

# A Call for **Judicial Leadership in Reshaping Child Welfare** in the United States

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**E**arlier this summer the Children's Bureau convened teams of up to ten individuals from every state, D.C., Puerto Rico, and the U.S. Virgin Islands to chart a new course for child welfare in the United States: strengthening families through primary prevention of child maltreatment and family disruption. The teams included representatives from the state child welfare agency, the legal and judicial community, and prevention partners. The main purpose of the meeting was to discuss and begin planning what child welfare system partners can do together to support primary prevention—to work upstream to address the root causes that make foster care necessary in the first place.

In some ways, primary prevention may be a concept that the legal and judicial community considers out of its purview, especially judges. It may be difficult to see the role of a judge in preventing the need for children and families to enter his or her courtroom. However, there is a critical and absolutely necessary role for judges in advancing primary prevention to prevent maltreatment. It is also clear that judges deal daily with the results of the lack of primary prevention nationally as reflected by increasing docket sizes, unmanageable attorney caseloads, multiple generations of the same family entering courtrooms, and children and families appearing in court with deep trauma histories and mental health and substance abuse challenges that have often gone unattended.

The combination of these factors means that families and children in the child welfare system require some of the most difficult and long-lasting efforts within the court system. They are complex, involve challenging social issues, and do not often lend themselves to bright line decision making. These difficulties are exacerbated by legal burdens that are vague, such as contrary to the welfare of the child, reasonable efforts, and of course, the best interest of the child. Implicit bias lurks as a constant threat to which all must remain vigilant, and the fear of making the wrong decision, one that may place a child in jeopardy of serious harm—or worse—is ever present. No one wants to see a child or family in the child welfare system experience tragedy. A concerted focus on primary prevention will help address the factors that leave families vulnerable, reduce the need for foster care, and help mitigate the vicious cycle with which we continue to struggle.

There are three key judicial strategies that can help disrupt the destructive cycle in which many families experience in the child welfare system: (1) mobilize judicial leadership to support and voice the importance of strengthening families to prevent child maltreatment, (2) ensure that reasonable efforts are truly made to prevent removal, and (3) where removal is necessary, ensure that reasonable efforts are truly made to finalize permanency plans. Each of the strategies require a strong judicial philosophy of and commitment to prevention.

Mobilizing judicial support for primary prevention requires judges to be strong voices for prevention outside of the courthouse. The National Council of Juvenile and Family Court Judges (NCJFCJ) has long been a proponent of the role of judges as leaders and conveners, and primary prevention is a topic in which both actions are vital. The status judges hold in their communities as leaders can have a powerful impact on bringing important community needs to light and bringing credibility to efforts that support families and increase parental resilience. Judges know firsthand the importance of programs and services that help children and families stay healthy and on the right track. Judges also regularly see the consequences of children and

families not receiving the support they need early on—consequences that may have been diverted had families received legal services, concrete supports, or other services sooner. Active judicial support for programs and approaches that serve families before crisis arise can have an enormous impact.

Once families do make it to court, there are two critical judicial determinations required under the law that judges can use as tools to prevent trauma to children and families: reasonable efforts to prevent removal and reasonable efforts to finalize the permanency plan. We invite the legal and judicial community to view these findings as incredibly important decisions that can forever change the trajectory of children's and parents' lives—as moments where we can choose to support families and reduce trauma to children. We invite the legal and judicial community, including attorneys for children, attorneys for parents, agency attorneys, and judges in particular, to view reasonable efforts determinations as tools and opportunities to promote family safety and family unity as opposed to exercises in compliance with statutory requirements.

Research and brain science make very clear that parent child separation is traumatizing and can have severe effects on healthy child development. As a field, we know such trauma may last a lifetime and is a powerful adverse childhood experience that can lead to long-term health, relational, and self-sufficiency challenges. It is also highly traumatic for parents and can be a trigger for relapse or decompensation for those that may be in recovery or struggling with substance abuse or mental health issues. Knowing these facts should compel all of us to take primary prevention very seriously. If we concentrate efforts and resources further upstream, we can stem the tide of children entering foster care. Reasonable efforts to prevent removal and to finalize the permanency plan are tools that are available to prevent unnecessary trauma and help make sure children and parents receive the support they need to stay safe, well, and together.

One of the most important reasonable efforts to finalize permanency plans and reduce unnecessary trauma to children is robust family time/visitation practice for children in foster care with their families. Judges can set the expectation and change both culture and practice by ordering high frequency, high quality and meaningful family time as a part of all court orders absent the presence of clearly identified, current safety concerns. Where clear safety concerns are identified, family time should continue as possible with supervision. Family time in the home, homes of family members, relatives, or home-like settings is one of the best ways to help parents practice and learn to parent more safely and effectively. Family time is the single most effective way to maintain the integrity of the parent child relationship when children are in out of home placement and a powerful way to “normalize” foster care and reduce trauma to children.

It is high time to take a different approach in child welfare in the United States; our children, families, and communities deserve better. We ask all judges to take a leadership role and do all that you can in your courtrooms and communities to demonstrate commitment to strengthening families, preventing maltreatment, reducing parent and child trauma, and interrupting the intergenerational cycles of vulnerability and disruption we have come to know so well.

## NCJFCJ IN THE NEWS

- YOUTH TODAY** **6/5/2018**  
[David E. Stucki Elected Deputy-President of the Int'l Association of Youth & Family Judges & Magistrates](#)
- CNN** **6/21/2018**  
[Handcuffs, assaults, and drugs called 'vitamins': Children allege grave abuse at migrant detention facilities](#)
- THE OLYMPIAN** **6/22/2018**  
[Family separation a travesty to children](#)
- PSYCHOLOGY TODAY** **6/22/2018**  
[Damage of Separating Families](#)
- TIME** **6/27/2018**  
[I'm a Judge Who Decides if Children Should Be Separated from Abusive Parents. Here's How Trump's Immigration Policy Should Change](#)
- WESTWORD** **7/20/2018**  
[Biggest Challenges Facing Juvenile and Family Court Judges](#)
- DEPARTMENT OF JUSTICE** **7/24/2018**  
[Acting Director Katharine Sullivan of the Justice Department's Office on Violence Against Women Delivers Remarks at NCJFCJ Annual Conference](#)
- BUFFALO NEWS** **8/18/2018**  
[Shackling of 8-year-old in Family Court prompts outrage, new policy](#)
- GAINESVILLE TIMES** **10/3/2018**  
[How federal grants will help GBI, Drug Courts in opioid fight](#)