

CHAPTER 6
BASIC JUVENILE COURT CONCEPTS
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6.01	<p>KEY PRINCIPLES¹</p> <p>All of the key principles to be discussed 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 key principles emphasizes the tremendous responsibility undertaken by judges hearing child abuse and neglect cases.</p>
6.02	<p>AVOIDING UNNECESSARY SEPARATION OF CHILDREN AND FAMILIES</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 1980.² 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"> 1. First, many mental health professionals believe that stable and continuous care givers for children are very important to normal emotional growth.³ 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. 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.⁴

¹ *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*).

² 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.

³ 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).

⁴ 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).

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	<p>10.02 Avoiding Unnecessary Separation of Children and Families</p> <p>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.⁵</p> <p>4. Fourth, the child-rearing competence of autonomous families is always superior to that of the state.⁶ 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.⁷ States have reinforced this federal requirement through state statutes, regulations, and policies.</p>
6.03	<p>REUNIFICATION</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.⁸ 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>

⁵ 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 Without Homes: An Examination of Public Response to Children in Out-of-Home Care*, 41 (Washington, D.C.: Children's Defense Fund, 1978).

⁶ 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).

⁷ 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).

⁸ See 42 USC § 671(a)(15), 427 (a)(2)(C) .

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6.04	<p>WHEN REUNIFICATION IS NOT FEASIBLE</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.⁹ 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>THE NEED TO MAKE TIMELY DECISIONS IN CHILD ABUSE AND NEGLECT LITIGATION</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.¹⁰</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>

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

¹⁰ 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.

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	<p>10.05 The Need to Make Timely Decisions in Child Abuse and Neglect Litigation (continued)</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.¹¹ 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>THE OVERSIGHT ROLE OF THE JUVENILE AND FAMILY COURT</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"> 1. court involvement in child welfare cases occurs simultaneously with agency efforts to assist the family; 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 3. because of the multitude of persons dealing with the child and family, there is increased potential for the delay and error. <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>

¹¹ 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).

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	<p>10.06 The Oversight Role of the Juvenile and Family Court (continued)</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"> • the child’s emergency placement into shelter care; • the child placement into extended foster care; • the parents’ participation in treatment; • the parents’ submission to evaluation or testing; • the parents’ participation in a revised treatment plan; • a schedule for parent-child and sibling visitation; • termination of parental rights; and • the child’s adoption. <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>