

One judge's tough approach to foster care: It's only for the really extreme cases

By [Richard A. Webster](#)

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NEW ORLEANS — The courtroom looks more like a preschool than a command center for dismantling the city's foster care system. A stuffed penguin perches above the judge's bench. A bookcase is filled with children's favorites. And dozens of stuffed animals — teddy bears, polar bears, pandas — are scattered around the room.

Juvenile Court Judge Ernestine S. Gray gives each child who appears before her a bear and a book. She believes it makes what can be the worst day of their lives just a little easier.

This soft touch belies the power that Gray wields as one of just four Louisiana judges who control the entire child protection docket in their jurisdiction. And she has used that authority to upend the status quo and reduce Orleans Parish's foster care numbers to levels unmatched anywhere in the country.

Between 2011 and 2017, the number of children in foster care here fell by 89 percent compared with an 8 percent increase nationally. New Orleans children who do enter the system don't stay long. Seventy percent are discharged within a month; nationally, it's only 5 percent.

Gray has effectively all but eliminated foster care except in extreme situations, quickly returning children flagged by social workers to their families or other relatives.

"We shouldn't be taking kids away from their parents because they don't have food or a refrigerator," she said in explaining her philosophy. "I grew up in a poor family in South Carolina, and we didn't have a lot. But what I had was people who cared about me."

The local numbers — detailed in a privately commissioned study by the nonprofit Casey Family Programs in Seattle — sent shock waves throughout the child welfare community. Some national groups hailed Gray's approach as a road map to reform the country's troubled foster care system.

"What Judge Gray is doing is unique, and we hope to see it with other judges," said Melissa Gueller, program director for child abuse and neglect at the National Council of Juvenile and Family Court Judges. "Removing a child is extremely traumatic, and we want to make sure kids go home to their families where they deserve to be as quickly as possible, or not enter the system at all."

In New Orleans, however, child advocates reacted cautiously. In the collective fervor to remedy the system, they fear the lives of hundreds of boys and girls are being endangered by returning them to families in chaos.

Virtually no data are available to allay their concerns.

Joy Bruce, executive director of CASA New Orleans, acknowledged the judge is combating serious, entrenched problems. The question is whether her solution is the right one.

“There are people who absolutely see her as a model for change, somebody who should be held up as an example and followed,” Bruce said. “And you will definitely find people who intensely dislike her and feel very strongly that what she has done is wrong. The only thing we know for sure is that we used to have more kids in care, and now we have fewer.”

Few disagree that the system is severely broken nationwide because of decades of mismanagement and inadequate funding. Instead of protecting children, it often traumatizes them further. They have poorer outcomes in education, employment, housing and early pregnancy, studies show. By 17, more than half will have been arrested, jailed or convicted, according to a University of Chicago study.

Congress responded last year by passing the Family First Prevention Services Act, the biggest overhaul of foster care in a generation. The law redirects money from paying for state custody to providing services designed to keep families intact, such as mental health care, substance abuse treatment and parenting skills training.

The refocus mirrors Gray’s goal. The greatest threat of harm for most of the children who appear before her, she stresses, is being unnecessarily removed from their families.

“Foster care is put up as this thing that is going to save kids, but kids die in foster care, kids get sick in foster care,” she said. “So we ought to be trying to figure out how to use that as little as possible. People have a right to raise their children.”

Her views have been shaped by experience. During her 35 years on the bench, she has witnessed Louisiana’s system slowly be gutted. The most devastating cuts happened under Gov. Bobby Jindal, who, along with the state legislature, slashed the budget of the Department of Children and Family Services by 41 percent. DCFS is now short 500 child welfare workers; high caseloads and turnover are constant challenges.

Such dysfunction pushed Gray into applying the law more rigidly. While many judges often err on the side of caution, placing children into state custody until all of the facts can be sorted out, she moved in the opposite direction. If protective services can’t make an ironclad case as to why children should be removed, Gray returns them to their families — even if DCFS investigators have described the setting as an “unhealthy environment.”

“Are we putting children at risk when we send them home? That’s a concern,” Gray admitted. Yet no matter what action she takes, “there are no guarantees.”

Other numbers show just how much of an outlier Orleans Parish has become. In 2017, 806 children here were

confirmed victims of maltreatment, according to the Baltimore-based Annie E. Casey Foundation, yet at the end of the year, only 27 children were in foster care. East Baton Rouge Parish, by contrast, had more than 760 cases and 181 children in care.

At the Youth Empowerment Project in New Orleans, which provides mentoring, education and job-training skills to at-risk youth, Chabre Johnson remembers the “revolving door” she saw while a DCFS child welfare specialist. She and colleagues would respond to calls, discover evidence of either abuse or neglect, and remove children, only to take them home a few days later because Gray decided the case they’d built didn’t pass muster.

“A lot of times it was infants and babies being returned to the home. It got frustrating,” said Johnson, a program director at the nonprofit. “The people making the decisions are not the ones going into these homes putting their lives in danger. They’re not the ones sitting outside of these homes waiting for police officers.”

One recent client was a 15-year-old living with her grandmother because her mother was addicted to drugs. When the grandmother suddenly decided she no longer would care for the girl or her younger brother, DCFS was called. The boy went to a foster family, while his sister was taken 60 miles west to a group home. A few weeks later, both were sent back to the grandmother and the same unstable situation.

“Any involvement with the system can be traumatizing,” Johnson said, “but there are some kids who need . . . it because their home life is that horrible.”

Championing New Orleans’s low numbers is problematic. The state has no legal right to track children who are returned to their home, and DCFS has no ability to look deeper into data since nearly all of its analytics staff was lost to

budget cuts. The only available metric is whether a child reenters the system at some point.

By that standard, Gray's strategy is working. The city's reentry rate of 7 percent is slightly lower than the statewide average, according to DCFS. But everyone, including Gray, concedes that is an imperfect data point for measuring success. It requires a child to be re-victimized and for someone to notice the abuse or neglect and again contact protective services.

Child advocates say the drastic reduction in foster care would make more sense if it came with greater resources to support struggling families — for mental health care, substance abuse treatment, case management or housing assistance — but that's not the case. Louisiana won't be eligible for federal funds through the new Family First law until 2021.

Paulette Carter, president of the Children's Bureau of New Orleans, said it takes at least a month for the organization to line up services. And the answer isn't just a couple of parenting classes. In the vast majority of cases, the issues that led to a child being removed from a home take months, if not years, to resolve.

"At one point, yes, we were probably taking too many kids into foster care," Carter said. "But these recent numbers are troubling. We're not giving any of these families or communities the support they need. It's almost like natural selection — this idea that if you can't take care of yourself, that's the way it goes."

Gray has heard all of the arguments against what she is doing, and to her critics she has a simple reply: She will apply the law. "And my reading of the law says we're not supposed to take kids from their families unless it's absolutely necessary."

In cases of abuse, she said she does not hesitate to remove children, but that is not the norm. More than 85 percent of foster children in Louisiana are removed from their homes due to neglect, which is defined as a parent's failure to provide food, shelter, clothing, supervision or medical care, to the point where the child's safety is at risk. In many cases, Gray thinks, DCFS investigators mistake poverty for neglect.

"No food in the house? Send them to the food bank rather than taking [their children] into care," she said.

Nzinga Hill, a New Orleans public defender who represents parents in foster cases, believes the system is inherently damaging and prone to abuse. She supports how the judge does her job.

"If a parent has a substance abuse disorder and is actively using, that parent might not be able to parent a 5-month-old or 5-year-old," Hill said. "But a 15-year-old? Even if the parent lacks protective capacity, the child is not vulnerable. A 15-year-old can feed him or herself."

Gray has one more year on the bench until mandatory retirement when she turns 70. She won't speculate on whether her approach could serve as a model nationally. One key factor, she offered with a laugh, is having officials who are not afraid of negative publicity or losing elections.

“You have to have courage,” she said. “I don’t advocate being reckless, but I think there are judges who do things just to be safe, for themselves and the families. To me, that’s not the standard.”

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