

Child Welfare and the Courts

By Sue Badeau

Juvenile and family courts,¹ as well as tribal² and many general trial courts, have jurisdiction over cases involving child abuse and neglect. Only children who are identified in a state's law as needing the court's protection may become the subject of a child protection petition. Each state has its own terms and definitions related to jurisdiction of these cases, and each state has its own court structure for handling these cases.³

State courts are key decision-makers in the lives of children involved in the child welfare system. The responsibilities of juvenile and family court judges include decisions and determinations ranging from whether child abuse or neglect actually occurred, to whether the parent(s)' rights should be terminated, and whether a child should be adopted or placed in another permanent setting.

Passage of the 1997 Adoption and Safe Families Act (ASFA) expanded the role of juvenile and family courts in several ways, by:

- Establishing a judicial role in decisions about whether and what reunification services are required;
- Requiring earlier and more comprehensive permanency hearings than previously required (these hearings must be held within 12 months of initial placement, instead of the prior 18-month requirement);
- Setting deadlines for filing termination of parental rights petitions; and
- Establishing rights of foster and adoptive parents to receive notice of, and appear in, juvenile and family court proceedings.⁴

While these changes were important for improving outcomes for children, the law did not address the systemic challenges faced by courts in meeting these new requirements, nor did it provide additional resources to assist courts in overcoming these challenges.

As the number of children in state custody has grown and as the court's legal responsibilities for these children have increased, many courts have struggled to handle expanded caseloads, often with limited resources.

The Unique Characteristics of Juvenile and Family Courts

State and local juvenile and family courts have the ability to hasten or delay children's movement in and out of foster care. Most courts that oversee the cases of children in foster care struggle to balance the competing needs of (1) protecting children from further harm, (2) making timely decisions about their futures, and (3) respecting their parents' due process rights. To succeed in meeting these needs, the courts, and the judges and attorneys working within them, rely on more non-legal professionals than do their

counterparts in other court systems. These professionals include child welfare agency caseworkers, private agency social workers, volunteer Court Appointed Special Advocates,⁵ mental health and health care professionals, educators, and citizen review panels.

In essence, the juvenile and family courts are both the “gate-keepers” and the monitors of the nation’s child welfare system. To a large extent, judges control which children and families are served by the child welfare system as well as the nature of the services they receive. Additionally, judges are often called upon to oversee the child welfare agency, usually in cases where the agency is the subject of a lawsuit.⁶

More so than other members of the judiciary, juvenile and family court judges are expected to understand child development, family dynamics, and the impact of substance abuse, mental health problems, or learning disabilities on parents and children. They are further expected to determine which services and resources would be most appropriate for each individual child and family.⁷ These unique expectations have led to the creation of a complex and often cumbersome court structure and process for managing child welfare cases.

An Overview of the Juvenile and Family Court Structure

While some states have a juvenile and family court system that is separate from the courts that handle adult matters, in other states the juvenile and family courts fall within the larger court structure. Some state court systems have dedicated career tracks for juvenile and family court judges, while in other states the juvenile and family courts are one of several rotations. In these cases, child abuse and neglect cases are typically heard in juvenile sessions of the general courts.

The court structure used for hearing child abuse and neglect cases is likely to affect some aspects of how the case is handled. For example, a court responsible for general civil and criminal matters may find that children’s cases constitute only a small fraction of their overall areas of responsibility. As a result, these cases may not receive the time, attention, or other unique resources warranted. Additionally, the judges hearing these cases may be less familiar with child welfare issues than juvenile and family court judges, who have the opportunity to develop special expertise in child welfare and dependency issues. In recent years, states have addressed these issues by experimenting with a number of variations on traditional court structures.

An Overview of the Juvenile and Family Court Process

While dependency court processes vary widely across states and jurisdictions, there are generally seven types of hearings in most child welfare cases. The text box below briefly describes the typical court process for child abuse and neglect cases. We note that some jurisdictions may combine or consolidate some of the hearings—such as the adjudicatory and dispositional hearings—and may require some steps or permit options that are not described here. We also note that in addition to the following typical hearings, a child’s

case may come to court many more times, as a result of continuances, repeated hearings, and appeals.

Typical Hearings in Child Welfare Cases

Protective Hearing: To determine whether the child should be placed in emergency, temporary out-of-home care.

Adjudicatory Hearing: To determine if abuse or neglect did, in fact, occur.

Dispositional Hearing: To determine where the child in foster care will live, who will have custody of the child, and what conditions will be placed on the agency and parents.

Periodic Reviews: To review progress under the child's case plan. (These reviews must occur at least every six months.⁸)

Permanency Hearing: To approve a clear, definitive permanency plan for the child. (This hearing must occur within 12 months of the child's initial placement.⁹)

Termination of Parental Rights Hearing: To determine whether the parent(s)' rights should be terminated. With some exceptions, federal law requires states to initiate this proceeding for any child who has been in foster care for 15 of the last 22 months.

Adoption or Guardianship Hearing: To make the child legally part of another family, either through adoption or by establishing legal guardianship.

Challenges Facing the Juvenile and Family Court System

In 1999, the General Accounting Office (GAO) issued a report¹⁰ that identified significant problems facing juvenile and family courts. The problems fell into two broad categories:

- Lack of cooperative working relationships between the courts, tribes, and child welfare agencies; and
- Difficult personnel and data management issues.

A subsequent GAO report in June 2002 noted that most states indicate some significant court challenges that hinder efforts to achieve permanency for children in foster care.¹¹

For example, caseloads for both the judges and the attorneys involved in child welfare cases are often very large, at times exceeding 1,000 cases per year per judge.¹² With such high caseloads, judges often have as little as four minutes to devote to a protective hearing, and rarely do they have enough time to adequately consider all of the information presented at subsequent hearings. This frequently leads to continuances and

delays in the ultimate resolution of the case. Yet without current data at their fingertips, most judges and court administrators are not able to track the amount of time spent on each case, or the number of continuances.

The implementation of ASFA has presented additional court-related challenges. For example, ASFA requires that foster and pre-adoptive parents and relative caretakers must receive notice of hearings and have the opportunity to participate in the court process. While this requirement is important for ensuring that the court receives input from caregivers, it also adds administrative time and costs for courts and their staff.¹³

In short, courts generally do not have the information and resources to make appropriate decisions in individual cases, nor do they have the data necessary to make systemic changes that would improve outcomes for children on a larger scale.

Current Reform Efforts

Several court reform efforts are currently underway, including the following:

Model Courts

In 1980, The National Council of Juvenile and Family Court Judges created the Model Courts program with funding from the Edna McConnell Clark Foundation. The purpose was to create model approaches to assist courts with the implementation of the “reasonable efforts” requirements related to family preservation and reunification. Since then, the focus of the Model Courts program has expanded, and the number of jurisdictions with model courts has grown from the original 14 to 25 today. These courts have engaged in a number of innovative strategies to improve both court performance and outcomes for children. Model Court judges have taken a leadership role in improving court and agency collaboration, increasing the role of community leaders in court activities, enhancing availability of, and access to, services (such as providing on-site mental health or substance abuse assessments). Other reforms have involved re-designing courtrooms and re-organizing court calendars to be more child- and family-friendly, and improving court access to and utilization of data.

Court Improvement Program

The Court Improvement Program (CIP), established in 1993, was recently reauthorized through 2006. Under this program, the highest court in each state is eligible to apply for grants to make specific improvements to their juvenile and family court systems. The Department of Health and Human Services has funded the American Bar Association (ABA) Center on Children and the Law to provide technical assistance to states with CIP grants. According to the ABA, states have targeted their improvement efforts in the following areas:

- Improving the quality and depth of court hearings in child welfare cases;
- Improving legal representation of all parties;

- Improving timelines of decision-making through improved usage of technology and data management and other management tools;
- Addressing issues of court staffing and the quality of the judiciary; and
- Increasing community collaboration between agencies, tribes, and courts.

Development of Juvenile and Family Court Performance Standards

In 2001, three of the largest national organizations with interest in juvenile and family courts - the National Council of Juvenile and Family Court Judges, the National Center for State Courts and the ABA - with funding from the Packard Foundation, came together to develop juvenile and family court performance standards and to pilot these standards in several jurisdictions around the country. Building on the outcome measures included in the Child and Family Services Reviews, this project developed measures to help courts identify problems, set priorities, develop solutions, and evaluate their impact. A small number of states and individual courts have approved policies (through administrative directives or legislation) requiring case tracking and performance measures.

¹ These courts have many different names, including but not limited to: juvenile courts, family courts, and dependency courts.

² Not all Native American tribes have courts. However, if a tribe does have its own court system, it is up to the tribe to decide whether the case should be transferred to the tribal court.

³ Janet Nusbaum Feller, Howard A. Davidson, Mark Hardin, Robert Horowitz (1992). *Working with the Courts in Child Protection*. Washington, DC: US Department of Health and Human Services.

⁴ Mark Hardin (1998). *Impact of the Adoption and Safe Families Act on Judicial Resource and Procedures*. Washington, DC: American Bar Association.

⁵ The Court Appointed Special Advocates program was established in 1976 and provides trained volunteers to advocate in and out of court for the needs of children. CASA is now authorized by Congress under the Victims of Child Abuse Act of 1990 (Public Law 101-647), and receives both federal and private funding.

⁶ National Council of Juvenile and Family Court Judges (NCJFCJ) Publication Development Committee, Honorable David E. Grossman, Chairman, (1995). *Resource Guidelines: Improving Court Practice in Child Abuse & Neglect Cases*. Reno, NV: National Council of Juvenile and Family Court Judges., Appendix C.

⁷ Margaret Beyer, Ph.D., and The Honorable Ricardo Urbina, (1986). *An Emerging Judicial Role in Family Court*. Washington DC: American Bar Association, p. 1.

⁸ Feller, et al (1992).

⁹ The federal 12-month timeline for permanency hearings is a ceiling; some states have elected to require earlier hearings.

¹⁰ United States General Accounting Office (GAO), (1999) *Juvenile Courts: Reforms Aim to Better Serve Maltreated Children* HE-HS-99-13. Washington DC: General Accounting Office, p. 2.

¹¹ United States General Accounting Office (GAO), (2002). *Foster Care: Recent Legislation Helps States Focus on Finding Permanent Homes for Children, but Long-Standing Barriers Remain*. GAO-02-585. Washington DC: General Accounting Office.

¹² GAO HE-HS-99-13 (1999), p. 11.

¹³ Hardin (1998).