

Trauma Caused by Separation of Children from Parents

A Tool to Help Lawyers

This tool was created by the Children’s Rights Litigation Committee of the American Bar Association Section of Litigation. Thank you to everyone who contributed to this document including DLA Piper LLP (US); Andrew Cohen, Dir. of Appellate Panel, Massachusetts Committee for Public Counsel Services, Children & Family Law Division, and Aylin Corapcioglu and Mariel Smith, Legal Interns, Massachusetts Committee for Public Counsel Services, Children & Family Law Division; and Krista Ellis, former legal intern, American Bar Association Center on Children and the Law

Information is up to date as of May 2019. To share information to be added to this tool or provide feedback, please contact cathy.krebs@americanbar.org

© 2019 American Bar Association. May be reproduced, displayed, and distributed with the following credit: © 2018 American Bar Association. Reproduced with permission.

The views expressed herein have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the policy of the American Bar Association. Nothing contained in this book is to be considered as the rendering of legal advice for specific cases, and readers are responsible for obtaining such advice from their own legal counsel.

TABLE OF CONTENTS

	<u>PAGE</u>
I. Executive Summary	3
II. Talking Points for Trial and Appellate Lawyers.....	4
III. Harm Resulting From Separation of Parent and Child	6
A. Introduction.....	6
B. Scientific Research on the Effects of Removal From Parents Generally	6
C. Relevant Case Law and Law Journal Articles	10
1. Case Law.....	10
2. Law Journal Articles and Related Materials	13
D. The Effects of Removal Into Foster Care	16
IV. Resources For Parents and Children Facing Removal.....	22
A. Introduction.....	22
B. Removal Resources Generally	23
C. Kinship Placement	25
V. The Effects of Toxic Stress in Children.....	26
A. Introduction.....	26
B. Relevant Research.....	27
VI. Additional Resources	29

I. EXECUTIVE SUMMARY

This memorandum provides a summary of the extensive research detailing the grave consequences that result when a child is separated from his or her parent(s).

Part II sets forth talking points for use by trial and appellate lawyers during oral argument. These talking points distill the key themes and conclusions of the clinical and legal research set out in the balance of this memorandum.

Part III begins with a review of the clinical literature concerning the well-documented psychological and physical effects of removal generally. These resources find that the negative effects of removal often far outweigh the harm allegedly inflicted on the child by his or her parent. Part III next reviews relevant case law and legal journal articles applying these clinical findings in cases involving removal or attempted removal. Because one of the original driving forces behind development of this memorandum was the federal government's policy of separating children from their parents at the border, the cases summarized in this memorandum generally concern challenges to that policy. The courts rely heavily on literature from the scientific and medical communities describing the negative effects of parent-child separation.

Part IV reviews literature discussing the effects of placement into foster care, which concludes that those effects are negative and substantial. The memorandum then reviews literature that may serve as a resource for parents facing a removal or who have already lost their children. Some of this literature provides guidance on healthy and effective parenting strategies; other literature addresses the potential benefits of post-removal visitation, mental health counseling, and other social services. Though not particularly useful for a memorandum of law in opposition to a removal petition, these resources may be helpful in counseling the client on practical actions he or she might take to protect the relationship with his or her child.

Part V reviews literature regarding the physical effects of "toxic stress," which is prevalent among children who are removed from the parental home.

Finally, Part VI of the memorandum provides a listing of available additional resources assessing the effects of removal, including studies on the outcomes for children removed from the parental home and the long-term effects of the trauma that results from removal.

II. TALKING POINTS FOR TRIAL AND APPELLATE LAWYERS

Set forth below is a list of key talking points intended for potential use in oral argument before a trial or appellate court to encourage the court to consider how separating children from their family causes them significant trauma. Lawyers can use this research to encourage courts to weigh the risks of remaining at home with the proven harm from separation from family.

- Although the courts, at the time of initial removal, must focus on harm, risk, and the best interests of the child in the home, they cannot properly assess those factors without considering the scientifically established damage caused by removal from primary caretakers. (Gambriel & Shlonsky 2001).
- Several cases, relying on the scientific research and expert testimony, acknowledge that children’s physical and mental health are seriously damaged by separation from primary caretakers. See, e.g., Ms. L. v. U.S. Immigration & Customs Enforcement, 310 F.Supp. 3d 1133, 1147 (S.D.Cal. 2018); Nolasco v. U.S. Immigration & Customs Enforcement, 319 F.Supp. 3d 491, 503 (D.D.C. 2018); M.G.U. v. Nielsen, 325 F.Supp. 3d 111, 122 (D.D.C.2018); Nicholson v. Williams, 203 F.Supp. 2d 153, 198-99 (E.D.N.Y. 2002).

A. **Harm from Removal**

Clinical research shows that

- Children who are removed are “overwhelmed with feelings of abandonment, rejection, worthlessness, guilt, and helplessness.” (Folman, 1998).
- Separation floods stress hormones throughout the child’s brain and body, leading to:
 - difficulty sleeping, developmental regression, heart disease, hypertension, obesity, diabetes, and decreased longevity. (Goydarzi 2018; Eck 2018; Carnes 2018)
 - permanent architectural changes in the brain, including lower IQs. (Wan 2018)
 - depression, more suicide attempts, and more problems with alcohol abuse and gambling. (Wan 2018; Goydarzi 2018; Eck 2018; Carnes 2018).
- Children generally suffer worse outcomes when removed than if they had been allowed to remain in marginal homes. In studies of similarly situated children (those with social services involvement facing possible removal), children who were, in fact, removed (compared to those remaining at home):
 - have two to three times higher delinquency rates. (Ryan & Testa 2005; Doyle 2007; Doyle 2008; Lowenstein 2018)
 - have higher teen birth rates. (Doyle 2007)
 - have lower earnings as adults. (Doyle 2007)
 - are twice as likely to have learning disabilities and developmental delays. (Lowenstein 2018)
 - are six times more likely to have behavioral problems. (Lowenstein 2018)

- as adults, are more likely to have substance-related disorders, psychotic or bipolar disorders, and depression and anxiety disorders. (Côté et al. 2018)
- as adults, have arrest rates two to three times higher, and are more likely to have criminal convictions for violent offenses. (Doyle 2008; Côté et al. 2018)

III. HARM RESULTING FROM SEPARATION OF PARENT AND CHILD

A. Introduction

This section of the memorandum explores three areas of research concerning the harms visited upon children as a result of forced removal from their parents. First, this section reviews the scientific literature discussing the general effects of removal on the child. As these resources indicate, the short- and long-term effects on the child's mental and physical well-being are often devastating. These effects include severe anxiety, depression, post-traumatic stress disorder, and toxic stress (reviewed separately in Part V below). Separation can also result in delays in cognitive development. Further, the child may suffer physical harm that is manifested as a result of stress-induced releases of hormones that impact brain and organ function. Second, this section summarizes key court decisions and law journal articles that recognize the deleterious effects of parent-child separation. With respect to the case law, this memorandum focuses principally on decisions concerning the challenges to the government's policy of parent-child separation at the border. Those decisions recognize that even temporary separation can result in irreparable and grave harm. The law journal articles similarly build on and adopt the findings of the scientific community and advocate for the courts' careful exercise of their discretion in child removal cases. Third, and finally, this section analyzes research specifically addressing the negative impact of placement into foster care and the negative effects associated with living in foster care.

B. Scientific Research on the Effects of Removal from Parents Generally

- Allison Eck, Psychological Damage Inflicted by Parent-Child Separation is Deep, Long-Lasting, NOVA Next (June 20, 2018), http://www.pbs.org/wgbh/nova/next/body/psychological-damage-inflicted-by-parent-child-separation-is-deep-long-lasting/?utm_source=FBPAGE&utm_medium=social&utm_term=20180620&utm_content=1603761016&linkId=53285432&utm_source=FBPAGE&utm_medium=social&utm_term=20180623&utm_content=1608267756&linkId=53391996

In response to the separation of families at the border in 2018, this article explores the harm that can result when a child is removed from his or her parents. Citing statements released by the scientific community in response to current events, the article focuses on the devastating effects for both child and parent. The article quotes Erin C. Dunn, a social and psychiatric epidemiologist at Massachusetts General Hospital's Center, who states that, "The scientific evidence against separating children from families is crystal clear," and "[w]e all know it is bad for children to be separated from caregivers." The article details the harm that can result from the "monsoon of stress hormones... flood[ing] the brain and body," noting potential increased risks of developing heart disease, diabetes, and even certain forms of cancer. Quoting Carmen Rosa Norona, Child Trauma Clinical Services and Training Lead of Boston Medical Center's Child Witness to Violence Project, the article states that even when children are in the care of parents who may not be able to meet their needs, they "still organize their behaviors and thinking around these relationships and go to great lengths to maintain them."

- Sara Goydarzi, Separating Families May Cause Lifelong Health Damage, Scientific American (June 2018), <https://www.scientificamerican.com/article/separating-families-may-cause-lifelong-health-damage/>.

This article documents the potential long-term effects of family separation on children. The article includes an interview with Alan Shapiro, Assistant Clinical Professor of Pediatrics at Albert Einstein College of Medicine, in which he examines the various acute and long-term harms caused by family separation. According to Shapiro, separation can impact children in various ways, including developmental regression, difficulty sleeping, depression, and acute stress. Dr. Shapiro also notes that “[t]he younger you are when you’re exposed to stress . . . , the more likely you will have negative health outcomes caused by dysregulation of stress response.” That dysregulated stress response, in turn, “leads to architectural changes in the brain—which means that in the future children might end up with serious learning, developmental and health problems.” Pointing to the results of a 17,000-patient study called Adverse Child Experiences (“ACEs”), Dr. Shapiro further asserts that family separation may also lead to long-term chronic medical conditions like cardiovascular disease, hypertension, obesity, and decreased longevity.

- Kimberly Howard et al., Early Mother-Child Separation, Parenting, and Child Well-Being in Early Head Start Families, 13 Attachment & Human Development 5 (2009), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3115616/>.

This study examines the impact of early mother-child separation on both maternal parenting and later child development through the lens of attachment theory, which generally posits “that caregivers must be present and accessible in order for their children to become attached to them.” The study defines separation broadly as *any* separation from the mother that lasts one week or more within the child’s first two years of life. The study concludes that any such separation—even those occurring for innocuous reasons—can “result in distress for a young child who lacks the cognitive abilities to understand the continuity of maternal availability.” The study’s findings were based on observations of 2,080 predominantly poor families collected over a period of five years. Controlling for baseline family characteristics and indicators of family instability, the study found that the separation of mother and child was related to higher levels of child negativity toward mothers (at age 3) and aggression (at ages 3 and 5).

- Marcia McNutt, Statement on Harmful Consequences of Separating Families at the U.S. Border, National Academies of Sciences Engineering Medicine (June 20, 2018), http://www8.nationalacademies.org/onpinews/newsitem.aspx?RecordID=06202018&_ga=2.2927672.960183307.1530129958-713614449.1530129958.

This statement deals primarily with the separation of immigrant families at the border, but bases its conclusions on research concerning the effects of the removal of children from their parents more generally. Relying on a comprehensive study by the National Academies of Sciences, Engineering, and Medicine (“NASEM”), the statement asserts that family separation “jeopardize[s] the short- and long-term health and well-being of the children involved.” The statement further notes NASEM’s finding that in light of the complex interactions among genetic, biological, psychological, and social

processes during child development, family disruption can “hinder health development and increase[] the risk of future disorders.”

This statement points the reader in the direction of several key resources:

1. NASEM, Parenting Matters: Supporting Parents of Children Ages 0-8 (2016), <https://www.nap.edu/read/21868/chapter/2>
 2. Nat'l Res. Council & Inst. of Med., Preventing Mental Emotional, and Behavior Disorders Among Young People: Progress and Possibilities, Ch. 4 (2009), <https://www.nap.edu/read/12480/chapter/7#74>
 3. Nat'l Res. Council & Inst. of Med., From Neurons to Neighborhoods: The Science of Early Childhood Development, Ch. 20 (2000), <https://www.nap.edu/read/9824/chapter/20#387>
 4. Inst. of Med., Reducing Suicide: A National Imperative, Exec. Summ. (2002), <https://www.nap.edu/read/10398/chapter/2>
- NOVA PBS Official, Inside the Brains of Children Separated from Parents, YouTube (June 25, 2018), <https://www.youtube.com/watch?v=bwpcn8sRtqg&feature=youtu.be>.

This short informational film provides a summary of the neurological processes that occur when a child is separated from her parents. Through visual aids, the film demonstrates how stress from separation can impact a child's brain within the first few minutes of removal. According to psychologists Karlen Lyons-Ruth and Robin Deutsch, even very brief separations are stressful for infants and young children because cortisol (a stress hormone) floods the brain and begins to damage brain cells. Additionally, the over-activation of the amygdala, the portion of the brain responsible for fight-or-flight instincts, can compromise the child's ability to evaluate risks and make good decisions. The ability to form an attachment with a reliable and consistent caregiver is fundamental to a child's cognitive and social development. Time is very important when dealing with young children because deterioration of this attachment can take place very quickly; even a few weeks away from a parent is an enormous amount of time for an infant.

- William Wan, What Separation from Parents Does to Children: 'The Effect is Catastrophic', Washington Post (June 18, 2018), https://www.washingtonpost.com/national/health-science/what-separation-from-parents-does-to-children-the-effect-is-catastrophic/2018/06/18/c00c30ec-732c-11e8-805c-4b67019fcfe4_story.html?noredirect=on&utm_term=.cf5ca597dc72

This article discusses generally the research on child-parent separation that “is driving pediatricians, psychologists, and other health experts to vehemently oppose the Trump administration's new border crossing policy.” The cross-cultural research presented provides insight into the physical and psychological impact of child-parent separation in a wide range of circumstances. Of particular interest is the discussion of Charles Nelson's research, which studied the neurological development of children in Romanian orphanages.

A pediatrics professor at Harvard Medical School, Nelson found that the children “separated from their parents at a young age had much less white matter, which is largely made up of fibers that transmit information throughout the brain, as well as much less gray matter, which contains brain-cell bodies that process information and solve problems.” Nelson also noted that children who were separated from their parents within the first two years of their life scored significantly lower on IQ tests later in life and their fight-or-flight response system appeared “permanently broken.” The article also references research on aboriginal children removed from their parents in Australia who, when compared to children who remained with their parents, were “nearly twice as likely to be arrested or criminally charged as adults, 60 percent more likely to have alcohol-abuse problems, and more than twice as likely to struggle with gambling.” As the article notes, it is the duration of this damage that is the most troubling aspect of separating parents and children: “Unlike other parts of the body, most cells in the brain cannot renew or repair themselves.”

- [The Science of Childhood Trauma and Family Separation: A Discussion of Short – and Long-Term Effects](#), Cynthia García Coll, Ph.D; Gabriela Livas Stein, Ph.D; Nim Tottenham, Ph.D; D, Youtube (June 28, 2018) <https://www.youtube.com/watch?v=9-34LJoM1HY&t=3s>

This webinar focuses primarily on the issue of separation in the immigration context, but also generally discusses the impact of separation on children. Of particular relevant here, Dr. Nim Tottenham details the neuroscientific tools used to show the changes that occur when children experience trauma. She explains that when humans, as a species, experience a major threat to survival, “we activate threat systems in our bodies” like the amygdala. She elaborates, noting “when we keep activating stress hormones and circuits, it is harder and harder to shut them off – particularly for children.” Dr. Tottenham also posits that as a species, we are conditioned to expect parental buffering to take care of our needs. Thus, children who have experienced trauma need immediate remediation. But for traumatized children who have been separated from their parents, the major stress buffering system is removed at the very time when it is needed most—i.e., while the brain is undergoing a period of serious development.

This Webinar also discusses the long-term distress created by separation even after families are reunited. There is tremendous injury inflicted upon the family unit and parents. For both parents and children, separation leads to increased risks of depression, difficulty with social functioning, attachment issues, and PTSD.

- Stephanie Carnes, *The Trauma of Family Separation Will Haunt Children for Decades*, HUFFINGTON POST, June 22, 2018, (https://www.huffingtonpost.com/entry/opinion-carnes-family-separation-trauma_us_5b2bf535e4b00295f15a96b2).

Exposure to trauma in childhood can both stunt cognitive development and alter the structure of a young brain in profound ways. Thanks to the groundbreaking [Adverse Childhood Experiences Study](#), conducted by Kaiser Permanente and the Centers for Disease Control and Prevention, we know that exposure to traumatic events in childhood is strongly correlated with increased risk of suicide attempts, drug addiction, depression, chronic obstructive pulmonary disease, heart disease and liver disease. More detailed

information about the study can be found in “[Relationship of Childhood Abuse and Household Dysfunction to Many of the Leading Causes of Death in Adults](#),” published in the *American Journal of Preventive Medicine* in 1998, Volume 14, pages 245–258.

- [J. Goldstein, A. Freud, & A. Solnit, *Beyond the Best Interests of the Child* \(1973\).](#)
https://www.jstor.org/stable/1121526?seq=1#page_scan_tab_contents

This book is cited frequently in law review articles and appears to be a leading authority on the potential harms associated with removal of a child from the parental home. A full version of the book does not appear to be available online for free, though it is available on Amazon for around \$15.

C. Relevant Case Law and Law Journal Articles

1. Case Law

- [Ms. L. v. U.S. Immigration & Customs Enforcement](#), 310 F. Supp. 3d 1133 (S.D. Cal. 2018)

In a decision entering a preliminary class-wide injunction with respect to ICE’s practice of separating the minor children of parents detained for illegally crossing the border, the court discussed the harms associated with forced parent-child separations in considerable detail. Drawing from an amicus brief submitted by the Children’s Defense Fund, the court posited that “there is ample evidence that separating children from their mothers or fathers leads to serious, negative consequences to children’s health and development.”¹ *Id.* at 1146. The disruption that forced separations “put[] 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.” *Id.* at 1147. The court pointed to other evidence establishing “that separating children from parents is a highly destabilizing, traumatic experience that has long term consequences on child well-being, safety, and development.” *Id.* The court continued:

Separation from family leaves children more vulnerable to exploitation and abuse, no matter what the care setting. In addition, traumatic separation from parents creates toxic stress in children and adolescents that can profoundly impact their development. Strong scientific evidence shows that toxic stress disrupts the development of brain architecture and other organ systems, and increases the risk for stress-related disease and cognitive impairment well into adult years. Studies have shown that children who experience such traumatic events can suffer from symptoms of anxiety and post-traumatic stress disorder, have poorer behavioral and educational outcomes, and experience higher rates of poverty and food insecurity.

¹ The amicus brief contains a wealth of information and cites to a number of helpful resources. It is discussed immediately below.

Id. The court determined that the evidence “conclusively shows that Plaintiffs and the class members are likely to suffer irreparable injury if a preliminary injunction does not issue.”

○ Children’s Defense Fund – Amicus Brief

The amicus brief referenced above is packed with information regarding the effects of child separation. The brief also includes a compilation of the laws in every state governing the circumstances under which a child may be separated from his or her parents. The brief asserts that those laws “reflect the universal belief that a child should remain with her parent unless doing so would be severely detrimental to the child’s welfare, and, even then, separation should be a last resort. Id. at 7. Further, the brief points to the standards espoused by the Council on Accreditation, an international human service accrediting organization, affirming that “it is in a child’s best interest to remain with her parent whenever possible.” Id. at 9-10.

- Jacinto-Castanon de Nolasco v. U.S. Immigration & Customs Enforcement, 319 F. Supp. 3d 491 (D.D.C. 2018)

In this case, the court also recognized “the profound and long-term consequences that separation can have on a child’s well-being.” Id. at 503. Relying on the same authority as the Ms. L. court, the court note the American Academy of Pediatrics’ research indicating that “[t]he psychological distress, anxiety, and depression associated with separation from a parent would follow the children well after the immediate period of separation – even after the eventual reunification with a parent or other family.” Id. The effects of separation can be so extreme in some circumstances that the “children may experience high rates of post-traumatic stress disorder, anxiety, depression, and suicidal ideation, in addition to developmental delays or poor psychological adjustment.” Id. The court accordingly concluded that the plaintiffs had established that they would suffer irreparable harm absent an injunction. Id.

- M.G.U. v. Nielsen, 325 F. Supp. 3d 111 (D.D.C. 2018)

The same court relied on essentially the same medical findings, emphasizing that separation may result in “toxic stress, a form of extreme and repetitive stress that adversely affects brain development,” a concept discussed more fully below, and that the effects can be devastating and long lasting. Id. at 122.

- Nicholson v. Williams, 203 F. Supp. 2d 153 (E.D.N.Y. 2002) (subsequent history before Second Circuit and N.Y. Court of Appeals follows).

This was an action brought by mothers individually and on behalf of their children in which the mothers alleged that they were separated from their children because the New York City Administration for Child Services (“ACS”) determined that

the children had been neglected solely due to their observance of domestic violence against their mothers. The plaintiffs alleged that these separations violated both the substantive due process rights of mothers and children and their procedural due process rights. In considering the plaintiffs' claims, the court relied in part on expert testimony regarding the harm that occurs as a result of child-parent separation. Noting that "attachment between parent and child forms the basis of who we are as humans" and that the continuity of "that attachment is essential to a child's natural development," 203 F. Supp. 2d at 198-99, plaintiffs' experts testified that removal of children from parents results in:

- fear and anxiety;
- diminished sense of stability and self;
- despair accompanied by hyper-vigilant looking, waiting, and hoping for parents' return; and
- heightened sense of self-blame.

Id. at 199. The experts also noted that "another serious implication of removal is that it introduces children to the foster system which can be much more dangerous and debilitating than the home situation." Such dangers include:

- risk of additional exposure to domestic violence;
- increased risk of abuse and child fatality;
- lack of adequate medical care; and
- disruption of contact with community, school, and siblings.

- Nicholson v. Scoppetta, 344 F.3d 154 (2d Cir. 2003).

On appeal, the Second Circuit held that the District Court had not abused its discretion in concluding that, in some instances, removals based solely on the child's exposure to domestic violence suffered by mother may raise serious questions of federal constitutional law. However, given the strong preference for avoiding unnecessary constitutional adjudication, the Second Circuit certified the matter to the Court of Appeals of New York to be resolved under state statutory law.

- Nicholson v. Scoppetta, 3 N.Y.3d 357 (2004).

The New York Court of Appeals held that far more was required to find neglect and justify the removal than a showing that the parent had been a victim of domestic violence. According to the Court, the plain language of the statute and its legislative history demonstrate that "a blanket presumption favoring removal was never intended." Rather, it concluded, "a court must weigh, in the factual setting before it, whether the imminent risk to the child can be mitigated by reasonable efforts to avoid removal" and it "must balance that risk against the harm removal may bring" to determine factually which course is in the child's best interests. *Id.* at 378. For New York-specific cases, the cases applying this standard will be particularly relevant. Because this memorandum is focused on identifying relevant authority discussing the general harms associated with removal, those cases are not discussed here.

2. Law Journal Articles and Related Materials

- Vivek Sankaran, Easy Come, Easy Go: The Plight of Children Who Spend Less Than 30 Days in Foster Care, 19 U. Pa. J. L. & Soc. Change 207-37 (2016), <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=2850&context=artiles>.

In this article, Sankaran explores the plight of “short stayers,” children who spend less than 30 days in the foster care system. According to Sankaran, “removing children—even abused and neglected children—from the custody of their parents harms them emotionally, developmentally, and socially.” Citing the work of Joseph Doyle, Sankaran calls attention to the increased severity and frequency of these problems for children removed to foster care compared to similar children who have remained in the home. Presenting a more “child-centered narrative,” he calls for the harm caused by removal to be balanced with the other factors traditionally considered by the courts (e.g., the interests of parents and child welfare agencies). Ultimately, Sankaran argues that “juvenile courts are failing to use two tools—the federal reasonable efforts requirement and the early appointment of parents’ counsel—to prevent the unnecessary entry of children into foster care.” According to Sankaran, the federal government “must acknowledge the problem of short stayers by utilizing data related to children who may unnecessarily enter foster care in the Child and Family Services Review, the accountability process used to assess state compliance with federal child welfare requirements.”

- David Pimentel, Protecting the Free-Range Kid: Recalibrating Parents’ Rights and the Best Interest of the Child, 38 Cardozo L. Rev. 1 (2016)

Focusing more on the impact on the parents’ rights as a result of temporary removal and the importance of legal representation of the parents from the beginning, Pimentel argues that “even a temporary removal is an enormous imposition on parents’ constitutionally protected interests” *Id.* at 52. Noting that “[o]nce removed, it can be very difficult to obtain the return of the children to their parents,” he concludes that “parents’ rights to the care, custody, and control of their children can be meaningfully protected only if the parents can keep custody of their kids from the outset.” *Id.* at 52-53.

- Developing a Trauma-Informed Child Welfare System, Children’s Bureau (May 2015), https://www.childwelfare.gov/pubPDFs/trauma_informed.pdf

This brief discusses “the steps that may be necessary to create a child welfare system that is more sensitive and responsive to trauma.” According to the National Child Traumatic Stress Network, a trauma-informed system “is one in which all parties involved recognize and respond to the impact of traumatic stress on those who have contact with the system, including children, caregivers, and service providers.” Trauma-informed practices, the brief argues, are better able to address children’s safety, permanency, and well-being needs. The brief provides an overview of trauma and its effects and then focuses on the primary areas of consideration in the child welfare process (workforce development, screening and assessment, data systems, evidence-based and evidence-informed treatments, and funding).

- Rebecca Bonagura, Redefining the Baseline: Reasonable Efforts, Family Preservation, and Parenting Foster Children in New York, 18 Colum. J. Gender & L. 175 (2008)

Bonagura asserts that “[r]emoval and placement in foster care may have a worse impact on the child than neglect Just as neglect can contribute to cognitive, social, and emotional problems, removal may also cause emotional problems by disrupting a child’s ability to bond with his or her caregiver.” Id. at 196.

- 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 (2006).

Liebmann argues that in order to protect children from the perils of the foster care system, “we must examine the outdated and short-sighted standards nearly every state currently uses to justify initially removing children from their parents.” Liebmann contends that the exclusive focus on the harm caused by parents fails to acknowledge that placement in foster care, even temporarily, poses a risk of harm to children. Specifically, Liebmann highlights data regarding the poor outcomes for many foster children with respect to education and financial well-being as well as mental, emotional, and physical harm (e.g., separation anxiety, depression). According to Liebmann, applying Grambrill and Shlonsky’s comprehensive risk assessment analysis (see annotation above) to the legal process “would add a critical second step to judicial determinations at temporary removal hearings and offer a whole new level of protection to the children at issue.” Under this assessment, in order to determine placement of the child, the judge would weigh the risks of *remaining* in the home against the risks of harm to the child if she were *removed* from the home, and select the least detrimental alternative.

- Sonja Starr & Lea Brilmayer, Family Separation as a Violation of International Law, 21 Berkeley J. Int’l L. 213 (2003)

Though addressed in the context of international law, the authors recognize that “[c]hild removals are frequently traumatic for all concerned.” Id. at 272. The authors specifically address temporary removals, emphasizing that they “may cause lasting harm to the children and to the stability of the family relationship” Id. They go on to criticize the “too-hasty resort to removal any time a child’s well-being is at all in doubt—a practice that, indeed, is the official policy of many child protective services agencies.” Id.

- Andrea Charlow, Race, Poverty, and Neglect, 28 Wm. Mitchell L. Rev. 763 (2001)

Discussing the adverse effects of removal on children, Charlow notes that “[c]hildren in foster care exhibit high rates of emotional, behavioral and developmental problems.” Id. at 782. She ties into this concept attachment theory’s (discussed supra at p. 1) recognition of “the need for children to bond with their adult care-givers in order them to develop self-esteem.” Id. Charlow concludes that “the negative effect of removal likely outweighs any intellectual impairment that may have been caused by neglect.” Id. at 783.

- Eileen Gambrill & Aron Shlonsky, Need for Comprehensive Risk Management Systems in Child Welfare, 23 Child & Youth Servs. Rev. 79 (2001).

This article advocates for the use of a more “comprehensive risk assessment” analysis by child welfare professionals prior to removal. While this study is targeted specifically at social workers and child welfare professionals, it provides insight into the various factors that should be balanced in determining whether removal is in the best interest of the child. The study suggests that the current focus on the harm posed by parents “ignores a host of other factors that may influence risk to children.” Instead, the study calls for an assessment that extends beyond the posed threat to children by their parents to include risks presented by foster parents, child welfare staff, and service providers and agency procedures. The study concludes, “[i]f we are concerned about risk to children, we should make efforts to identify and minimize *all* sources of risk.”

- Joseph Goldstein et al., Best Interests of the Child: The Least Detrimental Alternative (1996).

This book explores the principles that should guide courts in determining the fate of children involved in child welfare proceedings. The book presents a child-centric approach to child welfare and calls upon readers to “put [themselves] in a child’s skin’--the infant, the toddler, the preschooler, the schoolchild, or the teenager—as you consider what ought to be the guiding principles.” According to the authors, the “least detrimental alternative” in such cases is the continuity of the child’s relationship with his or her caregiver. The book provides various guiding questions for the “professional participant in the child placement process” (e.g., judges, lawyers, social workers, psychiatrists, other experts) in an effort to recognize the “boundaries of their knowledge and of their authority to act, the boundaries between their personal and professional beliefs, and the boundaries between the profession and parental roles.” Of particular interest is the emphasis on the time period sufficient to disrupt the psychological child-parent relationship. Noting the unique temporal abilities of young children, the authors contend that “[f]or children under the age of five years, an absence of parents for more than two months is intolerable.” For younger school-age children, an absence of six months or more may be similarly detrimental.

- Joseph Goldstein, Medical Care for the Child at Risk: On State Supervention of Parental Autonomy, 86 Yale L.J. 645 (1977)

This article explores the importance of the rights to parental autonomy and family privacy, and “the reciprocal liberty interest of parent and child in the familial bond between them, noting that they require “no greater justification than that they comport with each state’s fundamental constitutional commitment to individual freedom and human dignity.” *Id.* at 649. Goldstein further advocates “for a policy of minimum state intervention” into the parent-child relationship because of the law’s inability “to deal on an individual basis with the consequences of its decisions or to act with the deliberate speed required by a child’s sense of time and essential his well-being.” *Id.* at 650. Moreover, the fact that parents are imperfect and may sometimes take actions against their child’s interests does not justify greater intervention—it justifies less. *Id.* Indeed, there is no evidence “that the state necessarily can or will do better.” *Id.* at 650-51.

- Michael S. Wald, State Intervention on Behalf of “Neglected” Children: Standards for Removal of Children From Their Homes, Monitoring the Status of Children in Foster Care, and Termination of Parental Rights, 28 Stan. L. Rev. 623 (1976)

Among other things, this article walks through the harms associated with removal from the family home. Wald argues that “there is substantial evidence that coercive intervention often is harmful, not benevolent, to both children and parents. Because children are strongly attached to their parents, even ‘bad’ parents, intervention that disrupts the parent-child relationship can be extremely damaging to the child.” *Id.* at 639-40. For that reason, he argues that the courts’ discretion to decide removal issues should be strictly limited “by defining in advance those harms justifying intervention and the steps that may be taken to alleviate the harm” *Id.* at 640.

- Michael Wald, State Intervention on Behalf of “Neglected” Children: A Search for Realistic Standards, 27 Stan. L. Rev. 985 (1975)

Wald advances similar arguments to those he advanced in the article immediately above. He notes that “[i]t is well recognized by psychiatrists that ‘so far as the child’s emotions are concerned, interference with [parental] tie[s], whether to a ‘fit’ or ‘unfit’ psychological parent, is extremely painful.’” *Id.* at 993-94 (quoting J. Goldstein, A. Freud, & A. Solnit, Beyond the Best Interests of the Child 20 (1973)). For that reason, “[r]emoving a child from his family may cause serious psychological damage—damage more serious than the harm intervention is supposed to prevent.” *Id.* at 994. And even after the child is placed in a foster home—and the initial damage already done—the child is “frequently subjected to numerous moves, each destroying the continuity and stability needed to help a child achieve stable emotional development.” *Id.* That conclusion segues neatly into the next topic, which concerns the adverse effects often associated with a child’s removal into foster care.

D. The Effects of Removal into Foster Care

- Joseph J. Doyle, Jr., Child Protection and Child Outcomes: Measuring the Effects of Foster Care, 97 Am. Econ. Rev. 1583 (2007).

Examining removal decisions that were “on the margins,” this study found that children who remained at home had better long-term well-being outcomes than children who were removed and placed in foster care. The study tracked at least 15,000 children between 1990 and 2002 and in order to avoid results attributable to family background, extreme cases of abuse or neglect were screened out and instead, “on the margins” cases were used. The study defines “on the margins” decisions as instances where there was disagreement by child protection investigators as to whether removal was necessary. By using the removal tendencies of investigators as an instrumental-variable (i.e., a variable that induces change in the explanatory variable but has no effect on the dependent variable), the study identifies the effects of foster care placement on child outcomes for school-aged children.

This study provided the first “viable, empirical evidence of the benefits of keeping kids with their families,” and “confirms what experience and observation tell us: Kids who

can remain in their homes do better than in foster care.” (quote from http://usatoday30.usatoday.com/news/nation/2007-07-02-foster-study_N.htm). Ultimately, the study found higher delinquency rates, higher teen birth rates, and lower earnings among children removed to foster care as compared to similarly situated children who remained at home.

- Joseph J. Doyle, Jr., Child Protection and Adult Crime: Using Investigator Assignment to Estimate Causal Effects of Foster Care, 116 J. of Political Econ. 4 (2008), http://www.mit.edu/~jjdoyle/doyle_jpe_aug08.pdf

Using the assumption that child protection cases are effectively randomized to investigators, this follow-up study explores an additional outcome: adult crime. According to the study, children “on the margins” of placement in foster care who are subsequently placed demonstrate “arrest propensities that are two to three times higher compared to investigated children who remained with their parents.” Moreover, this study importantly notes that while the “removal from abusive parents may protect children from further abuse and reduce the likelihood of criminal activity as adults,” at the same time, “the removal of children from their parents is thought to be traumatic and *may lead to worse adult outcomes*” (emphasis added). This study also notes that “[i]n terms of criminal justice involvement, nearly 20 percent of the U.S. prison population under the age of 30, and 25 percent of these prisoners with prior convictions, report spending part of their youth in foster care.”

- Joseph J. Doyle, Jr., Causal Effects of Foster Care: An Instrumental-Variables Approach, 35 Child. & Youth Servs. Rev. 1143 (2013).

This follow-up study uses instrumental-variables to estimate the causal effects of foster care on short- and long-term outcomes. Again examining children “on the margins,” the study focuses on two outcomes: juvenile delinquency later in life, and emergency healthcare usage in the year following a report of abuse. According to the study, “placing children in foster care increases their likelihood of becoming delinquent during adolescence and requiring emergency healthcare in the short term.”

- Lowenstein, Kate. Shutting Down the Trauma to Prison Pipeline Early, Appropriate Care for Child-Welfare Involved Youth, 2018. Citizens for Juvenile Justice, <https://static1.squarespace.com/static/58ea378e414fb5fae5ba06c7/t/5b47615e6d2a733141a2d965/1531404642856/FINAL+TraumaToPrisonReport.pdf>

This project explores the number of children entering the foster care system and the resulting foster-care-to-prison pipeline in Massachusetts. The project found that children placed in foster care are three times more likely than similarly situated children who remained with their families to be juvenile justice-involved. Additionally, national and Massachusetts data show that “placement instability—when a child is moved through multiple out-of-home placements—is a key risk factor for later juvenile justice system involvement.” The project also discusses a survey of the sources of Post-Traumatic Stress Disorder among foster care alumni, which revealed that “many of the alumni identified the initial home removal itself as a trauma and also considered being returned home as an

additional “placement” as it involved having to re-create relationships.” Finally, this project also provided that behavioral problems were “six times more likely among children who spent time in foster care” and that foster youth have a “three times greater risk for ADHD diagnosis, and are twice as likely to have learning disabilities and developmental delays than children not in foster care.”

The project then provides various recommendations in response to the numerous detrimental effects of foster care previously discussed, namely:

- 1) Invest in promising practices and program models to prevent child removal and safely promote family stabilization. DCF’s services budget under invests in in-home and reunification services. The Federal Family First Act presents an opportunity for additional funding to safely prevent out-of-home removals
 - 2) Recent research found that opioid-dependent newborns who remain with their moms have fewer hospital stays (4-5 days compared to 22-23 days) and fewer infants needed medication assisted withdrawal treatment (14% compared to 98%). Parent’s service plans, however, may conflict with this promising clinical treatment unless service plans begin to adapt to evolving yet proven science.
 - 3) Early recognition of behavioral problems stemming from exposure to trauma should result in an investment in interventions that promote positive youth development, to better prevent the intensification of the problems and the poor outcomes associated with them. Early efforts to develop a child’s skills, self-esteem, and positive investments in their futures include consistent involvement with positive, trusted adults and with positive pro-social community activities.
- Rosalind D. Folman, “I Was Taken”: How Children Experience Removal from Their Parents Preliminary to Placement in Foster Care, 2 *Adoption Quarterly* 2 (1998).

This paper presents the results of a qualitative study of the removal experiences of 90 inner-city children (aged 8-14) who entered foster care in middle childhood due to abuse and/or neglect. Using attachment theory to interpret the children’s narratives, the paper demonstrates a “progression of traumatizing events ensuing from the placement process.” The paper focuses only on the “crisis period” of the fostering process—i.e., “the day the child is initially removed from his/her parents.” According to the paper, separation from a caregiver “is severely threatening for the child, irrespective of the quality of the child’s experience with the parent.” As a result, the day of placement “constitutes a crisis for children because everything in their lives changes and the children are overwhelmed with feelings of abandonment, rejection, worthlessness, guilt, and helplessness.” The findings suggest that these feelings were intertwined with an overwhelming sense of loss. Recalling the day of his removal, one child stated: “I thought that they [the police officer] was gonna take me to where they lived. Bein in a policeman’s house would be fun, but not fun without being with my parents cause I love em.” When asked where he thought he was going, another child simply responded: “Away from my mother... I was going to leave my mother for good.”

- Catherine R. Lawrence et al., Impact of Foster Care on Development, 18 *Dev. & Psychopathology* 57 (2006).

This study examines that relationship between foster care placement and the development of behavioral problems. The study followed 189 children and families at risk because of poverty and associated factors. Comparisons were made among three groups: (1) children who experienced foster care; (2) children who were maltreated but remained in the home; and (3) children who had not experienced foster care or maltreatment despite similar at-risk demographic characteristics. The impact of foster placement was evaluated immediately following release from care and at several points later in development. Controlling for developmental adaptation and social economic status prior to placement, “the results support a general view that foster care may lead to an increase in behavior problems that continue after exiting the system” (71). The study highlights several factors that may account for the increase in problematic behavior, including foster care as an intervention that can expose its recipients to difficult developmental challenges and the lack of comprehensive psychological services offered to foster children.

- Joseph P. Ryan & Mark F. Testa, Child Maltreatment and Juvenile Delinquency: Investigating the Role of Placement and Placement Instability, 27 *Child. & Youth Servs. Rev.* 227 (2005), <https://www.sciencedirect.com.ezproxy.bu.edu/science/article/pii/S0190740904002026>

This study explores the correlation between the increased risk of maltreated children engaging in delinquent behavior and the use of substitute care placement and placement instability. While removing children from high-risk environments should decrease the risk of delinquency, the study concluded that “children in placement are more likely to be delinquent.” According to the study, “16% of children placed into substitute care experience at least one delinquency petition compared to 7% of all maltreatment victims who are not removed from their family.” One possible explanation for this increase in deviant behavior, the study argues, is that “multiple placements after substitute care further depletes a child’s stock of social capital, which weakens social attachments and social controls.”

- Côté SM, Orri M, Marttila M, Ristikari T. Out-of-home placement in early childhood and psychiatric diagnoses and criminal convictions in young adulthood: a population-based propensity score-matched study. *Lancet Child Adolesc Health* 2018; published online July 25. https://www.researchgate.net/profile/Sylvana_Cote/publication/326652825_Out-of-home_placement_in_early_childhood_and_psychiatric_diagnoses_and_criminal_convictions_in_young_adulthood_a_population-based_propensity_score-matched_study/links/5b75d16a45851546c90a380b/Out-of-home-placement-in-early-childhood-and-psychiatric-diagnoses-and-criminal-convictions-in-young-adulthood-a-population-based-propensity-score-matched-study.pdf

Researchers conducted a population-wide longitudinal study using the 1987 Finnish Birth Cohort, which collects data from child welfare, medical, and criminal

registers for those born in Finland in 1987. The study aimed to “compare the rates of psychiatric diagnoses and criminal convictions in young adulthood (ages 18–25 years) among children who were first placed at ages 2–6 years with those of children who were not placed and who had similar sociodemographic and family characteristics.”

Using this novel propensity score matching approach, the findings of study showed:

Of 54,814 individuals included in analyses, 388 (1%) were placed out of home at ages 2 to 6 years, for whom 386 were assigned matched controls. At ages 18 to 25 years, those who had been placed out of home had a greater risk compared with never-placed controls for substance-related disorders (odds ratio [OR], 2.10; 95% CI, 1.27-3.48), psychotic or bipolar disorders (OR, 3.98; 95% CI, 1.80-8.80), depression and anxiety disorders (OR, 2.15; 95% CI, 1.46-3.18), neurodevelopmental disorders (OR, 3.59; 95% CI, 1.17-11.02), or other mental disorders (OR, 2.06; 95% CI, 1.25-3.39). Additionally, those who had been placed as children were more likely to use psychotropic medication (OR, 1.96, 95% CI, 1.38-2.80) and to have higher rates of criminal convictions for violent (OR, 2.43; 95% CI, 1.61-3.68) and property (OR, 1.86; 95% CI, 1.17-2.97) offenses.

This data demonstrates that preschool children placed out-of-home are at risk of adverse outcomes as adults – more than twice that of individuals who were never placed out-of-home – even accounting for their initial circumstances.

- National Scientific Council on the Developing Child. (2012). The Science of Neglect: The Persistent Absence of Responsive Care Disrupts the Developing Brain: Working Paper 12. <http://www.developingchild.harvard.edu>

This working paper examines children reared in institutions. It explains that “young children who live in such settings experience little more than transient serve and return interactions. Frequent staff rotations mean that infants are cared for by many different people, making it extremely difficult to develop meaningful relationships with any single caregiver.” In such circumstances, “although basic needs for food, warmth, shelter, and medical care may be met (thereby avoiding most legal definitions of neglect), the setting itself may still be a precipitant of severe psychosocial deprivation for the youngest inhabitants.”

Institutionally-reared children also show differences “in the neural reactions that occur as an individual is processing information, such as looking at faces to identify different emotions.” These findings indicate “impairments in the way the brain interprets such input and are consistent with behavioral observations that neglected children struggle to correctly recognize different emotions in others.”

Finally, “[w]hen compared with children who have been victimized by overt physical maltreatment, young children who experienced prolonged periods of neglect exhibit more severe cognitive impairments, language deficits, academic problems, withdrawn behavior, and problems with peer interaction. This suggests that sustained

disruption of serve and return interactions in early relationships may be more damaging to the developing architecture of the brain than physical trauma.”

- Carlo Schuengel et al., Children with Disrupted Attachment Histories: Interventions and Psychophysiological Indices of Effects, 26 Child & Adolescent Psychiatry & Mental Health 3 (2009), <https://dio.org/10.1186?1753-2000-3-26>

This study asserts that while a child may be more physically secure if removed from the home in certain circumstances, they may not necessarily be more emotionally secure. Young children, “who may not yet have had the opportunity to develop secondary attachment relationships,” are particularly at risk, since they “may lose the only source of security and comfort they had, however fallible or limited it was.” Discussing psychobiological propositions alongside attachment theory, this study demonstrates the hidden physiological responses to child-parent separation. By examining HPA-axis activity (activity within the hypothalamus, pituitary gland, and adrenal glands that controls reactions to stress), the study suggests that foster children show more reactivity within systems facilitating fight-or-flight behaviors than social engagement. These results increased in foster children with atypical attachment behavior. If children must be placed out of the home, the study argues, “more is needed than a physically safe family.” According to the study, well-designed intervention aimed at foster parents “may nudge back psychophysiological parameters within the normative range.”

- Michelle R. VanTieghem and Nim Tottenham, Neurobiological Programming of Early Life Stress: Functional Development of Amygdala-Prefrontal Circuitry and Vulnerability for Stress-Related Psychopathology, Springer International Publishing Switzerland 2017 Curr. Topics Behav. Neurosci. DOI 10.1007/7854_2016_42 http://docs.wixstatic.com/ugd/f0bac7_13e118065ecf478fa7a9b1932f0758f7.pdf

This paper discusses “role of emotion regulation circuitry implicated in stress related psychopathology from a developmental and transdiagnostic perspective.” Of note, this paper explains that “[i]n accordance with studies in adult Early Life Stress (ELS) samples, children and adolescents with a history of early adversity also show enhanced amygdala reactivity to emotional stimuli. Previously institutionalized (PI) youth with a history of institutional care exhibit heightened amygdala reactivity to threat-related facial expressions across childhood and adolescence.” Further, this paper explains that “[i]n a cross-sectional study from early childhood to late adolescence, PI youth showed an atypical trajectory of age-related changes in threat-related amygdala-mPFC connectivity relative to comparison youth, such that PI youth exhibited more mature (i.e., adult-like) connectivity at younger ages. Youth with trauma exposure also show atypical amygdala-prefrontal function in response to emotional distractors, with weaker negative connectivity between the amygdala and pregenual ACC (pgACC) relative to comparison youth.” This is to say that exposure to childhood trauma creates lasting impacts, but so, too, does institutionalized care.

When discussing the importance of caregivers, this paper notes that:

Evidence across species has shown that caregivers regulate emotional and neurobiological development. In rodent pups, maternal presence has transient

effects on cortisol release and amygdala function, such that maternal presence blocks stress reactivity and fear learning during the early stage of rat pup development. Similar social buffering effects have been identified in humans; parent availability reduces cortisol response to social stress and enhances emotion regulation abilities in children. Moreover, parental stimuli can induce transient changes in functional connectivity of amygdala-mPFC circuitry, and these neurobiological changes predict the degree of parental buffering of children's emotion regulation abilities. Together, these findings provide a plausible neurobiological mechanism through which caregivers can directly influence neuro-affective functioning during development.

Altogether, these findings provide further insight into the “neuro-developmental mechanisms underlying the emergence of adversity-related emotional disorders and facilitate the development of targeted interventions that can ameliorate risk for psychopathology in youth exposed to early life stress.”

- Renee Schneider et al., What Happens to Youth Removed From Parental Care?: Health and Economic Outcomes for Women with a History of Out-of-Home Placement, 31 *Child. & Youth Servs. Rev.* 440 (2009), https://s3.amazonaws.com/academia.edu.documents/44083072/What_happens_to_youth_removed_from_paren20160324-25611-1df1v7u.pdf?AWSAccessKeyId=AKIAIWOWYYGZ2Y53UL3A&Expires=1531767464&Signature=psL6xfEc0Oxk0I7V8qmq42Ia12s%3D&response-content-disposition=inline%3B%20filename%3DWhat_happens_to_youth_removed_from_paren.pdf

This study used data from the *California Women's Health Survey* to examine the mental and physical health problems, low educational attainment, and economic adversity for women ages 18 and older with and without a history of out-of-home placement. The study defined “out-of-home placement” as any removal from the parents’ or caregivers’ home by the state or county. Surveying 368 women with a history of out-of-home placement and 9240 women without, the study found that “history of out-of-home placement was associated with mental health problems, poor subjective health, smoking, obesity, low educational attainment, living in poverty, and use of public assistance in adulthood.” The study contends that overall, these findings “underscore the need for greater access to mental health and social services for youth in out-of-home placement to improve their long-term health and economic well-being.”

IV. RESOURCES FOR PARENTS AND CHILDREN FACING REMOVAL

A. Introduction

In this section, we first review studies that may serve as resources for parents faced with removal of their children or related domestic disputes. Such resources include studies focused on identifying healthy and effective parenting techniques, potential avenues by which a separated biological parent may at least be able to obtain visitation

rights, and the effective use of mental health and other social services. Also discussed are resources advocating for kinship placement—i.e., in the event of removal, the children are placed with a relative. Studies show that placement with a relative results in more positive outcomes than does placement into foster care. Thus, even if a court were to find that removal from the parental home is appropriate, the parents could argue that the child should be placed with close relatives with whom they already have a relationship, rather than with a stranger.

B. Removal Resources Generally

- Vivian L. Gadsden et al. eds., Parenting Matters: Supporting Parents of Children Ages 0-8 (2016), <https://www.nap.edu/read/21868/chapter/1>.

Noting that decades of research have demonstrated that the parent-child dyad and the environment of the family are “the foundation of children’s well-being and healthy development,” the study focuses on supporting parents with children under the age of eight. In particular, the study seeks “to provide a roadmap for the future of parenting and family support policies, practices, and research in the United States.” According to the study, children who do not become securely attached to a primary caregiver (e.g., due to maltreatment or separation) may develop insecure behaviors in childhood and potentially suffer adverse outcomes later in life, such as mental health disorders and disruption in other social and emotional development. In an effort to facilitate healthy attachment, the study explores parenting-related knowledge, attitudes, and practices that are associated with improved developmental outcomes for children and provides guidance for the development of parenting-related programs, policies, and initiatives. Such recommendations include how to effectively utilize existing platforms and properly scale parenting programming to reduce the harm of removal.

In its chapter on parenting knowledge, the study identifies “several parenting practices that are associated with improvements in” physical health and safety and emotional, behavioral, social, and cognitive competence:

- Contingent responsiveness (serve and return);
 - Showing warmth and sensitivity;
 - Routines and reduced household chaos
 - Shared book reading and talking to children
 - Practices related to promoting children’s health and safety—in particular, receipt of prenatal care, breastfeeding, vaccination, ensuring children’s adequate nutrition and physical activity, monitoring, and household/vehicle safety; and
 - Use of appropriate (less harsh) discipline.
- Lenore M. McWey et al., The Impact of Continued Contact with Biological Parents upon the Mental Health of Children in Foster Care, 32 *Child. & Youth Servs. Rev.* 10, 1338 (2010), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2928481/pdf/nihms205361.pdf>

Guided by attachment theory, this study examines the impact of contact with biological parents on depression and externalizing problems (i.e., aggressive and delinquent behavior) in children in foster care. Controlling for gender differences and exposure to violence, the study surveyed 362 children who were subjects of abuse or neglect between October 1999 and December 2000. The study highlights many of the purported benefits of visitation between children in foster care and their biological parents (e.g., maintenance of family ties, lessened grief, increased overall well-being). While foster parents often challenge the benefit of visitation by reporting that visitation results in problematic behavior of the children, the study found that “more frequent contact with the biological mother was marginally associated with lower levels of depression and significantly associated with lower externalizing problem behaviors.”

- Renee Schneider et al., What Happens to Youth Removed From Parental Care?: Health and Economic Outcomes for Women with a History of Out-of-Home Placement, 31 *Child. & Youth Servs. Rev.* 440 (2009), https://s3.amazonaws.com/academia.edu.documents/44083072/What_happens_to_youth_removed_from_paren20160324-25611-1dflv7u.pdf?AWSAccessKeyId=AKIAIWOWYYGZ2Y53UL3A&Expires=1531767464&Signature=psL6xfEc0Oxk0I7V8qmq42Ia12s%3D&response-content-disposition=inline%3B%20filename%3DWhat_happens_to_youth_removed_from_paren.pdf

Exploring the relationship between out-of-home placement and mental and physical health problems and educational attainment, this study posits the need for “greater access to mental health care and social services for youth in out-of-home placement to improve their long-term health and economic well-being.” According to the study, routine screening for mental health problems and early intervention and prevention efforts should be targeted to youth in or transitioning to out-of-care placement. (See Removal into Foster Care for full annotation).

- Aubyn C. Stahmer et al., Developmental and Behavioral Needs and Service Use for Young Children in Child Welfare, 116 *Pediatrics* 4, 891 (2005), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1550707/>

This paper seeks to “determine the level of developmental and behavioral need in young children entering child welfare [and] estimate early intervention services use.” Collecting data on 2,813 children under the age of 6 for whom possible abuse or neglect was investigated, the study analyzed developmental and behavioral needs across five domains: cognition, behavior, communication, social, and adaptive functioning. The study found that across age groups, approximately half of young children in child welfare had developmental or behavioral problems that would qualify them for early intervention services. The study found, however, that over the course of year, less than one quarter of young children in contact with child welfare received any developmental or behavioral intervention. The study also notes that, although serious developmental and behavioral problems are as frequent among children that remain home as those that are removed, children remaining home are much less likely to receive early intervention services. From a societal prospective, the study contends, “contact with [child welfare] represents an

opportunity to identify children who are likely to be at substantial risk for poor long-term developmental trajectories,” and access to early intervention services should be increased whether the child remains in the home or is removed.

- Children with Traumatic Separation: Information for Professionals, National Child Traumatic Stress Network, https://www.nctsn.org/sites/default/files/resources//children_with_traumatic_separation_professionals.pdf.

The NCTSN provides a variety of tips for working with children experiencing traumatic separation, including allowing the child to have memorabilia (e.g., pictures, objects from a previous home, a scrapbook) to preserve positive memories of and stay connected to the absent caregiver and coordinating outside resources and referrals to whom the child can turn when needing comfort.

C. Kinship Placement

- Deborah Cromer, Through No Fault of Their Own: Reasserting a Child’s Right to Family Connectedness in the Child Welfare System, 41 Family L. Quarterly 181 (2007).

This essay explores “the statutory and public policy frameworks that guide state intervention in the parent-child relationship, and the negative outcomes resulting from removal of at-risk children from the family. Cromer suggests that even when families are dangerous or unhealthy, children “often experience[] separation from a primary caregiver as a threat to survival.” As an alternative, the essay proposes that “public policy should demand a refocus of the child welfare system on family connectedness.” Detailing the success of relative-care initiatives across the United States (e.g. Alameda County’s StepUp Project), the essay notes several benefits of relative care:

- connecting with a person the child knows and trusts;
 - creating a network of connected, caring support from family even if the child cannot be reunited with biological parents;
 - reinforcing the child’s personal and cultural identity;
 - encouraging families to cultivate and rely their own resources and strengths; and
 - saving the state significant costs.
- Atalia Mosek & Leah Adler, The Self-Concept of Adolescent Girls in Non-Relative versus Kin Foster Care, 44 Int’l Soc. Work 149 (2011)

In an effort to determine the “least detrimental placement” for maltreated children, this study collected data on the “self-concept” of adolescent girls cared for by kin versus non-relative foster parents in Israel. The study defines “self-concept” as “an organizing system of traits and ambitions that a person relates to [herself], and according to which [she] manages [her] life.” The study included adolescent girls (aged 12-18)

placed in foster care for four years or more in the north of Israel. Of this sample, 18 girls were with non-relative foster care and 20 were with kinship foster parents. Using a questionnaire that measured 5 dimensions of the self (i.e. psychological self, social self, sexual self, family self, and coping self), the study found that adolescents who grow up in kinship care have a more positive self-concept than those adolescents growing up in non-relative foster care. According to the study, “[i]t is the feeling of stability and permanency perceived by adolescents who stay with kin that contribute to their inner self-assurance, in comparison with adolescents staying with non-relative families.” Adolescents placed with kin report greater closeness with the foster family and fewer tensions between the foster family and biological family.

- Femke Vanschoonlandt et al., Kinship and Non-Kinship Foster Care: Differences in Contact with Parents and Foster Child’s Mental Health Problems, 34 *Child. & Youth Servs. Rev.* 1533 (2012).

This study compares two aspects of out-of-home kinship placements and out-of-home non-kinship placements: contact with and attitude of parents and mental health of the foster children. Following 186 foster children (aged 3-18) in the Flemish child welfare system, the study found that while non-kinship placements fare better on aspects of contact with and attitudes of parents, children in kinship placements had significantly fewer behavioral problems and lower levels of mental health problems. The study found that in non-kinship foster placements there was a 50% chance of severe behavioral problems compared to only a 35% chance in kinship placements. According to the study, the better psychosocial functioning of kinship foster children is usually explained by “the protective effect of cultural and family preservation” because “*living with relative may reinforce the sense of identity and self-esteem that flows from knowing the family history and culture*” (emphasis in original). Notably, the study found that the number of previous out-of-home placements played a greater role in behavioral problems than the type of placement. In this regard, the results confirm the importance of stability for foster child well-being.

V. THE EFFECTS OF TOXIC STRESS IN CHILDREN

A. Introduction

This section includes resources discussing the physical effects visited upon children as a result of “toxic stress,” which can result from “strong, frequent, and/or prolonged adversity . . . without adequate adult support.” Center on the Developing Child, Harvard University, Toxic Stress, <https://developingchild.harvard.edu/science/key-concepts/toxic-stress/> (also linked below). Toxic stress “can disrupt the development of brain architecture and other organ systems, and increase the risk for stress-related disease and cognitive impairment, well into the adult years.” *Id.* As noted in some of the resources discussed in Part II *supra*, parent-child separation places the child at significant risk of developing toxic stress. The research below, therefore, may be grafted onto the discussion of the harmful effects of removal generally when preparing a submission to a court in opposition to the government’s removal attempt.

B. Relevant Research

- Laura Santhanam, *How the Toxic Stress of Family Separation Can Harm a Child*, PBS, June 28, 2018, (<https://www.pbs.org/newshour/health/how-the-toxic-stress-of-family-separation-can-harm-a-child>).

Excerpt:

In a situation where children are separated from their parents for a long period of time, they remain on high alert, and their bodies endure prolonged and severe toxic stress as a result. See [Harvard University Center on the Developing Child – Toxic Stress](#)

Excerpt:

When a child is primed to experience fear and anxiety, those emotions can superimpose themselves onto how the child interacts with another person, even if that person wants to nurture and love the child. This condition is called reactive attachment disorder, and it can start as early as infancy if a child's basic needs aren't met by a parent or caregiver, preventing a healthy bond from forming between them. See [Mayo Clinic's Reactive Attachment Disorder Research](#)

Excerpt:

Toxic stress is more subtle than a broken bone or distended stomach, but it can leave permanent mark on a child's brain and can "create a weak foundation for later learning, behavior, and health," according to a [2012 study](#) published in the journal *Pediatrics* that explored how adversity and toxic stress in early childhood can manifest itself throughout a child's life. After a long period of sustained toxic stress, a child who had seemed inconsolable may become quiet, dull or withdrawn. That doesn't mean they have adjusted to what's going on, those symptoms emerge because their cortisol levels are depressed and their stress levels are blunted. See American Academy of Pediatrics News & Journal Gateway, [The Lifelong Effects of Early Childhood Adversity and Toxic Stress, \(2012\)](#).

- Hillary A. Franke, [Toxic Stress: Effects, Prevention and Treatment](#), 1 *Child*. 3, 390 (2014), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4928741/>.

In this article, Franke summarizes the findings in recent studies on toxic stress and childhood adversity that followed the American Academy of Pediatrics Policy Report on the effects of toxic stress. Childhood toxic stress, Franke explains, is defined as "severe, prolonged, or repetitive adversity with a lack of the necessary nurturance or support of a caregiver to prevent an abnormal stress response." Children who experience toxic stress are at risk for long-term adverse health effects including maladaptive coping skills, poor stress management, unhealthy lifestyles, mental illness and physical disease." According to Franke, "[f]actors that place a child at risk of maltreatment overlap those with risk of toxic stress" (e.g., social isolation, poverty, non-biological relative living in the home, depression). However, if primary preventative measures are taken during early development, appropriate stress responses to adversity may result. Positive factors for child maltreatment (e.g., structured school environment, positive family changes, presence of a caring and supportive adult) may also reduce the risk of toxic stress. An

integrative approach to prevention and treatment of toxic stress, Franke argues, “necessitates individual, community and national focus.”

- Alexander C. McFarlane, Long-Term Costs of Traumatic Stress: Intertwined Physical and Psychological Consequences, 9 World Psychiatry 1, 3 (2010), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2816923/>.

This paper explores the delayed, long-term physical and psychological effects of traumatic stress. Understanding that the effects of stress need to be considered as a major environmental challenge that places an individual’s physical and psychological health at risk, this paper focuses on the development and impact of delayed Post Traumatic Stress Disorder (PTSD) as a result of subsequent adverse experiences. While the paper does not deal specifically with child separation, the focus on the impact of stressful environments following a traumatic experience speaks to the layered traumatic experiences many children experience following removal and provides insight into necessary treatment approaches. According to the paper, the majority of people who develop PTSD do not originally meet the diagnostic criteria of the disorder; rather, it is only with the passage of time that the symptoms become sufficiently severe to warrant a clinical diagnosis. This delayed form of PTSD demonstrates “how a traumatic experience can apparently lie dormant within an individual only to become manifest at some point in the future.” The paper explores the various physical and psychological symptoms that may develop in association with delayed PTSD (e.g., cardiovascular problems, obesity, morbidity) and proposes treatment that emphasizes addressing underlying psychophysiology in the early periods following exposure to adversity.

- Jack P. Shonkoff & Committee on Psychological Aspects of Child and Family Health et al., Lifelong Effects of Early Childhood Adversity and Toxic Stress, 129 Pediatrics 232 (2012).

This report presents an ecobiodevelopmental (EBD) framework that demonstrates how toxic stress “can leave a lasting signature on the genetic predispositions that affect emerging brain architecture and long-term health.” Recognizing development as “nature dancing with nurture” rather than “nature vs. nurture,” an EBD framework examines “how early experiences affect when, how, and to what degree different genes are actually activated.” This framework provides insight into the well-documented relationship between child adversity and adult health impairment. Although moderate levels of stress are essential to survival, toxic stress describes prolonged exposure to excessively high levels of stress hormones that leads to chronic “wear and tear” on bodily systems, including the brain. According to this report, alleviating toxic stress in childhood could reduce persistent health disparities associated with poverty, discrimination, or maltreatment. Ultimately, the report proposes “a new role for pediatricians to promote the development and implementation of science-based strategies to reduce toxic stress in early childhood.”

- Excessive Stress Disrupts the Architecture of the Developing Brain, Harvard U. Center on the Developing Child: National Scientific Council on the Developing Child (Jan. 2014), https://developingchild.harvard.edu/wp-content/uploads/2005/05/Stress_Disrupts_Architecture_Developing_Brain-1.pdf.

Extensive research shows that healthy development can be derailed by excessive or prolonged activation of stress response systems in the body and the brain. This paper suggests that policies affecting young children generally do not reflect awareness of the degree to which very early exposure to stressful experiences and environments can affect the architecture of the brain, the body's stress response systems, and a host of health outcomes later in life. Because a child's ability to cope with stress has consequences for mental and physical health throughout life, this paper suggests that "understanding the nature and severity of different types of stress responses to early adverse experiences can help us make better judgments about the need for interventions that reduce the risk of later negative impacts." The paper focuses on the neurological effect of toxic stress that occurs when children lack a supportive caregiver to act as a buffering agent. According to the paper, the quality of early care and education that young children receive outside the home also plays an important role in whether they experience toxic stress.

VI. ADDITIONAL RESOURCES

Resources exhibiting that separation causes trauma:

- [Maslow's Hierarchy of Needs](#)
- [Pediatrician Henry Dwight Chapin's study of institutionalized infants](#)
- [John Bowlby's Attachment Theory](#)
- Psychiatrist Charles Nelson's Bucharest Project, a study of Romanian Orphanages: [American Psychological Association – the lasting impact of neglect](#)
- Research on ["Aboriginal Children in Australia"](#)
- AJPH – A publication of the American Public Health Association - [Left Too Early: The Effects of Age at Separation from Parents on Chinese Rural Children's Symptoms of Anxiety and Depression.](#)
- Focusing on the trauma of transitioning into foster care – [Monique Mitchell](#), *The Neglected Transition: Building a Relational Home for Children Entering Foster Care* (Oxford University Press, 2016) ([preview available](#))
- NOVA PBS Official, [Inside the Brains of Children Separated from Parents](#), YouTube (June 25, 2018), <https://www.youtube.com/watch?v=bwpcn8sRtqg&feature=youtu.be>.

Studies on the long-term effects of trauma:

- Kaiser Permanente and the Centers for Disease Control and Prevention's [Adverse Childhood Experiences Study](#)
- [Comorbidity and Continuity of Psychiatric Disorders in Youth After Detention: a Prospective Longitudinal Study](#)
- Brain Development: [Harvard University Center on the Developing Child – Toxic Stress](#)
- Long-Term Effect of Toxic Stress on Child: American Academy of Pediatrics News & Journal Gateway, [The Lifelong Effects of Early Childhood Adversity and Toxic Stress, \(2012\).](#)
- Emotional Toll: [Mayo Clinic's Reactive Attachment Disorder Research](#)

Resources on family separation and trauma developed by the National Child Traumatic Stress Network (NCTSN):

- [Traumatic Separation and Refugee and Immigrant Children: Tips for Current Caregivers](#)
- [Key Points: Traumatic Separation and Refugee and Immigrant Children](#)
- [NCTSN Resources Related to Traumatic Separation and Refugee and Immigrant Trauma](#)

Studies conducted to assess child outcomes when removed from primary caregivers:

- [Mental and Physical Health of Children in Foster Care by the American Academy of Pediatrics \(2016\)](#)
- The importance of visitation and contact with family:
 - [Information Packet Parent-Child Visiting, National Resources Center for Family-Centered Practice and Permanency Planning at the Hunter College School of Social Work \(2008\)](#)
- The younger the child and the longer the period of uncertainty and separation from the primary caregiver, the greater the risk of emotional and developmental harm to the child.
 - [Developmental Issues for Young Children in Foster Care by the American Academy of Pediatrics Committee on Early Childhood, Adoption and Dependent Care \(2000\)](#)
 - [Visitation with Infants and Toddlers in Foster Care: What Judges and Attorneys Need to Know by the American Bar Association \(2007\)](#)
 - [Mental Health Assessments for Infants and Toddlers by the American Bar Association in Child Law Practice \(Vol. 24 No.9\) 129-139 \(2005\)](#)

Resources identifying the importance of family to a child's development and well-being:

- Separation may lead to mental health disorders – [Parenting Matters: Supporting Parents of Children Ages 0-8 \(2016\) by The National Academies: Sciences, Engineering, & Medicines](#)
- Family disruption can hinder healthy development and increase risk of future disorders – [Preventing Mental, Emotional, and Behavioral Disorders Among Young People: Progress and Possibilities \(2009\) by The National Academies: Sciences, Engineering, & Medicine](#)

Guide to assist attorneys in child welfare practice:

- [Child Safety: A Guide for Judges and Attorneys by the American Bar Association](#)
- Martin Guggenheim and Vivek S. Sankaran, Representing Parents in Child Welfare: Advice and Guidance for Family Defenders (2015) ([available for purchase](#))