



**Recommendations for Strengthening Courts
Made by the
Pew Commission on Children in Foster Care**

*As described in the Pew Commission's May 2004 report,
Fostering the Future: Safety, Permanence and Well-Being for
Children in Foster Care
(Available at: <http://www.pewfostercare.org>)*

**Prepared by the Children's Defense Fund
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On May 18, 2004, the Pew Commission on Children in Foster Care released its final recommendations about how to improve outcomes for children in the foster care system. The Commission released two sets of recommendations: one proposing changes to the fiscal structure of the child welfare system and another proposing changes to the way dependency courts operate. This document describes the court recommendations. A companion document describing the financing recommendations can also be found on the Children's Defense Fund's Web site. The specific recommendations are noted in bold. The accompanying text summarizes additional detail found in the body of the Commission's report.

Recommendations for Strengthening Courts Made by the Pew Commission on Children in Foster Care

PEW COMMISSION RECOMMENDATION #1

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

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

Further detail provided in the Pew Commission Report:

Court performance measures

- The American Bar Association, the National Center for State Courts, and the National Council of Juvenile and Family Court Judges developed and pilot tested a set of court performance outcome measures by which courts across the country can assess their own performance in accordance with the goals of the Adoption and Safe Families Act (ASFA). These performance measures are described in *Building a Better Court: Measuring and Improving Court Performance and Judicial Workload in Child Abuse and Neglect Cases*, which was supported by the David and Lucile Packard Foundation and published in 2004. The specific court performance measures in *Building a Better Court* are described in Appendix B (pp. 59-63) of the Pew Commission Report. Copies of *Building a Better Court* are available from the

Permanency Planning for Children Department of the National Council of Juvenile and Family Court Judges at ppcd@ncjfcj.org.

- The court performance measures in *Building a Better Court* track those used by state agencies in the Child and Family Service Reviews and include: safety, permanency, due process, and timeliness. They help measure the role of courts in ensuring:
 - 1) children are safe from abuse and neglect while under court supervision;
 - 2) children have permanency and stability in their living situations;
 - 3) courts deal with cases impartially and thoroughly based on evidence brought before the court; and
 - 4) courts can expedite permanency by minimizing the time from the filing of the petition or protective custody order to permanency.
- Aggregate data on court performance provide essential information for Chief Justices and State Supreme Courts as they monitor the performance of dependency courts, support best practices in these courts, allocate resources, and discuss court appropriations with legislatures.
- State court systems should make this aggregate information on court performance publicly available. The Pew Commission suggests that this will lead to heightened citizen awareness of the challenges children face and greater stakeholder involvement in developing strategies for addressing these needs.
- The Commission recommends that Congress appropriate at least \$10 million to help courts build their performance tracking capacity, with such sums available in subsequent years. It suggests that this could be done through the federal Strengthening Abuse and Neglect Courts Act or the Court Improvement Program. It further recommends that access to these funds be contingent upon the development of a joint plan between the state child welfare agency and the courts for collaboration and sharing of data and information. Federal dollars have not been available in the past to help courts track information about children under their supervision.

PEW COMMISSION RECOMMENDATION #2

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

- **The Department of Health and Human Services (HHS) should require that state IV-E plans, Program Improvement Plans, and Court Improvement plans demonstrate effective collaboration (and that tribal courts and service agencies be included in the development and implementation of all plans.)**

- **HHS should require states to establish broad-based state commissions on children in foster care, ideally led by the state’s child welfare agency director and the Chief Justice.**
- **Congress should appropriate \$10 million to train court personnel, a portion of which should be designated for joint training of court personnel, child welfare agency staff, and others involved in protecting and caring for children.**
- **Courts and agencies on the local and state levels should collaborate and jointly plan for the collection and sharing of all relevant aggregate data and information, which can lead to better decisions and outcomes for children.**

Further detail provided in the Pew Commission Report:

Demonstrate effective collaboration in state plans

- Effective collaboration requires that both courts and public agencies change the way they think about their respective roles, responsibilities, and priorities and engage in a new way of doing business together.
- Tribal courts and service agencies should be included in the development and implementation of the state IV-E plans, Program Improvement Plans (PIP), and Court Improvement Program plans.
- Congress should amend the Title IV-E state plan requirements and HHS should amend the PIP guidelines by adding a requirement for state agencies to demonstrate substantial, ongoing, and meaningful collaboration with state courts in the development and implementation of both plans. Where applicable, this collaboration should also include leadership from Indian tribes.
- Congress should direct HHS to amend the Court Improvement Program guidelines to explicitly require that the plans that must be developed by the highest court in each state to improve foster care and adoption laws and judicial processes must demonstrate meaningful and ongoing court-agency (and, where applicable, tribal) collaboration.
- Examples of meaningful collaboration include meeting regularly to review policies and procedures, sharing data and information, providing joint training, and engaging in other ongoing efforts

Multi-disciplinary state commissions on children in foster care

- The goal of the state commissions on children in foster care should be to engage the entire community in reaching the goal of providing all children with safe, permanent families in which their physical, emotional and social needs are met. More specifically, the state commissions can broaden public awareness and support for

meeting the needs of these children and families, monitor and report on the extent to which the child welfare programs and the courts are responsive to the needs of children in their joint care, and institutionalize collaboration beyond the terms of those heading the agencies and courts.

- The commission must be multidisciplinary and broad-based and ideally be co-convened by the State's Chief Justice and the child welfare agency director. The Pew Commission also suggests that states, particularly those with large urban jurisdictions, may want to encourage similar coordinating bodies at the local level.

Training

- High quality multi-disciplinary cross system training helps to ensure a competent workforce in both agencies and courts. It helps staff understand each others roles and how they fit into the system. It helps them ask the right questions and provide the correct information so children's needs can be met appropriately.
- Cross-system training is most effective when the planning and implementation of the training involve the active collaboration of both agency and court leaders. The Commission cited California's "Beyond the Bench" Program and New York's "Sharing Success" Conference as two examples of effective cross-system training.
- The Commission recommends that the current Title IV-E training funds be included in the Safe Children, Strong Families Grant so that the fund may be used for training court personnel as well as agency staff. It further recommends that Congress require states to demonstrate that a portion of their training dollars is used for cross-training initiatives that are jointly planned and executed by the child welfare agency and the state court system.
- The Commission also recommends that Congress appropriate \$10 million annually through the Court Improvement Program for training judges, attorneys, and other legal personnel in child welfare cases. States must document in their Court Improvement Plans that a portion of these funds will be used for cross-training initiatives planned and executed with the child welfare agency.

Sharing information

- The Commission recommends that courts and child welfare agencies share data and information in ways that maintain the confidentiality of certain information. It may be appropriate, the Commission says, to begin by sharing information through meetings, conversations, and shared reports. It also gives the example of Utah where courts and agencies integrate pertinent parts of their data management system. The ultimate goal, the Commission says, is for the courts and agencies to benefit from having access to the same information.

PEW COMMISSION RECOMMENDATION #3

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

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

Further detail provided in the Pew Commission Report:

Participation by children, parents, and caregivers in court proceedings

- Children, parents, and caregivers all benefit when they can actively participate in court proceedings, as does the quality of decisions by judges.
- Factors like the court room and waiting room accommodations, case scheduling, use of technology in the court room, and translation of written materials can make the court process more accessible and meaningful for all involved.
- Judges should actively seek input from a broad range of people who care about each child when making decisions about them.
- The state commissions on children in foster care referred to earlier can help judges determine the best way to give many and varied voices a chance to be heard in a safe and equitable way.

Court Appointed Special Advocates

- The Pew Commission recommends an expansion of the Court Appointed Special Advocates (CASA) Program. It urges Congress to appropriate \$5 million for the expansion of CASAs in the federal Strengthening Abuse and Neglect Courts Act.

Effective representation

- The Commission recommends that:
 - 1) state courts require attorneys practicing regularly in dependency courts to complete a multi-disciplinary training program and participate in ongoing training within and across disciplines throughout their careers;
 - 2) state courts, state bars, and organizations that provide continuing legal education develop and offer such training;
 - 3) law schools develop and expand course offerings and clinical internships that enable students to gain expertise in dependency law;
 - 4) Congress explore a loan forgiveness program and other demonstration programs to attract and retain competent attorneys in the dependency court and that other strategies also be explored to use federal funds to assist individual state courts that are pursuing innovative strategies to attract and retain qualified attorneys to dependency law; (The Commission specifically mentions S. 104 as moving in this direction, and suggests that it perhaps be expanded in scope to include attorneys already practicing in dependency court with heavy student loans as well as those attorneys just out of law school. With respect to other ways to promote innovative strategies, the Commission also notes that some states dedicate a portion of their court fees to compensate attorneys practicing in dependency court.) and
 - 5) Attorneys and law firms encourage and support the provision of more pro bono services to children and families in dependency court. To encourage this, State Supreme Courts and Chief Justices should publicly recognize attorneys and firms that provide pro bono services in this area, as is done in California. Legal education organizations also should offer continuing legal education credits for training that support their efforts.

PEW COMMISSION RECOMMENDATION #4

Chief Justices and state court leadership must take the lead, acting as the foremost champions for children in their court systems and making sure the recommendations described in the Pew Commission's report are enacted in their states.

- **Chief Justices should embed oversight responsibility and assistance for dependency courts within their Administrative Office of the Courts.**
- **State court leadership and state court administrators should organize courts so that dependency cases are heard in dedicated courts or departments, rather than in departments with jurisdiction over multiple issues.**

- **State judicial leadership should actively promote: (1) resource, workload, and training standards for dependency courts, judges, and attorneys; (2) standards of practice for dependency judges; and (3) codes of judicial conduct that support the practices of problem-solving courts.**

Further detail provided in the Pew Commission Report:

- Leadership from the top of the state judiciary is key to improving court performance in dependency cases. It sends a powerful message within and beyond the courts that safety, permanency, and well-being of children under court supervision is paramount.

Office of Children in the Courts

- The Pew Commission urges every state Chief Justice to establish an office on children in the courts within his or her Administrative Office of the Court. Some of the functions of these offices could include:
 - Analyzing the performance of the dependency courts with respect to improving outcomes for children, reporting their analyses directly to the Chief Justice or other state judicial leadership;
 - Providing information and technical assistance to the dependency courts around best practices and problem-solving approaches of jurisprudence;
 - Assuming responsibility for the management of the Court Improvement Program;
 - Providing tangible evidence of the importance of dependency issues to the court leadership; and
 - Institutionalizing the court's commitment to children beyond the tenure of individual Chief Justices.

Dedicated courts

- Currently, in many jurisdictions, dependency cases are heard by courts that preside over all categories of cases – family, civil and criminal, thereby denying dependency cases the time, expertise and importance that they deserve. The Commission suggests that state court leadership establish specific courts or departments dedicated to dependency cases to enable judges and other court personnel to develop expertise and demonstrate commitment to children and families affected by this area of the law. In small jurisdictions that do not have the capacity to create separate departments, the Commission suggests that cluster courts, such as those developed in Texas, might be an alternative. In cluster courts, courts are grouped together to build a dependency docket and then a judge travels to the different counties to preside over all the dependency cases.
- State courts should provide for the coordination of judicial proceedings that simultaneously affect the same child, so that children and their parents are not forced to cope with conflicting court orders or competing schedules for court hearings.

Judicial training

- State court leadership should actively ensure that every child’s dependency case is heard by an experienced, appropriately trained, and committed judge.
- The Commission recommends multi-disciplinary training for judges at the start of their work in dependency court and periodically throughout their tenure. They need a basic understanding of child development from infancy through adolescence, and an appreciation of children’s needs at each stage of development. They also need an understanding and respect for the complex and challenging jobs of caseworkers and foster parents responsible for children’s day-to-day care. The Commission notes that the National Council of Juvenile and Family Court Judges and many state courts have designed or endorsed training programs.

Encouraging best practices

- State judicial leadership can facilitate the use of best practices and the broader problem solving approach in dependency courts in the following ways:
 - Adopt and use standards for court resources and workloads within the dependency courts that recognize the unique nature of cases before these courts, the relatively large number of parties involved in these cases, and the often extended timeline of dependency cases;
 - Promulgate standards of practice for dependency judges, such as the *Resource Guidelines* developed by the National Council of Juvenile and Family Court Judges; and .
 - Promulgate codes of judicial conduct such as the Standards for Judicial Administration embodied in the 2004 California Rules of Court, which can be found at www.courtinfo.ca.gov/rules/appendix/appdiv/pdf.
- The Commission cited the National Council of Juvenile and Family Court Judges Model Courts and the special attention being given to drug courts and mental health courts that have been endorsed by the Conference of Chief Justices and the Conference of State Court Administrators as examples of best practices. The drug and mental health courts, the Commission says, adopt a problem-solving approach by engaging in a less adversarial, more therapeutic judicial process, that shifts the focus from processing cases to achieving tangible improvements in the lives of children and families.

Keeping qualified judges in dependency court

- The Commission recommends that judges who choose to build a career on the dependency bench, and have shown merit while on the bench, be permitted to opt out of routine court rotation, provided they have been assigned long enough to become knowledgeable about and engaged in the court. Currently, judges are often assigned to dependency court as an initiation to the system, until they can move “up” to civil or criminal court.