

# A CRISIS FOR A SYSTEM IN CRISIS: FORECASTING FROM THE SHORT- AND LONG-TERM IMPACTS OF COVID-19 ON THE CHILD WELFARE SYSTEM<sup>1</sup>

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The COVID-19 pandemic has thrust the world into a crisis – and the child welfare system is particularly susceptible to its effects. This pandemic has exacerbated some of the most problematic aspects of the system, and its impacts will reverberate long after the immediate crisis ends. As COVID-19 spread, families were instantly impacted – in-person family time was cancelled, youth and families were unable to access basic resources, services, and technology, and access to the courts was curtailed. Those short-term effects may give way to long-term harms such as disrupted attachments and delays in achieving permanency. The pandemic also reinforced the importance of key tenets of a well-functioning child welfare system: high-quality legal representation, creativity, and youth and family engagement. Attorneys must learn from the fallout of the pandemic, retain the best responsive practices, and use the lessons learned from this crisis to transform dependency cases, and the system writ large, into what families need and deserve.

## Key Points for the Family Court Community:

- Many child welfare agencies and courts' first response to COVID-19 was to suspend in-person family time (visitation) for all youth in care; these blanket suspensions failed to take into account individual family circumstances, contravened federal guidance, and isolated youth from their families – and virtual visitation did not serve as a meaningful substitute for all youth, particularly when taking into account age, developmental needs, and access to technology.
- During COVID-19, families and youth in the dependency system experienced restricted and limited access to daily living needs (food, shelter, education), technology, reunification services and resources for transition-aged youth, and the courts and attorneys.
- Because quality family time supports attachment and expedites permanency, parent/child relationships may be long impacted by COVID-19 restrictions, well after the immediate crisis ends.
- Attorneys have an important role to play in ensuring that meaningful, quality family time resumes and that disrupted attachments are repaired through increased contact and/or targeted therapeutic services.
- Closed courts, cancelled services, and suspended visitation may lead to delays in achieving permanency for youth in the child welfare system during COVID-19.
- Attorneys should ensure the court has before it a full record of what was supposed to happen and use the reasonable efforts requirement to hold agencies accountable for what did or did not occur during the pandemic (and why) – including services, family time, placement changes, and case plan compliance.
- The child welfare system can mitigate the worst impacts of COVID-19, and begin to become the kind of system that families need and deserve, by focusing on and emphasizing high-quality legal representation, creativity in advocacy and policy design, and meaningful youth and family engagement – all best practices that shone through even during the pandemic.

**Keywords:** *Attachment; Child Welfare; COVID-19; Dependency; Family Time; Quality Legal Representation; Reasonable Efforts; Youth Engagement.*

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The COVID-19 pandemic has thrust the world into a crisis. Although the disease and its consequences have impacted people in varying degrees, it has produced some common experiences. As states and countries sheltered-in-place, shut down, and quarantined, the world has almost universally and simultaneously experienced isolation, scarcity of resources, and heightened uncertainty, anxiety, and fear.

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The child welfare system is particularly susceptible to the effects of the pandemic, at least in part because those characteristics – isolation, scarcity of resources, and uncertainty, anxiety, and fear – were already all-too-common before the pandemic hit. COVID-19 exacerbated some of the most problematic aspects of the system, and its impacts will reverberate long after the immediate crisis ends. The pandemic has also ushered in creativity, resilience, and innovation in both the families involved in the system and many of the professionals that work with them.

The pandemic should serve as a moment of reflection and then action for child welfare professionals, particularly attorneys. The aftermath of COVID-19 must not be as harmful to families as the pandemic itself. Attorneys must learn from the fallout of the pandemic, retain the best responsive practices, and use the lessons learned from this crisis to transform dependency cases, and the system writ large, into what families need and deserve.

## A. IMMEDIATE IMPACTS OF COVID-19 ON THE CHILD WELFARE SYSTEM

### Isolation

During the COVID-19 pandemic, almost everyone has experienced isolation in some way. This isolation is particularly salient for children and teenagers, who were separated suddenly and without much warning from their schools, friends, and activities. Many children in foster care experience added layers of isolation. Being removed from one's home and separated from parents is often the first significant isolation that a foster youth experiences and constitutes a trauma that may result in myriad long-term negative consequences.<sup>2</sup> And there are many other forms of isolation that youth have experienced during COVID-19: some have been stuck, around the clock, in a foster home that they did not have a true connection with; others were placed in isolation in a group home or facility due to COVID-19 exposure; still others have been denied access to their "team" of social workers, attorneys, and other service providers. But perhaps the most significant isolation youth have experienced is isolation from their families.

Many jurisdictions' initial response to COVID-19 included suspension of in-person family time (visitation).<sup>3</sup> These orders came from agencies, courts, or some combination.<sup>4</sup> Although such orders reflected a valid concern about protecting the health and safety of children and families, blanket orders and suspensions<sup>5</sup> did not account for individual circumstances. As a result, for too many children in foster care, in-person family time has been suspended indefinitely, and in the face of closed and inaccessible courts, attorneys are left with few immediate remedies. Although virtual visitation has been encouraged, access to technology and consistent implementation have been cited as barriers to ensuring family time is consistent and meaningful.<sup>6</sup> In addition, depending on the age, developmental stage, or abilities and needs of the child or youth, virtual visits may offer even less utility as an intermediate substitute. For example, research shows that children under age three have a "video deficit," causing them to have difficulty learning from and interacting with something shown via screen.<sup>7</sup>

The significance of family time for children and youth cannot be understated. Research associates meaningful family time with numerous positive outcomes, perhaps more so than any other intervention.<sup>8</sup> Studies demonstrate that quality family time yields greater likelihood of reunification and increased chances of sustained case closures (permanency that "sticks").<sup>9</sup> For children, it supports attachment and bonding, improves child mental and emotional well-being, and expedites permanency.<sup>10</sup> For parents, family time enhances motivation to work toward treatment goals, provides opportunities to practice new skills, and positively engages them in the child's development, education, and medical needs.<sup>11</sup> Conversely, "[r]esearch shows ending or reducing family time due to a parent's non-compliance with a case plan is problematic and can negatively impact parental engagement and well-being."<sup>12</sup> When children and families do not maintain regular contact, it can deteriorate the attachment relationship, sometimes irreparably, and protract time spent in foster care.<sup>13</sup>

The federal government, through the Children's Bureau, "strongly discourages the issuance of blanket orders ... doing so is contrary to the well-being and best interest of children, may contribute

to additional child trauma, and may impede the likelihood of reunification.”<sup>14</sup> The guidance further underscored the need for “continued family time, especially in times of crisis and heightened anxiety” and recommended “ask[ing] parents their preference when deciding how to proceed.”<sup>15</sup> Some jurisdictions made case-by-case determinations about the feasibility of in-person visits, making decisions as multidisciplinary teams, considering the recommendations of medical experts, and examining families’ particular circumstances, such as health status, ability to social distance during visits, and opinions of all involved parties.<sup>16</sup> These practices, consistent with federal government guidance, demonstrate that some states can and do make individualized, case-specific determinations that balance compliance with COVID-19 directives with the critical importance of family time to maintain family connections, promote healthy attachment, and achieve reunification.

### Scarcity of Resources

People confined to their homes during the pandemic have experienced many forms of scarcity. Physical and mental bandwidth has been universally taxed by loss of employment, inability to access avenues to relieve stress, health concerns, and a myriad of other issues. Children and families involved in dependency cases are not unfamiliar with scarcity – poverty, a lack of high-quality services, and inadequate and inappropriate placement options have long plagued the child welfare system. For a system whose bandwidth was already taxed, a national crisis only further restricts an already limited pool of resources.

The COVID-19 pandemic has impacted the ability of youth in the child welfare system to get their basic needs met. Foster home availability is limited by health conditions and lack of supports and respite.<sup>17</sup> Food availability is limited by the closure of schools and other community-serving organizations.<sup>18</sup> Education is limited by such barriers as school district decisions, inadequate virtual special education services, and access to technology.<sup>19</sup>

Technology has emerged as a basic need during the COVID-19 pandemic. Youth need technology to access their education, communicate with family and friends, and receive medical care. However, for youth involved in the child welfare system, such access has been uneven at best. For example, some state agencies provide cell phones to all youth of a certain age in foster care, some place that responsibility and discretion on the resource family, and some lack clear guidance or expectations for providing cell phones.<sup>20</sup> Some children and families live in areas where internet connectivity and access are inconsistent and unreliable. And for other families, their financial constraints, which were exacerbated by the negative economic impact of COVID-19, prevent consistent access to technology.<sup>21</sup>

Youth and family access to court-ordered and case plan services has also been inconsistent during COVID-19. Although some jurisdictions have implemented tele-services, particularly for mental health therapy, critical services needed for safety, permanency, and mental and physical well-being have often stagnated.<sup>22</sup> Services that were already in short supply became difficult or impossible to access due to reallocation of health and medical resources to COVID-19 patients. COVID-19 has amplified the problems of resource scarcity in the child welfare system.

One particularly vulnerable population during the pandemic are youth exiting foster care. The child welfare system has long struggled to provide youth aging out with access to sufficient resources to successfully emancipate and move towards independence, such as housing and employment. Those resources are scarcer still during a public health crisis; how does a young person look for an apartment or job when stay-at-home orders are in place and businesses are closing their doors?<sup>23</sup> Advocates have had some success in getting many jurisdictions to halt or extend exits from foster care during COVID-19.<sup>24</sup> This proved an area in child welfare where zealous advocacy, collaboration amongst branches of government, and receptive governors and legislatures came together and acted quickly and nimbly to meet the evolving and changing needs of youth during the pandemic.<sup>25</sup>

### **Uncertainty, Anxiety, and Fear**

The COVID-19 pandemic has brought with it a host of unknowns. What will be the impact on the economy? The health care system? When will life go back to “normal”? What will “normal” look like? Youth in foster care share those uncertainties, and more. When will they be able to see their parents again? Will their planned return home go forward? How will this crisis impact their search for an adoptive parent?

Compounding the uncertainty and anxiety is severely limited access to courts. Courts across the country have responded to the pandemic in different ways. Tremendous variety abounds around what types of in-person hearings have moved forward; whether virtual hearings are used and for what cases/issues; whether there is a system for online filings; and what types of cases constitute an emergency.<sup>26</sup> Court closures and limitations impact families’ abilities to move towards permanency – planned reunifications have been cancelled, trial guardianship and adoption visits suspended. Many have already long been waiting for their families to be reunited and their cases to close. The COVID-19 pandemic places a giant question mark around timeframes for these key life events.

To answer those questions, youth might normally turn to their attorneys. For many, that access has been restricted as well. Advocates have reported difficulty visiting their clients in congregate care settings.<sup>27</sup> Social distancing mandates and stay-at-home orders complicate attorneys’ ability to visit and interact with their clients, and the legal workforce is also at home taking care of children, home-schooling, and managing other new and unexpected responsibilities.<sup>28</sup>

However, zealous attorneys for children have not let court closures and in-person restrictions deter their advocacy and relationship-building. Many have maintained continuous contact with their clients – through virtual communication, phone calls, or even speaking through windows and doorways.<sup>29</sup> Many have maintained legal advocacy – through motions practice, virtual hearings, or systemic advocacy to reopen courts for certain hearings.<sup>30</sup> Diligent children’s attorneys bring some consistency and certainty to an uncertain time, answering questions as best they can for their clients, and where they cannot, remaining committed to being a constant presence in their clients’ lives.

## **B. LONG TERM IMPACTS OF COVID-19 ON THE CHILD WELFARE SYSTEM**

At some point, the immediate consequences of COVID-19 will abate. Social distancing rules will relax, adults will return to work, and children to school. But there are likely to be long-term impacts felt in the world in general, and for the child welfare system in particular. Although the specific effects remain to be seen, advocates should keep an eye on a few distinct possibilities. There are lessons to be learned from the pandemic, and attorneys can help guide decision-making and reflection to ensure that the immediate negative impacts of COVID-19 do not repeat themselves or go unacknowledged.

### **Attachment**

The child welfare system must confront a severe reality of the COVID-19 pandemic: there will be many children who will go months without face-to-face contact with their parents. How a child processes and responds to that reality will depend on many factors, including their age, development, and cognitive abilities. For some youth and parents, this lack of contact may have a significant and long-lasting impact on attachment.

Attorneys cannot recover this lost contact for youth and families. What they can do is target their advocacy to immediately re-establish regular and meaningful family time and repair strained and disrupted attachments. Attorneys should work with agencies and the courts to ensure that youth have contact with their family as frequently as is in their interests after the pandemic ends. Such advocacy may include re-exploring visit location, length, and supervision, to ensure those decisions are made in a way that promotes relationship-building and healthy attachments. If therapeutic services are indicated, attorneys can advocate for high-quality, evidenced-based services that are

appropriate to the child and family's specific need. Modalities of therapy and particular service providers that were recommended before the pandemic may need to be re-examined to ensure that they are targeted towards and have the appropriate qualifications in attachment.

Services and relationships cannot merely pick up where they were left off before the pandemic. The child welfare system needs to acknowledge and own the impact of interrupted family time and make meaningful, diligent efforts to repair what has been broken. Children's attorneys can ensure those efforts are made through out-of-court and in-court advocacy.

### **Reports of Abuse and Neglect**

There has been much media coverage and discussion of concerns regarding abuse and neglect reporting during the pandemic, which unfolded during National Child Abuse Prevention Month.<sup>31</sup> Some, though not all, jurisdictions have seen a dramatic drop in hotline calls, reports, and new cases. Many in the system have wondered and worried about whether COVID-related stressors could lead to increased incidents of abuse and neglect that are going unreported. During the pandemic, children generally are in less contact with mandatory reporters, such as teachers and social workers. Once the pandemic ends and children return to school, will the child welfare system face an inundation of hotline calls and new cases?

The answer may be more complicated than media coverage would lead us to believe. Child welfare system professionals have an opportunity to be reflective in this moment and examine what the reporting numbers, before, during, and after the pandemic, truly tell us. For example, were families put at greater risk due to a lack of social supports and outlets, and if so, how should the system prepare if such a crisis were to occur again? Were the reports that were not coming in reports that would have been screened out, and how should the child welfare system apply that information to how mandatory reporters are trained? Were financial supports and resources for families inadequate? Attorneys can help the system shift focus from fears about what happens behind closed doors, to open and honest conversations about how society views "at risk" families<sup>32</sup> and what prevention services and financial resources are most effective.<sup>33</sup>

### **Permanency Delays**

When courts reopen, they may be facing months of cancelled and waylaid hearings. Decisions will need to be made about which types of dependency hearings will be heard first, which will in turn, necessarily delay court access for families for a period after the pandemic ends. Some guiding principles should dictate these decisions: are constitutional rights at stake? Is there an emergency that can only be addressed by the court? Would further delay impact federal and state timelines? If so, do those timelines make sense for the case at hand? But as during the pandemic, attorneys should be wary about, and advocate against, blanket and one-size-fits-all approaches to hearing rescheduling and push the courts to make individualized decisions that further clients' interests.

A likely long-term impact of COVID-19 is delayed permanency for youth. How exactly those delays will manifest remain to be seen. Will agencies insist on following Adoption and Safety Family Act (ASFA) timelines<sup>34</sup> and filing motions to terminate parental rights, regardless of service impediments during COVID-19? How many cases that were on a clear path to reunification, guardianship, or adoption have been temporarily or irreparably diverted from that path? Will youth scheduled to exit care in late 2020 or early 2021 have access to the services and skills to achieve independence? Many families will likely find their cases and lives in very different places post-COVID-19.

Attorneys can play an important role in ensuring that youth and families' experiences during COVID-19 are not discounted or ignored by using federal and state laws to inform their advocacy. COVID-19 did not, in and of itself, excuse agencies of their legal obligation to make reasonable efforts towards the permanency goal.<sup>35</sup> Certainly, what was "reasonable" before the pandemic may

not necessarily be so reasonable during COVID-19. Attorneys should ensure the court has before it a full record of what was supposed to happen during the pandemic, and did or did not occur (and why) – including services, family time, placement changes, case plan compliance, etc. Such records can help inform whether “compelling reasons” exist for the agency to not file a termination of parental rights motion and what services are needed immediately after the pandemic, to name a few.<sup>36</sup>

Conversely, attorneys should watch for inaccurate or overbroad causal links to the pandemic by all parties. For example, a case may have been heading towards adoption before the pandemic due to parental non-compliance with services, missed visits, etc. In that scenario, even though visits or services were missed during COVID-19, the attorney may still advocate for the case to continue towards adoption.

There is a very real possibility that COVID-19 shows up in a number of appellate arguments in the next few years. Such cases might include challenges to agency reasonable efforts made during the pandemic. We may see more appeals of terminations of parental rights and adoptions, based on lack of in-person family time or inconsistent and absent parental services. By creating and preserving a clear record of whether and how the pandemic impacted these cases, attorneys can mitigate permanency delays for their clients, immediately and long after the pandemic ends.

### **C. APPLYING LESSONS LEARNED FROM COVID-19**

The COVID-19 pandemic has revealed many facets of the child welfare system, both good and bad. As stated above, there is a key role for attorneys in mitigating and correcting the flaws in the system that the pandemic created and exacerbated. But just as important are continuing the lessons that emerged from this public health crisis.

#### **The Importance of High-Quality Representation**

The pandemic reinforced that high-quality legal representation is critical for youth in the child welfare system.<sup>37</sup> Many attorneys for children played an irreplaceable part during COVID-19. They advocated for case-specific and system-wide change.<sup>38</sup> They figured out and implemented new ways to connect with and check on their clients and families.<sup>39</sup> They navigated virtual courtrooms and a constantly changing legal landscape.<sup>40</sup> During COVID-19, high-quality children’s attorneys shifted how they fought for their clients, but maintained their zeal, diligence, and innovation.

Attorneys possess the skills, training, and ability to access courts for their clients, to ensure their opinions and voices are heard, and to explain the legal system, consequences, and options to their clients. For youth who do not have access to high-quality representation, or any representation at all, their ability to access their other legal rights – and needs of daily living – have likely been hampered during the pandemic.<sup>41</sup> This national crisis highlighted the crucial needs of youth in the child welfare system, and one such need is the presence of competent, diligent, and zealous attorneys for children.

During COVID-19, attorneys have had an important and complicated role to play in ensuring clients’ legal rights were protected and advanced, and that due process did not suffer, even in a legal landscape with challenging and complex access to courts. That role continues to be important during the after-effects of COVID-19 and beyond. Youth in the child welfare system need high-quality attorneys who are well-supported, trained, and resourced.

#### **Creativity**

When the child welfare system is not working for youth and families, common responses to creative and flexible ideas can be: “that’s not the way we do things” and “that would never work in our jurisdiction.” The COVID-19 pandemic has stifled many aspects of the system, but, often out of

necessity, it has bred innovation, and many of those novel ideas should be retained and continued once the pandemic ends. In fact, many of these “new” approaches are ideas the child welfare system should have embraced long ago.

Virtual family time, although not a substitute for in-person contact, has the potential to allow children to have *more* contact with their parents, siblings, and extended family members. It enables parents to be part of children’s daily routines, such as doing homework, reading bedtime stories, and even family meals.<sup>42</sup> The child welfare system has more than endorsed that virtual family time can be successful; it has insisted in many places that this was the best response to ensure family contact during the pandemic.<sup>43</sup> It would be difficult to argue that this type of contact, unless harmful to a specific child, should end after the pandemic does, and advocates can and should seize on this moment to increase their clients’ contact with their parents, if appropriate.

In a similar way, the system has learned lessons about how successful advocacy can occur outside of the four walls of the courtroom. Motions practice, virtual hearings, and decisions by consensus have helped keep some cases moving during this time. It is advisable to retain elements of those strategies. Virtual participation in some court hearings by youth and parents may be appropriate, for example, to keep from children missing school and parents missing work. Negotiation and mediation can lead to lasting and positive outcomes for children and avoid the pain and discomfort of contentious court hearings. Written advocacy allows attorneys to get all relevant authority in front of judges, including social science, federal law, and best practices from around the country.

During COVID-19, the child welfare system embraced creativity and innovation because it had to. Now the best innovations should continue because they work.

### **Youth and Family Engagement**

Youth experiencing foster care, and alums of the foster care system, have repeatedly told those of us in positions of privilege and power: do not single us out, do not make us feel different, just treat us like any other kid. When youth and family voice are left out of key decisions, the child welfare system operates in an inequitable and paternalistic fashion. The blanket suspension of family time was illustrative of the harms caused by failure to include family voice. Families outside the child welfare system had the ability to design the type of contact they had with each other during the pandemic. For example, children who were subject to custody orders in domestic relations matters continued to move between their family homes during the public health crisis, if their parents so chose. Children and parents in the system should have had the same opportunity to let their wishes be known and to be a part of crafting what family time should look like for their own family.

Genuine youth and family engagement did not consistently occur before COVID-19, so it should have come as no surprise that that best practice was similarly ignored during this national crisis. What COVID-19 taught us was the extremely harmful consequences that can result when family voice is not meaningfully engaged. The child welfare system should reflect post-COVID on how to more intentionally incorporate family and youth voice into decision-making. When done well, child and parental voice engagement can help ensure rules, policies, procedures, and practices are as consistent as possible with actual family experiences, needs and opinions.<sup>44</sup>

For all of us, it will be very tempting to want to treat COVID-19 as a distant, bad memory, as an anomaly frozen in time. But for the child welfare system to truly serve families in a holistic and empowering way, focused on prevention and relationships, attorneys and other professionals must pause and reflect on some key questions. What holes in the child welfare system made it particularly vulnerable to the impacts of COVID-19? How did the system fail families during the pandemic? What aspects of creative advocacy, collaboration, and solutions-focused thinking should be retained post-COVID 19? And how can we be better prepared during the next crisis, so that the effects are not borne on the backs of youth and families? We must use the lessons we learned from

COVID-19, the good and bad, to create the type of child welfare system families have deserved all along.

## ENDNOTES

1. The author wrote this article in May 2020 for publication in October 2020. This article reflects the development and impact of the COVID-19 pandemic as of the date of writing.

2. *See, e.g.*, Shanta Trivedi, *The Harm of Child Removal*, 43 N.Y.U. REV. OF L. & SOC. CHANGE 523 (2019).

3. According to the federal Children’s Bureau, “[w]hat the field most often regards as ‘visitation’ and ‘visitation plans’ seldom fulfills the needs that parents and children have for meaningful and nurturing time together. This language often implies standard visitation schedules whereby all parents receive a predetermined amount of supervised time with their child, regardless of the parents’ circumstances and protective capacities, and for ‘visitation’ to increase only as parents ‘earn’ the right for longer and unsupervised interactions... Viewing child and family contacts during foster care less as ‘visits’ and more as ‘family time’ suggests the critical importance of the length and quality of time that children spend with their parents, separated siblings, and other important family members.” “Family Time and Visitation for Children and Youth in Out-of-Home Care.” Memorandum from the Administration for Children and Families (Feb. 5, 2020) <https://www.acf.hhs.gov/sites/default/files/cb/im2002.pdf>. (hereinafter “Admin for Child. & Fam.”).

4. *See, e.g.*, Allison Green, *COVID-19 Response: Foster Care and Family Visitation*, NATIONAL ASSOCIATION OF COUNSEL FOR CHILDREN (NACC) (Apr. 14, 2020), [https://cdn.ymaws.com/www.naccchildlaw.org/resource/resmgr/covid19/testimony\\_before\\_the\\_vermont.pdf](https://cdn.ymaws.com/www.naccchildlaw.org/resource/resmgr/covid19/testimony_before_the_vermont.pdf).

5. The term “blanket order” refers to an order that applies evenly across all cases, regardless of individual case circumstances – in this case, orders that cancel in-person family time for all families in the dependency system. *See, e.g.*, Memorandum from Marc D. Smith, Acting Director, Illinois Dep’t of Child and Fam. Servs., to DCFS and POS Permanency Staff (Mar. 19, 2020), [https://illinoiscasa.org/file\\_download/inline/33eb621b-2603-41fc-8877-b8efce2af54e](https://illinoiscasa.org/file_download/inline/33eb621b-2603-41fc-8877-b8efce2af54e).

6. *See COVID-19 Membership Webinar Notes*, NATIONAL ASSOCIATION OF COUNSEL FOR CHILDREN (NACC) (Mar. 26, 2020), [https://cdn.ymaws.com/www.naccchildlaw.org/resource/resmgr/webinars/covid-19\\_membership\\_webinar\\_.pdf](https://cdn.ymaws.com/www.naccchildlaw.org/resource/resmgr/webinars/covid-19_membership_webinar_.pdf).

7. Cynthia Brunson, *Successful Video Visits with Young Children*, NAT’L COUNCIL ON CRIME AND DELINQUENCY, (Mar. 25, 2020), <https://www.nccedglobal.org/blog/successful-video-visits-young-children>.

8. *See, e.g.*, Admin. for Child. & Fam., *supra* note 3, at 3-6.

9. *Id.* at 4-5.

10. *Id.* at 3-4.

11. *Id.*

12. *Id.* at 9.

13. *Id.* at 8-10.

14. *See* Letter from Jerry Milner, Associate Commissioner, Children’s Bureau, to Child Welfare Legal and Judicial Leaders (Mar. 27, 2020), <https://www.grandfamilies.org/Portals/0/Documents/COVID/covid19-letter%20HHS.pdf>.

15. *Id.*

16. *See, e.g.*, Rep. to the Judicial Council No. 20-141 (Apr. 6, 2020), <https://caanet.org/app/uploads/2020/04/20-141-Adoption-of-Emergency-Rules-FINAL.pdf> (affirming that decisions about in-person family time must be made on a case-by-case basis); “Declaration of James Watt, MD, MPH in Support of Children’s Law Center of California (CLC) Motion for Modification of Presiding Judge’s Standing Order Regarding Visitation Issued 3/20/20,” *In the Matter of: Los Angeles County Clients of Children’s Law Center of California* (Apr. 2, 2020) (affidavit of the Acting Deputy Director of the Center for Infection Diseases and Interim State Epidemiologist at the California Department of Public Health that attests that a blanket ban on in-person visitation was “more restrictive than necessary under the current public healthy guidelines.”), [https://cdn.ymaws.com/www.naccchildlaw.org/resource/resmgr/covid19/1\\_affidavit\\_in\\_support\\_of\\_fa.pdf](https://cdn.ymaws.com/www.naccchildlaw.org/resource/resmgr/covid19/1_affidavit_in_support_of_fa.pdf); Order Re: Dependency and Termination Cases, Wash., No 25700-B-614, (Apr. 3, 2020) (stating that “[w]hile in general video or other forms of virtual visitation may serve on a temporary basis to preserve family connections during the time of the public health emergency as described in the Governor’s Proclamations, such visitation will not be sufficient in some cases, because it cannot be accessed by the parent or child, or both, and the disruption/denial of visitation will not be in the best interests of the child.”), <http://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20Orders/Emergency%20Order%20on%20Dependency%20and%20Termination%20Cases%204-03-2020.pdf>.

17. *See, e.g.*, Eli Hager, *Coronavirus Leaves Foster Children With Nowhere to Go*, THE MARSHALL PROJECT (Mar. 24, 2020), [https://www.themarshallproject.org/2020/03/24/coronavirus-leaves-foster-children-with-nowhere-to-go?utm\\_medium=email&utm\\_source=govdelivery](https://www.themarshallproject.org/2020/03/24/coronavirus-leaves-foster-children-with-nowhere-to-go?utm_medium=email&utm_source=govdelivery) (last accessed: May 14, 2020).

18. Press Release, FOSTER CLUB, *Youth from Foster Care Thrown into Crisis During Pandemic*, (Mar. 27, 2020), <https://www.fosterclub.com/sites/default/files/docs/blogs/PR%20FosterClub%20TAY%20Crisis.pdf> (last accessed: Apr. 30, 2020).

19. *See, e.g.*, Benjamin Herold, *The Disparities in Remote Learning Under Coronavirus (in Charts)*, EDU. WEEK (Apr. 10, 2020), (last accessed: May 14, 2020).

20. The Children's Bureau issued guidance for when agencies can use Title IV-B and/or Chaffee funds to purchase cell phones for youth and families. See Letter from Jerry Milner, Associate Commissioner, Children's Bureau, to Child Welfare Leaders, (Apr. 17, 2020), [https://www.acf.hhs.gov/sites/default/files/cb/letter\\_on\\_federal\\_funds.pdf](https://www.acf.hhs.gov/sites/default/files/cb/letter_on_federal_funds.pdf).

21. During the pandemic, some organizations, corporations, and individuals developed programs to provide technology resources and connectivity to youth and families. See, e.g., Rebecca Lee Armstrong, "Are There Programs Available to Help Make Internet Service More Affordable?" HIGH SPEED INTERNET.COM. (Apr. 20, 2020), <https://www.highspeedinternet.com/resources/are-there-government-programs-to-help-me-get-internet-service> (last accessed: May 14, 2020); "New tablet initiative for schools will help close Detroit's digital divide (opinion)." DETROIT FREE PRESS (Apr. 27, 2020), <https://www.freep.com/story/opinion/contributors/2020/04/27/new-tablet-initiative-schools-help-close-detroit-digital-divide-opinion/> 3027952001/ (last accessed: May 14, 2020); AMERICAN BAR ASSOCIATION. "At-Home Education and Learning Resources for Foster Youth During COVID-19" (Mar. 20, 2020), <https://www.americanbar.org/groups/litigation/committees/childrens-rights/practice/2020/at-home-education-and-learning-resources-for-foster-youth-during-covid-19/> (last accessed: May 14, 2020).

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25. *Id.*

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33. See Jane Spinak, *Child Welfare and COVID-19: An Unexpected Opportunity for Systemic Change*, in LAW IN THE TIME OF COVID-19 73-74 (Columbia Law School ed.); Shanta Trivedi, *Why the Drop in Child Welfare Reports Might Be a Good Sign*, SLATE

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34. 42 U.S.C. § 675 (5)(E) (2018) (instructing the State to file a motion to terminate parental rights when a child has been in care for 15 of the last 22 months, with some enumerated exceptions).

35. 42 U.S.C. § 671(a)(15) (2019); 45 C.F.R. § 1356.21(b)(2) (2012).

36. 42 U.S.C. § 675 (5)(E) (2018).

37. See, generally, Admin. for Child. and Fam., *High Quality Legal Representation for All Parties in Child Welfare*, U.S. DEP'T OF HEALTH AND HUM. SERV. (Jan. 17, 2017), <https://www.acf.hhs.gov/sites/default/files/cb/im1702.pdf>.

38. See, e.g., John Kelly, *Public Defender Fights Blanket Ban on Supervised Family Visits*, THE CHRON. OF SOC. CHANGE (May 8, 2020), [https://chronicleofsocialchange.org/child-welfare-2/public-defender-fights-blanket-ban-supervised-family-visits/43216?utm\\_medium=email&utm\\_source=govdelivery](https://chronicleofsocialchange.org/child-welfare-2/public-defender-fights-blanket-ban-supervised-family-visits/43216?utm_medium=email&utm_source=govdelivery) (last accessed: May 15, 2020); Megan Conn, *New York Governor Implored to Extend Foster Care Past Age 21 During Pandemic*, THE CHRON. OF SOC. CHANGE (May 4, 2020), <https://chronicleofsocialchange.org/foster-care/new-york-governor-implored-to-extend-foster-care-past-age-21-during-pandemic/43082> (last accessed: May 15, 2020).

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41. Vivek Sankaran, *In Child Welfare Cases, Just Any Old Lawyer Won't Do*, THE CHRON. OF SOC. CHANGE (Apr. 28, 2020), [https://chronicleofsocialchange.org/child-welfare-2/in-child-welfare-cases-just-any-old-lawyer-will-not-do/42826?utm\\_medium=email&utm\\_source=govdelivery](https://chronicleofsocialchange.org/child-welfare-2/in-child-welfare-cases-just-any-old-lawyer-will-not-do/42826?utm_medium=email&utm_source=govdelivery) (last accessed: Apr. 30, 2020).

42. See Mary Jo Pitzel, *Parents of foster children lose what that keeps them connected: In-person visits*, ARIZ. REPUBLIC (Apr. 28, 2020), <https://www.azcentral.com/story/news/local/arizona-child-welfare/2020/04/28/arizonas-foster-care-system-virtual-visits-replace-parent-visits/5148618002/> (last accessed: May 15, 2020).

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44. Admin. for Child. and Fam., *Engaging, empowering, and utilizing family and youth voice in all aspects of child welfare to drive case planning and system improvement*, U.S. DEP'T OF HEALTH AND HUM. SERV., (Aug. 1, 2019), <https://www.acf.hhs.gov/sites/default/files/cb/im1903.pdf>.

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