

**CHAPTER 1
INTRODUCTION AND USER’S GUIDE**

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INTRODUCTION

1.01 INCREASE IN NUMBER AND COMPLEXITY OF CHILD PROTECTION CASES

In the publication entitled *Resource Guidelines: Improving Court Practices in Child Abuse and Neglect Cases* [hereinafter "*Resource Guidelines*"], the National Council of Juvenile and Family Court Judges (NCJFCJ) provides the following background regarding the nature of child protection cases:

Victims of child abuse and neglect come before juvenile court judges for protection from further harm and for timely decision-making for their futures. In response, judges must make critical legal decisions and oversee social service efforts to rehabilitate and maintain families, or to provide permanent alternative care for child victims. These oversight responsibilities require a large portion of the court's attention, workload, and resources as the reported number of child abuse and neglect cases grows each year. Public awareness of the tragedy of physical and sexual abuse and neglect of children has led to a recent explosion in child protection cases. The problem has been exacerbated by poverty, the impact of drug-exposed mothers and infants, HIV, the continuing dissolution of the family unit, and the growing recognition that child victims are often found in violent families.¹

1.02 HISTORICAL PERSPECTIVE: INCREASED JUDICIAL OVERSIGHT

Over the past 25 years, the role of the juvenile court judge has changed dramatically. The NCJFCJ explains the change as follows:

As recently as the 1970s, juvenile court judges were expected only to determine whether a child had been abused or neglected and, if so, whether the child needed to be removed from home or placed in foster care under court or agency supervision. Children were often being removed from their homes unnecessarily and children who could not be safely returned home lingered in temporary care for years. These children endured multiple placements and often aged out of the child welfare system without family ties and with inadequate skills to function as adults. Court involvement in these cases often was only a "rubber stamp" for agency recommendations and plans.

During the 1980s, with the implementation of the Adoption Assistance and Child Welfare Act of 1980, juvenile court judges became responsible for ensuring that a safe, stable, permanent home is secured for each abused or neglected child coming before the court. The law required courts to evaluate the reasonableness of services provided to preserve families, to hold periodic review hearings in foster care cases, to adhere to deadlines for permanency planning

¹ *Resource Guidelines: Improving Court Practice in Child Abuse & Neglect Cases*, National Council of Juvenile and Family Court Judges, Reno, Nevada, p. 10 (Spring 1995) [hereinafter *Resource Guidelines*].

decisions, and to comply with procedural safeguards concerning placement and visitation.²

As a result of these changes in federal and state laws, juvenile court judges must now take a far more active role in decision-making in abuse and neglect cases. More complex issues are now decided in each case, more hearings are held, and many more persons are involved. . . . Juvenile and family court judges are the gatekeepers of our nation's foster care system. They must ultimately decide whether a family in crisis will be broken apart and children placed in foster care or whether placement can be safely prevented through the reasonable efforts of the social service system. If reasonable efforts to preserve or reunify families are not evaluated and ensured through effective and timely judicial reviews, then children and families may be unnecessarily harmed.³

1.03 PURPOSE OF *BENCHBOOK*

To perform their expanded oversight role, and to better serve children and families, judges need a clear description of how best to fulfill their judicial responsibilities in child abuse and neglect cases. To that end, this *Benchbook* sets forth the elements of a high-quality judicial process at each stage of a child protection proceeding. Consistent with Minnesota's statutes, Rules of Juvenile Protection Procedure, and case law, it specifies the necessary elements of a fair, thorough, and timely court process in child protection cases. In compliance with federal and state law, it also identifies the findings, conclusions, and orders required at each stage of a proceeding. Orders that are not timely issued, or that do not include the "reasonable efforts" and other findings required under Title IV-E of the Social Security Act, may subject the county and/or state to negative financial consequences related to foster care funding (see section 1.05 below entitled "Ensuring Continued Funding – The Court's Role").

1.04 CHILDREN'S JUSTICE INITIATIVE – PURPOSE AND GOALS

The Children's Justice Initiative (CJI), spearheaded by Chief Justice Kathleen Blatz, is a collaboration between the Minnesota Supreme Court and the Minnesota Department of Human Services. The mission of the CJI is to ensure that, in a fair and timely manner, abused and neglected children involved in the juvenile protection court system have safe, stable, permanent families first through reunification with parents if that is appropriate, or through some other permanent placement option.

The purpose of the project is for Minnesota Supreme Court and Minnesota Department of Human Services to work closely with the juvenile courts, social services agencies, county attorneys, public defenders, court administrators, guardians ad litem, and other key stakeholders in each of Minnesota's 87 counties to improve the processing of child protection cases and the outcomes for abused and neglected children. When identifying and

² *Adoption and Permanency Guidelines: Improving Court Practice in Child Abuse & Neglect Cases*, National Council of Juvenile and Family Court Judges, Reno, Nevada, p. 2 (Fall 2000) [hereinafter *Permanency Guidelines*].

³ *Resource Guidelines*, *supra* note 1, at p. 10 -11.

implementing improvements, the project's goal is for all stakeholders to operate "through the eyes of the child."

The specific goals of the CJI are to ensure that the:

1. Child is safe, protected from abuse and neglect, and maintained in the child's own home whenever possible;
2. Child lives in a permanent and stable home;
3. Child's well-being and sense of time are the focus of practice and procedure; and
4. Proceedings are conducted in a fair manner with strong judicial oversight.

1.05 ENSURING CONTINUED FUNDING – THE COURT'S ROLE

Prolonged litigation and lengthy out-of-home placements have a negative impact not only in terms of unhealthy development for abused and neglected children, but also in terms of the financial cost to society in general and the State of Minnesota in particular. In 2000, for example, 18,451 abused and neglected children experienced 21,610 out-of-home placements,⁴ which totaled 2,929,766 days.⁵ The cost to counties in Minnesota for these days of out-of-home care totaled \$156,151,674.⁶ Based upon claims made by counties, a portion of these foster care placement costs was reimbursed to counties by the federal government pursuant to Title IV-E of the Social Security Act. The reimbursement rate for the cost of foster care maintenance is approximately 50% of the total cost of care. In addition, the county receives case-related administrative costs under Title IV-E.

A State (or, in Minnesota, a county) may validly seek reimbursement from the federal government for foster care and case-related administrative costs only if the court makes the required "reasonable efforts" and "contrary to the welfare" determinations and conducts timely permanency hearings required under Title IV-E. If the case is otherwise eligible for Title IV-E reimbursement and the required judicial determinations related to "reasonable efforts," "best interests," and "contrary to the welfare" are not made in a timely fashion at the beginning of the child's placement, the county may never claim Title IV-E reimbursement. Similarly, if a timely permanency hearing resulting in a determination that "reasonable efforts to finalize the permanent plan for the child" does not occur, the county's ability to claim reimbursement ceases.

The federal government periodically conducts reviews in each state to determine the accuracy of the state's claims for reimbursement. In April 2004, a federal Title IV-E Foster Care Eligibility Review was conducted in Minnesota. To successfully complete the Review, Minnesota was required to be in "substantial compliance" with all of the 35 audited items required by Title IV-E

⁴ Minnesota's Child Welfare Report for 2000: Report to the 2002 Minnesota Legislature, Minnesota Department of Human Services, p. 16 (April 2002).

⁵ *Id.*

⁶ *Id.* In Minnesota, the daily basic maintenance rates paid to foster care providers in 2001 ranged from \$16.13 to \$19.60, depending upon the age of the child. In addition, each child in placement was allotted a clothing allowance ranging from \$331 to \$633, depending upon the age of the child. A "difficulty of care" payment is also paid to foster care providers at a rate of 18¢ per day per difficulty point.

on each of 80 cases reviewed. "Substantial compliance" is defined as an error rate of 10 percent or less. This means that of the 80 cases selected for the Review, only eight or fewer cases could have made Title IV-E reimbursement claims in error. If Minnesota was found not to be in substantial compliance with the federal laws, the State could have been subjected to a disallowance, required to have a program improvement plan (PIP) to correct identified errors in claiming reimbursement, and experience another federal review within twelve (12) months. If a state continues to not be in substantial compliance at the second review, substantial statewide penalties may be imposed.

During the April 2004 Review, Minnesota was found to be in substantial compliance with a 97.5% rating. While achieving substantial compliance is a significant accomplishment, Title IV-E Foster Care Eligibility Reviews will occur at least every three (3) years. At the time of the next review, the substantial compliance requirement increases from 90% to 95%, which means that only four of 80 cases reviewed may have an error on any of the 35 audited items. In order to help ensure continued quality performance on the Title IV-E Review, federal reviewers identified the following areas for which the court has responsibility as needing improvement or continued diligence:

- Timely permanency decisions for children in foster care;
- Court order language that clearly shows an individualized judicial determination of contrary to the welfare, best interests, and reasonable efforts; and
- Written court orders for every court hearing.

Title IV-E is not only about revenue recapture. It is about best practices related to providing children with needed safety and permanency. While maximizing the revenue that Minnesota counties can obtain through Title IV-E is laudable, most importantly judges must carefully exercise meaningful review of the reason for the child's removal and whether reasonable efforts have been made to safely reunify the child with the parent. Such review is required to enforce protections provided to children and families under Title IV-E. The requirements for judicial determinations related to "contrary to the welfare," "best interests," and "reasonable efforts" help ensure that only children whose safety cannot be met in their home are removed from the care of a parent or legal custodian. Timely permanency hearings and judicial determinations about the agency's efforts to finalize a permanent plan for the child help protect the child from foster care drift and the lifelong issues the child may experience due to the "system's" failure to attend to the child's need for a permanent connection to at least one adult.

1.06 AVAILABILITY OF TECHNICAL ASSISTANCE AND OTHER RESOURCES

The Children's Justice Initiative (CJI) Staff from the Court Services Division of the State Court Administrator's Office provide technical assistance related to child protection cases in various ways, including:

- **Technical Assistance:** CJI Staff are available to provide technical assistance to judges, court administrators, and other court employees and child protection system stakeholders. Contact Staff Attorney Ann Ahlstrom at ann.ahlstrom@courts.state.mn.us or Staff Attorney Judy Nord at judy.nord@courts.state.mn.us

- **CJI District Leadership Team:** A CJI District Leadership Team has been established in each of Minnesota's ten judicial districts. Comprised of CJI Lead Judges, social services directors/managers, and other child protection system leaders, the District Leadership Team is available to assist child protection system stakeholders within the district. To access the CJI Leadership Team in your district, contact the CJI District Project Staff – the list of district staff is located on the CJI Website:
<http://www.courts.state.mn.us/ChildrensJustice/>
- **CJI Website:** The CJI has developed a website designed to provide a variety of information about child protection cases. The website address is:
<http://www.courts.state.mn.us/ChildrensJustice/>
- **Juvenile Court Orientation Video:** The CJI Staff have produced a 20-minute juvenile court orientation video, entitled "In the Best Interests of Your Child," that is intended to be shown to parents and other participants prior to the first hearing in a child protection proceeding. Copies of the video have been distributed to court administrators, social services offices, and public defender offices in each county. The video describes the purpose and process of child protection proceedings; identifies the professionals involved in child protection cases and their respective roles (e.g., judge, social worker, guardian ad litem, parent's attorney, child's attorney, court clerk, etc.); explains the permanency timelines and the possible "consequences" if a child is not returned to the parent's care within the 12-month permanency timeline; explains the parent's rights and responsibilities (e.g., to make progress on the case plan); and identifies the various hearings that a parent might be required to attend, such as the Emergency Protective Care (EPC) Hearing, Admit/Deny Hearing, Disposition Hearing, Review Hearings, and Permanent Placement Determination Hearing.

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USER'S GUIDE

The *Minnesota Judges Juvenile Protection Court Benchbook* specifies the necessary elements of a fair, thorough, and timely court process for child protection cases, consistent with Minnesota's statutes, Rules of Juvenile Protection Procedure, and case law. In addition to this *Introduction and User's Guide*, the *Benchbook* is organized into eight sections: *Juvenile Protection Court*, *Hearing Procedures*, *Procedural and Substantive Issues*, *Child Protection System Background Information*, *Table of Authorities – Cases and Statutes*, *Case Law Summary*, and *Topics Index*, each of which is summarized below.

1.07 JUVENILE PROTECTION COURT – CHAPTERS 2-6

Included in this *Benchbook* is an overview of general Juvenile Protection Court information, including:

- Hearings Timeline Summary,
- Child Protection System Flow Chart: From Petition to Permanency,
- Definitions,
- Juvenile Court Jurisdiction,
- Key Permanency Planning Principles, and
- Basic juvenile court concepts, such as the “best interests” of the child; reasonable and active efforts; due process, such as notice and appointment of counsel; and funding issues.

1.08 HEARING PROCEDURES – CHAPTERS 7-20

This *Benchbook* identifies procedures for all types of hearings in a child protection proceeding, including:

- Ex Parte Emergency Protective Care Proceeding,
- Emergency Protective Care (EPC) Hearing,
- Admit/Deny Hearing,
- Pretrial Conference,
- Trial (CHIPS and Permanency Matters),
- Adjudication,
- Disposition,
- Disposition Review Hearing,
- Permanent Placement Determination Hearing, and
- Post-Permanency Review Hearing.

For each hearing type, the *Benchbook* includes three sections:

- **Hearing Procedures “At-A-Glance”** – A laminated checklist of procedures for the hearing.
- **Hearing Script** – A sample script for the hearing.
- **Detailed Hearing Procedures** – A detailed outline of procedures for the hearing, including:
 - o Recommended hearing length,
 - o Purpose of hearing,

- o Timing of hearing,
- o Service and notice requirements,
- o Persons who must be present and others whose presence may be needed,
- o Hearing procedures, including rights advisories,
- o Determinations the court must make at the hearing, and
- o Next steps, including scheduling of next hearing.

1.09 RECOMMENDED HEARING LENGTH

Included in the detailed outline of each of the “hearings” chapters (Chapters 7 – 17) is a recommendation about the amount of time that should be set aside for the hearing in order to adequately cover all issues that should be addressed and all decisions that should be made at each hearing. The recommended hearing lengths are based upon those set forth in the *Resource Guidelines*⁷, but are adapted to Minnesota’s needs. For example, while the *Resource Guidelines* recommends that sixty (60) minutes should be calendared for each Emergency Protective Care (EPC) Hearing,⁸ the *Benchbook* recommends that thirty (30) minutes should be allotted to adequately cover all issues.⁹

1.10 PROCEDURAL AND SUBSTANTIVE ISSUES – CHAPTERS 21-35

This *Benchbook* provides guidance regarding procedural issues, such as filing and service of process issues, access to hearings and court files, appointment of counsel, default, party-participant discovery, and judicial notice. It also provides guidance on substantive issues, such as case plans, bypassing CHIPS and reunification efforts, relative search, visitation issues, out-of-home placement, concurrent permanency planning, immigration issues, Indian Child Welfare Act (ICWA), and case resolution options.

1.11 CHILD PROTECTION SYSTEM BACKGROUND INFORMATION – CHAPTER 36

This *Benchbook* provides information about child protection system topics, such as essential child development concepts.

1.12 TABLE OF AUTHORITIES – CHAPTER 37

The Table of Authorities is an index to the court rules, cases, statutes, and other resources cited throughout the *Benchbook*.

⁷ *Resource Guidelines*, *supra* note 1, pp. 126-130.

⁸ *Id.* at p. 42.

⁹ See *Benchbook* Chapter 8.01 (recommended amount of time to be set aside for EPC Hearing is 30 minutes).

1.13 CASE LAW SUMMARY – CHAPTER 38

Included in the *Benchbook* is a summary of all significant federal and state cases. The summary of Minnesota cases includes both published and unpublished cases.

1.14 TOPICS INDEX – CHAPTER 39

The Topics Index is an index of all key words and phrases used throughout the *Benchbook*.

1.15 COMMENT CARD – CHAPTER 40

State Court Administration welcomes your comments and suggestions for revisions regarding the format and content of this Benchbook, as well as any errors that you might identify. Please use the form found in Chapter 40 to inform State Court Administration of any recommended revisions or corrections.