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Protecting Our Youth: Compiling and Sharing Model Children's Laws Will Impact Thousands of Lives

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Legislative Update:
**Protecting Our Youth: Compiling and Sharing Model Children's Laws
Will Impact Thousands of Lives**

*Brenda "B." Alvarez**

I. INTRODUCTION

"The idea here is, and it's extremely important, is you've got advocates at the state level. We've got issues that are important that are life and death. Models that work. Let's take what works and replicate it. Roll it out." – Professor Robert Fellmeth

The Children's Advocacy Institute (CAI) was founded at the University of San Diego School of Law, and is one of the nation's premiere academic, research, and advocacy organizations seeking to improve the lives of children and youth. CAI's offices in San Diego, Sacramento, and Washington, D.C., leverage change for children and youth through impact litigation, regulatory and legislative advocacy, and public education. The Institute is active at the local, state, and federal levels, and its multi-faceted efforts comprehensively and successfully embrace all tools of public interest advocacy to protect and enhance the lives of children.

CAI's most recent endeavor, the "Model Law Project," involves identifying and compiling a list of existing statutes to serve as model laws for child advocates around the nation. With laws that properly protect children, the project hopes to save and improve thousands of lives. The Model Law Project is led by University of San Diego School of Law Professors Robert Fellmeth[†] and Jessica Heldman.[‡]

This article will discuss the purpose behind the Model Law Project and the importance of compiling a comprehensive list of model laws. It will also discuss the methods used to gather and review successful model children's laws and illustrate two examples of the successful enactments of model laws.

* B. Alvarez is a 2021 J.D. candidate at Loyola University Chicago School of Law. She is the founding Co-President of Loyola's First-Generation Law Students organization and the Vice President of the Student Bar Association. Her involvement in Stand Up For Each Other (SUFEO) inspired her to join the *Children's Legal Rights Journal*. B. would like to give a special thank-you to Professor Fellmeth and Professor Heldman for discussing this exciting new project with her and for their essential input on this article.

[†] Professor Fellmeth is CAI's Executive Director. He has over thirty years of experience as a public interest law litigator, teacher, and scholar. Professor Fellmeth is also the Policy Committee Chair and Counsel for the Partnership for America's Children. The Partnership for America's Children is a network of nonpartisan child policy advocacy organizations that represent children and their needs at the local, state, and national level within and across states.

[‡] Professor Heldman is CAI's Fellmeth-Peterson Professor in Residence in Child Rights. Her areas of expertise include Child Rights and Juvenile Law.

II. THE MODEL LAW PROJECT

“[There’s] nothing about any state that should necessarily preclude the efficacy of a statute that works in a given state. If it works in one, it is likely to work in another. We are not looking at each other’s statutes.” – Professor Robert Fellmeth

A. What Is the Model Law Project?

Children cannot advocate for themselves, so it is vital that advocates have effective tools to assist them in their efforts. According to Professor Heldman, “As child advocates, we are small in number and in influence as compared to many other special interests and private interests.” To assist in these advocacy efforts, the Model Law Project compiles model laws from all fifty states in an effort to ensure lobbyists and policy advocates across the country are able to view each other’s model laws and work to implement those laws in their state. “We have to be very efficient and effective in our advocacy,” Professor Heldman states. The Project will help “put these tools in the hands of advocates so that [they] don’t have to spend time reinventing the wheel.”

The model laws will fall within broad legal categories such as child welfare, education, and child health and safety, as well as more narrow topics such as commercial sexual exploitation of children and the treatment of child witnesses. The broad scope of the Project is defined by chapters in *Child Rights and Remedies, 4th Edition*, authored by Professors Fellmeth and Heldman. *Child Rights and Remedies* is a law school text that covers a broad spectrum of major cases, statutes, and relevant empirical evidence in the United States that illustrates how children are faring in light of how our legal and political systems function.

B. Research Compilation

As part of its academic program, CAI has three clinics; two work in direct child representation and the third engages students in policy work, which includes the Model Law Project. CAI has several ways of populating the compilation of model statutes. First, the Project’s research examines the legislative work CAI has done throughout its decades of advocacy. This work includes hundreds of enacted bills that CAI has supported as well as statutes drafted by CAI itself. CAI is one of the few child advocacy organizations that has very active policy advocates in both a state capital—Sacramento, CA—and in Washington, DC. CAI’s most successful and impactful legislative efforts are included in the compilation.

Second, model statutes in several areas have been identified by CAI as part of ongoing research and highlighted in its existing reports. For example, *A Child’s Right to Counsel*, a report written in partnership with First Star Institute, evaluates state laws relating to the legal representation of children in civil child abuse and neglect proceedings. According to *A Child’s Right to Counsel*, “quality legal representation has been associated with better outcomes and shorter times in foster care for children in dependency cases.” The report reviews the extent to which states are providing adequate legal representation

for children. Each state is graded using criteria that assesses statutory mandates for attorney representation of abused and neglected children and the extent to which that representation is client-directed, encompasses all hearings, requires multi-disciplinary training, and maintains confidentiality and liability under professional responsibility standards applicable to children's counsel. Compiled statutes for the Model Law Project will include the laws of states that have received "A" grades in *A Child's Right to Counsel*.

Finally, law students in CAI's policy research clinic identify model statutes by conducting research on relevant topics and tracking key legislative trends over several decades. Additionally, students are surveying child advocates in forty-two states to gain insight on where there is a need for model statutes as well as examples of successful legislation. Students also review model statutes and code devised by organizations such as the American Bar Association and the American Law Institute.

III. MODEL LAWS SAVE AND IMPROVE LIVES

Child advocates in every state work to improve the safety and security of children and promote investment in effective policies in areas such as child protection, child health, education, and juvenile justice. Adoption of such policies can literally save lives. For example, in 1995, CAI played a key role in developing the Swimming Pool Safety Act for the state of California. Professor Fellmeth worked closely with "lawmakers, the insurance industry, the swimming pool industry, trial attorneys, as well as other groups to make sure children would be protected in California." Modeled after ordinances in Arizona and Australia, this statute was meant to combat deaths resulting from drowning. Since this bill was enacted in 1996, several states have passed their own version of the Swimming Pool Safety Act.

The success of the Act was demonstrated in 2019 when the Centers for Disease and Control released an extensive study on several leading causes of deaths. The study reviewed deaths from 1995 to 2018 for which drowning was listed as a cause of death. According to the study and an article written in *The Sacramento Bee*, in "1995 and 1996 before the Act took effect, 269 California children died from accidental drowning. By comparison, in 2016 and 2017, 125 California children drowned—a drop of more than 50%." These major reductions could be directly attributed to the implementation of the Swimming Pool Safety Act and CAI's advocacy.

CAI's work also focuses on transition-aged foster youth—children in the child welfare system who reach the age of majority without the kinds of familial support many others are able to claim. Professor Heldman explained, CAI works "to increase the supports to transition-aged youth and break down barriers that are getting in the way of kids having sufficient funds and support." One of many barriers faced by some of these youth is the "taking" of their benefits by the foster care agency. Professor Heldman further explained that "states are able to claim the Social Security disability and death benefits that foster youth are entitled to . . . to reimburse the foster care system for caring for them, which they are already legally obligated to do, instead of the youth having that money come to them individually or to a trusted adult who will make sure the money is spent or saved wisely."

In 2018, CAI National Policy Advocate and Senior Staff Attorney, Amy Harfeld, advocated for the enactment of Maryland's HB 524, which addresses this "takings" issue specifically. HB 524 requires Maryland's Department of Human Services to identify a representative payee or fiduciary for a child in the Department's custody, rather than appointing itself by default. When serving as the representative payee or in any other fiduciary capacity for a child, the Department must provide notice to the child, through the child's attorney, of actions taken with respect to the child's benefits. Further, when the Department serves as the representative payee for children in foster care, the Department shall "use or conserve the benefits in the child's best interest, including using the benefits for services for special needs not otherwise provided by the Department or conserving the benefits for the child's reasonably foreseeable future needs," and "ensure that when the child attains the age of 14 years and until the Department no longer serves as the representative payee or fiduciary, a minimum percentage of the child's benefits are not used to reimburse the state for the costs of care for the child and are used or conserved." The measure further requires the Department to provide the child and the child's attorney information on how the child's resources have been used or conserved, and to provide the child with financial literacy training when the child turns fourteen. In praising the statute, Professor Heldman states, this is "a great example of a state [identifying a] problem, [coming] up with a legislative solution and now the rest of us working on this, in this area, are using that as a model for advocacy."

IV. CONCLUSION

As Professor Fellmeth states, "Children have a real problem getting on the agenda." The Model Law Project will help save thousands of lives and improve the lives of even more by making it easier to get proven children's laws on the legislative agenda. The Project provides advocates with a clear source to rely on when seeking to improve child-related laws in their respective states. The broad scope of this project means that its reach will be even greater. Importantly, many of these model laws have empirical data to support their success, which will facilitate lobbying on a new bill or an amendment to existing law. The Model Law Project is vital, as children need effective laws, and it is the responsibility of our legislatures to grant children the protections they deserve.

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