

The Growing Use of State Child Welfare Report Cards: What Attorneys Should Know

by Daniel Pollack & Cameron R. Getto

Every child's heart skips a beat upon hearing, "Your report card is here." The report card communicates children's achievement related to standards. Usually these standards measure skills, comprehension, and behavior/attitudes.

State child welfare agencies are facing increasing accountability of their performance. Private foundations and other organizations have issued report cards on the well-being of a state's children and its children's services. The Kids Count Data Center,¹ a project of the Annie E. Casey Foundation, is the best example. It ranks states by economic well-being, education, health, family, and community. The 2017 report cards have recently come out.

This article reviews the benefits and limitations of state report cards, how data from the report cards are being used in litigation, and suggestions for improving how they are used in practice.

Benefits

There is much useful information in state report cards and the child welfare community is the beneficiary. Report cards can communicate a wealth of useful information:

- A quick, easily accessible way to compare performance based on disaggregated, objective data and metrics.
- Some indication whether certain programs, policies, practices or approaches are effective or tend to provide better results than others.
- A means of drawing attention to strengths or weaknesses that may warrant further investigation.

Limitations

It is important to acknowledge the following limitations of state

report cards:

- The right attributes are not always being measured by the right metrics. The purpose of a report card is to communicate the nature of the progress being made toward an agreed-upon performance-based standard or standard of care.
- Report cards can score or rank, but they do not always adequately explain the reasons behind a high or a low score. To be objective, report cards should document movement toward agreed-upon goals.
- Report cards that share "snapshot" data with the public may be misinterpreted without understanding the underlying data and expertise in child welfare issues. This may lead to conclusions not actually supported by the underlying data.
- As we raise the expectations bar, it is likely grades may temporarily decline.
- Child welfare report cards heavily depend on data and definitions supplied by states. This may limit accurate comparisons between states.
- There are two general report card models, descriptive and score and rank. Because of their simplicity and the ease of turning them into a headline, the media and others often emphasize the score and rank models. Those that rank low can expect cringe-worthy coverage: "Once again, Florida ranks low for child well-being."² Those that

rank high receive crow-worthy coverage: "Vermont ranks third in the nation for child welfare."³ Ranking allows for easy comparison between states, but may be too simplistic.

Citing Report Cards in Litigation

Politicians and the media tend to focus on grades and rankings in these report cards, which are condensed for easy public consumption. The litigation process, however, operates more like a microscope that examines facts and data more closely. Child welfare advocates and attorneys have used the data collected by Kids Count effectively and successfully as evidence in court cases. Thus, the data underlying the report cards have affected court decisions throughout the United States far more than the report cards themselves.

For example, in 2004, the Supreme Court of Missouri reviewed a termination of parental rights judgment. In determining that it was "not uncommon" to experience difficulty finding suitable adoptive placements, the court cited Missouri's *Kids Count Data Book* from 2002. The Data Book showed that "children in the custody of Missouri DFS are moved from placement to placement an average of over three times per child."⁴ Because these types of changes were common, they could not be used to support a decision terminating parental rights.⁵ The court reversed the judgment and remanded for further proceedings.⁶

In 2005, New York City convinced a trial court to reverse New York State's annulment of "the city's share of the state's foster care block grant."⁷ The court criticized the state's failure to appropriately use and weigh 1998-99 data from the *Kids Count Data Book*. In this instance, the *Data Book*

provided extensive information concerning local foster care use.⁸ The data had been disaggregated on the basis of multiple population characteristics.⁹ The state attempted to use these characteristics for certain “foundational assumptions,”¹⁰ building a statistical model upon them and claiming this statistical model was “the best available benchmark.”¹¹ The court accepted the data, but disagreed as to the soundness of the state’s various ex-

- **Avoid simple lists.** Lists invite the potential for abbreviated analyses, undeserved accolades and unfair condemnation without taking time to explain why. If it is important to rank, include the rankings in an executive summary that explains the results and factors evaluated. Mention anomalies or gaps in the data leading to the result. If results are grouped in “top ten” or “bottom ten” categories, focus

state child welfare report cards are not as simple as 1, 2, 3.

Daniel Pollack is professor at Yeshiva University’s School of Social Work in New York City and a frequent expert witness in child welfare lawsuits. Contact information: dpollack@yu.edu; 212/960-0836.

Cameron R. Getto is a shareholder with Zausmer, August & Caldwell, P.C. in Farmington Hills, MI. With 20 years’ experience representing plaintiffs and defendants, Mr. Getto currently focuses his practice on representing nonprofits, health care professionals, and human services organizations in complex litigation and professional liability matters. Contact information: cgetto@zacfirm.com; 248/851-4111.

Endnotes

1. <http://www.aecf.org/resources/2017-kids-count-data-book/>
2. <http://www.ocala.com/opinion/20170625/roy-miller-once-again-florida-ranks-low-for-child-well-being>
3. <http://www.benningtonbanner.com/stories/report-vermont-ranks-third-in-the-nation-for-child-welfare,51064>
4. In re K.A.W., 133 S.W.3d *1, *7 fn 5. (Mo. 2004). In the Interest of K.A.W., 133 S.W.3d *1, *7 fn 5. (Mo. 2004).
5. *Id.*
6. *Id.*
7. *City of New York v. Johnson*, 2005 N.Y. Misc. LEXIS 3321 *1 (Supreme Court of New York, January 11, 2005).
8. *Id.* at *4-*7.
9. *Id.*
10. *Id.* at *7.
11. *Id.* at *8.
12. *Id.* at *9-*12.
13. *Id.* at *20.
14. *Id.* at *21.
15. *Baskin v. Bogan*, 766 F.3d 648 (7th Cir. 2014).
16. *Id.* at 664.
17. *Id.*
18. *Id.*
19. *Id.*

...the data underlying the report cards have affected court decisions throughout the United States far more than the report cards themselves.

trapolations from it.¹² The court held the annulment “irrational and contrary to law.”¹³ The court ordered the funding restored, which was noted could be as much as \$100 million.¹⁴

In 2014, the United States Court of Appeals for the Seventh Circuit used *Kids Count* data while invalidating Wisconsin and Indiana’s ban on gay marriage.¹⁵ Indiana argued that the government’s interest in conventional marriage was closely connected to the problem of accidental births.¹⁶ By maintaining conventional marriage only, the argument went, children who were the result of unintended pregnancies somehow benefitted.¹⁷ The Seventh Circuit disagreed and characterized this argument as less than serious.¹⁸ It noted *Kids Count* reporting, which showed that neither states’ laws were “aimed at channeling procreation into marriage” with any measure of success.¹⁹

Improving How Report Cards are Used

Widespread media attention can launch important child welfare policy and practice issues into the forefront of public discourse, even if only temporarily. It is important to ensure the substance of media messages are accurate and balanced. Suggestions for improving use of state report cards and rankings include:

on the potential policy and fiscal reasons behind them while acknowledging that the reason for issuing grades in the first place is to improve the welfare of children throughout the country.

- **Avoid report card style grades without sufficient explanation and qualification.** Organizations that advocate for children should resist garnering attention at the potential expense of accuracy or fairness. Grades should be accompanied by sufficient explanation to ensure the reader is left with an objective understanding of the basis for the grade, the context in which it was issued, and what it may not reflect.

Conclusion

Child welfare report cards generally pose a single question: Is government keeping its commitments to children? Child law practitioners should be aware of child welfare agencies’ strengths and weaknesses. A state’s latest CFSR scores and report card can help discern an agency’s strengths and weaknesses. However, neither the CFSR scores nor the state report cards are definitive. They may be instructive, and from a legal perspective, they may be persuasive. Just as a child’s report card never tells the whole story,