

Mission Matters

Challenging Child Support Enforcement in Foster Care and TPR Proceedings

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January 21, 2022

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Mission Matters

Agencies that exist to serve
also seek to exist.

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They're my advocates? No they're not. To me, they're against me.

- Quote from teenage foster child about a foster care agency taking his social security survivor benefits

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Foster Care Revenue

Figure 3.2. The revenue stream surrounding "sarah."

MAKING MONEY ON THE MOST VULNERABLE

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Maximizing Revenue vs Maximizing Welfare

Alabama Funding Example:
In 2004, Alabama "spent" \$278 million on child welfare.

- There were about 5,900 children in foster care in Alabama in 2004, so divided out, Alabama reported about \$47,000 in funding per child.
- If IV-E B funds are subtracted (which could be used to prevent the need for foster care, before Families First legislation) the amount is still about \$45,000 per foster child.
- \$45,000 annual funding per foster child = \$3,750 per month per child.
- Alabama only paid its regular foster care providers between about \$400- 450 per month in 2004 to care for the children.

Figure 3.1. Graphic used by the Georgia Department of Human Resources at the beginning of every chapter of a training manual for social services case managers regarding the IV-E foster care program.

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Foster Care Agencies Taking Children's Resources

Maryland contract with Maximus:

- Describes foster children as "revenue generating mechanism."
- Goal to increase percentage of disabled children in foster care from 2% to up to 20% so state could obtain up to \$6 million in children's SSI benefits.

MAKING MONEY ON THE MOST VULNERABLE

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John G.

Court of Appeals of North Carolina.

IN RE: J.G., (a.k.a. J.M.G. and J.M.S.)

No. COA06-752.

Decided: November 06, 2007

Office of the Guilford County Attorney, by Deputy County Attorney James A. Dickens, for Guilford County Department of Social Services, petitioner-appellant; Smith, James, Rowlett & Cohen, L.L.P., by Margaret Rowlett, Greensboro, for Guardian ad Litem, and Legal Aid of N.C., by Attorney Advocate Lewis Pitts, Durham, for respondent-juvenile-appellee; Nelson Mullins Riley & Scarborough LLP, by Matthew P. McGuire and Amy L. Keegan, Raleigh, for North Carolina Justice Center, Carolina Legal Assistance, and the Puljet Forum of Cherry, Greensboro and Vicinity; and Charrn M. Nichol, Butler, for Governor's Advocacy Council for Persons with Disabilities, Amicus Curiae; Goldstein & Payne, by M. Travis Payne, Raleigh, and Sullivan & Worcester LLP, by Patrick P. Dinardo, Beth Jacobson, and Jennifer L. Sullivan, Boston, MA, for First Star, Amicus Curiae; Paul Meyer, Raleigh, for North Carolina Association of County Commissioners, Amicus Curiae.

NEWS & RECORD News Obituaries Opinion Sports

Chalk one up for the underdog.


The Greensboro orphan known as "John G.," who sued the DSS to keep the house left him in his father's will, has won a court case being watched by child advocates nationwide.

In a unanimous opinion handed down Tuesday, the N.C. Court of Appeals flatly denied a claim by the county DSS.

The agency wanted to pocket the monthly \$571 Social Security benefit John's father left him and not use part of the boy's money to pay the \$221 monthly mortgage on a small Habitat for Humanity house the parent left John, now 17.

MAKING MONEY ON THE MOST VULNERABLE

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Title IV-E and Foster Care


Foster care cost recovery through child support enforcement initiated under the requirements of Title IV-E of the Social Security Act.

To receive the federal funds, IV-E requires inter- agency partnership in effort repay foster care costs. Child support obligations initiated against mothers and fathers of foster children, and rather than using the payments for the children's benefit, the child support is assigned to the government.

Only applies to children removed from poor families.

Figure 3.1. Graphic used by the Georgia Department of Human Resources at the beginning of every chapter of a training manual for social services case managers regarding the IV-E foster care program.

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Title IV-E and Foster Care

Title IV-E payments are targeted so that states have a financial preference to remove foster children from poor families.

Agencies develop strategies to increase the "**penetration rate**"—the percentage of foster children from poor families.

Children in low- income families, already at increased risk of being assessed for child maltreatment due to the circumstances of poverty, are further targeted because they come with money attached.

Combined with ASFA strict time limits. And unpaid support used as grounds for TPR.

Figure 3.1. Graphic used by the Georgia Department of Human Resources at the beginning of every chapter of a training manual for social services case managers regarding the IV-E foster care program.

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Starting at the end – recommendations:
Primary Recommendation: Use discretion to benefit children and families

- Good cause for noncooperation
- Downward deviations from guidelines when in best interests of children
- “Where appropriate”
- Challenge enforcement tools based on best interests
- Enforcement conflicts with “reasonable efforts” requirements
- Unconstitutional TPRs

Cost recovery through child support

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WELFARE

- Expansive “good cause” to not require child support cooperation and assignment. Value choice of the custodial parent. Best interests of child should always control.
- Expansive use of ground to deviate downward from child support guidelines when support is owed to gov’t.
- Exercise discretion to reduce driver’s license suspensions and credit reporting
- Best interests of child standard applies even after assignment of support

Focused Recommendations

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FOSTER CARE

- Most of the same recommendations as with welfare cost recovery, plus....
- Expansive use of “where appropriate” language. Don’t refer cases to child support if contrary to best interests of child or conflicting with reunification efforts.
- Don’t include child support as part of reunification plan (violates reasonable efforts)
- Don’t take children’s Social Security benefits, but rather use the funds to help the children and families. But if agency takes Social Security, can’t take child support too.
- State is spending more to enforce assigned support than it is collecting.

Focused Recommendations

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<ul style="list-style-type: none"> • Discretion ignored • Diversion of statutorily required mission • Misuse of required case plans – using children as collateral • Termination of parental rights for gov't debt (substantive due process) 	<h2>Illegality of practices</h2>
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<p>42 U.S.C. § 671(a)(17). <i>"[W]here appropriate, all steps will be taken, including cooperative efforts with the State agencies administering the program funded under part A of this subchapter and plan approved under part D of this subchapter, to secure an assignment to the State of any rights to support on behalf of each child receiving foster care maintenance payments under this part."</i></p> <p><i>"Where appropriate" - requires discretion to not refer cases when harmful to best interests and inconsistent with "reasonable efforts", but states often ignore discretion.</i></p>	<h2>Illegality of practices: Discretion ignored</h2>
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<p>42 U.S.C. § 671(a)(15). (A)in determining reasonable efforts to be made with respect to a child, as described in this paragraph, and in making such reasonable efforts, <u>the child's health and safety shall be the paramount concern</u>; (B)except as provided in subparagraph (D), <u>reasonable efforts shall be made to preserve and reunify families</u> — (i) prior to the placement of a child in foster care, to prevent or eliminate the need for removing the child from the child's home; and - (ii) to make it possible for a child to safely return to the child's home;</p>	<h2>Illegality of practices: Diversion of statutory mission</h2>
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42 U.S.C. § 671(a)(16).

((16)provides for the development of a case plan (as defined in section 675(1) of this title and in accordance with the requirements of section 675a of this title) for each child receiving foster care maintenance payments under the State plan and provides for a case review system which meets the requirements described in sections 675(5) and 675a of this title with respect to each such child;

- Adding state-owed child support obligation into case plan, and using children as collateral, violates the plan purposes.

Illegality of practices:
Violation of case plan requirements

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North Carolina General Statutes Chapter 7B. Juvenile Code § 7B-1111.

(a) The court may terminate the parental rights upon a finding of one or more of the following: . . .

(3) The juvenile has been placed in the custody of a county department of social services, a licensed child-placing agency, a child-caring institution, or a foster home, and the parent has for a continuous period of six months immediately preceding the filing of the petition or motion willfully failed to pay a reasonable portion of the cost of care for the juvenile although physically and financially able to do so.

- TPR for government debt is contrary to the purpose of IV-E and foster care, and a violation of substantive due process.

Illegality of practices:
Unconstitutional TPRs for government debt

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In re T.D.P.

364 N.C.App. 287
Court of Appeals of North Carolina.
In re T.D.P.
No. COA03-222.
May 18, 2004.

Synopsis

Background: County department of social services (DSS) filed a petition seeking termination of father's parental rights. The District Court, Cumberland County, Edward A. Piner, J., granted petition, and father appealed.

Holding: The Court of Appeals, Timmons-Goodson, J., held that sufficient grounds existed for termination of parental rights of father, who failed to use prison wages to pay any portion of costs of child's foster care.

Affirmed.

2009] COLLATERAL CHILDREN 1359

Time is of the essence in the advocacy strategy chosen. For as the next section explains, the end of the parent-child relationship may be fast approaching if the conflict with reunification goals is not remedied.

B. *Constitutional Implications: Terminating Parental Rights for a Government-Owed Debt*

"We have not rid ourselves of debtors prisons only to substitute for that Dickensian horror, the termination of the debtor's parental rights."¹³

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<p>Substantive Due Process</p> <p>Cruel and Unusual Punishment</p>	<p>2009] COLLATERAL CHILDREN 1367</p> <p>Rather than the mere rational basis scrutiny requiring government statutes and regulations to be rationally related to legitimate government interests,²¹⁸ substantive due process protections for fundamental rights requires more. Justice Scalia described the heightened scrutiny as “a substantive component, which forbids the government to infringe certain ‘fundamental’ liberty interests <i>at all</i>, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest.”²¹⁹</p> <p>A statute that allows the termination of parental rights due to a child support obligation owed to the government fails the test. The state interest in termination of parental rights proceedings is clear and compelling: protecting the welfare of children.²²⁰ However, terminating the parent-child relationship because of a government-owed debt is not related to the compelling state interest, let alone narrowly tailored. The statutory provision in North Carolina has been construed as allowing the termination of parental rights for less than \$100 owed to the government.²²¹ Even if the unpaid amount were much greater, severing the parent-child relationship as result of the government’s self-interested cost recovery collections is simply not narrowly tailored to serve the state interest in protecting the welfare and best interests of the individual child.²²² Thus, with the required nexus lacking, such a statute should not withstand substantive due process scrutiny.</p>
	<p>2. Cruel and Unusual Punishment</p> <p>In addition to the substantive due process violations, an impoverished parent’s loss of a child resulting from the inability to pay a government debt raises another consideration—cruelty. The Eighth</p>

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<p>Forced Assignment of Child Support cannot remove best interest standard from any child support enforcement actions, including state-owned obligations.</p>	<p>C. <i>Legal Confusion at the Crossroads</i></p> <p>In addition to the constitutional and federal statutory violations, foster care cost recovery policies result in several other legal concerns. The questions further illustrate the legal conflicts and confusion resulting from the child welfare system’s diverted purpose.²²⁶</p>
	<p>1. Is Forced Assignment Legal Assignment?</p> <p>An assignment of rights is a legally recognized form of contract with three parties: an assignor, assignee, and obligor.²²³ In the context of welfare cost recovery, where custodial parents must assign their child support rights to receive welfare assistance, the custodial parent is the assignor, the state is the assignee, and the absent parent is the obligor.²²² In foster care cases, the required assignment of child support rights occurs differently and the status of the three parties to the assignment becomes confused. Neither parent has custody, both parents must assign their child support rights, and in involuntary child removals the parents are not voluntarily applying for benefits in exchange for the assignment. The parents are both the assignors and obligors in the same forced transaction.</p>

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<p>Contact me</p> <p>If you are interested in discussing additional ways to seek needed changes on behalf of foster children, children in juvenile justice facilities, nursing home residents and other vulnerable individuals, feel free to email me at dhatcher@ubalt.edu</p>	<p>Solutions begin with awareness</p>
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