Building Better Courts by Measuring Court Performance and Judicial Workload

Today, more than ever before, courts are playing an essential role in ensuring the safety, permanency and well-being of abused and neglected children. Through a combination of legislation, regulations and executive policy guidance, the federal government has encouraged agencies, courts and other stakeholders to work together to achieve safe, permanent and loving homes for children involved in the child welfare system.

Building on the mandates of the Adoption and Safe Families Act of 1997 (ASFA), the federal government is working with state child welfare agencies to assess state performance through the Child and Family Services Reviews (CFSRs), a process that examines child welfare outcomes and state systemic factors – both of which include significant legal and judicial dimensions. The federal government is also continuing to work with state courts to improve their handling of child welfare cases through the Court Improvement Program (CIP).

Despite these efforts, however, many courts are not yet able to achieve excellence. In times of reduced resources, increasing federal pressure and heightened accountability, courts need to reflect on how to better manage their calendars, improve the productivity of their staff and ultimately ensure better outcomes for children and families.

The concept of court performance measurement is still relatively new for juvenile and family courts. Without the ability to measure performance, establish benchmarks and track progress, however, courts will never be able to fully achieve needed systems reform.

Two types of measurement activities are vital to court improvement:

- **Performance measurement** to establish baseline performance, identify areas for reform and chart their own progress in meeting deadlines and other goals, and
- **Judicial workload measurement** to track the resources courts have and to persuasively argue for what they need to make major gains in their performance.

**The Need for Performance Measurement**
The public holds both courts and child welfare agencies accountable for outcomes for abused and neglected children. Performance measures are the yardstick by which courts and child welfare agencies can measure the success they are achieving and the progress they are making.

Courts must not only focus on timeliness of case processing and decision making, but also on the quality of the process and related outcomes. For example, courts make key safety decisions – two of the most important being deciding whether to remove a child from the home and whether to return a child to the home. Measuring the appropriateness of these decisions, and their impact on children, motivates courts to critically examine their decision-making process, the outcomes and impacts of those decisions, and how to enhance future decision-making. Courts also need to set aspirational performance goals that are designed to focus their efforts, motivate their staff and evaluate their achievements.

Court performance measurement enables courts to measure whether they:
- Hold timely hearings within ASFA and state timelines
- Achieve timely permanency for children with minimal disruption in placement
- Conduct hearings that decide on permanent outcomes for children – such as return home, adoption, legal guardianship and permanent placements with relatives
- Successfully avoid repeated maltreatment of children
- Provide procedural protections for parties – such as notice to parents and foster parents

Performance measurement helps to identify and document good practice, while informing the field. It is also needed to demonstrate the value of successful pilot or demonstration projects by helping to prove that such reforms are cost-effective and should be replicated. For example, courts that have the capacity to link reforms to shortened lengths of stay for children in foster care can prove that carefully targeted resources can actually reduce the overall level of public expenditures for the child welfare system.

Performance measurement is also critical to the long-term expansion and sustainability of successful reforms. Only with a clear demonstration of success will most courts be able to access the funding needed to successfully develop, and sustain, reforms. In the current fiscal environment, funding for improvements is possible only with compelling and objective proof that improvement will achieve concrete and favorable results for families and children.

**The Need for Judicial Workload Assessment**
Equally critical to court improvement is objectively assessing judicial workload for courts handling child abuse and neglect cases. While the availability of sufficient resources does not guarantee good performance or positive outcomes for children, the lack of adequate resources will almost always hamper a court’s performance.

Increased demands such as new types of hearings required by federal and state law, increased frequency of certain types of these new hearings, and additional, stricter timelines for hearings, decisions and petitions, among other demands, require additional judicial time per case. Increased work with the agency and key groups in the community increases off-the-bench responsibilities of judges. Thus, judicial workload assessment must not only describe current judicial workloads but also determine what additional time and resources are needed to enable courts to perform at a level of sustainable excellence in both on-the-bench and off-the-bench responsibilities.

Sound and objective analysis of judicial workload requirements will help courts understand what resources they need and how to strengthen their requests for those resources. Through realistic workload assessment, courts can demonstrate need to funders through critical data.

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Improved judicial workload assessment can help achieve ASFA’s goals by:
- Giving judges and other decision makers sufficient time to hear evidence, ask questions, require parties to produce additional evidence, and make thoughtful decisions
- Freeing up overcrowded court dockets
- Giving judges time to carefully review agency reports and testimony and to ask questions
- Establishing manageable workloads so courts can create effective case review systems, provide procedural protections, and make necessary and detailed findings

The Packard Guide
With the generous support of the David and Lucille Packard Foundation, the American Bar Association Center on Children and the Law (ABA), the National Center for State Courts (NCSC), and the National Council of Juvenile and Family Court Judges (NCJFCJ) developed a Guide to help courts improve their performance by addressing court performance measurement and judicial workload.

The Guide explains the need for these two areas of reform, set forth methods to address them, provide specific instruments to assist courts, and explain how to use these instruments. The Guide present a set of performance measures and a system of measurement comparable to those used by state agencies in CFSRs – so that, like agencies, courts can measure their performance and track their own progress in improving safety, permanency and timeliness for the children who come before them.

This article is adapted from Building a Better Court: Measuring and Improving Court Performance and Judicial Workload in Child Abuse and Neglect Cases. To obtain a copy of this guide, at a cost of $12.95 plus the cost of mailing, and for additional information about accessing technical assistance, contact one of the partner organizations:
ABA: Mark Hardin, Esq., Director, Child Welfare (202) 662-1750
NCSC, Research Division: Victor E. Flango, Ph.D., Vice President (757) 253-2000
NCJFCJ, Permanency Planning for Children Department: Mary Mentaberry, Director (775) 327-5300

For Your Bookshelf
Children Discharged from Foster Care: Strategies to Prevent the Loss of Health Coverage at a Critical Transition. This paper discusses the importance of maintaining health coverage for children who are discharged from foster care and presents strategies for state child welfare and Medicaid agencies. Prepared by Pat Redmond of the Center on Budget and Policy Priorities for the Kaiser Commission on Medicaid and the Uninsured. For more information, contact the author at Redmond@cbpp or see the full report at www.kff.org.

An Analysis of Mental Health Issues in States’ Child and Family Service Reviews and Program Improvement Plans. In 2003, a workgroup of staff from the federal administration for Children and Families and the Substance Abuse and Mental Health Services Administration asked the National Technical Assistance Center for Children’s Mental Health at Georgetown University and the Technical Assistance Partnership for Child and Family Mental Health at the American Institutes for Research to conduct a mental health analysis of CFSR findings. The analysis is based on findings from Final Reports in 38 States and Program Improvement Plans (PIPs) from 28 States. The report summarizes responses to 10 specific questions about mental health screening and assessment, mental health services, and the extent to which mental health issues are addressed in PIPs. It also presents the mental health related trends observed in the Final Reports and PIPs and concludes with a summary of the challenges and solutions related to mental health needs and services for children and families in the child welfare system. Available online at http://gucchd.georgetown.edu/document.html#child.