

Children & Youth¹

Part I

Over 40 million children in the United States are poor² or live in low-income families.³ In 2007, 13.3 million children (18% of children in the United States) lived in families with incomes below the federal policy level, and 28.6 million (36%) lived in low-income families. In California, 1.7 million children (18% of California children) are poor and 4 million children (39%) live in low-income families.

Children in Poverty

Nearly 2500 children are born into poverty every day according to the Children's Defense Fund. Official child poverty rates range from 6% in New Hampshire to 29% in Mississippi.

Although the largest number of children in poverty in the United States is white, disproportionate percentages of American Indian (40%), Black (32%), and Latino (27%) children are poor. Young children are especially likely to live in poverty. Nationally, 20.8% per cent of children under the age of 6 are poor.

In California, 29% of Black children and 26% of Latino children live in poverty; 21% of children under the age of six are poor.

Children living in poverty face many challenges. They are more likely than other children to have chronic disease and other health problems and are more often exposed to factors, such as environmental toxins, inadequate nutrition, poor schools, violent neighborhoods, and lack of high quality child development programs that can affect their long term development. Children

¹ An annotated version of this section is available from the Youth Law Center.

² The official federal poverty level for a family of four was \$20,650 in 2007 and \$21,200 in 2008.

³ Low-income refers to income less than 200% of the poverty level.

who grow up in poverty are more likely to have lower earnings over their lifetime.

Children in Low-Income Families

Most parents in low-income families are working: 56% of children in low-income families have at least one parent who is working full time year around. Three fourths of low-income parents have a high school diploma or higher: 36% have only a high school diploma, and 39% have some college or more. Fifty-two percent of children in low-income families live with a single parent.

Young children and children of color are disproportionately likely to live in low-income families. Forty-four percent of children under the age of three live in low-income families. Sixty-three percent of American Indian children, 61% of Latino children, and 60% of Black children live in low-income families. Rates of children in low-income families vary by region: 42% of children in the South, 40% for children in West, 34% of children in the Northeast, and 36% of children in the Midwest live in low-income families.

1. INCOME Child Support

Most children are dependent on their parents for support. For some children, legal advocacy may be necessary to establish or enforce the right to support. While child support collections have increased over the years, most poor children in single parent households do not receive child support, and many of those who do get support receive it inconsistently.

When children receive public benefits part or all of their child support may go to the government to reimburse the cost of these benefits.

Overzealous collection efforts may unfairly penalize non-custodial parents who are poor and collection of foster care costs may interfere with efforts to reunite families of children in foster care.

Public Benefits

Temporary Assistance to Needy Families (TANF), known as CalWORKs in California, provides assistance to children in families with very low income, but program time limits, work requirements, and other restrictions may prevent needy children from receiving the help they need.

Some children may qualify for targeted programs, such as those designed for children of veterans, children in foster care, adopted children with special needs (adoption assistance), children with disabilities (SSI), and children of wage earners who retire or become disabled (Social Security)

For example, about 6.5 million children of covered wage earners (nearly 9% of U.S. children) received part of their family income from Social Security in 2005. Social Security benefits lifted 1.3 million children out of poverty and reduced the poverty experienced by another 1.5 million children and their families.

2. CHILD CARE AND DEVELOPMENT

Child care is essential for many working parents, and a growing body of research shows that high quality child development programs have a positive effect on children, particularly those from disadvantaged backgrounds.

Most poor and low-income families need assistance to afford child care, but child care subsidy programs are often complex and difficult to navigate. Lack of affordable child care creates a barrier to employment for many parents, reducing family income not only from wages but also as a result of CalWORKs sanctions.

Children with disabilities too often face barriers to child care. Although discrimination against children with disabilities is illegal, children may need legal assistance to gain access to child care and development programs and to obtain the services they need.

3. CHILD CUSTODY, GUARDIANSHIP AND EMANCIPATION

While many children live with both of their parents, some children are unable to live with their parents because of family situations. For other children circumstances such as domestic violence, divorce, or disputed parentage may require legal intervention to protect the child and resolve custody issues.

Parents who cannot care for their children may make alternative custody plans through informal arrangements; formal agreements, such as a power of attorney; or a legal change of custody through guardianship. Older youth who live on their own may want to formalize their independence through emancipation.

4. CHILD WELFARE AND FOSTER CARE Abuse and Neglect

State and local child welfare officials investigated child abuse reports concerning 3.6 million children in 2006. Approximately one quarter of these investigations resulted in a finding of abuse or neglect. Most children (64.1%) were victims of neglect; 16% were physically abused, 8.8% were sexually abused, 6.6% were psychologically maltreated, and 2.2% were medically neglected.

Young children are most likely to be victims of abuse or neglect. Nationally the highest victimization rate by age was for children from birth to one year old.

Foster Care

Thousands of children live apart from their families in foster care, although the foster care population is decreasing as child welfare systems focus on permanency for children. Nationally foster care placements decreased from 544,303 in 2000 to 510,000 in 2006. In California, placements went from 116,869 in July 1998 to 84,562 in July 2007.

Children who come into foster care as a result of abuse or neglect may have significant emotional, medical, and mental health problems, and these problems are often exacerbated by multiple placement moves, inappropriate use of group care, and failure to provide timely and appropriate health care and other services.

Unfortunately, some children are re-abused by caregivers while in the foster care system.

Youth who age out of foster care face enormous challenges. They are more likely than other youth to experience homelessness, unemployment, and difficulty obtaining basic services, such as health care. They are less likely to have a high school diploma, earn enough to support themselves, and go on to post-secondary education or training. Child welfare practices can contribute to these tragic outcomes by severing youths' ties to family and other sources of support.

5. EDUCATION

In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Brown v. Board of Education, 347 U.S. 483, 493 (1954.)

Access to a high quality education, essential for all children, is particularly important for children living in poverty.

Equal educational opportunity is still not a reality for many children today. Poverty decreases the chance that children will receive an adequate education. Poor children, who have disabilities, are homeless, have limited English proficiency, live in migrant families, or are in out-of-home care face additional challenges.

6. HEALTH

Access to Care

Poor children are more likely than other children to have serious health problems and are less likely than other children with the same conditions to do well. These disparities increase as children grow older. Health problems not only cause suffering in childhood but also keep poor children from achieving economic success as adults.

In 2007 more than 8 million children were without health care coverage. Children in poverty are more likely to be uninsured, and Hispanic children have the highest uninsured rate.

Consent

Unresolved consent issues may impede access to necessary health care for children and youth. Adolescents may need the ability to consent to health care services without the involvement of a parent, either because the youth's parents are unavailable or because the youth needs confidential access to services such as mental health care, reproductive health services, or substance abuse treatment.

Lead Poisoning

Lead poisoning can have a devastating effect on children by causing developmental delays, learning disabilities, behavioral problems, and, at very high levels, seizures, coma, and even death.

Children living in older and substandard housing and young children who tend to put things in their mouth are especially likely to be exposed to lead. Children under the age of 6 years, who are undergoing rapid growth and development, are at particular risk of harm. The CDC estimates that some 310,000 children aged 1-5 years have blood lead levels that are high enough to require public health action.

7. HOUSING DISCRIMINATION

While all people in poverty face challenges in obtaining affordable housing, families with children may encounter additional barriers from landlords who refuse to rent to families with children or place illegal restrictions on children's activities.

Although housing discrimination against families with children is illegal under federal and California law, families continue to face practices such as refusing to rent to families with children; misrepresenting unit availability; unnecessarily limiting the number of occupants per unit; denying families with child access to units; segregating families with children into specified units; denying children access to outdoor space or amenities, such as swimming pools; and requiring unreasonably close supervision of children.

Children & Youth

Part II

1. INCOME

Temporary Assistance to Needy Families (TANF)

42 U.S.C §§ 601, *et seq.*

The TANF program provides federal block grant funds to states to assist poor families with children. While federal law allows states some flexibility to design their TANF programs, it imposes work requirements, time limits, and other restrictions on state programs and requires states to meet a maintenance of effort (MOE) obligation.

California Work Opportunity and Responsibility to Kids program (CalWORKs.)

Calif. Welf. & Inst. Code §§ 11000, *et seq.*

The TANF program in California is known as the California Work Opportunity and Responsibility to Kids program (CalWORKs.)

See Chapter 7 for more information on TANF and CalWORKs.

Social Security Children's Benefits

42 U.S.C. §§ 301, *et seq.*

Children may be eligible for social security benefits if a parent who is a covered worker dies, retires, or becomes disabled. A parent becomes covered by working a certain number of calendar quarters. Social security is not a means tested program; the income and resources of the family are not counted in determining eligibility. Adopted children are eligible on a parent's earnings record, as are step children and grandchildren in some circumstances.

A child may receive social security dependents benefits up to age 18 or, if elementary or high school, up to age 19. A child who becomes disabled before age 22 may receive social security children's benefits as an adult.

Supplemental Security Income (SSI)

42 U.S.C §§ 1381 *et seq.*

SSI provides a monthly cash benefit and, in most states, Medicaid eligibility for poor children with disabilities. The child must have a condition that meets the Social Security definition of disability and have income and resources within SSI eligibility limits. The financial test does not include the income and resources of the child's parents unless the child is living with them.

In California, child welfare agencies are required to screen children in foster care 16 and older and submit applications for youth likely to be eligible for SSI, so that they will have a source of income when they leave foster care.

Veterans Dependents Benefits

38 U.S.C. §§ 101, *et seq.*

Children of veterans who die while on active duty, in training, in the line of duty, or as a result of disease or injury connected with their service may be eligible for dependents benefits. The Dependency and Indemnity Compensation (DIC) program provides monthly benefits to surviving children who are younger than age 18, disabled, or students. In some circumstances, the DIC program also provides benefits for children of veterans with a service-connected disability at the time of their death but whose deaths were not the result of their service connected disability. Some states provide additional benefits for veterans and their children.

Title IV-D Child Support

42 U.S.C §§ 651, *et seq.*; Calif. Family Code §§ 17000, *et seq.*

Title IV-D of the Social Security Act funds state efforts to assist parents in collecting child support and establishing paternity. State IV-D agencies must provide assistance to any parent who requests it. Services are automatically available to families receiving TANF/CalWORKs.

Parents of children who receive TANF/CalWORKs or other benefits may be required to assign their right to child support over to the

state in order to obtain assistance for their children. Assignment of child support rights is not required when there is good cause not to cooperate, such as when cooperation would pose a risk of harm to the child or the care provider.⁴ Special arrangements are available in situations where child support payments could interfere with efforts to reunite children in foster care with their families.⁵

2. CHILD CARE

The Child Care and Development Block Grant

42 U.S.C. §§ 618 & 9858, *et seq.*

Federal funds are available to the states to pay for child care for low-income families.

Subsidized child care services are available to eligible families through certificates (vouchers) or contracts with providers. Parents may select any legally operating child care provider.

California Child Care and Development Services Act

Calif. Educ. Code §§ 8200, *et seq.*

This California law establishes a system of child care and development services, including center based programs and child care subsidies for family based care. It authorizes the California Department of Education to create standards for quality care, defines eligibility for free or reduced cost child development services and child care subsidies, and funds a resource and referral programs to help families find appropriate care.

Families with incomes up to 75% of the state median income are eligible for child care assistance. Child care assistance is a block grant, not an entitlement program. Limited funding means that some eligible families will not receive this assistance, but some may qualify for priority. For example, children who have been abused or neglected or are risk of abuse or neglect have first priority.⁶

Parents who are required to engage in welfare to work activities in the CalWORKs program are entitled to child care for children age 10 and under.⁷

California Child Day Care Facilities Act

Calif. Health and Safety Code §§ 1596.70, *et seq.*

This act requires child care centers and family day care providers to be licensed. Defined child care arrangements, such as care provided by a child's relative, parent co-ops, after school and extended day programs, families who provide care for the children of one other family, and temporary onsite child care where parents are on the premises are exempt from licensing.

The Community Care Licensing Division (CCL) of the Department of Social Services sets and enforces licensing standards. CCL also operates a Child Care Advocate Program to assist families, child care providers, and members of the community and to promote the delivery of quality child care.

3. CHILD WELFARE AND FOSTER CARE

The Child Abuse Prevention and Treatment Act (CAPTA)

42 U.S.C. §§ 5101, *et seq.*

CAPTA provides Federal funding to support child abuse prevention, assessment, investigation, prosecution, and treatment activities. As a condition of funding, CAPTA requires states, among other things, to have procedures for reporting and investigating child abuse, to appoint a Guardian ad Litem (GAL) for every abused or neglected child involved in a judicial proceeding, to define child abuse and neglect in accordance with federal standards, and to refer every abused or neglected child under three for early intervention services.

⁴ Calif. Welf. Inst. Code § 11477.04.

⁵ Calif. Family Code § 17552, 22 CCR § 119191.

⁶ Calif. Educ. Code § 8263(b)(1).

⁷ Calif. Welf. & Inst. Code § 11323.2(a)(1).

Child Welfare Services, Title IV-B of the Social Security Act

42 U.S.C. §§ 620, *et seq.*

Title IV-B provides federal funding for state Child Welfare Services and Promoting Safe and Stable Families. Each state must have a IV-B plan approved by the United States Department of Health and Human Services that describes how Title IV-B money will be spent. In California the 2004-2009 IV-B plan is available on the California Department of Social Services website.⁸

California Child Abuse and Neglect Reporting Act

Calif. Penal Code §§ 11164 – 11174.3

California procedures for child abuse reporting are spelled out in the Penal Code. Mandated reporters, who are defined by law, are required to make a child abuse report if they know or reasonably suspect that a child may be the victim of abuse or neglect as defined by law. Other individuals who report are protected from liability as long as they act in good faith. Legal advocates should determine whether ethical standards prohibit them from making child abuse reports in situations that involve clients.

Foster Care and Adoption Assistance Benefits, Title IV-E of the Social Security Act

42 U.S.C. §§ 670, *et seq.*

Title IV-E provides federal funds to states to help pay foster care maintenance payments and adoption assistance benefits for eligible children. Title IV-E also requires states to implement foster care protections, such as reasonable efforts to prevent foster care placement, and reunite families when children are removed; reasonable efforts to make permanent placements for children who cannot return home; individual case plans; a case review system; and procedural protections for children and parents. The law governing these requirements is sometimes referred to as ASFA

⁸ <http://www.childsworld.ca.gov/res/pdf/IV-BPlan.pdf>

because of amendments enacted through the Adoption and Safe Families Act of 1997.

The John H. Chafee Foster Care Independence Act (FICA), which is part of Title IV-E, provides federal block grant funds, often called Chafee funds, for Independent Living Programs (ILP) for youth in foster care and transitional services, including housing and education assistance, for youth who emancipate from foster care.

FICA also established transitional Medicaid for former foster youth at state option.⁹ California has chosen to provide transitional Medi-Cal for former foster children, which covers them until they reach 21.¹⁰

California Juvenile Court Law

Calif. Welf. & Instit. Code §§ 200, *et seq.*

Child welfare proceedings are defined by state law. In California dependency proceedings are governed by Welfare and Institutions Code §§ 300, *et seq.* and delinquency proceedings are governed by §§ 600, *et seq.* Abuse and neglect situations that give rise to juvenile court dependency jurisdiction are defined at § 300. Status offenses, which are offenses that would not be a crime if the individual were an adult (like truancy or violation of a curfew,) are defined at §601. Delinquent offenses are defined at § 602. These cases are sometimes referred to as “300s,” “601s,” or “602s” after the applicable code sections.

California Foster Care Benefits, Foster Care Placement, and Child Welfare Services

Calif. Welf. & Inst. Code 11460, *et seq.*

Calif. Welf. & Inst. Code 16000, *et seq.*

In California the counties operate child welfare services under the oversight of the state Department of Social Services. State law spells out the rights of children in foster care,¹¹

⁹ 42 U.S.C §1396a(a)(10)(A)(ii).

¹⁰ Department of Health Care Services, All County Welfare Directors Letters 00-41 (August 14, 2000), ACWDL 00-61 (November 22, (2000.)

¹¹ *E.g.*, Calif. Welf. & Inst. Code § 16001.9.

placement criteria, requirements for case plans, and other matters, such as the right to foster care benefits¹² and adoption assistance.¹³

California Community Care Facilities Act Calif. Health and Safety Code §§ 1500, *et seq.*

The Community Care Facilities Act requires residential care facilities, such as group homes, foster family agencies, and foster families, to meet licensing standards. These standards are set and enforced by the Community Care Licensing Division of the Department of Social Services. Relative care providers who are not licensed as foster parents must meet standards that are equivalent to the licensing standards and must be approved by the county.¹⁴

4. ADOPTION, CUSTODY, GUARDIANSHIP AND EMANCIPATION

Adoption and custody matters are governed by state law, and therefore vary from state to state. In California the Family Code is the primary source for most of the governing law.

Emancipation

Family Code §§ 7000, *et seq.*

In California a minor becomes emancipated when he or she enters into a valid marriage, is on active duty in the armed forces, or is declared emancipated by a court. Minors 14 and over are eligible for a court declaration of emancipation if they are willingly living apart from their parents with their parents' consent or acquiescence, and managing their own financial affairs. The court may decline to issue the declaration if it finds emancipation would be contrary to the minor's best interest.

An emancipated minor is considered an adult for the purposes specified in the law.¹⁵ For example, the minor gives up the right to support from his or her parents and gains the right to enter into contracts, but age restrictions related to voting, alcohol use, and labor laws still apply.

¹² Calif. Welf. & Inst. Code §§ 11460, *et seq.*

¹³ Calif. Welf. & Inst. Code §§ 16115, *et seq.*

¹⁴ Calif. Welf. & Inst. Code §§ 309(d), 319(f), 361.4.

¹⁵ Calif. Family Code § 7050.

Guardianship

Calif. Probate Code §§1510, *et seq.*

A legal guardianship is a court order that gives custody of child to someone other than a parent. A guardianship gives the guardian the authority to make most major decisions concerning the child but does not terminate parental rights.

A relative or other person on behalf of a child, or a child 12 years old or older, may file a petition for guardianship. Notice must be given to the child's parents and anyone else with legal custody of the child, unless the court orders otherwise. In an emergency the court may appoint a temporary guardian pending the hearing on the petition.

5. EDUCATION

Head Start

42 USC §§9801, *et seq.*

The Head Start program provides federal funds to local public and private agencies for comprehensive child development services for economically disadvantaged children and families. Early Head Start serves children from birth to age three. Parental involvement is a key component in Head Start programs. Elimination of poverty is a primary goal of the Head Start program.¹⁶

The Elementary and Secondary Education Act; No Child Left Behind

20 U.S.C. §§ 6301, *et seq.*

The No Child Left Behind Act of 2001 (NCLB) contains the most recent amendments to the Elementary and Secondary Education Act of 1965 (ESEA.) The ESEA provides federal funds to school districts to improve education services, support professional development of educators, develop instructional materials, and advance other educational goals.

Included in the ESEA are Title I, which is designed to improve the academic achievement of disadvantaged children, and targeted programs for special populations such as

¹⁶ 42 U.S.C. § 9801.

children in migrant families; children who are neglected, delinquent or at risk; immigrant children; and children with limited English proficiency.

NCLB imposed accountability measures, including student testing requirements, which have created some controversy. NCLB is scheduled for reauthorization in 2008.

Individual with Disabilities Education Act (IDEA)

20 U.S.C. §§ 1400, *et seq.*

Calif. Education Code §§ 56000, *et seq.*

The IDEA provides funds for special education programs for children with disabilities. Part B provides assistance for children age 3 to 21; Part C of the IDEA funds early intervention programs for children from birth to age 3.

The IDEA requires states to provide a free and appropriate education for children with a disability who need specialized education services to benefit from their education. Special education includes not only instruction but also related services that are necessary to allow a child to benefit from his or her education program. The IDEA requires states to identify eligible children and imposes due process requirements.

Section 504 of the Rehabilitation Act

29 U.S.C. § 794

Section 504 prohibits discrimination against people with handicaps in programs that receive federal funds. The population covered by section 504 is broader than that covered by the IDEA; it covers any student who has a physical or mental impairment that limits a major life activity. Section 504 prohibits schools from excluding or discriminating against children with disabilities and requires schools to make reasonable accommodations for the known physical or mental limitations of students with disabilities.

6. HEALTH

See Chapter 4, Health, and Chapter 7 Public Benefits

Early and Periodic Screening, Diagnosis and Treatment (EPSDT)

42 U.S.C. §§ 1396a(a)(43)(A)

EPSDT is a required Medicaid service that provides comprehensive health care for children. It requires states to provide screening, including vision, hearing, and dental screening according to established periodicity schedules, and diagnosis and treatment needed to correct or ameliorate a child's condition, whether or not the treatment service is included in the state's Medicaid plan. The Deficit Reduction Act of 2005 authorized waivers for states to provide EPSDT services through benchmark or benchmark equivalent health insurance packages with wrap-around benefits.

7. NUTRITION

See Chapter 7 Discussion of Food Stamp Program.

National School Lunch, School Breakfast, Summer Food Services, and Child Care Food Programs

42 U.S.C §§ 1751, *et seq.*

These child nutrition programs provide federal funds to reimburse schools, child care facilities, and other eligible agencies for the cost of free and reduced cost meals, free milk, and after school snacks for low income children. Children with family income up to 130% of the federal poverty level are eligible for free meals, and children with family income up to 185% of the federal poverty level are eligible for reduced cost meals.

Special Supplemental Food Program for Women, Infants and Children (WIC)

42 USC § 1786

WIC provides federal funds to states for supplemental foods, health care referrals, and nutrition education for low-income pregnant, breastfeeding, and non-breastfeeding postpartum women, and for infants and children up to age

five who are found to be at nutritional risk. States set their own income eligibility criteria between 100% and 185% of the federal poverty level. In California the income limit is 185% of FPL. Families on food stamps, TANF, Medicaid, and other programs at state option, automatically meet income criteria.

WIC provides eligible families with vouchers to buy healthy foods, nutrition information, support for breast feeding, and help in finding community services. WIC is not an entitlement program and funding is limited, so not all eligible families are able to receive assistance.

6. HOUSING

See Chapter 6 Housing

The Fair Housing Act; Title VIII

42 U.S.C. §§ 3601, *et seq.*

Federal law prohibits discrimination in housing on the basis of familial status. This protection for families with children includes renting, buying, or obtaining a loan to purchase housing. The law provides a specific exemption for housing that qualifies as senior housing.

Discriminatory practices go beyond just refusing to rent to a family. For example, landlords may not limit families with children to certain units or certain areas of a housing complex, prohibit children from enjoying amenities such as outdoor space or a swimming pool, and may not target children in restrictive tenancy rules.

Fair Housing and Employment Act

Calif. Gov. Code §§ 12922, *et seq.*

California law also prohibits discrimination in housing on the basis of familial status.

RESOURCES - CHILDREN¹⁷

* California Legal Services Support Center

Child Care

* Child Care Law Center

<http://www.childcarelaw.org>

¹⁷ Additional resource lists available from the Youth Law Center.

National Child Care Information Center

<http://www.nccic.org>

Child Nutrition Programs

California Food Policy Advocates

<http://www.cfpa.net>

Food Research and Action Center (FRAC)

<http://www.frac.org>

United States Food and Nutrition Service

<http://www.fns.usda.gov>

Education

Center for Law and Education

<http://www.cleweb.org>

Foster Care Benefits Manual

* Western Center on Law and Poverty

<http://www.wclp.org>

General

American Bar Association Center on Children and the Law

<http://www.abanet.org/child>

Children's Defense Fund

<http://www.childrensdefense.org>

Children's Defense Fund, California

<http://www.cdfca.org>

National Center for Children in Poverty

<http://www.nccp.org>

* National Center for Youth Law

<http://www.youthlaw.org>

State Bar of California Publications

Kids and the Law

When You Become 18

<http://www.calbar.ca.gov>

* Youth Law Center

<http://www.ylc.org>

Guardianship and Emancipation

Legal Services for Children (Manuals)

<http://www.lsc-sf.org>

Housing Discrimination

California Department of Fair Employment and
Housing

<http://www.dfeh.ca.gov>

Legal Services of Northern California Fair
Housing Project

<http://www.lsnrc.net/fairhousing.html>

United States Department of Housing and Urban
Development (HUD) Fair Housing and Equal
Opportunity (FHEO)

www.hud.gov/fairhousing

SSI

* SSI Transitions Project/Public Interest Law
Project

<http://www.ssitransitions.org>