

Child Injury Laws *Blog*

Foster Care System Failing To Protect Those Who Need It The Most

Posted by [Jonathan Rosenfeld](#) on November 29, 2010

In the United States, there are more than 500,000 children living in foster care. Foster care is the temporary placement of children because of abuse, neglect, family problems, or dependency.

A child may be placed because their home is no longer safe, their parents or guardians are no longer able to provide proper care, or the child no longer has a parent or guardian to care for them. The primary goal of foster care is to return the child to its home, if possible.

Foster care is intended to be a temporary solution for children who suffer from abuse or neglect, no longer have a parent or family capable of taking care of them, or need a temporary home. Foster homes are supposed to be a safe but temporary home for the child, with the long-term goal of finding a permanent family and home for the child.

A foster parent's [responsibilities](#) include the responsibility to:

- Communicate and share information about the child with the child welfare team.
- Respect the confidentiality of information concerning foster children and their families
- Advocate for children in the foster parent's care
- Treat children in the foster parent's care with dignity, respect, and consideration
- Recognize the foster parent's own individual and familial strengths and limitations when deciding whether to accept a child into care
- Be aware of the benefits of relying on and affiliating with other foster parents and associations

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- Assess the foster parent's ongoing individual needs and take action to meet those needs
- Promote foster parenting in a positive way
- Serve as a mandated reporter of suspected child abuse or neglect under the Abused and Neglected Child Reporting Act
- Provide care and services that are respectful of and responsive to the child's cultural needs

The Children's Bureau, U.S. Department of Health and Human Services (DHHS), Adoption and Foster Care Analysis and Reporting System (AFCARS) released a [preliminary 2009 report](#) on foster care data. The report includes the placement settings of children in foster care (423,773 children were in foster care on September 30, 2009):

- 48% [Foster Family Home](#) (non-relative)
- 24% Foster Family Home (relative)
- 10% Institution
- 6% Group Home
- 5% Trial Home Visit
- 4% Pre-Adoptive Home
- 2% Runaway
- 1% Supervised Independent Living

Case goals of children in foster care (255,418 children entered foster care in 2009):

- 49% Reunify with Parent(s) or Principal Caretaker(s)
- 25% Adoption
- 8% Long Term Foster Care
- 6% Emancipation
- 5% Case Plan Goal Not Yet Established
- 4% Guardianship

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- 4% Live With Other Relative(s)

Outcomes for children exiting foster care during 2009 (272,266 exited foster care in 2009):

- 51% Reunification with Parent(s) or Primary Caregiver(s)
- 20% Adoption
- 11% Emancipation
- 8% Living with Other Relative(s)
- 7% Guardianship
- 2% Transfer to Another Agency
- 1% Runaway
- *0% Death of a Child (*417 children)

Problems With The Foster Care System

Although foster care is supposed to be temporary, many youth stay in the system for extended periods of time, never gaining that permanent and supportive family home. In 2006, 26,181 foster home youth “[aged out](#)” of the system without ever being placed in a permanent home (see [figure](#) below). This number accounts for roughly 9% of all children leaving foster care. [Illinois](#) ranked 7th in the list of the states with the highest percentage of youth aging out in 2006 (783 youths aged out – 14.2% of total exits).

These children spent, on average, five years in the system; whereas, children who left the foster care system through reunification, adoption, guardianship, or other means spent less than two years in the system.

The children, who aged out of the system, have no family to rely on and face these disheartening statistics:

- 25% did not have a high school diploma or GED
- Over 50% experienced homelessness or unstable housing

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- Almost 30% had been incarcerated
- Increased rates of unemployment or underemployment

Although foster care is supposed to provide a safe and supportive environment for a child, sometimes the foster home becomes yet another source of abuse. Abuse can include physical, sexual, or emotional abuse, and neglect. Children who live in foster care are a vulnerable population. These children are isolated because of their situation.

Oftentimes, the children are moved between several foster homes over the course of their stay in foster care, have already suffered from abuse and neglect, lack a familial support system, are sometimes separated from their siblings, and the system is overloaded with work. (See previous posts on "[Children Are frequent Targets of Abuse In A Group Home Setting](#)" and "[Sexual Abuse of Children By Caregivers: A Varied & Widely Unknown Impact](#)")

In [Los Angeles County](#), DCFS may have not have properly counted up to 21 child deaths from abuse or neglect over the last two years. A 2008 California law ([SB39](#)) requires the Department to report child deaths that result from abuse or neglect. DCFS was focused on reducing the number of children in foster homes through reforms. This year, there are 15,000 children in foster homes, compared to the 30,000 that were in foster homes in 2003.

However, it might be this almost single-minded determination to reduce the number of children in foster care, which allowed more child deaths to occur and fail to be accounted for. In one case, an eleven-year-old boy committed suicide. DCFS ruled that the death was not subject to SB39 disclosure. However, in court, DCFS stated that the boy's death was the result of abuse or neglect, which does make it subject to SB39 public disclosure.

Shortcomings such as these can make it more difficult to determine the welfare of children living in foster care; which, in turn, makes it more difficult to protect these children without a clear picture of their situation.

Liability in Child Placement

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In Illinois, the Department of Children and Family Services (DCFS) is responsible for placing children in substitute care. The Department's substitute care services include: Foster Family Care, Relative Care, Group Home, and Institutional Care. The DCFS [website](#) emphasizes the Department's early intervention services, which are in place to prevent the need for a child to be placed into substitute care.

DCFS is also responsible for determining whether persons and families are eligible to become a foster care providers. Potential foster care persons must fill out an [application](#) and a medical form for each member of their family. DCFS fingerprints applicants and runs criminal background checks on all applicants, as well as contacting applicant references. In order to ensure that foster care providers provide proper care, they must attend training classes. DCFS social workers must be a [licensed](#) clinical social worker.

The Department (DCFS) has the power to initiate injunction proceedings if it appears to the Director of Children and Family Services that any person, group of persons, or corporation is engaged or about to engage in any acts or practices that constitute or will constitute a violation of the [Child Care Act of 1969](#).

While a child is in foster care, that child continues to be the state's duty. It is not until the child is legally adopted that the state relinquishes guardianship. If DCFS places a child with foster parents where the state knew or suspected that the foster parents were child abusers, the responsible state officials could be held liable.

[The United States Court of Appeals, Seventh Circuit](#), held that in the situation of child placement by an adoption agency, the agency officials and case workers are liable if they violated the right of a child in custody by placing the child with a foster parent or other custodian, whom the state knew or suspected to be a child abuser. And, it is only in this narrow situation, where the foster parents are considered an "instrument" of the state for child abuse.

Furthermore, a [single instance](#) of abuse may not create a situation requiring immediate state action on a child's behalf without more evidence of the severity of the consequences.

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An instance of hitting (slapping or spanking) may raise a red flag, but it does not necessarily constitute abuse.

The [Abused and Neglected Child Reporting Act](#) specifies that abuse requires a finding of death, disfigurement, impairment of physical or emotional health, or loss or impairment of any bodily function, substantial risk of such injury, or excessive corporal punishment.

If a child is placed by a [private child welfare agency](#), the agency must first determine whether any other children who are wards of the Department have been placed in that home, whether a child who has been placed in that home is still in the home or has been transferred. Then, the agency must conduct a site visit every 30 days to verify the child's safety and well-being.

If a foster family home is [implicated](#) in a report under the Abused and Neglected Child Reporting Act, DCFS must immediately conduct a re-examination of the foster family home. DCFS licensure. The Department must also review the child placement records of all private child welfare agency placements at least once every six months.

The foster care system is failing many of our nation's children, many of whom have already been subjected to situations that no child should have to face. Child services is incapable of providing adequate screening and supervision to children placed in foster homes. The socials are overworked and disillusioned by the system.

Our current system leaves many children vulnerable to further instances of abuse and neglect. The system requires more funding, more workers, more oversight, and more penalties for situations where child services and social workers knowingly place children in dangerous situations in order to better protect the children.

Special thanks to Heather Kiehl J.D. for her assistance with this [Child Injury Laws](#) entry.

Resources:

[Office of the Inspector General: Illinois Department of Children and Family Services](#)

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Lifting the Veil: A Critical Look At The Foster Care System, How Widespread a Problem?

National Coalition for Child Protection Reform: Foster Care vs. Family Preservation – The Track Record on Safety and Well-Being

Adoption Information Center of Illinois

Lutheran Social Services of Illinois – Foster Care

Illinois Foster and Adoptive Parent Association

First Star

University of Chicago – Chapin Hall: Center for State Foster Care and Adoption Data

The Pew Charitable Trusts: Foster Care Reform

DCFS: Foster Care

Child Care Association of Illinois

University of Maryland – Welfare Reform Academy: Malpractice in Child Placement – Civil Liability for Inadequate Foster Care Services

Frontline: Failure To Protect

Daily News Los Angeles: Answers Sought in Child Deaths

Nursing Homes Abuse Blog: Children Are frequent Targets of Abuse In A Group Home Setting

Nursing Homes Abuse Blog: Sexual Abuse of Children By Caregivers: A Varied & Widely Unknown Impact

US Court of Appeals – 7th Circuit: Lewis v. Anderson

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