

**CHAPTER 1****INTRODUCTION****TABLE OF CONTENTS**

<b>1.01</b>	<b>Increase in Number and Complexity of Child Protection Cases .....</b>	<b>1-2</b>
<b>1.02</b>	<b>Historical Perspective: Increased Judicial Oversight .....</b>	<b>1-2</b>
<b>1.03</b>	<b>Purpose of Benchbook .....</b>	<b>1-3</b>
<b>1.04</b>	<b>Children’s Justice Initiative – Purpose and Goals .....</b>	<b>1-3</b>
<b>1.05</b>	<b>Ensuring Continued Funding – The Court’s Role .....</b>	<b>1-3</b>
<b>1.06</b>	<b>Availability of Technical Assistance and Other Resources .....</b>	<b>1-5</b>
	• Technical Assistance .....	1-5
	• CJI Website .....	1-5
	• Juvenile Court Orientation Video .....	1-5

### **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.<sup>1</sup>

### **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 decisions, and to comply with procedural safeguards concerning placement and visitation.<sup>2</sup>

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

---

<sup>1</sup> *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*].

<sup>2</sup> *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*].

preserve or reunify families are not evaluated and ensured through effective and timely judicial reviews, then children and families may be unnecessarily harmed.<sup>3</sup>

### **1.03 PURPOSE OF THE 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, not only have a negative impact on the child's timely permanency, but also 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) is a collaboration between the Minnesota Judicial Branch and the Minnesota Department of Human Services. These two state entities work closely with the CJI teams in each of Minnesota's 87 counties, comprised of juvenile court judges, child protection workers, county attorneys, attorneys for parents and children, court administrators, guardians ad litem, tribes, and other key stakeholders. The purpose of the collaboration is to enhance the processing of child protection cases in an effort to improve the outcomes for abused and neglected children.

The overall objective of the CJI is to timely find safe, stable, permanent homes for abused and neglected children, first through reunification with the child's parents if that is safe or, if not, through another permanent placement option. When identifying and implementing improvements, the goal is for all stakeholders to operate "through the eyes of the child" so as to achieve child safety, permanency, and well-being.

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 when it is safe to do so;
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 children who already are vulnerable due to abuse and neglect, but also in terms of the financial costs to society in general and the State of Minnesota in particular.

In 2009, Minnesota counties, and the Leech Lake and the White Earth Bands of Ojibwe, assessed 17,218 reports of maltreatment involving 24,499 children.<sup>4</sup> Of all accepted maltreatment reports, 11,427

---

<sup>3</sup> *Resource Guidelines, supra* note 1, at p. 10 -11.

<sup>4</sup> Minnesota's Child Welfare Report 2009: Report to 2010 Legislature, Minnesota Department of Human Services, p. 4 (Child Maltreatment section) (July 2010).

received a Family Assessment, a strengths-based and family-focused method for working with families in the child protection system where no determination of maltreatment is made.<sup>5</sup> Of the 5,478 reports that underwent a traditional Family Investigation, maltreatment was determined to have occurred in 3,163 (with 4,742 associated victims) and 91 Facility Investigations (with 150 associated victims).<sup>6</sup> There were 21 deaths determined to be a result of maltreatment in 2009, and 44 victims with life-threatening injuries.<sup>7</sup>

In 2009, 11,699 children spent some time in out-of-home care<sup>8</sup> totaling 2,079,532 days.<sup>9</sup> The total number of children who experienced out-of-home care decreased about 15% since 2008, and 37% since 2000.<sup>10</sup> The majority of children in placement were adolescents.<sup>11</sup> African American/Black and American Indian children were represented in out-of-home care disproportionate to their representation in the Minnesota child population.<sup>12</sup> Approximately 60% of reasons offered for entry into care were solely related to children's parents.<sup>13</sup> Children's behavior or substance abuse was attributed to 25% of placements.<sup>14</sup>

### Title IV-E Foster Care

Title IV-E of the Social Security Act requires states who wish to receive Title IV-E money (and all 50 states do) to have in place recognized best practices related to providing children with needed safety and permanency. Title IV-E practices and requirements are reflected in Minnesota law. When Title IV-E requirements are met, there is federal financial participation (FFP) in the cost of foster care and related administrative costs paid mainly through county property tax dollars. In other words, there is federal reimbursement for a portion of the county's cost for a child in foster care.

Maximizing the revenue that Minnesota counties can obtain through Title IV-E is laudable. More important, however, is the implementation of required IV-E practices, which include careful judicial review of:

- The reason for the child's removal;
- Whether the responsible social services agency made reasonable efforts to prevent the removal or that such efforts were not required;
- If the child is removed, whether the agency has made reasonable efforts to safely reunify the child with the parent; and
- When the child cannot return to the care of the parent, whether the agency has made reasonable efforts to finalize the permanency plan for the child.

The requirements for judicial determinations related to "contrary to the welfare," "best interests," and "reasonable efforts to prevent placement" help ensure that only children whose safety cannot be met in their home are removed from the care of a parent or legal custodian.

Title IV-E requires periodic court review of progress on the case plan, permanency hearings, and permanency planning for children who cannot return home. Timely permanency hearings and judicial

---

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at p. 17.

<sup>8</sup> *Id.* at p. 4 (Children in Out-of-Home Care section).

<sup>9</sup> *Id.* at p. 13.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

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. These review requirements enforce protections for all children and families, not just those that financially qualify for reimbursement under Title IV-E.

A State (or, in Minnesota, a county) may validly seek reimbursement from the federal government for foster care (at the rate of approximately 50% of the cost to the county) 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. The last review was conducted in 2010. To successfully complete a review, Minnesota is required to be in "substantial compliance" with all of the 35 audited items required by Title IV-E for 95% of the cases reviewed. "Substantial compliance" is defined as an error rate of 5% percent or less. If a state is not found to be in substantial compliance and corrective action under a Program Improvement Plan (PIP) does not resolve compliance issues, substantial statewide penalties may be imposed.

Minnesota has been found to be in substantial compliance after each of its reviews. This is a significant accomplishment. Title IV-E Foster Care Eligibility Reviews will continue to occur at least every three (3) years. In order to help ensure continued quality performance on the Title IV-E Review, the following areas for which the court has responsibility require continued diligence:

- Timely permanency decisions for children in foster care, which include findings addressing reasonable efforts to finalize the permanency plan for the child when the child cannot return to the care of the parent;
- Court order language that clearly shows an individualized judicial determination of contrary to the welfare, best interests, and reasonable efforts to prevent placement issued at the time the child is removed from the home and enters foster care; and
- Written court orders for every court hearing.

### 1.06 AVAILABILITY OF TECHNICAL ASSISTANCE AND OTHER RESOURCES

The Children's Justice Initiative (CJI) Staff from the Court Services Division of State Court Administration 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, attorneys, guardians ad litem, and other child protection system stakeholders regarding specific cases or county practices. Contact Staff Attorney Ann Ahlstrom at [ann.ahlstrom@courts.state.mn.us](mailto:ann.ahlstrom@courts.state.mn.us) or Staff Attorney Judy Nord at [judy.nord@courts.state.mn.us](mailto:judy.nord@courts.state.mn.us).
- **CJI Website:** Posted on the CJI website are the CJI values and mission statement, timelines and flowcharts, practice manuals and products produced by CJI Teams, agendas and materials from conferences. The website address is: <http://www.mncourts.gov/?page=148>.
- **Juvenile Court Orientation Video:** "*In the Best Interests of Your Child*" is an orientation to juvenile court and child protection proceedings. The purpose of the video is to:

- Identify the people who will be involved in the child protection proceeding and who will be in the courtroom;
- Describe the juvenile court process, including the types of hearings that the parent may be required to attend and what happens at a typical hearing;
- Explain how the juvenile court process may affect the parent and the child and what will happen after court;
- Explain the parent's legal rights and responsibilities;
- Explain the permanency timelines and the consequences if the parent does not complete the case plan and comply with court orders; and
- Emphasize that the child's best interest is at stake and timely resolution of the problems causing risk of harm to the child is critical to the child's healthy development.

In addition to being posted on the CJI website (<http://www.mncourts.gov/?page=3894>), the video has been provided to all court administrators, county social services agencies, GAL Program Managers and Coordinators, and attorneys representing parents in child protection cases. The video has been translated into Spanish, Hmong, Laotian, and Somali.