



Examining hearing quality in child abuse and neglect cases: The relationship between breadth of discussion and case outcomes



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ABSTRACT

Child abuse and neglect court hearings are complex, multifaceted, and necessary for judicial oversight to ensure safe, timely permanency for youth and families involved in the system. While best practices have been suggested, little research has been conducted to examine what the critical components of a “high quality” dependency court hearing are, and, more importantly how these factors might be related to improved outcomes for children and families. The current study explores the relationship between breadth of discussion at the first hearing on the case and subsequent case decisions and outcomes. Findings suggest a positive relationship between breadth of discussion at the initial hearing and a higher likelihood of relative or parent placements compared to foster care placements, increased presence of parents throughout the life of the case, and higher likelihood of case closure and reunification. The study is limited by a small sample size and focus on one of many court hearings; however, it does provide empirical support that the quality of the court hearing may be related to better outcomes for families.

1. Introduction

The [Adoption and Safe Families Act \(ASFA\) of 1997](#) (PL 105-89) contains several provisions focused on moving children more expeditiously to permanency, placing a paramount focus on the safety, well-being, and rights of children ([Brooks & Webster, 1999](#)). ASFA made significant changes to the ways in which child abuse and neglect cases are handled by enacting strict timelines for parents to complete services and tightening court oversight deadlines. The law requires, for instance, that a permanency planning hearing to inquire into the welfare of the child and progress of the case be held within 12 months of the date a child enters foster care. The law also requires that courts initiate termination of parental rights proceedings if a child has been in foster care for 15 of the most recent 22 months. These timelines are meant to ensure that children have shortened stays in foster care and find safe, permanent homes as soon as possible. The extensive research regarding the troubling outcomes for children in foster care (c.f., [Courtney, Dworsky, Lee, & Raap, 2009](#); [Doyle, 2013](#); [Lawrence, Carlson, & Egeland, 2006](#)) supports the tenets of ASFA that lingering in foster care is not a permanency option for maltreated children and that expeditious permanency must be a primary concern of the courts.

Despite the best intentions of the law, many courts are overwhelmed and struggling to meet ASFA's deadlines. In 2015, nearly 270,000 children entered foster care across the United States, while > 400,000 children remained in care at the end of the fiscal year, according to the Adoption and Foster Care Analysis and Reporting System (AFCARS). For those exiting care, the average length of stay in foster care was 19 months. As further evidence of states' struggles in meeting ASFA requirements, after the second round of the Child and Family Services Reviews,¹ conducted by Children's Bureau of the U.S. Department of Health and Human Services, the percentage of states achieving substantial conformity with each of seven outcomes related to safety, permanency, and well-being ranged from zero to 20%. Further, no state achieved substantial conformity with all seven or even more than two outcomes ([U.S. Department of Health and Human Services, 2011](#)). Because of these struggles, researchers have begun to explore factors that may be related to improved case processing and outcomes for children and families involved in the system. One factor that has been consistently identified as an area of focus for state court's improvement efforts is the quality of child abuse and neglect hearings (e.g., [Planning and Learning Technologies, Inc., Urban Institute, and Center for Policy Research, 2007](#)).

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¹ The Child and Family Services Reviews (CFSRs) are conducted to ensure States' conformity with federal child welfare requirements, to determine what is actually happening to children and families in child welfare services, and to assist states in helping children and families achieve positive outcomes. The CFSRs monitor States' conformity with the requirements of title IV-B of the [Social Security Act](#).

Nationally, all states are provided funds through the Federal Court Improvement Program (CIP) to improve State court handling of child abuse and neglect cases to ensure safety, permanency, and well-being for children in foster care. In the instructions for applying for CIP funds, the Administration for Children and Families requires that courts implement continuous quality improvement efforts that include a focus on promoting four key factors, including timely, thorough, and complete court hearings (ACYF-CB-PI-12-02). The 2012 program instruction for CIP funds included some guidance and instruction on what constituted a timely and thorough court hearing. These indicators included timely reports, all parties being noticed and present, appropriate inquiries, specificity of the court order, and review of the court orders with parties. Furthermore, the new CIP program instruction, released in November of 2016 (ACYF-CB-PI-16-05) required that all CIPs develop a project to continuously improve the quality of child abuse and neglect court proceedings.

While funding requirements to improve the quality of court hearings may be relatively new, efforts to improve the quality of child abuse and neglect court hearings have long been a focus of the CIPs. In a 2005 review of CIP activities, 51% of states were working on initiatives aimed at improving the quality of their child abuse and neglect court hearings (Planning and Learning Technologies, Inc., Urban Institute, & Center for Policy Research, 2007). These numbers have only continued to grow. In a self-report summary of projects undertaken in 2015, 79% of CIPs reported at least one project related to improving the quality of the child abuse and neglect court process, including activities aimed at improving hearing quality (Child Welfare Capacity Building Center for Courts, 2016).

Improving hearing quality must take into account the complexities of the child welfare system process. Within the legal framework and requirements of federal (e.g., ASFA) and state laws, child abuse and neglect courts must hold a series of hearings in order to make key decisions in child welfare cases that will help facilitate safe and timely permanency for children. Each hearing has a specific role in the process meant to ensure due process rights of the parents while still guaranteeing the safety of the child and working towards a permanent outcome. The National Council of Juvenile and Family Court Judges (NCJFCJ), a national organization with expertise in child abuse and neglect practice, has set guidelines to help facilitate quality child abuse and neglect hearings. NCJFCJ first promulgated guidelines on best practices in child abuse and neglect court hearings in 1995 (NCJFCJ, 1995). These guidelines were created by a panel of experts in the field and were based on their shared experience of effective practice. In 2016, the guidelines were updated to reflect changes in the law, identify practices with empirical support, and to include enhanced practice recommendations (Gatowski, Miller, Rubin, Escher, & Maze, 2016). The *Enhanced Resource Guidelines* helps judges to identify the major decisions that need to occur in child abuse and neglect cases and recommends specific best practices for effective and efficient case processing (Gatowski et al., 2016). The recommendations are multifaceted, but include concepts focused on improving general hearing practice, such as engaging parents in the process and ensuring thorough discussion of key issues at each hearing.

The American Bar Association has also contributed to the child abuse and neglect hearing improvement effort by producing standards of practice for parent's, children's, and child welfare attorneys involved in the child abuse and neglect court process (American Bar Association, 1999; 1996; 2004). Although these guidelines and systems efforts to improve practice have been around for decades, very little peer reviewed research has been conducted on hearing quality.

2. Assessment of the quality of child abuse and neglect hearings

In the field of child welfare court practice, an important question still remains—what dimensions of hearing quality are related to improved outcomes for children and families in child abuse and neglect

cases? It is unclear, for instance, if there are specific best hearing practice recommendations or “quality indicators” (e.g., substantive discussion, engagement of parties, etc.) that are more critical to improving outcomes than others. Identifying the dimensions of hearing quality that may be related to improved outcomes is critical to the field. Knowing what hearing practice elements are associated with positive outcomes in cases helps provide direction to courts about the essential activities of each hearing so that sufficient time can be devoted to those activities. Identifying core components of hearing quality can also help system change efforts to ensure that training is available regarding important hearing quality practices and focus limited resources on improving key practices that yield the greatest impact.

One of the key concepts in the *Resource Guidelines* (NCJFCJ, 1995) related to quality of the entire court process is frontloading (i.e., concentrating maximum efforts at the outset of a case). Frontloading offers an opportunity for court jurisdictions to establish processes that encourage a collaborative approach to problem-solving issues that may appear early on in a case which can potentially cause delays in permanency. According to the *Enhanced Resource Guidelines*, the court should ensure that frontloading procedures are in place so that, “at the earliest point possible, all parties to a court proceeding begin doing all that they can to minimize the length of time that children remain in temporary placement” (Gatowski et al., 2016, p. 40). For that reason, early court hearings are of primary interest when examining the quality of hearings.

The Preliminary Protective Hearing² (PPH) is the first court hearing in a child abuse or neglect case, occurring immediately before or immediately after a child is removed from the home. According to the *Resource Guidelines* (NCJFCJ, 1995), the main purpose of this initial hearing is to determine whether removal was necessary to prevent further child abuse or neglect. After that is established, the court must determine if the agency made reasonable efforts to prevent the removal, and if so, when the child can be safely returned home. Although the decision to remove the child is made on an emergency basis, the decision must be based upon a competent assessment of risks and dangers to the child.

In all states, the PPH in a child abuse and neglect case must take place within a short time after the child has been removed from home (e.g., in some states the PPH must be held within 48 h of temporary custody (excluding weekends and holidays). Evidence is presented at the PPH to support the allegations contained in the report of alleged abuse or neglect (or additional allegations which have surfaced), the immediate safety of the child in the home, and the reasonable efforts made or community resources available that could allow the child to safely remain in the home pending further court action. If no resources or reasonable efforts could provide a safe environment for the child in the home, the child welfare agency explains why emergency removal is warranted. When there are several children in the home, and they are not all taken into protective custody, the State must offer evidence to explain why the child or children remaining at home are not at risk of serious injury, or what reasonable efforts have prevented the need for placement of these other children.

Drawing from the *Resource Guidelines* (NCJFCJ, 1995) best practice recommendations for child abuse and neglect hearings and the indicators of quality court hearings outlined by the CIP program instruction, several potential dimensions of hearing quality have been identified. While there are many dimensions of hearing quality, this paper focuses solely on those dimensions with some empirical support and those that are pertinent to general court practice. The authors recognize that there is a wide body of research on specialty courts'

² The initial hearing in a child abuse and neglect case has different names in different jurisdiction, such as “preliminary protective hearing,” “shelter care hearing,” “temporary custody hearing,” “detention hearing,” or “removal hearing.” Preliminary protective hearing is used herein because it is the name for the initial hearing used in the NCJFCJ's *Resource Guidelines* (1995) and Gatowski et al. (2016).

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