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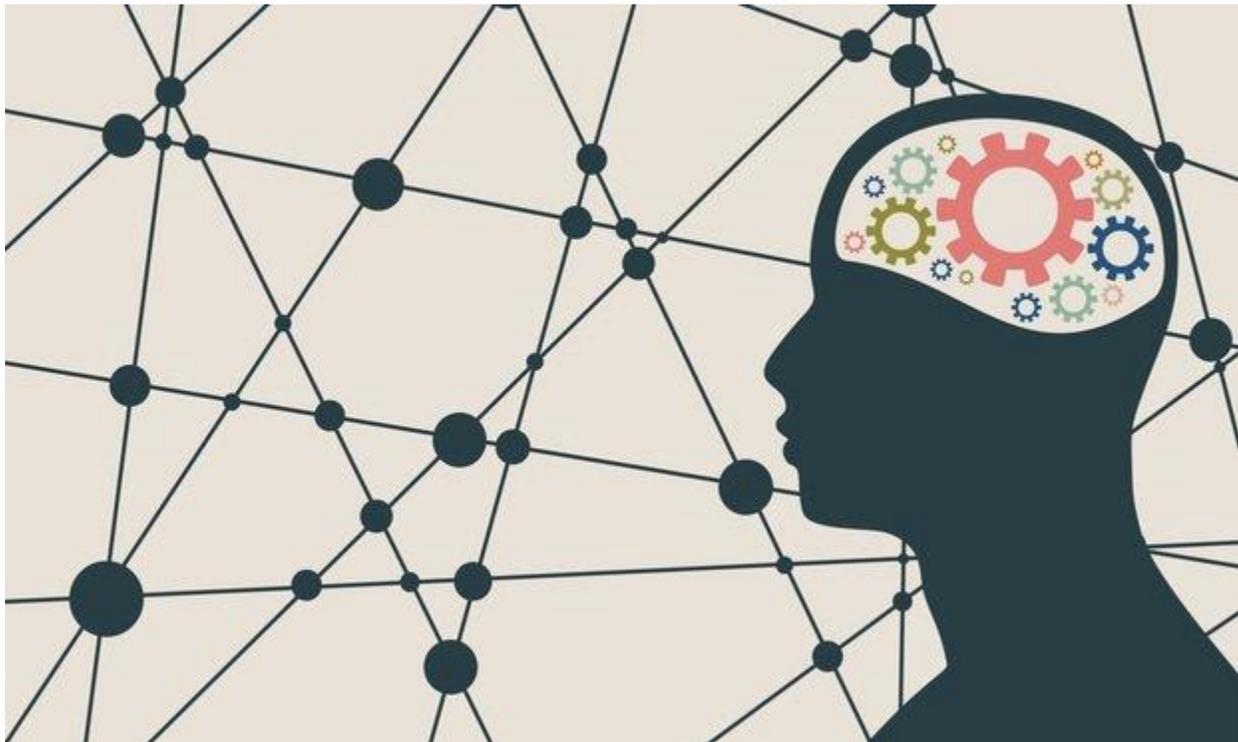


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## Legal Issues Regarding Suicidality of Young Children in Foster Care

It is important to focus on the needs of this highly vulnerable population.

By **Christine M. Sarteschi and Daniel Pollack** | February 24, 2021 at 11:00 AM



On December 30, 2016, 12-year-old foster child Katelyn Nicole Davis broadcast her own hanging on a live stream social media site. Before it was taken down, the [video](#) was seen by thousands of people. In 2009, 7-year-old Gabriel Myers [hanged himself](#) in the shower of his foster home. In 2014, six-year-old Kendra Johnson died by suicide after hanging herself with a jump rope from her

bunk bed. A lawsuit, filed by her grandmother, alleged that Kendra was removed from her mother's care and placed in a Minnesota foster care home where her suicidal ideations had been ignored by the child welfare system. These anecdotes demonstrate the tragic outcomes experienced by some youth in out-of-home care.

The [rate of suicide](#) among youth, ages 10 to 24, between 2000 and 2007 was approximately 6.8 deaths per 100,000 people. By 2017, the rate had increased 56%, reaching 10.6 deaths per 100,000. While suicides of children 12-years-old and younger [are rare](#), the numbers seem to be growing. [Recent figures](#) indicate that youth in foster care die by suicide at a rate much higher than usual when compared to the general population.

When children die in child welfare settings, civil lawsuits for wrongful death, negligent supervision, or similar claims are often filed resulting in legal difficulties for the involved agencies. Legal analyses of wrongful death cases regarding suicide often involve assertions of there being a “special relationship” between the victim and the caretaker, thus imposing a duty on the caretaker an enhanced oversight responsibility. In addition, foreseeability of harm is a leading factor in determining whether a caretaker has a duty to warn others regarding potential dangers for the person in their care. These wrongful death lawsuits usually settle before proceeding to trial. Consequently, a legal ruling on liability is avoided which decreases the probability of uncovering what may have led to suicidal behavior.

## **Context Setting**

The latest federal [data](#) indicates that there are currently more than 400,000 children in foster care throughout the United States. Children in out-of-home-care placement settings [experience higher rates](#) of substance abuse, unsafe sexual behaviours, delinquency, truancy, psychiatric diagnoses, and maltreatment when

compared to children not in out-of-home-care placement settings. These factors place children in these settings at an increased risk for suicide and suicide attempts. Despite this increased risk, many foster care agencies [are not providing](#) suicide risk assessments.

Less is known about the stress imposed upon children in the child welfare system during the COVID-19 pandemic. It will be important to examine how the pandemic has affected suicide rates in youth residing in out-of-placement settings. The uncertainties caused by the crisis have the potential to increase suicide rates. To date, there is a general lack of empirical data concerning suicidal ideation and behaviour of youth in the child welfare system. There is no data assessing the effects of the COVID-19 pandemic upon this delicate population. Media reports and some early studies have indicated that youth, in general, are facing increased mental health concerns. Whether or not this finding suggests a potential increase in suicide among those in child welfare settings or to the general youth population as a whole remains unknown.

### **Key Points for Legal Practice**

The following key learning points, geared towards legal and clinical suggestions, are offered.

#### *Legal considerations*

The mere fact that a child commits suicide does not retrospectively provide sufficient knowledge that suicide was likely. A child may send mixed signals regarding suicide. From a legal perspective, all are not necessarily actionable because they may not indicate that the suicide was actually foreseeable. In exploring suicidal proclivities and liability, the following questions should be asked:

- Did the guardian have information that the child might be a suicidal risk?

- Were there escalating and concerning behaviors?
- What was the child’s history of maltreatment?
- Did the child previously attempt suicide?
- Did the child write any letters, send texts, or make phone calls indicating suicide?
- Did the child undergo a recent transition in housing, change of school, etc.?
- Were there telltale indications that the suicide was planned in advance? How far in advance? Who had this knowledge?
- What medications was the child taking that had side effects indicating possible suicide?
- Did the guardian take “reasonably necessary” preventative measures regarding the suicidal information it had? In other words, were there policies, procedures and practices in place that addressed how to provide safe care and treatment?

### *Clinical considerations*

For those working in the child welfare system, several strategies could be implemented to further assist in identifying youth at risk for suicide or suicidal ideation. The following should be considered:

- Implementing a universal suicide screening to assess for suicide risk (Brown, 2020).
- Assessing the utility of utilizing foster parents to screen for suicidal behaviours (Brown, 2020) and when possible, involving them in the treatment process.
- Mandating suicide risk training for those working in the child welfare system. This could come in the form of professional gatekeeper training (Osteen, *et al.*, 2018) or mandating continuing education training for mental health and child welfare professionals in the area of suicide prevention.

- Increasing access to mental health services for youth in the child welfare system.
- Studying cases of suicide, in young children, to determine circumstances and causal triggers.
- Increased interventions focused on suicide prevention and additionally teaching techniques for appropriate emotion regulation.

## **Conclusion**

Children in the welfare system face additional challenges beyond those faced by children not in the welfare system. It is important to focus on the needs of this highly vulnerable population. Though the burden of COVID-19 is likely to increase these challenges, it has yet to be so determined in the research.

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