

# **Abuse in Foster Care**

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**May27,2012**

## **Thesis Statement:**

I believe that abuse of children while in foster care is a wide ranged problem that still, to this day, the Department of Children and Family Services has not properly been held accountable for considering they are responsible for these placements and lack of services. The foster care system is a system utilized by the Department of Children and Family Services that is designed to temporarily protect children from abuse and neglectful situations; the reality is that sometimes children are placed in just as bad, if not worse, situations then they were removed from because DCFS fails to fulfill their legal and moral obligation to ensure the well being of the children once children are out of the care of their parents.

## **The Scope**

In this paper I will define what a "case plan" is through the US Code Section 675. I will discuss what "reasonable efforts" means when it comes to children through US Code Section 671(15). I will discuss common violations of those obligations by using cases and articles to reveal the wide ranged problem of abuse of children while in the foster care system. I will generally utilize two class action lawsuits filed in two different states to point out how the constitutional rights of children are violated by the Department of Children and Families (DCF) while children are in foster care by routinely placing them in dangerous and unstable situations once removed from their parents' care and failing to take necessary action to ensure the safety and well being of the children in foster care.

## **Argument**

"To keep children safe from abuse and neglect and provide domestic violence services by strengthening families and working with communities." "To protect children who are reported to be abused and neglected and to increase their families' capacity to safely care for them; provide for well-being of children in our care; Provide appropriate, permanent families as quick as possible for those children who cannot safely return home; Support early intervention and child abuse prevention activities; Work with partnership with communities to full fill this mission." "The department is charged with protecting children from abuse and neglect and strengthening families." These are all Mission Statements of Department of Children and Family Services (DCFS or DCF) in several states; all having one thing in common which is the safety of children.

"The purpose of this agency is to avoid needless institutionalization of the children and adults by providing supportive, community based, in home placements to as many children and adults

that need the services.” “To provide safe, permanent, and nurturing families within the child’s own community by maintaining connections; thereby minimizing trauma/harm. To utilize one placement until permanency is achieved. To maintain quality of life by linking families to/with community resources. To develop partnerships between agencies, families in foster care parents, to achieve permanency within a year.” These are all mission statements of different Foster Care Agencies also sharing common ground with DCFS, the safety of children, so why is it so hard for DCFS and Foster care agencies to live up to this exact expectation?

In today’s society Fostering Children has become a form of employment, and too many Foster Parents consider fostering to be nothing more than just a job. Agencies are considering the hiring process as an urgency to match staff with cliental; considering families as just another case to fill their homes and keep their agencies up and running instead of taking time to match families according to the needs of the children and qualifications of the foster parents.

The Department of Children and Family Services has become just another system with overloaded workers losing focus of there purpose, running as if it were a production line, but instead of products, families are being pushed through the system. There is such a high rate of cases flowing through the Department of Children and Family Services (DCFS) that there is not enough workers within the department to manage the cases, and lack of foster homes to place the children once in their custody. The massive case loads and shortage of foster homes has the department and private agencies desperate for Foster Parents which has resulted in a slacked approval requirement when it comes to finding Foster Parents. Many agencies will file waivers when parents do not meet certain requirements. As a result, a system that was designed to maintain safety and stability to children who have been removed from abuse and neglectful homes, is now a factor that puts children at risk of being abused and neglected in “the system” (Foster Care).

This is what contributed to the current Viola Vanclief case (**fn1**) of Los Angeles where foster mother (Kiana Barker) and her boyfriend (James Julian) were arrested and have charges pending for the murder of a 2yr old foster child (Viola Vanclief) that was in Barker’s care. According to the LA Times, this Foster mother and her boyfriend had a previous criminal history that should have eliminated them from being certified as a foster parent. However, Barker was approved by the child welfare system to foster children. Kiana, under investigation for the death of the Viola that resulted from a brutal beating with a hammer, had been subject to five previous child abuse complaints, including one referral for severe neglect to her biological child that was substantiated. The previous referrals, if put into the system, could have red flagged a state certification, but again, heavy case loads and not enough staff result in dangerous situations for children in foster care, and in this case resulted in death. The agency that licensed Barker stated that they were unclear as to whether Barker’s criminal history was not disclosed, or was disclosed but overlooked. Coming from a system designed for the protection of children, that is concerning. Barker was employed by United Care, Inc. which contracts with Los Angeles County to provide shelter for abused and neglected children which had been cited several times for their caregivers choking, hitting and whipping children with a belt in the recent years,

another concerning factor when considering the purpose of the agency. Why wasn't this agency shut down?

When children come into the custody of DCFS and are placed into Foster Care they are scared, confused, lonely, and usually conditioned not to tell when they are being mistreated. Most of the children that come into "the system" have learned to accept abuse as normal or natural and are unaware that they are even being mistreated. Therefore, when they are placed in homes where this is occurring it is not in their nature to speak up. Once they are removed from their parents, they are solely reliant on the department for their protection and it is the department's responsibility to provide that protection which has not always been fulfilled by the department or the foster care agencies. The department should be making reasonable efforts to provide proper services based on the families needs, this includes proper placement.

42 U.S.C. § 671(fn2) : US Code - Section 671(15)(A)&(B)(i)&(ii) provides that -

(A) in determining reasonable efforts to be made with respect to a child, as described in this paragraph, and in making such reasonable efforts, the child's health and safety shall be the paramount concern.

(B) except as provided in subparagraph (D), reasonable efforts shall be made to preserve and reunify families -

(i) prior to the placement of a child in foster care, to prevent or eliminate the need for removing the child from the child's home; and

(ii) to make it possible for a child to safely return to the child's home.

Instead, children are being placed in homes that are not based on the health and safety needs of the child which results in children being abused and neglected while in foster care. The abuse of children while in Foster Care is a widespread problem with many factors contributing to the problem; such as, massive case-loads of case workers and the supervisors of DCFS and lack of supportive services from the department to the foster care agencies and families to maintain healthy placement. The impact that this would have is that there is lack of supervision of cases which results in the possibility of incomplete inspection of the home before children are placed, inappropriate placement, less visits from the worker to the home or the foster home, lack of visits between the children and their parents or siblings, oversight of important details of the case that require attention, delay in response to needs of the families, delays in case management, or even delays in prioritizing reunification services or permanent placement and not following the case plan.

The term case plan is defined in US case code 675(1)(a)-(e).

#### **42 U.S.C. § 675 : US Code - Section 675(1)(a)-(e) states (fn3)**

As used in this part or part B of this subchapter:

(1) The term "case plan" means a written document which includes at least the following:

(A) A description of the type of home or institution in which a child is to be placed, including a discussion of the safety and appropriateness of the placement and how the agency which is responsible for the child plans to carry out the voluntary placement agreement entered into or judicial determination made with respect to the child in accordance with section 672(a)(1) of this title.

(B) A plan for assuring that the child receives safe and proper care and that services are provided to the parents, child, and foster parents in order to improve the conditions in the parents' home, facilitate return of the child to his own safe home or the permanent placement of the child, and address the needs of the child while in foster care, including a discussion of the appropriateness of the services that have been provided to the child under the plan.

(C) To the extent available and accessible, the health and education records of the child, including -

(i) the names and addresses of the child's health and educational providers;

(ii) the child's grade level performance;

(iii) the child's school record;

(iv) assurances that the child's placement in foster care takes into account proximity to the school in which the child is enrolled at the time of placement;

(v) a record of the child's immunizations;

(vi) the child's known medical problems;

(vii) the child's medications; and

(viii) any other relevant health and education information concerning the child determined to be appropriate by the State agency.

(D) Where appropriate, for a child age 16 or over, a written description of the programs and services which will help such child prepare for the transition from foster care to independent living.

(E) In the case of a child with respect to whom the permanency plan is adoption or placement in another permanent home, documentation of the steps the agency is taking to find an adoptive family or other permanent living arrangement for the child, to place the child with an adoptive family, a fit and willing relative, a legal guardian, or in another planned permanent living arrangement, and to finalize the adoption or legal guardianship. At a minimum, such documentation shall include child specific recruitment efforts such as the use of State, regional, and national adoption exchanges including electronic exchange systems."

So as you can see the case plan is vital to the family in all aspects of the case, especially when considering placement. It is the workers responsibility to come up with a "case plan" based on the individual need of each family they work with. The case plan should be followed and revised throughout the case. Instead children are being placed in inappropriate homes and facilities, abused in foster care, and are deprived of the services that should be put in place when making "a reasonable effort" to cater to the need of children and families. Workers are overloaded with cases and are not maintaining cases according to the family's individual needs.

A lack of supportive services and failure to place children according to their individual needs has a huge impact on families in the foster care system in so many ways. When children are placed in Foster care they are mentally and emotionally broken and traumatized. In order for DCFS not to contribute to the process of traumatizing children, they have a legal and moral obligation to

provide the proper supportive services based on the families needs upon immediate removal; this is often delayed. These services would include but are not limited to stabilized placement in foster care, Family Preservation, Wrap Around Services, individual and family therapy and counseling, proper placement based on the needs of the child, mental health services, drug treatment, proper education, etc. Often these services are not provided by the department which results in the department being responsible for traumatizing children while in "the system." This is the case with lawsuits filed in Massachusetts, Arizona, and several other states.

In Massachusetts, a National advocacy group Children's Rights and Boston law firm Nutter Mc.Clenen & Fish LLP- with help of advocates and families throughout the state brought class action law suit on behalf of all children who have been placed in the care of Massachusetts Department of Children and Families in 2010. In this suit, known as the Connor B. v. Patrick case (**fn4**), there were six named defendants who had been, abused, and neglected while in Foster care due to factors such as lack of supportive services by the department and continuous placement in inappropriate homes, among other things. Among the six plaintiffs was:

Connor B who was removed from his home at the age of six because his mother was neglecting his medical needs and exposing him to the risk of being sexual abused because her live-in boyfriend had previously sexually abused his daughter. Connor, 9yrs old at the time of the suit, remained in foster care where he was sexually abused in his very first placement, has been moved six or more times among seven different placements spanning four different counties. During this time, Connor had experienced a 4 ½ month long hospitalization after he was sexually abused by a 17 yr old foster child that resided in Connor's fist placement which caused a psychological melt down. At least 5 different placements took place within the first year in foster care alone. The 17 yr old boy was assessed as posing a serious risk of sexual abuse to others. During the hospitalization Connor was assessed as having PTSD and ADHD as a result of the sexual abuse and recommended for a residential treatment program to receive ongoing therapy to stabilize him, and once stabilized should transition to a intensive family foster home, where there is case management. All these recommendations where ignored by DCF and Connor was continuously moved around from placement to placement.

Adam S who was 16 yrs old at the time of the suit had been removed from his mothers care for neglect and since then had lived half his life in Foster care. Adam had suffered repeated, severe physical and psychological abuse in two of the more than seven placements he had been placed in while in foster care. In 2003 when Adam was 9 he reported that his adoptive parents had forced him to get on his hands and knees on a regular basis while they beat him. DCF had done an investigation stating there was insufficient evidence and made an agreement with the foster home to shut down the home as a foster placement. Shutting the home down as a placement resulted in no more visits from DCF. Shortly after, the family removed Adam from school supposedly to home school him. In 2004 one of Adams siblings reported more abuse from the home and DCF concluded there was no abuse until the child produced pictures of the bruises which resulted in the adoptive mother being convicted for the abuse. Shortly after the children were again detained Adam had a breakdown and was hospitalized in a locked down psychiatric facility for 2 months and then placed with a family that was not equipped to handle his needs. Adam was then placed in a residential treatment program where he did not regularly attend school for at least a year even though school was offered on-site. Once Adam reached the age limit of the residential he moved to two more placements which were inappropriate. One being

a residential placement for sexual offenders; which Adam did not have characteristics of. Shortly after his placement Adam was a victim of a "fight club" put on by staff at the treatment facility and was brutally beaten which resulted in a hospitalization. Adam was also repeatedly raped during this hospitalization by one of the boys and when he would scream for help the staff would turn up the T.V.

These are only two of the six stories stated in the lawsuit that represented 8,500 children placed in Massachusetts's foster care population. In this suit it was recognized that according to Massachusetts's DCF's child welfare Act Reports, Fiscal year 2009, DCF's reported rate of maltreatment in foster care exceeds CFSR expectations for child safety by nearly 400%. Between 2008-2009 the overall rate of substantiated abuse or neglect in foster care increased by 13%.

The children's complaints linked their situations to DCF's failure to properly manage their cases, provide supported services, and maintain suitable placement for the children in their care.

Prayer for relief in this lawsuit included the following:

- DCF's caseloads to be shortened. There will be a limit established and implemented on all case loads of all case-carrying workers for children in DCF's placement and private agencies contracted with DCF.
- Education and Training Services for DCF. More education and qualification requirements for case workers and their supervisors.
- Availability of necessary resources for the placement of the child.
- An assessment be done on the children being placed including a list of services.
- Monitor safety of children in placement= DCF visits children in there placement and their foster parents according to the standard set by the Council of Accreditation and the Child Welfare League Association in order to ensure the safety of the child.
- Child parent and sibling visitation= DCFS shall develop and implement policies providing adequate visitation with children placed and their parents and siblings.
- Foster Care maintenance rates= that the foster care maintenance rate be paid according to the needs of the child.
- Monitoring enforcement
- Award to children the reasonable costs and expenses incurred in the prosecution of this case including reasonable attorney fees.
- Grant such other equitable relief s the court seems just, necessary, and proper to protect the children.

In Arizona, a class action lawsuit was brought against the state of Arizona stating several plaintiffs that were victims of neglect and abuse while in foster care. (Boguts v. Arizona case 1994)(fn5). Amongst the victims stated were:

Sergio B. who was a victim of severe sexual abuse by the foster parent and other children in the home where he was placed due to lack of supervision.

Tina W., while under the care of her foster family, was allowed to stay out past curfew, became addicted to drugs and alcohol, was cited for incidents such as driving while intoxicated, suffered as a student, kept the company of gang members, was sexually abused, became pregnant and was arrested for drunk driving. After she was returned home to her parents, she managed to obtain drug and alcohol treatment and she had her baby. Unfortunately, her baby was born with developmental delays due to the substance abuse while in foster care.

Rachel W. was taken into custody by DES at the age of 8 and at the time of the lawsuit was in her seventh year of foster care placements where she had been transferred an excessive number of times with out preparation and while in a foster home at the age of 13 Rachel was repeatedly and consistently molested by an adult son of the foster parents. Rachel's mom was informed that Rachel had been sexually active with two males and refused any further information except she was placed in a "Therapeutic Foster Home and was coping as well as expected." As a result of the physical and emotional abuse, abandonment, sexual molestation, and child neglect while in foster care Rachel continues to suffer emotional, physical, and mental harm.

Yana P. was removed from her mother's care after her mother turned to DES to receive some counseling and support for Yana after she had learned that Yana had been sexually abused by her father, whom was not residing in their home. Instead of providing services, DES removed Yana and her sibling from the home and placed them in foster care where Yana was sexually abused by a teenage foster child also placed in that home. After Yana was sexually assaulted in the foster home, her and her siblings were placed back with their mother where they never received the counseling originally sought.

Michelle E. was taken into custody along with her siblings when she was 2yrs old and placed into a foster home where she became subject of pornography made by her foster parents, and was sexually abused in that pornography, and otherwise, during their placement in the foster home. Michelle's mother was not informed about the sexual abuse until 6 months after her children were moved from the home and 3 months after the home had been closed for abuse to foster children in the home.

The suit alleges that over 500 of an estimated 4,000 foster children- about 12.5% of the states foster care population have been abused while in foster care. The action charges that "the acts and omissions of Defendants were done in bad faith, with malice, intent or deliberate indifference to/and or reckless disregard for the health, safety and rights of the child."

Neither of these lawsuits are seeking to hold the caseworkers personally responsible for the placements and supervisions of these children.

In a Baltimore lawsuit (L.J. v. Massinga (1988))(fn6) after reviewing several cases it was determined that there was "a pattern of physical,sexual, and emotional abuse." The cases reviewed as this trial progressed revealed that children in the foster care system had suffered from severe emotional, physical, sexual abuse and neglect. There was a population of girls sexually abused the foster fathers.

In 2000 the New York Times posted an article titled "Foster Child Advocates Gain Allies in Injury Lawyers"<sup>(fn7)</sup> which states that two girls, ages 2 and 4 years old, were supposed to be placed for adoption or returned home in 18 months after their mom had abandoned them in a park. Instead the Florida Department of Children and Family Services had placed them in over 30 homes and facilities for the next fourteen years where they were beaten, raped, and repeatedly separated from others while case workers overlooked obvious signs of abuse; such as a diagnosis for syphilis on a 9yr. old child. According to the article the girls are not grown, illiterate, and mothers.

These cases are just scratching the surface of the abuse in foster care. Unfortunately, abuse in foster care has become an epidemic. According to an article called "How Safe the Service,"<sup>(fn8)</sup> during a recent two year period, a foster child died on average every 7 ½ weeks. Trudy Festinger, head of Department of Research at the New York University School of Social Work determined that 28% of the children in state care in Baltimore have been abused while in the system. In California, as of 1989 Los Angeles County alone had paid \$18 million in settlements to children who have been abuse in their system. The abuse in the system is due to lack of quality foster parents and case workers failure to maintain and manage cases properly, according to the families individual needs.

I could go on and on about the abuse in the Foster care system but I think you get my point. It is obvious that the abuse is there, the question is, when is the department and their workers that are responsible for the placement of these children going to be held personally accountable.

## **Conclusion:**

Abuse in the Foster Care system, like I said earlier, is a widespread problem continuously catching the attention of society and filling the court rooms all over the United States. While new policies get put in place and changes are made, there is still lack of accountability when it comes to the Department of Children and Family Services. While foster parents are taken into custody and charged and agencies are eventually shut down, the Department of Children and Family Services manages to skate by with few adjustments to their policies. Workers responsible for maintaining, supervising, and placing the children in these abuse and neglectful placements are never personally held accountable for their lack of legal and moral obligation of protecting the constitutional rights of these children. I believe a worker responsible for the placement of a child that is abused while in foster care, should be criminally prosecuted accordingly; just as the biological, foster, and adoptive parents would be.

## **Footnotes**

1. Garrett Therolf and Anna Gorman, "South LA foster mother, boyfriend arrested in connection with hammer-beating death of 2-year-old," Los Angeles Times Local (July 20, 2010)
2. 42 U.S.C. § 671(15)(A)&(B)(i)&(ii)
3. 42 U.S.C. § 675 : US Code - Section 675(1)(a)-(e) states



4. CONNOR B. v. Patrick, Dist. Court, D. Massachusetts 2011
5. Superior Court of Arizona, Maricopa County, Bogutz v. Arizona, [2nd amended civil complaint](#), No. CV94-04159. July 1994.
6. United States District Court, D. Maryland, L.J. By and Through Darr v. Massinga, decision, Civ. No. JH-84-4409, September 27, 1988. F.Supp. 508 (D.Md. 1988).
7. Nina Bernstein, "Foster child Advocates Gain Allies in Injury Lawyers," LA Times (October 27,2000)
8. Jeff Jacoby, "Catastrophe in Foster Care," *Boston Globe*, (July 18, 1995).