



Child Law Practice

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Helping Lawyers Help Kids

EXPERT EXCHANGE

The Amazing Teen Brain: What Every Child Advocate Needs to Know

by Linda Burgess Chamberlain

As a child advocate, you are well aware that your teen clients think and behave differently. Recent scientific discoveries on teen brain development are helping us to better understand and respond to the sometimes unpredictable, frequently frustrating, and totally amazing teen years.

Around puberty, the teen brain begins to undergo major changes, many of which will not be completed until the early to mid-20s. The massive surges of hormones teens experience are associated with gender-specific changes in the brain that may help explain some of the differences between male and female brains. The teen brain is a work-in-progress that is far from complete.

During adolescence the brain becomes more efficient and develops more advanced skills. Brain connections that are stimulated and used repeatedly are strengthened while unused connections wither away. Similar to early childhood, this developmental window of opportunity is a period of “use it or lose it.” Adolescence is also a time of enhanced vulnerability. Rapid changes make the teen brain more sensitive to stress and neurotoxins, such as alcohol, tobacco, and drugs. How teens spend their time influences the organization and capacity of their brains. This raises questions about whether they are engaged in activities that promote active learn-

ing and skill development, such as volunteering with community services, practicing public speaking, learning to play an instrument, engaging in physical activities, and spending quality time with adults.

While you may think teen brain development does not directly affect your advocacy with teens, you may be surprised. Every youth-serving professional should have a basic understanding of teen brain development. The implications for frontline child advocates who work with at-risk youth is even greater. Many of these teens have experienced early trauma such as child abuse or domestic violence. Trauma can impact brain development and consequently behavior.

What is going on in your teen clients’ lives is influenced by their developing brains and life experiences—their behaviors, relationships, decisions, emotions, and just about everything that makes them unique. Developing a basic understanding of teen brain development can guide your interactions, enhance your communication skills, and help shape your advocacy for teens.

“What Were You Thinking?”

Challenging teen behaviors, such as sudden mood-swings, extreme risk-taking behaviors, and failure to follow instructions make sense when we understand what is happening in the teen brain. Teens lack all of the hardware in their brains to think like an adult. The outer covering of the brain, the cortex, goes through extensive remodeling during adolescence. Often referred to as the “intellectual brain,” this upper region of the brain is responsible for reason, logic, and rational thinking.

The prefrontal cortex is located right behind the forehead. It has a leading role in judgment, impulse control, problem-solving, organization and planning, multitasking, goal setting, and other essential skills. Following a growth spurt around age nine or 10 when the prefrontal cortex actually thickens,

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ABA Child Law PRACTICE

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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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this area of the brain then goes through extensive pruning to eliminate unused brain connections. *Nature saves the best for last*—the prefrontal cortex will not mature until the early 20s when brain connections get a final coating of insulation, called myelin, which increases the brain's speed and efficiency.

Teens may not be able to respond rationally when asked "What were you thinking?" because they reacted impulsively without the benefit of a mature prefrontal cortex to think things through first. The teen brain is still developing the thought patterns and skills for rational thinking and decision making. This is new terrain for the teen brain as teens develop more advanced cognitive skills to ask "how" and "why" questions, analyze more complex issues, and evaluate alternatives in decision making.

During adolescence, short-term memory increases by approximately 30 percent. Teens have tremendous capacity for acquiring new knowledge and skills. Even so, prefrontal cortex functions such as prioritizing what is important and developing organizational skills, challenge most teens. Asking a teen to multitask (i.e., "Take these papers to your guardian and have them signed, return the signed papers to your counselor, and schedule a follow-up appointment in two weeks.") can overwhelm a teen brain that is just learning to sort and prioritize information. Add stress to the scenario, and a teen may appear defiant when really they are overwhelmed with too much information.

While part of adolescence is about seeking new experiences and independence, teens still need lots of quality time with healthy adults to help shape their brains and learn the skills to transition into adulthood. They need the guidance of adults' mature prefrontal cortexes, even more so when they have histories of trauma. Traumatized children often

spend more time in the lower "survival" regions of the brain. While this shows the extraordinary ability of the brain to adapt to its environment, it comes at a high cost—spending less time in the cortex. Teens with a significant history of trauma may have deficits in cortical development and skills. Under stress, they may be more reactive and impulsive because it is harder for them to get to their upper brain/cortex. Adult mentoring can help teens model healthy behaviors and provide positive learning experiences to maximize cortical development during adolescence.

Strategies:

- Encourage activities for teens that allow time for active learning and positive social interactions (afterschool activities, sports, etc.). Teens in foster care placements should not miss out on school and extracurricular activities that are available to all students because of their foster care status.
- Educational stability is key to promoting active learning and academic success. When foster placements must change, advocate for the teen to remain in the same school to avoid disrupting the teen's education.
- Recognize trauma can impact brain development. It is important to meet each child at her developmental level rather than base expectations on age or grade in school. When a child has a long trauma history, it is not unusual to see significant developmental delays in reading, speech, social skills, and impulse control. These skills are cortical activities that require lots of energy and an ability to focus, which can be compromised when a child does not feel safe, nurtured, and stimulated in their environment.
- Create opportunities for healthy adults to spend quality time actively engaging with teens.

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CASE LAW UPDATE

Agency Found Negligent for Not Disclosing Adopted Child's Maternal Medical History

Halper v. Jewish Family & Children's Service of Greater Philadelphia, 963 A.2d 1282 (Pa. 2009).

Adoptive parents of child, who began suffering mental health problems during adolescence, filed suit against the adoption agency claiming negligent misrepresentation and negligent failure to disclose for not notifying them of the birth mother's mental history. The child also filed an action for negligent failure to disclose.

When their adopted son was hospitalized as a teenager for depression following a suicide attempt, the adoptive parents began a 10-year effort to obtain the birth mother's medical records to assist with their son's treatment. The agency revealed a letter from a psychiatrist indicating the mother suffered from schizophrenia.

The adoptive parents alleged two theories of negligence: wrongful adoption and failure to disclose. On a jury verdict, the trial court held the agency was generally negligent without differentiating between the negligent adoption and failure to disclose theories.

On appeal, the superior court found the trial court's verdict "too muddled to be legally supported" since the parents had presented conflicting expert testimony about their son's diagnosis as schizophrenic or major depressive with psychotic features. The superior court also agreed with the agency's argument that when the parents adopted the child, schizophrenia was generally believed to be a reactive disorder of the mind, not an inherited or foreseeable condition. Therefore, the agency could not be held negligent for withholding information from the adoptive parents. The parents and child appealed.

The Pennsylvania Supreme Court reversed and reinstated the trial court's verdict. The adoptive parents first claimed they had no obligation to show their son's birth mother's mental illness was foreseeable to establish the agency's duty

to disclose information about her condition. They also challenged the superior court's reliance on *Gibbs v. Ernst*, 647 A.2d 882 (Pa. 1994), which held a failure to disclose in the adoption context only applies when the condition of the child was foreseeable at the time of placement. They claimed the agency had a duty to fully disclose all information about the child without requiring a foreseeability element.

The agency countered that *Gibbs* only required disclosure of relevant information. In 1964, when the child was adopted, the birth mother's schizophrenia was not considered genetic but rather a product of her environment. Therefore, the agency claimed the information was irrelevant and need not be disclosed.

Gibbs compared wrongful adoption to the common law tort of negligent misrepresentation and held that adoption agencies were required to make reasonable efforts to make true representations to adoptive parents. However, it restricted the agency's duty to situations where the condition of the child was foreseeable at the time of placement. *Gibbs* also held that negligent failure to disclose relevant information also applied in the adoption context, but limited that duty to relevant nonidentifying information about the child that it had in its possession.

The supreme court found the superior court properly interpreted *Gibbs* regarding the wrongful adoption/negligent representation claim. Since the general belief in the medical community at the time of the child's adoption was that schizophrenia was a product of the environment, not genetically caused, the court agreed that there was no foreseeable harm at the time of the child's adoption about his mother's condition. Since foreseeability is a required element of negligent misrepresentation, the superior court's analysis was correct.

The adoptive parents next challenged the superior court's conclusion that their medical experts disagreed about their son's diagnosis and left the jury without enough guidance to make a legally supported decision. While the experts' testimony differed, the supreme court found the differences did not compromise their testimony so that it required removal from the jury's consideration.

Two of the adoptive parents' experts had diagnosed the child with schizophrenia, while a third expert diagnosed him with major depression with psychotic features and substance abuse. Despite these differences, overall the experts agreed about the child's past behaviors and overall scheme of mental illness. The supreme court found the trial court had correctly determined the matter was appropriate for the jury to decide.

The adoptive parents next claimed the superior court erred when it failed to address their claim for failure to produce the birth mother's medical history when it remanded for a new trial based only on the child's identical claim. Although the supreme court had found the adoptive parents' first negligence theory to be untenable, their second theory was supported by evidence and it was unclear why the superior court only remanded regarding the son's identical claim. The court also noted the verdict that had been issued did not differentiate between the two negligence theories. In such cases, the "general-verdict rule" applies; this rule states that when a verdict is supported for one or more issues, it will not be reversed on appeal. Since the evidence supported at least one of the adoptive parents' negligence theories, the court held the verdict would stand.

California

D.B. v. Superior Court, 89 Cal. Rptr. 3d 566 (Ct. App. 2009). DEPENDENCY, ICWA

Case had to be remanded for trial court to apply ICWA requirements, including sending notices to determine child's eligibility for tribal membership; court's determination that ICWA did not apply because child or father was not enrolled was in error as eligibility for membership not enrollment determines ICWA status.

In re R.V., 89 Cal. Rptr. 3d 702

(Ct. App. 2009). DELINQUENCY, GPS MONITORING

Trial court did not abuse discretion in placing juvenile on a global positioning system monitor; probation condition was reasonably related to and likely to deter his delinquent activities including gang-related vandalism, and failure to attend school and follow curfew according to court orders.

Connecticut

In re Cheila R., 963 A.2d 1014 (Conn. App. Ct. 2009). TERMINATION OF PARENTAL RIGHTS, BEST INTERESTS
Mother, a minor, failed to show she had achieved sufficient rehabilitation within reasonable period and it was in her child's best interests to terminate her parental rights; mother made no effort to conform to minimally acceptable parenting standards, did not cooperate with child welfare agency or service providers, made no changes to become a safe and responsible parent, and shared weak bond with child.

In re Deleon J., 963 A.2d 53 (Conn. 2009). DEPENDENCY, NOTICE
Mother's procedural due process rights were violated when trial court failed to adequately notify her of hearing that addressed merits of her petition for reinstatement as child's guardian; trial court only stated that hearing would focus on court's continued jurisdiction over custody and guardianship of child and did not indicate that merits of mother's petition would be decided.

In re Janzia S., 961 A.2d 1036 (Conn. App. Ct. 2009). TERMINATION OF PARENTAL RIGHTS, FAILURE TO REHABILITATE
Determination that it was in child's best

interest to have parental rights terminated was not in error, even though mother had achieved some level of stability after five years, and court was not required to analyze mother's rehabilitation and child's best interests in isolation; court properly considered emotional toll time in care took on child and testimony estimating it would take years for mother to complete services to independently care for child after several failed attempts at substance abuse treatment.

District of Columbia

In re T.W.M., 964 A.2d 595 (D.C. 2009). ADOPTION, PARENTAL PREFERENCE
Trial court erred in granting adoption to nonrelative foster parent over competing petition by relative where parent had consented to adoption by relative; court failed to give due weight to the parent's preference for an adoptive caregiver and erred in concluding the relative was unfit despite testimony by social workers and others about her suitability and positive relationship with child.

Florida

P.S. v. Dep't of Children & Families, 2009 WL 482280 (Fla. Dist. Ct. App.). DEPENDENCY, CASE PLAN
Trial court properly required father, who had sexually abused his stepdaughter but not his sons, to complete a case plan in dependency proceeding involving sons; case plan's requirements were reasonable given sexual abuse finding and evidence of father's sporadic involvement in his sons' lives.

In re S.M., 997 So. 2d 513 (Fla. Dist. Ct. App. 2008). DEPENDENCY, SIBLINGS
Trial court erred in adjudicating sibling dependent in case where mother knew of sexual abuse of oldest child and violated court orders by continuing to live with the perpetrator; while middle child was properly found to be abused or neglected because he was harmed emotionally by his knowledge of his mother's failure to protect, there was no evidence to show infant had been abused, neglected, or was at substantial risk of maltreatment.

Hawaii

Doe v. Doe, 2009 WL 487386 (Hawaii Ct. App.). CUSTODY, DUE PROCESS
Trial court violated mother's right to due process in denying her motion to vacate an ex parte order granting custody to

father; ex parte order was not moot in light of subsequent hearings on custody issues held over a year later because consequences of the order put mother in a substantially different position since the child lived with and presumably bonded with father during the interim.

Indiana

In re M.S., 898 N.E.2d 307 (Ind. Ct. App. 2008). TERMINATION OF PARENTAL RIGHTS, BEST INTERESTS

In case in which mother had requested child welfare agency's help with son when he was two years old, causing his out-of-home placement, termination of mother's parental rights when son was eight was not in child's best interests; mother's need for help with son's behavior problems was insufficient basis for termination and status of son's relationship with mother had no bearing on his ability to remain in placement.

Louisiana

In re P.A.P., 2009 WL 250443 (La. Ct. App.). DEPENDENCY, GUARDIANSHIP
Permanent placement of children under guardianship of relatives was in children's best interests where mother's drug use and father's incarceration before children's removal created unsafe home environment, and children's lives improved markedly in relatives' care; relative placement did not relieve child welfare agency of continuing duty to seek family reunification.

Maine

In re Jacob C., 2009 WL 243035 (Me.). CUSTODY, PARENTAL RIGHTS
Court properly awarded sole custody and parenting rights to father with supervised visits for mother based on child's best interests; after a year in agency custody, mother had not remedied her serious mental health issues so she could parent the child, even in a shared capacity, and child was thriving in placement with father.

In re Robert S., 2009 WL 468071 (Me.). TERMINATION OF PARENTAL RIGHTS, EVIDENTIARY HEARINGS

Order terminating mother's parental rights without an evidentiary hearing violated her right to procedural due process; trial court terminated her rights at the docket call based on her failure to appear but did not take testimony or other evidence to

show she was adequately notified or make factual findings regarding elements of abandonment.

Maryland

In re Joseph N., 2009 WL 396191 (Md.). DEPENDENCY, APPEALS

Mother could sustain interlocutory appeal from review hearing order in dependency case where her child was placed with the father making it more likely, as did happen in the interim, that child might be placed permanently with the father; an interlocutory appeal can be taken from a review hearing if a plan change has the potential to substantially influence the ultimate outcome of the case against the parent's interests.

Montana

Adoption of K.P.M., 201 P.3d 833 (Mont. 2009). TERMINATION OF PARENTAL RIGHTS, STANDING

Stepmother had standing to petition to terminate biological mother's parental rights since stepmother was married to biological father, who had primary legal and physical custody of child for over two years, stepmother was custodial parent, and she had petitioned to adopt child with father's consent.

New Hampshire

In re Kotey M., 2009 WL 385427 (N.H.). DEPENDENCY, COMPETENCY

Child did not have to be found competent before being adjudicated on status offenses; though state statute afforded child a right to counsel, there was no constitutional requirement that child be able to assist his counsel and a guardian ad litem could be appointed if the court felt it necessary for that purpose.

New Jersey

New Jersey Div. of Youth & Fam. Servs. v. W.A., 2009 WL 498347 (N.J. Super. Ct. App. Div.). TERMINATION OF PARENTAL RIGHTS, BEST INTERESTS

Child welfare agency proved by clear and convincing evidence that terminating mother's parental rights was in child's best interests; mother's long-term substance abuse placed child's safety at risk and that risk would continue, mother was unable to address substance abuse through treatment and remove harm to child, agency made reasonable efforts to provide mother rehabilitative services, and termination of

parental rights would not do more harm than good.

New York

In re Anthony M., 867 N.Y.S.2d 590 (App. Div. 2008). TERMINATION OF PARENTAL RIGHTS, MENTAL ILLNESS

Child welfare agency proved by clear and convincing evidence that parents were unable to adequately care for their children now or in the future because of their mental illness to support terminating their parental rights; court-appointed psychologist testified that parents could not acknowledge or meet their son's special needs and their prognosis for recovery was poor.

In re Dustin P., 870 N.Y.S.2d 670 (App. Div. 2008). DEPENDENCY, MEDICAL NEGLECT

Father neglected son by failing to pursue recommended therapy for him or offering alternative treatment until after child jumped from second story window at father's home; child's suicidal and homicidal ideations directly resulted from conflict between father, mother and stepmother and father had affirmative duty to provide son adequate medical care.

In re Vashaun P., 861 N.Y.S.2d 453 (App. Div. 2008). DEPENDENCY, PRIOR FINDINGS

Evidence supported finding that child was derivatively neglected for purposes of removal from parent's custody based on mother's prior neglect of two older children; mother continuously failed to address older children's basic needs and refused to take part in programs to strengthen relationship with them and provide for their care and well-being.

North Carolina

In re S.R.G., 671 S.E.2d 47 (N.C. Ct. App. 2009). TERMINATION OF PARENTAL RIGHTS, GROUNDS

Trial court improperly terminated mother's parental rights when she failed to overcome substance abuse issues and missed approximately half her visits; while evidence may have supported termination for failure to remedy conditions that led to custody, this ground was not alleged in the petition and fact that mother had visited, even if inconsistently, precluded termination for abandonment.

Oregon

In re L.N., 2009 WL 455584 (Or. Ct. App.). TERMINATION OF PARENTAL RIGHTS, FITNESS

Termination of mother's parental rights was appropriate on ground of unfitness where state, for a period of at least two years, made reasonable efforts to provide services to address mother's need for housing and her mental illness, but mother resisted, showed hostility towards state's efforts, and failed to keep state informed of her location, which prevented her from making lasting changes to allow child to return to her home within reasonable period.

In re W.L.P., 202 P.3d 167 (Or. Ct. App. 2009). DEPENDENCY, EXCLUSIONARY RULE

In dependency proceeding in which child was removed from home based on parents' arrest in connection with drugs found in home within child's reach, federal exclusionary rule, which precludes illegally obtained evidence in certain court proceedings, did not apply to father's request to suppress drug evidence found during search of his home; federal exclusionary rule does not apply in Oregon juvenile dependency proceedings.

Washington

In re M.G., 201 P.3d 354 (Wash. Ct. App. 2009). DEPENDENCY, VOLUNTARY CONSENT

Mother could not set aside dependency order based on misrepresentation or fraud by state; mother had voluntarily consented to dependency order on the belief that child would remain with her while she was in drug treatment, but child's placement with mother was contingent on child's health, which was too unstable to support such an arrangement, and state had not intentionally misled mother when she signed order.

Neilson v. Blanchette., 201 P.3d 1089 (Wash. Ct. App. 2009). DOMESTIC VIOLENCE, PROTECTION ORDERS
Trial court improperly issued protection from abuse order where alleged abuse was between two youth aged 14 and 17 years old; state statute governing protection orders in domestic violence cases covers only situations involving persons over age 16 who are in a dating relationship.

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Legal advocates, foster parents, caseworkers, relatives, Big Brothers/Big Sisters, mentors, teachers, coaches, pastors and other adults can positively influence a teen's life.

- When interacting with teens, communicate one task at a time and help identify priorities. Don't overwhelm teens with too many decisions at once.
- Create reminders by posting notes, setting up calendars, using erasable message boards and other strategies to help teens identify and process tasks.

Boys vs. Girls

Gender influences brain structure and function. Being aware of these differences can help you understand common behavioral patterns in boys and girls. The cerebral cortex is composed of gray and white matter. The female brain has more gray matter, which is densely packed with cell bodies. Having more gray matter may explain why girls tend to be more efficient in processing information, have stronger verbal skills, and often excel at juggling several activities. Boys have more white matter, which consists of insulated axons that form connections between brain cells. Having more white matter helps the male brain transfer information throughout the brain, which can enhance spatial skills, such as aiming at targets, navigation, and mathematical problem solving.

Several structures in the limbic system, the emotional core of the brain, grow differently in teen boys and girls. The hippocampus, which transfers new information to long-term memory, is sensitive to the female hormone, estrogen, and grows faster in girls. Scientists believe that a larger hippocampus may explain girls' strong social skills—sizing up social situations, being emotionally supportive, and coordinating

complex relationships. The amygdala and the hypothalamus are sensitive to male sex hormones and grow larger in boys. Both structures are involved in the body's response to fear and danger, often called the "fight or flight" response. Enjoying contact sports, having increased sexual desires, and being more assertive are behaviors that make sense due to the male growth spurt in the amygdala and hypothalamus.

Given the differences between male and female brains, it is not surprising that boys and girls learn differently. Understanding some of these differences is relevant to anyone who is trying to reach and influence teens—

- *Boys* often learn better and have fewer impulsive behaviors when they can move around while they are learning. They typically need more variety to engage their attention and keep focused. *Girls* can typically focus on one activity or subject for longer periods and are less likely to get bored.
- *Boys* are more oriented towards spatial thinking and therefore often need more physical space to learn (spreading out their work etc.). *Girls* learn best when things are conceptualized into everyday language with examples and details.
- *Boys* tend to prefer coded language and jargon and learn more from diagrams, charts, and symbols. *Girls* are often better listeners and can absorb more details from conversations.

Strategies:

- Recognize that girls' and boys' brains develop differently, which influences how they process information and solve problems. Girls' brains mature sooner than boys.' Think about gender differences when interacting with a teen. Avoid one-size-fits-all approaches.
- Promote gender-specific enrichment activities tailored to a teen's

interests. Provide additional support and learning opportunities to promote skill development in areas where a teen is particularly challenged.

- Provide opportunities for teens to develop social skills through small groups and one-on-one with adults to promote closer bonding. This especially benefits teen boys.

Managing Emotions

The core of our emotions—the limbic system—lies deep in the center of the brain. The limbic region, which includes the amygdala and the hippocampus, goes through major transformations during adolescence. It is no wonder that youth sometimes feel like they are on an emotional roller coaster as they navigate the daily drama of school, relationships, and life in general, in addition to the many changes occurring in their bodies and brains.

While adults rely on their cortexes to interpret and think through their emotions, teens rely more on the primitive limbic system. Changes in the teen brain slow teens' ability to identify emotions—their own and those of others. Teens frequently misinterpret other people's emotions. Often they confuse anger with sadness or concern. Without the advantage of a mature cortex to override the more impulsive limbic response, the teen brain is vulnerable to stress. In emotionally-charged situations, teens tend to overreact and escalate their emotions.

Lack of sleep can affect teens' brain development and their ability to manage their emotions. The brain chemicals that induce sleep also help build brain connections. Due to changes occurring in the sleep center of the teen brain, teens need more sleep than adults—approximately 9½ hours a night. Many teens are sleep deprived not only due to busy schedules but also

because melatonin, a hormone that induces sleep, is secreted two hours later at night during adolescence and stays in their systems two hours later in the morning compared to childhood.

Teens are often wide awake at bedtime and have difficulty waking up at the usual time in the morning. This can lead to chronic sleep deprivation. Sleep deprivation can look like or worsen symptoms of ADHD (attention deficit/hyperactivity disorder) in children. Sleep-deprived teens are more likely to be depressed, lack control of their emotions, and act aggressively. Adequate sleep is particularly challenging for traumatized youth because of sleep problems associated with early trauma, such as night terrors, repeated night wakings, and fear of going to sleep.

Strategies:

- When a teen seems upset or angry, respond calmly. Limit your emotions to prevent prompting or escalating an emotional (and often inaccurate) response.
- Clearly state your feelings or concerns, one at a time. Avoid communicating your emotions through facial expressions, which teens often misinterpret.
- Encourage teens to talk about their feelings by asking open-ended questions in a safe and supportive environment where their feelings can be acknowledged without judgment.
- Help teens find healthy ways to deal with stress, such as physical exercise, journaling, and peer support groups.
- Ask about sleep patterns if teens experience behavioral and/or emotional problems. Find out if they're getting enough sleep and suggest changes if not.
- Encourage teens who are having problems getting enough sleep to avoid stimulating activities, such as playing computer games, exercising, or drinking caffeinated beverages close to

Web Sites:

www.cdc.gov/HealthyYouth/yrbs/ This Web site provides national data on adolescents' health and risk behaviors, including alcohol, drugs, and tobacco use from the Youth Risk Behavior Surveillance System.

www.pbs.org/wgbh/pages/frontline/shows/teenbrain/ "Inside the Teen Brain" describes what science tells us about how the teen brain works.

www.nimh.nih.gov/Publicat/teenbrain.cfm

A brief overview of research into brain development during adolescence.

Books:

Walsh, David. *Why Do They Act That Way?* New York, NY: Free Press, 2005.

Strauch, Barbara. *The Primal Teen: What the New Discoveries About the Teenage Brain Tell Us about Our Kids.* New York, NY: Doubleday, 2003.

Wolfe, David, Peter Jaffe, and Claire Crooks. *Adolescent Risk Behaviors: Why Teens Experiment and Strategies to Keep Them Safe.* New Haven, CT: Yale University Press, 2006.

Journal Articles:

Giedd, J. N. et al. "Brain Development during Childhood and Adolescence: A Longitudinal MRI Study." *Nature Neuroscience* 2(10), October 1999, 861-863.

bedtime. Talk with them about ways to wind down when trying to go to sleep, such as reading, listening to soft music, and relaxation activities.

The Risk-Seeking Teen

What is it about adolescence that causes teens to take risks—often extreme risks—without considering the consequences? While we know what puts teens "at-risk"—poverty, neglect, violence, and substance abuse—we are less clear on why teens are more likely to take risks than adults. There is little question that puberty and the developing teen brain have a major role in teens' quests for new experiences and thrills.

Paus, T. et al. "Maturation of White Matter in the Human Brain: A Review of Magnetic Resonance Studies." *Brain Research Bulletin* 54(3), 2001, 255-266.

Spear, Linda Patia. "Neurobehavioral Changes in Adolescence." *Current Directions in Psychological Science* 9(4), 2000, 111-114.

Tapert, S.F. et al. "Substance Use and Withdrawal: Neuropsychological Functioning over 8 Years in Youth." *Journal of International Psychology and Sociology* 8, 2002, 873-883.

DeBellis, M. et al. "Hippocampal Volume in Adolescent-Onset Alcohol Use Disorders." *American Journal of Psychiatry* 157, 2000, 737-744.

Brown, S. A. et al. "Neurocognitive Functioning of Adolescents: Effects of Protracted Alcohol Use." *Alcoholism Clinical and Experimental Research* 24(2), 2000, 164-171.

Monti, P. M. et al. "Adolescence: Booze, Brains and Behavior." *Alcoholism Clinical and Experimental Research* 29(2), 2005, 207-220.

Abreu-Villaco, Y. et al. "Nicotine is a Neurotoxin in the Adolescent Brain: Critical Periods, Patterns of Exposure, Regional Selectivity and Dose Thresholds for Macromolecular Alterations." *Brain Research* 979, 2003, 114-128.

To start, teens lack a mature frontal cortex to suppress those "just do it" impulses or to fully consider the consequences of their actions. Chemical changes occurring in the teen brain are also likely contributors. Levels of dopamine, the "feel good" neurotransmitter that is part of the brain's pleasure and reward circuit, are declining between childhood and adulthood. One way to get that dopamine "high" is thrill-seeking. In addition, levels of serotonin, a brain chemical that helps control impulsive behavior, fluctuate during adolescence.

Teens perceive risk differently than adults—they are more enticed by the novelty of the experience. They also have a higher sensitivity

to reward which means that when they take a risk and win the reward, they are more driven to keep taking that risk over and over again even when the strategy does not work anymore. Research shows that when other teens are present, teens' willingness to take risks increases dramatically whether it is driving a car or hanging out with a street gang.

Given teens' propensity for risk-taking, we need to create more options for positive risks under structured circumstances. Opportunities for teens to do new things and have novel experiences are essential development tasks. The types of activities depend on each teen and his/her life circumstances. It might be surfing waves in the ocean, learning to use power tools, or organizing a youth rally. There is one thing we can count on—if we do not provide them opportunities to build their confidence and independence through reasonable risk taking, they will find their own ways to take risks without adult supervision.

Drugs and the Teen Brain

The tendency towards risk-seeking and novel experiences during adolescence increases the likelihood that a teen will experiment with alcohol and drugs. Drugs such as Ecstasy and methamphetamine cause imbalances in brain chemicals and can lead to problems with impulse control and depression.

Even the nicotine in tobacco interferes with healthy brain development. Nicotine interacts with at least 20 different chemicals in the brain and can damage the hippocampus (the brain's memory maker). The neurotoxic effects of nicotine on the brain may help explain why teen smokers are more prone to infections and depression.

Alcohol is still the most common substance that teens try. According to national data, more than one out of 10 eighth graders reported heavy drinking (consuming five or more alcoholic beverages in

a row) in the past two weeks. Research on the impact of alcohol on the teen brain has led to some startling discoveries:

1. Teens are more likely to black out (conscious but can't remember) than pass out and are less likely to succumb to the sedative effects of alcohol. As a result, they are less sensitive to the warning signs of inebriation and can continue consuming alcohol and engaging in other risky behaviors, such as driving while intoxicated, without recognizing their level of impairment.
2. The hippocampus is approximately 10 percent smaller in heavy teen drinkers. Young drinkers have more long-term memory impairment.
3. Teens are more prone to addiction than adults. The younger teens are when they start drinking alcohol the more quickly they become addicted.

Strategies:

- When teens engage in bad or risky behavior, for example truancy, violence, and drug use, be mindful of how the teen brain is developing and transitioning. Know how these developmental changes affect teens' thought processes and behaviors so you can talk and relate to your teen client effectively, make better decisions on behalf of your client, and support positive outcomes.
- Ensure teens have opportunities for novel, challenging experiences, such as hiking, rock climbing, outdoor recreational activities, and chaperoned all-night teen events.
- Encourage caregivers to give teens an active role in discussing family rules, curfews, and consequences for their behaviors and to listen to how they evaluate risks and decide what is important.
- Recognize that teens act differently under the influence of alcohol compared to adults and

that there is no known "safe" level of alcohol consumption for teen brain development.

- If a teen drives, encourage caregivers to set boundaries for driving that limit a teen driver's opportunities to take risks, such as limiting the number of friends allowed in the car.

A Peaceful Adolescence

Dr. Lawrence Steinberg, an expert in teen development, compares the teenage brain to "a car with a good accelerator but a weak brake." Teens are acquiring the "hardware" in their brains to function like adults—but they are not there yet. Teens need our guidance and an enriched environment to optimize this extraordinary window of opportunity in brain development.

The importance of a stimulating and supportive learning environment is all the more important when early trauma has interfered with optimal brain development. Under the best circumstances, it is realistic to expect some chaos, conflict, emotional peaks and valleys, risk taking, and rule breaking as teens navigate the tremendous physical and neurodevelopmental changes that begin at puberty and continue into the mid-20s.

By creating opportunities for teens to practice good decision making, develop new skills, seek adventure through structured risk taking, and benefit from the experience of our mature cortexes, we can promote resilience and help teens reach their potential.

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An earlier version of this article was published by the Institute for Safe Families. It has been updated and expanded by the author to address issues unique to traumatized and at-risk youth.

Program Teaches Domestic Violence Victims Safe Use of Technology

A new Washington state program helps domestic violence victims understand how to use technology safely and minimize the risks that technology can pose when in an abusive relationship. An evaluation of the program finds it is highly successful.

The Technology Safety Program, developed by the Washington State Coalition Against Domestic Violence, was judged to be needed, useful and effective by Jerry Finn, a University of Washington Tacoma professor of social work who evaluates effectiveness of human services programs. The program also was judged to be very helpful by nearly 500 women who tested the program at 18 locations throughout Washington. According to Finn, the program can be easily adopted for use in other states or nationally.

“Victims of domestic violence often are reaching out through technology to gain access to information, services and support, often without understanding how that same technology can be used to track and monitor them. This program educates victims on Internet communications, cell phones and global positioning systems and keeping their personal information safer,” said Finn.

“Domestic violence is built around control, not anger, and an abusive partner often limits a woman’s access to information and support. Monitoring computer activity is one of many ways to control a spouse. In a shelter a woman needs to keep her identity secret, but a fax number can be tracked to her location. Abusive partners also can track their victim’s cell phone calls or can use a keystroke logger on a computer to intercept and read e-mail. This program shows women ways in which they might be monitored and steps they can take to prevent being stalked and tracked.”

Finn noted that cyber stalking and use of technology is increasing, but safe use of technology can be empowering to women seeking to escape an abusive relationship.

Findings from the evaluation came from 479 domestic violence victims ranging in age from 15 to 74. The women were predominantly white (67 percent) or Hispanic (17 percent) and three-quarters of them had children. Twenty-five percent had their browser history monitored, 24 percent had been repeatedly threatened, insulted or harassed by e-mail, 18 percent had someone monitor their e-mail and 17 percent had someone use their password or PIN number.

Staff at the 18 participating agencies, primarily shelters, were trained in the program, which was funded by the Bill and Melinda Gates Foundation. How the program was delivered at each agency varied, but participants viewed a presentation. It included information about technology safety, what could happen to a person and how to prevent identity theft, protecting their browser history, chat room safety, setting up an e-mail account without using real names, and how to protect from being followed with a GPS device.

The training included a section on Internet safety for parents with children. Abusers often communicate with or search for a victim’s children through social networking sites or other online venues. Children sometimes post location information such as the town they live in or the school they attend, potentially compromising the family’s safety. The program helps parents talk to their children about safety when using chat rooms, not meeting someone they met on line or not divulging personal information online.

Finn said satisfaction with the program was high with 86 percent

of the women reporting high satisfaction and 10 percent saying they were somewhat satisfied. However, he said it is unknown how much of this information the women used after the training.

In addition, he said the program met its three goals of increasing domestic violence victim’s knowledge and safe use of communications technology, reducing the risk posed by abusers by teaching women about technology safety and privacy and increasing women’s ability to help themselves and their children through the use of technology.

Many women expressed interest in helping other domestic violence victims receive the same kind of training. “These women are re-emerging after being severely restricted and technology is a way of communicating with the rest of the world. It is very therapeutic to be a helper, and it would be a good use of resources to have women who learned these skills to teach the next group of women entering shelters,” said Finn.

The evaluation also suggests that technology safety be addressed in all domestic cases. “It must be part of the assessment process in every case. We talk about safety and two questions should be ‘What technology devices do you use?’ and ‘Is it possible your partner monitors your use of these devices?’ The most dangerous time for a woman is when she plans to leave a violent partner. Her plans can be intercepted if she uses a computer, cell phone or other technology,” said Finn.

The evaluation results were published in the online edition of the *Journal of Family Violence*, co-authored by Teresa Atkinson, technology safety program coordinator of the Washington State Coalition Against Domestic Violence.

Engaging Fathers in the Child Protection Process: The Judicial Role (Part 2)

by Judge Leonard Edwards (ret.)

Part 1 of this article appeared in last month's CLP. It explored the roles of judges in identifying, locating, and notifying fathers in child protection proceedings. Part 2 focuses on specific strategies judges can use to engage fathers in and out of court, as well as strategies for engaging fathers' extended families and ensuring the safety of the mother and child.

Engaging fathers in the child protection process involves strategic thinking and planning. For the father who enthusiastically comes to court asking to fully engage in his child's life, participate in services, and attend all court hearings, there is little the court needs to do. The enthusiastic father, however, is the exception. More often the father is ambivalent about participating in the case, his relationship to the mother, and coming to court. Moreover, he may worry about getting involved in legal proceedings for reasons relating to his immigration status, criminal history, concerns about child support, or poor relationships with the caseworkers or attorneys.

Court Engagement Strategies

Treating fathers with respect

When the father appears in court,

treat him with respect, acknowledging his importance to the legal proceedings and to the child.¹ Simple courtesies can make the difference between a positive and negative court experience for the father. Take time to explain such issues as the nature of the proceedings, the importance of fathers, permanency issues and timelines, the father's legal rights, and the potential role of the father's family for the child.

Removing barriers to participation

Identify and remove barriers to the father's participation and encourage him to become involved with his child. The barriers include anything that makes it more difficult for the father to play a role in his child's life. For example, ask whether the father has transportation to and from the facility that will perform the DNA testing, to court proceedings, to the site for visitation, and to the location of services. Ensure that there are language interpreters for non-English speaking fathers and that those interpreters are available at all critical events in the case. Also determine whether the father's relatives want to be involved in the child's life.

Appointing qualified counsel

Appointing counsel for the father is critical to his involvement in the court process. Counsel can inform the court about problems the father is experiencing that otherwise would escape the court's notice.

Counsel can facilitate communication between the father and the caseworker and can ensure the father's rights are upheld.

There is no constitutional right to counsel for indigent parents in child protection cases.² State laws and practices vary regarding appointing counsel for indigent parents. A 1998 survey found:

- Thirty-nine states provide that counsel be appointed for indigent parents.
- Six states include provisions that counsel be appointed for parents in all child protection proceedings.
- Three states provide only for the appointment of counsel for parents in termination of parental rights cases.
- Three states do not provide explicitly for the appointment of counsel in statute.³

Seventy-eight percent of the survey respondents reported that counsel is appointed at some point during a child protection case, while 11% of the respondents said that counsel for parents is generally not appointed.⁴ The survey also found that appointed parents' counsel is often inadequate for three reasons:

- 1) inadequate time to prepare;
- 2) inadequate time, resources, and compensation to adequately represent clients, and
- 3) tension between zealously representing parent clients and "core concepts" of morality [that] dictate care and concern for the

About this Series

The series gives attorneys and judges tools to better engage nonresident fathers in child welfare cases. Article topics include:

- ✓ Nonresident Fathers' Constitutional Rights (Nov. 08)
- ✓ Representing Nonresident Fathers (Dec. 08)
- ✓ Understanding Male Help-Seeking Behavior (Jan. 08)
- ✓ **Involving Nonresident Fathers: The Judicial Role (this issue)**
- Engaging Incarcerated Fathers
- Child Support Issues
- Ethical Considerations

abused child.⁵

The survey shows that representation for indigent parents is not provided in all states, and when it is provided it is often inadequate. Appointing counsel for nonresident fathers occurs less frequently than for mothers and presumed (putative) fathers. For adequate counsel to be appointed for nonresident fathers, standards of representation must be raised. Some jurisdictions, such as the District of Columbia, already set high standards by appointing counsel for all fathers.

The court should also require counsel to participate in training focused on representing fathers.⁶ Some courts require all appointed attorneys to complete trainings and observe and participate in court proceedings before becoming eligible for court appointment.⁷ Such requirements ensure the availability of an experienced panel of attorneys for representation of parents, and particularly fathers, in child protection cases.⁸

Encouraging the father to take pride in his status as father

Encourage the father to take pride in his new status as father and help him identify the positive aspects of being a father. These include visits, sharing with other family members, exchanging photos, attending doctor visits, and more. Congratulate the father, reminding him that this is a major societal and family event. This encouragement can come from any male in the courtroom:

Judge: You know I am a father, too.

Father: Oh?

Judge: Yes, having a son/daughter has been one of most important parts of my life. There are so many things we do together. You have a great deal to look forward to as a father.⁹

Consider asking the father if he had a relationship with his own fa-

Judge's Checklist: Engaging Fathers

- ✓ Identify all possible fathers as soon as possible.
- ✓ Question the mother under oath regarding the identity of the father.
- ✓ Determine where the father or potential fathers can be located.
- ✓ Order the caseworker to follow-up on information gained from the court hearing.
- ✓ Order the caseworker to personally serve each possible father with notice of the legal proceedings.
- ✓ Insist that caseworkers use good faith efforts to identify, locate, and support the father throughout the child protection process. Use the “reasonable efforts” finding if necessary and appropriate.
- ✓ Revisit the question of the father’s identity and location at all later court hearings.
- ✓ When a potential father comes to court, let him know the court is pleased that he has appeared because he is an important person in the child’s life. Let him know that once his paternity is established, he will be treated as a parent in all subsequent court proceedings.
- ✓ Complete the testing for paternity as soon as possible at state expense unless the father has the means to pay for testing.
- ✓ Appoint counsel for the father as soon as paternity has been established, with the possibility of reimbursement considering his financial means.
- ✓ Make it clear that the father may be a placement possibility for the child.
- ✓ Identify the father’s extended family and ensure they know about the legal proceedings and that they will be considered as possible placements if placement is necessary.
- ✓ Permit the extended family to participate in group decision-making processes, visitation, and court hearings.
- ✓ Encourage services to be developed in the community that will meet the needs of fathers. These could include parenting classes for fathers, parent coaching, fathers mentoring fathers, and other gender-based programs.
- ✓ Determine if the father is a danger to the mother or to the child and make appropriate protective orders.

ther. Depending on the answer, you might follow up with “Would you like to have a good relationship with your child?” If the answer is yes, offer to help with that. If the father works, compliment him and offer

praise for his role in supporting his child and tell him how important economic support is to the child’s well-being.¹⁰

The court can also present barriers to engagement by making it

difficult for the father to visit, come to court, or engage in services. Some courts show a bias towards alleged fathers that harms the father and child.¹¹ Without appellate court oversight some trial courts will continue to provide only minimal due process or support for fathers.

Identifying and Engaging Extended Family

Extended family can help engage fathers with their children. The young father may not understand the importance of a new family member to other family members and to the family unit. Other family members—grandparents, aunts, uncles, and siblings—understand how important a new family member is, particularly a baby. They will want to be a part of the baby’s care and for the baby to remain in the family. Moreover, they will likely influence the father more than any professional in the child protection system.¹² Parents, siblings, and other relatives may be able to hold the father accountable for his behavior and ensure he participates in the legal proceedings.

Young fathers can be uncomfortable with infants. Typically they do not know how to play with or comfort them. Extended family members can help the father learn to relate to and feel more comfortable with his child, and make him understand how important this new addition is to the family. A father visiting with an infant by himself may have a difficult experience and give up his efforts to be involved in his child’s life. A father visiting with a relative sees the child in the hands of a more skilled family member and learns how to be a better father.

As the judge, you can play an important role in making the extended family a part of the child protection case. Insist that extended family be told of the legal proceedings, invited to court, and included in visitation arrangements so that they can help engage the father in

his child’s life.

Identifying and engaging relatives is sound policy. It also is the law in many states and is emphasized in recent federal legislation.¹³ The Fostering Connections to Success and Increasing Adoptions Act stresses identifying extended family, engaging relatives, and giving preference to relatives. There are also more than 23 “relative preference” states—states with statutes that state that relatives are to be preferred to nonrelatives when a child is removed from parental care and placed out of home. This is also the practice in some states without relative preference statutes.

It is good caseworker practice to identify and work with extended family members. Usually these relatives know the child, which makes placement with them less traumatic. They also share DNA with the child, making it likely they will treat the child with love and will work to make the child’s environment family-like. Some research shows that relative placements are safer than nonrelative placements.¹⁴ It is also well established that relatives provide a significant percentage of care for children placed out of home.¹⁵

Protecting the Safety of the Mother and Child

Do not assume the father in the child protection case is harmless or a positive influence in the child’s life. He may be dangerous, violent, a substance abuser, or have sexual or mental health problems. You will need good information about the father to make decisions about his contact with the child and with the mother. Be prepared to restrict contact, if necessary, and have domestic violence protocols and practices in place that address when mediation or other group decision-making processes should be used.¹⁶

However, just because the father is violent or dangerous does not mean his entire family is to be avoided. Some people subscribe to

the maxim that “the apple does not fall from the tree,” meaning that if the father is dangerous, the entire family must be dangerous. Group decision-making practices often uncover solid, stable family members, no matter how violent or dangerous one or more members may be.

Assuming the father is a danger, if a family member steps forward to receive a child into their home, find out whether the family member understands what the father has done and is willing to protect the child from the father in the future. This issue is challenging for family members because they often love the father and cannot accept that he has done or may do something abusive towards the child. Weigh these considerations when making a placement decision.

Using Nonadversarial Decision-making Processes

The adversarial court process does not build relationships, strengthen families, or encourage participation by fathers or other family members.¹⁷ Fathers (and most family members) are intimidated by the adversarial process and most do not want to come to court and have a trial. As a result, they either do not attend or sit silently in child protection proceedings. The courtroom does not permit the parent to speak freely. Instead, any expressions are restricted by the rules of evidence and time restrictions. An important strategy for the child protection system is to have opportunities outside of court to resolve matters, preferably in a confidential setting where family members can work with others to address the needs of their child.¹⁸

Group decision making

Encourage the agency to use group decision-making processes that bring together family members, friends, and professionals to address issues relating to the child.¹⁹ Family members work together to plan for

the future of their children. Resources within the family and close friends are identified, family members help make it possible for the child to remain with relatives, and fathers see that they are a part of a greater family that wants to raise its children. The father also sees that he has a part to play in the family, and that he is important to his child. Every effort should be made to include fathers in group decision making. In North San Diego County, for example, the agency will not convene a team decision-making meeting without the father, believing his involvement and the involvement of his family almost always benefits the child.²⁰

Mediation

Many child protection courts across the country have started mediation programs with great success.²¹ Family members prefer mediation to the court process because they feel that they are heard (for the first time) and they can work with others to fashion a result with which everyone agrees.²² If your jurisdiction lacks a child protection mediation program, encourage your court administration to start one.

Ensuring Quality Visits

Pay special attention to visitation between children and their fathers. Frequency, duration, location, and environment (including who else is present) can make the difference between effective visitation that builds a relationship and visitation that discourages the father.²³ Visitation once a month or once a week is insufficient to build a relationship. Nor is 30 minutes sufficient to engage father and child. Meeting in a room by oneself is also not conducive to strengthening a relationship. Insist that: visitation take place frequently for at least an hour (longer is preferable), it occur in a family-like setting, and others (such as relatives or supportive foster parents) can attend with the father.²⁴

Views from the Bench: Engaging Fathers

While little has been written about engaging fathers from a judicial perspective, juvenile and family court judges, child support commissioners, and other judicial officers have thought a great deal about this issue. Interviews with several judicial officers revealed several themes.

- ✓ **Encourage the agency to locate the father early:** Regularly ask about the father's whereabouts and hold the agency accountable for not looking hard enough.
- ✓ **Consider the father as a resource:** Make it clear that the father should be considered for placement, if not immediately, then sometime soon. Encourage and facilitate regular visits between the father and child. Hold the agency accountable for failing to provide fathers with meaningful reunification services.
- ✓ **Engage fathers in the court process:** Tell them that "anyone can be a father, but it takes dedication to be a daddy." Share studies that show that children fare better if both parents are involved in their lives. Explain to the parties that just because a father is noncustodial it does not mean he is unfit. Permit appearances by phone to accommodate work schedules, transportation problems, incarceration or other conflicts fathers may have. Order paternity testing if necessary. Offer evaluations, family contact, treatment and transportation assistance.
- ✓ **Encourage interagency collaborations:** Coordinate with parent representation offices to appoint counsel for indigent fathers. Facilitate the development of protocols with child support enforcement whereby the father's child support obligation can be suspended if he has custody under a juvenile court order.
- ✓ **See how other jurisdictions are engaging fathers:** For example, Iowa has several innovative father-engagement projects:
 - The Parent Partners program works with parents who have successfully navigated the system to mentor parents who are new to the system.
 - Iowa courts provide parents handbooks at the first hearing to help them understand the nature of the proceedings.
 - Iowa's Fatherhood Initiative developed by the court and community supports fathers and provides educational tools.
 - A Zero To Three project has made special efforts to motivate fathers to participate in all aspects of a case. It offers attachment assessments, dyadic therapy, family contact and other frontloaded services.

Sources: These tips were drawn from interviews with: Commissioner Marilyn Kading Martinez, Los Angeles County Juvenile Court; Judge Stephen Rubin, Pima County, Arizona, Juvenile Court; Commissioner John Schroeder, Santa Clara County Child Support Commissioner, and Judge Constance Cohen, Juvenile Court Judge, Des Moines, Iowa.

Some fathers will benefit from support or coaching before or during visits. Sophisticated supports and techniques for visiting exist to enhance parenting skills during visitation. The agency and the judge should consider referring fathers to “visit coaching” to make visits as positive as possible.²⁵ These coaching services prepare fathers to meet children they have not seen or had much contact with, and are useful for incarcerated fathers.²⁶

Visitation should be expanded to include other locations and events rather than just time at a visitation center.²⁷ For example, make orders that permit fathers to get notice of and to participate in all well-baby doctor visits as well as the child’s other appointments. For the school-age child, this includes parent-teacher conferences and sporting or cultural events in which the child participates. Church-based events such as baptisms, Sunday school, and other occasions also offer opportunities for meaningful father-child contact.

Ensuring Fathers Receive Parenting Services

Many fathers need help learning how to be a father, particularly young fathers. Be prepared to refer the father to services that will provide basic information about child development and skill development for parents.²⁸ Most jurisdictions offer parenting classes, and some offer parenting classes that focus on infants. The most useful classes bring together fathers and their children so the father can work and play with the child in the context of the parenting class.²⁹ Also useful are programs that bring new fathers together to address their unique needs.³⁰ Some communities have mentoring programs that match experienced fathers with new fathers so that one can learn from the other.

Pressing for father-specific services

Know what services are available in your community. Community-based organizations such as the YMCA often provide services for fathers. If no appropriate services exist, explore how they might be developed. Excellent service models exist around the country.³¹ If no services specific to fathers exist, ask the agency to develop them. You may decide that a parenting class or a parenting class for fathers is a reasonable service for the community to provide and insist that the agency create one. Failure to do so would result in a “no reasonable efforts” finding.³²

Handling reluctant fathers

Some fathers will balk at the idea that they should participate in any services. The father may say something like “[s]he was the one who neglected my child. Why should I have to do anything?” Be prepared to discuss the importance and value of the service being offered. When speaking to a father about services, one judge suggests advising: “You are a father. Now you need to learn how to be a daddy.”³³

Working with Incarcerated Fathers

Many foster children have parents in jail or prison. Of this population there are far more incarcerated fathers than mothers.³⁴ Some of these fathers are “alleged,” that is, they are not married to the mother and have not established paternity. The issues discussed earlier regarding identifying, locating, notifying, and engaging fathers are relevant to incarcerated fathers. While the mother may finally reveal the father’s identity, she may or may not know if he is incarcerated. Best practice in cases involving incarcerated fathers includes:

- Ensure the caseworker confirms the father’s incarceration status.

With a name, a birth date, and possibly other information, the caseworker should be able to locate an incarcerated father quickly.

- Insist that the caseworker contact the alleged father, inform him of the legal proceedings, and determine his desires regarding the child protection proceedings. The fact that he is in jail should not stop the inquiry.³⁵
- Bring the incarcerated father to court, appoint counsel, have paternity established, and proceed with the case.³⁶
- Offer services to incarcerated fathers who show interest in reunifying with their children, including visitation, to improve their parenting abilities.³⁷ Even if services are unavailable in prison (counseling, parenting classes, etc.), insist that the caseworker assist the father and examine the caseworker’s conduct as part of the reasonable efforts requirement.³⁸
- Be creative in efforts to involve incarcerated fathers. In one New Hampshire judicial district the court has approved a computer hook-up in the jail so that incarcerated fathers can communicate with their children.³⁹

Conclusion

Our court traditions and practices must change to embrace fathers, and judges must take the lead. Recent developments in law and practice are encouraging. Increasingly legislatures are passing laws that grant fathers the same rights as mothers once paternity is established. Additionally, the extended family is now a placement of choice if children must be removed from their parents.

It is up to the court to ensure fathers receive their legal rights, attorneys speak forcefully for them, and caseworkers fulfill their roles in identifying, locating, notifying, and

working with fathers. The potential benefits are that the father will become engaged in the court process and with his child, and the father and his family will be a resource to the child and to the decision makers in the court system. Additionally, allowing the child to remain with family brings emotional, social and financial rewards for the child.

Judge Leonard Edwards is a retired superior court judge from Santa Clara County, CA. He has 26 years experience as a judge, primarily in juvenile court, and has presided over thousands of child protection cases. Through this work, he has found that fathers are important to the child and to the legal process and that judges can play a critical role in engaging fathers in the child protection process.

The author thanks Judge William Jones (ret.), David Meyers, and Bruce Boyer for their assistance in writing this article and Alan Hertzberg and Sean Marsh for their research assistance. The author also thanks all of the judicial officers who gave their thoughts about the issues raised in the article.

Endnotes

¹ E-mail correspondence from Commissioner Marilyn Kading Martinez, June, 12 2008 (“... what is very very important is to treat the man with dignity and respect. The goal is for him to feel that he is being treated fairly and that he can be a part of his child’s life and we will take him seriously.”) Copy available from the author.

² In 1981, in *Lassiter v. Department of Social Services*, 452 U.S. 18, the United States Supreme Court ruled that due process does not always require the appointment of counsel in termination of parental rights cases. Since child protection proceedings are less intrusive than termination of parental rights, it is logical to conclude there is no constitutional right to counsel in child protection proceedings.

³ National Council of Juvenile and Family Court Judges. *Child Abuse and Neglect: Representation as a Critical Component of Effective Practice*, March 1998. States not requiring appointment of counsel for indigent parents include DE, ID, KY, IN, MN & MS. However, a statute requiring appointment of counsel for indigent parents does not always mean the trial court will implement the statute. Nevada, for example, is currently being sued for failing to appoint counsel for indigent parents (and for children as well).

⁴ *Ibid.*

⁵ Garcia, S. & R. Batey. “Parents, Children, and the Courts: The Roles of Counsel for the Parent in Child Dependency Proceedings.” *Georgia Law Review* 22, 1988, 1079, 1093-94.

⁶ The court’s role in overseeing the provision of legal services to indigent parents is important. One state has written a Standard of Judicial Administration that addresses this issue. See California Standard of Judicial Administration 5.40(c) (West, 2008).

⁷ *Ibid.*

⁸ See San Francisco Superior Court, *Local Rules of Court*, Rule 12.6—12.18, describing an elaborate system for identifying qualified parent attorneys.

⁹ Judge Carolyn Kirkwood, presiding judge, Orange County (CA) Juvenile Court. Research shows that connections with families can refocus a parent’s attitude towards life, even a life of crime. Desistance from crime is one of the byproducts. See Farrall, S. *Rethinking What Works With Offenders*. Portland: Willan Publishing, 2002, 8, 146, 152, 159.

¹⁰ *Ibid.*

¹¹ See *In re Baby Boy V.*, 45 Cal. Rptr. 3d 198 (Ct. App. 2006) involving trial court’s failure to notify and engage father in child welfare proceedings, resulting in reversal of termination of parental rights order and remand for new trial.

¹² Farrall, S. & A. Calverley. *Understanding Desistance from Crime*. New York: Open University Press, 2006, 72; Farrall, *Rethinking What Works*, 2002.

¹³ See, e.g., Cal. Welf. & Inst. Code § 361.3(a) (West, 2008) which states, in part, “In any case in which a child is removed from the physical custody of his or her parents pursuant to Section 361, preferential consideration shall be given to a request by a relative of the child for placement of the child with the relative.” Recent federal legislation places great emphasis on the identification and engagement of relatives. See *Fostering Connections to Success and Increasing Adoptions Act of 2008*, P.L. 110-351.

¹⁴ Edwards & I. Sagatun-Edwards. “The Transition to Group Decision Making in Child Protection Cases: Obtaining Better Results for Children and Families.” *Juvenile & Family Court Journal* 58(1), Winter 2007, 8-9.

¹⁵ The AFCARs data shows approximately 24% of children in out-of-home care reside with relatives.

¹⁶ Such protocols are standard practice in some jurisdictions. See Cal. Rule of Court 5.215. For discussion of best practices regarding mediation when domestic violence is present, see Edwards, “Achieving Timely Permanency,” 2007, 12-13.

¹⁷ See Edwards, L. “Comments on the Miller Commission Report: A California Perspective.” *Pace Law Review* 27(4), Summer 2007, 635-639.

¹⁸ The California legislature has acknowledged the importance of nonadversarial resolution of family matters. See Cal. Welf. & Inst. Code § 350, Cal. Fam. Code § 3170(a), and the

California Blue Ribbon Commission on Foster Care, Recommendation 2E, www.courtinfo.ca.gov/jc/tlists/bluerib.htm

¹⁹ Other common names are family group decision making, family group conferencing, team decision making, family team meetings, and court-based mediation. See Edwards & Sagatun-Edwards, “Group Decision Making,” 2007; For a description of family team meetings, see Edwards, L. “Achieving Timely Permanency in Child Protection Courts: The Importance of Frontloading the Court Process” *Juvenile and Family Court Journal* 58(2), Spring 2007, 13-14; MacRae, A. & H. Zehr. *The Little Book of Family Group Conferences: New Zealand Style*. The Little Books of Justice & Peacebuilding, Good Books, 2004; *Family Group Conferencing*, edited by Burford, G. & J. Hudson. Piscataway, NJ: Aldine Transaction, 2005.

²⁰ E-mail correspondence from Donna Hand, deputy director to Judge Susan Huguenor, presiding judge of the San Diego County Juvenile Court, July, 31 2008. Copy available from the author.

²¹ See Edwards, L. “Mediation in Child Protection Cases.” *Journal of the Center for Families, Children & the Courts* 5, 2004, 57-69; Trosch, L. et al. “Child Abuse, Neglect, and Dependency Mediation Pilot Project.” *Juvenile and Family Court Journal* 53(4), Fall 2002, 57-67; and the citations in Edwards, “Achieving Timely Permanency,” 2007, 12-13. If you are interested in starting a child protection mediation program, contact the author for a free DVD. E-mail: leonard.edwards@jud.ca.gov

²² Edwards, L., et al. “Mediation in Juvenile Dependency Court: Multiple Perspectives.” *Juvenile and Family Court Journal* 53(4), Fall 2002.

²³ *Ibid.*

²⁴ Any visiting relatives must not pose a threat of harm to the child.

²⁵ Beyer, M. “Visit Coaching: Building on Family Strengths to Meet Children’s Needs.” *Juvenile and Family Court Journal* 59(1), Winter 2008, 47-60.

²⁶ E-mail from Marty Beyer, October 18, 2008. Copy available from the author.

²⁷ Edwards et al., “Mediation in Dependency Court,” 2003, 10.

²⁸ E-mail from Joe Spaeth, Marin County Public Defender, September 30, 2008. Mr. Spaeth’s office represents parents in child protection proceedings. Copy of e-mail available from the author.

²⁹ For an outstanding example of such parenting programs see www.celebratingfamilies.net/

³⁰ Effective programs for fathers in Colorado include B.A.M. (Be A Man) Fatherhood Program in the Greeley/Evans area (www.realdads.net); Got Fatherhood? Program in South Weld County (Longmont/Boulder) (www.gotfatherhood.com), and Colorado Dads – Be There for Your Kids, a state program (www.coloradodads.com). The Center on Fathering in Colorado Springs, Colorado also offers several different programs for fathers,

and is one of the model intervention/evaluation sites for the Quality Improvement Center on Non-Resident Fathers and the Child Welfare System.

For advice about maximizing the effectiveness of fathers programs, see Rosenberg and Wilcox, Office on Child Abuse and Neglect. "The Importance of Fathers in the Healthy Development of Children," (CD-ROM) User Manual Series, 2006, Section II, Fatherhood Programs.

³¹ Brandon, E. "Dudley Morgan Speaks about Marin City Fatherhood Program." *The Center View* (a publication of the Marin City Community Services District) 10(20), Oct-Nov, 2008, 4.

³² For a discussion on how a "no reasonable efforts" finding can result in changes to services available in the community, see Edwards, L. "Improving Implementation of the Adoption and Child Welfare Act of 1980." *Juvenile and Family Court Journal* 45(3), 1994, 3 and Appendix C, in *Resource Guidelines: Improving Court Practice in Child Abuse & Neglect Cases*. Reno, NV: National Council of Juvenile and Family Court Judges, Reno, 1995, 167-168, and Edwards, L., "Reasonable Efforts: A Judicial Perspective," July 2008.

³³ E-mail correspondence with Child Support Commissioner John Schroeder, June 4, 2008. Copy available from the author.

³⁴ Committee on Law and Justice. *Parole, Desistance from Crime, and Community Integration*. Washington, DC: National Research Council, 2007.

³⁵ Additionally, connecting with family can change the direction of a prisoner's life. See Farrall, *Rethinking What Works*, 2002.

³⁶ Ibid.

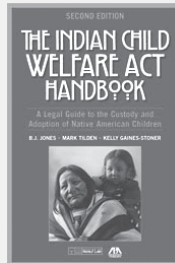
³⁷ California legislation permits the court to extend the reunification period for parents who are incarcerated, institutionalized, or in residential substance abuse treatment up to 24 months from the time the child was removed from the parent under specified circumstances. The statute requires the court to consider the parent's criminal history as well as the parent's ability to care for the child. AB 2070 (Ch. 842, Statutes of 2008). This is a clear legislative

determination that the facts surrounding incarceration should be carefully considered before ending the parent-child relationship.

³⁸ Lough, D. "Incarcerated Father Entitled to Reunification Services." *Journal of Juvenile Law* 21, 2000, 169-173; See also *In re Robin V.*, 39 Cal. Rptr. 2d 743 (Ct. App. 1995).

³⁹ E-mail correspondence from Judge Susan B. Carbon, Grafton County, NH, October 12, 2008. Copy available from the author.

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