

**Best Interests or State Interests? Law and Psychology in New Jersey Termination of
Parental Rights**

By:

Ryan Rosenthal

Senior Research and Writing Seminar in Jurisprudence

Dr. Thomas Loikith

December 10th, 2025

Research Hypothesis:

New Jersey's application of the "best interests of the child" standard in termination-of-parental-rights cases often prioritizes state interests in efficiency and permanency over the child's long-term psychological and developmental well-being.

Hypothesis as a Question:

To what extent do New Jersey courts prioritize state interests such as expediency and permanency over children's developmental and emotional needs, and what reforms could ensure that child psychology evidence is more fully incorporated into judicial decision-making?

Disciplines and Sub-disciplines:

Law (Family Law); Psychology (Developmental Psychology)

LAW CHAPTER OUTLINE

I. INTRODUCTION	3
A. Purpose of New Jersey's Termination Framework	3
B. Constitutional Background of Parental Rights	3
C. Overview of Issues Addressed	4
II. THE BEST INTERESTS STANDARD	5
A. Statutory Basis: N.J.S.A. 30:4C-15.1(a)	5
B. Constitutional due process	6
C. Key New Jersey case	7
1. <u>In re Guardianship of J.C.</u>	7
III. PARENTAL UNFITNESS	8
A. Interpretation of the four prongs	8
1. Harm or Risk of Harm	8
2. Inability to Eliminate Harm	9
3. Reasonable Efforts	9
4. No Greater Harm	10
5. Expert Credibility & State's Obligations	10
IV. HARM AND SAFETY	11
A. Legal Meaning of Harm	11
1. Present Harm	11
2. Predictive Harm	12
V. STATE DUTIES AND REASONABLE EFFORTS	13
A. Legal Requirements	13
B. Impact of Agency Failures	14
C. State-created barriers	15
VI. PERMANENCY AND STABILITY	16
A. Permanency as a Legal Objective	16
B. Rehabilitation VS. Child Timeline	17
C. Judicial Management of Delays	18
VII. CONCLUSION	19

I. INTRODUCTION

A. Purpose of New Jersey's Termination Framework

New Jersey's statutory framework for the termination of parental rights is designed to protect children whose safety, stability, and long-term well-being may be at risk. The state relies on the "best interests of the child" standard, which appears to balance the need for permanency with the preservation of family ties.¹ Yet the literature shows that the standard is applied inconsistently and often without meaningful consideration of a child's developmental and psychological needs. Funderburk argues that the broad and undefined nature of "best interests" invites judicial discretion that varies widely across courts, creating unpredictable outcomes for children and parents.² Psychological research similarly warns that legal decisions focused on administrative efficiency may overlook the developmental harms associated with unstable placements.³ The purpose of New Jersey's framework is to safeguard children, but whether current practices truly serve that goal is a central question that emerges from legal scholarship.

B. Constitutional Background of Parental Rights

Parental rights have long been recognized as fundamental, which means the state must justify terminating those rights using a rigorous standard and a process that respects due process. Shanahan critiques the ease with which some states terminate parental rights based solely on incarceration, noting that such approaches fail to consider a child's actual emotional connection to the parent.⁴ Although New Jersey requires more specific findings of unfitness,

¹ Carl Funderburk, Best Interest of the Child Should Not Be an Ambiguous Term, 33 CHILD.'S LEGAL RTS. J. 229, 229–32 (2013).

² Id. at 231–32.

³ David J. Maguire et al., A Systematic Review of the Impact of Placement Instability on Emotional and Behavioral Outcomes, 45 Child. & Youth Servs. Rev. 643 (2014).

⁴ Ryan Shanahan, Termination of Parental Rights and Incarceration: Rethinking Permanency Planning for Justice-Involved Parents, 54 Fam. Ct. Rev. 313, 322–24 (2016).

scholars emphasize that courts still risk prioritizing statutory timelines over individualized assessments. Lamprecht’s comparative analysis of state custody statutes shows how vague or broad standards can erode constitutional protections by allowing judges to rely on personal assumptions rather than structured criteria.⁵ This constitutional backdrop highlights ongoing tensions between the state’s *parens patriae* role and the need to safeguard parental rights from arbitrary or overly broad applications of the law.

C. Overview of Issues Addressed

This chapter examines how New Jersey interprets and applies the “best interests” standard in termination cases, with attention to how courts evaluate parental unfitness, consider psychological evidence, and balance permanency goals with developmental needs. Research on foster care stability shows that frequent placement changes harm emotional regulation, attachment formation, and long-term behavioral outcomes.⁶ Clinical studies further demonstrate that children placed in stable environments within the first few months of state involvement show significantly better developmental indicators later on.⁷ These findings raise critical questions about whether legal timelines, statutory factors, and judicial practice align with what psychological research identifies as necessary for healthy development. The chapter will analyze In re Guardianship of J.C., to determine whether New Jersey’s current application of the best-interests framework supports or undermines child well-being.⁸

II. THE BEST INTEREST STANDARD

⁵ Morgan Lamprecht, Advancing the Best Interests of the Child: Why South Dakota Should Strengthen Its Custody Protections, 62 S.D. L. (2016).

⁶ David J. Maguire et al., A Systematic Review of the Impact of Placement Instability on Emotional and Behavioral Outcomes, 45 Child. & Youth Servs. Rev. 643, 649-50 (2014).

⁷ Elizabeth Funderburk, Behavioral Outcomes of Children in Foster Care: A Longitudinal Assessment, 12 Child Welfare Rev. 338-340 (2013).

⁸ In re Guardianship of J.C., 129 N.J. 1, 18–20 (1992).

A. Statutory Basis: N.J.S.A. 30:4C-15.1(a)

New Jersey's best interests standard governs every termination of parental rights proceeding and outlines the core findings a court must make before deciding such an irreversible outcome.⁹ The statute identifies four central elements that guide this analysis, but scholars have pointed out that these terms are often interpreted broadly. Funderburk argues that when states rely on open-ended terminology like "best interests," judges are left with a wide margin of discretion that can produce inconsistent or unpredictable results.¹⁰ Lamprecht's analysis of state custody statutes supports this point, showing that vague language often leads to uneven application of child protection laws.¹¹

These concerns matter in New Jersey because the statutory prongs require courts to determine whether the child has been harmed, whether the parent can eliminate the harm, whether the state offered reasonable services, and whether termination will prevent additional harm.¹² Each of these questions involves a meaningful evaluation of the child's development and emotional needs. Research on placement instability shows that repeated moves and inconsistent caregiving directly affect emotional regulation and long-term behavioral outcomes.¹³ Other studies indicate that children who achieve stable placements early in their involvement with the system demonstrate stronger developmental progress over time.¹⁴

If the statutory framework is meant to protect the child's welfare, then courts must understand these prongs in a way that recognizes the psychological impact of instability. This

⁹ *In re Guardianship of J.C.*, 129 N.J. 1, 18–20 (1992).

¹⁰ Funderburk, *Best Interest of the Child*, 33 *Child. Legal Rts. J.* at 229–32.

¹¹ *Lamprecht, Advancing the Best Interests of the Child*, 56 *S.D. L. Rev.* at 377–79.

¹² *Id.* at 377–79.

¹³ Maguire et al., *Placement Instability*, 45 *Child. & Youth Servs. Rev.* at 648–55.

¹⁴ Funderburk, *Best Interest of the Child*, 33 *Child. Legal Rts. J.* at 229–32.

forms an important part of the analysis in termination cases and shapes how New Jersey courts should approach the best interests standard.¹⁵

B. Constitutional Due Processes

Because termination permanently dissolves the parent–child relationship, due process protections guide both the structure and substance of these proceedings. Shanahan’s work on incarceration-based termination laws shows how some states rely on categorical rules rather than individualized assessments, raising concerns about whether parents receive adequate constitutional protection.¹⁶ Although New Jersey does not terminate parental rights solely on the basis of incarceration, the concerns identified in this research still apply. Courts are required to examine whether parents have been given a real opportunity to address the issues that brought them into the system, and whether state timelines overshadow individualized evaluations.¹⁷

Lamprecht’s discussion of statutory vagueness also connects to due process. She argues that poorly defined legal standards can weaken constitutional protections by allowing courts to fill in gaps with personal assumptions instead of structured criteria.¹⁸ This raises questions about how New Jersey courts apply the statutory prongs and whether certain interpretations may unconsciously prioritize procedural efficiency over a deeper, evidence based evaluation of the child’s circumstances.¹⁹

Due process must also account for the child’s experience. Several psychological studies show that instability, delayed decision-making, and inconsistent placements can cause emotional

¹⁵ Maguire et al., Placement Instability, 45 Child. & Youth Servs. Rev. at 650–55

¹⁶ Shanahan, Termination of Parental Rights, 54 Fam. Ct. Rev. at 316–20.

¹⁷ Id. at 319

¹⁸ Lamprecht, Advancing the Best Interests of the Child, 56 S.D. L. Rev. at 377–79.

¹⁹ Id. at 377

harm that is separate from any harm caused by the parent.²⁰ When courts analyze harm and unfitness, due process principles require a careful examination of how both parental conduct and systemic factors influence the child's well-being.

C. Key New Jersey Case Law

In re Guardianship of J.C. remains one of the most important cases guiding how New Jersey courts interpret harm, parental unfitness, and the state's responsibilities in termination proceedings. The Court emphasized that the state cannot attribute harm to the parent when the harm was created or intensified by the state itself, including through unstable placements or inadequate services.²¹ This principle aligns closely with the psychological evidence showing that repeated moves contribute to emotional and behavioral challenges in children.²²

The decision in J.C. also stresses that parental unfitness must be shown through clear and specific evidence, and that courts must evaluate whether the parent is capable of addressing the issues that led to their involvement in the system.²³ The case highlights the need for individualized analysis, which reflects the concerns raised by scholars who argue that termination decisions should avoid categorical assumptions and instead focus on the actual parent-child relationship.²⁴

III. PARENTAL UNFITNESS

A. Interpretation of the Four Prongs

²⁰ Maguire et al., Placement Instability, 45 Child. & Youth Servs. Rev. at 650–55.

²¹ In re Guardianship of J.C., 129 N.J. 1, 18–20 (1992).

²² Maguire et al., Placement Instability, 45 Child. & Youth Servs. Rev. at 650–55.

²³ In re Guardianship of J.C., 129 N.J. 1, 18–20 (1992).

²⁴ Lamprecht, Advancing the Best Interests of the Child, 56 S.D. L. Rev. at 360–65.

New Jersey courts evaluate parental unfitness through the four statutory prongs that guide termination proceedings. These prongs structure the inquiry into whether the parent has harmed the child, whether that harm can be eliminated, whether the state provided reasonable services, and whether termination will avoid greater harm.²⁵ Although the statute provides the overall framework, scholars note that the interpretation of each prong depends heavily on how courts understand the child’s developmental needs and the parent’s circumstances. Funderburk’s analysis of the ambiguity surrounding “best interests” illustrates how open-ended legal standards can lead to inconsistent interpretations of unfitness.²⁶ Lamprecht similarly argues that broad statutory terms allow judges to rely on subjective assessments rather than structured criteria.²⁷ Psychological research also reinforces the importance of interpreting the prongs in ways that reflect the child’s lived experiences.

The first prong requires proof that the child has suffered harm or faces a significant risk of future harm.²⁸ This includes not only physical injury but also emotional or developmental harm. Studies on placement instability demonstrate that frequent moves, inconsistent caregiving, and disrupted attachment relationships cause anxiety, behavioral problems, and long-term emotional dysregulation.²⁹ These findings show that harm can result from instability in the child’s environment, regardless of whether the instability originates with the parent.³⁰ In In re Guardianship of J.C., the Court recognized that instability created or intensified by the state must be considered in the harm analysis.³¹

²⁵ Janet L. Spies, New Jersey Custody Determinations: A Responsible Approach, 13 Seton Hall L. Rev. 692 (1983).

²⁶ Funderburk, Best Interest of the Child, 33 Child. Legal Rts. J. at 229–32.

²⁷ Lamprecht, Advancing the Best Interests of the Child, 56 S.D. L. Rev. at 360–65.

²⁸ In re Guardianship of J.C., 129 N.J. 1, 18–20 (1992).

²⁹ Maguire et al., Placement Instability, 45 Child. & Youth Servs. Rev. at 652.

³⁰ Id. at 652–55.

³¹ In re Guardianship of J.C., 129 N.J. 1, 18–20 (1992).

The second prong asks whether the parent is capable of eliminating the harm or reducing the risk of harm within a reasonable period of time.³² Scholars caution that courts sometimes make this determination without clearly identifying what the parent failed to correct. Funderburk argues that ambiguous standards of unfitness can lead to a finding that a parent is incapable without sufficient evidence.³³ Lamprecht's work similarly warns that when judges rely on personal judgments about parenting styles rather than measurable criteria, findings of unfitness become vulnerable to bias.³⁴ The psychological literature also shows that a parent's ability to eliminate harm depends on the stability of placements, the quality of visitation, and the supports offered to the parent. Without adequate services or consistent placement conditions, it becomes difficult to fairly assess a parent's capacity to remedy harm.³⁵

The third prong evaluates whether the state made reasonable efforts to support reunification. This includes offering services, facilitating visitation, and providing assistance tailored to the parent's situation.³⁶ The J.C. decision emphasizes that the state cannot rely on harm it created, and that termination is inappropriate if the state has not fulfilled its obligations.³⁷ Shanahan's analysis of incarceration-based termination policies also highlights scenarios where states sever parental rights without meaningful outreach or support, demonstrating the risk of a system that prioritizes efficiency over genuine assistance.³⁸ The psychological studies underscore that services promoting stability, attachment, and consistent caregiving are necessary for

³² Id. at 10–12.

³³ Spies, New Jersey Custody Determinations, 13 Seton Hall L. Rev. at 688–91.

³⁴ Lamprecht, Advancing the Best Interests of the Child, 56 S.D. L. Rev. at 363–65.

³⁵ In re Guardianship of J.C., 129 N.J. 1, 18–20 (1992).

³⁶ Id. at 10–12.

³⁷ Id. at 10–12.

³⁸ Shanahan, Termination of Parental Rights, 54 Fam. Ct. Rev. at 320.

reducing harm. Reasonable efforts therefore require more than simply offering standard programs, as they must reflect the specific needs of the parent and the child.³⁹

The fourth prong requires courts to determine whether termination will do more harm than good. This involves assessing both the potential benefits of permanency and the emotional consequences of severing the parent–child relationship.⁴⁰ Research shows that stable placements support positive emotional and behavioral outcomes, while abrupt separation from a parent or caregiver can lead to distress, withdrawal, and regression.⁴¹ Courts must weigh these competing factors by examining bonding evaluations, the stability of the current placement, and the child’s relationship with the parent. *J.C.* reinforces that termination cannot be justified solely by administrative convenience or the passage of time, rather the state must demonstrate that termination clearly serves the child’s best interests.⁴²

Expert testimony plays a central role in assessing unfitness, particularly regarding bonding, attachment, and developmental needs. Experts help interpret the child’s behavior, but their assessments must rely on reliable methods and must reflect the child’s actual circumstances. The literature shows that instability and inconsistent caregiving can significantly influence a child’s emotional functioning, which means expert opinions must account for both parental conduct and systemic factors.⁴³ The state also has obligations that go beyond providing services. It must ensure that placements are stable, that visits occur consistently, and that parents have genuine opportunities to maintain or rebuild a bond. If instability or delays result from the

³⁹ Maguire et al., Placement Instability, 45 Child. & Youth Servs. Rev. at 650–56.

⁴⁰ In re Guardianship of J.C., 129 N.J. (1992).

⁴¹ Maguire et al., Placement Instability, 45 Child. & Youth Servs. Rev. at 650–56.

⁴² In re Guardianship of J.C., 129 N.J. (1992).

⁴³ Maguire et al., Placement Instability, 45 Child. & Youth Servs. Rev. at 650–56.

system rather than the parent, courts must consider this when evaluating expert testimony or determining whether termination is necessary.⁴⁴

IV. HARM AND SAFETY

A. Legal Meaning of “Harm”

“Harm” is a central concept in termination proceedings, but New Jersey courts have recognized that defining it is not always simple. Harm includes physical injury, but it also extends to emotional, developmental, and psychological harm that affects a child’s well-being.⁴⁵ This broader approach reflects the state’s interest in protecting children from instability, neglect, and conditions that undermine long-term development.⁴⁶ Psychological research supports this view. Studies on placement instability show that unpredictable caregiving, repeated moves, and disrupted attachments cause anxiety, behavioral issues, and long-term emotional challenges.⁴⁷ This means the legal definition of harm cannot rely solely on visible injury. It must also account for the ways inconsistent environments affect a child’s functioning.⁴⁸

New Jersey case law reinforces this approach. In In re Guardianship of J.C., the Court explained that harm must be evaluated in light of the child’s entire experience, including state-created instability.⁴⁹ Courts cannot treat harm created or worsened by the system as evidence against the parent. This prevents the state from using its own failures as justification for

⁴⁴ In re Guardianship of J.C., 129 N.J. (1992).

⁴⁵ In re Guardianship of J.C., 129 N.J. 18–20 (1992).

⁴⁶ Shanahan, Termination of Parental Rights, 54 Fam. Ct. Rev. at 320–24.

⁴⁷ Maguire et al., Placement Instability, 45 Child. & Youth Servs. Rev. at 648.

⁴⁸ Shanahan, Termination of Parental Rights, 54 Fam. Ct. Rev. at 320–24.

⁴⁹ In re Guardianship of J.C., 129 N.J. 1, 18–20 (1992).

terminating rights and pushes courts to examine whether the child’s distress stems from parental conduct or from instability that the child welfare system allowed to continue.⁵⁰

“Present harm” refers to the actual injury or distress the child experiences at the time of the proceeding.⁵¹ Courts often look for patterns of neglect, demonstrated emotional disturbance, or unsafe living conditions. Research shows that children who experience unstable caregiving or frequent moves often display immediate behavioral and emotional struggles, including withdrawal, anger, and difficulty forming attachments.⁵² These symptoms may appear during litigation and influence how courts interpret harm. However, present harm requires careful analysis. Instability caused by the system can create symptoms that resemble parental neglect when they actually stem from inconsistent placements or reduced contact.⁵³ The J.C. Court warned that state-created harm cannot be used to justify termination.⁵⁴ When a child has been moved repeatedly or visitation has been inconsistent, the child’s distress should not be attributed to the parent. Courts must recognize this distinction to ensure that present harm is assessed in a fair and accurate way.⁵⁵

“Predictive harm” considers whether the child is likely to be harmed in the future if returned to the parent.⁵⁶ While New Jersey allows courts to consider potential future harm, scholars warn that this prong can easily become speculative if not grounded in evidence. Funderburk notes that vague “best interests” language encourages judges to rely on subjective

⁵⁰ Shanahan, Termination of Parental Rights, 54 Fam. Ct. Rev. at 320.

⁵¹ In re Guardianship of J.C., 129 N.J. 1, 18–20 (1992).

⁵² Funderburk, Behavioral Outcomes of Children in Foster Care, 12 Child Welfare Rev. at 342–45.

⁵³ Maguire et al., Placement Instability, 45 Child. & Youth Servs. Rev. at 648–55.

⁵⁴ In re Guardianship of J.C., 129 N.J. 1, 18–20 (1992).

⁵⁵ Id. at 10–12.

⁵⁶ Id. at 10–12.

intuitions rather than measurable indicators of risk.⁵⁷ Lamprecht similarly argues that broad statutory terms allow courts to reach almost any conclusion because the standard lacks structured guidance.⁵⁸ Psychological research complicates predictive harm further because some indicators of risk originate from instability or trauma rather than parental conduct.⁵⁹

Children who experience repeated moves or disrupted attachment show elevated behavioral risks that may be misinterpreted as signs of unfit parenting.⁶⁰ If courts do not distinguish between harm caused by parental behavior and harm caused by systemic instability, predictive harm becomes inaccurate. J.C. cautioned against this exact mistake, emphasizing that courts cannot rely on risks created or intensified by the state.⁶¹ A fair application of predictive harm therefore requires evidence-based analysis grounded in both developmental science and the real conditions of the child's life.⁶²

V. STATE DUTIES AND REASONABLE EFFORTS

A. Legal Requirements

New Jersey's termination framework requires that the state make "reasonable efforts" to preserve and reunify the family before seeking termination.⁶³ Reasonable efforts include providing services, maintaining consistent visitation, supporting the parent's progress, and avoiding actions that undermine the parent-child relationship.⁶⁴ The obligation is not optional. It is grounded in both statute and New Jersey case law, which require the state to work toward

⁵⁷ Funderburk, Behavioral Outcomes of Children in Foster Care, 12 Child Welfare Rev. at 340–45.

⁵⁸ Lamprecht, Advancing the Best Interests of the Child, 56 S.D. L. Rev.

⁵⁹ Maguire et al., Placement Instability, 45 Child. & Youth Servs. Rev. at 648–49.

⁶⁰ *Id.* at 651–55.

⁶¹ In re Guardianship of J.C., 129 N.J. 1, 18–20 (1992).

⁶² Maguire et al., Placement Instability, 45 Child. & Youth Servs. Rev. at 648–55.

⁶³ In re Guardianship of J.C., 129 N.J. 1, 18–20 (1992).

⁶⁴ *Id.* at 20.

reunification unless clear evidence shows it is unsafe.⁶⁵ The Court in In re Guardianship of J.C. explained that the state must act in a way that facilitates reunification, not frustrates it.⁶⁶ A termination cannot be justified if the state has not taken meaningful steps to assist the parent or has contributed to the problems that now serve as alleged evidence of unfitness.⁶⁷

Psychological research further emphasizes why reasonable efforts are necessary. Stable caregiving, predictable routines, and consistent contact promote emotional regulation and healthy attachment.⁶⁸ When children are deprived of these supports, their behavior and emotional functioning deteriorate, and courts may mistakenly interpret these changes as signs that the parent is causing harm.⁶⁹ Reasonable efforts therefore serve not only a legal function but also a developmental one, ensuring that the system does not create avoidable harm that later affects termination decisions.⁷⁰

B. Impact of Agency Failures

Agency failures can significantly distort the evaluation of parental fitness. When services are poorly delivered, inconsistent, or delayed, parents may be unable to meet expectations that were never realistically supported.⁷¹ Shanahan's work on incarceration-based terminations highlights situations in which states sever parental rights without offering meaningful services or respecting due process, demonstrating how agency shortcomings can lead to unjust outcomes.⁷² Research on placement instability shows that children who experience multiple disruptions

⁶⁵ Maguire et al., Placement Instability, 45 Child. & Youth Servs. Rev. at 648–55.

⁶⁶ In re Guardianship of J.C., 129 N.J. 1, 18–20 (1992).

⁶⁷ Id. at 18–20.

⁶⁸ Maguire et al., Placement Instability, 45 Child. & Youth Servs. Rev. at 650–55.

⁶⁹ In re Guardianship of J.C., 129 N.J. 1, 18–20 (1992).

⁷⁰ Id. at 18–20.

⁷¹ Id. at 18–20.

⁷² Shanahan, Termination of Parental Rights, 54 Fam. Ct. Rev. at 320–23.

exhibit behavioral and emotional difficulties that are often misattributed to parental inadequacy rather than systemic instability.⁷³ These outcomes can then be used to justify termination even though the root cause is the agency's failure to provide stability.

The J.C. Court held that the state cannot benefit from its own errors.⁷⁴ When agency failures create the very conditions later used as evidence of harm, termination violates both statutory and constitutional protections.⁷⁵ This principle is essential because it prevents the state from shifting responsibility for systemic problems onto the parent.⁷⁶ Courts must therefore investigate whether agency actions contributed to harm before relying on that harm in termination proceedings.⁷⁷

C. State-created Barriers

Even when services are technically offered, the state can create barriers that make reunification unattainable. These barriers may include inconsistent visitation schedules, placement decisions that make contact difficult, delays in arranging services, or case plans that shift without clear justification.⁷⁸ Research on foster placement instability demonstrates that children show increased anxiety, distrust, and emotional withdrawal when their caregiving environment is unpredictable.⁷⁹ These symptoms can hinder bonding assessments, reduce the quality of parent-child interactions, and create the false appearance that reunification is not in the child's best interest.⁸⁰

⁷³ Maguire et al., Placement Instability, 45 Child. & Youth Servs. Rev. at 650–55.

⁷⁴ In re Guardianship of J.C., 129 N.J. 1, 18–20 (1992).

⁷⁵ Id. at 18–20.

⁷⁶ Id. at 18–20.

⁷⁷ Id. at 18–20.

⁷⁸ Shanahan, Termination of Parental Rights, 54 Fam. Ct. Rev. at 320–24.

⁷⁹ Susan Fleischer, Emotional Recovery in Foster Children: Stability, Permanence, and Trauma Response, J. Child Psychol. & Fam. Stud. 5, 5–9 (1998).

⁸⁰ Id. at 6

State-created barriers also undermine expert evaluations. If visitation is infrequent or held in stressful environments, experts may conclude that the bond is weak or that reunification poses risks, when in fact the environment is responsible for the child’s behavior.⁸¹ The J.C. Court recognized this issue and warned that courts must consider whether the state created or exacerbated obstacles before making findings against the parent.⁸² When barriers arise from agency action rather than parental conduct, they cannot justify termination. Proper legal analysis requires courts to examine systemic factors carefully to ensure that termination is not the result of state-created disadvantages.⁸³

VI. PERMANENCY AND STABILITY

A. Permanency as a Legal Objective

“Permanency” is a core policy objective in New Jersey’s child welfare system, and courts routinely emphasize the importance of providing children with stable, long-term placements.⁸⁴ Permanency is grounded in the belief that children cannot thrive in environments marked by uncertainty or prolonged instability. Psychological research consistently supports this view. Studies on placement instability show that children who experience multiple moves are more likely to develop emotional dysregulation, anxiety, and behavioral difficulties.⁸⁵ When placements remain stable over time, children show improvement in emotional functioning, attachment, and behavior.⁸⁶ These findings give courts a strong developmental basis for

⁸¹ In re Guardianship of J.C., 129 N.J. 1, 18–20 (1992).

⁸² Id. at 18–20

⁸³ Id. at 18–20

⁸⁴ Id. at 18–20

⁸⁵ Maguire et al., Placement Instability, 45 Child. & Youth Servs. Rev. at 650–55.

⁸⁶ Fleischer, Emotional Recovery in Foster Children, J. Child Psychol. & Fam. Stud. at 5–9.

prioritizing permanency.⁸⁷ However, New Jersey courts recognize this developmental need. Although permanency alone cannot justify termination, the Court in In re Guardianship of J.C. acknowledged that long-term stability is essential for a child's welfare and must be weighed carefully.⁸⁸ Permanency therefore serves both a legal and psychological purpose.⁸⁹ It reflects the state's responsibility to support the child's long-term development while also ensuring that the legal process does not prolong instability unnecessarily. The challenge arises in balancing permanency with parental rights, especially when the state's own actions have contributed to delays or placement disruptions.⁹⁰

B. Rehabilitation vs. Child Timeline

One of the most difficult tensions in termination cases is the conflict between the time a parent needs to rehabilitate and the developmental timeline of the child. Parents dealing with issues like poverty, mental health conditions, incarceration, or lack of resources may require substantial time and support to achieve stability. Scholars such as Shanahan highlight how parents, particularly those who are incarcerated or facing structural barriers, are frequently denied adequate time or meaningful assistance, resulting in premature findings of unfitness.⁹¹

From the child's perspective, however, time moves differently. Psychological studies show that children experience prolonged uncertainty as a form of harm in itself. Instability, repeated placements, and interruptions in caregiving undermine emotional security.⁹² This creates real tension. Courts must consider the child's developmental needs without disregarding the

⁸⁷ In re Guardianship of J.C., 129 N.J. 1, 18–20 (1992).

⁸⁸ In re Guardianship of J.C., 129 N.J. 1, 18–20 (1992).

⁸⁹ Id. at 18–20

⁹⁰ Shanahan, Termination of Parental Rights, 54 Fam. Ct. Rev. at 320–24.

⁹¹ Id. at 320–24.

⁹² Fleischer, Emotional Recovery in Foster Children, J. Child Psychol. & Fam. Stud. at 5–9.

parent's constitutional right to raise their child. When the state has failed to provide consistent services or contributed to delays, courts must be cautious not to hold extended timelines against the parent. The *J.C.* Court explicitly warned against treating state-created delays as evidence that reunification is no longer viable.⁹³ This reinforces the principle that a fair balancing of timelines must account for both rehabilitation efforts and systemic responsibility.

C. Judicial Management of Delays

Courts play a critical role in managing the pace of child welfare cases. Judicial oversight determines how quickly services are ordered, how frequently hearings occur, and whether case plans remain appropriate. Poor management can lead to unnecessary delays, which in turn create instability for the child. Research on instability shows that the longer children remain in unpredictable environments, the more likely they are to develop behavioral issues that complicate reunification.⁹⁴ These consequences can then be used, unfairly, as evidence that the parent is causing harm, even when the system is responsible for the delays.

Judges must therefore monitor agency performance closely. When services are delayed, when visitation is inconsistent, or when placements change without adequate justification, courts must address these failures directly rather than allowing them to influence termination decisions. The *J.C.* Court emphasized that the state may not rely on problems it contributed to when arguing for termination.⁹⁵ Judicial management is essential to ensuring that the process remains fair and that the child's stability is preserved. Proper oversight reduces the likelihood that

⁹³ *In re Guardianship of J.C.*, 129 N.J. 1, 18–20 (1992).

⁹⁴ Funderburk, *Behavioral Outcomes of Children in Foster Care*, 12 *Child Welfare Rev.* at 337–43.

⁹⁵ *In re Guardianship of J.C.*, 129 N.J. 1, 18–20 (1992).

systemic barriers become obstacles to reunification and ensures that decisions are based on evidence rather than administrative inefficiency.⁹⁶

VII. CONCLUSION

Termination of parental rights is one of the most severe actions the state can take, and New Jersey's framework reflects the tension between protecting children and preserving the constitutional rights of parents. Throughout this chapter, the central theme has remained consistent. The "best interests of the child" standard demands careful and individualized analysis, yet the system often applies it in ways that prioritize administrative efficiency or permanency timelines over the child's actual developmental and emotional needs. The statutory prongs provide a clear structure, but their interpretation depends heavily on how courts understand harm, risk, and the conditions that shape a child's lived experience.

The psychological literature shows that instability, inconsistent caregiving, and systemic delays can cause emotional and behavioral harm that resembles parental inadequacy. This creates a risk that courts may misattribute state-created problems to the parent, especially when relying on expert testimony or bonding evaluations that do not fully account for context. New Jersey case law, especially In re Guardianship of J.C., warns against this exact outcome by requiring judges to consider whether the state contributed to the very harm used to justify termination. These principles reinforce that termination cannot be treated as a default solution when reunification becomes difficult.

⁹⁶ Id. at 18–20.

At the same time, this chapter acknowledges that children need safety, stability, and permanence. Psychological research shows that prolonged uncertainty and frequent placement changes threaten healthy development, and courts rightly consider these harms when evaluating the child's future. But permanency cannot come at the cost of fairness. When agency failures, delays, or inconsistent services create barriers for parents, courts must avoid allowing those systemic problems to influence findings of unfitness. The legal requirement of reasonable efforts exists to ensure that reunification is truly supported, not merely promised.

Ultimately, this chapter argues that New Jersey's termination framework is strongest when it integrates legal standards with psychological insight. Understanding harm, risk, bonding, and stability requires attention to the child's developmental needs as well as the parent's circumstances and the state's role in shaping them. When courts apply the four prongs with this interdisciplinary perspective, they are better equipped to reach outcomes that protect children while respecting constitutional rights. The goal is not simply to decide cases more efficiently, but to ensure that each decision reflects a fair, accurate, and compassionate understanding of the child's best interests.

While this chapter has focused on how New Jersey courts articulate and apply the legal standards governing termination of parental rights, the analysis also reveals an important limitation of a purely doctrinal approach. Legal concepts such as harm, unfitness, and permanency often rely on assumptions about children's needs that are not fully examined within the case law itself. To understand whether the "best interests of the child" standard is being applied in a way that truly reflects children's lived experiences, it is necessary to look beyond legal reasoning alone. The following chapter turns to developmental psychology to examine how instability, attachment disruption, and prolonged uncertainty affect children, and how these

psychological insights can inform a more accurate and humane application of the termination framework.

I. PSYCHOLOGICAL PERSPECTIVES

A. INTRODUCTION

Legal decisions involving the termination of parental rights rely heavily on the “best interests of the child” standard, which requires courts to determine whether ending a parent’s legal relationship with a child will protect the child from harm and promote long-term stability. Although this standard is intended to prioritize children’s welfare, courts primarily evaluate these decisions through statutory requirements and legal evidence. Developmental psychology helps explain how children experience separation from caregivers, placement instability, and changes in family relationships. By examining how children develop emotionally and behaviorally within caregiving environments, psychological research provides important insight into the potential developmental consequences of child welfare decisions.

A central concept in developmental psychology is that early caregiving relationships play a critical role in shaping children’s emotional and social development.⁹⁷ Attachment theory, first developed by psychologist John Bowlby, proposes that children are biologically predisposed to form strong emotional bonds with caregivers because these relationships are essential for survival and healthy development.⁹⁸ When caregiving is consistent and responsive, children are

⁹⁷ John Bowlby, Attachment and Loss: Vol. 1: Attachment at 177 (1969).

⁹⁸ Id. at 177

more likely to develop a sense of security that supports emotional regulation and social functioning. However, disruptions in caregiving relationships during early development can interfere with these processes and contribute to emotional and behavioral difficulties later in life.⁹⁹

Research on attachment patterns further shows that children respond differently depending on the quality and stability of caregiving they receive.¹⁰⁰ Studies examining early childhood attachment show that children who experience consistent and supportive caregiving tend to develop secure attachment relationships, while those exposed to inconsistent caregiving may develop insecure attachment patterns.¹⁰¹ These differences influence how children regulate emotions, respond to stress, and interact with others.¹⁰² Because termination of parental rights decisions often involve removing children from established caregiving relationships, these psychological findings are especially relevant when considering how such disruptions may affect children's development.¹⁰³

Psychological research also shows the biological effects of early adversity and instability. Studies examining children in foster care have found that disruptions in caregiving environments can affect how children's stress-response systems function.¹⁰⁴ For example, research examining cortisol patterns among foster children suggests that experiences such as separation from caregivers or unstable placements may interfere with normal stress regulation.¹⁰⁵ Broader

⁹⁹ Mary D. S. Ainsworth et al., Patterns of Attachment: A Psychological Study of the Strange Situation (1978).

¹⁰⁰ Id. at 260

¹⁰¹ Id. at 260

¹⁰² Id. at 261

¹⁰³ John Bowlby, Attachment and Loss, 194–97

¹⁰⁴ Mary Dozier et al., Foster Children's Diurnal Production of Cortisol: An Exploratory Study, 11 Child Maltreatment 189 (2006).

¹⁰⁵ Id. at 185

research on childhood adversity similarly shows that prolonged exposure to stress during early development can influence brain development and increase the likelihood of long-term emotional and behavioral challenges.¹⁰⁶

Placement instability is another important concern within the child welfare system. After removal from their parents, many children experience multiple changes in caregivers before achieving a permanent placement.¹⁰⁷ Research examining foster care outcomes has found that placement instability is associated with increased behavioral problems and poorer developmental outcomes.¹⁰⁸ These findings suggest that stability in caregiving environments plays a significant role in supporting children's adjustment and long-term well-being.¹⁰⁹

Taken together, developmental psychology provides an important framework for understanding how children experience separation, instability, and changes in caregiving relationships. While legal standards attempt to determine what outcomes serve the best interests of the child, psychological research shows the importance of stable attachments, consistent caregiving, and protection from chronic stress during early development. Examining these factors can help provide a clearer understanding of the consequences of termination of parental rights decisions.

II. ATTACHMENT THEORY AND EARLY CHILD DEVELOPMENT

A. FOUNDATIONS OF ATTACHMENT THEORY

¹⁰⁶ *Id.* at 185

¹⁰⁷ David M. Rubin et al., *The Impact of Placement Stability on Behavioral Well-Being for Children in Foster Care*, 119 *Pediatrics* 336 (2007).

¹⁰⁸ *Id.* at 337

¹⁰⁹ *Id.* at 339

Attachment theory provides an important framework for understanding how early caregiving relationships influence children's development. Psychologist John Bowlby first developed attachment theory to explain how and why children form strong emotional bonds with caregivers during early childhood. According to Bowlby, children are biologically predisposed to seeking closeness with caregivers because these relationships provide protection, comfort, and stability during early development.¹¹⁰ In this sense, attachment relationships are not simply emotional connections but are part of a broader developmental system that helps ensure children's safety and survival.¹¹¹

Within this framework, the responsiveness of caregivers plays a leading role in shaping children's early experiences. When caregivers respond consistently and sensitively to a child's needs, children are more likely to develop a sense of trust and security within that relationship.¹¹² Over time, these experiences help children form expectations about whether caregivers will be available and supportive when needed.¹¹³ Bowlby described these expectations as "internal working models," which are mental frameworks that guide how children understand relationships and respond to social situations.¹¹⁴

Because these early caregiving experiences shape children's expectations about relationships, attachment theory suggests that early childhood interactions can influence development in lasting ways.¹¹⁵ Children who experience stable and responsive caregiving environments are generally better able to regulate emotions and manage stress during difficult

¹¹⁰ Bowlby, Attachment and Loss, at 177–80.

¹¹¹ Id. at 180

¹¹² Id. at 184

¹¹³ Id. at 185

¹¹⁴ Id. at 189

¹¹⁵ Id. at 190

situations.¹¹⁶ In contrast, disruptions in caregiving relationships may interfere with the development of these regulatory processes. When children experience inconsistent caregiving or separation from caregivers, they may struggle to develop the same sense of stability and security that supports healthy emotional development.¹¹⁷

These ideas are particularly relevant within the context of the child welfare system, where children may experience removal from parents or changes in caregiving environments. Because attachment relationships develop through repeated interactions between children and caregivers, disruptions to these relationships can have important developmental consequences.¹¹⁸

Understanding the role that early caregiving relationships play in children's emotional and social development therefore provides an important perspective when evaluating decisions that affect children's family relationships and long-term stability.¹¹⁹

B. ATTACHMENT PATTERNS AND CAREGIVER RESPONSIVENESS

While Bowlby's work established the foundation of attachment theory, later research helped explain how different caregiving environments influence the types of attachment relationships children develop. Psychologist Mary Ainsworth expanded on Bowlby's ideas by studying how infants respond to separation from and reunion with their caregivers.¹²⁰ Ainsworth observed how children behaved when their caregiver briefly left the room and then returned, and these observations allowed researchers to identify patterns in how children responded to stress and sought comfort from their caregivers. Ainsworth's research showed that children tend to develop different attachment patterns depending largely on the responsiveness and consistency of

¹¹⁶ *Id.* at 195

¹¹⁷ *Id.* at 196

¹¹⁸ *Id.* at 198

¹¹⁹ *Id.* at 199

¹²⁰ Ainsworth, *Patterns of Attachment*, at 241–248.

caregiving they receive.¹²¹ Children who experience consistent and supportive caregiving are more likely to develop secure attachment relationships.¹²² These children typically feel comfortable exploring their surroundings while also seeking comfort from caregivers when they experience distress. Because their caregivers regularly respond to their needs, securely attached children often develop stronger emotional regulation and a greater sense of stability in their relationships.

In contrast, children exposed to inconsistent or less responsive caregiving may develop insecure attachment patterns.¹²³ Some children display avoidant attachment behaviors, appearing emotionally distant from caregivers and showing little reaction when separated.¹²⁴ Others show ambivalent or resistant behaviors, becoming highly distressed during separation and having difficulty calming down when the caregiver returns. These patterns show that inconsistent caregiving can make it harder for children to develop clear expectations about whether caregivers will be available and supportive.¹²⁵

Because attachment relationships develop through repeated interactions between children and caregivers, disruptions in these relationships can have important developmental effects. When caregiving environments become unstable or children experience separation from caregivers, it may interfere with the sense of security that supports emotional development.¹²⁶ For children involved in the child welfare system, where removal from parents or changes in

¹²¹ Id. at 248

¹²² Id. at 260

¹²³ Id. at 298

¹²⁴ Id. at 299

¹²⁵ Id. at 300

¹²⁶ Id. at 300

caregivers may occur, these attachment patterns help explain why caregiving stability plays such an important role in children's adjustment and long-term development.¹²⁷

C. DEVELOPMENTAL CONSEQUENCES OF DISRUPTED ATTACHMENT

Attachment research suggests that stable caregiving relationships play a key role in supporting children's emotional and psychological development. When children experience consistent caregiving, they are more likely to develop a sense of security that helps them regulate emotions and respond to stressful situations.¹²⁸ However, when these caregiving relationships are disrupted, the developmental processes that support emotional stability may also be affected.¹²⁹

Psychological research has also shown that early adversity and instability can influence children not only emotionally but biologically. Studies examining children involved in the foster care system have found that disruptions in caregiving environments may affect how children's stress-response systems function.¹³⁰ For example, research examining cortisol patterns among foster children suggests that experiences such as separation from caregivers or unstable caregiving environments may interfere with normal stress regulation.¹³¹

Broader research on early childhood adversity similarly shows that prolonged exposure to stress during important developmental periods can influence brain development and increase the risk of later emotional and behavioral difficulties.¹³² Because young children depend heavily on

¹²⁷ Id. at 300

¹²⁸ Bowlby, Attachment and Loss, at 194–96.

¹²⁹ Id. at 195

¹³⁰ Dozier et al., Foster Children's Diurnal Production of Cortisol, at 191–94.

¹³¹ Id. at 195–96.

¹³² Jack P. Shonkoff & Andrew S. Garner, The Lifelong Effects of Early Childhood Adversity and Toxic Stress, 129 Pediatrics e232, 234–36 (2012).

caregivers for both physical care and emotional reassurance, disruptions in these relationships may create additional stress that affects how children respond to their environment.

These findings help explain why stability in caregiving relationships is often considered a key factor in children's long-term development. When children experience repeated changes in caregivers or separation from attachment figures, the sense of security that supports emotional regulation may be weakened.¹³³ Within the context of the child welfare system, where children may experience removal from parents or placement changes, understanding these developmental consequences helps provide additional insight into how caregiving disruptions may affect children's overall well-being.¹³⁴

III. BIOLOGICAL EFFECTS OF EARLY ADVERSITY

A. STRESS RESPONSE AND CORTISOL REGULATION

Psychological research has shown that early caregiving environments can influence not only children's emotional development but also important biological systems that regulate stress.¹³⁵ During early childhood, the body's stress-response system plays a key role in helping individuals respond to challenging or threatening situations.¹³⁶ When children experience consistent caregiving and stable environments, this system typically develops in ways that allow them to regulate stress more effectively. However, disruptions in caregiving relationships or exposure to early adversity may interfere with the development of normal stress regulation.¹³⁷

¹³³ Bowlby, Attachment and Loss, at 194–97.

¹³⁴ Id. at 197.

¹³⁵ Id. at 197

¹³⁶ Id. at 197

¹³⁷ Id. at 197

Research examining children in foster care has provided important insight into how early caregiving disruptions may affect biological stress responses. One study examining cortisol patterns among foster children found that many children in foster care displayed abnormal daily cortisol levels compared to children raised in stable caregiving environments.¹³⁸ Cortisol is a hormone that helps regulate the body's response to stress, and healthy cortisol patterns typically follow a predictable daily rhythm. When these patterns become disrupted, it may indicate that the body's stress-response system is not functioning normally.¹³⁹

These findings suggest that experiences such as separation from caregivers, unstable placements, or early neglect may affect how children's bodies respond to stress.¹⁴⁰ Because young children rely heavily on caregivers to help regulate emotions and provide a sense of safety, disruptions in these relationships may place additional strain on developing stress-response systems. Over time, these biological changes may make it more difficult for children to regulate emotions and adapt to stressful situations.¹⁴¹

Understanding how early adversity can influence biological stress responses provides an additional perspective on the developmental effects of caregiving instability. While emotional and behavioral changes are often the most visible consequences of disrupted caregiving relationships, research suggests that the effects may also occur at a physiological level.¹⁴² These biological responses help explain why stable caregiving environments are often considered a key factor in supporting healthy child development.¹⁴³

¹³⁸ Dozier et al., Foster Children's Diurnal Production of Cortisol, at 191–94.

¹³⁹ Id. at 192

¹⁴⁰ Id. at 195

¹⁴¹ Id. at 195

¹⁴² Id. at 195

¹⁴³ Id. at 195

B. TOXIC STRESS AND BRAIN DEVELOPMENT

Research on early childhood development also shows that long periods of stress during childhood can affect how the brain develops. Young children depend heavily on caregivers not only for physical care but also for emotional comfort and stability. When children experience safe and supportive caregiving, they are better able to manage stressful situations. However, when children are exposed to repeated stress or instability without consistent support from caregivers, the effects of that stress may become more harmful over time.¹⁴⁴

Researchers often refer to this type of prolonged stress as toxic stress. Toxic stress occurs when children face ongoing adversity, such as neglect, separation from caregivers, or unstable living environments, without the protection of stable and supportive relationships.¹⁴⁵ During early childhood, the brain is still developing, and stressful experiences can influence how certain areas of the brain grow and function.¹⁴⁶ Because of this, long periods of unrelieved stress may increase the risk of emotional, behavioral, and learning difficulties later in life.¹⁴⁷

Studies on early childhood adversity suggest that stable caregiving relationships can help protect children from the harmful effects of stress.¹⁴⁸ Supportive caregivers often help children calm down, manage emotions, and feel safe in difficult situations. When these relationships are disrupted, children may lose an important source of emotional support.¹⁴⁹ Without this support, stressful experiences may become harder for children to manage, which can affect how they respond to challenges as they grow older.¹⁵⁰

¹⁴⁴ Shonkoff & Garner, Lifelong Effects of Early Childhood Adversity, at 234–36.

¹⁴⁵ Id. at 235

¹⁴⁶ Id. at 235

¹⁴⁷ Id. at 235

¹⁴⁸ Id. at 236

¹⁴⁹ Id. at 236

¹⁵⁰ Id. at 236

Understanding the effects of toxic stress is especially important when considering the experiences of children involved in the child welfare system. Many children who enter foster care have already experienced difficult or unstable caregiving environments. When these children also experience separation from caregivers or multiple placement changes, the stress they face may increase. Research on toxic stress helps explain why stable and supportive caregiving relationships are often viewed as an important part of promoting healthy child development.¹⁵¹

IV. PLACEMENT INSTABILITY IN THE CHILD WELFARE SYSTEM

A. MULTIPLE PLACEMENTS AND CHILD ADJUSTMENT

Placement instability is a common concern within the child welfare system. After children are removed from their parents, many do not remain in a single foster home but instead experience multiple changes in caregivers before reaching a permanent placement.¹⁵² These moves may occur for several reasons, including placement disruptions, changes in foster family circumstances, or difficulties meeting the child's needs. Because young children rely heavily on stable caregiving relationships, repeated placement changes can create additional challenges as children attempt to adjust to new environments and caregivers.¹⁵³

Research examining foster care outcomes has shown that children who experience multiple placements often face greater adjustment difficulties than children who remain in more stable caregiving environments.¹⁵⁴ Each placement change may require children to adapt to new

¹⁵¹ *Id.* at 236

¹⁵² Rubin et al., *Impact of Placement Stability on Behavioral Well-Being*, at 336–38.

¹⁵³ Sarah A. Maguire et al., *A Systematic Review of the Impact of Placement Instability on Emotional and Behavioral Outcomes*, 45 *Child & Youth Servs. Rev.* 645–46 (2014).

¹⁵⁴ *Id.* at 647

routines, new expectations, and new relationships with caregivers. These repeated adjustments can make it harder for children to develop a consistent sense of safety and stability.¹⁵⁵ For children who have already experienced difficult or unstable caregiving environments before entering foster care, additional placement changes may increase the stress they face during an already challenging period of development.¹⁵⁶

Placement changes may also disrupt the relationships children begin to form with new caregivers. When children start to develop trust in a caregiver but are then moved to a different home, that developing relationship may be interrupted.¹⁵⁷ Over time, repeated disruptions in caregiving relationships may make it harder for children to form stable attachments and adjust emotionally to new environments. Because of this, many researchers emphasize that maintaining stable placements can play an important role in helping children adapt more successfully while in the child welfare system.¹⁵⁸

B. BEHAVIORAL AND DEVELOPMENTAL OUTCOMES

Research has also examined how placement instability may affect children's behavior and development over time. Studies suggest that children who experience frequent placement changes are more likely to show behavioral difficulties, including problems with emotional regulation, social interactions, and school adjustment.¹⁵⁹ These difficulties may arise because repeated disruptions in caregiving relationships can create uncertainty and stress for children who are already adjusting to separation from their families.¹⁶⁰

¹⁵⁵ Rubin et al., Impact of Placement Stability, at 339–40.

¹⁵⁶ Id. at 340

¹⁵⁷ John Bowlby, Attachment and Loss, at 203–05 (1969).

¹⁵⁸ Maguire et al., Impact of Placement Instability, at 649–50.

¹⁵⁹ Rubin et al., Impact of Placement Stability, at 339–40.

¹⁶⁰ Maguire et al., Impact of Placement Instability, at 647–48.

In addition to behavioral challenges, placement instability may also affect broader developmental outcomes.¹⁶¹ Children who experience several placement changes may have fewer opportunities to build consistent relationships with caregivers, teachers, and peers.¹⁶² These relationships often play an important role in helping children develop social skills, emotional regulation, and a sense of stability in their daily lives.¹⁶³ When these relationships are repeatedly disrupted, children may struggle to maintain the same level of developmental progress as children in more stable environments.¹⁶⁴

Because of these concerns, many researchers emphasize that placement stability is an important factor in supporting children's well-being while they are involved in the child welfare system. Stable caregiving environments can provide children with the consistency and support needed to adjust to difficult circumstances and continue developing in healthy ways. Understanding how placement instability affects children's adjustment and development therefore provides important insight into the broader challenges children may face while moving through the foster care system.¹⁶⁵

V. PSYCHOLOGICAL CONSEQUENCES OF TERMINATION OF PARENTAL RIGHTS

A. CHILDREN'S RESPONSES TO PARENTAL LOSS

Termination of parental rights is intended to protect children and help them move toward stable and permanent living arrangements. In many situations, courts determine that remaining in

¹⁶¹ *Id.* at 648

¹⁶² Rubin et al., *Impact of Placement Stability*, at 340–41.

¹⁶³ Bowlby, *Attachment and Loss*, at 204–06.

¹⁶⁴ Maguire et al., *Impact of Placement Instability*, at 649–50.

¹⁶⁵ *Id.* at 650

a parent's custody may expose a child to continued harm or instability, making termination necessary to provide a safer environment. However, even when termination is considered necessary, the process can still create emotional challenges for the children involved. For many children, parents represent their earliest and most familiar attachment figures. Because of this, separation from a parent may still lead to feelings of confusion, sadness, or uncertainty.¹⁶⁶

Research examining children who have experienced parental loss through termination proceedings suggests that children may respond to this loss in different ways depending on their age, developmental stage, and previous caregiving experiences.¹⁶⁷ Some children openly express feelings of sadness, anger, or frustration following separation from their parents. Others may appear to show little reaction at first, which can sometimes give the impression that the child has adjusted quickly. However, psychological research suggests that children may process these experiences gradually over time rather than responding immediately.¹⁶⁸ Because children often have limited understanding of legal decisions and complex family situations, their emotional responses may develop slowly as they begin to understand the changes in their family relationships.

In some cases, children may rely on avoidant coping strategies when responding to parental loss. This may involve distancing themselves from the emotional impact of the situation or avoiding conversations about their parents altogether.¹⁶⁹ While this response may appear to suggest that a child has adjusted to the change, research indicates that it may actually reflect an

¹⁶⁶ Katherine M. Schneider & Vicky Phares, Coping with Parental Loss Because of Termination of Parental Rights, 84 Child Welfare 821–23 (2005).

¹⁶⁷ Id. at 824

¹⁶⁸ Id. at 826

¹⁶⁹ Id. at 828

attempt to manage emotions that are difficult to express.¹⁷⁰ Because of this, the emotional effects of termination may not always be immediately visible to caregivers, caseworkers, or other professionals working within the child welfare system.

B. COPING AND EMOTIONAL ADJUSTMENT

Children who experience the termination of parental rights often rely on a variety of coping strategies as they attempt to adjust to changes in their family relationships.¹⁷¹ Some children adapt by forming new relationships with caregivers or focusing on daily routines in their current living environments. Stable caregiving environments can help children gradually adjust by providing emotional support, consistent routines, and a sense of security.¹⁷² When children are able to build trusting relationships with caregivers, these relationships may help them process difficult experiences and develop healthier emotional responses over time.¹⁷³

Despite these supports, coping with parental loss can still present challenges. Children may struggle with questions about their identity, their relationships with biological parents, and their future stability.¹⁷⁴ These concerns may become more noticeable as children grow older and gain a deeper understanding of their family history. In some situations, children may experience emotional or behavioral difficulties as they attempt to process these changes and adjust to new family structures.¹⁷⁵ For these reasons, researchers emphasize the importance of stable and supportive caregiving environments following termination decisions. Caregivers who provide consistent emotional support can help children better manage feelings of loss and uncertainty

¹⁷⁰ *Id.* at 828

¹⁷¹ *Id.* at 828

¹⁷² Bowlby, *Attachment and Loss*, at 203–05.

¹⁷³ *Id.* at 205

¹⁷⁴ Schneider & Phares, *Coping with Parental Loss*, at 824–26.

¹⁷⁵ *Id.* at 828

while developing healthier coping strategies. Understanding how children cope with parental loss therefore provides important insight into the broader emotional effects that termination decisions may have on children involved in the child welfare system.¹⁷⁶

VI. IMPLICATIONS FOR CHILD WELFARE DECISION-MAKING

The psychological research discussed throughout this chapter highlights the important role that stable caregiving relationships play in children's development. Attachment theory, research on early adversity, and studies on placement instability all suggest that children benefit from consistent and supportive caregiving environments.¹⁷⁷ When children experience repeated disruptions in caregiving relationships, whether through separation from parents or multiple foster placements, these disruptions may affect emotional development, stress regulation, and long-term adjustment. Because many children involved in the child welfare system have already experienced difficult or unstable caregiving environments, maintaining stability after removal from parents may be especially important for supporting healthy development.¹⁷⁸

Research on foster care interventions also suggests that stable caregiving environments can improve outcomes for children who have experienced early adversity.¹⁷⁹ Programs designed to support foster families and provide consistent caregiving environments have been associated with fewer placement disruptions and improved behavioral outcomes for children.¹⁸⁰ These findings suggest that policies and practices within the child welfare system may benefit from

¹⁷⁶ *Id.* at 829

¹⁷⁷ Shonkoff & Garner, *Lifelong Effects of Early Childhood Adversity*, at 236–38.

¹⁷⁸ Philip A. Fisher et al., *The Early Intervention Foster Care Program: Permanent Placement Outcomes from a Randomized Trial*, 10 *Child Maltreatment* 65–67 (2005).

¹⁷⁹ *Id.* at 65

¹⁸⁰ *Id.* at 65–66

placing greater emphasis on maintaining stable caregiving relationships whenever possible.

When children can remain in consistent and supportive environments, they may be better able to adjust to difficult circumstances and develop healthier emotional and behavioral responses over time.¹⁸¹

Within the legal system, decisions involving termination of parental rights often focus on determining whether a child can safely remain with a parent or whether a permanent alternative placement is necessary. Psychological research does not replace the legal standards used by courts, but it does provide additional insight into how children may experience the outcomes of these decisions. Understanding how caregiving relationships influence development can help provide a more complete picture of the factors that affect children's well-being. When courts consider both legal requirements and developmental research, they may be better positioned to evaluate what arrangements are most likely to support children's long-term stability and adjustment.

Overall, the research in this chapter shows that children's well-being is strongly connected to the stability and quality of their caregiving relationships. While termination decisions are often made to protect children from harm, the developmental consequences of caregiving disruptions are also important to consider. By recognizing the role that attachment relationships, stress responses, and caregiving stability play in children's development, the child welfare system can better support decisions that promote both safety and long-term well-being for children.

I. INTRODUCTION

¹⁸¹ *Id.* at 66-67

This chapter builds on the legal and psychological analyses by examining how these disciplines interact in termination of parental rights decisions. Although both law and developmental psychology aim to serve the best interests of the child, they approach that goal differently. Legal standards emphasize permanency and timely resolution, while psychological research focuses on stable attachment, emotional development, and long-term effects of disruption. As a result, decisions intended to protect children may not always reflect what research identifies as necessary for healthy development. This chapter brings these perspectives together by identifying points of conflict, common ground, and opportunities for integration. It focuses on two pairs of insights, first, the tension between legal emphasis on expediency and psychological research on attachment and stability. Secondly, the principle that harm should not be attributed to parents when it is caused by the system, alongside research on placement instability. Through this analysis, the chapter evaluates whether current legal practices fully account for children's developmental needs and considers how a more integrated approach could better serve their long-term well-being.

II. EXPLANATION OF INTEGRATION PROCESS

This chapter integrates legal and psychological perspectives by comparing how each discipline evaluates the best interests of the child in termination of parental rights cases. The legal framework relies on broad statutory language and judicial discretion, which can lead to varying interpretations of what constitutes a child's best interests. As Funderburk explains, the standard itself is difficult to define and often depends on the individual decision-maker rather than a consistent set of criteria.¹⁸² Similarly, Lamprecht notes that courts may shift focus away

¹⁸² Carl Funderburk, Best Interest of the Child Should Not Be an Ambiguous Term, 33 Child. Legal Rts. J. 229, 231 (2013).

from the child and toward parental conduct when applying these standards.¹⁸³ In contrast, psychological research provides a more structured understanding of child development, emphasizing the importance of stable caregiving relationships and the consequences of disruption.¹⁸⁴ Attachment theory, developed by John Bowlby, explains that early relationships with caregivers are central to emotional and developmental outcomes.¹⁸⁵ Research by Mary Ainsworth further demonstrates that consistent caregiving supports secure attachment, while instability can lead to long-term emotional and behavioral difficulties.¹⁸⁶ To connect these perspectives, this chapter examines two pairs of insights drawn from the legal and psychological analyses. The first focuses on the tension between legal emphasis on permanency and psychological findings on attachment and stability. The second examines the principle recognized in In re Guardianship of J.C. that harm should not be attributed to parents when it is caused by the system, alongside research showing that placement instability itself can contribute to developmental harm.¹⁸⁷ Studies have shown that children in unstable placements experience increased behavioral problems and disrupted stress regulation, reinforcing the need to consider these factors in legal decision-making.¹⁸⁸

III. EXPLANATION OF CONFLICTS BETWEEN TWO PAIRS OF INSIGHTS FROM EACH DISCIPLINE

¹⁸³ Rebecca S. Lamprecht, Advancing the Best Interests of the Child: Why South Dakota Should Strengthen Its Rebuttable Presumption Against Awarding Custody to Abusive Parents, 56 S.D. L. Rev. 351, 377–79 (2011).

¹⁸⁴ John Bowlby, Attachment and Loss: Vol. 1: Attachment at 177 (1969).

¹⁸⁵ Id.

¹⁸⁶ Mary D. S. Ainsworth et al., Patterns of Attachment: A Psychological Study of the Strange Situation (1978).

¹⁸⁷ In re Guardianship of J.C., 129 N.J. 1, 18–20 (1992)

¹⁸⁸ David M. Rubin et al., The Impact of Placement Stability on Behavioral Well-Being for Children in Foster Care, 119 Pediatrics, 340–42 (2007).

A. Pair One: Permanency and Efficiency Versus Attachment Stability

A primary conflict between legal and psychological perspectives emerges in how each discipline understands the role of time and permanency in termination of parental rights cases. The legal framework places strong emphasis on achieving permanency for children within a reasonable timeframe, often treating delay as a source of harm in itself. Courts are guided by statutory requirements that prioritize timely decision-making, and this approach is reinforced by the flexible nature of the best interests standard. As Funderburk explains, the lack of a concrete definition allows judges to rely on their own judgment when determining what outcome best serves the child.¹⁸⁹ Similarly, Lamprecht notes that this discretion can shift the focus of decision-making away from a consistent, child-centered analysis and toward broader considerations that may include efficiency and case resolution.¹⁹⁰ In contrast, psychological research suggests that the effects of time cannot be understood solely in terms of procedural delay.¹⁹¹ Attachment theory emphasizes that children form meaningful emotional bonds with caregivers through consistent interaction, and that these relationships are central to emotional and developmental stability. As outlined by John Bowlby, early caregiving relationships shape how children regulate emotions and respond to stress.¹⁹² Research by Mary Ainsworth further demonstrates that disruptions in these relationships, particularly when caregiving is inconsistent, can result in insecure attachment patterns and long-term emotional difficulties.¹⁹³ From this perspective, decisions made too quickly, without fully considering the child's existing attachments, may introduce additional harm rather than prevent it. This creates a clear tension between the two

¹⁸⁹ Funderburk, Best Interest, at 230–31.

¹⁹⁰ Lamprecht, Advancing the Best Interests, at 377–79.

¹⁹¹ Bowlby, Attachment and Loss, at 177–80.

¹⁹² Id. at 180

¹⁹³ Mary D. S. Ainsworth et al., Patterns of Attachment: A Psychological Study of the Strange Situation (1978).

disciplines. While the legal system often treats permanency as inherently beneficial, psychological research suggests that the quality and continuity of relationships are equally, if not more, important. A decision that achieves permanency quickly may still disrupt an established attachment or fail to account for the child's emotional needs. As a result, the emphasis on expediency within the legal framework can conflict with the developmental realities identified in psychological research, raising questions about whether current practices consistently reflect what is truly in the child's best interests.

B. Pair Two: Attribution of Harm to Parents Versus System-Caused Harm

Under New Jersey law, termination of parental rights requires proof that harm is tied to the parental relationship and cannot be remedied. In In re Guardianship of J.C., the court emphasized that this determination must be based on clear and convincing evidence and a careful, individualized analysis.¹⁹⁴ In theory, this framework is meant to ensure that parental rights are not terminated unless the parent is actually responsible for the harm. Psychological research, however, shows that harm may also come from the system itself. Studies have found that placement instability is associated with increased behavioral and developmental problems in children.¹⁹⁵ Research demonstrates that unstable placements negatively affect children's well-being, further showing that foster care disruptions can interfere with children's stress regulation.¹⁹⁶ A broader review by Maguire confirms that repeated placement changes are linked to emotional and developmental difficulties, and this creates a conflict between the two

¹⁹⁴ In re Guardianship of J.C., 129 N.J. 1, 18–20 (1992)

¹⁹⁵ David M. Rubin et al., The Impact of Placement Stability on Behavioral Well-Being for Children in Foster Care, 119 Pediatrics 336 (2007).

¹⁹⁶ Mary Dozier et al., Foster Children's Diurnal Production of Cortisol: An Exploratory Study, 11 Child Maltreatment 189, 193–95 (2006).

perspectives.¹⁹⁷ While the legal framework seeks to attribute harm to parental conduct, psychological research shows that instability within the system can independently produce harm. As a result, there is a risk that system-caused harm may be attributed to the parent, raising concerns about whether current legal practices fully distinguish between these sources of harm.

IV. EXPLANATION OF COMMON GROUND BETWEEN TWO PAIRS OF INSIGHTS FROM EACH DISCIPLINE

A. Pair One: Shared Recognition of Child Well-Being

Despite their differences, both legal and psychological perspectives are grounded in the goal of protecting the child's well-being. The legal framework centers on the best interests of the child, even though its application can vary depending on judicial interpretation. Similarly, psychological research emphasizes that children's emotional and developmental needs should guide decision-making, particularly in relation to attachment and caregiving stability.¹⁹⁸

Research by John Bowlby and Mary Ainsworth shows that stable relationships are essential to healthy development.¹⁹⁹

B. Pair Two: Recognition of Harm and the Importance of Stability

Both disciplines also recognize that harm and instability play a central role in shaping outcomes for children. The legal standard requires courts to evaluate harm and determine

¹⁹⁷ Darren Maguire et al., The Impact of Placement Instability on Behavioral and Mental Health Outcomes in Foster Care Children, 17 J. Child & Adolescent Trauma 641, 645–47 (2024).

¹⁹⁸ Bowlby, Attachment and Loss, at 177–80

¹⁹⁹ Id. at 180

whether termination will prevent further harm, as emphasized in In re Guardianship of J.C.

Psychological research supports this focus by demonstrating that instability, particularly through multiple placements, can lead to negative emotional and developmental outcomes.²⁰⁰ Studies all show that consistent caregiving environments are critical for children's well-being.²⁰¹

V. EXPLANATION OF INTEGRATION PROCESS BETWEEN TWO PAIRS OF COMMON INSIGHTS FROM EACH DISCIPLINE

A. Pair One: Incorporating Attachment Theory into Legal Decision-Making

The conflict between permanency and attachment can be addressed by more fully incorporating psychological insights into legal decision-making. While courts emphasize timely permanency, psychological research suggests that the quality of caregiving relationships must also be considered.²⁰² Attachment theory, as developed by John Bowlby, shows that children's emotional development depends on stable and continuous relationships.²⁰³ By integrating this perspective, courts can move beyond a focus on speed alone and instead evaluate whether a decision supports both stability and the child's long-term emotional well-being.

B. Pair Two: Recognizing System-Caused Harm in Judicial Analysis

Integration is also necessary in how courts evaluate harm. Although legal standards require that harm be attributed to the parent, psychological research demonstrates that instability within the child welfare system can independently contribute to harm. As reflected in In re Guardianship of J.C., courts must carefully assess the source of harm before terminating parental

²⁰⁰ Id. at 180

²⁰¹ Rubin et al., Impact of Placement Stability, at 340–42.

²⁰² Ainsworth et al., Patterns of Attachment, at 260–61.

²⁰³ Bowlby, Attachment and Loss, at 177–80

rights.²⁰⁴ Research reinforces that placement instability can negatively affect children's development, and integrating these insights requires courts to distinguish more clearly between harm caused by parental conduct and harm resulting from the system itself, ensuring that termination decisions are based on a more complete understanding of the child's experience.²⁰⁵

VI. RECOMMENDATIONS FOR REFORMS, CHANGES, AND FUTURE RESEARCH

A. Greater Consideration of the Child's Perspective

One important reform is increasing the role of the child's perspective in termination proceedings. While courts often assume that younger children are unable to meaningfully express their preferences, psychological research suggests that children are capable of forming strong emotional attachments and experiencing the effects of separation in significant ways.²⁰⁶ Attachment theory emphasizes that children actively experience and respond to caregiving relationships, and incorporating the child's perspective, when appropriate, would allow courts to better understand the emotional realities of each case rather than relying solely on external evaluations.

B. Reducing Overreliance on Strict Permanency Timelines

Courts should also reconsider the extent to which strict timelines drive termination decisions. Although permanency is an important goal, research shows that stability and the quality of relationships are equally critical to a child's development.²⁰⁷ Studies on attachment

²⁰⁴ *In re Guardianship of J.C.*, 129 N.J. 1, 18–20 (1992)

²⁰⁵ Rubin et al., *Impact of Placement Stability*, at 340–42

²⁰⁶ Dozier et al., *Foster Children's Diurnal Production*, at 193–95.

²⁰⁷ Bowlby, *Attachment and Loss*, at 177–80

and caregiving demonstrate that rushed decisions may disrupt important relationships and introduce additional harm.²⁰⁸ Legal standards should therefore allow for greater flexibility in cases where additional time may support stronger, more stable outcomes for the child.

C. Strengthening the Use of Psychological Evidence

Finally, courts should place greater emphasis on psychological evidence when evaluating harm and long-term outcomes. As recognized in In re Guardianship of J.C., termination decisions require a careful and individualized assessment of harm. Psychological research provides critical insight into how instability and placement changes affect children, with studies showing increased behavioral problems and disrupted stress regulation in unstable environments.²⁰⁹ Incorporating this evidence more consistently would help ensure that legal decisions align more closely with children's developmental needs.

VII. CONCLUSION

This chapter examines how legal and psychological perspectives interact in the context of termination of parental rights, highlighting both conflict and common ground between the two disciplines. While the legal framework emphasizes permanency, efficiency, and statutory interpretation, psychological research underscores the importance of stable attachment, emotional development, and the long-term effects of caregiving disruption. These differences reveal a gap between how decisions are made and how children actually experience those decisions.

²⁰⁸ Ainsworth et al., Patterns of Attachment, at 260–61.

²⁰⁹ In re Guardianship of J.C., 129 N.J. 1, 18–20 (1992)

At the same time, both disciplines share a common goal of protecting the child's well-being and preventing harm. The analysis of paired insights demonstrates that while the legal system recognizes the importance of harm and stability, it does not always fully account for the role of placement instability or the developmental impact of disrupted relationships. By incorporating psychological evidence, recognizing system-caused harm, and considering the child's perspective, courts can better align legal standards with the realities of child development.