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Michigan CIP Reassessment: How Michigan Courts Handle Child Protection Cases - A Report Summary

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MICHIGAN CIP REASSESSMENT : HOW MICHIGAN COURTS HANDLE CHILD PROTECTION CASES

A REPORT SUMMARY

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 1993.¹ 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.

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. The report resulting from that study (the original CIP assessment)² was released in 1997. It contained 57 recommendations. These recommendations addressed 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.

In 2001, the federal Safe and Stable Families Act extended the Court Improvement Program through 2006. In order to continue receiving CIP funds, the highest court of each participating state was required to undergo a detailed self "reassessment" to get updated information on how well its courts handle child protection litigation. The

¹ 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.

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

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 summary is drawn from the full report, *Michigan CIP Reassessment 2005*, which represents the results of that study.

Michigan's court system will use the reassessment results to develop and implement an updated plan for improving its performance in child protective proceedings, as it did following the initial assessment.

How has Michigan used its CIP funds³?

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 protective 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.

Training—Michigan CIP has worked with the Michigan Judicial Institute, the Child Welfare Training Institute, and others to provide training to jurists, attorneys, court staff, child welfare caseworkers at DHS and their contract agencies, and delinquency and adoption workers at DHS on statutes, rules, policies, and practices relating to child protective proceedings.

³ This is not a complete list of CIP-funded activities. For more complete and up-to-date information, please refer to the full report or contact the Michigan State Court Administrative Office.

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

How was the Reassessment conducted?

The Reassessment followed a research design similar to that used for the original assessment.⁴ 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 areas and issues for study in addition to the federal program requirements for the reassessment and chose the study site courts.

Over the next year, evaluators gathered information using the following methodologies:

- ❑ A statewide survey of judges and referees presiding over child protective proceedings;
- ❑ Visits to the courts in Kent, Roscommon, Wayne, Marquette, Macomb, and Jackson Counties to interview judges, court administrators, prosecutors, attorneys, FCRB members, CASA program representatives, DHS and private foster care agency staff, and where possible, parents, foster parents, and youth;
- ❑ Observation of court proceedings at the court sites visited;
- ❑ Individual case file review of child protection files at the court sites visited;
- ❑ Analysis of case-level data provided by DHS regarding dates of key case events;
- ❑ Analysis of Michigan law, court rules, and other judicial documents regarding child protective proceedings.

In preparing the reassessment findings and formulating recommendations for change, evaluators considered numerous standards on model professional and court practice including *Resource Guidelines: Improving Court Practice in Child Abuse and Neglect*

⁴ 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.

Cases (“Resource Guidelines”), which were endorsed by the National Conference of Chief Justices, National Council of Juvenile and Family Court Judges, and the American Bar Association; ABA-endorsed standards for attorneys representing children and child welfare agencies; and *Guidelines for Achieving Permanency in Child Protection Proceedings* published by the Michigan Children’s Charter.

Evaluators also reviewed other studies relevant to issues in the reassessment, such as the ABA’s Evaluation of the Implementation of the L-GAL Protocol, Michigan State University’s evaluation of the Permanency Planning Mediation Pilot Program, and the National Council of Juvenile Court Judges’ evaluation of the Washington State Pilot Program to Improve Representation of Parents in Dependency Cases.

What did the evaluators find?

Evaluators met with dozens of professions engaged in child protective proceedings who were committed to, and often passionate about, their work. Many of the judges and referees interviewed have substantial experience presiding over child protective 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
- 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.

What do the evaluators recommend?

The following pages contain major recommendations taken from the full CIP Reassessment Report, with condensed discussion of the facts and reasoning supporting the recommendations. We hope that readers with a particular interest in specific issues will read the parts of the full report addressing those issues. In the full report there are detailed explanations of the data from the jurist survey, interviews, focus groups, file reviews, and DHS foster care database; references to other studies and standards of practice; and more extensive reasoning in support of the recommendations.

Because we were not able to include all recommendations and issues in this summary, readers are encouraged to review the table of contents and the comprehensive list of recommendations for a better understanding of the scope of the full report.

The recommendations in this summary address the following issues:

1. Representation of the Department of Human Services (DHS)
2. Judicial expertise
3. Representation for parents and children
4. Relationship between the courts, DHS, and others
5. Educating and informing parents and foster parents
6. Quality and depth of hearings and judicial workload
7. Reducing delays to permanency
8. Information systems
9. Long term foster care

To help with the planning process following the completion of the Reassessment, we have presented short-term and longer-term goals related to the recommendations. We suggest concrete, practical steps toward specific short-term goals, while keeping in mind the longer-term goals toward which these steps are leading.

RECOMMENDATION ONE:

Ensure the quality and consistency of representation of DHS

through state legislation requiring that DHS be represented at all stages of child protective proceedings by highly trained, specialized, and permanently assigned prosecutors or attorneys general.

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.” We reaffirm this recommendation and consider it to be one of the highest priority steps toward improving Michigan’s handling of child protective cases. (Our recommendations relating to ensuring judicial expertise and improving the quality of representation for parents and children go hand-in-hand with this one.)

Michigan law does not currently provide for representation per se for the Department of Human Services in child protective proceedings. Rather, Michigan Court Rules allow a prosecuting attorney to appear at all stages of a child protective proceeding as a “legal consultant” at the request of the Michigan DHS or of an agent under contract with the agency. The Rules also permit DHS 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)

In the great majority of Michigan’s courts, assistant county prosecutors appear at child protective proceedings to represent the interests of the state. In Wayne County, however, attorneys from the state attorney general’s office are permanently assigned to the courtrooms of particular jurists and are present for every hearing. In two of the other five the courts we visited, prosecutors were routinely absent from preliminary hearings and were often present only at adjudication and termination hearings.

Regardless of the model of representation, it was widely reported that prosecutors or attorneys general often do not assist with the drafting of petitions nor do they confer with agency workers prior to hearings. Other reported problems were frequent substitutions of prosecutors, short-term assignments to child protective proceedings, lack of understanding of the facts of the case, lack of preparation for hearings and trials, and limited understanding of the law and of agency policies.

Many DHS employees said they would prefer to have their own counsel, representing the position of the agency, to be present at hearings so the workers would not have to perform lawyer-like functions. They also said that the stress of having to testify, sometimes cross-examine other witnesses, and negotiate plea agreements was an important reason for high caseworker turnover. Losing competent and experienced caseworkers has serious consequences for the children and families involved in these proceedings. Were the agency to have its own properly trained and prepared attorneys present for all hearings, this problem might be eased to a significant degree.

The *Standards of Practice for Lawyers Representing Child Welfare Agencies*, completed and approved by the American Bar Association in 2004, promotes a model referred to as “agency representation.” Under this model, the attorney advocates on behalf of the agency and its position, assists with the drafting of the petitions and motions, and attends all hearings. We recommend this model, in which the agency (and its agents) are clearly the client.

Recommended short-term goals:

CIP should work with state administrators of DHS, the Prosecuting Attorneys Association of Michigan (PAAM), the state Attorney General’s office, the state bar association, and state-based law schools to develop the following:

- a. A curriculum on child welfare law and child protective proceedings targeted to new prosecutors.
- b. An agreement that all government attorneys handling these cases will participate in minimum two-day training, once the curriculum becomes available.
- c. Guidelines for orienting newly-assigned prosecutors, to include job-shadowing with experienced prosecutors, observation of hearings, mentoring, and review of Michigan Children’s Charter’s *Guidelines to Achieving Permanency in Child Protective Proceedings*.
- d. Michigan standards for government attorneys in child protective proceedings, based on the ABA’s *Standards of Practice for Lawyers Representing Child Welfare Agencies*, Michigan Children’s Charter’s *Guidelines to Achieving Permanency in Child Protective Proceedings*, and Michigan law.
- e. A model contract between DHS and prosecutors calling for compliance with such standards.

Recommended longer term goals:

- f. Draft and support legislation calling for the assignment of specialized, highly trained, permanent prosecutors or attorneys general to represent DHS at all stages of child protective cases.
- g. Implementation legislation.
- h. Implement training curriculum for prosecutors, including video/DVD or web-based applications.

RECOMMENDATION TWO:

Ensure judicial expertise in child protective proceedings

through the systematic development of training curricula, mandatory judicial participation, improved selection and assignments of jurists, and strengthening of family court plans.

Child protective proceedings are a highly specialized and challenging area of judicial practice. Stakes for the parties in these proceedings are high, the law and procedures complex, the facts intricate, and competent practice requires intensive training and experience. Therefore, special efforts are essential ensure that individual jurists can meet the challenges of child protective proceedings.

Systematic Training Curricula. To maintain its role as a national leader in training for child protective proceedings, Michigan should work toward developing a comprehensive judicial curriculum for these cases, including the full range of knowledge critical to jurists handling these cases. The curriculum should include a set of modules for new jurists, a set for experienced jurists, and modules providing at least annual updates. Each module should include very concrete learning objectives and self tests so that jurists might evaluate their own mastery of the topic.

Mandatory Participation in Training. Michigan should require all jurists hearing child protective proceedings to receive the judicial curriculum in child protective proceedings. Currently, the requirements of MCL §§600.1011 and 600.1019 regarding mandatory training for jurists are not enforced throughout the state. SCAO needs to develop and implement an effective enforcement mechanism.

Improved Selection and Assignment of Jurists. In many counties, inexperienced jurists are still assigned to handle child protective and other family proceedings. The transfer of child protective proceedings from the probate courts to the Family Divisions of the Circuit Courts has had an uneven impact on the quality of child protective proceedings. This change has taken child protective proceedings away from experienced probate court judges and reassigned them to less qualified judges in the Family Division.

One Family, One Judge. Michigan should enact legislation and SCAO should strengthen its procedures to improve the selection of jurists to hear child protective proceedings. This should include a provision for electing judges specifically to the family division. Assignments to the family division should be based on jurists' demonstrated interest and knowledge concerning family cases, including child protective proceedings. Assignments to the family division should be long-term; rotation out of the family division should be less frequent and less common. Judicial assignments should respect the one family, one judge principle.

Strengthening of Family Court Plans. 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. MCL §§600.1011. Family court plans do not consistently fulfill the requirements of state law regarding judicial training and judicial assignments to ensure judicial expertise. In addition, stronger review and oversight of Family Court Plans is needed, probably requiring additional SCAO staff support. Therefore, to strengthen Family Court Plans, SCAO should adopt stricter and more specific requirements concerning judicial training and assignments to the family court. SCAO should also provide more thorough review of the plans before approving them and should more thoroughly review their implementation.

Recommended short-term goals:

- a. Establish an interdisciplinary working group to develop a core curriculum for jurists, based on knowledge essential to judicial practice, advanced knowledge, and knowledge needed to keep current. The curriculum should include concrete learning objectives and self-tests and should be designed for multiple modes of transmission, such as in person training, web-based training, and videotapes/DVDs.
- b. Develop stronger requirements for family court plans regarding judicial training, criteria for judicial selection and assignments to the family division, and longer and more stable judicial assignments to the family division.

Recommended longer-term goals:

- c. Require participation in the full core curriculum.
- d. Implement judicial training curriculum and monitor jurists’ participation.
- e. Improve system for monitoring of Family Court Plans.
- f. Support legislation and court rules to provide for judicial elections specifically to positions in the family division.
- g. Support legislation and court rules to enforce the principle of one jurist, one judge; revise assignment requirements for judges and referees accordingly.

RECOMMENDATION THREE:

Ensure the quality of representation of parents and children in child protective proceedings

through mandatory training, contracts requiring attorneys to comply with standards of performance, systematic local court oversight of attorney performance (including a mechanism for parents and children to raise concerns about the quality of representation), and mandated reasonable minimum compensation and maximum caseloads.

Attorneys largely articulate the arguments and control the flow of information that judges receive during child protective proceedings. Accordingly, it is vital that all parties receive high quality legal representation. 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 citizens against needless government interference. Without complete information and cogent arguments presented by attorneys there is a sharply increased risk that judges will make decisions resulting in children's injuries (or even death), needless breakups of families, and children growing up in foster care rather than in permanent homes.

The Reassessment found that individual courts vary in how they qualify attorneys for practice in CP cases: one may use mentoring; others require a half-day to two days of training for new attorneys. Only one of the courts visited systematically reviewed attorneys' performance to determine whether to keep them on the appointment list. In another court, individual judges controlled the admission and retention of attorneys on their lists. Michigan should enact state legislation and adopt uniform court rules setting minimum training requirements for attorneys representing parents and children and a system to ensure that minimum standards of attorney performance are consistently met.

Based on interviews, the statewide jurist survey, and court observations, it is clear that many attorneys fail to independently investigate the facts of a case and to meet with clients to prepare for hearings. Many carry excessive caseloads and receive low compensation. Parents and youth reported speaking with their attorneys only immediately prior to hearings, or in some cases for the youth, not speaking with them at all.

Recommended short-term goal:

Form a working group to develop the following:

- a. Updates and enhancements to the existing core curriculum of training for attorneys that address changes in federal and state laws, court rules and procedures, as well as specialized topics such as Title IVE, substance abuse, Absent Parent Protocol, mental health, and domestic violence.

- b. A model contract for use by juvenile courts specifying the attorneys' specific obligations to their clients and setting out minimum standards of practice. (These could be drawn, in large part, from Michigan's own *Guidelines to Achieving Permanency in Child Protection Proceedings*.)
- c. Guidelines for systematic court oversight or review of attorneys' performance in child protection cases, including a mechanism for parents and youth to provide feedback and raise concerns about the quality of representation they are receiving.

Recommended longer term goal:

Support and implement legislation mandating the following for attorneys representing parents and children in child protection cases:

- d. Required training for new attorneys and ongoing annual training requirements.
- e. Reasonable compensation, including compensation for out of court time to independently investigate cases and meet with clients.
- f. Maximum caseloads.

RECOMMENDATION FOUR:

Strengthen the relationships between courts and DHS on the local level.

Direct courts to meet regularly with DHS to address mutual concerns relating to child protective proceedings.

Include different levels of agency and court representatives—e.g., supervisors or caseworkers and agency managers; jurists as well as court administrators.

Also include attorneys, service providers, and other interested stakeholders as appropriate.

Encourage jurists and key court employees to engage in cross-training with prosecutors and agency personnel on issues of mutual concern.

The working relationships and communication between DHS (and private foster care agencies appearing in court on behalf of DHS) and the court are of great consequence to the children and families involved in child protective proceedings. The court and DHS share responsibility for protecting the child and moving the child toward permanency within mandated time frames.

Frustration at the lack of consistent and constructive communication was one of the recurring themes in interviews with court and agency personnel. Jurists reported not getting the information they need from agency caseworkers in petitions and in written reports to the court. Agencies reported not receiving court orders in a timely fashion that would allow them to set up services promptly in compliance with court orders. Jurists were frustrated by high turnover and inexperience in caseworkers; caseworkers felt disrespected by jurists during courtroom hearings and in the scheduling of, and delays associated with, hearings.

Notwithstanding the above, 80% of jurists responding to the statewide survey stated that representatives of their courts met regularly with DHS representatives. Agency and court administrators described good communication between the two systems (for example, an agency director calling or meeting with a court administrator if they had a question or concern, and vice versa). Because of the differences between reports of court and agency administrators and those of jurists and caseworkers, we recommend that meetings include supervisors and caseworkers as well as agency managers, and jurists as well as court administrators. In addition, attorneys, service providers, and other interested stakeholders should be invited to participate, as appropriate.

Kent County court administrators have been holding regular quarterly meetings with DHS and private foster care agency directors and managers for a number of years. Jurists also periodically meet with agency representatives. Participants discuss barriers to permanency and the timeliness of court and agency actions in light of state and federal mandates. While one of the other five courts studied during the reassessment also has

regular meetings with DHS, the remaining courts have more sporadic DHS contact, discussing issues ad hoc as they emerge.

Short-term goals:

SCAO should work with DHS on the state level to accomplish the following:

- a. Study models of local collaboration between courts and child welfare agencies regarding child protective proceedings (e.g., Kent County).
- b. Develop guidelines regarding the makeup of local court-DHS groups.
- c. Identify common issues needing attention on the local level and those that need to be resolved at the state level. (Consider issues such as the content and timely submission of DHS reports, the timely issuance of court orders, the scheduling of hearings, including reasons for delays, and the availability of services in the community.)
- d. Identify a process by which issues raised at the local level can come to the attention of the state level group.
- e. Develop a group of state level court and DHS administrators (if one does not already exist) to address issues appropriate for resolution at the state policy level. (The group working on the Program Improvement Plan for the CF SR might provide a starting point for this group.)

Intermediate goal:

- f. Develop a cross-training or information-sharing curriculum designed to improve knowledge and understanding of the needs, requirements, and challenges of the court and child welfare agency systems. (Issues identified in Chapter Six of the full Reassessment report should be considered as possible topics for this process.)

Longer-term goals:

- g. Direct local courts to meet with local DHS agencies according to guidelines identified by the state level group.
- h. Implement cross-training curriculum between the courts and child welfare agency systems.

RECOMMENDATION FIVE:

Ensure that services for parents are appropriate and reasonable, parents understand what they must do, and parties and foster parents are well informed about hearings and about their rights to participate.

Courts should collaborate with DHS and others to address these issues.

Focus groups of various stakeholders at the six courts visited revealed the following:

- ❑ Service plans that were thought to be inappropriate, unreasonable, escalating in their requirements over time, and/or one-size-fits-all.
- ❑ Parents lacking the capability and resources to comply with the requirements of service plans.
- ❑ Parents and youth lacking understanding of the court process and feeling that they were not being heard by the court and did not have attorneys who spoke for them.
- ❑ Inconsistent notice to foster parents regarding the date and time of hearings, particularly when hearings were rescheduled, and regarding their right to provide information to the court.

Explaining the court process. For a number of reasons parents easily misunderstand court proceedings in child protection cases. Parents are often highly upset by the removal of their children and intimidated by the court environment. Many parents in child protective proceedings have cognitive challenges or mental illness. Even for parents without these particular challenges, the court process can be confusing and overwhelming.

While many jurists and attorneys are diligent in explaining the court process to parties, that is not always the case. The reassessment found that parents confer with their attorneys at the courthouse only just before the hearing. It was reported and observed that jurists vary in the degree to which they give parties the opportunity to ask questions or to address the court. Jurists also vary in the extent to which they rely on attorneys and others to educate their clients as opposed to taking steps to ensure that this occurs.

Caseworkers, service providers, and attorneys -- who have far more contact with parents than jurists -- should explain the court process, expectations, and consequences to parents. It is also essential that parents hear this from the court, since many parents pay closest attention to the jurist as the ultimate authority in their cases. In addition, caseworkers, service providers, and attorneys do not consistently provide such explanations.

Improving service plans for parents. Parents' service plans should take into account the challenges they face. Many Michigan parents lack transportation to get them to services, are asked to participate in more service programs than is reasonably possible, or are in danger of losing their employment because participating in service programs takes too much time away from work. Similarly, parents may lose subsidized housing when their

children are removed and are not able to obtain housing again until their children are returned.

To address these problems, DHS must work closely with families and with other agencies, and the court and attorneys must be attentive to the challenges parents are facing. If not, parents in these situations may be doomed to failure, even when they are making their best effort to comply.

At the same time, it is crucial that the courts, DHS, attorneys, and service providers work together to help families understand what they need to do to have their children returned home. They can do this by reiterating what is expected from parents and the consequences of their failure to comply. Courts and attorneys should question parents to be sure that they understand what is expected of them. They should also make sure parents receive copies of court orders.

Recommended short-term goals:

The courts, DHS, attorneys, and, where appropriate, service providers and other persons should work together to do the following:

- a. Encourage the convening of local roundtables involving jurists, DHS, attorneys, services providers, and possibly parents to discuss the issue of appropriate and reasonable service plans as well as the barriers parents encounter in their efforts to comply. (See Recommendation Four of this Summary regarding the Court's relationship with DHS and the community.)
- b. Establish protocols regarding the timely notification of foster parents, pre-adoptive parents, and relative caretakers concerning the dates and times of post-dispositional hearings, including provisions for prompt notice regarding continuances and adjournments. 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 except in cases where the court finds that to be in the child's best interests.
- c. Develop informational brochures explaining child protective proceedings to parents, youth, family members, foster parents, and other interested persons. Seek funding for the production of a video/DVD brochure, in addition to a printed version, to deliver the information. Also develop a protocol for how, where, and to whom the video/DVD would be made available.

Recommended longer-term goals:

- d. Identify and implement collaborative efforts to monitor the reasonableness and appropriateness of court-ordered service plans and to support parents in their efforts to comply with the plans, being sure to involve a range of stakeholders necessary to the success of the effort.
- e. Deliver information regarding child protective court proceedings to parents, youth, family members, foster parents, and other interested persons through printed and video/DVD brochure.

RECOMMENDATION SIX:

Improve the quality and depth of hearings in child protective proceedings through advancing workload analysis. Determine appropriate judicial caseloads and typical length of hearings needed to allow for judicial best practices.

Improved Workload Analysis. The caseloads and workloads of both jurists and court staff determine whether they have enough time to perform competently and efficiently. Without enough time, jurists cannot fully consider the evidence and communicate with the parties, thus increasing the risk of potentially tragic error.

Workloads in child protective proceedings are often excessive because jurists' responsibilities in these cases have dramatically expanded. The number of judicial positions and the times allowed for hearings have not taken into account these greater responsibilities. Each child protective case now involves more hearings than in the past, more parties and participants in each hearing, and more issues that the jurist must decide in each hearing, as well as increasingly challenging family problems. Michigan has developed data requirements that can support a comparatively sophisticated system of caseload analysis. This system, among other things, requires data for the numbers of different types of hearings,⁵ data that is essential to caseload analysis and which can be used for sophisticated calculations of caseloads.

Missing, however, is an analysis of how long hearings typically *should* last to enable the judge to comply with the requirements of Michigan law for child protective proceedings and to implement best practices recommended by Michigan and national standards.⁶ Some courts conduct brief hearings that fall short of full compliance with the letter and spirit of Michigan law. To efficiently carry out best practices in the Michigan courts, calculations of workload needs and case weights⁷ appropriate to child protective proceedings should be based on how long hearings generally need to last, not how long, on average, they currently take.

What is also missing, and should be taken into account in the workload analysis, is the extra time required for judges to meet with child welfare agencies and community groups to help improve child protective proceedings, as recommended by national standards.

⁵SCAO, *Caseload of Michigan Trial Courts: Reporting Forms and Instructions for Circuit Court* 34, 38-40 (2003). Note, however, that the terminology for child protective proceedings should be updated to include annual and expedited permanency hearings.

⁶See, e.g., 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 address all aspects of a court's handling of abuse and neglect cases.

⁷"Case weight" refers to the relative amount of time required for different types of cases and is based on the total number of minutes required by an average case within a given category.

Length and Content of Hearings in Relation to Best Practices. In small courts, child protective proceedings often take up a small proportion of the jurists' time. In these jurisdictions, changes in workload analysis for child protective proceedings, as discussed above, are unlikely to affect the number of judges or the time set aside for child protective proceedings. For example, if there are two judges in a jurisdiction and one spends 10% of her time hearing child protective proceedings, a better analysis of judicial workloads for child protective proceedings probably will not affect the numbers of judges in the jurisdiction or the length of hearings in child protective proceedings.

In larger courts with family divisions in which the same jurists hear both child protective and other family cases, adding judicial positions will not ensure that adequate time is set aside for child protective proceedings.

On the other hand, providing guidance regarding the length of time jurists *should* spend hearing individual hearings in child protective proceedings may make a significant difference in the quality and depth of hearings. Of particular help would be an SCAO analysis of how long different types of hearings typically *should* take in order to fulfill the law and implement best practices. This, combined with clear communication from SCAO to jurists and court staff regarding its expectations for the typical length and content of different types of hearing, might well transform child protective proceedings in many courts.

Recommended short-term goals:

- a. Develop enhanced method of judicial workload analysis for child protective proceedings that will take into account the time jurists need for best practices.
- b. Test the enhanced method for workload analysis in child protective proceedings in a small number of selected courts.
- c. Develop standard lengths for different types of hearings, in accordance with what is needed to fulfill best practice standards for those hearings.

Recommended longer-term goals:

- d. Provide enhanced funding for additional judicial positions, in accord with improved workload analysis.
- e. Incorporate enhanced method of workload analysis for child protective cases into future workload studies.
- f. Incorporate enhanced method of workload analysis for child protective cases into statewide data system.

RECOMMENDATION SEVEN:

Reduce judicial and agency delays in child protective proceedings
through systematic state and local projects, involving both the court and DHS. Measure timeliness of court and agency decisions, identify barriers to more timely decisions, overcome such barriers, document progress, and disseminate knowledge of effective solutions.

Overall, DHS and Michigan courts are timelier than most states in their processing of child protective proceedings. But there are particularly slow points in the Michigan decision-making process. Statewide data, as well as data gathered at the court sites visited, indicated serious delays in the time from termination of parental rights to final adoption. Wayne County in particular was reported to have a high number of “legal orphans,” that is, children whose parents have lost their rights but who have not been adopted and may not be adoptable because of serious health and behavioral challenges. Other delays vary in type and degree from court to court throughout the state. Therefore, Michigan would benefit from carefully designed state and local delay reduction projects. Michigan can base such projects on comparable projects in other states, such as New York and New Jersey, that have proven their success in reducing delays.

Cooperation in Delay Reduction. In child protective proceedings there are intense and repeated interactions of the courts, DHS, private agencies that contact with DHS, and other service providers. Both the courts and DHS must provide enough staff and staff time to fully examine the causes of delays and to develop and implement initiatives to reduce those delays. In Michigan, as elsewhere, it may sometimes be easier to assume that others and not one’s own organization are responsible for the delays. However, to effectively improve the timeliness of child protective proceedings, courts, DHS, and other key participants must work together. To ensure fairness and impartiality in efforts to reduce delays, not only the court, DHS, key private agencies, and other key providers should participate, but also representatives of advocates for parents and children.

Measuring Timeliness and Identifying Barriers to Timely Decisions. Before deciding which delays to address, it is important for a project to identify how long decisions are actually taking. Measuring timeliness should include determining which types of cases are most severely delayed and at what points in the process the delays are occurring. This can be done manually until the courts can use their computers to measure the time between key events in child protective proceedings.

Measuring the timeliness of events is critical not only to defining and addressing the problem, but also to later evaluating the success of efforts to make improvements. Determining the precise causes of delays is essential to the projects’ success. This can be done through careful documentation of the decision-making processes (e.g., with the use

of flow charts) and working cooperatively to identify the flaws in the processes and other specific problems causing or contributing to delays.

Overcoming Barriers to Timely Decisions. To effectively overcome barriers to timely decisions, delay reduction projects should ideally follow a disciplined schedule and process that should include the following elements:

- ❑ Agency and court administrators support for priority and oversight of project throughout the process.
- ❑ A time limit for the overall project.
- ❑ Project staff identified and assigned specific tasks, with deadlines, to address particular barriers to timely decisions.
- ❑ At each project meeting, staff documentation of what they have achieved.
- ❑ At each meeting decisions about next steps in the process.

Measuring Success and Disseminating Knowledge of Effective Solutions. At the conclusion of the project, its progress or lack of progress should be measured. This provides a source of motivation for project staff and also helps determine which improvements and reforms are worthy of replication.

Each project should also result in a report of its progress. If a project is successful, there should be a press release and DHS and SCAO should widely disseminate the knowledge gained about effective solutions to reducing delays.

Recommended short-term goals:

Form a working group of court, DHS, and private agency administrators at the state level to:

- a. Initiate a small number of demonstration delay reduction projects.
- b. Ensure sufficient state and local staff support for such projects.
- c. Arrange for evaluation of project results.
- d. Obtain expert support and technical assistance.

Recommended longer-term goals:

- e. Secure state and local funding to expand and support the expansion of such projects, including proper evaluation.
- f. Incorporate lessons from the projects into curricula and rules for court administrators, judges, attorneys, court staff, DHS managers, and DHS staff.

RECOMMENDATION EIGHT:

Strengthen computer support for courts hearing child protective proceedings
to enable them to improve and evaluate their performance through generating statistics, performing other specific functions critical to protective proceedings, and obtaining and using data developed by DHS.

Information on Court Performance. Judges need statistical information about their own caseloads, to evaluate and improve their own decision-making process. When judges know how fast cases move through their courts and exactly where the delays typically occur, they can more easily make corrections to speed the court process. When judges know how often children are reabused or neglected after coming before them and know which children are most likely to experience this, judges are better able to take steps to ensure child safety.

Likewise, when judges have a realistic knowledge of how often children who are “permanently placed” will actually not get permanent homes – and when judges know for which categories of children permanent placements are most likely to fail – judges can make better permanency decisions and more effectively review agency efforts to achieve permanency.

When judges can compare their performance with that of other judges and courts, it motivates them to improve their own performance. It leads them to consider and try different approaches to practice, with a goal of achieving better results for children and families.

Michigan legislation already requires courts to produce statistical reports on their handling of abuse and neglect cases. MCL §712A.22. These reports are supposed to describe each court's adherence to all time periods for child protective proceedings that are prescribed by Michigan's statutes and court rules. The reports also are to address the reasons why the courts have failed to adhere to deadlines.

The American Bar Association (ABA), National Center for State Courts (NCSC), and National Council of Juvenile and Family Court Judges (NCJFCJ) have developed proposed measures that computers can generate and that will help courts evaluate their performance of courts in child protection cases.⁸ These measures not only address the timeliness of child protective proceedings, but also the fairness of the proceedings, the

⁸See *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 (ABA, NCSC, NCJFC 2003).

safety of children before the courts, and the courts' achievement of permanency of maltreated children. To have such information, courts need the sophisticated support of court based computer systems.

Michigan courts do not yet have automated performance measurement for child protection cases. None of the six courts studied in the reassessment produced such data and SCAO has not yet designed computer programs to readily produce it. SCAO does require courts to produce data on five important timeliness measures in child protective proceedings. These measures do not, however, address the timeliness of termination of parental petitions or the completion of termination of parental rights proceedings. They also do not address the timeliness of outcomes such as family reunification and adoption (measured from the time of foster care placement),⁹ nor do they address other elements of performance as set forth in the ABA/NCSC/NCJFCJ measures.

Michigan should take concerted steps both to comply with MCL §712A.22 and to adapt and implement the ABA/NCSC/NCJFCJ performance measures. SCAO and the legislature should keep in mind that, although child protective proceedings do not represent a large proportion of cases, they are important far beyond their numbers. Such cases take up more court time than other case types, involve great expenditures of state and county funds (for foster care, administrative costs, Medicaid, and other services), and involve higher stakes—children's lives and safety and parental rights.

Other Computer Supports for Child Protective Proceedings. Child protective proceedings are distinct from other types of litigation, involving a long sequence of unique hearings and including many participants in several different categories. Computer systems for courts typically are designed for civil and criminal cases, making adaptations for child protection cases seem impractical and expensive. For these reasons, very few state computer information systems have yet been adapted specifically to meet courts' needs in child protective proceedings.

For example, computer support is needed to help courts track individual cases, automatically schedule hearings within statutory time limits (or provide warnings when hearings are scheduled outside time limits), project dates of other future deadlines, automatically generate court orders and other documents, process electronically filed documents (e.g., DHS court reports), and alert judges when there are other court cases related to the same family.

SCAO has developed the automated Trial Court Information System (TCS) to provide computer supports for courts. TCS, like many other court systems, supports docketing, calendaring, forms and generating notices. It stores information on parties, cases, charges, filed documents, court events, filings and dispositions, and other relevant

⁹SCAO, *Caseload of Michigan Trial Courts: Reporting Forms and Instructions for Circuit Court* 48-50 (2003). SCAO currently requires courts to provide data regarding the timeliness of adjudication and disposition, the timeliness of expedited permanency hearings, the time from adjudication to disposition, the timeliness of review hearings, and the timeliness of annual permanency hearings.

information. TCS does not yet, however, enable courts to perform many functions important to child protective proceedings.

Using DHS Data. In addition to producing their own data, courts should work collaboratively with DHS to obtain and use the agency's data relating to key case events and outcomes for children. In Kent County, DHS regularly provides data on the timeliness of family reunification, TPR, and adoption. This data measures the performance of individual judges, as well as that of the court as a whole and it helped the Kent County court become a national leader in timely court decision-making.

Information from DHS, while very helpful, cannot produce complete data on the court process. Only the courts' own automated systems can produce data that will help courts improve their efficiency, track their own cases, and evaluate their own processes in detail.

Recommended short-term goals:

- a. Develop comprehensive long-term state plan for providing complete regular performance statistics by local courts to SCAO, including identifying the performance measures, specifying the formats in which the statistics will be presented, setting protocols and timetables (including deadlines), and assigning state and local responsibilities for implementing the plan.
- b. Create and implement short-term plan for improvements in the current Trial Court Information System to perform additional functions for child protective proceedings.
- c. Develop and implement plan for DHS-SCAO collaboration relating to the sharing of DHS data and statistics on the state and local court level.
- d. Develop long-term plan for a comprehensive computer-programming module for child protective proceedings.

Recommended longer-term goals:

- e. Support legislative funding for the development of complete performance statistics pursuant to MCL §600.1011 and for a comprehensive management information system module for child protective proceedings.
- f. Complete local plans to provide complete and regular performance statistics, to be updated at least once a year and to be considered an adjunct of each court's family court plan pursuant to MCL §600.1011.
- g. Generate quarterly statistics to measure the performance of courts in child protective proceedings, including those required by MCL §712A.22 and those recommended by ABA/NCSC/NCJFCJ.
- h. Complete and implement comprehensive management information system module for child protective proceedings, with additional funding provided by the legislature.

RECOMMENDATION NINE:

Reduce the inappropriate use of extended foster care as a permanent placement.

In place of the term “long-term foster care,” substitute “another planned permanent living arrangement” and define this to offer new assurances of permanency. Strengthen and clarify permanency hearings and require periodic court review after a court authorizes another planned permanent living arrangement.

*Making “another planned permanent living arrangement” the permanency plan of last resort for Michigan’s foster children. A weakness in Michigan law is that it authorizes courts to place children in “long-term foster care” when there is a compelling reason.¹⁰ In 1997, federal law eliminated the option of long-term foster care *per se* as a permanency option, replacing it with “another planned permanent living arrangement.”¹¹ The preamble (commentary) to the federal regulations adopted to implement ASFA states that “far too many children are given the long-term goal of foster care.”¹² Cases reviewed during the court reassessment showed that many remain in the system as long-term foster care placements. Court observations revealed that long-term placements still are tolerated as permanent plans.*

In difficult cases where it is not possible to secure a timely permanent placement, continued foster care is sometimes necessary. When there are compelling reasons why other more permanent placement goals are not 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, an identified, responsible, and permanent parent figure is in the child’s life, together with a stable living situation. The term “another planned permanent living arrangement” should be defined to reflect that difference.

Strengthening permanency hearings. Permanency hearings are supposed to result in decisive case decisions and are supposed to avoid needless extended foster care and

¹⁰ MCL §712.19f(7)(b).

¹¹ 42 U.S.C. §675(5)(c)

¹² 65 Fed. Reg. 4036.

particularly to avoid extended foster care as a permanency plan. Yet, in some Michigan jurisdictions, the purpose of the permanency planning hearing is neither well understood or implemented. Many attorneys and judges regard permanency hearings merely as review hearings in which the court makes additional findings. They do not regard the permanency hearing as more of a critical juncture than other reviews.

Recommended short-term goals:

- a. Adopt court rules and encourage DHS to adopt a parallel 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.
- b. Draft legislation to substitute the term “another planned permanent living arrangement” for “long-term foster care,” and define “another planned permanent living arrangement” as a permanency plan for which the goal is to establish and secure a permanent relationship between the child and an adult, which will continue long into the child’s adulthood (such as with an identified permanent foster parent or permanent adult parent figure and mentor).
- c. Draft legislation to tighten permanency hearings by requiring that:
 1. Whenever DHS proposes “another planned permanent living arrangement” as a permanency plan, it must file a report before the hearing, explaining why other more permanent options are not practical and what steps will be taken to promote a permanent parent-child like relationship.
 2. Whenever the court approves “another planned permanent living arrangement” as a permanency plan, it must enter findings explaining why other more permanent options are not practical and detailing steps to be taken to promote a permanent parent-child like relationship.
- d. Draft legislation to require continued periodic review after the court approves another planned permanent living arrangement as the permanency plan.

Recommended longer-term goals:

- e. Enact legislation as outlined above.
- f. Design training curricula and provide training for jurists, attorneys, and caseworkers on changes in the law and how best to implement them.