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**KEY PRINCIPLES<sup>1</sup>**

All of the key principles discussed in this chapter rest on one foundational element: All children have the right to a healthy and safe childhood in a nurturing, permanent family, or the closest possible substitute to a family setting. Each of these principals emphasizes the tremendous responsibility undertaken by judges hearing child abuse and neglect cases.

<b>PROCEDURE</b>	
6.01	<p><b>AVOIDING UNNECESSARY SEPARATION OF CHILDREN AND FAMILIES</b></p> <p>When the state is forced to intervene on behalf of abused and neglected children, it is not enough to protect them from immediate harm. When the state is deciding whether to place children outside the home, it must take into account not only the children’s safety, but also the emotional impact of separation. Throughout its involvement, the state must strive to ensure that children are brought up in stable, permanent families, rather than in temporary and unstable foster placements under the supervision of the state.</p> <p>The need to provide permanent homes for abused or neglected children is the fundamental principle behind the Adoption Assistance and Child Welfare Act of 1980.<sup>2</sup> The obligation to achieve permanency is also set forth in most states’ juvenile court acts and laws authorizing the termination of parental rights.</p> <p>Statutory provisions designed to achieve permanency for abused or neglected children are based on several widely accepted principles of child development.</p> <ol style="list-style-type: none"> <li>1. First, many mental health professionals believe that stable and continuous care givers for children are very important to normal emotional growth.<sup>3</sup> According to these authorities, children need secure and uninterrupted emotional relationships with adults who are responsible for their care. Repeatedly disrupted placements and relationships can interfere with a child’s ability to form close emotional relationships after reaching maturity.</li> <li>2. Second, children need the security of having parents committed to their care. The lack of parents who provide unconditional love and care can profoundly insult a child’s self-image.<sup>4</sup></li> <li>3. Third, having a permanent family adds predictability to a child’s life. Foster care, with its inherent instability and impermanence, can impose great stress on a child. Weathering the normal situational changes of childhood in a permanent family enables a child to envision a more secure future.<sup>5</sup></li> </ol>

<sup>1</sup> *Adoption and Permanency Guidelines: Improving Court Practice in Child Abuse and Neglect Cases*, published by the National Council of Juvenile and Family Court Judges, Reno, Nevada, © 2000 by the National Council of Juvenile and Family Court Judges (*reprinted with permission*).

<sup>2</sup> Public Law 96-272 (enacted June 17, 1980) repealed the old foster care provisions of Title IV-A of the Social Security Act, added a new Title IV-E (Foster Care and Adoption Assistance), and amended Title IV-B (Child Welfare Services) of the Social Security Act, see 42 USC § 620 et seq. and § 670 et seq.

<sup>3</sup> See, e.g., J. Goldstein, A. Freud and A. Solnit, *Beyond the Best Interests of the Child* (New York; Free Press, Macmillan 1973); Leon A. Rosenberg, “The Techniques of Psychological Assessment as Applied to Children in Foster Care and Their Families,” *Foster Children in the Courts*, 550-74 (Boston: Butterworth Legal Publishers, 1983); M. Rutter, *Maternal Deprivation Reassessed*, 179-97 (1981).

<sup>4</sup> See David Fanshel and Eugene B. Shinn, *Children in Foster Care: A Longitudinal Investigation*, 479-82 (New York: Columbia University Press, 1978); Michael Wald, *State Intervention on Behalf of “Neglected” Children: Standards for Removal of Children from Their Homes, Monitoring the Status of Children in Foster Care, and Termination of Parental Rights*, 28 *Stanford Law Review* 623, 645 (1976); E. Weinstein, *The Self-Image of the Foster Child* (1960).

<sup>5</sup> See V. Pike, et al., *Permanent Planning for Children in Foster Care: A Handbook for Social Workers*, 1-2 (Portland: Regional Research Institute for Human Services, Portland State University, 1977); M. Allen and J. Knitzer, *Children*

	<p><b>6.01 Avoiding Unnecessary Separation of Children and Families (continued)</b></p> <p>4. Fourth, the child-rearing competence of autonomous families is always superior to that of the state.<sup>6</sup> Parents are likely to be capable of making the best, most timely decisions for a child, while decision-making concerning a child state-supervised foster care can often be fragmented and inconsistent.</p> <p>If it is important that children be raised in stable and secure families, it follows that the state should, when possible, protect the child without removing the child from home. Preventing unnecessary removal also helps to preserve the constitutional right of families to be free from unwarranted state interference.</p> <p>To prevent unnecessary removal of children from their homes, the state must take strong, affirmative steps to assist families. Toward this end, federal law requires child welfare agencies to make “reasonable efforts” to prevent the necessity of foster placement.<sup>7</sup> States have reinforced this federal requirement through state statutes, regulations, and policies.</p>
6.02	<p><b>AVOID DELAY IN PERMANENCY DECISIONS</b></p> <p>Court delays caused by prolonged litigation can be detrimental to the healthy development of abused and neglected children – in essence, a re-victimization of the child. Children have a very different sense of time from adults – the passage of time is magnified for children in both anxiety levels and direct effect. When juvenile court litigation proceeds at what judges, attorneys, and other system professionals regard as a “normal” pace, looking “through the eyes of the child” it is perceived that such proceedings are literally lasting a lifetime and the child will never have a permanent family. Three years is not a terribly long period of time for an adult. Yet, for a six-year-old, it is half a lifetime; for a three-year-old, it is the formative stage for trust and security; and for a 14-year-old it can mean the difference between finding an adoptive family and failing to gain permanence because of age. The uncertainty of not knowing whether they will be removed from home, whether and when they will go home, when they might be moved to another foster home, or whether and when they might be placed in a new permanent home is frightening to children.</p> <p>Many abused and neglected children leave (some “age out” of) the system without family ties and without adequate skills to function as adults. Recent studies show that, measured over a period of 20 years, childhood abuse and neglect increases the likelihood of a host of lasting, negative effects, including: lower IQs, less education, higher unemployment, more divorces, more personality disorders, more suicide attempts, and a greater risk of being arrested for a violent crime both as a juvenile and as an adult. The children first seen in juvenile courts as abused and neglected children have a much greater likelihood than other children of entering the court system as juvenile delinquents and, later, as adult criminals. Nearly 80% of all inmates in our nation’s prisons were abused or neglected as children – our child protection system has become a “feeder system” to our prisons.</p>

Without Homes: An Examination of Public Response to Children in Out-of-Home Care, 41 (Washington, D.C.: Children’s Defense Fund, 1978).

<sup>6</sup> See J. Goldstein, A. Freud and A. Solnit, *supra*, at 51-52; I. White, *Federal Programs for Young Children, Review and Recommendations* (1973); Institute for Judicial Administration/American Bar Association Juvenile Justice Standards Project, *Standards Relating to Abuse and Neglect, Standard 1.1* (Washington, D.C.: American Bar Association, 1981); Michael Wald, *State Intervention on Behalf of “Neglected” Children: A Search for Realistic Standards*, 27 *Stanford Law Review* 985, 989-10000 (1975).

<sup>7</sup> See 42 USC § 671(a)(15); Debra Ratterman, G. Diane Dodson and Mark A. Hardin, *Reasonable Efforts to Prevent Foster Placement: A Guide to Implementation* 2d ed (Washington, D.C.: American Bar Association, 1987).

6.03	<p><b>REUNIFICATION</b></p> <p>Achieving permanent homes for abused and neglected children also includes working toward the reunification of families that have had to be separated. When there had been no safe way to prevent the need for foster placement, states must make reasonable efforts to bring about the safe reunification of children and their families.<sup>8</sup> States have spelled out this obligation through state statutes, regulations, and policies. Among the requirements are the following: individual written case plans specifying state efforts to reunify families; placement in the least disrupted setting possible; actual services pursuant to the case plans; and periodic review of each case to ensure timely progress toward reunification.</p>
6.04	<p><b>WHEN REUNIFICATION IS NOT FEASIBLE</b></p> <p>Of course, some children in foster care cannot safely be returned home spite of the state’s best efforts to assist the family. The best state efforts to assist families do not always improve parental behavior or enable parents to care for their children. In cases where family reunification is not feasible, the search for a new, permanent home for the child supersedes that as a goal.</p> <p>Federal law makes it clear that permanent homes are to be arranged for children unable to be reunited with their families within a reasonable time.<sup>9</sup> State laws and policies on such issues as case review, termination of parental rights, custody, adoption of children with special needs, and adoption subsidy reinforce this concept.</p>
6.05	<p><b>THE NEED TO MAKE TIMELY DECISIONS IN CHILD ABUSE AND NEGLECT LITIGATION</b></p> <p>Court delays can be a major obstacle to achieving permanency for abused and neglected children. Even where the pace of litigation is tightly managed, decision-making in child abuse and neglect cases can extend for many months. When juvenile or family court proceedings are allowed to proceed at the pace of other civil litigation, children spend years of their childhood awaiting agency and court decisions concerning their future.</p> <p>Children have a very different sense of time from adults. Short periods of time for adults seem interminable for children, and extended periods of uncertainty exacerbate childhood anxiety. When litigation proceeds at what attorneys and judges regard as a normal pace, children often perceive the proceedings as extending for vast and infinite periods.</p> <p>The passage of time is magnifies for children in both anxiety levels and direct effect. Three years is not a terribly long period of time for an adult. For a six-year-old, it is half a lifetime, for a three-year-old, it is the formative stage for trust and security, and for a nine-year-old, it can mean the difference between finding an adoptive family and failing to gain performance because of age. If too much time is spent in foster care during these formative years, lifetime problems can be created.<sup>10</sup></p> <p>Court delays caused by prolonged litigation can be especially stressful to abused and neglected children. The uncertainty of not knowing whether they will be removed from home, whether and when they will go home, when they might be moved to another foster home, or whether and when they may be placed in a new permanent home are frightening.</p>

<sup>8</sup> See 42 USC § 671(a)(15), 427 (a)(2)(C) .

<sup>9</sup> See 42 USC § 427(a)(2)(C), 675(1)(B), 675(5)(B), 675(5)(C).

<sup>10</sup> Pat O'Brien, Youth Homelessness and the Lack of Adoption Planning for Older Foster Children: Are They Related?, Adoptalk Newsletter, North American Council on Adoptable Children, 1821 University Avenue, Suite N-498, St. Paul, Minnesota 55104, (612)644-3036.

	<p><b>6.05 The Need to Make Timely Decisions in Child Abuse and Neglect Cases (continued)</b></p> <p>The law requires courts to make timely decisions for abused or neglected children. Under federal law, a decision concerning the permanent placement of each child is to take place within 18 months of when a child is first placed into foster care.<sup>11</sup> Many states set stricter deadlines. To be able to meet such deadlines in making permanent placement decision for a child, the earlier stages of the litigation must also occur in a timely manner.</p> <p>Combating delays in juvenile court, where there are many stages to the litigation and many participants in the process, can be more difficult than in other courts. Yet efforts to speed litigation in child welfare can be successful. There are great variances in court delays from jurisdiction to jurisdiction, and while differences in caseloads can be the cause, docketing practices and case flow management have their effect. Some courts have successfully used case flow management to reduce delays in child welfare litigation. To do so, however, the courts have had to make timely litigation a high priority.</p>
6.06	<p><b>THE OVERSIGHT ROLE OF THE JUVENILE AND FAMILY COURT</b></p> <p>Child welfare cases impose a special obligation on juvenile and family court judges to oversee case progress. Case oversight includes two requisites: state fulfillment of its responsibilities and parental cooperation with the state.</p> <p>The oversight obligation of judges in child welfare cases is necessary because special circumstances apply:</p> <ol style="list-style-type: none"> <li>1. court involvement in child welfare cases occurs simultaneously with agency efforts to assist the family;</li> <li>2. the law assigns to the juvenile court a series of interrelated and complex decisions that shape the course of state intervention and determine the future of the child and family; and</li> <li>3. because of the multitude of persons dealing with the child and family, there is increased potential for the delay and error.</li> </ol> <p>Unlike most litigation, child abuse and neglect cases deal with an ongoing and changing situation. In a criminal case, by contrast, the trial usually deals with whether specific criminal acts took place at a specified time and place. But in a child welfare case, the court must focus on agency casework and parental behavior over an extended period of time. In making a decision, the court must take into account the agency’s plan to help the family and anticipated changes in parental behavior. At the same time, the court must consider the evolving circumstances and needs of each child.</p> <p>The juvenile court or family court judge is required to remain actively involved over a period of time in child welfare litigation. The judge does not simply make a one-time decision concerning the care, custody, and placement of a child, but rather make series of decisions over time. In effect, step-by-step the judge must determine how best to assure the safe upbringing of the child, and that the child is eventually placed in a safe and permanent home.</p> <p>The decisions that must be made in child welfare litigation are not merely litigation management decisions, but decisions governing the lives and futures of the parties. For example, over time a court may order, in a single child welfare case:</p> <ul style="list-style-type: none"> <li>• the child’s emergency placement into shelter care;</li> <li>• the child placement into extended foster case;</li> </ul>

<sup>11</sup> See 42 USC § 675(5)(C); Marylee Allen, Carol Golubock, and Lynn Olson, “A Guide to the Adoption Assistance and Child Welfare Act of 1980,” Foster Children in the Courts, 575-611 (Boston: Butterworth Legal Publishers, 1983).

	<p><b>6.06 The Oversight Role of the Juvenile and Family Court (continued)</b></p> <ul style="list-style-type: none"> <li>• the parents’ participation in treatment;</li> <li>• the parents’ submission to evaluation or testing;</li> <li>• the parents’ participation in a revised treatment plan;</li> <li>• a schedule for parent-child and sibling visitation;</li> <li>• termination of parental rights; and</li> <li>• the child’s adoption.</li> </ul> <p>The length, scope, and continuous nature of these determinations involves the court in the lives of the parties and the operations of the agency to a degree unlike other court cases.</p> <p>All decisions in a child welfare case are interrelated. Just as the findings at the adjudication (trial) shape the disposition (the decision concerning the child’s custody, placement, and services), subsequent review hearings typically focus on how the parties have reacted to the court’s decision at disposition. Termination of parental rights proceedings rely heavily upon the court’s findings during all earlier stages of the case.</p> <p>In child welfare cases, the judge is not merely the arbiter of a dispute placed before the court, but, rather, sets and repeatedly adjusts the direction for state intervention on behalf of each abused and neglected child. These decisions encompass not only the issues of custody, placement, and visitation, but also, in many states, the case plan for the child, including exactly which services are to be provided to the child and family.</p> <p>Because its decisions in child welfare cases are interlocking and sequential, the court performs a more managerial and directive function than in other litigation. Court decisions shape agency actions by identifying dangers and defining the agency’s approach to each case, and related delivery of services to the child and family. Regular court review of each case refines and redefines agency involvement. Because of the nature of this decision-making in child welfare cases, the judge has a distinct impact on the course of agency work with each family.</p>
6.07	<p><b>ACCESS TO COMPETENT LEGAL REPRESENTATION</b></p> <p>Juvenile courts should take active steps to ensure that the parents, children, and other parties in child abuse and neglect cases have access to competent legal representation. Attorneys and other advocates determine, to a large extent, what information is presented to a judge. Each party must be competently and diligently represented by a well-trained and qualified attorney in order for the courts to function effectively.</p>
6.08	<p><b>CALENDARING FOR ONE FAMILY – ONE JUDGE</b></p> <p>A unique judicial perspective is developed by having one judge hearing all matters related to a family’s court experience. Knowledge gained of family circumstances and responses to court orders may increase the quality of the social services agency’s response to family crisis. This long-term perspective identifies patterns of behavior exhibited over time by all parties involved in a case, preventing a judge from too heavy a reliance on social service agency recommendations. Having one judge provides consistency and continuity in case plan development, implementation, and monitoring. A judge who has remained involved with a family is more likely to make decisions consistent with the best interests of the child.</p>
6.09	<p><b>CASE FLOW MANAGEMENT</b></p> <p>Effective case flow management is essential in abuse and neglect cases because it is essential to successful permanency planning. Permanency planning means achieving permanent placements for abused or neglected children within a relatively short period of time, either through their safe return home, or their placement in a new, legally secure permanent home. Sound case flow management by juvenile and family courts is needed to assure that delays in the court process do not interfere with the timely achievement of permanency. Case flow management</p>

**6.09 Case Flow Management (continued)**

also helps the court monitor the agency to make sure the case is being moved diligently and decisively toward completion. Following are the basic tools of case flow management:

1. **Judicial Commitment and Leadership.** The court must demonstrate an unmistakably strong commitment to timely decisions in child abuse and neglect cases. It must communicate to its own employees, the attorneys practicing before it, and the child welfare agency that timely decisions are a top priority. It must conduct and participate in educational programs concerning the elimination of delays, in cooperation with court and agency staff. The court must design explicit processes to ensure timely hearings and must make sure they are implemented by all judges and administrative staff.
2. **Monitoring and Information System.** Court staff can monitor the timing of court proceedings in several ways. They may use tickler files to help the judge or judicial officer schedule hearings within required deadlines. Court staff can contact agency staff to remind them of judicial deadlines for the filing of reports. Serious breaches of court deadlines can be brought to the attention of the presiding judge. The court's information system can assist court staff to spot cases that have been seriously delayed and can measure court progress in case flow management. The information system should maintain data on the length of time from case filing to case closure and the length of key steps in the litigation, such as petition to adjudication, petition to disposition, and termination of parental rights petition to final written findings of fact and conclusions of law. These statistics should be periodically reported and used to evaluate the effectiveness of case flow management.
3. **Scheduling for Credible Court Dates.** In the majority of cases, the court should hold hearings on the date that they are originally scheduled. To make this possible, attorneys and parties must understand that hearing and trial dates are firm. One way to keep hearings on schedule is for all parties, participants, and attorneys to bring their calendars to court so that the court may schedule the date of the next hearing so that it is not in conflict with anyone's schedule and then issue an order setting the hearing date.
4. **Court Control of Continuances.** The court must have a firm and effective policy on continuances. Continuances should not be allowed because hearing dates prove inconvenient for attorneys and parties. Continuances should be granted only when attorneys or parties are ill; essential witnesses cannot be located; or services of process had not yet been completed. Neither should continuances be granted based upon the stipulation of the parties. Administrative personnel should not be authorized to grant continuances. The reason for any continuance should be included in the court record. As the result of these procedures, it should be difficult or impossible to avoid court continuance policies. One of the consequences of a firm policy on continuances is better use of judicial resources. With strong continuance policies, pretrial conferences, and calendar calls in contested matters, few hearings should need to be rescheduled at the last minute. With a strict policy against continuances and an adequate number of judges, all hearings can be set for a time certain. This includes even the most routine matters such as case review hearings. When cases are set for a time certain, typical waiting time can be less than 20 minutes, with hearings occasionally being delayed up to an hour or more. Reduction of waiting time for agency caseworkers and other witnesses can result in major reductions in government expenditures.