Representing Parents in Child Welfare Cases

A Basic Introduction for Attorneys

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American Bar Association / Washington, D.C.
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in Child Welfare Cases

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Acknowledgments

The goal of the National Child Welfare Resource Center on Legal and Judicial Issues is to improve the court and child welfare systems to better the lives of children and families. This booklet is one step along that road; without quality legal representation for parents, the system is unfair and not good for children.

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ABA Center on Children and the Law
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Introduction

Representing parents in child protection cases is no easy task. In these cases, the rights of parents to raise their children is at stake.

Children are often removed from their homes amid allegations of abuse or neglect. The parent may face months of treatment or counseling and may be required to make major lifestyle changes before the safe return of the child is possible. Reunification may be an unrealistic goal, with termination of parental rights the ultimate result.

Recent federal and state legislation also affects the representation of parents in child protection cases. The most prominent is the Adoption and Safe Families Act (ASFA) of 1997, which was passed to reform the child welfare system. Intended to emphasize the safety, permanency, and well-being of children in foster care, ASFA tightens the timeframes within which efforts toward reunification can be achieved.

Reunification may be an unrealistic goal, with termination of parental rights the ultimate result.
Representing Parents In Child Welfare Cases

This booklet introduces you to the responsibilities and duties of attorneys who represent parents. It outlines the various proceedings in a case, addresses recent reforms, and refers to key state and federal laws. The final section cites books and articles that will help you learn more about the child welfare process.

This booklet is not intended as a substitute for a detailed practice manual, nor is it intended to give you a comprehensive knowledge of relevant law. Rather, this booklet is written for attorneys who are new to child protection cases and is designed to help you better understand your role as the parent's representative.

A note about variations in state law: Each state uses its own terms to describe the various hearings in child protection cases. While this booklet uses the most typical terminology, some of the hearings in your state may have other names. When reading about the court process, you will need to determine what the most nearly equivalent hearing is in your state.

While this booklet explains the essence of the court process in most states, you will need to learn the unique features of your own state statutes, court rules, agency policies, and local practice.
The Role of Parents' Counsel in Child Protection Proceedings

General Responsibilities of Parents' Attorneys

An attorney is required to provide competent representation to a client. "Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation." ABA Model Rules of Professional Conduct 1.1 (1989)

An attorney also must act with reasonable diligence, as well as "with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf." ABA Model Rules of Professional Conduct 1.3; Comment – Rule 1.3 (1989).

Given the most serious potential outcome of a child protection matter—severance of the parent-child relationship—as the parent's attorney, you must recognize the ethical responsibilities of representation and you must be sensitive to the intense emotions involved. You must remember that the parent is your client, and the parent should make significant decisions as to the overall posture of the case.

You must remember that the parent is your client.
You are responsible for apprising your client of alternatives, as well as of the ramifications and obligations surrounding each alternative. In addition, guide your client in making an informed decision about the posture of the case.

Tactical and strategic litigation decisions lie within your domain. For example, such decisions would include vigorously opposing delays when the child is out of parental custody—except in special circumstances, such as when a hearing is scheduled during a week in which a parent has been admitted to a mental hospital for a discrete short-term period. Part of your function as attorney is to challenge and test the child welfare agency's version of the facts, which may be based on an incomplete investigation or on unsupportable conclusions.

Although you must zealously represent the parent, experience shows that confrontational and obstructionist tactics often tend to be counterproductive to the parent's interests. Since the agency and the court wield enormous and continuing power over the life of the child and, therefore, the parent, it benefits your client when you are selective in deciding which issues to contest.

You should seek a productive working relationship with the agency whenever possible, especially at the early stages of the juvenile court process. Such a relationship may help:

- expedite the resolution of the case,
- minimize needlessly contentious relationships between the parents and agency caseworkers, and
- facilitate negotiated settlements that ensure the protection of the child without unnecessarily infringing on the family's integrity.
Representing Parents in Child Welfare Cases

With the tightened timeframes under ASFA, in most cases, you should advise your client to cooperate and accept services immediately. In certain cases, however, cooperation may require potentially damaging admissions, i.e., where a criminal case is pending or your client denies that the abuse ever occurred.

Although the American Bar Association (ABA) Model Rules do not state precisely what level of knowledge, skill, and preparation is necessary for a minimum level of competent representation, it is safe to say that before each factual hearing constituting a critical stage in the proceedings, among other things, you must:

- discuss the matter with your client sufficiently in advance to have time to investigate and prepare the case;
- conduct a thorough, independent investigation;
- conduct formal discovery, if needed;
- interview and subpoena necessary witnesses before the hearing;
- research any legal issues pertinent to the case; and
- continue with the case until it is specifically relieved.

As the result of court improvement efforts and other reforms, some jurisdictions have implemented specific standards addressing representation of parents and children in child protection cases. You should be familiar with any applicable standards in your jurisdiction.¹

In most cases, advise your client to cooperate and accept services immediately.
In addition, you will need to determine whether the court adopts a formal or informal approach to child protection hearings. Courts adopting an informal approach either relax the rules of evidence or ignore them entirely, most notably in the admission of hearsay testimony. When it is in your client’s interest, you must demand strict adherence to procedural and evidentiary rules.

Finally, the parent’s attorney is not the advocate for the best interests of the child. That is the province of the agency, the guardian ad litem (GAL), and the court. Your primary concern rests with the rights and interests of the parent and the preservation of the family unit. Furthermore, even if the parent has done everything the agency has alleged, court and agency involvement may not be justified.

In the final analysis, if you work to ensure the integrity of the judicial process, you ultimately safeguard the interests of the child.

The Effect of the Adoption and Safe Families Act

When a child has been removed from the home due to allegations of abuse or neglect, federal and state legislation has been enacted that significantly shortens the time period for the parent to demonstrate that he or she has complied with the requirements set forth by the court and is ready for the return of the child.

You must be vigilant about the passage of time. Under the new mandates, every week is critical.
Timeline from the Adoption and Safe Families Act

- **Decision to make reasonable efforts to reunify**
  - 6 months: Review hearing
  - 12 months: Permanency hearing
  - 15 months: ASAP
  - ASAP: Termination hearing

- **Decision NOT to make reasonable efforts to reunify**
  - 30 days: Permanency hearing
  - 60 days: File TPR petition (if judicial determination of abandonment or conviction of certain crimes)
  - ASAP: File TPR petition (if no reasonable efforts for other reasons if adoption is goal)

Reviews every 6-12 months (from previous hearing) until child is adopted or permanency plan is completed.

* When calculating when to have the permanency hearing or the 15 or 22 months, use the earlier of the date of adjudication or 60 days after the child is removed from the home.

* * Unless the child is being cared for by a relative, or compelling reason not to TPR exist.

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Representing Parents in Child Welfare Cases

You must be familiar with any recent changes to the state statutes and rules governing these cases.

The most important change is the enactment of the Adoption and Safe Families Act (ASFA), which sets forth specific guidelines for children in foster care. To comply with ASFA, states have changed the court process of child protection cases. Therefore, it is important that you are familiar with any recent changes to state statutes and rules governing these cases.

Generally, while the agency is still required to demonstrate that reasonable efforts were made to preserve or reunify the family, the child's health and safety take precedence. ASFA allows for concurrent planning, i.e., while providing reasonable efforts toward reunification, the agency may adopt a concurrent alternative plan for permanency. For example, taking into account that the plan of reunification may not work even at the same time reunification efforts are underway, a concurrent plan of adoption may be implemented.

The child may be placed with foster parents who are willing to adopt if reunification fails. By already having a backup plan in place, the goal is to eliminate the time a child is in foster care if the first plan fails.

When adopting a concurrent plan, the agency should provide services early in the case and, as the parent's representative, you should advocate for services immediately.

You also should view concurrent planning efforts with a healthy suspicion. Always warn your client of the consequences of noncompliance, i.e., that the agency will move on its "concurrent" plan to place the child in another permanent setting.

View concurrent planning efforts with a healthy suspicion.
Furthermore, carefully weigh the accuracy of information about the child and your client that is presented by the foster or pre-adoptive parents, given the potential for conflict. The foster or pre-adoptive parents may not be as supportive of reunification if the concurrent plan provides for their adoption of the child.

In certain cases, ASFA allows reasonable efforts to be bypassed when:

- the parent has subjected the child to aggravated circumstances as defined by state law;
- the parent has been convicted of certain crimes, such as killing, attempting to kill, or committing a felony assault against another of his or her children; or
- the parent's rights to a sibling have been involuntarily terminated.

The court's use of the bypass provision is discretionary and designed for extreme circumstances. It is important, however, to be aware of what circumstances the state deems to be "aggravated." You must be fully aware of any past circumstances that might cause the agency to argue for using the bypass provision.

Once there is a finding that reasonable efforts are not required, the court must hold a permanency hearing within 30 days. Even if the bypass provision is invoked, you may want to help the parent obtain the necessary services in an effort to convince the judge to reconsider the decision at the permanency hearing.
If a parent has participated in services during the interim period before the permanency hearing and is showing progress, the judge may be willing to reverse the prior decision and order that the agency make reasonable efforts to reunify.

Another change that affects many parents is the requirement that the court hold such a permanency hearing within 12 months:

- after the date of the first judicial finding that the child was subjected to abuse or neglect;
- or
- 60 days after removing the child from the custody of the parent, whichever date is earlier.

In other words, the permanency hearing must be held no later than 14 months after the date of removal. States can shorten this timeline, and some have a strict 12-month deadline after removal.

It is vital to explain to clients—particularly those who are familiar with the child welfare system—that the permanency hearing is not simply another foster care review hearing. Rather, as a result of this hearing, a decision is supposed to be reached as to a permanent placement for the child, i.e., return home, adoption, legal guardianship, permanent placement with a fit and willing relative, or another planned permanent living arrangement.

At the permanency hearing, the court is permitted to direct the agency to file a termination of parental rights petition.
The permanency hearing requirement does not mean that a child’s stay in foster care may never be extended. Such an extension, however, is less likely than before ASFA. Each state has or will design a process to consider when it may be in the child’s best interest to extend foster care.

The bottom line is you must always be mindful of the 12- to 14-month deadline, and you will be required to provide more substantive reasons than in the past for arguing that foster care should be extended.

Finally, under ASFA, a termination of parental rights (TPR) petition must be filed and concurrent planning initiated to find an adoptive family for a child if:

- the child has been in foster care for 15 of the past 22 months,
- the child is an infant that has been found by the court to be “abandoned,” or
- the court determines that the parent has been convicted of certain crimes, such as those previously outlined.

The agency can opt not to file a TPR petition if:

- the child is in the care of a relative (an option most states have accepted),
- the agency has documented compelling reasons why termination is not in the best interest of the child, or
- reasonable efforts were required to be made and the state did not provide the services it deemed necessary for reunification. For example, if there was a delay in the provision of services to
the client, you may be able to argue that the agency should not file a TPR petition.

Some states have defined these criteria further in policies (agency manuals); therefore, you must determine if this is the case in your jurisdiction.

These new deadlines will have a particular impact on a client who has a chronic substance abuse problem or is mentally ill. For example, one of the biggest issues in many child welfare cases is the substance abuse of a parent. The chronic nature of substance abuse, coupled with the shortened timeframes contemplated under ASFA, presents a major challenge for attorneys representing parents.

Experts suggest that parents with a chronic substance abuse problem need at least one to two years to stabilize in recovery. Given the propensity for relapse—especially early in recovery—and the limited availability of appropriate programs, it may be very difficult for a parent with a substance abuse problem to regain custody of a child within the 12-month period.

It is imperative, therefore, that you not wait for the agency to suggest appropriate services. You should immediately move to get services for the client and be creative in making suggestions for speedy, appropriate treatment.

Incarcerated parents are another group of parents that might be particularly affected by the shortened timelines. You must consider the timelines in light of the length of the prison term.
and the reason for the parent’s incarceration. For example, if the parent is in jail because of a crime committed against the child, reunification efforts may be bypassed. In some states, length of incarceration alone may be a ground for termination of parental rights.

If reunification efforts are not bypassed, you need to urge the caseworker to work with the incarcerated parent. Both you and the caseworker should contact the parent and the parent’s prison social worker as soon as possible to determine what the parent wants.

Will the parent work toward reunification or would the parent prefer to surrender his or her rights? If the parent wants to work toward reunification, explore what services are available in prison and stress to your client the importance of participating in any appropriate services.

It is vital that your client keeps in contact with the agency caseworker and the child through letters, phone calls, and small gifts to the child. If visits are possible, help to arrange them.

In addition, ask the parent if any relatives could be considered as placement resources. If so, this option may be your client’s best chance of avoiding the filing of a termination petition after 15 of 22 months of the child’s stay in foster care.

Remember that a parent’s incarceration is likely to be scary and confusing for a child, especially if the incarcerated parent was the custodial parent. It is important for the parent to try to explain the situation in language the child can understand. Frequent contact and visitation are also crucial. As the parent’s
attorney, you can help facilitate an easier transition for your client, as well as for the child. Generally, the agency case file is the single most important written record that you need to review.

Pretrial Independent Investigation

An initial step in representing parents is a pretrial independent investigation. At this stage, you must take several steps:

- **Immediately contact the social welfare agency responsible for the child in care.** The agency should be able to provide information about the reasons for the child’s supervision by the agency or removal from the home, as well as the agency’s immediate plans for the child. Early contact with the agency can help you influence the process to the greatest extent and potentially prevent removing the child from the home.

- **Contact the police or responsible law enforcement agency and obtain a complete report of any incident leading to the removal.**

- **Interview any potential witnesses,** including school personnel, teachers, relatives, neighbors, friends, clergy, health care providers, counselors, or any other relevant individuals.

- **Identify and confer in advance with the state’s witnesses.** After determining which witnesses should appear in the initial hearing, prepare them and review their testimony well in advance.
Emergency Removal Hearing

Emergency proceedings are triggered when a child welfare agency worker or law enforcement officer decides that it is necessary to place a child in protective care before trial. Emergency placement is usually authorized by an ex parte order directing the placement of the child.

In extreme circumstances, the child may be placed first and a court order approving placement sought shortly thereafter. Whether or not an ex parte hearing is held, the parents are still entitled to a subsequent hearing within a short time after the child is removed.

In nearly every jurisdiction, an informal emergency hearing (sometimes called the shelter care hearing) is automatically scheduled within a short time (pursuant to a statutory time limit) after placement.

Should the agency and court fail to comply with the statutorily mandated time period, you might argue for the immediate release of the child due to the failure to comply with the law.

Be aware, however, that the court is not required to place a child in a highly dangerous situation even if the agency or court failed to comply with time periods set forth in the law.
Since the document or report resulting from this investigation often becomes critical evidence in the case, assert your right to review and scrutinize all contents of the child protection agency’s case file as soon as possible and well before the court hearing.

Generally, the agency case file is the single most important written record which the attorney needs to review. You should be prepared to take any necessary steps to gain access to it. Then, you should determine if any records or case notes in the custody of the caseworker have not been placed in the file and move to obtain those records as well.

Of course, other documents not in the case file may also be critical in some cases, such as medical and school records that the caseworker has not obtained. In seeking such documents, you should evaluate whether formal or informal discovery is needed. If formal discovery is needed, decide which techniques are appropriate (depositions, interrogatories, subpoenaes tecum, etc.).

Be prepared to move for a copy of any written report before trial or to move for a continuance to ensure sufficient time to properly review the report.
At this emergency hearing, the court:

- reviews the decision to place the child,
- determines whether the child should be returned home before trial,
- decides what arrangements are needed for the child’s care, and
- oversee the beginning of court proceedings.

Among other things, the court also may address:

- whether relatives are available to help;
- whether the agency made reasonable efforts to avoid placement of the child;
- whether immediate services are warranted;
- whether appointing an attorney for the child, a GAL, or a Court Appointed Special Advocate (CASA) is appropriate or required; and
- under what terms visitation will be allowed.

The emergency hearing is often critical. Once a child is removed, it is easier for a judge to continue the placement.

If you are confronted with an emergency situation in which the child has already been removed from the home against the parent’s wishes, you must act expeditiously to minimize the amount of time the child and parents are separated.
The longer the separation, the more difficult it often becomes to reunite the family. In addition, for the entire time the family is separated, you should advocate for visitation and other ways to maintain parent-child contact.

In preparing for the emergency removal hearing, you must immediately determine both the agency’s and your client’s versions of the reasons for the child’s removal. In addition, you must determine what the parent wants regarding the child’s placement, frequency of visits, and communication with the child.

If the parent wishes to retain custody of the child, you must act quickly. Consider suggesting that the child be returned home while the parents accept agency support services for the problems that led to intervention, or have an acceptable relative or friend stay with the family. A court is less likely to order removal if the parents present a clear plan to address and eradicate the dangers the state alleged.

If the court determines that the child must be removed from the home, it may be appropriate to propose that a willing relative or friend take the child into their home pending the adjudication and disposition hearing.

Alternatively, you may choose to raise such alternatives in a post-emergency hearing motion. This notification affords the agency the opportunity to investigate before the adjudication hearing. The court and agency therefore might be inclined to recommend placing the child with these individuals pending disposition (as described on page 25).
Sometimes a child enters foster care as the result of domestic violence rather than strictly abuse or neglect. In this case, the child welfare system may not be the best place for the family to receive the help it needs.

If you represent the parent who is the victim of violence—which is generally the mother—you may be able to assist her in getting a Civil Order of Protection or a Stay Away Order so the child could be returned to her. Separating a child from the parent should be a last resort, especially when the parent did not harm the child.

If you are unfamiliar with this area of the law, find out about the resources in the community and help your client take advantage of them. A legal clinic that specializes in this type of care or shelters for victims and their children may be available in your area. You may need to seek the assistance of an attorney who specializes in this type of law.

If you are involved in the case before the emergency hearing and your client opposes removal or seeks other relief not agreed to by the agency, you will have to quickly secure witnesses to appear at the emergency hearing. The emergency nature of the proceeding probably will not provide enough time for subpoena, so you will need to secure desired witnesses by telephone.

Because the court must determine not only whether the child is in sufficient danger to justify sustained removal from him or her parents, but also whether the agency has made reasonable efforts to prevent placement, you should consider both these questions and work to ensure that the court record casts the parents in the most favorable light possible.
If the court finds that the agency has not made reasonable efforts to prevent placement, it may be more inclined to order the child’s return.

If the emergency hearing occurred without notice to the parents or there was insufficient time to prepare, you should request a rehearing or short delay rather than risk an ineffective and potentially damaging defense.

Press for a hearing to be held quickly since the child is out of the home and momentum is building against reunification.

Any time before the adjudication, you should also be prepared to file any and all appropriate pretrial motions, including (but not limited to):

- motions for discovery,
- motions for psychological and other medical assessments,
- motions for protective or restraining orders,
- motions to strike or dismiss the petition,
- motions for change of placement, and
- motions to modify visitation.

Request a rehearing or short delay rather than risk an ineffective or potentially damaging defense.
Mediation and Alternative Dispute Resolution

As a result of court improvement efforts across the country and the mandates of ASFA, some jurisdictions are implementing alternative dispute resolution techniques, such as mediation and family group conferences. As mediation becomes a part of many juvenile courts across the country, as the parent’s attorney, you must learn to advocate for the client within that structure. In some courts, alternative dispute resolution techniques are being used throughout the course of the case.

If there is mediation, you must carefully consider the strategy to be employed. Parents may be intimidated by the prospect of actually participating in a plan. Those who have been in the child welfare system for an extended period of time may distrust the process.

First and foremost, well before the initial mediation session, prepare your client for what to expect. Discuss the issues that will be considered as part of mediation. If a particular person’s presence at the session will help your client, suggest that he or she attend.

One intended outcome of mediation is parent empowerment. Parents are included in the process and hopefully motivated to participate in a final plan.

An agreement reached through mediation, however, probably will result in your client’s “giving up” something. Therefore, be sure your client is an active part of the case planning and is fully informed about any agreement. Be sure the agreement is complete and correct.
and take the time necessary at the mediation session to clarify or confer with your client.

In many jurisdictions, any agreement must be approved by the court and may be made a part of the court order.

Finally, not all mediation results in an agreement. Even when an agreement is reached, it may require modification later. Understand any process for modification and explain it thoroughly to your client.

Another alternative dispute resolution technique gaining in popularity is family group conferencing (FGC) or family group decision making (FGDM). These techniques employ the family in making decisions about the child’s placement, based on the underlying belief that involving extended families can achieve better results for children.14

While FGC and FGDM vary from place to place, the following is a common example:

The social worker refers the case to a coordinator who determines if a FGC meeting should be held. The coordinator prepares for the meeting by contacting family members and other supportive individuals, determining who will be invited, describing the role of the FGC meeting, and arranging all aspects of the meeting.

At the meeting, the professionals present factual information about the case to the assembled family members. The family members are then left in private to deliberate, considering whether or not the child was abused or neglected, and if so, what needs to happen to ensure the child’s safety.15
Upon reaching a conclusion, the professionals meet with the family members to consider their plan. If the agency and the family group cannot reach an agreement about the family’s plan, the court will likely consider the case and determine the next step.14

The goal of the FOC is to empower the family and make the members part of any decisions about the child’s future.

**Adjudication**

Adjudication (sometimes called the *jurisdictional hearing, trial, or fact-finding hearing*) is the hearing in which the court determines if allegations of child maltreatment are sustained by the evidence and legally sufficient to justify state intervention against the family. Adjudication is the most formal stage in child protection cases and often the most familiar stage for attorneys.

As the attorney, you must pay careful attention to findings concerning maltreatment because, as explained below, the adjudication process often has impact beyond the adjudication itself.

First determine whether a legal basis for intervention exists and whether it is in your client’s interest to contest.15 Although you must contest if the parents choose, you also must inform the parent as to whether it is advisable. The decides to contest depends on the chances of prevailing and, if the parent is likely to lose, the impact on the relationship between the parent and the agency. It may be in the parent’s best interest to negotiate the court’s specific findings that the child was abused or...
neglected and consider accepting services from the agency through a negotiated settlement.

With the exception of termination proceedings, a contested adjudication is the most adversarial stage of the proceeding. If you plan to contest, do so vigorously. Vigorous action includes:

- forcing the state to adequately prove each element of its case;
- introducing suggested findings of fact, where appropriate;
- raising objections to inadmissible evidence; and
- ensuring that all relevant issues are raised to preserve them for appeal.

Certain jurisdictions statutorily provide for specific findings of fact and conclusions of law. In some of these jurisdictions, the attorney's failure to request specific findings of fact is interpreted as a waiver of that right.

Although in most states hearsay evidence can be admitted at various stages of child welfare proceedings, it is generally not admissible at adjudication. It is crucial that you insist on adherence to the rules of evidence at the adjudication stage.

The record at adjudication is vital to the entire process. If the court makes specific findings to explain the grounds for its judgment, the record will be clearer for appellate review. The record at adjudication should specify the precise nature of the allegations so that disposition and casework can focus on the specific problems precipitating the state's intervention.
A parent can sometimes refuse to cooperate with the agency on an issue not legally established at adjudication. A clear record may foreclose subsequent factual disputes or further evidence against the parent that might otherwise be admissible.

It is important to remember that, under ASFA, reunification efforts may be bypassed if the parent has been convicted of certain crimes against a child. If you are representing a parent on a matter relating to such a crime, carefully consider any plea that could result in a finding for bypass. If another attorney is representing your client on such a criminal matter, you may want to consult with him or her about the potential pitfalls of a plea.

Disposition

At disposition, the court decides who shall have custody and control of the child and what steps are necessary to resolve the problems that caused state intervention. The questions addressed at disposition are therefore different from those asked at adjudication.

The issue is no longer whether the child abused the child, but what will happen next to the child; in other words, questions of placement, services, visits, and case plan. Experienced attorneys often overlook the disposition, which is frequently the most critical stage of the process.

Some states provide for the adjudication and disposition hearings to be held together, usually with disposition.
immediately following adjudication. Although separate hearings may delay the ultimate disposition, where it is not mandated, you should consider requesting that the disposition hearing be held at a later date. In some cases, it is only after the court sustains a petition alleging maltreatment that the parents will accept the necessity of a long-term placement and discuss potential arrangements with the agency.

Be mindful of early service delivery—a delay in the disposition hearing should not delay services for your client. Prepare separately for each hearing, regardless of whether the hearings occur on different days, because different questions are at issue.

At the disposition hearing, courts often admit into evidence the caseworker’s report. This report, prepared by the agency, summarizes the background of the case and makes a recommendation about disposition. Since the report is usually the agency’s primary piece of evidence at disposition and often heavily influences the court’s decision, you should insist on obtaining a copy of this report well before the hearing so that you can review the report and prepare for the hearing.

Some jurisdictions require that all parties receive a copy of the report no later than a specified time before the hearing. If you have not received this report by the specified time, you have a right to a continuance as a matter of due process so that you have adequate time to review the report and prepare for the hearing.

Always weigh the genuine need for a continuance against the running clock. You should also obtain a copy of any other
Always weigh the genuine need for a continuance against the running clock.

The case plan, which may or may not be attached to the caseworker's report, typically sets forth the type of placement, visitation schedule, parental problems to be addressed, and services to be provided.

Under 45 C.F.R. § 1356.21(g), the case plan must be developed within a reasonable time, but no more than 60 days from the date of removal. These regulations require that the parents be involved in the process of developing the case plan, or insist that the caseworker comply with this requirement and provide you with a copy well before the hearing.

You need to prepare a response to the agency's proposal, and in particular, to negotiate or contest certain issues, if necessary. You can help ensure that the plan the agency and parents develop addresses the specific problems that necessitate state intervention. At this stage, a working relationship among the attorney, the parent, and the agency is especially important.

When reviewing the agency's plan and preparing for the hearing, consider the plausibility and logic of the plan in light of the proven allegations. Conduct discovery, if necessary, including questioning and preparing witnesses expected to testify on behalf of the parents. Experts may be needed to testify as to whether the agency's plan is workable, and if not, what alternatives are appropriate.

The agency's plan may be limited by known resources. An initial review of services provided by the state and agency is crucial. Do not, however, feel restrained by
these services. Rather, independently explore services to assist the parent, thoroughly understand quality—ensures in the community, and be creative in suggesting alternatives.

Try to get the advice of an independent social worker or other experts. Given the tight timelines within which to achieve permanency, you also should insist on the immediate start of all appropriate services.

Similarly, do not hesitate to suggest alternatives for both removal and visitation, and consider devising a modified version of the case plan. For example:

- How often should visits occur?
- Should visits be at home? Or should there be protective visits in the agency offices only?
- Should the visits be supervised?

To facilitate visitation, advocate for placement as close to home (or the parent) as possible.

If the child is or may be placed in foster care, when revising the plan, determine what type of placement is preferred. Whenever possible, attempt to locate a relative or family friend who gets along with the parent, is willing to take custody of the child, and is acceptable to the agency. Such a placement will likely help more smoothly facilitate visits.

If more than one child is involved, consider whether it is best and possible to keep the siblings together.

Locate a relative or family friend.
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You should ensure that the parties and the court concentrate on the most crucial issues causing state intervention. Develop a plan on the record to address these issues.

Think about the disposition record in order to set a framework for review. The plan should address the issues raised at adjournment and should specify:

» what the parents are to do,
» what the agency is to do,
» what services are to be provided, and
» what the schedule should be for services.

Make sure the tasks and goals set forth for the parent are realistic and not designed to result in failure. Clear goals and the steps each party must take to accomplish those goals enable the court or agency to evaluate progress at later review hearings.

Additionally, a parent may gain significant advantage at a later date if he or she achieves the specified goals and the agency attempts to raise additional issues not addressed in the original plan.

Perhaps the most important advice you can give the parent is to adhere to the visitation schedule. Advise the parent that if there is a legitimate reason for missing a visit, he or she should promptly notify all parties of the reason and promptly reschedule it. Regular visitation, especially where the parent behaves appropriately during the visit, may help sway a judge away from termination.

Frequently monitor the parent’s progress and the agency’s services.
To ensure adherence to the case plan, frequently monitor the parent’s progress and the services provided by the agency.

- Periodically call the parent and the caseworker.
- Be attentive to any problems that arise as the parties execute or fail to execute the plan.
- If aspects of the plan prove vague or unworkable, seek to modify the relevant prior orders.

Review Hearings

Review hearings refer to post-disposition proceedings where the court considers how the case is progressing. Such hearings are necessary for several reasons. Case work and services for the parent may be delayed, the child may be needlessly moved in foster care, or visitation may be insufficient.

The court will assess the performance of the parent and agency, as well as the status of the child’s relationships. Furthermore, the court will determine the parent’s progress in achieving case plan goals, as well as the agency’s ability to provide promised services.

Determine whether any service providers view your client in a positive light or see progress in their program, and present that information to the court.
Vigilance at review is also important for the child. A child in foster care forms new relationships and ties to the biological family may weaken. If a child is moving between many placements, or often returns, the child may lose the ability to form strong bonds with any family.

Timetables for foster care review can be governed by state statute and state or local court rules. Agency regulations or policy may require caseworkers to institute review proceedings at particular intervals. In addition, federal law requires a review of children in foster care by either a court or an administrative body at least once every six months. 42 U.S.C. § 675(b)(8).

Under ASFA, foster parents, pre-adoption parents, or relatives caring for the child must be given notice of and the opportunity to be heard at all review hearings. 42 U.S.C. § 671(b)(6)(C). While this provision does not bestow party status on these individuals, you should inform the parent that these individuals will be given an opportunity to present their viewpoint to the court.

Speak with any of these individuals before the hearing to prepare for their presentation. Since they are not parties to the case, there is no ethical problem in contacting them before the hearing. If their testimony helps your client, you may want to help them get to the hearing.

If your client has confidential issues to be discussed at the hearing—sexual health problems, substance abuse, or HIV status—do not hesitate to move to have these individuals escorted from the courtroom except while they address the court.
Before each review hearing, you should determine how the case has progressed since the last hearing:

- Read agency case records,
- Obtain the latest copy of the agency’s case plan,
- Obtain the agency report and any other relevant reports, and
- Confer with your client.

Depending on changes in circumstances, you may request an update and revision of the plan in regard to the services provided by the agency. If caregivers and agencies have not devoted sufficient time and energy to the case or have not provided the services mandated by court order, analyze recent case law regarding the power of the court to compel state agencies to provide services as required by law.

You also might work with the parent, foster family, and agency to expand visits or to make them more frequent.

In some states, it can be tactically helpful to persuade the court to find that the agency has not made reasonable efforts to make it possible for the child to safely return home.

As with adjudication and disposition hearings, you should:

- Identify areas of agreement and disagreement in the agency’s (or other) reports,
- Arrange for necessary witnesses and evidence, and
- Inform the court of the estimated time of the hearing.
You will be most effective if you appear in court with a clear command of the facts and a proposed case plan that considers the changed circumstances.

At the hearing, concentrate on creating a record that places the parent in the most favorable light possible. While avoiding antagonism, emphasize any gaps in services and assistance to the parent. Focus on establishing a workable plan for the parents.

Depending on the circumstances and powers of the court, you may request that the court order increased parental visitation and sibling contacts, strengthen the service obligations of the agency, and, if appropriate, return the child to the parent.

Where possible, try to use ASFAs to your client’s advantage. ASFAs emphasize the health and safety of the child. Therefore, if the client has completed enough of the case plan for the child to be safe, argue for the child’s return.26

**Permanency Hearings**

After a child has been in foster care for an extended period of time or where a determination is made that no reunification efforts need to be made, a permanency hearing is held to determine the child’s permanent placement.27
At a permanency hearing, the court will determine if the child can return home. If the child cannot return home, the court will decide if the child should be:

- placed for adoption,
- referred for legal guardianship,
- permanently placed with a fit and willing relative, or
- placed in another planned permanent living arrangement.

ASFA requires permanency hearings to be held at the latest, within 12-14 months of the child’s removal from the home or within 36 days of a determination that no reunification efforts are necessary.

A permanency hearing is not just another review hearing. It is intended to truly resolve the issue of where the child’s permanent home will be. The purpose of ASFA is to make it more difficult for courts and agencies to continue extending a child’s placement in foster care with no plan for a permanent home.

You must impress upon the client the philosophy of ASFA and the reality that it entails. On one hand, not only does the client potentially have less time within which to improve his or her situation, the permanency hearing may result in a decision that will ultimately sever the parent-child relationship. For example, if the court decides that the child should be placed for adoption at the permanency hearing, the agency could be required to file for the termination of parental rights.
On the other hand, while the goal of the permanency hearing under ASFA is to reach a decision about a permanent placement, circumstances may arise where the court will extend the child's placement in foster care with the continued goal of reunification.

The court may select this option if the parent and child continue to have a strong bond and the parent is making significant progress that the child will likely be able to return home within a short period of time. Again, a solid record of visitation and cooperation with planned services will help the parent's argument for this option.

Therefore, if arguing for an extension of foster care with the continued goal of reunification, you should be prepared to set forth compelling reasons for this option. For example:

- document the substantial progress made by the client,
- state why the child cannot yet be returned to the home,
- specify if the agency has not provided all the services it promised in the case plan, and
- present a plan for the child's safe, early return home.

In addition, to strengthen your argument before the court, before the court hearing, try to convince the agency that this plan is appropriate.
Termination of Parental Rights

Most children in foster care are eventually returned home. However, when an agency regards the child’s return home as unlikely or undesirable, it may seek to terminate parental rights in order to legally free the child for adoption. In some jurisdictions, termination is called severance, guardianship with the power to consent to adoption (granted to the child welfare agency), or permanent commitment of the child.⁴⁴

Generally, a termination decree ends the duty of support, as well as the parent’s right to visit, communicate, or have information about the child. In addition, the parent is no longer entitled to notice of further legal proceedings and is effectively denied further opportunity to regain custody. With the passage of ASFA, as noted before, termination of parental rights may be affected within a shorter period of time and more frequently than ever before.

If the agency is considering filing for termination and the parent is opposed, you should argue why the petition should not be filed. For example, you might argue that services have not been provided as specified in the case plan or that a committed relative may be proposed to provide a permanent home for the child, e.g., through a permanent guardianship, without the necessity of termination.

Argue why the petition should not be filed.
In addition, consider arguing that there are compelling reasons why a termination petition should not be filed in your case. Understand that it is in the agency's discretion to file a termination petition and a compelling reason is not a defense for a parent.

However, making an argument that a compelling reason exists may persuade a judge in your client's favor. Some examples of compelling reasons include:

- A teenage child who is attached to his/her family and determines, after counseling, that he or she does not want to be adopted,
- A child with severe medical issues who cannot be placed with a family, or
- A child who is living with an individual who would accept guardianship but does not want to adopt.

In light of the severity of the threat facing the client, you must engage in a vigorous and zealous defense, unshaken by any consideration of the client's serving relationship with the agency. The essence of the parent's defense is that the child can eventually return home based on the history of state involvement with the family and/or that adoption is harmful or impractical for the child.

It is essential that you determine if the parent wants to contest termination. Voluntarily surrendering parental rights may be appropriate for some clients, yet many will be uncomfortable admitting that they want to surrender their rights. Discuss this option honestly with your client and let your client reach his/her own conclusion.
You should also explain that voluntary surrender may save the parent’s chance for the return of any other children in foster care or may protect the parent’s rights with respect to any children that might be placed in care later.

Under ESAF, the agency has grounds to bypass reunification efforts if the parent’s rights to a sibling were involuntarily terminated. Therefore, if the chances of winning the termination case appear very weak, voluntary surrender would prevent the agency from arguing for bypass of reunification efforts on this basis in the cases of any other children. It is important, however, to understand how your state defines voluntary termination. Some jurisdictions allow for the parent to “voluntarily” surrender up until the start of the termination hearing, while others might consider the parent’s surrender to be “involuntary” as soon as the petition is filed.

The first step in defending a termination of parental rights case is to assemble a complete history of the case. An initial interview with the client is critical as virtually every aspect of a client’s life can be of evidentiary significance.

While you should never rely exclusively on the client’s perception of the circumstances triggering agency and judicial intervention, the parent’s motivation and explanation for his or her behavior may be a valuable source of rebuttal evidence. Also interview witnesses, friends, relatives, and the caseworker. However, do not substitute an interview with the caseworker for the thorough inspection of agency records, court transcripts and files, and records from any other sources.
You should obtain releases from your client in order to acquire confidential documents, such as medical treatment, substance abuse treatment, employment, and welfare records.

In reconstructing the history of the case, identify the bases of the original abuse or neglect allegations and carefully analyze the agency’s efforts to work with your client. While assessing the strength of the agency’s case, you might explore the agency’s amenability to a settlement proposal short of termination.

If a settlement is unlikely, you must prepare for trial. Because of the magnitude and finality of the decision at issue, you must use all available defenses and tactics to provide zealous representation.

The state is required to prove its case by clear and convincing evidence. Expert witnesses for the parent are often necessary to rebut the state’s case. Consider motions for expert evaluations of, among other things:

- the child’s relationship with the parent and with the foster parents,
- the child’s response to continued contacts with the parent while in foster care, and
- the parent’s capacity to care for the child.

In some situations, where the case for termination rests on mental disability or other specific diagnoses, expert opinion will be critical to the case.
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If your client is indigent and unable to pay for these experts, check to see if your jurisdiction permits you to make a written motion asking the court to appoint an expert to testify on behalf of the parent. If your jurisdiction provides for such an appointment, include a list of two or three proposed experts in the motion to avoid the court making a potentially undesirable choice for you.

Besides contesting the legal grounds for termination, another basis to oppose termination exists. You may want to demonstrate that termination will not actually benefit the child. For example, you might assert that adoption is impractical and the child is likely to remain a “legal orphan.”

You also might show that some other arrangement is best for the child. In some instances, legal guardianship could be a better solution and is permitted under 42 U.S.C. § 5755(C). Legal guardianship allows for a permanent placement with full responsibility for all decisions about the child given to the guardian.

Once the appointment is made, legal guardianship does not require state or court intervention and can allow a grandparent or other individual to care for a child without severing all parental contact. Such an arrangement might be best suited to an older child who does not wish to be adopted.

Planned permanent living arrangements, such as placement in a permanent foster home or some other well-considered permanent arrangement, is another option. 42 U.S.C. § 5755(C).
While considered the “least permanent” option under ASFA, it may be particularly appropriate for a disabled child who cannot live within a traditional family structure or for an older child who does not want to be adopted and does not have a guardianship option.

Planned permanent living arrangements may be used only when compelling reasons exist as to why the other permanency options would not be in the child’s best interests.

As a settlement, you may want to explore the possibility of an open adoption arrangement. Determine whether your state allows for some form of open adoption, including informal visits or even enforceable visits.

**Appeal**

In determining whether to appeal an adjudication, disposition, review decision, or a decision to terminate parental rights, you must evaluate whether an appeal is in the parent’s interest. Although serving as counsel to the parent includes pursuing an appeal when meritorious, you should consider other factors.

The primary factor to consider is that of time. Because appeals tend to drag on, tax (at the very least) the parents’ emotional resources, and leave the family situation in continued disarray, it is not always a service to the parents to appeal.
However, if the appeal is meritorious, you should explore means of expediting it, possibly through a motion to expedite. In this motion, you might attach affidavits of experts outlining the damage to both the family and child if the appeal is not expedited.

You also should be aware that an increasing number of states are mandating expedited appeals in child abuse and neglect proceedings by statute or court rule.

If you are not skilled in appellate practice, you may want to consult with an experienced appellate practitioner before agreeing to continue or refer your client to another attorney for the appeal. If you do continue on appeal, you must strictly follow the Rules of Appellate Procedure.
Endnotes


3 For a detailed discussion of concurrent planning as contemplated under ASFA, see Womble, Anita, & Linda Kate. "Law and Social Work in Partnership for Permanency: The Adoption and Safe Families Act and the Role of Concurrent Planning." *Children's Legal Rights Journal* 18, fall 1998, 2.

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11. Id.

12. Id.

13. Id. at 6.

14. Id. at 7.


18. Id. at 5.
" id. at 6.

" Wienerman, Gary T. "Improving Practice to Avoid Unnecessary Placements." In Foster Children in the Courts. Edited by Mark Hardin. Boston: Butterworth, 1983, 4, 12-14. This chapter addresses issues that a parent's attorney should consider when making the decision to contest and strategies to employ when that decision is made.

" Id. at 15.


" Id. at 23-24.


" For a detailed description of permanency hearings, see Hardin, Mark. "Improving Permanency Hearings: Sample Court Reports and Orders." Washington, DC: American Bar Association, 1999. This article, which does not address a 30-day permanency hearing, can be ordered by calling (800) 662-1743.


" id.

" id.

" id
Bibliography

General Overview


This book includes articles on corporal punishment, domestic violence, emotional abuse, incarcerated parents, fetal alcohol syndrome, use of anatomically detailed dolls, attachment, kinship care, sex abuse, visitation, parents with disabilities, delinquency, open adoption, permanency planning, and adoptability.


This 24-chapter volume is a guide to practitioners seeking to protect children from unnecessary and extended foster care placement. As such, it provides a comprehensive and detailed analysis of the different stages and issues arising in child
protection, foster care, and adoption cases. Its functional approach to the representation of parents and children in child protection proceedings includes practice suggestions and legislative analysis of relevant law, such as the Adoption Assistance and Child Welfare Act of 1980. This book now is available only in libraries.


Representation


This guide examines different important and recurrent problems faced by defense attorneys. It seeks to give a general understanding of the issues surrounding each topic and to point out more promising avenues of defense advocacy. Although prepared for advocacy in the District of Columbia (DC) Superior Court, the case law in this volume includes the few reported opinions concerning child neglect matters before the DC Superior Court and, where appropriate, leading cases from other jurisdictions selected on the basis of their consistency with DC practice.


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The authors include a good overview of the Indian Child Welfare Act, as well as an extensive explanation of Medicaid and other federal health care benefits for low income children. This publication is updated biannually with supplements and revisions.


This handbook is a second, updated edition of an earlier version published by the American Bar Association.

Reasonable Efforts to Prevent Placement

Sources listed in General Overview and Representation.
Representing Parents in Child Welfare Cases


This book presents a detailed analysis of the reasonable efforts requirement and highlights trends in reasonable efforts policy.


This manual is a compilation of the most practical and effective techniques to ensure needed judicial scrutiny of the removal of children from their families.

Placement Options


**Alternative Dispute Resolution**


Substance Abuse


Representing Parents in Child Welfare Cases


Legislation


Representing Parents in Child Welfare Cases


Education


This book covers school discipline issues in the general education and special education populations. It discusses the 1999 IDEA regulations addressing the disciplining of students with disabilities.


This publication contains chapters addressing the IDEA, Section 504 of the Rehabilitation Act, the American with
Disabilities Act, related services, least restrictive environment, procedural safeguards, and discipline.

Public Benefits

The best secondary source of information for advocates regarding public benefits programs is generally the local legal aid program or one of the legal services corporation back-up centers, whose telephone numbers can be obtained from the local office and are listed in Clearinghouse Review.

Clearinghouse Review is published bimonthly by the National Poverty Law Center, www.povertylaw.org, (312) 285-3030. It covers public benefit programs in detail and has listings of many manuals on specific aid programs. Other subject areas covered in Clearinghouse Review include civil rights, disability, family law, domestic violence, housing, employment, and health.

Internet Resources

American Bar Association Center on Children and the Law http://www.abanet.org/child
Association of Family and Conciliation Courts http://www.aftc.org
Child Welfare League of America http://www.cwla.org
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Children's Defense Fund
http://www.childrensdefense.org

National Adoption Information Clearinghouse
http://www.calh.com/home

National Clearinghouse on Child Abuse and Neglect Information
http://www.calh.com/home

National Council of Juvenile and Family Court Judges
http://www.ncjfcj.us/homepage

National Court Appointed Special Advocate (CASA) Association
http://www.nationalcasa.org

Office of Juvenile Justice and Delinquency Prevention
http://www.ojjdp.ncjrs.org

U.S. Department of Health and Human Services
http://www.hhs.gov
Significant State and Federal Statutes and Regulations

State Statutes and Regulations

Statutes regarding child protection issues vary among the states. Most states, however, have statutes such as those listed below with which parents' attorneys should be familiar.

Child Abuse and Neglect Reporting Laws

Abuse and neglect reporting laws vary by state, but most have a similar framework. These laws typically include:

- a purpose clause;
- definitions of abuse and neglect;
- identification of those who, for purposes of child protection, are possible child abusers;
- lists of persons required to report suspicions of child abuse;
- protective or emergency custody authority and criteria;
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- responsibilities of child protection agencies;
- creation of multidisciplinary teams;
- establishment of central child abuse registries and record confidentiality;
- provisions for guardians ad litem or counsel for the child and counsel for the parents;
- authorization to take photographs and X-rays of injured children; and
- abrogation of certain privileged communications.

Juvenile Court Statute
A state’s juvenile court act sets forth the criteria and procedures triggering judicial intervention and removal of endangered children. The act normally includes self-contained sets of procedures, partly drawn from the state’s rules of civil procedure.

The juvenile court act is perhaps the most important legislation with which an attorney must become familiar in child protection cases because it delineates the court process. In some states, the reporting laws and juvenile court act are combined.

Termination of Parental Rights Statute
This act may be self-contained or part of either the state’s juvenile court act or the adoption act. It sets forth the grounds,
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procedures, and criteria for a termination of parental rights action.

Adoption Statute
A state's adoption act, which outlines the grounds and procedures for adoption, may or may not be located in the same part of the code as the above two acts. In addition, state adoption subsidy legislation may be included in the state's adoption act or may be an entirely separate piece of legislation.

Additional State Statutes
In addition to the statutes listed above, many states have statutes or regulations in the areas listed below. Attorneys handling child protection matters should be certain to become familiar with pertinent state regulations and local practice.

- Citizen Review Panels. Some states have adopted a system under which private citizens review foster care cases. These review boards or panels usually are under the juvenile court jurisdiction; some boards are organized on a statewide level, others locally.

- Interstate Compacts. All of the 50 states and the District of Columbia have adopted at least one of three compacts that form the legal basis, primarily procedural, for institutionalizing children outside their home state. All 51 jurisdictions have adopted the Interstate Compact on Juveniles, under which a state will cooperate with the return of a juvenile to another state if return is sought and will accept the return of a juvenile
found in another state. Most of the jurisdictions have adopted the Interstate Compact on the Placement of Children and/or the Interstate Compact on Mental Health.

The Interstate Compact on the Placement of Children allows children to be placed in other states provided proof of the placement’s suitability is made and sets forth the responsibilities for oversight of the placement.

The Interstate Compact on Mental Health allows for the care and treatment of mentally ill and mentally retarded individuals in states other than the state in which the individual resides. Many states have also adopted the Interstate Compact on Adoption and Medical Assistance. This compact allows a state to enter into agreements with other states to provide for interstate adoption assistance payments and medical payments when a child is placed in another jurisdiction.

- **Freedom of Information and Confidentiality Statutes.** In addition to the federal Family Educational Rights and Privacy Act of 1974 (FERPA, also known as the Buckley Amendment, 20 U.S.C. § 1232g), states have enacted statutes regarding entitlement to and limitations on freedom of information and confidentiality.

- **Mental Health and Hospitalization.** Many states have adopted legislation regarding mental health treatment of other parents or children, or both, who may be involved in a child protection case. In particular, the procedures by which children are
committed to mental health facilities differ from the procedures governing adult commitment.

Many states have juvenile commitment statutes that, among other things, allow parents to voluntarily commit their children irrespective of the child's consent. Such statutes usually limit nonconsensual commitment to younger children.

- **Child Welfare Agency Statutes.** Counsel should be familiar with the state statutes that establish the child welfare agency and govern the agency's functions and responsibilities. In addition, there are regulations and manuals promulgated by the agency itself.

- **Uniform Child Custody and Jurisdiction Act (UCCJA).** The UCCJA applies to abuse and neglect cases except in a few states that have specifically excluded it. Where the interstate compacts do not apply, the Act determines which state is the proper forum for child protection proceedings.

  It also provides useful procedures for securing evidence and the cooperation of other courts outside the forum state. Some states have enacted a revision of this Act, known as the Uniform Child Custody Jurisdiction and Enforcement Act.

- **Enforcement of Child Support.** Many states have provisions governing the enforcement and collection of child support, which may be relevant in child abuse and neglect cases. In addition, the Social Security Act provides for the withholding
or garnishment of federal or District of Columbia wages, as well as certain other federal payments, for the enforcement of child support and alimony obligations. This provision is found at 42 U.S.C. § 659.

Federal Statutes and Regulations

Statutes Regarding Children

- The Social Security Act, Titles IV-B and IV-E, 42 U.S.C. §§ 600-602; 675-679b

These provisions fund and define service programs, foster care, matching funds, and the adoption assistance program for children with special needs. The Adoption and Safe Families Act amends some of these provisions.


The Adoption and Safe Families Act is the most far-reaching federal child welfare law enacted in nearly 20 years. The goal
of ASFA is to emphasize the health, safety, and permanency of children in foster care.

Specifically, ASFA requires courts to determine whether states have made reasonable efforts to prevent placement, achieve family reunification, make and finalize permanency plans, and ensure the child's safety; determine whether the state is required to provide preventive or reunification services in certain instances; hold timely permanency hearings; initiate and complete termination of parental rights proceedings in a timely fashion; and, ensure that foster parents, relative caregivers, and pre-adoptive parents receive notice and an opportunity to be heard in reviews and hearings.

ASFA amends the Adoption Assistance and Child Welfare Act, the federal law governing family support, family preservation, foster care, adoption assistance, and adoption services.


This Act is designed to prevent the undermining of Indian culture through the intervention of the child welfare agencies and state courts. It imposes a number of special procedural and substantive requirements whenever Indian children are involved in child protection and adoption proceedings. Among other things, the Act prescribes notice to the tribe, Indian parents, relatives, anduardians; rights to counsel;
tribal court jurisdiction; and, strict criteria and burdens of proof for non-Indian placement and termination of parental rights.

- The Multi-Ethnic Placement Act, as amended by the Inter-
  seq.; § 670 et seq.; regulations found at 45 C.F.R. Part
  1355.38)

  The Multi-Ethnic Placement Act, amended by the Inter-
  Ethnic Adoption Provisions, is intended to combat foster care
  drift among children in certain minority groups who are over-
  represented in foster care. The provisions aim to end
  discrimination in foster care and adoptive placements and
  encourage the recruitment of foster and adoptive families.

- Child Abuse Prevention and Treatment Act (CAPTA), Pub. L.
  No. 93-247, 98 Stat. 4-5, 7-8 (1974), as amended by Pub. L.
  No. 104-235, 110 Stat. 3063-7, 3066, 3071, 3078, 3083, 3085-

  As originally enacted in 1974, CAPTA was intended to
  improve and bring uniformity to child protective service
  agencies (CPSs) practice across the country. As a condition
  of eligibility under its "basic state grants" funding authority, the
  law required states to certify that laws and policies were in
  effect to ensure reporting of suspected child abuse and
  neglect; prompt screening, safety assessment, and
  investigation of reports; appropriate confidentiality
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protections for child protective records; cooperation of different agencies with CPS; and the provision of a guardian ad litem (GAL) for the maltreated child in relevant court proceedings.

The 1996 amendments revised definitions, substantially changed earlier language concerning both confidentiality and mandatory sharing of child protective services records and other information, strengthened protections for parents wishing to appeal an official finding of abuse or neglect, and required GALs to make recommendations to the court regarding the "best interests" of the child.


Along with the Uniform Child Custody Jurisdiction Act, the Act determines which state court has jurisdiction in cases where a child has been moved across state lines and where there have been juvenile or family court proceedings involving allegations of mistreatment.

The Act requires states to give full faith and credit to custody determinations of other states. Custody determinations may be made in the course of juvenile court abuse, neglect, and termination cases. In addition, the Act may govern cases where another state has jurisdiction based on a prior abuse, neglect, dependency, or termination of parental rights case. This jurisdiction may be significant when the children did not enter the state at the behest of a court or agency, because the
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Interstate Compact on the Placement of Children does not apply to such situations.


The Act provides comprehensive educational protections for disabled children, as did its predecessor, the Education for All Handicapped Children Act, Pub. L. No. 94-142, 89 Stat. 773 (1975). It is particularly important to children in the foster care system because a disproportionate number are educationally disabled, and agencies sometimes fail to secure the appointment of a “surrogate parent” to assert their educational rights. Note that § 504 of the Rehabilitation Act of 1973, 42 U.S.C. § 794, as amended, includes some parallel provisions.


The Act gives parents the right to gain access to their children’s educational records, to correct the content of such records, and to have a hearing if such access is denied. See the definition of parents found at 34 C.F.R. § 99.4. It prohibits disclosures to persons other than school officials, with limited exceptions. The Act provides a means for parents who have lost custody of their children, as well as for foster parents, to determine how their children are doing in school, unless there is state law to the contrary.
Public Benefits Programs for Children

Poverty-related issues contribute to the entry of many children into foster care. Proper administration of public assistance benefits can help to avoid the unnecessary entry of children into foster care and can facilitate family reunification.

Where a lack of food, clothing, transportation, or medical care necessitates placement or prevents reunification, the attorney should consider the possibility that clients are not receiving benefits to which they are entitled. Among the specific benefits programs are the following:

- **Temporary Assistance for Needy Families (TANF), 42 U.S.C. § 603 et seq.** This legislation provides cash assistance to needy children and their families. Numerous states have chosen to operate this program according to many requirements of the old federal Aid to Families with Dependent Children (AFDC) program, thus making it a state entitlement program.

- **Supplemental Security Income (SSI), 42 U.S.C. § 1381 et seq.** This provision allows for cash assistance to needy, aged, blind, and disabled persons, including disabled children.

- **Old Age, Survivors, and Disability Insurance, 42 U.S.C. § 401 et seq.** This legislation provides "social security" benefits for retired and disabled workers and their children, and for the survivors of deceased wage earners.
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* Medicaid, 42 U.S.C. § 1396 et seq. This provision offers medical assistance to individuals with low income, including but not limited to those receiving AFDC, SSI (generally), and federal adoption assistance and foster care benefits.

* Food Stamp Program, 7 U.S.C. § 2011 et seq. This legislation provides for coupons that needy persons can use for food purchases.
Other Resources

The resources on the following pages are available from the ABA. To order:

- Call us at: 1-800-285-2221 Monday – Friday 7:30 a.m. – 5:30 p.m. CST
- Write to us at: ABA Publication Orders
  P.O. Box 10892
  Chicago, IL 60610-0892
- FAX us at: (312) 988-5568
- Email us at: abarecords@abanet.org or visit our website at:
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