



THE TRAUMA OF REMOVAL

By Judge Leonard Edwards (Ret.)¹

Removing a child from home is a traumatic event for the child and family members. Even when the child has been abused or neglected, separation from family may have a lifelong negative impact on all family members, but most significantly on the child.² As a part of any hearing when removal is possible, the parties and judge must consider the impact of removal on the child. Surprisingly, no state has statutory law focusing on the impact of removal on the child.³ To ameliorate this trauma the parties in juvenile court proceedings should spend time addressing the impact of removal on the child as well as the steps to take to reduce that trauma.

First, state law should require that the court address the trauma of removal at any hearing when removal from parental care may take place. Second, the court should focus on the legal requirement that the agency provide reasonable efforts to prevent removal from parental care.⁴ Third, if removal is ordered by the court, the parties should address several additional issues, and caseworker reports should address each of these issues so that those attending the court hearing can express their views:

- *Placing the child with relatives, which is preferable to foster and institutional care.*⁵ Relative placement is also preferred in the law.⁶ In addition, studies demonstrate that relative placement improves outcomes for children, including fewer medical and mental health problems, improved academic performance, and a longer life for the child.⁷
- *Maintaining the child in their current school.* Other than a child's family, the most significant social group a child experiences is at school. Changing schools disrupts friendships, interrupts learning, and ends relationships developed in clubs and sports.
- *Placing siblings together.*

1 The author wishes to thank Judge Christopher Marshall for his assistance in the preparation of this article.

2 Wan, William, "What Separation from parents does to children: The effect is catastrophic," *The Washington Post*, June 18, 2018. Trivedi, S., "The Harm of Child Removal," *43 New York University Review of Law & Social Change*, 523 (2019).

3 See *supra* note 2, Trivedi, p. 567.

4 45 CFR §1356.21(b)

5 Edwards, L., "The Urgency of Placing Children with Relatives," *The Guardian*, Vol. 42, No. 04, Summer 2020.

6 Fostering Connections Act, P.L. 110-351; Edwards, L. *Reasonable Efforts: A Judicial Perspective*, NCJFCJ, Reno 2022 at pp 56-61.

7 See *supra* note 5. See also Washington, T., and Mihalec-Adkins, B. "Kinship Care Supports the Academic Performance of Children," *Child Trends*, September 2023. <https://doi.org/10.56417/6688s365k>

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- *Placing the child in the neighborhood where friends live.*⁸
- *Providing mental health services to the child to address the trauma of removal.*
- *Ordering a family time schedule that maximizes contact with parents and family members and includes medical, dental, religious, educational, and sports events where family members can be present.*⁹
- *Appointing a Court Appointed Special Advocate (CASA) for the child in addition to legal representation.*

Many of these issues are a part of existing state and federal laws, but they are frequently not discussed in court when a child is removed from parental care. Perhaps it is assumed that the social service agency will address these issues effectively.¹⁰ Yet children continue to be housed in social service offices, hotels, detention facilities, and other inappropriate placements. And most children are not placed with relatives or siblings, are removed from their neighborhood, their education is interrupted, and family time occurs once a week or less.¹¹

Often judges do not know about the details of the child's placement or if they do, there is little they can do about it. Some would call this unfortunate reality an abrogation of the judge's duty to oversee the wellbeing of the child. After all, when judges declare a child a dependent of the court, under the doctrine of *parens patriae* the judge has the legal responsibility for the care and control of the child. The judge may rely on others — usually the child welfare agency — to implement the judge's orders, but the responsibility for those actions ultimately resides with the judge.

Attention to the trauma a child suffers when removed from home should be addressed at the time the removal order is made. That is why a new bill in California and a court rule in the District of Columbia are so important.¹² The California bill, in relevant part, reads:

(2) (A) In determining whether continuance in the parent's or guardian's home is contrary to the child's welfare under paragraph (1), the court shall consider the short-term and long-term harms to the child that may result from the continued removal. In making this determination, the court shall review the social worker's report and any other evidence in considering factors that include, but are not limited to, all of the following:

(i) The child's perspective on removal and a description of the existing relationship between the child and their parents, guardians, or Indian custodians.

⁸ See 45 C.F.R. §1356(g)(3)

⁹ See *supra* note 6, Edwards, p. 49–56.

¹⁰ In a discussion with the Director of the Santa Clara County children's services agency about SB 578, he stated that "I'm not seeing any financial impact as this should be incorporated into current practice." Daniel Little, MSW, Director, Social Service Agency, County of Santa Clara.

¹¹ See *supra* note 6, Edwards, p. 49–61.

¹² The District of Columbia Rule of Court reads in part that the pre-disposition report provided to the judge include information regarding "the likely harm the child will suffer as a result of the separation from his or her parent, guardian, or custodian and recommended steps to be taken to minimize this harm" D.C. Super. Ct. R. Neglect & Abuse Proc. 13(a). See also *supra* note 2, Trivedi, p. 568–569. New York relies on a Court of Appeals decision mandating the court consider these issues. Trivedi also mentions state statutes that address this issue, but only indirectly (New Mexico, Hawai'i, Minnesota, and South Carolina).



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(ii) The existing relationship between the child and other members of the household, including, but not limited to, siblings.

(iii) The disruption to the child’s schooling, social relationships, and physical or emotional health that may result from placement out of the home, and in the case of an Indian child, the child’s connection to their tribal community.¹³

A judge may feel helpless to keep track of the placement of a child after the court removes the child. However, there are several ways in which early attention to placement can make a difference for the child. First, the judge should receive timely updates on the child’s placement. The agency will then realize that the judge is monitoring their actions and may be more attentive to each child’s case. Second, the attorneys for the child and parents may monitor the child’s placement and call attention to the court about any egregious developments. Third, some judges review cases thirty to forty-five days after the disposition hearing.¹⁴ This review is intended to ensure that the judge’s orders are being carried out. The child welfare agency may complain that this involves too much work, but the court is able to ensure that an appropriate placement has been accomplished. *In other words, judicial oversight does not stop after a removal order is made.*

Children experience significant trauma when removed from their parents’ care. All participants in the child welfare system need to recognize this fact and take action to reduce the impact of that trauma once removal has been ordered. Passing legislation or creating court rules addressing the trauma of removal is an important first step in this process. ■

¹³ 2023 CA S.B. 578 (NS).

¹⁴ This is a best practice. See *supra* note 6, Edwards, p. 120-122.