COURTS CATALYZING CHANGE

Achieving Equity and Fairness in Foster Care

RIGHT FROM THE START:

The CCC Preliminary Protective Hearing Benchcard

A TOOL FOR JUDICIAL DECISION-MAKING

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As with all publications developed by NCJFCJ, this TAB was created in concert with many dedicated staff members across the organization. Special thanks to Ruby White Starr of the Family Violence Department for her insights, which improved both the depth and breadth of the TAB. We also very much appreciate the work of Alicia Summers, Ph.D from PPCD who was instrumental in developing, implementing and reporting on the pilot study. A final note of gratitude to Tracy Cooper who assisted with gathering much of the information and research that went into this Bulletin.

INTRODUCTION

Disproportionality & Disparate Treatment in the Child Welfare System

American children of all races, ethnicities and socioeconomic backgrounds experience abuse, abandonment and neglect. More often than not, these children live in families who are under enormous stress due to substance abuse, domestic violence, poor living and educational conditions and parental history of trauma. The first three National Incidence Studies of Child Abuse and Neglect (referred to as NIS-1, NIS-2 and NIS-3) found that, regardless of the standard of maltreatment used and adjusting for poverty, there are "no statistically significant differences in the overall occurrence rate for maltreatment between black and white families."[1] The NIS-4, reporting 2006 data, found that African American children experienced higher rates of maltreatment than white children in several categories; however, this is due in part to the "growing gap between white and black children's economic well-being."[2]

Disproportionality – the difference in the percentage of children of a racial or ethnic group in a population as compared to the percentage of children of the same racial or ethnic group in the child welfare system.

Disparity – unfair or unequal treatment of one racial or ethnic group as compared to another racial or ethnic group.

Research has demonstrated that children and families of color are disproportionately represented in the child welfare system.[3] "In states where there is a large population of Native Americans, this group can constitute between 15% and 65% of the children in foster care."[4] Hispanic or Latino children may be significantly over-represented based on the locality (e.g., in Santa Clara County, California, Latino children represent 30% of the child population, but 52% of all child welfare cases.[5]

Children of color experience disparate decision-making in investigation, substantiation, removal, placement in foster care and final permanency determinations. "African Americans are investigated for child abuse and neglect twice as often as Caucasians,"[6] and African American children who are determined to be victims of child abuse are 36% more likely than Caucasian children to be removed from their parent(s) and placed in foster care.[7] Federal Child and Family Services Review[8] data also show that Caucasian children achieve permanency outcomes at a higher rate than children of color.[9] In addition to being more likely to be placed in foster care, African American children are less likely to be reunified with their parents[10] and receive fewer services than Caucasian children.[11]

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[1] Hill, R.B. (2006). Synthesis of research on disproportionality in child welfare: An update. Casey Family Programs. See also G.A.O. (2007). *African American children in foster care: Additional HHS assistance needed to help states reduce the proportion in care.* GAO-07-816.

[2] Sedlak, A. J., McPherson, K., & Das, B. (2010). *Fourth national incidence study of child abuse and neglect (NIS-4): Supplementary analyses of race differences in child maltreatment rates in the NIS-4.* Washington, DC: U.S. Department of Health and Human Services, Administration for Children and Families.

[3] Anderson, G. R. (1997). Introduction: Achieving permanency for all children in the child welfare system. In G. R. Anderson, A. Ryan, & B. Leashore (Eds.), *The challenge of permanency planning in a multicultural society* (pp. 1-8). New York: Haworth Press, Inc. See also U.S. Department of Health and Human Services (2005). Data Report.

[4] Miller, O. (2009). Breakthrough Series Collaborative on Reducing Disproportionality and Disparate Outcomes for Children and Families of Color in the Child Welfare System. Casey Family Programs. Seattle: WA. Retrieved at http://www.casey.org/Resources/Publications/pdf/BreakthroughSeries_ReducingDisproportionality_process.pdf on June 10, 2010.

[5] Congressional Research Service. Race, *Ethnicity and Child Welfare* (August, 2005).

[6] Yaun, J., Hedderson, J., and Curtis, P. (2003). Disproportionate representation of race and ethnicity in child maltreatment investigation and victimization. *Children and Youth Services Review*, 25, 359-373.

[7] U.S. Department of Health and Human Services (2005).*Data Report*

[8] The Child & Family Service Review (CFSR) are a statewide assessment and on-site review by the Department of Health & Human Services, Administration for Children & Families Children's Bureau. The state must address a large array of systemic factors that are reviewed by the federal team of reviewers. The process includes case file reviews, consumer interviews, stakeholder interviews and state data analysis and review. The states are measured in the area of safety, permanency and child and family well-being. For more information on the CFSR process, visit www.acf.dhhs.gov\programs\cb.

[9] National Child Welfare Resource Center (2006). *Data Report*

[10] Lu, Y. E., Landsverk, J., Ellis-MacLeod, E., Newton, R., Ganger, W., & Johnson, I. (2004). Race, ethnicity and case outcomes in child protective services. *Children and Youth Services Review*, 26, 447-461.

[11] Courtney, M., Barth, R., Berrick, J., Brooks, D., Needell, B., & Park, L. (1996). Race and child welfare services: Past research and future directions. *Child*

Disproportionality and disparity are distinct, complex, and related concepts. Disproportionality is created and perpetuated by disparities.[12] Thus, "[p]olicies and practices to reduce disproportionality must target the underlying disparities that lead to it."[13] There are a number of factors that contribute to disparities. Agency practices, court culture, access to and effectiveness of services, child and family resources, community resources, law and public policy, social problems, institutional/structural racism and individual bias may all be contributing factors. A "one size fits all" service array, found in far too many communities, belies the fact that the same services do not work for every family. Services that are targeted, culturally appropriate and specific must be developed in communities across the country. Every person and part of the child welfare system must engage in targeted strategic action to reduce these inequities to improve outcomes for all children and families.

"Courts Catalyzing Change is the most significant initiative our Juvenile Court has embarked upon in the last decade. The journey to understanding how deeply embedded bias, in all its forms, is within each of us individually and within our entire child welfare system is extraordinarily difficult. Reducing the disparities that result from this bias is an even more arduous task. However, both are incredibly worthwhile and, as our efforts through Courts Catalyzing Change are demonstrating, both can be done. I am a better judge for my involvement with this initiative. Likewise, our juvenile court system is becoming more just for all children and families."

— HONORABLE LOU TROSCH
DISTRICT COURT JUDGE
26TH JUDICIAL DISTRICT
OF NORTH CAROLINA

The National Council of Juvenile and Family Court Judges' (NCJFCJ) Courts Catalyzing Change Initiative[14]

The *Courts Catalyzing Change: Achieving Equity and Fairness in Foster Care* (CCC) initiative was developed by the NCJFCJ's Permanency Planning for Children Department in pursuit of a Model Court national goal to reduce disproportionality and disparate treatment. Funded by Casey Family Programs and the U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention (OJJDP), the CCC Initiative builds on the successful work of the Casey Breakthrough Series Collaborative. CCC was developed with input from the following NCJFCJ committees and workgroups:

- Committee on the Disproportionate Representation of Children of Color
- Tribal Courts Committee
- Diversity Committee
- Permanency Planning for Children Department (PPCD) Advisory Committee
- NCJFCJ's Model Court Lead Judges
- CCC Call to Action Workgroup

The CCC mission is to create and disseminate judicial tools, policy and practice guidelines, and associated action plans that court systems can implement to reduce disproportionality and disparities. The CCC Initiative, informed by existing and newly developed research, will evaluate decision points in the dependency court system, re-evaluate federal, state, and local policy, make recommendations for changes or improvements, and recommend strategies for court and child welfare systemic change.

Development of the CCC Initiative & PPH Benchcard

In September 2007, Casey Family Programs partnered with NCJFCJ to bring together judicial officers and other child welfare system stakeholders in a series of leadership and work group meetings to create a National Agenda to reduce disproportionality and disparate treatment in the foster care system. Once developed, the National Agenda was to be implemented in the NCJFCJ's Model Court jurisdictions.

Welfare, 75, 99-137.

[12] Gatowski, S., Maze, C., & Miller, N. (Summer 2008). Courts Catalyzing Change: Achieving Equity and Fairness in Foster Care — Transforming Examination into Action. *Juvenile and Family Justice TODAY*, 16-20

[13] *Ibid.*

[14] Excerpted in part from Gatowski, S., Maze, C., & Miller, N. (Summer 2008). Courts Catalyzing Change: Achieving Equity and Fairness in Foster Care — Transforming Examination into Action. *Juvenile and Family Justice TODAY.* 16-20.

Funded by the OJJDP, Model Courts in 35 jurisdictions across the country are committed to improving courts' handling of child abuse and neglect cases and engaging in overall system improvement efforts. Guided by a local Lead Judge, a Model Court team comprised of all child welfare system stakeholders works collaboratively to improve court and child welfare systems.

On October 3, 2007, at the OJJDP-funded Model Court All-Sites Conference in New Orleans, Louisiana, the Model Court Lead Judges began initial conversations about the development of the National Agenda. A Judicial Steering Committee was soon appointed and the Courts Catalyzing Change initiative was born. A broad-based Call to Action Workgroup, brought together by the NCJFCJ, developed the CCC National Agenda and continues to advise the project as it moves forward. The NCJFCJ Board of Trustees adopted a resolution supporting the CCC initiative, clearly articulating support from the highest levels of the organization.

The Courts Catalyzing Change initiative was launched in the National Council's OJJDP supported Model Court jurisdictions. These courts have strong, collaborative, problem-solving, system improvement teams already in place. Model Courts are in a constant state of readiness for change. They have worked together over time to create an environment that embraces system improvement.

The CCC National Agenda is comprised of five core components: engaging stakeholders, transforming judicial practice, utilizing data and research, evaluating policy and law, and impacting the service array for children and families in the child welfare system. Each of five core components of the CCC National Agenda include comprehensive strategies to implement both on the local and national levels. Components of the National Agenda are implemented locally in the sequence that best fits each jurisdiction.

The CCC initiative is guided by core principles:

- Children and families of color must be an integral part of the planning and problem-solving process at all levels and at all stages.
- Judges – as the final arbiters of justice - must be leaders in their communities on the issue of reducing disproportionality and disparity in the child welfare system.
- Broad-based, multidisciplinary alliances and honest collaboration must be formed to effectively and comprehensively reduce disproportionality and disparate treatment.
- Reducing racial disproportionality and disparities in the child welfare system must be linked with a broader effort to eliminate institutional and structural racism in the child welfare system.

Nationally and locally, lead judges, Model Courts and their community partners and stakeholder teams, have been engaged in a multi-layered process to move these principles to action. Model Court teams have worked to bring the community

CORE COMPONENTS OF THE NCJFCJ COURTS CATALYZING CHANGE NATIONAL AGENDA

I. Engage national, state, local and tribal stakeholders, including children and families
II. Transform judicial practice
III. Participate in policy and law advocacy
IV. Examine and employ research, data and promising practices
V. Impact service array and delivery

"The Courts Catalyzing Change initiative is the NCJFCJ taking an historical leadership role to administer justice for all. We are looking at institutional racism and bias for the first time and saying it is nobody's fault but it is everyone's responsibility. By working together with all of our stakeholders with intentionality towards reducing the overrepresentation and disparities of children of color in our systems, this initiative provides real hope of change in how we work with our nation's most vulnerable children and families to provide fairness of process and eliminate barriers that may have once seemed insurmountable."

— HONORABLE KATHERINE LUCERO
SUPERVISING JUDGE OF DEPENDENCY COURT,
SANTA CLARA COUNTY SUPERIOR COURT

into the juvenile court system – not through the courtroom doors – but rather to meetings, planning sessions and problem-solving efforts. Model Court collaboratives have engaged in training, team/trust-building and awareness-raising to better understand structural and institutional racism. Judges have begun to explore how their own beliefs and biases can perpetuate inequitable treatment of the children and families who appear before them and contribute to disproportionality and disparate treatment.

The CCC Steering Committee discussed the importance of understanding the many factors that impact judicial decision-making. To that end, training was developed for all Model Courts focused on:

- Understanding and examining implicit bias;
- Understanding race as a social and legal construct; and
- Understanding and identifying institutional and structural racism.

Although it is the most difficult issue to explore, NCJFCJ member judges chose to begin their work to reduce disproportionality and disparities by holding courageous conversations about race and implicit bias. Clearly, the disproportionate number of children of color in care signals a system imbalance. While many debate whether and why disproportionality exists, NCJFCJ member judges are focused instead on remedying the disparate treatment experienced by children and families of color once they enter the foster care system.

NCJFCJ member judges affirmatively decided to begin their CCC work to reduce disproportionality and disparate treatment at the point the child and family first appear in court. Conducting a thorough hearing, allowing sufficient time to fully explore the need for foster care placement, helps to ensure that foster care is utilized only when it is the only appropriate option to protect the safety of a child.

The CCC Preliminary Protective Hearing (PPH) Benchcard, a practical and concrete judicial tool for use at the first hearing, was developed by the Call to Action Workgroup and vetted by the CCC Steering Committee and PPCD Advisory Committee. Building on the *RESOURCE GUIDELINES: Improving Court Practice in Child Abuse & Neglect Cases,*[15] the PPH Benchcard reflects aspirational 'best practices' for the Preliminary Protective Hearing, one of the most critical stages in a child abuse and neglect case.

"How do we reduce implicit bias in our decision making when it is automatic and pervasive? …Developing and employing checklists at various key decision points (e.g., detention intake) can encourage less biased decisions by providing an objective framework to assess your thinking and subsequent decisions. The methodical approach encouraged by checklists also can serve to reduce cognitive load by introducing more time into the decision making process."

Marsh, S. (2009). The Lens of Implicit Bias. Juvenile & Family Justice TODAY. Summer, 16-19.

[15] *RESOURCE GUIDELINES: Improving Court Practice in Child Abuse & Neglect Cases* (1995). National Council of Juvenile and Family Court Judges, Reno, Nevada.

IMPLEMENTING THE CCC NATIONAL AGENDA: GETTING STARTED

Develop a Collaborative Leadership Group

Reducing and eliminating disproportionality and disparities is a collective effort that requires the collaboration of all system partners and stakeholders including the judiciary, child welfare and juvenile justice agencies, court administration, community service providers, advocates (lay, legal and community), researchers/universities, funders, biological and foster parents and youth who have experienced the foster care system.

Host an Informational and Information-Sharing Meeting

This meeting is an opportunity for the judicial leader to discuss the CCC National Agenda components and overall goals and strategies. This meeting allows those already working to reduce disproportionality and disparities in their own sphere of influence to describe their work as well. It also offers an opportunity to present data that demonstrates the jurisdiction's key child welfare system and court measures for each racial/ethnic group as a way to frame the work. It is critically important to ensure all system stakeholders are gathered at this initial meeting. Involving parents and children who have experienced the system brings an important voice to the conversation. Consider the contributions that can be made by non-traditional partners and ensure they are invited.

Initiate a Courageous Conversation about Institutional & Structural Racism

Those who engage in the difficult and long-term work of reducing disproportionality and disparities in the child welfare system should first gain an understanding of the scope and causes of the issue. By examining the history of institutional and structural racism, each individual involved in the collaborative will be asked to examine his/her own biases and beliefs. This is a difficult, but necessary part of the process.

Develop a Strategic Plan

Due to the scope and goals of the National Agenda, it is unlikely that a jurisdiction can tackle all of the components and strategies at once. Developing a plan of action is essential and will allow each jurisdiction to identify its own strengths and opportunities for implementation and to prioritize the process.

Follow Up and Follow Through

Those jurisdictions that have successfully begun to implement the National Agenda have ensured that their collaborative group meets regularly to review progress on action items and to continue to engage in a conversation about improving outcomes. Agreeing on objective measures of progress promote follow up meetings that go beyond sharing experiences to actually evaluating the effect of the group's efforts.

For comprehensive guidance on implementing the CCC National Agenda please see *Model Courts CCC National Agenda Implementation Guide* (2009), National Council of Juvenile and Family Court Judges.

The Benchcard is built around two types of inquiry: internal and external. The internal inquiry is set forth in a self-reflection section containing questions designed to help judges examine potential biases at play that may affect their decisions. The external inquiry is laid out in both the due process related questions and considerations as well as the actual judicial inquiry of the hearing participants related to specific salient issues that should be determined at the PPH.

SETTING THE STAGE FOR A PRODUCTIVE, THOROUGH AND FAIR HEARING

REFLECTION QUESTIONS

- What assumptions have I made about the cultural identity, genders, and background of this family?
- What is my understanding of this family's unique culture and circumstances?
- How is my decision specific to this child and this family?
- How has the court's past contact and involvement with this family influenced (or how might it influence) my decision-making process and findings?
- What evidence has supported every conclusion I have drawn, and how have I challenged unsupported assumptions?
- Am I convinced that reasonable efforts (or active efforts in ICWA cases) have been made in an individualized way to match the needs of the family?
- Am I considering relatives as preferred placement options as long as they can protect the child and support the permanency plan?
- Have I placed the child in foster care as a last resort?
- How have I integrated the parents, children and family members into the hearing process in a way that ensures they have had the opportunity to be heard, respected, and valued? Have I offered the family and children the chance to respond to each of the questions from their perspective?
- Is this family receiving the same level and tailoring of services as other families?
- Is the parents' uncooperative or negative behavior rationally related to the involvement of the Agency and/or the Court?

"The men and women who serve as attorneys, judges and social workers in abuse and neglect cases bring their total life experiences and the assumptions that those experiences create to each case. It is a lofty goal to expect that attorneys, judges and social workers can set aside assumptions that are based on our perceptions of race, ethnic background, religion, poverty, substance abuse, literacy, language differences, gender, age and sexual orientation."

Source: Ventrell, M. and Duquette, D. (Eds.). (2005) *Child Welfare Law and Practice: Representing Children, Parents and State Agencies in Abuse, Neglect and Dependency Cases*. Bradford Publishing Co., (8,1).

Reflection questions encourage the judge to pause and think about his or her own decision-making process. The reflection questions in the PPH Benchcard acknowledge that all people, often subconsciously and without malice, ascribe a set of stereotypes to people around them. These stereotypes naturally help us categorize and organize our world. Many are not harmful, and many are, especially if they seep into the 'neutral' realm of judicial decision-making.[16] It is important not only for judges, but for all decision-makers in the child welfare system, to acknowledge this 'implicit bias' and to become more conscious about potential influences on their decision-making process.

The reflection questions also support judges in making individually-tailored decisions that consciously consider the unique cultural and familial context in which each child and family exist, while applying the same legal standard to all families involved in the dependency court process. The goal is to understand the cultural contexts of the children and families involved in the child welfare system. The strengths of a particular family, coupled with those of their cultural community can be used as supports upon which to build a rehabilitative and supportive plan that promotes stability and permanence for the child.

The reflection questions can be used in the manner that is most helpful to each individual judge. Some judges may choose to take a moment prior to each PPH and look through the reflection questions before they begin the hearing. Others may use the reflection questions to trigger additional questions they may have of the parties or participants.

"Martha Minow, Harvard Law School [Dean and Jeremiah Smith, Jr. Professor of Law] states that modern American society - and thus the application of the rule of law - must begin with new assumptions based upon an understanding that there are no cultural norms and everyone should be treated as though everyone is different. Minow's position calls for a new set of assumptions in abuse & neglect practice:

- *Each family is unique*
- *Each family is different in key aspects of their lives*
- *The solutions needed to repair the family or determine whether to break the parent-child relationship forever must be based upon a clear and careful understanding of family differences and family uniqueness."*

Source: Howze, K.A. (1996). *Making Differences Work: Cultural Context in Abuse and Neglect Practice for Judges and Attorneys*. American Bar Association, 5-6.

[16] Banaji, M. R., Bazerman, M. H., & Chugh, D. (2003). How (un)ethical are you? *Harvard Business Review*, 81(12), 56-64, and Carpenter, S. (2008). Buried prejudice. *Scientific American Mind*, 19, 32-39.

Who Should Be Present?

Following the format of the *RESOURCE GUIDELINES*, the first page of the PPH Benchcard identifies those who should be present and be represented at the preliminary protective hearing. The discussion below is meant to provide insight into the value of having each party present at the initial removal hearing, as well as additional recommendations for how best to ensure that they are aware of the hearing and able to participate. While state and federal laws define which parties are required to receive notice, the list of persons provided in the following pages will provide the court with the most thorough information on which to base its decisions.

Removing a child from her home is a monumental decision and one that should not be made lightly or quickly. Too often, these important hearings are conducted in a matter of minutes with few if any participants other than the caseworker and perhaps, the parents. The PPH Benchcard changes the paradigm of the removal hearing and the important decisions made at that hearing. It encourages thorough exploration of alternatives to foster care, maintenance of cultural connections for children and their families, and involvement of key individuals in the family and child's life in this important early decision-making process. To have a fair, productive, and thorough hearing, judges require accurate, up-to-date information. While many of the questions at the initial hearing are often answered by an investigator of the initial allegation of child maltreatment, it is critically important for the court to hear the perspective of the family and those attending the hearing as support for them.

Parents, parents' partners, relatives, and any available extended family are critical to the proceeding. Parents who are incarcerated should be transported to the PPH or permitted to attend by phone or videoconference. The child welfare agency should be expected to locate and assess relatives on both the maternal and paternal side of each family. Those connected to the child by relationships "of the heart" can also be strong supporters and should be encouraged to participate. Relatives and the extended networks of the parents/children are often able to provide support that may prevent removal of the child. When removal is necessary, these biological and social networks often offer a safe placement option that also keeps the child within his community or connected to his family, as opposed to placement with strangers.

RESEARCH REGARDING NON-RESIDENT FATHERS OF CHILDREN IN THE CHILD WELFARE SYSTEM INDICATES:

- Involvement by non-resident fathers is associated with more reunifications and fewer adoptions.
- Higher levels of non-resident father involvement are associated with substantially lower likelihood of later maltreatment allegations.
- Highly involved non-resident fathers' children exited foster care more quickly.
- Children who had had contact with a non-custodial parent in the last year were 46% less likely to enter foster care.

Source: U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, Office of Human Services Policy and Administration for Children and Families, Administration on Children, Youth and Families, Children's Bureau. (2008). More about the dads: Exploring associations between nonresident father involvement and child welfare case outcomes. Available at http://www.fatherhoodqic.org.

Diligent searches for all relatives should be standard. The Fostering Connections Act (PL 110-351) requires due diligence to identify and provide notice to all adult relatives within 30 days of removal.[17] A standard court-wide protocol for ensuring effective and thorough diligent searches should be cooperatively implemented. Child protection investigators and caseworkers should be trained on the protocol. Some courts have created 'diligent search' checklists or other family finding techniques that conform to state statute.[18]

Tribal representatives or liaisons, cultural or community leaders or liaisons, and/or religious leaders should always be at the PPH when required and whenever possible if not required. They should be engaged as partners in the effort to find community alternatives to foster care. Families should be asked prior to the PPH which of these leaders should be invited to attend. If the Indian Child Welfare Act (ICWA) applies, an ICWA expert or Tribal liaison should be involved at the PPH to testify and to advise the court and parties. Waiting until the jurisdictional hearing for the ICWA expert to testify could result in a child spending months in care without consideration of the higher standard for placement that the ICWA requires.

Children should participate in the PPH. Judges should expect that children are brought to court when safe and appropriate – and if they are not, the court should require that the child welfare agency provide an explanation that connects to that child's safety and well-being. There is evidence to suggest that children who are more knowledgeable about the legal system - through preparation by attorneys, social workers or caregivers as well as personal experience with the system - are less distressed about attending court and value the opportunity to be heard by the judge.[19] If not already instituted, courts will need to develop policies and protocols for ensuring that children will have the opportunity to attend the PPH and subsequent hearings. Judges should expect that substitute caregivers and child welfare agencies will work collaboratively to ensure that children are able to appear in court.[20] Courts should seek and participate in specific training to learn how best to engage children during the hearing process. The court should carefully weigh whether the child should be present throughout the whole hearing or just portions, as well as the extent to which the child should be asked to testify immediately after the removal.

All attorneys and advocates should be present at the PPH. Even though many jurisdictions only appoint counsel at the PPH, developing a process in which each parent's attorney is appointed prior and present at the PPH allows for the parent to have advice and counsel at the start of the process – promoting speedier resolution of key issues that need to be determined at this stage. Although some jurisdictions routinely provide separate counsel for each parent, in those that do not, judges should determine from the onset whether there is a conflict or potential conflict for an attorney to represent both parents. In cases involving domestic violence, it is critical that separate attorneys be appointed.

Of equal importance is the legal and/or lay advocate for the child. Ideally, the child's advocate(s) should be involved in the process from the first day and should be able to speak with the child prior to the PPH and present that child's perspective or position and a recommendation as to their best interest on removal, placement, visitation, and service/treatment decisions. Representation for the child welfare agency, whether by a district attorney representing the agency's position, or,

[17] 42 U.S.C Section 671(29)

[18] ChildFocus. (2007). *Making relative search happen: A guide to finding and involving relatives at every stage of the process*. Http://www.childfocuspartners.com/toolkits%26guides.htm.

[19] Quas, J.A., Wallin, A.R., Horwitz, B., Davis, E. & Lyon, T. (2009). Maltreated Children's Understanding of and Emotional Reactions to Dependency Court Involvement. *Behavioral Sciences & the Law* 27: 97–117

[20] See the American Bar Association Center on Children and the Law, Bar-Youth Empowerment Project, National Child Welfare Resource Center on Legal and Judicial Issues. (2008). *Judicial Benchcard for Engaging Children & Youth in Court*. Available at www.abanet.org.

when a conflict exists, by an agency attorney or state attorney is also essential.

Because the PPH is often very upsetting and difficult for parents, supportive individuals who can help the parents navigate the process such as parent mentors, cultural liaisons, substance abuse coaches, domestic violence advocates, etc., can help a parent remain engaged during and after the PPH. Treatment or service providers that have been working with the family prior to the court's involvement should be invited to attend the PPH to support the parents and discuss their progress. Judges need to inquire about the whereabouts of each of these representatives if they are not present.

Promoting Attendance at the PPH

Involving many of the aforementioned individuals in the PPH can be a challenge. Inherent mistrust of the system may keep individuals away from the court. Court schedules are not particularly conducive to gathering large numbers of people together for an emergency hearing. Schedules are most often more convenient for the court than they are for the individuals who must appear. However, making the court accessible and welcoming is an important part of building public trust and confidence and allowing families the best possible opportunity for involvement in the proceedings. Building relationships among the court, the child welfare agency, community leaders and cultural liaisons can assist with promoting attendance at the PPH. Implementing time certain calendaring can support broader hearing attendance by avoiding scheduling that may require participants to wait for long periods of time for their hearing to commence. Consideration of alternative scheduling (i.e. night court) may further assist families and their support systems with attendance.

In open courts, all persons present for the hearing should be allowed to enter the courtroom. In courts where the proceedings are closed, judges should make a point of requiring their bailiffs to invite anyone waiting for a case into the courtroom unless there is a compelling safety reason to the contrary. It is critically important that the judge, and not the bailiff, make decisions about who is allowed to enter the courtroom and participate in the hearing. Judges should routinely

inquire of the family and child/youth whether there is anyone waiting outside the courtroom.

Documentation and/or testimony should be provided by the child welfare agency affirming that parties and witnesses received both oral and written notice in a language that is understandable to them. Certified court interpreters should be used where available if a family is non-English speaking. Under no circumstances should a family member, party to the case, or other hearing participant interpret the proceedings for another person in attendance.

Appropriate motions and orders should be entered to ensure that incarcerated parents are transported for PPHs whenever possible. For parties and key witnesses who are unable to attend in person, telephonic attendance or videoconferencing should be made available.

Reviewing the Petition

While state and federal law dictate the essential elements of the initial petition, judges can work with the agency to

WHAT JUDGES CAN DO AT THE PRELIMINARY PROTECTIVE HEARING TO ENSURE THAT THE AGENCY IS WORKING TO IDENTIFY AND LOCATE FATHERS FROM THE START:

The Fostering Connections Act (PL 110-351) requires due diligence to identify and provide notice to all adult relatives within 30 days of removal (42 U.S.C. Section 671(29)). This includes non-resident fathers and paternal relatives. The court should ask what actions the social worker has taken to identify and locate the father. Has the social worker:

1. Asked the mother about the identity and location of the father?
2. Used any search technology such as the child support locator to locate the father?
3. Asked the mother's relatives about the father and his relatives?
4. Asked the mother about the identity and location of any of the father's relatives?
5. Used family finding technology to identify the father's relatives?
6. Contacted any of the father's relatives concerning his location?
7. Checked with local jail or state prison representatives to determine whether the father is incarcerated?
8. Checked with probation or parole authorities to determine if the father is on probation or parole?
9. Talked with the child or the child's siblings about contact with the father or father's relatives?

These and other questions will inform the case manager about the thoroughness of the inquiry the court expects concerning the father's identity and location.

"[...The issues discussed.....regarding identifying, locating, notifying, and engaging fathers are relevant to incarcerated fathers. The mother may finally reveal the father's identity, but she may not know if he is incarcerated. With a name, birth date, and possibly other information, the social worker should be able to locate an incarcerated father quickly. The court should insist that the caseworker contact the alleged father, inform him of the legal proceedings, and determine his desires about the child protection proceedings. The fact that he is in jail should not stop the inquiry."

If a case involves domestic violence, the way in which the court makes these inquiries is important so as not to compel the victim to provide information that may place her in danger.

Source: Edwards, L. (2009). Engaging fathers in the child protection process. *Juvenile and Family Court Journal*, 60(2), 1-29.]

require that petitions contain sufficient factual and contextual information upon which to base a more thoroughly considered decision. Judges must also determine whether the petition meets the requirements of state law and whether due process requirements are met.

Generally, initial petitions must be sworn and the affiant should be present in court or available to the court to answer questions about the facts contained therein. Clearly stated facts should support any conclusions reached in the petition. Many petitions are vague ("the child is in need of the services of the court") or conclusory ("the father reportedly has a substance abuse problem"). In domestic violence cases, the court should pay particular attention to the language of the petition – does it hold the batterer accountable for his violence?[21]

Judges should insist that proof be offered at the level the court requires to determine probable cause for any and all allegations in the petition. The petition should include specific language that articulates the current threat to the child's safety that necessitates removal. Additionally, the petition should be accompanied by an affidavit stating the specific reasonable or active efforts that have been made to prevent removal. It is important that the initial petition is filed prior to the time of the PPH to allow adequate time for the parents' review and consideration.

Petitions often list allegations only as to the primary caretaker parent. Often, caseworkers or investigators are concerned that they do not know enough about the other non-custodial, non-charged parent or guardian at the time the petition is filed. If that parent or guardian then appears at the hearing, they are sometimes ordered to participate in a series of evaluations to "convince" the child welfare agency and court that he/she is a fit parent. Judges must ensure that the rights of non-custodial parents or guardians are adequately protected and should carefully consider whether there is a legal basis to deprive a non-custodial parent of placement of their child if no allegations have been filed.

Throughout the PPH Benchcard development process, judges expressed concern regarding how best to handle cases with uninvolved parents who may or may not be appropriate placement resources. The court and/or agency needs additional information in order to make that determination. The majority of judges involved in the creation of the PPH Benchcard believe that a parent has a right to custody of their child if no allegations are filed. Others strongly believe that the court has the authority to order services even if allegations are not filed. This is an important consideration individual judges must make, often based on state law.

Conducting the Hearing

Once the judge has confirmed that the aforementioned individuals and representatives were given the opportunity to attend the PPH and is satisfied that due process requirements regarding notice and the elements of the petition have been met, he/she should proceed through the questions of the PPH Benchcard. The questions are grouped by topic area to allow for flexibility based on each judge's style and the natural flow of the hearing.

[21] Goodmark, L. (2008). *Reasonable Efforts Checklist for Dependency Cases Involving Domestic Violence*. Reno, NV: National Council of Juvenile and Family Court Judges Family Violence Department

Key Inquiries, Analyses and Decisions the Court Should Make at the Preliminary Protective Hearing

DETERMINE WHETHER THE INDIAN CHILD WELFARE ACT (ICWA) APPLIES

The court should require that the applicability of the ICWA be determined before proceeding with the preliminary protective hearing. If the court has reason to believe ICWA applies, the court should proceed accordingly.

- If Yes – different standards apply, refer to the ICWA Checklist.
- If Yes – determine whether there was clear and convincing evidence, including testimony of a qualified expert witness, that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. 25 U.S.C. § 1912(e).

Judges must determine whether the ICWA applies to the case as a threshold inquiry. Meant to safeguard and protect Indian children, the ICWA was intended to remedy abusive child welfare practices that separated Indian children from their families in the interest of assimilating them in to the white culture. Because tribal children were removed at outrageously disproportionate rates (in one state at 20 times the rate of non-Indian children), the ICWA set forth the requirement and standard that the state engage in active focused efforts to prevent the removal of Indian children from their homes and/or termination of parental rights. The ICWA also recognized that a child's extended family as well as other tribal families should be considered first as substitute caregivers for Indian children. The ICWA also provides for the right of tribes to actively participate in any state court proceeding involving tribal children.[22]

The ICWA applies when the proceedings are 'child custody proceedings' as defined by ICWA[23] and the child is an 'Indian child' as the ICWA defines that term.[24] Under the ICWA, a child custody proceeding includes:[25]

- Any action where the Indian child is removed from his or her parent or Indian custodian for temporary placement in a home or institution, including guardianship and conservatorship and where parent or custodian cannot have child returned upon demand but where parental rights have not been terminated;
- Termination of parental rights;
- Pre-adoptive placements; and
- Adoptive placements.

The child is considered an 'Indian child'[26] pursuant to the ICWA if:

- He/she is an unmarried person under the age of 18, and
- The child is a member of a federally recognized Indian tribe; or
- The child is the biological child of a member of a federally recognized Indian tribe and the child is eligible for membership in any federally recognized Indian tribe.

[22] The five aspects of the ICWA are based on a summary of Thorne, W.A. An overview of the Indian Child Welfare Act (ICWA). The *Judge's Page Newsletter.* National CASA in partnership with the National Council of Juvenile and Family Court Judges. http://www.casaforchildren.org/atf/cf/{9928CF18-EDE9-4AEB-9B1B-3FAA416A6C7B}/0404_indian_child_welfare_act_issue_0011.pdf

[23] 25 U.S.C. §1903(1)

[24] 25 U.S.C. §1903(4)

[25] 25 U.S.C. §1903(1)(i-iv)

[26] 25 U.S.C. §1903(4)

EXCERPT FROM PPH CHECKLIST FOR ICWA CASES

Key inquiries the court should make:

- Is the child under 18, unmarried and:
  - a member of a federally recognized tribe or
  - eligible for membership in a federally recognized Indian tribe and the biological child of a member of a federally recognized tribe?
- Was the child in the custody of an Indian custodian prior to the hearing?
- If child is an Indian child, does the child either reside or is the child domiciled on a reservation or is the child already a ward of a tribal court, depriving the court of jurisdiction? If the child resides or is domiciled on reservation but is temporarily off reservation, the court may order an emergency removal from the parent or Indian custodian to prevent imminent physical damage or harm to the child.
- Has the agency mailed proper notice the child's putative father, including father who has acknowledged paternity, even if he has not legally established paternity?
- Was proper notice and inquiry mailed to all tribes in which the child may be eligible for membership, including a family chart or genogram to facilitate the tribe's membership determination?
- If the child's tribe is not known at this time, was written notice sent to the U.S. Secretary of the Interior?
- What efforts, if any have been made by the agency to identify extended family or other tribal members or Indian families, for placement of the child? Has the agency attempted to create a family chart or genogram soliciting assistance from neighbors, family or members of the Indian community who may be able to offer information?
- Is the parent able to read and/or understand English? If not, what efforts have been made to ensure that the parent understands the proceedings and any action the court will order?

Key decisions the court must make:

- Has the agency made *active efforts* [emphasis added] to identify responsible extended family or other tribal members or Indian families to serve as a placement for the child?
- Is it in the best interest of the child to appoint counsel for the child?
- If the state law makes no provision for the appointment of counsel, has the court notified the Secretary upon appointment of counsel so that reasonable fees and expenses may be appropriated?
- In assessing whether an individual who meets the placement preferences is an appropriate placement for the child, has the agency relied upon the social and cultural standards of the Indian community in which the parent or extended family reside, or with which the parent or extended family maintain social and cultural ties?
- What additional efforts need to be made to ensure that the child is placed with extended family or within his/her tribal community?
- What culturally relevant services will allow the child to remain at home?
- Will parties voluntarily agree to participate in services?
- Are restraining orders or orders expelling an allegedly abusive parent from the home appropriate or necessary?
- Are orders needed for examinations, evaluations, or other immediate services?

"Leadership by the court is essential to ensure ICWA compliance….Much has been written in recent years about the impact to affected children if the requirements of the ICWA are not met, most notably the significant delay in achieving permanency for these children as well as the widespread non-compliance with the requirement that a qualified expert testify at hearings including the initial removal hearing."

— HONORABLE DALE R. KOCH, MULTNOMAH COUNTY CIRCUIT COURT, PORTLAND, OR

The court should make a determination about the applicability of the ICWA for every child that appears before the court, and review ICWA applicability at every hearing. Once the ICWA is determined to apply to the child, the court should refer to the PPH checklist for ICWA cases that appears in the Indian Child Welfare Act Checklists for Juvenile and Family Court Judges developed and published in 2003 by the NCJFCJ-PPCD. Most importantly, the court must apply the actual wording of the ICWA to decide if removal is appropriate. Key written findings that the court must make include:

- Whether, at the time of removal, the child was already a ward of a tribal court (if known) thereby depriving the state court of jurisdiction.[27]
- Whether, at the time of removal, the child was in the custody of an Indian custodian.
- Whether active efforts were made prior to removal of the child to provide remedial services and rehabilitative programs designed to prevent the breakup of the family, and whether the efforts were successful.[28]
- Whether there was clear and convincing evidence, including testimony of a qualified expert witness, that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.[29]
- Whether the parent, Indian custodian, or child's tribe requested an additional 20 days to prepare for the hearing.[30]

[27] 25 U.S.C. §1903(6)
[28] 25 U.S.C. §1912(e)
[29] 25 U.S.C. §1912(e)
[30] 25 U.S.C. §1912(a)

ENGAGE IN AN OPENING DISCUSSION WITH PARENTS, CHILDREN AND FAMILY MEMBERS AT THE BEGINNING OF THE HEARING

- What language are you most comfortable speaking and reading?
- Do you understand what this hearing is about?
- What family members and/or other important people should be involved in this process with us?
- Do you understand the petition? (review petition with parties)

One of the key principles of the CCC Initiative is to engage families in every court hearing. Judges have a significant opportunity to connect with and engage families appearing before them. Often referred to as therapeutic jurisprudence, the judge's demeanor, behavior, and interactions with each party, relative, and community member are crucial to the perception of fairness in the process.[31] In this case, the cliché is true – the perception of justice is of equal importance as justice itself.

The "Opening Discussion" questions listed on page three of the PPH Benchcard guide the judge through the initial family engagement process. These questions will help the judge determine whether the family truly understands the proceedings and the process, and demonstrate openness on the judge's part to including the family's familial, social, community, and cultural support network in the court process. The opening discussion between the judge and the family can set the stage for the rest of the proceedings by modeling and promoting cooperation, communication, engagement and a strength-based family-centered approach. Not only does this signal to the family that they will be treated fairly and openly, it clearly sends the message that those working directly with the family will be expected to be open and fair as well.

CONSIDERATIONS WHEN ENGAGING FATHERS IN CASES INVOLVING DOMESTIC VIOLENCE

When domestic violence is involved in a child maltreatment case, efforts to engage the father and extended family through Family Group Decision-Making or other collaborative, family-centered approaches must consider the safety and protection of the adult victim (mostly mothers) and the children. Safeguards from further emotional and physical abuse should be identified and implemented and separate parental engagement strategies should be employed. The judge should consult with the mother and her domestic violence advocate regarding safety concerns and priorities as well as her present and future needs. The judge should encourage differentiated engagement by the caseworker that takes into consideration the expressed concerns and needs of the children, mother and father individually.

Judges should be aware of how the abused parent and the perpetrator will present to social workers, court staff, and to judges themselves. On first glance, the perpetrator may appear to be the better parent—charming, cooperative, and in control of the children. The abused parent, on the other hand, may seem stressed, depleted, and an inadequate parent. Judges should understand, and help others in the dependency system to understand, the techniques used by the perpetrator to undermine the adult victim's parenting.[32]

[31] Senjo, S. and Leip, L. (2001). Testing therapeutic jurisprudence theory: An empirical assessment of drug court process. *Western Criminology Review* 3(1) [Online]. Available: http://wcr.sonoma.edu/v3n1/senjo.html.

[32] Goodmark, L. (2008). *Reasonable Efforts Checklist for Dependency Cases Involving Domestic Violence*. Reno, NV: National Council of Juvenile and Family Court Judges Family Violence Department

DETERMINE WHETHER ESSENTIAL DUE PROCESS REQUIREMENTS WERE MET

- Who are the child's parents and/or guardians?
- How was paternity determined?
- What were the diligent search efforts for all parents?
- Have efforts to identify and locate fathers been sufficient? What has been done?
- How were the parents notified for this hearing?
  - Was the notice in a language and form understandable to parents and/or guardians?
- Do the parents understand the allegations?
- Are the parents entitled to representation? Are there language issues to consider when appointing attorneys?
- Are there issues in the case that are covered by the Americans with Disabilities Act (ADA)?

Although state law varies, the specific questions related to due process requirements addressed in this section meet the minimum standards of most, if not all, jurisdictions, as well as the requirements under the Fostering Connections Act regarding notice to relatives and youth engagement.[33] The questions can be addressed to the parents, relatives, caseworker/investigator and others who may be present. To the best of its ability, the court must determine whether the child protection agency has sufficiently attempted to identify, locate, and confirm paternity in every case. If the judge determines this has not taken place, additional steps and a timeframe for completing these steps should be clearly ordered. The judge should conduct a paternity inquiry of any and all parties in the courtroom. The judge must also assess whether the parents were notified pursuant to the requirements of state statute, including the right to receive notice in a language and form that is understandable to them.

The court should require that critical documents such as the initial petition, notices of hearing, the case plan, etc., are professionally translated into the language that the parent is most capable of reading. If a parent is unable to read in any language, the court should instruct the parents' counsel to be sure to read all documents to the parent and to ensure that the parent understands their meaning. The parents should be asked whether they have any physical or developmental disabilities that prevent them from fully participating in the proceedings. If they do, the Americans with Disabilities Act (ADA) may require certain accommodations be made by the court and the child protection agency.

[33] P.L. 110-351

IF THE CHILD HAS BEEN REMOVED, DETERMINE WHETHER THE AGENCY MET THE LEGAL THRESHOLD FOR REMOVAL OF THE CHILD

- Has the agency made a prima facie case or probable cause showing that supports the removal of the child?
- Have the family's cultural background, customs and traditions been taken into account in evaluating the event and circumstances that led to the removal? 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?

Removing a child from home, even when there is an imminent safety threat, is a life-altering experience for all involved. Despite the very intrusive and high-impact nature of the initial removal decision by child protective services, much about this decision is left to the subjective judgment of the child protective investigator. Judges charged with reviewing the decision to remove a child are in a powerful and challenging position. Removing a child from his parents will likely result in removing the child from his siblings, extended family, friends, activities, belongings and community. Once removed, a child may be placed with an adult and other children whom they do not know, who may not look like them, speak their language, or follow their family's customs. They may be separated from school or community activities, and adults that they trust. Parents are often confused, scared, concerned and desperate.

Cultural norms shape the way that individuals evaluate and determine whether a particular behavior is considered abusive or places a child at risk. Sometimes they cause people to find abuse where none in fact exists. Conversely, sometimes beliefs about what is 'normal' for a culture or community cause those responsible for determining safety and risk to dismiss signs of threat or harm. Thus, a decision-maker's cultural norms must be balanced by knowledge and information about cultures and communities coupled with objective and effective safety and risk assessments by professionals in the field.

Timeframes for the PPH differ by state.[34] Whatever the timeframe, the state child protection agency is required to make a prima facie case or probable cause showing that supports removal of the child. The question at this point is not whether the allegations are true but, assuming the allegations are true, whether an imminent safety threat to the child necessitating removal exists? Some state statutes specifically state that the judge may make either a probable cause finding, or rule that the court requires additional time to obtain and review documents in order to determine the risk of harm to the child.[35]

It is the duty of the court to ensure that its findings are based on conclusions that are supported by facts. Often, statements are made in court that are, in fact, conclusions drawn by witnesses without evidence to support the claims. For example, a neighbor may have reported to the agency that a parent has a substance abuse problem. Because the agency has not had adequate time to gather additional information, the court may simply be informed that the parent has a substance abuse problem that places the child at risk. The court should challenge every conclusion made to ensure that those conclusions are supported by facts. Statements in petitions such as, "The parent was out of control," should be further explored by the judge. A parent may have behaved this way due to the trauma of having their children removed. This behavior may be completely uncharacteristic of the parent and does not necessarily pose a threat to the child's safety.

When evaluating the facts contained in the petition, judges should consider whether the family's cultural background, customs, and traditions have been taken into account regarding the events and circumstances that led to the removal, as well as the types, tailoring, and appropriateness of services provided and the method by which the family was engaged. Cultural norms shape the way that individuals evaluate and determine whether a particular behavior is considered abusive or places a child at risk. Sometimes they cause people to find abuse where none in fact exists. Conversely, sometimes beliefs about what is 'normal' for a culture or community cause those responsible for determining safety and risk to dismiss signs of threat or harm. Thus, a decision-maker's cultural norms must be balanced by knowledge and information about cultures and communities coupled with objective and effective safety and risk assessments by professionals in the field. There are a number of key informants on this issue in addition to the agency: the parents, the extended

[34] In Florida, for example, the statute requires a hearing within 24 hours after the removal of the child (Fla. Stat. §39.401(3)(b). Arizona law requires the court to hold a preliminary protective hearing to review the removal not fewer than five days nor more than seven days after the child is taken into custody (ARS §8-824).

[35] For example, Florida Statute 39.402(8)(h) in discussing what written findings must be made states, "That based upon the allegations of the petition for placement in shelter care, there is probable cause to believe that the child is dependent or that the court needs additional time, which may not exceed 72 hours, in which to obtain and review documents pertaining to the family in order to appropriately determine the risk to the child."

family, religious, cultural or tribal representatives or experts, or community leaders. Judges should inquire whether the incident(s) causing the harm or safety concerns were related to the parent engaging in a cultural or religious practice or belief.

The court must carefully consider whether these customs rise to the level of child abuse or neglect. If the judge finds that cultural or community practices and beliefs contributed to the allegations, there should be an exploration of the risk of harm to the child if the practice was to continue in the home. If the judge does believe there is a safety threat to the child,

THE COURTS' ROLE IN ENSURING CULTURAL COMPETENCE

Falicov (1995) recommends that an inquisitive and open-minded strategy is adopted, rather than relying on stereotypical information about members of a particular group. She also cautions us to view people in all their many contexts and facets including "rural, urban, or suburban setting; language, age, gender cohort, family configuration, race, ethnicity, nationality, socioeconomic status, employment, education, occupation, sexual orientation, political ideology, migration and state of acculturation" (p. 375). In other words, knowing one particular fact about a family's identity, such as its race or ethnic background, tells us little about who the family really is.

Saba and Rodgers (1990, p. 205) offer the following guidelines:

- Clarify your assumptions (about members of the group.)
- Realize that your perceptions may vary considerably from the family's.
- Accept that a climate of mistrust exists.
- Understand that mutual stereotypes enter the interview room first.
- Be conscious of the power relationships between you and the family.
- When uncommon events occur, consider alternate explanations in addition to the obvious ones.
- Accept and admit your fallibility.
- When you discover your discriminatory behaviors, do not give up. Make changes and continue to work.
- Explore your setting for structures that foster prejudice.
- Cultivate safe collegial relationships that will permit discussion of clinical discrimination.
- Most importantly, be open to learning from the families you treat.

Source: Fontes, L.A. (2005). *Child Abuse and Culture: Working with Diverse Families*. Guilford Press: NY.

For more resources on cultural competence in child abuse and neglect cases, including how child abuse and neglect is viewed in different cultures, please consult the Child Welfare Information Gateway, a technical assistance service of the U.S. Department of Health and Human Services- Administration of Children and Families' Children's Bureau. www.childwelfare.gov/systemwide/cultural/can.cfm

"Every child who should be in care must be in care, and not one child more."

— HONORABLE R.MICHAEL KEY
JUVENILE COURT OF TROUP COUNTY
LAGRANGE, GEORGIA

the parents' willingness to explore different ways to respect cultural tradition without causing harm to the child must be evaluated.

If the judge determines that a prima facie case was made or probable cause was shown, there are additional inquiries and findings that need to be made. The judge must next determine: 1) whether reasonable efforts were made to prevent removal and 2) whether the immediate threat has diminished and/or whether adequate safeguards could be put in place to sufficiently protect the child should he/she return home today? Foster care placement should only be used as a last resort.

DETERMINE WHETHER REASONABLE EFFORTS WERE MADE TO PREVENT REMOVAL

- Were there any pre-hearing conferences or meetings that included the family?
  - Who was present?
  - What was the outcome?
- What services were considered and offered to allow the child to remain at home? Were these services culturally appropriate? How are these services rationally related to the safety threat?
- What was done to create a safety plan to allow the child to remain at home or in the home of another without court involvement?
  - Have non-custodial parents, paternal and maternal relatives been identified and explored? What is the plan to do so?
- How has the agency intervened with this family in the past? Has the agency's previous contact with the family influenced its response to this family now?

The federally required 'reasonable efforts to prevent removal' determination is one of the most critical elements of the PPH. Federal law requires the judge to determine whether "reasonable efforts have been made to prevent or eliminate the need for removal."[36] This finding must be made by the court within 60 days from the time of removal.[37]

REASONABLE EFFORTS IN DEPENDENCY CASES INVOLVING DOMESTIC VIOLENCE

In cases involving domestic violence, the court must first understand the agency's rationale for removal or for seeking removal of the child. Was the child being physically or emotionally abused by the perpetrator of abuse against the adult victim? Was the child being physically or emotionally abused or neglected by the adult victim of domestic violence? Was removal sought because the child was 'exposed' to domestic violence in the home (which some states define as per se neglect). In order to determine whether the agency's efforts to prevent removal were reasonable, the judge should consider the following:

1. How did the family come to the agency's attention? How did the investigator/case manager determine that domestic violence was an issue for the family? What injury to the child is the agency alleging?
2. How did the agency seek to address the domestic violence in the family prior to seeking removal? (Alternatively: Why was immediate removal warranted?)
   - Did the adult victim have strategies to keep the child safe? If so, why were those strategies not effective?
   - Did the investigator/case manager consult with a domestic violence expert or advocate? If applicable, did he/she consult with the perpetrator's probation or parole officer or treatment providers?
   - Was there an assessment of the likelihood of future violence?
3. What assistance and services, if any, were provided to the adult victim to keep herself and her children safe and together? (e. g., developing a meaningful safety plan; providing emergency funds; legal assistance for the adult victim; helping the victim enter shelter or obtain a protective order if she deems these necessary; connecting the adult victim with in-patient services that will allow her child to remain with her; etc.)
4. How did the agency deal with the batterer? Does the petition hold the batterer accountable for his violence? Did the agency try to have the batterer removed from the home?
5. If the child has already been moved, what actions would be necessary to allow the child to return home immediately and safely and what services would be required to support the child's return?

Source: Goodmark, L. (2008). *Reasonable Efforts Checklist for Dependency Cases Involving Domestic Violence*. Reno, NV: National Council of Juvenile and Family Court Judges Family Violence Department.

[36] 42 U.S.C. §§672(a)(1), 672(a)(1); 45 C.F.R. Section 1356.21(b)(1)
[37] 45 C.F.R. §1356.21(b)(1)

The 'reasonable efforts' evaluation is the judge's opportunity to fully assess the efforts that have been made to engage the family in services and supports that would have either eliminated the safety threat prior to placement or allow the child to return home today. These findings powerfully communicate whether the court is satisfied that the agency is using foster care only as a last resort and not simply as the most expeditious intervention and provide guidance to the agency about the court's expectations for immediate service delivery whenever possible.

It is reasonable to make no efforts in an emergency situation. Courts must carefully evaluate which situations are actually emergencies. Court and agency culture over the years sometimes leads to a less than thorough exploration of alternatives to placement even when a situation appears grave on its face. A judicial finding that it was reasonable to make no efforts to prevent the placement should only be made if there are no other reasonable means to protect the child from an imminent safety threat.

If the court determines that an emergency situation did not exist, the judge should inquire about the specific services provided and the specific safety concerns they were meant to ameliorate. A judicial inquiry should also be made about the cultural relevance and appropriateness of the services, including the languages in which they were offered. Proof of provision of these services, beyond a simple one-page referral sheet, is also important to consider.

The family's past interactions with the court and the child protection agency should be considered by the judge, but care should be taken to ensure that the judge or the child protection agency is not unduly influenced by that history. The agency as well as the judge must use history as a context, but also view the current situation in light of the presenting set of facts and circumstances and the efforts made now to prevent removal. Past efforts that were unsuccessful do not relieve the agency from making reasonable efforts to prevent removal should a new allegation arise.

Most importantly, judges should explore with the agency whether an in-home safety plan was considered prior to the removal and whether such a plan would allow the child to safely return home – with or without the involvement of the agency and /or court. "If an in-home safety plan would be sufficient, and the agency fails to consider or implement one, then the agency has failed to provide reasonable efforts to prevent removal."[38] The elements of assessing safety and the appropriateness of an in-home safety plan are discussed more thoroughly in the next section.

[38] Lund, T., & Renne, J. (2009). *Child safety: A guide for judges and attorneys*. Washington, DC: American Bar Association, p. 25.

IF THE CHILD HAS BEEN REMOVED ON AN EMERGENCY BASIS AND REASONABLE EFFORTS TO PREVENT REMOVAL WERE NOT REQUIRED, DETERMINE WHETHER THERE IS ANYTHING THAT PREVENTS THE CHILD FROM RETURNING HOME TODAY

- What is the current and immediate safety threat? Has the threat diminished? How do you know that? Specifically, how can the risk be ameliorated or removed?
- What is preventing the child from returning home today? What type of safety plan could be developed and implemented in order for the child to return home today?
  - What specifically prevents the parents from being able to provide the minimally adequate standard of care to protect the child?
  - Will the removal or addition of any person from or in the home allow the child to be safe and be placed back in the home?
- If the safety threat is too high to return the child home, how have the conditions for return been conveyed to the parents, family and child, and are you satisfied that they understand these conditions?

Determining safety threats and the need for continued out-of-home placement is one of the most challenging aspects of serving as a judge in child protection proceedings. Accurate, up-to-date information from credible sources about the threats to the child's safety must be available to the judge. At the first hearing, emphasis is frequently focused on the child's stay in substitute care rather than thoroughly assessing whether the child can safely return home immediately. Implicit bias and historical systemic practice can easily cloud the decision-making process regarding the need for the child's removal, thus necessitating a more structured approach based on discernable criteria upon which to base this key decision.

Confusion of the terms 'risk' and 'safety' is a core issue when evaluating an emergency removal decision.[39] In state statute, as well as in common child welfare parlance, risk and safety are often referred to as one and the same, when, in fact, they are not.

The *Child Safety Guide* disseminated in 2009 by the ABA Center on Children and the Law's National Resource Center on Legal and Judicial Issues[40] and the National Resource Center for Child Protective Services advocates the use of six background questions to assess the threat of danger, vulnerability of the child and protective capacities of the parent(s):

1. What is the nature and extent of the maltreatment?
2. What circumstances accompany the maltreatment?
3. How does the child function day-to-day?
4. How does the parent discipline the child?
5. What are overall parenting practices?
6. How does the parent manage his own life?

There is a significant chance of missing information and/or bias influencing the answers to these questions. For example, many women experiencing domestic violence never disclose the battering to their closest friends and family, let alone to their attorneys or a government agency empowered to remove their children. And although professional organizations such as the National Association of Public Child Welfare Administrators have stressed the importance of screening and assessing families for domestic violence, some caseworkers may not make such inquiries.[41] If this critical information is not disclosed, it is possible that negative assumptions may be made about the behavior of a battered woman, when in fact, that very behavior may be necessary to save her life or that of her children.

"Whether or not a child is safe depends on a threat of danger, the child's vulnerability and a family's protective capacity…..Vulnerable children are safe when there are no threats of danger within the family or when the parents possess sufficient protective capacity to manage any threats….Children are unsafe when threats of danger exist within a family and children are vulnerable to such threats and parents have insufficient protective capacities to manage or control threats."

Source: Lund, T., & Renne, J. (2009). *Child safety: A guide for judges and attorneys.* Washington, DC: American Bar Association, (p.2).

[39] *Child Safety: A Guide for Judges and Attorneys* jointly developed by the American Bar Association Center on Children and the Law and the National Resource Center for Child Protective Services. This is an excellent and thorough guide through the questions and decision-making process in which judges must engage to determine safety throughout the life of the case. The Guide also provides comprehensive case studies that demonstrate the decision-making process recommended by the authors.

[40] The National Council of Juvenile and Family Court Judges and the National Center for State Courts are partners with the ABA in the National Resource Center on Legal and Judicial Issues.

[41] Goodmark, L. (2008). *Reasonable Efforts Checklist for Dependency Cases Involving Domestic Violence*. Reno, NV: National Council of Juvenile and Family Court Judges Family Violence Department.

In another example, children may function very differently day-to-day depending on their culture. They may spend more time with grandparents than they do with their biological parents, they may share sleeping quarters with multiple siblings, they may live in homes with dirt floors and minimal food. Failure to explore the cultural relevancy of certain behaviors or conditions may lead to assumptions about those behaviors or conditions having a negative influence on a child.

Each case must be carefully evaluated within the family's cultural context. In making the safety decision, judges are strongly encouraged to refer directly to the self-reflection questions to help them ensure that bias is not influencing the safety inquiry at this critical juncture. Making a safety determination at the PPH stage is especially challenging because it takes time for caseworkers, attorneys, and CASAs to gather the needed contextual and background information.

The decision to remove a child on an emergency basis must be factually supported even though the agency may have only limited information. The extent of maltreatment and the surrounding circumstances must be clearly explained.[42] If the judge determines a safety threat did, in fact, exist, the judge should then inquire whether an in-home safety plan was considered and, if found to be appropriate, implemented. The following factors must be evaluated to determine whether an in-home safety plan is feasible:[43]

[42]Lund & Renne (2009), p. 7
[43]Lund & Renne (2009), p. 25

- If the family's current capacity to protect the child is limited, what other measures can be put in place to ensure safety? Considering when and how threats develop and emerge is important in making this decision. For example, in a domestic violence case, if the alleged abuser is removed from the home, can the child and the alleged victim parent remain safe?
- Based on the above analysis, is an in-home safety plan going to control the safety threats?
- What services and action steps are necessary for the in-home plan to control the threats to the child?

The judge should use answers to these questions to assess whether an in-home safety plan will be "sufficient, feasible and sustainable."[44] The safety plan is not a case plan, although some of the services and supports necessary for implementing the safety plan will also be part of the parents' case plan. Only when the court determines that an in-home safety plan is not feasible or sustainable, should the court turn its attention the child's out-of-home placement and ongoing contact with his or her family.

[44] Lund & Renne (2009), p. 25-26

DETERMINE WHETHER THE CURRENT OUT-OF-HOME PLACEMENT MEETS THE CHILD'S AND FAMILY'S NEEDS

CONSIDERING KIN AS A FIRST RESORT

- If child is placed in foster care/shelter, have kinship care options been fully explored? If not, what is being done to explore relatives? If so, why were the relatives deemed inappropriate?
- If child is placed in kinship care, what steps have been taken to ensure the relative is linked with all available training, services, and financial support?
- How is the placement culturally and linguistically appropriate?
  - From the family and child's perspective, is the current placement culturally and linguistically appropriate?
- How does the placement support the child's cultural identity? In what way does the placement support the child's connection to the family and community?
- How does the placement support the family/child's involvement in the initial plan?
- What are the terms of meaningful family time with parents, siblings and extended family members?
  - Do the terms of family time match the safety concerns? Is it supervised? Specifically, why must it be supervised?
  - Is the time and location of family time logistically possible for the family, and supportive of the child's needs?

The stability and quality of placement and parenting time (visitation) are essential to successful reunification between children and their parents. Agencies are required to provide an out-of-home placement that is the 'least restrictive' and 'most family-like' for the child. Judges must consider the cultural, linguistic, environmental, and geographical aspects of the placement, as well as the substitute caregiver's ability to maintain the child's connection to his or her family, school, traditions and community. Kinship care (or relative placement) can be the best possible opportunity for maintaining these ties and reducing the overall trauma of removal and placement. Furthermore, kinship care placements generally allow for a more natural parenting time routine, a familiar 'supervisor' if parenting time is required to be supervised, and potentially fewer logistical challenges associated with timing and transportation.

Research has shown that children placed with kin experience fewer placement disruptions than do children placed with non-related foster parents and, if disruption occurs, the children are more likely to be transferred to the care of another relative rather than a non-relative caregiver.[45]

Because research has shown that kinship caregivers are more likely to be older, single, less educated, unemployed, and poorer than most agency foster parents,[46] they are sometimes eliminated as unable or unfit to care for the children. They typically require assistance from caseworkers in order to obtain financial, health and social support to be able to provide for the children placed in their care. Judges should specifically inquire about the level of support that has been offered to assist the kin caregiver. Many jurisdictions offer relative caregiver funds. Supplemental Security Income and Social Security Disability benefits are often available. The caseworker should be expected to assist the relative with school enrollment, Medicaid enrollment, and access to other entitlement programs, etc. Institutionalized attitudes and practices that create unbalanced benefits for relatives must be eliminated, but while they still exist, judges may have influence to change them. For example, some states will pay a foster care maintenance payment to an agency foster home but not to a relative. This sort of institutional bias prevents children from being placed with kin. Parents are often required to place severely

[45] Gleeson, J.P. (2007). *Kinship Care Research and Literature: Lessons Learned and Directions for Future Research*. *Kinship Report*. Child Welfare League of America, 1(2), 1, 8-11.
[46] Cuddleback, G. S. (2004). Kinship family foster care: A methodological and substantive synthesis of research. *Children and Youth Services Review*, 26, 623-639.

KINSHIP CARE RESEARCH OVERVIEW

In 2007, the Child Welfare League of America (CWLA) published a report of a review of 15 years worth of research on kinship care. Following are highlights of this literature review.

Placement Stability: Children in the child welfare system who are in relative placements experience fewer placement disruptions than children placed in non-related foster care. If the placement is disrupted, children in relative care are more likely to move to the home of another relative versus placement in a foster home. Financial and social support influence relative placement stability.

Reunification: Children placed with kin are reunified at slower rates with their biological parents than those children in non-related foster care. However, those in kinship care are less likely to reenter the child welfare system. The slower rate of reunification may be connected to the decreased focus on permanency once a child is placed with a relative.

Adoption: Recent research, as compared from early research about relative adoption, shows a greater willingness on the part of relatives to consider adopting their kin. Key to relative adoptions are the approach of the case manager in discussing all permanency options, information provided and assistance and support in weighing the pros and cons of a particular option.

Guardianship: Subsidized guardianship as an alternative to adoption is thought to be more consistent with cultural practices of 'informal adoption.' This is particularly true for African American families who are typically comfortable with taking care of their kin permanently; however, are not supportive of termination of their son or daughter's parental rights.

Child Safety: The National Survey of Child and Adolescent Well-Being (NSCAW) found no difference between the child's physical environment and community violence exposure in kinship care versus foster care. Similarly, there are no detected differences between the number of children with kin and the number of children in non-relative foster care who are exposed to harsh disciplinary practices.

Child Well-Being: Children and youth living with relatives have been found to have lower rates of mental health and behavioral problems than do children in foster care and group care, although they have higher rates of these problems than the general population does and of those in non-child welfare related (informal) kinship placements.

Children's Views: Of the six studies on this topic published as of 2007, children generally reported feeling always loved at a higher rate than children in foster care. They are less likely to run away and more likely to like their caregivers, have contact with biological family and talk with the adults in their life about school and dating. Also, children reported that being in a relative's care required very little transition for them as they had close relationships with their extended family and experiences of living together all or some of the time.

Impact on Kin: Although they report high levels of satisfaction and meaning from taking care of their grandchildren, those who suffer the most physically and emotionally from kinship care are the actual caregivers. Conflicting loyalties, complex legal situations, lack of financial and material resources, stress/physical health deterioration and community violence all impact a relative's ability to care for their kin.

Source: Gleeson, J.P. (2007). *Kinship Care Research and Literature: Lessons Learned and Directions for Future Research. Kinship Report*. Child Welfare League of America, 1(2), 1, 8-11.

disabled children in care because benefits are only available if the child is in foster care. Judges must weigh these institutional practices in determining their reasonable efforts findings. Many advocates argue just because it is policy does not make it reasonable.

Kinship caregivers may also find themselves facing undue bias or confront preconceived judgments about their ability to care for their kin based on the poor behavior of the parent. Of course, criminal history, involvement with the child protection system, and ability to provide for the children should be evaluated and may rule out kinship caregivers as an option. Even a criminal history or prior contact with child welfare, however, should not summarily rule out a relative. The court should make active inquiry as to the current circumstances of the family to determine whether prior history warrants eliminating the family from consideration.

Kinship caregivers should be approached from a strengths-based perspective – addressing their current situation, and evaluating current and known safety risks along the same lines that child safety is evaluated with respect to returning the child to his or her biological parents. Non-relative foster care placement should be a last resort and, even if a child is placed in foster care, maintaining a connection with relatives who are important to the children and supportive of the parents is essential.

Non-Relative Foster Care

When children must be placed in foster homes, the judge must consider a variety of factors at the PPH to determine whether the placement is appropriate. Whether and how the placement supports the child's cultural identity is a key consideration. The judge should ask the parents, relatives, and community representatives how the child identifies culturally and in what ways the court and the placement can best support his or her identity. The child's opinion should also be solicited in these important considerations. The most basic elements involve language, food and meal times, religious beliefs and practices, and grooming. After the trauma of removal, placing a 10 year old in a home where he is the only Spanish speaker, expected to eat food that is unfamiliar, attend an unfamiliar church, or even, cut or style his hair in a way that is not acceptable in his family of origin, can strip a child of his identity. It is essential to ensure the placement supports the child's cultural identity which, in turn, can promote active communication, less difficulty with acclimating to the new

environment, and can build productive relationships among the foster family, child and birth parents. Supporting the family's culture and traditions may also contribute to the parents' engagement with permanency planning efforts and related interventions and services. Whether in foster care or kinship care, the ability of the substitute caregiver to maintain the child's connection to his or her parents and extended family is essential.

Visitation/Parenting Time

Note: The term "visitation" is only used in this Technical Assistance Bulletin given that it is most often used in the child welfare system. Juvenile courts are encouraged to change the term to 'parenting time' in order to communicate the importance of the parent/child relationship.

At the PPH, supervision of parent-child contact should not be imposed unless there is objective evidence suggesting that the child will not be safe in an unsupervised setting. In many jurisdictions, sadly, supervised visitation is the norm. It is critical that the court make a vigorous inquiry and a well-reasoned and supportable determination as to why visits need to be supervised. In order to truly preserve the child's attachment to the parent, visitation should be as unrestricted as possible while ensuring the child's safety. There are jurisdictions in which visits are assumed to be unsupervised unless the agency can rebut the presumption that unsupervised visits are in the child's best interest. Again, it is important for the court to actively inquire about the facts to support any conclusion drawn. For example, reports often state that "the child acts out after visits, therefore the visits need to continue to be supervised." The court must explore the fact that the child, in fact, may be acting out because they miss the parent and need more time with them.

Visitation has been called the 'heart of permanency planning'[47] and frequent visitation can promote healthy attachment and reduce the negative impact of separation for both the child and the family.[48] Research shows that regular, frequent visitation increases the likelihood of an expeditious reunification.[49] Visitation should be specifically tailored to meet the

VISITATION & REUNIFICATION

Research has noted the importance of parent-child visitation as a predictor of family reunification. One reunification study involving 922 children age 12 or younger determined that children were 10 times more likely to be reunited with mothers with whom they had visitation. In fact, the birth mother's visits are a stronger predictor of reunification than are her presenting problems (i.e., substance abuse). The location and frequency of visits is important as well and are linked to positive reunification and parental engagement outcomes.

Visits in a home setting – birth parents or foster parents – were associated with more frequent maternal visitation than visits at fast food restaurants, an office building, or other location. Frequent visitation is associated with a birth mother's level of involvement in case reviews and other case-related activities. Finally, and critically, foster children who saw their birth parents at least once every two weeks showed fewer behavior problems, less anxiety and less depression.

Sources:
Davis, I. P., Landsverk, J., Newton, R., & Ganger, W. (1996). Parental visiting and foster care reunification. Children and Youth Services Review, 18(4/5), 363–382.
Cantos, A. L., Gries, L. T., & Slis, V. (1997). Behavioral correlates of parental visiting during family foster care. *Child Welfare*, 76, 309-330.
Gardner, H. (1996). The concept of family: Perceptions of children in family foster care. *Child Welfare*, 75, 161-183.
Child Welfare Information Gateway. (2006). Family reunification: What the research shows. Retrieved at http://www.childwelfare.gov/pubs/issue_briefs/family_reunification/family_reunification.pdf on August 31, 2010.

[47] Hess, P. & Proch, K. (1988). *Family Visiting in Out-of-Home Care: A Guide to Practice*. Washington, DC: Child Welfare League of America.
[48] Smiarga, M. (2007). *Visitation with Infants and Toddlers in Foster Care: What Judges and Attorneys Need to Know*. ABA Center on Children & the Law and Zero to Three Policy Center
[49] Id.

individual needs of the child and family before the court. "One-size-fits-all" approaches place unnecessary restrictions on the child and family and may delay permanency.
Many visitation schedules are more focused on the needs of the child welfare workers or foster parents than they are designed to meet the needs of the child and family. Visits should be scheduled at a time that best allows the parent to participate and disrupts the child's schedule as minimally as possible.

Visitation should include all levels of 'family time' with frequent face-to-face interactions. Parent-child visits should include all siblings unless there are reasons to do otherwise. If so, arrangements should be made for specific visitation time between/among siblings. Visits should take place in a natural environment – a home, family church or the park – rather than an office. Other contacts such as phone calls, emails and letter writing should be scheduled and parents should be expected and encouraged to participate in all school, medical and therapeutic appointments. Parents should be allowed to participate in cultural and community events with their children.

It is important for caseworkers to personally observe visits. While workers may consider feedback from others who may be supervising the visitation, the personal experience and evaluation of the caseworker for the family can help guard against potential bias in describing the visits. Judges should expect that caseworkers will have the requisite education, training, and tools (i.e., a visitation assessment form) to make a complete and informative report to the court about visitation that includes qualitative information about the parent's ability to protect and keep his child safe, as well as parent-child attachment. Reports on these issues should be framed in a strengths-based manner, emphasizing challenges and issues in terms of additional supports and needs of the parent and/or child. It is very important for the court to carefully inquire about conclusions drawn in reports of visits especially if the visit is observed outside the room (e.g., behind a one-way mirror); a person supervising the visit may draw conclusions based on incomplete facts or assumptions about the behavior of the parents.

DETERMINE WHAT REASONABLE SERVICES, INTERVENTIONS AND SUPPORTS WOULD ALLOW THE CHILD TO SAFELY RETURN HOME

- What services can be arranged to allow the child to safely return home today?
- How are these services rationally related to the specific safety threat?
- How are the parents, extended family and children being engaged in the development and implementation of a plan for services, interventions, and supports?
- How will the agency assist the family to access the services?
  - Does the family believe that these services, interventions and supports will meet their current needs and build upon strengths?
  - Has the family been given the opportunity to ask for additional or alternate services?
- How are the services, interventions and supports specifically tailored to the culture and needs of this child and family?
  - How do they build on family strengths?
  - How is the agency determining that the services, interventions and supports are culturally appropriate?
- What evidence has been provided by the agency to demonstrate that the services/interventions for this family have effectively met the needs and produced positive outcomes for families with similar presenting issues and demographic characteristics?

Research shows that the longer children remain in out-of-home care, the less likely it is that they will be reunified with one or both parents.[50] Thus, early and intensive permanency and service planning and implementation are keys to promoting expeditious reunification. At the PPH, the court should inquire directly of the agency and the family regarding the services and supports necessary for the child to be safely returned home. Like visitation planning, the services should be specific to the needs and safety threats in the individual family. Not all parents require parenting skills courses and anger management and not all children require play therapy. Rather than overwhelming parents with multiple services, agencies and families should work together to create a plan that is rationally related to the jurisdictional findings of the court. Should further allegations arise later in the case, and these allegations are proven, additional services to address these concerns can be added to the case plan.

Emphasis should also be placed on increasing the involvement of natural supports to a family – neighbors, relatives, respite families, afterschool care, etc. – that can reduce the safety threat, increase the parent's protective abilities and reduce the child's vulnerability. Immediate in-home services have been found to be successful in that they initiate very close in

[50]Wulczyn, F., Chen, L. & Hislop, K.B. (2007). *Foster care dynamics 2000-2005: A report from the Multistate Foster Care Data Archive*. Chicago: Chapin Hall Center for Children at the University of Chicago.

time to the event necessitating a referral, teach practical skills to use in the home, and emphasize skill building and the delivery of concrete services.[51]

The family should be actively engaged in developing and participating in the service plan. Family-focused approaches addressing the needs of the entire family unit, not just the child, are more likely to yield long-term results. Even therapeutic interventions for the child should involve the parent(s).[52]

Families must be provided with programs that are known to be (1) effective and (2) incorporate family's unique strengths, cultural connections and community resources. Since the mid-1990s, there has been a growing body of social and behavioral science research that supports the use of approaches and strategies that have demonstrated their effectiveness with children, youth and families.[53] To determine effectiveness, such programs have been evaluated rigorously in experimental or quasi-experimental studies.

EVIDENCE-BASED PRACTICES AND PROGRAMS

A program or practice is evidence-based if (a) evaluation research shows that the program produces positive results; (b) the results can be attributed to the program itself, rather than to other extraneous factors or events; (c) the evaluation is peer-reviewed by experts in the field; and (d) the program is "endorsed" by a federal agency or respected research organization and included in their list of evidence-based programs.

Although the availability of evidence-based programs may be limited in some geographic areas, ensuring that parents and children are enrolled in programs that have been rigorously tested increases the odds that the program will work as expected and the intended outcome will result.

Source: Cooney, S. M., Huser, M., Small, S. A., & O'Connor, C. (2007). Evidence-based programs: An overview. *What Works: Wisconsin Research to Practice Series*, 6. Madison: University of Wisconsin-Extension. Retrieved August 1, 2008, from http://www.uwex.edu/ces/flp/families/whatworks_06.pdf
See also: Lederman, C., Gomez-Kaifer, M., Katz, L., Thomlison, B. and Maze, C. (Fall 2009). An Imperative: Evidence-Based Practice in the Child Welfare System. *Juvenile & Family Justice TODAY.*

Judges should ask caseworkers if the services and interventions in the plan are evidence-based and considered effective with families involved in child welfare proceedings and families from the particular socioeconomic and racial/ethnic background as the family before the court. One of the many advantages of using an evidence-based program is the increased likelihood of participant retention, which is essential with families involved with the child welfare system. Although this concept is new for many child welfare systems and there simply may not be evidence-based programs in a particular community, "evidence-based" should be used as the benchmark for programs and interventions.

[51] Dawson, K. & Berry, M. (2002). Engaging families in child welfare services: An evidence-based approach to best practice. *Child Welfare*, 81, 293-317.
[52] Dawson & Berry (2002)
[53] Cooney, S. M., Huser, M., Small, S. A., & O'Connor, C. (2007). Evidence-based programs: An overview. *What Works: Wisconsin Research to Practice Series*, 6. Madison: University of Wisconsin-Extension. Retrieved August 1, 2008, from http://www.uwex.edu/ces/flp/families/whatworks_06.pdf

Pilot Studies of the Preliminary Protective Hearing Benchcard's Usability & Effectiveness

The Preliminary Protective Hearing (PPH) Benchcard has been piloted in three Model Court sites: Los Angeles, California; Omaha, Nebraska; and Portland, Oregon. This pilot was conducted along with a rigorous research study to test the effects of the PPH Benchcard. The first phase of the study included data collection on approximately 500 children in the three study sites. Data were gathered from case file information (both court and agency files) and from courtroom observation. This longitudinal study was designed to follow these children throughout the course of their involvement in the juvenile dependency system. Researchers collected data at several junctures from placement to establishment of jurisdiction and disposition. They collected information on numerous data points, including demographic details (including race), information about the families involved, hearing participants, dates of case events, details on allegations, services, and placement outcomes.

To explore PPH Benchcard implementation effects, the study was designed to allow for several different comparisons. Data from a baseline sample were collected at each of the three sites, and judicial officers at each site were randomly assigned to either a PPH Benchcard group or a control group. Judicial officers in the PPH Benchcard group were trained on its use, including receipt of a draft of this Technical Assistance Bulletin explaining the development of the PPH Benchcard. They then began implementation of the PPH Benchcard in their preliminary protective hearings. After each judicial officer heard 10 preliminary protective hearings with the PPH Benchcard, all judicial officers in each of the sites (both the PPH Benchcard group and control group) began using the PPH Benchcard in their preliminary protective hearings. The PPH

Benchcard was not shared with stakeholders during the research project in order to isolate the judicial intervention. Had the PPH Benchcard been shared with others, it would have been difficult to measure whether judges or others were raising key issues associated with its use.

This methodology will allow researchers to examine any changes in the status of children and later, the actual effects of using the PPH Benchcard. Future analysis will also assess any potential reductions (or increases) in decision-making disparities, changes in judicial and child welfare practice, and child welfare outcomes like safety and permanency.

Pilot Survey Results

As part of the pilot assessment, judges who had been assigned to the Benchcard implementation group were asked about their opinions on ease of implementation, challenges to implementation, and strategies for more efficient use. Of the judges who were surveyed, 62 percent said that the PPH Benchcard was easy to integrate into the Preliminary Protective Hearing. Most believed that it was easy to integrate because they already had experience using the *RESOURCE GUIDELINES*. Approximately 25 percent of judges surveyed indicated that it was difficult to integrate, and the remaining 13 percent fell somewhere in the middle. Some of the challenges noted were:

- **Flow.** Several judges indicated that the flow of the PPH Benchcard was not in line with their typical hearing process, making it difficult to integrate the PPH Benchcard. Revisions were made to the flow of the PPH Benchcard based on this feedback.
- **Length.** A concern of some was length of the PPH Benchcard since the piloted PPH Benchcard had questions across four pages. The PPH Benchcard was reorganized by topic area for ease of use.
- **Stakeholder Responses.** A final concern that was expressed was that stakeholders, such as agency representatives or attorneys, were not prepared to respond to PPH Benchcard questions. For the study, only judicial officers implemented the PPH Benchcard, but going forward, all stakeholders will be included.

Court Observation Findings

Researchers observed Preliminary Protective Hearings in the three pilot sites to assess the impact of the PPH Benchcard on hearing practice. This observation found that judicial officers who implemented the PPH Benchcard discussed more key topics (based on the CCC initiative and topics outlined in the *RESOURCE GUIDELINES*) during the preliminary protective hearings. PPH Benchcard implementation also corresponded to a greater thoroughness of discussion across topics. PPH Benchcard implementation was also found to be associated with greater direct judicial inquiry and with more engagement of parents.

More discussion of the pilot study in general, as well as these findings in particular, is available in the CCC Benchcard Study Technical Report. This Technical Report will also include preliminary findings and analysis on PPH Benchcard implementation effects on outcomes for families and children.

JUDICIAL FEEDBACK FROM PPH Benchcard PILOT SITES

"….[I]t is the strong feeling in our jurisdiction, among judges, lawyers and child welfare workers alike, that consistent use of the Benchcard is raising the standard of practice for everyone. Everyone is now looking at the Benchcard to see how to develop court practice training for their particular disciplines so that lawyers, child welfare workers, service providers and others, can be prepared to answer the court's questions the moment they walk in for the first appearance, and to know that a second shelter hearing will follow closely if the court needs more. We believe that use of the Benchcard is strongly encouraging serious consideration of all the placement alternatives before the court hears the recommendation."

— JUDGE KATHERINE TENNYSON
MULTNOMAH COUNTY FAMILY COURT
PORTLAND, OREGON

"Since the start of the Benchcard, I have found that considerable discussion is being had at the initial hearing in regards to services that enable the children to return home. It seems that more children are returning home at the first hearing than in the past. In addition, for those children that remain outside of the home, more are definitely being placed with relatives. More relatives are being explored, even when the first relative option turns out not to be viable….Visits when children are remaining outside of the home are less restrictive when they safely can be, and the parties seem to have more discussions in regards to the children going home sooner and/or visits being liberalized sooner. It also appears that these concepts work well for all children in our Child Welfare System, including Caucasian children…As an aside, I actually enjoy following the Benchcard."

— JUDGE WADIE THOMAS, JR.
SEPARATE JUVENILE COURT OF DOUGLAS COUNTY
OMAHA, NEBRASKA

"The CCC Benchcard served as a concrete reminder to consider and verbalize required findings, such as the services available to leave the child in the home without risk, and efforts made to place the child with relatives. It also provided valuable prompts to solicit the input of those family members present in court and to ascertain at the end of the hearing that the parents understood what happened in the hearing. It has the potential to equalize treatment of parties of diverse backgrounds by ensuring that the same considerations are made in every case and by making sure that all participants have an understanding of the court process…."

— JUDGE D. ZEKE ZEIDLER
LOS ANGELES JUVENILE COURT, CALIFORNIA

Implementing the Preliminary Protective Hearing Benchcard Based on Feedback from the Field

The pilot test data were used to inform the final version of the PPH Benchcard, to guide recommendations regarding use and implementation and to inform related training tools. The primary lessons learned indicate that the most effective way to integrate the PPH Benchcard into the preliminary protective hearing is for judges to become very familiar with the questions. This includes understanding the rationale behind the inclusion of each question included in the PPH Benchcard as described in this publication. The pilot test revealed that reading directly from the PPH Benchcard may make the hearing seem awkward and may prohibit the natural interaction between the judge and the parties. Thus, thoroughly learning and integrating the PPH Benchcard questions will help the judge obtain key information linked with improving outcomes while maintaining the flow of the hearing.

IMPLEMENTING THE PRELIMINARY PROTECTIVE HEARING BENCHCARD

Lay the Foundation

- Participate in training that examines foundational issues related to implicit bias, structural and institutional racism.
- Determine availability of data, gather and report on local problem scope.

Build Consensus Through Collaboration

- Hold collaborative meetings to discuss the PPH Benchcard and its potential impact in order to build consensus for its use.

Develop a Strategic Plan

- Discuss the jurisdiction's strengths and opportunities. Discuss strategies and priorities. The PPH Benchcard is just one tool. It important to consider how it will fit into the jurisdiction's overall strategic plan for reducing disproportionality and disparity.
- Include all members of the collaborative.
- Set attainable goals and specific timelines and activities.

Train all Stakeholders on PPH Benchcard Use

- Train all stakeholders so that everyone is familiar with the questions and can actively participate in discussions during the hearing process.

Participate in Ongoing Dialogue

- Use the PPH Benchcard implementation process, challenges and successes as a means of continuing ongoing dialogue regarding disproportionality and disparities.
- Assess whether disproportionality and disparities have changed as a result of use of the PPH Benchcard. Discuss reasons why it has or has not been as effective a tool.
- Discuss ways to better utilize the PPH Benchcard so that is fits the individual needs of the jurisdiction and all agencies involved.

The second major lesson learned is that training prior to implementing the PPH Benchcard is essential and must include all major stakeholders involved in the court process. To reduce spillover effects and maintain statistical control during the pilot test, only judges were trained on using the PPH Benchcard. However, this method prevented the parties from being fully prepared to address the new issues related to safety, reasonable efforts and race and culture that are raised by the PPH Benchcard. Training all professionals involved with the preliminary protective hearing about the PPH Benchcard, including the underlying reasons for the specific questions, will allow social workers, attorneys and others to gather the necessary information prior to the hearing. Such

training will also foster greater awareness of cultural considerations and implicit bias and the professionals' role in reducing disparities for children and families of color. Ultimately, professionals who are motivated to be responsive to the judge, may start using the PPH Benchcard questions outside of court, potentially improving their practice and reducing the impact of unintended bias in their own decision-making.

PRIMARY LESSONS ABOUT THE PRELIMINARY PROTECTIVE HEARING BENCHCARD

- Become very familiar with each specific question on the PPH Benchcard in order to implement effectively.
- Training should include all stakeholders so there is awareness about the issues that will be addressed by the judge.
- Using the PPH Benchcard increases discussion of major hearing issues.
- Using the PPH Benchcard increases parental engagement in the process.

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