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Volume V: Background and Research

Judicial, Court, and Attorney Measures of Performance (JCAMP), Volume V: Background and Research

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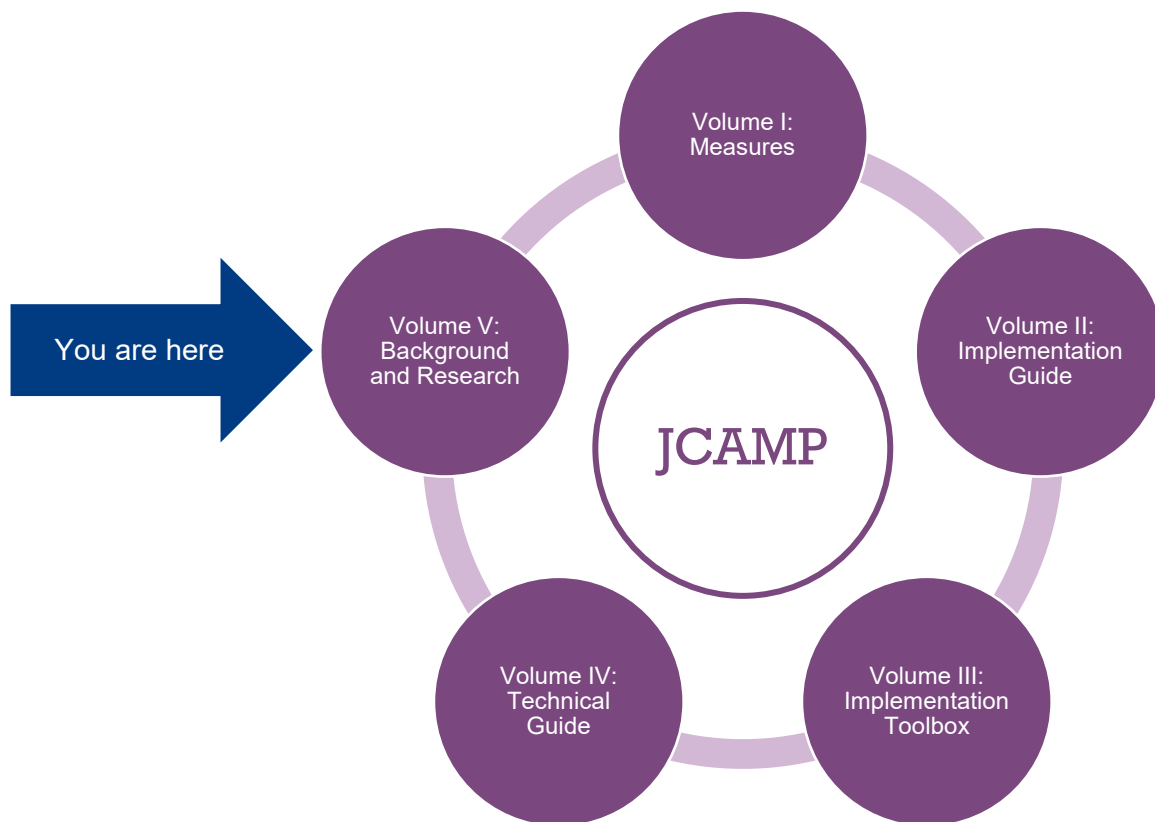


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Introduction

In 2021, the Children’s Bureau funded the Capacity Building Center for Courts (CBCC) to develop a set of child welfare court, judicial, and attorney performance measures to help the field understand and improve child welfare court practice. Called the Judicial, Court, and Attorney Measures of Performance (JCAMP), this project included the following key activities:

- Establishment of an Expert Advisor Pool composed of individuals with expertise in high-quality legal representation, judicial decision-making, child welfare hearing quality, child welfare agency practice, tribal courts, tribal IV-E funding, equity, the Indian Child Welfare Act, safety decision-making, youth and family engagement, and both youths and parents with lived experience within the system to inform all steps of the project
- Development of a comprehensive review of existing court measures, research, and best practices (see [Measuring Child Welfare Court Performance: Review of Resources, 2022](#))
- Development and field testing of a set of performance measures for child welfare courts, judges, and attorneys

This volume describes the methods used to develop and refine the measures, provides theories of change for how each measure relates to outcomes for children and families, and summarizes supporting research evidence. For a complete discussion of the literature and best-practice recommendations for these topics, see [Measuring Child Welfare Court Performance: Review of Resources, 2022](#). The other JCAMP Volumes in this series include the following:

- **Volume I: Measures** describes the JCAMP performance measures in five topical categories.
- **Volume II: Implementation Guide** provides guidance for effectively implementing the measures and using the data.
- **Volume III: Implementation Toolbox** is a compilation of tools for each implementation step described in Volume II, including sample data collection instruments.
- **Volume IV: Technical Guide** provides detailed instruction on calculating each measure using different data collection methods.



Methods

The JCAMP measures were developed through a rapid prototyping process that drew on the expertise of a multidisciplinary team to integrate available feedback and resources into a structured working prototype. The multidisciplinary team was composed of researchers, court administrators, judges, attorneys, child welfare agency practitioners, representatives of tribal courts, and parents and youths with lived experience who met weekly to discuss the audience for the measures, ideas, priorities and structure for measures, and capacities for measurement. They also discussed findings from the comprehensive Resource Review (Summers, Gatowski, Richards & Fromknecht, 2022). All team members provided insight and recommendations around guiding principles, potential measures, and structure. Core team members integrated this information into a working prototype that the team reviewed and refined based on multiple rounds of feedback from these groups:

The iterative development process incorporated feedback from individuals with a broad range of knowledge and experience to ensure the measures are meaningful and useful to the field.

- The JCAMP Expert Advisor Pool
- Court Improvement Program (CIP) administrators and staff
- Children’s Bureau Partners

*The JCAMP Expert Advisor Pool included over 60 **individuals** with expertise in high-quality legal representation, judicial decision-making, child welfare hearing quality, child welfare agency practice, tribal courts, tribal IV-E funding, equity, the Indian Child Welfare Act, safety decision-making, youth and family engagement, and both youths and parents with lived experience within the system.*

In addition to the *Resource Review*, several key performance measures documents inform thinking about the JCAMP measures:

- ***The Toolkit for Court Performance Measures in Child Abuse and Neglect Cases (The Toolkit)***. This U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention series of documents recommends 30 court performance measures for child welfare courts in the areas of safety, due process, timeliness, and permanency. These measures are used in the field of child welfare court practice, and specific toolkit measures are referenced when they relate to the JCAMP measures.



- **Child and Family Services Reviews (CFSR).** The CFSR process is a critical review of child welfare practice that all states undergo approximately every 5 years. CFSR tools focus heavily on child welfare agency practice in the areas of safety, permanency, and well-being for children and families. These measures are considered complementary to JCAMP and are noted in specific proposed measures to consider as part of an enhanced understanding of systemic performance in an area.
- **Family Justice Initiative (FJI) Attributes of High-Quality Legal Representation.** The FJI identified individual and system attributes of high-quality legal representation for parents and children in child welfare cases. FJI attributes and associated indicators helped to inform the development of the high-quality legal representation measures included in JCAMP.
- **National Center for State Courts (NCSC) CourTools.** The NCSC developed performance measures for trial and appellate courts. Although not specifically designed for child welfare courts, CourTools measures (e.g., access and fairness, experience of the court system) were considered in the JCAMP measures.
- **NCSC Well-Being Measures (Well-Being Measures).** The NCSC has proposed general and education-specific well-being measures for child welfare cases. These types of measures would be ideal in exploring practices related to specific well-being goals for children and families. Because these have already been suggested, they are not duplicated within the JCAMP measures.

The JCAMP measures are organized into five categories:

1. Family Engagement
2. Due Process
3. High-Quality Legal Representation
4. Safety
5. Permanency

A theory of change, description of supporting research evidence, and summary table of research evidence and supporting best practice standards for measures in each category appear below.

A "theory of change" is a narrative description of how and why a desired change is expected to happen. It explains why and how activities, behaviors, practices, or policies are expected to produce a series of results (Capacity Building Center for Courts, n.d.).



Family Engagement

Family engagement describes how parents, children, and youth are involved in their court hearings. It includes whether they attend hearings, strategies professionals use to make sure families participate in a meaningful way, and families' own perceptions of their engagement in the hearing process, such as whether they understood what happened and felt they had an opportunity to be heard.

Theory of Change

When parents, children, and youth attend their hearings, they can share their perspectives and have questions answered by the court. Judges can actively engage them (e.g., explain the purpose of the hearing, ensure they understand what happens next), thoroughly discuss relevant topics (e.g., child's placement, visitation/family time, conditions for reunification), and encourage ongoing participation in services and the court process. This process provides more information to the judge for decision-making and reinforces parents' and youths' feeling that their needs and wishes were expressed to the court. Parents are then more likely to continue attending hearings, participating in services, and actively participating in problem solving, which should lead to reunifying with their children or, when reunification is not possible, may lead to the parent maintaining a safe and healthy relationship with their children in some other placement.

Supporting Research Evidence

Parents' and youths' meaningful participation in the court process is recommended by multiple national best-practice standards for child welfare cases, including the American Bar Association's (ABA) *Standards of Practice for Lawyers* (1996, 2004, 2006), National Association of Counsel for Children's (NACC) *Recommendations for Legal Representation of Children and Youth in Neglect and Abuse Proceedings* (2021), the Bureau of Indian Affairs' (BIA) *Guidelines for Implementing the Indian Child Welfare Act* (2016), and the National Council of Juvenile and Family Court Judges' (NCJFCJ) *Enhanced Resource Guidelines* (Gatowski et al., 2016).

Studies of parent and youth engagement and hearing discussion are often limited in scope and methodology. However, some studies have reported positive findings. In one study of hearing quality, the breadth of discussion at the first hearing in the child welfare case process predicted parents' presence across the life of the case, with more discussion related to increased presence (Summers et al., 2017). Two studies explored factors related to parents' or youths' understanding of the hearing. One study of youths' understanding found that more than half could not explain the court's decisions. Further, attending court did not affect knowledge or attitudes of the youth (Block et al., 2010). A study of judicial engagement and parent satisfaction found that judicial engagement of parents is related to the mother's satisfaction with and understanding of the court process, but not the father's (Wood & Gonda, 2014). Further, an analysis of several youth in court programs showed that youth want to participate in their hearings and that being present can improve decision-making (Elstein et al., 2015).



Studies have also explored how the presence of parents may be related to case outcomes. While one study found no impact of parents' presence on reunification (Gonzalez & Summers, 2014), three others found the parents' presence to be a predictor of reunification (Summers et al., 2017; Summers & Gatowski, 2018; Wood et al., 2016). Two studies found that the presence of parents at early case hearings was related to timelier reunification (Wood & Russell, 2011) or timely permanency (Summers & Gatowski, 2018). The same study found that giving parents an opportunity to be heard was related to timelier permanency (Summers & Gatowski, 2018).

Several studies have explored the relationship between judicial engagement strategies and case outcomes. Three studies showed that higher levels of engagement were related to improved outcomes, including more placements with parents and relatives (Macgill & Summers, 2014) and timelier permanency (Summers, 2017; Summers & Gatowski, 2018). One study showed that even though judicial engagement increased, outcomes were not different (Gonzalez & Summers, 2014).

Studies of hearing discussion are often limited in scope and methodology. All the research on discussion has focused primarily on correlations between hearing quality and outcomes of interest. These studies cannot demonstrate causal impact and often do not have all the variables needed to control for other possible explanations in a meaningful way. Five studies explored discussion in relation to case outcomes. One study found no relationship between discussion in hearings and placement (Macgill & Summers, 2014). Two studies found relationships between the breadth of discussion (percentage of topics discussed in hearings) and timelier permanency outcomes, with one related to timelier permanency of any outcome (Summers & Gatowski, 2018) and one showing a relationship only to timely adoption (Summers, 2017). Both studies were correlations between average practice and average county-level outcomes. An additional study found that breadth of discussion at the first hearing on the case predicted the likelihood of reunification (Summers et al., 2017).

Associated research and best-practice standards documents supporting the JCAMP Family Engagement measures are summarized in exhibit 1.



Exhibit 1. Research and Best-Practice Standards Supporting Family Engagement Measures

Family engagement measures	Research citing an association with case closure outcomes*	Best-practice standards supporting measure
1.1 Do parents attend hearings?	Summers et al., 2017; Summers & Gatowski, 2018; Wood et al., 2016; Wood & Russell, 2011	ERG; SPR, TIB
1.2 Do children and youth attend hearings?	Summers, 2017; Summers & Gatowski, 2018	ERG; LRCY, SCR; SCWR, TIB
1.3 Do tribal representatives attend hearings?	Capacity Building Center for Courts, 2020	ERG, GICWA, TIB
1.4 Do foster parents and relative caregivers attend hearings?	No outcome studies found	ERG, TIB
1.5 Do courts send orders to parties or provide them at the end of the hearing?	No outcome studies found	ERG, GICWA, JE
1.6 What do judges do to engage parents, children, and youth in hearings?	Macgill & Summers, 2014; Summers, 2017; Summers & Gatowski, 2018	ERG, GICWA, JE, TIB
1.7 What do judges do to engage foster parents and relative caregivers in hearings?	No outcome studies found	ERG, GICW, JE, TIB
1.8 How do parent attorneys engage parents in the process?	No outcome studies found	SPR
1.9 How do child or youth attorneys and/or attorney guardians ad litem (GALs) engage children and youth in the process?	No outcome studies found	LRCY, SCR, TIB
1.10 How do prosecuting (or agency or state) attorneys engage parents, children, and youth in the process?	No outcome studies found	SCR, SCWR
1.11 Are important issues discussed in hearings?	Summers, 2017; Summers et al., 2017; Summers & Gatowski, 2018	ERG, CSG, TIB
1.12 Do parents feel judges engaged them in hearings?	No outcome studies found	ERG



Family engagement measures	Research citing an association with case closure outcomes*	Best-practice standards supporting measure
1.13 Do children and youth feel judges engaged them in hearings?	No outcome studies found	ERG, LRCY
1.14 Do foster parents and relative caregivers feel judges engaged them in hearings?	No outcome studies found	ERG, TIB

Notes: *Case closure outcomes include child safety, family preservation, child permanency, and child well-being.

Acronyms for best-practice standards:

- CSG = *Child Safety: A Guide for Judges and Attorneys*, American Bar Association (ABA) & ACTION for Child Protection (Lund & Renne, 2009)
- ERG = *Enhanced Resource Guidelines*, National Council of Juvenile and Family Court Judges (NCJFCJ) (Gatowski et al., 2016)
- GICWA = *Guidelines for Implementing the Indian Child Welfare Act (ICWA)* (Bureau of Indian Affairs, 2016)
- JE = *Judicial Excellence in Child Abuse and Neglect Proceedings: Principles and Standards for Court Organization, Judicial Selection and Assignment, Judicial Administration and Judicial Education* (ABA, 2010)
- LRCY = *Recommendations for Legal Representation of Children and Youth in Neglect and Abuse Proceedings* (National Association of Counsel for Children, 2021)
- RRD = *Reducing Racial Disparities in the Child Welfare System* (ABA, 2008)
- SCR = *Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases* (ABA, 1996)
- SCWR = *Standards of Practice for Lawyers Representing Child Welfare Agencies* (ABA, 2004)
- SPR = *Standards of Practice for Lawyers Representing Parents in Abuse and Neglect Cases* (ABA, 2006)
- TIB = *Trauma-Informed Benchbook for Tribal Justice Systems* (Aleut Community of St. Paul, n.d.)



Due Process

Due process describes the constitutional rights of families with a child welfare dependency case. It includes timely written notice in their primary language, explanation of rights, access to competent legal representation, and equal access to justice (e.g., interpreters or accommodations under the Americans with Disabilities Act). The goal is to measure whether families have access to fair court hearings.

Theory of Change

When judges ensure parents have the constitutional right of due process, parents and youth better understand a hearing's purpose, the decisions that are made, and any next steps that may be required. This improves parents' perceptions of procedural justice (that appropriate and just procedures were applied in their case and that the government has treated them fairly). Improved procedural justice leads to increased parental engagement in case plans and services and ultimately timelier reunification.

Supporting Research Evidence

Due process is included in national standards of attorney practice and in best-practice recommendations for judges. Examples are the NCJFCJ's *Enhanced Resource Guidelines* (Gatowski et al., 2016) for judges; the ABA's *Standards of Practice for Lawyers* (1996, 2004, 2006); the NACC's *Recommendations for Legal Representation of Children and Youth in Neglect and Abuse Proceedings* (2021); and the BIA's *Guidelines for Implementing the Indian Child Welfare Act* (2016). Although activities related to due process have been detailed in these best-practice recommendations and covered in the Toolkit (see measures 3A–3J), little research has been conducted on due process within the hearing and during the case process. One study that examined implementation of model court practices found an increase in the specificity of court orders (Halemba et al., 2002). Another study found that judicial training increased the frequency with which judges explained the hearing process to fathers (Summers et al., 2016). One study examined timely notice to tribes for ICWA cases and found that timelier notice was related to placements that were more likely to follow placement preferences (CBCC, 2020).

Additionally, a study comparing district and family courts (in which judges hear only juvenile or family court matters and follow family court rules designed to promote uniformity and improve court practice) found that family courts were statistically more likely to be provided with copies of petitions and all court orders to parties throughout the case (Boes et al., 2015). In another study of a family treatment drug court (FTDC), the perceptions of parents' procedural justice/fairness of the case process, and reunification rates of FTDC parents, were compared against a control group of non-FTDC parents (Fessinger et al., 2020). Results indicated that FTDC parents had a higher perception of procedural justice (i.e., belief that the court process was fair) compared with control parents, and that this perception was associated with more consistent participation in court-ordered services and in higher rates of reunification of FTDC parents compared with those of control parents.



Associated research and best-practice recommendation documents supporting the JCAMP due process measures are summarized in exhibit 2.

Exhibit 2. Research and Best-Practice Standards Supporting Due Process Measures

Due process measures	Research citing an association with case closure outcomes*	Best-practice standards supporting measure
2.1 Do parties to the case receive timely service?	No outcome studies found	ERG, GICWA, TIB
2.2 Are child or youth attorneys and/or attorney GALs appointed early in the case?	No outcome studies found	ERG, JE, LRCY, SCR
2.3 Are parent attorneys appointed early in the case?	Wood et al., 2016; Wood & Russell, 2011 ⁺	ERG, JE, SPR
2.4 Do parties to the case receive timely notice of hearings?	No outcome studies found [^]	ERG, JE, GICWA, SCR, SCWR
2.5 Are Indian children identified early in the case?	Capacity Building Center for Courts, 2020	ERG, GICWA
2.6 What do judges do to ensure fair hearings?	No outcome studies found	ERG, GICWA, JE, RRD
2.7 How do prosecuting (or agency or state) attorneys ensure fair hearings?	No outcome studies found	SCWR
2.8 How do parent attorneys ensure fair hearings?	No outcome studies found	SPR
2.9 How do child or youth attorneys and/or attorney GALs ensure fair hearings?	No outcome studies found	LRCY, SCR
2.10 Do parents feel they were treated fairly?	Fessinger et al., 2020	ERG
2.11 Do children and youth feel they were treated fairly?	No outcome studies found	ERG

Notes: *Case closure outcomes include child safety, family preservation, child permanency, and child well-being.

⁺ Wood and Russell (2011) found attorney presence at early hearings predicted case outcomes. Wood, Summers, and Soderman-Duarte (2016) studied a pilot representation model featuring early attorney appointment and judicial continuity. Other research of high-quality child and parent representation models has reported associations with child and family outcomes (e.g., Gerber et al., 2019); however, the specific variable of early appointment of attorney was not studied.



^ Timely notice to tribes was associated with ICWA placement preferences (CBCC, 2020); however, no studies were found examining whether timely notice is associated with child and family outcomes.

Acronyms for best-practice standards:

- CSG = *Child Safety: A Guide for Judges and Attorneys*, American Bar Association (ABA) & ACTION for Child Protection (Lund & Renne, 2009)
- ERG = *Enhanced Resource Guidelines*, National Council of Juvenile and Family Court Judges (NCJFCJ) (Gatowski et al., 2016)
- GICWA = *Guidelines for Implementing the Indian Child Welfare Act (ICWA)* (Bureau of Indian Affairs, 2016)
- JE = *Judicial Excellence in Child Abuse and Neglect Proceedings: Principles and Standards for Court Organization, Judicial Selection and Assignment, Judicial Administration and Judicial Education* (ABA, 2010)
- LRCY = *Recommendations for Legal Representation of Children and Youth in Neglect and Abuse Proceedings* (National Association of Counsel for Children, 2021)
- RRD = *Reducing Racial Disparities in the Child Welfare System* (ABA, 2008)
- SCR = *Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases* (ABA, 1996)
- SCWR = *Standards of Practice for Lawyers Representing Child Welfare Agencies* (ABA, 2004)
- SPR = *Standards of Practice for Lawyers Representing Parents in Abuse and Neglect Cases* (ABA, 2006)
- TIB = *Trauma-Informed Benchbook for Tribal Justice Systems* (Aleut Community of St. Paul, n.d.)



High-Quality Legal Representation

High-quality legal representation includes the in-court and out-of-court practices of parents' attorneys, children's attorneys and/or attorney GALs, and state or child welfare agency attorneys to ensure competent legal representation in child welfare cases.

Theory of Change

Providing families with access to competent legal representation helps in achieving procedural fairness for parents and children or youth, ensures complete and accurate information is provided to judges, and supports fair and equal application of the law. When parents, children, or youth have access to competent legal representation, the likelihood of achieving timely permanency is enhanced. When parents feel that they had access to competent legal counsel early enough to influence their case, trust is built in the integrity and fairness of the process. When state or child welfare agency attorneys provide competent legal representation, they ensure due process is upheld, promote fairness, and ensure consistent application of the law.

Supporting Research Evidence

Best-practice standards for parents' and children's attorneys and/or attorney GALs and child welfare agency or state attorneys outline in-court and out-of-court activities as components of high-quality representation. Examples are the ABA's *Standards of Practice for Lawyers* (1996, 2004, 2006), and the NACC's *Recommendations for Legal Representation of Children and Youth in Neglect and Abuse Proceedings* (2021). Multiple studies have shown a correlation between attorney presence at key points in the case or early in the case process and positive outcomes for children and families, including timelier permanency (Summers, 2017; Wood et al., 2016) and a decreased likelihood of creating legal orphans (Summers & Gatowski, 2018). While many descriptive studies exist of attorneys' out-of-court practices (e.g., describing the frequency with which attorneys perform specific activities), few studies have examined the relationship of *specific* out-of-court attorney activities or practices to case processing or outcomes.

Most of the studies examining the continuity of attorneys for parents and children have been descriptive, reporting the frequency with which the same attorney was involved in all hearings in a case or the frequency with which attorneys changed in the same case (e.g., DiPietro, 2008; Gatowski et al., 2002; Lukowski & Davies, 2002; Pitchal et al., 2009; Summers et al., 2011). No studies were found that examined attorney continuity (or lack thereof) and its impact on the case process and outcomes.

Research examining models of representation for child and parent advocacy have shown mixed results. In one robust study of child attorney models, for example, no differences were found in placement or in achievement of permanency for child program attorneys compared with control-group attorneys (Orlebeke et al., 2016). A second study offering a specific legal representation model to youth found no impact on reunification, but a significant impact on guardianship and adoption rates (Zinn & Slowriver, 2008). Some research has supported interdisciplinary legal



team approaches in which attorneys are supported by child welfare specialists among other experts, finding they led to fewer days in foster care and faster permanency, reunification, and guardianship (Gerber et al., 2019).

Associated research and best-practice standards documents supporting the JCAMP High-Quality Legal Representation measures are summarized in exhibit 3.

Exhibit 3. Research and Best-Practice Standards Supporting High-Quality Legal Representation Measures

High-quality legal representation measures	Research citing an association with case closure outcomes*	Best-practice standards supporting measure
3.1 Do parent attorneys attend hearings?	Summers, 2017; Summers et al., 2017; Summers & Gatowski, 2018; Wood et al., 2016; Wood & Russell, 2011	ERG, JE, SPR, TIB, LRCY, ABA
3.2 Do child or youth attorneys and/or attorney GALs attend hearings?	Summers et al., 2017; Summers & Gatowski, 2018	ERG, LRCY, SCR, TIB
3.3 Do prosecuting (or agency or state) attorneys attend hearings?	Summers et al., 2017; Summers & Gatowski, 2018	ERG, JE, SCWR
3.4 Do multidisciplinary members of the legal team attend hearings?	Gerber et al., 2019; Orlebeke et al., 2016; Summers et al., 2017; Zinn & Peters, 2015; Zinn & Slowriver, 2008	—
3.5 How do parent attorneys ensure they provide high-quality legal representation? *	No outcome studies found	ERG, JE, GICWA, SPR
3.5a Does the same parent attorney represent the parent throughout the case?	No outcome studies found	ERG, JE, GICWA, SPR
3.5b Do parent attorneys advocate for parents in hearings?	No outcome studies found	ERG, SPR
3.5c Do parent attorneys prepare in between hearings?	No outcome studies found	ERG, SPR



High-quality legal representation measures	Research citing an association with case closure outcomes*	Best-practice standards supporting measure
3.6 How do child or youth attorneys and/or attorney GALs ensure they provide high-quality legal representation? +	No outcome studies found	ERG, JE, LRCY, SCR
3.6a Does the same child or youth attorney or attorney GAL represent the child or youth throughout the case?	No outcome studies found	ERG, JE, LRCY, SCR
3.6b Do child or youth attorneys and/or attorney GALs advocate for children and youth in hearings?	No outcome studies found	ERG, LRCY, SCR
3.6c Do child or youth attorneys and/or attorney GALs prepare in between hearings?	No outcome studies found	ERG, LRCY, SCR
3.7 How do prosecuting (or agency or state) attorneys ensure they provide high-quality legal representation? +	No outcome studies found	SCWR
3.7a Do prosecuting (or agency or state) attorneys stay on the same case throughout the case?	No outcome studies found	SCWR
3.7b How do prosecuting (or agency or state) attorneys advocate in hearings?	No outcome studies found	SCWR
3.7c Do prosecuting (or agency or state) attorneys prepare in between hearings?	No outcome studies found	—
3.8 Are parents satisfied with their attorneys' representation?	No outcome studies found	—
3.9 Are children and youth satisfied with their legal representation?	No outcome studies found	LRCY
3.10 How do parents, children, and youth feel they were treated by prosecuting (or agency or state) attorneys?	No outcome studies found	—

Notes: *Case closure outcomes include child safety, family preservation, child permanency, and child well-being.

+ Studies of attorney representation models have found associations with case outcomes (e.g., Courtney & Hook, 2012; Gerber et al., 2019; Zinn & Slowriver, 2008). However, associations with case outcomes for different elements of these program models, such as advocacy in hearings and preparation in between hearings, were not found.

Acronyms for best-practice standards:



- CSG = *Child Safety: A Guide for Judges and Attorneys*, American Bar Association (ABA) & ACTION for Child Protection (Lund & Renne, 2009)
- ERG = *Enhanced Resource Guidelines*, National Council of Juvenile and Family Court Judges (NCJFCJ) (Gatowski et al., 2016)
- GICWA = *Guidelines for Implementing the Indian Child Welfare Act (ICWA)* (Bureau of Indian Affairs, 2016)
- JE = *Judicial Excellence in Child Abuse and Neglect Proceedings: Principles and Standards for Court Organization, Judicial Selection and Assignment, Judicial Administration and Judicial Education* (ABA, 2010)
- LRCY = *Recommendations for Legal Representation of Children and Youth in Neglect and Abuse Proceedings* (National Association of Counsel for Children, 2021)
- RRD = *Reducing Racial Disparities in the Child Welfare System* (ABA, 2008)
- SCR = *Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases* (ABA, 1996)
- SCWR = *Standards of Practice for Lawyers Representing Child Welfare Agencies* (ABA, 2004)
- SPR = *Standards of Practice for Lawyers Representing Parents in Abuse and Neglect Cases* (ABA, 2006)
- TIB = *Trauma-Informed Benchbook for Tribal Justice Systems* (Aleut Community of St. Paul, n.d.)



Safety

Safety means being protected from harm. There are multiple definitions and ways to think about safety in child welfare. For this document, we define safety in relation to safety decision-making that occurs in the case immediately after (or immediately before) the child has been removed from the home and throughout the case as judges make decisions about safely returning the child home. The goal is that children remain at home as long as safely possible and be able to return home when safely possible.

Theory of Change

Keeping children at home when safely possible will prevent unnecessary removals, reduce trauma to the child and family, and reduce the burden on court professionals by reducing caseloads. Focusing discussion on safety and conditions for return allows all parties to understand the requirements for the child to return home so that parents can work toward ameliorating the safety threats and children can spend as little time as possible in substitute care. Increased discussion in hearings and opportunities to cross-examine reasonable efforts also allow the court to hold the agency accountable for decisions regarding safety and removal, which can enhance decision-making, prevent unnecessary removals, and promote timely return home or alternative permanency placements.

Supporting Research Evidence

Little research evidence exists on specific court-related safety practices. Review of current research suggests that removal from the home is traumatic on the family and that efforts to reduce this would be beneficial to children and parents (Sankaran et al., 2019). The limited research on practices suggests that judges inquiring about what is preventing the child from returning home results in a higher percentage of children being returned to their home at the first hearing but also more children returning to care after reunification (Gonzalez & Summers, 2014).

Best practices, such as those put forth in the NCJFCJ's *Enhanced Resource Guidelines* (Gatowski et al., 2016) and *Child Safety: A Guide for Judges and Attorneys* (Lund & Renne, 2009), suggest that judges should engage not only in discussions of the agency's efforts to prevent removal at the first hearing but also in an ongoing discussion at every hearing related to safety and what is preventing the child from returning home today. *Child Safety: A Guide for Judges and Attorneys* (Lund & Renne, 2009) contains advice on robust safety discussion and analysis at hearings.

Associated research and best-practice standards documents supporting the JCAMP Safety measures are summarized in exhibit 4.



Exhibit 4. Research and Best-Practice Standards Supporting Safety Measures

Safety measures	Research citing an association with case closure outcomes*	Best-practice standards supporting measure
4.1 How often and at what points in the case do courts make a finding of reasonable or active efforts to prevent removal? How often is the finding that the agency made no “reasonable efforts”?	Summers, 2017	ERG, JE, GICWA, TIB, CSG
4.2 How do courts discuss safety and removal?	Gonzalez & Summers, 2014	CSG, ERG, GICWA
4.3 How do courts discuss the agency’s reasonable or active efforts to prevent removal?	No outcome studies found	CSG, ERG, GICWA
4.4 Do attorneys cross-examine reasonable or active efforts to prevent removal?	No outcome studies found	SPR, ERG, CSG
4.5 Do attorneys raise the issue of reasonable or active efforts if not raised?	No outcome studies found	SPR, ERG, CSG
4.6 Do prosecuting (or agency or state) attorneys offer information or evidence about the agency’s reasonable or active efforts to the court?	No outcome studies found	SCWR, ERG, CSG
4.7 Do judges ask about the agency’s efforts to prevent removal?	No outcome studies found	CSG, ERG
4.8 Do judges make detailed reasonable or active efforts findings that explain how the agency has worked with the family to prevent removal?	Capacity Building Center for Courts, 2020 +	ERG, JE, GICWA, TIB, CSG
4.9 Do judges consider parents’ protective capacities in determining whether to remove, maintain, or return the child home?	No outcome studies found	CSG, ERG
4.10 Do parents understand the safety threats to the child and how those led to the child’s removal?	No outcome studies found	CSG, ERG
4.11 Do parents understand the conditions for return of the child?	No outcome studies found	CSG, ERG
4.12 Do parents believe judges considered their protective capacities in decision-making regarding removal and return?	No outcome studies found	CSG, ERG



Safety measures	Research citing an association with case closure outcomes*	Best-practice standards supporting measure
4.13 Do parents feel their voices were heard in safety planning discussions?	No outcome studies found	CSG, ERG
4.14 Do children and youth feel their voices were heard in safety discussions?	No outcome studies found	CSG, ERG

Notes: *Case closure outcomes include child safety, family preservation, child permanency, and child well-being.
 + Study findings were that, although detailed *active efforts findings* were associated with a higher likelihood of reunification, they were also associated with a longer time to reunification (CBCC, 2020).

Acronyms for best-practice standards:

- CSG = *Child Safety: A Guide for Judges and Attorneys*, American Bar Association (ABA) & ACTION for Child Protection (Lund & Renne, 2009)
- ERG = *Enhanced Resource Guidelines*, National Council of Juvenile and Family Court Judges (NCJFCJ) (Gatowski et al., 2016)
- GICWA = *Guidelines for Implementing the Indian Child Welfare Act (ICWA)* (Bureau of Indian Affairs, 2016)
- JE = *Judicial Excellence in Child Abuse and Neglect Proceedings: Principles and Standards for Court Organization, Judicial Selection and Assignment, Judicial Administration and Judicial Education* (ABA, 2010)
- LRCY = *Recommendations for Legal Representation of Children and Youth in Neglect and Abuse Proceedings* (National Association of Counsel for Children, 2021)
- RRD = *Reducing Racial Disparities in the Child Welfare System* (ABA, 2008)
- SCR = *Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases* (ABA, 1996)
- SCWR = *Standards of Practice for Lawyers Representing Child Welfare Agencies* (ABA, 2004)
- SPR = *Standards of Practice for Lawyers Representing Parents in Abuse and Neglect Cases* (ABA, 2006)
- TIB = *Trauma-Informed Benchbook for Tribal Justice Systems* (Aleut Community of St. Paul, n.d.)



Permanency

Permanency means children have safe and permanent homes. Measures in this category include whether parents feel included in a meaningful process to achieve reunification, and when reunification is not possible, that there is a fair and meaningful process that moves the case forward to achieve alternative forms of permanency for children. It also includes measures of judicial and attorney practices that support timely achievement of reunification and permanency in cases.

Theory of Change

Involving parents in a meaningful process to achieve reunification (i.e., one in which parents have a clear understanding of their path and requirements for getting their child back home, have access to tailored reunification services, have access to family time, and feel they are supported and engaged in the case process) will result in timelier achievement of reunification and permanency. When reunification has been fully explored and is not safely possible, having a process that includes robust discussion of permanency at hearings will lead to identification of alternative permanency goals as well as steps needed to achieve those goals, which will lead to timelier achievement of permanency for the child.

Supporting Research Evidence

Little research exists examining the specific practices related to parents' perception that they are part of a meaningful process to achieve reunification. The research that has been conducted in this area primarily comes from studies of problem-solving court models such as family treatment drug court and parent mentor programs. Some research, for example, indicates that parents involved in family treatment drug courts had higher reports of procedural fairness than control groups and that this perception was related to higher engagement in services (e.g., Fessinger et al., 2020). In another study, parents involved in a parent mentor program had a better understanding of the case process, increased trust in the child welfare agency, and increased belief in control over case outcomes (Summers et al., 2012). Parent mentoring programs have also been found to decrease termination of parental rights rates (Trescher & Summers, 2020) and increase reunification rates (Bohannon et al., 2016; Trescher & Summers, 2020).

Associated research and best-practice standards documents supporting the JCAMP permanency measures are summarized in exhibit 5.



Exhibit 5. Research and Best-Practice Standards Supporting Permanency Measures

Permanency measures	Research citing an association with case closure outcomes*	Best-practice standards supporting measure
5.1 How much time does it take until the first permanency hearing?	No outcome studies found	ERG, JE
5.2 How much time does it take to file the termination of parental rights petition?	Summers, 2017	ERG, JE, SCWR
5.3 How much time does it take until the termination of parental rights?	No outcome studies found	ERG, JE
5.4 How often and at what points in the case do courts make a finding of reasonable or active efforts to reunify or finalize permanency?	No outcome studies found	ERG, JE
5.5 How often and at what points in the case are continuances granted?	Summers, 2017; Summers & Gatowski, 2018	ERG, JE, SCWR
5.6 How many termination of parental rights decisions are appealed?	No outcome studies found	ERG, GICWA
5.7 How do courts discuss permanency?	Summers, 2017; Summers et al., 2017; Summers & Gatowski, 2018	ERG, LRCY, SCR, SPR
5.8 Do judges ask about what is preventing the child or youth from safely returning home today?	No outcome studies found	ERG, CSG
5.9 Do judges ask about parents' access to and receipt of relevant services?	No outcome studies found	ERG, JE, RRD
5.10 Do judges order any relevant services to support reunification/permanency?	No outcome studies found	ERG, GICWA, JE, TIB
5.11 How do court orders address family time?	No outcome studies found	CSG, ERG, TIB
5.12 Do judges make detailed reasonable or active efforts to achieve permanency findings that explain how the agency has worked to reunify the family or achieve permanency?	No outcome studies found	ERG



Permanency measures	Research citing an association with case closure outcomes*	Best-practice standards supporting measure
5.13 What information or evidence about reasonable or active efforts to reunify or finalize permanency do prosecuting (or agency or state) attorneys present to the court?	No outcome studies found	SCWR
5.14 Do prosecuting (or agency or state) attorneys file motions and petitions related to permanency goals in a timely manner?	No outcome studies found	SCWR, ERG
5.15 Do parent attorneys advocate for reunification in hearings?	No outcome studies found	SPR
5.16 Do child or youth attorneys and/or attorney GALs advocate for reunification or other permanency in hearings?	No outcome studies found	LRCY
5.17 Why are continuances granted?	No outcome studies found	SCR, SCWR, SPR, ERG
5.18 Do parents feel their voices were heard in permanency planning discussions?	No outcome studies found	ERG
5.19 Do parents understand what is required of them and the steps needed to have their child returned?	No outcome studies found	—
5.20 Do parents feel services met their needs and assisted them in reunification?	No outcome studies found	ERG
5.21 Do parents feel they were able to engage in meaningful family time?	No outcome studies found	ERG
5.22 Do children and youth feel their voices were heard in permanency decisions?	No outcome studies found	—

Notes: *Case closure outcomes include child safety, family preservation, child permanency, and child well-being. Although many of these measures have been frequently included measures in studies, few studies were found to demonstrate an association with these case outcomes.

Acronyms for best-practice standards:

- CSG = *Child Safety: A Guide for Judges and Attorneys*, American Bar Association (ABA) & ACTION for Child Protection (Lund & Renne, 2009)
- ERG = *Enhanced Resource Guidelines*, National Council of Juvenile and Family Court Judges (NCJFCJ) (Gatowski et al., 2016)
- ICWA = *Guidelines for Implementing the Indian Child Welfare Act (ICWA)* (Bureau of Indian Affairs, 2016)



- JE = *Judicial Excellence in Child Abuse and Neglect Proceedings: Principles and Standards for Court Organization, Judicial Selection and Assignment, Judicial Administration and Judicial Education* (ABA, 2010)
- LRCY = *Recommendations for Legal Representation of Children and Youth in Neglect and Abuse Proceedings* (National Association of Counsel for Children, 2021)
- RRD = *Reducing Racial Disparities in the Child Welfare System* (ABA, 2008)
- SCR = *Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases* (ABA, 1996)
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- SPR = *Standards of Practice for Lawyers Representing Parents in Abuse and Neglect Cases* (ABA, 2006)
- TIB = *Trauma-Informed Benchbook for Tribal Justice Systems* (Aleut Community of St. Paul, n.d.)



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