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Legal Safety Nets: The Law as a Change Agent for Children

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"No state shall ... deny to any person within its jurisdiction the equal protection of the laws." U.S. Constitution, XIV.

The guarantee of equal protection under the law is a fundamental principle to any free society and in the US, we are fond of saying, "we are a nation of laws!" There is scarcely an aspect of modern American life that is untouched by policy, legislation, or legal institutions, and we all depend on the law and the protections that adherence to the law provides. The legal system frequently provides avenues to establish "safety nets" for those who are vulnerable or who may be at risk without such a safety net in place. For example, our government provides safety nets in the form of public education, Social Security, state and federal programs to assist the hungry, and attempts have even been made to make sure that medical care is available to everyone, just to name a few. In other words, many institutions exist which provide a measure of stability and safety, without which our society would be vastly different.

Balance and the application of good judgment however is a key aspect of the law and safety nets. So, we see that just as legal structures can provide the support of a safety net which prevents the exploitation of the vulnerable; these same laws can also create an entrapping mesh of well-intentioned structures and requirements that may also hinder rather than help. If the safety net ends up barring the way forward, rather than providing support and a clear onward path then clearly we have waded into the land of unexpected consequences, despite often having the best of intentions. As academically-inclined child advocates we see this dilemma most often where the legal structures imposed were created without the benefit of sound evidence, or from a place of privilege or under the influence of top-down management style that dismisses the input of the stakeholders and of the affected community. This is especially true for children, who perhaps more than any other group, depend on the law and its protections. We are keenly aware as advocates for children that the law can both promote child well-being and, at other times, actively work against the best interests of children.

There is a long history that undergirds our approach to protecting children by striking a balance between parents' rights to manage their family privately and as they see fit while also respecting the rights of the individual children, and which also recognizes the community's interest in promoting the health and wellbeing of its children. An example of a safety net that works, and one which needs expanding, are housing subsidies. Children's health correlates strongly with their housing security and communities see value in helping families assure safe, clean and accessible shelter to the children. In this issue of JARC we look at the positive effect housing subsidies are having, and examine ways to enroll more families more efficiently in housing subsidy programs as a way of helping children live better lives and position them to achieve.

Regretfully, the application of the law doesn't always work out as well as we hope for. In contrast to the housing discussion, where safety nets promote a positive outcome, the observed disproportionality in school discipline is a failure that must be faced. While most if not all would agree that our schools need to be safe places that foster an environment where all students can learn, we cannot ignore the fact that students of color are disproportionately subject to school suspensions and other disciplinary measures. In this issue, we offer an unflinching look at the causes of disproportionality, and examine interventions to ameliorate this pressing problem. We

also examine juvenile justice, children's mental health services, paternity establishment, and a plethora of additional children's issues that intersect with the law, and we are grateful to the distinguished authors of these compelling articles. We would also like to extend a special thanks to Teachers College Press for permitting us to publish chapter excerpts from the forthcoming book, Closing the School Discipline Gap: Equitable Remedies for Excessive Exclusion. These excerpts range from an exploration of the issues and policy recommendations surrounding the predicted suspension rates in special education, to the true social and economic costs of dropouts, and it is certain that all readers will find them thoroughly enlightening.

What is key to our discussion however is a willingness to look beyond the sound bite or the ideology behind the law, and instead examine the evidence that supports the legal approach and which explores the impact on the actual outcome being produced. It is only from an informed perspective that we can assess if the legal structure or the safety net is having the desired result.

We are always interested in the effects of policy on children, because our mission is to promote the very best policies to provide all children with the greatest chance to succeed. Again, children are the most in need of legal protection, and the most vulnerable of children especially so. We hope that through these articles and the information they provide, others will also be motivated to seek ways to seek needed change of our laws and in our legal institutions to in order to help, not harm, our children.