

FOSTERING THE FUTURE: **Safety, Permanence and Well-Being for Children in Foster Care**

THE PEW COMMISSION ON CHILDREN IN FOSTER CARE

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We are proud to introduce this report from the Pew Commission on Children in Foster Care. It represents a year of intensive work and reflects the collective wisdom of Commission members who have devoted their lives to improving outcomes for vulnerable children.

Its recommendations focus on reforming federal child welfare financing and strengthening court oversight of children in foster care. These two issues are at the root of many of the problems that frustrate child welfare administrators, case workers, and judges as they seek to move children quickly from foster care to safe, permanent homes – or to avoid the need to put them in foster care in the first place.

Efforts to help children who have suffered abuse or neglect have traditionally enjoyed bipartisan support. The Commission believes its proposals continue this tradition. The two of us have found much common ground in our determination to see the nation do a better job of caring for children in foster care. We will be reaching out to leaders from all parties and all branches and levels of government to urge their careful consideration and swift action.

These recommendations stem from the expertise, experience, and extraordinary commitment of the members of this Commission. They listened respectfully to each other, as well as to all advisors, debated forcefully, and ultimately reached strong consensus in support of a set of proposals to help children everywhere. Individually, each of them is a luminary, but together they have worked even greater wonders. The whole has been greater than the sum of its parts.

On behalf of the entire Commission, we also thank The Pew Charitable Trusts, our many trusted consultants, and all the individuals and organizations that regularly advised us. Most of all, we thank our superb staff. It is small in number, but its dedication was total, and its work heroic. Like the Commission itself, the staff has earned our pride and our gratitude.

Bill Frenzel
Chair

William H. Gray, III
Vice Chair

INTRODUCTION: A CALL FOR CHANGE

So, this is how it is in foster care, you always have to move from foster home to foster home and you don't have any say in this and you're always having to adapt to new people and new kids and new schools. Sometimes you just feel like you are going crazy inside. And another thing, in foster care you grow up not knowing that you can really be somebody. When I was in foster care, it didn't seem like I had any choices or any future. All kids deserve families. They need a family, to have someone, this is father, this is mother—they need a family so they can believe in themselves and grow up to be somebody. This is a big deal that people don't realize. I wish everyone could understand.

- Former Foster Youth

All children need safe, permanent families that love, nurture, protect, and guide them. This was the starting point for the work of the Pew Commission on Children in Foster Care and a steady compass throughout our deliberations.

Foster care protects children who are not safe in their own homes. For some children, it is literally life-saving. But for too many children, what should be a short-term refuge becomes a long-term saga, involving multiple moves from one foster home to another. None of us would want this for our own children.

Children in foster care cannot count on things that all children should be able to take for granted—that they have constant, loving parents; that their home will always be their home; that their brothers and sisters will always be near; and that their neighborhoods and schools are familiar places. Some children in foster care don't understand why they were removed from their birth parents and blame themselves. Most don't know whether or when they will rejoin their parents or become part of a new, permanent family.

Childhood should not be this way. Yet on any given day in the United States, half a million children and youth are in foster care, removed from their homes because of abuse or neglect. Almost half of these children spend at least two years in care, waiting for the safe, permanent family that should be their birthright. Almost 20 percent wait five or more years.¹ In fiscal year (FY) 2001, nearly 39,000 infants under the age of one entered foster care,² where they may lack the stability that promotes attachment and early brain development. That same year, about 19,000 older youth “aged out” of foster care without a permanent family to support them in the transition to adulthood.³

On average, children have three different foster care placements.⁴ Frequent moves in and out of the homes of strangers can be profoundly unsettling for children, particularly when they do not know how long they will stay and where they will go next. One young man told us that, as a child growing up in foster care, he checked every day to see if his belongings had been packed in anticipation of another move.

This kind of turbulence and uncertainty in childhood can have lasting consequences. Children who spend many years in multiple foster homes are substantially more likely than other

¹Based on the latest federal statistics on foster care supplied by the states for the Adoption and Foster Care Analysis and Reporting System (AFCARS). See U.S. Department of Health and Human Services. *The AFCARS Report: Preliminary FY 2001 Estimates as of March 2003*. Washington, DC: DHHS, 2003. Available online at <http://www.acf.hhs.gov/programs/cb/publications/afcars/report8.htm>.

²U.S. Department of Health and Human Services, 2003.

³Ibid.

⁴Ibid.

ABOUT THE PEW COMMISSION

The nonpartisan Pew Commission on Children and Foster Care was launched in May 2003. Supported by a grant from The Pew Charitable Trusts to the Georgetown University Public Policy Institute, the Commission's charge was to develop recommendations to improve outcomes for children in the foster care system—particularly to expedite the movement of children from foster care into safe, permanent, nurturing families, and prevent unnecessary placements in foster care.

The Commission is chaired by Bill Frenzel, former Republican Congressman and currently Guest Scholar at the Brookings Institution. The Vice Chair is William Gray, III, former Democratic Congressman and currently President and CEO of the United Negro College Fund. Mr. Frenzel and Mr. Gray are well known for their expertise in the federal budgeting process and for their ability to forge consensus across party lines. The Commission includes some of the nation's leading child welfare experts, administrators of child welfare agencies, judges, social workers, a state legislator, a child psychologist, foster and adoptive parents, a former foster youth, and others. These are people who know the system well—both its assets and its limitations.

The Commission met intensively, exploring a broad range of key issues in child welfare. It listened to judges who oversee dependency cases, managers who administer child welfare systems, and caseworkers with daily, frontline responsibility for children. It also listened to other professionals, scholars, and advocates; to foster, adoptive, and birth parents; and to young people themselves. It closely examined critical problems and promising approaches.

The Commission focused its work on two targeted areas:

- Improving existing federal financing mechanisms to facilitate faster movement of children from foster care into safe, permanent families and to reduce the need to place children in foster care in the first place.
- Improving court oversight of child welfare cases to facilitate better and more timely decisions related to children's safety, permanence, and well-being.

Informed by the breadth of stakeholder input and its own expertise, the Commission first agreed on five principles that articulate what children in the child welfare system need. With these principles always in mind, the Commission then undertook an extensive review of policy options, ultimately reaching consensus on a set of policy recommendations that are presented in this report. These thoughtfully considered recommendations from a diverse group of experts are intended to give Congress, federal agencies, states, courts, and communities a framework for strengthening the ability of child welfare agencies and courts to secure safe, permanent families for children in foster care and at risk of entering care.

children to face emotional, behavioral, and academic challenges. As adults, they are more likely to experience homelessness, unemployment, and other problems.⁵ While some of these problems likely have their roots in the underlying abuse or neglect that led a child into foster care in the first place, long and uncertain periods in foster care also contribute to these poor outcomes.⁶

When children languish in foster care, caseloads rise to untenable levels, and even the most dedicated case workers cannot provide the attention and support that children need. Case workers burn out and leave the profession in very high numbers. The *annual* turnover rate in the child welfare workforce is 20 percent for public agencies and 40 percent for private agencies.⁷ As the cadre of experienced case workers shrinks, the quality of care that children receive diminishes as well.

The shortage of licensed family foster homes further exacerbates the situation. Case workers scramble to find appropriate placements, often to little avail. Adolescents, in particular, can end up in group homes or institutions that offer few of the advantages of a family, while posing much higher costs to states and the federal government. A shortage of treatment options for parents, particularly substance abuse treatment and mental health services, also contributes to children staying longer in foster care.

The problem of children languishing in foster care is hardly new. But most of the time, it is a quiet crisis, below the radar of most citizens – until a child in foster care dies, or is abused, or is lost and cannot be accounted for. Even then, discussions of how to respond can quickly bog down in the intricacies of the system and the complexities of the families involved. Where, for example, would reform begin? With workforce improvements and lower caseloads? More and better substance abuse treatment? Less crowded court dockets? Or all of the above, all at the same time?

This seemingly endless list of urgent problems confronted the Pew Commission on Children in Foster Care when we began our work in May 2003. Indeed, we might have directed our efforts to any of these problems. Instead, we focused on reform of two key issues that underlie many of the problems in child welfare today: a federal financing structure that encourages an over-reliance on placement of children in foster care, and a court system that lacks sufficient tools, information, and accountability necessary to move children swiftly out of foster care and into permanent homes. Reform in these two areas is a critical first step to solving many other problems that plague the child welfare system.

We began our work by developing a set of guiding principles that articulate what we want for children in the child welfare system. We then considered various policy options in light of these principles. The principles were an important touchstone throughout our year of deliberations, focusing us consistently on the children at the heart of the child welfare system.

Our work built on a solid base of federal statutes that emphasize safety for children and support for families. These laws also establish the shared responsibility of the federal government, the states, and the courts to protect abused and neglected children and secure safe, permanent homes for them. The nation's first significant child welfare legislation, the Adoption Assistance

⁵Courtney, M.E. and Piliavin, I. *Foster Youths Transitions to Adulthood: Outcomes 12 to 18 Months After Leaving Out-of-Home Care*. Madison, WI: School of Social Work, University of Wisconsin-Madison, 1998.

⁶Barbell, K. and Freundlich, M. *Foster Care Today*. Casey Family Programs: Washington, DC, 2001.

⁷The Annie E. Casey Foundation. *The Unsolved Challenge of System Reform: The Conditions of the Frontline Human Services Workforce*. Baltimore, MD: The Annie E. Casey Foundation, 2003.

Guiding Principles for the Work of the Pew Commission

Preamble: All children must have safe, permanent families in which their physical, emotional and social needs are met. When children are abused or neglected, these fundamental needs are not met. The recommendations of the Pew Commission on Children in Foster Care focus on improving the circumstances for children who are served by the child welfare system, whether in foster care or in their own homes.

The Commission's work was guided by the following principles:

1. Children must be physically and emotionally safe and must be protected wherever they live. When children are removed from their homes, public authorities have an obligation to ensure that they are safer in out-of-home care than they would have been at home.
2. Children must have their needs met in a timely manner at every stage of their development and every stage of public decision making about their futures.
3. Children must have continuity and consistency in care-giving and relationships, including healthy ties to siblings and extended family.
4. Children must have equal protection and care, including attention to meeting children's needs in the context of their community and culture.
5. Children and their families must have an informed voice in decisions that are made about their lives.

and Child Welfare Act of 1980⁸ set forth the twin goals of preserving families and securing permanence for children, and it gave new responsibilities to the courts for overseeing child welfare cases. Subsequent legislation in 1993⁹ and 1994¹⁰ provided new funding for prevention of child abuse and neglect, family preservation, and court improvements. The Adoption and Safe Families Act (ASFA) of 1997¹¹ established the goals of safety, permanence, and well-being for children in foster care, with a very deliberate emphasis on permanence. This bipartisan legislation also focused attention on measuring states' performance toward national goals and further increased the role of the courts in overseeing child welfare cases.

These landmark pieces of legislation reflected lawmakers' concern over growing numbers of children in foster care and the long periods of time that so many children stayed in care. These laws and others have made important and lasting improvements in the ability of child welfare agencies and the courts to meet the needs of children who have been abused and neglected.

But more remains to be done. The number of children in foster care appears to be stabilizing, but at a very high level. There were 534,000 children in foster care in 2002, almost double the number in care in the early 1980s.¹² Moreover, children continue to stay in foster care for longer periods than may be necessary, and to move frequently from placement to placement. While in care, many children still do not receive appropriate services, whether they are infants suffering the effects of trauma or older adolescents about to leave foster care to live on their own. Interwoven with all of these challenges is the over-representation of minority children in foster care—especially African-American children, who enter foster care at the fastest rate and leave at the slowest.

The Pew Commission's recommendations identify "next steps" on the road to reducing the number of children in foster care, shortening the amount of time children have to spend there, and responding better to the needs of *all* children in care. The steps we recommend are in the direction of reforming federal financing of child welfare service and court oversight of child welfare cases, for reasons we discuss below.

⁸Public Law 96-272.

⁹Omnibus Budget Reconciliation Act, Public Law 103-66, 1993.

¹⁰Social Security Amendments, Public Law 103-432, 1994.

¹¹Public Law 105-89.

¹²U.S. House of Representatives, Committee on Ways and Means. *2000 Green Book*. Washington, D.C.: U.S. Government Printing Office, 2000.

THE ROLE OF FEDERAL FINANCING

Simply put, current federal funding mechanisms for child welfare encourage an over-reliance on foster care at the expense of other services to keep families safely together and to move children swiftly and safely from foster care to permanent families, whether their birth families or a new adoptive family or legal guardian.

This conundrum stems from the structure of the two major federal sources of child welfare funding, Titles IV-E and IV-B of the Social Security Act.¹³

Title IV-E is the largest source of federal funding for child welfare, accounting for 48 percent of federal child welfare spending in state fiscal year (SFY) 2000.¹⁴ Title IV-E is a permanently authorized and open-ended entitlement program that guarantees federal reimbursement to states for a portion of the cost of maintaining an eligible child in foster care. Specifically, states may claim a federal reimbursement on behalf of every income-eligible child they place in a licensed foster home or institution.¹⁵ In FY 2004, federal IV-E foster care expenditures are estimated to be \$4.8 billion.¹⁶

Title IV-B provides flexible funds that can be used by states for a broad array of child welfare services. There are no federal income eligibility or other requirements. Title IV-B funds may be used for family preservation services, community-based family support services, time-limited family reunification services, and adoption promotion and support services. These funds, however, represent a relatively small pot of money, accounting for just five percent of all federal spending on child welfare in SFY 2000.¹⁷ Furthermore, unlike IV-E, IV-B funding is not an open-ended entitlement, but rather a mixture of capped entitlement dollars and discretionary funding—meaning that the overall funding level is subject to the annual appropriations process. Title IV-B accounted for only \$693 million in federal child welfare spending in FY 2004, compared to the \$4.8 billion for Title IV-E foster care.

Such a disparity in these two funding sources hampers states' ability to invest in strategies that limit the time children need to spend in foster care. The result is a discouraging and frustrating cycle: Foster care rolls are swelled by children who might have been able to stay at home safely or leave placement sooner had states been able to use more federal dollars for prevention, treatment and post-permanency services. As the number of children in care increases, so, too, do social workers' caseloads, limiting their ability to visit children, assess safety, and respond appropriately to the needs of the children and their families. This in turn contributes to longer stays in foster care and limits the time available to workers for oversight of the children in their care. Such a sequence of Catch-22s is clearly not in the best interest of children, their families, or the professionals charged with their oversight.

THE ROLE OF THE COURTS

For years, the courts have been the unseen partners in child welfare – yet they are vested with enormous responsibility. Along with child welfare agencies, the courts have an obligation to ensure that children are protected from harm. Courts make the formal determination on whether abuse or neglect has occurred and whether a child should be removed from the home.

¹³In recent years, states have also used three non-dedicated federal funding streams to support child welfare services—the Social Services Block Grant (representing 17 percent of all federal child welfare spending in SFY 2000), the Temporary Assistance for Needy Families block grant (15 percent), and Medicaid (10 percent). Bess, R., Andrews, C., Jantz, A., et al. *The Cost of Protecting Vulnerable Children III: What Factors Affect States' Fiscal Decisions?* Occasional paper No. 61. Washington, DC: The Urban Institute, 2002.

¹⁴Bess, R., et al, 2002.

¹⁵Income eligibility is based on the 1996 eligibility standards of the Aid to Families with Dependent Children program, which was replaced by the Temporary Assistance for Needy Families block grant.

¹⁶Title IV-E also provides a federal reimbursement to states for expenses related to supporting adoptions from foster care (\$1.6 billion [estimated] in FY 2004) and a capped entitlement for the Chafee Foster Care Independence Program for youth aging out of foster care (the FY 2004 appropriation was \$185 million, which includes \$45 million in funding for education and training vouchers). The FY 2004 estimated expenditures and appropriation figures presented here are from the Congressional Budget Office. [See <http://www.cbo.gov/factsheets/2004b/FosterCare.pdf>]

¹⁷Bess, R., et al, 2002.

Courts review cases to decide if parents and the child welfare agencies are meeting their legal obligations to a child. Courts are charged with ensuring that children are moved from foster care and placed in a safe and permanent home within statutory timeframes. And courts determine if and when a parent's rights should be terminated and whether a child should be adopted or placed with a permanent guardian.

The Adoption and Safe Families Act placed new obligations and greater pressure on the courts by requiring them to expedite termination of parental rights and finalize adoption or guardianship arrangements when it is found that children cannot be returned to their birth parents. The law is a positive one for children who might otherwise languish in foster care, and many courts have embraced this charge. But longstanding structural issues in the judicial system limit the ability of the courts to play the important role in protecting children that ASFA assigns to them.

For example:

- Many courts do not track and analyze their overall caseloads, making it difficult for them to spot emerging trends in the cases that come before them, eliminate the major causes of delays in court proceedings, and identify groups of children who may be entering or reentering foster care at very high rates, or staying in care the longest. This can contribute to large caseloads and limit judges' ability to give each child the time he or she deserves.
- Institutional barriers discourage courts and child welfare agencies from working together to improve outcomes for children in foster care.
- Many judges come to this work without sufficient training in child development or knowledge of effective dependency court practices – information that could help them make appropriate and timely decisions that move children out of foster care to safe, permanent homes.
- Children and parents often lack a strong and effective voice in court decisions that affect their lives.

Court reforms directed at these structural issues could lessen children's time in foster care and help children get the services and assistance they need while in foster care. For example, case tracking might highlight rapid growth in the number of infants entering foster care in a particular court. (Indeed, nationwide, infants are the fastest growing portion of the foster care population.¹⁸) This information could and should prompt a judge to inquire of caseworkers whether services are readily available to meet the urgent developmental needs of very young children. Case tracking might also identify problems in the legal representation of children and parents as a cause of frequent continuances that prolong children's time in foster care. This is important information for state courts, which are responsible for ensuring that parties in court proceedings are adequately represented by legal counsel. Aggregate data on the progress of children through the foster care system – and specifically on compliance with the timelines specified in the Adoption and Safe Families Act – can be a very useful starting point for collaboration between the courts and the child welfare agency.

When decision makers and the public are unaware of the role of the courts in child welfare, and when they lack information on court performance as it affects children, there may be little public will to provide dependency courts with adequate financial resources. The results are crowded courts, overworked and often under-trained judges and attorneys, and decisions made without

¹⁸Wulczyn, F. and Hislop, K. B. *Babies and Foster Care: The Numbers Call for Action*. Zero to Three, 2003. (22) 5.

sufficient information or insight. In the end, children and families pay the price when courts lack the tools and resources to do their job well.

CHANGING THE FUTURE

The Pew Commission met intensively for a year. We were acutely aware of the context in which we worked -- a mounting federal deficit and severe fiscal constraints at the state level; deeply held philosophical and political views that threaten to divide people of good will on both sides of the aisle; and the fear in all quarters of unanticipated events -- an upsurge in drug use, for example -- that could send large numbers of children into foster care.

But we were also aware that in many instances, the system works—when caseworkers quickly secure help for children and families; when children’s ties to extended family, schools, and communities are maintained while they are in foster care; when children and their families participate in their own case plans and decisions; when courts and agencies act well and efficiently together; when children are returned home or moved to another permanent home without unnecessary delays. With countless examples in mind, we sought recommendations that would turn “best practices” into “common practices” across the country.

Finally, we were aware of the strong and abiding bipartisan desire to take better care of children who have suffered abuse and neglect. This bipartisanship was evident in the passage of ASFA in 1997 and in many of the state and local reforms that have improved outcomes for thousands of children in foster care. It was also apparent in the many expressions of encouragement and good will the Commission received in the course of our work.

Our recommendations offer an achievable plan for improving outcomes for children in foster care and those at risk of entering care. Case workers, agency administrators, and judges want to do the best for the children in their care. It is well within our nation’s reach to help them do their best.

The recommendations will require some new funding. But just as important, they will require redirection of current funding and stronger accountability for how public dollars are used to protect and support children who have suffered abuse and neglect.

Children deserve more from our child welfare system than they are getting now. For this to happen, those on the front lines of care -- caseworkers, foster parents, judges -- need the support necessary to do their jobs more effectively. And the public needs to know that, with this support, every part of the chain of care -- from the federal government to the states to the courts—can reasonably be held to high standards of accountability for the well-being of children.

We offer these recommendations to decision makers at the federal, state, and local levels and in the courts. They are designed to work together. No one recommendation satisfies all of our principles or holds as much promise for children as the recommendations as a whole. We hope that policy makers will give them thoughtful consideration and take deliberate action. Half a million children have waited long enough.

A former foster child who talked at length with members of the Commission stated the urgency most eloquently: “I just think everybody deserves a family when they’re young.”

RECOMMENDATIONS OF THE PEW COMMISSION ON CHILDREN IN FOSTER CARE

All children must have safe, permanent families in which their physical, emotional, and social needs are met. Together, the Pew Commission's recommendations focus on what states and courts need to help children get safe and permanent homes. Our recommendations would give states a flexible and reliable source of federal funding as well as new options and incentives to seek safe permanence for children in foster care. They would help dependency courts secure the management tools, information, and training necessary to fulfill their responsibilities to children, and they would help children and parents have a strong and informed voice in court proceedings. Finally, they call for greater accountability by both child welfare agencies and courts

FINANCING CHILD WELFARE

1. Because every child needs a safe, permanent family, the Commission recommends:

- *Providing federal adoption assistance to all children adopted from foster care;*
- *Providing federal guardianship assistance to all children who leave foster care to live with a permanent, legal guardian.¹⁹*

2. Because every child needs to be protected from abuse and neglect, the Commission recommends that the federal government join states in paying for foster care for every child who needs this protection:²⁰

- *Regardless of family income;²¹*
- *Including children who are members of Indian tribes; and*
- *Including children who live in the U.S. territories.*

3. Because every child needs a permanent family, the Commission recommends allowing states to “reinvest” federal dollars that would have been expended on foster care into other child welfare services if they safely reduce the use of foster care. States could use these funds for any service to keep children out of foster care or to leave foster care safely.

4. Children need skillful help to safely return home to their families, join a new family, or avoid entering foster care in the first place. For caseworkers to provide this help, states need flexible, sufficient, and reliable funding from the federal government. The Commission recommends an indexed Safe Children, Strong Families Grant that combines federal funding for Title IV-B, Title IV-E Administration, and Title IV-E Training into a flexible source of funding. The Commission further recommends that additional funding be provided in the first year, and that the grant be indexed in future years.

- *Each state's grant amount would be based on its historical spending for Title IV-B and Title IV-E Administration and Training;*
- *In addition, the total base funding level would be enhanced by \$200 million in the first year of implementation;*
- *In subsequent years, each state's allocation would grow by 2 percent plus the inflation rate, as measured by the Consumer Price Index; and*

¹⁹Federal eligibility for adoption or guardianship assistance would not be based on the income of the child's birth family.

²⁰Currently, the federal government pays a portion of the costs of foster care for children whose family income is below the 1996 Aid to Families with Dependent Children (AFDC) income standards. States, in contrast, pay the cost of foster care for every child who needs this protection.

²¹Family income refers to the income of the family from which the child is removed.

- *States would be required to match the federal grant funds, just as they currently are required to match federal IV-B and IV-E dollars.*
5. *To guarantee that public funds are used effectively to meet the needs of children who have been abused or neglected and to increase public accountability, the Commission recommends improvements to the federal Child and Family Services Reviews (CFSRs).*
- *The CFSRs should include more and better measures of child well-being, use longitudinal data to yield more accurate assessments of performance over time, and HHS should direct that a portion of any penalties resulting from the review process be reinvested into a state's Program Improvement Plan;*
 - *The federal government should continue to help states build their accountability systems by maintaining the federal match for State Automated Child Welfare Information Systems; and*
 - *Congress should direct the National Academy of Sciences, through its Board on Children, Youth, and Families, to convene a foster care expert panel to recommend the best outcomes and measures to use in data collection.*
6. *To promote innovation and constant exploration of the best ways to help children who have been abused and neglected, the Commission recommends that the federal government:*
- *Expand and improve its successful child welfare waiver program;*
 - *Continue to reserve funds for research, evaluation, and sharing of best practices; and*
 - *Provide bonuses to states that make workforce improvements and increase all forms of safe permanence for children in foster care.*

STRENGTHENING COURTS

1. *Courts are responsible for ensuring that children's rights to safety, permanence and well-being are met in a timely and complete manner. To fulfill this responsibility, they must be able to track children's progress, identify groups of children in need of attention, and identify sources of delay in court proceedings.*
- *Every dependency court should adopt the court performance measures developed by the nation's leading legal associations²² and use this information to improve their oversight of children in foster care;*
 - *State judicial leadership should use these data to ensure accountability by every court for improved outcomes for children and to inform decisions about allocating resources across the court system; and*
 - *Congress should appropriate \$10 million in start-up funds and such sums as necessary in later years, to build capacity to track and analyze caseloads.*
2. *To protect children and promote their well-being, courts and public agencies should be required to demonstrate effective collaboration on behalf of children.*
- *The Department of Health and Human Services (HHS) should require that state IV-E plans, Program Improvement Plans, and Court Improvement Program plans demonstrate effective collaboration;²³*
 - *HHS should require states to establish broad-based state commissions on children in foster care, ideally led by the state's child welfare agency director and the Chief Justice;*

²²See Appendix B for a more detailed description of the court performance measures. The American Bar Association's Center on Children and the Law, National Center for State Courts, and National Council of Juvenile and Family Court Judges. *Building a Better Court: Measuring and Improving Court Performance and Judicial Workload in Child Abuse and Neglect Cases*. Los Altos, CA: The David and Lucile Packard Foundation, 2004.

²³Tribal courts and service agencies should be included in the development and implementation of all plans.

- *Congress should appropriate \$10 million to train court personnel, a portion of which should be designated for joint training of court personnel, child welfare agency staff, and others involved in protecting and caring for children; and*
- *Courts and agencies on the local and state levels should collaborate and jointly plan for the collection and sharing of all relevant aggregate data and information which can lead to better decisions and outcomes for children.*

3. To safeguard children's best interests in dependency court proceedings, children and their parents must have a direct voice in court, effective representation, and the timely input of those who care about them.

- *Courts should be organized to enable children and parents to participate in a meaningful way in their own court proceedings;*
- *Congress should appropriate \$5 million to expand the Court Appointed Special Advocates program;*
- *States should adopt standards of practice, preparation, education, and compensation for attorneys in dependency practice;*
- *To attract and retain attorneys who practice in dependency court, Congress should support efforts such as loan forgiveness and other demonstration programs; and*
- *Law schools, bar associations, and law firms should help build the pool of qualified attorneys available to children and parents in dependency courts.*

4. Chief Justices and state court leadership must take the lead, acting as the foremost champions for children in their court systems and making sure the recommendations here are enacted in their states.

- *Chief Justices should embed oversight responsibility and assistance for dependency courts within their Administrative Office of the Courts;*
- *State court leadership and state court administrators should organize courts so that dependency cases are heard in dedicated courts or departments, rather than in departments with jurisdiction over multiple issues;*
- *State judicial leadership should actively promote: (1) resource, workload and training standards for dependency courts, judges, and attorneys;²⁴ (2) standards of practice for dependency judges; and (3) codes of judicial conduct that support the practices of problem-solving courts; and*
- *State court procedures should enable and encourage judges who have demonstrated competence in the dependency courts to build careers on the dependency bench.*

²⁴Court performance measures, discussed earlier in the chapter and presented in Appendix B, will assist courts in the initial development and subsequent tracking of compliance with these measures.

FINANCING CHILD WELFARE

“The system has all been about tweaking. That’s how we got to where we are. And tweaking is always fixing something that’s broken and is always about 20 years behind what we know from the experts is the way it should be.”

-Program Administrator

The Pew Commission decided from the beginning that it was not interested in “tweaking” the system. Not all of our recommendations are large-scale proposals, but implemented together, they will result in substantial improvements in how the system works and how it is financed.

Paying for foster care is a shared responsibility of the states²⁵ and the federal government. Paying for the support and services that enable children to remain at home safely or leave foster care for a permanent, nurturing family is also a shared state-federal responsibility. Both are important, yet the vast majority of these funds can only be accessed by states after a child has already been placed in care. As a result, current federal funding mechanisms encourage an over-reliance on foster care at the expense of services that move children to permanent families and help keep families safely together.

TITLES IV-E AND IV-B

Titles IV-E and IV-B of the Social Security Act make up the two major dedicated sources of federal funding for child welfare.²⁶ Title IV-E is the larger, accounting for 48 percent of federal child welfare spending in state fiscal year (SFY) 2000.²⁷ It is a permanently authorized, open-ended entitlement program that reimburses states for a portion of the cost of maintaining a child in foster care. States may claim this federal reimbursement for every income-eligible child who is placed in a licensed foster home or institution. In fiscal year (FY) 2004, federal IV-E foster care expenditures are estimated to be \$4.8 billion.²⁸

The other major dedicated source of federal child welfare funding is Title IV-B of the Social Security Act. Title IV-B includes two state grant programs, which vary in their degree of flexibility. States may use Subpart 1 funds for any child welfare purpose. Subpart 2 funds may be used for four broadly defined categories of services for children and families. Generally, Title IV-B funds are used for preventive services, to help stabilize families and prevent foster care, or to help families when children return home.²⁹ There are no income or other eligibility requirements associated with either subpart. While Title IV-B is a flexible source of funding, it is also a relatively small amount of money, accounting for just 5 percent of all federal child welfare spending in SFY 2000.³⁰ Unlike IV-E funds, IV-B funding is a mixture of capped entitlement dollars and discretionary funding—meaning that the overall funding level is subject to the annual appropriations process.³¹ The FY 2004 appropriations for the two major subparts of Title IV-B totaled \$693 million.

²⁵Because federal child welfare dollars are directed to states, and for simplicity of reading, we refer throughout only to states, even though in 13 states, counties administer child welfare and foster care services.

²⁶Other dedicated sources of federal child welfare funding not discussed in this report include the Child Abuse Prevention and Treatment Act (funded at \$90 million in FY 2004) and the Chafee Foster Care Independence Program and related Education and Training Vouchers for youth aging out of foster care (total funding for which was \$185 million in FY 2004).

²⁷Bess, R., Andrews, C., Jantz, A., et al.

²⁸Title IV-E also provides federal reimbursement to states for expenses related to supporting adoptions from foster care (estimated to total \$1.6 billion in FY 2004) and a capped entitlement for the Chafee Foster Care Independence Program and related Education and Training Vouchers for youth aging out of foster care (total funding for which was \$185 million in FY 2004). The FY 2004 figures presented in this report are from the Congressional Budget Office. [See <http://www.cbo.gov/factsheets/2004b/FosterCare.pdf>.]

²⁹U.S. General Accounting Office. *Child Welfare: Enhanced Federal Oversight of Title IV-B Could Provide States Additional Information to Improve Services*. GAO-03-956. Washington, DC: GAO, September 2003. [See especially page 14, Table 2 “Fiscal Year Expenditures for Subparts 1 and 2 Service Categories.”]

³⁰Other federal funding sources include the Social Services Block Grant (representing 17 percent of all federal child welfare spending in SFY 2000), the Temporary Assistance for Needy Families block grant (15 percent), Medicaid (10 percent), and other programs (4 percent). Bess et al.

³¹Subpart 1 (the Child Welfare Services Program) is discretionary funding; its FY 2004 appropriation was \$289 million. Subpart 2 (Promoting Safe and Stable Families) is a capped state entitlement, meaning that states are entitled to a specified share of annual funding. Subpart 2 has a mandatory funding floor (currently \$305 million) and a discretionary component. The FY 2004 appropriation for Subpart 2 was \$404 million.

Because funding for safe alternatives to foster care is so limited, states use placement in foster care more than they might otherwise. Foster care is often seen as the only available way to respond to children at risk, both in terms of the numbers of children placed in care and the length of time they stay there.

Neither state nor federal officials are happy with this status quo. For years, legislators of both political parties have struggled to craft a new financing structure that would lessen the use of long-term foster care and promote safe, permanent families for children. But reaching consensus on a new approach has been difficult. Nevertheless, we believe that dissatisfaction with the failure of the current financing structure to produce better outcomes for children is sufficiently strong that leaders on both sides of the aisle are ready and willing to consider new financing proposals.

RECOMMENDATIONS FOR CHANGE

The Pew Commission's financing recommendations seek to build a federal financing structure that protects children who are not safe in their own homes; keeps states and courts focused on achieving a safe, permanent family for every child who needs one; and promotes the well-being of children while they are under the supervision of the child welfare agency and after they leave the agency's care. We address the structure of federal child welfare financing, giving states increased flexibility in how they can use federal dollars and greater options and incentives to seek safe permanence for children in foster care. We also recommend new investments to build key parts of the child welfare system, including the child welfare workforce and the continuum of services from prevention, to treatment, to supports for children once they leave foster care. In our view, this represents putting the right money in the right places. Finally, we tie greater flexibility and new investments with stronger accountability measures, so that the public can assess how well its institutions are protecting vulnerable children.

The key components of the Commission's financing recommendations are:

- Preserving federal foster care maintenance and adoption assistance as an entitlement and expanding it to all children, regardless of their birth families' income and including Indian children and children in the U.S. territories;
- Providing federal guardianship assistance to all children who leave foster care to live with a permanent legal guardian when a court has explicitly determined that neither reunification nor adoption are feasible permanence options;
- Helping states build a range of services from prevention, to treatment, to post-permanence by (1) creating a flexible, indexed Safe Children, Strong Families Grant from what is currently included in Title IV-B and the administration and training components of Title IV-E; and (2) allowing states to "reinvest" federal and state foster care dollars into other child welfare services if they safely reduce their use of foster care;
- Encouraging innovation by expanding and simplifying the waiver process and providing incentives to states that (1) make and maintain improvements in their child welfare workforce and (2) increase all forms of safe permanence; and
- Strengthening the current Child and Family Services Review process to increase states' accountability for improving outcomes for children.

We view our recommendations as a package. No one of them alone fulfills all of the Commission's child-focused principles. In combination, they reinforce one another and

offer a bold yet achievable plan for improving outcomes for children who have been abused and neglected.

1. Because every child needs a safe, permanent family, the Commission recommends:

- *Providing federal adoption assistance to all children adopted from foster care;*
- *Providing federal guardianship assistance to all children who leave foster care to live with a permanent, legal guardian.*³²

Adoption. Foster care provides a safe home for children on a temporary basis. But safety is only the starting point. For children to thrive, they also need a stable, permanent family that loves and nurtures them. When children in foster care cannot safely return to their parents, public policies should support efforts to actively seek new families that will provide safety, love, and permanence. Adoption is the primary means of doing this. Since the passage of the Adoption and Safe Families Act³³ in 1997, more than 230,000 children in foster care have been adopted.³⁴ Public subsidies help strengthen these new families by partially supporting the needs of the children. These existing subsidies have enabled many foster parents to adopt their foster children by ensuring that they do not lose the maintenance payments they received as foster parents when they become adoptive parents. But these subsidies only apply to income-eligible children and families.

Because *all* children in foster care need a safe, permanent family, the Commission recommends continuing federal adoption assistance as an entitlement under Title IV-E. Furthermore, because we believe that *every* child who experiences abuse and neglect—not just every poor child—deserves state and federal support in the effort to secure a permanent family, we recommend elimination of any income eligibility standard for adoption assistance.³⁵ Many children adopted from foster care have significant health and other needs that exceed what many adoptive families could provide on their own. The current system of providing federal adoption assistance based on the income of the child’s birth parents does not recognize or address these needs. To maintain cost neutrality, the federal reimbursement rates for adoption assistance would be adjusted in the same way as federal reimbursement for foster care. Adjustments to foster care reimbursement rates are discussed below as part of the second recommendation. The adjustments refer to changes in rates of federal reimbursement to states for their adoption assistance and foster care programs, *not* changes in the actual assistance payments that adoptive and foster parents currently receive.

Guardianship. For some children in foster care, neither reunification with their birth parents nor adoption is a viable option. In these cases, legal guardianship can be a route out of foster care and into a safe, permanent family. When guardians are also relatives, guardianship can promote healthy ties to a child’s extended family, home community, and culture. There are many situations in which guardianship might be the best permanence option for a child, for example:

- A child is living with a relative who is able to make a permanent commitment but does not want to disrupt existing family relationships. As one grandmother put it,

³²Federal eligibility for adoption or guardianship assistance would not be based on the income or assets of the child’s birth family.

³³Public Law 105-89.

³⁴McDonald, J., Salyers, N., and Testa, M. *Nation’s Child Welfare System Doubles Number of Adoptions from Foster Care*. Chicago, IL: Fostering Results, 2003.

³⁵The current IV-E income and other eligibility requirements are discussed in more detail as part of the second recommendation.

“I was ready to make a permanent commitment to my grandson but I was still going to be his grandmother, I was never going to be his mommy.”

- A family where termination of parental rights goes against a strongly held cultural norm, as in Native American cultures.
- An adolescent who, after a clear understanding of the options, does not wish to be adopted but desires a permanent connection with his relatives or a foster family.
- A situation where a parent’s physical, emotional or cognitive disability prevents him or her from being an active, permanent caregiver but where termination of parental rights is undesired and unwarranted.

Guardianship is a judicially created, permanent relationship between a child and a caretaker. Guardianship conveys the following parental rights to the child’s caretaker: custody; responsibility for the protection, education, and care and control of the child; and decision-making responsibilities as the child’s caretaker.³⁶ In most cases, legal guardians are relatives who have stepped in to care for children. Once guardianship is established, children are no longer in the custody of the state. For this reason, guardianship reduces government costs associated with agency oversight of foster care cases.

As is the case with adoption assistance, guardianship assistance can help strengthen families by partially supporting the needs of the children. More than 30 states currently provide subsidies to legal guardians. However, with the exception of states that currently have federal waivers in this area, states do not receive any federal IV-E reimbursement for their assisted guardianship programs.

To further the likelihood that more children will leave foster care for a permanent family, the Commission recommends that the federal government and the states share the cost of guardianship assistance for those states that choose to provide such assistance. For the federal government, guardianship assistance would become a IV-E reimbursable expense, and the federal match would be the same percentage as the match for foster care and adoption assistance. The estimated cost to the federal government of this recommendation would be approximately \$70 million in the first year of implementation.³⁷

Because our recommendation on guardianship assistance is intended to provide an additional route to permanence *specifically for children in foster care*, it should apply only under the following circumstances:

- When a child has been removed from his or her home and the state child welfare agency has responsibility for placement and care of the child;

GUARDIANSHIP ASSISTANCE

While the federal government shares in the cost of providing assistance payments to adoptive parents, it generally does not provide reimbursement for assistance payments to legal guardians. However, under the Title IV-E waiver program, several states have obtained waivers to test assisted guardianship programs as part of an overall effort to increase permanence for children involved in the child welfare system. One of these states, Illinois, has completed an extensive evaluation of its guardianship program. Illinois’ waiver program has been heralded as a successful example of how innovation, careful planning, and the removal of financing restrictions can result in improved outcomes for children. The evaluation found that over five years, assisted guardianship provided permanence for more than 6,800 children who had been in foster care, and that discussing all permanency options helped to increase the number of adoptions. In fact, during that same period, while assisted guardianship placements increased six-fold, adoptions from foster care doubled. As a result, the overall permanence rates for children in the demonstration group were 6.6 percentage points higher than those for children in the control group. The evaluation also found that children perceived guardianship as providing as much security as adoption. Children in both adoptive and guardianship placements reported feeling similar levels of safety, attachment, and well-being.¹

¹Children and Family Research Center. *Illinois Subsidized Guardianship Waiver Demonstration: Final Evaluation Report*. Urbana, IL: School of Social Work, University of Illinois at Urbana-Champaign, 2003.

³⁶See Section 475(7) of Title IV-E of the Social Security Act [42 U.S.C. 675].

³⁷This estimate was produced for the Commission by the Urban Institute. See Appendix A for the first-year and five-year costs of each of the following recommendations and for more discussion of how the cost estimates were developed.

- When a child has been under the care of the state agency for a given period of time, to be determined by the state;
- When a court has explicitly determined that neither reunification nor adoption are feasible permanence options for a particular child; and
- When a strong attachment exists between a child and a potential guardian who is committed to caring permanently for the child.

States' current guardianship programs vary considerably in terms of subsidy levels, licensing, and other requirements. We recommend that federal requirements related to guardianship assistance be consistent with federal requirements related to foster care and adoption. Thus, federal eligibility would require that assisted guardianship placements be licensed or approved according to state standards and state guardianship laws. Federal eligibility would also require that states undertake criminal record checks before guardianship is approved and that guardianship assistance payments not exceed either foster care maintenance or adoption assistance payments.

Recognizing that state decisions about subsidy levels for both guardians and adoptive parents are based on many factors, the Commission urges states to be mindful of the impact these decisions can have on promoting or discouraging permanence. For example, setting adoption or guardianship assistance at lower levels than foster care payments may hinder efforts to ensure permanence for children. This may be especially true when seeking permanence and stability for children with special needs.

2. Because every child needs to be protected from abuse and neglect, the Commission recommends that the federal government join states in paying for foster care for every child who needs this protection:

- ***Regardless of family income,³⁸***
- ***Including children who are members of Indian tribes; and***
- ***Including children who live in the U.S. territories.***

Protecting All Children Regardless of Income (“De-Linking”). Children must be physically and emotionally safe and protected wherever they live. Foster care was designed to protect children who cannot live safely in their own homes. The underlying financing structure obligates the federal government to share in a portion of the cost of foster care for every child whose family income is below the 1996 Aid to Families with Dependent Children (AFDC) income standards.³⁹ In contrast, states are obligated to provide protection to every abused or neglected child, regardless of family income.

To redress this imbalance and ensure that every child who is abused or neglected has the protection of *both* the federal and state governments, the Pew Commission calls for the elimination of income requirements⁴⁰ for federal foster care eligibility.

This recommendation reflects a deeply held principle within the Commission that every child who experiences abuse or neglect—not just every poor child—deserves the protection of both the federal and state governments. It would also allow states to redirect the administrative

³⁸Family income refers to the income of the family from which the child is removed.

³⁹Title IV-E income eligibility is based on each state's AFDC eligibility standards that were in place when that program was replaced by the Temporary Assistance for Needy Families block grant in 1996. The AFDC eligibility requirements include income, asset, and deprivation tests. Because the 1996 standards have never been adjusted for inflation, the number of children who meet IV-E eligibility requirements will continue to decline over time.

⁴⁰The proposed “de-link” from AFDC would also eliminate the AFDC asset and deprivation tests from IV-E eligibility determinations.

resources currently spent on determining income eligibility to services that protect children and support safe, stable families.

We recognize that removing the income eligibility requirement, often called “de-linking,” is a complicated process. Doing so while maintaining current federal reimbursement rates⁴¹ would pose a significant cost to the federal government. Specifically, based on data from fiscal year 2002, the federal costs of de-linking using the current federal reimbursement rates would be approximately \$1.6 billion annually.⁴² Federal reimbursement rates could be reduced to achieve cost-neutrality for the federal government, but this would create fiscal “winners” and “losers” among the states, leaving some in a worse financial position than they are under the current reimbursement system.

We searched for an approach that would be affordable for the federal government and fair to states, while still being faithful to the goal of ensuring all abused and neglected children the protection of both the federal and state governments. The Commission’s attention to controlling federal costs reflects the recognition that the pool of funding available for child welfare is not unlimited. We also believe that the primary focus of *new* federal spending should be on helping states develop the capacity to reduce an over-reliance on foster care use—rather than on foster care itself.

Given these considerations, we recommend an approach that is cost-neutral to both the federal government and the states. One way to do this would be to reduce each state’s current federal reimbursement rate by 35 percent - this reimbursement would apply to all children in foster care. To avoid creating any fiscal “losers,” states’ reimbursement claims would be adjusted to ensure that no state either loses or gains federal funding compared to what it would have received under current law.

Under this approach, states would continue to determine IV-E eligibility for the first three years of implementation in order to calculate what they would have received under the current eligibility rules. At the end of this three-year transitional period, states would negotiate with the U.S. Department of Health and Human Services (HHS) a fixed “claims-adjustment” amount to be applied in perpetuity. This negotiation would take into account the past three years of claiming data, as well as the state’s projected caseload and expenditure trends, helping to ensure that no state would lose federal funding. Appendix A describes this approach in more detail. Should Congress wish to consider approaches that are not cost-neutral, the Commission has identified two that merit consideration. These approaches are also described in Appendix A.

Extending Protection to Children in Indian Tribes and the U.S. Territories. Even with the elimination of income standards, two groups would remain outside of the federal-state partnership to protect children—children in Indian tribes and children who reside in the U.S. territories. Tribal governments, much like states, have the authority to provide child welfare services, yet unlike states, they are excluded from receiving direct IV-E funding to operate their child welfare programs.⁴³ Child welfare funding for U.S. territories is subject to a cap on federal

⁴¹Each state’s federal reimbursement rate is equivalent to its Federal Medical Assistance Percentage (FMAP), which is inversely related to per capita income.

⁴²This includes costs for both foster care and adoption assistance. This and other cost estimates associated with “de-linking” were produced for the Commission by the Urban Institute.

⁴³Not every tribe administers its own child welfare system. Some tribes that do administer their own systems negotiate with a state or states for a portion of the Title IV-E funds that the state(s) receives.

spending for Title IV-E, the Temporary Assistance for Needy Families block grant, and other programs. In both cases, these restrictions limit the capacity of tribes and territories to protect and serve abused and neglected children.

The Commission recommends that Indian tribes have the option to directly access funding for both Title IV-E and the Safe Children, Strong Families Grant (described in the following recommendation), through a negotiated process with HHS. Together, tribal leaders and HHS would develop a mutually acceptable plan and timeline for providing tribes with the technical assistance necessary to build their capacity to administer a child welfare system.⁴⁴ This plan would also address concerns about the relationship of autonomous tribes to the federal government and the states with respect to administration and enforcement of child welfare laws. In the case of U.S. territories, we recommend that they be treated the same as states with regard to Title IV-E and the Safe Children, Strong Families Grant. In the first year of implementation, the estimated cost to the federal government of each of these recommendations could total up to approximately \$15 million, for a combined total of \$30 million.

3. Because every child needs a permanent family, the Commission recommends allowing states to “reinvest” federal dollars that would have been expended on foster care into other child welfare services if they safely reduce the use of foster care. States could use these funds for any service to keep children out of foster care or to leave foster care safely.

The Commission sought multiple strategies to encourage child welfare agencies to focus early and consistently on achieving safety and permanence for children in foster care. Currently, when states reduce their foster care expenditures, they “lose” the federal share of savings associated with that reduction—even though keeping children out of foster care can require substantial investments in early intervention, treatment, and support once a child leaves foster care. These funds would provide an additional impetus to states to reduce over-reliance on foster care by allowing them to transfer the federal savings into a broad range of child welfare services intended to further reduce the need for foster care.

The ability to reinvest these dollars would encourage and provide tangible benefits to states that actively promote and achieve safe permanence for children. The concept behind this recommendation was originally included in the 1980 legislation that created Title IV-E. It was later advanced as “transferability and reinvestment” by the American Public Human Services Association,⁴⁵ and was most recently refined by researchers at the Chapin Hall Center for Children at the University of Chicago, who drew on findings from a research program they initiated in the early 1990s. States can reduce their use of foster care through any number of strategies, including prevention, early intervention, and family preservation to reduce the number of entries into foster care; intensive reunification services and follow-up services so children do not re-enter care after going home; increased adoptions; and increased guardianships.

Operationally, each state would project its annual foster care expenditures over a specified period of time given current practice.⁴⁶ If a state were able to reduce its foster care expenditures, the difference between the projected expenditures and the state’s actual expenditures would represent the foster care savings available to invest in other child welfare services. Given the

⁴⁴See the sixth recommendation for a discussion of set-aside funding for technical assistance.

⁴⁵Baker, M. *Transferability and Reinvestment in Child Welfare Financing*. Washington Memo. Washington, DC: American Public Human Services Association, 2001.

⁴⁶See Appendix A for a more detailed description of this recommendation.

technical challenges associated with projecting expenditures, we recommend that HHS, in consultation with the American Public Human Services Association, convene a panel of experts to determine the national standards by which expenditure baselines would be calculated. This approach maintains the federal entitlement for foster care, while providing states that successfully increase permanence with an additional source of flexible funds for child welfare services.

In addition to offering states a financial incentive to safely reduce use of foster care, this strategy would also maintain the federal government's share of child welfare spending. To ensure that states also maintain their level of spending, we recommend that states be required to match the federal savings at their foster care matching rates. This means that states could access the federal share of savings only when they are willing to reinvest the full share of their own savings. States that choose to divert their share of foster care savings to unrelated programs would forfeit the federal share as well.

Some observers of the child welfare system are concerned that incentives alone will not be sufficient to drive policy changes in some states. If this proves to be the case after the incentives have been in place for a reasonable period of time, Congress may wish to consider a penalty in the form of a lower federal reimbursement rate for the marginal foster care expenditures that exceed projections. Such a penalty would not be based on expenditures for any individual child—for example, based on the individual's length of time in care—but rather on the state's aggregate foster care use. The decision to apply such a penalty would take into consideration whether factors beyond the control of child welfare policy makers—such as a sudden upsurge in drug use—were driving the increase in foster care use.

4. Children need skillful help to safely return home to their families, join a new family, or avoid entering foster care in the first place. For caseworkers to provide this help, states need flexible, sufficient, and reliable funding from the federal government. The Commission recommends an indexed Safe Children, Strong Families Grant that combines federal funding for Title IV-B, Title IV-E Administration, and Title IV-E Training into a flexible source of funding. The Commission further recommends that additional funding be provided in the first year, and that the grant be indexed in future years.

- *Each state's grant amount would be based on its historical spending for Title IV-B and Title IV-E Administration and Training;*
- *In addition, the total base funding level would be enhanced by \$200 million in the first year of implementation;*
- *In subsequent years, each state's allocation would grow by 2 percent plus the inflation rate, as measured by the Consumer Price Index; and*
- *States would be required to match the federal grant funds, just as they currently are required to match federal IV-B and IV-E dollars.*

Children's needs must be met in a timely manner at every stage of their development. Yet, as noted earlier, the current federal financing structure limits states' ability to respond appropriately to the unique needs of the children in their care, since the vast majority of federal dollars available for children who are abused and neglected are restricted to the costs of foster care.

For many children, foster care is indeed the best immediate option to keep them safe. Once in care, however, children need assistance beyond the protection of a foster home. This assistance

is difficult for caseworkers to provide when they do not have the flexibility to obtain or provide specific types of help. For example, if returning home is a goal, as it is in many cases,⁴⁷ parents need services, treatment, or training to provide a safe and nurturing environment in their home. Children are likely to spend more time than necessary in foster care when their caseworkers do not have the resources to provide or secure the kinds of assistance that might allow them to return home safely or prepare them to join another family.⁴⁸

The proposed Safe Children, Strong Families Grant is intended to: (1) address the need for greater flexibility in how states can use federal dollars to help abused and neglected children; and (2) provide states with a reliable, mandatory source of federal dollars to build a continuum of services so that children's needs can be met quickly and in a developmentally appropriate way.

Building a Continuum of Services. The indexed Safe Children, Strong Families Grant extends the flexibility of Title IV-B to the administration and training components of IV-E. Title IV-E administrative dollars help pay for casework—the day-to-day work to ensure the safety of children in foster care, to move them from foster care to safe and permanent homes and to provide the support necessary to keep children safely with their families. Title IV-E training dollars pay for a significant portion of the cost of training caseworkers in public agencies. Together, IV-E Administration and Training account for nearly half of all federal IV-E foster care and adoption assistance expenditures—about \$3.1 billion in FY 2004.

This new flexibility will mean that states can use a significant share of their federal child welfare funding as they see fit to meet the needs of children—specifically, for any child welfare purpose currently allowed under IV-B, except for foster care maintenance payments. The grant is not intended to pay for services administered by other agencies to which children or their parents are entitled, such as health, mental health, and case management services that are covered by Medicaid. It would also give states broad flexibility to use their funds to train any personnel who are responsible for administering child welfare services. In addition, training funds could be used to provide cross-training for public and private child welfare employees and court personnel, guardians ad litem or other court-appointed advocates. This will help states create a workforce that is adequate and competent to meet the needs of children.

To underscore the imperative for states to develop a full continuum of child welfare services, we further recommend that every state's child welfare services plan demonstrate how officials will address the child welfare needs of children and families across the full continuum of services. States' child welfare services plans must be approved by HHS and are a prerequisite for states to receive federal foster care and child welfare funds.⁴⁹ In particular, as under current law, states should continue to demonstrate that they are investing in family preservation services, community-based family support services, time-limited family reunification services, and adoption promotion and support services. In addition, these state plans should demonstrate how the state is utilizing the funds to address the program improvements described in their Program Improvement Plans, discussed below.

⁴⁷On the last day of FY 2001, the permanency goal for approximately 44 percent of children in foster care was to reunify with a parent or principle caretaker. Based on the latest federal statistics on foster care supplied by the states for the Adoption and Foster Care Analysis and Reporting System (AFCARS). See U.S. Department of Health and Human Services. *The AFCARS Report: Preliminary FY 2001 Estimates as of March 2003*. Washington, DC: DHHS, 2003. Available online at <http://www.acf.hhs.gov/programs/cb/publications/afcars/report8.htm>.

⁴⁸Large caseloads also compound the difficulties caseworkers face in accessing appropriate services for the children and families they serve. See our sixth recommendation for further discussion and recommendations regarding the child welfare workforce.

⁴⁹Currently, to be eligible for federal child welfare funds under Titles IV-B and IV-E, states are required to submit a "State Plan for Child Welfare Services." Specific descriptions and requirements of state child welfare plans can be found in Section 422 [42 U.S.C. 622] and Section 432 [42 U.S.C. 629b] of Title IV-E of the Social Security Act. HHS requires that these plans be submitted as part of a consolidated five-year Child and Family Services Plan. States must also submit annual progress reports regarding this consolidated plan.

Additional Funding. The Commission recognizes that flexibility alone is not enough to enable states to build a full continuum of services to meet the needs of children who are abused or neglected. Additional federal funding is needed if states are to improve child welfare outcomes. Accordingly, we recommend providing an additional \$200 million in federal funding for the Safe Children, Strong Families Grant above the current IV-B and IV-E Administration and Training funding levels. We further recommend that, after the first year, the proposed grant be indexed to an annual growth factor—specifically, the sum of the Consumer Price Index plus 2 percent—to ensure that funding not only keeps pace with inflation but also grows over time. This index is intended to ensure that states have a steady, reliable source of funds to build the continuum of services needed to ensure safety, permanence and well-being for all children. The estimated cost of the additional indexed funding is approximately \$855 million over five years.

We recognize that proposals to convert portions of an open-ended entitlement to capped funding create unease in some quarters. Thus the Commission sought to avoid possible erosion in the value of the Safe Children, Strong Families Grant by indexing it. As a further protection against cuts in this funding in future years, Congress may wish to consider a “snap-back” provision so that, at any time, should the grant not be fully funded, the IV-E Administration and Training functions would revert to their former open-ended entitlement status.

We recommend that funding allocations to states be based on states’ historical allocations. To maintain states’ share of child welfare funding, we recommend that states be required to match the federal grant funds, just as they are currently required to match federal IV-B and IV-E funds. The state match requirement is discussed in more detail in Appendix A. In addition to the match requirement, states’ plans should demonstrate maintenance of their child welfare spending levels.

5. To guarantee that public funds are used effectively to meet the needs of children who have been abused or neglected and to increase public accountability, the Commission recommends improvements to the federal Child and Family Services Reviews (CFSRs).

- ***The CFSRs should include more and better measures of child well-being, use longitudinal data to yield more accurate assessments of performance over time, and HHS should direct that a portion of any penalties resulting from the review process be reinvested into a state’s Program Improvement Plan;***
- ***The federal government should continue to help states build their accountability systems by maintaining the federal match for State Automated Child Welfare Information Systems; and***
- ***Congress should direct the National Academy of Sciences, through its Board on Children, Youth, and Families, to convene a foster care expert panel to recommend the best outcomes and measures to use in data collection.***

Societies measure what they value. Reliable data that measure progress over time are essential to designing and operating a child welfare system that fulfills its obligations to the children in its care. Without this information, states are unable to identify and respond to those children who enter foster care most frequently, leave at the slowest rate, and get lost or forgotten in the system.⁵⁰ The capacity to collect and utilize longitudinal data is also a prerequisite for calculating the federal foster care “savings” that states could reinvest as discussed above. Most importantly,

⁵⁰Such data can be particularly helpful to states seeking to reduce the disproportionate representation of children of color in their child welfare systems.

reliable data that are publicly available shine a spotlight on the needs of children who have been abused and neglected and on public officials' efforts to meet those needs.

Most states and the federal government use point-in-time data, which measure how many children are in care on a given day, where they are placed, and so on. This gives states a quick “snapshot” of their system. However, because the most difficult cases are in placement for the longest period of time, and thus more likely to be counted on a given day, point-in-time data do not offer an overview of the strengths and weaknesses of the system as a whole and may in some cases provide a distorted view. For example, a state that has found adoptive homes for children who have been in foster care for very long periods of time – a highly desirable outcome – will actually score poorly on the “length of time to achieve adoption” measure as it is currently constructed. Longitudinal data will more accurately reflect states' progress toward improving outcomes for all children in foster care and will more appropriately drive child welfare practices and decision-making in desired directions.

Accountability through the Child and Family Services Reviews. Currently, the federal Child and Family Services Reviews (CFSRs) are the principal tool for assessing how well states and localities are meeting the goals of safety, permanence, and well-being for children in foster care. The CFSRs are extensive state-by-state reviews of progress toward basic outcomes for children who have been abused or neglected. Congress required the CFSRs as part of the Social Security Amendments of 1994.⁵¹ This was a major and laudable step forward in measuring—and publicly reporting on—the effectiveness of public policies to protect children from abuse and neglect, secure or support safe, permanent families for these children, and ensure that children in the state's protective custody have their basic needs met, as well as their educational, physical health, and mental health needs.

The CFSR process is linked directly to creation of state plans of action for addressing weaknesses identified through the review. It thus represents an important milestone in child welfare policy—the creation of an accountability system based on outcomes for children. States are required to submit their Program Improvement Plans to HHS, and face financial consequences for failure to improve after a period of time. Between 2001 and 2004, HHS completed the first round of CFSRs for all 50 states, the District of Columbia, and Puerto Rico. None of the states with final CFSR reports achieved substantial conformity on all of the review measures.⁵² Under the provisions of the Adoption and Safe Families Act, if these states continue to be in non-conformity after two years, they will be assessed a financial penalty.

The Commission recommends that Congress and HHS take three specific steps to make the CFSRs an even more effective tool for improving outcomes for children:

- Substantively, the Commission recommends including more and better measures of actual well-being, such as health status and educational achievement, to supplement the process measures currently included in the CFSRs;
- Methodologically, the Commission recommends the use of longitudinal data, rather than point-in-time data, to produce more complete and accurate assessments of states' progress;⁵³ and
- Procedurally, the Commission recommends that a portion of the financial penalties resulting from the CFSR process be reinvested in a state's child welfare system to address

⁵¹Public Law 103-432.

⁵²U.S. General Accounting Office. *Child and Family Services Reviews: Better Use of Data and Improved Guidance Could Enhance HHS's Oversight of State Performance*. GAO-04-333. Washington, DC: GAO, April 2004.

identified shortcomings. Reinvestments should be made at the direction of HHS as part of its review and approval of the state's Program Improvement Plan.

To ensure that states have the tools and technology necessary to track and analyze outcomes for children in foster care, we recommend that federal IV-E funding to build the capacity of the State Automated Child Welfare Information Systems (SACWIS) remain an open-ended entitlement at the current 50 percent federal matching rate. Researchers at the Chapin Hall Center for Children at the University of Chicago estimate that at least 40 states have the data capacity to begin using longitudinal data within a year.⁵⁴ Until the remaining states have developed the same capacity, there are reasonable substitutes that can be used in the interim to measure progress.

Measuring Well-Being. *How to measure well-being—particularly for children who may be in state custody for only a limited period of time—is a complex task. Whether to measure it is also a controversial issue, especially among some public officials who fear that their agencies will be held accountable for outcomes beyond their control. Recognizing both the importance and the sensitivity of the task, the Pew Commission urges Congress to call on the National Academy of Sciences, through its Board on Children, Youth, and Families, to convene an expert panel to recommend appropriate outcomes and measures, particularly related to child well-being. The Commission also urges HHS to convene an expert advisory group to periodically review the measures and methodology to ensure that they remain timely and appropriate.*

6. To promote innovation and constant exploration of the best ways to help children who have been abused and neglected, the Commission recommends that the federal government:

- **Expand and improve its successful child welfare waiver program;**
- **Continue to reserve funds for research, evaluation, and sharing of best practices; and**
- **Provide bonuses to states that (1) make workforce improvements and (2) increase all forms of safe permanence for children in foster care.**

The shortcomings of the child welfare system are well known even to casual observers—from high-profile tragedies to the daily struggles of overloaded caseworkers and judges. In the midst of all of this bad news, it is easy to lose sight of the benefits achieved in states, localities, and courts across the country as a result of innovative policies and rigorously evaluated experimental programs. Positive outcomes include increases in adoptions from foster care in every state; the successful use of guardianship assistance; the potential of wrap-around services such as those being tested in Santa Clara County, California and Milwaukee, Wisconsin; and the effectiveness of performance-based contracting in Illinois, New York City, and Kansas.

Promoting Innovation and Evaluation. Improving outcomes for children in foster care or at risk of entering care requires more than a handful of success stories. It will require experimentation on a broad scale, rigorous evaluation, and aggressive dissemination of proven practices. Federal child welfare waivers have encouraged such innovation in several important areas, and performance bonuses have encouraged innovative and successful efforts by states to increase adoptions from foster care. To encourage more such innovation on behalf of children, the Commission recommends expansion and improvement of the federal child welfare waivers,

⁵⁴For example, a state that has found adoptive homes for children who have been in foster care for very long periods of time—a highly desirable outcome—will actually score poorly on the "length of time to achieve adoption" measure as it is currently constructed. Longitudinal data will more accurately reflect states' progress toward improving outcomes for all children in foster care and will more appropriately drive child welfare practices and decision-making in desired directions.

⁵⁵According to Fred Wolczyn, Research Fellow, Chapin Hall Center for Children at the University of Chicago (personal communication, May 4, 2004).

retention of existing research and evaluation set-asides, and broader use of performance-based bonuses.

The current child welfare waiver program was designed to allow states to use federal funds to test innovative approaches to delivering and financing child welfare services with the goal of advancing best practices. While waivers have enabled states to successfully implement new programs, critics have pointed out some shortcomings in the current waiver program. A common critique is that HHS is limited in the number and types of waivers it may approve.

The indexed Safe Children, Strong Families Grant would give states greater flexibility to use federal child welfare dollars to serve the unique needs of their child welfare population. Beyond this flexibility, however, we recognize the continuing need to test innovative uses of IV-E foster care maintenance funds for populations not currently served with those funds. The Commission recommends improving the current waiver program by eliminating the cap on the number of waivers HHS may approve and permitting HHS to approve waivers that replicate waiver demonstrations that have already been implemented in other states. We further recommend that HHS streamline the waiver application and approval process to underscore the importance the Department places on encouraging the development of best practices. Finally, we recommend that HHS urge states to solicit waiver applications from their counties and cities to encourage and support practice innovation at the local level.

States will want to invest their flexible Safe Children, Strong Families funds wisely. In choosing how to allocate their funds, many states may benefit from the experiences of other states' financing and policy approaches. Ongoing evaluation is essential to the development of a set of "best practices" that states can draw on to improve their child welfare systems. The Commission therefore recommends retaining the Title IV-B evaluation, research, training and technical assistance set-asides to continue to test new approaches and disseminate successful results.

Child Welfare Workforce. Recognizing the fundamental role that caseworkers play in the lives of children and families in the child welfare system, the Commission also recommends creating a financial incentive for states to improve the quality of their child welfare workforce. For states that meet certain workforce targets, the federal government would provide a one percentage point increase in the match rate for the Safe Children, Strong Families Grant. The enhanced match rate would provide an incentive for states to continue to make investments in two critical areas: (1) improving the competence of the overall workforce and (2) lowering caseloads. The additional federal funds associated with the higher federal match rate could only be used for activities within the Safe Children, Strong Families Grant, and could not be used to replace state investments in these activities. We estimate that this recommendation could eventually result in increased federal costs of about \$30 million annually.

Across the country, there is significant variation in the level of training, education and experience of child welfare caseworkers and their supervisors. Similarly, average caseload size varies widely. While some research indicates that caseload size should not exceed 15 cases per worker, research also indicates that other factors including case mix and the types of activities required are also related to improved outcomes for children.⁵⁵

⁵⁵Tittle, G. *Caseload Size in Best Practice Literature Review*. Urbana, IL: Children and Family Research Center, School of Social Work, University of Illinois, 2002; U.S. General Accounting

In addition to caseload size, caseworker education is also directly related to performance and outcomes for children. Research has demonstrated that higher education, specifically toward a Master's degree in Social Work, appears to be the best predictor of overall performance in social service work⁵⁶ and that child welfare staff with a Bachelor's or Master's degree in Social Work are more effective in developing successful permanence plans for children in foster care.⁵⁷

Some states and localities have begun to address these issues. For example, in states that have developed caseload size standards, the range for caseworkers supervising children in out-of-home placements is between 17 and 23, while the range for child protection investigators is between nine and 15. Some agencies, for example New York City's Administration on Children's Services, have also begun to require social work degrees and other demonstrations of competence for caseworkers and supervisors. The Commission recommends that HHS convene a collaborative working group of state officials, professional organizations and researchers to (1) review existing standards from a variety of national and state sources and (2) recommend a national set of "best practice" standards for both worker competence and caseload size. States that meet and maintain those standards would receive the higher federal match rate.

Increasing Safe, Permanent Families. The Adoption Incentives program, which was recently reauthorized through FY 2008, provides incentive payments to states that increase the number of children who are adopted from foster care. States receive enhanced incentives for increasing adoptions of older children and children with special needs. This program has sent an important signal to states about the urgency of providing a safe and stable home to children who cannot return to their families of origin. It has also helped states build the infrastructure to recruit, train, and support adoptive families.

We recommend creating a new Permanence Incentive that would be modeled on the Adoption Incentives program but would include two other types of safe and stable permanence: reunification with the child's family of origin and guardianship. Reunification is likely to be in a child's best interests when a parent, often with the help of services provided by the child welfare agency, has made the changes that address and remedy the problems that led to the child being placed in foster care. When a child's needs for safety and well-being can be met in the parents' home, reunification as a permanence outcome should be

IMPROVING THE PUBLIC CHILD WELFARE WORKFORCE THROUGH ACCREDITATION

The Council on Accreditation (COA) provides public child welfare agencies with a process of on-going quality improvement through which agencies demonstrate that they are meeting quality standards. COA accreditation assures that an agency is frequently evaluating and meeting the recognized standards of its field with respect to policies and procedures, service delivery, and organizational management and administration.

COA assesses caseload size and worker competency. Three states—Illinois, Louisiana and Kentucky—have achieved COA accreditation, and eight are in the process of achieving accreditation. Seventy-four county child welfare agencies in twelve states (California, Colorado, Florida, Georgia, Illinois, Kentucky, Maryland, Michigan, New Jersey, North Carolina, Ohio, and Texas) have achieved accreditation through COA.

Source available online: http://www.coanet.org/front_end/index.cfm

ADOPTION INCENTIVES PROGRAM

The Adoption Incentives program, established by the Adoption and Safe Families Act of 1997, provides incentive payments to states that increase the number of adoptions from the public child welfare system. States report that they have used their incentive payments to recruit and train adoptive families and provide post-adoption services.

During the first five years of the Adoption Incentives program, adoptions from foster care increased substantially—from 31,000 in 1997 to approximately 51,000 in 2002. In all, an estimated 238,000 adoptions were completed during this time. All states, the District of Columbia, and Puerto Rico have earned awards for increasing their adoptions in at least one of the five years.

Based on the program's success, in 2003 it was reauthorized and expanded to include an additional incentive to encourage states to increase the number of adoptions of older children.

Office, Child Welfare: HHS Could Play a Greater Role in Helping Child Welfare Agencies Recruit and Retain Staff. GAO-03-357. Washington, DC: GAO, March 2003. This report suggests the merit of establishing reasonable worker-caseload ratios and cites caseload standards recommended by the Child Welfare League of America and the Council on Accreditation for Child and Family Services.

⁵⁶Booz-Allen & Hamilton. *The Maryland Social Service Job Analysis and Personnel Qualifications Study*. Baltimore, MD: Maryland Department of Human Resources, 1987.

⁵⁷Albers, R., and Albers, R. *Children in Foster Care: Possible Factors Affecting Permanency Planning*. Child and Adolescent Social Work Journal (1993) 10 (4) 329-341.

encouraged and supported. Guardianship, as noted earlier, can be an effective way of securing a permanent family for children in foster care when reunification and adoption have been ruled out.

Under this enhanced Permanence Incentive, states would receive incentive payments for increasing the percentage of children who leave foster care through one of three paths to safe permanence: reunification, adoption, or guardianship. Payment levels would be equal for all three types of permanence. Similar to the existing Adoption Incentives program, states would receive enhanced payments for increasing their rates of permanence for older children and children with special needs.

Children's health and safety must always be paramount. Therefore permanence decisions must be driven by safety, stability, and the child's best interests. Moreover, to avoid the unintended consequence of moving children out of foster care too quickly or moving them to unsafe or unstable homes, permanence rates would be based on the number of placements that last at least 12 months. In addition, states would be eligible to receive incentive payments only if their *overall* permanence rate increased, and only if their overall rates of re-entry into foster care did not increase. For example, to be eligible for reunification incentive payments, a state would have to maintain or increase its rates of adoption and guardianship. States that increased their rates of permanence in all three areas would receive three sets of incentive payments—one each for adoption, reunification, and guardianship. The incentive payments could be used for any activities within the Safe Children, Strong Families Grant and could not replace state investments in these activities.

CONCLUSION

Taken as a whole, the Pew Commission's financing proposals meet several important objectives. First and foremost, they focus on improving outcomes for children in foster care and children at risk of entering care, consistent with our guiding principles. They recognize and strengthen the federal-state funding partnership to protect and nurture abused and neglected children by preserving the federal entitlement for foster care maintenance. They provide states with much a reliable source of flexible funds for services to children in the child welfare system, support additional approaches to achieving safe permanence, and offer incentives to improve outcomes for children. Importantly, the Commission calls for a stronger and more accurate accountability system, so that the public can assess whether its investments are resulting in safer children, greater permanence for children who have been removed from their homes, and a child welfare system that promotes well-being.

In developing its recommendations, the Commission was very aware of the fiscal constraints facing the federal government and the states. With that in mind, our proposals use existing dollars more effectively and invest a relatively modest amount of new dollars *in the right places*. Ultimately, our elected officials will decide whether and how to alter federal financing for child welfare. In doing so, we urge them to give careful consideration to the recommendations offered here.

STRENGTHENING COURTS

I think there is probably no work that's of more value...But we put our newest lawyers on these cases. We force judges in some states to rotate through family court...And then we don't do enough training. . . So I think that we have to take all of these issues on if we're really serious about children as a priority.

-The Honorable Kathleen Blatz, Chief Justice, Minnesota Supreme Court

The courts act for all of us to make certain that children are protected. No child enters or leaves foster care without the approval of the court. No reunification, adoption, or guardianship happens without the court's approval. Judges⁵⁸ in these cases make decisions that fundamentally alter the lives of the children and parents before them, for better or worse. Courts are charged with ensuring that the basic rights of children and parents are respected when children are placed in the custody of the state. Courts are further responsible for ensuring that public officials meet their legal responsibilities to these children -- to keep them safe, to secure permanent homes, and to promote their well-being during the time when the state is acting as parent to a child.

The work of the dependency court⁵⁹ is profound and far-reaching. Judges wrestle every day with how best to ensure the safety and care of children, protect the rights of parents, and respect the centrality of family in American society. Their decisions may affirm or dissolve some family ties and create others. They affect both the current circumstances and future prospects of the children who pass through the courts.

Yet the dependency courts are often undervalued entities within the judicial system. The public is largely unaware of the depth of the court's responsibility in cases of abuse and neglect and has little information on its effectiveness in protecting children and promoting their well-being. Within the larger state court system, dependency courts compete for resources with higher-profile criminal and civil courts.

The nature of judicial work in dependency court is different from judicial work in other areas of the justice system. When done well, it entails consultation with executive branch agencies, outreach to the community, and a commitment to legal proceedings that rely more on a problem-solving approach than on the traditional adversarial process. It also entails oversight that extends well beyond placing a child in foster care to include ensuring that children in out-of-home care receive the safety, permanence, and well-being promised them in federal and state law.

Dependency courts should be important and valued in every state. For this to happen, the judicial leadership of every state must make strengthening and supporting the dependency courts a top priority. Resource allocations are made at the top levels by Chief Justices and Supreme Courts.⁶⁰ Codes of judicial conduct are generally promulgated at this level -- codes that may encourage or discourage problem-solving approaches to dependency cases. If the top people in the system model collaboration with executive branch agencies, then there is an expectation that productive ties between local courts and child welfare agencies will be the norm, not the exception. Court leadership can send a powerful message regarding the court system's accountability for children in public custody.

⁵⁸Throughout this chapter, we use the term "judges" for ease of reading, although we recognize that quasi-judicial officers also hear dependency cases.

⁵⁹Throughout this chapter, we use the term "dependency courts" for those courts that have jurisdiction over cases involving children who are abused or neglected. These courts may also be known as juvenile and family courts. In addition, some tribal and general trial courts may have jurisdiction over these cases. Each state has its own terms and definitions related to jurisdiction of these cases, and each state has its own court structure for handling these cases.

⁶⁰We recognize that the terms used to refer to the top decision-making body in state courts vary across the states. For ease of reading, we use the terms "Chief Justice" and "Supreme Court" throughout this chapter.

Across the country, there are shining examples of exceptional judges and dependency courts. These courts are well organized and well run. They protect the children who come before them. They track and analyze their aggregate caseloads to identify and address those children who come into foster care at the fastest rates, leave at the slowest rates, or are lost or overlooked by an overburdened child welfare system. They use their data to identify and address sources of delay in the court system. They apply the “best practices” of problem-solving courts. They work collaboratively with the public and private agencies responsible for the day-to-day care of children.

Similarly, in a handful of states, there are Chief Justices, Supreme Courts, and judicial councils that have given priority status to the dependency courts.⁶¹ These court systems have devised strategies unique to their specific states, but share the common goal of equipping courts to meet their responsibility for ensuring the safety, permanence, and well-being of children in the public’s care.

The decisions made in dependency courts every day have powerful and life-long implications for children and families. No child or parent should face the partial or permanent severance of familial ties without a fully informed voice in the legal process. Some state courts have made significant investments to improve attorney training and compensation so that children and parents have an informed and effective voice in court. Even when less shattering decisions are made, judges need to hear from the people who will be most affected by their decisions – children, parents, siblings and other relatives, foster and adoptive parents. Around the country, some state court systems, bar associations and voluntary organizations such as Court Appointed Special Advocates (CASA) have also helped give children and parents a more effective voice in dependency court proceedings.

RECOMMENDATIONS FOR CHANGE

The Pew Commission applauds the efforts of these courts, judges, attorneys, and volunteers, and wants their experiences to be the norm across the country, rather than noteworthy exceptions. Our court recommendations identify policy levers that can improve the oversight of child welfare cases in literally thousands of courts throughout the nation. These recommendations focus on ensuring that courts have the tools and information needed to fulfill their responsibilities to children and to the public trust. They call for tangible forms of communication and collaboration between the courts and agencies, improved training and resources for judges and attorneys who practice in this area of law, and strengthening the voice of children and families whose cases are heard in dependency courts. We call, in particular, for forceful leadership from Chief Justices and state court leadership to ensure that children’s cases receive high priority. We also call for new resources, specifically targeted investments of federal funds that will leverage significant change in state courts and result in improved outcomes for abused and neglected children.

The Commission’s court recommendations call for:

- Adoption of court performance measures by every dependency court to ensure that they can track and analyze their caseloads, increase accountability for improved outcomes for children, and inform decisions about the allocation of court resources;

⁶¹See, for example, the work of the court leadership in the following states: California’s Center for Families, Children and the Courts, information available at www.courtinfo.ca.gov/programs/CFCC; New York’s Permanent Judicial Commission on Justice for Children, information available at www.courts.state.ny.us/ip/justiceforchildren/index.shtml; Minnesota’s Children’s Justice Initiative, information available at www.courts.state.mn.us/childrensjustice; and Michigan’s Child Welfare Services Director, information available at www.courts.michigan.gov/supreme-court/press/ogrady.pdf.

- Incentives and requirements for effective collaboration between courts and child welfare agencies on behalf of children in foster care;
- A strong voice for children and parents in court and effective representation by better trained attorneys and volunteer advocates;
- Leadership from Chief Justices and other state court leaders in organizing their court systems to better serve children, provide training for judges, and promote more effective standards for dependency courts, judges, and attorneys.

These recommendations, when enacted as a package, will create conditions that encourage every judge and every court to adopt proven and promising court practices. They will also increase court accountability for ensuring that every child reaches permanency as quickly as possible. They will lead to court improvements that persist beyond the tenure of individual judicial leaders. Taken together, these recommendations provide judicial leaders with the tools and strategies to fulfill the Commission's child-centered principles for every child who comes into contact with dependency courts.

To this end, we offer the following recommendations to strengthen and support the nation's dependency courts in their critical work on behalf of the children before them.

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

- ***Every dependency court should adopt the court performance measures developed by the nation's leading legal associations⁶² and use this information to improve their oversight of children in foster care.***
- ***State judicial leadership should use these data to ensure accountability by every court for improved outcomes for children and to inform decisions about allocating resources across the court system.***
- ***Congress should appropriate \$10 million in start-up funds, and such sums as necessary in later years, to build capacity to track and analyze case loads.***

Using Data Well. Effective judges understand the dynamics of their caseloads. These judges can identify the groups of children most likely to languish in foster care and will know why. They can assess how quickly cases move through each stage of the court process and where delays are most likely to occur. They know the percentage of children in their caseload who leave foster care only to reenter because of subsequent abuse or neglect, and they can identify the most common circumstances for repeat victimization.

Armed with this kind of information, some courts across the country have instituted practices that reduce needless delays that

CASE TRACKING AND THE EFFECTIVE USE OF DATA BY COURTS

Judges who use data in their courts have found it useful for a number of purposes, including, as Judge David Grossmann, former presiding judge of the Hamilton County Juvenile Court, puts it, "determin[ing] the dimension of the problem." Judge Grossmann identifies several advantages of collecting data. One advantage is that the data can be used to "hold the court accountable....The other advantage is that once you have the data, ... getting the necessary funding from both county and state officials is a much easier task.... Suddenly it's pretty hard to argue that...you're not entitled to the necessary resources to resolve those problems."

⁶²The American Bar Association's Center on Children and the Law, National Center for State Courts, and National Council of Juvenile and Family Court Judges. *Building a Better Court: Measuring and Improving Court Performance and Judicial Workload in Child Abuse and Neglect Cases*. Los Altos, CA: The David and Lucile Packard Foundation, 2004. See Appendix B for a more detailed description of the court performance measures.

harm children. In doing so, they have identified and focused on overlooked groups of children, demonstrated the need for additional resources or the redeployment of existing resources, and most importantly, hastened children's movement out of foster care and into safe, permanent homes. Use of data in this way may be an important first step in addressing other systemic issues within the child welfare system. For example, evidence from the courts of over-representation of children of color may lead to collaborative efforts between the courts and child welfare agencies to rectify this situation.

Why haven't more courts moved to implement case tracking and other data management tools? Some judges may lack access to the information and training to do so. Others may fear that doing so will require expensive management information systems, and still others may have concerns about how the information, once collected, will be used by state court leadership, elected officials, and the media.

In response to these concerns, the American Bar Association, the National Center for State Courts, and the National Council of Juvenile and Family Court Judges developed a set of court performance outcome measures by which courts across the country can assess their own performance in accordance with the goals of the Adoption and Safe Families Act.⁶³ A compilation of these measures can be found in Appendix B of this report. These court performance measures can help state courts ensure timely and appropriate permanency decisions for children unable to return home; improve judicial decision-making; and improve the overall fairness of child abuse and neglect proceedings for all involved.

Aggregate data on court performance is also essential information to Chief Justices and state Supreme Courts as they monitor the performance of dependency courts, decide on strategies to support best practices in these courts, allocate resources across the court system, and discuss court appropriations with their legislatures.

Data on the experiences and outcomes of children in the dependency courts can underscore for the public and decision makers the courts' responsibilities in protecting children who have experienced abuse and neglect and in monitoring their care while in the custody of the state. The Commission calls on state court systems to make this aggregate information publicly available. This is the same standard to which public child welfare agencies are held. Indeed, in the case of public child welfare agencies, publication of the results of the Child and Family Services Reviews has led to heightened citizen awareness of the challenges of meeting the needs of children in foster care and greater stakeholder involvement in developing strategies for addressing these needs.

Building Court Capacity. Unlike public child welfare agencies, courts have not had access to dedicated federal assistance to develop the capacity to gather and track information necessary to protecting children in the state's custody. While federal IV-E funds are available for public child welfare agencies to develop statewide automated child welfare information systems, federal dollars are not similarly available to help courts track critical

TRACKING CHILDREN'S PROGRESS ACROSS COURTS AND AGENCIES

Both the court and public agencies in the executive branch must be aware of the status of every child under their supervision. To this end, Utah is currently re-engineering its juvenile justice information system so that all state and local entities involved in children's lives, including the court, the child welfare agency, law enforcement agencies, and schools, can identify and track data about a child involved in the child welfare or juvenile justice systems. The project's mission is to enhance communication and cooperation between those government entities in order to achieve better outcomes for children.

⁶³The American Bar Association's Center on Children and the Law, National Center for State Courts, and National Council of Juvenile and Family Court Judges. *Building a Better Court: Measuring and Improving Court Performance and Judicial Workload in Child Abuse and Neglect Cases*. Los Altos, CA: The David and Lucile Packard Foundation, 2004.

information about children under the supervision of the dependency courts – even though court actions are reported on in the federal Child and Family Services Reviews.

Recognizing that state court resources are limited, we call upon Congress to appropriate at least \$10 million to help state courts build their capacity to monitor the experiences and outcomes of children in the dependency courts. Potential legislative vehicles for such an appropriation include the Strengthening Abuse and Neglect Courts Act (SANCA), which has already authorized funding in this amount for court case tracking, and the Court Improvement Program (CIP), which provides funds directly to state Supreme Courts specifically to improve the operations of the dependency courts. Access to these funds should be contingent upon developing a joint plan between the state child welfare agency and the courts for collaboration and sharing of data and information.⁶⁴ The Commission further recommends that in subsequent years, Congress provide such sums as necessary for implementation of these plans.

2. To protect children and promote their well-being, courts and public agencies should be required to demonstrate effective collaboration on behalf of children.

- ***The Department of Health and Human Services (HHS) should require that state IV-E plans, Program Improvement Plans, and Court Improvement Program plans demonstrate effective collaboration.***⁶⁵
- ***HHS should require states to establish broad-based state commissions on children in foster care, ideally led by the state’s child welfare agency director and the Chief Justice.***
- ***Congress should appropriate \$10 million to train court personnel, a portion of which should be designated for joint training of court personnel, child welfare agency staff, and others involved in protecting and caring for children.***
- ***Courts and agencies on the local and state levels should collaborate and jointly plan for the collection and sharing of all relevant aggregate data and information, which can lead to better decisions and outcomes for children.***

Although child welfare agencies and the courts share responsibility for improving outcomes for children in foster care, institutional barriers and long-established practices often discourage them from collaborating. Effective collaboration requires that both entities change the way they think about their respective roles, responsibilities, and priorities and engage in a new way of doing business together. Jurisdictions in which courts and agencies have been able make this shift have yielded better results for children.

State Plans. The Pew Commission recommends that Congress require meaningful collaboration between child welfare agencies and courts in the development of all state IV-E plans, Program Improvement Plans (PIP), and Court Improvement Program plans. Currently, in order to be eligible for federal child welfare funds under Titles IV-B and IV-E of the Social Security Act, states are required to submit a “State Plan for Child Welfare Services.”⁶⁶ While the law requires states to demonstrate some coordination of services, the courts are not specifically mentioned.⁶⁷ States are also required to undergo a federal review process, the Child and Family Services Review (CFSR), which is designed to measure each state’s performance in

⁶⁴For further discussion about data sharing between courts and agencies, please refer to the section on collaboration below.

⁶⁵Tribal courts and service agencies should be included in the development and implementation of all plans.

⁶⁶Specific descriptions and requirements of state child welfare plans can be found in Sec. 422 [42 U.S.C. 622] and Sec. 432 [42 U.S.C. 629b] of the Social Security Act.

⁶⁷Sec. 422 [42 U.S.C. 622] (b)(2) of the Social Security Act requires that states must “provide for coordination between the services provided for children under the plan and services and assistance provided under Title XX, under the State program funded under part A, under the State plan approved under subpart 2 of this part, under the State plan approved under part E and under other State programs having a relationship to the program under this subpart, with a view to provision of welfare and related services which will best promote the welfare of such children and their families.”

child abuse and neglect cases. Each state must then develop a PIP to demonstrate how they will improve in those areas in which they are not in substantial conformity with the federal requirements. Although some of the CFSR measures report on court activities, there is no requirement for court-agency collaboration in developing and implementing the PIP.

We also recommend that Congress amend Title IV-E and that HHS amend the PIP guidelines by adding a requirement for state agencies to demonstrate substantial, ongoing, and meaningful collaboration with state courts in the development and implementation of both plans. Where applicable, this collaboration should also include leadership from Indian tribes. Agencies and courts can demonstrate meaningful collaboration by meeting regularly to review policies and procedures, sharing data and information, providing joint training, and engaging in other ongoing efforts.

Congress and HHS should place similar requirements for collaboration in statutes and regulations that support the dependency courts. Currently, all 50 states and the District of Columbia receive funding under the CIP.⁶⁸ The CIP requires the highest court in each state to conduct assessments and develop a plan to improve state foster care and adoption laws and judicial processes. Just as the Commission recommends that Congress and HHS amend Title IV-E and the PIP guidelines, it also recommends that Congress direct HHS to amend the CIP guidelines to explicitly require that the plans demonstrate meaningful and ongoing court-agency (and, where applicable, tribal) collaboration.

Multi-Disciplinary Commissions. Collaboration should also recognize that the children and families involved with the child welfare system are often simultaneously engaged with other community agencies and services -- schools, health care, mental health, child care, and others. Children and families are better served when these multiple community partners come together on their behalf. Thus, in addition to an increase in collaboration between public child welfare agencies and courts, we also recommend broader, multi-disciplinary collaboration that engages the entire community in reaching the goal of providing all children with safe, permanent families in which their physical, emotional, and social needs are met.

To this end, the Commission recommends that Congress require the development of multi-disciplinary, broad-based commissions on children in foster care, ideally co-convened by the state's Chief Justice and child welfare agency director.⁶⁹ Similar advisory bodies already operate effectively in other public systems such as the State Advisory Groups established by the Office on Juvenile Justice and Delinquency Prevention (OJJDP), and the State Interagency Coordinating Councils required under Part C of the Individuals with Disabilities Education Act. Both of these entities are established under federal law and implemented at the state level. Both prescribe membership that includes representatives from state agencies, community organizations, and consumers of services. The State Advisory Groups also include representation from the legal and law enforcement communities.

These commissions can monitor and report on the extent to which child welfare programs and courts are responsive to the needs of the children in their joint care. They can also broaden public awareness of and support for meeting the needs of vulnerable children and families

⁶⁸The CIP was established through the Omnibus Budget Reconciliation Act, Public Law 103-66, 107 Stat. 312 Part I Sec. 13711 (1993), [42 U.S.C. 629 et seq.] and has been reauthorized twice through Adoption and Safe Families Act, Public Law 105-89, 111 Stat. 2115 (1997), [42 U.S.C. 1305 note] and Promoting Safe and Stable Families Amendments, Public Law 107-133, 115 Stat. 2413 (2001), [42 U.S.C. 629h(e)] respectively.

⁶⁹States, particularly those with large urban jurisdictions, may wish to encourage similar coordinating bodies at the local level.

including sufficient mental health, health care, education and other services. Moreover, they can institutionalize collaboration beyond the terms of office of individual agency directors and Chief Justices.

Training. The Commission recognizes that paradigm shifts and major changes in practice such as those outlined above do not come easily. Change has to occur not only in policy and procedure, but also in practice. The workforce that is charged with carrying out the day-to-day practices and providing services to vulnerable children must be competent, capable, and willing to make this shift. Multi-disciplinary, cross-system training for all parties in the child welfare system is key to building this competence.

We understand that there are specific skill sets and content areas that are unique to child welfare agencies, and others that are unique to the courts. Courts and agencies therefore need separate training opportunities that emphasize and reinforce their respective roles and responsibilities. But system-specific training, while necessary, is not sufficient. It should be paired with high-quality, multi-disciplinary, cross-system training.

Multi-disciplinary, cross-system training provides an opportunity for people to understand each other's roles and how they each fit into the system. Clarity about respective roles and responsibilities enables each party to ask the relevant questions and provide the pertinent information for everyone to do their jobs well, with the ultimate benefit of improving services to children and families. For example, while it is not a judge's responsibility to develop case plans to address a child's specific health or mental health needs, training in child development will help the judge to ask the key questions, on the record, to ensure that these needs are being addressed in case planning and service implementation.

Cross-system training is most effective when it is collaborative at every stage, that is, when both the planning and implementation involve the active participation of both agency and court leaders. Such training programs require a commitment of time and financial resources by both the agency and the court. California's "Beyond the Bench" program and New York's "Sharing Success" conference are two examples of effective cross-system training.⁷⁰

Currently, the only specific source of federal funding for child-welfare training is Title IV-E of the Social Security Act. Under current law, IV-E will reimburse for training of child welfare agency staff, but not for training of judges, lawyers, or other professionals in the child welfare system. Additional restrictions regulate the content of the training and who may provide it. We have recommended that IV-E Training be included in a flexible and indexed Safe Children, Strong Families Grant, which would enable state agencies to include court personnel in any training they design and deliver. To increase the likelihood that this will happen, we recommend that Congress require states to demonstrate that a portion of their training dollars are used for cross-training initiatives that are jointly planned and executed by the child welfare agency and the state court system.

The Commission further urges Congress to appropriate \$10 million annually through the Court Improvement Program, specifically for the purpose of training judges, attorneys and other legal personnel in child welfare cases. To receive these training funds, courts will have to

⁷⁰California's "Beyond the Bench" and New York's "Sharing Success" are statewide, multidisciplinary juvenile/family court conferences that bring together judicial officers, court staff, attorneys, CASAs, probation officers, social workers, and other professionals working with children and families in the court system.

show in their Court Improvement Plans that a portion of the training dollars will be used for cross-training initiatives that are jointly planned and executed with the child welfare agency. This funding will enable court systems to address court-specific training needs, and at the same time ensure that courts and agencies each have their own source of funds to contribute to collaborative ventures.

Sharing Information. Sharing important data and information between state child welfare agencies and the courts is another specific and far-reaching step to increase collaboration in ways that help children. When the two systems do not share and compare data, or do not have access to the same information, mistrust and inefficiency can result. We recognize that there are multiple ways to share data and information that maintain the confidentiality of certain information. In Utah, for example, courts and agencies have gone so far as integrating the pertinent parts of their respective data management systems.⁷¹ For other states, sharing of information through meetings, conversations, and shared reports may be an appropriate starting point. Ultimately, state agencies and courts will benefit from having access to the same information.

3. To safeguard children's best interests in dependency court proceedings, children and their parents must have a direct voice in court, effective representation, and the timely input of those who care about them.

- ***Courts should be organized to enable children and parents to participate in a meaningful way in their own court proceedings.***
- ***Congress should appropriate \$5 million to expand the Court Appointed Special Advocates program.***
- ***States should adopt standards of practice, preparation, education, and compensation for attorneys in dependency practice.***
- ***To attract and retain attorneys who practice in dependency court, Congress should support efforts such as loan forgiveness and other demonstration programs.***
- ***Law schools, bar associations, and law firms should help build the pool of qualified attorneys available to children and parents in dependency courts.***

Children under court supervision and their parents must have an informed voice in decision-making related to whether a child enters foster care, how a child fares while in care, and what kind

COLLABORATION BETWEEN COURTS AND CHILD WELFARE AGENCIES: EXAMPLES FROM TWO STATES

Illinois

"We know the court doesn't stand alone, and we gladly accepted the challenge of achieving timely permanence for children as an ongoing series of collaborations," says Judge Nancy Salyers, former Presiding Judge of the Child Protection Division of Cook County, Illinois. Judge Salyers convened a "Table of Five" that met regularly and included herself, the public child welfare agency director, the Public Defender, the Public Guardian, and a representative from the State's Attorney's Office. Jess McDonald, former Executive Director of the Illinois Department of Children and Family Services (DCFS), speaks highly of this approach, praising the level of communication and genuine problem-solving that resulted. For example, he says, "case-workers sitting in court all day was a real problem." But as a result of collaboration with DCFS, the court introduced time-specific calendaring, which had a "huge impact" on the movement of children's cases through the courts.

New York

Chief Justice Judith Kaye of New York has made collaboration with the child welfare agency a top priority during her tenure as Chief. "[A]s courts we value our independence and our impartiality and our integrity... [Y]ou have to be independent when you make judicial decisions...but when you're dealing with the life of a child who's growing up in the courts, you have custody of that child's life. Independence is not the word. Collaboration is the word. You have to work with other people...to do the best for this child, that's what's really important."

Together with Commissioner John A. Johnson of the New York State Office of Children and Family Services, Chief Justice Kaye has instigated collaborative efforts throughout the state of New York. Commissioner Johnson underscores the importance of these efforts, stating that "collaboration among the courts, social service agencies, and the larger community is crucial to achieving the goal of timely, appropriate decisions that lead to permanent family connections. The Office of Children and Family Services and the Office of Court Administration are working together toward this shared goal."

⁷¹Utah State Juvenile Justice Information System. Project Charter. November 10, 1999.

of plan is in place to secure a safe, permanent home for that child. These are all decisions made in the courts. In our legal system, individuals are most likely to have an informed and effective voice when they are represented by competent counsel. Although infants, very young children, and some children with significant disabilities may not appear able to have an “informed” voice of their own, but it is critical, nonetheless, that they, like children of all ages and capabilities, have a skilled and knowledgeable advocate in all legal proceedings.

Regrettably, this is often not the case for children and parents involved in dependency cases. Children and parents often report infrequent and last-minute meetings with attorneys who appear to them to be unfamiliar with the details of their case or the current circumstances of their lives. Children are not always present in court and are often unaware that court proceedings are underway. Parents report feeling marginalized, criminalized, and left to their own devices to make sense of complex legal processes.⁷²

Direct Participation. Federal law has provided little guidance about children’s and parents’ participation in court proceedings. The Chafee Foster Care Independence Act does require adolescents involved in independent living programs to be actively involved in case planning,⁷³ although not necessarily in court proceedings. The Adoption and Safe Families Act provides that administrative case reviews be “open” to parents⁷⁴ and also requires that foster parents, pre-adoptive parents or relatives providing care for a child have an opportunity to be heard in court.⁷⁵

Children, parents, and caregivers all benefit when they have the opportunity to actively participate in court proceedings, as does the quality of decisions when judges can see and hear from key parties. State court leaders should consider the impact of factors such as court room and waiting area accommodations, case scheduling, use of technology in the court room, and translation of written materials. These issues can make the process more accessible and meaningful for all participants, including children. Judges should actively seek input from a broad range of people who care about each child – including siblings, relatives, neighbors, educators, and others – when making decisions about a child’s present and future circumstances. A state’s commission on children in foster care can play a role in helping judges determine how such many and varied voices can be safely and equitably heard.

SEEING AND HEARING CHILDREN: THE EXPERIENCES OF TWO JUDGES

Judge Ernestine S. Gray of New Orleans, Louisiana

“Children don’t necessarily come to court for the initial hearing,” Judge Gray points out, adding, “As a judge I believe it’s important to see the children, so I schedule a second hearing within 15 days in which they have to be present, I explain to them what’s going on, see how they act in the courtroom, sometimes give them a little toy and tell them that they’re going to see me again in a few months.” Judge Gray’s staff schedules these hearings during after-school hours to minimize disruptions to the child’s education.

Judge Richard FitzGerald of Louisville, Kentucky

In Louisville, Kentucky, all children come to court unless the child’s lawyer guardian ad litem (GAL) requests otherwise. For children who are medically fragile or who would be emotionally harmed by a court appearance, the court conducts proceedings at hospitals or other facilities. To further ensure that all children have a voice in their court proceedings, the court requires that the GAL must have at least one personal contact with the child prior to the proceeding.

This wasn’t always the case. Judge FitzGerald recounted a chilling experience to the Pew Commission that led to dramatic changes in dependency court procedures across Kentucky. In the early 1980’s, a medically fragile nine-year-old child was found to be neglected while in state care. In addition to his medical problems, the child had severe developmental disabilities and other special needs. A lack of proper oversight by the court and the child welfare agency meant that the child did not receive the services he needed. More alarmingly, he was starving, weighing just 16 pounds when he was finally examined by a doctor. Yet on paper, his case report raised no red flags to warrant court action. Had the child appeared before the court, his severe neglect would have been obvious. As a result of this and similar cases, the Kentucky Legislature enacted requirements for judicial review of all children in state foster care placement.

Today, children whose cases appear before the Louisville court come to the courtrooms and actively participate in the proceedings. This practice affords judges a wonderful opportunity to observe parent-child interaction and address placement problems.

⁷²Moynihan, A., Forgy, M.A., and Harris, D. Symposium: Fordham Interdisciplinary Conference Achieving Justice: Parents and the Child Welfare System: Foreword. *Fordham Law Review* (2001) 70 p.303.

⁷³Foster Care Independence Act, Public Law 106-169, 113 Stat. 1822 (1999), [42 U.S.C. 677 (3) (H)].

⁷⁴Adoption and Safe Families Act, Public Law 105-89, 111 Stat. 2115 (1997), [42 U.S.C. 1305 note].

⁷⁵*Ibid.*

Court Appointed Special Advocates. Neither judges nor attorneys will always have the time and resources to provide the in-depth information courts need to make fully informed decisions about children's well-being. Therefore, we recommend an expansion of the Court Appointed Special Advocate Program (CASA). This community-based program recruits, trains, and supervises volunteers to conduct investigations and make recommendations to the court that focus on meeting the best interests of the child. These volunteers have the time, training, and commitment to listen carefully to children and to the adults who care for them, and to report their findings and recommendations to judges.

Today, there are approximately 930 local and 45 statewide CASA programs. Their growth has been spurred in part by encouragement from the judicial and legal communities. The National Council of Juvenile and Family Court Judges has endorsed the use of CASAs, urged replication of the program, and helped establish the National CASA program, which was incorporated in 1984, to promote the growth and development of CASA programs nationwide.⁷⁶ Similarly, the American Bar Association has passed a resolution endorsing the use of CASAs in addition to attorney representation and encouraging its members to support the development of CASA programs in their communities.⁷⁷

The Strengthening Abuse and Neglect Courts Act (SANCA) authorized \$5 million to expand the CASA program, both by extending it to new communities and by building the capacity of existing programs to serve more children in their community. However, Congress has never appropriated these funds. The Pew Commission urges Congress to do so. CASA is a proven means of strengthening the voice of children in dependency courts. We further urge states and private organizations, many of whom have already provided substantial support to their local CASA programs, to join Congress as partners in this important effort to expand the program to underserved jurisdictions.

Securing Effective Representation. The availability and competence of legal representation for children and their parents in dependency proceedings is wildly inconsistent across the country, for many reasons. Federal law and Supreme Court rulings have given only limited specific guidance on the issue of representation of children.⁷⁸ Federal leadership in this area is made more difficult because family law is traditionally a subject of state, not federal, law.⁷⁹ Without federal guidance, the legal profession and individual states have come up with their own standards and guidelines for the practice of child representation.⁸⁰ While some state statutes provide clearer direction than others, the dissonance among state legislation, legal theory, and individual practice contributes to confusion within the field -- to the detriment of children who need strong, clear advocacy.⁸¹

The situation is compounded by the limited training available to attorneys in dependency court. Every attorney practicing in this field needs training beyond the limited offerings that currently exist in most law schools. The Commission calls on state courts to require that

⁷⁶Piraino, M.S. Representation of children: Lay Representation of Abused and Neglected Children: Variations on Court Appointed Special Advocate Programs and Their Relationship to Quality Advocacy. *Journal for the Center for Children and the Courts*, (1999) 1, p.64.

⁷⁷American Bar Association. Resolution, August 1989.

⁷⁸Child Abuse Prevention and Treatment Act, Public Law 93-247, 88 Stat. 4 (1974), [42 U.S.C. 5101 et. seq.]. CAPTA conditions states' eligibility for grants on meeting certain requirements, one of which mandated the appointment of a guardian ad litem (GAL) to any child who is a subject of abuse or neglect proceedings. In 1996, Congress amended the statute to specify that a GAL may "be an attorney or a court appointed special advocate (or both)" and that the purpose of such appointment shall be "(I) to obtain first-hand, a clear understanding of the situation and needs of the child; and (II) to make recommendations to the court concerning the best interests of the child." CAPTA Amendments of 1996, Sec 107, 107(b)(2)(A)(ix)(I)-(II), Public Law 104-235, 110 Stat. 3063, 3073-74 (1996), [42 U.S.C. 5106a(b)(2)(A)(ix)(I)-(II)]. In 2003, Congress added that the GAL must receive training "appropriate to the role." CAPTA Amendments of 2003, 117 Stat. 800, 810 (2003), [42 U.S.C. 114, 114(b)(1)(A)(vii)(I)-(II)].

⁷⁹See *Egelhoff v. Egelhoff ex rel Breiner*, 121 U.W. 1322 (2001); *Boggs v. Boggs*, 117 U.S. 1754 (1997).

⁸⁰Examples of child representation include: American Bar Association. Standards of Practice for Lawyers Representing a Child in Abuse and Neglect Standards, 1996; National Association of Counsel for Children. NACC Recommendations for Representation in Abuse and Neglect Cases, 2001. All 50 states and the District of Columbia have developed their own statutory provisions on the subject but each state varies in its requirements. National Council of Juvenile and Family Court Judges. Child Abuse and Neglect Cases: Representation as a Critical Component of Effective Practice, March 1998.

⁸¹Michigan and Pennsylvania, for example, have outlined the specific duties and responsibilities of guardians ad litem in their statutes. See M.C.L. 712A.17d(1); Pa.C.S.A. 42 Sec. 6311.

attorneys regularly practicing in dependency courts complete a multi-disciplinary training program and participate in ongoing training within the discipline and across disciplines throughout their careers. As with judges and caseworkers, this training should be multi-disciplinary so that attorneys have a clear understanding of child development, the roles and responsibilities of the various parties in a proceeding, and the methods and uses of problem-solving techniques and alternative dispute resolution. We also call on state courts, state bars, and organizations that provide continuing legal education to develop and offer such training.

To attract attorneys to this area of the law, we recommend that law schools develop and expand course offerings and clinical internships that enable students to gain expertise in dependency law. We recognize that compensation for dependency attorneys is generally low⁸² and that many law graduates leave school with substantial educational debt that can deter them from practicing in this field. We therefore recommend that Congress explore a loan forgiveness program and other demonstration programs to attract and retain competent attorneys in the dependency courts.

A proposed amendment to the Higher Education Act of 1965 would move in this direction, creating a loan forgiveness program on a demonstration basis. The amendment includes an evaluation to assess whether such loan forgiveness actually achieves its goal of attracting and retaining qualified attorneys.⁸³ The Commission urges Congress to consider this legislative proposal carefully, perhaps expanding its scope to include not just attorneys fresh out of law school, but those already practicing in dependency courts who carry heavy student loan debts. Federal funds might also assist individual state courts that are pursuing innovative strategies to attract and retain qualified attorneys to this field of law. Some states, for example, dedicate a portion of their court fees to compensate attorneys practicing in dependency law.⁸⁴

Finally, to further develop the pool of experienced attorneys willing to represent children and parents in dependency proceedings, we call on attorneys and law firms to encourage and support the provision of more pro bono services to children and families in dependency court. State Supreme Courts and Chief Justices should publicly recognize attorneys and firms that provide pro bono services in this area -- as is the case in California -- and legal education organizations should offer continuing legal education credits for training that supports their efforts.

4. Chief Justices and state court leadership must take the lead, acting as the foremost champions for children in their court systems and making sure the recommendations here are enacted in their states.

- ***Chief Justices should embed oversight responsibility and assistance for dependency courts within their Administrative Office of the Courts.***
- ***State court leadership and state court administrators should organize courts so that dependency cases are heard in dedicated courts or departments, rather than in departments with jurisdiction over multiple issues.***
- ***State judicial leadership should actively promote: (1) resource, workload, and training standards for dependency courts, judges, and attorneys;⁸⁵ (2) standards of practice for dependency judges; and (3) codes of judicial conduct that support the practices of problem-solving courts.***

⁸²Adoption 2002: The Presidents' Initiative on Adoption and Foster Care Guidelines for Public Policy and State Legislation Governing Permanence for Children VII-1, 1999; Mandelbaum, R. Revisiting the Question of Whether Young Children in Child Protection Proceedings Should be Represented by Lawyers. Loyola University, Chicago Law Journal, (2000), 34 (1,) pp. 24-25.

⁸³S. 104, 108th Congress, A Bill to Amend the Higher Education Act of 1965 to Provide Loan Forgiveness for Attorneys who Represent Low-Income Families or Individuals Involved in the Family or Domestic Relations Court Systems. Read twice and referred to the Committee on Health, Education, Labor, and Pensions on February 13, 2003.

⁸⁴Housman, A.W. Civil Legal Assistance for the Twenty-First Century: Achieving Equal Justice for All. Yale Law and Policy Review (1998) 17, p.381.

⁸⁵Court performance measures, discussed earlier in the chapter and presented in Appendix B, will assist courts in the initial development and subsequent tracking of compliance with these measures.

- *State court procedures should enable and encourage judges who have demonstrated competence in the dependency courts to build careers on the dependency bench.*

All of the recommendations for improving court performance in dependency cases require leadership from the top of the state judiciary. When such leadership is established and sustained, it sends a powerful message within and beyond the courts that the safety, permanency, and well-being of children under court supervision is paramount. This leadership can be demonstrated by organizing and supporting courts so that they can effectively discharge their responsibilities, by setting certain high expectations for dependency court judges and -- as mentioned in earlier recommendations -- by actively collaborating with the public child welfare agency.

An Office on Children in the Courts. With this in mind, the Commission urges every state Chief Justice to establish an office on children in the courts within his or her Administrative Office of the Courts. These offices would analyze the performance of the dependency courts with respect to improving outcomes for children, reporting their analyses directly to the Chief Justice or state judicial leadership. They would provide information and technical assistance to the dependency courts around best practices and problem-solving approaches of jurisprudence. These offices would also likely have responsibility for management of the Court Improvement Program. We recognize that, in some small states, these “offices” may consist of only one person who may have other responsibilities as well. Regardless of how they are staffed, establishment of these offices is tangible evidence of the importance of dependency issues to the court leadership, as well as a means of institutionalizing the court’s commitment to children beyond the tenure of individual Chief Justices.

PROBLEM-SOLVING COURTS

In Santa Clara County, under the leadership of Judge Len Edwards, the courts have adopted problem-solving principles that help parents reunify with their children. One example is the Dependency Drug Treatment Court. This court provides on-site drug testing and treatment referrals by the Santa Clara Alcohol and Drug Bureau, and requires frequent court visits—all to encourage and facilitate change in a parent’s behavior. Said one former drug court participant, “If not for drug court, I don’t know how I would’ve gotten my son back.”

Dedicated Courts. In many jurisdictions across the country, dependency cases are heard in courts that preside over all categories of cases -- family, civil, and criminal. As a result, dependency cases do not always get the time, expertise, and degree of importance and attention children deserve. State court leadership can address this problem by establishing specific courts or departments dedicated to dependency cases, in this way enabling judges and other court personnel to develop expertise and demonstrate commitment to the children and families affected by this area of law.

Small jurisdictions that do not have the capacity to create separate departments should consider cluster courts, such as those utilized in Texas.⁸⁶ These courts group a number of counties together to build a dependency docket, served by a judge who travels to the different counties to preside over all dependency cases. While this structure may require additional expenditures, such as costs associated with extra time off the bench while a judge travels, they are outweighed in our view by the benefits to children of having their cases heard by judges with expertise in to this area of law.

In addition, state court systems should recognize that children with cases in dependency courts, or their parents, may have ongoing cases in other courts as well related, for example, to custody and child support, civil suits or criminal charges. State courts should develop procedures to

⁸⁶For an explanation of Texas’ cluster courts, see www.texasaca.org/heartbeat/fall2001_article2.asp.

provide for the coordination of judicial proceedings that may be simultaneously affecting the same child, so that children and their parents are not forced to cope with conflicting court orders or competing schedules for court hearings.

Judicial Training. Children who have experienced abuse or neglect in their homes should not suffer further neglect at the hands of the court. Judges on the dependency bench are charged with keeping children safe and making timely decisions to ensure that their fundamental needs are met at all stages of development. This is difficult work that requires exceptional training in both the complexities of dependency law and the developmental needs of the very fragile children before them. State court leadership should actively ensure that every child's case is heard by an experienced, appropriately trained, and committed judge.

Judges in this area confront an array of issues not often addressed in law school, continuing legal education programs, or judicial training. They need a basic understanding of child development from infancy through adolescence, and an appreciation of children's needs at each developmental stage. They also need an understanding of and respect for the complex and challenging jobs of caseworkers and foster parents responsible for children's day-to-day care.

The Commission therefore recommends multi-disciplinary training for judges at the start of their work in dependency court and periodically throughout their tenure. The National Council of Juvenile and Family Court Judges offers such training, and many state courts have designed or endorsed training programs that apply directly to the laws and practices of their states.

Encouraging Best Practices. Individual judges, state judicial leaders, and judicial and legal associations have done much in recent years to test best practices and explore alternatives to the traditional adversarial model of jurisprudence, all with the goal of improving outcomes for children under court supervision. For example, the National Council of Juvenile and Family Court Judges (NCJFCJ) works with model courts across the country to continually engage in, evaluate, and disseminate a wide range of best practices. Similarly, many dependency courts are becoming a part of the larger problem-solving courts movement, an approach pioneered by mental health and drug courts and endorsed by the Conference of Chief Justices and the Conference of State Court Administrators. These courts adopt a problem-solving approach by engaging in a less adversarial, more therapeutic judicial process, thus shifting the focus from processing cases to achieving tangible improvements in the lives of children and families before the courts.

TIME TO DECIDE

Judge Stephen Rideout of Alexandria, Virginia points out that time is a major factor in making the right decisions. One case he reviewed involved a 15 year-old girl who wasn't going to school. In talking to the girl, Judge Rideout learned that she had a baby. As part of her truancy program, he ordered the girl to read to her baby and come back with a report on every book she read and how the baby responded. The baby loved the reading and the teen didn't miss any more school. Judge Rideout explained: "If I had decided that case in five minutes or ten minutes, all it would have been is 'You go to school or you're going to come back and I'm gonna lock you up.' You can't do these cases that are so important to people's lives in [a matter of minutes]. They deserve more than that."

State judicial leadership can facilitate the use of best practices and the broader problem-solving approach in dependency courts in several ways. First, the judicial leadership can adopt and use standards for court resources and workloads within the dependency courts that recognize the unique nature of cases before these courts, the relatively large number of parties involved in

these cases, and the often extended timeline of dependency cases. Here, as in other areas, court administrators and judicial leadership will be aided by data on a range of court measures. Second, judicial leadership can promulgate standards of practice for dependency judges, such as the Resource Guidelines developed by NCJFCJ. Finally, judicial leadership can promulgate codes of judicial conduct such as the Standards for Judicial Administration embodied in the 2004 California Rules of Court.⁸⁷ These codes encourage dependency court judges to provide leadership and outreach in their communities to build support for the important role of the dependency courts in serving children who have experienced abuse or neglect.

Keeping Qualified Judges in the Dependency Courts. Serving in dependency court, while demanding, and at times overwhelming, can also be among the most rewarding of judicial assignments, offering judges the chance to participate directly in changing the trajectory of a child's life for the better. Unfortunately, many court systems are not specifically organized to offer judges this opportunity. In many jurisdictions, judges are assigned to the dependency courts as an initiation into the system -- an early assignment until they can move "up" to civil or criminal court. Our prior recommendation related to reorganization of state court systems to place and maintain a focus on children is intended in part to recognize and facilitate the important of the work performed by the dependency courts.

We recommend that those judges who choose to build a career on the dependency bench be permitted to opt out of routine rotation, provided their chief judge agrees that they have shown merit in this assignment. (This assumes a rotation in dependency court that is long enough for a judge to become knowledgeable about and engaged in this work). This, together with the training and practice improvements described above, will contribute to the development of a cadre of judges who have actively chosen dependency court as a career path and will over time bring to that work great experience and expertise.

CONCLUSION

The Pew Commission recognizes that there is a lot at stake in restructuring the dependency courts. Our recommendations require real leadership, multi-disciplinary training, additional staffing and volunteers. Most of all they require judges who are dedicated to safety, permanency, and well-being for children. We believe this is possible. As Judge Lee Satterfield of Washington, D.C., said: "If you can create an environment where [judges] feel they are doing good and that they're achieving outcomes and that there are manageable caseloads, you'll have more judges wanting to do this work."

⁸⁷Available at www.courtinfo.ca.gov/rules/appendix/appdiv/pdf.

THE CONTINUING CHALLENGES OF CHILD WELFARE

It's not unusual for a child to have three or four or 5 different social workers...that are working with that child and with the family....And all of these workers have way too many children and families on their caseload. And so this child is just a sliver of what they do, but she is my whole life..

- Foster/adoptive parent

The Pew Commission on Children in Foster Care began and ended its work with the same principle: All children must have safe, permanent families in which their physical, emotional and social needs are met. This principle also is at the heart of federal and state laws that establish society's obligation to protect children who have suffered abuse or neglect.

The Pew Commission's recommendations focus specifically on two important areas—federal financing and court oversight—where many of the problems, delays, and perverse incentives in child welfare have roots. Reform in these two critical areas will go a long way to remove major obstacles to securing safe, permanent, nurturing families for children.

Beyond financing and court reform, difficult challenges remain, we raise some of them in this chapter, in the hope that doing so will shine additional light on the needs of children in foster care and spur further action. Some of these issues are beyond the scope of the Commission's mission, and others require further study and public discussion. Some of the challenges can be addressed by child welfare agencies and dependency courts, while others involve other service systems and funding streams. But they are inescapable issues for those who seek to improve society's ability to protect and nurture children who have suffered abuse and neglect.

We present four issues. The first three are “infrastructure” issues related to removing barriers that prevent children and parents in the child welfare system from getting the assistance they need in a timely manner. The fourth issue, reducing the disproportionate representation of children of color in the child welfare system is a more pervasive, systemic issue that requires the attention of policy-makers, practitioners and researchers alike in order to accomplish the improved outcomes we seek for all children.

COORDINATING CHILD WELFARE AND OTHER HUMAN SERVICES

Families in the child welfare system often have needs that extend beyond the purview of the child welfare agency itself. Abuse and neglect problems are frequently compounded by physical or mental health needs, substance abuse, poverty, educational issues, or involvement in the juvenile justice system. Numerous studies have shown for example, that families in the child welfare system have high rates of mental health and substance abuse problems.^{88, 89} A similar connection exists between domestic violence and child abuse.⁹⁰

When families' needs cross agency boundaries, challenges arise. Many of the programs and systems that serve families have their own eligibility criteria, regulations, and case tracking and management systems. (These programs include Medicaid, education, juvenile justice, mental

⁸⁸Halfon, N. Zepeda, A., Inkelas, M., *Mental Health Services for Children in Foster Care*, UCLA Center for Healthier Children, Families and Communities, no. 4, Sept 2002

⁸⁹CWLA, *Alcohol, Other Drugs and Child Welfare*, Washington DC 2001.

⁹⁰Osofsky, J.D. (2003) *Prevalence of Children's Exposure to Domestic Violence and Child Maltreatment: Implications for Prevention and Intervention*, *Clinical Child and Family Psychology*, 21(12), 161-171)

health, substance abuse, public housing, and welfare-to-work programs.) This means that children and families involved in multiple systems typically have many caseworkers, who may not be in communication with one another.

It also means that the roles and responsibilities of each agency or program are not always clearly delineated, resulting in inter-agency disputes that can delay or deny services to children and families. Fiscal constraints often lead families to seek services from agencies that are not best suited to meet their children's needs, but seem to have funding available. For example, the Government Accounting Office and several news outlets have documented cases of parents who have placed their children in the custody of the child welfare agency because it was the only way they could secure intensive mental health services for children with serious mental illnesses.⁹¹

Assuring child safety, permanence and well being is a shared responsibility, requiring collaboration and coordination across publicly-financed systems. Many jurisdictions across the country have implemented promising initiatives to improve collaboration and coordination among the different agencies that serve children and families. For the most part, however, breaking down these funding "silos" remains a significant challenge.

COORDINATING SERVICES ACROSS STATE LINES

Children must have continuity and consistency in their care giving and in their relationships, including ties to their siblings and extended family. While this is often accomplished by keeping children in their neighborhoods, schools and communities, there are times when a relative or prospective adoptive parent in another county or state is the best caretaker for a child. Indeed, the Adoption and Safe Families Act requires states to seek permanent families for children using all available resources, even when this means seeking approved families that reside outside of the child's immediate community.

When children are placed in foster care or with relatives or adoptive families across state lines, there are sometimes disagreements about which state is responsible for paying for a home study, for example, or specific educational, health, or mental health services. The Interstate Compact on the Placement of Children (ICPC) and the Interstate Compact on Adoption and Medical Assistance (ICAMA) were established to ensure that children placed across state lines live with safe, suitable families and receive appropriate services. While these compacts provide essential protections, confusion about and inconsistent implementation of their requirements has also led to delays in achieving permanence -- indeed, children placed out of state wait one year longer to find permanent homes than children placed in-state.⁹²

Child welfare professionals, judges, members of Congress, families and advocates have identified several problems that arise with cross-jurisdictional placement as well as problems with the ICPC itself. Many are working to remove obstacles that contribute to delays in achieving permanence across state lines. The Commission commends these efforts.

IMPROVING STRATEGIES FOR DOCUMENTING "REASONABLE EFFORTS" AND OTHER PROTECTIONS

Dependency courts and child welfare agencies have a shared responsibility to ensure that children are not removed from their homes until reasonable efforts to maintain them safely with

⁹¹U.S. General Accounting Office, *Child Welfare and Juvenile Justice: Federal Agencies could Play a Stronger Role in Helping States Reduce the Number of Children Placed Solely to Obtain Mental Health Services*, GAO-03-397, April 2003.

⁹²Remarks of House Majority Leader Tom DeLay at the annual meeting of the American Public Human Services Association, March 29, 2004.

their own families have been made. For states to claim federal funding for foster care placement, the child's case record must include judicial determinations that the state agency has made reasonable efforts to maintain the family unit, prevent the unnecessary removal of the child from the home, and develop and finalize a permanency plan in a timely manner. The record must also include a judicial determination that leaving the child in the home would be contrary to the child's welfare or that placement in foster care is in the best interest of the child. When court orders do not contain these specific judicial determinations, the state child welfare agency risks loss of federal funds.

The Commission heard concerns from several judges and agency administrators related to these case record requirements. While all agree that the protections are essential for children and families, many expressed concerns that the current approach may emphasize the documentation of particular words rather than evidence that the proper protections are in place. We believe this is an area that could benefit from improved practice guidelines and commends the Conference of Chief Justices and other groups that are addressing this issue thoughtfully.

REDUCING THE DISPROPORTIONATE REPRESENTATION OF CHILDREN OF COLOR IN THE CHILD WELFARE SYSTEM

Continued improvements related to the three issues discussed above will strengthen the child welfare system's infrastructure and improve its capacity to achieve the desired outcomes for all children. But we must also improve the system's capacity to meet the needs of diverse populations of vulnerable children. Better outcomes in child welfare will depend on responding better to the specific populations that have the highest rates of entry, the longest stays in care and the lowest rates of exit. Such effort must include a thoughtful examination of both the fiscal and human costs of disparate outcomes for children of color.

While children of color⁹³ represent approximately 33 percent of all children in the United States, they are 55 percent of the foster care population.⁹⁴ African American children face the gravest disparities; they are 15 percent of the child population, yet 38 percent of the foster care population. These disparities exist despite evidence that there are "no differences in the incidence of child abuse and neglect according to racial group."⁹⁵ They also exist at every stage of a child's journey through the foster care system: children of color enter foster care at a higher rate, stay longer, and leave at a slower rate than white children. Children of color are also far less likely to be reunified with their families.⁹⁶

Studies suggest varied and complex reasons for these disparities, including limits on the use of kinship care as a permanency option,⁹⁷ the economic and social vulnerability of families of color, and bias on the part of individual workers.⁹⁸ The Commission urges policy makers and practice organizations to intensify their efforts to eliminate these disparities.

* * * * *

The issues raised in this chapter quickly surface in even the most cursory reviews of child welfare policy and practice. Failure to deal with them leaves a significant proportion of children

⁹³Including African American, Latino, Asian and Indian children.

⁹⁴Population Reference Bureau, analysis of data from U.S. Census Bureau, *2000 Census Summary File 1*. As cited in: Annie E. Casey Foundation. *Kids Count Data Book*, AECF: Baltimore, MD, 2002.

⁹⁵Chipungu, Bent-Goodley, in *Future of Children* 2004, p 79.

⁹⁶Hill, Robert. *Disproportionality of Minorities in Child Welfare: Synthesis of Research Findings*. Rockville, MD: Westat. January 2003.

⁹⁷Implementation of the Commission's recommendation regarding subsidized guardianship as a permanency option for children leaving foster care can help address this challenge.

⁹⁸Chipungu, p 80.

underserved or poorly served by the child welfare system and other human service agencies. We hope that the Pew Commission's recommendations will pave the way for other reform efforts. We also hope they will help create a policy and practice environment that welcomes discussion and exploration of other difficult but important issues in child welfare.

CONCLUSION

"We live in a world in which we need to share responsibility. It's easy to say, 'It's not my child, not my community, not my world, not my problem.' Then there are those who see the need and respond. I consider those people my heroes."

- Fred Rogers

On May 7, 2003, 16 individuals agreed to work closely together to craft recommendations to improve outcomes for children in foster care. We have many different points of view, and we come from many walks of life. Some of us have spent our careers in the child welfare system, others in related legal, policy, and research fields. Some of us have had intensely personal experiences as children in foster care, as foster and adoptive parents, as social workers, and as ministers and counselors to children and families in crisis. All of us want to see our nation take better care of children who have been abused or neglected. We want to reduce the number of children who need to enter foster care. We want to help children leave foster care for a permanent family as soon as they safely can.

One year later, we are even more committed to this vision than when we first came together as the Pew Commission on Children in Foster Care.

We are also as optimistic at the end of our work as we were at the beginning. We were struck time and again by the willingness of elected officials to reach across party lines to help these very vulnerable children. We were also encouraged by the success of some states and jurisdictions and some courts, despite the obstacles embedded in current laws and practices. Illinois, for example, cut its foster care population in half between 1997 and 2002, more than doubled adoptions from foster care, and – under a federal waiver – implemented a cost-effective, subsidized guardianship program. New York City cut its foster care population almost in half between 1996 and 2003. Chief justices in Michigan, California, New York, Utah, Minnesota and other states have made improving outcomes for children in abuse and neglect cases a top priority. Individual judges have reduced delays across the board in their caseloads, speeding children's movement out of foster care and into safe, permanent homes.

Imagine the progress that could take place with a more rational financing structure and courts that have sufficient information, tools, and accountability measures.

If adopted, our financing proposals would do several things:

- Maintain the federal safety net for foster care and adoption, while also providing new options and incentives for states to seek safe, permanent families for children.
- Give states greater flexibility in how they can use federal funds to serve maltreated children.
- Strengthen accountability for outcomes for children.
- Provide resources and incentives to states to build the full continuum of services for abused and neglected children, from prevention to post-permanency.
- Encourage states to test and evaluate new approaches to helping children in foster care, children at risk of entering care, and children who are leaving foster care.
- Offer financial incentives to build the capacity of the child welfare workforce.

Similarly, enactment of our court recommendations would do the following:

- Equip dependency courts with the tools they need to analyze caseloads, assess their performance, and identify issues in the courts and populations of children that need special attention.
- Require and encourage collaboration between child welfare agencies and the courts toward their common goal of serving children better.
- Give children and parents a stronger and more effective voice in court proceedings that affect their lives.
- Organize state court systems and individual courtrooms to respond better to the urgent needs of children in the child welfare system for a safe, permanent home.
- Engage chief justices and other state court leadership to be the foremost champions and the most powerful voices for children in the dependency courts.

Our charge was to develop a practical set of policy recommendations to reform federal child welfare financing and strengthen court oversight of child welfare cases. Designing the perfect child welfare system would have been easy. Designing proposals that could win bipartisan support in Washington and in the states was a much harder task.

Our proposals are the result of hard choices and difficult compromises. We think they are bold, fair, and achievable. We hope they will spur thoughtful discussion, and we urge swift implementation.

Appendix A: TECHNICAL NOTES

This appendix provides more detailed descriptions of some of the more technical financing recommendations. A table summarizing the cost estimates of all of the financing and court recommendations is presented at the end of the appendix.

GUARDIANSHIP ASSISTANCE

As indicated in the report, the Commission's proposal to make guardianship assistance a Title IV-E reimbursable expense would result in increased federal costs of about \$70 million in the first year of implementation. These costs would rise to about \$90 million by the fifth year of implementation. These estimates were developed by the Urban Institute using data from the U.S. Department of Health and Human Services (HHS) Adoption and Foster Care Analysis and Reporting System (AFCARS), the Institute's kinship care and child welfare fiscal surveys, and the Institute's National Survey of America's Families. Due to the lack of reliable national data on assisted guardianship, there are several limitations to the estimates. Given these limitations, the figures presented here are likely to under-estimate the actual cost of expanding the IV-E entitlement to guardianship assistance.

ELIMINATING INCOME ELIGIBILITY REQUIREMENTS FROM TITLE IV-E ("DE-LINKING")

Based on fiscal year (FY) 2002 expenditure data, the annual federal costs of "de-linking" IV-E eligibility from the AFDC income eligibility standards using the current federal reimbursement rates would be approximately \$1.6 billion for both foster care and adoption assistance. De-linking without increasing federal costs, as the Commission recommends, would require a reduction in current federal reimbursement rates—of about 35 percent based on the 2002 data. These estimates were developed for the Commission by the Urban Institute.

Reducing federal rates to achieve federal cost-neutrality without taking other steps would create fiscal "winners" and "losers" among the states. Generally, states with a relatively high proportion of IV-E-eligible children would lose federal funds under a cost-neutral de-linking proposal. This is because the number of children for whom the state could claim federal reimbursement would increase only slightly, while the reimbursement rate per child would decrease, resulting in an overall net reduction in federal reimbursement. The "winners" would generally be those states that currently claim reimbursement for a very low share of their foster care population. For these states, the effect of lower reimbursement rates would be offset by the increase in the number of children for whom the state would receive reimbursement.

The Commission recommends de-linking in a way that is cost-neutral for both the federal government and the states. One way to do this is as follows. First, each state's current federal reimbursement rate for both foster care and adoption assistance would be reduced by about 35 percent. (Note that this reduction would apply to each state's rate of federal reimbursement for foster care and adoption expenditures, and *not* to the actual payments that individual foster and adoptive parents receive. Additionally, this figure is based on FY 2002 data, as noted above. The actual reduction may be more or less depending on more recent expenditure data that will become available.) Second, to avoid creating fiscal "winners" and "losers," states'

reimbursement claims would then be adjusted so that no state would either lose or gain federal funding compared to what it would have received under current law.

For the first three years of implementation, states would continue to determine IV-E eligibility in order to calculate what they would have received under the current eligibility rules. States that would have received more federal funds under current law would be made whole through the claims-adjustment process. Similarly, for states whose reimbursable claims would now exceed what they would have received under current law, a portion of their claims would also be adjusted to account for the difference. At the end of this three-year transitional period, states would negotiate with HHS a fixed “claims-adjustment” amount to be applied in perpetuity. This negotiation would take into account the past three years of claiming data as well as the state’s projected caseload and expenditure trends, helping to ensure that no state would lose federal funding in the future due to the de-link.

Alternative Approaches to De-Linking. Should Congress wish to consider approaches that are not cost-neutral, the Commission identified two alternatives to the approach above that merit consideration.

The first alternative is similar to the option described above in that federal reimbursement rates would be reduced by the amount necessary to achieve federal cost-neutrality. However, under this approach, states’ reimbursement claims would not be automatically adjusted to achieve cost-neutrality. Instead, states that would lose federal funding under the new rates could submit a “supplemental” claim in the amount of the loss. Based on FY 2002 expenditure data, the states that would lose funding under a cost-neutral de-link structure would lose a total of about \$280 million. (This is the same amount of funding that the fiscal “winners” would gain under the de-link.) Thus, it would cost approximately \$280 million to create a supplemental “hold harmless” fund. This supplemental fund is similar in concept to the supplemental fund that was created when the Temporary Assistance for Needy Families (TANF) block grant replaced AFDC.

The second alternative to de-linking would gradually phase out the use of income eligibility standards, over a period of, for example, 17 years. During the phase-out period, Title IV-E eligibility would continue to be based on income. However, the 1996 AFDC income standards, which vary state by state, would be replaced by a national standard linked to the federal poverty level (FPL). In the first year, the income threshold would be 50 percent of FPL. Each year, the income standard would rise by 10 percentage points. Thus, in the second year, the income standard would be 60 percent of FPL; in the third year, 70 percent; and so on, until the threshold reached 200 percent of poverty in year 16. The following year, there would be no income test. At this point, Title IV-E eligibility would be completely de-linked from any income eligibility standard.

To control the federal costs associated with the de-link, the federal reimbursement rates would be reduced by one percentage point each year beginning in the fourth year of implementation. Thus, in the fifth year, when the income standard is 90 percent of FPL, federal reimbursement rates would be 2 percentage points lower than the current rates. By year 17, when the de-link is fully phased-in, the reimbursement rates would be permanently reduced by 14 percentage points.

States would be given the option to move to this new structure at any point during the phase-out period. (However, once in, they could not opt out). States with relatively low 1996 AFDC eligibility standards would likely opt in first, while states with higher standards would opt in later, when the Title IV-E income threshold surpassed their old AFDC standards. By year 17, when Title IV-E eligibility would be completely de-linked from any income standard, the new structure would apply to all states.

While the phase-out approach means that states would continue to determine income eligibility for another 17 years, the outdated AFDC eligibility determination process, which also involves an asset test, would be replaced by a simple income test based only on the family's adjusted gross income as reported in the prior year's federal tax form. (In cases where a family's income was too low to file a tax form, the child would be automatically eligible.)

This approach would result in some increased federal costs. However, the gradual rise in income thresholds, combined with the concurrent reduction in reimbursement rates, is intended to ensure that federal costs are not prohibitive.

U.S. TERRITORIES

As indicated in the report, IV-E foster care and adoption assistance funding for the U.S. territories is subject to a spending cap. Specifically, combined federal funding for Title IV-E, the TANF block grant, and grant programs for the aged, blind, and disabled is capped at a maximum dollar amount for each territory. The Commission's recommendation to give territories the same open-ended access to IV-E maintenance funding and equitable access to the proposed Safe Children, Strong Families Grant would effectively remove Title IV-E from the spending cap. To implement this recommendation, the Commission further recommends that each territory's spending cap level be adjusted downward by the amount that is currently accounted for by the territory's IV-E claims. This adjustment would ensure that the federal costs for the other social services programs that fall under the spending cap are unaffected.

We estimate that the costs associated with removing Title IV-E from the spending cap could total up to approximately \$15 million each year. Title IV-E expenditure data for the territories are limited. This estimate is based on the data that are available from Puerto Rico—which accounts for the vast majority of federal spending in the territories—and the assumption that Puerto Rico's spending on maintenance payments as a percentage of its total IV-E spending mirrors spending patterns in the 50 states and the District of Columbia.

“REINVESTING” FOSTER CARE SAVINGS

Currently, states that safely reduce their use of foster care can invest the state share of savings into other child welfare services. However, they “lose” the associated federal share of IV-E savings. Under the Commission's third recommendation, states could retain the federal share of savings to invest in their child welfare systems.

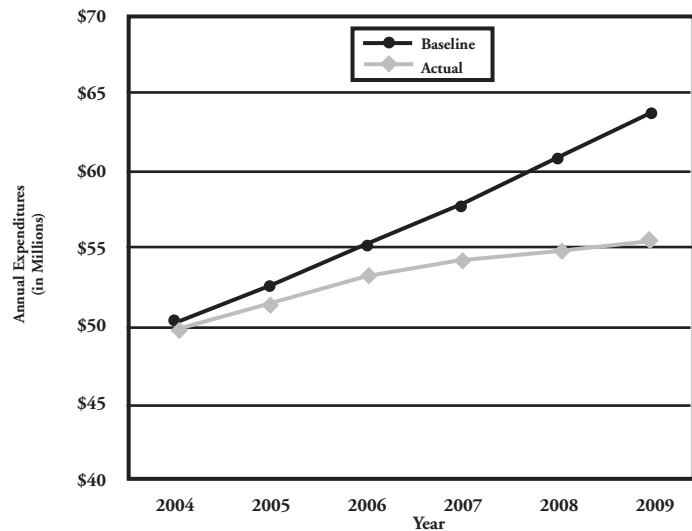
The following graph illustrates how savings would be calculated. The top line represents the state's projected annual foster care expenditures over five years given current practice—that is, the “baseline.” The bottom line represents the state's actual expenditures resulting from new program practices adopted at the start of the five-year period. The difference between the two lines—that is, the “wedge” that is created over the five-year period—represents the federal savings available for re-investment.

Under this proposal, the state could reinvest the entire “wedge” of savings resulting from its program improvements. As described in the report, states would be required to match the federal savings at their IV-E matching rate. This means that states could keep the federal share of savings only if they are willing to reinvest their own share of the savings into their child welfare system.

SAFE CHILDREN, STRONG FAMILIES GRANT

As described in the report, the Commission’s proposed indexed Safe Children, Strong Families Grant would combine current federal funding for both subparts of Title IV-B and the administration and training components of Title IV-E. (However, the development and maintenance costs of the State Automated Child Welfare Information Systems, or SACWIS—currently part of IV-E Administration—would remain outside of the grant, and states would continue to claim the 50 percent federal matching rate for those costs on an open-ended entitlement basis.) Based on expenditure projections by HHS, the combined federal spending in those programs would total approximately \$3.7 billion in FY 2005. As indicated in the report, the Commission recommends adding an additional \$200 million to the funding base in the first year, and growing each state’s allocation by the inflation rate plus 2 percent each subsequent year.

A Hypothetical Illustration: Retaining Savings Under the Child Welfare Investment Fund



As the report indicates, states would be required to match the federal grant funding with their own spending. Currently, states must match IV-B funding at a 25 percent match rate. The state matching rate for IV-E Administration is 50 percent, and 25 percent for IV-E Training. The match rate for the Safe Children, Strong Families grant would be based on the national weighted average match rate for those programs. States’ shares of IV-B and IV-E Administration and Training as a percentage of their combined spending in those areas vary. Consequently, the national weighted average rate is higher than the weighted average rate in some states, and lower than the weighted average rate in other states. To avoid creating any fiscal “losers,” the national weighted average match rate would be adjusted so that no state would be required to match the new grant funding at a higher rate than what it would have had to match to receive its share of IV-B and IV-E Administration and Training funds. Based on expenditure data from FY 2002, the adjusted state matching rate would be about 32 percent.

Both the executive and legislative branches of state government must be part of decisions about how to spend federal funds. In some states, because of court decisions, the executive branch has exclusive spending authority over consolidated federal grant funding. To ensure that the conversion from an entitlement to a consolidated grant does not erode state legislative authority

to determine how federal child welfare funds are spent, the Commission recommends that the Safe Children, Strong Families Grant be subject to appropriation by the state legislature, similar to the way TANF funds are currently treated.

**PEW COMMISSION ON CHILDREN IN FOSTER CARE
FINANCING AND COURT RECOMMENDATIONS
COST ESTIMATES
(Dollars in Millions)**

<u>Recommendation</u>	<u>First Year Costs</u>
FINANCING	
De-link IV-E Eligibility from AFDC ^a	\$0
Guardianship Assistance ^b	\$70
Indexed Safe Children, Strong Families Grant ^c	\$200
Equitable Treatment of Tribes ^{de}	\$15
Equitable Treatment of Territories ^e	\$15
Workforce Incentive ^f	\$0
Permanence Incentive	\$45
Subtotal	\$345
COURTS	
Measuring and Tracking Data ^g	\$10
Training ^h	\$10
Incentives for Attracting and Retaining Attorneys	\$10
CASA	\$5
Subtotal	\$35
Total Costs	\$380

Note that the figures presented here are not official cost estimates prepared by CBO or OMB.

^a Estimates assume a cost-neutral de-linking structure. Other de-linking approaches described in Appendix A would result in annual costs of at least \$280 million.

^b Estimates were developed by the Urban Institute. Due to data limitations, they are likely to understate the actual costs of federal guardianship assistance.

^c Estimates assume (1) an increase of \$200 million over current funding levels for child welfare services and (2) annual growth rates of CPI + 2%. The costs associated with the recommended \$10 million funding increase for court-related training, which would be included in the indexed grant, are shown below.

^d Estimates assume that increasingly more tribes will take advantage of the option in the out-years.

^e Estimates include the costs associated with direct and equal access to both IV-E maintenance and the indexed Safe Children, Strong Families Grant. The estimate for the territories represents an upper bound.

^f Estimates assume (1) a 1% increase in federal reimbursement rates for meeting workforce standards, (2) that it will take one year to develop the standards, and (3) that roughly half of the states would be eligible for the bonus beginning in the third year at an annual cost of approximately \$30 million.

^g Estimates represent the minimum costs associated with the Commission's recommendation to appropriate "such sums as may be necessary" in the out-years to develop data measures and track court performance. The actual five-year costs are likely to be higher.

^h The recommended \$10 million increase would be included in the indexed Safe Children, Strong Families Grant as part of the Court Improvement Program. Like the rest of the indexed grant, this base funding would grow each year by CPI + 2%.

Appendix B

COURT PERFORMANCE MEASURES

Developed by the American Bar Association Center on Children and the Law, National Center for State Courts, and National Council of Juvenile and Family Court Judges.⁹⁹

The three leading legal/judicial organizations, with a grant from the Packard Foundation, have created and pilot-tested these court performance measures. The measures are designed to complement those used by state agencies in Child and Family Service Reviews (CFSRs) so that, like agencies, courts can measure their performance and track their own progress in improving safety, permanency, and timeliness for the children who come before them.

PERFORMANCE MEASURE 1: SAFETY

Goal 1: To Ensure Children Are Safe from Abuse and Neglect While Under Court Jurisdiction.

Safety measures address the status of children while they are under the jurisdiction of the court. The performance outcome promoted by these measures follows from the principle of “first do no harm.”

Safety Outcomes Are:

- Children are, first and foremost, protected from abuse and neglect.
- No child should be subject to maltreatment while in placement.
- Children are safely maintained in their homes whenever possible and appropriate.¹⁰⁰

What Courts Should Measure:

1. Percentage¹⁰¹ of children who do NOT have a subsequent petition of maltreatment filed in court after the initial petition is filed.
2. Percentage of children who are the subject of additional allegations of maltreatment within 12 months after the original petition was closed.¹⁰²

PERFORMANCE MEASURE 2: PERMANENCY

Goal 2: Children should have permanency and stability in their living situations.¹⁰³

Permanency outcomes are closely related to timeliness measures, but also include additional considerations. Assessments of whether the court facilitates permanency include a focus on whether children change placements, whether in the end cases achieve permanent legal status, and whether children reenter foster care due to placement disruption. The permanency measures presented in th[e] Guide and Toolkit encourage courts toward the “long view” of the court experience for abused or neglected children. An important challenge for courts addressing the permanency measures is that in order to address them adequately, a court will need to obtain information from partner agencies (e.g., the state child welfare system or private providers who track children placed in foster care).

⁹⁹All of the information in this appendix comes directly from: The American Bar Association (Center on Children and the Law), the National Center for State Courts, and the National Council of Juvenile and Family Court Judges. *Building a Better Court: Measuring and Improving Court Performance and Judicial Workload in Child Abuse and Neglect Cases*. Los Altos, CA: The David and Lucile Packard Foundation, 2004.

¹⁰⁰Although safety is a concern for both child welfare agencies and courts, the emphasis is different. Child welfare agencies focus attention on reports of abuse or neglect. The court measures discussed here focus on new allegations made while the child is under court jurisdiction. Moreover, courts should be concerned about how often children do return to court with a new allegation after court jurisdiction has been terminated in a previous case.

¹⁰¹A percentage should not be calculated if the number of cases involved is less than 20. In those instances, the raw frequencies should be reported. Indeed, it is always useful to provide users with the number upon which the percentages were calculated.

¹⁰²The Children's Bureau of the U.S. Department of Health and Human Services recently changed their definition of recurrence within six months (ACYF-CB-IM-00-11; ACYF-CB-IM-01-01; ACYF-CB-IM-01-07; 45 CFR 1355.34(b)(4) and (5); see also www.acf.hhs.gov/programs/cb).

¹⁰³Measures under “permanency” should measure stability as well since federal CFSRs include stability as part of overall permanency. To measure the stability of judicial involvement, the principle at work is consistency of decisions and information as well as the avoidance of loss of relationships.

Permanency is achieved when children are returned to their families without further court supervision, when children are adopted, or when children are placed with individuals who are their permanent guardians.¹⁰⁴ Courts are empowered to remove children from home if they are in danger of harm, but also have other alternatives, including removing the alleged perpetrator and placing the child with members of the extended family.¹⁰⁵

Permanency Outcomes Are:

- Children have permanency and stability in their living situations.¹⁰⁶
- The continuity of family relationships and connections is preserved for children.

What Courts Need to Measure:

1. Percentage of children who reach legal permanency (by reunification, guardianship, adoption, planned permanent living arrangement or other legal categories that correspond with ASFA) within 6, 12, 18, and 24 months from removal. Specific time lines for this measure should be adapted to jurisdictional timelines.
2. Percentage of children who do not achieve permanency in the foster care system (e.g., court jurisdiction ends because the child reaches the age of majority).
3. Percentage of children who re-enter foster care pursuant to court order within 12 and 24 months of being returned to their families.¹⁰⁷
4. Percentage of children who return to foster care pursuant to court order within 12 and 24 months of being adopted or placed with an individual or couple who are permanent guardians.
5. Percentage of children who are transferred among one, two, three, or more placements while under court jurisdiction. Where possible, this measure should distinguish placements in and out of a child's own home from multiple placements in a variety of environments.

PERFORMANCE MEASURE 3: DUE PROCESS

Goal 3: To deal with cases impartially and thoroughly based on evidence brought before the court.

Due process measures address the extent to which individuals coming before the court are being provided basic protections. Due process refers to the right of all parties to participate in court proceedings. Among other things, courts must ensure that family members have notice of the proceedings as well as a fair opportunity to present testimony and express their point of view. These rights apply at all stages of the court process.

The performance goal addressed by these measures is the enhancement of due process by deciding cases impartially and thoroughly, based on evidence brought before the court. This goal encompasses giving each family the individual attention necessary to make effective decisions for the child and assuring that each child receives due process, including effective legal representation. The ideal is that children in similar circumstances should achieve similar results regardless of the jurisdiction in which the case is heard.

The ABA Center for Children and the Law considers the completeness and depth of child pro-

¹⁰⁴See 42 U.S.C. Sec675(5)(c).

¹⁰⁵Guidelines for Public Policy, op.cit., IV-11.

¹⁰⁶The W.K. Kellogg Foundation's Families for Kids Program, among other organizations, adds a time dimension to the permanency goal – placement in nurturing, permanent homes within one year. This elapsed time goal will be considered here as an integral part of the measure of permanency because it is a shared goal of courts and social service agencies. The timeliness of court processing, however, will be considered part of Goal 4, discussed later.

¹⁰⁷This measure was originally conceived to cover the scenario during which a child returns home, the court case is closed, and after some time has elapsed, returns to foster care in the custody of the agency. The court may also want to capture information on those cases in which children are returned home under protective supervision, the case remains open, and the child returns to foster care in the custody of the agency after some time has elapsed.

protective hearings to be a major factor in the quality of proceedings.¹⁰⁸ Quality hearings encompass, in part, notification of parties involved, amount of hearing time allotted, use of court reports, case plans, and findings, and court emphasis on permanency planning. The objective measures of due process proposed below incorporate these concepts of quality proceedings but cannot be complete without qualitative measure of fairness and equality.

Due Process Outcomes Are:

- Enhancement of due process by deciding cases impartially and thoroughly, based on evidence brought before the court.

What Courts Need to Measure:

1. Percentage of cases in which both parents receive written service of process within the required time standards or where notice of hearing has been waived by parties.
2. Percentage of cases in which there is documentation that notice is given to parties in advance of the next hearing.¹⁰⁹
3. Percentage of cases in which the court reviews case plans within established time guidelines.
4. Percentage of children receiving legal counsel, guardians ad litem or CASA volunteers in advance of the preliminary protective hearing or equivalent (Percentage within established time guidelines? Percentage within 0-5 days? 6-10 days? More than 10 days?).
5. Percentage of cases where counsel for parents are appointed in advance of the preliminary protective hearing or equivalent (Percentage within established time guidelines? Percentage within 0-5 days? 6-10 days? More than 10 days?).
6. Percentage of cases in which legal counsel children changes (as well as number of changes in counsel if possible).
7. Percentage of cases where legal counsel for parents changes (as well as number of changes in counsel if possible).
8. Percentage of cases where legal counsel for parents, children, and agencies are present at each hearing.
9. Percentage of children for whom all hearings are heard by one judicial officer (as well as two, three or more judicial officers if that information is available).¹¹⁰

PERFORMANCE MEASURE 4: TIMELINESS

Goal 4: To enhance expedition to permanency by minimizing the time from the filing of the petition or protective custody order to permanency.

Establishing and complying with state and federal guidelines for timely case processing are also important court process performance goals. Limiting the time required to bring litigation to a conclusion limits the exposure of families to emotionally charged issues that can have a detrimental impact on children.¹¹¹ Long periods of uncertainty and judicial indecision can put pressure on children and families, greatly adding to the strain of foster care. In addition, judicial timeliness is closely related to the goal of permanency. Children can be damaged by “foster care drift” – remaining too long in “temporary” foster homes. Clearly, the length of time required to resolve family issues needs to be limited and reasonable, given the potential harm from delays. Courts need guideposts to help them determine how well they are meeting performance goals.

¹⁰⁸American Bar Association, Center on Children and the Law, *State Court Assessments 1995-1998, Dependency Proceedings, Vol. 2, Quality of Hearings* (Washington, DC: ABA Center on Children and the Law, 1999), p. 17.

¹⁰⁹For most courts this may be an “aspirational goal” reflecting best practices.

¹¹⁰To measure the stability of judicial involvement, the principle at work is consistency of decisions and information as well as the avoidance of loss of relationships.

¹¹¹Joseph Goldstein, Anna Freud, and Albert Solnit, *Beyond the Best Interests of the Child* (New York: Free Press, 1979). Authors note the importance of considering the child’s sense of time.

In some courts, for example, a case can remain in litigation for a year or more after a petition for termination of parental rights is filed, before the trial court makes a final decision. In some courts, it can take up to a year from the date a child is removed from home simply to establish whether or not the child has been abused and neglected and the court has the power to determine who shall have custody of the child. Many courts perform in a far more timely fashion. It is important to capture this dimension of a court's performance.

It is important not only to capture the total time it takes a child to reach a permanent legal status, but also to capture the time elapsed between events in the court process (e.g., court hearings) so that courts can pinpoint precise sources of delay, and thus improve performance. Courts generally are most familiar with timeliness measures. These measures provide courts with tools to assist them in pinpointing areas where they are doing well and areas where improvement is needed.

Timeliness Outcomes Are:

- Expedition of permanency by minimizing the time from the filing of the petition or protective custody order to permanency.

What Courts Need to Measure:¹¹²

1. Average or median time from filing of the original petition to adjudication.
2. Average or median time from filing of the original petition to disposition.
3. Percentage of cases that are adjudicated within 30, 60, 90 days after the filing of the dependency petition.
4. Percentage of cases that receive a disposition within 10, 30, 60 days after the dependency adjudication.
5. Average or median time from filing of the original petition to permanent placement.
6. Average or median time from filing of the original petition to finalized termination of parental rights.
7. Percentage of cases for which the termination petition is filed within 3, 6, 12, 18 months after the dependency disposition.
8. Percentage of cases that receive a termination order within 30, 90, 120, 180 days after the filing of the termination petition.
9. Percentage of cases for which an adoption petition is filed within 1, 3, 6, months after the termination order.
10. Percentage of cases for which the adoption is finalized within 1, 3, 6, 12 months after the adoption petition.
11. Percentage of hearings (by hearing type) not completed within time frames set forth in statute or court rules. Where possible, the reason(s) for non-completion should also be captured (e.g., party requesting postponement).

PERFORMANCE MEASURE 5: WELL-BEING

Courts do not have the same extensive role to play in the lives of children and families that child welfare agencies do, and consequently are likely to have fewer outcome goals.¹¹³ The court's role in ensuring the well-being of children is more indirect. Although courts do not

¹¹²Two appellate measures are usually included as part of the timeliness goal: (1) Percentage of adjudication, disposition, termination and other judicial decisions that are appealed and percentage overturned on appeal; (2) Percentage of cases in which the results of the appeal are received within 1, 3, 6, and 12 months from the date the appeal was filed. The goals are very important and relevant, but cannot be obtained from trial court case files. For information on how appellate courts can expedite proceedings, see Ann Keith and Carol Flango, *Expediting Dependency Appeals: Strategies to Reduce Delays*, 2nd ed. Williamsburg, VA: National Center for State Courts, 2002.

provide care for children directly, they do have a role in inquiring about the health, medical care, school attendance, and other indicators that children are being properly cared for. These indicators may provide cues of dysfunctional family relationships and cause the family to return to court repeatedly. That being said, it is premature at this time to have courts adopt measures of well-being when consensus does not exist on measures for which courts have direct responsibility, such as safety of children, appropriate removal of children from their homes, successful achievement of permanency, and length of time in foster care. Yet such performance measures are part of a process of continuing improvement, which means that they should be reexamined and refined as their usefulness becomes apparent.

Children's well-being is another dimension of performance measurement that is specified in the Adoption and Safe Families Act (ASFA). In ASFA, children's well-being refers to factors other than safety and permanency that relate to a child's current and future welfare. Most notably, child well-being under ASFA refers to the child's educational achievement and mental and physical health. Measures of children's educational achievement and mental and physical health are *not* included in the *Guide* and *Toolkit* for several reasons:

- First, neither the federal government nor the social science research community have identified, or achieved consensus on, helpful statistical measures that are specifically related to child welfare cases. By contrast, we were able to adapt measures of safety, permanency, and procedural fairness related to court performance in child welfare cases.
- Second, even if there were clear well-being measures, the judicial branch is not likely to have child well-being statistics readily available. Getting this information requires data exchanges with external entities, which will only become possible **after** the court has developed its own system to measure performance.
- Third, although courts influence children's educational attainment and health only indirectly, they clearly do impact children's safety and permanency.

In the future, it may be helpful for courts to use child well-being measures in analyzing their own performance. To the extent that courts have the responsibility to make sure that the state is providing proper care to children in its custody, it will be useful for courts to know whether those children over whom they have jurisdiction are receiving a good education and are physically and emotionally healthy. If a local court learns, for example, that children in court-supervised foster care are substantially behind educationally, the court may decide to ask more penetrating questions about children's educational attainment. The court may decide to demand more documentation concerning the child's education, may instruct guardians ad litem to check into children's educational progress, and may even decide to join in meetings with school officials to discuss the educational needs of children in foster care and how best to address them.

Accordingly, once useful well-being measures have been developed for child welfare cases, at least some courts will want to include them in their own system for performance measurement. Data to support these measures, however, will primarily have to come from sources external to the court.

¹³Prevention goals especially may be achieved by child welfare agencies alone without court involvement. For example, Oregon's goal of reducing the number of abused children under age 18 decreased from 12 per 1,000 children to 6 per 1,000 children. *Oregon Progress Board, Oregon Benchmarks: 1993 Report to the Legislature* (Salem: Oregon Progress Board, 1993).

Appendix C

PEW COMMISSION ON CHILDREN IN FOSTER CARE COMMISSION MEMBER BIOGRAPHIES

THE HONORABLE BILL FRENZEL, CHAIRMAN

Guest Scholar, Governance Studies, The Brookings Institution
Washington, D.C.

Bill Frenzel is the Chairman of the Pew Commission on Children in Foster Care. Mr. Frenzel has been a Guest Scholar since 1991 at the Brookings Institution in Washington, D.C. For twenty years he represented Minnesota in the U.S. House of Representatives, where he was the Ranking Minority Member on the House Budget Committee. He was also a member of the House Ways and Means Committee and its Trade Subcommittee. In 2001, President Bush appointed him to the Social Security Commission, and in 2002, to the Advisory Committee on Trade Policy and Negotiations, which he chairs. He is also the Vice Chairman of the Eurasia Foundation, Chairman of the Japan-America Society of Washington, Chairman of the U.S. Steering Committee of the Transatlantic Policy Network and a board member of Northstar Education Finance, Sit Mutual Funds and other organizations.

THE HONORABLE WILLIAM H. GRAY, III, VICE CHAIRMAN

President and CEO, The College Fund/UNCF
Fairfax, Virginia

William H. Gray, III is Vice Chairman of the Pew Commission on Children in Foster Care. He has served as president and chief executive officer of the United Negro College Fund since September, 1991. As head of the UNCF, Mr. Gray has led the organization to new fundraising records, while cutting costs and expanding programs and services. Prior to his tenure at the UNCF, Gray served in the U.S. House of Representatives, where he chaired the House Budget Committee and served as Majority Whip. He was the highest-ranking African American ever to serve in Congress. Additionally, Mr. Gray served as special advisor to President Clinton on Haiti in 1994. Among the awards and distinctions he has received are the Medal of Honor from Haitian President Jean-Bertrand Aristide and the Franklin Delano Roosevelt Freedom of Worship Medal.

POLLY ARANGO

Founder, Family Voices
Algodones, New Mexico

Polly Arango is an adoptive parent and an advocate for children with special health care needs. She co-founded Family Voices, a national grassroots network working to improve health care for children with special health needs. Currently, Mrs. Arango continues her work as writer, speaker, and advocate for children. She is a member of the U.S. Department of Health and Human Services Secretary's Advisory Committee on Infant Mortality, the Human Condition Jury for the Heinz Family Foundation Awards, and the Board of Directors of the National Initiative for Children's Healthcare Quality/NICHQ. She has served as a member of the National Commission on Childhood Disability/Supplemental Security Income. Mrs. Arango also helped establish the New Mexico Citizens' Review Board for foster care and served as a member.

WILLIAM C. BELL

Commissioner, New York City Administration for Children's Services

New York, New York

William C. Bell was appointed Commissioner of New York City's Administration for Children's Services by Mayor Michael R. Bloomberg in December 2001. The agency is responsible for child protection, foster care, adoption, and child care services. He has over 27 years of experience in the human services field, and he has worked for a variety of private and public agencies in New York City. Mr. Bell is a member of the Advisory Board of the National Resource Center on Child Maltreatment and serves on the Board of Directors of the Council on Social Work Education. He is also on the Executive Committee of the National Association of Public Child Welfare Administrators.

THE HONORABLE MAURA CORRIGAN

Chief Justice, Michigan Supreme Court

Detroit, Michigan

Maura Corrigan is Chief Justice of the Michigan Supreme Court. She was appointed to the Michigan Court of Appeals in 1992 and became Chief Judge of that court in 1997. In 1998, she was elected to the Michigan Supreme Court for an eight-year term, then elected Chief Justice by her colleagues in 2001. In January 2003, she was elected by her colleagues to a second two-year term as Chief Justice. She chairs the Conference of Chief Justices Problem Solving Courts committee, served as a member of the Attorney Advisory Committee of the United States Court of Appeals, and has served on the executive board of the Michigan Judges Association. Chief Justice Corrigan won the U.S. Department of Health and Human Services Award for significant improvements to Michigan's Child Support Enforcement Program.

GLENN DeMOTS

President, Bethany Christian Services

Grand Rapids, Michigan

Glenn DeMots is the President and Chief Executive Officer of Bethany Christian Services, a non-profit, social services agency based in Grand Rapids, Michigan. Bethany provides services to children and families in 75 locations in 32 states and 16 other countries. Services include birthparent counseling, domestic and international adoption services, foster care, family and marriage counseling, and refugee resettlement. Prior to being named CEO, Mr. DeMots worked in Bethany's foster care and family counseling programs.

HELEN JONES-KELLEY, ESQ.

Executive Director, Montgomery County, Ohio Children Services

Dayton, Ohio

Helen Jones-Kelley, Esq., was appointed Executive Director of Montgomery County, Ohio Children Services in 1995, where she oversees public child protection programs. Prior to that position, she served as a referee (magistrate) and Assistant Legal Director for Montgomery County Juvenile Court. She is a past president of the board of the National CASA Association and serves on the Executive Advisory Council for the Child Welfare League of America. She also served on the Dave Thomas National Center on Adoption Law. Ohio Supreme Court Justice Tom Moyer appointed her to co-chair the Ohio Advisory Council on Children, Families and the Courts. Mrs. Jones-Kelley was also a foster parent.

THE HONORABLE PATRICIA MACIAS

Judge, 388th Judicial District

El Paso, Texas

Judge Patricia A. Macías is Presiding Judge of the 388th Family District Court in El Paso, TX. During her nine-year tenure on the bench, she has served as Associate Judge of the Children’s Court, designated as a model court by the National Council of Juvenile and Family Court Judges. Her current assignment includes high conflict custody and domestic violence cases. In this capacity, Macias introduced and implemented the Unified Family Court concept for all El Paso Family Courts. Judge Macias is a member of the Board Trustees of the National Council of Juvenile and Family Court Judges, and serves on the Texas Supreme Court Task Forces on Foster Care and Protective Orders. In 2003, Judge Macias was inducted into the El Paso Hall of Fame for her Outstanding Public Service.

THE HONORABLE ANGELA MONSON

Assistant Majority Leader, Oklahoma Senate

Oklahoma City, Oklahoma

Senator Angela Monson is the Assistant Majority Leader of the Oklahoma Senate, where she previously chaired the Finance Committee. Prior to being elected to the Senate, she served in the Oklahoma House of Representatives for three years. Senator Monson was the Executive Director of the Oklahoma Health Project before her election to public office. Senator Monson is the immediate past President of the National Conference of State Legislatures and serves on the Executive Committee of the National Black Caucus of State Legislatures. She is raising her late sister’s two children.

JOY D. OSOFSKY, Ph.D.

Professor of Pediatrics, Psychiatry, and Public Health, Louisiana State University Health Sciences Center

New Orleans, Louisiana

Dr. Joy Osofsky is a psychologist and psychoanalyst. She serves on the faculty at Louisiana State University Health Science Center, the University of New Orleans, and the New Orleans Psychoanalytic Institute. She is also President of Zero to Three: National Center for Infants, Toddlers, and Families. Her research has been published in numerous journals, including *The Future of Children*, *Infant Mental Health*, *American Psychologist*, and *International Journal of Psychoanalysis*. In 2002, she co-authored a technical assistance brief, "Questions Every Judge and Lawyer Should Ask About Infants and Toddlers in the Child Welfare System." Since 1997, she has consulted with Judge Cindy Lederman, Administrative Judge of the Juvenile Court in Miami/Dade County to develop and evaluate programs to benefit high-risk young children and families in court.

CRISTINA SILVA

Student, New York University

Miami, Florida

Cristina Silva is a junior at New York University pursuing a B.A. in Journalism and Politics. Her volunteer work with various child welfare agencies has earned her several service awards, including the Miami Herald/Knight Ridder Award for Journalism and the Hispanic Heritage Regional Award in English. Ms. Silva spent time as a child and adolescent in Florida's foster care system. She currently participates in the Florida Department of Children and Families' Independent Living Program. Ms. Silva plans to pursue a career in writing and politics.

CAROL WILSON SPIGNER, D.S.W.

Kenneth L.M. Pray Distinguished Professor, University of Pennsylvania School of Social Work

Philadelphia, Pennsylvania

Dr. Carol Wilson Spigner (aka Williams) is the Kenneth L.M. Pray Distinguished Professor at the University of Pennsylvania School of Social Work. From 1994 to 1999, she was Associate Commissioner of the Children's Bureau of the U.S. Department of Health and Human Services, where she was responsible for the administration of federal child welfare programs. She has been a senior associate at the Center for the Study of Social Policy and a professor at the University of North Carolina at Chapel Hill (where she directed the National Child Welfare Leadership Center) and the University of California, Los Angeles. She began her career working for the Los Angeles County Departments of Adoption and Probation.

GARY STANGLER

Executive Director, Jim Casey Youth Opportunities Initiative

St. Louis, Missouri

Gary Stangler is the Executive Director of the Jim Casey Youth Opportunities Initiative. He previously served as the Director of the Missouri Department of Social Services under both a Republican and Democratic Governor (Governors John Ashcroft and Mel Carnahan, respectively) and as Director of Policy for the Center for Family and Policy Research at the University of Missouri-Columbia. Mr. Stangler is affiliated with many state, national and international child welfare organizations, including the American Public Human Services Association (APHSA) and the International Initiative for Children, Youth, and Families.

THE HONORABLE WILLIAM A. THORNE JR.

Judge, Utah Court of Appeals

Salt Lake City, Utah

Judge William A. Thorne Jr. is a member of the Utah Court of Appeals. Previously, he served as a state trial judge for 14 years. For 20 years, he served, on a part-time basis, as a tribal court judge in several Western and Midwestern States. He is currently president of the National Indian Justice Center and chairs the Racial and Ethnic Fairness Commission for the State of Utah and the Judicial Council's Technology Committee. Judge Thorne is a member of the Executive Committee for the National Court Appointed Special Advocates (CASA) and a member of the board of directors for the North American Council of Adoptable Children (NACAC) and the Evan B Donaldson Adoption Institute. Judge Thorne is a Pomo Indian.

WILLIAM C. VICKREY

Administrative Director of the Courts, California Administrative Office of the Courts
San Francisco, California

William C. Vickrey is the Administrative Director of the Judicial Council of California's Administrative Office of the Courts. Previously, he was the State Court Administrator for the Utah Administrative Office of the Courts; the Executive Director for the Utah Department of Corrections; and Director for the Utah State Division of Youth Corrections. He has served as staff to the Governor's Judicial Article Task Force which established the Utah Court of Appeals and other judiciary reforms. Mr. Vickrey served as President of the Conference of State Court Administrators in 1998-1999. He was the 1995 recipient of the Warren E. Burger Award, one of the highest honors from the National Center for State Courts.

CLARICE DIBBLE WALKER

Associate Professor Emeritus, Howard University
Silver Spring, Maryland

Clarice Dibble Walker is Associate Professor Emeritus at Howard University. She has been on the faculty at Howard for much of her career. She also served as Commissioner of Social Services for the District of Columbia during the administration of Mayor Sharon Pratt Kelly. Walker is president of the board of Safe Shores-The D.C. Children's Advocacy Center, and is the former chair of the board of The National Black Child Development Institute. She also serves on a number of other boards, including The Freddie Mac Foundation, D.C. Action for Children, and Prevent Child Abuse America, and is a trustee of Sarah Lawrence College.

Appendix D

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