



Courts, COVID and Permanency

The COVID-19 pandemic and its associated isolation and economic hardships have placed unprecedented pressure on children and families at risk. Overcrowded housing and homelessness, less access to health care and insurance, and preexisting health conditions make staying healthy during the pandemic less likely. Child and family-serving systems have worked hard to address these increased risk factors. The system is strained due to COVID-19, causing likely delays to permanency for children and youth.

The early response during the COVID-19 pandemic included suspended family time, cancelled services, and challenges accessing court. Many of the services previously relied upon and required to achieve permanency for a child are not currently available or have been moved to virtual environments. Some of the services that remain available may no longer be appropriate or adequate due to the current individual needs and interests of each child and family strained by COVID 19.

However, time does not stand still because there is a global pandemic. The need for expedited permanency has not diminished during COVID-19. In a Department of Health & Human Services Letter to Child Welfare Legal and Judicial Leaders on March 27, 2020, the Children's Bureau encouraged courts to refrain from making sweeping orders. It recognized that interruptions in court-ordered services or treatment based on lack of provider availability may cause concern about reasonable efforts toward family reunification. "Prolonged or indefinite delays in delivering services and postponements of judicial oversight place children's safety and well-being in jeopardy; may lead to unnecessarily long stays in foster care; and are inconsistent with statutory and regulatory requirements."ⁱ It is important to consider whether

services that are unavailable due to COVID-19 are necessary to the reunification of the family or whether alternative services which can be provided are adequate substitutes.

Federal funding mandates require that before children can be separated from their families, except in clear emergencies, child protective services must make reasonable efforts to keep children safely at home.ⁱⁱ If a child is removed from a parent, reasonable efforts to reunify a family or, if this is not possible, to find another permanency option other than extended foster care, is also required. These requirements often include the delivery of supports and services to the children and families. COVID 19 makes this delivery more challenging.

As a result of the pandemic, child welfare practice had to adapt and so did the courts. Courts remained open, even if only virtually, in their role serving children and families. But what more can the judicial and legal community and its partners do to promote positive permanency outcomes for children and families under their jurisdiction?

Ensure Quality Parenting Time

In most states, the court plays a vital role in establishing and overseeing family time between children in care and their parents and siblings. The frequency, duration, and quality of family time promotes permanency and is often the most important factor in promoting reunification. Family Reunification is the main case planning goal of most foster care cases before the courts. Guardianship, adoption, or other custody arrangements are often concurrent goals if reunification cannot be met.

Disruptions in family connections during the pandemic can have devastating impacts on permanency outcomes. Child welfare agencies, attorneys, caregivers, and courts must creatively adapt to maximize family time under pandemic conditions. The Conference of Chief Justices and Conference of State Court Administrators' Pandemic Rapid Response Team offers the following resources and guidance on family time:ⁱⁱⁱ

- Federal funding may be available to support the purchase of equipment and internet service to facilitate virtual family time. It may also enable families to participate in remote hearings and virtual ADR as well. Children may have trouble staying focused on a remote visit with parents or siblings for an extended time. Allowing shorter, more frequent interactions may be beneficial for children. The Child Welfare Information Gateway issued a list of Virtual Visitation Resources with a variety of tips for effective remote parenting time.
- Creative approaches to achieving safe, in-person family time should be considered, such as meeting outdoors while observing social distancing, as necessary. The Washington State Court Improvement Training Academy developed a helpful web page of guidance and resources on maintaining momentum in child welfare cases, including a variety of approaches to parenting time.^{iv}
- As the numbers of those fully vaccinated continues to increase, continually monitor the CDC and state public health guidance on post-vaccination behavior, and review visitation and parenting time protocols, masking requirements, etc. accordingly.

Specifically for courts' decision-making regarding family time, the Children's Bureau urges courts to:

- Discourage or refrain from issuing blanket court orders reducing or suspending family time.
- Be mindful of the need for continued family time, especially in times of crisis and heightened anxiety.
- Remain cognizant that interruption or cessation of family time and parent-child contact can be traumatic for children.

- Continue to hold the child welfare agency accountable for ensuring that meaningful, frequent family time continues.
- Become familiar with ways in which in-person family time may continue to be held safely.
- Encourage resource parents to provide transportation to, and supervision of, family time in order to limit additional people having to be involved to limit possible exposure to COVID-19.
- Consider the use of family members to supervise contact and to engage in family time outdoors, where feasible.
- Inquire whether parents and resource parents have access to cell phones and computers with internet access to ensure virtual connections where in-person family time is not possible.
- Encourage use of technology such as video conferencing, phone calls and other readily available forms of communication to keep children, parents, and siblings connected.
- Ask parents their preference when deciding how to proceed with family time as some parents may prefer to meet via technology due to health concerns.
- Consider whether children may be reunified with their parents in an expedited manner if the child's safety would not be jeopardized.

Ensure the Continuity of Services for Parents, Children, and Caregivers

Resources and high-quality services were already scarce in many communities pre-COVID, but the pandemic exacerbated this problem. Not only are court-ordered services for parents difficult to access during COVID-19, but also necessary services for children and youth. Many jurisdictions were able to implement tele-services. A growing body of research indicates the efficacy of some virtual services and treatments.^v This has implications not only for access during this pandemic, but for after as well. Virtual services can be more accessible for families struggling with child-care needs, transportation challenges, and demanding work schedules. Further, it is suggested that the addition of virtual services could offer families wider access to services that are a better cultural and language fit.^{vi} However, access still remains disparate. One silver lining that has surfaced through the

pandemic is that because of virtual hearings child protection workers have more time to do actual casework as they are spending less time waiting in courthouses through busy cattle-call child welfare dockets.^{vii} Many of those extra hours can be spent connecting families to high-quality and available services. Judicial and child welfare leaders should work within their communities to explore how to best access and utilize remote services for children and families.

Ensure Access to Justice and Due Process

It is critical that courts continue to ensure access to justice and due process for children and families involved in child protection proceedings during this pandemic. Measures that should be taken include^{viii}:

- (1) Notice requirements should be followed.
- (2) Child protection hearings, including status hearings, should not be postponed.
- (3) Access to high quality legal counsel should be afforded to all children and parents involved in child protection proceedings.
- (4) Virtual and telephonic hearing participation should be permitted, and participation should also be afforded to children and youth, foster parents and kinship providers, and service providers, including therapists, educators, and medical professionals.

Hopefully the end of the COVID-19 pandemic is imminent. The experiences of the legal and judicial community and its child and family-serving partners during the pandemic have sparked many critical practice and policy examinations. They have prompted many innovations that have the potential to positively transform our child welfare system going forward.

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ⁱ 3 March 27, 2020 Letter of Commissioner Jerry Milner to Child Welfare Legal and Judicial Leaders https://www.acf.hhs.gov/sites/default/files/documents/cb/covid_19_childlegalandjudicial.pdf

ⁱⁱ See generally, Reasonable Efforts to Preserve or Reunify Families and Achieve Permanency for Children Child Welfare Information Gateway (2020). <https://www.childwelfare.gov/pubPDFs/reunify.pdf>

ⁱⁱⁱ Child Welfare: Addressing Backlog and New Filings. CCJ/COSCA RRT and NCSC (July 22, 2020). https://www.ncsc.org/data/assets/pdf_file/0024/51495/RT-Children-Families-and-Elders-CFE-Child-Welfare-Addressing-Backlog.pdf

^{iv} COVID-19 Resources. Washington Courts, Court Improvement Training Academy. <https://www.wacita.org/covid-19-resources/>

^v Sage, M., & Hitchcock, L. (2020). Remote Casework for child welfare stakeholders in the time of COVID19. Buffalo Center

for Social Research: Institute for Healthy Engagement and Resilience with Technology. Buffalo, NY: University at Buffalo School of Social Work. https://figshare.com/articles/online_resource/Remote_Casework_For_Child_Welfare_Stakeholders_in_the_Time_of_COVID-19/12156156/2

^{vi} *Id.*, at 8.

^{vii} Deal, Teri *et al.* Study of Virtual Child Welfare Hearings: Impressions from Judicial Interviews. National Center for State Courts (forthcoming, May 2021).

^{viii} See, A Joint Statement on Child Welfare Courts During a Public Health Crisis: Access to Justice and Advocacy are Critical Anchors During Uncertain Times. Youth Law Center, National Association of Counsel for Children, Children's Rights, Children's Advocacy Institute, and the National Center for Youth Law (March 21, 2020). https://www.acf.hhs.gov/sites/default/files/documents/cb/statement_child_welfare_crisis.pdf