

**State Bar of Michigan Children's Law Section**

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# The Michigan Child Welfare Law Journal



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# Message from the Chair

It is time to transfer the leadership to a new Chair. Two years have passed quickly but they have been fun and fruitful. I look forward to working closely with Jodi Latuszek and the council for many years into the future.

I do, however, sense a schism developing in this area of the law. A schism seems to be developing between those of us that represent children as lawyer's/guardian ad litem and those that represent parents. Certainly the *Mason* case brought much attention to the under-representation of mothers, and particularly fathers, in child protective proceedings. However, increasing adversarial postures is counter-productive to the protection of children.

I was once complimented, by a worker, when representing a parent, who told me, "You make us do our job." That, I believe, is the job of both the parent attorney and the lawyer/guardian ad litem. Nevertheless, many parents attorneys appear late to court, needing time to meet with their clients, often times for the first time since the last hearing. Service plans arrive the day before the hearing, if not the day of the hearing.

Workers appear without files, (I have been told by several private agency workers that they are instructed NOT to bring their file), and then leave upset wondering why the cross examination is harsh. Workers are testifying, with a growing arrogance, that the matter has been decided in a recent PPC or conference between the workers and parents. The list is long.

The mission of the Children's Law Section states. "... and we work to improve the lives of children and families ensuring they all receive justice." This is about not protecting our insurance company client from large judgments or attempting to get our injured client a large settlement; this is about restoring families whenever possible. The section provides the vehicle to meet the goal of family reunification as a unified group.

Current projects of the section include proposed legislation regarding the effect of the Medical Marijuana Law on child protective proceedings and the development of "Best Interest" factors more suited for our cases than those of the Child Custody Act now utilized by the courts.

I recently read the *Modified Settlement Agreement and Consent Order* in the *Dwayne B. et al v Rick Snyder* case. I might suggest you have an adult beverage handy if you intend to read this document. It may be good bureaucratic tonic to please those that never have nor never will appear in a courtroom in a child protective proceeding, but I guess only time will tell if it will benefit the children of Michigan.

As we welcome the new leadership of our section, please join the Council as one of the 423 members of our section in helping them to continue to make an impact on child protection in the legislature and courts of Michigan.

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# Editor's Note

I hope you enjoy this summer issue of the *Michigan Child Welfare Law Journal*. In “Changing The Narrative Of Child Welfare” (Fraidin), the author writes that the difference we can make as lawyers for parents, children, and the state is to prevent children from entering foster care unnecessarily. Further, we should strive to end a child’s stay in foster care as quickly as possible. To do that, we have to fight against a powerful narrative of child welfare and against the accepted “top-down” paradigm of legal services. The author believes that we can achieve these goals by looking for the strengths of the people involved in our cases, rather than their weaknesses. The “nuclear secret” of child welfare is that most of the children in foster care should not be there. Most of the children in foster care are harmed more than they are helped by being taken from their families, and by being kept in foster care for too long.

In “Improving Parent Representation in Child Welfare Proceedings” (Hutchison) the author, a student at MSU College of Law, describes her first experience as a legal intern with an attorney/Guardian ad Litem in Fayetteville, North Carolina. The author describes her initial impressions that led her to question whether parents in the proceedings she observed received adequate representation. While the author was initially discouraged, what she observed

also strengthened her commitment to the field of child welfare. This article provides interesting insight into how future practitioners view the field in which many of us have practiced for many years.

In the commentary “Mediation in Neglect/Abuse – Time and Cost Savings?” (Lafferty), the author asks us to consider the role of mediation in child protection cases. One of the virtues of mediation compared to litigation is the increased prospect of maintaining relationships after the process, an ideal to strive for given the nature of these “family-centric” cases. Successful mediation also can lead to tremendous cost savings, not by cutting services but by utilizing more effective procedures to resolution. The author asks us to consider anew the role that mediation can play in ensuring positive outcomes in child protection cases.

Finally, effective July 1 Public Act 17-19 (2011) amended Michigan’s Sex Offender Registration Act (SORA) to comply with the requirements of the Federal Sex Offender Registration and Notification Act (SORNA). Included in this issue is a memo drafted by Thomas Robertson that clearly and succinctly sets forth the changes effected by this new law.

I hope you find this issue interesting and useful. As always, the editorial board welcomes your feedback to ensure that the *Child Welfare Journal* is of value to you.

—Joseph Kozakiewicz

# Changing the Narrative of Child Welfare

(adapted from article forthcoming in *Georgetown Journal of Poverty Law and Policy*, Volume XIX (2011))

by Matthew I. Fraidin

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## Opening

In 1987, Billy Calvin Jones was lucky to be living at Wynne State Prison Farm in the Texas Department of Corrections. The other option was Death Row a few miles away. Billy was 18 when he and a couple of friends robbed a pharmaceutical warehouse, looking for drugs to fuel their addictions. Billy killed the security guard. He was convicted of capital murder and sentenced to life in prison. The prosecutors called him “venomous” and “a threat to civilized society.”

According to the rock star, David Crosby, of Crosby, Stills, Nash & Young, Billy Calvin Jones represents safety, stability, and maturity. Crosby served a year in the mid-80s in a Texas prison for drug and gun offenses. By that time, Jones had served ten years. He knew his way around. In his autobiography, Crosby tells a different story about Billy Calvin Jones than that recounted by prosecutors at Billy’s trial. Crosby writes “Even though Billy Jones was younger than me, he was an older and wiser head. He taught me a lot about how to stay alive in prison.”

Rowena Kingston is a recovering crack addict who lost six children to the foster care system when she left them alone for days on end. I know her as the den mother to her entire neighborhood, housing and feeding kids and adults who have nowhere else to turn.

Roberto James was a teenager in foster care. He’d bounced in and out of a dozen or more schools and probably 30 placements, and was arrested ten times in a year. Roberto constantly was written up for absconding from his group home placements. The other side of the story, though, is that Roberto was the sole caretaker for his baby, and the social work agency wouldn’t let him bring his baby to his placement. So Roberto “absconded” to his mother’s house, or his mother-in-law’s house. Many who cared about him saw the most

gentle parent they’d ever known; the caseworker and judge saw an absconder, a rulebreaker – they saw the quintessence of irresponsibility.

So what is this all about?

Well, in law school, I had a friend who often came to class unprepared, or missing a notebook, or rushed into class late, that sort of thing. By way of excuse, he would say, and I quote, “I am a work-in-progress.”

I thought that was sort of silly then, but it turns out that I feel the same way about being a lawyer. Since entering this profession, I have been on a journey. This evening, I’d like to have a conversation about what lawyers do, what lawyers in child welfare CAN do, and how we can do it. My goals are to find a way to do more good than harm as a lawyer, and to feel fulfilled and sustained by doing it.

The short version of the story is that I’ve always thought that the very essence of a lawyer is to do SOMETHING. I sit up and take notice of lawyers who don’t merely watch and let the world take its course. Were I a client, I think I’d want a lawyer who *makes a difference*.

In child welfare, the difference we can make as lawyers for parents, children, and the state, and as judges, is to prevent children from entering foster care unnecessarily. And we can end a child’s stay in foster care as quickly as possible. To do that, we have to fight against a powerful narrative of child welfare and against the accepted “top-down” paradigm of legal services.

In the next 25 minutes, I want to suggest that we can achieve our goals of limiting entries to foster care and speeding exits from it by looking for the strengths of the people involved in our cases, rather than their weaknesses. We can look for what they can do, rather than what they can’t. We can focus on their abilities, not the shortcomings over which we often obsess – like

drug addiction, impatience, illiteracy, poverty. We can start from a premise that families involved with child welfare are bundles of assets, rather than collections of problems. If we can do all this, we can help families build, rather than watch them fall.

### The Problem

The problem is that we are imprisoned by a grand narrative of child welfare. That narrative is one of brutal, deviant, monstrous parents, and children who are fruit that doesn't fall far from the tree. These are, to use Edgar Cahn's phrase, "throwaway people."

To give you an idea of the relentlessness of the messages drummed into our heads, more than 90 percent of news stories about children are about violence by and against children, and more than 90 percent of those stories focus on a discrete incident, ignoring larger public policy questions. One researcher found that 70 to 95% of stories about child welfare are "horror stories." These are stories about gruesome, brutal injuries inflicted on children by unfathomably beastly parents. Psychological anthropologist Axel Aubrun and linguist Joseph Grady confirmed that the most common child welfare media story frames depict murders or violent injuries by, in their words, "brutal," "monstrous" parents. Finally, Dorothy Roberts and others have pointed out the inextricable link between stories of animalistic behavior and racial stereotyping.

So, what we think of when we think of children and foster care is brutality, savagery, deviance, and abuse. We think of horrible, heinous misdeeds perpetrated by monstrous felons. We think of murders that scream from the headlines, and the vile tragedy of family sexual abuse.

There is another story, however. In fact, more than 70% of the children in foster care are there because of allegations that they were neglected, not abused. According to Ruth White of the National Center for Housing and Child Welfare, for example, "Nearly a third of all children in foster care placement are separated from their families because their parents can't afford safe, decent housing." Other children live in foster care because they miss school without an adequate explanation, because they are left alone by their parents for excessive periods of time, or, according to researchers Lawrence, Carlson and Egeland, because of "death of a parent, parental incarceration, parental chemical addiction, or homelessness" without maltreatment.

But the grand narrative of rampant deviance and

abuse, embedded again and again, has created a pernicious reality. The nuclear secret of child welfare is that most of the children in foster care should not be there. Most of the children in foster care are harmed more than they are helped by being taken from their families, and by being kept in foster care for too long.

According to Paul Chill, "more than 100,000 children who were removed in 2001 – more than one in three – were later found not to have been maltreated at all." A 1997 study of infants born to substance-abusing mothers found that the language development of children placed in foster care was delayed in comparison to that of children who remained with their mothers. A 2006 study concluded that children in foster care developed more significant behavioral problems than similarly-maltreated children who remained at home. More recently, an MIT economist studied 15,000 kids and found that children taken from their families and placed in foster care fared worse in life than similarly-maltreated children who were simply left with their families.

More evidence comes from Florida. Florida housed 28,000 children in foster care in Fiscal Year 2006-07. Then Florida decided to spend more on family preservation and less on out-of-home care. Two years later, only 21,000 children were separated from their families, and safety improved. Among children who were placed in out-of-home care, reunification happened more quickly and more successfully.

Finally, in 60% of my students' cases at the University of the District of Columbia, the children were returned home from foster homes or group homes – and were never found to be abused or neglected. These are kids who were taken from their homes for a few days, or a few weeks, or three months – but it turned out they weren't abused or neglected, so they were returned.

One of the children in our cases was Kevin. Kevin was only seven months old at the time he was separated from his mother. He was born HIV-positive. The state took custody of Kevin because test results showed that his viral load was elevated. According to the agency, the doctor who treated Kevin said that the enormous elevation could only have been due to maladministration of the medication by Kevin's mother. The problem was that the test results were a month old, and Kevin's viral load actually was normal on the day he was taken. The other problem is that the doctor later signed a sworn affidavit stating she had never

said that there could have been only one cause for the spike in Kevin's viral load. Kevin was returned to his mother's custody.

And James, who was taken from both his mother and his father – who did not live together – because his uncle came to school and beat him up for stealing a video game! The uncle didn't live with either parent or the child! James lived with strangers in foster care for a month and a half.

And finally, Isaac, who was apart from his mother for three months. The government alleged that Isaac's grandfather had beaten him across the legs and that Isaac's mother knew about it and failed to stop it. The government also alleged that Isaac was "educationally neglected" because he had missed seven days of school in the first two months of the term. Three months later, at trial, it turned out that the government couldn't even prove that Isaac had been hit, let alone by his grandfather. And the educational neglect? One of the days they said Isaac was absent was the day the social worker went to the school and took Isaac to foster care!

The judge sent Isaac back home after three months.

So, we have a foster care system full of children who should be at home. What does it look like? Well, things haven't improved since 1991, when the National Commission on Children wrote "If the nation had deliberately designed a system that would frustrate the professionals who staff it, anger the public who finance it, and abandon the children who depend on it, it could not have done a better job than the present child-welfare system."

Children and youth in foster care experience multiple moves from home to home and high levels of abuse in foster homes and group homes. Former foster youth have sky-high rates of homelessness, unemployment, poverty, arrest and incarceration, teen pregnancy, dating violence victimization, and low educational achievement.

This is the child welfare system we create by telling only stories of "Rowena Kingston, the crack fiend," and "Roberto James, the bad kid." We need to tell new stories.

## The Solution

We need to figure out what we can do. How can we be part of the solution? How can we disrupt the status quo, instead of perpetuating it? How can we fight the narrative?

Fortunately, to paraphrase Brendan Sullivan, Oliver North's lawyer, we are not potted plants. We can do something. We **MUST** do something, because we're standing here.

What I propose is a paradigm shift. The low-income people you'll meet in this line of work? Suspend disbelief for a moment, and convince yourself they're rich. The crummy neighborhoods the children come from and broken-down communities you see all around you? Think of those as strong and healthful, instead of shabby and pathologized.

Here's how.

To challenge the narrative of child welfare, we will have to start by challenging our approach to legal services. Anti-poverty programs in general, and legal service providers in particular, see clients as the sum of their needs. Clients and litigants come to us with their problem. Indeed they only get our attention because they *have* a problem. And the first thing we ask is "What is your problem? What do you need? How can I help you?" And we try to solve the problem. We fill the hole, apply a bandaid, put a finger in the dike, whatever. You've heard the metaphors.

But what is the result? More poor people than ever, families being broken up, children bouncing around foster care.

Here is a different model. Instead of merely asking: "What is your problem? What is the disease, the defect that brought this mother – and by extension, her child – into my life," we can ask a different question. Not what is she lacking, but what does she have? Not only "what can I do?" but we can also ask a client or litigant "what can *you* do?" What are her abilities, her strengths, her assets?

How can we re-envision her as rich, powerful, and capable?

Well, can the mother whose child is taken away braid hair? Can she cook a meal? Can she smile at an elderly person in a nursing home? And let's think about that person in the nursing home. Can she watch a child recite a poem and clap for the child? Can she read a story? Can she share her own story about life "in the old days"? Does she know by heart, perhaps, a recipe for the best fried turkey you've ever eaten?

We can see with different eyes, and look for successes. Did the child's mother pull her neighbor's weeds last week? Or change a lightbulb? Or pick up litter? These are things she did, not things she didn't.

Can she shop for groceries? Can she throw a party, or drive a neighbor to the doctor? Can she paint a room or clean a house or walk a dog?

The answers will be yes, yes, and yes.

In Chicago, eighth-graders in special education tutor first-graders in math. In Washington, D.C., returned prisoners escort children to school.

In Washington, D.C., our Youth Court is run by kids we might call juvenile delinquents. Youth Court gives us a chance to call them judges and jurors. It is a diversion program, in which the very youth who come through the court as defendants sit as jurors, reviewing infractions of other youth. They hear facts, deliberate, and impose sentences of community service, restitution, counseling, or an apology.

So it turns out that delinquent youth also are judges!

Our clients can do the things we professionals do. Research is clear, for example, that women in violent relationships are the very best judges of their own safety, better than the police, lawyers, case workers, or even judges. In Washington, D.C., when our highest court ruled that there was no statutory right to custody for non-parents, a swarm of low-income grandmothers descended on the city Council, submitting statements and testifying about the necessity that the law be amended. And it was. Currently, in Washington, D.C., a homeless homeless advocate is leading a campaign to restore funding for homeless services.

So our clients from Ward 8 in Washington, D.C., from the Bronx, New York, from a Chicago housing project, a Detroit slum, and a gang zone in Los Angeles can all DO SOMETHING. Sure in some respects, they CAN'T, but in others, they CAN.

Now, if the mother is a person with assets, wealth, power, and strength, we see her differently. We learn from her, we admire her, we grow from knowing her.

It turns out we don't have all of the answers. We don't have a preordained stereotype into which we can fit her any more. She has busted through the narrative. We have to take her for who she is, the real person, the complicated three-dimensional, real person. She isn't a stick figure – the deviant, monstrous black hole of problems, needs, and pathologies.

And her strengths and powers and abilities unlock ours.

First, we can tell stories of competence: this is our client, and these are the many things she can do! Instead of defensively trying to explain away those

problems and needs, we can tell a story of strength, power, and admirable qualities. Rather than begging the court and case worker for scraps – an extra hour of visitation, for example – we can proudly and confidently argue that separation is unnecessary, or that reunification should come quickly. This is my client! She can do it!

And second, working with this person inspires and challenges us in a way that working for a stick figure cannot possibly do. Our work is exciting, not depressing! We collaborate with rich, nuanced, textured peers, rather than resignedly imposing our will on the frightened losers we are conditioned to see. We can spend our energies creating and problem-solving, rather than dampening hopes and delivering bad news.

In child welfare, family strengths animate the practice of the Center for Family Representation in New York City and the Detroit Center for Family Advocacy.

The Center for Family Representation represents parents whose children are at risk of entering foster care. With a lawyer, social worker, and parent peer advocate, CFR has kept 50% of the kids from ever entering foster care, and, for those who do enter, they return home in four months instead of the state average of three years. Similarly, Detroit's Center for Family Advocacy represents parents of children already found to be abused or neglected. In the last data of which I was aware, CFA had kept 59 kids out of 59 from entering foster care.

## Call to Action

**Lawyers.do.things.** They don't stand and watch and think it's right because everyone else does it, because the courthouse culture has always done it this way, because the oldtimers do it this way, or even because a law professor tells them to do it this way. Lawyers don't stand idly by just because that's what a judge wants. And this – reducing the scourge of unnecessary foster care placements and lengthy stays in foster care – is what there is to be done in child welfare. Every lawyer and judge involved in child welfare has the opportunity to do **this** – to keep children from unnecessary, devastating disruption, fear, and pain.

We *can* assume that every client and every litigant and every witness is different from every other one. We *can't* assume we've seen this one before, that we can spot this kind of case a mile away. We have to resist the tendency to say "Oh, yeah, sure, this is the FILL IN THE BLANKS kind of case." This is the "mother

who is a victim of domestic violence” case. This is the “untreatable manic-depressive” case. “This is the immature-father-still-sponging-off-his-mother” case.

Because if we know all the answers from the outset, we don’t get to do any thinking. We don’t get to get to know this particular client, this particular human being. We don’t get to hear her story, because we don’t have to. And we can just stand around and let the world take its course.

But that’s not what lawyers do. We change the course of events. We add value. We make a difference.

So instead of knowing the answers, we can ask questions. A lawyer can ask a parent or a child, “Who are you? What do you do? What do you know? Who do you love? What was your greatest success? What is your dream? What is your favorite food? What’s the most frivolous thing about you? What makes you laugh?”

As it happens, it’s much more fun to practice law as if your goal is to make a difference. If your goal is to make a difference, you’ll have to learn, instead of know. You’ll have to listen instead of tell. You can ask instead of declaim. You’ll get to know the dozens and hundreds of people you’ll come across, rather than spend your days interacting with the fleshly embodiment of your assumptions. You’ll hear real people, not a pathologized, stereotyped version of them created by your own preconceived notions. And instead of hanging out with people whom you despise or, at best for whom you have compassion, you get to be with a bunch of fascinating people from whom you’re learning and with whom you’re growing.

Conducting a job interview once, I had been having a bad time. My clients were all going through hard times, and I think I was looking for support from the poor interviewee! So I asked her, “Don’t you get depressed about these cases? All these bad things happening?” She answered, very thoughtfully, “I remember that my clients are more than their sadness.” And David Chavkin writes that each of our clients, like each of us, has a unique “constellation of family, friends, experiences, goals, dreams, needs, problems, and other factors.” Assuming your client is a bundle of assets unlocks for you an opportunity to meet those fascinating people, and to represent them far more effectively.

You will go to court and you will see things that appall you. In a New Jersey case, a lawyer didn’t bother to meet with his client for the eight months preceding

the client’s termination of parental rights trial. And the lawyer justified his actions by telling the Court “I can learn everything I need to from him in three minutes at counsel table.” That lawyer doesn’t need to meet with his clients because he thinks he already knows all the answers.

In one reported case, a lawyer told a judge that it was a “foregone conclusion” that his clients’ rights would be terminated. In another, a lawyer said his client’s rights “*should* be terminated.”

We can’t be that lawyer. We can’t be that person.

What can we do? Well, that’s the fun part. There is no limit, because the facts are always different and your imagination is boundless if you let it be. When the agency shrugs its shoulders and says four siblings will have to live with strangers, instead of with their grandmother because the grandmother doesn’t have enough beds for the children, you can pull out a credit card, as I saw a lawyer do. He told the judge that HE would buy the beds, and the judge ordered the agency to reimburse him. In a criminal case, a judge delayed sentencing for a man convicted of stealing classified documents, because the defendant’s lawyer wrote a sentencing memorandum citing eight cases that the judge had never seen, and which supported a shorter sentence. A few months ago, ACLU lawyers may have stopped some executions, by uncovering emails indicating that states hadn’t complied with an administrative requirement to register their purchases of a drug used in the death cocktail. That’s plain, everyday lawyering, not Thurgood-Marshall-changed-the-world lawyering, and I think we can do it.

So, I have painted the world in black and white: either you passively sell your clients down the river by going along and getting along, or you stand valiantly in the breach, determinedly fighting for justice. I know that’s not really the way the world works, of course, nor the way any of us humans can function. Some days we’re on, some we’re off, some we’re funny and some sad. Sometimes we’re energetic and other times we’re slugs.

What you can do as a lawyer, however, is to be aware of yourself. You can be reflective and self-conscious in the most constructive way. What are the choices I am making here? Am I assuming weakness or am I looking for strengths? Am I seeing only disease, or am I finding health? Do I wallow in the worst of my client, or build on her best? What is the story I tell myself about my client, and what, then, is the story



I tell the Court? (If I am the judge, what stories am I listening for?) What story am I conveying to the client herself? Am I, as Tennessee lawyer Jim Neal once said, ready to be “the only person by my client’s side, all the way to the electric chair”?

I’ll conclude by returning to Roberto, the teenager I mentioned at the opening of these remarks. He was constantly arrested AND very sweet, he fought with police AND was gentle. Tragically, Roberto was shot and killed. Fittingly, the scene had dual storylines. Roberto was killed by a 15-year old, angered that Roberto had been stealing the other child’s drug stashes. Roberto had been doing it to support his two children, but the boy with the gun knew only the wrongfulness, not the righteousness, of Roberto’s actions. Roberto’s funeral was a gruesome affair, with people screaming and wailing and crying, and the minister begging Roberto’s friends not to retaliate against the killer and his friends. It was scary and horrible and awful.

But the story has unfolded differently since then. There has been no retaliation. The two mothers of Roberto’s two children, formerly rivals, now live together and raise their children as one family. Roberto’s sister had a child about a year ago. She named him Roberto, and I’m watching him grow up in Facebook posts and photos.

It is a truism that there are at least two sides to every story. In child welfare, we tend to listen for stories of sadness and failure, stories of disability and incapacity. Our power and our joy, however, are unleashed when we help children and families tell stories of happiness, success, strength and achievement. Wishing

won’t make drug dependency vanish, but an addict can be more to us than her illicit hunger.

Parenting coaches tells us that “what we focus on, grows.” So accentuating the positive won’t pay the rent or get rid of roaches or cure a mental illness, but embracing all parts of a family’s reality, including the admirable parts, can deepen our investment in them and our commitment to them.

As I hear myself tell the story, I know the positives of Roberto’s death don’t outweigh the negatives. And I don’t mean to be Pollyanna. I mean only to point out that plus and minus live together, that positives and negatives come side-by-side, and that joy can be sorrow’s companion, if we insist.

Being a lawyer is an incomparable gift. It can be a gateway to worlds of exploration and growth. What I hope for all of us is to see the best in others, to learn from everyone around us, and to find out, by examining our own choices, who we really are. If we refuse to be potted plants, if we seek and tell stories of strength, we can do more GOOD than harm as lawyers, and we ourselves can grow and grow and grow. ©

#### About the Author

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# Thoughts from Michigan's Future Practitioners: One Student's Perspective

## Improving Parent Representation in Child Welfare Proceedings: What is in it for the Kids? The Benefits of Children Returning Home in Comparison to Entering Foster Care.

by Jessica Hutchison

### Introduction

My first experience as a legal intern was with an attorney serving as a Guardian ad Litem in Fayetteville, North Carolina. Every week, I would attend court for the child protection hearings. The first cases I observed made me realize that the parents in these proceedings did not receive adequate representation. I watched as attorneys for the parents showed up late or talked about their weekends right before a hearing. It was evident that these parents felt a sense of discouragement while sitting next to their court appointed attorneys.

The court was notable for its lack of organization. Parents drove from far away, they took off time from needed work, and they sometimes pulled their children out of school to come to these hearings. The parents arrived to discover that their hearing could be the first or the last or anywhere in between on the docket. Parents were not usually aware of the fact that their case may be continued for a week, two weeks, or a month. The parents most likely left the courthouse thinking "what just happened?" Some attorneys followed their clients to explain what the judge decided, but some only told the parents to watch the mailbox for more paperwork. Many attorneys appeared indifferent to their clients, and there was little evidence that the unique characteristics of each client had any impact on the attorneys.

That summer was my first time in such a court. It was small and extremely disorganized. I am not sure if this is how most child protection courts operate; however, after reading other articles, it seems to be a feature of many children's courts. Attorneys would talk amongst themselves while their parent clients sat next to them. The parents, and I, would look at the

attorneys with a sort of expectancy, while wondering if this case was at all important to the attorney. Some attorneys would give a good argument for the parents, and some would help the parents in the right direction. Others would mumble a few words, then sit back down and be done. After the parents left, the attorneys would make fun of the parents or harshly criticize their still current drug problems. The attorneys (and judge) would mock and demean the parents in the parents' presence as well. In some ways, it was more disturbing than the sad stories of the children themselves.

Although I was discouraged on the very first day I sat in court, I did not take the disappointment out of the courtroom with me. The parents, however, take the disappointment with them when they leave the courtroom. One mother who took it with her was a prescription drug addict. She looked run down, skinny, and tired. Her ex-husband was an abusive alcoholic. Throughout the proceeding, the mother was crying, especially when the judge told her there was little chance of her getting her children back. While the mother was in the courtroom, the attorneys laughed, saying that she should "fake tears better. These crocodile tears are nothing." Assuming I was being naïve, I thought I was not one to judge the attorneys, but I could not help thinking that this mother seemed genuine. Although she had her drug abuse problems, and was most likely an unfit parent, I felt her kids needed her love.

The mother committed suicide a month later. I should not have been shocked, but I was. The GAL did not seem too concerned. I asked the GAL if she felt the system had failed, but she brushed off the question. Maybe it was just drugs that made the

mother commit suicide. Maybe it was not the fact that she would never see her kids. Perhaps her “crocodile tears” had fooled me; however, I felt the system had failed, if not for her, then for her kids. The kids were left with two options: 1) abusive alcoholic father or 2) Fayetteville, North Carolina, foster homes.

Parents in these proceedings are required to attend drug rehabilitation, counseling, or other appropriate services to aid their recovery. However, the mother in this case had completed these requirements. The issue was that a doctor had prescribed medication for her containing the exact drug she was in rehab for. The judge faulted her for taking these drugs. The mother explained she had not known, yet still the judge blamed her. Again, perhaps I am naïve, but some of these parents do not have a high school degree. These parents need our help, better direction, and our patience. If DHS is going to take away kids, it should be done fairly and with some empathy. Each case has its own unique characteristics, but after a while the identifying characteristics begin to blend together. Judges and caseworkers see the same cases, and they get tired of the same excuses. Yet, all court actors involved need to remember why they are in the courtroom.

It can be beneficial for attorneys to have relationships with other attorneys in the proceedings. This way they can work together to reach a common goal. *ABA Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases*, 25 ABA CHILD LAW PRACTICE, n.7, 12 (2006). Attorneys will socialize together in the courtroom because of these close groups, and maintaining good working relationships with other players in the child welfare system is an important part of being an effective advocate. *Id.* Yet, the attorneys may give the impression that they are in the courtroom more for socialization than for business. Clients could perceive this negatively and may feel that the case is of little importance to the attorney. Attorneys must ensure that the “client feel[s] that the attorney believes in him or her and is actively advocating on the client’s behalf.” *Id.* If the parent feels that the attorney is not advocating for him or her, then the parent will feel less inclined to do his or her part. Attorneys’ behavior will reflect what they predict the outcome of the cases to be.

## The Problem

### *Termination of the Family Unit*

Attorneys who represent parents face a challenge. These attorneys must fight for the rights of the parents, while at the same time often fighting against the Guardian ad Litem (who is advocating for the best interests of the children involved). This presents an internal conflict when the GAL has decided that it is not in the best interest of the child to stay with the parents, and the attorney for the parents does agree. These cases are not a fight over property, but a fight over a human. Attorneys for parents, justifiably, may lose motivation to protect parental rights. However, instead of viewing these proceedings as terminating parental rights, attorneys should view these proceedings as terminating the family unit. The attorney is not advocating for the best interests of the child, but for the parents. Not only is the attorney advocating for the parents, but also for the preservation of the family unit. D. B. Rauber & L.A. Granik, *Representing Parents in Child Welfare Cases: A Basic Introduction for Attorneys* 6 (Mimi R. Laver ed., American Bar Association Center on Children and the Law 2000). Attorneys for these parents must use all available defenses and tactics to provide zealous representation. *Id.* at 39. Some attorneys may not do all that they can because they may not feel motivated to help the parents. Thus arises the issue of inadequate representation.

Attorneys have large case loads, so they are likely to delegate less important duties to paralegals and assistants. Clients paying the higher rate will take priority, thus leaving the parents in termination hearings with poor representation. The problem of poor representation for these particular parents begins before entering the courtroom: “31% of responding parents indicated their attorney never contact them and 51% of parents stated their only contact with the attorney was right before the hearing.”<sup>1</sup> The expectation of work on a particular case needs to expand. Instead of hiding the reality of attorneys delegating duties, this reality needs to be addressed and accepted. When cases are assigned to attorneys, the workload expectation needs to encompass paralegals and other actors. Resources necessary to defend zealously are only provided to the attorney on the case. Hopefully, the resources experience a trickle down effect to the other actors.

According to the survey above, this is not happening, as parents are not being contacted or communicated with appropriately. Resources must be provided to the team as a whole to ensure zealous advocacy.

Currently, attorneys and paralegals are not encouraged to function as a team, it is expected that the attorneys independently perform the work. This results in attorneys not responding to telephone calls, communicating only right before the hearing, being unavailable when problems arise with services, calling the social worker at the last minute, reading reports during the hearing, and not being reliable advocates.<sup>2</sup> Attorneys should utilize expert witnesses, community providers, and community sources; however, data shows that attorneys do little of this out-of-court advocacy. *Legal Representation for Parents in Child Welfare Proceedings: A Performance-Based Analysis of Michigan Practice* 6 (American Bar Association Center on Children and the Law 2009). Attorneys are obligated to, and shall, “adhere to all relevant jurisdiction specific training and mentoring requirements before accepting a court appointment to represent parents in an abuse or neglect case.” *ABA Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases*, 25 ABA CHILD LAW PRACTICE, n.7, 3 (2006). However, as discussed above, it is not solely the attorneys performing the work on these cases. Paralegals and other assistants are not required to adhere to specific training and mentoring. Given that it is beneficial to have teams working on a case during sensitive termination proceedings, the ABA obligation should apply to the team as a whole.

The attorneys on these cases are not being paid as much as their usual hourly rate. A survey assessed how certain counties compensate court appointed attorneys. The findings were as follows:

**County 1:** pays an hourly rate of \$70; attorneys can bill for out-of-court time.

**County 2:** pays an hourly rate of \$55.

**County 3:** pays per case and per case event; no compensation for out-of-court time.

**County 4:** pays per appearance; no compensation for out-of-court court work.

*Legal Representation for Parents in Child Welfare Proceedings Performance-Based Analysis of Michigan Practice* 48 (American Bar Association Center on Children and the Law 2009). These rates represent what only attorneys are being paid. The team as a

whole does not see extra compensation. If these rates are not enough to motivate attorneys, the lack of compensation will not motivate the rest of the team to adequately represent the parent clients in out-of-court advocacy. The attorneys are not working on their own, so the compensation should not be structured as if the attorneys are working independently.

How to obtain this money? In New York City, the Center for Family representation uses Community Advocacy Teams (which include a parent partner, as will be explained further). The Center reports that “the lowest annual foster care cost in New York City is \$23,000 per child per year, while the annual cost of CFR’s teams is \$6,900 per family.” The Center for Family Representation. *Community Advocacy Teams – Common Sense Approach Yields Uncommon Results*, 6 FAMILY MATTERS, Winter 2009. The city money saved on foster care can be redirected to those community advocacy teams.

Attorneys and their teams are working for little compensation, and they are working for what appears to be an endless lost cause. Where there is needed reinforcement for zealous representation there is not any. Poor behavior and socialization in court are reinforced with continuances by the judges. Zealous defending is sanctioned with more work and cut backs. Reinforcement needs to be sought and delivered. The system of sanctions and reinforcement needs to be adjusted because these proceedings are not only terminating parental rights, but these proceedings are also terminating the family unit.

#### *What is in it for the Kids?*

“I’ve always run [from foster homes] because I love my family . . . I would go to the end of the Earth just to sleep on the sidewalk beside my family.”-Timothy, age 15. Randi J. O’Donnell, *A Second Chance for Children and Families: A Model Statute to Reinstate Parental Rights After Termination*, 48 FAM. CT. REV. n.2, 362 (2010). Studies have shown that at-risk children raised in a single-parent, low-income household are less likely to suffer from developmental delays, emotional problems, and psychological problems than foster children. 30 to 40% of foster care children suffer from a chronic medical problem. *Id.* at 363. Although it is not intended by the GAL, these children feel abandoned by the separation. After attorneys advocate for the best interests of the child, the child will run back home. Resources have been wasted. Part of the

problem is the innocent attachment of children to their parents. Efforts should be redirected to solve the problem of wasted resources. If children are going to run back home, then resources spent on keeping them out of the home should be focused on making the home appropriate for the best interests of the children.

Recently, I went to St. Vincent's Catholic Charities in Lansing, Michigan, and I spoke with Gina Villas, the child welfare director. At the facility, there are residential units for children who cannot live in foster care. Ms. Villas explained that some children are too emotionally upset to function in society or a foster home. Most children develop mental disabilities that encompass emotional problems, anger, and substance abuse problems. These children are a danger to other children in the foster care home, society, and themselves. She explained the children will commit crimes in the community, abuse substances, or try to commit suicide.<sup>3</sup> A prominent cause of these problems is children being removed from their homes, she stated. Ms. Villas is also a child therapist, and stated that most children develop mental disabilities after they get removed. St. Vincent's facilitates relationships with parents and children through supervised parenting when possible. One of the teenagers is remaining as stable as she can because of supervised parenting sessions with her mother who abuses drugs.

In *A Second Chance for Children and Families: A Model Statute to Reinstate Parental Rights After Termination*, an 11-year-old boy named David is mentioned. His story is about how he has been shifted around foster homes. He is in a group home such as the ones at St. Vincent's. Like most children in his position, he will age out of the system because he has not been able to establish a relationship with another family. He does remain in contact with his mother, and they have rebuilt their relationship through telephone conversations. They would like to reunite but "unfortunately, the law does not allow their wishes to be realized in all but a handful of states."<sup>4</sup> David is one of 500,000 children currently in foster care.<sup>5</sup> These teens are more likely to face homelessness, joblessness, drug addiction, early pregnancy, mental health problems, and prison time . . . and every year 25,000 children age out of the system.<sup>6</sup> All of these factors contribute to lifetime poverty.<sup>7</sup> A New York family court judge stated, "this is an irony that is brought home to me daily. After all of this elaborate mechanism of removal, adjudication, and placement,

I think a lot of the kids end up going back home. Even the kids whose goal is independent living [sic]."<sup>8</sup>

## Solution

### *It is in the Best Interests of the Children to Maintain a Relationship with Their Parents*

The attorneys working for the parents have large caseloads. When the court appoints these attorneys to represent parents, the attorneys are not paid as much as they are paid by the clients who retain them. Given this, the attorneys delegate their duties. The system is disconnected. Attorneys do not work on the cases, and the paralegals working on the cases do not go to court. Contributing to the disconnection, the parents rarely see either the lawyer or the paralegal. Inside of the courtroom, there are three different parties fighting against each other: the GAL is fighting for the child, the DHS is usually fighting against the parents, and the attorneys for the parents are fighting solely for the parents. These three distinct forces working against each other rarely work together. Only when all agree that it is in the best interests of the child to go with the parents do the parties work in the same direction. However, as shown above, many times it can be in the best interests of the child to go back with the parent, or, minimally, it is in the best interests of the child to facilitate a relationship.

St. Vincent's Catholic Charities will facilitate relationships with family members because the agency has realized the importance of allowing children to maintain a relationship with their parents. There is a pattern of children returning to their parents after the children age out of foster care. Yet, forces in the courtroom work against the children initially. The Foster Youth Transitions to Adulthood (FYTA) survey found that 52% of former foster youth reported feeling very close or somewhat close to their biological mothers, and 46% reported that their biological families provided them with emotional support. Mark E. Courtney et al., *Foster Youth Transitions to Adulthood: A Longitudinal View of Youth Leaving Foster Care*, 70 CHILD WELFARE n. 6, 685 (2001). The goal of FYTA is to examine experiences of youth who have left the system,<sup>9</sup> and who have had relatively long stays in foster care.<sup>10</sup> Additionally, FYTA also seeks to clarify the extent to which governmental services help these individuals transition to independence. The survey

also seeks to define the circumstances 12 to 18 months after they have aged out of the system.<sup>11</sup>

Many of the children reported that they felt lonely while in the system, that they are different than other youths, or that they had “no roots.”<sup>12</sup> They felt that out-of-home care was not like being in their own family. Many did not want to let on to others that they were in the system, and nearly half wished that they knew more about their family background.<sup>13</sup> 34% of the respondents indicated that they had been mistreated at least some of the time while in the system.<sup>14</sup> The data show that some children may benefit from living with their families.

When I visited St. Vincent’s, I spoke with an employee who worked with the parents during termination proceedings. She would go into the homes of the parents, and she would help the parents learn how to do simple home tasks. These tasks included doing laundry, changing diapers, cooking dinners, and so on. Her job was to prepare and teach the parents how to become proper parents.<sup>15</sup> Usually the minimum the courts expect from the parents are a few parenting classes. After the classes, the courts expect the parents to know how to be the world’s best parents. However, the parents need more than a possible two seminars. With only the minimum training, the parents are not likely to show that they are fit and able. Without access to other resources, the parents are likely to never qualify as able parents.

I propose combining the efforts, resources, and money. All the parties should work together to reunite the children, even if it is simply through supervised parenting. Although it is said that courts work to reunite first, and that courts do not want to terminate parental rights, the presumption is usually that the parents are unfit. It is detrimental when the attorneys for the parents presume the parents are unfit. Instead of working against the presumption, the parties should work as if the parents are unfit, but that they need direction in becoming better parents. Constructive criticism should be utilized as a tool, and not used as a plain statement.

Laws and statutes preclude parents from trying to regain parental rights. However, given the data, the system should work with parents to reduce the number of children who may end up in foster care initially. Resources and money are spent by the state once these children are in foster care, so the state should spend the resources on preventing the children from

entering foster care. The system would balance itself because fewer children would be in foster care if they were reunited with their parents. Also, if children did have to be in foster care regardless, then maintaining a relationship has shown to reduce emotional problems in these children.<sup>16</sup> A reduction in these problems would reduce children moving from foster care to a group facility because of these potential difficulties.<sup>17</sup> As stated earlier, it has been shown that children with emotional problems who do not see their parents are at risk of eventually ending up in the criminal system. When I was in court, I noticed that the children who used to be advocated for by the GAL, would eventually be sitting on the opposite side of the courtroom with attorneys representing them as parents.

Resources are already spent and wasted in the current system. The Center for Family Representation in New York City has a program called the Community Advocacy Team (which utilizes the parent partner team system) that saves the city and taxpayers an estimated \$22 on every \$1 it spends to reconnect and heal separated families.<sup>18</sup> The program also estimates that it saved the city \$30 million for the year of 2008.<sup>19</sup> For all the children that the Center for Family Representation serves, only 1% will return to foster care.<sup>20</sup> This is compared to the 11.4% that are served by the city’s traditional representation approach.<sup>21</sup> So my proposal is to redirect available resources at preventing the problems associated with children in foster care who would prefer to live with their parents.

#### *Needed Change in the Legislature*

In 2004, California had a case in which a 14-year-old boy asked the court to reinstate the rights of his parents. *C. Schmidt & B. Dabney, Restoring Parental Rights: Giving Legal Orphans a Chance at a Family*, 25 CHILD LAW PRACTICE n. 11, 170. Prevented by state statutes, the court could not reinstate the rights; however, the court then asked the California legislature to rework the statutes that prevent the parents from regaining rights. The statute, California Welfare & Institutions Code § 366.26(i)(3), was passed in 2005.<sup>22</sup> Children who have lived in foster care for 3 years can petition the court to reinstate parental rights. The statute mandates that a court must determine:

[First, that] adoption is no longer the child’s permanent plan goal. If the evidence is clear and convincing the child is no longer likely to be

adopted, and that it is in the child's best interest to reinstate parental rights, the court must grant the petition. *Id.*

There are a number of potential problems with relying on the proposed change. First, as stated above, few states have statutes such as this. It will take time to change the legislature in multiple states. Further, children, not the parents, must petition the court when they wish to go back to their parents. In the case of a young child, the caseworker would have to initiate a new proceeding to reinstate rights. However, if the child is too young, or does not express his or her wishes, the caseworker may not recognize the child's wishes. For a child to petition the court, it would be the responsibility of the caseworker to determine what the child wants. Yet, once parental rights have been terminated, the case is essentially, if not indefinitely, closed in regard to parental rights. The judge, GAL, and other parties involved continue with other cases. Thus interaction between that court and the child will likely no longer take place. If it did become part of the child's best interest to go back with a parent, the other parties would not recognize the child's wishes given the lack of interaction.

Another problem that presents itself is cooperation by the parties. After strongly litigating for the parental rights to be terminated, the GAL may not want to reopen the case. Convincing the attorney to argue that it is in the best interests of the child to return to the parents would be difficult. The GAL, and the judge, may still have a bias against the parents as being unfit. As the statute calls for above, the evidence must be clear and convincing, which could be hard to show.

Lastly, aside from the problem of asking the GAL to argue the opposite argument on a previous case, asking the judge to fill the docket with more cases may be an obstacle as well. These cases already overwhelm the courts, and allowing cases to be reheard may exacerbate the current problems: large dockets, overworked attorneys, and apathetic representation. The statute is new, and it has not been determined what problems it will solve or worsen. However, it is a change toward recognizing that it may be in the best interests of the child to reinstate parental rights.

#### *Working as a Team and Utilizing the Parent Partners*

States are also using other tools to work toward the best interests of children. The word "team" is begin-

ning to echo in the efforts to help children. States are recognizing the importance of parents being part of the team. One of these states is Michigan itself. The University of Michigan has created the Detroit Center for Family Advocacy. D. Rauber, *From the Courthouse to the Statehouse: Parents as Partners in Child Welfare*, 28 CHILD LAW PRACTICE n. 10 (2009). In this program, "parent partners" accompany the parents who are in the proceedings during hearings, agency meetings, and right before a child is removed (a meeting the parent's attorney is not usually permitted to attend).<sup>23</sup> These partners are parents who have been through child protection proceedings as well. The team for the parents encompasses the attorney, social workers, a possible GAL for the parent, and the parent partner.<sup>24</sup> "[S]ince many child welfare cases involve substance abuse, parent partners may provide insight and support to a parent new to recovery."<sup>25</sup> These parent partners are trained in this area, and are able to be helpful advocates for the parents in the proceedings. The Detroit Center for Family Advocacy creates a team that is specific for helping the parents:

CFA uses an attorney, social worker, and parent advocate to assist families. The attorney handles legal advocacy, the social worker helps families access services and provides case management, and the parent advocate offers support and advice on navigating the child welfare system. *Id.*

This is the type of team that needs to be organized within the entire legal system. The attorney is not the sole practitioner in the case, and is not the only person responsible to cover all the areas needed to be a successful advocate. States have "programs that train parents to serve as parent mentors and programs that train parent leaders to sit at the decision-making table and influence child welfare policy."<sup>26</sup> There is potential to greatly improve the system if the partners are utilized effectively.

There are obstacles as well. Parents may still not cooperate with the team in the proceedings. Some parents can never be helped; however, after sitting in the courtroom during the summer, I noticed a majority of the parents do what their children back. The parents who do want to actively participate in the proceedings will benefit from this help, and if some parents are apathetic to the help, then the help can be withdrawn. Many parents see the system and

the people working for the system as enemies. If the system is explained to parents by people to whom they can relate, then they may be more likely to participate. Attorneys get frustrated because parents do not cooperate, but if the parents are able to communicate to someone who previously dealt with a similar situation, then a reduction of parental apathy may be likely.

Another problem with this team system is recruiting enough parents to become parent partners. Taking on responsibilities in a job such as this will be a large step for some parents, but it is a step that can be done. The University of Michigan's Detroit Center for Family Advocacy, and other similar programs in DC, New York, Kentucky, Iowa, California, and Washington have been able to recruit parents to be parent partners.<sup>27</sup> With the economy and job market being down, this would create jobs for parents who have a hard time getting a job on their own. Earning an independent income may be enough motivation for some parents (reducing the unemployed and homeless).

Lastly, a problem may be whether or not judges, attorneys, and social workers are willing to participate in this team effort to provide better representation for parents. There is an annual parent leadership conference that is cosponsored by Parents Anonymous, CSPT, and DSS.<sup>28</sup> Over 400 judges, attorneys, parents, and agency staff attended the most recent conference, which "brings together parent advocates, practitioners from various systems (e.g., child welfare, mental health, juvenile justice, education, and early childhood development) parents/caregivers, policymakers, and community providers in a statewide forum."<sup>29</sup> The goals of the conference include, but are not limited to: (1) increase awareness of Parent Leadership strategies, models, and resources; (2) increase knowledge, skills, and abilities on Parent Leadership and Shared Leadership strategies; (3) showcase Parent Leadership and Shared Leadership programs from local areas, exhibit products, and disseminate information; (4) promote establishment of evidence-based/evidence-informed local Parent Leadership models; (5) provide resources to strengthen existing Parent Leadership models; (6) improve evaluation of Parent Leadership programs and strategies; and (7) expand opportunities for parents/caregivers to participate in meaningful leadership activities.<sup>30</sup> If more studies show that the resources and efforts to promoting parent representation are beneficial, then other agencies and people will be more likely to spend the resources needed. The assumption that

termination of parental rights is in the best interests of children may dissipate.

### *Nancy Colon: Parent Partner*<sup>31</sup>

Some people may question whether parents will want to become parent partners and contribute to other child welfare cases. For Nancy Colon, her motivation was simply to help others in a situation she had experienced. Nancy Colon is currently a parent partner at the Detroit Center for Family Advocacy. Not only is she a parent partner, but she is an advocate for improving parent representation in child welfare proceedings. Her story reflects what most parents experience in these proceedings and demonstrates the need for better representation. Most importantly, her story needs to resonate within the legal community.

In March 2004, Ms. Colon was told to attend a meeting with protective services. She was to bring her five children. Uninformed, without a lawyer, and alone, Ms. Colon was accused of child neglect. She had been a victim of domestic violence for two years, and now she was losing her children because of it. However, she went into the situation not knowing why she was there, or what was going to happen. Her five children were placed in four different foster homes. It is important to emphasize that her children were removed before a hearing and without an attorney or parent partner present. Very little information was provided to Ms. Colon.

She met her attorney a few minutes before her first hearing. The attorney told her nothing would happen at the hearing, and she would have to wait until the next court date. She left not knowing what would happen to her children, or even how her children were doing in their foster homes. What she did know was that no one had answers for her. While she was living in a shelter during the case, a caseworker visited her three weeks after the children were removed. The caseworker had Ms. Colon sign a treatment plan without understanding it, and without an attorney to explain to her what the plan meant. She signed it assuming she would get her children back soon. Three weeks passed until she was able to see her children.

After seeing them, she was determined to get them back. However, she did not know how to begin. She moved through multiple shelters, and she tried to find a job. Her treatment plan required her to establish stability. A friend took her in, and Ms. Colon was able to begin working on her plan. Ms. Colon knew that



she could rely on support groups such as her church, employers, and school. However, not all parents know that they can seek help in these areas. With an individual like Ms. Colon directing parents, parents will be able to find help beyond the legal system. However, Ms. Colon's support group could not provide her answers in regard to the legal proceedings. Ms. Colon was following the plan, and she expected to get her children back every time she went to court. Each time she left disappointed because she did not know she had to complete the plan before she got her children back. Her attorney never made her aware of this.

Her attorney was nice to her; however, she felt he was more nervous than her at times in front of the judge. He told her to be compliant and to admit to the allegations. She assumed this would help her case, although she did not agree with what was being said at the hearings. Her attorney only met with her five or ten minutes before each hearing, but never outside of court. He never filed motions on her behalf, and he did not help her with her plan. With minimal representation, she fought against the agency. During this struggle, no one helped her children in abusive foster care homes.

Finally, Ms. Colon received a new worker who advocated for her. The children were placed in new foster homes that wanted to help reunify the children with their mother. Ms. Colon completed her plan, and finally the court reunified her with her children in June 2005, more than a year after they had been removed from her care. Looking back, she feels that if she had an attorney who had zealously advocated for her instead of instructing her to passively move through the system, she would have been reunified earlier. She also feels if she did have an attorney before the removal, then her children would not have gone through the stressful experience of being in foster homes. The children were harmed by the actions of the system, not helped. If an attorney had been appointed initially, and began zealously advocating initially, then the children might not have experienced a year away from their mother and siblings.

Ms. Colon became a parent partner because she experienced the need for better representation of parents. She experienced that without a proper attorney informing her of her rights, her kids were separated from her and each other. Without support, resources, and guidance, parents will sit in silence while their kids are taken away. The parents sit in silence because

they feel small and insignificant in the courtroom. Whether this is true or not, attorneys are appointed to make up for this feeling. However, attorneys do not always zealously advocate, as in Ms. Colon's situation. Ms. Colon herself has seen attorneys humiliate their clients in court. The Detroit Center for Family Advocacy utilizes a team comprised of an attorney, a social worker, and a parent partner. The goals of the center are to reduce the number of children in foster care, provide legal support for families, and to help encourage parents through the process. Ms. Colon is able to provide emotional support and encouragement for the parents. Attorneys and social workers cannot balance all the emotional needs of their clients, so the parent partner can help fill that gap in advocacy. Parents will better understand their own roles in the system, and understand how to get their children back faster. With the parent partner's knowledge, the parent will be able to pursue the proper resources faster. Given the dynamics of the team, the parent will spend less time confused, and will be able to work in a more focused way toward the goal of reunification, thus reducing the time children spend in foster care.

#### *Cooperation*

Although this is a redundant theme, the attorneys representing the parents in these proceedings are busy, the social workers overworked, and the court dockets are crowded. Obtaining cooperation from all these actors and the court system could be difficult because of the extra parent partner. Aside from social workers, clients, witnesses, GAL advocates, and other people involved, a new voice – that of the parent partner – would have to be heard. This voice may get lost, ignored, and disrespected. This new voice could hinder or possibly burden the system. In the article *Working with Parent Partners to Achieve Better Case Outcomes for Families*, D. Rauber describes how attorneys and social workers can work effectively with parent partners in child welfare cases. Rauber reminds the caseworkers to treat these partners as professionals, as these partners can be treated negatively: “[g]enerally, the parent partner has dealt effectively with issues that brought him or her to the child welfare agency's attention, has been reunited with his or her child for at least one year, and has been screened by the advocate program.”<sup>32</sup> It may be hard for attorneys to ignore the stereotypes that are associated with parents who have already been through the legal system as an unfit parent. However, these par-

ents are required to continually participate in extensive training and education on many child welfare topics.<sup>33</sup>

The parent partners typically understand their role in helping clients navigate through the system effectively. The partners understand the goal is to regain parental rights. Thus, attorneys and social workers should utilize the parent partner in helping the client achieve the goal. Instead of the attorney only advocating for clients in court, the attorney can ensure that the client is being helped outside of court. The attorney can be assured that the client is taking all steps with the help of the parent partner. To regain rights, attorneys find themselves searching for reasons why the client deserves parental rights. This teamwork system can help parents achieve more than what the court looks for when looking at “parental accomplishments.” The attorneys and social workers do not have time to walk the parent through every step diligently. However, if the caseworkers accept the partner’s role as the client’s resource to accomplish what the court expects, then the successes of the client will more likely produce a success in the case.

It is an ethical obligation for attorneys to communicate regularly with their clients. However,

A recent ABA study of parent representation in Michigan . . . revealed parents are often disappointed with the level of communication between their attorney and them. 31% of responding parents indicated their attorney never contacted them and 51% of parents stated their only contact with their attorney was right before the hearing. Common complaints from parents in focus groups included attorneys not responding to phone calls, communicating only right before the hearing, being unavailable when a problem arose with services, and “not being a reliable advocate.” *Id.*

If an attorney kept the partner informed, then the attorney could save time. Saving time means more focus on issues and less time rushing to accomplish goals. Many times the clients are difficult to contact and often correct phone numbers have to be determined. If these responsibilities are left to the parent partners, then the attorneys will have contact, at least indirectly, with the clients. Many attorneys will try once to contact the clients, but if the client does not reply, then it is likely that the attorney will continue with other important cases. Having a parent partner

involved may make communication easier because the client may feel more empathy from the partner and thus may be more likely to communicate. In law school, professors always express that clients always lie. If there is one thing we should learn from law school, it should be this. One must ask: why is this true? The attorneys are associated with the legal system. The legal system is perceived as the enemy by many litigants. Attorneys need to accept this justifiable view of the legal system, and include partners in the process. By doing this, the partners themselves can instill in the clients a sense of trust in the system.

A side note must be addressed. Attorneys and social workers must remember that the partners are not there to replace the attorney in fulfilling his or her job responsibilities. The partners are there to help supplement what the attorneys and social workers need to accomplish.<sup>34</sup> Too many duties may be delegated to the partner, and the partner may not be capable of completing them or even legally allowed to do so. This could create ethical conflicts. Social workers cannot depend on the partner to monitor the parent. Thus, information collected on parenting time, participation in behavioral services, or general behavior of the client must be obtained by the social worker.<sup>35</sup> The partner is there to help the client understand the system and to become a fit parent in the eyes of the law. Although it is a fine line, the partner is support for the client, not the caseworkers. The support is indirect help for the caseworkers and attorneys.

## Conclusion

The mother who committed suicide over the summer may have benefited from a team effort. If she had a parent partner, then she may have understood what the system was trying to accomplish. She may not have committed suicide if she had more guidance. If this guidance had been provided, the children involved may have better options than they do now. Attorneys and social workers need to abandon this idea of separate forces. All players in the courtroom need to understand they are all working for a common goal: the best interests of the children. With this understanding, reunification may be achieved faster. Combine reunification with proper implementation of parent resources, and the children may benefit more than they would in foster care.

The article *Working with Parent Partners to Achieve Better Case Outcomes for Families* stated that recent evaluations of parent partner and advocate programs “show the presence of a parent partner in a case can reduce the amount of time a child spends in foster care and increase the chance of reunification.”<sup>36</sup> The Center for Family Representation (CFR) in New York City uses a Community Advocacy Team (CAT) approach. This approach encompasses the “team” idea as discussed. In this team there is an attorney, a social worker, and a parent advocate representing the parent clients. “Of the 700 families who received services through the CAT approach, the average stay for children entering care was 98 days, compared to an average stay of 11.5 months for children who reunify in one year.”<sup>37</sup> ©

### About the Author

*I first became interested in child welfare while completing my degree in Behavioral Psychology at Western Michigan University. Although, I always knew I wanted to pursue a legal career, it was not until my child psychology class that I decided to practice family law. While considering law schools, I discovered the Chance at Childhood Clinic at Michigan State University College of Law. The program provided the valuable experience I was looking for in a law school. During my internship with a Guardian ad Litem attorney, I was able to see the effect this work has on children, and what it means for the children. I always knew that attorneys were needed in the practice of family law. However, during that experience, I realized the desperate need for family law attorneys. Jessica Hutchison, Michigan State University College of Law, JD candidate May 2012*

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8. *Id.*
9. The survey was of youths from 43 different counties in Wisconsin. The sample size was 150. About 57% were female, 65% were Caucasian, 27% were African American, 6% were American Indian, and less than 2% were of other racial or ethnic heritage. Three interviews were taken, one before the youths left the system, another when the youths spent between twelve and eighteen

months out of the system, and a final one when the youths had spent approximately three years out of the system.

10 *Id.* at 687.

11 *Id.*

12 *Id.* at 701.

13 *Id.*

14 *Id.*

15 Interview with Gina Villas, Child Welfare Director, St. Vincent's Catholic Charities, in Lansing, MI. (November 12, 2010).

16 See page 8 above that discusses *A Second Chance for Children and Families: A Model Statute to Reinstate Parental Rights After Termination* data.

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18 The Center for Family Representation. *Community Advocacy Teams – Common Sense Approach Yields Uncommon Results*, FAMILY MATTERS, 4, Winter 2009.

19 *Id.*

20 *Id.*

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23 *Id.* at 1.

24 See *Id.*

25 *Id.* at 1.

26 *Id.*

27 See *Id.*

28 *Id.* at 6.

29 *Id.*

30 *Id.*

31 See generally Nancy Colon, *Parent Partner Stories: From Parent-in-Crisis to Parent Partner- Nancy Colon's Story*, 28 CHILD LAW PRACTICE n.11, 169-170 (2010), for the complete article that this entire section is citing.

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# Commentary: Mediation in Neglect/Abuse – Time and Cost Savings?

by Val Lafferty

Linda Glover, Executive Director of the Resolution Service Center (RSC) in Lansing, spoke recently to Ingham County Bar Association's Child Welfare Section about the use of mediation in neglect/abuse (N/A) proceedings. Linda has prior experience as a foster care worker, foster care supervisor and as a mediation administrator for the Supreme Court Administrator's Office, among other relevant experience, before heading the RSC. Linda's comments along with earlier thoughts shared via Children's Law listserve demonstrate the success of mediation in Michigan counties where it is used.

In 2005, the seven pilot projects then using mediation in Michigan N/A cases were evaluated by the Michigan State University School of Social Work. The evaluators concluded that agreements were reached in more than 80% of mediated cases between 2000 and 2003, and that children involved in the mediated cases achieved a permanent placement an average of 8 months sooner than children in unmediated cases. The evaluators also found that mediation resulted in substantial savings of funds that would otherwise have been spent on court hearings or out-of-home placement costs.

In Charlevoix County every N/A case reported is sent to mediation at the adjudication stage. Sanilac County uses mediation at several junctures during the 1-3 year or more process. The parties can agree to mediate at the preliminary hearing or the judge might order it somewhere along the line – especially where a neutral third party could bring perspective for extremely adversarial hearings. Prosecutor Eric Scott of Sanilac noted that while mediation is used at all stages of the process he believes pre-trial is the best place to achieve resolution.

Probate Judge Kenneth Tacoma in Wexford County uses Permanency Planning Mediation (PPM) versus Permanency Planning Conferences (PPC). PPCs

came about as a result of a lawsuit settlement with the state. PPCs are aimed at case management and differ from mediation in several important ways:

- mediation is under the auspices of the Court,
- all parties are present at a PPM,
- parties are represented by counsel in mediation and
- the process is facilitated by a neutral mediator (PPCs are facilitated by DHS employee).

Where termination of parental rights is being sought, Wexford County estimated 75% are settled in a PPM. Judge Tacoma believes the big difference is that mediation makes parents feel they are being listened to (versus ganged up on) and therefore the PPM process presents more opportunities for parents to develop what truly is best for the child.

Mediator/Attorney/Trainer Susan Butterwick from Ann Arbor clarifies that PPCs used to be called TDMs and originated as a requirement of an Anne E. Casey grant, even before the law suit. A PPM can be used at any stage in the case, not just the Permanency Planning Hearing stage, adds Susan, which was why “we changed the name of our program from PPM to Child Protection Mediation because stakeholders thought it was a process that was to be used only at the PPH stage.”

In Marquette County, Probate Judge Michael Anderegg reiterates the value of PPM over PPCs: unlike PPC all parties must be present. Plus, if agreement is reached, it is incorporated into the court order. Marquette was one of the SCAO program's pilot sites. Since SCAO's funding for mediation was terminated, Marquette funds the operation of their PPM program from local sources.

In Wayne Co. mediation is being used in the 3rd circuit court at most points along the N/A continuum from post-adjudication through (contested) adop-

tions. Susan Butterwick reports the program has been in place, through the Wayne Mediation Center, for about 3 years. “One of the Wayne Co. DHS district offices is also using mediation as part of a pilot on unsubstantiated CPS cases as a way to resolve the underlying dispute that causes repeated unsubstantiated reports,” offers Susan. She further clarifies that the entire pilot program through SCAO from 1998-2003 showed children reached permanency approximately 12.5 months sooner when mediated versus non-mediated.

Also, while this is not an exhaustive list, there are other models to draw upon. Mediation is used in every abuse/neglect case in Washington DC Family Court and in San Jose, CA. Cook Co. (Chicago) uses mediation on every case after the first shelter hearing if the child is placed out of home (which is most cases).

One of the virtues of mediation compared to litigation is the increased prospect of maintaining relationships after the process – certainly ideal for the family related issues in family and probate court. But by far the larger potential benefit is cost savings – not

by cutting services but by utilizing more effective procedures to resolution.

Given Governor Snyder’s mantra of value for services, perhaps an opportunity to revisit the benefits of mediation is at hand. It would seem logical to pursue a more systematic use of mediation in abuse and neglect cases through the state. ©

#### About the Author

*Valerie Lafferty has a MA in counseling and took advantage of ADR options at MSU Law including an internship with the Dispute Resolution Center in Lansing and in mediation competitions with other law schools. Over the past few years she represented parents in N/A cases. “Because the system is complex -- with so many players and at so many levels – effective communication seems almost impossible. Because the rights at stake are so fundamental, because the professional court staff is so overwhelmed and because the outcomes are often so discouraging, these other models seem to offer hope for better outcomes.” Val mediates in elder law and real property and would love to help in the child welfare area.*

# Changes to Michigan's Sex Offender Registry

2011 PA 17-19, Effective July 1, 2011

by Thomas Robertson

2011 PA 17-19 amended Michigan's Sex Offender Registration Act (SORA) to comply with the requirements of the Federal Sex Offender Registration and Notification Act (SORNA). Information regarding SORNA is available on-line at: <http://www.ojp.usdoj.gov/smart/guidelines.htm> This memo addresses the major changes in a Frequently Asked Questions (FAQ) format.

## What is a Conviction?

1. A judgment of conviction in a criminal court, including tribal or military courts. MCL 28.722(b)(i).
2. A conviction that has been set aside under MCL 780.621 to 624. MCL 28.722(b)(i).
3. Being assigned to youthful trainee status:
  - a. Before October 1, 2004 if the person did not successfully petition for removal from the registry before July 1, 2011. MCL 28.722(b)(ii)(a).
  - b. Before October 1, 2004 if the person is convicted of a felony after July 1, 2011. MCL 28.722(b)(ii)(b).
4. A juvenile disposition if the juvenile was age 14 or older and was adjudicated for a tier 3 offense. MCL 28.722(b)(iii).

## Who is Required to Register?

Registration offenses are divided into three tiers.

### *Tier 1*

- a. Tier 1 offenders will only be on the law enforcement registry. MCL 28.728(4)(c).
- b. Tier 1 offenders will register for 15 years. MCL 28.725(10).
- c. Tier 1 offenses are:
  1. MCL 750.145c(4) - Knowing possession of child sexually abusive material. MCL 28.722(s)(i).
  2. MCL 750.335a(2)(b) - Indecent exposure with fondling if the victim is a minor. A minor is a person under 18 years of age. MCL 28.722(s)(ii).
  3. MCL 750.349b - Unlawful imprisonment if the victim is a minor. MCL 28.722(s)(iii).
  4. MCL 750.520e - 4 degree CSC if the victim th is 18 or older. MCL 28.722(s)(iv).
  5. MCL 750.520g(2) - Assault with intent to commit CSC (sexual contact) if the victim is 18 or older. MCL 28.722(s)(iv).
  6. MCL 750.539j - Video voyeurism if the victim is a minor. MCL 28.722(s)(v).
  7. Any other violation that by its nature constitutes a sexual offense against a minor. MCL 28.722(s)(vi).
  8. An offense committed by a sexually delinquent person. MCL 28.722(s)(vii).
  9. An attempt or conspiracy to commit a tier 1 offense. MCL 28.722(s)(viii).
  10. An offense substantially similar to a tier 1 offense under the law of the United States, another state or country, or tribal or military law. MCL 28.722(s)(ix).

*Tier 2*

- a. Tier 2 offenders will be on the public registry. MCL 28.728(4).
- b. Tier 2 offenders will register for 25 years. MCL 28.725(11).
- c. Tier 2 offenses are:
  1. A tier 1 offender subsequently convicted of another tier 1 offense. MCL 28.722(t)(i).
  2. MCL 750.145a - Soliciting a person under the age of 16 for an immoral purpose. MCL 28.722(u)(i).
  3. MCL 750.145b - Soliciting a person under the age of 16 for an immoral purpose; second offense. MCL 28.722(u)(ii).
  3. MCL 750.145c(2) or (3) - Creation or distribution of child sexually abusive material. MCL 28.722(u)(iii).
  4. MCL 750.145d(1)(a) - Using the Internet to commit various crimes against a minor. MCL 28.722(u)(iv).
  5. MCL 750.158 - Sodomy against a minor. MCL 28.722(u)(v).
    - a. Unless the victim was between 13-16, and
    - b. The defendant was not more than 4 years older than the victim, and
    - c. The victim consented to the violation, or
    - d. The victim was 16 or 17 and was not under the custodial authority of the defendant at the time of the violation, and
    - e. The victim consented to the violation.
  6. MCL 750.338, 338a or 338b - Gross indecency against a minor. MCL 28.722(u)(vi).
    - a. Unless the victim was between 13-16, and
    - b. The defendant was not more than 4 years older than the victim, and
    - c. The victim consented to the conduct, or
    - d. The victim was 16 or 17 and was not under the custodial authority of the defendant at the time of the violation, and
    - e. The victim consented to the conduct.
  7. MCL 750.448 - Soliciting a minor to become a prostitute. MCL 28.722(u)(vii).
  8. MCL 750.455 - Pandering. MCL 28.722(u)(viii).
  9. MCL 750.520c - 2nd degree CSC committed against a victim 13 year of age or older. MCL 28.722(u)(ix & x).
  10. MCL 750.520e - 4th degree CSC committed against a victim between 13 and 18 years of age. MCL 28.722(u)(ix).
  11. MCL 750.520g(2) - Assault with intent to commit sexual contact committed against a victim between 13 and 18 years of age. MCL 28.722(u)(ix).
  12. An attempt or conspiracy to commit a tier 2 offense. MCL 28.722(u)(xi).
  13. An offense substantially similar to a tier 2 offense under the law of the United States, another state or country, or tribal or military law. MCL 28.722(u)(xii).

*Tier 3*

- a. Tier 3 offenders will be on the public registry. MCL 28.728(4).
- b. Tier 3 offenders will register for life. MCL 28.725(12).
- c. Tier 3 offenses are:
  1. A tier 2 offender subsequently convicted of another tier 1 or tier 2 offense. MCL 28.722(v)(i).
  2. MCL 750.338, 750.338a, 750.338b - Gross indecency committed against a victim under age 13. MCL 28.722(w)(i).
  3. MCL 750.349 - Kidnaping if the victim is a minor. MCL 28.722(w)(ii).
  4. MCL 750.350 - Enticing a child under age 14. MCL 28.722(w)(iii).



5. MCL 750.520b, 750.520d and 750.520g(1) - 1st degree CSC, 3rd degree CSC and Assault with intent to commit sexual penetration. MCL 28.722(w)(iv).
  - a. Unless the victim was between 13-16, and
  - b. The defendant was not more than 4 years older than the victim, and
  - c. The victim consented to the conduct.
6. MCL 750.520c or 750.520g(2) - 2nd degree CSC or Assault with intent to commit sexual contact committed against a victim under 13. MCL 28.722(w)(v).
7. MCL 750.520e - 4th degree CSC if the defendant is over 17 and the victim is under 13. MCL 28.722(w)(vi).
8. An attempt or conspiracy to commit a tier 3 offense. MCL 28.722(w)(vii).
9. An offense substantially similar to a tier 3 offense under the law of the United States, another state or country, or tribal or military law. MCL 28.722(w)(viii).

### What About Juvenile Offenders?

1. Only juvenile offenders who are 14 or older at the time of the offense are required to register, and only for a tier 3 adjudication. MCL 28.722(b)(iii).
2. Juvenile offenders are only on the law enforcement registry. MCL 28.728(4)(b).
3. Juveniles convicted as an adult in circuit court are subject to adult registration rules. MCL 28.722(b)(i) & 28.722(b)(iii).
4. Juveniles convicted in a designated proceeding in juvenile court are subject to adult registration rules. MCL 28.728(4)(a).

### How Do We Determine Romeo and Juliet Status?

1. If there is a dispute between the prosecution and defense regarding whether the defendant or juvenile is required to register because the defense claims the conduct falls within the Romeo and Juliet exception:
  - a. The court holds a post-conviction, pre-sentencing hearing or a post-adjudication, pre-disposition hearing. MCL 28.723a(1).
  - b. The defendant or juvenile must prove by a preponderance of the evidence that:
    1. The victim was between the ages of 13 to 16.
    2. The defendant or juvenile was not more than 4 years older than the victim.
    3. The sexual conduct was consensual.
    4. The victim was 16 or 17 and was not under the custodial authority of the defendant at the time of the violation, and
    5. The victim consented to the conduct. MCL 28.723a(2).
  - c. The rules of evidence, except those relating to privileges and the rape shield law, do not apply. MCL 28.723a(3).
  - d. The victim has the right to attend and be heard, attend and be silent, or to refuse to attend. MCL 28.723a(5).
  - e. The Court's decision is a final order, appealable by right to the Court of Appeals. MCL 28.723a(6).

### What if My Case is Pending on July 1, 2011 When this Law takes Effect?

1. If a prosecution or juvenile proceeding is pending on July 1, the registration determination is made under Acts 17-19, and not the law in effect at the time of the offense. MCL 28.724(7).

### When and How Often Does an Offender have to Check In?

1. A tier 1 offender must report once a year between January 1-15. MCL 28.725a(3)(a).

2. A tier 2 offender must report twice a year between January 1-15 and July 1-15. MCL 28.725a(3)(b).
3. A tier 3 offender must report quarterly between January 1-15, April 1-15, July 1-15 and October 1-15. MCL 28.725a(3)(c).
4. When the person reports they must review and confirm or change their registration information. If their appearance has changed, they must obtain an updated photo. MCL 28.725a(4) & (5).

### What is the Registration Fee?

1. The fee is increased from \$35 to \$50. MCL 28.725a(6).
2. \$30 must be forwarded to the MSP for deposit in the sex offenders registration fund. \$20 is retained by the collecting agency. MCL 28.725b(1).
3. The fee can be waived for 90 days if the offender is indigent. MCL 28.725b(3).
4. An offender is indigent if he or she:
  - a. Was found indigent by a court within the last 6 months, or
  - b. Receives assistance under the DHS food assistance program, or
  - c. Has an annual income below the current federal poverty guidelines. MCL 28.722(h).

### Where does a Homeless Person Register?

1. A homeless person registers in the city, village or township where the person spends the majority of his or her time. MCL 28.722(p).

### When does a Nonresident have to Register?

1. A nonresident who works or attends post secondary school in this state has to register and comply with all reporting and change of work or school address requirements. MCL 28.723(1), MCL 28.724a & MCL 28.725(2).
2. A non resident who commits a Tier 1-3 offense in this state must initially register, but he or she is not required to comply with continuing SORA reporting requirements. MCL 28.723(3).

### What Information is on the Registry?

1. The Acts create two registries. A registry with information that is available only to law enforcement, and a public registry that can be accessed on-line with less information. The following information will **all** be on the law enforcement registry. *Information on the public registry is in italics.*
  - a. *Offender's legal name, any aliases, nicknames, ethnic or tribal names or any other names by which the individual is or has been known.* MCL 28.728(1)(a). *MCL 28.728(2)(a).*
  - b. Social security number and any alleged SSNs previously used by the offender. MCL 28.728(1)(b).
  - c. *Date of birth* and any alleged dates previously used by the offender. MCL 28.728(1)(c) . *MCL 28.728(2)(b).*
  - d. *The address where the offender resides* or will reside. MCL 28.728(1)(d). *MCL 28.728(2)(c).*
  - e. Name and address of any temporary lodging that will be used for more than 7 days. MCL 28.728(1)(e).
  - f. Name and *address of the offender's employer.* MCL 28.728(1)(f). *MCL 28.728(2)(d).*
  - g. Name and *address of any postsecondary school the offender is attending.* MCL 28.728(1)(g). *MCL 28.728(2)(e).*
  - h. All phone numbers registered to the offender or routinely used by the offender. MCL 28.728(1)(h).
  - i. All email or instant message addresses assigned to or routinely used by the offender, including all login names or other identifiers. MCL 28.728(1)(i).
  - j. *The license plate number, registration number and description of any motor vehicle, aircraft or vessel owned or regularly operated by the offender,* including the location at which the item is habitually stored or kept. MCL 28.728(1)(j). *MCL 28.728(2)(f).*

- k. Driver license or state personal ID card number. MCL 28.728(1)(k).
- l. A digital copy of the offenders passport and other immigration documents. MCL 28.728(1)(l).
- m. Any occupational or professional licensing information. MCL 28.728(1)(m).
- n. *A brief summary of the conviction*, including where it occurred and the original charge if the conviction was for a lesser offense. MCL 28.728(1)(n). *MCL 28.728(2)(g)*.
- o. *A complete physical description of the offender*. MCL 28.728(1)(o). *MCL 28.728(2)(h)*.
- p. *A photograph*. MCL 28.728(1)(p). *MCL 28.728(2)(i)*.
- q. Fingerprints and palm prints. MCL 28.728(1)(q).
- r. An electronic copy of the offender's driver license or state ID card, including a photograph. MCL 28.728(1)(r) .
- s. *The law text for the offender's registration offense*. MCL 28.728(1)(s). *MCL 28.728(2)(j)*.
- t. Any outstanding arrest warrant information. MCL 28.728(1)(t).
- u. *Offender's tier classification and registration status*. MCL 28.728(1)(u). *MCL 28.728(2)(k) & (l)*.
- v. An indicator whether a DNA profile has been entered in CODIS. MCL 28.728(1)(v).
- w. Offender's complete criminal history, including dates of all arrests and convictions. MCL 28.728(1)(w).
- x. Offender's MDOC number, and the status of his or her parole, probation or release. MCL 28.728(1)(x).
- y. Offender's FBI number. MCL 28.728(1)(y).
- z. *Whether the offender's conviction has been set aside*. *MCL 28.728(10)*.

#### When does an Offender have to Update His or Her Registration Information?

1. An offender must immediately report the following changes in person to the registering authority.
  - a. A change of residence. MCL 28.725(1)(a).
  - b. A change in place of employment, or discontinuance of employment. MCL 28.725(1)(b).
  - c. Enrolls in an institution of higher education, or discontinues enrollment. MCL 28.725(1)(c).
  - d. A name change. MCL 28.725(1)(d).
  - e. Temporarily reside at a place other than his or her residence for more than 7 days. MCL 28.725(1)(e).
  - f. Establishing an email address. MCL 28.725(1)(f).
  - g. Purchases or begins to regularly operate a vehicle, or discontinues ownership or operation. MCL 28.725(1)(g).
  - h. When he or she plans to change residence to another state. MCL 28.725(6).
2. Immediately is defined as within 3 business days. MCL 28.722(g).
3. The registering authority is the law enforcement agency or sheriff's office having jurisdiction over the offender's residence, place of employment or institution of higher learning, or the nearest MSP post. MCL 28.722(o).
4. If an offender is moving out of the country, or will be traveling to another country for more than 7 days, he or she must notify the registering authority within 21 days before moving or traveling. MCL 28.725(7).

#### How is a Current Registrant Notified of any New Reporting Requirements?

1. The MSP must mail a notice to every registrant before July 1, 2011. MCL 28.725a(1).

#### Are the Registration Provisions Retroactive?

1. If a person was previously convicted of an offense for which registration would now be required, the person is not required to register, unless he or she is convicted of a felony after July 1, 2011. MCL 28.724(5).

#### What does Law Enforcement have to do if an Offender does not Register or Update Registration Information?

1. The registering agency must do all of the following:
  - a. Determine whether the offender has absconded or is otherwise unavailable. MCL 28.728a(1)(a).

- b. If notified by another state, US territory, or Indian tribe that an offender was supposed to appear and register or update registration information, and the offender does not appear, the registering agency must notify the MSP. MCL 28.728a(1)(b).
  - c. Revise the information in the law enforcement registry that the offender has absconded or is otherwise unlocatable. MCL 28.728a(1)(c) .
  - d. Seek an arrest warrant if the legal requirements for obtaining a warrant are satisfied. MCL 28.728a(1)(d).
  - e. Enter the offender into the National Crime Information Center. MCL 28.728a(1)(e).
2. After receiving notification from the registering agency, the MSP must do all of the following:
    - a. Notify the state, territory or Indian tribe that the offender failed to register. MCL 28.728a(2)(a).
    - b. Notify the US Marshall's service. MCL 28.728a(2)(a).
    - c. Update the National Sex Offender Registry of the offender's status as an absconder or as unlocatable. MCL 28.728a(2)(c) .

### What are the Penalties for Violations?

1. A willful violation of the act is a felony punishable by imprisonment for up to 4 years and/or a fine of up to \$2,000. MCL 28.729(1)(a). It is an F felony under the guidelines. MCL 777.11b.
  - a. A second offense is a felony punishable by imprisonment for up to 7 years and/or a fine of up to \$5,000. MCL 28.729(1)(b). It is a D felony under the guidelines. MCL 777.11b.
  - b. A third offense is a felony punishable by imprisonment for up to 10 years and/or a fine of up to \$10,000. MCL 28.729(1)(b). It is a D felony under the guidelines. MCL 777.11b.
2. A failure to register is a misdemeanor punishable by imprisonment for up to 2 years and/or a fine of up to \$2,000. MCL 28.729(2). It is an F felony under the guidelines. MCL 777.11b.
3. A willful failure to sign a registration and notice is a misdemeanor, punishable by imprisonment for up 93 days and/or a fine of up to \$1,000. MCL 28.729(3).
4. A willful refusal or failure to pay the registration fee is a misdemeanor punishable by imprisonment for up to 90 days. MCL 28.729(4).
5. Divulging, using or publishing non-public SORA information is a misdemeanor punishable by imprisonment for up to 93 days and/or a fine of up to \$1,000. MCL 28.730.

### How do We Count the Registration Period?

1. The registration periods for tier 1, 2 or 3 offenses exclude any periods of incarceration or civil commitment. MCL 28.725(13).
2. If a person is required to register after July 1, 2011 for a conviction that occurred prior to July 1, any time from the date of that conviction to the date of registration, less time spent incarcerated, will count toward the applicable registration period. MCL 28.275(14).

### My Registration Period Expired. Do I need to do Anything to be Removed from the Registry?

1. If the MSP determines a person's registration period has expired, or that the offender is no longer required to register, the MSP must remove the offender within 7 days after making that determination. MCL 28.728(9).

### When can a Person Petition for Removal from the Registry?

1. A tier 1 offender with a clean record can petition for after 10 years. MCL 28.728c(1) & (12).
2. A tier 3 offender with a clear record, who is on the registry for a juvenile adjudication, can petition after 25 years. MCL 28.728c(2) & (13).
3. An offender who is on the registry under any of the following circumstances can petition immediately for removal from the registry. The court **shall** grant the petition if the offender proves any of the following. MCL 28.728c(3) & (14-15).
  - a. That he or she meets the "Romeo and Juliet" exception. MCL 28.728c(14)(a) & (b).

- b. That he or she was convicted of gross indecency or 2nd degree CSC by a department of corrections employee, the victim was 16 or older, the act was consensual, and the victim was not under the offender's custodial authority. MCL 28.728c(14)(c).
- c. That he or she was under 14 at the time of the offense, and was adjudicated as a juvenile. MCL 28.728c(15)(a).
- d. That he or she is on the registry for an offense that no longer requires registration. MCL 28.728c(15)(b).
  1. Those offenses would be indecent exposure and juveniles adjudicated for an offense that is not on tier 3.
4. The petition is filed in the county of conviction, or if the offender was convicted in another state or territory, in the county of the offender's residence. MCL 28.728c(4) & (7).
5. The prosecuting attorney must be served with the petition. MCL 28.728c(7).
5. A false statement in a petition is perjury. MCL 28.728c(6).
6. If the victim is known, the prosecuting attorney must notify the victim. MCL 28.728c(8).
  - a. The victim has the right to attend any hearing and make a statement. A victim cannot be required to attend a hearing against his or her will. MCL 28.728c(10).
7. The court **may** reduce the registration period to 10 years for a tier 1 offender or to 25 years for a juvenile offender if the court finds the following:
  - a. The appropriate time period has elapsed. MCL 728.8c(12)(a) & (13)(a).
  - b. The offender has not been convicted of a felony. MCL 728.8c(12)(b) & (13)(b).
  - c. The offender has not been convicted of a listed offense. MCL 728.8c(12)(c) & (13)(c).
  - d. The offender has successfully completed probation, parole or supervised release without any revocation. MCL 728.8c(12)(d) & (13)(d).
  - e. The offender successfully completed a sex offender treatment program. This requirement may be waived if such programming was not a condition of probation, parole or supervised release. MCL 728.8c(12)(e) & (13)(e).
  - f. The petition shall not be granted if the court determines the offender is a continuing threat to the public. MCL 28.728c(11).

## About the Author

*Thomas M. Robertson graduated from James Madison College, Michigan State University in 1975 with high honors. He obtained his J.D. from the University of Michigan Law School in 1977. After a brief stint in private practice, he joined the Isabella County Prosecutor's office in 1978. In 1981 he became the Assistant Executive Director of the Prosecuting Attorneys Coordinating Council, and was appointed the Executive Director in 1997.*

## *The Michigan Child Welfare Law Journal* Call for Papers

The editorial board of *The Michigan Child Welfare Law Journal* invites manuscripts regarding current issues in the field of child welfare. The *Journal* takes an interdisciplinary approach to child welfare, as broadly defined to encompass those areas of law that directly affect the interests of children. The editorial board's goal is to ensure that the *Journal* is of interest and value to all professionals working in the field of child welfare, including social workers, attorneys, psychologists, and medical professionals. The *Journal's* content focuses on practice issues and the editorial board especially encourages contributions from active practitioners in the field of child welfare. All submissions must include a discussion of practice implications for legal practitioners.

The main text of the manuscripts must not exceed 20 double-spaced pages (approximately 5000 words). The deadline for submission is December 30, 2011. Manuscripts should be submitted electronically to [kozakiew@msu.edu](mailto:kozakiew@msu.edu). Inquiries should be directed to:

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# Message from the Chair

It is time to transfer the leadership to a new Chair. Two years have passed quickly but they have been fun and fruitful. I look forward to working closely with Jodi Latuszek and the council for many years into the future.

I do, however, sense a schism developing in this area of the law. A schism seems to be developing between those of us that represent children as lawyer's/guardian ad litem and those that represent parents. Certainly the *Mason* case brought much attention to the under-representation of mothers, and particularly fathers, in child protective proceedings. However, increasing adversial postures is counter-productive to the protection of children.

I was once complimented, by a worker, when representing a parent, who told me, "You make us do our job." That, I believe, is the job of both the parent attorney and the lawyer/guardian ad litem. Nevertheless, many parents attorneys appear late to court, needing time to meet with their clients, often times for the first time since the last hearing. Service plans arrive the day before the hearing, if not the day of the hearing.

Workers appear without files, (I have been told by several private agency workers that they are instructed NOT to bring their file), and then leave upset wondering why the cross examination is harsh. Workers are testifying, with a growing arrogance, that the matter has been decided in a recent PPC or conference between the workers and parents. The list is long.

The mission of the Children's Law Section states. "... and we work to improve the lives of children and families ensuring they all receive justice." This is about not protecting our insurance company client from large judgments or attempting to get our injured client a large settlement; this is about restoring families whenever possible. The section provides the vehicle to meet the goal of family reunification as a unified group.

Current projects of the section include proposed legislation regarding the effect of the Medical Marijuana Law on child protective proceedings and the development of "Best Interest" factors more suited for our cases than those of the Child Custody Act now utilized by the courts.

I recently read the *Modified Settlement Agreement and Consent Order* in the *Dwayne B. et al v Rick Snyder* case. I might suggest you have an adult beverage handy if you intend to read this document. It may be good bureaucratic tonic to please those that never have nor never will appear in a courtroom in a child protective proceeding, but I guess only time will tell if it will benefit the children of Michigan.

As we welcome the new leadership of our section, please join the Council as one of the 423 members of our section in helping them to continue to make an impact on child protection in the legislature and courts of Michigan.

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