

Immigration in the Juvenile Justice System

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2. Intake

Probation:

- Gather info about youth, inc. imm status
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- Referral to JJ, adult criminal court,
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3. Detention

Juvenile Detention Staff

- Permit ICE interviews
- Contact ICE
- Discrimin. Treatment

4. Detention Hearing

Probation, Court, DA, & PD

- Consideration of imm status
- Secure detention

5. Adjudication

Judge	DA	PD
<ul style="list-style-type: none"> •Order youth back to detention •Delay case until ICE pickup •Translator denial •Refer to ICE •No transfer to foster care for SIJS •Punitive use of judicial authority to increase imm consequences 	<ul style="list-style-type: none"> •Calls ICE •Serious charges to impact imm status •Offer pleas with condition of removal 	<ul style="list-style-type: none"> •Failure to research and defend against imm conseq. •No connection to imm svcs •No contest of detainer •Failure to push for release

6. Disposition

Judge	Probation	DA
<ul style="list-style-type: none"> •Contact ICE •Order deportation as dispo •Discriminatory Treatment 	<ul style="list-style-type: none"> •custody instead of svcs •Call ICE •Recommend deportation 	<ul style="list-style-type: none"> •Argues sanctions •Contact ICE

7. Release or Complete Dispo

Probation	Juvenile Detention Staff
<ul style="list-style-type: none"> •Refuse to provide services •Contact ICE 	<ul style="list-style-type: none"> •Permit ICE interviews •Contact ICE •Discrim. Treatment •Refuse to release after detainer expires (48 hrs)

Integrating Child Welfare Principles with the Immigration System

Guardians *ad litem* for unaccompanied and
separated immigrant, migrant and refugee
children

2005 Statistics

- Approx. 80,000 unaccompanied children cross U.S. borders annually.
- More than 8,000 children were taken into federal custody last year.





GAL/Child Advocate's Objective:

Identify and represent the child's best interests – **safety and well being** – while the child is subject to immigration removal proceedings.



International Principles

- Universal Declaration of Human Rights – children entitled to special protection and assistance.
- International Covenant on Civil and Political Rights – every child shall have . . . the right to such measures of protection as are required by his status as a minor.
- Convention on the Rights of the Child – in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

Domestic Principles

- 1899 first Juvenile Court in U.S., laying foundation for special treatment of juveniles charged with criminal offenses.
- U.S. Supreme Court “Children have a very special place in life which law should reflect. Legal theories and their phrasing in other cases readily lead to fallacious reasoning [if] uncritically transferred to determination of state’s duty towards children.”
May v. Anderson (1953)
- 1974 Child Abuse Prevention and Treatment Act – impartial adult should have responsibility for ensuring the best interests of child in child welfare proceedings.
- Today, child welfare and children charged with status offenses (do not presuppose criminal intent) diverted from punitive to protective models.

U.S. Immigration Policy

- 1998 INS Guidelines – Issued to address the unique vulnerability and circumstances of children. Recognized obligation to refrain from acts that would defeat object and purpose of CRC.
- 2002 Homeland Security Act – stipulates that interests of child must be considered in decisions and actions relating to care and custody of UACs.
- 2004 EOIR Interim Guidelines – allows discretion to create child-friendly courtroom atmosphere.
- 2004 ABA Standards on Unaccompanied Children –The best interests of the child shall be a primary concern of the custodial agency, adjudicator, child advocate and immigration enforcement personnel.

Role of GAL/Child Advocate – identify and represent the child’s best interests.

- Meet with children.
- Learn their stories and why they’ve come to U.S.
- Learn what the child wants.
- Help identify eligibility for asylum or other protection.
- Accompany to court.
- Help children make difficult decisions.
- Research country conditions.
- Develop recommendations on best interests.
- Advocate for the child.
- Post-placement assistance.



Liaison to the Legal System

- Acclimate the child before court appearances.
- Accompany the child to court and other meetings (not attorney-client meetings).
- Be available to the child after court hearings to help the child process information.
- Communicate w/child's attorney regarding any lack of understanding by child.

Coordination Between Attorney and GAL/Child Advocate

- Attorney should keep GAL/Child Advocate informed
 - About possible consequences of legal strategies
 - Notice about upcoming proceedings
- Attorney should utilize expertise of GAL/Child Advocate to ascertain facts about child's history
- Attorney should seek GAL/Child Advocate's input re: options that are in the child's best interests

Coordination between ORR, shelter and GAL/Advocates

- GAL/Advocate communicates with ORR and shelter.
- GAL/Advocate convenes meeting – staffing to attempt to reach consensus on best interest.
- GAL/Advocate interviews shelter staff to obtain their view as ‘persons close to child’ when developing BI recommendations.
- BI letters copied to ORR and shelter.

Developing Best Interest Recommendations



- Country conditions; availability of child protection services
 - Family reunification is priority
 - Child's view
 - Views of persons close to child
 - Security conditions in home country
 - Availability of adult caregiver in home country
 - Education, health care
 - Child's best interest – safety and well-being

Formal Best Interests Report

- SIJ cases
- When child is separated from family against their will.
- Decisions on temp. care in complex situations.
- When child is at risk of removal to unsafe conditions or no adult caregivers available.
- When attorney is not representing child's interests.
- * UNHCR Guidelines on Formal Determination of the Best Interest of the Child.



Long-term policy goals

- Incorporate consideration of best interest – safety and well-being – in immigration cases involving children
- Credibility
- Safe repatriation

Immigrant Child Advocacy Center at the University of Chicago



For more information, contact
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www.ImmigrantChildAdvocacy.org

Immigration and Juvenile Delinquency

Angie Junck, Immigrant Legal Resource Center

The Migration and Child Welfare National Network
Second National Forum
April 1, 2008



Immigration Enforcement in Delinquency Proceedings

Immigration Enforcement in Delinquency

- ICE increasingly using juvenile justice system as one of the trigger sites for their enforcement efforts
- ICE conducts outreach to JJ actors to aid in the enforcement of imm laws and JJ actors comply
- JJ system actors routinely refer noncitizen youth to ICE to face immigration detention and deportation

Immigration Enforcement in Delinquency

- Discriminatory actions against noncitizen youth that lead to their disparate treatment in the JJ system, e.g., subject to detention longer, harsher dispositions
- Failure to recognize special needs of noncitizen youth that exacerbate their situation, e.g., ineligible for immigration relief

JJ Players whose Actions Affect Noncitizen Youth

- Police
- Probation
- Juvenile detention staff
- Prosecutors
- Public Defenders
- Judges

Some Causes of these Actions

- Lack of training and resources on imm
- General lack of info and understanding of complex imm laws
- Lack of resources from federal gov't to compensate them for providing services to noncitizen youth

Some Causes of these Actions

- Feeling it is their law enforcement obligation to enforce immigration laws
- Bias against immigrants generally
- Political pressure from state and local officials, communities, constituents, ICE
- Socio-political context

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Are JJ actors compelled to enforce immigration laws?

- No federal law requires state and local officials to affirmatively enforce federal immigration laws.
- There is no agreement under federal law whether or not local and state law enforcement have the inherent authority to enforce civil immigration laws.

Are JJ actors compelled to enforce immigration laws?

- Authority/ability to enforce immigration laws must take into account state and local laws
 - Some authorize, some do not, some prohibit

Federal Law on Imm Enforcement

- The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) = main piece of federal legislation that addresses ability of state and local agencies to investigate suspected civil violations of immigration law.

IIRIRA Provisions

- Responding to “mass influx” of immigrants in urgent situations (rare)
- 287(g) Programs – MOUs between ICE and law enforcement to aid in enforcement of imm laws after receiving training (none with JJ system so far)
- Prohibits don't tell policies, but not don't ask policies

Don't Tell v. Don't Ask Policies

- IIRIRA does not allow policies that restrict information sharing re: imm status between ICE and local and state law enforcement
- It does not, however, require that they collect immigration information
 - If policy is not to ask, then there is nothing to share

Don't Tell and Don't Ask Policies

- General policies limiting disclosure of confidential information, including imm status are okay

Immigration Consequences of Delinquency for Noncitizen Youth

Possible imm consequences for noncitizen youth

- Deportation
- Prohibited from applying for green card or citizenship
- Lose visa or lawful status
- Bars to re-entry (sometimes permanent)
- Detention in a secure facility
- Risk of being placed in expedited removal (no hearing in immigration court)

Impact of Charges and Findings from JJ system

- Retroactive - no matter how long ago
 - Example: A homeless youth arrested for selling cocaine at age 14 gets transferred to foster care, cleans up his act completely, and is eligible for applying for immigration benefits. He/she will be prevented from doing so forever because this is a drug charge.
- Essential for public defenders/advocates to work with immigration experts

Juvenile Dispositions and Immigration Consequences

- Juvenile delinquency findings are **not** convictions under immigration law.
- Criminal convictions in adult court are convictions under immigration law
- Most, but not all, deportation grounds require a conviction

Juvy Delinquency Dispos and Findings that Can Trigger Imm Consequences

- Prostitution;
- Drug trafficking offenses;
- Findings of drug abuse/abuser;
- Findings of suicide attempts, torture or mayhem, sexual predator, alcoholism;
Offenses relating to false claim to
- Findings of violation of no contact or protection order

Benefits of Dependency Compared to Delinquency

- Less immigration enforcement
- More advocacy on behalf of noncitizen youth
- More likely noncitizen youth will obtain immigration relief and services they need

Recommendations for Child Welfare

- Advocate against transfer to delinquency
- If noncitizen youth already in both systems, retain dual jurisdiction so youth can continue to access needed services
- Screen immigrant youth for relief and advise of potential consequences of delinquency

Intersection Between SIJ Cases and Juvenile Court

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What is the Office of the Public Guardian?

- Serve as Attorney and Guardian *ad litem* for:
 - Abused and neglected children
 - Children in divorce cases
 - Disabled elderly wards

Safety, Permanency, Well-Being

- Role of GAL/Attorney

Statutes, Case Law and IL Supreme Court Rules – Role of GAL/Attorney

- Best Interest 705 ILCS 405/2-17(1)
- Safeguard and protect child's interests and welfare. Roth v. Roth, 52 Ill. App. 3d 220 (1st Dist. 1977)
- GAL acts under control of court. *In re Marriage of Wycoff*, 266 Ill App. 2d 408 (4th Dist. 1994)
- GAL tells court child's preference. *Id.*
- Client under disability. IL Rules of Professional Conduct Rule 1.14.

Conflict Between Roles of Attorney and Guardian *ad litem*

- Young children
- Child with disability
- Older children

Involvement with SIJ Cases

- Abuse and neglect – non-detained
- Children in federal custody – consent

Facilitating SIJ Cases

- Identify which cases qualify
- Liaison with State's Attorney, Juvenile Court Judge, DCFS

Children in Federal Custody

- Age-out
- Consent
- Perez-Olano

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