Responsibilities and Effectiveness of the Juvenile Court in Handling Dependency Cases

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Abstract

The juvenile court’s role in handling child abuse and neglect cases changed and expanded greatly after the passage of the federal Adoption Assistance and Child Welfare Act in 1980 and following the enactment of many similar state laws. These federal and state “permanency planning” laws require child welfare agencies to make reasonable efforts to avoid the break-up of families, where safe and practical, and direct the courts to monitor these efforts. The laws also require both agencies and courts to establish timely permanent new homes for children when preservation of families is not possible.

The effectiveness of juvenile courts in fulfilling the laws’ mandates has been uneven because of variations in judicial workload, court management, and relationships between the courts and the child welfare agencies. The quality of legal representation of children, parents, and agencies is often compromised by high caseloads, low status and pay, lack of experience, and rapid turnover. Courts vary in their capabilities to monitor agencies’ permanency planning efforts and in their power to order specific placements and services. The proper role of the court and the agency in this regard is a matter of continuing debate. The author concludes that efforts currently under way in the states to reform the juvenile court’s handling of abuse and neglect cases are cause for optimism.

In child abuse and neglect cases (also known as dependency cases), the court is asked to protect children who are allegedly abused or neglected. In these cases, the court may remove supervisory authority or custody of the child from the family and transfer it to a state or county child protection agency. To take such a drastic step, the court must find that a child would be in serious danger if left unprotected in the home.

The juvenile court’s responsibilities in child abuse and neglect cases have historically been to determine the facts of each case, to ensure the child’s protection, and to assure that parents’ rights are respected. In recent
years, courts have been assigned new responsibilities: to make sure that public child welfare agencies are providing help to families; to authorize placement of abused and neglected children in new permanent homes when family reunification is impossible; and to ensure that timely, permanent decisions are made for abused and neglected children.

This article examines the court’s responsibilities and considers how well they are being carried out. The first section of the article explores the evolution of the juvenile court process in child protection cases over the past 20 years. The second section discusses the effectiveness of the court in fulfilling its new responsibilities. The third section explores the boundaries of the juvenile court’s case monitoring responsibilities.

The Expansion of Judicial Responsibilities

Juvenile court child abuse and neglect litigation has been transformed in the past 20 years. In the early 1970s, the main functions of the court in child maltreatment cases were first to determine the validity of child abuse or neglect allegations and then to decide whether the child needed to be placed in foster care or could remain at home under agency supervision. Today, the juvenile court continues an active role after a child is removed from home and maintains responsibility for ensuring that the child is placed in a legally permanent and stable home.

The responsibilities of the juvenile court were expanded during the mid- to late-1970s to address the problem of children drifting between foster care placements with little effort at providing necessary services to assist families in reunification. Parent-child bonding theory, as developed by such pioneers as John Bowlby and popularized by Goldstein, Freud, and Solnit, emphasized the need for stable and permanent homes for children. Broad acceptance of this theory led to criticism of a system that allowed children to be brought up in foster care and resulted in proposals for reform.

“Permanency planning,” which entails concerted efforts to achieve permanent homes for foster children, was developed as a solution to foster care drift. The concept of permanency planning first began to be enacted into state law in the late 1970s and became federal law with passage of the Adoption Assistance and Child Welfare Act of 1980 (Public Law 96-272).

Under Public Law 96-272, permanency planning seeks to (1) prevent out-of-home placement of children through the provision of family services, (2) reunify the family after a child is placed in foster care, and (3) secure a new permanent home if reunification efforts fail. Each of these objectives is accomplished through written case plans with specific goals and timetables, periodic review of each case, and definitive legal action within a reasonable time (usually 18 months) after placement.

These new legal requirements led to reformulation of child welfare practice and expansion of the role of the juvenile court. As a result, child protection cases have grown more complex over recent decades. Box 1 illustrates the expanded range of issues that juvenile courts have come to address in child abuse and neglect cases. Box 2 summarizes the duties imposed by federal and many state laws. Box 3 illustrates the increasing number of participants involved in the court process. Figure 1 illustrates the multiple hearings that are now typical in juvenile court child abuse and neglect cases.

The consequences of these changes have been wide-ranging. For example, child welfare agencies are now required to try to avoid the need for out-of-home placement, and courts are required to determine if agencies have made reasonable efforts to
avoid such placements. While in the past the juvenile court might have held one brief, uncontested hearing for each case, courts are now required to conduct periodic hearings, including a permanency planning hearing within 18 months of an out-of-home placement. All hearings include enhanced procedural protections for parents and children. Federal funding for foster care placements is conditioned upon the court’s findings that child welfare agencies are in compliance with statutory mandates. These added legal requirements have been coupled with a sharp increase in the numbers of child protection cases in many jurisdictions, especially urban areas, further impacting the workload of both the court and the child welfare agencies.

The Stages of an Abuse and Neglect Case
All states now hold an emergency placement hearing within a few days after removal of a child from the home. Originally created to protect the civil liberties of parents and to avoid having children placed in out-of-home care without good cause, emergency hearings are now the forum for considering safe alternatives to removing the child from the home, such as providing services or removing the abuser from the home, or determining whether children can be placed with relatives rather than with strangers. In many states at this stage, courts are also expected to determine whether the child protection agency has made reasonable efforts to prevent the need to remove the child from home. This hearing also provides timely notice to all parties about the court proceedings which helps to ensure active representation.

Following the emergency hearing, the adjudication (trial) determines whether the child was abused or neglected. A separate disposition hearing is held to determine who has custody of (legal responsibility for)
the child and to outline the plan to rehabilitate the parents and protect the child.\textsuperscript{15}

In nearly all states, courts now conduct periodic review hearings to ensure that a child removed from her home does not remain too long in foster care.\textsuperscript{16} Because routine court or administrative progress reviews often fail to move children out of foster care, a special type of judicial review hearing, most commonly referred to as a permanency hearing, is required. Such a hearing must be held within 18 months of out-of-home placement of a child to determine the child’s permanent legal status.\textsuperscript{17}

Federal law mandates have expanded the functions of the juvenile court concerning permanent placements. Some states have empowered juvenile or family courts to create guardianships for foster children who cannot be returned home when adoption is not practical or the best plan for the child.\textsuperscript{18} Others have empowered courts to authorize long-term foster care under such conditions.\textsuperscript{19} (For further information about the actual outcomes of these cases, see the article by Barth in this journal issue.)

The Scope of Judicial and Agency Decision Making

As the responsibilities of the juvenile court in child abuse and neglect cases have expanded, there has been a gradual but uneven trend to expand the decision-making powers of juvenile courts in these cases. In some states, courts now approve and modify the terms of each family’s case plans.\textsuperscript{20} (A typical case plan specifies case goals, such as family reunification, and areas of parental improvement; agency and parental tasks needed to achieve the goals; and timetables for the achievement of the identified goals and tasks.) In other states, appellate court decisions give courts authority to resolve issues concerning placement and services.\textsuperscript{21} In contrast, there are a number of jurisdictions where state laws and appellate decisions limit such powers of juvenile courts.\textsuperscript{21}

Federal law requires that a six-month review be conducted by “either a court or by administrative review,” to determine, among other things, the appropriateness of the placement, the extent of case progress, and compliance with the case plan.\textsuperscript{22} As a practical matter, for a court to review such issues effectively, it also should be empowered to correct them. In practice, each state decides whether these reviews are to be conducted by a designated administrative review body or by a court, and determines the scope of the court’s power to conduct meaningful reviews. For example, in some states the juvenile court has no power to alter agency case plans, order specific services, or change placements. In these states, the oversight function of the court is largely restricted to holding hearings and making recommendations to the agency. However, given the power of the court to compel the presence of witnesses and the need for court approval before freeing the child for adoption or returning the child home, judges in these
states retain influence concerning placement and services. As discussed below, judges in some states have the power to influence placement and services through their determination of whether the agency has made reasonable efforts.

**Termination of Parental Rights**

To free a foster child for legal adoption without parental permission, it is necessary to terminate parental rights. The emphasis on finding permanent families for foster children who cannot safely be returned home has resulted in an increase in the numbers of termination proceedings in recent years. The growing number of these proceedings has created a subtle but significant change in the judicial process.

Termination proceedings are typically the most difficult and hard-fought stage of child protection cases. If earlier stages of the proceedings have not been conducted carefully and thoroughly, or if agencies delay initiating termination proceedings, are slow in preparing documentation, or lax in the delivery of services to the family, children remain in foster care longer than necessary.23,24

For example, case progress reviews must be detailed and penetrating to expose and correct any flaws or errors in casework which might be criticized by the court in a termination hearing. All parties, including non-custodial parents, unmarried fathers, and other key relatives, must be notified before the adjudication of the case. This early notice may preclude the need for the agency to attempt to reunify the child with the non-custodial parent after work with the custodial parent has failed, a process that prolongs the child’s stay in out-of-home care.

Some courts have changed the earlier stages of their processes to facilitate timely permanent placement decisions, including the termination of parental rights. For example, the juvenile court in Grand Rapids, Michigan (Kent County), is able to terminate parental rights in about half the time that is typically taken in other courts because it develops a full court record for each case.25 The same judge handles all stages of the case and carefully records the facts at each hearing. If reunification efforts do not succeed, a detailed judicial record of the abuse or neglect, the case plan, efforts to assist the family, and the parents’ failure to improve already exists and can lay the groundwork for timely termination of parental rights.

Another important factor in termination proceedings is whether all child protection functions are carried out by a single court. Delays result when the court handling termination of parental rights is different from the one that heard the earlier stages of the case.
The Effectiveness of the Court

Judicial performance in child abuse and neglect cases varies sharply in different parts of the United States. There are great differences in the length of court delays, the thoroughness of hearings, and the fairness of the legal process for parents and children. For example, adjudication can take nine months in one court but be routinely completed within 50 days in another. Termination proceedings may take from 90 days in one locale to more than one year to complete in another.

The thoroughness and fairness of hearings vary from jurisdiction to jurisdiction. In many courts, regardless of the requirements of state law, the parent is unrepresented at the emergency hearing, and the court rarely reverses an agency decision to place the child in out-of-home care. Such a hearing functions only as an occasion to inform parents of the allegations against them and to arrange for the appointment of an attorney and does not meet federal law requirements. By contrast, in some exceptional courts, a routine emergency hearing makes an in-depth examination of the circumstances surrounding removal and identifies the next
steps in the case, such as the notification of parties and the provision of preliminary services to the family.

Likewise, the conduct of the court’s periodic review hearings varies sharply. In some courts, the judge spends an average of five minutes, typically reviewing and approving the agreement of the parties.\textsuperscript{28} In others, the judge spends up to an hour conducting a thorough exploration of the case.\textsuperscript{29}

**Factors Affecting Judicial Performance**

Judicial workload is a key factor in determining the quality and timing of child abuse and neglect cases. Judges handling a large number of assigned cases obviously have less time to hear each case than those in courts with more manageable workloads. Where there is little court time available for each case, hearings are delayed or continued more often, particularly when they become contested.

In less populous jurisdictions where abuse and neglect cases are not heard in separate juvenile courts, child protection hearings must compete with other proceedings for court time. Minor civil and criminal matters are routinely given more time than child protection review proceedings and trials.

Case scheduling and case flow management can improve both the timeliness and efficiency of the court docket. Courts can move cases quickly by (1) setting strict time standards for completion of each stage of the case, (2) measuring compliance with those time standards, (3) strictly limiting cancellation and delay of judicial hearings, (4) setting and adhering to precise times for hearings, and (5) setting the time of the next hearing at the end of each hearing to ensure that the case stays on the judicial calendar. Pretrial and settlement conferences and the development of local rules covering discovery and related matters can also help move cases quickly. Unfortunately, many courts do not effectively apply these techniques in child protection cases.\textsuperscript{26}

The process of judicial assignment can also affect the overall flow of cases through the system. Judges are typically assigned cases through either a master calendar system, which permits different judges to be assigned to hear different stages of a case, or through an individual calendar system, which means that, once a case is filed, the same judge holds all necessary hearings until the case is concluded. In an individual calendar system, parties feel more connected with the judge and are more likely to obey court orders knowing they will return
to the same judge. They are less able to use the same arguments or excuses more than once because the judge knows the case better; it is easier to develop a stable case plan, and the judge takes on a greater responsibility for the case outcome; and judges learn about child welfare law and practice more rapidly. When judges are rapidly rotated in and out of juvenile court, the advantages of the individual calendar are lost or the disadvantages of the master calendar are aggravated. (For more information on juvenile court structure, see the article by Rubin in this journal issue.)

Representation of Parties
The quality of legal representation of the agency, the parents, and the children is a critical dimension of the quality of the court process. Advocates for all parties largely determine the flow of information upon which the judge’s decision will be based. Advocates also often need to take affirmative steps to resolve the case such as initiating termination of parental rights cases. Attorneys representing all parties in juvenile court are hampered by high caseloads, low status and pay, lack of specific training and experience, and rapid turnover.

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Attorneys practicing in the juvenile court vary in quality, due in part to differences in state statutes and in part to differences in compensation, training, and supervision. These latter differences are often associated with differences in how representation is organized and funded. Where parties are represented by government-funded programs, such as public defenders, legal services programs, law firms under contract, or the attorney general, the attorneys are usually relatively knowledgeable. On the other hand, such attorneys may rotate in and out of these arrangements so rapidly or have workloads so high that they are unable to prepare cases adequately. In contrast, where parties are represented by private attorneys drawn from community-based lists, attorney expertise is often limited. This difficulty can be counteracted through mandatory training, mandatory brief apprenticeships, adequate compensation, and limiting numbers of attorneys on appointment lists to allow for them to gain expertise.

Parents
The legal representation of parents is governed by a combination of federal and state constitutional and statutory guarantees. The federal constitution requires that in termination of parental rights cases, the courts make a case-by-case determination whether court-appointed counsel for indigent parents is required. The Indian Child Welfare Act requires the appointment of counsel for indigent Native American parents.31 State laws and constitutions generally exceed the minimal federal protections; most require the appointment of counsel for indigent parents at all stages of the process.

A parent’s attorney plays an essential role in a child protection proceeding. An attorney’s key function is to ensure procedural fairness for parents in the court process and to prevent the state from making errors harmful to both parents and children. Unrepresented parents are at a severe disadvantage in child protection cases. The average parent who is involved in child protection proceedings not only has a lower-than-average level of education but also is unfamiliar with agency procedures and operations, child welfare law, and courtroom procedures.32

It is not unusual for parents’ attorneys to come to the courthouse unprepared, not having discussed their case with their clients. Such situations make it less likely that court reviews can effectively monitor case progress. Standards concerning the representation of parents which address each of the above issues are needed.

Children
The representation of children is governed by both federal and state law. The federal Child Abuse and Neglect Prevention and Treatment Act requires the appointment of a guardian ad litem for each child who is the subject of a child protection proceeding.33 State laws reinforce this requirement. A guardian ad litem is appointed for a specific case and represents the best interests of the
child to the court. This role can be filled by either an attorney or a trained volunteer, often known as a court-appointed special advocate (CASA), or a combination of the two. The role of guardian ad litem differs from the role of counsel for the child, who represents the child’s wishes. In some jurisdictions, separate advocates will represent the child’s wishes and the child’s best interests.

Legal representatives for children should provide a perspective that otherwise would not be available to the judge in child protection proceedings. Children’s advocates, whether attorneys or guardians ad litem, should conduct an independent investigation and ensure that the needs of the children are fully presented to the court. Each child should be personally observed and interviewed (if old enough to speak) by the child’s advocate before each hearing. Unlike agency attorneys, children’s advocates are not to be constrained by child protection agency policies or interests.34

Where children are represented by attorneys, the quality of representation is hampered by heavy workloads, inexperience, and inadequate preparation. Where children are represented by volunteers, inadequate training, supervision, or access to legal assistance may affect the advocate’s effectiveness in court. It should be noted, however, that many CASA or guardian ad litem programs do provide substantial training, supervision, and legal support.35

**Agencies**

Agency attorneys present information to the juvenile court on behalf of the state and initiate court proceedings to remove children from their homes, file petitions recommending children’s return home, and seek the termination of parental rights.

Agency legal representation often suffers because of inexperienced attorneys who do not remain long on the job and who have inadequate clerical and computer supports. Because agency attorneys spend most of their time in court due to high workloads, they are often unable to prepare their cases properly. In some instances, they do not handle all stages of the same case. They play a limited role in case planning between court proceedings, a function that can help ensure timely case decisions.36

**Monitoring of Reasonable Efforts**

Federal law requires courts to determine whether the agency has made reasonable efforts (1) to prevent or eliminate the need for removal of a dependent, neglected, or abused child from the child’s home and (2) to reunify the family if the child is removed.37 However, federal law does not specify when this determination is to occur. State laws may direct that it occur at the emergency hearing, at the adjudication (trial), or at the disposition hearing (see Figure 1). Some states require reasonable efforts findings at more than one of these hearings.

Courts vary in how they determine if reasonable efforts have been made. Despite federal law, there is probably little separate discussion of whether the agency has made reasonable efforts in most court hearings. Few court orders at emergency hearings, adjudication, or disposition recite specific agency efforts on behalf of the family. In fact in many courts, language to the effect that the agency has made reasonable efforts is simply preprinted into the court form.38 In other courts, the judge simply checks a box to indicate if reasonable efforts have been made.

The variability and general laxity of court monitoring of reasonable efforts occur for a variety of reasons. The federal law mandating reasonable efforts lacks specificity and definition; it does not provide an objective basis on which to make the determination, and state and federal regulations rarely help. Furthermore, given the level of caseloads and other demands, courts often do not have time to make the determination or they may find the determination of reasonable efforts irrelevant to deciding whether to remove the child from the home. Courts may be reluctant to issue
negative reasonable efforts determinations because such findings could interfere with good court-agency relations and potentially could cause the child welfare agency to lose money. However, some judges have successfully used the determination of reasonable efforts as an important tool to monitor agency case management. For example, after a judge in one small state made many negative reasonable efforts findings when he found services were needed but not available, the state sharply increased the supply of needed services.

Periodic Review
Case progress reviews are conducted by courts, agency panels, or citizen boards, often known as foster care review boards. Some states have multiple reviews, using a combination of the above. In some jurisdictions, agency and citizen board reviews precede and inform the court reviews. In other jurisdictions, there is little coordination between the different reviews (especially between agency and court reviews), and information from agency reviews may not consistently be provided to or reviewed by the courts.

Court review hearings vary widely in quality and depth. At one extreme, some courts schedule as many as 50 such reviews for one afternoon to be heard by a judge who has no prior familiarity with the cases. At the other extreme, some courts schedule from a half-hour to an hour for routine progress review hearings, which allows time to discuss the details of each case.

Permanency Planning Hearings
Federal law requires hearings, often referred to as “permanency planning hearings,” within 18 months of a child’s out-of-home placement and at least annually thereafter, to determine the permanent status of the child. There are wide variations in how this requirement is implemented. In some states, the permanency planning hearing is held as a routine hearing; in others, additional requirements attach to this hearing as a matter of state law or court rules.

A strict permanency planning hearing is distinguished from a routine review in jurisdictions where state law or court rules make it difficult to extend indefinitely a child’s time in foster care—especially in cases in which family reunification is a continuing goal. States with strict permanency planning hearing laws prohibit the judge from continuing the child in foster care with the goal of family reunification unless the parent or parents have already made substantial progress and there is reason to believe that the child’s safe return will be possible within a short time. In addition, the judge must provide a written explanation of why it is likely that the child will be safely returned home within a prescribed period of time. Furthermore, where the judge does authorize continued foster care with a goal of reunification, the judge is limited in the length or number of such extensions.

Where the goal is a new permanent home for the child, a strict permanency planning hearing law requires prompt steps to achieve such permanency. Such steps might include a requirement to petition for termination of parental rights to free the child for adoption or a petition for a permanent guardianship.

Future Directions of the Juvenile Court in Child Protection Cases
The trend in child protection cases toward expanded judicial responsibilities for case monitoring is a matter of continuing debate, particularly among child welfare agencies and legal practitioners.

Need for Judicial Involvement
There is no serious dispute that certain actions cannot be taken against parents without giving them the opportunity to challenge those actions in court. For example, decisions that affect fundamental constitutional rights, such as the placement of a child in out-of-home care or termination of parental rights, cannot be made unilaterally by governmental officials without giving parents the right to challenge such actions. Disagreement occurs, however, concerning
the scope of the court’s monitoring of other agency actions. The court’s role in determining a child’s out-of-home placement, what services are to be provided to the child and parents, or the terms of the case plan varies between jurisdictions. In addition to legal arguments concerning judicial authority to resolve such issues, there are a number of practical arguments both in favor of and against active judicial monitoring and powers concerning case planning, placement, and services.

Judicial oversight of social service agencies came into being, at least in part, because these agencies were not doing an adequate job of protecting children and preserving families. These failures of the public child welfare system served as the impetus for the federal and state laws discussed above.

Limitations on Judicial Powers

It is possible to restrain judicial powers over case planning, placement, and services without totally eliminating judicial authority over these areas. One approach is to permit judges to override an agency decision only under defined conditions, for example, when (1) the decision clearly violates state or federal law or agency policy, (2) case plans or services are illogical (for example, requiring parent skills training for a parent whose neglect was drug related and who does not lack parent skills), or (3) the evidence before the court shows that the agency decision was incorrect (for example, not in the best interest of the child). To encourage judges to respect these limits, a brief written explanation could be required whenever a court overrules agency decisions.

A second very different means of limiting judicial powers over placement, services, and case plans is through adoption of agency rules. For example, an agency might adopt a rule specifying categories of children to be placed in certain types of residential facilities. Unless the rule violates state law, the court is bound to follow it. This approach addresses the issue of judicial orders for expensive services that ignore the constraints of agency budgets.

A third means of limiting judicial interference is to require parties to pursue their complaints within the agency before presenting a service or placement dispute to the judge. However, the appropriateness of such a requirement may vary depending on several key differences among states. The most important of these is the quality of the agency’s own processes. If impartial, law-trained agency personnel are available to adjudicate such disputes in a timely manner, it may be appropriate for the court to limit its role to reviewing agency decisions. The expertise of the juvenile court is important in deciding whether to utilize agency dispute resolution mechanisms. Where judges are generalists with little knowledge or experience in child welfare, it is logical to rely more on the agency for such decisions. If, however, the court conducts frequent monitoring reviews of case plans, placements, and services, it makes little sense to superimpose an additional process to resolve disputes. In any event, where a court has already made a decision concerning placements, services, or the case plan, these issues should be considered foreclosed to an administrative body.

Judicial Restraint

Agency dissatisfaction with judicial monitoring occurs when judges “act like social workers” and impose their personal beliefs or preferences upon the agency rather than basing decisions upon the law and the evidence before the court. This can be limited, to a large extent, by placing legal limits on judicial orders, as discussed above. In addition, judicial training should clarify the limited role of the judge in monitoring agency case management.

As agencies demonstrate competence in implementing case plans, placement decisions, and the provision of services, judges gain confidence in their work and exercise self-imposed judicial restraint. In addition to issuing orders, judges can influence agency performance by offering compliments, expressing concerns, making suggestions, requiring parties to appear and explain their actions, and entering findings outlining
agency agreements. Judicial monitoring is less burdensome when judges minimize needless court appearances. For example, rather than schedule a hearing, a judge might require a written report by a certain date and convene a special hearing only if the report is not filed or the judge’s suggestions are not followed.

The most effective means for addressing recurring problems with agency performance or service delivery may be periodic meetings between the judge and agency administrators and members of the community. Taking this step does not excuse the judge from taking necessary action required in individual cases.

Conclusion
The expanding role of the juvenile court in abuse and neglect cases has been driven by the need to achieve permanency for abused children, to address children’s special needs while they are in foster care, and to provide procedural protections for the parties. None of these factors is likely to change in the near future.

Until now, the court’s performance in these areas of responsibility has been uneven. To a large extent differences are due to court organization and resources. The lack of clear laws, rules, and standards articulating how the court process is supposed to work has also contributed to the problem. The variation in performance of the courts has been affected in part by differences in state legislation enacted pursuant to the Adoption Assistance and Child Welfare Act. For example, strong state laws addressing permanency planning, discussed above, have often been helpful. Improving court performance will require a strong statutory framework, proper court organization and resources, and well-thought-out court rules and guidelines.

Current efforts in most state court systems to reform the handling of child abuse and neglect cases are cause for optimism. State courts are now conducting self-assessments of their handling of these cases, pursuant to the Family Preservation and Support Act, and with the assistance of private foundations. The recent development of explicit guidelines for the court process in child protection cases endorsed by the National Conference of Chief Justices, the National Council of Juvenile and Family Court Judges, and the American Bar Association creates additional hope for improvements.

Judicial monitoring of case management in child protection cases is likely to expand. At the same time, there may also be expansion of alternative dispute resolution, to divert cases that do not require juvenile court involvement and to avoid needless contested hearings. (See the article by Edwards in this journal issue.)

If public resources to assist families of abused and neglected children decline as the result of federal, state, and local funding reductions, courts will face additional difficulties in child abuse and neglect cases. For example, extended delays in treatment for parents will make early decisions about whether children can safely be returned home and meeting permanency planning deadlines more difficult. However, the status of services to families and children will not change the responsibilities of the court. Courts will still need to decide whether endangered children should be removed from their homes and to ensure that abused and neglected children are placed in safe and permanent homes.

1. In this article, the term juvenile court is used to refer to any court hearing child protection cases.


8. Note that some of these hearings not listed as common in 1975 (for example, involuntary termination of parental rights and adoption) did occasionally occur at that time.


12. This hearing is most commonly known as the shelter care hearing. State law usually requires that it take place within one to three days following the child’s removal.


14. See note no. 13, National Council of Juvenile and Family Court Judges, Chapter 3.

15. See note no. 13, National Council of Juvenile and Family Court Judges, Chapter 5.

16. While semiannual case progress reviews may be conducted by a court, the state child protection agency, or a foster care review board, postdisposition “dispositional hearings,” which are required within 18 months of placement and annually thereafter, can be held only by courts or court-approved entities. Adoption Assistance and Child Welfare Act of 1980, Public Law 96-272, 42 U.S.C. § 675(5)(C). In nearly all states 18-month hearings are held by courts.

17. See, for example, Ohio Rev. Code Ann. § 2151.415 (Anderson 1994).

18. See, for example, California Welfare and Institutions Code §§ 366.25, 366.26 (West 1996); R.I. Gen.


24. The juvenile court is charged with making timely decisions to arrange for permanent homes for foster children. Yet, such decisions are difficult or impossible when agencies are slow to work with families or to provide services. For example, if an agency has been unable to provide drug treatment to a parent and cooperation with such treatment is part of the case plan, it is difficult for the court either to return the child home or to arrange for a permanent placement through adoption. Many courts do not take seriously statutes calling for long-term decisions for children within a year or 18 months precisely because agency work with the family typically has not been completed within that time due to service shortages or agency inefficiency.

26. This observation is based on the author’s years of experience studying juvenile courts and speaking to thousands of judges, attorneys, and other child welfare professionals throughout the United States. Until now, few data have been collected concerning the performance of juvenile courts in child abuse and neglect cases. Fortunately, however, state courts throughout the United States are currently conducting self-assessments of their performance in child abuse and neglect cases pursuant to federal grants funded by the Family Preservation and Support Act. In most states, data on recent court performance in such cases will soon be available. For further information, contact the author at the ABA Center on Children and the Law, 740 15th Street, Washington, DC 20005, telephone (202) 662-1750.

27. For example, compare the timeliness of termination proceedings in Cincinnati, Ohio, and Grand Rapids, Michigan. Hardin, M. Judicial implementation of permanency planning reform: One court that works. Washington, DC: American Bar Association, 1992, pp. 49–50 (10 months) and Hardin, M., Rubin, T., and Ratterman-Baker, D. A second court that works: Judicial implementation of permanency planning reforms. Washington, DC: American Bar Association, 1995, p. 79 (63 days). Since the time of the study, termination proceedings in Cincinnati reportedly have been speeded up considerably.


29. See note no. 25, Hardin, Rubin, and Ratterman-Baker, p. 75.


38. The pro forma recitation regarding reasonable efforts occurs partly because a number of state laws provide that children cannot be removed from home unless the court finds that the agency has made reasonable efforts to prevent the need for placement. See, for example, Idaho Code §§ 16-1605(b)(9) (1996); Iowa Code §§ 232.52(6), 232.95(2)(a), 232.102(5)(b) (1996); Ky. Rev. Stat. Ann. § 620.140(1)(c) (1996); Wyo. Stat. Ann. § 14-6-229(a) (1996).


41. Permanency planning hearings are given the misleading name of “dispositional hearings” in the federal legislation. A reading of what is required in these hearings as well as consideration of their apparent purpose make it clear that they are intended to modify the results of the prior disposition hearing. See Adoption Assistance and Child Welfare Act of 1980, Public Law 96-272, 42 U.S.C. § 675(5)(C); Hardin, M. Permanency planning hearings that work. Juvenile and Child Welfare Law Reporter (1993) 12:60.

43. See note no. 41, Hardin.
44. See, for example, Edwards, L. The juvenile court and the role of the juvenile court judge. *Juvenile and Family Court Journal* (1992) 43,2:1–45 (advocating that the court should be empowered to make decisions specifying foster placements, visitation, and services whenever necessary to protect the best interests of the child); King, M., and Trowell, J. *Children’s welfare and the law: The limits of legal intervention*. Newbury Park, CA: Sage, 1992 (advocating that the court should not be empowered to make such decisions); Harris, L. Rethinking the relationship between juvenile courts and treatment agencies—An administrative law approach. *Journal of Family Law* (1990) 28:217 (advocating that the court should be able to substitute its judgment for that of the agency only when there is specific and compelling evidence that the agency is incorrect or unwise); Boyer, B. Jurisdictional conflicts between juvenile courts and child welfare agencies: The uneasy relationship between institutional co-parents. *Maryland Law Review* (1995) 54:377 (advocating that courts have powers to make decisions concerning placement and services, but must take into account areas of agency expertise and the limits of judicial time).
45. Such restraints of judicial power may be established through judicial appellate decisions or state statutes.
47. See note no. 44, Boyer.
48. For a discussion of the criteria courts apply in appeals of agency administrative hearings (that is, the “scope of judicial review of administrative agency adjudications”), see Davis, K.C. *Administrative law treatise*. 2nd ed. San Diego, CA: K.C. Davis Publishing, 1984, Chapter 29.
52. Public Law 103-66, § 13712, 107 Stat. 649. The act provides for grants to state courts to assess their performance in abuse and neglect cases and to develop and implement plans for improvement. Court systems in 47 states and the District of Columbia have elected to participate.
53. The Freddie Mac Foundation and the W.T. Kellogg Foundation have provided important support to the implementation of this legislation.
54. See note no. 51, National Council of Juvenile and Family Court Judges.