

AMERICAN BAR ASSOCIATION**HOUSE OF DELEGATES****ADOPTED AUGUST 12-13, 2019****RESOLUTION**

RESOLVED, That the American Bar Association recognizes children and parents have legal rights to family integrity and family unity;

FURTHER RESOLVED, That the American Bar Association urges legal professionals, courts, and relevant state agencies to mitigate the trauma and long-term harm that can result from separation from parents and other primary caregivers;

FURTHER RESOLVED, That the American Bar Association supports the use of prevention services, including legal services, to ensure children's safety without the need for removal from a parent or caregiver;

FURTHER RESOLVED, That the American Bar Association recognizes government action may intentionally interfere with rights to family integrity when necessary for the child's health, safety, and well-being, provided that procedural protections are applied, including access to high quality legal representation for children and parents;

FURTHER RESOLVED, That the American Bar Association urges federal authorities seeking to separate a child from a parent to protect the child's health, safety, or well-being to engage state or tribal child protection authorities, which have exclusive jurisdiction to take such action under state and federal statutory law; and

FURTHER RESOLVED, the American Bar Association urges, state, local, territorial, and tribal authorities to ensure family connectedness is safely maintained and supported with parents and kin during the pendency of the child welfare case if children cannot safely remain with their parents or other primary caregivers and must enter the custody of a state or tribe. The definition of kin in such circumstances should include relatives and unrelated persons with significant relationships to the child or family the children or youth identify as individuals with whom they want to remain connected. Additionally, child welfare agency staff, attorneys, and judges should:

- a) Identify kin and ensure they are notified and engaged within 30 days of removal and throughout the life of the case. Family search and engagement efforts should

seek not only kin resources as placement options, but as other types of long-term connections;

- b) Prioritize placement with kin, including relatives, former caregivers, or close family friends;
- c) Help children maintain important family connections and support, through regular family time and a presumption of unsupervised visitation unless the court finds that unsupervised visitation is not in the child's best interests;
- d) Tailor services and assistance to address the unique needs of kinship foster families, while still working toward the goal of safe reunification with parents where that is the case goal;
- e) Seek to facilitate placing siblings together in the same foster home, absent a court finding of a safety or well-being concern, and allow regular and meaningful visitation between siblings when that is not possible. The definition of "sibling" should include those connected through one or more common parents and those connected through shared living arrangements, including those formed through foster home placements;
- f) Support youth who may age out of the foster care system rather than achieve permanency by developing a network of positive adult connections (including their parents, if the youth wish) that serve as a support network while the youth are part of the child welfare system that can be maintained after the youth leave the system; and
- g) Include family members, including parents and caregivers, in development of the service plan and critical treatments for youth in foster care.

REPORT

Introduction

This policy derives from three recent developments in the child welfare field.

First, federal litigation challenging family separation at the U.S. Border has brought with it an increased focus on applying child welfare laws and principles in federal litigation across the country. Those cases emphasize that both children and parents have substantive and procedural rights to family integrity and government action can intentionally interfere with such rights only when it has a compelling reason to do so and follows required processes.

Second, Congress enacted new child welfare legislation in 2018, titled the Family First Prevention Services Act¹ (“Family First Act” or “Family First”), which changes child welfare funding structures and emphasizes the overall importance of children’s connections to family, including birth parents, kin, siblings, and foster families.

Third, the federal government recently updated the Child Welfare Policy Manual of the U.S. Department of Health and Human Services to allow states to use federal funding to pay part of the cost of providing children and parents with legal counsel in child welfare/dependency cases. This change recognizes high-quality child and parent legal representation protects children and parents’ substantive and procedural due process rights and produces better long-term outcomes for families, including shorter time to permanency (e.g., reunification, guardianship, or adoption).

All three developments – federal family separation litigation, the Family First Act, and new federal funding to support child and parent counsel – are unified around a theme of promoting family integrity and family connection for children and youth. Although the ABA has existing policy supporting children’s rights in a variety of contexts, it lacks policy addressing children and youth’s interests in family integrity and family connection. This Resolution addresses that gap by recognizing:

- Children and parents have rights to family integrity and family unity;
- Children’s separation from parents and primary caregivers can produce trauma;
- Prevention services, including legal services, can ensure children’s safety without removing them from their families;
- Government may interfere with children and parents’ rights to family integrity when necessary for the child’s health, safety, and well-being;
- Decisions to separate a child from a parent to protect health, safety and well-being are subject to state and tribal authorities; and

¹ Family First Prevention Services Act, P.L. 115-123 (enacted as part of the Bipartisan Budget Act of 2018 on Feb. 9, 2018) (“Family First Act”).

- When children are in foster care, family connections should be safely maintained and supported with parents, kin, and siblings during the pendency of the case.

The following report structure corresponds with the five sections in the Resolution: (1) Legal Principles Defining Family Integrity; (2) Trauma of Removal; (3) Promoting Child Safety through Prevention Services; (4) Government Intervention and Foster Care Placement; (5) Jurisdictional Authority; and (6) Family Connections while in Foster Care.

I. Legal Principles Defining Family Integrity

The Supreme Court has repeatedly held parents have a constitutional liberty interest “in the care, custody, and control of their children.”² In *Troxel v. Granville*, the Court went so far as to describe this parental interest as “perhaps the oldest of the fundamental liberty interests recognized.”³

Over the last year and a half, federal courts around the country have interpreted and applied that holding in litigation challenging instances of family separation at the U.S.-Mexico Border.⁴ As part of the government’s “Zero Tolerance Policy for Criminal Illegal Entry” in 2018, the Department of Homeland Security separated thousands of children from their parents.⁵ The leading case involves a certified class of parents who were separated from their children pursuant to this policy.⁶ In a powerful rebuke of the government’s policy, the Southern District of California concluded the class of parents suffered “agonizing” harm from the separations in violation of their substantive and procedural due process rights to family integrity.⁷

Although parental assertions of rights to family integrity under *Troxel* and related cases are not new, a more novel thread of family integrity assertions has also emerged in the

² *Troxel v. Granville*, 530 U.S. 57, 65 (2000); see *Parham v. J. R.*, 442 U.S. 584, 602 (1979) (explaining “our constitutional system long ago rejected any notion that a child is the mere creature of the State”); *Quilloin v. Walcott*, 434 U.S. 246, 255 (1978) (“We have recognized on numerous occasions that the relationship between parent and child is constitutionally protected.”); *Stanley v. Illinois*, 405 U.S. 645, 651 (1972) (“It is plain that the interest of a parent in the companionship, care, custody, and management of his or her children ‘come(s) to this Court with a momentum for respect lacking when appeal is made to liberties which derive merely from shifting economic arrangements’”); see also *Bohn v. City of Dakota*, 772 F.2d 1433, 1435 (8th Cir. 1985) (“We can conceive of no more important relationship, no more basic bond in American society, than the tie between parent and child”).

³ *Troxel*, 530 U.S. at 65.

⁴ See *Ms. L. v. U.S. Immigration and Customs Enforcement (“ICE”)*, 310 F. Supp. 3d 1133, 1146 (S.D.Cal. 2018); *J.S.R. by and through J.S.G. v. Sessions*, 330 F. Supp. 3d 731, 738-39 (D. Conn. 2018); *W.S.R. v. Sessions*, 318 F. Supp. 3d 1116, 1124-25 (N.D. Ill., 2018); *Jacinto-Castanon de Nolasco v. U.S. Immigration and Customs Enforcement*, 319 F. Supp. 3d 491, 495 (D.D.C. 2018); *M.G.U. v. Nielsen*, 325 F. Supp. 3d 111, 114 (D.D.C. 2018); *State of Washington et al. v. United States*, 2018 WL 3139446 (W.D.Wash.) (Complaint).

⁵ See Cong. Research Serv., R45266, The Trump Administration’s “Zero Tolerance” Immigration Enforcement Policy (Feb. 26, 2019).

⁶ See *Ms. L.*, 310 F. Supp. 3d 1133.

⁷ *Ms. L.*, 310 F. Supp. 3d at 1146.

border cases. In this group, the plaintiffs are children who have asserted the government violated their own rights to family integrity. Each federal court to address these assertions has agreed that children have their own rights to family integrity protected by the Fifth Amendment (and by extension the Fourteenth Amendment in states). For example, in *J.S.R. v. Sessions*, the District of Connecticut recognized that by “forcibly removing them from their parents without due process of law” the government “deprived the children of their family integrity – depriving them of their primary and only consistent source of support”.⁸ Similarly, in *W.S.R. v. Sessions*, another case involving child plaintiffs, the Northern District of Illinois recognized “the liberty interest at stake is a child’s right to remain in the custody of his parent . . . [is] a fundamental right.”⁹ Finally, in *Jacinto-Castanon de Nolasco v. ICE*, the D.C. District Court reviewed claims from a mother and sons and concluded all three plaintiffs were likely to “succeed on their substantive due process claim premised on their constitutional right to family integrity.”¹⁰

In addition to these cases involving child plaintiffs, seventeen states and the District of Columbia challenged the federal government’s zero tolerance policy, arguing *inter alia* that both children and parents’ rights to family integrity had been violated.¹¹ Specifically, the states asserted in Counts One and Two that “parents have a fundamental liberty interest in the care, custody, and control of their children...” and “minors have a reciprocal liberty interest in their parents’ care.”¹² To support the children’s rights assertion, the plaintiffs cited numerous state statutes and case law affirming the importance of children’s rights to family. A few key examples are included below:

- Massachusetts cited a state supreme court case finding “the interest of the child is best served by a stable, continuous environment with his or her own family.”¹³
- Iowa explained children and parents can be separated only in “the most exceptional circumstances” because remaining in parental custody is presumed to be in a child’s best interest and separation “inflict[s] a unique deprivation of a constitutionally protected liberty interest.”¹⁴

⁸ *J.S.R.* 330 F. Supp. 3d at 742

⁹ *W.S.R.* 318 F. Supp. 3d at 1124

¹⁰ *Jacinto-Castanon de Nolasco*, 319 F. Supp. 3d at 502.

¹¹ See *State of Washington*, 2018 WL 3139446 (W.D. Wash.).

¹² *Id.* ¹³ *Adoption of Frederick*, 405 Mass. 1, 4 (1989); see also *Am. Acad. of Pediatrics v. Lungren*, 16 Cal. 4th 307, 348 (1997) (preserving and fostering the parent-child relationship are “extremely important interests that rise to the level of ‘compelling interests’ for purposes of constitutional analysis.”)

¹³ *Adoption of Frederick*, 405 Mass. 1, 4 (1989); see also *Am. Acad. of Pediatrics v. Lungren*, 16 Cal. 4th 307, 348 (1997) (preserving and fostering the parent-child relationship are “extremely important interests that rise to the level of ‘compelling interests’ for purposes of constitutional analysis.”)

¹⁴ *In re M.S.*, 889 N.W.2d 675, 677-78 (Iowa Ct. App. 2016); see also Or. Rev. Stat. § 419B.090(3) (explaining that Oregon law requires the government to “safeguard and promote each child’s relationships with parents, siblings, grandparents, other relatives and adults with whom a child develops healthy emotional attachments.”); 62 Pa. Stat. Ann. § 2172(a)(1) (requiring Pennsylvania officials to recognize “[t]he family is the basic institution in society in which our children’s sense of self-esteem and positive self-image are developed and nurtured” and “[t]hese feelings and values are essential to a healthy, productive and independent life during adulthood”).

- New Mexico state law provides to “the maximum extent possible, children in New Mexico shall be reared as members of a family unit” and process is due when a proceeding affects or interferes with the parent-child relationship.¹⁵

This Resolution builds on the recognition of children’s rights to family integrity in both federal and state sources of law. We encourage attorneys for children in dependency proceedings to use these and other sources of authority on children’s rights to family when consistent with client interests.¹⁶ Advocacy based on children’s rights to family integrity may be especially compelling in instances involving access to services or supports that could promote child safety without effectuating a removal, as provided for through the Family First Act, which may be relevant in pre-petition or pre-removal representation.¹⁷ Relatedly, arguments about children’s fundamental rights to family integrity may be effective as attorneys advocate for child welfare agencies to provide reasonable efforts to prevent removals and facilitate reunification as required by federal and state law.¹⁸

II. Trauma of Removal

Recent federal litigation challenging family separation at the border has repeatedly emphasized the “irreparable harm” that can ensue from separating a child and parent.¹⁹ For example, Jack Shonkoff, Director of Harvard University’s Center on the Developing Child, explained when testifying before the House of Representatives that “[s]udden,

¹⁵ N.M. Stat. Ann., Sec. 32A-1-3 (2009); *State ex rel. Children, Youth & Families Dep’t v. Stella P.*, 986 P.2d 495 (N.M. 1999).

¹⁶ See e.g., *Kia P. v. McIntyre*, 235 F.3d 749, 759 (2d Cir. 2000) (finding children have “a parallel constitutionally protected liberty interest in not being dislocated from the emotional attachments that derive from the intimacy of daily family association.”), *cert. denied*, 534 U.S. 820 (2001); *Duchesne v. Sugarman*, 566 F.2d 817, 825 (2d Cir. 1977) (“Th[e] right to the preservation of family integrity encompasses the reciprocal rights of both parent and children.”). See also 2011 ABA Model Act Governing Representation of Children in Abuse, Neglect, and Dependency Proceedings at https://www.americanbar.org/content/dam/aba/administrative/child_law/aba_model_act_2011.pdf (calling on children’s attorneys to serve as “client-directed” counsel representing children’s expressed interests).

¹⁷ See U.S. Dep’t of Health and Human Servs., Admin. for Children and Families, Admin. on Children, Youth and Families, Children’s Bureau, *High Quality Legal Representation for All Parties in Child Welfare Proceedings*, No. ACYF-CB-IM-17-02 (2017), available at <https://www.acf.hhs.gov/sites/default/files/cb/im1702.pdf>.

¹⁸ See 42 U.S.C. § 671(a)(15)(B).

¹⁹ See, e.g., *Ms. L.*, 310 F. Supp. 3d at 1146-47 (citing an amicus brief by the Children’s Defense Fund for evidence that “separating children from their mothers or fathers leads to serious, negative consequences to children’s health and development. Forced separation disrupts the parent-child relationship and puts children at increased risk for both physical and mental illness.... And the psychological distress, anxiety, and depression associated with separation from a parent would follow the children well after the immediate period of separation—even after eventual reunification with a parent or other family.”); see also *W.S.R.* at 1128 (noting that the child plaintiffs “have proven that every day of separation is causing dangerous harm to their mental health”); *Jacinto-Castanon de Nolasco*, 319 F.Supp.3d at 501 (finding separation “absolutely precludes Ms. Jacinto-Castanon’s involvement in any aspect of her sons’ care, custody, and control, from religion to education” and “prevents her from expressing love for, and comfort to, her sons – comfort that they surely need as they endure the bewildering experience of detention”).

forcible separation of children from their parents is deeply traumatic for both.”²⁰ This medical understanding of the trauma of separating children from parents helps to show in the child welfare context that while foster care can be a critical response to certain family circumstances, it is not without consequences. As the American Academy of Pediatrics has stated “[r]emoval is emotionally traumatizing for almost all children, although for some, it is the first time they may feel safe.”²¹

In federal FY 2017, 269,690 children entered foster care across the United States, to become part of the almost 443,000 youth in care that year.²² Research shows that removal from parents and transition into foster care is stressful and distressing to children,²³ as children removed from their parents’ care often also lose connections to their homes, siblings, friends, other family members (if kinship care is not considered), pets, familiar environments, and sometimes school settings. A study completed by a professor at MIT in 2007 demonstrated that children “on the margin” (i.e., who could have avoided foster care placement) had better lifetime outcomes when they were raised by their families of origin than those raised in the foster care system.²⁴

The research on trauma does not suggest children should be left in harm’s way when circumstances require government intervention. Indeed, Dr. Shonkoff’s Congressional testimony provides a clear caution against such inaction by explaining “inadequate caregiving and limited nurturance very early in life can have long-term (and sometimes permanent) effects on immune and inflammatory responses.”²⁵ In this respect, medical research on the trauma of separation does not justify a government’s failure to act to support children. Rather, it underscores the importance of investing in supports that address child health and safety within the family and ensuring due process when a child needs to be physically removed for safety reasons. This approach is consistent with state laws and policies that simultaneously affirm the importance of family integrity and identify government responsibilities to prevent the unnecessary removal of children from their homes. For example, Minnesota law provides “all children are entitled to live in families

²⁰ *Hearing on “Examining the Failures of the Trump Administration’s Inhumane Family Separation Policy”* Before the H.Comm. on Energy and Commerce, Subcomm. on Oversight and Investigations, 116th Cong. (2019) (statement of Jack P. Shonkoff, M.D. at 2).

²¹ Am. Acad. of Pediatrics, *Policy Statement on Health Care Issues for Children and Adolescents in Foster Care and Kinship Care* (2015), available at <https://pediatrics.aappublications.org/content/136/4/e1131>.

²² See U.S. Dep’t of Health and Human Servs., Admin. for Children and Families, Admin. on Children, Youth and Families, Children’s Bureau, AFCARS Report 25 (2017), available at <https://www.acf.hhs.gov/sites/default/files/cb/afcarsreport25.pdf>.

²³ See Monique Mitchell & Leon Kuczynski, *Does Anyone Know What is Going On? Examining Children’s Lived Experience of the Transition into Foster Care*, 32 Child and Youth Services Review 437-43 (2010).

²⁴ Joseph J. Doyle, *Child Protection and Child Outcomes: Measuring the Effects of Foster Care*, 97 Am. Econ. Rev. 1583 (2007). For a perspective on how the United States has styled its child welfare efforts, at times failing to protect children from risks of additional harm, see Jill Lepore, *Baby Doe: A political history of tragedy*, New Yorker, Jan. 24, 2016.

²⁵ Shonkoff, *supra* note 21, at 7.

that offer safe, nurturing, permanent relationships, and that public services be directed toward preventing the unnecessary separation of children from their families.”²⁶

ABA policy recognizing the trauma of child and parent separation can help inform attorney advocacy and judicial decision-making in the child welfare field where questions about keeping a child safe require considerations beyond simply whether to remove a child from the home. Instead, with an understanding of the trauma that such a removal may cause for the child as well as the family and community, legal professionals have a responsibility to examine alternative options when a child can be cared for safely without needing to effectuate a removal if that is in the child’s interests. In many instances, those options may include the provision of government assistance and support services to help stabilize a family and address specific safety concerns. We also encourage states to consider adopting language like Alaska’s statute, which requires courts reviewing removal petitions to consider potential harm to the child caused by removal from the home and family when making determinations about health, safety, and best interests.²⁷

Importantly, when removal from parents or other primary caregivers is needed to ensure a child’s health or safety, legal professionals can also join the agency to develop policies that minimize the trauma of that transition for children.²⁸

III. Promoting Child Safety through Prevention Services

Historically, federal child welfare funding has been limited to supporting children after they entered foster care.²⁹ The corresponding lack of federal funding for prevention services to assist families in need of support before placing a child in foster care has long frustrated attempts at broad system improvement. A 2010 ABA Resolution urged child welfare financing reform that would allow states to use federal funds available through Title IV-E

²⁶ Minn. Stat. § 252.32, subd. 1; *see also* 10 Del. C. § 902(a) (declaring preservation of the family as a unit to be “fundamental to the maintenance of a stable, democratic society.”); 705 Ill. Comp. Stat. 405/1-2 (requiring Illinois to “secure for each minor ... such care and guidance, preferably in his or her own home, as will serve the safety and moral, emotional, mental, and physical welfare of the minor and the best interests of the community; [and] preserve and strengthen the minor’s family ties whenever possible”); Md. Code Ann., Fam. Law § 4-401(1) (recognizing the government’s responsibility to “promote family stability, [and] to preserve family unity”).

²⁷ Alaska Stat. Ann. § 47.10.082 (requiring courts to consider children’s best interests and the “potential harm to the child caused by removal of the child from the home and family environment”). *See also* Theo Liebmann, *What’s Missing from Foster Care Reform? The Need for Comprehensive, Realistic, and Compassionate Removal Standards*, 28 Hamline J. Pub. L. & Pol’y 141, 174 (2006) (urging states to adopt a “comprehensive risk assessment” in removal decision-making which requires judges to weigh “whether the risks to that particular child with his parents are actually greater than the risks to the child’s life or health if removed from his parents”).

²⁸ *See, e.g.*, ACS-NYU Children’s Trauma Institute, *Easing Foster Care Placement: A Practice Brief*, (2012) https://www.nctsn.org/sites/default/files/resources/fact-sheet/easing_foster_care_placement_a_practice_brief.pdf.

²⁹ 42 U.S.C. 672(a)(2)(A)(ii) (providing for federal funding after a child has been placed in foster care).

of the Social Security Act on child abuse and neglect prevention, among other efforts to strengthen and stabilize families.³⁰

The Family First Act, which was signed into law in 2018, addresses several of these proposals by bringing a range of improvements to the child welfare system. For example, states can now access federal Title IV-E funding to provide services and programs to children, parents, and kinship caregivers with the goal of *preventing* children from entering foster care. Eligible families in which a child is a “candidate for foster care” can access preventive mental health, substance abuse, and parenting skills services for up to 12 months. The new federal law complements existing state responsibilities to support families and prevent child-parent separation when possible.³¹

Within the context of this new legislation, legal professionals have several key roles, including a responsibility to protect children’s and parents’ rights to family integrity.³² Similarly, counsel for child welfare agencies have an opportunity to work closely with their clients to ensure “reasonable efforts” are provided in a deliberate way to help families in need of services and prevent a child from entering foster care when services can help stabilize the family.³³ To protect legal rights while prevention services are being provided, jurisdictions should consider appointing counsel for children, parents, and agencies once a child has been deemed a “candidate for foster care” and prevention services are offered.³⁴ New federal funding for children’s counsel and parents’ counsel appears to permit federal reimbursement (at a 50% match rate) in such instances, creating new opportunities for pre-petition legal services.³⁵

As significant as the funding shifts are likely to be from Family First, it is far from a comprehensive approach to prevention and family support. Consequently, in addition to services to help families when children are at imminent risk of entering foster care, it is critical for states and communities to develop and offer programs and services that

³⁰ See ABA House of Delegates Resolution 110 (adopted February 2010), *available at* https://www.americanbar.org/groups/child_law/resources/attorneys/child_welfare_financingreform/

³¹ See, e.g., 29 Del. C. § 9001 (Delaware “has a basic obligation to promote family stability and preserve the family as a unit...”); *supra* note 27.

³² For additional details on the role of the legal community in implementing Family First, see ABA Center on Children in the Law, *Legal Professional Roles: Implementing the Family First Prevention Services Act*, https://www.americanbar.org/content/dam/aba/administrative/child_law/ffpsa-legal-roles.pdf.

³³ For an overview of federal and state requirements that agencies make reasonable efforts both to prevent the removal of a child from the home and to achieve reunification with the family, see, e.g., U.S. Dep’t of Health and Human Servs., Admin. for Children and Families, Admin. on Children, Youth and Families, Children’s Bureau, *Reasonable Efforts to Preserve or Reunify Families and Achieve Permanency for Children* (2016), *available at* <https://www.childwelfare.gov/pubPDFs/reunify.pdf>.

³⁴ See ABA House of Delegates Resolution 112A (adopted August 2006) (urging federal, state, and territorial governments to provide legal counsel as a matter of right at public expense to low income persons in those categories of adversarial proceedings where basic human needs are at stake, such as those involving shelter, sustenance, safety, health or child custody, as determined by each jurisdiction).”

³⁵ See § 8.1B Child Welfare Policy Manual, Question 30, *available at* https://www.acf.hhs.gov/cwpm/public_html/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=36

provide primary prevention and family support. As noted by the Children's Bureau of the U.S. Department of Health and Human Services, "coordinated and robust primary prevention efforts are critically important to strengthen families, prevent the initial occurrence of and ongoing maltreatment, prevent unnecessary disruption of families, reduce family and child trauma, interrupt intergenerational cycles of maltreatment, and build a well-functioning child welfare system."³⁶

Legal services provide a core component of these more comprehensive prevention efforts. For example, medical-legal partnerships identify and address simultaneous legal and medical pressures such as when children's medical, mental health, or special needs create challenges in the care they can receive at home.³⁷ The medical-legal partnership between Arkansas Children's Hospital and Arkansas Legal Aid provides a useful example of a practice that assists legal and medical needs concurrently for children and families. Children's Law Center in Washington, DC has a similar program in place with Children's National Medical Center and several other health clinics. Additionally, the medical-legal partnership between Mt Sinai-St. Luke's Child and Family Institute and the Legal Aid Society in New York City provides education advocacy to students with significant emotional disabilities.

Multidisciplinary legal teams in child welfare representation can also strengthen families by incorporating an attorney, a social worker, and a peer advocate as part of a triad of service delivery.³⁸ As a prevention model, the Detroit Center for Family Advocacy (CFA) provides an excellent example of how multidisciplinary representation can help eliminate the need for foster care placement.³⁹ In CFA's prevention services program, families with a substantiated allegation of child abuse or neglect but no filed petition or court proceeding were provided with a multidisciplinary legal team including a lawyer, a social worker, and a parent advocate who had been involved in the child welfare system to address the legal issues that put them at risk of a dependency petition. During a three-year evaluation, CFA's multidisciplinary teams prevented the need for dependency petitions in nearly 93% of all cases handled.

³⁶ U.S. Dep't of Health and Human Servs., Admin. for Children and Families, Admin. on Children, Youth and Families, Children's Bureau, *Strengthening Families Through Primary Prevention of Child Maltreatment and Unnecessary Parent-Child Separation*, No. ACYF-CB-IM-18-05 (2018), available at, <https://www.acf.hhs.gov/cb/resource/im1805>.

³⁷ The ABA has long supported medical-legal partnerships. See ABA House of Delegates Resolution 120A (adopted August 2007), available at <https://medical-legalpartnership.org/wp-content/uploads/2014/02/American-Bar-Association-MLP-Resolution.pdf>; see also ABA Medical Legal Partnerships Pro Bono Project, https://www.americanbar.org/groups/probono_public_service/projects_awards/medical_legal_partnerships_pro_bono_project/ (last visited May 7, 2019).

³⁸ Children's Bureau No. ACYF-CB-IM-17-02, *supra* note 17 (noting several models of multidisciplinary representation in child welfare). The Center for Family Representation in New York and the Washington State Office of Public Defense provide two prominent examples of organizations that have achieved excellent results by using the multidisciplinary model to represent parents after a petition has been filed

³⁹ For more information about Detroit CFA and the results produced in a three-year pilot please visit: <https://www.healthymarriageandfamilies.org/library-resource/detroit-center-family-advocacy-pilot-evaluation-report-72009-62012>.

Finally, policymakers should explore efforts to expand access to civil legal aid to help families maintain stable housing, protect against domestic violence, and access benefits for which they are eligible. Each of these legal issues can affect child safety. Legal clinics and services co-located at Family Resource Centers throughout the country provide other examples for how to expand primary prevention legal supports for families.

IV. Government Intervention and Foster Care Placement

There are circumstances when it is necessary for a child to separate from a parent or caregiver and enter foster care to ensure the safety of the child.⁴⁰ All state jurisdictions recognize this legal reality. State laws vary, however, in the statutory language they use to support parent-child separation. Some require a showing that the child's health or safety are at risk.⁴¹ Other states use broader language like child welfare or well-being.⁴²

Because children's and parents' rights to family integrity are fundamental interests, certain procedural protections apply in the decision-making process regarding removal into foster care.⁴³ As such, the government may not intentionally intrude on rights to family integrity without a particularized court finding of unfitness on the part of each parent.⁴⁴ When a state or tribe seeks to prove a parent unfit and seeks removal of a child, the parent must be given notice and an opportunity to contest the basis for that fitness determination.⁴⁵ As a general rule, this court hearing should occur before the parent "may be deprived of the care, custody, or management of their children without their consent."⁴⁶

⁴⁰ Significantly, the existence of an immigration proceeding involving a parent and/or the family is not grounds for a dependency petition. Similarly, criminal charges alone are not presumptively grounds for a dependency petition, though an instance or pattern of child abuse or neglect may result in both criminal charges and a dependency case.

⁴¹ See Alaska Stat. § 47.10.082 (requiring courts to "keep the health and safety of the child as the court's paramount concern"); Ark. Code Ann. § 9-27-328 (requiring the first judicial findings to include an analysis of "[w]hether the removal and the reasons for the removal of the juvenile is necessary to protect the health and safety of the juvenile"); N.Y. Fam. Ct. Act § 1027 (providing for a child's removal from the parent when necessary to avoid imminent risk to the child's life or health).

⁴² See, e.g., Cal. Welf. & Inst. Code § 202(a), 16000(a) (providing for removal of a child from the custody of a parent "only when necessary for his or her welfare or for the safety and protection of the public"); Kan. Stat. Ann. 38-2243 (courts may order removal when the "health or welfare of the child may be endangered without further care").

⁴³ See *Quilloin*, 434 U.S. at 255 ("We have little doubt that the Due Process Clause would be offended [i]f a State were to attempt to force the breakup of a natural family, over the objections of the parents and their children, without some showing of unfitness and for the sole reason that to do so was thought to be in the children's best interest"); *Stanley*, 405 U.S. at 658 ("The integrity of the family unit has found protection in the Due Process Clause of the Fourteenth Amendment").

⁴⁴ See *id.*; see also *In re Sanders*, 852 N.W.2d 524, 533, 539 (Mich. 2014) (rejecting the one-parent doctrine and requiring a finding that both parents are unfit before a court can interfere with a parent's right to care, custody and control of his or her children).

⁴⁵ See *Stanley*, 405 U.S. at 658.

⁴⁶ *Southerland v. City of New York*, 680 F.3d 127, 142 (2d Cir. 2012) ("The Fourteenth Amendment imposes a requirement that except in emergency circumstances, judicial process must be accorded both parent and child before removal of the child from his or her parent's custody may be effected."); *Ram v. Rubin*, 118

Only in emergency situations, where the government has evidence that harm to the child is imminent, should the state assume custody of the child without court authorization or parental consent.⁴⁷ Emergency removals should not be permitted when the agency has “reasonable time consistent with the safety of the child to obtain a judicial order.”⁴⁸ To exercise these procedural safeguards, children and parents should have access to quality legal representation at every stage of the case.⁴⁹

Additionally, not every child found to be neglected or dependent must be removed from parental custody.⁵⁰ Generally, a court determination of the necessity of removal should include assessment of the nature of the threat(s) of danger, the child’s vulnerability, and the family’s protective capacities to manage the threat.⁵¹ Assessing child safety is relevant not only at the point of initial removal, but also when developing and approving an effective case plan and when determining whether a child can be reunified with parents or should achieve a different form of permanency (e.g. adoption or guardianship).⁵²

Attorneys and judges can use this emphasis on procedural protections to ensure children’s and parents’ rights to family integrity are protected while also keeping children safe. Judges and attorneys should understand the safety factors at issue and develop a framework for child safety decision-making that facilitates consistency and clarity in the field. This Resolution is not intended to apply to military assignment decisions in which a service member may be asked to deploy without his or her accompanying family to protect their safety.

F.3d 1306, 1311 (9th Cir. 1997), cert. denied, 522 U.S. 1045 (1998) (holding “notice and a hearing are required before children can be removed, even temporarily, from the custody of their parents” and explaining emergency circumstances exist only when a state official has a reasonable belief the children are in imminent danger).

⁴⁷ N.Y. Fam. Ct. Act § 1024(a) (defining emergencies as “circumstance[s]” wherein a child’s remaining in the parent’s care and custody “presents an imminent danger to the child’s life or health”).

⁴⁸ *Tenenbaum v. Williams*, 193 F.3d 581, 596–97 (2d Cir.1999), cert. denied, 529 U.S. 1098 (2000).

⁴⁹ See National Center for State Courts, Conference of State Court Administrators, *Policy Statement: Child Welfare* 1 (2017) (stating that courts should explore options to ensure “the legal representation of children and parents in all child protection cases and at every stage of the case”), available at <https://ccj.ncsc.org/~media/Microsites/Files/COSCA/Policy%20Statements/Child-Welfare-Final-Aug2-17.ashx>; Nat’l Council of Juvenile and Family Court Judges, *Enhanced Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases* 29 (2016), available at <https://www.ncjfcj.org/sites/default/files/%20NCJFCJ%20Enhanced%20Resource%20Guidelines%2005-2016.pdf>; see also ABA Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings (2011); ABA Standards of Practice for Lawyers who Represent Parents in Abuse and Neglect Cases (2006); ABA Standards for Lawyers who Represent Children in Abuse and Neglect Cases (1996).

⁵⁰ See Nat’l Council of Juvenile and Family Court Judges, *supra* note 49, at 22 (noting that the key decision in a disposition hearing is whether a child must be placed away from home); Vivek S. Sankaran, *When Child Protective Services Comes Knocking*, 31 Fam. Advoc. 8, 14 (Winter 2009) (noting that even if the court makes a finding that a child was abused or neglected, the court may return the child home at any point, including at the dispositional hearing).

⁵¹ See Therese Roe Lund & Jennifer Renne, *Child Safety: A Guide for Judges and Attorneys* (American Bar Association 2009) at 1.

⁵² See *id.*

Careful consideration of due process protections is also important when implementing the Family First Prevention Services Act because state and local child welfare agencies will be working with unrepresented parents and children in the context of providing prevention services and developing case plans without judicial review or legal representation.

V. Jurisdictional Authority

Determinations of parental fitness and the necessity of removal fall exclusively to state and tribal jurisdiction.⁵³ In instances where federal authorities have custodial authority over a child and parent, decisions to separate the child from a parent to protect the child's safety, health, or well-being require coordination with state or tribal authorities that have statutory authority to effectuate such separations as part of the child welfare legal process.⁵⁴

VI. Family Connections while in Foster Care

Outside child welfare system involvement, parents' arrangements of where their children live and with whom are presumptively valid. Once children enter state or tribal custody, parents' recommendations may be considered by the state or tribal agency or court. Children's ties to family (whether parents, siblings, relatives, or unrelated persons with a significant relationship to the child or family) should be maintained. Attorneys and courts can develop, strengthen, and support promising practices which have been recognized at the state and federal levels to maintain family connections for youth of all ages.

i. Kin and Relative Engagement

Decades of research confirms that children who cannot remain with their parents thrive when raised by relatives and close family friends, known as kinship care.⁵⁵ Children in foster care with relatives have more stable and safe childhoods than children in foster care with non-relatives, with greater likelihood of having a permanent home. They experience fewer school changes, have better behavioral and mental health outcomes, and report they "always felt loved." They keep their connections to brothers and sisters, family and community, and their cultural identity. Youth in kinship care homes themselves generally express more positive feelings about their placements and are less likely to run

⁵³ See 8 U.S.C. § 1101(a)(27)(J) (adjudication of dependency law matters is conducted by state courts under state law); 42 U.S.C. § 672(a)(2)(B) ("a child's placement and care are the responsibility of" state and tribal agencies); see also U.S. Immigration and Customs Enforcement, Policy No. 11064.2, *Detention and Removal of Alien Parents or Legal Guardians* (Aug. 29, 2017) (providing if there is an indication that the minor child(ren) has been subject to abuse or neglect by a parent or other adult who may be asked to take custody of the minor child(ren), ICE personnel should contact local child welfare authorities or law enforcement to take custody of the minor child(ren), available at <https://www.ice.gov/doclib/detention-reform/pdf/directiveDetainedParents.pdf>).

⁵⁴ See, e.g., *supra* note 41.

⁵⁵ Research details and citations are available collectively in Generations United, *Children Thrive in Grandfamilies* (2016), <http://grandfamilies.org/Portals/0/16-Children-Thrive-in-Grandfamilies.pdf>.

away.⁵⁶ Moreover, children in foster care with relatives are less likely to re-enter the foster care system after returning to birth parents. If returning to parents is not possible, relatives are often willing to adopt or become permanent guardians.⁵⁷ In fact, in Fiscal Year 2017, 34% of all children adopted from foster care were adopted by relatives and 10% of children exited foster care into kinship guardianships.⁵⁸

Federal and state child welfare law and policy prioritize placing children in kinship care arrangements when children enter foster care.⁵⁹ For example, federal law requires state child welfare agencies to notify all adult relatives when a child is removed from parental care within 30 days of the removal, and to exercise due diligence to identify and locate all the child's adult relatives. An exception is articulated for cases involving family or domestic violence.⁶⁰ Most state laws and policies also support a priority for placement with a relative.⁶¹

More recently, the Family First Act seeks to improve licensing standards for relatives by requiring states to assess whether their foster family home licensing standards meet federal model standards and to identify what non-safety licensing standards can be waived for relative caregivers.⁶² Family First also provides federal reimbursement for state expenditures on kinship navigator programs, which provide information, referral, and follow-up services to grandparents and other relatives raising children.⁶³

This Resolution urges judges and attorneys to support these goals by asking about agency efforts to place a child with a kin caregiver. Judges and attorneys should also inquire about how family connections are being maintained throughout a case.

ii. Unsupervised Visitation

Goals of family visitation after a child enters foster care include maintaining the parent-child relationship, reducing the trauma of separation, and promoting reunification. Frequent and meaningful family time can improve the child-parent relationship and

⁵⁶ See *supra*, note 55.

⁵⁷ See *supra*, note 55.

⁵⁸ See 2017 AFCARS Report, *supra* note 22.

⁵⁹ 42 U.S.C. § 671(a)(19) (Title IV-E of the Social Security Act requires states receiving federal financial support to “consider giving preference to an adult relative over a nonrelated caregiver when determining placement for a child, provided that the relative caregiver meets all relevant state child protection standards.”); Fostering Connections to Success and Increasing Adoptions Act of 2008, P.L. 110-351 (“Fostering Connections Act”) (recognizing the important role relatives play in the life of a child and explicitly encouraged states to connect foster children with their relatives).

⁶⁰ See 42 U.S.C. § 671(a)(29).

⁶¹ See, e.g., Ind. Code Ann. § 31-34-19-7(b) (“A juvenile court shall consider placing a child . . . with a relative related by blood, marriage, or adoption before considering any other placement of the child”); N.C. Gen. Stat. Ann. § 7B-505(b) (“In placing a juvenile in [foster care] under this section, the court shall first consider whether a relative of the juvenile is willing and able to provide proper care and supervision of the juvenile in a safe home.”)

⁶² See 42 U.S.C. § 671(a)(36).

⁶³ See 42 U.S.C. § 674(a)(7).

promote permanency by engaging parents; a parent can be significantly motivated through meaningful and regular contact with a child. However, in unfamiliar settings supervised by unfamiliar people, a family may find it challenging to interact naturally.

To promote meaningful visitation, family visits should be conducted in the least-restrictive environment available that supports the child's safety, and the level of supervision a family requires should be determined on a case-by-case basis. In its recommendations for improving court practice, the National Council for Juvenile and Family Court Judges (NCJFCJ) has noted, "[c]onsistent with child safety, relationships between and among children, parents, and siblings are vital to child well-being. Judges must ensure that quality family time is an integral part of every case plan. Family time should be liberal and presumed unsupervised unless there is a demonstrated safety risk to the child."⁶⁴ Some states, such as Georgia, have recognized the value of safe, unsupervised visitation and include the presumption in their statutes.⁶⁵

State legislative, executive and judicial branches of government should examine the model as recommended by NCJFCJ and implemented in Georgia and should consider adopting similar statutes or policies of allowing a presumption of unsupervised visits between children and parents. Attorneys and judges can also support a presumption for unsupervised visits, including the safety considerations that must be considered, and question what barriers exist to safe, unsupervised visitation in individual cases.

iii. Sibling Connections

Federal and state child welfare law and policy recognize the importance of sibling bonds for children and youth in foster care and have explored many strategies and approaches to maintaining those connections.⁶⁶ Absent a risk to child safety, courts should consider and attorneys advocate for regular, frequent contact between and among siblings.

Effective implementation of Family First will include careful consideration of the sibling-related provisions. For example, an exception to the limit on the number of children who can reside in a "foster family home" at the same time is available to place sibling groups together.⁶⁷ Additionally, if a child is placed in a Qualified Residential Treatment Program,

⁶⁴ Nat'l Council of Juvenile and Family Court Judges, *supra* note 49.

⁶⁵ See, e.g., Ga. Code Ann. 15-11-112(b) (establishing a presumption that visitation shall be unsupervised unless the court finds that unsupervised visitation is not in a child's best interests).

⁶⁶ See, e.g., U.S. Department of Health and Human Services, Children's Bureau, *Sibling Issues in Foster Care and Adoption* (January 2013), <https://www.childwelfare.gov/pubPDFs/siblingissues.pdf>; See Fostering Connections Act, Sec. 206 (requiring child welfare agencies to make reasonable efforts to place siblings together, whether in foster care, kinship guardianship, or adoptive placements); Preventing Sex Trafficking and Strengthening Families Act of 2014, P.L. 113-183, Sec. 209(a)(2) (requiring child welfare agencies to notify parents of a child's siblings when the child is removed from a parent's care, to include individuals who would have been considered siblings if not for the termination or other disruption of parental rights).

⁶⁷ See 42 U.S.C. § 672(c)(1)(b)(2).

the program must provide outreach to relatives, including siblings, and document how the child's sibling connections are being maintained.⁶⁸ The state's case plan must include placement preferences reflecting that children should be placed with their siblings absent a court order to the contrary.⁶⁹

When sibling connections are considered, courts, attorneys, and agencies should not overlook the bonds developed between unrelated children and youth in a foster care setting. Children or youth who leave a foster care setting may want to maintain a relationship and connection with other young people they lived with in that setting, and those ongoing relationships should be supported. Judges and attorneys should question how sibling bonds are maintained during individual child welfare cases and whether child's siblings are also in foster care. They should also seek the input of a child or youth in care as to who the youth wants to remain connected to in addition to biological relatives.

iv. Other Positive Adult Connections

Research has shown, youth who age out of foster care face many challenges at higher rates than youth who were never in foster care or who exited foster care to reunify with parents.⁷⁰ It is critical for older youth to have permanent, emotionally sustaining, and committed relationships to reach self-sufficiency and reduce the risk of negative outcomes such as homelessness and criminal involvement.

A key recommendation from the Evan B. Donaldson Adoption Institute report, "Never Too Old: Achieving Permanency and Sustaining Connections for Older Youth in Foster Care"⁷¹ was to increase efforts to recruit, support, and use relatives by promoting kinship adoption and subsidized guardianship, and explore subsidized guardianship and adoption. One study showed the value of mentoring relationships, a role often fulfilled by a close relative which contributed to: socio-emotional development, problem-solving, and identity development. This was especially valuable to youth during vulnerable periods like transitions into and out of foster care.⁷² One strategy for facilitating engagement by caring adults is permanency planning that reflects efforts at relational permanency by building and maintaining connections with family and other supportive adults.⁷³

Judges and attorneys in dependency cases should ensure older youth in care maintain family connections and establish positive relationships with adults. Attorneys representing

⁶⁸ See 42 U.S.C. § 672(k)(4)(D).

⁶⁹ See 42 U.S.C. § 675a(c)(1)(B)(iii).

⁷⁰ See, e.g., Annie E. Casey Foundation, *Every Kid Needs a Family* (2015), available at <http://www.aecf.org/m/resourcedoc/aecf-EveryKidNeedsAFamily-2015.pdf>; Mark Courtney et al., *Midwest Evaluation of the Adult Functioning of Former Foster Youth* (2011), available at <https://www.chapinhall.org/research/midwest-evaluation-of-the-adult-functioning-of-former-foster-youth/>

⁷¹ Evan B. Donaldson Adoption Institute. *Never Too Old: Achieving Permanency and Sustaining Connections for Older Youth in Foster Care*, (2011), available at https://adoptioninstitute.org/old/publications/2011_07_21_NeverTooOld.pdf.

⁷² Kym R. Ahrens, et al., *Qualitative Exploration of Relationships with Important Nonparental Adults in the Lives of Youth in Foster Care*, 33 Children and Youth Services Review, 1012–1023 (2011).

⁷³ See, e.g., ABA Center on Children and the Law and Juvenile Law Center, *Issue Brief: The Role of the Court in Implementing the Older Youth Provisions of the Strengthening Families Act* (February 2016).

youth in care should ask clients who they talk to regularly, who they seek advice from or go to for help, and who they would like to remain connected to after leaving state child welfare custody. Judges should ask related questions during court proceedings.

v. Service Plan and Treatment Plan

In recent years, child welfare professionals and legislators have focused on the importance and value of directly engaging youth in foster care in the creation of their service plans and any needed treatment plans, and also closely involving their families. For example, the Family First Act articulates how family members and others should be included in treatment for a youth placed in a Qualified Residential Treatment Program (QRTP). For a state to access federal funding for a child's placement in a QRTP, the placement must be recommended by an impartial assessor and approved by the court.⁷⁴ Part of the assessment involves consultation with a family and permanency team, which must consist of appropriate biological family members, relatives, fictive kin and "professionals who are a resource to the family...such as teachers, medical or mental health providers who have treated the child, or clergy."⁷⁵ And if the child placed in the QRTP is over 14, the team must also include members selected by the child. The QRTP must involve family members when it would be in the child's best interest, describe how to integrate them in a post-discharge plan, and provide post-discharge and family-based support for six months.⁷⁶

Building on these laws, judges should ensure the relevant federal and state rules are applied, and attorneys should advocate for youth's active involvement in their own case planning, the involvement of family members and other adults important to the youth. Similarly, judges and attorneys should regularly pursue questions in court about the appropriateness of a child or youth's specific placement in foster care. Once a state is using QRTPs as placements, more specific inquiries should be established.

Conclusion

Major events, legal actions, and child welfare legislative and policy changes have produced renewed attention on children and youth rights to family integrity and family connection. The legal community should serve as a leader advocating for and upholding these rights in legal representation, judicial decision-making, and legislative action.

Respectfully submitted,
Hon. Marguerite Downing
Chair, Commission on Youth at Risk
August, 2019

⁷⁴ See 42 U.S.C. § 675a(c)(1)(A).

⁷⁵ See 42 U.S.C. § 675a(c)(1)(B).

⁷⁶ See 42 U.S.C. § 675a(c).

GENERAL INFORMATION FORM

Submitting Entity: Commission on Youth at Risk
 Section of Litigation
 Commission on Homelessness and Poverty
 Section of Civil Rights and Social Justice

Submitted By: Hon. Marguerite Downing

1. Summary of Resolution(s). This Resolution recognizes both children and parents have rights to family integrity and family unity. The Resolution urges the legal community to work to mitigate the trauma to children and families that separation causes and supports the use of prevention services to ensure children's safety without the need for removal into foster care. The Resolution confirms that state and tribal actors may interfere with family integrity when necessary for a child's health and safety, and outlines important procedural protections to be upheld by attorneys and judges for children and parents when removal is necessary.

The Resolution further urges maintenance of family connectedness if a child does need to enter foster care. Specifically, the Resolution calls for prompt identification, notification, and engagement of the kin of a child in foster care; prioritization of placement of the child with kin; unsupervised visitation between parents and children in foster care, unless a court finds that unsupervised visitation is not in the child's best interest; support for kinship foster families; maintained of sibling connections; positive adult connections for youth who may age out of foster care; and family involvement in the service plan and treatment of youth in foster care.

2. Approval by Submitting Entity.
 Final approval by the Commission on Youth at Risk on May 7, 2019
 Approved by the Section of Litigation on May 6, 2019
 Approved by the Commission on Homelessness and Poverty on May 7, 2019
3. Has this or a similar resolution been submitted to the House or Board previously? No
4. What existing Association policies are relevant to this Resolution and how would they be affected by its adoption? This Resolution would build upon past ABA policies that have touched on related points:
 - ABA House of Delegates Resolution 110 (Adopted February 2010) urged federal child welfare financing reform that would allow states to access federal funding for prevention services for families in need of support. That change was part of the Family First Prevention Services Act of 2018, and the new funding opportunity is highlighted in

a section of this proposed Resolution's accompanying Report.

- This Resolution's inclusion of quality legal representation as part the legal protections available when a child is removed from the home builds on the ABA House of Delegates Resolution 112A (Adopted February 1996) (adopting ABA Standards for Lawyers who Represent Children in Abuse and Neglect Cases), ABA House of Delegates Resolution 112A (Adopted August 2006) (adopting Standards of Practice for Lawyers who Represent Parents in Abuse and Neglect Cases), and ABA House of Delegates Resolution 101A (Adopted August 2011) (adopting ABA Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings (2011).

5. If this is a late report, what urgency exists which requires action at this meeting of the House? N/A

6. Status of Legislation. (If applicable) N/A

7. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates. If adopted, this ABA Resolution with Report will be shared among networks of attorneys and judges involved in child welfare and immigration cases. We will encourage attorneys for children and parents in child welfare proceedings to use these and other sources of authority on the right to family integrity and connectedness when consistent with client interests.

8. Cost to the Association. (Both direct and indirect costs) Adoption of this proposed resolution would result in only minor indirect costs associated with Commission staff time devoted to the policy subject matter as part of the staff members' overall substantive responsibilities.

9. Disclosure of Interest. (If applicable) None

10. Referrals. By copy of this form, the Report with Recommendation will be referred to the following entities:

- Center for Human Rights
- Civil Rights and Social Justice Section
- Coalition on Racial and Ethnic Justice
- Commission on Disability Rights
- Commission on Domestic and Sexual Violence
- Commission on Homelessness and Poverty

- Commission on Immigration
- Commission on Sexual Orientation and Gender Identity
- Commission on Women in the Profession
- Criminal Justice Section
- Family Law Section
- Health Law Section
- Judicial Division
- Legal Services Division
- Litigation Section
- Section of Science and Technology
- Solo, Small Firm and General Practice Division
- Special Committee on Hispanic Legal Rights and Responsibilities
- Young Lawyers Division

11. Contact Name and Address Information. (Prior to the meeting. Please include name, address, telephone number and e-mail address)

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12. Contact Name and Address Information. Please include best contact information to use when on-site at the meeting. *Be aware that this information will be available to anyone who views the House of Delegates agenda online.)*

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EXECUTIVE SUMMARY

1. Summary of the Resolution

This Resolution recognizes both children and parents have rights to family integrity and family unity. The Resolution urges the legal community to work to mitigate the trauma to children and families that separation causes and supports the use of prevention services to ensure children's safety without the need for removal into foster care. The Resolution confirms that state and tribal actors may interfere with family integrity when necessary for a child's health and safety, and outlines important procedural protections to be upheld by attorneys and judges for children and parents when removal is necessary.

The Resolution further urges maintenance of family connectedness if a child does need to enter foster care. Specifically, the Resolution calls for prompt identification, notification, and engagement of the kin of a child in foster care; prioritization of placement of the child with kin; unsupervised visitation between parents and children in foster care, unless a court finds that unsupervised visitation is not in the child's best interest; support for kinship foster families; maintained of sibling connections; positive adult connections for youth who may age out of foster care; and family involvement in the service plan and treatment of youth in foster care.

2. Summary of the Issue that the Resolution Addresses

Promising practices and recent developments in the child welfare field call for development of this Resolution, which centers on family integrity and family connection. First, federal litigation challenging family separation at the U.S. Border has brought with it an increased focus on applying child welfare laws and principles in federal litigation across the country, including the substantive and procedural rights of children and parents to family integrity. Second, 2018 child welfare legislation titled the Family First Prevention Services Act (P.L. 115-123) changed child welfare funding structures and emphasized the overall importance of children's connections to family, including birth parents, kin, siblings, and foster families. Third, the federal government recently updated the Child Welfare Policy Manual of the U.S. Department of Health and Human Services to allow states to use federal funding to pay part of the cost of providing children and parents with legal counsel in child welfare/dependency cases. This change recognizes high quality child and parent legal representation protects children and parents' substantive and procedural due process rights and produces better

long-term outcomes for families, including shorter time to permanency (e.g., reunification, guardianship or adoption).

All three developments are unified around a theme of promoting family integrity and family connection for children and youth. Although the ABA has existing policy supporting children's rights in a variety of contexts, it lacks policy addressing children and youth's interests in family integrity and family connection.

3. Please Explain How the Proposed Policy Position Will Address the Issue

This resolution addresses the gap identified by urging that:

- Children and parents have rights to family integrity and family unity;
- The legal community and state agencies should work to mitigate the trauma resulting from children's separation from parents;
- Prevention services, including quality legal representation services, can ensure children's safety without removing them from their families;
- Government may interfere with children's and parents' rights to family integrity when necessary for the child's health or safety; and
- When children are in foster care, family connections should be safely maintained and supported with parents, kin, and siblings during the pendency of the case.

This Resolution seeks to inform attorneys and judges in the child welfare and other legal fields of these important developments related to family integrity and family connectedness and provide guidance on effective implementation of the several intertwined practices and concepts.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified

None have been identified.