



# ENHANCED RESOURCE GUIDELINES

*Child Welfare Caseworkers' Companion Guide*



NATIONAL COUNCIL OF  
JUVENILE AND FAMILY COURT JUDGES

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**RCDV:CPC**

Resource Center on Domestic Violence:  
Child Protection and Custody

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# Acknowledgments

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The National Council of Juvenile and Family Court Judges® (NCJFCJ) provides cutting-edge training, wide-ranging technical assistance, and research to help the nation’s courts, judges, and staff in their important work. Since its founding in 1937 by a group of judges dedicated to improving the effectiveness of the nation’s juvenile courts, the NCJFCJ has pursued a mission to improve courts and systems practice and raise awareness of the core issues that touch the lives of many of our nation’s children and families.

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# Preface

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The National Council of Juvenile and Family Court Judges (NCJFCJ) published the ENHANCED RESOURCE GUIDELINES: Improving Court Practice in Child Abuse and Neglect Cases to provide guidance to judges who preside over child protection or child welfare cases. The original RESOURCE GUIDELINES, published in 1995, detailed effective child abuse and neglect court hearing practices, provided options for improved practice and guided juvenile and family courts in assessing and implementing improvements in the handling of child abuse and neglect cases. The ENHANCED RESOURCE GUIDELINES updated the original document to incorporate new federal legislation and the increased amount of research demonstrating the benefits of key strategies for improving child permanency outcomes such as engaging families through alternative dispute resolution techniques, ensuring adequate and appropriate family time, and cultivating cultural responsiveness.

The ENHANCED RESOURCE GUIDELINES cover all stages of the child abuse and neglect hearing court process, from the preliminary protective hearing until court involvement, and the case has ended, with a preference for the child safely being returned home or placed in a new, secure, and legally permanent home. Judicial bench cards are included for each stage of the court process, outlining the required judicial findings and making recommendations to judges for preparing for the hearing, case management during the hearing, and preparing for the next hearing in the court process. The ENHANCED RESOURCE GUIDELINES serve as the blueprint for the NCJFCJ's efforts to provide training and technical assistance to judges presiding over child abuse and neglect cases in courts across the country.

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*"The ENHANCED RESOURCE GUIDELINES [are] a valuable teaching tool and a practical everyday guide to assist judges, attorneys, child welfare workers, court appointed special advocates (CASAs) and others in achieving timely safety, permanency and well-being for the children who, through no fault of their own, find themselves in court."*

**- Hon. Stephen Rubin, (Ret.), Past President of the NCJFCJ and co-author of the ENHANCED RESOURCE GUIDELINES**

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Building on the foundational information about best hearing practices in the ENHANCED RESOURCE GUIDELINES, this *Child Welfare Caseworkers' Companion Guide* to the NCJFCJ's ENHANCED RESOURCE GUIDELINES has been developed with the goal of improving caseworker hearing practice in child abuse and neglect cases generally, but also with a focus on improving caseworker hearing practice in cases involving domestic violence. The ENHANCED RESOURCE GUIDELINES: *Child Welfare Caseworkers' Companion Guide* is intended to be a resource for building knowledge about hearing practice, promoting effective hearing practices, and enhancing court and child welfare agency collaboration in the child welfare system and domestic violence. Specifically, the *Child Welfare Caseworkers' Companion Guide* builds on the foundational information presented in the ENHANCED RESOURCE GUIDELINES aimed at improving judicial practice in child abuse and neglect hearings to adapt and tailor judicial hearing benchcards for use by child welfare casework professionals. The *Child Welfare Caseworkers' Companion Guide* provides the basic information needed by caseworkers to work successfully with the courts in hearings – introducing legal concepts and terminology associated with hearings, describing the caseworker's role in those hearings, outlining the expectations of the court for caseworkers, and presenting practical information to help caseworkers prepare for and participate effectively in the child abuse and neglect hearing process. By having knowledge of the court's expectations for hearings, the role of caseworkers in the hearing process, it is hoped that child welfare professionals can work, in partnership with the courts, toward the safety, permanency and well-being of children and families more effectively. The *Child Welfare Caseworkers' Companion Guide* offers recommendations and practical strategies for child welfare system caseworkers who wish to gain a better understanding of court hearing processes and the expectations the court has of them in any child abuse and neglect case. It also provides specific recommendations and practical strategies for caseworkers' when their case involves domestic violence.

To ensure the adaptation of the ENHANCED RESOURCE GUIDELINES publication for judges truly addresses caseworkers' needs, the NCJFCJ sought the input of child welfare caseworkers and casework supervisors from across the country via a needs assessment survey. The survey asked about caseworkers' experience with child abuse and neglect cases, their area of child welfare specialization, and the barriers faced when it comes to being effective as a child welfare professional in child abuse and neglect hearings (e.g., the challenges faced in working with the court and the training or technical assistance resource materials needed to help overcome those challenges). Survey respondents were also asked their opinion about whether bench cards or hearing checklists that address the specific responsibilities and tasks of caseworkers before, during, and after child abuse and neglect hearings would be helpful to them, and to provide any other recommendations they had for a *Child Welfare Caseworkers' Companion Guide* to the ENHANCED RESOURCE GUIDELINES.

The responses the caseworkers provided to the needs assessment survey questions directed the

adaptation of the ENHANCED RESOURCE GUIDELINES and helped tailor this *Child Welfare Caseworkers' Companion Guide* to the specific needs and concerns of child welfare professionals. The content of this publication reflects the recommendations made by caseworkers for what would be of most value to them in a resource publication aimed at assisting them to be effective in their child abuse and neglect hearing practice generally, and in cases involving domestic violence including how best to work in partnership with survivor parents.

**Designed with the feedback child welfare professionals provided about their technical assistance needs when working effectively with the court in child abuse and neglect cases in mind, the *Child Welfare Caseworkers' Companion Guide* to the ENHANCED RESOURCE GUIDELINES offers information on:**

- The technical assistance needs identified by caseworkers regarding child abuse and neglect hearing practice, including hearing specific checklists that cover the role and responsibilities of caseworkers in hearings and the expectations of the court for caseworkers.
- Guidance on hearing practice in the context of domestic violence cases which pose additional challenges for caseworkers.
- Resources that can be accessed for more information.

#### NEEDS ASSESSMENT SURVEY OF CHILD WELFARE PROFESSIONALS

Child welfare caseworkers and casework supervisors from across the country were surveyed and 268 responded and gave their input into how the ENHANCED RESOURCE GUIDELINES could best be adapted to the needs of caseworkers. Survey respondents were experienced child welfare professionals, with more than half of all respondents having 11 years or more of experience in child abuse and neglect case practice. Survey respondents agreed that child abuse and neglect hearing checklists adapted to address the specific role and responsibilities of caseworkers in those hearings would be valuable technical assistance tools.

The topics or issues overwhelmingly identified by the survey respondents as areas in need of practice guidance, and recommended to be covered in a *Child Welfare Caseworkers' Companion Guide* to the ENHANCED RESOURCE GUIDELINES were:

- Preparing for Court
- Relevant Laws, Statutes and Policies
- The Court's Expectations for Caseworkers/Role of the Caseworker in Child Abuse and Neglect Court Process

Other areas to explore in the future for technical assistance publications recommended by the survey respondents include providing effective testimony and court reports and documentation.

# Introduction

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## *The ENHANCED RESOURCE GUIDELINES*

### *A. Historical Perspective and the Need for Guidelines to Improve Courts' Handling of Child Abuse and Neglect Cases*

In the 1970s, juvenile and family courts were expected only to determine whether a child had been abused or neglected and, if so, whether the child needed to be removed from their home or placed 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 successfully as adults. Court involvement in cases was often a rubber stamp for agency recommendations and plans.

During the 1980s, with the implementation of the Adoption Assistance and Child Welfare Act of 1980 (P.L. 96-272), juvenile and family court judges became responsible for ensuring that a safe, permanent, and stable home was secured for each abused or neglected child coming before the court. The Act was passed to address the growing concern that children were being lost in foster care and to provide a more clear and appropriate future for these children through the provision of preventative services. 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. For a summary of additional child welfare legislation, please refer to the legislative summary in the Appendix.

Throughout the United States, child abuse and neglect proceedings in the juvenile and family courts were transformed by evolving federal and state law and the active role in decision-making that juvenile and family courts were now required to take. New demands were placed upon the courts, with the court's oversight responsibilities requiring a large portion of the court's attention, workload and resources. Unfortunately, many courts had neither the ability nor the resources to meet these demands. As a result, in many jurisdictions, the quality of the court process gravely suffered. Hearings were often rushed, and there were frequent and unfortunate delays in the timing of hearings and decisions, causing children to grow up without permanent homes.

The nation's juvenile and family courts needed a clear description of ways to fulfill their growing responsibilities in child abuse and neglect cases. This description needed to explain the decision-making process in these cases and what resources might be required to create such a process. A clear vision for effective child abuse and neglect case procedures – a vision based upon the experiences of courts and based on information about best or promising practices to improve safety, permanency, and well-being outcomes for children and families involved in the child welfare system was needed.

## ***The Original RESOURCE GUIDELINES, Model Courts, and ADOPTION AND PERMANENCY GUIDELINES***

In order to assist juvenile and family courts to successfully carry out their responsibilities, the NCJFCJ developed, over a three-year period in the early 1990s, the RESOURCE GUIDELINES: *Improving Court Practice in Child Abuse and Neglect Cases*.<sup>1</sup> Development of the RESOURCE GUIDELINES formally began in 1992 with funding from the Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention (OJJDP), U.S. Department of Justice. The RESOURCE GUIDELINES resulted from the working experience of many courts, resulting in the final document. Court practices were observed, measured, and documented to provide a baseline for understanding both the need for good practice and the requirements necessary to assure it can occur.<sup>2</sup>

Completed and published in 1995, the RESOURCE GUIDELINES detailed effective dependency court hearing practices, provided options for improved practice, and guided juvenile and family courts in assessing and implementing improvements in the handling of child abuse and neglect cases. The RESOURCE GUIDELINES were endorsed by the NCJFCJ Board of Trustees, the Conference of Chief Justices and the American Bar Association, and became the blueprint for the NCJFCJ's efforts to provide training and technical assistance to judges presiding over child abuse and neglect cases from courts across the country. In addition to training, the NCJFCJ obtained funding support from OJJDP to select "Model Courts" which agreed to focus on improving practice in child abuse and neglect cases by incorporating the principles outlined in the RESOURCE GUIDELINES. Lead judges in each Model

Court agreed to take a critical look at their practices and institute reforms where needed to improve court performance and enhance outcomes for children and families.<sup>3</sup> Beginning with just a handful of Model Courts willing to implement the RESOURCE GUIDELINES, the NCJFCJ's Model Court initiative eventually grew to involve more than 80 jurisdictions, representing large urban centers such as New York City, Miami, Chicago and Los Angeles, smaller communities such as Alexandria, Virginia, and Reno, Nevada, statewide model courts such as Florida, Kentucky, New York, Utah and Virginia as well as tribal model court communities. Model Courts began to consistently measure outcomes in 2007, basing their improvement efforts on real time data.

At approximately the same time as the development of the RESOURCE GUIDELINES and NCJFCJ's Model Court initiative, the U.S. Department of Health and Human Services (HHS), Children's Bureau implemented the Court Improvement Program (CIP). This program made funds available to each state to create court and interagency teams to assess their systems serving abused or neglected children and to develop and implement improvements. Many CIPs used the RESOURCE GUIDELINES in local and state judicial trainings and as a tool for multidisciplinary best practice court teams to use to assess their child abuse and neglect hearing process and make improvements to align with the RESOURCE GUIDELINES' recommendations.

Expanding the RESOURCE GUIDELINES, in 2000, the NCJFCJ published the ADOPTION AND PERMANENCY GUIDELINES.<sup>4</sup> Developed as a result of another three-year effort to produce best practice recommendations for use in child abuse and neglect cases in which the abused or neglected child cannot be reunified with their parents, this companion document to the RESOURCE GUIDELINES provided juvenile and family court judges with guidance on how to hold meaningful hearings from the permanency hearing through subsequent termination of parental rights hearings and final case closure.

Initially, the RESOURCE GUIDELINES and ADOPTION AND PERMANENCY GUIDELINES documents were intended to provide judges with guidance on conducting effective court hearings in child abuse and neglect cases – hearing timeframes, the purpose of specific hearings, parties' attendance at various hearings, the issues to address at each hearing, and making thorough and effective judicial findings. The RESOURCE GUIDELINES and ADOPTION AND PERMANENCY GUIDELINES grew in their power of influence through the widespread acceptance of what have become foundational judicial best practices in child abuse and neglect cases, the recognition of the critical leadership role of the judge (both on and off the bench), the role of the court more broadly, and the need for systems-wide collaboration to truly improve outcomes for abused and neglected children and their families. NCJFCJ judges and the original RESOURCE GUIDELINES were also relied upon by Congress in the crafting of ASFA. Today, the foundational practices and recommendations for the handling of child abuse and

neglect cases articulated in the two documents are still critical components of ongoing reform in child abuse and neglect cases across the nation—and they continue to shape the future of ongoing legal and court and child welfare agency reform efforts.<sup>5</sup>

**SOME OF THE PRACTICE IMPROVEMENTS RECOMMENDED BY THE ORIGINAL RESOURCE GUIDELINES AND FIRST PIONEERED BY COURTS IMPLEMENTING THOSE GUIDELINES:**

- Substantive and thorough child abuse and neglect hearings
- One family–One judge case assignment and calendaring
- Individual and time–certain calendaring
- Implementation of strict no–continuance policies
- Copies of orders disseminated to all parties at the end of the hearing
- Setting the date and time of the next hearing at the end of the current hearing
- Frequent court review with enforcement of established time frames
- Judicial leadership both on and off the bench to improve case processing and child welfare outcomes
- Front–loading of the case process –substantive preliminary protective hearings, early appointment of counsel for parents and children, the use of pre–hearing and pre–trial conferencing, early alternative dispute resolution, early identification of services to children and families
- Development and use of family group conferencing and child protection mediation
- Strong and effective collaborative relationships and collaborative action among all aspects of the court and child welfare system
- Monitoring of the effectiveness of the system through the development of data information systems specifically focused on dependency case processing and performance measurement
- Collaboration among state and tribal courts



## *B. The Need for Revision*

In 2016, the NCJFCJ published the ENHANCED RESOURCE GUIDELINES. This publication updated the original RESOURCE GUIDELINES and the ADOPTION AND PERMANENCY GUIDELINES and incorporated new federal legislation since the development of the original guidelines. The ENHANCED RESOURCE GUIDELINES also integrated new information from the field and promising practices that were learned from the Model Courts. Updates were necessary because of the growing demands on judges as a result of changing and emerging federal law, including the Adoption and Safe Families Act of 1997,<sup>6</sup> Fostering Connections to Success and Increasing Adoptions Act of 2008,<sup>7</sup> and the Preventing Sex Trafficking and Strengthening Families Act of 2014.<sup>8</sup> Lessons learned from the successes and challenges of the Model Courts that implemented key parts of the RESOURCE GUIDELINES were also incorporated into the new document. The ENHANCED RESOURCE GUIDELINES include the growing body of empirical knowledge and research about the needs of children and their families involved in the child abuse and neglect court system, including the importance of engaging family and children to develop a better understanding of trauma and integration of trauma informed court practices.<sup>9</sup> The ENHANCED RESOURCE GUIDELINES also incorporated alternative dispute resolution techniques and reflective decision-making strategies to protect against bias

Much had been learned from the successes experienced by courts that had implemented the RESOURCE GUIDELINES through the NCJFCJ Model Courts initiative, CIP model and best practice courts, as well as from problem-solving courts such as family treatment courts that needed to be incorporated in the revised document. Some of the successes reported by Model Courts implementing the RESOURCE GUIDELINES, for example, include safe reductions in the number of children in foster care, increased adoptions, reductions in the amount of time a child remains under the jurisdiction of the court, and reduction in the time it takes for all parties to be appointed counsel.<sup>10</sup> In addition, a growing body of research examining the effectiveness of a number of the key strategies recommended in the RESOURCE GUIDELINES needed to inform the revised document. Research has demonstrated the benefits of key strategies such as time-certain calendaring<sup>11</sup>, judicial continuity, and early and effective legal representation in child abuse and neglect cases.<sup>12</sup>

Results from HHS' Child and Family Services Review (CFSR) process also highlighted areas in need of improvement nationally in the way courts, in collaboration with their child welfare and tribal partners, handle child abuse and neglect cases that should be addressed in the ENHANCED RESOURCE GUIDELINES. Many specialized judicial checklists and bench cards were developed since the original RESOURCE GUIDELINES, and these checklists/benchcards needed to be referenced and integrated (e.g., Indian Child Welfare Act (ICWA) implementation checklists, bench cards to address disproportionality and disparate outcomes, checklists for addressing the needs of the very youngest of children involved



in the child abuse and neglect system, checklists for ensuring attention to the educational needs of children in care and improving their educational outcomes, checklists addressing the crossover of domestic violence and child protection, and checklists that focus on what judges need to know to be a trauma-informed and responsive court). A growing body of empirical knowledge about the needs of children and families involved in the child abuse and neglect system and the



effectiveness of court based interventions such as mediation, family group conferencing, family drug courts, and other problem-solving court approaches also emerged, resulting in an expanded menu of best practice options that courts may implement to improve the child abuse and neglect case process. The original RESOURCE GUIDELINES' focus on due process and fairness, access to justice, and safety and permanency also needed to include more focus on child well-being and responsiveness to issues of race and culture.

Child welfare is a dynamic and continually evolving field of practice. Recent years have seen both changes in applicable laws and policies and significant reforms based on emerging science about best practices in child welfare. Lessons learned from courts implementing the RESOURCE GUIDELINES and ADOPTION AND PERMANENCY GUIDELINES, new federal legislation, the development of specialized bench cards and checklists, and the growing body of research, evaluation and assessment results all indicated a need for the ENHANCED RESOURCE GUIDELINES document.

## *C. Scope and Purpose of the Caseworkers' Companion Guide to the ENHANCED RESOURCE GUIDELINES*

Despite the great challenges working in the complex, dynamic environment of child abuse and neglect proceedings, great progress has been made in the courts' and child welfare system's handling of child abuse and neglect cases. Practice improvements and the law have raised the bar and the ENHANCED RESOURCE GUIDELINES are intended to help judges, attorneys and caseworkers meet and exceed these new heightened expectations. The ENHANCED RESOURCE GUIDELINES set forth the principles that should guide a judge's work, with the goal of providing judges with a tool to achieve the best practices

above. The *Child Welfare Caseworkers' Companion Guide* adapts that information to provide specific guidance for child welfare professionals for all stages of the child abuse and neglect hearing process. The *Child Welfare Caseworkers' Companion Guide*, for example, outlines the roles and key responsibilities of caseworkers at each hearing and the expectations of the court for child welfare practitioners. While building on the original content and bench cards contained in the judges' ENHANCED RESOURCE GUIDELINES document, the content of the *Child Welfare Caseworkers' Companion Guide* was informed by a training and technical assistance needs assessment of child welfare caseworkers and supervisors. Knowledge gained from this assessment was used to adapt and tailor the original ENHANCED RESOURCE GUIDELINES to address the needs of child welfare practitioners in a child abuse and neglect when domestic violence is an issue.

It is important to note that neither the ENHANCED RESOURCE GUIDELINES nor the *Child Welfare Caseworkers' Companion Guide* offers criteria for state agency or court intervention in the lives of families. Neither document attempt to define child abuse and neglect, describe what kinds of child abuse or neglect justify a child's removal from home, specify when children can safely be returned home, or set forth suggested grounds for the termination of parental rights. Instead, the focus is once the case is before the court and the hearing process – setting forth the characteristics of each hearing, outlining the needed procedural steps for each hearing, identifying key tasks or responsibilities, and identifying ways to ensure the processes and procedures promote the safety of children and adult survivor parents in cases involving domestic violence.

While the ENHANCED RESOURCE GUIDELINES describe the role of the judge at hearings, the *Child Welfare Caseworker's Companion Guide* highlights the role of the child welfare professional in preparing for, participating in, and following up after hearings. The *Child Welfare Caseworkers' Companion Guide* can be used to support and enhance the training of child welfare professionals in child protection cases. It is not a step-by-step curriculum, but rather a resource for effective handling of child abuse and neglect hearings and a tool for examining and evaluating current policies and practices. It can be used, in conjunction with the original ENHANCED RESOURCE GUIDELINES in collaboration with the court and child welfare agency (and other system partners) to shape policies and practices to ensure effective child abuse and neglect case processing that upholds the requirements of the law and comports with what is known to be effective in achieving safety, permanency, and well-being for children and families involved in the child welfare system.

The caseworker bench cards are a roadmap to preparing for and participating in thorough hearings. Many of the considerations listed in the bench cards are aimed at aiding judges in obtaining or learning more information about the child and family for better decision-making. While much of the information should be presented to the court without the judge needing to ask for it, the court should

always include a thorough discussion of all relevant issues in open court, avoiding total reliance on written reports. By making all system stakeholders aware of the contents of the bench cards, not just judges, it is hoped that child welfare practitioners will not only be able to better prepare for hearings and to anticipate the information judges need to make informed decisions in a case, but ultimately, that safety, permanency and well-being outcomes for children and families, including survivors of domestic violence, involved in the child abuse and neglect system will also improve.

### **EACH BENCHCARD AND CHAPTER MAKES RECOMMENDATIONS FOR:**

- **Case management to prepare for the hearing**
  - Document review
  - Internal reflection to prevent bias
  - Identify who should be present or may be needed
  - Related cases evaluation
- **Case management during the hearing**
  - Opening the hearing by engaging children, parents, families and foster parents
  - Due process and fairness considerations
  - Key inquiries, decisions and findings and orders
- **Case management to prepare for the next hearing**
  - Time to permanency focus
  - Setting next hearing date and time
  - Engaging children, parents, relatives and foster parents
- **Case management tips for cases involving domestic violence**
  - Tips for ensuring that each stage of the process takes domestic violence into account by promoting safe participation by the survivor parent and ensures that case findings/outcomes are developed after considering the context of domestic violence



# The Key Principles of the ENHANCED RESOURCE GUIDELINES and Implications for Caseworker Practice

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## *The Key Principles Underlying the ENHANCED RESOURCE GUIDELINES*

The most basic principle underlying the ENHANCED RESOURCE GUIDELINES is the need for comprehensive and timely judicial action in child welfare cases. These guidelines recognize the need to assure safe and permanent homes for abused or neglected children in the shortest time possible, while enhancing the well-being of children in care and the prominent role of the judiciary in this process. Other key principles are noted below, including the foundational value or philosophy envisioned by the drafters of the key principles and some thoughts on their implication for caseworker practice.

**Key principles<sup>13</sup> include:**

### **KEEP FAMILIES TOGETHER**

*Families are the cornerstone of our society, and children have a right to grow up with their families as long as they can be safe. Judges should avoid unnecessary separation of a child and family if the child can remain safely in the home. Children will thrive, grow, mature, and reach their full potential when they have a home they consider permanent. The best plan, if it can be safely implemented, is the child's own home. 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 potentially unstable foster placements under the supervision of the state.*

Each child and family deserve to be treated fairly and holistically, regardless of how and why they enter the court system. Judicial determinations to remove children from a parent should only be made based on legally sufficient evidence that a child cannot be safe at home. Children and families must be an integral part of the planning and problem-solving process.

**Philosophy behind the principle:** Foster care is a last resort. The best plan for a child is to remain in their own home as long as they can be safe. Families should be treated holistically. The court should make every attempt to consolidate all cases in which the family is involved with one judge. If that is not possible, judges should communicate with each other to ensure that orders do not conflict. Treating families holistically also requires that the judge understand the parents' history and culture. Judges must be mindful that trauma may be playing a large part in the family dynamic, especially in the stressful situation of having children removed.

**Practice implications for caseworkers:** Workers must conduct a careful analysis about whether they are using foster care as a last resort. Making the case that reasonable efforts have been made to prevent a placement is one of the most important analyses a worker does. It is critical that the worker be able to provide to the court a fully thought out analysis as to why no in-home services or other arrangements or supports will keep the child safe. Preparing an affidavit of reasonable efforts will assist the court in understanding the agency's reasoning and making its own necessary findings. Clear documentation of the parents' involvement in decision making is also warranted. Whenever possible children affected by child maltreatment and domestic violence should remain in care of the non-offending parent. (NCJFCJ. 1999. *Effective Intervention in Domestic Violence and Child Maltreatment Cases: Guidelines for Policy and Practice*) Caseworkers should access and tailor services and supports to keep the child and non-offending parent survivor together and safe.

## ENSURE ACCESS TO JUSTICE

Judges must ensure that the courtroom is a place where all who appear are treated with respect, patience, dignity, courtesy and as part of the problem-solving process. Juvenile courts must be child and family-centered and presumptively open to the public. Children and parents must have the opportunity to be present in court and meaningfully participate in their case planning and in the court process. It is the responsibility of Judges to see that all children and each parent are afforded their constitutional rights to due process.

**Philosophy behind the principle:** The juvenile court should be presumptively open to the public to allow for transparency and involvement of interested persons and family members. Both children and families should attend hearings and speak to the court directly.

**Practice implications for caseworkers:** A worker's own beliefs about whether it is important for families to attend court often drive whether, in fact, they do attend. Workers can collaborate with attorneys and advocates to explain that the court will want to hear directly from their clients and request that attorneys and advocates also stress the

importance of parent and child attendance at court, and develop safety plans for survivor parents. When workers explain the hearing process and warmly invite parents and children to participate, it helps them understand how important their direct feedback to the court can be. It is important for judges to know as early as possible if a case involves domestic violence to ensure that the survivor parent's safety can be addressed at hearings and to ensure that separate counsel is appointed.

## **CULTIVATE CULTURAL RESPONSIVENESS**

Courts must be welcoming and respectful to people of all races, legal, ethnic, and socio-economic statuses, honoring family in all its forms. All members of the court system must recognize, respect, and seek to preserve the ethnic and cultural traditions, mores and strengths of those who appear before the court. Judges must become aware of, and remediate to the extent possible, their own implicit biases that may adversely affect decision making.

**Philosophy behind the principle:** Remediating implicit bias is the job of everyone involved in the court system (judges, lawyers, child welfare, foster parents, CASAs, etc). Learning about one's own biases is an important first step and judges should encourage interactive training for all court stakeholders along with the judge. The judge should always ask family members about their cultural connections and inquire whether they wish to have a cultural support person involved in the case with them. In cases involving domestic violence, a survivor parent may need a support person or a domestic violence advocate to attend case staffings and court hearings.

**Practice implications for caseworkers:** As the first line of contact with families, a worker's interest in and respect for a family's culture and traditions is the foundational building block of a true partnership with a family. Workers should participate in training to learn to identify their own biases and learn about other cultural traditions and practices. If the court is not taking a lead in ensuring this type of training is provided, workers can advocate with the court and with their own agencies to provide such training. Workers should explain the hearing process and warmly invite parents and children to participate, it helps them understand how important their direct feedback to the court can be.

## **ENGAGE FAMILIES THROUGH ALTERNATIVE DISPUTE RESOLUTION TECHNIQUES**

Judges should encourage and support the development of family-centered, culturally responsive forms of dispute resolution to allow families to craft effective court-sanctioned solutions to the issues that brought them before the court. Courts should support the development and use of appropriate dispute resolution techniques including mediation, family group conferencing, differential response, and encourage all to utilize the form that will be most beneficial to the children and parents in a particular case.

**Philosophy behind the principle:** Judges should encourage the use of all appropriate dispute resolution (ADR) methods. In cases involving domestic violence, judges should consider if the parties are able to effectively participate



without compromising survivor safety. (NCJFCJ. 1999. *Effective Intervention in Domestic Violence and Child Maltreatment Cases: Guidelines for Policy and Practice*). Even when cases are settled during an ADR process, the judge should always inquire of all parties (and directly to parents and children) whether they understood the process and agree with the outcome. Settling cases does not relieve the judge of the responsibility to inquire broadly enough to make the required findings of fact and issue appropriate orders. Most ADR processes will not provide all the information a judge needs to make required findings therefore the judge must make independent inquiry

**Practice implications for caseworkers:** Families know themselves and their strengths best. Workers should involve families in processes in which the family is the key decision maker. The worker should accept the family's plan, as long as it provides for the safety and well-being of the children and survivor parent or be prepared to explain to the court why the family's plan cannot be adopted. It is important that workers explain the many processes fully to parents and emphasize that their input and safety is the most critical input.

## **ENSURE CHILD SAFETY, PERMANENCY, AND WELL-BEING**

Children should remain at home as long as they can be safe. Removal of a child from the home should occur only as a last resort. Judges are responsible for proactively monitoring the safety of children and ensuring services are provided to maintain their safety no matter where they are placed. Judges are responsible for ensuring the physical, mental, emotional, reproductive health, and educational success of all children under the supervision of the court. If a parent is a survivor of violence from the other parent/spouse/friend, the judge should sanction plans that keep the survivor parent safe as the best way to keep a child safe. When return to a parent is inappropriate, placement with kin or a responsible person with a significant relationship with the child is the first priority. No child should exit foster care without a life-long connection to a caring and responsible adult.

A child's sense of time requires timely permanency decisions. Research supports that a child's development of trust and security can be severely damaged by prolonged uncertainty in not knowing or understanding if they will be removed from the home, or when and whether they will return home. The shorter the time a child spends in foster care, separated from their family, the less likely there will be prolonged damage to the child's development of trust and security.

**Philosophy behind the principle:** Judges are responsible for ensuring the physical, mental, and emotional well-being and the health and educational success of children before the court. The judge is also responsible for ensuring the safety of survivors of domestic violence.

**Practice implications for caseworkers:** Judges are required to oversee numerous areas of a child's well-being when children are in foster care. Workers can ensure that the judge has adequate information by maintaining close contact with all service providers and delivering information to the court that is thorough and current.

*In domestic violence cases, when workers view survivor parents as partners in protection of their children rather than perpetrators of abuse, children’s attachments are best served. Workers should ensure that survivor and child safety and offender accountability drive the case plan.*

*When a child cannot safely remain at home, any foster care placement should be made with an eye toward permanency from day one. Relatives must be thoroughly explored and clear reasons they may be excluded must be explained to the court.*

## **ENSURE ADEQUATE AND APPROPRIATE FAMILY TIME**

*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. Family time should be liberal and presumed unsupervised unless there is a demonstrated safety risk to the child. Sibling family time apart from parental family time should be considered. Family time should not be used as a case compliance reward or consequence.*

**Philosophy behind the principle:** *Research has shown that family time is highly correlated with returning children home. Judges should not utilize form orders that cede all decision-making about visits to the agency or attorneys.*

*Family time should be liberal and presumed unsupervised unless there is a documented safety risk to the child. Judges should inquire if the child welfare agency assessed for domestic violence and assess the risk posed by perpetrators to reduce identified safety threats to children. Courts should ensure guidelines and appropriate interventions are established for the perpetrator in cases where supervised visitation is granted. (NCJFCJ Checklist to Promote Perpetrator Accountability in Dependency Cases Involving Domestic Violence) If they are supervised, judges should inquire at every hearing and review about the current safety threat in the visit and ensure supervision is stepping down and frequency increasing as soon as the child can be safe at the visit.*

*Family time should never be used as a reward or punishment for parents or children. It should be regular and often and not tied to compliance with the case plan, for example.*

**Practice implications for caseworkers:** *Too often, visitation planning is pro forma in agencies. Workers should provide a thorough, individualized, written explanation to the court, clearly documenting the safety threat, if a visit needs to be supervised. Workers can revisit visitation planning at each monthly contact with family members and ensure that visitation plans are regularly updated, stepping down the level of supervision and extending the time when appropriate. Caseworkers should challenge policies or practices that dictate that all visits should be supervised without consideration of a safety threat in the visit.*

*Guidelines and appropriate interventions should be implemented for perpetrators in cases where supervised visitation is ordered (NCJFCJ Checklist to Promote Perpetrator Accountability in Dependency Cases Involving Domestic Violence).*



## PROVIDE JUDICIAL OVERSIGHT

*Juvenile and family court judges have a responsibility to provide individual case oversight, as well as system oversight and leadership. A vision for improved outcomes for children and families involved in the child welfare system cannot be achieved without strong leadership from the judiciary. The role of the juvenile and family court judge is a unique one, as it combines judicial, administrative, collaborative, and systemic advocacy roles. By taking on these roles, the juvenile and family court judge holds all stakeholders, including the court, responsible to ensure safe, timely permanency and well-being for children and families.*

*Judges must provide fair, equal, effective, and timely justice for children and their families throughout the life of the case, continually measuring the progress toward permanency for children. The same judge should oversee all cases impacting the care, placement, and custody of a child. Through frequent and thorough review, without needless delay, judges must regularly exercise their authority to set and monitor the timelines, quantity, quality, and cultural responsiveness of the services for children and families. Judges should ensure that there is communication, collaboration and cooperation among all courts handling cases involving any given family.*

**Philosophy behind the principle:** *Judges are uniquely positioned to lead system change efforts. While parties to the case each see a family through the lens of their individual jobs, judges see the big picture and can pinpoint issues in the case and systemic issues that are negatively impacting children and families.*

*All cases involving the family should be handled by a single judge. If that is not possible, judges should ensure different courts and judges dealing with the family are in close communication.*

**Practice implications for caseworkers:** *Caseworkers should understand that the judge has a legal responsibility to provide oversight and to ensure that services and supports are provided to achieve the goal of the case. Caseworkers should always come to court prepared to testify about the issues that brought the case to the attention of the court, how that is related to the goal and services, if the child is removed explained why at any hearing the child cannot safely return home, compliance with court orders, the child's placement and well-being and what specifically is needed to return the child safely home and when that should occur.*

*Never lie or mislead a judge. If you do not understand a question, let the judge know. If you do not know the answer, say you do not know and will get the information for the court. If something has not been done that the court has ordered, it is always best to be honest with the judge and tell the judge how you plan to achieve compliance or what you think would be a better approach and work with your attorney on modifying the order.*

*When courts do not adhere to a one family one court model, families are all too often before several different judges. Not only is this burdensome for families, it can result in conflicting court orders making it hard for families to know*

what to do. This is particularly true in child abuse and neglect cases involving domestic violence. It is important for the court, attorneys and caseworkers to ask the parties if they have any pending cases in other courts and to keep the court apprised of any cases that might arise during the pendency of the abuse and neglect case to try and avoid conflicting orders. If a caseworker is aware of a pending case and conflicting orders the caseworker should notify the agency's attorney to bring that issue before the court.

## **ENSURE COMPETENT AND ADEQUATELY COMPENSATED REPRESENTATION**

*Judges are responsible for ensuring that parties, including each parent, are vigorously represented by well-trained, culturally responsive, and adequately compensated attorneys who are committed to these key principles. Children should be parties to their cases. Children are entitled to representation by attorneys and guardians ad litem and judges must ensure the child's wishes are presented to and considered by the court.*

**Philosophy behind the principle:** *All parties should have adequately compensated, highly trained attorneys.*

**Practice implications for caseworkers:** *Caseworkers should maintain contact with the parties, involve attorneys and court appointed advocates in case decision-making, to help build collaborative, rather than adversarial, case planning solutions. It is important for judges to know if domestic violence is involved in a case as soon as possible to ensure that the surviving parent as separate counsel.*

## **ADVANCE THE DEVELOPMENT OF ADEQUATE RESOURCES**

*Juvenile and family courts must be appropriately supported. Courts must maintain a sufficient number of specially trained and permanently assigned judicial officers, staff, attorneys and guardians ad litem to thoroughly and effectively conduct the business of the court. Judges should continually assess the availability and advocate for the development of effective and culturally responsive resources and services that families need.*

**Philosophy behind the principle:** *Courts should determine through a fair and equitable process how many judicial officers are needed to conduct the business of the court in the manner prescribed in these guidelines. Judges across the country often say they do not have enough time to devote to hearings, especially the amount of time suggested in the ENHANCED RESOURCE GUIDELINES. If families are not getting what they need, judges should join and lead the conversation to promote additional resources in the community.*

**Practice implications for caseworkers:** *Caseworkers have first-hand knowledge of systemic barriers to doing their jobs and serving families well. Caseworkers should document these barriers and forward them to leaders in the agency who are working on collaborative system improvement.*

## DEMONSTRATE JUDICIAL LEADERSHIP AND FOSTER COLLABORATION

*Judicial leadership is the cornerstone of the ENHANCED RESOURCE GUIDELINES' principles – both on the bench in individual cases and off the bench in the broader community. Committed, knowledgeable judicial leaders are crucial to the success of court improvement and child welfare system reform efforts. The driving ENHANCED RESOURCE GUIDELINES' principle, on which all other principles are based, is the need for judicial leadership to provide comprehensive and timely judicial action in child abuse and neglect cases. Without this vitally important cornerstone, best practice principles cannot be fully implanted and achieved. The leadership of the judiciary is a crucial and necessary component in implementing reforms that support the ENHANCED RESOURCE GUIDELINES.*

*Judges must convene and engage the community in meaningful partnerships to promote the safety, permanency, and well-being of children and to improve system responses to our most vulnerable citizens. The juvenile court must model and promote collaboration, mutual respect, and accountability among all participants in the child welfare system and the community at large. To demonstrate the effectiveness of the system and to improve its ability to serve children and families, courts should strive to maintain data on every aspect of the process and support outcome measurement efforts that use that data to identify and achieve system improvements. Judges must encourage regular and productive review of system-wide processes to foster the continual goal of system improvement.*

**Philosophy behind the principle:** *Judges are uniquely positioned to lead both on the system change level and on the case level. From their vantage point, they have a clear view of the role, the performance, and the roadblocks of each of the stakeholders, so they see a case from many perspectives vs. those who see cases through their own role lens. Judges must thoroughly know the laws so they are well prepared to lead efforts to implement them.*

*On the case level, agency and court culture are difficult to change. Judges must set clear expectations about how their courtroom will function. Timely hearings with no unnecessary continuances, for example, should be among the judge's expectations. Judges have a strong say in the way families are treated in court by the judge and by other stakeholders.*

**Practice implications for caseworkers:** *Most often, caseworkers are not involved in system reform activities in their counties yet, caseworkers know the barriers best. They should be directly involved in system improvement initiatives. If that is not possible, formal mechanisms for direct worker feedback should be in place in any system change effort. Caseworkers, who have the most contact with families, should work with the court to develop mechanisms to provide direct feedback to the court about how they and the families are experiencing the court process – vital feedback to any reform effort.*

## INTRODUCTION ENDNOTES

<sup>1</sup> National Council of Juvenile and Family Court Judges. (1995). *RESOURCE GUIDELINES: Improving Court Practice in Child Abuse and Neglect Cases*. Reno, NV: Author.

<sup>2</sup> The primary courts observed and evaluated in the development of the original RESOURCE GUIDELINES were Hamilton County Juvenile Court, Cincinnati, Ohio and Kent County Juvenile Court in Grand Rapids, Michigan. This observation and evaluation experience was documented in Hardin, M. (1992). *Judicial implementation of permanency planning reform: One court that works*. Washington, DC: American Bar Association, and in Hardin, M., Rubin, H. T., & Ratterman-Baker, D. (1995). *Another court that works: Judicial implementation of permanency planning reform*. Washington, DC: American Bar Association.

<sup>3</sup> Portune, L., Gatowski, S. I., & Dobbin, S. A. (2009). *The RESOURCE GUIDELINES: Supporting best practices and building a foundation for innovation in child abuse and neglect cases*. Reno, NV: NCJFCJ; Whitney Barnes, E. (2010). *Model court protocol: Leadership, innovation and accountability*. Reno, NV: NCJFCJ.

<sup>4</sup> National Council of Juvenile and Family Court Judges. (2000). *ADOPTION AND PERMANENCY GUIDELINES: Improving Court Practice in Child Abuse and Neglect Cases*. Reno, NV: Author.

<sup>5</sup> For examples of some of the ways the national Model Courts used the RESOURCE GUIDELINES documents to change practice, see Whitney Barnes, E. (2006). *Back to basics: Fundamental application of the RESOURCE GUIDELINES and the ADOPTION AND PERMANENCY GUIDELINES in child abuse and neglect cases*. Reno, NV: NCJFCJ.

<sup>6</sup> Adoption and Safe Families Act of 1997 § 42 U.S.C. 678 (1997).

<sup>7</sup> Fostering Connections to Success and Increasing Adoptions Act of 2008 § 42 U.S.C. 627 (2008).

<sup>8</sup> Preventing Sex Trafficking and Strengthening Families Act of 2014 § 42 U.S.C. 622 (2014).

<sup>9</sup> Barnes, *supra* note 6, at 12.

<sup>10</sup> For a summary of Model Court outcomes, see National Council of Juvenile and Family Court Judges. (2009). *The model court effect: Proven strategies in systems change*. Reno, NV: Author; also see the many technical assistance publications evaluating Model Court practice available at [www.ncjfcj.org](http://www.ncjfcj.org).

<sup>11</sup> National Council of Juvenile and Family Court Judges. (2015). *Research report: Assessing time-certain calendaring dockets*. Reno, NV: Author.

<sup>12</sup> See, for example, Festinger, T., & Pratt, R. (2002). Speeding adoptions: An evaluation of the effects of judicial continuity. *Social Work Research*, 26, 217–224; Kirk, R. S., & Griffith, D. P. (2006). *Final report: Evaluation of North Carolina family court pilots*. Raleigh, NC: Administrative Office of the Courts, Court Improvement Advisory Committee; Martinson, D. J. (2010). One case—one specialized judge: Why courts have an obligation to manage alienation and other high conflict cases. *Family Court Review*, 48, 180–188; Shdaimah, S., & Summers, S. (2013). One family, one judge practice effects on children: Permanency outcomes on case closure and beyond. *Journal of Juvenile Justice*, 2(2), 37–45.

<sup>13</sup> Key Principles National Council of Juvenile and Family Court Judges. (2011). *Key principles of permanency planning for children*. Reno, NV: Author





# Preliminary Protective Hearing Benchcard

The preliminary protective hearing is the first hearing in a child abuse and neglect case. It is called by many names throughout the country including shelter hearing, detention hearing, and removal hearing, among others. The purpose of this hearing is to determine whether probable cause existed at the time of removal and whether probable cause continues to exist to continue the removal pending the Adjudication hearing when the court determines whether there is evidence to support the allegations in the petition.

JUDICIAL ROLE AND ACTIVITIES	CASEWORKER ROLE AND ACTIVITIES
<p><b>Before the hearing:</b></p> <p><b><i>BIAS CHECK</i></b></p> <p>Review and consider each of the questions in the ENHANCED RESOURCE GUIDELINES aimed at reducing implicit bias.</p>	<p><b>Before the hearing:</b></p> <p><b><i>CHECK YOUR BIAS AT THE DOOR</i></b></p> <p>Seek out training on bias and individual, structural, and institutional racism. Review and consider each of the self reflection questions in the ENHANCED RESOURCE GUIDELINES aimed at reducing implicit bias.</p> <p><b><i>FILING THE PETITION</i></b></p> <p><b><i>AVOID CONCLUSIONARY LANGUAGE – USE FACTS NOT UNSUPPORTED CONCLUSIONS</i></b></p> <p>Detail the facts that support the immediate safety threat to the child that resulted in the removal.</p> <p><b><i>Avoid using “failure to protect” language directed at the survivor parent.</i></b></p> <p>A parent experiencing domestic violence does not have control over where and when the violence might occur. An allegation that the survivor parent needs the services of the court to help protect their children is more appropriate.</p> <p>Ensure petition language is specific to the person using violence.</p>

JUDICIAL ROLE AND ACTIVITIES	CASEWORKER ROLE AND ACTIVITIES
<p><b>IDENTIFICATION OF PARENTS AND/OR GUARDIANS</b></p>	<p><b>GET EVERYBODY THERE!</b></p> <p>Has the identity of all parents and/or guardians been determined? If not, what diligent search efforts have been made?</p> <p>Has paternity of all children been legally established and if so how? Specially what have you done to identify all parents and/or guardians?</p>
<p><b>ENSURE PROPER NOTICE</b></p> <p>Foster parents of a child and any pre-adoptive parent or relative providing care for the child shall be provided with notice of, and an opportunity to be heard in, any review or hearing to be held with respect to the child, but this does not grant them party status to the case. 42 U.S.C. § 675(5)(G).</p>	<p>Work with the agency counsel to ensure all parties, including foster parents, relative caregivers, and pre-adoptive parents have notice and are properly served according to your state law for the hearing.</p> <p>Specifically, what have you done to exercise due diligence to provide notice to the parties?</p> <p><b>GET ICWA RIGHT!</b></p> <p>Have you made an ICWA inquiry and who have you asked? Is there a tribe entitled to notice?</p>



JUDICIAL ROLE AND ACTIVITIES	CASEWORKER ROLE AND ACTIVITIES
<p><b>REVIEW DOCUMENTS AND BE PREPARED TO MAKE ICWA INQUIRY IMMEDIATELY</b></p> <p>Review relevant documents and determine whether all parties received notice and proper service.</p> <p>Determine whether the child is an Indian child and, if so, ensure tribal notification and the presence of a Qualified Expert Witness (QEW) at the hearing is arranged.</p> <p>If there is reason to know but not sufficient evidence to determine that the child is or is not an Indian child, courts must confirm on the record that due diligence was used to identify and work with all of the possible tribes and must treat the child as an Indian child unless and until it is determined on the record that the child does not meet the definition. (25 C.F.R. § 23.107).</p>	<p>Ask all legal parents, age-appropriate children, and any other known relatives whether the parents or child have Native American or Alaska Native heritage. Ensure tribal notice and secure the attendance of a QEW. If ICWA applies, the court must find that continued custody with the parents/ legal custodian is likely to result in serious physical or emotional damage to the child. (25 U.S.C. § 1912(e)).</p>



JUDICIAL ROLE AND ACTIVITIES	CASEWORKER ROLE AND ACTIVITIES
<p><b>REQUEST THAT INTIMATE PARTNER VIOLENCE ASSESSMENTS BE PROVIDED TO THE COURT SO A SAFE HEARING ENVIRONMENT CAN BE ESTABLISHED.</b></p>	<p><b>BE A PARTNER WITH PARENTS AND CHILDREN FROM THE START</b></p> <p>Meet with parents and age appropriate children and explain the purpose of the hearing, their right to counsel, and the critical importance of their attendance at the hearing. The worker’s genuine interaction and engagement as a partner with the survivor and children at this early stage can set a positive and cooperative tone throughout the case. Genuinely engage with the person using violence. Use trauma-informed engagement strategies with parents and children. Provide full documentation to attorneys and CASAs as soon as they are appointed.</p> <ul style="list-style-type: none"> <li>• Utilize methods and tools developed by the <a href="#">Quality Improvement Center on Domestic Violence in Child Welfare</a></li> <li>• Screen for Intimate Partner Violence (IPV)</li> <li>• Assess the Nature and Context of IPV</li> <li>• Focus on the Effects of IPV</li> <li>• Respond to the Lived Experience of IPV</li> </ul> <p>Adapted from the Battered Women's Justice Project <a href="#">SAFeR: Screening, Assessing, Focusing on the Effects, and Responding to Abuse</a></p>





# At the hearing

JUDICIAL ROLE AND ACTIVITIES	CASEWORKER ROLE AND ACTIVITIES
<p><b>JURISDICTION</b></p> <p>The court should examine whether the allegations, if proved, would result in the court having jurisdiction over the parties based on the state’s laws.</p>	<p><b>JURISDICTION</b></p> <p>Work with your agency attorney to ensure that your petition meets your state’s legal requirements to establish jurisdiction.</p>
<p><b>WAS THERE AN EMERGENCY? REASONABLE/ ACTIVE EFFORTS TO PREVENT REMOVAL</b></p> <p>The court should determine if there was probable cause to remove the child and if the agency made reasonable efforts (active efforts, if ICWA case) to prevent the removal.</p> <p>The court must make a determination within 60 days of the child’s physical removal that the agency made reasonable efforts to prevent removal or the state will lose Title IV-E federal funding for that child for the duration of his/her stay in foster care. 42 C.F.R. §1365.21(b)(1).</p> <p>In an ICWA case the court must determine if the agency made affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite an Indian child with his or her family. 25 C.F.R. § 23.2.</p>	<p><b>WAS THERE AN EMERGENCY? REASONABLE/ ACTIVE EFFORTS TO PREVENT REMOVAL</b></p> <p><b>Be prepared to testify as to the specific efforts that were made to prevent removal.</b> Document and be prepared to testify to the reasonable, or when an Indian child is involved, the active efforts the agency made to provide remedial service or rehabilitative programs to prevent removal. If the removal was done due to an emergency, be prepared to fully explain to the court the nature of the emergency and why no efforts could be made to prevent the removal.</p> <p>How did the agency seek to address the domestic violence in the family prior to seeking removal? (Alternatively: Why was immediate removal warranted?)</p>
<p><b>WAS THERE AN EMERGENCY?</b></p> <p>Determine whether there was probable cause to remove the child and if the agency made reasonable efforts (active efforts, if ICWA case) to prevent the removal.</p>	<p><b>Did the adult survivor have strategies (protective factors) to keep the child safe? If so, why were those strategies not effective? Review the <a href="#">QIC-DVCW Protective Factors</a> with the survivor parent.</b></p>

JUDICIAL ROLE AND ACTIVITIES	CASEWORKER ROLE AND ACTIVITIES
<p><b>CONSOLIDATING CASES</b></p> <p>Determine whether other cases related to the family can be consolidated before one judge or whether judges can consult on related cases.</p>	<p><b>KNOW THE WHOLE STORY</b></p> <p>It is important to ask parties if they have any pending cases before other courts and to keep the court informed of any known cases involving family members in other courts.</p>
<p><b>IMMINENT SAFETY THREAT</b></p> <p>Determine whether probable cause continues to exist. What is the imminent safety threat?</p> <p>The judge will be inquiring not only about the reason the child was removed but also why the child cannot safely return home TODAY. The reason the child entered care is not a reason to keep the child in care. The judge must weigh the current safety threat at every hearing and determine whether the child needs to remain in placement.</p>	<p><b>IMMINENT SAFETY THREAT</b></p> <p><b>KEEP IT CURRENT - What prevents the child from safely returning home TODAY?</b></p> <p>The judge is interested not only in why the child was removed but what prevents the child from safely returning home today. Remember that children should be returned to their parents when their parents can provide the minimally sufficient standard of care. This does not mean that the parents need to complete services. It does mean that children should be returned home when the safety threat has been eliminated. <i>Always be able to articulate the safety threat today.</i></p>
<p><i>If the court orders that the child should remain in care, the following issues will be explored:</i></p> <p><b>MOST APPROPRIATE, LEAST RESTRICTIVE</b></p> <p>The court should evaluate whether the child’s current placement is the most appropriate, least restrictive to meet the child’s needs. The court should inquire about the diligent search for relatives at every hearing.</p> <p>Has the agency exercised due diligence to identify and provide notice to all adult relatives of the child’s removal and their options to participate in the child’s care and placement? (42 U.S.C. § 671(a)(29)).</p>	<p><b>RIGHT PLACEMENT FROM THE START</b></p> <p>When a child has been removed, make every effort to place the child in the right placement from the start. Relatives should be explored as fully as time before the first hearing allows. Be prepared to explain to the court the diligent efforts made to locate relatives and specifically why the current placement was chosen for the child.</p>

JUDICIAL ROLE AND ACTIVITIES	CASEWORKER ROLE AND ACTIVITIES
<p><b>SERVICES</b></p> <p>The court should make a decision about whether services can be provided to allow the child to safely return home now or in the future.</p>	<p><b>ARE THERE SERVICES THAT WILL MITIGATE THE SAFETY THREAT AND ALLOW THE CHILD TO RETURN SAFELY?</b></p> <p>Services should be rationally (directly) related to the reason the child was removed from home and later, directly related to the jurisdictional findings of the court.</p>
<p><b>FAMILY TIME</b></p> <p>The court should determine the frequency of family time (visitation) that should be provided.</p>	<p><b>FAMILY TIME</b></p> <p>Be prepared to explain to the court the frequency and level of supervision the agency is recommending. Levels of supervision must be determined based on whether the child can be safe during the visit. The reason for removal is not an automatic reason to recommend supervised visits. The analysis must be about safety during the visit. Be prepared to explain the potential safety risk during a visit specifically if the agency is recommending supervised visits.</p>
<p><b>SET NEXT HEARING WHILE ALL PARTIES ARE PRESENT AND DISTRIBUTE ORDERS TIMELY</b></p>	<p><b>TO PREPARE FOR THE NEXT HEARING</b></p> <p>Review the court order with the parties to ensure they understand when the next hearing is and what is expected. Develop the case plan with the family and ensure compliance with the court orders.</p>



# Adjudication Hearing Benchcard

The adjudication hearing resembles a traditional trial under rules of civil procedure and evidence. In some states, the adjudication hearing is called jurisdictional hearing or fact-finding hearing. Some jurisdictions conduct pre-hearing conferences, settlement conferences, or mediation prior to the adjudication hearing. The court may conduct a full contested hearing; however, the majority of these cases are pled or stipulated to by the parties by agreement and accepted by the court. The outcome of adjudication controls whether the state may intervene in the life of the child. Adjudication hearings should be held within 60 days of the removal of a child from their home. State requirements differ on timing.

JUDICIAL ROLE AND ACTIVITIES	CASEWORKER ROLE AND ACTIVITIES
<p><b>Before the hearing:</b></p> <p><b>BIAS CHECK</b></p> <p>Review and consider each of the questions in the ENHANCED RESOURCE GUIDELINES aimed at reducing implicit bias.</p>	<p><b>Before the hearing:</b></p> <p><b>CHECK YOUR BIAS AT THE DOOR</b></p> <p>Seek out training on bias and individual, structural, and institutional racism. Review and consider each of the questions in the ENHANCED RESOURCE GUIDELINES aimed at reducing implicit bias.</p>
<p><b>ENSURE COMPETENT LEGAL REPRESENTATION FOR ALL LEGAL PARENTS, GUARDIANS, AND CHILDREN</b></p>	<p><b>TAKE ACTION TO ENSURE PARENTS AND CHILDREN ARE REPRESENTED</b></p> <p>If counsel has not been appointed, caseworkers can talk with parents and children about their rights to legal representation and the steps to take to secure it.</p> <p><i>Caseworkers should take steps in cases involving domestic violence to ensure separate attorneys are appointed for the survivor parent and the person using violence.</i></p>

JUDICIAL ROLE AND ACTIVITIES	CASEWORKER ROLE AND ACTIVITIES
<p><b><i>ENSURE PROPER NOTICE</i></b></p> <p>Foster parents of a child and any pre-adoptive parent or relative providing care for the child shall be provided with notice of, and an opportunity to be heard in, any review or hearing to be held with respect to the child, but this does not grant them party status to the case. 42 U.S.C. § 675(5)(G).</p>	<p><b><i>WHO MUST RECEIVE NOTICE</i></b></p> <p>Work with the agency counsel to ensure that all parties including foster parents, relative caregivers, and pre-adoptive parents, have notice and are properly served according to state law for the hearing.</p>
<p><b><i>GET ICWA RIGHT!</i></b></p> <p>Determine whether the child is an Indian child and, if so, ensure tribal notification and the presence of a Qualified Expert Witness (QEW) at the hearing is arranged. Raise the evidence standard to clear and convincing even if state statutory standard is lower.</p>	<p><b><i>GET ICWA RIGHT!</i></b></p> <p><i>If ICWA eligibility has not yet been determined what steps need to be taken to determine it?</i></p> <p>Ask all legal parents, age-appropriate children, and any other known relatives whether the parents or child have Native American or Alaska Native heritage. Ensure tribal notice and secure the attendance of a QEW. If ICWA applies, understand that the hearing proceeds with a clear and convincing evidentiary standard.</p>



JUDICIAL ROLE AND ACTIVITIES	CASEWORKER ROLE AND ACTIVITIES
<p><b>REVIEW THE PETITION</b></p>	<p><b>THE PETITION</b></p> <p>Workers should work with the attorney who files the petition to recommend specific allegations based on the facts of the case.</p> <p>What case-specific evidence supports this allegation? <i>The petition should include specific facts, not conclusions.</i></p> <p>For example –</p> <p>Incorrect based on a conclusion: <i>The parent exposed the children to domestic violence.</i></p> <p>Correct based on actual fact: <i>The parent engaged in violence.</i></p> <ul style="list-style-type: none"> <li>• Describe the specific facts that describe the type and context of the violence and name the parent who engaged in violence.</li> <li>• Provide detailed facts why the child is at imminent risk of harm as a result of the specific violence described.</li> </ul>
	<p>Have the family’s cultural background, customs, and traditions been taken into account in evaluating the event and circumstances that led to the removal?</p> <p>Have the parent(s)’ cultural or tribal liaison/ relevant other(s) been asked if there is a culturally-based explanation for the allegations in the petition?</p>

JUDICIAL ROLE AND ACTIVITIES	CASEWORKER ROLE AND ACTIVITIES
<p><b><i>STIPULATIONS, ADMISSIONS, TRIALS</i></b></p> <p>Whether the case is contested or uncontested, the judge will be seeking to ensure that the parents understand the allegations of the petition, the evidence supports the petition, and that any admissions by the parent are entered with their full understanding and consent.</p>	<p><b><i>SPECIAL CONSIDERATIONS IN CASES INVOLVING DOMESTIC VIOLENCE</i></b></p> <p>Care should be taken to hold the person using violence accountable for their behavior and avoid blaming or naming the survivor parent. The survivor parent, as long as they are not subjecting the child to abuse or neglect, should be viewed as a partner in protecting the children and in providing services to the survivor parent to protect their children.</p>
<p><b><i>TAKE TESTIMONY AND ADMIT RELEVANT EVIDENCE</i></b></p> <p>Even when parties stipulate or pled to the facts in the petition, the court should have the parties testify on the record they understand and consent to the terms before accepting any agreement.</p>	<p><b><i>TESTIFYING IN COURT</i></b></p> <p>Child welfare agency staff should come to court fully prepared to testify to the facts in the petition. The most important concept in providing testimony at an adjudication hearing is to fully describe the facts that meet the state's definitions of child abuse or neglect pled in the petition by the parent that caused the child to be in danger. Using conclusions without facts to back them up can create an uncomfortable court experience for caseworkers.</p>
<p><b><i>SCHEDULE DISPOSITION HEARING AND DISTRIBUTE TIMELY ORDERS</i></b></p> <p>It is recommended that the court schedule the disposition hearing when all parties are present.</p> <p>The ENHANCED RESOURCE GUIDELINES recommends courts conduct the disposition hearing immediately following the adjudication hearing.</p>	<p><b><i>AFTER THE HEARING</i></b></p> <p>Meet with parents/guardians to ensure they understand what happened at court and the required next steps. Set a schedule for regular contact.</p>



# Disposition Hearing Benchcard

If the court finds abuse or neglect at the adjudication hearing, the court will conduct a disposition hearing. The ENHANCED RESOURCE GUIDELINES recommend that the disposition hearing happen immediately or as soon as possible after the adjudication hearing.

The disposition hearing is focused on approval of the plan for the child and family and what services and steps are needed to accomplish the plan. Federal and state law set the timeline for the jurisdictional hearing. Best practice is to hold the hearing within 60 days of placement, the same time as the case plan must be written in consultation with the parents. State statutes vary as to what courts can order at this stage of the proceeding as to placement and services. It is important to know your state law's options.

JUDICIAL ROLE AND ACTIVITIES	CASEWORKER ROLE AND ACTIVITIES
<p><b>Before the hearing:</b></p> <p><b>BIAS CHECK</b></p> <p>Review and consider each of the questions in the ENHANCED RESOURCE GUIDELINES aimed at reducing implicit bias.</p>	<p><b>Before the hearing:</b></p> <p><b>CHECK YOUR BIAS AT THE DOOR</b></p> <p>Seek out training on bias and individual, structural, and institutional racism. Review and consider each of the questions in the ENHANCED RESOURCE GUIDELINES aimed at reducing implicit bias.</p>
<p><b>CASE PLANS</b></p> <p>The judge will be inquiring about the case plan and the concurrent case plan.</p>	<p><b>CASE PLANS</b></p> <p><b>SPECIAL CONSIDERATIONS IN CASES INVOLVING DOMESTIC VIOLENCE</b></p> <p><u>Case plans should focus on helping the survivor parent build protective factors and buffer risk. The children should be placed with the survivor parent as long as they can be safe.</u></p>



JUDICIAL ROLE AND ACTIVITIES	CASEWORKER ROLE AND ACTIVITIES
	<p><i>Case planning must include active engagement of the person using violence. Planning should be based on survivor safety and relational and systemic accountability.</i> Relational accountability involves using the power of relationships, connections, and human interactions to reduce domestic violence and to support positive change. Systemic accountability involves using the power of systems to reduce the use of violence and other forms of coercive control and guide people to healthier choices for themselves and their families.</p> <p>Develop case plans utilizing methods and tools developed by the <a href="#">Quality Improvement Center on Domestic Violence in Child Welfare</a>.</p> <p><a href="#">Utilize protective factors analysis to make review hearing recommendations for return of the child.</a></p> <p><b>[See also the Case Plan Requirements Benchcard]</b> Pursuant to federal law, the initial case plan must be written, in consultation with the parents, within the first 60 days of placement. Children who are 14 and older have a right to be present and involved in case planning and to select two members of the case planning team who are not the caseworker or foster parent. (42 U.S.C. § 675(5)(C)(iv)).</p>

JUDICIAL ROLE AND ACTIVITIES	CASEWORKER ROLE AND ACTIVITIES
	<p>Agency staff should ensure that case plans are individualized and speak to the findings the court is required to make at each hearing. Affidavits outlining reasonable or active efforts the agency has made should be provided to the court to aid the judge in making these important findings.</p>
	<p>Verify that the case plan documents the child’s education, health, visitation, and court participation rights, the right to receive a credit report annually, and a signed acknowledgment that the child was provided these rights and that they were explained in an age-appropriate way. (42 U.S.C. § 675a(b); 42 U.S.C. §675(5)(I)).</p>
<p><b>RATIONAL RELATIONSHIP</b></p> <p>In reviewing case plans, judges are encouraged to ensure that services required are rationally related to the reasons the court is involved.</p>	<p><b>RATIONAL RELATIONSHIP</b></p> <p><i>Caseworkers should ensure that the case plan and bears a rational relationship to the services and findings of the court. Parents should not be required to participate in services that are not related to the reasons the court found the child abused or neglected.</i></p>
<p><b>ENSURE PROPER NOTICE</b></p> <p>Foster parents of a child and any pre-adoptive parent or relative providing care for the child shall be provided with notice of, and an opportunity to be heard in, any review or hearing to be held with respect to the child, but this does not grant them party status to the case. 42 U.S.C. § 675(5)(G).</p>	<p><b>RIGHT TO NOTICE</b></p> <p>Work with the agency counsel to ensure that all parties have notice and are properly served according to state law for the hearing.</p> <p><i>What have you done to exercise due diligence to provide notice?</i></p>

JUDICIAL ROLE AND ACTIVITIES	CASEWORKER ROLE AND ACTIVITIES
<p><b>GET ICWA RIGHT!</b></p> <p>Determine whether the child is an Indian child and if so, ensure tribal notification and the presence of a Qualified Expert Witness (QEW) at the hearing is arranged. Raise evidence standard to clear and convincing even if state statutory standard is lower.</p>	<p><b>GET ICWA RIGHT!</b></p> <p>Ask all legal parents, age-appropriate children, and any other known relatives whether the parents or child have Native American or Alaska Native heritage. Ensure tribal notice and secure the attendance of a QEW if ICWA applies. Understand that hearing proceeds with clear and convincing evidentiary standard if ICWA applies.</p>
<p>If there is reason to know but not sufficient evidence to determine that the child is or is not an Indian child, courts must confirm on the record that due diligence was used to identify and work with all of the possible tribes and must treat the child as an Indian child unless and until it is determined on the record that the child does not meet the definition. 25 C.F.R. § 23.107.</p>	
<p><b>REASONABLE AND ACTIVE EFFORTS</b></p> <p>These are some of the most important findings judges' make in child welfare cases.</p> <p>During the pendency of the case, the court must determine whether the agency has provided reasonable efforts to make it possible for a child to safely return to the child's home. 42 U.S.C. 6715(a)(15)(B)(i).</p> <p>See Judge Leonard Edwards' <a href="#">Reasonable Efforts: A Judicial Perspective</a>.</p> <p>See the NCJFCJ's <a href="#">Reasonable efforts and special considerations in cases involving domestic violence</a>.</p>	<p><b>REASONABLE AND ACTIVE EFFORTS</b></p> <p>Workers must be prepared to outline the reasonable efforts (active efforts when an Indian child is involved) the agency has made to provide services to both parents to allow the child to safely return home.</p>

JUDICIAL ROLE AND ACTIVITIES	CASEWORKER ROLE AND ACTIVITIES
<p>Reasonable efforts are not required to return a child home to a parent of a child, if a court of competent jurisdiction has determined that the parent has:</p> <ul style="list-style-type: none"> <li>• subjected the child to aggravated circumstances (as defined in State law, which definition may include but need not be limited to abandonment, torture, chronic abuse, and sexual abuse);</li> <li>• committed murder of another child of the parent;</li> <li>• committed voluntary manslaughter of another child of the parent;</li> <li>• aided or abetted, attempted, conspired, or solicited to commit such a murder, voluntary manslaughter; or</li> <li>• committed a felony assault that results in serious bodily injury to the child or another child of the parent. (42 U.S.C. 6715(a)(15)(D); 42 C.F.R. §1365.21(b)(3)).</li> </ul>	<p>The agency may ask the court to relieve the agency of the responsibility to provide reasonable efforts to reunify the family based on factors outlined in state and federal law. If the court relieves the agency of providing reasonable efforts to reunify the family a permanency hearing must be held within 30 days of the court's finding. <i>Active efforts cannot be waived under any circumstances by the court or agency.</i></p>



**JUDICIAL ROLE AND ACTIVITIES****PLACEMENT**

If the child cannot safely return home, the court should inquire whether the placement is the most appropriate, least restrictive placement to meet the child’s needs. Judges will also ensure other statutes related to placement with siblings, ICWA notice placement preferences, placement in proximity to parent and ensure school continuity is appropriate, and whether caregivers are able to apply a reasonable and prudent parent standard.

The court should also reassess the safety risk to determine if the child can safely return home TODAY.

**CASEWORKER ROLE AND ACTIVITIES****PLACEMENT**

*Be prepared to answer the following questions:*

Has the agency made reasonable efforts to place siblings together? If not, has the agency documented that joint placement would be contrary to the safety or well-being of any sibling? If not, what efforts have been made to place the siblings together? If siblings cannot be placed together has the agency made reasonable efforts to facilitate frequent and meaningful visitation between siblings? (42 U.S.C. § 671(a)(31)).

- ✓ If an ICWA case, is the placement consistent with ICWA placement preferences? (25 U.S.C. 1915).
- ✓ From the family’s perspective, is the placement culturally and linguistically appropriate?
- ✓ Is the placement in proximity to the child’s educational setting, or does it otherwise support educational continuity? (42 U.S.C. § 675(1)(G)).
- ✓ Are caregivers and foster parents able to apply a reasonable prudent parent standard? (42 U.S.C. § 675(10)(A)).
- ✓ If the child is a survivor of sex trafficking, or at risk of becoming a survivor of sex trafficking, verify that the case plan includes appropriate and necessary services for the child. (42 U.S.C. § 671(a) (35)(A)).
- ✓ Does the placement facilitate a sense of “normalcy” by supporting the child’s participation in developmentally appropriate activities and events? (42 U.S.C. § 675(11)(A)).

JUDICIAL ROLE AND ACTIVITIES	CASEWORKER ROLE AND ACTIVITIES
<p><b>PLACEMENT</b></p>	<p>What is the specific plan to assess and ensure the child’s well-being, including, as applicable, his/her educational, developmental, emotional and mental health, trauma, medical, dental, medication, and reproductive health needs?</p> <p>If the child is placed out of the home, provide a clear explanation outlining why the child cannot safely return home <i>TODAY</i>. The safety threat to the child must be assessed on an ongoing basis. It is not appropriate to suggest that the reason the child entered care is sufficient to keep the child in care today. Judges will make these findings based on the current situation, not the reason for removal.</p>
<p><b>FAMILY TIME</b></p> <p>The court should determine the frequency of family time (visitation) that should be provided.</p>	<p><b>FAMILY TIME</b></p> <p>Be prepared to explain to the court the frequency and level of supervision the agency is recommending. Levels of supervision must be determined based on whether the child can be safe during the visit. The reason for removal is not an automatic reason to recommend supervised visits. The analysis must be about safety during the visit. Be prepared to explain the potential safety risk during a visit specifically if the agency is recommending supervised visits.</p> <p>Also be prepared to describe the plan for sibling visitation if siblings are not placed together.</p>
<p><b>SET NEXT HEARING WHILE ALL PARTIES ARE PRESENT AND DISTRIBUTE TIMELY ORDERS</b></p>	<p><b>AFTER THE HEARING</b></p> <p>Meet with parents/guardians to ensure they understand what happened at court and the required next steps. Set a schedule for regular contact. Review court orders and develop task list and time line to ensure compliance with court orders.</p>



# 🔍 | Review Hearings Benchcard (Pre- and Post-Permanency)

Review hearings must occur within six months of the date a child enters foster care. States have different requirements for review hearings with some states conducting those hearings in court, some before citizen review boards, and some through internal administrative review. Regardless of the format, federal requirements are the same. Review hearings examine progress made by the parties since the conclusion of the disposition hearing. They provide an opportunity to ensure that the case goal is on track and the parties are complying with the court's orders. It also provides an opportunity for the court to check on the child's placement and well-being. Review hearings ensure that cases progress and children spend as short a time as possible in temporary placements. Federal law requires that the status of each child in out-of-home care be reviewed at least once every six months by either a court or an administrative body. (42 U.S.C. § 675(5)(B)).



The review hearing must examine:

- the ongoing safety of the child;
- the continuing necessity for out-of-home placement;
- the appropriateness of the out-of-home placement;
- the extent of the agency's and parents' compliance with the case plan;
- the extent of progress that has been made toward alleviating or mitigating the reasons the child was placed in foster care; and
- the likely date by which the child may be returned home or placed for adoption or legal guardianship. (U.S.C. 675(5)(B)).

JUDICIAL ROLE AND ACTIVITIES	CASEWORKER ROLE AND ACTIVITIES
<p><b>Before the hearing:</b></p> <p><b>BIAS CHECK</b></p> <p>Review and consider each of the questions in the ENHANCED RESOURCE GUIDELINES aimed at reducing implicit bias.</p>	<p><b>Before the hearing:</b></p> <p><b>CHECK YOUR BIAS AT THE DOOR</b></p> <p>Seek out training on bias and individual, structural, and institutional racism. Review and consider each of the questions in the ENHANCED RESOURCE GUIDELINES aimed at reducing implicit bias.</p>



JUDICIAL ROLE AND ACTIVITIES	CASEWORKER ROLE AND ACTIVITIES
<p><b><i>ENSURE PROPER NOTICE TO ALL REQUIRED PARTICIPANTS</i></b></p> <p>If there is reason to know but not sufficient evidence to determine that the child is or is not an Indian child, courts must confirm on the record that due diligence was used to identify and work with all of the possible tribes and must treat the child as an Indian child unless and until it is determined on the record that the child does not meet the definition. 25 C.F.R. § 23.107.</p>	<p><b><i>NOTICE</i></b></p> <p>All parties.</p> <p>Foster parents, relative caregivers, and pre-adoptive parents are entitled to notice of the review hearing and have a right to be heard.</p> <p>Tribal liaison if an ICWA case.</p> <p>Any other parties to the case.</p> <p><i>Specifically, what have you done to exercise due diligence to provide notice?</i></p>
	<p><b><i>SPECIAL CONSIDERATIONS IN CASES INVOLVING DOMESTIC VIOLENCE</i></b></p> <p>Develop case plans utilizing methods and tools developed by the <a href="#">Quality Improvement Center on Domestic Violence in Child Welfare</a>.</p> <p><a href="#">Utilize protective factors analysis to make review hearing recommendations for return of the child.</a></p>
<p><b><i>REQUEST THAT INTIMATE PARTNER VIOLENCE ASSESSMENTS BE PROVIDED TO THE COURT SO A SAFE HEARING ENVIRONMENT CAN BE ESTABLISHED</i></b></p>	

# | At the hearing

JUDICIAL ROLE AND ACTIVITIES	CASEWORKER ROLE AND ACTIVITIES
<p><b>CONSOLIDATING CASES</b></p> <p>Determine whether other cases related to the family can be consolidated before one judge or whether judges can consult on related cases.</p>	<p><b>KNOW THE WHOLE STORY</b></p> <p>Inform the court whether there are any other cases involving family members filed in any other court.</p>
<p><b>PLACEMENT</b></p> <p>The court should inquire not only about the reason the child was removed but also why the child cannot safely return home TODAY. The reason the child entered care is not a reason to keep the child in care. The judge must weigh the current safety threat at every hearing. Determine whether the child needs to remain in placement.</p> <p>The judge should inquire not only about the reason the child was removed but also why the child cannot safely return home TODAY. The reason the child entered care is not a reason to keep the child in care. The judge must weigh the current safety threat at every hearing. Determine whether the child needs to remain in placement.</p>	<p><b>PLACEMENT</b></p> <p><b>KEEP IT CURRENT - What prevents the child from safely returning home TODAY?</b></p> <p>The judge is interested not only in why the child was removed but what prevents the child from safely returning home today. Remember that children should be returned to their parents when their parents can provide the minimally sufficient standard of care. This does not mean that the parents need to complete all the provisions of a case plan or services. It does mean that children should be returned home when the safety threat is eliminated. Always be able to articulate the safety threat that is prohibiting the child from returning home today.</p> <p>Be prepared to testify as to how the child’s placement meets the health, educational, cultural, treatment, and emotional needs (including trauma) of the child. Siblings should be placed together whenever possible and the agency should be prepared to describe reasonable efforts keep the siblings together if they are separated and how they are maintain contact including visitation.</p>

JUDICIAL ROLE AND ACTIVITIES	CASEWORKER ROLE AND ACTIVITIES
	<ul style="list-style-type: none"> <li>If the child has been missing from placement, inquire about what is known of the child's experiences while absent from care, including whether the child was a survivor of sex trafficking or at risk of such victimization; if so, what services will be offered?</li> </ul>
<p><i>If the court orders that the child should remain in care, the following issues will be explored:</i></p>	
<p><b>MOST APPROPRIATE, LEAST RESTRICTIVE</b></p> <p>The court should evaluate whether the child's current placement is the most appropriate, least restrictive to meet the child's needs. The court will inquire about the diligent search for relatives at every hearing.</p>	
<p><b>REASONABLE AND ACTIVE EFFORTS</b></p> <p>During the pendency of the case, the court must determine whether the agency has provided reasonable efforts to make it possible for a child to safely return to the child's home. (42 U.S.C. § 6715(a)(15)(B)(i)).</p>	<p><b>REASONABLE AND ACTIVE EFFORTS</b></p> <p>Caseworkers should be able to testify as to the reasonable efforts, and active efforts if it is an ICWA case, being made to enable the child to return safely to the parent.</p>



JUDICIAL ROLE AND ACTIVITIES	CASEWORKER ROLE AND ACTIVITIES
<p><b>SERVICES</b></p> <p>The court should make a decision about whether services can be provided to allow the child to safely return home now or in the future.</p>	<p><b>SERVICES</b></p> <p>Caseworkers should be ready to testify as to services for the child and the parents. Services should be directly related to the reason the child was removed from home and later, directly related to the findings of the court. Are there services that can be provided to mitigate the safety threat and allow the child to safely return home?</p> <ul style="list-style-type: none"> <li>• How is the agency assisting the family in accessing services?</li> <li>• Has the agency demonstrated that the services offered are culturally appropriate and proven effective for families with similar issues and characteristics?</li> </ul>
<p><b>FAMILY TIME</b></p> <p>The court should determine the type and frequency of family time (visitation) that should be provided.</p>	<p><b>FAMILY TIME</b></p> <p>Be prepared to explain to the court the frequency and level of supervision the agency is recommending. Levels of supervision must be determined based on whether the child can be safe <i>during the visit</i>. The reason for removal is not an automatic reason to recommend supervised visits. The analysis must be about safety during the visit. Be prepared to explain the potential safety risk during a visit specifically if the agency is recommending supervised visits.</p> <ul style="list-style-type: none"> <li>• What are the terms of family time with parents, siblings, and extended family members?</li> <li>• Do the terms of family time match the safety concerns? Is there evidence supporting supervised visitation?</li> <li>• Are the time and location of family time logistically possible for the family and supportive of the child’s needs?</li> </ul>

JUDICIAL ROLE AND ACTIVITIES	CASEWORKER ROLE AND ACTIVITIES
<p><b>CHILD'S WELL-BEING</b></p> <p>The court should inquire about the child's well-being, information about the child's current placement, physical, mental health, and educational status and needs.</p> <p><b>Think legal requirement:</b></p> <ul style="list-style-type: none"> <li>• School continuity law</li> <li>• Normalcy</li> <li>• Sex trafficking</li> </ul>	<p><b>CHILD'S WELL-BEING</b></p> <p>The caseworker should be able to testify as to the child's well-being. What is the specific plan to assess and ensure the child's well-being, including, their educational, developmental, emotional and mental health, trauma, medical, and dental needs?</p> <ul style="list-style-type: none"> <li>• Health and education records must be updated yearly and every time the child experiences a placement change.</li> <li>• Verify that the child's health, mental, physical, dental, and educational needs are being addressed. Get input from all parties/participants, including the child (if appropriate) and caregiver/foster and pre-adoptive parents.</li> <li>• Status of school programs, school records, including any Individualized Education Program (IEP). Verification that the child is attending the same school as when he/she entered care. If not, why and how was the decision made to move the child's school placement.</li> <li>• Verification that the child is attending school on a regular basis and has adequate transportation.</li> <li>• Verify that the child is able to participate in developmentally age-appropriate activities that promote a sense of normalcy.</li> <li>• Concerns if the child was a survivor of sex trafficking, or at risk of being a survivor of sex trafficking, are appropriate and necessary services being addressed?</li> </ul>

JUDICIAL ROLE AND ACTIVITIES	CASEWORKER ROLE AND ACTIVITIES
<p><b>CASE PLAN/PERMANENCY PLAN GOAL</b></p> <p>The court should inquire how the parties are working to accomplish the case plan/permanency goal. What specific steps are still needed, and the likely date it will be accomplished?</p>	<p><b>CASE PLAN/PERMANENCY PLAN GOAL</b></p> <p>The worker should be prepared to explain to the court how the permanency plan was selected, whether all parents who have legal rights and children when appropriate, were involved. In cases in which more desirable permanency plans were not selected (return to parent, adoption, guardianship), the worker should be prepared to explain specifically why each was ruled out.</p>
<p><b>SCHEDULE NEXT HEARING WHILE ALL PARTIES PRESENT AND DISTRIBUTE ORDERS TIMELY</b></p>	<p><b>TO PREPARE FOR THE NEXT HEARING</b></p> <p>Review the court order with the family. Update the case plan if necessary and ensure compliance with the court order.</p>







# Permanency Hearing Benchcard

Federal and state statutes govern timetables for permanency hearings. ASFA requires that a permanency hearing must take place no later than 12 months after a child has entered foster care. The mandated time for a permanency hearing in your state may be sooner. ASFA describes a permanency hearing as a procedure to ensure that the court determines one of the following permanency plans in order of preference for the child and specify the date that the plan will be implemented:

- Returned to the Parent
- Placed for Adoption
- Referred for Legal Guardianship
- Placement with a fit and willing relative
- Another planned permanent living arrangement (APPLA)

Subsequent permanency hearings should be held every 12 months after the initial permanency hearing. If a court relieves the agency of the responsibility to provide reasonable efforts to reunify with a parent, a permanency hearing is required within 30 days of that finding.

The court must determine whether the agency made reasonable efforts to finalize the permanency plan that is in effect within 12 months of the date the child entered foster care and at least every 12 months thereafter when the child remains in care.





JUDICIAL ROLE AND ACTIVITIES	CASEWORKER ROLE AND ACTIVITIES
<p><b>Before the hearing:</b></p> <p><b>BIAS CHECK</b></p> <p>Review and consider each of the questions in the ENHANCED RESOURCE GUIDELINES aimed at reducing implicit bias.</p>	<p><b>Before the hearing:</b></p> <p><b>CHECK YOUR BIAS AT THE DOOR</b></p> <p>Seek out training on bias and individual, structural, and institutional racism. Review and consider each of the questions in the ENHANCED RESOURCE GUIDELINES aimed at reducing implicit bias.</p>
<p><b>ENSURE PROPER NOTICE TO ALL REQUIRED PARTICIPANTS</b></p> <p>Foster parents of a child and any pre-adoptive parent or relative providing care for the child shall be provided with notice of, and an opportunity to be heard in, any review or hearing to be held with respect to the child, but this does not grant them party status to the case. 42 U.S.C. § 675(5)(G).</p>	<p><b>NOTICE</b></p> <p>All parties.</p> <p><i>Specifically, what have you done to exercise due diligence to provide notice?</i></p> <ul style="list-style-type: none"> <li>• Foster and pre-adoptive parents are entitled to notice of the hearing and have the right to be heard</li> <li>• Tribal liaisons if an ICWA case</li> <li>• Any parties to the case</li> </ul>
<p><b>REQUEST THAT INTIMATE PARTNER VIOLENCE ASSESSMENTS AND TREATMENT RECORDS BE PROVIDED TO THE COURT SO A SAFE HEARING ENVIRONMENT CAN BE ESTABLISHED</b></p>	<p><b>SPECIAL CONSIDERATIONS IN CASES INVOLVING DOMESTIC VIOLENCE</b></p> <p><a href="#">Update case plans utilizing methods and tools developed by the Quality Improvement Center on Domestic Violence in Child Welfare.</a></p> <p><a href="#">Utilize protective factors analysis to make recommendations for permanency plan.</a></p>



# At the hearing

JUDICIAL ROLE AND ACTIVITIES	CASEWORKER ROLE AND ACTIVITIES
<p><b>CONSOLIDATING CASES</b></p> <p>Determine whether other cases related to the family can be consolidated before one judge or whether judges can consult on related cases.</p>	<p><b>KNOW THE WHOLE STORY</b></p> <p>Inform the court whether there are any other known cases involving family members filed in any other court.</p>
<p><b>PERMANENCY PLAN ANALYSIS</b></p> <p>It is imperative at every permanency hearing that the court examine each permanency option and rule out the appropriateness of the more permanent options anytime another is selected. The court must affirmatively rule out any plans higher on the permanency scale (i.e., return to parent) before allowing a plan lower on the scale to be selected.</p> <ul style="list-style-type: none"> <li>✓ Return to parent</li> <li>✓ Adoption</li> <li>✓ Permanent guardianship</li> <li>✓ Placement with a fit and willing relative</li> <li>✓ Another planned permanent living arrangement</li> </ul> <p>The court should determine the permanent plan for the child and why the plan is in the child’s best interests. The order should state the steps to be taken and timelines for accomplishing the permanent goal.</p> <p><b>Note:</b> <i>The Permanency Hearing Benchcard in the ENHANCED RESOURCE GUIDELINES contains a more comprehensive list of inquiries the court must make. If the court has not completed at least two review hearings prior to the Permanency Hearing, the court will need to conduct additional inquiries required by federal law for six months reviews at this time too.</i></p>	<p><b>PERMANENCY PLAN AND CONCURRENT PERMANENCY PLAN</b></p> <p>Many states conduct permanency staffings with all the parties in preparation for the parties to propose their recommendations to the court at the permanency hearing. Caseworkers need to be prepared to testify why the agency’s recommendation is in the child’s best interest and why the other plans are not appropriate. Caseworkers should also be ready to testify as to the steps and timeline necessary to implement the recommended permanency plan.</p> <p>For a child 14 or older, the permanency plan must be developed in consultation with the child, with the same team provisions as with the case plan. (42 U.S.C. § 675(5)(C)(iv)).</p>

JUDICIAL ROLE AND ACTIVITIES	CASEWORKER ROLE AND ACTIVITIES
	<p><b>REUNIFICATION</b></p> <p>If the permanent plan is reunification and if the child cannot be returned home safely today to the parent(s) is the reunification achievable within a reasonable amount of time taking into consideration the child’s age and unique needs. Specify the specific step needed and a date for reunification.</p>
<p><b>ADOPTION</b></p> <p>If the plan is adoption/termination of parental rights and a termination of parental rights (TPR) petition has not been filed, the order should state the expected timeframe for filing a TPR, which must be within 30 days. If the petition has been filed, the court should schedule pre-trials, mediation, and trial dates.</p>	<p><b>ADOPTION</b></p> <p>Be prepared to testify why the child cannot be returned to the parent and why adoption is in the child’s best interest. Specify whether the child has been placed in an adoptive placement and if not, the specific steps to effect that placement, necessary adoption subsidy paperwork required, including but not limited to adoptive home study, TPR petitions, and time for achieving adoption goal.</p>
	<p><b>PERMANENT GUARDIANSHIP</b></p> <p>Be prepared to testify why the child cannot be returned to the parent or why the child should not be adopted and why guardianship is in the child’s best interest. Specify whether a placement has been designated and if financial and other necessary supports are in place, guardianship or assistance is needed and if subsidies are available.</p>

JUDICIAL ROLE AND ACTIVITIES	CASEWORKER ROLE AND ACTIVITIES
	<p><b><i>PLACEMENT WITH A FIT AND WILLING RELATIVE</i></b></p> <p>Be prepared to testify why the child cannot be returned to the parent, or why the child should not be adopted or placed in a guardianship and why custody with a relative is in the child’s best interest. Specify whether a placement has been designated and if financial, assistance is needed and what will be provided along with other necessary supports.</p> <p>Also ensure that the agency fully informed the relatives about the benefits of adoption and/or permanent guardianship, including financial assistance.</p>
<p><b><i>ANOTHER PLANNED PERMANENT LIVING ARRANGEMENT (APPLA)</i></b></p> <p>APPLA cannot be a permanent plan for any child age 16 or under. (42 U.S.C. § 675(5)(C) (i)).</p> <p>The court must ask the child about the desired permanency outcome and make a judicial determination why another planned permanency living arrangement is the best permanency plan and provide compelling reasons why other options (return home, adoption, legal guardian, relative placement) are not in the child’s best interest. (42 U.S.C. § 675(a)(2)).</p>	<p><b><i>ANOTHER PLANNED PERMANENT LIVING ARRANGEMENT (APPLA)</i></b></p> <p>Specify whether and how the child was consulted about the plan.</p> <p>Specify whether and how connections and relationships important to the child will be maintained through this permanency goal.</p> <p>What efforts have been made to provide additional services that would allow the child to reside in a more permanent, family-like environment? (42 U.S.C. § 675(5)(A)).</p>

JUDICIAL ROLE AND ACTIVITIES	CASEWORKER ROLE AND ACTIVITIES
	<p>If the child is 14 years old or older, determine whether the agency is providing services needed to assist the child to make the transition from foster care to successful adulthood. (P.L. 113-183 § 475(5)(I)).</p> <p>The state agency must document the intensive, ongoing, and, as of the date of the hearing, unsuccessful efforts made by the State agency to return the child home, adoption, guardianship or custody with a fit and willing relative (including adult siblings) including through efforts that utilize search technology to find biological family members for the children. (42 U.S.C. § 675a(a)(1)).</p>
<p><b><i>REASONABLE EFFORTS TO FINALIZE THE PERMANENCY PLAN</i></b></p> <p>The court shall make a judicial determination that the agency has made reasonable efforts to finalize the permanency plan that is in effect (whether the plan is reunification, adoption, legal guardianship, placement with a fit and willing relative, or placement in another planned permanent living arrangement) within 12 months of the date the child entered foster care, and at least once every twelve months thereafter while the child is in foster care. 42 C.F.R. §1365.21(b)(2)(i).</p>	<p><b><i>REASONABLE EFFORTS TO FINALIZE THE PERMANENCY PLAN</i></b></p> <p>Be prepared to testify about the specific reasonable efforts the agency has made to finalize the permanency plan.</p> <p>Failure to get a reasonable efforts finding to finalize the permanency plan within 12 months of the child entering care and every 12 months thereafter, results in the child becoming ineligible for title IV-E funding at the end of the month in which the judicial determination was required to have been made, and remains ineligible until such a determination is made. 42 C.F.R. §1365.21(b)(2)(ii).</p>

JUDICIAL ROLE AND ACTIVITIES	CASEWORKER ROLE AND ACTIVITIES
<p><b><i>15 of 22 MONTHS IN CARE FINDING</i></b></p> <p>If a child has been in care for 15 of the last 22 months, the court must examine the agency’s compliance with the mandate to file or join a termination of parental rights petition absent compelling reasons not to file.</p>	<p><b><i>15 of 22 MONTHS IN CARE FINDING</i></b></p> <p>The agency should be prepared to inform the court about whether a petition to terminate parental rights will be filed or joined on any child who has been in care for 15 of the last 22 months. Exceptions to this mandate include:</p> <ul style="list-style-type: none"> <li>√ the child is being cared for by a relative;</li> <li>√ there are compelling reasons that it would not be in the child’s best interests to file; or</li> <li>√ reasonable efforts necessary to achieve the case plan goal of reunification have not been made. (42 U.S.C. § 675(5)(C); 65 Fed. Reg. 4062 (Jan. 25, 2000)).</li> </ul>
<p><b><i>SCHEDULE NEXT HEARING WHILE ALL PARTIES PRESENT AND DISTRIBUTE ORDERS TIMELY</i></b></p>	<p><b><i>TO PREPARE FOR THE NEXT HEARING</i></b></p> <p>Take all necessary steps to implement and finalize the permanency plan.</p> <p>Ensure the parties understand the permanency plan and the necessary step to finalize the plan.</p>





# Appendix A

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## *Child Welfare Legislative Summary*

## Child Welfare Legislative Summary

*Note: In response to COVID-19 and the resulting interruption and delay of court proceedings as well as delays in other services related to child welfare, the Office for the Administration for Children & Families, the Children's Bureau has developed a resource page as well as issued guidance regarding state courts' and administrative child welfare practices including termination of parental rights and flexibility regarding Title IV-E plan requirements. Those resources and other information can be found here: <https://www.acf.hhs.gov/cb/resource/covid-19-resources>.*

In December 2019 Congress passed, and the president signed the 2020 Further Consolidated Appropriations Act. This spending bill included the Family First Transition Act ("Transition Act"),<sup>1</sup> which was designed to support states and tribes in their implementation of the 2018 Family First Prevention Services Act. It provided the following:

- Family First Fund - \$500 million distributed proportionately to states to support implementation;
- Changes to implementation of Evidence Based Program Implementation
  - 2022 states now required to have 50% of funding on Supported or Well Supported Programs
  - 2024 states now required to have 50% of funding on Well Supported Programs; and
- Funding for waiver states, if states can demonstrate losses – guarantee 90% of waiver funds for FY 2020 and 75% for FY 2021.

### **Family First Prevention Services and Prevention Act of 2018 and the Family First Transition Act (Family First)**

The Family First Prevention Services Act (Family First) of 2018 provides States and Tribes opportunities to use federal funding to support children and families to prevent foster care placements. It focuses on family engagement and evidence-based practices and requires judicial oversight of the placement and review of children in residential treatment programs to

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<sup>1</sup> See Pub. L. No. 116-94 (Dec. 12, 2019); see also <https://www.ncsl.org/research/human-services/ncsl-s-child-welfare-legislative-policy-network-newsletter-february-2020637176195.aspx>.

## Child Welfare Legislative Summary

ensure that children are in the least restrictive placement that meets their needs consistent with their permanency plan.

Family First contains different effective dates for various provisions and state agencies have the ability to delay implementation or waive certain features. Funding for prevention services and programs was effective October 1, 2018, but states could not seek reimbursement until October 1, 2019, and only if they were in compliance with the provisions of the Act related to the qualified residential treatment programs. For a status of state and tribal prevention plans submitted and approved go to <https://www.acf.hhs.gov/cb/resource/title-iv-e-five-year-plan>. For a detailed overview of Family First see the NCJFCJ's *The Role of the Court in Implementing the Family First Services and Prevention Act of 2018*.<sup>2</sup>

The following is a summary of the specific judicial requirements with regard to qualified residential treatment programs which require judicial review.

Family First clarifies that Title IV-E maintenance payments will only pay for specified placements (with the exception of a two-week grace period), beginning October 1, 2019, as to residential treatment placements. While States have the option to delay this effective date for up to two years, they will not receive any Title IV-E prevention fund reimbursement for the same period they delay compliance with this section of the law. Title IV-E eligible placements include:

- Qualified Residential Treatment Programs (QRTP) as set forth in the Act;
- Specialized settings for prenatal, postpartum, or parenting support for youth;
- Supervised setting for youth that have attained the age of 18 and are living independently; and
- Highly qualified residential care and supportive services to children and youth who have been found to be or are at risk of becoming sex trafficking victims. 42 U.S.C. § 672(k)(2).

Reimbursement for QRTPs will not be provided to states unless within 30 days of the placement a qualified individual makes an assessment using an

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<sup>2</sup> <https://www.ncjfcj.org/publications/the-role-of-the-court-in-implementing-the-family-first-prevention-services-act-of-2018/>

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age-appropriate, evidence-based, validated, functional assessment tool that has been approved by the Secretary of the U.S. Department of Health and Human Services. 42 U.S.C. § 672(k)(3).

Within 30 days of the placement, the qualified individual must complete the assessment that shall:

- Assess the strengths and needs of the child;
- Determine whether the child's needs can be met by family members or in a foster-family home, and if not, what would provide the most appropriate level of care in the least restrictive environment consistent with the child's permanency plan;
- Develop a list of child specific short- and long-term mental and behavioral health goals;
- Involve the child's Family and Permanency Team while conducting the assessment. 42 U.S.C. § 675a)(c).

Within 60 days of the start of a QRTP placement, the Court must review the assessment and documentation made by the "qualified individual" who conducted the assessment.

The Court must determine whether the needs of the child can be met through placement with family or in a foster family home. If placement with family or in a foster- family home will not meet the child's needs, the Court must determine whether the QRTP residential qualified placement provides the most effective and appropriate level of care for the child in the least-restrictive environment and whether that placement is consistent with the short and long term goals for the child [hereinafter QRTP Standard], as specified in the permanency plan; and approve or disapprove the placement. 42 U.S.C. § 675a(c)(2).

As long as the child is in a QRTP, the agency must submit evidence at each Review and Permanency Hearing demonstrating that the child's needs cannot be met in a foster family home, and that the QRTP meets the QRTP Standard; documenting the specific treatment or service needs that will be met in the placement, and the expected length of time the child will need them; and documenting the State agency's efforts to prepare the child to transition to the permanency plan goal. 42 U.S.C. § 675a(c)(4).

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### Preventing Sex Trafficking and Strengthening Families Act (2014)

This purpose of this Act was to protect and prevent children and youth in foster care from becoming victims of sex trafficking and to make improvements in the child welfare system for children and youth in care.

#### Preventing Sex Trafficking

**Policies and Procedures:** The state agency must develop policies and procedures for identifying, documenting, and determining appropriate services for children who the state has reasonable cause to believe are victims, or are at risk of becoming a victim.

- Applies only to children for whom the state has responsibility for placement, care, or supervision, including those who were not removed from the home, children from foster care who have run away (under age 18, or under age 21, if the state extended foster care), and those receiving services under the Chaffee program. However, states have the option to extend to young adults under the age of 26, regardless of whether they were involved in foster care. 42 U.S.C. § 671(a)(9)(C).

**Reporting Requirements:** States must immediately report, and no later than 24 hours, children who are identified as sex trafficking victims to law enforcement. States are also required to report annually the total number of youth sex trafficking victims to the Secretary of Health and Human Services (HHS), who is then required to report to Congress and make data available to the public on the HHS website. 42 U.S.C. § 671(a).

States are required to annually submit data in the Adoption and Foster Care Analysis and Reporting System (AFCARS) on the number of children in foster care who are identified as victims of sex trafficking, including the number of children who were victims before entering foster care and those who became victims while in foster care. 42 U.S.C. § 679(c)(3).

- These reports should also include information on characteristics of the children who run away, potential factors associated with children running away from care, information on children's experiences while absent from care, and trends in the number of runaways in each
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## Child Welfare Legislative Summary

fiscal year. The report must also summarize the information on state efforts to provide specialized services, foster family homes, child care institutions, or other placement options to child victims of sex trafficking, and information on state efforts to ensure children in foster care form and maintain long-lasting connections to caring adults. 42 U.S.C. § 671(a)(35).

**Affirmative Efforts to Locate Missing Youth:** States must develop and implement specific protocols to expeditiously locate any child missing from foster care; determine the primary factors that contribute to the child’s running away or being absent from foster care; determine the child’s experiences while absent from foster care, including screening whether the child was a victim of sex trafficking; and related information required by HHS. 42 U.S.C. § 671(a)(35)(A).

Within 24 hours of receiving information on missing or abducted children, the state agency is required to report to the law enforcement authorities so the information can be entered into the National Crime Information Center (NCIC) database, and the National Center for Missing and Exploited Children (NCMEC). 42 U.S.C. § 671(a)(35)(B).

For more information go to:

<https://www.traffickingmatters.com/category/resources/us-federal-government-reports/us-department-hhs/>

### **Improving Opportunities for Children in Foster Care and Supporting Permanency**

#### **Supporting Normalcy for Foster Youth**

Requires states to implement a “reasonable and prudent parent standard” for decisions made by foster parents or designated officials for a child care institution to guide decisions about a foster child’s participation in extracurricular, enrichment, cultural and social activities.

- The “reasonable and prudent parent standard” is defined as careful and sensible parental decisions that maintain the health, safety, and best interests of a child while at the same time encouraging emotional and developmental growth of the child, that a caregiver shall use when determining whether to allow a child in foster case under the

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responsibility of the State to participate in extracurricular, enrichment, cultural, and social activities. 42 U.S.C. § 675(10)(A).

- “Age or developmentally-appropriate” means activities or items that are generally accepted as suitable for children of the same chronological age or level of maturity or that are determined to be developmentally-appropriate for a child, based on the development of cognitive, emotional, physical, and behavioral capacities that are typical for an age or age group; and in the case of a specific child, activities or items that are suitable for the child based on the developmental stages attained by the child with respect to the cognitive, emotional, physical, and behavioral capacities of the child. 42 U.S.C. § 675(11)(A).
- Prospective foster parents must be prepared with appropriate knowledge and skills, continuing as necessary after placement, relating to the reasonable and prudent parent standard. 42 U.S.C. § 671(24).

### **Permanency Hearings – APPLA Requirements**

The Act eliminates Another Planned Permanent Living Arrangement (APPLA) as a permanency goal for children under the age of 16. 42 U.S.C. § 675(5)(C)(i).

At each permanency hearing for a child whose permanency plan is APPLA:

- The state agency must document the intensive, ongoing, and, as of the date of the hearing, unsuccessful efforts made by the State agency to return the child home, adoption, guardianship or custody with a fit and willing relative (including adult siblings) including through efforts that utilize search technology to find biological family members for the children. 42 U.S.C. § 675a(a)(1).
- The court must ask the child about the desired permanency outcome and make a judicial determination why another planned permanency living arrangement is the best permanency plan and provide compelling reasons why other options (return home, adoption, legal guardian, relative placement) are not in the child’s best interest. 42 U.S.C. § 675a(a)(2).
- The state must document the steps it is taking to ensure that the child’s foster family or child care institution is following the reasonable and prudent parent standard, and that the child has regular, ongoing



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opportunities to engage in age or developmentally appropriate activities. 42 U.S.C. § 675a(a)(3).

### Foster Youth Rights

For a child 14 or older, the permanency plan must be developed in consultation with the child, with the same team provisions as with the case plan. 42 U.S.C. § 675(5)(C)(iv).

For a child 14 or older, the Transitional Plan must be developed in consultation with the child, who may choose up to two members, subject to the State's rejection upon good cause belief that the chosen individual would not act in the child's best interest 42 U.S.C. § 675(1)(B).

- For a child 14 or older, the case plan must include a document describing the child's rights with respect to education, health, visitation, and court participation, as well as the right to be provided with certain specified documents and the right to stay safe and avoid exploitation; the plan should also include an acknowledgment of receipt and explanation signed by the child. 42 U.S.C. § 675a(b).
- Youth exiting foster care because they due to age (18 or older depending on state law), who have been in care for six months or longer, and are eligible to receive such documents, shall receive an official or certified copy of their birth certificate, a social security card, health insurance information, medical records, and a driver's license or identification card. 42 U.S.C. §675(5)(l).

### Fostering Connections to Success and Increasing Adoptions Act of 2008 (Fostering Connections)

Fostering Connections to Success and Increasing Adoptions Act provides opportunities to connect and support relative caregivers, guardianship assistance, encourage adoptions and improve outcomes for children in foster care.

#### Connecting and Supporting Relative Caregivers

Provides opportunity (state's option) for states to provide kinship guardianship assistance payments on behalf of children to grandparents and other relatives who have assumed legal guardianship of the children

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for whom they have cared as foster parents and for whom they have committed. 42 U.S.C. § 671(a)(28).

- State plan must require it to enter into a written, binding kinship guardian assistance agreement with the prospective relative guardian of a child and give the guardian a copy 42 U.S.C. § 673(d)(1)(A).
  - The agreement must specify at least the assistance payments and how they may be adjusted; services and assistance the child and guardian will be eligible for; the procedure to apply for additional services; and that the State will pay the cost of nonrecurring expenses to obtain legal guardianship up to \$2000 42 U.S.C. § 673(d)(1)(B).
  - The agreement must remain in effect regardless of State residency. 42 U.S.C. § 673(d)(1)(C).
- A child is eligible for a kinship guardianship assistance payment if the agency determines that:
  - The child was removed pursuant to voluntary placement or judicial determination, and the child has resided for at least 6 months with the prospective relative guardian
  - Being returned home or adopted are not appropriate permanency options
  - The child demonstrates a strong attachment to the prospective relative guardian, and the guardian has a strong commitment to caring permanently for the child
  - For children over 14, the child has been consulted regarding the kinship guardianship arrangement 42 U.S.C. § 673(d)(3)(A).
  - Siblings may be placed in the same arrangement if the State agency and relative agree; kinship guardian assistance payments may be paid for each sibling 42 U.S.C. § 673(d)(3)(B).

### Relative Notification

Within 30 days of a child's removal the State must exercise due diligence to give to all adult grandparents and other adult relatives (including any other adult relatives suggested by the parents), subject to exceptions due to family or domestic violence, that:

- Specifies that the child has been or is being removed from the custody of the parent or parents of the child;

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- Explains the options the relative has under Federal, State, and local law to participate in the care and placement of the child, including any options that maybe lost by failing to respond to the notice;
- Describes the requirements of becoming a foster family home and additional services and supports that are available for children placed in such a home; and
- Describes how to be a guardian and receive kinship guardianship assistance payments, if the state elects to do guardianship assistance 42 U.S.C. § 671(a)(29).

### Relative Foster Care Waiver

Provides that the state may waive a foster care licensing standard for relatives: on a case-by-case basis and for non-safety standards, as determined by the State. 42 U.S.C. § 671(a)(10).

### Improving Outcomes for Children and Youth in Foster Care

#### Case Plans

State case plans must include among other things the steps taken to determine why returning the child home is not appropriate; reasons for sibling separation; reasons why permanent placement with a relative is in the child's best interest; how the child meets eligibility requirements for a kinship guardianship assistance payment; agency's efforts to discuss adoption by the foster parent, and the reasons why a relative won't pursue adoption; and agency's efforts to discuss the guardianship assistance with the parents, or why such efforts were not made. 42 U.S.C. § 675(1)(F).

#### Older Youth

States have the option to elect to provide federal Title IV-E support for eligible youth and young adults in foster care and those who exit to adoption or guardianship at age 16 or older up to 19, 20, or 21 years old provided the youth/young adult is:

- Completing high school or its equivalent;
- Enrolled in post-secondary or vocational training;
- Participating in a program to promote or remove barriers to employment;
- Employed 80 hours/month; or
- Incapable of doing any of the activities described above due to a medical

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- condition, which incapability is supported by regularly updated information in the child's case plan. 42 U.S.C. § 675(a)(8)(A).

### **Transitional Youth Plan**

At least 90 days before a child transitions out of foster care (18 or older, depending on the State's law), the agency in consultation with other appropriate representatives of the youth must provide the youth assistance and support in developing a personalized and as detailed a plan as the youth chooses to include specific options on housing, health insurance, education, local opportunities for mentors and continuing support services, and work force supports and employment services. 42 U.S.C. § 675(5)(H).

### **Education Stability**

The state agency is required to coordinate with local education agencies to ensure that children remain in the same school at the time of placement, unless it would not be in their best interest to remain in the same school. If it is not in the child's best interest to remain in the school at the time of placement, the state must ensure immediate enrollment in a new school with all of the educational records of the child provided to that new school. 42 U.S.C. § 675(1)(G).

### **Health Coordination and Oversight Plan**

States are required to develop a state plan for the ongoing oversight and coordination of health care services for all children in foster care. The health plan must be developed in coordination and collaboration with the state Medicaid agency and in consultation with pediatricians and other experts in health care and child welfare. The plan must ensure a coordinated strategy to identify and respond to the physical, mental, reproductive health and dental health needs of all children in foster care. 42 U.S.C. § 622(b)(15).

### **Sibling Placements and Reasonable Efforts**

Reasonable efforts must be made to place siblings in the same placement, unless the State documents that joint placement is contrary to any child's safety or well-being. If siblings are not placed together, the state must document why and make reasonable efforts to provide frequent visitation or other ongoing interaction between the siblings, unless this interaction would be contrary to a sibling's safety or well-being. 42 U.S.C. § 671(a)(31).

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### Adoption and Safe Families Act (ASFA) (1997)

ASFA was passed in 1997 and amended the Adoption Assistance and Child Welfare Act of 1980 to address concerns that children and youth were languishing in foster care with multiple placements without permanency. The bill clarified required judicial reasonable efforts findings, including when the state was not required to provide reunification services. It imposed timelines for judicial hearings and findings. It also provided incentives and additional funding to support adoptions as a permanency option.

#### Reasonable Efforts

The court must make reasonable efforts findings to preserve and reunify families in at least three different stages of a juvenile child abuse and neglect case. The first reasonable efforts finding is required, prior to the placement of a child in foster care, to prevent or eliminate the need for removing the child from the child's home. 42 U.S.C. § 6715(a)(15)(B)(i).

- The first court order to remove a child from a home must have a reasonable effort finding to prevent removal, even temporarily, and a determination regarding remaining in the home is contrary to the welfare for the child to be eligible for Title IV–E foster care maintenance payments for the duration of that stay in foster care. 42 U.S.C. § 6715(c).
- Second, the federal law requires that the court must make a determination within 60 days of the child's physical removal that the agency made reasonable efforts to prevent removal or the state will lose Title IV-E federal funding for that child for the duration of his/her stay in foster care. 42 C.F.R. § 1365.21(b)(1).

Third, reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanent placement of the child. 42 U.S.C. § 6715(a)(15)(C).

- There must be a judicial determination that the agency has made reasonable efforts to finalize the permanency plan that is in effect (whether the plan is reunification, adoption, legal guardianship, placement with a fit and willing relative, or placement in another planned permanent living arrangement) within twelve months of the date the child entered foster care, and at least once every twelve

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months thereafter while the child is in foster care. 42 C.F.R. § 1365.21(b)(2)(i).

- Failure to get a reasonable efforts finding to finalize the permanency plan within 12 months of the child entering care and every 12 months thereafter, results in the child becoming ineligible for title IV–E funding at the end of the month in which the judicial determination was required to have been made, and remains ineligible until such a determination is made. 42 C.F.R. § 1365.21(b)(2)(ii).

Note: Existing federal law still provides that during the pendency of the case, the court must determine whether the agency has provided reasonable efforts to make it possible for a child to safely return to the child's home. 42 U.S.C. § 6715(a)(15)(B)(i).

Reasonable efforts are not required shall not be to prevent removal or reunify with to a parent of a child if a court of competent jurisdiction has determined that the parent has:

- Subjected the child to aggravated circumstances (as defined in State law, which definition may include but need not be limited to abandonment, torture, chronic abuse, and sexual abuse);
- Committed murder of another child of the parent;
- Committed voluntary manslaughter of another child of the parent;
- Aided or abetted, attempted, conspired, or solicited to commit such a murder, voluntary manslaughter; or
- Committed a felony assault that results in serious bodily injury to the child or another child of the parent. 42 U.S.C. § 6715(a)(15)(D); 42 C.F.R. § 1365.21(b)(3).

If reasonable efforts finding not made, must have permanency hearing within 30 days, and make reasonable efforts finding to place child in accordance with permanency plan 42 U.S.C. § 671(a)(15)(E).

### **Notice and Right to be Heard**

Foster parents of a child and any pre-adoptive parent or relative providing care for the child shall be provided with notice of, and an opportunity to be heard in, any review or hearing to be held with respect to the child, but this does not grant them party status to the case. 42 U.S.C. § 675(5)(G).



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### Permanency Hearing

A Permanency Hearing must be held within 12 months of the date a child enters foster care. The hearing must determine the permanency plan for the child, which includes whether and when the child will be either returned to the parent, placed for adoption, referred for legal guardianship, or when the State shows a compelling reason for not doing any of those, placed in another planned permanent living arrangement. 42 U.S.C. § 675(4)(C).

- Legal guardianship is defined as a “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” 42 U.S.C. § 675(7).

### Termination of Parental Rights

The state shall file a petition to terminate parental rights to free the child for adoption when:

- A child who has been in foster care under the responsibility of the State for 15 of the most recent 22 months;
- If a court of competent jurisdiction has determined a child to be an abandoned infant(as defined under State law); or
- A court of competent jurisdiction has made a determination that the parent has committed murder of another child of the parent, committed voluntary manslaughter of another child of the parent, aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter, or committed a felony assault that has resulted in serious bodily injury to the child or to another child of the parent. 42 U.S.C. § 675(5)(E).

*Note: the second two grounds are also grounds for no reasonable efforts to provide reunification services to the family.*

If such a petition has been filed by another party, the state shall seek to be joined as a party to the petition), and, concurrently, to identify, recruit, process, and approve a qualified family for an adoption, unless:

- The child is being cared for by a relative;



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- There is a compelling reason for determining that termination of parental rights is not in the child's best interest; or
- The State has not provided child's family necessary services for safe return, if reasonable efforts are required. 42 U.S.C. § 675(5)(E)(i-iii).

### Plan Requirements

For children whose case plan includes adoption or placement in another permanent home, an agency's case plan must include documentation of steps taken to find such an arrangement. This may include the use of adoption exchanges. 42 U.S.C. § 675(1)(E). There is an emphasis on safety, in addition to appropriateness. 42 U.S.C. § 622(b)(8)(A)(iii)(I).

States must develop plans for effective use of cross-jurisdictional resources to facilitate timely adoptive or permanent placements for waiting children. 42 U.S.C. § 622(b).

- States must not deny or delay a placement for adoption when an approved out of state family is available. 42 U.S.C. § 671(a)(23)(A). States must grant opportunity for a fair hearing, as described in 42 U.S.C. § 671(a)(12), to anyone who alleges a violation of the above. 42 U.S.C. § 671(a)(23)(B).

A State plan must contain assurances that the safety of the children served is of paramount concern. 42 U.S.C. § 629b(9).

State plan must have procedures for criminal records checks, including national databases, for any prospective foster or adoptive parent before final approval of placement; certain crimes mandate ineligibility under all circumstances, while others require it only when committed within five years. 42 U.S.C. § 671(a)(20)(A).

## Adoption Assistance and Child Welfare Act of 1980 (known as Pub. L. 96-272)

Pub. L. 96-272 required reforms in child welfare in exchange for federal funding. It required states courts to make reasonable efforts findings to prevent removal, case plans and judicial hearings.

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### Reasonable Efforts

Removal of a child from the home must be the result of a judicial determination that continuation in the home would be contrary to the welfare of the child, and that reasonable efforts have been made to prevent or eliminate the need for removal for a child to be eligible for federal Title IV-E funding. 42 U.S.C. § 671(a)(15).

### Case Plan

Case plan is defined as a written document that contains at least a description of the home or institution in which a child is to be placed, including the appropriateness of the placement and how the responsible agency plans to carry out the appropriate judicial determination; and a plan for assuring that the child receives proper care and that services are provided to the parents, child, and foster parents in order to improve conditions in the parents' home, facilitate return of the child or permanent placement, and address the child's needs in foster care. 42 U.S.C. § 675(1).

Various federal laws have added additional requirements for the case plan including but not limited to:

- For a child 14 or older, the plan must be developed in consultation with the child. 42 U.S.C. § 675(1)(B).
- Health and education records of the child. 42 U.S.C. § 675(1)(C).
- For a child 14 or older, the plan must contain a written description of the programs and services to help them prepare for the transition from foster care to adulthood. 42 U.S.C. § 675(1)(D).
- For a child whose permanency plan is adoption or placement in another permanent home, the plan must document the steps the agency is taking to find a permanent living arrangement. 42 U.S.C. § 675(1)(E).
- A plan for ensuring educational stability while in foster care, including certain information. 42 U.S.C. § 675(1)(G).

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### **Hearings and Timelines**

#### **Review Hearing**

Pursuant to the State's case review system, each child's status must be reviewed by a court or administrative agency at least once every six months from the date the child was removed. 42 U.S.C. § 675(5)(B).

- The purpose of the review is to determine “the safety of the child, 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 and safely maintained in the home or placed for adoption or legal guardianship.” 42 U.S.C. § 675(5)(B).

#### **Permanency Hearings**

Procedural safeguards must also be in place to assure foster children a judicial permanency hearing no more than 18 months from the date they entered foster care to determine the permanency plan. 42 U.S.C. § 675(5)(C).

#### **Voluntary Placements**

Within 180 days of a voluntary placement, there must be a judicial determination that the placement is in the best interests of the child. 42 U.S.C. § 672(e).

### **Child Abuse Prevention and Treatment Act (CAPTA) (1978)**

CAPTA provides federal funding and guidance to support prevention, reporting, investigation, assessment, and treatment of child abuse and neglect. It was originally passed in 1988, but has been amended several times, most recently in the Victims of Child Abuse Reauthorization (VOCA) of 2018, signed in January 2019. It sets forth the federal definition of child abuse and neglect. It also places requirements on the state that courts may encounter.

#### **Child Abuse and Neglect**

Child abuse and neglect are defined as “any recent act or failure to act on the part of a parent or caretaker, which results in death, serious physical or emotional harm, sexual abuse or exploitation, including a child identified as

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a sex trafficking victim, or an act or failure to act which presents an imminent risk of serious harm.” 42 U.S.C. § 5101.

- Child is defined as any person under the lesser of 18 years of age, or except in cases of sexual abuse the age specified by the State’s child protection law. 42 U.S.C. § 5101.

The State plan must include the following:

- Confidentiality of children’s records, with disclosure only allowed to certain parties, including a court upon a finding that information in the record is necessary for the determination of an issue before it. 42 U.S.C. § 5106a(b)(2)(viii).
- Cooperation by courts and others in the investigation, assessment, prosecution, and treatment of child abuse and neglect. 42 U.S.C. § 5106a(b)(2)(xi).
- Expungement of unsubstantiated or false records accessible to the public or used for background checks, except for CPS records. 42 U.S.C. § 5106a(b)(2)(xii).
- Appointment of guardians ad litem with appropriate training in every case involving a victim of child abuse or neglect to make a recommendation to the court concerning the child’s best interest. 42 U.S.C. § 5106a(b)(2)(xiii).
- Not requiring reunification with a parent convicted of certain crimes against any of their children, including murder or an inchoate offense including, voluntary manslaughter or an inchoate offense towards it, felony assault, or sexual abuse. 42 U.S.C. § 5106a(b)(2)(xvi).
- Also includes provisions to not require reunification with any parent who is a registered sex offender pursuant to the Adam Walsh Child Protection and Safety Act of 2006. 42 U.S.C. § 5106a(b)(2)(xvii).
- Conviction of any of the above felonies must be grounds under State law for termination of the parent’s parental rights with respect to any of their children. 42 U.S.C. § 5106a(b)(2)(xvii).
- Criminal background checks for prospective foster and adoptive parents. 42 U.S.C. § 5106a(b)(2)(xxii).
- The “sense of Congress” is that entities ought to ensure that children and families with limited English proficiency or disabilities receive appropriate materials and services. 42 U.S.C. § 5106d(d).
- The State must allow CPS to pursue any legal remedies to provide medical care or treatment for a child when necessary to prevent or

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remedy serious harm, or to prevent the withholding of medically indicated treatment from a child with a life-threatening condition. 42 U.S.C. § 5106i(b).

### **Interstate Compact on the Placement of Children (ICPC)**

The ICPC is a model compact law, governing the interstate placement of children and youth. The law provides that state agencies must give certain notice to another state before placing a child there, and that the sending agency maintains financial responsibility for a child even after placement.

The ICPC applies when a sending agency sends, brings, or causes to be sent or brought into any other party state any child for placement in foster care or as a preliminary to possible adoption [hereinafter “Sends,” etc.]. Article III(a).

Sending agencies are forbidden from doing so unless they fully comply with the ICPC.

- Prior to Sending, a sending agency must give public authorities in the receiving state certain written notice, including identifying information and the reason for Sending. Article III(b).
- A child may not be Sent until the receiving state’s public authorities notify the sending agency that the placement does not appear contrary to the interests of the child.
- The sending agency retains jurisdiction over the child until the child is adopted, reaches majority, becomes self-supporting or is discharged. Article V(a).
- The sending agency also continues to have financial responsibility for the child’s support.

A child adjudicated delinquent may only be placed in another state’s institution if a court hearing is held and the court finds that equivalent facilities are not available in the sending agency’s jurisdiction, and that institutional care in the other jurisdiction is in the child’s best interests and will not produce undue hardship. Article VI.

The ICPC does not apply to a relative’s sending or bringing a child into a receiving state and leaving them with a relative or non-agency guardian. Article VIII.

# Appendix B

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## *Indian Child Welfare Act of 1978 – Key Points Outline*

## Indian Child Welfare Act of 1978

### Key Points Outline

*Note: In response to COVID-19 and the resulting interruption and delay of court proceedings as well as delays in other services related to child welfare, the Office for the Administration for Children & Families, the Children's Bureau, has developed a resource page as well as issued guidance regarding state courts' and administrative child welfare practices including termination of parental rights and flexibility regarding Title IV-E plan requirements. Those resources and other information can be found at <https://www.acf.hhs.gov/cb/resource/covid-19-resources>.*

#### **I. The Indian Child Welfare Act (ICWA): Background & Context.<sup>1</sup>**

- A. Congress passed ICWA in response to the wholesale removal of Indian children from their families, finding:
1. “[A]n alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them ... and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions.” 25 U.S.C. § 1901(4).
  2. States, “often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families.” 25 U.S.C. § 1901(5).
- B. ICWA provides standards for state courts to apply for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture in order to:
1. Prevent the break-up of Indian families;
  2. Protect the best interests of Indian children; and
  3. Promote the continued existence of Indian Tribes. 25 U.S.C. § 1901-2.
- C. Indian children are still removed from their homes and communities at a disproportionately higher rate than other children, with that disproportionality rate increasing over the last ten years.<sup>2</sup>

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<sup>1</sup> 25 U.S.C. § 1901 *et. seq.*; 25 C.F.R. Part 23 (81 FED. REG. 38864 (June 14, 2016)).

<sup>2</sup> Shamini Ganasarajah, *et al.*, *Technical Assistance Bulletin: Disproportionality Rates for Children of Color in Foster Care, Fiscal Year 2015*, National Council of Juvenile and Family Court Judges 5 (September 2017).



## Indian Child Welfare Act of 1978 Key Points Outline

- D. Implementation of ICWA by states has been inconsistent, with different interpretations from state to state and different interpretations from court to court within states. In 2016, the DOI issued new regulations and updated guidelines intended to help correct these inconsistencies. 81 FED. REG. 96476 (December 30, 2016); U.S. Dep't of Interior, Bureau of Indian Aff., Guidelines for Implementing the Indian Child Welfare Act 11 (Dec. 2016) (“Guidelines”).
- E. This summary only addresses key provisions in ICWA’s requirements. See the National Council’s ICWA Judicial Benchbook for a complete discussion. Keep in mind, each state may have higher standards and/or have its own implementing regulations and/or guidance documents for state agencies and courts.<sup>3</sup>

### II. ICWA Key Definitions.

- A. An **“Indian child”** is unmarried person under the age of 18 and a member of a federally-recognized Indian tribe; **OR** an unmarried person under the age of 18 and eligible for membership in a federally recognized Indian tribe and the biological child of a member/citizen of a federally recognized Indian tribe. 25 U.S.C. § 1903(4).
- B. An **“Indian tribe”** or a **“federally recognized Indian tribe”** is any tribe with a government-to-government relationship with the United States, possessing certain inherent rights of self-government (*i.e.*, tribal sovereignty), and recognized as eligible to receive certain federal benefits, services, and protections.<sup>4</sup> 25 U.S.C. § 1903(8).
- C. **“Active efforts”** are affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite an Indian child with his or her family. 25 C.F.R. § 23.2.

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<sup>3</sup> See *e.g.*, <http://www.ncsl.org/research/human-services/state-statutes-related-to-indian-child-welfare.aspx>; <https://www.ncsl.org/research/human-services/ncsl-state-tribal-institute-intersection-ec-cwp.aspx>.

<sup>4</sup> A list of federal recognized tribes is published annually, and there are currently 574 such American Indian and Alaska Native tribes and villages. See *e.g.*, 85 FED. REG. 5462 (January 30, 2020).

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D. A “**qualified expert witness**” is a person qualified to address whether continued custody will result in serious emotional or physical damage to the child, has knowledge of tribal culture, family and child-rearing practices, and cannot be an employee of the agency seeking foster care placement or TPR. 25 C.F.R. § 23.122(a)-(c).

**III. Applicability of ICWA.** ICWA applies to state “child custody proceedings” where the court, “knows or has reason to know the child is an ‘Indian child.’” 25 U.S.C. § 1903(1).

**A. What is a “child custody proceeding” under ICWA?**

1. *Foster care placement.* Any action where the child is removed from a parent or Indian custodian for temporary placement (including on an emergency basis under 25 U.S.C. § 1922) a home or institution, including guardianship and conservatorship, and where the child cannot be returned upon demand but where parental rights have not been terminated (25 U.S.C. § 1903(1)(i));
2. *Termination of parental rights* (TPR) (25 U.S.C. § 1903(1)(ii));
3. *Pre-adoptive placement* (25 U.S.C. § 1903(1)(iii));
4. *Adoptive placement* (25 U.S.C. § 1903(1)(iv));
5. *Voluntary proceedings.* Proceedings that could prohibit a parent/Indian custodian from regaining custody upon demand (25 C.F.R. § 23.103(a)(ii));
6. *Status offenses* (25 C.F.R. § 23.103(a)(iii)).
7. *Emergency proceedings.* 25 C.F.R. § 23.103(b).

**B. What is not a “child custody proceeding” under ICWA?**

1. An award of custody pursuant to a divorce where one parent will obtain custody of the child (25 U.S.C. § 1903(1));
2. Voluntary placement that does not prohibit the child’s parent/Indian custodian from regaining custody upon demand, *i.e.* a simple verbal request without any formalities or contingencies (25 C.F.R. § 23.2);
3. Placement based upon an act which, if committed by an adult, would be deemed a crime (25 U.S.C. § 1903(1)).

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**C. How does a state court “know or have reason to know,” i.e. how does it conduct an Indian child inquiry?**

1. At the commencement of every child custody proceeding and on the record, courts must ask each participant whether they know or have reason to know the child is an Indian child. 25 C.F.R. § 23.107.
2. Tribes have sole authority to determine their membership, which may be based on shared customs, traditions, language, residency, and/or tribal blood. Membership is not reviewable by U.S. courts and state courts may not substitute their own membership determination for a tribe’s.<sup>5</sup>
3. The inquiry requirement is ongoing; courts must instruct the parties to inform the court if they subsequently receive information that provides reason to know the child is an Indian child. 25 C.F.R. § 23.107.
4. Even if a party fails to assert that ICWA may apply, courts have a duty to inquire as to ICWA’s applicability to the proceeding. See Guidelines at 11.
5. Courts have reason to know if: anyone, including the child, tells the court the child is an Indian child; any participant informs the court 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 Alaskan Native village; the child is, or has been, a ward of Tribal court; or either parent or the child possesses an ID indicating Tribal membership. 25 C.F.R. § 23.107.
6. If there is reason to know but not sufficient evidence to determine that the child is or is not an Indian child, courts must confirm on the record that due diligence was used to identify and work with all of the possible tribes and must treat the child as an Indian child unless and until it is determined on the record that the child does not meet the definition. 25 C.F.R. § 23.107.

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<sup>5</sup> *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978).

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**IV. Implementation of ICWA.** Once a court determines ICWA does apply or is proceeding as if it may apply, the following are some of the key components for implementation.

- A. **Notice.** In any involuntary proceeding, the party seeking foster care placement or TPR shall notify: the parent/Indian custodian and the Indian child's tribe about the pending proceedings and the right to intervene.<sup>6</sup> Notice must be received at least 10 days prior to a hearing and may request an additional 20 days. 25 U.S.C. § 1912.
- B. **Intervention.** An Indian child's custodian and tribe have the right to intervene at any point in any foster care placement or TPR proceeding. 25 U.S.C. § 1911(c).
- C. **Jurisdiction.** ICWA provides for exclusive tribal or concurrent tribal/state jurisdiction over child custody proceedings involving an Indian child.
1. Tribal courts have exclusive jurisdiction where the child is a resident of/domiciled on a reservation exercising exclusive jurisdiction or where child is already ward of tribal court (25 U.S.C. § 1911(a));
  2. State and tribal courts share concurrent jurisdiction where:
    - a. The child is domiciled/resides off a reservation (25 U.S.C. § 1911(b));
    - b. The child is not a ward of a tribal court;
    - c. The state has jurisdiction on the reservation via Pub. L. 83-280;
    - d. There is a tribal-state agreement where a tribe allocates jurisdiction to the state (25 U.S.C. § 1919(a));
- D. **Emergency Proceedings.** Where a reservation-resident Indian child is temporarily off the reservation, states have limited emergency jurisdiction removed the child in an emergency situation to prevent imminent physical damage or harm to the child. This limited

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<sup>6</sup> The requirements for the content of the notice is provided at 25 C.F.R. § 23.111. Copies of the notice are to be sent to the regional offices of the BIA as provided at 25 C.F.R. § 23.11. Contact information for ICWA notice purposes for each federally recognized tribe is published annually. See e.g., 85 Fed. Reg. 24004 (April 30, 2020).

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emergency jurisdiction terminates upon 30 days, when such removal or placement is no longer necessary to prevent imminent physical damage or harm to the child (restoration to the family), transfer to the child's tribe, or initiation of a child custody proceeding. 25 U.S.C. § 1922; 25 C.F.R. § 23.113.

- E. **Transfer.** Courts shall transfer to tribal court any involuntary proceeding involving an Indian child not domiciled/residing within the reservation of the child's tribe when: requested to do so, there is no good cause to the contrary, neither parent objects, and the tribal court does not decline jurisdiction. 25 U.S.C. § 1911. Good cause to deny the transfer should be shown by the party seeking denial by clear and convincing evidence. See Guidelines at 49-50. Courts may not consider: whether the proceeding is at an advanced stage and party did not receive notice until the advanced stage, whether prior petitions involving the child were not transferred, potential placements, the child's cultural connections to the tribe, or socioeconomic conditions or perceived inadequacies of the tribe or BIA social services or judicial system. 25 C.F.R. § 23.118.
- F. **Heightened Burden of Proof.** For any placement outside the home, courts must specify by clear and convincing evidence (including testimony of at least one qualified expert witness) that continued custody is likely to result in serious emotional or physical damage to the child. In TPR proceedings, courts must show beyond a reasonable doubt (including testimony of at least one qualified expert witness) that continued custody is likely to result in serious emotional or physical damage to the child. 25 U.S.C. § 1912(e-f).
- G. **Active Efforts.** Any party seeking foster care placement or TPR of an Indian child shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family, and these efforts have been unsuccessful. The active efforts must take into consideration the prevailing social and cultural conditions and way of life of the Indian child's tribe and involve and use the available

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resources of the extended family, the tribe, Indian social services, and individual Indian caregivers. 25 U.S.C. § 1912(d).

- H. **Placement Preferences & Order.** For foster care placement, Indian children must be placed in the least-restrictive setting that most approximates a family, taking into consideration sibling attachment, meets the child's special needs (if any), and is in reasonable proximity to the Indian child's home, extended family, or siblings. The order of preference (unless otherwise changed by the child's tribe) is: extended family, tribally-licensed foster homes, state-licensed Indian family foster homes, tribally-approved institutions, and other state-licensed foster homes.<sup>7</sup> Courts must follow these preferences absent good cause to the contrary, which should be shown by the party seeking departure by clear and convincing evidence. 25 U.S.C. § 1915(b); See Guidelines at 59-64. When examining whether there is good cause to depart from placement preferences, courts may not consider the socioeconomic status of any placement relative to another or any bonding/attachment flowing from time spent in a non-preferred placement made in violation of ICWA. 25 C.F.R. § 23.132. For adoptive placements, the order of preference is: a member of the child's extended family, other members of the child's tribe, other Indian families. 25 U.S.C. § 1915(a).
- I. **Right to Counsel.** Parents/Indian custodians have the right to court-appointed counsel in any involuntary or TPR proceeding. Indian children may be provided with counsel at the discretion of the court as it determines is in the best interest of the child. 25 U.S.C. § 1912.
- J. **Voluntary Placement.** Whenever a parent/ Indian custodian seeks to temporarily place an Indian child out of the home, or to voluntarily terminate parental rights, consent to placement must not be given prior to or within 10 days after birth, be in writing; and be recorded

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<sup>7</sup> Tribes may establish a different order of placement preferences under ICWA; therefore, courts should ensure they understand if there is a tribal-specific preference scheme applicable to a proceeding. 25 C.F.R. § 23.131.

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before a judge. Courts must ensure the parent/Indian custodian understand the terms and consequences. 25 U.S.C. § 1913(a).





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