



Guiding Principles

for Effectively Addressing Child Custody
and Parenting Time in Cases Involving
Domestic Violence



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The Family Court Enhancement Project

The Family Court Enhancement Project (FCEP), an initiative funded by the U.S. Department of Justice, Office on Violence Against Women (OVW), is a multi-year demonstration initiative designed to build the capacity of court systems and partner stakeholders to improve child custody decision-making in cases involving domestic violence. Four project sites have engaged in assessing and strengthening their response to domestic violence in custody cases: Cook County, Illinois (Chicago), the State of Delaware (all three counties), Hennepin County, Minnesota (Minneapolis), and Multnomah County, Oregon (Portland).

The National Council of Juvenile and Family Court Judges (NCJFCJ) is responsible for coordinating technical assistance (TA) provision to the four sites through dedicated TA teams composed of representatives from each of the project's National Partner organizations: the NCJFCJ, the Center for Court Innovation (CCI), the Battered Women's Justice Project (BWJP), and OVW. Specifically, TA teams are helping these court systems determine how their procedures, practices, and structures related to custody and parenting time can reduce further violence and trauma and enhance victim and child resilience and well-being.

The FCEP enabled the project sites to explore, implement, and assess new and innovative court and non-court procedures and practices designed to improve custody and parenting time decision-making and overcome existing barriers identified during the assessment phase of the project. One important objective of the FCEP, as a demonstration initiative, is to share lessons learned and experiences and outcomes with other communities so that they can benefit from the focused work at each project site. During the course of its intensive work with the FCEP sites, the project's TA teams discerned several themes that emerged as each site engaged in efforts to improve its response to domestic violence in child custody cases. Building upon these themes in partnership with multiple stakeholders at each site, we identified five fundamental values that underlie the work and

developed a set of Guiding Principles that enable courts and communities to incorporate those values into their systems, processes, and decision-making. The values and principles are described in detail below.

Five Underlying Values

The five values identified by the project partners are:

- **Safety and well-being of children and parents;**
- **Access to justice;**
- **Due process;**
- **Collaboration;** and
- **Accountability and transparency.**

These values provide the foundation upon which the work at each site is based, and they underlie the Guiding Principles described below.

We understand the **safety and well-being of children and parents** to include freedom from abuse in all of its forms: physical; sexual; and coercive-controlling. We also understand that the well-being of children and parents requires protection from the short- and long-term effects of abuse and trauma on children and adults. Communities and courts give expression to this fundamental value by, among other things, ensuring that custody and related decision-making is informed by research findings regarding the effects of abuse on children and adults; providing all litigants with access to support services, including safety planning and advocacy; and designing court and parallel processes to maximize safety and evaluating them on that basis.

We define **access to justice** as access to informed, trained judicial decision-makers who act timely and decisively, and with authority to enforce orders; the ability of litigants to make informed, independent decisions; and court processes that are accessible to all litigants, including self-represented litigants and individuals from under-served communities, including those with disabilities and limited English proficiency.

We understand **due process** to require that all litigants have a meaningful opportunity to be heard, that all judicial and non-judicial decision-makers are neutral and unbiased, that non-judicial court processes (custody evaluation, use of guardians *ad litem*, custody facilitators, etc.) include due process protections to the extent possible (and that parties are informed of any due process rights they give up), and that access to legal representation and/or legal advice is made available for all litigants, to the extent possible.

Sustained, meaningful improvement of existing practices and processes is impossible without true **collaboration** among the diverse agencies and professional disciplines involved in child custody cases. Courts, including judicial officers, court administrators, and other personnel such as attorneys, advocates, guardians *ad litem*, and custody evaluators have a shared responsibility to facilitate litigants' access to legal relief that is responsive to their and their children's needs. Only by engaging collaboratively in forward-looking, problem-solving efforts can the key stakeholders hope to improve outcomes significantly for families in their court systems.

We define **accountability and transparency** to include the assessment of court and parallel processes for adherence to procedural justice principles of understanding, voice, respect, and neutrality, and the ongoing evaluation of processes by stakeholders capable of instituting necessary changes to ensure that services and processes offered match the descriptions provided to litigants.

The Guiding Principles

The Guiding Principles set forth below are intended to be broadly applicable in diverse communities and courts across the country, despite some significant differences in governing legal standards, court processes and structure, demographic characteristics, etc. Rather than prescribe a specific approach to addressing domestic violence in child custody and related cases, we instead offer guidance that may be tailored to the unique characteristics and needs of each individual community and court.

The Guiding Principles recognize that all stakeholders in the system—judges,

attorneys, advocates, allied professionals (GALs, evaluators, mediators), etc.—have independent, yet intersecting, responsibilities, expertise, strengths, and opportunities. In addition, stakeholders may have different ethical and professional responsibilities that affect the means by which the Guiding Principles may be put into action. It is critical for stakeholders in a particular discipline to recognize and respect the possible constraints under which their colleagues in other disciplines must operate.

Despite the presence of such limitations, the Guiding Principles are meant to encourage professionals across the system to engage in collaborative efforts to improve outcomes for families in cases involving domestic violence—to move beyond business as usual and to consider innovative approaches potentially outside existing practices and comfort zones.

In our work with the FCEP sites and elsewhere, we have learned that family court systems in many places have become increasingly complicated, with confusing relationships (at least as perceived by litigants) between non-court and court processes. For example, in many court systems what we refer to as allied professionals have come to play a significant role in the child custody decision-making process. The Guiding Principles described below, by emphasizing collaboration and accountability, attempt to address the growing challenges presented by such dispersed systems.

The Guiding Principles in Action

To facilitate communities' and courts' incorporation of the Guiding Principles into their unique systems and processes, we have provided examples of the Guiding Principles in action, using examples from the FCEP project sites and other communities. The diversity of the sites and their implementation strategies should provide other communities with ideas for how to achieve the more general objectives expressed by the Guiding Principles in the context of a community's unique characteristics. Each of the sites providing examples of the Guiding Principles in action has

agreed to provide more information and guidance to professionals in other communities on the development and implementation of the strategy.

Please contact the National Council of Juvenile and Family Court Judges regarding any questions you have about the Family Court Enhancement Project Guiding Principles.

The Guiding Principles

1 Courts and allied professionals should make decisions and/or issue orders regarding child custody and parenting time that effectively address domestic violence by accounting for the nature and context of the abuse and its implications for children and parents. (Value: Safety and well-being of children and parents)

EXAMPLES:

Judicial officers can apply the BWJP Framework for Identifying, Understanding and Accounting for Abuse (BWJP Framework) in their decision-making, aided by a judicial guide currently under development by the FCEP partners (information about the BWJP Framework can be found at <http://www.bwjp.org/our-work/projects/national-child-custody-project/custody-framework.html>). Similarly, other professionals can use the worksheets, interview guides, and other resources developed by BWJP in their work with and on behalf of victims. In Cook County, Multnomah County, and Hennepin County, judicial officers, court staff, attorneys, advocates, and other stakeholders have received consistent training on the BWJP framework and associated resources to foster consistency in approach and practice. In addition, Hennepin County developed one consistent order for protection for all judicial officers to use during their mandatory domestic abuse calendar. The form order ensures that all issues are addressed and that language remains consistent throughout the bench; allows parties and law enforcement to access information easily in their order; and ensures that the nature and context of the abuse is addressed both in the domestic abuse proceeding and in any family court proceeding.

Please note that the specific values underlying each guiding principle are noted in parentheses at the end of the guiding principle.

2 Courts should provide direct and timely access to the courts for child custody and parenting time relief, including temporary relief and enforcement of child custody and parenting time orders. (**Values:** Safety and well-being of children and parents; Access to justice; Due process)

EXAMPLE:

By implementing a specialized civil protection order docket dedicated to cases in which child-related relief has been requested by a party, Hennepin County has enabled litigants to obtain timely relief, including temporary custody, parenting time, child support, and various community programming (domestic abuse programming, mental and chemical health evaluations, and other social services) from a judicial officer with the appropriate expertise on domestic violence and its effects on children and parenting.

3 Courts should respond to the urgent need for relief in child custody and parenting time cases involving domestic violence by prioritizing these cases and deciding them without delay. (**Values:** Safety and well-being of children and parents; Access to Justice)

EXAMPLES:

Facilitating an expedited, informed process, Multnomah County allows victims seeking emergency relief to speak with domestic violence advocates and request emergency orders through remote video access. Hennepin County developed a specialized civil protection order docket dedicated to cases in which child-related relief has been requested, enabling litigants to obtain necessary relief quickly from a judicial officer with the appropriate expertise on domestic violence and its effects on children and parenting. In addition, Hennepin County revised its policy regarding e-signing petitions for orders for protection so that judicial officers now are required to sign *ex parte* orders within 15 minutes of receipt of the request.

4 Courts should assure that judges have access to relevant court-documented domestic abuse history, consistent with governing ethical standards and in a manner that assures due process for all litigants. (**Values:** Safety and well-being of children and parents; Access to justice)

EXAMPLES:

By developing procedures that reflect the applicable jurisdiction's ethical standards and rules for accessing information before, during, and after court proceedings, courts can prevent the issuance of contradictory court orders, improve the effectiveness of granted relief, and identify risk posed by abusive parents or by particular court responses to victim-parents or children. Hennepin County developed a procedure by which court personnel relate cases, including criminal cases, other family cases, and related or reciprocal petitions for civil orders for protections. Hennepin County has also adopted a one family, one judge policy to ensure that judicial officers appropriately trained in domestic violence are assigned to domestic abuse cases.

5 Communities and courts should take steps to maximize parties' ability to obtain domestic violence-informed legal advice and representation regarding child custody and parenting time matters. (**Values:** Access to justice; Due process)

EXAMPLES:

The FCEP participants developed partnerships with legal aid programs, bar associations, and other available legal resources resulting in the use of help desks inside courthouses, community-based legal clinics, and on-site legal representation for victims of domestic violence. Cook County and Hennepin County partnered with local legal services providers who provide day-of legal consultations and/or representation to victims of domestic violence that have a domestic abuse hearing for a civil protection order.

6 Courts and providers of child custody and parenting time dispute resolution services should utilize processes that account for domestic violence, and are safe, fair, and accessible. (**Values:** Safety and well-being of children and parents; Access to justice; Due process)

EXAMPLES:

Cook County created a new alternative dispute resolution process (implemented by the Child Relief Expediter) for litigants seeking child-related relief in civil protection orders. By incorporating protocols and screening tools addressing case appropriateness, voluntary participation, informed consent, confidentiality, and safety and risk assessments, the process meets the unique needs of victims of domestic violence. Multnomah County has a domestic violence-informed mediation process that is uniformly praised by domestic violence advocates and court-related professionals alike. Hennepin County revised their initial Case Management Data Form to offer more opportunity for parties to disclose domestic violence as a possible issue. These forms are reviewed by the court prior to the first hearing with the parties. In addition, Hennepin County’s mediation service now provides more in-depth screening when a case is referred by a judicial officer. Mediation services now allow parties to complete their intake forms in separate rooms if an order for protection exists or domestic violence has been alleged and if parties agree to attempt mediation.

7 Courts and professionals should assure that party participation in child custody and parenting time processes and services is informed and as voluntary or party-determined as possible. (**Values:** Access to justice; Due process)

EXAMPLE:

Cook County’s Child Relief Expediter process is governed by protocols and includes forms and disclosures to ensure that participation by litigants is voluntary and based upon their informed consent. Multnomah County has created a position called the Navigator that helps parties understand the family court process and make informed decisions about their participation.

8

Communities and courts should provide all parties in child custody and parenting time cases with access to information concerning:

- (a) available resources, including community resources and child custody and parenting time dispute resolution processes and services;**
- (b) the relief available from courts, including the legal and practical effects of the relief and the risks and benefits associated with the relief;**
- (c) the legal process and their rights, including the legal standards applied to child custody and parenting time decision-making, the meaning of legal terminology, the roles and responsibilities of judges and professionals, and the parties' rights and access to recourse and review; and**
- (d) how to navigate court and parallel processes, including how to prepare for participation in those processes and how to avoid involuntary case dismissal.**

(Values: Access to justice; Due process; Accountability and transparency)

EXAMPLES:

All FCEP participants developed materials for self-represented litigants including videos, brochures, forms, and FAQs. Hennepin County designates personnel within the family court system to assist parties with obtaining information and accessing community-based resources. Multnomah County has a Navigator and self-help center within the family court.

9

Communities and courts should create opportunities for safe and informed disclosure of domestic abuse in child custody and parenting time matters. (Values: Safety and well-being of

children and parents; Access to justice)

EXAMPLE:

Cook County created the Child Relief Expediter, an alternative dispute resolution process, for litigants seeking child-related relief in civil protection orders. This process includes strict protocols allowing for voluntary and confidential disclosures by litigants. Multnomah County

has developed screening tools for attorneys and custody evaluators and provided training. All FCEP participants promote the use of appropriate domestic violence screening tools by various professions involved in family court and facilitate access to advocates for victims. Hennepin County revised their initial Case Management Data Form to offer more opportunity for parties to disclose domestic violence as a possible issue. These forms are reviewed by the Court prior to the first hearing with the parties.

10 **Communities and courts should provide parties with access to support services, including domestic violence advocacy, in child custody and parenting time matters.**

(**Value:** Safety and well-being of children and parents)

EXAMPLE:

FCEP participants included representatives from domestic violence programs and other community support services in their project planning and implementation work groups. Hennepin County conducted listening sessions with domestic violence advocates to inform the family court system and increase access to services for litigants. Cook County maintains a help-desk and intake center in the Domestic Violence Division courthouse in which legal and advocacy services are co-located. Multnomah County's Gateway Center provides victims with easy access to a variety of services, including remote court appearances for protection orders. All FCEP sites facilitate victims' access to domestic violence advocates in family court cases.

11 **Courts and communities should recognize the critical and emergent nature of family law matters by providing sufficient and appropriate staff, resources, and ongoing training to the professionals who manage these cases.**

(**Value:** Accountability and transparency)

EXAMPLES:

The FCEP sites conduct ongoing training for court staff and other professions involved in the family court system on such topics as BWJP's

Framework, exposure to domestic violence and effects on children, assessing lethality risk, understanding trauma, improving interview skills, and procedural fairness. Judges were encouraged by all FCEP sites to attend the Enhancing Judicial Skills training conducted by the NCJFCJ (see <http://www.ncjfcj.org/conference-training/calendar>). Hennepin County hired a Tribal/State Court Liaison to address a gap in Native American community members' access to family court for protection. Multnomah County has added the navigator position and has provided training to judges, court staff, and other professionals such as custody evaluators, attorneys, mediators, batterer intervention program staff, therapists, and others.

12 Courts should evaluate, on an ongoing basis, whether the publicly provided descriptions of child custody and parenting time processes and services match the services actually provided. (**Value:** Accountability and transparency)

EXAMPLES:

By engaging in court assessment activities such as walk-throughs, observations, litigant surveys, and material and procedure reviews, the family courts in Delaware were able to view their system through the eyes of the litigants. Cook County compiles and reviews data collected from court cases, court expediter ADR cases, and help desk interactions to assess the needs of litigants and the effectiveness of the family court services and responses. Cook County also conducted roundtables of victims in both Spanish and English, and included victims who did not seek court relief from abuse. Hennepin County hosted roundtables of victims, perpetrators, and advocates, and it publishes a monthly newsletter to inform court and community stakeholders of the work on the FCEP. Multnomah County hosted roundtables of victims and professionals and conducted a court-wide litigant survey, which will be repeated annually.

13 **Communities and courts should evaluate, on an ongoing basis, the extent to which the custody decision-making processes and services provided effectively address domestic violence by accounting for the nature, context, and implications of abuse. (Values: Safety and well-being of children and parents; Accountability and transparency)**

EXAMPLES:

Judicial officers can apply the BWJP Framework in their decision-making, aided by a judicial guide currently under development by the FCEP partners (materials will be available at www.bwjp.org). Several judicial officers at the FCEP project sites will be pilot-testing a framework tool developed specifically for judges. Similarly, other professionals can use the worksheets, interview guides, and other resources developed by BWJP in their work with and on behalf of victims. Hennepin County manually tracks all cases assigned to their specialized civil order for protection docket to evaluate relief requested compared to relief granted, and it also tracks compliance with orders to participate in community programming.

14 **Communities and courts should evaluate, on an ongoing basis, whether custody decision-making processes and services are consistent with these Guiding Principles and work collaboratively to address any deficiencies. (Value: Accountability and transparency)**

EXAMPLES:

FCEP project sites continually assess whether their practices are consistent with the Guiding Principles through the use of litigant surveys, case file reviews, and evaluation of procedures and professional standards. Multnomah County conducts an annual litigant survey and is working with its local researcher to review other possible methods of evaluation. Also, its judges are beginning a process of court observation and peer-to-peer review about demeanor, clear language, and behaviors that promote procedural justice and a domestic violence- and trauma-informed process.

15 **Communities and courts should ensure that their processes and services related to child custody and parenting time cases are consistent with evidence-based best practices.** (**Values:** Accountability and transparency; Safety and well-being of children and families)

EXAMPLE:

The Domestic Violence Evidence Project and Promising Futures: Best Practices for Serving Children, Youth, and Parents Experiencing Domestic Violence are on-line resources providing information on evidence-based approaches and lists available resources for accessing and developing promising practices in communities. See <http://www.dvevidenceproject.org/> and <http://promising.futureswithoutviolence.org/>.

16 **Communities and courts should ensure that processes and services are truly accessible to everyone in the community, including those from under-served communities (e.g., immigrant populations, non-English speaking and limited English proficiency individuals, et al.).** (**Value:** Access to justice)

EXAMPLES:

After reviewing case files and conducting listening sessions and focus groups, Hennepin County discovered that Native American communities rarely accessed the family court. In response, Hennepin County established a liaison position to conduct outreach, build relationships, and promote family court services with the Native American communities. Cook County increased court access for Spanish-speaking litigants through the use of bilingual staff at the court's help-desk. Multnomah County conducted a training on domestic violence for court interpreters and is providing self-help resources, including videos and printed material, in other languages.

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