



# Engaging Noncustodial Fathers in Child Welfare Cases:

A Guide for Children's Attorneys  
and Lawyer Guardians ad Litem



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AMERICAN BAR ASSOCIATION  
Center on  
Children and the Law



NATIONAL QUALITY  
IMPROVEMENT CENTER  
ON NON-RESIDENT FATHERS AND  
THE CHILD WELFARE SYSTEM



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Lisa Pilnik and Jessica R. Kendall

Edited by Claire S. Chiamulera



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This publication was produced by the National Quality Improvement Center on Non-Resident Fathers and the Child Welfare System (QIC NRF), funded by the Children's Bureau of the U.S. Department of Health and Human Services. We are grateful to our project officer, Jason Bohn, and to our QIC NRF project partners, American Humane Association and National Fatherhood Initiative, for their support and thoughtful feedback on our draft manuscripts.

We also thank Amanda Donnelly from the National Association of Counsel for Children for supporting this brief and carefully reviewing it and providing useful input. Special thanks also to Howard Davidson, the ABA Center on Children and the Law's director, and Richard Cozzola and Mark Kiselica, members of the National Advisory Board for the QIC NRF, for reviewing drafts of this publication and sharing valuable suggestions.

Thank you also to Claire Chiamulera for meticulously editing the manuscript and coordinating its design.

Finally, nearly 100 young people now or formerly in foster care shared their thoughts and feelings about their own fathers with us. Many of their words are included in this document, and all of their contributions informed this publication and our work on this issue. We are grateful to the youth who shared their stories with us, and to the staff at their organizations who helped gather their input: Justin Lee from the Pennsylvania Youth Advisory Board, Kara Sanders from The Mockingbird Society in Washington, and Terri Bailey from Elevate to Inspire in Iowa.

- Lisa Pilnik and Jessica R. Kendall  
American Bar Association Center on Children and the Law

## **ABOUT THIS BRIEF**

The QIC NRF is examining the impact of nonresident father involvement on child welfare outcomes. Through research, it seeks to understand the relationship between children, nonresident fathers, and/or paternal relatives. Since its start, the QIC NRF has focused on developing materials for child welfare system players-- judges, lawyers, social workers, fathers and others--on the importance of father engagement. This publication extends what the QIC NRF has learned to children's and GAL attorneys. It offers another useful tool to advocate on behalf of children.

In addition to this brief, the QIC has other resources that may be useful to children's and GAL attorneys, including:

- a book on advocating for fathers in child welfare court cases;
- a curriculum for attorneys on advocating for nonresident fathers;
- the father-friendly checkup for child welfare agencies; and
- newsletters on several topics, including child support, father engagement, and parent representation.

View these and other publications and materials developed by the QIC NRF at: [www.fatherhoodqic.org](http://www.fatherhoodqic.org)

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This publication was made possible through a cooperative agreement between the U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau, the American Humane Association, the American Bar Association Center on Children and the Law, and the National Fatherhood Initiative.

The views expressed herein have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the policy of the American Bar Association or the QIC NRF project partners.

## INTRODUCTION

*“While it may take extra effort to involve a nonresidential father, it is usually in the child’s best interest to do so.”*

— Children’s Bureau, U.S. Department of Health and Human Services <sup>1</sup>

*“Every kid has a right to know their father.”*

—Foster youth

Each year, hundreds of thousands of children become involved with child protective services (CPS) due to suspected or confirmed abuse or neglect. Some of these children were living with both biological parents when CPS got involved, and their mother, father, or both, maltreated them. However many of these children were living with their mother, mother’s partner, or other relatives, but not their father. For these children, their biological fathers are often left out of caregiver search efforts, case planning, team meetings, and court hearings, even if they were positively involved in the child’s life before CPS involvement.<sup>2</sup>

Failing to engage noncustodial (“nonresident”) fathers in child welfare cases harms children by robbing them of many potential resources. Fathers and paternal relatives may serve as placement resources, provide youth meaningful adult connections, and provide financial, emotional, and other support. Support from noncustodial fathers may also help custodial mothers or other caregivers address the issues that first brought the child to the attention of CPS. In cases where the father does not want to be involved with a child, or cannot be a positive presence in the child’s life, determining and documenting this throughout the case will also reduce permanency delays once the case reaches the termination of parental rights or adoption stages and may help resolve unanswered questions for the child in the future.

As a children’s attorney or lawyer guardian ad litem (GAL), your advocacy should include efforts to engage fathers in child welfare cases. Many of your child clients’ biological fathers may not live with them when CPS becomes involved with the family. Or, the father may not be accused of abuse or neglect when CPS intervenes. This guide offers practice tips to identify and engage these fathers in your child clients’ cases. Some of this material may also be useful when working with noncustodial mothers or custodial fathers. The information and tips will help you make informed recommendations about children’s best interests, and promote father engagement that supports those interests. If you represent your client’s expressed wishes, they will help you better counsel your client to make informed decisions, and give you strategies to achieve your client’s goals. (A brief for court appointed special advocates/ nonlawyer GALs, and a book for parents’ attorneys is available at [www.fatherhoodqic.org](http://www.fatherhoodqic.org).)



## WHAT FOSTER YOUTH SAY ABOUT THEIR FATHERS

In developing this brief, the QIC NRF worked with foster youth empowerment groups across the country to learn what youth think about their fathers and their relationships with them.

We found that although the youth's feelings and involvement with their fathers varied greatly, the impact a father can have on his child's life, positive or negative, is profound.

Throughout this brief are the questions we asked, and responses from youth currently or formerly in foster care and involved with the Pennsylvania Youth Advisory Board, The Mockingbird Society (Washington State), or Elevate to Inspire (Iowa).

## THE IMPORTANCE OF FATHER INVOLVEMENT

*“Having a male as part of your life is a big deal. There is just a connection that father and son have that cannot be replaced. [I think child advocates should] try their best to make sure that there is a connection with son and father.”*

–Foster youth

### *Improves children's quality of life*

Although most children from single-mother households grow up to live healthy and productive lives, research shows youth from father-absent homes are more likely to experience poverty, emotional and behavioral problems, substance abuse, incarceration, and problems at school (e.g., repeating a grade, dropping out, poor performance).<sup>3</sup> In contrast, having a closer relationship with their fathers is linked to higher self-esteem and lower depression rates in adolescents. Increased father involvement in activities such as family outings, homework, and meals is linked to better academic performance, more positive social behavior, and fewer behavioral issues in children and adolescents.<sup>4</sup>

Studies of families involved with the child welfare system show:

- Involvement by nonresident fathers is associated with more reunifications and fewer adoptions.
- Higher levels of nonresident father involvement substantially lower the likelihood of later maltreatment allegations.
- Highly involved nonresident fathers' children exited foster care faster.<sup>5</sup>
- Children who had had contact with a noncustodial parent in the last year were 46% less likely to enter foster care.<sup>6</sup>

In addition to social science research, much anecdotal evidence shows that youth in foster care benefit from contact with their fathers; youth often reveal that they value their relationship with their fathers, or wish they had more opportunities to get to know their fathers. As a children's attorney or GAL, you have likely seen the difference it makes when noncustodial fathers are engaged in their cases and given the opportunity to be a resource for their children. Having the father and his family involved with the child also means there are “more eyes on the child,” which can increase safety and well-being.

### *Provides children with adult connections*

Youth in foster care need adult connections. They need to know who their parents are and to have as much contact with them as is possible and safe. This applies to fathers just as much as mothers, particularly when the father did not abuse or neglect the child. If you have worked with a child who begs to return to a parent who the courts have said cannot care for her, or who connects with his biological family immediately after aging out of foster care, you understand that kids don't just want permanent parents or guardians; they often want *their* parents. Although many fathers struggle with inexperience as a parent, substance abuse, incarceration, or poverty, none of those things limit a father's ability to love his child, or a child's ability to feel loved and connected. Children in foster care need that love and connection from their fathers, even when their fathers cannot be a placement resource.

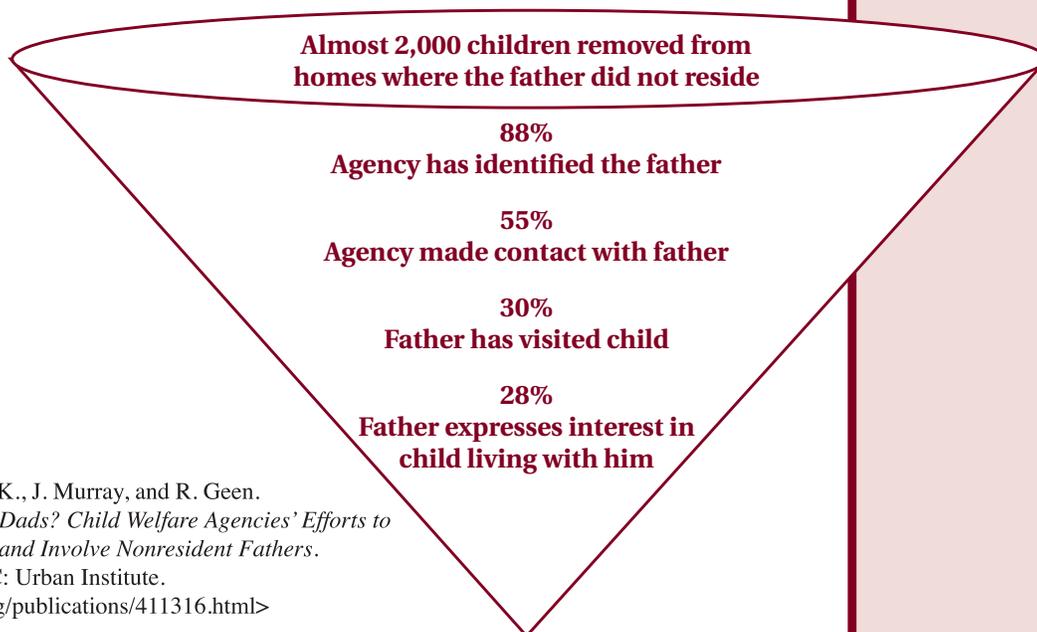
## BARRIERS TO FATHER ENGAGEMENT

*"I didn't talk to my dad from the time I was 4-14. I lived with him for 6 months while I was 14. Now we talk just about every day."*

–Foster youth

### *Failure to locate/contact*

A 2006 Urban Institute report found that although noncustodial fathers had been identified in most cases studied, far fewer of the fathers were contacted by the agency or visited their child.



**Source:** Malm, K., J. Murray, and R. Geen.  
*What about the Dads? Child Welfare Agencies' Efforts to Identify, Locate and Involve Nonresident Fathers.*  
Washington, DC: Urban Institute.  
<[www.urban.org/publications/411316.html](http://www.urban.org/publications/411316.html)>

The federal Child and Family Services Reviews (CFSRs) have also found many states:

- do not adequately involve fathers in case planning or provide services for them;
- fail to contact fathers, even when they had been involved in their children's lives; or
- do not adequately involve fathers in any aspect of their child's case.

To read your state's CFSR report, visit  
[http://basis.caliber.com/cwig/ws/cwmd/docs/cb\\_web/SearchForm](http://basis.caliber.com/cwig/ws/cwmd/docs/cb_web/SearchForm).

Although there is sometimes a perception that noncustodial parents are "absent" entirely from their children's lives, this is rarely true. A study of nearly 4,000 families across the country who were involved with CPS found that in 73% of the families where there was a noncustodial parent, that parent had had contact with the child(ren) in the last year.<sup>7</sup>

Failure by child welfare caseworkers and the courts to locate and contact fathers, even when their identity is known, prevents many fathers from engaging in their child's case or, in some situations, from even knowing the child has been abused or neglected. In the Urban Institute report discussed above, only 55% of noncustodial fathers were contacted, compared to 100% of noncustodial mothers. This disparity may have been due to:

- caseworker bias against men;
- fears that involving the father would lead to more work for an already overburdened caseworker;
- fears that the father could be violent; or
- a lack of due diligence in securing adequate contact information for the fathers.

Caseworker bias is viewed as “the most widely researched barrier to fathers’ participation in child welfare case planning.”<sup>8</sup> In one study, “caseworkers were found to require that fathers demonstrate their connection to the child whereas the mothers’ connection was taken for granted.”<sup>9</sup>

#### *Mothers’ resistance to share information*

Mothers often act as “gatekeepers,” withholding information about the father’s identity or location. In some cases, the mother does not want the father to be considered as a placement resource or included in decision making, while in others she may be protecting that father from court involvement (e.g., if he has immigration issues, large child support arrearages, or pending criminal matters), or she may simply be ashamed that she is involved in an abuse or neglect proceeding and not want the father or his family to find out. Some mothers also shield their children from their fathers because of a history, on the father’s part, of past child maltreatment, or violent or criminal behavior. Not all fathers have such histories, however.

#### *Fathers’ personal issues*

Fathers also face other barriers in their lives, including poverty, substance abuse, incarceration, or language or literacy barriers:

- **Poverty**—These men are often extremely poor: 20% of nonresident fathers are believed to have incomes below the poverty line.<sup>10</sup> As a result, they may lack a fixed address or phone number where agency staff and attorneys can reach them, and they may find it difficult to afford transportation to meetings, visits, or court appearances.
- **Low literacy**—Many fathers do not understand what is happening to their child because they cannot read or understand notices sent to them by the agency or court, due to illiteracy or lack of fluency in English. Even those who can read and write in English may be intimidated or confused by the unfamiliar legal or child welfare terms in letters or documents they receive.
- **Substance abuse/Criminal history**—Many struggle with current or past substance abuse, or have been charged with misdemeanors or felonies in the past and are afraid of becoming involved with the courts again.

## A Framework for Involving Fathers in Children's Lives

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Despite the potential for positive outcomes when fathers and paternal relations are involved, roadblocks remain. Overcoming these roadblocks takes an organized framework, such as the following from The National Center on Fathers and Families (NCOFF). It is based on practitioners' experiences serving fathers, mothers, children, and families:

1. Fathers care – even if that caring is not shown in conventional ways.
2. Father presence matters – in terms of economic well-being, social support, and child development.
3. Joblessness and unemployment are major barriers to family formation and family involvement.
4. Systemic barriers – in existing approaches to public benefits, child support enforcement, and paternity establishment – create obstacles and disincentives to father involvement.
5. A growing number of young fathers and mothers need additional support (coparenting) to develop the skills to share parenting responsibilities.
6. Transitioning from the role of biological father to committed parent significantly affects the father's own development.
7. The behaviors of young parents, both fathers and mothers, are influenced significantly by intergenerational beliefs and practices within their families of origin.

**Source:** Adapted and reprinted from Merkel-Holguin, Lisa. "Fathers and Their Families: The Untapped Resource for Children Involved in the Child Welfare System." *Child Protection Leader*, September 2003, published by American Humane.





## HOW HAS YOUR DAD BEEN INVOLVED IN YOUR LIFE?

*“He has been supportive of me and gave me advice when I needed it the most.”*

*“He was always in my life until he went to prison.”*

*“He hasn’t been in my life at all.”*

*“My dad tried to get custody while we were in foster care. My father did not get custody of us because he started drinking again. He called us as much as possible”*

*“My dad comes around when he wants something and tells us he loves us and wants to see us more, then leaves at random.”*

*“He has been involved in my spiritual life by helping me get through the hard times.”*

*“He is like my best friend! He is so supportive.”*

*“I don’t know my father.”*

*“He has not really been a part of my life. He says he cares but he doesn’t show it.”*

*“My dad has never really been a part of my life. I met him once when I was 12.”*

*“My dad calls me every Sunday night and he sends me money and I go visit him.”*

- **Incarceration**—Incarcerated fathers are frequently left out of child welfare cases. Like other nonresident fathers, they can contribute greatly to their children’s lives.
- **Uncertain parenting skills**—Fathers who have not been primary caregivers for children before may not feel confident about their parenting skills.
- **Unawareness of children/fatherhood**—Fathers may be unaware that they have children or unsure they are the fathers of particular children.
- **Conflicting domestic relations orders**—It is unclear whether the father can pursue custody in the dependency case because of an existing domestic relations court order awarding the mother custody of the child.

Many of these challenges can be overcome by services the agency should be providing as part of its reasonable efforts requirements (such as an interpreter, vocational training, or housing assistance).

## PRACTICE TIPS FOR CHILDREN’S ATTORNEYS AND ATTORNEY GALs

*“I think that once the state gets involved with children, fathers tend to stay away, so [child advocates] or some other service providers should work on keeping fathers involved with their kids.”*

—Foster youth

As a children’s attorney or GAL, you can ensure fathers engage in the child welfare process and with their children. You are charged with conducting your own investigation and providing counsel to your client and advocating for her wishes or making recommendations to the court about the child’s best interests. You can interview and meet with the child’s father and paternal relatives to assess their interest and ability to participate in the child’s life. Because you represent the child’s interests, you can develop relationships with the child and relatives that other parties may not. Although fathers and others involved with the child welfare system may fear or mistrust attorneys, your child-centric focus may also be less intimidating to the father and his family, making them more apt to work with you. Your role in encouraging a positive father-child relationship should begin early in the case and carry through permanency.



### *Help identify and locate the father.*

Often the agency and court only try to identify and locate missing fathers at the beginning and end of a case. Even if there was an earnest attempt to locate the father early, new information may surface as the case progresses that may make it easier to find him. You can encourage these ongoing efforts. Failing to make ongoing diligent efforts to locate the missing parent is not in the child's interest, and may interfere with achieving the child's wishes.

- It prevents the child from maintaining or establishing an important connection with a parent.
- It may prevent the child from maintaining or establishing connections with paternal relatives.
- It deprives the child, court, and parties of important information about the father's and his relative's capacity to parent or be involved in the child's life.
- It may delay permanency for the child if adoption is the goal if the father is found late or not diligently searched for until the termination stage.

You can help ensure the agency makes reasonable efforts to locate unknown or missing fathers and that the court fulfills its oversight responsibilities by taking these steps:

- Ask the child (if age appropriate) whether she knows her father and where he may be.
- Remind the agency to continue efforts to find the father, and advocate in court (verbally or by motion) that search efforts continue.
- Ask the mother (through her attorney) and other known relatives about the father's whereabouts.
- Work with the Court Appointed Special Advocate or lay GAL (if there is one) to search for the missing father.
- Report your findings to the agency and court to help them locate the missing parent.

### *Encourage the agency to find missing parents.*

Child welfare agencies use various tools to locate missing parents. You can ask the caseworker which avenues were explored and suggest she use new ones to locate the parent, such as:

- Consult the state Department of Revenue or child support agency files.
- Hire a private investigator.
- Check the federal Bureau of Prisons and any state inmate locators.
- Search public records (DMV, social security, courts) through Westlaw or LexisNexis.
- Check the federal Parent Locator Service (see [www.acf.hhs.gov/programs/cse/newhire/](http://www.acf.hhs.gov/programs/cse/newhire/)).

## **IF YOUR FATHER WASN'T INVOLVED IN YOUR LIFE, DID YOU WANT TO KNOW HIM BETTER OR SEE HIM MORE?**

Of the youth who answered this question, 41 said "yes", 40 said "no", and 9 said "maybe" or "I don't know." Some of their explanations appear below.

*"Yes – Because I still love him."*

*"No – I turned out fine without him."*

*"Yes – The system continued to schedule visits with my mom but would not let us have visits with my dad."*

*"Yes – Because it's kinda hard being without a dad and so many things are going wrong."*

*"Yes – I want to feel like I have an actual father. I want to feel like he cares. I want to know my father."*

*"Maybe – I sort of want to see him more and find out how he's been doing."*

*"Yes – I would have liked to have known what he does and the background of his family that way I could better understand my father and that way I could have had a relationship with him."*

*"Yes – Because I would like to have that relationship and NO – because he always cared at the wrong moments."*

*"No, not seeing me was his choice. If he had no desire to see me then his loss."*

*"Yes, he could have taught me things a man needs to know from his father."*

## **Relationships between Fathers and Children in Your Cases**

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If you represent children under a GAL model, you will need to determine what type of relationship with the father you wish to seek for your client. If you represent the child's expressed wishes, the decision is your client's but you still have a responsibility to gather information to help her make an informed decision, provide counsel, and determine what intermediate steps to take regarding the father to achieve her ultimate goals. Under either approach, it is important to reconsider your position or check in with your client to see if her wishes have changed, throughout the case as new information becomes available and circumstances change. Although speaking to your clients about their fathers is detailed later in this publication, the following common issues may arise in your representation whether you represent the child's best interests or the child expressed wishes:

**Identifying and locating the father:** Support finding the father in every child welfare case. You and your client cannot determine what type of contact or relationship would be best without knowing who the father is or his circumstances. Additionally, failing to identify and locate the father can delay permanency later in the case (e.g., if adoption is the goal but the father's rights have never been terminated).

**Gathering complete information:** Perform your own independent investigation about the father and the resources he may provide for his child, rather than relying on the case file, statements from the mother, other relatives, foster parents or caseworkers. To counsel your client properly or make the most informed recommendation to the court, you need accurate, current information. All of these sources could give you a false impression based on outdated, mistaken, or biased information. Remember that even fathers who are incarcerated or have substance abuse issues can provide resources for their children, as discussed later in this brief.



**When a client *doesn't* want contact with her father:** If your client says she does not want to have any contact with her father (or less contact than you think might be beneficial), find out why. She may be basing this decision on incorrect information, or she may be worried about being rejected or let down. Share anything you know that may help her make an informed decision (e.g., steps her father has been taking to be a better parent, reasons he may not have been in contact before). Suggest solutions to emotional concerns (e.g., holding visits in a more comfortable location, having someone she trusts participate in visits, or starting small, such as by exchanging letters or calls, before jumping into visits).

If she is still adamant that she does not want contact, continue sharing relevant information with her and ask about her position throughout the case. Make sure she understands that you may still need to work with the father and his attorney. Ensuring that he is involved in the case may help her achieve her goals, as not respecting the fathers' constitutional rights (p. 21) can delay permanency.

You may represent the child as a GAL and believe a relationship with her father would benefit her, but she is set against it. If you have taken the steps above, follow your state's protocols (e.g., you may need to let the court know about the disagreement and request that an expressed wishes attorney also be provided). (For fathers who are dangerous, deceased or otherwise inappropriate, see the box p. 23 for steps to take to secure additional resources for your client.)

**When a client *wants* contact with her father and you disagree:** Again, it's important to find out your client's reasoning and share any information you have that she may not be aware of. If you represent her under a GAL model be clear that you must advocate what you believe is best and safest for her. Explain why you have reached your position. Follow your state's protocols if you cannot agree. Consider whether your own biases are factoring into your assessment. Depending on your client's age and resourcefulness, she may see her father anyway. The better your relationship with your client, the more she will trust you and the better able you will be to fulfill your role as advisor.<sup>1</sup> Still advise the court of your client's position, even if you disagree, and provide your client the opportunity to attend the hearing when possible.

Also, consider if it could be in the child's interests to advocate for some contact (e.g., letters, phone calls) even if you do not believe visits or placement with the father are safe or appropriate. If you represent the child's expressed wishes, you can still counsel your client about why you are hesitant for her to have contact with her father, and suggest intermediate steps or lower levels of contact, as discussed above.

If your client is directing your representation, ultimately you must advocate for what your client wishes. It's important not to set her up for disappointment, so be honest about how you think the agency and judge will react to your requests.

**Source:**

<sup>1</sup> ABA Model Rule of Professional Conduct 2.1 (stating that "in representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors that may be relevant to the client's situation.")



- Ask the court to require the agency to use family-finding strategies.<sup>11</sup>
- Use online people search engines, such as:
  - » Peopleprofileusa.com
  - » usatrace.com (search by name and social security number)
  - » People-data.com
  - » Social Security Death Index
  - » Reunitetonight.com
  - » Myfamily.com
  - » Intelius.com

If appropriate, you may choose to do some searches yourself. These may include:

- Ask the mother, other relatives, and the child about the father's identity and location.<sup>12</sup>
- Consult the phone book.
- Review the agency's file for details that could lead to the father or other information sources.
- Send a letter to the father's last known address and to any of his relatives.

When an alleged or putative father is found, encourage swift resolution of paternity questions. Paternity testing can take a long time and delay case progress. Reminding the court, agency, and alleged father's attorney to request expedited results will help the child maintain or establish contact with his father and speed permanency. Asking the court to have the agency pay for the testing, rather than requiring the father to pay, particularly if he is indigent also helps speed the process.

*Assess whether the father could be a placement or other resource for the child.*

***“The people around children play a very significant part in their life. If the father is stable and willing to have a relationship with their child then [child advocates should] push visitation or placement forward.”***

–Foster youth

You may speak with the father with the assistance/permission of his counsel about his interest in visitation or custody. Be clear about your role in the case and how it differs from the agency caseworker's and explain the reason for meeting. In any direct interactions you have with the father, be clear that you cannot provide legal advice, and be careful not to promise anything you will not be able to deliver.<sup>13</sup>

Attempt contact with the father as early as possible to move the case along and limit the time the child remains in out-of-home care. If the father can't take or doesn't want custody, assess how he can still be a resource and provide support to his child. In cases involving children with multiple fathers, assess each father's capacity to parent, and ensure the agency is including each father in case planning and offering him appropriate services.

## The Dimensions of Effective Fathering

According to a 2006 U.S. Children's Bureau report, "research suggests seven dimensions of effective fathering:

- Fostering a positive relationship with the children's mother
- Spending time with children
- Nurturing children
- Disciplining children appropriately
- Serving as a guide to the outside world
- Protecting and providing
- Serving as a positive role model."

The report goes on to say that a good father does not necessarily achieve all of these things, but succeeding in many of these categories will help fathers serve their children well. Fathers whose children are involved in the child welfare system can meet all of these criteria for effective fathering, but may need additional services or resources.

**Source:** Rosenberg J. and W.B. Wilcox. "The Importance of Fathers in the Healthy Development of Children." Washington, DC: Office on Child Abuse Neglect, Children's Bureau/ACYF, 2006. Available at [www.childwelfare.gov/pubs/usermanuals/fatherhood/](http://www.childwelfare.gov/pubs/usermanuals/fatherhood/).

The information children's attorneys and GALs obtain about the father depends on the different circumstances of each case, and depending on the circumstances, you may wish to work through the father's attorney (if he has one) or to obtain his attorney's permission to interact directly with the father.

*Fathers who want to be custodial caregivers.* When assessing the father's interest and capacity to be the child's **caregiver**, you may want to find out:

- What he wants for his child's future and how he fits into that picture.
- How the child feels about living with her father.
- What the father's home is like (to get a sense for where the child may live and if you believe it is in the child's interest, or if there are issues you need to counsel her about). Respect the father's cultural background and economic status, recognizing that although his home and daily activities may differ from the child's foster home or custodial parent, they can still benefit the child.
- Whether the father currently or previously cared for the child or other children.
- About the father's daily routine, employment, and family and friend resources.
- About the father's child care options and his plans for the child's education, and physical and mental health care.
- How the father provides support to the child (e.g., gifts, phone calls, letters, recreational activities, involvement in school or medical appointments, etc.).
- How visits have gone (with permission, you may wish to observe a visit).

## Communicating with Fathers and Other Parties

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Dependency cases involve many parties. Depending on state law, these parties may or may not be entitled to an attorney. The ability to competently represent a child is impacted by ABA Model Rule of Professional Conduct (MR) 4.2, which expressly states, “a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer....” The exceptions are when (1) the lawyer has received consent of the other lawyer authorizing such communication, or (2) the lawyer is authorized by law or a court order to communicate with the represented party. Thus, MR 4.2 potentially complicates representation by making it difficult for a child’s attorney to easily obtain all information she needs to counsel her client or make decisions about the representation.

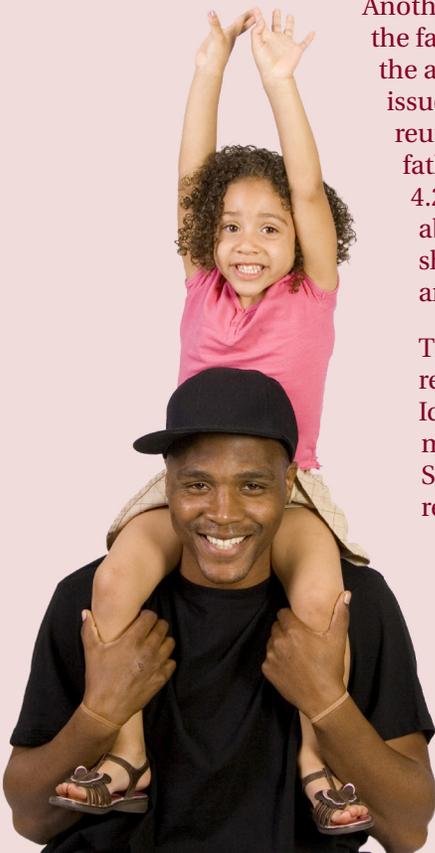
What is the best way to comply with ethics rules? Comment 4 to MR 4.2 clarifies that an attorney may communicate with a represented party about matters “outside the representation,” including those things that are “administrative” in nature, such as setting up a home visit. However, keep in mind that asking a father to share how the child has been handling visits, or what his plans are for child care if he is being considered as a primary caretaker goes beyond “administrative” and directly relates to the “subject of representation.”

### SPEAKING TO REPRESENTED PARENTS

Under the first exception to MR 4.2, the child’s attorney should seek permission from the father’s attorney to observe visitation and/or speak with the father outside the presence of his attorney. Even if the father volunteers that he is happy to meet and speak with you about anything, confirm this with his attorney. If the attorney does not permit you to speak with the father, you should still perform a home visit if the father is being considered as a placement, but take care not to discuss any substantive matters with the father while you are in his home.

Another option is to ask the father’s attorney to allow you to speak with the father in his attorney’s presence. If this approach is not acceptable to the attorney and you are preparing for a hearing at which substantive issues – such as case closure, additional treatment or services, or ongoing reunification – are being discussed, you may have to move to depose the father to learn his position. Alternatively, under the second exception to MR 4.2, you could request a court order to observe a visit or speak with a father about specific issues. Setting a deposition or requesting a court order should be pursued only when efforts to work out a mutually agreeable arrangement with the father’s attorney have failed.

The father should be advised by his lawyer that the child’s attorney may report any child abuse or neglect she observes or becomes aware of. Ideally, if an agreement to speak with the father or observe visitation is made, the child’s lawyer should not be alone with the father and child. Someone else (e.g., social worker, case manager, therapist) should also be required to report abuse and serve as a witness if abuse occurs.



## SPEAKING TO UNREPRESENTED PARENTS

In most jurisdictions, an indigent parent has a right to court-appointed counsel. When a parent does not meet the financial threshold for indigence, the parent often proceeds pro se. Noncustodial fathers may be less likely to receive attorneys since they are often nonoffending and therefore not the subject of the dependency petition.

This is a challenging area for children’s attorneys. You will need to speak with all relevant parties, but with the many parties and participants in a dependency case, a father can easily misconstrue your role and intentions. MR 4.3 directs attorneys regarding interactions with those who are not represented by counsel. Put simply, an attorney may not state or imply to the unrepresented party that they (the attorney) are without bias. If the attorney knows, or reasonably should know, the unrepresented father misunderstands the attorney’s role, she must make reasonable efforts to correct the misunderstanding. Avoid this issue from the outset by clearly and succinctly explaining at the first meeting your role vis-à-vis the child. Explain that you do not represent the father; however, sometimes the position of the child and the parent are the same (i.e., when a child’s attorney is advocating placement/unification with the father). Explain that any information the father provides you is not confidential. MR 4.3 states the only legal advice an attorney may give to an unrepresented party is to “get a lawyer.”

## SPEAKING TO A CHILD PROTECTION AGENCY CASEWORKER OR SUPERVISOR

In a typical dependency case the agency’s case manager makes referrals to services, speaks with the parents, relatives, service providers, etc. It is also typical for the agency to be represented by an attorney in a dependency proceeding as they are a party to the case. Often, a child’s attorney will come to rely on the information provided by the case manager about the parent’s compliance with services, treatment and service provision, and other case-related matters. Again, you need to confirm with the agency attorney that you would like to communicate with the case manager about the specifics of the case, not just “administrative” matters. Even if the agency attorney grants such access to her client, effective and ethical representation of your client requires that you confirm information provided by the case manager by collecting information independently.

**Source:** Adapted from Maze, Candice. *Advocating for Very Young Children in Dependency Proceedings: The Hallmarks of Effective, Ethical Representation*. Washington DC: ABA Center on Children and the Law, 2010.



If the father lacks counsel, ensure the agency is providing him the support and services he needs to be a resource to his child. If he is represented, you should support his attorney's efforts to do so. For example, if he has not parented before, it may help him to voluntarily participate in a parenting class or fathers support group. You can help by suggesting to the agency or to the father's attorney that he be enrolled in a class or group that matches his needs and will help him parent his child. For example, if the child is a teenager, the father should participate in a class targeted toward parenting adolescents rather than infants. The class or group should also be gender-specific and help the father address the child's history of abuse or neglect. The father may gain less from the experience if it is geared toward mothers and female learning styles. (For more on male help-seeking behavior, see *Recognize that fathers learn and seek help differently than mothers*, p. 25.)

*Fathers who have not expressed interest in being custodial caregivers.* When a father has not expressed interest in becoming a custodian for his child, ensure the caseworker has discussed the reasons with him. If he is capable, but reluctant, the worker should explore whether perceived barriers can be overcome. In some instances, these barriers are outside his control (e.g., agency failure to include him in permanency planning, inadequate housing) and may be overcome through advocacy by his attorney (with your support if you are arguing for a continued father-child relationship). For fathers who have never been custodial parents, or who suffered family traumas when they were children, a lack of confidence in their parenting ability may need to be addressed through counseling, mentorship, and/or parenting classes.

## Parenting Abused or Neglected Children

A nonresident father who seeks custody or a continued relationship with his child should know how to respond to an abused or neglected child. A parenting class or fatherhood group that provides individualized assistance can be effective in preparing fathers.

- **If the child has been sexually abused**, the father will need to be modest around the child and respect the child's privacy, particularly when bathing.
- **If the child was neglected**, the father should create a reliable schedule with frequent adult attention.
- **If the mother was the perpetrator**, the father should also be prepared to address the child's feelings of abandonment and betrayal towards the father.
- **If the child feels the father did not protect her from the abuse**, the father should be prepared to address this concern appropriately.

**Source:** Rosenberg, J. and W.B. Wilcox. "The Importance of Fathers in the Healthy Development of Children." Washington, DC: Office on Child Abuse and Neglect, U.S. Children's Bureau, 2006.

Unlike other parties to the case, the father may lack counsel. If an attorney is not appointed for a father, be vigilant about ensuring the court and agency involve him in the case, notify him of meetings and hearings, offer him services, and make his position known so informed decisions can be made about the child. As discussed above, be clear that you do not represent the father and cannot give him legal advice. Follow your state's ethical guidelines for dealing with unrepresented parents and/or parties.



*Fathers who live out of state.* If the father lives out of state, he may face another barrier to reunification with his child. Many states interpret the Interstate Compact on the Placement of Children (ICPC) to apply to out-of-state parents. If your jurisdiction is one of them, the father must submit to a home study before placement, which may take months to complete. You can help speed this process by urging the child welfare agency to quickly send all pertinent information to the father's home state and then contacting the ICPC representative in the receiving state to request an immediate home study be conducted. Consider also recommending that the court order an expedited ICPC. Even before the home study has been completed, the ICPC allows children to have extended visits with out-of-state parents. If the father is being considered as a placement option, these visits can be an important step. ICPC delays can be devastating for children and their prospective caregivers. For additional practice tips on expediting the process, see:

- Sankaran, Vivek S. "Navigating the Interstate Compact on the Placement of Children: Advocacy Tips for Child Welfare Attorneys." *ABA Child Law Practice* 27(3), May 2008, 33.
- Sankaran, Vivek S. "Out of State and Out of Luck: The Treatment of Non-Custodial Parents under the Interstate Compact on the Placement of Children." *Yale Law & Policy Review* 25, Fall 2006, 63.
- Fiermonte, Cecilia. "Interstate Placements: Applying the ICPC." *ABA Child Law Practice* 21(5), July 2002, 65.

Roles for fathers who are not seeking to become custodial parents. Sometimes it may not be feasible or appropriate for the father to be the child's custodial parent. This does not mean, however, that he cannot maintain a relationship with and be a resource for the child. Even if the father is incarcerated, he can still write to the child, speak with her by phone, or possibly see her at prison visiting times (particularly if the facility has a family-friendly visiting room). A father struggling with other issues like substance abuse or mental health issues may also be a resource to his child. With guidance from service and therapeutic providers, the father and child can maintain a healthy connection with proper supports and supervision. In all instances, the father can be an important link to his relatives, culture, and family medical and other history. The father can also provide the child with another valuable adult connection and the understanding that she has family who cares about her.

When assessing the father's willingness and ability to be a **nonplacement resource** you may want to find out:

- what type of relationship the child would like with her father;
- ways the father and his relatives are interested in staying connected, such as:
  - » calling the child
  - » writing letters
  - » participating in recreational activities
  - » attending school or medical appointments
  - » sending gifts or cards
  - » sending e-mail

## WHAT DO YOU WISH HAD BEEN DONE DIFFERENTLY BY YOUR CASA, LAWYER, OR JUDGE SO YOU COULD HAVE HAD A BETTER RELATIONSHIP WITH YOUR FATHER?

*"Let him be involved in my life."*

*"Worked harder to keep contact."*

*"I wish that my lawyer and worker would have explained to me about why he left."*

*"I wish they'd made him come to my court dates and made us have visits."*

*"Just to ask him what he did as a child with his parents."*

*"More unsupervised visits and overnight visits."*

*"I wish my lawyer would have done a background check and done a thorough search so I could have known my dad."*

*"Try to find him."*

*"Contact me more with him and allow visitation."*

## Services Checklist for Fathers

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Become familiar with available services for children and parents in your area. You can recommend these services to the father's attorney, caseworker, or the court. Understanding what is available in your community will help you determine whether the agency is offering parents appropriate services and making reasonable efforts to reunify your client with her family. The services the agency provides or refers the father to need to take into account where the father lives, whether he will be able to access the service by public transportation, and whether services are offered at times that do not conflict with his work schedule or other court-ordered appointments. Services that may benefit a father include:

- job training
- housing assistance
- parenting classes (basic skills and skills specific to the needs of the child)
- help procuring state and/or federal benefits for himself and/or the child, including food stamps

Other fathers may need:

- substance abuse counseling, including Alcoholics Anonymous or Narcotics Anonymous
- mental health services, including counseling and psychiatric assistance
- referrals to low-cost or pro bono legal services for matters other than the dependency proceeding, such as housing or immigration
- health education (e.g., training from a public health nurse) regarding caring for a child's medical conditions
- a translator, if he is not fluent in English, or help reading or filling out forms or documents if he has literacy challenges

**Source:** Cohen, Andrew L. "Representing Nonresident Fathers in Dependency Cases." In Ch. 4, *Advocating for Nonresident Fathers in Child Welfare Court Cases*, Washington, DC: ABA Center on Children and the Law, 2009. Available at [www.fatherhoodqc.org/chapter4.pdf](http://www.fatherhoodqc.org/chapter4.pdf).



The father may lack counsel during the court process, so you can be an important link to ensure the father is engaged. When determining what the agency and court can do to ensure your client is able to establish or maintain a healthy relationship with her father, consider advocating for:

- concurrent planning to include reunification with the father;
- increased visitation for the father in the least-restrictive setting feasible, taking into account the child's safety (i.e., unsupervised or monitored<sup>14</sup> by a caseworker or relative);
- increased support (services or other assistance) for the father seeking custody or to be a positive support in the child's life. (e.g., housing assistance, child care, or help enrolling the child in school).

### **Fathers' Legal Rights in Child Welfare Cases**

Assuming the father has established himself as the legal father of the child, according to your state's requirements, during the child welfare court process, he has the right to:

- notice of proceedings;
- attend and be heard at court proceedings;
- admit or deny allegations made against him;
- an interpreter if he doesn't understand English or is hearing impaired;
- visit his child, unless there are safety concerns or it would harm the child;
- have the child welfare agency make reasonable efforts to reunify him with his child.

Many states also give nonresident fathers the right to a court-appointed attorney, if he cannot afford one.

#### ***Remember paternal relatives.***

A child's father and his relatives represent half of her family. Federal law encourages placing children with relatives.<sup>15</sup> In fact, the federal Fostering Connections to Success and Increasing Adoptions Act of 2008 (Fostering Connections) promotes relative involvement in cases by:<sup>16</sup>

- requiring notice to relatives when children first enter care;
- providing federal funding to states that create permanent guardianship programs for relatives; and
- allowing waivers for non-safety related foster home licensing standards for relatives (e.g., if the home doesn't meet strict square footage requirements).



## WHAT DO YOU THINK CHILDREN’S LAWYERS OR GALs NEED TO KNOW ABOUT KIDS IN FOSTER CARE AND THEIR FATHERS?

*“If possible let them see them so they don’t think that they don’t love them anymore.”*

*“Help them be the best they can on an individual basis.”*

*“That every father deserves to be involved in their child’s life.”*

*“We have just as much of a bond with our fathers as we do our mothers. My father wanted to be in our lives but was not given very many opportunities.”*

*“Judge one by one – not all together.”*

*“Sometimes the father doesn’t know what’s best.”*

*“That it’s not always as it seems.”*

*“Some are good, some are bad – there just needs to be more of an investigation.”*

*“That a real father can never be replaced no matter what—meaning kids long for their father.”*

Using relative caregivers preserves the extended family, allows the child to remain connected with siblings, and reduces the trauma that children experience when separated from their parents.<sup>17</sup> It also helps the child navigate the foster care system with a sense of belonging to biological family and a connection to her culture and background. Knowing about family on both sides can also help you understand family health history, which may be useful in assessing the child’s physical and mental health issues.

Ensure that caseworkers looking for missing fathers also search for the father’s relatives and ask the mother, child, and maternal relatives about the paternal family. When the father is located, the caseworker should ask about his family resources and assess the child’s relationships with them. If you are not satisfied with the caseworker’s investigation or disagree with her findings, consider contacting paternal relatives directly, in cooperation with the father’s attorney if appropriate. You may want to assess relatives’:

- relationship to the child or their interest in having a relationship with the child (if no relationship or contact, ask why and help overcome barriers, where appropriate);
- ability to be a placement resource (explore their child care options, parenting experiences, employment, other children or adults in the home, and contact and relationship with biological parents);
- ability to be a nonplacement resource (explore their ability to visit with the child regularly, participate in planning meetings, spend time with or host the child on holidays and other family celebrations, provide regular child care or respite care, maintain contact with the child by phone or e-mail, coordinate recreational events for the child, etc.).

Based on your investigation, you may ask in court that paternal relatives:

- regularly visit the child;
- be notified of and participate in court hearings (citing the Fostering Connections Act);
- participate in agency case meetings and family group decision-making conferences;
- become a kinship caregiver/guardian for the child under a concurrent goal of reunification and guardianship or as a sole permanency option as guardian;
- receive supportive services (such as child care vouchers or housing assistance) to become a kinship caregiver for the child;
- host the child during holidays or family gatherings/celebrations or provide regular child care or respite care.

## Your Role When Fathers Cannot or Should Not Have Contact

Although children benefit from some contact with their father, in most cases there will be situations where contact will not be in the interests of the child, or the child does not want contact with her father. Or, the father may be deceased, unwilling to be in touch with the child, or cannot be found despite diligent efforts. In these cases, try and gather information about the father and his family and ensure it is included in the child's case file and shared with the child's caregivers and child as appropriate. Relevant information could include:

**family medical history** (so the child and her caregivers know of any conditions she may be at risk for);

**information about benefits** the father might be (or was) entitled to that could pass to the child (e.g., social security, worker's compensation, and inheritance of the father's assets), and any identifying information needed to claim those benefits, such as name, social security number, or birth date. The law varies on whether different benefits survive termination of parental rights, and how they apply to children of unmarried, nonresident fathers, so ask a colleague specializing in this area if necessary;

**father's contact information**, which may include his address, phone number, cell phone number, workplace, and similar information for his relatives so the child or caretaker can reach him in the future;

**picture of the father and information** about his work, interests, hobbies, etc. (e.g., in the case of a deceased father whose child might one day want to know more about him).

### *Talk to the child.*

Often child welfare caseworkers, attorneys, and others working in the system hesitate to ask the child about his family history and connections, fearing it will be emotionally difficult for the child to discuss his past and therefore his family. Many times, however, these fears are exaggerated and what children and youth have experienced before entering the system does not affect their ability to have general conversations about their family, particularly about family members who were not a part of the abuse or neglect history, such as cousins, aunts, uncles, grandparents, and often the nonresident father.

If the child is old enough to carry on a conversation, meet with him and ask about his extended family. It may surprise you how much the child knows and is able to share about family that will inform decisions about placement and resources. When meeting with the child, ask the child questions in an age-appropriate way.

- **Ask about the child's father:**

- » How often do you see your father?
- » Do you speak on the phone?
- » Does he send you mail?
- » What do you do together?
- » Have you stayed at your father's house before?
- » Have you lived with him before?
- » Would you like to see him now? Why or why not?
- » (If the father is missing) When did you see him last? Do you know where he lives or have his phone number? Can you describe what he looks like? Do you know where he works or spends time?

If the child says she does not want to see or contact her father, ask why and try to find out the source of any negative information (e.g., if she says her father does not want to see her, find out who told her that). It may help dispel any misconceptions she may have about him. The child may not know why she hasn't heard from or seen her father or may have been told things about him that are not true. Providing as much accurate information about her father's situation as possible can help her make an informed decision about contact.

If a child is adamant that she not maintain contact with her father and you agree it is not in her interest, tell the child you would still like to contact the father for information that may be useful to the child later in life or if she chooses to resume contact. (For a youth who is seeing a therapist, counselor, or other mental health professional, the decision to resume contact should be made in consultation with that professional.) Obtaining medical histories from the father and his relatives may be useful later if the child has any medical problems. Obtaining the father's contact information will also allow the child to reach him in the future and get information from him about his relatives to explore all support and placement options for her.

- **Ask about the child's maternal and paternal relatives:**

- » Do you know your grandmother/grandfather, aunts/uncles, cousins, etc. on your father's side of the family?
- » How often do you see them?
- » Do you talk on the phone or do they send you mail?
- » What do you do with them?
- » Have you ever lived with them or stayed at their houses before?
- » Would you like to see them now? Why or why not?
- » Do you know their full names and do you have their contact information?

The child should know why information is being gathered about her relatives and you should be careful not to set up false expectations. The child has a right to know you are gathering information about her family to assess their abilities to participate in the case, but be clear that you do not know where the information will lead.

If age appropriate, consider learning about family members by drawing a family tree with the child. Bring two copies of a family tree form to your meeting and fill them out together. Let the child keep one tree and you keep the other to continue your investigation. There are numerous genealogy programs on the Internet. For examples, visit:

- [http://genealogy.about.com/od/free\\_charts/ig/genealogy\\_charts/family\\_tree.htm](http://genealogy.about.com/od/free_charts/ig/genealogy_charts/family_tree.htm)
- [www.genopro.com](http://www.genopro.com)

*Recognize that fathers learn and seek help differently than mothers.<sup>18</sup>*

***“Our research really bashes the stereotype of the low-income father. These fathers care about their kids, but may not show their love in conventional ways and sometimes a lack of a job, poor communication with the mom, or even their own childhood experiences can prevent them from getting involved.”***

*-Dr. Michael Lamb<sup>19</sup>*

Historically, the child welfare system has worked more with mothers than fathers. More caseworkers are women than men. Services are often geared towards women's learning styles, using group therapeutic interventions that stress emotional discovery. They often overlook how men seek assistance or learn: in fact they may isolate and inhibit male participants.

Follow these tips when interacting with fathers and male paternal relatives:

*Encourage the caseworker to offer the father services that respond to male learning styles.* Doing so will maximize the father's experience, increase learning, and ultimately benefit his relationship with his child. Keep in mind:

- Men are less likely to seek help than women. Even calling a service, or your assistance, “help” may deter the father from engaging in the process because he may view seeking help as a sign of weakness.
- Identify services that are informational and provide concrete practical guidance.
- Don't dwell on emotional disclosures or how the father is feeling when you meet with him. Discussions should be action oriented and focus on planning for the future and resolving problems.
- Participating in services, such as parenting classes or counseling, should normalize the father's experiences. If the father feels others share his experience he is more likely to engage and seek help.

## How and When Fathers Want Help: What the Research Says

by Mark Kiselica, Ph.D., Vice Provost and Professor of Counselor Education, The College of New Jersey and National Advisory Board Member, QIC NRF

Little research focuses on how and when fathers involved with the child welfare system seek help. However, a body of research shows adolescent and young adult fathers – a population that is separate but overlaps with fathers in the child welfare system – want assistance and would use it if offered in a male-friendly manner.

Teen fathers want emotional support during the transition to fatherhood. They also seek information, practical help, and counseling to address problems with their partners, families, and communities.<sup>1</sup> The most frequently requested services include:

- job referrals
- vocational education
- job readiness
- parenting education
- GED classes
- legal advice about paternity establishment and child support orders
- medical treatment
- mental health counseling
- relationship counseling
- child care assistance<sup>2</sup>

Furthermore, they believe a good father provides for his children in a consistent, dedicated manner. They emphasize that being a caring father involves focusing on one's family, being there for one's child and partner, taking care of responsibilities, and showing love.<sup>3</sup>

You can help fathers be better parents to their children by connecting them to the services and supports discussed above, and ensuring their attempts to be good fathers are recognized by caseworkers and the courts, and shared with their children.

### Sources:

<sup>1</sup> Hendricks, L.E. "Outreach with Teenage Fathers: A Preliminary Report on Three Ethnic Groups." *Adolescence* 23(91), 1988, 711-720; Kost, K.A. "The Effects of Support on the Economic Well-being of Young Fathers." *Families in Society* 78, 1997, 370-382.

<sup>2</sup> Rhein, L.H. et al. "Teen Father Participation in Child Rearing: Family Perspectives." *Journal of Adolescent Health* 21, 1997, 244-252; see also Weinman, M., R.S. Buzi, and P.B. Smith. "Addressing Risk Behaviors, Service Needs, and Mental Health Issues in Programs for Young Fathers." *Families in Society: The Journal of Contemporary Social Services* 86(2), 2005 261-266.

<sup>3</sup> Allen, W.D. and W.J. Doherty. "Being There: The Perception of Fatherhood among a Group of African-American Adolescent Fathers." In McCubbin, H.I. et al. (Eds.). *Resiliency in African-American Families*. Thousand Oaks, CA: Sage, 1998, 207-244; see also Hernandez, R. *Fatherwork in the Crossfire: Chicano Teen Fathers Struggling to Take Care of Business*, (Report No. JSRI-WP-58). East Lansing, MI: Michigan State University, Julian Samora Research Institute, 2002.



### *Avoid negative biases about fathers.*

Avoid the knee-jerk reaction that if the father is absent he is irresponsible or neglectful.<sup>20</sup> Do not assume that he doesn't care about his child if he misses court or agency meetings. Continue to conduct a thorough investigation of all the child's potential placement and resource options, gathering information about the father and his relatives and meeting him and his family to discuss their positions. You may learn the father does not fit the stereotype of a man unconcerned about his child, but other barriers or fears have prevented him from being involved in his child's life or court case. You may learn he has the capacity to be a strong support for his child. Being open minded about the father and his desire to play a role in his child's life can lead to a positive outcome.

### *Recognize gender differences.*

If you are speaking directly with the father, recognize that he may hesitate to engage with a female attorney more than with a male attorney. Create a more comfortable environment by validating the father's involvement and experiences with the child. Consider sharing a little about your life and experiences. Recognize the father may also be strongly influenced by traditional gender roles and feel his duty is to protect and provide. Support these notions by helping him identify and implement approaches to support the child.

### *Focus on strengths.*

While the case file, mother, or caseworker may be quick to highlight the father's shortcomings, getting a true picture of his strengths may require more independent investigation. Ask the father (through his attorney if necessary) how he thinks he can benefit his child. Be sure to consider efforts or progress he is making, from large accomplishments, like completing a substance abuse program, to smaller involvement, like attending doctor appointments or a basketball game with his child. When appropriate, share this information with your client.

## **Learning Styles/Help-Seeking Differences**

Men and women interact, learn, and seek help differently from one another. These differences should not cloud your objective assessment of the father's interests, capacity, or the child's best interests. Remember this when assessing (or considering reports from others about) visits, the father's actions, appropriate services for the father, or his compliance with services. Men are often:

- action-oriented;
- future-focused;
- less likely to seek help;
- unlikely to dwell on emotions;
- more likely to engage in physical play with children (which helps children regulate feelings and behaviors better, and teaches them self-control);
- sensitive to power and respect issues (i.e., make sure he understands your role as advocating for what is best for his child).

**Sources:** Rosenberg and Wilcox, citing Parke, R.D. et al. "Fathers' Contributions to Children's Peer Relationships." In Tamis-LeMonda, C.S. and N. Cabrera (Eds.), *Handbook of Father Involvement: Multidisciplinary Perspectives*. Mahwah, NJ: Erlbaum, 2002, 141–167; Parke, R.D. and M.E. Lamb. "Infant-Father Attachments and their Impact on Child Development." In Tamis-LeMonda, C. S. and N. Cabrera (Eds.), *Handbook of Father Involvement: Multidisciplinary Perspectives*. Mahwah, NJ: Erlbaum, 2002, 199.

*Try to engage incarcerated fathers.*

***“...maintaining relationships with their parents during incarceration can improve the lives of children, and yet too often our policies have failed to support these relationships.”***

—Attorney General Eric Holder, Atlanta, GA, December 15, 2009

***“While ‘use a gun, go to prison’ may well be an appropriate legal maxim, ‘go to prison, lose your child’ is not.”***

—*In re Brittany S.*, 17 Cal. App. 4th 1399, 1402 (Ct. App. 1993).

More than 1.5 million American children have parents in prison and many of these children are also in the foster care system.<sup>21</sup> One study found as many as one in five foster children have a parent in prison.<sup>22</sup> Foster children often struggle with mental and physical health problems, learning disabilities, and aggression. Children of incarcerated parents face similar obstacles. When combined, these experiences decrease the likelihood of a child’s future success. The child welfare system often ignores incarcerated fathers or the value they may add to their children’s lives.

Incarcerated parents can have a positive impact on their children, safely maintain connections, and offer support in many ways. For example, one study found that when an incarcerated parent maintains contact with their child it supports the parent-child attachment and improves the child’s response to incarceration.<sup>23</sup> Anecdotal studies also show the frequency of phone calls between parent and child significantly predicts the quality of their relationship.<sup>24</sup> An October 2007 literature review on children with incarcerated parents found “the majority of families participating in research surveys indicate that children want and need to see their incarcerated parents and support the idea of children visiting . . .”<sup>25</sup>

Most incarcerated fathers leave prison and reintegrate into their families and society. In fact, approximately 700,000 people return to their communities from prison every year. Attorneys should not let the child welfare system or court ignore incarcerated fathers. During their incarceration, fathers can provide important information about the child’s medical and social history, suggest relatives who can be placement or other resources, and maintain a relationship with the child. This gives the child an additional adult connection, and helps identify people who care about the child. After release, fathers may be placement resources, enrich the child’s life with frequent visits, or provide financial or emotional support. Learn about the father’s situation and his relationship to his child before incarceration, and find out how much contact he has had with his child from the correctional facility. Identify positive ways the father can continue to interact with his child.

Upon learning the child’s father is incarcerated, take the following steps:

*Learn the father’s position.* Contact the father through his counsel (or directly if he is unrepresented). Discuss what he hopes will happen for his child through the child welfare case and what level of contact he is interested in having. Also ask about the father’s relatives and their relationship with the child. In situations where the father may be released during the case and may be a permanency option, or where paternal relatives are or could be placement resources you may need to communicate with the father frequently. Contacting

incarcerated fathers can be difficult. The father's attorney may help foster communication, or the prison may have a caseworker, chaplain, or other person who may be able to help. Recognize the father's ability to make outgoing phone calls may be limited, so do not take unreturned calls as a sign that the father is not interested. Setting a specific time for a phone call with the prison in advance may help, and if phone contact is not possible (or for ongoing contact throughout the case), consider writing the father letters and including self-addressed, stamped envelopes for his replies. (Try to confirm in advance that the father is able to read and write.) For more information on communicating with represented or unrepresented fathers, see box above.

*Encourage positive contact between the father and child.* If age appropriate, ask the child if she would like to maintain contact with her father, which may include writing or receiving phone calls or letters. Also encourage the caseworker to contact the prison to learn if visiting facilities are available and whether they offer touch visits that are child-friendly. The caseworker should ask whether the prison uses new technologies, such as videoconferencing, to aide contact between inmates and family (as some locales have started to do) or if the facility will allow the father to have a tape recorder so he can read books to the child via tape or speak to the child. These may be good solutions for maintaining contact if the father is in prison out of state or the prison restricts child visits.

The caseworker can also ask whether the father can communicate by phone or mail, and if anything can be done to address barriers to such communication. This may include talking with the child's caretaker about accepting collect calls from the prison. If the caseworker has not done these things, contact the prison directly to ask about its capacity to host visits. If concerns remain about in-person contact, discuss them with the caseworker and mental health provider to determine whether visits should occur and under what circumstances.

*Ask the agency to develop case plan goals for the father.* Even if the father is incarcerated, the agency must assess his capacity to parent his child and offer him assistance to gain custody or support his child. Many correctional facilities offer classes to help fathers become better resources for their children, such as parenting classes, literacy assistance, or vocational training. Remind the agency to work with the prison to set realistic goals and offer case-appropriate supports to the father so he has tools to engage with his child while incarcerated and after. Attorneys and agency caseworkers must also be sensitive to restrictions that may prevent fathers from participating in services or court hearings (such as the father having a conflicting work assignment at his facility, or lacking necessary "privileges"). Encourage the agency to work with the father and correctional staff to address these issues.

Fathers in other types of residential facilities (e.g., an inpatient mental health center) should also be engaged in the case, to the extent possible. Modify the steps outlined above to fit his situation.

### *Understand how substance abuse affects fathering.*

Many child abuse and neglect cases involve substance abuse allegations.<sup>26</sup> If the case file shows the father has or had substance abuse issues, several things must be determined to understand how this will impact the child. First, is the problem current? A father who is currently drug-free and committed to staying drug-free is as able to care for his child as any other parent. Determining how

long the father has been in recovery and what steps he is taking to maintain his sobriety (e.g., attending support group meetings, keeping in touch with a sponsor or counselor), can help you determine if the agency should be providing additional support or services to the father.

For fathers with current substance abuse problems, appropriate services should be offered as part of the case plan. Recognize that chronic substance abuse can take a year or more to truly address. It is essential that the father receive services that meet his needs immediately. Also understand that relapse is part of recovery and does not mean the father is not trying or does not want to overcome his problem. Timelines in federal law may lead the agency to move for termination of parental rights even if the father is doing all he can to complete a recovery program promptly.<sup>27</sup> Placing the child with a relative caregiver early in the case can ease this time pressure and preserve the father-child relationship. Fathers working through substance abuse issues should still have contact with their children (as appropriate and recommended by the recovery program), as this can increase their motivation to overcome their issues. It also helps the children feel connected to their fathers and maintain that important parental relationship.

## Substance Abuse Resources

Sanders, Mark. "Fatherhood and Recovery." *The Source* 19(1), Spring 2009, 14-16, available at <http://aia.berkeley.edu/media/pdf/TheSourceSpring09.pdf>.

Breshears, E.M., S. Yeh, and N.K. Young. "Understanding Substance Abuse and Facilitating Recovery: A Guide for Child Welfare Workers." Rockville, MD: U.S. Department of Health and Human Services Substance Abuse and Mental Health Services Administration, 2004, available at [www.ncsacw.samhsa.gov/files/UnderstandingSAGuide.pdf](http://www.ncsacw.samhsa.gov/files/UnderstandingSAGuide.pdf).

Young, N.K. et al. "Screening and Assessment for Family Engagement, Retention, and Recovery (SAFERR)." DHHS Pub. No. (SMA) 07-4261. Rockville, MD: Substance Abuse and Mental Health Services Administration, 2007, available at [www.ncsacw.samhsa.gov/files/SAFERR.pdf](http://www.ncsacw.samhsa.gov/files/SAFERR.pdf).

Finally, if the father denies having a substance abuse problem and there is no evidence to the contrary (e.g., drug-related criminal convictions, failed drug screenings), find out why the caseworker or other parties believe he has a problem. Sometimes speculation or allegations by people involved with a family (including those with competing interests) make it into a case file without much context. As time goes on and caseworkers change, incorrect information can end up as longstanding fact.

Advocate for including the father and paternal relatives in case planning and family group decision-making conferences.

Critical decisions are made about service delivery and permanency options for children and families at agency case planning meetings and family group decision-making conferences (FGDM).<sup>28</sup> These informal settings allow parties to have an in-depth dialogue about the family's needs and how to overcome barriers.

FGDM is a promising practice that is being used throughout the country. One of its core principles is including extended family in decision-making processes that affect children and families in the child welfare system.<sup>29</sup> It can also be used to help locate and engage fathers and paternal relatives. If the father or his family is not at the case-planning meeting or FGDM, encourage the agency to solicit information from participants about the father's and paternal relatives' whereabouts to assure they are found and can participate in future meetings. Maternal relatives, who may not have been previously interviewed, may have useful identifying information about the child's paternal kin.

By allowing the family private time to develop a plan for the child and family, FGDM gives fathers and their relatives a chance to make meaningful commitments and contributions to their child's life. The process also helps parties identify the child's potential formal and informal support systems. Excluding the father and his family from these meetings limits options and supports for the child.<sup>30</sup> When participating in case-planning meetings or FGDM conferences, advocate that:

- fathers and paternal relatives be invited to participate;
- fathers and paternal relatives be given an opportunity to share their positions;
- safety measures or other plans are put in place before meetings start if there are high-conflict issues between participants;
- case plans address services or needs that help both parents successfully reunify with the child or be positively involved in the child's life in other ways.

If your jurisdiction uses other meetings, such as family group conferences, permanency mediation, or family team meetings, ensure the father can participate when appropriate.

## CONCLUSION

Fathers and their relatives provide important and varied supports to children in the child welfare system. Research shows children whose fathers are engaged experience better outcomes in many facets of their lives and achieve permanency faster. As a children's attorney or GAL, you play a critical role promoting positive and sustained relationships between fathers and children. You can remind other professionals and volunteers on your cases of the importance of engaging fathers. This includes diligent efforts to help fathers participate in court hearings and agency meetings. In the end, to fully and completely advocate for the child, you must always consider the father and his family and how they fit into the child's universe of family resources and support as the case moves towards permanency.

## ENDNOTES

<sup>1</sup>Rosenberg, J. and W.B. Wilcox. "The Importance of Fathers in the Healthy Development of Children." Washington, DC: Office on Child Abuse Neglect, Children's Bureau/ACYF, 2006. Available at [www.childwelfare.gov/pubs/usermanuals/fatherhood/](http://www.childwelfare.gov/pubs/usermanuals/fatherhood/).

<sup>2</sup>See "Barriers to Father Engagement." In Malm K., J. Murray and R. Geen. *What About the Dads? Child Welfare Agencies' Efforts to Identify, Locate and Involve Nonresident Fathers*. Washington, D.C.: The U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, 2006.

<sup>3</sup>Horn, W. and T. Sylvester. *Father Facts: Fifth Edition*. Gaithersburg, MD: National Fatherhood Initiative, 2007.

<sup>4</sup>Ibid.

<sup>5</sup>Chen, Henry, Karin Malm and Erica Zielewski. *More about the Dads: Exploring Associations between Nonresident Father Involvement and Child Welfare Case Outcomes*. Washington, DC: U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, 2008. Available at <http://aspe.hhs.gov/hsp/08/moreaboutdads/report.pdf>.

<sup>6</sup>Bellamy, Jennifer L. "A National Study of Male Involvement among Families in Contact With the Child Welfare System." *Child Maltreatment* 14, 2009, 255-262.

<sup>7</sup>Ibid.

<sup>8</sup>Rosenberg, J. and W.B. Wilcox. "The Importance of Fathers in the Healthy Development of Children." Washington, DC: Office on Child Abuse Neglect, Children's Bureau/ACYF, 2006. Available at [www.childwelfare.gov/pubs/usermanuals/fatherhood/](http://www.childwelfare.gov/pubs/usermanuals/fatherhood/).

<sup>9</sup>Ibid., citing Sonenstien, F, K. Malm, and A. Billing. *Study of Fathers' Involvement in Permanency Planning and Child Welfare Casework*, 2002. Available at <http://aspe.hhs.gov/hsp/CW-dads02>; Greif, G.L., and S.J. Zuravin. "Fathers: A Placement Resource for Abused and Neglected Children?" *Child Welfare*, 68(5), 1989, 479-490; Franck, E.J. "Outreach to Birthfathers of Children in Out-of-Home-Care." *Child Welfare* 80(3), 2001, 381-399.

<sup>10</sup>Sorensen, Elaine and Laura Wheaton. *Income and Demographic Characteristics of Nonresident Fathers in 1993*. Washington DC: Office of the Assistant Secretary for Planning and Evaluation Department of Health and Human Services, June 2000. The poverty threshold was \$7,518 for a single person and \$11,522 for a family of three in 1993.

<sup>11</sup>To learn more about family finding, visit the Center for Family Finding and Youth Connectedness's Web site: [www.senecacenter.org/familyfinding](http://www.senecacenter.org/familyfinding).

<sup>12</sup>To learn more about finding fathers through mothers, see Thompson, Kenneth. *A Tool for Reducing Barriers to Finding Fathers through Mothers*. Englewood, CO: Quality Improvement Center on Nonresident Fathers and the Child Welfare System, 2009. Available at [www.fatherhoodqic.org/mothersvoices.pdf](http://www.fatherhoodqic.org/mothersvoices.pdf).

<sup>13</sup>For more information on speaking with parties who are or are not represented by counsel, see Renne, Jennifer. "Interacting with Other Parties." In *Legal Ethics in Child Welfare Cases*. Washington, D.C.: ABA Center on Children and the Law, 2004, 61.

<sup>14</sup>This refers to instances where the father and child will have unsupervised time together but an agency representative or its designee will frequently check in on the visit to ensure things are going well.

<sup>15</sup>42 U.S.C. § 671(a)(19) (2008).

<sup>16</sup>Pub. L. No. 110-351 (2008).

<sup>17</sup>Testa, Mark F. "When Children Cannot Return Home: Adoption and Guardianship." *The Future of Children* 14, winter 2004, 115, 121. Available at [www.futureofchildren.org/usr\\_doc/vol\\_14\\_no\\_1\\_no\\_photos.pdf](http://www.futureofchildren.org/usr_doc/vol_14_no_1_no_photos.pdf).

<sup>18</sup>Information from this section is adapted from Kiselica, Mark. "Understanding Male Help-Seeking Behavior." In *Advocating for Nonresident Fathers in Child Welfare Court Cases*. Washington, DC: ABA Center on Children and the Law, 2009.

<sup>19</sup>Rosenberg and Wilcox, citing Marsiglio, W. et al. *Social Fatherhood and Paternal Involvement: Conceptual, Data, and Policymaking Issues*, 1998. Available at <http://fatherhood.hhs.gov/CFSForum/c4.htm>.

<sup>20</sup>Schmid, Jeanette. "The Business of Engaging Fathers (and Other Male Relatives) in the FGC Process." *Protecting Children* 21(1), 2006.

<sup>21</sup>Mauer, M., A. Nellis and S. Schirmer. *Incarcerated Parents and their Children—Trends 1991-2007*. Washington, DC: The Sentencing Project, February 2009. Available at [www.sentencingproject.org/doc/publications/publications/inc\\_incarceratedparents.pdf](http://www.sentencingproject.org/doc/publications/publications/inc_incarceratedparents.pdf).

<sup>22</sup>Enos, Sandra. "Incarcerated Parents: Interrupted Childhood." In *CW 360: A Comprehensive Look at a Prevalent Child Welfare Issue - Children of Incarcerated Parents*. University of Minnesota, Center for Advanced Studies in Child Welfare, spring 2008. Available at <http://cehd.umn.edu/SSW/cascw/attributes/PDF/publications/CW360.pdf>. (citing Mumola, C. "Incarcerated Parents and Children." Bureau of Justice Statistics Special Report." Washington, DC: Bureau of Justice Statistics, 2000).

<sup>23</sup>LaVigne, N.G. et al. "Examining the Effect of Incarceration and In-Prison Family Contact on Prisoner's Family Relationships." *Journal of Contemporary Criminal Justice* 21(4), 2005.

<sup>24</sup>Poehlmann, J. "Incarcerated Mothers' Contact with Children, Perceived Family Relationships, and Depressive Symptoms." *Journal of Family Psychology* 19(3), 2005, 350-57.

<sup>25</sup>Hairston, Creasie. *Focus on Children with Incarcerated Parents: An Overview of the Research Literature*. Baltimore, MD: Annie E. Casey Foundation, 2007. Available at [www.aecf.org/~media/Pubs/Topics/Special%20Interest%20Areas/Incarceration%20and%20Reentry/FocusonChildrenwithIncarceratedParentsAnOverv/HAIRSTON.pdf](http://www.aecf.org/~media/Pubs/Topics/Special%20Interest%20Areas/Incarceration%20and%20Reentry/FocusonChildrenwithIncarceratedParentsAnOverv/HAIRSTON.pdf).

<sup>26</sup>Breshears, E.M., S. Yeh. and N.K. Young. *Understanding Substance Abuse and Facilitating Recovery: A Guide for Child Welfare Workers*. Rockville, MD: U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, 2004.

<sup>27</sup>See Adoption and Safe Families Act of 1997, P.L. No. 105-89. For more information on the ASFA timelines, see [www.abanet.org/child/rclji/asfa\\_timeline.pdf](http://www.abanet.org/child/rclji/asfa_timeline.pdf).

<sup>28</sup>FGDM may also be referred to as Family Group Conferences or Family Team Meetings.

<sup>29</sup>For more information about FGDM, visit [www.americanhumane.org/protecting-children/programs/family-group-decision-making/](http://www.americanhumane.org/protecting-children/programs/family-group-decision-making/).

<sup>30</sup>Kinney, Ellen and Molly Jenkins. "Dads and Paternal Relatives: Using Family Group Decision Making to Refocus the Child Welfare System on the Entire Family Constellation." In *The Judge's Page*, National CASA newsletter, November 2009. Available at [www.casaforchildren.org/site/c.mtJSJ7MPIsE/b.5332551/k.D500/Current\\_Newsletter.htm](http://www.casaforchildren.org/site/c.mtJSJ7MPIsE/b.5332551/k.D500/Current_Newsletter.htm).

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