

**JUDGING YOUR JUVENILE COURT:  
A CITIZEN'S GUIDE TO EVALUATING  
JUDICIAL PERFORMANCE  
IN  
CHILD NEGLECT AND ABUSE CASES**

*A joint publication of*

**THE TENNESSEE YOUTH ADVISORY COUNCIL  
THE VANDERBILT LEGAL CLINIC  
THE VANDERBILT CHILD AND FAMILY POLICY CENTER**

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## FOREWORD

In June 2004, Tennessee Supreme Court Justice Riley Anderson was the guest speaker at a conference co-sponsored by the Tennessee Youth Advisory Council (TYAC), a group of current and former foster youth committed to improving the foster care system. Justice Anderson spoke about the roles and responsibilities of juvenile courts and Guardians *Ad Litem* (GALs) in child neglect and abuse cases.

There were some foster youth at our conference whose cases had received the attention they needed from their judge. There were some for whom the system worked because their GAL took the time to understand their situations and advocated conscientiously. But for too many of us, as we listened to Justice Anderson, we were struck by the difference between what he said was supposed to happen in juvenile court and what had happened to us.

Many of us had been at a disadvantage because we had not known how the system was supposed to work. When we were not included in court hearings or were not asked what we wanted to have happen, we were left to think that was just the way the system worked. When we only met with our GAL five minutes before court, we thought that was all the time we were entitled to.

As a result of the conference, the TYAC realized that in order to improve the system we needed to educate ourselves and the public about the juvenile court process. As part of that effort, we have published two short pamphlets to help youth understand their rights in juvenile court proceedings, pamphlets which we would like juvenile court staff and DCS staff to distribute to older children at the beginning of any child abuse and neglect case.

We hope that this third publication, *Judging Your Juvenile Court*, produced in collaboration with the Vanderbilt Legal Clinic and the Vanderbilt Child and Family Policy Center, will heighten public awareness about the role of the juvenile court in neglect and abuse cases—and about the tremendous difference that a good judge and a good GAL can make in the lives of children.

The Tennessee Youth Advisory Council is committed to working with judges, lawyers, DCS staff and others to ensure that all of our juvenile courts work the way Justice Anderson says they are supposed to.

Michelle Crowley  
Tennessee Youth Advisory Council

TYAC publications are available for downloading from our website, [www.tnfosteryouth.org](http://www.tnfosteryouth.org).

# JUDGING YOUR JUVENILE COURT: A CITIZEN'S GUIDE TO EVALUATING JUDICIAL SYSTEM PERFORMANCE IN CHILD NEGLECT AND ABUSE CASES

By Andy Shookhoff\* & Susan L. Brooks\*\*

## Introduction

*“No child enters or leaves foster care without the approval of the court. No reunification, adoption, or guardianship happens without the court’s approval. . . Courts are charged with ensuring that the basic rights of children and parents are respected when children are placed in the custody of the state. Courts are further responsible for ensuring that public officials meet their legal responsibilities to these children—to keep them safe, to secure permanent homes, and to promote their well-being during the time when the state is acting as parent to a child.”*

*The Pew Commission on Children in Foster Care, *Fostering the Future: Safety, Permanency and Well-Being for Children in Foster Care* 34 (2004) (“Pew Commission Report”)*

When a child in foster care suffers further abuse or neglect while in a foster home or a residential facility, public attention is centered on the child welfare agency. Individual case workers and supervisors responsible for the child’s case become the focus of public scrutiny; the welfare agency commissioner is called to account for and explain the agency’s failure; and the Governor and other elected officials responsible for the appointment of commissioners and for oversight of state agency operations are expected to publicly decry the agency’s failure and assure the public that they will use their authority to reform the agency. However, while the role of the agency in these tragedies appropriately receives public scrutiny, too little attention is given to the quality of the performance of the legal system—the judges, the court administrators, the Guardians Ad Litem—in these cases.

The question of how the child “slipped through the cracks” typically focuses attention on inexperienced, poorly trained, or overloaded caseworkers; or on worker turnover resulting in a child’s case not being reassigned; or an overburdened or poorly organized child abuse and neglect investigations unit failing to respond to reports of neglect—all important areas of inquiry. But there are other important questions that rarely get asked by the media covering these cases and the political leaders responding:

- How could the agency have so failed this child without the juvenile court—which is responsible for oversight, review and monitoring the situation of any child it places in foster care—knowing about it and intervening?
- How could the Guardian Ad Litem (GAL)—the court appointed lawyer that each child is supposed to have advocating for him or her while in care—not

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be aware that his or her client was being abused, that the worker was not visiting, that allegations of abuse were not being investigated?

- Why did the required court review process not catch these problems? If court proceedings occurred in a timely manner shouldn't the court have recognized the early signs of a case failing to get appropriate attention, and then acted to prevent the tragedy?

This guide will help you ask key questions about the way in which your juvenile court handles child abuse and neglect cases. The answers to these questions will provide valuable information about the performance of your juvenile court and can help you identify both strengths and weaknesses of the court system's performance in your county.

### **Understanding the Role of the Juvenile Court in Child Neglect and Abuse Cases**

*“The public is largely unaware of the depth of the (juvenile) court’s responsibility in cases of abuse and neglect and has little information on its effectiveness in protecting children and promoting their well being.”*

*Pew Commission Report at 34.*

Late one night, a neighbor hears cries from the apartment next door. She believes that the three young Smith children who live there have been left unsupervised. She checks around the building, but there is no sign of the parents. She knows that any time you suspect a child is being neglected or abused you should immediately report it (as the law requires you to), so she calls the 24-hour hotline operated by the Tennessee Department of Children's Services (DCS) and makes an anonymous report.

But what happens once that report is made? Who decides whether those children will remain in the home or be removed and placed elsewhere? Who is responsible for making sure that services are provided to the children and their family? If the children come into foster care, who makes sure they are safe and well cared for? Who makes sure they can be safely reunited with their families or that they are adopted into new families if safe return to the family is not possible?

Most people know that DCS has a major role in investigating allegations of child abuse and neglect, acting to protect children, and providing placements and services to children and families. What many people do not know is the critical role and responsibility of the juvenile court in these situations.

It is the juvenile court that will decide whether the three Smith children have been neglected or abused, and if they were, whether they can remain with their family or must come into foster care. Once in foster care, the children cannot be reunified with their family, placed in the custody of relatives, or adopted without court approval. Until reunification or adoption occurs, the juvenile court is responsible for ongoing monitoring and review of the children to make sure that DCS is keeping the children safe, diligently working to reunite them with family or place

them for adoption, and conscientiously promoting their well-being by attending to their physical, emotional, educational and developmental needs.

The decisions made and oversight and monitoring provided by judges in these cases every day in Tennessee's juvenile courts "alter the lives of the children and parents before them, for better or worse." *Pew Commission Report at 34*. If judges and the attorneys involved in these cases do their jobs well, the system works better, children are safer and families are strengthened. If they do not, the system falters, and children and their families are in harm's way.

What should judges be doing in these cases? How do we know if a judge is doing a good job? How do we know if the lawyers involved in the cases are doing their jobs? Where do we look for information on the effectiveness of our juvenile courts in protecting children and promoting their well-being?

### **The Judge as Gatekeeper**

*"[C]hildren have fundamental liberty interests at stake in [child neglect and abuse] proceedings. These include a child's interest in his or her own safety, health, and well-being, as well as an interest in maintaining the integrity of the family unit and in having a relationship with his or her biological parents. On the one hand, an erroneous decision that a child is not deprived or that parental rights should not be terminated can have a devastating effect on the child, leading to chronic abuse or even death. On the other hand, an erroneous decision that a child is deprived or that parental rights should be terminated can lead to the unnecessary destruction of the child's most important family relationships."*

*Kenny A., et al., v. Sonny Perdue, et al., No. 1:02-cv-1686-MHS, slip op. at 14 (N.D. Ga. Filed Feb. 5, 2005).*

### ***How does the Juvenile Court become involved in situations like that of the Smith children?***

The Juvenile Court would become involved with the Smith children and their family if the Department of Children's Services, upon investigating the children's situation, believes that the children are neglected or abused and believes that either (1) the children need to come into state custody for their protection or (2) the children need some court required, court supervised, or court authorized involvement of DCS in order to remain safely in the care of their parents.

A case like the Smith case is usually brought to the court's attention as a result of DCS filing a petition in juvenile court. The petition states why the Department believes the Smith children are neglected or abused and asks the court to hold a hearing (also referred to as a "trial" or an "adjudicatory hearing") on the petition. In addition, if the Department believes the children are in immediate danger and need to be taken into state custody while awaiting the trial on the petition, the Department can take the children into "emergency custody" (referred to as an "emergency removal"). If the Department does an emergency removal, the juvenile court must hold a "preliminary hearing" within 3 days of the emergency removal to decide whether the children should remain in DCS custody until the trial is held.

At the trial on the petition, the judge must decide whether DCS has proven by “clear and convincing evidence” that the children are neglected and abused. If the Department has not proven its case, the case is dismissed. If the Department has proven its case, the court then holds a further hearing, called a “dispositional hearing.” The purpose of the dispositional hearing is to decide whether the children need to be in state custody, or whether they can stay with their parents or relatives, while the Department works with them and their family to try to address the problems that resulted in the neglect or abuse.

In this part of the judicial process—the pretrial proceedings, the adjudicatory hearing (trial) and the dispositional hearing—the juvenile court has the critical role of making sure that no child suffers the trauma of removal from his or her family and no parents suffer the loss of their children unless the children have in fact been neglected or abused and there is no less drastic alternative to address the situation than placement in state custody. As Tennessee Supreme Court Justice Riley Anderson observed:

*“The Juvenile Court Judge is the gatekeeper for children in foster care. First the judge should make sure children are appropriately placed in foster care. If services exist that can be provided to the family to keep children safely in the home, that should happen before children are removed from the home.”*

*Keynote Address, 2004 Tennessee Youth Action Conference, reprinted in THE TENNESSEE VOLUNTEER ATTORNEY (Summer, 2004) 11 (“Anderson”).*

As Justice Anderson has emphasized, “the reality is that most children are ultimately returned to their families.” *Anderson at 12.* For this reason, “there needs to be an increased focus on the role of the Juvenile Court Judge in preventing unnecessary removal of children from their homes.” *Anderson at 12.*

Nevertheless, there are cases in which there is no alternative to bringing a child into foster care and in those situations the judge takes on a second critical role.

### **The Judge as Monitor**

#### ***What is the juvenile court’s role after placing a child in DCS custody?***

For children that are “adjudicated” neglected or abused by the juvenile court and are placed by the juvenile court in DCS custody, the judge’s role shifts from the “gatekeeper” preventing unnecessary placement in foster care to the “monitor.” As Justice Anderson explained to young people in foster care:

*“The judge is responsible for monitoring your situation until you are placed in a permanent home. A part of the judge’s responsibility is to review your Permanency Plan<sup>1</sup>. . . . [T]he judge should determine whether the plan’s goal is*

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<sup>1</sup>The Permanency Plan is a document that is supposed to be developed by DCS and the child and family at a Child and Family Team Meeting. The Permanency Plan becomes a blueprint for how the case should proceed. The law

*appropriate for you. Whether the goal is to reunify you with your family, or placement with a relative, or adoption or a planned permanent living arrangement, the judge should make sure the goal makes sense for your individual situation. Whatever goal is decided, the judge must determine if you, your family, relatives, and foster parents are receiving the services required to ultimately reach that goal.”*

*Anderson at 11.*

In most cases, the goal is reunification and when reunification is the goal, “the judge should ensure that the services in the Permanency Plan are provided expeditiously so that children do not remain in foster care any longer than necessary.” *Anderson at 12.* In some cases, the goal is (or becomes) adoption and in those situations, DCS may seek to terminate parental rights.

***What is the juvenile court’s role if the Department seeks to terminate parental rights?***

In some cases, either because of the severity of the abuse or neglect or because of the failure of the family situation that resulted in a child coming into care to improve to the point where the child can safely come home that the parents, termination of parental rights may be appropriate. In the case of the Smith children, if the Department believes that their parents will not in the foreseeable future be able to safely provide for their care and there are no relatives willing and able to provide a safe alternative permanent home for the children, the Department will seek to terminate parental rights so that the children can be freed up for adoption.

There is a big difference between filing a neglect or abuse petition seeking custody and filing a petition to terminate parental rights. A hearing on a neglect or abuse petition can result in loss of custody, but there remains the possibility (and in most cases the expectation) that this loss of custody is temporary and that custody will be restored to the parent once the situation improves. Termination of parental rights, on the other hand, is the permanent severing of the legal relationship between the parent and the child with the parents becoming the legal equivalent of strangers and losing all of their rights.

Parents can voluntarily surrender parental rights by signing surrender papers before a judge. Before accepting a surrender, the judge must read through the surrender papers with the parent and go over each provision with them to make sure that the parent understands what he or she doing.

The process for terminating parental rights requires either the signing of a voluntary surrender of parental rights by the parents or the filing of a petition to terminate parental rights and a hearing (trial) on that petition. Petitions for termination of parental rights involving children in foster

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requires that a plan be created for every child who is placed in the state’s custody within the first 30 days and approved by the juvenile court within the first 60 days. The plan should state the permanency goal for that child and identify existing barriers, time frames, and specific responsibilities of each of the members of the Child and Family Team for achieving the child’s permanency goal. Substantial non-compliance with a permanency plan can be an independent basis for terminating parental rights, so the plan has a great deal of importance on many levels.

care are most frequently filed in and heard by the juvenile court.<sup>2</sup> At the hearing on the petition, DCS must prove by clear and convincing evidence that there are “legal grounds” for termination of parental rights and that it is in the best interests of the children to terminate parental rights. Whether the court grants the termination of parental rights petition or not, the court must continue to monitor the child’s situation until that child achieves permanency. However, if the court terminates parental rights, the focus of the monitoring will be on making sure that the Department finds an adoptive home or other appropriate permanent living arrangement and that the children are receiving the services and care they need until that occurs.

### **Indicators of Judicial Performance: Four Key Areas of Focus**

It is often said that in any contested court case, the side that wins thinks the judge is fair and wise and the side that loses thinks the judge is biased and stupid. While that is clearly an oversimplification, it does point out some of the difficulty in evaluating judges. Contested cases can turn on the ability of the parties to produce and present evidence, the credibility of (and availability of) witnesses, the legal requirements established by the legislature and the constitutional balance between state power to police families and protect children and the liberty interests of children and parents. Therefore, whether one party is unhappy with a decision and believes the judge was wrong or another is happy with a decision and believes the judge is right is not necessarily helpful in evaluating a judge’s performance. Without sitting through every case from beginning to end how can we even begin to tell whether a judge is doing a good job or a bad job?

In its report, “Fostering the Future: Safety, Permanence and Well-Being for Children in Foster Care,” the Pew Commission on Children in Foster Care, drawing on court performance measures developed by the American Bar Association Center on Children and the Law, the National Center for State Courts, and the National Council of Juvenile and Family Court Judges, identified key areas of the court process that are good indicators of the quality of juvenile court performance. If judges are performing well in these areas, there is reason to have confidence that the court is functioning the way it is supposed to, that decisions are being thoughtfully and fairly made in a timely manner, and that, if mistakes are made, they are more likely to be corrected, either by further hearings in juvenile court or actions of the appellate courts.

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<sup>2</sup> Circuit courts can also hear these cases, either as separate proceedings or as part of an adoption proceeding.

You can generally have confidence in the way your juvenile court is handling its responsibilities in these kinds of cases involving child neglect and abuse if four things are happening on a consistent basis:

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| <p><b>I. Children and their families are receiving full, fair and respectful hearings;</b></p> <p><b>II. Lawyers representing children and parents are providing effective advocacy for their clients;</b></p> <p><b>III. Cases are being heard and reviews being conducted in a timely manner; and</b></p> <p><b>IV. Judges are using available information about their caseloads to structure and prioritize their case reviews so that children don't fall through the cracks.</b></p> |
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The following sections are designed to help identify the questions you can ask to understand these four areas of court performance.

**I. Full, Fair and Respectful Hearings**

*“The decisions made in dependency courts every day have powerful and life-long implications for children and families. No child or parent should face the partial or permanent severance of familial ties without a fully informed voice in the legal process.”*

*Pew Commission Report at 35.*

When making these life altering decisions and overseeing and monitoring the case planning and provision of services that so impact child safety, wellbeing, and permanence, the juvenile court must make sure that the rights of children and families are respected and that the decisions made are based on evidence that is fully and fairly developed and presented in hearings and reviews at which children and parents are active and meaningful participants.

Judges are supposed to deal with cases “impartially and thoughtfully based on evidence brought before the court.” *Pew Commission Report at 60.* Whether it is a preliminary hearing following an emergency removal, an adjudication or dispositional hearing, a court review, or a termination of parental rights proceeding, hearings in these matters need to be conducted in a manner that recognizes and reflects the significant rights involved, and the grave harm and injustice that a wrong decision brings with it. This means making sure that the judge hears from all interested parties, that the facts are fully presented, and disputed facts effectively debated and legal arguments competently presented. Good judges know that the quality and accuracy of their decisions are dependent on having the full benefit of the different perspectives of those who are familiar with the children and the family situation.

There are six critical (and interrelated) elements of “full, fair and respectful hearings” that pertain to all parties:

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| <ul style="list-style-type: none"><li><b>A. The right to advance notice of hearings and reviews;</b></li><li><b>B. The right to quality legal representation;</b></li><li><b>C. The right to be present and to participate;</b></li><li><b>D. The right to see, hear and respond to any evidence the judge will rely on in making his or her decision;</b></li><li><b>E. The right to be treated with dignity and respect; and</b></li><li><b>F. The right to appeal.</b></li></ul> |
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**A. The Right to Advance Notice of Hearings and Reviews**

Parents (including fathers), older children and teenage youth are supposed to be notified of any court hearings where decisions about them and their family are going to be made. They are supposed to be told what the hearing is about, when the hearing will be held, where it will be held and what the purpose of the hearing is. And they are supposed to be notified sufficiently in advance of the hearing to allow them to prepare for the hearing. They should receive copies of petitions, motions and other filed documents and written notification of hearing dates. Foster parents, involved relatives and siblings should also have the opportunity to appear and participate.

**B. The Right to Quality Legal Representation**

The juvenile court judge is responsible for ensuring that any child who is the subject of a child neglect or abuse or termination of parental rights proceeding in that judge’s court, is represented by a GAL, from the time a petition is filed until the child reaches permanency. Every parent in these kinds of proceedings is entitled to be represented by a lawyer and to a court appointed lawyer if the parent cannot afford to pay for a lawyer. The juvenile court judge is responsible for advising the parent about their right to representation and ensuring that they have either retained or appointed counsel, unless the parent knowingly and voluntarily waives that right to a lawyer.

The roles and responsibilities of the GAL and the lawyer representing parents in these proceedings are discussed in Part II.

**C. The Right to Be Present and Actively Participate in Hearings and Reviews**

*“Judges need to hear from the people who will be most affected by their decisions—children, parents, siblings and other relatives, foster and adoptive parents.”*

*Pew Commission Report at 35.*

Parents, older children and teenagers are supposed to attend any court hearings where decisions about them are going to be made. As stated above, foster parents, involved relatives and siblings should have the opportunity to appear and participate, especially in reviews of children in state custody. “Children, parents and caregivers all benefit when they have the opportunity to actively participate in court proceedings, as does the quality of decisions when judges can see and hear from key parties.” *Pew Commission Report at 42.*

When older children and teenagers attend hearings and reviews, they are supposed to have the opportunity to tell the judge about how they are doing, any problems they are having, and concerns or complaints that they have, whether they are satisfied with the contact and visits they are having with family members, friends, and other important people in their lives, any things that they would like to change in their situation, and what they would like to see happen or like the judge to order.

The judge should ask them about or make sure that they (either directly or through the statements of their lawyers or GALs) have the opportunity to tell the judge about the following things:

- ✓ How they are doing in their placements;
- ✓ How they are doing in schools;
- ✓ Whether they are satisfied with their visits and contact with their families;
- ✓ Whether they are satisfied with their visits and contact with their friends;
- ✓ Whether they are satisfied with their visits and contact with other important adults in their lives (teachers, counselors, case managers, family friends, and other important community members):
- ✓ Whether there are any services or opportunities they would like to have —counseling, tutoring, medical care, recreational opportunities, job opportunities, etc.;
- ✓ Whether there are specific things they would like the court or DCS to do to make things better for them and what they would like to see happen with their situations.

#### **D. The Right to Hear and Respond to the Evidence the Judge Will Rely on in Making a Decision**

A judge is supposed to make a decision based only on information that is presented to the judge at the court hearing. The judge gets this information through the testimony of witnesses and sometimes through written reports, records, and evaluations. Parents, older children and teenagers are supposed to have an opportunity to hear all the witnesses when they testify and, through their GAL or lawyer, to ask those witnesses questions. In most cases, parents, older children and teenagers are supposed to have an opportunity to read any written reports, records and evaluations that the judge will be looking at, and have the opportunity to ask questions of the persons who wrote the reports, records, or evaluations. Parents, older children and teenagers are also supposed to have an opportunity to present information by testifying themselves, having other witnesses testify on their behalf, and providing the judge with written reports, records and evaluations.

Judges should never receive information about a case other than through formal court proceedings. In all but emergency circumstances, a judge who engages in private or informal conversations with a party, witness, lawyer or other person involved in the case, outside of the scheduled court hearings, about the facts of the case, or receives letters or other writings submitted to the judge or the court clerk about the case without all of the parties having a chance to review, object to or respond to the letters or other writings, is in violation of the Code of Judicial Conduct Canon 3B(7)(Tennessee Supreme Court Rule 10). Even in emergency situations, when so-called “ex parte hearings”—hearings at which one or more parties are not present—are permitted under certain procedures, communications with the judge in these hearings must be disclosed to all the parties and the parties must have an opportunity to respond at a further hearing.

#### **E. The Right to Be Treated with Dignity and Respect in Court Proceedings**

Judges are required by the Code of Judicial Conduct Canon 3B(4) to be “patient, dignified, and courteous” to all of the people who appear in court proceedings, including parents and children appearing before them. The judge is also required to make sure that court personnel treat people respectfully. Canon 3B(4).

Related to this, there are times when court hearings involve very personal matters that are hard to talk about in a courtroom full of people. In some situations, judges will arrange the courtroom differently, or ask people unconnected with the case to leave the courtroom, or take other steps to limit the discomfort or embarrassment that a child or parent might feel in talking about something in an open courtroom.

#### **F. The Right to Appeal**

If parents or children disagree with a judge’s decision in a case, they have a right to appeal that decision to another judge or group of judges and ask those judges to make a different decision.

Judges are supposed to make sure that parents and children understand that they have a right to appeal and understand how to go about filing an appeal.

GALs and lawyers for parents are supposed to talk to their clients about the right to appeal and if the client wants to appeal, to file the appeal on behalf of the client.

Sometimes children or parents ask whether a judge will get angry with them if they appeal a decision of the judge which they disagree with and whether the judge will hold it against them if they file and appeal. A judge should not take an appeal “personally” and should not be influenced in making future decisions in the case by the fact that a party files an appeal.

## **II. Effective Advocacy for Children and Parents**

*“Children and parents often report infrequent and last minute meetings with attorneys who appear to them to be unfamiliar with the details of their case or the current circumstances of their lives.”*

*Pew Commission Report at 42.*

Effective advocacy for children and parents is a critical element of what takes place within a juvenile court case. Unfortunately, too often, lawyers who have been appointed to represent children or parents fail to become familiar with their client; fail to keep the client informed about what is taking place in court and the client’s options; fail to investigate the case fully and to prepare adequately for court; fail to present evidence to advocate effectively for their client’s position; and fail to appeal the case if the client does not succeed in achieving their goal.

### ***Children and Teenagers***

The juvenile court is required to appoint every child who is the subject of a child neglect or abuse proceeding or a termination of parental rights hearing a lawyer to serve as the child’s active, informed and involved advocate from the beginning of the case until the child is either returned safely to his or her family, is successfully adopted, or transitions to adulthood and no longer receives or is interested in receiving “voluntary” services from DCS. The advocate is known as the child’s GAL and his/her role and responsibilities are set forth in detail in Tennessee Supreme Court Rule 40.

Although the Juvenile Court judge must appoint the GAL, it is the child, not the judge, who is the GAL’s client. With older children and teenagers, the GAL must consult with, advise, and listen to the child and must ensure that the child can actively and effectively participate in hearings and meetings. With younger children, the GAL must observe the child with caretakers and others and obtain information and perspectives from other sources as a substitute for the kinds of conversations that are expected of the GAL with older children.

In summarizing the role of the GAL to a group of older children and teenagers in foster care, Justice Anderson remarked:

*“The guardian ad litem should establish and maintain a relationship with you,... should have contact with you before and after Foster Care Review Board and court hearings, and at times of emergencies or significant events affecting you. The guardian should provide information and advice directly to you. The level of detail and how the explanation is done will depend on the child’s age. The guardian should explain what the court case is about; the child’s rights; the court process; the guardian ad litem’s role and responsibilities; what to expect before, during and after each hearing or review; and explain the recommendations of the foster care review board and the decision of the judge. If you are to testify, the guardian ad litem should work with you to make sure you are prepared and feel comfortable.”*

*Anderson at 11.*

The Tennessee Youth Advisory Council, an organization of present and former foster youth, in a pamphlet it has developed for youth in foster care, lists eight questions to help a young person know whether his or her GAL is doing a good job:

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| 1. | Does your GAL spend time getting to know you?  |
| 2. | Does your GAL explain what is going on with your case?   |
| 3. | Does your GAL give you a chance to say what you are feeling?   |
| 4. | Does your GAL ask what you want to have happen? (For example, does your GAL ask if you want to see your family more? Or, do you want to live with relatives? Or, are you getting to see your friends?) |
| 5. | Does your GAL speak up for you in court and in meetings?   |
| 6. | Does your GAL keep in touch with you by visiting, calling or writing to you?   |
| 7. | Can you call your GAL when you have a problem or question?   |
| 8. | Does your GAL try to help you with your problems?  |

If the Guardian ad Litem is doing his or her job properly, the answer to each of these questions should be “yes.”

### ***Parents***

A parent in a child abuse and neglect case and in a termination of parental rights case has the right to be represented by counsel and the right to appointed counsel if the parent cannot afford to hire a lawyer. The parent’s lawyer’s responsibility is to act as an advocate who “zealously asserts the client’s position under the rules of the adversary system.” *Tennessee Supreme Court Rule 8, Preamble (3)*.

Most of the duties and obligations of lawyers for parents mirror those of GALs for children. A lawyer representing a parent should inform the parent about the parent’s legal rights and obligations and explain their practical implications. The lawyer should investigate the case, do advance preparation for hearings, including preparing the parent for hearings, and actively represent the parent at hearings and meetings. The parent’s lawyer should also maintain regular contact with the parent, keep the parent informed about the case, and be available to answer questions and advise the parent.

### **III. Timeliness of Hearings and Reviews**

*“Long periods of uncertainty and judicial indecision can put pressure on children and families, greatly adding to the strain of foster care . . . Children can be damaged by “foster care drift”—remaining too long in “temporary” foster homes.”*

*Pew Commission Report at 6.*

It is not unusual for court cases dealing with routine legal matters such as contract disputes or automobile accident cases to take months to prepare and a year or more to bring to trial. For children in neglect and abuse cases, a month feels like a year and a year like an eternity. Delay in responding to the needs of children in these cases can be devastating. The law recognizes this and sets strict timelines for all aspects of the court process designed to expedite the handling of these cases. A key measure of whether judges are doing their jobs is whether they are meeting these timelines.

#### ***What are the key timelines against which to measure judicial performance?***

- ***The time from the emergency removal to the preliminary hearing.*** Because emergency removal involves DCS taking a child without any hearing having taken place, the law requires that there be a preliminary hearing within three days of the removal. Courts should have processes in place to ensure that whenever there is an emergency removal, a preliminary hearing is promptly set, children and parents are immediately notified, and a GAL is appointed for the child and a lawyer appointed for the parent if the parent is unable to afford one.
- ***The time from emergency removal or the filing of a neglect petition in juvenile court to the adjudicatory hearing.*** If the child is in custody because of an emergency removal, the juvenile court is required to hold an adjudicatory hearing within 30 days of either the date of the removal or the date of the filing of the petition, whichever is shorter. If the child is not in custody, the petition should be heard within 30 days when reasonable given the circumstances, but in any event within 90 days.
- ***The time from the adjudicatory hearing to the dispositional hearing.*** In many or most cases, a dispositional hearing is held immediately following the adjudicatory hearing. However, in cases in which that is not the case, the dispositional hearing is supposed to

be heard within 15 days of the adjudicatory hearing if the child is in state custody or within 90 days if the child is not in state custody.

- ***The time from a child coming into state custody to permanency (successful reunification with parents, permanent placement with relatives, or adoption).*** Under current law, the goal is for all children to achieve permanency within 12 months of entering state custody. Permanency means securing a safe, stable, permanent home for the child, preferably through the return of the child to his or her parents' home or the home of a family member, but if that is not possible, through adoption of the child into a new family. A child should either be back with his or her own family within a year of coming into foster care or be in some other permanent alternative family setting.<sup>3</sup> The law requires DCS to initiate a petition to terminate parental rights once a child has been in state custody for 15 months, unless there is a compelling reason not to file or the child is placed with a relative.
- ***The timeliness of required court and/or foster care review board reviews.*** At least once every six months from the time of placement of a child in state custody, a child's case must be reviewed by either the juvenile court judge or Foster Care Review Board (FCRB).<sup>4</sup> The FCRBs assist the court in monitoring the progress of the child toward permanency and may make recommendations to the parties and the court. At least once every twelve months, the court itself must conduct a hearing called the *Permanency Hearing*, at which the court again reviews the progress toward permanency. Given that the goal of the law is for all children in state custody to achieve permanency within twelve months, if permanency has not been achieved by the time of the *Permanency Hearing*, the judge is supposed to take an aggressive stance in questioning the parties as to how they intend to achieve permanency for the child within a reasonably short time frame.
- ***The time from filing of TPR petition to hearing on the petition.*** Although there is no specific time set for the scheduling of a hearing once a TPR petition has been filed, the juvenile court judge should make sure that a hearing date is promptly set and should only grant continuances that are necessary and reasonable. These cases should be given priority and judges should make sure that there is time on the docket to hear these cases in a timely manner.
- ***The time from hearing petition termination of parental rights case to issuing an order with findings either granting or denying the petition.*** Tennessee law requires the judge

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<sup>3</sup> The other acceptable goals are adoption, exit custody, and a Planned Permanent Living Arrangement or "PPLA." Exit custody means that either a relative or non-relative assumes private custody of a child. PPLA means that a permanent home has been identified, but adoption and reunification are not appropriate, and the child needs to remain in DCS custody for some valid reason. One example of a case in which PPLA might be the goal would be an older child who chooses not to be adopted, but is living with a foster parent who cannot afford to raise the child on his or her own. Another example would be a "kinship foster parent," a relative who does not want to change the natural familial relationships, and again, needs financial help to care for the child(ren).

<sup>4</sup> Foster Care Review Boards are lay committees of citizens who receive special training and volunteer their services to courts that hear child abuse and neglect cases.

to “enter an order which makes specific findings of fact and conclusions of law within 30 days of the conclusion of the hearing.” TCA 36-1-113(k).

- ***If an appeal is filed, the time from the filing of the appeal to the judge certifying the record on appeal.*** There are special expedited time frames for appeals in termination of parental rights cases. Rule 8(a) of the Tennessee Rules of Appellate Procedure. The person filing an appeal is required to file a transcript of the proceedings within 45 days of the filing of the notice of appeal and the other parties have ten days from the filing of the transcript to file any objections. Once that ten day period is over, the juvenile court judge should certify the record and see that it is sent on to the Court of Appeals.

#### **IV. Understanding the Caseload**

*Courts are responsible for ensuring that children’s rights to safety, permanence, and well-being are met in a timely and complete manner. To fulfill this responsibility they must be able to track children’s progress, identify groups of children in need of attention, and identify sources of delay in court proceedings.*

*Pew Report at 36.*

*. . . [E]ffective judges understand their caseloads. These judges are able to identify the groups of children most likely to languish in foster care and know why. They are able to determine how quickly cases move through each stage of the court process and where delays are most likely to occur. They know the percentage of children in their case load who leave foster care only to re-enter because of later abuse or neglect. . . If judges know which children are staying in foster care the longest, they can begin to address these delays and determine what resources are needed to move these children out of foster care and into permanent homes.*

*Anderson at 12.*

Judges, of course, need to work with court clerks and court administrators to ensure that there is adequate docket time to fully hear cases, that timelines for hearings are being complied with, that counsel for parents and GALs are appointed promptly, and that the basics of court management are sound. Judges should have available to them data on court functioning, use that data to improve the court process, and make that data available to the public.

However judges should also be able to answer a core set of questions about how the court and the Department of Children’s Services are meeting their core responsibilities to the dependent and neglected children of that county:

- How good are we at identifying children who can safely remain with their families with support services out of custody and identifying and removing those who cannot?

- When children come into foster care, how long do they stay in care? How successful are we in safely reuniting them with their parents and relatives; or, in cases in which that cannot occur, how successful are we in finding them adoptive families?
- While they are in foster care, how successful are we in providing stable, supportive, home-like settings that preserve healthy contacts with family, friends and community?
- Are there other counties that are doing a better job with dependent and neglected children?
- How are we doing with children on our caseload this year, compared to last year or the year before? Are we improving? Staying the same? Getting worse?

Much of this information is available or will soon be available through the TN KIDS data system operated by the Department of Children’s Services. If children from your county are doing worse—experiencing more repeat instances of neglect and abuse; languishing in foster care for longer periods; experiencing multiple disruptive moves while in foster care; achieving permanency at lower rates—your juvenile judge needs to be asking why. Whether the poorer statistics are a result of the courts own failings (children remaining in custody longer than necessary because of delays in the court process) or the failing of the Department (a lack of service provision or high staff turnover rates resulting in cases not getting the attention they need), court attention must be paid to these children individually through the review process and systemically, through efforts to work collaboratively with DCS and others to improve the system. Additional information about key indicators and other types of statistical information courts should be gathering is found in Appendix B (Court Performance Measures) of the Pew Commission Report, available on line at [www.pewfostercare.org/research/docs/Final Report](http://www.pewfostercare.org/research/docs/Final%20Report).

## **Conclusion**

The public is increasingly aware of the failures of the child welfare system—children languishing in foster care, bouncing from placement to placement, carrying their belongings in a plastic garbage bag; failing to receive necessary medical or mental health services, and often being subjected to excessive and improper administration of psychotropic medications; aging out of the system without the skills and supports necessary for a safe and successful transition to adulthood; suffering further abuse and neglect while in care. The public holds the child welfare system—by which they mean the child welfare agency—accountable for these failures.

What the public has a more difficult time understanding is that the failures of the child welfare system that make the headlines are often not simply failures of the child welfare agency, but are also failures of the judicial system—the judges, lawyers, and court administrators—to provide the quality of advocacy, judicial decision-making, and judicial oversight of children in the system that are critical to ensuring that abused and neglected children are safe, that their needs are being provided for in stable and nurturing environments, and that they achieve permanency.

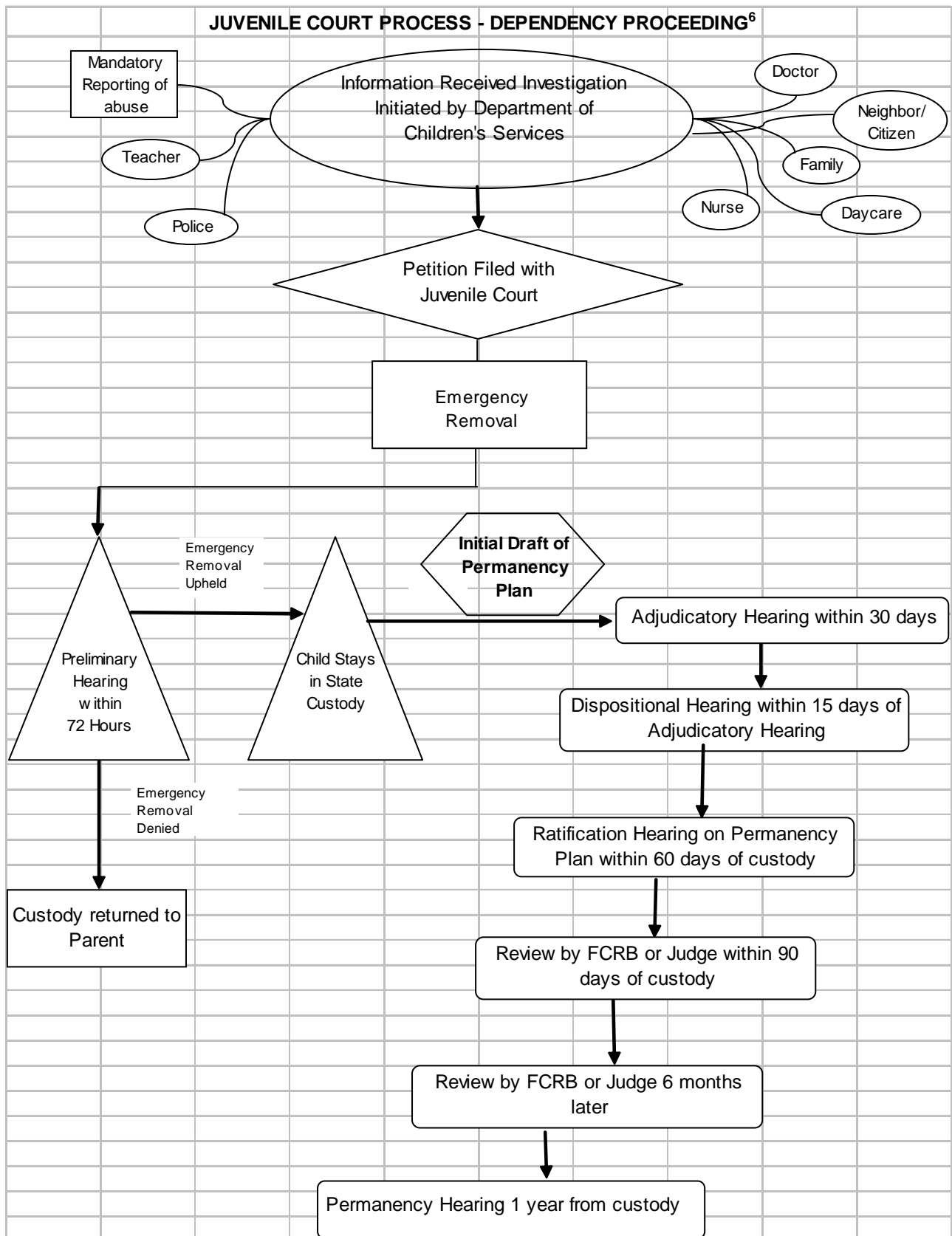
As the Pew Commission ultimately concluded, one of the best opportunities to improve the functioning of the child welfare system, to improve the lives of children and families in that system, and to reduce the frequency of those tragic headlines about children slipping through the cracks is to focus on court system improvement.

With the basic understanding that this guide has provided about what courts can and should be doing to meet their responsibilities to children and families in child neglect and abuse cases, you can begin to evaluate the performance of your juvenile court, and by so doing, help improve our child welfare system and the lives of the children and families it serves.

**TABLE OF REQUIRED HEARINGS FOR JUVENILE DEPENDENCY CASES<sup>5</sup>**

HEARING	TIMING	PURPOSE	CONDUCTED BY
<b>Emergency Removal/ Preliminary Hearing</b> T.C.A. 37-1-128	Within <b>72 hours</b> of child's removal	To determine if there is <u>probable cause</u> to believe that the child is abused or neglected as defined by law. Court must find that the child is in immediate danger and that there is no less restrictive alternative to the removal.	<b>Court</b> -- formal hearing with notice to parties and counsel
<b>Initial Draft of Permanency Plan</b> T.C.A. 37-2-403	Within <b>30 days</b> of foster care placement	To document what efforts are required by DCS and the family to reunify the family or to accomplish the objectives served by the child's removal. The goal identified in the Plan may be family reunification, permanent placement with a relative, adoption, or planned permanent living arrangement. Concurrent goals may be appropriate	<b>DCS.</b> All parties and their counsel should be present.
<b>Adjudication</b> T.C.A. 37-1-128 T.C.A. 37-1-129 T.C.A. 37-1-166	Within <b>30 days</b> of removal or filing of petition if child not removed; not more than 90 days	Trial on the allegations of abuse and neglect found in petition, by a <u>clear and convincing</u> evidentiary standard. Court also determines if DCS has made reasonable efforts to prevent removal of child and/or to reunify family.	<b>Court</b> -- formal hearing with notice to parties, attorneys and foster parents
<b>Disposition</b> T.C.A. 37-1-129	Within <b>15 days</b> of adjudication if child has been removed; 90 days if child not removed	To determine who shall have temporary custody of child while reasonable efforts are made to reunify family (if that is the goal). <u>Evidentiary standards relaxed.</u> Court reviews services and the parties' progress on the permanency plan.	<b>Court</b> -- formal hearing with notice to parties, attorneys and foster parents
<b>Ratification of Permanency Plan</b> T.C.A. 37-2-403	Within <b>60 days</b> of foster care placement	Court reviews the Permanency Plan drafted by DCS and ratifies it or asks for modifications. Parents are provided opportunity to comment and to sign a statement of responsibilities.	<b>Court.</b> - formal hearing with notice to parties
<b>Status Reviews</b> -- 90-day -- 6-month T.C.A. 37-2-404 T.C.A. 37-2-406	Within <b>90 days</b> of foster care placement and <b>every 6 months</b> thereafter	To review the progress of all parties toward the goals specified in the Permanency Plan and to assess the appropriateness of the Plan: parents' compliance, child's safety, and the timely provision of services by DCS.	<b>Court or FCRB.</b> Requires notice to parties, attorneys and foster parents
<b>Permanency Hearing</b> T.C.A. 37-2-409	Within <b>12 months</b> of foster care placement (formerly 18 months)	Court makes a permanency decision for the child, based upon the progress of the family under the terms of the permanency plan. Court determines if DCS has made reasonable efforts to reunify family (if that is the goal).	<b>Court</b> -- formal hearing with notice to parties, attorneys and foster parents

<sup>5</sup> Reprinted from LEGAL ADVOCACY IN CHILD DEPENDENCY AND PARENTAL RIGHTS CASES 16 ( Leslie Barrett Kinkead, et al., eds.) (Fourth Edition 2004).



<sup>6</sup> Reprinted from Leslie Barrett Kinkead and Jeanah McClure, TENNESSEE SUPREME COURT IMPROVEMENT PROGRAM FOR JUVENILE DEPENDENCY CASES: TRAINING FOR FOSTER CARE REVIEW BOARDS 2 (1998).