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Bringing Child Focused Law/Policy into the 21st Century

International Fathers Rights Foundation

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Child Focused Law

The more we know the les it seems that critical laws, policies and practices conform to what in so many ways may be the best for children and their families.

Our public system of intervention for some very vulnerable populations – children in high conflict parental custody disputes, in abuse/neglect case and in the juvenile delinquency arena – continue to fail for far too many of these children.

We simply do not have a coherent unifying national children's policy through which propose new legislation and practice reforms can be evaluated or reviewed.

Fragmented, underfunded and politically expedient approaches to governmental intervention with children and their families continue to be the thought and usage of poorly thought out laws that are opportunistically named for decease children, unless:

1. Policy makers step back before passing new child related legislation and take time to learn from experts what has worked and what has not.

2. Program models are adequately funded and evaluated.

3. Information of successful program is more widely disseminated so that can be stronger support for expanding them to serve far more children and families in need.

It may be time for child advocates to go beyond calling for new laws and to start focusing on legislative oversight, fiscal accountability, outcome measurements and other strategies though which current legal and judicial practice can be tested.

There is no real "American Child Rights Jurisprudence." A few isolated children focused US Supreme Court cases have been cited throughout, but most frequently when the court has addressed an issue, it has decided cases without any discussion of children's rights per se.

American legislatures, court and administrative agencies are afraid to use the term children's rights. It seldom appears in laws, regulations or cases. Unlike in other countries, the topic of children's rights is rarely addressed in the media or in public discourse.

Despite the fact of political and public supports for harsh juvenile sanction that are not proven to reduce or affect recidivism, there is a growing body of research largely unused by policy makers on programs that actually work to prevent juvenile crime and are additionally cost effective. The criteria for selection include demonstrated successful case outcomes and evidence of sustained positive impact after youth leave the program.

A decade ago, urged by the US Advisory Board on Child Abuse and Neglect as a National Policy Priority (creating caring communities 1991) are a few ideas from these supports:

1. An elementary school-based program for promoting emotional and social competencies while reducing behavior problems and aggression.

2. Bully Prevention Programs.

3. A life skills training Programs for Middle/High school students to prevent or reduce the use of alcohol, tobacco and marijuana use.

4. Multi-dimensional treatment foster care programs for troubled adolescents.

5. Multi-systemic therapy and functional family therapy as well as multi-disciplinary family/community based treatment programs.

Media review and Issues of Child Laws

"Politicians and diapers have one thing in common. They should both be changed regularly for the same reason."
Author Unknown

The media have occasionally looked at the issue of parents as potentially responsible (both criminally and civilly) for their child's criminal l misbehavior rather than exploring how courts and agencies could more positively involve parents in decision making and parenting skills enhancement.

Parental involvement was topic of consortium on children, Families and the Law Invitational Conclave (1999) and recent focus national research study parental involvement practice of juvenile courts (Wavies and Davidson 2001). More organizations, court and researchers should increase their focus on this subject.

One of the core principles of the convention on the rights of children is that policies and services for children should respect parents and support families. Any juvenile system that ignores the possibilities of or does nothing to promote the positive involvement of parents in the lives of youth in that system is violating this important premise. I worry that this important study will not result in universal judicial reform because of disconnect between research and policy/practice changes. In short we have poorly applied findings from the research scholars who have poorly explored how to children and their families experience the legal system, to the implementation of practical reforms in that system. This situation must change in many ways. America's system of appointment for legal representation of children in the courts are the most advanced in the world, but are often held in ransom of fiscal and monetary resources. Many lawyers, competent representatives for children are forced out of the field by compensation rates too low for a long term professional to committee to this area, caseloads for children's attorneys in public agencies and so high as to unwittingly invite malpractice and burnout and a lack of respect from their colleagues who practice in other fields.

Many children are pressured to waive their right to counsel and worse in some types of serious cases they are offered no legal representation at all this is high conflict, contested custody and visitation disputes as well as in immigration, political asylum cases.

A fear of the basic intent of Congress in enacting the Adoption and Safe Family Act (ASFA) to speed permanency for maltreated children removed from their homes may be frustrated by inadequate advocacy for children within the courts. Therefore evaluations of the implementations of ASFA must include studies of how representation of children has helped or hindered the legislation's goals of the child's safety, permanence and wellbeing. The failure of the Federal, state, legislators, governors, mayors, county executives and others to acknowledge that services to children have grossly underfunded in so many areas have contributed to the benign neglect of the child protection, child welfare, child care and family courts and juvenile justice system. The same is true for the handling of most child abuse/neglect issues at the state level. No wonder our services to children and families are permanently delivered though narrow categorically funded programs rather than by holistic approaches.

If we are to achieve nationally the child centered family focus neighborhood based integrated child protection systems that the advisory board called for it will require sustained funded efforts that bring together political, business and religious leaders for a prolonged look at how the laws addressing child protection and their state counterparts might be changed to promote real community partnership for the protection of children.

Our more thoughtful holistic work must be attention to the fact that strengthening our poor communities must be a central part of any reform. Moreover extreme poverty, pervasive family community and media violence are at the very core of the child related social problems that have been a part of America's shame. We are living at a time when few political leaders do not publicly voice there sentiment that children's issues are important, yet troubled youth are still scapegoated and demonized.

FYI - CONSENT

Before an adoption petition can be approved the consent of certain parts may be required. Thee parties typically include the adoptee, if he or she is of sufficient age, the natural parents and the guardian or agency that has been given control of the prospective adoptee. There considerations are some of the issues raised by this requirement.

1. **The consent of the child adoptee:**
    a. States typically require children who have reached a certain age to give their consent to being adoption.
    b. This requirement reflects recognition that children, although legal means are old enough at a certain point to determine where and with whom they wish to live.

2. **The consent of the national parent(s):**
    a. Generally if a parent's relationship with a child has not been previously terminated, the parent must give his and/or her express consent to surrender a child for adoption
    b. Failure to secure this consent may justify voiding a purported adoption. Now typical "surrender agreements" provide that the natural parents will abdicate all their rights to care for their child and that they will not interfere with the child's adoption.
3. **Consent by conduct:**
    a. In addition to providing express consent a parent's conduct may justify termination of the parent-child relationship and a forfeit the need for the parent to consent to the adoption.
    b. Termination of such a parental right must be measured against the safeguards assured under the US constitution.

Here is an example

Quilloin vs. Walcott:

In this case the Supreme Court observed in dicta that a statue that terminates parental rights without a finding of parental unfitness may violate the constitution's due process requirements.

Now later in another case:

Santosky vs. Kromer

The Supreme Court specially determined that a statue that regulates the termination of parental rights requires at a minimum proof by clear and convincing evidence of parental unfitness.

Overview

The fundamental liberty interest of natural parents in the care, custody and management of their children does not evaporate simply because they have not been model parents or have lost temporary custody of their child(ren) to the state custody. If anything people faced with forced dissolution of their parental rights have a more critical need for procedural protections than do those resisting state interventions into ongoing affairs. When the state moves to destroy weakened familial bonds, it must provide the parents with fundamental fair procedures. State procedures must also assure the correctness of factual conclusions in the proceedings. The minimum requirements of procedural due process are a matter of federal law and are not diminished by procedures a state has adopted as adequate to determine the preconditions to terminate.