

# COVID-19's Impact on Families, Lawyers, and Courts: An Annotated Bibliography

by

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This bibliography covers significant issues resulting from the COVID-19 pandemic, with a particular emphasis on issues relevant for families, family law attorneys, and family courts. The first part of the bibliography provides sources and annotations on various topics that include COVID's effect on families, the impact of hearings and other court proceedings being conducted online, and the ways in which the pandemic has required lawyers to adapt to working remotely. The second half of the bibliography focuses on vaccination. It provides citations and some analysis of issues concerning parental disputes about vaccination of children, the extent to which failure to vaccinate children affects determinations about parental fitness and child neglect, whether children under the age of 18 should be able to consent to receiving vaccinations without parental notification or approval, and whether vaccination of children can be mandated.

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## **Appellate Practice**

Campbell D. Barrett et al., *Appealing from the Remote Environment*, *FAM. ADVOC.*, Fall 2021, at 23 (discussing the impact of remote legal proceedings on appellate law practice, including the potential benefits of appellate hearings done remotely, but also issues presented by remote trial court proceedings that may create appealable issues).

Pierre H. Bergeron, *COVID-19, Zoom, and Appellate Oral Argument: Is the Future Virtual?*, 21 *J. APP. PRAC. & PROCESS* 193 (2021) (examining the impact of COVID-19 on oral arguments in appellate courts and arguing that the practice of having some arguments conducted online should remain part of appellate courts' repertoire after the pandemic is no longer an issue).

Adam Hosmer-Henner & Chelsea Latino, *The Virtual Raise It or Waive It: Preserving an Accurate Appellate Record of Remote Trial Court Proceedings*, *NEV. LAW.*, June 2021, at 10 (providing advice about how to properly create and preserve an accurate appellate record when trial court proceedings are conducted online).

Margaret D. McGaughey, *Remote Oral Arguments in the Age of Coronavirus: A Blip on the Screen or a Permanent Fixture*, 21 *J. APP. PRAC. & PROCESS* 163 (2021) (describing how appellate courts adapted to the COVID-19 pandemic, reviewing how judges and lawyers reacted to the shift to online proceedings, and

assessing the benefits and downsides of remote appellate arguments).

## Child Custody & Visitation

Gloria E. Block & Gabriela O. Asrow, *Navigating Remote Custody Proceedings, Custody Evaluations, and Child Therapy During the COVID-19 Pandemic*, FAM. ADVOC., Fall 2021, at 27 (considering how the COVID-19 pandemic and the shift to use of videoconferencing technology has affected various aspects of legal proceedings concerning children, including children's meetings with their guardians ad litem, custody evaluations, teletherapy, visitation with parents, and judicial interviews of children).

Kaleb Byars, *Coronavirus, Caregivers and Child Custody*, TENN. B.J., May 2020, at 28 (discussing the extent to which parents may seek modification of child custody arrangements if necessary to protect a child from the risk of COVID-19 exposure).

Mildred D. Dale et al., *Making the Case for Videoconferencing and Remote Child Custody Evaluations (RCCES): The Empirical, Ethical, and Evidentiary Arguments for Accepting New Technology*, 27 PSYCHOL. PUB. POL'Y & L. 30 (2021) (examining the COVID-19 pandemic's dramatic impact on the child custody evaluation community, reviewing the empirical research on the effectiveness of remote child custody evaluations, and recommending ways for evaluators doing remote evaluations to prepare for challenges to the admissibility of their expert testimony).

Jodie Fleischer et al., *Shared Custody Raises COVID-19 Concerns as Kids Travel Between Households for Holidays*, NBC WASH. (Nov. 25, 2020), <https://www.nbcwashington.com/investigations/shared-custody-raises-covid-19-concerns-as-kids-travel-between-households-for-holidays/2487742/> (recounting the facts of a visitation case in which a mother obtained a pediatrician's letter stating that the child was at high risk for travel, while the father outlined steps he would take to keep the child safe).

Karen Kaplan, *Coronavirus Today: No Vaccine, No Custody?*, L.A. TIMES, Jan. 18, 2022, <https://latimes.com/science/newsletter/2022-01-18/coronavirus-today-covid-vaccine-parents-child->

custody-coronavirus-today (discussing the possibility that a parent could be denied custody or visitation with a child because the parent is not vaccinated).

Madison McBratney, Comment, *How to Stay-at-Home When You Have Two Homes: Covid-19's Effect on Co-Parenting and Child Custody*, 33 J. AM. ACAD. MATRIM. LAW. 225 (2020) (examining how stay-at-home orders during the COVID-19 pandemic addressed custody exchanges for co-parenting families, reviewing how COVID-19 custody cases have been handled by the courts, and looking at possible solutions for co-parents involved in COVID-19 custody disputes).

Karen Oehme et al., *Online Virtual Supervised Visitation During the COVID-19 Pandemic: One State's Experience*, 59 FAM. CT. REV. 131 (2021) (describing how Florida's supervised parental visitation programs quickly shifted from in-person supervised visits to online visits during the COVID-19 pandemic, and discussing the advantages and disadvantages of online visitation and the extent to which virtual visits will continue to be used in the future).

Tom S. Tanimoto, *Child Custody Considerations in a COVID-19 Era and Thoughts for the Future*, HAW. B.J., Sept. 2021, at 12 (discussing how custody litigation may be affected by COVID-19, including the impact of concerns about infection from the general public, or from an infected parent, or situations involving a child who is sick with COVID).

## **Child Welfare & Rights**

Nicola A. Booth, *Traffickers' "F"ing Behavior During a Pandemic: Why Pandemic Online Behavior Has Heightened the Urgency to Prevent Traffickers from Finding, Friending and Facilitating the Exploitation of Youth Via Social Media*, 22 GEO. J. GENDER & L. 533 (2021) (explaining how the COVID-19 pandemic created a need for legislation that targets those using social media to exploit and traffic children).

Symone Bullock, *Spotlight On: Children's Law Center*, 41 CHILD. LEGAL RTS. J. 173 (2021) (discussing the Children's Law Center, an organization that advocates for children in Washington DC on

issues such as foster care and custody, and how it utilized a multidisciplinary approach to deal with challenges presented by the COVID-19 pandemic).

Rachel Haney, *When "Safe at Home" Is Not Safe*, SCITECH LAW., Summer 2021, at 22 (considering the increased risk of online child sexual abuse and exploitation during the COVID-19 pandemic and the role that technology companies play in combatting the proliferation of child sexual abuse materials).

Jessica K. Heldman et al., *Covid-19 and Preventing Harm to Vulnerable Children*, 57 S.D. L. REV. 865 (2020) (assessing the COVID-19 pandemic's effects on child welfare, juvenile justice, and special education systems, and arguing that the pandemic has drawn new attention to preexisting problems and created opportunities to make long-term systemic improvements to the systems that provide protection, care, and services for vulnerable children).

Alexandra Kuenzli, *Spotlight On: The Congressional Coalition on Adoption Institute*, 41 CHILD. LEGAL RTS. J. 73 (2021) (reviewing the recent work of the Congressional Coalition on Adoption Institute, including the recommendations of the COVID-Pandemic Working Group concerning the impact of COVID-19 on the foster care system).

Kristen Pisani-Jacques, *A Crisis for a System in Crisis: Forecasting from the Short- and Long-Term Impacts of COVID-19 on the Child Welfare System*, 58 FAM. CT. REV. 955 (2020) (analyzing in detail the immediate impacts of COVID-19 on the child welfare system, such as isolation created by suspension of family visitation time, and the long-term impacts, such as loss of attachment with parents and delays in achieving permanency for youth in the child welfare system).

R. Chantz Richens, *Privacy in a Pandemic: An Examination of the United States' Response to COVID-19 Analyzing Privacy Rights Afforded to Children Under International Law*, 28 WIL-LAMETTE J. INT'L L. & DISP. RESOL. 244 (2021) (describing how the COVID-19 pandemic raised new concerns about the effec-

tiveness of legal measures to protect children's privacy, including data derived from health care, education, and online activity).

Megan Schmidt, Note, *The Hidden Foster Care System: A Parallel System in Legal Limbo During a Deadly Pandemic*, 12 U. MIAMI RACE & SOC. JUST. L. REV. 141 (2021) (looking at how the COVID-19 pandemic affected the "American Hidden Foster System," in which threats and coercive practices result in children being removed from homes and put into the custody of other family members without formal state intervention or court oversight).

Rebecca M. Stahl, *Responding Effectively to Trauma Manifestations in Child Welfare Cases*, 58 FAM. CT. REV. 920 (2020) (discussing how families and professionals involved in family court cases experience trauma, and noting how the COVID-19 pandemic exacerbated the problem by causing social isolation, economic difficulties, uncertainty, and adverse effects on mental health).

Kele Stewart & Robert Latham, *COVID-19 Reflections on Resilience and Reform in the Child Welfare System*, 48 FORDHAM URB. L.J. 95 (2020) (reporting the results of an analysis of data on children in Florida's child welfare system and what this data shows about the COVID-19 pandemic's effect on that system).

Anita Weinberg & Lilia Valdez, *Child Welfare, Reasonable Efforts, and COVID-19*, 41 CHILD. LEGAL RTS. J. 162 (2021) (analyzing how the COVID-19 pandemic affected the ability of child welfare agencies to make reasonable efforts to protect children from abuse and neglect and to prevent the need for removing a child from the home, with a particular focus on the Illinois child welfare system and how the pandemic impacted people of color).

Dana Weiner et al., *COVID-19 and Child Welfare: Using Data to Understand Trends in Maltreatment and Response*, CHAPIN HALL ISSUE BRIEF, Sept. 2020, <https://www.chapinhall.org/wp-content/uploads/Covid-and-Child-Welfare-brief.pdf> (presenting guidance, based on empirical data, for child welfare system leaders dealing with the risk of an increase in undetected maltreatment of children because stay-at-home orders and deteriorating eco-

conomic conditions will put families under stress and increase the chances that abuse and neglect will not be detected and reported by teachers or other adults).

## Dispute Resolution

John D. Feerick, *COVID-19's Impact on Best Practices in Arbitration and Mediation*, 39 ALTERNATIVES TO HIGH COST LITIG. 105 (2021) (evaluating how the COVID-19 pandemic affected alternative dispute resolution and the professionals who provide dispute resolution services).

Joann Feld, *Mediation May Be the Best Option for Divorced Families Dealing with the Impacts of COVID-19*, N.Y. ST. B.J., June/July 2020, at 34 (recommending the use of mediation for resolving conflicts over issues such as visitation or child support).

Melissa A. Kucinski, *ODR Overview and Introduction*, 59 FAM. CT. REV. 208 (2021) (introducing a special issue on the use of technology in family dispute resolution, and explaining how the COVID-19 crisis dramatically expanded the use of videoconferencing and other online technology for dispute resolution in family cases).

Michele F. Lowrance, *Effective and Personalized Mediation During the Zoom Boom*, FAM. ADVOC., Fall 2021, at 34 (providing advice for attorneys and mediators involved in mediations in divorce cases conducted via Zoom, including suggestions for how to overcome the loss of personal connection and bonding that occur during "in person" mediation).

James C. Melamed, *Establishing Ethical Standards for Online Family Mediation*, 59 FAM. CT. REV. 244 (2021) (assessing the need for family mediation standards to be reconsidered and updated to account for issues presented by online family mediation).

Amy J. Schmitz & Leah Wing, *Beneficial and Ethical ODR for Family Issues*, 59 FAM. CT. REV. 250 (2021) (discussing the move toward integrating new online technologies into alternative dispute resolution, especially in the wake of the COVID-19 pandemic, and evaluating the risks posed by the use of such

technology for family disputes and the way those risks can be reduced).

Laura A. Wasser, *Design Challenges in Applying Online Dispute Resolution to Divorce*, 59 *FAM. CT. REV.* 268 (2021) (observing how the COVID-19 pandemic has forced new consideration of reforms and providing a detailed evaluation of the benefits and concerns presented by the application of online dispute resolution technologies to the field of divorce).

## **Divorce**

Gia M. Conti, *COVID-19: Key Considerations in Divorce and Related Support Obligations*, *FAM. ADVOC.*, Summer 2020, at 36 (describing how COVID-19 created economic challenges and uncertainty for those dealing with divorce and its consequences, and providing advice for those seeking modification of spousal or child support).

Jay L. Lebow, *The Challenges of COVID-19 for Divorcing and Post-Divorce Families*, 59 *FAM. PROCESS* 825 (2020) (recommending ways for therapists to help divorcing and divorced families dealing with the effects of the COVID-19 pandemic).

Wendy Manning & Krista K. Payne, *Marriage and Divorce Decline During the COVID-19 Pandemic: A Case Study of Five States*, 7 *SOCIUS* (Apr. 2021) (reporting that data from five states showed that marriages and divorces declined in 2020 during the COVID-19 pandemic).

Joan McWilliams & Stephanie E. Dankel, *Parenting Plans for the COVID-19 Pandemic Era*, *COLO. LAW.*, Nov. 2020, at 40 (providing advice for creatively overcoming the challenges faced by divorcing parents in the COVID-19 era, including the disruption of court systems, the need for parenting plans that account for the new stressors and traumas resulting from the pandemic, and the increased importance of the lawyer's role as advisor rather than advocate).

Christopher Vatsaas & Kendal O'Keefe, *Pandemic Family Stress Equals Pandemic Family Law Stress*, *BENCH & B. MINN.*, June 2020, at 33 (discussing how the COVID-19 pandemic has sub-



jected families to new combinations of intense stressors, created uncertainty for divorcing families, and affected court proceedings and alternative dispute resolution mechanisms).

## Domestic Violence

Ashri Anurudran et al., *Domestic Violence Amid COVID-19*, 150 INT'L J. GYNECOLOGY & OBSTETRICS 255 (2020) (calling for action to address the risk that shelter-in-place orders will endanger victims of domestic violence).

Brad Boserup et al., *Alarming Trends in US Domestic Violence During the COVID-19 Pandemic*, 38 AM. J. EMERGENCY MED. 2753 (2020) (discussing data showing increases in reports of family violence after implementation of stay-at-home orders).

Kendall Denning, *The Impact of COVID-19 on Domestic Violence Calls in Southern Nevada*, 41 J. LEGAL MED. 13 (2021) (reporting that at least in some areas, calls to police departments about domestic violence remained flat or decreased during the COVID-19 pandemic, and considering theories about underreporting and other explanations for that outcome).

Allie Gottlieb, *COVID-19, Domestic Violence, and Guns*, REGULATORY REV., Apr. 8, 2020, <https://www.theregreview.org/2020/04/08/gottlieb-covid-19-domestic-violence-guns/> (discussing the risk that stay-at-home orders and other home containment measures during the COVID-19 pandemic would lead to an increase in the frequency and severity of domestic violence).

Yasmin B. Kofman & Dana Rose Garfin, *Home Is Not Always a Haven: The Domestic Violence Crisis Amid the COVID-19 Pandemic*, 12 PSYCHOL. TRAUMA: RES., PRAC., & POL'Y S199 (2020) (reviewing literature on previous disaster related surges in domestic violence and recommending ways to reduce the risk of new or escalating family violence during the COVID-19 pandemic).

Alex R. Piquero et al., *Domestic Violence During the COVID-19 Pandemic – Evidence from a Systematic Review and Meta-Analysis*, J. CRIM. JUST., May/June 2021 (finding that reported inci-

dents of domestic violence increased when stay-at-home orders were in effect).

Merril Sobie, *COVID-19, Domestic Violence and the Forgotten Home Term*, N.Y. ST. B.J., Sept./Oct. 2020, at 32 (recounting the history of the Home Term, a division of New York City's Magistrate's Court created in 1945 to have jurisdiction over cases about domestic violence and other family disputes).

## **Education**

Jim Alrutz, *Legislative Update: Early State and Federal Responses to Coronavirus-Related School Closures*, 40 CHILD. LEGAL RTS. J. 146 (2020) (reviewing actions by state legislators, governors, and the federal government relating to the operation of schools during the COVID-19 pandemic).

Hannah Cholewinski, *Die Ähnlichkeiten: Learning from Similarities and Key Differences Between U.S. and German Education Policy in the Time of COVID-19*, 41 CHILD. LEGAL RTS. J. 89 (2021) (using Germany's educational system as a model to explore the challenges faced by American schools during the COVID-19 pandemic, with a particular focus on the delivery of special education services).

Alaina Goschke, Note, *Virtual Learning in a Pandemic and Its Effects on Lower-Income Students: How the Education Gap Is Widening Beyond Repair*, 19 IND. HEALTH L. REV. 157 (2022) (examining how online learning during the COVID-19 pandemic has exacerbated the education gap, disadvantaged lower-income students, and jeopardized the right to education).

Crystal Grant, *COVID-19's Impact on Students with Disabilities in Under-Resourced School Districts*, 48 FORDHAM URB. L.J. 127 (2020) (describing the COVID-19 pandemic's adverse effect on special education services, particularly in school districts that have limited resources and primarily serve students of color).

Megan Helton, Note, *A Tale of Two Crises: Assessing the Impact of Exclusionary School Policies on Students During a State of Emergency*, 50 J.L. & EDUC. 156 (2021) (comparing the impact of Hurricane Katrina and COVID-19 school closures on the

school-to-prison pipeline, student discipline, attendance, and suspension and expulsion).

Victor M. Jones, *COVID-19 and the “Virtual” School-to-Prison Pipeline*, 41 CHILD. LEGAL RTS. J. 105 (2021) (evaluating the use of exclusionary measures, such as suspensions or expulsions, for students with disciplinary issues during the period of remote learning necessitated by the COVID-19 pandemic, and analyzing the potential constitutional and civil rights violations resulting from the use of exclusionary discipline).

Ariel Katz, *Education Connection: Education in the Time of COVID-19: Remote Learning’s Mixed Effects on Students and the School System*, 41 CHILD. LEGAL RTS. J. 183 (2021) (analyzing the shift to remote learning during the COVID-19 pandemic and assessing its effects on students and school systems).

Thomas A. Mayes, *The Long, Cold Shadow of Before: Special Education During and After COVID-19*, 30 S. CAL. L. & SOC. JUST. 89 (2021) (discussing how school closures placed a disproportionate burden on students with disabilities and their families).

Leah A. Plunkett & Michael S. Lewis, *Education Contracts of Adhesion in the COVID-19 Pandemic*, 2021 U. ILL. L. REV. ONLINE 1 (criticizing schools’ use of agreements that condition the resumption of in-person classes on parents and students waiving their rights to hold schools liable for exposure to COVID-19).

Alexa Valenzisi, *Education Connection: Schools Still Struggle with Compensatory Education Despite Coming Back to the Classroom*, 42 CHILD. LEGAL RTS. J. 66 (2021) (discussing how the COVID-19 pandemic, online education, and the return to classrooms have affected the provision of compensatory education services for children with disabilities, particularly children with autism spectrum disorders).

## **Families with Special Concerns**

Naomi R. Cahn & Linda C. McClain, *Gendered Complications of COVID-19: Towards a Feminist Recovery Plan*, 22 GEO. J. GENDER & L. 1 (2020) (describing how the COVID-19 pandemic ex-

posed pre-existing inequalities concerning work and family for women, particularly women of color, and how a feminist approach would shape the measures implemented to recover from the pandemic).

Danielle H. Dallaire et al., *COVID-19 and Prison Policies Related to Communication with Family Members*, 27 *PSYCHOL. PUB. POL'Y & L.* 231 (2021) (examining how state departments of corrections changed their policies for family visits and contact during the COVID-19 pandemic and how they communicated information about the policy changes).

Leanne Fuith & Susan Trombley, *COVID-19 and the Caregiving Crisis: The Rights of Our Nation's Social Safety Net and a Doorway to Freedom*, 11 *U. MIAMI RACE & SOC. JUST. L. REV.* 159 (2021) (assessing the immediate and long-term effects of the increased burden placed on working caregivers, primarily women, during the COVID-19 pandemic).

Theresa Glennon et al., *Shelter from the Storm: Human Rights Protections for Single-Mother Families in the Time of COVID-19*, 27 *WM. & MARY J. RACE, GENDER & SOC. JUST.* 635 (2021) (applying a human rights framework to the serious difficulties facing single-parent families, primarily single-mother families, during the COVID-19 pandemic).

Jasmine E. Harris, *The Frailty of Disability Rights*, 169 *U. PA. L. REV. ONLINE* 29 (2020) (discussing how the COVID-19 pandemic revealed systemic flaws in legal protection of disability rights in health care, education, and other contexts).

Elizabeth Kukura, *Seeking Safety While Giving Birth During the Pandemic*, 14 *ST. LOUIS U. J. HEALTH L. & POL'Y* 279 (2021) (examining the increased interest in non-hospital-based approaches to giving birth and how various legal and regulatory restrictions on the practice of midwifery create inequities in access to these approaches).

Seema Mohapatra, *Reproductive Injustice and COVID-19*, 50 *STETSON L. REV.* 389 (2021) (analyzing the COVID-19 pandemic through the lens of reproductive justice and describing how the pandemic revealed racial inequalities in health care and how lack

of support for childbearing and childrearing disproportionately burdens women of color).

Madeleine M. Plasencia, *COVID-19, Lying, Mask-Less Exposures and Disability During a Pandemic*, 11 U. MIAMI RACE & SOC. JUST. L. REV. 119 (2021) (examining how disability law can protect vulnerable people at high risk from COVID-19 from those who will not comply with safety precautions such as wearing masks and social distancing).

McKala Troxler, Note, *Evaluating the Impact of the COVID-19 Pandemic on Students with Disabilities*, 50 J.L. & EDUC. 362 (2021) (discussing how the closure of schools prevented students with disabilities from receiving appropriate accommodations and services and suggesting ways in which schools and laws can be changed to address students' needs during such a crisis).

Jessica Dixon Weaver, *The Perfect Storm: Coronavirus and the Elder Catch*, 96 TULANE L. REV. 59 (2021) (considering how the COVID-19 pandemic exacerbated the challenges faced by adults who are working, caring for elder parents or relatives, and sometimes raising children as well, and arguing that states have used a framework based on assumptions about traditional families to resist providing more support for those with elder care responsibilities).

## **General Effects on Family Law**

Jhanice V. Domingo, *20/20 Hindsight on 2020's Coronavirus Pandemic and Its Effect on the Practice of Family Law*, N.J. LAW., Apr. 2021, at 43 (assessing how COVID-19 affected family law in New Jersey, including its impact on court proceedings, divorce, domestic violence, and shared custody).

Linda D. Elrod, *Review of the Year 2020 in Family Law: COVID-19, Zoom, and Family Law in a Pandemic*, 54 FAM. L.Q. 281 (2021) (providing a general overview of issues in family law in 2020, including developments relating to COVID-19 such as the proliferation of online alternative dispute resolution, new problems for parties attempting to divorce, and difficulties for cases about children in need of care).

Aimee Key & Lindsey Obenhaus, *COVID-19 and Family Law*, 83 *TEX. B.J.* 310 (2020) (describing how the COVID-19 pandemic affected family law in Texas, including the shift to virtual court proceedings and the emergence of new issues about shared custody, co-parenting, and child support).

Michaël Lessard, *Coronavirus: Recent Developments in Québec Family Law Regarding Custody and Access During the COVID-19 Pandemic (March 13 to April 13, 2020)*, *REPÈRES*, Apr. 2020 (discussing recent developments in Québec family law relating to the COVID-19 pandemic, including the effect on exercise of custody and access rights).

Michaël Lessard, *Coronavirus: Recent Developments in Family Law During the COVID-19 Pandemic (April 14 to June 1st 2020)*, *REPÈRES*, June 2020 (discussing recent developments in Québec family law relating to the COVID-19 pandemic, including the impact on schools and custody rights).

Amy Soled, *Family Law Reform: A Needed Cure for the Effects of a Pandemic*, 72 *RUTGERS L. REV.* 1435 (2020) (reviewing how COVID-19 affected many aspects of family law, such as increasing rates of divorce and domestic violence and disruption of support payments and visitation, and suggesting ways for legislatures to reform family law statutes to address the problems).

## **Incarcerated Youth**

Laura Cohen, *Incarcerated Youth and COVID-19: Notes from the Field*, 72 *RUTGERS L. REV.* 1475 (2021) (providing observations, from the perspective of the director of the Rutgers Criminal and Youth Justice Clinic, on the harm that COVID-19 inflicted on incarcerated young people).

Marsha Levick, *No Exit: How Litigation Failed Incarcerated Youth During the COVID-19 Pandemic*, 93 *TEMPLE L. REV.* 489 (2021) (asserting that litigation did not prove to be an effective way to protect incarcerated youth who were in highly contagious environments, cut off from family, and denied essential court-ordered programming).

## International Comparisons & Issues

Michael Coffee, *Cross-Border Issues Associated with the Use of Online Dispute Resolution for International Family Law Matters*, 59 FAM. CT. REV. 211 (2021) (describing the logistical, technical, and legal issues that parents and their attorneys must consider when using online dispute resolution for family law matters that cut across international borders).

Laura Kistemaker, *Rechtwijzer and Uitelkaar.nl. Dutch Experiences with ODR for Divorce*, 59 FAM. CT. REV. 232 (2021) (discussing the development and use of online self-help tools for divorcing couples in the Netherlands, which provide a way for separating couples to have a structured dialogue about divorce and parenting and then have those agreements formalized in court).

Savannah Mora, *Cured: Proposing a Solution to the Hague Convention's "Zone of Disease" Defense*, 22 CHI. J. INT'L L. 223 (2021) (describing how some parents in international child abduction cases have argued that they should not be ordered to return the child because of the risk of exposure to COVID-19 during international air travel, and arguing that there should be a rebuttable presumption against those invoking this defense).

Bruce M. Smyth, *COVID-19 in Australia: Impacts on Separated Families, Family Law Professionals, and Family Courts*, 58 FAM. CT. REV. 1022 (2020) (assessing how COVID-19 affected separated families in Australia, including the risk of increased levels of domestic violence, the adaptations made by services and courts in the family law system, and the need to better understand and manage continuing challenges in moving beyond the initial response to the pandemic).

Robert G. Spector & Melissa A. Kucinski, *The Effect of COVID-19 on International Child Abduction Cases*, 54 FAM. L.Q. 268 (2020) (describing how the COVID-19 pandemic disrupted resolution of international child abduction cases under the Hague Abduction Convention).

Laura Tamblyn Watts, *Canada's Coronavirus Chaos*, 41 BIFOCAL 288 (2020) (describing the devastating impact of COVID-19 on

long-term care facilities in Canada, and calling for new national quality standards for such facilities).

Ambrosia Wilkerson, Comment, *The Fate of Intercountry Adoptions Following COVID-19*, 54 INT'L LAW. 457 (2021) (analyzing how the international adoption process has been affected by the COVID-19 pandemic, with a particular focus on adoptions of children from China and Guatemala).

## **Long-Term Care Facilities**

Samuel Brooks et al., *States Move to Shield Nursing Homes from Liability in COVID-19 Deaths*, 41 BIFOCAL 277 (2020) (discussing the enactment of state laws providing immunity from civil liability for long-term care facilities and health care providers).

*Guidance for Guardians During the Pandemic*, 41 BIFOCAL 263 (2020) (discussing a “Frequently Asked Questions” document prepared for the National Guardianship Association, the ABA Commission on Law and Aging, and the National Center for State Courts, providing answers to key questions about how the COVID-19 pandemic affects the responsibilities of those acting as guardians for clients or loved ones in nursing homes).

*Reimagining Elder Care: A Conversation with the Green House Project*, 41 BIFOCAL 282 (2000) (interview with Susan Ryan, the director of the Green House Project, an alternative model of long-term care with small homes with gardens and porches in campus-like communities, about the future of long-term care in the wake of the COVID-19 pandemic).

Charles Sabatino, *It's Time to Defund Nursing Homes*, 41 BIFOCAL 281 (2020) (asserting that the COVID-19 pandemic revealed deep-seated problems with the traditional institutional model of nursing home care and showed why it should be replaced by a radically different model that has a home-like structure, low staff turnover, and a culture focused on residents' interests).

Marianne Udow-Phillips & Robyn Rontal, *Examining Systemic Deficiencies, Tragic Outcomes in LTC Facilities*, 41 BIFOCAL 284 (2020) (arguing that the COVID-19 pandemic revealed the need for systemic reassessment and reform of long-term care facilities,



such as changes to improve the quality of oversight and regulatory processes).

## Practicing Law

Traci Capistrant, *Family Law: The COVID Chronicles*, BENCH & B. MINN., July 2021, at 16 (providing a personal account of the challenges for family law practitioners during the COVID-19 pandemic, such as dealing with parents unable to pay support obligations, disputes over following COVID prevention guidelines, and mastering new technology for a virtual law practice).

Hilary Dalin et al., *Working Remotely? Legal Delivery Tools You Need Now*, 41 BIFOCAL 258 (2020) (reviewing important steps for lawyers shifting to remote work, including advice about technology and the importance of letting clients know that legal assistance is still available).

Sheila Engelmeier & Heather Tabery, *Creating a Healthy Work Environment in a Family Law Practice*, FAM. ADVOC., Winter 2021, at 10 (providing advice for creating a family law practice that is successful and sustainable, including suggestions for dealing with ways in which the COVID-19 pandemic has affected law practices).

Fahi Takesh Hallin, *Embracing and Preparing for Remote Depositions*, FAM. ADVOC., Fall 2021, at 31 (discussing the potential pitfalls of remote depositions, but also noting the potential benefits and observing how remote depositions using today's virtual technology are much more effective than remote depositions done by telephone).

Kyra Hazilla, *Vicarious Trauma in the Time of COVID-19*, OREGON ATTORNEY ASSISTANCE PROGRAM, July 24, 2020, <https://bit.ly/35sL1Xf> (discussing how lawyers faced increased risk of vicarious trauma during the COVID-19 pandemic, particularly attorneys exposed to children's trauma).

Katharine W. Maddox, *Best Practices for Lawyers in a Virtual World*, FAM. ADVOC., Fall 2021, at 20 (discussing how the COVID-19 pandemic has caused most law practices to be con-

ducted remotely, at least in part, and providing advice about how to practice law using virtual technology).

Mark Rubin, *Secondary Trauma for the Family Advocate AKA Getting Through the Days*, FAM. ADVOC., Winter 2021, at 26 (considering how the COVID-19 pandemic led to emotional distress for many attorneys, and suggesting strategies for coping with vicarious trauma).

Rebecca Salido, *Notarizing Docs Amid Stay-in-Place Orders: The Evolving Status of State Laws*, 41 BIFOCAL 262 (2020) (announcing that the ABA's Commission on Law and Aging compiled a state-by-state guide to electronic or remote online notarization).

## **Technology**

Darren Gingras & Josh Morrison, *Artificial Intelligence and Family ODR*, 59 FAM. CT. REV. 227 (2021) (providing a basic introduction to artificial intelligence technologies and discussing how they will affect providers of legal services in the future, especially for small firms and solo practitioners).

Tiffany A. Lesnik, *The Mental Health Effects Relative to Social Media*, FAM. ADVOC., Summer 2021, at 27 (assessing social media's negative and positive effects on mental health, marriages, and other family relationships, and noting how the COVID-19 pandemic accelerated the use of social media).

David Sella-Villa, *An Early Evaluation of the Privacy Impacts of the COVID-19 Pandemic*, 76 BUS. LAW. 261 (2020-2021) (discussing the privacy concerns raised by data streams created or expanded by the COVID-19 pandemic, including the increased use of Zoom and other videoconferencing software, the development of contact tracing apps, the collection of body temperatures and other symptom-related information from people entering workplaces and other establishments, and novel uses of existing technologies such as facial recognition, artificial intelligence, and social media).

## **Trials & Hearings**

Alicia L. Bannon & Douglas Keith, *Remote Court: Principles for Virtual Proceedings During the COVID-19 Pandemic and Beyond*, 115 NW. U. L. REV. 1875 (2021) (developing a set of principles that should govern virtual court proceedings, including the need to provide extra support for self-represented litigants, protect marginalized populations, seek the consent of parties before proceeding remotely, and study remote proceedings to better understand their impact).

Wendy Brooks Crew & Christina Vineyard, *Solutions for Problems Presented with Virtual Trials*, FAM. ADVOC., Fall 2021, at 17 (providing recommendations for handling some of the most common problems with conducting trials online, including technical difficulties, not knowing what the court expects, how to compel witnesses to testify, how to handle hostile or potentially dangerous witnesses, not knowing who is in the room with a remote witness, and use of exhibits).

Kiilu Davis & Sally Colton, *Preparing Clients and Witnesses for Remote Hearings*, FAM. ADVOC., Fall 2021, at 13 (discussing client and witness preparation for hearings conducted remotely through virtual technology, including how to make sure the client or witness has proper technology and understands how to use it).

Jodi Lazar, *Litigating Family Law Through COVID-19*, ADVOC. (Texas), Winter 2020, at 35 (providing advice for lawyers handling family law cases during the COVID-19 pandemic, including how to prepare clients for virtual court appearances, how to conduct virtual trials, and the importance of checking for new court rules implemented because of COVID).

Debra H. Lehrmann, *Persevering in the Pandemic: Texas Courts*, FAM. ADVOC., Summer 2020, at 35 (describing some measures implemented in the Texas courts to deal with the COVID-19 pandemic, including using digital technology for remote proceedings, issuing guidance to clarify how stay-at-home orders and school shutdowns would affect child possession and access schedules, and issuing stays of residential eviction proceedings).

Lynda B. Munro & Nicole M. Riel, *Our Virtual Reality: Facing the Constitutional Dimensions of Virtual Family Court*, 54 FAM. L.Q. 245 (2020) (assessing the potential constitutional concerns arising from virtual operation of family courts, including the need to balance privacy concerns with interests in having courts open to the public, the impact of virtual proceedings on the factfinder's ability to evaluate the demeanor and credibility of witnesses, and the implications of virtual courtrooms for access to justice and due process).

Samuel V. Schoonmaker IV, *Family Law During COVID-19: Virtual Hearings, Family Court Proceedings, and the Future*, 54 FAM. L.Q. ix (2020) (introducing the issue on court reforms responding to the COVID-19 pandemic).

Elizabeth G. Thornburg, *Observing Online Courts: Lessons from the Pandemic*, 54 FAM. L.Q. 181 (2020) (reporting the results of an observational study of online court proceedings, which involved interviews with lawyers, family court judges, and staff members of the Dallas Court Appointed Special Advocates, as well as having a team of six law students observe online hearings and report on what they saw).

Randall H. Warner, *Judging in a Time of Covid*, 58 FAM. CT. REV. 965 (2020) (reflecting on how the COVID-19 pandemic affected family court proceedings, including the impact of virtual court proceedings on children, parents, judges, and procedural justice).

R. James Williams, *Taking a Shot: Access to Justice, Judging and eCourt*, 59 FAM. CT. REV. 278 (2021) (describing the eCourt pilot program implemented in the Nova Scotia Supreme Court's Family Division, explaining how the COVID-19 pandemic provided a vital push toward the launch of this program, and assessing how this sort of online judicial dispute resolution process may enhance access to justice and improve outcomes for families).

## **Voting Accessibility & Assistance**

Julie Gilgoff, *Election Outreach to Long Term Care Facilities*, 42 BIFOCAL 50 (2020) (describing how the COVID-19 pandemic

posed challenges for those providing voting assistance and outreach to residents of long term care facilities).

Ana Rebecca Salido, *States Vary in Helping Disabled Adults Exercise the Right to Vote*, 42 BIFOCAL 4 (2020) (discussing a review, conducted by the ABA Commission on Law and Aging, of how states provide assistance for people with disabilities to get out and vote, and noting how increased reliance on mail-in voting creates the need for other types of assistance such as for persons with vision or mobility challenges).

## **Wellness of Lawyers**

Judith A. Hoechst, *Wellness in the Midst of a Global Pandemic*, FAM. ADVOC., Winter 2021, at 43 (providing a personal account of experiences during the COVID-19 pandemic, including how it affected a law practice focusing on family formation and assisted reproduction technology law).

Steve Shewmaker, *One Lawyer's Take on Lawyer Wellness*, FAM. ADVOC., Winter 2021, at 14 (sharing personal observations about how to maintain wellness as a practicing lawyer).

Brentley Tanner, *Is Being a Lawyer and Marriage Compatible?*, FAM. ADVOC., Winter 2021, at 16 (discussing stressors that can destroy a marriage of two lawyers and suggesting ways to strengthen a lawyers' marriage).

Roberta Tepper, *Being Evergreen, Avoiding Burnout*, FAM. ADVOC., Winter 2021, at 22 (discussing the causes of burnout for lawyers, including the heightened stresses during the COVID-19 pandemic, and recommending ways to avoid burning out).

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## **Making Decisions About Vaccination for Children**

The COVID-19 pandemic has drawn attention to issues about parental decisions concerning vaccination of children. Disputes can occur when parents disagree about whether a child should be vaccinated. Difficult issues also can arise when parents agree not to have a child vaccinated, such as when failure to vac-

ciate raises questions about parental fitness or when children seek to be vaccinated without parental permission. The pandemic has also renewed debate about the extent to which vaccination of children should be mandatory.

### A. Parental Disputes

Prior to COVID-19, courts made a number of rulings about situations where a child's parents disagreed on whether a child should be vaccinated. The vaccination issue was typically just one part of a broader assessment of the overall situation and the child's and parents' circumstances. Courts generally tended to resolve these disputes in favor of vaccination,<sup>1</sup> but there were no hard-and-fast rules on this and courts occasionally ruled in favor of the parent opposed to vaccination.<sup>2</sup> Prior to the COVID-19 pandemic, there was little discussion in law journals about parental disputes over vaccination, but an article that extensively analyzed the topic happened to be published in the Spring of 2020 just as COVID-19 became a worldwide crisis.<sup>3</sup>

The COVID-19 pandemic has produced a substantial amount of additional discussion about situations where parents disagree about whether their children should be vaccinated. Courts have made a flurry of decisions, and litigation of many other disputes is underway. Some of the cases are specifically about COVID-19 vaccination, while others involve parental dis-

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<sup>1</sup> See, e.g., *San Marco v. San Marco*, 961 So. 2d 967 (Fla. Dist. Ct. App. 1997) (switching custody of a child to the father, where the child had not received vaccinations while the mother had custody); *In re Marriage of Botofan-Miller*, 446 P.3d 1280 (Or. 2019) (finding that a substantial change of circumstances warranted modification of a child custody order where the child's mother failed to comply with court-ordered vaccination schedule); *In re A.J.E.*, 372 S.W.3d 696 (Tex. App. 2012) (affirming the trial court's ruling in favor of vaccination where the child's mother opposed vaccination but the child's father and a physician favored it).

<sup>2</sup> *Grzyb v. Grzyb*, 79 Va. Cir. 93 (2009) (finding that the child's mother was in the better position to make health and medical decisions for the child, despite the fact that she opposed having the child receive routine vaccinations).

<sup>3</sup> Elizabeth Angeley, *Anti-Vaccination: A Growing Epidemic?*, 32 J. AM. ACAD. MATRIMONIAL LAW. 271 (2020) (describing how courts evaluate vaccination issues on a case-by-case basis, looking at the best interests of the children in light of expert testimony and the particular facts and circumstances of each situation).

putes that began before the emergence of COVID-19 and concerned other vaccinations.

Most courts have reached conclusions favoring vaccination. For example, a New York court in *J.F. v. D.F.*<sup>4</sup> ruled in favor of the parent supporting vaccination. The case concerned divorced parents with joint custody of an 11-year-old child. The mother wanted the child to receive the COVID-19 vaccine, and the father objected. Through her advocate, the child expressed a desire to be vaccinated. The court found that while the father would prefer to wait for additional information to accumulate about the risks and effectiveness of COVID-19 vaccines, waiting for more information “is simply untenable, when the specter of a killing or incapacitating disease is swirling in the environment surrounding this young girl.”<sup>5</sup> Concluding that vaccination was in the child’s best interests, the court ordered the mother to schedule an appointment for the vaccination to occur as soon as possible.

A family court in New York also ruled in favor of COVID-19 vaccination in *A.L. v. V.T.L.*<sup>6</sup> In that case, a father sought to prevent his former wife from having their child vaccinated against COVID-19, arguing that decisions about vaccination should be postponed until the child was 18 years old and could make his own decision. The father also argued that vaccination was unnecessary because the child had already contracted COVID and therefore had some level of immunity from having previously had the virus. The court emphasized that the issue before it was not the virtues or risks of COVID vaccination, but the more general question of the appropriate mechanism for medical decision-making for the child. The court ultimately found no basis for modifying the stipulation the parties had made during their divorce proceedings, which gave the mother final authority on medical issues for the child.<sup>7</sup>

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<sup>4</sup> *J.F. v. D.F.*, 74 Misc.3d 175, Index No. I2012001795, 2021 WL 5779901 (N.Y. Sup. Ct. Dec. 3, 2021).

<sup>5</sup> *Id.* at \*4.

<sup>6</sup> *A.L. v. V.T.L.*, No. V-02893-21/21A, 2022 WL 201278 (N.Y. Fam. Ct. Jan. 24, 2022).

<sup>7</sup> *Id.* at \*3.

California courts faced a similar situation in *Sullivan v. Superior Court of Santa Clara*,<sup>8</sup> which involved a dispute between a father and mother who shared joint legal and physical custody of two children. The father filed an application asking the court to order the mother to vaccinate the children, or to modify legal custody so that he would have the exclusive right to make final decisions about vaccination for the children. He asserted that the mother had become radically opposed to vaccines and joined an anti-vaccination group on Facebook. The mother denied having an objection to all vaccines, but claimed to have specific concerns based on the children's medical and genetic history. The trial court made clear that it would not decide whether the children would be vaccinated, and instead it would merely decide which parent would make that decision. The court emphasized that it wanted to ensure the parents' positions on vaccination "were motivated by 'actual scientific medical advice [and] that they are not knee-jerk reactions to one faction or another, but they are looking into the best interest of their children by making sure that as many experts and/or pediatricians are giving the advice necessary for them to make an educated choice.'"<sup>9</sup> The trial judge therefore "asked the parties to explain how they educated and informed themselves on the issue of vaccinations."<sup>10</sup> After hearing about the bases for each parent's stance, the judge ordered that the father ultimately would have the authority to make decisions about the children's vaccination, but each parent would have the opportunity to designate a knowledgeable expert that would meet and confer with the parents before the father made any decisions.<sup>11</sup> On appeal, the trial court's ruling was reversed on the ground that the judge had failed to require the parties to mediate the issue as required by California law.<sup>12</sup>

A New Jersey court ruled in favor of the parent seeking vaccination for children in *M.A. v. A.A.*<sup>13</sup> A father wanted his

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<sup>8</sup> *Sullivan v. Superior Ct. of Santa Clara*, No. H048294, 2022 WL 497529 (Cal. Ct. App. Feb. 17, 2022) (unpublished opinion).

<sup>9</sup> *Id.* at \*3.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at \*4.

<sup>12</sup> *Id.* at \*7.

<sup>13</sup> *M.A. v. A.A.*, No. A-1493-20, 2021 WL 2711112 (N.J. Sup. Ct. June 30, 2021).



daughter to be vaccinated, but the child's mother opposed this. While the mother asserted a religious objection to vaccination, the trial judge found that the mother's testimony was not credible, and the judge instead believed the father's assertions that the mother's religious claims were pretextual. The trial court appointed the father to be the child's limited medical guardian for purposes of vaccinations, and the appellate court affirmed that decision.

Likewise, Kentucky courts in *Burch v. Lipscomb* ruled in favor of vaccination of children involved in a custody dispute.<sup>14</sup> The children's father believed it was appropriate to have the children vaccinated, while the children's mother objected on religious grounds. The family court judge in the case found that it was in the children's best interests to be vaccinated and that "the children's health and welfare outweighed the religious beliefs of one parent."<sup>15</sup> The appellate court affirmed, finding that the judge had made a well-informed decision based on the children's best interests.<sup>16</sup>

COVID vaccines are now available for children ages 5 and up, and they may soon become available for children as young as 6 months.<sup>17</sup> Courts are therefore likely to continue to see many disputes between parents over vaccination of children.<sup>18</sup>

In addition to the court decisions, the COVID-19 pandemic has inspired a substantial amount of news coverage and other writing about disputes between parents over children's vaccination. Articles with significant discussions of these issues include:

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<sup>14</sup> *Burch v. Lipscomb*, No. 2021-CA-0614-ME, 2021 WL 5406027 (Ky. Ct. App. Nov. 19, 2021).

<sup>15</sup> *Id.* at \*1.

<sup>16</sup> *Id.* at \*3.

<sup>17</sup> *COVID-19 Vaccination for Children*, CENTERS FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/vaccines/covid-19/planning/children.html> (last visited Feb. 26, 2022).

<sup>18</sup> See also *Benjamin C. v. Nalani S.*, No. S-17968, 2021 WL 5349900, \*1, \*6 (Alaska Dec. 29, 2021) (noting that the trial court had ordered the child to be vaccinated under the recommended schedules and the child's mother had complied with that order); *In re Smith*, 967 N.W.2d 857 (Mich. Ct. App. 2021) (discussing a parental dispute over COVID-19 vaccination that had become moot).

Danielle Campoamor, *Divorced Parents Are Going to Court over COVID-19 Vaccines for Their Children*, TODAY, Nov. 19, 2021, <https://www.today.com/parents/covid-19-vaccine-kids-issue-co-parents-t237998>.

Hayley Fowler, *Divorced Parents Are Divided on COVID Vaccines for Kids. What Are Their Options?*, MIAMI HERALD, Jan. 13, 2022, <https://www.miamiherald.com/news/coronavirus/article257215847.html>.

Sarah Gibson, *What Happens When Divorced Parents Disagree on Vaccinating Their Child?*, All Things Considered, NPR, Dec. 8, 2021, <https://www.npr.org/2021/12/08/1062478253/what-happens-when-divorced-parents-disagree-on-vaccinating-their-child>.

Emily C.A. Hull, *Conflict, Custody & Covid: Vaccination Consent*, HOUS. LAW., Aug. 2021, at 22 (discussing whether COVID-19 vaccination is an “invasive procedure” rather than routine health care for purposes of custody orders in Texas).

Lambeth Hochwald, *Divorced Parents Are Clashing over COVID-19 Vaccines*, WEBMD, July 12, 2021, <https://www.webmd.com/lung/news/20210712/divorced-parents-covid-vaccines>.

Christine Nguyen, *Divorced Parents Are Going to Court over Vaccinating Their Kids Against the Coronavirus*, WASH. POST, Oct. 7, 2021, <https://www.washingtonpost.com/lifestyle/2021/10/07/divorced-parents-covid-vaccine-court/>.

## B. Parental Fitness

Even when there is no disagreement between a child’s parents, failure to have a child vaccinated can become an issue in proceedings about parental fitness, child abuse, and neglect. Courts have generally assumed that failing to have children vaccinated can be a relevant factor weighing against parents in such proceedings.<sup>19</sup> Moreover, once parents have been found to be

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<sup>19</sup> See, e.g., *In re E.A.*, 114 A.3d 207, 211 n.1 (Me. 2015) (affirming a decision that twins would remain in foster care and noting that the parents’ refusal to have the children vaccinated “further confirms their current lack of insight”); *Bulkley v. Bulkley*, 82 A.3d 116, 121 (Me. 2013) (finding that a court’s decision

unfit and a child has been removed from their care, a court has broad powers to protect the welfare of the child and that includes having the child vaccinated despite the parents' objections.<sup>20</sup>

While most courts have ruled in favor of vaccination in these situations, there are exceptions. For example, Texas has a statute that specifically prevents courts from ordering vaccination of a child where a parent has expressly refused to approve the vaccination, even in situations where the parent generally has lost the right to care for and make decisions for the child.<sup>21</sup>

Several articles, in law journals and other publications, have discussed whether vaccines should be mandated for children and whether failure to vaccinate can be a form of abuse or neglect:

Frank A. Chervenak et al., *Professional Responsibility and Early Childhood Vaccination*, 169 J. PEDIATRICS 305 (2016) (applying the professional responsibility model of pediatric ethics, arguing that physicians must be vigorously directive in seeking informed parental permission for childhood vaccination, and arguing that there is no scientific or ethical basis for controversy about these matters).

Robin Fretwell Wilson, *When Faith Defines, and Divides, Family*, FAM. ADVOC., Winter 2022, at 21 (noting how the COVID-19 pandemic has affected legal issues concerning families and religious faith, including how legislators have limited parents' rights

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to award primary residence of a child to the father was supported by the fact that the child received inadequate medical care and was five vaccines behind while residing with the mother).

<sup>20</sup> *In re Statler*, No. 352674, 2021 WL 1941735 (Mich. Ct. App. May 13, 2021) (affirming the trial court's order granting the state agency's motion seeking vaccination of children who had been removed from their parents' home); *In re Deng*, 887 N.W.2d 445 (Mich. Ct. App. 2016) (finding that because a child's mother and father had been adjudicated as unfit parents, the trial court had authority to order vaccination of their children despite the parents' religious objections to vaccination).

<sup>21</sup> TEX. FAM. CODE § 32.101(c)(1) (2021); *In re Zook*, No. 03-21-00180-CV, 2021 WL 2964264 (Tex. App. July 15, 2021) (rejecting the attorney ad litem's request for the children to be vaccinated despite their mother's objection); *In re Womack*, 549 S.W.3d 760 (Tex. App. 2017) (rejecting a state agency's request for vaccination where the agency had been appointed as temporary managing conservator of the child, with the right to make medical decisions concerning the child, but the child's parents objected to vaccination).

to make health-care decisions that endanger children, and how the Supreme Court has cracked down on government actions that treat secular interests more favorably than religious ones).

Efthimios Parasidis & Douglas J. Opel, *Parental Refusal of Childhood Vaccines and Medical Neglect Laws*, 107 AM. J. PUB. HEALTH 68 (2017) (reviewing nine cases in which parents were accused of medical neglect because of refusal to have children vaccinated, and noting that courts found medical neglect in seven of the nine cases).

Kathleen Ramirez, Note, *Protect Our Children: Vaccination Exemptions Can Establish Child Abuse and Neglect*, 57 FAM. CT. REV. 258 (2019) (describing the anti-vaccine movement and proposing the enactment of a federal law that would require parents to have young children receive all vaccines recommended by the Centers for Disease Control and Prevention unless a licensed physician recommends otherwise).

Adeline Sulentich, *Do Parents Who Choose Not to Vaccinate Their Children Open Themselves up to Liability?*, UIC LAW REVIEW (online blog) (Jan. 9, 2019), <https://lawreview.law.uic.edu/do-parents-who-choose-not-to-vaccinate-their-children-avail-themselves-to-legal-punishment/> (discussing how to reconcile parents' rights with societal interests in vaccination).

Nicole Wetsman, *Pediatricians Are Debating Whether Refusing to Vaccinate a Child Can Be Construed as 'Medical Neglect,'* BUS. INSIDER, Aug. 3, 2017, <https://businessinsider.com/is-skipping-a-childs-vaccines-medical-neglect-2017-8> (discussing the debate over whether vaccine refusal is a form of neglect).

### C. Adolescent Consent

In addition, some articles have discussed whether children should be able to obtain vaccinations without parental consent. In most states, a child under age 18 cannot be vaccinated without parental approval,<sup>22</sup> but a few states have laws generally allowing

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<sup>22</sup> Most states have exceptions that allow certain minors, such as those who are emancipated or married, to make their own decisions about vaccination and other health care.

adolescents to make certain decisions about medical care, including decisions about vaccination. Articles discussing this issue with respect to vaccines in general, not just COVID-19 vaccines, include:

Abigail English et al., *Adolescent Consent for Vaccination: A Position Paper of the Society for Adolescent Health and Medicine*, 53 J. ADOLESCENT HEALTH 550 (2013) (recommending that health care providers should develop processes to allow minors to consent to vaccinations “consistent with legal requirements” and that these providers should explore legal options to allow minors to give their consent to vaccines).

Carol A. Ford et al., *Minor Consent and Delivery of Adolescent Vaccines*, 54 J. ADOLESCENT HEALTH 183 (2014) (reporting the results of a survey of health-care providers about the extent to which unaccompanied adolescents seek vaccinations and recommending that older minors be allowed to consent to receiving vaccines).

Peter Kreidl et al., *14-Year-Old Schoolchildren Can Consent to Get Vaccinated in Tyrol, Austria: What Do They Know About Diseases and Vaccinations?*, 8 VACCINES 610 (2020) (reporting the results of a survey conducted in a region of Austria where children age 14 and up can consent to receiving vaccinations, which found that the number of adolescents objecting to vaccination is very low but intensified health education is still needed to increase young people’s understanding of health decisions).

Linda M. Niccolai & Caitlin E. Hansen, *Suboptimal Uptake of Meningococcal Vaccines Among Older Adolescents: Barriers, Solutions, and Future Research Directions*, 16 HUMAN VACCINES & IMMUNOTHERAPEUTICS 3208 (2020) (examining the factors that have reduced rates of adolescent vaccination for meningococcal disease and recommending ways to encourage vaccination including efforts to strengthen general attitudes toward vaccination during adolescence).

Ross D. Silverman et al., *Vaccination over Parental Objection – Should Adolescents Be Allowed to Consent to Receiving Vaccines?*, 381 N. ENGL. J. MED. 104 (2019) (arguing that states

should enact laws empowering minors at least 12 to 14 years of age to make decisions about vaccinations, because allowing minors to make their own choices about vaccination would promote their health, pose minimal health risks, and reinforce norms about vaccination and community protection).

Ashlynn R. Torres et al., *State Laws Permitting Adolescent Consent to Human Papillomavirus Vaccination and Rates of Immunization*, 176 *JAMA PEDIATRICS* 203 (2022) (finding that HPV vaccination rates for adolescents are higher in states where adolescents are permitted to give consent for vaccination without parental notification or approval).

Lois A. Weithorn & Dorit Rubinstein Reiss, *Providing Adolescents with Independent and Confidential Access to Childhood Vaccines: A Proposal to Lower the Age of Consent*, 52 *CONN. L. REV.* 771 (2020) (analyzing the constitutional, policy, scientific, and practical issues raised by a proposal to allow older minors to consent to recommended childhood vaccinations without parental consent).

Gregory D. Zimet et al., *Adolescent Consent for Human Papillomavirus Vaccine: Ethical, Legal, and Practical Considerations*, 231 *J. PEDIATRICS* 24 (2021) (arguing for the elimination of legal barriers to adolescent choice about vaccination).

The debate surrounding these issues intensified when COVID-19 vaccines became available. Several recent articles have discussed whether children under 18 years of age should be able to get vaccinated against COVID-19 without parental consent:

Caroline A. Buchanan, *Until Adolescents Can Consent for Vaccination, Protecting Them from COVID-19 Will Require Counseling Skeptical Parents*, 22 *AM. J. BIOETHICS* 68 (2022) (discussing the complicated questions faced by pediatric health care providers when counseling adolescents who want to be vaccinated but have parents who oppose vaccination).

Leah R. Eisenberg, *"I Can Decide for Myself:" Adolescents Who Wish to Consent for COVID-19 Vaccination*, 22 *AM. J.*

BIOETHICS 62 (2022) (considering whether adolescents should be able to give consent for COVID-19 vaccination).

John Massie et al., *Vaccination of Young People from 12 Years of Age for COVID-19 Against Parents' Wishes*, MED. J. AUSTRALIA, Jan. 24, 2022 (analyzing the ethical considerations that justify allowing health care providers to vaccinate young people even when parents do not consent).

Larissa Morgan et al., *COVID-19 Vaccination of Minors Without Parental Consent*, 175 JAMA PEDIATRICS 995 (2021) (proposing that minors aged 12 to 14 years should be able to consent to vaccination without parental approval, although notification to parents generally should be provided, and that minors aged 15 to 17 years should be able to consent to vaccination without parental approval and their decision should be kept confidential).

Eman Mubarak & Janice Firn, *When Parents Don't Want Their Teenager to be Vaccinated Against COVID-19, Who Calls the Shots?*, 22 AM. J. BIOETHICS 66 (2022) (advising health care professionals trying to recognize the emerging autonomy of adolescent patients and integrate the adolescent's views into the medical decision-making process while complying with ethical or legal obligations to obtain parental consent).

Robert S. Olick et al., *Adolescent Consent to COVID-19 Vaccination: The Need for Law Reform*, 137 PUB. HEALTH REPORTS 163 (2022) (arguing that states should follow the lead of the District of Columbia and enact legislation authorizing adolescent consent for vaccination).

Lawsuits that raise critical issues concerning parental decision-making about vaccination are now underway in federal court in the District of Columbia. These lawsuits arose because in October 2020, the District of Columbia enacted legislation allowing children as young as 11 years old to be vaccinated without their parents' knowledge or consent.<sup>23</sup> Under this law, dubbed the District of Columbia Minor Consent to Vaccinations Act, a doctor must approve the vaccination and determine that the child

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<sup>23</sup> D.C. MUN. REGS. tit. 22, § 600.9 (2020).

is capable of giving informed consent. To the extent that the doctor needs to provide information to the child's school or submit a claim for compensation to a health insurance company, the doctor must do so directly rather than through the child's parents. The doctor may omit information about the vaccination from the child's medical records made available to the child's parents.

The law, which was enacted before COVID-19 vaccines became available, was inspired by outbreaks of measles. Legislators hoped it also would increase the number of teens being vaccinated against the human papillomavirus. The law took on new importance when the FDA approved COVID-19 vaccines (initially for individuals age 16 and up, but later extended to younger age groups as well).

Several lawsuits challenging the D.C. law have been filed in the U.S. District Court for the District of Columbia. In one of the cases, Josh Mazer, a Maryland parent, asserts that his teenage daughter went to a pediatrician's office in the District of Columbia to get a tetanus, diphtheria, and pertussis vaccination required for a summer camp that she wanted to attend. Although she decided not to get the vaccine, her father filed a lawsuit against the District's health department and District officials on July 2, 2021. He contends that the D.C. law allowing vaccinations without parental consent violates constitutional and statutory rights, including provisions of the National Childhood Vaccine Injury Act which require information about vaccine risks to be provided to guardians of children receiving vaccines.<sup>24</sup>

In the other case, four parents sued the District of Columbia's mayor, its health department, and its public school system.<sup>25</sup> They claim that the District's Minor Consent to Vaccinations Act conflicts with federal statutes and unconstitutionally infringes their parental and religious rights. Counsel for the plaintiffs in the case include Robert F. Kennedy, Jr., a prominent activist raising concerns about vaccines.

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<sup>24</sup> The case is *Mazer v. D.C. Dep't of Health*, No. 1:21-cv-01782 (D.D.C.). The complaint is available online at <https://www.bloomberglaw.com/public/desktop/document/MAZERvDCDEPARTMENTOFHEALTHetalDocketNo121cv01782DDCJul022021Court?1645392273>.

<sup>25</sup> The case is *Booth v. Bowser*, No. 21-1857 (D.D.C.). The complaint is available online at <https://childrenshealthdefense.org/wp-content/uploads/Booth-DC-1-Verified-Complaint-CMECF.pdf>.



Articles discussing the lawsuits and the District of Columbia's Minor Consent to Vaccinations Act include:

*D.C. Sued over Vaccine Law Curbing Parental Consent for Kids*, BLOOMBERG LAW, July 6, 2021, <https://news.bloomberglaw.com/health-law-and-business/d-c-sued-over-vaccine-law-curbing-parental-consent-for-kids>.

Diego Mendoza, *Lawsuits Challenge Legality of DC Law Allowing Minors to Get Vaccinated Without Parental Permission*, WUSA, July 21, 2021, <https://www.wusa9.com/article/news/health/washington-dc-youth-covid-19-vaccination-consent-law-suits/65-2a607b7f-9a60-42df-bf1e-cf6376d76d90>.

Justin Wm. Moyer & Julie Zauzmer Weil, *Lawsuits Challenge D.C. Law Allowing Kids to Get Vaccines Without Parental Permission*, WASH. POST, July 18, 2021, [https://www.washingtonpost.com/local/dc-vaccination-lawsuit-parental-permission/2021/07/16/d7710422-e649-11eb-b722-89ea0dde7771\\_story.html](https://www.washingtonpost.com/local/dc-vaccination-lawsuit-parental-permission/2021/07/16/d7710422-e649-11eb-b722-89ea0dde7771_story.html).

The plaintiffs in both cases filed motions seeking preliminary injunctions, while the defendants filed motions to dismiss. In March 2022, the district court ruled in favor of the plaintiffs on these motions, finding that the plaintiffs were likely to succeed on their arguments about federal preemption and religious rights.<sup>26</sup> With most states continuing to require parental consent for vaccination but a growing number of experts arguing for this to change, the outcome of the litigation in the District of Columbia may play a significant role in determining whether other states move toward expanding opportunities for adolescents to make their own decisions about vaccinations.

#### D. *Mandatory Vaccination for Children*

The COVID-19 pandemic has also inspired further debate about the extent to which vaccination can be legally mandated for all children, or at least all children attending public schools. The following articles address that issue.

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<sup>26</sup> Booth v. Bowser, Nos. 21-cv-10857 (TNM), 2022 WL 823068 (D.D.C. Mar. 18, 2022).

Christian Farias, *Yes, the Government Can Make You Vaccinate Your Child*, NEW REPUBLIC, Feb. 3, 2015, <https://newrepublic.com/article/120950/courts-have-upheld-governments-constitutional-right-vaccine-laws> (discussing the legal basis for rejecting constitutional challenges to laws requiring vaccinations for students attending public schools).

Katherine A. Fortune, Note, *Medical Miracle or Unnecessary Exercise? The Legal Implications of Mandatory Childhood Vaccination for HPV*, 85 U. DET. MERCY L. REV. 203 (2008) (discussing the controversy over proposals to make HPV vaccination mandatory for girls entering the sixth grade in Michigan).

Megan Gibson, Note, *Competing Concerns: Can Religious Exemptions to Mandatory Childhood Vaccinations and Public Health Successfully Coexist?*, 54 U. LOUISVILLE L. REV. 527 (2016) (arguing that the compelling interest in public health justifies elimination of non-medical exemptions to mandatory childhood vaccine requirements).

Diane Heckman, *The Legality of Mandatory Vaccinations of K-12 Public School Students and the Implications for the COVID-19 Universe*, 388 ED. L. REP. 453 (2021) (analyzing the issues and precedents concerning the constitutionality of state laws imposing mandatory vaccination requirements on school children).

Emily R. Jones, Note, *Who Calls the Shots? Parents Versus the Parens Patriae Power of the States to Mandate Vaccines for Children in New York*, 37 GA. ST. U. L. REV. 637 (2021) (examining New York's response to a measles outbreak and arguing that public health interests in having safe school environments should be able to override personal liberty).

Dorit R. Reiss & Arthur L. Caplan, *Considerations in Mandating a New COVID-19 Vaccine in the USA for Children and Adults*, 7 J. L. & BIOSCIENCES 1 (2020) (suggesting there may be sound ethical and legal grounds for mandating COVID-19 vaccination, including for children).

Miranda Wheeler, Note, *Vaccination Altercation: The Constitutionality of Mandatory Influenza Vaccination for Students*, 30 S. CAL. INTERDISCIPLINARY L.J. 851 (2021) (finding that is unclear whether mandatory flu vaccination for students would be constitutional).

Lauren Zidones, Note, *A Chance to Save Lives: A Guide for How and Why the US Should Mandate Vaccines for Children and*

*Limit State Exemption Laws*, 54 AKRON L. REV. 159 (2020) (arguing that vaccinations for children can be mandatory and state laws that allow parents to exempt their children from vaccination should be eliminated or limited).

