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## Michigan Court Improvement Program Reassessment

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# **MICHIGAN COURT IMPROVEMENT PROGRAM REASSESSMENT**

August 2005

*submitted to*

**MICHIGAN SUPREME COURT  
STATE COURT ADMINISTRATIVE OFFICE**

*prepared by*

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# INTRODUCTION

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## CHAPTER 1

### CHAPTER 1: INTRODUCTION

#### **Background: What is the Court Improvement Program (CIP)?**

In response to a dramatic increase in child abuse and neglect cases and the expanding role of courts in assuring stable, permanent homes for children in foster care, the State Court Improvement Program (CIP) was created by Congress in 1993.<sup>1</sup> CIP provided grants to state courts to help them improve the quality of their litigation involving abused and neglected children as well as children in foster care. The grants directed states to conduct assessments of their foster care and adoption laws and judicial processes and then to develop and implement plans to improve litigation in these cases.

CIP was enacted because courts have been under intensive pressures in recent years affecting their handling of child abuse and neglect cases. Federal and state laws have imposed new duties on the courts, greatly increasing the complexity of cases. For example, in each case, courts must address a far wider range of issues than in earlier years. There are an increasing number of hearings per case. More individuals are involved in the litigation. This has placed greater demands not only on judges, but also on court staff, attorneys, and agencies in their dealings with the courts.

In most states, those who wielded the power within the state judiciary have still not fully understood the changing needs of the juvenile courts. This lack of understanding has kept state court systems from providing juvenile courts the full resources, training, and oversight needed to cope with the new demands placed upon the juvenile courts and to allow timely, full, and fair proceedings for children and their families.

For this reason, the federal grants are channeled to the highest state courts, those that have the responsibility for administering state court systems. It is hoped that as the high courts (and their administrative offices) are made increasingly aware of the situation and needs of the juvenile courts, priorities will change and improvements will be made.

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<sup>1</sup> CIP was enacted as part of the Omnibus Budget Reconciliation Act (OBRA) of 1993, Public Law 103-66. OBRA designated \$5 million in fiscal year 1995 and \$10 million in each of FYs 1996 through 1998 for grants to state court systems. All 50 states, the District of Columbia, and Puerto Rico are recipients of funding under the federal Court Improvement Program (CIP), which is administered by the Children's Bureau of the US Department of Health and Human Services.

According to federal law and policy directives, the CIP assessments were to identify federal and state laws that affect judges' decisions concerning children in foster care -- decisions whether to place or continue children in foster care, whether to terminate parental rights, and whether to secure permanent placements for foster children.

In addition to identifying the pertinent state laws and evaluating their sufficiency, the assessment was supposed to evaluate the performance of the courts in carrying out those laws and in conducting timely, fair, and decisive hearings. For example, the assessments were to address:

- How consistently state courts adhered to federal and state requirements concerning foster children;
- The seriousness of delays in abuse and neglect trials, court reviews, and termination of parental rights proceedings;
- Whether enough court time was made available to allow judges to implement federal requirements fully (e.g., time for the judge to carefully determine whether agencies have made reasonable efforts and time for the parties to make arguments and offer evidence concerning reasonable efforts);
- Whether parties are introducing evidence and calling witnesses, when appropriate, concerning judicial determinations of reasonable efforts and during judicial foster care review hearings -- and, if not, why not;
- Whether judges' caseloads are preventing them from fulfilling federal and state requirements in a timely, thorough, and fair manner; and
- Whether parents and children are receiving adequate legal representation and, if not, why not.

The Adoption and Safe Families Act of 1997 (ASFA), Public Law 105-89, reauthorized the Court Improvement Program through 2001, and the Promoting Safe and Stable Families Amendments of 2001, Public Law 107-133, reauthorized the Court Improvement Program through FY 2006. The 2001 amendments also expanded the scope of the program to: (1) include improvements that the highest courts deem necessary to provide for the safety, well-being, and permanence of children in foster care, as set forth in ASFA; and (2) implement a corrective action plan, as necessary, in response to findings identified in a Child and Family Services Review (CFSR) of the State's child welfare system. The amendments also continued the mandatory funding level of \$10 million for CIP while authorizing new discretionary funding for FYs 2002 through 2006. The additional discretionary funds have added several additional million per year to CIP.

In 2003 the federal government issues Program Instruction ACYF-CB-PI-03-04 which, among other things, required each state CIP project to conduct a reassessment of its laws and performance and to adopt a strategic plan to further improve its handling of litigation involving child abuse and neglect and children in foster care.

## Michigan CIP: How has Michigan used its CIP funds?

After receiving its first CIP funds, the Michigan State Court Administrative Office (SCAO) commissioned a study of its state's courts, as required by federal law. The study was conducted by the American Bar Association, in partnership with the National Center for State Courts. A state-wide judges' survey was conducted. Evaluators visited three courts, where they interviewed jurists and attorneys, reviewed court files, and observed court hearings and Foster Care Review Board review hearings. The report resulting from that study (the original CIP assessment)<sup>2</sup> was released in 1997. It contained 57 recommendations (see Appendix A for a listing of the 1997 CIP Assessment Recommendations) addressing a wide range of topics, such as the timeliness and quality of hearings, attorney and judicial caseloads, quality of legal representation, treatment of parties and witnesses, training, adequacy of court facilities, and use of computer technology and management information systems.

Following the original Michigan CIP assessment, a CIP Advisory Committee prioritized the recommendations from the assessment and focused its efforts over the next several years on the following projects and initiatives:

*Permanency Planning Mediation Project*—CIP funds supported mediation pilot sites and has supported ongoing training for coordinators and mediators in expanded sites. In 2004, an evaluation of the project was completed with CIP funds.

*Absent Parents Protocol*—the Children's Charter of Michigan developed a protocol and training module for court and child welfare agency staff on locating and serving process on absent parents in child protection proceedings. Failure to locate and serve primarily absent fathers was determined to be a cause of serious delay in reaching permanency in these cases.

*Evaluation of the implementation of the LGAL protocol*—this assessment was conducted by the ABA's Center on Children and the Law, and a report was issued in 2002. Michigan CIP provided a 20% match, which included cash and CIP staff time for coordinating and supporting the evaluation.

*Permanency Planning Indicator Report*—Michigan CIP has engaged in ongoing efforts, including a pilot project, to develop a data collection process that will enable courts to comply with legislative requirements to report on their compliance with statutory time frames and their progress in achieving permanency for children. CIP has worked with the Judicial Information System Division of the State Court Administrative Office to develop specifications and software.

*Child Protective Proceeding Judicial Benchbook*—Michigan CIP worked with the Michigan Judicial Institute to complete the benchbook, which comprehensively addresses

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<sup>2</sup> The original report can be found at the Michigan Supreme Court website at <http://courts.michigan.gov/scao/resources/publications/reports/cipaba.pdf>

child protective proceedings. CIP funds were used to research, prepare, and distribute the benchbook.

*Guidelines for Achieving Permanency in Child Protection Proceedings*—this manual is a companion to the judicial benchbook and was developed for practitioners such as attorneys (prosecutors, LGALs, and parents attorneys) and caseworkers.

*Adoption Benchbook*—this publication is, in part, the result of collaborative discussions convened and facilitated by Michigan CIP regarding systemic barriers to timely adoption. It is designed for judges, referees, and court support staff who process adoptions.

*Training*—Michigan CIP, in collaboration with the Michigan Judicial Institute, Child Welfare Training Institute, Michigan Department of Human Services (DHS), and others has delivered training to jurists, court staff, attorneys, and DHS personnel on laws, policies, practices, and subject areas relevant to child protective proceedings.

To continue receiving CIP funds, the Michigan Court Improvement Program was required to conduct a reassessment of its laws and performance and to adopt a strategic plan to further improve its handling of child protection cases. The Muskie School of Public Service, Cutler Institute for Child and Family Policy, and the American Bar Association’s Center for Children and the Law contracted with Michigan’s State Court Administrative Office to conduct the Reassessment. This report represents the results of the reassessment study.<sup>3</sup>

## **Methodology: How was the Reassessment conducted?**

The Reassessment followed a research design similar to that used for the original assessment.<sup>4</sup> The reassessment process began in December 2003, with a meeting between the evaluation team and the CIP Advisory Committee, including, among others, the State Court Administrator, the Director of Child Welfare Services, the director of the Child Advocacy Law Clinic, a judge, and representatives of the Michigan Judicial Institute, CASA program, and Michigan’s Foster Care Review Board Program (FCRBP). The committee identified the areas and issues to be examined (in addition to those require by the federal program instruction), chose the study site courts, and agreed on the particular individuals and constituencies to be interviewed.

Evaluators used a mixed methods approach to the reassessment, because of the many participants involved in child protection proceedings (e.g., judges, court personnel, attorneys, GALs and CASAs, DHS staff, parents and caregivers, foster and adoptive parents, and youth) and their varying issues and interests, and also because of the many issues to be addressed in the reassessment.

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<sup>3</sup> In addition to this full report, a report summary is also available.

<sup>4</sup> The two primary differences are that (a) the original evaluators visited three courts: Wayne, Jackson, and Roscommon and (b) they did not have access to DHS case-level data for the courts visited.

Both quantitative (from case file reviews, a statewide jurist survey, and state and county data and statistical reports) and qualitative data (from the jurist survey, interviews, and focus groups) were collected. Triangulation, that is, using more than one method to collect similar data and asking for similar information at different sites and from different participants, was also employed to insure the validity of findings.

To the extent possible, the instruments used in the reassessment were adapted from those used in the original assessment, to enable evaluators to compare results of the original assessment with findings of the reassessment.

### ***Specific Methodologies***

The following research methods were used to collect the data contained in this report:

*Legal research:* This was necessary to establish a foundation for understanding the legal and procedural background for the handling of child abuse and neglect cases in the State of Michigan and to determine if the state was in compliance with ASFA and other federal requirements, as well as Michigan's state requirements. The following were reviewed:

1. Adoption and Safe Families Act, and subsequent amendments;
2. Other federal legislation addressing child abuse and neglect and related matters, such as ICWA and CAPTA;
3. Michigan statutes, administrative procedures, and court rules relating to child abuse and neglect cases;
4. Michigan case law addressing Michigan's statutes, rules, and procedures as they relate to child abuse and neglect;
5. Family Court Plans, as approved by the Michigan Supreme Court, for the six study sites.
6. Journal articles relating to Michigan child abuse and neglect law and practice;
7. Guidelines and standards of practice for judges and attorneys in child abuse and neglect cases.<sup>5</sup>

*Secondary research:* Existing research and findings that related to the issues being studied in the reassessment were reviewed by evaluators. Those materials included the following:

- Evaluation of the Permanency Planning Mediation Project
- ABA Evaluation of the implementation of the Michigan lawyer-GAL statute
- 2002 Child and Family Services Review (conducted by ACS)
- 2004 Program Improvement Plan (developed by DHS, in response to the CFSR)

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<sup>5</sup> Some examples are *Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases* (NCJFCJ); *Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases* (ABA); *Guidelines to Permanency in Child Protection Proceedings* (Children's Charter of Michigan). See Bibliography for a complete list of references.

*Case file review at six study sites:* To determine whether the courts studied were in compliance with the timeliness mandates set out in ASFA and in Michigan statutes, rules and procedures, and with other federal laws such as ICWA and CAPTA, evaluators recorded dates for the following key events during their review of court files at the six study sites (Jackson, Kent, Macomb, Marquette, Roscommon, and Wayne Counties):

- Removal from home;
- Preliminary hearing;
- Adjudication;
- Disposition;
- Review hearings;
- Termination of parental rights;
- Final adoption.

Evaluators also reviewed files for qualitative purposes: to better understand the stories of the children and families involved in the cases, to review the case plans and types of notice sent to parents, and other elements of the cases. File reviews enabled evaluators to see up close some of the things that were reported in the interviews and focus groups. The information gleaned from the files informed the interviews at the sites, leading to additional questions. Likewise, information obtained in interviews enabled evaluators to better understand what was reflected in the case files.

*Review of case level and reported statistical data from DHS:* Data maintained in the DHS database and data reported by DHS on the county and state level, including AFCARS data on average times to adoption, were used in the analysis of timeliness of important case events.

*Interviews with judges, court staff, and other stakeholders at each of the six study sites:* Evaluators conducted interviews to determine the effect of particular mandates, practices, and procedures on compliance and on the safety and well-being of children; the effect of caseload size and resource limitations on judicial performance; the extent to which parties present witnesses, evidence and legal arguments; the quality and adequacy of information available to courts in child welfare cases; the extent to which mandates impose administrative burdens on the courts; the quality of representation of parties; the treatment of participants in the system; and the effectiveness of CIP initiatives.

*Statewide surveys of Chief Judges, referees, court administrators, and other stakeholders:* Areas addressed in the self-administered survey were experience and training of jurists, caseload, case assignment and scheduling, length and quality of hearings, delays, services, reasonable efforts findings, representation of parties, ICWA, Foster Care Review Boards. (See Appendix B, Courts Completing Jurist Survey.)

*Focus groups of stakeholders, primarily in each of the six study sites:* These assisted evaluators in determining, among other things, the quality of representation of parties, the

treatment of parties, and other participants by the courts, and the impact of CIP activities. Focus groups were conducted with attorneys (including L-GALs), CASAs, parents (including birth, foster, and pre-adoptive), DHS managers and staff, and Foster Care Review Board members at the six court locations.

## ***Description of Respondents and Data Collected***

### Qualitative: Interview and Focus Groups

Below is a table reflecting the interviews and focus groups conducted by evaluators, including the type of respondent, numbers, and locations:

<b>Table 1</b>						
<b>MICHIGAN CIP REASSESSMENT: INTERVIEWS and FOCUS GROUPS</b>						
<b>Court</b>	<b>Jackson</b>	<b>Kent</b>	<b>Macomb</b>	<b>Marquette</b>	<b>Roscommon</b>	<b>Wayne</b>
<b><i>Interviews</i></b>						
Court Administrator	Yes	Yes	Yes	Yes	Yes	Yes
Judges	2	3	1	1	1	2
Referees	1	3	4	NA	NA	7
Attorneys	2	3	6	8	1	2
Prosecutors	1	1	2	1	1	2
<b><i>Focus Groups</i></b>						
FIA Directors/Managers	Yes (5)	Yes (5)	Yes (6)	Yes (1)	Yes (2)	No
FIA Caseworkers and Supervisors	Yes (5)	Yes (20-25)	Yes (12-15)	Yes (6)	Yes (5)	Yes (15-20)
POS Agency Managers and Caseworkers	Yes (5)	Yes (4)	Yes (5)	No	No	Yes (5)
Foster Care Review Board	Yes	Yes	Yes	Yes	Yes	No
Parents	Yes (7)	Yes (15)	Yes (5)	No	Yes (1)	Yes (8-10)
Youth	No	No	Yes (12)	No	No	Yes (5)
Foster parents			Yes (3)	Yes (1)	Yes (1)	
Court Appointed Special Advocates (CASAs)	NA	Yes (1)	NA	NA	NA	Yes (5)
<b><i>Misc.</i></b>						
Home educator				Yes (1)		
CASA statewide association of coordinators	<i>CASA managers (14) representing Ogama, Benzie, Saginaw, Muskegon, Monroe, Oakland, Kent, Wayne, and Kalamazoo Counties</i>					

### Quantitative Data: from DHS

Evaluators worked with administrators and analysts at DHS to obtain de-identified case level data from the DHS database system referred to as SWSS CANS (for protective services) and FAJ legal module (for foster care). Data is entered into this database by protective and foster care caseworkers on all children in DHS custody. Evaluators requested only data elements regarding the following key case events to enable analysis of timeliness: preliminary hearing, adjudication, disposition, permanency planning, termination of parental rights, adoption, date case closed, and child status at close.

Because more DHS data was available for Kent and Wayne counties than evaluators were able to collect during their review of court files, that data was used for the analyses of time between key case events for those two courts. For the remaining counties, evaluators collected more data from the court file reviews than was provided by DHS, so the court file review data was used to analyze timeliness.

Evaluators were advised to only use DHS data entered as of February 2002, since the database was put in place in 2001 and the agency was more confident of the data's accuracy as of that date in 2002. The primary difference between court file review data and the DHS data is that the DHS entries were by *child* rather than by *parent*. This means that the numbers presented in the analyses for Kent and Wayne may include multiple children from the same family.

*Dataset One from DHS:* This consisted of cases (i.e., children) in which there was a preliminary hearing sometime in 2002. For Wayne County, there were 1,068 cases available for analysis; for Kent County, there were 88.

*Dataset Two from DHS:* This consisted of all cases (i.e., children) opened in 2004 and still open as of December 7 of 2004. (See comparisons between 2002 and 2004 cases for Kent and Wayne in Chapter 3 on Timeliness.) For Wayne County, there were 1,458 cases available for analysis; for Kent County there were 294.

### Quantitative Data: from Court File Review

Court files were selected for review at each of the six courts visited. The numbers of cases reviewed at each of the six study sites depended upon a number of factors: the number of recent child protective cases in the court; the ease with which evaluators were able to find file documents reflecting the significant case events, and the amount of time available to conduct file review.

For the most part the cases reviewed were representative of overall cases based on dispositions for cases closed in 2003—e.g., dismissed, child returned home, parental rights terminated. Also, the great majority of cases chosen for review were opened no later than 2000 or 2001. A small number of cases opened earlier than 2000 that were still

open at the time of the site visits were also reviewed.<sup>6</sup> Evaluators randomly selected one child from each file and recorded data only on that child. This means there were no multiple children from the same families in the timeliness analyses for Jackson, Macomb, Marquette, and Roscommon.

#### Quantitative and Qualitative Data: from Jurist Survey

All Michigan jurists presiding over child protective proceedings in the spring or summer of 2004 were asked to respond to a self-administered survey covering the subjects described above. Fifty-four (54) of Michigan's 83 counties, and 46 of its 56 judicial circuits, were represented in the 137 surveys returned and completed by jurists. After screening, 125 of those were chosen for use in the analysis for this report.<sup>7</sup> (See C for listing of courts and counties that completed the survey.)

The analysis included comparative breakdowns of the responses by court size (small=up to 200 child protective filings per year; medium=200-800 filings per year; large=over 800 filings per year (Wayne County only)); by judge and referee; and by whether the jurist was full-time v. part-time on the juvenile docket. Where there were significant differences in the responses offered by these groupings, they were included in the report.

### **Summary of Findings and Recommendations: What did evaluators find and what do they recommend?**

Evaluators met with dozens of professions engaged in child protection proceedings who were committed to and often passionate about, their work. Many of the judges and referees interviewed have substantial experience presiding over child protection proceedings, have had previous, related experience in the field and have exhibited leadership and dedication to improving the lives of children and families. These individuals were united in a sincere desire to help children find safe, healthy, and permanent homes, either with new families or by returning to families that were safer and healthier than they were prior to court intervention.

Evaluators also met with individuals who were overwhelmed by inefficiencies in the system:

- Caseworkers frustrated by their experiences at court, such as going into hearings with no representation and waiting weeks for court orders before they could obtain services for parents;
- Jurists frustrated by the inexperience of caseworkers and by the inadequacies of a system that doomed certain categories of parents to losing their children; and

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<sup>6</sup> Of the 128 court files reviewed in the four courts for which this data was used to analyze timeliness, ten were opened prior to 2000: Jackson—1 out of 41; Macomb—4 out of 47; Marquette—2 out of 24; and Roscommon—3 out of 16.

<sup>7</sup> Surveys from jurists who spend an insignificant percentage of their time on child protective cases or who were not currently presiding over these proceedings were eliminated.

- ❑ Parents, who did not feel heard, did not understand what was expected of them, and did not feel that their attorneys were speaking for them at hearings.

Analysis of the quantitative data revealed some problems with regard to the timeliness of significant case events, but most of the courts visited are in substantial compliance, or are improving. Where delays are occurring, and where permanency for children is affected, however, evaluators believe there are certain important improvements that might help reduce such delays.

Similarly, while Michigan courts compare favorably with many others in terms of such issues as the completeness and depth of their hearings, legal representation, and court organization and management, evaluators identified many areas that can be improved. We believe that Michigan courts have much impressive strength in this area and, with further specific reforms; the state can be a national leader.

Following are some recommendations<sup>8</sup> that evaluators believe, if followed, could significantly improve the overall quality of child protection proceedings and shorten the time to permanency. They are directed to the staff at SCAO who, in the opinion of the evaluators, should do the following:

- ❑ Develop methods for improved judicial caseload analysis, specifically for child protective proceedings, to take into account the judicial time needed to fulfill the letter and spirit of the law and to implement nationally accepted best practices. This analysis should also determine typical appropriate lengths of non-contested hearings in child protective proceedings.
- ❑ Work collaboratively with DHS toward the goal of having permanent, specialized prosecutors/attorneys general assigned to represent DHS at all stages of child protection proceedings, beginning with the filing of the removal petition. Revise the Michigan statute regarding representation of DHS to read that the prosecuting attorney or assistant attorney general is to act as the DHS (or its agent's) attorney in these proceedings.
- ❑ Strengthen and enforce statutory requirements for mandatory training for the judiciary and for attorneys (including those representing parents, children, and DHS or its agents) on child protection statutes, court rules and procedures, case law, and on other child welfare related issues.
- ❑ Establish standards for court information systems that will allow courts to collect and report on compliance with all deadlines in child protective proceedings, as required by the state statute.
- ❑ Encourage collaborative relationships between DHS and the courts on a state and county level that would result in the sharing and reviewing of data regarding timeliness in child protective proceedings and in working toward shared solutions to delays in reaching permanency.

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<sup>8</sup> A complete listing of the Recommendations contained in this report can be found on page 187. Recommendations relating to the chapter subjects can be found at the end of each chapter.

- ❑ Consider ways to assign judges with a specific interest and/or background in child welfare law to specialized, longer-term assignments to preside over child protection proceedings.
- ❑ Develop statewide standards (or issue an administrative order) regarding the scheduling of types of hearings in child protective proceedings, specifying which hearings should/must be set for a time certain and which may be block set, as well as the length of time needed for each type of hearing.
- ❑ Establish a mechanism to ensure accountability of attorneys representing parents and children. This should include the ability to enforce standards or requirements regarding minimum qualifications, mandatory training, and ongoing supervision. In addition, there should be a mechanism for parents and children to raise concerns about the quality of representation they are receiving.
- ❑ Advocate for legislation to eliminate, as a permanency option, any decision to continue a child's placement indefinitely in foster care. Michigan law should substitute for the term "long-term foster care" the term "another planned permanent living arrangement" and define the latter term to include only long term arrangements in which the goal is to establish and secure a permanent relationship between the child and an adult.

# COURT ORGANIZATION AND MANAGEMENT

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## CHAPTER 2

### CHAPTER 2: COURT ORGANIZATION AND MANAGEMENT

#### INTRODUCTION

Overall, Michigan courts are better organized to handle child protective proceedings than those of most other states. Both the Michigan court system and the Michigan legislature recognize the need for experience and sophistication in the handling of these cases. Michigan Courts have worked hard to improve their handling of child protective proceedings since the issuance of the original 1997 SCAO *Assessment of Probate Courts' Handling of Child Abuse and Neglect Cases*.

Yet, many further important organizational changes are needed to improve child protective proceedings. Many of the recommendations set forth in the 1997 assessment have not been implemented. And the transfer of child protective proceedings to the family divisions of circuit courts has not always improved the handling of child protective proceedings.

#### ***Organization of Courts Hearing Child Protective Proceedings***

Child protective proceedings in Michigan are heard in the circuit courts, which are the trial courts of general jurisdiction. The state is divided into judicial circuits, each of which includes one or more counties. The family division of the circuit court has exclusive jurisdiction over all family matters, including, among others, divorce, custody, support, paternity, adoptions, juvenile delinquency, and child protective proceedings. The family division also has ancillary jurisdiction over cases involving guardianships, and other probate matters.

The probate court formerly had exclusive jurisdiction in such matters as juvenile delinquency, neglect, abuse, and adoption proceedings, including at the time of the original assessment in 1997. Since then, the Legislature created the family division in the circuit court and moved delinquency cases, child protective proceedings, adoption proceedings, and other family matters from the probate court to the circuit court.

## ***Special Characteristics of Child Protective Proceedings***

Underlying any discussion of court organization as it applies to child protective proceedings should be an understanding of the characteristics of this special kind of litigation. Contrary to persistent judicial stereotypes, child protective litigation is a highly specialized and challenging area of judicial practice. Child maltreatment cases are to family law as homicide cases are to criminal law. That is, the stakes for the parties are uniquely high in child protective cases, the law and procedures are particularly complex, the facts are intricate, and competent practice requires intensive training and experience.

Courts must be specially organized specifically to meet the unique challenges of child protective litigation. Because of the importance of this central principle to this chapter, the following section explains some of the specific challenges of these cases. For a far more detailed and thorough explanation of the special requirements of these cases, including illustrative examples, see *Child Protection Cases in a Unified Family Court*.<sup>9</sup>

**Factual complexity of child protective proceedings.** For a variety of reasons, most child protective cases present complex sets of facts. First, the pathologies of parents and children in child protective proceedings are typically far more serious than in other types of family court cases. Only the most severe and difficult to treat child protective proceedings are brought to court in most jurisdictions. Less than one percent of the children in the United States are the subject of on-going child protective hearings.

Common characteristics of abusive and neglectful parents include alcohol and drug dependency, emotional disorders, developmental disabilities, character disorders, lack of attachment with their children, and severe deficiencies in parenting skills and knowledge. Judges need to learn enough about common parental pathologies, both to make intelligent decisions concerning whether to authorize rehabilitative services for parents and to decide whether and when to restrict and terminate their rights.

Abused and neglected children also suffer disproportionately from emotional and other disorders. A high proportion of children in residential mental health treatment facilities are placed there by child welfare agencies. Treatment plans for parents not only must address the parents' own pathologies, but also must prepare the parents to meet the special needs of the specific child. Family court judges do not automatically gain expertise concerning the severe family problems and pathologies common in child protective cases.

A second reason why the facts of child protective cases are complex is that, in making decisions, the judge must take into account a wide array of treatment and services that the responsible public agency provides or arranges. Because of the disparate needs of parents and children coming before the court, there are many possible treatment options. Because the appropriateness and efficacy of treatment is relevant at many stages of child protective proceedings, judges must learn basic information about key treatment approaches. For every type of service frequently provided in child protective cases, the judge needs to learn some of the service provider's special vocabulary and something

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<sup>9</sup>32 Family Law Quarterly 147 (1998).

about the provider's therapeutic methods. This knowledge permits the judge to grasp the testimony, ask questions, and critically consider the testimony.

Treatment and services are a core issue in child protective cases because both state and federal law require judges to address treatment issues in a number of different contexts. Among other things, judges must consider treatment alternatives to removing children from their homes, must evaluate the progress and efficacy of treatment during review hearings (to monitor case progress), must determine whether agencies are making "reasonable efforts" to preserve families (as required by state and federal law), and must determine the likely future success of treatment in deciding whether to terminate parental rights.

These cases typically present parents and children with complex pathologies and a variety of treatment options and services the court must consider; therefore, individual decisions are often highly intricate. For example, in making a key decision in a case, the judge often must simultaneously consider the following factors: the child's special needs, personality, and level of development; the parents' own capacities and condition; the parents' ability both to care for a child and to meet their child's special needs; and the parents' prospects for improvement, given the types of treatment possible, the providers, and the availability of services in the future.

Inexperienced or ill trained judges are less able to be active in their oversight of these cases. Such judges are less capable of effectively challenging agency caseworkers by asking penetrating questions and setting demanding expectations when caseworkers follow the path of least resistance. The law, however, requires judges to take an active role in these cases, such as through meaningful case progress reviews, as required by law, and reviewing agency efforts to preserve families, as specified in state and federal statutes. Judicial passivity (or uninformed assertiveness) causes children to remain too long in foster care or to fail to receive adequate services while in foster care.

Third, child protective cases are factually complex because of the profound interdependency of the judge and child protective agency, i.e., the Department of Human Services (DHS), formerly called the Family Independence Agency (FIA). Judges and DHS are far more interdependent in child protective cases, even in comparison to the interdependency of courts and law enforcement agencies in criminal matters.

There are a number of facets of this interdependency. The law charges courts and DHS to work simultaneously on common timetables. On the one hand, the court depends on the agency to complete its work and to provide information according to certain statutory timetables. On the other hand, the agency depends on the court to hold hearings, to make a sequential set of decisions, and to reach final decisions on each case within common timetables. In short, the agency and court must be able to operate with a reasonable degree of synchronism. They not only operate on mutual statutory schedules for decision-making, but also must apply the same laws and principles in making decisions and carrying out their work.

Because there are challenging judicial and administrative barriers to timely decisions in these cases, both courts and agencies need a sophisticated understanding of the operations of the other. The judge relies on the agency to provide most of the information about the case through its petitions, affidavits, reports, caseworker testimony, and witnesses. Judges need to know what to look for and how to induce the agency to submit informative reports that are provided on time and in helpful formats. Agencies,

by themselves, have difficulty fully understanding what information the court needs and why.

Further, judges need such skills as motivating workers during court hearings, enforcing policies regarding late filing of reports, and dealing with agency supervisors and administrators to correct logistical problems. As judges gain experience, they learn how to secure the cooperation of the child protective agency and to encourage it to fulfill its legal duties. Working with the child protective agency is an art, mixing persuasion and enforcement, an art which judges need to master in order to improve the quality of the litigation.

Besides inadequate reports and testimony, common problems faced by judges in these cases include delayed services, inadequate agency searches for missing parties, failure of agency employees and treatment providers to obey court orders, and frequent absences from court of the most critical witness, i.e., the caseworker who is responsible for the case.

In addition, to be able to determine whether the agency has made reasonable efforts to preserve the family or to finalize a permanent home for the child, as required by law, the judge needs to know what constitutes reasonable expectations of the agency. To know what is reasonable to expect, the judge must gain a certain understanding of the operations of the agency, including worker caseloads, typical skill levels of caseworkers, agency procedures, and key agency policies. It takes time and effort for judges to learn this.

**Legal complexity of child protective cases.** Perhaps even more striking than the factual intricacy of these cases is their legal complexity and distinctiveness. Because of this, some judges do not master the law that applies to child protective cases. (Even the Michigan CPP Benchbook, a tightly written 492-page document, is not long enough to cover many areas of law significant to child protective cases, including many of the particularly relevant federal laws, laws related to interstate placement, laws regarding public benefits, and other related proceedings.)

First, in recent years, due to an emphasis on permanency planning, a sequence of hearings has been added to the court process of child protective proceedings. This has also added to the courts' responsibilities at each hearing by adding more issues and participants. At the same time, legislation and court rules describing this process have rapidly become more elaborate. Federal laws have partly driven these changes, largely through Titles IV-B and IV-E of the Social Security Act and the Child Abuse Prevention and Treatment Act.

Among the many key areas of recent legislative attention have been: (a) laws governing child abuse and neglect reporting, investigation, and emergency removal; (b) laws requiring agency "reasonable efforts" to preserve families (discussed above); (c) redefinitions of the criteria for court intervention in child protective proceedings; (d) laws concerning judicial oversight of case planning, including periodic review of children in foster care; (e) laws and court rules for permanency hearings to bring about earlier final case decisions; (f) grounds and procedures for the termination of parental rights and alternatives to the termination of parental rights, such as special forms of guardianship and adoption; (g) laws concerning rights of foster parents and relatives in child protective proceedings; and (h) adoption and guardianship subsidies. Each of these categories of legal requirements is a complex issue in itself and requires careful study and mastery.

A second area of legal complexity relates to issues of procedural fairness and proof. For example, there are several different burdens of persuasion in different child protective hearings in Michigan.<sup>10</sup> In Michigan, as in other states, the roles of particular parties remain complex and confusing, particularly the rights of parents to affect the care of their children in foster care (e.g., regarding religious preferences, medical care, and education) and the various rights and legal roles of non-custodial parents, putative fathers, foster parents, and other relative caretakers. There are certain not yet fully resolved overtones of criminal law and procedure, such as limited parental rights against self-incrimination in child protective cases (e.g., the rights not to testify or cooperate with rehabilitative services) and the availability of legal remedies when child abuse and neglect investigations are thwarted.

Third, complex laws governing financial assistance to poor parents, foster parents, and adoptive parents are important to child protective cases. Among the programs judges need to understand are Temporary Aid to Needy Families (TANF, typically known as welfare), Supplemental Security Income to the disabled and aged (SSI), Social Security, Medicare, Medicaid, and a variety of special educational benefits for children.

Judges need a basic understanding of these public benefits laws because parents who abuse and neglect their children are disproportionately poor and often are dependent on the state for financial assistance. The financial condition of parents affects whether permanent placement of children is practical for them. Biological parents may, for example, face housing problems, have logistical challenges such as transportation, and may be forced to work long hours, making participation in some services difficult. Failure to provide these services may block or delay family reunification.

Similarly, failure to provide assistance to adoptive parents or guardians sometimes prevents timely permanent out-of-home placement, especially for children with special needs. For example, without adequate adoption financial assistance, adoption may be impractical because of a child's needs for expensive mental health services or physical therapy.

Judges need to know enough about the requirements and legal principles underlying public benefits programs to ask good questions and to ensure the programs are being correctly applied when doing so affects the future upbringing of abused and neglected children.

Fourth, there is an often little understood relationship between child protective and a number of other types of family proceedings. For example, when both a parent and child are victims of domestic violence, separate domestic violence proceedings are sometimes an alternate solution in lieu of child protective proceedings. Sometimes divorce proceedings are an acceptable alternative. In other cases, simultaneous or consolidated proceedings are the best solution, while in still others domestic violence or divorce proceedings may allow a child to exit from foster care.

In addition, depending on the circumstances of each case, adoption, guardianship, custody, or adoption proceedings may provide the best legal option for a child's exit from foster care. In most states, many attorneys and jurists who practice family law don't fully

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<sup>10</sup>Among the burdens of persuasion in child protective proceedings are preponderance of evidence, clear and convincing evidence (for termination of parental rights and certain hearings under the federal Indian Child Welfare Act [ICWA]), and beyond a reasonable doubt (for termination of parental rights in cases governed by ICWA).

grasp the pros and cons of these options specifically for child protective cases, nor the criteria and procedures for putting all of these options into effect for a child in foster care.

Other important issues that often are difficult for jurists in child protective cases are the collection of child support for children in foster care and determinations of paternity. While the usual procedures for establishing paternity and collecting child support in family court are clearly established, they are far less clear in the context of child protective proceedings. Because judges often are unable to efficiently determine child support and paternity in child protective proceedings (also due in part to insufficient times for the hearings), these matters are handled separately. When paternity and child support are determined separately from child protective proceedings, the two can often work at cross-purposes, failing to establish compatible schedules and serving inconsistent goals. For example, a child support order from another judge can affect a parent's ability to continue to care for a child or to arrange for a home to make family reunification possible.

Still another type of related family proceeding involves those governing the interstate transfers of children. Both the Uniform Child Custody Jurisdiction and Enforcement Act and the Interstate Compact for the Placement of Children (and its implementing regulations) establish specific procedures and criteria governing decision-making and the transfer of children across state lines. Both of these involve special complications for children in foster care. In most states, many judges do not have the time or training to master how these laws apply to children in foster care.

Finally, an array of state and federal laws and regulations govern the release and exchange of information regarding children and their families. In child protective cases, judges need to know the most intimate and private details regarding parents and children, and a strong knowledge of these laws is critical to obtaining this information, while protecting the parties' privacy rights. Agencies often fail to collect and present vital information because of legal barriers they face. Judges need to know how to overcome these barriers so they will learn about the diagnoses, treatment, special needs, and history of abused and neglected children and their parents.

There are many separate laws governing disclosure of information in such areas as substance abuse, mental health, education (including separate laws regarding different programs), criminal justice, public housing, domestic violence, child welfare, adoption, public benefits, and many others. Not only are the criteria for disclosure different, depending on the particular laws, but also the procedures for obtaining information are often markedly different.

### ***Critical Court Organization Issues in Child Protective Proceedings***

Court organization affects the quality of child protective proceedings in many ways. Courts that are well organized to handle child protective proceedings create the conditions that make it possible for judges and court personnel to do their best work; improve the skills and capabilities of judges and other court staff; ensure that judges and court staff have the right amounts of time to devote to individual cases; and improve the ways that professionals, witnesses, and abused and neglected children and their families experience the courts. This chapter addresses the following dimensions of court

organization, each of which is critical to the quality and effectiveness of child protective proceedings:

*Judicial caseloads and workloads, including the numbers and types of cases per jurist.* The term “jurist” means an individual who hears court cases, such as a judge or referee. The caseloads and workloads of both jurists and court staff determine whether they have a proper amount of time that allows and encourages competent and efficient work.

*One family, one jurist.* One family, one jurist means that a single jurist hears each case from beginning to end. Having a single jurist throughout a case helps ensure consistency in the judicial decisions in each case, coordination of different legal proceedings affecting the same family, how well jurists get to know their cases, and how families view the jurists.

*Judicial assignments.* How jurists are assigned to child protective proceedings affects the quality of the litigation. Assigning experienced and specialized jurists helps guarantee a high level of judicial competency and skills.

*Roles of referees and judges.* In Michigan, both referees and judges hear child protective proceedings. How duties are divided between them affects both the efficiency and quality of the proceedings.

*Training of jurists.* The quality, consistency, and comprehensiveness of judicial training regarding child protective proceedings have a significant effect on the quality of jurists’ work.

*Staff support for jurists.* Jurists need strong staff support to be able to effectively perform their work.

*Judicial information systems.* Effective computer support can help jurists and their staff to perform their work efficiently, assist them to avoid errors in their work, and provide them with data to help them evaluate court and individual performance.

*Court facilities.* Court facilities should be convenient and comfortable for the parties, attorneys, court staff, and jurists. They should create an atmosphere that reinforces respect for the court. A good work environment affects the efficiency of the court.

This chapter discusses each of these issues in detail, including Michigan’s progress in child protective proceedings.

## **CASELOAD AND WORKLOADS OF JURISTS – AND SUFFICIENT TIMES FOR HEARINGS IN CHILD PROTECTION PROCEEDINGS**

Reasonable caseloads and workloads are essential to proper judicial performance. Yet, objectively determining the needed number of jurists and court staff is a complex task. Caseloads and workloads are subtle “infrastructure” issues that can affect all other areas of performance.

The following are important examples of problems that can result from excessive workloads and from failing to set aside sufficient time for hearings in child protective proceedings:

- *Case delays:* Because there is not enough room on the docket, it takes a long time to set a hearing, the court “double schedules” cases, or fails to

take enough time to pay attention to casework problems and, thus, to anticipate causes of future delays.

- *Parties don't understand:* Because the judge doesn't have the time to explain to parents and other parties what is happening in court or enough time to promptly prepare court orders, parties don't understand what is happening during court hearings and then walk away from the hearing not knowing what is expected of them.
- *Inefficient operations of the child welfare system as a whole:* Because the judge and court employees don't have time to meet and work with the community, there are persistent problems with agency-court logistics, performance of agency witnesses in court, availability of other witnesses, compliance with court orders, and delivery of services in the community.
- *Failure to meet legal requirements:* Because of a lack of judicial and staff time, the court fails to fulfill and implement legal requirements, due to the jurists' inability to keep up with legal requirements, to address issues fully, to hold complete hearings, and prepare findings. (Chapter 4 on the quality and depth of hearings discusses jurists' inconsistency in covering essential issues during hearings.)

When their time is too limited, judges must face difficult choices. In other words, the jurists in that court may have to choose between communicating with the parties and getting done all of the business at hand. One of the two jurists mentioned takes the time to communicate with the parties, and the other takes time to address the legal issues, but neither does both.

Much of the reason why judicial caseloads adversely affect child protective proceedings is the changing nature of this type of litigation. In recent years, child protective proceedings have undergone rapid change. As explained in the 1997 Michigan Assessment, the number of hearings; issues in each hearing; parties, participants, and functions of the court in these cases have dramatically increased. The problem is that courts have not developed methods that fully account for these changes, for evaluating judicial workloads and for evaluating how much time courts typically should set for key types of routine hearings in child protective proceedings. In addition, many jurists and court staff follow obsolete habits in failing to schedule enough time for each child protective hearing.

*One of our jurists addresses all of the parties and allows them to speak in the courtroom. By taking more time for that, [the jurist] shortens the amount of time available for making decisions and covering all of the legal issues. [The jurist] often does not make reasonable efforts inquiries, causing the whole system to be under investigation for federal funding. By contrast, [another jurist] makes a specific inquiry into the need for each service. [That jurist] takes plenty of time to make a record and to include findings but doesn't spend so much time talking to the parties.*

—Attorney

## ***Laws and Standards Regarding Judicial Caseloads and Workloads***

While there are no laws or state or national standards setting judicial workloads in child protective proceedings, there are some relevant recommendations.

First, the *Resource Guidelines: Improving Practice in Abuse and Neglect Proceedings*<sup>11</sup> (hereafter called the Resource Guidelines), recommended the following times for hearings (averages when not contested) – 60 minutes for preliminary hearings (hearings following an emergency removal from home), 30 minutes for adjudication, 30 minutes for disposition, 30 minutes for review, 60 minutes for permanency hearing, 60 minutes for TPR, and 30 minutes for adoption. The Resource Guidelines are a comprehensive set of guidelines for child protective proceedings, which have been endorsed by the National Council of Juvenile and Family Court Judges (NCJFCJ), the Conference of Chief Justices (CCJ), and the American Bar Association (ABA). The Resource Guidelines were based, in part, on the practices and experiences of two courts noted for their excellent and timely performance in child protective proceedings, namely the Hamilton County, Ohio, Juvenile Court<sup>12</sup> and the Kent County, Michigan, Juvenile Court.<sup>13</sup>

Hearing length is a more relevant measure than caseload in rural courts where judges handle a wide variety of proceedings. In urban and specialized courts, however, caseloads need to be calculated to allow for hearings long enough for the judges to follow the law and permit the involvement of the parties.

There are wide differences in the numbers of child protective proceedings filed in judicial circuits and counties. In 2003, the number of CP cases filed in judicial circuits ranged from 2016 new CP petitions in the 3<sup>rd</sup> Circuit to only 14 new petitions in the 33<sup>rd</sup> Circuit. In the same year, the number of CP petitions ranged from 2016 in Wayne County to 0 in Keweenaw County.

The following are the results of the calculations described in note six below:

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<sup>11</sup>National Council of Juvenile and Family Court Judges, *Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases* (Reno, Nevada: National Council of Juvenile and Family Court Judges 1995). These standards, which address all aspects of a juvenile court's handling of abuse and neglect cases, will be discussed in greater detail as specific assessment findings and recommendations are related.

<sup>12</sup>See M. Hardin, *Judicial Implementation of Permanency Planning: One Court That Works* (ABA 1992). Caseloads in Hamilton County in 1993 were 181 new child protective petitions per year per full time jurist, or new cases per year involving 264 children per jurist. Note that in the Hamilton County Juvenile Court, as in juvenile courts in most states at the time, the court did not hear related adoption cases so that these, therefore, were not included in the calculations. Note further, that Hamilton County caseloads were higher than those of Kent County and that, in spite of its general excellence, termination of parental rights decisions were substantially delayed because of the lack of space available on the court docket.

<sup>13</sup>See M. Hardin, Ted Rubin, and Debra Ratterman Baker, *A Second Court That Works: Judicial Implementation of Permanency Planning Reforms* (ABA 1995). Caseloads in Kent County, at the time of its study, were 106 new child protective petitions per year per full time jurist, or new cases per year involving 181 children per jurist. Note, however, that to be comparable with other states, these figures did not include judicial time devoted to adoption proceedings.

**Table 2**

**ESTIMATED JUDICIAL CASELOADS IN CHILD PROTECTIVE PROCEEDINGS 2003<sup>14</sup>**

<b>COUNTY</b>	<b>FTE Judges in County for CP Cases</b>	<b>Number of Petitions in 2003 (Generally One Petition per Mother)</b>	<b>Number of Children Subject to Petitions in 2003</b>	<b>Judicial Caseload Based on Number of Petitions in 2003</b>	<b>Judicial Caseload Based on Number of Children Subject to Petitions in 2003</b>
Jackson	.6 <sup>15</sup>	217	355	362	592
Kent	3.1	393 <sup>16</sup>	764 <sup>17</sup>	127	246
Macomb	2.65	298	487	112	184
Marquette	.45	38 <sup>18</sup>	68 <sup>19</sup>	84 <sup>20</sup>	151 <sup>21</sup>
Roscommon	.1 <sup>22</sup>	29	61	290 <sup>23</sup>	610 <sup>24</sup>
Wayne	9.16	2016	3512	220	383

Keep in mind that these estimates are less exact for smaller counties because of the relatively small percentages of jurists' time devoted to CP cases in small counties.

Compare the lower caseload figures from Kent County in 2003 in the table below. These figures were collected for the book, *A Second Court That Works*.

<sup>14</sup>Data from the above table were based on a combination of sources. The number of petitions filed in each county was taken from the SCAO website, <http://www.courts.michigan.gov/scao/resources/publications/reports/statistics.htm#cir>. From that web page, we selected 2003 data and went to the web pages for each of the six counties, recording the numbers of CPP filings for each county. At our request, each circuit court then calculated for us the number of children who had been the subject of those petitions, the number of jurists handling CP cases and the percentage of time devoted by each of them to CP cases during 2003. To determine how many new CP cases per year a single judge, if working on a full time basis, would handle in each county, we divided the number of cases by the FTE judge time devoted to child protective proceedings. For comparison purposes, we calculated caseloads both in terms of the numbers of petitions filed (one petition being filed per mother) and in terms of the numbers of children who were subjects of new CP petitions.

That data made it possible to calculate the above chart, using the method described above.

<sup>15</sup>Court staff provided this estimate.

<sup>16</sup>The caseloads increased sharply in 2004, with a 49% increase in removals of children from their homes.

<sup>17</sup>As explained in note 8, above, the Kent County CPP case filings increased sharply in 2004.

<sup>18</sup>This number was taken from 2004, because the number for 2003 was far lower than usual, compared to both earlier and subsequent years.

<sup>19</sup>This number also was taken from 2004, because the number for 2003 was far lower than usual.

<sup>20</sup>Note that these numbers are based on estimates of FTE that, due to the smaller proportions involved and the fact that only one jurist handles nearly all of these cases, are rougher approximations than in larger counties.

<sup>21</sup>See note 7 above.

<sup>22</sup>See note 7 above.

<sup>23</sup>See note 7 above.

<sup>24</sup>See note 7 above.

**Table 3**

**JUDICIAL CASELOADS IN CHILD PROTECTIVE PROCEEDINGS IN KENT COUNTY 1993**

<b>FTE Judges for CP Cases</b>	<b>Number of Petitions (Generally One Petition per Mother)</b>	<b>Number of Children Subject to Petitions</b>	<b>Judicial Caseload Based on Number of Petitions</b>	<b>Judicial Caseload Based on Number of Children Subject to Petitions</b>
3.0	256	435	85	106

Kent County was able to achieve the level of excellence reported in *A Second Court That Works* partly because of its low caseloads shown above.

Past caseload and workload studies have not calculated the time actually needed to adhere to current legal requirements and best practices in child protective proceedings. For example, the 1998 Michigan study by the National Center for State Courts (NCSC)<sup>25</sup> is an example of such a “weighted caseload study.” While the study included estimates by expert judges, these estimates were not taken into account in the final case weights.<sup>26</sup> The report explained this by pointing out that there was a large discrepancy between the recorded time and the estimates and that the data from the judicial diaries were more scientifically defensible.

In addition, the case weights were used solely to allocate judicial positions fairly among counties, and not to specify the amounts of time needed to allow judges to follow Michigan law or carry out best practices. Determining how much time judges would need to comply with the law and follow best practices in CP cases was beyond the purpose and scope of the study.

It would take a different approach to caseload analysis to take into account changes in the law, including new timeliness and procedural demands. The chapter of this report on the quality and depth of hearings shows that judges do not spend the amounts of time recommended by the *Resource Guidelines* for certain types of hearings and do not consistently address the full range of issues required by law.

Differences in the quality and depth of hearings observed during site visits to the six courts did correspond, to some extent, to the judicial caseloads of the six courts, as set forth in the table above. For example, in some courts with high judicial caseloads, review hearings were very brief and did not come close to addressing the range of issues required by law.

On the other hand, in some courts with lower caseloads, we observed inefficiencies that wasted time. For example, court time was wasted while jurists waited for attorneys to talk to their clients and other attorneys, instead of requiring attorneys to be ready at a particular time.

<sup>25</sup>Michigan Trial Court Assessment Commission, *Recommendation Judicial Resource Distribution and Court Revisions Court Funding Formula: Reports the Michigan Weighted Caseload System*. National Center for State Courts (1998).

<sup>26</sup>*Id.*, Section 3.2.

## **Recommendations**

An improved caseload analysis is needed, specifically for child protective proceedings, to take into account the major changes in the court process for these cases in recent years and the concomitant changes in the time needed to devote to them. Such analysis needs to measure the amount of time needed to fulfill best practices, as defined in national standards such as the Resource Guidelines and to implement the letter and spirit Michigan and federal law.

Such analysis should provide guidance on the necessary average length of particular types of dependency hearings and should calculate needed child protective caseloads, as opposed to redistributing jurists based on existing child protective caseloads throughout the state. In addition, future caseload and workload studies should take into account the special duties of judges handling CP cases to work with the community.<sup>27</sup>

Of course, adjustments in workload alone will not ensure strong judicial practice. Such reforms as well designed training for jurists on best practices, evaluation of judicial performance, strong staff support, sound judicial selection for the Family Division, and other reforms discussed in this chapter. Reasonable judicial caseloads and adequate judicial time for hearings are necessary preconditions but not guarantees of thorough, high quality hearings.

## **CASE ASSIGNMENTS TO JURISTS**

The topic of judicial case assignments concerns which jurists will handle which types of cases. As explained in the introduction to this chapter, child protective proceedings require jurists with a sophisticated knowledge of this area of law and practice. Which jurists are assigned to child protective proceedings has a substantial affect on their degree of expertise.

Some of the key aspects of judicial assignments as they affect the sophistication and knowledge of jurists are as follows:

- The degree of specialization in dependency and family matters.
- The duration of judicial assignments, particularly where assignments are specialized.
- Prerequisites for judicial assignments and selection of jurists for the Family Division.

## **Laws and Standards Regarding Judicial Assignments**

Before 1996, child protective proceedings were mostly heard in probate courts, while circuit courts had jurisdiction over most other family matters, such as divorce, custody, support, and paternity. In 1996, legislation was passed calling for transfer of

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<sup>27</sup>See Hardin, *Child Protection Cases in a Unified Family Court*, 32 Fam.L.Q. 147, 190-193, pointing out the need for low caseloads in child protective proceedings and for adequate calendar time to consider the issues in each case and to conduct contested hearings without delay

child neglect-abuse cases from probate courts to the family divisions of circuit courts.  
MCL 600.1011

Under current Michigan law, the family division of the circuit court has exclusive jurisdiction over a wide range of family matters, including, among others, divorce, custody, support, paternity, adoptions, juvenile delinquency and child protective proceedings. Probate court judges or referees may, however, work in the family division of the circuit court and may hear child protective proceedings.

Chief probate and circuit court judges in each jurisdiction are to develop a “family court plan,” detailing how the family division will operate in the circuit. Most recently, these were submitted and approved by the Michigan Supreme Court in 2003. Each of the six counties we visited had such a plan in effect.

The law requires each family court plan to ensure “a judge’s service in the family division be consistent with the goal of developing sufficient judicial expertise in family law to properly serve the interests of the families and children whose cases are assigned to that judge.” The chief judge of the circuit court is to have the authority and flexibility to determine the duration of a judge’s service pursuant to this goal. MCL 600.1011(3) In approving Family Court Plans, it is the duty of the Michigan Supreme Court to make sure the Plans are calculated to develop judicial expertise in family law, including in child protective proceedings.

Another important dimension of the assignment of jurists in child protective proceedings involves the use of referees. Court Rule 3.193, which governs the assignments of referees to juvenile matters, provides that only a person licensed to practice law in Michigan may serve as a referee at a child protective proceeding other than a preliminary inquiry, preliminary hearing, progress review, or emergency removal hearing. Referees who are licensed to practice law may serve in any child protective hearings except where there is a jury trial. Court Rule 3.192(A) In addition, if a personal protection order (PPO) is sought, only a judge may authorize, modify, or terminate such an order. Such orders sometimes are helpful in child protective proceedings.

Referees, after conducting hearings, submit proposed orders for approval of a judge. Following each hearing by a referee, parties have the right to request a review of the referee’s proposed order, including any findings and recommendations.

### ***Actual Specialization in Judicial Assignments***

The results of the judicial survey show that jurists hearing child protective proceedings are relatively specialized in this area of practice. Not only are child protective cases a substantial proportion of Family Division jurists’ total workloads, but also child protective proceedings take up a disproportionate amount of the jurists’ time compared to other types of cases in the Family Division. Consider the following chart:

<b>Table 4</b>	
<b>PERCENTAGE OF JURISTS' TIME SPENT ON CHILD PROTECTIVE PROCEEDINGS</b>	
<b>Workload</b>	<b>Percentage</b>
% of time spent in an average week (40 hours) on the bench spent hearing child protective proceedings ( <i>N</i> = 124)	28.4
% of time spent in an average week (40 hours) devoted to preparing for scheduled hearings (e.g., reading files, and reports or doing research) in child abuse and neglect proceedings ( <i>N</i> = 121)	11.9
<b>TOTAL</b>	<b>40.3%</b>

Overall, the jurists who completed and submitted the survey reported spending 40.3% of their time, based on a 40-hour workweek, preparing for and hearing CP cases.<sup>28</sup> As shown by the following table, while jurists reported devoting 43% of their time to child protective proceedings, these constituted 34% of their total cases.

<b>Table 5</b>		
<b>PERCENTAGE OF JURISTS' MONTHLY ASSIGNMENTS – CP v. NON-CP CASES</b>		
<b>CP Caseload</b>	<b>Number of Cases</b>	<b>Percentage of Overall Cases</b>
Average number of child protection cases assigned to the jurist's docket on a monthly basis ( <i>N</i> = 108)	49.3	34%
Average number of all other cases assigned to the jurist's docket on a monthly basis ( <i>N</i> = 107)	94.0	66%
<b>TOTALS</b>	<b>143.3</b>	<b>100%</b>

Not surprisingly, owing to greater judicial specialization in larger courts, there is a connection between the size of the courts and the proportion of time that jurists devote to child protective proceedings. As shown by the following table, jurists in small courts reported putting in about ¼ of their time handling CP cases, while those in medium courts reported putting in roughly ½ of their time on CP cases, and those in Wayne County (based on responses of seven referees and one judge) reported putting in over ¾ of their time.

In considering these results, it is helpful to consider the wide range of courts included within the classification of small courts. In very small courts, far fewer than 200 child protective petitions are filed per year. If very small courts are taken into account, the differences in the degree of specialization may be far greater.

The degree of specialization is affected much more by the size of courts than by whether jurists are referees or judges. The judges who responded to the questionnaire (from all sizes of courts) reported that they spend an average of approximately 36% percent of their time hearing and preparing for child protective proceedings, and about

<sup>28</sup>We did not ask the percent of their time devoted to administrative activities and work with the community focused on child protective proceedings.

36% of their cases assigned monthly are child protective proceedings. As for the referees who responded, they spend an average of 43% of their time hearing and preparing for child protective proceedings, and 52% of the cases assigned to them monthly are child protective proceedings.

Consider the sharper differences in the degree of specialization based on the size of the courts, based on the results of the questionnaire. Jurists from small courts (including both judges and referees) reported that they spend an average of approximately 29% percent of their time hearing and preparing for child protective proceedings. By contrast, jurists from medium courts spend 50% of their time hearing and preparing for child protective proceedings and jurists from large courts spent 77% of their time doing so. About 21% of the cases assigned to jurists from small courts monthly are child protective proceedings. By contrast about 37% of the cases assigned monthly to jurists in medium courts and about 81% of the cases assigned monthly to jurists in large courts are child protection cases.

As might be expected, visits to the six sites showed sharp variations among individual counties regarding the degree of specialization of jurists hearing child protective proceedings. In Roscommon County, a very small court in terms of CP cases filed per year, one judge is assigned to the family division, including child protective proceedings. Court staff estimated that the judge spends an average of about 10% of the time on child protective proceedings. Because of the low CP caseload in the county, this varies considerably from month to month.

In Marquette County, another very small court, the probate court judge assigned to the Family Division spends about 45% of the time on child protective proceedings. The other judge hears other family division cases. This essentially continues the division of responsibilities that pre-existed the creation of the Family Division. If the two judges shared CP cases, the percentage obviously would drop.

In Jackson County, in the lower range of medium-sized courts, three full time judges are assigned to the family division and two of those three judges hear a combination of child protective proceedings and other family matters involving children, such as divorces, custody, and paternity matters.<sup>29</sup> According to court staff, the two Jackson County judges spend about 25% of their time each on child protective proceedings.<sup>30</sup> Judges rather than referees handle child protective matters, except for the first portion of preliminary hearings, in which the appointment of counsel occurs. The referee reportedly spends an additional 10% of the time on child protective proceedings.

In Kent County, six full-time judges are assigned to the family division, including three probate judges and three circuit court judges. The Family Division administrator reports that each of the six judges and each of the six referees hear an approximately equal proportion of child protective proceedings, about 25%.<sup>31</sup> Each referee is assigned to one judge, together forming six judge-referee teams. In 2003, three referees averaged about 47% of their time on CP cases. Currently, all six referees handle CP cases, averaging about 30% each.

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<sup>29</sup>Jackson County Family Court Plan, pp. 3-5.

<sup>30</sup>Court staff provided this estimate.

<sup>31</sup>The three judges who were interviewed, however, reported 45%, 50% and 30-50%.

Thus, following the transfer of juvenile cases into the Family Division, there are no longer judges or referees who exclusively handle juvenile cases. Judges selected to serve in the Family Division are deemed permanent and full-time, which is consistent with the Michigan law.

In Macomb County, during the time of the site visit, one Circuit Court judge from the Family Division was assigned to juvenile cases along with five referees, with one referee position then unfilled. All of those referees worked full-time hearing only juvenile cases, averaging about 48% of their time handling CP cases. The judge also heard some criminal and domestic relations matters and estimated that he currently spent about 65% of his time on CP cases. This followed the Macomb County Family Court Plan, which stated, “One of the Family Division judges will have primary responsibility for the ongoing handling of matters arising in the Juvenile Division.”

On May 31, 2005, this arrangement is scheduled to change, with all but one of the juvenile court referees being moved downtown and each assigned to teams with one of the four family division judges. Referees will continue to carry most of the burden of hearing CP cases.

In Wayne County, seven judges and 13 referees are currently assigned on a full-time basis to the juvenile court. The judges devote an estimated 75% of their time to CP cases, and 10 referees spend from 50% to 100% of their time on CP cases, averaging about 76%. Thus, the Wayne County jurists maintain essentially the degree of specialization that pre-existed the transfer of CP cases to the Family Division.

Taken together, information from the six counties show that the merger of the circuit and probate judges into the Circuit Court Family Division has reduced the degree of specialization of jurists handling CP cases. Nevertheless, except in the smallest counties, judges are handling a sufficient number of cases to maintain sufficient expertise in this area, if other organizational factors are present. That is, with consistently thorough mandatory training regarding CP cases and the selection of highly qualified judges for the family division, jurists are spending enough time on these cases to maintain a high level of skills.

### ***Duration of Judicial Assignments***

Results of the judicial survey show that, as a whole, judicial assignments to jurists hearing CP cases are relatively long in duration.

**Table 6**

**NUMBER OF YEARS JURISTS PRESIDED OVER CHILD PROTECTIVE PROCEEDINGS**

<b>Number of years</b>	<b>Number of Responses</b>	<b>Percentage</b>
Less than one year ( <i>N</i> = 5)	5	4.0%
One to five years ( <i>N</i> = 49)	49	38.9%
More than five years ( <i>N</i> = 72)	72	57.1%
Total Responses ( <i>N</i> = 126)	126	100%

Practices vary markedly among the six counties regarding the duration of judicial assignments in child protective proceedings. For example, while family division appointments are permanent in one county, in another, at the time of our site visit, the newest Circuit Court judge heard child protective proceedings.

In Jackson County, there is no set policy governing the duration of judicial assignments either to the Family Division, in general, or toward assignments to hear juvenile cases. Rather, the court will exercise its discretion based on the preference of the judges and a sense of who can best handle these cases.<sup>32</sup> The probate judge has over 16 years of experience handling child protective proceedings. The newer circuit court judge was the one most recently assigned to the family division in this county and likely will rotate to other cases after gaining more experience.

In Kent County, by contrast, the Family Court Plan states that judges selected to serve in the Family Division are deemed permanent and full-time. Further, the duration of referees in that county is indefinite. The average time on the bench for the judges currently serving in the family division types of cases is 7½ years, while the average time that referees have been on the bench is over 17 years.

In Macomb County, as in Jackson County, there is no specific policy regarding the duration of judicial assignments to the Family Division. Rather, the Family Court Plan simply recites the statutory language governing such assignments.<sup>33</sup> The newest

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<sup>32</sup>According to the Jackson County Family Court Plan:

In the future, service in the family court will, if possible, be made by consensus of the judges to the family court based on training, experience, and the potential for judicial fatigue....All judges are qualified and capable to handle a family court assignment with the appropriate training. However, the judges recognize that some judges may have better skills for the family court....The judges also recognize that long-term service, in either the circuit court, probate court or the family court, may negatively impact judicial productivity....The duration of a judge's service in the family division shall be consistent with the goal of developing sufficient judicial expertise in family law to properly serve the interests of families and children whose cases are assigned to that judge....The chief judge of circuit court shall have the authority and flexibility to determine the duration of a judge's service in the family division in furtherance of this goal.

<sup>33</sup>According to the Jackson County Family Court Plan:

The duration of a judge's service in the Family Division will be consistent with the goal of developing sufficient judicial expertise in family law to properly serve the interests of families and children whose cases are assigned to that judge. The Chief Judge shall have the authority and

Circuit Court judge in the county, with no prior experience in juvenile matters, was assigned to the juvenile division at the time of the site visit. At the time of the site visit, the average duration of referees in the Macomb County juvenile division was five years. In 2005, however, the four circuit court judges will begin to share the responsibility for CP cases. One of these has substantial prior experience handling CP cases and the remaining two have been assigned to the Family Division for two years.

In Marquette County, the probate judge who formerly handled child protective proceedings for the county continues to do so as the judge has done for many years. While the family court plan does not specify whether this practice will continue,<sup>34</sup> presumably it will continue so long as this judge continues to serve. After that, the duration of judicial appointments to child protective proceedings should be clarified.

In Roscommon County, the Family Court Plan does not address the issue of the duration of assignments to the family division or to child protective proceedings. The current judge has served for five years. Since the demographics of the County do not permit full-time family division judges, however, judicial assignments are likely to be long term.

In Wayne County, the Family Court Plan addresses the duration of judicial assignments with greater specificity. First, current probate judges serving in the family division are to remain until their retirement. Second, following their retirement, the Chief Judge of the Circuit Court will assign a replacement judge for not less than three years.<sup>35</sup> Third, all appointments to the family division are to be for at least three years, and not only to the entire family division, but also to the Child Protective Services/Juvenile Section of the family division.

While this provides less assurance of a long-term assignment than the typical past practice of the Wayne County probate court before child protective proceedings were

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flexibility to determine the duration of a judge's assignment to the Family Division to further the goal of developing judicial experience in family law.

<sup>34</sup>According to the Marquette County Family Court Plan:

The Chief Judge of the Circuit Court has the authority and flexibility to determine the duration of a judge's service in the Family Court, subject to annual review. Duration of service in the Family Court shall be consistent with the statutory and legislative requirement that judges develop judicial expertise in family law.

<sup>35</sup>The Wayne County Family Court Plan states that:

[Three Probate Judges] shall serve in the Child Protective Services/Juvenile Section until their respective retirements. Upon the retirement of each of these Probate Judges presently serving in the Child protective Services/Juvenile Section of the Wayne County Circuit Court exercising jurisdiction pursuant to MCLA 600.1021 for a period of not less than 3 years. The Chief Judge of the Circuit Court may reject that proposal but must then assign a Circuit Court Judge for a period of not less than three years to replace the retiring Probate Judge....Judge's service to the Family Division shall be consistent with the goal of developing sufficient judicial expertise in family law to properly serve the interests of families and children whose cases are assigned to that judge....Effective July 1, 2003, the duration of a judge's service pursuant to this Plan in both the Domestic Relations Section and in the Child Protective Services/Juvenile Section shall be a minimum of three years.

transferred into the Family Division, it does prevent the rapid rotation of judges handling child protective proceedings. Finally, while the Family Court Plan does not address the duration of referee assignments, referees in Wayne County generally are assigned long-term to handle child protective cases.

Referees hearing CP cases in Wayne County have substantially more experience regarding these cases than the judges. The average time on the bench for referees is 9.9 years. Excluding the most senior referee, who has served for 24 years, the average is 7.6 years.

By contrast, average time on the bench for the Wayne County judges handling CP cases is 6.7 years. Excluding the most senior judge, however, who has served on the bench for 28 years, the average is 3.2 years. All of these judges began their service on the bench handling juvenile cases.

**Criteria and Qualifications for Judicial Assignments**

One important qualification for jurists hearing child protective proceedings is prior relevant experience. The judicial survey asked respondents whether, during their last five years prior to becoming a jurist, they had worked as an attorney and spent 25% or more of their time on certain categories of cases. The numbers and percentages of jurists indicating they had such experience are reported below.

<b>Table 7</b>		
<b>PRIOR ATTORNEY EXPERIENCE OF JURISTS (LAST 5 YEARS, 25% OR MORE OF THE TIME)</b>		
<b>Activity</b>	<b>Number of Responses</b>	<b>Percentage</b>
Domestic/Family	79	62.7%
Child Protective Proceedings	50	39.7%
Delinquency	43	34.1%
Criminal cases involving child maltreatment	12	9.5%

Thus, almost 63% of jurists reported having significant practice experience in domestic and family cases, and nearly 40% of the jurists reported significant practice experience in CP cases.

Another question asked whether respondents had had at least one year of other specific types of experience related to child protective proceedings before appointment to the bench. The results are as follows:

<b>Table 8</b>		
<b>PRIOR EXPERIENCE OF JURISTS RELATING TO CHILD PROTECTIVE PROCEEDINGS (ONE YEAR OR MORE)</b>		
<b>Type of experience</b>	<b>Number of Responses</b>	<b>Percentage</b>
Employee of Probate Court	9	7.1%
Non-Attorney employee of private child welfare agency or service provider of DHS	3	2.4%
Foster Care Review Board Member	1	.8%
Other	46	36.5%
<b>TOTALS</b>	<b>59</b>	<b>46.8%</b>

Thus, 46.8% of the jurists, prior to their appointments, had at least one year of experience specifically relevant to child protective proceedings. Of the 46 who indicated they had a year or more of “other” experience related to child protective proceedings before taking the bench, the following experiences were specified:

<b>Table 9</b>		
<b>OTHER EXPERIENCE OF JURISTS RELATING TO CHILD PROTECTIVE PROCEEDINGS</b>		
<b>Type of experience</b>	<b>Number of Responses</b>	<b>Percentage</b>
Prosecutor	12	9.5%
Attorney	20	15.9%
Social Services, Teaching	2	1.6%
Foster Parent	2	1.6%
Legislator	2	1.6%
Other	2	1.6%

During our site visits, we found that many but not all judges had relevant experience before being assigned to hear child protective proceedings. In Jackson County, the probate judge had many years of experience handling CP cases as a prosecutor before coming onto the bench. The circuit court judge, before coming onto the bench, had oversight of prosecutors handling child protective proceedings and had personally handled several such cases while in private practice. According to the Jackson County Family Court Plan, future assignments of judges to the Family Division will be discretionary, based on a consensus of the judges.<sup>36</sup>

<sup>36</sup>The Jackson Family Court Plan states, in part:

In the future, service in the family court will, if possible, be made by consensus of the judges to the family court based on training, experience, and the potential for judicial fatigue....All judges are qualified and capable to handle a family court assignment with the appropriate training. However, the judges recognize that some judges may have better skills for the family court....The

The Kent County Family Court plan says that “[s]election of Probate Judges to the Family Division and the duration of a judge’s service will further and be consistent with the goal of developing judicial expertise in family law.” In practice, the six family court judges have a wide range of experience prior to their appointments, some having had major experience in juvenile and family cases before joining the family division, and others having very limited experience. Since the Family Court Plan says that assignments to the Family Division are to be permanent, this will help make up for the relevant lack of prior experience of some recently selected judges.

In Macomb County, the Family Court Plan says that “[t]he circuit judges to be assigned to the Family Division will be determined by the best interests of the citizens of Macomb County.” There is no reference to special qualifications or experience regarding family issues. At the time of the site visit, the judge assigned to the juvenile court had been there less than two years and had begun his service as a circuit court judge in that capacity, with little prior experience in juvenile cases. Recently appointed referees had been in private practice from 6 to nine years before becoming referees and, during that practice, had taken many CP appointments.

As indicated above, child protective cases will be divided equally among the judges in 2005. Recent assignments to the Family Division as a whole have not been based on judges’ experience in family or juvenile cases.

In Marquette County, the probate court judge has handled child protective proceedings for many years. The Family Court Plan implies that, after the eventual retirement of this judge, a new probate judge will handle this caseload.

In Roscommon County the judge has been on the bench for five years. Prior to that, the judge handled CP cases as an attorney for 25 years.

As for the criteria for judicial appointments in Wayne County, the following is the case. First, the Family Court Plan articulates no criteria for the initial assignment of judges to CP cases. Of the seven judges assigned to hear juvenile cases (including CP and other juvenile matters), three had relevant prior experience. By contrast, all of the referees, before taking the bench, had substantial prior experience handling CP cases as attorneys. In recent years, Wayne County has required referees to have at least five years of practice experience before taking the bench.

## **Recommendations on Judicial Assignments**

In many counties, the assignment of probate court judges to the Circuit Court Family Division has diluted judges’ focus on child protective proceedings. This makes it more critical that judges have the background and skills to handle these cases.

SCAO should take stronger measures to achieve the state law’s goal of ensuring that judges assigned to the Family Division have expertise both in family law in general and child protective proceedings in particular. The following steps should be considered:

- Setting requirements or standards concerning the qualifications of judges assigned to the family division.

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judges also recognize that long-term service, in either the circuit court, probate court of the family court, may negatively impact judicial productivity.

These requirements or standards would address prior experience before appointment to the bench as well as experience on the bench. They would also serve as advice to the electorate. They would call for prior experience handling other family issues before being assigned to hear child protective proceedings, with exceptions to allow for the one family, one jurist principle.

- Setting standards or guidelines for the duration of assignments to the family division.

SCAO should limit rotations in and out of Circuit Court Family Divisions. Long judicial assignments to the family division should be the norm, but with allowances for judges who become fatigued with handling CP and other family cases. Problems with judicial fatigue will become greatly reduced, however, when judges are originally selected for the Family Division, based on extensive prior experience and demonstrated interest in this area of law.

- Establishing specialized courts for sparsely populated areas.

Michigan should seriously consider creating specialized multi-county courts for sparsely populated areas, in which jurists cover multiple counties. Without such arrangements, most rural judges have great difficulty mastering child protective litigation. Texas has successfully experimented with this arrangement, establishing “cluster courts” in which judges hear only child protective proceedings for multiple counties. Initial evaluations have shown this approach to improve the quality and timeliness of child protective proceedings in many rural counties in Texas.<sup>37</sup>

- Setting stricter expectations for Family Court Plans.

Currently, Family Court Plans can be developed in accord with the preferences of judges who are adverse to long-term family court practice and particularly child protective proceedings. To avoid this, more specific requirements should be in place for Family Court Plans and there should be tighter scrutiny before they are approved. This may require additional staff time for such review within SCAO.

Another way to establish greater scrutiny of Family Court Plans is to require that, prior to their approval, they be mailed to key persons in each county (including DHS, foster parent groups, bar groups, and others) and be subject to public comment to be considered by the local Circuit Court and submitted to SCAO prior to its approval of the Plans. For a general discussion of courts working with the community, see Chapter 6.

## **ONE FAMILY, ONE JURIST**

The concept of one family, one jurist has two facets in child protective proceedings. First, there is the principle that, whenever possible, a single jurist should hear all stages of child protective proceedings in each case, from opening through closing. Second, there is the principle that different court proceedings involving the legal status of a single family, such as a divorce, custody proceeding, paternity case, child protective proceedings, etc., should be heard by a single jurist.

There are several reasons why it is important that one jurist hear all stages of a child protective proceeding:

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<sup>37</sup>A more thorough, federally funded evaluation of the Texas “cluster courts” is currently underway.

- 1) When one jurist presides over all hearings in each case, the jurist becomes thoroughly familiar with the needs of children and families, the efforts over time made to address those needs, and the complexities of each family's situation.
- 2) When a single jurist hears all matters related to families' cases the jurist more rapidly gains a firm understanding of child protective proceedings. Handling all stages of a case enables a jurist to understand how each stage of the process affects later stages and what steps must be taken early in the case to ensure better results later.
- 3) Having a single jurist in a case ensures more consistent decisions in each case. This enables parties to follow the court's orders without concerns that a different judge at the next hearing will interpret the case differently. Having a single jurist in each case can prevent parties from resurrecting previously rejected arguments and makes it more difficult for parents to repeatedly and successfully use the same excuses for non-compliance with court orders or lack of progress.
- 4) When a single jurist hears an entire case, there is a stronger relationship between the parties and the jurist. With a single jurist, families are less likely to feel that strangers who know nothing about them are controlling their lives.
- 5) Having a single jurist hear all stages of a case is more efficient. Because of the court's prior experience with the case, the jurist can more quickly review and understand files, agency reports, and case plan changes prior to each hearing.
- 6) When a jurist handles an entire case, the jurist has a greater sense of ownership and responsibility for case results. When a jurist knows that his or her involvement will extend beyond the immediate hearing, the jurist is more likely to invest the time necessary to gather complete information, to assess the results of decisions, and to develop a working relationship with all the parties.

These same principles also generally apply regarding having a single jurist preside over different cases in the family division affecting the same family. The jurist handling related cases involving the same family gains a greater familiarity with different types of proceedings and how they interrelate, learns more about each family, ensures greater consistency of decisions for each family, has a greater impact on the family, and feels a stronger responsibility for the ultimate safeguarding and protection of the child.

On the other hand, there can be complications in having the same jurist hear child protective proceedings and other family related cases. First, child protective proceedings are generally more complex and specialized than other types of family division cases, and some judges may lack experience or be uncomfortable handling child protective proceedings. Similarly, some jurists specializing in child protective proceedings may not have expertise in certain other family division matters, such as complex issues of property division in divorce cases or child support guidelines.

## **Laws and Standards Regarding One Family, One Jurist**

The first recommendation in the 1997 Assessment was that a single jurist should hear all stages of child protective proceedings. In 1997 there were only a few jurisdictions still not adhering to that principle in child protective proceedings.

MCL 600.1023 goes further, applying the principle of one family, one jurist to all family division cases, providing that “[w]hen 2 or more matters within the jurisdiction of the family division of circuit court involving members of the same family are pending in the same judicial circuit, those matters, whenever practicable, shall be assigned to the judge to whom the first such case was assigned.”

### **Adherence to the One Family, One Jurist Principle in Michigan**

The judicial survey asked about the system of assigning judges to hear the different stages of child protective proceedings. The following table summarizes the results.

<b>Table 10</b>	
<b>METHOD OF ASSIGNMENT OF CHILD PROTECTIVE CASES TO JURISTS</b>	
	<b>Percentage</b>
Single judicial officer hears cases from initial removal or preliminary hearing until case is closed (permanency plan is implemented) ( <i>N</i> = 32)	25.6%
Judicial officer hears preliminary or initial removal hearing with case then assigned to another judicial officer who presides over the case until it is closed (permanency plan is implemented) ( <i>N</i> = 65)	52%
The same case is assigned to multiple judicial officers who preside over the case at different stages of the proceedings ( <i>N</i> = 6)	4.8%
Judge hears adjudicatory hearings and termination of parental rights hearings with referees assigned to preliminary and dispositional hearings/reviews ( <i>N</i> = 22)	17.6%
<b>TOTALS</b> ( <i>N</i> = 125)	100%

Slightly over ¼ of jurists reported that the one jurist, one family principle is fully implemented in their courts. An additional ½ of jurists reported that the principle was applied, with the exception of preliminary or initial hearings. (This practice represents a significant erosion of the one jurist, one family principle, because, as explained in the Quality and Depth Chapter, preliminary hearings represent a critical stage of the court process, in which there are major court decisions affecting the long-term prospects of the child and family.) The remaining roughly ¼ of jurists reported wholesale non-adherence to the one jurist, one family principle.

The following table shows how the size of courts affects the one jurist, one family principle in CP cases.

**Table 11****METHOD OF ASSIGNING CHILD PROTECTION CASES BY SIZE OF COURT**

<b>Method</b>	<b>Small Court</b>	<b>Medium Court</b>	<b>Large Court</b>	<b>Total</b>
a. Single officer hears case from removal until closed	35.3% N=24	16.3% N=8	0% N=0	25.6% N=32
b. One officer hears prelim/initial then assigned to another	48.5% N=33	49.0% N=24	100.0% N=8	52.0% N=65
c. Same case assigned to multiple officers	1.5% N=1	10.2% N=5	0% N=0	4.8% N=6
d. Judge hears adjudicatory & TPR, referees hear preliminary/dispositional hearings	14.7% N=10	24.5% N=12	0% N=0	17.6% N=22
<b>Total</b>	<b>100%</b> <b>N=68</b>	<b>100%</b> <b>N=49</b>	<b>100%</b> <b>N=8</b>	<b>100%</b> <b>N=125</b>

The table indicates that the principle of one family, one jurist is affected somewhat by the size of the court hearing child protective proceedings. About 5% of jurists from small and medium courts indicate that they still have multiple jurists hearing the same CP cases. Another 14.7% of jurists in small counties and 24.5% in medium counties report that judges handle adjudications and TPR hearings, while referees hear other hearings, such as preliminary hearings, dispositional hearings, and reviews. About half of jurists from small and medium courts and all from Wayne County report that one jurist hears child preliminary or initial hearings and another jurist hears the remainder of the case. Thus, only 35.3% of the jurists reporting from small courts, 16.3% from medium courts, and 0% from Wayne County, indicate that the same jurist routinely handles all stages of the same case.

Of the six counties in which there were site visits, none wholly rejected the one jurist, one family principle, but most did not fully comply with the principle in child protective proceedings. Fewer yet fully complied with the principle where more than one type of case is involved, i.e., a child protective proceeding and a related family case.

Jackson County follows the one family, one jurist principle in practice. If a judge is already involved with a family, the case goes back to that judge. On the other hand, when there has been no prior Family Division involvement, the case is randomly assigned.<sup>38</sup>

<sup>38</sup>The Jackson County Family Court Plan requires the county clerk's office to develop procedures to ensure that new Family Division cases are assigned, when applicable, to judges with other pending cases in the Family Division. If there is more than one pending Family Division case, the judge with the oldest case is to take responsibility for both cases. The chief judge, however, on the request of a judge, may assign the cases to the judge handling the newer case, when the judge handling the newer case has more involvement with the family. In addition, the Chief Judge may also, in the interest of judicial economy and timeliness, allow pending cases not to be reassigned to a judge handling another pending case.

A minor exception to the one family, one jurist principle in CP cases in Jackson County is that a referee hears the initial portion of preliminary hearings. The court holds these hearing within 24 hours after a child is removed from home. At this first portion of the preliminary hearing, the referee will appoint attorneys and explain the court proceedings. At a later-held portion of the preliminary hearing, the judge will determine whether there is probable cause for the child to be removed. Because the part of the preliminary hearing heard by the referee is not substantive, in effect the same judge hears all substantive phases of the case. Accordingly, Jackson County fully adheres to the one family, one jurist policy in child protective proceedings.

The one jurist, one family principle extends to other types of family cases in Jackson County, in that the judge who begins a case, either as a child protective proceeding or another type of family case, will also handle the other related case.

In Kent County, except for preliminary hearings, the Family Division applies the one family, one jurist principle regarding the handling of cases by judges. Judges may assign specific hearings to referees, however, and each judge decides how this will be done. Assigning specific hearings to referees, of course, dilutes the principle of one jurist, one case in child protective proceedings. On the other hand, each judge works only with a single referee and each judge and referee form a team.

In Macomb County at the time of the site visit, juvenile offenses, abuse and neglect, adoption, and parental consent cases were filed and heard at the building used for juvenile cases. Referees presided over the great majority of hearings in child protective proceedings in that building.

The one family, one jurist principle mostly worked in Macomb County for CP cases. A case stayed with the referee who was on call the day it came in for preliminary hearing, unless there was a judge demand. Referees thus took cases from the beginning and kept them until their completion.

Exceptions occurred when there was a judge demand, in which case hearings were transferred to the single judge assigned pursuant to the Macomb County Family Court Plan to hear juvenile cases. In most cases the judge would return the case to the referee after the hearing. In some cases, however, the judge would retain the case for its duration.

After the transfer of cases to the downtown courthouse, in 2005, referees will form teams with all of the four Family Division judges hearing child protective proceedings. It is expected that referees will continue to handle most hearings in CP cases, but it has not been decided exactly how this will work.

At the time of the site visit, for cases where there was a pending divorce, visitation, or custody matter, with a subsequent protective petition filed, the Macomb County Family Court Plan stated that the child protective case would be assigned to the judge hearing the domestic relations matter. But if the child protective case was filed first, the case would go to the judge hearing the child protective proceedings.

In reality, however, when there were both child protective and family proceedings affecting a family, the one family, one jurist concept largely broke down. When a referee heard about a related case in Macomb County, the referee contacted the judge in the downtown courthouse hearing the family case and asked the judge how he or she wanted to handle the case. Often the judge told the referee to handle the child protective proceedings, while the judge would continue to handle the other family matter. Some

circuit court judges were reluctant to handle child protective proceedings because of their lack of experience and familiarity with them.

Occasionally, however, a judge would send the domestic relations case to the juvenile child protective department or send the child protective case downtown. Several persons reported that there were no clear rules governing when this would occur.

Because the rest of the family division in Macomb County was in a separate building case coordination was more difficult. Further complicating such coordination was that two types of juvenile referees were involved, those assigned to the juvenile division and “friend of the court” referees assigned to domestic relations matters such as divorces.

A number of people gave examples of how the separation of family and child protective proceedings sometimes created difficulties in the resolution of CP cases. For example, they said if a custodial parent abuses or neglects a child and the non-custodial parent is protective of the child and willing to take over care but unable to afford to bring a case to court, it was difficult to resolve the case. This was because DHS does not have the financial ability to help non-custodial parents to take a case to family court.

In addition, they said, abuse and neglect cases were sometimes bogged down while they were waiting for court orders in circuit court. DHS would have to wait for the downtown circuit court judge to change custody although the juvenile court had decided to place the child with the non-custodial parent.

This situation should change, at least in part, after the referees and others move to the downtown courthouse and form teams with each of the four judges. It has not yet been determined, however, how cases will be handled when there are simultaneous CP and other family proceedings.

At the time of the site visit, there was not yet a reliable method of avoiding inconsistent juvenile and domestic relations orders. There was no computer system yet in place to ensure that these cases are linked. There could be inconsistencies in orders concerning, for example, visitation and participation in services.

On the other hand, attorneys are supposed to ask their clients and let the court know about any related cases. They usually catch the fact that cases are ongoing in the other court – at some point. The court hopes that the new MIS computer program will help resolve inconsistent court orders and will identify cases when they involve the same parties. They have worked out common identifiers to link cases.

In any case, the joining of referees and judges into teams in Macomb County should reduce the likelihood of inconsistent court orders in different proceedings, at least when the two types of cases are simultaneously open.

The Marquette County Family Court Plan states that “[t]he statutory requirement of ‘one family, one judge’ shall be maintained. Once a family law matter is heard by a Family Court judge, the complete case and all future matters relating to that family will continue to be heard by the same Family Court judge.” In practice, if one judge has heard a divorce or juvenile case and a CP case comes up, that judge will take that case. Thus, the judge who hears the new CP cases also hears related family matters that come up after the CP case, while the judge who hears other new Family Division cases also hears CP cases that come up after the other family cases.

The Roscommon County Family Court Plan states, in part, the following:

Caseload considerations do not permit judges to be designated to serve full-time in the family division because of caseload balancing and due to geographical areas....In deference to the spirit of the legislation, each judge will be, as much as possible, permanent to a family. However, practical considerations do not support permanent and exclusive family court duties. Fortunately, the judges available to the family division all have a significant background in family law matters.

As a practical matter, the court fully complies with the one jurist, one family approach in CP and family cases because the judge who handles child protective cases also hears other related family cases that come up. When the non CP Family Division judge has a pending family matter and a CP petition is subsequently filed, that judge will hear the related CP case.

The Wayne County Family Court Plan assigns juvenile and child protective cases to seven judges, while other family matters are assigned to a different group of judges.<sup>39</sup> In CP cases, which are heard within the court's Juvenile and Child Protective Section of the Family Division, a group of referees are assigned exclusively to preside over CP cases.

Among the CP referees, two are assigned to hear all preliminary hearings. Following preliminary hearings, the case is assigned to another referee, who usually handles the remaining stages of a CP case.

Judges and referees form teams within the Juvenile-Child Protective Section of the Family Division. When there is a judge demand, the judge who is the leader of a referee's team presides over the hearing. The judge may return the case to the referee after the hearing or may retain the case until its conclusion. This, of course, erodes the one family, one jurist principle in those cases that move between referees and judges.

When a child custody case has neglect or abuse issues, however, judicial assignments become more complicated. In that case, the judge in Domestic Relations Section downtown may retain the whole neglect-abuse case. Or the judges may divide the case, one handling abuse and neglect issues and the other hearing different family issues. The Chief Judge of the Juvenile and Child Protective Section calls the circuit court judge downtown to decide which jurist will handle issues and case. Reportedly, no uniform criteria govern these decisions. As a practical matter, the one jurist, one family principle generally does not apply when there are simultaneous family and child protective proceedings.

In Wayne County, like Macomb County at the time of our site visit, there is a risk of inconsistent court orders between the two departments of the Family Division, because the computer system is not currently set up to link cases.

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<sup>39</sup>The Plan states in part that: "Case assignment will continue to be identified by case type codes, as per 1996 PA 388 (i.e. Family Division, Domestic Relations Section, located in the Coleman A. Young Municipal Center, will continue to hear all cases involving divorce, child custody, parenting time, paternity, child and spousal support, personal protection orders, emancipation of minor parental consent waivers and name changes. Family Division, Child Protective Services/Juvenile Section, locate at James H. Lincoln Hall of Juvenile Justice 1025 E. Forest, Detroit, Michigan 48207 will continue to hear all cases involving adoption, child abuse and neglect and delinquency."

## **Recommendations**

There are several factors that interfere with the practice of one family, one jurist in Michigan. First, there is the division of responsibilities between judges and referees. When referees handle certain types of hearings in child protective cases and judges others, there is a departure from the practice. Further, judge demands, and judges taking over cases following judge demands or reviews dilutes the practice.

Second, there is the specialization of referees in some jurisdictions, where some are “friend of the court referees” only hearing family and domestic proceedings,<sup>40</sup> while other referees hear only child protective proceedings.<sup>41</sup> This specialization impedes the application of the one jurist, one family principle beyond child protective proceedings.

Third there is the separation of the Family Division into a judicial subdivision and a family subdivision in Wayne County.

The legislature and SCAO should take the following additional measures to achieve the goal of one family, one jurist.

- The practice of designating particular types of hearings either to judges and referees should be discouraged.

Courts should stop assigning referees to handle preliminary hearings,<sup>42</sup> while judges handle other types of hearings. Likewise, courts should not assign adjudications and TPRs to judges, while assigning other types of hearings to referees. As explained in the Quality and Depth chapter, each of these hearings is a vital stage of the proceedings, in which the jurists obtain and need information regarding the cases. Alternating between judges and referees erodes the one family, one jurist principle.

- Rotation of judges in and out of the Family Division should be slowed or ended.

As discussed in the section of this chapter on the assignment of jurists, rotation in and out of the Family Division reduces judicial expertise. Rotation also undermines the one jurist, one family principle, in that after rotation another judge generally takes over the cases of the judge who is rotating out. While some courts require judges to keep their child protective proceedings after transferring out of the Family Division, this may not be a fully satisfactory solution because, after the transfer, judges may no longer have the support of the specialized court staff.

- Different departments within the Family Division should be phased out in the medium and larger courts, once there are stronger and more consistent judicial skills within the Family Division.

There are still some Michigan Courts in which the Family Division is subdivided into a domestic and family department and a juvenile-child protective department. So long as new judges who are inexperienced in family law are assigned to the Family Division, the existence of such departments will be necessary to ensure a proper level of expertise in child protective proceedings. If courts fulfill the expectations of the law and assign only

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<sup>40</sup>MCL 552.507.

<sup>41</sup>MCR 3.913(A)(2).

<sup>42</sup>An exception should be the use of separate jurists to handle non-substantive parts of preliminary hearings, such as the appointment of counsel. Another exception is the use of specialized jurists to review cases after the termination of rights – until other jurists receive sufficient training in the adoption process to perform this function.

highly qualified judges to the Family Division, however, the need for the separate departments will no longer exist.

- Systematic and consistent methods are needed to identify related family cases.

In spite of the development of the Family Division, it still is not unusual in some Michigan courts for different judges to hear child protective and other family proceedings involving the same family, and without knowing about the other proceeding. It also occasionally happens that judges hearing child protective proceedings are unaware of prior relevant court orders that still are in effect as the result of prior divorce, custody, paternity, or personal protective order (PPO) proceedings. To remedy this problem, courts both must develop computer systems that will help identify related cases or must develop and implement new procedures for routine checks by court staff.

## **TRAINING OF JURISTS**

As explained by the introduction to this chapter child protective proceedings are a unique and complex form of litigation. In addition, law and practice in this area is more rapidly evolving than most areas of law. Mastery of child protection proceedings requires substantial training and experience. Because many judges begin this work without prior experience in child protective proceedings, the need for training judges newly assigned to child protective proceedings is particularly acute.

### ***Laws and Standards Regarding Training of Jurists***

MCL 600.1011, which requires each judicial circuit to establish a family court plan ensuring, among other things, that “[a] judge serving pursuant to the family court plan shall receive appropriate training as required by the Supreme Court.” The implication of this language is that the Michigan Supreme Court will specify training that is mandatory for family court judges. MCL 600.1019 provides that the Michigan judicial institute will provide appropriate training for all probate judges and circuit judges who are serving pursuant to the family court plan.

These legal requirements are consistent with recommendations of the 1997 Assessment, including the following:

The Michigan Judicial Institute and SCAO should develop and implement training for judges and referees at the time they are elected, appointed, or assigned to the bench, and periodically thereafter. This training should be mandatory for all judges and referees, as well as court administrators and other court personnel and should focus on permanency planning issues....Recommendations made throughout this report should be made applicable to all judges who will ultimately be family court judges and who will handle child protective proceedings. This includes all recommendations referring to the judges and referees.

## **Available Training Regarding Child Protection Proceedings**

The Michigan Judicial Institute (MJJI) provides training every year for jurists assigned to their circuits' family divisions. For example, in 2003, MJJI provided a full day Adoption Proceedings seminar, in which most presentations were relevant to child protective proceedings. In 2004 there was a full day Family Division Judicial Symposium, in which more than one half the content was relevant to child protective proceedings.

In addition, there were sessions regarding child protective proceedings at several conferences and seminars. At the 2004 Annual Judicial Conference there was a session on lawyer-guardian ad litem issues. At the 2003 New Juvenile Proceedings Court Rules Seminar there was a session on the new abuse and neglect rules. At the new judges seminar in January 2005 there was a session about child protective proceedings.

There also have been annual programs for referees that addressed child protective proceedings. In 2003 MJJI offered a full day of training for referees on juvenile matters, which included child protective proceedings. This was also provided in 2004.

Besides offering programs for jurists to attend, MJJI has offered other forms of training. These have included web-based and other training regarding the requirements of Title IV-E of the Social Security Act, which judges must fulfill in order for Michigan to be eligible to receive federal foster care and administrative matching funds. For example, there were 24 participants in MJJI web-based training on Title IV-E in August 2004.

MJJI regularly sends judges information about available training. Referees may be informed about training by, among other sources, the Michigan Referees' Association although referees report that this information is inconsistently received. As described above, MJJI has provided both face-to-face training by expert faculty and web-based training for child protection cases. In other areas it has also provided video training and training by CD-ROM.

In some counties, training funds are much more generous for judges than referees. This includes counties where referees hear all phases of child protection proceedings.

In addition to training offered by MJJI, training has been available from a variety of other sources in many counties. Among such sources have included DHS, Continuing Legal Education of the Michigan State Bar, county bar organizations, and other organizations (on interdisciplinary topics). A number of courts also conduct local training for judges and others.

In some parts of the state, DHS and other organizations have provided multidisciplinary training and cross training for judges and DHS

*I think there is an assumption that judges who take the bench have a background in child protection and if they do have the background, the training is adequate. But the training is not adequate to those who don't have the background. It's safer to assume that all judges don't have the background and provide more comprehensive training.*

—Experienced judge

*Our new [jurist] was thrown in without experience and attorneys had to educate the judge during hearings.*

—Foster parents

staff. However, there is a lack of systematic training on child protective proceedings for judges newly assigned to such cases.

### ***Courts' Expectations for Jurists to Actually Receive Training in Child Protection Proceedings***

In most of the six study sites the courts' Family Court Plans do not clearly require jurists to participate in training. The Roscommon County Family Court Plan provides that "[t]raining will initially be in house, the joint responsibility of all judges who are involved in the plan. Where available, we will access MJI or similar training. Budgets will address continuing education as a specific line item." The Roscommon Plan pledges to allow judges to attend MJI training sessions and to provide local training on an as-needed basis. But it does not state that jurists must attend any MJI training. Similarly, the Macomb Family Court Plan does not require judges to attend MJI training.<sup>43</sup>

By contrast, the Wayne County Family Court Plan provides that [t]he Chief Judge of the Circuit Court will require the attendance of Judges serving pursuant to this Plan to attend training offered pursuant to MCLA 600.1019."

Finally, the three study sites that rely heavily on referees in child protection proceedings (Kent County, Macomb County, and Wayne County) did not specify what training they would provide for referees or that referees must attend MJI or other training.

### ***Jurists' Actual Participation in Training on Child Protection Proceedings***

Actual attendance at such training by jurists varies for a number of reasons. As explained above, while some courts expect attendance at MJI training sessions others do not. Courts also have different practices regarding paying for attendance at training,

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<sup>43</sup>Consider the following excerpt from the Macomb County Family Court Plan:

1. The Michigan Judicial Institute will provide training for judges serving in the Family Division pursuant to this Plan.
  2. [The] County Circuit Court will evaluate the need for local training on an ongoing basis as part of the phases of implementation.
  3. The need for training for the Family Division of the Circuit Court will be determined by the Chief Judge in consultation with the Presiding Judge of the Family Division, the Circuit Court Administrator, the Juvenile Court Administrator and other interested stakeholders.
  4. Judges of the Family Division have received and will continue to receive judicial support and training from the other judges of the Circuit Court in the form of advice, bench books and other relevant information. Members of the Civil/Criminal Division will likewise continue to receive information from the judges of the Family Division. All judges meet at least monthly to discuss issues of mutual interest.
  5. Employees are receiving appropriate in-service training on an ongoing basis as the need arises.
  6. Judges and key employees of the Family Divisions *will be allowed to attend* appropriate Michigan Judicial Institute training sessions.
  7. Local in-service training will be provided to judges and employees on an ongoing basis.
- (emphasis added)

especially for referees. And, of course, some jurists are more interested in attending training than others.

Of the jurists responding to the questionnaire, around half had participated in training on several subjects important in child protection proceedings, as indicated by the following table.<sup>44</sup>

<b>Table 12</b>	
<b>PAST TRAINING OF JURISTS</b>	
<b>Topic of Training</b>	<b>Percentage</b>
Requirements of the Indian Child Welfare Act (ICWA) ( <i>N</i> = 73)	57.9%
Child Development ( <i>N</i> = 72)	57.1%
Diversity training/special ethnic and cultural issues related to child protection cases ( <i>N</i> = 52)	41.3%
Title IV E ( <i>N</i> = 75)	59.5%
Monitoring compliance ( <i>N</i> = 50)	39.7%

While there were not marked differences among small, medium, and large courts in the level of jurists' overall participation in training, there were sharp differences depending on the topic. For example, among the eight jurists responding to the survey in Wayne County, seven (87.5%) had had training on the Indian Child Welfare Act, compared to 21 of 50 jurists from medium courts (42%) and 25 of 68 jurists from small courts (36.9%). On the other hand, none of the eight jurists reporting from Wayne County had received training on child development or on how to monitor compliance with case plans. By contrast, 41 of the 68 jurists from small courts (60.3%) had received training regarding child development while 31 of the 50 jurists from medium courts (62%) had received such training. Differences based on the size of counties regarding jurists' participation in diversity training were less significant.

Interestingly, the proportion of judges and referees receiving training were consistently similar regardless of topic.<sup>45</sup> Most surprising is that there were only minor differences between jurists working full time in handling juvenile cases and jurists working only part time on juvenile cases. Excluding training on Title IV-E, which had been offered in some but not all parts of the state at the time the questionnaires were filled out, the proportions of jurists hearing juvenile cases part-time and full-time were nearly equal. In fact, among the remaining topics, the greatest difference in training

<sup>44</sup>The greatest difference between the percentage of judges and referees who had received training on any topic was 9.3% for training regarding monitoring compliance. The frequency and valid percentages reported are based upon a sample of 126 responses, only those who indicated whether or not they had had the training are reported below.

<sup>45</sup>While 33.9% of the 62 judges answering the question reported having had training on monitoring compliance, 43.6% of the 55 referees answering the question reported having had such training. We do not count the responses to whether they had received training regarding Title IV-E in this comparison because at the time the questionnaires were filled out, such training had been provided in some but not all parts of the state.

received by jurists hearing juvenile cases part-time and full-time was only 4.1% (training about ICWA).<sup>46</sup>

One striking result of the survey of jurists was the relatively low percentages indicating they wanted further training. The following table shows the percentages of jurists wishing future training on five topics.<sup>47</sup>

<b>Table 13</b>			
<b>FUTURE ADDITIONAL TRAINING FOR JURISTS</b>			
<b>What ... future additional training [listed below] would you find beneficial in the area of child abuse and neglect and related child welfare concerns?</b>	<b>All Jurists (n=124)</b>	<b>Full-time Jurists (n=69)</b>	<b>Part-time Jurists (n=55)</b>
Requirements of the Indian Child Welfare Act (ICWA) (N = 3)	27%	33% (n=23)	18.2% (n=10)
Child Development (N = 33)	26.2%	31.8% (n=22)	20% (n=11)
Diversity training/special ethnic and cultural issues related to child protection cases (N = 28)	22.2%	27.9% (n=19)	16.4% (n=9)
Title IV E (N = 57)	46%	49.2% (n=34)	41.8% (n=23)
Monitoring compliance (N =41)	32.5%	33% (n=23)	32.7% (n=18)

Generally, jurists' level of interest in future training was similar regardless of the size of their court and regardless of whether they were judges or referees. One exception was Title IV-E training where, although fewer of the eight jurists responding from Wayne County had received the training compared to jurists from small or medium sized courts, only one of the eight (12.5%) wanted the training. By contrast, 45.6% of the 68 jurists from small courts and 52% of the jurists from medium sized courts wanted the training. As might be expected, smaller proportions of jurists handling juvenile matters on a part-time basis wanted certain types of training than jurists handling such cases on a full-time basis.

Other statistics regarding jurists' participation in training are collected by MJI. For example, according to MJI, there were 37 participants in the 2003 MJI Adoption Proceedings Seminar and 42 participants in the 2004 MJI Family Division Judicial Symposium. There were 54 participants in the 2003 training for referees on juvenile matters and also 54 participants in the 2004 training for referees on juvenile matters. 2004 web-based training on ensuring Title IV-E eligibility drew 24 participants. While the session on abuse and neglect rules at the Seminar on New Juvenile Proceedings Rules drew 50 participants, the lawyer-guardian ad litem session at the Annual Judicial Conference drew 40 participants, and the session at the 2005 new judges' seminar about child protection proceedings drew 15 participants.

<sup>46</sup>While 51.9% of the 68 part-time jurists answering the question reported having received training on ICWA, 55% of the 55 full-time jurists answering the question reported having received such training.

<sup>47</sup>The frequency and valid percentages reported are based upon a sample of 126 responses, only those who indicated whether or not they had had the specific types of training are reported below.

To summarize both sets of statistics, jurists' attendance at training is substantial but fractional. That is, large percentages of jurists both have and have not received training in areas that are critical to their work. There is not yet an effective statewide system to ensure that jurists receive consistent MJI training, as contemplated by MCL 600.1011(4). Some local courts expect attendance at MJI training, but not others. Likewise, some local courts provide some training locally and require attendance at such training, but not others.

Jurists and court administrators interviewed during site visits described a number of barriers to attendance at training. Among them were the difficulty for busy jurists to take time off for training, limited funds available for training (especially for referees), and that many jurists reported not wanting training in key areas. Unfortunately, those who need training the most may be least motivated to seek it out or participate. Site visits confirmed that there is little tracking to ensure that either judges or referees receive any particular training. The only tracking to ensure that judges or referees have any particular skills or knowledge comes from recent reviews regarding the courts' compliance with federal requirements under Title IV-E of the Social Security Act, governing programs for foster care. A lack of systematic tracking to ensure that all jurists receive instruction on key topics has tangible adverse results. For example, some jurists are not familiar with the Interstate Compact on the Placement of Children (ICPC) and fail to comply with the Compact.

DHS staff in several of the site visit counties made a number of important points regarding training for jurists. Jurists, they pointed out, have varying amounts of knowledge regarding services available to parties and applicable DHS policy. This unevenness in knowledge sometimes contributes to jurists making arbitrary orders regarding services, which, in turn, force caseworkers to pay greater attention to cases that happen to be subject to court orders. Jurists need to know something about DHS paperwork, caseworkers and supervisors said. Finally, they said, jurists should better understand what the workers do and the difference between a sexual abuse, psychological, and psychiatric assessment. In some counties jurists have reportedly received no cross training with attorneys and DHS staff.

There is a lack of training regarding the many, complex timelines, especially for new jurists. Few experienced jurists receive refresher training on this topic. Introductory training for new jurists assigned to the Family Division does not consistently provide complete, yet basic presentations of key requirements in child protective proceedings.

In some counties but not others, newly assigned jurists shadow other jurists for specified periods of time and ease into their duties as jurists.

### ***Training Materials Available for Child Protection Proceedings***

MJI has produced two comprehensive and excellent benchbooks that are helpful to judges handling child protective proceedings. One benchbook is about child protective proceedings and the other about adoptions. Both are available online and are relatively up to date, having been published in 2003. These benchbooks were highly rated by jurists interviewed in the study sites and impressed the authors of this report as being well written, well researched, and well organized.

Missing, however, are easier to understand materials on child protection proceedings for new jurists. As one jurist pointed out, the comprehensiveness and level of detail in the two benchbooks can be intimidating to those who lack prior experience in child protective cases.

## **Recommended Steps Regarding Training for Jurists**

There are a number of training topics to which all jurists handling child protection proceedings should be exposed. Among these are the following:

- Special laws and procedures for child protection proceedings.

As explained in the introduction to this chapter, there are a unique set of laws and procedures governing child protection proceedings judges need to master and then apply these laws and procedures correctly.

- Timelines for each stage of the proceedings in child protective proceedings.

During interviews with experienced jurists, we learned that some did not have a firm grasp of all of the timelines governing child protective proceedings. These timelines are a fundamental part of the law in this area.

- Federal requirements governing child protective proceedings, especially, but not limited to requirements in Title IV-E of the Social Security Act.

As shown by the recent federal review of Title IV-E eligibility, not all judges are correctly applying federal requirements. This not only puts Michigan's federal foster care funding in jeopardy, but also denies important protections for families and children.

- Child development and basic principles of child psychology.

Michigan and federal law regarding child protective proceedings are founded on basic principles of child development. Jurists need to know these principles.

- Operations and services of DHS and other key agencies.

Michigan and federal law call upon jurists to monitor agencies' efforts to preserve families and achieve permanency for children and their success in meeting meet children's critical needs while in foster care. For courts to perform this role effectively, they need a basic understanding of how the agencies operate and the services they provide.

Of course, these are only the basic areas of skills and knowledge needed by judges in this field. For a more extensive list of training needed by jurists to handle child protection cases, see the introduction to this chapter.

MJI's use of multiple methods of judicial education is commendable and impressive. More of these methods are needed for training in child protective proceedings. For example, introductory videos and web-based training about child protective proceedings would be very helpful for jurists newly appointed to hear these cases. Face-to-face training typically cannot be available at the time jurists first take the bench.

To ensure that training imparts the most useful information, training should be designed with very specific learning objectives. When training addresses core areas of judicial knowledge, such as timeliness and Title IV-E requirements, jurists should be offered materials for self-testing to give them the opportunity to evaluate their own mastery of the information.

Given the lack of interest in training by many jurists, training should be carefully designed, consistently evaluated, and retooled based on results of judicial evaluations. While MJI already makes efforts to do this, additional financial support is needed for the development of professional curriculum.

Another invaluable form of instruction for jurists newly hearing child protection cases is “shadowing” of experienced jurists. This practice should be universal for jurists newly assigned to child protective proceedings, including, where necessary, shadowing in other courts.

Cross training (simultaneous training of multiple groups and disciplines) can be useful to judges, but should be used with care. For most training, judges require different information than agency caseworkers and supervisors and needs to be different. Where cross training can be useful, for example, is to address issues of mutual concern to different groups and around which different groups interact. For example, it is often helpful for judges and agency staff to discuss the content, purposes, uses, and timing of court reports. See Chapter 6 on working relationships between courts, DHS, and other community organizations.

The recommendation in the 1997 Assessment for mandatory training should be fully implemented as contemplated by MCL 600.1011(4), for both judges and referees. Because local courts understandably wish to be collegial and are reluctant to compel jurists to participate in training, SCAO should strengthen its expectations of judicial attendance in training.

Among other things, SCAO should develop sample training plans for inclusion in family court plans, should provide a required outline for such plans, and specify mandatory areas of training, based on jurists’ experience and prior training. Special training for new judges, as described above should be required. There should be mandatory training on certain topics for all judges assigned regularly to hear child protection cases.

Family Court Plans should set forth how training for jurists will be funded and SCAO should require that such training funds be distributed equitably between judges and referees. In particular, priority for training in child protection proceedings should go to those jurists who carry the heaviest neglect-abuse caseloads.

## **DUTIES AND ROLES OF REFEREES AND JUDGES**

In many Michigan Courts, particularly the larger ones, referees preside over most court hearings in child protection proceedings. As illustrated by the differences in the use of referees in the study counties, the respective roles of referees and judges in varies substantially in child protection proceedings.

The heavy reliance of some courts on referees raises a number of important questions:

- What are the actual differences in the roles of referees and judges in court and do those differences make sense?
- Does the use of referees strengthen or weaken the achievement of the principle of one jurist, one case?
- Does the use of referees strengthen or weaken the expertise and experience of jurists hearing child protection cases?

- Does the use of referees improve the workloads of jurists, allowing more intensive attention to be given to each child protection case?
- Do referees receive sufficient supports in staff assistance, physical space, and equipment?
- Does the use of referees strengthen or weaken the timeliness of judicial proceedings?

### ***Laws and Standards Regarding Use of Referees***

MCR 3.913(A)(2)(b) authorizes the assignment of referees to handle child protection cases, provided that referees may hear child protective proceedings. Only referees who are licensed to practice law may preside over hearings other than preliminary inquiries, preliminary hearings, emergency removal hearings, and progress reviews (for children remaining at home).

There are several limitations on the roles of referees in child protective proceedings. First, MCR 3.912(A)(1) provides that only judges may hear jury trials in child protective and other juvenile proceedings.

Second, MCR 3.912(B) provides that the parties have the right to demand a judge for hearings subsequent to the preliminary hearing.<sup>48</sup> A party may demand that a judge rather than a referee by filing a timely written demand.

Third, MCR 3.913(C) provides that, during a hearing held by a referee, the referee must inform the parties of the right to request a review of the referee's decision by a judge. If a party files such a request in a timely manner, the court will review the referee's recommended findings and conclusions. If there is no request for review, however, the judge may sign the recommended order without such a review. MCR 3.991. A judge must sign proposed orders issued by a referee. Subject to these conditions, however, a referee who is licensed to practice law may handle a case from its inception through its closure, including termination of parental rights.

According to the Resource Guidelines, judges should hear child abuse and neglect cases dependency cases, whenever possible, even in jurisdictions in which judicial resources are at a premium. On the other hand, the Resource Guidelines say, the use of judge-supervised judicial officers such as referees "can be an appropriate alternative when judges, particularly in large urban areas, are faced with increasing child abuse and neglect caseloads." The Resource Guidelines then list, as possible advantages of referees that they can: (a) be cost-effective; (b) ensure more consistent decisions within a court when supervised by a single administrative judge; (c) strengthen case flow management in the court by adhering to consistent procedures; and (d) develop greater specialization and expertise than can realistically be expected from many judges, because referees can be selected based on their specific expertise and interest in child protective and other juvenile proceedings.<sup>49</sup>

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<sup>48</sup>More precisely, MCR 3.912(B) provides that a party can demand a judge at any a hearing "on the formal calendar." MCR 3.903(A)(10) provides the following definition: "Formal calendar" means judicial proceedings other than a delinquency proceeding on the consent calendar, a preliminary inquiry, or a preliminary hearing of a delinquency or child protective proceeding.

<sup>49</sup>Resource Guidelines, 21-22.

The Resource Guidelines also provide several cautions regarding the use of referees:

When judge-supervised judicial officers are employed, the principle of one family-one judge must still be maintained. Cases should not be shifted between judges and hearing officers at different stages of the proceedings. If cases can be appealed from the hearing officer to the judge, they should not be retried by the judge. Rather, the judge should promptly review a tape or transcript of the hearing. Retrials waste judicial time, delay case decisions, and undermine the principle of one family-one judge.<sup>50</sup>

Among the six courts visited for this report, the five with the largest caseloads use referees in child protection cases. In Jackson County, the role of the referee is limited to handling the non-substantive portions of preliminary hearings. In Kent County, the lawyer-referees hear whichever hearings in CP cases that they are assigned by the judge with whom they work. A specialized referee, however, reviews cases following termination of parental rights, to ensure that there are timely adoptions. In Macomb County, at the time of the site visit, referees typically handled all stages of each CP case except where there were judge demands, reportedly sometimes used by parents' attorneys to buy time for their clients, aware that the judge's docket is overcrowded. In Marquette County, referees occasionally handle preliminary hearings and sit in on other hearings on an ad hoc basis for the judge. In Wayne County, like Macomb County, referees typically handle all stages of CP cases.

When attorneys request review of referees' decisions in Kent, Macomb, and Wayne Counties, judges generally review the hearing record rather than scheduling a rehearing. In Kent and Macomb Counties, judges can review a video of the hearings.

One limitation in the use of referees is that referees generally do not handle all family issues regarding a single family, such as when there are simultaneous child protection, delinquency, and domestic relations issues. Rather, "friend of the court" referees typically preside over related assigned domestic relations matters while juvenile referees preside over child protection matters.

There typically is a sharp distinction between the status of judges and referees, even in courts where referees hear all types of hearings in child protective proceedings. In Wayne County the judges and referees do not all meet together. In Macomb County during the time of the site visit, there was a dramatic difference in the kinds of staff support available to referees and judges.

It was our impression when visiting Wayne County that each referee presides over far more hearings than each judge. In Wayne County, judges reportedly have more authority than referees in ordering additional services, particularly regarding mental health evaluation and treatment. Judges, but not referees, reportedly can remove attorneys for insufficient performance.

While not as egregious as the problem was in Macomb County during our site visit, referees also have less staff support than judges in Wayne County. Further, a referee reported, referees but not judges are held accountable by court administration for adhering to statutory timelines.

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<sup>50</sup>Resource Guidelines, 22.

## **Recommendations**

The authors of this report are not qualified to evaluate the political necessity of using a combination of judges and referees to handle child protection cases. It may be that by using referees, it is possible to have more jurists available to handle these cases than would be possible through the uses of judges alone.

We can comment, however, regarding the impact of how Michigan uses both judges and referees to hear these cases. First, many Michigan counties use judges and referees in child protection proceedings in a manner that undermines the one jurist, one family principle. With the exception of Jackson County, in which the referee is used only to hear the first, non-substantive, portion of preliminary hearings, the use of referees in the six sites necessarily causes cases to be transferred among jurists. In different counties, these transfers happen for the following reasons:

- There is a practice of assigning referees to particular types of hearings.
- Referees are assigned ad hoc to preside over particular hearings.
- Judge demands cause different stages of cases to be heard by different jurists.
- Some judges take over cases following judge demands or after reviewing hearing records.
- In some counties, juvenile and child protection referees do not handle other related family matters.

In short, the above practices significantly erode the one jurist, one family practice in child protection proceedings.

An irony concerning the assignment of referees to child protection proceedings is that many have more experience and expertise in this area than the judges who supervise them. One justification for assigning referees to handle child protection proceedings is that many of the judges lack either the skill or knowledge to do so. It is true that, in some jurisdictions, referees have more experience and expertise than judges in this area of practice. A more openly expressed reason is that some judges prefer not to handle these cases.

Principles governing the use of referees in domestic relations and child protective proceedings are different. It is possible, in domestic relations cases to assign friend of the court referees to relatively routine matters that generally are not linked to other matters before the court. This is not the case in child protective proceedings.

Ideally, it would be possible to elect and appoint sufficient numbers of judges to hear child protective proceedings who are fully competent to hear such cases. Holding elections that are identified as specifically for assignments to the Family Division might help. But if having only judges hear family and child protection proceedings would bring about a deterioration of judicial caseloads for child protection proceedings or reductions in the overall skills of jurists hearing them, we recommend continuing the use of referees.

More realistically, we recommend that SCAO develop standards regarding staff support for all jurists (explained elsewhere in this chapter), reduce differences in training for referees and judges hearing child protection cases, and provide them with comparable facilities and equipment.

## MANAGEMENT INFORMATION SYSTEMS

Effective computer support can help jurists and their staff to perform their work efficiently, assist them to avoid errors in their work, and provide them with data to help them evaluate court and individual performance. Because of the complexity of child protective proceedings and intensive ongoing involvement of the courts in such cases, it is particularly critical that courts have effective management information systems in these cases.

Unfortunately, state computer information systems typically are not adapted to meet the specific needs of the courts in child protective proceedings. This occurs, in large part, because the distinctiveness of the litigation requires many special features in computer programming in this category of cases. At the same time, systems frequently are designed first for larger categories of civil and criminal cases and by the time the judiciary is ready to make adaptations for child protection cases, such adaptations require impractical and expensive modifications.

A few of the key features of management information systems that are most critical to child protective proceedings are the following:<sup>51</sup>

- Automated reminders to prompt users of needed findings and court orders in specific hearings.

Given all of the special findings required and issues to be addressed in these cases, this is a critical function. Such capacity could help prevent courts' failures to make findings needed to ensure eligibility for federal foster care matching funds under Title IV-E of the Social Security Act.

- Capacity to accept electronic filing and communications and providing electronic forms and templates for documents to be electronically filed.

Electronic filing of pleadings, court reports, and other court documents would be a great help for DHS, attorneys, and the court itself. It would save time and help ensure the timely submission of documents.

- Tracking – checking status of individual cases (or group of related cases) and involvement of parties and other persons in such cases.

This can help ensure the timeliness of case decisions and can enable the court and parties to identify cases where hearings or decisions are delayed.

- Automated creation and printing of documents.

This not only can save time for court staff and others, but also can speed case progress. When parties are handed court orders as they exist the courtroom, they will better understand what they are to do next and are less likely to delay such things as participation in services and visitation.

- Routine generation and distribution of summary information for specific cases – *e.g.*, “registers of actions,” “cover sheets,” or “dockets.”

Routine generation and distribution of registers of action, together with pleadings and court reports, can help judges and other parties efficiently prepare for hearings.

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<sup>51</sup>For a more detailed explanation of these functions and related tasks for judges and court administrators, see M. Hardin, *Planning a Computerized Judicial Case Management System For Dependency Cases: Basic Tasks For the Computer and Things to do for Court Administrators and Judges*, <http://www.abanet.org/child/computertasks.html> (ABA 2004)

- Scheduling of hearings.

Computers can help ensure that the many hearings that occur in child protective proceedings are held within statutory deadlines. Computers can also improve the efficiency of scheduling and can help accommodate the needs of all of the parties, even including DHS.

- Generation of calendars.

Computers can electronically distribute court calendars to DHS, attorneys, and other frequent witnesses.

- Producing Special Reports.

Computers can collect and disseminate statistics to assist court management (including workloads and many other issues) and to report on the quality and timeliness of court activities and decisions.<sup>52</sup>

### ***Laws and Standards Regarding Management Information Standards***

The Joint Standards Development Committee of the Technology Division of the National Center for State Courts (NCSC) has developed functional standards for juvenile courts. Supplementing these standards specifically for child protective proceedings is a paper by the ABA Center on Children and the Law.<sup>53</sup> In addition, The American Bar Association (ABA), National Center for State Courts (NCSC), and the National Council for Juvenile and Family Court Judges (NCJFCJ) have developed proposed measures for the performance of courts in child protection cases.<sup>54</sup>

Several years ago, legislation was passed to require the courts in Michigan to produce certain types of statistical reports on abuse and neglect cases. These reports concerned the compliance with statutory timeframes for cases at a series of milestones measured in days or hours.

The reports are to “include at least information and statistics detailing the court's adherence to each time period” prescribed by statutes and court rules for the management and disposition of child protective proceedings. The report also is to address, where applicable, the reason why the courts fail to adhere to a particular time period. MCL 712A.22.

These milestones are similar in concept to the timeliness measures in the ABA/NCSC/NCJFCJ national performance measures. JIS began a project to produce report programs to meet this requirement, but the effort was put on hold when Michigan became aware the there were specific national performance measures being developed. This effort has not yet resumed and JIS has not yet been asked to program reports for the national performance measures.

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<sup>52</sup>*Why We Should Develop Automated Judicial Performance Measurement in Child Abuse and Neglect Cases*, <http://www.abanet.org/child/whyperfmeas.doc> (ABA 2004).

<sup>53</sup>SEE note 43.

<sup>54</sup>See *Building A Better Court: Measuring and Improving Court Performance In Child Abuse Cases 12*, [http://www.ncsconline.org/wc/publications/res\\_ctpers\\_tcps\\_packgde4-04pub.pdf](http://www.ncsconline.org/wc/publications/res_ctpers_tcps_packgde4-04pub.pdf) (ABA, NCSC, NCJFCJ 2003).

In addition Recommendation 4 of the 1997 Assessment included the following recommendation:

Tracking systems should be implemented in all courts in which appropriate court personnel are designated to track the amount of time it takes a case to proceed through various stages of child neglect and abuse proceedings, identify the reasons for delay, and move court personnel and parties to a more expeditious handling of a case.

In support of this recommendation, the Assessment explained the critical importance of the timeliness in judicial decisions in child protection cases and the existence of numerous, sometimes complex time requirements in these cases.

A related recommendation was Recommendation 13, which stated that “the SCAO should work closely with each county court to evaluate whether each court is utilizing its existing computer technology as effectively as possible for the tracking of [child protection] cases.” In addition, Recommendations 14, 15, and 16 were as follows:

**RECOMMENDATION 14.**

SCAO policy should be implemented to require that each county court produce a uniform quarterly report for submission to the SCAO, the bar and public detailing case tracking information.

**RECOMMENDATION 15.**

Sufficient funding should be appropriated for the purchase and installment of computer software and equipment necessary to upgrade or make uniform existing county case tracking systems.

**RECOMMENDATION 16.**

The SCAO should train judges, local administrators, and other appropriate court personnel on the implementation of an automated tracking system to ensure that a high level of expertise in data management is maintained. Tracking systems should be utilized so that appropriate court personnel or a permanency planning committee are designated to monitor case flow.

***Overview of Michigan Management Information Systems Currently Available for Child Protective Proceedings***

In Michigan the responsibility for court automation is county-based. Some counties have developed their own court applications; others have purchased commercial systems from Maximus and CSI or other vendors and about 60 courts utilize the Trial Court Information System (TCS) developed by the Judicial Information Systems Group (JIS) of the Office of the State Court Administrator.

The predecessor system to TCS for abuse and neglect cases was the juvenile module of the older Probate Case Management System. When TCS was developed, the functionality of the Probate System was rolled into the new system, and many courts upgraded. There are still some courts on the old Probate System. JSI supports about 60 courts with about 3,000 users on TCS and the Probate System. TCS is written in COBOL and runs on ninety-five (95) AS-400 computers installed in courts around the state.

Courts pay a yearly users fee to defray the cost of maintenance and support. The user fee does not provide sufficient funds for large-scale new development or upgrading of the application to newer technology, although new features are added to TCS periodically.

TCS has the typical functionality of a court case management system. It supports docketing, calendaring, forms and notice generation, financial functions and state required reporting. It stores information on parties, cases, charges, filed documents, court events, filings and dispositions and other relevant information.

There is no interface to share data between TCS and the child welfare agency's systems. The Office of the State Court Administrator also has a data warehouse that stores some information about all cases, but does not have a complete copy of all data maintained at the local level due to limited bandwidth in the state network. As it is currently designed, due to the limited types of data, the data warehouse is not suitable for producing the National Performance Measures developed by the ABA, NCSC, and NCJFCJ. If funds were available to expand this resource and the network, however, this might be an option for producing performance measures.

JIS has not been provided funds to update the TCS system to new technology, although the 20-year old system is very outdated from a technological standpoint. Courts that have developed automated systems specifically to support abuse and neglect cases or a unified family court have found that due to the significant differences between these cases and other case types the automation must have some special functions. These include, among other requirements:

- Establishing linkages between cases;
- Establishing linkages between parties of more than one case;
- Limiting access to confidential cases and documents (sealing and unsealing);
- Tracking multiple outcomes for a case and for each child in the case;
- Tracking service of parties, including putative fathers;
- Tracking attendance at hearings, including all parties and attorneys;
- Linking parties to their attorneys and keeping a history of when attorneys are appointed or cease to represent a party;
- Tracking complex timelines for each child in a case, mandated by federal or state law or judicial rules;
- Tracking judicial findings made at hearings;
- Setting cases for hearing within specific timeframes;
- Tracking re-abuse and subsequent petitions;
- Tracking children's placements;
- Tracking and linking information on multiple case types, including abuse and neglect, adoption, termination of parental rights, emancipation, other family law cases and others.

Money is a significant barrier to advancing automation to support abuse and neglect cases in Michigan, but not the only one. In a decentralized automation environment, many court systems have found that a certain amount of standardization is required for the data to be comparable statewide. Also, entering the added data may be a burden for clerks, depending upon their workload. Statewide training of clerks and monitoring of the data to ensure that it is being collected in a consistent manner would be

required to produce accurate national performance measures, even if TCS was upgraded to a new system with all required functions and data.

### ***Progress in the Development of Management Information Systems for Child Protective Proceedings***

SCAO has not yet produced, however, comprehensive standards to guide courts in meeting their management information needs specifically for child protection cases. Nor has it yet developed software that allows courts to comply with the MCL 712A.22.

While the team preparing this report did not explore in depth the status of management information systems in the six sites, we did discuss this issue in each one. We were thereby able to make a number of important observations. First, none of the six sites are able to produce substantial data on court performance in child protective proceedings, even regarding the timeliness of court hearings and decisions.

One factor that may have slowed progress in moving toward automated information in child protection cases is the transfer of cases from probate courts to the Family Division of the Circuit Court. Any management information systems affecting these cases formerly were housed in the probate courts.

In Jackson County, there is no user-friendly method of getting performance data on child protective proceedings. To enter, or to find data, one must go through three separate screens. It is difficult to keep people educated on the use of three different systems and there is little or no pre-service training.

At the time of the 1997 Assessment, the Kent County Juvenile Court relied on DHS for data regarding the timeliness of child protective proceedings. In that county, the local office of DHS provided the court with data concerning timeliness of reunification, termination of parental rights, and adoption, not only broken down according to the responsible private agencies, but also by judge.

During the site visit to Kent County for this report, the Family Division of the Circuit Court still relied on the local data from DHS. While the court is working on improvements in its computer system, we did not ascertain what data it would be able to report and when this would become possible.

In Macomb County, jurists stated that they needed reports on the timeliness of court proceedings, including the equivalents of criminal speedy trial reports. Such reports would say how many cases the jurist has that have missed a (standard) deadline, including the case number of each case. Prosecutors also mentioned their desire for such information.

The court in Macomb County has not used its computers to generate performance data for child protection proceedings. There is technology at the circuit court that regularly provides data regarding standard timeliness requirements for other types of litigation very quickly. The court has been able to use the juvenile court JIS software for delinquency timeline compliance. Right now referees are responsible for tracking and enforcing their own timeliness.

Jurists in Macomb County pointed out a number of additional ways a computerized case management system could help them. It could automate a variety of clerical tasks. It could make more equitable the distribution of child protective proceedings among jurists. While assignments are random, there is no checking on

comparative numbers of open cases. Jurists could use the system to assess and monitor their own cases. A computer system could indicate when the next hearing needs to occur and alert jurists so children do not fall between the cracks and cases meet their deadlines. That is, it could generate ticklers to remind jurists of deadlines.

Computers could generate a register of actions form, a jurist pointed out, that would be on the inside of the file. Currently, the jurist pointed out, there is no cover sheet that summarizes the case. Instead, there is an index card listing the name of the child, the file number, the DHS worker, and some idiosyncratic dates of hearings. It would help for the computer to generate a register of actions that the jurist could quickly review before reading a file in preparation for a hearing.

Both judges and referees, however, had access to a computer terminal through which they could check the criminal records of parties before the court, when parents sign releases. This is important information in child protective proceedings, not only to protect the safety of the children, but also to develop workable reunification plans with parents.

Statewide “report cards” are expected to start being issued in 2005. This is pursuant to the Binsfeld legislation. There are reportedly four timeframes for child protective proceedings. Macomb County is working with the state to make sure they will get the information necessary to issue those reports. They are working with Maximus, a private software vendor, to ensure that the new system will provide those numbers to the state.

At the time of the site visit, the Family Division was just setting up formal meetings (the case flow committee) involving the circuit court administrator, prosecutor, DHS, a referee, intake coordinator, victims’ rights, juvenile court judge’s clerk. Their job will be to review the flow of all cases in child protective proceedings to ensure that they will meet all of the timelines. They are presently looking at statistics and are making adjustments regarding what numbers they are recording.

It was not clear, however, that the court realized the amount of staff time and expertise it would need, including from referees and managers, to guide the software firm to build sufficient case management capabilities specifically for child protective proceedings.

In Marquette County, the circuit court will soon have a computerized case flow management system. Those involved in its development, however, had not involved the judge hearing child protective proceedings in the planning.

On the other hand, referees reportedly get a “case age report” on their screens that show which cases have met or exceeded the time limits. Referees, as employees of the court, are accountable for meeting time lines. Judges are reportedly not held accountable for such performance. A judge reported not receiving regular data on caseloads or the timeliness of cases on the judge’s docket.

The Wayne County automated case management system for CP cases is reportedly now outdated. While information is entered by child and can be entered by the mother, reportedly there is no way to connect a father with the neglect case if he is involved in other related court cases. Moreover, there is no merger of data between the downtown court’s system’s management information system and that of the juvenile court. The courts downtown (hearing other Family Division cases) cannot set the next court date through the management information system. Reportedly, there is a lack of

investment in the automated case management system used in CP cases and the court is having difficulty filling open positions.

Because this study did not involve a detailed and technical analysis of Michigan's MIS initiatives, this report can offer only educated guesses. There was an initiative by the Michigan CIP project that was frustrated by the death of the chief computer programmer responsible for the project. Based on experience in other states, we suspect that the following are reasons for the lack of substantial progress in this area in Michigan:

- The particular complexity of establishing automated case management systems for CP cases.

Many of the specific tasks that computers should perform in child protection proceedings are distinct from those of other cases and are more complex, given the many time requirements in CP cases, the distinctive court process in these cases, the many parties and participants having important relationships with the child, the many entities with which the court interacts, the need for ticklers and reminders (given the extreme importance of timeliness in these cases), and the need for complex forms of performance measurement.<sup>55</sup>

- The lack of priority given to establishing automated case management systems for CP cases.

There are a number of reasons why developing automated case management systems for CP cases has generally been a low priority. First, CP cases represent a relatively small proportion of cases in the courts, even within the Family Division (although a larger proportion of the *time* spent by family division judges). Second, the private parties involved in CP cases are mostly low income, and large proportions of the children and families involved in these cases are members of minority groups. Third, generally speaking, attorneys and judges assigned to these cases have relatively low influence within the judicial system. For all of these reasons, CP cases are generally the last to be developed in larger management information systems, and by the time the larger systems are developed for other types of litigation, they do not fully function for CP cases because of the distinctiveness of CP proceedings.

- The relative lack of available software for automated management information systems in CP cases.

For the above reasons, major software providers have not yet fully developed modules for CP cases. That is, there are not yet established CP modules within larger automated judicial management information systems. This is the case because major state court systems, such as Michigan, have not yet demanded such modules.

On the other hand, there are now some helpful materials available from the American Bar Association, the National Center for State Courts, and the National Council of Juvenile and Family Court Judges that can help court systems and vendors develop such programs.

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<sup>55</sup>See, e.g., *Building A Better Court: Measuring And Improving Court Performance And Judicial Workload In Child Abuse And Neglect Cases* (ABA, NCSC, & NCJFCJ 2004); M. Hardin, *Planning A Computerized Judicial Case Management System For Dependency Cases: Basic Tasks For The Computer And Things To Do For Court Administrators And Judges* (ABA 2003), <http://www.abanet.org/child/computertasks.html>.

## **Recommendations:**

Both SCAO and counties must increase their investment in automated management information systems specifically for CP cases. SCAO, with additional funding provided by the legislature, should make the development of MIS support for CP cases a high priority.

Although CP cases do not represent a large proportion of cases, even in the Family Division, they are important far beyond their numbers. This is true, in part, because they take up more court time than other case types. More important is that these cases involve particularly high stakes, namely, the extreme risks faced by the children coming before the court and, therefore, to society, and the potential for parents' rights to be terminated. Finally, these cases are also far more important than their numbers because of the high state investment in these cases. That is, Michigan pays large sums of money every year for the care of these children and services to their families.

Through relatively small investments in the court system, Michigan can save substantial foster care related costs. This was demonstrated by the 1995 study of the Kent County Juvenile Court, showing how a high functioning court process helped make it possible for children to stay for short periods in foster care. The cost of the court process was a small fraction of the overall costs to the state and county for such children.<sup>56</sup>

SCAO and the legislature should require courts to fully comply with state law regarding reporting of compliance with deadlines in CP cases and should specify a realistic timetable for the courts to comply. The current SCAO administrative order regarding timeliness should be strengthened for this purpose to cover all time requirements, as specified by state law.

SCAO should work with DHS to obtain and distribute relevant AFCARS statistics to the courts in each county and judicial circuit. This information could provide the courts with information, among other things, regarding the timeliness of adoptions and the timeliness of reunifications.

The legislature should appropriate and designate funds to implement its legislation calling for performance measurement by the courts in CP cases.

SCAO should develop statewide data specifications for automated management information (MIS) systems. To develop these data specifications, SCAO should support the development of these specifications through pilot courts. This should include developing specifications for data sharing between local courts and between local courts and SCAO in CP cases. It should also include the development of specifications for information exchange between DHS, the courts, and other agencies in CP cases.

## **STAFF SUPPORT FOR JURISTS**

Judicial staff performs a number of duties in child protective proceedings that are different from typical duties of court staff in other cases. These duties are related to

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<sup>56</sup>See M. Hardin, Ted Rubin, and Debra Ratterman Baker, *A Second Court That Works: Judicial Implementation of Permanency Planning Reforms* 3, 50-51, 121-123 (ABA 1995).

judicial functions that are unique to child protective proceedings. For example, in CP cases, because the court must ensure that abused and neglected children are placed in safe and permanent homes within a reasonable time of entering foster care, courts must oversee family progress as well as the delivery of services to the family and children. Courts must provide such oversight through an extensive series of court hearings.

For court oversight to be effective courts must receive complete and comprehensive information about the children and families who come before it. Without substantial staff support for the courts, there commonly are problems in both the timeliness and quality of information provided to in CP cases. Typical problems faced by courts in these cases include untimely court reports, court reports that are uninformative or inaccurate, and the absence of key witnesses and parties.

Court staff can help the judge ensure there will be adequate information in a number of ways. Staff can let the judge know when reports are incomplete or submitted late. Staff can make sure that the many participants, including parents (often several in a single case), custodians, foster parents and others receive notice.

While it is not the job of court staff to work with the agency in organizing and preparing information, it should be the job of court staff to make sure that the information is provided, to contact the agencies when it is not provided properly, to let judges know when the court itself is contributing to these problems, and to inform and work with agency administrators when there are chronic problems with the timeliness and completeness of legally required information, and to inform the judge when appropriate.

Another frequent problem requiring staff support is agencies' and other parties' failures to comply with and implement court orders. It is critical to the successful handling of these cases that court instructions and orders are implemented in a timely way. Examples include orders to provide evaluations and services within specified time limits. To help ensure compliance with court orders, court staff can help by checking on compliance and then helping the judge when necessary to enforce the orders. Likewise, court staff can suggest non-case-specific discussions between the agency and the judges regarding problems agencies reportedly have in complying with court orders.

For example, a judge may order a party to take a particular action within a specified time and to notify the court in writing when that action has been completed. Court staff can place the date on their tickler. When the tickled date occurs, court staff can check to see whether the court received the required notification and, if not, can contact the agency or party as a reminder. If the party has not complied within a very short time, court staff can ask the judge whether to schedule a hearing. When the judge finds that there are good reasons for such non-compliance, court staff can organize meetings between the court and others to discuss such recurring problems.

Another important duty of court staff is to set up an efficient court schedule to avoid excessive waiting time of parties. In many courts, caseworkers and witnesses typically wait for hours for short and routine proceedings. Court staff can help address these problems in a number of ways. They can help the judge follow up when particular agency staff or attorney are habitually late, thus enabling the judge to set more precisely timed hearings.

Other important duties of court staff are as follows:

- Community outreach and communication

Court staff can help the judge meet with agencies and community groups to work out logistical issues with the court, especially in providing information.

- Training

Court staff can help set up training programs through which the judge explains the court proceedings to agencies and community groups.

- Attorney oversight and appointments

Where the court appoints attorneys, court staff can help the judge not only appoint attorneys but also can check whether they submit proper reports on time, and whether they properly document their own work.<sup>57</sup> Court assessments in the mid and late 1990s showed major deficiencies in legal representation throughout the United States.<sup>58</sup>

Without competent legal representation, there will be major gaps in the information presented to the court.

- Special needs assistance

CP cases involve a high proportion of cases needing such special assistance as translators and transportation for incarcerated parents.

- Special projects

A number of special projects have proved to be very helpful in CP cases, such as truancy court, drug court, family group conferences, and project for coordination of domestic violence and CP cases. These projects require staff support. The Conference of Chief Justices has endorsed the use of special “problem solving courts.”

- Computer support

Computer support needed for CP cases is considerably more complex than for other types of court proceedings. The functionalities are more complex given the many time requirements in CP cases, the many parties and participants having important relationships with the child, the need for ticklers and reminders, and the need for complex performance measurement. Support by well-qualified staff is needed to support these systems.

## **Standards**

There currently is a lack of national or state standards concerning court staff in child protection proceedings. This is a serious gap. Studies conducted in Michigan and elsewhere have demonstrated their critical importance to successful court operations in CP cases.<sup>59</sup>

## **Staff Support in Site Visit Courts**

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<sup>57</sup>The ABA recommends that judges play a stronger role in the selection, training, oversight, and prompt payment of court-appointed lawyers in child abuse/neglect cases. American Bar Association, *Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases*, Part II - Enhancing The Judicial Role in Child Representation (ABA 1996).

<sup>58</sup>See generally, M. Hardin, D. Boyd Rauber, & R. Lancour, *State Court Assessments 1995-1998: Dependency Proceedings, Volume One: Representing Clients* (ABA 1999).

<sup>59</sup>M. Hardin, *Judicial Implementation of Permanency Planning: One Court That Works* (ABA 1992); M. Hardin, T. Rubin, & D. Ratterman, *A Second Court That Works: Judicial Implementation of Permanency Planning Reforms* (ABA 1995).

In Jackson County, each judge has a full time court officer and a judicial secretary. In addition there is a full time court clerk who manages video recording of hearings and the entry of data into the IT system. He is a county employee and reports to the county clerk. The referee depends on the judges' staff to prepare her orders. Spanish and hearing-impaired interpreters are available. When there is a need for something unusual – for example, Portuguese, they scour the local communities and find someone.

In Kent County, all of the judges have assistants (hearing coordinators) who work very closely with them. Since the transfer of cases to the family division, however, the availability of such assistants to help with child protection proceedings has diminished. As a result, several persons reported, there are often long delays in the issuance of notices and court orders and problems with the review of CP court orders, reducing the accuracy of dates and other specifics in court orders.

Because hearing coordinators now have to take on many other domestic case tasks, their time must be shared according to the demands of the expanded Family Division in Kent County. They do not perform the multiple tasks for neglect-abuse cases that they did under the old Juvenile Probate system. For example, they can no longer read all reports and confer on the substantive issues with the judge.

In Macomb County, the juvenile court has received fewer staff resources than the circuit court downtown. At the time of the site visit, there was one judge at the juvenile court building, and his staff included a secretary, clerk, bailiff, and court reporter. They were stationed downtown when he was there and in juvenile court when he was there.

Staff support for referees, who carried the primary burden of hearing CP cases in Macomb County, was quite different. The "legal department" of the court included the chief referee, four additional referees, and their support staff. Since the time of the site visit, a fifth referee position has been filled. Except for the chief referee, referees had no personal staff. In addition to the secretary for the chief referee, filing clerks handled files for all referees and the judge; there were staff responsible for greeting parties and visitors, and security personnel.

Thus, referees retrieved their own files, generally made their own copies, typed up their own court orders, printed their own copies and screened their own calls. Telephone calls were put through in spite of the bar on ex parte communications. Further, there was no tickler system for hearings, and no clerical staff was responsible for docket management.

There were two deputies for the building in which six referees and a judge worked. They did have a panic button that calls the sheriff's office a short distance away. The court had access to competent interpreters, but not stationed at the court. Thus, when the court knew in advance about the need for interpreters, this would not cause delays. Note, however, that on May 31, 2005 the judge, the referees, and court staff are scheduled to be transferred to the main downtown courthouse. Referees will be teamed with Family Division Judges, who will divide the responsibility for CP cases. The impact, if any, on staff support for referees was not yet known at the time of this study.

In Roscommon County the staff working for the judge includes a clerk who handles the paper work and a recorder who takes care of the orders. They reportedly don't often need interpreters but when they need one, they get that help through a local private business. According to informants in Roscommon County, the court needs more staff help, including someone who can coordinate CP cases, keep information about

families up to date, and prepare court orders – making sure that legal requirements for the orders are fulfilled, including federal Title IV-E requirements.

In Wayne County, which relies heavily on referees to handle CP cases, both referees and judges have a court stenographer and a court clerk who shows people in and enters dates in a computer. Courtroom clerks rotate every six months, however. Referees must type their own orders. Judges, but not referees have armed security officers in their courtrooms.

### ***Recommendations Regarding Staff Support***

Michigan, like other states, needs to systematically examine the staffing needs of courts handling child protective proceedings. There are extreme differences in staff supports for jurists within the state, particularly for referees.

SCAO not only should set standards for support staff for CP cases, but also should address in such standards the duties qualifications of such staff. Currently staff duties evolve locally, and there is a need for greater leadership from the state court system. Due to differences in court size and the lesser degree of specialization in less populated counties and judicial circuits, staff duties cannot be uniform across the state. But dramatic gaps in staff support should be strongly discouraged.

In judicial circuits that rely heavily on referees to hear child protective proceedings, it is strange for judges have substantial staff support that is far in excess of that of referees. This, of course, is not based on a rational allocation of staff based on different needs, but rather is a result of the politics of judicial funding.

## **COURT FACILITIES**

For many reasons, the quality of court facilities is important to all who work in and come before the courts. The following are some of those reasons.

- The quality and appearance of court facilities either reinforces or undermines the privacy, dignity, and comfort of the parties.
- Child-friendly facilities enable children to attend court and improve their experiences when they do appear.
- The court environment affects public attitudes about the court decisions and the court process.
- Proper facilities, providing a pleasant and safe place to work, help courts to attract and retain competent personnel.
- Court facilities, including equipment, affect the efficiency of the court.

### ***Standards and Best Practice Recommendations***

The Resource Guidelines provide the following principle recommendations regarding court facilities for dependency cases:

- The courthouse should be centrally located in the community and should be readily accessible through mass transit.
- The courtroom itself should be separate and apart from courtrooms used for adult and criminal and civil cases.

- Ideally, courtrooms used for abuse and neglect cases should be physically separated from courtrooms used for other juvenile court proceedings. If this is not feasible, child protective proceedings can be separated from other matters on the court's docket through scheduling.
- Hearings should be held in a courtroom sufficient to accommodate, without crowding, the judicial officer and court staff, the social worker and government attorney, the guardian ad litem and the child, the custodial and non-custodial parents, and their attorneys.
- Appropriate recording equipment should be available, which may include videotaping equipment.
- The courtroom must have adequate seating capacity, but need not have the appearance of a traditional courtroom. Smaller but comfortable courtrooms are often appropriate. The use of a conventional courtroom may be intimidating to children.
- The judge should exercise some discretion in protecting the privacy interests of each party. Persons not directly involved in the hearing should not be present in the courtroom. Other space should be provided for parties, witnesses, and attorneys waiting for hearings in the same court.
- The courtroom should have a telephone. A bailiff should be in the courtroom, and the judge should have a silent buzzer or other device available to obtain additional security personnel when necessary.

Recommendation 57 of the original CIP Assessment reinforced and expanded on the Resource Guidelines recommendations, as follows:

In light of creation of the family division of the circuit court, and because it is in the best interest of children, sufficient funding should be appropriated by the legislature so that all Michigan courthouse facilities being used for child abuse and neglect proceedings come into compliance with the Resource Guidelines. In all facilities handling child protective proceedings, the following need to be created or, if currently available, maintained:

- Adequate waiting and playrooms that are "child-friendly" and designated for children.
- Courtrooms that are separate and apart from courtrooms used for criminal and other civil cases, including delinquency cases.
- Adequate courtrooms so that all court participants, including judicial officers, court staff, attorneys for the parties, can be comfortably seated.
- Attorneys should have access to adequate counsel table space to allow for consultation with clients and for the taking of notes and reviewing of files and other appropriate materials.
- Adequate and private conference rooms (in the vicinity of the juvenile courtrooms) that enable attorneys to consult with their clients, including child clients.

- Consistent policies about confidentiality of files and the public's access to child abuse and neglect hearings.

Based on visits to the six sites, this section of the chapter discusses the following aspects of court facilities: waiting rooms, meeting rooms, and the overall courthouse environment; jurists' courtrooms and offices; court locations; file rooms; and court equipment. In the two sites in which child protective proceedings were still heard in separate locations from other Family Division cases, we noted the substantial inferiority of the facilities available for juvenile cases.

### ***Waiting Rooms, Meeting Rooms, and Courthouse Environment***

In the Jackson County Courthouse people crowd into the judges' courtroom and people involved in a number of different cases enter the court at the same time. This occurs because there is no lobby and no place for people to wait outside the courtroom for their cases to be called.

There are only a few meeting rooms for attorneys and their clients. According to one person we interviewed, one reason that children do not come to court is that there are no child-friendly spaces. As recognized by the Resource Guidelines, it is important that age-appropriate children be present in child protective proceedings.

In Kent County, child protective proceedings are no longer heard in the old building used when the 1997 Assessment took place. Cases are now heard in a modern, multistory courthouse, in which other family division matters are heard. Members of the site visit teams observed large, well-lit, open lobbies as they got off the elevator. There was plenty of seating space and nice children's art on the walls of the waiting areas.

While the new building is attractive, several persons complained that, because courtrooms are locked and judges are on separate floors, judges, attorneys, and others miss the former collegiality. A number of people reported that there are now fewer impromptu chambers discussions with DHS, the prosecutor, and other attorneys.

The Macomb County courthouse in which child protection cases were heard at the time of the site visit was overcrowded. The waiting room, essentially a lobby, is right at the front entrance. Parents, children and social workers crowded into the area to wait for their cases to come up. During the site visit evaluators observed that the lobby-waiting area became overcrowded with many people having to stand up because there were so few seats. In this area there was chaos, noise, and a lack of privacy. One Macomb County caseworker said that she sometimes waited in her car because there was no room in the waiting room.

Names were called over a loudspeaker, which was heard throughout the waiting area, so everyone present learned the names of the other persons before the court. Attorneys generally had to talk to clients in the lobby or outdoors. Because of the lack of meeting rooms, attorneys spoke openly about private family matters in the waiting area in the presence of strangers. Sometimes a person came to the waiting area and said in front of others something like "your drug test came back OK." One day a young woman could be seen and heard wailing in grief as she came out of one of the courtrooms into the crowded main waiting area. There was a small victim's room in the courthouse in Macomb County, which was used mostly for children who were victims of crimes. The halls were narrow, and attorneys and their clients congregated in them to develop plea

agreements and wait to enter the referees' rooms. Youth in handcuffs are paraded through the halls to their hearings.

On May 31, 2005, juvenile and child protective proceedings are scheduled to be transferred to the downtown courthouse. Based on a description we received of the rooms to be set aside for child protection proceedings, this will represent a considerable improvement.

In Marquette County, child protective proceedings take place in an annex that is connected to a beautiful old courthouse. There is no separate waiting room or lobby, however, for parents or children. There are a few chairs in the clerk's office. In Roscommon County, parents wait for hearings in the hallway leading into the courthouse. While there is no over-crowding, there is no area for children or parents to wait or consult in private with their attorneys.

In Wayne County, the conditions reported in the 1997 Assessment still apply. The waiting areas adjacent to hallways are often noisy and crowded. It is loud in the hallways and it is often necessary to yell in the halls to be heard. There are no play areas for children and no child-friendly interview rooms. During the visit, one youth went into the bathroom to talk to her attorney.

### ***Courtrooms and Offices of Jurists***

In Jackson County, the senior judge has a new courtroom on 5<sup>th</sup> floor, with new, large, lovely adjoining conference room that is behind a locked door. The less senior judge has an older courtroom downstairs. There are two smaller conference rooms for attorney-client meetings beside the courtroom. The referee has another smaller courtroom where she does initial preliminary hearings only.

In Kent County courtrooms are well furnished and small, though with adequate seating for everyone. There are locked, secure offices for judges and staff offices quite a distance from the lobbies-waiting areas.

In Macomb County at the time of our site visit, there were five referees and one judge. Referees held hearings in tiny, claustrophobic, windowless, office-sized hearing rooms. When a case was called, people crowded into the tiny room, standing or sitting along the walls or at the one table that sits in front of the judge's desk. Each referee wore a robe (a recent change), but sat at a desk. Referees had no offices outside of the rooms in which they heard cases.

Several informants expressed concern about the informality of the facilities in Macomb County. As a result, one explained, family members people may say "I have an appointment with Ms. ----," referring to one of the referees. While attorneys may emphasize to their clients that "this isn't an appointment for tea" the courtroom atmosphere did not confirm that fact. There was one larger room fully outfitted as a courtroom in the Macomb County Juvenile Courthouse, which was occupied by the judge.

With the transfer of referees to the downtown courthouse, the courtrooms reportedly will be considerably larger and more impressive.

In Marquette County, there is a large and attractive courtroom with adjoining conference rooms. There are good-sized judge's chambers where pre-trials take place.

In Roscommon County, the situation is unchanged from the time of the 1997 Assessment. The courtroom is small. When more than two attorneys appear on behalf of the parties, there is no room for all attorneys to sit at counsel's table, let alone with their clients next to them. Attorneys making legal arguments on behalf of their clients are forced to make their presentations to the court from the audience. There is no desk space to take notes and be in close proximity to their clients for consultation purposes.

In Wayne County, where referees preside over more child protection hearings, referees' courtrooms are small and uncomfortable. Their courtrooms are located off narrow hallways and across from each other. Because parties and witnesses involved in different cases often are present in the courtrooms, the courtrooms can be quite crowded. A referee remarked that there is "standing room only in my courtroom. On Mondays and Tuesdays, especially, people are 'nose to nose' in the court waiting areas." This is partly the consequence, however, of the block setting of hearings, as described in Chapter 3 on timeliness. In each courtroom there is a court stenographer and a court clerk who shows people in and enters dates in a computer.

Everyone sits in the small hearing room waiting for attorneys to show up. Referees' offices, just through a door from the hearing room, are very small, barely able to accommodate a desk.

Judges' courtrooms are more spacious than those of the referees. The judges' offices, adjacent to their courtrooms, though for the most part windowless, were much larger than those of the referees, and can accommodate legal books, a conference table, and desk.

### ***Location of Courthouses***

Court location presented a problem in two counties at the time of our site visits. In Macomb County, the courthouse where child protective proceedings were heard was some distance away from the downtown courthouse, in which the rest of the family division is located. On the other hand, the juvenile court was near a major DHS office. This made it more convenient for caseworkers and other agency staff to attend court.

In Wayne County the family court includes the Lincoln Hall complex (old juvenile court) and the downtown courts where related family matters are heard. They are some distance from one another. Further, some persons who work in the Lincoln Hall complex are concerned that it is located in an unsafe neighborhood.

### ***Equipment and Technology***

In the six counties visited for this report, there have been a number of improvements in equipment for CP cases. In Jackson County, there is a computer printer in the courtroom, which makes it possible to produce and distribute court orders in the courtroom. In Kent County, the court has the capacity to videotape hearings.

In Macomb County, child protective proceedings were videotaped at the time of the site visit, using a system that allows the efficient retrieval of hearing videos for review either by the referee hearing the case or the judge. Judges and some referees had computers in their courtrooms. They also have access to a special terminal, which allows them to do criminal records checks with parties' permission, even for child protective

proceedings. Criminal records checks provide critically important information for these cases. On the other hand, referees generally do not have access to computerized legal research, such as through Westlaw or Lexis.

In Marquette County, the judge has a high quality speakerphone at the bench. This enables the judge to include parties and witnesses not present in certain courtroom proceedings.

## ***Recommendations***

Besides reaffirming the recommendations of the 1997 Assessment, listed above, we have several further suggestions. First, child protective proceedings Wayne County need to be moved from their present building. We applaud the recent decision to move cases from the old building in Macomb County to the downtown courthouse. Second, while we realize that public finances do not always permit making timely improvements in courthouses, we think that SCAO can plan a greater role in encouraging these developments specifically for child protective proceedings.

Specifically, we suggest that SCAO develop guidelines for the development of new court facilities for family division cases in general and for child protection cases specifically. Such guidelines should set both “minimum” and “recommended” specifications for such facilities and should, with specificity, address the issues set forth in the 1997 recommendations. The SCAO should then, to the extent that it has the influence to do so, encourage counties to follow these guidelines in the development of new facilities.

For example, such guidelines should call for child-friendly waiting rooms equipped with toys and other sources of amusement to make it possible to bring children to court and to minimize the unpleasantness of the experience. The guidelines should call for waiting areas in which caseworkers can catch up on work when waiting for court hearings. They should include rooms for attorneys and clients to meet. Especially in urban areas, the guidelines should call upon the courts to provide enough space for the co-location of certain services that enhance the efficiency of the court process, such as on the spot drug and paternity testing.

SCAO, the legislature, and county governments should increase the availability for videotaping court proceedings, making child protection cases a priority. This system works well in Macomb and Kent Counties and makes the court process more efficient.

SCAO, the legislature, and county governments should expand the availability of interactive video technology for juvenile cases, including making child protective proceedings a priority. This technology can be of great help, for example, when parents are in jail; parents, witnesses, and other important parties are in remote locations. In child protective proceedings, more than in most other cases, parties and witnesses lack the resources to finance travel from distant locations.

SCAO, in cooperation with DHS and the bar, should help courts provide information for parties and witnesses in abuse and neglect cases. They should accomplish this by developing model pamphlets, videos and other materials for parents, children, foster parents, caseworkers, and other witnesses. SCAO should help provide equipment to show such videos to parents in the courthouse and assist in the printing of

written materials. SCAO should develop sample scripts of videos, allowing local courts to develop their own localized versions.

## **SUMMARY OF RECOMMENDATIONS**

The following is a summary of recommendations regarding court organization:

1. An improved judicial caseload analysis is needed, specifically for child protective proceedings, to take judicial time needed to fulfill the letter and spirit of the law and to implement nationally accepted best practices. This analysis should also determine typical appropriate lengths of non-contested hearings in child protective proceedings. In many counties, the assignment of probate court judges to the Circuit Court Family Division.
2. SCAO should, in accordance with state law, ensure that judges assigned to the Family Division have expertise both in family law in general and child protection proceedings in particular. It should do this by:
  - Setting requirements or standards concerning the qualifications of judges assigned to the family division.
  - Setting standards or guidelines for the duration of assignments to the family division.
  - Establishing specialized courts for sparsely populated areas.
  - Setting stricter expectations for Family Court Plans.
  - Discouraging or barring the practice of designating particular types of hearings either to judges or referees.
  - Slowing or ending rotation of judges in and out of the Family Division.
  - Requiring systematic and consistent methods to identify related family cases.
3. SCAO should develop standards regarding staff support for all jurists, reduce differences in training for referees and judges hearing child protection cases, and provide them with comparable facilities and equipment.
4. SCAO and counties should increase their investment in automated management information systems (MIS) specifically for CP cases and speed the development of MIS specifically for CP cases.
5. SCAO and the legislature should set a schedule for courts to fully comply with state law regarding reporting of compliance with deadlines in CP. The legislature and counties should provide resources to make this possible.
6. SCAO should develop statewide specifications a range of functions to be performed by automated management information (MIS) systems in child protective proceedings.
7. SCAO should work with DHS to obtain and distribute relevant AFCARS statistics to the courts in each county and judicial circuit. This information could provide the courts with information, among other things, regarding the timeliness of adoptions and the timeliness of reunifications.
8. SCAO should set standards for support staff for CP cases and should address in such standards the duties and qualifications of such staff.

9. SCAO should develop guidelines for the development of new court facilities for family division cases in general and for child protection cases specifically. Among other things, the standards should call for:
- Child-friendly waiting rooms equipped with toys and other sources of amusement to make it possible to bring children to court and to minimize the unpleasantness of the experience.
  - Waiting areas in which caseworkers can catch up on work when waiting for court hearings.
  - Rooms for attorneys and clients to meet.
  - Especially in urban areas, space for the co-location of certain services that enhance the efficiency of the court process, such as on the spot drug and paternity testing.
  - Capacity to videotape court proceedings.
  - Interactive video technology for juvenile and child protective cases, allowing testimony from remote locations.

# TIMELINESS

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## CHAPTER 3

### CHAPTER THREE: TIMELINESS

Managing case flow in order to meet hearing deadlines is a profoundly important way to assure that a child obtains a safe, permanent placement that promotes health and well-being. Attention and discipline are required to counter the slow-down effect inherent in complex cases and in court and agency bureaucracies. Unlike criminal cases, or divorce custody disputes, child neglect-abuse cases involve extended families, absent parents, foster parents, multiple service providers (psychologists, counselors, etc.), lawyers and guardians *ad litem*, and caseworkers. To schedule hearings in a timely way and simultaneously assure that persons who are crucial to the outcomes are present requires that a management system be in place to account for notices, court orders, attorney assignments, and other paperwork.

The Adoption and Safe Families Act sets only the major deadlines within which cases must be decided. The regulations interpreting the Act add the following timelines:

- Making a finding that it is *contrary to the welfare of the child* to return home. 45 C.F.R. 1356.21(F)

The contrary to the welfare finding must be made in the first court order sanctioning removal of the child from home.

- Developing a *case plan* and reviewing the case plan periodically, but no less frequently than once every six months. 42 U.S.C. 675(4)(B)

The case plan must be prepared within 60 days after the child's removal from home. 45 C.F.R. 1356.219(g)(2) The case is to be reviewed 6 months after the child is considered to have entered foster care. 65 Fed. Reg. 4030-4032

- Holding a *permanency planning hearing*, one year after the child is considered to have entered foster care.<sup>60</sup> 42 U.S.C. 675(5) (C)

If a child's family does not qualify for reasonable reunification efforts because of abandonment or various aggravated circumstances, the permanency hearing is to be held within 30 days after the determination that reasonable efforts do not apply. 42 U.S.C. 671(a)(15)(E)(i) A finding of reasonable efforts to finalize the petition must be made on or before the one-year date. 45. C.F.R. 1356.21(b)(2)

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<sup>60</sup> A child is considered to have entered foster care on the earlier of (1) the date of the first judicial finding that the child has been subjected to abuse or neglect; or (2) 60 days after the child is removed from home. 42 U.S.C. 675(5)(F)

- Filing a *termination of parental rights petition* for a child who has been in foster care 15 of the most recent 22 months. 42 U.S.C. 675(5)(3)(E)

The petition must be filed by the end of the 15<sup>th</sup> month, excluding court-ordered trial home visits, and runaway episodes. For children who are abandoned or the victims of aggravated circumstances, the petition must be filed 60 days after the decision that reasonable efforts do not apply. 45 C.F.R. 1356.21(i)

State legislatures are expected to specify how many hearings will be held and the time within which they must be accomplished. Michigan could well be a national leader. Its laws meet all Federal deadlines and exceed the number of reviews required in order to create an effective monitoring system. Under Michigan law, cases are to move through the courts as follows:

**Table 14**

**MICHIGAN’S STATUTORY TIMELINE FOR CHILD PROTECTION PROCEEDINGS**

<b>Event</b>	<b>Time Limit</b>	<b>Source</b>
Preliminary Inquiry	No time limit (child at home).	MCR 3.962
Preliminary Hearing	24 hours after protective custody. “Contrary to welfare” finding in 1 <sup>st</sup> court order authorizing removal. Reasonable efforts finding not to remove child from home due 60 days after removal. Attorneys appointed. Preliminary hearing may be adjourned for up to 14 days.	MCR 3.965
Review of Placement, Case Plan	Petition for review to be filed within 14 days after agency’s placement decision. Court hearing within 7 days of petition filing. For Native American children, removal hearing to be completed 28 days after removal.	MCR 3.966; MCR 3.980
Case Service Plan	30 days after placement. Must be updated every 90 days.	MCR 3.965
Adjudication	<i>Child at home:</i> 6 months after filing petition. <i>Child in foster care:</i> As soon as possible, but not later than 63 days after placement by the court, unless postponed.	MCR 3.972
Disposition	35 days after trial, except for good cause.	MCR 3.973
Dispositional Reviews	No later than every 91 days following original order of disposition and every 91 days thereafter.	MCR 3.975
Permanency Planning Hearing	<ul style="list-style-type: none"> <li>▪ <i>Standard cases:</i> No later than 1 year after original petition has been filed. A finding of reasonable efforts to finalize the petition must be made on or before this date.</li> <li>▪ <i>Special circumstance cases:</i> 28 days after petition has been adjudicated.</li> </ul>	MCR 3.975
Termination of Parental Rights	<ul style="list-style-type: none"> <li>▪ <i>Standard cases:</i> Petition must be filed 42 days after order in the permanency planning hearing. No deadline for hearing, but “hearings must be given highest possible priority consistent with the orderly conduct of the court’s caseload.”</li> <li>▪ <i>Supplemental petition cases:</i> Hearing 42 days after filing of a supplemental petition. Period may be extended for up to 21 days.</li> <li>▪ <i>Special circumstance cases:</i> Rights may be terminated at the initial dispositional hearing.</li> </ul>	MCR 3.977
Post-termination Reviews	91 days after termination of parental rights and at least every 91 days for the first year. Every 182 days after the first year. (Note: court rule specifies every 91 days as long as child is subject to court jurisdiction or Michigan’ Children’s Institute, excepting long-term foster care and kinship placements. Practice seems to follow the statute.)	MCR 3.978; MCL 712a.19c
Adoption	No deadline.	
Long-term Cases	Long-term foster care agreements and “other placements intended to be permanent” must be reviewed every 182 days. There must be an annual permanency hearing one year from the prior permanency hearing.	MCR 3.976; 3.978

Though an excellent framework for meeting federal statutory deadlines, Michigan’s requirements nonetheless have the potential to allow open-ended continuances and adjournments at many points in the process. These adjournments and continuances,

which must be managed by each jurist to accord with individual calendars, are possible causes of delay in the overall case flow.

## **I. COURT ACHIEVEMENT OF TIMELY PERMANENT PLACEMENTS**

On January 1, 2004, the Michigan Supreme Court issued Administrative Order 2003-7 on Case flow Management Guidelines. The Court firmly placed responsibility for achieving timely outcomes on the judiciary, acknowledging that this requires balancing the interests of individual litigants and the state's citizens, while working with limited resources. Specifically for children in foster care, "90% of all original petitions should have adjudication and disposition completed within 84 days from the authorization of the petition and 100% within 98 days." This directive asks courts to achieve disposition 15 days earlier than the statute and rules absolutely require, but allows 10% of the cases to meet the rules-imposed deadline of adjudication 63 days after placement, plus disposition 35 days after trial (98 days). The administrative order is not mandatory (courts are told they "*should*" meet the deadline), and no sanctions are imposed for failure to do so.

Court case files were reviewed and DHS case file data were obtained for the six courts visited during this Reassessment. (See Chapter 1 section on methodology for a detailed description of the data used for analysis.) The goals of collecting and analyzing this information were twofold: to determine whether the courts are adhering to the legal timeframes and to identify the points in the process that constituted barriers to moving a child to a final, permanent placement in a timely way. The main points of measurement are:

- Preliminary hearing<sup>61</sup> to adjudication – disposition;
- Preliminary hearing to permanency planning hearing;
- Preliminary hearing to case closure, child with parent;
- Preliminary hearing to termination of parental rights;
- Termination of parental rights to case closure, child adopted.

The data cited below should be considered rough approximations, rather than exact reflections, of what is going on in the study site courts, for two reasons: (1) only a small percentage of the total number of cases in all but the two smallest courts could be examined during the evaluators' visits to the courts; and (2) data could not be obtained for every significant event in the cases reviewed and analyzed.<sup>62</sup>

A mix of closed and open cases was examined to capture information regarding the broadest range of court events.<sup>63</sup> Data on more recent cases (i.e., cases opened in 2002 and cases opened in 2004) that could reflect more current court practices were used

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<sup>61</sup> The actual legal point of initial measurement should be removal of the child from home, but as that date was often missing from the judicial case files, the preliminary hearing date (24 hours later) was used.

<sup>62</sup> Michigan courts do not have an automated system that generates standardized timeliness statistics, therefore no statewide statistics could be obtained for this review. Differences in how case files were maintained court-to-court and differences in how data were input into the DHS system are reasons for caution regarding the degree to which these analyses should be relied upon.

<sup>63</sup> Case files reviewed included primarily cases that were opened in 2001 and cases that were closed in 2003. A small number of older, still-open cases were also reviewed.

for the analyses for Kent and Wayne Counties. The cases reviewed reveal patterns and problems that merit serious attention, even taking into account the limitations of the data.

### A. Preliminary Hearing to Adjudication

The legal requirement is for adjudication to occur 63 days after removal of the child from home. In these charts, the percentages of cases that reach adjudication within 63 days of the preliminary hearing are listed, as well as the percentages that fall outside of the legal limit. A subset (portion) of the cases outside the legal limit is labeled “seriously delayed.”

<b>Table 15</b>						
<b>PRELIMINARY HEARING TO ADJUDICATION</b>						
<b>Time</b>	<b>Jackson N=29</b>	<b>Kent N=38</b>	<b>Marquette N=17</b>	<b>Macomb N=38</b>	<b>Roscommon N=3</b>	<b>Wayne N=384</b>
Within 63 days	89.6%	72.8%	53%	60.5%	66.7%	61.5%
63 to 93 days	6.9%	16.8%	5.8%	18.5%	0%	20.9%
More than 93 days	3.5%	10.4%	41.2%	21%	33.3%	17.6%

In the two smallest courts, adjudication was seriously delayed: in 41.22% of cases in Marquette and 33.3% of cases in Roscommon.<sup>64</sup> By contrast, in Jackson nearly 90% of the cases reached adjudication within 63 days.

For Kent and Wayne Counties, additional data from cases opened in 2004 are available for the preliminary hearing-to-adjudication phase. A comparison of the 2002 and 2004 data for these two jurisdictions follows:

<b>Table 16</b>				
<b>PRELIMINARY HEARING TO ADJUDICATION KENT AND WAYNE: 2002/2004</b>				
<b>Time</b>	<b>Kent 2002 N=38</b>	<b>Kent 2004 N=125</b>	<b>Wayne 2002 N=384</b>	<b>Wayne 2004 N=340</b>
Within 63 days	33.3%	72.8%	50.7%	61.5%
63 to 93 days	43.9%	16.8%	24.4%	20.9%
Over 93 days	22.8%	10.4%	24.9%	17.6%

<sup>64</sup> With only three cases available for this particular analysis in Roscommon, it is really not possible to draw meaningful inferences about the timeliness of cases overall in that court. On the other hand, because evaluators did not wish to leave Roscommon out of this section of the report, it was decided to include even these small case numbers.

Both Kent and Wayne improved their timeliness performance for this important initial increment. Kent more than halved the seriously delayed cases and adjudicated 72.8% of cases within the legal timeframe. While Wayne’s improvement is not as remarkable as Kent’s, it is significant, with delayed and seriously delayed cases being reduced by 22% and 29%, respectively.

Dispositions are required to be held within 35 days of the adjudication.

<b>Table 17</b>						
<b>ADJUDICATION TO DISPOSITION</b>						
<b>Time</b>	<b>Jackson N=28</b>	<b>Kent N=53</b>	<b>Macomb N=31</b>	<b>Marquette N=17</b>	<b>Roscommon N=3</b>	<b>Wayne N=328</b>
Within 35 days	67.8%	98%	71.1%	17.6%	33.3%	74.3%
36 to 60 days	17.8	0%	16.1%	23.5%	0%	10.4%
More than 60 days	14.4%	2%	6.4%	53%	66.7%	15.3%

Marquette and Roscommon continue to have the highest percentages (53% and 66.7%) of seriously delayed cases.<sup>65</sup> The fact that there are serious delays in both of the initial increments (i.e., preliminary to adjudication and adjudication to disposition) raises the question of whether these courts hold timely adjudications and dispositions as a high priority. It may be that the intention of jurists in these courts is to work out problems at the early stages to avoid trial and disposition if at all possible.<sup>66</sup> Again, 2004 data is available for both Kent and Wayne counties relating to the adjudication-to-disposition phase. The comparisons follow:

<b>Table 18</b>				
<b>ADJUDICATION DISPOSITION WAYNE: 2002 AND 2004</b>				
<b>Time</b>	<b>Kent 2002 N=53</b>	<b>Kent 2004 N=118</b>	<b>Wayne 2002 N=328</b>	<b>Wayne 2004 N=278</b>
Within 35 days of adjudication	98%	99.2%	74.3%	86.6%
36 to 60 days	0%	0%	10.4%	6.9%
More than 60 days	2%	.8%	15.3%	6.5%

Once again there is improvement, particularly for Wayne County, over the two-year period, resulting in a nearly 50% reduction in Wayne’s delayed dispositions.

Both Wayne and Kent courts typically schedule dispositions to occur on the same day and immediately following the trial. This helps make up for delays in scheduling the adjudication. As one jurist observed, this approach does not give parents a lot of time to accept the decision and then move on – but it does allow them to “hit the ground running

<sup>65</sup> It should be noted that this measurement only applies to the increment of time between adjudication and disposition—it does not include delays from the preliminary hearing to adjudication.

<sup>66</sup> This may well apply to the court in Marquette which, up until 2004, when mediation funds were withdrawn from that court, regularly used mediation as a tool for resolving issues in cases. (See Chapter 7 for a more extensive discussion of mediation, including in Marquette.)

with a service plan in place.” If DHS’s case management is tight enough to assure that the elements for a comprehensive disposition are in place, combining the hearings could help move the child to permanency quickly. On the other hand, if assessments are not ready or the family’s cooperation has not been obtained to complete the case service plan, combining the two hearings could be unwise.

Interviews at the six sites revealed the kinds of problems that some courts are having in scheduling trials on time. In Macomb, each jurist can only schedule trials one day a week because of a shortage of prosecutors. One jurist whose trial day is Monday said that many of her cases were delayed beyond even those of her colleagues because so many official holidays occur on Mondays. Pretrial conferences usually are scheduled for one half hour, at a time certain, in Macomb, in the expectation that a plea will result. Nevertheless, some informants say that adjudication can take three to six months, even in uncontested cases. They note that many adjournments occur because attorneys do not show up or because service of process by publication has not been completed.

On the other hand, throughout the system probable cause hearings usually are waived at preliminary hearings (95-99% of the time, one Wayne jurist estimated), and pleas are encouraged. A Wayne County jurist estimated that between 50-75% of cases plead out in Wayne. A Macomb County jurist placed their pleas at 90%. In Kent County, a jurist said that attorneys recognize the need to obtain pleas quickly, presumably so that cases can move in a timely way through the system.

### **B. Preliminary Hearing to Permanency Planning Hearing**

Michigan law requires a permanency planning hearing for standard cases (those which are not subject to early termination of parental rights) to be held within one year of the date on which the initial petition is filed. Typically, the preliminary hearing is held on the same date the initial petition is filed, that is, 24 hours after the child has been removed from home. Data relating to scheduling the permanency planning hearing one year later were available for four counties.<sup>67</sup>

<b>Table 19</b>				
<b>PRELIMINARY HEARING &amp; PERMANENCY PLANNING HEARING</b>				
<b>Time</b>	<b>Jackson N=17</b>	<b>Kent N=11</b>	<b>Macomb N=23</b>	<b>Wayne N=195</b>
Within 364 days of preliminary hearing (initial petition)	58.8%	54.5%	21.7%	37.9%
12 to 15 months	11.7%	18.2%	39.2%	29.7%
15 to 18 months	5.8%	0%	26.1%	6.6%
Over 18 months	23.5%	27.3%	13%	25.8%

<sup>67</sup> It was not always clear from the court files which of the review hearings were permanency planning hearings, or whether a permanency planning hearing ever took place. Also, entries for permanency planning hearings were significantly lower in DHS data. That is one of the reasons that the numbers of cases for this analysis are so much lower and that there are not *any* cases to analyze from the two smallest courts.

Barely half the cases in Jackson and Kent Counties reach a permanency decision on time and about a quarter of the cases are seriously delayed. Given the fact that the great majority of cases in Jackson and Kent Counties met the timeline for adjudication, the search for causes of delay must be in the interim period of dispositional reviews. By comparison, it is not surprising that Macomb, with approximately 40% of its cases delayed at the adjudicatory stage (21% seriously), has the great majority (78.3%) of its cases (13% of them seriously--a reduction from the adjudicatory stage) delayed at the permanency hearing. Whereas a majority of cases in Wayne were adjudicated on time, at the permanency planning stage a majority (62.1%) is delayed. The percentage of seriously delayed cases in Wayne (25.8%) is comparable to that in Kent (27.3%) and in Jackson (23.5%).

Interviews suggest that the timeliness of permanency planning hearings may relate to how seriously jurists and the court culture take those hearings. In two jurisdictions, attorneys and caseworkers stated that the permanency planning hearing is just another review and no special attention is given it. In Macomb, attorneys said the timelines were flexible, and up to four or five month delays were permitted to allow parents to resolve issues. A key informant in Macomb estimated that permanency did not occur within the times permitted by law in 80% of the cases. The case review affirms this estimate--there was delay in 78.3% of permanency planning hearings in 23 of the cases reviewed in that jurisdiction. In Jackson County, where statistics were slightly better than a few other jurisdictions, an attorney said that the jurist recognized the time frame was "artificial" and would give the family more time to work out its problems if necessary.

The 2003 Child and Family Service Review rated permanency planning hearings as an area needing improvement. In that federal-state review, only 59% of the cases examined had a permanency planning hearing within 12 months of the initial petition. Jackson and Kent counties were in line with the results of the review at 58.8% and 54.5%; the other two courts were considerably worse. The lack of timeliness of permanency planning hearings in Michigan is cause for serious concern.

### ***C. Preliminary Hearing to Date of Case Closure, Child with Parent***

There is no specific legal deadline for reunification of a child with the parent. Since a permanency planning hearing is to make a decision concerning the child's future, a decision to return the child to the parent is normally supposed to occur either immediately, or by a fixed date within a short time. In some cases, however, it is necessary to grant a brief extension of time to phase in the return, for example, for three months.<sup>68</sup>

The data reported below include cases where the child may have been returned home prior to a permanency planning hearing and the case was closed, as well as cases in which there was a permanency planning hearing after which the child remained in DHS

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<sup>68</sup> 42 U.S.C. 675(5)(E) requires a petition for termination of parental rights, subject to certain exceptions, when a child has been in foster care for 15 of the last 22 months. For most children, this deadline occurs three months after the permanency hearing. For an explanation of different legal options at permanency hearings, including reunification, see C. Fiermonte & J. Renne, *Making It Permanent* (ABA 2002).

custody until the agency and the court determined that it was safe for the child to return home.

In looking at these data, one should think of the 12-month date as the permanency planning hearing and the 15-month date as one that might accommodate a phased or monitored return. Any time over the 18-month date would be outside the usual limits. Over 18 months would be considered seriously delayed.

**Table 20**  
**PRELIMINARY HEARING TO CASE CLOSURE, CHILD RETURNING HOME**

Time	Jackson N=12	Kent N=40	Macomb N=4	Marquette N=11	Roscommon N=8	Wayne N=364
Up to 12 months	75%	50%	0%	63.6%	62.5%	23%
12 to 15 months	0%	17.5%	0%	9.1%	12.5%	15.5%
15 to 18 months	8.3%	2.5%	25%	18.2%	12.5%	17.5%
Over 18 months	16.7%	30%	75%	9.1%	12.5%	44%

It is striking that all of Macomb’s cases were delayed and 75% of them seriously delayed.<sup>69</sup> While only four cases were available for examination, this is to some degree consistent with the 23 Macomb cases examined at the permanency planning hearing stage, of which 78.3% were delayed. Despite earlier delays, around 75% of family reunifications occur within 15 months in both Marquette and Roscommon. A majority of cases in Jackson and Kent are heard within 15 months, though the category of seriously delayed cases in Kent (30%)

The 2003 Child and Family Service Review found that “The State’s percentage of children reunified within 12 months of entry into foster care (52.9%) does not meet the national standard of 76.2 percent,” (p. 6). It may be that jurists and DHS caseworkers are focused on resolving problems in the family, however long it may take, rather than swiftly finding a permanent placement for a child. One jurist explained how she was hesitating about sending children home to a family that had complied with all elements in the case plan, but whom she felt were not competent to care for their children. The permanency deadline slipped by as she struggled with that.

In Wayne County, the court has reorganized to provide more thorough preliminary hearings, with the result that more children are being returned home at the earliest point in the process. The two jurists who now carry the preliminary hearing docket have estimated that up to 20% of the petitions can be dismissed at the preliminary hearings, a benefit of the longer and more penetrating inquiries at that initial stage. As jurists in Wayne have discovered, once families enter the system, the bureaucracy carries them further and further away from their children. Discerning judicial oversight in the early stages could benefit a certain percentage of children by returning them home

<sup>69</sup> It should be kept in mind that information on only four cases in Macomb was available for this analysis. Evaluators did not want to eliminate Macomb from this examination, since it did seem useful to look at the time increments in relationship to each other.

quickly, while simultaneously taking some of the pressure off the system and saving its resources for the cases that truly belong there.<sup>70</sup>

**D. Preliminary Hearing to Termination of Parental Rights**

The legal deadline for filing a petition of termination of parental rights in standard cases is 42 days after the permanency planning order that contains a goal of adoption. There is no deadline for the termination of parental rights hearing. Michigan law requires that these hearings “be given the highest possible priority consistent with the orderly conduct of the court’s caseload.” MCR 3.977 Assuming that the permanency planning hearing occurs properly at the 12-month point, and allowing for 42 days to file a petition, with a possible extension of 21 days (as permitted for filing supplemental petitions), it seems reasonable that a standard termination of parental rights hearing should occur within 15 months after the preliminary hearing.

There are in addition early termination cases, for which a permanency planning hearing must be held within 28 days of adjudication, with immediate termination of parental rights at the disposition a possibility. In the following chart, 42 days is a marker for early termination cases, 15 months is a reasonable date for terminations in standard cases, and over 24 months is the marker for delayed termination of parental rights. Seriously delayed cases are those over 24 months.

<b>Table 21</b>						
<b>PRELIMINARY HEARING TO TERMINATION OF PARENTAL RIGHTS</b>						
<b>Time</b>	<b>Jackson N=12</b>	<b>Kent N=18</b>	<b>Macomb N=10</b>	<b>Marquette N=10</b>	<b>Roscommon N=5</b>	<b>Wayne N=106</b>
Early terminations: Up to 42 days	8.3%	0%	0%	0%	20%	0%
Up to 15 months: standard cases	66.6%	50%	10%	80%	60%	42.5%
15 to 24 months	25.1%	50%	90%	20%	20%	57.5%
Over 24 months	8.3%	22.3%	30%	10%	0%	12.2%

By the termination of parental rights stage, Marquette has closed the gap with 80% of its decisions within 15 months of the preliminary hearing. Roscommon also has made up much time lost, with 60% of its TPR cases within 15 months, and no cases that are seriously delayed. Macomb has been unable to shake off its cumulative weight of lost time: 90% of its cases are delayed. As with adjudications, Macomb jurists identified the greatest barrier to timely terminations of parental rights – particularly for early terminations which have strict deadlines -- as the lack of prosecutors, which forces jurists to hold trials only one day a week. One Macomb jurist said that available trial dates

<sup>70</sup> This point was also made by a jurist with many years of experience in another court, who stated that in his opinion 25% of the cases brought before him for preliminary hearing did not belong in court at all.

usually were 60 to 90 days after the scheduled pretrial, but if publication is required, the trial must be extended for another six weeks.

In Kent County, problems were reported with the availability of prosecutorial and judicial time. One attorney said that it takes a month for the prosecutor to the petition and two months to schedule the hearing. In several jurisdictions there are pretrial hearings that narrow the issues and often produce consents. However, in Kent the pretrial conferences were discontinued, so there is no formal mechanism for the parties to meet and identify areas of agreement. If less than the required time has been allotted for trial, it could be two to three months before the trial reconvenes because of limited judicial time. This can and, based on the data reported here, does appear to result in permanency delays in cases that go to termination.<sup>71</sup>

### ***E. Termination of Parental Rights to Case Closed, Child Adopted***

There are no legal deadlines for adoptions although there are national standards utilized for Child and Family Service Reviews. The whole thrust of ASFA and Michigan law is to obtain for the child a safe, permanent placement as swiftly as possible. Adoption is the most desirable permanent out-of-home placement because it is the most secure for the child. One of the traps in neglect-abuse case processing is that there can be a rush to the permanency planning hearing and to termination of parental rights, and then the child can drop into legal limbo. Michigan law tries to protect against that by requiring post-TPR hearings every 91 days for the first year after termination of parental rights. Nevertheless, the Child and Family Service Review noted (p.68):

According to the Statewide Assessment, the number of foster care cases in which parental rights have been terminated (permanent wards) has increased by 22 percent since 1998. The increase in the number of terminations has resulted in an increase in the number of children adopted; although there is a concern that Michigan is creating 'legal orphans' and is not considering a child's best interest when filing and supporting termination petitions. Data collected in February/March 2002 on children who had been in out of home care for at least 15 months indicated that for 41 percent of these children, a termination petition had been filed; and for 47 percent of the children, a compelling reason had been noted.

DHS generates annual statistics on adoption, including measures of the time from commitment, when parental rights are terminated and the child becomes a permanent ward of the state, to adoption. The times to adoption in 2004 are set out in the table below:<sup>72</sup>

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<sup>71</sup> In 1993, as noted in *A Second Court That Works* (Hardin, ABA), Kent's average time from the child's entry into care until TPR was 14.5 months (p.4). In the current analysis, 72.3% of Kent's cases require more than 15 months to complete a TPR. It is quite possible that the merger of courts has reduced the time available for TPR trials (as well as child protective proceedings generally), with the result that the case process through TPR is substantially slowed.

<sup>72</sup> The state reported no adoptions in 2004 for Roscommon and Marquette though evaluators' case file review did reflect that there were adoptions in Marquette that year.

<b>Table 22</b>					
<b>TERMINATION TO FINAL ADOPTION</b>					
<b>Time</b>	<b>Jackson N=65</b>	<b>Kent N=158</b>	<b>Macomb N=110</b>	<b>Wayne N=800</b>	<b>State N=2671</b>
Up to 6 months	13.85%	46.84%	6.36%	7.63%	14.98%
6 months to 1 year	24.62%	27.22%	24.55%	20.00%	29.35%
More than 1 year	56.92%	12.66%	61.82%	69.00%	50.99%
No data	4.62%	13.29%	7.27%	3.38%	4.68%

Kent County has by far the best statistics at this stage of the process, with close to 75% of adoptions occurring within one year of commitment. However, some of the court staff interviewed in Kent were not happy with the amount of time it took for children to be adopted. Those times fell well short of their goals.

The Kent County court has the distinguishing feature of a designated jurist to manage the adoption calendar. This jurist has become an expert in all aspects of adoption and is able to identify barriers and avoid them. Kent County also maintains financial and supervisory authority over most of their post-TPR children. Only those children whose parents would not have been Title IV-E eligible under the old rules (estimated to be about 20%) are shifted over to state supervision by the Michigan Children’s Institute. Kent’s adoption jurist estimates that it takes about two months longer for a child under the Michigan Children’s Institute custody to be adopted than for county-sponsored children.<sup>73</sup>

In the 2003 CFSR, Michigan barely met the national standard, scoring exactly 32% of adoptions occurring within 24 months after entry into care. Obviously there is great variation among jurisdictions.

Throughout the six sites visited during the reassessment, there were complaints about the insufficient adoption subsidies. An informant in one county said that infants under three years are not getting subsidized unless they are clearly diagnosed as impaired, so foster parents are delaying adopting those children. An informant in another county said that it was not possible to get increased level of care subsidies for children with special physical or mental health needs. Families considering adopting a special needs child would request an increased level of care subsidy, but it was most often denied; subsidies were not sufficient for families considering adopting these children, which delayed permanency. While potential adoptive families can appeal a denial of increased level of care subsidies, they could not appeal a denial unless it was put into writing; therefore DHS delayed putting denials in writing to stave off these appeals. Negotiations for subsidies were reported to add considerably to the amount of time required for completion of the adoption.

Other problems reported to be contributing to delays included a difficulty locating adoptive homes and the lack of concurrent planning. One Wayne County jurist said that post-TPR reviews are “disheartening; kids are languishing.” He noted that prosecutors

<sup>73</sup> It was reported to evaluators that there were staffing problems at MCI in 2003 and 2004 that contributed to serious delays in the time it took for children in MCI custody to be released for adoption.

should continue to be involved because after termination, only the jurist, caseworker, and child's attorney are in the courtroom for the reviews. Another long-time Wayne jurist said that in its attempt to comply with statutory mandates, the court was systematically creating legal orphans, children with no family to go back to and with problems so serious they were no families willing or able to adopt them.

## II. COURT MANAGEMENT TO ACHIEVE TIMELINESS

Certain elements for timely achievement of permanent placements for children are within court control. These include scheduling cases, granting continuances, distributing documents, and informing jurists about policies, laws and performance statistics. Other elements that can cause delay are not within the court's immediate control, but can be contained and directed through negotiations. These elements include delays that emanate from Federal and state agencies, private agencies, service providers, and other court systems.

In *A Second Court That Works* (Hardin et al., ABA, 1995), the factors that must be in place to create an efficient court process for child abuse and neglect cases are identified as:

- Judicial leadership and commitment;
- Standards and goals;
- Monitoring and an information system;
- Scheduling for credible trial dates;
- Judicial control of continuances;
- Individual calendars.

Numerous books have been written to guide case flow management<sup>74</sup> but few of those books specifically address child neglect and abuse cases. Best practices in this field are found in family and juvenile courts that have devised ways to mitigate delays and control paperwork and personnel. Two such courts are described in the ABA publications *One Court That Works* (Hardin, ABA, 1992), looking at the court in Hamilton County, Ohio, and *A Second Court That Works* (Hardin, et al., ABA, 1995), analyzing the court in Kent County, Michigan.

### A. Scheduling Cases

One great advantage of the one-judge-one-family strategy is that it allows a jurist to individually control the schedule for each case. Although Michigan courts are strongly committed to one-judge-one-family, for a variety of reasons judges in a number of courts have lost control of their calendars.

One of the problems appears to arise from "judge demands" that move a case from a referee's calendar onto a judge's calendar, and then most often return the case to

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<sup>74</sup> Examples of such books are Barry Mahoney et al., *How to Conduct a Caseflow Management Review: Guide for Practitioners* (Institute for Court Management of the National Center for State Courts, 1992) and James Steelman, *Caseflow Management: The Heart of Court Management in the New Millennium*, (National Association for Court Management, 2004). Websites where one can investigate literature and order books include <http://www.jmijustice.org/Publications.htm> and [www.ncsconline.org](http://www.ncsconline.org)

the referee after adjudication. In Wayne County, there is an intermediate administrative step that prevents the referee and judge from communicating directly about scheduling. According to one jurist, this can add four to five months to obtaining a trial date.

Another problem can be the variety of courts involved in which a family may have simultaneous cases. As one jurist in Wayne said, there are different buildings in which cases can occur and different judges handling different cases for the same family. Sometimes the jurist is aware of the other cases, but many times not, especially if the conflicting case is listed under the father's name, while neglect-abuse cases are listed under the mother's name. The prosecutor may go downtown to argue the neglect issues before a custody case judge, or a county attorney may come into the neglect-abuse courtroom to argue a juvenile delinquency issue. This causes complex scheduling issues.

A third problem is that in some jurisdictions, the jurist may not be in control of, or involved in, the actual scheduling. In one court, DHS used to employ a full-time case scheduler to assist the court. That position was lost, so the court now schedules cases from preliminary hearing through adjudication. At the review stage, the parties and the clerk negotiate the subsequent hearing date after the close of each hearing, without the judge's participation. DHS caseworkers were often the last whose schedules are considered, resulting in substitution of caseworkers at the next hearing.<sup>75</sup> Therefore, during the hearing the judge may have less information about the child and family. One of the improvements suggested by an attorney at this court is for scheduling to be done by the jurist at the bench at the end of the hearing, rather than have a clerk do it "behind the judge's back."

In Macomb County, judges have asked DHS caseworkers to remind them when permanency hearings are going to occur so judges can keep within the timelines. In Jackson County, DHS reportedly has been asked to schedule review dates, which they do the day after they receive the court orders. In Kent County, the jurist produces an order on the computer in the courtroom with the next hearing date on it. Even though the court is committed to controlling the docket, as the court administrator said, there are difficulties in finding room in full dockets to schedule hearings and trials. This may be largely due to the reduction in jurists' time available for child protective proceedings following the transfer of child protective proceedings into the Family Division, in order to make more judicial time available for other types of family cases.<sup>76</sup>

Several persons interviewed indicated that delays increased after the courts were merged. They said that in the former juvenile court, a TPR hearing could be scheduled in 4 to 6 weeks, whereas now it takes 4 to 5 months. Foster Care Review Board members saw the problem as one of stretched resources and greater obligations in the new court. With the added tasks of hearing divorce and child custody cases, jurists no longer have an exclusive focus on neglect and abuse cases. Overall, statistics regarding judicial workloads in child protective proceedings have not been developed or maintained by the individual courts since the merger. There is no uniform statewide practice about whether cases will be block-set (all cases set for a single time in the morning or afternoon), staggered (several cases set for a single time), or set for a time certain. The statewide survey provided some answers, but also revealed some confusion and conflicts. To the

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<sup>75</sup> This comment was echoed by DHS workers in all of the jurisdictions visited.

<sup>76</sup> This issue is addressed in Chapter Two on Court Organization.

question, *How often is each hearing set at a time certain (for a specific time when no other hearing will be held)?* 125 respondents replied:

- 62.4% Always
- 13.6% Most
- 3.2% Often
- 16% Sometimes
- 4% Rarely
- .8% Never

Respondents were then asked, *When cases are set for a time certain, what percentage is called within 15 minutes of the scheduled time?* They replied:

- 14.6% Always
- 52.8% Most
- 13.8% Often
- 8.9% Sometimes
- 9.8% Rarely

Jurists were asked to choose among five listed events that could cause delay in cases set for a time certain. While no event dominated, certain matters were chosen more often than others. For example, 44.6% said that *earlier hearings lasted longer than their scheduled time* either “often” or “most of the time”; 35.1% indicated that *attorneys do not appear at the scheduled time* either “often” or “most of the time.”

To the question, *If cases are block set (several cases set for the same time) in your court, how are they most typically scheduled?* 112 jurists responded as follows:

- 52.7% No hearings are block set in the court
- 29.5% Cases are block set in small groups for a designated time
- 17% Cases are block set for a morning or afternoon session
- .9% Cases are block set for a full day

In Jackson, cases are block set. Mondays are trials, Tuesday mornings are probate matters, Tuesday afternoon from about 1:00 to 3:00 PM are reviews and dispositions. Preliminary hearings are heard late Tuesday afternoon (the 24 hour preliminary hearings occur as they come in, but are only used to appoint attorneys; the full preliminary hearing with a probable cause hearing is held on Tuesday afternoon). Attorneys say that somehow this all works and all the cases are heard. Two attorneys alternately represent the child or parent in every case. That means that all court-related personnel are fully employed on every case, except for caseworkers. Caseworkers reported, however, that they sometimes must wait hours for their case to be called. It is a complaint that the CFSR noted as well: “Some stakeholders identified the process of scheduling general court calls as opposed to specific appointments for court appearances as a hardship impacting attendance at the court hearing,” (p.67).

In Wayne County, some jurists block set all of their cases for a half day, others stagger them, and still others set them for a time certain. A child’s attorney described the difficulties when cases are block set: the attorney may have obligations in other courtrooms, and when the case is called, if the attorney is not there another attorney from the Legal Aid Defense Association is brought in as a substitute, which compromises the quality of representation. She referred to the staggered cases of one jurist as working

very well. DHS disagreed, however, stating that staggering cases did not work in Wayne County, mostly because attorneys came late to hearings, or did not appear at all.

In Roscommon, cases are set for a time certain. As the court administrator said, with only three attorneys on contract, cases can be scheduled for a time when it is known the attorneys will be in the courtroom for other cases.

In Macomb County at the time of the site visit, scheduling differed between referees and the judge. Referees set hearings for a time certain, while the judge block set hearings for the morning or afternoon calendar.

In Kent County, cases are set for a time certain. CASAs observe that cases usually are called on time. Judges have packed dockets, and it is in their interest to move cases along swiftly.

Courts should stop block-setting cases and shift to a time certain calendar<sup>77</sup>, with the exception of technical motions, which are appropriate to stagger. Interviews suggest that scheduling is most efficient when the jurist determines the next date at the end of the current court hearing. Cases scheduled after the hearing by a central court administrative office, or by an outside agency, bring the most complaints and confusion.

## **1. CONTINUANCES AND ADJOURNMENTS**

There is one advantage when the jurist maintains control over scheduling and sets the next hearing date at the end of the current hearing. Because all attorneys, caseworkers, and parties usually are present in the courtroom, objections to a proposed date can be raised immediately and the next date immediately set. Subsequent to the in-court agreement, the jurist may firmly refuse to change the date except for an emergency or other extremely compelling reason.

Michigan law 712a.17 provides:

“The court shall adjourn a hearing or grant a continuance regarding a case under section 2(b) of this chapter only for good cause with factual findings on the record and not solely upon stipulation of counsel or for the convenience of a party. In addition to a factual finding of good cause, the court shall not adjourn the hearing or grant a continuance unless 1 of the following is also true:

- (a) The motion for the adjournment or continuance is made in writing not less than 14 days before the hearing.
- (b) The court grants the adjournment or continuance upon its own motion after taking into consideration the child’s best interests. An adjournment or continuance granted under this subdivision shall not last more than 28 days unless the court states on the record the specific reasons why a longer adjournment or continuance is necessary.”

Michigan Court Rule 3.972, pertaining to trials, is looser than the statute. It states that postponement may be granted:

1. On stipulation of the parties;
2. Because process cannot be completed; or
3. Because the court finds that the testimony of a presently unavailable witness is needed.

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<sup>77</sup> This change could not be made in Wayne County without also addressing the issue of the size of attorney caseloads.

The main conflicts between the statute and the rule are that the rule permits postponement by stipulation and does not require the motion to be in writing.

Rules governing other parts of the process impose some additional restrictions. For example, preliminary hearings may not be continued for more than 14 days, MCR 3.965(B)(10), and the filing date for the TPR petition may only be extended for 21 days, MCR 3.977.

Probing the extent to which jurists control continuances, the statewide survey asked two questions:

1. *Do you require a written motion for continuances/adjournments?* 32.5% of the 120 respondents answered that a written motion is required. All Wayne jurists responded that, a written motion is required, and most of the jurists from the medium-sized courts (85.4%) responded similarly. Only half of jurists from the small courts responded that they required written motions.

2. *Are there circumstances in which court staff can grant a continuance/adjournment without judicial approval?* Twice as many respondents from small courts answered yes to this question (25%) as from large courts (12.5%).

In the statewide survey, no single reason emerged as “always”, “most often”, or “often” being the cause of continuances or adjournments. A variety of reasons are acknowledged, however, as “sometimes” being the cause.

- 51.6%, Lack of or delay in service of process on parents
- 49.6%, Parents, children or witnesses not available
- 46.3%, Failure to identify or locate parents
- 20.6%, Failure to timely serve notice of process
- 26.8%, Attorneys not available
- 25.2%, Inadequate court time to hear case
- 23.6%, Caseworker not available
- 22.2%, Failure to timely file or serve report or document
- 16.3%, Appointment or assignment of attorneys for parties delayed
- 15.8%, Judicial determination needed in related case
- 12.2%, Caseworker not prepared
- 11.3%, Lack of service on tribe in cases with Native American
- 10.6%, Judge or referee not available
- 8.9%, Attorneys not prepared

A jurist in Macomb described a typical delay in a TPR trial:

There is a case set for trial at 10:00. The bench trial breaks at noon and restarts at 1:30. There are four attorneys and some say they have matters elsewhere, in the downtown court, etc., so they want me to adjourn the hearing. I want to accommodate them, but this hurts the whole proceeding. They have to get their books out, and they reschedule a week later.

Private attorneys in Macomb said that continuances are only granted for important reasons. Sometimes the problem is service of process to parents; sometimes more time is needed for resolution of the issues. They did view the court as being flexible on timelines for permanency hearings; four or five extra months could be permitted to allow parents to resolve issues. This leniency may encourage requests for continuances.

The interviews leave one with the impression that there is not, in fact, strict court control over continuances, as required by Michigan law and urged as a best practice by such professional groups as the National Council of Juvenile and Family Court Judges, the American Bar Association, and the National Center for State Courts. In *One Court That Works* (Hardin, ABA, 1992), the court in Hamilton County, Ohio was identified as having a “strong and effective anti-continuance policy.” In that court continuances are granted only where “attorneys or parties are ill, essential witnesses cannot be located, service of process has not yet been completed, or newly appointed attorneys cannot clear hearing dates.” Where there is a delay in attorney appointment, a case is set for pretrial conference, rather than adjudication. Court personnel, other than the judge, are not authorized to grant continuances.

A first step in tightening up the case flow is to gain control of scheduling by expressing a strong policy against continuances. Courts should examine whether jurists are in control of granting continuances, or whether in some jurisdictions attorneys are in control by making oral requests to court staff, or informally arranging stipulated postponements.

The matter of adjournments after a hearing has begun is not as easy to resolve as pre-hearing continuances. During a case, a variety of issues, such as witness unavailability, may arise that requires adjournment. One matter that is within control of the court, however, is scheduling adequate time to hear the whole case. A question on the statewide survey asked respondents to *Estimate how long the following types of hearings usually last*. The following responses were given regarding three kinds of contested hearings:

<b>Table 23</b>						
<b>ESTIMATE OF USUAL LENGTH OF CONTESTED HEARINGS</b>						
<b>N=</b>	<b>0-5 minutes</b>	<b>6-15 minutes</b>	<b>16-59 minutes</b>	<b>1-3 hours</b>	<b>Half day</b>	<b>1+ days</b>
Contested preliminary removal hearings N=	0%	1.0%	54.2%	40.6%	2.1%	2.1%
Contested adjudicatory, dispositional, and permanency planning hearings	0%	1.0%	23.3%	40.8%	21.4%	13.6%
Contested termination Of parental rights Hearings	0%	0%	0%	7.4%	27.7%	64.9%

100% of Wayne’s jurists report that hearings fit into the 16 minutes to 1 hour timeslot, whereas 47.5% of respondents in small courts and 36.7% of cases from medium courts report that hearings require from 1 to 3 hours.

According to the eight Wayne County jurists responding to the survey, a great majority of Wayne’s contested adjudications require 1-3 hours to be heard:

**Table 24**  
**LENGTH OF CONTESTED ADJUDICATIONS BY COURT SIZE**

Time	Small Court n=	Medium Court	Large Court
6-15 min.	1.7%	0%	0%
16-59 min.	18.6%	36.1%	0%
1-3 hours	40.7%	30.6%	<b>87.5%</b>
Half day	23.7%	19.4%	12.5%
1+ days	15.3%	13.9%	0%

Overall, a majority of jurists (75.8%) report that contested adjudicatory hearings are taking from 1 hour to more than one day. Several questions arise: (1) Are pretrial conferences scheduled in all jurisdictions? (2) Are pretrial conferences used to sort out the issues, or only to take pleas? (3) Does the extended time that appears on the data charts include delays, such as waiting for attorneys, reports, and files? (4) The overall question has to be, Are there ways to make the adjudicatory phase more efficient?

The statewide survey asks: *How often are contested hearings started but then continued for more than 24 hours?* 37.5% of respondents answered “sometimes” and 37.5% answered “rarely.” There was little variation based on size of court. When cases are delayed, however, a substantial majority of respondents (74.1%) indicated that cases are postponed for more than ten days:

- 6-10 days (21.7%)
- 11-30 days (46.2%)
- More than 30 days (12.3%)

It appears that the greatest problem is in Wayne County:

**Table 25**  
**CONTESTED HEARINGS CONTINUED FOR > 24 HOURS**

Court Size	1 day	2-5 days	6-10 days	11-30 days	30 days+
Small court N=	4.9%	23.0%	24.6%	44.3%	3.3%
Medium court	5.3%	5.3%	21.1%	44.7%	23.7%
Large court	0%	0%	0%	<b>71.4%</b>	<b>28.6%</b>

A Wayne jurist noted that if a case “overshoots its time boundary,” the case is adjourned for two to three months. He said that judges sometimes “double-book” cases, apparently to keep dockets full against the possibility that one of the cases will break down. Full dockets are also a problem in Kent County. An attorney there said if a case spills over, it could be 6 to 8 weeks before it can be reconvened, and if it spills over the scheduled time again, another 6 to 8 weeks are added.

The court may be able to positively affect a number of matters that can cause adjournments. For example, notice to absent parents can be vigorously pursued at the preliminary hearing stage. Identification of Native American children also can be pursued at the inception of the case. Sanctions can be imposed for late filing of

documents. Tightening up the process here and there and scheduling adequate time may lessen the need for adjournments.

**2. ATTORNEY AVAILABILITY**

Closely tied to scheduling and continuances is the issue of attorney availability. This arose as a problem much more frequently in the interviews than it did in the statewide survey. Two questions bearing on this issue were asked in the survey. In one question, respondents were given a choice of reasons why a case might not be heard at the time set for it. One choice was *Attorneys do not appear at the scheduled time*. Respondents answered

- Always (.9%)
- Most (15.4%)
- Often (19.7%)
- Sometimes (31.6%)
- Rarely (29.9%)
- Never (2.6%)

Three of the choices to another question that asked about factors causing cases to be continued or delayed included: *Attorney for parents not available*, *Attorney for child not available*, and *Attorney for government not available*. Answers were consolidated into the response *Attorneys not available*. Jurists answered as follows]:

- Most (5.7%)
- Often (11.4%)
- Sometimes (26.8%)
- Rarely (43.1%)

These percentages were consistent across court size.

A jurist in Wayne County called attorney unavailability a big problem because it leads to delays of 6 weeks to 2 months. Indeed, in the statewide survey, 6 of the 8 jurists completing the survey from Wayne County found that delays often (37.5%) or sometimes (37.5%) were caused by attorneys being unavailable.

<b>Table 26</b>						
<b>DELAYS OF CONTINUANCES CAUSED BY ATTORNEY UNAVAILABILITY</b>						
<b>Court Size</b>	<b>Never</b>	<b>Rarely</b>	<b>Sometimes</b>	<b>Often</b>	<b>Most</b>	<b>Always</b>
Small court	9.1%	51.5%	27.3%	10.6%	1.5%	0%
Medium court	18.4%	34.7%	24.5%	8.2%	12.2%	2%
Large court	0%	25%	<b>37.5%</b>	<b>37.5%</b>	0%	0%

While 51.5% of jurists from small courts said attorneys were “rarely” unavailable, DHS caseworkers in Roscommon said that many defense attorneys’ requests for continuances and adjournments are granted.

Interviews showed a high degree of frustration with continuances granted to parents’ attorneys and with the waiting time imposed on caseworkers when attorneys were elsewhere during calendar calls, making cases fall to the back of the lineup. This complaint tended to arise where cases were block set, although in Wayne attorneys did

not always appear as scheduled even where cases were set for a time certain, according to some informants.

Generally, courts can maintain control over attorneys who protest that they have conflicting court engagements when those engagements are within the same court. Of course, there will always be cases where an attorney is in trial and the trial has taken longer than scheduled so that the subsequent hearing in another courtroom must be put on hold. But in-house priorities can be established. Scheduled cases can be on a central computer so that a judge can locate an attorney with a click of the mouse. Rules can be imposed that attorneys cannot double-book cases.

In courts where referees preside over most hearings and judges are available on demand, referees have had to accept that judges' matters take precedence over their own cases. However, when the judges' dockets are jammed, re-scheduling cases for hearing before a judge can put off the permanency date by months.

Another complex problem occurs in jurisdictions where attorneys take court appointments in several courts at some distance from one another. This problem is aggravated when some jurists in child protection matters tolerate having their scheduled matters bumped by subsequently-set dates in criminal matters.

There are several ways the court hearing the child protection proceedings can overcome delays. First, by setting cases for a time certain, the judge hearing the child protection proceedings can avoid giving the jurist hearing the criminal matter the impression that there is flexibility regarding the time of the neglect-abuse matter. Second, by setting hearings for time certain, the judge need not tolerate attorneys and others not being present. Third, by contracting with a relatively small number of attorneys to handle child protection cases, the court can gain more leverage over them. Fourth, courts can gain more leverage over private attorneys by making sure that they are paid sufficiently for juvenile-neglect work. Finally, when attorneys routinely cause delays, courts should explore various other systems of representation, for example contracts with an organization or with individual attorneys to handle a set number of cases. Any system chosen will only work well if caseloads are kept low enough to permit adequate legal representation.

## ***B. Managing Paper Flow***

In each of the six sites where court personnel were interviewed, complaints emerged about the lack of data support jurists receive from their court administrations. For the most part, documents do not effectively flow out from the courtroom to parties, attorneys and caseworkers, and data do not consistently flow into the courtroom about due dates, performance measures, and policies. The particular kinds of problems differ with each court, but they have in common antiquated information technology and inadequacy of staff support.

In several jurisdictions, jurists complained about the lack of a tickler system to warn the court of important milestones, like the permanency planning hearing, and to generate notices. As one jurist in Macomb put it, "Referees have a huge file and lots of people in a hearing. They have to flip through the handwritten orders to figure out where they are." Another Macomb jurist said, "It would be great if someone would write on the file when the next hearing is supposed to occur." A suggestion from another Macomb

jurist is to use a computer-generated cover sheet to summarize the case. A jurist in Jackson County was pleased when the court administration recently announced a tickler system to flag timelines. Jurists in many courts are not getting data on their timeliness of performance. As a Macomb prosecutor stated, there are no statistics to provide an overview of how cases are moving through the system. In Macomb, there were skeptical references to the long prospective new computer system, Maximus, which is to replace the rudimentary Justice Information System. In at least one jurisdiction, however, Wayne County, jurists receive a “case age report” which shows how many cases have met or exceeded deadlines. In Kent County, jurists receive a monthly report on their performance, generated by DHS, not by the court. In fact, in several jurisdictions, courts are relying on DHS for data that could be coming from the court.

Michigan courts are suffering from a data crisis. In none of the courts visited was there a state-of-the-art automated case management computer program capable of measuring court performance<sup>78</sup> Automatically-generated data have the potential to reinforce timeliness and to expose the nature and frequency of delays. The system that fails to feed vital information into the courtroom may also fail to take information out of the courtroom and distribute it. A Wayne prosecutor said the court has inadequate staff to move paperwork through the mill, to get orders signed, to move files and distribute orders.

When the ABA described the Juvenile Court system in Kent County, Michigan, as a model court in its book, *A Second Court That Works*, the year was 1995. Hearing coordinators assigned to each judge were a most valuable resource in that system. The hearing coordinators’ multiple tasks included preparing notices and orders and overseeing files. Subsequently, the Juvenile Court became the Family Division of the Circuit Court, and jurists, as well as hearing coordinators, were given a variety of new tasks because other civil family matters were added to the dockets. A jurist reported that hearing coordinators no longer have time to read reports and confer on substantive issues with the judge. There may be a connection between the loss of exclusive focus on neglect-abuse cases and the longer time it now takes for cases to move through the court system.

In Hamilton County, Ohio, the important tasks of managing documents were assigned to case managers. Their tasks are to “help oversee statutory timetables and filing requirements, manage court paperwork, assist with scheduling hearings, oversee data collection for the court’s information management system, and perform intake duties for the department,” (Hardin, p.26). In other words, support personnel like Kent County’s hearing coordinators and Hamilton County’s case managers have a vital role to move paperwork and cases along so the system does not get clogged. Persons in such positions can keep the tide of paper moving in and out if they are directly accountable to jurists and have a realistic workload.

## **1. COURT ORDERS**

Tardiness of court orders is endemic to the Michigan court system. There were no complaints where a judge produces the order at a computer from the bench and gives it directly to the parties in the courtroom. That is not possible in courts that rely mainly on referees, who can only recommend, but not issue orders. *People v Davie (after remand)*, 225 Mich App 592, 571 NW2d 229 (1997) As an attorney described in Wayne

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<sup>78</sup> Information technology systems for the courts are fully discussed in Chapter Two on Court Organization.

County, the referee sends the recommendation to the judge, who may modify and then sign it, then it goes back to the referee, then to the clerk’s office, then to DHS, which sends the orders on to the contract agency, which then may send it to providers. Several important persons are not in the distribution loop, including the child’s attorney (who must call the caseworker for a copy of the order), and the parent. Parents in Wayne County complained that they did not get orders or even a list of tasks they are to accomplish. The process can take not just weeks, but months. Services for parents cannot start until orders are received. If services begin just before the next hearing, it is not possible to accurately measure a parent’s progress.

Complaints were by no means limited to Wayne County or to jurisdictions where cases are heard mainly by referees. Wherever the court requires the order to be processed internally in the court’s administrative office prior to distribution, there are time lags. The delay can severely affect the acquisition of services, for example hospitalization, medication, mental health and substance abuse treatment, and at later stages in the court process, adoption subsidies. POS agencies at the end of the distribution loop express bewilderment at the time delays accumulated during the orders’ travels through the court administration and DHS’s bureaucracy. To compound matters, the court order may be handwritten and indecipherable, or be modified so as to no longer reflect what the caseworker believed was agreed upon during the hearing.

Various solutions have been tried, some with partial success. In Wayne County, referees have been given permission to distribute their recommendations while awaiting the signed court order. At least one jurist expressed a concern that such a strategy might be a due process violation, but it is a catalyst to start services. In several courts a single judge will use form orders, print them out on the courtroom computer and distribute them immediately (Jackson County, Macomb County), but that is not a pattern throughout those courts, because either most cases are handled by referees or not all judges feel comfortable using computers in the courtroom, or for other reasons. The Macomb court administrator did say that soon all jurists in that court would try out courtroom distribution of orders.

**2. NOTICE**

In the statewide survey, half of jurists (51.6%) said that lack of or delay in service of process on parents was “sometimes” a reason for continuing or adjourning a hearing. The problem is greater in Wayne County, where **87.5%** of the jurists answered that the failure to identify and locate parents, and to serve them with process, was a cause of delay.

<b>Table 27</b>					
<b>LACK OF SERVICE TO PARENTS AS CAUSE OF DELAY</b>					
<b>Court Size</b>	<b>Never</b>	<b>Rarely</b>	<b>Sometimes</b>	<b>Often</b>	<b>Most</b>
Small Court	1.5%	39.4%	<b>47%</b>	12.1%	0%
Medium Court	2.1%	25%	<b>62.5%</b>	6.3%	4.2%
Large court	0%	12.5%	<b>25%</b>	<b>50%</b>	<b>12.5%</b>

Clearly, identification of and notice to parents continue to be significant problems in Michigan, according to jurists responding to the statewide survey. The original assessment recommended the following: “In order to diminish adjournments, county practices addressing the identification of and service of process on fathers, especially FIA practices, need to be more closely examined to determine how fathers can be better identified and served early in the court process.” (Recommendation 10) As a result, the Absent Parents Protocol was developed to address and hopefully correct these problems.<sup>79</sup>

While not law, the Protocol arose from concerns expressed by a variety of professional organizations, ranging from the State Bar of Michigan to the Kent County Families for Kids Initiative. The Protocol is officially sponsored by the Supreme Court Office of Administration. Emphasis is on the earliest possible identification of parents and inclusion of them in the original or early-amended petition. As the Protocol points out:

If an absent parent has never been a respondent until such time that termination is sought against the other parent, then relevant and material evidence assembled during the course of the protective proceeding may *not* be considered to establish a statutory basis for termination of the absent parent’s rights. This is because legally admissible evidence must be used to establish the factual basis of parental unfitness sufficient to warrant termination of parental rights if the allegations against the absent parent are new or differ from those that allowed the court to take jurisdiction of the child. MCR 5.974(E). (p. 6)

The Protocol asserts that even if, after a diligent search, a parent cannot be identified, he or she may nevertheless be included in the original petition. MCL 712A.19b(3)(a) and (g)

Michigan’s laws relating to inclusion of putative fathers in petitions have been complicated by case law that denies a putative father notice of a proceeding if there is a legal father identified. A legal father is a man who was married to the mother from conception through birth. *In re K.H.*, 469 Mich. 621, 677 N.W.2d 800 (2004) Absent a legal father, a putative father is to be given notice and an opportunity to prove his fatherhood through a putative father hearing. MCR 5.921(D)(2) Genetic paternity tests are free.

Personal service is the standard and preferred way to deliver notice. Failing that, the Protocol includes a form for Affidavit of Diligent Search that is recommended to be included with any motion for alternative service. Alternative service may be by certified letter or publication; it could also include delivery to a member of a household that has been identified as one where the parent may reside. The affidavit relies on reasonable efforts standards, which the Protocol relates to the following five questions:

1. Has the parent involved in the protective proceeding been asked as to the identity and whereabouts of the absent parent? (The Protocol suggests that the court may wish to put the parent who is present under oath when questioning her about the putative father.)
2. Have friends and relatives been contacted?

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<sup>79</sup> See Chapter 7 on CIP Initiatives for further discussion of the protocol.

3. Was the telephone directory checked?
4. Was the city directory checked?
5. If none of the above were successful, has a request for a search by the Office of Child Support Enforcement been made?

The court is urged to conduct inquiries not just at the preliminary hearing, but also at *every* hearing until the parent is located.

Jurisdictions may voluntarily decide whether to implement the Protocol. Attorneys and jurists at four of the courts visited were not familiar with the Protocol *per se*. In Marquette, both a jurist and prosecutors expressed opinions that DHS does a “pretty good job” of finding absent parents. Private investigators are used, where necessary.

In Jackson County, a jurist said, “I would hate a kid to be adopted, then find that there was a dad there.” Consequently, the jurist takes time to ask about searches for absent parents, beginning with the preliminary hearing. Another Jackson jurist claimed to have good success in interrogating mothers about the location of fathers. The jurist said that some DHS caseworkers were skilled at finding parents, while others were not.

In Kent County, where pride is expressed that the Protocol began with their efforts in 1989, a jurist said Kent had not had “good luck” with the Protocol. The jurist identified the problem as turnover in DHS caseworkers and their lack of persistence in finding fathers. Another Kent jurist said where there are “unknown fathers,” the worker must testify about efforts to locate the parent, and then the jurist adjudicates and even terminates the rights of “unknown fathers,” sometimes including “numerous possible unknown fathers.” A Kent jurist further observed that though the court makes its records regarding Friend of the Court and criminal cases available to the caseworkers to help with identification and location of parents, she did not believe they were taking advantage of these resources.

Macomb private attorneys say that about 30% of non-custodial parents attend the preliminary hearing. Most custodial parents are at the adjudication, and estimates of putative fathers attending that hearing ranged from 55% to 75%. Present or not, it is the uniform practice to make allegations against both parents. Attorneys say that jurists will appoint counsel for the father “whenever he comes through the door,” even though representation is only mandated for legal fathers. A Macomb jurist was much less positive about success of notification.

The jurist feels that the court administration confused the issue by telling process servers that it was all right to serve by certified mail, as opposed to personal service. Another Macomb jurist agreed with that analysis and, in addition, identified problems with lack of monitoring and follow-up. For example, there may be proof of service in the file, but no one looks to see if it is valid. Or papers may be sent to another county, but no one calls to ask for proof of service.

In Wayne, a jurist said that there are so many problems with service on parties that the jurist will not schedule a trial date until ascertaining that the parents have been served. In the past, the jurist would set a trial date “two or three months out,” then at trial the service issue would be uncovered and the trial would have to be delayed for another two or three months.

Another jurist in Wayne County identified service to incarcerated parents as a major problem. DHS caseworkers agreed, thinking that the court was responsible for locating parents in jails.

A Kent jurist has offered to guide DHS caseworkers through the Federal criminal database, OTIS, and Internet white pages. In the jurist's experience, caseworkers do not feel comfortable doing this, and it is the jurist who often ends up locating the parent that way.

A Wayne County jurist said that prosecutors also have responsibility to check the computers. A Wayne prosecutor said it is difficult to personally serve incarcerated persons. (Note that the Protocol does not include search for parents in jails and hospitals among its 5 reasonable efforts questions).

The Protocol should be mandatory in all jurisdictions. SCAO should amend the Protocol to include a search of criminal justice systems and hospitals.

A helpful way to address this issue locally is through cross training, where judges could serve as trainers, participate in discussions with attorneys and agency staff, and learn about agency procedures regarding the location of missing parties. (See Chapter 6 for discussion of cross training between court and agency personnel.) The most important single point to emphasize in such cross training is that a diligent search for absent parents should occur at the earliest possible moment in the case. Training should emphasize that identification of parents should be followed by proper service, the hierarchy being personal service, then court-ordered certified mail, and then court-ordered publication.

### ***C. Securing Agency Cooperation with Court Deadlines***<sup>80</sup>

Much of the paperwork that flows into the court is generated by DHS and a few other agencies. Service providers, the subjects of many court orders, are often not parties and therefore are not normally subject to court orders and, ultimately to a finding of contempt should they not comply. For service providers not being paid by DHS, the court cannot exercise indirect leverage through orders directed at DHS.

Problems with case management often require agreements reached through negotiation. Chief judges can bring together representatives from agencies and providers to discuss how to resolve problems and develop policies to improve the timeliness of cases. Some courts do this very successfully. Among constantly occurring problems to be resolved are late court reports and tardy service provision. Other matters that can be resolved at the court's negotiation table are delays in adoption subsidies, early development of concurrent plans for children whose parents' rights may be terminated, the use of mediation, and obtaining timely responses from tribes and U.S. Department of Interior in cases involving Native American children.

#### **1. COURT REPORTS**

When court reports are submitted on the day of a hearing, it can be impossible for the attorneys and jurists to investigate the assertions, propose alternatives, and object to erroneous information. MCR 3.973 governing dispositions states:

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<sup>80</sup> Cooperation with DHS and other agencies is covered more fully in Chapter 6.

“The parties shall be given an opportunity to examine and controvert written reports so received and may be allowed to cross-examine individuals making the reports when those individuals are reasonably available.”

Without time to prepare, that right is rendered meaningless. As the Resource Guidelines state (p.56):

It is important that the agency report be distributed to the parties well in advance of the disposition hearing, allowing the parties time to consider agency proposals for disposition. This enables the parties to develop alternatives, call witnesses, and subpoena and cross-examine persons who provided information relied upon in the agency’s report. Early submission of the report can improve the parties’ understanding of dispositional issues and enable them to more effectively contribute to the dispositional decision, enhancing the deliberations and decisions of the court.

Tardiness of the report affects not only the quality of the hearing but its timeliness, for sometimes the only solution is to adjourn the hearing and reschedule it for another day.

The statewide survey inquired about the number of days before the disposition, review, and permanency planning hearing that the caseworker’s reports usually were received.

<b>Table 28</b>				
<b>COURT RECEIPT OF CASEWORKER REPORT</b>				
<b>Event</b>	<b>Same day</b>	<b>One day before</b>	<b>Two to five days before</b>	<b>Six days or more before</b>
Disposition	33%	11.9%	44%	10.1%
Review	32.4%	17.6%	38.9%	11.1%
Permanency Planning	17.8%	26.2%	43.9%	12.1%

Reports are submitted the same day as the hearing close to 30% of the time for dispositions and reviews. Even at the all-important permanency planning hearing, almost 40% of the time reports are submitted on either the same day or just one day before.

Attorneys in Macomb County described the problem this way: “There is a rule that caseworkers are supposed to submit reports 24 hours in advance, but generally they fail to do this. DHS brings in a big report 10 minutes late for the hearing. Then the hearing is delayed because everyone needs to read the report.” Attorneys complained that jurists do not use their contempt power to discipline the caseworkers. The attorneys said it was such a big problem that it had been discussed at bench-bar meetings, but matters had not improved. People in several jurisdictions cited high turnover among caseworkers as one cause for late court reports. However, DHS staff at two locations reported that because the court so often misplaced reports filed earlier, they brought reports closer to the hearing date, as well as bringing extra copies to the hearing in case the reports were lost.

The Resource Guidelines state that there should be firm deadlines in the statute or court rules. Courts may also consider mandating forms for the reports. These are matters upon which the court might reach agreement and a joint policy with DHS. Case managers, as used in Hamilton County, Ohio, or hearing coordinators, as they were formerly used in Kent County, Michigan, can be effective in reminding caseworkers that reports have not been received, and logging them in and distributing them.

## **2. SERVICE PROVISION**

One aspect of obtaining timely services for children and families is largely within the court's control: *the issuance of timely court orders*. Most services cannot begin until the psychologist, physician or drug treatment counselor has the court's order in hand. A second aspect of ordering services may be managed through negotiation with DHS. The agency's own bureaucracy is often sluggish, so discussion with DHS administrators about how to *move orders quickly from DHS to service providers* may be productive. DHS also often has contracts with providers. By explaining problems with service delivery experienced by the court, the court may convince agency administrators to *improve contracts and expand the number of service providers*.

Another aspect of service provision seems at first glance to be out of the court's control –timely provision reports to the court. However, this can be affected by the court's involvement at a policy level. Through describing delays in court reports and setting deadlines for their receipt, the court may convince DHS to impose *reporting deadlines*, both on their own employees and on agencies with which they contract.

For providers who do not contract with DHS, a reminder that the court will recommend referrals to providers who are prompt may have some effect. Also helpful is for the court simply to explain the impact of late reports. It is important for the court to bring representatives from frequent providers to meetings so they are drawn into the project of improving case flow to achieve timely placements for children.

Still another approach is for the court to notify DHS and other service providers whenever a report is submitted late. If this practice is worked out in advance through meetings, it can help solve the problem. If late reports still do not improve, the court always can issue subpoenas and, as a last resort, schedule show cause hearings.

As the statewide survey and the 2003 Federal Child and Family Service Review revealed, mental health services are the greatest concern to the courts; 44.4% of respondents to the Reassessment's statewide survey found that mental health services were a significant delay to permanency. At the largest court, Wayne County, over half of respondents noted delays in mental health evaluation and treatment as a significant cause of delay; the usual delay in referrals for the initial screening and diagnosis was reported typically to be 3 or 4 months. Referrals for treatment occur after screening and diagnosis, and can take 6 months, leaving almost no time for the parent to receive services prior to the permanency hearing. If parent-child visitation is contingent upon completing counseling, which is delayed, the likelihood of family reunification decreases.

In every other site where interviews were held – Kent, Macomb, Jackson, Marquette and Roscommon -- there were complaints that mental health services are delayed and inadequate. While the concern can be raised at the local court level, the matter may have to be worked out at the state level, for example in discussions between SCAO and the Mental Health Services Administration.

Other services that were pinpointed in the survey as causes of substantial delay in case processing were housing assistance (40.9%), residential treatment facilities (38.7%), specialized therapeutic foster care (36.5%), and substance abuse treatment (34.3%). These providers should be brought to the table for negotiations with the court and DHS.

### III. Recommendations

Michigan law establishes comprehensive deadlines for child protection proceedings, from the preliminary hearing through case closure. Adherence to the statutes and court rules would make Michigan a national leader in timely and safe permanent placements for neglected and abused children. Data indicate, however, much unevenness in the achievement of the goal of timely permanent placement. Some problems have a clear solution, as discussed above. Others require further investigation and debate.

1. The timeliness of permanency decisions should be strengthened by the following means:
  - a. SCAO should setting statewide norms regarding typical lengths of different types of hearings (based on the time it takes to fulfill the law and perform best practices) (see discussion of caseloads in Chapter 2);
  - b. SCAO should instructing court staff to docket hearings according to such standards, except where special factors apply;
  - c. More demanding court rules should apply to certain hearings, including preliminary hearings, permanency hearings, and post-TPR review hearings and, among other things, these rules should specify issues to address and specific written findings;
  - d. SCAO should develop forms with templates that require more demanding findings for court hearings (see Chapter 6 discussion of consultation with DHS in the development of such forms);
  - e. SCAO should require the use of such forms, except where local courts develop their own and obtain SCAO consent to the use of their local versions (see Chapter 6 for discussion of consultation with local agencies in the development of such forms); and
  - f. SCAO should provide training and demonstrations of well-conducted hearings of certain types (e.g., through videos), such as preliminary hearings, disposition hearings, review hearings, permanency hearings, and post-TPR review hearings.
2. Where needed, counties should provide additional prosecutors so that trials and other contested hearings can be scheduled as required by Michigan law. Prosecutors' offices should consider redeployment of their attorneys to avoid unnecessary situations where they are expected to be present in different courts at the same time. For example, they should consider avoiding this by teaming prosecutors with particular judges. See Chapter 6 on legal representation.
3. Preliminary hearings should be lengthened to conduct in-depth inquiries. Conducted in this way, a greater percentage of cases may be resolved

- without further court process, cases not dismissed will move ahead more quickly because of what is accomplished during preliminary hearings, and parties' rights will be more fully protected. While this may be accomplished by assigning specific judicial staff to hear preliminary hearings as in Wayne County, it can also be accomplished through a combination of other steps, such as those listed in recommendation one.
4. Scheduling the next hearing should be handled by the jurist at the bench in the current hearing. As some other states have done, SCAO should adopt a rule or administrative order requiring this practice.
  5. Jurists should tightly control continuances, as prescribed by Michigan's statute. SCAO should require jurists to document reasons for each continuance or adjournment that is granted.
  6. Court rules and court forms should require that diligent searches to notify absent parents begin by the first court hearing. The Absent Parent Protocol should be mandatory, in an amended form that includes search of criminal justice and hospital systems.
  7. Timely submission of DHS and other court reports is so important that the law should require it and jurists should insist on it. Best practice nationwide is for court reports to be submitted a minimum of 5 to 7 days before a hearing. See Chapter 6, which includes recommendations for collaboration between courts, DHS, and others to implement these requirements, including meetings, protocols, and cross training. The courts, as a last resort, should also be prepared to apply sanctions to enforce this requirement.
  8. Improved management information system (MIS) technology needs to be uniform throughout Michigan's court system. This technology should, among other things, enable jurists to more efficiently schedule hearings, quickly prepare court orders, and measure judicial performance. Jurists should have access to the MIS system from the bench.<sup>81</sup> See further recommendations and discussion in Chapter 2.
  9. Time-certain scheduling respects the time of the parties and witnesses and improves the quality of litigation by making it easier for attorneys and key witnesses (such as responsible caseworkers) to be present.
  10. Adequate time should be provided on dockets for contested child protection proceedings to be heard in their entirety, in most cases without adjournments beyond 24 hours. See the discussion and recommendations in Chapter 2 regarding judicial caseloads and workloads.
  11. To improve the timeliness of adoption, conduct more frequent and thorough post-TPR review hearings. To implement this recommendation implement steps such as those outlined in recommendation one. Ensure that all jurists receive detailed materials and training concerning all phases of the adoption process and in how to conduct an effective post-TPR review hearing. See Chapter 4 (quality and depth of hearings) for a discussion and recommendations regarding this issue and Chapter 6 (cooperation between agencies and courts) on how agencies and courts

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<sup>81</sup> Information technology is fully discussed in Chapter Two.

should cooperate to address problems with the high numbers of children in Michigan who are waiting for adoption.

12. Study and then develop guidelines regarding:
  - a. When and how it is desirable to hear dispositions on the date of adjudication, without compromising the quality of the disposition.
  - b. Whether and how pre-trial hearings can more effectively support adjudications and TPRs.
13. Evaluate whether certain systems of legal representation are more likely to assure better attorney performance, including attendance at hearings, than other systems. Also see Chapter 6 (on legal representation). SCAO should develop and require a streamlined system to complete and distribute orders based on referees' recommendations, including when there is a request for a judge to review a referee's recommendations.
14. SCAO should develop a streamlined system to schedule hearing and complete and distribute court orders when there is a "judge demand."

# QUALITY AND DEPTH OF HEARINGS

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## CHAPTER 4

### CHAPTER FOUR: QUALITY AND DEPTH OF HEARINGS

A blend of factors affect the quality and depth of hearings, including whether the court’s oversight substantially advances the child’s permanency, whether the people who have been summoned or invited to the hearing are encouraged to contribute effectively, and whether the jurist, lawyers, and caseworkers are well trained and have completed their required tasks.

Michigan laws are excellent guides to hearing content and process. Part I of this chapter examines the central role of the court’s “reasonable efforts” inquiry. Part II analyzes the quality and depth of court practice in each of the mandatory neglect-abuse hearings.

#### I. Reasonable Efforts

An important function of jurists in child protection proceedings is to ensure that the government endeavors to prevent the family breakup. When it is not possible to keep the family together without harming the child, the jurist is to ensure that the child is in the safest, most permanent out-of-home placement possible. The court accomplishes this by reviewing whether the state has made reasonable efforts:

1. To prevent removal of the child from the family;
2. To reunify the family if removal of the child is necessary; and
3. If 1 and 2 are not safely possible, to finalize a permanent plan for the child in a timely way.

Reasonable efforts are actions by agency caseworkers and by service providers working with the agency to avoid or mitigate disruptions in a child’s life and to bring services to the child and to qualified families.<sup>82</sup>

ASFA mentions two junctures in the neglect-abuse court process where judicial findings of reasonable efforts must be made and documented:<sup>83</sup>

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<sup>82</sup> Not every family is entitled to receive the reasonable efforts of the state. ASFA at 47 U.S.C. 671(a)(15)(d) and Michigan law at MCL 712A.19a(2) permit, or in some situations require, the court to deny reasonable efforts to parents who have abandoned or aggressively attacked, or been complicit in violence against the child or sibling, or involuntarily surrendered parental rights to a sibling, or in the case of “Binsfeld” petitions, voluntarily surrendered parental rights.

<sup>83</sup> 42 U.S.C. 671(a)(15).

1. At the first hearing authorizing the child’s removal into foster care, the court must find that reasonable efforts were, or were not, made to prevent removal of a child from home. This finding is due within 60 days of the child’s removal
2. At or before the annual permanency planning hearing, the court must find that reasonable efforts were, or were not, made to finalize the child’s permanent placement.

These two mandated judicial findings of reasonable efforts are to be “explicitly documented and must be made on a case-by-case basis and so stated in the court order.”<sup>84</sup> The federal regulations also describe reasonable efforts that are to be made to effect the safe reunification of the child and family, although a separate judicial finding of this activity is not required.

In addition to the required court findings, there is a commonly understood larger meaning of reasonable efforts that embraces every court inquiry into the child’s placement and condition. This latter meaning includes on-going agency efforts to assure the child’s safety, health and well-being, including physical and mental health, adequacy of placement, education, visits with parents and siblings, substance abuse and mental health treatment for parents, housing assistance, and so forth.<sup>85</sup> According to the Resource Guidelines and Michigan law, judicial inquiries into the effectiveness of these efforts should be made at every hearing that has a dispositional component, for example, the preliminary hearing, emergency hearings, dispositions and reviews, the permanency planning hearing and post-permanency hearings.

The case service plan, due 60 days after the child’s removal from home, is the engine that drives reasonable efforts, for it describes the services and permanency goal that are tailored to fit the particular child and family. Michigan law has an exceptionally thorough description of elements that must be addressed in a case service plan.<sup>86</sup>

In order to probe whether Michigan jurists were eliciting crucial points in their court inquiries about reasonable efforts, the statewide survey asked: *How often are the following issues raised in connection with reasonable efforts inquiries by the court concerning efforts to prevent removal or reunify the family?* Jurists rated themselves in four categories: (1) types of services and assistance to families; (2) sufficiency and appropriateness of services offered; (3) caseworker diligence ensuring services were provided; and (4) availability and timing of services.

### **A. Types of Services and Assistance to Families**

A majority of jurists (66.4%) said that types of services are always (45.1%) or mostly (21.3%) raised when the issue is preventing removal of the child from home or reunifying the family. More respondents indicated they were likely to address types of services than any of the other three categories. Nevertheless, this falls quite a bit short of the Resource Guideline’s goal of 100%. There may be few services available when the agency first intervenes in a family emergency (e.g. respite care, in home intensive counseling, search for relatives, removal of aggressor), but the thrust of federal and state

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<sup>84</sup> 45 C.F.R. 1356.21(d).

<sup>85</sup> ASFA at 42 U.S.C. 629a(a)(7)(B) gives examples of the kinds of services for families that the reasonable efforts term encompasses.

<sup>86</sup> MCL 712A.18f. *See also* MCR 3.961; MCR 3.973; MCR 3.975.

law is to prevent removal if possible, so the court must inquire whether services and assistance were possible and offered. At the stage where the court is contemplating reunification, the family’s progress toward adequate parenting is measured principally through services offered and the family’s compliance with those services.

**B. Sufficiency and Appropriateness of Services**

Slightly more than half of respondents (53.6%) indicated that sufficiency and appropriateness of services were always (33.6%) or mostly (21.8%) raised at the removal and reunification stages. A criterion for measuring sufficiency and appropriateness can be whether services were tailored to the needs of the particular family and child. During interviews for this Reassessment, a complaint raised by parents’ attorneys, and occasionally by children’s attorneys was that case plans tend to be “generic”: the same services are listed in every case plan to the extent that the case plans could be exchanged. In fact, one attorney described how a caseworker had mistakenly submitted the wrong case plan with the right name at a hearing, and that no one caught the difference until they noticed that the address was wrong, because the tasks and services listed were the same for both people. Parenting classes, psychological evaluations, and substance abuse assessments are among standard services. Services often overlooked are education evaluations, dentistry, and transportation to appointments in areas where public transportation is not readily available.

**C. Caseworker diligence Ensuring Services and Assistance were Provided**

Only 43.5% of respondents said that the issue of caseworker diligence is always (23.0%) or mostly (20.5%) raised. Questions pertaining to reasonable efforts at reviews and permanency hearings revealed similar responses. Overall, there appears to be some reluctance to examine caseworker diligence and DHS compliance with orders. However, as the following chart reveals, the issue may be more serious in small and medium courts. In Wayne County 37.5% of jurists often pursue the issue, compared to around 5% of jurists in small and medium sized courts.

<b>Table 29</b>			
<b>ISSUE RAISED AT REVIEW HEARING: CASEWORKER FAILURE TO PROVIDE SERVICES</b>			
<b>Frequency</b>	<b>Small Court N=0-200</b>	<b>Medium Court N=200-400</b>	<b>Large Court N=600 or more</b>
Never	3.4%	.0%	.0%
Rarely	<b>44.1%</b>	28.6%	.0%
Sometimes	45.8%	64.3%	62.5%
Often	5.1%	4.8%	<b>37.5%</b>
Most	.0%	2.4%	.0%
Always	1.7%	.0%	.0%

A related question in the survey is how often the issues of caseworker failure to provide access to services are raised in dispositional review hearings. Although 54.1% of

respondents overall said that they sometimes raise the issue, when the data is split to detect differences between judges and referees it is revealed that judges are less likely to raise the issue (43.3% rarely do) than referees (22.2% rarely do).

When asked *how often do you make negative reasonable efforts determinations?* 90.4% of jurists said rarely (70.2%) or never (20.2%). To a follow-up question, *How often do you make affirmative findings when you believe FIA failed to make reasonable efforts?* not surprisingly 59.5% said never, but 25.6% said rarely, and smaller percentages said sometimes (6.6%), often (2.5%), mostly (5.0%), and always (.8%). In other words, 40.5% admitted to having at some time made affirmative findings when DHS had failed to make reasonable efforts. A follow-up question probed for the reason for such findings: 17.1% answered that “insufficient information” and 20.3% answered that “additional costs to the county” were factors inhibiting negative findings.

#### **D. Availability and Timing of Services**

Forty-five (45.4%) of jurists replied that the availability and timing of services is always (26.4%) or mostly (19.0%) raised. That is surprising because a number of federal and state reviews of Michigan courts and foster care services have identified some serious service gaps. Mental health services are one example. The 2003 Child and Family Services Review (CFSR) found mental health services for children to be an Area Needing Improvement. In 19% of cases the reviewers examined, the children did not receive adequate mental health services.<sup>87</sup> Interviews conducted at six sites for this Reassessment revealed widespread discouragement with the timing and quality of mental health services. The Community Mental Health agency was cited over and over as a delay and barrier to treatment. Once a treatment appointment is set up, the quality is disappointing. One jurist indicated that “treatment” might consist of 15- minute medical reviews every six weeks. Another jurist said the dollar amount per family is capped, and the number of treatment sessions permitted is capped. A legal aid attorney said that in one case where multiple personality disorder was diagnosed in a child, the prescription was once-a-week group therapy. One jurist bleakly said, “There are no mental health services. The only service that a boy or girl gets if they are suicidal is to lock them up for 72 hours.”

A series of questions on the survey targeted the adequacy and availability of certain services. In response to these, a substantial minority of respondents found *significant inadequacies and or delays in the following services:*

- Mental health services: 49.5% overall.
- Housing assistance: 40.9% overall, 50% of respondents from Wayne County, and 53.5% from medium-sized courts.
- Residential treatment facilities: 38.7% overall.
- Substance abuse assessment and treatment: 34.3% overall. Respondents from small courts (37.9%) and medium courts (31.0%) identified this as a greater problem than did the Wayne County court (25.0%).

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<sup>87</sup> Michigan’s Program Improvement Plan (PIP), responding to the CFSR, looks to greater support for foster parents as facilitators for mental health services, and envisions a single point of entry for services to children with mental health needs. That plan was to be in place by January 2004.

Comparing current responses to the judicial survey in the original 1997 assessment of Michigan’s neglect-abuse courts, there is only slight improvement for three services in the intervening years and an actual worsening of the housing crisis.

<b>Table 30</b>		
<b>SIGNIFICANT SERVICE INADEQUACIES AND/OR DELAYS IN PERMANENCY PLANS</b>		
<b>Service</b>	<b>1997 Court Assessment Judicial Survey</b>	<b>2004 Court Assessment Judicial Survey</b>
Mental health services	57.9%	49.5%
Residential treatment	46.7%	38.7%
Therapeutic foster homes	35.9%	36.5%
Housing	34.4%	40.9%

It may be that courts are not sufficiently familiar with the services essential to making reasonable efforts: when asked whether DHS provided information annually regarding services, 65.9% of respondents answered “No.” In less populated areas where relatively unspecialized judges have a limited amount of time to devote to learning about this category of cases, and in more heavily populated areas where judges’ workloads limit their time, it may be difficult to keep up with information regarding services. (See Chapter 2 Court Organization for a detailed discussion of judicial caseloads and specialization.)

**E. Summing up Court Process for Reasonable Efforts**

An overview of survey answers suggests that despite mandatory reasonable efforts inquiries at the removal and reunification stages of a neglect-abuse case, most Michigan jurists do not consistently address the all of the key issues.

<b>Table 31</b>		
<b>ISSUES RAISED IN REASONABLE EFFORTS INQUIRY</b>		
<b>Issue</b>	<b>Always</b>	<b>Most</b>
Types of services and assistance offered	45.1%	21.3%
Sufficiency of appropriateness of services offered	33.6%	21.3%
Caseworker diligence ensuring services were provided	23.0%	20.5%
Availability and timing of services	26.4%	19.0%

In order to increase awareness of the bench about reasonable efforts requirements, training should be provided to all jurists. Jurists need to inquire carefully into a family’s needs and accurately assess the variety of services that could ameliorate a child and family’s conditions. This might require modifying case service plans and issuing orders for specific services. Findings of reasonable efforts need to be accurately documented, which may be done by cross-referencing to court reports or sustained petitions, or with a brief written description. Jurists should be encouraged to actively support development of needed services in the community.

## II. The Hearings

### A. Preliminary Hearings

There are good reasons for the Resource Guidelines' recommendation that a full hour be scheduled for each preliminary hearing. Whether or not a child can be immediately and safely returned home "is often the most important decision to be made in an abuse and neglect case." The authors note that child protection agencies often feel that the surest way to protect children is to remove them from home. "Harmful consequences should also be considered. Removal is always a traumatic experience for a child. Once a child is removed it becomes logistically and practically more difficult to help a family resolve its problems," (p.30). It is expensive to maintain children in foster homes and difficult to reunify families when bonds are broken.

The preliminary hearing needs to be a thorough consideration of the following: the facts that caused the petition to be brought; whether in-home services can assure the child's safety; the extended family's resources for temporarily providing shelter and nurture for the child; the medical, mental health, and other service needs of the child and parents pending trial; and arrangements for parental visitation if the child is removed. In other words, the preliminary hearing is the first of the blueprint for the child's case.

For those reasons, the people who can best speak to each of the issues should be present. At a minimum, the Resource Guidelines recommend:

- A jurist with deep experience with the entire range of child abuse and neglect cases;
- Parents whose rights have not been terminated, including putative fathers;
- Relatives with legal standing or other custodial adults;
- The caseworker with primary responsibility for the case;
- The agency attorney;
- The attorney for the parents (separate attorneys if there is a conflict);
- The child's attorney and/or a GAL/CASA;
- A court reporter, unless there is other suitable technology for recording the hearing;
- Security personnel.

In addition, other persons who may be present are children who are of suitable age and emotional or physical condition, extended family members, adoptive parents, judicial case management staff, law enforcement officers, service providers, adult or juvenile probation or parole officers, and other witnesses. Given the number of decisions that must be made, and the many participants present in the courtroom, it is apparent why an experienced jurist is required for this most important hearing.

Michigan Court Rule 3.965, an excellent directive for preliminary hearings, covers each of the elements that must be noted in these hearings. For example, attorneys for parents and children are to be appointed at the preliminary hearing, a necessity if the court is to determine if the child is to be placed away from the family. A problem in Michigan courts is that attorneys may not be appointed in time to actually assist their clients during the preliminary hearing. As a practical matter, the lack of legal assistance at the preliminary hearing means that parents rarely question or challenge the removal decision.

In some Michigan jurisdictions, other attorneys and key parties also are not involved in preliminary hearings. In one jurisdiction the prosecutor said her associates cover only about 50% of preliminary hearings. An experienced jurist in another jurisdiction said that at the preliminary hearing parents are present only 50% of the time, there is no prosecutor, and the GAL is appointed within 24 hours after the preliminary hearing. If parents are present, the jurist goes over the petition, advises parents on their rights, makes a contrary to the welfare finding, and determines temporary visitation. In other words, neither parent nor child is represented at the hearing in this court, neither may be present, nor there is mention of services that might be required pending trial. In still another jurisdiction, where parents' attorneys are present at the first hearing, a jurist says that if the attorneys waive proof of probable cause, only placements and visits are discussed, which can take about 15 minutes.

### **1. PRELIMINARY INQUIRY: NATIVE AMERICAN HERITAGE**

The Indian Child Welfare Act of 1978 (ICWA) grants tribes the right to intervene at any stage of a foster care proceeding, from the first instance it enters a court on a neglect-abuse petition until after adoption.<sup>88</sup> The *tribe* is entitled to early notice so that its representatives can determine if the tribe wishes to intervene in the case. It is therefore crucial for jurists to ascertain at the beginning of the preliminary hearing whether the child or either parent is affiliated with any of the American Native American tribes. If such an affiliation exists, both the tribe or tribes (if known) and the Secretary of Interior must be notified according to procedures set forth in 25 U.S.C. 1912a and MCR 3.980.

Nevertheless, the court has power to protect a Native American child through emergency removal. In such case a hearing must be held within 28 days, and the evidentiary standard for removal is "clear and convincing" evidence. The hierarchy of placements to be followed is: (a) with a member of the child's extended family; (b) a foster home licensed, approved, or specified by the child's tribe, (c) an Indian foster family licensed or approved by a non-Indian licensing authority, and (d) an institution for children approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the child's needs.

An attorney interviewed at one site explained the local procedure in this way: the main MICWA office is in Lansing. The MICWA representative comes to a court hearing where a Native American child has been identified in advance, and then becomes the child's caseworker. Native American children are placed in homes picked by the MICWA representative. The court holds reviews every three months to examine the services that are rendered. The attorney said the three biggest problems with the procedure are identifying children as Native American, identifying the tribe, and getting a response from the U.S. Department of Interior.

Though it begins at the preliminary hearing, the ICWA inquiry must continue throughout the case process, as it may not be revealed at the preliminary hearing whether Native American heritage is involved.

In the statewide judicial survey, 63.1% of respondents said they always inquire whether there is Native American heritage. Judicial officers from small courts were more

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<sup>88</sup> Indian Child Welfare Act of 1978, P.L. 95-608, 25 U.S.C. §1201 *et seq.* *Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. 30 (1989)

likely to make the inquiry always (73.5%) than either those from medium courts (50.0%) or the Wayne County court (50%). Interviews indicate that jurists are trying to remember to ask whether Native American heritage is involved. One jurist said that a recent judge's conference did a good job of covering tribal issues and as a result he now asks the right questions at every hearing.

In Wayne County, 57.1% of respondents say they rarely get information about whether a child may be Native American, although oddly 42.9% of respondents from Wayne County said they always do. 75% of respondents from Wayne County say they always make a full inquiry into efforts to prevent out-of-home placements in ICWA cases.

Statewide, 64.8% of jurists report having presided over a case involving ICWA, and this experience is spread rather evenly among small courts (65.2%), medium courts (62.5%) and the Wayne County court (75%).

In addition to the basic inquiries, 68.5% of respondents say they also inquire about DHS's compliance with ICWA mandates. 69.4% of respondents indicated there is someone at DHS who is designated to notify tribes, although that knowledge is more prevalent in large (75%) and small (71.6%) courts, than medium-sized courts (65.3%). In general, the statewide survey indicates that medium-sized courts have less experience and less knowledge about ICWA-MICWA laws than do their colleagues in large and small courts. 60.9% of jurists say they have access to experts on Indian culture. A large majority of respondents (78.3%) said it was rare for there to be a forum where state courts and tribal courts could engage in joint training and discussion.

## **2. PRELIMINARY INQUIRY: NOTIFICATION OF ABSENT PARENTS**

Failure to notify all parents is a significant cause of delay in the case overall. Court Rule 3.965 that covers preliminary hearings makes notification the court's first inquiry. One jurist interviewed said that parents are present only about half of the time in preliminary hearings in her jurisdiction. Concerns about resulting delays were raised by organizations representing lawyers, foster parents, and child advocates. Weakness in notifications was highlighted in the original court assessment.

In response to that finding, SCAO developed the Absent Parent Protocol. It states:

A successful protocol for locating and involving absent parents is dependent upon a local system that incorporates attention to the matter at the earliest possible point and into every subsequent aspect of the child protection proceeding process. While the activities involved in locating absent parents are substantially the responsibility of others, the system is given meaning by a court that embraces the importance of this work and insures, through the review role, that timely and appropriate activity takes place.

The Protocol suggests a process for every one of the multiple circumstances that may cause parents not to appear. One of the most confusing issues in Michigan is that involving putative fathers, who under Michigan case law have no standing and no right to notice if there is a "legal father," that is, someone married to the mother from conception through birth. It can be complicated for a court to sort that out. The Protocol guides jurists through a procedure that may include putting the mother under oath and

conducting a putative father hearing. A putative father who receives notice is allowed 14 days to establish a legal paternal relationship under the Paternity Act.<sup>89</sup>

A high priority of Michigan's Court Improvement Project is to increase the ability of DHS to locate absent parents and, once they are located, to integrate them more effectively into the permanency planning process. The Program Improvement Plan, responding to the CFSR's concerns, provides for increased cross-systems training and technical assistance.

### **3. THE TWO REQUIRED FINDINGS: "CONTRARY TO THE WELFARE," AND "REASONABLE EFFORTS TO PREVENT REMOVAL."**

By now, most jurists in Michigan know that a Title IV-E investigation by a federal Health and Human Services team found that Michigan courts are not in consistent compliance with either the "contrary to welfare" finding or the "reasonable efforts" finding. Federal law states that a child who is removed from home is ineligible for Title IV-E federal funds for the entire case process, unless a court has made a finding in the first court order that it is "contrary to the welfare of the child" to remain in the home.<sup>90</sup>

The "contrary to welfare" finding is factually related to the second required finding that the agency made reasonable efforts to prevent removal of the child from home. Usually it is demonstrated that it is contrary to the welfare of the child to remain in the home because, although reasonable efforts were made to prevent the removal, the child would be unsafe if not removed. However, each finding must be made explicitly: (1) that it is contrary to the welfare of the child to remain in the home; and (2) that reasonable efforts were made to prevent the removal. To assure that the two findings are actually made on the basis of facts in the case before the court, the federal regulations require the court order to recite specific facts supporting the findings. Affidavits, *nunc pro tunc* orders, and state orders referencing state law are not acceptable substitutes. If the facts are not reflected in the court order, or as a fallback, in the transcript of the hearing, Title IV-E funds can be denied totally.<sup>91</sup>

This puts great pressure on the jurist to elicit all of the underlying facts in the case. As the Resource Guidelines state, "Courts should insist that adequate services are delivered to prevent the need for placement, and make certain that decisions to remove children from their homes are made prudently and after full consideration of less disruptive alternatives." This may require brief adjournments for all of the services to be put in place. MCR 3.965(b) (10) permits adjournment for up to 14 days. In Michigan the court has broad powers to order services, including requiring adults to reside outside the home if there is probable cause to believe they perpetrated the offense and their presence in the home is a substantial risk to the child. A jurist said one of the best things the court does is get families services. Several stakeholders reported some cases are brought to court for the purpose of obtaining services for a child and family.

Note also that the court has 60 days from removal within which to make the finding that reasonable efforts to prevent removal of the child were made by the agency. In Michigan law, that finding must be made in the dispositional order after the

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<sup>89</sup> MCL 722.711 *et seq.*; *In re K.H.*, 469 Mich. 621, 677 NW2d 800 (2004).

<sup>90</sup> 42 U.S.C. 762(a)(1); 45 C.F.R. 1356.21(c).

<sup>91</sup> 45 C.F.R. 1356.21(d). A checklist or specific cross-reference to an attached report or affidavit may be included in the order, although best are short specific descriptions.

adjudication. As a practical matter, since adjudications have a 63-day deadline, and dispositions can be scheduled up to 35 days after the adjudication, a reasonable efforts finding at the disposition stage would not fulfill the requirement for a finding within 60 days of removal.<sup>92</sup> It is best for the facts to be elicited and the finding to be made at the preliminary hearing.

#### **4. EARLY TPR PETITIONS**

Petitions for early TPR may be presented at the preliminary hearing, and if accepted, a permanency hearing must be scheduled within 30 days. Michigan law is in accord; in fact, the rules require a shorter time of 28 days.<sup>93</sup> Such a petition presented at the preliminary hearing usually would be set for adjudication of the basic neglect-abuse allegations, with TPR issues scheduled to be resolved at the first dispositional hearing.

Federal law states, subject to certain exceptions, that when the state files an abuse or neglect petition it may also seek the early termination of parental rights in cases where parents' rights to a sibling have been involuntarily terminated previously. In Michigan, however, jurists, attorneys, and agency caseworkers have an additional task. DHS is required to petition for termination of parental rights at the preliminary hearing if a neglect-abuse matter arises even for a parent who *voluntarily* relinquished a child in an earlier proceeding. The judge may grant the petition unless it would not be in the child's best interests. These are known as "Binsfeld" cases.<sup>94</sup>

#### **5. SCHEDULING ADEQUATE TIME; PROBABLE CAUSE HEARINGS**

Michigan law richly provides due process opportunities for parents to challenge decisions and present facts. At the preliminary hearing, if parents contest the allegations the government must prove that there is probable cause for the court's jurisdiction. If the court decides on an out-of-home placement for the child, parents or the L-GAL or another person receiving notice of the placement may petition for review. If the court does not modify the placement, a hearing must be held within 14 days. Though all material and relevant facts may be considered, attorneys have subpoena powers to produce their own witnesses and can cross-examine the government's witnesses.<sup>95</sup> Children are provided with counsel throughout the neglect-abuse court process, and indigent parents have the opportunity for appointed counsel beginning with the preliminary hearing.

A problem with preliminary hearings is that parents' counsel often is appointed *at* the hearing, not before it, so they may not be able to effectively assist their clients *during* the hearing. In one jurisdiction, a jurist said that 95-99% of the time probable cause is waived. As a practical matter, parents rarely challenge the removal decision. (See Chapter 5 on Representation of Parties for further discussion of representation of parents.)

The Resource Guidelines recommend that the time in a preliminary hearing be arranged as follows (p.42):

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<sup>92</sup> 45 C.F.R. 1356.21(b); MCR 3.972; MCR 3.973.

<sup>93</sup> 42 U.S.C. 671(a)(15)(d); MCL 712A.10a(2); MCR 3.976.

<sup>94</sup> *FIA v. Glass (In re A.H.)* 245 Mich.App.77, 627 NW2d 33 (2001) (finding Binsfeld cases do not violate equal protection clause of the U.S.Constitution.

<sup>95</sup> MCR 3.966.

<b>HEARING ACTIVITY</b>	<b>TIME ESTIMATE</b>
<b>1. Introductory remarks</b>	<b>5 minutes</b>
<ul style="list-style-type: none"> <li>• Introduction of parties</li> <li>• Advisement of rights</li> <li>• Explanation of Proceeding</li> </ul>	
<b>2. Adequacy of Notice and Service of Process Issues</b>	<b>5 minutes</b>
<b>3. Discussion of Complaint Allegations/ Introduction of Evidence</b>	<b>15 minutes</b>
<ul style="list-style-type: none"> <li>• Introduction of complaint</li> <li>• Caseworker testimony</li> <li>• Witness testimony</li> <li>• Parent testimony</li> </ul>	
<b>4. Discussion of Service Needs/ Interim Placement of Child</b>	<b>15 minutes</b>
<ul style="list-style-type: none"> <li>• Parental visitation</li> <li>• Sibling visitation</li> <li>• Service referral</li> </ul>	
<b>5. Reasonable Efforts/Contrary to Welfare Findings</b>	<b>5 minutes</b>
<b>6. Troubleshooting and Negotiations between Parties</b>	<b>10 minutes</b>
<ul style="list-style-type: none"> <li>• Time for parents to speak and ask questions</li> <li>• Explanation of court procedures to confused parents</li> <li>• Identification of putative fathers and investigation of paternity issues</li> <li>• Identification of potential relative placements</li> <li>• Restraining orders</li> </ul>	
<b>7. Issuance of Orders and Scheduling of Next Hearing</b>	<b>5 minutes</b>
<ul style="list-style-type: none"> <li>• Issue interim custody order (as necessary)</li> <li>• Preparation and distribution of additional orders to all parties prior to adjournment</li> </ul>	

According to the Resource Guidelines, whether or not allegations of neglect or abuse are contested, “the court must carefully consider where a child shall be placed pending further hearings, whether reasonable efforts have been made to prevent the child’s removal from his or her family, and whether additional services need to be offered to keep the family together,” (p.99).

Considering the best practices described in the Resource Guidelines and the number of mandatory and other crucial decisions that must be made, it is important to ask whether enough time is allotted the preliminary hearing. On the statewide survey,

Michigan jurists were not asked the amount of time for which they *scheduled* preliminary hearings, but rather how long such hearings usually last. Almost all jurists (95.8%) indicated that *contested* preliminary hearings last anywhere from 16 to 59 minutes (54.2%) or from 1-3 hours (40.6%). The caseworker and other witnesses testify at contested hearings, according to 85.2% of jurists. There is very little variation in these percentages between size of courts, or full-time and part-time jurists, or referees and judges. Since more than half of jurists (55.3%) spend less than an hour on contested preliminary hearings, it appears that the majority of Michigan jurists do not meet Resource Guidelines standards.

As for non-contested preliminary hearings, close to 95.1% of respondents say that the hearings take less than an hour (43.1% say between 6 and 15 minutes; 52.0% say 15 minutes to an hour), and either only the caseworker testifies (according to 38.1% of the jurists) or the parties or attorneys make representations about what the evidence will show, and no testimony is taken (according to 20.4% of jurists).

The short length of time assigned to uncontested preliminary hearings was a subject of concern in the original 1997 court assessment and it remains a concern today. The Resource Guidelines make a special point of noting that uncontested hearings have the same substantial issues as those that are contested:

[T]he court must carefully consider where a child shall be placed pending further hearings, whether reasonable efforts have been made to prevent the child's removal from his or her family, and whether additional services need to be offered to keep the family together, (p.99).

In Wayne County, where there is concern about the quality of preliminary hearings, a decision was made to assign all preliminary hearings to two jurists who would develop expertise with community services and would take the time to thoroughly understand the cases. One result, according to one of those jurists, is that approximately 20% of the petitions are being dismissed as without merit, for there is now time to thoroughly question the parties, and for attorneys, caseworkers and parents to confer. The jurist gave the example of a case that often can be dismissed as being one where a child is picked up by police officers for being without parental supervision.

At a thorough preliminary hearing it can be determined whether this precipitating problem is a one-time event and whether the problem can be solved without the court's intervention. It must be noted, however, that the special assignment of preliminary hearings to only certain referees erodes the principle of one case, one family, which is discussed in Chapter Two. This practice presents an interesting question: why is it not possible for other referees who work full time on child protection proceedings to conduct effective preliminary hearings that comply fully with state and federal requirements?<sup>96</sup>

The Michigan legal structure provides a basis for thorough preliminary hearings. All that is required is that jurists, attorneys and caseworkers be well trained and have enough time to raise and resolve the right issues. Court inquiries should be full enough to determine whether petitions can be dismissed because other services are available to

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<sup>96</sup> In Wayne County, the explanation offered was that the referees with the greatest facility with computers were selected to conduct these hearings, in part because they could generate orders from their computers in the courtroom at the end of each hearing.

ameliorate the problems. The reasonable efforts and “contrary to the welfare” findings should be based on a jurist’s inquiries and accurately documented in the order. Full inquiries should be made also into the circumstances of uncontested cases. Attorneys for both the parent and child should be present and prepared for probable cause hearings.

### ***B. Pretrial through Adjudication***

Under Michigan law, the trial for parents of a child in foster care must commence within 63 days of placement, unless it is postponed. The rule permits postponement by stipulation, but the statute prohibits stipulated continuances, requiring them to be based on “good cause,” inability to complete the “process,” or because a crucial witness is unavailable.<sup>97</sup>

Between the preliminary hearing and the trial much must be accomplished. The caseworker prepares a case plan within 30 days of placement, if possible with cooperation of parents and the child, setting forth services to be provided and the responsibilities of both the agency and parents. Discovery can proceed and motions may be filed.<sup>98</sup> Interviews indicated that the amount of discovery activity differs from court to court. One parents’ attorney complained that there is no money available for defense investigators or expert witnesses although prosecutors can obtain the witnesses and investigators that they need.

In the midst of the preparation period a pretrial conference may be scheduled. The purposes of pretrial conferences are to test whether there is a basis for a plea, or alternatively whether certain matters can be stipulated to narrow the issues raised at trial. Interviews indicate that attorneys expect most cases to be settled through a plea. A jurist estimated that between 50% and 75% of cases in her jurisdiction are settled by pleas.

Court observations revealed that the dynamics and inclusiveness of pretrial conferences varies greatly between jurisdictions. In one court it is the practice for anyone involved in the case, including service providers, to meet in the judge’s chambers and work out differences. In another jurisdiction, only the attorneys and the judge meet, often excluding even the caseworker. In another jurisdiction, parents said they were not at all involved in developing plea agreements, and often did not know the meaning or consequences of the agreement they signed.

A caseworker described that at pretrial conferences in her court, the attorneys, judge, caseworker and child protection workers meet off the record and without the parents to determine what the parents will agree to. If agreement can be reached, the matter goes on the record with the parents present.

One jurist said 30 minutes are allotted for the plea, and typically pleas do in fact take 30 to 45 minutes unless there is a problem with placement, in which case an additional hour might be required. If the parents wish to go to trial, the jurist said, the pretrial meeting will only take about 5 minutes--just long enough to find a trial date.

Michigan courts conduct trials according to formal rules of evidence, with all parties (except possibly putative fathers) having the opportunity for legal representation. Parents and the government present their position and cross-examine witnesses. The

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<sup>97</sup> MCL 712A.17(1); MCR 3.972.

<sup>98</sup> MCR 3.965(E). MCL 712A.17b(1)(c) provides that a child’s statements may be videorecorded. The recording cannot be subpoenaed, but may be viewed. MCL 712A.17b(13) provides for depositions if court-ordered. Discovery requests must be made within 21 days of trial.

child's guardian *ad litem* and attorney are permitted to be fully involved. Jury trials may be requested, but seldom are.

Statewide, only 24.3% of respondents estimated that contested adjudications were completed within 1 hour, and 21.4% estimated a half day. 40.8% of respondents overall, and 87.5% of jurists from Wayne County, indicated that contested adjudications take from 1 to 3 hours. Also in Wayne County, caseworkers observed that there is never enough time for a trial to be heard straight through because dockets are too full. When the data are split, it can be seen that judges (21.1%) are more likely than referees (5/4%) to preside over contested adjudications that last for more than one day.<sup>99</sup>

Strong points in Michigan's adjudication system are the laws and rules that provide for due process at trial for parents, and legal representation for all but certain putative fathers. Weak points appear to be pretrial conferences as they are conducted in some jurisdictions, in that they may exclude parents and caseworkers, be focused entirely on pleas rather than also on defining issues in controversy at trial, and may be rushed through to the dissatisfaction of parents. Jurists should be especially aware of their duty to assure that plea arrangements are understood by parents and should not hesitate to schedule a trial if parents are uncertain about the terms of the agreement.

### **C. The Disposition Hearing**

#### **1. THE CASE SERVICE PLAN**

The case service plan, due 30 days after initial placement of the child, makes its first appearance at the disposition hearing. Court Rule 3.973(F) (2) states, "The court shall not enter an order of disposition until it has examined the case service plan...." MCL 712A.18f details what the plan shall contain:

- The type of home in which the child is to be placed and reasons for its selection (it must be the most family-like setting available in as close proximity to the child's parents' home as is consistent with the child's best interests and special needs).
- Efforts to be made by the child's parents to enable the child to return home.
- Efforts to be made by the agency to return the child home.
- Schedule of services to be provided to the parent, child and foster parent to facilitate the child's return home.
- Schedule for regular and frequent parenting time, which shall not be less than once every 7 days unless parenting time would be harmful to the child as determined by the court.

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<sup>99</sup> Preponderance of the evidence is the standard of proof at adjudication. Videorecorded statements are admissible, and the testimony of a child under 10 years of age, or an incapacitated child under 18 years of age may have testimony regarding neglect, abuse, sexual abuse or sexual exploitation admitted by hearsay through the person to whom the statement was made. MCR 3.972(c)(2). *People v. Katt*, 468 Mich. 272, 662 NW2d 12 (2003). The L-GAL may recommend to the court which of the allegations were proved. MCL 712A.17d(2), MCR 3.972(D).

The court is not bound by the case service plan, but has broad powers to order compliance with all or any part of the plan and to issue any orders that would further the interests of the child.<sup>100</sup>

According to the CFSR final report, case service plans in Michigan suffer from lack of involvement by parents and children. In 30% of the 47 randomly selected cases that were thoroughly reviewed, the agency caseworker developed the plan without parental involvement. If parents are to be assigned responsibilities, it is obvious they should participate in defining what they are capable of doing. For example, if they are required to make and keep certain appointments, those must be within the hours, transportation system, and finances available to them. At the disposition hearing jurists can and should insist on parent involvement in developing the plan. The hearing is an opportunity for the jurist to elicit their ideas and cooperation.

## 2. PLACEMENT OF THE CHILD

At the disposition hearing the first concern usually is placement of the child. If the child is to be placed out-of-home, the court is required to make a finding that the agency made reasonable efforts (1) to prevent the child's removal from home, and (2) to rectify the conditions that caused the child to be removed from home.<sup>101</sup>

Kinship placements are permitted and encouraged by ASFA and Michigan law.<sup>102</sup> Michigan Court Rule 3.965(c)(4) permits the court to place a child with a relative pending results of a criminal records check within 7 days, and a home study within 30 days. In one jurisdiction, a jurist said she is not willing to place a child with relatives until the background checks are complete. In another jurisdiction, if the jurist agrees that a child can be placed with a relative, DHS uses Family Group Decision Making<sup>103</sup> to seek out the best relative placement for the child. Often the petition can be dismissed once a stable relative placement is located, although the agency continues to work with the family for one year. In a third jurisdiction a DHS supervisor estimated that out of 145 cases, over 100 would be relative placements and 43 would be foster care placements.

There is a concept of "fictive kin" or "psychological relatives" applied in some Michigan jurisdictions that expands the potential for placements. The definition of "relative" at MCL 712A.13a(j) does not include a fictive kin concept, thus not all courts utilize it. When the court places children with relatives or fictive kin, the next step often is to encourage adoption or guardianship.

A prevalent problem is that children are not always placed as a sibling group when there is no need to separate them. A 1999 statewide assessment found there were separate placements for 33.1% of sibling groups of 2, and 54.6% of sibling groups of 3-4. Four years later the 2003 CFSR found unnecessary sibling separation in 16% of cases reviewed. Sibling placement is a matter for which court oversight can be crucial.

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<sup>100</sup> MCR 2.973(F)(2); *In re Macomber*, 436 Mich. 386, 461 NW2d 671 (1990).

<sup>101</sup> MCL 712A.18f(4); MCR 3.973(F)(3).

<sup>102</sup> 42 U.S.C. 671(a)(19); MCL 722.954a(2).

<sup>103</sup> Family Group Decision Making involves meetings with the parents, agency representatives, extended family members, and sometimes other persons important to parents to set goals and plans for the family.

### 3. SERVICES

The 2003 CFSR found that DHS had not effectively addressed the service needs of children, parents and foster parents in 27% of the cases investigated. The problem seems to be a failure to assess needs adequately. It makes sense that if parents and children are not involved in developing the plan, certain needs may not be evident. Stakeholders commented that many case service plans tend to be “generic” or “boilerplate,” rather than tailored to the specific needs of a particular child and family.

One need that often is not addressed is education. The CFSR found that in 21% of cases they investigated, the educational needs of the child were not “effectively and appropriately addressed.” In particular, tutoring and special education services were lacking. In the statewide judicial survey, 56.4% of respondents said they rarely (25.5%) or only sometimes (30.9%) addressed the educational needs of the child. In Jackson County, however, a major focus of the court is educational neglect. Educational neglect is viewed as a gateway to discovery of other problems in the home. The issue is consistently raised from the preliminary hearing and then throughout the case history. In that court much is made by jurists in that court of children’s successes in education, ranging from ability to stay in school to achievement of high school degrees.

Overall, CFSR reviewers found that Michigan was not in substantial conformity with Well-Being Outcome I: *Families have enhanced capacity to provide for their children’s needs.*

### 4. EARLY TERMINATION OF PARENTAL RIGHTS

If petitions for early TPR are presented at the preliminary hearing, a 28-day permanency hearing is triggered. These include cases where the parent is accused of severe violence toward a child or a sibling or complicity in those attacks; or an involuntary TPR of a sibling, or abandonment of the child. Permanent placement decisions, including TPRs, can be made at the disposition hearing.<sup>104</sup> Jurists in the statewide survey said 28-day permanency hearings are infrequent. Agency supervisors in one medium sized court said the percentage of early terminations is “miniscule.”

The statewide survey asked in what percentage of cases a respondent made a finding triggering a 28-day permanency planning hearing. 23.6% of respondents said they had never made such finding, 34.5% said it was rare, and 34.5% said they seldom made such findings. Further inquiry shows that such cases are far more likely to involve criminal sexual conduct (mostly, 23.8%, often 21.4%; sometimes 22.6%, and rarely 25.0%) than abandonment, battering, torture, life threatening injury, murder or manslaughter, or aiding, abetting or attempting murder or manslaughter. Criminal sexual conduct cases are most likely to appear in small courts and least likely in the Wayne County court.

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<sup>104</sup> MCL 712A.19a(2); MCL 712A.19b(3)(k); MCR 3.976.

**Table 32**

**IN THOSE CASES IN WHICH YOU MAKE A FINDING THAT TRIGGERS A 28-DAY PERMANENCY PLANNING HEARING, HOW OFTEN IS THE FINDING BASED ON THE CRIMINAL SEXUAL CONDUCT?**

Frequency	Small Court	Medium Court	Large Court
Never	2.1%	6.5%	33.3%
Rarely	14.9%	41.9%	16.7%
Sometimes	27.7%	16.1%	16.7%
Often	19.1%	25.8%	16.7%
Most	<b>36.2%</b>	9.7%	.0%
Always	.0%	.0%	16.7%

“Binsfeld” cases are unique to Michigan. Some DHS offices have interpreted the law to require a TPR petition at the preliminary hearing if a parent lost – voluntarily or involuntarily – parental rights to another child.

Interviews at six Michigan sites indicate that there are a variety of ways in which courts and the agency respond to Binsfeld petitions, given that sometimes the facts of the new case would not merit termination of parental rights, for example when the parent has matured and rehabilitated since the prior relinquishment. In one jurisdiction a prosecutor estimated that 60% to 65% of “Binsfeld” cases did not proceed to termination because the “best interests of the child” were not furthered by termination. In such cases the jurists establish best interests in court by asking the caseworker what the child needs. In another jurisdiction, Binsfeld terminations tend to disappear at the plea agreement stage. In a third jurisdiction, there is no overall court strategy for handling neglect termination cases, but the prosecuting attorney and jurists feel they have discretion to decide which cases go to termination. In a fourth jurisdiction, it is the L-GAL who raises the “best interests” issue in recommending that termination be removed as an option. In a fifth jurisdiction, prosecutors believe that the “current risk of harm” language permits them to decide whether termination is the best strategy. One jurist said “this legislation needs to be amended. It is a barrier to effectively dealing with parents. It doesn’t address the needs of families as they are today.”

By no means are courts bypassing parental termination in all “Binsfeld” cases. In every jurisdiction where interviews were conducted it was recognized that there are situations that do call for immediate action. One attorney said that Binsfeld legislation helps detect the most serious cases. The Michigan Supreme Court is very aware of the practical concerns that accompany Binsfeld cases. A legislative work group has proposed modifications to nine sections of the Binsfeld statute. The work group includes

probate and circuit court judges and referees, DHS administrators, attorneys representing all parties in the system and members from the Governor’s Task Force on Children’s Justice. It is possible that through legislative amendments the statute and court practice will come into accord.

For all early TPR cases, the disposition hearing may be part of one bundle that includes adjudication, immediately followed by a disposition hearing that combines permanency planning and TPR.

#### **D. Dispositional Reviews**

For children in foster care, the case service plan and its permanency goal are to be examined at least every three months (91 days) in court. Earlier reviews are permitted. Michigan law exceeds federal law in the number of hearings and reasonable efforts findings required. For Michigan’s case review to be effective there must be cooperation from all participants. Jurists, caseworkers and attorneys must adequately fulfill their roles.

The Resource Guidelines offer a checklist of key decisions to make during review hearings:

- Whether there is a need for continued placement of a child.
- Whether the court-approved long-term permanent plan for the child remains the best plan for the child.
- Whether the agency is making reasonable efforts to rehabilitate the family and eliminate the need for placement of the child.
- Whether services set forth in the case plan and the responsibilities of the parties need to be clarified or modified due to the availability of additional information or changed circumstances.
- Whether the child is in an appropriate placement that adequately meets all physical, emotional and educational needs.
- Whether terms of visitation need to be modified.
- Whether terms of child support need to be set or adjusted.
- Whether any additional court orders need to be made to move the case toward successful completion.
- Whether appropriate timeframes are set forth as goals to achieve reunification or other permanent plan for each child.

#### **PERMANENCY GOAL**

At every dispositional review the court is to examine the permanency goal for the child, and determine whether it needs to be modified. Occasionally this may include not only changing the goal in the case services plan, but also changing the child’s current placement. Potential dispositional review orders can include:

- Dismissal of the petition and return of the child to the parents’ custody, after a warning.<sup>105</sup>
- Return of the child to the parents’ home under supervision of the court and DHS.<sup>106</sup>

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<sup>105</sup> MCL 712A.18(1)(a); *In re La Flure*, 48 Mich App 377, 210 NW2d 482 (1973).

<sup>106</sup> MCL 712A.18(1)(b).

- Placement with a relative.<sup>107</sup>
- Placement with a legal guardian, accompanied either by continued court supervision, or by complete dismissal of the petition.<sup>108</sup>

At a minimum, the dispositional review order should indicate that the permanency goal has been examined and is determined to be appropriate, or that it is to be modified (for example, changed from reunification to adoption), or that concurrent plans are to be developed for reunification and an out-of-home placement.

The statewide survey shows that only about 30% of jurists always (19.6%) or mostly (10.3%) address appropriateness of the permanency goals at dispositional reviews, and in fact 18.7% rarely do so.

Table 33						
HOW OFTEN DOES ISSUE ARISE AT REVIEW HEARINGS?						
Issue	Never	Rarely	Sometimes	Often	Most	Always
Appropriateness of permanency plan	1.9%	18.7%	29.9%	19.6%	10.3%	19.6%

## 2. VISITATION

Parental visitation did not arise as a significant problem in the statewide survey. 47.3% of jurists say there is a minor delay in providing supervised visitation, and 40.9% say there is no delay. The survey answers are at odds with both the 2003 CFSR, and with interviews conducted at six sites for this report. The CFSR noted that Michigan is not in substantial conformity with Permanency Outcome 2: *Continuity of family relationships and connections is preserved for children*. In 32% of the cases investigated, “FIA had not made concerted efforts to facilitate visitation.” As the Review noted, this is in conflict with Michigan law. MCL 712A.18f(3)(e) states that “unless parenting time, even if supervised, would be harmful to the child as determined by the court....a schedule for regular and frequent parenting time between the child and his or her parent...shall not be less than once every 7 days.”

At three sites, persons interviewed for this reassessment indicated that where supervised visitation is required, agencies do not schedule evening and weekend appointments. Although the law provides for “frequent” parenting time, it is hard for working parents to obtain that if visits are offered only during regular business hours.

Jurists may not understand how inadequate visitation is for many parents because they do not raise the issue at dispositional reviews. In the statewide judicial survey, less than half of respondents say they always or mostly raise the issue of parental visitation, though 35.5% say they often do. The response to sibling visitation is bleaker: about half of respondents (51.4%) say they rarely or only sometimes raise the issue. Of course sibling visitation is not an issue in cases where siblings are placed together, so that may have skewed the response. Nevertheless, given the heightened concern of federal investigators, it is an issue requiring the court’s vigilance.

<sup>107</sup> MCL 712A.12(9).

<sup>108</sup> MCL 712A.18(1)(h); MCL 700.5204. Note that Michigan does not have subsidized guardianship, a weakness that the 2003CFSR noted.

**Table 34**

**HOW OFTEN ARE THE FOLLOWING ISSUES RAISED AT REVIEWS?**

Issue	Never	Rarely	Sometimes	Often	Most	Always
Visitation with parents	0%	3.6%	12.7%	35.5%	18.2%	30.0%
Visitation with siblings	1.8%	25.7%	25.7%	22.9%	11.0%	12.8%

A few differences between jurists in small courts, medium courts and the Wayne County court are noted. Fewer jurists in small courts reported always addressing sibling visitation (6.7%), while more reported rarely doing so (35%). By comparison, only 14.3% of jurists from medium courts and 14.3% of jurists from Wayne County reported rarely considering whether siblings were placed together. 23.8% of jurists in medium sized courts and 0% in Wayne County reported always addressing sibling visitation.

Michigan court rules *require* that the court inquire about the extent of parenting time or visitation, including a “determination” of reasons it was not frequent or never occurred. Overall, fewer than half of jurists are in compliance with this state requirement.

### 3. SERVICES

At the dispositional review the family’s progress toward reunification, including the family’s and the agency’s compliance with the case services plan must be addressed. MCR3.975 requires the following elements to be considered each time:

- Services provided or offered to the child and parent;
- Benefits the parent has obtained from the services;
- Extent to which the parent complied with each provision of the case service plan, prior court orders, and any parent-agency agreement.

This legally required inquiry by the court is supposed to uncover the kind of flaws, individual cases, which the 2003 CFPSR found in the quality of numerous services for children and families, including mental health, insufficient caseworker visits with parents and children, and educational needs.

**Table 35**

**HOW OFTEN ARE THE FOLLOWING ISSUES RAISED AT REVIEWS?**

Issue	Never	Rarely	Sometimes	Often	Most	Always
Treatment for the child	0%	9.3%	28.0%	27.1%	13.1%	22.4%
Treatment for the parent	.9%	3.7%	22.4%	21.5%	22.4%	29%
School related issues	2.8%	13.9%	42.6%	21.3%	11.1%	8.3%
Appropriateness of child’s education	1.8%	25.5%	30.9%	21.8%	10%	10%

The 2003 CFSR found that in 21% of cases they investigated, the educational needs of the child were not “effectively and appropriately addressed by the responsible agencies.” In particular, tutoring and special education services were lacking.

In the statewide survey, over half of jurists (56.4%) said they rarely (25.5%) or sometimes (30.9%) addressed the appropriateness of the child’s education, and about the same number (56.5%) rarely (13.9%) or only sometimes (42.6%) address school-related issues. When the data is split it appears that more respondents from Wayne County often address education issues (37.5%) than those in small courts (18.3%) and medium courts (23.8%). In Jackson County a major focus of the court is educational neglect. There, educational neglect is viewed as a gateway to discovery of other problems in the home. The issue is consistently raised from the preliminary hearing and throughout the case history. Much is made by jurists in Jackson County of children’s successes in education, ranging from their ability to stay in school to the achievement of high school degrees.

There is another side to the provision of services that arose over and over in interviews at the six sites. Both parents and attorneys mentioned that so many tasks and service appointments are set up for parents that often they simply cannot meet them in their entirety. Indeed parents’ attorneys complained in one county that it was a social service pattern intended to make parents fail and head them down the path toward termination of parental rights.

At that site parents’ attorneys and prosecutors were in agreement. One prosecutor said, if you are poor, lack transportation and a job, you can’t get to all the appointments that the social workers pile on, with the result that you lose your children because you don’t comply with requirements. One parent’s attorney said he tells his clients “FIA is not your friend. Do the services but don’t trust them, don’t confide in them.”

Because parents must be given a fair chance to rehabilitate themselves and reunify with their children if possible, jurists should examine case plans during reasonable efforts inquiries to assure that service requirements are phased in, occur at reasonable hours, and that parents have transportation to reach appointments. When the court is assured that service requirements are achievable, the burden is properly on parents to prove that they can become adequate parents.

#### **4. APPROPRIATENESS OF CHILD’S CURRENT PLACEMENT**

The 2003 CFSR noted that Michigan is not in substantial conformity with Permanency outcome 1: *Children have permanency and stability in their living situations*. Michigan comes close to meeting the national standard, but the Review found that in about 18% of cases examined children had 2 or more foster care placements within one year. Stakeholders indicated to reviewers that some problems are:

- Initial placements do not match children’s needs.
- Inadequate information is provided to foster parents regarding the child’s behavior when the child is initially placed.
- Foster parents have inadequate support to prevent movement when children entering foster care have many problems.
- Specialized foster homes are lacking in Michigan.

Michigan’s PIP indicates that caseworkers will attempt to complete a needs assessment prior to placement in the foster home, so that foster parents have better information.

DHS also will be increasing support for foster parents and attempt to develop specialized foster homes.

Several questions were asked in the statewide survey about how often issues relating to the child’s current placement were raised in dispositional reviews.

<b>Table 36</b>						
<b>HOW OFTEN ARE THE FOLLOWING ISSUES RAISED AT REVIEWS?</b>						
<b>Issue</b>	<b>Never</b>	<b>Rarely</b>	<b>Sometimes</b>	<b>Often</b>	<b>Most</b>	<b>Always</b>
Type of child’s placement	0%	13%	30.6%	22.2%	5.6%	28.7%
Appropriateness of child’s out-of-home placement	.9%	19.1%	41.8%	12.7%	6.4%	19.1%
Alternatives to out-of-home placement	1.8%	17.4%	36.7%	20.2%	11.0%	12.8%
Placement with relatives or other adults	0%	8.2%	37.3%	33.6%	12.7%	8.2%

Only 38.2% of respondents often (12.7%), mostly (6.4%) or always (12.8%) inquire about the appropriateness of the child’s current placement. 60.9% of jurists only rarely (19.1%) or sometimes (41.8%) so inquire.

Any time after the dispositional hearing, an emergency may occur, requiring a child either to be removed from the family home or from a foster home. Both parents and foster parents have rights to contest the removal and new placement. At the required 24 hour hearing, parents are given a written statement of reasons for removal, permitted to state their objections and advised of their right to legal representation at a dispositional review within 14 days.<sup>109</sup> Foster parents who have had a child for more than 90 days may appeal the removal to the Foster Care Review Board, which may then trigger a court review.<sup>110</sup> At this point, inadequacies in available foster care placements may come to the attention of the court.

In the 1997 court assessment, 35.9% of respondents to the judicial survey found therapeutic foster homes to be in seriously short supply. In the current court assessment, DHS caseworkers also raised the issue, particularly in larger cities. Often only short-term facilities for children with acute problems are available, so that is where children are put even if they do not have acute problems. A jurist in Wayne County referred to the humiliating system of bidding for children. She said that when a child needs a placement, foster care providers are supposed to meet to reveal how many beds they have available, but if providers foresee that there will be a “problem child” to be placed, they simply skip the meeting. She firmly said that beds should follow children, not the other way around.

<sup>109</sup> MCR 3.974(b)(3).

<sup>110</sup> MCR 3.966.

Aware that the 2003 CFSR found too much movement from foster home to foster home, courts should ask about current placement conditions at every dispositional review.

### **5. LATE COURT REPORTS**

One reason that problems with service provision and other issues relating to the child's placement do not often come up in court, despite dispositional reviews every 91 days, may be that almost 32.4% of the time court reports arrive on the day of the hearing. When that happens, there simply is not time for attorneys to investigate the information reported and to recommend alternative plans and services, let alone to challenge the statements challenge the assertions of the report.

For example, when reports are submitted shortly before, or even as hearings begin, it is difficult for advocates or the court to evaluate carefully whether the mental health services identified in the report are the ones the child needs or whether supervised visits can be arranged at hours accessible to parents. Unless the jurist has a thorough knowledge of community services and an instinct for identifying problems, the weaknesses may go undetected.

Unless jurists make repeated and concerted efforts to ensure timely reports, reports are likely to be late. Rectifying late court reports might best be worked out with the agency at the policy level. Sanctions are another judicial tool that may have to be used.

### **6. LEGAL REPRESENTATION**

Courts in Michigan may want to investigate whether part of the problem in getting accurate information and getting to the heart of the issues in neglect-abuse cases is that not all of the advocates are present at dispositional review hearings. While the L-GAL is required by law<sup>111</sup> and the L-GAL Protocol to be present at every hearing, prosecutors do not cover dispositions and neglect reviews in some jurisdictions. As one prosecutor said, "Prosecutors tell workers to go in without representation but if they get in trouble, to ask for an adjournment. If they come in the same day and say they need coverage, they will just have to wait until a prosecutor becomes available." By contrast, in another jurisdiction prosecutors are assigned to particular judges and are present at every hearing. Some courts often permit substituted counsel when the assigned counsel cannot be present, with the result that attorneys are not fully versed in the facts of the case. In one jurisdiction a parent's attorney said that "double booking" was a big problem, because the court set hearings without regard to attorneys' schedules, so attorneys who are required to be in several hearings simultaneously must substitute for each other. Legal representation is fully covered in Chapter 6.

### **7. PRESENCE OF PARTIES AND OTHER APPROPRIATE PERSONS**

Another factor that can cause jurists to fail to address the most important issues is the absence of parties and others with knowledge of the case. Foster parents and relative caregivers often can contribute information to the court about service needs of children in their care. Federal and state laws require foster parents to be notified of court hearings

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<sup>111</sup> MCL 712A.17d(1)(h).

involving a child in their care and to be given an opportunity to be heard.<sup>112</sup> The 2003 CFSR found that there was inconsistent notification of foster parents, pre-adoptive parents, and relative caregivers.

The survey of judges shows an apparent difference among jurisdictions as to involvement of foster parents. 47.4% of respondents said they always notified foster parents. In small courts, 42.4% of jurists indicated foster parents often were in court. In Wayne County none of the respondents indicated they always or even mostly notified foster parents and, in fact, half of Wayne County respondents said foster parents were rarely in court. However, when foster parents did appear in Wayne County courts (presumably after caseworkers had notified them), 37.5% of jurists said they always were invited to speak. Statewide, most jurists said they rarely (22.3%) or only sometimes (30.4%) invited foster parents to speak when they were present. Likewise, most respondents said they rarely (23.9%) or only sometimes (41.6%) found foster parents' information to be an important factor in their decisions.

Foster parents in some jurisdictions reported that they often did not receive notices of hearings, or adjournments of hearings, and most often if present were not invited to address the court. One foster parent reported writing letters to the judge expressing her concerns. DHS workers reported that usually foster parents communicate with the court by providing information to caseworkers that is then included in the court report. In two of the courts visited it is more common for foster parents to attend hearings: it was reported that in one of the courts the foster parent is nearly always given the opportunity to address the court; in the other court all those present in the courtroom identify themselves and may be allowed to speak, unless attorneys object.

## **8. QUALITY OF JUDGING**

While persons interviewed at six sites occasionally expressed frustration with some jurists, there also was much praise and even awe of the skills and compassion of many others. One attorney in a small court jurisdiction said "We're very lucky here. The judge is respectful of everyone. He scares people when they need it. He is caring and careful with each case and experienced and wise, not jaded." In a medium sized court an attorney said jurists on the whole were involved, concerned and creative. One jurist in a third jurisdiction praised some of his colleagues as compassionate, but said others are "just putting in their time." Complaints were in the minority. To a great extent, attorneys and caseworkers respect the skills of jurists.

While there are differences among courts in the conduct of cases, interviews suggest that there often are also sharp differences among jurists within each court. For example, in one medium sized court, both jurists and attorneys indicated that reasonable efforts were raised in every courtroom at every hearing. Further questioning revealed, however, that the jurists made their inquiries in markedly different ways. Some cross-examined extensively to establish the facts, while others "rubber stamped" the DHS assertions of reasonable efforts and merely checked the reasonable efforts box. One jurist said candidly that while she sometimes directs DHS to provide a particular service, more often there is standard statutory language that gets "plugged" into the court order.

The statewide survey certainly has revealed a failure among a majority of jurists to inquire consistently at every dispositional hearing about the permanency goal, current

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<sup>112</sup> 42 U.S.C. 675(5)(G); MCR 3.921(2)(b).

placement of the child, visitation, services to the child and family, diligence of the caseworker, and so forth. It seems that a mandatory checklist is needed, consistent with recommendations of the Resource Guidelines, so that these important issues do not escape notice. One jurist said she has a routine script that helps her put everything required on the record. She always makes reasonable efforts findings. It might help to provide mandatory forms for judicial orders, which require jurists to address each of these issues. Even more effective might be computerized templates for court orders, in which key issues are fields to be addressed in completing the orders.

### **E. The Permanency Planning Hearing**

The permanency planning hearing is ASFA’s jewel in the crown. Michigan Court Rule 3.976 makes clear that the permanency planning hearing is to be a thorough and deep inquiry into the basis for the long-term plan. All relevant and material evidence, both oral and written, can be received from the child’s parent, guardian or custodian; foster parent; child caring institution; or relative with whom the child is placed “in addition to any other evidence offered at the hearing.” The Rule continues: “the parties must be afforded an opportunity to examine and controvert written reports so received and may be allowed to cross-examine individuals who made the reports when those individuals are reasonably available.”

The Resource Guidelines recommend that an hour be set aside for the permanency planning hearing.

#### **1. THE REASONABLE EFFORTS FINDING**

A required court finding at or before the twelve-month date is that the agency make reasonable efforts to finalize the permanency plan.<sup>113</sup> The court rule anticipates that the permanency planning hearing will be timely. If it is not, and the reasonable efforts finding is not made before the hearing, any Title IV-E federal matching funds for the child will be lost between the time that the deadline has run until the finding is made.<sup>114</sup>

As most jurists are aware, a number of randomly selected cases in the recent Title IV-E review did lack the reasonable efforts findings, contributing to Michigan’s failure to pass the review, and triggering a larger scale review the next year.<sup>115</sup>

A judicial finding that reasonable efforts were made to finalize the permanent plan should normally be made at the permanency planning hearing, based on actual questions to the caseworker and other parties. It should be properly documented in the order. If the permanency planning hearing is late, the reasonable efforts finding needs to

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<sup>113</sup> 45 C.F.R. 1356.21(b)(2)(i); MCR 3.976(A).

<sup>114</sup> 45 C.F.R. 1356.21(b)(2)(ii).

<sup>115</sup> The purpose of the 2004 Title IV-E review was to determine whether Michigan was in compliance with child and provider eligibility requirements found in 45 C.F.R. 1356.71. 80 randomly selected cases were reviewed. Michigan was found not in substantial compliance with (1) the contrary to welfare finding, (2) the reasonable efforts to prevent removal or reunify the child finding, and (3) the reasonable efforts to finalize permanency plans finding. As a result, a more complete Title IV-E review is scheduled.

be made within one year from the child's removal, to ensure that Title IV-E foster care matching funds will not be lost.<sup>116</sup>

## **2. REUNIFICATION**

Indicating other underlying problems with Michigan's permanency planning review, the 2003 CFSR found that in 31% of applicable cases "FIA had not made diligent efforts to achieve the goal of reunification or permanent placement with relatives in a timely manner." Not surprisingly, DHS workers and biological parents had different opinions about the barriers to effective planning. DHS workers tended to feel that the parents' poor parenting skills, substance abuse and emotional instability prevent reunification, whereas 26% of parents indicated in a survey that their service needs were not met by the agency, particularly housing and family counseling. (p.8)

Michigan law sets a standard for the decision about whether to return the child home or place the child out of the home. Return home is possible only if the placement would not cause "substantial risk of harm to the child's life, physical health, or mental well-being." In making that decision the court is required to consider failure of the parent to substantially comply with the case service plan. In addition, the court is required to consider whether any condition or circumstance of the child would mean that a return home could cause substantial risk of harm.

If reunification is determined to be feasible, it can occur at once, or according to a reasonably brief time schedule. In the statewide survey, 64.3% of respondents said they always (12.2%) mostly (33%) or often (19.1%) order reunification to occur according to a timetable. Many times, of course, that timetable will have begun prior to the permanency planning hearing. Family reunification is often the result, according to 37.9% of respondents in small courts, 40.9% in medium-sized courts, and 25% in Wayne County, with slightly greater percentages of jurists agreeing that they sometimes ordered family reunification.

## **3. GUARDIANSHIP**

Michigan's legal system does not include subsidized guardianship. Many relatives and foster families that otherwise would consider guardianships are eliminated from consideration because they cannot afford it. The state is keenly aware of the need to provide subsidized guardianships, both as a placement for children while their cases are under review, and as a permanent placement. The state has applied to the U.S. Department of Health and Human Services for a Title IV-E waiver that would pilot a five year subsidized demonstration project in the eight counties that account for 40% of children in foster care: Wayne, Berrien, Saginaw, Muskegon, Macomb, Oakland, Ingham and Genesee. The amount of the subsidy would be equivalent to the adoption subsidy. The Foster Care Review Board, which is a part of SCAO, would perform annual guardianship review to monitor the child's educational progress and adjustment in the guardian's home.

Additionally, a legislative workgroup is using permanent guardianship legislation. Meetings have occurred between the Chief Justice of the Michigan Supreme Court, the

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<sup>116</sup> In the statewide survey only 64% of judicial officers indicated that they always conduct a permanency planning hearing within 12 months of a petition being filed, although an addition 29.7% said the most often do. 87.5% of jurists in Wayne claimed to always hold the hearings on time.

Director of Child Welfare Systems and key legislators. The problem of lack of subsidized guardianships is on its way toward resolution.

#### **4. LONG TERM FOSTER CARE**

A weakness in Michigan law is the specific permission it gives to place the child in long-term foster care, if there is a compelling reason.<sup>117</sup> ASFA eliminated the option of long-term foster care *per se* as a permanency option, replacing it with “another planned permanent living arrangement.”<sup>118</sup> The preamble to the federal regulations adopted after ASFA states that “far too many children are given the long-term goal of foster care.”<sup>119</sup>

The ABA Center on Children and Law urges that in difficult cases where a permanent placement is not immediately available foster care be considered an interim arrangement while permanent placements are developed. When there are compelling reasons why other more permanent placement goals are possible, “another planned permanent living arrangement” may become the permanent placement arrangement. If the most permanent possible placement option for an individual child involves continuing foster care, it should be combined with the child’s permanent ties to an adult parent figure, a mentoring adult who will maintain those ties long after the child reaches adulthood. Such an adult might be a foster parent with whom the child currently lives, or for a child unable to live in a family setting, a person who visits and will maintain a close and permanent relationship with the child. In other words, the difference between “long term foster care” and “another planned permanent living arrangement” is that, with the latter, there is an identified, responsible, and permanent parent figure in the child’s life, together with a living situation that is as stable as practical.

Cases reviewed during the court reassessment showed that many cases remain in the system as long-term foster care placements. Court observations revealed that long-term placements still are tolerated as permanent plans.

#### **5. COURT REPORTS**

As with dispositional review hearings, there is a perennial problem of late court reports. In the statewide jurists’ survey 17.8% of respondents say court reports for the all-important permanency planning hearing are coming in on the same day, with 26.2% of respondents saying most reports arrive just one day before the hearing. Only 43.9% of caseworkers have their reports submitted between 2 and 5 days before the hearing.

Based on responses from almost 40% of jurists (39.1%), a parents’ attorney or L-GAL regularly needs to ask for an adjournment in order to investigate adequately the statements and recommendations and be prepared to cross-examine the caseworker vigorously.

#### **6. LEGAL REPRESENTATION**

In at least two jurisdictions prosecutors almost never appear at permanency planning hearings, which means that the caseworker is without representation even

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<sup>117</sup> MCL 712.19f(7)(b).

<sup>118</sup> 42 U.S.C. 675(5)(c)

<sup>119</sup> 65 F.R. 4036.

though the judge must make a finding whether or not reasonable efforts were made to finalize the permanency plan.

A meaningful reasonable efforts finding has to be based on the court's full inquiry into the diligence of the caseworker and the kind and quality of services offered. Each of the parties, including the caseworker, deserves to participate in, and have legal representation during, the inquiry. (See Chapter 5 on Representation, for a detailed discussion of DHS representation.) The permanency hearing is the culmination of a year's work on behalf of the child and a critical juncture in the case. The best thinking of all the professionals should be brought to bear on the child's permanency goal.

## **7. QUALITY OF JUDGING**

Michigan law, with the exception of its acceptance of long-term foster care as a permanent placement, provides an excellent structure for jurists to implement a long-term placement plan that will further the child's best interests. As with all other hearings in the neglect-abuse system, there are good results only when all jurists, lawyers and caseworkers are well trained and fully use what the law provides.

In at least a few jurisdictions the purpose of the permanency planning hearing is well understood and implemented. Interviews at six sites indicate, however, that not all jurists have changed their pre-ASFA mindset.

- In several jurisdictions attorneys and caseworkers said that the permanency planning hearing was “just an augmented review hearing.”
- The prosecutor in one jurisdiction said “the permanency hearing is not considered to be a critical juncture. It is more an occasion for the referee to ask ‘where are we going with this case?’”
- A jurist in the same jurisdiction agreed, saying that long-term goals should be discussed at every hearing and that in her opinion permanency planning hearings differed from dispositional reviews only in the forms that need to be filled out.
- A jurist in a third jurisdiction said permanency planning hearings are not necessary because the court should know all along where the case is going and be continually asking “what's the plan? When are you going to get there?”
- In a fourth jurisdiction caseworkers complained that the scheduling function was placed on their shoulders. The workers had to remember to recommend in the report of the last review that the next hearing should be a permanency planning hearing. The court did not independently note or schedule for it.

The Resource Guidelines recommend that one hour be set aside for uncontested permanency planning hearings. Interviews in the six sites indicate that not all jurists conduct full permanency inquiries as recommended in the Guidelines. For example, one jurist said that permanency planning hearings take from 15 minutes to ½ hour, the same amount of time as is given to a dispositional review hearing.

In spite of the Guidelines, as well as federal and state laws, many courts continue to treat the permanency planning review like any other dispositional review, as if the main purpose were to check again on the family's progress toward reunification. Michigan jurists need additional instruction about the proper function of the permanency

planning hearing to emphasize that it is not just another dispositional review hearing, but rather the turning point for the child, either away from the family or back into it. Additionally, the permanency planning hearing is an important backstop for children for whom permanency plans have not yet been accomplished. The jurist needs to examine permanency options with a degree of formality. Another Planned Permanent Living Arrangement should not be accepted without systematic consideration of the evidence supporting other more permanent options for a child. If the decision is to seek an adoptive placement, caseworkers should be required to file the TPR petition within 42 days, and to identify an adoptive family.<sup>120</sup>

## **F. Terminations of Parental Rights**

Terminating parental rights is a point at which the child protective process intersects profoundly with U.S. Constitutional law. Parents have a right to raise their children free of government interference unless it can be proven that they are unable to care for them.<sup>121</sup> To utterly and absolutely remove children from their parents is an act that courts must take most seriously.

Michigan law describes three kinds of termination of parental rights petitions.<sup>122</sup>

1. The standard petition, for cases that proceed through the system on the usual time frame, with no allegations in addition to those in the original petition;
2. The supplementary petition, where allegations are based on different circumstances from those in the original petition, the facts of which were revealed during the course of the neglect-abuse case; and
3. The fast-tracked petition for cases where the court has determined early in the process that no reasonable efforts are to be made to reunite the family.

A petition may be filed by anyone who has information that a child has been maltreated.<sup>123</sup> Michigan law requires the termination petition to be filed within 42 days of the permanency planning decision unless the court has documented a compelling reason for not proceeding with termination.<sup>124</sup>

The Resource Guidelines recommend scheduling uncontested terminations for an hour and making certain all family members, attorneys and witnesses are present. In accordance with that best practice, Michigan law casts the net wide to bring in all persons and documents that could be useful to the jurist. While the evidentiary standard is “clear and convincing,” as it must be under U.S. Constitutional law,<sup>125</sup> all material and relevant testimony and documents are potentially permitted into evidence.

In the statewide survey, 64.9% of jurists said that contested termination proceedings could take more than a day, and an additional 27.7% indicated that a half day was usual. These numbers were quite consistent across small courts, medium courts and

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<sup>120</sup> MCL 712A.19a(a)(6); MCR 3.976(E)(2).

<sup>121</sup> *Meyer v. Nebraska*, 262 U.S. 390 (1923); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925); *Prince v. Massachusetts*, 321 U.S. 158 (1944).

<sup>122</sup> MCL 712A.19b(4); MCR 3.977(E). *In re Marin*, 198 Mich. App. 560, 499 NW2d 400 (1993) (holding that a child need not have been in foster care for a parent’s rights to be terminated).

<sup>123</sup> MCL 712A.11(1).

<sup>124</sup> MCL 712A.19a(6); MCR 3.976(E)(2).

<sup>125</sup> *Santosky v. Kramer*, 455 U.S. 745 (1982).

in Wayne County. A great majority of respondents (77.9%) heard uncontested terminations in an hour or less.

In one jurisdiction a jurist spoke frankly about the system being “too pro-termination.” In his view, his colleagues and the court administration were “risk adverse.” Terminations of parental rights tax foster care and adoption systems and families. He felt that few of his colleagues were ordering family reunification. In the same jurisdiction a parent’s attorney said that the atmosphere is against parents and there is a “deification of children.” These remarks were made in a jurisdiction that has a reputation and expresses the philosophy of making great efforts to keep families together with front-end services before a case is petitioned. The cases that do come into this court tend to be those the agency considers to be intractable, for which reasonable efforts to date have failed. In several of the other jurisdictions visited, concerns about a tilt toward terminations of parental rights also were raised. Even a chief prosecutor noted that once cases get into the system, many parents do not have a chance to keep up with onerous service requirements, with the result that they lose their children. A focus group of biological parents in that same jurisdiction complained of this bitterly.

Michigan statistics in year 2001, compared to statistics from the entire United States for that year, had nearly the same percentage of family reunifications and approximately the same percentage of adoptions.<sup>126</sup>

<b>Table 37</b>		
<b>PERMANENCY OUTCOMES 2001</b>		
<b>Exit</b>	<b>Michigan %</b>	<b>U.S. %</b>
Adoption	22.4%	18.0%
Reunification	56.7%	57.0%
Legal guardianship	2.8%	3.0%
Other	18.0%	22.0%
Missing data	0.1%	0.0%

None of the persons interviewed suggested that there were deficiencies in the manner in which TPR hearings are conducted. Typically, there are pre-trial conferences to narrow the issues and determine whether a plea can be reached. In one jurisdiction, however, an attorney said that the prosecutor, who did not want the child’s statements to be “given away” by the L-GAL, had canceled pre-termination conferences, which previously had been very helpful. Another attorney said that terminations move swiftly in her jurisdiction because the judge has handled the case up to that point, knows all the issues, and likely has made up his or her mind. One jurist said “I don’t think there is a more significant act a government can do than taking someone’s child.” In his court, contested termination cases often go on for more than a day. A jurist in another jurisdiction said that he writes 20 to 25 pages summarizing his opinion in termination cases.

<sup>126</sup> Children’s Defense Fund website, <http://www.childrensdefense.org/childwelfare/financing/factsheets/default.aspx>. Data were compiled and analyzed by federal agencies.

When issues have not been raised at the beginning of a case and throughout its journey through the court system, they can come to a head at the TPR stage. For example, jurists need to assure that ICWA issues have been properly dealt with as early in the process as possible so that the case does not collapse as it moves toward adoption. Vigorous efforts must be made to locate absent parents, lest they appear after the filing of the TPR petition, forcing the state to begin work with them late in the case. By the time the TPR petition is filed, caseworkers should often be able to identify adoptive homes. If not, the court needs to issue orders that speed the case toward that end.

### **G. Adoptions and Post-termination Reviews**

Adoption is the preferred out-of-home placement for children. The guiding legislation is titled the *Adoption and Safe Families Act*, no doubt to emphasize the importance of a permanent and stable home for the child. ASFA reaches beyond terminations of parental rights to the steps the agency and courts must take to accomplish the permanency plan. There must be:

documentation of the steps the agency is taking to find an adoptive family or other permanent living arrangement for the child to place the child with an adoptive family, a fit and willing relative, a legal guardian, or in another planned permanent living arrangement, and to finalize the adoption or legal guardianship.<sup>127</sup>

Concurrently with filing a TPR petition, the agency is required to begin identifying, recruiting, processing and approving an adoptive family. This is part of the agency's obligation to finalize an alternate permanency plan when reasonable efforts to reunify the family are no longer appropriate.<sup>128</sup> The court must make an actual finding that reasonable efforts have, or have not, been made. That finding is required at each twelve-month period while the case remains in the system.

Michigan law requires post-termination reviews every 91 days for the first year after termination, unless the child is with a relative in a placement "intended to be permanent" or under a "permanent foster family agreement." At each of those reviews the court is required to find "whether reasonable efforts have been made to establish permanent placement for the child." This obligation exists whether the child's case is with the Michigan Children's Institute or another agency. If children are in care longer than a year after TPR, the court must review their cases every 182 days, with a permanency planning hearing occurring 12 months after the preceding permanency planning hearing. The court is obliged to consider three things:<sup>129</sup>

1. The appropriateness of the permanency planning goal for the child.
2. The appropriateness of the child's placement.
3. The reasonable efforts being made to place the child for adoption or in another permanent placement in a timely manner.

The Resource Guidelines recommend scheduling uncontested adoption hearings for ½ hour. In the statewide survey 69.9% of jurists indicated that typically contested

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<sup>127</sup> 42 U.S.C. 675(1)(E).

<sup>128</sup> 45 C.F.R. 1356.21(k)(3); 45 C.F.R. 1356.21(b).

<sup>129</sup> MCL 712A.19c; MCR 3.978.

adoption hearings take either a half day (39.7%) or 1 to 3 hours (30.2%). Uncontested adoption hearings take anywhere from 15 minutes (41.6%) to 1 hour (58.4%).

During interviews at six sites, an issue that often was raised was the limbo into which many children fall in Michigan after their parents' rights have been terminated. The 2003 CFSR made the very same point: "[T]here is concern that Michigan is creating 'legal orphans' and is not considering a child's best interest when filing and supporting termination petitions," (p.69). Year 2001 statistics prepared by the Children's Defense Fund show that while the entire United States had 126,000 children waiting for adoption that year, Michigan's portion of that total was high: 7,839 children. Two far more populous states, Texas and California, had fewer children waiting for adoption.

One jurist described the "huge failure of the Michigan Children's Institute," which is slow to process adoptions, perhaps for lack of resources. Caseworkers in a private agency describing problems from their point of view said level of care issues were a problem: the adoptive family might want the child to have a higher level of subsidy, which often requires new child assessments. There are no subsidies for children under 3 years of age, so foster parents may not be able to afford adoption. Relatives who have been providing care are often unable to meet adoptive placement requirements, which can include space and privacy issues for the child. For couples not in a standard marriage there can be barriers to adoption.

One jurist spoke of the complexity of post-termination reviews "if you do them right:"

- Much of the structure that sustains cases in the first year has fallen away at the post termination stage, especially after the second year, when cases are only heard every 6 months.
- Agency attorneys do not feel obligated to appear.
- The parents' rights have been terminated, so there are no attorneys representing them.
- The foster parents may or may not come, for notification is not reliable.

Unless the judge is committed to conducting thorough reasonable efforts inquiries prior to making the required reasonable efforts finding, there is little chance that barriers to a more permanent placement will be uncovered.

In Kent County, post-termination hearings are a special docket heard by a designated jurist. The jurist has developed an expertise with services and a sense of how to push bureaucracies. In his jurisdictions there is a weekly meeting of DHS and the private agencies to review every lingering post-TPR case. As a result of these efforts, and because a higher percentage of adoptions are processed locally rather than referred to the Michigan Children's Institute, adoptions are achieved more rapidly there than elsewhere in the state. In other jurisdictions, jurists may lack the specialized knowledge to conduct penetrating post-TPR reviews. Michigan has larger than usual numbers of children awaiting adoption, and effective post-TPR hearings are critical to achieving permanency.

Jurists who preside over post-TPR cases need to keep their eyes on the calendar, making certain that all barriers to putting the child in a secure, permanent home are removed.

## **H. Treatment of Parties**

Parents, children, foster parents, caseworkers and attorneys need to feel that the jurist is listening to them and respects them. In every one of the six jurisdictions visited, some people had complaints about certain jurists, and other jurists were praised. Some jurists were praised by one group, for example, agency attorneys, but not another group, for example, parents. Still, the personality and demeanor of the jurist is only one of a number of factors that determine whether people are well-treated in court.

### **1. PARENTS, CHILDREN AND FOSTER PARENTS**

From the moment parents walk in the door of the courthouse, the surroundings and behavior of court staff--from security personnel to clerks who direct them to the courtroom--set a tone about how seriously and courteously they will be treated. Chapter 2 on Court Organization describes the different milieus in Michigan courts, from the crowded lobby at the Macomb court house, to the dignified surroundings in Marquette and the new building in Kent. Youth interviewed in Wayne County talked about the difficulty of getting through the security barriers, and caseworkers and parents in Macomb mentioned the lack of confidentiality as the names and types of cases are broadcast over the speaker system.

Long waiting times try the patience of families who are nervous about their cases, so it can make a profound difference whether cases are block-set or set for a time certain, as described in Chapter 3 on Timeliness. Thus, block-setting cases in Jackson may work well for some court professionals, but be painful for the families who may have to wait all afternoon for their cases to be called.

When parents finally get into court, they may not feel that they are actually participating in the decisions. Sometimes that relates to whether the hearing has been foreshortened, as so many preliminary hearings improperly are. If the parent has not had a reasonable amount of time to talk to an attorney, or, in some cases, is not represented at all at the preliminary hearing, decisions to remove the child can appear arbitrary, and parents may feel that they do not know how to speak to the jurist to explain their situations. Another example is that in some jurisdictions parents do not seem to be fundamentally involved in the development of consent decrees. They wait in the hall for their attorneys to appear periodically, perhaps to ask questions, or perhaps just to present them an ed consent decree.

Another factor in how a person feels treated in court is whether the jurist and the attorneys take time to explain clearly what is happening and what the legal consequences are. Some jurists do this very effectively and were praised during interviews. Parents in some focus groups, however, said they did not understand what was happening. As one parent said, "I had done what I need to do and no one is telling me why I cannot get my daughter back."

Courtroom ambience also plays a part. In both Wayne and Jackson counties, parents complained that while they were waiting for the cases to be called or were in the courtroom while the judge was off the bench, the attorneys and caseworkers joked and laughed, were casual and insensitive to how painful these matters are for parents.

Jurists differ in the amount of participation they permit parents, children and foster parents. In some courts, children are not invited. In some courts, parents are not allowed to speak, other than to consult with their lawyers who speak for them. In a

number of courts, foster parents do not receive notice of hearings and are not asked to speak if they do come to court. On the other hand, many jurists do encourage participation of parents, children and foster parents – and sometimes these are the very jurists who are criticized by court professionals for not moving their cases briskly along.

## **2. CASEWORKERS AND ATTORNEYS**

Many heartfelt complaints by caseworkers were made during interviews at the six sites. They expressed that they were treated like “go-fers,” that they were disrespected in court, which affected their relationship with the families they were serving, that they were subject to contempt orders over matters that could be solved by a simple telephone call, and that attorneys were unnecessarily adversarial. These complaints were not expressed in all jurisdictions, and even within courts not referring to all jurists, but overall mistreatment of caseworkers was a major theme.

Parents’ attorneys, who were quick to show their disagreement with certain jurists’ decisions, did not extend their complaints to lack of respect. Children’s attorneys, however, were feeling very burdened by the Protocol’s duties to visit children before hearings and felt they were questioned vigorously and publicly by some jurists for supposed failures in this regard. On the whole, however, attorneys seemed able to absorb the adversarial nature of some hearings better than caseworkers.

Many of the concerns raised about treatment of parties can be resolved through jurists’ training, better distribution of jurists’ caseloads, and improved court organization that will give more time for hearings. These matters are thoroughly discussed in Chapter 2 on Court Organization. Also, providing representation for DHS at all hearings and resolving the issue of late reports to the court should relieve major irritants for a number of the participants.

## **Summary and Recommendations on Quality and Depth of Hearings**

Michigan laws, court rules, and protocols are an excellent structure for child neglect and abuse hearings. These meet, and in some instances exceed, federal standards and national best practices. High caseloads (or inadequate time devoted to child protective proceedings) and gaps in training have made it difficult for jurists to achieve what the law requires. Crowded facilities, thin administrative support, and lack of training for lawyers and caseworkers also diminish the quality of hearings. These issues are discussed fully in the chapters addressing court structure, representation, and CIP Initiatives. Overall, the Reassessment review team is very impressed by the many dedicated jurists they interviewed and observed who are committed to helping children achieve better lives and determined to give parents due process in their courts.

There are actions that jurists and courts can take to reduce their in-court frustrations, meet legal requirements, and speed children on their way to safe and healthy permanent homes.

1. SCAO should do the following:
  - a. Set statewide norms regarding typical lengths of different types of hearings and instruct court staff to docket hearings according to such standards, except where special factors apply (See discussion of caseloads in Chapter 2.);

- b. Advocate for more demanding court rules for certain hearings, including preliminary hearings, permanency hearings, and post-TPR review hearings and, among other things, that these rules should specify the issues to be addressed and specific written findings;
  - c. Develop forms with templates that require more demanding findings for court hearings and require the use of such forms, except where local courts develop their own and obtain SCAO consent to the use of their local versions (See Chapter 6 for discussion of consultation with local agencies in the development of such forms.); and
  - d. Provide training and demonstrations of well-conducted hearings of certain types (e.g., through videos), such as preliminary hearings, disposition hearings, review hearings, permanency hearings, and post-TPR review hearings.
2. SCAO should enter into a contract with DHS to develop quality assurance procedures to ensure that court orders comply with Title IV-E of the Social Security Act, with regard to “contrary to welfare” and “reasonable efforts” findings. (See Chapter 6, Relationship between the Court and DHS, which includes recommendations for collaboration between courts, DHS, and others to implement these requirements, including meetings, protocols, and cross training.)
  3. Work to clarify state law and court rules regarding the issuing of orders addressing specific placements and services only when such orders are supported by evidence and the parties have prepared and presented evidence in opposition to such orders. Provide training to jurists on this issue.
  4. Work to clarify state law and court rules addressing the jurists’ review of case plans and issuing of court orders, to include consideration of the ability and resources of parents to follow the requirements of case plans and court orders. Provide training to jurists on this issue.
  5. Develop automated forms for court orders for jurists to use on the bench. (See the discussion of court technology in Chapter 2.)
  6. Establish protocols regarding the timely notification of foster parents, preadoptive parents, and relative caretakers of the dates and times of post-dispositional hearings, including following adjournments of previously-scheduled hearings. The protocol should address the participation of notified persons at the hearings. The protocol should specify that the court not make foster parents’ addresses available to parents and their attorneys unless the court finds that it is in the child’s best interests to do so.
  7. Advocate for legislation to eliminate, as a permanency option, a decision that a child will continue indefinitely in foster care. Michigan law should substitute for the term “long-term foster care” the term “another planned permanent living arrangement” and define the latter term to include only long-term arrangements in which the goal is to establish and secure a permanent relationship between the child and an adult, which relationship will continue long into the child’s adulthood (such as with an

identified permanent foster parent or permanent adult parent figure and mentor).

8. Issue a policy rejecting use of the term “long-term foster care” as a synonym for the child eventually aging out of foster care with no specific permanent arrangements.
9. Ensure that all jurists receive detailed materials and training concerning all phases of the adoption process (e.g., adoption recruitment, placement, subsidies, matching adoptive parents with children) and on how to conduct an effective post-TPR review hearing. An alternative to consider and possibly recommend, if comprehensive training is not available, is the Kent County model of a specialized docket limited to post-TPR reviews.

# REPRESENTATION OF PARTIES

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## CHAPTER 5

### CHAPTER 5: REPRESENTATION OF PARTIES

It is important that all parties to child protection proceedings receive good quality representation before the courts. The stakes in these cases are high: the safety and well-being of a vulnerable child; the rights of parents to love, protect, and care for their legal children; and the responsibility of the state to protect its vulnerable citizens against harm. Ideally, lawyers representing the child, the parents, and the agency act as the judge's eyes and ears, presenting vital evidence upon which the judge can base decisions that will be in the child's best interests. Without this information, there is an increased risk that the judge will make decisions that could result in the child's injury (or even the death), the needless breakup of a family, or a child growing up in foster care rather than in a permanent home.

Michigan child abuse and neglect statutes exceed the minimum requirements of ASFA and U.S. Constitutional case law with regard to representation in child protection proceedings.<sup>130</sup> Each respondent is permitted legal representation at every stage of a child protection proceeding. Legal representatives will be appointed if the parents are indigent. MCL 712A.17c Children not only have mandatory representation by a lawyer guardian *ad litem*, but the potential for either or both an additional guardian *ad litem* and a court appointed advocate. MCL 712A.17d

The original CIP assessment report contained twelve (12) recommendations addressing representation in child protection proceedings. (See Appendix A, Summary of Recommendations in 1997 Report, Recommendations 11 and 17-28.) In summary, the report recommended that the Michigan courts:

- Implement attorney quality control measures, such as mandatory training and experience requirements;
- Advocate for reasonable compensation for attorneys;
- Educate attorneys on juvenile court practice;
- Ensure attorney caseloads are reasonable;
- Appoint attorneys for parties in advance of the preliminary hearing with that representation continuing throughout the life of a case;

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<sup>130</sup> Neither ASFA nor U.S. Constitutional case law requires legal representation for children in neglect-abuse cases. However, in order for a state to receive federal funding for foster care under the Child Abuse Prevention and Treatment Act (CAPTA), P.L.100-294, amend. P.L.108-36 (2003), 102 Stat.102, it must require legal representation of children in these cases. *ABA Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases* states in the preface that "All children subject to court proceedings involving allegations of child abuse and neglect should have legal representation as long as court jurisdiction continues."

- Appoint attorneys to independently represent each child and parent;
- Appoint attorneys to remain with one case through all its stages;
- Recruit attorneys for parents and children based, in part, on their skill and knowledge related to child welfare;
- Monitor attorney conduct;
- Require children’s attorneys to meet with the child they represent at least once before each proceeding or hearing.

This chapter will consider specific recommendations from the original assessment that have been addressed by CIP initiatives and also those that have not been addressed, where the reassessment has found a continuing need for attention. It will examine the representation of the Family Independence Agency, of the parents of children who are subject to a child protection proceeding, and of the children themselves. It will address the quality of representation; training of attorneys and prosecutors; the methods of appointment, qualifications, and compensation of attorneys; and the use of court-appointed special advocates (CASAs). There will be references to relevant statutes and standards of practice to assist in the assessment of how well advocates are performing in child protective proceedings in Michigan and to guide in the development of recommendations.

## **DHS Representation**

While Michigan law is clear that each respondent in a CPP has the right to an attorney, it does not provide for representation per se for the moving party, the Family Independence Agency. Rather, Michigan Court Rule 3.914 states that “on request of the court, a prosecuting attorney shall review the petition for legal sufficiency and shall appear at any child protective proceeding.” Under the Rule, and in accordance with the most common practice, the prosecuting attorney may also appear at all stages of a child protective proceeding as a “legal consultant” at the request of the Michigan FIA or of an agent under contract with the agency. Finally, the Rule allows for the agency to retain “legal representation of its choice when the prosecuting attorney does not appear on behalf of the agency or an agent under contract with the agency.” MCR 3.914(C)(2)

### ***Michigan’s Models of Agency Representation***

The original CIP assessment report urged implementation of the Binsfeld Commission’s recommendation that the Juvenile Courts assign “specialized, highly trained, permanent prosecutors or attorneys general to represent DHS at all stages of abuse and neglect cases, beginning with the filing of the petition to remove children from the home.” Another recommendation of the assessment was to modify the practice of caseworkers in preliminary petitions. (See Appendix A, Summary of Recommendations, Recommendations 19-21.)

The *Standards of Practice for Lawyers Representing Child Welfare Agencies*, promulgated by the American Bar Association in 2004, promotes a model they refer to as “agency representation.” Under this model, the agency attorney represents the agency as

a legal entity, much the same as in-house counsel represents the corporation. The attorney could be an employee of the agency or of another governmental body, but the agency is clearly the defined client. In this model, the attorney advocates on behalf of the agency and its position, assists with the filing of the preliminary petition, and attends all hearings. Michigan courts do not operate under this model.

In most of the courts visited, assistant county prosecutors appear at CPPs to represent the interests of the state. Nearly 80% of the jurists responding to the statewide survey said the government was represented by local prosecutors; 8% said it was represented by a contractual attorney; and 7% answered that it was represented by attorneys employed by the FIA.

In Michigan's largest jurisdiction, Wayne County, the state attorney general's office is under contract to appear in child protection proceedings. Wayne County is one of two study site courts in which the prosecutor<sup>131</sup> is present at every hearing. The practice there is to permanently assign a prosecutor to a particular jurist's courtroom. Even though there is consistent presence of prosecutors and a procedure by which the prosecutors are to review preliminary petitions ahead of time, those prosecutors may nonetheless be seeing the preliminary petition for the first time when the caseworker walks into the courtroom.<sup>132</sup> There were complaints in Wayne County that prosecutors were recommending pleas that they knew the jurist would accept, rather than advocating for what the agency believed was best for the child.<sup>133</sup>

One of the most remarkable findings of this reassessment was that in only one of the courts visited was the prosecutor's office held in nearly universally high regard with respect to the quality of the advocacy. This was attributed in part to the value placed on the prosecution of child abuse and neglect cases by the Chief Prosecutor in that jurisdiction, which was reflected in long-term specialized assignments of prosecutors to child protection cases. The longevity, skill, and commitment of the assistant prosecutor who was primarily responsible for these cases were also significant factors. However, it was also reported that there is a considerable "gap" in the quality of the representation between this particular prosecutor and others who appear when that person is not available.

In all other courts, there was significant dissatisfaction by at least some of the stakeholders regarding the quality and consistency of prosecutors' participation in the cases. The primary complaint by DHS workers is that the prosecutors do not represent the agency or the workers at the hearings. The fact that prosecutors are overworked and unavailable to them contributes to the sense that the agency is not represented.<sup>134</sup> When a

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<sup>131</sup> "Prosecutor" will be used to refer to anyone appearing in CPPs on behalf of the state, whether it be a Chief or Assistant Prosecutor, an Assistant Attorney General, or an attorney employed directly by the DHS.

<sup>132</sup> Evaluators observed prosecutors conferring with DHS caseworkers in the courtroom, immediately before the convening of the preliminary hearing, to review the contents of petitions.

<sup>133</sup> Many of the referees in Wayne County are former assistant attorneys general who practiced in that court in child protective cases prior to being employed as referees. This shared experience, combined with the fact that the prosecutor remains in the courtroom with the jurist while other parties and attorneys come and go may create the impression that the jurist and the prosecutor work together, rather than that the prosecutor works for the agency. This also presents frequent opportunities for informal conversation between the two during the breaks between hearings. Evaluators did witness such conversations during the court visit to Wayne.

<sup>134</sup> In one of the study sites it was reported that there was no system for DHS workers to confer with prosecutors. If there were contested issues in a case, caseworkers were sometimes advised by the

prosecutor is participating in a case and makes recommendations to the court substantively different from what FIA is recommending, procedures allow for an attorney to be hired to represent DHS's position. However, caseworkers reported that the process of hiring another attorney can be complex and time-consuming, largely because of bureaucratic requirements.

In the statewide survey, jurists were asked if it was their understanding that "government attorneys believe that they are legally required to represent FIA's position." Forty-three (43) percent of them answered "No." In at least one of the site visit courts where both the agency caseworker and the prosecutor were present at a hearing, it was reported that jurists will first ask for the agency's recommendations, then for the prosecutor's.

Other complaints reported by DHS workers included the following:

- ❑ Lack of assistance and support in the filing of preliminary petitions;
- ❑ Absence of prosecutors from preliminary hearings, where the caseworkers are required to represent themselves as they present their evidence, respond to examination by other attorneys, and negotiate pleas with parents and their attorneys;
- ❑ Lack of understanding and preparation by the prosecutors, who reach pleas with parents' attorneys without the input and participation of the caseworkers;
- ❑ Frequent substitutions by the prosecutor's office, resulting in appearances by prosecutors who are not familiar with the case and do not know its history.<sup>135</sup> These prosecutors may not be prepared to support the agency's recommendations, should they come under fire, or, in rare cases, may make recommendations not consistent with the agency's. (Statewide data showed that 38% of jurists reported that more than one government attorney appears "often" or "most of the time" during the life of a case.)
- ❑ Lack of training and understanding of the law. (Caseworkers expressed frustration at knowing more than prosecutors do, particularly with new prosecutors who do not work on child protection proceedings for more than six months or a year.)

The original CIP assessment specifically addressed three of the complaints raised by FIA workers in the reassessment when it recommended the following:

1. That "specialized, highly trained permanent prosecutors/attorneys general [be assigned] to represent DHS at all stages of abuse and neglect cases, beginning with the filing of the petition to remove the children from the home" (Recommendation 19);
2. That MCL 712A.17(5), MCR 5.914(B)(1) "be modified to clarify that the prosecuting attorney or assistant attorney general is to act as the

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prosecutor to go into the hearing and, if they felt that they could not handle what came up, to ask for an adjournment. In another court, the judge would adjourn a hearing and ask the agency to find a prosecutor to confer with before the hearing would be reconvened.

<sup>135</sup> In the most extreme example reported, five (5) different prosecutors appeared in one case. The final prosecutor disagreed with DHS's position and recommended changing the direction of the case. The agency then began the process of hiring its own attorney. This occurred at a late stage in the case and resulted in further delay.

FIA or its agent's 'attorney' in child abuse and neglect proceedings" (Recommendation 20);

3. That "the practice in some counties in which DHS workers are responsible for filing the initial abuse and neglect petition should be modified to delegate this responsibility to the FIA attorney."<sup>136</sup>

The ABA's *Standards of Practice for Lawyers Representing Child Welfare Agencies* recommends that attorneys representing the agency "prepare or help prepare the initial petition and all subsequent pleadings" (C-7), "participate in settlement negotiations (C-11), and "attend and prepare for all hearings" (C-15). Interviews and court observations at the study sites revealed that the issues raised in the original assessment regarding agency representation remain problems in Michigan's courts. Also, current practice at the study courts falls far short of the ABA practice standards.

### ***Presence of Prosecutors at Hearings***

Where the prosecutor is absent from the hearing, the L-GAL will often function as the de facto prosecutor, it was reported, bringing out the evidence in support of DHS's position and recommendations (since most of the time the L-GAL's position is consistent with that of the agency) and cross-examining parents when necessary. This may be one reason why prosecutors' offices decide to redirect their resources to other places, possibly to criminal juvenile cases, for example, unless a hearing is contested or an amended petition and plea are being submitted. Although in individual cases this may work well--in theory--, it may also lead to a confusion of roles, when an L-GAL who has functioned in this role over time could lose sight of his or her singular duty to determine and advocate for the child's best interests.<sup>137/138</sup>

*It's not appropriate for preliminary hearings to go forward without the prosecutors. It's hard for the children's attorney to do that because we don't work with DHS and we haven't seen the petition before or talked to the caseworkers.*  
—Private attorneys

On a statewide level, jurists report the presence of prosecutors at the following types of hearings:

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<sup>136</sup> In all six of the jurisdictions visited, DHS caseworkers were responsible for drafting the initial abuse and neglect petition.

<sup>137</sup> This confusion of roles may also be attributable to two unusual provisions of the Michigan statute that set out the duties of the L-GAL in these proceedings: to foster cooperation among the parties; and to recommend to the court which of the allegations have been proved in the adjudicatory hearing. MCL 712A.17d(2), MCR 3.972(D) One could say that the latter of these duties would be more appropriately performed by a prosecutor, or counsel for the DHS.

<sup>138</sup> Illustrations of this point include a report that a judge in one of the courts studied reminded an L-GAL that it was okay to cross-examine the state's witnesses. Another was a report from an attorney that she has done case preparation for an inexperienced prosecutor and case worker in some cases in which she herself was representing the child.

**Table 38**

**PRESENCE OF PROSECUTORS AT HEARINGS (MID-RANGE VALUES NOT REPRESENTED)**

Type of Hearing	Never		Rare 1 - 10%		Routine 90 - 99%		Always	
	#	%	#	%	#	%	#	%
<b>Removal</b> (n = 116)	15	<b>12.9</b>	15	<b>12.9</b>	13	11.2	61	52.6
<b>Adjudication</b> (n = 118)	2	1.7	2	1.7	7	<b>5.9</b>	98	<b>83.1</b>
<b>Review</b> (n = 114)	15	<b>13.2</b>	18	<b>15.8</b>	16	14.0	42	36.8
<b>Permanency Planning</b> (n = 113)	11	<b>9.7</b>	13	<b>11.5</b>	13	11.5	67	59.3
<b>TPR</b> (n = 113)	0	0	0	0	4	<b>3.5</b>	108	<b>95.6</b>

While prosecutors are nearly always present for adjudication and termination proceedings according to the responding jurists, their presence at removal hearings, reviews, and permanency planning hearings is substantially less routine.

The FIA workers’ complaints about frequent substitutions of prosecutors were reinforced by jurists’ responses to question in the statewide survey regarding how often more than one prosecutor appears during the life of a case. Nearly two-thirds of the jurists answered that this happens “often” (1/3 to 2/3) or “most” (more than 2/3) of the time.<sup>139</sup>

Concerns regarding the lack of both communication between DHS and prosecutors and preparation for hearings were also supported by the jurists’ responses to the survey. In answer to the question of how often prosecutors spoke with the child’s social worker prior to the day of the hearing, 29% of the jurists said they believed this happened “most” of the time; another 29% said it happened “some” of the time (i.e., less than 1/3); and 25 % said it happened “rarely.”

The DHS workers expressed strongly their wish to have their own counsel represent the position of the agency’s workers as well as to be present at hearings so the workers could concentrate on being social workers. The absence of representation at hearings was cited as a reason for high turnover, since many workers are not comfortable acting as attorneys in the hearing setting and are not equipped to deal with the stress of being cross-examined by parents’ attorneys. This was a greater problem in certain courts, where particular jurists have specific expectations of how workers should perform these functions, especially at the preliminary hearing stage, and may express their disappointments and frustrations at the hearing. Workers who had this experience said that this criticism undermined their ability to work with parents and their authority to oversee and enforce parent agency agreements.

<sup>139</sup> It is interesting to compare this to the jurists’ responses to the same question with regard to L-GALS: only 7% of them said that more than one L-GAL appeared on behalf of a child “often” or “most” of the time.

Agency supervisors and managers reported that unpleasant experiences in court contributed significantly to a high turnover rate among caseworkers. They pointed out that this reduces the pool of experienced and skilled workers who can appear at hearings, thus exacerbating the problem. (See Chapter 6 for an in-depth discussion of court-agency issues.) Were the agency to have its own properly trained and prepared attorneys present for all hearings, as was recommended in the original assessment and as called for by the ABA standards, the problem of turnover might be eased to a significant extent.

## Appointment and Compensation of Attorneys to Represent Parents and Children

Courts utilize a variety of approaches to meet their obligation to provide counsel for children and for parents in child protection proceedings. The six courts visited for this study represent the primary methods of contracting for, appointing, and paying attorneys. Courts either have attorneys, or attorney organizations such as the Legal Aid and Defenders’ Association, with whom they enter into contracts to represent children and parents, and/or they appoint attorneys from a list developed and monitored either by the court (as in Kent County) or by the judges (as in Wayne County).

In the courts that do not have attorneys under contract, appointments generally rotate among the attorneys on the appointment list, alternating between appointments to represent children and appointments to represent parents. Jurists reported that in special cases they may appoint a particular attorney who has substantive knowledge of the issues presented in a case (e.g., a baby who has been shaken or a parent with a diagnosis of Munchausen’s Syndrome) or who has represented a particular child or parent in a past case that has returned to court. Court rules are strict and specific about judges not having bias in the appointment of attorneys. [find this cite]

As Table 38 indicates, the compensation possibilities include monthly or annual contracts (\$18,000 to \$62,000 a year); hourly fees (\$45 for in-court, \$30 for out of court); fees based on type of hearing (e.g., \$100 for prelims and adjudication and \$75 for reviews); and fees for bringing a case from the preliminary hearing to disposition (\$420). Even courts that have annual contracts with individual attorneys must also pay other attorneys on an hourly basis, when those attorneys are not able to provide representation in particular cases or when they have exceeded the number of cases for which they have contracted.

<b>Court</b>	<b>Compensation</b>	<b>Number</b>
Jackson	Under contract--\$62,424/yr. Other--\$58/hr.	Contract (2) Others (4)
Kent	\$50/hr.	65
Macomb	Prelims, adjudication, disposition, pretrial motion-- \$100 Reviews--\$75	80-100

	Plea or consent to TPR--\$200 Trial (full day)--\$300 Trial (half day)--\$150 Hearing adjourned--\$50	
Marquette	\$50/hr.	15
Roscommon	\$1411/mo for two who each do 1/3 of the cases; \$705.50/mo. for two who each do 1/6 of the cases	4
Wayne	<i>For children:</i> LADA under contract amount for 2300 new juvenile (delinquency and neglect ) cases per year <i>For children and parents:</i> Flat \$420.00 from prelim to disposition; hourly \$30.00 out of court, \$45.00 in court thereafter	Not known

The statewide survey results show that the most common approach is to pay attorneys an hourly fee. These fees range from \$35 per hour to nearly double that amount--\$72 per hour (but for court time only)--with 51 of 68 responding jurists answering that their courts pay attorneys an hourly rate. The next most common approach is to enter into a monthly or annual contract, with 13 jurists describing that as their court's practice. Annualized, those contracts range from \$12,000 to \$47,500

At the courts visited, the size of the attorney lists varies from court to court, and even from judge to judge. There is more or less oversight by courts and judges of the attorneys on the list at these courts as well. In one court, a judge interviews attorneys before they are placed on the list. In another court, administrators and judges review the attorney list annually, remove names of attorneys whose performance is considered substandard and replace them with new attorneys.

*Issues in these cases are far more serious, but we are paid only half as much for twice the work as with misdemeanor criminal cases. There is a tremendous disparity of payment in the system. This work is very important, but it's treated as though it's less important.*

—Attorney

There is significant variation among the courts visited regarding what the court pays for when attorneys are appointed from a list. One court pays attorneys for time spent visiting children, in mediation sessions, and for attendance at Foster Care Review Board hearings. As Table 38 shows, one court pays a higher hourly rate to attorneys but it only applies to the attorneys' time spent in court.

Regarding attorney compensation, the original assessment made the following recommendations:

- ◆ “Attorneys representing children and parents should receive compensation that is reasonable and commensurate with the amount and complexity of work involved in child abuse and neglect cases.” (#28)
- ◆ “Compensation systems should not be utilized that provide disincentives to fulfilling responsibilities mandated by statutes, codes of professional responsibility, and other standards (e.g., annual, ‘no case cap’ contracts).” (#29)

There are currently no state standards guiding the compensation of attorneys representing parents and children in Michigan. It would seem to make sense that the SCAO promulgate such standards. For example, it seems grossly unfair for a child or parent in one court to be potentially disadvantaged in representation because of a compensation system that discourages case preparation outside of court appearance time. Every child and parent deserves the highest possible quality of representation in these proceedings. Though reasonable compensation alone cannot insure that quality and needs to be combined with other factors (e.g., appropriate training and reasonable caseloads), it is nonetheless vitally important and should be made a priority.

## Representation of Children

The State of Michigan Court System, and the State Court Administrative Office in particular, deserves high praise for its responsiveness to the issues raised in the original assessment regarding the quality of representation for children in child protective proceedings. The original assessment contained the following recommendation:

The recommendation by the Michigan Children's Ombudsman that MCL 712A.17c(7), the statutory provision addressing the case preparation obligations of the child's attorney, should not only be "better enforced," but "should also be amended to specifically require that *the child(ren)'s attorney meet with the child(ren), at least once before each proceeding or hearing*" should be adopted. (Recommendation 22)

In 1998, subsequent to the report and this recommendation, the Michigan Legislature enacted MCL 712A17.d, a statute that delineates the powers and duties of the L-GAL and includes a provision requiring the child's attorney to meet with the child at least once before each hearing. The ABA has called this statute "one of the nation's most detailed set of mandatory guidelines for representing children."<sup>140</sup>

In its 2001 annual report, the Michigan Foster Care Review Board reported that statewide data compiled by board members found that inaction on the part of L-GALs was one of the top ten barriers to permanency. While the FCRBP recommendation for a state Office of Lawyer-guardian ad litem was not implemented due to budgetary restrictions, their concerns were echoed by the results of a study by the ABA, released in 2002. This study found that poor training, inadequate funding, and poor enforcement of the requirements of the L-GAL statute [refer to ABA study].

In response to these findings that the requirements of the L-GAL statute were not being complied with, the Michigan State Court Administrative Office engaged in one of its most significant CIP initiatives, the development of the L-GAL protocol. The protocol was intended to further the implementation of the statutory provisions of the L-GAL statute and "to assure competent, effective representation in every case in which the

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<sup>140</sup> *A Challenge for Change: Implementation of the Michigan Lawyer-Guardian ad litem Statute*, ABA (Nov. 2002)

court appoints an L-GAL.”<sup>141</sup> The protocol was disseminated in 2004, and attorneys across the state received regionally-based training.<sup>142</sup>

Michigan law requires that an L-GAL be appointed to represent a child in child protective proceedings. MCL 712A.17c(7) and MCL 722.530 Where a child’s expressed wishes conflict with the L-GAL’s determination of what is in the child’s best interests, an attorney may be appointed to represent the child. This attorney owes the same duties to the child as to an adult client. MCL 712A.13a(1)(b)

Duties of the lawyer guardian *ad litem* (L-GAL) under Michigan law are specific and demanding. The statute sets out the duties and power as follows: “to serve as the independent representative for the child’s best interests;” “to determine the facts of the case by conducting an independent investigation including, but not limited to, interviewing the child, social workers, family members, and others;” and “to meet with and observe the child, assess the child’s needs and wishes with regard to the representation and the issue in the case, review the agency case file . . . .” 712A.17d(1)(d)<sup>143</sup>.

The L-GAL protocol sets out a number of practical suggestions for ways in which the L-GAL and the child may meet:

- ◆ in the child’s living environment or in a place where the child is comfortable;
- ◆ at the courthouse several hours before the hearing;
- ◆ during parenting time sessions, especially where the child’s siblings will also be present;
- ◆ at his or her school after school hours;
- ◆ at the agency;
- ◆ at the psychologist’s or counselor’s office after the child’s appointments;
- ◆ at a meeting place half-way between the child’s foster home and the court.<sup>144</sup>

The Protocol goes on to say that an L-GAL should meet with a child no later than one week after the preliminary removal hearing and that they must visit with and observe very young or non-communicative children prior to hearings (p. 32, Protocol).

To reinforce the statutory requirement that attorneys visit children they represent, in September of 2003 the State Court Administrator ordered the courts to require attorneys to file an affidavit in which the attorneys attested to visiting the children they represented before each hearing.

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<sup>141</sup> from the Introduction to *Lawyer Guardian ad Litem Protocol*

<sup>142</sup> Thirty-one all-day training sessions were conducted at 20 different sites across the state (six of the sessions were in Detroit). The number of L-GALs trained as of February, 2005, was 671. (Wayne County L-GALs receiving the training numbered 147, Oakland County 104.) Trainees represented all but 23 of Michigan’s 83 counties.

<sup>143</sup> Effective December 28, 2004, a legislative amendment added language specifying the instances in which L-GALs were required to meet with children, that is, before the following types of hearings: pretrial, initial disposition (if held more than 91 days after the petition has been authorized), dispositional review, permanency planning, post-termination review, and at least once during the pendency of a supplemental petition. The amendment also added language stating that “the court may allow alternative means of contact with the child if good cause is shown on the record.” MCL 712A.17d(1)(e).

<sup>144</sup> The Protocol also mentions that if a child has been placed in another county, the court may appoint co-counsel to meet with and observe the child in the child’s living environment and file a report with the L-GAL.

## **L-GAL Visits with Children**

At the time of the CIP reassessment, the most striking issue that emerged from interviews and focus groups concerning the quality of representation of children was that L-GALs were not consistently visiting with children prior to hearings. This was reported in all the study sites except one and by various stakeholder groups from caseworkers to foster parents to the youth themselves.

In spite of the newly-implemented L-GAL protocol and the training provided by the SCAO during the spring and summer of 2004 regarding the protocol,<sup>145</sup> the practice was not widespread at the time this study was conducted. A major barrier to compliance with the requirement was reported to be the failure of the courts to compensate attorneys for the time spent visiting children. Three of the site visit courts reported that some L-GALs withdrew from their cases when the filing of affidavits and/or informing the court on the record regarding visits with children became a requirement,<sup>146</sup> since no additional compensation was made available for the time spent on the visits. (Jurists in five of the study courts reported asking L-GALs at the hearing whether they had visited with the child or children they were representing.) However, in one court, that was not seen as detrimental, since the attorneys who remained as L-GALs were committed to the work and were sufficient in number to meet the court's need.

Caseworkers, foster parents, Foster Care Review Board members, and CASAs interviewed at the study sites reported a deep-seated concern that LGALs were not meeting with children. In one county, caseworkers reported that it was more often the case that the attorneys were not seeing the children. A judge in the same jurisdiction disagreed and stated that it was the exception for them not to meet with their clients. A jurist in another court stated that 95% of the attorneys were visiting children in their homes. In yet another court, a judge recognized that it was not possible for children's attorneys to travel to out of county placements to visit children. In Wayne County there were varying reports on the extent to which LADAs and private attorneys were visiting children. One jurist thought most LADAs were, but said a few claimed they could not because of their high caseloads. Another jurist reported that LADAs did not visit children.

*We have no compensation for traveling. The law and reality don't match—it's just unrealistic to expect attorneys to comply with the visitation requirement.*  
—Attorney

On the other hand, there were many reports that the practice of seeing children prior to hearings was happening more often than it did prior to the LGAL protocol. Numerous stakeholders connected the change to the "new Supreme Court requirement," which they associated with the use of the affidavit.<sup>147</sup> In Wayne County it was reported that the private bar's representation of children had improved as a result of the protocol.

Children placed out of the county presented particular challenges, though some L-GALs dealt with this by asking another attorney in the county where the child resided to

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<sup>145</sup> Training on the L-GAL protocol coincided with evaluators' visits to the six study courts, which were conducted between May and October of 2004. (See previous footnote.)

<sup>146</sup> In one study site, a jurist stated that "some of the best and most devoted attorneys" asked to be taken off the list when the requirement to file affidavits testifying to visits with children came into effect. This was reported by a number of other interviewees at the same site.

<sup>147</sup> In fact, this had been a statutory requirement since 1998, pursuant to MCL 712A17.d.

conduct the visit and send them reports. Some L-GALs questioned the value of visiting an infant, though one pointed out that it was important to see the type of environment the child was placed in, even if the child could not speak, since the attorney could learn a lot from being in the child's home.

In one of the jurisdictions visited, an attorney who represents children held "visiting hours" on Saturday morning at his office, sent out a notice to that effect to caseworkers and foster parents, and expected the child's case workers to bring the children there to fulfill the requirement. This presented problems for caseworkers, since it was Saturday, as well as for foster parents, who often had Saturday activities for their other children.

In another jurisdiction, a few attorneys had asked for extra compensation to visit children when they were required to travel more than a short distance. While the judge allowed the extra compensation when asked, the availability of the extra compensation was not made known to other attorneys, nor was the extra compensation offered by the court unless a specific request was made.

Affidavits in which L-GALs list and testify to visits with the child are used in some of the courts visited and not in others. In a couple of court sites where the affidavits were required in order for the attorneys to be paid, there was concern that additional inquiry or oversight by the court might be necessary to ensure that the visits were indeed taking place. In one court that does not require the affidavit, L-GALs testify at the hearings about whether or not they have seen the child or children they represent prior to the hearing, so that information is entered on the record.<sup>148</sup>

In Wayne County, the LADA attorneys (see earlier section of this chapter on "Appointment and Compensation of Attorneys" for explanation of "LADA") divide up the visits so that one attorney will visit all the children at a particular institutional setting, while others will divide the city up geographically, visit children in their regions, and provide reports to the appropriate children's attorneys. Both because of their high caseloads<sup>149</sup> and because of the way cases are called in Wayne County (see Chapter 3, p. ), LADA attorneys may frequently substitute for each other. So in spite of the LADAs best efforts to see the children prior to each hearing (and even when the child has been seen, if the LADA attorney who is substituting for that hearing did not see the child), the attorney will have to answer "no" to the question of whether the child was seen prior to the hearing.

According to jurists in the statewide survey, most L-GALs are seeing their child clients before hearings. Following is a table of their responses to the questions:

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<sup>148</sup> Evaluators observed review hearings in which LGALs so testified, using precisely the same language in each instance. The LGALs either said "the child was seen" or "there has been a breakdown in communication." Evaluators did not observe the court make further inquiry regarding the LGALs attempts to see the child.

<sup>149</sup> There are 19 attorneys with LADA who do both neglect and delinquency cases. In the recent past, the caseload for each of these attorneys was reduced from over 200 to 130.

**Table 40**  
**ATTORNEY & CHILD-CLIENT COMMUNICATION**  
**PRIOR TO HEARING DATE (JURIST SURVEY)**

Frequency	Talk to		Visit at Residence	
	#	%	#	%
<b>Rarely</b> <i>1 – 10%</i>	4	3.4	16	13.8
<b>Sometimes</b> <i>11 – 35%</i>	3	2.6	13	11.2
<b>Often</b> <i>36 – 65%</i>	17	14.5	19	16.4
<b>Most</b> <i>66 – 95%</i>	63	53.8	55	47.4
<b>Always</b> <i>96 – 100%</i>	30	25.6	13	11.2

It is interesting to note that 24% of the jurists believed that attorneys were *always talking to the children* they represented prior to the day of the hearings, while only 10% believed that attorneys were *always visiting children at their residences* prior to the hearings.

There is a lack of clarity and consistency on the part of the courts with regard to how and where L-GALs are to visit the children they represent. In one court, a judge makes it clear that it is the attorney’s responsibility to go to the child’s home. In another, the L-GALs never visit the children in their placement (unless, for example, the child is disabled or is about to be adopted) and, instead, leave it up to the caretaker to bring the child to the lawyer.<sup>150</sup> In still other jurisdictions, attorneys will request (and on occasion judges will order) that caseworkers bring the child to the attorney, sometimes to the courthouse on the same day as the hearing. It was reported that this is problematic in terms of the other demands on caseworkers’ time and because many of the courts are not child-friendly and have no private meeting spaces for the child and attorney to speak.

While it may make sense in exceptional circumstances for caseworkers to assist with those visits, the court should not encourage that as a regular practice. The caseworkers are already charged with working with families, monitoring the provision of services and compliance with those services, and reporting to the court. On the other hand, attorneys are also overburdened, and the inflexibility of the requirement to meet with every child, no matter what the age or circumstances, before each hearing, may not be reasonable. Requiring attorneys to file affidavits attesting to visits that may not have happened and

*I attend all the hearings, and before I leave the court I ask the attorneys right there on the spot when they’ll be coming to visit the kids. As soon as I get the date, I put it in my calendar.*  
 —Foster parent

<sup>150</sup> One foster parent reported bringing her foster child to a Wendy’s, which was half-way between the attorney’s office and the foster home, for a 3-minute meeting with the child’s attorney prior to a hearing. Another foster parent said she attends all the hearings and asks the attorneys when they will be coming to visit and puts the date in her calendar.

having judges inquire superficially about whether those visits have taken place constitute pro forma rather than substantive compliance with the requirement of the statute.

For the most part, youth<sup>151</sup> reported not being contacted by their attorneys and in some cases not having a way to contact their attorneys (e.g., one lawyer's business card had a post office box but no phone number). They also reported not understanding that the case in court was about them, as well as about their parents. Even youth who said they call their attorneys reported not often receiving return calls, and they generally only meet their attorneys minutes before the hearing. At that time, the attorney may describe what's going on in a language the youth does not understand. Youth said that they are not shown the reports that go to the court and are not asked whether or not what is stated in the report is accurate.

Youth in Wayne County reported that frequently at their hearing an unfamiliar attorney will show up who will quickly read the report but who does not understand what is going on in the case. Substitution of counsel is an issue for children and for parents, particularly in Wayne County. As mentioned elsewhere, this occurs in part because of the scheduling of a number of cases for the same time, making it difficult for attorneys to be present at all hearings in which they represent clients.

The absence of the attorney of record can mean that the substituting attorney does not play an active role in the hearing. In that case, no one will be there to ask questions and present evidence on behalf of the child. If the child's wishes differ from those of the agency, those views will not be represented.

Recently-passed Michigan legislation clarifies the issue of when L-GALs must visit children. It specifies the types of hearings before which the L-GAL should visit the child, and allows for alternative means of contact if good cause is shown on the record. [look for Senate Bill No. 1440 of 2004 regular session, or the statute, if amendments have been codified. Insert in earlier section on the LGAL statute.]

The LGAL Protocol itself and training on the protocol are directed at attorneys representing children and do not include the courts. The role of the court is rarely addressed in the text of the protocol. In one section of the legislation it states that the LGAL may substitute representation for the child "only with court approval." MCL 712A.17d(1)(g) In its practice suggestions for how and where visits should take place, the Protocol says, "If a child has been placed in another county, the court may appoint co-counsel located in the other county to meet with and observe the child in the child's living environment," (Protocol, page 32).

Revising the protocol<sup>152</sup> is needed to include guidance for the courts in how to promote and enforce the legal requirement for the L-GAL to visit with the child and how to most appropriately respond to exceptional circumstances. The courts need to be familiar with and understand the protocol if they are to enforce the statutory requirements and support the practical suggestions for implementing them.

Finally, courts should be encouraged to recognize the importance of LGAL visits with children and to compensate L-GALs appropriately for the additional time spent on

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<sup>151</sup> Focus groups with youth in foster care were conducted in two of the six sites visited. One of those sites was Wayne County.

<sup>152</sup> Current proposals for revising the L-GAL protocol include the following [check to find out what those are]

the visits. (In Wayne County, however, where attorneys have extremely high caseloads, compensating them for visits may not be enough to solve the problem. In order to be effective, this change would need to be accompanied by a reduction in the caseloads of attorneys representing children.) The practice suggestion in the protocol of appointing a co-counsel for a child in an out-of-county placement, who would then submit a report to the L-GAL, should be routinely implemented.

### ***Participation of LGALs at Hearings***

In courts where the prosecutor (See this chapter, section on “Representation of DHS”) does not appear at every hearing, the LGALs’ role becomes more important. It was reported in several of the courts that in these situations, the direct examination of the caseworker is conducted by the L-GALs and the cross-examination is conducted by the parents’ attorneys. In one of the courts, prosecutors reported that while L-GALs are routinely present and “ask good questions” they tend to rely on the prosecutor to do the real legal work in the case, and they do not file motions, or pleadings, or ask questions during trials.

In Wayne County, where a prosecutor is present at every hearing and where frequent attorney substitutions occur, it was reported that it is the prosecutor who will take the initiative, ask questions, and present evidence. It was also reported by a jurist with a generally low opinion of children’s attorneys that LADAs, who may only represent 20-30% of the children, are better than the private bar because “at least they will ask questions and present motions.” Taking another view, another jurist in Wayne County stated that LADAs may not have a real world view and may raise too many issues.

In another of the courts visited, a private agency reported that the LGAL routinely says, “I am in accord with the recommendation.” A jurist reported that LGALs in his court add to what the prosecutor may have missed and, in general, are not as aggressive as the prosecutor but still are “very zealous.”

More than one of the study sites reported that the L-GAL plays an important role when a mandatory preliminary [what is the correct term for this?] petition for permanent custody, also referred to as a “Binsfeld petition,” is filed with the court. Under Michigan law, this type of petition is filed when parental rights to a sibling were terminated in the past and there is an unreasonable risk of harm to the current child, often a newborn. MCL 722.638(2) DHS policy states that a mandatory petition to terminate parental rights must be filed in any case in which there is “current risk of harm to the child and the parent’s rights to another child were previously terminated” either as a result of an abuse/neglect proceeding or voluntarily, following the initiation of such a proceeding. (CFP 715-3, October 2003)

In a number of the jurisdictions visited, the practice of DHS workers and supervisors has been to file mandatory petitions even when the agency does not believe that termination of parental rights is best for the child. Neither DHS caseworkers nor prosecutors (when present), consider themselves able to argue again against their own petition or against DHS policy. Therefore, it is the LGAL who makes the argument that

the petition should be dismissed because it is not in the child’s best interests to terminate parental rights.<sup>153</sup>

## Representation of Parents

In most of the courts studied, the same attorneys are either under contract or appointed by the court on a case-by-case basis to represent both children and parents. (In rare instances, attorneys who make the request to represent only children are allowed to do so.) Courts will generally rotate assignments for individual attorneys between parents and children to provide for some balance.

In Wayne County, attorneys must be placed on an individual judge’s list in order to be assigned to represent parents and/or children. The requirements for gaining admittance to the lists vary from judge to judge, and the sizes of the judges’ lists vary as well.<sup>154</sup> There is a widespread perception that cronyism plays a role in who is admitted to the judges’ lists. Since the judges’ control their own lists, no consistent standards apply, and there is no overall system of oversight. Attorneys are appointed to referees’ cases from the list of the judge they are working under. It was reported that referees may discharge an attorney from a case for failure to appear at hearings but that the judge may overrule the referee and put the attorney back on the case.

One person observed that parents’ attorneys in Wayne County meet in the

*Since the burden is on the parents to comply with the service plan, I don’t have much to do [after adjudication].*

—Attorney

cafeteria and “deal the morning’s cases like cards,” trading cases back and forth based on who is going to be in which courtroom that day. Attorneys who work on these cases in Wayne County generally are not able to do other kinds of work and must maintain high caseload numbers to assure themselves adequate income. These high caseloads contribute to the necessity to substitute for each other.<sup>155</sup>

If a parent’s attorney is not available at the time of the hearing, the parent is offered house counsel—an attorney who is on call for that day and who is assigned to come in to the hearing without ever having seen the case file or ever having met the parent. The parent is not required to accept house counsel and can instead choose to have his or her hearing adjourned to a later date. The inconvenience of having to return to court may be a disincentive to parents’ choosing to adjourn, particularly where they may have had to wait up to several hours for the hearing to be called.

<sup>153</sup> Though the petition for termination will likely be dismissed in these instances, the court will often decide to take jurisdiction with the goal of making the child a temporary ward of the court, to enable monitoring of the parents and the provision of services.

<sup>154</sup> One jurist with a long history with the Wayne Court described some of these attorneys as “greedy,” saying they get assigned to many more cases than they can realistically handle. These high caseloads, the jurist noted, unavoidably result in frequent substitutions.

<sup>155</sup> One interviewee estimated that some attorneys have as many as 200-300 cases, and that they seem to rely on the prosecutor to present the case.

Attorneys in another court reported that it was not possible to meet with clients in their offices, since they were not compensated for the time. If they do have contact outside the courthouse, it is by phone, but most often they talk to their clients in the lobby or outside the courthouse just before the hearing. (See Chapter 1, section on court facilities.) An attorney in this court described case preparation as being “training and learning the law,” as opposed to spending time with the client. A jurist in this court stated that attorneys often do not interview witnesses prior to trials; another jurist said, “Everything is more casual at a bench trial—sometimes too casual.” An attorney in yet another court described his preparation for adjudicatory hearings in this way: “I study the information that the prosecutor and DHS have—their files are completely open to me. I don’t need to do any additional investigation.”

*Often the prosecutors are more mindful of the rights of the parents than the defense attorneys. They seldom file motions or pleadings or present witnesses in court. It bothers me that a defense attorney in a TPR hearing might never call a witness.*

—Prosecutor

The strongest criticisms about the quality of representation came, as one might expect, from the parents themselves. They reported that their attorneys do not return phone calls or provide parents with their phone numbers, do not explain what is going on in their cases, do not give parents a chance to tell their side of the story at court hearings, and make deals without consulting with them. Parents described talking to their attorneys for only a few minutes before their hearings.

The next strongest criticisms came from DHS and private agency caseworkers. According to the caseworkers, parents often say that they are unable to reach their attorneys prior to hearings and that they meet their attorneys for the first time at the courthouse five minutes before hearings begin. Some workers described coaching parents in how to get increased visitation. Private agency workers complained that parents’ attorneys had not read their reports.

*Sometimes we end up representing the parent, too, because you feel bad for them.*

—Caseworker

Of the jurists responding to the statewide survey regarding how often parents’ attorneys were speaking to parents before the day of their hearings, 28% answered that this is happening “rarely” (less than 10%) or “sometimes” (less than 1/3), 26% said it was happening “often” (36-65%), and 37% said they believe this happens “most” (over 2/3) of the time.

Jurists interviewed at the study courts had fewer negative things to say about attorneys representing parents than did other stakeholders. They reported some variations in the quality of the attorneys, but overall they thought the quality of representation was good. Most of the jurists at the study courts have backgrounds as either prosecutors of juvenile cases or as attorneys who were appointed to represent parents or children in child protective cases. It seems possible that the jurists’ backgrounds and familiarity with the challenges of insufficient compensation, inadequate training, and lack of time could result in a lowering of expectations of the attorneys who practice before them.

It was reported by a broad range of stakeholders that when parents hire private attorneys with little or no knowledge or experience in child protection law, it often works against the interests of the parent. The attorney may take a more adversarial approach to the case and may fail to advise the parent to agree to the voluntary provision of services prior to adjudication. Without an understanding of the strict timelines and the serious consequences of parents' failure to show improvement within those timelines, these attorneys may actually harm parents' chances of having their child(ren) returned to them.<sup>156</sup>

What was reported to evaluators in this reassessment and what was observed at court hearings falls disturbingly short of standards of practice. *Representing Parents in Child Protection Proceedings*, an ABA publication, recommends that, prior to each factual hearing at the critical stages of the proceedings, attorneys for parents do the following, among other things:

- ◆ discuss the matter with your client sufficiently in advance to have time to investigate and prepare the case;
- ◆ conduct a thorough, independent investigation (p. 5).

Michigan's own *Guidelines for Achieving Permanency* sets out similar standards for parents' attorneys. At the preliminary hearing stage, for example, the responsibilities outlined include the following: interview parents (i.e., ask parents for their view of the problems that led to the petition and their view of their services needs) and conduct independent fact gathering to ascertain harms and levels of risk of future harms (*Guidelines*, p. 27). Clearly, when the attorney is only talking to the parent client for a few minutes prior to hearings and is not compensated for out of court time, these standards are not likely to happen in most cases, even though they would be considered minimal professional practices in all other areas of law.

One of the difficulties in assuring the quality of representation of parents is that often no mechanism exists for the court to supervise the work being performed by the attorneys appearing before them. There are models to ensure increased accountability without compromising the independence of attorneys and the Court's objectivity. The use of contracts that outline the attorneys' roles and responsibilities have been used in some states. In others, a Public Defender model ensures adequate training and supervision.<sup>157</sup>

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<sup>156</sup> The hiring of private counsel was reported to occur in more affluent regions, such as western Wayne County.

<sup>157</sup> In Massachusetts, the Children and Family Law Program (CAFL) of the Massachusetts Committee for Public Counsel Services provides legal representation to indigent parents and children in state intervention/child welfare matters, including care and protection proceedings. Representation is provided by a panel of private court-appointed attorneys and by staff attorneys in two areas. Admission to the CAFL trial panel is by application only and requires satisfactory completion of a five-day training program combining substantive law and trial skills. Upon completion of the trial certification training, attorneys are assigned to an experienced CAFL attorney for mentoring and support. Regional Coordinators also are available to provide advice and technical assistance to CAFL attorneys. G.L.ch. 119 § 29; G.L.ch. 210 § 3

## Qualifications and Training

The original assessment made the following recommendation:

Prior to appointment, all attorneys who represent the DHS, children, and parents in abuse and neglect cases should be required to undergo mandatory training on topics relevant to advocacy in the juvenile or family court forum and provide information to the court on their experience level. (#24)

The ABA Standards for agency attorneys recommends (within its “agency representation” model—see section of representation of DHS) that new agency attorneys be paired with an experienced “attorney mentor” who will work with the new attorney. The new attorney should be required to “observe each type of court proceeding, second-chair each type of proceeding, try each type of case with the mentor second-chairing, and try each type of proceeding on his or her own, with the mentor available to assist, before handling cases alone.” The Standards also call for the new attorney to attend at least 12 hours of training before beginning, and at least 10 hours of training every year after that. Training should include general legal topics such as evidence and trial skills and child welfare-specific topics, such as relevant state, federal and case law, procedures and rules, agency policies and procedures, and numerous other topics relevant to child protection cases (Standards 2004, pp. 21-22).

Likewise, the ABA Standards for lawyers representing children call upon the court to “determine that the lawyer has been trained in representation of children and skilled in litigation” and upon the trial judge to “ensure that the child’s attorney has had sufficient training in child advocacy and is familiar with these Standards.” The minimum content of lawyer training is outlined in the standards and it is also recommended that courts “provide individual court-appointed lawyers who are new to child representation the opportunity to practice under the guidance of a senior lawyer mentor,” (Standards, 1996, pp. 18-20).

The reassessment process revealed that there are no statewide requirements for mandatory training for attorneys who function as advocates in child protection proceedings.<sup>158</sup> While all but one of the study courts require attorneys to complete application forms to represent parents and children in CPPs, most of them do not have clear and specific training requirements, either for new attorneys or for those with some experience.

One site visit court reported there is a mandatory “nuts and bolts” half-day training that attorneys must complete to get on the list, as well as an obligation to attend at least one additional seminar a year. While these training requirements are listed on the application form the attorneys are required to fill out, it is not clear that there is a process for determining who has and who has not completed the trainings.<sup>159</sup>

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<sup>158</sup> While the L-GAL training discussed earlier in this chapter was available statewide, it was offered in response to requests from the individual counties or regions.

<sup>159</sup> Another attorney in the same court reported that all that was needed to get on the list was “a county bar card and a license.” This presumably indicates that there may not be oversight and enforcement

Another of the site visit courts provides guidelines to new attorneys: that they read the CPP bench book, attend hearings to observe, and meet with an experienced attorney who can act as their mentor. In another court, a judge meets with attorneys before they are placed on the list and conducts an orientation for them. Still, attorneys in that court expressed a need for more training, saying, “We’re just thrown into it.” They reported that they would have also benefited from an overview from other, more experienced attorneys.

Attorneys in Wayne County are supposed to receive two days of training if new and one day a year if experienced. The LADA, which contracts with Wayne County Juvenile Court to represent children, is able to use more experienced attorneys in its organization to mentor newer ones and also has a training budget that allows them to send attorneys to conferences and trainings outside the state.

Almost everyone interviewed at the site visit courts reported that additional training for attorneys and prosecutors would be helpful, if not essential. One jurist thought it would not be a good use of CIP monies to train attorneys, since they often move on into other practice areas. This judge encourages mentoring, so that new attorneys can learn from more experienced attorneys who have made a commitment to these kinds of cases.

Finally, two of the site visit courts mandate yearly training requirements for attorneys who represent children and parents. One of these courts performs an annual review of all attorneys on their appointment list and decides whether those attorneys will continue. Attorneys are removed from this court’s list if they receive poor evaluations.

Many respondents in the study sites reported that attorneys could benefit from additional training. The strongest statements were made with regard to prosecutors, in part because of the high turnover rate. In many jurisdictions it is the newest and least experienced attorneys who are assigned as prosecutors to the child protection cases. Usually, they have had no training. Because they are assigned to handle all juvenile cases, they may spend considerably more time doing criminal delinquency cases, which are very different from child protection cases. As stated earlier, it is often left up to the DHS worker to “educates” the prosecutor about the law and procedures in these cases.

In three of the study sites, the prosecutors themselves said that they needed and wanted training, particularly on time lines, court rules, the Binsfeld legislation, and Title IVE. They said there was no training curriculum per se for prosecutors in child protection cases and that it is up to the Chief Assistant Prosecutor to train the other attorneys. Training on the criminal prosecution of child abuse cases was offered recently by the Prosecuting Attorneys’ Association of Michigan. While not directly relevant to the work of a prosecutor handling child protection proceedings, it was the only training offered to juvenile prosecutors that related at all to this area of practice.

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of the training requirements and/or that the training requirements are not clearly and consistently communicated to attorneys.

## Court Appointed Special Advocates (CASAs)

Begun in the late 1970's by a juvenile court judge in Seattle, Washington, the use of court-appointed volunteer advocates in child protective proceedings has been shown to contribute to improved outcomes for children: more services, fewer placements, and lasting permanence (i.e., decreased likelihood of a child re-entering the foster care system once discharged.)<sup>160</sup> According to Michigan Court Rules, a court may “appoint a volunteer special advocate to assess and make recommendations to the court concerning the best interests of the child in any matter pending in the family division.” MCR 3.917(A). The rule sets out the duties of this volunteer as follows:

- Maintain regular contact with the child;
- Investigate the background of the case;
- Gather information regarding the child's status;
- Provide written reports to the court and all parties before each hearing; and
- Appear at all hearings when required by the court.

*Guidelines for Achieving Permanency in Child Protection Proceedings*, a publication of the Children's Charter of Michigan, provides specific guidance about how those duties should be carried out. It recommends that the CASA see the child every week to 10 days, maintain regular contact with professionals and others who have information about the child, and monitor the implementation of court orders and service plans.

Michigan's CASA volunteers must undergo 40 hours of training in a nationally-approved curriculum before they are qualified for appointment in court cases. For every 30 volunteers, there must be at least one supervisor. While most volunteers are assigned only one case, and stay with that case until it reaches a final disposition, some work on two cases.

There are three models for how CASA programs are organized in Michigan:

- 1) Court-based, in which the court assumes the costs for the program. This model applies to five of Michigan's programs.
- 2) Under the umbrella of another agency, such as a child abuse council. This model applies to ten programs.
- 3) Non-profit stand-alone agency that raises its own funds. This applies to four programs.

Local communities choose which structure will work best for their jurisdiction.

The state of Michigan currently has 19 CASA programs that serve 21 of the state's 83 counties in child protection proceedings. (See Appendix C, Michigan CASA Profile 2004.) Jurists were asked how often CASA volunteers were assigned to their child protection cases: 60.1 % said CASAs were “never” or “rarely” assigned, and 21.1% said they

*CASAs do sometimes get over invested, but I will put up with some non-objectivity in exchange for good information.*

—Jurist

*I am using CASAs more and more. Before, I was being my own CASA, I was micromanaging my cases. I rate them very highly.*

—Jurist

<sup>160</sup> *Guidelines for Achieving Permanency in Child Protection Proceedings*, p.150.

were “sometimes” assigned. Two of the six courts visited have active CASA programs. In Kent County<sup>161</sup> the CASA program was part of the Permanency Planning Division of the Family Court at the time of the visit.<sup>162</sup> The CASA coordinator and supervisor are contractors rather than court employees, and they report to the Director of the Permanency Planning Division. This structure helps ensure close communication between the court and the CASA program regarding issues such as training, problems with placements or funding for services in particular cases, and issues that arise with regard to individual CASA volunteers.<sup>163</sup>

Overall, the court in Kent County has high regard for the CASA volunteers. At the time of the visit to their court in the spring of 2004 the court was planning to double their CASA budget and add 40% more cases, raising the number from 70 or 75 to 120. The CASA volunteers are described by jurists as a “sheltering presence,” and as having an “objective perspective” and a “love of children.” One jurist reports using CASAs as investigators in “messy cases.”

A number of people reported that the quality of the CASAs was inconsistent, with some being outstanding, and others, particularly those who do not have a professional background (e.g., as attorneys or social workers), not understanding their role and going too far. One interviewee offered the contrasting view that volunteers with completely different backgrounds often provide the best results because they are able to “think outside the box.”

According to CASA coordinators, the volunteers are trained to push past the policies, if possible, so that when the caseworker may say that certain services cannot be provided, the CASA worker may persist in inquiring about and advocating for the service until funds are found to provide it. The role of the CASA takes on greater importance in jurisdictions with high turnover among caseworkers. In such situations, there is a danger that they take on responsibilities that belong more to the caseworkers. While the CASA role does require that the volunteer spend time with the child, some may cross the line by assisting the child with transportation to appointments for services.

*In many cases, case workers have changed and we are the only ones who know what happened with that case over time. We give time but caseworkers don't have that time to give.*  
—CASA coordinator

Wayne County also has a CASA program, which is based within the juvenile court. At the time of evaluators’ visit to that court, the court was planning to expand the CASA program. Opinions about the CASAs among other stakeholders in Wayne County were mixed, with some commenting that their training was inadequate and that the volunteers become overly invested in the cases. Jurists reported using CASAs in cases where there is a lot of conflict and the jurist does not know what to do and where the agency worker does not have a clear and detailed viewpoint of what is needed in the case.

<sup>161</sup> While a CASA volunteer in Kent County is considered a party to child protection proceedings; this is not true in other courts. This status allows the volunteers to work independently with the attorney employed by the CASA program rather than relying on the L-GAL to file motions or call witnesses.

<sup>162</sup> Kent County is changing from a court-based program to a nonprofit agency in 2005.

<sup>163</sup> A comment was made that this structure (the location of the CASA office in the courthouse and the reporting system) allowed the CASA program to have access to the court in a way that other parties and their counsel did not.

It is not possible to separate the question of the value of CASAs from the issues discussed previously with regard to the high turnover rate at FIA (and at the private agencies) and the high caseloads and frequent substitutions of children’s attorneys, particularly in Wayne County. In considering the “best fix” for such problems, it may not be wise to add CASA volunteers to a system that is not working as it should—it may be better to tackle the underlying problem. It is understandable that jurists would want the depth of information as well as the advocacy that a CASA can bring to a case when others involved, who may be operating with excessive caseloads, do not have sufficient time to do those things. But, if adding CASA volunteers is planned as a substitute for ensuring competent legal representation by attorneys, it should be reconsidered.

The original assessment recommended that funding be provided to establish CASA programs in all counties of the state and that the new programs work with the existing ones to develop policies and procedures. Given current budgetary restrictions, it is not likely that this will happen on a statewide level at this time, or in the near future.

Ideally, the use of CASAs in the courts where the programs currently exist would focus on cases in which they can be most useful: for example, those in which the information presented to the court is in conflict, or where the child and/or family face unusual challenges.<sup>164</sup> Particularly in Wayne County, where the case numbers in child protective proceedings are so high, it is important that there be some consistency and thoughtfulness about when a CASA should be appointed to a case. These are precious resources and should be treated as such. Currently, some jurists use them while others never do. It may be that an orientation or training discussing the role of CASAs and the types of cases in which CASAs can be used to best effect would move courts closer to this consistency and introduce jurists who have not yet used CASAs to the practice of doing so.

## **Recommendations relating to representation**

- Establish statutory requirements and/or court rules setting minimum standards for attorney compensation. Include compensation for case preparation and client meetings outside hearing times.
- Establish guidelines regarding maximum attorney caseloads.
- Develop model contracts for courts to use with attorneys providing representation for parents and children. The contracts should specify the attorney's obligations to the client and set out standards for reasonable attorney caseloads.
- Establish guidelines for the courts regarding oversight and enforcement of statutory requirements regarding L-GAL contact with child prior to hearings.
- Expand requirement for the filing of affidavits by L-GALs regarding the fulfillment of their responsibilities, including visiting with the child, to parents’

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<sup>164</sup> A study released in 2004 by Caliber Associates, using national CASA data and data collected through the National Survey of Child and Adolescent Well-being (NSCAW), showed the following, regarding children who were assigned a CASA volunteer: they had more severe cases, more prior contact with the child welfare system, received more services (as did their parents), and were less likely to be reunified with their families or placed in kinship care. Caliber Associates, *Evaluation of Casa Representation* (2004)

attorneys. Make the provision of this documentation a prerequisite for payment by the court.

- Establish statutory requirements and/or court rules specifying mandatory training for attorneys providing representation for children and parents.
- Establish a mechanism to ensure accountability of attorneys representing parents and children. This should include the ability to enforce standards or requirements regarding minimum qualifications, mandatory training, and ongoing supervision. In addition, there should be a mechanism for parents and children to raise concerns about the quality of representation they are receiving.
- Establish Court rules specifying that, subject to advance court approval for exceptions, the same attorney will represent the client (including DHS) at all stages of the court process and that members of the same firm or organization cannot substitute for the individual attorney. Establish strict criteria for exceptions. [Does this Rule already exist?]
- Revise state statute at MCL 712A.17(5), MCR 5.914(B)(1) regarding representation of DHS to read that the prosecuting attorney or assistant attorney general is to act as the DHS (or its agent's) "attorney" in child abuse and neglect proceedings.
- Work collaboratively with state administrators of DHS toward the goal of accomplishing the following: the assignment of "specialized, highly trained, permanent prosecutors/attorneys general to represent FIA (now DHS) at all stages of abuse and neglect cases, beginning with the filing of the petition to remove the children from the home." (Recommendation 19 of the original CIP assessment; Recommendation 47 of the Binsfeld Commission) Assist DHS with the development of a model contract for use with prosecutors that would include provisions regarding appearance at all hearings and consulting with the agency prior to making case decisions.
- Work collaboratively with state administrators of DHS, Prosecuting Attorneys Association of Michigan (PAAM), the state bar association, and with state-based law schools to develop a curriculum on child welfare law and child protection proceedings.<sup>165</sup>
- Require all attorneys who represent DHS in these proceedings to have taken the law school class and/or to have participated in a minimum two-day training that should include the ABA standards, as well as the Guidelines to Permanency published by the Children's Charter of Michigan. (See Chapter 7 for more on the Guidelines.)

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<sup>165</sup> This is modeled on Binsfeld Commission Recommendation 50, which is restated in Recommendation 27 of the original assessment.

# RELATIONSHIP BETWEEN THE COURT, DHS, PRIVATE AGENCIES, AND OTHERS

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## CHAPTER 6

### CHAPTER 6: RELATIONSHIP BETWEEN THE COURT, DHS, PRIVATE AGENCIES AND OTHERS

The relationship between the court, the Department of Human Services, private agencies that contract with DHS (referred to by DHS as “Point of Service Agencies” or “POS”), and other organizations is particularly important in child protection cases. Frequent interactions between these groups are needed because of their intense interdependency in child protective proceedings. (See Introduction to Chapter 2, Court Organization, for a more complete description of this interdependency.) Michigan state law, as well as federal statutes<sup>166</sup> and regulations, determine the nature of child protective proceedings and create a type of litigation in which the court process shapes DHS intervention on behalf of children and in which the court, in making timely decisions for children, as required by law, depends heavily on services arranged and provided by DHS and on information gathered and presented by DHS staff.

#### ***Background: Title IV-E and Reasonable Efforts Findings***

Title IV-E of the Social Security Act was enacted with the intent of preventing unnecessary removal of children from their homes, and once removed, preventing children from remaining in foster care for an extended period of time. If a state agency does remove a child from their home, states are required to show, if the family was known to the agency, that they made efforts to prevent the child’s removal. After a child is removed from the home, state agencies must show that efforts continue to be made to reunify the child with their family by providing appropriate services. The case service plan is developed by the agency with the participation of the family, and outlines what services will be provided, and what the parent’s responsibilities will be. (For detailed discussion on reasonable efforts requirements and court review of case service plans, see

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<sup>166</sup>For example, Titles IV-B and IV-E of the Social Security Act, the Indian Child Welfare Act, and the Child Abuse Prevention and Treatment Act, help shape the nature of child protective proceedings.

Chapter 4, Quality and Depth of Hearings.) Once it is determined that reunification is not in the child’s best interests, efforts must be made to provide another permanent placement for the child.<sup>167</sup>

Compliance with the Title IV-E requirements is tied to federal funding for foster care. If children are otherwise eligible for title IV-E funding,<sup>168</sup> state agencies must document that services were offered to families, and the courts must make timely findings that the children’s removal from the home were necessary to ensure child safety, and that “reasonable efforts” were made to avoid removing the child.

### ***DHS and Point of Services (POS) Agencies***

While the Department of Human Services (DHS) initiates all child protective proceedings, private agencies with which DHS contracts (Point of Service (POS) agencies) also can provide services and manage cases. Michigan Public Act 344 (2004) specifies that DHS must offer private, nonprofit licensed agencies the first opportunity to provide foster care services for new foster children in counties where DHS’s own caseloads for the management of foster care cases is greater than 20 cases per foster care worker. With the exception of preliminary hearings where DHS requests the removal of children, Point of Service (POS) agency staff has extensive interactions with the court, much the same as DHS caseworkers.

### ***Communication between the Court and DHS***

The working relationships and communication between DHS/POS and the court are of great consequence to a child and their family. Both the court and DHS have the awesome responsibility to protect the child, while moving the child towards permanency.

It is encouraging to note that statewide, 80% of respondents to the jurist’s survey reported that court meets with DHS to discuss strategies. At study sites, qualitative interviews suggested that meetings and relationships occurred at high administrative levels between the two systems.

For instance, Kent County DHS and the court meet every three months. At these meetings, DHS shares statistical data with the court regarding timeliness; this is of particular value as the court does not have the ability to generate its own data on case

*Communication is all at the top level with the court.  
We’ve heard that referees laugh at agency concerns.  
Our director isn’t bringing our concerns to these meetings.  
We’re asked for our suggestions, but we don’t hear back about what happened at the meeting. Nothing changes.*

—DHS caseworkers

<sup>167</sup>42 U.S.C. 672(a)(15), 675(1), 675(5)(B)

<sup>168</sup>Eligibility requirements include: the child is a citizen of the U.S. or qualified alien; the responsible relative from whom the child was removed meets certain financial eligibility requirements; and there are judicial determinations that it is in the best interest of the child to be placed out of home, that the state has made reasonable efforts to prevent placement, and, within 12 months of the date the child entered foster care, that the state agency has made reasonable efforts to finalize the permanency plan 42 U.S.C. 672(a), 671(a)(15).

outcomes and timeliness. Other issues of importance are also discussed. For example, DHS managers and court administrators met in June, 2004, shortly before the evaluators' site visit to Kent County, to discuss referees' expectations of caseworkers at preliminary hearings. In Jackson County, the court holds quarterly meetings with DHS, in which they discuss systemic issues such as Title IV-E eligibility.

Overall, because of the regular meetings between the two systems, DHS/POS Managers in most of the site visit counties reported a positive relationship with the court. Caseworkers and supervisors reported being asked to provide input for these meetings but said they were not informed of the outcomes. In locations with ongoing tensions between the court and the caseworkers, caseworkers did not see changes occurring as a result of these meetings.<sup>169</sup>

Most line staff reported a more negative relationship with the court. Even where the relationship with the court was reported as being a positive one by line staff, workers resented being the "bottom of the pile;" that is, at every study site, caseworkers reported feeling that the court did not respect their work or their time. While attorneys' calendars were taken into account when scheduling hearings, the availability of caseworkers was not. Caseworkers resented that they were often referred to as "the worker," rather than by their names, as all other parties in the court were. Some study sites reported that caseworkers were not informed of adjournments by the court, which caused them to spend time waiting for hearings that never occurred.

Caseworkers' feeling that they were treated disrespectfully by court staff and jurists was sometimes cited by DHS/POS managers as causing increased caseworker turnover, in a field which already has a disturbingly high rate of turnover. Court personnel, in turn, were frustrated by the constant changeover of DHS and POS staff, which they felt contributed to the uneven quality of work performed by caseworkers.

### ***Performance of DHS/POS Staff at Court***

The statewide jurist's survey revealed that it was not unusual for the prosecutor to be absent at hearings.<sup>170</sup> (See Chapter 5 for further discussion of DHS representation.) The absence of prosecutors at preliminary hearings can result in inexperienced caseworkers being unable to present their case adequately. Inadequate representation can lead to much more than a jurist becoming frustrated with a caseworker's performance. If a petition is denied because it is poorly prepared or because a caseworker's inexperience leads to poor testimony, the consequence to a child can be devastating.

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<sup>169</sup> *A Second Court that Works* describes the range and subject matters of meetings taking place between the court, FIA, private agencies, and other community groups in Kent County in 1993. The *Resource Guidelines* also describes the need for different types of meetings.

<sup>170</sup> At initial removal hearings, 68% of the jurist's survey respondents reported observing the AG present at initial removal and review hearings; 83% reported AG present at permanency hearings; 92% at adjudicatory hearings.

Across study sites, the performance of DHS and POS staff at court was described as varying greatly from worker to worker. Several sites described that lower wages, higher turnover, and lack of accountability to DHS led to a lower quality of work by POS caseworkers.

Legal training was described as vital to improve caseworkers' court performance. This was stated as necessary both by court personnel and DHS/POS staff. Specific training needs mentioned included:

- how to investigate a case so evidence can be used;
- how to write a petition; and,
- how to testify at hearings.

*The absence of help by prosecutors affected DHS's ongoing work on cases because caseworkers received no guidance on how to draft their petitions, how to do better investigation of important facts, or what they can do to make their cases stronger.*

—Jurist

Prosecutors at half the study sites offered training in ing petitions and gathering evidence to caseworkers. The rest had no such training available. At the sites where the prosecutors did not provide training, a number of informants reported that some DHS and POS staff were turning to private attorneys and to jurists for mentoring, as a result of not having training in legal issues. The varying levels of experience in testifying resulted in some referees feeling they were losing their objectivity as they coached inexperienced caseworkers during hearings. Other jurists expressed more frustration with caseworker performance; this could lead to impatience with and distrust of caseworker judgment.

When the courts and FIA reported regular communication, some of these issues could be resolved. For instance, a Jackson County quarterly meeting led to petitions being faxed over to the Prosecutor for review prior to preliminary hearings.

### **DHS Reports**

DHS reports are due at each hearing and are expected to update the court on events that have occurred since the last hearing. Reports detail services provided to the family, the family's progress in engaging with these services, and the status of the child. These reports are important documents for jurists responsible for deciding whether or not reasonable efforts are being made to keep a child with their family. Reports are also vital to parents' and children's attorneys as they prepare to represent their clients in child protective cases.

### **TIMELINESS OF DHS REPORTS**

The original Court Improvement Report noted that DHS reports were chronically late or missing. In response to this, it was recommended that caseworkers' reports should be submitted to the court and attorneys at least seven days prior to the scheduled hearing. Results of the statewide jurist survey and interviews and observations argue that this

recommendation has not been implemented adequately.<sup>171</sup> (This issue is also discussed in Chapter 2 on the timeliness of hearings.)

At study sites it was reported that, in theory, reports were required to be at the court 7-14 days before hearings. In actuality, reports were described as routinely arriving the day of, or the day before, hearings. The exception to this was Jackson County, where reports were described as arriving in a timely manner. Workers there reported that they were fined by the court if they did not file reports at least one week before the hearing.

Conversely, DHS staff at several sites expressed frustration with the court losing their reports when they were submitted in advance. This resulted in DHS staff bringing the reports to the court closer to the hearing date so they would not be misplaced, and bringing extra copies of reports to hearings to replace lost ones. Even when reports were submitted prior to hearings, caseworkers complained that attorneys and jurists did not read them or only glanced at them quickly, as evidenced by attorneys and jurists asking caseworkers for information that they had included in their reports. Workers also pointed out that the court's misplacement of reports and frequent failures to review them prior to the hearing was a disincentive to submit reports to the court ahead of time.

When reports are received on the day of the hearing or when reports are received but not read, delays can occur in the hearing as parties pause to read them. Evaluators observed this during site visits. Not only does the late reading of reports delay the commencement of hearings, but it also leads to verbal challenges and inquiries in the courtroom that should have been taken care of in advance.

### **CONTENT AND FORMAT OF DHS REPORTS**

Several jurists described DHS reports as too general, making it difficult for jurists to determine if services provided met the needs of the family. Some stakeholders described the content of reports as repetitive, with information from earlier reports being repeated again and again, rather than focusing on what had happened since the last hearing. The repetition of earlier information in each report could be damaging to parents if jurists assumed that the critical incident was recent, rather than occurring earlier in the case. Attorneys at two sites also complained that reports left out information that was favorable to parents.

On the other hand, a lack of uniform expectations among jurists frustrated caseworkers trying to write reports to the court's satisfaction. DHS staff described doing extra work on their reports out of fear that their documents would be harshly criticized at court, yet feeling frustrated by the lack of consistency in what different jurists wanted. It was also sometimes difficult for caseworkers to meet both DHS policy and the requirements of jurists. DHS requires "Structured Decision Making" (SDM) reports, but some jurists

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<sup>171</sup> Only 9-10% of jurists reported receiving DHS reports 6 days or more before hearings. Over one-third of the respondents reported that reports are received the day of, or one day before, the hearing.

reject this format for court reports. This has forced caseworkers to write two reports to satisfy both their agency's and the court's competing requirements.

### **Court Orders**

Court orders are necessary in implementing a family's service plans. Court orders are sometimes crucial in obtaining referrals for services, thus receiving court orders is vital in moving a case along towards the ultimate goal of permanency for children.

At most study sites, DHS and POS staff described receiving court orders anywhere from the same day of a court hearing to three months later. The path that a court order took in going from jurist to caseworker was described as convoluted. In some counties, caseworkers reported that one cause of delays was "too many people, too many steps, orders go from the referee to the judge to the officer to DHS to private agencies." Michigan law requires judges must sign referee orders. While many judges permit unsigned orders from referees to be given to DHS while awaiting the judge's signature, some judges do not, which causes increased delays in the commencement of services.

*In desperation to get court orders [to obtain services or to facilitate adoptions of children,] caseworkers travel several miles to the courthouse, go through an involved process to get the court file, purchase copier tokens from a court secretary, feed the tokens to the court copier, and then return the file to the secretary.*  
—Private agency staff

The distribution process for court orders was confusing at several sites. POS staff, including the Division Director at one site, said that they did not know who was supposed to get orders, or how they were distributed. The legibility of handwritten orders was an issue in one site. Caseworkers at some sites also complained about the differences in the formats of court orders and wished for more simplicity and consistency.

DHS and POS staff often reported that delays in getting court orders delayed the commencement of services for families. In Wayne County, workers said they were unable to refer families for mental health assessment without signed court orders. Court orders, they said, were sent to DHS but often were not forwarded to POS, at least within a reasonable time. This made it take longer for POS workers to obtain services and, in turn, caused children to remain longer in foster care. Obtaining custody orders following a disposition hearing reportedly sometimes takes months, which can hold up needed medical procedures for children. Late court orders were also described as a factor delaying the adoption process.

Referees, judges, and court administrators confirmed that a shortage of clerical staff and computer equipment results in delays in courts producing and distributing their orders. In an effort to expedite the delivery of court orders to caseworkers, Macomb County reportedly is trying a new system that results in an order on the same day as a hearing and which specifies the next hearing date. It is anticipated that this system will not only accelerate the delivery of court orders to caseworkers, but will also eliminate the need to later serve parties who were present at the hearing. A system that can deliver the court orders to workers quickly will allow for expedited referrals and services for families.

Ultimately, this will also prevent extended court proceedings caused by delays in referrals and services.

### **Service Plans**

Service plans outline the steps that DHS and POS agencies will take in obtaining services for families, as well as the expectations of parents in cooperating with those services. Parents' progress in completing service plans is closely scrutinized by the agency and the court. Compliance with service plans is crucial in obtaining reunification with their children; non-compliance can lead to the termination of their parental rights.

Jurists must review service plans that DHS proposes for families and ascertain whether services identified by DHS or POS agencies are appropriate to the families' needs. Later, jurists must determine whether services are provided in a timely manner.

### **PARENTS' UNDERSTANDING OF SERVICE PLANS**

At several sites, there was concern that cognitively-limited parents needed more concrete goals that were repeated often, so that parents could clearly understand what it is they need to do to regain custody of their children. Even when parents are not cognitively challenged, it was recognized by stakeholders across sites that the court process is overwhelming. Even though the parent-agency agreement between DHS and families outlines the consequences of failing to comply with the service plan, caseworkers, attorneys and jurists all agreed that parents need many reminders and explanations. Parents were described as often not understanding the process until later on – and, because of federally mandated timelines, “later on” may be too late.

*There is a presumption that [parents] know what to do. Particularly when they are a low functioning person ... they need more repetition, concrete goals, expectations explained more often. Sometimes at a Foster Care Review Board review, a parent hears for the first time exactly what a caseworker expects.*  
—FCRB member

Some jurists help parents understand what was expected of them. Some reported that they used time during hearings to reiterate to parents what they need to do in order to get their children back. One referee used preliminary hearings as opportunities to educate parents about what is ahead of them, what the consequences of admitting to neglect are, and how parents could take the opportunity to obtain treatment voluntarily before a finding is made.

### **“BOILER PLATE” SERVICE PLANS**

There were also concerns regarding “cookie cutter” service plans, i.e., those that are not tailored to address the specific needs of individual families and children. Many jurists, attorneys, and others complained that caseworkers often do not identify services needed

by individual families, use checklists of services, and make the same recommendations for everyone.

Examples included illiterate parents being given written material and neuropsychological evaluations being ordered for six-year old children. A review of court files at study sites confirmed that service plans were remarkably similar. Agency managers at one site agreed that, in their efforts to gather information quickly to meet tight court timelines, they sometimes tried to “cover all the bases,” which resulted in generic service plans.

Service plans that initially were generic and were then modified at a later point confused and angered parents and their attorneys. Parents, attorneys and others described DHS as “raising the bar” by continually adding to the service plans with the result that the child was prevented from going home. Even when parents completed their service plans, DHS did not always return children to their families.

Sometimes it was a jurist who was reluctant to reunify a family. One jurist described a case where the parents had done everything asked of them, but the jurist was still not sure they were ready to have their children. At that point, the children had been in care for two years.

When parents fulfill the service, yet the agency or the jurist is reluctant to reunify the family, it is a signal that either the service plan was not complete in addressing the needs of the family or that the definition of “completing” the plan was inadequate.

Because parents must be given a fair chance to rehabilitate themselves and reunify with their children, if possible, courts should examine case plans during disposition and review hearings and in the course of reasonable efforts inquiries to assure that service requirements are phased in, occur at reasonable hours, and that parents have transportation to reach appointments. When the court is assured that service requirements are achievable, the burden is properly on parents to prove that they can become adequate parents.

### ***The Impact of Services on the Court Process***

Problems with substance abuse, mental health issues, parents’ lack of understanding of child raising, and other barriers to children remaining with their families are supposed to be addressed by the services identified in the family’s service plan. When services identified in the service plan are not provided, court cases often must be delayed to give a family the opportunity to receive services and thereby make improvements. (See Chapter 3 for detailed discussion of the impact of delays in services on timely permanency.)

## **IDENTIFICATION AND PROVISION OF SERVICES BY DHS/POS**

Study site interviews described caseworkers as varying widely in their ability to identify and procure services for families. When DHS did not arrange services readily available in the community, it was described as complicating TPR trials, with trials delayed so parents could be offered services.

*Sometimes DHS says that families are not eligible for services, and I do not know why.*

—Jurist

A number of informants expressed confusion and dismay regarding DHS policies that prevented the provision of particular services to families. Limited funding was perceived by some to be the impetus for rigid DHS policies. Others complained that DHS and the court would not give extra time to families to complete service plans when evaluations and service referrals were slow to be set up by DHS/POS; even when DHS had not provided enough services to a family, the court would not continue the case. Some stakeholders believed that the time mandates forced the jurist's hand, even when parents were not matched with appropriate services.

Some jurists described ordering services that were available in the community and expressed frustration in feeling the need to take on the role of caseworker. On the other hand, DHS caseworkers complained that some jurists micromanaged cases and ordered inappropriate services for families.

## **LACK OF SERVICES IN COMMUNITIES**

Sites widely acknowledged that there was a critical shortage of certain services needed by children and families, and that these shortages delayed cases. Even in Kent County, where those interviewed felt that the community was generally able to provide many preventive and supportive services for children and families, respondents reported a need for more substance abuse treatment services, mental health services, and housing.

Other counties reported more gaps in terms of the timely availability of services for families. Inpatient and outpatient substance abuse treatment services, intensive in-home services, psychiatric care and housing were widely described as being scarce, which led to long delays as parents were put on waiting lists.

Another frequent complaint voiced was that the brief services offered were unsuited to most families with long standing substance abuse and mental health issues. Wayne County, the largest system in the state, repeatedly described services for children and families as overloaded. Complicating the shortage of services in Wayne County was the scarcity of services to non-English-speaking families. Statewide data also reflected the shortage of services that caused delays in implementing permanency plans.<sup>172</sup>

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<sup>172</sup> Percent of jurists reporting the lack of these services caused "significant delay": mental health assessment/treatment – 44%; housing assistance -36%; residential treatment facilities -34%; specialized/therapeutic foster care – 32%; substance abuse assessment/treatment – 31%; transportation – 21%.

**MENTAL HEALTH SERVICES FOR CHILDREN**

Most sites described mental health services for children as particularly stretched thin. The shortage of services often led to services being available to children only for crisis situations, or after a long delay. Even children in severe distress received only brief services. Delays in cases were reported to result from the wait for assessment and treatment of children.

*Most jurists don't understand how long this will take. A referral (to JAC) can be ordered at one court date and it still hasn't occurred three months later.*

—POS staff, Wayne County

In Wayne County, the lack of mental health services for children with severe mental health issues or difficult behavioral issues was critical; there was nowhere to place them. Some parents ended up refusing to allow children to come home after being hospitalized for mental health or behavioral issues. As a result, some families who try to responsibly protect their children have neglect cases filed against them.

**WAYNE MENTAL HEALTH: JUDICIAL ASSESSMENT CENTER (JAC) UNIT**

In Wayne County, the Judicial Assessment Center (JAC) conducts mental health assessments of all IV-E eligible children and their families. JAC then refers families and children to community mental health services, when appropriate.

Several jurists expressed concerns regarding the quality and timeliness of JAC evaluations. While JAC allocates a finite number of therapy sessions to the family, the court can overrule the cessation of such services. As one referee said, this makes it vital to read reports very carefully to make sure all mental health issues have been fully addressed before these services end.

The timeliness of JAC assessments was an issue for several respondents. The quickest assessments, they said, occur in two months, but more often services begin three to four months after the referral, plus an additional two-week delay until the written report was available. This lengthy process is frustrating for both the agencies and the court.

The lack of clear guidelines for making a referral to JAC was apparent when speaking to stakeholders. POS agencies reported that they did not receive any written material when the JAC system was initiated. This was perhaps made more confusing by different rules imposed by referees and by JAC itself. Finally, one interviewee claimed that judges are allowed to “leapfrog” the JAC process when ordering services, but referees cannot.

**COURT INTERACTION WITH SERVICE PROVIDERS**

In some counties, courts communicate with service systems in the community by inviting service providers to meetings at which DHS, the court, and advocates discuss systems issues. For instance, Jackson County has invited mental health providers to their quarterly meeting with DHS to discuss issues of service provision. These types of meetings can be used to identify service gaps, to discuss delays in obtaining referrals, and

to provide a forum for discussion of ways in which absent services might be brought into communities.

### ***Child Removal and Placement Issues***

Preliminary hearings are held when DHS asks the court to approve the removal of a child from the home. Once a child is removed, he or she must be placed in an appropriate home, either with a relative, a non-related foster family, or other facility.

Preliminary hearings in one county were described as markedly long, with some jurists demanding substantial proof to justify the removal of children from their homes. Jurists were described as sometimes holding a preliminary removal decision in abeyance, which meant that Protective Service workers needed to come back (sometimes several times) with very detailed information, such as immunization and school attendance records for a child. DHS complained that while workers would normally have had such information available for a disposition, gathering it for a preliminary hearing was unwarranted. Caseworkers described hearings as being like early case management conferences, with referees wanting to manage cases as if they were supervisors, as opposed to looking only at the legal issue of whether probable cause has been shown.

On the other hand, some jurists complained about what they thought was DHS's premature removal of children from families. One jurist, for example, felt that foster care and adoption were overused by DHS, and that it was the jurist's responsibility to scrutinize and sometimes block DHS's actions. Another believed that once the problem which had caused the child's removal from the home had been addressed, then the child should be returned home, even if other problems, which DHS felt existed in that home, still needed to be addressed.

### **LACK OF PLACEMENT ALTERNATIVES**

A lack of foster care homes in the community stressed the often-overloaded child welfare system further. "Hyper technical" licensing requirements were identified as barriers towards recruiting foster care homes, and low foster care reimbursement rates contributed to the shortage of placement alternatives. An ineffective level of payment system, in which payment to a foster home increases for a child with behavioral, mental health or physical health issues, was also said to contribute to the shortage of foster homes. Therapeutic foster homes, homes that accepted pregnant and parenting teens, and secure residential placements were described as particularly scarce.

The lack of residential placements and therapeutic foster homes for children with severe mental health and behavioral issues resulted in inappropriate foster care placements. Unsuitable placements were sometimes blamed for children being moved from foster home to foster home.

When DHS has no home or facility in which to place children removed from the home, it becomes more difficult to make a decision regarding the safety and welfare of children.

One jurist commented on the traumatic effect of multiple foster care placements on children, believing it was sometimes better to send a child back to an inadequate home than to continue to traumatize the child with numerous moves.

In Wayne County, some referees were particularly dismayed at the method of placing children in foster care homes. Children who needed foster placement would be presented to various agencies. If providers did not want certain children, due to their reported behavioral or mental health issues, they would simply not show up at the meeting.

## ***Recommendations***

The following recommendations are made to improve the court's interactions with DHS and POS Agencies.

1. Direct courts to meet with DHS at a local level to address mutual concerns. Recommend that they include attorneys, service providers, representatives of community organizations, and other interested stakeholders, as appropriate, and that different levels of representatives (e.g., supervisors or caseworkers and jurists, as opposed to agency managers and court administrators) from the agencies and the court be included, depending upon the issues to be discussed. SCAO should clearly dictate regular contact between the courts and DHS to work through systems issues. Some of the issues that need continuing discussion are:
  - ✓ Finding the most efficient way of delivering court orders to DHS/POS agencies and to parents.
  - ✓ Developing a template for court orders. This could be done at a state level by SCAO for all counties to follow. To tailor it to local systems, variances to the template could be requested so that it is responsive to local needs and services
  - ✓ Implementing mandatory delivery of court reports no later than 5 days before hearings. At the local level, this would mean working out a mechanism for enforcement of this policy and developing a process of notifying caseworkers when their report is due.
  - ✓ Discussing and standardizing the format and contents of court reports so that caseworkers are clear regarding the expectations of what should be contained in the report.
  - ✓ Sharing information about service availability in the community. Depending on the locality, this could result in written information provided by DHS to the court.
  - ✓ Clarifying DHS policies that affect service referrals.
  - ✓ Identifying barriers to timely adoption and working out solutions to decrease the number of "legal orphans."
  - ✓ Inviting service providers to meetings with the court and DHS to strengthen communication with existing service systems.
  - ✓ Brainstorming ways to bring adequate services, particularly mental health services, to the community.

2. Use data as a way to identify barriers to permanency. Look to Kent County as a possible model. DHS and the court in Kent County use DHS-generated data to monitor timeliness and to identify which cases are delayed, and at what point in cases delays can occur. Particularly when courts do not have their own sources of data, DHS information can be a valuable tool in generating critical discussions between the two systems.
3. Training
  - ✓ Increase cross training opportunities on mutual topics such as Title IV-E eligibility. Training is most effective when it involves issues central to both systems, such as Title IV-E, or concurrent planning.
  - ✓ Offer training conducted by prosecutors and jurists for DHS/POS agency staff, particularly regarding writing petitions, investigation of case facts in preparation for court, and testifying in court.
4. Provide legal representation for DHS/POS agencies at every hearing in the life of a child protection case. (See Chapter 5, Representation of Parties, for more detailed recommendations regarding agency representation.)
5. Treat caseworkers respectfully. In regards to caseworker turnover, the court cannot change many of the job conditions or compensation issues that lead to high turnover. What individuals in the court can do is treat caseworkers with the respect that they show attorneys and families. This includes using common courtesies such as calling the caseworker by name, and when scheduling hearings taking caseworker availability into account, as they do attorney schedules. Time certain scheduling to decrease caseworker waiting time (see Chapter 4, Quality and Depth of Hearings). Continual legal representation at court (see Chapter 5, Representation of Parties) can also help caseworkers stay out in the field, supporting families and preventing care and protection cases from coming into court.
6. Clarify expectations for parents. Jurists and attorneys should assist families by ensuring that parents understand what they need to do to have their children returned home. Reiteration by jurists, caseworkers, and attorneys of what is expected from parents is necessary since parents are often overwhelmed and confused by the legal process. It is imperative that parents be given copies of court orders to help them understand what is expected of them. (See Chapter 4, Quality and Depth of Hearings.)
7. Monitor service plans. The courts should examine service plans to ascertain that they are tailored to families' needs. Service plans should prioritize services for parents, and jurists should monitor plans to ensure that they are addressing areas that directly impact the child's safety. (For more discussion of service plans, see Chapter Four, Quality and Depth of Hearings.)
8. Support concurrent planning. While the court cannot by itself streamline foster care licensing requirements or increase the level of care payments for foster and adoptive

parents, it can encourage concurrent planning. The identification of potential options for a child early in the case can speed the adoption process later on for children who need permanency.

# COURT IMPROVEMENT PROJECT INITIATIVES

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## CHAPTER 7

### CHAPTER 7: CIP INITIATIVES

#### **Publications: The Child Protective Proceedings Benchbook, Guidelines for Achieving Permanency in Child Protection Proceedings, Adoption Benchbook**

All stakeholders interviewed, from judges and referees to attorneys and case workers, reported that they found the *Child Protective Proceedings Benchbook* (for judges and referees) or the *Guidelines for Achieving Permanency in Child Protection Proceedings* (for caseworkers and attorneys) to be extremely useful.<sup>173</sup> The CPP Benchbook contains statutory and court rule requirements, agency responsibilities, and service alternatives, and also addresses quality control and funding issues. Several thousand copies have been distributed. It is also available at the Michigan Supreme Court's website at [www.courts.mi.gov](http://www.courts.mi.gov).

The Benchbook and Guidelines were physically present and pointed out by a number of respondents who were being interviewed in their offices, from judges to private foster care agency managers. A private attorney at one of the study sites complained that she did not know about the Benchbook when she first started practicing and wished she had been told. Prosecutors at another court commented that the Benchbook, which is given to judges, referees, and prosecutors, should also be provided to attorneys who are appointed to represent parents and children in child protection proceedings.<sup>174</sup>

*Guidelines for Achieving Permanency* also contains applicable statutory and court rule requirements, as well as guidelines for practice for caseworkers and attorneys at each

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<sup>173</sup> At the time of the court visits, evaluators were not aware that there were two separate benchbooks, one for jurists and one for practitioners. Therefore, reports from stakeholders should be taken to apply to one or the other or both, unless otherwise indicated.

<sup>174</sup> The publisher of the *Guidelines*, Children's Charter, has sent notices and brochures to courts, attorneys, and other interested stakeholders about the updated edition of the Guidelines, which can be purchased for \$30.

stage of a child protection proceeding. This volume was edited and had a second printing in 2004, after a first edition distribution of nearly 5,000 copies.

Many of the judges and referees said they used the benchbook “all the time” or “quite regularly” and found it to be very useful. One judge, with many years of experience, found the scripts for jurists to use for preliminary hearings, for taking pleas, and for making inquiries related to the Indian Child Welfare Act to be useful. This judge also said that she had observed attorneys referring to their benchbook during hearings. A referee reported using the check off sheets from the benchbook. Another judge found the benchbook so useful he took his old benchbook home when he received a new one. This same judge reported that as a result of consulting the benchbook he discovered he could take medical testimony over the phone, which he did in a case where the parents did not want their child to have an operation.

*The benchbooks are terrific. I use them all the time. I refer to them at least once a week and sometimes every day. I also make them available to lawyers. Sometimes lawyers ask to borrow them and copy from them.*

—Judge

The *Adoption Benchbook* was written for use by judges, referees, and court support staff who process adoptions with the goal of standardizing court adoption practice statewide and removing barriers to timely adoption that are under the control of the court. One thousand copies were distributed as of 2004. Some jurists and some of the private agencies interviewed at the study sites had the *Adoption Benchbook*, but many others were not aware of it. This could be because of timing: SCAO was still distributing the *Adoption Benchbook* during 2004, at the time evaluators were visiting the courts.

Michigan should find a way to ensure that attorneys providing representation in child protection proceedings are aware of the *Guidelines for Achieving Permanency* and further, that the guidelines are affordable and easily available to them. No attorney should need to ask the judge to borrow the benchbook and make copies from it. The distribution of the *Guidelines* to attorneys could be done in conjunction with mandatory training, either at the state or at the court level, depending upon the location of the training.

## **Permanency Planning Mediation Program**

The 1997 original CIP assessment recommended that the Michigan courts should “investigate, establish, and evaluate demonstration alternative dispute resolution programs in child abuse and neglect cases in selected sites in accordance with Resource Guidelines.” (See Appendix A, Recommendation 47.) This was a recommendation that the CIP Advisory Committee took to heart and selected as one of its priorities for implementation.

In March of 1998 it launched the Permanency Planning Mediation Program as a pilot project and gave funds to already-existing community dispute resolution program centers to train mediators and provide mediation services in child protective proceedings in their regions. As of December 2001, there were 10 mediation programs covering 19

counties.<sup>175</sup> In its fifth year, in December of 2003, there were eight sites [does this mean programs or courts served?] Approximately half of the CIP funds were directed to these programs during this five-year period. In 2004, a decision was made to reallocate funds.

Between 1998 and the end of 2003, well over 400 cases had been mediated at various stages in the child protective proceeding. Cases could be referred to the mediation program by a judge/referee or others involved in the family's case, such as a caseworker, attorney, or family member. The referral could occur at various points in a case, including pre-adjudication, at the point of dispositional or permanency planning hearings, or prior to termination of parental rights or final adoption.

In 2004, an evaluation of the mediation program was conducted by the School of Social Work at the University of Michigan, looking at cases that underwent mediation between 1999 and 2001. Agreements were reached in 82%, 83%, and 76%, respectively, of those cases. The most frequently addressed issue was visitation. Other frequently-addressed issues included child placement decisions, service plans, plea language, and parental counseling. Parents and other family members involved in mediation reported that they had been included in case planning and had their viewpoints considered during that process. There were high rates of parental compliance with the terms of the agreement. The great majority of parents and grandparents reported that people at the mediation listened to them, respected them, and took them seriously. Mediation, in general, was rated as a positive experience by most participants.

Whether or not mediation decreased the time to achieve permanency for a child was unclear, due to the differing points of entry in a case when mediation occurred, the small number of cases, and the lack of an experimental control group.<sup>176</sup> Whether or not mediation was a cost-effective approach was also difficult to determine. The evaluation found that the use of volunteer mediators reduced expenses associated with the cost of the mediation program itself. However, the average time from preparation through participation in the mediation sessions (the sessions themselves lasted an average of three hours) was 11 hours. Caseworkers, parents' attorneys, children's attorneys, and DHS attorneys all participated in the process, so the cost of their time needs to be considered in this analysis.

Stakeholders at the study sites were asked about the availability of and use of mediation. Three of the study courts had been part of the original pilot project; only one was still using mediation at the time of the evaluators' court visits, and that was only on an occasional basis. One of the courts lost its funding for mediation in 2004. Ironically, that was the court in which there was a clear consensus that mediation was a very good tool for child protective cases. All stakeholders groups in that county were in agreement that mediation speeded up permanency and case resolution, saved on representation costs,

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<sup>175</sup> Seventy (70) of the 126 respondents to the judicial survey indicated that mediation or alternative dispute resolution programs were available in their courts.

<sup>176</sup> The comparison group of cases referred for mediation was much smaller (11 versus the 106 cases in which mediation occurred). In addition, the group of 11 was not controlled for characteristics, which likely influenced the severity of the child welfare case and could thus impact the time from petition to permanency. For instance, the evaluation stated that the control group did not participate in mediation because they refused, because mediators could not contact potential participants (possibly indicating housing or other economic difficulties which may have impacted the case), because they did not show up for mediation, or because of the presence of current domestic violence.

and gave parents a forum in which to voice their concerns and to help them understand the nature of their case. Enthusiasm and support for mediation in this court was so strong that it was pursuing other funding sources to enable it to continue using mediation on a case-by-case basis. Issues such as the amount of professional time required, as well as case delays pending the mediation, though acknowledged by stakeholders in this court, were thought to be outweighed by the benefits of the mediation process.

At another of the courts visited, mediation was only occasionally used. A jurist from one of the courts expressed that it was not appropriate for that courts' cases, since the families had already participated in collaborative efforts prior to the initiation of the child protective proceeding. In another court, attorneys thought mediation was too time-consuming, especially since they felt they could work out the issues in cases without the involvement of a mediator.

In all locations where mediation had or was being used, those interviewed gave high ratings to the training and professionalism of the mediators. However, in two of the three sites, the overall feeling was that mediation took up too much of the professionals' time.

There is certainly value in providing a forum in which parents feel respected and heard and in which they are involved in the development of their service plans. However, instituting mediation in all courts to accomplish these goals may not be the most effective approach, nor may it be the best use of CIP funds. Improved quality of representation for parents and greater collaboration among the court, parents' attorneys, and the agencies to involve parents in developing service plans could accomplish these goals as well. Requiring professionals who are already overburdened by high caseloads to participate in a lengthy process may only compromise their ability to perform well in other cases.

In courts where high attorney caseloads are not an issue and there is a strong consensus regarding the benefits of the process, it may make sense for SCAO to assist those courts in finding other funding to support mediation programs. However, continued study of the costs and benefits of mediation, compared with the costs and benefits of other, similar initiatives or processes, should be encouraged.

As mentioned previously, it is not easy to evaluate the effectiveness of mediation, even in terms of savings of court time and costs. Cases successfully referred to mediation are likely to be different from cases not referred, and critics may argue that the issues in the case might well have been resolved without mediation. It is difficult to counter that argument. While the "feel good" benefits of mediation are fairly well-documented now as a result of numerous evaluations, it is not clear what types of cases, types of issues, and points in the case appear to benefit most from mediation. Finally, educating jurisdictions about the results of such studies will make it possible for them to make better-informed decisions about whether, and in what situations, mediation can best be used in child protection proceedings.

It may also be useful for the courts to consider how to incorporate aspects of the mediation process into child protective proceedings--particularly providing the opportunity for parents, family members, and other caretakers to be heard and to feel included and respected.

## Absent Parent Protocol

Recommendation #10 of the Original CIP Assessment stated:

In order to diminish adjournments, county practices addressing the identification of and service of process on fathers, especially DHS practices, need to be more closely examined to determine how fathers can be better identified and served early in the court process.

The CIP Advisory Committee identified this as its number one priority for implementation following the assessment, since the failure to identify and/or locate absent fathers was seen as a major reason for the delay in reaching permanency for children.

SCAO selected Children's Charter of the Courts of Michigan to develop the Absent Parent Protocol to help courts and child welfare agencies ensure that absent parents (usually fathers) are given due process in child protective proceedings, beginning with the preliminary hearing. In addition, Children's Charter developed a training module for the Michigan Judicial Institute and DHS to use to train courts and child welfare staff on the use of the protocol. Two train-the-trainer sessions are planned and will take place by the fall of 2005.

Interviews at the courts visited revealed that implementation of this protocol rests initially and primarily with DHS. Kent County, one of the courts visited, was a model for the protocol, since they had implemented a protocol for notifying absent parents in 1989. Many courts implementing the protocol provide DHS with family court records, records from child support (Title IV-D) proceedings, and occasionally private investigators to locate absent parents.

A jurist complained that even though DHS workers were offered access to court records and criminal databases to assist them in locating absent parents, they were not making full use of these resources. A number of other jurists said that, realistically, it is up to them to inquire about and determine whether the agency has made reasonable efforts to locate the absent parent.

One jurist reported typically asking the mother in court about the identity of the father in cases where no father is named on the petition. Because the jurist sometimes obtains this information, it is the jurist's opinion that the agency is not doing enough. Another jurist in another court said that the high turnover rate at DHS and the foster care agencies lead to lack of continuity and persistence in the attempt to locate the absent parent.

Other issues regarding service on absent parents involved who pays for publication (agency or court) and what happens when some process servers do not properly perform their jobs, e.g., serving notice by certified mail rather than in-person when the address is known.

The Absent Parents Protocol should be distributed to jurists, court administrators, and those responsible for supervising process servers. Cross-training that would include both court personnel and agency workers should take place. (See Chapter Three on Timeliness for recommendation regarding Absent Parents Protocol.)

## Foster Care Review Board Program (FCRBP)

The Michigan Foster Care Review Board Program (FCRBP) was established in Michigan law by Public Act 422 of 1984. The creation of a citizen review board was part of the State's efforts to respond to the spirit of the "reasonable efforts" and "permanency planning" goals of the Adoption Assistance and Child Welfare Act of 1980 (PL 96-272). One of the issues raised in the deliberations of PL 96-272 was that the child welfare system had become too isolated from the citizens it serves. Citizen foster care review boards were proposed as one strategy for mitigating that isolation. The thinking was that lay people, with appropriate training and support, could provide a perspective different from that of child welfare professionals and the courts. In addition, citizens with an understanding of child welfare issues could be effective and objective advocates for system changes and improvements. In response to these ideas, Michigan established its Foster Care Review Board Program. The FCRBP provides citizen volunteers the authority to review randomly selected cases and to use the information from those reviews to report concerns regarding the child welfare system to the legislature.

A core question that has framed the efforts of the FCRBP since its inception is whether all parties involved in a case are making reasonable efforts to achieve a safe and permanent home for children in foster care. The following excerpt from the 2003 & 2004 Annual Report of the FCRBP describes the purpose and the process for individual case reviews.

*The central focus of foster care reviews is to assess plans for permanency and care of children in foster care. Is there a clear plan to achieve permanency? Do the parents and all parties to the case understand their responsibilities and are all making reasonable efforts to achieve the plan? Are children safe and their needs being met while in the foster care system?*

*Each of the 30 boards that comprise Michigan's Foster Care Review Board system uses a structured format to gather the information needed to assess those core issues of permanency for children in care. For every review, a Findings and Recommendations Report is done and is shared with all parties involved with the case. The FCRB reports provide case specific feedback to the courts, attorneys, foster care and service providers from the perspective of impartial, well-trained citizen volunteers. However, with each review, the Board also considers whether the case issues contain examples of broader systemic concerns.<sup>177</sup>*

Each of the 30 local boards<sup>178</sup> is staffed by volunteers who attend a two-day orientation training before they begin serving. In addition a two-day conference for all volunteers is conducted annually and each Board has a full day in-service session at least annually.

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<sup>177</sup> Citizens' Foster Care Review Board Program; Annual Report 2003 and 2004, Introduction, page 5

<sup>178</sup> This is according to the SCAO website at <http://www.courts.michigan.gov/scao/services/fcrb/fcrb.htm>. The original assessment report said there were "at least 15" boards. With the passage of a set of bills in 1996, commonly referred to as the Binsfeld legislation, FCRB was expanded to a statewide initiative.

The FCRB is provided with the selected portions of the agency file before each hearing. Caseworkers or supervisors are required to attend, and family members, foster parents, and attorneys are invited. Attorneys generally submit completed questionnaires instead of attending in person, except in one county where the court pays the attorneys to attend. The primary purpose of the FCRB hearing is to ensure that the case plan meets the needs of the child and is fully implemented.

Another purpose of the FCRB is to act as a forum for foster families to appeal agency decisions requesting removal of a foster child from their care. This role was added to the FCRBP responsibilities as a result of the findings of the Binsfeld Commission in 1996 and the subsequent legislation in 1997. Concerns were raised with the Binsfeld Commission by foster parents that children were being moved when they advocated for services for the children in their care. Examples were given where, rather than respond to the issues raised, children were being moved to a new placement. In response, the Binsfeld legislation established an appeal process for foster parents. The FCRBP was given responsibility for the first level of appeal.

A summary of the appeal process follows:

- Within 7 days of a request for an appeal, the FCRB conducts the review. Within 3 days of completing its review, the FCRB provides its finding and recommendations to the court, the foster parents, the parents, and the agency.
- If an appeal is requested, the child is not moved until the review is completed except in case where the proposed move is as a result of an allegation of sexual abuse or non-accidental injury
- If FCRB does not agree with the Agency's decision to move a child (not in the child's best interest) the placement is maintained until the court has an opportunity to review the matter
- If FCRB agrees with the DHS, the review process ends at that point
- If FCRB does not agree with the change of placement, the court is notified and a hearing is conducted after notification by the FCRB. (no sooner than 7 day - no later than 14 days from the FCRB notice)
- Not all new placements can be appealed. The exceptions follow:
  - 1) Court orders the child returned home
  - 2) Change of placement is less than 30 days after the removal from the child's home - or 90 days if the new placement is with a relative
  - 3) Change of placement is as a result of a determination that the child has suffered sexual abuse or non-accidental injury (an appeal under this provision may still be made)

The evaluation team met with local FCRB members at five of the six study sites and observed hearings when possible. FCRB members described their work as including both individual case review and systems level advocacy. FCRBs review a small number

of randomly-selected child protection cases in which children are in foster care<sup>179</sup> and conduct hearings to discuss those cases. Generally, five cases are scheduled on each day, and each hearing usually lasts up to one hour. The reviews of the selected cases continue at six-month intervals until each child has reached permanency.

The FCRB members interviewed often had backgrounds in social services and/or the legal system. FCRB members described spending most of their time reviewing the randomly-selected cases on regularly scheduled monthly hearing days.<sup>180</sup> Although most reviews done by Boards are of cases that are randomly selected, the law does provide for the court or an interested party to request that a case be reviewed. One board reported conducting reviews of high profile cases upon request by the court.

Foster family appeal hearings were reported much less frequently. Some boards did not even report this as one of their purposes, and one of the boards described hearing only one to four such appeals in a year. However, statewide statistics show that during Fiscal Years 2003 and 2004 there were a total of 314 requests for appeals from foster parents. Those requests resulted in 201 board appeal hearings. Of the 201 appeal hearings, boards supported foster parents 85 times (42%) and agencies 116 times (58%).

It was reported that foster parents sometimes hire attorneys to represent them at these hearings. It was also reported that appeal hearings present special challenges because they require the involvement of at least three members who need to be available often with very little advance notice. In addition the findings must be provided to interested parties within 72 hours of the hearing.

Our interviews with judges, Board members and other stakeholders resulted in a variety of perspectives on the FCRBP. While some Board members expressed concern about the lack of feedback from the courts, others felt the reviews provided a unique forum for parents to be heard. Some stakeholders felt the hearings were ineffectual because the hearings are not legal proceedings and because Boards have no legal authority. On the other hand, in one of the jurisdictions, both the prosecutor (who once sat on the board) and the judge found the board to be helpful. A judge in another court who has been involved with the Board also felt very positive about the FCRBP's efforts.

DHS and private agencies described FCRB review hearings as burdensome and time-consuming. In addition to the time spent at the hearing itself, DHS staff indicated they were required to copy the entire contents of files, some of which were voluminous, to send to the board in advance of the hearing. Caseworkers with high caseloads felt that review hearings were yet another demand on their time. They also felt some resentment that DHS was being "audited" by yet another entity.

Overall, in both the survey results and the interviews, jurists reported that the Findings and Recommendations of the FCRBP did not influence their court decisions. While some did state that the review hearings could help caseworkers refine the service plans when they are not clear, none reported that the FCRB review recommendations influenced their own decisions. The statewide jurist survey, in which 97% of the

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<sup>179</sup>Jackson County FCRB reported reviewing 25 cases per year. Kent FCRB reported reviewing 3-5% of the approximately 700 cases per year (i.e., 21-35). Macomb reported reviewing around 60 cases, Marquette 15, and Roscommon 3.

<sup>180</sup> In smaller jurisdictions, boards rotate their monthly hearings among several counties. The board that sits in Jackson, for example, also holds hearings in a number of other, smaller counties. By contrast, in Wayne County there are 10 different boards.

respondents said they had FCRB in their jurisdictions, reported similar results: over two-thirds (67.3%) of the jurists responded that FCRB recommendations are “not very helpful” in making judicial decisions; and nearly three-quarters (72%) said that FCRB recommendations “never” or “rarely” prompt filing of a TPR.<sup>181</sup>

Attorneys and prosecutors had mixed reactions to the FCRB. Assistant prosecutors at one site noted a collateral benefit of reviews: because all parties were at one place at one time, an opportunity presented itself to discuss issues and reach agreements. These “hallway” agreements were reached sometimes after an FCRB review.<sup>182</sup> Most of the attorneys interviewed however, found the reviews to be neither helpful nor unhelpful.

During the focus groups conducted by the evaluators at the study sites, FCRB board members talked about systemic issues they had identified in the course of their reviews. (These issues were often the same issues reported in other stakeholder interviews and focus groups.) One board had noted the non-participation of foster parents at court hearings. They subsequently provided jurists with information regarding the right of foster parents to come to court and to provide input. They later addressed this issue at a meeting with jurists.

The 2001 Annual Report of the FCRBP noted that L-GALs frequently had no contact with children, foster parents, or caseworkers, and that this was a significant barrier to obtaining permanency for children. This finding resulted in a series of meetings that included the Chief Justice of the Supreme Court. One of the outcomes from those meetings was an Administrative Order (dated October 29, 2003) by Michigan’s Supreme Court which specified a procedure for a Board to file a grievance related to an L-GAL’s representation of a child. These meetings also reportedly helped lead to a successful effort to develop and deliver training to L-GALs on their duties under state law in representing children in child protection proceedings. (See Chapter 5, Representation of Parties, for a more extended discussion of L-GAL duties and training).

As members of one board noted, FCRBP volunteers are able to speak more freely about issues and problems in the system than are those employed by the state or by the court system. Also, because the FCRBP has boards working throughout the state, it can offer a statewide perspective on issues that impede the goal of obtaining safety and permanency for children.

In summary, when individual FCRBP case reviews are taken in isolation, the stakeholders interviewed did not always see meaningful value in this work. Concerns were raised as to whether Findings and Recommendations were having an effect on the outcomes of cases and whether the worker time invested in preparing and attending FCRBP reviews was justified. However the FCRB has demonstrated its potential for impacting Michigan’s child welfare system as evidenced by the FCRBP role in the attention given to the responsibilities of L-GALs; by identifying issues such as the high staff turnover rate of private agency foster care workers; and by communicating with

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<sup>181</sup> One factor that may influence the responses by jurists is that, in a high percentage of cases, the Board agrees with the permanency plan – both for temporary and permanent wards. For instance in FY 2003, statewide, the Boards agreed with the permanency plan for temporary wards 77% of the time and 88% of the time for permanent wards.

<sup>182</sup> These prosecutors stated that the agreements occurred before their court began to use mediation in child protection proceedings.

jurists on the issue of foster parents' right to attend hearings. The ability to raise such issues is directly related to the emphasis the FCRBP places on identifying "systems level" issues as cases are reviewed throughout the state.

With its Foster Care Review Program, Michigan has established a strong statewide structure for citizen review of its child welfare system. In our assessment of the program, we believe there are changes in emphasis that, if implemented, could improve the capacity of the program to raise core issues in the child welfare system with Michigan's policymakers.

## **Recommendations regarding CIP Initiatives**

### ***Publications***

Michigan should find a way to ensure that attorneys providing representation in child protection proceedings are aware of the *Guidelines for Achieving Permanency* and further, that the guidelines are affordable and easily available to them. The distribution of the *Guidelines* to attorneys should be done in conjunction with mandatory training (see Chapter Five on Representation for recommendation on mandatory training of attorneys), either at the state or at the court level, depending upon where the training takes place.

### ***Absent Parent Protocol***

The Absent Parent Protocol should be distributed to jurists, court administrators, and those responsible for supervising process servers. Cross-training that would include both court personnel and agency workers should take place. (See Chapter Three on Timeliness for recommendation regarding Absent Parent Protocol.)

### ***Mediation***

In courts where high attorney caseloads are not an issue and there is a strong consensus regarding the benefits of the process, it may make sense for SCAO to assist those courts in finding other funding to support mediation programs. However, continued study of the costs and benefits of mediation, compared with the costs and benefits of other, similar initiatives or processes, should be encouraged.

It may also be useful for the courts to consider how to incorporate aspects of the mediation process--particularly providing the opportunity for parents, family members, and other caretakers to be heard and to feel included and respected-- into child protective proceedings.

### ***Foster Care Review Board***

Consider augmenting the current case reviews done by the Boards with other strategies to assess the well being of children in foster care. Some examples of other assessment tools are case file reviews, periodic surveys, court observations, and interviews or focus groups with foster parents, parents, and youth.

- ❑ Consider reducing the number of individual case reviews done by the Boards if, over time, other activities prove to be more effective means of gathering information to be used to advocate for children in foster care. Regardless of the method used, factors such as the appropriateness and implementation of the service plan, foster parent participation at court hearings, and the quality of attorney representation should continue to be areas of focus for the Boards' efforts.
- ❑ Investigate with the Department of Human Services whether there are ways to reduce the foster care staff time involved in copying and forwarding materials to the FCRBP in preparation for reviews.
- ❑ Place a greater emphasis on:
  - Including FCRB members in meetings between systems (the court, DHS, foster care agencies, attorneys, service providers, etc.) at the local and state level and in training and cross-training opportunities. Invite board members to share what they have learned about problems and barriers to permanency.
  - Communicating with policymakers on the issues the FCRBP sees as barriers to permanency for children. (The FCRBP Annual Reports address these issues in detail and should be used as a basis for discussions.)
- ❑ Meet with or conduct telephone surveys with jurists who preside over child protective proceedings to determine their views of how FCRB Findings and Recommendations and, more broadly, the input of Board members, can best be used to improve the handling of child protection cases.

# SUMMARY OF RECOMMENDATIONS

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This summary contains all of the recommendations from the body of the Reassessment Report and organizes them by subject areas that generally reflect the chapter titles. A number of similar or overlapping recommendations that were made in more than one chapter have been consolidated in this summary to avoid redundancy. Recommendations cited in the Summary of Findings and Recommendations in Chapter 1 are in bold.

## **Court Organization**

1. **An improved method for judicial caseload analysis is needed, specifically for child protective proceedings, to take into account judicial time needed to fulfill the letter and spirit of the law and to implement nationally accepted best practices.** This analysis should also determine typical appropriate lengths of non-contested hearings in child protective proceedings.
2. **SCAO should, in accordance with state law, ensure that judges assigned to the Family Division have expertise both in family law in general and child protection proceedings in particular.** It should do this by:
  - a. Setting requirements or standards concerning the qualifications of judges assigned to the family division;
  - b. Setting standards or guidelines for the duration of assignments to the family division;
  - c. Establishing specialized courts for sparsely populated areas;
  - d. Setting stricter expectations for Family Court Plans;
  - e. Discouraging or barring the practice of designating particular types of hearings either to judges or referees;
  - f. Slowing or ending rotation of judges in and out of the Family Division;

- g. Requiring systematic and consistent methods to identify related family cases.
3. SCAO should develop standards regarding staff support for all jurists, reduce differences in training for referees and judges hearing child protection cases, and provide both with comparable facilities and equipment. SCAO should set standards for support staff for CP cases and should address in such standards the duties qualifications of such staff.
  4. SCAO and counties should increase their investment in automated management information systems (MIS) specifically for CP cases and should speed the development of MIS specifically for CP cases. SCAO should develop statewide data specifications for those systems.
  5. **SCAO should work with DHS to obtain and distribute relevant statistics to the courts in each county and judicial circuit, regarding the timeliness of adoptions and reunifications and barriers to permanency.** (Kent County should be considered as a possible model for this, since it uses data provided to the court by DHS to monitor timeliness and to identify which cases are delayed and at what points the delays occur.
  6. SCAO should establish guidelines for new court facilities for family division cases in general and for child protection cases specifically. Among other things, the standards should call for:
    - a. Child-friendly waiting rooms equipped with toys and other sources of amusement to make it possible to bring children to court and to minimize the unpleasantness of the experience;
    - b. Waiting areas in which caseworkers can catch up on work when waiting for court hearings;
    - c. Rooms for attorneys and clients to meet;
    - d. Especially in urban areas, space for the co-location of certain services that enhance the efficiency of the court process, such as on the spot drug and paternity testing;
    - e. Capacity to videotape court proceedings; and

- f. Interactive video technology for juvenile and child protective cases, allowing testimony from remote locations.

### **Timeliness**

7. **SCAO and the legislature should set a schedule for courts to fully comply with state law regarding reporting of compliance with deadlines in child protection proceedings. The legislature and counties should provide resources to make this possible.**
8. **SCAO should set statewide norms regarding typical lengths of different types of hearings and the specific issues to be addressed and findings to be made for each of these hearings (based on the time it takes to fulfill legal requirements and to engage in best practices).** These should be implemented through the use of guidelines for judges and court staff, court rules, and model forms.
9. SCAO should adopt a rule or administrative order requiring jurists to schedule the next hearing at the bench in the current hearing. A streamlined system should be developed for scheduling hearings when there has been a judge demand.
10. Jurists should tightly control continuances, as prescribed by Michigan's statute. SCAO should require jurists to document reasons for each continuance or adjournment that is granted.
11. Hearing should be scheduled for a time certain. Time-certain scheduling respects the time of the parties and witnesses, helps to ensure their presence at hearings, and improves the quality of litigation.
12. Adequate time should be provided on dockets for contested child protection proceedings to be heard in their entirety, in most cases without adjournments beyond 24 hours.
13. To improve the timeliness of adoption, jurists should conduct more frequent and thorough post-TPR review hearings. All jurists should receive detailed materials and training concerning all phases of the adoption process and in how to conduct an effective post-TPR review hearing.
14. SCAO should study and develop guidelines on whether and how pre-trial hearings can more effectively support adjudications and TPR proceedings.

15. SCAO should develop and require a streamlined system for completing and distributing court orders whether from referees or judges.

### **Quality and Depth of Hearing**

16. SCAO should enter into a contract with DHS to develop quality assurance procedures to ensure that court orders comply with Title IV-E of the Social Security Act, with regard to “contrary to welfare” and “reasonable efforts” findings.
17. Work to clarify state law and court rules regarding the issuing of orders addressing specific placements and services only when such orders are supported by evidence and the parties have prepared and presented evidence in opposition to such orders. Provide training to jurists on this issue.
18. Work to clarify state law and court rules addressing the jurists’ review of case plans and issuing of court orders, to include consideration of the ability and resources of parents to follow the requirements of case plans and court orders. Provide training to jurists on this issue.
19. Establish protocols regarding the timely notification of foster parents, pre-adoptive parents, and relative caretakers of the dates and times of post-dispositional hearings, including following adjournments of previously-scheduled hearings. The protocol should also address the participation of notified persons at the hearings and should specify that the court not make foster parents’ addresses available to parents and their attorneys unless the court finds that to be in the child’s best interests.
20. **Advocate for legislation to eliminate, as a permanency option, any decision to continue a child’s placement indefinitely in foster care. Michigan law should substitute for the term “long-term foster care” the term “another planned permanent living arrangement” and define the latter term to include only long term arrangements in which the goal is to establish and secure a permanent relationship between the child and an adult.** This relationship (such as with an identified permanent foster parent or permanent adult parent figure and mentor).

- should continue long into the child’s adulthood. SCAO should issue a policy rejecting use of the term “long-term foster care” as a synonym for the child eventually aging out of foster care with no specific permanent arrangements.
21. SCAO, in cooperation with DHS and the bar, should help courts provide written and video information for parties and witnesses in abuse and neglect cases.

### **Representation of Parties**

22. Establish statutory requirements and/or court rules setting minimum standards for attorney compensation. Include compensation for case preparation and client meetings outside hearing times.
23. Establish guidelines regarding maximum attorney caseloads.
24. Develop model contracts for courts to use with attorneys providing representation for parents and children. The contracts should specify the attorney's obligations to the client and set out standards for reasonable attorney caseloads.
25. Establish guidelines for the courts regarding oversight and enforcement of statutory requirements regarding L-GAL contact with child prior to hearings.
26. Expand requirement for the filing of affidavits by L-GALs regarding the fulfillment of their responsibilities, including visiting with the child, to parents’ attorneys. Make the provision of this documentation a prerequisite for payment by the court.
27. **Establish a mechanism to ensure accountability of attorneys representing parents and children. This should include the ability to enforce standards or requirements regarding minimum qualifications, mandatory training, and ongoing supervision. In addition, there should be a mechanism for parents and children to raise concerns about the quality of representation they are receiving.**
28. Establish Court rules specifying that subject to advance court approval for exceptions, the same attorney will represent the client (including DHS) at all stages of the court process and that members of the same firm or organization cannot substitute for the individual attorney. Establish strict criteria for exceptions.

29. Revise state statute at MCL 712A.17(5), MCR 5.914(B)(1) regarding representation of DHS to read that the prosecuting attorney or assistant attorney general is to act as the DHS (or its agent's) "attorney" in child abuse and neglect proceedings.
30. **Work collaboratively with state administrators of DHS toward the goal of assigning specialized, highly trained, permanent prosecutors/attorneys general to represent DHS at all stages of child protection cases, beginning with the filing of the petition for removal.** Assist DHS with the development of a model contract for use with prosecutors that would include provisions regarding appearance at all hearings and consulting with the agency prior to making case decisions.

### **Courts and DHS**

31. Direct courts to meet regularly with DHS at a local level to address mutual concerns. Recommend that they include attorneys, service providers, representatives of community organizations, and other interested stakeholders as appropriate, and that different levels of representatives (e.g., supervisors or caseworkers and jurists, as opposed to agency managers and court administrators) from the agencies and the court be included, depending upon the issues to be discussed. Some of the issues in need of continuing discussion are:
  - a. Finding the most efficient way of delivering court orders to DHS/POS agencies and to parents;
  - b. Developing a template for court orders. This could be done at a state level by SCAO for all counties to follow. Variances could be requested to the template to make it responsive to local needs and service systems;
  - c. Implementing mandatory delivery of court reports no later than 5 days before hearings. At the local level, this would mean working out a mechanism for enforcement of this policy, and developing a process of notifying caseworkers when their report is due;

- d. Discussing and standardizing the format and contents of court reports so that caseworkers are clear regarding the expectations of what should be contained in the report;
  - e. Sharing information on service availability in the community. Depending on the locality, this could result in written information provided by DHS to the court;
  - f. Clarifying DHS policies that impact service referrals;
  - g. Identifying barriers to timely adoption and working out solutions to decrease the number of ‘legal orphans’;
  - h. Inviting service providers to meetings with the court and DHS to strengthen communication with existing service systems; and
  - i. Brainstorming ways to bring adequate services, particularly mental health services, to the community.
32. Jurists should treat caseworkers respectfully. This should include calling the caseworker by name, and taking caseworker availability into account when scheduling hearings.
33. Clarify expectations for parents. Jurists and attorneys should assist families by ensuring that parents understand what they need to do to have their children returned home. Reiteration by jurists, caseworkers, and attorneys of what is expected from parents is necessary, since parents are often overwhelmed and confused by the legal process. It is imperative that parents be given copies of court orders to help them understand what is expected of them.
34. Monitor service plans. The courts should examine service plans to ascertain that service plans are tailored to families’ needs. Service plans should prioritize services for parents and jurists should monitor plans to ensure that they are addressing areas that directly impact the child’s safety .
35. Support concurrent planning. While the court cannot by itself streamline foster care licensing requirements or increase the level of care payments for foster and adoptive parents, the court can encourage concurrent planning. The identification of potential options for a child early in the case can speed up the adoption process for children who need permanency.

### **Publications/Benchbooks**

36. Michigan should find a way to ensure that attorneys providing representation in child protection proceedings are aware of *Guidelines for Achieving Permanency in Child Protection Proceedings* and further, that the guidelines are affordable and easily available to them. The distribution of *Guidelines* to attorneys should be done in conjunction with mandatory training, either at the state or at the court level, depending upon where the training takes place.

### **Absent Parents Protocol**

37. The Absent Parent Protocol should be mandatory, in an amended form that includes search of criminal justice and hospital systems. The Protocol should be distributed to jurists, court administrators, and those responsible for supervising process servers. Cross-training on the Protocol should include both court personnel and agency workers. Court rules and court forms should require that diligent searches to notify absent parents begin by the first court hearing.

### **Mediation**

38. In courts where high attorney caseloads are not an issue and there is a strong consensus regarding the benefits of the process, it may make sense for SCAO to assist those courts in finding other funding to support mediation programs. Continued study of the costs and benefits of mediation, compared with the costs and benefits of other, similar initiatives or processes, should be encouraged.
39. Courts should consider how to incorporate positive aspects of the mediation process—particularly providing the opportunity for parents, family members, and other caretakers to be heard and to feel included and respected—into child protective proceedings.

### **Foster Care Review Board**

40. Consider reducing the number of individual case reviews done by the Boards if, over time, other activities prove to be more effective means of gathering information to be used to advocate for children in foster care. Regardless of the method used, factors such as the appropriateness and implementation of the service plan, foster parent participation at court hearings, and the quality of

attorney representation should continue to be areas of focus for the Boards' efforts.

41. Investigate with the Department of Human Services whether there are ways to reduce the foster care staff time involved in copying and forwarding materials to the FCRBP in preparation for reviews.
42. Place a greater emphasis on:
  - a. Including FCRB members in meetings between systems (the court, DHS, foster care agencies, attorneys, service providers, etc.) at the local and state level and in training and cross-training opportunities. Invite board members to share what they have learned about problems and barriers to permanency.
  - b. Communicating with policymakers on the issues the FCRBP sees as barriers to permanency for children. (The FCRBP Annual Reports address these issues in detail and should be used as a basis for discussions.)
43. Meet with or conduct telephone surveys with jurists who preside over child protective proceedings to determine their views of how FCRB Findings and Recommendations and, more broadly, the input of Board members, can best be used to improve the handling of child protection cases.

### **Training**

44. SCAO should provide training and demonstrations of well-conducted hearings of certain types (e.g., through videos), such as preliminary hearings, disposition hearings, review hearings, permanency hearings, and post-TPR review hearings.
45. Ensure that all jurists receive detailed materials and training concerning all phases of the adoption process (e.g., adoption recruitment, placement, subsidies, matching adoptive parents with children) and on how to conduct an effective post-TPR review hearing. If comprehensive training is not available, consider the model of a specialized docket limited to post-TPR reviews.
- 46. Establish statutory requirements and/or court rules specifying mandatory training for attorneys providing representation for children and parents.**
47. Work collaboratively with state administrators of DHS, Prosecuting Attorneys Association of Michigan (PAAM), the State Attorney General, the state bar association, and with state-based law schools to develop a training curriculum on

- child welfare law and child protection proceedings for attorneys appearing on behalf of DHS.
48. Require all attorneys who represent DHS in these proceedings to participated in a minimum two-day training that should include the ABA standards, as well as the Guidelines for Achieving Permanency published by the Children’s Charter of Michigan
  49. Increase cross training opportunities on mutual topics such as Title IV-E eligibility.
  50. Offer training conducted by prosecutors and jurists for DHS/POS agency staff, particularly regarding writing petitions, locating absent parents, investigation of case facts in preparation for court, and testifying in court.

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# APPENDIX A

## ORIGINAL CIP ASSESSMENT SUMMARY OF RECOMMENDATIONS

### RECOMMENDATION 1.

The Michigan Supreme Court and SCAO should ensure that a direct calendaring system of case assignment in child abuse and neglect cases be established and maintained in all counties.

### RECOMMENDATION 2.

The Michigan Judicial Institute and SCAO should develop and implement training forejudges and referees at the time they are elected, appointed, or assigned to the bench, and periodically thereafter. This training should be mandatory for all judges and referees, as well as court administrators and other court personnel and should focus on permanency planning issues.

### RECOMMENDATION 3.

To ensure the timely and expeditious implementation of permanency plans, all courts handling abuse and neglect cases should have written policy and procedures governing timely hearings and decision making that mirrors Michigan's statutory mandates.

### RECOMMENDATION 4.

Tracking systems should be implemented in all courts in which appropriate court personnel are designated to track the amount of time it takes a case to proceed through various stages of child neglect and abuse proceedings, identify the reasons for delay, and move court personnel and parties to a more expeditious handling of a case.

### RECOMMENDATION 5.

The recommendations of the Michigan Probate Judges Association are incorporated herein and should be adopted. "The Michigan Probate Judges Association believes that reforms should be put in place which would result in closer monitoring of compliance with time limits and that steps can be taken to expedite termination cases that are appealed ..... The Association "support[s] the following actions being taken to reduce delays in receiving appeal opinions in termination of parental rights cases:

- I. Restructure Court of Appeals reporting system to assure that:
  - a. The Probate Court is notified when time limits on appeals of termination of parental rights cases are not met.
  - b. The Supreme Court receives necessary reports to assure adherence to time limits by all courts.
2. Revise the Court Rules to require that the local Probate Court and interested parties receive:
  - a. Affidavits of service by court reporters for filing transcripts.
  - b. Correspondence between attorneys and the Court of Appeals of delays in time limits and filing of briefs.
3. The Supreme Court review how expeditiously termination cases should be heard and review all time limits in the Court Rules on appeals as to their reasonableness as well as the strength of the existing sanctions and, if appropriate, make necessary revisions of the Court Rules.
4. Michigan Probate Courts should develop methods to:

- a. Place a higher priority on the completion of transcripts and expeditiously send the lower court record to the Court of Appeals.
- b. Improve the appointment of counsel process to assure that attorneys comply with the time limits in the appeals process

**RECOMMENDATION 6.**

The SCAO should ensure that as statewide court reorganization is implemented, court procedures and practices that are instrumental in diminishing delays in child abuse and neglect cases are maintained

**RECOMMENDATION 7.**

The SCAO should work with those minority of probate courts that are not scheduling individual cases for a date and time certain. The SCAO should issue a reminder to all probate courts of the applicability of MCR 8.116 "Sessions of the Court" to the handling of child abuse and neglect cases .

**RECOMMENDATION 8.**

Pretrial conferences should occur in cases in which the parties anticipate a contest so that issues for litigation can be clarified and appropriate time set aside for the trial of the case.

**RECOMMENDATION 9.**

The SCAO should ensure that the judiciary and the bar are aware that case adjournments should be granted in child abuse and neglect cases in only the most exceptional of circumstances

**RECOMMENDATION 10.**

In order to diminish adjournments, county practices addressing the identification of and service of process on fathers, especially FIA practices, need to be more closely examined to determine how fathers can be better identified and served early in the court process.

**RECOMMENDATION 11.**

Policies and practices should be implemented that guarantee that attorneys for the parties (FIA, child, and parent) are appointed before the initial removal and non-removal preliminary Hearings.

**RECOMMENDATION 12.**

The SCAO should develop a consistent method of file management, including an automated record system, for use by county courts.

**RECOMMENDATION 13.**

The SCAO should work closely with each county court to evaluate whether each court is utilizing its existing computer technology as effectively as possible for the tracking of cases.

**RECOMMENDATION 14.**

SCAO policy should be implemented to require that each county court produce a uniform quarterly report for submission to the SCAO, the bar and public detailing case tracking information.

**RECOMMENDATION 15.**

Sufficient funding should be appropriated for the purchase and installment of computer software and equipment necessary to upgrade or make uniform existing county case tracking Systems.

**RECOMMENDATION 16.**

The SCAO should train judges, local administrators, and other appropriate court personnel on the implementation of an automated tracking system to ensure that a high level of expertise in data management is maintained. Tracking systems should be utilized so that appropriate court personnel or a permanency planning committee are designated to monitor caseflow.

RECOMMENDATION 17.

All courts presiding over child abuse and neglect cases should implement procedures that guarantee that each child and parent are appointed trained and skilled attorneys in advance of initial preliminary hearings and who will continue representation to each child and parent until a plan of permanency is implemented (e.g., adoption, reunification, permanent custodial placement). Attorneys for children and parents should be recruited and selected in part for their skill and knowledge in law and fields relevant to child welfare.

RECOMMENDATION 18.

The Michigan Bar and the SCAO should work with courts to develop models for use when courts contract with attorneys to provide legal services to parents and children in abuse and neglect cases. The contracts should incorporate provisions addressing the attorney's obligations to the client and standards for reasonable attorney caseloads taking into consideration the need for out-of-court case preparation time.

RECOMMENDATION 19.

Recommendation 47 of the Binsfeld's Children's Commission should be implemented. This recommendation provides: "Juvenile Courts in each county shall be assigned specialized, highly trained, permanent prosecutors/attorneys general to represent FIA at all stages of abuse and neglect cases, beginning with the filing of the petition to remove the children from the home. The Family Independence Agency will expand the pilot project that is providing funds to prosecutors to increase their ability to represent the FIA except where a conflict of interest arises.

RECOMMENDATION 20.

The FIA or its agent should be represented by reliable civil counsel at all stages of child abuse and neglect proceedings. Michigan's statute and court rule addressing attorney services for the FIA or its agent refers to a prosecuting attorney serving as a "legal consultant" to the FIA. MCL 712A. 17(5), MCR 5.914(B)(1). In order to ensure that the FIA is assured of adequate representation in child abuse and neglect proceedings, the above-cited statute and court rule should be modified to clarify that the prosecuting attorney or assistant attorney general is to act as the FIA or its agent's "attorney" in child abuse and neglect proceedings.

RECOMMENDATION 21.

The practice in some counties in which FIA workers are responsible for filing the initial abuse and neglect petition should be modified to delegate this responsibility to the FIA attorney.

RECOMMENDATION 22.

The recommendation by the Michigan Children's Ombudsman that MCL 712A. 17c(7), the statutory provision addressing the case preparation obligations of the child's attorney, should not only be "better enforced," but "should also be amended to specifically require that the child(ren)'s attorney meet with the child(ren), at least once before each proceeding or hearing" should be adopted.

RECOMMENDATION 23.

Public Act 204 that "requires the Ombudsman to investigate and report alleged infractions about attorneys who engage in adoption" should be amended to "...require the Ombudsman to report violations of MCL 712A. 17c(7) to the Attorney Grievance Commission.

RECOMMENDATION 24.

Prior to appointment, all attorneys who represent the FIA, children, and parents in abuse and neglect cases should be required to undergo mandatory training on topics relevant to advocacy in the juvenile or family court forum and provide information to the court on their experience level.

RECOMMENDATION 25.

The recommendations as outlined in the Final Report of the State Bar of Michigan Children's Task Force (September 21, 1995) should be implemented, including that:

The State Bar of Michigan adopt [the Final Report's] Guidelines for Advocates for Children and distribute them to bench, bar and other interested persons throughout Michigan;

The Guidelines for Advocates for Children be implemented by the organized bar, courts, and individual attorneys representing children in Michigan courts for the improvement of such representation; and

Law schools, Michigan Judicial Institute, Institute for Continuing Legal Education, other lawyer training units, and the Michigan CASA Association use [the] Guidelines for Advocates for Children as a basis for training attorneys and others to advocate for children.

RECOMMENDATION 26.

The court, attorneys for children, and the organized bar should consider establishing mentorship programs in which more experienced attorneys provide guidance to less experienced attorneys on child advocacy practice.

RECOMMENDATION 27.

Recommendation 50 of the Binsfeld Commission Report should be adopted and expanded upon. The Recommendation states: "[The] FIA should work with Prosecuting Attorneys Association of Michigan (PAAM) to ensure Michigan's public and private law schools have child welfare/protection/juvenile law curricula." Added to it should be the statement that other Michigan child and parent legal advocacy groups should also participate in curricula development to ensure that subjects relevant to the representation of parents and children are covered.

Attorneys for children must also be knowledgeable of Michigan's statutory requirements for children's attorneys, the State Bar of Michigan Children's Task Force's "Guidelines For Advocates For Children in Michigan Courts," and the American Bar Association's "Standards of Practice For Lawyers Who Represent Children in Abuse and Neglect Cases," approved by the American Bar Association's House of Delegates on February 5, 1996.

RECOMMENDATION 28.

Attorneys representing children and parents should receive compensation that is reasonable and commensurate with the amount and complexity of work involved in child abuse and neglect Cases.

RECOMMENDATION 29.

Compensation systems should not be utilized that provide disincentives to fulfilling responsibilities mandated by statutes, codes of professional responsibility and other standards (e.g., annual, "no case cap" contracts).

RECOMMENDATION 30.

Funding should be provided for the establishment of Court Appointed Special Advocate (CASA) programs in all counties in the state.

RECOMMENDATION 31.

New programs should work closely with already existing CASA programs in the state to establish policy and procedure related to the recruitment, training, screening and monitoring of CASA volunteers.

RECOMMENDATION 32.

In order for hearings to be effective, the SCAO should develop caseload standards for the judiciary modeled after the formula developed in the Kent County study.

RECOMMENDATION 33.

The judiciary's staffing resources should be carefully evaluated as a unified family court is established in Michigan .

RECOMMENDATION 34.

The impact on caseload of recent changes in delinquency laws needs to be examined.

RECOMMENDATION 35.

Judges and referees handling abuse and neglect cases should familiarize themselves with the Resource Guidelines' rationale supporting lengthier court proceedings in routine or non-contested cases.

**RECOMMENDATION 36.**

Courts should require the assigned caseworker to submit a comprehensive report on the progress being made toward the implementation of the case permanency plan. A statute or court rule should be enacted which mandates that these reports be submitted to the court, the parties' attorneys, and unrepresented parties at least seven days prior to the scheduled hearing. Courts should monitor the submission of reports and impose appropriate sanctions for any failure to submit a report in a timely manner.

**RECOMMENDATION 37.**

Judges and referees handling abuse and neglect cases should ensure that assigned caseworkers are present for all court proceedings and encourage and mandate the attendance of age-appropriate children.

**RECOMMENDATION 38.**

In addition to the training recommended previously in this report, judges and referees should receive specific training on the Resource Guidelines, in particular the nature and content of preliminary hearings and permanency planning reviews.

**RECOMMENDATION 39.**

In order to ensure that the removal of children from their families is the most appropriate plan, courts must issue orders as to whether the FIA or its agents have made or should make "reasonable efforts" to prevent removal through the provision of adequate family preservation services at all preliminary removal hearings.

**RECOMMENDATION 40.**

Michigan's system for funding foster care and other services to children and families should be evaluated to modify those aspects of the system that create financial disincentives to making negative findings of reasonable efforts.

**RECOMMENDATION 41.**

The following recommendations of the Children's Task Force of the State Bar of Michigan should be adopted:

Implement a flexible funding mechanism that allows the court services to follow the family;

Overhaul existing funding statutes so that they are driven by the best interests of the child and not fiscal implications, so that issues such as the following are addressed:

1. Amend existing law so that the reasonable efforts determination required by federal mandate does not carry a financial penalty to the county when the court finds that reasonable efforts have not been made;
2. Amend existing law so that treatment plans and placement decisions are independent of considerations regarding funding sources and the parent's economic circumstances . . . . .

**RECOMMENDATION 42.**

Courts should issue detailed written findings of fact and court orders that clearly state the responsibilities of each party and time frames for satisfying those responsibilities .

**RECOMMENDATION 43.**

All Michigan courts should work with their local FIA office to determine whether adoption is being considered early enough as a permanency planning option in all appropriate cases. This issue may be especially relevant in urban courts .

RECOMMENDATION 44.

Sufficient funds should be appropriated by the Legislature to ensure the establishment of appropriate preventive and reunification services, as well as placement alternatives that ensure a child's safety and at the same time allow for the timely implementation of permanency plans of family reunification, permanent custody, adoption, or independent living.

RECOMMENDATION 45.

Consideration should be given to the establishment of Foster Care Review Boards in those jurisdictions that currently do not have them.

RECOMMENDATION 46.

The SCAO should work with local FCRI3 representatives to evaluate how the Boards' recommendations can be more effectively utilized by courts (e.g., scheduling of court review if the FCRB disagrees with agency's permanency plan; attendance of FCRB representatives at hearings to present case reports). Consideration should also be given to how attorneys for the parties can be more actively involved at FCRB hearings.

RECOMMENDATION 47.

A state statutory provision or court rule should be enacted that requires all judges and referees to inquire fully as to whether or not an Indian child is the subject of a neglect and abuse petition at the preliminary hearing in all cases. The SCAO should work with local courts to insure that their preliminary hearing form orders include language on the court's inquiry about the child's Indian Heritage.

RECOMMENDATION 48.

The Court Improvement Project Advisory Board, local courts, and the SCAO should investigate, establish, and evaluate demonstration alternative dispute resolution (ADR) programs in child abuse and neglect cases in selected sites in accordance with the Resource Guidelines.

RECOMMENDATION 49.

The SCAO should identify Michigan courts that may be using the services of mediators in child abuse and neglect cases and examine the effectiveness of those programs in resolving disputes in the best interest of the child.

RECOMMENDATION 50.

As unified family courts are established within Michigan, consideration should also be given to expanding already existing domestic relations mediation programs to the realm of abuse and neglect cases taking into account the Resource Guidelines' admonition that mediators be knowledgeable on all aspects of child welfare.

RECOMMENDATION 51.

The Kent County model project on family group conferences should be evaluated for effectiveness and possible replication in other Michigan counties.

RECOMMENDATION 52.

Courts should have the authority to order permanent guardianship, power of attorney or "stand-by" guardianship, or open adoption as an alternative permanency plan.

RECOMMENDATION 53.

The recommendations of the State Bar of Michigan Children's Task Force on permanent guardianship should be adopted.

RECOMMENDATION 54.

In order to increase permanency planning options for children, consideration should also be given to enacting legislation that permits "open" adoption, which in appropriate cases, allows a child and his or her biological family to maintain contact after an adoption decree is issued.

RECOMMENDATION 55.

The recommendations of the State Bar of Michigan Children's Task Force on expanding the statutory definition of "relative" for purposes of child placement should be considered for implementation." The Recommendations incorporated herein state:

The Task Force recommends that the Michigan Legislature expand MCL 712A.18(1); MSA 27.3178(598.18(1)) to allow for placement of children in 130 conformity to Act 116 of the Child Care Licensing and Regulation Act, MCL 722.115a; MSA 25.358(15).

It is further recommended that the Michigan Legislature clarify the definition of suitable relative placements in child protective proceedings to allow the court the discretion to define "relatives" within the context of the family relationship and community norms. Act 116 of the Child Care Licensing & Regulation Act should be amended to allow for this expanded definition.

RECOMMENDATION 56. Kinship caregivers should receive adequate financial subsidies and appropriate services that will encourage kinship care for children who otherwise would be placed in the public foster care system .

RECOMMENDATION 57. In light of creation of the family division of the circuit court, and because it is in the best interest of children, sufficient funding should be appropriated by the legislature so that all Michigan courthouse facilities being used for child abuse and neglect proceedings come into compliance with the Resource Guidelines. In all facilities handling child abuse and neglect cases, the following need to be created or, if currently available, maintained:

adequate waiting and play rooms that are "child-friendly" and designated for children;

courtrooms that are separate and apart from courtrooms used for criminal and other civil cases, including delinquency cases;

adequate courtrooms so that all court participants, including judicial officers, court staff, attorneys for the parties, can be comfortably seated; attorneys should have access to adequate counsel table space to allow for consultation with clients and for the taking of notes and reviewing of files and other appropriate materials;

Adequate and private conference rooms (in the vicinity of the juvenile courtrooms) that enable attorneys to consult with their clients, including child clients;

Consistent policies about confidentiality of files and the public's access to child abuse and neglect hearings.

# APPENDIX B

## Michigan CIP Reassessment Statewide Jurist Survey: Courts Completing Jurist Survey; Number Included in Analysis

<i>Circuit Court #</i>	<i>County</i>	<i># completing survey</i>	<i># used in analysis</i>
1	Hillsdale	1	1
2	Berrien	4	4
3	Wayne	11	8
4	Jackson	4	3
5	Barry	1	1
6	Oakland	12	12
7	Genesee	5	4
8	Montcalm	1	1
9	Kalamazoo	6	6
10	Saginaw	1	1
11	Mackinac, Luce	1	1
14	Muskegon	5	5
16	Macomb	8	6
17	Kent	10	10
18	Bay	1	1
19	Manistee, Benzie	5	4
20	Ottawa	1	1
21	Isabella	1	1
22	Washtenaw	4	2
23	Alcona, Arenac, Iosco, Oscoda	7	6
24	Sanilac	1	1
25	Marquette	1	1
27	Oceana	2	2
28	Missaukee	2	2
29	Gratiot	1	1
30	Ingham	7	7
31	St. Clair	2	2
32	Gogebic, Ontonagon	2	2
35	Shiawassee	1	1
36	Van Buren	1	1
37	Calhoun	6	6
38	Monroe	3	2
39	Lenawee	1	1
40	Lapeer	1	1
42	Midland	1	1
45	St. Joseph	1	1
46	Crawford, Otsego	2	2
47	Delta	2	2
48	Allegan	3	3
49	Mecosta, Osceola	1	1

50	Chippewa	2	2
51	Mason	1	1
52	Huron	1	1
53	Cheboygan	1	1
54	Tuscola	1	1
56	Eaton	1	1
	TOTALS	137	125

# APPENDIX C

## Michigan CASA Profile 2004

County or Program	Staff	Vols. In 2004	Children Served Presently	Hours Given by Volunteers in 2004	Year Program Began Assigning Vol.	Staff Positions	Funding Sources
<b>Allegan</b>	Chris West	16	23	861	1999	1 FTE	VOCA Events
<b>Barry/Eaton</b>	Linda Glover Dorian Hawkins	45	113	1890	1992	2 FTE	United Way Individuals Strong Families Child. Events Child Care Fund
<b>Cass</b>	Pam Hemenway Lori Ruff	52	19	2190	1997	1.75 FTE	Child Care Fund Direct Mail Strong Families United Way Nat. CASA
<b>Genesee (Redevelopment)</b>	Pam Morrison Connie Gertz	21	31	1235	2001	1.5 FTE	Mott Foundation Nat. CASA
<b>Grand Traverse County</b>	Linda Fawcett	8	5		2004 (restart)	Court staff time	Child Care Fund Court
<b>Ingham</b>	Angela Smith Tina Petersen	74	105	8280	1997	2 FTE	50% VOCA United Way City of Lansing Grants 2 major Events

<b>County or Program</b>	<b>Staff</b>	<b>Vols. In 2004</b>	<b>Children Served Presently</b>	<b>Hours Given by Volunteers in 2004</b>	<b>Year Program Began Assigning Vol.</b>	<b>Staff Positions</b>	<b>Funding Sources</b>
<b>Kalamazoo</b>	Janet Brode	58	88	1367	1980	1 FTE +Clerical support	County Funded
<b>Kent</b>	Julie Mauer Patty Sabin	52	116	2210	1992	1.5 FTE	Court shifting to Nonprofit in 2005
<b>Menominee (New Program)</b>	Lori Stubenvoll	5	18	225	2004	1 FTE	Nat CASA Events Grants
<b>Monroe</b>	Dot Stacy	22	65	2030	1997	1 FTE	Events Grants
<b>Montcalm (New Program)</b>	Erin Snook	4	7	30	2004	.5 FTE	Child Care Fund United Way Strong Families Foundations
<b>Muskegon</b>	Jeanie Colella Kyleen Gee	51	86	3912	1992	2 FTE Clerical Support	United Way VOCA County Events
<b>(Oakland) Janice Morgenroth Volunteer Advocates for Children</b>	Chuck Ludwig	31	72	2658	2002	1 FTE	Funded thru a variety of sources from the CAN Council

<b>County or Program</b>	<b>Staff</b>	<b>Vols. In 2004</b>	<b>Children Served Presently</b>	<b>Hours Given by Volunteers in 2004</b>	<b>Year Program Began Assigning Vol.</b>	<b>Staff Positions</b>	<b>Funding Sources</b>
<b>André Bosse Center CASA Oceana Newaygo</b>	Kolleen Lenon Diana Hanna	Oceana 18 Newaygo 21	Oceana 27 Newaygo 12	Oceana 1077 Newaygo 662	Oceana 2000 Newaygo 2003		Foundations United Way Events Individuals Court (small)
<b>Ogemaw</b>	Jennifer Izvorski	10	11	595	2000	1 FTE	Court/Child Care Fund United Way Events Friends of CASA
<b>Ottawa</b>	Gina Merritt	18	54	610	1996	.5 FTE	County United Way Events
<b>Saginaw</b>	Jennifer Mercer Randy Roberts	44	131	4379	2001	2 FTE	Child Care Fund United Way Grants Events UAW
<b>Washtenaw</b>	Ava Adler	14	35	935	1997	1 FTE	Court/Child Care Fund
<b>Wayne</b>	Roland Smith	69	136	9580	1997	1 FTE ED 2 FTE Vol. Coor	Skillman Foundation Child Care Fund Nat. CASA