

SPECIAL SESSION FOR CHILD WELFARE SYSTEM STAKEHOLDERS



AGENDA

- Common Challenges
- Best Interest and Important Legal Principles
- Best Practices



CHALLENGES IN CHILD WELFARE PRACTICE

- Lack of coordination between local ICE and CPS agencies
- Difficulty assessing immigration status of children
- Difficulty identifying viable relatives for placement
- Inability of parents to participate in cases that cross borders
- Difficulty coordinating reunification at the time of a parent's release/
deportation
- Inability of parents to visit with child, meet child welfare case plan requirements, participate in family court proceedings
- Barriers to receipt of needed services
- Strict child welfare timelines that can result in termination of parental rights

POPCORN DISCUSSION

- Name some new/ongoing challenges related to immigration or interactions with immigration authorities since 2016.

BEST INTEREST

- Best interest is not well defined in any jurisdiction in the U.S.
- No straightforward definition in NM Children's Code
- Use the legal rights of children and parents as standards for determining best interest
- Does involvement in the immigration system impact these rights?

New Mexico

Ann. Stat. § 32A-4-28(A)

In proceedings to terminate parental rights, the court shall give primary consideration to the physical, mental, and emotional welfare and needs of the child, including the likelihood of the child being adopted if parental rights are terminated.

Ann. Stat. § 32A-1-3

The Children's Code shall be interpreted and construed to effectuate the following legislative purposes:

- First, to provide for the care, protection, and wholesome mental and physical development of children coming within the provisions of this code, and then to preserve the unity of the family, whenever possible
- To provide judicial and other procedures through which the provisions of the Children's Code are executed and enforced and in which the parties are assured a fair hearing, and their constitutional and other legal rights are recognized and enforced
- To provide a continuum of services for children and their families from prevention to treatment, considering, whenever possible, prevention, diversion, and early intervention, particularly in the schools
- To provide children with services that are sensitive to their cultural needs
- To provide for the cooperation and coordination of the civil and criminal systems for investigation, intervention, and disposition of cases, to minimize interagency conflicts and to enhance the coordinated response of all agencies to achieve the best interests of the child victim
- To provide continuity for children and families appearing before the family court by assuring that, whenever possible, a single judge hears all successive cases or proceedings involving a child or family

The child's health and safety shall be the paramount concerns. Permanent separation of the child from the child's family, however, would especially be considered when the child or another child of the parent has suffered permanent or severe injury or repeated abuse. It is the intent of the legislature that, to the maximum extent possible, children in New Mexico shall be reared as members of a family unit.

STEREOTYPING AND BIAS

- Stereotypes refer to beliefs that certain attributes, characteristics, and behaviors are typical of a certain group of people, constructed from personal experience or more commonly from the media
- Problems
 - Many stereotypes-especially related to race, ethnicity, immigration status, religion, and gender, are invalid
 - Stereotypes lead to bias and discrimination- favoring one group against another, differential treatment of one group over another
- Implicit bias: Unconscious prejudice in favor or against certain groups of people

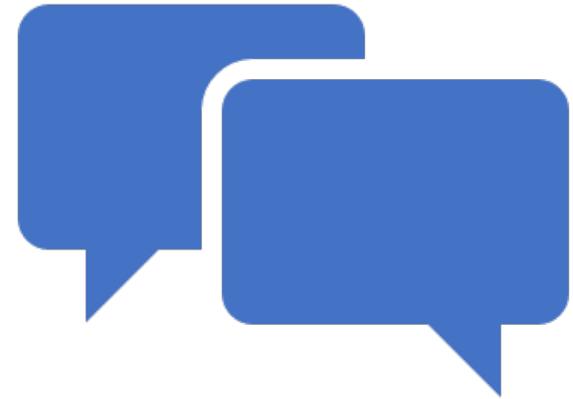
IMMIGRANT STEREOTYPES

- Immigrants are violent criminals
- Immigrants take jobs away from U.S. citizens, drain the welfare system, cost the U.S. economy
- Immigrants don't want to fully invest and integrate into U.S. society, are hurting the English language and are weakening social cohesion
- Immigrants broke the law coming to this country so they do not have the same rights as citizens
- Immigrant parents are not attentive to their children, don't discipline or set limits for their children, don't care about their children's education



GROUP DISCUSSION

- What are some allegations of abuse, neglect, or abandonment that you have heard that feed on these immigrant stereotypes?
- What are the arguments you have heard for and against the placement of children:
 - With undocumented relatives
 - In another country
 - With a parent who has been detained by immigration or deported
- What role does bias play in these arguments?



NEW MEXICO CHILD WELFARE/ IMMIGRATION LAW

- 32A-4-23.1 NMSA
 - Statute regarding disposition under the Abuse and Neglect Act when a child is an immigrant without documentation
- CYFD administrative rules:
 - Title 8, Chapter 10, Part 7, NMAC (Protective Services Legal)
 - 8.10.7.10 – CYFD shall determine immigration status under abuse/neglect act
 - 8.10.7.11 – CYFD shall report immigration status at first judicial review
 - 8.10.7.29 – pursue special immigrant juvenile status
 - Title 8, Chapter 10, Part 8, NMAC (Permanency Planning)
 - 8.10.8.8 – provide permanency planning services
 - 8.10.8.22 – pursue special immigrant juvenile status



IMPORTANT LEGAL PRINCIPLES IN CASE LAW

- All parents have a constitutional right concerning care, custody and control of their children, regardless immigration status.
- Agencies are required to satisfy reasonable efforts in all cases, including those involving detained or deported parents.
- Agencies are to investigate reunification with parent in home country when aboard, and parental rights may not be terminated based on standard of living in another country.
- Parental deportation does not constitute abandonment without additional evidence of abuse or neglect.
- All parents have a right to participate in hearings and to have legal counsel represent them.
- Complications in facilitating cases involving parental detention or deportation do not nullify a parent's right to participate in proceedings.

Source: Beidler Carr, 2019

BEST PRACTICES

In the legal community

In child welfare agency policy

In workforce preparation

Across systems

Across borders

LEGAL COMMUNITY

- Enact legislation which provides exceptions to the Adoption and Safe Families Act (ASFA) termination of parental rights timing provisions when case involves delays due to parental detention or deportation.
- In the meantime, argue the exceptions in 32A-4-29(G) to prevent TPR/extend the timelines, perhaps especially G6 and perhaps G7.
- Advocate for visitation and reasonable efforts based on ASFA provisions that apply equally to immigrant parents

Source: Beidler Carr, 2019

AGENCY POLICY & PROCEDURE

- Make non-citizen/undocumented caregivers eligible to be approved caregivers
- Review and incorporate the ICE Directive on Detention and Removal of Alien Parents of Legal Guardians in agency policy manuals
- Commit to ongoing policy review and development to improve responsiveness to these families.
- Develop clear policies on confidentiality and sharing info with immigration authorities
- Implement policies similar to SB 1064
- Have a process/mechanism for and equip workers to screen for SIJS, U Visas, VAWA
- Have specific staff members trained on immigration-related issues e.g., immigration liaison
- Ensure that all documents and forms are language accessible to clients
- Listen to and learn from families and caseworkers about the needs and experiences of these families

WORKFORCE PREPARATION & TRAINING

- Educate and encourage workers to support immigrant families in preparing for possible detention and deportation (e.g., contingency and safety planning, power of attorney)
- Incorporate trauma-informed and culturally sensitive practices
- Train workforce on screening for legal relief options
- Pre-employment AND ongoing training on these issues

CROSS SYSTEMS COLLABORATION

- Establish relationships with local immigration legal clinics
- Identify an ICE point of contact
- Develop relationship with consulates

BEST PRACTICE ACROSS BORDERS

- Involve and develop relationships with foreign consulate; MOUs
- Locate parents/relatives
- Conduct home studies
- SKYPE
- Arrange for participation in court proceedings, visits
- Arrange for service provision in other countries
- Placement in other countries



Which of the identified best practices do you have in place?

Which do you think are most important to effectively serving children in immigrant families?

If you could have anything you want to support your work with immigrant children and families, what would it be?

DISCUSSION