The Enhanced Resource Guidelines: A Tool for Court Innovation
by Claire Chiamulera

“Just because you get the job doesn’t mean you know how to do it.” It was 1998. Judge Peggy Walker was starting her career in juvenile court in Douglas County, Georgia. A former teacher, she knew education was key to doing her job well, so she turned to the National Council of Juvenile and Family Court Judges’ (NCJFCJ) Resource Guidelines in Child Abuse and Neglect Cases. “I came to find the Resource Guidelines and they became the guide for me on the how to,” said Judge Walker.

Likewise, when Judge Egan Walker left criminal work six years ago to become a dependency court judge in Washoe County, Nevada he needed guidance. “I have 12 years of higher education. Not one moment of that instruction was about how you get this giant system—the child welfare system—to provide a good product for the children and families involved,” he said. He attended NCJFCJ’s Child Abuse and Neglect Institute, where he learned about the Resource Guidelines and how to apply them in his courtroom.

Their experiences are mirrored by judges nationwide who make life-altering decisions about children and families—cases complicated by federal and state child welfare laws, bureaucratic systems, and many parties with competing interests. The Resource Guidelines give judges the law and resources to guide decisions.

“What’s great about the Guidelines is they lay out these different laws in a way the judge can get quick and easy answers,” said Victoria Sweet, senior program attorney at NCJFCJ. Sweet trains juvenile court judges on the Resource Guidelines, bridging gaps in their knowledge. Sweet has noticed the boost in confidence judges have in their decisions once they start using the Guidelines. They have a reference to turn to with strategies from experienced judges that helps them promote best practices.

For juvenile court judges throughout the country, the Resource Guidelines have served as a roadmap since their release in 1995. Courts that committed to using the Resource Guidelines became part of NCJFCJ’s expansive Model Court program, with over 80 jurisdictions participating.

Time for a Refresh
As the child welfare field evolved, new laws and research emerged, and the Model Courts learned from their experiences, the time came to revamp the Resource Guidelines.

Enhanced Resource Guidelines

Questions Every Judge and Lawyer Should Ask About Infants and Children in the Child Welfare System
http://www.ncjfcj.org/Questions-To-Ask-Child-Welfare

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District Court Dismisses Claim that ICWA Provisions and Accompanying Guidelines are Unconstitutional

**A.D. by Carter v. Washburn, 2017 WL 1019685 (D. Ariz.).**

A class action was filed on behalf of all off-reservation Arizona children with Indian ancestry and all off-reservation Arizona foster, preadoptive, and prospective adoptive parents in child custody proceedings involving children with Indian ancestry challenging certain provisions of the Indian Child Welfare Act (ICWA) and the 2015 Guidelines. The claim alleged several constitutional violations including equal protection and due process violations of the Fifth and Fourteenth Amendments. The court found the parties lacked standing because the complaint did not allege facts showing a concrete and particularized injury that was actual or imminent and fairly traceable to alleged violations.

This case was filed to protect children involved in three different child welfare cases and was extended to include all off-reservation Arizona children in child custody proceedings. Of the child-specific cases, the first involved a child who was an enrolled member of a tribe, whose parents’ rights had been terminated, and whose foster parents’ petition to adopt was pending. The second was a child who was also an enrolled member of a tribe with a finalized adoption after four years in state custody. The third was a pair of half-siblings, one of whom was eligible for tribe membership while the other was not. Parental rights had not been terminated and the siblings remained in foster care with parents who wanted to adopt them.

The petitioners, on behalf of the children, alleged the 2015 ICWA Guidelines and parts of ICWA itself violate equal protection and due process guarantees of the Fifth and Fourteenth Amendments; exceed the federal government’s power under the Indian Commerce Clause and the Tenth Amendment; violate associational freedoms under the First Amendment; and exceed authority to publish guidelines. The government sought a dismissal of these claims. To avoid dismissal, the complaint needed to contain “enough facts to state a claim for relief that is plausible on its face.” The petitioners also needed to establish standing by showing they suffered an injury that was concrete and particularized, actual or imminent, and traceable to the alleged violation.

The court’s analysis of the disputed sections of ICWA and the 2015 Guidelines included:

- Section 1911(b) requires state courts to transfer any proceeding on foster care placement of, or termination of parental rights to, an Indian child not domiciled or residing within the reservation of the child’s tribe to the tribal court upon petition of either parent, the Indian custodian, or the Indian child’s tribe, in the absence of good cause to the contrary, objection by either parent, or declination by the tribal court of the tribe. The court found only one of the three cases had a tribe seek transfer and agreed there was concrete and particularized injury of delay due to that transfer. However, the court determined it was not traceable to §1911(b) but rather to the tribe.

- Section 1912(d) requires state officials to make active efforts to provide services to prevent the breakup of an Indian family. These efforts are distinct from reasonable efforts found in the Adoption and Safe Families Act (ASFA). Petitioners argued that requiring more than reasonable efforts deprived Indian children and their foster parents of legal recognition of their family status resulting in
uncertainty and distress. The court found the only possible injury from Section 1912(d) would be a delay in termination of parental rights, which no party suffered.

- Section 1912(e) prohibits foster care placement “in the absence of a determination supported by clear and convincing evidence…that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.” This is a higher standard of proof than required in non-Indian child cases. Petitioners argued the higher standard disregarded the safety and security of children with Indian ancestry based solely on race. The court found the complaint did not state facts showing a foster care placement for any of the children was delayed or exposed to greater risk of harm because of this higher standard and therefore there was no injury.

- Section 1912(f) prohibits termination of parental rights “in the absence of a determination, supported by evidence beyond a reasonable doubt…that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.” It was argued the “beyond a reasonable doubt” standard is greater than would otherwise be required, but the complaint did not allege termination proceedings were affected by the standard.

Petitioners also argued ICWA and the 2015 Guidelines, § § 1915(a), (b) and § § F.1., F.2., F.3., and F.4. regarding adoptive placement preferences, single out and treat children with Indian ancestry and non-Indian adults involved with their care and upbringing differently. The court found the complaint alleged mere conclusions, not facts, in the cases of adoption or foster care placements that had been delayed by preferences, so there was no injury.

The complaint had been amended several times, and the court used its broad discretion to bar further amendments because it would cause undue delay and would likely be futile. Finding no injury, the court dismissed the case.

Reasonable Efforts Tailored to Mother’s Intellectual Disability

Required before Terminating Parental Rights

In re Hicks/Brown, 893 N.W.2d 637 (Mich. 2017).

The Michigan Supreme Court found a child welfare agency’s required reunification efforts were not reasonable unless the agency modified services, as reasonably necessary, to accommodate parent’s disability. Court ruled termination of parental rights must have proper finding of reasonable efforts, which had not happened in this case.

A mother with intellectual disabilities brought her infant to the Michigan Department of Health and Human Services (the Department) stating she could not care for her child. The mother was pregnant with another child, who was also placed with the Department after birth. The mother was provided a service plan in early 2013, which she participated in inconsistently. In 2014, the mother’s attorney sought accommodations. When the department modified its services as reasonably necessary to accommodate the mother’s disability, requires the Department to provide reasonable modifications to the services or programs offered to a disabled parent. The court found the Department failed in this duty to provide accommodations and therefore may have failed to make reasonable efforts at reunification.

The Michigan Supreme Court found the Department was aware of the mother’s disability and could not be passive in its approach to providing accommodations. When the mother’s attorney sought accommodating services, at least a year before termination, the Department did not object. The court therefore found the Department could not now complain the request for accommodations was untimely.

The court held reunification efforts cannot be reasonable unless the Department modified its services as reasonably necessary to accommodate the mother’s disability before termination. In this case, the lower court’s analysis of reasonable efforts was incomplete so the court vacated the termination order and remanded the case for further consideration.
STATE CASES

Alaska
TERMINATION OF PARENTAL RIGHTS, ICWA
Father appealed termination of his parental rights to child subject to Indian Child Welfare Act (ICWA). Appellate court found child welfare agency made active but unsuccessful efforts to prevent breakup of family, as required by ICWA. Agency provided out-of-state residential treatment and weekly cognitive behavioral therapy for child, developed multiple case plans for father, referred him to parenting classes and substance abuse treatment, and continued to work with him even after visitation was terminated.

California
In re R.T., 3 Cal. 5th 622 (Ct. App. 2017).
DEPENDENCY, DUE PROCESS
Mother appealed order of dependency based on her inability to provide appropriate parental care and supervision due to daughter’s chronic runaway behavior and acting out. Due process does not require finding of unfitness or neglect before court assumes dependency jurisdiction over child harmed as result of “failure or inability of his or her parent or guardian to adequately supervise or protect the child.” Daughter refused to return to mother’s home and care, and minor, who was teenager and already mother herself, was at substantial risk of serious harm.

Florida
DEPENDENCY, PERMANENCY GOAL
After mother’s children were adjudicated dependent and trial court accepted case plan setting forth primary goal of reunification, trial court changed goal to permanency. Appellate court held trial court could not change primary goal of mother’s case plan without adequate evidentiary basis.

TERMINATION OF PARENTAL RIGHTS, DEFAULT JUDGMENT
Father appealed final judgment terminating his parental rights. Trial court entered implied consent against father when he failed to appear at adjudicatory hearing and concluded father’s motion to vacate must be denied because he failed to present meritorious defense. Appellate court concluded trial court erred in denying motion to vacate because child welfare agency asked for continuance of adjudicatory hearing, father was hospitalized at time of hearing, and he presented argument as to each ground for termination.

Georgia
ABUSE, FELONY MURDER
Defendant parents could not be convicted of both felony contributing to deprivation of child and felony murder. They could not be convicted or sentenced for felony contributing to deprivation of child, predicated on death of daughter, when defendants were convicted of felony murder based on aggravated assault resulting in daughter’s death. Trial court could only impose one conviction and sentence for killing of single victim.

Idaho
TERMINATION OF PARENTAL RIGHTS, SEX ABUSE
Appellate court upheld termination of mother’s and father’s parental rights to seven minor children. Father was serial child molester over at least 16 years. Mother testified father first molested oldest daughter, who was 22 years old at time of hearing, when she was six years old; two to four of their daughters had some degree of molestation; she did not call police; and she told daughter to be careful what she said to police.

Illinois
In re Brandon K., 2017 WL 2982521 (Ill. App. Ct.).
TERMINATION OF PARENTAL RIGHTS, DOMESTIC VIOLENCE
Jury verdict finding father guilty of first-degree murder of children’s mother qualified as “conviction” triggering statutory presumption of depravity. Presumption that father was deprived and therefore unfit to care for and protect his minor children supported termination of parental rights and did not require child welfare agency to show father had more than one conviction or that murder conviction had been accompanied by finding of brutal and heinous conduct.

Indiana
In re K.S., 78 N.E.3d 740 (Ind. Ct. App.).
DEPENDENCY, SUBSTANCE ABUSE
Evidence failed to establish that mother’s use of marijuana two months before giving birth “seriously impaired or seriously endangered” her son within meaning of statute and he was therefore not dependent. Child welfare agency presented no evidence son had tested positive for marijuana or, even if he had, how positive marijuana test endangered him.

Kansas
C.M. ex rel. A.M. v. McKee, 398 P.3d 228 (Kan. Ct. App.).
ABUSE, STALKING
Mother, on behalf of child, was granted protection from stalking order against neighbor, and he appealed. When plaintiff seeking protection order is child, court must view circumstances from viewpoint of reasonable child of plaintiff’s age. Eleven-year-old victim testified that while she was traveling with father, neighbor drove his vehicle towards their vehicle, and neighbor jumped out from behind bush as she walked home from school and scared her.

Maine
In re Zoey P., 2017 WL 3027547 (Maine).
TERMINATION OF PARENTAL RIGHTS, DUE PROCESS
Mother received adequate notice of termination hearing, therefore her due process rights were not violated. She was served in-hand with termination petition and notice of hearing was issued one month before hearing. Record showed child welfare agency and court-appointed counsel tried to contact mother many times.

Missouri
In re G.M.G., 2017 WL 3387980 (Mo. Ct. App.).
TERMINATION OF PARENTAL RIGHTS, REPRESENTATION
Indigent mother was not entitled to court-appointed counsel in underlying neglect proceeding before her termination proceeding, for which she had representation. She was unrepresented only after she knowingly and voluntarily waived her right to counsel or trial court made express finding that appointing counsel was not necessary for “full and fair hearing.”

Nevada
TERMINATION OF PARENTAL RIGHTS, SERVICES
Evidence supported terminating mother’s parental rights based on her demonstrating only token efforts to care for children. Mother failed to take advantage of
resources available to her to help accomplish her case plan goals. She failed to find apartment after receiving housing voucher from housing authority, and failed to submit documentation for low-income energy assistance. Mother was referred to therapy to address anxiety but failed to follow through, failed to stay employed, and voluntarily left several jobs.

North Carolina

Mother’s children were adjudicated neglected and placed with adult sibling. On remand after mother’s appeal, juvenile court found reasonable efforts to reunify family would be futile and ordered children to remain with sibling. Mother appealed again. Appellate court found juvenile court’s permanent plan order, which stated reasonable efforts to reunify family would be futile and incorporated findings in prior orders by reference, did not satisfy statute. Reunification had to remain primary or secondary plan unless court made findings of fact showing reunification efforts would clearly be unsuccessful or inconsistent with child’s health and safety.

Oklahoma

In re B.K., 398 P.3d 323 (Okla. 2017). TERMINATION OF PARENTAL RIGHTS, MENTAL ILLNESS
As matter of first impression, trial court did not commit fundamental error by allowing child welfare agency to seek termination of mother’s parental rights based on her failure to correct delusional condition that led to child’s adjudication as dependent, even though agency could have alternatively proceeded based on mother’s diagnosed delusional persecution disorder. Mother was given notice of condition she needed to correct, assistance and services, and reasonable period address issues.

Pennsylvania

As matter of first impression, family court lacked authority to enter order finding child was subject to aggravated circumstances once it determined child was not dependent. Plain language of statute provided that court may make finding of aggravated circumstances only if it finds child is dependent. Statute contained no provision authorizing findings on aggravated circumstances if no finding of dependency is made.

Rhode Island

In re Adrina T., 162 A.3d 658 (R.I. 2017). DEPENDENCY, ABUSE
Record was insufficient to support finding mother abused and neglected child. Trial judge expressly noted there were too many unanswered questions, especially uncertainty as to how child’s injury occurred. Mother testified she was not present at time of child’s injury and no contrary evidence was presented. Medical testimony was unclear whether child’s injury resulted from abuse or was merely accidental.

South Dakota

In dependency proceeding, mother was not prejudiced by court taking judicial notice of two prior abuse and neglect cases and mother’s criminal file, which may have contained inadmissible drug court evidence. Court did not rely on any improper evidence, such as statements mother made in connection with drug court program or reports of drug court staff regarding her use of controlled substances, but merely considered fact that mother was in drug court program and received services through drug court.

Utah

In re K.T., 2017 WL 3404802 (Utah). DEPENDENCY, CORPORAL PUNISHMENT
Parents’ stipulation that they had disciplined their children by spanking them with belt, without evidence that would infer harm, was insufficient to support finding that children were abused. Parents did not stipulate that their discipline caused children harm, and per se rule that harm occurred any time child was struck with any object was overbroad and impermissibly expanded meaning of abuse.

Vermont

Trial court abused its discretion in denying mother’s request for 30-minute recess to allow her to attend contested termination of parental rights hearing. Mother asked for brief recess early in proceeding so requested delay would not have disrupted court’s calendar or prejudiced children or child welfare agency. Denying request had harsh effect on mother because case was decided based on exhibits and testimony presented by agency but without mother’s testimony.

Virginia

Mother filed petition seeking sole custody of child, a Honduran native, and asked court to make specific factual findings to qualify child for Special Immigrant Juvenile (SIJ) status. Juvenile court awarded mother sole custody but declined to make requested factual findings. On mother’s appeal, appellate court found state courts lack power to hear petitions for findings of fact required for child to acquire SIJ status. Courts are not required to make findings relating to abuse, neglect, or abandonment, as required for child to acquire SIJ status, or tailor their orders to increase likelihood federal immigration officials will find them acceptable.

FEDERAL CASES

Seventh Circuit

United States v. Gatlin, 2017 WL 3167338 (7th Cir.). SEX TRAFFICKING, AGE OF VICTIM
Defendant appealed conviction for sex trafficking of children in or affecting interstate or foreign commerce. Court of Appeals ruled prosecution was not required to prove minor victim actually engaged in commercial sex act. Defendant stipulated that integral part of his scheme to prostitute minor—taking photographs of minor in her underwear and posting pictures on classified advertising website—affected interstate commerce.

Eighth Circuit

United States v. Wearing, 2017 WL 3254374 (8th Cir.). JUVENILE JUSTICE, SENTENCING
Defendant pleaded guilty to receiving child pornography and appealed his sentence. Appellate court held juvenile delinquency adjudication for criminal sexual offense involving minor was not “prior conviction” triggering 15-year mandatory minimum sentence for receiving child pornography under sentencing statute. Under federal law, delinquency adjudications are considered determinations of status rather than convictions for crimes.
Engaging Parents Early
Engaging parents early in court and having them more fully participate in decisions that impact them and their children is one change Judge Peggy Walker is making. She regularly asks parents, “What do you think? What would work for you? What would be a good way to approach this from your perspective?” This gives them a sense of involvement and that they are help-

Behind them, it really says the timeline needs to be contracted.” The guidelines give him the ability to say, “Let’s talk about what’s best for children and families in terms of outcomes and evidence.” They reinforce the need to push things up earlier and work toward reunification as quickly as possible.

“The greatest service we can do for children and families is to educate ourselves. The Enhanced Resource Guidelines give us a framework for that education.”

—Judge Peggy Walker, Douglas County, GA

The Enhanced Resource Guidelines, released May 2016, updated and expanded the original version, becoming the new framework for juvenile court judges and related professionals at every stage of a child dependency court proceeding. The Enhanced Resource Guidelines incorporated over 20 years of changes to the law and adopted new principles. NCJFCJ developed bench cards for each proceeding in a child welfare case to provide a quick reference on legal requirements and practice recommendations.

Springboard for Change
NCJFCJ is using the Enhanced Resource Guidelines as a foundation for training new and experienced dependency court judges and related professionals. Sweet has noticed that judges are starting to reference them, follow the best practice recommendations, and use them to try new courtroom approaches. Judge Peggy Walker and Judge Egan Walker’s courts are implementing the Enhanced Resource Guidelines, serving as test sites in the same way the Model Courts did for the original Resource Guidelines. Both judges are using the Enhanced Resource Guidelines to align practices, try new approaches, and create a shared understanding of expectations among professionals who enter their courts. Some areas they are focusing on are highlighted below.

Enhanced Resource Guidelines Key Principles
■ Keep families together.
■ Ensure access to justice.
■ Cultivate cultural responsiveness.
■ Engage families through alternate dispute resolution techniques.
■ Ensure child safety, permanency, and well-being.
■ Ensure adequate and appropriate family time.
■ Provide judicial oversight.
■ Ensure competent and adequately compensated representation.
■ Advance development of adequate resources.
■ Demonstrate judicial leadership and foster collaboration.

Urgency around Reunification
Moving system professionals and getting them to respect the urgency to reunify and restore families involved in the child welfare system is a focus in Judge Egan Walker’s court. “From my view, pervasive in the Enhanced Resource Guidelines is building a sense of urgency related to reunification of children with their parents,” he said. “If you dig deep into the Enhanced Resource Guidelines and the policies

marked remarkable. Not everybody changes…but parents get better, particularly when the judicial system is responsive to their needs, comes from a strength-based approach and uses evidence-based practices—those people get better,” he said. “They’re reunifying with their kids and their kids get better.”

Trauma-Informed Practice
Child Trauma. Woven throughout the Enhanced Resource Guidelines is the concept of being trauma-informed and trauma-responsive. While training judges and courtroom professionals, Sweet has helped courts perform trauma assessments to identify where they could improve. This has led to changes. “You start seeing attitude shifts about how we are treating people when they come into court, how we are viewing them,” she said. “Court is combative and stressful and most people who end up being systems-involved have been trauma-involved in some way in their lives. Are we viewing them that way and are we responding appropriately?”

Courtroom changes have included using therapy dogs and making courtrooms more inviting for children. “In children’s courts, we’ve seen them paint murals on the walls of beautiful things that make the kids feel comfortable,” Sweet said. Some judges stash beanie baby pets behind the bench and
allow children to pick one to hold during court hearings. Judges are ensuring comfortable temperatures and lighting in rooms and clear signage as ways to make the court process less stressful.

In Georgia, children are parties so they are present in court. Judge Walker said they now pay more attention to what is said and done in court in the presence of children. She routinely asks, “Are there things we’re going to address that perhaps the child should be excused, and do we have a child-friendly place?” The court created a reading room where children and parents can go and read books. Besides being an inviting, safe space for children, it promotes education and literacy, said Judge Walker.

Judge Walker takes precautions with children who have been removed from their parents and are dealing with separation. She prepares children before court hearings, telling them they will see their parents again and a plan will be made to help them reunify. She also pays attention to how she engages parents in the presence of their children, avoiding statements that are harsh or hold parents accountable. “We really want to understand the trauma they’ve experienced as part of that abuse and neglect and make sure our system isn’t retraumatizing them by the way that we conduct court,” she said.

Vicarious Trauma. The Enhanced Resource Guidelines also recognize that being trauma-informed includes being aware of the impact to professionals of working in juvenile court. “You can’t be a trauma-informed judge, or a trauma-informed attorney, if you’re so burned out and frazzled and traumatized by many of the things you’re observing,” said Sweet. The Enhanced Resource Guidelines promote self-care strategies to reduce and avoid burnout.

In Georgia, Judge Walker is sensitive to caseworkers’ experiences. “In a lot of ways, they’re as fragile as the parents we are dealing with because they’re the ones on the front lines,” she said. The caseworkers have visited the family’s home and have seen the children cry when separated from their parents. “The Enhanced Resource Guidelines suggest that we are thoughtful about how we’re approaching things from the perspective of every person. They help us focus broadly, not just on children and not just on parents but on the system as a whole.”

Project ONE—Holistic Approach to Families

Rare is the case in which a child or family is involved only in one system and rarer is the court that can handle all a family’s legal matters. This hit home for Judge Egan Walker when a young mother in his dependency court told him she had four court hearings in one week: her dependency court hearing, a delinquency matter involving her son, a criminal hearing before a different judge, and a municipal court hearing for a parking ticket.

NCJFCJ created Project ONE, which stands for One Judge, No Wrong Door, Equal Access to Justice, to streamline handling of multiple legal issues involving a child or family. Project ONE started with a narrow cross-section of children and families who cross two domains: child welfare and delinquency (“crossover youth”) then branched out to their parents and siblings and their related legal cases.

Judge Walker is implementing Project ONE in tandem with the Enhanced Resource Guidelines. Through the project and with guidance from the Enhanced Resource Guidelines, hearings involving a child or family that address multiple legal subjects and would traditionally be heard by
separate courts are centralized and heard by one judge. “That’s what Project ONE is all about—really looking holistically at the needs of children and families and trying to apply courtroom resources to those needs,” said Judge Walker.

The guidelines help him address permanency for the child but also offer guidance when connections to broader legal system involvement exist on such issues as domestic violence or substance abuse. They ensure that decisions in one area don’t interfere with what is best for the child or family and promote permanency.

**Indian Child Welfare**

Indian child welfare is one area where the *Enhanced Resource Guidelines* have been strengthened since the original *Resource Guidelines*. For Judge Egan Walker, the complexity of these cases and the differing legal requirements and evidentiary standards make having a clear guide critical. “The *Enhanced Resource Guidelines* give you the formula—in the area of the Indian Child Welfare Act—that helps guide the process,” he said.

In addition to the law and best practices, judges learn the historical underpinnings of the law. When training judges on ICWA and the *Enhanced Resource Guidelines*, Sweet weaves in concepts of historical trauma, challenges Native communities have faced because of governmental policies, and why ICWA was implemented. She also addresses children’s rights to culture and to know who they are and where they come from. She has found judges value this context and some have applied the information to parallel settings like immigration.

Although not all child welfare laws addressed in the *Enhanced Resource Guidelines* apply to tribal courts, many best practices are relevant to them. According to Sweet, tribal courts can benefit from the guidelines because understanding the rules the state is following is key to collaborating successfully.

NCJFCJ is incorporating best practices from the recent ICWA Regulations that were released after the *Enhanced Resource Guidelines* were published. Sweet said the updates are underway and new bench cards are being developed.

**Early Childhood**

Growing research on the needs of infants and toddlers in the child welfare system and the impact of removal and separation on their development is shifting courts’ responses to removal, placement, and other decisions. The *Enhanced Resource Guidelines* encourage judges to view decisions through the lens of the child. A companion bench card, *Questions Every Judge and Lawyer Should Ask About Infants and Children in the Child Welfare System*, offers specific questions for judges in cases involving very young children.

“It’s important for us to think through what we’re doing and make sure we’re meeting the needs of infants and toddlers because those first three years determine the trajectory of that person’s life forever,” said Judge Peggy Walker. In her court, she recognizes the important role of a young child’s attachment to his or her primary caregiver and the impact of removal on that attachment. “Every time you remove a child, even if you’re removing them to a better situation, you are impacting that child in a negative way because that primary attachment is the most important thing to that child,” she said.

Judge Walker avoids unnecessary removals and placements when it is safe for the child. She also orders supports and services to foster healthy attachments. She is careful to identify and address a parents’ underlying issues that may prevent a positive attachment with the child. “It’s very important for us to think about learning,” she said. “Children learn in that primary relationship. If [the person] is depressed and they’re not interacting with that child, it’s going to negatively impact that child’s learning. So, you’ve got to make sure you’re dealing with the issues of depression.”

Trust is also critical for a young child’s healthy development and ability to form relationships. “If you can’t trust that your needs are going to be met because you cry and nothing happens, or you’re hungry and nothing happens, your diaper is soiled and nothing happens, then you don’t have the ability to establish relationships later in life based on trust because you’ve learned you can’t count on adults to do what needs to be done for you,” she said.

**Conclusion**

The *Enhanced Resource Guidelines* provide juvenile dependency court professionals new direction and a framework for decision making, but also open the door to innovation. As judges learn the laws, principles, and best practices, they will begin to make changes that are responsive to the guidelines and meet their community’s needs. Early implementation in Douglas County, Georgia and Washoe County, Nevada serve as a snapshot of court innovations that are underway.

Claire Chiamulera, legal editor at the ABA Center on Children and the Law, Washington, DC, is CLP’s editor.

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IN PRACTICE

The Impact of Trauma on the Attorney-Client Relationship
by the National Child Traumatic Stress Network, Justice Consortium Attorney Workgroup Subcommittee

Trauma can interfere with the formation of strong client-attorney relationships by impairing the client’s capacity to trust others, process information, communicate, and respond to stressful situations. As the child’s attorney, understanding trauma’s impact on behavior can help you modify your approach with traumatized clients, prepare clients for court proceedings in a way that reduces their likelihood of a traumatic response, and advocate for clients in a way that empowers them and helps build a sense of safety and resiliency. With adequate preparation, clients may feel empowered by the opportunity to tell their stories and receive empathy and effective support from the professionals involved.

To establish an effective working relationship with traumatized clients, you should focus on physical and psychological safety, communication, and client support.

Physical and Psychological Safety
When a client is reminded, either consciously or unconsciously, of a past trauma, that trigger may cause the client to feel as if she is in imminent danger.

When traumatized clients feel physically or psychologically unsafe, they may become focused on protecting themselves and avoiding the perceived danger. As a result, they may not listen to or process information accurately, may refuse to talk, or simply agree to anything in order to leave. You can assist your client and establish a safe environment by providing structure and predictability, allowing the client to make informed decisions about his or her case whenever possible.

Court hearings and other procedures in the child welfare system may inadvertently trigger or re-traumatize clients with trauma histories. For example, clients are frequently triggered by a perceived loss of control or power, such as court decisions made about placement or visitation. Therefore, you should give clients a clear voice in decisions related to their representation, elicit their views, and seek active, age-appropriate involvement.

When triggered, clients may react in ways that are misinterpreted by the court. For example, a child may withdraw emotionally or physically (often described as freezing or shutting down) in response to questions about desire for contact with a parent. Or, a parent with a trauma history may shut down or react defiantly during cross-examination. A child placed in foster care, particularly an adolescent, may run away or act out in response to conflict with a foster parent or group home staff member. Judges, attorneys, and other professionals may view such a client as uncooperative or disinterested rather than as someone who is having a trauma response. You can advocate for clients by explaining to the court and the other parties that the client’s behavior is a reflection of underlying trauma. Decisions regarding such disclosures should be case-specific and within the bounds of attorney-client privilege and your specific attorney role.

Some suggestions for increasing physical and psychological safety include:

- **Meet in a quiet space where there are minimal distractions, away from other parties who may make your client feel threatened.**
- **Inform the client of the purpose of that day’s meeting, what to expect during the meeting, and how long the meeting will last.** Several shorter meetings can build

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**Practice Tips to Avoid Triggering Clients with Prior Trauma**

- **Look for signs of trauma reactions.** As discussed in this section, clients may exhibit variations of the fight, flight, or freeze response.
- **Try not to startle the client.** Loud noises (including yelling), sudden movements (jumping up from a chair), or unexpected news can all trigger trauma responses.
- **Prepare the client for what is ahead.** Predictability is important to establishing a trusting relationship. Preparation can help minimize your client’s hypervigilance to threats from unfamiliar or unexpected sources.
- **Minimize touching the client.** You may intend to be supportive when you put your arm around a child or touch a parent’s shoulder, but that can trigger a reaction in people who have been physically or sexually abused. By respecting your client’s personal space, you can help build the client’s sense of control and safety.
- **Do not overpromise or tell the client “everything will be fine.”** This includes promising clients you will always be there for them. Attorneys frequently change. Be honest in your communications because clients may be triggered by feeling let down or misled by their attorney. Remember that clients’ behaviors may also be influenced by the expectation that you will inevitably disappoint them, so be honest and forthright from the start.

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Explain the court process. Let the client know what you are going to say in court, questions you may ask the client, and questions the judge or opposing attorney may ask (particularly when you anticipate an adversarial cross-examination). Knowing what to expect can help your client feel less anxious during a hearing. Allowing the client time to practice responding and role-playing can increase a sense of control and safety.

As part of explaining the court process to child clients, it is also important to provide a realistic understanding of the potential outcomes of a court hearing. It can be empowering for child clients to know that their attorney is listening to them and will express their wishes in court, but it is also important for them to be prepared for the possibility that those wishes may or may not be honored. Additionally, when child clients are not present for court hearings, it can be triggering for them to know there was a court date but not be informed about what happened at that hearing. Children and youth should attend their own hearings whenever possible. When their presence is not possible, it is important to provide information about what happened or some type of update in an age-appropriate manner.

Communication
Clients who have experienced trauma may experience greater difficulty forming trusting relationships with their attorneys. Many youth in the child welfare system have been hurt by a caretaker or authority figure they trusted, and many parents distrust “the system.” Such clients may not believe that you will actually advocate for them. Clients also may be slow to share emotionally-charged information, or may not feel safe expressing preferences regarding their desired outcomes, such as visitation or placement. Developing an effective attorney-client relationship takes time and patience.

You can learn to recognize signs that a client may be experiencing a trauma reaction so that you do not misinterpret or exacerbate the client’s response. Trauma reactions typically represent some version of fight, flight, or freeze. A client who suddenly becomes loud or combative may be going into “fight mode” in order to keep herself safe by pushing others away. Clients may go into “flight mode” and try to avoid a triggering situation by refusing to answer sensitive questions or attempting to leave a meeting or court hearing. Clients may also “freeze” by shutting down or dissociating (a common response to trauma when a person mentally shuts down or “goes elsewhere”). She may sit quietly but will no longer be paying attention. Do not assume that silence means the client understands or consents.

Child participation in the court process is considered a best practice by national organizations such as the American Bar Association, National Council of Juvenile and Family Court Judges, and National Association of Counsel for Children. A study in Nebraska found that children’s anxiety levels related to court participation were low overall and even lower for children who had attended court. The children who attended court also viewed the judgments as more fair. A recent New Jersey study showed that court participation is not upsetting for youth, but can provide an opportunity for them to be heard. It also provides better information to both the youth and the court.

Trauma Resources

Client Support
Parents and children who are involved in the child welfare system may still have strong attachments to and pleasant memories of family members. In fact, a child can remain emotionally attached to a dysfunctional family and may be further traumatized by complete loss of contact with relatives. Family members can offer the best source of long-term support for a traumatized child. It is essential
that a child stay connected with siblings, relatives and extended family (as defined by the client), and friends. In cases in which ongoing family contact is not feasible or is contraindicated for safety reasons, you can look for ways to involve other people trusted by your client, such as a family friend, coach, teacher, or pastor.

Finally, be aware that some clients may find the experience of court involvement traumatizing, whether from memories of past involvement, interactions with or observations of others in the courthouse, and especially the intensity of the courtroom environment itself. Trauma triggers might include an attorney’s behaviors, tone of voice, body language or approach to questioning. You can take steps to make your clients more comfortable and to recognize when clients are having a trauma reaction.

**Client Resiliency**

Despite trauma histories and traumatic stress reactions, clients are often resilient. Your actions during legal proceedings can further bolster resiliency. Whether through advocacy for treatment or facilitating a client-attorney relationship that conveys awareness of traumatic stress reactions, promoting a psychologically safe environment using the above strategies can support your clients’ improved management of traumatic stress reactions.

**Endnotes**


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### JUVENILE JUSTICE UPDATE

**National Report Finds Solitary Confinement Harms Youth and is Unevenly Applied**

Washington, D.C. – The Juvenile Law Center, Philadelphia, PA, released a report August 2, 2017 with findings on the use of solitary confinement at juvenile facilities nationally. The report found that despite progress at the federal level and in a growing number of states, solitary confinement of youth remains widespread, with a disproportionate impact on youth of color, LGBT youth, and youth with disabilities. The organization, which has fought the use of solitary confinement with kids for decades, shared the report’s findings at a Congressional briefing held the afternoon of August 2, 2017.

“Solitary confinement is torture—it can lead to depression, anxiety, hallucinations, self-harm, and even suicide, especially in teenagers,” said report co-author and Juvenile Law Center Associate Director Jessica Feierman. “It also doesn’t keep youth, staff, or the public safe. In fact, juvenile facilities that eliminate solitary confinement have seen reductions in violence as a result.”

In crafting the report, the Juvenile Law Center surveyed public defenders and disability rights advocates, and interviewed facility administrators, youth and family members. More than two-thirds of public defenders surveyed reported that their clients spent time in solitary confinement.

“The conditions are atrocious,” said Karen Lindell, report co-author and a Juvenile Law Center staff attorney. “Kids are regularly denied access to personal belongings, papers, pens, books, time outdoors, recreation, counseling, and school. They are even denied basic necessities, like showers and mental health treatment.”

Juvenile Law Center supports legislation like the MERCY Act, introduced by Senator Cory Booker (D-NJ). “There is no justice in throwing juveniles in solitary confinement. This practice, which disproportionally affects kids of color, LGBT kids, and those with disabilities, is deeply harmful. That’s exactly why we reintroduced the bipartisan Mercy Act earlier this year—to fix this injustice by banning the solitary confinement of juveniles under federal supervision,” Senator Booker said. “[The] report demonstrates the depth of the problem and the urgent need for reform.”

According to the report, the time is ripe for legal change. On July 10th, Juvenile Law Center, along with co-counsel the ACLU of Wisconsin and Quarles and Brady, won injunctive relief in a class action civil rights lawsuit against state officials for their use of solitary and other harmful practices at two youth facilities in Wisconsin—Lincoln Hills School for Boys and Copper Lake School for Girls. This is the third federal court order this year to hold solitary confinement of youth unconstitutional; similar orders were issued by federal courts in Tennessee and New York. Since 2016, Washington D.C., California, and Colorado have all passed legislation strictly curtailing the use of solitary confinement in their juvenile facilities.

**Download the report and executive summary:**

http://tinyurl.com/y85j3f7m
What follows are tips and themes shared by these families:

- Respect birth parents and be compassionate.
- Encourage visitation and regular contact.
- Communicate with the family regularly.
- Remember that safe reunification is best for the children.

Respect Birth Parents and Be Compassionate

Across the board, the resource families emphasized the importance of respecting parents from the start. Several said to treat birth parents not only with respect but with love. Many families highlighted the cyclical nature of dependency cases. A resource parent from Oregon said, “Often times in foster care, parents are villainized and judged. Foster parents need to love them and never make them feel like they are being judged. We need to encourage them and become cheerleaders for them.”

Among the practical tips to show respect and compassion, resource families suggested:

- Express genuine concern.
- Be honest with birth parents.
- Let the family know that your goal is to help them get their children back.

- Understand how scared they are and try to alleviate it.
- Refer to birth parents using parental terms such as “Mom” or “Dad” when with their children and ask your foster kids to call you by another name.
- Believe people can change.
- Assume that things will go well.

Birth parents need to know what is going on with their children and foster parents need to know the children and family’s background.

- Understand that the families often have different life experience than you.
- Look for ways to break down barriers.
- See birth parents as people and help them as people.
- Look for positives.
- Act as a support for family.

Encourage Visitation and Regular Contact

Many of the resource parents stated that visitation is an opportunity not only for parenting, but to improve the relationship between the foster family and birth family. When physical visitation is limited by court order or scheduling, the resource families suggested having regular phone contact between parents and their children. When physical visitation is not limited, the resource parents said it was best for both the children and the birth parents to have as much visitation as possible.

Some practical ways resource families encouraged visitation and contact include:

- Advocating for increased visitation whenever safe
- Encouraging children to have phone calls with family, especially during the week and multiple times per week
- Helping children video chat with their birth parents and family members
- Inviting families to community events for visitation where the birth parents and children can act like a family and do activities when it is safe to do so
- Transporting the parents or children to visitation when possible or safe to do so
- Sending children with everything they might need on a visit, such as games, snacks, and activities they can do with their parents; meeting spots can be boring

Communicate Regularly with the Family

The resource families we interviewed said that knowledge is power. Birth parents need to know what is going on with their children and foster parents need to know the children and family’s background. A resource parent from Osage Nation/Oklahoma said, “Birth parents are the experts on their kids.”

The resource families offered these tips to maintain communication with
the birth family:
- Ask parents about life before and the history of the children.
- Involve parents or other family members in school functions/meetings.
- Stay in constant contact; tell them it’s ok to call any time.
- Send pictures, photos, art projects, grades, etc. with the children to visits.
- Have as many early conversations with parents as possible.
- Transport kids to visits rather than using transporters if you are able.
- Show an interest, not just in the child, but in the family as a whole.
- Go to doctor appointments and other meetings together.
- Include birth parents in decisions.

Pursue Safe Reunification for Children
The resource families stated that keeping families together was better for the children. Each resource family focused not only on the parent’s need for their children but the children’s need to be with their parents and families whenever possible.

Resource families discussed their attitudes towards reunification and what they wish each foster family was taught during training:
- Reunification is the first and best option.
- It is comforting for the kids to know the foster parents understand the kids want to be with their birth parents.
- Foster families need to try to get children back where they belong, with their families.
- Supporting reunification is a must.
- Foster families should have a deep, strong belief that families should be together.
- Family units are important; parents should have their children when possible.

Promote Cooperative Reunification-Centered Approaches at Agencies
Each of the resource families stated that agency support was integral to promoting a relationship between resource families and families of origin. There are two models of partnership currently used in the United States: the Shared Family Care Model and the Parent Collaboration Model.
- In the Shared Family Care Model, resource parents and birth families move into shared housing. The children remain with their families and services are provided in-home.
- The Parent Collaboration Model is similar to the traditional foster care model. Resource families communicate with birth families. Increased visitation and communication between the birth parent and child are prioritized.

To read the full summary of interviews conducted with resource families across the country, or to find more information or research regarding potential models that child welfare agencies can implement, read the full article at: http://tinyurl.com/Reun-SupportArt

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About National Reunification Month
National Reunification Month is held annually in June. The month celebrates the people and efforts around the country that make it possible for families to stay together. As part of Reunification Month, events are held around the country to recognize parents’ who work to bring their children home safely from foster care and the professionals who support them.

The ABA Center on Children and the Law provides resources about National Reunification Month, including stories about reunification heroes.

Learn more: https://www.americanbar.org/groups/child_law/what_we_do/projects/nrd.html
The Growing Use of State Child Welfare Report Cards: What Attorneys Should Know
by Daniel Pollack & Cameron R. Getto

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

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

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

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

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

Limitations
It is important to acknowledge the following limitations of state report cards:

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

Ranking allows for easy comparison between states, but may be too simplistic.

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

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

In 2005, New York City convinced a trial court to reverse New York State’s annulment of “the city’s share of the state’s foster care block grant.” The court criticized the state’s failure to appropriately use and weigh 1998-99 data from the Kids Count Data Book. In this instance, the Data Book...
Avoid simple lists. Lists invite the potential for abbreviated analyses, undeserved accolades and unfair condemnation without taking time to explain why. If it is important to rank, include the rankings in an executive summary that explains the results and factors evaluated. Mention anomalies or gaps in the data leading to the result. If results are grouped in “top ten” or “bottom ten” categories, focus on the potential policy and fiscal reasons behind them while acknowledging that the reason for issuing grades in the first place is to improve the welfare of children throughout the country.

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

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

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

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

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

In 2014, the United States Court of Appeals for the Seventh Circuit used Kids Count data while invalidating Wisconsin and Indiana’s ban on gay marriage. Indiana argued that the government’s interest in conventional marriage was closely connected to the problem of accidental births. By maintaining conventional marriage only, the argument went, children who were the result of unintended pregnancies somehow benefitted. The Seventh Circuit disagreed and characterized this argument as less than serious.

It noted Kids Count reporting, which showed that neither states’ laws were “aimed at channeling procreation into marriage” with any measure of success.

Conclusion
Child welfare report cards generally pose a single question: Is government keeping its commitments to children? Child law practitioners should be aware of child welfare agencies’ strengths and weaknesses. A state’s latest CFSR scores and report card can help discern an agency’s strengths and weaknesses. However, neither the CFSR scores nor the state report cards are definitive. They may be instructive, and from a legal perspective, they may be persuasive. Just as a child’s report card never tells the whole story, state child welfare report cards are not as simple as 1, 2, 3.

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Endnotes
4. In re K.A.W., 133 S.W.3d *1, *7 fn 5. (Mo. 2004). In the Interest of K.A.W., 133 S.W.3d *1, *7 fn 5. (Mo. 2004).
5. Id.
6. Id.
8. Id. at *4-*7.
9. Id.
10. Id. at *7.
11. Id. at *8.
12. Id. at *9-*12.
13. Id. at *20.
14. Id. at *21.
16. Id. at 664.
17. Id.
18. Id.
19. Id.
Tennessee Court Supports Infants in the Child Welfare System

by Sara Schleicher

A new court in Davidson County, Tennessee is keeping a close eye over babies who enter the child welfare system. The Davidson County Infant Court, a specialty court focused on infants and toddlers and their families, is led by Judge Melinda Rigsby. CLP spoke with Judge Rigsby to learn more about the court, how it operates, and its approach to meeting the needs of young children and their parents.

Q&A How did the Davidson County Infant Court get started?
The Davidson County Infant Court is a specialty court in Davidson County, Tennessee, that is dually focused on ensuring the safety of children ages 0-3 during the removal from their parents and home and placement into the child welfare system. It also provides necessary recovery services to parents to provide a pathway towards reunification.

The concept of infant courts is not new. The original courts, known as the ZERO TO THREE Safe Babies Courts, originally found in Louisiana, aim to increase awareness for those who work with maltreated infants and toddlers as well as modify local systems to better court outcomes. The Infant Mental Health Association of Tennessee (AIMHiTN) showed interest in these infant courts and the results they were producing. They found a grant opportunity, put together a work group, drafted a proposal, and were later awarded the grant. Because I had shown interest in the idea, I was contacted during the work group stage and asked to serve as the judicial oversight. From there, the Davidson County Infant Court was created in August 2016 and our first docket was in December of that year.

Our state legislator has recently showed interest in getting involved with the court, so there has been talk of funding the creation of other courts similar to ours in different regions throughout Tennessee. For now, mine is the only one currently up and going.

Q&A How does the court operate and who are the key participants?
The Davidson County Infant Court is modeled after the ZERO TO THREE Safe Babies Courts, which are found nationwide. Representatives from the ZERO TO THREE Safe Babies Courts have come to train our staff at in Davidson County twice since we first began. Since the court is structured around a multidisciplinary team approach, all players in the court receive continuous training. The team includes, but is not limited to, service providers, caseworkers, as well as all attorneys involved. We invite and encourage all family members who are interested to come be a part of the team meetings so they can also gain a better understanding of what is being done to meet the child’s needs. When it is time for the court date, participants meet in an unstructured, roundtable discussion-like setting, and talk openly about how to best meet the needs of the child to produce the best outcomes possible.

Q&A What kind of services does the court offer parents?
Davidson County Infant Court serves children ages 0-3 who have been removed from parents and placed into state custody due to a variety of reasons, including parental mental health and homelessness, but the majority are drug related. In Tennessee, opiate usage is prevalent. We feel that opioid addiction is a treatable condition so one of our primary focuses is supporting the parents’ recovery. We emphasize finding the underlying reason that the parent is in this predicament and address the problem at its source. These parents work with our service providers, to receive the treatment services they need so their children can return home and we can reunite these families. Services include mental health care, parenting classes, and in-home treatments, as well as inpatient care at residential facilities.

Our court has also worked with Tennessee Department of Labor and Workforce Development, which has offered mothers job support and vocational rehab as well as the Department of Children’s Services, which has assisted mothers by giving referrals for housing and adult education options. We also work with providers that offer services for domestic violence victims and victims of sex trafficking, since we often see a correlation between these victims and opioid users. We do not set a time limit to providing these services; we want to be there for as long as they need us to be there.

Q&A How does the court assist temporary caregivers?
We have really seen how these babies can suffer if they are not treated appropriately during this very formative time. So, while ensuring the parent is getting the help that he or she needs, we also are largely focused on seeing that the child’s needs are being met. As a court, we ensure the child’s caregivers, such as a foster family
or relative, are giving the child the support, comfort, and love they need. Services provided to the temporary caregivers include ongoing training so they are better educated on adverse childhood experiences and how they affect infants.

**Q&A** What kind of services does the court offer to the child?

Our main focus is always to ensure the child is properly cared for. We do so by aiding parents and temporary caregivers, which helps the children. We also pay attention to the child’s needs. While the temporary caregiver is caring for the child, we seek to maintain as much contact between the parent and baby as possible. This is so when it is time to reunite the transition is not as difficult for the child. In some cases, such as with in-home treatment and treatment in residential facilities, the mother can receive mental health and drug treatment without being separated from her child. With such treatments, the mother and child are monitored together.

We also recognize that children are very aware of and responsive to their surroundings. Although they may not know the difference between being in their birth mother’s arms versus a foster mother’s arms, they are still aware that someone is there holding them. If they’ve been used to certain smells or voices, we try to ensure the foster mom or temporary caregiver creates a sense of consistency for the child, such as by using the same laundry detergent as the birth mother, playing recordings of the birth mother reading a book to the child, or giving the child a blanket that has his or her birth mother’s scent on it. Consistency reduces trauma for the child.

**Q&A** What is your court’s typical caseload?

We currently have 10 cases on the docket at a time so that you are still able to adequately manage them all is 19.

**Q&A** How is Davidson County and your court addressing cases involving neonatal abstinence syndrome?

Because so many of our cases have involved drugs, opiates being the most prevalent, we have had quite a bit of NAS babies come through our courtroom. [Neonatal abstinence syndrome is a group of problems that occur in a newborn who was exposed to addictive opiates drugs while in the mother’s womb. See Medline Plus: https://medlineplus.gov/ency/imagepages/19888.htm]. Members of the Department of Infant and Mental Health work to ensure these children receive services through the Tennessee Early Intervention System (TEIS). Services include child development services consisting of speech, language, and physical and occupational therapy, and regular screenings to measure progress in the child’s development.

**Q&A** Has your court taken preventative steps to limit cases involving infants?

Right now, since the court is new, it is very reactive, overseeing cases as they are brought to us. Our preventative efforts are geared towards addressing babies’ issues now and throughout their childhood and young adulthood. We have an Infant Court Coordinator who is gathering statistics and data on cases heard in our infant court, with a goal of having more preventative practices in the future.

I have been working in juvenile court for about 20 years, first as a prosecutor and now as a judge. During this time, I saw some kids that came in as teenagers in juvenile delinquency cases were the same children that came into court as neglect victims during their younger years. I saw mothers of these neglected or abused children who were in foster care as a child, or who were the children I prosecuted in juvenile delinquency court prior to serving as a judge. We recognize that adverse childhood experiences shape the way the child is going to be in adulthood. If we can ensure these children are properly cared for from the start, and if we can teach them how to address the trauma associated with being in the system in a healthy manner, without turning to drugs or crime, then maybe we can break this cycle. We’ve been trying to fix these issues on the back end, providing a temporary band-aid. Let’s get to the very beginning. Let’s try to get to that baby now.

**Q&A** How do your actions to help families differ on and off the bench?

On the bench, we have focused on providing well-rounded services to not only the parent in their recovery but also to the temporary caregivers and the child while considering their developmental needs.

Off the bench, I have gone to speak to groups about what our court is doing, which has resulted in an increased interest in these courts statewide and a desire to create more courts similar to ours.

**Q&A** How do you encourage parents who come to your court?

One idea we are working on implementing is the “Parent Partner Program,” which is an idea inspired by the ZERO TO THREE Safe Babies Courts. A Parent Partner is someone who has previously been through the system, can act as an emotional support for the parent, and has gone through the recovery and reunification processes. Our court coordinator is currently reaching out to potential Parent Partners to get this program implemented in our court.

Sara Schleicher, communications intern, ABA Center on Children and the Law, summer 2017, is a senior at Syracuse University studying political science and child and family policy.
POLICY UPDATE

ABA Enacts Standards for Dual-System Youth
by Linda Britton

Youth involved with the child welfare and juvenile justice systems have poor outcomes as they transition to adulthood. They are less likely to complete high school, more likely to become homeless, more likely to enter the criminal justice system, and they lose access to benefits as former foster children that would assist them with education, training and job skills, employment, and housing. Crossover youth also tend to be disproportionately youth of color.

In August, the ABA House of Delegates passed the ABA Criminal Justice Standards Relating to Dual Jurisdiction Youth. The standards, proposed by the ABA Criminal Justice Section, assist lawyers and courts with youth involved in multiple legal systems. The most common dual-status situations are foster youth who enter the juvenile justice system, but other crossover combinations occur in educational and mental health systems as well.

The overarching goal of the standards, available at https://www.americanbar.org/content/dam/aba/images/abanews/2017%20Annual%20Resolutions/112A.pdf, is to reduce the number of youth who enter the juvenile justice system and ensure systems coordinate information and care for youth who are multisystem involved. The path to meeting this goal can be summarized as follows:

- Reconsider practices that result in unnecessary referral of youth to juvenile courts;
- If referred, maximize diversion from juvenile court;
- Make certain youth receive services from all systems: coordinate and collaborate with each other while protecting youth privacy;
- Improve legal representation for multisystem youth and ensure families of youth are engaged and heard; and
- Ensure that youth discharged from juvenile justice facilities have a re-entry plan well before discharge.

The standards are organized by this framework of principles for courts, agencies, and lawyers who handle dual-status youth.

To reduce entry into the juvenile justice system, child welfare agencies and foster placements must differentiate between normal adolescent behavior and conduct warranting intervention.

Juvenile Justice Referrals
Do not refer youth from other systems or agencies to the juvenile justice system for minor delinquent behavior. Scrutinize all arrests and referrals to the juvenile justice system.

Too often, foster youth are arrested or referred to the juvenile justice system for minor delinquent behavior. Typical teenagers living with their parents would not be arrested for single incidents of disruptive behavior, leaving home without permission, breaking curfew, or skipping school. Youth who are in foster care should not be arrested and locked up in detention for the same conduct. To reduce entry into the juvenile justice system, child welfare agencies and foster placements must differentiate between normal adolescent behavior and conduct warranting intervention. Court systems should develop protocols to screen referrals to keep youth out of the juvenile justice system.

The standards define “minor delinquent behavior” as “conduct that does not rise to the level of significant or repeated harm to others, significant or repeated property loss or damage, or a threat of significant harm to others.” Standard 1.1(t)

The standards advise that minor delinquent behavior should be addressed without law enforcement, and that stakeholders (dependency judges, child welfare agencies and caseworkers, foster families and group homes, and counsel for all parties) create a presumption against arresting youth in the child welfare system for minor delinquent behavior.

Further, law enforcement, schools, and the juvenile justice system should improve joint protocols so that youth are not unnecessarily pushed into the juvenile justice system. Data should be kept and reviewed by all groups to identify gender, racial or ethnic, and economic disparities in referrals.

More important, school resource officers are not to be used to enforce school discipline; they are present when necessary to protect students. Memorandums of understanding (MOUs) between law enforcement agencies and school districts must reflect the protocols for school resource officers. School misbehavior should be handled by school personnel, and disciplinary practices should limit educational disruption, reject zero tolerance policies and mandatory punishments.

Youth privacy must be protected, especially with educational records. And, all systems must meet the educational needs of multisystem youth.
Youth Diversion

Youth should be diverted from the juvenile justice system to receive necessary services whenever possible.

Excellent diversion programs are constantly being developed starting at the police station door so a youth need not become more deeply involved in the juvenile justice system. Diversions programs must also exist at other points in the juvenile justice system: through detention staff at the time of detention, through juvenile probation officers before a case is sent to the prosecutor’s office; by the juvenile prosecutor when the case enters court; and by the court itself upon receiving a motion to defer a youth. It’s critical that diversion exist at multiple points of entry to extract those youth who can best benefit from these programs and receive appropriate services.

Detention must not become a placement for youth, and child welfare agencies must not close their case once a youth is detained, adjudicated, or sent to another correctional facility. Locked facilities should only be used to protect the safety of the community or to prevent flight by a youth.

Coordination & Collaboration

Information must be shared to allow coordinated services but protect youth privacy, and systems must collaborate to provide necessary services to youth. The juvenile court is the lead for dual-status youth.

The standards suggest amending state laws and policies to support coordinating services and removing funding barriers. Juvenile and family courts must establish policies and protocols for referrals of youth, detention issues, and service provision for youth. Concurrent jurisdiction between systems must continue, even when a youth is transferred to adult court, so the youth can continue accessing services to which he or she is entitled under each system. Early identification of youth in the child welfare and juvenile justice systems with mental health or substance abuse conditions is critical to allow access to appropriate treatment.

When a youth enters the juvenile justice system, courts should use dual-status docketed led by the juvenile justice court, and elements of specialty youth courts, e.g., youth drug courts. These elements include hearings at which:

- all system stakeholders are present,
- parents are present and engaged, and
- a team approach is used with close judicial oversight.

There are also incentives for positive youth behavior and graduated responses for negative behavior. Services are coordinated, goals are aligned, permanency planning continues, and all systems are responsible for a youth’s outcomes. Meaningful re-entry strategies are planned, discussed, and executed.

During adjudication of an alleged juvenile offense and to fully protect youth privacy, statements made by the youth to the “best interest” advocate in the child welfare case should not be used in the juvenile court case absent a knowing, voluntary, and intelligent waiver.

Services & Representation

All services for youth should be in a least-restrictive setting and close to family, whether in or out of custody. Zealous advocacy by legal counsel should be provided through post-disposition for youth.

Disposition requires coordination of services, appointment of a lead agency for the youth, use of least restrictive alternatives, and access to all programs and services. Youth must have counsel for all decisions affecting placement, services, and his or her well-being. Parents, guardians, and caretakers of youth must have the opportunity to participate as well. Again, the child welfare case should not be closed just because the youth is in the juvenile justice system.

An unresolved area in the standards is the conflict between the child welfare and juvenile justice systems over using congregate care. Policy advocates urge reducing congregate care facilities in child welfare placements and increasing its use in the juvenile justice system to decrease juvenile incarceration. Advocates also believe, however, that foster youth and juvenile offenders should not be placed in congregate facilities together.

Discharge Planning

Discharge planning should start at or before disposition of the juvenile case.

Re-entry into the youth’s community should involve all agencies responsible for the youth and focus on these areas:

- Discharge coordination
- Housing, education, and employment training
- All documents necessary for youth to transition to independence
- Health care
- Continued services and benefits
- Identification of case manager for extended child welfare services
- Expungement/sealing procedures for the delinquency case

The standards further state that youth in custody should be released to parents, relatives, or an appropriate system with their discharge plan.

Additional provisions further describe state structure of child welfare and juvenile justice systems, interstate cooperation, cross-system training between agencies and stakeholders, responsibilities of prosecutors and defense counsel, and special circumstances like pregnant or parenting youth.

The standards are the result of extensive work by a task force appointed by the Criminal Justice Section in March 2006. After many meetings and review by the CJS Standards Committee and the CJS Council, the standards were finally approved for adoption by
At the ABA Annual Meeting in August, the ABA House of Delegates adopted Resolution 117C endorsing the **Blueprint for Change: Education Success for Children in Foster Care** (2007) and the **Blueprint for Change: Education Success for Youth in the Juvenile Justice System** (2016) (collectively, the “Blueprints”). The Blueprints were developed by the Legal Center for Foster Care and Education, a project at the ABA Center on Children and the Law. By endorsing the Blueprints, the ABA calls on state government agencies, courts, and legal practitioners to adopt the principles in both Blueprints to promote education success for children in the child welfare and juvenile justice systems.

**The Blueprint addressing children in foster care promotes eight goals** that are essential to ensure children in foster care do not get off track in school. These goals focus on school stability when a child is placed in foster care and when placements change; school readiness for young children; opportunities to participate fully in school programs and activities; efforts to keep children in school and avoid harsh discipline; engaging children in their education planning; identifying adults to support children’s education during their time in foster care; and supports for postsecondary education.

**The Blueprint addressing children in the juvenile justice system promotes 10 goals** to promote school success for youth placed in the juvenile justice system. The goals focus on ensuring: youth are empowered and engaged in education decisions; adults are identified to support youths’ education goals; school stability is prioritized; youth receive full access to education opportunities; youth are provided quality education experiences; education environments are safe and positive; youth receive access to high-quality career paths; youth have supports to pursue postsecondary education; smooth transitions exist between school placements and reentry; protections are in place for marginalized youth.


**For more resources,** see the Legal Center for Foster Care and Education, [http://www.fostercareandeducation.org/](http://www.fostercareandeducation.org/)