Children's Advocacy Institute

University of San Diego
SCHOOL OF LAW

The Pursuit of Permanency:
The First 90 Days

Course Materials

June 11–12, 2020

Sponsored by the
Judicial Council of California

Agenda

Presenters' Bios

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Powerpoint Slides

ACF: Foster Care as a Support to Families

Family is Compelling Reason, by Jerry Milner and David Kelly

Reasonable Efforts as Prevention, by Jerry Milner and David Kelly

Are We Sincere About Valuing Families?, by Jerry Milner and David Kelly

Family Time/Visitation: Road to Safe Reunification, by Mimi Laver

Preserving Cultural Connections

Family Engagement: Maximizing Family Resources & Kinship Connections

Supporting Successful Reunifications

Achieving Timely Permanency in Child Protection Courts: The Importance of Frontloading the Court Process

Improving Dependency Court Performance and Accelerating Permanency

Powerpoint Slides

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ACF: Family Time and visitation for children and youth in out-of-home care

Can Children's Attorneys Transform the Child Welfare System?, True North Child Advocates

In Re C.P.

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Cal. Department of Social Services, All County Letter 20-38

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How Recent Policy Changes (Family First, CCR) Effect Permanency

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The Pursuit of Permanency: The First 90 Days

June 11–12, 2020

Presented by the University of San Diego School of Law's Children's Advocacy Institute
Sponsored by the Judicial Council of California

Course Overview

This unique 12-hour training will provide valuable information and insights on promising and effective practices and strategies to accelerate permanency and improve permanency outcomes, with a special focus on the first 90 days of a child welfare case. This training is intended for judicial officers, attorneys, child welfare professionals, probation officers, tribal representatives and advocates, community advocates, CASAs, and others.

Agenda

June 11, 2020: 8:00 am - 5:00 pm

8:00–8:05	**Welcome / Overview of Training Program**
8:05–10:05	**Cornerstone Advocacy Training** *Michele Cortese, Center for Family Representation* *Rebecca Ingerman, Children's Law Center of California*
10:05–10:15	**Break**
10:15–12:15	**Cornerstone Advocacy Training *(cont'd)***
12:15–12:30	**Break**
12:30–2:30	**Improving Dependency Court Performance and Accelerating Permanency** *Panelists Hon. Marian Gaston, Carolyn Griesemer, Adam Reed, Caitlin Rae, Alice Kennedy, Sarah Pauter; moderated by Christina Riehl*
2:30–2:40	**Break**
2:40–3:40	**Improving Dependency Court Performance and Accelerating Permanency *(cont'd)***
3:40–4:40	**Strategies/Efforts/Advocacy in the First 90 Days: Ethical Considerations** *Panelists Hon. Marian Gaston, Carolyn Griesemer, Adam Reed, Caitlin Rae, Alice Kennedy, Sarah Pauter; moderated by Christina Riehl*
4:40–5:00	**Participant feedback re Day 1 curriculum**

June 12, 2020: 8:00 am - 12:15 pm

8:00–9:30	**Population-Specific Permanency Issues** *Antonia Torres, County of San Diego Health & Human Services Agency* *Sue Abrams, Children's Law Center of California*
9:30–9:35	**Break**
9:35–11:05	**How Recent Policy Changes (Family First, CCR) Effect Permanency** *Jennifer Rodriguez, Youth Law Center*
11:05–12:05	**Identifying and Addressing Bias and How it Impacts Permanency Efforts** *David Meyers, Dependency Legal Services*
12:05–12:15	**Participant feedback re Day 2 curriculum/closing remarks**

The University of San Diego School of Law is a State Bar of California-approved MCLE provider and this event has been approved for 10 hours of general MCLE credit hours, 1.0 hour of Legal Ethics MCLE credit and 1.0 hour of Elimination of Bias MCLE credit.

The opinions, findings, conclusions, and recommendations expressed in this program are those of the author(s) and do not necessarily reflect the views of the Judicial Council.

The Judicial Council of California, Center for Families, Children & the Courts (CFCC), provider number 58804, is approved by the California Association of Marriage and Family Therapists (CAMFT) to sponsor continuing education for licensees of the California Board of Behavioral Sciences (BBS). The Pursuit of Permanency: The First 90 Days" provided by the Children's Advocacy Institute at the University of San Diego School of Law, maintains responsibility for this program/course and its content.

***Registration/Refund/Cancellation Policy**. This program is provided free by the Judicial Council of California Center for Families, Children & the Courts. Because no fees are charged to participants, the program does not require a refund policy. Those who register for the program and later find they cannot attend are asked only to notify Elisa Weichel at eweichel@sandiego.edu prior to the training date.*

***Grievances**. If a program participant has a complaint, the participant may contact Program Lead Kathleen O'Neill at kathleen.o'neill@jud.ca.gov or 916-643-4671, who will provide a grievance form on which the complainant will be asked to provide the title, date and location of the program, as well as specific details of the grievance and any requested remedy. The Program Lead or other agency representative will respond to the grievance within 21 days.*

***Accessibility**. The Judicial Council of California, Center for Families, Children & the Courts supports the Americans with Disabilities Act, which promotes public accessibility for persons with disabilities. If participants require special equipment or services, they may contact the Administrative Specialist Charina Zalzos at Charina.Zalzos@jud.ca.gov or 415-865-8977.*

Learning Objectives

Cornerstone Advocacy Training:

- Participants will understand the Cornerstone Advocacy approach to visits that speed reunification, well-tailored service plans, placement options that support a child's attachment to their parent, families, culture and community and out of court advocacy opportunities
- Participants will learn to develop legal theories and strategies to advance the objectives of their client and improve timeliness to permanency
- Participants will identify opportunities to make small adjustments in their own practice (all stakeholders)
- Participants will be able to identify next steps in their jurisdiction or among pertinent stakeholders to advance one or more of the Cornerstones, i.e. develop visit host guidelines.

Improving Dependency Court Performance and Accelerating Permanency:

- Participants will learn about the assessment tools used in the screening and intake process to support structured decision-making.
- Participants will learn agency responsibilities with respect to provision of services, risk assessment, ICWA assessment, education assessment and family connections.
- Participants will learn the role of each system participant in ensuring that Indian children are identified in a timely manner to avoid disruptions in case plan and permanency.
- Participants will learn the language of assessment and structured decision making to support collaborative advocacy.
- Participants will add to their advocacy skills by learning important advocacy tools, including collaboration, to use in supporting permanency at the detention hearing.
- Participants will learn about evaluating whether an agency had reason to believe or know a child was an Indian child and met the requirements for emergency removal, and how to advocate for return of an Indian child to parental custody.
- Participants will be reminded of the importance of visitation for parents and children in the path toward permanency.
- Participants will learn how to best utilize mandated timelines to support permanency.
- Participants will add to their advocacy skills by learning important advocacy tools, including collaboration, to use in supporting permanency at the jurisdiction and disposition phases of the case.
- Participants will commit to the tools they will utilize to support permanency.

Strategies/Efforts/Advocacy in the First 90 Days: Ethical Considerations

- Participants will learn how to navigate ethical considerations as they advocate for permanency.

Population-Specific Permanency Issues

- Participants will learn about permanency challenges and opportunities specific to Indian children and families.
- Participants will learn about tools available for Native American families that will help lead to greater permanency.
- Participants will learn about permanency challenges specific to pregnant and parenting youth, older youth, non-minor dependents, and high needs youth.
- Participants will learn how to best advocate for permanency for pregnant and parenting youth, older youth, non-minor dependents, and high needs youth.

How Recent Policy Changes Effect Permanency

- Participants will learn how Continuum of Care Reform impacts permanency advocacy in California.
- Participants will learn about the potential impacts of the Family First Act on prevention services.

Identifying and Addressing Bias and How it Impacts Permanency Efforts

- Participants will learn to identify bias in their own practices and daily lives.
- Participants will learn how to address inherent bias and its impact on permanency for their clients.

The Pursuit of Permanency: The First 90 Days

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Presenter Bios

Sue Abrams has been working at Children's Law Center of California (CLC) since 2005. She began her career implementing an Equal Justice Works, where she sought to reduce the rate of dependent youth entering the juvenile justice system. Following her fellowship, Ms. Abrams worked as a staff attorney for several years until she transitioned from the courtroom to focus on macro level policy work. She now serves as CLC's Director of Policy and Training – developing and strategizing CLC's public policy priorities and legislative advocacy efforts at the local, state and national levels.

Michele Cortese has served as Executive Director of the Center for Family Representation in New York City since January 2016. She joined the organization as Deputy Director in 2002. Since joining CFR, Ms. Cortese has personally conducted more than 175 training sessions, and has presented or provided TA to practitioners from more than 15 states. She supervised the development of interdisciplinary models of representation for parents in CFR's child welfare cases. In addition to representing parents, Ms. Cortese served as an Attorney for the Child (law guardian) for over a dozen years and has also represented foster care agencies in trial and appellate proceedings. She worked at the NYC Legal Aid Society Juvenile Rights Practice, as the Director of Professional Development, where she coordinated and conducted training citywide for attorney, social work, paralegal and management staff. She also served as the Attorney-In-Charge of JRP's Manhattan trial office that represented 12,000 children annually in child protective, delinquency and PINS proceedings. Ms. Cortese has been a member of the faculty of the Practicing Law Institute, the New York State Judicial Institute and the Child Welfare League of America, and has written for the American Bar Association's Center on Children and the Law. In May of 2010, Ms. Cortese received the Kathryn A. McDonald award from the New York City Bar Association for Excellence in Service to the Family Courts. Ms. Cortese is a graduate of Columbia University School of Law and Colgate University.

The Hon. Marian Gaston was appointed to a judicial seat by Governor Jerry Brown in 2015. She currently serves as Assistant Supervising Judge for San Diego County's Juvenile Court. Prior to her appointment, Gaston served as a deputy public defender for 19 years including several years in the Juvenile Delinquency Division as an attorney and Assistant Supervisor. There, she collaborated with other county agencies and non-profits to create a restorative justice diversionary program, and, in partnership with local medical professions, she established a method for assessing detained youth for Fetal Alcohol Syndrome. She created a process that allowed defense attorneys to quickly access their clients' Child Welfare records so that each

child's needs could be identified and appropriate services provided. She also conducted a research study showing the high prevalence of trauma in the lives of incarcerated minors.

As a public defender, she litigated the full range of adult criminal cases including homicides and sexual offenses. While a member of the San Diego County Sex Offender Management Council, she worked with law enforcement and the prosecution to implement policies to prevent sexual assault.

She has taught classes on Contemporary Forms of Social Control at the University of California at San Diego; Sexual Deviance and Crime at Thomas Jefferson School of Law; and trial advocacy at both the University of the Pacific, McGeorge School of Law and California Western School of Law. She also teaches at trial advocacy programs throughout the country for the National Institute of Trial Advocacy.

Judge Gaston earned her Juris Doctor from the University of California at Berkeley, Boalt Hall, in 1996. For her undergradute degree she attended Emory University, graduating in 1993 with majors in political science and history.

Carolyn Griesemer is a graduate of University of North Carolina-Chapel Hill and St. Louis University School of Law. Carolyn began her legal career in 1999 as a judicial clerk in the Eastern District of Missouri Court of Appeals. She entered trial practice at the St. Louis County Prosecuting Attorney's Office as an Assistant Prosecutor in the Domestic Violence Unit. She moved to San Diego to work at the San Diego Family Justice Center in 2004 as a Deputy City Attorney's Office Domestic Violence and Child Abuse Unit. In 2009, Carolyn entered the field of juvenile dependency law as a senior staff attorney with Minors Counsel Office of Dependency Legal Group. From 2014-2016, Carolyn ran her own practice serving caregiver and relative clients in the juvenile and probate court systems. In 2016, Carolyn co-founded Children's Legal Services of San Diego and currently serves as the Executive Director.

Rebecca Ingerman is currently an attorney at Children's Law Center of California, Sacramento (CLC), where she represents juveniles in a variety of dependency hearings and staffs the specialized CSEC and non-minor dependent courtrooms. Prior to joining CLC, Rebecca worked at the Center for Family Representation (CFR) in New York for 10 years. Starting as a staff attorney and leaving as the Director of Government Affairs and Special Projects, Rebecca represented parents in dependency proceedings as part of an interdisciplinary team model. She also managed the development of new practice initiatives including into the areas of housing, criminal defense, and immigration. Rebecca frequently conducted training throughout New York State and nationally, and developed the first modules for CFR's community based presentations and child welfare briefings. Rebecca is a graduate of New York Law School and George Washington University and is a National Association of Counsel for Children Certified Child Welfare Law Specialist.

Alice Kennedy, MSW is the Assistant Director for the County of San Diego, Health and Human Services Agency, Child Welfare Services (CWS) and serves in the functional role of Director of

Child Welfare Practice. Ms. Kennedy has over 28 years of experience in the field of Social Work and graduated from San Diego State University; she holds a Master Degree in Social Work with an emphasis in Administration. Ms. Kennedy's breadth of experience includes Child Welfare regional operations and leadership of countywide programs including the County of San Diego Adoption Program, Foster Home Licensing (Resource Family Approval- RFA) and the Child Abuse Hotline. Formerly, Ms. Kennedy held roles as manager of Policy and Program Support, the Child Welfare Ombudsman, Civil Rights Liaison and Department of Justice Grievance Hearing Officer. She also previously served as Secretary of the San Diego Child Abuse Coordinating Council Child Fatality Review Team. Since 2008, Ms. Kennedy has worked as a consultant/trainer for the Public Child Welfare Training Academy (PCWTA now CWDS) and in 2015 she began consulting and training for Southern Area Consortium of Human Services (SACHS) Leaders in Action; specifically focusing on race and diversity in the workplace. Ms. Kennedy will be transitioning into retirement in June 2020 and will continue to consult and train in the areas of social work and child welfare.

David Meyers is an attorney who serves as Chief Operating Officer of Dependency Legal Services, a non-profit that holds contracts to represent parents and children in four Northern California Counties. In addition, David serves as part time staff to the UC Davis Northern Training Academy, and runs the Law Office of David M. Meyers.

He has been working in the field of juvenile dependency law since 1995. David served for many years as a Senior Attorney with the Center for Families Children and the Courts where his primary responsibility included curriculum development and training facilitation for attorneys and court professionals engaged in juvenile dependency practice. David is licensed to practice law in California, Arizona and the Pascua Yaqui Nation.

Prior to joining CFCC, David was an Assistant Attorney General in Tucson representing their Child Protective Services Division. He worked for Sacramento Child Advocates, and for many years served as the supervising Attorney of Parent Advocates of Sacramento where he was responsible for the representation of indigent parents in child welfare cases.

He is currently a member of the American Bar Association's Parent Attorney Representation Project Steering Committee, where he works to advance attorney representation issues throughout the country. David holds a Bachelor's in Journalism and Music from the University of Florida and his JD from the University of Arizona.

Sarah Pauter. After spending 17 years in the child welfare system before ultimately emancipating or "aging out," Sarah earned a Bachelor's in Social Work from San Diego State University and a Master's in Public Policy and Administration from Northwestern University. Sarah has dedicated her life and career to improving outcomes for vulnerable children and youth, even testifying before Congress and the California Senate on mental health treatment options for young people in foster care. Prior to launching Phenomenal Families, Sarah was the Program Director of the Family & Youth Roundtable, where she developed and enhanced public

child-serving systems through policy formulation and implementation. Her efforts were recognized by the San Diego County Child Abuse Prevention Coordinating Council which honored her with their annual STARS award. Sarah is a former FosterClub California Youth Ambassador, Foster Care Youth and Alumni Policy Council Member, and Co-Chair of the San Diego County Children's System of Care Council. Currently, she serves as a Trauma-Informed Systems Specialist with the Center on Child Welfare Trauma-Informed Policies, Programs, and Practices (TIPs Center), on the Polinksy Children's Center Advisory Board, and the San Diego County Juvenile Justice Commission. She is passionate about preventing intergenerational and cyclical system involvement and ensuring that all youth, regardless of past adversity, can create a strong and flourishing family of their own.

Caitlin E. Rae is Chief Deputy County Counsel with the Office of County Counsel-Juvenile Dependency Division. Ms. Rae has been working as a Deputy County Counsel since 2003. Along with a juris doctor, Ms. Rae holds a Master's degree in Social Work. As a Senior Deputy County Counsel, Ms. Rae has worked in the trial courts, on the appellate level, and with the Health and Human Services Agency on various policies and programs. She has argued at the California Supreme Court and Ninth Circuit. She is the author of "Compendium and Treatise on Juvenile Dependency" used exclusively by the Offices of County Counsel across California. Additionally, Ms. Rae has handled civil litigation cases involving child welfare and social worker defendants.

Adam Reed is the managing director of Dependency Legal Services San Diego. Dependency Legal Services San Diego began providing representation to families in the San Diego County Superior Court in October of 2016. Dependency Legal Services San Diego is the counterpart to Los Angeles Dependency Lawyers, which has provided parent representation in Los Angeles County since 2007. Prior to organizing and opening their San Diego office, Mr. Reed was a supervising attorney with Los Angeles Dependency Lawyers for approximately ten years. Prior to that he personally represented parents and children in the Los Angeles County Dependency Court. Mr. Reed has a combined total of 23 years of experience in Child Welfare. Mr. Reed has worked on legislation and served on various committees and boards with the goal of implementing systemic improvements in Child Welfare statewide on topics such as disproportionality, CPS reform, and the promotion of family reunification.

Christina Riehl serves as a Deputy Attorney General for the California Department of Justice, Bureau of Children's Justice where she protects the civil rights of California's children through investigatory work, litigation, and amicus support. Before joining the California Department of Justice, Christina served as Senior Staff Attorney for the University of San Diego School of Law's Children's Advocacy Institute (CAI), where she worked on CAI's impact litigation, regulatory and legislative advocacy, public education programs, and directed USD School of Law students engaged in CAI's Policy and Dependency clinical programs.

Jennifer Rodriguez is Executive Director of the Youth Law Center (YLC), advocating to transform foster care and juvenile justice systems across the country so youth can thrive. Jennifer spent many years of her childhood in foster care and juvenile justice facilities, and has spent most of her life advocating to ensure justice, compassion and opportunity for system involved youth. Jennifer's advocacy has resulted in significant national policy, practice and culture changes around the fundamental needs of youth and formally including system involved youth as part of all policy processes. Jennifer's leadership at YLC has a special focus on ensuring youth in both child welfare and juvenile justice receive the parenting necessary to heal and thrive and live in conditions that meet their developmental and emotional needs. Before coming to the Youth Law Center in 2007, Jennifer served for eight years at the California Youth Connection, a nationally-recognized foster youth advocacy organization, leading efforts resulting in major legislative and policy accomplishments for California probation and foster youth, including stronger educational rights, higher education funding, increased funding for transition services, and promotion of normalcy and permanence for teenagers. Jennifer received her G.E.D. from San Jose Job Corps, her B.A. from UC Davis, and her J.D. from UC Davis law school and is mother to two beautiful children.

Antonia "Toni" Torres, MSW - Kumeyaay, San Pasqual Band of Diegueno Mission Indians of California, worked for a consortium of eight San Diego County tribes as an Indian child welfare advocate and program supervisor at Indian Health Council, Inc from 1995-2000. She began working for the County of San Diego, Child Welfare Services (CWS) in 2002 as a protective services social worker after earning her MSW from San Diego State University. In 2005, she worked as a Child Welfare Policy Analyst and assisted in the development and implementation of the County's System Improvement Plan (SIP) that included strategies aimed at reducing the number of Native American children in the child welfare system and improving the outcomes for Native foster children. She was the supervisor of the County's Indian Specialty Unit from 2010 thru 2016, established in 1992 in response to the growing concern by the tribal community that their children were being "lost" in the system. She is currently a manager over Policy and Program support unit that develops of oversees various policy implementation, protocols and training. She is a member of 7th Generation, a workgroup of various child welfare and community partners working together collaboratively to improve child welfare services for Native children and their families. She is also a trainer for the Academy of Professional Excellence-Cultural Responsiveness Academy.

Achieving Timely Permanency in Child Protection Courts: The Importance of Frontloading the Court Process

BY JUDGE LEONARD P. EDWARDS

ABSTRACT

Timely permanency for foster children has been an unrealized goal in our nation's juvenile courts. The goal of timely permanency is a legal mandate, it serves the needs of families, it is consistent with evolving case management standards, it is required by the Canons of Judicial Ethics, and it serves the best interests of children. Judges must take a leadership role within their courts to reduce delays in child protection courts. Through a series of changes including legislation, court rules, case management techniques, and judicial control, timely permanency for foster children can be achieved.

INTRODUCTION

Since passage of the original federal legislation authorizing intense court oversight of the foster care system in 1980, many courts have been unable to meet the timeframes established by Congress and state legislatures. As a result, many foster children and their parents have waited for resolution of their cases and for permanency for inordinate periods of time.

This paper will suggest ways to attain the elusive goal of timely permanency for foster children. First, it will summarize the legal framework established by federal and state legislatures. Second, it will describe the phases of a child protection case as it proceeds through the juvenile dependency court,[1] including both state statutory guidelines and the federal time frame. Third, it will address the importance of timely permanency for children removed from their homes by the state. Fourth, it will discuss the history of case management in child protection cases, focusing particularly on the ethical canons that address judicial responsibilities relating to timeliness. Fifth, it will discuss the Children and Family Service Review process and its relevance to court oversight of foster children. Sixth, the paper will discuss data indicating that juvenile dependency courts across the country are failing to meet statutory time limits particularly at the beginning of the court process. Seventh, it will make suggestions to help judges, legislatures, and court systems achieve timely permanency for children. Finally, the paper will discuss the changing role of the juvenile court judge and how judges must become leaders if foster children are going to achieve timely permanency. Potential delays occur at every stage of a child protection case, but this paper will focus upon the most important stages of these proceedings, the front end of child protection cases.

The paper concludes that the nation's juvenile dependency courts have failed to achieve timely permanency for abused and neglected children. With a few notable exceptions, most juvenile dependency courts do not take early and aggressive steps to address the critical needs of children and their families. Sadly, children's cases languish at every step of the dependency court process. This paper will focus upon the crucial front end of the legal process from the shelter care hearing to the completion of adjudication and disposition. The paper will highlight reasons why delays are detrimental

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Judge Leonard P. Edwards (ret.) is a Judge-in-Residence with the California Administrative Office of the Courts. A past president of the National Council of Juvenile and Family Court Judges, he received the William H. Rehnquist Award for Judicial Excellence in 2004.

to children and families and will propose recommendations for improving practice while following both the spirit and letter of the law.

The paper will also explain why it is important to focus upon the early stages of child protection proceedings. It answers questions often posed about troubled families—Why is it not preferable to allow these cases all the time necessary to resolve the complex legal and social issues before the court? The paper will offer legal, developmental, administrative, ethical, and practical answers. It will explain that early and intensive attention by the juvenile court is the legal standard for both the federal and many state courts, that the developmental needs of children require immediate attention to their care and custody, that court administrative best practices increasingly stress court control of caseflow management, that judicial ethics require courts to dispose of cases diligently, and, finally, that early, intensive efforts by the juvenile court will result in better outcomes for children and their families.

I. THE LAW REGARDING TIMELY PERMANENCY

The Adoption Assistance and Child Welfare Act of 1980 (the 1980 Act)[2] was the first federal law authorizing comprehensive judicial oversight of child protection cases. Enacted in response to widespread criticisms of the country's child welfare system, this federal legislation addressed the need to protect children and the policy of preserving families.[3] The 1980 Act attempted to balance child protection with the need to give families fair opportunity to regain custody of their children if removed from parental care. It recognized a child's need to have a permanent home within a reasonable time. Congress designated the nation's juvenile courts to oversee actions taken by social service agencies on behalf of abused and neglected children by intensifying both the frequency and the nature of judicial review. Neither courts nor social welfare agencies welcomed this new arrangement, the former seeing oversight as not being legal work and the latter reluctant to have the court system oversee their actions.[4]

After 1980, legislation in all 50 states implemented some or all of the federal law. The state laws ran parallel to the federal law: Provide child safety, give parents an opportunity to have their children returned to them, and achieve timely permanency for children who are removed from parental care.[5] The 1980 Act originally defined timely permanency as a permanent home within 12 months, with a possible extension of 6 months.[6]

In 1997, Congress modified the earlier Act. The lawmakers were concerned that state courts were over-emphasizing parents reuniting with children, no matter how long it took.[7] This resulted in children not receiving timely permanency.[8] Congress took significant action, passing the Adoption and Safe Families Act (ASFA) in 1997. ASFA modified the 1980 Act in important ways, stressing that timely permanency must follow federal timelines and emphasizing adoption as the preferred permanent plan when return to the parents could not be accomplished in a timely fashion. ASFA reduced the timelines for permanency to one year, and added new provisions addressing the need for permanency for foster children who had been under the jurisdiction of the juvenile court for 15 of the previous 22 months.[9] As with the 1980 Act, all state legislatures passed legislation conforming to ASFA.[10]

The federal government originally decided to enact legislation regarding foster children for several reasons. Congress found that too often, states unnecessarily removed abused and neglected children from parental care and devoted insufficient resources to preserving and reuniting families. Too often, children not able to return to their parents "drifted" in foster care and never found a permanent home.[11] Congress concluded that children need permanent homes, preferably with their own parents, but with another permanent family if return to a parent is not possible within a reasonable time. Under the 1980 Act, a permanent placement could be with a parent, in an adoptive home (after termination of parental rights), with a legal guardian, or with a relative. Congress' clear intent was to end foster care drift and establish a system that ensured that foster children would be provided permanent homes in a more timely fashion.[12] Unfortunately, the numbers of children in foster care between passage of the 1980 Act and 2007 have grown from approximately 250,000 to approximately 500,000.[13] The well-being and plight of foster children continues to be a national issue.[14] To clarify why more children than ever await permanency, one must examine the path a child protection case takes through the court system.

II. THE LEGAL STAGES OF CHILD PROTECTION CASES

A. State Laws

To understand the legal environment in which timely permanency must occur, this section describes the legal stages of a child protection case, including a summary of the issues the court may have to decide at each stage. Child protection cases usually begin with a child abuse or neglect report from a hospital, a school, or other community source. After receipt of a report, the local child protection services agency must investigate to determine whether state intervention is necessary.[15] In the most serious cases, CPS[16] may remove the child from parental care and initiate legal proceedings in the juvenile dependency court.[17] The filing of legal papers (petitions) starts the legal process.

Many state legislatures have designed an expedited process for child protection cases. After removal, CPS is mandated to file the petition usually within a day or two of removal.[18] The first court hearing (the shelter care hearing) most often is mandated to occur within a day or two of the removal.[19] At that hearing the court must, among other things, appoint counsel for the parents; appoint counsel and/or a guardian *ad litem* for the child; serve the parents with a copy of the petition; explain the proceedings to the parties including the rights that the parents have in a child protection case; inquire about any Native American heritage in the family; determine paternity; determine whether CPS has provided reasonable efforts to prevent removal of the child; determine whether the state has demonstrated probable cause that the alleged abuse or neglect occurred; decide whether the child should be removed from one or both parents and, if so, where the child should be placed; and, finally, decide what contact the parents and other family members may have with the child pending further hearings. With so many important issues to address, it is easy to understand why the shelter care hearing is considered critical in a child protection case.[20] In fact, until these issues are resolved, further movement toward resolution of contested issues may not be possible.

Mandating that the shelter care hearing occurs within a day or two from the removal of the child makes it clear that the legislature treats removal as an emergency.[21] The statutory scheme acknowledges that removal is an extremely serious form of state intervention that demands immediate judicial oversight. The short time frame also places a great deal of pressure on CPS to locate and give notice to the parents and other family members, to prepare and file the petition, and to collect and prepare the evidence and supporting documentation that will be required at a shelter care hearing. Some of these tasks, in particular locating parents, can be challenging. CPS frequently determines that one or both parents are in custody or are missing, and often the identity of the father is unknown.

The next stage in the legal process is the adjudicatory or fact-finding hearing when a judge determines whether the facts alleged in the petition are true. This is the trial stage of child protection proceedings when the parents and child may demand that evidence be produced to prove that the allegations are true. State laws differ greatly on when the adjudicatory hearing must take place, with some states mandating that the hearing take place within three weeks (15 court days) of the shelter care hearing,[22] others permitting the hearing to take place 90 days or more after the shelter care hearing,[23] while still others have no statutory time limits at all.[24] At an adjudicatory hearing, the parents have a right to see, hear, and question the witnesses who have knowledge of the facts of the case, to present their own evidence, and to testify. In most cases there is no trial as the parents admit to the facts contained in the petition or some modified version of these facts.[25]

If the court finds the facts alleged in the petition to be true,[26] the next step is the dispositional hearing. Here, the court has the authority to decide what action, if any, to take on behalf of the child. The court's options range from taking no action and returning the child to the parents' care, to placing the child in state care, and removing her from parental care. State laws vary on the timing of the dispositional hearing. Some mandate that it must take place within a few days after the conclusion of the adjudicatory hearing, and others permit it to be held as long as 30 days from the adjudication.[27] In practice, the time range is great. Dispositional hearings can take place immediately after the adjudicatory hearing or weeks or even months thereafter.

In many cases petitioned in the juvenile dependency court, the court finds that some version of the facts in the petition are true, places the child under the court's protection, removes the child from parental care and control, places the child in the home of a relative or in foster care, and orders the parents to participate in services to address the issues that brought the child to the attention of the authorities.[28] The court must then monitor the progress of

the case until the child is placed in a permanent home. A permanent home can be a reunification with one or both parents, adoption after termination of parental rights, a legal guardianship, or placement with a relative. The child may be placed in a foster home, a group home, or a private institutional placement, but these options are not considered to be permanent homes under the law.[29]

Legislation and court practice regarding the monitoring of children in out-of-home care varies greatly from state to state. In some states, the court reviews child protection cases frequently after the dispositional hearing. Court hearings may take place within 30 or 45 days after the dispositional hearing and every few months thereafter. In other states, the court will hold a review at 6 and 12 months.[30] Still other states rely on Foster Care Review Boards (FCRBs) to monitor the child's case.[31] FCRBs are federally authorized and statutorily created panels of trained citizens who receive progress reports from the agency and hold administrative hearings to:

> "...determine the continuing necessity for and appropriateness of the placement, the extent of compliance with the case plan, and the extent of progress which has been made toward alleviating or mitigating the causes necessitating placement in foster care, and to project a likely date by which the child may be returned to the home or placed for adoption or legal custody.[32]

The purposes of these reviews, whether a court hearing or an FCRB hearing, are to check on the child's well-being and the status of her placement; to review the progress that each parent is making with regard to the plan created by CPS and approved by the juvenile dependency court; to ensure that CPS is providing timely and appropriate services to each parent and to the child; and to check to see that all parties are carrying out other court orders including visitation.

A sense of urgency should prevail throughout these proceedings. A child's future is at stake—parental rights may be lost, and the time is short—one year and possibly only six months.[33]

As the name suggests, the hearing that determines the child's permanent placement is the permanency planning hearing. State legislatures have different statutory schemes for when these hearings must take place, but usually they are scheduled 12 or 15 months after the shelter care hearing. In some statutory schemes the permanency planning hearing can occur as late as 18 months from the shelter care hearing. At the permanency planning hearing the court must adopt a permanent plan for the child. As indicated above, the plan can be return to a parent, adoption preceded by termination of parental rights, legal guardianship,[34] or placement with a relative. In practice, the court places many children into foster, group, or institutional care.[35]

Depending on the outcome of the permanency planning hearing, the court will set the next legal hearing. If the court has returned the child to a parent, the next hearing may be to review the progress of the parent and child. Or the court may dismiss the case, believing that court and agency supervision is no longer necessary. If the court has ordered adoption as the permanent plan, the court will order commencement of legal proceedings to terminate parental rights so that the child is freed for adoption.[36] The legal process for guardianship is similar to that for adoption. If the court has ordered that the child be placed permanently with a relative, the court may dismiss the case or continue to review the child's status in that placement depending on state law.[37] If the child is placed in foster or group home care, in all states the court or FCRB must monitor the child's progress until the child is placed in a permanent home or emancipated. The court must hold additional permanency planning hearings for any child in foster or group home approximately every 15 or 18 months.[38]

There may be an additional stage in a child protection case, an appeal or extraordinary writ.[39] Each of the parties may challenge trial court rulings at any stage of the case. Additionally, most states confer a right to have appellate counsel represent an indigent party, usually a parent or child.[40]

In summary, a child protection case starts with the filing of a petition on behalf of an allegedly abused or neglected child. In most states, the court holds a shelter care hearing within a few days, an adjudication hearing within a few weeks or months, and a dispositional hearing simultaneously with or a few weeks after the jurisdictional hearing. Review hearings are held thereafter, either by the court or by an FCRB, and a permanency planning hearing is held at 12, 15, or possibly 18 months. Thereafter, legal action is taken to complete the permanent plan, unless the child is placed in foster or group home care, in which case the court must continue

to monitor the child's case until a permanent plan is adopted or the child is emancipated. Final decisions may depend on the results of appellate or extraordinary writ action if taken by one or more of the parties.

B. The Federal Time Frame for Child Protection Cases

Complicating the achievement of timely permanency is the fact that federal law has established separate timelines for some stages of the child protection legal process, and that these timelines differ from those adopted by most states.[41] Under federal law, a child is considered to have entered foster care on the earlier of two dates: (1) the date of the first judicial finding that the child has been subjected to child abuse or neglect (completion of the adjudicatory hearing); or (2) 60 days after the date on which the child is removed from the home.[42] For courts that complete the adjudication hearing within 60 days of removal, the permanency clock starts at the completion of the hearing, but for the states that complete their adjudication hearings after 60 days, the federal permanency clock has already started running. Future review hearings, including the permanency planning hearing, must be scheduled from the federally established date that the child entered foster care.[43]

Delayed determination of the jurisdictional facts can profoundly affect the entire child protection process. Parents may still be contesting the factual basis of the state intervention. They may be resistant to participation in services until the facts have been established. Social workers may be continuing their investigations in preparation for an anticipated trial or other contested proceeding. Attorneys may be in a trial mode rather than steering their clients toward services. Most importantly, the child is waiting to learn where she will be permanently placed.

III. THE IMPORTANCE OF TIMELY PERMANENCY

> When hearings are delayed, children and families suffer. When hearings are delayed, the courts are not in compliance with the law. But with caseloads averaging 1,000 for judges and 270 for attorneys, delays are far too common.[44]

Timeliness is important in child protection cases because children have a different sense of time than adults.[45] A week or a month is only a small percentage of an adult's life, but that same time is a large part, even the majority, of a child's life. Additionally, as we know from our everyday experience, children can't wait. They cannot wait for Christmas, for their birthday, for anything that is important. Since children have not learned to anticipate the future, they cannot manage delay.[46] An infant or toddler cannot "stretch his waiting more than a few days without feeling overwhelmed by the absence of parents," while for most children under five years of age, the absence of parents for more than two months is "equally beyond comprehension."[47] Thus, child development experts argue that "procedural and substantive decisions should never exceed the time the child-to-be-placed can endure loss and uncertainty."[48]

It is clear from the legislative history and statutory schemes that the federal and some state legislatures understood some of these child development principles when they wrote the child protection statutes. Language from these statutes emphasizes these considerations. In the federal law, for example, 42 U.S.C. section 675 (5)(f) states that the case must move forward expeditiously.

> A child shall be considered to have entered foster care on the earlier of
>
> (i) the date of the first judicial finding that the child has been subjected to abuse or neglect; or
>
> (ii) the date that is 60 days after the date on which the child is removed from the home.[49]

Some state laws also emphasize the importance of timely judicial hearings. For example, the Illinois legislature enacted the following language in that state's child protection statute:

> Purpose and Policy—The legislature recognizes that serious delay in the adjudication of abuse, neglect, or dependency cases can cause grave harm to the minor and the family and that it frustrates the health, safety and best interests of the minor and the effort to establish perm nent homes for children in need.[50]

Most states have time standards for the completion of adjudication at 60 or 90 days from the filing of the petition,[51] but some states have shorter time standards. Nevada,[52] Idaho,[53] Arkansas,[54] Virginia,[55] Ohio,[56] New Hampshire,[57] and Maryland[58] legislatures set the adjudi-

catory hearing at 30 days, while California schedules the hearing at 15 court days for children who were removed from parental care at the shelter care hearing, and Texas statutes declare that the "adversary hearing" must take place within 14 days.[59] Pennsylvania law requires the adjudicatory hearing to take place no later than 10 days after the petition is filed.[60] Moreover, in Pennsylvania, if the hearing is not held within the 10 days, the child must be returned to the parents.[61] The California legislature enacted laws to hold courts to the strict timelines when it wrote a code section entitled "Continuance of Hearing Under This Chapter"[62] where the legislature stresses the importance of reaching timely decisions regarding minors removed temporarily from their homes.

> ...that no continuance shall be granted that is contrary to the interest of the minor. In considering the minor's interests, the court shall give substantial weight to a minor's need for prompt resolution of his or her custody status, the need to provide children with stable environments, and the damage to a minor of prolonged temporary placements.[63]

These shorter time standards are consistent with statements in the nation's most important child abuse and neglect policy document, NCJFCJ's *Resource Guidelines*.[64] "Because of the traumatic effect of removal of a child from the home it is essential that the adjudication hearing take place as soon as it is practical."[65]

Unfortunately, it is necessary to point out that not all states have created time standards for juvenile dependency cases,[66] and some have statutory timelines beyond 90 days.[67] Moreover, as will be discussed in Section VI, *infra,* courts in many states with time standards have been unable to meet those standards.

Early and intensive attention to child protection cases will also benefit parents. At the outset of child protection cases, parents are typically distraught over removal of their child and are sometimes amenable at least to consider addressing the issues that led to the removal. They must be given an early opportunity to understand the gravity of the legal situation they are facing, must be given access to competent counsel to advise them of their rights, and must hear from a judge about the urgency of the legal proceedings. Months later, the emotional ties to their children may not be as immediate, parental frustration with the process may have increased, or the problems with day-to-day living may have replaced their feelings of urgency regarding their children.

> I think we can all agree that the longer it takes to engage parents, the less likely family reunification is a viable goal and plausible outcome.[68]

IV. THE COURTS, DELAY, AND CASE MANAGEMENT

A. Delay in the Legal System

> One of the most profound and intractable problems in child welfare litigation is that of delay.[69]

Delay is endemic in the legal system. The law is a deliberate process, governed by statutes, rules, traditions, and the legal culture. Legal issues can be complex, and the law expects attorneys to prepare for and present the evidence and arguments for the party they represent. The formal nature of legal proceedings and the numerous parties and their attorneys often means that the case is not ready to proceed. Someone may be ill, someone may be delayed or involved in another legal proceeding, someone may not be prepared to proceed, or someone may not want to proceed and may use tactics to delay the legal process. In all of these situations a party may ask for a continuance of the proceedings. A continuance is a legal order that sets the legal proceedings over or adjourns the case to a different date. It is a primary reason for delay in the court process.

In child protection proceedings, the likelihood of a continuance is greater than in most legal proceedings. With four or more parties (the parents, the child, and the agency), and complex legal and social issues, often one party will ask for a continuance.[70] A continuance by definition delays the timely advancement of the case. Furthermore, it makes the hearings more stressful for those coming to court. Issues concerning the care, custody, and control of children are highly charged, and dealing with delays takes its toll emotionally.

One study indicated that the five most frequent reasons for a continuance request are a late or missing report by the social worker, an incarcerated parent who has not been transported, the lack of notice or late notice to a parent or legal caretaker, a stipulation or agreement among the parties, and an unavailable attorney.[71] Often new information arrives just as child

protection proceedings are scheduled to take place, and one or more of the parties will ask for a continuance to read the new report and prepare a response to the statements and information contained in it. In few other types of cases are there so many factors that can disrupt and delay the timely movement of cases.

B. Caseflow Management, Ethics, and the Courts

1. Caseflow Management

Only in the past few decades has the judicial branch addressed issues relating to caseflow management and delay reduction.[72] Caseflow management concerns the scheduling of cases within the court system, the allocation of judicial resources to cases, and the procedures used by the court to dispose of cases.[73] In spite of the adage "justice delayed is justice denied," the common law view was that trial judges should have no interest in the pace of civil litigation; instead the parties should control the progress of the litigation.[74] Roscoe Pound stated this passive judicial concept in 1906:

> [I]n America we take it as a matter of course that a judge should be a mere umpire, to pass upon objections and hold counsel to the rules of the game, and that the parties should fight out their own game in their own way without judicial interference. We resent such interference as unfair, even when in the interests of justice.[75]

In the past 30 years, leaders in the judicial branch have concluded that the courts need to be actively involved in the management of all cases that come before them.[76] Although it was once considered no part of the judicial duties of the "dispassionate magistrate," caseflow management has now become an accepted aspect of court administration.[77] In the 1980s, the National Center for State Courts and the American Bar Association wrote a number of case processing time standards.[78] Central to these standards is the notion that delay reduction is a goal for court systems, and that "the leading cause of delay has been the failure of judges to maintain control over the pace of litigation."[79] Thus, a new role for judges has evolved: To become active administrators who deal with the expanding caseloads facing the modern judiciary.[80]

> Eradicating delay depends on adherence to this one axiom: The court must take the initiative to eliminate the causes of delay.[81]

Underlying the judicial concern for case management are several principles:

First, judges have taken control of the movement of cases through the court system. This commitment includes the concomitant growth of the role of the court administrator and other court staff who focus on case management, calendaring, and data collection.

Second, courts and legislatures have developed time standards for the completion of different types of cases.

Third, court systems have developed administrative rules describing the ways in which cases will be managed within the court system including the filing of legal actions, the timing of appearances, trial dates, continuances, and sanctions for those who do not follow the rules.

Fourth, courts are committed to monitoring the cases under court jurisdiction. This has led to the development of information and case management systems that are able to inform the court about the numbers of cases within the court system, the time that each case has been in the system, and the status of each case.

Fifth, courts have begun to experiment with different court structures in order to better manage caseloads. For example, courts have used individual calendaring, unified family courts, specialized court divisions, and other structures in an effort to manage cases more effectively.

When first created, case processing time standards in most states focused upon the dockets that took most of the court's time, criminal and general civil matters. Smaller civil dockets, such as matters relating to divorce and juvenile court, were sometimes added, but often as an afterthought. Matrimonial and juvenile cases had to do with "family matters" and did not receive much attention.

It took juvenile court experts approximately 10 years to weigh in with their own time standard policy recommendations for juvenile dependency cases. The National Council of Juvenile and Family Court Judges first published time standard recommendations with the *Child Dependency Benchbook*[82] in 1994 followed

by the *Resource Guidelines*[83] in 1996.[84] These publications stressed the importance of time standards in juvenile dependency cases, noting that these procedures will "bring cases to disposition within a short time period with relatively few court appearances."[85]

Some states responded to the recommended standards by adopting administrative or judicial rules for the completion of different types of cases. Such rules are binding on trial judges.[86] On the whole, however, states were slow to adopt time standards for juvenile dependency cases.

Caseflow management of juvenile dependency cases presents complex issues far beyond those of typical civil cases. Disposition in typical civil and criminal cases refers to the conclusion of the case—the judgment in a typical civil case or the sentencing in a criminal matter. Disposition in a juvenile dependency case marks the completion of one of the earlier stages in the life of a case and the beginning of a process to achieve a permanent home for the child, whether permanency occurs through rehabilitation of the parent and return of the child or by the court establishing an out-of-home permanent plan such as adoption, guardianship, or other permanent placement. Moreover, as we saw in Section III, the purpose of juvenile dependency proceedings—to address the needs of abused and neglected children—is child focused, unlike mainstream civil cases.

2. Ethical Considerations Regarding Delay Reduction

Paralleling the development of caseflow management rules and protocols have been the Canons of Judicial Conduct, and, in particular, Canon 3,[87] which states "[a] judge shall perform the duties of judicial office impartially and *diligently*." (emphasis added). The sub-parts of Canon 3 instruct judges to "dispose promptly of the business of the court,"[88] "promptly dispose of their court's business,"[89] and ensure the diligence of other court officials subject to the judge's direction and control.[90] Judges, then, have both administrative and/or legislative rules regarding caseflow management as well as ethical imperatives regarding their administrative oversight duties.

Several states refer to the Canons of Judicial Conduct regarding the prompt resolution of cases. West Virginia Rule of Court 16.01 refers both to its state constitutional mandate that "justice shall be administered without sale, denial or delay" and Canon 3-(8) of the Code of Judicial Conduct, "[a] judge shall dispose of all judicial matters promptly, efficiently, and fairly," and mandates that the state courts adhere to the time standards declared by the West Virginia State Court Rules.[91] The Utah Judicial Conduct Commission and the Utah Supreme Court relied upon Code of Judicial Conduct Canon 2A in finding that a judge failed to hold child welfare adjudication hearings in a timely manner and holding cases under advisement for more than two months thus bringing "judicial office into disrepute."[92]

V. THE CHILDREN AND FAMILY SERVICE REVIEWS AND PROGRAM IMPROVEMENT PLANS

Still another reason to be concerned with timely permanency and other issues relating to the outcomes for children in the child protection system is the federal effort to monitor progress by each state welfare agency to achieve the goals of safety, permanence, and well-being for all children in the child protection system.[93] The Department of Health and Human Services (HHS) Administration for Children and Families (ACF), through its Children's Bureau, has primary responsibility for administering laws passed by Congress relating to child welfare and, in particular, for oversight of federal funding to states for child welfare services under Titles IV-B and IV-E. ACF has identified five basic principles guiding child welfare services in the states:

- The child's safety is the paramount concern.
- Foster care is a temporary setting, not a place for children to grow up.
- Permanency planning efforts for children begin as soon as a child enters care and are expedited by providing services to families.
- The child welfare system must focus on results and accountability.
- Innovative approaches are necessary to achieve the goals of safety, permanency, and well-being.[94]

ACF intends to determine whether these goals are being achieved through a process known as the Children and Family Service Reviews (CFSRs) and Program Improvement Plans (PIPs). The CFSRs examine state child welfare outcomes on a variety of scales intended

to determine the how children under the supervision of state child welfare agencies are faring. Beginning in 2001, the CFSR process has examined outcomes for children in every state using national data measures focusing on safety, well-being, and permanency.[95] Each state responded to its CFSR results by writing a Program Improvement Plan designed to address the weaknesses in its child welfare system. Now, in 2007, a second round of CFSRs is beginning. In the second round the hope is that each state has made progress through the implementation of its PIP. Penalties may be assessed for failures to meet the CFSR minimum standards,[96] but the process will be ongoing with the Children's Bureau continuing to monitor deficiencies in agency performance in future years.

One challenge for state agencies involves measures that are beyond their control. For example, timeliness of reunifications, timeliness of adoptions, and timely permanency are all measures that depend, in part, on court performance. The agency may perform well in accessing services, locating placements, and providing support for children and families, but the "timeliness" outcome may not meet federal standards and the state agency may stand to be penalized if the child's case is delayed in the court process.

It is has been somewhat ironic that in most of the literature describing the CFSR and PIP process, courts have not been mentioned.[97] With significant legislative responsibilities overseeing the child protection system and a court process each child and family experiences, courts should have been an integral part of CFSRs from the beginning. Juvenile judges have been involved in the CFSR process in some states, but judges generally have not participated in the CFSRs.[98] One reason has been a lack of understanding about how the executive and judicial branches are intertwined in the CFSR process. Many judges wonder why the judicial branch should be involved with executive branch activities. There are several answers. This paper has explained that the goal of achieving timely permanency for children is a legal mandate, that it serves needs of families, that it is consistent with case management standards, that it is required by the Canons of Judicial Ethics, and, above all, that it serves the best interests of children. Additionally, states face economic penalties for failure to achieve timely permanency goals. If courts do not follow the law and meet federal timeliness standards, the federal government may sanction the state's executive branch. Thus, efficiently operated juvenile courts are necessary for child welfare agencies to succeed in their PIPs. As one commentator said, "[i]t makes no sense to penalize the child welfare system for what courts can or can't accomplish with no funding.[99] Joan Ohl, Commissioner of the Administration for Children, Youth and Families,[100] has taken steps to engage the courts in the CFSR/PIP process.[101] The results of these efforts will be seen in the years to come.

VI. DELAYS IN THE NATION'S JUVENILE DEPENDENCY COURTS

Data nationwide indicate that many juvenile dependency courts are failing to achieve timely permanency for foster children.[102]

> One of the main reasons that permanency is not being achieved timely is that often these hearings are simply not being held within twelve months.[103]

Even though some states have rigorous statutory time frames for completing the adjudication, these statutes do not appear to be enough. It seems that either the local legal culture or overwhelming caseloads result in delayed proceedings in most courts. Legal proceedings are delayed at each stage of the case leading to longer times before children reach a permanent home. Many state and local court systems have delays built into the statutory framework that governs these cases, and other courts do not move these cases along expeditiously.

Some of the most significant delays occur between the shelter care hearing and the adjudicatory hearing.[104] Much of the delay occurs because state statutes authorize the holding of the adjudicatory hearing months after the shelter care hearing,[105] while some states have no statutory guidelines.[106] In some states, regardless of the statutory mandates, the court views the statute as a goal, not as a mandate.[107]

Close examination of some state court operations reveals that timeliness varies greatly from district to district or county to county even within the same state. For example, a California study found that courts vary widely in the timeliness of their adjudicatory hearings. In the three juvenile courts examined in one study the percentage of adjudicatory hearings completed

within statutory timelines varied from 26% to 46% to 83%.[108] The statutory time limit for completing an adjudicatory hearing in California is 15 court days when a child has been removed from home.[109] In the state of Washington, a study revealed that juvenile courts were averaging from 35 to 91 days for completion of the adjudicatory portion of the case.[110] The statutory time limit for completing the adjudicatory hearing in Washington is 75 days as of 2007.[111]

It should come as no surprise that juvenile courts in the same state operating under the same statutory framework have widely different results when measuring the timeliness of hearings and other issues relating to how long foster children remain in the legal system. The administration of the law determines how quickly hearings will take place. The legal culture determines whether children's cases are treated as emergencies or as just another sub-category of civil cases. From observations of many juvenile courts across the United States, it is clear that the wide variations in timeliness are determined by the leadership of the judge, the resources available to the court, the importance placed on children's cases by the judge and court administration, and similar factors.

Failure to resolve the adjudicatory issues in a timely fashion is a major barrier to timely permanency. Because the adjudicatory hearing addresses whether the state has proven facts that would authorize intervention in the family, the longer the resolution of those factual issues takes, the longer a child remains out of parental custody with no legal determination of the truth of those facts. The parents sometimes disagree with the allegations in the petition and wish to contest the matter. Psychologically, they are "fighting the case" rather than engaging in services that might ameliorate the issues that brought their child to the attention of CPS. Until the issues raised in the petition are resolved, they will not be ready to engage in rehabilitative services and cooperate with CPS. Furthermore, the longer the child remains in out-of-home care, the more likely that the parents will give up and assume that the "all-powerful" state has taken their child and they can do nothing about it.

All of this supports the conclusion that the adjudicatory hearing should take place within a 60-day period at the outside, and preferably within 30 days.[112] That would meet the federal standard and would put the case in a timeframe that would give the parents a year to address the problems that brought their child to the attention of CPS. It would mean that the permanency planning hearing would take place after a period of efforts to reunify the child and the parents, but most importantly it would indicate that the court system pays close attention to these cases, recognizes that they are of great importance, and ensures that there are early and intensive efforts to address the child's situation.

VII. MAKING CHANGES IN THE COURT SYSTEM TO ACHIEVE TIMELY PERMANENCY

Timely permanency is an achievable goal. The federal and some state statutory schemes may be challenging, but they can be met, as those states with short timelines to adjudication have demonstrated. Moreover, even states without statutory or court guidelines can move these cases in a much more timely fashion. However, change is not as easy as it may sound. After all, many courts are out of compliance with their own statutes in case after case. No judge is comfortable participating in a court system where hearings do not comply with statutes. Judges take seriously the command of Canon 3(A)(5) that the "judge shall dispose of all judicial matters promptly, efficiently and fairly."[113] It is the complexities of child protection cases combined with overcrowded calendars and the inherent delays in the legal system that lead ultimately to development of a local legal culture that accepts delays.

Modifying the court system takes considerable effort by the court and the professionals involved in child protection cases. It may also take the assistance of the state's highest court and, on occasion, the state legislature. Jurisdictions that have been able to change local practice to hold hearings early in the court process offer examples of how change can be accomplished.

Achieving timely permanency starts at the beginning of the case. The work accomplished in the first few hours and days will set the pace and tone for all that follows.[114] Thereafter, the principles of sound caseflow management will enable a court to adhere to the appropriate timelines and achieve timely permanency.[115] The following suggestions and recommendations offer ways for judges and other court leaders to make the changes necessary to achieve timely permanency for foster children.

A. Time Standards and Early Resolution

1. Legislators or court leaders must establish time standards for moving child protection cases through the court system.[116] These time standards should encompass a timeline for child protection cases from the first to the last hearing.[117] The shelter care hearing should be an emergency hearing that takes place within 24 to 48 hours or less of the physical removal of the child from parental care. The adjudicatory hearing should take place no more than 60 days from the removal, although a time limit of 30 days is preferable. Court leaders must examine the state legislative scheme for any time frame, including completion of adjudication.[118] They should encourage the legislature to reduce the time to adjudication to 60 calendar days or less.[119] Court leaders should have no difficulty approaching lawmakers on matters involving court improvement. The *Resource Guidelines* and other national policy makers recommend 60 days.[120] Sixty days is also the federal statutory limit.[121] If no legislation exists, court leaders must work with the state's highest court to develop administrative rules defining time standards.[122] If that effort is unsuccessful, local court leaders must enact local rules.

In the establishment of time standards, the legislature and/or courts may wish to consider procedural rules that provide incentives for parties to limit the number of continuance requests or sanctions for failure to complete specified tasks within a specified period. Or the Commission on Judicial Performance may consider timeliness in decision making as serious enough to justify a sanction. The Utah Supreme Court removed a juvenile dependency judge from office for failing to adjudicate and decide cases in a timely fashion.

> [W]e hold that Judge Anderson has violated his obligations as a judge, specifically in that he failed to hold adjudication hearings in a timely manner, and held two cases under advisement for a period in excess of two months. This action constituted a pattern of disregard and indifference to the law in violation of both Judge Anderson's oath of office and the Code of Judicial Conduct....[123]

One commentator suggested that the parties be limited to a total number of days of continuances during the pendency of litigation.[124] Several state legislatures have passed laws limiting the time for completing adjudication with the sanction of dismissal if the hearing is not completed.[125] The difficulty with mandatory dismissals, however, is that unless there are other safeguards, the child may be returned to an abusive or neglectful environment. The best interests of the child must prevail.

2. Legislators and court leaders must ensure that any legislation, administrative rule, or local court rule emphasizes resolving the adjudication of cases before the established time standard, whether that is 60 days or a lesser period.[126] The time standard should be an outer limit for resolving adjudication issues, not a starting point. Kent County (Grand Rapids), Michigan, is an excellent example of a local jurisdiction that sets and enforces stricter timelines than those required by the state statute. Under Michigan law, the adjudication of abuse and neglect cases must be made within 63 days from the date the child was placed outside the home. Kent County has set a 42-day limit and, while the court may grant extensions for good cause, any continuance is for only a week or two. Moreover, the trial judge must make a record of the reasons for any extension.[127]

Whether legislatively mandated or created by court rule, time standards should not be at the expense of quality decision making about family members' rights. The juvenile dependency process should not be a rush to permanency that fails to give the parents a fair chance for reunification. The judge must ensure that parents receive early and appropriate services so that they have a realistic chance to reunify with their children.

3. Juvenile court judges must accomplish as much as possible at the shelter care hearing. The more the court can accomplish at the shelter care hearing, the more meaningful each hearing thereafter will be, and the more likely that the case will be resolved early in the court process.[128] The *Resource Guidelines* recommend that the shelter care hearing be scheduled for an hour of court time.[129] Many courts do not have the time available for a one-hour hearing; however, every court must perform the functions outlined by the *Resource Guidelines* and in section II-A of this paper (see page 3) at some time.[130] Of course, to address most of these issues, the court must appoint counsel for the

parents and counsel/GAL for the child, and must find that reports have been distributed and read by the parties.[131] If all these issues can be addressed at the shelter care hearing, the parties will more likely be in a position to understand the nature of the proceedings and be able to discuss possible resolution at or before the next hearing.

B. Early Procedures for Resolution of Adjudication

Presiding judges and court administrators should implement procedures that enable and encourage resolution prior to scheduled hearings, and, in particular, before the adjudicatory hearing. Several case management tools should be considered. All of these tools are being used by some courts around the nation. All have had a positive impact on finding solutions for children caught in the foster care system. Some of these procedures include identifying extended family members, having group discussions concerning the needs of the children,[132] and addressing issues while they are still fresh in everyone's mind. Since they all take place early in the legal process, they are also consistent with the children's need for early resolution of the legal matters.

1. Court-Based Mediation

For over a decade many child protection courts have used mediation to resolve cases early and effectively.[133] In child protection mediation, specially trained neutral professionals facilitate resolution of child abuse and neglect issues by bringing together, in a confidential setting, the family, social workers, attorneys, and others involved in a case.[134] Mediation's success in family matters has been acknowledged for years by scholars and practitioners alike.[135] Mediation can be used at any stage of the proceedings, but it is very effective in the early stages when there is information that has not yet been exchanged among the parties, the parties have not become entrenched in an adversarial stance, and there is an urgency to start working on rehabilitative plans so that children can be safely returned to their parents.[136] Furthermore, evaluations indicate that cases reach permanency more quickly when they are mediated.[137]

Some commentators have recommended that mediation not be conducted where there has been domestic violence between the parties.[138] They argue that putting the victim together with the perpetrator will result in an unfair advantage for the batterer and that the mediation cannot be safely managed by the mediator.

The experience in California and elsewhere indicates that with appropriate procedures in place, mediation can be safely and fairly conducted even when there has been a history of violence between the parties. Twenty-five years of practice in California has led to the development of refined practices and procedures that address the concerns expressed by the critics. These best practices have been built into statutes and court rules.

First, mediators must meet minimum employment and training requirements.[139] Second, the court process must screen for any history of violence between the parties.[140] If violence is detected, the law mandates that, if detected or if the mediator decides, the mediator shall meet with the parties separately at separate times.[141] Further, if the mediator learns of a violent history any time during the mediation, the mediator must ask the victim if he or she would prefer a separate session or other safety precautions during the mediation. Additionally, the victim may have the assistance of a support person throughout the process.[142] Finally, the mediator may terminate the mediation at any time and refer the case back to the formal court process.[143]

National experts agree with the California approach. In 1994, the Family Violence Department of the National Council of Juvenile and Family Court Judges wrote *Family Violence: A Model State Code*.[144] The Model Code recommends that there be no mediation where there has been violence between the parties *unless* the court finds the mediation is provided by a certified mediator trained in the dynamics of domestic violence and the mediation service provides procedures (such as a support person) to protect the victim from intimidation by the alleged perpetrator[145] (emphasis added). Evaluations of the mediation process confirm that victims of violence and victim advocates prefer appropriately conducted mediation to the formal court process.[146]

The mediator's expertise, the safety protocols, attorney involvement, and the mediator's ability to return a case to the court process ensures that there is no power imbalance between the parties or other complications that might make the process unfair to one or both parties. This also makes it possible for extended family members to participate in the mediation as well as chil-

dren, depending on their maturity.[147] When the process is refined as it has been in some jurisdictions, the judge decides whether the parties participate in mediation. The mediator working with the parties and attorneys determines who will participate in the mediation.

Strong judicial leadership is critical for the establishment, growth, and maintenance of a successful mediation program.[148] Many commentators mention that judicial leadership is necessary to overcome the opposition to mediation from some professionals within the child protection system, who often prefer the traditional adversarial process and resist non-adversarial alternatives.[149]

> There was considerable resistance by all professional groups when dependency mediation was introduced into the system, but this resistance was short lived.[150]

Related to this resistance has been the reluctance of some judges to refer cases to mediation, believing that traditional courtroom methods are adequate and mediation unnecessary.[151]

In many jurisdictions the major drawback to full implementation of mediation has been the lack of funding.[152] Since child protection proceedings are state initiated, no money is generated by filing fees. Moreover, most parents who appear in these cases are poor and unable to pay for mediation services, so that the court must bear the full cost. Severe court budget cutbacks in several child protection mediation programs in California and other states have led to reductions in the service, while other programs have simply closed down.[153]

These financial problems are counter-productive since child protection mediation evaluations are unanimous that mediation settles cases, produces satisfactory results, is preferred by clients, and provides cost avoidance.[154] Moreover, mediation also results in cases resolving earlier and children reaching permanency more quickly than non-mediated cases.[155]

2. Second Shelter Care Hearings

Second shelter care hearings are an innovation developed in the Multnomah County Model Court (Portland, Oregon)[156] in 1998.[157] These hearings take place from 7 to 14 days after the initial shelter hearing which by state statute is held within 24 hours of removal of the child. Court leaders developed the second shelter care hearing because they were unable to collect important information at the initial shelter care hearing and thus were unable to identify and locate parents and resolve many of the issues that needed to be addressed at the initial hearing.[158] Under the court's new protocol, those present at the initial shelter care hearing identify the issues that will be addressed at the second shelter care hearing. Those usually include locating parents, obtaining service, clarifying paternity issues, ICWA (Indian Child Welfare Act) issues, ensuring that all parents and children are represented by counsel, and obtaining assessments or developing safety plans for the return or placement of the children. It is the practice in the Multnomah juvenile court that the same parties, attorneys, social worker, and hearing officer appear at both hearings. The judicial officer is assigned to hear all further proceedings in the case.[159]

Another result of the implementation of second shelter care hearings is that the court can now accomplish what was intended when the *Resource Guidelines* authors outlined what should be accomplished at the initial shelter care hearing.[160] The *Resource Guidelines* recommended that the court devote one hour to fully address the issues that needed to be resolved at the initial shelter care hearing.[161] The expanded second shelter hearing has enabled the Multnomah juvenile court to prepare adequately for and address these issues.

One result of the second shelter care hearing has been increased judicial continuity through completion of adjudication. Additionally, more fathers have been identified and in less time than before implementation, and more extended family members have been involved earlier in the case process than before.[162] There has been more participation by parents at the adjudication hearing, and the time for ICWA determinations has been shortened. Finally, professionals working in the court system are generally satisfied with the results of the second shelter hearing, although they state that these hearings should be held on a case-by-case basis, indicating that they believe in some cases they were unnecessary.[163]

3. Family Team Meetings (FTM) and the District of Columbia

In 2005, the District of Columbia developed a unique early process that brings extended family members together immediately after a child has been removed

from parental care by the government and engages them in the court process from the start of a child protection case.[164] The Family Team Meeting (FTM) program has eight guiding principles:

a. Family Inclusive Philosophy: Meaningful family participation in planning and decision making.
b. Strength- and Need-Based Planning: Strengths-based assessment and plans are vitally important.
c. Ongoing Assessment and Planning: Plans are flexible for changing family needs.
d. Team-Based Approach: Providing assistance to children and families requires a family inclusive team.
e. Multi-Systemic Intervention: Crucial to assessing, planning, and providing suitable resources to children and their families.
f. Cultural and Community Responsiveness: Promote involvement of the community of origin in the planning with the families and children.
g. Brief Strategic Solution Focused Intervention: Use of flexible and easily accessible resources used to support those solutions.
h. Organizational Competence: Committed, qualified, trained, and skilled staff, supported by an effectively structured organization.[165]

Pursuant to the protocol, Family Finding[166] techniques are used immediately after a child is removed from parental custody and before any court hearings, and extended family members are contacted and convened to address the problems facing the child and family members.[167] The family members work with agency representatives to come up with a plan for the children, often including placement with one of the same family members. Evaluations indicate that the process results in faster placements, increased placement with family members, and fewer entries into foster care.[168] The FTM process includes legislative authorization for the court to extend the time for the initial (shelter care) hearing from 24 to 72 hours from removal of the child. The extra time permits the extended family to meet and devise a plan which is then presented to the court.[169] It does not appear that the time extension prejudices the parents—indeed, the evaluations indicate that the parents appreciate the extra time to meet with their attorney and to prepare for that hearing.[170] Judicial officers are also pleased with the results of the program.[171]

4. Settlement and Pretrial Conferences

Some courts use more traditional methods such as settlement and pretrial conferences to manage child protection cases prior to adjudication.[172] In 1997, the Pima County (Tucson), Arizona, juvenile court implemented a pilot project intended to improve court practice relating to abused and neglected children.[173] One critical area for innovation was the court's effort to "front-load" the system between removal of the child and the dispositional phase.[174] In 1997, the Arizona legislature had shortened the time frame for child protection cases such that the initial shelter hearing was to be held within 5 to 7 days from the filing of the petition (reduced from 21 days). The most important innovation was the requirement that the court conduct a formal pre-hearing conference immediately prior to the shelter care hearing.[175] At the pre-hearing conference, the parents are advised of the initial shelter care hearing and their rights; attorneys appear with the parents, and the GAL appears on behalf of the child (appointed at the time the petition is filed), and issues such as placement, services, and visitation are discussed.

One of the results of the Pima County Juvenile Court innovations is a shorter time to the completion of adjudication—from 78 days to 57 days.[176] Cases are getting to court earlier, and the court process has become more substantive.[177] Parents are feeling more empowered and have a better understanding of what is expected of them in the reunification process.[178] Other results include increased family reunifications, shorter times in out-of-home care for children, and shorter times under juvenile court jurisdiction.[179] The Arizona state legislature was so impressed with the work of the Pima County juvenile court that they passed legislation in 1998 that required the juvenile courts to front-load the court process in ways similar to what Pima County had instituted.[180]

A number of states have implemented pre-trial hearings in child protection cases. The Utah legislature has mandated pre-trial hearings in every child protection case.[181] They must occur within 15 days of the shelter care hearing and result in a high percentage of settlements.[182] The Connecticut juvenile courts have instituted a case management project that brings the parties and attorneys together with a trained facilitator at the time of the first hearing to determine whether the case can be resolved. The results of this project have been

successful in resolving a high percentage of cases.[183]

In Philadelphia, Pennsylvania, court improvement efforts have included a pre-hearing conference before every adjudicatory hearing.[184] The hearings have been successful in that agreements have been reached regarding petition allegations, placement, visitation, and services in over 70% of cases where parents appeared.[185] In the District of Columbia, the presiding judge has required that all family court judicial officers schedule the mediation, pre-trial hearing, and trial dates within the 45-day period following the initial hearing.[186] In Cook County, Illinois, Judge Nancy Salyers (ret.) created a "55 Day" hearing after the temporary custody hearing and before adjudication in order to address all issues facing the child and family. This was a critical part of her efforts to reduce the time to adjudication.[187] Minnesota court rules require a pretrial conference in every case where a denial has been entered so that settlement may be attempted and/or issues narrowed for trial.[188]

Local Santa Clara County, California, rules require a settlement conference before any contested hearing.[189] This practice brings the parties and their attorneys together usually before a judicial officer to discuss the issues, to attempt to resolve some or all of the contested matters, and, if resolution is unsuccessful, to clarify time estimates and identify any problems that might interrupt or slow down the trial.[190]

C. Judicial Leadership in Court Management

1. Cases will move along more expeditiously only if judges make movement a priority.[191] As the leader of the court, the judge's attitude toward resolution of cases will set the tone for the court system. For example, judges should stress that child protection cases are similar to a medical emergency at a hospital, and urge all professionals to treat each case as such.[192] Such leadership is necessary to avoid judges being part of the problem.[193]

2. The court, not the attorney or the parties, must control the pace of litigation.[194] As one commentator put it, "If the court does not establish and control the pace at which cases proceed, then who does?"[195] This means that the court must know where cases are in relation to the time standards set by the court.[196] Some courts use case management systems while others have developed their own means of keeping track of cases, particularly those that exceed statutory timelines.[197] Whatever the system employed, courts need to ensure that the case management system that they have established tracks cases and can inform them if they are out of compliance.

Traditionally, attorneys have controlled the pace of litigation—prosecutors in criminal cases and plaintiffs in civil actions. In many juvenile dependency courts the agency has controlled movement of cases through the system. Factors such as how long it takes a social worker to complete a report and agency policies have set the pace. The court can accommodate the legitimate needs of the parties, the attorneys, and the social workers, but ultimately, the court runs the court system including case management. That is its responsibility.[198]

One method of ensuring that the court can control the pace of litigation is to assure that judicial officers directly control their own calendar and scheduling of their own cases.[199] This assurance gives the judicial officer full control and responsibility for the flow of cases in his or her courtroom.

3. Judges must ensure that timeliness is a guiding principle in the juvenile dependency court.[200] To realize this principle, judges must enforce a strict continuance policy and avoid unnecessary continuances (set-overs) or delays of court proceedings.[201] Judges should not permit stipulated continuances by the attorneys or other agreements that the case will be set-over without individualized reasons, carefully reviewed by the court.[202] This can be a burdensome and unpopular judicial task, but when the attorneys know that the judge is strict about granting continuances, they will be less likely to ask for them and more likely to resolve issues in a timely fashion. One important reason why judges need to control continuances is that there is a correlation between the number of times a case is continued and the time a child's case remains in the court system.[203]

It is also true that some attorneys attempt to delay the proceedings believing that their clients benefit from slowing down the process. This is a carry-over from the criminal courts where delay is a tactic often employed effectively by defense counsel. However, in child abuse and neglect proceedings, delay will probably not help the parents as it may persuade them that the proceedings are not urgent. Instead, the attorneys

should be insisting on the early delivery of services to the parents.

Some state legislatures have begun to impose mandates on the juvenile court's discretion to grant continuances.[204] The California legislature has discouraged the granting of continuances, outlined the procedures that must be followed to have a continuance motion heard, and legislated that no dispositional hearing shall be continued beyond 60 days from the date the child was removed from the parent.[205]

One effective means of controlling a calendar is to schedule hearings so that they are heard on the scheduled date.[206] To establish realistic trial dates, the court must set aside enough time so the trial can start as scheduled and allow sufficient time to complete the trial without a continuance.[207] It is well known that once attorneys know that the trial will take place, the chances of settlement are enhanced both at the settlement conference and on the day of trial.

D. Careful Attention to Each Case—Some Nuts and Bolts

To achieve timely permanency, trial court judges must pay attention to the details of each case and of the court process. By examining these details, judges can significantly reduce the time to resolution of adjudication and disposition.

1. Courts must assure that timely notice has been served on all parties, particularly potential fathers and Indian tribes.[208] A frequent delay in child protection proceedings occurs when a father appears after six months of court hearings or when the court learns late in the case that the child is a member of an Indian tribe.[209] These late discoveries may cause the court process to start over again. In some states the notice procedures are so stringent that the case does not move forward for months.[210] A number of best practices have been developed for locating fathers.[211] Consultants at the National Center for State Courts have recommended creating a juvenile court-based "Diligent Search Office" with one person assigned to locate and make service on absent parents in child protection cases. This person would soon develop the expertise necessary to permit the court to make predictable expectations about the time necessary to complete service of process.[212] In Kent County, Michigan, continuances for noticing of parents are minimized because a senior attorney has trained children's agency staff to complete timely reasonable efforts searches for missing parents.[213]

Additionally, courts should inquire about each parent's address each time a parent appears in court. Many parents change addresses during legal proceedings, complicating the court's efforts to notify them of court hearings. California requires a parent to fill out an address form that is placed in the court file. That address is considered to be the parent's legal address until a new form is filled out.[214]

2. Judges should not continue a child protection case because of a pending criminal case.[215] On occasion the conduct that brings the child to the attention of child protection authorities also results in criminal charges against one or both of the parents. In many court systems, criminal cases proceed more slowly than child protection cases. This often occurs because defense counsel needs time to prepare and believes that delay will be an advantage to the defendant. The fact that criminal proceedings are pending is not sufficient reason to delay the child protection case. Parents can be offered some protections. In some states, the law does not permit statements by the parent made in the child protection proceeding to be used in the criminal proceeding.[216] In states with no such statutory protection, the parent may decide not to make any statements in or out of court in the child protection proceeding, but CPS still must prove its case. The possible prejudice to the parent in having the child protection case proceed before the criminal case is outweighed by the prejudice that would attach to the child who must wait for months and possibly years for completion of the criminal case before her case can be heard in juvenile court.

3. Judges should adopt a policy that whenever an adjudicatory hearing commences, it will continue to be heard on successive days until completion.[217] Hearings heard piecemeal create multiple problems for the court, the attorneys, and the parties. Between hearings memories fade, new evidence is discovered, and unanticipated scheduling conflicts arise. Parents become frustrated with prolonged hearings, and children wait to learn

about their future. Such a practice can also lead to tragic results. As one appellate court noted,

> This case presents a dramatic example of the vital importance of timeliness in the early stages of dependency proceedings. The petitions were filed in early June 1999, and the minors were detained. It was not until late September that the matter was finally concluded with a finding that the petitions were not meritorious. Thus for nearly one-third of this year petitioner's family was split apart and doubtless the relationships among family members damaged. DHHS can and must do better.[218]

Criminal and civil courts do not permit such delaying procedures—and neither should juvenile dependency courts. Establishing a panel of pro-tem or retired judges to substitute in emergency situations is one way of addressing this need.[219]

4. When a case must be continued, judges should make the continuance as short as possible, particularly when the issue is the truth of the petition's allegations. This is an extremely challenging issue, but one that can be effectively addressed with careful planning. The first problem is that the court calendar (docket) is already crowded with other cases. The second problem is that the attorneys, social workers, and parties all have other obligations. Simply setting a new calendar date can be one of the most frustrating and complex hearings any court will encounter. Nevertheless, to "give up" and set the case out four to five months is a result that will be detrimental to the child and family.

Court practices around the country offer possible solutions to this problem.

a. Some courts set aside one day or an afternoon a week for such emergencies.
b. Some courts have worked with the attorneys representing the parties to ensure that counsel is dedicated to one courtroom and, therefore, always available.
c. Some larger courts have teams of attorneys representing parties so that if one team member is unavailable, the other attorney-member is ready to proceed.
d. Many courts have hearings to determine the status of each case before setting the matter for trial (see the discussion at VII B 4 *infra*). Since a trial will take more time than an uncontested hearing and court time is a scarce and valuable commodity, these earlier hearings can explore settlement, determine the numbers of witnesses and whether any experts are to be called, exchange expert reports, indicate how long the attorneys believe it will take to present their cases, whether some testimony can be received in a documentary form (or by offer of proof), what stipulations the parties are prepared to make, and whether the court needs to make special accommodations for any witnesses. In other words, after such a status hearing, the court has a good knowledge of the time necessary to complete the adjudication and that there will be no "surprises" to upset this estimate.
e. Many courts have written local rules outlining how the court expects the attorneys and parties to manage their cases. Santa Clara County, California, offers an example of rules governing juvenile dependency cases.[220]

5. Judges should attempt to get at least some decisions or some work completed on the date of the scheduled hearing even though some aspects of the case must be continued. For example, if a report arrives late, ask the attorneys and parties to read the report and confer about whether the court can proceed even with late-breaking information. Often the new information does not bear upon some of the issues that the court can resolve.

The court can also ask the parties to confer and to come back the same day, after a few hours or after the luncheon recess. By stressing the importance of the timely completion of the legal issues before the court, the parties may be able to work out an agreement or agree that the court can make a decision.

6. Courts should implement a practice that the next court hearing is scheduled before the parties leave the courtroom.[221] The practice of sending out notices to inform parties of the next hearing date without knowing who is available to attend is inefficient and also runs the risk of not notifying parties, particularly parents, who may change addresses.

7. While it may be necessary to take some issues under advisement to complete legal research and writing before

issuing a decision, nevertheless judges should work with all due diligence to render their decisions as soon as possible. Some state statutes or administrative regulations require that a judge file a decision in certain types of cases within a time limit,[222] and a number of states require that a judge render a decision within a certain time period or be subject to consequences.[223] In juvenile dependency cases, the urgency to render timely decisions within even shorter limits is compelling. With these considerations in mind, many judges rule from the bench or make their decisions immediately after the trial.

8. Judges should insist that whenever possible, the disposition hearing should follow directly after completion of the adjudicatory hearing.[224] This can be accomplished if the social worker prepares her report for the adjudicatory hearing and includes recommendations for the dispositional phase of the case.[225] If the case must be continued for preparation of the social worker's report, it should be for a short period of time.[226]

E. Modifying the Court Structure

Some changes have more to do with the structure of court operations than with what judges should be doing with individual cases.

1. One Judge/One Family and Long Judicial Assignments

Presiding judges will achieve better results for children and families if they ensure that the court's case management policies assign one judicial officer to hear a case from beginning to end.[227] The policy of one-judge/one-family or direct calendaring ensures that the same judicial officer will hear a case from shelter care hearing through the attainment of a permanent plan.[228] The judge who hears all matters relating to a child or family develops expertise about that family, understands their needs, and can develop a productive working relationship with them as new problems arise. Issues that come before the court can be more expeditiously managed since the judge understands which issues have been previously litigated, what the parents have done that brought the child to the attention of the authorities, and what the plans for the family are.[229]

Judicial tenure also affects judicial effectiveness. It takes time for judges to understand the complex juvenile dependency system. Judges who remain in the juvenile court for extended numbers of years are in a better position to take control of their dockets and move cases along expeditiously.[230] Long-term assignment to the juvenile court bench is a recognized best practice by many policy publications.[231]

2. Regular Systems Meetings

Judges should convene regular meetings of all participants in the court system, and particularly the Agency Director, to address issues relating to court improvement and other administrative issues including the timely resolution of child abuse and neglect cases.[232] The issues to be addressed at these meetings can include all administrative and legal issues relating to delays in the court process such as notice for hearings, lateness of social worker reports, transportation of prisoners, location of fathers, timely appearances by attorneys, and other barriers to timely completion of hearings.

3. Early Appointment and Involvement of Attorneys

Presiding judges and other court leaders must ensure that the parents are represented by well-trained, effective counsel as early as possible in the court process and throughout the life of a dependency case.[233] Early assignment of counsel can make a significant difference, particularly if counsel can confer with their clients before the initial hearing.[234] Improved representation for parents has been demonstrated to reduce the amount of time children wait to reach permanency.[235] Moreover, the reduction in time to complete the shelter care and adjudicatory hearings can lead to significant increases in family reunification.[236]

Judges must also appoint counsel/guardian *ad litem* for the child as early as possible in the case.[237] The longer the delay in the appointment of counsel, the longer the delay before court work can commence and legal issues be resolved. Additionally, court systems should encourage the creation of attorney teams, serving designated departments (courtrooms). The team concept enables court business to take place even in the absence of one attorney since a team member can speak for the client.[238]

4. Borrowing from the Civil Courts

Juvenile courts can borrow some of the techniques developed by civil trial court reduction successes. These include:

> Time standards, early screening and disposition of cases, innovative calendaring techniques, alternative dispute resolution, supportive technology to track cases and develop management information, systems analysis to identify bottlenecks, procedural changes, enforcement of deadlines and stringent standards for continuances, forceful judicial leadership, ongoing communication with the various agencies and the bar, case differentiation, discovery controls, [and] pretrial conferences.[239]

Congress has passed legislation addressing judicial accountability regarding timely resolution of cases in the federal courts. The legislation requires the Director of the Administrative Office of the United States Courts to prepare a semi-annual report for every federal district judge and magistrate. The report must identify all motions and bench trials that have been pending for more than six months.[240]

> Ideally, time standards and goals should be incorporated into court rules and made legally binding upon the court. Serious breaches of court deadlines should be brought to the attention of the Chief Judge.[241]

The Utah state courts keep meticulous records regarding each judge. One judge was removed from office for failing to adjudicate juvenile dependency cases within the statutory time lines.[242]

F. Policy and Resources

1. Legislatures should consider shorter timelines for younger children who are the subjects of child protection proceedings. Several states have recognized the child development principles reviewed in Section III and reduced the reunification period for younger children.[243] In California, six months of reunification services are offered to parents of children who are under three when they enter the child protection system.[244] Utah has a similar statute[245] as does Colorado.[246]

2. Legislators and presiding judges must ensure that juvenile courts have adequate resources to effectively address delay reduction. While it is true that the steps outlined above will all have an impact on reducing delays in the juvenile dependency court, in the most impacted courts, adequate resources will be necessary to complete the task.[247] Thus it was necessary for the Cook County, Illinois, courts to work with state and local legislators to add 24 hearing officers in the juvenile dependency court before the court could reduce its enormous caseload of over 55,000 children to its current caseload of under 10,000.[248] When the District of Columbia reformed its juvenile dependency court, it discovered that the court needed to add a number of judicial officers.[249] The Utah state court system added five judges statewide to address child welfare needs in the courts.[250]

Appellate courts recognize the challenges of the trial court and encourage them to complete their work despite overwhelming caseloads.

> We are mindful that juvenile court judges, while diligent and caring, are overworked and doing their best to juggle ever-increasing caseloads while suffering grossly inadequate resources. The current judge in this case, alone, handles a daily calendar of 40 to 50 cases, including 4 to 5 trials designated as "no time waiver" cases because the minors are detained outside the home. While each division of the court is vitally important to the litigants and to society, there is no division of greater importance than the juvenile court, which deals with the sensitive parent-child relationship and the potential of horrendous damage to children.[251]

VIII. THE CHANGING ROLE OF THE JUDGE

If children are going to reach timely permanency, many courts will have to change the way that business is conducted.[252] That responsibility falls to the judges who run the court and each courtroom therein. Judges are responsible for outcomes in court, including whether cases are heard within statutory timelines. The changes that are necessary will have to begin with judicial leadership.[253]

For some juvenile court judges, the observations and recommendations in this paper will be familiar. They have been running their courts efficiently, resolving cases within state and federal guidelines, and children have been achieving timely permanency. They understand that reducing delay involves intense efforts regarding court administration and the nuts and bolts of everyday court operations. For others, many of these ideas, while not foreign, will be frustrating and will be resisted. They may believe that adopting the suggested approaches to

caseflow management will turn them into bureaucrats or administrators and will change their role significantly. Moreover, they suspect (correctly) that the responsibilities created by adopting the changes suggested above will create more work and increase job-related pressures for them, and in particular for the presiding or administrative judge.[254] Commentators have pointed out that to be successful in court management, the judges will have to work harder and will have to work in teams with court administrators and other staff.[255]

This is not a new role for the juvenile court judge. For over a hundred years juvenile court judges have broken from the mold of the "neutral magistrate" and have fulfilled their expanded role as judge, administrator, collaborator, and advocate for the court and the children and families who appear therein.[256] This is a necessary role for the judge to play if children are to reach timely permanency.

IX. CONCLUSION

Children are different from adults. Their development, their sense of time, and their needs are all different from adults. Sometimes it is difficult for a legal system created and operated by adults to understand these truths. Perhaps years ago some court leaders might have been understandably excused from appreciating and responding to the unique needs of children before the court. The social and medical sciences had not provided such a rich literature about children and their development as we have today. However, there are no viable excuses today. Today we know that children's special needs are a powerful justification for the courts to modify their practices to accommodate, or at least be tailored, to meet those needs. A well-known state Chief Justice created an entire court reform with the theme "Through the Eyes of a Child."[257] Her choice of this phrase was significant—it identified the child's needs as paramount when courts improve their procedures and practices.

Judges can and should modify the way that they do business in their juvenile dependency dockets in order to address the special needs of children and families, to follow the law, and to follow the Judicial Canons of Ethics. We know that it can be done as there are many examples of court systems that have made the necessary changes.[258] Now, judicial leaders in every state and every judicial district must take up the cause and make the necessary changes to fulfill their judicial responsibilities. They owe that to the children and families who appear before them. The results will be more court oversight of dependency matters; more monitoring of cases as they move through the system; better policies and practices; more frequent hearings; more and better information available to each judge; and better outcomes for the children and families in the court system.

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END NOTES

1 The state court that hears child protection cases is usually referred to as a juvenile or family court. It is also called a child protection court, CHINS (Children In Need of Supervision), CHIPS (Children In Need of Protection), CINC (Children in Need of Care), and other names. The term juvenile dependency court or juvenile court will be used throughout this paper.

2 42 U.S.C. §§ 675 et.seq. (1980); P.L. 96-272.

3 Leonard Edwards, *Improving Implementation of the Federal Adoption Assistance and Child Welfare Act of 1980*, [hereinafter *Improving Implementation*] 45 JUVENILE AND FAMILY COURT JOURNAL, 3-28, 4 (Summer 1994).

4 *Id.* at 16. Moreover, Congress did not appropriate any monies to help the courts respond to these new responsibilities. Many state and local courts have had to request legislative support to add judicial resources in order to address the additional legal work created by The Act. See the discussion at VII-E, 2, *infra*.

5 One of the principal concerns of the legislatures was the phenomenon of foster care "drift." This refers to children who, once placed in foster care, become lost in the foster care system, "drifting" from home to home thereafter, never achieving permanency. *See* M. Garrison, *Why Terminate Parental Rights?*, 35 STANFORD LAW REVIEW, 423 (1983).

6 42 U.S.C. § 675(5)(C)(1989).

7 "However, there seems to be a growing belief that Federal statutes, the social work profession, and the courts sometimes err on the side of protecting the rights of parents. As a result, too many children are subjected to long spells in foster care or are returned to families that reabuse them." H.R. REP. 105-77, H.R., Rep. No. 77, 105th Cong., 1st Session, 1997 U.S.C.C.A.N. 2739, 1997 WL 225672 (Leg. Hist.), at 8; *See generally*, *Barriers to Adoption: Hearings on S. 104-76 Before the Subcommittee on Human Resources of the House Committee on Ways & Means*, 104th Cong., 2-5 (1996); H. Davidson, 33 FAMILY LAW QUARTERLY, 765-782, 771 (2000).

8 "Children are experiencing increasingly longer stays in foster care...The emerging statistical picture shows that young children are spending substantial portions of their childhood in a system that is designed to be temporary." H.R. REP. 105-77, *id.* at 11; During the hearings on ASFA, David S. Liedermann, Executive Director of the Child Welfare League of America testified that,

> [d]espite improvements and progress, the nation's collective response to abused, neglected and abandoned children is failing to provide both protection and permanency for many children. There are many reasons for this, not the least of which is the tripling in the number of children reported abused and neglected since 1980, the failure of state, Federal and local targeted resources to keep pace with this rise.

Encouraging Adoption, 1997: Hearings on H.R. 867 Before the Subcommittee on Human Resources of the Ways and Means Committee, 105th Cong., 36 (1997); U.S. GOVERNMENT ACCOUNTING OFFICE, FOSTER CARE: STATES' EARLY EXPERIENCES IMPLEMENTING THE ADOPTION AND SAFE FAMILIES ACT, [hereinafter FOSTER CARE: STATES' EARLY EXPERIENCES], GAO/HEHS-00-1 (December 1999), at 4.

9 42 U.S.C. § 675 (5)(E). ASFA also extended the "reasonable efforts" requirement to include the agency's attempts to reach timely permanency after a permanent plan had been established. 42 U.S.C. § 675 (5)(C); "By contrast, ASFA set definitive and relatively short timeframes, including time limits to reunify children with their parents and time-specific mandates for the filing of petitions to terminate parental rights." M. FREUNDLICH & L. WRIGHT, POST-PERMANENCY SERVICES, Casey Family Programs, (2003), at 4.

10 42 U.S.C. § 675 et. seq. (2007); S. Christian, *1998 State Legislative Responses to the Adoption and Safe Families Act of 1997*, 24 STATE LEGISLATIVE REPORT, 5, (March 1999); "In response to the passage of ASFA, states enacted their own enabling legislation and developed administrative policies and procedures." FOSTER CARE: STATES' EARLY EXPERIENCES, *op.cit.* note 8 at 2.

11 143 CONG. REC. S12,670 (daily ed. Nov. 13, 1997) (statement of Rep. Kennelly) ("This legislation we can all agree on is putting children on a fast track from foster care to safe and loving and permanent homes."), *Id.* at S12,671 (statement of Sen. Rockefeller) (saying the bill would "move children out of foster care and into adoptive and other permanent homes more quickly and more safely than ever before."); *Improving Implementation*, *op.cit.* note 3, at 4-6. Foster care drift also resulted in more moves from foster home to foster home and all of the instability associated with multiple placements; STAFF OF HOUSE COMMITTEE ON WAYS & MEANS, 104TH CONG., 1996 GREEN BOOK 692 (Comm. Print 1996).

12 The Congressional intent to end foster care drift and achieve timely permanency was a primary reason for The Act as well as for ASFA.

> [T]he provision for a dispositional hearing after a set period of time is I believe, of critical importance. One of the prime weaknesses of our existing foster care system is that, once a child enters the system and remains in it for even a few months, the child is likely to become "lost" in the system. Yearly judicial reviews of the child's placement too often become perfunctory exercises with little or no focus upon the difficult question of what the child's future placement should be. Foster care, with

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few exceptions, should be a temporary placement; unfortunately, under our existing system, temporary foster care becomes a permanent solution for far too many children. This provision requiring a dispositional hearing after a child has been in foster care for a specific time should assist states in making the difficult, but critical, decisions regarding a foster child's long-term placement.

123 CONG. REC. S22684 (daily ed. Aug. 3, 1979), (statement of Sen. Cranston during Congressional hearings.) Note that the dispositional hearing referred to by Sen. Cranston is the hearing that takes place no later than 18 months (now 12 months) after the child has been removed from parental custody. This hearing is more commonly referred to as a permanency planning hearing while the term "disposition" usually refers to the hearing that takes place soon after the court has adjudicated the petition and asserted jurisdiction over the child. See also H.R. REP. No. 136, 96th Cong., 1st Session, 50, 1979 (remarks of Rep. Ullman).

13 The most recent figure is 517,325 children in foster care. This is based on the Adoption and Foster Care Analysis and Reporting System (AFCARS) 2004 data assembled by Dr. Elliott Smith of Cornell University's National Data Archive on Child Abuse and Neglect, ASPE Claims Reports, 2005, and ACF Budget Reports, 2005. The preliminary estimate as of September 2006 is 513,000 according to the AFCARS Report, http://www.acf.dhhs.gov/programs/cb/stats_research/afcars/statistics/entryexit2005.htm; 534,000 is the number used by the Pew Commission on Children in Foster Care, PEW COMMISSION ON CHILDREN IN FOSTER CARE FOSTERING THE FUTURE: SAFETY, PERMANENCE AND WELL-BEING FOR CHILDREN IN FOSTER CARE, (2004), at 12, *available at* www.pewfostercare.org [hereinafter PEW COMMISSION].

14 In addition to the considerable federal and state legislative attention, the work of the Pew Commission (*id.*) has given significant national exposure to the plight of foster children. The Commission has sponsored a number of national initiatives to improve outcomes for foster children and asked other national leaders to take action. "We call, in particular, for forceful leadership from Chief Justices and state court leadership to ensure that children's cases receive high priority." PEW COMMISSION, *id.* at 35. The Conference of Chief Justices (CCJ) and the Conference of State Court Administrators (COSCA) have also taken action to improve outcomes for abused and neglected children. There are far more resolutions adopted by CCJ on child welfare than any other legal topic addressed by that organization. (Resolutions 10, 12, 13, 15, 16, 17, 18, 19, 20, 21, 22, 29, 30, and 31). The CCJ and COSCA have also sponsored two national conferences focusing on improving outcomes for foster children. http://ccj.ncsc.dni.us/; NORTH AMERICAN COUNCIL ON ADOPTABLE CHILDREN, A FRAMEWORK FOR FOSTER CARE REFORM: POLICY AND PRACTICE TO SHORTEN CHILDREN'S STAYS, (November 1999).

15 Nationally, there are approximately 3,000,000 reports of child abuse or neglect annually. U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, ADMINISTRATION ON CHILDREN, YOUTH AND FAMILIES, REPORTS FROM THE STATES TO THE NATIONAL CHILD ABUSE AND NEGLECT DATA SYSTEM (1999), at xi-xiii.

16 Technically, child protective services (CPS) and social service or child welfare agencies serve different purposes. While both are a part of the executive branch, CPS responds to child abuse calls and intervenes to protect children. Social Service and Children's Service agencies provide support services to children and families independent of the protective function. In some states, one agency performs both functions, while in others there is a separate child protection and children's services agency. Throughout this paper, CPS will be used to refer to both functions.

17 Nationally, there are approximately 1,000,000 legal proceedings instituted on behalf of abused and neglected children annually, REPORTS FROM THE STATES, *op.cit.* note 15.

18 For example, in California, the petition must be filed within 48 hours of removal and the court must hold an initial hearing within 24 hours of the filing of the petition. CAL. WELF. & INST. CODE §§ 309-315 and California Rule of Court 1442, (West 2007); In Virginia, the Emergency Removal Hearing must take place within 72 hours of removal. VA CODE §16.1-252. Not all states set the shelter care hearing in such a short time frame. In Connecticut, the shelter care hearing can take place up to 20 days from the filing of the petition. See P. McAvay, *Families, Child Removal Hearings, and Due Process: A Look at Connecticut's Law*, 19 QUINNIPIAC LAW REVIEW, at 125-168.

19 McAvay, *id.*

20 The *NCJFCJ's Resource Guidelines: Improving Court Practice in Child Abuse & Neglect Cases* recommends that the court devote one hour to a Shelter Care hearing. NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, RESOURCE GUIDELINES: IMPROVING COURT PRACTICE IN CHILD ABUSE & NEGLECT CASES, (1995), at 42 [hereinafter RESOURCE GUIDELINES]. A full description of all of the hearings in child abuse and neglect cases is contained within the RESOURCE GUIDELINES.

21 There are some exceptions. In Connecticut, for example, if the removal is contested, the preliminary hearing can take place as long as 20 days after the issuance of an ex parte order giving temporary custody of the child to the state. CONN. GEN. STAT. § 49b-129.

22 In California, the adjudication hearing for children removed from parental care is 15 court days (3 weeks); CAL. WELF. & INST. CODE § 334 and Cal. Rule of Court 1447, (West 2007); Texas mandates that the adjudication be completed within 14 days. TEX. FAM. CODE § 262.001.

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23 The Alaska legislature has set the time limit at 120 days. ALASKA STAT. § 47.10.080(a), (West 2007).

24 New York, Connecticut, and New Jersey are examples.

25 In Santa Clara County, California, for example, less than 2% of the petitions filed are dismissed without a true finding.

26 And in most cases they are. In Santa Clara County, for example, more than 97% of the petitions filed are sustained although there may be amendments during the process.

27 For example, in California, the dispositional hearing must be held within ten court days (two weeks) from the conclusion of the jurisdictional hearing. CAL. WELF. & INST. CODE § 358, (West 2007).

28 Verification of this statement is the fact that there are approximately 500,000 children placed in out-of-home care under juvenile dependency court jurisdiction in the United States today. Each of these children was removed from his or her home and placed in out-of-home care through a judicial order. "No child enters or leaves foster care without the approval of the court." PEW COMMISSION, *op.cit.* note 13 at 34.

29 *In re Jose V,* (1996) 50 Cal.App.4th 1792, 1799, 58 Cal. Rptr.2d 684. Further, neither federal nor state laws include any of these as permanent homes. *See also, In re Rosalinda C.*, (1993) 16 Cal.App.4th 273.

30 The six and twelve month reviews are required by federal law. 42 U.S.C. § 675 (5)(C).

31 For example, the Utah Foster Care Citizen Review Board was established by state law (UCA 78-3g-101-103); In Nebraska, Foster Care Review Boards are authorized by state statute, NEB. REV. STAT., § 43-1303(2(d) & (3); In Arizona, FCRBs were created in 1978 by the Arizona Legislature, while in Kentucky the Citizen Foster Care Review Boards were created by the legislature in 1987. *See* KY. REV. STAT. 620.270. For a discussion of the use of FCRBs, as well as cautions for judges, see NCJFCJ, CHILD DEPENDENCY BENCHBOOK, (1994), at 214-217 [hereinafter DEPENDENCY BENCHBOOK].

32 42 U.S.C. § 675(5)(B).

33 California law, for example, permits only six months of family reunification services for children who were under 3 years of age when they were placed under court jurisdiction. CAL. WELF. & INST. CODE § 361.21(e), (West 2007).

34 The term "legal guardianship" means a judicially created relationship between child and caretaker which is intended to be permanent and self-sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child: protection, education, care and control of the person, custody of the person, and decision-making. The term "legal guardian" refers to the caretaker in such a relationship.

42 U.S.C. § 674(7). Some state legislative schemes do not provide for guardianship.

35 "In addition, a significant percentage of the cases involve older children for whom the Court has found compelling reasons to plan for an alternative permanent living arrangement." DISTRICT OF COLUMBIA, FAMILY COURT ANNUAL REPORT: FINAL VERSION, (2006), at 51 [hereinafter D.C. FAMILY COURT REPORT].

36 As with many aspects of the movement of a child protection case, state statutes differ on how a termination of parental rights proceeding will take place. In most states, there is a separate legal proceeding to determine whether parental rights will be terminated. In California, the juvenile dependency court retains jurisdiction over the next hearing and will determine whether parental rights will be terminated. *See* CAL. WELF. & INST. CODE § 366 et seq., (West 2007).

37 In California, state law requires that the juvenile court continue to monitor the progress of the child in relative care unless the relatives adopt the child or become legal guardians. *In re Rosalinda C.*, (1993) 16 Cal.App.4th 273. In other states, state law may permit the case to be dismissed by the court.

38 42 U.S.C. § 675(5)(E).

39 An extraordinary writ is a type of emergency appellate review of the actions of a trial court when the ordinary appellate process would not provide the necessary relief in a timely fashion. Writs are utilized in child protection cases in some states because of the emergency nature of the proceedings. In other states, the appellate process is used exclusively to resolve issues decided by the trial courts. For a comprehensive discussion of appellate procedures in juvenile court cases see NCJFCJ, JUVENILE DELINQUENCY GUIDELINES: IMPROVING COURT PRACTICE IN JUVENILE DELINQUENCY CASES, (2005), at 157-164.

40 *Id.* at 161. It should be noted that the appellate and writ processes are another part of the legal system that significantly delays permanency for children. Timeframes for the appellate process are addressed at 162-163.

41 42 U.S.C. § 675(5)(F)

42 *Id.*

43 *Id.*

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44 C. Moreno, & K. Bass, *A Case for Reform*, THE SAN FRANCISCO CHRONICLE, April 8, 2007 at E-5, http://www.sfgate.com/cgi-bin/article.cgi?file=/c/a/2007/04/08/EDGEBOSDPB1.DTL

45 J. GOLDSTEIN, A. FREUD, & A. SOLNIT, BEYOND THE BEST INTERESTS OF THE CHILD, (Free Press, 1973), at 40-42.

46 *Id.*

47 *Id.* at 41.

48 *Id.* at 42.

49 42 U.S.C. § 675(5)(f).

50 705 ILCS 405, 2-14 (a) ILL. REV. STAT., (Deerings 2007). The Hawaiian legislature has similar language in its laws:

> The legislature finds that *prompt* identification, reporting, investigation,services, treatment, adjudication, and disposition of cases involving children who have been harmed or are threatened with harm are in the children's, their families', and society's best interests because the children are defenseless, exploitable, and vulnerable.
>
> The policy and purpose of this chapter is to provide children with *prompt* and ample protection from the harms detailed herein, with an opportunity for *timely* reconciliation with their families where practicable, and with *timely* and appropriate service or permanent plans so they may develop and mature into responsible, self-sufficient, law-abiding citizens. The service plan shall effectuate the child's remaining in the family home, when the family home can be *immediately* made safe with services, or the child's returning to a safe family home. The service plan should be carefully formulated with the family in a *timely* manner. (emphasis added)

Section 587-1, Hawai'i Code Annotated, Child Protective Act, (West 2007). *See also* Kentucky law where parties are assured "prompt and fair hearings," and "All cases involving children brought before the court whose cases are under the jurisdiction of the court shall be granted a speedy hearing...." KRS § 600.010(g) and KRS § 610.070(1); Some state court appellate judges make reference to the importance of timeliness. "There is a speedy hearing provision designed to minimize a disruption in family unity." *In the Interest of J.P.*, 832 A.2d 492 (Pa. Super. 2003) at 495.

51 Utah law requires adjudication no later than 60 days from the date of the shelter hearing; UTAH CODE ANN. § 78-3a-308(2), (West 2007); Minnesota statutes mandate that the trial commence within 60 days of the date of the EPC Hearing or Admit/Deny Hearing, whichever is earlier (RJPP 39.02, subd. 1[a]), but the court may extend the commencement of trial (RJJP 39.02, subd. 2), and trial must be commenced and completed within 90 days of denial (RJJP 39.02, subd. 2[b]). The court must issue its decision within 15 days of trial, although this may be extended for up to 15 days for good cause (RJPP 39.05, subd. 1); Florida sets 60 days as the limit a child can be held in a shelter without an adjudication of dependency, but there are numerous circumstances that permit the court to continue that date. FSA Title V, Ch. 39, Part V, § 339.402 (13) & (14), (West 2007); Wyoming statutes declare the adjudicatory hearing should be held within 60 days with "good cause" to delay the hearing, but "in no case" beyond 90 days after the date the petition is filed. WYO. STAT. ANN. § 14-3-426 (b), (West 2007).

52 Section 432B.530, *Michie's Nevada Revised Statutes Annotated*, (LexisNexis 2003).

53 Idaho Statutes § 16-1619(1).

54 ACA 9-27-315(a)(2)(B) and 9-27-327(a)(1)(A).

55 Virginia Statutes § 16.1-252.

56 Juv R 29A, Ohio Rules of Juvenile Procedure, *Baldwin's Ohio Revised Code Annotated*, (West 2007).

57 RSA Chapter 169-C:16(d)

58 MD Code, Article 49D, section 3-815(c)(4) although the adjudication may be extended for an additional 30 days.

59 The California legislation permits the adjudicatory hearing to be set within 30 days if the child remains in parental care. CAL. WELF. & INST. CODE § 334 and California Rules of Court 1447, (West 2007). The Texas statute permits a continuance for good cause. TEX. FAM. CODE § 262.001.

60 42 Pa.C.S. § 6335(a); However, there are exceptions if the child requests a continuance or material evidence is unavailable.

61 *Id.*; *In the Interest of J.P.*, 832 A. 2d 492 (Pa. Super. Ct. 2003). Commentators in Pennsylvania state that the court should make every effort to minimize delay when a child is in shelter care to reduce trauma to the child, increase the possibility of reuniting the child with the parents, and increase the possibility of finding a permanent home; A. FIELD, PENNSYLVANIA JUDICIAL DESKBOOK: A GUIDE TO STATUTES, JUDICIAL DECISIONS AND RECOMMENDED PRACTICES FOR CASES INVOLVING DEPENDENT CHILDREN IN PENNSYLVANIA, 4TH ED., (Juvenile Law Center, 2004), at 50. The Pennsylvania statutes do permit continuances under certain circumstances. *See* Pa.CS section 6335(a)(1),(2).

62 CAL. WELF. & INST. CODE, § 352, (West 2007).

63 *Id.* The statute concludes that "In no event shall the court grant continuances that would cause the hearing pursuant to Section 361 to be completed more than six months after

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the hearing pursuant to Section 319." *See also* California Rules of Court 1422 and 1451, (West 2007). Other states have enacted laws and court rules regarding the granting of continuances in child protection cases. New Mexico Children's Court Rule 10-320 (2007); Minnesota Court Rule 5.01; Missouri Court Rules 119.10-119-11; District of Columbia Code § 16-2330.

64 RESOURCE GUIDELINES, *op.cit.*, note 20 at 47;"[T]ime is of the essence" *Id.* at 31 and DEPENDENCY BENCHBOOK, *op.cit.*, note 31 at 201.

65 RESOURCE GUIDELINES, *id.* at 47; "The earlier stages of the litigation must also occur in a timely manner."Courts have had to make timely litigation a high priority." RESOURCE GUIDELINES, *id.* at 14; "But in every case, the court must assure that progress is being made and the need for quick action...the 'child's sense of time'...is respected," JUVENILE JUSTICE, SPRINGFIELD, ILL., FINAL REPORT OF THE ILLINOIS SUPREME COURT SPECIAL COMMISSION ON THE ADMINISTRATION OF JUSTICE, PART II, (1993), at 9.

66 For example, New York, Connecticut, and New Jersey do not have statutory or court rules regarding time standards for the adjudication of juvenile dependency cases.

67 The District of Columbia Adoptions and Safe Families Act (D.C.ASFA)(D.C.Code §§ 16-2301 et seq., 2000) sets 105 days to adjudication for a child removed from the home. *And see* D.C. FAMILY COURT REPORT, *op.cit.* note 35 at 43; Alaska statute sets 120 days for the completion of adjudication; ALASKA STAT. § 47.10.080(a), (West 2007). Maine statutes also set 120 days for the resolution of adjudication. Title 22, Subtitle 3, Part 3, Chapter 1071, Subchapter 4, section 4035 4-A.

68 E-mail communication from Gregg Halemba, National Center for Juvenile Justice (copy on file with author). Several studies support these conclusions. *See* DAVID AND LUCILE PACKARD FOUNDATION, BUILDING A BETTER COURT: MEASURING AND IMPROVING COURT PERFORMANCE AND JUDICIAL WORKLOAD IN CHILD ABUSE AND NEGLECT CASES, (2004), at 17-18:

> Establishing and complying with state and federal guidelines for timely case processing are also important court process performance goals. Limiting the time required to bring litigation to a conclusion limits the exposure of families to emotionally charged issues that can have a detrimental effect on children. Long periods of uncertainty and judicial indecision can put pressure on children and families, greatly adding to the strain of foster care....Clearly, the length of time required to resolve family issues needs to be limited and reasonable, given the potential harm from delays. Courts need guideposts to help them determine how well they are meeting performance goals.

69 NCJFCJ, FINAL REPORT: WASHINGTON COURT IMPROVEMENT PROJECT RE-ASSESSMENT, (2005), at 57 [hereinafter WASHINGTON COURT IMPROVEMENT].

70 "It appeared in some instances that judges really had no choice but to grant continuances grudgingly because certain tasks must be completed for cases to progress." M. Dolce, *A Better Day for Children:A Study of Florida's Dependency System with Legislative Recommendations,* 25 NOVA LAW REVIEW 547, (Spring 2001), at 610.

71 ADMINISTRATIVE OFFICE OF THE COURTS, CENTER FOR FAMILIES, CHILDREN & THE COURTS, CALIFORNIA JUVENILE DEPENDENCY COURT IMPROVEMENT REASSESSMENT, San Francisco, CA, [hereinafter CALIFORNIA COURT IMPROVEMENT] 2005, at 3-22 - Table 3.13;A study of the Utah juvenile courts indicated that the primary reasons for continuances were:(1) defense counsel not yet appointed/unavailable; (2) scheduling problems; and (3) witness unavailability. NCJFCJ, AN EVALUATION OF UTAH COURT IMPROVEMENT PROJECT REFORMS AND BEST PRACTICES: RESULTS AND RECOMMENDATIONS, (October 2002), at 57-59 [hereinafter UTAH COURT IMPROVEMENT].

72 ROBERT TOBIN, CREATING THE JUDICIAL BRANCH:THE UNFINISHED REFORM,(National Center for State Courts, 1999),at 187-191; J. SHAMAN, S. LUBET, & J. ALFINI, JUDICIAL CONDUCT AND ETHICS, (Lexis, 2000), at 177; D. STEELMAN, CASEFLOW MANAGEMENT: THE HEART OF COURT MANAGEMENT IN THE NEW MILLENNIUM, (National Center for State Courts, 2000), at xii-xiii.

73 TOBIN, *id.* at 187.

74 The Florida Bar Re: Amendment to Rules of Judicial Administration, Rule 2.050 (Time Standards), 493 So. 2d 423 (Fla. 1986)(Ehrlich, J., dissenting).

75 R. Pound, *The Causes of Popular Dissatisfaction with the Administration of Justice,* 20 JUDICATURE 178, 182 (1936); Clarence Callender agreed when he wrote that "the paramount objective of the [early] law was to place the machinery [of justice] at the disposal of the litigant." C. CALLENDER, AMERICAN COURTS, THEIR ORGANIZATION AND PROCEDURE, (1927) at 222.

76 As Robert Tobin wrote: "...[C]aseflow management was a euphemism for assertion of judicial control over the process of dispute resolution."TOBIN *op.cit.*, note 72 at 188. ABA NATIONAL CONFERENCE OF STATE TRIAL JUDGES, STANDARDS RELATING TO COURT DELAY REDUCTION, section 2.52 (1984) [hereinafter STANDARDS].The view of active judicial oversight of case management is consistent with Canon 3-(8) of the Code of Judicial Conduct which provides: "A judge shall dispose of all judicial matters promptly, efficiently, and fairly," and Section 2.50 of the ABA STANDARDS which provides, "the court, not the lawyers or litigants, should control the pace of litigation."

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77 TOBIN, *op.cit.* note 72 at 223-226. The evolution from passive adjudicator to active case manager had its critics. *See* O. Fiss, *The Bureaucratization of the Judiciary*, 92 YALE LAW JOURNAL 1442 (1983) and R. Moore, *Comment: Time Standards: Changing the Role of Florida Judges by Judicial Fiat*, 15 FLORIDA STATE UNIVERSITY LAW REVIEW 67, (Spring 1987). As Ernest Friesen wrote:

> The study of delay is not the study of inefficiency, but is the study of the very purposes for which courts exist....Justice is lost with the passage of time....No matter how you look at it, whether it's a civil or a criminal matter, time destroys the purposes of the courts. We study case management because case management is the way we get rid of the waiting time, [by] which we control delay, [and by] which we enhance the purposes of courts. Court management is what we're about in controlling delay.

Ernest Friesen, *The Delay Problems and the Purposes of Courts*, National Center for State Courts, *Caseflow Management Principles and Practice: How to Succeed in Justice* (Institute for Court Management, videotape, 1991) cited in STEELMAN, *op.cit.* note 72.

78 CONFERENCE OF CHIEF JUSTICES AND CONFERENCE OF STATE COURT ADMINISTRATORS, NATIONAL TIME STANDARDS FOR CASE PROCESSING, (1984); ABA, NATIONAL CONFERENCE OF STATE TRIAL JUDGES, STANDARDS RELATING TO CASEFLOW MANAGEMENT AND TIME DELAY REDUCTION, (1984).

79 STANDARDS, *op.cit.* note 76 at 6.

80 "[S]ymbolically it signified that there was another dimension to judging, a dimension of administrative responsibility imposed on every judge: he or she was not only to judge well but to work well, and to do whatever was necessary to assure that the entire system was functioning properly." *In re Alvino*, 100 N.J. 92, 494 A. 2d 1014 (1985); regarding the development of case management in the federal courts, see J. Resnick, *Managerial Judges*, 96 HARVARD LAW REVIEW (1982), at 417-421.

81 STANDARDS, *op.cit.* note 76 at 6.

82 DEPENDENCY BENCHBOOK, *op.cit.* note 31 at 201-227.

83 RESOURCE GUIDELINES, *op.cit.* note 20.

84 Two related publications were also influential in stressing the importance of timely permanency. These were studies of courts that were demonstrating excellent results for children through the adoption of best practices including adherence to time standards. *See* AMERICAN BAR ASSOCIATION CENTER ON CHILDREN AND THE LAW, JUDICIAL IMPLEMENTATION OF PERMANENCY PLANNING REFORM: ONE COURT THAT WORKS, (1992) [hereinafter ONE COURT THAT WORKS] and M. HARDIN, H.T. RUBIN, & D.R. BAKER, A SECOND COURT THAT WORKS: JUDICIAL IMPLEMENTATION OF PERMANENCY PLANNING REFORMS, (ABA, 1995).

85 DEPENDENCY BENCHBOOK, *op.cit.* note 31 at 204;

> A court system cannot afford to treat abuse and neglect, termination of parental rights, and adoption proceedings as unrelated matters. Judges and court managers must be prepared from the time children are removed from their homes and place in shelter to manage cases not only to ensure prompt progress toward adjudication and disposition of abuse or neglect issues but also to provide timely permanency hearings, termination proceedings and adoption proceedings.

STEELMAN, *op.cit.* note 72 at 47.

86 SHAMAN et al., *op.cit.* note 72, at 203-204.

87 The Canons of Judicial Conduct were developed by the American Bar Association. http://www.abanet.org/cpr/mcjc/home.html. Each state has adopted its own set of Canons, although most are closely tied to the ABA's 1990 version of a Model Code of Judicial Conduct. See SHAMAN ET AL., *op.cit.* note 72, at 3-4.

88 Canon 3(A)(5) of the 1972 Model Code. In California, the Canon reads as follows:

> "A judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, and shall cooperate with other judges and court officials in the administration of court business." Canon 3C(1).

89 "A judge shall dispose of all judicial matters promptly, efficiently and fairly." 1990 Model Code, Canon 3B(8), *op.cit.* note 87.

90 "A judge shall require staff, court officials and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties." Canons 3B(2) of the 1972 Model Code and 3C(2) of the 1990 Model Code, *id.*

91 Rule 16.01 Purpose, State Court Rules, Chapter 1, W. VA. CODE ANN., (West 2007). The time frame contained in the West Virginia statutes is found at W. VA. CODE ANN. §§ 49-6-1 through 49-6-5; The Rule also cites the ABA Standards that state "the court, not the lawyers or litigants, should control the pace of litigation," and directs circuit courts and their officers to comply with the rules of court regarding time standards.

92 *In re Anderson*, 2004 UT 7, 28, 82 P3d 1134, 1151 (2004).

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93 "Each state" includes the District of Columbia and Puerto Rico.

94 CENTER FOR THE STUDY OF SOCIAL POLICY, IMPROVING THE PERFORMANCE AND OUTCOMES OF CHILD WELFARE THROUGH STATE PROGRAM IMPROVEMENT PLANS (PIPS), (2003), at 1-2.

95 These outcomes are: (1) Reduce recurrence of child abuse and/or neglect; (2) Reduce the incidence of child abuse and/or neglect in foster care; (3) Increase permanency for children in foster care; (4) Reduce time in foster care to reunification without increasing re-entry; (5) Reduce time in foster care to adoption; (6) Increase placement stability; and (7) Reduce placements of young children in group homes or institutions. U.S. DEPT. OF HEALTH AND HUMAN SERVICES, ADMINISTRATION FOR CHILDREN AND FAMILIES, CHILD WELFARE OUTCOMES 2002: ANNUAL REPORT TO CONGRESS: EXECUTIVE SUMMARY, *available at* http://www.acf.hhs.gov/programs/cb/pubs/cwo02/chapters/executive2002.htm.

96 Financial penalties have been assessed against many states. The GAO estimated that the financial penalties thus far range from a total of $91,492 for North Dakota to $18,244,430 for California. Statement of Cornelia Ashby, Director, Education, Workforce, and Income Security Issues: GAO-04-781T, May 13, 2004, at 13.

97 For example, ADMINISTRATION FOR CHILDREN AND FAMILIES, CHILD WELFARE OUTCOMES 2002: ANNUAL REPORT TO CONGRESS, (2002). To read this report, one would assume that the courts were not a part of the child welfare process and had no bearing on outcomes for children in foster care.

98 In one comprehensive review of the efforts of six states to improve outcomes for children through the CFSR/PIP process, only two states even mentioned judicial involvement and in each case, the involvement was minimal. CENTER FOR THE STUDY OF SOCIAL POLICY, *op.cit.* note 94 at 57, 64.

99 *Id.* at 57.

100 Her official title is Commissioner of the Administration for Children, Youth and Families in the Administration for Children and Families, Health and Human Services.

101 Some of her outreach activities are outlined in her Testimony of Joan E. Ohl, Commissioner, Administration on Children, Youth and Families, Administration for Children and Families, Department of Health and Human Services before the Committee on Finance, U.S. Senate, May 10, 2006, at 8-11. The ACF has also funded a joint project through the ABA Center on Children and the Law, the NCJFCJ and the National Center for State Courts, entitled the Toolkit Project. One of the components of this project is to establish and calculate court performance measures. By focusing on these performance measures in state courts, the goal is to improve outcomes for children and families including timely permanency. Additionally, Commissioner Ohl has made significant efforts to work with the nation's juvenile courts collaboratively to achieve the state child welfare goals. Her office has funded three national organizations, the ABA, the NCSC, and the NCJFCJ, to work together to improve court/agency relationships, and her office has also hired two distinguished retired judges to meet with state Chief Justices across the nation to impress upon them the importance of court-agency collaboration.

102 E. Stawicki, & D. Gunderson, *How Long are Minnesota Children Waiting?* (Minnesota Public Radio broadcast, Feb. 19, 2007); "In New York City, the average length of stay in foster care is now 4.2 years...." J. Chaifetz, *Listening to Foster Children in Accordance With the Law: The Failure to Serve Children in State Care*, NEW YORK UNIVERSITY REVIEW OF LAW AND SOCIAL CHANGE, (1999), at 4, citing materials from *Marisol A. v. Giuliani*, 185 F.R.D., 151 (S.D.N.Y. 1999); WASHINGTON COURT IMPROVEMENT REPORT, *op.cit.* note 69, at 80. Connecticut is an example of a state where overwhelming caseloads prevented the juvenile court from completing the preliminary hearing (shelter care hearing) within the state statutory time frame. The Court Improvement Report in 1996 noted that removal hearings once begun were often not completed for weeks or months. NATIONAL CHILD WELFARE RESOURCE CENTER FOR ORGANIZATIONAL IMPROVEMENT, STATE OF CONNECTICUT COURT IMPROVEMENT PROJECT REPORT (1996) at 39; Philadelphia, Pennsylvania, is an example of a dependency court that was not until recently reaching adjudication within statutory time limits; "Adjudication on cases could be deferred not for months, but years, and no one could really tell for sure how many deferred cases there were because these cases were not consistently recorded in the court's automated database." NATIONAL CENTER FOR JUVENILE JUSTICE, PENNSYLVANIA COURT IMPROVEMENT PROJECT: ASSESSMENT OF 2001 INITIATIVES IN THE PHILADELPHIA DEPENDENCY COURT, (2002), at 66 [hereinafter PENNSYLVANIA COURT IMPROVEMENT].

103 Dolce, *op.cit.* note 70 at 576. "Adjudications were not occurring within twenty-eight days and the Department was seeking extensions of time to do so." *Id.*

104 "What Courts Need to Measure: 1. Average or median time from filing of the original petition to adjudication." D. Will, A. Hirst, & A. Neustrom, *Information Needs in Juvenile Dependency Court*, 5 JOURNAL FOR THE CENTER FOR FAMILIES, CHILDREN & THE COURTS 71, (2004), at 45.

105 For example, in Florida the time standard is 88 days from shelter care hearing to disposition for a child in shelter care, Rule 2.250(a)(1)(F), Florida Rules of Judicial Administration, (West 2007); in Alaska the time to CINA (Children in Need of Assistance) adjudication is 120 days. 25 THE ALASKA BAR RAG, (2001), at 8; in Illinois, the statute requires that the "adjudicatory hearing shall be commenced within 90

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days of the date of service of process upon the minor, parents, any guardian and any legal custodian..." 705 ILCS § 405/2-14(b), (West 2007); Montana statutes require the adjudication to be held within 90 days of a show cause hearing, but, pursuant to section 41-3-437, this date can be continued if newly discovered evidence, unavoidable delays, stipulations by the parties pursuant to section 41-3-434, and unforeseen personal emergencies; MONT. STAT., § 41-3-321, (West 2007); in Nebraska, the statutory time frame mandates that the adjudication take place in 90 days (NRS Section 43-278, West 2007). According to a lead juvenile court judge, some judges grant liberal continuances beyond that date while in other courts the trial may start within 90 days, but it has to be continued because of heavy dockets (e-mail communication with Judge Douglas Johnson, on file with author).

106 There are no statutory guidelines for the timing of the adjudicatory hearing in child protection cases in New York. One judge from upstate New York indicated that there is a court rule (outside of New York City) that there must be a resolution of adjudication within six months. He stated that the majority of cases are resolved from six to eight weeks from filing and 95% within six months, and that there are no consequences for a failure to meet the six-month time limit. In New York City, the clock does not start until the respondent first appears. The same judge indicated that cases may be extended indefinitely if there are pending criminal charges against one of the parents (e-mail interview with Judge Dennis Duggan, on file with author). In Erie County (upstate New York), the local court developed its own time standards for hearings (e-mail interview with Judge Sharon Townsend). In New Jersey, there are no statutory guidelines for the time to adjudication, either. There is an administrative directive (non-statutory) requiring the adjudication to take place within four months of the date of filing of the complaint. A Newark judge indicates that it is usually within 20 days, as to the fact finding and dispositional hearing (title 9:6-8:45) (e-mail communication with Judge Thomas Zampino, on file with author).

107 Stawicki et al., *op.cit.* note 102.

108 California Court Improvement, *op.cit.* note 71 at 3-10—3-13.

109 CAL. WELF. & INST. CODE § 334, (West 2007).

110 WASHINGTON COURT IMPROVEMENT, *op.cit.* note 69 at 80-81.

111 RCW 13.34.070, (West 2007).

112 California law mandates that the jurisdictional hearing take place 15 court days (three weeks) after the shelter care hearing; CAL. WELF. & INST. CODE § 334, (West 2007); Texas Family Code section 262.001 states that in emergency removals the "adversary hearing" must take place in 14 days with good cause to extend that time. Participants in the El Paso Juvenile Court indicate that they have been able to keep within those time limits for the adjudication. "The Vermont statute requires a merits (adjudication) hearing 15 days from the date the petition is filed if the child has been removed (33 V.S.A. § 5519) and that a disposition hearing be held no later than 30 days after adjudication (33 V.S.A. § 5526(b)). However, in 2006, adjudication was completed within 90 days in only one-half of the abuse/neglect cases disposed that year." (e-mail from Vermont Administrative Judge Amy Davenport, on file with author). Many states have statutes that mandate 60 days: Colorado (C.R.S. § 19-3-501(2) but section 19-3-123 indicates 90 days), Iowa (Rule of Civil Procedure 8.11, but the Supreme Court has indicated that 30 days is best practice), New Mexico (N.M. Laws § 32A-4-19 - Chapter 15 15.2.1, West 2007), North Carolina (§ 7B-801 et seq, West 2007), Oregon (ORS 419B.305, West 2007), and Utah (UCA section 78 78-3a-308, West 2007). The *Resource Guidelines* recommend 60 days. RESOURCE GUIDELINES, *op.cit.* note 20 at 47.

113 1990 Model Code, Canon 3B(8), *op.cit.* note 87. The language from the 1972 Model Code, Canon 3(A)(5) is for judges to "dispose promptly of the business of the court."

114 RESOURCE GUIDELINES, *op.cit.* note 20 at 14. James Payne, former Presiding Judge of the Marion County (Indiana) Juvenile Court and now Director of the Indiana Department of Human Services, stresses the importance of 30-30-30—the first 30 minutes, the first 30 hours, and the first 30 days in order to accomplish child protection goals in a timely fashion.

115 *Id.* at 47.

116 "Court rules or guidelines need to specify a time limit within which the adjudication must be completed." *Id.*; STEELMAN, *op.cit.* note 72 at 47.

117 D. STEELMAN, J. ARNOLD, & K. GOTTLIEB, NEW ORLEANS COLLABORATIVE ON TIMELY ADOPTIONS: REMOVING BARRIERS TO PROMPT COMPLETION OF CHILD PROTECTION CASES: FINAL REPORT, (National Center for State Courts, April 1998), at 18-19 [hereinafter NEW ORLEANS FINAL REPORT].

118 "One means of establishing court control and court accountability to the public as the use of time standards." "A court that cannot move cases is a court that lacks management credibility and is prone to interference from outside the judiciary." TOBIN, *op.cit.* note 72, at 18; "Establish mandatory hearings and time frames for hearings in abuse/neglect cases filed in juvenile court and address other barriers to permanency in the court process." THE JUVENILE COURT IMPROVEMENT PROJECT STEERING

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COMMITTEE, IMPROVING MISSOURI'S COURT PRACTICE IN CHILD ABUSE AND NEGLECT CASES: 10 RECOMMENDATIONS, (Jefferson City, MO, January 2000), at iv, 9-11.

119 The difference between 60 calendar days and 60 court days is approximately three to four weeks. The DEPENDENCY BENCHBOOK, *op.cit.* note 31 recommends 45 days from removal to completion of adjudication, at 204.

120 WASHINGTON COURT IMPROVEMENT, *op.cit.* note 69 at 57.

121 42 U.S.C. § 675(5)(f).

122 Vermont offers an example of how the courts can develop their own standards for the completion of adjudication. The Vermont Supreme Court recently (2006) adopted as an Administrative Directive standards for adjudication of merits and disposition as well as time standards for a number of other parts of abuse/neglect and delinquency proceedings including termination of parental rights. These standards include timelines for "normal" cases (60 days to completion of adjudication) and for "complex" cases (90 days to completion of adjudication). This is a creative way to set a flexible standard for trial judges.

123 *In re Anderson,* 2004 UT 7, 34, 82 P3d 1134, 1153 (2004).

124 Dolce, *op.cit.* note 70 at 610.

125 For example in Illinois the period is 90 days. *See* 705 ILCS 405, section 2-14; *In re S.G.* 214 Ill.Dec. 583, 277 Ill.App.3d 803; 661 N.E. 2d 437 (1997). However, the dismissal is without prejudice.

126 "Court rules or guidelines need to specify a time limit within which the adjudication must be completed." RESOURCE GUIDELINES, *op.cit.* note 20 at 47. "Ideally, time standards and goals should be incorporated into court rules and made legally binding upon the court. Serious breaches of court deadlines should be brought to the attention of the Chief Judge," WASHINGTON COURT IMPROVEMENT, *op.cit.* note 69 at 57. See also Pima County discussion *infra* in section VII-C, 3.

127 HARDIN ET AL., *op.cit.* note 84 at 58.

128 Refer to the discussion and references in section VII-B, 4.

129 RESOURCE GUIDELINES, *op.cit.* note 20 at 29-44, 42-43.

130 *Id.*

131 STEELMAN, *op.cit.* note 72 at 47-8.

132 On the movement toward group decision making in child protection cases, *see* Leonard Edwards & Inger Sagatun-Edwards, *The Transition to Group Decision Making in Child Protection Cases: Obtaining Better Results for Children and Families,* 58 JUVENILE & FAMILY COURT JOURNAL 1 (Winter 2007).

133 Evaluations of child protection have been reported in a number of states. *See* THE CENTER FOR POLICY RESEARCH, ALTERNATIVES TO ADJUDICATION IN CHILD ABUSE AND NEGLECT CASES, EXECUTIVE SUMMARY, (1992); N. Theonnes, *Dependency Mediation: Help for Families and Courts,* 51 JUVENILE AND FAMILY COURT JOURNAL 2, (Spring 2000) at 13-22; Leonard Edwards, *Mediation in Child Protection Cases,* 5 JOURNAL FOR THE CENTER FOR FAMILIES, CHILDREN & THE COURTS, 57-70, at 62 (2004) [hereinafter *Mediation in Child Protection Cases*]; Leonard Edwards et al., *Mediation in Juvenile Dependency Court: Multiple Perspectives,* 53 JUVENILE AND FAMILY COURT JOURNAL 4, (2002), at 52 [hereinafter *Multiple Perspectives*]; N. THEONNES & J. PEARSON, MEDIATION IN THE SANTA CLARA COUNTY DEPENDENCY COURT: A REPORT TO THE CALIFORNIA LEGISLATURE IN COMPLIANCE WITH SB 1420, (Center for Policy Research, December 1995), at 31-33 [hereinafter MEDIATION IN SANTA CLARA]; D.C. FAMILY COURT REPORT, *op.cit.* note 35 at 31-2; G. ANDERSON, & P. WHALEN, PERMANENCY PLANNING MEDIATION PILOT PROGRAM: EVALUATION FINAL REPORT, (Michigan State University School of Social Work, Ann Arbor, 2004), *available at* http://courts.michigan.gov/scao/resources/publications/reports/PPMPevaluation2004.pdf.

134 *Mediation in Child Protection Cases, id.* at 62.

135 J. Liebow, *The Need for Standardization and Expansion of Nonadversary Proceedings in Juvenile Dependency Court With Special Emphasis on Mediation and the Role of Counsel,* 44 JUVENILE AND FAMILY COURT JOURNAL 3, (1993); N. THEONNES & J. PEARSON, MEDIATION IN FIVE CALIFORNIA DEPENDENCY COURTS: A CROSS-SITE COMPARISON, (Center For Policy Research, November 1995) [hereinafter MEDIATION IN FIVE CALIFORNIA COURTS]; "There is, however, a strong counterargument that alternative dispute resolution is the best means of tailoring justice to the nature of each case to provide more timely and lest costly decisions." TOBIN, *op.cit.* note 72 at 211; "The fourth principle is to maximize the use of non-adversarial methods of family dispute resolution." Robert Page, *Family Courts: An Effective Judicial Approach to the Resolution of Family Disputes,* 44 JUVENILE & FAMILY COURT JOURNAL 1, 30 (Winter 1993); ANDERSON & WHALEN, *op.cit.* note 133, at 5.

136 "Conduct mediation as early in process as possible." THE CENTER FOR PUBLIC POLICY DISPUTE RESOLUTION, EVALUATION OF THE CHILDREN'S JUSTICE ACT CHILD PROTECTION SERVICES MEDIATION PILOT PROJECTS, (University of Texas at Austin School of Law, November 1998), at 30; K. Olson, *Lessons Learned From a Child Protection Mediation Program: If at First You Succeed and Then You Don't...,* 41 FAMILY COURT REVIEW 4, 480-496, 489, (October 2003) [hereinafter *Lessons Learned*]; "Most cases do get resolved at the

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pre-trial stage of the process. Difficult issues of proof, concern for trauma to the family, and recognition of the likely disposition, may facilitate a settlement, but not before parties are entrenched in adversarial processes." J. Wiig, Pre-trial Resolution of Child Protective Proceedings, (Unpublished manuscript, 1984, Los Angeles, Calif., Superior Court, Juvenile Division), cited in N. Theonnes, *Child Protection Mediation: Where We Started*, 35 FAMILY AND CONCILIATION COURTS REVIEW 2, 136-142, 136 (1997), [hereinafter *Where We Started*]; SUPERIOR COURT OF THE DISTRICT OF COLUMBIA, FAMILY COURT 2006 ANNUAL REPORT, (2006), at 21-23.

137 ANDERSON & WHALEN, *op.cit.* note 133 at 5-8.

138 Karla Fisher, Neil Vidmar, & Rene Ellis, *The Culture of Battering and the Role of Mediation in Domestic Violence Cases*, 46 SMU LAW REVIEW 2117 (1992); ONTARIO ASSOCIATION OF INTERVAL AND TRANSITION HOUSES, STOP THE VIOLENCE AGAINST WOMEN, BACKGROUND REPORT, (Toronto, Ontario, 1989); Nancy Ver Steegh, *Yes, No and Maybe: Informed Decision Making About Divorce Mediation in the Presence of Domestic Violence*, 9 WILLIAM & MARY JOURNAL ON WOMEN & LAW, 145 (Winter 2004).

139 Cal. R. Ct. 5.210(f) and (g), (West 2007); *Mediation in Child Protection Cases*, *op.cit.* note 133 at 62.

140 Cal. R. Ct. 5.215(f), (West 2007). Other courts have developed screening tools that are used in different parts of the country. L. Girdner, *Mediation Triage: Screening for Spouse Abuse in Divorce Mediation*, 7 MEDIATION QUARTERLY 365, (Summer 1990).

141 CAL. FAM. CODE § 3181, (West 2007); Cal. R. Ct. 5.125(g)(1), (West 2007). In practice, California Family Court Service mediators use this procedure regularly. One California county conducted over 1,000 mediations in 2005. (author's discussion and e-mail communication with Cathy Harmon, Manager, Orange County Family Court Services, on file with author).

142 Cal.R.Ct. 5.215, (West 2007).

143 CAL. FAM. CODE § 3183(c), (West, 2007).

144 NCJFCJ, MODEL CODE ON DOMESTIC AND FAMILY VIOLENCE (1994).

145 *Id.* section 408(B).

146 J. Kelly, *Family Mediation Research: Is There Empirical Support for the Field?*, 22 CONFLICT RESOLUTION QUARTERLY 3, (Fall-Winter 2004), at 28; B. Davies, & S. Ralph, *Client and Counselor Perceptions of the Process and Outcomes of Family Court Counselling in Cases Involving Domestic Violence*, 36 FAMILY & CONCILIATION COURTS REVIEW 227, (April 1998), at 242; *Multiple Perspectives*, *op.cit.* note 133 at 61.

147 *Mediation in Child Protection Cases*, *op.cit.* note 133 at 62.

148 L. Edwards, *Dependency Court Mediation: The Role of the Judge*, 35 FAMILY AND CONCILIATION COURTS REVIEW 2 (1997), at 160-163; OFFICE OF THE EXECUTIVE SECRETARY OF THE SUPREME COURT OF VIRGINIA, CHILD DEPENDENCY REPORT, (November 2002), at 10, 21, *available at* http://www.courts.state.va.us/publications/child_dependency_mediation_report.pdf. [hereinafter VIRGINIA REPORT].

149 Edwards, *id.* at 160; "Each site indicated that the main program challenge was obtaining the endorsement or 'buy-in,' from all the parties necessary to have a successful child dependency mediation program." VIRGINIA REPORT, *id.* at 17.

150 Theonnes, *op.cit.* note 133 at 20.

151 VIRGINIA REPORT, *op.cit.* note 148 at 19; *Lessons Learned*, *op.cit.* note 136 at 489.

152 "Funding for these programs will be a major factor in developing stable and successful programs for mediation in dependency cases." G. Firestone, *Dependency Mediation: Where Do We Go From Here?* 35 FAMILY AND CONCILIATION COURTS REVIEW 2, 223-238, 234 (April 1997); M. Orlando, *Funding Juvenile Dependency Mediation Through Legislation*, 35 FAMILY AND CONCILIATION COURTS REVIEW 2, 196-201 (April 1997); the author has also learned that some of Michigan's very successful child protection mediation programs had to be reduced or cancelled because of a lack of funding (e-mail from Judge Michael Anderegg, on file with author).

153 For example, in 2002, the Los Angeles Juvenile Dependency Mediation program lost more than one-half of its mediators due to budget cutbacks. The program went from ten full-time to four full-time and one part-time mediator. This resulted in severe reductions in the capacity of the program to meet the needs of the court and hundreds of scheduled mediations were never held. (Communication with Meghan Wheeler, Director of the Los Angeles Juvenile Court Mediation Program, on file with author); see also VIRGINIA REPORT, *op.cit.* note 148 at 10, and *Lessons Learned*, *op.cit.*, note 136 at 489.

154 The estimated savings in the San Francisco mediation program were $2,505 per case. CENTER FOR POLICY RESEARCH, DEPENDENCY MEDIATION IN THE SAN FRANCISCO COURTS: EXECUTIVE SUMMARY, (March 1998), at 66; NCJFCJ, MEDIATION IN CHILD PROTECTION CASES: AN EVALUATION OF THE WASHINGTON, D.C. FAMILY COURT CHILD PROTECTION MEDIATION PROGRAM, (2005), at 6, 11, 16-17 [hereinafter DC MEDIATION

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EVALUATION]; Theonnes, *op.cit.* note 133 at 21; MEDIATION IN FIVE CALIFORNIA COURTS, *op.cit.* note 135 at 3-7, 12; Edwards, *Mediation in Child Protection Cases*, *op.cit.* note 133 at 63, 64.

155 VIRGINIA REPORT, *op.cit.* note 148 at 4; In the Arkansas child protection mediation project, the average time for finding a permanent placement in mediated cases was 295 days while in non-mediated cases, it took 553 days, *Lessons Learned*, *op.cit.* note 136 at 489; In Washington, D.C., mediated cases completed adjudication on average in 49 days as compared to an average of 86 days for non-mediated cases, DC MEDIATION EVALUATION, *id.* at 16; MEDIATION IN FIVE CALIFORNIA COURTS, *op.cit.* note 135, at 3-7.

156 Model Courts are courts selected by the National Council of Juvenile and Family Court Judges to participate in its Child Victims Act Model Courts Project. This national project, funded by the Office of Juvenile Justice and Delinquency Prevention, was created to promote improvements in juvenile and family courts handling civil child abuse and neglect cases. It was inspired by the publication of the RESOURCE GUIDELINES, *op.cit.* note 20 and now includes over 30 courts nationwide. Multnomah County was one of the earliest participants in the Model Courts program.

157 NCJFCJ, *The Portland Model Court Expanded Second Shelter Hearing Process: Evaluating Best Practice Components of Front-Loading*, VI TECHNICAL ASSISTANCE BULLETIN 3, (July 2002) [hereinafter *Portland Model Court*]. Hamilton County (Cincinnati), Ohio also uses an expanded initial hearing with similar results. See ONE COURT THAT WORKS, *op.cit.* note 84.

158 *Portland Model Court*, *id.* at 5.

159 *Id.* at 6.

160 RESOURCE GUIDELINES, *op.cit.* note 20 at 29-44.

161 The RESOURCE GUIDELINES refer to the hearing as the "preliminary protective hearing."

162 *Portland Model Court*, *op.cit.* note 157 at 8.

163 *Id.* at 8-9.

164 This protocol was developed after passage of the "Child in Need of Protection Amendment Act of 2004," Section 4-1301.02 et. seq., (West 2007). It is fully described in M. EDWARDS, & K. TINWORTH, FAMILY TEAM MEETING (FTM): PROCESS, OUTCOME, AND IMPACT EVALUATION, (American Humane Association, October 2005). FTMs are defined as "structured planning and decision-making meetings that use skilled and trained facilitators to engage families, family supports, and professional partners in creating plans for children's safety and inlaying the groundwork for permanency." The legislative history is also discussed at 28-30; FTMs are further described as a court innovation in D.C. FAMILY COURT REPORT, *op.cit.* note 35 at 63.

165 EDWARDS, & TINWORTH, *id.* at 2-3.

166 Family Finding is a philosophy that emphasizes the importance of family members as a solution to the problems facing abused and neglected children. Family Finding stresses the value of extended family members as a resource for governmental agencies seeking support for these children. Using advanced technology from 100 to 300 extended family members can be located in a short period of time. Some of these may be able to provide support, even a home for the child in question. *See generally*, B. Boisvert, G. Brimner, K. Campbell, D. Koenig, J. Rose, & M. StoneSmith, *Who Am I? Why Family Really Matters*, 16 FOCAL POINT 1, 25-27, Spring 2002; Edwards & Sagatun-Edwards, *op.cit.* note 132; M. Shirk, *Hunting for Grandma*, YOUTH TODAY, February 2006; L. Edwards, *Finding Foster Kids' Families Must Become Our Mandate*, SAN JOSE MERCURY NEWS, April 14, 2005; *Loneliest: Children in Foster Care Being Reunited with Birth Families*, CBS News Transcripts, Dec. 17, 2006; L. Clemetson, *Giving Troubled Families a Say in What's Best for the Children*, THE NEW YORK TIMES, Dec. 16, 2006.

167 The identification of extended family is critical in many child protection cases. Kinship care often is the best answer for children who cannot return to their parents. R. Hegar, *The Cultural Roots of Kinship Care*, in KINSHIP FOSTER CARE: POLICY, PRACTICE, AND RESEARCH, (R. Hegar, & M. Scannapieco, eds., Oxford University Press, 1999).

168 EDWARDS & TINWORTH, *op.cit.* note 164 at 23-56.

169 Chapter 23 of Title 16 of the District of Columbia Official Code, (a) Section 16-2312 (a)(1)(1) & (a)(2) as amended by the "Child in Need of Protection Amendment Act of 2004, *op.cit.* note 164.

170 EDWARDS & TINWORTH, *op.cit.* note 164 at 3-5, 45-47.

171 *Id.* at 3-5; "It has been extremely helpful in pulling together family members who are willing to share in the responsibility for keeping children safe and the process avoids unnecessary removal of children who can be otherwise safely maintained in the community. We really like the idea of getting family members involved in the case on the front end." (e-mail to the author from Judge Anita Josey-Herring, Supervising Judge, Child Protection Division, Superior Court, District of Columbia, Dec. 6, 2006, on file with author).

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172 This is the recommendation of the National Council of Juvenile and Family Court Judges, DEPENDENCY BENCHBOOK, *op.cit.* note 31 at 165-166, 203; and see Leonard Edwards, *Alternatives to Contested Litigation in Child Abuse and Neglect Cases, Appendix B*, RESOURCE GUIDELINES, *op.cit.* note 20 at 131-133.

173 G. Halemba, G. Siegel, R. Gunn, & S. Zawacki, *The Impact of Model Court Reform in Arizona on the Processing of Child Abuse and Neglect Cases*, 53 JUVENILE AND FAMILY COURT JOURNAL, 1-20, at 1 (Summer 2002).

174 *Id.* at 3.

175 Arizona uses the term "preliminary protective hearing."

176 *Id.* at 9.

177 G. HALEMBA, & G. SIEGEL, PIMA COUNTY JUVENILE COURT: SUMMARY OF FOLLOW-UP ASSESSMENT, (National Center for Juvenile Justice, 1999) at 13.

178 *Id.*

179 Halemba et al., note 173 at 13-16.

180 *Id.* at 1.

181 UTAH COURT IMPROVEMENT *op.cit.* note 71, at 3-38, 3-39, 4-20.

182 *Id.* at 4-20 - 4-23.

183 McAvay, *op.cit.*, note 18 at 164-5.

184 PENNSYLVANIA COURT IMPROVEMENT, *op.cit.* note 102 at 13-15. Evaluations of this process note that it encourages parents to attend early hearings and keep attending hearings, identifies relatives as alternatives to placement in substitute care, helps give children a voice in the proceedings, builds a foundation for communication and cooperation at the outset of the proceedings, encourages innovative solutions to family problems that engage support networks of relatives, friends and service providers and improves the relationship between the caseworkers and family members. *Id.* at 15.

185 *Id.* at 47.

186 D.C. FAMILY COURT REPORT, *op.cit.* note 35 at 45.

187 E-mail from Judge Nancy Salyers (ret.), on file with author.

188 RJPP 36.02. The conference must be held at least 10 days prior to the trial (RJPP 36.01).

189 Settlement conferences shall be held prior to every contested hearing, unless expressly deemed unnecessary by the judicial officer setting the contested hearing. The trial attorneys and all parties shall be present at the settlement conference unless expressly excused by the Court. Prior to the calling of the case the parties or their attorneys shall meet in order to determine the issues to be tried and any areas of agreement.

SCC Local Juvenile Court Rule IG, Superior Court, Santa Clara County, 2007.

190 Accord, NEW ORLEANS FINAL REPORT, *op.cit.* note 117 at 55.

191 The court must "establish and control the pace at which cases proceed..." NEW ORLEANS FINAL REPORT, *id.* at 21. "It is up to judges to ensure that children reach permanency.... If the judge emphasizes the importance of these cases, they will reach conclusion and be dismissed from the system." *Improving Implementation, op.cit.* note 3 at 15. "The two most frequently given strengths pertaining to the judiciary were:... (2) commitment to timely decision-making." NCJFCJ, *Judicial Leadership and Judicial Practice in Child Abuse and Neglect Cases*, II TECHNICAL ASSISTANCE BULLETIN 5, (July 1998) at 21 [hereinafter *Judicial Leadership*]; STEELMAN, *op.cit.* note 72, at 47, 61.

192 "Court enforcement of a time limit within which adjudication must take place compels court clerks, attorneys, investigators, and social workers to adjust to a quicker pace of litigation." RESOURCE GUIDELINES, *op.cit.* note 20 at 47; "Judges and all other participants in the juvenile abuse and neglect process should treat each case as though it were an emergency." L. Edwards, *Improving Juvenile Dependency Courts: Twenty-Three Steps*, 48 JUVENILE AND FAMILY COURT JOURNAL 1, 10 (Fall 1997) [hereinafter *Improving Juvenile Dependency Courts*].

193 "...28% believed that poor judicial practices often resulted in case delays. Specifically, the majority of these specialists complained that judges are granting continuances much too often." *Judicial Leadership, op.cit.* note 191 at 29.

> To have a court that is responsive to the needs of children and families I am convinced the system must have: 1. leadership. This must come from judges, but it can be shared with and can emerge from a working partnership with social service administration, the bar (including prosecuting attorneys), and community (including funders.) But it must have an activist judiciary." (emphasis in the original).

(Letter to the author from Judge John P. Steketee, former Chief Judge, Kent County Juvenile Court, April 14, 1997, on file with author). Several juvenile courts have written mission statements outlining the goals of their court. The Cook County Mission Statement has as #1 of its guiding parameters as "We will not permit children to remain in foster care due to delay of decisions necessary to achieve permanency or to bureaucratic concerns." Cook County Juvenile Court, Chicago, Illinois Mission Statement, found

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in NCJFCJ, COURT, AGENCY AND COMMUNITY COLLABORATION, Chapter 2, (2000), worksheets.

194 "[T]he court, not the lawyers or litigants, should control the pace of litigation." Section 2.50, ABA STANDARDS, *op.cit.* note 76; And see W. VA. CODE § 49-6-5(a). "The prevalent view is that the judge most controls the pace of litigation. About 3 out of 4 corporate counsel, 7 out of 10 public interest litigators, the majority of plaintiff's litigators and a near majority of defense litigators feel that judges are not forceful enough in their case management. "Study of Louis Harris and Associates," found in C. Geyh, *Adverse Publicity as a Means of Reducing Judicial Decision-Making Delay*, 41 CLEVELAND STATE LAW REVIEW 511, at 517. "Court enforcement of a time limit within which adjudication must take place compels court clerks, attorneys, investigators, and social workers to adjust to a quicker pace of litigation." RESOURCE GUIDELINES, *op.cit.* note 20 at 47.

195 NEW ORLEANS FINAL REPORT, *op.cit.* note 117 at 21.

196 "Judges should have a complete list of all children over whom the court has jurisdiction. The list should include the status of each case and how long it has been in the system....If the judge emphasizes the importance of these cases, they will reach conclusion and be dismissed from the system." *Improving Implementation*, *op.cit.* note 3 at 15.

197 One judge keeps track of her cases on her own computer, another has her clerk remind her of cases that are out of compliance, while still a third uses a "tickler" system to identify cases that exceed timelines.

198 *Judicial Leadership*, *op.cit.* note 191 at 4, 25-34. One remedy for controlling the timeliness of court reports is to sanction social workers for late reports. Judge Michael Nash, the Presiding Judge of the Los Angeles Juvenile Court, reports that before 1996 social worker reports were late in 20%-25% of all cases, thus requiring continuances. He instituted a program of monetary sanctions for late reports and reduced the number of late reports to approximately 3.5%. Further, Judge Nash met with the Director of the Children's Services agency and informed him what the contents of a social worker report should be. Once the agency understood what the court needed in its reports, the number of cases continued to obtain additional information was also reduced. His efforts resulted in reducing the time to adjudication from 143 days to 60 days. (Interview with Judge Michael Nash, on file with author).

199 WASHINGTON COURT IMPROVEMENT, *op.cit.* note 69 at 65.

200 HARDIN ET AL., *op.cit.* note 84 at 64; "Time is an important part of the equation that produces justice." DEPENDENCY BENCHBOOK, *op.cit.* note 31 at 201. The Court Improvement Program has helped improve the timeliness of court proceedings. See M. HARDIN, COURT IMPROVEMENT FOR CHILD ABUSE AND NEGLECT LITIGATION: WHAT NEXT?, (ABA Center on Children and the Courts, 2003) at 2-3. Some courts have written timely permanency into their mission and goal statements.

> The mission of the Family Court of the Superior Court of the District of Columbia is to protect and support children brought before it, strengthen families in trouble, provide permanency for children and decide disputes involving families fairly and expeditiously while treating all parties with dignity and respect. GOALS: 1. Make child safety and prompt permanency the primary considerations in decisions involving children.

D.C. FAMILY COURT REPORT, *op.cit.* note 35, at 2.

201 "Local juvenile courts should closely monitor the granting of continuances and only grant continuances for good cause. Reasons must be stated on the record. Good cause does not include 'stipulation by the parties.' Attorneys should be on time for hearings and notify the court when they are going to be late." Recommendation 3, CALIFORNIA COURT IMPROVEMENT, *op.cit.* note 71 at 1-12, 3-8; *Judicial Leadership*, *op.cit.* note 191 at 6; "The juvenile court must assure that judicial determinations are made in a timely fashion." 42 U.S.C. § 675 (5)(C) (1989) cited in *Improving Implementation*, *op.cit.* note 3 at 5; found also in RESOURCE GUIDELINES, *op.cit.* note 20, Appendix C, at 139-168, 141; "The court must have a firm and effective policy on continuances," RESOURCE GUIDELINES, *op.cit.* note 20 at 21; "Continue and enforce strict no-continuance policies." WASHINGTON COURT IMPROVEMENT, *op.cit.* note 69, at 65; UTAH COURT IMPROVEMENT, *op.cit.* note 71, at 3-58 - 3-59;

> Too often, the system tolerates continuances to accommodate the schedules of lawyers, case workers and others, very often without reflection on the harm that such delay may have on the precious, limited commodity which we call childhood. Judges can and must be the gatekeepers of the system.

M. Landrieu, & J. Adams, Jr., *On Behalf of Our Children*, 46 LOUISIANA BAR JOURNAL, 469, 472; STEELMAN, *op.cit.* note 72, at 80.

> Judges should make certain that their courts are well-managed, accessible to the public and safe. Judges should conduct timely calendars, ensure that all reports are filed on time, and that all parties are present, and avoid unnecessary continuances or delays of court proceedings.

Improving Juvenile Dependency Courts, *op.cit.* note 192 at 6; DEPENDENCY BENCHBOOK, *op.cit.* note 31 at 203.

202 Sitting as a judge, the author has had attorneys come to court and announce that they understood that the case was going to be continued and thus had done no preparation on it. The response from the court has always been that the court knows of no such "understanding," that there are

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no continuances without court approval, that the court expects the attorneys to be prepared, and that some work might be completed even though there are compelling reasons for a continuance.

203 NEW ORLEANS REPORT, *op.cit.* note 117 at 5; "The court must not continue a hearing beyond the time set by statute unless the court determines the continuance is not contrary to the interest of the child." California Rule of Court 5.550(a)(1), (West 2007).

204 In Minnesota the legislature has mandated that in child abuse and neglect matters "...hearings may not be continued or adjourned for more than one week unless the court makes specific findings that the continuance or adjournment is in the best interests of the child." MINN. STAT. ANN. § 260C.163(b).

205 CAL. WELF. & INST. CODE § 352 and California Rule of Court 5.550, (West 2007). In this same statute the legislature further added "[i]n no event shall the court grant continuances that would cause the hearing pursuant to Section 361 to be completed more than six months after the hearing pursuant to Section 319." Of course, one difficulty is that there is no remedy for a failure to follow the statutory mandates.

206 RESOURCE GUIDELINES, *op.cit.* note 20, at 20.

207 "Trials should commence on the first date scheduled.... Having reasonably firm trial dates is a key feature of a successful caseflow management improvement program." STEELMAN, *op.cit.* note 72 at 6-7. One technique to ensure there is enough judicial time to provide a credible trial date is to have a "backup judge," a judge available to hear a trial if there is an unexpected overload of judicial work. STEELMAN, *id.*, at 10-11.

208 "The court must also enquire of the child's mother and of any other appropriate person present as to the identity and address of any and all presumed and alleged fathers of the child;" California Rule of Court 5.668(b), West, 2007; "[W]hen a noncustodial parent or putative father is first notified after efforts to work with the custodial parent are exhausted, new efforts must be initiated to work with the noncustodial parent or putative father." RESOURCE GUIDELINES, *op.cit.* note 20, at 46. "When noncustodial parents and putative fathers are brought into the litigation late, children often remain in foster care longer than necessary." RESOURCE GUIDELINES, *id.* at 49.

209 Lack of service of process on parents is noted as a reason for delay in the District of Columbia. D.C. FAMILY COURT REPORT, *op.cit.* note 35 at 45.

210 This was the case in Illinois when Judge Nancy Salyers (ret.) took over as Presiding Judge of the Child Protection Division in 1995. She worked with the Sheriff and the Clerk to eliminate "slippages" in the noticing process and eventually went to the state legislature to change the law so that if due diligence is shown on the original petition, the court can move directly to the termination of parental rights hearing, as long at the parents were personally served the first time (e-mail communication with Judge Nancy Salyers (ret.), on file with author.)

211 U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, WHAT ABOUT THE DADS?, (2006). The Parent Locator Service has proven effective in many jurisdictions.

212 NEW ORLEANS FINAL REPORT, *op.cit.* note 117 at 51-52.

213 HARDIN ET AL., *op.cit.* note 84 at 111.

214 (a) Upon his or her appearance before the court, each parent or guardian shall designate for the court his or her permanent mailing address. The court shall advise each parent or guardian that the designated mailing address will be used by the court and the social services agency for notice purposes unless and until the parent or guardian notifies the court or the social services agency of a new mailing address in writing.

CAL. WELF. & INST. CODE § 316.1, (West 2007). The court form developed to implement this statute is California Judicial Council Form JV-140, (West 2007).

215 "Juvenile court proceedings generally should go forward when related criminal proceedings are pending. Delays in adjudication delay progress toward family rehabilitation and reunification." RESOURCE GUIDELINES, *op.cit.* note 20 at 47. *In the Interest of J.P.*, 832 A.2d 492 (Pa.Super.Ct., 2003).

> Continuances shall be granted only upon a showing of good cause and only for that period of time shown to be necessary by the evidence presented at the hearing on the motion for the continuance.... Further, neither a pending criminal prosecution nor family law matter shall be considered in and of itself as good cause.

CAL. WELF. & INST. CODE § 352(a), (West 2007).

216 CAL. WELF. & INST. CODE § 355.1(f), (West 2007).

217 "It is recommended that the Judicial Council consider adopting a rule of court requiring that longer dependency matters be set and heard as a continuous proceeding." CALIFORNIA COURT IMPROVEMENT, *op.cit.* note 71 at 8-4; *Resource Guidelines, op.cit.* note 20 at 51; *Jeff M. v Superior Court*, 56 Cal.App.4th 1238 (1997) and *Renee S. v Superior Court*, 76 Cal.App.4th 187, 197 (1999); Continuous Trial Setting in Juvenile Dependency Cases,

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Rule 5.51, Proposed California Rule of Court, copy on file with author.

218 *Renee S. v Superior Court, id.* at 198. Furthermore, it seems clear that the court should do better.

219 DEPENDENCY BENCHBOOK, *op.cit.* note 31 at 203.

220 Superior Court, County of Santa Clara, Local Rules of Court and Internal Policies, San Jose, CA 2007.

221 This is standard practice in the Utah juvenile courts. UTAH COURT IMPROVEMENT, *op.cit.* note 71, at 57; NEW ORLEANS FINAL REPORT, *op.cit.* note 117 at 53; HARDIN ET AL., *op.cit.* note 84 at 110.

222 In cases involving physical or sexual abuse, the Minnesota legislature mandates that the court file the decision with the court administrator "as soon as possible but no later than 15 days after the matter is submitted to the court." Section 263.163(b) MINN. STAT. ANN., (West 2007).

223 SHAMAN, ET AL., *op.cit.* note 72, at 180-4. For example, in Utah a trial judge must decide all matters submitted for final determination within two months of submission. UTAH CODE § 78-7-25(1). A Utah juvenile dependency court judge who failed to render timely decisions was removed from office. *In re Anderson,* 2004 UT 7, 82 P3d 1134 (2004); In California, a judge must render a decision on a case taken under advisement within 90 days or his or her judicial salary will not be paid. Other states have similar rules, although in some of these attempted legislative mandates have been overruled as unconstitutional by the state supreme courts. In North Dakota, where a court rule states that reporting an overdue case to the Judicial Qualifications Commission "must be treated as a complaint against the judge assigned to the case." North Dakota Supreme Court Administrative Rule 4(J).

224 Disposition should occur quickly. Often a decision on disposition is necessary before significant case planning can begin.... [B]ut it may be appropriate to allow the disposition hearing to follow in a bifurcated manner immediately after the adjudicatory phase of the process if: (a) all required reports are available and have been received by all parties or their attorneys at least five days in advance of the hearing; and (b) the judge has had the opportunity to review the reports after the adjudication.

RESOURCE GUIDELINES, *op.cit.* note 20 at 55. Also see HARDIN ET AL., *op.cit.* note 84 at 110.

225 This practice is followed in many states. MINN. STAT. § 260C.201; *See* HARDIN ET AL., *op.cit.* note 84 at 86, and RESOURCE GUIDELINES, *id.* at 55; PENNSYLVANIA COURT IMPROVEMENT, *op.cit.* note 102 at 54.

226 The California statutes mandate that the dispositional hearing be heard no later than 10 court days after completion of adjudication if the child has been removed from parental care. CAL. WELF. & INST. CODE § 358, California Rule of Court 5.686, (West 2007); MINN. STAT. § 260.201, (West 2007).

227 RESOURCE GUIDELINES, *op.cit.* note 20 at 20; PORTLAND MODEL COURT, *op.cit.* note 157, at 49; "State court leadership and state court administrators should organize courts so that dependency cases are heard in dedicated courts or departments, rather than in departments with jurisdiction over multiple issues." PEW COMMISSION, *op.cit.* note 13, at 44; STEELMAN, *op.cit.* note 72 at 47; DEPENDENCY BENCHBOOK, *op.cit.* note 31 at 203.

228 RESOURCE GUIDELINES, *id.*, at 20, this is standard practice in most Model Courts including Utah. See UTAH COURT IMPROVEMENT, *op.cit.* note 71, at 3-3 - 3-4; *See also* PENNSYLVANIA COURT IMPROVEMENT, *op.cit.* note 102 at 12-13.

229 Preferably one judicial officer will hear a child welfare case from start to finish. When more than one judge hears a case, each successive judge must go back to the beginning to understand the case's procedural and factual history. Having multiple judges hear a case increases the possibility that facts ill be forgotten. It reduces accountability. It can turn judicial review into an exercise of paper movement and can result in poor judicial decisions concerning the placement of children.

Improving Implementation, op.cit. note 3 at 13. *See also* NORTH AMERICAN COUNCIL ON ADOPTABLE CHILDREN, JEFFERSON FAMILY COURT: ONE JUDGE, ONE STAFF, ONE FAMILY, SHORTENING CHILDREN'S STAYS: INNOVATIVE PERMANENCY PLANNING PROGRAMS, (April 1997), at 45-48.

230 *Improving Juvenile Dependency Courts, op.cit.* note 192 at 5-6; RESOURCE GUIDELINES, *op.cit.* note 20, at 19; *Improving Implementation, op.cit.* note 3 at 149; Leonard Edwards, *The Juvenile Court and the Role of the Juvenile Court Judge*, 43 JUVENILE AND FAMILY COURT JOURNAL 1-43, 36-37 (Spring 1993) [hereinafter *The Role of the Juvenile Court Judge*].

231 *Id.*

232 This has been a recognized best practice for years. "The court should regularly convene representatives from all participants in the child welfare system so as to improve the operations of the system." NCJFCJ, KEY PRINCIPLES FOR PERMANENCY PLANNING FOR CHILDREN, #11 (October 1999) [hereinafter KEY PRINCIPLES]; NCJFCJ, COURT, AGENCY AND COMMUNITY COLLABORATION, (2000); *Improving Implementation, op.cit.* note 3 at 18; HARDIN ET AL., *op.cit.* note 86 at 109-110; Judge Nancy Salyers (ret.) found that these meetings were critical to court improvement when

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she took over the Cook County Juvenile Court in 1995 and initiated changes that resulted in a reduction of children under court supervision from over 55,000 to under 10,000 (e-mail communication from Judge Nancy Salyers to author; copy on file with author).

233 "All parties in child welfare proceedings should be adequately represented by well-trained, culturally competent and adequately compensated attorneys and/or guardians *ad litem*." KEY PRINCIPLES, *id. Improving Juvenile Dependency Courts*, *op.cit.* note 192 at 7.

234 "The impact of expedited appointment of counsel is muted if attorneys fail to contact their clients prior to the first court appearance." PENNSYLVANIA COURT IMPROVEMENT, *op.cit.* note 102 at 10.

235 NCJFCJ, *Improving Parents' Representation in Dependency Cases: A Washington State Pilot Program Evaluation*, TECHNICAL ASSISTANCE BRIEF, (2003), at 6-7.

236 "[C]ases in Pilot Sample B that had a previous history with the court were 6.9 times more likely to have an outcome of reunification than cases in the Pre-Pilot Sample. *Id.* at 7.

237 RESOURCE GUIDELINES, *op.cit.* note 20 at 22-24; UTAH COURT IMPROVEMENT, *op.cit.*, note 71, at 9-15; *Improving Juvenile Dependency Courts*, *op.cit.* note 192 at 8. In Santa Clara County, California, attorneys/guardians *ad litem* for children are appointed before the shelter care hearing so that they can meet and confer with their client before the initial hearing. Attorneys for the parents are appointed at the initial hearing; however, they receive copies of the petition and other documents before that hearing so that they can meet with their clients and be prepared for the initial hearing.

238 The State of Utah and Los Angeles and Santa Clara counties in California, among many other Model Courts, use this arrangement. UTAH COURT IMPROVEMENT, *op.cit.* note 71, at 3-16 - 3-21.

239 TOBIN, *op.cit.* note 72, at 188; on the importance of controlling discovery as a means of case management, see DEPENDENCY BENCHBOOK, *op.cit.* note 31, at 203.

240 18 U.S.C. § 476(a)(1)-(2) (Supp., II 1990).

241 WASHINGTON COURT IMPROVEMENT, *op.cit.* note 69 at 57.

242 Judge Anderson's failure to hold the nine adjudication hearings in a timely manner, and his holding of the two cases under advisement for a period in excess of two months, constitutes a pattern of disregard and indifference to the law and thereby violated Code of Judicial Conduct 2A, which requires judges to respect and comply with the law....

In re Anderson, 2004 UT 7, 26-27, 82 P.3d 1134, 1150 (2004).

243 The law should treat children differently at different ages. This differential treatment would help assure that young children do not suffer psychologically or lose adoption opportunities due to needless delays, and that older children do not suffer terminations for which they are not ready and from which they may not benefit.

R. Gordon, *Drifting Through Byzantium: The Promise and Failure of the Adoption and Safe Families Act of 1997*, 83 MINNESOTA LAW REVIEW 637, 695 (Feb. 1999).

244 CAL. WELF. & INST. CODE § 366.21(e), (West 2007). However, if the court finds there is a substantial probability that the child may be returned to a parent within six months, the case will be continued to the 12 month hearing. *Id.* For information regarding the special developmental needs of children from 0 to 3, *see Protecting Children: Children Birth to Three in Foster Care*, 16 AMERICAN HUMANE ASSOCIATION, CHILDREN'S SERVICES, 1, (2000).

245 UTAH CODE ANN., Title 78, Part I, Chapter 3A, Part 3, § 78-3a-311(2)(g), 2007.

246 CRS 19-1-102(1.6), 2006.

247 The principal idea behind writing the RESOURCE GUIDELINES, *op.cit.* note 20, was to identify the resources necessary to operate an effective juvenile dependency court. Many juvenile dependency courts have been inadequately resourced. In Connecticut, the judicial resources for hearing juvenile dependency cases were so inadequate that preliminary removal hearings were taking weeks and months to complete. When a mother appealed because the court system could not hear her child's case within the statutory timelines, the state took the position that the delay was justified by the juvenile courts' inability to address the high volume of cases before it. See *Pamela B. v Ment*, 244 Conn. 296, 709 A.2d 1089 (1998).

248 The 55,000 figure is taken from "In the Best Interests of the Court, Children Come First: Improvements in the Juvenile Court System of the Circuit Court of Cook County, Illinois 1989-1997," State Justice Institute, on file in the Circuit Court of Cook County, Illinois. Judge Salyers sets the number at 58,000 as of her start-up date of January 1995. (e-mail from Judge Nancy Salyers (ret.) to author, copy on file with author).

249 The District of Columbia added 14 judicial officers, L. Satterfield, *The New District of Columbia Family Court - Only the Beginning*, 37 FAMILY LAW QUARTERLY (Fall 2003); D.C. FAMILY COURT REPORT, *op.cit.* note 35 at 431-439. *D.C. Family Court: Additional Actions Should be Taken to Fully Implement Its Transition*, GAO, GAO-02-584, (May 2002), at 11-12.

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250 E-mail from Judge Sharon McCully of the Salt Lake City Juvenile Court. In 1994, the Utah legislature created an entire division of attorneys in the Attorney General's office to represent the state in child welfare cases and a statewide office of guardian *ad litem* attorneys to represent children (on file with author).

251 *Renee S. v Superior Court, op.cit.* note 221 at 195-6 citing *Jeff M. v Superior Court, op.cit.* note 221 at 1243.

252 "The fate of foster care children in Louisiana and across the nation rests, in part, on the ability of our court system to competently and diligently process child abuse and neglect cases." Landrieu & Adams, *op.cit.* note 201, at 469.

253 Judges must never forget that changes in the juvenile court must come from them. No one else has the responsibility for day-to-day operation of the court progress including adequate representation, ensuring necessary papers get to all parties, collecting data on court operations, providing oversight of social service activities, ensuring that children reach permanency in a timely fashion and more. True judicial leadership is the appreciation that in addition to calendar management other issues must be addressed and that judges must take responsibility to see that they are. *Judicial Leadership, op.cit.* note 191 at 19; NCJFCJ Diversion Project Matrix, A Report from Four Sites Examining the Court's Role in Diverting Families from Traditional Child Welfare Services into Community-Based Programs, (1998), at 6-10.

254 Tobin, *op.cit.* note 72 at 190.

255 *Id.*

256 *The Role of the Juvenile Court Judge, op.cit.* note 230 at 25-32; California Standard of Judicial Administration 5.40, (West 2007).

257 Chief Justice Kathleen Blatz of the Minnesota Supreme Court, now retired, made this phrase famous within court systems across her state and the country when she led the creation of The Children's Justice Initiative: Through the Eyes of a Child. This statewide judicial branch initiative is intended to improve outcomes for children in the child protection system. Other commentators have also used the phrase; "[T]here is an attitudinal problem that goes along with the view of the judge as impartial adjudicator—they need to see the problems from the eyes of the child." *Judicial Leadership, op.cit.* note 191 at 30. *See also*, Bobbe Bridge, *View Foster Care Through Their Eyes*, Seattlepi.com, May 30, 2006, *available at* http://seattlepi.nwsource.com/opinion/272000_fostercarebobbe30.html

258 A few examples of the many courts that have made significant changes to improve their juvenile dependency courts and to reach timely permanency are Philadelphia (Pennsylvania Court Improvement *op.cit.* note 102), The District of Columbia, (D.C. Family Court Report, *op.cit.* note 35), and the Model Courts mentioned throughout this paper (*see* note 156).

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Cornerstone Advocacy:
Promoting Safe and Lasting Reunification

cfrny.org
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Who we are and Who we Serve

- Like the public defender in Queens and New York County family courts
- Represent 2400 parents a year in Dependency and all related proceedings, including termination of parental rights
- Teams of Attorney/SW/Parent Advocate
- Worked with over 10,000 parents
- Regularly Collaborate with CPS agency

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What Story do the Allegations Tell?

Cornerstone Advocacy Tells a Different Story

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Cornerstone Advocacy

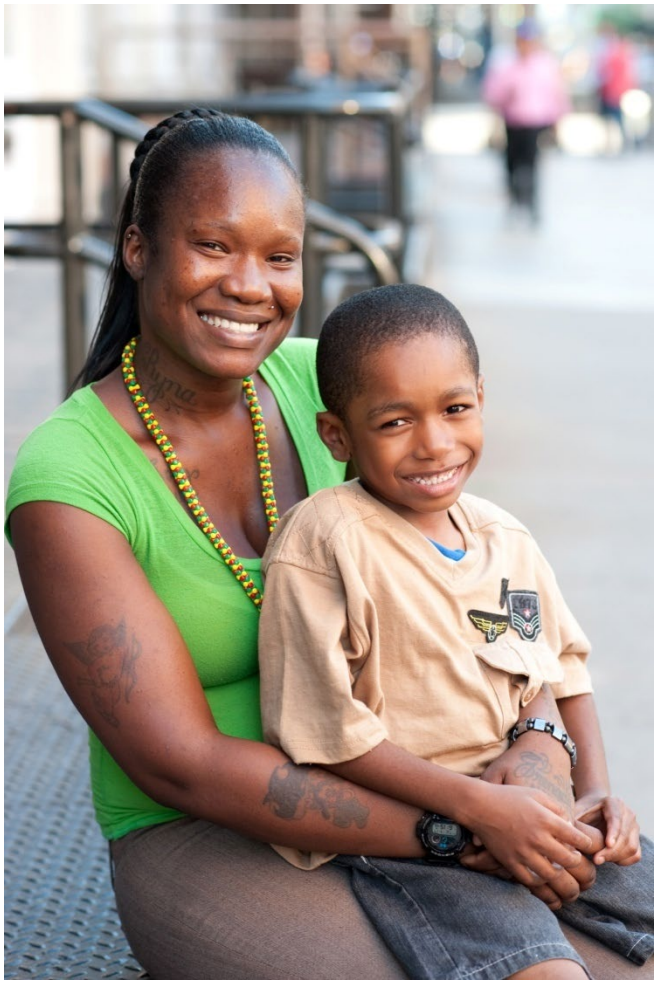
Placement Services

Conferences *VISITS

Our Results

Median LOS/FC of 5 months (avg over 11 years) compared to 11.5 months (city) prior to becoming the primary defender

50%-52% of our clients children do not enter care



Re-entry 8% compared to 15.4% (state)

Dismissal rate of 33%-40% compared to 11% (ACD)

Estimate we've saved NYC $48 million in FC Costs

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1. Always ask WHY?
2. REFRAME (use child's view)
3. ARGUE from Common Sense and Compassion
4. Learn a few Regs or Policy Directives
5. Think about "Small Adjustments" and "Next Actions"

Placement

Placement

- Connections
- Services
- Reduce anxiety and you promote engagement
- Be open to change
- What Q's do you ask?

Services

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Services

- No cookie cutter
- Other demands?
- Culture, language
- No duplication
- What does the service provider know?
- What do you know?
- Releases

Conferences

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Conferences

1. **What might parent need from court? From attorney?**
2. **Preparation**
3. **Community or Family Supports**
4. **Expand the "services"**
5. **Document the Positive**
6. **Call**

Visiting

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What makes a Visiting Plan Good?

1. **Frequent**
2. **Long**
3. **Supervision as Minimal as is Necessary**
4. **Outside the Agency**
5. **Activities that Mimic Family Life**
6. **PROGRESS**

Why Visiting (and the Story) Matter

- Engage and Persist
- Cope with loss and confusion
- Let's Mom and Dad *still be* Mom and Dad
- Unique (really)
- **urgency** about reunification before ASFA timelines kick in
- **"Better"** Permanency Decisions—fewer lost opportunities

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*Do the MATH

*Make a LIST

*Ask WHY and EVERY time

*DeBrief

*Visit Host

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Cornerstone Advocacy is not just Cool, it's LEGAL….!

Reasonable Efforts Language (and Case Law)

-plus-

Applicable Regulations

-plus-

Policy Statements, Guidelines and/or Best Practices materials

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Example: Application for Individualized Service Plan

CA Specific Statutes and CaseLaw

""If the child is not returned …shall determine whether reasonable services that were designed to aid the parent or legal guardian in overcoming the problems that led to the initial removal and the continued custody of the child have been provided or offered" **WIC 366.21 (e)(8); WIC 366.21(f)(1)(A)**

"shall not order hearing pursuant to Section 366.26 unless there is *clear and convincing evidence that reasonable services have been provided."* **WIC 366.21 (g)(1)(A)(2)**

"The legislature finds and declares that foundation and central unifying tool in child welfare services is the case plan." **WIC 16501.1**

"It is difficult, if not impossible, to exaggerate the importance of reunification services in the dependency system." **In re Luke L. (1996) 44 Cal.App.4th 670, 678.**

"Reunification services must be specifically tailored to the needs of the parents." **In re Joanna Y. (1992) 8 Cal.App.4th 433, 438**

<u>You don't have to concede that a parent should be bypassed!</u>

"unless the court finds, by clear and convincing evidence, that reunification is in the best interest of the child" **WIC 361.5(c)(2)**

"*'fruitless' is a pretty high standard…* If *there is a reasonable basis to conclude that the relationship with the current children could be saved, the courts should always attempt to do so."* **Renee J. v. Superior Court (2002) 96 Cal.App.4th 1450, 1464**

Example: Application for Individualized Service Plan

-plus-

CA Specific Regulations and Rules of Court

"During the development of a case plan, professionals should consider the family's ideas before making their own suggestions. Children, youth, and their families are the best experts about their own lives and preferences and their natural supports have valuable information and resources to share…Plans must be individualized, culturally responsive and trauma-informed. The team should routinely measure and evaluate child or youth and family member progress and emerging needs."

"The CFT's role is to include family members in defining and reaching identified goals for the child. The individuals on the team work together to identify each family member's strengths and needs, based on relevant life domains, to develop a child, youth, and family-centered case plan. The CFT process reflects a belief that families have capacity to address their problems and achieve success if given the opportunity and supports to do so." **All County Letter 16-84**

"The range of service-funded activities shall include, but not limited to….case management, counseling, emergency shelter care, temporary in-home caretakers, therapeutic day services, teaching and demonstrating homemakers, parenting training, substance abuse testing, transportation, respite care."
CA DSS MPP Regulations 31-315

Example: Application for Individualized Service Plan

CA Specific Regulations and Rules of Court Cont'd

*"**J**udges … are encouraged to follow the resource guidelines of the National Council of Juvenile and Family Court Judges, titled "Resource Guidelines: Improving Court Practice in Child Abuse & Neglect Cases."* **Cal. Rule of Ct. Standard 5.45**

↓

-plus-

CA Specific Policy Guidelines, Task Force Reports, etc.

"*If the needs of a child and family have not been thoroughly assessed and appropriate services made available to families to assist with reunification, the parents may have a valid argument at the permanency hearing that reasonable efforts have not been made to reunify them with their child."*
National Council of Juvenile and Family Court Judges Resource Guidelines, pg. 84

Also look at language from COVID-19 specific guidance:

"During this time, it may not be possible or prudent to attend in-person..court-ordered services. However, some services may still be available in different delivery modalities…Caseworker should provide the family with resources that the family can access…so that this emergency does not cause unnecessary delays in reunification." **All County Letter 20-58 (in effect until June 30, 2020)**

Example: Application for Visit Host

CA Specific Statutes and CaseLaw

"shall not order hearing pursuant to Section 366.26 unless there is *clear and convincing evidence that reasonable services have been provided."* **WIC 366.21 (g)(1)(A)(2)**

"Visitation shall be as frequent as possible, consistent with the well-being of the child." ***WIC 362.1***

"in order to find a substantial probability that the child will be returned to the physical custody of parent….and safely maintained in the home...the court shall be required to find all of the following: 1) that the parent...has consistently and regularly contacted and visited with the child." **WIC 366.22(b) and 366.21(g)**

"Visitation is an essential component of any reunification plan." ***In re Alvin R., Jr. (2003) 108 Cal.App.4th 962, 972***

"Parental visitation is mandatory unless there exists substantial evidence of a threat to the child's safety. Suspension of visitation based upon a finding of detriment to a child's overall well-being is not permitted." ***In re C.C. (2009) 172 Cal.App.4th 1481, 1492****.*

-plus-

Example: Application for Visit Host

CA Specific Regulations and Rules of Court

"The foster placement shall be based on...Capability, willingness and ability of the caregiver to meet specific needs of the child, to facilitate family reunification..." **California DSS MPP Regulations 31-420**

"the court must consider the issue of visitation between the child and other persons... would be beneficial or detrimental to the child, and make appropriate orders." **Cal Rules of Court 5.670(c)**

Visits are to be as frequent as possible, consistent with the well-being of the child." **Cal Rule of Court 5.695 (g)(3)**

"designed to apply to all providers of supervised visitation, whether the provider is a friend, relative… Who provides the supervision and the manner in which supervision is provided depends on different factors, including local resources, the financial situation of the parties, and the degree of risk in each case. ..the court may consider recommendations by the attorney for the child, the parties and their attorneys, Family Court Services staff, evaluators, and therapists…" **Cal Rules of Court 5.20 (a)**

"Uniform Standards of Practice for Providers of Supervised Visitation"– *Has your county adopted these?*

Example: Application for Visit Host

-plus-

CA Specific Policy Guidelines, Task Force Reports, etc.

Remember Cal. Rule of Ct. Standard 5.45 (Judges encouraged to follow resource guidelines):

"Judges must ensure that quality family time is an integral part of every case plan. Family time should be liberal and presumed unsupervised unless there is a demonstrated safety risk to the child" **National Council of Juvenile and Family Court Judges Resource Guidelines, pg. 16**

Rules of Court/Policy Manuals from other Counties—even if not official guidance- use the language

- **Los Angeles DCFAS Manual:** "*Visitation between children in out-of-home care, their parents and other family members are essential for achieving the outcomes of safety, permanence and well-being….A monitor may be any of the following….a CSW...any person who is not paid for providing supervised visitation including family friend or relative agreed to by all parties, with whom the child is comfortable and who has been cleared through a criminal background check."*
- **San Francisco County Rules of Court: "***From the time of detention and until disposition, the visitation must be set as follows unless …good cause : 1) Newborns to five-year-olds must have at least six (6) hours of visitation …per week. 2) Six-year-olds to eighteen-year-olds must have at least three (3) hours of visitation …per week. 3) Visitation should be as frequent and convenient as possible for all parties."*
- **San Diego County Rules of Court:** *"nothing in this rule may be construed to restrict the right or ability of the parent or guardian to visitation and contact with the child at a location other than the foster family home where such visitation and contact is in the child's best interest."*

Also look at language from COVID-19 specific guidance:

"Family time is important for child and parent well-being, as well as for efforts toward reunification. Family time is especially important during times of crisis." **Emergency Rule 6 (in effect until 90 days after state of emergency lifted or further repealed)**

How Did we Get Here?

- Took Lessons from (you guess….)
- Repeated Road Shows on the 2000 Guidelines with an active Visiting Exercise, even with large audiences
- Meetings with Key Stakeholders—We were VERY transparent…
- Visit Host Workgroup and Focus Groups
- Consistent meetings (incl. with City Leadership)—"publicized" great visiting

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CHALLENGES remain….

- Visiting Guidelines reissued in 2006 and 2013 to keep visiting prominent
- Parents and Youth still need more support
- Funding led to reduced staffing at the Office of Family Visiting within Children's Services
- City Prosecutors are being trained on how to counsel caseworkers around exercising discretion to move visiting forward—many are still stuck
- Visits being reduced or suspended still happens more quickly than it should

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How Does Change Happen?

May 6, 1954

(3:59.4)

What Happened in 1955?

1964: Jim Ryun

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Learn From our Success and Mistakes

- *Don't Get Crazy—*
- *Review your own laws, regulations and policy*
- *Orders are your Friends…Attorneys and Judges*
- *What Creates Incentives? (Data and Evaluation)*
- *Be Vigilant about Mixed Messages—for parents and for case planners*
- *Spend Some time with like minded people—Serve Food (Invest in T-shirts and Buttons)*

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What Else?

- Raise visiting whenever and wherever you can
- Think about visits from a child's view
- Do you think Better Visits are Reasonable Efforts?
- Explore your own biases
- Learn the research and the tools/borrow from work that has already been done—in your own state and in others
- Start a Visiting "book" group

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What Story do the Allegations Tell?

What Might that Story Be?

Ice cream Chili

Nintendo Hip-Hop

Nurse Construction

Bilingual Likes Math

Afraid of Dogs Pet Mouse

"Frozen" The Mets

Church Bake Sales

Early Intervention

Florida

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Small Adjustment: Do you believe that Cornerstone efforts (and orders) are Reasonable Efforts?

Jerry Milner, DHHS Assoc. Commissioner, Children's Bureau

https://www.acf.hhs.gov/cb/news/reasonable-efforts-as-prevention

- Juvenile Judges Corner—Judge Leonard Edwards—http://www.judgeleonardedwards.com/

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Small Adjustment:
Do you need a Win?

BJ Walker

If you are the parent's attorney-- Redefine the "Win" and Change the Narrative

For yourself and the Client—helps the client feel Progress	Help the "System" see your Client differently (help yourself do this too)	To set the direction of the case towards reunification from the outset.

While Cornerstone Advocacy should begin on day one, it can and should continue throughout the case, regardless of when a trial date is set.

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If you are a Judge, an attorney or case planner working for the Department, or a child's attorney…

- **Helps Us View every Family as Unique (*really, not just lip service*)—reveal a more complete narrative—hope, resiliency**
- **Helps Us Maintain a Sense of Urgency about Reunification before 15/22 *(not for everyone)***
- **"Better" Permanency Decisions—fewer lost opportunities**

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Remember…..

In Child Welfare,

What is our WHY?

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More Helpful California Specific Resources

General Resources:

- Statewide Rules of Court Title Five: https://www.courts.ca.gov/cms/rules/index.cfm?title=five
- Link to Local Rules for each County: https://www.courts.ca.gov/3027.htm
- National Council of Juvenile and Family Court Judges Resource Guidelines: https://www.ncjfcj.org/wp-content/uploads/2016/05/NCJFCJ-Enhanced-Resource-Guidelines-05-2016.pdf
- California All County Letters: https://www.cdss.ca.gov/inforesources/letters-regulations/letters-and-notices/all-county-letters
- California Dependency Online Guide- links to past trainings, ACLs, regulations, publications, etc. Have to create log-in, but mostly free based on role: https://cadependencyonlineguide.info/
- Dependency Quick Guide: A Dogbook for Attorneys Representing Children and Parents: https://www.courts.ca.gov/documents/dogbook.pdf

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More Helpful California Specific Resources

Reasonable Efforts/Reasonable Services

- Summary of caselaw: http://judgeleonardedwards.com/docs/ReasonableEffortsCalifornia.pdf

Placement

- Foster Youth Bill of Rights: https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=WIC&sectionNum=16001.9
- RFA Emergency Funding Guidance: https://www.cdss.ca.gov/portals/9/ccr/rfa/WD-V6.1-FINAL-1.7.20_AV.pdf

Services

- Excellent cheat sheet on each bypass provision and case law surrounding it: http://cadependencyonlineguide.info/view/articles/11986.pdf

Visitation

- Structured Decision Making Manual (pgs. 170-190) https://cdss.ca.gov/Portals/9/CWPPDB/SDM%20Policy%20and%20Procedure%20Manual.pdf?ver=2018-07-16-141043-853

Conferences

- Continuum of Care Reform: https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB403

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More helpful Cornerstone Sources

- Preserving Cultural Connections: relative placement, *see* http://childlaw.unm.edu/assets/docs/best-practices/Cultural-Connections-2011.pdf
- Education Advocacy: school stability, *see* http://childlaw.unm.edu/assets/docs/best-practices/Education-Advocacy-2011.pdf, and
- Family Engagement-maximizing family resources, kinship connections, and active participation of families in decision making,

  see http://childlaw.unm.edu/assets/docs/best-practices/Family-Engagement-2011.pdf.

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Other helpful Cornerstone Sources:

Juvenile Judges Corner—Judge Leonard Edwards—
http://www.judgeleonardedwards.com/

Child and Family Visitation: A Practice Guide to Support Lasting Reunification and Preserving Family Connections for Children in Foster Care (placement, visitation)

https://edocs.dhs.state.mn.us/lfserver/Legacy/DHS-5552-ENG

RISE Magazine www.risemagazine.org Video and Parenting Tips

Protecting and Promoting Meaningful Connections: The Importance of Quality Family Time in Parent-Child Visitation

http://www.state.nj.us/childadvocate/reports/other/OCA%20Visitation%20Brief%20-%201-14-10.pdf

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More helpful Cornerstone Sources

Child Welfare Information Gateway Information Brief, "Family Reunification: What the Evidence Shows" (visitation, placement, services)

https://www.childwelfare.gov/pubPDFs/family_reunification.pdf

Child Welfare Information Gateway, "Supporting Reunification and Preventing Reentry into Out-of-Home Care" (placement, services)

https://www.childwelfare.gov/pubPDFs/srpr.pdf

Advocates for Children of New Jersey, "Family Visitation: Key to Safe Reunification for Children in Foster Care" (visitation)

http://acnj.org/downloads/2014_08_13_family_visitation_key_to_safe_reunification_for_children_in_foster_care.pdf

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ACF Administration for Children and Families	U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES Administration on Children, Youth and Families	
	1. Log No: ACYF-CB-IM-20-06	**2. Issuance Date:** April 29, 2020
	3. Originating Office: Children's Bureau	
	4. Key Words: Foster Care, Resource Families, Well-being, Best Practices	

TO: State, Tribal and Territorial Agencies Administering or Supervising the Administration of Titles IV-E and IV-B of the Social Security Act, and State and Tribal Court Improvement Programs.

SUBJECT: Foster Care as a Support to Families.

LEGAL AND RELATED REFERENCES: Titles IV-B and IV-E of the Social Security Act (the Act).

PURPOSE: To provide information on best practices, resources, and recommendations for using foster care as a support for families in a way that mitigates the trauma of removal for the child and parents, expedites safe and successful reunification, and improves parent and child well-being outcomes. This Information Memorandum (IM) emphasizes the importance of state and tribal child welfare communities building and supporting relationships between resource families and parents[1] to facilitate improved engagement of parents, promote timely reunification, build protective capacities[2] in parents, and strengthen overall child and family well-being, while ensuring child safety.

As agencies begin the work to shift their system's culture by adopting a new vision for foster care as a support to families, it will be critical to help existing resource families adapt to this

[1] CB is making a conscious effort to stop using the terms "birth parents" and "biological parents" and simply refer to a child's parents as parents. We are making this effort at the request of parents with lived experiences. Absent termination of parental rights, children have one set of legal parents and when needed, temporary caregivers. We believe that qualifying parents as "birth' parents or "biological" parents can be experienced as disempowering and can deemphasize the primacy of the parent child bond. CB is also making an effort to refer to "foster parents" as resource families as an effort to emphasize the enhanced role that resource families can play in the lives of children and their parents, serving as a support, as opposed to a placement alone. CB encourages all colleagues to make a similar effort to be aware of the words we use.

[2] Protective Capacity refers to caregiver characteristics that are directly related to child safety. See infographic that further describes protective capacities here: https://library.childwelfare.gov/cwig/ws/library/docs/capacity/Blob/107035.pdf?r=1&rpp=25&upp=0&w=NATIVE%28%27SIMPLE_SRCH+ph+is+%27%27protective+factors%27%27%27%29&m=1&order=native%28%27year%2FDescend%27%29

change. The Children's Bureau (CB) believes, that for many child welfare systems across the country, it will take significant effort to undo years of practice that discouraged resource families from actively engaging in open relationships with the parents of children in their care. While some jurisdictions may have already begun adopting the best practices described in this IM, for others, this will be completely new territory. This IM seeks to support this practice by providing information on why this approach can be effective, and how child welfare agencies may begin to implement.

This IM is organized as follows:

BACKGROUND

CB is committed to two overarching goals: (1) strengthening families through primary prevention to reduce child maltreatment and the need for families to make contact with the formal child welfare system; and (2) dramatically improving the foster care experience for children, youth, and their parents when a child's removal from the home and placement in foster care is necessary. To accomplish these goals, child welfare systems and the public at large will need to view families that make contact with the child welfare system differently, and adopt new approaches for supporting families.

Transforming the child welfare system in the United States from a reactionary system that waits for trauma to occur before offering support to families, into a system that is proactively designed to promote family well-being and healing, requires a change in mindset for elected officials, state and tribal child welfare leaders, staff, service providers, the legal and judicial community and other stakeholders. The CB recognizes that this will take a national culture shift among child welfare professionals and the public. In our experience, changes in policy alone are inadequate to meet the challenge; changes in values are essential. Likewise, changes within the child welfare agency alone will be insufficient to change the course of child welfare practice. Judges, attorneys for the child welfare agency or state/tribe, children's attorneys, resource parents, Court Appointed Special Advocates (CASA), service providers and others involved with our system are all integral to making and sustaining the shift. All involved with the child welfare system

must see parents involved with the child welfare system as human beings in need of help who are worthy of respect. There is a need to assess how poor and vulnerable families are often portrayed and perceived and to be mindful of how those portrayals or perceptions influence what types of resources are available, and to whom, and legislative, policy and practice decisions at the federal, state, tribal, and local levels of government. Budget allocations are often indicative of priorities for child welfare work.

Currently, the vast majority of the federal child welfare budget goes toward reimbursing state and tribal title IV-E agencies for some costs associated with foster care. Foster care exists to protect children from abuse or neglect occurring in their own homes. While the primary aim of foster care is to meet a child's immediate need for safety, we know that physical safety is only one part of child well-being. Children cannot have well-being without feeling safe, but they can certainly have safety without having their other well-being needs met. Too many children and youth in our foster care system have this experience. We also recognize that lack of permanency has a direct impact on their well-being. The field recognizes that when a child remains in foster care for an extended time, experiences multiple placements and does not have his or her key connections preserved, it significantly compromises his or her well-being. This can result in a lack of belonging and a lack of meaningful, long-term connections with adults. It is imperative that foster care placement holistically addresses the safety, well-being, and permanency needs of children. Failure to recognize that all three needs are connected to one another, and that attention to all three needs is a fundamental obligation, may prevent children from thriving.

While there will always remain a need for foster care[3], CB believes that need can be reduced substantially through a national commitment to strengthening families and communities through community-based, readily accessible family supports and services. Where foster care is necessary, that same commitment can dramatically improve the experience and promote the well-being of children and parents. Foster care must be more than a placement or bed alone in order to meet the well-being needs of children and their parents, regardless of the child's permanency goal. Likewise, resource families have much more to offer than a safe place, and in our experience, are overwhelmingly deeply caring people who wish to help children heal and thrive. Relationships, belonging, and human connectedness are critical to well-being and must become key components of more humane and effective foster care practice. We can best promote well-being through foster care by ensuring that:

[3] Note that in instances where aggravated circumstances exist it may not be appropriate for parental involvement to continue as described in this IM. There will always be a need for foster care as a means of protecting children that have been severely physically abused or sexually exploited. Statistically these situations make up a very small percentage of the population of children abused and neglected. This memorandum describes a new approach for foster care where there is an absence of aggravated circumstances or severe physical or sexual abuse and where such dangers do not exist.

- Agencies and courts thoroughly explore existing familial relationships and maternal and paternal relatives as possible placements (section 471(a)(29) of the Act);
- Agencies and courts place children with relatives or fictive kin, people who they know, when it is not possible to safely remain with their parent or primary caregiver (section 421 and 471(a)(19) of the Act);
- Agencies and courts make all reasonable efforts to keep siblings together unless such a joint placement would be contrary to the safety or well-being of any of the siblings (section 471(a)(31) of the Act);
- Children remain in their communities;
- Children remain in their schools and connected to classmates and teachers (section 471(a)(30) and 475(1)(G) of the Act);
- Parents and children remain connected, speak with and see each other daily;
- Parents remain as involved in normal daily parenting activities as possible;
- Agencies and courts encourage and support relationships between resource families and parents;
- Resource families view working with parents as a central part of their role;
- Resource families are available to provide post reunification support;
- Agencies provide resource families with consistent and ongoing support to maintain their well-being; and
- All child welfare stakeholders view and support utilizing foster care as a support to entire families.

ACYF-CB-IM-20-02[4] provides a comprehensive overview of the impact of a child's removal from his/her home on child well-being and outlines the importance of family time as a means of safely expediting reunification and improving child outcomes. Utilizing foster care as a support to the family includes the practice of encouraging and facilitating family time, but goes beyond that to promote the restorative impact of the relationship between parents and resource families and the concept of shared or co-parenting[5]. The benefits that derive from leveraging this unique relationship and approaching foster care as an opportunity for mentoring and shared parenting have the potential to enhance well-being for the entire family.

Research regarding the impact of a child's removal on parents and what is needed to engage parents effectively in working toward reunification, highlights the critical need for addressing parental motivation and providing social support to parents.[6] Both of these needs can be overlooked in case plans and the approach to working with parents. Ensuring that families have

[4] https://www.acf.hhs.gov/cb/resource/im2002

[5] The term co-parenting includes a range of activities that a parent would ordinarily perform, assist with or attend in the life of a child, including, but not limited to: daily routines such as meal preparation and sharing meals, bathing and hygiene related activities for young children, homework, extracurricular activities, medical appointments, holidays and special occasions, religious observances, and more generally availability to provide emotional support to promote child well-being.

[6] Kemp, S. P., Marcenko, M. O., Hoagwood, K., & Vesneski, W. (2009). Engaging parents in child welfare services: Bridging family needs and child welfare mandates. Child Welfare Journal 88(1), 101-126.

the opportunity to enhance their protective capacity is another critical, but often missing, component in the array of services and supports typically offered to families, as evidenced in three rounds of Child and Family Services Review (CFSR) findings[7] and CB discussions with parents and youth. Utilizing foster care as a support for the entire family can address all of these key needs.

While the field has begun to acknowledge the trauma children experience from being removed, less attention has been given to the experience of parents when their children are removed from their care. Many parents involved in child welfare services want to provide a nurturing, safe home for their children, but struggle to do that for various reasons. These parents are also bonded and attached to their children, an experience inherent in families. In light of this, it is clear that parents experience significant loss when a child is removed, and the loss is often compounded with feelings of shame, anger and hopelessness. This painful reality has been confirmed in numerous discussions CB has had with parents. In addition to grieving the loss of their children, parents are often subjected to social and legal stigmatization when their children are removed.[8] It is also important to recognize that many parents involved in child welfare systems have endured past trauma related to abuse or neglect in childhood, their own experience in foster care, or other significant losses or harmful experiences.[9] Similar to children, parents involved in the system often deal with complex trauma, but approaches to working with parents are not always trauma-informed, potentially contributing to poor outcomes for family well-being and timely permanency as seen in CFSR findings across all three rounds.

Using a child's foster care placement as a support for the entire family can be a powerful tool to improve parent engagement, enhance parental capacity to meet the needs of their children, and achieve safe, timely reunification. Results from round three of the CFSR[10] indicate that states continue to struggle to effectively achieve these key outcomes for families and children in the foster care system:

- Agencies made concerted efforts to achieve reunification in 49% of foster care cases. (Permanency Outcome 1, Item 6 - Reunification)

- Agencies made concerted efforts to promote, support, and otherwise maintain a positive and nurturing relationship between the child in foster care and his or her parents in 58% of foster care cases. (Permanency Outcome 2, Item 11)

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[7] https://www.acf.hhs.gov/cb/monitoring/child-family-services-reviews

[8] Broadhurst, K. & Mason, C. (2017). Birth Parents and the Collateral Consequences of Court-ordered Child Removal: Towards a Comprehensive Framework. *International Journal of Law, Policy and the Family*, *31*, 41-59. doi: 10.1093/lawfam/ebw013

[9] National Child Traumatic Stress Network, Child Welfare Committee. (2011). Birth parents with trauma histories and the child welfare system: A guide for resource parents. Los Angeles, CA, and Durham, NC: National Center for Child Traumatic Stress. https://www.nctsn.org/sites/default/files/resources//birth_parents_with_trauma_histories_child_welfare_resource_parents.pdf

[10] Forthcoming Children's Bureau CFSR R3 Aggregate Report

- Agencies conducted a comprehensive assessment of parents' needs and provided appropriate services to address needs of parents in 42% of foster care cases. (Well-Being Outcome 1, Item 12B)

- Children and parents were adequately engaged in case planning in 55% of foster care cases. (Well-Being Outcome 1, Item 13)

- Agencies conducted frequent, quality caseworker visits with parents in 41% of foster care cases. (Well-Being Outcome 1, Item 15)

These round three CFSR findings highlight a clear need to improve our efforts to engage with and support parents, and call for a different approach to working with children and families. That includes a shift in priorities and commitment to emphasizing family support and viewing foster care placement as a means for that support. By utilizing foster care as a way to ensure child safety while also supporting the entire family in achieving reunification, we can make the most of a difficult, yet sometimes necessary, experience for families and mitigate the trauma to children and parents that is associated with foster care.

INFORMATION

I. The Need for Approaching Foster Care as a Support for Families

Outside of situations of egregious abuse and neglect to children by their parents or a finding of aggravated circumstances, the goal for a child placed in foster care, is most often reunification. Federal law requires title IV-B/IV-E agencies to provide reasonable efforts to make it possible for children to reunify with their parents safely.[11] While "reasonable efforts" have not been defined in federal law, the CFSR examines efforts that agencies are making to achieve positive outcomes for children and families. The CFSR evaluates states on their ability to demonstrate these efforts through case reviews. Some of the efforts outlined in the CFSR and guidance provided to states that highlights areas of the CFSR that relate to utilizing foster care as a support to families, support timely reunification, and child and family well-being include:

Safety-Informed Decision-Making (CFSR Items 2, 3, 6, 14 and 15)

- Regularly assessing the safety of the home and family to which the child is to return
- Utilizing appropriate safety plans and safety-related services to allow reunification to occur timely
- Conducting frequent, quality visits with parents and children to gather information to

[11] Sections 471(a)(15) and 472(a)(2)(A)(ii) of the Act; 45 CFR 1356.21(b)

inform quality risk and safety assessments

Preserving Connections and Supporting the Parent-Child Relationship (CFSR Items 8 and 11)

- Ensuring frequent, quality parent-child visitation
- Encouraging a parent's participation in school-related activities, doctor's appointments for the child, or engagement in after-school activities
- Providing or arranging transportation so that parents can participate in activities with the child
- Providing opportunities for therapeutic situations to strengthen the parent-child relationship
- Encouraging resource families to serve as mentors/role models for parents

Enhancing Parental Capacity through Assessment of Needs and Provision of Services (CFSR Item 12B)

- Ensuring a comprehensive assessment of the parent's needs, including consideration of the following:
  - What does the parent need to provide care and supervision and to ensure the well-being of his or her child?
  - What would the parent need to support his or her relationship with the child, or build a relationship if one was not established before the child's entry into foster care?
  - What underlying needs, if they continue to be unmet, will affect the individual's capacity to parent and nurture his or her child?
  - What is the parent's current capacity to engage in services and what supports may be needed to support engagement?
  - What will the parents need to provide care for all of their children after reunification?
- Ensuring appropriate services are provided in a timely manner to parents to meet all identified needs
- Engaging family members in services and monitoring the impact of service participation to ensure that treatment goals are being achieved and progress is made; and, if necessary, adjusting the provided services relative to case goals and progress

Enhancing Parental Capacity through Engagement in Case Planning (CFSR Items 13, 14 and 15)

- Discussing family strengths and needs with children and parents
- Ensuring that case planning meetings are arranged based on the family's availability and are utilized to engage the family in case planning discussions
- Ensuring caseworker visits with the parents are frequent enough to monitor their progress in services, promote timely achievement of case goals, and effectively address their children's safety, permanency, and well-being needs

- Ensuring caseworker visits are of good quality, with discussions focusing on the parent's and children's strengths, needs, services, and case plan goals
- The length and location of caseworker visits should be conducive to open, honest, and thorough conversations

We must all work diligently to apply these efforts and best practice standards for all families. A supportive approach to working with families is also consistent with the CB's prevention priority, as it serves to build protective capacity in parents to prevent further maltreatment. State data reviewed during CFSR case reviews indicate that too many families have multiple encounters with the child welfare system, repeat reports of child abuse and neglect, and re-entries into foster care, even after months and years of intervention by child welfare agencies. This further demonstrates that our typical approach to foster care and working with families has not been oriented toward strengthening families, has struggled with securing timely and permanent reunification, and is in need of significant improvement.

Ideally, families should be better off after receiving reunification services, however, there is evidence to suggest that child welfare interventions require improvements to meet familial needs. CFSR findings from rounds one to three have consistently identified challenges with service arrays across the country. Stakeholder interviews and information provided to CB from groups of parents and young adults with lived child welfare experience point to a need for greater availability of high quality services and supports. One way to help address such challenges is to use foster care as a more intentional support to families.

II. Best Practice Guidance for Utilizing Foster Care as a Support to Families

When a child enters foster care, the reality for his/her parents is that another person has been assigned the role of parent for their child. The parent may feel that he or she is being replaced in the life of the child. This is a major disruption in the family and can be overwhelming, traumatic and incredibly fear-inducing for a parent. Over the past three years, CB leadership has met directly with hundreds of parents with lived child welfare experience. In those meetings, parents routinely expressed feelings of fear, anxiety and lack of trust of child welfare social workers and resource families. Parents identified these feelings as often presenting a sizeable obstacle for their engagement with the child welfare agency and fueling negative feelings toward, or mistrust of, resource families.

Intentionally working to create reunification-focused relationships between parents and resource families helps to dispel the fears that are often present for parents. When parents do not know who their child's new caregiver is, are uncertain if their child's needs are being met and do not have the opportunity to continue any of their parenting tasks, there is an inevitable power differential that can become a significant barrier for parents to face as they work toward reunification. This barrier may influence whether parents will effectively engage in case

planning and needed services and can significantly impact the trajectory for reunification. We must realize that these are normal human reactions for parents experiencing grief and uncertainty and take all measures possible to reduce this stress.

Implementing Best Practices

The following best practices facilitate the use of foster care as a support to families:

1. Create a culture of viewing and utilizing foster care as a support for entire families, including:

    - Assemble and work with a team of stakeholders to create a new or enhanced vision for foster care in your jurisdiction. Involve parents and youth with lived experience, current and prospective resource families, caseworkers, attorneys for parents and children, judicial representatives and others in creating the vision.
    - Ground the vision in the experience stakeholders would like children and parents to have when they are unable to live together.
    - Identify and agree on key values.
    - Identify specific supports and opportunities that must be in place to make foster care a support to families.
    - Identify what may stand in the way of making those supports and opportunities available.
    - Develop protocols and guidelines to promote the shared values across stakeholder groups (including the legal and judicial community) and make those experiences possible.
    - Create training opportunities for all stakeholders (including judges and attorneys) on how to operationalize the vision.
    - Revamp all policy and procedures to reflect the vision and articulate how implementation will occur for new families coming in as well as families already being served by the agency.
    - Develop an ongoing feedback loop to hear directly from parents and youth in foster care about their experiences in foster care as a means of continuous quality improvement.

2. Ensure exhaustive family search efforts[12] occur at the onset of child welfare involvement so that children can be placed with relatives or kin, including:

    - Incorporate questions about known relatives/kin during the intake process to begin identifying potential resources at case opening.
    - Ensure that the investigation process include an assessment of all known relatives/kin (parents, children and youth should also be involved in identifying kin/relatives).
    - Develop training and protocols for workers and supervisors to ensure prioritization of relative/kin placement.
    - Implement evaluative processes for family/kin search efforts as part of continuous quality improvement.

[12] See section 471(a)(29) of the Act

3. Recruit and train resource families that are committed to serving as a support to families with children in foster care, including:

    - Update marketing and recruitment materials and resources to communicate the clear expectation that the role requires resource families to work closely with the parents of children in foster care and their families.
    - Clearly articulate the need and purpose for resource families to serve as temporary caregivers and supports to facilitate reunification as opposed to a fast track for adoption.
    - Make clear that adoption may be an option, but only after resource families' work intensively to help families reunify when that is the goal.
    - Evaluate and enhance resource family training to ensure alignment with the agency's vision of foster care as a support to families.
    - Incorporate parents, youth and resource parents as trainers in resource family training.
    - Develop training components that address the unique needs of relatives/kin.
    - Ensure that resource family training includes an overview of the concerted efforts agencies are expected to make with families to ensure safety, permanency and well-being outcomes are achieved. It is critical that resource families understand the role they can play in advocating for best practices on behalf of children and families.
    - Make resource family training accessible to children's attorneys, Guardians ad Litem (GAL) and CASA volunteers to support a shared understanding of the agency's vision and expectation of resource families.
    - Create training opportunities for all stakeholders on the purpose of foster care in your jurisdiction, why it is beneficial to all involved, what the agency requires and how the agency and other stakeholders will provide support and reinforcement.

4. Support relationships between parents and resource families, including:

    - Create opportunities for parents and resource families to meet at the time of initial placement, or soon after placement. Agencies should plan these meetings based on the families' circumstances, ensuring safety and facilitating a non-threatening environment for both sets of parents. Early engagement at the time of placement is critical for both resource families and parents and is an essential step toward mitigating the trauma of removal.[13]
    - Prepare/train parents and resource families in developing a co-parenting relationship. This can be initiated at an initial case planning team meeting where they explore and define roles, expectations and shared parenting activities specifically for the child. Case

[13] 'Bridging the Gap' is a model some states have used to formalize the process of building and maintaining relationships and communication between the parents and foster families involved in a youth 's life, or between the foster and adoptive families, with the goal of supporting family reunification or another permanency plan. The model includes specific training components that are provided to resource families. It has been implemented in a number of states and in some jurisdictions, implementation includes the use Ice Breaker Meetings, a stand-alone meeting developed by Family to Family, a child welfare reform initiative developed and supported by the Annie E. Casey Foundation. A toolkit for implementing Ice Breaker meetings can be found at https://www.aecf.org/resources/icebreaker-meetings/

managers can continue to provide ongoing training and support during their visits with parents and resource families. Frequent, joint visits with both sets of parents are recommended, particularly at the beginning of the placement, and occurring before or after family time/parent-child visitation. By setting the expectation early on that the agency's goal is to support the parent, even through the use of foster care placement, we communicate a key message to families that safe and timely reunification is the primary aim of the entire team.

- Communicate an expectation for ongoing efforts toward developing a co-parenting relationship and talk openly about the fears and struggles both sets of parents may be feeling/experiencing.
- Encourage and support regular communication between resource families and parents.
- Be clear about roles, expectations, safety boundaries, communication lines, and confidentiality. Engage resource families and parents in writing these expectations out together in language that everyone agrees on, as part of the case planning process.
- Train attorneys for parents, children and the child welfare agency to identify and advocate for enhanced opportunities for support and co-parenting.
- Ensure that judges are aware of these roles and expectations and actively inquire about progress in hearing and reviews.

5. Develop written family time and shared parenting agreements as part of the reunification plan, including:

    - Identify key parenting tasks that resource families and parents can safely share during placement (homework and school activities, extra-curricular activities, medical/therapy appointments, etc.).
    - Work toward ensuring multiple, weekly opportunities for co-parenting activities to occur, in addition to family time.
    - Be creative in utilizing other relatives, friends, and supports in the plan.
    - Ensure parents have transportation to allow for full participation in agreed-upon parenting activities and family time.
    - Be prepared to support parents in developing skills for various parenting activities. Resource families can model parenting techniques or reference their particular methods/styles of parenting as a way to mentor.

6. Utilize resource families as post reunification supports, including:

    - Encourage and support ongoing contact between resource families and parents after reunification occurs.
    - Offer concrete examples and support for how resource families can support families following reunification. In many ways, this can look like a role reversal, with the resource families visiting the family, with their permission, to assist with parenting and household management tasks, such as preparing or sharing meals, helping complete errands and or simply making social visits to help prevent isolation.
    - Build expectations for ongoing post reunification engagement, at the parents' option, into recruitment and training efforts.

7. Prioritize retention of resource families, including:

    - Create and maintain in-person and virtual support groups for resource families to share experiences with one another and participate in peer-to-peer learning.
    - Create and maintain a shared virtual workspace for resource families where they can share ideas and resources.
    - Ensure that resource families have adequate, ongoing supports that can provide child care, respite care and meals. Encourage extended family and kin to serve as a "wraparound team" that can provide these supports for resource families.
    - Facilitate and host opportunities for resource families and families of children in foster care to get together for social events.
    - Be proactive and attentive in reaching out to resource families to ask about support that may be helpful, address any challenges, and ensure the well-being of the entire resource family.

8. Celebrate successes to support ongoing engagement, including:

    - Emphasize parents' positive efforts to address risk/safety concerns, preserve and strengthen their relationship with their child, and work with the planning team. Celebrate these successes together with resource families and children.
    - Positively reinforce efforts by resource families to support parents. Judges can be especially helpful during hearings and reviews in highlighting and encouraging more good work.

Practice Implications for Placement with Kin

When children are placed with kin, a parent's existing relationship with the caregiver can be a tremendous asset. Research demonstrates that placement with kin supports a number of improved outcomes for children and we must continue to prioritize that.[14] However, even when children are with kin, we do not always leverage the relationship between parents and caregivers as best we can, which may impede the timeliness and frequency of safe, successful reunification. CB has heard kin caregivers often express that they feel forgotten about after receiving children since the agency assumes they will simply take on the care of the children without any additional support. The error in this approach is again assuming that the only purpose for foster care placement is to ensure child safety.

Expectations for shared parenting should be explicit even when parents have an existing relationship with the resource family, such as with kinship placement. Additional support and training may be required for kin resource families to help them understand how to navigate the

[14] Marc Winokur, Amy Holtan, and Deborah Valentine, "Kinship Care for the Safety, Permanency, and Well-Being of Children Removed From the Home for Maltreatment," Campbell Systematic Reviews 1 (2009), doi:10.4073/ csr.2009.1.

new complexities of their relationship with parents due to foster care placement. Title IV-B/IV-E agencies should also take extra care to ensure that parents stay engaged and motivated to work toward reunification. Kinship placements can provide an opportunity for more parent child involvement, but depending on family dynamics, may also present challenges. Title IV-B/IV-E agencies should be mindful in helping families think through how family time will be planned and occur in kinship placements in advance of making placements to help ensure success.

Assisting Resource Families:

Recognizing the critical role that resource families play in supporting parents, we offer the following considerations to assist them in adapting to, and becoming champions for, this change:

- Utilize story-telling. One of the most powerful ways to shift values and beliefs is through storytelling. Find resource families and parents (in your own state/tribe or in others) who experienced the benefits of co-parenting and believe in this vision and have them share the positive impact it has made in the lives of their children.
- Facilitate open dialogue. Don't expect families to adapt immediately to this change but, rather, create the space for open communication where resource families can ask questions, seek help, share concerns/fears, and learn from others.
- Progress step by step. Support resource families in taking incremental steps toward developing relationships with parents. Perhaps begin with a letter or email, progress to a phone call, and then support face to face meetings.
- Maintain the vision. While we are hopeful that all resource families will see the benefits of this approach to foster care and support the new vision, we must be prepared that some may not. In those situations, agencies must be willing to make hard decisions in order to support parent's reunification efforts. Facilitating moves to kin or relatives in these scenarios may best ensure timely permanency and support well-being for the entire family.

When agencies encourage resource families and parents to develop a relationship that focuses on co-parenting the child in care, they can achieve many benefits, including:

- We can mitigate the trauma of separation for the child and parent as the parent knows who is caring for the child and understands that the resource family is an ally who will keep the child safe while supporting the parents' efforts toward reunification.

- Parents do not have to fear that they are being "replaced" by the resource family and this creates less confusion and worry for the child as well, as they see the resource family as a friend and support to the parent.

- Children are able to see and experience the adults they care about working together, rather than against, each other. This may ease tension, anxiety and help stabilize an abnormal and traumatic experience.

- As parents and resource families share a common interest in the well-being of the child, an appropriate and supportive partnership can develop (respecting boundaries to ensure safety) which can serve as a key source of encouragement and support to the child's parent, ideally continuing post-reunification.

- Co-parenting activities ensure that parents stay meaningfully engaged in the child's life on a frequent basis.

- We can enhance visitation and family time opportunities as parents work together to coordinate schedules, keeping this a key priority during placement. This further reinforces to the parent that the placement is a time-limited support toward reunification.

- Resource families can serve as models of effective and safe parenting while also learning key information from the parent about the child's preferences, routines, and needs. This transfer of parenting knowledge and skills can occur in a more natural setting as the relationship builds and parents spend time together co-parenting the child.

- With increased exposure to parents in different settings, resource families are able to see more accurately the parent's strengths and needs which can help facilitate honest communication between all parties in case planning, and contribute to ongoing assessment by the social worker.

- We can more naturally and effectively facilitate a teaming approach with the worker, parent, resource family and other service providers working toward reunification.

III. Resources and Innovation to Support the Use of Foster Care as a Support to Families

A number of jurisdictions across the country have implemented programs or approaches that promote foster care as a support to families. These programs and approaches serve as concrete examples of how to improve the foster care experience for children and their parents by creating opportunities for parents and resource families to work together and demonstrate to children that multiple adults love them, while enhancing parental protective factors and strengthening parent-child bonds. A wide variety of child welfare and community stakeholders, including judges and attorneys for parents, children and the child welfare agency can help promote and sustain such practices. The examples to follow include public, private and faith-based efforts to promote foster care as a support to families.

Children's Home Society and Guilford County, North Carolina Department of Social Services

Children's Home Society (CHS) and Guilford County, North Carolina Department of Social Services (DSS) are in the early phases of piloting a new approach to foster care designed to emphasize foster care as a vehicle for reunification. The pilot arose from a common goal among the agency and stakeholders to improve the reunification rate in the county. A team including CHS staff, DSS staff, GAL staff, youth, parents, and resource families designed and is overseeing the work. That team co-designed the three components of the pilot; (1) training materials for social workers and resource families to address resistance to shared parenting, (2) shared parenting practices at initial placement in foster care, and (3) materials to support the implementation of these practices. The team is working to develop formal training material for social workers and resource families, based on shared parenting practices and supporting materials. The team is also producing a series of videos as an additional training element that highlight the reason why reunification and shared parenting are important and the positive impacts for children, parents, and resource families.

The pilot currently focuses on three primary practices: shared parenting training during pre-service licensing, parent flyers (parents and resource families), and parent calls. Except for the shared parenting training, these practices all occur immediately following placement with the resource families. The underlying intent of these practices is to initiate relationships, break down barriers to communication, build partnerships between the resource families and parents, and provide parents with dignity while their children are in care.

Parent Flyers are brief, informal, written resources that provide basic information about the resource families to the parents. For parents, the effort is a way to give them a sense of the people who are caring for their child. This simple tool helps to set the tone for future interactions with parents. Parent Flyers allow parents a glimpse into the house and family their children will be with while they are away from them, which is comforting during a difficult time. Parent Flyers also allow parents to see that their child is with loving people, in a safe, stable home environment. Parent Flyers help parents understand resource families are open to forming a connection with them, which demonstrates the willingness to share parts of their life with them.

Parents receive the flyer at the first Child and Family Team meeting or 7-day hearing. The Parent Flyer has a section where the parent can provide information back to the resource families about them, their children, and their family. The Parent Flyer includes language that affirms the parent as an expert about their child and a partner with the resource family in supporting reunification. The design team also created protocols for introducing this tool and guide to resource families and parents as well as CHS, DSS, and GAL staff.

The Parent Call is a phone call that takes place between the resource family and parent at the 7-day visit in the resource family home. The DSS and CHS staff are present to help facilitate the phone call. The purpose of these calls is to establish communication between resource families and parents and begin building relationships that will ultimately lead to a partnership focused on

the needs of the child. These calls can also help to reduce parent's anxiety about their child's well-being and for the resource family to show their respect for them as the parent. The resource family can also clarify their intentions and their willingness to support the parent and reunification. Lastly, they can discuss information regarding the child (likes, dislikes, etc.) and begin to establish shared parenting roles (visits, phone calls, etc.).

The design team is soliciting feedback from all involved with these efforts on an ongoing basis to identify ways to improve the approach.

FaithBridge, Atlanta, Georgia

FaithBridge is a faith-based organization operating in the metro Atlanta area and surrounding suburbs. The organization offers a number of family support services, including foster care placement. FaithBridge believes that restoring families and working towards reunification is just as important as licensing new resource families and caring for children in foster care. Recognizing that outcomes for children are better when they can be reunited safely with their family of origin, FaithBridge intentionally included the parents in the center of their model. Their program's expectation is that their resource families participate not only in the redemption of the trauma children in foster care have experienced, but also in the restoration of their families as they seek to break generational cycles of difficulty and struggle. The agency's data indicate that reunification rates improved significantly when resource families worked closely with families and nearly 25% of families maintained a relationship post-reunification. FaithBridge's practice framework is composed of the following two principles:

1. It is in the best interest of the child for their resource families to engage in partnership parenting with their parents.
    - It is an expectation that families are willing to work alongside parents in order to be licensed with FaithBridge.
    - FaithBridge teaches resource families to understand the natural love the child has for theparent despite the circumstances associated with the child's removal.
    - FaithBridge asks resource families to recognize and respect the parent's role in the lives of the children.

2. Families (of origin and resource) thrive when they have a community of support.
    - FaithBridge works to assign every family to a Community of Care support network led by church partners. The Community of Care provides wrap-around support to resource families, parents, and children in foster care.
    - Since neuroscience research indicates that the trauma children and parents experience can be healed through the process of building healthy relationships, FaithBridge trains

families that no one should parent alone, and encourages all of their parents and resource families to build healthy support systems. With regular ongoing support, parents are more successful and resource families have higher retention rates and placement stability.

- FaithBridge utilizes former and current resource family trainers trained in Trust Based Relational Intervention (TBRI®) and Empowered to Connect parent coaching.

Ottawa County, Michigan

In Ottawa County, Michigan, an effort has been underway for several years among the county child welfare agency and resource families to support the practice of resource families working closely with the parents of children and youth in their care. The approach is one that is rooted in a philosophy of mutual respect that recognizes that even when it may not be possible or appropriate for a child to live with his/her parents, they remain critically important in the lives of that child and that opportunities to keep the parents meaningfully involved in parenting activities is beneficial. The approach is designed to recognize that resource families can be helpful in reducing both child and parent trauma and enhancing parental protective capacities. Ottawa County Department of Health and Human Services (DHHS) has made concerted efforts to recruit, encourage and support resource families that have an overall positive attitude about working with the parents of children placed in their homes. The approach emphasizes the importance of resource families and parents working together as a team.

Multiple efforts to support resource families in Ottawa County help reinforce the approach. The first begins with the staff of Ottawa County DHHS. The staff members always talk about parents in a respectful and strength-based way. They encourage resource families to have relationships with parents, and give ideas of ways to make this happen. They also allowed two resource families who have had positive relationships with parents to train other resource families on how to do this.

One resource family started an online Facebook support group for resource families called Ottawa Fosters. The Facebook support group has become a robust online community for resource families in Ottawa County to connect, share advice and discuss experiences. There are rules around confidentiality, but most importantly, the goal is to keep conversations positive and supportive of everyone involved in the child's case, including their parents. It has also organized support for families in need of items following reunification.

A second effort, initially started by two resource families has also grown into a powerful support for resource families. This approach developed organically through discussions between resource families that came to know one another because the children placed with them attended the same school. The founders simply thought it would be a good idea to create an informal way for resource families to get together, talk about how things were going in their homes and share experiences. What started as a morning a month with a small group in resource family homes

has now grown to a larger gathering of resource families and children that occurs at the local school.

A third effort which has been in existence for many years, Mosaic, a community-based provider in the county, also encourages relationships between resource families and parents and provides support to resource families. The leader of this group has been providing foster care for many years, and often shares her experiences in the mentor role to the parents of the children in her care to help support the approach.

IV. Conclusion

All title IV-B/IV-E agencies have an opportunity to change the foster care experience drastically for children and parents from one that compounds trauma and prolongs permanency to one that supports healing, promotes timely reunification and strengthens families. To begin the process, stakeholders must agree that family is important in the lives of children in foster care and meaningful relationships with parents and siblings are a key to child well-being, and act accordingly. We strongly encourage all title IV-B/IV-E agencies to commit to using foster care as a support to families by implementing the best practices outlined in this IM. To implement this approach successfully, agency and court leaders must mobilize service providers, attorneys and resource families in every community to promote this vision and provide the critical supports that families need to achieve successful reunification.

Inquiries: CB Regional Program Managers

/s/

Elizabeth Darling
Commissioner
Administration on Children, Youth and Families

Disclaimer: IMs provide information or recommendations to States, Tribes, grantees, and others on a variety of child welfare issues. IMs do not establish requirements or supersede existing laws or official guidance.

Resources

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Family Is A Compelling Reason

An Opinion Column from Federal Child Welfare Leaders

April 6, 2020 Jerry Milner and David Kelly

In a world where "social distancing" has become a necessary practice and the primary preventative measure for reducing the spread of coronavirus, we must remember that children in foster care and their families have already been "distanced" from each other.

Protecting family integrity may seem like an expendable effort – something to be put aside until the world changes. The fact is, every day that goes by with restrictions on family time, reduced availability of treatment or other services for parents and delays in reunification efforts is a threat to family integrity.

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When children are removed from their parents, even when necessary for their safety, and artificial visiting arrangements are imposed that prevent parents from being parents and children from being children, they become distanced and that can be harmful to parents and children alike. The effects of such distancing shows up in trauma responses, in hopelessness, in destructive behaviors, in increasing needs for clinical interventions, and in repeated cycles of difficulty within families.

As we struggle to develop responses and adapt, we cannot forget the simple fact that children miss their parents, parents miss their children, and that absent aggravated circumstances, they deserve a fair shot to be together or get back together as soon as there is not a safety risk. Further, it is not merely a matter of longing for contact, it is a matter of healthy brain development, maintaining critical bonds, and prevention of trauma that can persist for generations.

We have to commit to doing all within our power to protect parent-child relationships during separations, and to continue to work as diligently as we possibly can to achieve reunification for those families who are not yet together.

We cannot hit pause. We cannot allow a hiatus.

The presence of this virus in the world, alone, is not the safety risk that should keep children and parents apart. We expose children, particularly young children who have difficulty understanding separation and infants, to a less contagious but equally harmful threat when we interrupt the parent-child relationship when explicit safety or health reasons do not call for it.

Likewise, the interruptions and delays that have already taken place in our efforts to serve children and families during the initial weeks of the public health crisis do not grant any of us permission to forgo making reasonable efforts to keep families together or reunite them as fast as safely possible. The reasonableness of our efforts may need adjustment given the circumstances, but we must make them and we can be creative in doing so.

This is a time for us to demonstrate initiative and innovation, not to shrink away. It is not the time to return to old ways that have proven ineffective or harmful.

In taking all needed precautions and heeding public health guidelines, we do not have to succumb to paralysis, indecision or inaction. To do so is to betray our charge and our obligations as administrators, social workers, attorneys, judges and providers. We are people who

Jerry Milner, associate commissioner of the U.S. Children's Bureau.

care for other people and we need to show that — even in uncertain times where we are concerned about our own families and well-being.

We also cannot allow our structural, functional and funding limitations to be used against families down the line. Time is a child welfare system's biggest challenge and has been since the passage of the Adoption and Safe Families Act in 1997 and the advent of reasonable efforts requirements – but it is an even greater challenge now. The timelines in the Act were more the result of negotiation than what we know about the importance of parent-child relationships, recovery and trauma. They do not reflect what we know about treatment and recovery and do not reflect the contextual factors that are directly relevant to successful reunification, such as the availability of quality services and treatment and a family's ability to access services timely and effectively. The decades that have passed and research lessons learned have revealed the timelines as lacking alignment with what many children and families need.

Nonetheless, the 15 out of 22 months deadline continues to loom large. For some families who are nearing a year of separation, they are skating dangerously close to the statutory timelines for filing termination of parental rights petitions. We must be mindful of what is fair and just for parents in these situations. The law provides a tool for circumstances like these, compelling reasons not to file to terminate parental rights. The agency can demonstrate that compelling reasons exist not to file to terminate parental rights, even when the 15/22 month

mark has been reached, if a parent is showing progress and needs a bit more time, a fit and willing relative steps up, or a variety of other changes or circumstances that may exist.

We have to stand on guard and prepare for the aftermath of our current crisis. One, two, three or even 12 months from now, we will continue to deal with the results of the virus and the manner in which it has affected our system. Should restrictions on family time and services continue, a significant amount of time may pass before parents and children are properly served.

Despite our strong preference that all measures be taken to continue in-person family time for children in foster care and their parents and siblings, there will undoubtedly be instances where such family time is not provided. In some instances that may be appropriate due to the presence of the virus in the resource family home or home of the parent. In many more instances, there will be no known safety threat.

Although it pains us greatly to write this, there will be circumstances where children, some as young as infants, may go a significant period of time without seeing their parents as the public health crisis continues. In some instances this may be warranted but in others, it will not. In both instances, the agency must demonstrate that it made reasonable efforts to maintain critical connections and courts must hold them accountable for doing so.

Our challenge is how we in the nation's child welfare systems respond to these situations. It will reveal where our values truly

lie. There will be those who use the crisis to serve their own interests or those of their constituencies. There will be those whose implicit or even

explicit biases are drawn out into the light. There will be those who choose to weaponize our systemic shortcomings and use them against parents.

David Kelly, special assistant to the associate commissioner of the U.S. Children's Bureau at the Department of Health and Human Services. Photo: Children's Bureau

Child development and **bonding will be used in arguments** not to return children to their parents and to expedite adoptions in instances where families did not have a fair chance. We must be vigilant and prepared to stop this from happening, because justice demands it.

There will also be leaders and individuals who will learn from these difficult times and chart a new course, inspired by this stark reminder of our common humanity. For such leaders, this crisis is an opportunity to reorient our system.

We can demand the flexibility in funding and the array of responses we need to serve children and families. This is a defining moment for us as a system; it has laid threadbare our lack of agility to meet family needs. We cannot allow our shortcomings to be held against families — to do so is the height of injustice and compromises the legitimacy of our system in our own eyes and those of the families we are privileged to serve.

We have an opportunity to rise to the occasion and demonstrate new ways of serving families — we can be proactive in finding solutions.

We cannot allow ourselves to repeat the mistakes of the past, where sometimes well intended but deeply misguided efforts

to help children had the opposite effect. We cannot allow the coronavirus to serve as a modern-day orphan train that leads to the redistribution of other people's children.

Every day that we do not maintain connections between children in care and their parents and siblings is a source of trauma. We have to keep this in the forefront of our minds in the days, weeks and months ahead and use it to guide our actions. To lose sight of this is a moral and ethical failing. It is an injustice.

Jerry Milner *is the associate commissioner of the* ***U.S. Children's Bureau****.* ***David Kelly*** *is special assistant to the associate commissioner.*

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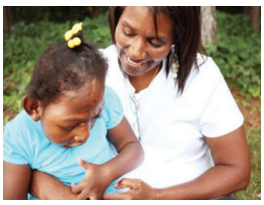

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November 05, 2018

Reasonable Efforts as Prevention

By Jerry Milner, David Kelly

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The U.S. Children's Bureau has shared a new vision for the child welfare system that emphasizes preventing child maltreatment and the unnecessary removals of children from their homes. Attorneys and judges can leverage reasonable efforts findings as part of child welfare prevention efforts. This article shares how a commitment to making meaningful reasonable efforts findings can fulfill legal mandates and support prevention efforts.

Far too often the wrong examples drive child welfare policy and practice in the United States.

We see it time and time again in jurisdictions where there is a child fatality; a formulaic response. Negative stories run, resignations are sought, blue ribbon commissions or task forces assembled, recommendations made. Perhaps a new policy is created or law passed to hold folks more accountable—often based on the facts of the most recently publicized tragedy as opposed to data and what we know children and families need. Commonly, there are corresponding spikes in the number of kids removed from their homes, everyone becomes scared and that fear is reflected in social work and legal decision making.

Attention then turns to recruiting more foster homes to place the increasing numbers of kids coming into foster care and we create a demand for which supply will never be adequate. Dockets and caseloads swell, workforce stress and turnover become endemic, and children and parents often do not receive services or supports to meet their needs. Such reactions bring tragic consequences and affect tens of thousands of lives annually-- the unnecessary separation of children from their parents and ensuing trauma. The child welfare system often becomes stuck in this cycle, and it comes at enormous human and financial cost. Yet, we continue to respond in the same damaging and costly way, over and over again.

As a field we know the trauma children experience when separated from their parents is considered a powerful adverse childhood experience that can lead to long-term health, relational, and self-sufficiency challenges. It is also highly traumatic for parents and can trigger relapse or decompensation for those that may be in recovery or struggling with substance abuse or mental health issues. In other words, fear of making a wrong decision can lead to over removal. Over removal is a near guarantee of harm to a much larger population and perpetuates intergenerational cycles of disruption and maltreatment. This is a quieter, more far-reaching tragedy.

Attorneys' Roles in Promoting Reasonable Efforts

High-quality legal representation for parents, children, and child welfare agencies at all stages of child welfare proceedings is one of the most important systemic safeguards to ensure we keep our eyes on the ball as a child welfare system and avoid unnecessary removal, overly long stays in foster care, and trauma to parents and children.

Attorneys for parents, children, and the child welfare agency are charged with providing information to the judge to guide two critical judicial determinations: the determination that reasonable efforts have been made to prevent removal, and later, if out-of-home placement is deemed necessary, reasonable efforts to finalize the permanency plan. Exercised as statutorily intended, these two findings alone have the potential to dramatically reduce unnecessary family separation, decrease child and parent trauma, promote child and parent well-being, and expedite permanency.

Well-trained child welfare attorneys bring extra sets of problem-solving eyes to assist families and children and the skills to advocate for safety plans, identify strengths, needs, resources, and supports to help keep parents and children safe and together. Attorneys for all parties have the ability to ask what the needs or threats are that have been identified, zealously inquire about efforts to address those needs or threats, provide legal advocacy to ensure those needs are met and threats are addressed to support family resiliency. This is the very substance of reasonable efforts.

However, evidence remains scarce based on round 3 of the Child and Family Services Review, court observation work conducted across the country by Court Improvement Programs, and current trends in child welfare outcome data that either reasonable efforts determination is treated with the rigor or seriousness required under the law. Legislative intent provides adequate context to understand that these legal findings were intended to avoid unnecessary placement and minimize the length of time children and youth spend in foster care. Tying these findings to federal funding in the form of eligibility for title IV-E reimbursement was intended to underscore the significance of keeping families together and preventing unnecessarily long stays in foster care. Unfortunately, tying the findings to funding often leads to the common practice of invoking standard language, checking boxes, and findings in words only, for fear of a determination leading to financial ineligibility for federal reimbursement for part or all of a child welfare episode.

Using Reasonable Efforts as a Prevention Tool

For the child welfare system to become one that respects the integrity of the parent-child relationship and seeks to minimize trauma, attorneys must use the tools the law provides and judges must make meaningful judicial determinations.

Attorneys for parents, children, and the child welfare agency can help change the trajectory of child welfare in the United States by:

1. Being active voices for preventing the trauma of unnecessary family separation in and out of the courtroom,
2. Advocating vigorously for reasonable efforts to be made to prevent removal or for a finding that reasonable efforts have not been made to prevent removal when that is the situation, and
3. Where removal is necessary, advocating that reasonable efforts be made to finalize permanency plans and, when not made, advocating for a no reasonable efforts finding.

There must be a unified commitment across the child welfare system to strengthening families through prevention, reasonable efforts to prevent removal and finalize the permanency plan, and providing the services that will become available through the Family First Prevention and Services Act and other sources. These efforts harbor great potential to keep families safely together and help avoid the outlier tragedies that have for too long driven how we serve children and families.

To be clear, the change we need in child welfare will not come from legislation alone. There must be a change of mindset, and support among the legal and judicial community to work further upstream to help prevent the need for children and families ever to enter a courtroom. Reasonable efforts must be treated with the seriousness such findings deserve when legal system contact is made. As we've seen with previous legislation, laws that do not translate into robust practice at best preserve the status quo.

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Are We Sincere About Valuing Families?

Written by Jerry Milner and David Kelly

If we are sincere in our statements that family comes first—that families matter and belong together—our child welfare system is the proving ground we have before us. If we are sincere in our proclamations that foster care is a temporary option of last resort, we must do everything we can to prevent unnecessary removal and support and enhance the parent-child relationship when a child is in foster care. If we are sincere in our commitment to follow federal law, we must do all in our power to strengthen and protect the integrity of the parent-child bond while a child or youth is in foster care. As a field, this requires all of us to view foster care as more than a "placement" and far more than a bed. For the vast majority of children and youth in foster care, foster care can and should be a vehicle to promote healthy reunification—the most direct way to follow the law.

If the goal of foster care is to provide for temporary care while a child achieves reunification, why do we continue to hear young people recount their histories with statements such as, "I was in care for 18 years with 18 placements," or "17 years with 17 placements," or "12 years with 21 placements"? Why do we continue to hear about young people "emancipating" from foster care to return to their families of origin when agencies have done little or nothing to prepare the young person or the family for getting back together? Why do we leave familial and particular parental resources unsupported, undeveloped, and underused?

What should we make of instances where a parent in recovery may go months, a year, or longer without seeing her infant that was removed at birth due to positive toxicity?

Why do we continue to see and hear standard procedures in courts and agencies that assume parent-child visits will be limited and supervised and where parents must effectively earn greater visiting privileges? We talk about the importance of parent-child relationships. We have laws and regulations that speak to the need to "normalize" the foster care experience. Yet, our actions often speak louder than our words.

Our words say that foster care is temporary, supports parent-child relationships, and meets children's needs for safety, permanency, and well-being. Our actions too often say that foster care will go on for years, that we hold parents at arms distance or alienate them, and that physical safety trumps both permanency and well-being. How do we reconcile the contrast between our words and our actions?

We can begin by taking family time seriously.

Without time together, how do we expect parents and children to grow and heal together?

Without time together, how do we expect parents to practice parenting and children to learn routines and structure and feel cared for in uninterrupted ways.

The simple answer is that it is not logical or reasonable to expect separated families to reunify unless we prioritize and value making sure they spend meaningful time together.

In our time in the field, we have each encountered situations where courts and agencies treat family time—all too often referred to as "visitation"—as reward or punishment. We have seen it used as a privilege a parent must earn, much in the way an inmate earns privileges in the penal system. We have seen visitation suspended or canceled when a judge or a social worker feels a parent has not complied with expected behavior or case-planned goals. We

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have seen visitation cancelled due to positive drug tests days or weeks before scheduled visitation. And, in our travels to now 42 states in nearly 3 years, we have heard from attorneys, judges, social workers, parents, and young people working in the system or with lived experience that such practices remain commonplace today.

This needs to stop.

Absent an immediate danger, we should regard family time as a critical reasonable effort to reunify, and we must prioritize it. Research makes clear that there is a strong relationship between high-frequency, meaningful family time and reunification.

Failure to treat family time as a critical reasonable effort to reunify is a threat to child and family well-being and an impediment to permanency. In order for family time to actually support the child's and family's well-being and promote permanency, it must be more than an arranged hour or two of time between a parent and child in a sterile environment where neither feels free to interact naturally. Family time should provide opportunities for parents to carry out parenting responsibilities and for children to see their parents as people who care about them and are trying to meet their needs. Family time should provide the most normalized environment that is as safe as possible given the abnormality of foster care itself.

When we ensure that normalized family time is an essential part of the foster care experience and fully engage parents in the process, we provide them with hope that reunification is possible, that parenting can be successful, and that they can surmount the difficulties they may face in dealing with whatever brought their children into foster care. Without such hope, parents run the risk of becoming overwhelmed, discouraged, and disengaged and believing that they cannot actually meet their children's needs. This, in turn, can lead to the circumstances behind the stories we hear—spending 17 or 18 years in foster care. When we engage parents actively in the lives of their children while they are in foster care, we create opportunities for decreasing the trauma of separation, for faster routes to permanency, and for healthier children and young people who feel loved and cared for despite the difficult circumstances of their lives.

When we begin seeing parents as partners who care about the well-being of their children instead of pariahs, we can change the dynamic that has historically clouded visitation—now referred to as family time—and change the experience for children and young people in care. Family time can help us get there.

Next Article >

March 01, 2017

Family Time/Visitation: Road to Safe Reunification

Mimi Laver

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Research shows there is a strong connection between family time and safe reunification. We know that quality family time is a key indicator of earlier, and safer, reunifications. This article highlights practices that can improve the experience and outcomes for the child and family.

First, a note on language. In most parts of the country, child welfare practitioners use the term "visitation" when they are talking about time a child spends with her parents/siblings/ extended family. Because that time is essential for a healthy family and because it is what all families do in everyday life, throughout this article uses the term "family time." This may be a switch you'd consider in your jurisdiction to consider communicating the "normalcy" of this experience.

Preparation Matters

Family time, especially soon after a child's removal, can be an extremely stressful experience for both the parents and child. Children may be scared, unclear about whether they can hug their parents in front of people, unsure why they were removed and afraid to ask, and generally feel anxious about sharing their feelings of hurt and sadness. Parents may worry about whether the child is angry at them, may be afraid to come to the agency's office, may be uncertain about how to act in front of the case worker, and may be feeling ashamed and embarrassed. In addition to considering the logistics of the actual family time gathering, the professionals in the case should consider all of these emotions in supporting the family.

The logistics cannot be overlooked; they can be a key to a successful meeting. Family time should be a focus of the family's case plan. The first time a family gets together after a child was removed

should occur as soon as possible, **ideally within 48 hours**, and if need be, the judge should order this. Family time should be planned when it does not interfere with a parents' work or child's school schedule. It should occur in a place that is convenient for everyone, and preferably somewhere outside of the child welfare agency's office (like a park, mall, or visitation center).

The caseworker should prepare the parent for what to expect during the time with the child. Parents often want to know if they can bring food or a gift. Parents also want to know if they will be supervised and by whom and the kinds of things they should say to their child if the child asks questions about when the family will be reunited. Helping parents prepare, logistically and emotionally, can go a long way towards successful family time.

Consider How Much Supervision is Necessary

In most jurisdictions, family time is always supervised, at least at the beginning of the case. Some practitioners have started to ask WHY? Why must the family time be supervised when the child came into care because, for example, of a housing issue or another reason having nothing to do with safety. In contrast, Georgia recently enacted legislation making unsupervised family time the default and it only becomes supervised by court order if the court finds unsupervised visitation is not in the child's best interest. O.C.G.A. 15-11-112

It is difficult for a family to maintain their connections when someone is sitting nearby, watching every move and taking notes about every interaction. The level of supervision a family requires should be determined on a case-by-case basis. The caseworker should consider the reasons the child came into care, the child's age, and other family needs. Attorneys for the children and the parents should advocate with the agency, and with the court if needed, to have the family time follow the least-restrictive setting concept—there should be as little supervision as possible with safety of the child being the primary consideration.

Family Time Should Mimic Family Life

In addition to a preference for unsupervised visits, caseworkers and courts should prioritize family time that actually mimics family life. Because the quality of family time is such a strong indicator of successful reunification, family time itself should resemble real life as much as possible. Concretely this means the visit should take place in locations that the family enjoys—a park, a relative's home, the family's church or favorite restaurant.

The family should be together as often as possible. If a family only sees each other for one hour once a week, for example, that means they would only be together for about two days a year. This is certainly not enough. When children are very young, they should see their parents several times a week, and the length of visit could be on the shorter side. When children are older, they may only see their parents once or twice a week, but they might visit for a few hours (or longer) at a time.

In addition to scheduled family time, parents should be encouraged to participate in the child's normal activities. The parent should be told about all doctor and school appointments as well as extracurricular activities that they could go and enjoy. Even if the parents and child do not get to interact at these events, it means a lot to both when a parent can see the child play a sport, act in a play, participate in a school concert, or meet the child's friends.

Some jurisdictions such as New York City, have been making use of "visit hosts" as a way to have family time occur often and in settings that are familiar and comfortable for the family. A visit host is someone who the agency and family agree could oversee a visit safely. Examples include a pastor who allows the family to be together after a Sunday service while he is doing work in another room, a relative who hosts Sunday dinner, and a bowling alley manager who allows a father and son to bowl together each week. For more information and to see New York's Visit Host Policy see the Resources box.

In other places, communities have created visiting centers. Often, these are in houses where staff can be on site, but out of sight, and families can do "family activities." There are often kitchens so the family can make a meal, living areas to relax, play games, read books or work on homework together and bath tubs so parents can bathe their young children. This type of setting provides the answer to concerns about supervision that some might have while providing a comfortable setting for the family.

Barriers to Quality Family Time

Of course there are practical issues that arise when stakeholders are considering improving the way they provide family time. Transportation to and from the gathering, staff time to organize and/or supervise, money to develop a family time center, and probably the most difficult, the will to change "the way we do things." While all of these are real concerns, many jurisdictions have joined together to figure out creative solutions to over-coming these issues. In some places, like a county in North Carolina, all it took was a judge who kept ordering family time for babies to

happen three times a week. At first the system was stressed by this, but then they came together and figured out how to make it happen. Understanding the importance of family time to the child's well-being, as the judge did, provided strong motivation for family time that mimics family life in that county.

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Resources:

Guggenheim, Martin and Vivek S. Sankaran, ed. *Representing Parents in Child Welfare Cases: Advice and Guidance for Family Defenders*. American Bar Association, 2015. Specifically see: Appendix A to "Chapter 6, A Bridge Back Home: Visit Hosts New York City Administration for Children's Services Division of Family Support Services Office of Family Visiting," and Appendix B to "Chapter 6, New York City Administration for Children's Services Best Practice Guidelines for Family Visiting Arrangements for Children in Foster Care."

National Council of Juvenile and Family Court Judges. *Enhanced Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases,* 2016, 85-88.

Jordan Institute for Families, UNC-CH School of Social Work. Visiting with Your Child, February 2015.

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Center for Family Representation. A Cornerstone Approach to Moving Child Protective Cases: Small Adjustments for Judges and Practitioners to Consider.

National Family Preservation Network. *Best Practice for Father-Child Visits in the Child welfare System*, February 2012.

Partners For Our Children. *From Evidence to Practice: Family Visitation—Family Visitation in Child Welfare: Helping Children Cope with Separation while in Foster Care,* April 2011.

Office of Children & Families in the Courts, Pennsylvania State Roundtable, Visitation Workgroup, Pennsylvania Parent Visitation Guide.

Videos:

Pennsylvania – visitation starts at 28:37

New Jersey

Preserving Cultural Connections

What is *Preserving Cultural Connections?*

Culture is a defining feature of our identity and it is no different for the children and young people in our care. Culture contributes to how children and youth see themselves and the groups with whom they identify. Culture may be broadly defined as the sum total of ways of living embraced by groups of people. Such groups may be defined by race, ethnicity, economic class, language, disability, gender, sexual orientation, age, geography, immigration status, and so forth. Every cultural group has its own values, beliefs, and ways of living.

The observable aspects of culture -- such as food, clothing, celebrations, communication, religion, and language -- are only part of a person's cultural identity. The shared values, customs, and histories characteristic of culture shape the way a child thinks, behaves, and views the world. A shared cultural heritage bonds the members of the group together and creates a sense of identity and belonging through community acceptance.

Children and youth who enter the child welfare system often leave behind much of their cultural heritage and enter into new settings characterized by different values and customs. Cultural bonds are sometimes inadvertently broken, and the sense of identity and belonging and acceptance may be lost. Preserving cultural connections is about identifying aspects of culture important to the child or youth and aggressively working to keep connections that will maintain a sense of identity and belonging.

What is *Current Practice?*

Currently, there is no standardized statewide practice to preserve cultural connections for children. However, the Indian Child Welfare Act (ICWA) requires that placements of Native American children and youth in foster care follow very specific preferences, starting with placement with a member of the Indian child's extended family, followed by placement with family from the child's tribe, and placement with another Indian family.

What is *Best Practice?*

Best practice requires judges, attorneys, caseworkers, service providers, child advocates, and others who work with children and families to thoroughly assess and identify those cultural factors critical to the child's sense of self and sense of belonging. Best practice also requires that child welfare professionals and advocates identify the individuals and community networks that need to be involved with the child or youth while he/she is in care in order to preserve cultural connections.

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Best Practices cont...

Recent changes in federal law promote the involvement of the child's relatives in the child's life and makes it easier to place children in relative care. Maintaining the child's connection with birth relatives is an appropriate way to preserve the child's cultural connections. It is also important for children to maintain connections with their siblings. Sibling relationships are often the longest relationships in people's lives and uniquely sustain children's sense of both their personal and familial history.

There are no pre-established checklists that identify the critical elements of various cultural groups. These must be discovered through inquiry and a demonstration of empathy, compassion, and the highest level of cultural sensitivity. Some things that child welfare professionals and advocates can do are listed below. Safety, permanency, and well-being must be assured in all efforts to preserve cultural connections.

- Remember that the first and best way to preserve cultural connections is to preserve the child's connections with the child's biological family, including extended family, whenever possible and consistent with safety, permanency and well-being.

- Remember that cultures are defined by race, ethnicity, economic class, language, disability, gender, sexual orientation, age, geography, immigration status, and so forth.

- Persistently gather information about the defining characteristics of a child's culture; ask about friends and their backgrounds, school and neighborhood activities, celebrations and special events, language preferences, religious affiliations, and support networks.

- Speak freely with the child and parents about cultural issues; share information with caretakers, service providers, and others.

- Discover the people who share the child's culture and ensure that the child spends time with them; include family members, neighbors, and community members, as appropriate.

- If language is a defining feature of the child's culture, make sure that placement and service providers can speak the child's language.

- Where relevant, make books available about the child's culture of origin. Also, provide toys and games relevant to the child's culture of origin.

- Attend and acknowledge various celebrations and events within the child's culture of origin, if applicable.

- Respect the young person's choice of religious affiliation and help him/her participate accordingly.

What is *my ROLE?*

- As a JUDGE, you would inquire about the child's culture and the efforts that are being made to preserve cultural connections for the child or youth. You would ask about which aspects of race, ethnicity, economic class, language, and so forth are critical for the child and his or her sense of identity and belonging. You would also inquire about barriers and seek solutions to preserving cultural connections.

- As a CASEWORKER, you would gather information about the defining aspects of the child's culture. You would identify individuals and community networks that share the child's culture and can maintain relationships while the child is in care. You would engage foster parents, service providers, and others in efforts to preserve cultural connections. You would attempt to connect children with services in his or her native language. You would also document efforts to preserve cultural connections in the case record and in the treatment plan.

- As a CHILDREN'S COURT ATTORNEY, you would present recommendations from caseworkers about cultural connections in an informed manner to the Court.

- As a RESPONDENT ATTORNEY, YOUTH ATTORNEY, OR GAL, you would advocate for placement, service provision, and other activities that honor and preserve cultural connections for your client.

- As a CASA VOLUNTEER, you would speak with the child about his or her needs, hopes, and experiences in regards to the cultural connections that are important. You would also make recommendations to the Court in the child's best interests as they relate to preserving cultural connections.

- As a CRB MEMBER, you would inquire about the steps taken to preserve cultural connections. You would document your observations and recommendations in the CRB report.

- As a PARENT, you would help your caseworker identify and understand the cultural factors that are important to your family and to your child. You would talk to your caseworker or your attorney if you feel your child is being denied access to those cultural connections.

- As a FOSTER PARENT, you would work with the caseworker and the parents to preserve the child's cultural connections, including his or her choice of religious affiliation and participation in cultural traditions and events. You would help the child maintain a Life Book including photos and other items celebrating the child's culture.

- As a CHILD or YOUTH, you would let your caseworker, CASA, and attorney know what cultural factors are important to you and your family, including your religious affiliation, community affiliations or activities, cultural traditions and special events. You would let your caseworker, CASA, or attorney know if you feel you are being denied access to any of those cultural connections.

WHAT CAN BE DONE TO PRESERVE CULTURAL CONNECTIONS?

What can be done to preserve connections with birth parents?

- Whenever possible, choose placements for foster children in close proximity to the child's birth parents.
- Encourage visitation and communication, even if the parent is incarcerated.
- Encourage parents to participate in treatment planning, mediation, and court hearings and related events.
- Consider open adoptions. (See Best Practice Bulletin Open Adoptions and Mediated Post Adoption Contact Agreements (PA CA).
- Promote positive relationships between foster youth and birth parents; avoid speaking negatively about birth parents in front of the foster youth.
- Keep foster youth informed of what is going on with his or her parents; always be honest.

What can be done to preserve connections with siblings?

- Whenever possible, place siblings together in foster homes.
- Specifically address maintaining connections with siblings in case planning.
- Encourage visitation and communication.
- Keep foster youth informed of what is going on with his or her siblings; always be honest.
- If siblings have to be separated initially, work toward reuniting them.

What can be done to preserve connections with family members?

- Specifically address maintaining connections with grandparents, aunts and uncles, and other extended family in case planning whenever possible.
- Encourage and support visitation, including helping the foster youth participate in important family events.
- Inform grandparents of their rights, including their right to visitation. (For more information, see the booklet Abuelos y Sus Nietos: Grandparents & Their Grandchildren. Call Pegasus Legal Services for Children, 505-244-1101, or the Administrative Office of the Courts, 505-827-4800, and ask for a copy.)
- Keep foster youth informed of what is going on with his or her extended family; always be honest.

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Family Engagement: Maximizing Family Resources & Kinship Connections

What is *Family Engagement?*

Family engagement is a critical component of ethical and effective child welfare practice. Family engagement embraces core principles and values as well as a number of critical practice habits related to assessment, case planning, placement, and permanency. Family engagement is a strength-based approach and a defining characteristic of family-centered and team-based decision-making. Family engagement is any and all of these things, and overall, it is our best hope for preserving the family-child relationship, whether or not reunification is achieved. Family engagement practices encourage parents to participate meaningfully in their case from the outset.

The intent of family engaged practice is to maximize family resources and kinship connections. Various approaches are used to achieve consensus on key decisions related to removal, placement, and permanency while simultaneously enhancing capacity, strengthening competency, and promoting family growth and development. The family is broadly defined to include parents, children and youth, extended family, fictive kin, and others. As explained in 1990 by the Young Children's Continuum of the New Mexico State Legislature:

> *We all come from families. Families are big, small, extended, nuclear, multi-generational, with one parent, two parents, and grandparents. We live under one roof or many. A family can be as temporary as a few weeks, as permanent as forever. We become part of a family by birth, adoption, marriage, or from a desire for mutual support. As family members, we nurture, protect, and influence each other. Families are dynamic and are cultures unto themselves, with different values and unique ways of realizing dreams. Together, our families become the source of our rich cultural heritage and spiritual diversity. Each family has strengths and qualities that flow from individual members and from the family as a unit. Our families create neighborhoods, communities, states, and nations*

What is *Current Practice?*

Current practice includes a number of different approaches across the state to involve families in critical decision-making, including icebreakers between families and foster parents to help support maintenance of family routines when children are in state custody. The Department uses family centered meetings, which is a strength based, solution focused, and family centered process.

Find all the best practices at:
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Current Practice cont...

Recent changes in federal law support active recruitment and involvement of the child's extended family. CYFD is charged with identifying and providing notice to grandparents and other adult relatives of the child within 30 days after the child is removed from the home. CYFD may also waive non-safety based licensing standards on a case-by-case basis for relatives who are seeking to become foster parents.

What is *Best Practice?*

Best practice in family engagement maximizes family resources and kinship connections. It requires the active participation of the family in solution- and outcome-focused planning and decision-making that is needs-driven and-strength based. Interactions with families are open, transparent and non-judgmental, with the relationship between families and professionals viewed as a partnership. While family engagement is a concept that should be adopted in every day work, there are several best practice tools that can be employed.

Most approaches to family engagement employ team-based planning and decision-making meetings, often managed by a skilled and independent facilitator. There are a number of established models for this work, including family team conferencing, family centered meetings, family group conferencing, family team decision-making, family unity meetings, and team decision-making.

Typically these models use a trained facilitator or meeting coordinator. The facilitator/coordinator has a strengths-based orientation and excellent group process and communication skills. The facilitator asks questions in a way that is not blaming, demanding, or threatening but rather supportive and respectful. And even when a facilitator/coordinator is not involved, this same skill set is manifested by the caseworker and other professionals who manage these meetings.

A number of professionals are currently working to incorporate "motivational interviewing" as a tool in family engaged practice in child welfare. Motivational interviewing is "a directive, client-centered counseling style for eliciting behavior change by helping clients explore and resolve ambivalence." (http://motivationalinterview.org). Per the website, motivational interviewing relies upon identifying and mobilizing intrinsic values and goals to stimulate behavior change. Motivation to change is elicited from the family and not imposed from without. Reflective listening is key to understanding the family's point of reference; accepting and affirming that point of reference is equally critical.

Participants in team meetings typically include the birth parents, children, extended family, fictive kin, members of the family's support system, current caregivers, caseworkers, service providers, and others. Meetings can be held in conjunction with assessment, case planning and review, and can be directed to decisions regarding removal, placement, services, and permanency.

Best practice includes families throughout the life of the case. The National Resource Center on Family Centered Practice and Permanency Planning (NRCFCPPP*) recommends family involvement in assessment, case planning, and case management as follows:

Family-centered assessment forms the foundation of effective practice with children and families. Family-centered assessment focuses on the whole family, values family participation and experience, and respects the family's culture and ethnicity. Family-centered assessment helps families identify their strengths, needs, and resources and develop a service plan that assists them in achieving and maintaining safety, permanency, and well-being. There are many phases and types of family-centered assessment, including screening and initial assessment, safety and risk assessment, and comprehensive family assessment. Assessment in child welfare is ongoing.

Family-centered case planning ensures the involvement and participation of family members in all aspects of case planning, so services are tailored to best address the family's needs and strengths. It includes the family members' recommendations regarding the types of services that will be most helpful to them, timelines for achieving the plan, and expected outcomes for the child and family. Case planning requires frequent updates based on the caseworker and family's assessment of progress toward goals. Through frequent, planned contact, the family-centered practitioner assists the family in achieving the goals and objectives of the service plan. This includes helping families access a range of supports and services and creating opportunities for them to learn and practice new skills.

Family-centered case management includes communication and planning with multiple service systems to ensure provision of appropriate services and assess service effectiveness and client progress. Families are encouraged to use their skills to access resources, fully participate in services, and evaluate their progress toward desired goals and outcomes. Caseworkers assist the family with practical needs such as food, housing, and income support; provide information on child development and parenting, as well as direct assistance such as counseling and family mediation; help build parenting and daily living skills; and assist the parent in building supportive connections with other parents, extended family, and community groups.

*The National Resource Center on Family Centered Practice and Permanency Planning (NRCFCPPP) can be found at http:// www.hunter.cuny.edu/socwork/nrcfcpp/

What is *my ROLE?*

- As a JUDGE, you would ensure that there are opportunities for the birth parents, the child/youth, and the foster parents to actively participate in the court hearings. When needed to help ensure family centered, solution focused approaches are being taken to address an issue in the case, you would refer the family for a family centered meeting and order team based decision-making for the family.

- As a CASEWORKER, you would engage the family and explore with the family their feelings on the child/youth being removed. You would develop a service plan with the family, and create a list of what needs to be accomplished to reunify the family. You would engage the family in a culturally sensitive manner, showing respect to the different family members, showing empathy to the family's situation and referring the family to appropriate community resources. You would help the parents and children identify family and fictive kin for support. You would also engage the parents and the children in developing their service plans and assist them in accomplishing the goals in their plans. Additionally, you would encourage parents and children to attend court hearings.

- As a CHILDREN'S COURT ATTORNEY, you would talk to the caseworker, the respondent's attorney , the youth attorney or the GAL about ideas for better engaging the birth parents or the child/youth. You would encourage the birth parents and the child/youth to attend and participate in court hearings.

- As a RESPONDENT ATTORNEY, you would fully explain the court process and talk to your client about how they can best work with the caseworker. You would ensure that your client has the appropriate referrals to address any issues that are barriers to reunification. You would encourage your clients to consistently participate in the activities required by their service plans and to make the most of visits with their children. You would also encourage your clients to actively participate in court hearings and meetings with caseworkers and community providers.

- As a YOUTH ATTORNEY or GAL, you would fully explain the court process and talk with your client about how he or she can be involved. You would ensure that the caseworker is arranging transportation and otherwise facilitating your client's attendance at hearings and meetings, and that visitation with his or her parents, siblings and other

family members is taking place in the best possible way. You would consider ways in which you can help your client become more comfortable in the courtroom or at CYFD offices and encourage your client to talk with the judge at hearings. You would also encourage your client to take advantage of any counseling or treatment that is offered, while it is available.

- As a CASA VOLUNTEER, you would attend and advocate for the child during all meetings engaging the family. When age appropriate, you would encourage the child's attendance at the meeting. You would ensure the child's best interest is heard during the discussions. You would monitor and support the group's decisions and make recommendations to the Court when appropriate.

- As a CRB MEMBER, you would inquire specifically about how the family is being engaged. You would document your observations and recommendations in the CRB report.

- As a PARENT, you would work with the caseworker on the development of your service plan. You would regularly visit your child and attend court hearings. You would also talk with your caseworker about how you are doing on your treatment plan goals and any challenges you are experiencing. You would participate in family centered meetings and other services as provided. As appropriate, you would provide information about your culture and any related needs you may have.

- As a FOSTER PARENT, you would encourage the child/youth to maintain a relationship with his or her parents, when appropriate. You would support the child/youth to deal with feelings about being in custody and away from home. You would attend court hearings, family centered meetings, and other staffings and provide information about how the child/youth is doing.

- As a CHILD or YOUTH, you would work with your caseworker on the development of your service plan, attend court hearings, participate in any services provided, provide information about your extended family and about your culture and any needs you have around your culture, and provide information about how you are emotionally/physically doing.

CRITICAL ELEMENTS FOR ENGAGING FAMILIES*

- ***Meet the client where the client is:*** Engagement is more likely when a client is in a familiar setting, and engaging on their own terms.
- ***Build on strengths:*** Clients are more likely to be engaged if they feel their strengths are recognized, not just their problems. Case planning involves identifying the strengths and resources clients and their families can draw on to help address the identified risk factors and increase their child's safety, permanence, and well-being. A client's cultural community may have strengths that are uniquely valuable in the change process. Child welfare professionals should communicate respect for a client's strengths.
- ***Client empowerment:*** Engagement is more likely when clients feel that they are affecting the change process. Professionals empower clients when they communicate respect and expertise in making the changes in their lives.
- ***Steps to success:*** Engagement is more likely to result when child welfare professionals understand, and convey to families, that the processes of change happens in small steps. It is important to acknowledge incremental victories.

Family Engagement cont...

- ***Client involvement in assessment, planning, and decision-making:*** Engagement is more likely when the client/client family has all the information necessary to address concerns and is actively engaged in defining the problem and creating the solution.
- ***Hope, expectancy:*** Engagement is more likely when child welfare professionals convey hope and an expectation that the family is capable of succeeding.
- ***Honoring and connecting with cultural resources:*** A client or client family will be more likely to engage if/when the client's cultural ways of knowing, communicating, and nurturing are recognized as strengths, and when the culture of the client is valued.
- ***Concrete services:*** Clients will be engaged best when the needs they identify can be met. Often the more obvious and immediate needs are concrete services.
- ***Skills-based:*** Engagement results from the teaching of specific skills, such as ways to praise or discipline a child.
- ***Honest communication:*** Child welfare professionals should communicate with honesty, integrity, respect, cultural competence, and authenticity.

** Engaging Families: Skills Workshop for Social Workers, May 22, 2007 —Training presented by Traci Tippett, LCSW, New Mexico State School Work and CYFD*

THIS BULLETIN IS JOINTLY PUBLISHED BY:

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Children, Youth & Families Department CYFD NEW MEXICO

NEW MEXICO CASA Court Appointed Special Advocates NETWORK

THE UNIVERSITY of NEW MEXICO

CCIC NEW MEXICO CHILDRENS'S COURT IMPROVEMENT COMMISION

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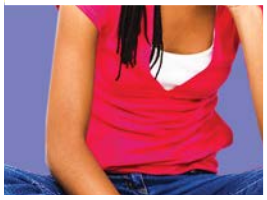
BULLETIN FOR PROFESSIONALS
October 2017



Supporting Successful Reunifications

If a child has been removed from the care of his or her parents, safe and timely family reunification[1] is the preferred permanency option for most children.[2] Safe and stable reunification does not begin or end with the return of children to the care of their parents. Caseworkers should give careful consideration to assessing families' capacity for keeping children safe and their readiness to reunify as well as to planning for postreunification services and contingencies in the event of future safety concerns. Child welfare agencies may find it challenging to help families achieve timely reunification while at the same time preventing children from reentering foster care. Agencies that focus their efforts on only one aspect of the challenge (reducing time to reunification versus reducing reentries to foster care) may find themselves succeeding in one area and losing ground in the other. Addressing both issues is difficult, but it can be done. This bulletin offers information to help child welfare agency managers by providing strategies for achieving reunification and preventing reentry and includes examples of promising practices being implemented by states and localities.

[1] The physical return of a child to parents or caretakers may occur before the return of legal custody. During this period, the child welfare agency continues to supervise the family for some period of time, often referred to as a "trial home visit." Reunification is considered achieved when both care and custody are returned to parents or guardians and the child is discharged from the child welfare system.

[2] The Adoption and Safe Families Act of 1997 requires that states make reasonable efforts to preserve or reunify families, but it also outlines several conditions (e.g., the parent committed the murder of another of his or her children, the parent submitted the child to aggravated circumstances as defined by state law) under which states do not have to make such efforts. For additional information about reasonable efforts, refer to *Reasonable Efforts to Preserve or Reunify Families and Achieve Permanency for Children* at https://www.childwelfare.gov/topics/systemwide/laws-policies/statutes/reunify/.

WHAT'S INSIDE

Child Welfare Information Gateway

Children's Bureau/ACYF/ACF/HHS
800.394.3366 | Email: info@childwelfare.gov | https://www.childwelfare.gov

Children's Bureau

Benefits of Supporting Reunification and Preventing Reentry

Achieving timely reunification while preventing reentry into foster care has benefits at multiple levels. Children do best when raised in a stable family setting, which can support positive effects on their cognitive, behavioral, and health outcomes (Craigie, Brooks-Gunn, & Waldfogel, 2010). When fewer children reenter foster care, it indicates that families have made adjustments that improve family functioning and keep children safe in the long term. Additionally, state and local agencies can realize cost benefits by safely reducing the number of children in out-of-home care. In 2014, federal, state, and local government agencies spent $13.5 billion for out-of-home care, which accounts for nearly half of all of their child welfare expenditures (Annie E. Casey Foundation, Casey Family Programs, & Child Trends, 2016). By increasing the rate of successful reunifications, states and localities can reinvest funds otherwise targeted for out-of-home care to other areas of the child welfare system, such as prevention or in-home services.

National Statistics

The Children's Bureau within the Administration for Children and Families (ACF) of the U.S. Department of Health and Human Services (HHS) collects state and national data on reunification and reentry. Based on data from the Adoption and Foster Care Analysis and Reporting System, reunification is the most common goal for children in out-of-home care (55 percent in 2015) as well as the most common outcome for children leaving care (51 percent in 2015) (HHS, ACF, Children's Bureau, 2016). According to *Child Welfare Outcomes 2010–2014: Report to Congress,* the national median percentage of children achieving reunification in 2014 within 12 months of entry into care was 69.2 percent, and 7.5 percent of all children who entered care in 2014 were reentering within 12 months of a prior foster care episode (HHS, ACF, Children's Bureau, 2017). For additional details, including comparisons over time and state-specific data, refer to chapter 4 of the report at https://www.acf.hhs.gov/sites/default/files/cb/cwo10_14.pdf#page=49. To view additional statistics from the Children's Bureau, visit https://www.acf.hhs.gov/cb/research-data-technology/statistics-research.

The Children's Bureau reviews state performance in the areas of reunification and reentry through the Child and Family Services Reviews (CFSRs). Item 8 of the CFSR measures whether a state "has achieved the permanency goals of reunification, guardianship, or permanent placement with relatives in a timely manner or, if the goals had not been achieved, whether the agency had made, or was in the process of making, diligent efforts to achieve the goal" (HHS, ACF, Children's Bureau, 2011). In the second round of the CFSRs, only three states (5.8 percent) had this item rated as a strength (HHS, ACF, Children's Bureau, 2011).[3] For a state to receive a strength rating, 90 percent of all reviewed cases must be rated as a strength. CFSR item 5 measures whether a child's entry into foster care during the period of review occurred within 12 months of exit from a previous foster care episode. In the second round, 40 states (76.9 percent) had this item rated as a strength (HHS, ACF, Children's Bureau, 2011). For additional details, refer to *Federal Child and Family Services Reviews Aggregate Report: Round 2: Fiscal Years 2007–2010* at https://www.acf.hhs.gov/sites/default/files/cb/fcfsr_report.pdf.

Factors That Affect Reunification and Reentry

Many factors influence the likelihood of whether children will reunify with their families or remain in their care after reunification. Although some studies have contradictory findings, research has shown that certain child, family, and case characteristics can affect child outcomes. When the following factors are present, children in care are less likely to reunify with their families (Akin, 2011; Carnochan, Lee, & Austin, 2013):

- Being placed in kinship care
- Spending longer time in care or experiencing more placements
- Being African-American
- Having health, mental health, or behavioral problems (child)
- Coming from a single-parent family
- Receiving an initial placement in a group home or emergency shelter

[3] As of the writing of this bulletin, round 2 was the most recently completed round of the CFSRs. As of June 5, 2017, only 22 round 3 final reports were available.

When the following factors are present, children are more likely to reenter care after reunification (Shaw & Webster, 2011; Lee, Jonson-Reid, & Drake, 2012; Goering & Shaw, 2017):

- Being African-American
- Having health, mental health, or behavioral problems (child)
- Having a parent with mental health problems, low education, or substance use issues
- Living in poverty
- Having a shorter stay in care
- Experiencing a higher number of placements

Children may be less likely to reenter care if their families received in-home services during or after foster care, if they spent a longer time in care before reunifying, or if they had previously been placed with relatives (Shaw & Webster, 2011; Lee, Jonson-Reid, & Drake, 2012; Goering & Shaw, 2017). Service receipt, along with the support and case management associated with them, may help families adjust after reunification, and longer stays in care may provide families with more time to achieve their case goals. Relative care placements tend to be more stable and continue for a longer duration prior to reunification compared with nonrelative settings, both of which serve as supportive factors for the reunification.

Systemwide Strategies That Support Reunification and Prevent Reentry

Agencies can pave the way for timely, safe, and stable reunification by incorporating the following systemwide approaches:

- Collaborating with the courts in working toward timely, stable reunification
- Collaborating with related agencies, community providers and members, and families involved with child welfare
- Implementing policies and standards that clearly define expectations, identify requirements, and reinforce casework practices that support reunification and prevent reentry
- Ensuring agency leaders support staff in achieving safety and stability
- Maintaining manageable caseloads and workloads that allow caseworkers time to engage families
- Ensuring the availability and accessibility of diverse out-of-home and postreunification services that can respond to families' identified needs and conditions (see the following section for additional information)
- Implementing data systems that monitor systemwide and case-level data on timeliness of reunification and reentry into foster care
- Engaging external assistance in the form of training, consultation, and technical assistance from recognized experts

Concurrent Planning

Concurrent planning is the practice of seeking multiple options for permanency at the same time rather than consecutively in order to reduce children's time without a permanent family. Often, this means that reunification is sought as the primary goal, but the caseworker will also simultaneously seek out other options, such as adoption or guardianship. Additional research on concurrent planning is still necessary to better determine its effects on outcomes, including reunification and reentry (Child Welfare Information Gateway, 2012). For additional information about concurrent planning, refer to *Concurrent Planning: What the Evidence Shows* at https://www.childwelfare.gov/pubs/issue-briefs/concurrent-evidence/ or the Child Welfare Information Gateway webpage on the topic at https://www.childwelfare.gov/topics/permanency/planning/concurrent/.

Practices That Support Reunification and Prevent Reentry

Efforts to promote successful reunification can begin as soon as the decision is made to place a child in out-of-home care and continue throughout the out-of-home placement and any subsequent reunification. This section describes specific practices agencies can employ to support reunification and prevent reentry while children are in out-of-home care and after they have been returned to their families. The practices are organized into casework frameworks and practices, parent support systems, and legal system involvement. These categories are not mutually exclusive, and some practices may have implications in multiple areas. Information Gateway resources regarding these topics are found at the end of this section.

Casework Frameworks and Practices

The following are examples of frameworks and practices caseworkers can use in their work with families seeking reunification or who have been reunified with children formerly in out-of-home care.

- **Family group decision-making (FGDM)** is an umbrella term for various processes (e.g., family team meetings, team decision-making) in which families are brought together with agency personnel and other interested parties to be an active participant in identifying underlying issues and make decisions about and develop plans for the care of their children and for needed services. This helps avoid having the case plan be solely prescribed by others without the family's input and engagement. Engaging families in decisions about where children should be placed to ensure their safety while working toward reunification can help increase families' buy-in and follow through with the case plan. Among other positive outcomes, FGDM has been shown to increase rates of reunification and reduce reentry (Sheets et al., 2009).
- **Intensive reunification services** are short term, intensive, family centered, and are intended to reunite families whose children would otherwise likely remain in out-of-home care for more than 6 months (National Family Preservation Network, 2003). In a study of families experiencing the removal of a child for the first time, those receiving intensive and standard services reunified at similar rates, but families receiving intensive services reunified more quickly, had fewer placement moves while in care, and had lower rates of rereferral for maltreatment (Pine, Spath, Werrbach, Jenson, & Kerman, 2009). Two examples of intensive reunification services models are those from the Institute for Family Development's Homebuilders program (http://www.institutefamily.org/programs_IFPS.asp) and the National Family Preservation Network (http://www.nfpn.org/reunification.html).
- **Solution-Based Casework** (http://www.solutionbasedcasework.com/) provides a strengths-based framework for caseworkers to partner with families to find solutions to difficult, everyday situations facing the family. Families receiving Solution-Based Casework services have been found to experience reduced recidivism rates compared with families receiving standard services (Antle, Barbee, Christensen, & Sullivan, 2009).
- **Comprehensive family assessments** have been linked to various positive outcomes for children and families, including increased reunification and reductions in maltreatment recurrence (Smithgall, DeCoursey, Yang, & Haseltine, 2012). Two standardized tools that show promise for improving reunification are the North Carolina Family Assessment Scales for Reunification (http://www.nfpn.org/assessment-tools) and the Structured Decision-Making Reunification Reassessment (http://www.nccdglobal.org/assessment/structured-decision-making-sdm-model).
- **Postreunification services** can help support families who have been reunited. Both parents and children may require services to help prevent reentry. Prior to reunification, child welfare agencies can identify families' and children's expected needs after reunification and match them with appropriate services in the community. In at least one study, children in families receiving postreunification services were less likely to reenter care than children whose families did not receive those services (Lee, Jonson-Reid, & Drake, 2012).

- **Parent-child interaction therapy (PCIT)** is a promising technique to reduce the recurrence of maltreatment. The curriculum focuses on relationship enhancement as well as how parents discipline their children. The parent and child are treated together, and their interactions are observed by the therapist. Families involved with child welfare who receive PCIT are less likely to have future reports of maltreatment (Chaffin, Funderburk, Bard, Valle, & Gurwitch, 2011). Caseworkers can refer families to PCIT providers in their communities.
- **Children's regular visits with parents and siblings.** Frequent and regular parent-child visits help children, youth, and parents maintain continuity of their relationships, improve relationships, and help them prepare to reunite. Visits can provide parents with opportunities to learn and practice parenting skills as well as give caseworkers opportunities to observe and assess family progress. Children and youth who have regular visits with their families are more likely to reunify (Chambers, Brocato, Fatemi, & Rodriguez, 2016).

Parent Support Systems

Strengthening parents' support systems can be a key strategy for supporting reunification or avoiding reentry. Caseworkers can seek opportunities to incorporate additional supports, such as the following, into families' case plans:

- **Foster parent-birth parent partnerships** show promise in increasing reunification (Casey Family Programs, 2011). When foster parents support or mentor birth parents, they can enhance the ability of birth parents to stay informed about their children's development while they are in out-of-home care, improve parenting skills, increase placement stability, and lead to more timely reunifications. Partnership strategies being employed in states include icebreaker meetings and visit coaching. For additional information about icebreaker meetings, refer to the Annie E. Casey Foundation's *Icebreaker Meetings: A Tool for Building Relationships Between Birth and Foster Parents* at http://www.aecf.org/resources/icebreaker-meetings/.
- **Education and training programs** for birth parents can enhance the parent-child relationship and teach both specific parenting and general problem-solving skills. They also can increase the likelihood of reunification (Franks et al., 2013). Even training for foster parents may be able to improve reunification rates. Children whose foster parents received the KEEP (Keeping Foster and Kin Parents Supported and Trained) training were more likely to be reunified than those whose foster parents did not receive the training (Chamberlain, Price, Reid, & Landsverk, 2008). This may be due to a reduction in children's behavior problems, which may make reunification more likely.
- **Parent mentor programs** utilize parents who were once involved with the child welfare system to assist currently involved parents. The mentors provide birth parents with support, advocacy, and help navigating the child welfare system. Research shows that these programs can increase reunification rates for participating families (Enano, Freisthler, Perez-Johnson, & Lovato-Hermann, 2017). Two-parent mentoring programs that have shown promise in bolstering reunification include Parent Partners (Berrick, Cohen, & Anthony, 2011) and Parents in Partnership (Enano et al., 2017).
- **The use of recovery coaches**, who assist parents in successfully completing substance use treatment, has been shown to help families reunify with their children (Ryan, Victor, Moore, Mowbray, & Perron, 2016). Recovery coaches support families by conducting assessments, developing service plans, advocating for parents, conducting home visits, and working in partnership with the child welfare caseworker.
- **Social support** can provide a safety net for parents before and after reunification. A strong support system can help families achieve reunification and maintain healthy family functioning (Lietz, Lacasse, & Cacciatore, 2011). Helping parents strengthen their support networks and building community partnerships for child protection provide informal and formal opportunities for families to deal with stresses that could lead to maltreatment.

Services to Support Reunification

Families seeking to reunify often are experiencing multiple problems that need to be addressed prior to reunification. Families may be referred to voluntary services or be required by the courts to participate. Parents who fully use services are more likely to reunify than those who only partially participate or do not participate (D'Andrade & Nguyen, 2014). However, the likelihood of reunification may vary based on the types of services or supports families receive. For example, one study found that families receiving financial assistance or housing services were more likely to reunify than those who received other types of services (Cheng & Li, 2012).

Given that service receipt can affect reunification, it is important that agencies ensure families' needs are correctly identified and addressed. In one study, more than one-third of parents seeking to reunify were ordered to receive services targeting problems they were not identified as having (D'Andrade & Chambers, 2012). This can overburden parents already dealing with complex issues and diminish their ability to improve family functioning, which could lead to extended time in care for children.

It is also important that caseworkers accurately assess if families have improved functioning after service receipt. A parent's participation in a service does not necessarily mean that changes in behavior or circumstances will occur. In some cases, a caseworker may view parents who complete services as having a higher commitment to reunification or as being more compliant with the case plan, which could affect the caseworker's recommendation for reunification (D'Andrade & Nguyen, 2014). To address this, agencies can ensure caseworkers are trained on how to conduct accurate assessments of service needs and are aware of effective, evidence-based services and supports in the community.

Furthermore, service availability is a challenge for many families and agencies. During round 2 of the CFSRs, approximately half (51 percent) of states reported that services in the community were insufficient to meet the needs of families seeking to reunify (HHS, ACF, CB, 2011). Additionally, in a survey of state child welfare agencies, most states indicated that postpermanency services were more widely available for adoptive parents than for birth parents after reunification or legal guardians upon guardianship (ZERO TO THREE & Child Trends, 2013). The survey results also revealed that children who were adopted had greater access to services and supports than children who were reunified or received a guardianship placement. Child welfare agencies can work with community providers to ensure that appropriate services are available to children and families as well as build their own capacity to serve this population.

Legal System Involvement

Families involved with the child welfare system frequently have contact with the juvenile and family court systems. These courts have great influence over the paths of child welfare cases, including whether children are reunified with their families or reenter care. The following practices can help improve reunification and reentry outcomes for families:

- **Family drug courts** are a voluntary alternative to the traditional dependency court system. These courts focus on families' substance use and child welfare issues and seek to improve treatment and reunification outcomes. Children whose families participate in family drug courts spend less time in foster care and are more likely to reunify with their families (Lloyd, 2015).
- **Competent legal representation for parents** is associated with the achievement of timely reunification (Courtney, Hook, & Orme, 2011). One promising approach to legal representation is Cornerstone Advocacy, which was developed by the Center for Family Representation (http://www.cfrny.org/). This approach helps guide attorneys in advocating for their clients in four areas: visiting, placement arrangements, services, and family conferences and meetings. Families whose attorneys used the Cornerstone Advocacy approach reunited more frequently and had fewer instances of reentry than those whose attorneys did not (Thornton & Gwin, 2012). For more information about parent representation, visit the webpage for the American Bar Association's National Project to Improve Representation for Parents in the Child Welfare System at https://www.americanbar.org/groups/child_law/what_we_do/projects/parentrepresentation.html.

Additional Resources

The following are Information Gateway resources that provide additional information about strategies and practices to support reunification and prevent reentry:

- Reunifying Families (includes visits, preventing reentry, assessments, and other topics): https://www.childwelfare.gov/topics/permanency/reunification/
- Family Group Decision-Making: https://www.childwelfare.gov/topics/famcentered/decisions/
  - Using Family Group Decision-Making to Build Protective Factors for Children and Families [Children's Bureau-funded projects]: https://www.childwelfare.gov/topics/management/funding/funding-sources/federal-funding/cb-funding/cbreports/fgdm/
- Comprehensive Family Assessment: https://www.childwelfare.gov/topics/systemwide/assessment/family-assess/
  - Using Comprehensive Family Assessments to Improve Child Welfare Outcomes [Children's Bureau-funded projects]: https://www.childwelfare.gov/topics/management/funding/funding-sources/federal-funding/cb-funding/cbreports/familyassessments/
- *Parent-Child Interaction Therapy With At-Risk Families:* https://www.childwelfare.gov/pubPDFs/f_interactbulletin.pdf
- Working Together: Foster Families and Birth Parents: https://www.childwelfare.gov/topics/outofhome/resources-foster-families/working-together-foster-families-and-birth-parents/
- Substance Use Disorders, Child Welfare, & Family Dependency Drug Courts: https://www.childwelfare.gov/topics/systemwide/courts/specialissues/drug/
- "Developing and Sustaining a Parent Partner Program" [podcast]: https://www.acf.hhs.gov/cb/resource/child-welfare-podcast-parent-partner

The National Resource Center for In-Home Services (https://uiowa.edu/nrcihs/) also has helpful information about practices that can support reunification and family stability.

State and Local Examples of Strategies That Support Reunification and Prevent Reentry

State and local agencies throughout the country are at various stages of implementing and strengthening efforts that support reunification and prevent reentry. The following are selected examples of such initiatives. (The examples are presented for information purposes only; inclusion does not indicate an endorsement by Child Welfare Information Gateway or the U.S. Department of Health and Human Services, Children's Bureau.)

- Mockingbird Family Model: Washington State and other locations
- Fostering Relationships: Washoe County, Nevada
- Foster Parent Mentoring: Lafayette, Louisiana

Mockingbird Family Model: Washington State and Other Locations

The Mockingbird Family Model (MFM), which was developed by the Mockingbird Society in Washington State, is an innovative method of delivering out-of-home care. MFM is structured to provide an enhanced support network focused on foster parent retention and foster care delivery strategies that contribute to youth stability and connections to birth families while in out-of-home care. A group of 6–10 foster families ("satellites") who live near an experienced foster care provider (the "hub") are placed together to form an MFM "constellation." The hub home helps coordinate supports for satellite families, including planned and crisis respite, mentorship, and training.

MFM hub homes may help support and strengthen birth family connections and reunification efforts through the supportive constellation community. Hub homes can host visits between children and their birth families as well as team decision-making meetings, which provides a more neutral and welcoming location than an office space. The hub home can also invite the birth families into the constellation to participate in trainings and other supports, which allows them to engage with their children's foster families and learn the same skills. Additionally, foster care agencies can coordinate postreunification supports through the hub home. For example, if a birth family needs respite, the child can be cared for in the familiar setting of a hub home.

The Mockingbird Society consults with out-of-home care placement agencies to help them implement the model. For more information, visit the Mockingbird Society website at http://www.mockingbirdsociety.org/index.php/what-we-do/mockingbird-family-model.

Fostering Relationships: Washoe County, Nevada

The Washoe County (Nevada) Department of Social Services (DSS) developed the Fostering Relationships program through its participation in the Quality Parenting Initiative (QPI). Fostering Relationships, which is an adaptation of the Attachment and Biobehavioral Catch-Up for Visitation (ABC-V) intervention, seeks to improve parent-child visits by establishing foster parents and a paraprofessional mentor as partners with the birth parents in the visitation process. Although ABC-V was designed for children ages 6 months through 6 years, Fostering Relationships is intended for children of all ages.

DSS recognized that some visits may not be productive because the birth parents may feel rejected by their children or threatened by the relationship their children have established with the foster parents, or the birth parents may not yet have the skills to interact with their children appropriately. In Fostering Relationships, mentors work with both the birth parents and foster parents to prepare them for the visits, including teaching them about realistic expectations and following the child's lead. Foster parents also receive instruction on Fostering Relationships during preservice and other trainings. During the initial visits, the mentor is in the room with both sets of parents and the child. Both the mentor and foster parents provide positive feedback and coaching about the birth parents' interactions with the children. If the foster parent is comfortable and proficient, the mentor may not need to be present during later visits.

One of the goals of Fostering Relationships is to improve reunification and reduce reentry. DSS is still collecting data about these outcomes, but, anecdotally, staff are reporting an increase in children returning home under an in-home safety plan and that families are moving to unsupervised and offsite visits more quickly. Other program goals include helping all parties—including the child—feel more comfortable during visits and improving the relationship between the birth and foster parents.

For more information about QPI, visit http://www.qpi4kids.org/ and http://www.ylc.org/our-work/action-litigation/quality-foster-care/quality-parenting-initiative/.

Foster Parent Mentoring: Lafayette, Louisiana

The Louisiana Department of Children and Family Services (DCFS) (http://www.dcfs.la.gov/) has partnered with The Extra Mile (http://www.theextramileregioniv.com/), a local nonprofit agency, to strengthen outcomes for children and families, including supports to promote reunification. A recent initiative of DCFS and The Extra Mile is a mentoring program for foster parents, which was spurred by discussions that occurred as part of Lafayette's participation in QPI. This new program pairs a veteran foster parent with a foster parent who is receiving his or her first placement, has a challenging placement, has been recommended by his or her caseworker for a mentor relationship, or has self-selected to participate.

One of the goals of the program is to help foster parents improve their relationships with birth parents and better understand how they can help birth parents. In many cases, birth parents and foster parents view themselves as being in an adversarial relationship where only one of them will ultimately receive custody of the child. The mentors help the foster parents recognize how they can partner with the birth parents to achieve the best outcomes for the child. The following are examples of discussions the mentors and mentees may have:

- Importance of children's attachment to both their birth and foster families
- Loss and grief foster parents may experience if children in their care are reunified with their birth families
- Context regarding the birth family's situation (e.g., previous trauma)
- Support the foster parents can provide the birth parents before and after reunification
- How the foster parents can be a part of the child's life after reunification

Foster parents equipped with this information may be able to better help birth parents reunify with their children and maintain a safe and stable home after reunification.

Conclusion

In most child welfare cases, reunification is the preferred permanency option. When working with families, caseworkers must balance the desire to return children to their families with ensuring that birth families have sufficient ability and support to safely care for their children. To achieve this, caseworkers can seek out services in their communities that have been proven to support reunification and avert reentry or show promise to do so. If these practices are not available in your community, you can work with agency leadership to explore how they can be introduced.

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Suggested Citation:

Child Welfare Information Gateway. (2017). *Supporting successful reunifications.* Washington, DC: U.S. Department of Health and Human Services, Children's Bureau.

U.S. Department of Health and Human Services
Administration for Children and Families
Administration on Children, Youth and Families
Children's Bureau

ICWA INQUIRY

- Duty to inquire
- First contact with family, ongoing duty
- Reason to believe = further inquiry
- Reason to know = notice

Critical thinking process

4 KEY ASSESSMENTS / 4 KEY METRICS

1) IS THE CHILD SAFE?
Safety Assessment

2) HAS CHILD ABUSE OR NEGLECT OCCURRED?
Penal Codes 11165.1 -.6

3) SHOULD THE REFERRAL BE PROMOTED TO A CASE?
Risk Assessment

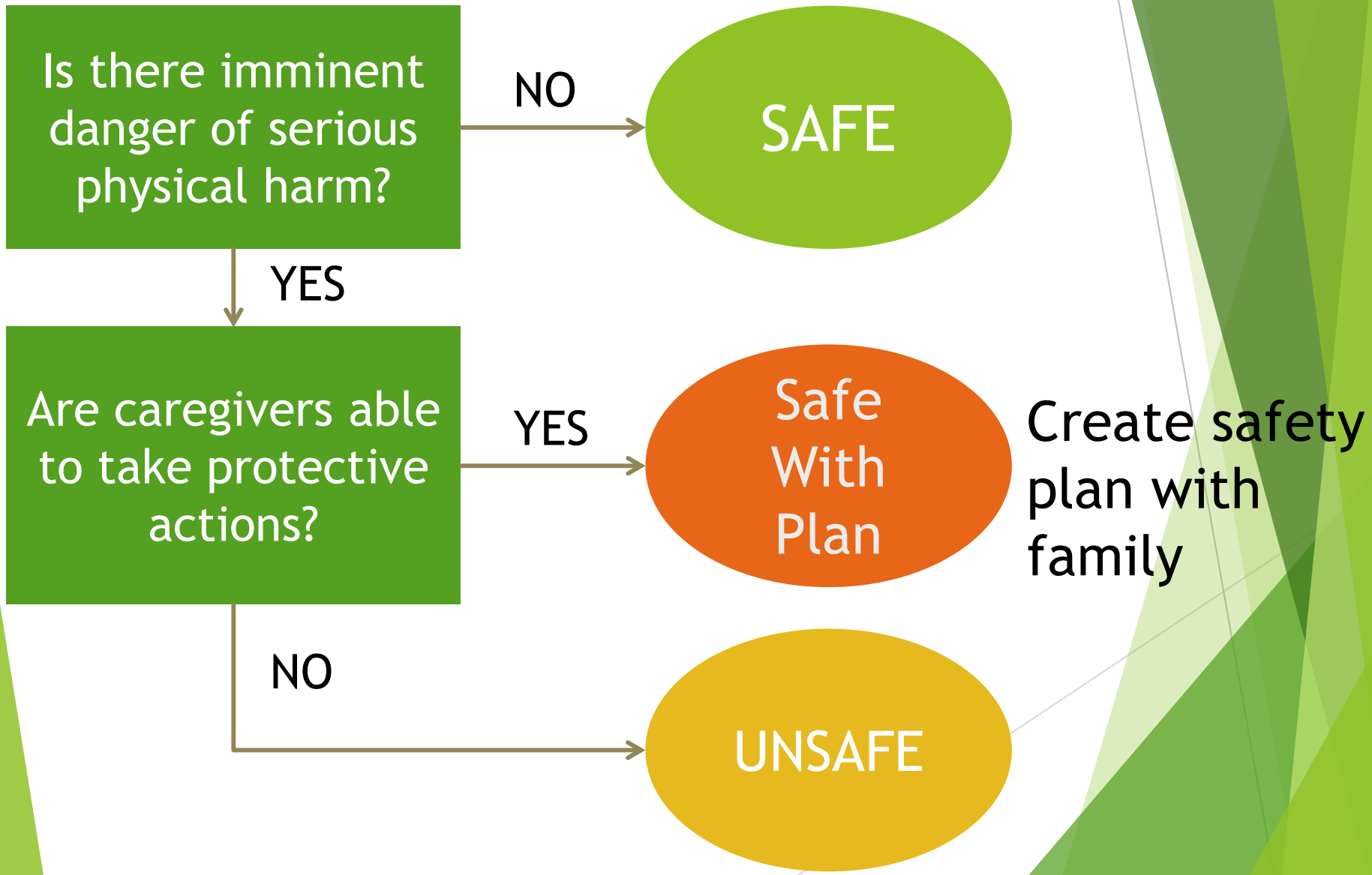
4) DOES THE EVIDENCE SUPPORT COURT INVOLVEMENT?
WIC 300

Is the Child safe?

PRIOR TO LEAVING ANY CHILD IN THE HOME OR PLACEMENT THE SW MUST…

- Assess for child safety
- Identify safety threats

SDM and Safety Threats



Safety Plans

SPECIAL POPULATIONS

- Indian Children
- Infants (0-24months)

Did abuse or neglect occur?

PENAL CODE § 11165.6 DEFINITION OF CHILD ABUSE OR NEGLECT

CHILD ABUSE AND NEGLECT

- Physical injury or death inflicted by other than accidental means upon a child by another person
- Unlawful corporal punishment of a child
- The willful harming or injury of a child
- The endangerment of the person or health of a child
- Neglect
- Sexual Abuse

Did Abuse or Neglect occur?

THE PENAL CODES DEFINE ABUSE AND NEGLECT

Sexual Abuse **PC § 11165.1**

General/Severe Neglect PC **§ 11165.2**

Emotional Abuse PC **§ 11165.3**

Physical Abuse/ Willful Harming of a Child PC **§ 11165.3 and .4**

Allegations related to DV

PC 11165.3 (EMOTIONAL ABUSE AND ENDANGERMENT)

The willful harming or injuring of a child or endangering the person or health of a child means:

1. a situation in which any person willfully causes or permits the child to suffer or inflict upon unjustifiable mental suffering **OR**

2. willfully causes or permits the person or health of the child to be placed in a situation in which his or her person or health is endangered

What does the evidence tell us?

PENAL CODE 11165.12

Substantiated	• Credible evidence that makes it more likely than not that child abuse, neglect or exploitation occurred.
Inconclusive	• Not “unfounded” but findings are inconclusive and without enough info to determine if abuse, neglect or exploitation occurred.
Unfounded	• Determined to be false, an accidental injury or not constituting child abuse.

Evidence needed to Substantiate

- RP contacted
- Photos
- Collaterals
- Police/Forensic Reports

Critical thinking

WEIGHING THE EVIDENCE

Concluding allegations

Review

- Review what Hotline entered
- Add allegations as appropriate

Consider Evidence

- Interviews
- Documented evidence

Review Penal Code

- Read definitions

Should the referral be promoted to a case?

RISK ASSESSMENT

Factors of Prior Investigations
Factors of Current Investigation
Family Characteristics

Likelihood of Future Harm

LOW | **MEDIM** | **HIGH** | **VERY HIGH**

CLOSE REFERRAL

OPEN A CASE

Risk Assessment

RISK DRIVES INTERVENTION

Does the evidence support court involvement?

WIC 300

- Is the Child described by WIC 300a-j?
- Is Court Intervention needed?
- Is there sufficient evidence to support risk of future harm?

NAME OF AGENCY:

DATE :

STREET ADDRESS :

CITY AND ZIP CODE :

COUNTY :

NAME OF SOCIAL WORKER :

CASELOAD ID :

TELEPHONE

EMERGENCY RESPONSE REFERRAL INFORMATION

REFERRAL NAME: Carri B (24 hr)

REFERRAL NUMBER: 0280-8270-1707-8008959

NA	EVALUATE OUT	X	IMMEDIATE		3 DAY		5 DAY		10 DAY		N/A SECONDARY REPORT

SCREENER INFORMATION

NAME	TITLE	DATE	TIME
Jensen, Cindy	CWS Manager	08/02/2018	

CASELOAD #	PHONE NUMBER	LOCATION
CMS/Seng	(858) 616-5991	Viewridge

ALERTS:

Officer D from SDPD reported responding to a domestic violence incident at 10pm on Sunday 7/25/18. Officer D reported that Isaac (10 yrs old) called 911 during DV incident between his stepfather Daniel A. and his mother Carrie B. Upon arrival to the residence, Isaac reported that when the fighting began he went outside and called the police. He reported seeing Daniel A. forcefully grab his mother and threatened to "end her". Isaac reported that his baby sister was on the couch next to his mother when this occurred and while he was on the phone, he could hear Daisy crying inside. Carri B. was found to have contusions to the left side of face, arms and legs. There was broken glass in the living room and a meth pipe was found on the kitchen counter. Daniel A. fled the scene prior the arrival of LE.

LAW ENFORCEMENT AGENCY

POLICE REPORT NUMBER

HOME ADDRESS

	PHONE NUMBER
8965 Balboa Ave. San Diego, California 92123	(858) 616-0000

ADDRESS COMMENTS

CURRENT LOCATION OF CHILD(REN)

Isaac is at "Elementary school until 3pm. Daisy is at common address.

VICTIM INFORMATION

NAME	AKA (if applicable)	SOCIAL SECURITY #
Issac B		

DOB	AGE	AGE CODE	SEX	ETHNICITY	LANGUAGE	ICWA ELIGIBILITY
	10	Year(s)	M			Not Asked

SCHOOL/DAYCARE NAME

SCHOOL/DAYCARE ADDRESS

ABUSE CATEGORY (See Screener Narrative Attached)	ALLEGED PERPETRATOR NAME	
Emotional Abuse	Daniel A	
CASE WORKER NAME (FOR OPEN CASE)	PHONE # (FOR OPEN CASE)	CASELOAD #

VICTIM INFORMATION

NAME	AKA (if applicable)	SOCIAL SECURITY #
Daisy A		

DOB	AGE	AGE CODE	SEX	ETHNICITY	LANGUAGE	ICWA ELIGIBILITY
	6	Month(s)	U			Not Asked

SCHOOL/DAYCARE NAME

SCHOOL/DAYCARE ADDRESS

ABUSE CATEGORY (See Screener Narrative Attached)	ALLEGED PERPETRATOR NAME	
Emotional Abuse	Daniel A	
CASE WORKER NAME (FOR OPEN CASE)	PHONE # (FOR OPEN CASE)	CASELOAD #

OTHERS IN THE HOME

NAME	AKA (if applicable)	SOCIAL SECURITY #
Carri B		

SEX	DATE OF BIRTH/AGE	LANGUAGE	WORK PHONE

ROLE	FOR/TO
Mother (Birth)	Isaac
Mother (Birth)	Daisy

CASE WORKER NAME	PHONE #	CASELOAD #

OTHERS IN THE HOME

NAME	AKA (if applicable)	SOCIAL SECURITY #
Daniel A		

SEX	DATE OF BIRTH/AGE	LANGUAGE	WORK PHONE

ROLE	FOR/TO
Father (Birth)	Daisy
Father (Step)	Isaac

ADDRESS	PRIMARY PHONE

CASE WORKER NAME	PHONE #	CASELOAD #

OTHERS NOT IN THE HOME

NAME	AKA (if applicable)	SOCIAL SECURITY #
Saul		

SEX	DATE OF BIRTH/AGE	LANGUAGE	WORK PHONE

ROLE	FOR/TO
Father (Birth)	Isaac

ADDRESS	PRIMARY PHONE

CASE WORKER NAME	PHONE #	CASELOAD #

COLLATERAL INFORMATION

NAME

ROLE | FOR/TO

ADDRESS | PRIMARY PHONE

CONTACT DATE | CONTACT METHOD | DESCRIPTION

CROSS REPORT INFORMATION

AGENCY | OFFICIAL CONTACTED | TITLE

ADDRESS | PHONE NUMBER | BADGE NO.

CROSS REPORTED BY | DATE & TIME OF REPORT

REFERRAL HISTORY

REFERRAL ID | CLIENT NAME | REFERRAL ROLE | REFERRAL DATE

ALLEGATION TYPE | ALLEGATION DISPOSITION

REPORTER INFORMATION

NAME: Officer D | AGENCY OR ORGANIZATION: SDPD | RELATIONSHIP

ADDRESS: SDPD | PRIMARY PHONE | SECONDARY PHONE

CONTACT DATE | CONTACT METHOD | DESCRIPTION

☐ ANONYMOUS REPORTER	☒ MANDATED REPORTER	FAMILY INFORMED
APPLICATION FOR PETITION	CONFIDENTIALITY WAIVED	FEEDBACK REQUIRED

SDM Risk Assessment

Referral ID:	1234-1234-1234-1234567	**Assessment Date:**	6/03/2020
Referral Name:		**County of Completion:**	San Diego
Approval Status:	Not Submitted	**Approval Unit:**	
Created by:	Kneeland, Sarah (6/03/2020)	**Last Update by:**	Kneeland, Sarah (6/03/2020)

Prior Investigations

	Neglect	Abuse
1. Prior neglect investigations	**0**	**1**
☐ a. No prior neglect investigations	0	0
☑ b. One prior neglect investigation	0	1
☐ c. Two prior neglect investigations	1	1
☐ d. Three or more prior neglect investigations	2	1
2. Prior abuse investigations	**1**	**0**
☐ a. No prior abuse investigations	0	0
☑ b. One prior abuse investigation	1	0
☐ c. Two prior abuse investigations	1	1
☐ d. Three or more prior abuse investigations	1	2
3. Household has previous or current open ongoing CPS case (voluntary/court-ordered)	**1**	**1**
☐ a. No	0	0
☑ b. Yes, but not open at the time of this referral	1	1
☐ c. Yes, household has open CPS case at the time of this referral	2	2
4. Prior physical injury to a child resulting from child abuse/neglect or prior substantiated physical abuse of a child	**0**	**1**
☐ a. None/not applicable	0	0
☑ b. One or more apply (mark all applicable):	0	1
☑ Prior physical injury to a child resulting from child abuse/neglect		
☑ Prior substantiated physical abuse of a child		

Current Investigations

	Neglect	Abuse
5. Current report maltreatment type (mark all applicable):		
☐ a. Neglect	1	0
☑ b. Physical and/or emotional abuse	0	1
☐ c. None of the above	0	0
6. Number of children involved in the child abuse/neglect incident	**0**	**0**
☑ a. One, two, or three	0	0
☐ b. Four or more	1	1
7. Primary caregiver assessment of the incident	**0**	**0**
☑ a. Caregiver does not blame the child	0	0
☐ b. Caregiver blames the child	0	1

Family Characteristics

	Neglect	Abuse

8. Age of youngest child in the home	**1**	**0**
☐ a. 2 years or older	0	0
☑ b. Under 2	1	0
9. Characteristics of children in the household	**0**	**0**
☑ a. Not applicable	0	0
☐ b. One or more present (mark all applicable):	1	*
☐ Mental health or behavioral problems		
☐ Developmental disability		
☐ Learning disability		
☐ Physical disability		
☐ Medically fragile or failure to thrive		
10. Housing	**0**	**0**
☑ a. Household has physically safe housing	0	0
☐ b. One or more apply (mark all applicable):	1	0
☐ Physically unsafe; AND/OR		
☐ Family homeless		
11. Incidents of domestic violence in the household in the past year	**0**	**1**
☐ a. None or one incident of domestic violence	0	0
☑ b. Two or more incidents of domestic violence	0	1
12. Primary caregiver disciplinary practices	**0**	**0**
☑ a. Employs appropriate discipline	0	0
☐ b. Employs excessive/inappropriate discipline	0	1
13. Primary or secondary caregiver history of abuse or neglect as a child	**0**	**0**
☑ a. No history of abuse or neglect for either caregiver	0	0
☐ b. One or both caregivers have a history of abuse or neglect as a child	1	1
14. Primary or secondary caregiver mental health	**0**	**0**
☑ a. No past or current mental health problem	0	0
☐ b. Past or current mental health problem (mark all applicable):	1	1
☐ During the past 12 months		
☐ Prior to the last 12 months		
15. Primary or secondary caregiver alcohol and/or drug use	**1**	**1**
☐ a. No past or current alcohol/drug use that interferes with family functioning	0	0
☑ b. Past or current alcohol drug use that interferes with family functioning (mark all applicable):	1	1
Alcohol		
☐ During the past 12 months		
☐ Prior to the last 12 months		
Drugs		
☑ During the past 12 months		
☑ Prior to the last 12 months		
16. Primary or secondary caregiver criminal arrest history	**1**	**0**
☐ a. Does not have criminal arrests	0	0
☑ b. Either caregiver has one or more criminal arrests	1	0
Total Score:	**5**	**6**

Scoring and Overrides

Scored Risk Level

Neglect Risk Level: Moderate

Abuse Risk Level: High

Scored Risk Level: High

Overrides

Instructions: If there are no overrides, select "No override"; the risk level will remain the same. If there is a policy override, select the appropriate override; the risk level will become very high. If you select a discretionary override, the risk level will increase one level, and you must enter a reason in the box provided.

Policy Overrides *(increases risk level to very high)*

- ☐ Policy override
  - ☐ Sexual abuse case AND the perpetrator is likely to have access to the child
  - ☐ Non-accidental injury to a child under age 2
  - ☐ Severe non-accidental injury
  - ☐ Caregiver action or inaction resulted in the death of a child due to abuse or neglect (previous or current)

Discretionary Overrides *(increases risk level one level)*

- ☐ Discretionary override

Override Risk Level:

Discretionary Override Reason:

No Overrides *(no change to risk level)*

- ☑ No override

Final Risk Level

The final risk level is: **High**

Recommended Decision

The recommended decision is: **Promote**

Planned action: ☑ **Promote** ☐ **Do not promote**

If recommended decision and planned action do not match, explain why:

Supplemental Questions

1. Either caregiver demonstrates difficulty accepting one or more children's gender or sexual orientation.

- ☑ a. No
- ☐ b. Yes

2. Alleged perpetrator is an unmarried partner of the primary caregiver.

- ☐ a. No
- ☑ b. Yes

3. Another adult in the household provides unsupervised child care to a child under the age of 3.

- ☑ a. Not applicable
- ☐ b. No
- ☐ c. Yes

  Is the other adult in the household employed? ☐ No ☐ Yes

4. Either caregiver is isolated in the community.

- [x] a. No
- [ ] b. Yes

5. Caregiver has provided safe and stable housing for at least the past 12 months.

- [ ] a. No
- [x] b. Yes

Comments

Staff Person Comments:

Supervisor Comments:

SDM Safety Assessment

Referral ID:	1234-1234-1234-1234567	**Assessment Date:**	6/03/2020
Referral Name:		**County of Completion:**	San Diego
Approval Status:	Not Submitted	**Approval Unit:**	
Created by:	Kneeland, Sarah (6/03/2020)	**Last Update by:**	Kneeland, Sarah (6/03/2020)

Household Name: Household

Were there allegations in this household? ☑ Yes ☐ No

Assessment Type: ☑ Initial ☐ Review/Update ☐ Referral Closing

Is either caregiver Native American or a person with Indian ancestry?

☐ Yes ☑ No ☐ Parent not available ☐ Parent unsure

Factors Influencing Child Vulnerability

- ☐ Age 0 - 5 years
- ☐ Significant diagnosed medical or mental disorder
- ☐ Not readily accessible to community oversight
- ☐ Diminished mental capacity (e.g., developmental delay, non-verbal)
- ☐ Diminished physical capacity (e.g., non-ambulatory, limited use of limbs)

Section 1: Safety Threats and Protective Capacities

Part A: Safety Threats

Instructions: Assess household for each of the following safety threats. Indicate whether currently available information results in reason to believe safety threat is present. Mark "Yes" for all threats that apply. Mark "No" for any threats that do not apply.

1.	☑ Yes ☐ No	Caregiver caused serious physical harm to the child or made a plausible threat to cause serious physical harm in the current investigation, as indicated by: ☐ Serious injury or abuse to child other than accidental. ☐ Caregiver fears he/she will maltreat the child. ☐ Threat to cause harm or retaliate against the child. ☑ Domestic violence likely to injure child. ☐ Excessive discipline or physical force. ☐ Drug-/alcohol-exposed infant.
2.	☐ Yes ☑ No	Child sexual abuse is suspected, and circumstances suggest that the child's safety may be of immediate concern.
3.	☐ Yes ☑ No	Caregiver does not meet the child's immediate needs for supervision, food, clothing, and/or medical or mental health care.
4.	☐ Yes ☑ No	The physical living conditions are hazardous and immediately threatening to the health and/or safety of the child.
5.	☐ Yes ☑ No	Caregiver describes the child in predominantly negative terms or acts toward the child in negative ways that result in the child being a danger to self or others, acting out aggressively, or being severely withdrawn and/or suicidal.
6.	☐ Yes ☑ No	Caregiver is unable OR unwilling to protect the child from serious harm or threatened harm by others. This may include physical abuse, sexual abuse, or neglect.
7.	☐ Yes ☑ No	Caregiver's explanation for the injury to the child is questionable or inconsistent with the type of injury, and the nature of the injury suggests that the child's safety may be of immediate concern.
8.	☐ Yes ☑ No	The family refuses access to the child, or there is reason to believe that the family is about to flee.
9.	☐ Yes ☑ No	Current circumstances, combined with information that the caregiver has or may have previously maltreated a child in his/her care, suggest that the child's safety may be of immediate concern based on the severity of the previous maltreatment or the

caregiver's response to the previous incident.

10. ☐ Yes ☑ No

Other *(specify)*:

Section 1A: Caregiver Complicating Behaviors

Instructions: If any safety threats above are marked yes, indicate whether any of the following behaviors are present. These are conditions that make it more difficult or complicated to create safety for a child but do not by themselves create a safety threat. These behaviors must be considered when assessing for and planning to mitigate safety threats with a safety plan. Mark all that apply to the household.

- ☑ Substance abuse
- ☑ Domestic violence
- ☐ Mental health
- ☐ Developmental/cognitive impairment
- ☐ Physical condition
- ☐ Other *(specify)*:

Section 2: Household Strengths and Protective Actions

Household Strengths: These are resources and conditions that increase the likelihood or ability to create safety for a child but in and of themselves do not fully address the safety threats.

Protective Actions: These are specific actions, taken by one of the child's current caregivers or by the child, that mitigate identified safety threats in the household.

Household strengths and protective actions should be assessed, considered, and built upon when creating a safety plan. Mark all that apply to the household.

Caregiver problem solving

Household Strengths:	☑ At least one caregiver identifies and acknowledges the problem/safety threat(s) and suggests possible solutions.
Protective Actions:	☑ At least one caregiver articulates specific strategies that, in the past, have been at least partially successful in mitigating the identified safety t

Caregiver support network

Household Strengths:	☑ At least one caregiver has at least one supportive relationship with someone who is willing to be a part of his/her support network.
	☐ At least one non-offending caregiver exists and is willing and able to protect the child from future harm.
	☑ At least one caregiver is willing to work with the agency to mitigate safety threats, including allowing the caseworker(s) access to the child.
Protective Actions:	☑ At least one caregiver has a stable support network that is aware of the safety threat(s), has been or is responding to the threat(s), and is willi

Child problem solving

Household Strengths:	☑ At least one child is emotionally/intellectually capable of acting to protect him/herself from a safety threat.
Protective Actions:	☑ At least one child, in the past or currently, acts in ways that protect him/herself from a safety threat(s).

Child support network

Household Strengths:	☐ At least one child is aware of his/her support network members and knows how to contact these individuals when needed.
Protective Actions:	☐ At least one child has successfully pursued support, in the past or currently, from a member of his/her support network, and that person(s) wa

Other

Household Strengths:	☐ Other (specify):
Protective Actions:	☐ Other (specify):

Section 3: Safety Interventions

Instructions: For each identified safety threat, review available protective capacities. With these protective capacities in place, can the following interventions control the threat to safety? Consider whether the threat to safety appears related to the caregiver's knowledge, skill, or motivational issue.

If one or more safety threats are present, consider whether safety interventions 1-8 will allow the child to remain in the home for the present time. If protective capacities 2, 3, and/or 7 are not marked, carefully consider whether any safety interventions 1-8 are appropriate to immediately protect the child. Mark the item number for all safety interventions that will be implemented. If there are no available safety interventions that would allow the child to remain in the home, indicate by marking item 9 or 10, and follow procedures for initiating a voluntary agreement for taking the child into protective custody. A safety plan form is provided to systematically capture interventions and facilitate follow-through.

Safe With Plan

One or more safety threats are present; however, the child can safely remain in home with a safety plan. In-home protective interventions have been initiated through a safety plan, and the child will remain in the home as long as the safety interventions mitigate the safety threats. Mark all in-home interventions used in the safety plan.

1.	☐	Intervention or direct services by worker. (DO NOT include the investigation itself.)
2.	☑	Use of family, neighbors, or other individuals in the community as safety resources.
3.	☐	Use of community agencies or services as safety resources.
4.	☐	Use of tribal, Indian community service agency, and/or ICWA program resources.
5.	☐	Have the caregiver appropriately protect the victim from the alleged perpetrator.
6.	☐	Have the alleged perpetrator leave the home, either voluntarily or in response to legal action.
7.	☑	Have the non-offending caregiver move to a safe environment with the child.
8.	☐	Legal action planned or initiated - the child remains in the home.
9.	☐	Other (specify:)

Unsafe

One or more safety threats are present, and placement is the only protective intervention possible for one or more children. Without placement, one or more children will likely be in danger of immediate or serious harm. Check one response only.

10.	☐	Have the caregiver voluntarily place the child outside the home, consistent with WIC 11400(o) and (p).
11.	☐	Child placed in protective custody because interventions 1-9 do not adequately ensure the child's safety.

Section 4: Safety Decision

Instructions: The safety decision will be automatically selected below. The decision generated is based on your responses to the safety threats and safety interventions above.

Safe. No safety threats were identified at this time. Based on currently available information, there are no children likely to be in immediate danger of serious harm.

✔ Safe With Plan. One or more safety threats are present; however, the child can safely remain in home with a safety plan. In-home protecting interventions have been initiated through a safety plan, and the child will remain in the home as long as the safety interventions mitigate the safety threats.

Unsafe. One or more safety threats are present, and placement is the only protecting intervention possible for one or more children. Without placement, one or more children will likely be in danger of immediate or serious harm.

Comments

Staff Person Comments:

Supervisor Comments:

ACF Administration for Children and Families	U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES Administration on Children, Youth and Families	
	1. Log No: ACYF-CB-IM-20-02	**2. Issuance Date:** February 5, 2020
	3. Originating Office: Children's Bureau	
	4. Key Words: Family time and visitation for children and youth in out-of-home care**;** Trauma; Well-Being; Best Practices	

TO: State, Tribal and Territorial Agencies Administering or Supervising the Administration of Titles IV-E and IV-B of the Social Security Act, and State and Tribal Court Improvement Programs.

SUBJECT: Family Time and visitation for children and youth in out-of-home care.

LEGAL AND RELATED REFERENCES: Titles IV-B and IV-E of the Social Security Act.

PURPOSE: To provide information on research, best practices, resources and recommendations for providing children and youth in out-of-home care safe, meaningful and high frequency family time that strengthens the family, expedites reunification and improves parent and child well-being outcomes. This information memorandum (IM) emphasizes the importance of family time and visitation in reducing the trauma of removal and placement of children in out-of-home care, maintaining the integrity of the parent-child relationship, healthy sibling relationships and overall child and family well-being.

BACKGROUND

Children in out-of-home care often face many unintended and undesirable consequences that adversely affect them in childhood and follow them into adulthood, even when out-of-home care is necessary to protect their safety. Placing a child in out-of-home care can cause irreparable damage to the child and the broader family unit.[1] Removal and subsequent continued separation

[1] See, Church, C., Mitchell, M., and Sankaran, V. (2019). A CURE WORSE THAN THE DISEASE? THE IMPACT OF REMOVAL ON CHILDREN AND THEIR FAMILIES, 102 Marq. L. Rev. 1163. See also Sugrue, E. (2019). *Evidence Base for Avoiding Family Separation in Child Welfare Practice: An Analysis of Current Research*. Commissioned by Alia. https://protect2.fireeye.com/url?k=65d4abfc-3980b280-65d49ac3-0cc47adc5fa2-09cda7b346d2009a&u=https://researchbrief.aliainnovations.org/

makes the sustenance of primary relationships and prospects of reunification more problematic. The loss a child experiences when separated from his or her parent or parents is profound and can last into adulthood.[2] In terms of evolutionary biology, losing a parent or primary protective adult can represent a grave danger to survival for a child. Evidence of this activation and its harmful physiological and psychological consequences is well established.[3] Attachment science shows that the emotional and psychological ramifications of child removal from primary caregivers occur even if the removals are relatively brief. Short-term removals can interfere with a child's sense of safety, and multiple critical capacities, including learning, curiosity, social engagement, and emotional regulation.[4]

Following removal from parents, children and youth are often scared and confused and have incomplete understandings of what is happening to their families, why they are not with their families and what their future will hold. When they lack basic information about the status of their parent or caregiver, they may imagine worst-case scenarios and/or experience feelings of abandonment.[5] This uncertainty has been characterized as ambiguity of loss and provides evidence that ambiguity (not knowing or having the capacity to comprehend why they are not with their parents, where their parents are, or what will happen to him or her) is a tremendous source of stress and trauma.[6] Children and youth are at their most traumatized stage immediately following removal and often do not see their parents for days or weeks, which can exacerbate stress responses and compound trauma.[7]

What the field most often regards as "visitation" and "visitation plans" seldom fulfills the needs that parents and children have for meaningful and nurturing time together. This language often implies standard visitation schedules whereby all parents receive a predetermined amount of supervised time with their child, regardless of the parents' circumstances and protective capacities, and for "visitation" to increase only as parents "earn" the right for longer and unsupervised interactions.

Viewing child and family contacts during foster care less as "visits" and more as "family time" suggests the critical importance of the length and quality of time that children spend with their parents, separated siblings, and other important family members. "Family time" can occur when the parent and/or family participates in normal parenting activities, such as sharing meals,

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[2] Id.
[3] See Complex Trauma, Nat'l Child Traumatic Stress Network, https://www.nctsn.org/what-is-child-trauma/trauma-types/complex-trauma
[4] See Kimberly Howard et al., Early Mother-Child Separation, Parenting, and Child Well-Being in Early Head Start Families, 13 Attachment & Hum. Dev. 5, 21 (2011).
[5] See Monique B. Mitchell, The Neglected Transition: Building a Relational Home for Children Entering Foster Care 6 (2016); see also Pauline Boss, Ambiguous Loss: Learning to Live with Unresolved Grief 5-8 (1999); Lyn R. Greenberg, Barbara J. Fidler, Michael A. Sani, Evidence-Informed Interventions for Court-Involved Families: Promoting Healthy Coping and Development 261 (2019).
[6] Id
[7] Id

medical appointments and school events. It can occur in the homes of resource families or in the family's home. The frequency, duration and intensity of "family time" takes into account the needs of children, depending upon their age and stage of development, and the capacities of parents to share parenting roles with resource families.

This IM is organized as follows:

I. Family Time: Research and Best Practices
II. Inadequate Family Time: Research and Best Practices
III. Resources and Innovation to Support Strong Family Time Practice
IV. Recommendations
V. Conclusion
VI. Resources

INFORMATION

I. Family Time: Research and Best Practices

Family time is critical to maintaining the parent-child relationship when a child is in out-of-home care.[8] We can protect and strengthen the parent-child relationship from the time of removal throughout a child's entire time in care by ensuring parents are fully encouraged and supported to participate in all parenting activities and decisions. While some parenting approaches can be improved through increased knowledge of child development, learning appropriate discipline techniques and other capacity building efforts that enhance parental protective factors, the relationship between the parent and child is paramount.

Research

Frequency and duration of family time: A growing body of research associates regular, meaningful family time for children in out-of-home care with several positive outcomes, including:

- Enhanced parental engagement;
- Greater likelihood of reunification;
- Expedited permanency;
- Increased chances of reunification being sustained;
- More meaningful connections to parents for older youth without reunification as permanency goal; and

[8] Haight, W. L., Mangelsdorf, S., Black, J., Szewczyk, M., Schoppe, S., Giorgio, G., Tata, L. (2005). Enhancing parent-child interaction during foster care visits: Experimental assessment of an intervention. *Child Welfare, 84*, 459–81.

- Improved emotional well-being for parents and children.[9]

Research shows that children participating in more frequent and/or regular time with parents exhibit more of the positive outcomes below when compared to peers who participate in fewer or less regular visits:

- Stronger attachments to their parents;[10]
- Improved child well-being;[11]
- Fewer behavioral problems, including both internalizing and externalizing problems;[12]
- Lower levels of depression;[13] and
- Better adjustment.[14]

Consistent contact with parents is also strongly associated with reunification.[15] Studies examining this association have found that:

- Children aged 12 years and younger who had been in out-of-home care for up to 18 months, those who were visited at the recommended levels in their case plans were more likely to be reunified than those who were not.[16]
- Children age 12 and 13 who had been in out-of-home care for 1 to 8 years, those who were visited more frequently were more likely than other children to return home.[17]
- Children who were visited more frequently by their parents while in out-of-home care spent fewer months in care than those with less frequent visits.[18]

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[9] Partners for Our Children, Family Visitation in Child Welfare: Helping Children Cope with Separation while in Foster Care. April 2011, p.1.

[10] McWey, L. M., & Mullis, A. K. (2004). Improving the lives of children in foster care: The impact of supervised visitation. *Family Relations, 53*, 293–300. doi: 10.1111/j.0022-2445.2004.0005.x

[11] Id

[12] McWey, L. M., Acock, A., & Porter, B. E. (2010). The impact of continued contact with biological parents upon mental health of children in foster care. *Children and Youth Services Review, 32*, 1338–1345. doi: 10.1016/j.childyouth.2010.05.003; McWey, L. M., & Cui, M. (2017). Parent–child contact for youth in foster care: Research to inform practice. *Family Relations. 66*, 684–695. doi: 10.1111/fare.12276

[13] Id

[14] Supra at note 8.

[15] D'Andrade, A. C., & Valdez, M. (2012). Reunifying from behind bars: A quantitative study of the relationship between parental incarceration, service use, and foster care reunification. *Social Work in Public Health, 27*, 616–636. doi: 10.1080/19371918.2012.713294; López, M., del Valle, J. F., Montserrat, C., & Bravo, A. (2013). Factors associated with family reunification for children in foster care. *Child & Family Social Work, 18*, 226–236. doi: 10.1111/j.1365-2206.2012.00847.x; Leathers, S. J., Falconnier, L., & Spielfogel, J. E. (2010). Predicting family reunification, adoption, and subsidized guardianship among adolescents in foster care. *American Journal of Orthopsychiatry, 80*, 422–431. doi: 10.1111/j.1939-0025.2010.01045.x

[16] Davis, I. P., Landsverk, J., Newton, R., & Ganger, W. (1996). Parental visiting and foster care reunification. *Children and Youth Services Review, 18*, 363–382. doi: 10.1016/0190-7409(96)00010-2

[17] Leathers, S. J., Falconnier, L., & Spielfogel, J. E. (2010). Predicting family reunification, adoption, and subsidized guardianship among adolescents in foster care. *American Journal of Orthopsychiatry, 80*, 422–431. doi: 10.1111/j.1939-0025.2010.01045.x

[18] Mech, E. V. (1985). Parental visiting and foster placement. *Child Welfare, 64*, 67–72.

- Among children discharged from out-of-home care, those who visited more frequently with their parents were in care for shorter periods.[19]
- Among children under age 10 who had been reunified, more frequent visits were associated with shorter placements in out-of-home care.[20]
- In a longitudinal study of all children placed in foster care for at least 90 days in New York City, the occurrence of visits made it more likely for children to reunify with their parents, with reunification being more likely with a higher frequency of visits than a lower frequency or no visits.[21]
- A study of children in out-of-home care who had an incarcerated parent found that difficulties accessing services and with visitation present barriers to reunification.[22]

Immediacy of family time: Research suggests meaningful family time close in time to removal may help reduce stress and anxiety for children in out-of-home care.

Providing quality family time: The quality of time a parent spends with his or her child is critical for the strength of relationships of all families, especially a family involved with the child welfare system. Likewise, many factors may affect the quality of time a parent and child spend together. This includes: who is present, where the time together is spent, how the time together is spent, whether attention is focused or divided, the ability of parent or child to be emotionally present, the physical health and social, emotional and psychological health of a parent or child and numerous other stressors or stimuli.

Parents with lived experience in child welfare commonly report that the presence of a government employee or private social worker with decision-making authority over the future of their families can affect the quality of the time a parent spends with his or her child. In this situation, a parent may feel uncomfortable and have difficulty engaging with his or her child. Research shows that supervised family time can and often does affect the comfort levels of parents and children and can inhibit the ability of a parent or child to interact freely. A child welfare agency should not assume that a child in an out-of-home care automatically means visitation must be supervised. Out-of-home care may be necessary for a variety of reasons; however, that does not mean it is unsafe for parents and children to spend time together without supervision. This is particularly true for families with older children, and those cases involving neglect.

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[19] Milner, J. L. (1987). An ecological perspective on duration of foster care. *Child Welfare, 66*, 113–123.

[20] White, M., Albers, E., & Bitonti, C. (1996). Factors in length of foster care: Worker activities and parent-child visitation. *Journal of Sociology & Social Welfare, 23*, 75–84.

[21] Fanshel, D., & Shinn, E. B. (1978). *Children in foster care: A longitudinal investigation*. New York: Columbia University Press.

[22] Supra at note 13, D'Andrade & Valdez, 2012; López, del Valle, Montserrat, & Bravo, 2013.

Data show that the majority of older youth in the child welfare system have contact with their parents in varying degrees, but often those relationships are unacknowledged, unsupported or discouraged. Failing to recognize and promote such relationships may leave youth on their own to manage complicated relationships and feelings.[23] Research shows that supporting and strengthening parent and older youth relationships can result in permanency through reunification, and can be crucial to achieving permanency with other individuals. Family time with older youth is important because even where a parent may not be an option as a caregiver, they can be a valued member of the youth's network of support; even in instances of termination of parental rights.

Best Practices

Liberal, creative, and robust family time strengthens parent child relationships, promotes child and family well-being, and expedites reunification. Many states, national professional membership organizations and advocacy groups identify best practices for family time:

- Georgia statute specifies that "there shall be a presumption that visitation shall be unsupervised unless the court finds that unsupervised visitation is not in a child's best interests." [24] The Georgia Court Improvement Program (CIP) has issued a comprehensive guide for judges to ensure strong judicial decision-making on family time. [25] The guide provides an overview of research, case law, and best practices for judges to utilize in assessing and ordering family time plans. It also provides judges with the information necessary to make well-informed orders that will promote the well-being of the child.

- The Wisconsin Department of Children and Families Ongoing Services Standards identifies family interaction while a child is in out-of-home care as critical for "minimizing placement-induced trauma caused by separation" and recognize that such contact is critical to enhancing attachment.[26] The Standards also recommend that the agency think broadly about the individuals that may be important in the child's life with whom continued contact would be helpful, including: friends, neighbors, and extended family as defined by culture and spiritual communities.[27] Family interaction includes parent attendance in regular parenting activities, such as medical appointments and school events, and time specifically for visits. The standards recommend that visits occur in the least restrictive setting, account for the child's developmental needs, highlight a

[23] See Courtney, M., Dworsky, A.,Brown, A., Cary, C., Love, K., & Vorhies, V. (2011). *Midwest evaluation of the adult functioning of former foster youth: Outcomes at age 26.* Chicago, IL: Chapin Hall at the University of Chicago.
[24] O.C.G.A. § 15-11-112(b) (2013)
[25] See http://www.gacip.org/family-time-practice-guide/
[26] https://dcf.wisconsin.gov/files/cwportal/policy/pdf/ongoing-services-standards.pdf
[27] Id.

preference for family-like visit settings, and speak to the importance of decreasing levels of supervision during visits where reunification is the permanency goal.[28]

- Illinois statute places visitation in the context of reasonable efforts and permanency planning articulating that, "the frequency, duration, and locations of visitation shall be measured by the needs of the child and family and not by the convenience of the department."[29] The Illinois Department of Children and Family Services family visitation rules recognize "a strong correlation" between the frequency parental visits and parent child contacts more generally. Where reunification is the permanency goal, the rules call for visits to occur in the family home and an increase in the length of time to aid with the transition of the child to his or her family home, absent a threat to safety.

- Illinois policy provides additional support for family time by clarifying that agencies can reimburse caregivers who provide the location, supervision, mentoring, or transportation for "family-setting activities" that include "parenting activities such as help with homework, hobbies, meal preparation, chores, getting ready for nap or bedtime" that is also available for parents who are incarcerated or hospitalized. [30]

- Michigan law requires the child welfare agency to monitor "in-home visitation between the child and his or her parents. To ensure the occurrence of in-home visits required under this subsection, the supervising agency shall institute a flexible schedule to provide a number of hours outside of the traditional workday to accommodate the schedules of the individuals involved." [31]

- Numerous leading national professional membership organizations and advocacy groups provide best practices for family time. The National Council of Juvenile and Family Court Judges (NCJFCJ) highlights the importance of family time in the Enhanced Resource Guidelines, a resource developed to support judges in child welfare practice. The guidelines include a principle statement that, "consistent with child safety, relationships between and among children, parents, and siblings are vital to child well-being. Judges must ensure that quality family time is an integral part of every case plan. Visitation should be liberal and presumed unsupervised unless there is a demonstrated, safety risk to the child. Sibling time apart from parental family time is also important. Family time should not be used as a case compliance reward or consequence."[32]

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[28] Id at 166 (PDF 176); 167 (PDF 177).
[29] See https://dcf.wisconsin.gov/files/cwportal/policy/pdf/ongoing-services-standards.pdf
[30] Illinois Family Reunification support Special Service Fee—Policy Guide https://www2.illinois.gov/dcfs/aboutus/notices/Documents/policy_guide_2007.06.pdf
[31] MCL 722.954b
[32] NCJFCJ Enhance Resource Guidelines Principle---Ensuring Family Time)

- A joint publication of the American Bar Association Center on Children and the Law and NCJFCJ identifies visitation as a key factor for judges to consider in making reasonable efforts determinations pursuant to the Adoption Assistance and Safe Families Act (ASFA). The publication states that, "quality visitation plans between young children, their parents, siblings and extended family members directly relate to ASFA mandates for timely permanency and reasonable efforts."[33]

- The American Humane Association, Center for the Study of Social Policy, Child Welfare League of America, Children's Defense Fund, and Zero-To-Three issued a call to action on the need for children to have strong and healthy relationships; stating that, "children develop within the context of their relationship with their primary caretaker or parent. Secure and stable attachments with a primary caregiver form the basis for a child's future social, emotional and cognitive development. Maintaining or healing attachments with parents is critical, since relationships are the conduit for change in young children and families."[34]

- The American Bar Association and Zero-To-Three co-authored a publication to build legal and judicial knowledge on the developmental needs of children. The authors highlight the effects of parent-child separation on very young children, emphasizing that "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." [35]

II. Inadequate Family Time: Research and Best Practices

Inadequate family time can impede parental engagement, inhibit healthy parent child bonding, disrupt and damage relationships, delay permanency, and perpetuate trauma for both children and parents.[36]

Research

[33] American Bar Association, National Council of Family and Juvenile Court Judges, Healthy Beginnings, Healthy Futures: A Judge's Guide, 2009, p. 105.
[34] American Humane Association, Center for the Study of Social Policy, Child Welfare League of America, Children's Defense Fund, and Zero to Three. A Call to Action on Behalf of Maltreated Infants and Toddlers. 2011, p. 5)
[35] American Bar Association and Zero to Three, Visitation with Infants and Toddlers in Foster Care: What Judges and Attorneys Need to Know, July 2007.
[36] Kendra L. Nixon et al., "Every Day It Takes a Piece of You Away": Experiences of Grief and Loss Among Abused Mothers Involved with Child Protective Services, 7 J. Pub. Child Welfare 172, 182-83 (2013); E. Wall-Wieler et al., Maternal Health and Social Outcomes After Having a Child Taken into Care: Population-based Longitudinal Cohort Study Using Linkable Administrative Data, 71 J. Epid. Comm. Health 1145 (2017).

Research shows ending or reducing family time due to a parent's non-compliance with a case plan is problematic and can negatively impact parental engagement and well-being.[37] Parents with lived-experience report time with their children to be motivating and help them stay focused on successfully completing treatment or more generally meeting the conditions of case plans. Conversely, parents report feelings of frustration, loneliness and despair in situations where meaningful contact with their children is limited, reduced or canceled. Parents also report that despite strong desires to spend time with their children, it is sometimes difficult to meet family time schedules due to a variety of every day challenges that may exist in the life of parents involved with the child welfare system.

A number of social and economic factors may limit a parent's ability to comply with a case plan. The challenges of poverty, such as limited access to transportation, inflexible employment schedules and lack of financial resources, can all combine to make case plan compliance and honoring family time schedules difficult. It is important for agencies and judges to be mindful that ending or reducing family time as a form of punishment for noncompliance may have deleterious effects on parental progress and cause additional challenges or setbacks in treatment and recovery.[38] Family time plans should consider the parent's circumstances, including the resources to which they might have access. When a parent cannot attend a visit, it is important not to assume a lack of interest.

Research suggests that ending or reducing family time due to perceived or observed negative emotional responses of the child in anticipation of seeing his or her parents or following time spent together is also problematic.[39] Such responses in children are complex, and often an expected result of a child dealing with the trauma or emotions related to separations, including the separation that occurs at the end of visits.[40] Separation can be confusing for children as they lack the ability to understand why he or she cannot be with his or her parents. Depending on the age and developmental stage of the child, it may not be possible for the child to comprehend anything other than the fact that his or her parent is not there, and the upheaval and uncertainty that accompany removal can bring a range of emotions including anger, sadness, and

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[37] Id. See also the 2019 Family Treatment Court Best Practice Standards Provision D: High Quality Parenting Time (Visitation): https://www.cffutures.org/files/OJJDP/FDCTTA/FTC_Standards.pdf#page=136

[38] SAMHSA's Children Affected by Methamphetamine (CAM) program focused family treatment courts on evidence based parenting and children's services including a strategy of promoting parenting right away; participating sites shifted from "requiring" a length of time of sobriety or in the Family Treatment Court prior to beginning family time/visitation to supporting parenting time from the start of program participation. Sites found that actively engaging parents in decision making and parenting led to increased attendance for sessions when they were presented as an opportunity to focus on the needs of their children. A summary of that final report is here https://ncsacw.samhsa.gov/files/CAM_Brief_2014-Final.pdf. Additional resources on lessons learned can be found at https://www.cffutures.org/report/prevention-and-family-recovery-brief/ and http://www.cffutures.org/files/PFR_Tompkins_Standard_Final2.pdf

[39] See Rich, C. (2010). *The effect of parental visitation on the emotional and behavioral stability of foster children*. Fresno: Alliant International University.

[40] Id.

depression.[41] It is important for social workers and legal professionals to be mindful of the complex emotional responses that children may experience and the different ways those emotions may be displayed. Reducing or restricting visitation based on negative child responses, rather than working with parents and youth to understand those reactions and ease anxiety, may further traumatize children in out-of-home care. Such reductions may also add trauma to parents and can be a disincentive for parental compliance with case plans.

Best Practices

Child welfare agencies, attorneys for parents, children, youth and child welfare agencies, judges, and CIPs can work together to ensure that family time is not unnecessarily supervised, ended or reduced contrary to research supporting positive outcomes for youth. Examples of such best practices include:

- Where children exhibit concerning behavior, child welfare professionals should seek out mental health professionals to help interpret the emotions and reactions children may exhibit before deciding to reduce family time.[42]
- Where there are threats of danger ensure, that they are specific, observable, immediate, carry severe consequences, and cannot be controlled.[43]
- Where there is a safety risk, agencies and courts should consider the protective capacities of caregivers in the home and the child or children to determine whether those protective factors will mitigate the identified risk before reducing or ending family time.[44]
- Agencies and courts should also consider additional protective factors that can be provided to help ensure safety before reducing or ending family time.[45]

III. Resources and Innovation to Support Strong Family Time Practice

State and county child welfare agencies report that meaningful and frequent family time can be time and resource intensive for child welfare agencies and staff. The expense associated with providing supervision can be challenging. However, federal financial participation (FFP) is

[41] See generally, Dozier, M., Stovall, K.C., Albus, K. & Bates, B. (2001). Attachment for infants in foster care: The role of caregiver state of mind. Child Development, 72, 1467-1477; Haight, W., Black, J., Mangelsdorf, S., Giorgio, G., Tata, L., Schoppe, S., & Szewczyk, M. (2002). Making visits better: The perspectives of parents, foster parents, and child welfare workers. Child Welfare, LXXXI, 173-202.; Haight, W., Black, J., Workman, C. & Tata, L. (2001). Parent-child interaction during foster care visits: Implications for practice. Social Work, 46, 325-338; Stovall, K.C., & Dozier, M. (2000). The development of attachment in new relationships: Single subject analyses for 10 foster infants. Development and Psychopathology, 12, 133-156; Cantos, A.L. & Gries, L.T., (1997). Behavioral Correlates of Parental Visiting During Family Foster Care. Child Welfare, 76 (2) 309-330.

[42] See supra note 5, responses could be the result of ambiguity of loss, feelings of abandonment or other emotional responses depending on the developmental stage or trauma history of the child.

[43] See Therese Roe Lund & Jennifer Renne, *Child Safety: A Guide for Judges and Attorneys* 33-34 (2009) for a detailed analysis on how to balance safety threats and protective capacities and how judges can utilize information gained through application of a safety decision-making framework to craft thoughtful and effective visitation/family time plans.

[44] Id.

[45] Id.

available for certain costs associated with facilitating family time. There are also innovative approaches to facilitating family time that show promising results for families and require less agency staff time and resources.

Federal Funding

Funding may be available under titles IV-B and IV-E for certain activities that support family time. This IM provides only a basic overview of potentially available funding, and agencies should contact their regional office with questions about whether specific costs for activities that support family visits are allowable.

A title IV-B agency may utilize title IV-B, subpart 2 funds to pay for services and activities designed to facilitate access to and visitation of children with parents and siblings. Statute and regulation are broad regarding parenting time and visitation to allow jurisdictions flexibility in designing practices and providing support for family time practices that meet the unique needs of their communities.

A title IV-E agency may claim FFP for costs related to a child's travel to and from family visits as a foster care maintenance expense. Title IV-E agencies may claim FFP for allowable title IV-E foster care administrative costs, including activities closely related to case management and supervision (45 CFR 1356.60(c)(2)(vi)). Any such costs must be allocated through an approved cost allocation plan and the claims must be on behalf of a title IV-E eligible child or candidate for title IV-E foster care. States may not claim the transportation costs of a parent for visitation as a foster care maintenance payment nor an allowable administrative cost. See Child Welfare Policy Manual section 8.3B.1 for additional information on allowable costs.

Innovative Approaches

A number of jurisdictions are increasing access to family time, improving the experiences of parents and children during family time and reducing the costs associated with facilitation (both transportation and staff time) by working with community-based organizations. Community-based organizations offer a variety of programs and services, such as support staff, peer mentors, family time or visit hosts, visit coaching, and/or convenient, nonthreatening space for families to spend time together. Where provided, jurisdictions report improved parental attendance, increased parental engagement, improved compliance with case plans, and reduced burden on the child welfare agency. Examples of innovate approaches include:

- New York City's Administration for Children's Services (ACS) worked with community partners and providers to maintain and strengthen the relationships that parents have with their children when placement in out-of-home care is necessary. One such effort supported by the Center for Family Life (CFL), an ACS contracted service provider, redefines the concept of visitation entirely. CFL is a community-based provider in Brooklyn, NY. CFL operates a foster care program for ACS that focuses on building

positive relationships between parents with children in foster care and foster parents. CFL has set the expectation that parents with children in foster care will remain involved with the daily routines of their children's lives. Children are placed nearby where the parent lives, and the foster parent works directly with the parent to set daily schedules whereby the parent will regularly be in the foster home helping their children prepare for school, do homework, prepare and eat meals, play, and attend appointments or school events. The goal is meaningful and ongoing contact and involvement, seamlessly blending foster care and family time. CFL also provides additional support to parents and families to help build protective capacities, connections to community resources, and programs to promote economic mobility, which help increase the likelihood of sustained family reunification.

- The Center for Family Representation, a parental defender organization in NYC, has advocated for and helped support a "Visit Host" approach that promotes family-centered, community-based visitation practice. ACS and its community partners worked together to establish protocols and guidance for the agency and families to work together to identify non-agency staff that can supervise visits where supervision is necessary. A visit host is someone that the parent or family knows and trusts, that can assure the safety of the child, is invested in the well-being of the child and family, and is supportive of the parent and the family's attempts to reunify or maintain strong relationships. A host can bring participants together more frequently and for longer visits and has the flexibility to be creative in supporting families to spend time together in natural settings. CFR, one of many partners across the city that helps facilitate the approach, reports that visit hosts are used in approximately twenty percent of their cases where supervision has been deemed necessary, a significant reduction of burden on the child welfare agency.

- Hancock County, Mississippi has converted a former children's shelter into a family time meeting place. The building is set up to feel like a home and includes living room spaces, play space for children inside and outside, a reading room/library, and a functioning kitchen and dining area to allow families to spend time together in natural ways. Families are encouraged to bring food so they may prepare and share meals. The county provides groceries in the kitchen for families that may not be able to afford to bring food on their own so that they do not miss the opportunity for family dinners. Most notably, parents of infants may visit as often as they can attend for as long as they can be present to promote healthy parent child bonding and attachment.

- San Diego County implemented an approach to ensure family time helps enhance parenting skills and promotes relationships between parents and foster families. Working in partnership with Casey Family Services, the county has implemented a coaching

program for parents known as Visit Coaching.[46] Under the model, coaches train to help parents enhance or develop specific parenting skills and protective factors that allow them to parent more effectively. Visit coaches are not employees of the child welfare agency and therefore viewed as independent supports to the family. Coaches are also from the same community and/or cultural background of the families, which can help parents feel more comfortable. Visit coaches may supervise visits ordered to be monitored, but are also used where supervision is not mandated as a parental support and resource.

IV. Recommendations

CIPs, administrative offices of the courts, state and county judges, child welfare administrators, child welfare agency case workers, and attorneys for parents, children, youth and the child welfare agency all play essential roles and share common interests in protecting and strengthening the integrity of the parent-child relationship. The parent-child relationship is critical to the well-being of children and parents, except in the most egregious of situations where it would be harmful to the child. Ensuring that meaningful family time is a central component of every case plan for children in out-of-home care is a critical strategy for strengthening the parent-child relationship and promoting family well-being.

Studies indicate that the above parties should work collectively and in their individual capacities to implement these key principals associated with more meaningful and effective family time practices:

- Recognize family time as critical reasonable or active effort and centerpiece of case plans.
- Engage parents in family time discussions as early as possible, even before physical removal where possible, to seek their ideas and opinions on where, when, and how family time can occur.
- Create policy and promote practice that presumes family time should be unsupervised absent an identified present danger of harm.
- Work to identify and partner with community organizations that can supervise visits where supervision is necessary.
- Utilize non-threatening, natural, family-like settings for visits to occur.

Recommendations for CIPs

- Enhance or create training curriculum and educational opportunities to ensure judges are aware of the trauma caused by parent-child separation and the long-term impact removal can have, even as the result of short-term separation.

[46] http://martybeyer.com/content/visit-coaching

- Enhance or create in-depth training on the importance of family time to child and parent well-being.
- Work with the Administrative Office of the Courts to create or update family time specific court rules that reflect current knowledge about the importance of family time in mitigating child trauma and expediting reunification.
- Create training opportunities for judges to lead detailed discussion of family time at every hearing and review, including making specific inquires to attorneys for parents, children and youth and the child welfare agency on case specific family time needs.
- Create training opportunities for judges and attorneys that identify family time as a critical reasonable effort to finalize permanency goals of reunification and to normalize the foster care experience for children in out-of-home care.
- Include qualitative measures that look at the substance of family time discussions and decisions in court observation and other instruments utilized as part of mandatory CIP hearing quality projects. Utilize data to continuously improve legal and judicial aspects of family time planning and decision-making.

Recommendations for Judges

- Become familiar with trauma research and the impact that parent-child separation has on children.
- Consider family time a critical reasonable or active effort that the agency must make to finalize permanency goals of reunification.
- Routinely ask parent attorneys and attorneys for children and youth about the adequacy of and satisfaction with the family time plan.
- Routinely ask the agency attorney for detailed accountings of the agency's efforts to ensure family time is occurring in accordance with the case plan.
- Make findings of no reasonable efforts to finalize a permanency goal of reunification where the agency has not provided adequate evidence that it has provided meaningful family time.
- Set clear expectations that agencies individually tailor family time plans to meet the specific needs and circumstances of each individual child and family.
- Order unsupervised family time unless specifically contraindicated by safety threats to the child or based on the specific needs/circumstances of the child.
- Require detailed family time plans and proactively monitor family time by requiring detailed updates on the progress with family time at every hearing and review.

Recommendations for Attorneys of Parents, Children, Youth, and the Child Welfare Agency

- Remain cognizant that parent-child separation, even when necessary or for short time periods, causes trauma to children and parents.

- Help locate and involve relatives or kin supportive of parent child contact when removal is necessary.
- Advocate for parent-child contact as soon as possible after removal to help mitigate child trauma and ambiguity of loss.
- Be creative in recommendations of where, when, and how initial contact and ongoing family time occur.
- Ensure substantive discussion of family time occurs in every hearing or review where a child is in out-of-home care.
- Advocate for sibling time where siblings are in separate placements.
- Know the factors that can make family time logistically and emotionally challenging for parents and children, anticipate needs, and identify resources to mitigate those challenges.
- Contest unnecessary supervision of family time.

Recommendations for Child Welfare Agency Leadership (*including directors, managers and supervisors)*

- Be mindful that removal, even when necessary or for a short period of time, is traumatic to both children and their parents.
- Recognize family time as central to fulfilling the agency's mission and responsibilities under the law and that agency leadership should:
    - create a clear vision for what family time should look like in the state, counties, and communities;
    - identify what the agency will do to operationalize that vision; and
    - craft agency policy and procedures to support the vision, and provide training, supervision and coaching to ensure fidelity to the vision.
- Involve all levels of staff, the legal and judicial community, parents and youth with lived child welfare experience, community members, and private, public, and faith-based partners in crafting the vision.
- Identify public, private and faith-based partners to help implement and support the vision.
- Craft and implement policy and support case work practice that is rooted in an understanding that the quality of family time is affected deeply by where and how it occurs and that natural environments and unsupervised family time should be arranged absent identified, immediate danger of harm to the child.
- Create and maintain a culture that promotes the vision for family time within the agency and incentivizes or rewards caseworker efforts in promoting meaningful family time.
- Provide supervision and coaching to support caseworker efforts in ensuring meaningful family time.
- Facilitate and support ways for caseworkers to share routinely what they are doing to ensure family time with their peers and learn from one another.

- Work with community partners, including private and faith-based organizations to identify more home-like settings that may be appropriate for supervised visitation.
- Access title IV-E reimbursement to promote high quality legal representation for parents that will help ensure higher levels of parental engagement, identify family strengths and resources, all of which can support strong and effective family time practice.

Recommendations for Caseworkers

- Be mindful that removal, even when necessary and for short time periods, is traumatic to both children and their parents.
- Take all steps necessary to assure the parent that family time will be a top priority before removal.
- Arrange family time as soon as possible after removal, arranging contact within 24 hours or less of the initial removal, unless there is a clear and present safety threat to the child.
- Speak with the parents as early as possible to identify family members, friends, or other trusted adults the parents may know that can help where supervised visitation may be necessary.
- Ensure that family time is a central part of every case plan.
- Remain aware that frequent family time can help reduce trauma to both parents and children and can help the family move toward permanency sooner.
- Understand that where and how visits occur affect the quality of family time, and that agencies should arrange for visits to occur in natural and unsupervised environments, absent identified immediate danger of harm to the child.
- Reinforce the importance of all families, families of origin, and resource families, calling the child by the same name, following the same care practices (like eating and toilet learning), and speaking without judgment or criticism about each other during family time and throughout the child's time in care.
- Provide continuity in transportation for visits with the parents, i.e., transportation should be done by the same staff in the same vehicle as much as possible, as routine helps to reduce stress.
- Think of family time broadly as involving the parent as much as possible in day-to-day child rearing activities that allow for parental participation in normal daily experiences of their children's lives, e.g., school activities, doctor appointments, recreational activities, assistance with school work in the resource home.

V. Conclusion

Research is clear that frequent quality family time is a vital component of expedited reunification and positive well-being outcomes for children and families. We strongly encourage child welfare agencies, CIPs, judges, attorneys and other stakeholders to review the research, best

practices, funding sources, and recommendations related to providing family time, and work together to ensure that frequent quality family time is provided to all parents, children, and youth consistent with child safety. We further urge all jurisdictions never to use family time as reward or punishment as such practices are inconsistent with federal law and harmful to the well-being of children and parents.

Inquiries: CB Regional Program Managers

/s/

Elizabeth Darling
Commissioner,
Administration on Children, Youth and Families

Disclaimer: IMs provide information or recommendations to States, Tribes, grantees, and others on a variety of child welfare issues. IMs do not establish requirements or supersede existing laws or official guidance.

VI. Resources

Applying the Science of Child Development in Child Welfare Systems
https://developingchild.harvard.edu/resources/child-welfare-systems/

Child and Family Visitation: A Practice Guide to Support Lasting Reunification and Preserving Family Connections for Children in Foster Care (Minnesota)(placement, visitation)
https://edocs.dhs.state.mn.us/lfserver/Legacy/DHS-5552-ENG

Child Safety: A Guide for Judges and Attorneys by the American Bar Association

Developmental Issues for Young Children in Foster Care by the American Academy of Pediatrics Committee on Early Childhood, Adoption and Dependent Care (2000)

Enhanced Resource Guidelines: National Council of Juvenile and Family Court Judges

http://www.ncjfcj.org/ncjfcj-releases-enhanced-resource-guidelines

Evidence Base for Avoiding Family Separation in Child Welfare Practice: An Analysis of Current Research. (2019). Commissioned by Alia. https://researchbrief.aliainnovations.org/

Family Services or Family Preservation plan: dated January 2016 Policy 1.6 (Wyoming) https://drive.google.com/file/d/0B6DSpyyE-UEST2ZrNGdLV2RWY2M/view?pref=2&pli=1

Georgia Family Time Practice Guide: A Guide to Providing Appropriate Family Time for Children in Foster Care.
http://www.gacip.org/family-time-practice-guide/

Mental Health Assessments for Infants and Toddlers by the American Bar Association in Child Law Practice (Vol. 24 No.9) 129-139 (2005)

Parenting Matters: Supporting Parents of Children Ages 0-8 (2016) by The National Academies: Sciences, Engineering, & Medicines

Preventing Mental, Emotional, and Behavioral Disorders Among Young People: Progress and Possibilities (2009) by The National Academies: Sciences, Engineering, & Medicine

Reasonable Efforts: A Judicial Perspective, National Council of Juvenile and Family Court Judges –Handbook on Reasonable Efforts by Len Edwards
http://www.ncjfcj.org/resource-library/publications/reasonable-efforts-judicial-perspective

RISE Magazine www.risemagazine.org Video and Parenting Tips

Visitation with Infants and Toddlers in Foster Care: What Judges and Attorneys Need to Know by the American Bar Association (2007)

Can Children's Attorneys Transform the Child Welfare System?

As we enter a new year, we find ourselves in a familiar position. Once again, more kids are entering foster care than are leaving. Increased caseloads affect every aspect of the child welfare system. Children's attorneys struggle to represent their clients, often finding themselves putting out fires and preparing for hearings the day before they go to court. From high caseloads, to lack of resources to help families, to overcrowded court dockets, many elements of the child welfare system seem out of our control. But what if there was another way, right now, for children's lawyers to dramatically impact the lives of our individual clients, and the system as a whole? We believe that there is.

We are four lawyers from three states who share a common belief – that advocacy is the answer to our struggling child welfare system. The purpose of this article is to present our shared vision of the power of advocacy for children. We will focus on one key question – how can children's attorneys transform the child welfare system? We believe this can happen, but only if there is a culture shift in our profession. We know what we are suggesting may sound unrealistic to some – but stay with us. By the end of this article, we hope you will be ready to join our effort to elevate our profession and take charge of getting our clients home.

THE CHALLENGE FOR OUR PROFESSION

While there have been many strides in the area of children's law, we are still a relatively young profession. Compared to other professions that serve children – such as pediatric medicine which is mentioned in ancient texts from the 6th century B.C. – we got our start in 1874 when an attorney rescued an orphan, Mary Ellen Wilson, from abusive adoptive parents in Hell's Kitchen with a Writ of Habeas Corpus. There were no laws protecting children from abuse, so that lawyer, Elbridge Gerry, founded the New York Society for the Prevention of Cruelty to Children. It was the first child protection agency in the United States.

Even though it was a child's attorney who first took action to systemically protect children in our country, it was not until 100 years later, in 1974, that the Federal Government would pass the Child Abuse Prevention and Treatment Act. While CAPTA does require some form of representation, it does not do enough to promote quality. The real drivers of effective representation are mainly addressed at the state level: training, caseload size, compensation, and accountability. This has resulted in wide variation among states, with children receiving representation in many different forms and structures.

For 44 years children's attorneys have struggled to remove our common roadblocks because we are constantly putting out fires. When we do have time to think globally, we tend to pull in opposite directions. We argue about the nuances of representation that do not affect the majority of children. Some of us take up the banner of due process, believing that every child having some kind of counsel should be the ultimate goal. Others believe that holistic representation is the goal – having enough lawyers and trainings and conferences to address every possible need a child could have. And many, many lawyers are just trying to keep their heads above water, doing the best they can to represent too many children with too little time.

As we speak to children's lawyers from across the country, we find that the practice looks drastically different from state to state and, in some cases, from county to county. There are, however, some unfortunate constants: high caseloads, low compensation, inadequate training and lack of supervision. There are others, but these are the four constants. At least one and probably some combination of the four are present in your jurisdiction.

How would the practice be different if we were specialized doctors, rather than specialized lawyers? To return to the pediatric medicine metaphor – we essentially operate as the legal equivalent of pediatric trauma surgeons. We just are not resolving physical problems, but much more complex emotional, familial and behavioral problems for our clients. And we must agree as a profession that all of these problems are best resolved in the context of a permanent family. That is our shared role. It starts with recognizing our value as professionals and demanding respect by achieving results for our clients. And it ends with a drastically changed child welfare landscape where the child's attorney is not an afterthought, but the person whose vision guides the child home.

Would pediatric trauma surgeons be asked to work on 150 to 200 children at one time? Would they be asked to do it without nurses or physician's assistants? Would surgery be scheduled every half hour of the day? Parents would not stand for this. But the children we represent don't have another option. They get us, in whatever form we take. Our role is critically important to our clients. We must hold ourselves accountable.

THE SOLUTION IS PERMANENCY FOCUSED ADVOCACY

So how do we elevate our profession?

There is a way. For over 17 years, The Foster Children's Project (FCP) has operated in Palm Beach County with a singular purpose – to get kids out of foster care and into permanent homes quickly and safely. The office was founded with the goal of getting children into permanent homes within 12 months. When FCP began taking cases in 2001, the average time to permanency was 36 months. Throughout the life of the program, FCP has averaged 12.5 months to get a child into his or her permanent placement. Some may be concerned that this approach adversely impacts parents. But this is not the case. The Chapin Hall study of FCP found substantially higher rates of exits to permanency without any negative impact on rates of reunification.

When FCP was created, it began with the simple premise of measuring the length of time children were in foster care, and it evolved into an approach that has stood the test of time. The primary reason FCP's work has not been replicated is the assumption that it is too expensive. It operates like a real law firm – with caseload targets of 50 children per lawyer, social workers and funds for litigation expenses. This model and approach helped FCP to change the culture of the child welfare system in Palm Beach County. But it is not necessary to have all of the resources in place to take action today.

We are calling this model of representation permanency focused advocacy. And we are proposing a nationwide move in this direction. It means creating a culture where every case has a sense of urgency - where we work harder in between hearings than in court. Permanency focused advocacy is actually very simple. Many of the strategies learned can be utilized with any caseload or system. And imagine if we were all able to move children home a bit faster. What could that mean for the child welfare system as a whole? Even one month per child?

There are three key features of permanency focused advocacy. If every children's attorney adopted these, we would see the kind of culture shift needed to transform the child welfare system.

THE CHILD'S ATTORNEY ACTS AS LEAD COUNSEL

As children's attorneys, we lack clarity that is so common in many other areas of the law. Criminal defense attorneys know they are working for a "not guilty" verdict. A lawyer suing an insurance company on their client's behalf is looking for a win, so the client receives a judgement. The list goes on and on. But for children's attorneys, there are no wins or losses. We must counsel our clients and seek the best possible outcome, but many times that is a moving target. And we are expected to address the well-being of the child while in the system. This unique role, and the frequent high caseloads, sets lawyers up for failure. We take the small wins and handle only the most urgent issues between court hearings. This leaves little time for legal strategy and proactive steps to move cases forward.

The only way for children's lawyers to transform the child welfare system is to step into the role of lead counsel and take responsibility for the direction and pace of the case. After all, the case is styled "in the interest of our client." That alone should bring us a degree of clarity: we are lead counsel because we represent the most important person, indeed the subject, of the case. Once we realize this, we must then focus on the most important legal problem first.

THE CHILD'S ATTORNEY FOCUSES ON THE CHILD'S NUMBER ONE LEGAL PROBLEM – BEING IN THE CUSTODY OF THE STATE, INSTEAD OF A FAMILY

Most children in foster care have the same problem that Mary Ellen Wilson had – they need a safe and permanent home. If a client is in state custody and you are appointed as their lawyer, it is safe to conclude that your role is to get them out of state custody as quickly as possible. Taking that a step further, since your client is a child, it's safe to assume your client needs to be with a family. By keeping it simple, we believe the mission of the child's attorney is clear – get the child home. Preferably (with some exceptions) this will mean the birth parent's home. Sometimes it will mean an adoptive home.

As the child's attorney, you cannot control what the parent will or will not do on their case plan. You can remove obstacles. You can motivate them with visitation. You can plan concurrently by keeping siblings together and in foster homes that will adopt if need be. And you can do this one

case at a time. By developing a strategy for permanency within one year for each of your clients, you can start to move the needle in your jurisdiction, even if it's just a little.

THE CHILD'S ATTORNEY ENFORCES PERMANENCY TIME FRAMES AS A RIGHT OF THE CHILD

How many cases do not see real movement until right before the hearing? What if we spent more time working between hearings? We must hold the department accountable for referrals and services. We must bring cases back into court when action is not taken.

How do we keep our focus on the time frames? We can start by measuring.

> "The signal of the importance of something is whether you're actually measuring it and you're holding people accountable to improving those numbers."
> Sandra E. Peterson (Group Worldwide Chairman, Johnson & Johnson)

While some children's law offices have databases to track cases, many attorneys operate with a stack of files and an impossible list of things that need to be done. If we are to take charge of our cases, and work to improve the system, we must start by measuring. It is not the lack of laws on the books that prevents children from finding permanency quickly. It is flaws in the system and the court process. These are areas that may seem outside the purview of the role of a children's attorney, but we submit that they are not. We are, in fact, in the very best position to be the driver of the case.

Once in the driver's seat, it is our role to watch the clock for our client. This means watching more than the goal date of the case plan. It means making sure the parents get engaged in services early, taking the case back into court when it veers too far off the course you have set for it and developing interim goal dates for each task in the case plan. These are all ways you can begin to let your jurisdiction know that you are watching the clock. As you introduce these practices, you'll start to see a reduction in your client's length of stay - if you measure your outcomes.

Measuring can also lead to new resources. If the success of FCP can be replicated, we can all make the case for lower caseloads based on the real, measurable impacts we have on individual clients and the system.

CHILDREN'S ATTORNEYS HAVE THE POWER TO CHANGE THE CHILD WELFARE SYSTEM ONE CASE AT A TIME

If all of us were pulling together in the direction of permanency focused advocacy, what would be the cumulative effect on the child welfare system in this country? What if children removed from their homes because the parents smoked marijuana and had a dirty house were returned in 6 months instead of a year? What if children whose parents disappeared from their lives at birth got adopted in 6 months instead of 18 or 24?

What we as children's attorney bring to the table are critical thinking skills. We analyze the facts, apply the law to them, and bring about the best outcome for our client. Achieving an outcome for your client may involve thinking way outside the box, or even changing the practice of the local child welfare agency. By doing this, FCP has impacted its local system of care in the following ways:

Visitation – Once you know it's the single biggest predictor of reunification, you realize once a month is not enough. FCP pushed for 3 times a week for infants. They were told it would break the system. The system did bend but it did not break. Three times a week visitation is now the rule in Palm Beach County - for every child.

Concurrent Planning – Once you know that, from the child's perspective, it makes no sense to spend a year in a foster home only to be moved to an adoptive home if your parents fail, you realize the first placement should be the last placement. So FCP pushed hard for "foster to adopt" homes, so that if parents could not be reunified, the child would only undergo one change in caretakers. They were told it could not be done. Now, the majority of children under age 5 are in foster homes that will adopt them if the parents are unsuccessful.

Material Breach of the Case Plan – Once you know that the case plan is really just a contract, you realize your client is a party to that contract, or, at a minimum, a third-party beneficiary. So FCP borrowed from contract law and argued material breach as a ground to terminate parental rights when parents stopped working their case plans. In these cases, it makes no sense to wait the whole 12 months of the plan. Material breach is now a statutory ground for TPR in Florida.

Prescriptive Case Plans – Once you know that your client's parents have trouble getting things accomplished, you know they need to focus ONLY on what needs to get done. They can't afford distraction. So FCP argued against extraneous tasks in case plans. As it turns out, Chapin Hall found this was one of the critical differences in cases where children were represented by FCP. The case plans contained only relevant tasks – and that helps kids get home quicker.

These are just a few of the ideas that grew organically out of permanency focused advocacy. You likely face different issues in your jurisdiction, but the process is the same. Once you change your focus, your practice begins to change. If this seems daunting, keep in mind that not all of the cases we handle as children's attorneys are difficult. Sadly, parents often make the decision about whether or not our client is going home an easy one. Even ruling out the complex cases, just tackling the cases where the outcome is not in doubt could have a tremendous effect on child welfare nationally. Some may say that's not our concern, that it's the province of state and Federal governments to worry about the health of the child welfare systems. We disagree.

WE HAVE THE POWER TO TRANSFORM THE CHILD WELFARE SYSTEM

We believe that it is time for us, as children's attorneys, to take matters into our own hands - just as Elbridge Gerry did when he stepped outside his role as a lawyer and formed the first child protection agency. Let's all start pulling in the same direction and transform this broken system.

Less kids in care means a healthier system for our next client to enter. It means case workers with more time. It means less crowded foster homes. It means shorter waiting lists for services. It means all of that, and more.

Together, we can change the system one step at a time. Start small. Pick one. Measure. Use results to show the value of your work and increase resources for high quality representation.

We hope this conversation continues on many fronts, and that you will be a part of it. For our part, we have started the Children's Law Podcast - the first project of our new organization, True North Child Advocates. You can find us at childrenslaw.org or on iTunes by searching "True North Children's Law." Please join the conversation. Your voice is vital.

True North Child Advocates was formed by William Booth, Angela Orkin, Jim Walsh and John Walsh with the goal of spreading the simple message that advocacy is the answer to our nation's broken child welfare system. They reside and practice in New York, Atlanta and West Palm Beach, respectively, and are the hosts of the Children's Law Podcast.

Filed 3/26/20

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re C.P., a Person Coming Under the Juvenile Court Law.	
SAN BERNARDINO COUNTY CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. A.P., Defendant; M.P. et al., Interveners and Appellants.	E072671 (Super.Ct.No. J271063) OPINION

APPEAL from the Superior Court of San Bernardino County. Steven A. Mapes, Judge. Reversed and remanded with instructions.

Patricia K. Saucier, under appointment by the Court of Appeal, for Objectors and Appellants.

Michelle D. Blakemore, County Counsel and Svetlana Kauper, Deputy County Counsel, for Plaintiff and Respondent.

In this appeal, the maternal grandparents of C.P., the child who is the subject of this dependency matter, argue that the absolute statutory bar to placement of the child in their custody, either through approval as a resource family pursuant to Welfare and Institutions Code[1] section 16519.5 or on an emergency basis pursuant to section 361.4, is unconstitutional as applied to them.[2] The bar is triggered in this case by a disqualifying misdemeanor criminal conviction suffered by grandfather in 1991. We agree with grandparents that the absolute statutory bar to placement of the child in their custody would be unconstitutional as to them *if* they can establish that they have a *parental* relationship with the child, not just a grandparental relationship. We remand to the trial court to make the predicate factual findings and consider the issue anew from that perspective.

I. FACTUAL BACKGROUND

The child (born 2011) was removed from mother's custody in May 2017, after he was sexually abused by a maternal uncle; at the time of removal, mother, child, and uncle all resided in the home of the grandparents. The uncle is now incarcerated on a 20-year sentence for child molestation. Mother has been out of contact with CFS, and reportedly has moved out of state. The child was initially placed with a foster family, but in June

[1] Further undesignated statutory references are to the Welfare and Institutions Code.

[2] The maternal grandparents are objectors and appellants M.P. and S.P. The child's mother, alleged father, and paternal grandparents are not parties here.

2017 he was moved to a group home capable of addressing his special health care needs related to autism.

Mother failed to reunify with the child. The child was ordered to remain in the group home under a planned permanent living arrangement, with the goal of identifying an appropriate placement for legal guardianship.

The grandparents started the resource family approval process, with the goal of having the child placed in their care, almost immediately after the child was removed from mother's custody in May 2017. The grandparents have been involved in the regular child and family team meetings for the child, and at least at some points have been designated as the educational rights holders for the child. They have also maintained contact with the child, making a two-hour drive to visit with him weekly once their visitation was approved in October 2017; a social worker characterized grandparents as the "only constant" in the child's life. The grandparents' visitation was initially supervised, but in November 2018 "four hour Saturday visits off site" were approved. The child was allowed to spend almost two weeks in the grandparents' home for the 2018 holidays, staying with them from December 21, 2018 to January 2, 2019. By January 2019, in the judgment of the group home, the child had made "significant progress" with respect to his developmental issues, and was "ready and willing to transition into living with his grandparents," though a transition to a different placement would raise concerns due to his "need for routine and anxiety with new places/situations." In February 2019, with the agreement of the social worker, the juvenile court gave CFS authority to allow

grandparents to have overnight and weekend visitation with the child on the condition that the child was to have no contact with anyone CFS had not approved.

During the process, however, a criminal background check revealed that the grandfather had a 1991 misdemeanor conviction under Penal Code section 273d, which is disqualifying under Health and Safety Code section 1522. (See Health & Saf. Code, § 1522, subd. (g)(2)(A)(i) [prohibiting exemption for resource family applicant with conviction under Pen. Code, § 273d prior to January 1, 1994].) Penal Code section 273d applies to "[a]ny person who willfully inflicts upon a child any cruel or inhuman corporal punishment or an injury resulting in a traumatic condition . . ." (Pen. Code, § 273d, subd. (a).) According to grandfather's account of the circumstances giving rise to this conviction—the only account in our record—he pleaded no contest, and was sentenced to probation and required to take anger management classes after he was accused of pushing his wife and son during, or while trying to walk away from, an argument.

Grandfather successfully took steps to have his name removed from the Child Abuse Central Index (CACI), the database maintained by the California Department of Justice regarding reports of known or suspected child abuse or severe neglect. (See *In re C.F.* (2011) 198 Cal.App.4th 454, 462-463 [discussing CACI and process of removing reports from CACI].) Grandfather also obtained a dismissal of the charge pursuant to Penal Code section 1203.4.[3] Nevertheless, in November 2018, CFS issued grandfather a

[3] Penal Code section 1203.4 allows a defendant who successfully completes probation to petition the court to set aside his or her guilty plea and dismiss the complaint or information. (*People v. Mazumder* (2019) 34 Cal.App.5th 732, 745.) "If granted,

"Notice of Action to Individual Regarding Resource Family Approval Criminal Record Exemption Decision," stating that the grandparents' application for resource family approval must be denied because of the grandfather's conviction. The grandparents filed an administrative appeal of that decision. Our record does not reveal what disposition, if any, was reached in that administrative appeal, though we can infer that it has not been resolved in the grandparents' favor, since they continue to pursue this appeal.[4]

During a team meeting in January 2019, the child stated "'I love my grandma and grandpa and I want to live with them forever.'" At a post permanency review hearing in February 2019, the child again expressed that he wished to live with the grandparents by stating "I want to go home," and confirming that "home" meant his grandparents' house. The child's counsel noted, however, that "placement is not looking likely anytime soon" because of grandfather's "nonexemptible criminal history and prior CACI hits." The juvenile court appointed counsel for the grandparents, and requested briefing on the issue of whether a "misdemeanor 28 years ago" could preclude any exercise of "independent judgment" regarding the child's placement.

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section 1203.4 relief provides substantial benefits . . . ." (*Ibid.*) Nevertheless, it """does not purport to render the conviction a legal nullity""" and it "'does not, properly speaking, "expunge" the prior conviction.'" (*Ibid.*)

[4] In any case, CFS has never argued that the grandparents required to exhaust all administrative remedies before challenging the denial of an exemption in the juvenile court. (See *Mission Housing Development Co. v. City and County of San Francisco* (1997) 59 Cal.App.4th 55, 67 ["[T]he defense of failure to exhaust administrative remedies may be waived if not properly or timely raised."]; see also *In re N.V.* (2010) 189 Cal.App.4th 25, 31 [noting several exceptions to the doctrine of exhaustion of administrative remedies that apply to a challenge to an agency determination that a relative's home would be unsuitable for placement of a dependent child].)

Counsel for CFS filed a memorandum of points and authorities arguing that placement of the child with the grandparents without a criminal record clearance or exemption was barred by statute, that grandfather's conviction was nonexemptible, and that obtaining relief under Penal Code section 1203.4 did not render the conviction a nullity or exemptible for purposes of determining whether placement of the child would be permissible. Grandparents' counsel filed a memorandum of points and authorities, arguing that CFS had abused its discretion in denying the grandfather's exemption request, and asking that the juvenile court "order the department to reevaluate" the request.

At a hearing in April 2019, the juvenile court agreed with CFS's analysis of the law, and denied "the grandparents' request to be reassessed . . . ."

II. DISCUSSION

We consider here whether the absolute statutory bar to placement of the child with grandparents, triggered by grandfather's misdemeanor conviction from 1991, is unconstitutional as applied.[5] If this question is answered in the affirmative, CFS should be required to reconsider grandparents' request for an exemption starting from the premise that grandfather's conviction is generally disqualifying but potentially exemptible in exceptional circumstances, based on an individual analysis. We hold that

[5] Grandparents did not raise this constitutional issue in the juvenile court. Nevertheless, we exercise our discretion to reach the issue. (See *Los Angeles Unified School District v. State of California* (1991) 229 Cal.App.3d 552, 555 ["belatedly raised" constitutional issue that involves "a purely legal question involving no disputed facts" may be considered for the first time on appeal].)

if the trial court finds that grandfather has a parental relationship with C.P., he is entitled to an individual analysis of his exemption request, rather than the application of an absolute statutory bar, and that the circumstances here may warrant an exemption being granted.

A. *Background Regarding Resource Family Approval Process*

The resource family approval process is intended to be an expedited assessment of individuals and families to provide foster care and become legal guardians or adoptive families for dependent children. (§ 16519.5, subd. (a).) A resource family is "an individual or family that has successfully met both the home environment assessment standards and the permanency assessment criteria" established by statute and the State Department of Social Services. (*Id.*, subds. (c), (d).)

The home environment assessment standards include a "criminal record clearance of each applicant and all adults residing in, or regularly present in, the home . . . ." (§ 16519.5, subd. (d)(2)(A)(i)(I).) If the background check of such individuals indicates that any of them has been convicted of "an offense described in subparagraph A of paragraph (2) of subdivision (g) of Section 1522 of the Health and Safety Code, home approval *shall be denied*." (§ 16519.5, subd. (d)(2)(A)(i)(III), italics added.) As relevant here, these offenses include a conviction under Penal Code section 273d dating from prior to January 1, 1994. (Health & Saf. Code, § 1522, subd. (g)(2)(A)(i).) The "approving entity"—here, CFS—may grant an "exemption from disqualification" for some offenses, if the applicable criteria are met, but pre-1994 Penal Code section 273d

offenses are among those that are categorically nonexemptible.[6] (See § 1522, subd. (g)(2)(B)-(D).) Dismissal of a conviction under Penal Code section 1203.4 does not render the conviction either a nullity or exemptible for purposes of determining whether a conviction is disqualifying. (*Los Angeles County Dept. of Children & Family Services v. Superior Court* (*Cheryl M.*) (2003) 112 Cal.App.4th 509, 518-519.)

When resource family approval has not yet been granted, a child may be placed on a temporary emergency basis with a relative or nonrelative extended family member. (§§ 309, subd. (d), 361.45.) Again, however, criminal background checks are required before placement, and the standards set out in Health and Safety Code section 1522 apply; if an adult residing in or regularly present in the home has a conviction under an offense described in Health and Safety Code section 1522, subdivision (g)(2)(A), "the child shall not be placed in the home . . . ." (§ 361.4, subd. (b)(5).)

B. *Standing*

CFS argues that the grandparents lack standing because they were not "directly injured" by the juvenile court's order that the child remain in his current placement. We reject this argument.

In substance, grandparents' constitutional challenge is fairly construed not as a challenge to the juvenile court's order regarding the child's placement, but rather its

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[6] Formerly, the county agency would apply to the State Department of Social Services for approval of the exemption, but the relevant statutes have been amended. (See *Los Angeles County Department of Children and Family Services v. Superior Court* (*Valerie A.*) (2001) 87 Cal.App.4th 1161, 1166-1167 [discussing former procedures for exemptions].)

rejection of their request that CFS be required to reassess them for approval as a resource family.[7] That rejection is an order after judgment, appealable under section 395, subdivision (a). (§ 395, subd. (a)(1) ["A judgment in a proceeding under Section 300 may be appealed in the same manner as any final judgment, and any subsequent order may be appealed as an order after judgment"].) The grandparents were directly "aggrieved" by the juvenile court's denial of their request, in that they have a legally cognizable interest that is injuriously affected by the decision. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 948; see also *In re Esperanza C.* (2008) 165 Cal.App.4th 1042, 1053 [agency conceded that relatives denied criminal records exemption had standing to challenge the denial; Court of Appeal found child and parent whose parental rights had not yet been terminated also had standing].) Moreover, we are required to "liberally construe the issue of standing and resolve doubts in favor of the right to appeal." (*Ajida Technologies, Inc. v. Roos Instruments, Inc.* (2001) 87 Cal.App.4th 534, 540.)

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[7] The remedy grandparents request on appeal is different from the one requested in the juvenile court. In the juvenile court, grandparents requested an order that CFS "reevaluate [their] request for an RFA exemption." In this appeal, now represented by different counsel, they ask that we "reverse the juvenile court's findings and orders made pursuant to section 361.4" and "remand for a hearing to determine whether placing [the child] with [the grandparents] is in [the child's] best interests." In our view, grandparents' trial counsel better framed the appropriate remedy. As grandparents' trial counsel noted, the juvenile court "does not have the authority to order placement of [the child] with the grandparents." It can find, however, that CFS misunderstood the scope of its discretion in denying an exemption request, and order it to reconsider the issue under the appropriate legal standard. (See *In re M.L.* (2012) 205 Cal.App.4th 210, 227 [juvenile court's finding that the agency had abused its discretion in denying exemption request did not give it authority to grant exemption request or place child in the home of party requesting exemption].)

We find that grandparents have standing, and turn to the merits of their challenge to the juvenile court's order.

C. *Separation of Powers*

The grandparents contend that the statutory bar to placement of the child with them because of the grandfather's conviction violates the doctrine of separation of powers "by giving the legislature, instead of the juvenile court, the power to determine the best interests of the children, especially where it does so without fully considering the totality of the child's circumstances."

Grandparents offer no authority establishing that determination of a dependent child's best interests generally, or the determination of whether to place a child with someone despite a prior criminal conviction more specifically, should be viewed as constitutionally vested only in the judicial branch. (See *Carmel Valley Fire Prot. Dist. v. State of California* (2001) 25 Cal.4th 287, 298 (*Carmel Valley*) [purpose of separation of powers doctrine "'is to prevent one branch of government from exercising the *complete* power constitutionally vested in another' . . . "].) To the contrary, all three branches of government are properly involved. For example, the decision to grant or deny a criminal records exemption is an executive one subject to administrative review. (*In re M.L.*, *supra*, 205 Cal.App.4th at p. 227.) The judiciary may review an agency's ruling on an exemption request as part of the dependency proceeding, as the juvenile court did here, or on writ review from denial of administrative relief. (*In re Esperanza C.*, *supra*, 165 Cal.App.4th at pp. 1058-1059.) The judiciary reviews the agency's decision for abuse of

discretion. (*Id.* at pp. 1049-1050.) The scope of that discretion is defined by the statutes enacted by the Legislature. (See *State Bd. of Education v. Honig* (1993) 13 Cal.App.4th 720, 750 ["Essentials of the legislative function include the determination and formulation of legislative policy"].)

Grandparents emphasize that section 362, subdivision (a), grants the juvenile court the power to make "any and all reasonable orders for the care, supervision, custody, conduct, maintenance and support of the child . . . ." They ignore, however, that this statute, adopted by the Legislature, is also subject to limitations set by the Legislature. The doctrine of separation of powers does not apply here.

D. *Due Process*

Grandparents concede that the juvenile court correctly determined that, under the statutory scheme, grandfather's conviction is nonexemptible. They contend, however, that because that statutory scheme places an absolute bar on the child ever being placed with them, based solely on the Penal Code section of grandfather's conviction and not on any individualized determination of their circumstances, it violates their constitutional right to due process. We agree that the absolute statutory bar may be unconstitutional as to grandparents, and therefore unenforceable as to them, depending on factual findings that need to be made by the trial court in the first instance.

"The due process clause protects substantive fundamental liberty interests against unreasonable government interference." (*In re H.K.* (2013) 217 Cal.App.4th 1422, 1432.) In addressing a substantive due process argument, we first identify the liberty

interest asserted and then determine whether it is a fundamental right that is "'deeply rooted in this Nation's history and tradition . . . .'" (*Ibid.*) "When a statutory classification impinges on a fundamental right, it is subject to strict scrutiny review." (*Id.* at p. 1433.) "If a statute does not implicate a fundamental right or operate to the singular disadvantage of a suspect class, only a rational relationship to a legitimate state purpose is necessary to uphold the constitutional validity of the legislation." (*Ibid.*) We apply the de novo standard of review to constitutional questions. (*Ibid.*)

Courts have generally rejected the proposition that grandparents, in their capacity as grandparents and without more, have a constitutionally protected interest in their relationship with the grandchild. (See *In re Brittany K.* (2005) 127 Cal.App.4th 1497, 1508 [noncustodial grandparent of juvenile court dependents have no substantive due process right to free association with minors, or to maintain a relationship with them]; *In re R.J.* (2008) 164 Cal.App.4th 219, 225 [recognizing absence of authority for the proposition that a grandparent has a constitutionally protected interest in the custody and care of his or her grandchild]; *Miller v. California* (9th Cir. 2004) 355 F.3d 1172, 1175 ["While there is no question that *parents* have a constitutionally protected liberty interest in making decisions about the care, custody, and control of their children [citations], we have never held that any such right extends to *grandparents*"]; but see *Drollinger v. Milligan* (7th Cir. 1977) 552 F.2d 1220, 1227, fn. 6 [stating, without further analysis: "The nuclear family has traditionally constituted the unit afforded the protection of due

process. We see no reason, however, not to extend this guaranty to the grandfather-grandchild relationship"].)

It is well-established, however, that essentially *parental* bonds may develop between a child and a caregiver, including a grandparent, who are not biologically parent and child, and courts have often found these parental relationships to be constitutionally protected. (See *In re H.K.*, *supra*, 217 Cal.App.4th at p. 1435; see also *In re Bridget R.* (1996) 41 Cal.App.4th 1483, 1503-1504, 1507, superseded by statute on another ground as stated in *In re Santos Y.* (2001) 92 Cal.App.4th 1274, 1311-1312 [finding children in care of prospective adoptive parents to have a "*presently existing* fundamental and *constitutionally protected* interest in their relationship with the only family they have ever known"].) Grandparents argue that their bond with the child falls within this constitutionally protected category of relationship.

Grandparents rely primarily on New York authority involving circumstances where the child had long been living with the caretakers *as parent and child*. In *Matter of Abel* (N.Y. Fam. Ct. 2011) 33 Misc.3d 710, the child had formed an "'inseparable bond'" with maternal relatives who had served as his parents since his birth and who wished to adopt him, but were disqualified from adopting by a conviction from 12 years before the child was born. (*Id.* at pp. 711-713.) The children in *In re Adoption of Jonee* (N.Y. Fam. Ct. 1999) 181 Misc.2d 822 had lived for seven years with an aunt who wished to adopt them, who they "viewed as a 'loving parent,'" and with whom they shared a "'deep bond.'" (*Id.* at pp. 824-825.) The children were nevertheless being removed from the

aunt's custody solely because of a 20-year-old conviction. (*Ibid*.) *In re Adoption of Corey* (N.Y. Fam. Ct. 1999) 184 Misc.2d 437 involved children placed in an unrelated foster family with whom they had developed a closely bonded parental relationship, and who desired to adopt them. (*Id.* at pp. 439-440.) The children were placed in the home before a new statute disqualified the parents from custody of the children, let alone adoption, because of a prior conviction suffered by the prospective adoptive father, who had since gotten sober and otherwise fully engaged in rehabilitating himself. (*Id.* at pp. 439-441.) In each of these cases, the New York courts found that the absolute statutory bar disqualifying the parents violates state and federal constitutional rights, reasoning that due process required an individualized determination of whether maintaining the parental relationship would be in the children's best interests, regardless of the parents' prior convictions. (*Matter of Abel, supra,* at pp. 717-718; *In re Adoption of Jonee, supra,* at p. 829; *In re Adoption of Corey, supra,* at pp. 446-447.)

We are persuaded that the reasoning of these New York courts, grounded in federal constitutional principles, applies equally well in this state. A permanent, irrebuttable statutory presumption regarding certain convictions—no matter what the underlying facts, no matter how long ago, and no matter the characteristics of the parent apart from the conviction—may not, consistent with the California State and United States Constitutions, absolutely disqualify an adult who shares a *parental* bond with a child from ever having that child placed in their care. Due process principles require, at the least, an individualized, case-by-case analysis, rather than the placement of an adult

with a parental relationship in a category as broad as the one in which grandfather has been placed. The prohibition here encompasses even, for instance, very old misdemeanor convictions where a child was not physically harmed. As applied, the absolute bar at issue may work an unreasonable government interference with parental rights.

On the present record, we find it possible that grandparents have developed a relationship with the child that amounts to the sort of "bonded, quasi-family relationship that courts have found worthy of protection as a fundamental interest." (*In re H.K.*, *supra*, 217 Cal.App.4th at p. 1435.) Among other things, the record makes it obvious that the child loves his grandparents and views their house as his "home." As well, a social worker viewed grandparents as the "only constant" in the child's life—and endorsed overnight, unsupervised visitation, sometimes extended for days and even weeks at a time—which also supports the conclusion that grandparents have served a fundamentally parental role in the child's life.

Moreover, on the present record, we find it plausible that, absent the absolute statutory bar, CFS would have found grandfather's conviction to be exemptible. In the absence of an absolute statutory bar cutting short the analysis, an agency considering whether to grant a criminal records exemption is required to consider factors "including, but not limited to, the following as evidence of good character and rehabilitation: the nature of the crime and whether it involved violence or a threat of violence to others; the period of time since the crime was committed and the number of offenses; circumstances surrounding the commission of the crime that would demonstrate the unlikelihood of

repetition; activities since conviction, including employment, therapy or education; a full and unconditional pardon or certificate of rehabilitation; character references; and honesty and truthfulness in the exemption application process." (*In re Esperanza C.* (2008) 165 Cal.App.4th 1042, 1056 (*Esperanza C.*))

We emphasize that the Legislature's determination that an offense constitutes an absolute bar to placement must still be considered as the starting point in the analysis when it applies, even though due process requires that a person who has a parental relationship with a child receive a more individualized determination when placed in a broad category for disqualification.[8] And for crimes normally subject to an absolute statutory bar on exemptions, the first factor listed in *Esperanza C.*—the nature of the crime and whether it involved violence or a threat of violence to others—will often weigh strongly, even dispositively, in favor of denial. That may not be so, however, for a misdemeanor conviction like grandfather's, which arose, so far as we can tell from the record, from circumstances involving only minimal violence and no injury to any victim. Also, the other factors, so far as we can determine, are either neutral or weigh in favor of

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[8] Consistent with cases applying the due process clause to require an individual determination where persons are placed broad regulatory or statutory categories, we believe the absolute statutory bar must be a starting point for the analysis, even if constitutional considerations require departure from that default position. (See *In re Humphrey* (2018) 19 Cal.App.5th 1006, 1044-1045 [describing bail amount from schedules as "starting point" and "default position," even though individualized inquiry required to make final determination of amount necessary to secure defendant's appearance]; *Beckles v. United States* (2017) 137 S.Ct. 886, 894 [describing federal sentencing guidelines as "'the starting point and the initial benchmark' for sentencing" after *United States v. Booker* (2005) 543 US. 220, 259, even though individualized assessment is constitutionally required.)

granting grandfather an exemption. Among other things, grandfather's offense was committed in 1991; although he has not obtained a pardon, he has obtained dismissal of the charge pursuant to Penal Code section 1203.4; and we have no reason to conclude he has committed any other crimes, or otherwise failed to show good character and complete rehabilitation.

Nevertheless, the record we have before us is limited, and in this appeal, at least, CFS has contested whether grandparents' relationship with the child should be viewed as parental. We cannot determine how long the child and his mother were living with grandparents before the child was removed, and the record has only sparse information about the circumstances of that cohabitation. The child resided in the grandparents' house, but it was the child's mother who had custody of him. By the April 2019 hearing, the child had not resided with the grandparents for two years. By the time this opinion issues, approximately another year of the child living in a group home will have elapsed. Our limited record shows no reason to conclude that the child has formed parental bonds with any other parental figures during this time. Although visitation with grandparents was going well as of April 2019, nothing in the record speaks to current circumstances, whether positive or negative. Furthermore, our record contains only grandfather's own, possibly self-serving description of the circumstances giving rise to his 1991 conviction. It may be that there is another side to that story that needs to be taken into account in deciding whether an exemption *should* be granted, even though we hold due process

would require an individualized determination, if it is determined that grandparents have a *parental* relationship with the child.

In other dependency contexts, the existence of a parental relationship is generally a factual determination for the juvenile court to make in the first instance. (See, e.g., *In re Anthony B.* (2015) 239 Cal.App.4th 389, 395 [regarding determination of whether there is a beneficial parental relationship for purposes of statutory exception to termination of parental rights].) Here, grandparents' constitutional argument, premised on the existence of a parental relationship with the child, was raised for the first time on appeal, so the juvenile court has never had the opportunity to consider whether their relationship with the child is the sort of "bonded, quasi-family relationship that courts have found worthy of protection as a fundamental interest." (*In re H.K.*, *supra*, 217 Cal.App.4th at p. 1435.) We conclude that the matter should be remanded for the trial court to make that predicate factual determination in the first instance.

III. DISPOSITION

The juvenile court's order denying grandparents' request for an order that CFS reassess their application to be approved as a resource family is reversed, and the matter is remanded for the trial court to take evidence and make factual findings about whether grandparents' relationship with the child is the sort of "bonded, quasi-family relationship" that should be deemed "worthy of protection as a fundamental interest." (*In re H.K.*, *supra*, 217 Cal.App.4th at p. 1435.). If the juvenile court finds that grandparents' relationship with the child is worthy of such protection, it shall direct CFS

to reassess grandparents' request for a criminal records exemption on an individualized basis, applying the legal standard articulated in this opinion. If the juvenile court finds that grandparents' relationship with the child is not worthy of such protection, it shall again deny grandparents' request that CFS be directed to reassess grandparents' application.

CERTIFIED FOR PUBLICATION

RAPHAEL
J.

We concur:

CODRINGTON
Acting P. J.

SLOUGH
J.

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The Judge's Role in Ensuring Meaningful Family Time

Written by Judge R. Michael Key, Troup County Juvenile Court and Troup County Adult Felony Drug Court, LaGrange, GA

While acknowledging the importance of making individualized decisions in cases where reunification is the permanency goal for a child, the failure to provide meaningful family time between the child and the child's parents, in and of itself, is a failure to make reasonable efforts to reunify. In many jurisdictions, family time will be no more meaningful than the expectations set by the presiding judge. It is important for judges to set clear expectations for family time and to model its importance by allowing sufficient court time to effectively exercise judicial oversight and to promote ownership of family time by all parties and attorneys in each case. Judicial oversight should be exercised to address the necessity for supervision, frequency, duration, and quality.

Presumptive Unsupervised Family Time

Even after appropriate inquiry, supervised family time immediately following removal from the home, and for some time following the preliminary protective hearing, will likely be appropriate in a significant number of cases. However, the presumption should be that unsupervised family time is in the child's best interest, and supervision should be required only if the child welfare agency can establish, by at least a preponderance of the evidence presented in court, that supervised family time is necessary for the protection of the child and that unsupervised family time is not in the child's best interest. The issue of supervision should be considered at the first hearing and at every hearing and review thereafter. Even where supervised family time is initially appropriate, there comes a point when, if the family cannot visit unsupervised, consideration needs to be given as to whether reunification is still an appropriate permanency goal or whether the case plan needs to be revised and additional services should be provided.

Frequency and Duration

Child development experts say that daily contact between a parent and a child should occur to maximize bonding and attachment. Even considering the resource challenges in child welfare, it is not unreasonable for the judge to adopt minimum standards as to the frequency and duration for family time. Georgia's family time practice guide (see this issue's Strategies and Tools for Practice section) makes the following family time recommendation: 1.5 to 2 hours, three times per week, for children from birth to 3 years; 2 or more hours, at least two times per week, for children ages 3 to 12 years; and 1 or more hours, one or two times per week, for children ages 12 to 18 years. While there are certainly factors in individual cases that make the provision of this level of family time difficult, any downward deviation from these recommendations should be limited, supported by evidence, and approved by the judge.

Quality

Family time should be as natural and family-like as possible, both in terms of setting and dynamics. It is important for the judge to monitor quality as carefully as frequency and duration. Giving families the very best opportunity to maintain parental relationships contributes to positive outcomes for children removed from their birth families in terms of child well-being and successful and timely reunification.

Links

ACF

The Family Room Blog

Children's Bureau

Child Welfare Information Gateway

Incarcerated Parents

The narrative changes when family time is viewed through the eyes of the child. Nowhere is that truer than when talking about family time with incarcerated parents. Instead of asking why incarcerated parents should be allowed to visit with their children in foster care, ask why children in foster care should not be allowed to visit with their incarcerated parents. The right to visit is valued more when it is expressed as the child's right. Considering the negative impact even a short-term loss of contact has on children, denying family time because parents are incarcerated inflicts significant trauma on the children and undermines the reunification plan. For an article on family time between children and their incarcerated parents, go to https://georgiacourtsjournal.org/a-very-special-thanksgiving-at-the-troup-county-jail/.

Milestones

With effective case planning, implementation, and monitoring, the time frames for moving from supervised family time (when required) to unsupervised family time to the transition home should be reasonably predictable within some acceptable range. Hope drives reunification, and it is hard for families to maintain hope when they have to look too far down the line. Hope survives best when gains can be made and celebrated in shorter periods. Milestones can be set so that, if parents work their case plans and make appropriate progress, there is an expectation of moving from supervised visitation to reunification at targeted intervals.

It Takes a Village

As with many other challenges in the child welfare arena, other stakeholders see family time as something for which the child welfare agency is responsible and fail to accept their own legal and ethical responsibilities. Attorneys for parents, attorneys, guardians ad litem for children, and court-appointed special advocates should hold the child welfare agency and the judge accountable for ensuring that children in foster care have meaningful family time with their parents, but they should also be full partners in making that happen. These advocates can sometimes identify nongovernmental resources to allow for more family time and continuously monitor compliance with the family-time plan and milestones.

Can Family Time Be Expanded Today?

The enhanced guidelines remind us to frequently ask what is preventing the child from returning home safely at every hearing and review. It should be the same with family time. Waiting until the next hearing to consider expanding family time delays permanency and prolongs the harm done by separating children from their families.

This article is not intended to be a research-based authoritative work; rather it is intended to spur thoughts and conversations about the role of judges and other stakeholders in ensuring meaningful family time for children in foster care.

For support for the positions contained herein and for guidance on how to implement meaningful family time, see the *Georgia Family Time Practice Guide: A Guide to Providing Appropriate Family Time for Children in Foster Care* at http://www.gacip.org/family-time-practice-guide/ or contact Judge Michael Key at mkey@troupco.org.

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How Family Visit Coaching Is Making a Difference in San Diego County

Written by Kimberly Giardina, director, County of San Diego Health and Human Services Agency Child Welfare Services, and Jorge Cabrera, senior director, San Diego Field Office, Casey Family Programs

Navigating past the toy aisles without a toddler meltdown can be a challenge for any parent shopping at a big-box store. In San Diego County, that trip to the local Walmart can double as a supervised visit with a coach who supports parents in practicing their parenting skills as they work to be reunified with their child.

"We might start at the child welfare office, and then we move to a park or library," explained Phyllis Carlson, a family visit coach with Home Start, one of four community-based organizations that contracts with the County of San Diego to provide family visit coaching (FVC). "Then, we could move from a park to a library to Walmart. The visit coach can work with the parent to figure out how they can go past a toy aisle without temper tantrums or the parent feeling like they have to buy something they can't afford."

Since 2015, the county has offered family visit coaching to families with complex child welfare needs as part of its title IV-E waiver demonstration project. The county was so pleased with the results that it decided to expand FVC countywide, even though its waiver expired in September 2019.

"We were looking at promising practices to implement as our IV-E waiver demonstration," said Laura Krzywicki, chief of agency operations for child welfare services at the county's health and human services agency. "We really wanted to focus on how we can improve our reunification in 12 and 18 months; how do we reunify kids faster?"

The National Council on Crime and Delinquency (NCCD) evaluated the San Diego program—the first such evaluation of the visit coaching model developed by child welfare and juvenile justice consultant Marty Beyer—and its effects on family reunification, reunification timeliness, and parenting efficacy.

"This model differs from the traditional supervised-visits approach used by most child welfare agencies in that parents interact with a coach during visits who focuses on the family's strengths and the children's needs," the evaluation explained.

The county hoped to look at its rates of reunification at 18 months, timeliness of reunification, and how often children reentered care.

According to Krzywicki, the county has not had enough time to evaluate whether children's reentry into care has been impacted. However, the NCCD evaluation found that 30 percent of families who were referred to FVC were reunified within 18 months if parents did not participate in the program compared with 47 percent for families with parents who completed the coaching program. Even parents who participated but did not complete the program had a higher reunification rate (32 percent) within 18 months.

The evaluation found that family visit coaching did not speed up the reunification process, but it did show a statistically significant improvement in parenting skills. With family visit coaching,

parents meet with a coach before, during, and after supervised visits with their children. Together, they choose where to meet and decide what they want to accomplish.

"With visit coaching, it gives the parents opportunities to visit in a natural setting that's not in a child welfare office," Krzywicki said. "(Coaches) spend a lot of time helping the parent prepare for the trauma-related needs that come from visitation. Traditionally, in supervised visits when there's a removal, when the child first sees the parent, there might be behavioral problems. They might act out. The coach prepares the parents for this and how to respond in a trauma-informed way." After the visit, the coach and parents discuss what went well and what they can do better.

Coaches have a small caseload, which gives them flexibility to meet family needs. They, together with the parents, invest in 1- to 3-hour visits, one to three times a week, for 3 to 6 months.

The county is discussing how to expand the program beyond the 650 children served by the four community-based organizations. With support from Casey Family Programs, the county is consulting with Beyer on next steps. The county is hopeful that family visit coaching, which NCCD calls "promising," will be included as an intervention in the Family First Prevention Services Act Clearinghouse.

One surprising result of the NCCD evaluation was that social workers did not refer families to FVC until much later in their engagement (an average of 7.5 months from removal). As they consider expansion, the county will look at policies and practices that could support earlier referrals, according to Krzywicki.

Carlson, who became a coach in 2018 after retiring as a social worker for child welfare services, sees a distinct difference in her new role.

"I am very much focused on developing a relationship with (parents), helping them develop a trusting relationship with their child, and helping them find ways of being protective," she said. "I have found that through reframing some of the situations they share with us, we can break down some of their barriers/resistance with their social worker and with the system, and this helps propel them toward reunification, ultimately restoring their parental role."

Parents who were interviewed for the NCCD evaluation said they preferred the coaching format. When asked about traditional visitation supervision, one parent said, "Oh, it made me feel uncomfortable. She didn't talk or interact. I didn't know what she thought about how I was doing."

Carlson also sees the impact family visit coaching has on parents. "In the beginning, clients come and they're angry, they feel a little lost, they feel confused about how the system works … and they often don't really understand the connection between the roles they played that led them there and the services that are being provided to them," she said. "As parents move forward with their case, they can't wait to call us with their accomplishments."

Coaches also help families build their own support networks. "By modeling a relationship that is trusting and supportive, they can go out and find relationships that have similar characteristics so they can support themselves," Carlson said.

By offering a more natural setting and working with parents to manage their sadness or anger, coaching makes family time more meaningful, Krzywicki said. "As long as you have kids in out-of-home care, this is a program you could be looking into."

The Administration for Children, Youth and Families recently issued an information memorandum that includes the County of San Diego's approach to family visit coaching, along with research, best practices, resources, and recommendations for providing children and youth in out-of-home care safe, meaningful, and high-frequency family time.

To learn more about family visit coaching, visit www.visitcoachingcommunity.com.

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In Pursuit of Permanency for Native American Children

Antonia "Toni" Torres, MSW
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Protective Services Program Manager
County of San Diego, Child Welfare Services
Policy and Program Support

Learning Objectives

- Participants will learn about permanency challenges and opportunities specific to Indian children and families.
- Participants will learn about tools and resources available for Native American families that will help lead to greater permanency.

Definition of Permanency and Reunification

Permanency means a legally permanent, nurturing family for every **child** involved in the foster care system. Caseworkers focus first on preserving and strengthening families and on preventing the need to place **children** outside of their homes.

Permanent Connections for a Native child means, supporting life long connections to his/her tribe and individuals that play an important part of their life.

Reunification efforts focus on returning them to the family of origin as soon as is safely possible.

Source: https://training.cfsrportal.acf.hhs.gov/section-2-understanding-child-welfare-system/3030

ICWA Inquiry and Case Planning

- Early and ongoing Native American heritage inquiry and timely notification/involvement of the child's Tribe. The term "reason to believe" refers to the threshold for continued inquiry regarding a child's potential membership with a tribe.
- (ACL 20-38) Pursuant to WIC § 224.2(a), the duty to inquire in *all* referrals begins at first contact and must occur regardless of the likelihood of court intervention. The term "reason to believe" refers to the threshold for continued inquiry regarding a child's potential membership with a tribe.
- If thorough inquiry to identify an Indian child is not conducted prior to the involvement of the juvenile court, it is unlikely that CWS agencies will be able to meet the ICWA requirements such as making active efforts to provide "remedial services and rehabilitative programs designed to prevent the breakup of the Indian family." (25 USC §1912(d))
- Case plans are developed following a thorough assessment of the family that address child safety concerns includes family strengths and cultural considerations. They should be developed in partnership with the family, tribes and community supports.

Reunification and Concurrent Planning

- When Reunification is goal, it is the Agency and tribes responsibility to insure the case plan and all services support this plan, but it is the agencies responsibility to also work with the family and tribe to implement ***concurrent planning*** to ensure that permanency is achieved for the child in as timely a manner as possible and within ASFA guidelines.
- Concurrent planning involves identifying and working toward a child's primary permanency goal, such as reunification, while simultaneously identifying and working on a secondary goal, such as adoption/TCA or guardianship.
- This provides caseworkers with a structured approach to move children quickly from foster care to the stability of a safe and continuous family home.

Adoption and Safe Family Act (ASFA)

ASFA includes five possible permanency goals for children in foster care (note that among these are two distinct guardianship goals).

- **Reunification** with the parent
- **Termination of parental rights (TPR)** and **Adoption**
- **Guardianship** with a permanent guardian
- **Guardianship** with a "fit and willing relative" while remaining in the State's legal custody
- **Another planned permanent living arrangement (APPLA)** while remaining in the State's legal custody

In addition, the are other permanency goals that apply to Native American children:

- **Tribal Customary Adoption**
- **Designation of a Tribal Custodian**

Active Efforts

- **Active efforts** are affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite an Indian child with his or her family. *See* 25 CFR § 23.2 for the more expansive definition and examples.
- Services included in case plans and offered to the family should be culturally responsive and accessible to the family
- Requires the testimony of Indian Expert Witness that can testify to that remedial efforts to prevent the break up of the Indian Family were provided and that they were unsuccessful to keeping the family together.
- State/County child welfare agency responsibility, but efforts can be completed with the assistance of the child's Indian tribe and other tribal resources.
- For Native children, it means active efforts to establish permanent connections to their tribe and community in order to learn and understand the tribe's customs, oral traditions, language and tribal citizenship

Tribal Customary Adoption

- Historically and traditionally, adoption has been practiced in most tribal communities through custom and ceremony. Tribes did not practice Termination of Parental Rights (TPR).
- TPR was seen as a tool to destroy Indian families and culture. Due to this historical trauma, many tribes actively do not approve of traditional adoption where parental rights are terminated".
- The old way of finding a permanent family through traditional/customary adoption is now being recognized as an important permanency option. California was the first State to implement such law in the United States.
- Allows traditional forms of adoption practiced by Tribes to be recognized by California courts. It is the Tribe's option, for Tribal customary adoption to be included as an alternative permanent plan to family reunification throughout the dependency case

Tribal Customary Adoption

- Provides tribes the opportunity (it is not mandatory) to chose a permanent plan of Customary Adoption, to develop a tribal adoption "plan" or "order" to meet the interests of the Indian child and have that Tribal Customary Adoption Order (TCAO) be recognized by the state.
- The TCAO will delineate the rights and responsibilities of the parties, including, but not limited to, rights of inheritance and contact with birth relatives. The state court will have an opportunity to review the TCAO and will have discretion not to enter it under a full faith and credit analysis.
- The TCAO is an order of a sovereign, providing deference to the TCAO is required under existing full faith and credit provisions of federal and state law and is essential to the best interests of Indian children, families and tribes.

Why is permanency important?

- Findings shows that children of color are disproportionately represented in the foster care system and remain in the system longer.
- Trauma in the child welfare system
  - Studies have found a significant number of children who enter the child welfare system have experienced trauma that can have profound and lasting negative effects throughout their lives.
  - Chronic, adverse conditions in a child's background can lead to ongoing issues with social, cognitive, emotional, and behavioral well-being. These might include maladaptive behaviors, cognitive difficulties, problematic relationships, and mental health issues.
  - In addition, children who enter the child welfare system after experiencing trauma are vulnerable, without proper interventions, to being further traumatized by the very system that was designed to protect and heal them.

Active Efforts and Best Practices in working with Native families and tribes

- The Indian Child Welfare Act (ICWA) is a federal statute enacted to protect Native children and sets federal requirements that apply to state child custody proceedings involving an Indian child who is a member of or eligible for membership in a federally recognized tribe.
- Preventative remedial services must be provided to the family and an Indian expert witness testimony is required.
- Consider the transfer of jurisdiction to Tribal Court or other restorative interventions in partnership with the Tribe
- Best practices include developing policies and programs that support the Spirit of ICWA. Examples: Tribal CASAs, Child Protection Teams in tribal communities

Source: National Indian Child Welfare Association (www.nicwa.org)

Partnering with Tribes to Achieve Greater Permanency for Native Children

- Partner with tribes, tribal social workers, tribal organizations to develop a culturally responsive response to child abuse investigations, reunification services and permanent planning
- Be forth coming and transparent with the tribe and family about the different types of permanent plans and provide legal referrals that will assist to understand their legal rights
- Connect with Native American resources, organizations and attend trainings Eg. Tribal Star, Cultural Responsiveness Academies, NICWA and State ICWA Conferences

Best practices that address disparities in CWS and improving outcomes for permanency

- Create a place to bring State and Tribal partners together to discuss and address disparities in CWS including permanency, and together come up with ways to address those areas
  - **7th Generation**-collaborative group made up of several Southern counties, tribes, ICWA advocates, community partners, Office of Tribal Affairs, universities and training academies
- **Review child welfare data** with tribes and partners during collaborative meetings
  - **ICWA Data Dashboards**-child abuse referrals, noticing, # of cases and permanency data
- **Develop agreements,** MOA's, Protocols to help guide the child welfare work with families, tribes and Native serving organizations
  - **San Diego County's Child Welfare Services Protocol to Working with Native American families and Tribes**

Resources

- **Antonia “Toni” Torres- County of San Diego CWS**
  - Antonia.Torres@sdcounty.ca,gov
- **California Department of Social Services Office of Tribal Affairs**
  - **https://www.cdss.ca.gov/inforesources/tribal-affairs**
- **California Indian Legal Services (CILS)**
  - http://www.calindian.org/
- **Academy for Professional Excellence –Tribal STAR**
  - https://theacademy.sdsu.edu/programs/tribal-star/resources-for-icwa-specialists/
- **National Indian Child Welfare Association**
  - **https://www.nicwa.org/**
- **Capacity Building for Tribes**
  - **http://collaboration.tribalinformationexchange.org/**

We Are One World

April 18, 2020

CALIFORNIA DEPARTMENT OF SOCIAL SERVICES

EXECUTIVE SUMMARY

ALL COUNTY LETTER NO. 20-38

The purpose of this letter is to provide a general overview to county child welfare services agencies and county probation departments of certain provisions passed under Assembly Bill (AB) 3176 (Chapter 833, Statutes of 2018), effective January 1, 2019. This bill amended 32 sections of the Welfare and Institutions Code. This letter does not address every part of the changes made by AB 3176 and is not intended to be a comprehensive guide. The purpose of this letter is to highlight the significant amendments passed by AB 3176.

STATE OF CALIFORNIA—HEALTH AND HUMAN SERVICES AGENCY
DEPARTMENT OF SOCIAL SERVICES
744 P Street • Sacramento, CA 95814 • *www.cdss.ca.gov*

KIM JOHNSON
DIRECTOR

GAVIN NEWSOM
GOVERNOR

April 18, 2020

ALL COUNTY LETTER NO. 20-38

TO: ALL COUNTY CHILD WELFARE DIRECTORS
ALL COUNTY PROBATION OFFICERS
ALL COUNTY BOARDS OF SUPERVISORS
ALL CHIEF PROBATION OFFICERS
ALL TITLE IV-E AGREEMENT TRIBES
ALL FEDERALLY RECOGNIZED TRIBES

SUBJECT: CHILDREN AND FAMILY SERVICES DIVISION: IMPLEMENTATION OF ASSEMBLY BILL 3176 REGARDING INDIAN CHILDREN (CHAPTER 833, STATUTES OF 2018)

REFERENCE: TITLE 25 UNITED STATES CODE (USC) CHAPTER 21, 1903(4), 25 USC 1912(d); TITLE 25 CODE OF FEDERAL REGULATIONS (CFR) PART 23; 84 FEDERAL REGISTER (FR) 20387; ASSEMBLY BILL (AB) 3176; WELFARE AND INSTITUTIONS CODE (WIC) SECTIONS 212.5, 224.1, 224.1(f), 224.2(a), 224.2(d), 224.3, 224.3(a)(5), 224.3(g), 224.6, 292, 293, 295, 297, 300, 306, 306(d), 306(e), 319, 319.4, 352(b), 354, 361.31, 16507.4, AND 16507.4(b); ALL COUNTY LETTER (ACL) NO. 16-84 MENTAL HEALTH SUBSTANCE USE DISORDER SERVICES (MHSUDS) INFORMATION NOTICE (IN) NO. 16-049; ACL NO. 18-09/MHSUDS IN NO. 18-007; ACL NO. 18-23; ACL NO. 18-81; ACL NO. 18-140; ALL COUNTY INFORMATION NOTICE (ACIN) NO. I-21-18 MHSUDS IN NO. 18-022; CHILD WELFARE SERVICES MANUAL OF POLICIES AND PROCEDURES (MPP) DIVISION 31 REGULATIONS SECTION 31-105.114(a-e)

The purpose of this All County Letter (ACL) is to provide an overview to county child welfare services (CWS) agencies and county probation departments of certain provisions passed under AB 3176 (Chapter 833, Statutes of 2018), effective January 1, 2019. AB 3176 is intended to conform state law with the 2016 Federal Bureau of Indian Affairs (BIA) regulations governing the Indian Child Welfare Act (ICWA). This bill amended 32 sections of the California Welfare and Institutions Code (WIC). This letter

does not address every aspect of the changes made by AB 3176 and is **not** intended to be a comprehensive guide. The purpose of this letter is to highlight the significant amendments made by AB 3176. The California Department of Social Services (CDSS) will release further guidance to provide additional details for implementing AB 3176.

BACKGROUND

The ICWA was enacted to establish minimum federal standards for the removal of Indian children from their families and the placement of such children in foster and adoptive homes that reflect the unique values of Indian culture. Historically, states have struggled with its implementation, which has resulted in inconsistent practices across the country. In 2016, the BIA adopted regulations to clarify minimum federal standards in order to promote a more uniform and compliant application of the ICWA. AB 3176 was enacted to update and conform the WIC to the BIA federal regulations. This ACL will address some of the major amendments.

ICWA AND THE INTEGRATED CORE PRACTICE MODEL

In 2018, the state's Integrated Core Practice Model (ICPM) for Children, Youth, and Families[1] was significantly enhanced, establishing evidence-informed guidance and principle-based practices around effective engagement, assessment, service planning and delivery, monitoring of care, and transition management. The ICPM has particular use in supporting voice and choice, sharing of decision-making power, and establishing authentic cultural humility as a central tenet of intervention. Communicating with a family in a way that supports a discussion of the family's culture is an important casework component of California's ICPM and facilitates natural inquiry into the family's tribal affiliation during the process of engagement. Inquiry should be made with the child as well as any parent, Indian custodian, and extended family contacted in the course of an investigation. The ICPM will inform the guidance put forth in future letters that will more thoroughly address the areas outlined in this letter.

DOCUMENTATION OF ONGOING INQUIRY AND ACTIVE EFFORTS

During the intake and investigation process, timely documentation is critical to demonstrate thorough inquiry and the provision of active efforts. Hotline inquiries with reporting parties regarding tribal affiliation must be documented in the Screener Narrative and/or the emergency response referral. Successful and attempted contacts with tribal representatives or designated ICWA agents should be documented in the case record and include as much detail as possible. Documenting activities that enable a child to remain in the home during investigations (safety planning, community service

[1] ACIN NO. I-21-18/MHSUDS IN NO. 18-022

referrals, informal and formal teaming) is an essential component of active efforts. (See the "Active Efforts" section below for further information.) Counties may find it beneficial to develop guidance to ensure that ICWA inquiry, active efforts, and ICWA notice (if applicable) are consistently documented in a specific location or form. CDSS will release further guidance addressing entry of this information in the Child Welfare Services/Case Management System (CWS/CMS).

DUTY OF INQUIRY BEGINNING AT INTAKE AND INVESTIGATIONS

Pursuant to WIC § 224.2(a), the duty to inquire in *all* referrals begins at first contact and must occur regardless of the likelihood of court intervention. If thorough inquiry to identify an Indian child is not conducted prior to the involvement of the juvenile court, it is unlikely that CWS agencies will be able to meet the ICWA requirements such as making active efforts to provide "remedial services and rehabilitative programs designed to prevent the breakup of the Indian family." (25 USC §1912(d))

Communication with tribes regarding reports of abuse and neglect involving a child where there is reason to believe that the child may be an Indian child is a critical component of the inquiry process. When a referral is received at the Hotline alleging a child has been the victim of abuse, neglect, or exploitation, the Hotline social worker shall ask the reporting party whether they have any information that the child is or may be an Indian child, which is defined as a child who is either (1) a member of an Indian tribe, or (2) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe. (25 U.S.C. § 1903(4)) If a child's affiliation with a specific tribe is reported to the Hotline at the point of intake, that tribe's designated tribal agent for ICWA notice, as published annually in the Federal Register, should be contacted for further inquiry. The date, time, and result of communication with the tribe should be documented. For more information on the documentation requirements regarding collateral contacts at the Hotline, please refer to the CWS MPP Section 31-105.114(a-e).

Any time a referral is assigned to a CWS field office for investigation, the investigating social worker has an affirmative and ongoing duty to inquire whether a child may be an Indian child. A response in the negative at the time of Hotline screening is *not* a sufficient basis to cease inquiry, as the reporting party may have limited information regarding the child's membership (or potential membership) with a tribe.

REASON TO BELIEVE AND CONTINUED INQUIRY WITH TRIBES

The term "reason to believe" refers to the threshold for continued inquiry regarding a child's potential membership with a tribe. If a child, a parent, an extended family member, or a collateral contact identifies the family's potential affiliation with any tribe,

there is reason to believe the child may be an Indian child and communication for the purpose of further inquiry should commence. This communication should occur regardless of the likelihood that CWS will seek court intervention or remain involved with the family. Federally recognized tribes should be treated as any other governmental organization with whom confidential information should be shared as early as possible regarding the investigation of child abuse and neglect. ACL No. 18-140 provides more detail about information-sharing with tribes.

For inquiry purposes, communication with tribes may be informal (telephone calls, email, etc.) but must be thoroughly documented in the case record. Notice, in contrast, requires a specific method and process for communication, as outlined below. Prior to contacting a tribe, social workers should gather as much identifying information as possible regarding the child's biological family members (including absent parents) who are believed to have affiliation with a tribe. This includes full names and dates of birth, tribal enrollment numbers/certifications, Degree of Indian Blood and/or Certificates of Indian Blood, and tribal identification cards.

At first contact with a tribe, CWS social workers should state the purpose of the call (to determine whether the child is a member of the tribe or eligible for membership) and the purpose of the CWS agency's involvement (investigating a referral, assigning a referral to a field office, etc.) and clarify whether juvenile court involvement has occurred or is likely to occur. A sample inquiry script is outlined below:

"My name is _____, and I am a social worker with [Name of county welfare agency]. I was recently assigned a child abuse/neglect investigation. This is an initial investigation only. No removal of the child has occurred and the CWS agency has not made any decision regarding pursuing court involvement. During my initial contact with the family, the mother reported that her child may be eligible for membership with your tribe through their father's side of the family. I am hopeful of connecting this youth to his/her community and/or available tribal resources, and we have an obligation to inquire directly with the tribe to attempt to confirm the child's Indian status and the child's tribe. Can you assist me with this or identify the appropriate tribal contact? The child's mother was not aware of any enrollment numbers and has no information regarding extended paternal family. The child's biological father is reported to be (FULL NAME/ALIASES) and his date of birth is MM/DD/YYYY. The child's name is (FULL NAME) and their date of birth is MM/DD/YYYY

This proactive method of inquiry is the first step in the process of active efforts, and of creating or deepening the natural supports which are critical to maintaining independence and supporting any needed interventions. This inquiry should be accurately reflected in the case records. If the tribe responds affirmatively, it is critical

that the social worker immediately inquire as to whether the tribe exercises exclusive jurisdiction over child welfare matters or whether the particular child is a ward of a tribal court (see "Exclusive Jurisdiction" below for further information). Thorough documentation of the tribe's determination includes the date and time the information was received by the CWS social worker and the full name and contact information for the tribal representative who provided the information. If the tribe determines that the child is a member or eligible for membership, ongoing communication with the tribe during the investigation (and any subsequent CWS involvement) is required. This would extend to the child and family teaming processes and meetings that may later be required.

INQUIRY THROUGHOUT JUVENILE COURT INVOLVEMENT

Inquiry about a child's status can furnish information providing "reason to know" or "reason to believe" that a child is or may be an Indian child. These are distinct legal terms that require different responses. While "reason to believe" requires further *inquiry*, "reason to know" requires formal *notice* and application of ICWA minimum standards as described below.

The court, CWS agencies, and the probation department have an affirmative and ongoing duty in all cases to inquire whether a child for whom a petition may be or has been filed, is or may be an Indian child. That duty includes asking questions of all of the participants in the case, including, but not limited to, the party reporting abuse or neglect, the child, the parents, the legal guardian, the Indian custodian, extended family members, and any others who may have an interest in the child as to whether the child is or may be an Indian child. This also includes asking where the child, parents, or Indian custodian reside, or are domiciled. The court shall ask each participant at their first appearance whether the participant knows or has reason to know that the child is an Indian child and instruct the participants to provide to the social worker and the court any subsequently received information that provides such reason to know.

If information produced during the child custody proceeding is insufficient to give reason to know but does give **reason to believe** that the child is an Indian child, the social worker or probation officer shall make further inquiry. Further inquiry includes, but is not limited to, interviewing those who have an interest in the child—including the Indian custodian, the parents, extended family members, and legal guardians—to gather the information required under WIC § 224.3(a)(5), contacting the BIA and the CDSS to gather contact information for tribes, and contacting the tribes that the child is or may be a member of.

When contacting the CDSS to assist in identifying the contact for a tribe(s) in which a child, parent, or Indian custodian may be or is a member of, please send inquiries to ICWAinquiry@dss.ca.gov.

REASON TO KNOW

Although AB 3176 describes reason to know in the specific context of the court, it also provides the standards that apply to the social worker prior to and in preparation for court proceedings. There is "reason to know" that the child is an Indian child under the Act when:

- A person having an interest in the child informs the court that the child is an Indian child.
- The child, their parents, or Indian custodian is domiciled on a reservation.
- A participant in the proceeding or other interested person informs the court that they have information indicating that the child is an Indian child.
- The child gives the court reason to know they are an Indian child.
- The court is informed that the child is or has been a ward of a tribal court.
- The court is informed that either parent or the child possesses an identification card indicating membership or citizenship in an Indian tribe.

If there is "reason to know" as defined above, the party seeking foster care for the child shall provide notice in accordance with WIC § 224.3(a)(5). If the court has "reason to know" but does not have sufficient evidence to determine that the child is or is not an Indian child, the court shall confirm, by way of a report, declaration, or testimony included in the record, that the agency or other party used due diligence to identify and work with all of the tribe(s) in which there is a "reason to know" the child may be a member of, or eligible for membership with, to verify that the child is in fact a member or eligible for membership and has a biological parent who is a member of a tribe.

If there is "reason to know" that the child is or may be an Indian child, the court shall treat the child as an Indian child unless and until the court determines on the record that the child does not meet the definition of an Indian child under the ICWA.

ICWA NOTICE

The 2016 ICWA regulations updated ICWA notice requirements to include only designated "Indian child custody proceedings"; that is, hearings that could result in foster care, termination of parental rights, or the adoption of an Indian child. The ICWA Notice refers to the formal process by which tribes are notified of a dependency proceeding (by certified or registered mail) involving an Indian child. As provided by WIC 224.3 , if a court, social worker, or probation officer knows or has reason to know

that an Indian child is involved (as provided by WIC § 224.2(d)), the following notice requirements apply:

- Notice of any hearing that may result in an order for foster care placement, pre-adoptive placement, termination of parental rights, or adoptive placement must be provided.
- The notice shall be provided to the parents or legal guardian, Indian custodian, and the tribes in which the child is or may be a member or eligible for membership, and shall contain all of the elements required under WIC § 224.3.
- The notice shall be sent by registered or certified mail with a return receipt requested. The proof of notice, including all copies of the notices sent and the return receipts and responses received, shall be filed with the court prior to the hearing.
- No proceeding shall be held until at least 10 days after the receipt of notice by the parent, Indian custodian, tribe, or the BIA, except that in the case of a hearing held pursuant to WIC § 319, notice of the hearing shall be provided as soon as possible after the filing of the petition to declare the Indian child a dependent child.

WIC § 224.3(g) now specifies the following: For any hearing that does not meet the definition of an Indian child custody proceeding set forth in WIC § 224.1, or is not an emergency proceeding, notice to the child's parents, Indian custodian, and tribe shall be sent in accordance with WIC §§ 292, 293, and 295.

For situations involving Indian children that fall under WIC § 300, if additional information or circumstances are discovered other than what was in the original petition, a subsequent petition shall be filed and noticed. Notice for this hearing may be delivered by electronic service with the consent of all parties and the permission of the county and the court pursuant to WIC § 212.5. Counties shall follow the guidelines in accordance with WIC § 297 when filing a subsequent petition.

VOLUNTARY PROCEEDING

WIC § 224.1(q) defines a voluntary proceeding as one in which "either parent, both parents, or the Indian custodian has, of his or her or their free will, without a threat of removal by a state agency, consented to" placing the child in an out-of-home placement or termination of parental rights. Additionally, the parent, parents or Indian custodian must have the ability to regain custody upon demand. WIC § 224.1(p) clarifies that "upon demand" means that "in the case of an Indian child, the parent or Indian custodian may regain physical custody during a voluntary proceeding simply upon verbal request, without any delay, formalities, or contingencies." Any action by the agency that restricts access between the Indian child and their parent, such as a safety

plan or a Voluntary Placement Agreement, is not considered "voluntary." A voluntary proceeding must be presented in court and the following requirements must be met (for any parent or custodian of an Indian Child):

1. Consent must be in writing and recorded before a judge.
2. The presiding judge must certify that the terms and consequences were fully explained in detail and were fully understood in English, or that it was interpreted into a language that was understood.
3. The placement must comply with the placement preferences set forth in WIC § 361.31.
4. Consent given before or within ten (10) days after birth of the Indian child shall not be valid.

The CDSS encourages CWS agencies, social workers, and probation officers to consult with their Counsel when considering if a case is voluntary or involuntary. Further guidance from CDSS on voluntary proceedings and voluntary placements for Indian children pursuant to WIC § 16507.4 will be forthcoming.

ACTIVE EFFORTS

"Active efforts," in the case of an Indian child, means affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite an Indian child with his or her family. It is critical for CWS agencies to understand that active efforts begin at first contact, when an allegation of child abuse or neglect is received at the Hotline. Active communication, coordination, and engagement of tribes via the tribal representative is required at the earliest point in the child welfare referral or investigation regardless of the likelihood of court intervention. Tribal engagement must be taking place **prior to removal** in order to prevent the breakup of the Indian family. It is during these active efforts when professional practice behaviors described in the ICPM are most needed, and staff and supervisors are encouraged to reorient themselves often to the ICPM's practice behaviors in the execution of active efforts.

County CWS agencies must tailor active efforts to the facts and circumstances of every Indian child, which may change depending on the stage of the child welfare referral, investigation, or case. Collaborating with tribal leadership, tribal elders, the Indian child's parents, extended family members, Indian custodians, or other tribal members must occur when social workers or probation officers are determining what the appropriate prevailing social and cultural conditions of the Indian child's tribe are. Furthermore, tribal recommendations regarding specific services or additional assessments for the Indian family must be sought out and provided if possible, rather than relying on the CWS agency's standard or contracted providers. For additional examples of what may constitute active efforts, please see WIC § 224.1(f).

EMERGENCY REMOVAL

If it is known, or there is reason to know, that the child in a detention hearing is an Indian child, federal emergency proceeding requirements mandate that the court must find the Indian child at risk of imminent physical damage or harm in order to detain, or continue to detain, the child. This is in addition to the other requirements for detention. AB 3176 added WIC § 319(i), which provides that in the case of an Indian child, any order detaining the child at the initial petition hearing constitutes an emergency removal. Per WIC 319.4, at or after the initial petition hearing but prior to the disposition, any party may request an ex-parte hearing for the purposes of having the Indian child returned to the parents.

WIC § 352(b) **requires the dispositional hearing to be held within 30 days for an Indian child** (as opposed to 60 days for a non-Indian child), unless the court finds exceptional circumstances to support a continuance. Consistent with the ICPM, CWS and probation agencies must have a Child and Family Team[2] (CFT) meeting and complete the Child and Adolescent Needs and Strengths[3] (CANS) assessment tool to inform the case plan. Thus, in the case of an Indian child, a CFT and the CANS assessment must also be completed in 30 days rather than 60 days. CWS agencies are also reminded that, in the case of an Indian child, an Indian custodian as well as a representative of the child's tribe are required members of the CFT. Active efforts requirements under the ICWA require involvement of the child's tribe at the earliest opportunity.

PLACEMENT PREFERENCES

If it is known or there is reason to know the child is an Indian child, the agency must apply ICWA placement preferences as early as the initial removal. Whether a placement complies with the placement preferences must be analyzed each time there is a change in the child's placement. Pursuant to WIC § 361.31, deviating from the placement preferences requires a showing of good cause, and the party seeking to deviate has the burden of making that showing. Departure from the placement preferences may not be based solely on the socioeconomic status of any relative or based solely on ordinary bonding or attachment. AB 3176 requires the court to make a record in writing and determine good cause based on one or more of the following considerations:

- The request of the Indian child's parent(s), if they attest that they reviewed the placement options

[2] ACL NO. 16-84/MHSUDS IN NO. 16-049, ACL NO. 18-23
[3] ACL NO. 18-09/MHSUDS IN NO. 18-007, ACL NO. 18-81

- The request of the child, if the child is old enough and has the capacity to understand the decision being made
- The placement is the only way to maintain a sibling relationship
- The Indian child requires specialized treatment services that are unavailable, or has an extraordinary need that cannot be met, by conforming to the placement preferences
- A suitable placement was unavailable despite a diligent search, as confirmed by the court.

Under WIC § 16507.4(b)(3), the placement preferences must also be considered in a voluntary placement.

EXCLUSIVE JURISDICTION

It is the duty of the CWS agency and probation department to inquire as to whether a child may already be a ward of a tribal court or if an Indian tribe has exclusive jurisdiction over a child custody proceeding. This begins at first contact or during the inquiry process. Please refer to the "Duty of Inquiry Beginning at Intake and Investigations" section of this letter to follow the requirements for communication with tribes at the inquiry stage.

Prior to the enactment of AB 3176, when a tribe had exclusive jurisdiction over an Indian child and the Indian child was found to be in state court proceedings, a judge would commence the transfer of the proceedings. This process presumed authority by the state court over an Indian child in which the state court did not have jurisdiction to begin with. The amendments made by AB 3176 at WIC § 306 clarify the process for expeditious dismissal in cases where tribes have exclusive jurisdiction.

Pursuant to WIC § 306(d), if a county social worker takes into or maintains an Indian child in temporary custody and the worker knows or has reason to believe the child is already a ward of a tribal court, or resides or is domiciled within a reservation of an Indian tribe that has exclusive jurisdiction over child custody, the CWS agency shall notify the tribe no later than the next working day that the child was taken into temporary custody. The CWS agency must also provide all relevant documentation to the tribe regarding the temporary custody and the child's identity. If the tribe determines that the child is an Indian child who is already a ward of a tribal court or who is subject to the tribe's exclusive jurisdiction, the CWS agency shall transfer custody of the child to the tribe within 24 hours of learning of the tribe's determination.

Pursuant to WIC § 306(e), if a social worker is unable to confirm that an Indian child is a ward of a tribal court and is unable to transfer custody of the Indian child to the tribe, the CWS agency must file the petition within 48 hours. In the report, the CWS agency must inform the court that the Indian child may be a ward of a tribal court or subject to the

exclusive jurisdiction of the child's tribe. Additionally, if the CWS agency receives confirmation that an Indian child is a ward of a tribal court or subject to the exclusive jurisdiction of the Indian child's tribe between the time of filing a petition and the initial petition hearing, the CWS agency must inform the court, provide a copy of the written confirmation, if any, and move to dismiss the petition.

QUALIFIED EXPERT WITNESS

Pursuant to WIC § 224.6(b), the Qualified Expert Witness (QEW) must provide testimony regarding both the social and cultural standards of the Indian child's tribe **and** whether or not continued custody by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. The CDSS encourages CWS agencies to seek a QEW early in the child welfare process. Failure to obtain a QEW prior to the dispositional hearing is not cause for a continuance, pursuant to WIC § 354. The court may still continue to accept a declaration or affidavit from a QEW in lieu of testimony, but only if the parties have knowingly, intelligently, and voluntarily so stipulated in writing, and the court is satisfied with the stipulation.

CONCLUSION

As previously noted, this letter does not address every aspect of the changes made by AB 3176 nor the current BIA ICWA Regulations, 25 CFR 23, released in 2016. Rather, the purpose of this letter is to highlight some of the significant amendments made by AB 3176 that became effective on January 1, 2019. The CDSS remains dedicated to its continued collaboration with tribes and the enhancement of CWS agency practices to improve consistency as well as to improve outcomes for Indian children and families.

If you have any questions about this letter, please email the Child Welfare Policy and Program Development Bureau at ChildProtection@dss.ca.gov. For any questions related to tribal affairs, please email the Office of Tribal Affairs at TribalAffairs@dss.ca.gov.

Sincerely,

GREGORY E. ROSE
Deputy Director
Children and Family Services Division

c: County Welfare Directors Association (CWDA)
Chief Probation Officers of California (CPOC)

Quick Reference Sheet for State Agency Personnel in Involuntary Proceedings*

U.S. Department of the Interior, Bureau of Indian Affairs
Final Rule: Indian Child Custody Proceedings
25 CFR 23

Inquiry. The court will ask at the beginning of each child-custody proceeding:

Do you know, or is there a reason to know, the child is an "Indian child" under the Indian Child Welfare Act (ICWA)?

An "**Indian child**" is:

- A member of a federally recognized Tribe or
- Eligible for membership in a federally recognized Tribe and has a biological parent who is a member.

Indications of "**reason to know**" include—

- Anyone, including the child, tells the court the child is an Indian child or there is information indicating the child is an Indian child;
- The domicile or residence of the child or parent/Indian custodian is on a reservation or in an Alaska Native village;
- The child is, or has been, a ward of Tribal court; or
- Either parent or the child has an ID indicating Tribal membership.

Whether a child is an "Indian child" does not consider factors outside the statutory definition, such as:

- Participation of the parents or the Indian child in Tribal activities;
- Relationship between the Indian child and his or her parents;
- Whether the parent ever had custody of the child, or
- The Indian child's blood quantum.

Pending verification. The court will treat the child as an Indian child, unless and until it is determined on the record that the child is not an "Indian child" under the Indian Child Welfare Act (ICWA).

Due diligence to identify "Indian child's Tribe" and verify membership/eligibility. Use due diligence to identify and work with all of the Tribes of which there is reason to know the child may be a member (or eligible for membership), to verify whether the child is a member **or** a biological parent is a member and the child is eligible for membership.

Inquire as to domicile and residence. The court will look at whether the Indian child's domicile or residence is on a reservation **or** the child is a ward of Tribal court to determine whether the Indian child's Tribe has exclusive jurisdiction.

Use and document *active efforts* to prevent the breakup of the family. You must use active efforts to prevent the breakup of the family. Before ordering an involuntary foster care placement or termination of parental rights (TPR), the court must conclude that active efforts have been made to prevent the breakup of the Indian family and those efforts have been unsuccessful. The court will require active efforts to be documented in detail in the record.

Active efforts are affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite an Indian child with his or her family. *See* 25 CFR § 23.2 for the more expansive definition and examples.

If an emergency removal under State law is necessary. An emergency removal or placement is any removal/placement of an Indian child under State law without the full suite of ICWA protections, regardless of the label used for the removal or placement, and is permitted to prevent "imminent physical damage or harm" to the child. Any emergency removal or placement of an Indian child:

- **Must terminate** immediately when the removal or placement is no longer necessary to prevent "imminent physical damage or harm" to the child and
- **Cannot last more than 30 days** unless the court makes certain determinations.

IMPORTANT NOTE: This quick reference guide is not comprehensive and highlights only some of the requirements of the statute at 25 U.S.C 1901 *et seq.* and regulations at 25 CFR 23. To the extent there are any discrepancies, the statute and regulations govern.

An emergency proceeding can be terminated by one or more of the following actions:

(1) Initiation of a child-custody proceeding subject to the provisions of ICWA (e.g., providing notice);
(2) Restoring the child to the parent or Indian custodian; or
(3) The court transfers of the child to the jurisdiction of the appropriate Indian Tribe.

Notice. Provide clear and understandable notice to the parents (and/or Indian custodian, if any) and Tribe, by registered or certified mail, return receipt requested, of the involuntary proceeding, and maintain proof that the notice was given (i.e., the return receipts and copies of notice). The court will not hold a foster-care-placement or TPR proceeding until at least **10 days after receipt** of the notice of that particular proceeding (with extensions allowed at option of parent or Tribe).

Standards of Evidence. The court will order foster-care placement or TPR only if there is:

- ***Clear and convincing evidence*** (for foster-care placement) or ***evidence beyond a reasonable doubt*** (for TPR),
- Including the testimony of qualified expert witness(es),
- That the child's continued custody by the child's parent or Indian custodian is likely to result in "serious emotional or physical damage" to the child.

The evidence must show a ***causal relationship*** between the particular conditions in the home and the likelihood that continued custody of the child will result in serious emotional or physical damage to the particular child who is the subject of the child-custody proceeding.

Without a causal relationship, evidence that shows only the existence of community or family poverty, isolation, single parenthood, custodian age, crowded or inadequate housing, substance abuse, or nonconforming social behavior does not by itself meet the standard of evidence.

The ***qualified expert witness*** may not be the social worker regularly assigned to the Indian child. The Indian child's Tribe may designate an individual as a qualified expert witness and you may seek the Tribe's or BIA's assistance in identifying a qualified expert witness.

Placement Preferences. Seek to identify placements that meet ICWA's placement preferences (or the Indian child's Tribe's placement preferences established by resolution, if applicable). The court will apply the placement preferences in any preadoptive, adoptive, or foster-care placement of an Indian child.

ICWA's top preferred placement is a member of the Indian child's extended family.
For the remaining preferences, see 25 U.S.C. 1915 or 25 CFR §§ 23.129-131.

The court will allow for deviations of the placement preferences only for *good cause* described on the record. Good cause should be shown by clear and convincing evidence and based on one or more of the considerations at § 23.132(c). Note that a prerequisite to finding good cause based on the *unavailability* of a suitable preferred placement is that a diligent search for suitable preferred placements must have been conducted. The standards for determining whether a placement is *unavailable* must conform to the prevailing social and cultural standards of the Indian community.

A placement may not depart from the preferences:

- Based on the socioeconomic status of any placement relative to another placement
- Based solely on ordinary bonding or attachment that flowed from time spent in a non-preferred placement that was made in violation of ICWA.

*Any proceeding that is not "voluntary" under the regulations is involuntary. A proceeding is "voluntary" only if either parent, both parents, or the Indian custodian has, of his or her or their free will, without a threat of removal by a State agency, consented to for the Indian child, or a proceeding for voluntary termination of parental rights.

Quick Reference Sheet for State Court Personnel

U.S. Department of the Interior, Bureau of Indian Affairs
Final Rule: Indian Child Custody Proceedings
25 CFR 23

All Child Custody Proceedings

Inquiry. Ask in every child custody proceeding (emergency, involuntary, and voluntary): *"Do you know, or is there a reason to know, the child is an 'Indian child' under the Indian Child Welfare Act (ICWA)?"*

An "**Indian child**" is:

- A member of a federally recognized Tribe or
- Eligible for membership in a federally recognized Tribe and has a biological parent who is a member.

Indications of "reason to know" include—

- Anyone, including the child, tells the court the child is an Indian child or there is information indicating the child is an Indian child;
- The domicile or residence of the child or parent/Indian custodian is on a reservation or in an Alaska Native village;
- The child is, or has been, a ward of Tribal court; or
- Either parent or the child has an ID indicating Tribal membership.

Whether a child is an "Indian child" does not consider factors outside the definition, such as:

- Participation of the parents or child in Tribal activities;
- Relationship between the child and his or her parents;
- Whether the parent ever had custody of the child, or
- The child's blood quantum.

Pending verification. If there is reason to know the child is an Indian child, treat the child as an Indian child, unless and until it is determined on the record that the child is not an "Indian child."

Verification with Tribe and identification of "Indian child's Tribe." Confirm, on the record, that the agency or other party used due diligence to identify and work with all of the Tribes of which there is reason to know the child may be a member (or eligible), to verify whether the child is a member **or** a biological parent is a member and the child is eligible. Determine **the Indian child's Tribe** for purposes of the Act.

Determine jurisdiction. The Indian child's Tribe has exclusive jurisdiction over the case if the Indian child's domicile or residence is on a reservation where the Tribe exercises exclusive jurisdiction over child-custody proceedings **or** the child is a ward of Tribal court. A parent or Indian custodian and the Indian child's Tribe may request a transfer of a foster-care or termination-of-parental-rights (TPR) proceeding to Tribal jurisdiction, at any stage and at any time, orally on the record or in writing. Upon such a request, the court **must** transfer unless:

- Either parent objects to such transfer;
- The Tribal court declines the transfer; or
- Good cause exists for denying the transfer.

The reasons for denial must be on the record.

A determination that good cause exists to deny transfer may **not** include the considerations listed at § 23.118(c).

Placement preferences. ICWA's placement preferences apply in any preadoptive, adoptive, or foster-care placement (voluntary or involuntary) of an Indian child.[1] Or, if the Indian child's Tribe has established, by resolution, a different order of preference, the Tribe's placement preferences apply instead. Deviations from the placement preferences are permitted only for *good cause*. Good cause must be on the record and should be shown by clear and convincing evidence and be based only on one or more of the considerations listed at § 23.132(c).

A placement may not depart from the preferences:

- Based on the socioeconomic status of any placement relative to another
- Based solely on ordinary bonding or attachment that flowed from time spent in a non-preferred placement that was made in violation of ICWA.

[1] *See* ICWA's placement preferences at 25 U.S.C. 1915 or 25 CFR §§ 23.129-131.

IMPORTANT NOTE: This quick reference guide is not comprehensive and highlights only some of the requirements of the statute at 25 U.S.C 1901 *et seq.* and regulations at 25 CFR 23. To the extent there are any discrepancies, the statute and regulations govern.

Involuntary Proceedings

Notice. The record must include proof that clear and understandable notice was provided to the parents (and/or Indian custodian, if any) and Tribe, by registered or certified mail, return receipt requested, of the involuntary proceeding. No foster-care-placement or TPR proceeding may be held until at least **10 days after receipt** of the notice of that particular proceeding (with extensions allowed at option of parent or Tribe).

Active Efforts. Before ordering an involuntary foster care placement or TPR, the court must conclude that active efforts have been made to prevent the breakup of the Indian family and those efforts have been unsuccessful. Active efforts must be documented in detail in the record.

> **Active efforts** are affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite an Indian child with his or her family. *See* § 23.2 for the more expansive definition and examples.

Standards of Evidence.

Foster-care placement and TPR may be ordered only if there is:

- ***Clear and convincing evidence*** *(for foster-care placement) or* ***evidence beyond a reasonable doubt*** *(for TPR)*,
- Including the testimony of qualified expert witness(es),
- That the child's continued custody by the child's parent or Indian custodian is likely to result in "serious emotional or physical damage" to the child.

The evidence must show a *causal relationship* between the particular conditions in the home and the likelihood that continued custody of the child will result in serious emotional or physical damage to the particular child who is the subject of the child-custody proceeding.

> Without a causal relationship, evidence that shows only the existence of community or family poverty, isolation, single parenthood, custodian age, crowded or inadequate housing, substance abuse, or nonconforming social behavior does not by itself meet the standard of evidence.

The *qualified expert witness* must be qualified to testify regarding whether the child's continued custody by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child, and should be qualified to testify as to the prevailing social and cultural standards of the Indian child's Tribe. The qualified expert witness may not be the social worker regularly assigned to the Indian child.

Emergency Proceedings

An emergency removal or placement is any removal/placement of an Indian child under State law without the full suite of ICWA protections, regardless of the label used for the removal or placement; the emergency removal or placement must terminate immediately when the removal or placement is no longer necessary to prevent "imminent physical damage or harm" to the child and **cannot last more than 30 days** unless the court makes the determinations at § 23.113(e). An emergency proceeding can be terminated by one or more of the following actions:

(1) Initiation of a child-custody proceeding subject to the provisions of ICWA;
(2) Transfer of the child to the jurisdiction of the appropriate Indian Tribe; or
(3) Restoring the child to the parent or Indian custodian.

Voluntary Proceedings

A voluntary proceeding must be truly voluntary (of the parent or custodian's free will, without a threat of removal by a State agency). The provisions summarized in "All Child Custody Proceedings" on p. 1 of this guide (including, e.g., placement preferences) apply. In addition, the court must ensure the safeguards for the parent or custodian's consent and withdrawal of consent are followed. *See* §§ 23.125 - 23.128.

Quick Reference Sheet for Tribes

U.S. Department of the Interior, Bureau of Indian Affairs
Final Rule: Indian Child Custody Proceedings
25 CFR 23

Identifying an "Indian child." State agency personnel will be contacting you to verify whether a child is an "Indian child" under the Indian Child Welfare Act (ICWA). An "**Indian child**" is:

- A member of a federally recognized Tribe or
- Eligible for membership in a federally recognized Tribe and has a biological parent who is a member.

Verifying membership/eligibility. The Tribe is the authoritative source on whether a child is a member, or whether the parent is a member and the child is eligible for membership, and the rule directs the State court to defer to the Tribe as a source in determining whether the child is an Indian child for purposes of the child-custody proceeding. Your response is therefore an important step to ensuring ICWA's protections apply.

Contact Information. The BIA final rule directs States to provide the notice and inquiry to the agent you designate for receipt of ICWA notices, as listed in the Federal Register and available on www.bia.gov.

The Indian child's domicile and residence. The court will look at whether the Indian child's domicile or residence is on a reservation where the Tribe exercises exclusive jurisdiction **or** whether the child is a ward of Tribal court. If either of these criteria is met, the Tribe has exclusive jurisdiction. For this reason, you may wish to notify State agency and court personnel, as early as possible, if you know either of these criteria is met.

Becoming designated as "the Indian child's Tribe." ICWA provides that only one Tribe may be designated as the Indian child's Tribe for the purposes of an ICWA child custody proceeding, even if the child meets the definition of "Indian child" through multiple Tribes. You may agree with the other Tribes as to which should be designated as the Indian child's Tribe and the court will designate the agreed-upon Tribe as the Indian child's Tribe. Otherwise, the court will designate the Indian child's Tribe under § 23.109(c).

> A determination of the Indian child's Tribe for purposes of ICWA does not constitute a determination for any other purpose.

Participation in active efforts. Tribes may participate in providing active efforts to prevent the breakup of the Indian family. The rule provides that, to the maximum extent possible, active efforts should be conducted in partnership with the Indian child's Tribe (as well as the parents and others). Before ordering an involuntary foster care placement or termination of parental rights (TPR), the court must conclude that active efforts have been made to prevent the breakup of the Indian family and those efforts have been unsuccessful. The court will also require active efforts to be documented in detail in the record.

Examples of active efforts include:

• Identifying, notifying, and inviting representatives of the Indian child's Tribe to participate in providing support and services to the Indian child's family and in family team meetings, permanency planning, and resolution of placement issues;

• Offering and employing all available and culturally appropriate family preservation strategies and facilitating the use of remedial and rehabilitative services provided by the child's Tribe.

Right to notice. The Indian child's Tribe (and parents or Indian custodians) must receive clear and understandable notice, by registered or certified mail, return receipt requested, of an involuntary proceeding. The court will check to ensure there is proof that the notice was given and will not hold a foster-care-placement or TPR proceeding until at least **10 days after receipt** of the notice of that particular proceeding (with extensions allowed at option of parent or Tribe). The Indian child's Tribe has the right to be granted, **upon request, up to 20 additional days** to prepare for the child-custody proceedings.

IMPORTANT NOTE: This quick reference guide is not comprehensive and highlights only some of the requirements of the statute at 25 U.S.C 1901 *et seq.* and regulations at 25 CFR 23. To the extent there are any discrepancies, the statute and regulations govern.

Right to transfer jurisdiction. The Indian child's Tribe (and parents or Indian custodians) may request a transfer of a foster-care or TPR proceeding to Tribal jurisdiction, at any stage and at any time, orally on the record or in writing. Upon such a request, the court **must** transfer unless:

- Either parent objects to such transfer;
- The Tribal court declines the transfer; or
- Good cause exists for denying the transfer.

The reasons for denying a request to transfer must be on the record.

> A determination that good cause exists to deny transfer of jurisdiction may **not** include the considerations listed at § 23.118(c) regarding advanced stage, prior proceedings, potential placements, cultural connections, socioeconomic conditions, or negative perceptions of Tribal or BIA systems.

Right to intervene. The Indian child Tribe's has the right to intervene, at any time, in a State-court proceeding for the foster-care placement of or TPR to an Indian child.

Qualified expert witnesses. The court will order foster-care placement or TPR only if certain standards of evidence are met, including the testimony of qualified expert witness(es). You, as the Indian child's Tribe, may designate an individual as being qualified to testify to the prevailing social and cultural standards of the Indian child's Tribe. The court or any party may request your assistance in locating persons qualified to serve as expert witnesses

> The qualified expert witness must be qualified to testify regarding whether the child's continued custody by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child, and should be qualified to testify as to the prevailing social and cultural standards of the Indian child's Tribe.

Placement preferences. Placement preferences apply in both voluntary and involuntary child custody proceedings. The Indian child's Tribe may establish, by resolution, an order of preference for placements that is different from the list in ICWA and which will then supersede the ICWA order of preference. Tribes may assist in identifying placements for the child. The court will allow for deviations of the placement preferences only for *good cause*. Good cause must be on the record, should be shown by clear and convincing evidence, and should be based the considerations listed at § 23.132(c)

Right to examine documents. The rule provides that each party to an emergency proceeding or a foster-care-placement or termination-of-parental-rights proceeding under State law involving an Indian child has a right to timely examine all reports and other documents filed or lodged with the court upon which any decision with respect to such action may be based. In addition, Tribes are sovereign entities that have concurrent jurisdiction over child-custody proceedings, and they should have the ability to review documents relevant to those proceedings. State agencies must share records with Tribal agencies that are parties to child-custody cases as they would other parties and governmental entities.

Right to request access accommodations. You have the right to request the court to allow alternative methods of participation in State-court child-custody proceedings involving an Indian child, such as participation by telephone, videoconferencing, or other methods.

Right to petition to invalidate an action. The Indian child's Tribe may petition any court of competent jurisdiction to invalidate an action for foster-care placement or termination of parental rights under State law where it is alleged that 25 U.S.C. 1911, 1912, or 1913 has been violated.

Right to obtain placement records. The Indian child's Tribe may require a State to provide the record for a voluntary or involuntary foster-care, preadoptive, and adoptive placement of an Indian child within 14 days of the request.

Active Efforts

U.S. Department of the Interior, Bureau of Indian Affairs
Final Rule: Indian Child Custody Proceedings
25 CFR § 23.2, § 23.120

What are active efforts?

Active efforts are affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite an Indian child with his or her family.

What must active efforts involve?

Where an agency is involved in the child-custody proceeding, active efforts must involve assisting the parent(s) or Indian custodian through the steps of a case plan and with accessing or developing the resources necessary to satisfy the case plan.

How should active efforts be provided?

To the maximum extent possible, active efforts should be provided in a manner consistent with the prevailing social and cultural conditions and way of life of the Indian child's Tribe and should be conducted in partnership with the Indian child and the Indian child's parents, extended family members, Indian custodians, and Tribe.

Are active efforts tailored to each case?

Yes, active efforts are to be tailored to the facts and circumstances of the case.

When are active efforts required?

The active efforts requirement applies in any foster-care or termination-of-parental-rights proceeding involving an "Indian child" (*see* 25 CFR 23). The court must conclude, prior to ordering an involuntary foster-care placement or termination of parental rights, that active efforts have been made to prevent the breakup of the Indian family and that those efforts have been unsuccessful.

Must active efforts be documented?

Yes, the court will require active efforts to be documented in detail in the record.

Active efforts may include, for example:

(1) Conducting a comprehensive assessment of the circumstances of the Indian child's family, with a focus on safe reunification as the most desirable goal;

(2) Identifying appropriate services and helping the parents to overcome barriers, including actively assisting the parents in obtaining such services;

(3) Identifying, notifying, and inviting representatives of the Indian child's Tribe to participate in providing support and services to the Indian child's family and in family team meetings, permanency planning, and resolution of placement issues;

(4) Conducting or causing to be conducted a diligent search for the Indian child's extended family members, and contacting and consulting with extended family members to provide family structure and support for the Indian child and the Indian child's parents;

(5) Offering and employing all available and culturally appropriate family preservation strategies and facilitating the use of remedial and rehabilitative services provided by the child's Tribe;

(6) Taking steps to keep siblings together whenever possible;

(7) Supporting regular visits with parents or Indian custodians in the most natural setting possible as well as trial home visits of the Indian child during any period of removal, consistent with the need to ensure the health, safety, and welfare of the child;

(8) Identifying community resources including housing, financial, transportation, mental health, substance abuse, and peer support services and actively assisting the Indian child's parents or, when appropriate, the child's family, in utilizing and accessing those resources;

(9) Monitoring progress and participation in services;

(10) Considering alternative ways to address the needs of the Indian child's parents and, where appropriate, the family, if the optimum services do not exist or are not available;

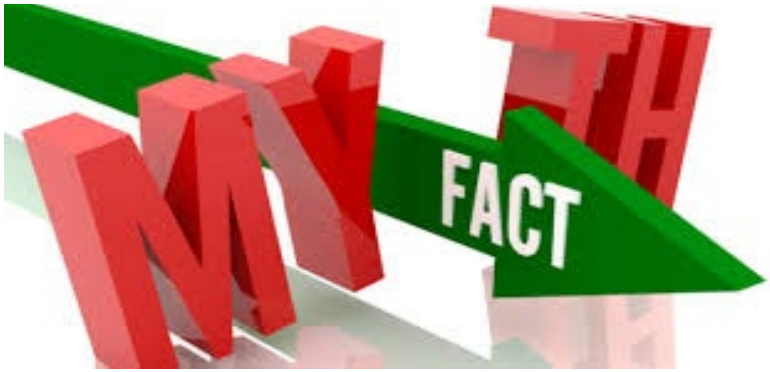
(11) Providing post-reunification services and monitoring.

IMPORTANT NOTE: This quick reference guide is not comprehensive and highlights only some of the requirements of the statute at 25 U.S.C 1901 *et seq.* and regulations at 25 CFR 23. To the extent there are any discrepancies, the statute and regulations govern.

Population Specific Permanency Issues: Non-Minor Dependents (NMDs) & Expectant and Parenting Youth (EPY)

Sue Abrams, Director of Policy & Training
Children's Law Center of California

Children's Law Center
of California
Excellence In Advocacy



- Older youth don't want to be adopted
- There are no adoptive placements for older youth
- Once a child is a teenager, the focus should switch to planning for independence instead of permanency
- We shouldn't be considering permanency past 16 because youth lose benefits

APPLA & Permanency Requirements for Older Youth

Federal Permanency Requirements

- Each child must have a case plan that provides the least restrictive and most family like setting

42 U.S.C.A. § 675 (5)(A)

- The court must make findings at each permanency review hearing that reasonable efforts are being made to finalize the child's permanency plan

The finding must be made every 12 months

The finding must be case and child specific

A negative, late, or insufficient finding means the agency is not eligible for IV-E funds

45 CFR § 1356.21 (b)(2)(i)

Fed Requirements Codified in CA

- The court shall determine whether or not **reasonable efforts to make and finalize a permanent placement** for the child have been made

- This requirement lasts throughout the life of a case

WIC § 366.3

Don’t Just Check the Box!

- Meaningful, enduring relationships with caring adults are associated with a variety of positive adult outcomes, including:
  - ☑ increased postsecondary educational attainment
  - ☑ having a bank account
  - ☑ reduced risk of homelessness
  - ☑ improved psychological well-being, and
  - ☑ improved physical health outcomes

- Furthermore, having at least one stable relationship with a committed, caring is the **single most common factor** in youth who develop resilience

https://www.sciencedirect.com/science/article/pii/S0190740917308204

Most Family Like/Least Restrictive

- Vision of CA's Continuum of Care Reform ("CCR"): All children live with family

  ☑ New limitations on congregate care

  ☑ Increased rates to support youth with higher needs

  ☑ Funding for counties to work on recruitment and retention of family homes (FPRRs)

Permanency Requirements for Older Youth

- APPLA (another planned permanent living arrangement) – youth 16 and up who have not achieved permanency
- Every permanency review hearing must:

Ask youth about desired permanency outcome

Make a judicial determination that APPLA is the best permanency plan

Court report must address **<u>intensive and ongoing efforts</u>** to return the child to the home of the parent, place the child for adoption, or establish a legal guardianship, as appropriate

WIC § 366.3(h)

Family Requirements

FAMILY FINDING: for children in APPLA, reasonable efforts must include the use of technology including social media to find biological or other family members of the child. *WIC § 16501.1(g)(15)(C)*

SIBLINGS: siblings must be placed together whenever possible; if not placed together, must have ongoing and frequent contact; relationship must be addressed at every review hearing. *WIC § 16002 & 366.3 (e)(9)*

RELATIVE PLACEMENT: when a change in placement is required, the county welfare department must assess any relative and/or non-relative extended family member to determine whether the child can be placed on an emergency basis. *WIC § 361.45*

Reinstating Parental Rights?

- Child may file to reinstate parental rights if:
  - Child is no longer likely to be adopted, and
  - Reinstatement of parental rights is in the child's best interest

WIC § 366.26(i)(3)

Maintaining Other Relationships

IMPORTANT INDIVIDUALS: Must identify and maintain relationships between a child and individuals important to the child when:

- The child is 10, and
- The child has been in out-of-home placement for six months or longer

WIC § 366.3 (e)(2);16501.1(j)

CARING/COMMITTED ADULTS: At every review hearing for a NMD the court must inquire about the progress being made to provide permanent connections with caring, committed adults.

WIC § 361.45

Non-Minor Dependents (NMDs)

Permanency Requirements Still Apply!

- Must continue to make reasonable efforts to make and finalize a permanent placement
- What can permanency look like for an NMD?

☑ Return home to parents

☑ Adoption

☑ Permanent connections with caring, committed adults

Family Reunification

The court may order family reunification services (FR) to continue for an NMD if:

1) All parties are in agreement
2) Continuing FR is in the best interests of the NMD, and
3) There is a substantial probability that the NMD will safely reside in the home by the next review hearing.

WIC § 361.6

Supervised Independent Living Placement (SILP) with a Parent?

- In 2017, CA issued a policy that allows NMDs to live in a SILP with a parent, which can include a biological parent, guardian or adoptive parent
- The NMD is not being "placed" with the parent
- SILP needs to be approved the same way any other SILP is approved

ACL 17-83

NMD Adoptions

- NMDs can be adopted in the juvenile court
- Termination of parental rights not required
- Requires mutual consent between adults
- NMDs able to retain certain benefits, including:
  - Adoption Assistance (AAP) benefits
  - MediCal coverage
  - Independent Living Program (ILP) benefits

WIC § 366.31(f), Court forms: JV-475, 477 & 479

Expectant and Parenting Youth (EPY)

- Teen girls in foster care are **2.5 times** more likely to become pregnant by age 19 than their adolescent peers not in foster care
- **50%** of 21-year-old males transitioning out of foster care become young fathers compared to 19% of their non-foster care peers
- The children of parenting youth in foster care were **3 times** more likely to spend time in foster care than children in the general populations

Midwest Evaluation of Adult Functioning of Former Foster Youth.
University of Chicago at Chapin Hill, Courtney, et.al., 2005

Keeping Families Together

- CA has expressed legislative intent to **keep dependent parent families together**

- A parenting dependent's history or past behavior alone is not a basis for risk of abuse of neglect to their child

- Parenting dependents must have access to existing services to support their parent-child bond and ability to provide a permanent and safe home for the child including:
  - ☑ **Child care**
  - ☑ **Parenting classes**
  - ☑ **Child development classes, and**
  - ☑ **Frequent visitation**

WIC §§ 361.8 & 16002.5

Placements Should Support Parenting Dependent

- Placements for minor and NMD parents and their children shall:
  - ☑ Be willing and able to support minor/NMD parents,
  - ☑ Support the preservation of the family unit, and
  - ☑ Refer the minor/NMD parent to preventive services as necessary to help prevent the filing of a petition

WIC § 16002.5(e)

Specialized Placement – Whole Family Foster Home

- WFFHs provide care to parenting dependents & their non-dependent children
- Assist parents in developing skills to provide a safe, stable, and permanent home for their children
- WFFHs must undergo specialized training

WIC § 11400(t)

Resource Family Approval (RFA)

- The latest version of the Written Directives includes new capacity exceptions. Among them:
  - A County may approve a capacity greater than six to allow a minor or NMD parent to remain with their child

Written Directives 6.1; Section 10-04

Infant Supplement

- Infant Supplement – paid for care and supervision of the child of a parenting foster youth
- Rate is the same as the basic rate for a dependent child (THP/STRTP rate is higher)
- Paid to the caregiver/provider unless NMD is residing in a SILP
- Guardians of parenting youth also eligible for infant supplement

WIC § 11465(d)(1)

Emergency Child Care Bridge Program

- Enables parenting foster youth (and others) to access temporary child care to “bridge” the gap to get permanent child care
- Can be paid directly to the family or the child care provider
- Can provide payment for 6 months with discretion to allow for a 6 month extension
- Required county opt-in

Shared Responsibility Plan

- Caregiver and parenting dependents in WFFHs have option to create a **shared responsibility plan**, which helps define roles/responsibilities of each person
  - After development of plan caregiver eligible for additional $200 supplement per month

WIC §§ 11465(d)(3) & 16501.25

Parenting Support Plan

- Similar to a shared responsibility plan, but for parenting NMDs residing in a SILP
- Developed between an adult mentor and an NMD 
- Outlines specific ways in which the adult mentor will assist the NMD parent
- If approved by child welfare or probation dept, youth is eligible for additional $200 supplement per month

WIC §§ 11465(d)(3)(B) & 16501.26

Permanency Requirements Still Apply!

- Must continue to make reasonable efforts to make and finalize a permanent placement **for the parenting youth**

- What can permanency look like for a parenting youth? Same options as any other youth!

  ☑ Return home to parents
  ☑ Adoption
  ☑ Guardianship
  ☑ Placement with a fit and willing relative
  ☑ Etc.

Addressing Bias in Delinquency and Child Welfare Systems

Eliminating Racial and Ethnic Disparities in Juvenile and Family Courts is Critical to Creating a Fair and Equitable System of Justice for All Youth.

A. Racial and Ethnic Disparities in Juvenile Court[1]

Eliminating racial and ethnic disparities in juvenile and family courts is critical to creating a fair and equitable system of justice for all youth. While the number of youth who come into formal contact with the court system has declined in recent years, little progress has been made in reducing racial and ethnic disparities.[2]

Youth of color are disproportionately represented at every decision point of the juvenile delinquency court process.[3] They face higher arrest rates for similar conduct, fewer opportunities for diversion, and are far more likely to be detained and incarcerated.[4] For instance, in 2001, "Black youth were four times as likely as whites to be incarcerated"; today, they are five times as likely.[5] Additionally, Black youth "are at least 10 times as likely to be held in placement as white youth" in six states: New Jersey, Wisconsin, Montana, Delaware, Connecticut, and Massachusetts.[6] Native youth "were three times as likely to be incarcerated as white youth," while Latino youth "were 65 percent more likely to be detained or committed" than white youth.[7]

Youth of color face these same disparities in the child welfare system, as do their families, who are disproportionately referred into the system by institutions such as hospitals, schools, and law enforcement.[8] Where youth are dually involved in both the delinquency and child welfare systems, these disparities are exacerbated.[9] Addressing the overrepresentation of children and families of color in our juvenile courts requires careful consideration and reform of the policies and practices that drive bias and structural racism.[10]

1. Features of Adolescent Development are Consistent Across Racial Groups and Cannot Account for the Racial and Ethnic Disparities in the Court System

Developmental research shows that behaviors and characteristics common in adolescence are consistent across all races, ethnicities, and socioeconomic groups.[11] These studies, controlling for race and ethnicity, found no significant difference in key features of adolescent development, such as impulsivity, sensation seeking, susceptibility to peer influence, and a limited ability to plan ahead or anticipate consequences.[12] The disproportionate representation of youth of color in juvenile court, therefore, cannot and should not be attributed to differences in adolescent development or differences in behavior across racial and ethnic groups.[13]

Similarly, rates of child abuse and neglect are not higher in families of color; however, these families are disproportionately petitioned and brought into the court system and face greater likelihood of removal of their children than white families.[14]

2. Bias

A fundamental canon of judicial conduct states that judges must perform all duties of office fairly and impartially, without bias or prejudice;[15] avoid actual bias and the appearance of bias;[16] and be aware of and work proactively to address bias in the courtroom. To eliminate bias, we must address the structural bias of the justice system and honestly assess personally held explicit and implicit biases.

NCJFCJ est. 1937 NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES WWW.NCJFCJ.ORG
SJI State Justice Institute
NJDC National Juvenile Defender Center

a. What Is Structural Bias?

Structural, institutional, or systemic bias refers to "a set of processes that produce unfairness in the courtroom . . . [which] lock in past inequalities, reproduce them, and . . . exacerbate them . . . without formally treating persons worse simply because of attitudes and stereotypes about the groups to which they belong."[17] It is the "cumulative and compounding effects of an array of factors that systemically privilege white people and disadvantage people of color."[18]

Structural bias may exist as rules, procedures, practices, or policies, and as a result of legislation, administrative decisions, or historical attitudes and practices, and may also be countermanded in the same way.[19] For example, structural biases may be embedded in criminal statutes, such as harsher penalties for certain drug use (e.g., crack cocaine versus powder cocaine), which may subject people of color to longer sentences for comparable behavior.[20] Structural bias is perpetuated by those who implement or execute policies by following existing rules or norms that promote racial differences in opportunities, outcomes, and consequences, even though they may have no consciousness of how those policies negatively impact certain groups.[21]

b. What Is Explicit Bias?

Explicit bias refers to attitudes and beliefs that are consciously held about a person or group of people.[22] Overt racism is an example of explicit bias; e.g., Black youth are denied opportunities for diversionary programs because of the belief that (1) they should be punished, and (2) they are dangerous. Racism is defined as "prejudice plus power," which combines "the concepts of prejudice and power, point[ing] out the mechanisms by which racism leads to different consequences for different groups."[23]

Explicit bias has no place in our justice system. Where expressions of explicit bias are observed, justice system stakeholders have an ethical obligation to address and/or report the person responsible.[24] Stakeholders must prevent explicit biases and prejudices from influencing decision-making in courts.

c. What Is Implicit Bias?

Implicit bias refers to subconscious feelings, attitudes, and stereotypes that affect our understanding, actions, and decision-making processes in an unconscious manner.[25] These assessments, both favorable and unfavorable, are "activated involuntarily and without an individual's awareness or intentional control."[26] "Implicit biases are not accessible through introspection" because these "associations develop over the course of a lifetime beginning at a very early age through exposure to direct and indirect messages" in the form of "media and news programming" and other life experiences.[27]

Implicit biases result when we use cognitive shortcuts to filter information, fill in missing data, and categorize people and evidence.[28] This often occurs in fast-paced environments, such as juvenile court. Our strongly held conscious beliefs, intentions, and explicit efforts to treat people fairly do not prevent our implicit biases from affecting our perceptions and actions, even among "those [of us] who actively support equality, vehemently reject racism and discrimination, and have positive relationships with people of other races."[29]

Implicit biases may, despite our best intentions, influence decisions such as whether to remove a youth from the home, what disposition should be imposed, and other case outcomes. Each and every judicial officer, regardless of race and ethnicity, has an obligation to consciously ensure all decisions are based on the facts in evidence rather than implicitly held biases.

B. Bias in the Juvenile Courtroom

1. Bias Impacts Who is Brought to Court

Structural, explicit, and implicit biases impact which children and families enter the courtroom before judges ever consider their cases. Children of color and their families face a greater likelihood of referral to the court system[30] — in both the juvenile justice and child welfare systems.[31] Beginning as early as pre-school,[32] children of color face discriminatory application of school discipline policies and are pushed out of schools and into the juvenile and criminal justice systems.[33]

2. How Does Bias Impact How I Do My Job as a Judge?

Being aware of bias, particularly implicit bias and its role in how we process information and perceive people and events, is a first step to recognizing how our implicit biases can affect the judicial decision-making process.

Children of color and their families face a greater likelihood of referral to the court system — in both the juvenile justice and child welfare systems.

In every case, we must ensure that our perceptions of a youth's culpability and capability are not influenced by biases associated with race, class, or ethnicity, and strive to make unbiased decisions accordingly. One way to lessen the impact of bias is to begin with the viewpoint that most youth behavior is normal adolescent behavior and that the youth is amenable to redirection. We should ensure that all decisions are developmentally appropriate, strengthen the youth's likelihood for success while accounting for public safety, and are driven by an objective assessment of the youth rather than bias.[34]

3. Preventing Bias at All Stages of the Proceedings

Youth of color, particularly Black, Latino, and Native youth, are overrepresented and receive harsher treatment at every point in the court process.[35] And studies have found "evidence of bias in perceptions of culpability, risk of reoffending, and deserved punishment for adolescents when the decision maker explicitly knew the race of the offender."[36]

Judges must become cognizant of the potential for bias at each decision point. One of the ways to address our own potential biases is to stop and ask ourselves specific questions at every stage of the case. These may elicit some of our own biases we may not even be aware we hold.

a. **Self-reflection inquiries can help identify when biases are impacting our decisions. For example:**

The NCJFCJ Enhanced Resource Guidelines prompt judges in child welfare/removal proceedings to ask themselves at each decision point or hearing:

1. What assumptions have I made about the cultural identity, genders, and background of this family?
2. What is my understanding of this family's unique culture and circumstances?
3. How is my decision specific to this youth and this family?
4. How has the court's past contact and involvement with this family influenced (or how might it influence) my decision-making process and findings?
5. What evidence has supported every conclusion I have drawn, and how have I challenged unsupported assumptions?
6. How am I convinced that reasonable efforts (or active efforts in Indian Child Welfare Act (ICWA) cases) have been made in an individualized way to match the needs of the family?
7. Have I considered relatives as a preferred placement option as long as they can protect the youth and support the permanency plan?[37]

The following is only a sampling, and not an exhaustive list of additional questions to consider:

In a child welfare/removal proceeding:

- Is my own personal experience, culture, and background preventing me from understanding and taking the cultural issues of the child and family into account in deciding what safety issues exist and whether to remove the child from the home?

For Example:

Disparities may be driven by the service strategy of an agency within the public child welfare system, due to lack of culturally relevant policies, procedures, practices, and decision-making.[38]

- Am I using data to identify how court recommendations and decisions may impact youth of color negatively?
- Do I believe that families of color abuse and/or neglect their children more than white families?
- Do I believe that if a parent was neglected and/or abused as a child they will be abusive parents?

At an initial appearance or detention hearing:

- Have I considered whether the youth before me has an actual history of failure to appear, or is my perception of that risk an assumption based on prior experience with other youth? Even if this youth has failed to appear, have I inquired into the reasons behind that failure? Was transportation an issue? Did they fail to receive notice? Were there factors outside of the youth's control that led to that failure?

For Example:

Data revealed ethnic disparities within Ventura County, California's juvenile justice system, where Latino youth were arrested 2.5 times more than white youth despite the county's population of youth as 47 percent Latino and 43 percent white.[39] Ventura County contracted with the W. Haywood Burns Institute to ensure that youth appeared in court and to reduce the "attendant detentions from bench warrants for failure to appear," resulting in a 50 percent reduction in admissions for probation violations for Latino youth.[40]

- Does the youth pose a serious public safety threat? Or am I basing the detention decision on biases, such as that the youth needs "protection" because they live in a "dangerous" neighborhood?

  For Example:

  Evidence suggests that bail judges rely on inaccurate stereotypes that "exaggerate the relative danger of releasing [B]lack defendants versus white defendants," which leads to disparities in bail determinations.[41]

- Am I considering the impact on school continuity when I decide to detain a child? How will detaining the child impact the child's ability to return to school and/or complete coursework?

  For Example:

  Incarceration as a youth reduces the chance of high school graduation by as much as 39 percent,[42] and "youth in correctional confinement score four years below grade level on average."[43]

- Is the youth before me also involved in the child welfare system, either as a status offender or as the subject of an abuse and neglect petition? If so, do I hold biases that might impede my impartiality based on my perception of their family situation?

- What objective criteria, in addition to any assessment, am I using to decide if detention is necessary? Do those criteria have a disproportionately negative impact on youth of color? If so, what is the appropriate response to that disproportionality?

- Are there resources that can be provided to address the issues that led me to conclude detention may be necessary? If there are no resources available in the child's community but there are resources available in another community, would my decision to detain have been different?

- Is bias affecting my decision to set conditions of bond or eligibility for release in a detention decision? For example, do I have a presumption that because the child resides in a single parent home that there will be inadequate supervision? Further, have I presumed that the child does live in a single parent home based on the race of the child?

  For Example:

  Courts often interpret the absence of a father in the home to indicate a lack of adequate parental supervision.[44]

When hearing pretrial or other motions:

- When defense attorneys file motions raising race, do I give them careful consideration or am I dismissive of the idea that any arresting, charging, or other court decision may have been racially biased?

At adjudication/transfer:

- In a battery case involving a white youth and a Black youth, do I assume the Black youth is the aggressor or more violent? Am I aware of research studies about perceptions of culpability and race?

  For Example:

  Studies have shown that people are more likely to see weapons in the hands of unarmed Black men than white men, which is more likely to lead to systemic and predictable errors in judgments of criminality.[45]

- Do I think that a youth is more likely to be guilty because of the neighborhood or zip code they live in or the school they attend? Am I making assumptions because I have had other youth from the same neighborhood appear in front of me, or has media coverage regarding certain neighborhoods influenced my perceptions and decisions?

- Do I fail to give credibility to a youth's denial because of a belief that young people are not truthful?

- Do I believe the police's version of the facts, even though it doesn't make sense, rather than the young person's?

- Am I likely to assume a Native youth charged with driving while intoxicated is guilty because I believe Native youth have significant issues with substance abuse? Am I considering the youth individually, rather than projecting my beliefs about racial or ethnic groups the youth belongs to onto the young person in front of me?

- Does bias factor into my decisions to transfer a youth to adult court rather than keep them within the purview of juvenile court, with its more rehabilitative focus?[46]

At a disposition proceeding:

- In deciding whether to commit a youth, or in setting conditions of probation or supervision, am I treating all youth similarly for similar conduct? For example, if I am ordering curfew, is it related to the time and place of the offense charged? Or is it just a rote standard condition imposed? Do I impose it equally on youth of all races?

- Are my commitment decisions reserved to address significant public safety concerns? Have I considered whether there are less restrictive alternatives? Have I considered the potential harm caused by confinement?

- In crafting conditions of probation, am I focusing on conduct related to the offense for which the youth was adjudicated? For example, if I have ordered ankle monitoring, is it based on the specific facts of the alleged offense or are there any underlying biases regarding the "dangerousness" of youth of color?

- Have I analyzed the disposition data and results by race and ethnicity in my jurisdiction? Are harsher dispositions imposed depending upon the race or ethnicity of the offender or victim? Are there other disparities?

- Am I familiar with services or programs in the youth's community that are culturally competent to serve youth of a particular race or ethnicity?

At a violation of probation or probation revocation proceeding:

- Have I inquired whether the probation officer has instituted appropriate services and opportunities for support? Have I considered whether the reason for revocation is related to bias against the youth's race or ethnicity?

For Example:

In Travis County, Texas, Latino youth were more likely to be "securely detained for technical probation violations" for truancy, curfew violations, and substance abuse than white youth.[47]

4. Eliminating Bias Increases Success

Procedural justice — the idea of feeling as though decisions are made in a fair and impartial manner, and without regard to racial or ethnic bias — means youth and families are more likely to feel trust and confidence in the court system and to abide by court orders and recommendations.[48]

C. Strategies For Correcting Implicit Bias — An Easy Reference Guide For Judges

As outlined above, racial disproportionality poses a significant problem in the juvenile justice and child welfare systems. In order to eliminate disparities in juvenile court, we must first understand our own biases. Because implicit biases are rooted in our subconscious mind, mitigating their impact can be a challenge. Fortunately, learned implicit biases can be 'unlearned' through a variety of techniques to change or mitigate the effects of these biases.

1. Recommended Practices for Judges to Mitigate the Impact of Biases When Making Judicial Decisions

a. Recognize your own implicit bias. In order to combat the impact of bias on judicial decisions, judges and others can learn about their implicit biases by taking one or more of the Harvard Project Implicit bias tests: https://implicit.harvard.edu/implicit/takeatest.html[49]

b. Ensure that you and your judicial colleagues, stakeholders, and court staff are educated about implicit bias. Training, literature, and technical assistance are available from a range of sources. These trainings take time, effort, and continuous reinforcement. Creating a court environment where decisions are made without implicit bias requires diligence by all involved.

c. Acknowledge that each of us employs shortcuts to synthesize information. This acknowledgment provides a platform to offer opportunities to others to do the same. Change very often follows acknowledgment.[50]

d. Slow down the process. Because implicit bias is a shortcut to organize and categorize information, slow down the process of making decisions, induce deliberation, and ensure that decisions are based in fact, rather than an aggregate of biases. Schedule hearings with critical case decisions when you are most alert and least fatigued in the day (this may be different for every judge), remember that we are prone to decision fatigue, gather as much information as you can, and use checklists as reminder of what questions to ask.[51]

In order to eliminate disparities in juvenile court, we must first understand our own biases.

e. Engage in "de-biasing," a practice of developing a greater appreciation of cultural communities different from our own, through active engagement with those communities.[52]

f. Question the information you receive from others. It is not enough to correct our own biases; we must also question others' biases. (For exanple: a police report states "the juvenile had a belligerent attitude and she was uncooperative." Are there specific facts to support that conclusion, or could the officer's perception have been based on implicit or explicit biases?)

g. Consider the tools and instruments used to assess youth and their families in the juvenile justice and child welfare systems. Are the risk-assessment tools racially neutral?

h. Become familiar with data. Data is a good tool to identify trends and patterns that may suggest our decisions are based in bias rather than fact. (For example: do plea negotiations, sentencing recommendations, and imposed sentences differ along racial lines?)

i. Practice mindfulness. Mindfulness means paying attention in a special way; "on purpose, in the present moment, and non-judgmentally."[53] It is a practice of being non-judgmental about anything you notice, of not labeling things as good or bad.

j. Exercise leadership in dismantling bias. Convene meetings of juvenile court stakeholders in the delinquency and child welfare systems to develop concrete plans to address bias.

2. Systemic Considerations

In addition to the recommendations previously mentioned about self-reflection, it is critical that judges are aware of the data and systems they are operating within before they can attempt to mitigate any structural biases that exist. Some questions that judges should ask, or request data regarding, include the following:

a. Does the court or prosecutor's office in my jurisdiction maintain data by race and ethnicity regarding which youth are referred for diversion?

b. Does the diversion program in my jurisdiction provide for referrals prior to arraignment?

c. Are diversion eligibility decisions informed or limited by the nature of the offense?

d. Do I have access to data regarding the race, ethnicity, and gender of youth who are detained in my jurisdiction?

e. Am I using an assessment or other standardized tool to determine if a youth should be detained? If I am using a standardized assessment, are the criteria used neutral across racial and ethnic identities? How do I know?

f. If there are override criteria for any assessment instrument I am using, do I know if and how the criteria negatively impact youth of color?

g. What criteria are being used by the court or other agencies to conclude that removal from the home is necessary? Are those criteria neutral or do they have a disproportionate impact on youth of color?

h. Is the safety assessment tool the child welfare agency is using dependent on objective criteria? Do those criteria disproportionately impact youth of color? If so, how? And what can be done to address the disparate impact of the tools and criteria used on our decision making?

i. Do I have access to commitment data in my jurisdiction regarding race, ethnicity, and gender?

j. Do I have access to data concerning transfer or waiver rates of all youth broken down by race, ethnicity, and gender?

Addressing the overrepresentation of children and families of color in our juvenile courts requires careful consideration and reform of the policies and practices that drive bias and structural racism.

TRAINING AND TECHNICAL ASSISTANCE

This bench card provides judges with introductory principles and best practices to support the elimination of disparities in the juvenile justice and child welfare systems. Comprehensive, supplementary training is strongly recommended in conjunction with use of this card. To connect with leading experts in the field of correcting implicit bias, please contact the National Juvenile Defender Center at 202-452-0010 or by emailing inquiries@njdc.info.

Implicit Association Tests, Project Implicit, https://implicit.harvard.edu/implicit/takeatest.html (last visited Nov. 7, 2017).

Project Implicit created a series of Implicit Association Tests (IAT) that measure the strength of associations between concepts (e.g., Black people, gay people) and evaluations (e.g., good, bad) or stereotypes (e.g., athletic, clumsy). Available IATs include (1) Presidents; (2) Religion; (3) Gender-Career; (4) Skin-tone; (5) Sexuality; (6) Weapons; (7) Asian; (8) Native; (9) Gender-Science; (10) Weight; (11) Age; (12) Disability; (13) Arab-Muslim; and (14) Race.

James Bell & Raquel Mariscal, Race, Ethnicity, and Ancestry in Juvenile Justice, in Juvenile Justice: Advancing Research, Policy, and Practice 111–130 (2011).

This chapter identified major elements of disparities by race, ethnicity, and ancestry in the juvenile justice system. Some key decision points prior to judicial appearance include "cite and release," arrest, diversion after arrest, referral to a detention facility, and admission to detention. At each key decision point, juvenile justice professionals exercise judgments about how the young person and their family should be handled. Monitoring these decision points, pursuant to federal policy, reveals that youth of color are funneled deeper into the system for behaviors similar to their white counterparts. In response, the chapter identifies promising policies and practices for reducing racial and ethnic disparities, demonstrating that juvenile justice systems can operate with fairness and equity for all young people, including collaboratively using data to conduct critical self-examination of policies and practices and determine how they impact youth of color.

David Arnold, Will Dobbie & Crystal S. Yang, Racial Bias in Bail Decisions (Nat'l Bureau of Econ. Research, Working Paper No. 23421, 2017).

This study used Becker's model of racial bias, which predicts that rates of pre-trial misconduct will be identical for marginal white and marginal Black defendants if bail judges are racially unbiased. In contrast, marginal white defendants will have higher rates of pre-trial misconduct than marginal Black defendants if bail judges are racially biased against Blacks, whether that racial bias is driven by racial animus, inaccurate racial stereotypes, or any other form of racial bias. Evidence suggested that there was a substantial bias against Black defendants, indicating that bail judges rely on inaccurate stereotypes that exaggerate the relative danger of releasing Black defendants versus white defendants.

Additionally, this study made three findings:

- Both white and Black bail judges were racially biased against Black defendants;
- Bail judges make race-based prediction errors due to anti-Black stereotypes and representativeness-based thinking, which in turn leads to the over-detention of Black defendants; and
- Racial bias is significantly higher among both part-time and inexperienced judges.

Phillip Atiba Goff et al., The Essence of Innocence: Consequences of Dehumanizing Black Children, 106 J. Personality & Soc. Psychol. 526 (2014).

This study examined whether Black male youth are given equal protections of childhood as their peers.

- Three hypotheses were tested:
  - That Black male youth are seen as less "childlike" than their white peers;
  - That the characteristics associated with childhood will be applied less when thinking specifically about Black male youth relative to white male youth, and;
  - That these trends would be exacerbated in contexts where Black males are dehumanized by associating them (implicitly) with apes.
- Findings:
  - The general population sees Black children as less innocent than white children.
  - Black children are seen as older and more culpable than their counterparts.
  - Police officers are also subject to dehumanizing Black children.
  - Black children are not equally "afforded the privilege of innocence – resulting in violent inequalities."

***Miles v. United States*, No. 13-CF-1523, 2018 WL 1527860 (D.C. Mar. 29, 2018).**

The D.C. Court of Appeals held that a tip that only identifies a suspect is insufficient, and that where the police received an anonymous tip alleging use of a firearm, the police needed to observe something that corroborated the presence of the gun before stopping the suspect. *Id.* at 2. The Court identified Miles' flight as the only potential corroborating action in this case and conducted a totality of the circumstances analysis. *Id.* at 14. The Court noted that a person "may be motivated to avoid the police by a natural fear of police brutality . . . or other legitimate personal reasons." *Id.* at 17 (citing *In re* D.J., 532 A.2d 138, 142 n.4 (D.C. 1987)). The Court also referenced the "proliferation of visually documented police shootings of African Americans . . . and the Black Lives Matter protests." *Id.* at 17. In finding the stop unlawful, the Court went on to note that the experience of being followed by a police officer on foot, blocked by a police cruiser that drove up on the sidewalk, and then told to stop "would be startling and possibly frightening to many reasonable people." *Id.* at 20-22. Moreover, unlike the cases cited by the government, "there was nothing about the character of Mr. Miles' flight that seemed particularly incriminating," as it was not unprovoked. *Id.* at 21. Thus, where Miles' flight was too "equivocal to reasonably corroborate the anonymous tip," the police lacked reasonable articulable suspicion for the *Terry* stop.

***Commonwealth v. Warren*, 475 Mass. 530 (2016).**

The Supreme Judicial Court of Massachusetts held that the defendant's race alone was insufficient to give officers reasonable articulable suspicion that he was the suspect of an earlier crime when the description lacked any information about facial features, hairstyles, skin tone, height, weight, or other physical characteristics separate from race. *Id.* at 339. The Court also noted that the police had no justifiable cause to arrest the defendant for running away from them in the first place; it was within the defendant's legal rights to run from the police, and the act of doing so does not imply guilt and is not grounds for arrest. *Id.* at 341-42. Black men were disproportionately targeted to the extent that flight from police should not necessarily be an admission of guilt. *Id.* at 342. Rather, Black men have "reason for flight totally unrelated to consciousness of guilt," such as the desire to avoid the recurring indignity of being racially profiled. *Id.*

***United States v. Smith*, 794 F.39 681 (7th. Cir. 2015).**

The United States Court of Appeals for the Seventh Circuit held that officers' encounter with a Black defendant in a dark alley at night in a minority-dominated urban area was a seizure, and that the defendant was not free to leave. *Id.* at 687-88. The Court further acknowledged that race was relevant in everyday police encounters with citizens in Milwaukee and around the country, and that existing empirical data demonstrates the existence of racial profiling, police brutality, and other racial disparities in the criminal justice system. *Id.* at 688.

Diversity & Inclusion 360 Comm'n, Am. Bar Ass'n, Hidden Injustice: Bias on the Bench (2016), https://www.americanbar.org/news/abanews/aba-news-archives/2016/02/hidden_injusticebi.html.

The American Bar Association's recently formed Diversity and Inclusion 360 Commission released a video tool to raise awareness and provide practical tips for judges in the United States on the damages caused by implicit bias and the necessary steps to combat it.

Judicial Div., Am. Bar Ass'n, Judges: 6 Strategies to Combat Implicit Bias on the Bench (2016), https://www.americanbar.org/publications/youraba/2016/september-2016/strategies-on-implicit-bias-and-de-biasing-for-judges-and-lawyer.html.

The American Bar Association's Judicial Division summarized six techniques and strategies judges can use on a weekly basis to mitigate implicit bias and successfully "de-bias," based on an original study, *Long-term Reduction in Implicit Race Bias: A Prejudice Habit-Breaking Intervention*, published by Patricia G. Devine, Patrick S. Forscher, Anthony J. Austin, and William T. L. Cox – (1) Become aware; (2) Individuation; (3) Stereotype replacement; (4) Counter-stereotypic imaging; (5) Perspective-taking; and (6) Increasing opportunities for contact.

Thomas Rudd, Kirwan Inst. for the Study of Race & Ethnicity, Racial Disproportionality in School Discipline: Implicit Bias is Heavily Implicated (2017), http://kirwaninstitute.osu.edu/racial-disproportionality-in-school-discipline-implicit-bias-is-heavily-implicated/.

Research shows that Black students are disciplined more often and receive more out-of-school suspensions and expulsions than white students. In 2010, over 70 percent of the students involved in school-related arrests or referred to law enforcement were Hispanic or

Black. Overall, Black students were three-and-a-half times more likely to be suspended or expelled than their white peers. According to the Kirwan Institute, implicit bias was heavily implicated as a contributing factor when the causes of racial disproportionality in school discipline were analyzed.

Nat'l Juvenile Def. Ctr. et al., Bench Card: Access to Juvenile Justice Irrespective of Sexual Orientation, Gender Identity, and Gender Expression (SOGIE) (2017), http://njdc.info/wp-content/uploads/2017/08/NJDC_SOGIE_Benchcard-1.pdf.

In partnership with the National Council of Juvenile and Family Court Judges (NCJFCJ), the National Juvenile Defender Center released *Access to Juvenile Justice Irrespective of Sexual Orientation, Gender Identity, and Expression (SOGIE)*, a bench card to promote judicial leadership in supporting Lesbian, Gay, Bisexual, Transgender, Queer or Questioning, and Gender Non-Conforming (LGBTQ-GNC) Youth.

Nat'l Juvenile Def. Ctr. et al., Bench Card: Applying Principles of Adolescent Development in Delinquency Proceedings (2017), http://njdc.info/wp-content/uploads/2017/08/NJDC_Adolescent-Development_Bench-Card.pdf.

In partnership with the National Council of Juvenile and Family Court Judges (NCJFCJ), the National Juvenile Defender Center released *Applying Principles of Adolescent Development in Delinquency Proceedings*, a bench card to promote judicial leadership in recognizing the developmental differences between youth and adults and integrate, at each stage of the case, applicable principles supported by the research on adolescent development.

The Sentencing Project, Fact Sheet: Black Disparities in Youth Incarceration (2017), http://www.sentencingproject.org/publications/black-disparities-youth-incarceration/.

Despite long-term declines in youth incarceration, the disparity at which Black and white youth are held in juvenile facilities has grown. As of 2015, Black youth were five times as likely to be detained or committed to youth facilities. Since 2001, racial disparities have grown in 37 states, and at least doubled in five: Maryland, Montana, Connecticut, Delaware, and Wisconsin.

The Sentencing Project, Fact Sheet: Native Disparities in Youth Incarceration (2017), http://www.sentencingproject.org/publications/native-disparities-youth-incarceration/.

Despite long-term declines in youth incarceration, the disparity at which Native and white youth are held in juvenile facilities has grown. Native youth were three times as likely to be incarcerated as white youth. The disparity has increased since 2001, when Native youth were roughly two-and-a-half times as likely to be detained or committed to juvenile facilities.

The Sentencing Project, Fact Sheet: Latino Disparities in Youth Incarceration (2017), http://www.sentencingproject.org/publications/latino-disparities-youth-incarceration/.

Latino youth are 65 percent more likely to be detained or committed than their white peers. While this disparity is concerning, the data shows a modest improvement from 2001, when Latino youth were 73 percent more likely to be in placement. The Latino disparity is smaller than that for Black youth, who are 500 percent more likely than white youth to be detained or committed.

Disparity and Disproportionality, Am. Public Human Services Ass'n, http://aphsa.org/content/APHSA/en/pathways/Positioning-Public-Child-Welfare-Guidance-PPCWG/Disparity-and-Disproportionality.html (last visited Nov. 8, 2017) (no longer on website) (on file with NJDC).

Framing the relationship between institutional and structural racism and disparate treatment raises awareness about how and why disproportionality occurs in public child welfare and the role the system can play to eliminate disparate practices within the agency. Disparities can be produced by the service strategy of an agency within the public child welfare system, due to lack of culturally relevant policies, procedures, practices, and decision-making. Poorly resourced public education systems and inequitable parental arrests are also significant contributors to disparate treatment, which yields negative outcomes for children, youth, and families. Addressing disparities and disproportionalities begins with data assessment, and collectively belongs to all members of the agency.

Child Welfare Info. Gateway, Racial Disproportionality and Disparity in Child Welfare (2016), https://www.childwelfare.gov/pubPDFs/racial_disproportionality.pdf.

Child Welfare Information Gateway compared the percentage of children by race in the general population to their percentage at various points in the child welfare continuum. They also compared a particular racial or ethnic population's representation in the child welfare system to its representation at the prior decision point (e.g., comparing a proportion of children adopted with the proportion of children of that race waiting to be adopted). Four possible explanations for racial disproportionality and disparity were identified: (1) Disproportionate and disparate needs of children and families of color due to higher rates of poverty; (2) Racial bias and discrimination exhibited by individuals (e.g., caseworkers, mandated and other reporters); (3) Child welfare system factors (e.g., lack of resources for families of color, caseworker characteristics); and (4) Geographic context, such as region, state, or neighborhood. A number of suggested strategies to address these issues were identified, but in implementation they should be specific to the disproportionality and disparities present in each jurisdiction, both in terms of the racial and ethnic populations affected and the points within the child welfare process at which those differences are apparent.

Citizens for Juvenile Justice et al., Missed Opportunities: Preventing Youth in the Child Welfare System From Entering the Juvenile Justice System (2017), https://www.cfjj.org/missed-opp.

Children pulled into the child welfare system are often not afforded stabilizing support systems, which puts them at high risk of developing reactive behaviors that lead to their entry into the juvenile justice system. Involvement in the juvenile justice system is tied to academic failure, future arrests, and other long-term consequences. Citizens for Juvenile Justice worked with the Massachusetts Department of Youth Services (DYS) and the Department of Children and Families (DCF) to examine aggregate case information for the more than 1,000 youth with open cases with both DCF and DYS in 2014. This review found that within the children welfare system, children who eventually had juvenile justice involvement had significantly different experiences than those who did not. These findings present opportunities to intervene, and incorporate different policies and programs that can prevent these children's experience with the juvenile court system.

Endnotes

[1] For the purposes of this Bench Card, Juvenile Court applies to all court proceedings affecting youth, including delinquency, child protective, and/or proceedings related to status offenses.

[2] Nat'l Research Council, *Executive Summary, in* Reforming Juvenile Justice: A Developmental Approach 6-7 (2013) [hereinafter Reforming Juvenile Justice]; Barry C. Feld, The Evolution of the Juvenile Court: Race, Politics, and the Criminalizing of Juvenile Justice 143 (2017); Citizens for Juvenile Justice & Mass. Budget and Pol'y Ctr., Missed Opportunities: Preventing Youth in the Child Welfare System From Entering the Juvenile Justice System (2015), https://www.cfjj.org/missed-opp; The Sentencing Project, Fact Sheet: Black Disparities in Youth Incarceration (2017) [hereinafter Black Disparities], http://www.sentencingproject.org/publications/black-disparities-youth-incarceration/; The Sentencing Project, Fact Sheet: Native Disparities in Youth Incarceration (2017) [hereinafter Native Disparities], http://www.sentencingproject.org/publications/native-disparities-youth-incarceration/; The Sentencing Project, Fact Sheet: Latino Disparities in Youth Incarceration (2017) [hereinafter Latino Disparities], http://www.sentencingproject.org/publications/latino-disparities-youth-incarceration/.

[3] Children's Bureau, U.S. Dep't of Health & Human Services, Racial Disproportionality and Disparity in Child Welfare 4 (2016), https://www.childwelfare.gov/pubPDFs/racial_disproportionality.pdf.

[4] *See generally* Sarah Hockenberry & Charles Puzzanchera, Nat'l Ctr. for Juvenile Justice, Juvenile Court Statistics 2013 at 7 (2015), https://www.ojjdp.gov/ojstatbb/njcda/pdf/jcs2013.pdf; Nat'l Ctr. for Juvenile Justice, Juvenile Offenders and Victims: 2014 National Report 176 (2014), http://www.ncjj.org/pdf/NR2014.pdf.

[5] Black Disparities, *supra* note 2.

[6] *Id.*

[7] *See* Native Disparities; Latino Disparities, *supra* note 2.

[8] *See* Children's Bureau, *supra* note 3, at 9. *See also* Ctr. for the Study of Social Pol'y, Disparities and Disproportionality in Child Welfare: Analysis of the Research 16 (2011) [hereinafter Analysis of the Research], https://www.cssp.org/publications/child-welfare/alliance/Disparities-and-Disproportionality-in-Child-Welfare_An-Analysis-of-the-Research-December-2011.pdf.

[9] Denise Herz & Joseph Ryan, *Building Multisystem Approaches in Child Welfare and Juvenile Justice, in* Ctr. for Juvenile Justice Reform & Am. Pub. Human Services Ass'n, Bridging Two Worlds: Youth Involved in the Child Welfare and Juvenile Justice Systems 37-39 (2008), http://cjjr.georgetown.edu/wp-content/uploads/2015/03/BridgingTwoWorlds_2008.compressed.pdf; Pam Fessler, *Report: Foster Kids Face Tough Time After Age 18*, Nat'l Public Radio, Apr. 7, 2010, https://www.npr.org/templates/story/story.php?storyId=125594259; Mark E. Courtney et al., Chapin Hill Ctr. for Children, Univ. of Chicago, Midwest Evaluation of the Adult Functioning of Former Foster Youth: Outcomes at Age 19 (2005), https://www.chapinhall.org/wp-content/uploads/Midwest-Eval-Outcomes-at-age-19.pdf.

[10] Over sixty-years after *Brown v. Board of Education*, 347 U.S. 483 (1954), residential segregation has resulted in youth of color attending under-resourced schools which contribute to the school-to-prison pipeline. *See* Charles J. Ogletree, Jr., All Deliberate Speed: Reflections on the First Half-Century of Brown V. Board of Education (2004).

[11] Nat'l Juvenile Def. Ctr. et al., Bench Card: Applying Principles of Adolescent Development in Delinquency Proceedings (2017) [hereinafter Adolescent Development Bench Card], http://njdc.info/wp-content/uploads/2017/08/NJDC_Adolescent-Development_Bench-Card.pdf; Russell J. Skiba & Natasha T. Williams, The Equity Project at Ind. Univ., Are Black Kids Worse? Myths and Facts About Racial Differences in Behavior (2014), http://www.indiana.edu/~atlantic/wp-content/uploads/2014/03/African-American-

Differential-Behavior_031214.pdf; Kristin Henning, *Race, Paternalism, and the Right to Counsel*, 56 Am. Crim. L. Rev. 649, 652-55 (2017) [hereinafter *Race, Paternalism, and the Right to Counsel*]; L. Song Richardson & Phillip Atiba Goff, *Self-Defense and the Suspicion Heuristic*, 98 Iowa L. Rev. 293, 297 (2012) [hereinafter *Self Defense*] (finding that people are more likely to see weapons in the hands of unarmed Black men than white men, which is more likely to lead to systematic and predictable errors in judgments of criminality); Jennifer L. Eberhardt et al., *Seeing Black: Race, Crime, and Visual Processing*, 87 J. Personality & Soc. Psychol. 876, 877 (2004) [hereinafter *Seeing Black*] (finding that Black faces influenced a person's ability to spontaneously detect degraded images of crime-relevant objects more than white faces); Dustin Albert & Laurence Steinberg, *Age Differences in Strategic Planning as Indexed by the Tower of London*, 82 Child Dev. 1501 (2011) (finding similar levels of maturation across groups in a study controlling for ethnicity and socio-economic status, and additionally finding that although strategic planning improved steadily as youth mature, an advanced ability to strategically plan did not develop until ages 22-25); Elizabeth Cauffman et al., *Age Differences in Affective Decision Making as Indexed by Performance on the Iowa Gambling Task,* 46 Developmental Psychol. 193 (2010) (finding a preference in adolescents for risk taking and for short-term reward over long-term gain, with no significant differences between ethnicities or socio-economic status); Laurence Steinberg et al., *Age Differences in Future Orientation and Delay Discounting*, 80 Child Dev. 28 (2009) (controlling for both ethnicity and socio-economic status, and finding that youth of similar ages in the study exhibited similar levels of weak future orientation across ethnicity and socio-economic status); Laurence Steinberg et al., *Age Differences in Sensation Seeking and Impulsivity as Indexed by Behavior and Self-Report: Evidence for a Dual Systems Model*, 44 Developmental Psychol. 1764 (2008) (measuring both sensation-seeking and impulsivity amongst a sample of 935 participants, controlling for ethnicity and socio-economic status, and finding that youth across all ethnic and socio-economic groups exhibited similar patterns in sensation-seeking and impulsivity); Laurence Steinberg & Kathryn C. Monahan, *Age Differences in Resistance to Peer Influence*, 43 Developmental Psychol. 1531 (2007) (measuring resistance to peer pressure, controlling for ethnicity and socio-economic status, and finding that between 10 and 14, little growth in the ability to resist peer pressure occurs, that between 14 and 18 resistance to peer pressure increases linearly, and that between 18 and 30 little growth occurs, in all groups); Lloyd D. Johnson et al., Monitoring the Future: National Survey Results on Drug Use 1975-2010, Volume I: Secondary School Students (2011) (suggesting that Black youth self-report using alcohol and different types of drugs less than other groups and by the 12th grade, white youth report using illicit drugs or alcohol more than any other group); Centers for Disease Control & Prevention, Youth Risk Behavior Surveillance (2014), http://www.cdc.gov/mmwr/pdf/ss/ss6304.pdf (according to self-report measures, white youth are engaged in illegal behavior at similar or higher rates compared to youth of color).

[12] See sources cited, *supra* note 11.

[13] See Joshua Rovner, the Sentencing Project, Racial Disparities in Youth Commitments and Arrests 6 (2016).

[14] See sources cited, *supra* note 8.

[15] Model Code of Judicial Conduct r. 2.2, 2.3(A) (Am. Bar Ass'n 2011).

[16] See Model Code of Judicial Conduct r. 2.3 (Am. Bar Ass'n 2011).

[17] Jerry Kang, *Implicit Bias in the Courtroom*, 59 UCLA L. Rev. 1124, 1133 (2012).

[18] Annie E. Casey Found., Race Equity and Inclusion Action Guide: 7 Steps to Advance and Embed Race Equity and Inclusion Within Your Organization (2014), http://www.aecf.org/m/resourcedoc/AECF_EmbracingEquity7Steps-2014.pdf.

[19] Constitutional amendments, legislation, and Supreme Court decisions have addressed instances of structural or institutional bias in marriage, deed restrictions, voting boundaries, voting registration, school desegregation, college admission and other areas. Statutes may include racial or cultural prejudices that are not overt. The court staff may lack diversity. The courthouse grounds may infer a bias by the inclusion or positioning of flags, monuments, plaques, or photographs that suggest a bias or prejudice. The courthouse location, court services location, or jail and prison locations may cause an impediment to access to justice and services. *See, e.g.,* Griggs v. Duke Power Co., 401 U.S. 424, 430 (1971) ("practices, procedures, or tests neutral on their face, and even neutral in terms of intent, cannot be maintained if they operate to 'freeze' the status quo of prior discriminatory . . . practices.").

[20] See Am. Civil Liberties Union, Racial Disparities in Sentencing: Hearing on Reports of Racism in the Justice System of the United States 5 (2014), https://www.aclu.org/sites/default/files/assets/141027_iachr_racial_disparities_aclu_submission_0.pdf.

[21] See MP Associates & Ctr. for Assessment & Policy Dev., Racial Equity Tools' Glossary [hereinafter Racial Equity Tools], http://www.racialequitytools.org/images/uploads/RET_Glossary913L.pdf (last visited Jan. 3, 2018).

[22] *See, e.g.*, Cmty. Relations Services, U.S. Dep't of Justice, Community Relations Services Toolkit for Policing, Understanding Bias: A Resource Guide, https://www.justice.gov/crs/file/836431/download (last visited Dec. 14, 2017); *Explicit Bias*, Perception Inst., https://perception.org/research/explicit-bias/ (last visited Dec. 14, 2017).

[23] See Racial Equity Tools, *supra* note 21.

[24] Even where an explicit bias does not appear to be harmful on its face, for example preference for a person who is from the same university alma matter as one's self, where such bias unfairly favors one group over another to their detriment, it can be harmful. *See, e.g, Griggs*, 401 U.S. 424. *See generally* Model Code of Judicial Conduct r. 2.3 (Am. Bar Ass'n 2011).

[25] *See, e.g.*, Jennifer K. Elek & Paula Hannaford-Agor, *First, Do No Harm: On Addressing the Problem of Implicit Bias in Juror Decision Making,* 49 Ct. Rev. 190 (2013) [hereinafter *First, Do No Harm*], http://www.ncsc-jurystudies.org/~/media/microsites/files/cjs/what%20we%20do/cr49-4elek.ashx; Mark Soler, *Reducing Racial and Ethnic Disparities in the Juvenile Justice System, in* Nat'l Ctr. for State Courts, Trends in State Courts: Juvenile Justice and Elder Issues 27 (2014), http://www.ncsc.org/~/media/Microsites/Files/Future%20Trends%202014/Reducing%20Racial%20and%20Ethnic%20Disparities_Soler.ashx; Anthony Greenwald et al., *Understanding and Using the Implicit Association Test: III. Meta-Analysis of Predictive Validity,* 97 J. Personality & Soc. Psychol. 17 (2009); Kristin A. Lane et al., *Understanding and Using the Implicit Association Test: IV: What We Know (So Far) About the Method, in* Implicit Measures of Attitudes: Procedures & Controversies (Bernd Wittenbrink & Norbert Schwarz eds., 2007).

[26] Kirwan Inst. for the Study of Race & Ethnicity, Understanding Implicit Bias, http://kirwaninstitute.osu.edu/research/understanding-implicit-bias/ (last visited Jan. 3, 2018).

[27] *Id.*

[28] See *First, Do No Harm, supra* note 25; *Race, Paternalism, and the Right to Counsel; Self Defense; Seeing Black, supra* note 11.

[29] See *Race, Paternalism, and the Right to Counsel, supra* note 11, at 653. *See generally* James Forman, Jr., Locking Up Our Own: Crime and Punishment in Black America (2017); Jeffrey J. Rachlinski et al., *Does Unconscious Racial Bias Affect Trial Judges?*, 84 Notre Dame L. Rev. 1195, 1197 (2009); L. Song Richardson, *Arrest Efficiency and the Fourth Amendment*, 95 Minn. L. Rev. 2035, 2039 (2011); Theodore Eisenberg & Sheri Lynn Johnson, *Implicit Racial Attitudes of Death Penalty Lawyers*, 53 DePaul L. Rev. 1539, 1540 (2004); Jerry Kang & Mahzarin R. Banaji, *Fair Measures: A Behavioral Realist Revision of "Affirmative Action"*, 94 Calif. L. Rev. 1063, 1072 (2006) (discussing studies, including those in which test subjects were Black, rejected racism, and still displayed implicit bias).

[30] See Analysis of the Research, *supra* note 8. *See also* Child Welfare Info. Gateway, Racial Disproportionality and Disparity in Child Welfare (2016) [hereinafter Racial Disproportionality and Disparity], https://www.childwelfare.gov/pubPDFs/racial_disproportionality.pdf; Office for Civil Rights, U.S. Dep't of Educ., Civil Rights Data Collection, Data Snapshot: School Discipline (2014) [hereinafter Data Snapshot: School Discipline], https://www2.ed.gov/about/offices/list/ocr/docs/crdc-discipline-snapshot.pdf; Donna St. George, *Federal Data Show Racial Gaps in School Arrests*, Wash. Post, Mar. 6, 2012, https://www.washingtonpost.com/national/federal-data-show-racial-gaps-in-school-arrests/2012/03/01/glQApbjvtR_story.

html?utm_term=.fe5c0b5f42ab; David J. Losen & Russell Skiba, Suspended Education: Urban Middle Schools in Crisis (2010), https://www.splcenter.org/sites/default/files/d6_legacy_files/downloads/publication/Suspended_Education.pdf.

[31] The Sentencing Project, Disproportionate Minority Contact in the Juvenile Justice System (2014) [hereinafter Disproportionate Minority Contact], http://www.sentencingproject.org/wp-content/uploads/2015/11/Disproportionate-Minority-Contact-in-the-Juvenile-Justice-System.pdf; Ashley Nellis, The Sentencing Project, Policies & Practices that Unfairly Shift Youth of Color into the Juvenile Justice System, https://www.juvjustice.org/sites/default/files/ckfinder/files/resource_473.pdf (last visited Dec. 19, 2017). *See generally Statistics*, Strategies for Youth Connecting Cops & Kids, https://strategiesforyouth.org/resources/facts/ (last visited Dec. 19, 2017).

[32] Data Snapshot: School Discipline, *supra* note 30.

[33] Am. Civil Liberties Union, School-To-Prison Pipeline, https://www.aclu.org/issues/juvenile-justice/school-prison-pipeline (last visited Dec. 19, 2017); Libby Nelson & Dara Lind, The School to Prison Pipeline Explained (2015), http://www.justicepolicy.org/news/8775.

[34] *See* Adolescent Development Bench Card, *supra* note 11.

[35] *See* Black Disparities; Native Disparities; Latino Disparities, *supra* note 2; Children's Bureau, *supra* note 3; Analysis Of The Research, *supra* note 8. *See also* Jolanta Juskiewicz, Building Blocks for Youth, Youth Crime/Adult Time: Is Justice Served? (2000), http://www.njjn.org/uploads/digital-library/resource_127.pdf.

[36] Kristin Henning, *Criminalizing Normal Adolescent Behavior in Communities of Color: The Role of Prosecutors in Juvenile Justice Reform*, 98 Cornell L. Rev. 383, 422 (2013).

[37] Sophie Gatowski et al., Nat'l Council of Juvenile & Family Court Judges, Enhanced Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases (2016).

[38] *Disparity and Disproportionality*, Am. Public Human Services Ass'n, http://aphsa.org/content/APHSA/en/pathways/Positioning-Public-Child-Welfare-Guidance-PPCWG/Disparity-and-Disproportionality.html (last visited Nov. 8, 2017) (no longer on website) (on file with NJDC).

[39] Disproportionate Minority Contact, *supra* note 31, at 8.

[40] *Id.*

[41] David Arnold, Will Dobbie & Crystal S. Yang, *Racial Bias in Bail Decisions*, 30 (Nat'l Bureau of Econ. Research, Working Paper No. 23421, 2017).

[42] *See* Anna Aizer & Joseph J. Doyle, Jr., The Nat'l Bureau of Econ. Research, Juvenile Incarceration, Human Capital and Future Crime: Evidence From Randomly-Assigned Judges 3 (2013), http://www.mit.edu/~jjdoyle/aizer_doyle_judges_06242013.pdf. *See also* Gary Sweeten, *Who Will Graduate? Disruption of High School Education by Arrest and Court Involvement*, 23 Jus. Q. 462, 473 (2006) (A first-time arrest during high school doubles the likelihood that a youth will drop out and a court appearance quadruples that likelihood.); Randi Hjalmarsson, *Criminal Justice Involvement and High School Completion*, 63 J. Urban Econ. 613, 613 (2008) (Arrested youth are 11 percent less likely to graduate from high school and incarcerated youth are 26 percent less likely to graduate.).

[43] Richard Mendel, The Annie E. Casey Found., No Place for Kids: The Case for Reducing Juvenile Incarceration 24 (2011), http://www.aecf.org/m/resourcedoc/aecf-NoPlaceForKidsFullReport-2011.pdf.

[44] Jeffrey J. Shook, *Racial Disproportionality in Juvenile Justice: The Interaction of Race and Geography in Pretrial Detention for Violent and Serious Offenses,*

[45] *See Self Defense*, *supra* note at 11.

[46] Black, Latino, Asian American & Pacific Islander, Native & Alaskan Native youth are significantly more likely to be transferred to adult court and sentenced to incarceration than white youth who commit comparable crimes. *See* Black Disparities; Native Disparities; Latino Disparities, *supra* note 2; Disproportionate Minority Contact, *supra* note 31.

[47] Ctr. for Children's Law & Policy, Graduated Responses Toolkit: New Resources and Insights to Help Youth Succeed on Probation 29 (2016), http://www.cclp.org/wp-content/uploads/2016/06/Graduated-Responses-Toolkit.pdf.

[48] *See* Reforming Juvenile Justice, *supra* note 2, at 192. *See also* Tom R. Tyler, *Procedural Justice, Legitimacy, and the Effective Rule of Law*, 30 Crime & Just. 283 (2003).

[49] *Implicit Association Tests*, Project Implicit, https://implicit.harvard.edu/implicit/takeatest.html (last visited Nov. 7, 2017).

[50] *See, e.g., What Can I Do About Bias?,* MTV's Look Different Campaign, http://www.lookdifferent.org/what-can-I-do (last visited Dec. 20, 2017).

[51] *See generally* Ed Yong, *Justice is Served, But More So After Lunch: How Food-Breaks Sway the Decisions of Judges*, Discover Mag., Apr. 11, 2011, http://blogs.discovermagazine.com/notrocketscience/2011/04/11/justice-is-served-but-more-so-after-lunch-how-food-breaks-sway-the-decisions-of-judges/#.Wk0A7dKnEnR; John Tierney, *Do You Suffer From Decision Fatigue*, N.Y. Times Mag., Aug. 17, 2011, http://www.nytimes.com/2011/08/21/magazine/do-you-suffer-from-decision-fatigue.html?pagewanted=all&_r=0; J.D. Meier, *10 Ways to Defeat Decision Fatigue*, Sources of Insight, http://sourcesofinsight.com/10-ways-to-defeat-decision-fatigue/ (last vested Jan. 3, 2018).

[52] *See* Judicial Div., Am. Bar Ass'n, Judges: 6 Strategies to Combat Implicit Bias on the Bench (2016), https://www.americanbar.org/publications/youraba/2016/september-2016/strategies-on-implicit-bias-and-de-biasing-for-judges-and-lawyer.html (Judge Bernice B. Donald of the 6th Circuit Court of Appeals stated, "Each of us in doing our jobs are viewing the functions of that job through the lens of our experiences, and all of us are impacted by biases, stereotypes and other cognitive functions that enable us to take shortcuts in what we do."). *See also* Patricia Devine et al., *Long Term Reduction in Implicit Race Bias: A Prejudice Habit-Breaking Intervention*, 48 J. Experimental Soc. Psychol. 1267, 1270 (2012).

[53] Jon Kabat-Zinn, *Defining Mindfulness* (2017), https://www.mindful.org/jon-kabat-zinn-defining-mindfulness/.

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Child Welfare is Not Exempt from Structural Racism and Implicit Bias

January 4, 2019 Jessica Pryce

Social workers and social scientists have a duty to educate, clarify and raise consciousness when empirically unfounded conclusions that can be harmful to marginalized populations are promoted as fact. Some may read Naomi Schafer Riley's blog for the American Enterprise Institute – No, The Child Welfare System Isn't Racist – and deem it as just another piece written from a shortsighted perspective steeped in white privilege. Others, however, may become even more convinced that implicit bias is an overused claim in child welfare and that racism is a thing of the past.

In response, we aim to push back on assumptions that stem from lenses tainted by privilege and facilitate cultural humility and compassion in discourse on this critical issue. We attempt to briefly address four of the main problems in the article that reflect a larger narrative that is intent on discrediting and denouncing the impact of institutional racism and implicit bias on black families in child welfare. We approach this as a serious matter because ideology of this nature

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can have a dangerous and detrimental effect when used to justify policies and approaches that disempower and penalize marginalized groups of people.

First, a fundamental flaw with the original article is that it restricts the definition of racism to overt and intentional acts and/or conscious thoughts held by individuals. It reinforces the misconception that racism is simply a problem of rare, isolated events and that it is most accurately understood as a relic of the past. It makes an erroneously and not so subtle jab that advocates of racial justice ignorantly equate racism and racial bias with "nosy white ladies who are interfering in the lives of black families."

On the contrary, advocates of racial equity in child welfare understand that racism is not simply a matter of *personal prejudice* and *hate* but a multifaceted problem that is prevalent within and across systems. In addition, Riley notes that the reporters of the abuse are often black or part of a minority group. She writes that, "more often than not, it is black people concerned about the welfare of black children."

But there is no evidence provided to support the implied claim that maltreatment allegations made by black people are a driving force in the reporting disparities. The error in this type of logic is that it assumes that acknowledging that there is racial bias in child welfare is synonymous with the claim that every holder of the bias is white. This is simply not true.

Overall, the Riley article would have benefited greatly from a basic understanding and application of the four levels of racism, as defined by **The Center for Racial Justice Innovation:**

Internalized racism lies within individuals. These are our private beliefs and biases about race and racism, influenced by our culture. Internalized racism can take many different forms, including racial prejudice toward other people of a different race.

Interpersonal racism occurs between individuals. These are biases that occur when individuals interact with others and their private racial beliefs affect their public interactions. Examples include racial slurs, bigotry, hate crimes and racial violence.

Institutional racism occurs within institutions and systems of power. It is the unfair policies and discriminatory practices of particular institutions – schools, workplaces, the criminal justice

system, and yes, the child welfare system – that routinely produce racially inequitable outcomes for people of color and advantages for white people.

Structural racism is racial bias among institutions and across society. It involves the cumulative and compounding effects of an array of societal factors including the history, culture, ideology and interactions of institutions and policies that systematically privilege white people and disadvantage people of color.

Second, the undertones in the original article do not reflect the true nature of what our families and children experience. By misconstruing the stances of child welfare researchers, practitioners and consumers as mistakenly focused on the child welfare system as racist, Riley suggests that racism in the child welfare system is undeserving of focus.

Focusing on race or racism does not mean that other factors are not important or influential to the disparity that is occurring. Quite like the stances "Black Lives Matter" versus "All lives Matter," race matters in child welfare and acknowledging and studying race does not mean that poverty, health inequities, domestic violence experiences and family structure issues are insignificant.

Race may not be the sole proprietor of the disparate outcomes minority children and families face, but it is a faulty literary contribution to assert that it bears no responsibility.

Third, the opinions of two black child welfare professionals appear to be used as an opportunistic attempt to validate the positions expressed in the article. A number of key insights potentially gained from the interview with the black professionals, both with extensive experience in Child Protective Services (CPS), actually go unacknowledged and unexplored in the original article. For example, the individuals interviewed expressed the following points:

- All social workers in CPS agencies, regardless of their own racial background, "work in a system and tend to reflect dominant discourses of power." If you are a child welfare worker, "you are an agent of systematic power." As such, having the same racial/ethnic background as overrepresented children of color does not negate the role of implicit bias for child welfare workers, mandated reporters or community members.

- Child welfare systems are not exempt from racial bias, just like other service systems that are characterized by disproportionality and disparity for black families. Implicit bias plays a role across systems (e.g. in hospitals and emergency rooms; schools; court rooms) as well as in child welfare systems.

The important systemic issues raised in these statements are not explored in the article. Furthermore, the anecdotal accounts of comments made to black CPS workers as reported in the article hardly speak to the nuances of attitudes around social service provision and interracial dynamics in black communities. The attempt to describe the perceptions that black families and communities have regarding the child welfare system appears disingenuous.

There is no intellectual curiosity applied to question the prevalence of such perspectives and what might be the root of such positions – for example, the historic and current experiences black families have had in child welfare interactions, their experiences when engaging in services, their perceptions of the motivations and efficacy of the system.

These dynamics matter, especially for vulnerable families who are resource-strapped. It matters for parents who may need help but may feel that systems are not for them or will respond punitively when help is needed and interpret requests for help as a failure on their part.

Continuing to address racial disparity and the subsequent disproportionality in the child welfare system is necessary, because it exists. Minority families have disparate outcomes in the child welfare system, which negatively affects the family and, ultimately, society. One of the key informants in Riley's piece commented about this: *"Racism exists inside our system – also in health care, mental health, and criminal justice."*

If there is racism embedded into systems that are tangential to child welfare, how is it that Riley claims that child welfare is spared? If the goal of the original article was to pontificate that racism alone is not to blame for these issues, then that's a short order. There is no current evidence of any researcher or practitioner taking the position that racism is the only explanation for disproportionality and disparity.

Riley seems to want the conversation of racism within child welfare to be silenced. But as Dr. Martin Luther King, Jr once stated:

> *Cowardice asks the question, is it safe? Expediency asks the question, is it politic? Vanity asks the question, is it popular? But conscience asks the question, is it right? And there comes a time when one must take a position that is neither safe, nor politic, nor popular – but one must take it because it is right.*

We must do all that we can to create a fair system, and that includes using an intersectional lens when examining outcomes across sub-populations. It does not mean avoiding a topic that creates discomfort. Perhaps when people commit to increasing critical consciousness, face personal discomfort and support anti-racist legislation and strategies, then real change can begin to permeate the child welfare system.

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Anna Yelick (Florida State University) and Reiko Boyd (University of Houston) also contributed to this op-ed.

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Race and Poverty Bias in the Child Welfare System: Strategies for Child Welfare Practitioners

By Krista Ellis

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This article was adapted from a presentation on Bias in Child Welfare by Krista Ellis, Amelia Watson, and Shrounda Selivanoff at the ABA Center on Children and the Law's National Conference on Parent Representation, April 2019 in Tyson's Corner, VA. 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.

Note: Bias harms families of color and low socioeconomic status involved in the child welfare system. While other biases must be addressed, such as those related to religion, sexual orientation, gender identity, and more, this article selectively discusses race and poverty bias.

- National studies by the U.S. Department of Health and Human Services reported "minority children, and in particular African American children, are more likely to be in foster care placement than receive in-home services, even when they have the same problems and characteristics as white children."[1]

- According to January 2017 reports from the state of Washington, "African American children were 2.2 times and Native American children were 2.9 times more likely to be placed in out-of-home care compared to white children"[2]

These statistics and similar reports from around the country indicate race and poverty-related disparities and disproportionality in the child welfare system. Race and socioeconomic status often impact decisions in every stage of the child welfare system from reporting, to foster care placements, to termination of parental rights decisions.

Many factors may explain the evidence of disproportionality and disparity surrounding racial groups and low-income families in the child welfare system:

- correlation between poverty and maltreatment;
- visibility or exposure bias;
- limited access to services;
- geographic restrictions; and
- child welfare professionals knowingly or unknowingly letting personal biases impact their actions or decisions.

Understanding Bias

Child welfare professionals must address their own biases when working with families. Many biases develop from the schema in our brain that lets us quickly analyze people, places, and situations.[3] Schema may be gathered through learned stereotypes and stored in the recesses of our brains. Our schema operates as the lens through which we interpret and predict the world. Schema often results in a fixed oversimplification of groups. Because schema assists our brains with processing, it can create preferences for particular groups, negative or positive.

Biases may come in two forms:

(1) Explicit biases include overt acts of discrimination, racism, and prejudice. Explicit bias is easier to identify. People are typically aware of the explicit biases they may possess because it is a conscious bias.

(2) Implicit biases can be more difficult to assess because they include unconscious attitudes and beliefs. We are typically unaware that we have these biases. However, while not as obvious, implicit biases can produce discriminatory behaviors. A common example used to describe implicit bias is racial profiling by law enforcement – implicit bias may lead police officers to be more suspicious of male minorities. In the child welfare realm, a study from a Philadelphia hospital suggested African American and Latino toddlers hospitalized for injuries such as bone fractures "were more than five times more likely to be evaluated for child abuse, and more than three times more likely to be reported to child protective services, than white children with comparable injuries."[4]

Everyone has implicit biases. The presence of implicit biases does not necessarily lead to explicitly biased decisions or behaviors; however, bias may predict subtle discriminatory behaviors.[5] By definition, implicit biases appear without awareness or direction. Research suggests that one way to reduce or prevent implicit bias in our decision-making process requires recognizing our biases. Since implicit biases are unconscious, using tools and self-reflection are the means through which we must discover these biases.

Harvard University created the Implicit Association Test (IAT) to help identify implicit biases.[6] The IAT uses a methodology relating reaction time to words and categories to elicit unconscious opinions. There are IATs to test biases for race, gender, disability, and much more. Strategies also focus on identifying and addressing bias in systems that work with children and families.[7]

Why Does Bias Matter?

Our implicit biases affect our daily decisions. For many of us, implicit biases may control who we sit beside on the bus or train on our morning commute or in a room with other people. Biases can impact our work with families in the child welfare system. Bias that goes unchecked can impact the trajectory of a child welfare case for many families. While implicit bias is not always negative, it can lead to discriminatory actions.

Addressing Bias

"Addressing the overrepresentation of children and families of color in our juvenile courts requires careful consideration and reform of the policies and practices that drive bias and structural racism."[8]

Child welfare system leaders should actively address concerns about bias.

1. Become aware of your own biases
2. Raise consciousness
3. Deliberate, reflect, and educate
4. Change perspectives
5. Welcome and embrace diversity among practitioners

Regardless of your role in the child welfare system, whether attorney, judge, social worker, or other professional there are opportunities to address your own and others' biases to ensure they do not drive decisions in child welfare cases. Often our biases lead us to believe all families should be just like our families. We may think, "Well, if that was my child I would not do that." We must break down this method of evaluating families and focus on safety and what is truly in the best interest of the child. Because this

mode of thinking is not the most natural for our brains to process, we must make conscious decisions after reflecting during each step of the child welfare proceeding.

Become aware of your own bias.

As mentioned above, a first step to addressing bias is knowing your own biases, whether positive or negative. Being aware of the bias enables you to flag and remove that bias when making decisions so a fair, individualized assessment can be made. Becoming aware of bias may require completing tests such as the IAT to identify your biases. Practicing ongoing self-reflection of your beliefs, presumptions, and opinions can assist with checking on pre-existing and newly formed biases. Our biases typically derive from our personal experiences. Therefore, by educating ourselves through reading books, listening to podcasts, participating in trainings, and having productive discussions that disrupt bias, child welfare providers can gain new perspectives that help them understand their decisions.

Raise consciousness.

Child welfare advocates must raise consciousness of bias in practice. For attorneys, bias can impact representation. Zealously representing clients may require attorneys to assess their own biases and ensure other professionals' biases are not driving decisions or recommendations. Judges should also reduce or eliminate bias in child welfare cases by assessing their biases about families of color or poor families. Judges should also acknowledge and properly assess cases when biases from other practitioners lead to improper case determinations.[9] For social workers this may require acknowledging biases during referrals, recommendations, and home visits.

A major area in which child welfare practitioners may raise consciousness of cultural bias is language barriers between families and practitioners. Language barriers often further cultural biases for child welfare professionals. Due to the difficulty of communicating, professionals may act unreasonably due to misunderstandings. Practitioners must advocate for access to tools and resources, such as language services, interpreters, or colleagues with language and culture fluency to foster meaningful communications with clients. Never let language barriers inhibit effective representation.

Deliberate, reflect, and educate.

To reduce or eliminate our own biases, we should take time to reflect on reasoning and facts before making decisions. Due to high caseloads and the need for triaging, child welfare practitioners often make quick, in-the-moment, decisions. These off-the-cuff decisions are usually biased because individual facts may not be considered.[10] Our brains often fill the gaps with stereotypes or prior cases we have encountered.

Some tips:

- *Write it down* – writing typically induces further deliberation and causes you to consider the justification of the decision made.
- *Explain your reasoning to another person* (e.g., colleague or intern). This alternative may provide an opportunity for deliberation. Taking the time to reflect, write down your perspective, or discuss resolutions with a colleague can uncover when and how a bias is impacting decisions.

Change perspectives.

Working directly with clients can foster an "in their shoes" approach. This means imagining you are the client, considering all factors you may know about the client (race, socioeconomic status, and more), and understanding the client's perspective. Meet your clients "where they are" and understand what they want and need. Exercise cultural empathy to understand how clients with varying

backgrounds may differ. Cultural empathy is simply appreciating and considering the differences and similarities of another culture compared to one's own.

In addition to personal steps we may take to change perspective, we can work together for structural and systematic changes of perspective. Examples include:

- *Supporting Parent Advocates.* Parent mentoring programs provide additional support for parents involved in the child welfare system. Supporting parent mentoring programs encourages parents to have a voice in the child welfare system to say what they need and how the system can do a better job to serve parents and families.
- *Reunification Day Celebrations.* These local events celebrate parents who have reunited with their children following child welfare intervention. They are an opportunity for localities to reflect and celebrate the preferred goal of child welfare intervention. For state examples of reunification day events, see the ABA's National Reunification Month web page.
- *"Blind Removals."* Blind removals require a panel of practitioners to look at a case file with all identifications of race removed before assessing whether a child should be removed from their home or receive services. In one jurisdiction, implementing blind removals resulted in fewer children of color being placed in out-of-home care than under previous methods.[11]

Welcome and embrace diversity among practitioners.

Research suggests exposure to varied groups may reduce bias. One mechanism for change may be the "social contact hypothesis." This hypothesis "suggests that prejudice and stereotypes can be reduced by face-to-face interaction between groups."[12] This means meeting and working with individuals from other communities can actually reduce our biases. More specifically, contact with "positive exemplars" can shape and possibly even reduce how we associate stereotypes to particular groups. A great way to introduce positive exemplars may be embracing a more diverse staff and/or peer mentors. Other examples of positive exemplars include reunification heroes, parent allies meeting with legislators, and parent allies employed by the child welfare system.

Conclusion

Addressing implicit bias is an ongoing process that individuals need to commit to addressing to have a child welfare system that our families truly deserve, one that does not treat them differently because of their race or income. As child welfare providers, attorneys, judges, and social workers, it is our job to take steps to combat our own biases affecting our cases and to work together to make systemic changes that benefit families. Take a step toward addressing bias today whether that means taking an IAT, starting a conversation in your office, setting up a bias training for peers, educating yourself with books or podcasts, or engaging in a new event or practice directed at disrupting bias in the child welfare system.

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Endnotes

[1] Dorothy Roberts. *PBS Frontline Essay: Race and Class in the Child Welfare System.* <https://www.pbs.org/wgbh/pages/frontline/shows/fostercare/caseworker/roberts.html>

[2] Partners for Our Children. "Child Welfare Data at a Glance. <https://partnersforourchildren.org/data/quickfacts>

[3] We use schemata to provide a frame of reference for new information. Schemata helps our brains predict likely outcomes and make sense of experiences. Because it plays a role in how we understand certain information, it can often guide or impact our behaviors. *See* InThinking.net. *Schema Theory: Definitions.* (last updated July 2018). <https://www.thinkib.net/psychology/page/1458/schema-theory>

[4] *See* Dorothy Roberts. *PBS Frontline Essay: Race and Class in the Child Welfare System* <https://www.pbs.org/wgbh/pages/frontline/shows/fostercare/caseworker/roberts.html >

[5]ABA Section of Litigation, Implicit Bias Initiative. <https://www.americanbar.org/groups/litigation/initiatives/task-force-implicit-bias/>

[6] Take a test here: https://implicit.harvard.edu/implicit/takeatest.html.

[7] *See* ABA Section of Litigation, Committee on Children's Rights. "Five Ways to Address Implicit Bias Within Our Systems," October 31, 2018. < https://www.americanbar.org/groups/litigation/committees/childrens-rights/practice/2018/five-ways-to-address-implicit-bias-within-our-systems/>

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[11] American Bar Association. *Hidden Injustice: Toward a Better Defense*, November 19, 2017. <https://www.americanbar.org/news/abanews/aba-news-archives/2016/08/hidden_injusticet/>

[12] ABA Section of Litigation, Implicit Bias Initiative. (citing Kang & Banaji, Fiske & Gilbers, Asgari, Dasgupta & Asgari). <https://www.americanbar.org/groups/litigation/initiatives/task-force-implicit-bias/>