



March 31, 2020

*A Joint Statement on*

## **Child Welfare Courts During a Public Health Crisis:**

*Access to Justice and Advocacy are Critical Anchors During Uncertain Times*

In this time of profound uncertainty, child welfare systems face unprecedented challenges to ensuring safety, well-being, and permanency for young people. As the public health crisis persists, it is incumbent upon courts and legal professionals to critically assess and safeguard the needs and rights of every young person and family member experiencing dependency court involvement. Judicial officers, attorneys for children, parents, agencies, and tribes, CIPs, CASAs, and court administrators should resist reactive, sweeping policies and insist upon thoughtful consideration of each child's and each family's individual circumstances, promoting decisions based on current information, informed by medical expertise, and anchored in due process values. Specifically:

- Courts must ensure **access to justice and due process** during this period. Proper notice requirements must be upheld. Hearings of any type should not be indefinitely postponed, particularly those involving executed or pending emergency removals. Even status hearings can be crucial opportunities to address imminent needs. Virtual and telephonic participation should be permitted, without cost to parties, in every non-evidentiary hearing until public health restrictions are lifted. Access to court, whether in person or virtually, must include actual opportunity for all parties to fully participate. Staggered hearing schedules should be used to support social distancing for in-person hearings.
- **Access to counsel** and CASAs for young people and parents must be preserved. This is especially true for youth in congregate care settings who may be particularly isolated during this time. Because effective, zealous representation and advocacy moves cases forward, improves outcomes, and remains an ethical mandate, no attorney should be barred from seeing their client. Where medically recommended, virtual and social distancing accommodations can be made to ensure safe, confidential communications.
- **Family time** must be protected and prioritized, unless factual, case-specific health concerns necessitate a temporary, virtual alternative. Child welfare courts and teams should monitor guidance from public health authorities such as the Centers for Disease Control and Prevention (CDC) and medical experts such as the American Academy of Pediatrics (AAP) to inform their analyses. Professionals should consider creative means to effectuate family time, including expanding the scope of kin who might assist with transportation or supervision, moving visits outdoors, and allowing unsupervised visits where there are no concrete safety concerns. With schools closed, more frequent telephone and virtual contact with family is possible as well.

- **Youth and parent voice** must be elevated and considered at every opportunity. To fully and responsibly inform decision-making, courts must hear directly from the children and families they serve about their current needs and wishes. Feelings of isolation and disempowerment that many youth already experience may be further amplified at this time. Being heard by attorneys and judicial officers can be a vital lifeline to youth in this time of crisis, and may be the only avenue for courts to hear and consider safety concerns during isolation. Updates and recommendations from professionals alone are not a sufficient basis to assure a determination fully addresses complex safety, well-being, and permanency concerns.
- Courts must continue to consider and address the myriad, interdependent issues facing each young person in their docket - health care, placement, education, therapeutic services, and more - and ensure that case plans addressing these issues are holistic and grounded in **medical evidence, particularized to the individual child**. Placements in congregate care and detention facilities should be avoided whenever possible given the heightened risk of exposure in these settings. Administrative obstacles to kinship placement should be eased.
- The safety, health, and well-being of young people should be considered within the context of their **developmental stages**. For example, infants and toddlers are particularly impacted by transition to virtual visitation and vulnerable to the abrupt interruption of in-person contact with family. Likewise, **older youth** in foster care may warrant special attention during the public health crisis. Courts and attorneys must ensure that older youth are not discharged from care prior to an adequate transition plan, which is unlikely to be established during a national public health crisis. Courts and attorneys can help ensure that the equitable authority of the court is used where needed to protect the health of young people, including those otherwise scheduled to age out of care.
- Scrutiny of **reasonable efforts** to prevent the removal of children and to achieve permanency must occur through a similar lens. Courts should insist upon robust and creative prevention efforts, rigorously assess reasonable efforts proffers, and apply the law consistently. In light of the pandemic, courts must consider the increased dangers of changing caretakers for a child as well as the decreasing availability of placements and incorporate that information into their best interest analysis.
- Judges and other court professionals must embrace their **unique leadership role** during this critical time. Each has a special responsibility to attend to the imminent concerns of the public health crisis while not losing sight of other important reforms and opportunities, such as sound implementation of the Family First Act and Title IV-E funding for legal representation, that are critical for stabilizing and strengthening the child welfare system now and in the long-term. We must continue collective advocacy for improvements to strengthen the current child welfare system and position it to truly support youth and families after the crisis has ended.

The role of attorneys and court systems is even more critical right now, as the daily functions of agencies and support systems have become increasingly strained. We strongly urge the child welfare court community to uphold the fundamental values that define our profession. Unwavering insistence upon access to justice, due process, and zealous advocacy will help anchor systems during unsteady times and preserve a sacred framework for keeping children safe and meeting their and their families' needs - - during this crisis, and beyond it.

***For more further information and assistance, please contact:***

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