

Juvenile Defender Newsletter

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Social Science Research Proves an Invaluable Tool in Successful Parent Representation

Social sciences research and data can help juvenile and family defenders get better outcomes in court. In their article¹ entitled “Bringing Data to Life,” published in the ABA’s *Child Law Practice Today*, Cristina Freitas, Debbie Freitas, Michael Heard and Alexandra Roark argue that data derived from social science research can provide an invaluable tool for effectively representing parents in child welfare cases.

The authors observe that:

- “Research provides incontrovertible facts that cannot be ignored by a fact finder or the child welfare agency.

¹ Cristina Freitas, Debbie Freitas, Michael Heard & Alexandra Roark, *Bringing Data to Life*, *Child Law Practice Today* (Feb 27, 2020) https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/january---december-2020/bringing-data-to-life--data-as-a-tool-for-parent-representation/

- Although it may be uncomfortable to dabble in this realm, social science research and data generally support our goals in parent representation.
- Lawyers and social service advocates’ awareness of data trends and ongoing research can help craft novel court arguments or out-of-court strategies in child welfare cases.”

When and How to Use Data in Your Cases

The authors summarize relevant data across four domains. Below are some Vermont-specific suggestions for incorporating emerging social sciences research into your practice.

At Temporary Care (or whenever removal is contemplated)

A 2007 study determined that children who remain in “marginal homes” fare better across a variety of domains than children who are placed in foster care.² The study authors defined a “marginal home” as one where the decision to remove was a question of caseworker judgment (i.e. the bulk of

² Doyle, Joseph, J. Jr. "Child Protection and Child Outcomes: Measuring the Effects of Foster Care." *American Economic Review* 97(5), 2007, 1583-1610. <https://www.aeaweb.org/articles?id=10.1257/aer.97.5.1583>

neglect and risk of harm cases). Children who grow up in foster care have undeniably poorer outcomes than children in the general population, and more recent research has attempted to determine to what extent foster care exposure causes both short-term behavior problems and long-term negative outcomes.³ The authors recommend that attorneys interested in leveraging this data:

- Hire a social work expert to explain how placement in foster care can cause negative behaviors (to counteract the frequently false narrative that parent-child contact is the cause).
- Oppose continued custody at temporary care with a written motion that cites to the research on the harmful effects of out-of-home placements. Link harm from foster care to the agency's obligation to make reasonable efforts to prevent removal.
- Advocate for reforms outside of the judicial system "to change the narrative of the foster care system to reflect the traumatic realities of system involvement."

At Disposition (or whenever a case plan is before the court)

The disposition case plan for your client will outline the services and action steps he or she is expected to complete prior to reunification. According to the authors, these plans have come to "look more like grocery lists than thoughtful targeted approaches to reunification." As any parent's attorney knows, your client's

inability to complete the action steps will be used against him or her at TPR. Therefore, it is vital that these action plans be achievable and uniquely tailored to the needs of each client. Unfortunately, recent research demonstrates that 35% of parents are ordered to participate in services that they do not need. Likewise, the average service plan requires that the parent participate in 22 to 26 hours-worth of services per week. For example, substance abuse treatment takes 9 hours per week on average, looking for work take 5 hours per week on average, therapy or domestic violence classes can take between 1 and 4 hours per week, case management/meetings can take up to 5 hours per week, and parenting classes can take two hours per week. For parents who are working, struggling to find and afford housing or transportation, or who must care for other children or relatives, compliance with such a plan is impossible. As attorneys, we must ensure that we are not setting our clients up for failure by allowing the court to approve a plan that includes services that our clients do not need or tasks that our clients cannot accomplish given the available resources. The authors suggest leveraging the above data in the following ways:

- Use a visual (calendar, pie chart, etc.) to demonstrate just how many of your client's waking hours must be devoted to compliance with the case plan. Such visuals can be an effective way to combat "boilerplate" action plans that demand engagement in excessive or irrelevant services.

³ Kristin Turney & Christopher Wildeman. "Mental and Physical Health of Children in Foster Care." *Pediatrics* 138(5), 2016, 1.

<https://pediatrics.aappublications.org/content/pediatrics/138/5/e20161118.full.pdf>

- Use an expert to identify and locate necessary and culturally relevant services for your client.
- Provide input during the development of the plan and demand that action plans be evidence-based and account for the relevant research described above. Ask the DCF worker to explain how a client who does not have transportation can be expected to comply with a plan that requires travel to and from 20-plus hours of services per week.
- Link service planning to the larger issue of “reasonable efforts.” As the authors write, “Boilerplate service plans are not reasonable and the effort required to produce boilerplate service plans falls far below the reasonable efforts benchmark.”

When Advocating for Parent-Child Contact

Frequent parent-child contact is the greatest predictor of successful reunification. Additionally, children who have more frequent contact with their parents demonstrate fewer behavior problems and improved mental health. Access to parent-child contact should *never* be used to reward or punish children and parents for compliance with the case plan. According to the authors, “Guidelines on parent-child contact recommend visits never be used as a reward or punishment. Rather, visits are clinically necessary to promote parent-child well-being and are legally consistent with a parent and child’s fundamental rights.” The

⁴ Dettlaff, Alan J. et al. “Disentangling Substantiation: The Influence of Race, Income, and Risk on the Substantiation Decision in Child Welfare.” *Children and Youth Services Review* 33, 2011, 1630–1637. <https://pdfs.semanticscholar.org/55f9/f76d476e94c18a1d71ecf930e949df496de8.pdf>; See also Fluke, J. D.

authors recommend using data on the importance of frequent parent-child contact in the following ways:

- Draft a motion that cites to research on the importance of parent-child contact and use it to alert the court that “standard” visitation practices are not consistent with current research. An excellent data-based summary of the importance of parent-child contact is available here: <https://dcf.vermont.gov/sites/dcf/files/FSD/pubs/Family-Time-Guidelines.pdf>
- Challenge standard visitation practices by arguing for more frequent contact and by arguing that unsupervised contact should be the starting point, especially in cases involving neglect or risk of harm.
- Challenge any plan or order that conditions parent-child contact upon “progress” in terms of engagement with the case plan.

When Representing Non-White Families

According to the authors, decades of “research has documented racial disparities at each stage of the child welfare case: acceptance of a case for investigation, substantiation of alleged maltreatment, placement in out-of-home care, length of time in placement, and time to reunification.⁴ Research also makes clear

et al. “Disproportionate Representation of Race and Ethnicity in Child Maltreatment: Investigation and Victimization.” *Children and Youth Services Review* 25, 2003, 359–373 (racial disparities exist at initial reports of maltreatment stage) <https://psycnet.apa.org/record/2003-00869-001>; Zuravin, S., J. Orme, & R. Hegar, R. “Disposition of

that racial disparities in the child welfare system are not due to poverty alone but are related to caseworker assessment of risk.”⁵ The authors recommend leveraging data on racial disparities in the child welfare system by:

- Filing motions opposing out-of-home placement that cite to data showing that race affects removal decisions.
- Advocating for placement with kin if removal cannot be avoided and advocating for kinship care providers to receive the same services and support as non-relative foster parents.
- Whenever appropriate, prepare clients to address the court directly. This allows the client’s voice to be heard, combats assumptions based on negative stereotypes, and increases the client’s perception of procedural fairness.

Where to Look for Data

Child Physical Abuse Reports: Review of the Literature and Test of a Predictive Model.” *Children and Youth Services Review* 17, 1995, 547–566 (disparities in acceptance for investigation stage) <https://www.semanticscholar.org/paper/Disposition-of-child-physical-abuse-reports%3A-Review-Zuravin-Orme/7d5d4508d2d662039f3994af32b82baf3b69a62f>; Rolock, N., & M. Testa, (2005). “Indicated Child Abuse and Neglect Reports: Is the Investigation Process Racially Biased?” In D. Derezotes (Ed.), *Race Matters in Child Welfare: The Overrepresentation of African American Children in the System*, 2005, 119–130. Washington, DC: CWLA Press (disparities at the substantiation of alleged maltreatment stage) https://repositories.lib.utexas.edu/bitstream/handle/2152/15376/casey_disparities_childwelfare.pdf?sequence=5; Rivaux, S. L. et al. “The Intersection of

The authors recommend the following sources:

- **“Adoption and Foster Care Analysis and Reporting System (AFCARS)–** A rich source of state-level data on all children in foster care. It includes data on demographics of foster children and foster and adoptive parents, number of removal episodes for a child, number of placements in the current removal episode, and current placement settings.
- **Child Welfare Information Gateway** Includes a large publication library and free listserv subscriptions that deliver updates about new research findings and data.
- **Child Welfare Agency Data -** State child welfare agencies also routinely publish quarterly or fiscal year data about their agencies’ service population, placement settings and availability, and number of children in care by specific demographic characteristics. If you cannot find

Race, Poverty, and Risk: Understanding the Decision to Provide Services to Clients and to Remove Children.” *Child Welfare* 87, 2008 151–168 (disparities at the home removal stage). https://www.researchgate.net/profile/Donald_Baumann2/publication/23440538_The_Intersection_of_Race_Poverty_and_Risk_Understanding_the_Decision_to_Provide_Services_to_Clients_and_to_Remove_Children/links/565a0cb908aeafc2aac50350.pdf; and Hill, R. B. (2005). “The Role of Race in Parental Reunification.” In D. Derezotes, J. Poertner, & M. Testa (Eds.), *Race Matters in Child Welfare: The Overrepresentation of African American Children in the System*, 2005, 215–230. Washington, DC: CWLA Press. http://www.citizenreviewpanelsny.org/documents/disproportionality_paper_bob_hill.pdf (disparities at the exit out of care stage).

⁵ *Id.*

this data online at the agency website, try using a public records request to the agency as these are typically predrafted reports available to the legislature and larger public.

- **Open source research search sites**, such as Google Scholar and ResearchGate, allow practitioners to search for specific research and data.
- **Listservs** - Many local practitioners have listservs that share new research findings or data. For example, in Massachusetts, the agency in charge of overseeing indigent representation, the Committee for Public Counsel Services (CPCS), maintains secure listservs and newsletters for various areas of indigent representation.”

Important Changes to DCF Policy in 2020

DCF’s policy webpage is an important resource for attorneys looking to better understand the agency’s work, and it is an invaluable resource for holding the agency accountable in court. DCF updated the following policies in 2020:

Policy 125: Permanency Planning for Children and Youth

The updated version of this policy clarifies DCF’s responsibilities under federal law when planning for permanency. Important points are as follows:

- DCF is required to make reasonable efforts throughout the life of a case.

- Even when reasonable efforts are not required, parents must be offered a service plan.
- Siblings should be placed together unless such placement would compromise safety or wellbeing.
- TPR at initial disposition requires consultation with an AAG and a policy and operations manager.
- DCF workers should make continuous efforts to engage children’s relatives in concurrent planning, even if those relatives cannot serve as placement resources.
- Children should be involved in case planning as developmentally appropriate.
- Children ages 10 and up should be present at permanency hearings unless waived by the child’s attorney. Federal guidance encourages judges to solicit the child’s perspective.
- Case plan action steps in a reunification plan must clearly identify the recommended services, the expected behavior change, and the timeframe for achieving the action step. DCF workers must rate progress toward behavior change. If the expected behavior change does not occur, then the worker should consider changing the goal in consultation with the team.
- Children ages 14 and up may select two people to attend their case plan reviews.
- Relative caregivers must be given preference over non-relative caregivers.

Policy 50: Child Abuse and Neglect Definitions

The updated version of this policy clarifies the definition of “obscenity” and clarifies that children over age 16 can be victims of lewd and lascivious conduct if there are elements of force, threat, or coercion present.

Policy 51: Screening Reports of Child Abuse and Neglect

The updated version of this policy clarifies that state law requires certain types of unaccepted reports of child maltreatment be reported to law enforcement. Reports of serious physical abuse or risk of harm that do not involve a person who meets the legal definition of a “caregiver” must be reported to law enforcement.

The updated version also clarifies that reports of historical physical abuse can be accepted when there is evidence to support a determination, such as the child’s disclosure or a scar. Likewise, reports involving discharge of a firearm inside a home when children are present will always be accepted, as will reports of intimate partner homicide, regardless of whether the children were present at the time of the homicide.

Policy 52: Child Safety Interventions – Investigations and Assessments

The revised version of this policy makes the following changes:

- Accepted reports of sex trafficking of a minor can be reported to federal law enforcement.
- Formal safety plans are created only when the SDM Danger/Safety Assessment identifies a danger item.

Policy 77: Medical Care for Children and Youth in DCF Custody

The policy governing medical care for children in custody was updated as follows:

- Children must be referred for a medical evaluation within one week of entering custody.
- Dental appointments should be scheduled “as soon as is feasible based on availability.” The policy notes that DCF has had difficulty accessing dental care at the recommended frequency for children in custody due to a reported shortage of pediatric dentists.
- Encouraging parental involvement in medical care and clarifying that absent a protective order, parents have the same right to access their children’s medical records as DCF staff.
- Foster parents cannot decide to delay or forego immunizations.
- Sections on gynecology and complimentary and alternative medicine were added to the policy.
- Children who are hospitalized must be accompanied by an adult (parent, foster parent, DCF worker, etc.).
- Guidance concerning the provision of services and ensuring safety for “medically complex” children was added to the policy.
- Guidance for resolving disagreements between the parent and DCF over the provision of medical care to children in custody was added to the policy. The guidance encourages DCF workers to ensure that parents are included in conversations about medical treatment to prevent misunderstandings. In cases where disagreement cannot be resolved,

DCF workers are encouraged to consult with the AAG about having the court resolve the disagreement.

Policy 93: Kinship, Foster, and Pre-Adoptive Parent Training

The updated policy reflects current training requirements for foster parents and pre-adoptive parents. The policy was also changed to incorporate differential reimbursements for foster parents based on experience and participation in training. Foster parents who complete additional training and foster children regularly over time are reimbursed at a higher rate.

Policy 203: Professional Development for Division Staff

The updated version of this policy now reflects current training requirements for DCF staff. Reviewing this policy may be useful for attorneys preparing to cross-examine a DCF worker.

Policy 262: Conflicts of Interest

DCF has made significant revisions to its conflicts of interest policy, clarifying that any personal relationships between division staff and clients may create a conflict of interest. Division staff are expected to notify their supervisors if they become aware of such a conflict, and they are not permitted to access records or information about anyone they have a personal relationship with. DCF staff are prohibited from engaging in romantic or sexual relationships with current or former clients as well as with subordinate staff.

Revisions to the Case Plan Templates

DCF revised its case plan templates as follows:

- Removal of the instruction sections and creation of a stand-alone document containing instructions for writing each section of the plan.
- Revision and simplification of the action plan. Case workers do not need to list a specific risk statement but are encouraged to have one in mind when drafting action steps.

Case plan templates are driven by federal law, which governs the contents of the case plan. Therefore, if sections of the case plan are missing or incomplete, the case plan is not in conformance with the required elements set forth in Title IV-E of the Social Security Act. Attorneys should consider bringing inaccurate or incomplete case plans to the attention of the court.

DCF's policies are all available online at: <https://dcf.vermont.gov/fsd/policies>.

Woodside Has Closed. Now What?

Vermont's only secure detention center for children and teens, Woodside Juvenile Rehabilitation Center, has officially closed. The last youth held at the facility was released in August 2020, and the legislature officially approved closing the facility in November 2020. As of August 2020, approximately one third of the remaining staff were under investigation for misconduct, according to a variety of media reports. The decision to close Woodside, which was run by DCF, followed a federal injunction prohibiting the use of certain dangerous restraint techniques, significantly limiting the use of isolation and seclusion to manage youth behavior, and prohibiting the facility from accepting youth with

significant mental health needs. DCF ultimately determined that complying with the terms of its settlement agreement with Disability Rights Vermont, the plaintiff in the lawsuit, would be prohibitively expensive and impossible given staff resistance to the court-mandated reforms.

In November 2020, the legislature officially approved a plan to replace Woodside with a privately-run secure facility. DCF will contract with Becket, a private non-profit, to convert a former bed and breakfast in Newbury, Vermont into a secure residential treatment program. The legislature voted down a proposal by VSEA to force Becket to give hiring preference to former Woodside employees. The new program will be much smaller than Woodside, with capacity for 6 justice-involved youth. Woodside had capacity for 30 youth, but in recent years, the average daily population hovered around 5 youth. The anticipated one-time cost to renovate the Newbury site is \$3.1 million. The annual operating expenses are expected to total \$3.8 million. By contrast, Woodside cost \$6 million annually to operate. According to DCF Commissioner Sean Brown, the goal is to make the new facility more therapeutic and home-like than the aging, jail-like Woodside structure. Brown said he hopes to have the Newbury facility up and running by October 1, 2021.

In the meantime, DCF plans to house youth in need of secure detention at New Hampshire's Sununu Youth Services Center, a juvenile detention center. Unfortunately, Sununu is currently facing concern over conditions within that facility. The New Hampshire Attorney General's Office is investigating claims of sexual, physical, and

emotional abuse, and a class action lawsuit with over 100 plaintiffs alleges an ongoing pattern of abuse of residents by staff, including an incident of abuse occurring as recently as last year.⁶

If you have a client who is facing detention at Sununu or another out-of-state detention center, please contact the Office of the Juvenile Defender to discuss your client's case.

PRIOR EDITIONS OF THE JUVENILE DEFENDER NEWSLETTER CAN BE FOUND AT:

[HTTP://DEFGEN.VERMONT.GOV/CONTENT/JUVENILE-DEFENDER-NEWSLETTERS](http://defgen.vermont.gov/content/juvenile-defender-newsletters)

⁶ Holly Ramer, the Associated Press, *Charges Dropped as Youth Center Abuse Investigation Widens*, (Mar. 11, 2020)

<https://www.fosters.com/news/20200311/charges-dropped-as-youth-center-abuse-investigation-widens>