

NCTSN BENCH CARD FOR JUVENILE COURT JUDGES

Newcomer Immigrant Youth in Juvenile Justice Court Proceedings: A Trauma-Informed Approach

What Do Judges Need to Know?

*No one puts their children on a boat
unless the water is safer than the land.*
—Warsan Shire, Home

NEWCOMER IMMIGRANT YOUTH & TRAUMA

This bench card focuses on a subset of recently arrived immigrant children, including refugee children, asylum seekers, and unaccompanied children, to whom we refer as “newcomer immigrant youth.”

Many newcomer immigrant youth come to the United States because of extreme adversity in their countries of origin. Some youth come with parents or family members, while others make the arduous journey alone.

Exposure to severe stressors and traumas is commonplace for newcomer immigrant youth. This exposure can occur before, during, and/or after migration to the United States. It is important to note that many of these stressors and traumas may occur for months or years, spanning multiple stages in the migration experience.

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| BEFORE MIGRATION | War and political conflict; lack of food, water, shelter, and medical care; forced displacement; gang violence; threats of physical and sexual violence or murder; death of a loved one |
| DURING MIGRATION | Extreme deprivation of food, water, shelter, and medical care; hazardous travel, often long distances by foot or unsafe transportation; death of—or prolonged separation from—a caregiver, family member, or other important person; direct or indirect exposure to physical and sexual violence; gender-based violence; human trafficking and financial exploitation |
| AFTER MIGRATION | Federal immigration detention; extreme poverty; discrimination/bullying/hate crimes based on race, ethnicity, sexuality, religion, or native language; separation from family members; drug exposure; community violence |

THE IMPACT OF TRAUMA ON NEWCOMER YOUTH: LIVING IN SURVIVAL MODE

Youth who have experienced such traumas often live in “survival mode” in order to protect themselves and others. Youth in survival mode may isolate themselves and become emotionally numb or shut down. They may also be constantly on guard and ready to react to danger with “fight or flight” responses, including aggression, avoidance, and reckless actions, which is best described as “survival coping.”

Living in survival mode may be helpful in the face of acute safety threats, but can inadvertently lead to further exposure to danger, conflict in relationships with peers, family, and school officials, and contact with law enforcement and the juvenile justice system. Breaking the cycle of trauma and escaping survival mode is the key to true rehabilitation for all youth who are involved in the juvenile justice system.

ENGAGING NEWCOMER IMMIGRANT YOUTH

The Court’s acknowledgment that youth in survival mode are attempting to regain safety provides a basis for engaging newcomer immigrant youth and helping them find constructive ways to live in their new communities.

Specifically, understanding newcomer youths’ trauma histories, cultural backgrounds, and personal strengths enables judges to craft effective orders and avoid potential pitfalls. Showing interest in and respect for youths’ cultural heritages, traditions, and support systems can establish mutual respect and engage valuable sources of rehabilitation from the youth’s culture and community. In addition, knowledge of youths’ past and current threats to their safety and their personal and/or communal fear of law enforcement and government involvement can help judges craft more relevant and responsive orders.

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What Can Judges Do?

You may be the first adult who understands the impact that trauma and survival coping have had on a newcomer immigrant youth's life. Below are ways that you can intervene in the continuum of traumas experienced by youth and activate their potential to heal and thrive.

1. Ask questions that enable you to make trauma-informed, culturally-sensitive decisions:

- “Have I taken into account how this youth has had to cope to survive trauma in her/his home country, en route to the US, and while adjusting to life here?”
- “Have I considered the role trauma reminders and survival coping play in this youth's behavior?”
- “Have I considered placements and services that will help this youth understand and overcome post-traumatic stress reactions and relinquish survival coping strategies?”
- “Have I actively shown respect for and incorporated the youth's cultural traditions/connections to inform my course of action?”
- “Have I considered the legal ramifications of my decisions on this youth's immigration status?”

2. Support the youth in strengthening protective factors and supporting resilience:

- Identify the positive characteristics/abilities and relationships/supports in the youth's life.
- Point out the youth's positive characteristics/abilities to her/him and to other adults.
- Use court orders to obtain resources or services that enhance and build on those strengths.

3. Order trauma-informed and culturally-relevant services and resources for the youth:

- When ordering mental health or related services, specify that the provider must be trauma-informed and qualified to provide trauma-informed, evidence-based assessment and treatment.
- Order services/placements that are consistent with the youth's culture and support systems.
- Rule out placements or referrals that trigger survival mode by either (a) exposing the youth to trauma reminders, stigma, or harm or (b) separating him/her from family, community, or culture.
- Consider declining to order transfers to adult criminal court or facilities where youth are at high risk for re-traumatization.

4. Follow up to ensure that the youth feels supported by the Court and is able to make progress:

- Inquire whether services ordered are actually provided and are meeting the youth's needs.
- Demonstrate commitment to support the youth's efforts to rehabilitate by commenting affirmatively in court appearances and evaluations about evidence that the youth is doing any of the following:
 - Drawing on and strengthening her/his culture and positive characteristics and abilities;
 - Engaging responsibly in healthy and supportive relationships;
 - Making progress towards goals that are meaningful to the youth and family (e.g., getting or keeping a job, attending school, participating in family/community);
 - Honoring her/his and the family/community's cultural values and traditions;
 - Making progress in services/treatments to help find constructive ways to achieve safety and personal control.

5. Consider the negative immigration consequences of juvenile justice system involvement:

- Juvenile justice system involvement can have serious immigration consequences for newcomer immigrant youth.
- Juvenile delinquency adjudications may trigger conduct-based grounds of inadmissibility or deportability, negatively impact a discretionary decision of immigration relief, or cause a youth to be held in secure detention.
- Expunging a juvenile adjudication does not generally eliminate immigration consequences.

Based on Neha Desai, Melissa Adamson, Maureen Allwood, Carly Baetz, Emma Cardeli, Osob Issa, & Julian Ford, *Primer for Juvenile Court Judges: A Trauma-Informed Approach to Judicial Decision-Making for Newcomer Immigrant Youth in Juvenile Justice Proceedings* (Feb. 2019), available at <https://youthlaw.org/publication/primer-for-juvenile-court-judges/>.

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