



SB 578 – Trauma-Informed Harm Reduction Model

Creates a trauma-informed harm reduction model for judges for a child in CPS custody

SUMMARY

SB 578 will require the court to consider the trauma a child will experience as a result of removal from parental care and weigh that harm against the potential risk of non-removal. The judge will also be able to ask that the social worker's harm reduction, trauma-informed report include suggested mitigation solutions to the impact of removal.

SB 578 seeks to reduce the harm a child endures by requiring a trauma-informed analysis be provided to judges in advance of any removal decision. Judges will make a more informed decision in the best interest of the child when given the requested analysis they need to weigh what the safest and healthiest outcome is, given all that is happening in the life of the child before them.

BACKGROUND

Eight states and Washington, D.C. require judges to consider the harms to a child when deciding whether removal is necessary. Washington D.C., New York, and Iowa, require courts to assess the harms of removal in deciding whether to separate a child from their family. New Mexico and South Carolina include the harm of removal in their reasonable efforts criteria and Hawaii, Minnesota, Nebraska, and Connecticut have issued policies or guidance that emphasize family preservation.

However, California does not. There is no statutory requirement for the juvenile courts in California to take into consideration the trauma a child experiences when removed from their home. The child welfare system is inconsistent in what is decided to be in the best interest of the child, and unfortunately, because there is nothing in statute to require trauma consideration when removing a child from their home, the courts often fail to consider the harms associated with removal.

Family courts are filled to the brim with impoverished litigants of color, and because of this, the harms of removal uniquely impact children of

color. Statistics confirm that minority families are less likely to receive in-home services meant to address underlying causes and prevent removal.¹ Because of this, minority children appear in court much more often, and are therefore placed into system care at a higher percentage.

Poverty, of course, also plays a significant role in exacerbating racial disparities. Poverty is often conflated with neglect, or creates circumstances that may lead to neglect. Research shows that inadequacy of income, more than any other factor, constitutes the reason that children are removed.² This is significant in the context of race because Black children are nearly three times more likely to live in poverty than their white counterparts. As such, Black families tend to have more contact with state actors, leaving them particularly vulnerable to additional state intervention. Low-income families are more likely to seek medical care from emergency rooms or public clinics, use public transportation, and live in public housing, leading to more frequent interaction with government systems and increased visibility to child protection agencies.

The removal of minority children from their communities inflicts additional, distinct trauma. Removal from one's family is harrowing enough, and minority children are often removed not just from their family but also their entire community, affecting their sense of identity and cultural belonging. For children belonging to minority ethnic groups, ethnicity forms an important part of their identity. As such, removal from their communities is devastating to their development, sense of self, and cultural identity.

THE PROBLEM

There is no disputing that children suffer harm when they are separated from their parents. The highly traumatic experience of family separation

¹ Ledesma, *supra* note 79, at 36 (citing Susan L. Brooks & Dorothy E. Roberts, *Social Justice and Family Court Reform*, 40 FAM. CT. REV. 453, 454 (2002) (finding disparities "even when [minority children] have the same problems and characteristics as white children").

² Duncan Lindsey, *The Welfare of Children* 175 (2d ed. 2004); *see also* Joyce, *supra* note 44

can cause *irreparable* harm. Research shows that children on the margins of removal fare better when left at home than when they are removed.³

Separation from one's parents, family, and community causes feelings of grief, loss, and confusion that can result in post-traumatic stress disorder, isolation, substance abuse, and anxiety due to the failure to deal with those feelings. Removed children experience not only the trauma of separation from parents, but also estrangement from their siblings, teachers, or friends in the community. If a child can be placed in kinship care, statistically they are more likely to be employed or enrolled in higher education by age 21 and less likely to need public assistance, experience homelessness, or be incarcerated compared to children who have been placed in non-kin foster care.

In addition, children may also be alienated from their communities, and may be required to transfer schools, compounding feelings of loss and isolation. One third of students in foster care change schools at least once during the school year – four times the rate of other student populations. Additional research has found that foster youth attend on average twice as many schools between the ninth and twelfth grades as their peers.

Foster youth, by definition, are also housing insecure, and housing insecurity can lead to instability that permeates into other areas of their life. These experiences of instability, oftentimes combined, lead to poor educational outcomes, most notably, low rates of college completion: in California, 93% of foster youth say they want to attend college, but only 4% of former foster youth will obtain their bachelor's degree by 26, compared to 50% of their peers. Research also shows that the rate of college students experiencing homelessness for former foster youth (43%) is more than double that of other students (19%).

California courts consider only whether a child is at risk of harm if they remain in parental care, without factoring in the harm that results from the alternative – removing that child from their home and family. There are, of course, times when removal is necessary, such as instances of violence

and abuse. SB 578 does not change the removal process for when a child is experiencing violence or abuse. But it does seek to incorporate a harm reduction model and a trauma analysis for when a child is being considered for removal.

THE SOLUTION

SB 578 will protect children and their families from the trauma of unnecessary separation by requiring the court to consider any likely harm to the child that may result from their removal by considering the following:

- The child's attitude toward removal and the existing and ongoing relationship to the parent, guardian, or Indian custodian;
- The child's existing and ongoing relationships between the child and other members of the household, including siblings;
- The disruption to the child's schooling, social relationships, and physical or emotional health that may result from placement outside of the neighborhood
- Any measures that can be taken to alleviate the disruption caused by removal.

SB 578 also requires the social worker to prepare a report with information regarding harm the child may suffer because of the removal, and list recommended steps to be taken to minimize the harm, if possible.

Ideally, children should remain a part of their family. And, at the very least, parents have a clear right to remain with their children until a finding of unfitness. There are, of course, necessary times when a child must be removed from their home, such as instances of violence and abuse.

SB 578 does not alter the removal process for violence or abuse, and still seeks for the courts to make the decision that is in the best interest of the child. However, it does implement a harm reduction model and require a trauma-informed analysis be considered when a child enters the system, to ensure that when the trauma of removal can be mitigated, it is.

SUPPORT

- California Judges Association (sponsor)
- ACLU Action

³ Joseph J. Doyle Jr., *Child Protection and Child Outcomes: Measuring the Effects of Foster Care*, 97 AM. ECON. REV. 1583, 1583 (2007)

- All Of Us Or None Orange County
- A New Way of Life Re-entry Project
- California Catholic Conference
- California Families Rise
- California Lawyers Association, Family Law Section
- Children's Bureau of Southern California
- County of Santa Clara
- Dependency Advocacy Center
- Dependency Legal Services
- Drug Policy Alliance
- East Bay Family Defenders
- Greater Sacramento Urban League
- JMACforFamilies
- Juvenile Court Judges of California
- Legal Services for Prisoners with Children
- Los Angeles Dependency Lawyers
- National Center for Lesbian Rights
- National Center for Youth Law
- National Center to Advance Peace and Equity for Children, Youth, and Families
- National Coalition for Child Protection Reform
- Opioid Policy Institute
- Parents Against CPS/Court Corruption
- Pregnancy Justice
- Public Counsel
- Sacramento Urban League
- Sayra & Neil Meyerhoff Center for Families, Children, & the Courts
- Starting Over, Inc.
- Upend Movement
- Western Center on Law & Poverty
- Young Women's Freedom Center

FOR MORE INFORMATION

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