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CHILD POLICY FORUM
Welcoming Remarks
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BROOKLYN COLLEGE

Thank you, Professor Lenzer, and good morning to the esteemed guests and participants at this important Child Policy Forum in support of the Campaign for United States Ratification of the Convention on the Rights of the Child. I bring greetings from the CUNY School of Law, one of the sponsors of the program, where our motto, "Law in the service of human needs" infuses everything we do.

The law school has long recognized the importance of exposing aspiring lawyers to the theoretical and practical aspects of international law. This recognition has one of its most notable expressions in our internationally recognized International Women's Rights Clinic, where law students, under the supervision of our outstanding faculty, address gender-related problems through the lens of international human rights laws. Students advocate on behalf of individual clients in the context of promoting change in both national and international human rights law. They urge international lawmaking institutions to redefine and implement human rights that will provide greater protection to, among others, those victimized by gender and sexual violence, and to advance reproductive and sexual rights as well as economic and social rights. Clinic students build the capacity to use international human rights frameworks and institutions to reexamine and challenge the narrower rights approach of U.S. domestic law while developing lawyering skills applicable purely to U.S. law reform efforts.

My practice experience, and my teaching and research interests focus on Family Law, Children's Rights and Child Advocacy. In keeping with the Law School's emphasis on international law, I look for opportunities to engage with students in thinking about ways to use the U.N. Convention on the Rights of the Child, and the human rights norms embodied within that historic document, in the service of the needs of children. In my own recent scholarship, I have been exploring ways in which the fundamental principles of the Convention can be brought to bear in the here and now to influence policy and law-making decisions regarding children.

Before we bring on our esteemed guests, who will educate us further on the history and meaning of the Convention, by way of example, I'd like to share with you some of my thoughts on how the Convention might be used to positively affect the lives of children in the United States even though our government has not yet ratified it.

As you have heard, similar sessions to this one are being held at venues around the country at this very moment. At the Georgetown University Law Center, the participants are specifically discussing how provisions of the Convention on the Rights of the Child can still be used as standards to guide policies and programs even in the absence of ratification by the United States government. Using the principles embodied in the Convention on the Rights of the Child, I have developed an international law framework for addressing the disturbing phenomenon of the use of psychotropic drugs on some of our most vulnerable children – those in foster care and in juvenile detention facilities. These drugs, such as Ritalin, Adderall, Prozac, Paxil, Haldol,

Risperidal, and Zoloft, to name just a few, are commonly used in children diagnosed with a psychiatric disorder or mental illness and in the presence of problematic behavior, emotion, or
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mood. Nearly all pediatric prescriptions of psychotropic drugs are "off-label", meaning that they have not been approved by the United States Food and Drug Administration as safe and effective for use in children.

Used appropriately and with close monitoring, psychotropic medications can literally save a particular child's life. However, even staunch supporters of psychotropic drug use in children acknowledge that such drugs can also worsen problems or create entirely new ones. Additionally, the risks the health and safety of individual children are well-documented, including the fairly innocuous, such as dry mouth, headache, etc, to more serious side effects such as thyroid dysfunction, growth retardation, abnormal weight gain, liver damage, heart failure, and death. Despite insufficient scientific evidence that the benefits to children of psychotropic medications outweigh the serious and sometimes deadly side affects associated with their use, according to the International Narcotics Control Board – the world's drug control watchdog – the prescription of psychotropic drugs to children in the United States has reached epidemic proportions, far outstripping both scientific evidence of their efficacy and safety in children and apparent need. A bit later, I will outline some of the alarming statistics about the use of these dangerous drugs in our children.

First, however, I'd like to address the following question: How can the Convention be used to address this problem in the United States, even in the absence of ratification? Although the United States government has not ratified the Convention, it has signed it. As such, the Convention does have some legal effect in the United States. In the absence of a clearly expressed intention not to ratify the convention, under Article 18 of the 1969 Vienna Convention on the Law of Treaties, by virtue of signing the Convention, the United States government is, at the very least, obligated to refrain from doing anything that "would defeat the purposes and objects" of the Convention.

An even more compelling argument for the Convention's applicability in the particular context of psychotropic drug use in children in state custody is based on the doctrine of "customary international law," a principle of international law that affirmatively binds a government to act in accordance with norms and values taken to be fundamental to the international community, even though that particular government has not entered into a formal treaty embodying those norms and values. Customary international law looks to the law and practice of nations throughout the world as a barometer of community conscience or opinion on a particular issue, and, where applicable, is of equal force and effect as treaty law.

With the exclusion of the United States and Somalia (which does not have a recognized government), virtually all of the members of the United Nations have ratified the Children's Rights Convention. This fact in itself may be viewed as codifying, in one place, the norms of special care and solicitude toward children previously embodied in various international documents. Under the documents comprising the "International Bill of Rights," (consisting of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social, and Cultural Rights), childhood is universally declared to be "entitled to special care and assistance," and governments are required

to adopt specific measures to ensure that children are protected from various forms of harm and exploitation.

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The unprecedented universality of ratification of the Convention demonstrates the unequivocal and overwhelming international acceptance of the Convention's norms and values, including the principles outlined above relative to the prohibition against the unwarranted use of psychotropic medications in children. Under this argument, the United States is obligated not only to refrain from doing anything that would defeat the purposes and objects of the CRC with respect to psychotropic drug use in children, but is obligated under the Convention to take affirmative steps to implement the provisions of the Convention requiring special care and protection for children from the unwarranted use of psychotropic medications.

In implementing this affirmative duty, I argue that the United States government must establish national standards and protocols for the use of psychotropic medications in children in state custody, and set up oversight, accountability and grievance mechanisms to ensure that those charged with the care and control of these children are monitored and that the children and their families have avenues of redress for harms suffered due to the illegitimate use of such drugs.

Children in state custody are in dire need of protection from the medically unjustified use of psychotropic drugs. Psychotropic drugs act directly on the brain, and although recognized as having important but limited therapeutic value, they are highly susceptible to dependency, abuse, and diversion into the illicit drug market. As such, the United Nations Convention on Psychotropic Substances, 1971 classifies certain psychotropic drugs as "controlled substances," and requires party governments to limit their use to "legitimate medical purposes." The United States has ratified the Psychotropic Substances Convention, and is therefore subject to its provisions requiring it to ensure that the use of such drugs are limited to legitimate medical purposes.

As stated above, Article 33 of the United Nations Convention on the Rights of the Child requires governments to take all appropriate measures to ensure that children are protected from the illegitimate use of psychotropic drugs. Thus, while the Psychotropic Substances Convention requires the United States government to ensure that psychotropic drugs are used appropriately as a general matter, Article 33 of the Convention on the Rights of the Child suggests that, because of the particular needs and vulnerabilities of children, in implementing its duties under the Psychotropic Substances Convention, the United States government must provide children with a substantially higher standard of care, protection, and solicitude when it comes to the use of psychotropic drugs.

This argument is further bolstered by other provisions of the Convention, such as Article 3, Section 1, which requires that "[i]n all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."

Additionally, Article 3, Section 2 requires governments to "undertake to ensure the child such protection and care as is necessary" for each child's well-being, and Section 3 emphasizes the obligation of governments to "ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff,

as well as competent supervision."

More generally, Article 9 of the Convention provides that children are to be protected from "all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, 4 maltreatment or exploitation . . .while in the care of parent(s), legal guardian(s) or any other person who has the care of the child," and Article 37 specifically requires that "no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment," and that "every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age." I argue that, taken together, these provisions of the Convention impose upon governments a heightened duty to ensure that children are not inappropriately exposed to psychotropic medications.

Unfortunately, children in state custody are particularly at risk of medically unjustified exposure to psychotropic drugs. Reports of routine, non-medically justified use of psychotropic drugs among children in foster care, in juvenile detention facilities and children who are Medicaid recipients are quite common. For example, in a 2004 report entitled "Forgotten Children: A Special Report on the Texas Foster Care System," Texas Comptroller Carole Strayhorn documented "disturbing amounts of psychotropic medications prescribed to foster children" and an almost complete lack of accountability in prescription practices. Strayhorn concluded that foster care children in Texas were being administered "astronomical amounts of medication" not for legitimate medical purposes, but rather, to "generate more money for the child welfare agency and for parents and foster parents." A similar report in 2001 established that approximately 600 children who were enrolled in the Florida Medicaid system – most of them in foster care, and the majority under five years old – were prescribed drugs marketed for the treatment of schizophrenia, an illness very rarely diagnosed in children of that age. Reports in 2002 from the Oregon Youth Authority documented that 72% of girls and 54% of boys in its custody, who were diagnosed with psychiatric conditions, and 39% of Oregon children on parole or probation ("community supervision") were taking psychotropics. A survey of juvenile correctional facilities in Pennsylvania in 2000 found that in some detention centers as many as 40-50% of the children were prescribed the drugs. And, in New Jersey, a 2004 report of an investigation by the Office of the Child Advocate into the conditions of confinement of juveniles in that state's 17 county detention centers revealed that, depending on the facility, anywhere from 10% to 50% of the incarcerated children were taking psychotropic medications.

These shocking statistics reflect the sobering truth that, despite the absence of sound scientific evidence justifying the treatment of children with psychotropic medications, there has been an astronomical increase in the practice of pediatric psychopharmacology generally,1 with state-involved children much more likely to be prescribed psychotropic drugs than children in the general population. Although poor record-keeping precludes exactitude, numerous reports have documented the predominance of psychopharmacology as the intervention of choice in responding to the psychological needs of state-involved children.2 To some, the dramatic shift

1 See, e.g., Cindy Parks Thomas, Ph.D., Peter Conrad, Ph.D., Rosemary Casler, M.A. and Elizabeth Goodman, M.D, Trends in the Use of Psychotropic Medications Among Adolescents, 1994 to 2001, Psychiatric Services, January 2006, vol. 57, no. 1, pp. 63-69.

2 The Associated Press, "A Dilemma: Medications for Foster Kids," March 13, 2007 (New York) [hereinafter Medications for Foster Kids] (observing that "[c]oast to coast, states are wrestling with how best to treat the legions of emotionally troubled foster kids in their care. Critics contend that powerful psychiatric drugs are overused and say poor record keeping masks the scope of the problem.")

toward psychotropic drug use in children signals "better case finding, better diagnosing, and a realization that we do have active treatments that can benefit children."3 On the other hand, critics, including the International Narcotics Control Board, contend that the practice is an outgrowth of the increasing medicalization of childhood behavior, and that it constitutes a "chemical sledgehammer" used to make children easier to manage.4

The arguments set out above provide an international law framework that can be used by child advocates and others concerned with the rampant use of psychotropic drugs to control the problematic behavior of children in state custody in the absence of sufficient medical or scientific justification. We desperately need a national conversation about the high rates of prescription of psychotropic drugs to children in state custody. The crux of my argument is that the Convention on the Rights of the Child, in conjunction with the 1971 Convention on Psychotropic Drugs imposes upon the United States government an affirmative duty to protect children in state custody from the inappropriate use of psychotropic drugs. To satisfy this duty, the United States government must investigate and document the problem, establish national standards and protocols for the use of psychotropic medications in children in state custody, and set up oversight, accountability and grievance mechanisms to ensure that those charged with the care and control of these vulnerable children are closely monitored. Additionally, avenues of redress must be set up so that children and their families have the means to seek redress for harms suffered due to the unwarranted use of such drugs.

Thank you for allowing me the time to share with you this example of how the Convention on the Rights of the Child might be used to influence policies and practices in the service of the needs of children, while we continue to fight the good fight for United States ratification of the Convention. I thank you for your attention, and look forward to a most fruitful and enlightening discussion today.

3 Interview with Marilyn Benoit, M.D., President of the American Academy of Child and Adolescent Psychiatry, State Health Lawmakers' Digest: Psychotropic Drug Use among Children (Vol. 3, No. 3), National Conference of State Legislatures Website, available at http://www.ncsl.org/programs/health/forum/shld/33c.htm.

4 Medications for Foster Kids, supra note 2.