

Performance Measures for Courts: The Next Step in Foster Care Reform

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The Need for Performance Measures

Working with the public child welfare system, it is the responsibility of juvenile and family courts to ensure right and timely placements of foster children with loving, permanent families. With more than a half-million children in foster care, this is a daunting task. The legal issues are complex, the caseloads enormous, and the resources limited. The interests of children in foster care can also at times be compromised by high turnover and lack of training of judges and court administrators, by a lack of judicial understanding and urgency regarding the interests of foster children, and by intransigence in adhering to the goal of family reunification, even when there is no real family to preserve. Despite the good intentions and diligent efforts of many family court judges and administrators, courts are often not living up to their responsibility to ensure foster children's safety, permanence, and well-being. Performance measures for juvenile and family courts can help provide both the understanding and the accountability necessary to promote court improvement.

Since 1997, the Children's Bureau of the Department of Health and Human Services (HHS) has collected nationwide data on children living in foster care through its Adoption and Foster Care Analysis and Reporting System (AFCARS). According to FY02 data, 532,000 children resided in foster care on September 30, 2002. Of these youth, 126,000 were waiting to be adopted. Additional AFCARS data paint a bleak picture for these children who have been victims of abuse or neglect. What is a system meant to provide temporary care has evolved into one in which hundreds of thousands of children languish for

two, three, and even four or more years. The FY02 data reflect that:

- Of the children in foster care on September 30, 2002, 87,964 had been there for five years or more.
- Of the children available for adoption in FY02, i.e., those whose parents' rights had been terminated, 25 percent – almost 31,000 – had resided there continuously for five years or more.
- 19,509 children “aged out” of the system in FY02, never finding a permanent home.
- Of the children exiting foster care in FY02, 24,434 had resided in state care for 60 months or more, while 28,302 had been there between three and four years.

Juvenile and family courts make daily decisions about whether a child is safe where the child resides; the necessary services to facilitate family reunification; and how long to allow caregivers to resolve parenting shortcomings before determining that the best interests of a child dictate another permanent setting. Courts should seize these opportunities to improve outcomes for foster children. Because the public has a stake in the welfare of all citizens, particularly those without the benefit of stable home environments, it has the right, and the need, to know how well court systems are performing their duties.

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Performance measures are fundamental to promoting and spearheading court improvement. In the first instance, they are essential to enabling judges to identify the barriers facing their courts so as to design effective system changes. They serve also the valuable purpose of informing and empowering policymakers, the media, communities, and families to hold family courts accountable for their performance in serving children in foster care. It is a basic management principle that “one can only expect what one inspects.” The fair exercise of accountability improves everyone’s performance, including family court judges and administrators.

Historically, neither courts nor child welfare systems were held accountable for how well they served children. Beginning in the 1990s, Congress and state legislatures saw fit to evaluate the effectiveness of state child welfare systems, as a way to promote accountability and improve performance. The Children’s Bureau instituted the AFCARS in the mid-1990s. Then, Congress passed, and President Clinton signed, the Adoption and Safe Families Act (ASFA) in 1997, which introduced deadlines for permanency decisions and established financial incentives for states based on the number of finalized adoptions in a given year. States enacted legislation consistent with ASFA. The Children’s Bureau published the ASFA-mandated national child welfare outcomes. More recently, HHS has begun to evaluate state child welfare systems through Child and Family Service Reviews (CFSR).

Common to all of the above are performance measures. For example, AFCARS requires states to collect data on the average length of stay in foster care, while ASFA mandates there be a permanency hearing within 12 months of entry into care. The last decade has seen positive changes within the child welfare system. Adoptions have increased since ASFA’s enactment, rising from 31,000 in 1997, to an average of 51,000 per year from 2000 to 2003. The first series of CFSRs have identified shortcomings in state child welfare systems. While it is too soon to evaluate the effectiveness of the state Program Improvement Plans (PIP), required to address noted weaknesses, the CFSRs have provided guidance to states on priorities for system changes.

Performance measures have also shed light on the reality that the challenges facing foster care reform require real collaboration between, among others, foster care agencies and the judiciary. Neither system has the capacity to solve, on its own, all problems. For example, the CFSR measures pertaining to time in care until adoption and time in care until reunification reflect on the performance of both the public foster care system and the courts.

Performance measures for juvenile and family courts is an idea whose time has come. Thanks to ASFA and AFCARS, performance measures have proven effective in promoting better performance by state foster care agencies. Performance measures are as important to court improvement, as they have been to child welfare system improvements. In its important May 2004 report, *Fostering the Future: Safety, Permanence and Well-Being for Children in Foster Care*, the Pew Commission on Children in Foster Care identified court performance as one of two key factors that unnecessarily delay the time that children live in state care. As was and continues to be the case for child welfare agencies, effective reform begins with attention to current practice. Performance measures enable courts to determine objectively their strengths and weaknesses, and provide the public information with which to ascertain how well their judiciaries are meeting the needs of children in foster care.

Court performance measures will:

- Raise public awareness of how well courts are doing in finding right and timely permanency for children in foster care.
- Inform policymakers, legislators, and the judiciary about needed reforms.
- Guide judges and court systems regarding key performance indicators.
- Guide judges and court systems regarding priorities for system changes.
- Provide data that judges and courts can use to demonstrate the effectiveness of system changes.

Models for Court Improvement

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A significant amount of experience has been obtained since the early 1990s about effective models for court improvement in providing right and timely permanence for children in foster care through the Model Courts, managed by the National Council for Juvenile and Family Court Judges (NCJFCJ), and the Court Improvement Program (CIP), managed by the Children's Bureau. NCJFCJ coordinates 25 Model Courts in 21 states and the District of Columbia. Every state, as well as Puerto Rico and the District of Columbia, has at least one CIP.

The Model Courts and CIPs have enabled courts to test reform efforts. Key to models for change is an in-depth analysis of how well systems and processes are already serving children. Participating courts have allocated resources for thorough self-studies in order to identify factors affecting the time children spend in state care. According to these studies, effective strategies for court improvement require:

- Judicial leadership
- Efficient case management
- Information systems
- Collaboration with the child welfare system and other stakeholders.

Following is a discussion of these strategies, with examples of reform efforts that have employed them.

Judicial Leadership: Successful court reform requires leadership from the top. Consider the Model Courts. These projects structure themselves around a Lead Judge who coordinates with a NCJFCJ Model Court liaison. It is the Lead Judges who facilitate, in large part, the annual National Council Model Court "all-sites" conference, at which judicial leaders from across the country learn from one another's experiences.

Model Courts that face challenges to reform implementation have cited judicial leadership as a factor. The Charlotte, North Carolina Model Court noted recently that transitions in judicial leadership were a recurring challenge. Appointed in January 2003, the current Charlotte Model Court Chief

Judge, the Honorable Louis A. Trosch, Jr., is now leading the court forward on previously established initiatives, such as evaluations of judicial workload and court performance. Judge Joseph Lauria, Administrative Judge of the New York City Family Court and Model Court Lead Judge, has embraced the need for change. Under his direction, the New York City Model Court formalized training in 2003, to address a wide variety of issues, including the "Babies Can't Wait" initiative. As part of the initiative, county specialists trained judges and court personnel on the medical and psychological needs of infants. That same year, Judge Lauria unrolled mediation training, borrowing from the experiences of the Buffalo, New York Model Court.

CIP initiatives, too, have paved the way for successful reform, for example, in the states of Virginia and Oregon. Virginia's CIP uses Best Practice courts to promote statewide reform, while the Oregon Juvenile CIP has instituted a judicial mentorship program. After beginning in 2002 with one court, the Alexandria Model Court, Virginia's initiative has expanded to 25 courts, as of November 2004. Judicial leadership has been key to its success. The CIP uses Best Practice Courts judges to grow the program. The CIP hosts meetings attended by Best Practice Courts judges, along with other courts interested in learning more about the program. Two 2003 trainings focused on: (1) how to find permanency for older adolescents; and (2) ways to improve and expedite the courts' consideration of child abuse, neglect, and foster care cases.

Recognizing the central role of judges for successful court reform, the Oregon Juvenile CIP has begun a judge mentorship program, where a champion judge supports new judges or those who infrequently hear child abuse and neglect cases. While the CIP has not yet formally evaluated the mentorship program, which is in its nascent stages, participant feedback has been encouraging.

Outside the context of the Model Court and Court Improvement Project systems, New York's Chief Judge Judith Kaye has orchestrated the "Adopt Now" initiative statewide, which focuses urgency on the job of making adoptive placements for the children who are free to be adopted. The initiative requires the collaboration of local child

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protection services, the state Office of Children and Family Services, and family courts across the state. As a result of these efforts, New York State has decreased by 38 percent the number of children in foster care waiting to be adopted, over the past ten years. In the past two years, this population has been reduced by 17 percent. According to its Administration for Children's Services, New York City alone finalized, 299 adoptions in 2004, 1,618 in 2003. There are currently 4,970 children eligible for adoption in the state of New York.

Case Management: Efficient case management is essential to avoiding protracted review processes and ensuring foster children right and timely placements. When a court is self-disciplined in its case management, child welfare workers, attorneys, court-appointed special advocates, and court personnel understand expectations and tend to be more cooperative in performing their responsibilities. The failure to establish case management protocols, or to adhere to the same, makes it difficult to monitor cases with regularity. Cases are overlooked, the efforts of biological parents or legal caretakers go unnoticed, families do not receive needed services, statutory deadlines are missed, and children languish in foster care.

Courts have undertaken a variety of strategies to promote efficient case management. Prepared by the American Bar Association's Center on Children and the Law, in collaboration with the US Children's Bureau, the current *National Court Improvement Progress Report and Catalogue* reports the use of case managers, court coordinators, attorney advisors, mediators, and other court staff to help processes operate more smoothly and expeditiously. For example, an Ohio CIP uses court improvement funds for a Family Law Education Manager. This manager trains court personnel on issues such as ASFA compliance and serves as a liaison to the state's child welfare agency.

The One Family-One Judge concept – that a single judge is assigned to hear all matters pertaining to a particular child – is another way to

facilitate better case management. The judge is already familiar with the case history and aware of any relevant family circumstances. With one judge, there is more efficient use of court time and resources; continuity in decision-making; the opportunity for families to get to know the judge, and vice versa, making for a more facilitative process; and a greater sense of judicial ownership, which heightens diligence and accountability.

Information Systems: Accurate and complete data are necessary to ensure safety, permanence, and well-being for each child, because information is essential to all aspects of case management and performance measurement. Courts must be able to track and access a variety of data, including hearing dates, time in care, number of continuances, and more. Without this information, the courts cannot identify their problem areas, develop strategies for improvement, or ascertain whether reform strategies are working.

The State of Utah provides a useful example. Responding to the mandates of federal statutes, including ASFA, and also to a federal consent decree that ensued child welfare litigation against the state, the Utah court system undertook intensive reform efforts. Among the improvements, Utah established a number of data management systems – within the courts, the child welfare system, and the attorney general's office. It was only with these capacities that Utah could measure empirically the quality of court performance, as it did in its 2002 report: *An Evaluation of Utah Court Improvement Project Reforms and Best Practices: Results and Recommendations*.

Written to evaluate court systems statewide, the report answered eight evaluative questions, comprising more than 20 measures. Many of the measures drew on empirical case data. For example, to answer the question of how timely courts were completing the steps in child welfare cases from preliminary protective hearings through permanence, the report presented, among other data: (1) the percentage of cases that met the statutory deadline of a preliminary protective hearing occurring within 72 hours of removal; and (2) the percentage of cases for which the court continued the

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original preliminary protective hearing to a later date. Utah could not have done this without intelligent data management practices.

Data management is also central to Kentucky's efforts to decrease the time children spend in foster care. Pursuant to state law and with CIP funding, Kentucky uses Citizen Foster Care Review Boards (CFCRB) to facilitate data collection and reporting. Comprised of citizen volunteers, these boards review cases regularly until a child exits state care, and gathers information from the reviews, which is housed in a tracking system. This data forms the basis for a mandated annual report. The FY2001 CFCRB report, published in 2004, presented a wide range of information, including average length of stay; length of stay by age; permanent placements, by type; and number of cases with changing placements more than three times within a six month period. Also, according to the report, data quality and content improved dramatically in recent years, due to coordination with the child welfare system, whose own data management system allows access by the court system.

Collaboration: Healthy collaboration among the courts and other key stakeholders is a precondition to successful foster care court reform. Juvenile and family courts cannot effectively perform their child welfare duties in isolation. They must collaborate with, and engage the participation of, many stakeholders, especially state foster care managers and workers. Reforms to information management capacity and case management practices require relationships built on trust and cooperation. Courts must, of course, maintain impartiality, but they need to do so while working with the child welfare system to achieve timely permanence for children in state care. It is the child welfare system that has access to many facts of the case, such as the circumstances of a child's environment. And it is the courts that review the facts to make decisions about where and with whom a child should reside.

The Los Angeles, California Model Court, which serves a population of approximately ten million, provides a model for judges trying to enhance effective collaboration. Beginning with the opening of the Edmund D. Edelman Children's

Court in 1992, Los Angeles has placed importance on operating a child-sensitive facility.

Collaboration with key stakeholders has been an important part of the Model Court's substantial progress in achieving this objective. The court collaborates to offer numerous services within its walls, including: CASA, the Juvenile Court Mental Health Unit, the Children's Law Center, and the Los Angeles Unified School District Liaison. In addition, the Juvenile Court has attorneys dedicated to specific courtrooms; advocates usually represent a child for the entire life of the case; and counsel for the state welfare system assigns attorneys to dependency courts, as does the Children's Law Center, which represents the child. All of these efforts require cooperation and collaboration.

The Chicago, Illinois Model Court is another example worth considering. Illinois' Cook County Circuit Court is the world's largest court system. Nevertheless, its Model Court has had amazing success, which can be attributed, in part, to better collaboration of key stakeholders. Like Los Angeles', Chicago's Model Court relies on the cooperation of the major stakeholders, namely the Illinois Department of Children and Family Services, the Public Guardian, the State Attorney, and the Public Defender. In 1995, 58,000 children were under the protection of the Cook County child protection services. In 2003, the caseload had decreased to 13,000. While part of the decrease is attributable to fewer children entering state care, the downward trend is also reflective of better collaboration.

Other examples of Model Courts and CIPs that are tackling court reform through enhanced collaboration include the Ohio Hamilton County and Miami, Florida Model Courts, and the New York Erie County CIP. The Miami Model Court used interdisciplinary training and other team building exercises to build better collaboration. Ohio's Hamilton County Model Court instituted multi-system collaboration by expanding the availability of substance abuse and related services to working parents to help them access needed support and treatment. Such collaboration is a way to "front-load" services – that is, to make

services available from the outset of a child's removal from the home – to enhance the likelihood of timely reunification, and, if not possible, timely placement into another permanent setting. On the other hand, New York's Erie County CIP created staff positions for two project coordinators, one in the court and one in the state foster care agency, who serve as liaisons to enhance collaboration and communication between the two systems.

Recommended Court Performance Measures

NCFA's proposed performance measures for juvenile and family courts are similar to and consistent with those advanced by judges' professional associations, including the National Council of Juvenile and Family Court Judges (NCJFCJ), the ABA Center on Children and the Law, and the National Center of State Courts (NCSC). The following performance measures would assess the timeliness and rightness of family court placement decisions on behalf of children in foster care.

While there are many measures relevant to these outcomes, NCFA has selected combinations that are appropriate whatever the challenges facing any particular family court. These should enable judiciaries to evaluate court performance, identify areas needing improvement, and evaluate effectiveness of system changes. Their application will facilitate adherence to federal and state performance requirements.

NCFA's proposed measures will provide useful data for measuring court performance in the areas of timeliness, permanence, safety, and due process. All four of these priorities are vital to effective reform. It is important to note that the truly effective court should score well on all four types of measures. The best interests of children do not allow one of these priorities to be sacrificed for another. Each must be addressed if children are to be well served.

For example, while a court should strive to make timely decisions, it must not do so at the expense of safety, permanence, or due process. Imagine a judge who reunifies a child at the adjudication hearing, despite a prior finding of neglect and a history of substance abuse. While the

decision would reflect well on "time in care," its quickness has likely occurred at the expense of the child's safety or the placement's permanence. On the other hand, a court that initiates termination of parental rights (TPR) at the adjudication hearing, before the parent has legal counsel, runs the risk of violating constitutional due process guarantees.

Following are fairly exhaustive lists of potentially useful performance measures for juvenile and family courts. NCFA presents a "short list" of the highest-priority measures at the end of this brief, under the heading, "Conclusion: Strategic Priorities for Measuring Court Performance."

Timeliness: The most common and systemic court-performance problems today revolve around issues of the timeliness of permanency decisions. While timeliness should not be achieved at the expense of the other priorities, it is a necessary condition to ensure that foster children are well served. Courts have the authority and responsibility to control the timing of their decisions and actions, in accordance with statute.

Timeliness is a priority of ASFA and HHS's outcomes and measures. A court's awareness of the time that passes before foster children find permanence is critical to meaningful court reform. So, too, are data on the timeliness of those "interim decisions" in between system entry and permanent placement – including measures of time between preliminary protective, adjudication, and permanency hearings. Absent such specificity, courts will lack data necessary to identify the causes of delay, which could lead to inappropriate system changes. Courts should therefore examine the timeliness of each step in the permanency process, as outlined below. Likewise, it is important for courts to track both the frequency of review hearings and the number of continuances, with reasons. This additional information will be necessary to shed light on explanations for overly lengthy timeframes. Finally, courts should analyze adherence to statutory requirements, such as is required by ASFA.

Timeliness measures such as the following can help courts isolate the causes of inappropriate delay, and move forward with appropriate reforms:

- Length of stay – i.e., time from entry into to exit from state care, by type of permanency placement
- Time between entry into care and permanency hearing
- Percentage of cases in which permanency hearing is not held within 12 months of entry into care
- Time between entry into care and preliminary protective hearing (at the preliminary protective hearing, the court determines whether a child can or cannot be immediately and safely returned home while the matter is pending)
- Time between entry into care and adjudication (at adjudication, the court decides whether the allegations of abuse or neglect are supported by the evidence, and, if so, whether there is need for continued state involvement)
- Time between adjudication and permanency hearing (at the permanency hearing, the court makes the decision as to the permanent placement for a child, such as adoption or reunification, and determines the plan for realizing the permanency decision)
- Frequency of review hearings
- Number of continuances for a single case, by reason
- Percentage of cases in which a court continues a permanency hearing, by reason
- Percentage of cases in which the court makes a “no reasonable efforts” finding, by number, such as ten percent of cases with two “no reasonable efforts” findings
- Time between entry into care and filing of TPR petition
- Percentage of cases in which TPR proceedings are not initiated upon a child residing in care 15 out of the latest 22 months
- Time between initiation of TPR proceedings and termination order
- Time between termination order and conclusion of any appeal
- Time between TPR order and initiation of adoption proceedings
- Time between initiation of adoption proceedings and finalization of adoption

Permanence: Placement permanence is an essential measure of the rightness of placement decisions. Courts should strive to find a safe and stable home for each child under their care, in accordance with clear standards for determining the appropriate case goal for each child. To do so, courts must have data that address whether and how foster children exit the foster care system. Also important is analysis of placement stability – both in and out of state care. Disruptions can be caused by unpredictable factors outside a judge’s control. But disrupted placements can also be evidence of faulty court performance. Courts should measure the success rate of permanency decisions through the monitoring and reporting of how many children re-enter state care after reunification, adoption, and guardianship. Useful permanency measures for courts include:

- Number and percentage of each case goal for children in foster care – reunification, adoption, guardianship, long-term foster care, and emancipation
- Number and percentage of children who exit the foster care system through a permanent placement, by type
- Number and percentage of children who “age out” of foster care (never find permanence prior to reaching the age of majority), by those having resided in long term foster care with one family and those that have not
- Number and percentage of children who re-enter state care following reunification, by length of time until re-entry
- Number and percentage of children who re-enter state care following adoption, by length of time until re-entry
- Number and percentage of children who re-enter state care following placement with a guardian, by length of time until re-entry
- Number and percentage of children who, while in foster care, experience:
 - one placement
 - two placements
 - three placements
 - four or more placements

Due Process: It is necessary to provide due process for all parties in foster care cases, in order to ensure the meaningful participation of biological parents, legal caretakers, and other interested parties. Without this participation, courts run the risk of making uninformed permanency decisions. The failure to afford parties due process also sets the stage for appeals, which delay permanence. On the other hand, courts should not delay processes on account of a party's lack of participation, if legally valid notice has been served, to which the party has not responded.

Important due process measures for courts include:

- Percentage of cases in which the court has ordered one or more continuances
- Percentage of continuances that are related to inadequate notice
- Percentage of cases for which timely notice of hearings to all parties is documented in the court file
- Percentage of cases in which there is identification of the father, categorized by stage of the case
- Stage of case by which time biological parents or legal caretakers have retained or been appointed legal counsel, such as by the adjudication hearing
- Percentage of cases in which there are documented efforts to meet the needs of the child and family, through early identification of family service needs and attempts to provide access to needed services
- Stage of case by which time there are documented efforts to meet the needs of the child and family, through early identification of family service needs and attempts to provide access to needed services
- Percentage of cases in which parties participate in the decision-making process, by type of intervention, including family conferencing, mediation, and alternative dispute resolution

Safety: If there is a “top” priority among these four priorities, it is the safety of the child. Timeliness, permanence, and due process are moot, if the

child is unsafe. ASFA, HHS’s Child Welfare Outcomes and Measures, and the CFSR outcomes similarly emphasize this point. ASFA includes funding for the Promoting Safe and Stable Families Program, which requires state plans to assure that the safety of children is paramount. The initial CFSR outcome reads: “Children are, first and foremost, protected from abuse and neglect.” Two child welfare outcomes address the importance of reducing the recurrence of abuse and neglect, including while in foster care. Fault for harm to a child, of course, resides fundamentally with the perpetrator of the harm. But courts have the responsibility of protecting the safety of children in state care, to the best of their abilities. Useful safety measures for courts include:

- Number and percentage of children who have been the subject of another abuse or neglect petition after exiting the system, examined in the contexts of time, such as 6, 12, 18, 24 months after exiting foster care, and of perpetrator demographics, such as biological or adoptive parent
- Number and percentage of children who are the subject of another abuse or neglect petition while in foster care, examined in the contexts of length of time in specific placement, time in foster care, and perpetrator demographics

Roles and Responsibilities in Court Accountability and Improvement

Various institutions and leaders have vital roles to play in ensuring that juvenile and family courts improve the timeliness and rightness of their placement decisions for children in foster care. Legislatures; public child welfare systems; outside groups, advocates, and experts; the media and general public; and the courts themselves all have the important responsibilities of monitoring and reporting court performance with respect to the aforementioned measures. In so doing, these institutions help educate the courts in strategies for court improvement and motivate the courts by shining the light of public scrutiny.

Courts: Courts should, on their own accord, initiate the use of performance measures. Judges and court administrators are well positioned to select important indicators. They can appreciate the interplay among “competing” goals and measures, and understand the laws and issues at hand. They know best the unique challenges facing their courts, such as enormous judicial caseloads and the challenge of obtaining important case details. With or without empirical data, courts have the responsibilities of examining where they fall short and identifying conditions that impair their ability to function smoothly.

Courts’ self-regulation requires the leadership of committed judicial leaders with sufficient authority. Whether a family-court administrative judge or the chief justice of a state supreme court, judicial leaders must possess qualities that earn the respect and cooperation of other members of the bench. Likewise, they need to be able to inspire the trust and support of other players in the child welfare process outside the court – such as child welfare workers, case managers, and officials; attorneys; and court-appointed special advocates – all of whom, without their cooperation, could seriously impair and undermine reform efforts. Even with court self-evaluations, however, others institutions need to be involved in monitoring and evaluating court performance, and in prioritizing performance measures.

Legislatures: It cannot be left solely to the courts to ensure the proper functioning of their own systems. State legislatures have not only the responsibility to fund court and public agency child welfare services, they also play an important role in improving court performance. Legislatures, of course, should take care to adhere to the constitutional principle of separation of powers. But they are in a unique position to facilitate court improvement through the passage of laws that impose standards for court performance, in addition to their shared social responsibility to monitor and report court performance with respect to these standards.

Legislatures should pass enforceable laws that establish performance requirements and that

require measurement of relevant data. All states have enacted statutes in response to ASFA. Some have adopted the ASFA requirements directly, such as beginning termination of parental rights after a child is in care 15 out of the last 22 months. Others have enacted more stringent laws with, for example, shorter compliance timeframes. Regardless, these laws do not generally address issues pertaining to development of performance measures or enforcement mechanisms. The overuse, by some courts, of the 15/22 rule exceptions is a good example of why court performance measures and accountability are necessary

The *National Court Improvement Progress Report and Catalogue* documents ways in which states are beginning to use legislation to further sound court reform. During 2004, approximately a half-dozen states passed laws to facilitate easier court review of cases, for example, by including a case summary sheet in each file, which quickly brings the judge up-to-date. Four states have recently passed laws designed to ensure timely hearings, specifying deadlines for various case phases. And, three states passed laws to ensure that files reflect all major milestones and decisions, such as documentation of “reasonable efforts” by the state.

Laws that include provisions for monitoring and reporting court performance are still rare. Utah has demonstrated leadership in this regard. It enacted a law in 1995, which created a child welfare oversight panel whose function was to oversee execution of child welfare statutes. In 2001, lawmakers strengthened the measure by requiring annual reporting by the judicial system, state attorney general, and child welfare system on the extent of noncompliance with statutory timeframes and related reasons. The first reports were submitted in October 2002.

Following the example of Utah’s law, states should explore how they can support the efforts of the judiciary to enhance the likelihood of courts designing and using effective measures. Legislatures should monitor courts for their adherence to statutory requirements designed to facilitate right and timely placements for these children. States could require individual courts to

report annually on their performance with regard to select measures for comparison, analysis, and public dissemination – a “state of the court,” if you will. They could also hold public hearings at which court administrators and judges could testify about court performance and obstacles to court improvement. Other appropriate stakeholders could also provide testimony.

A note regarding funding: Clearly, it is the responsibility of legislatures to fund juvenile and family courts. Improving information systems and data management, and reducing caseloads by increasing the numbers of judges and administrators, for example, cost money. But it is not the purpose of this analysis to address the issue of the adequacy of funding in the 50 states. Rather, our purpose is to advocate the use of strategic performance measures to improve court performance and prioritize court spending, whatever the level of funding.

Child Welfare Systems: As previously discussed, court reform is difficult, if not impossible, without the cooperation and collaboration of the child welfare system. Child welfare officials at the federal, state, and local levels should intentionally facilitate and encourage healthy relationships with courts. Their interactions with court officials can be a model for caseworkers and managers, and all those who interact daily with judges and court staff. Caseworker adherence to court protocol will further the timeliness of court decisions, and promote right and timely permanence for children in state care. Foster care workers and managers have an inside perspective on court performance, and have a duty to the children to speak up about it, both privately and publicly, as needed.

Outside Groups, Advocates, and Experts: Child welfare and adoption experts and advocates from nonprofit organizations, adoption agencies, and the academy can play an important role in promoting court improvement. They can provide courts and legislatures useful information for setting performance measures, allocating funding, and passing laws. Equipped with data based on performance measures advocated in this brief, they can

publicize courts’ records with respect to children in foster care. Child welfare and adoption organizations can be a powerful voice for foster children by using their research and educational resources and spheres of influence to inform legislators, executive branch officials, foster care managers and workers, the media, and the public about models for court improvement and the performance of the judiciary. Such education will help promote collaboration, bring additional expertise and resources to the task, motivate the judiciary, and suggest other legislative and administrative solutions.

Media and the General Public: The media, too, can promote court improvement by educating judicial and policy leaders regarding effective models for court improvement and by shining the light of public attention on performance measures for juvenile and family courts. It is the work of reporters and journalists to educate citizens on how well their government officials, including courts and judges, are fulfilling their responsibilities. By publicizing reports on court performance, highlighting both success stories and failures, the media will inform the public and empower citizens to expect improvement from their courts. There could not be a more compelling case for change than the awareness, for example, that a child lives in a dozen different foster care placements, only to exit the system on reaching the age of 18. In these ways, the media can inform public opinion and create powerful incentives for court improvement.

Conclusion: Strategic Priorities for Measuring Court Performance

All the performance measures for juvenile and family courts proposed in this brief have the potential of yielding significant positive results for juvenile and family courts’ understanding, accountability, and performance. In our view, as many as possible should be put into practice. But the challenge of mobilizing American society to demand excellent court performance, for the sake of foster children, requires focusing on a limited number of strategic measures capable of capturing public attention.

Following is NCFCA’s short list of top-priority

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performance measures for juvenile and family courts. These measures provide an informative and compelling overview of court performance. Considered together, they cover all four priorities – timeliness, permanence, safety, and due process – and avoid creating incentives that prefer one priority at the expense of others.

- Number and percentage of permanent placements, by type.
- Length of stay: time between entry into and exit from state care, by type of permanency placement
- Time in foster care, for children currently residing there
- Time between TPR order and conclusion of any appeals
- Number and percentage of children who age out of the foster care system
- Total and average number of continuances
- Number and percentage of cases for which there is not a permanency hearing within 12 months of entry into care
- Number and percentage of exceptions to the 15/22 rule
- Number and percentage of children who have been the subject of another substantiated abuse or neglect petition after exiting the system
- Number and percentage of children who are the subject of another substantiated abuse or neglect petition while in foster care
- Number and percentage of re-entries into the foster care system, after reunification, adoption, and guardianship

The time is ripe for concerted, multidisciplinary efforts to improve the performance of juvenile and family courts in fulfilling their responsibility to provide right and timely placements with loving, permanent families for foster children. The lessons learned from recent child welfare reform underscore the importance of performance measures to achieving this end. The National Council For Adoption adds its voice and offers its resources to promote the vital cause of court improvement through performance measures that highlight successful models for reform and provide greater court transparency and accountability, for the sake of America's deserving

foster children.

Sources and References

NCFA relied on governing law and expert opinion in selecting the above measures. Each correlates to federal child welfare priorities reflected in ASFA; the Adoption and Foster Care Analysis System; HHS's Child Welfare Outcomes and Measures; and/or the CFSR outcomes. They are also consistent with the opinions of experts, including the National Council of Juvenile and Family Court Judges (NCJFCJ), the ABA Center on Children and the Law, and the National Center of State Courts (NCSC). A discussion of these sources and their relevance to NCFA's recommended measures follows.

Adoption and Safe Families Act (ASFA):

ASFA guided selection of certain timeliness measures, most notably with regard to permanency planning and termination of parental rights. Specifically, ASFA requires that a permanency hearing take place no later than 12 months after a child has entered foster care. The statute requires the state to file a petition to terminate parental rights for any child who has been in foster care for 15 out of the most recent 22 months. ASFA also clarifies that concurrent planning may begin immediately upon the child's removal from the home. With regard to safety, ASFA underscores its overriding significance, identifying numerous circumstances under which it is proper to terminate parental rights without reunification efforts.

AFCARS Data: AFCARS data helped NCFA to identify federal timeliness and permanency priorities and, thus, to select critical measures. Some of the data necessary to measure court performance is already available through present AFCARS reporting. Key AFCARS data include information about: the settings in which children find permanence; the time between termination of parental rights and adoption; and the length of stay in foster care.

Child Welfare Outcomes and Measures and CFSRs: Developed in response to ASFA's mandates, HHS's Child Welfare Outcomes and Meas-

ures provided additional guidance on priorities for safety, permanence, and timeliness. The HHS outcome measures are pertinent to child safety in and out of foster care; stability of foster care placements; the timeliness of reunification and adoption; and re-entry into foster care. In addition, national standards, established for six of the twelve outcome measures, helped NCFA isolate the most important areas for court improvement.

Paraphrasing, the national standards are as follows:

- No more than 6.1 percent of children who are victims of abuse or neglect have another substantiated report within six months of the previous one.
- No more than .57 percent of children in foster care are the subject of substantiated abuse or neglect by a foster parent or facility staff member.
- At least 76.2 percent of children who are reunified with their parents or caretakers exit foster care in less than 12 months of the latest removal.
- No more than 8.6 percent of children re-enter foster care within six months of reunification.
- At least 32 percent of children who exit foster care by adoption do so in less than 24 months of the latest removal.
- For children who have been in foster care less than 12 months from the time of latest removal, 86.7 percent or more have had no more than two placement settings.

Other Sources: NCFA acknowledges the vital role of the Pew Commission on Children in Foster Care in establishing performance measures for courts as a strategic reform priority with its report, *Fostering the Future: Safety, Permanence and Well-Being for Children in Foster Care*. In its selection of performance measures for courts, NCFA referred significantly to *Building a Better Court*, made possible by the collaboration of the ABA Center on Children and Law, NCJFCJ, and NCSC. Like NCFA's recommendations, *Building a Better Court* promotes measures of timeliness, permanence, due process, and safety. NCJFCJ's *Resource Guide-*

lines: Improving Court Practice in Child Abuse Cases and Adoption and Permanency Guidelines provided comprehensive information about the appropriate time between different stages of the permanency process. The ABA Center on Children and the Law contributed significantly to their drafting. NCFA studied the NCJFCJ recommendations on hearing timeliness, which are outlined below, in determining which phases of the judicial process merit review. The recommendations included:

- Preliminary protective hearing:* 24-72 hours after removal
- Adjudication:* within 60 days of removal
- Permanency hearing:* within 12 months of removal
- Initiating termination of parental rights (TPR):* when grounds exist, but no later than upon a child being in foster care for 15 out of the last 22 months
- Filing of TPR petition:* within 30 days after agency or court makes determination that the filing is appropriate
- TPR hearing:* within 90 days of filing TPR petition
- Court decision:* within 14 days of TPR hearing
- Post-termination reviews, generally:* at least every 90 days until permanence
- Post-termination reviews when no adoptive parents have been recruited:* every 30 to 60 days

NCSC's *Trial Court Performance Standards and Measurement System* was useful to NCFA's measure selection process. NCSC's system targets the following performance areas: "Expedition and Timeliness"; "Access to Justice"; "Equity, Fairness, and Integrity"; "Independence and Accountability"; and "Public Trust and Confidence." NCSC's selection of "expedition and timeliness" dovetailed with NCFA's concern for timely permanence. More important, however, is NCSC's attention to judicial process and treatment of parties. Their priority to NCSC underscores the importance of corresponding measures, and validated NCFA's attention to the same.