



Court Performance Measures in Child Abuse and Neglect Cases

Technical Guide



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Court Performance Measures in Child Abuse and Neglect Cases: Technical Guide



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Preface

In ensuring the protection and welfare of children, the Federal Government has concentrated on three primary goals: safety, permanency, and well-being for abused and neglected children. The Government has led efforts to ensure that child welfare agencies, courts, and other stakeholders work together to achieve these worthy goals.

In 1997, the Adoption and Safe Families Act (ASFA) further focused child welfare agencies and courts on system reforms organized around these goals. The ASFA also emphasized that courts play a crucial role in achieving positive outcomes for vulnerable children.

The Federal Government recognizes that everyone involved in the protection of children is committed to the goals of safety, permanency, and well-being for every child. However, commitment to these goals is not enough. As stakeholders in whom the public has placed its trust, we must commit to a continuous process of improving and strengthening our dependency systems and cross-system supports. Performance measurement is only one step in that process, but it is a critical first step. To better serve and protect vulnerable children, we must first know how our current systems are doing.

Two Federal agencies—the U.S. Department of Health and Human Services' Children's Bureau and the U.S. Department of Justice's Office of Juvenile Justice and Delinquency Prevention (OJJDP)—are cosponsoring a

broad-based effort to measure the progress of juvenile and family courts in addressing the needs of abused and neglected children. This effort models the Federal ideals of collaboration and cooperation. It blends information and experience from two key initiatives: the Children's Bureau performance measurement project and OJJDP's Strengthening Abuse and Neglect Courts Act (SANCA) project. Three of the Nation's leading court reform organizations—the American Bar Association, the National Center for State Courts, and the National Council of Juvenile and Family Court Judges—have provided technical support.

The *Toolkit for Court Performance Measures in Child Abuse and Neglect Cases* is the result of this collaborative effort. The *Toolkit* provides practical, comprehensive guidance on how to undertake performance measurement and move toward more efficient and effective dependency court operations. Pilot tested in 12 diverse sites, the *Toolkit* reflects a breadth and richness of experience that will make it useful for any juvenile or family court.

The *Toolkit* could not have been produced without the combined expertise and leadership of the 3 court reform organizations and the cooperation of the 12 pilot sites. Working together, all of these contributors demonstrated that performance measurement can be done in any court and that it is essential to improving how we address the needs of abused and neglected children.



About the Toolkit

Performance Measurement: A Critical Need

Developing objective and qualitative measurements of practice is essential to a court's capacity to improve the effectiveness and efficiency of its operations and to sustain those improvements. Like child welfare agencies, juvenile and family courts must focus not only on the timeliness of case processing and decisionmaking, but also on the quality of the process and the outcomes resulting from the court's efforts.

Courts must focus on child safety by assessing their safety performance data and developing plans for improving the safety of children under their jurisdiction. Courts also must focus on ensuring secure, permanent homes for children in foster care and must improve their effectiveness in achieving permanency. In addition, courts need to determine how well they are protecting the rights of the children and adults who come before them. Finally, courts need to set aspirational performance goals in each of these areas—goals designed to focus efforts, motivate staff, evaluate achievements, and lead to better outcomes for children and families.

Few courts currently have the capacity to effectively measure their performance in child abuse and neglect cases. Whereas for-profit businesses have long taken for granted the need for performance measurement, it is still a relatively new concept for the Nation's courts. Yet, without this essential information, courts with jurisdiction over abuse and neglect cases cannot know what types of improvements they need to make and whether their efforts to improve are working.

Performance measurement makes it possible for courts to diagnose and assess areas in need of improvement and review progress in those areas. In this process, courts build improvements from a baseline of current practices and then conduct regular reassessments as reforms are implemented.

The purpose of the measures in the *Toolkit for Court Performance Measures in Child Abuse and Neglect Cases* is to help courts establish their baseline practices; diagnose what they need to improve; and use that information to

make improvements, track their efforts, and identify, document, and replicate positive results.

By capturing data for the 30 measures in the *Toolkit*, courts will be able to evaluate four areas of operation: child safety, child permanency, due process or fairness, and timeliness.

- ◆ **Safety (Measures 1A and 1B).** The goal of these two measures is to ensure that children are protected from abuse and neglect while under court jurisdiction. The performance outcome promoted by these measures is based on the principle of “first, do no harm.” Children should be protected from abuse and neglect, no child should be subject to maltreatment while in placement, and children should be safely maintained in their homes whenever possible and appropriate.
- ◆ **Permanency (Measures 2A–2E).** The goal of these five measures is to ensure that children have permanency and stability in their living situations. The permanency measures are closely related to timeliness measures but also include additional considerations. With this category, courts assess whether children change placements, whether cases achieve permanent legal status, and whether children reenter foster care (a possible safety issue as well). The permanency measures encourage courts to examine the “bigger picture” of the court experience for the abused or neglected child. In using the permanency measures, a court will need to obtain information from partner agencies such as the State child welfare system or private providers who track children placed in foster care.
- ◆ **Due Process (Measures 3A–3J).** The goal of these 10 measures is for the court to decide cases impartially and thoroughly based on evidence brought before it. Due process measures address the extent to which individuals coming before the court are provided basic protections and are treated fairly.
- ◆ **Timeliness (Measures 4A–4M).** The goal of these 13 measures is to minimize the time from the filing of the petition or emergency removal order to permanency. Courts generally are most familiar with timeliness measures. These measures help courts identify areas where they are doing well and areas



where improvement is needed. To ensure that courts can pinpoint specific stages of the hearing process in need of improvement, these measures must be comprehensive (applied to all stages of proceedings) and sufficiently detailed.

None of the measures includes a standard or benchmark of performance. Rather, the measures suggest a base of experience from which to develop reasonable and achievable benchmarks. The measures are designed to help courts improve services to maltreated children and their families, and it is important for courts to measure their progress toward achieving that goal. The measures are intended to be part of a process of continuing improvement. They are also intended to be developmental; that is, the measures can be refined as more is learned about the factors associated with a model process for handling child abuse and neglect cases.

The developers of the *Toolkit* expect courts to collaborate with child welfare agencies in applying these measures; for this reason, the court performance measures in the *Toolkit* are designed to be compatible with the Child and Family Services Review (CFSR) outcome measures developed for child welfare agencies. The *Toolkit* developers encourage courts to work with child welfare agencies to establish not only minimum acceptable standards of performance but also aspirational goals that challenge both stakeholders to improve even further.

The national court performance measures also reinforce the goals of other current Federal reform programs and legislation, including the Court Improvement Program (CIP) and the Adoption and Safe Families Act (ASFA). These initiatives recognize that courts, as well as State child welfare agencies, are crucial stakeholders in achieving positive outcomes for maltreated children who become involved in the child welfare system. Court performance has an impact on overall system performance in achieving safety and permanence for these children in a fair and timely manner.

History of the Performance Measures

The history of court performance measurement for child abuse and neglect cases began with a miniconference held in Scottsdale, AZ, on May 5, 1998. The miniconference was cosponsored by the Court Improvement Conference and the Conference of State Court Administrators' Court Statistics Project Advisory Committee. Participants worked with the following resource materials:

- ◆ Trial court performance standards and measurement system (prepared by the National Center for State Courts (NCSC) and funded by the Bureau of Justice Assistance (BJA)). These standards touched on five fundamental purposes of courts: access to justice; expediency and timeliness; equality, fairness, and integrity; independence and accountability; and public trust and confidence. Although general trial court standards could be applied to juvenile and family courts, miniconference participants perceived a need for measures and standards tailored specifically to child abuse and neglect cases.
 - ◆ Draft sets of child abuse and neglect performance measures developed by the American Bar Association (ABA) Center on Children and the Law, NCSC, and Walter R. McDonald & Associates, with comments and suggestions from the National Council of Juvenile and Family Court Judges (NCJFCJ).
 - ◆ A set of measurement goals from the National Court-Appointed Special Advocates Association.
 - ◆ Best practice recommendations for handling child abuse and neglect cases, outlined by NCJFCJ in *RESOURCE GUIDELINES: Improving Court Practice in Child Abuse and Neglect Cases*.
 - ◆ Technical assistance bulletins on information management in child abuse and neglect cases and judicial workload assessment in dependency cases, developed by NCJFCJ.
- Miniconference participants summarized key performance measures for dependency courts in a consensus statement, which was then presented in the following forums:
- ◆ To participants in the ABA Summit on Unified Family Courts, May 1998.
 - ◆ To child welfare professionals at the Permanency Partnership Forum, June 1998.
 - ◆ To managers of statewide automated child welfare information systems at the conference "Continuing To Build the Future: Using Automation for Children and Families," September 1998.
 - ◆ To juvenile and family court judges at the NCJFCJ Annual Conference, July 1998.
 - ◆ To judges, court administrators, and child welfare workers at "Improving Outcomes for Abused and Neglected Children," a symposium sponsored by the Bureau of Justice Assistance and the David and Lucile Packard Foundation, June 2000.

In addition, Dr. Ying-Ying Yuan prepared a critique of the performance measures in a September 1999 report for the ABA entitled “Feasibility of Implementing Court Self-Assessment Measures for Dependency Cases.”

The measures were then revised to reflect input from these sources, and the revisions were summarized by Dr. Victor E. Flango in an article entitled “Measuring Progress in Improving Court Processing of Child Abuse and Neglect Cases” (*Family Court Review*, Volume 39, pp.158–169, April 2001).

In their present form, the court performance measures in the *Toolkit* grew out of the Attaining Permanency for Abused and Neglected Children Project, conducted jointly by the ABA Center on Children and the Law, NCSC, and NCJFCJ, with funding from the David and Lucile Packard Foundation. Over a 3-year period, these measures were pilot tested to determine their applicability in different types of courts with different measurement needs and data collection capabilities. The measures were also examined for compatibility with the CFSR outcome measures for child welfare agencies. One result of this effort was the 2004 publication *Building a Better Court: Measuring and Improving Court Performance and Judicial Workload in Child Abuse and Neglect Cases*. This publication described dependency court performance measures for safety, permanency, due process, and timeliness. It also outlined a process for assessing judicial workload that encompasses both on-the-bench and off-the-bench aspects of dependency work.

The Children’s Bureau Project

After publishing *Building a Better Court*, the ABA, NCSC, and NCJFCJ received funding from the Children’s Bureau of the U.S. Department of Health and Human Services to support efforts by courts to improve their handling of child abuse and neglect cases. The Children’s Bureau project provided targeted technical assistance to six sites: Charlotte, NC; Clackamas County, OR; Little Rock, AR; Minneapolis, MN; New Orleans, LA; and Omaha, NE. During this project, the partnering organizations were able to test and refine the court performance measures, and data collection instruments at these sites.

The Children’s Bureau project helped the six sites do the following:

- ◆ Use the performance measures outlined in *Building a Better Court*—compatible with Adoption and Foster

Care Analysis and Reporting System (AFCARS) and CFSR measures—to assess their performance in abuse and neglect cases. This included evaluating each site’s capacity to generate data for each of the performance measures.

- ◆ Examine judicial workloads to determine whether judges were able to spend enough time on child abuse and neglect cases to make timely and well-considered decisions in these cases. The partnering organizations disseminated information about and provided technical assistance in judicial workload assessment.
- ◆ Develop a court-specific strategic plan for using performance and workload data to achieve increased accountability and better court performance.

A major goal of the Children’s Bureau project was to enhance the sites’ self-assessment capacity so they would be able to track and measure their own progress after their involvement in the project ended. This strengthened capacity also makes the sites better able to assess their ASFA compliance and CIP implementation. The project sought to enable project sites—and eventually all courts handling abuse and neglect cases—both to begin a process of continuing self-improvement and to help child welfare agencies determine the impact of court proceedings on achievement of CFSR outcomes.

The Strengthening Abuse and Neglect Courts Act Project

While the Children’s Bureau project was underway, the ABA, NCSC, and NCJFCJ received funding from the U.S. Department of Justice’s Office of Juvenile Justice and Delinquency Prevention (OJJDP) to help courts use automated management information systems to improve their performance in child abuse and neglect cases. The Strengthening Abuse and Neglect Courts Act (SANCA) project supported SANCA implementation in six States: Colorado, Florida, Georgia, Idaho, New Jersey, and Virginia.

At each site, the SANCA project partners helped improve automated management information systems, implement performance measurement, develop case-tracking capabilities, and perform other management information system functions specifically for child abuse and neglect cases. The SANCA project provided this assistance through meetings of representatives from all SANCA sites, onsite training and technical assistance to each site, and offsite consultation.

The SANCA project has not focused on improving court information systems as an end in itself. Rather, the focus has been on improving these systems in ways that will have the greatest positive impact on efforts to improve quality and timeliness in courts' handling of abuse and neglect cases, to target reforms for court improvement efforts, and, ultimately, to improve the lives of abused and neglected children.

The Toolkit Volumes

All the aforementioned work has culminated in the production of the *Toolkit for Court Performance Measures in Child Abuse and Neglect Cases*. The *Toolkit* content is informed by the experiences of the Children's Bureau and SANCA project sites.

In addition to providing detailed guidance about court performance measures for child abuse and neglect cases, the *Toolkit* offers a general approach—a way of thinking—that can help dependency courts successfully implement a performance measurement process. Using the *Toolkit*, dependency courts can:

- ◆ Establish a baseline of current practice, diagnose what they need to improve, and use that information to build and track improvement efforts.
- ◆ Measure their progress in achieving the goals of safety, permanency, and well-being for children.
- ◆ Identify and document practices that are achieving positive results and replicate those results.

The *Toolkit* includes the five volumes described below. Although each volume focuses on a particular audience, the *Toolkit* developers encourage everyone involved in court performance measurement for abuse and neglect cases to consult all the volumes for instruction, guidance, and inspiration.

Court Performance Measures in Child Abuse and Neglect Cases: Key Measures. This booklet outlines nine measures that the national partners have identified as key to determining court performance in child abuse and neglect cases. The booklet succinctly discusses the goal of each measure, data requirements, calculation and interpretation, and important related measures. It is an ideal tool for making the case for performance measurement to legislators, funders, and other high-level decisionmakers.

Court Performance Measures in Child Abuse and Neglect Cases: Implementation Guide. This step-by-step

guide provides practical advice on how to set up a performance measurement team, assess capacity (determine which measures the team can currently implement and which measures will require capacity building), prioritize among measurement needs, plan data collection activities, and use the data generated through the performance measurement process to plan reforms. The *Implementation Guide* uses examples from the Children's Bureau and SANCA project sites to illustrate key points. It also highlights lessons learned from the sites about performance measurement approaches, as well as challenges and strategies for overcoming those challenges. Performance measurement teams and project managers will find the *Implementation Guide* helpful as they plan and implement a performance measurement program and use results to drive improvement efforts.

Court Performance Measures in Child Abuse and Neglect Cases: Technical Guide. This comprehensive volume describes all 30 court performance measures for child abuse and neglect cases. The *Technical Guide* details the goals and purpose of each measure, discusses alternate or proxy measures, provides step-by-step specifications for calculating the measures, articulates what data elements need to be collected to produce each measure, suggests ways to present data effectively, and provides examples of how data obtained for each measure can be used in reform efforts. The *Technical Guide* also includes a detailed dictionary of technical terms and a flowchart outlining the typical child abuse and neglect hearing process. This volume is ideal for project managers and information technology (IT) staff tasked with obtaining performance measures. It will give them an in-depth understanding of all the measures, what is needed to obtain data for the measures, and how to report findings in a way that is easily understood by various target audiences.

Court Performance Measures in Child Abuse and Neglect Cases: User's Guide to Nonautomated Data Collection. Some courts may lack automated systems for gathering performance measurement data on abuse and neglect cases. Even if a court has adequate automation resources, certain performance measures (such as those assessing due process) may not be captured via automated systems. Furthermore, qualitative information can help to explain quantitative outcomes. This volume explains how to use nonautomated data collection methods—such as file review, court observation, interviews, and focus groups—to complete the performance measurement picture.

Court Performance Measures in Child Abuse and Neglect Cases: Guide to Judicial Workload Assessment. To improve their handling of abuse and neglect cases, courts need to be able to measure workloads as well as performance. Measuring judicial workloads makes it possible for courts to track existing resources and argue persuasively for additional resources when they are needed. This volume presents a method for obtaining data on judicial workloads in abuse and neglect cases which includes an assessment of what is required for best practice in these cases. Drawing on work from the pilot project sites, this volume discusses different approaches to workload analysis and provides tools for conducting analyses.

Toolkit DVD and Web Site

All *Toolkit* publications and related materials, such as presentations and instruments, are available on DVD and at www.courtsandchildren.org.

Acknowledgments

Our starting point in developing *Court Performance Measures in Child Abuse and Neglect Cases: Technical Guide* was the performance measures set forth in *Building a Better Court: Measuring and Improving Court Performance and Judicial Workload in Child Abuse and Neglect Cases*. These measures were jointly developed by the American Bar Association (ABA), the National Council of Juvenile and Family Court Judges (NCJFCJ), and the National Center for State Courts (NCSC). *Building a Better Court* included an earlier list of performance measures with brief accompanying definitions.

Much of the information in this *Technical Guide* is based on lessons we learned in the course of working with the people on the sites supported by the Strengthening Abuse and Neglect Courts Act project and the Children's Bureau project. We value and appreciate that experience.

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Overview of Technical Issues in Performance Measurement

This overview looks at the major considerations in designing and implementing a court performance measurement data collection and reporting system for child abuse and neglect cases. It provides important background information for the detailed performance measures in subsequent sections of this guide.

The overview covers the following:

- ◆ General design issues, with references to specific performance measures.
- ◆ Universal data elements—a few basic elements that should be included for every measure, in addition to the elements specified in subsequent sections of the guide.
- ◆ Relationships to Federal performance measurement systems.
- ◆ Data reports.
- ◆ Court reforms that can affect multiple measures.

The overview ends with “In This Guide,” a brief summary of contents.

General Design Issues

Gathering Information on Children

Child-Based Information

Courts that use a case-based—rather than a person-based—case management system (CMS) will find it particularly challenging to analyze the data for many of the performance measures. Most of the performance measures are about the individual child rather than the case as a whole, and require data to be linked to the individual child.

One or many children can live in a single household and be involved in a case, but not everything that happens in a case will apply equally to every child. The timing of case milestones and the eventual outcome for each child may be different. Early milestones, such as the emergency removal hearing, adjudication, and disposition hearing, may happen jointly for all children in a family. At later stages of the case, however, children from the same family may be on different tracks to permanency, and events may occur at different times for different children. To accurately measure performance, data must be linked to the children who are associated with the information.

Because the milestones and outcomes are specific to each child, the data to support the performance measures must also be child specific. For example, *Toolkit Measure 2A:*

Achievement of Child Permanency is related to an individual child. It is the child—not the case—who obtains a permanent home. If all children in a family are included under one case number, the CMS must have a mechanism for separately tracking what happens to each child and when. Even if all children in a family are released for adoption after their parents’ rights have been terminated, the adoptions may occur at different times, and some children in the family may never be adopted. Therefore, the reason for case closure as well as the date may differ for each child. *Toolkit Measure 2A: Achievement of Child Permanency* and *Toolkit Measure 2B: Children Not Reaching Permanency* require the final placement to be recorded for each individual child. In addition, the temporary placement data required by *Toolkit Measure 2C: Children Moved While Under Court Jurisdiction* must be maintained individually. Also, each child may have a different advocate to whom the child must be linked. Similarly, *Toolkit Measure 2D: Reentry Into Foster Care After Return Home* and *Toolkit Measure 2E: Reentry Into Foster Care After Adoption or Guardianship* relate to individual children, as do other measures.

Child Placements

Toolkit Measure 2C: Children Moved While Under Court Jurisdiction tracks the number of placements for each child during the life of the case. Placements may be with foster families, in group homes, and in residential care.

Most courts rely on the child welfare agency to maintain placement information and do not usually maintain placement information in a CMS. However, to produce the necessary statistical reports on this measure, courts will need access to the number of placements for each child. An alternative to maintaining detailed placement information in the CMS is to periodically obtain summary information from the agency. Because these reports are generally run for a population of cases that have closed within a certain timeframe,¹ such as 1 year, the court could elect to obtain a summary of the total number of placements for each child whose case closed during that timeframe specifically for purposes of statistical reporting. Some agencies may even be willing to produce a report on this performance measure for the court.²

Child Safety

Two *Toolkit* measures report on reabuse and renelect of children. *Measure 1A: Child Safety While Under Court Jurisdiction* and *Measure 1B: Child Safety After Release From Court Jurisdiction* both raise the issue of how the CMS will “determine” that there was further abuse or neglect both during the case and after the initial petition has closed.

First, courts must determine whether allegations of abuse or neglect are sufficient to count as reabuse or further neglect, or whether such allegations must first be substantiated by the agency or found to be true by the court.

Second, the “marker” that signals further abuse or neglect must be specified. In some jurisdictions, an amended or subsequent petition alleging abuse and/or neglect is filed after the initial petition while the case is still open. If that practice is universal among the courts in a jurisdiction, the filing of such a petition could be the marker, unless the courts require substantiation before the allegations can count as abuse or neglect. In other courts, a different mechanism for reporting further abuse or neglect to the courts must be developed, depending on the local legal process and the court’s requirements for counting instances of reabuse or further neglect; the CMS must then be revised to maintain this marker information. Depending on the CMS design, the task may be as simple as adding a reabuse flag and the date to the child’s record, or the mechanism may be more complex.

Courts may also obtain data on further abuse and neglect from the child welfare agency via report or data exchange,³ but there may be practical barriers to this exchange given current progress in judicial and child welfare agency CMS

systems. The marker to signal further abuse or neglect may be simpler after the initial petition is closed, because reabuse at that stage will usually trigger a new petition and new case cycle (emergency removal hearing, etc.) as part of the standard legal process. The CMS must be able to link the old and new petitions for the child to determine that additional abuse or neglect under *Measure 1B* has occurred (i.e., additional abuse or neglect after the initial petition has closed).

Reentry Into Foster Care

Unfortunately, permanent placements are sometimes disrupted and children must return to the foster care system. *Toolkit Measure 2D: Reentry Into Foster Care After Return Home* and *Toolkit Measure 2E: Reentry Into Foster Care After Adoption or Guardianship* examine such disruptions and subsequent reentries. The data issues for these measures are similar to those discussed above under “Child Safety,” but there are additional issues as well.

In these cases, the CMS must be able to determine that the child entering the foster care system has been there before; i.e., that this reentry is occurring after a prior permanent placement. Linking the two cases may be challenging, or even impossible, if the child’s case was previously heard in another jurisdiction, because the previous case information will not have been entered into the current court’s CMS. However, identifying the cases that must be linked, based on child’s name and date of birth, should be possible if both petitions are local or if the CMS is State-based (i.e., specific case information from each jurisdiction populates a statewide management information system).

Another issue involves determining whether the child is reentering foster care. First, where is the child placed after being removed from the home? Is the child placed in foster care in the custody of the child welfare agency, or placed with a relative, or returned home under the supervision of the court without the agency having custody? In the first instance, the child is returning to foster care, but in the other two instances, the child is not.⁴ The CMS must be able to distinguish between types of placement. Alternatively, the court can rely on the child welfare agency to assist in preparing reports on reentry into foster care.⁵

An additional issue is that the CMS must have a record of what type of permanent placement the child is leaving—adoption, guardianship, or return home. This is because *Measure 2D* and *Measure 2E* both report separately on children reentering care by the type of permanent placement that was disrupted. The type of permanent

placement, referred to in this guide as “case closure reason,” is required for a number of other performance measures. The fact that adoptions and/or terminations of parental rights are heard by different courts in many jurisdictions can make it challenging for the juvenile trial court to obtain this information readily and reliably. This is another fruitful area for data exchange between courts.

Gathering Information on Parents and Legal Guardians

Basic Information

A number of performance measures require the CMS to maintain detailed information about parents and legal guardians and their participation in the case. This information must be associated with the individual parent or guardian, who must in turn be linked to the individual child.

Basic information about each parent should include the name, address, and relationship to the child in the case. Relationship information includes whether an individual is the child’s biological parent, adoptive parent, or stepparent. There may be more than one putative father, and all who are involved in the case should be tracked.

Several *Toolkit* performance measures call for reporting data by parent, including *3D: Early Appointment of Counsel for Parents*, *3E: Advance Notice of Hearings to Parties*, *3G: Presence of Advocates During Hearings*, *3H: Presence of Parties During Hearings*, and *3J: Continuity of Counsel for Parents*. In reporting each of these measures, each parent or guardian should be counted only once, not once for each child.

Service of Process

Toolkit Measure 3B: Service of Process to Parties refers to service of the initial abuse and neglect petition, not to any subsequent petition(s) for termination of parental rights. Because State law specifies who is entitled to service of process, the CMS designer should consult legal staff to determine the parties for whom the CMS must track service of process. Many systems store service-of-process dates in the register of actions (also known as the docket). However, the CMS designer may prefer to store these dates in a separate data structure, with links to individual parties, to facilitate retrieving and reporting the information for specific parties.

The basic *Toolkit* performance measure regarding service of process, *Measure 3B*, looks only at whether a parent has been served, not necessarily when service was perfected or what method of service was used. However, the discussion of *Measure 3B* presents some alternatives that break down service by type of party and by whether the address of the party is or is not known.

The CMS designer must also address the issue of how to deal with multiple putative fathers in recording service-of-process data. The simplest way is to count the father as served when the first putative father has been served. However, the more comprehensive way is to track and report service on all putative fathers, especially the biological, putative, or adoptive father. The discussion of *Measure 3B* includes a recommended order of precedence for counting service to the father. Service of process is an important milestone. Without service on the required biological or adoptive father(s), if living, termination of parental rights cannot occur, and the child cannot be eligible for adoption.

Parents’ Demographic Information

None of the performance measures requires demographic information on parents. However, recording the parents’ race/ethnicity may be useful, because the jurisdiction may want to be able to report by racial/ethnic group on *Measure 3B* and other measures related to parental notification, counsel, and participation. Generally, collecting and reporting on demographic information (parent and child demographics) provides the court with a better understanding of the population of cases under its jurisdiction.

Gathering Information on Attorneys and Other Advocates

Basic Information

In most jurisdictions, the CMS allows staff to enter information about attorneys representing parties to a case. The CMS usually maintains the name, firm, address, and bar number of the current attorney. Sometimes the system stores the date of appointment or date of appearance, and some systems distinguish the type of attorney (appointed, retained, government attorney, etc.). Usually, but not always, the system links the attorney to the party being represented. Many systems also track similar identifying information for the court-appointed special advocate (CASA) volunteer or nonattorney guardian *ad litem* (GAL) appointed for a child.

Most of the information noted above (except addresses) is needed to produce one or more of the statistical reports described in this guide. In addition, some of the *Toolkit* performance measures require information less commonly found in a CMS, as discussed in the following paragraphs. The attorney or other advocate should be linked to the party being represented.

Appointment in Advance of Emergency Removal Hearing

Toolkit Measures 3C: Early Appointment of Advocates for Children and *3D: Early Appointment of Counsel for Parents* both require that the CMS retain information on when appointment of the attorney or other representative for mother, father, legal guardian, and child took place. Specifically, the CMS must record whether the attorney, CASA volunteer, or GAL was appointed prior to the emergency removal hearing.

Several issues complicate CMS design in this area. First, to be counted for purposes of the performance measures as someone entitled to appointed counsel, an individual must be identified as a party to the case *before* the emergency removal hearing. However, fathers sometimes are not identified until later in the case, or a father's whereabouts may be unknown. Furthermore, when parents waive the right to counsel, the question arises as to how they should be classified—as a party with representation or without representation. Each jurisdiction may determine how to count parents who waive counsel; the guide's discussion of *Toolkit Measure 3D* explores this issue further. Finally, in many States, parents who do not meet a “means test” are not eligible for appointed representation. The system must be able to track whether the party was eligible for appointment of counsel as well as whether counsel was actually appointed at this early stage.

Depending on its design, a CMS might track and report appointment of attorneys in a number of ways. One method is to track the date and time of the judge's order appointing the attorney and compare that information with the date and time the emergency removal hearing was held. (This would involve some complications if the hearing is postponed or completed on a day other than the day it began.) Another method is to instruct the data entry operator to include flags indicating that: (1) the party was or was not eligible for appointment of attorney, and (2) an attorney was or was not appointed prior to the emergency removal hearing. Both methods can accomplish the task, and both have pros and cons. For example, the flags may be simpler

to program, but they may be unreliable if data entry staff are not well trained or if the information is not reliably provided by the court.

Changes in Counsel

It is unusual to find a CMS that keeps a historical record of all attorneys and advocates who have appeared in the case and tracks the appearance (or lack of appearance) at each hearing for each party. Nevertheless, that is the requirement for *Toolkit Measure 3I: Continuity of Advocates for Children* and *Measure 3J: Continuity of Counsel for Parents*. These measures look at how many different individual attorneys or advocates represent a party over the life of the case. They examine who appears in court for each party, not who is the attorney of record.

In abuse and neglect cases, law firms providing appointed counsel, public defender offices, and government agencies representing child welfare agencies do not necessarily send the same attorney to each hearing in a case. Attorneys regularly substitute for each other when scheduling conflicts occur. In many jurisdictions, the CMS maintains the name of an agency or firm as the attorney of record in a case but does not link the name of an individual attorney to a specific party.

Establishing Data Requirements for Hearing Notification and Attendance Measures

Notice of Hearing

Courts differ in how they notify parties of the next hearing date and time. Some send written notices, others announce the date and time of the next hearing in open court, and others rely on attorneys to inform the parties and motivate their clients to attend hearings. *Toolkit Measure 3E: Advance Notice of Hearings to Parties* and *Measure 3F: Advance Written Notice of Hearings to Foster Parents, Preadoptive Parents, and Relative Caregivers* report on the documented record proving that advance notice of the hearing was provided in writing to all eligible parties, including foster parents and age-appropriate children,⁶ not just their attorneys.

These measures look at whether parties were notified and the timeliness of the notification. Because State law usually specifies how far in advance notices must be sent by mail to be considered timely, the CMS must maintain the dates that notices are mailed to parties. This information must be maintained for each party entitled to notice

(including foster parents, preadoptive parents, and relative caregivers), for each hearing throughout the life of the case.

A number of factors complicate analyzing data for these measures. A party in the case must have been identified as such to be entitled to notice; therefore, recording the date the party entered the case is important to accurate reporting. Federal law entitles foster parents to notice, and foster parents may change during the life of the case; therefore, the CMS must record the name and address of the current and any previous foster parents involved in a case.

If, in lieu of mailed notification, a written notice of the date and time of the next hearing is printed and handed to parties at the end of a court hearing, the courtroom clerk must record to whom the notice was given. Problems may arise with this method of notification because some parties may not be present in court or may have left before the notices were handed out.

Handing out or mailing a written notice to the attorneys does not count as notice to the parties. The notice must be given or sent to the party far enough in advance of the next hearing to satisfy State law for timely notice. The CMS must capture all the information needed to document this process, and staff must be conscientious in recording it.

Attendance at Hearings

Toolkit Measure 3G: Presence of Advocates During Hearings and *Measure 3H: Presence of Parties During Hearings* also require the CMS to track who is present at hearings. Although this information generally appears in the text of hearing minutes, these measures require that it be stored in data structures that facilitate retrieval and statistical analysis. The reports for *Measure 3G* show the percentage of cases in which all parties were represented by an attorney or other advocate at all hearings and, calculated separately for each type of party, the percentage of hearings where advocates were present. *Measure 3H* shows the presence (or lack thereof) of parties at the hearings.

One challenge in correctly analyzing attendance data lies in determining who should be present at a hearing. Who is *absent* from a hearing can be determined only when it is known who *should* be present. To be included in the analysis for a particular hearing, an individual must have been identified as a party to the case by the time of the hearing (parties identified later than the hearing date should be excluded from the analysis for that hearing).

Another challenge is that not every case involves every type of party. For example, no foster parents are involved if

the child has not been placed in foster care, few cases involve legal guardians, and a child may not be of legal age to attend hearings. The CMS must determine if any of these less common situations apply. Foster parents are a particular challenge because multiple foster families may be involved in the case at the same time, and children may be moved from one family to another during the life of the case. Determining who should be counted as present or absent may be especially challenging.

Information Regarding Judicial Officers

Only one performance measure deals directly with judges and other judicial officers: *Toolkit Measure 3A: Number of Judges Per Case*. This measure reports on cases in which the same judicial officer presided over all hearings, and cases in which two, three, four, or more than four different officers presided over hearings. In most jurisdictions, the CMS has this information in the text of court minutes and as part of a calendaring and/or scheduling module. However, a historical record of *who actually presided at each hearing* (not who was initially scheduled to preside) often is not maintained in a format that facilitates data retrieval for statistical reporting.

Being able to identify the judicial officers who preside at hearings has several advantages. The court can compare scheduled versus actual presiding officers to determine how frequently there are substitutions of judicial officers. It can report statistical information for actual presiding officers. Notably, judges can access information to learn about their own performance.

Linking or Obtaining Information From Multiple Sources

The structure of the court system may pose some challenges for assembling in a single system all the information needed to produce every performance measure. In some jurisdictions, abuse and neglect, termination of parental rights, and adoption cases are each heard by a different court, and these courts do not necessarily share the same CMS.

Calculating the total time from the beginning to the end of a case involving multiple courts—tracking, for example, when the original petition alleging abuse or neglect was filed, the child was removed from the home, parental rights were terminated, and the child was adopted—may pose

special challenges. Even if the courts involved do have a common CMS, tracking children across cases requires a common identifier for each child, which most States do not have. Furthermore, without a common identifier, information about legal proceedings cannot be shared between States or between jurisdictions within the same State.

In short, some data required for performance measurement will be imperfect because of limitations on a court's ability to match and assemble all relevant data in one system. However, a court can substantially improve its access to complete information by working with other courts and the child welfare agency to develop electronic data exchanges and strengthen interorganizational information-sharing policies and procedures.⁷

Addressing Data Comparability and Definitional Issues

If a jurisdiction reports performance measures at the State or judicial district level, comparability of data is essential. Comparability requires consensus on the definition of every data element.⁸ In addition, system designers should consult State and Federal law for definitions and legal requirements.

If standardization for a particular data item is impossible because variations in local practice cannot be changed, system designers must understand and accommodate the variations. The following list illustrates important data that should be standardized and indicates which performance measures are involved.

- ◆ What are the “markers” for reabuse and further neglect, both while the initial petition is active and after case closure? *Toolkit Measure 1A: Child Safety While Under Court Jurisdiction* and *Measure 1B: Child Safety After Release From Court Jurisdiction*.
- ◆ What are the types of permanent placements recognized in State law? For example, does “another planned permanent living arrangement” (APPLA), as defined by State law, have the key elements of a permanent placement? *Toolkit Measure 2A: Achievement of Child Permanency* and *Measure 4A: Time to Permanent Placement*.
- ◆ At what hearing does the court first find whether abuse or neglect has occurred for the purposes of Federal law? (See 42 U.S.C. §§ 675(F), 675(5)(C)). This will determine the start date required for *Toolkit Measure 4F:*

Timeliness of Case Review Hearings and *Measure 4G: Time to First Permanency Hearing*.

- ◆ Which putative fathers are entitled to service of process? *Toolkit Measure 3B: Service of Process to Parties*.
- ◆ What are the method and deadline, if any, for notice to foster parents preadoptive parents, and relative caregivers? *Toolkit Measure 3F: Advance Written Notice of Hearings to Foster Parents, Preadoptive Parents, and Relative Caregivers*.
- ◆ What is the legal deadline for adjudication? *Toolkit Measure 4C: Timeliness of Adjudication*.
- ◆ What is the legal deadline for the disposition hearing? *Toolkit Measure 4E: Timeliness of Disposition Hearing*.
- ◆ What is the deadline, if any, for completing termination of parental rights proceedings? *Toolkit Measure 4J: Timeliness of Termination of Parental Rights Proceedings*.
- ◆ Does State law require measurement of any other timeframes for abuse and neglect cases?

Technical Issues

In defining and standardizing data elements, system designers will need to address a number of technical issues. Some of these issues relate to selecting a reporting period, choosing samples, and providing context for analysis.

Reporting period. To the extent that the courts rely on data received from child welfare agencies, what court reporting period will be most useful? Should it coincide with the Federal fiscal year, State fiscal year, calendar year, or some other period? Keep in mind that child welfare agency reporting—and, therefore, production of data that the court will receive—may coincide with and/or be limited to specific points in the Federal fiscal year (October 1 through September 30).

Sampling. How will records be selected for samples to be included in each measure? Commonly used samples are cohorts of children entering court jurisdiction (“entry cohort”), children under court jurisdiction on a particular day (“cross-sectional cohort”), children under court jurisdiction at any time during a time period (“served cohort”), and children exiting court jurisdiction (“exit cohort”).⁹

Context. A single measure is rarely meaningful without placing it in some context. For example, is a reabuse rate of 4 percent high or low? The answer depends heavily

on the definitions of abuse and reabuse and on cohort selection, probability of detecting true abuse, variability of detection, and the point of reference for what is considered high or low. Definitions that remain consistent across jurisdictions and across many years go a long way toward providing enough context to answer this question.

Other measures also provide crucial context. For example, when a child is reunified with a parent who has been abusive in the past, there is always the risk that reabuse will occur. To interpret a reabuse rate, it is also important to know what resources the court is expending to mitigate the risk of reabuse. Interpreting measures not in isolation but as a balanced system of measurement is crucial. Such a system requires a great deal of expertise and thoughtful design.

Universal Data Elements

For each performance measure, this guide includes a list of the data elements specific to that measure, including required data elements (for calculating the basic measure) and optional data elements (for any alternative/proxy measures). In addition, several data elements are common to all the measures. **These universal data elements, which include organizational-level information, case number and child identifiers, and child demographic information, should be added to every measure.**

Organizational-Level Information

Organizational-level elements make it possible to aggregate information for reports that facilitate comparisons among courts (or circuits, districts, counties, judges, etc.). They also serve as search criteria for retrieving information to answer queries about specific organizational entities. These elements are:

- ◆ **State:** the name of the State in which the case was heard.
- ◆ **Judicial district:** the judicial district or circuit (if any) of the court.
- ◆ **Court:** the name of the local jurisdiction of the court, usually a county.
- ◆ **Branch:** the branch location of the court (if any).
- ◆ **Judge:** the name or ID of the assigned judge or judicial officer.

Case Number and Child Identifier

These elements make it possible to link specific cases and individual children with the data elements that apply to them:

- ◆ **Case number.**
- ◆ **Child identifier.**

If a CMS always assigns one child per case, only a single universal element is required to identify both the case and the child.

If, when more than one child is involved in a case, a CMS includes multiple children under the same case number, the system designer needs to provide separate universal elements for the case and for each child. Identifying each child can be accomplished by combining a party type (i.e., “child”) and a party number (unique to the specific child), or by assigning a child ID. Either approach makes it possible to link each child’s identity to all aspects of the case—events, documents, hearings, notices, outcomes, placements, attorneys, etc.—that relate specifically to that child. In this way, the system can treat each child, along with that child’s associated data elements, as a separate entity for purposes of reporting on performance measures.

Child Demographic Information

Although no performance measure actually requires demographic information for each child, such information may be very useful for purposes of analysis. Child demographics can provide the court with important information about the characteristics of the population served by the court and whether outcomes differ for segments of that population. The following universal elements are, therefore, recommended:

- ◆ **Date of birth.**
- ◆ **Race/ethnicity.**
- ◆ **Tribal affiliation.**
- ◆ **Gender.**

These elements make it possible to report aggregate information by age group, race/ethnicity, gender, and tribal affiliation, in situations where the court suspects that a disparity of treatment or outcomes exists between different groups.

Relationships to Other Measurement Systems

Nearly all State child welfare agencies report case-level data into the National Child Abuse and Neglect Data System (NCANDS)¹⁰ and the Adoption and Foster Care Analysis and Reporting System (AFCARS).¹¹ NCANDS is a voluntary reporting system containing information on abused and neglected children reported to State child welfare agencies. AFCARS is a mandatory reporting system covering all children in foster care for whom the State child welfare agency has placement and care responsibility. NCANDS and AFCARS are the sole data sources for calculation of the Federal Child and Family Services Review (CFSR) data indicators.¹²

Given that courts and child welfare agencies share much of the responsibility for safety and permanency, a number of the *Toolkit* performance measures are related to the CFSR measures and can be calculated from the same data. For children in foster care, proxies (approximate substitutes) can be calculated for both safety measures (1A and 1B) from a combination of NCANDS and AFCARS data. Proxies for all five permanency measures (2A through 2E) can be calculated directly from AFCARS data. Proxies for two of the timeliness measures (4A and 4I) can also be calculated from NCANDS and AFCARS data. By contrast, NCANDS and AFCARS contain no data elements relevant to the 10 *Toolkit* measures related to due process and fairness. In all, it is possible to calculate reasonable proxies for 9 of the 30 *Toolkit* measures based on agency NCANDS and AFCARS data.

The first round of the Federal CFSRs used a set of six discrete statewide data measures with simple national standards. For the second round, those six measures are replaced by two single measures and four “data composites,” covering the same broad outcome areas of safety and permanency. The decision to use composite measures calculated from a weighted combination of simple measures was driven by the recognition that: (a) measures can interact strongly with one another, (b) no measure can be interpreted in isolation, and (c) different practices may achieve the same outcomes through a different balance. The following excerpt of an answer by the Department of Health and Human Services’ Administration for Children and Families (ACF) to a question regarding composites illustrates the need for courts and child welfare agencies to work together to strike a balance between timely reunification and the rate of reentry to foster care:

A consistent finding of our analyses of State data on reunifications within 12 months and reentries within 12 months (as well as the research findings reported in the literature) is that many (although not all) States with a high percentage of reunifications in less than 12 months also tend to have a high percentage of re-entries into foster care in less than 12 months. We believe that a reunification that results in a reentry within a 12-month period should not be considered an effective reunification. Therefore, we expect States not only to reunify children in a timely manner, but also to do so in a way that supports the permanency of the reunification. Consequently, we incorporated reentry into the composite to ensure that this variable is accounted for in assessing the timeliness of reunification. Combining these measures in the composite provides both ACF and the States with a more accurate portrayal of a State’s performance with regard to reunifying children in a timely manner.¹³

Data composites provide a more holistic view of a State’s child welfare performance and also add complexity to the establishment and interpretation of national performance standards. Because of this complexity and incompatible definitions, the CFSR national standards are not closely equivalent to the *Toolkit* performance measures—with the possible exception of *Measure 2D: Reentry Into Foster Care After Return Home*. In this guide, discussions of several individual measures note similarities and differences between the measures and specific components or subparts of CFSR standards.

The two CFSR safety measures are not combined into a composite, which makes comparison with *Toolkit* performance measures relatively straightforward. Because of differences in definitions, however, neither measure is directly equivalent to *Toolkit* safety *Measure 1A* or *Measure 1B*.

Data Reports

The guide’s detailed discussions of the performance measures recommend tables and graphs to illustrate findings on each specific measure. This section of the overview discusses basic issues to consider when planning the reporting function.

Determining the Level of Aggregation

The level of organizational aggregation of the data in reports will depend on what choices are available and what choices a court system deems appropriate. For example,

if a State court system implements performance measurement through a statewide CMS used in every court, the options for refined analysis are far greater than they are if local jurisdictions implement performance measurement independently. Statewide systems can aggregate data by court, branch, judicial district, or other organizational entity and compare performance at each level to statewide totals, standards, medians, or means. Most courts are very interested in how well their jurisdiction is doing in comparison to others. Access to such information can be a prime motivation for change and reform.¹⁴

Choosing Open or Closed Cases for the Dataset

The universe of cases to be analyzed for each report must be determined. For many measures, the cases analyzed *must* be closed (completed) in order for all instances of the event or other element that is being measured to have occurred. Performance reports based on closed cases are often using data that are years old.

For example, *Toolkit Measure 4F: Timeliness of Case Review Hearings* examines all case review hearings that have occurred to determine the percentage of cases for which all review hearings were timely. Because review hearings occur periodically in each case until permanency is achieved and the case is closed, analysts must wait until case closure to capture all hearings in the analysis. For this measure, it is recommended that reports include all cases closed in a particular timeframe, such as 6 months or a year.

Another group of performance measures looks at what happens to children after their cases are closed and the children are in permanent placements. For example, *Toolkit Measure 2D: Reentry Into Foster Care After Return Home* and *Measure 2E: Reentry Into Foster Care After Adoption or Guardianship* are concerned with the rates of return to foster care within 12 and 24 months after permanency. For these reports, it is necessary to select cases that have aged at least 24 months since permanency was first achieved.

Some measures do not require analysis of the complete history of a case; for these measures, reports can include cases that are still open. Examples include measures that analyze time from one milestone to another, such as *Toolkit Measure 4B: Time to Adjudication*, which measures the time from filing of the initial petition to completion of the adjudication hearing. The report for that measure can

include any cases that reach adjudication during a specific timeframe such as 1 quarter, 6 months, or 1 year.

Another consideration in designing reports for measures that are not limited to completed cases is that the timeframe for analysis may be very recent (e.g., the universe could be cases in which the petition was filed during the last quarter). Such reports can provide a snapshot of a court's current performance.

In designing any report, special care must be taken that comparisons are based on equivalent samples and appropriate baselines. For example, when comparing reports from different jurisdictions within a state it is important to ensure that data from the same study period or timeframe are being compared. In addition, data from closed cases in one jurisdiction should be compared to data from closed cases in another jurisdiction.

Understanding Averages and Percentiles

Several performance measures require the calculation of averages (values, such as medians or means, that represent “typical” results). The median—the value midway between the lowest and highest values—is preferred because it is minimally affected by “outliers” (i.e., extreme deviations).¹⁵ Sometimes it is also helpful to compute the mean—the sum of all the values, divided by the number of values (*N*) summed.¹⁶ This guide points out performance measures for which it may be useful to calculate the mean.

To get a more complete picture of performance (e.g., the time to permanency not just for typical cases but for the fastest and slowest cases), the court might also compute values for the 25th, 75th, and 90th percentiles. Percentiles are identified in a manner similar to medians; the median is essentially the same as the 50th percentile—in the example of time to permanency, the value at which 50 percent of cases will be slower and 50 percent will be faster than the median. To identify percentiles, values are sorted from slowest to fastest. If, for example, the 25th percentile for time to permanency in a universe of cases is 100 days, that means that 25 percent of cases achieved permanency in 100 or fewer days, whereas the other 75 percent took longer. If the 90th percentile is 200 days, 90 percent achieved permanency in 200 or fewer days, and 10 percent took longer.

Analysis of percentiles can be very important in evaluating a court's case processing performance. Although it may be

relatively easy to reach timeliness goals that are measured against a median, the court’s greatest challenge may not lie in the timeliness of the “average” case. Problematic cases, often found in the upper (75th or 90th) percentiles, may be relatively few in number and yet take a disproportionate amount of the court’s time. If not managed effectively, such cases can have a major impact on the court calendar. In addition, cases in the upper percentiles may have actually “fallen through the cracks” in the court or child welfare system.

Therefore, once a court achieves its timeliness goal for processing the average case, it would do well to examine cases at the 75th and 90th percentiles. Analysis of these cases may show where the path to permanency is being delayed, shedding light on case processing issues that are not apparent in the median case alone. If, for example, time to permanency at the 75th and 90th percentile moves closer to the court’s goal for the median case, the indication may be that even the most difficult cases are benefiting from the court’s attention to increased timeliness. By contrast, if the 75th and 90th percentiles increase over time, improvements for the average case may be coming at the expense of the most problematic cases.

Calculating Time Intervals

Some performance measures require classification of cases according to a time interval measured in months. For example, *Toolkit Measure 2C: Children Moved While Under Court Jurisdiction* calculates the percentage of cases in which the child returned to foster care within 12 and 24 months after return home. The recommendation for calculating the month is to divide the number of elapsed days in a case by 30, which gives a close enough approximation of a month. If the calculation for a case comes to 12 months and 1 day, the case is counted in the 13–24 month category.¹⁷

Designing Tabular Reports

Tables show data in rows and columns. The intersection of a row and column is a cell in the table. Statistical reports are often formatted in tables, with an integer or percent in each cell. The information in the cell is correlated with the column heading and the row item. In sample OV–1, the highlighted cell shows the median days from filing of the initial petition to completion of the disposition hearing (column heading) for judicial district A (row item).

Sample OV–1. Median Time From Filing of Initial Petition to Disposition Hearing, by Judicial District, 2006

Judicial District	Median Days	Number of Cases
A	70	239
B	57	264
C	70	520
D	80	243
E	95	368
Statewide	72	1,634

Tabular reports may be simple to read and understand, as in sample OV–1, or they may be more complex. The more categories of data that are presented, the more complex a report will seem. Sample OV–2 uses the same dataset of cases as sample OV–1 but presents different information about those cases, breaking down the “days from filing” information into several categories (1–30 days, 31–60 days, 61–90 days, and more than 90 days). Each of these categories is divided to show the number of cases in the category and the percentage of total cases that number represents.

Breaking out the data by categories makes the report more informative, but it also multiplies the number of items a person must look at, which can make the report more difficult to read and understand. However, for many measures, it is necessary to compare several categories (columns) to understand the results. For example, reports on *Toolkit Measure 3D: Early Appointment of Counsel for Parents* or *Measure 3B: Service of Process to Parties* may tell a very different story for mothers and fathers as groups than for all parties combined. Data on *Toolkit Measure 2A: Achievement of Child Permanency* may look very different for older children than for younger children, or for different ethnic groups. Breaking data into categories can provide a more revealing view, uncovering important information that may be hidden in less differentiated statistics.

If the audience for a report is accustomed to reading tables, a tabular format is an efficient way to present a large amount of complex information. Depending on the audience, it may be useful to extract selected information from a complex table and present it in several simpler tables or in graphs (see the discussion below).

Breaking out tabular data by court can help to identify individual courts with excellent performance and those that

Sample OV-2. Days From Filing of Initial Petition to Disposition Hearing, by Judicial District, 2006

Judicial District	1-30 Days		31-60 Days		61-90 Days		More than 90 Days		Total Number of Cases
	Number of Cases	Percent	Number of Cases	Percent	Number of Cases	Percent	Number of Cases	Percent	
A	15	6%	79	33%	100	42%	45	19%	239
B	33	13%	116	44%	99	38%	16	6%	264
C	45	9%	201	39%	187	36%	87	17%	520
D	15	6%	69	28%	103	42%	56	23%	243
E	23	6%	80	22%	75	20%	190	52%	368
Statewide	131	8%	545	33%	564	35%	394	24%	1,634

are having difficulty achieving expected performance levels. Comparing individual courts or districts to a statewide average or standard can be useful in determining where to focus resources for improvement. Sometimes, showing a range of performance without specifically naming courts or districts is appropriate.

Tables can make it possible for people to analyze data in ways that are more comprehensive and complex than otherwise would be the case. However, it is not necessary to present the entire tabular report to every audience. Breaking a report into smaller segments, thereby showing only one or two things that are useful to a particular audience, is also a viable strategy.

Another way to help readers understand data is to provide textual analysis in short bullet points. This will be useful for

nonstatisticians who may need help accurately interpreting statistical data (e.g., the judge who needs to know whether he or she is meeting statutory timelines but may be unfamiliar with statistical presentations).

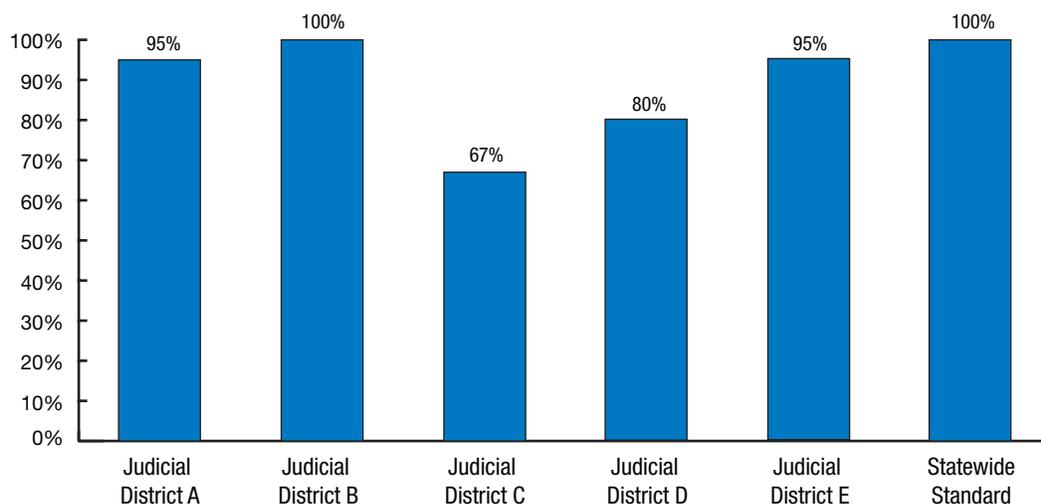
In short, it is important to consider the audience when deciding how to present findings in a tabular report.

Using Graphs

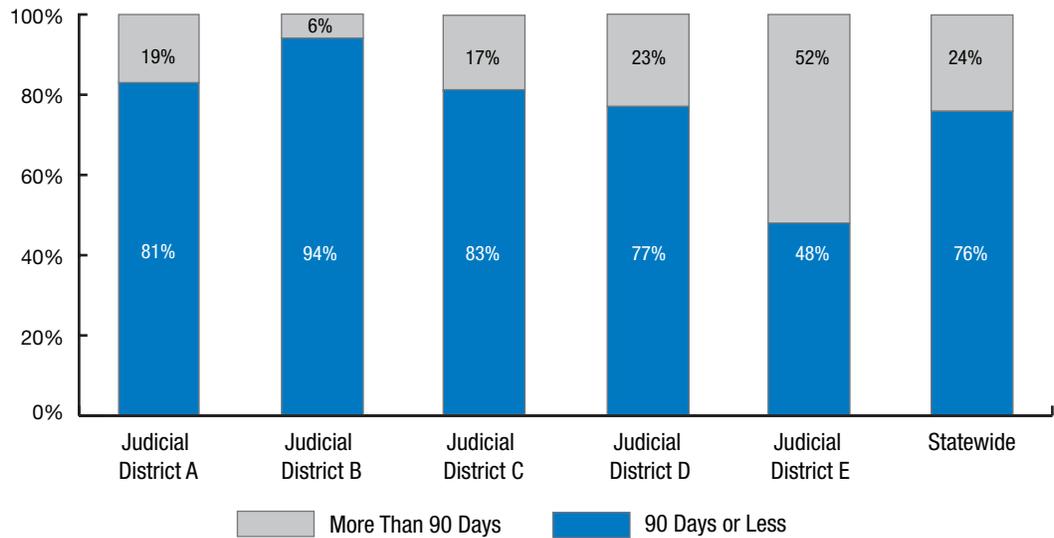
Depicting selected information graphically is one way to help audiences better understand the data. Bar graphs, pie charts, and trend lines all can be useful.¹⁸

Bar graphs are effective for side-by-side comparisons of the performance of different courts or districts. In sample OV-3, the heights of the bars provide a clear visual

Sample OV-3. Percentage of Cases Meeting State Standard for Days From Filing of Initial Petition to Disposition Hearing, by Judicial District, 2006



Sample OV-4. Percentage of Cases Reaching Disposition Hearing Within 90 Days, by Judicial District, 2006

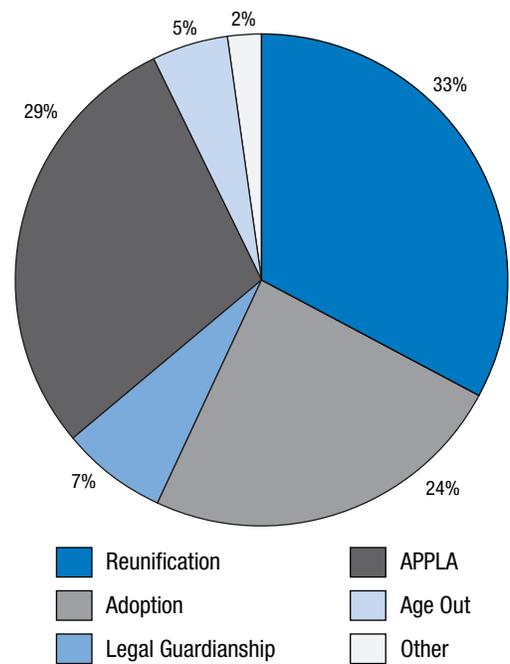


representation of differences between districts and also make it easy to see which districts are approaching the State standard. Sample OV-4 illustrates a stacked-bar graph. Here the divisions of the bars clearly show, for each district, the proportions of cases reaching a disposition hearing in 90 days or less versus more than 90 days. Based on data in the category “90 days or less,” the graph shows the districts in order from A to E next to the statewide average.

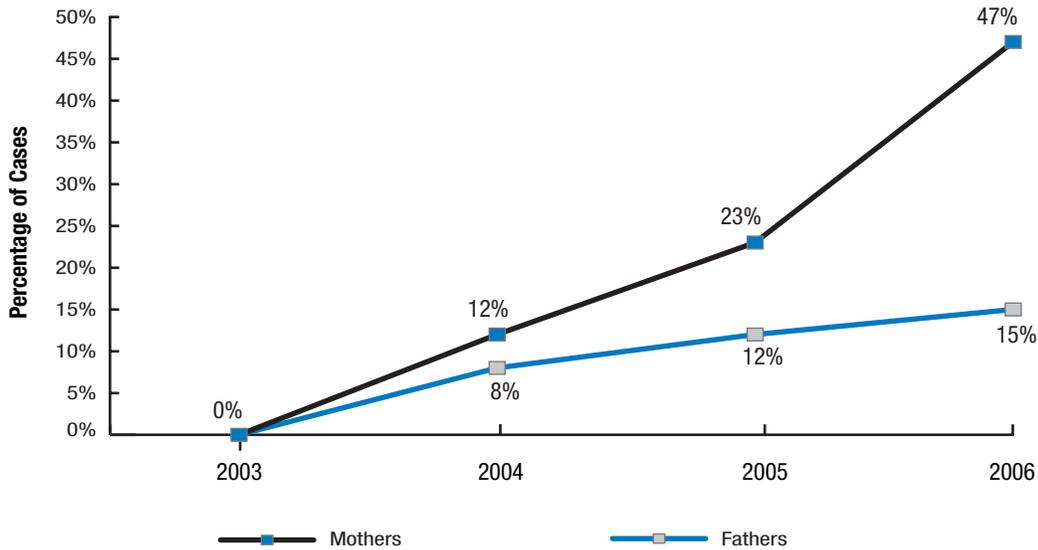
Pie charts are useful for showing how a dataset is divided into categories. For example, a pie chart of the data for *Toolkit Measure 2A: Achievement of Child Permanency* can clearly depict the percentage of children returning home, being adopted, living with a legal guardian, etc. (see sample OV-5). Pie charts can also illustrate proportions of other types of results, such as percentages of hearings occurring within various time ranges.

Trend lines connect various data points on a graph. They can show how the same measurement has changed over successive time periods. For example, sample OV-6 shows Judicial District C’s upward trend over the past 4 years in the percentage of mothers and fathers who were appointed counsel prior to the emergency removal hearing. In addition, the differences in the trajectories of the two lines and in the lines’ levels at each year emphasize the disparity in early appointment rates for mothers and fathers. Trend lines can also show the percentage of cases

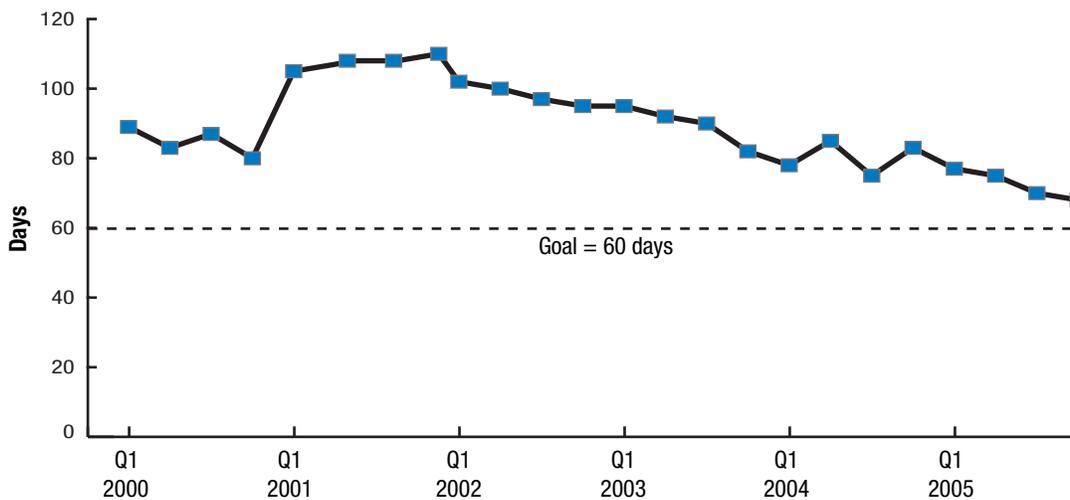
Sample OV-5. Types of Final Placements, Cases Closed in 2006: Judicial District D



Sample OV-6. Comparison of Early Appointment of Counsel for Mothers and Fathers, Judicial District 6, 2003 to 2006



Sample OV-7. Median Days From Filing of Initial Petition to Adjudication, by Quarter, 2000 to 2005



that reach particular points at different times. Sample OV-7 shows how the median number of days from filing to adjudication has changed over 6 years and how that trend relates to a particular goal or standard. Finally, a trend line can compare the rate at which events occur in different samples of cases (e.g., cases opened in different years).

The guide’s discussions of individual performance measures suggest possible graphs. Jurisdictions can experiment with different ways of illustrating the same

measures and results, to find the clearest and most compelling format for each. For example, multiple pie charts can show change over time. Whether pie charts are easier to understand than comparable bar graphs or trend lines depends not only on the particular area being measured, but also on the nature and complexity of the data. Again, jurisdictions are encouraged to tailor their reports to the needs of their audience(s).

Court Reforms Applicable to Multiple Performance Measures

This guide's sections on individual performance measures include discussions of court reforms related to each measure. This section of the overview looks at fundamental areas of legal system reforms that can have a bearing on many different performance measures. Courts wishing to improve their overall measurable performance should consider these broad, fundamental areas of reform as well as the specifics for the individual measures. For other general discussions of related practice reforms in child abuse and neglect litigation, see appendix B (for practice reforms related to specific stages of the court process) of this *Technical Guide*, chapter 3 and appendix A of the *Toolkit Implementation Guide*, and other sources cited.¹⁹

Analyzing Workloads

Appropriate judicial workloads are necessary but not sufficient to ensure good performance in many of the specific performance measures. For example, improved judicial workloads may or may not lead to more timely court hearings and decisions. However, workload improvements can be very helpful when combined with caseload management reforms such as restrictions on continuances, improvements in hearing practices (firm scheduling, clear deadlines, open-court scheduling of the next hearing). In other words, if a court is already efficient at scheduling hearings but there is not enough available time on the docket for timely hearings, more reasonable workloads may substantially improve performance for measures of timeliness.

Workloads involve more than the numbers of cases or hearings per judge. Also important are the workloads and duties of court staff and of attorneys who practice in the court. For example, if a court adds a new judge but lacks enough attorneys to cover the new courtroom, adding the judge may not speed the resolution of cases. Heavy workloads within the child welfare agency may also interfere with the timeliness of hearings, causing delays when workers fail to appear or are unprepared when they appear.

Judicial and attorney workloads affect not only the timeliness of hearings, but also the provision of procedural protections and the quality of hearings. These in turn may affect safety and other permanency outcomes.

Finally, analysis of workloads should take into account the time spent and time needed for the following:

- ◆ Hearings conducted in accordance with best practices.
- ◆ Off-the-bench activities related to cases (e.g., review and preparation).
- ◆ Off-the-bench activities not related to specific cases (e.g., court administration and work with the community).

For more information on workload analysis, see the *Toolkit* volume *Guide to Judicial Workload Assessment (Assessment Guide)*, as well as workload analysis discussions from site reports produced during the Children's Bureau performance measurement project.²⁰

Scheduling Hearings and Assigning Judges

Certain scheduling and assignment practices affect how much time is available for a hearing. For example, if a presiding judge without experience in child protection litigation determines how much time judges are to set aside for specific types of child protection hearings or for child protection cases generally, the time allotted for these hearings and cases may be insufficient.

The issue of time allotment is particularly important in rural areas and in other jurisdictions with unspecialized courts, where decisions of presiding judges rather than overall judicial workload analysis often determine the amount of court time to be devoted to child abuse and neglect cases. As discussed above, sufficient time for hearings is necessary to meet goals related to the timeliness, frequency, and completeness of hearings. Furthermore, judges in unspecialized courts (e.g., courts of general jurisdiction) may not hear child abuse and neglect cases on a regular basis and may require more time to conduct hearings properly than would more specialized juvenile and family court judges.

If a presiding judge allots inadequate docket time for hearings, problems are likely to result. For example, a presiding judge may allow one morning once a week for review and permanency hearings. If the court has only one judge to conduct such hearings and averages 12 hearings per week, this schedule allows only 15 minutes for each hearing, which probably will not be sufficient. Or, the presiding judge may allow one judge one day per week for *all* child abuse and neglect proceedings, a practice that is likely to cause a backup of cases and impose pressures that make

it impossible for hearings to comply with legal requirements and best practices.

To make improvements, courts are encouraged to set guidelines for (1) what should occur during particular types of hearings and (2) the length of particular types of hearings.²¹ Courts should consider making such guidelines standard and binding on court staff responsible for scheduling hearings, subject to ad hoc adjustments by the judge. For each type of hearing, staff should set aside standard amounts of time that will enable judges to conduct routine hearings in accordance with best practices; judges may then increase or decrease these time allotments based on the circumstances of specific hearings. Likewise, courts should set guidelines for the number of judicial officer-days needed per week for child abuse and neglect hearings, based on the number of cases, typical number of hearings, and other factors.

An additional factor in scheduling hearings is the amount of time judges need to complete related court forms and orders. For example, forms that call for certain case-specific facts may require additional time to complete and may also make it necessary for judges to ask more questions (and take more time) during hearings to gather the required facts.

Recruiting, Selecting, and Assigning Judges

Other factors critical to the quality of child protection litigation have to do with how judges are recruited, selected, and assigned to hear child protection cases in States with specialized juvenile or family courts. Such States should set objective requirements or standards concerning the qualifications and experience of judges assigned to child protection cases.²² Criteria for selecting judges should reflect these standards and should focus on qualifications and experience specifically relevant to child protection litigation. In addition, a fair, publicly known selection process should be in place.

Standards and selection criteria should take into consideration an individual's experience both before and since becoming a judge. They should also require experience handling other family issues, because of the "one family/one judge" principle (see below).

In courts of general jurisdiction,²³ where judges rotate in and out of family or juvenile divisions, long judicial assignments to the child protection dockets should be the norm.

Although allowances need to be made for judges who quickly become "fatigued" with child protection and other family cases, problems with judicial fatigue are greatly reduced when judges are originally selected for these cases based on extensive experience and demonstrated interest in this area of law.

In sparsely populated areas, establishing regional specialty courts to handle child protection proceedings is an alternative to requiring each rural judge to become familiar with this kind of litigation. Texas has experimented with this arrangement, creating "cluster courts" in which judges hear child protection cases for multiple counties.²⁴

A final, important consideration in assigning judges is to establish the principle of "one case/one judge," which means that (with limited exceptions) the same judge will hear all stages of a case. For related information, see this guide's discussion of *Toolkit Measure 3A: Number of Judges Per Case*.

Training Judges, Attorneys, and Court Staff

Training can be very helpful, but its effectiveness depends on a number of factors. The quality of the training itself is critical, as are trainees' levels of motivation and attendance. Other factors have to do with court organization, including rotation, specialization, and selection of judges, attorneys, and court staff.

The following steps can help courts create strong training programs for personnel involved in child protection cases:

- ◆ Identify specific skills and areas of knowledge that judges, attorneys, and other legal personnel need to best serve children and families.
- ◆ Develop curricula that address the most critically important skills and areas of knowledge and use the most effective methods for imparting them, including multiple modes of presentation and carefully designed audience participation exercises.
- ◆ Identify specific learning objectives for each training activity so its effectiveness can be measured against the objectives.
- ◆ Ensure that everyone who needs training in specific skills and areas of knowledge receives it. Approaches include making participation convenient, offering inducements for (or requiring) attendance, and tracking attendance.

- ◆ Ensure that those who attend training actually learn the skills and knowledge the training is designed to impart. Approaches include testing trainees (possibly online) and offering systematic refresher training.
- ◆ Use technology such as Web-based (online) training and training videos to reach employees who cannot travel to attend training sessions, and then support their participation by scheduling videoconferences or local meetings.
- ◆ Provide cross-system, multidisciplinary training on topics of mutual interest to different participants in the system. Such topics include risk assessment, mental health, substance abuse, and education of children in foster care; the role of caseworkers in court; and preparation and use of court reports.
- ◆ Colocate training for judges, attorneys, court staff, and child welfare agency staff, when practical, to combine multidisciplinary training with separate sessions for the different professional groups on topics of special interest to them.

Restructuring Legal Representation

Because attorneys strongly affect the flow of information to the court and the presentation of issues for litigation, the quality of legal representation is vital to the overall quality of child protection litigation. In restructuring legal representation to better serve children and families, courts should consider the following key factors:

- ◆ **Recruitment and selection.** Use objective selection criteria in appointing legal representation. Make the notice process for hiring or selection transparent.
- ◆ **Specialization of attorneys.** Find attorneys who specialize in child protection cases (e.g., through legal organizations) rather than randomly selecting attorneys from appointment lists.
- ◆ **Caseloads.** Balance caseloads to give attorneys adequate time to prepare cases and provide them with enough cases to develop and maintain expertise in child abuse and neglect litigation.
- ◆ **Mandatory training and mentoring.** Ensure that all attorneys handling child protection cases have the essential knowledge and experience needed for competent practice.
- ◆ **Clear performance expectations.** Consider using job descriptions or contracts that spell out obligations to provide advance preparation for hearings, attend all hearings, periodically check on clients' progress, and perform other specified duties.

- ◆ **Quality assurance and improvement.** Periodically evaluate the quality of legal representation and plan for improvements where needed.
- ◆ **Duration of assignments.** Consider using long-term contracts or staff assignments to specific dockets, divisions, or courts, which will allow attorneys to develop and maintain a high level of expertise.

Using Technology

Performance measurement is one of many ways that technology can be used to improve the efficiency and performance of courts. Other technology-based enhancements of the larger management information system (MIS) can also contribute to this goal. Important examples include the following:

- ◆ Electronic filing of court documents to facilitate timely filing of reports and pleadings.
- ◆ Automated creation and printing of court orders and other documents to facilitate timely preparation and distribution.
- ◆ Case-scheduling software that takes into account scheduling needs of all parties and produces court calendars.
- ◆ Electronic distribution of court calendars within and outside the court to facilitate attendance at hearings and enable timelier calendar adjustments, thus reducing delays.
- ◆ Automated reminders (ticklers) that prompt specific actions such as scheduling hearings and providing notice to avoid delays and improve the timeliness and consistency of notice.
- ◆ Automated tracking of cases, i.e., checking the status of specific cases (or groups of related cases) and the involvement of parties and others in these cases, to avoid needless delays in specific cases, diagnose causes of delays, and improve procedural protections.

MIS enhancements can also make it possible to prepare summary information for specific cases and electronically distribute the summaries to parties prior to hearings. (For example, summary case information could be added to lists of actions such as service of process, filing

of proceedings, and court orders.) Such summaries may improve the efficiency of judges and attorneys by keeping them informed of upcoming hearings. The summaries may also help to ensure the accuracy of information received by parties, judges, and attorneys.

In This Guide

This guide provides complete technical information for each of the 30 performance measures recommended for child protection litigation. The information includes an opening summary (definition, brief explanation, and purpose); a detailed discussion of implementation issues, such as complexities, alternative measures (“proxies”), additions, and barriers in capturing information; specifications for calculating the measure; data elements (including required elements for calculating the measure as defined, and optional elements for calculating alternatives); related CFSR standards; suggestions for tabular reports and graphs; examples of factors that may affect court performance; and possible court reforms for improving performance. The measures are arranged in four sections:

- ◆ **Safety (Measures 1A and 1B).**
- ◆ **Permanency (Measures 2A–2E).**
- ◆ **Due Process and Fairness (Measures 3A–3J).**
- ◆ **Timeliness (Measures 4A–4M).**

The guide also includes four appendices:

- ◆ **Appendix A. List of Performance Measures.** Each measure’s reference number, short title, and definition.
- ◆ **Appendix B. Stages of the Juvenile Court Process in Child Abuse and Neglect Cases.** Overview of the steps in processing child protection cases, including the guide’s terminology for hearings. This appendix will help States that use different terminology determine how their hearings correspond to those referred to in the guide.
- ◆ **Appendix C. Calculation Guide.** A quick reference for technical staff. Includes required data elements for each measure, plus specifications (also known as “business rules”) for performing calculations.
- ◆ **Appendix D. Data Element Dictionary.** Lists and defines all required and optional data elements used in calculating the performance measures.

Endnotes

1. By contrast, for many of the Child and Family Services Review (CFSR) measures and for the placement stability measure in particular, the sample for the measure is based on time of entry. Many of the measures, such as the stability of placements while children are in foster care, use such a sample. See the discussion in this overview regarding the comparability of CFSR performance measures and the measures set forth and discussed in this guide.
2. Note, however, that *Measure 3F: Advance Written Notice of Hearings to Foster Parents, Preadoptive Parents, and Relative Caregivers* still requires the court to be informed as to the foster parents who are active in the case in order to send notices of hearings to these foster parents as required by Federal law.
3. It is possible to link National Child Abuse and Neglect Data System (NCANDS) case records to CMS records with good accuracy by using a combination of child identifiers (e.g., date of birth, gender) and case identifiers (e.g., county, report date, petition date, removal date) data. See the discussion in this overview regarding the overlap of Federal data and the judicial performance measures in this guide.
4. Under Federal law, court-ordered out-of-home placement of abused and neglected children is not eligible for Federal foster care reimbursement unless the child welfare agency has custody or at least “the child’s placement and care are the responsibility” of the child welfare agency (42 U.S.C. § 672(a)(2)(B)). In addition, placements are not considered reimbursable “foster family homes” unless the child welfare agency has licensed or approved the home as meeting the relevant licensing standards (42 U.S.C. § 672(c)(1)).
5. The Adoption and Foster Care Analysis and Reporting System (AFCARS) includes the last date of discharge from the previous foster care removal episode. The comments in note 3 about linking NCANDS records to CMS records also apply to AFCARS records.
6. The definition of “age-appropriate” is left to the individual States.
7. When necessary, records for an individual child can be linked by using child- and case-identifying information. The linking process will rarely achieve 100-percent accuracy, as it will omit some true links and include some false links (in statistical terms, type I and type II

errors). It usually is possible to estimate the magnitude of these linking errors and the sensitivity of individual measures to these errors. Although they should never be ignored, linking errors and missing data should not be viewed as insurmountable obstacles. The effects of linking errors on measurement will often be small. As long as estimates of those effects are available for context, the errors should not diminish the utility of the measures.

8. Note that data collection methods need not be automated. Some data might be collected manually, whereas other data might be derived from automated systems.
9. A cohort is a group of people who share a common characteristic or experience within a defined time period. For example, all children entering court jurisdiction in 2005 form a cohort.
10. Most States and the District of Columbia (45 out of 51) report case-level data on child maltreatment to NCANDS. (See *Child Maltreatment 2004, Table 1–1 State Data Submissions*, www.acf.hhs.gov/programs/cb/pubs/cm04/table1_1.htm, accessed March 16, 2007.) NCANDS case-level records contain more than 140 fields describing each report of maltreatment disposed during the Federal fiscal year. (See *The Detailed Case Data Component (DCDC) Child Data File Record Layout*, Preliminary June 2000, www.acf.hhs.gov/programs/cb/systems/ncands/ncands98/record/recorda1.htm, accessed March 16, 2007.)
11. All State child welfare agencies report case-level data every 6 months to AFCARS. (See www.acf.hhs.gov/programs/cb/systems/index.htm#afcars, accessed March 16, 2007). The AFCARS foster care data contain more than 60 fields describing the most recent removal episodes of every child in State foster care during the reporting period. (See *AFCARS Foster Care Data Element Standards*, revised March 2000, www.acf.hhs.gov/programs/cb/systems/afcars/techbulletin/tb6.htm, accessed March 16, 2007.)
12. The CFRS program of the U.S. Department of Health and Human Services' Children's Bureau enables the Bureau to ensure that State child welfare agency practice is in conformity with Federal child welfare requirements, to determine what is happening to children and families who receive State child welfare services, and to assist States in enhancing their capacity to help children and families achieve positive outcomes.
13. From the National Resource Center for Child Welfare Data and Technology *2006 State Data Profile Toolkit* (www.nrcwdt.org/cfsr/cfsr_toolkit.html, accessed March 16, 2007).
14. Nevertheless, State courts should be circumspect about generating and publicly sharing reports that include data regarding the performance of individual judges. Such data can easily be misinterpreted and misunderstood. It is very important to allow judges to check and correct data. It is also important to carefully consider when, how, and in which formats to produce aggregate reports.
15. The median is the point that divides a set of measurements into two equal halves—half of the scores in a list of measurements are above the median and half are below the median. When there is an odd number of numbers, the median is simply the middle number (e.g., the median of 2, 4, and 7 is 4. When there is an even number of numbers, the median is the mean or average of the two middle numbers (e.g., the median of the numbers 2, 4, 7, and 12 is $(4+7)/2 = 5.5$).
16. For example, to calculate the mean time to adjudication for a sample of 150 cases, one would sum the days to adjudication for each case and then divide that sum by 150.
17. An average month is actually 30.4 days (365 days/12 months). Another possibility for counting months is to use 30.4 days and round off (e.g., 150 days/30.4 days = 4.9 months = 5 months). This usually will not affect the statistics by more than a day or two and rarely will force a case from one classification into another (e.g., from 1–3 months to 4–6 months). For example, if an event occurred on March 15, the system can measure the number of days from that point until the next event occurred on May 15 (61 days), divide 61 days by 30 or 30.4, and then round the result, which would be 2 in this case, for the number of months between events.
18. All of the types of graphs discussed in this section can be readily produced using Microsoft® Excel®.
19. For an extended discussion of one State's court organization reforms, see Muskie School of Public Service and American Bar Association Center on Children and the Law, *Michigan Court Improvement Program Reassessment* (Lansing, MI: Michigan State Court Administrative Office, 2005), pp. 12-70. See also summaries of

national court reform efforts of the National Council of Juvenile and Family Court Judges (NCJFCJ), published by NCJFCJ in a series of technical assistance bulletins (Model Court Status Reports), available online at www.ncjfcj.org.

20. For this information, contact Mark Hardin: markhardin@staff.abanet.org; 202-662-1750; American Bar Association Center on Children and the Law, 740 15th Street, NW, Washington, DC 20005.
21. For best practice guidance on the content and length of hearings, see the NCJFCJ publications *RESOURCE GUIDELINES: Improving Court Practice in Child Abuse and Neglect Cases* (1995) and *ADOPTION AND PERMANENCY GUIDELINES: Improving Court Practice in Child Abuse and Neglect Cases* (2000), available online at www.ncjfcj.org. Presiding judges or court staff who are responsible for scheduling child abuse and neglect hearings may benefit from training regarding the purposes of various types of hearings.
22. Such standards can also serve as useful background information for voters in States with judicial elections.
23. “Courts of general jurisdiction” are empowered to hear all types of litigation, including major criminal and civil cases. In many places, these courts have specialized family or juvenile divisions. Presiding or administrative judges of the court of general jurisdiction often control rotation in and out of the specialized divisions.
24. A thorough, federally funded evaluation of the Texas cluster courts is currently underway.

Child Safety While Under Court Jurisdiction

MEASURE 1A



Definition: Percentage of children who are abused or neglected while under court jurisdiction.

Explanation: This measure shows the percentage of children who suffer *further* abuse or neglect after court proceedings are initiated for their protection but before the case is closed.

Purpose: To help courts evaluate both their own role and the child welfare agency's role in protecting abused and neglected children from maltreatment. This measure focuses on the time period during which the court has jurisdiction over the children (i.e., while the court case is open).

A variety of circumstances exist in which courts affect the safety of children under their jurisdiction. Some of these circumstances are discussed in detail below. Among the more obvious examples are judicial decisions regarding whether or not to remove a child from the home and whether or not to return a child to that home. In addition, courts exercise oversight of children while they are in foster care. This measure may be refined to allow courts to calculate separately how often children under court jurisdiction are maltreated while at home or with relatives and how often they are maltreated while in foster care.

Implementation Issues

This is one of the most complex and challenging performance measures for courts to implement. The discussions that follow indicate why that is the case.

Distinctions Regarding Abuse or Neglect of Children While Under Court Jurisdiction

Whether Maltreatment Occurred While Children Were in Foster Care

One possible distinction regarding abuse or neglect while children are under court jurisdiction is whether or not the children were in foster care when the maltreatment occurred. The court may decide to measure abuse or neglect only while a child is in foster care. Or, it may decide to report separate rates of abuse or neglect for children who are in foster care and those who are not in foster care but are still under the court's jurisdiction.

Some examples illustrate why this distinction might be important. In the first situation, the child is placed in foster care:

- ◆ A judge awards custody of a child to the child welfare agency and the agency places the child in foster care. The foster parents later abuse or neglect the child. The child could not have been abused or neglected in foster care without the judge having awarded custody to the child welfare agency for foster placement. Although the judge received information about where the child was placed, it was the agency that chose the foster family, visited the child in the foster home, and continually evaluated the child's circumstances. Further, the judge awarded custody to the agency because the child already had been abused or neglected at home. Leaving the child at home was not a safe alternative.

By contrast, in the following situations, the children are not placed in foster care:

- ◆ A parent abuses or neglects a child after a judge decides not to approve the child's removal from home.
- ◆ A parent abuses or neglects a child after a judge allows a child to be returned home.
- ◆ A relative or other individual abuses or neglects a child after a judge decides to place the child into that person's home.
- ◆ Another member of the parent's or relative's household abuses or neglects the child in one of the above situations.

In these four situations, the judge specifically ordered a child to remain in a certain home. Abuse or neglect then occurred during this placement. The fact that the judge made the placement decision does not mean the abuse or neglect was necessarily the judge's fault. The agency may not have presented enough information, advocacy may have been insufficient, or there may have been facts that the agency could not have known. Nevertheless, *to some*

extent, the abuse or neglect can be attributed to the court's decision.

The situations outlined above suggest that courts generally are more responsible for abuse or neglect while children are *not* in foster care than when they are in foster care; however, this is not always the case. For example, although a child is placed in foster care, the child might be abused or neglected by a parent during visits, and the judge may have ordered the terms and conditions of those visits.

In some States, judges have the authority to order where a child will be placed in foster care and to set the conditions under which the child will be placed. If the judge orders a specific placement over the objection of the child welfare agency and the child is then abused or neglected in that placement, one might attribute the abuse or neglect, in part, to the judge's decision. However, even in States where judges have the authority to order specific foster placements, they actually do so only in a small minority of cases. While children are in foster care, the agency is much more often and more deeply involved in placement decisions than are judges. Thus, whether or not a child was in foster care while abused or neglected is a useful distinction for purposes of performance measurement.

Whether Maltreatment Occurred While Children Were Placed With Relatives

Another useful distinction regarding abuse or neglect of a child under court jurisdiction is whether or not the maltreatment occurred while the child was placed with a relative. Many courts and child welfare agencies are interested in evaluating the soundness of their decisions to place children with members of the extended family. Relatives with whom children are placed may or may not be licensed and approved as foster parents. Courts may grant custody of a maltreated child to relatives rather than to the child welfare agency.

Possible Sources or Types of Information Regarding Abuse or Neglect of Children While Under Court Jurisdiction

A major challenge for this measure is obtaining accurate data on the rate of abuse or neglect while children are under court jurisdiction. When designing specifications for this measure, courts must think carefully about what sources of information on abuse or neglect are most accurate and most consistently available. The paragraphs that

follow describe possible sources and types of data courts might use.¹ None of the approaches described will be the best in every State or local court system. Courts must decide what is the most effective, comprehensive way for them to collect the data for this measure.

Emergency Court Orders Transferring Children's Placement or Custody

One source of data that is relatively easy for courts to collect and count is emergency court orders authorizing the removal of a child from home or other emergency changes in placement. In most cases, such court orders will be based on an incident of abuse or neglect.

Note, however, that this performance measure is based *only* on abuse or neglect that occurred while the court had jurisdiction. Therefore, the count should *not* include judicial emergency removal decisions based on incidents that occurred before the court proceedings began. For example, assume that a child was abused or neglected at home and, based on that incident, the child welfare agency subsequently either (1) removed the child and then scheduled an emergency removal hearing, or (2) obtained an emergency court order before removing the child. In either circumstance, the first court order should not be counted in this measure because the actual abuse or neglect occurred *before* the court's jurisdiction began.

The following are examples of court orders that *would* be counted for purposes of this measure:

- ◆ After the judge issues a disposition order leaving a child at home, a parent again abuses the child. The agency promptly files a motion requesting a court order authorizing the agency to remove the child from the home immediately. That order would be counted for this measure.
- ◆ During a review hearing, the judge issues an order transferring custody of a 3-year-old child from the State child welfare agency to the child's maternal grandmother. Later, the agency finds the child unattended and wandering the grandmother's home while the grandmother is visiting friends a block away. The agency picks up the child and schedules a court hearing on the next day. The judge then issues an order transferring custody of the child back to the agency. That order would be counted for this measure.

If emergency court orders based on incidents of abuse or neglect are consistently issued when a child's custody or placement is changed, then courts can count and report

these orders relatively easily. To use the emergency orders as a source of data for this measure, however, court staff will need to distinguish them from other types of orders when entering the data into the judicial database.

A disadvantage of using this source of data is that if it does not include *all* incidents of maltreatment, then it is not fully valid as a measure of abuse or neglect. For example, abuse or neglect may occur that does not require emergency removal, such as incidents during visits. Furthermore, in most States, if maltreatment occurs while a child is in foster care, a court order is not necessary to change the child's placement. Another disadvantage affecting the validity of emergency orders as a data source for this measure is that children sometimes are removed from the home because of emergencies that do not involve abuse or neglect (e.g., a single parent may suddenly become ill).

Despite the disadvantages noted, emergency removal orders can be a roughly accurate proxy (and therefore useful) for measuring abuse or neglect that occurs while children are under the court's jurisdiction but not in foster care. To determine how useful these orders will be as a data source for this measure, it is necessary to carefully consider (1) the circumstances in which such orders are supposed to be issued, and (2) how consistently they are issued in these circumstances.

Written Reports by the Agency to the Court in Individual Cases of Abuse or Neglect

Another possible source of data on abuse or neglect while children are under court jurisdiction is written reports by the child welfare agency. If agencies routinely and consistently list such incidents in their written reports to the court, court staff can record this information in a way that makes it useful for this measure of court performance.

An advantage of this data source is that it can include incidents of maltreatment that occur while children are in foster care, as well as incidents that occur in other placements.

Two major challenges to gathering data from agency reports are: (1) the agency's consistency in providing reports to the court, and (2) the court staff's consistency and accuracy in entering this information into the judicial database.

To ensure consistent reporting to the courts, the agency should format its court reports so they prominently address any incidents of abuse or neglect since the previous court report. Specifically, the report form or template should

include a clearly marked section indicating whether the child has been abused or neglected and, if maltreatment has occurred, by whom. The agency must train and supervise its employees to ensure that they include this information in their reports to the court.

To ensure proper data entry by court staff, the court's computer programs should provide data entry screens prompting staff to indicate whether or not abuse or neglect information has been reported by the agency. The field for such data entry should be mandatory. The entry screen should ask who reportedly abused or neglected the child and whether the court ordered the child to be cared for by the person(s) named. Courts must train and supervise their employees to ensure that they consistently and accurately enter this information from the agency report into the court database.

Assuming that the court and agency agree on using written reports to identify incidents of abuse or neglect, they must also agree on the circumstances in which the agency will report incidents. For example, will the agency include all alleged incidents or only those it has verified? Because some agencies do not formally report and investigate allegations of abuse or neglect once court proceedings have begun, it may not be feasible for the agency to include only "substantiated" or "confirmed" incidents in its reports to the court. Even if the agency does formally investigate allegations after court proceedings have begun, the court may prefer that the agency report incidents before it completes its investigation.

A possible disadvantage of this data source is that the court may not regard the agency reports as judicially recognized proof of abuse or neglect. Nevertheless, courts should recognize that these data have value as a means of making aggregate comparisons.

A related problem has to do with the consistency of agency reports. Some agencies or branch offices might be more inclined than others to report minor incidents to the court. The State child welfare agency can alleviate this problem somewhat by adopting relatively clear definitions of abuse and neglect and periodically reviewing how local agencies screen reports and share information with courts.

Agency Data on Reports of Abuse While Children Are Under the Court's Jurisdiction

The child welfare agency might provide electronic data to the court regarding abuse or neglect. The data might also specify whether or not such abuse or neglect occurred

while the child was in foster care. Either the agency or the court should filter out reports of incidents that did not occur while the child was under court jurisdiction.

In most States, however, there are formidable technical and practical barriers to agencies' electronically sharing such data with courts. Few court systems and agencies have yet worked out systems for timely exchanges of data and implemented quality control measures to ensure the data's accuracy.

An alternative to electronic data exchange is for the agency to process the data itself and provide it to the court in written form. To make this possible, the court would have to provide the agency with the time period during which each case was under the court's jurisdiction. Analysis of information for this time period would require both additional programming and additional data entry by the agency.

It is important to note, however, that after court proceedings have begun, some agencies do not consistently process and investigate reports of abuse or neglect by parents. Thus, an agency may not be a good source of data on maltreatment by parents while children are under court jurisdiction.

Supplemental Petitions of Abuse or Neglect Filed After the Original Petition

An earlier version of this performance measure was based on the numbers of supplemental petitions of abuse or neglect following the original petition. The basis of this measure was changed, however, because in many courts supplemental petitions are not consistently filed when acts of abuse or neglect occur after the original petition. Rather, after court proceedings have begun, courts are most likely to learn of further abuse or neglect either through agency reports or through testimony in court.

In some States, however, supplemental petitions are filed fairly consistently when new incidents of abuse or neglect occur. In such States, this source of data is easy to obtain.

Assuming supplemental petitions are filed consistently, they must be connected to the pending litigation. Some courts open "new" cases with new case numbers when supplemental petitions are filed. Using supplemental petitions as a measure of incidents of further abuse or neglect requires a link between the original and supplemental petitions, based either on the similarity of the case numbers or, perhaps, on a unique identification code for the child.

One limitation of this source of data is that it generally measures abuse or neglect only when children are not in foster care. Even in States where supplemental petitions are filed consistently, they are filed only when children are at home or are in the custody of someone other than the child welfare agency. Thus, this source of data generally applies only to abuse or neglect occurring outside of foster homes.

Judicial Findings of Abuse or Neglect Based on Supplemental Petitions of Abuse or Neglect

A type of data that is closely related to the number of supplemental petitions is the number of judicial findings of abuse or neglect based on such petitions. The number of findings has the advantage of being more precise, especially from a judicial standpoint, in reflecting the actual proportion of cases in which further maltreatment has occurred.

On the other hand, using judicial findings as a data source does not solve the common problem of inconsistent filings of supplemental petitions. In the relatively few courts or court systems in which supplemental petitions are consistently filed, however, this can be an appropriate source of data.

Child-Based Measurement

This measure must be based on the experiences of individual children, not families. Different children in the same family may fare differently, some experiencing abuse or neglect while under court supervision, and others not. Accordingly, the court must establish and separately record further abuse or neglect for each child.

Start Date for Measure

An important issue in designing this measure is determining the time period within which incidents of abuse and neglect will be counted. Because the measure covers cases that are under the court's jurisdiction, it is first necessary to define when that jurisdiction begins and ends. The end point is relatively straightforward: It is the date that the court closes the case. Defining when court jurisdiction begins is more complicated.

Key considerations in specifying when court jurisdiction begins are the logic of the measure itself (i.e., what it is attempting to count), the practicality of collecting data regarding the start date selected, and the intuitive clarity

of that date (i.e., would it be generally regarded as an appropriate start date). The start date for this measure may be the date the original petition is filed or the date of the first placement order.

Date of Original Petition Filing

This is a simple and clearly defined start date and will apply regardless of whether a child is in foster care. Although children often enter foster care before the petition is filed, in most States the court usually is not seriously involved in a case before the petition is filed. Thus, the date the petition is filed is a practical start date for measuring the occurrence of abuse and neglect while a child is under court jurisdiction.

On the other hand, if the start date is the date the petition is filed, the measure will exclude situations in which a judge has refused to remove a child from the home during an *ex parte* motion or during the emergency removal hearing and the child is again abused or neglected before the petition is filed. How often this occurs depends on when the petition must be filed under State law.

Date of First Placement Order

Another possible start date for this measure is the date of the first court order regarding the custody or placement of a child. With this start date, abuse or neglect prior to such court orders would not be counted.

Business Rules

Basic Rules

1. The universe of cases included in this measure is children who were under the court's jurisdiction (had an open case) during a time period such as a calendar year. (A)
2. From dataset (A), select only cases for which abuse or neglect occurred during that time period (i.e., cases with an abuse or neglect incident date within that time period). Count the number of cases meeting this criterion. (B)
3. Compute the percentage of children with new abuse or neglect in that time period by dividing (B) by (A).²

Computation note. In the computation, (B) is the numerator population and (A) is the denominator population.

Possible Modifications

1. Report separately on cases based on one of more of the following distinctions: (a) children who were and were not in foster care when abused or neglected; (b) abuse or neglect perpetrated by persons who were and were not given court-ordered visitation rights; (c) children who were and were not placed with relatives; (d) category of person(s) who perpetrated the abuse or neglect (e.g., parents, relatives, or foster parents).
2. Report separately on cases by additional categories, such as child's race/ethnicity, child's age, and gender.

Data Elements

These elements apply specifically to this measure. For elements that apply to all measures, see "Universal Data Elements," page 7. For definitions of data elements, see appendix D, "Data Element Dictionary," page 289.

Required Elements

- ◆ Abuse or neglect petition date.
- ◆ Abuse or neglect incident date.
- ◆ Case closure date.

Optional Elements

- ◆ Placement type.
- ◆ Abuser.
- ◆ Abuser visitation status.
- ◆ Abuser relationship.
- ◆ Supplemental petition date.
- ◆ Allegations sustained.
- ◆ Emergency custody order date.

Related CFSR Standards

Two Child and Family Services Review (CFSR) standards for State child welfare agencies are related to *Toolkit Measure 1A*:

- ◆ **CFSR S1A. Recurrence rate of abuse and neglect:**
Of all children who were victims of a substantiated or indicated maltreatment allegation during the first 6

months of FFY [Federal fiscal year] 2004, what percent were not victims of another substantiated or indicated maltreatment allegation during a 6-month period? (The national standard is 95.2 percent or more.)

- ◆ **CFSR S1B. Rate of child abuse and neglect while the child is in foster care:** *Of all children in foster care in FFY 2004, what percent were not victims of a substantiated or indicated maltreatment by a foster parent or facility staff member? (The national standard is 99.67 percent or more.)*

The universe of cases in CFSR S1A is broader than just those cases under court jurisdiction (as in *Toolkit Measure 1A*) because not all substantiated reports are brought to the court. Nor will all substantiated reports lead to a successful petition for custody.

CFSR S1A also differs from *Toolkit Measure 1A* in that it specifies the “exposure time”—the time during which children are considered to be susceptible to maltreatment. The universe of cases in CFSR S1A is all cases in which children were susceptible to subsequent maltreatment for 6 months after the initial incident of maltreatment.

By contrast, *Toolkit Measure 1A*, like CFSR S1B, seeks to measure maltreatment among a universe of cases, but with a mixture of exposure times over the reporting period (i.e., not limited to further maltreatment within a fixed time after the original incident). In other words, *Toolkit Measure 1A* is based on a sample of open cases, with no limitation on the passage of time following the original incident of abuse or neglect.

The universe of cases in CFSR S1B (i.e., the denominator in the calculation of maltreatment rates) is all children in foster care at any time during the reporting period. This will generally be a subset of the cases under court jurisdiction, which means that the denominator populations for CFSR S1B and *Toolkit Measure 1A* are comparable. However, the numerator for CFSR S1B is restricted to abuse or neglect perpetrated by foster parents or facility staff, whereas the numerator for *Toolkit Measure 1A* also includes abuse or neglect by parents and by other relatives who are not foster parents.

With a national standard of 0.33 percent, cases involving abuse or neglect perpetrated by foster parents or facility staff appear to be extremely rare (no cases or one case in most county jurisdictions). When parents or other relatives maltreat children while the children are in foster care, those incidents are counted in *Toolkit Measure 1A* but not

in CFSR S1B. Thus, unless *Toolkit Measure 1A* is purposely restricted to abuse by foster parents, the maltreatment rate calculated from the measure will not be comparable to (and could be much higher than) the CFSR S1B national standard.

Reporting the Data

If performance measurement is statewide, the federally supported State Court Improvement Project (CIP) should develop tables and graphs that depict findings for the entire State, individual judicial circuits or districts, and, perhaps, individual judges. Local courts can use these tables and graphs to compare their performance to overall State performance.

Because the rate of abuse and neglect of children in foster care is likely to be small, tables and graphs for sparsely populated areas and for many individual judges may be misleading. In some small States, it may be appropriate to report only a statewide average, together with results for the largest one or two jurisdictions. For areas with small populations, simple lists of cases in which abuse or neglect occurred might suffice.

The percentage of children abused or neglected while placed with parents, other relatives, or other individuals—and during visitation with such persons—probably also will be small. Nevertheless, this percentage is likely to be substantially larger than the percentage of children maltreated while in foster care and thus more clearly suitable for reporting in comparative tables and charts.

Comparisons can be illustrated in either pie charts or bar graphs. Pie charts will clearly show the overwhelming proportion of cases in which no further maltreatment occurred, whereas bar graphs are better for representing significant practical differences between jurisdictions.

Graphic representations can help courts understand the meaning of their results for this measure. If striking differences are seen, for example, in certain locations or for certain racial/ethnic groups, the reasons for the differences may be well worth exploring.

The samples that follow use hypothetical data for a fictitious four-county State to demonstrate how results for this measure might be reported in tables and graphs. In the samples, “reabuse” refers to incidents of abuse or neglect that occur while a child is under the court’s jurisdiction, after the original incident(s) that brought the child to the attention of the court.

Sample 1A–1 is a tabular comparison of reabuse rates for the four counties and the State as a whole. Although the table could be produced for any time period, it is best to select a period such as a calendar year and produce the report for each period (e.g., every calendar year).

Sample 1A–2 uses a line graph format to show trends in safety performance over time. Presenting data on reabuse rates compiled for each year between 2000 and 2005, the graph demonstrates the State’s improved performance in protecting children from further abuse while they are under court jurisdiction.

Sample 1A–3 breaks down the data from sample 1A–1 to compare reabuse rates for children in foster care with rates for those not in foster care. The table shows that County A has a relatively high rate of reabuse (3.7 percent) for children not in foster care, compared with other

counties. Statewide, the reabuse rates are much lower for foster care than for other placements. Such results might motivate a State to look more closely at its non-foster-care placement practices, especially in counties with rates higher than the State average.

Sample 1A–4 uses a horizontal bar graph to illustrate the tabular data from sample 1A–3. Horizontal bars make it possible to compare a large number of entities (e.g., counties), but vertical bars are easier to comprehend at a glance.

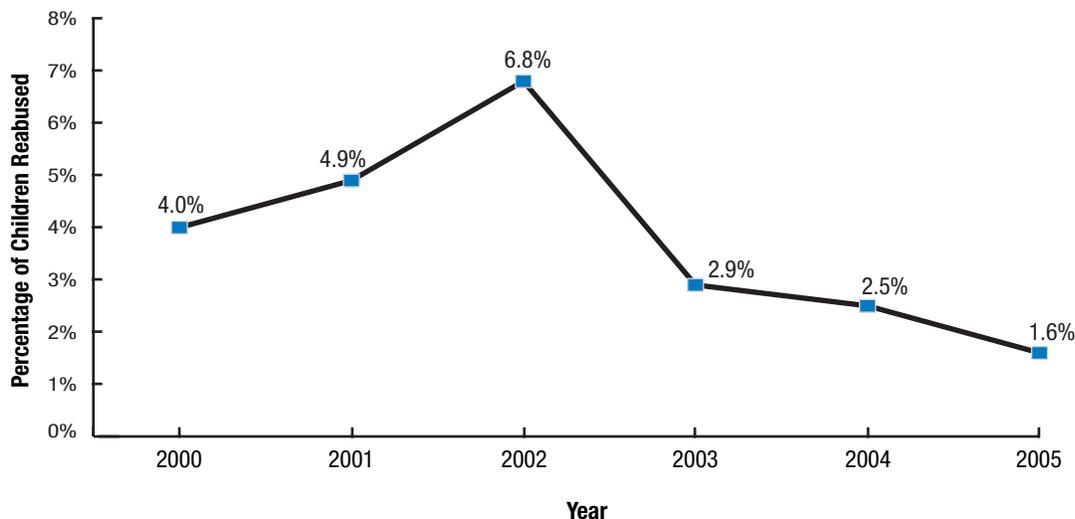
Factors That May Affect Results

In most States, courts have a limited impact on the safety of children who are in foster care. It may be possible, however, for courts to play a larger role in helping to prevent

Sample 1A–1. Children Reabused or Reneglected While Under Court Jurisdiction, by County, 2006

County	Total Children Under Court Jurisdiction	Children Reabused or Reneglected	Percent
A	1,500	66	4.4%
B	750	22	2.9%
C	325	8	2.5%
D	940	10	1.1%
Statewide	3,515	106	3.0%

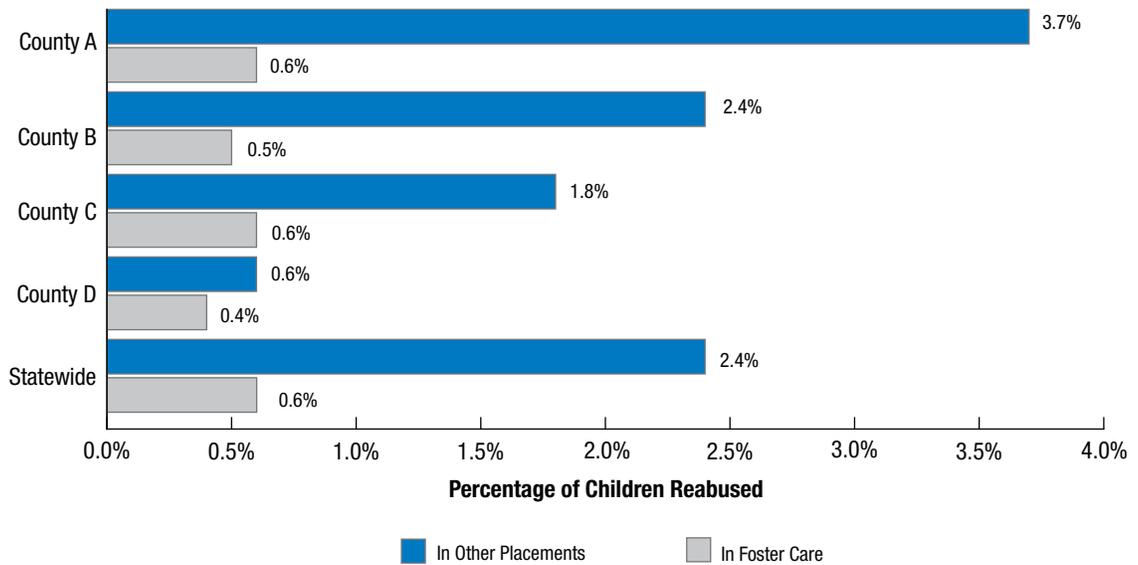
Sample 1A–2. Percentage of Children Reabused or Reneglected While Under Court Jurisdiction, Statewide, 2000 to 2005



Sample 1A–3. Children Reabused or Reneglected While Under Court Jurisdiction, in Foster Care Versus Other Placements, by County, 2006

County	Children Reabused or Reneglected in Foster Care		Children Reabused or Reneglected in Other Placements		All Children Under Court Jurisdiction
	Number	Percent	Number	Percent	
A	10	0.6%	56	3.7%	1,500
B	4	0.5%	18	2.4%	750
C	2	0.6%	6	1.8%	325
D	4	0.4%	6	0.6%	940
Statewide	20	0.6%	86	2.4%	3,515

Sample 1A–4. Percentage of Children Reabused or Reneglected While Under Court Jurisdiction, in Foster Care Versus Other Placements, by County, 2006



further abuse or neglect while children are under their jurisdiction. Toward that end, the data produced by this measure can be used to compare results in different parts of the State and may suggest the need to determine the root causes of abuse or neglect in particular localities or to particular subgroups of children.

The following paragraphs suggest some possible court-related reasons for performance results related to this measure. Please note: These are simply *examples* of factors to consider when analyzing performance at the local level.

Quality of Advocacy

Advocates need to be aware of child safety issues. The more sophisticated their awareness, the more helpful they may be in preventing harm to children. Advocates' performance may also be affected by general factors such as workloads, quality of supervision, compensation and financial incentives (as applicable), and training.

Judicial Oversight

How well judges oversee the safety of children under the court's jurisdiction may be directly related to how much

time and care judges take to evaluate safety issues in court. Other factors may include the existence of specific judicial procedures to address safety issues, as well as judges' knowledge about safety assessments and plans (related, in part, to having access to training and materials on child safety issues).

A more general factor in safety-related oversight is judicial qualification, which is affected by training, selection methods, and assignment practices (including duration of assignments to hear maltreatment cases). Another factor may be the court's ability to observe the "one family/one judge" principle (i.e., the same judge presides over all stages of a case), which is affected by judicial workloads and individual court calendars.

Possible Reforms

If data from this performance measure indicate room for improvement regarding children's safety while under court jurisdiction, the court should consider possible reforms. Specific reforms will, of course, depend on local conditions and the court's analysis of safety problems in its jurisdiction. The following are examples of additional measures a court might take to improve the safety of the children who come before it:

- ◆ Increase time to hear safety-related evidence (including proposed safety plans) before deciding about the placement or retention of a child in a specific home or about whether to allow extended or unsupervised visitation.
- ◆ Question the parties in greater detail on child safety in individual cases before deciding whether to authorize a child's removal from the home, to return a child to the home, or to allow extended or unsupervised visitation.
- ◆ Adopt a court rule or form that makes petitions more specific in describing the alleged abuse or neglect.
- ◆ Adopt a court rule or form that makes predisposition and prereview reports more specific in describing family circumstances contributing to abuse or neglect.
- ◆ When the child welfare agency requests permission to return a child home or allow extended home visits, require the agency to provide a specific plan to ensure the child's safety.
- ◆ When appropriate, order a family group conference to develop a plan under which the extended family will

assist and monitor the parents in their care of the child, in connection with crucial safety decisions.

- ◆ Require agencies to get court approval before returning a child home from foster care, authorizing extended home visits, or ending supervision of visits.
- ◆ Before returning a child home or closing the case after doing so, require the child welfare agency to submit a report describing how the parents are more capable of (or committed to) properly caring for the child now compared with when the child was removed from the home.
- ◆ Train attorneys to more effectively investigate and present evidence about the safety and stability of children's homes. The court can either provide the required training or help arrange for it.
- ◆ Train caseworkers to document safety-related information and present it to the court. Again, the court can either provide the training or help arrange for it.
- ◆ Seek and participate in judicial training regarding safety assessment.
- ◆ Hold periodic discussions among judges and staff about cases in which the court did not adequately protect children's safety.

Endnotes

1. Two other possible sources of data are *not* recommended, for the reasons explained below.

Changes in custody or cancellations of visitation rights. To ensure that all cases are counted in which parents, relatives, or others abuse or neglect children, the courts might include all decisions to remove a child from a home in which the court has placed the child, as well as decisions to reduce or eliminate parent-child or relative-child visits. This approach is overinclusive, as courts may decide to change custody or visitation for many reasons other than abuse or neglect. For example, a court might change a placement because it finds that another parent or relative will provide better care, or it might cancel visits solely because of the child's response to the visits. Overall, these data are probably less valid as indicators of further abuse or neglect than are emergency court orders transferring placement or custody.

Judicial findings affirming agency reports of further maltreatment. Another, possibly more accurate, type of data might be judicial findings affirming information reported by the child welfare agency regarding abuse or neglect by parents or other individuals with whom the court placed a child or with whom it authorized visits. However, such data rarely exist. Even if agencies consistently report this information, courts are unlikely to consistently make findings about whether or not the reports are true.

2. Individual cases included in the denominator of this measure may be under court jurisdiction for different lengths of time during the reporting period, ranging from 2 or 3 days up to the full length of the time period. Because the distribution of the lengths of time that children spend under court supervision will have a large effect on the resulting measure, that distribution should be taken into account when examining results for this measure.

Child Safety After Release From Court Jurisdiction

Definition: Percentage of children who are abused or neglected within 12 months after the case is closed following a permanent placement.

Explanation: This measure shows the proportion of children who suffer further abuse or neglect after the court has closed the original case. Case closure means there are no longer any pending child protection court proceedings, whether based on the original petition of abuse or neglect or based on supplemental or amended petitions filed while the original case was still pending.¹

Purpose: To help courts evaluate their success in ensuring child safety after cases are closed. More specifically, this measure helps courts determine how often they have successfully evaluated threats to child safety when deciding the child's placement before closing the case.

This measure considers the safety of children after their cases are closed following their return home, placement into legal guardianship, or adoption. It does not apply to cases in which youth age out of the foster care system; by definition, these individuals are too old to be considered victims of child abuse or neglect. Nor will the measure count children who are transferred to jurisdictions that do not provide child abuse and neglect statistics.

By evaluating the data produced with this measure, and perhaps by reviewing individual cases in which abuse or neglect did recur, courts and agency staff can develop strategies to reduce the recurrence rate. If the data are broken down by categories such as age, race/ethnicity, gender, type of placement, and reasons for case closure (i.e., reunification, legal guardianship, or adoption), the court will have additional useful information for evaluating its case closure decisions. Further, judges will know more about which types of permanent placements are most successful and for which categories of children.

Implementation Issues

A key issue for this measure is how to identify and count cases in which abuse or neglect occurs after the court case is closed. One approach is to count children who return to court because of new allegations of abuse or neglect. Another is to count children for whom the child welfare agency receives reports of abuse or neglect after the court closes a case.

Counting Children Who Return to Court Because of New Allegations of Abuse or Neglect

Identifying and counting children who return to court because of new allegations of abuse and neglect following case closure may be accomplished in either of two ways:

- ◆ **Counts based on new petitions.** Counts may be based on the filing of new petitions alleging abuse or neglect following case closure. Some courts may object to this approach because allegations do not constitute proof of subsequent abuse or neglect.
- ◆ **Counts based on judicial findings.** This approach is based on affirmative judicial findings of abuse or neglect rather than on mere allegations. Courts should base this count on new adjudications of abuse or neglect following closure of an earlier case involving the same child.

One possible disadvantage of relying on subsequent court proceedings to measure recurrence of abuse or neglect is that a family may abuse or neglect a child after moving outside the court's jurisdiction. A great deal of actual recurrence will be lost by relying on subsequent proceedings in the same court as a measure, unless the judicial management information system can provide statewide data.

Another possible disadvantage of this approach is that, for the most part, only the more severe incidents involving substantiated abuse or neglect reports result in court cases. Consequently, important information about the



extent of the potential danger to children will be missing if safety information is limited to subsequent court proceedings.

Counting Children for Whom the Agency Receives Abuse or Neglect Reports After the Court Closes the Case

Identifying and counting children for whom the child welfare agency receives reports of abuse or neglect after the court closes the case may also be accomplished in either of two ways:

- ◆ **Collection and analysis of agency data by the court.** With this approach, courts obtain data from the child welfare agency and then analyzes the data. In many States, however, formidable technical and practical barriers still impede electronic data sharing between agencies and courts. Few court systems and agencies have currently worked out systems for timely exchanges of data and implemented quality control measures to ensure the data's accuracy.
- ◆ **Analysis and sharing of agency data by the agency.** The agency might supply the court with information on reports of abuse or neglect after court case closure by programming its data system to do so. Many State agencies already have data on abuse and neglect reports broken down by county. To provide the court with the data it needs for this measure, the agency must be willing to include the date of judicial case closure in its records, program its information system to indicate the frequency of reports of abuse or neglect following case closure, and break down its data by judicial jurisdiction (or other variables requested by the court). This approach also requires valid, unique identifiers to link court cases to children with whom the agency deals.

If the court bases this performance measure on agency data, it must decide whether to count all reported abuse or neglect or only reports that are “substantiated” or “indicated” by the child welfare agency.² Courts may be more comfortable counting only substantiated or indicated reports.

Business Rules

Basic Rules

1. The universe of cases included in this measure is children for whom cases were closed as a result of

permanent placement (adoption, reunification, or legal guardianship) during a time period such as a calendar year. (*A*)

2. From dataset (*A*), select only cases for which a new petition alleging abuse or neglect of the same child was filed during the 12 months following case closure. Count the number of cases meeting this criterion. (*B*)
3. Compute the percentage of children with new abuse or neglect following case closure by dividing (*B*) by (*A*).

A note about the business rules: The report for this measure cannot be run until at least 12 months after the end date of the time period selected for the universe of cases (i.e., dataset *A*). For example, if the reporting time period was for cases closed in calendar year 2004 (January–December), the report could not be run before January 2006.

Possible Modifications

1. Instead of counting all cases in which a new petition was filed within the time specified, count only cases in which the new petition was adjudicated and affirmed within the time period. Because of the number of months from petition to adjudication, the window between original case closure and new case adjudication (specification *B*) should be at least 18 months.
2. Instead of basing counts on the filing or adjudication of a new petition, base counts on child welfare agency records on substantiated reports of new abuse or neglect occurring within the 12-month window after case closure.
3. Calculate the measure for 12, 24, and 36 months following case closure.
4. Report separately on cases based on one or more of the following distinctions: (a) reasons for case closure (e.g., reunification, adoption, or legal guardianship); (b) child's age; (c) child's race/ethnicity; (d) age of case at closure.

Data Elements

These elements apply specifically to this measure. For elements that apply to all measures, see “Universal Data Elements,” page 7. For definitions of data elements, see appendix D, “Data Element Dictionary,” page 289.

Required Elements

- ◆ Case closure date.
- ◆ Abuse or neglect petition date (i.e., the new petition following case closure).

Optional Elements

- ◆ Adjudication date (for new petition following case closure).
- ◆ Allegations sustained (for new petition following case closure).

Related CFSR Standards

The following Child and Family Services Review (CFSR) standard for State child welfare agencies is related to *Toolkit Measure 1B*:

CFSR S1A. Recurrence rate of abuse and neglect: *Of all children who were victims of a substantiated or indicated maltreatment allegation during the first 6 months of FFY [Federal fiscal year] 2004, what percent were not victims of another substantiated or indicated maltreatment allegation during a 6-month period? (The national standard is 95.2 percent or more.)*

The universe of cases in CFSR S1A is broader than just those cases formerly under court jurisdiction (as in *Toolkit Measure 1B*) because CFSR S1A includes cases currently under court jurisdiction and because not all substantiated reports after court jurisdiction has ended will be brought back to the court.

As with *Toolkit Measure 1B*, CFSR S1A specifies the “exposure time”—the time during which children are considered to be susceptible to maltreatment. The universe

of cases in CFSR S1A includes all cases in which children were susceptible to subsequent maltreatment for 6 months after the initial incident of maltreatment. The exposure time in *Toolkit Measure 1B* is 12 months after court jurisdiction ends.

Reporting the Data

Because recurrence rates of abuse or neglect following case closure may be small, tables and graphs that show percentages for sparsely populated areas or for individual judges may be misleading. (For example, if the number of cases closed in a 12-month period is small, even a few cases of reabuse would result in a large percentage.) An alternative is simply to list cases in which abuse or neglect recurs within a specific period of time after case closure.

The samples that follow use hypothetical data for a fictitious four-county State to demonstrate how results for this measure might be reported in tables and graphs. (If a court bases this measure on its own data (either new petitions, as shown in these samples, or new adjudications), it may choose to supplement its reports with additional tables and graphs showing selected data from the child welfare agency on recurrence of abuse or neglect.

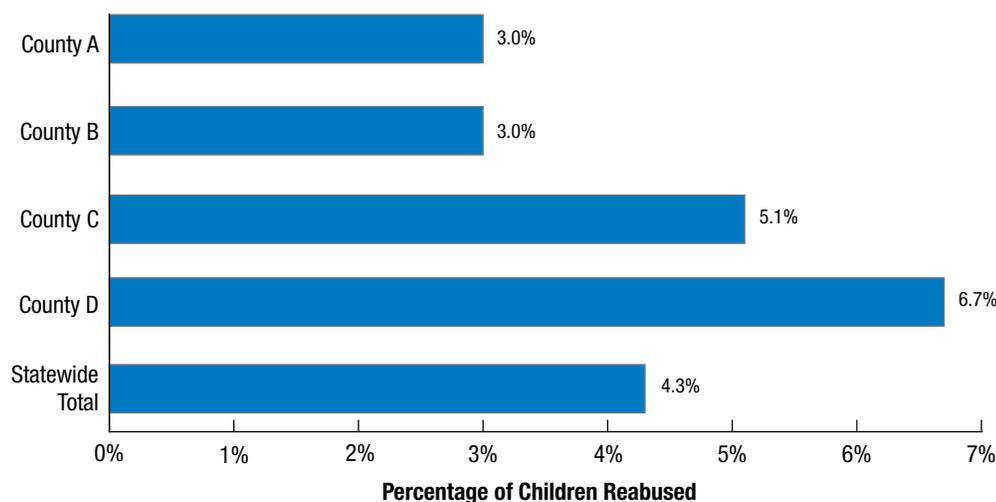
Sample 1B–1 is a tabular comparison of reabuse rates for the four counties and the State. Sample 1B–2 uses a horizontal bar graph format to illustrate the percentages from sample 1B–1.

Samples 1B–3 and 1B–4 break down the reabuse rates for County A by child’s age. Depending on the court’s preference and data availability, the age groups may correspond to the child’s age at the time of reabuse, at the time the new petition was filed, or at the time the original case was closed. (The table or graph should indicate which of these

Sample 1B–1. Children With New Petitions of Abuse or Neglect Within 12 Months After Case Closure in 2005, by County

County	Children With Cases Closed in 2005	Children With New Petitions Within 12 Months	Percent
A	1,000	30	3.0%
B	800	24	3.0%
C	670	34	5.1%
D	780	52	6.7%
Statewide	3,250	140	4.3%

Sample 1B–2. Percentage of Children With New Petitions of Abuse or Neglect Within 12 Months After Case Closure in 2005, by County



Sample 1B–3. Children With New Petitions of Abuse or Neglect Within 12 Months After Case Closure in 2005, by Age Group: County A

Age Group	Children With Cases Closed in 2005	Children With New Petitions Within 12 Months	Percent
Newborn-2 yrs.	235	12	5.1%
3-5 yrs.	322	8	2.5%
6-9 yrs.	199	6	3.0%
10-14 yrs.	128	1	0.8%
15 yrs. and older	116	3	2.6%
All ages	1,000	30	3.0%

is being shown.) The court might choose age groups different from those shown in these samples.

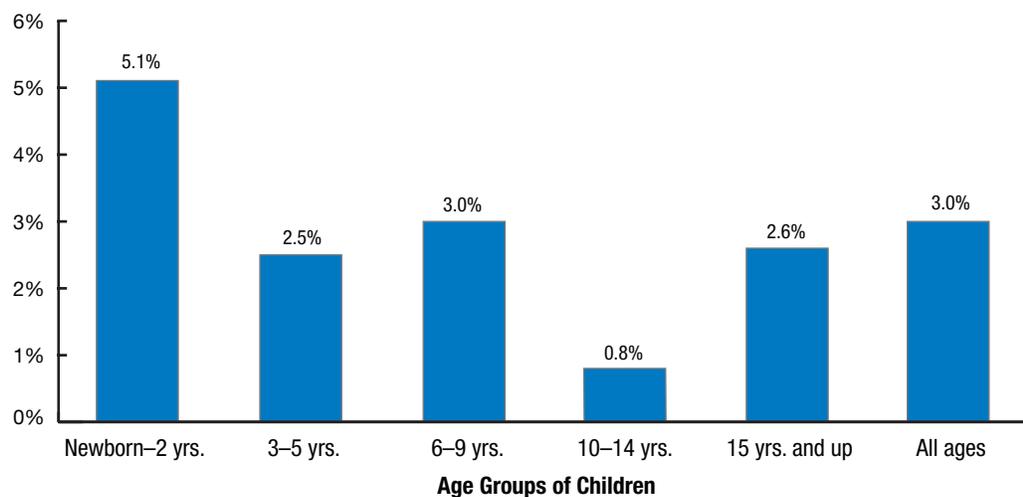
Factors That May Affect Results

Many of the possible court-related reasons for performance results related to this measure are the same as those for *Toolkit Measure 1A: Child Safety While Under Court Jurisdiction*. For example, quality of advocacy and depth of judicial oversight may affect results for both measures. In addition, certain actions by the court or the child welfare agency may affect child safety only after case closure. Such actions, which are specifically relevant to *Measure 1B*, include the examples discussed in the following paragraphs.

Conditions Imposed Prior to Case Closure

Before closing a case, the court or child welfare agency may impose special conditions to reduce the likelihood of future abuse or neglect. For example, when family reunification is planned, the court or agency may require gradually phased-in “transitional” visitation, with structured (consistent and methodical) observation of the family and the child’s safety. The court or agency may also ask extended family members and/or other service providers to assist in the observation. In addition, the court may ask extended family members for a commitment to provide continued, ongoing monitoring and assistance after case closure.

Sample 1B–4. Percentage of Children With New Petitions of Abuse or Neglect Within 12 Months After Case Closure in 2005, by Age at Time New Petition Was Filed: County A



Evidence of Changes in Parental Behavior

When parents have received services designed to improve their parenting behavior, the court or agency, before approving family reunification, may insist on evidence that they have actually improved critical areas of behavior. Requiring such evidence is, of course, more involved than simply relying on the service provider's representation that a parent has successfully completed a course.

Given the complexities of family problems and the many precipitants of abuse or neglect, careful analysis of child safety factors is an intellectually demanding task for courts and agencies. Incorporating evidence of parents' behavioral change in the decision to approve family reunification is an important part of that task.

Possible Reforms

As with factors affecting performance results, many of the possible court reforms to improve performance related to this measure are the same as those for *Toolkit Measure 1A: Child Safety While Under Court Jurisdiction*. As with *Measure 1A*, specific reforms will, of course, depend on local conditions and the court's own analysis of safety problems in its jurisdiction. Additional measures that may be particularly helpful in ensuring child safety after case closure include the following:

- ◆ **Using special forms for court reports and orders related to family reunification.** Forms for court reports recommending reunification can be designed so they help to ensure a careful thought process and a particular set of activities in support of this recommendation. For example, forms can require caseworkers to outline the plan for transitional visitation and family monitoring, explain how and why the causes of the prior maltreatment have been alleviated, and describe services and plans to ensure safety after case closure. Forms for court orders can use a similar design approach to encourage the judge to set appropriate expectations and go through a complementary thought process in approving reunification.³
- ◆ **Improving forms related to other types of case closure.** Family reunification is not the only circumstance in which children may experience further abuse or neglect after case closure. A child placed with an extended family member may suffer maltreatment, either by the family member or because the biological parent has too much access to the child. Adoptive parents, if not wisely chosen and particularly if a child has challenging special needs, may abuse or neglect a child. Improved agency report forms can help to ensure (and demonstrate to the judge) that the agency has taken all reasonable precautions before finalizing the child's permanent placement. Improved court forms can remind the judge what questions to ask the agency and encourage the judge to document the answers to these questions.

◆ **Enhancing benchbooks.** Judicial benchbooks and checklists can be enhanced to address safety issues specifically related to case closure. These tools can help judges ask appropriate questions, require necessary documentation, and refuse to close cases prematurely or inappropriately.

Endnotes

1. Note that in States where petitions for the termination of parental rights (TPR) are considered separate court proceedings, the original abuse or neglect proceeding generally remains open (although temporarily held in abeyance in some States) during and after the time that termination proceedings are pending, until the child has been adopted.
2. Different State agencies use different systems of classification for abuse or neglect reports, different criteria for defining their classifications (e.g., the degree of proof that is required), and different terms in referring to whether abuse or neglect has been proven. The most universal terms for agency reports deemed to have been proven true are “substantiated” reports and “indicated” reports.
3. For an example of such forms, see C. Fiermonte and J. Renne, *Making It Permanent: Reasonable Efforts To Finalize Permanency Plans for Foster Children* (Washington, DC: American Bar Association, 2002), pp. 19–24.

Achievement of Child Permanency

MEASURE 2A



Definition: Percentage of children in foster care who reach legal permanency by reunification, adoption, or legal guardianship.

Explanation: This measure evaluates the combined success of courts and child welfare agencies in achieving legal permanency by the time the court has closed each case involving children in foster care. “Legal permanency” means that there is a permanent and secure legal relationship between the adult caregiver and the child.

More specifically, legal permanency means the following:

- ◆ The individual adult or couple who is/are the child’s caregiver(s) has/have full legal authority over the child, free from the supervision of the child welfare agency.
- ◆ The court, in approving this relationship, intends it to be permanent.
- ◆ Significant legal barriers exist to block the disruption of the placement and the disruption of the legal relationship between child and caregiver(s).

By contrast, the court does not generally intend a foster care placement to be permanent. The foster parent lacks full authority to decide the nature of the child’s care, and only weak legal barriers exist to block the removal of the child from the foster home and prevent the end of the foster parent-foster child relationship.

Because of the complex nature of legal permanency, this measure is relatively challenging and complex to implement.

Purpose: To help courts determine the extent to which legal permanency is achieved for children under their jurisdiction. A considerable amount of social science research has demonstrated the importance of stable and secure homes for children’s healthy development and ultimate well-being. Legal permanency helps ensure that former foster children grow up in such homes.

Implementation Issues

Different Courts or Judges May Hear Adoption and Legal Guardianship Proceedings

A major challenge in developing this measure is that in many States, the courts that hear adoptions and legal guardianship matters are different from the courts that hear abuse and neglect cases. The problem is that few jurisdictions currently have management information systems that include and connect all case types.

In States with multiple courts, the courts that hear dependency (i.e., child abuse and neglect) cases are most likely to be interested in this measure and to maintain most of the data to support it. If, for example, dependency court cases are to be closed upon the final decree of adoption or approval of legal guardianship, the dependency court must

rely on another court to provide the date that adoption or legal guardianship is final.

States without multiple courts may have large jurisdictions that subdivide a single court so that one unit hears child abuse and neglect cases and another hears adoption cases. In this case, the different units may not be able to share data electronically.

Confidentiality of Adoption Proceedings

In many States, laws require that courts maintain the confidentiality of their adoption records. Therefore, some courts that hear adoption cases are reluctant to share information with courts that hear child abuse and neglect cases. This reluctance can present an obstacle to calculating the percentage of foster cases in which children are adopted.

Convincing legal arguments may exist, however, in support of sharing information needed to implement this measure. The purpose of State laws that make court adoption records confidential is to protect the privacy of individual adopted children, their adoptive families, and birth parents. As long as the courts hearing abuse and neglect cases maintain that confidentiality and make public only aggregate information about the percentage of children in foster care who are adopted, the purpose of the laws is not violated. Of course, in a particular State, such arguments should address the specific wording and legislative history of that State's laws.

Legal Characteristics of Permanent Placement Options

The three preferred legal placement options are family reunification, adoption, and legal guardianship.

Family Reunification

Family reunification, followed by closure of the court case, restores the original legal position of the family prior to court involvement. The parents have undivided legal decisionmaking power regarding the child (subject to mandatory education laws, child labor laws, etc.). The parents no longer must accept supervision by the child welfare agency. Strong legal barriers (i.e., required proof in court of further abuse or neglect), comparable to those for parents with no court involvement, block future removal of the child from the home.

Adoption

The legal position of adoptive parents is essentially the same as that for biological parents who have had no adjudication of child abuse or neglect.

Legal Guardianship

"Legal guardianship" refers to legal placement options, established by State law, that are consistent with the Federal statutory definition¹ of legal guardianship. Legal guardians are not subject to the oversight of the public child welfare agency. They generally have full decision-making authority over a child, as with biological and adoptive parents. In some States, however, the legal guardians' legal security against removal of the child is weaker than for most biological and adoptive parents. That is, in some States, if biological parents seek to regain custody of the child, the guardian may need to prove those parents unfit to resume care. This position is the reverse of that of the

biological or adoptive parents, who can maintain control of the child unless they are proved unfit as parents. On the other hand, some States have amended their guardianship laws to create legal preferences for keeping children with legal guardians when challenged by parents.

In some States, more than one legal option may fall within the definition of "legal guardian." For example, both "legal custody"² and guardianship (pursuant to the probate code) may qualify as legal guardianship. Thus, some jurisdictions may wish to include more than one form of legal guardianship in this measure.

"Another Planned Permanent Living Arrangement"

Some jurisdictions may wish to include "another planned permanent living arrangement" (APPLA) in this measure, as Federal law³ recognizes APPLA as a type of permanency plan. However, what many States consider to be APPLAs are actually legal arrangements that do not provide legally permanent placements. For example, simply deciding to continue a child in foster care is not an APPLA. If this is encompassed by a State's definition of APPLA, it is inappropriate to count APPLAs in this measure.

States that define the term APPLA narrowly, as intended by Federal law,⁴ may appropriately include APPLA in this measure. For example, if State law authorizes a court to order a permanent placement with a specific foster parent and that placement cannot be disrupted without a court order, a State may choose to include that placement within the measure.⁵ A State might even choose to include as an APPLA a group home placement for a child who is unable to live with a family, if an adult commits to serving as a lifelong mentor and substitute parent for the child, and the child accepts that relationship.

Calculating Rates of Success With Different Legal Permanency Options

Because a court may be effective in achieving permanency with some placement options but not others, it is important to calculate this measure separately for the different options. Only a single calculation combining all options is less informative. Furthermore, if APPLA is included as an option in a combined calculation, a high percentage of permanency based largely on numerous APPLAs may be misleading.

Placements With Relatives

Relatives may adopt children or become their legal guardians. Although placing abused or neglected children with relatives is generally preferred over other types of placements, “relative placement” is not a separate, legally defined placement category.⁶

Nevertheless, a court may want to know, for example, the percentage of adoptions and legal guardianships that involve placement with relatives. If so, the court will need to capture this information, perhaps by including the question “Is this placement with a relative?” on the data entry screen beneath each permanent placement option.

Case Outcomes Not Constituting Permanency

Case outcomes that do not constitute permanency include “aging out,” independent living, emancipation, and other nonpermanent legal placement categories.

Aging Out

If the court closes a case because a child has “aged out” of its jurisdiction, and the child remains in foster care after case closure, that child will be considered to have achieved legal permanency only if the court has ordered permanent placement with the foster parent(s) as an APPLA.

Independent Living

Cases labeled “independent living” (e.g., youth who are receiving services to help them function better after reaching adulthood) should not be classified as having achieved permanency. An independent living situation does not meet the goal of legal permanency, which should include, among other things, having a permanent family upon reaching adulthood. Effective services to help youth function independently upon reaching adulthood, although commendable and helpful, have little to do with permanency.

Emancipation

As with independent living, “emancipation” is sometimes used as a euphemism for aging out of foster care. In addition, an emancipated youth may be a young person who is granted some aspects of adult legal status before reaching the age of majority. For example, depending on State law, an emancipated youth may be granted the right to live alone without any adult supervision and to enter into certain contracts.⁷

Other Nonpermanent Legal Placement Categories

Examples of other categories of court case closure that would not be considered legal permanency for purposes of this measure include death of the child, transfer of the case to another geographic jurisdiction (e.g., another State’s court system or another judicial district), transfer of the case to another agency, and a runaway or missing child. The Federal Adoption and Foster Care Reporting System (AFCRS), which applies to State child welfare agencies, includes the following nonpermanent placement categories for foster care “discharge”: emancipation, transfer to another agency, runaway, and death of the child.⁸

Children who are transferred to another jurisdiction before case closure or who die in foster care (presumably through no fault of the State) should not be included in this measure, because such cases are not a reflection of the State’s degree of success in achieving permanency. On the other hand, a runaway or other missing child or a child who is transferred to another agency (e.g., a juvenile justice agency or developmental disabilities agency) should be included in this measure. Such cases usually do reflect the court’s and the child welfare agency’s success in planning, oversight, and decisionmaking with regard to the child.

Other Measures as Context

As is often the case, data based on this measure should be considered in light of data based on other measures. For example, although it is helpful to know the percentage of children reaching permanency by the time the case is closed, it is also helpful to know how long it takes to achieve permanency and case closure (*Toolkit Measure 4A: Time to Permanent Placement*). It is also useful to know what percentage of permanent placements subsequently break up, making it necessary for the child to reenter foster care (*Toolkit Measure 2D: Reentry Into Foster Care After Return Home* and *Measure 2E: Reentry Into Foster Care After Adoption or Guardianship*).

Measure Limited to Youth in Foster Care

This measure should be limited to youth in foster care. Otherwise, it would substantially reflect the percentage of abused and neglected children who come before the court but never enter foster care rather than the percentage of children in foster care who have achieved permanency. (Note that the rate of permanency for children who come

before the court but never enter foster care, excluding categories such as children who die while in foster care or who are transferred to another jurisdiction, would be close to 100 percent.)

If courts prefer to include all youth under court jurisdiction in this measure, they should maintain separate statistics on the permanency rate for youth in foster care.

Business Rules

Basic Rules

1. Select a date range for the report (e.g., for a report spanning a 12-month period, select beginning and ending dates 12 months apart).
2. From the cases that were closed within the date range selected (*A*), exclude cases that were closed because the child died, was transferred to another geographic jurisdiction (e.g., to another judicial district or State), or was never in foster care while the case was open. (*B*)
3. Count the number of cases in (*B*) for which the case closure reason is one of the permanent placements recognized by the State. (*C*) The remaining cases in (*B*) are those for which the case closure reason is a nonpermanent placement. (*D*)
4. Compute the overall rate of permanency by dividing (*C*) by (*B*). Compute the overall rate of nonpermanency by dividing (*D*) by (*B*).
5. Divide (*C*) into categories, each representing one type of permanent placement at case closure: family reunification (category 1), adoption (category 2), legal guardianship (category 3). If the State recognizes other permanent placement categories such as APPLA, create a fourth category, and so forth. Divide (*D*) into categories, each representing a nonpermanent placement type (category 5, category 6, etc.).
6. Compute the overall rate of permanency by dividing (*D*) by (*C*).

Possible Modifications

1. Report separately on cases by additional categories, such as child's race/ethnicity, child's age, gender, age of case at closure, etc.

Data Elements

These elements apply specifically to this measure. For elements that apply to all measures, see "Universal Data Elements," page 7. For definitions of data elements, see appendix D, "Data Element Dictionary," page 289.

Required Elements

- ◆ Foster care flag = "yes."
- ◆ Case closure date.
- ◆ Case closure reason (e.g., adoption, legal guardianship, reunification).

Optional Elements

- ◆ Abuse or neglect petition date.

Related CFSR Standards

The following Child and Family Services Review (CFSR) standard for State child welfare agencies is related to *Toolkit Measure 2A*:

CFSR PC3A2: *Of all children in foster care for 24 months or longer on the first day of the fiscal year, what percent were discharged to a permanent home prior to their 18th birthday and by the end of the fiscal year? A permanent home is defined as having a discharge reason of adoption, guardianship, or reunification (including living with relative).*

There are two key differences between CFSR PC3A2 and *Toolkit Measure 2A*. First, unlike *Toolkit Measure 2A*, the CFSR measure is limited to children in foster care 24 months or longer. Second, the CFSR measure is based on a sample of cases selected at a particular point in time, whereas *Toolkit Measure 2A* is based on a sample of closed cases. In general, the rates for these two measures will not be comparable and will have very different implications.⁹

Reporting the Data

Measure 2A lends itself to a variety of graphic representations. The samples that follow use hypothetical data for a fictitious seven-district State to demonstrate how results for this measure might be reported in tables and graphs.

Sample 2A–1 illustrates a tabular format that can be helpful for State Court Improvement Project (CIP) directors and their staff. The table shows the percentage of cases closed during calendar year 2005 in which legal permanency was achieved at the time of case closure, for the entire State and each judicial district. The permanency rates range from 53 percent in District C to 89 percent in District G. The overall rate for the State is 68 percent. This simple table has the advantage of being easy to read. However, because it does not distinguish rates for different types of permanency, the table will not reveal, for example, that a

A second possibility is that District G has (a) particularly effective services to prevent unnecessary placement in foster care (thus reducing the percentage of foster care cases ending in reunification), (b) effective adoption services, and/or (c) an efficient court process with few delays to impede adoption. If this is the case, District G’s adoption permanency rate is reasonable and even commendable. Other possibilities could be tested by reviewing data under various *Toolkit* measures of timeliness and permanency. If District G has a high rate of disrupted adoptions as shown in *Toolkit Measure 2E*, the high rate of adoptions may be

Sample 2A–1. Children Reaching Permanency, by Judicial District, Cases Closed in 2005

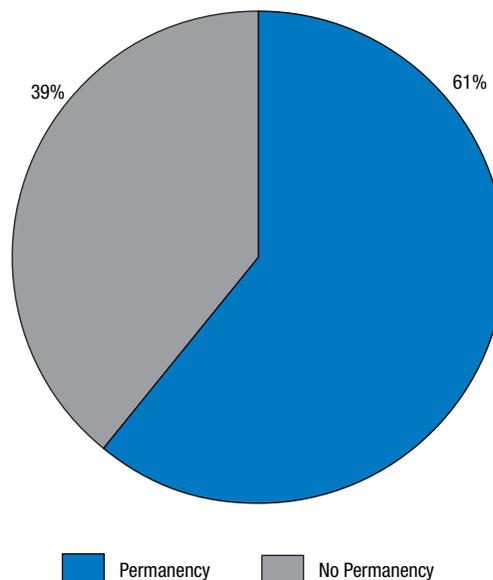
District	Permanency		No Permanency		Total	
	Number	Percent	Number	Percent	Number	Percent
A	46	61%	30	39%	76	100%
B	65	72%	25	28%	90	100%
C	8	53%	7	47%	15	100%
D	98	64%	55	36%	153	100%
E	9	82%	2	18%	11	100%
F	15	60%	10	40%	25	100%
G	51	89%	6	11%	57	100%
Statewide	292	68%	135	32%	427	100%

particular district may be doing well in achieving permanency through reunification but not through adoption. Thus, it will not reflect all the factors that affect, either positively or negatively, the overall achievement of permanency.

Data on the proportions of cases reaching and not reaching permanency can be well represented by pie charts. A pie chart can be created for each judicial district individually (see sample 2A–2) or for the entire State.

Sample 2A–3 breaks down the numbers from sample 2A–1 by type of permanent and nonpermanent placement (i.e., by reason for case closure), permitting sharper contrasts than can be seen in sample 2A–1. For example, the difference in permanency rates between District B and District G is far greater for adoption cases (1 percent versus 35 percent) than for reunification cases (63 percent versus 42 percent).¹⁰ Such findings could indicate that while District B had too few adoptions, District G had too many adoptions and not enough reunifications. The problem with this conclusion is that District G’s reunification rate is only 2 percent less than the statewide average.

Sample 2A–2. Achievement of Permanency for Cases Closed in 2005: District A



problematic; but if the rate of disruption is low, District G's adoption rate may be appropriate.

Sample 2A-4 shows how the tabular data from sample 2A-3 might be presented in a bar graph for one of the districts.

If a State has measured permanency rates for several years, it might show trends in the rates in a table such as that in sample 2A-5. The trends could also be illustrated in a line graph.

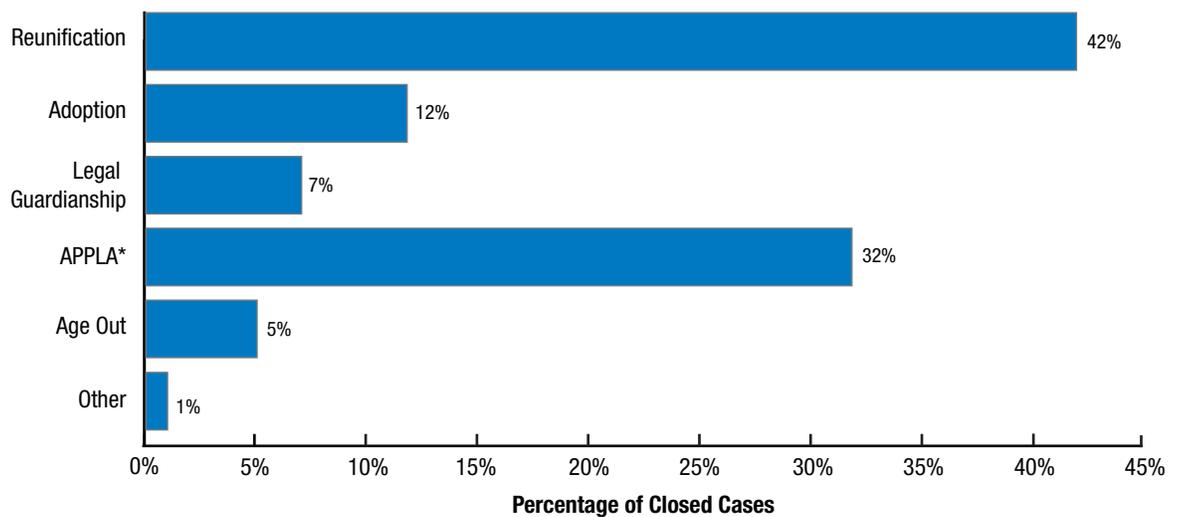
Sample 2A-3. Reasons for Case Closures in 2005, by Judicial District

District	Permanent Placement						Nonpermanent Placement						Total	
	Reunification		Adoption		Legal Guardianship		APPLA*		Age Out		Other			
	#	%	#	%	#	%	#	%	#	%	#	%	#	%
A	32	42%	9	12%	5	7%	24	32%	5	7%	1	1%	76	100%
B	57	63%	1	1%	7	8%	20	22%	3	3%	2	2%	90	100%
C	7	47%	0	0%	1	7%	7	47%	0	0%	0	0%	15	100%
D	51	33%	36	24%	11	7%	45	29%	7	5%	3	2%	153	100%
E	7	64%	2	18%	0	0%	0	0%	2	18%	0	0%	11	100%
F	10	40%	0	0%	5	20%	8	32%	2	8%	0	0%	25	100%
G	24	42%	20	35%	7	12%	4	7%	2	4%	0	0%	57	100%
Statewide	188	44%	68	16%	36	8%	108	25%	21	5%	6	1%	427	100%

*APPLA=another planned permanent living arrangement.

Note: Percentages may not add up to 100 because of rounding.

Sample 2A-4. Reasons for Case Closures in 2005: District A



*APPLA=another planned permanent living arrangement.

Note: Percentages may not add up to 100 because of rounding.

Sample 2A–5. Trends in Permanency Rates and State Rankings, by Judicial District, Cases Closed in 2001–2004

Judicial District	2001		2002		2003		2004	
	Ranking	Permanency Rate*						
A	5	56%	4	67%	5	60%	3	79%
B	7	27%	7	43%	6	55%	6	67%
C	1	75%	2	74%	1	83%	4	78%
D	3	65%	3	73%	3	77%	5	69%
E	6	44%	6	48%	7	48%	7	61%
F	4	59%	5	66%	2	83%	2	82%
G	2	66%	1	76%	4	69%	1	88%

*Percentage of children achieving permanency.

Factors That May Affect Results

Although the court plays an important role in achieving permanency for youth in foster care, other important factors also contribute to this outcome. Success in achieving permanency for foster children may reflect (a) the quality of the child welfare agency's casework, (b) the services available in the community, (c) the court's effectiveness in overseeing the work of the agency and service providers, (d) the quality of the court itself as a decisionmaker, (e) demographic factors, or (f) a combination of these factors. If, for example, a court has a relatively low percentage of children achieving permanency by the time of case closure, that court should consider all the possible reasons—including whether the court is contributing to the problem.

The following paragraphs suggest some possible court-related reasons for performance results related to this measure. Please note: These are simply *examples* of factors to consider when analyzing performance at the local level. Because factors may be different for reunification, adoption, and legal guardianship, they are described separately for each of these permanency options.

Factors Affecting Family Reunification Permanency

Knowledge of Judges and Advocates Regarding Safety Planning

The willingness of judges to approve family reunification and the willingness of advocates to support reunification can be enhanced by understanding how to analyze safety

issues. Skill in this kind of analysis also reduces the likelihood of the kinds of serious errors that make judges and advocates overly reluctant to approve or support reunification.

Conducting a methodical safety analysis requires understanding how to assess the following:

- ◆ The immediacy and severity of danger.
- ◆ The causes of parental behavior undermining the child's safety.
- ◆ The ability and willingness of parents to care for and protect the child, including parents' recognition and control of their own behavior.
- ◆ The availability and ability of relatives to help the parents and monitor the child's safety.
- ◆ The availability and reliability of services that can make the child more safe.
- ◆ The vulnerability of the individual child to danger, including the child's ability to protect himself or herself.

Involvement of Judges and Advocates in Reunification Planning

Judges and advocates can have a substantial impact on the timeliness of reunification planning by keeping close track of their cases and making sure that (a) case plans are logically related to the problems leading to and contributing to the child's removal from home, (b) services specified in the case plan are being provided on a timely basis, and (c) the criteria for reunification are practical and clear.

The contributions of judges and advocates to the reunification process depend on the clarity of their thought processes, their efforts to keep tabs on cases, and their insistence on timely followup by caseworkers and service providers.

Legal Criteria and Judicial Conditions for Reunification

The statutory criteria for family reunification can be an important factor in reunification rates. The key legal question is whether State law requires reunification (a) when the child is no longer facing a level of danger that would justify foster placement if the child were still living at home, (b) only when reunification is in the best interests of the child, or (c) somewhere between (a) and (b). Although some States clearly call for a particular approach, most are not clear. Approach (a) is the standard most favorable to the parents, in that it requires reunification when the child is no longer at risk of further abuse or neglect even if reunification is not best for the child. Approach (a) makes most practical sense at or near the time of removal, before the emotional bond between parent and child has had time to deteriorate. The longer the child is in foster care and the greater the deterioration of the parent-child emotional bond, the more approach (b) makes practical sense for the child's sake.

Individual judges' specific conditions or criteria for reunification are usually more crucial than criteria from statutes or case law. Different judges may use different criteria, depending on the circumstances of a case. For example, if a child has been removed from home because of drug-related maltreatment, a judge may require that the parent have no positive drug screens for a particular period of time. (Experts on safety analysis do not recommend this requirement as the sole criterion for reunification in such cases.) Judges can enhance their reunification criteria by applying the knowledge gained through studying different methods of safety analysis.

Factors Affecting Adoption Permanency

Knowledge of Judges and Advocates Regarding Adoption

Among the keys to successful adoption is the willingness of caseworkers or agencies to try adoption placements for a wide range of children. Judges and advocates should be aware that many agencies have successfully placed a wide variety of children.

Judges and advocates should also understand the key principles of good case practice that lead to successful adoption, practices that apply to various categories of children, and the elements of good adoption recruitment, screening, and home studies. Private agencies and experts can assist judges and advocates in this area.

In addition, judges and advocates should be well informed about potential barriers to adoption, so they are better prepared to overcome those barriers. For example, bureaucratic delay often impedes adoptions. Overcoming sources of delay can reduce trauma to the child and enhance the odds of successful adoption. Advocates can help reduce delays by having a detailed understanding of the administrative steps in the adoption process. With this knowledge, they can identify procedural barriers, press the agency to eliminate the barriers, and hold individual agency employees accountable for progress.

Involvement of Judges and Advocates in the Adoption Process

In addition to understanding the adoption process, judges and advocates must involve themselves in the process when necessary. One way to become involved is to seek early permanency in extreme cases—those in which children often are most deeply traumatized by abuse or neglect and success is least likely. In such cases, advocates may propose and judges may find that reasonable efforts for reunification are not required. Alternative approaches include scheduling an early permanency hearing or filing early in the case for termination of parental rights (TPR). A judge might change permanency plans to adoption proceedings (or an advocate might press for this change) during a permanency hearing or review hearing.

Another important step in improving adoptions is for judges and advocates to conduct more in-depth case reviews and permanency hearings after TPR. The reviews should focus on the efficiency of the administrative adoption process, identifying sources of delay and specifying steps to move the case forward.

Legal Criteria and Procedures Relevant to Adoption

Because the time and effort involved in TPR proceedings affect when and how often TPR petitions are filed, the efficiency of the procedures governing TPR can be an important factor in the number and timeliness of adoptions. The appropriateness of TPR grounds, including case law interpreting those grounds, also affects the number and

timeliness of adoptions. For example, appropriate early adoption in extreme cases is facilitated by the existence of grounds that require neither reasonable efforts to reunify nor the passage of specific amounts of time in such cases. In these cases and others, delays reduce the likelihood that a child eventually will be successfully adopted.

Key procedural factors relevant to successful adoption are the length of waiting periods and the circumstances in which waiting periods are required. Also important are the exact requirements for consent to termination, including consent by the agency and the child (upon reaching a specified age). Appropriately flexible consent requirements will prevent the arbitrary blocking of adoptions.

Factors Affecting Legal Guardianship Permanency

Knowledge of Judges and Advocates Regarding Legal Guardianship

When judges and advocates understand the full ramifications of guardianship, they will seek it appropriately. For example, judges and advocates should know about the financial implications of guardianship compared with those of foster care and adoption. They must also know the proper legal procedures for initiating and completing guardianship; in some States, these procedures are difficult to follow. Finally, judges and advocates should understand the legal protections of guardianship under State law, such as the guardians' freedom from State interference and their security from custodial challenges by biological parents.

Involvement of Judges and Advocates in Guardianship Planning

Well-informed judges and advocates who pay attention to planning for guardianship and stay involved in the process can be a great help. For example, judges and advocates can review whether legal guardians are receiving available subsidies or other financial assistance. They can ensure proper and timely home studies of the guardian household, including criminal record checks of the guardians and child abuse and neglect central registry checks of other adults in the home. They can also make sure that the guardianship proceeding has a proper court record of why the child entered foster care. Such a record can reduce the likelihood that biological parents will regain custody after a guardianship has been established as a permanent placement for the child.

Legal Criteria and Judicial Conditions for Legal Guardianship

If the law makes legal guardianship a permanent placement for a child, the legal grounds for establishing guardianship should reflect that fact. Generally speaking, the legal grounds for guardianship should require proof that (a) the child should not or cannot be returned to his or her parents within a reasonable time after entering foster care and (b) legal guardianship, rather than adoption, is in the child's best interests.

Procedures to establish legal guardianship should be efficient but should also provide strong legal protections for the parents and child. For example, State law should not require that a legal guardianship case be heard by a court other than the one that heard the child's abuse and neglect case.

Finally, the legal characteristics of guardianship should reinforce the legal permanency of the arrangement, for the sake of both the child and the guardian. Legal guardians should not be subject to ongoing supervision by the State child welfare agency and should not be highly vulnerable to custodial challenges by biological parents.

Possible Reforms

If data from this performance measure indicate room for improvement regarding the percentage of cases resulting in permanent placements, the court should consider possible reforms. Specific reforms will, of course, depend on local conditions and the court's analysis of the best procedures and steps for achieving permanency in its jurisdiction.

The sections that follow present examples of additional actions a court might take to improve permanency rates for reunification, adoption, and legal guardianship.¹¹

Family Reunification

- ◆ Take more time to address safety issues during reviews and permanency hearings.
- ◆ Before accepting other permanency plans during permanency hearings, require evidence that the child cannot safely return home, even with realistically available services and help.
- ◆ Train judges and attorneys on safety issues, such as focusing on the capacity of parents and relatives to keep

the child safe, focusing on the special vulnerabilities of children, and understanding other basic elements of good safety analysis. The training should include how to address these issues in review and permanency hearings.

- ◆ Secure the assistance of skilled forensic psychologists and psychiatrists in analyzing the safety of reunification.
- ◆ Improve agency reports to the court by working with the agency to develop new forms (or supplements to forms) in connection with recommendations for reunification. The forms should address matters such as the reasons why reunification is or is not now safe; how relatives will be involved, when appropriate, to help oversee the child's safety; and transitional visitation arrangements.
- ◆ Adopt new forms (or supplements to forms) to be used for court orders for family reunification. The forms should address matters such as those noted above for agency reports.
- ◆ Before case closure, implement family group conferencing models that involve the family in making safety plans to maintain their children in a safe and secure environment upon reunification.

Adoption

- ◆ Take more time to address adoption issues during reviews and permanency hearings.
- ◆ Review ongoing cases to ensure that sufficient steps are being taken to recruit adoptive parents, properly screen applicants, conduct thorough and timely home studies, and make timely decisions. This review helps to avoid the need to make hasty decisions later in the process or to choose among insufficiently qualified candidates.
- ◆ Before accepting other nonreunification permanency plans during permanency hearings, require evidence that the child cannot or should not be adopted.
- ◆ Train judges and attorneys on adoption issues, such as the details of the bureaucratic steps in the process, adoption recruitment, adoption screening and selection, financial barriers, and issues concerning adolescents.
- ◆ Revise the legal grounds for terminating parental rights to eliminate inappropriate barriers to adoption for children who are unable to return home within a reasonable time, when adoption is in their best interests.

- ◆ Simplify procedures for terminating parental rights, thereby encouraging agency workers and attorneys to seek that option and reducing delays.
- ◆ Train caseworkers to document and present to the court better information regarding reunification.

Legal Guardianship

- ◆ Take more time to address the possibility of legal guardianship during reviews and permanency hearings, at least for cases in which family reunification and adoption are seriously questioned as proper case goals.
- ◆ Review ongoing cases to ensure that sufficient steps are being taken to recruit guardians, properly screen applicants, conduct thorough and timely home studies, and make timely decisions. This review helps avoid the need to make hasty decisions later in the process or to choose among insufficiently qualified candidates.
- ◆ Before accepting lower priority permanency plans (such as APPLAs) during permanency hearings, require evidence that the child cannot or should not be placed in a legal guardianship.
- ◆ Revise legal procedures for guardianship to simplify the process.
- ◆ If legal protection for guardians against biological parents seeking to regain custody is inadequate under State law, amend statutes to correct the problem.
- ◆ Train judges and attorneys on legal guardianship issues, such as the process to establish legal guardianship, including, where applicable, coordination between the court handling the guardianship proceeding and the court handling the abuse and neglect case; the financial implications of legal guardianship, including possible financial benefits available; the legal rights and obligations of legal guardians under State law; and consent to guardianship.
- ◆ Revise forms for legal guardianship to help simplify the process, clarify the authority and responsibilities of the guardian, and set forth the reasons for choosing legal guardianship rather than reunification or adoption.
- ◆ Train caseworkers to document and present to the court better information regarding legal guardianship.

Endnotes

1. 42 U.S.C. § 675(7) states that:

The term 'legal guardianship' means a judicially created relationship between child and caretaker which is intended to be permanent and self-sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child: protection, education, care and control of the person, custody of the person, and decision-making. The term 'legal guardian' means the caretaker in such a relationship.

2. The term “legal custody,” when used as a type of permanent placement, means a court order that gives indefinite custody (permanent care and control) of a child to an individual or couple. Used in this sense during child abuse or neglect proceedings, legal custody would survive after the proceedings have been closed. However, not every State has the option of awarding legal custody of this type in the course of child abuse and neglect proceedings. The term “legal custody” is different from “physical custody” in that legal custody connotes full legal decisionmaking powers concerning the child, whereas physical custody generally means little more than the right to physical care and control of the child. Another type of custody in child abuse and neglect proceedings, “temporary custody,” typically means custody that lasts only as long as the abuse or neglect case remains open. Note, however, that the precise meaning of custody, legal custody, physical custody, and temporary custody can vary from State to State.
3. 42 U.S.C. § 675(5)(C).
4. For further discussion regarding the meaning of the statutory term “another planned permanent living arrangement,” see C. Fiermonte and J. Renne, *Making It Permanent: Reasonable Efforts To Finalize Permanency Plans for Foster Children* (Washington, DC: American Bar Association, 2002).
5. Although “permanent foster family care” is not as legally permanent as reunification, adoption, or legal guardianship, it is significantly more so than conventional foster placements. “Permanent foster family care” should be distinguished from “long-term foster care,” which generally means that the State or court has given up on securing a legally permanent placement for the child. The Federal Adoption and Safe Families Act of 1997 [42 U.S.C. § 675(5)(C)] eliminated

long-term foster care, so defined, as an acceptable permanent placement option. If, however, the term is used under State law or practice in a narrower, more precise sense to actually mean “permanent foster family care,” it may be considered as another type of legal permanent placement option for purposes of this measure.

6. Some States have special, narrow legal permanent placement options available only to relatives (e.g., special legal categories of adoption or guardianship). States that have such permanency options may want to count them separately.
7. Some States authorize legal emancipation before age 18 under certain circumstances, typically after a youth has reached age 16 or 17.
8. 45 C.F.R. § 1355, appendix A, section I(X)(B).
9. Whereas the numerator for CFSR PC3A2 is very similar to—in fact, a subset (portion) of—the numerator for *Toolkit Measure 2A*, the denominator of CFSR PC3A2 is drawn from the universe of children who have been in foster care 24 months or longer at the beginning of the reporting period.

CFSR PC3A2 uses a “point-in-time cohort,” limited to children with relatively longer times in foster care, whereas *Toolkit Measure 2A* uses an “exit cohort” limited to children whose cases were closed during the reporting period.

Table II* (“Point-in-Time Permanency Profile”) of the data profile used in the statewide assessment portion of the CFSR contains the counts for a Federal fiscal year (FFY) calculation of *Toolkit Measure 2A*. Element I (“Foster Care Population Flow”) contains the denominator count for discharges during the FFY. Element VIII (“Length of Time To Achieve Permanency Goal”) contains the numerator counts for discharges to reunification/relative placement, adoption, and guardianship during the FFY. The data guide of the *CFSR Round 1 State Data Profile Toolkit* on the National Resource Center for Child Welfare Data and Technology (NRC-CWDT) Web site (www.nrccwdt.org/ta/ttt/toolkit/ttt_toolkit_dataguide.html) contains instructions for the calculation of these counts from AFCARS data.

*Note that Table II is not associated with any national standards process.

The CFSR designation “PC3A2” refers to Permanency Composite 3, Component A, Measure 2. Permanency Composite 3 (PC3) includes components A and B, each of which includes separate measures. PC3 combines these measures in a single “national standard” relative to achieving permanency for children in foster care for long periods of time. The national standard for the permanency composite is the 75th percentile of a scaled score taking values from 50 to 150 (rather than a percentage). Although CFSR does not have a national standard for each component measure, a State child welfare agency would need to score near the 75th percentile for most of the components to meet the national standard for the composite. The following table illustrates PC3 components and measures.

10. In sample 2A–3, Judicial Districts C and F both had no adoption permanent placements in 2005. Because these districts had few total cases closed in 2005 (15 and 25, respectively), their data on permanency achievement by type of closure is of limited value for comparative purposes.
11. For additional information, see C. Fiermonte and J. Renne, *Making It Permanent: Reasonable Efforts To Finalize Permanency Plans for Foster Children* (Washington, DC: American Bar Association, 2002). In addition to helpful discussions of permanency options, *Making It Permanent* includes sample forms for agency reports and court orders used in permanency hearings. (Different forms are used for each of the permanency options discussed here.)

CFSR Permanency Composite 3. Component Measures, Range and Median Scores, and Composite National Standard

Permanency Composite 3: Achieving permanency for children in foster care for long periods of time	Range	Median	National Standard
	50–150	103.8	111.7 or higher
Component A: Achieving permanency for children in foster care for long periods of time			
Of all children who were discharged from foster care in FY 2004 and were legally free for adoption (i.e., there was a termination of parental rights for each living parent), what percent were discharged to a permanent home prior to their 18th birthday? A permanent home is defined as having a discharge reason of adoption, guardianship, or reunification (including living with relative).	84.8–100%	97.0%	No standard
Of all children in foster care for 24 months or longer on the first day of FY 2004, what percent were discharged to a permanent home prior to their 18th birthday and by the end of the fiscal year? A permanent home is defined as having a discharge reason of adoption, guardianship, or reunification (including living with relative).	8.1–35.3%	24.5%	No standard
Component B: Children growing up in foster care			
Of all children who exited foster care with a discharge reason of emancipation prior to their 18th birthday or who reached their 18th birthday while in foster care, what percent were in foster care for 3 years or longer?	17.9–80.4%	50.7%	No standard

Children Not Reaching Permanency



Definition: Percentage of children in foster care who do not reach legal permanency by reunification, adoption, or legal guardianship.

Explanation: This measure evaluates the combined *lack* of success of courts and child welfare agencies in achieving legal permanency by the time the court has closed each case involving children in foster care. This measure is the “flip side” of *Toolkit Measure 2A: Achievement of Child Permanency*, which focuses on the extent of success in achieving permanency. Much of the guide’s discussion for *Measure 2B* is identical or similar to the discussion for *Measure 2A*.

“Legal permanency” means that there is a permanent and secure legal relationship between the adult caregiver and the child. More specifically, legal permanency means the following:

- ◆ The individual adult or couple who is/are the child’s caregiver(s) has/have full legal authority over the child, free from the supervision of the child welfare agency.
- ◆ The court, in approving this relationship, intends it to be permanent.
- ◆ Significant legal barriers exist to block the disruption of the placement and the disruption of the legal relationship between child and caregiver(s).

Thus, this measure of the nonachievement of permanency includes cases that do not ultimately result in reunification, adoption, or legal guardianship.

In contrast to reunification, adoption, and legal guardianship, the court does not generally intend a foster care placement to be permanent. The foster parent lacks full authority to decide the nature of the child’s care, and only weak legal barriers exist to block the removal of the child from the foster home and prevent the end of the foster parent-foster child relationship.

Because of the complex nature of legal permanency, this measure, like *Measure 2A*, is relatively challenging and complex to implement.

Purpose: To help courts determine the extent to which legal permanency is not achieved for children under their jurisdiction. A considerable amount of social science research has demonstrated the importance of stable and secure homes for children’s healthy development and ultimate well-being. Legal permanency helps ensure that former foster children grow up in such homes. This measure gauges the lack of success of courts and agencies in achieving that goal.

Implementation Issues

Different Courts or Judges May Hear Adoption and Legal Guardianship Proceedings

To measure nonachievement of permanency, it is necessary to count cases that *do* achieve permanency—including those that result in adoption or legal guardianship. As with *Measure 2A*, a major challenge in developing this measure is that in many States, the courts that hear adoptions and legal guardianship matters are different from the courts that hear abuse and neglect cases. The problem is that few jurisdictions currently have management information systems that include and link all case types.

In States with multiple courts, the courts that hear dependency (i.e., child abuse and neglect) cases are most likely to be interested in this measure and to maintain most of the data to support it. If, for example, dependency court cases are to be closed upon the final decree of adoption or approval of legal guardianship, the dependency court must rely on another court to provide the date that adoption or legal guardianship is final.

States without multiple courts may have large jurisdictions that subdivide a single court so that one unit hears child abuse and neglect cases and another hears adoption cases. In this case, the different units may not be able to share data electronically.

Confidentiality of Adoption Proceedings

In many States, laws require that courts maintain the confidentiality of their adoption records. Therefore, some courts that hear adoption cases are reluctant to share information with courts that hear child abuse and neglect cases. This reluctance can present an obstacle to calculating the percentage of foster cases in which children are adopted.

Convincing legal arguments may exist, however, in support of sharing information needed to implement this measure. The purpose of State laws that make court adoption records confidential is to protect the privacy of individual adopted children, their adoptive families, and birth parents. As long as the courts hearing abuse and neglect cases maintain that confidentiality and make public only aggregate information about the percentage of children in foster care who are adopted, the purpose of the laws is not violated. Of course, in a particular State, such arguments should address the specific wording and legislative history of that State's laws.

Legal Characteristics of Permanent Placement Options

To understand when permanency is not achieved, it is first necessary to understand the characteristics of legal permanent placement options. The three preferred legal placement options are family reunification, adoption, and legal guardianship.

Family Reunification

Family reunification, followed by closure of the court case, restores the original legal position of the family prior to court involvement. The parents have undivided legal decisionmaking power regarding the child (subject to mandatory education laws, child labor laws, etc.). The parents no longer must accept supervision by the child welfare agency. Strong legal barriers (i.e., required proof in court of further abuse or neglect), comparable to those for parents with no court involvement, block future removal of the child from the home.

Adoption

The legal position of adoptive parents is essentially the same as that for biological parents who have had no adjudication of child abuse or neglect.

Legal Guardianship

“Legal guardianship” refers to legal placement options, established by State law, that are consistent with the Federal definition¹ of legal guardianship. Legal guardians are not subject to the oversight of the public child welfare agency. They generally have full decisionmaking authority over a child, as do biological and adoptive parents. In some States, however, the legal guardians' legal security against removal of the child is weaker than for most biological and adoptive parents. That is, in some States, if biological parents seek to regain custody of the child, the guardian may need to prove those parents unfit to resume care. This position is the reverse of that of the biological or adoptive parents, who can maintain control of the child unless they are proved unfit as parents. On the other hand, some States have amended their guardianship laws to create legal preferences for keeping children with legal guardians when challenged by parents.

In some States, more than one legal option may fall within the definition of “legal guardian.” For example, both “legal custody”² and guardianship (pursuant to the probate code) may qualify as legal guardianship. Thus, some jurisdictions may wish to include more than one form of legal guardianship in this measure.

“Another Planned Permanent Living Arrangement”

Some jurisdictions may wish to consider “another planned permanent living arrangement” (APPLA) as a form of permanent placement, as Federal law recognizes APPLA as a type of permanency plan. However, what many States consider to be APPLAs are actually legal arrangements that do not provide legally permanent placements. If APPLAs do not actually have the characteristics of permanent placements in a State, they should be counted in this measure (i.e., cases that result in APPLA should be considered not to have achieved permanency).

States that define the term APPLA narrowly, as intended by Federal law,³ may appropriately exclude APPLA from this measure (i.e., cases that result in APPLA could be considered to have achieved permanency). For example, if State law authorizes a court to order a permanent placement with a specific foster parent and that placement cannot be disrupted without a court order, a State may choose not to include that placement within this measure. A State might even choose to exclude a group home APPLA of a child who is unable to live with a family, if an adult commits to serving as a lifelong mentor and substitute parent for the child, and the child accepts that relationship.

Calculating Rates For Different Legal Permanency Options

If a State recognizes other types of permanent placements in addition to reunification, adoption, and legal guardianship, it could exclude *all* types of permanent placements from a report on this measure. (In any case, whatever *Measure 2A* includes, *Measure 2B* should exclude.)

Alternatively, a State might choose to count only reunification, adoption, and legal guardianship as permanent placements, and to calculate separately the frequency of different categories of nonpermanent placements. For example, it could calculate separately the percentage of actual APPLAs and the percentages of completely nonpermanent placements such as aging out of foster care, transfer to the custody of an agency other than child welfare, or transfer to another geographic jurisdiction.

Regardless of whether a State considers APPLA in the permanent or nonpermanent category, it should consider breaking out the percentage of APPLAs separately from other categories. Otherwise, a high percentage of non-permanency based largely on numerous APPLAs may be misleading.

Breaking out separate percentages for each type of nonpermanent placement (again, regardless of how APPLA is categorized) can provide courts with valuable information on what types of placements are most and least common. For example, a court might have relatively few children aging out in foster care but unusually high rates of transfers (to other agencies or jurisdictions) or children who run away or become missing.

Case Outcomes Not Constituting Permanency

Case outcomes that do not constitute permanency include “aging out,” independent living, emancipation, other nonpermanent legal placement categories, and “legal orphans.”

Aging Out

If the court closes a case because a child has “aged out” of its jurisdiction, and the child remains in foster care after case closure, that child will be considered to have achieved legal permanency only if the court has ordered permanent placement with the foster parent(s) as an APPLA.

Independent Living

Cases labeled “independent living” (e.g., youth who are receiving services to help them function better after reaching adulthood) should not be classified as having achieved permanency. An independent living situation does not meet the goal of legal permanency, which should include, among other things, having a permanent family upon reaching adulthood. Effective services to help youth function independently upon reaching adulthood, although commendable and helpful, have little to do with permanency.

Emancipation

As with independent living, “emancipation” is sometimes used as a euphemism for aging out of foster care. In addition, an emancipated youth may be a young person who is granted some aspects of adult legal status before reaching the age of majority. For example, depending on State law, an emancipated youth may be granted the right to live alone without any adult supervision and to enter into certain contracts.⁴

Other Nonpermanent Legal Placement Categories

Examples of other categories of court case closure that would not be considered legal permanency for purposes of this measure include death of the child, transfer of the case to another geographic jurisdiction (e.g., another State’s court system or another judicial district), transfer of the case to another agency, and a runaway or missing child. The Federal Adoption and Foster Care Reporting System (AFCRS), which applies to State child welfare agencies, includes the following nonpermanent placement categories for foster care “discharge”: emancipation, transfer to another agency, runaway, and death of the child.⁵

As with *Measure 2A*, children who are transferred to another jurisdiction before case closure or who die in foster care (presumably through no fault of the State) should not be included in this measure, because such cases are not a reflection of the State’s degree of success (or lack of success) in achieving permanency. On the other hand, a runaway or other missing child or a child who is transferred to another agency (e.g., a juvenile justice agency or developmental disabilities agency) should be included in this measure. Such cases usually do reflect the court’s and the child welfare agency’s lack of success in planning, oversight, and decisionmaking with regard to the child.

Legal Orphans

A group of particular interest is children who leave foster care without permanency but whose parents' rights have been terminated. With these youth, legal ties (and presumably contacts) with their families were ended when the termination of parental rights (TPR) was finalized, but legal permanency was never achieved. It is recommended that States seriously consider calculating the percentage of cases falling within this category.

Other Measures As Context

As is often the case, data based on this measure should be considered in light of data based on other measures. For example, although it is helpful to know the percentages of children not reaching permanency by the time the case is closed, it is also helpful to know how long it takes to achieve permanency and case closure (*Toolkit Measure 4A: Time to Permanent Placement*). It is also useful to know what percentage of permanent placements subsequently break up, making it necessary for the child to reenter foster care (*Toolkit Measure 2D: Reentry Into Foster Care After Return Home* and *Measure 2E: Reentry Into Foster Care After Adoption or Guardianship*).

Measure Limited to Youth in Foster Care

As with *Measure 2A*, this measure should be limited to youth in foster care. Otherwise, it would substantially reflect the percentage of abused and neglected children who come before the court but never enter foster care rather than the percentage of children in foster care who have not achieved permanency. (Note that the rate of nonpermanency for children who come before the court but never enter foster care, excluding categories such as children who die while in foster care or who are transferred to another jurisdiction, would be close to 0 percent.)

If courts prefer to include all youth under court jurisdiction in this measure, they should maintain separate statistics on the nonpermanency rate for youth in foster care.

Business Rules

Basic Rules

1. Select a date range for the report (e.g., for a report spanning a 12-month period, select beginning and ending dates 12 months apart).

2. From the cases that were closed within the date range selected (*A*), exclude cases that were closed because the child died, was transferred to another geographic jurisdiction (e.g., to another judicial district or State), or who was never in foster care while the case was open. (*B*)
3. Count the number of cases in (*B*) for which the case closure reason is one of the permanent placements recognized by the state. (*C*) The remaining cases in (*B*) are those for which the case closure reason is a nonpermanent placement. (*D*)
4. Compute the overall rate of permanency by dividing (*C*) by (*B*). Compute the overall rate of nonpermanency by dividing (*D*) by (*B*).
5. Divide (*C*) into categories, each representing one type of permanent placement at case closure: family reunification (category 1), adoption (category 2), legal guardianship (category 3). If the State recognizes other permanent placement categories such as APPLA, create a fourth category, and so forth. Divide (*D*) into categories, each representing a nonpermanent placement type (category 5, category 6, etc.).
6. Compute the percentage of cases in each category by dividing the number of cases in that category by (*B*).

Possible Modifications

1. Report separately on cases by additional categories, such as child's race/ethnicity, child's age, age of case at closure, etc.

Data Elements

These elements apply specifically to this measure. For elements that apply to all measures, see "Universal Data Elements," page 7. For definitions of data elements, see appendix D, "Data Element Dictionary," page 289.

Required Elements

- ◆ Foster care flag = "yes."
- ◆ Case closure date.
- ◆ Case closure reason.

Optional Elements

- ◆ Abuse or neglect petition date.

Related CFSR Standards

No Child and Family Services Review (CFSR) standard for State child welfare agencies relates specifically to *Toolkit Measure 2B*. For discussion of a CFSR standard that relates to the measurement of permanency rates, see “Related CFSR Standards” in *Measure 2A*.

Note: Because Measure 2B is the “flip side” of Measure 2A, the remaining sections—“Reporting the Data,” “Factors That May Affect Results,” and “Possible Reforms”—are similar to the corresponding sections in Measure 2A.

Reporting the Data

Measure 2B lends itself to a variety of graphic representations. The samples that follow use hypothetical data for a fictitious seven-district State to demonstrate how results for this measure might be reported in tables and graphs.

Sample 2B–1 illustrates a tabular format that can be helpful for State Court Improvement Project (CIP) directors and their staff. The table shows the percentage of cases closed during calendar year 2005 in which legal permanency was not achieved at the time of case closure, for the entire State and each judicial district. The nonpermanency rates range from 47 percent in District C to 11 percent in District G. The overall rate for the State is 32 percent. This simple table has the advantage of being easy to read. However, because it does not distinguish rates for different types of nonpermanency, the table will not reveal, for example, that a particular district may have a relatively low rate of children aging out but a high rate of APPLAs. Thus, it will not reflect all the factors that affect, either positively or

negatively, the overall achievement of permanency.

Data on the proportions of cases reaching and not reaching permanency can be well represented by pie charts. A pie chart can be created for each judicial district individually (see sample 2B–2) or for the entire State.

Sample 2B–3 breaks down the numbers from sample 2B–1 by type of permanent and nonpermanent placement (i.e., by reason for case closure), permitting sharper contrasts than can be seen in sample 2B–1.

Sample 2B–4 shows how the tabular data from sample 2B–3 might be presented in a bar graph for one of the districts.

If a State has measured permanency rates for several years, it might show trends in nonpermanency rates in a line graph such as in sample 2B–5.

Factors That May Affect Results

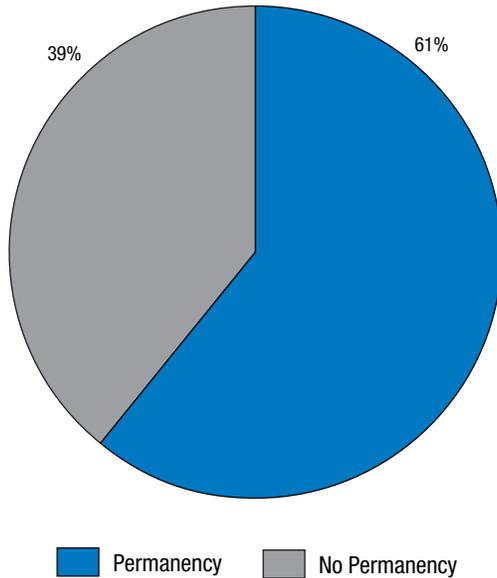
Although the court plays an important role in achieving permanency for youth in foster care, other important factors also contribute to this outcome. Success in achieving permanency for foster children may reflect (a) the quality of the child welfare agency’s casework, (b) the services available in the community, (c) the court’s effectiveness in overseeing the work of the agency and service providers, (d) the quality of the court itself as a decisionmaker, (e) demographic factors, or (f) a combination of these factors.

If, for example, a court has a relatively low percentage of children achieving permanency by the time of case closure, that court should consider all the possible reasons—including whether the court is contributing to the problem.

Sample 2B–1. Children Not Reaching Permanency, by Judicial District, Cases Closed in 2005

District	Permanency		No Permanency		Total	
	Number	Percent	Number	Percent	Number	Percent
A	46	61%	30	39%	76	100%
B	65	72%	25	28%	90	100%
C	8	53%	7	47%	15	100%
D	98	64%	55	36%	153	100%
E	9	82%	2	18%	11	100%
F	15	60%	10	40%	25	100%
G	51	89%	6	11%	57	100%
Statewide	292	68%	135	32%	427	100%

Sample 2B–2. Nonachievement of Permanency for Cases Closed in 2005: District A



The following paragraphs suggest some possible court-related reasons for performance results related to this measure. Please note: These are simply examples of factors to consider when analyzing performance at the local level. Because factors may be different for reunification, adoption, and legal guardianship, they are described separately for each of these permanency options.

Factors Affecting Family Reunification Permanency

Knowledge of Judges and Advocates Regarding Safety Planning

The willingness of judges to approve family reunification and the willingness of advocates to support reunification can be enhanced by understanding how to analyze safety issues. Skill in this kind of analysis also reduces the likelihood of the kinds of serious errors that make judges and advocates overly reluctant to approve or support reunification.

Conducting a methodical safety analysis requires understanding how to assess the following:

- ◆ The immediacy and severity of danger.
- ◆ The causes of parental behavior undermining the child’s safety.

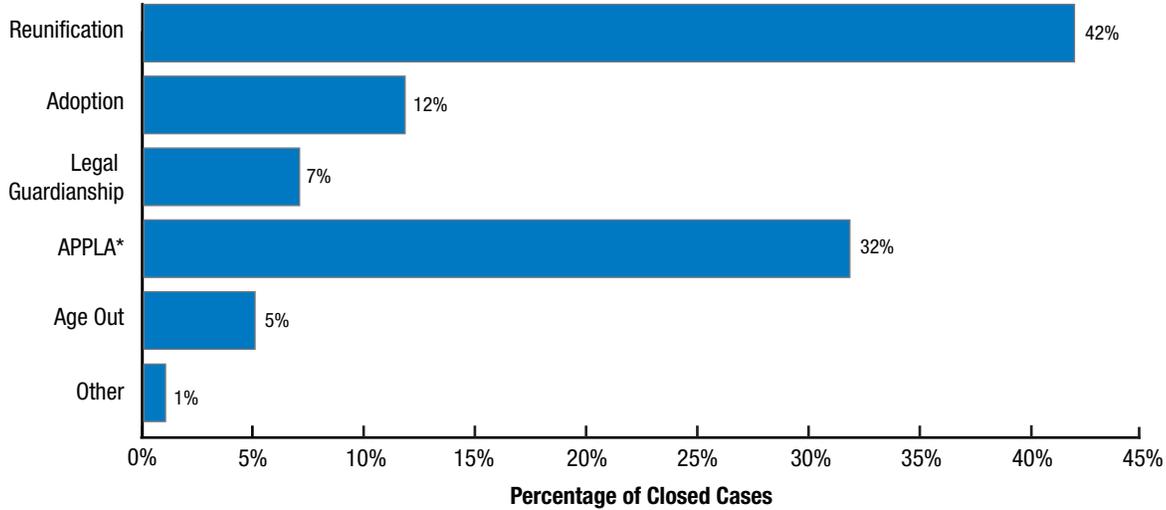
Sample 2B–3. Reasons for Case Closures in 2005, by Judicial District

District	Permanent Placement						No Permanent Placement							
	Reunification		Adoption		Legal Guardianship		APPLA*		Age Out		Other		Total	
	#	%	#	%	#	%	#	%	#	%	#	%	#	%
A	32	42%	9	12%	5	7%	24	32%	5	7%	1	1%	76	100%
B	57	63%	1	1%	7	8%	20	27%	3	3%	2	2%	90	100%
C	7	47%	0	0%	1	7%	7	53%	0	47%	0	0%	15	100%
D	51	33%	36	24%	11	7%	45	29%	7	5%	3	2%	153	100%
E	7	64%	2	18%	0	0%	0	0%	2	18%	0	0%	11	100%
F	10	40%	0	0%	5	20%	8	32%	2	8%	0	0%	25	100%
G	24	42%	20	35%	7	12%	4	7%	2	4%	0	0%	57	100%
Statewide	188	44%	68	16%	36	8%	108	25%	21	5%	6	1%	427	100%

*APPLA=another planned permanent living arrangement.

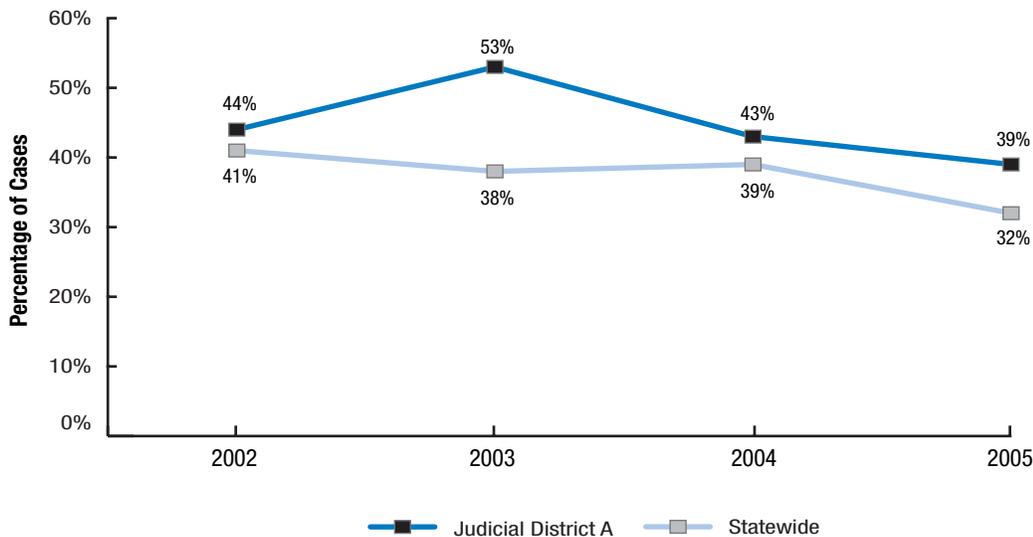
Note: Percentages may not add up to 100 because of rounding.

Sample 2B-4. Reasons for Case Closures in 2005: District A



*APPLA=another planned permanent living arrangement.

Sample 2B-5. Comparison of Trends in Nonpermanency Rates, Cases Closed in 2002-2005: Judicial District A Versus Statewide



- ◆ The ability and willingness of parents to care for and protect the child, including parents' recognition and control of their own behavior.
- ◆ The availability and ability of relatives to help the parents and monitor the child's safety.
- ◆ The availability and reliability of services that can make the child more safe.
- ◆ The vulnerability of the individual child to danger, including the child's ability to protect himself or herself.

Involvement of Judges and Advocates in Reunification Planning

Judges and advocates can have a substantial impact on the timeliness of reunification planning by keeping close track of their cases and making sure that (a) case plans are logically related to the problems leading to and contributing to the child's removal from home, (b) services specified in the case plan are being provided on a timely basis, and (c) the criteria for reunification are practical and clear.

The contributions of judges and advocates to the reunification process depend on the clarity of their thought processes, their efforts to keep tabs on cases, and their insistence on timely followup by caseworkers and service providers.

Legal Criteria and Judicial Conditions for Reunification

The statutory criteria for family reunification can be an important factor in reunification rates. The key legal question is whether State law requires reunification (a) when the child is no longer facing a level of danger that would justify foster placement if the child were still living at home, (b) only when reunification is in the best interests of the child, or (c) somewhere between (a) and (b). Although some States clearly call for a particular approach, most are not clear. Approach (a) is the standard most favorable to the parents, in that it requires reunification when the child is no longer at risk of further abuse or neglect even if reunification is not best for the child. Approach (a) makes most practical sense at or near the time of removal, before the emotional bond between parent and child has had time to deteriorate. The longer the child is in foster care and the greater the deterioration of the parent-child emotional bond, the more approach (b) makes practical sense for the child's sake.

Individual judges' specific conditions or criteria for reunification are usually more crucial than criteria from statutes or case law. Different judges may use different criteria, depending on the circumstances of a case. For example, if a child has been removed from home because of drug-related maltreatment, a judge may require that the parent have no positive drug screens for a particular period of time. (Experts on safety analysis do not recommend this requirement as the sole criterion for reunification in such cases.) Judges can enhance their reunification criteria by applying the knowledge gained through studying different methods of safety analysis.

Factors Affecting Adoption Permanency

Knowledge of Judges and Advocates Regarding Adoption

Among the keys to successful adoption is the willingness of caseworkers or agencies to try adoption placements for a wide range of children. Judges and advocates should be aware that many agencies have successfully placed a wide variety of children.

Judges and advocates should also understand the key principles of good case practice that lead to successful adoption, practices that apply to various categories of children, and the elements of good adoption recruitment, screening, and home studies. Private agencies and experts can assist judges and advocates in this area.

In addition, judges and advocates should be well informed about potential barriers to adoption, so they are better prepared to overcome those barriers. For example, bureaucratic delay often impedes adoptions. Overcoming sources of delay can reduce trauma to the child and enhance the odds of successful adoption. Advocates can help reduce delays by having a detailed understanding of the administrative steps in the adoption process. With this knowledge, they can identify procedural barriers, press the agency to eliminate the barriers, and hold individual agency employees accountable for progress.

Involvement of Judges and Advocates in the Adoption Process

In addition to understanding the adoption process, judges and advocates must involve themselves in the process when necessary. One way to become involved is to seek early permanency in extreme cases—those in which children often are most deeply traumatized by abuse or neglect and success is least likely. In such cases, advocates may propose and judges may find that reasonable efforts for reunification are not required. Alternative approaches include scheduling an early permanency hearing or filing early in the case for termination of parental rights (TPR). A judge might change permanency plans to adoption proceedings (or an advocate might press for this change) during a permanency hearing or review hearing.

Another important step in improving adoptions is for judges and advocates to conduct more in-depth case reviews and permanency hearings after TPR. The reviews should focus on the efficiency of the administrative adoption process,

identifying sources of delay and specifying steps to move the case forward.

Legal Criteria and Procedures Relevant to Adoption

Because the time and effort involved in TPR proceedings affect when and how often TPR petitions are filed, the efficiency of the procedures governing TPR can be an important factor in the number and timeliness of adoptions. The appropriateness of TPR grounds, including case law interpreting those grounds, also affects the number and timeliness of adoptions. For example, appropriate early adoption in extreme cases is facilitated by the existence of grounds that require neither reasonable efforts to reunify nor the passage of specific amounts of time in such cases. In these cases and others, delays reduce the likelihood that a child eventually will be successfully adopted.

Key procedural factors relevant to successful adoption are the length of waiting periods and the circumstances in which waiting periods are required. Also important are the exact requirements for consent to termination, including consent by the agency and the child (upon reaching a specified age). Appropriately flexible consent requirements will prevent the arbitrary blocking of adoptions.

Factors Affecting Legal Guardianship Permanency

Knowledge of Judges and Advocates Regarding Legal Guardianship

When judges and advocates understand the full ramifications of guardianship, they will seek it appropriately. For example, judges and advocates should know about the financial implications of guardianship compared with those of foster care and adoption. They must also know the proper legal procedures for initiating and completing guardianship; in some States, these procedures are difficult to follow. Finally, judges and advocates should understand the legal protections of guardianship under State law, such as the guardians' freedom from State interference and their security from custodial challenges by biological parents.

Involvement of Judges and Advocates in Guardianship Planning

Well-informed judges and advocates who pay attention to planning for guardianship and stay involved in the process can be a great help. For example, judges and advocates

can review whether legal guardians are receiving available subsidies or other financial assistance. They can ensure proper and timely home studies of the guardian household, including criminal record checks of the guardians and child abuse and neglect central registry checks of other adults in the home. They can also make sure that the guardianship proceeding has a proper court record of why the child entered foster care. Such a record can reduce the likelihood that biological parents will regain custody after a guardianship has been established as a permanent placement for the child.

Legal Criteria and Judicial Conditions for Legal Guardianship

If the law makes legal guardianship a permanent placement for a child, the legal grounds for establishing guardianship should reflect that fact. Generally speaking, the legal grounds for guardianship should require proof that (a) the child should not or cannot be returned to his or her parents within a reasonable time after entering foster care and (b) legal guardianship, rather than adoption, is in the child's best interests.

Procedures to establish legal guardianship should be efficient but should also provide strong legal protections for the parents and child. For example, State law should not require that a legal guardianship case be heard by a court other than the one that heard the child's abuse and neglect case.

Finally, the legal characteristics of guardianship should reinforce the legal permanency of the arrangement, for the sake of both the child and the guardian. Legal guardians should not be subject to ongoing supervision by the State child welfare agency and should not be highly vulnerable to custodial challenges by biological parents.

Possible Reforms

If data from this performance measure indicate room for improvement regarding the percentage of cases resulting in permanent placements, the court should consider possible reforms. Specific reforms will, of course, depend on local conditions and the court's analysis of the best procedures and steps for achieving permanency in its jurisdiction.

The sections that follow present examples of additional actions a court might take to improve permanency rates for reunification, adoption, and legal guardianship.⁶ In addition to the examples pertaining to specific permanency

options, the court should support a wide range of more general legal and judicial system improvements related to this measure.

Family Reunification

- ◆ Take more time to address safety issues during reviews and permanency hearings.
- ◆ Before accepting other permanency plans during permanency hearings, require evidence that the child cannot safely return home, even with realistically available services and help.
- ◆ Train judges and attorneys on safety issues, such as focusing on the capacity of parents and relatives to keep the child safe, focusing on the special vulnerabilities of children, and understanding other basic elements of good safety analysis. The training should include how to address these issues in review and permanency hearings.
- ◆ Secure the assistance of skilled forensic psychologists and psychiatrists in analyzing the safety of reunification.
- ◆ Improve agency reports to the court by working with the agency to develop new forms (or supplements to forms) in connection with recommendations for reunification. The forms should address matters such as the reasons why reunification is or is not now safe; how relatives will be involved, when appropriate, to help oversee the child's safety; and transitional visitation arrangements.
- ◆ Adopt new forms (or supplements to forms) to be used for court orders for family reunification. The forms should address matters such as those noted above for agency reports.
- ◆ Before case closure, implement family group conferencing models that involve the family in making safety plans to maintain their children in a safe and secure environment upon reunification.

Adoption

- ◆ Take more time to address adoption issues during reviews and permanency hearings.
- ◆ Review ongoing cases to ensure that sufficient steps are being taken to recruit adoptive parents, properly screen applicants, conduct thorough and timely home studies, and make timely decisions. This review helps to avoid

the need to make hasty decisions later in the process or to choose among insufficiently qualified candidates.

- ◆ Before accepting other nonreunification permanency plans during permanency hearings, require evidence that the child cannot or should not be adopted.
- ◆ Train judges and attorneys on adoption issues, such as the details of the bureaucratic steps in the process, adoption recruitment, adoption screening and selection, financial barriers, and issues concerning adolescents.
- ◆ Revise the legal grounds for terminating parental rights to eliminate inappropriate barriers to adoption for children who are unable to return home within a reasonable time, when adoption is in their best interests.
- ◆ Simplify procedures for terminating parental rights, thereby encouraging agency workers and attorneys to seek that option and reducing delays.
- ◆ Train caseworkers (or help arrange for training) to document and present to the court better information regarding reunification.

Legal Guardianship

- ◆ Take more time to address the possibility of legal guardianship during reviews and permanency hearings, at least for cases in which family reunification and adoption are seriously questioned as proper case goals.
- ◆ Review ongoing cases to ensure that sufficient steps are being taken to recruit guardians, properly screen applicants, conduct thorough and timely home studies, and make timely decisions. This review helps avoid the need to make hasty decisions later in the process or to choose among insufficiently qualified candidates.
- ◆ Before accepting lower priority permanency plans (such as APPLAs) during permanency hearings, require evidence that the child cannot or should not be placed in a legal guardianship.
- ◆ Revise legal procedures for guardianship to simplify the process.
- ◆ If legal protection for guardians against biological parents seeking to regain custody is inadequate under State law, amend statutes to correct the problem.
- ◆ Train judges and attorneys on legal guardianship issues, such as the process to establish legal guardianship, including, where applicable, coordination between

the court handling the guardianship proceeding and the court handling the abuse and neglect case; the financial implications of legal guardianship, including possible financial benefits available; the legal rights and obligations of legal guardians under State law; and consent to guardianship.

- ◆ Revise forms for legal guardianship to help simplify the process, clarify the authority and responsibilities of the guardian, and set forth the reasons for choosing legal guardianship rather than reunification or adoption.
- ◆ Train caseworkers to document and present to the court better information regarding legal guardianship.

Endnotes

1. 42 U.S.C. § 675(7) states that:

The term 'legal guardianship' means a judicially created relationship between child and caretaker which is intended to be permanent and self-sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child: protection, education, care and control of the person, custody of the person, and decision-making. The term 'legal guardian' means the caretaker in such a relationship.

2. The term “legal custody,” when used as a type of permanent placement, means a court order that gives indefinite custody (permanent care and control) of a child to an individual or couple. Used in this sense during child abuse or neglect proceedings, legal custody

would survive after the proceedings have been closed. However, not every State has the option of awarding legal custody of this type in the course of child abuse and neglect proceedings. The term “legal custody” is different from “physical custody” in that legal custody connotes full legal decisionmaking powers concerning the child, whereas physical custody generally means little more than the right to physical care and control of the child. Another type of custody in child abuse and neglect proceedings, “temporary custody,” typically means custody that lasts only as long as the abuse or neglect case remains open. Note, however, that the precise meaning of custody, legal custody, physical custody, and temporary custody can vary from State to State.

3. For further discussion about the meaning of the statutory term “another planned permanent living arrangement,” see C. Fiermonte and J. Renne, *Making It Permanent: Reasonable Efforts To Finalize Permanency Plans for Foster Children* (Washington, DC: American Bar Association, 2002).
4. Some States authorize legal emancipation before age 18 under certain circumstances, typically after a youth has reached age 16 or 17.
5. 45 CFR § 1355, appendix A, section I(X)(B).
6. For additional information, see C. Fiermonte and J. Renne, *Making It Permanent: Reasonable Efforts To Finalize Permanency Plans for Foster Children* (Washington, DC: American Bar Association, 2002).

Children Moved While Under Court Jurisdiction



Definition: Percentage of children who reside in one, two, three, four, or more placements while under court jurisdiction.

Explanation: This measure shows how many times abused and neglected children are moved from one placement to another while under court jurisdiction.

Purpose: To help courts evaluate the stability of placements for abused and neglected children while they are under court jurisdiction. Stability of placement is an important dimension of permanency for children. Placement changes are often traumatic, and multiple changes can undermine a child's long-term emotional adjustment.

Implementation Issues

Not Limiting Measure to Changes in Foster Placements

This measure might be defined to include only the number of placements while a child is in foster care, as opposed to including both foster care and non-foster-care placements. An argument in favor of this approach is that it allows the court to rely simply on agency data, without having to gather its own. A counter argument, which the developers of this guide find persuasive, is that including only foster care placements in this measure gives a limited and distorted view of placement changes in general. If a court counts changes of foster care placements only, it will not capture the following types of potentially traumatic placement changes:

- ◆ Movement from the custody of one relative into the custody of another.
- ◆ Movement from a long-term foster placement to the custody of a relative.¹
- ◆ A child's return home and subsequent removal.
- ◆ Movement from the custody of a relative into a new adoptive home.

Data for this measure should, therefore, include removals of children from home, children's return home, movement of children into the homes of relatives, placements for adoption, and other changes while children are under court jurisdiction.

How Placement Changes Are Relevant to Court Performance

Some might question the relevance of this measure to court performance if State law does not empower judges to order specific foster placements or block changes in foster placements. Even without these powers, however, many courts without such powers can affect changes of foster placements in their local areas. For example, if placement changes are unduly frequent, the court might issue orders in individual cases requiring agencies to notify the court when a child is to be moved, subpoena witnesses to explain the need for placement changes, and/or actively review the need for placement changes in disposition and review hearings. Such methods can help courts discourage needless changes in placement.

In States where judges do have the power to order specific foster placements, the court's responsibility with regard to placement changes is greater. That responsibility is even greater in States where the agency must notify the court when a child is moved from one foster placement to another, or where the court must approve any changes in foster placements.

In all States, courts have decisionmaking powers concerning placement changes other than moves between different foster homes or facilities. Because moves that require shifts in custody or other legal responsibilities for children must be approved by the court, the court clearly shares responsibility with the agency for such moves.

Obtaining Data on Placement Changes

Perhaps the most difficult challenge in collecting data for this measure is getting reliable and accurate information about placement changes not made pursuant to court

order (e.g., moves between foster placements). Although courts necessarily know of placement changes pursuant to court orders, they may not know when child welfare agencies make placement changes that do not require court approval.

Many States do not require agencies to notify the court when children are moved between foster placements. To have consistent and accurate data regarding such changes, courts must take steps to obtain the needed information from agencies.

One way for courts to obtain agency data on foster placement changes is through electronic data transfers. Currently, however, few jurisdictions have operational electronic data transfer. In addition, placement information in agency databases is not always up to date.

Alternatively, agencies can provide information on foster placement changes in their written reports to courts. The information must appear consistently in the same part of the report, in a format that makes it easily retrievable by court employees. The agency will need to revise its court report form and train its staff accordingly. In addition, the court will need to train its employees to enter the information into the management information system database. A quality control mechanism will also be needed to ensure that the data are entered correctly.²

The court may need to introduce standardized forms for court orders, or modify existing forms, to capture information on placement changes specified in court orders (e.g., orders changing a child's legal status). The court probably will also need to modify its case management system by adding data entry screens and data elements to accommodate information on placements.

Counting Placements or Moves

An important question for this measure is whether to count the number of placements or the number of moves while in foster care. Consider the following scenario:

A child is removed from home, placed into foster home A, moved into the home of a relative who is not certified as a foster parent, moved back into foster home A, moved into foster home B, and finally placed in a preadoptive home with parents who later adopt the child.

If this measure is based on the number of moves experienced by the child, the moves might be counted as follows:

The child is removed from home and placed into foster home A (move 1), moved into the home of a relative who is not certified as a foster parent (move 2), moved back into foster home A (move 3), moved into foster home B (move 4), and finally adopted (move 5).

If this measure is based on the number of placements, however, the calculation will depend on whether to count (a) only foster placements, (b) all out-of-home placements, or (c) all in-home and out-of-home placements. With option (b), all out-of-home placements would be counted as follows:

The child is removed from home and placed into foster home A (placement 1), moved into the home of a relative who is not certified as a foster parent (placement 2), moved back into foster home A, moved into foster home B (placement 3), and finally placed in a preadoptive home with parents who later adopt the child (placement 4).

A key argument for counting moves is that they are generally painful—if not traumatic—experiences for children. Arguments for counting placements are that (a) the initial removal from home should not count in the court performance measure because the child is brought to court only after experiencing abuse or neglect, and (b) the return of a child to a former placement should not count because it is usually better to return a child to a familiar placement (e.g., foster home A in the above scenario) than to move the child to a totally new placement.

Although it is feasible to count either moves or placements, *it is recommended that this measure be based on the number of all out-of-home placements.* Whereas it might be reasonable to measure a child welfare agency's performance based only on the number of foster placements children experience (i.e., placements while the agency has custody), all out-of-home placements (including, for example, placements with relatives not licensed as foster parents) makes better sense as a measure of court performance.

Business Rules

Basic Rules

1. Select a date range for the report.
2. The universe included in this measure is children whose cases were closed during that date range. (A)

3. From dataset (A), select cases with one placement before case closure (B), two placements before case closure (C), three placements before case closure (D), four placements before case closure (E), five placements before case closure (F), and more than five placements before case closure (G).
4. Compute the percentage of cases in each category (B through G) by dividing the number in each category by (A).

Possible Modifications

1. Report separately on cases by categories such as child's race/ethnicity, child's age, age of case at closure, etc.
2. Report only on the number of foster placements per case. (The universe of cases is limited to children (a) whose cases were closed during the date range selected and (b) who were in foster care at some time while their case was open.)

Data Elements

These elements apply specifically to this measure. For elements that apply to all measures, see "Universal Data Elements," page 7. For definitions of data elements, see appendix D, "Data Element Dictionary," page 289.

Required Elements

- ◆ Case closure date.
- ◆ Placement beginning date.

Optional Data Elements

- ◆ Abuse or neglect petition date.
- ◆ Foster care flag = "yes."
- ◆ Placement type.

Related CFSR Standards

Child and Family Services Review Permanency Composite 4 (CFSR PC 4)³ includes three measures that are somewhat similar to *Toolkit Measure 2C*:

Of all children in foster care in FY 2004 who were in foster care for 8 days or longer and less than 12 months, what percent had two or fewer placement settings?

Of all children in foster care in FY 2004 who were in foster care for at least 12 months but less than 24 months, what percent had two or fewer placement settings?

Of all children in foster care in FY 2004 who were in foster care for at least 24 months, what percent had two or fewer placement settings?

One key difference between *Toolkit Measure 2C* and these three CFSR measures is that *Toolkit Measure 2C* includes non-foster-care placements, such as placements in the home of relatives not licensed as foster parents, whereas the CFSR measures are limited to foster placements. Another difference is that the CFSR measures are based on samples in which children are in foster care for three specified lengths of time, whereas the length of time for *Toolkit Measure 2C* (i.e., while children are under court jurisdiction) varies from case to case.

Finally, a noteworthy technical difference between these CFSR measures and *Toolkit Measure 2C* is that the CFSR measures use an "entry cohort" limited to children who were in foster care during the time period specified, whereas *Toolkit Measure 2C* uses an "exit cohort" limited to children whose cases were closed during the reporting period.

Reporting the Data

As with other measures, *Measure 2C* lends itself to a variety of graphic representations. For example, improvement or lack of improvement in the frequency of placement changes over time can be shown in trend lines, a large table, or a series of bar graphs. Tables and graphs can show performance comparisons between an individual jurisdiction and the State as a whole, as well as comparisons by children's characteristics (e.g., age, race/ethnicity) or case characteristics (e.g., length of time a case stays open). The samples that follow use hypothetical data to demonstrate how results for this measure might be reported in tables and graphs.

Sample 2C-1 illustrates a tabular format for showing the percentage of cases in various categories based on number of placements while under court jurisdiction, for each of four courts and statewide. The table is based on a sample of cases closed in 2006. Note that the percentages of multiple placements in this table are significantly higher than would be the case if only foster care placements were counted. Also note that only 13 percent of cases statewide involve only one placement—a very low percentage.

Sample 2C-1. Number of Placements While Under Court Jurisdiction, by Court, Cases Closed in 2006

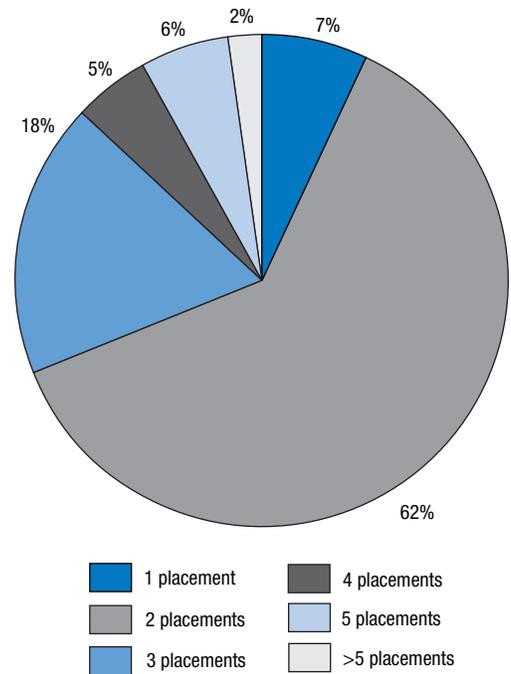
Court	Number of Placements												Total Number of Cases
	1		2		3		4		5		>5		
	#	%	#	%	#	%	#	%	#	%	#	%	
A	23	7%	193	62%	56	18%	16	5%	18	6%	5	2%	311
B	63	29%	140	65%	6	3%	3	1%	2	1%	1	0%	215
C	23	11%	120	59%	34	17%	12	6%	5	2%	8	4%	202
D	18	6%	134	48%	58	21%	33	12%	19	7%	16	6%	278
Statewide	127	13%	587	58%	154	15%	64	6%	44	4%	30	3%	1,006

Sample 2C-2 shows how data for one of the courts can be presented in an “exploded” pie chart.

Sample 2C-3 breaks down data for the same court by age of case, based on a sample of cases closed in 2005. Note that the number of placements in older cases may reflect earlier court and agency practices or may indicate that the longer a child is out of the home, the more likely the child is to be moved several times. A court may wish to use different time periods (e.g., breaking the “longer than 24 months” category into subcategories). If a court is concerned about the effects of very recent changes in practice, it could analyze an additional sample of cases opened more recently.

Finally, sample 2C-4 is a stacked bar graph based on the percentages in the “total” line of sample 2C-3. The graph gives a clear picture of the percentages of children in each of the “number of placement” categories. It also makes it possible to see cumulative percentages, i.e., the percentage of children who have two or fewer placements, three or fewer placements, etc. For example, the top line of the “3 placements” falls about midway between 40 percent and 50 percent, showing that 45 percent of children had three or fewer placements.

Sample 2C-2. Number of Placements While Under Court Jurisdiction, Cases Closed in 2006: Court A



Factors That May Affect Results

Knowledge of Judges Regarding the Impact of Placement Changes

If judges understand the impact of placement changes on children, they are more likely to monitor and question such changes. Furthermore, knowledgeable judges are more likely to approve a change only when reasons for the change are substantial and no reasonable, safe alternative exists.

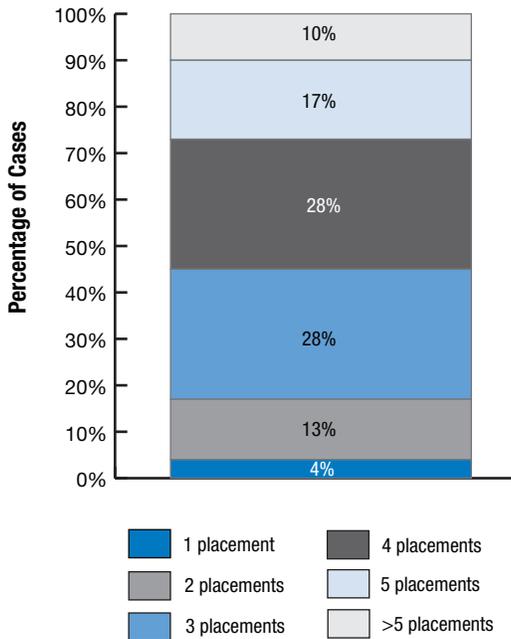
Quality of Advocacy

If advocates understand the impact of placement changes on children and actively investigate their cases, they are likely to alert judges to facts that will improve the quality of decisions regarding placement. Advocates should also obtain information from mental health care providers regarding the appropriateness of moving the child. Effective

Sample 2C–3. Number of Placements While Under Court Jurisdiction, by Age of Case, Cases Closed in 2005: Court A

Age of Case	Number of Placements												Total Number of Cases
	1		2		3		4		5		>5		
	#	%	#	%	#	%	#	%	#	%	#	%	
1–6 months	27	19%	36	25%	67	46%	13	9%	2	1%	0	0%	145
7–12 months	2	1%	45	27%	34	20%	69	42%	11	7%	5	3%	166
13–18 months	3	1%	9	4%	70	33%	60	29%	45	21%	23	11%	210
19–24 months	1	1%	7	8%	25	28%	16	18%	23	26%	18	20%	90
>24 months	1	0%	12	6%	35	17%	73	35%	56	27%	32	15%	209
Statewide	34	4%	109	13%	231	28%	231	28%	137	17%	78	10%	820

Sample 2C–4. Distribution of Cases by Number of Placements While Under Court Jurisdiction, Cases Closed in 2005: Court A



advocates for children should also visit the child in his or her current placement and obtain information from schools and medical providers regarding the quality of the child’s care in the home. Such steps can help the judge reach a better decision regarding a change of placement.

Quality of Disposition and Review Hearings

The appropriateness of a child’s current placement is a central issue in disposition and review hearings. If the hearings are active and thorough, mistakes such as needless changes in placement are less likely.

Judicial Workloads and Caseloads

As with other hearings in child abuse and neglect cases, judicial workloads and caseloads are important factors in the quality of disposition and review hearings. If overall workloads are unmanageable, judges are less likely to take the time to thoroughly address placement issues in abuse and neglect cases. Moreover, if an insufficient portion of a judge’s calendar is devoted to abuse and neglect cases, the judge is less likely to thoroughly address placement issues. Finally, if the time set aside for individual hearings is inadequate, judges are less likely to focus on changes in placement for abused and neglected children.

Possible Reforms

If data from this performance measure indicate room for improvement in reducing the number of placements per case, the court should consider possible reforms. Specific reforms will, of course, depend on local conditions and the court’s analysis of the causes of multiple placements in its jurisdiction. A court might, for example, consider the following improvements:

- ◆ Educate judges and advocates regarding the impact of placement changes on children, addressing the trauma of removal from home and the potential long-term emotional effects of multiple placement changes.
- ◆ Educate judges and advocates on how to effectively monitor and review placement changes.
- ◆ Issue orders barring agencies from returning children home without prior court permission.
- ◆ Refuse to grant agencies custody of children in cases where children are to be left at home. When children are allowed to remain at home following adjudication, instead place them under agency “protective supervision”⁴ or under the State’s legal equivalent to protective supervision.
- ◆ Improve judicial workloads in dependency cases by lightening judges’ overall workloads, setting aside more time for abuse and neglect cases in general, and setting aside more time for each hearing—especially disposition and review hearings.

a child, the agency generally cannot be said to have responsibility for the placement and care of the child.

2. In some States, such data are entered by elected court clerks who report to neither the presiding judge nor the State court administrator. This may complicate data entry to support this performance measure.
3. CFSR PC4 combines three measures in a single “national standard” relative to placement stability. The national standard is the 75th percentile of a scaled score using values from 50 to 150 (rather than a percentage). Although CFSR does not have a national standard for each individual measure, a State child welfare agency would need to score near the 75th percentile for most of the measures to meet the national standard for the composite. The following table illustrates PC4 measures.
4. “Protective supervision” means that a child remains in the home but the family must submit to the supervision of the child welfare agency by, for example, allowing agency caseworkers access to the home and child. Protective supervision may also require the family to comply with specific court orders or to participate in services as directed by the agency. While the term “protective supervision” is not universal, the courts’ option to order it (or something like it) exists in nearly every State. In some States, “protective supervision” is called “family supervision.”

Endnotes

1. Although relatives can be foster parents, relatives with custody generally are not foster parents. Foster care, as defined by Federal and State law, only exists when a child welfare agency has “responsibility for the placement and care” of a child (42 U.S.C. § 672(a)(2)). When someone other than the agency has custody of

CFSR Permanency Composite 4. Individual Measures, Range and Median Scores, and Composite National Standard

	Range	Median	National Standard
Permanency Composite 4: Placement stability	50–150	102.0	108.2 or higher
Of all children in foster care in FY 2004 who were in foster care for 8 days or longer and less than 12 months, what percent had two or fewer placement settings?	64.7–97.1%	82.4%	No standard
Of all children in foster care in FY 2004 who were in foster care for at least 12 months but less than 24 months, what percent had two or fewer placement settings?	37.0–82.3%	59.5%	No standard
Of all children in foster care in FY 2004 who were in foster care for 24 months or longer, what percent had two or fewer placement settings?	14.1–53.8%	33.4%	No standard

Reentry Into Foster Care After Return Home

Definition: Percentage of children who return to foster care pursuant to court order within 12 and 24 months of case closure following reunification.

Explanation: This measure shows how often, after judges return children home from foster care and close their cases, children are brought back to court and placed again into foster care within a relatively short time. The measure focuses on the quality of judicial decisions to return children home from foster care on a permanent basis. (When a judge closes a case following a child's return home, this decision indicates that the judge regards the child's return home as permanent.)

Purpose: To help courts evaluate their success in correctly deciding to return children home. The higher the percentage of children who reenter foster care relatively soon after having been returned home, the more critically courts should examine how they make family reunification decisions.¹

For many children, it is particularly traumatic to reenter foster care after having been removed from home, placed in foster care, and returned home. In addition, reentry of a child into foster care represents a failure to achieve a timely permanent placement for the child.

Children reenter foster care for a number of reasons. Most often, they are placed in foster care after being abused or neglected again by their families. In some cases, children suffer from physical or psychological complications requiring more intensive care than parents can provide. In still others, children run away from home and are subsequently placed into foster care. In these situations, the courts apparently were in error in deciding to return the child home and close the case.

Implementation Issues

Using Child-Based Information

As with the safety measures, this measure must be calculated by individual child—not by family. Different children in the same family may or may not be removed and reunified, or may be removed or reunified at different times. Thus, the court must separately record the removal and reunification (or the lack thereof) for each child. In addition, the court may close cases regarding individual children in the same family at different times, and this factor must also be taken into account.

Many courts open a new case with a new case number when a child is returned to foster care following case closure. The data collection system must include a link between the original and new cases.

Measuring Additional Factors

As with other measures, the court may decide to calculate foster care reentry rates by case characteristics it suspects may be factors in reentry. Such factors might include the type of abuse or neglect, the child's age or race/ethnicity, the age of the case at closure, or a combination of factors.

Business Rules

Basic Rules

1. Select a date range for the report (the beginning and ending date for case closure). The ending date must be at least 24 months ago.
2. From the cases that were closed within the date range selected, the universe included in this measure is children who were in foster care at some time while their case was open and whose cases were closed as a result of court-ordered permanent reunification. (A)
3. From dataset (A), select cases in which the court returned the child to foster care within 12 months after closure (B) and between 13 and 24 months after closure. (C)
4. Compute the percentage of children returned to foster care within each of these two time periods by dividing (B) and (C) by (A).

Possible Modifications

1. Include in this measure children who reentered foster care after being returned home by court order before the case was closed.



2. To measure the success of reunification over longer periods of time, include in this measure children who reentered foster care 36 and 48 months following case closure.
3. Report separately on cases by categories such as child’s race/ethnicity and age.

Data Elements

These elements apply specifically to this measure. For elements that apply to all measures, see “Universal Data Elements,” page 7. For definitions of data elements, see appendix D, “Data Element Dictionary,” page 289.

Required Elements

- ◆ Foster care flag = “yes.”
- ◆ Case closure date.
- ◆ Case closure reason = reunification.
- ◆ Child returned to foster care date.

Related CFSR Standards

The following Child and Family Services Review (CFSR) standard for State child welfare agencies is somewhat similar to *Toolkit Measure 2D*:

CFSR PC1B:² *Of all children who were discharged from foster care to reunification in the 12-month period prior to FY 2004 (i.e., FY 2003), what percent reentered foster care in less than 12 months from the date of discharge?*

One difference between CFSR PC1B and *Toolkit Measure 2D* is that the former measures reentry for a single time period (12 months) whereas the latter measures two time periods (12 and 24 months). Another difference is that

unlike the CFSR measure, *Toolkit Measure 2D* requires *court-ordered* reentry.

Reporting the Data

As with other measures, *Measure 2D* lends itself to a variety of graphic representations. Tables and graphs should be designed to help courts evaluate the meaning of the data. For example, if reentry into foster care is uncommon, a pie chart is a good way to highlight the large proportion of cases in which reunifications succeed. Bar graphs are especially useful for illustrating significant differences among individual courts (small differences in percentages will be more apparent in a bar graph than a pie chart). Bar graphs can also compare rates for a particular category of children (e.g., those thought to be at high risk of reentry) with overall rates. Finally, bar graphs showing local and statewide reentry rates at 12 and 24 months would be useful, as would a trend line incorporating results from 4 or more years.

The samples that follow use hypothetical data to demonstrate how results for this measure might be reported in tables and graphs.

Sample 2D–1 uses a tabular format to compare the success of reunification in four judicial districts. In this sample, District D has the best performance, with 81 percent of children not returning to foster care within 24 months after reunification and case closure. District C has the lowest percentage of children not returning to foster care (47 percent). The statewide rate is 61 percent. Sample 2D–2 shows how data for one of the districts can be presented in an “exploded” pie chart.

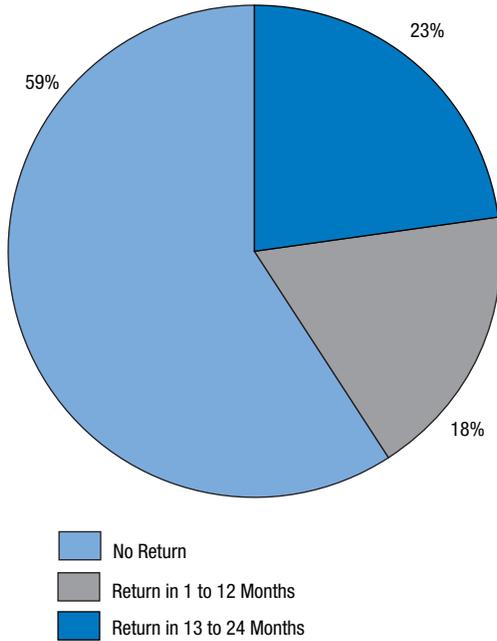
Sample 2D–3, based on data from a large court, compares reentry data for each of the court’s five full-time judges and includes detail for specific racial/ethnic categories

Sample 2D–1. Return to Foster Care Within 24 Months After Reunification, by Judicial District, Cases Closed in 2003

Judicial District	Return in 1 to 12 Months		Return in 13 to 24 Months		No Return to Foster Care		Total Number of Cases
	Number	Percent	Number	Percent	Number	Percent	
A	99	23%	78	18%	259	59%	436
B	77	24%	50	15%	198	61%	325
C	100	28%	89	25%	166	47%	355
D	28	9%	29	9%	250	81%	307
Statewide	304	21%	246	17%	873	61%	1,423

Note: Percentages may not add up to 100 because of rounding.

Sample 2D–2. Return to Foster Care Within 24 Months After Reunification, Cases Closed in 2003: Judicial District A



of children. In this sample, of the 500 children for whom Judge A ordered reunification in 2003, 133 (27 percent) returned to foster care within 24 months. Judge A’s reentry rates varied by racial/ethnic category (26 percent for Caucasian children, 32 percent for African American children, etc.). The table’s “total” line enables the court to determine its overall performance. Of the 2,319 children reunified with their families in 2003, 608 (26 percent) returned to foster care within 24 months; the percentages for racial/ethnic groups ranged from a high of 39 percent for Asian children to a low of 10 percent for children in the “other” category. This type of table could also show data by judicial district and statewide.

Finally, using data from sample 2D–3’s “total” line, the bar graph in sample 2D–4 highlights racial/ethnic variations in foster care reentry rates for the court as a whole.

Factors That May Affect Results

Knowledge of Judges Regarding Reunification Decisions

The quality of judicial decisions about reunification is affected by judges’ knowledge regarding issues such as safety assessments and the kinds of services and assistance available to keep children safe at home following reunification. With such knowledge, judges can make better informed decisions and ask better questions of witnesses.

Role of Judges in Reunification Decisions

A related factor is how active judges are in reunification decisions. For example, judges may set conditions for family reunification (caseworker visits during a transitional period, demonstrable improvements in parenting practices, etc.). Judges may require detailed written information from the agency on how parents have improved and why such improvements will make the home safer or more stable for the child. Judges may also require ongoing agency help to the family, visits by caseworkers and family members to monitor the home, periodic reports back to the court, and periodic expert evaluations. Judges may also instruct advocates to gather and present specific types of information following reunification, for use in assessing the safety and stability of the home.

Reunification decisions frequently occur during shelter care, permanency, and review hearings, and often in hearings following motions for reunification. Judges can restructure these hearings in ways that will improve the quality of reunification-related information provided, so they will be better prepared to make reasoned decisions about reunification.

Quality of Advocacy

The quality of advocacy affects the quality of information on which judges base reunification decisions. When advocates are knowledgeable, conduct active investigations regarding reunification decisions, and advocate vigorously regarding reunification, the quality of judicial decisions is likely to improve.

Sample 2D–3. Return to Foster Care Within 24 Months After Reunification, by Child’s Racial/Ethnic Category, by Judicial Officer, Cases Closed in 2003

Judicial Officer	Child’s Racial/Ethnic Category											
	Caucasian			African American			Hispanic			Asian		
	Cases Reunified	Returned to Foster Care		Cases Reunified	Returned to Foster Care		Cases Reunified	Returned to Foster Care		Cases Reunified	Returned to Foster Care	
		Cases	Percent		Cases	Percent		Cases	Percent		Cases	Percent
Judge A	190	50	26%	213	68	32%	45	5	11%	15	5	33%
Judge B	145	23	16%	167	80	48%	56	8	14%	0	0	0%
Judge C	178	65	37%	198	40	20%	71	11	15%	18	7	39%
Judge D	123	18	15%	203	48	24%	59	5	8%	8	3	38%
Judge E	200	55	28%	169	70	41%	49	17	35%	10	5	50%
Total	836	211	25%	950	306	32%	280	46	16%	51	20	39%

Judicial Officer	Child’s Racial/Ethnic Category (continued)								
	Native American			Other			All Racial/Ethnic Categories		
	Cases Reunified	Returned to Foster Care		Cases Reunified	Returned to Foster Care		Cases Reunified	Returned to Foster Care	
		Cases	Percent		Cases	Percent		Cases	Percent
Judge A	34	5	15%	3	0	0%	500	133	27%
Judge B	52	7	13%	0	0	0%	420	118	28%
Judge C	19	1	5%	0	0	0%	484	124	26%
Judge D	39	2	5%	6	1	17%	438	77	18%
Judge E	48	9	19%	1	0	0%	477	156	33%
Total	192	24	13%	10	1	10%	2,319	608	26%

Workloads and Caseloads of Judges and Advocates

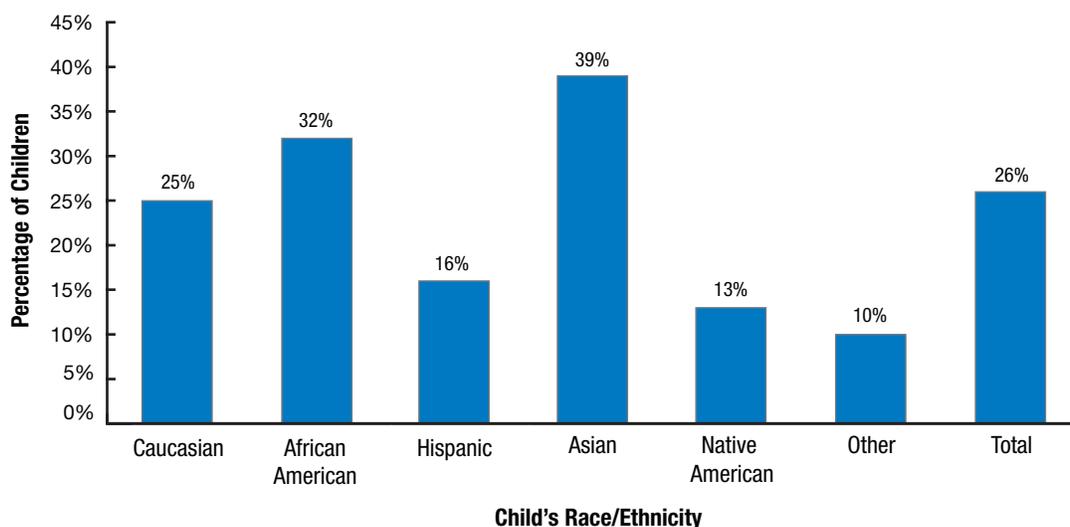
The quality of judicial decisions regarding family reunifications depends, in part, on how much time judges have (or take) to consider family reunification and to guide family reunification efforts. It also depends on how much time advocates have (or take) to focus on and investigate the safety and appropriateness of family reunification. Thus, judges’ and advocates’ workloads and caseloads are important determinants of the quality of reunification decisions.

Quality of Casework and Recommendations by Caseworkers

In reality, courts and agencies share responsibility for performance on this measure. A high level of agency performance helps to reduce the number of failed reunifications, and an effective court can identify and block unwise reunification recommendations by caseworkers.

More specifically, the quality of judicial decisions regarding reunification depends in part on the quality of caseworkers’ decisions and recommendations, which, in turn, can depend on the quality of safety assessment instruments

Sample 2D–4. Percentage of Children Returned to Foster Care Within 24 Months After Reunification, by Child’s Racial/Ethnic Category, Cases Closed in 2003



the workers use, workers' training in family safety assessment, and supervisory oversight of workers as they decide whether to return children home. Caseworkers' recommendations also reflect the availability and types of help provided to families following family reunification, including after case closure.

Possible Reforms

If data from this performance measure indicate room for improvement in reducing the number of returns to foster care following reunification, the court should consider possible reforms. Specific reforms will, of course, depend on local conditions and the court's analysis of the causes of failed reunifications in its jurisdiction. A court might, for example, consider the following improvements:³

- ◆ Before deciding to return a child home from foster care or closing a case after doing so, take more time to hear evidence regarding the capability and commitment of parents and the special needs of the child.
- ◆ Before deciding to return a child home or closing a case after doing so, require the child welfare agency to submit a report specifically describing how the parents are more capable of (or committed to) properly caring for the child now compared with when the child was removed from home.
- ◆ When the agency requests permission to return a child home, require the agency to provide a specific plan to ensure the child's safety. This plan should include steps for transitional visits and observation before reunification and steps to maintain the safety and stability of the placement after reunification.
- ◆ When appropriate, order a family group conference after the child is returned home to develop a plan under which the extended family will assist and monitor the parents in their care of the child to help ensure the child's safety.
- ◆ Before closing a case following the child's return home, require guardians *ad litem* or court-appointed special advocate (CASA) volunteers to visit the parents' home and report to the court. This report should supplement the caseworker report.
- ◆ Train attorneys (or require or help arrange for training) to more effectively investigate and present evidence about the safety and stability of family homes.
- ◆ Train caseworkers (or help arrange for training) to document and present safety information to the court.
- ◆ Seek and participate in judicial training regarding risk assessment and family evaluation.
- ◆ Hold periodic discussions among judges and staff about cases in which reunification failed.
- ◆ Support a wide range of more general legal and judicial system improvements related to this measure.

Endnotes

1. Although there is significant overlap between this measure and *Toolkit Measure 1B: Child Safety After Release From Court Jurisdiction*, the focus of the two measures is different. Whereas *Measure 1B* focuses on child safety, this measure focuses on permanency. Furthermore, the overlap is not complete. Many children reenter foster care for reasons other than further abuse and neglect. In addition, *Measure 1B* counts subsequent abuse or neglect regardless of why court jurisdiction ended, not only following reentry into foster care. Finally, many children suffer further abuse or neglect, as counted in *Measure 1B*, without reentering foster care (e.g., such children may be placed with relatives not licensed as foster parents).
2. The CFSR designation “PC1B” refers to Permanency Composite 1, Component B. Permanency Composite 1 (PC1), “Timeliness and Permanency of Reunification,” includes components A (timeliness) and B

(permanency). Component A includes three measures; component B includes one measure. PC1 combines these measures in a single “national standard” relative to the timeliness and permanency of reunification. The national standard for PC1 is the 75th percentile of a scaled score taking values from 50 to 150 (rather than a percentage). Although CFSR does not have a national standard for each component measure, a State child welfare agency would need to score near the 75th percentile for most of the component measures to meet the national standard for the composite. The following table illustrates the PC1 components and measures.

3. For additional information, see C. Fiermonte and J. Renne, *Making It Permanent: Reasonable Efforts To Finalize Permanency Plans for Foster Children* (Washington, DC: American Bar Association, 2002), pp. 12–26.

CFSR Permanency Composite 1. Component Measures, Range and Median Scores, and Composite National Standard

Permanency Composite 1: Timeliness and permanency of reunification	Range	Median	National Standard
	50–150	113.7	122.6 or higher
Component A: Timeliness of reunification			
Of all children discharged from foster care to reunification in FY 2004 who had been in foster care for 8 days or longer, what percent were reunified in less than 12 months from the date of the latest removal from home? (This includes the “trial home visit adjustment.”)	44.3–92.5%	69.9%	No standard
Of all children who were discharged from foster care to reunification in FY 2004, and who had been in foster care for 8 days or longer, what was the median length of stay in months from the date of the latest removal from home until the date of discharge to reunification? (This includes the “trial home visit adjustment.”)	1.1–13.7 months	6.5 months	No standard
Of all children who entered foster care for the first time in the 6-month period just prior to FY 2004, and who remained in foster care for 8 days or longer, what percent were discharged from foster care to reunification in less than 12 months from the date of latest removal from home? (This includes the “trial home visit adjustment.”)	17.7–68.9%	39.4%	No standard
Component B: Permanency of reunification			
Of all children who were discharged from foster care to reunification in the 12-month period prior to FY 2004 (i.e., FY 2003), what percent reentered foster care in less than 12 months from the date of discharge?	1.6–29.8%	15.0%	No standard

Reentry Into Foster Care After Adoption or Guardianship



Definition: Percentage of children who return to foster care pursuant to court order within 12 and 24 months of case closure following adoption or placement with a legal guardian.

Explanation: This measure shows the percentage of children who reenter foster care because their adoptions or legal guardianships fail within a relatively short period of time (i.e., the children do not stay in the homes of their adoptive parents or guardians for at least 12 or 24 months). “Legal guardianship” refers to legal placement options, established by State law, that are consistent with the Federal definition¹ of legal guardianship. Legal guardians are not subject to the oversight of the public child welfare agency. They generally have full decisionmaking authority over a child, as with biological and adoptive parents. The legal guardian is an individual or couple with whom the child is permanently placed.

Purpose: To help courts determine the success rates of adoptions and legal guardianships as permanent placements. For most children, it is traumatic to reenter foster care after having been adopted or placed in a legal guardianship with new parents. In addition, disruption of the adoption or guardianship represents a failure to achieve a successful permanent placement for the child.²

As with many of the performance measures, the results of this measure may reflect the combined performance of child welfare agencies, courts, and service providers. For example, a child sometimes returns to foster care because the adoptive parents or legal guardians were unable or unwilling to deal with the child’s special mental, emotional, or physical needs. Errors in the evaluation, selection, or preparation of adoptive parents or guardians may contribute to placement disruptions. Another possibility is that the children themselves were not prepared for their new homes and as a result have disrupted the homes or rejected the adoptive parents. In any case, such circumstances should ideally have been addressed by the court, the child welfare agency, and, if applicable, the private adoption service provider.

Implementation Issues

Data Sharing Between Different Courts

A challenge in capturing data for this measure is that in many States, the courts that hear adoption and legal guardianship matters are different from the courts that hear abuse and neglect cases (i.e., dependency courts). For example, if the start date for this measure is the date of the final decree of adoption or approval of legal guardianship (that is also the date that the dependency court’s jurisdiction ends), the dependency court must rely

on the other court to provide the date that adoption or legal guardianship is final. If the court ordering adoption or legal guardianship automatically electronically notifies the dependency court or the adoption or guardianship and this triggers case closure by the dependency court, this is not only efficient, but adds to the precision of the measure.

It is also possible to obtain the information needed for this measure by relying on the child welfare agency. If the child welfare agency is required to submit a copy of the decree of adoption or order of legal guardianship to the court when the agency closes a dependency case, court staff can enter the date of the decree or order into the court’s database.

Data Regarding Foster Care Reentry

An even more difficult challenge can be to consistently capture data regarding foster care reentry. Children are often placed for adoption or legal guardianship in other counties or States. When adoptions and legal guardianships subsequently are disrupted and children reenter foster care, they often do so in the county or State in which the child was placed for adoption or legal guardianship, not in the county or State that originally heard the abuse or neglect case. The court that heard the original abuse or neglect case may not be informed of the reentry.

To avoid these difficulties, courts may choose to limit the cases they count for this measure to adoptions and legal

guardianships by residents of the county where the original child abuse or neglect proceedings were heard. Technological advances may enable courts to also count adoptions and guardianships by residents of a different county in the same State—but only after (a) the State agency has a statewide management information system, (b) the State courts have a statewide management information system, or (c) the State courts and State child welfare agency can electronically exchange data. With such technology, courts and agencies might work out an automated process whereby the agency electronically notifies the court that heard the abuse or neglect case whenever a child reenters foster care from an adoptive home or from legal guardians.

Comparing Foster Care Reentry Rates for Different Groups

It may be useful for courts to calculate separate reentry rates for adoption and legal guardianship cases. It can also be helpful to distinguish between cases in which children are adopted by relatives and nonrelatives, to see how this factor may affect the disruption rate. The court may also decide to calculate foster care reentry rates by case characteristics it suspects may be factors in reentry, such as the type of abuse or neglect, the child's age or race/ethnicity, the age of the case at closure, or a combination of factors. Whether such separate reports actually cast light on what factors contribute to reentry will depend on the numbers of children reported in each sample.

Reentry Rates Over Longer Periods of Time

Another possibly useful modification to this measure is to calculate reentry rates after longer periods of time, such as within 3 or 4 years after adoption or legal guardianship. It is important to keep in mind, however, that the longer the period of time after the child has been adopted or a legal guardianship established, the more the measure may understate the percentage of reentries into foster care. As more time passes, adoptive parents and legal guardians are more likely to have moved outside the jurisdiction.

Business Rules

Basic Rules

1. Select a date range for the report (the beginning and ending date for case closure). The ending date must be at least 24 months ago.

2. From the cases that were closed within the date range selected, the universe included in this measure is children who were in foster care at some time while their case was open and whose cases were closed as a result of adoption or legal guardianship. (*A*)
3. From dataset (*A*), select cases in which the court returned the child to foster care within 12 months after closure (*B*) and between 13 and 24 months after closure. (*C*)
4. Compute the percentage of children returned to foster care within each of these two time periods by dividing (*B*) and (*C*) by (*A*).

Possible Modifications

1. Report separately on cases closed for adoption and cases closed for legal guardianship.
2. Report separately on cases by additional categories, such as child's race/ethnicity, child's age, age of case at closure, etc.
3. Report on cases closed for a longer period of time, such as 36 or 48 months.
4. Select cases in which children reentered foster care during a specific time period, and report on whether the children were adopted or placed with legal guardians, and other case characteristics such as child's race/ethnicity and age.

Data Elements

These elements apply specifically to this measure. For elements that apply to all measures, see "Universal Data Elements," page 7. For definitions of data elements, see appendix D, "Data Element Dictionary," page 289.

Required Elements

- ◆ Foster care flag = "yes."
- ◆ Case closure date (original case).
- ◆ Case closure reason = adoption or legal guardianship.
- ◆ Child returned to foster care date.

Related CFSR Standards

No Child and Family Services Review (CFSR) standard for State child welfare agencies relates specifically to *Toolkit Measure 2E*. For discussion of a CFSR standard that relates to the measurement of foster care reentry rates following family reunification, see “Related CFSR Standards” in *Measure 2D*.

Reporting the Data

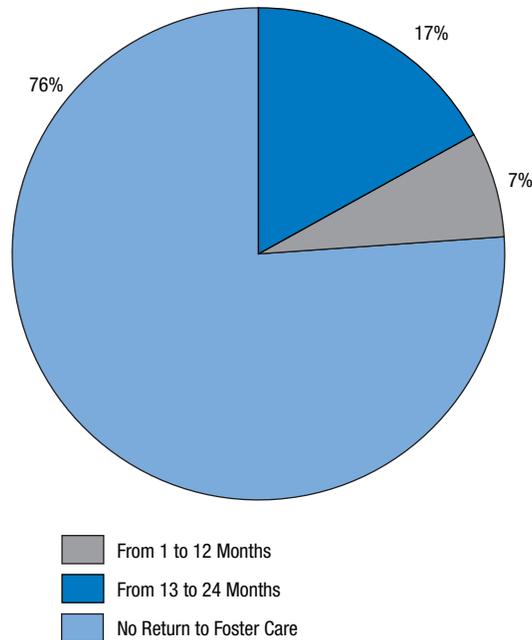
As with other measures, *Measure 2E* lends itself to a variety of graphic representations. Tables and graphs should be designed to help courts evaluate the meaning of the data. Both pie charts and bar graphs can be used to make geographic comparisons. Bar graphs are especially useful for illustrating significant differences among individual courts (small differences in percentages will be more apparent in a bar graph than a pie chart). Bar graphs can also compare rates for a particular category of children (e.g., those thought to be at high risk of reentry) with overall rates. Finally, bar graphs showing local and statewide reentry rates at 12 and 24 months would be useful as would a trend line showing results from 4 or more years.

The samples that follow use hypothetical data to demonstrate how results for this measure might be reported in tables and graphs.

Sample 2E-1 uses a tabular format to compare the success of permanent placements—reunification, adoption, guardianship, and other—in the first and second years

after case closure. In effect, this is a combined report for *Measure 2D* and *Measure 2E*. Sample 2E-2 shows how data for all types of permanent placements combined (i.e., the “total” row of the table) can be presented in an “exploded” pie chart. Even though the chart shows that most children do not reenter foster care, the reentry rates are, nevertheless, high and would be reason for concern.

Sample 2E-2. Return to Foster Care After Permanent Placement, Cases Closed in 2004



Sample 2E-1. Return to Foster Care After Permanent Placement, by Type of Placement, Cases Closed in 2004

Type of Permanent Placement	Returned 1–12 Months After Closure		Returned 13–24 Months After Closure		No Return to Foster Care		Total	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Reunification	23	18%	6	5%	97	77%	126	100%
Adoption	8	24%	2	6%	24	71%	34	100%
Guardianship	2	11%	1	5%	16	84%	19	100%
Other	0	0%	4	31%	9	69%	13	100%
Statewide	33	17%	13	7%	146	76%	192	100%

Note: Percentages may not add up to 100 because of rounding.

Factors That May Affect Results

Knowledge of Judges Regarding Adoptions and Legal Guardianships

The quality of judicial decisions about adoption and guardianship is affected by judges' knowledge regarding options for legal permanent placement. Judges need to be aware of available adoption and guardianship subsidies for children with special needs, postadoption and postguardianship services, adoption and guardianship processes, and common reasons for disruption of adoptive and guardianship homes. With such knowledge, judges can make better informed decisions and ask better questions of witnesses.

Role of Judges in Adoption and Guardianship Decisions

A related factor is how active judges are in adoption and guardianship decisions. Although it is not the judge's job to micromanage agencies' recruitment, screening, and selection of prospective permanent homes, it is the judge's job to ensure that these steps are carried out adequately, sensibly, and on a timely basis. For example, judges should require agencies to demonstrate that they are actively recruiting prospective permanent parents and are conducting thorough and timely screenings of prospective permanent families.

Judges must receive from agencies detailed written explanations of why adoption or guardianship is necessary and what steps will be taken to improve the likelihood that placement will be permanent. This information must be provided in a timely manner, well before the judge rules on the adoption or guardianship.

The structure of hearings is another important factor. Adoption and guardianship decisions are made in permanency, post-termination review, and other types of hearings. Judges can restructure these hearings to demand more information about case progress, barriers, and strategies to overcome barriers. They can also require structured inquiries about progress toward finalization of the permanent placement.

Quality of Advocacy

The quality of advocacy affects the quality of judicial decisions regarding adoption and legal guardianship. Advocates' sophistication and diligence affect the quality

of advocacy, as does their training and knowledge regarding adoption, legal guardianship, and other permanent placement options. The level of expectations imposed on advocates by judges is another factor, especially for court-appointed advocates and those whose fees are paid by the court.

Finally, the quality of advocacy regarding adoption and legal guardianship depends on the court process itself. For example, whether advocates can expect routine and difficult questions from the judge regarding proposed permanent places will affect the quality of their advocacy.

Workloads and Caseloads of Judges and Advocates

The quality of judicial decisions regarding adoption and legal guardianship depends, in part, on how much time judges have (or take) to consider the process of adoption and guardianship and to evaluate the appropriateness of the proposed adoptive parents or guardians. It also depends how much time advocates have (or take) to focus on and investigate these issues. Thus, judges' and advocates' workloads and caseloads are important determinants of the quality of adoption and guardianship decisions.

Quality of Casework, Services, and Recommendations by Caseworkers

As with reunification decisions, courts and agencies share the responsibility for the results concerning adoption and legal guardianship. In many places, private agencies also provide adoption- or guardianship-related services. A high level of performance by agencies can help reduce the numbers of disrupted adoptions and legal guardianships.

The quality of judicial adoption and guardianship decisions also depends on the quality of casework and caseworker recommendations. This casework involves, among other things, adoption recruitment and screening procedures, home studies, and assistance to families following adoption or legal guardianship.

Possible Reforms

If the data from this performance measure indicate room for improvement in reducing the number of returns to foster care following adoption and legal guardianship, the court should consider possible reforms. Specific reforms will, of course, depend on local conditions and the court's

analysis of the causes of failed adoptions and guardianships in its jurisdiction. A court might, for example, consider the following improvements:

- ◆ Review proposed adoptive and legal guardianship placements more intensively.
- ◆ Before approving the adoption or legal guardianship, take more time to hear evidence regarding the capability and commitment of proposed adoptive parents and legal guardians and the special needs of the child.
- ◆ Before approving the adoption or legal guardianship, require the child welfare agency to submit a report specifically describing the results of its home studies, including the capabilities and commitment of the proposed parents and other household members.
- ◆ Review ongoing cases to ensure that sufficient steps are being taken to recruit adoptive families or guardians, properly screen applicants, conduct thorough and timely home studies, and make timely decisions. This review helps to avoid the need to make hasty decisions later in the process or to choose among insufficiently qualified candidates.
- ◆ When the child welfare agency recommends a family for adoption or legal guardianship, require the agency to provide a specific plan to support the placement after the case is closed.
- ◆ In difficult cases, ask guardians *ad litem*, court-appointed special advocate volunteers, or other experts to report on the availability of specific services or the ability of the prospective family to meet the child's special needs. This report would supplement the agency report.
- ◆ Train attorneys (or require or help arrange for training) to more effectively investigate and present evidence about adoptions and legal guardianship.
- ◆ Train caseworkers (or help arrange for training) to document and present better information to the court regarding adoption or legal guardianship.
- ◆ Seek and participate in judicial training on adoption and guardianship issues and on agency processes for adoption and legal guardianship.
- ◆ Hold periodic discussions among judges and staff about cases in which adoptions and legal guardianships were disrupted.
- ◆ Support a wide range of more general legal and judicial system improvements related to this measure.

Endnotes

1. 42 U.S.C. § 675(7) states that:

The term 'legal guardianship' means a judicially created relationship between child and caretaker which is intended to be permanent and self-sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child: protection, education, care and control of the person, custody of the person, and decision-making. The term 'legal guardian' means the caretaker in such a relationship.

2. Although there is significant overlap between this measure and *Toolkit Measure 1B: Child Safety After Release From Court Jurisdiction*, the focus of the two measures is different. Whereas *Toolkit Measure 1B* focuses on child safety, this measure focuses on permanency. Furthermore, the overlap is not complete. Many children reenter foster care for reasons other than abuse or neglect in an adoptive or legal guardian home. In addition, *Measure 1B* counts subsequent abuse or neglect (i.e., abuse or neglect after the child was initially removed from home) regardless of why court jurisdiction ended, not only following foster adoption or legal guardianship. Finally, many children suffer further abuse or neglect, as counted in *Measure 1B*, without reentering foster care (e.g., such children may be placed with relatives not licensed as foster parents).

Number of Judges Per Case



Definition: Percentage of child abuse and neglect cases in which the same judicial officer presides over all hearings.¹

Explanation: This measure shows how consistently child abuse and neglect cases are handled by only one judge throughout the entire case.

Purpose: To help courts evaluate how often entire child abuse and neglect cases are heard by one judge—an important factor affecting the quality of judges' work.

The quality of abuse and neglect litigation improves when the same judge hears all stages of the case, from the date of removal through adoption or other permanent placement.² *RESOURCE GUIDELINES: Improving Court Practice in Child Abuse and Neglect Cases*—endorsed by the American Bar Association, the National Council of Juvenile and Family Court Judges (NCJFCJ), and the Conference of Chief Justices—cites the following reasons for this improvement:³

- ◆ **The judge has a greater sense of responsibility for the case.** With this enhanced sense of “ownership,” the judge feels more empowered to exercise active oversight in the case and to determine the ultimate outcome. The judge also feels more accountable for the case result.
- ◆ **The case plan for the child and family is usually more stable.** If different judges hear a case, they may give inconsistent instructions to the agency and parents, and the basic plan for the child is more likely to shift and become unpredictable. When the same judge hears all stages of the case, that judge is better prepared to make a final decision once the court’s work with the family has run its course.
- ◆ **The judge is better prepared for each new hearing.** Having presided over previous hearings, the judge can review the file more efficiently and grasp the pertinent facts more easily. Hearing all stages of the case helps the judge understand the complexities of the family situation.
- ◆ **The judge more readily learns about child welfare law and practice.** Following cases from beginning to end helps judges understand how cases evolve and enables them to handle early hearings in a way that lays the groundwork for later hearings. Judges also

learn about dysfunctional families in general and gain an understanding of the child welfare agency.

- ◆ **Parties can feel more connected with the judge.** Dealing with just one judge, families are more likely to feel they know the judge and that the judge knows them. (Judges are not counselors or caseworkers, but they are important authority figures.)
- ◆ **Directives for families are more consistent.** When parents have tried to follow a judge’s directives, it can be frustrating if a new judge at the next hearing is unfamiliar with those directives. (Even if the second judge has a written record from the first judge that is a weak substitute for actually having presided over the first hearing.) In addition, children may begin to feel that strangers who know little or nothing about them are controlling their lives.
- ◆ **Parents are more likely to comply with judicial orders.** If parents expect a different judge at each hearing, they may think they can avoid consequences for not obeying orders and may be able to recycle old excuses and reargue the same points.

Of course, there are circumstances in which it is impossible for one judge to preside over all stages of a case. For example, it may become apparent after a case has begun that there is a conflict of interest and the judge cannot continue to hear the case. Or a judge might be called away by a family emergency or decide to retire or resign. These circumstances are, however, relatively uncommon, and the ideal is one judge per case (or an average close to that ideal).⁴

Implementation Issues

Actual Versus Assigned Judges

The case management system must store information on the judge who actually presided at each hearing over the life of the case, not just the judge assigned to the case or the judge on whose calendar the case was scheduled. This measure requires recording who actually sat on the bench for each hearing.

Alternatives for Computing This Measure

Although this measure is defined as the percentage of cases in which the same judge conducts all hearings, circumstances in some jurisdictions may call for a different approach.

In some States, a single judicial officer rarely presides over an entire case. For example, subordinate judicial officers may preside over emergency removal hearings, and judges may preside over all other hearings. The more useful distinction between courts in such States probably would be whether there were two, three, four, or more than four judicial officers.

In States where one judicial officer per case is relatively common, it might be useful to calculate the proportion of hearings *not* heard by the judge who presided over the most hearings. For example, assume that Judge A presided over eight hearings in a particular case, Judge B presided over one hearing, and Judge C presided over one hearing. The percentage of hearings not heard by the judge who presided over the most hearings (Judge A) would be 20 percent. This approach would distinguish between cases in which the principal judge missed only one or two hearings and cases with little consistency on the bench. (It is better for one judge to miss a hearing or two than for a case to move back and forth between judges or be transferred to a new judge.)

When Different Judges Hear Different Stages of a Case

Even in courts where different judges hear the early stages of child abuse and neglect cases, proceedings for termination of parental rights (TPR), and adoption and legal guardianship proceedings, it is still desirable to capture the total number of judges throughout the life of a case.

Some argue that a new judge should be assigned to hear TPR proceedings because a judge who orders the initiation of these proceedings may be biased. However, appellate courts have rejected that argument.⁵ Judges are expected to be capable of making decisions based on the evidence rather than on personal feelings.

When State law requires that different courts hear dependency, TPR, and adoption and legal guardianship proceedings, courts may need to separately measure the number of judges per case in each of the different courts. Because it is best practice to have only one judge per case regardless of a State's judicial structure, courts should consider the benefits of developing a performance measure that can capture changes of judges as a case moves through multiple courts.⁶ However, barriers may make it difficult to collect data in different courts. For example, different courts may use different information systems applications that are unable to share information, or systems may collect and store different data. Although overcoming such barriers should be a goal, the barriers can be formidable, and the goal may need to be a long-term one.

Business Rules

Basic Rules

1. Select a date range for the report.
2. The universe included in this measure is all cases that were closed within the date range selected. (*A*)
3. For each case in (*A*), build a record for each hearing documenting the presiding judicial officer.
4. For each case in (*A*), compare the officer presiding at the first hearing against the officer presiding at each subsequent hearing, and divide (*A*) into two categories: (*B*) cases in which the hearing officer did not change in subsequent hearings and (*C*) cases in which the officer did change in at least one subsequent hearing.
5. Compute the percentage of cases in each of these categories by dividing the number of cases in each category by (*A*).

Possible Modifications

1. Report separately on cases with two, three, four, and more than four judicial officers.

2. Report on the average (mean) number of judicial hearing officers per case.
3. In States where different courts hear different types of proceedings involving children (child abuse and neglect, TPR, and adoption and legal guardianship), limit the report to cases heard by judges in the court that has jurisdiction over abuse and neglect cases.
4. Report on the percentage of hearings presided over by someone other than the judge who presides over the greatest number of hearings. That is, select the judge who presided over the most hearings in each case and calculate the percentage of hearings *not* presided over by that judge.
5. Report separately on age of cases at closure. That is, calculate and compare the number of judges per case, basing categories on the length of time cases were open (less than 1 year, 1–2 years, etc.).

Data Elements

These elements apply specifically to this measure. For elements that apply to all measures, see “Universal Data Elements,” page 7. For definitions of data elements, see appendix D, “Data Element Dictionary,” page 289.

Required Elements

- ◆ Hearing date.
- ◆ Case closure date.
- ◆ Judicial officer presiding at hearing.

Optional Element

- ◆ Abuse or neglect petition date.

Related CFSR Standards

No Child and Family Services Review standard for State child welfare agencies relates specifically to *Toolkit Measure 3A*.

Reporting the Data

As with other *Toolkit* measures, *Measure 3A* lends itself to a variety of tabular and graphic presentations. State Court Improvement Projects will need presentations that show performance statewide and for each jurisdiction. Individual courts will want to see how their performance compares with that of other courts and with the State as a whole, and also whether their performance has improved or declined over time.

The samples that follow use hypothetical data for a fictitious State to demonstrate how results for this measure might be reported in tables and graphs.

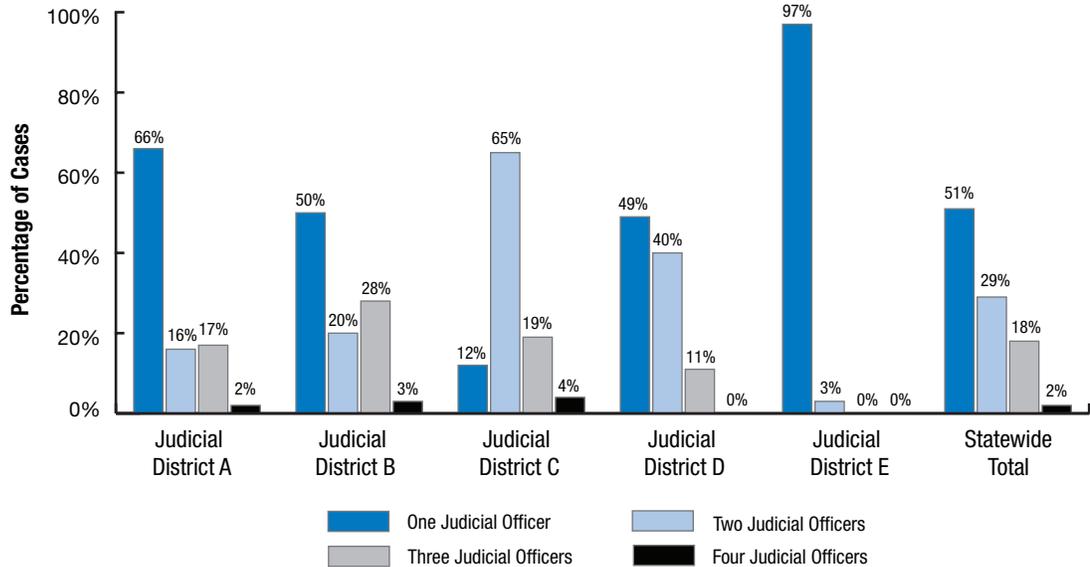
Sample 3A–1 uses a tabular format to compare judicial assignment practices in five districts. This table goes beyond the basic requirements of the performance measure to break down the cases into categories based on the number of judges hearing the case. Clearly, the assignment practices vary considerably: the percentage of cases heard by one judge ranges from a low of 12 percent in District C to a high of 97 percent in District E. The statewide average is 51 percent. In only two districts are the majority of cases heard by one judge. In sample 3A–2, a bar graph illustrates data from the table.

Sample 3A–1. Judicial Officers Per Abuse and Neglect Case, by District, Cases Closed in 2006

Judicial District	Number of Judicial Officers Per Case								Total Number of Cases
	1		2		3		4 or more		
	Number of Cases	Percent	Number of Cases	Percent	Number of Cases	Percent	Number of Cases	Percent	
A	660	66%	156	16%	167	17%	22	2%	1,005
B	1,120	50%	440	20%	613	28%	56	3%	2,229
C	120	12%	650	65%	188	19%	45	4%	1,003
D	577	49%	467	40%	135	11%	0	0%	1,179
E	566	97%	15	3%	0	0%	0	0%	581
Statewide	3,043	51%	1,728	29%	1,103	18%	123	2%	5,997

Note: Percentages may not add up to 100 because of rounding.

Sample 3A–2. Judicial Officers Per Abuse and Neglect Case, by District, Cases Closed in 2006



When results for this measure show striking disparities among districts, it is important to identify court procedural or organizational factors that might account for the differences. Identifying these differences should not be difficult. In this hypothetical example, possible explanations might include:

- ◆ Certain hearings are assigned to subordinate judicial officers.
- ◆ Judges in District C avoid scheduling hearings when they know they will be absent (e.g., during vacations or training), whereas judges in other districts arrange for temporary judges to cover absences.
- ◆ Judges in Districts A, B, D, and E occasionally “fill in” for each other, whereas judges in District C avoid this practice.

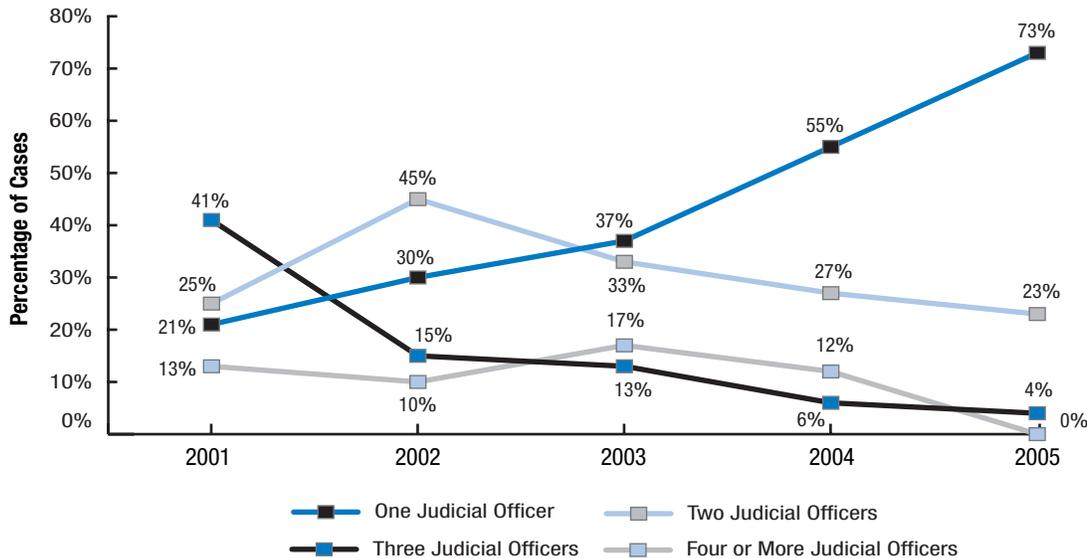
- ◆ In Districts A and B, different judges are assigned to different types of hearings (e.g., one judge presides over the early stages of child abuse and neglect cases and another hears TPR proceedings).
- ◆ Court structure varies (e.g., in some but not all districts, a separate probate court hears TPR, adoption, and legal guardianship cases).

Once this measure has been recorded for several years, it is useful to look at performance trends over time. The table in sample 3A–3 shows trends in judicial assignment practices over a 5-year period (the trends could be statewide or for a particular district, court, or judge).

Sample 3A–4 illustrates the same trends in a line graph. Note that because this measure has several categories

Sample 3A–3. Trend in Number of Judicial Officers Per Abuse and Neglect Case, Cases Closed in 2001–2005

Year	Percentage of Cases by Number of Judicial Officers			
	One Officer	Two Officers	Three Officers	Four or More Officers
2001	21%	25%	41%	13%
2002	30%	45%	15%	10%
2003	37%	33%	13%	17%
2004	55%	27%	6%	12%
2005	73%	23%	4%	0%

Sample 3A–4. Trend in Number of Judicial Officers Per Abuse and Neglect Case, Cases Closed in 2001–2005

(one judge, two judges, etc.), it is best to depict performance for just one entity (district, court, etc.) over time; comparing multiple entities would require too many lines and result in a confusing graph. To develop a readable graph like sample 3A–4, plot the datapoint for each category for each year on the graph and then connect the datapoints with a line. Use a different color for each category's trend line. This sample also uses a different symbol to indicate each category's datapoints on the trend line. Alternatively, to compare the performance of several entities (e.g., districts), limit the comparison to a single category (e.g., cases with just one judge) and plot a trend line for each entity.

Factors That May Affect Results

Efforts of Individual Judges To Avoid Substitution

When individual judges are careful to avoid the need for substitutions, e.g., by scheduling hearings around planned absences (vacations, trainings, etc.), fewer substitutions are necessary and changes in the judge presiding over a case are minimized.

Individual Judicial Calendars

A key factor in a court's ability to have each case heard by one judge is to organize judicial calendars and schedules around that principle. The related practice is widely known as using "individual calendars." With this system, each judge (or the judge's staff) manages scheduling of his or her own cases.

By contrast, in courts with "master calendars," employees of a court division or of the presiding judge manage all scheduling, randomly assigning each stage of the proceedings to a different judge. With this system, a different judge presides over each hearing in a case.

In courts that use "hybrid calendars," not every hearing is assigned randomly, but cases are shifted to new judges at some points in the litigation.⁷ Each case is heard by more than one judge, but typically not by as many judges as would be the case in a master calendar system.

Length of Judicial Assignments

Another key factor determining the likelihood that all stages of a case will be heard by the same judge is the length of judicial assignments. When judges are assigned to a particular division and courtroom for relatively long periods of time, it is less likely that a case will be heard by more than one judge. On the other hand, if judges are

rapidly rotated in and out of a child abuse and neglect docket, the same case is likely to come before multiple judges.⁸

Subordinate Judicial Officers

Many courts use subordinate judicial officers (e.g., referees, commissioners, magistrates, hearing officers) to hear child abuse and neglect cases. If a court uses subordinate officers in all stages of abuse and neglect proceedings, the “one judge/one case” principle can be observed. However, the principle is undermined if a court uses subordinate officers only for certain types of hearings, or if subordinate officers work with one or more judges as part of a team in which subordinates help only with certain hearings.

Court Organization

How courts are organized—i.e., whether or not the same court has jurisdiction over all phases of child abuse and neglect cases—is another key factor affecting whether one judge can preside over all stages of a case. Judicial continuity is possible if the same court hears all phases of a case. Continuity is impossible, however, if State law assigns jurisdiction to different courts for different phases—e.g., one court hears cases from initiation through reviews and permanency hearings, a second hears TPR proceedings, and a third hears adoption and guardianship proceedings.

Special Designation or Assignment of Judges

In many States, one court hears abuse and neglect cases and a separate court, such as a probate court, hears, for example, adoption and guardianship cases. Some States have enacted laws specially assigning judges from the abuse and neglect court to also hear adoption and guardianship proceedings that arise from their abuse and neglect cases.

Judicial Workloads

When judicial workloads are heavy, it becomes more difficult for judges to avoid reassignment of specific hearings. For example, if a judge’s calendar fills with routine hearings, that judge may not be able to conduct an extended

trial without major delays. In this situation, a court is more likely to assign contested trials to other judges. The court may, from time to time, use temporary judges to reduce delays caused by judicial backlogs.

Possible Reforms

If the data from this performance measure indicate room for improvement in reducing the number of cases heard by more than one judge, the court should consider possible reforms. Specific reforms will, of course, depend on local conditions and the court’s analysis of barriers to implementing the one judge/one case principle. A court might, for example, consider the following improvements:

- ◆ Establish statewide court rules calling for individual calendars and requiring that one judicial officer preside over all hearings in a child abuse or neglect case. Establish strict criteria and procedures for exceptions to this practice.
- ◆ Establish local court rules or guidelines requiring that one judicial officer preside over all hearings in a child abuse or neglect case.
- ◆ Pass State laws (and, if necessary, amend State constitutions) to give a single court responsibility for all stages of child abuse and neglect cases.
- ◆ Pass State laws (and, if necessary, amend State constitutions) to enable judges who hear abuse and neglect cases to also hear TPR, adoption, and guardianship proceedings that arise from those cases.
- ◆ Educate judges about the need to have one judge hear all stages of the same case (i.e., the benefits of judicial continuity) and about practical means for achieving this goal.
- ◆ Lengthen judicial assignments to abuse and neglect dockets, and either eliminate judicial rotation or provide for multiyear intervals.
- ◆ Either eliminate the practice of using subordinate judicial officers to hear certain phases of abuse and neglect cases or permit these officers to hear all stages of these cases.
- ◆ Analyze judicial workloads and use the results of this analysis to improve scheduling practices so judges are better able to keep up with their caseloads.

Endnotes

1. When this guide uses the term “judge,” it generally is referring to all judicial officers who perform the role of the judge. Other judicial officers are variously known as referees, magistrates, commissioners, or hearing officers. They may be appointed by a presiding or chief judge of a particular court or by an individual judge handling child abuse and neglect cases. If a single case is heard by both a judge and another judicial officer such as a referee, whether or not appointed by the individual judge, the case has not been heard by a single judicial officer.
2. Many of the NCJFCJ Model Court jurisdictions report improved case processing when one judge or judicial team hears the child abuse and neglect case from inception to case closure (e.g., better information exchange leading to better decisionmaking, clearer expectations for parties and greater accountability for practice, and more efficient hearings). As jurisdictions begin to collect data on judicial continuity in child abuse and neglect cases, and analyze that continuity’s impact on case processing outcomes, a body of empirical evidence supporting judicial continuity as best practice (or disproving it) will be developed.
3. See National Council of Juvenile and Family Court Judges, *RESOURCE GUIDELINES: Improving Court Practice in Child Abuse and Neglect Cases* (Reno, NV: NCJFCJ, 1995), p. 19.
4. The concept of one judge per case is related to the “one family/one judge” concept. For a discussion of the advantages and disadvantages of this concept, see Carol R. Flango, Victor E. Flango, and H. Ted Rubin, *How Are Courts Coordinating Family Cases?* (Williamsburg, VA: The National Center for State Courts, 1999), Chapter 2. The one family/one judge concept calls for the same judge to hear not only all stages of the same abuse or neglect case but also any related litigation affecting the same family. This concept can encounter special barriers when multiple types of litigation affect a single family. For example, different judges may have different areas of expertise, and it may not make sense for the same judge to sort out the financial aspects of a divorce and also handle the related dependency proceedings. In addition, docketing complications may arise when different types of proceedings for the same family are making their way through the courts. Although the one family/one judge concept is sound, exceptions will probably be more common for this concept than for the one case/one judge concept as applied to abuse and neglect litigation alone.
5. There are a number of circumstances in which courts make initial judgments in early stages of proceedings and continue to ultimately decide the merits of the case. Examples include judges who hear temporary restraining orders and preliminary injunctions before ruling on final injunctions, judges who preside over preliminary hearings before trying criminal cases (in some States), and judges who order temporary custody before making final custody decisions in cases involving the dissolution of a marriage.
6. Courts may prefer not to include more than one court in measurements of the number of judges per case, because one court cannot control the other. On the other hand, courts may choose to measure the number of judges per child in related proceedings being heard in multiple courts in States where the law allows some flexibility in consolidating court proceedings or in restructuring the court process—or where local presiding judges have administrative authority over multiple types of courts. Finally, having data on the number of judges per child may be helpful in seeking administrative or legislative change to keep cases within one court.
7. Hybrid calendar systems may take a variety of approaches. For example, one judge may preside over the emergency removal hearing, adjudication, and disposition, and then a different judge may preside over the TPR hearing.
8. For example, in some courts, judges are rotated in and out of the child abuse and neglect or juvenile docket on an annual, semiannual, or even monthly basis. In these courts, judges do not hear all stages of a case because they are not assigned to child abuse and neglect litigation long enough to do so. If courts do rotate judges, longer (e.g., multiyear) intervals between rotations not only will reduce the number of abuse and neglect cases heard by multiple judges but also will give judges opportunities to develop expertise in this area of litigation.

Service of Process to Parties



Definition: Percentage of child abuse and neglect cases in which both parents receive written service of process of the original petition.

Explanation: This measure shows how consistently both parents receive service of process of the original petition preceding the adjudication.¹ “Service of process of the original petition” means that parents receive a copy of the original petition and a written summons instructing them to appear in court and contest the case if they wish to avoid losing rights concerning the child. For purposes of this measure, “original petition” refers to the petition on which the adjudication is based (including any amended and supplemental petitions), as opposed to a petition for a later stage of the proceedings, such as termination of parental rights (TPR).²

Purpose: To help courts ensure that they consistently give both parents proper written notice of hearings in child abuse and neglect cases. Written notice affords parents the opportunity to appear in court and be heard.

In a broader sense, this measure helps to protect the rights of both parents in the earlier stages of the case and also helps to ensure timely permanent placements for children who are in foster care. Looking at what may happen when only one parent is notified helps to clarify the importance of notifying both parents.

In some courts, the government and its attorneys typically choose to serve process only on the parent currently caring for the child (most often the mother). For example, a mother who is alleged to have abused or neglected a child in her care states that the father is not involved in the child’s life or has disappeared. Only the mother receives service of process of the original petition. Not serving the father in this case is unfair to him and possibly harmful to the child.

A mother who has allegedly abused or neglected a child may not be truthful in what she says about the father. The father may actually be involved in his child’s life, and the mother may even know where the father lives. If the father receives notice, he may want to seek custody of the child, perhaps with the support of other relatives, and foster care may be avoided. The father may also want to visit the child or ask the child welfare agency to help him prepare to take custody of the child. If the father does not receive notice, both the father and the child may miss an opportunity for the father to become involved in the child’s life.

Failure to serve the original petition on a noncaregiver father often delays permanency. Consider the following situation:

A mother abuses her child while under the influence of methamphetamine. She persuades her caseworker not to notify the father, and the government and judge concur. The petition does not mention the father, and there is no attempt to locate or serve process on him. Thus, the father is not involved in any court hearings, including adjudication, disposition, review hearings, permanency hearings, etc. Meanwhile, the child welfare agency develops a case plan in which the child resides in a foster home while the agency tries to help the mother end her dependence on methamphetamine and improve her care and protection of the child.

After the agency has worked unsuccessfully with the mother for several months (the mother repeatedly fails to complete drug treatment the agency has arranged), the agency and court are convinced that reunification with the mother is inappropriate. At this point, the agency and the court consider adoption as a backup permanency plan but realize that the child cannot be legally considered for adoption without terminating the father’s rights.

Only when the mother and father are served with the termination petition does the father discover that his child has been in foster care. As it turns out, the father did not know the child’s whereabouts but had not abandoned the child. He is not, however, ready yet to take custody of the child.

Lacking grounds for terminating the father’s parental rights, the agency must develop a new case plan and begin its work with the father. Meanwhile, the child remains in foster care with no permanent home.

Serving the original petition on both parents at the beginning of the case can avoid such unfortunate scenarios. If both parents are served, both become parties to the case. Perhaps the noncustodial parent will be ready to take custody immediately and the child need not enter foster care. Or, perhaps the noncustodial parent will agree from the beginning to give up parental rights, and permanency need not be delayed.

When both parents receive service of process, the child welfare agency may choose to develop a case plan in which the agency works with both parents to help each try to gain custody. Such a plan provides an incentive for each parent to make improvements in an effort to avoid losing custody to the other parent. In the end, one of the parents may gain custody; if, however, neither is able to assume custody within a reasonable time, both parents' rights can be terminated at the same time, legally freeing the child for adoption—an outcome that will occur much more quickly than would have happened had the noncustodial parent not been involved in the case plan from the beginning.

To summarize, by serving the original petition on both parents, the agency and court may avoid the need to place the child in foster care, may maintain or strengthen the relationship between the child and the noncustodial parent, and may achieve earlier permanency for the child.

One final note: These principles apply to unmarried, as well as married, fathers. A large proportion of children in foster care have parents who were not married at the time of conception or birth. State laws vary with regard to which categories of putative fathers have the right to be notified of adoption proceedings and the circumstances in which they can block an adoption. The original petition should, at a minimum, be served on any father who by State law would have to consent to adoption or have his rights terminated before adoption could take place.

Implementation Issues

Identifying All Persons Who Must Be Served

In many management information systems, it may be difficult to extract information from the database regarding which persons should be served. The difficulty stems from the fact that the categories of persons to be served depend on the circumstances of each case. For example, there may or may not be a legal guardian for the child or

a relative with physical custody of the child; depending on State law, both may need to be served. In addition, more than one possible father may need to be served.

To ensure that the management information system has enough information to determine who must be served, the system may need additional data elements and additional mandatory fields in data entry screens. For example, if legal guardians and relatives with physical custody must be served, the entry screen could ask whether such guardians and relatives exist in this case; if the answers are “yes,” the screen would seek additional information about these individuals, who then would be added to the list of persons to be served.

Obtaining Agency Data on Parties, Marital Status, and Paternity

Court staff will need ready access to all the information called for on data entry screens, including identification of all parties and information on marital status, proof of paternity, etc. Obtaining this information will require coordination with the child welfare agency. Among other things, early agency reports to the court may need to be redesigned to provide paternity information, and agency staff may need training on how to provide that information in the appropriate format.

Obtaining Data on the Return of Service

Reporting on this measure may require changes beyond database redesign. One such change involves information on the return of service.³ A judicial information system may not record this information or may record it only in the register of actions.⁴ Because register of actions files are very large, extracting return of service data from them may be prohibitively time consuming. Therefore, this measure may require some adaptations of the case management system, even if data on return of service are already present.

Service of the Original Petition

As noted earlier, “original petition” refers to the petition on which the adjudication is based, as opposed to subsequent petitions such as the TPR petition.

If the original petition alleging abuse or neglect is amended before a party is served, the amended version should be a sufficient substitute for the original petition.

If a supplemental or amended petition adds new parties, the service on the new parties after adjudication should be considered the same as service of the original petition.⁵ If, for example, the first version of the petition is served only on the mother but a supplemental petition alleging further acts of abuse or neglect is served on both the mother and the father, then both parents should be considered to have been served.⁶

Note, however, that if a father is first served long after the adjudication, he will have been deprived of the opportunity to seek custody and visit the child during the months between the time the first petition was filed and the time he was first served. If the interval between the first petition and the father's first service is lengthy, the child's permanency may be delayed.

To address situations in which the father is first served long after the mother, this measure might be modified to count service of both parents only up to a specified time. For example, the deadline for service to be counted might be 2 months after adjudication is complete. The timing of the deadline should allow for a comprehensive search for the father and the completion of substitute service (e.g., service by publication), if necessary.

Service on "Both Parents"

The definition of the measure refers to "both parents." In many cases, "both parents" means one mother and one father. However, as discussed earlier, others may be functioning as parents, such as a person previously designated as the child's legal guardian by a court, or a relative who has been caring for and taking responsibility for the child. Furthermore, more than one man may claim to be the child's father.

To determine who should be included in "both parents" and should, therefore, be served with the original petition, it is necessary to consult State law. The statutes and court rules governing child abuse and neglect proceedings address the question of who must be served. These statutes may be explicit or vague, requiring service on the "parent or legal guardian," "parents and legal guardian," "parent," or "parents." They may be silent regarding putative fathers or may require that putative fathers be served.

Consulting statutes and court rules is only a starting point in deciding who to count in this measure. It is also useful to think in terms of best practices. For example, in deciding whom to serve, consider what practice will lead to an

efficient adoption process should the need arise. To avoid the type of scenario described above, best practice is to serve all persons who might collaterally attack an adoption, including any putative father who might be involved in the termination of parental rights or adoption process.⁷ To identify these persons, it may help to review the State's version of the Uniform Parentage Act, as well as State adoption laws and related case laws.

Business Rules

Basic Rules

1. Select a date range for the report.
2. The universe included in this measure is all cases closed within the date range selected for which adjudication has been conducted on the original or amended petition and on any supplemental petition adding parties. (A)
3. For each case in (A), determine who is entitled to service of process (to include, but not necessarily to be limited to, the mother and a father). Then, for each case, determine which parties received service of the original or amended petition, and sort the cases into two categories: (B) cases in which all parties entitled to service received service and (C) cases in which some parties who were entitled to service were not served.
4. Compute the percentage of cases in each of these categories by dividing the number of cases in each category by (A).

A note about the business rules: The universe of cases in this measure may be defined in various ways (see "Possible Modifications," below) but must always meet the requirement explained in rule 2. If a supplemental petition filed after adjudication adds parties, this measure should encompass service of process on those new parties. In such circumstances, the reopened or supplemental adjudication must have been completed for the case to be included in the universe for this measure.

Possible Modifications

1. Select all cases for which adjudication was conducted with a petition filing date in a specified date range (e.g., a calendar year). In selecting the date, be certain that the statutory time for service has lapsed.

2. Set a deadline for service on both parents in each case (e.g., 60 days after adjudication). Count the percentage of cases in which service was not completed within the deadline.
3. To provide detail on parties who are not being served, divide cases into categories such as the following:
all parties entitled to service received service; not all fathers who should have received service did receive service; no father received service; mother did not receive service; no parties received service.
4. Report separately on cases by additional categories, such as child's race/ethnicity, child's age, type of abuse or neglect, etc.

Data Elements

These elements apply specifically to this measure. For elements that apply to all measures, see "Universal Data Elements," page 7. For definitions of data elements, see appendix D, "Data Element Dictionary," page 289.

Required Elements

- ◆ Adjudication date.
- ◆ Party ID.
- ◆ Party type.
- ◆ Party entitled to service date.
- ◆ Service of process date.
- ◆ Case closure date.

Optional Element

- ◆ Abuse or neglect petition date.

Related CFSR Standards

No Child and Family Services Review standard for State child welfare agencies relates specifically to *Toolkit Measure 3B*.

Reporting the Data

As with other *Toolkit* measures, *Measure 3B* lends itself to a variety of tabular and graphic presentations. State Court

Improvement Projects will need presentations that show performance statewide and for each jurisdiction. Individual courts will want to see how their performance compares with that of other courts and with the State as a whole, and also whether their performance has improved or declined over time.

The samples that follow use hypothetical data for a fictitious State to demonstrate how results for this measure might be reported in tables and graphs.

Sample 3B-1 is a basic tabular report for this measure, showing the percentage of cases in which all parties who were entitled to service did and did not receive service. Note that this report could be based on cases closed or cases filed during a particular period. If filing is used as the reference point for selecting the sample, the court should make sure that the statutory time for service has lapsed.

The bar graph in sample 3B-2 is based on data from the table.

Sample 3B-3 analyzes which parties entitled to service are not being served. Such analysis requires modifying the business rules for the measure to include information about parties. In the sample, 14 percent of all 2,932 parties involved in cases closed statewide during 2005 were not served with the initial petition. In Court A, for example, 2 percent of mothers, 20 percent of fathers, 16 percent of legal guardians, and 25 percent of others entitled to be served were not served.

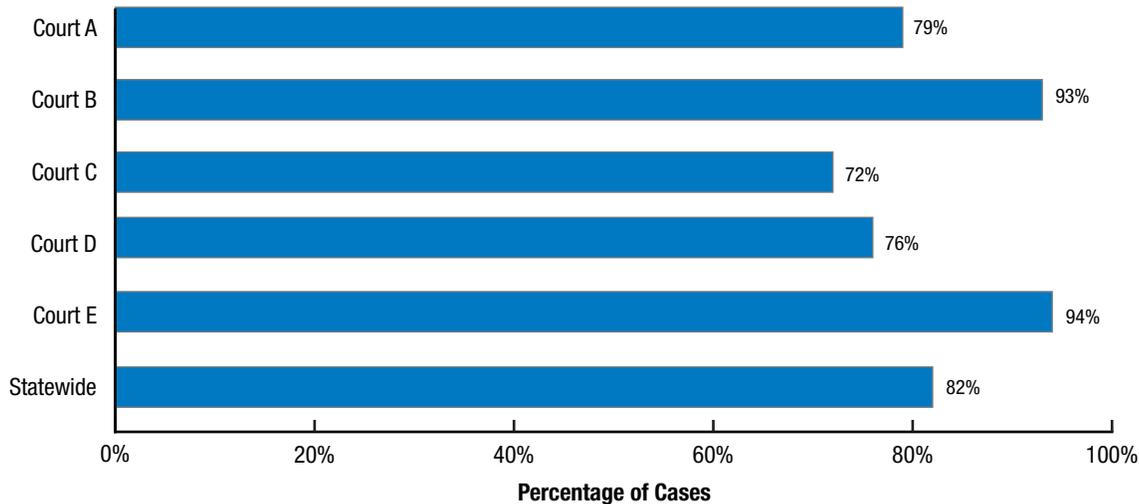
Creating a graph to clearly illustrate all of the data in a table as complex as the one in sample 3B-3 would be difficult. An alternative is to illustrate selected data from the table, such as data for one court, as shown in sample 3B-4.

Once this measure has been recorded for several years, it is useful to look at performance trends over time. For example, a chart could be created with trend lines (perhaps using different colors for different courts or judges) showing the percentage of cases in which all parties were served, for cases in which original petitions were filed in 3 to 5 successive years. A trend line graph that could be adapted for this measure is found in the discussion of *Reporting the Data* under *Measure 3J*. Such trend line graphs will make it clear whether service of process has improved or declined. Using the original filing date to define the sample makes it possible to include relatively recent data in the trends.

Sample 3B-1. Service of Process for Initial Petitions, by Court, Cases Closed in 2005

Court	All Parties Were Served		Some Parties Were Not Served		Total Number of Cases
	Number of Cases	Percent	Number of Cases	Percent	
A	125	79%	34	21%	159
B	75	93%	6	7%	81
C	68	72%	27	28%	95
D	243	76%	76	24%	319
E	199	94%	13	6%	212
Statewide	710	82%	156	18%	866

Sample 3B-2. Percentage of Cases in Which All Parties Received Service of Process, by Court, Cases Closed in 2005



Factors That May Affect Results

Knowledge of Judges and Advocates Regarding Service of Process

If judges and advocates understand the potential implications of failing to serve the original petition on all parties who should be served, this aspect of child abuse and neglect litigation is less likely to be overlooked.

Judges and advocates also need to be familiar with the different methods of service (including substitute service, such as publication of notice) and should also know at what points in the process service is required for the original abuse and neglect case, for TPR (in States that require separate service for TPR), and adoption.

Laws and Procedures for Service of Process

If State laws or court rules clearly require service of the original petition on both parents and set forth practical procedures for doing so, correct service is more likely to take place.

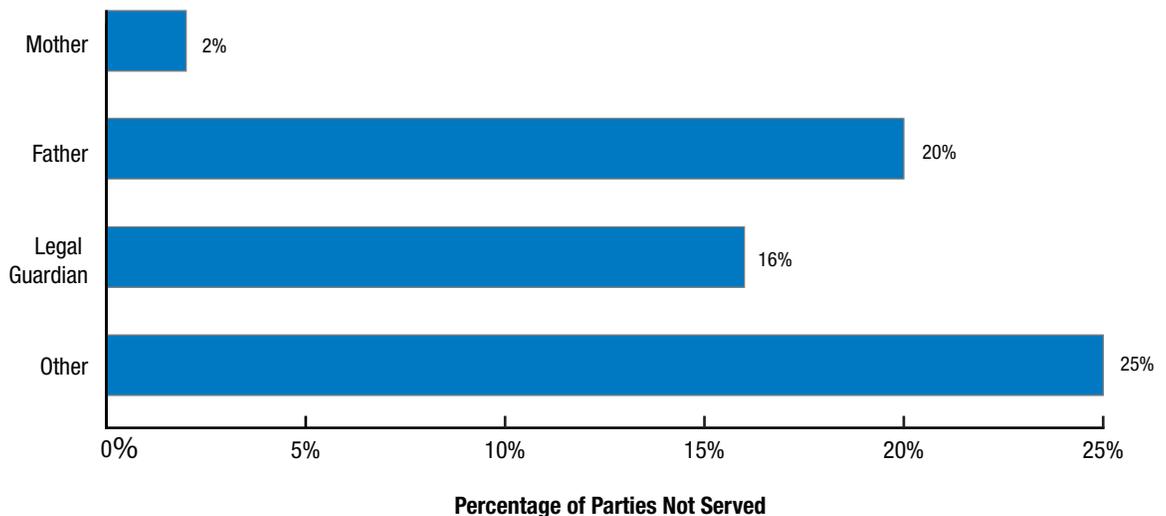
Possible Reforms

If the data from this performance measure indicate room for improvement in the percentage of cases in which both parents are served with the original petition, the court should consider possible reforms. Specific reforms will, of course, depend on local conditions and the court’s analysis of the best procedures for accomplishing this goal. A court might, for example, consider the following improvements:

Sample 3B–3. Service of Process, by Court and Party, Cases Closed in 2005

Court	Type of Party														
	Mother		Father			Legal Guardian			Other		All Parties				
	Total	Not Served		Total	Not Served		Total	Not Served		Total	Not Served				
	#	%	#	%	#	%	#	%	#	%	#	%			
A	225	5	2%	328	66	20%	25	4	16%	12	3	25%	590	78	13%
B	143	8	6%	179	18	10%	36	2	6%	17	6	35%	375	34	9%
C	367	23	6%	469	121	26%	21	6	29%	31	20	65%	888	170	19%
D	198	0	0%	287	26	9%	44	3	7%	19	11	58%	548	40	7%
E	201	14	7%	299	58	19%	8	2	25%	23	12	52%	531	86	16%
Statewide	1,134	50	4%	1,562	289	19%	134	17	13%	102	52	51%	2,932	408	14%

Sample 3B–4. Percentage of Parties Not Served, Cases Closed in 2005: Court A



- ◆ Educate judges and advocates about the need to serve the original petition on both parents.
- ◆ Educate judges, advocates, and process servers about methods for notifying both parents, even when a parent is difficult to locate.
- ◆ Educate judges and advocates about how to determine whether an individual named as a putative father must be served for the original abuse and neglect, TPR, and adoption proceedings.
- ◆ Prepare forms for original petitions. The forms should require allegations against both parents. (Note that if a parent is missing or has abandoned the child, these facts can constitute the allegations against that parent.)
- ◆ Prepare packets of forms for service of process of the original petition. These packets should provide for service on all parties, including putative fathers.
- ◆ Enact statutes and court rules that:
 - ◇ Require service on both parents.
 - ◇ Clarify service requirements for putative fathers.
 - ◇ Set forth efficient procedures for service, including timely substitute service if reasonable efforts to locate and serve the parent have not been successful.
- ◆ Allow adjudications to go forward when, after a reasonable effort, it has been possible to serve only one parent. However, require completion of service

against the missing parent as soon as possible after adjudication. If that service is successful within a reasonable time after the adjudication, allow the previously missing parent to request that the court award him or her custody and dismiss the case.

Endnotes

1. In a few States, if service of process on both parents is not possible in time for a regularly scheduled adjudication, the adjudication for one parent can take place before the other parent has been served. After service of process on the second parent, however, the second parent may reopen the adjudication. Such laws are consistent with this measure, because both parties will have eventually been served with the original petition, and service will have taken place prior to completion of the adjudication for both parties.
2. If an amended petition is filed, adding a sibling or other party, service of process with regard to the sibling or other party should be included in this measure. If such an amended petition is filed after adjudication, then this measure encompasses service for any reopened or subsequent adjudication, as well as for the original adjudication.
3. “Return of service” refers to documentation of service to a particular party. Individuals who serve process must provide this documentation to the court.
4. The “register of actions” is usually a list of official documents, hearings, and court orders, including dates, and is called a “docket” in some courts.
5. Thus, if a mother who is named in the original petition does not receive that petition but receives only a copy of the supplemental petition, this should not count as timely service. However, if a party is added in the supplemental petition, then service of the supplemental petition is essentially the “original” petition for that party and counts as timely service.
6. Even if the supplemental petition served on the father does not include the original allegations served on the mother, the father or his attorney can get copies of the first petition once the father has formally been notified of the litigation. Even if the father does not receive service of process of a supplemental petition until after the adjudication, he can either reopen the adjudication or have a new trial based on the facts of the supplemental petition.
7. Some State laws require service prior to adoption only on fathers whose paternity has been determined by a court, fathers who have entered their name in a registry, or fathers who have been involved in the child’s life in specified ways. Such provisions make it legally permissible for a child to be adopted without notification of certain fathers who are thought not to have lived with the child. The danger in not serving such fathers, however, is that despite the mother’s assertions and agency’s beliefs, the father may have been living with the child before the proceedings began and may later appear and reverse the adoption. Therefore, unless a putative father whose rights have not been terminated has been located and denies paternity, it may be prudent to include him in service of the original petition.

Early Appointment of Advocates for Children



Definition: Percentage of child abuse and neglect cases in which an attorney, guardian *ad litem* (GAL), or court-appointed special advocate (CASA) volunteer is appointed in advance of the emergency removal hearing.¹

Explanation: This measure shows how often legal advocates for children are appointed before emergency removal hearings.

Purpose: To help courts evaluate whether legal advocates for children are appointed in time to play an active role in what is usually the first critical stage of litigation—the emergency removal hearing.

This measure addresses whether children are represented prior to the emergency hearing by an advocate, i.e., someone officially designated to speak for, or on behalf of, the child in court. An advocate may be an attorney, a GAL, or a CASA volunteer.

The emergency removal hearing is a critical stage of child abuse and neglect litigation, in that it can affect the ultimate outcome of the case. At this hearing, the court decides whether to prolong the separation between parent and child following an emergency removal. The hearing has other important purposes. When a child cannot be returned home immediately, the judge should do the following during the hearing:²

- ◆ Ensure that parents understand the reasons for State intervention and are informed about court proceedings.
- ◆ Set the terms of immediate parent-child visitation.
- ◆ Inquire about missing parents (if any) and relatives who might care for the child as an alternative to relying on unrelated foster parents. If necessary, the judge should issue orders to ensure that missing parents and relatives are located, notified, and, if appropriate, evaluated as possible caretakers.
- ◆ Consider the appropriateness of the child's current emergency placement, including whether it is a family environment (when possible) and as close to the child's home as is practical.
- ◆ Ensure that the child is attending school, preferably the school the child attended before removal from home.
- ◆ Determine whether the child needs immediate services, such as evaluations or medical care, and issue orders accordingly.

- ◆ Issue orders regarding conduct expected of parents and services to be provided by the child welfare agency.
- ◆ Determine whether the agency made reasonable efforts to avoid having to remove the child from home.
- ◆ Formally notify the parties of the litigation through service of process.
- ◆ Schedule the next hearings in the case.

Active and effective representation of the child is important to ensuring that the emergency removal hearing fulfills its functions. Effective representation of the child can help accomplish the following:

- ◆ Prevent the unnecessary removal of a child from home by carefully evaluating the level of danger in the home and considering possible safe alternatives to removal.
- ◆ Limit the trauma the child may experience upon separation from the parents by proposing early and frequent parent-child visits.
- ◆ Speed casework when a child must be removed, by proposing early evaluations of the parents and the family unit and by making a more complete record, during the hearing, of the facts leading up to the removal of the child.
- ◆ Ensure that the child receives services that are needed immediately, such as medical care, psychological evaluation, and trauma counseling.
- ◆ Prevent any unnecessary interruption in the child's education and ensure that educational services for the child will be appropriate.

To achieve these goals, the advocate should be introduced to the child before the emergency removal hearing. The advocate should do the following:

- ◆ Observe the child's condition and circumstances, and ascertain the child's wishes.
- ◆ Conduct a quick investigation or inquiry regarding the facts of the case; include a discussion with the caseworker.
- ◆ Discuss the case with attorneys for the agency.
- ◆ Prepare for the hearing as thoroughly as time allows.

Of course, the early appointment of child advocates does not guarantee that they will fulfill their responsibilities prior to the hearing. They will, however, at least have the opportunity to do so.

Advocates are important not only before and during the emergency removal hearing but throughout all stages of the litigation. They represent an independent point of view, focusing exclusively on what is best for the child. They are not constrained by the organizational needs or limitations of the child welfare agency, as government attorneys may be. They are not bound to advocate for the parents' views, as parents' attorneys are. Even more broadly, advocates help to achieve procedural fairness for children, ensure that complete and accurate information is provided to the judge, and support fair and equal application of the law.

Implementation Issues

Information Storage

For this performance measure, the information system must permanently store data on the timing of the appointment of the first advocate for each child. Some systems are not currently set up to do this; instead, each time a new advocate is appointed, the system deletes information on prior appointments. Such systems must be reconfigured to retain information on each child's first advocate.

Defining "In Advance Of"

This measure records the percentage of cases in which the child's advocate is appointed in advance of the emergency removal hearing. A key question is whether "in advance of" means at least the day before the hearing or can also include appointment on the day of the hearing.

In defining this aspect of the measure, courts should consider the importance of allowing a reasonable amount of time for the advocate to discuss the case with the child, the caseworker or the caseworker's attorney, and other attorneys involved in the case. Courts also need to consider

whether it is realistic to appoint advocates prior to the day of the hearing, and whether it is practical to record the time of day when appointments occur and hearings begin.

Whether it is realistic to appoint advocates prior to the day of the emergency removal hearing depends largely on the legal deadline for these hearings. For example, in States where the hearing must take place within 48 hours of the child's removal from home (excluding weekends and holidays), appointing advocates before the day of the hearing should not be difficult. If, however, the deadline is 24 hours (including weekends and holidays), consistently appointing advocates before the day of the hearing will be more difficult.

Whether it is practical to record the appointment time depends in part on whether the application software has been programmed to capture this information. A simple approach is for a court employee to click a button or a check box on a screen to indicate whether an advocate was appointed prior to the emergency removal hearing ("yes" or "no"). Other approaches, which require comparing the appointment time to the hearing time, include:

- ◆ The court employee who completes the appointment document could fill in a data entry screen for the appointment date and time. (Alternatively, the appointment date and time could be entered when the advocate confirms the appointment.)
- ◆ If a court employee completes an electronic form that includes appointment date and time, the system could automatically capture and save that information.

If an advocate is chosen or appointed by someone located outside the court, the court might consider the appointment to have occurred at the moment the court transmitted its request for a child advocate to the outside organization. Alternatively, the court might ask the organization to notify it of the exact appointment time and then enter that information in the system.

Clearly, having to record the appointment time may involve extra work for court employees. The next consideration is whether the extra effort will consistently yield accurate information and, if so, whether the information will be worth the additional effort.

If it is impractical either to appoint an advocate before the day of the emergency removal hearing (because of constraints imposed by a State deadline for these hearings) or to capture the time of the appointment, the best practical substitute may be to measure how often a child's

advocate was present during these hearings (see *Toolkit Measure 3G: Presence of Advocates During Hearings*).

Many courts may have standardized procedures that make the timing of child advocates' appointments obvious (e.g., all advocates are appointed at the emergency removal hearing). If such procedures are widespread in the State, a sensible alternative to developing a precise measure might be for courts to simply report their procedures. In many States, however, practices vary enough to make developing this performance measure worthwhile.

State Laws and Court Rules

Courts may wish to use this measure even if State law does not require the appointment of child advocates before emergency removal hearings. As long as State law does not prohibit such appointments, the court can measure its performance relative to best practice regarding early appointments.

Measuring More Than One Time of Appointment

It may be sensible to measure the percentage of cases complying with each of several possible times of appointment of child advocates, as opposed to making this an "all or nothing" measure. For example, a measure might show the percentage of children whose advocates were appointed at the following points:

- ◆ In advance of the emergency removal hearing.
- ◆ At the beginning of (or during) the hearing.
- ◆ Within X days after the hearing.
- ◆ Within X or more days after the hearing, but at least Y days before adjudication.
- ◆ Later than any of these alternatives.

The options measured can reflect the apparent range of practices in a State or a local court. For example, if it is near certain that child advocates are rarely or never appointed more than X days after the emergency removal hearing, the last three of the five options in the above list could be replaced by two options: "Fewer than X days after the hearing" and "X or more days after the hearing."

Knowing exactly when advocates are appointed is an important indicator of the quality of representation. The earlier the appointment occurs, the sooner the interests of the child begin to be represented. Early appointment may

help to minimize traumatic separation from parents, improve protection from further abuse or neglect, and ensure more efficient delivery of needed services. Furthermore, the more refined the measurement of appointment timing, the more information individual courts and judges will have regarding their performance.

Different Categories of Advocates for Children

Some States and local courts use various types of advocates to represent children and may want to know which types of advocates tend to be appointed earlier (e.g., whether CASA volunteers tend to be appointed earlier than attorneys). The judicial information system may need to be reconfigured to capture this information.

Business Rules

Basic Rules

1. Select a date range for the report.
2. The universe included in this measure is all cases for which an emergency removal hearing was held within the date range selected. (A)
3. For each case in (A), determine when a child advocate was assigned. Then, sort the cases into two categories: (B) advocate appointed prior to hearing date and (C) advocate not appointed prior to hearing date.
4. Compute the percentage of cases in each of these categories by dividing the number of cases in each category by (A).

Possible Modifications

1. Report separately by type of representation (e.g., attorneys, attorney GALs, lay GALs, CASA volunteers).
2. Report separately by demographic categories, such as child's race/ethnicity and age.
3. Include later appointment categories, such as at the hearing, within X days after the hearing, more than X days before adjudication, at or after adjudication.
4. Correlate the results of this measure with other outcomes, such as achievement of permanency (*Toolkit Measure 2A*), timeliness of permanency (*Measure 4A*), and timeliness of adjudication (*Measure 4B*).

Data Elements

These elements apply specifically to this measure. For elements that apply to all measures, see “Universal Data Elements,” page 7. For definitions of data elements, see appendix D, “Data Element Dictionary,” page 289.

Required Elements

- ◆ Emergency removal hearing date-time.
- ◆ Appointment of advocate date-time.
- ◆ Party ID.
- ◆ Advocate ID.
- ◆ Advocate-party link.

Optional Elements

- ◆ Advocate type.
- ◆ Adjudication date.

Related CFSR Standards

No Child and Family Services Review standard for State child welfare agencies relates specifically to *Toolkit Measure 3C*.

Reporting the Data

As with other *Toolkit* measures, *Measure 3C* lends itself to a variety of tabular and graphic presentations. State Court Improvement Projects will need presentations that show performance statewide and for each jurisdiction. Individual courts will want to see how their performance compares with that of other courts and with the State as a whole, and

also whether their performance has improved or declined over time.

The samples that follow use hypothetical data for a fictitious State to demonstrate how results for this measure might be reported in tables and graphs.

Sample 3C–1 is a basic tabular report for this measure, showing the percentage of cases in which child advocates were appointed prior to the emergency removal hearing. In this sample, practices vary widely among the three courts in Judicial District A. The percentage of children appointed advocates before the hearing is far lower in Court A than in Court C, with Court B ranking in between. The bar graph in sample 3C–2, based on data from the table, clearly shows how each court’s percentage compares with the percentages for other courts and for the district as a whole.

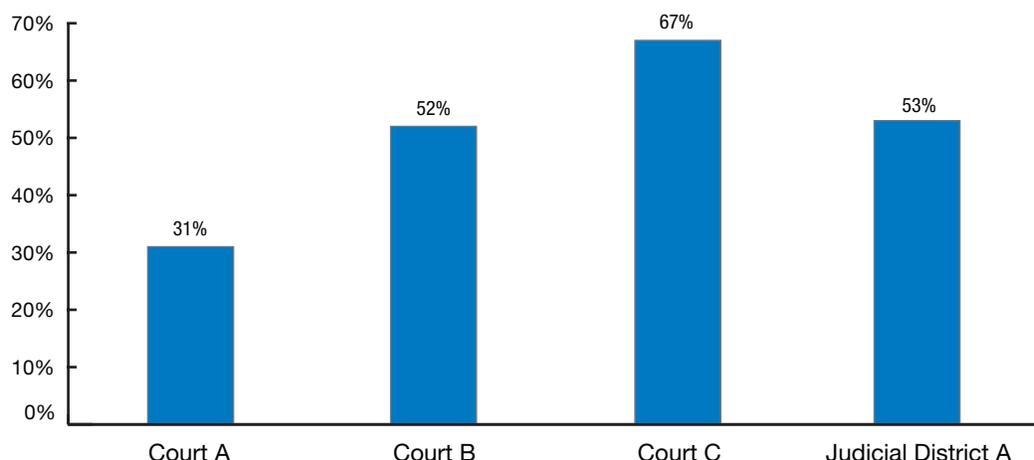
Sample 3C–3 analyzes early appointment rates for different types of advocates. It also shows striking differences among courts. For example, Court B has a CASA program, but Court A and Court C do not. The fact that Court A uses neither CASAs nor GALs may help to explain why it has the lowest overall early appointment rate of all three courts. The pie chart in sample 3C–4 illustrates District A totals from the table, clearly showing the different rates for the three types of advocates.

In addition to these samples, several other presentations may be useful for this measure. For example, if the measure is expanded to document rates for different appointment times (before the hearing, during the hearing, etc.), bar graphs or pie charts might be used to compare these rates. Pie charts could also show comparisons between a local court and the State as a whole or to compare rates for several years. Trend lines could be used to show increases or decreases in early appointment rates over time.

Sample 3C–1. Appointment of Child Advocate Prior to Emergency Removal Hearing, by Court, 2006: Judicial District A

Court	Appointed Prior to ERH		Not Appointed Prior to ERH		Total Number of Cases
	Number of Cases	Percent	Number of Cases	Percent	
A	54	31%	123	69%	177
B	87	52%	80	48%	167
C	198	67%	99	33%	297
Districtwide	339	53%	302	47%	641

Sample 3C–2. Percentage of Children Appointed an Advocate Prior to Emergency Removal Hearing, by Court, 2006: Judicial District A



Sample 3C–3. Appointment of Child Advocate Prior to Emergency Removal Hearing, by Type of Advocate, by Court, 2006: Judicial District A

Court	Type of Advocate Appointed Prior to ERH						No Appointment Prior to ERH		Total Number of Cases
	Legal Counsel		CASA*		GAL†		Number of Cases	Percent	
	Number of Cases	Percent	Number of Cases	Percent	Number of Cases	Percent			
A	54	31%	0	0%	0	0%	123	69%	177
B	9	5%	78	47%	0	0%	80	48%	167
C	175	59%	0	0%	23	8%	99	33%	297
Districtwide	238	37%	78	12%	23	4%	302	47%	641

*Court-appointed special advocate.

†Guardian *ad litem*.

Factors That May Affect Results

State Law Regarding the Early Appointment of Child Advocates

State law may specify when advocates are to be appointed for children. Some laws may require the appointment of advocates at or before the emergency hearing or the filing of the petition. Other laws may require appointment at the emergency hearing or after the filing of the petition (in effect blocking early appointment).

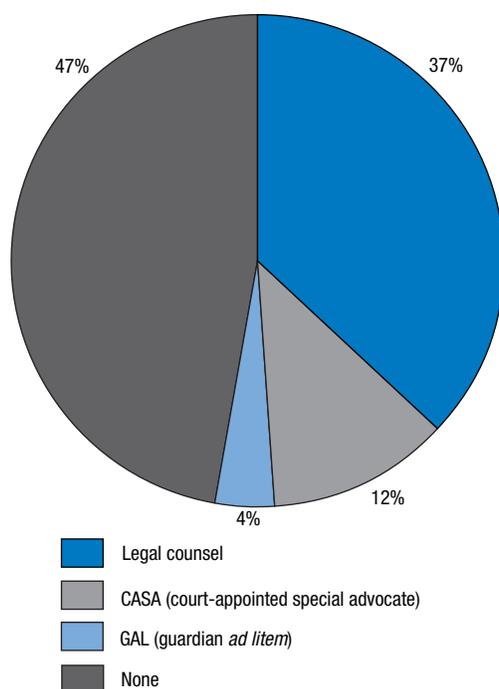
Most conducive to early representation for children are statutes or local court rules requiring immediate appointment of an advocate as soon as the court is informed that

a child has been removed from home and a hearing must be scheduled.

Understanding the Importance of Emergency Removal Hearings and the Role of Advocates at Those Hearings

When courts and advocacy organizations understand the potential benefits of a thorough emergency removal hearing and the role of the child advocates in the hearing, they are more likely to take steps to ensure early appointment of advocates. Judges and advocates must understand the appropriate roles of the advocate in the emergency removal hearing.

Sample 3C–4. Appointment of Child Advocate Prior to Emergency Removal Hearing (Percentage of Cases with Legal Counsel, CASA, GAL, and No Advocate), 2006: District A



Overcoming Administrative Obstacles

There are a number of potential obstacles to the early appointment of child advocates. For example, the court and attorneys may be in the habit of making appointments during or after the emergency removal hearing. There may not be enough attorneys available to meet with clients on short notice. The court or advocacy organizations may be reluctant to pay the costs associated with early involvement of child advocates in the litigation process.

Overcoming these obstacles often requires determination and persistence. Nevertheless, many courts consistently arrange for representation by child advocates before emergency removal hearings.

Possible Reforms

If the data from this performance measure indicate room for improvement in providing for early legal representation of children, the court should consider possible reforms. Specific reforms will, of course, depend on local conditions and the court’s analysis of the best procedures for accomplishing this goal. A court might, for example, consider the following improvements:

- ◆ Establish a State law or local court rule requiring appointment of a child advocate as soon as a court is notified of a case.
- ◆ Appoint a child advocate immediately upon receiving information that an emergency removal hearing will be scheduled.
- ◆ Arrange for the advocate and the child to meet at the courthouse a few hours before the emergency removal hearing.
- ◆ Revise judicial contracts with attorneys or advocacy organizations to require that advocates accept appointments and begin their work on the case before the hearing.
- ◆ Establish standards of representation specifying immediate actions child advocates must take upon receiving an appointment.

Endnotes

1. “Emergency removal hearing” refers to the hearing that State law dictates must take place shortly after a child is removed from home in an emergency situation. One purpose of the hearing is to give parents the opportunity to seek the immediate return of their child. The emergency removal hearing is variously known as the shelter care hearing, temporary removal hearing, initial hearing, preliminary hearing, detention hearing, and preliminary protective hearing.
2. See National Council of Juvenile and Family Court Judges, *RESOURCE GUIDELINES: Improving Court Practice in Child Abuse and Neglect Cases* (Reno, NV: NCJFCJ, 1995), pp. 40–41.

Early Appointment of Counsel for Parents

MEASURE 3D



Definition: Percentage of child abuse and neglect cases in which attorneys for parents are appointed in advance of the emergency removal hearing.¹

Explanation: This measure shows how often attorneys for parents are appointed before emergency removal hearings.

Purpose: To help courts evaluate whether attorneys for parents are appointed in time to play an active role in what is usually the first critical stage of litigation—the emergency removal hearing.

The emergency removal hearing is a critical stage of child abuse and neglect litigation, in that it can affect the ultimate outcome of the case. At this hearing, the court decides whether to prolong the separation between parent and child following an emergency removal. The separation of parent and child between the emergency removal hearing and adjudication may protect the child from serious, long-term harm. On the other hand, this separation may traumatize the child and ultimately make it more difficult for the parent to correct the problems that led to State intervention.

The emergency removal hearing also has other important purposes. When a child cannot be returned home immediately, the judge should do the following during the hearing:²

- ◆ Ensure that parents understand the reasons for State intervention and are informed about court proceedings.
- ◆ Set the terms of immediate parent-child visitation.
- ◆ Inquire about missing parents (if any) and relatives who might care for the child as an alternative to relying on unrelated foster parents. If necessary, the judge should issue orders to ensure that missing parents and relatives are located, notified, and, if appropriate, evaluated as possible caretakers.
- ◆ Consider the appropriateness of the child's current emergency placement, including whether it a family environment (when possible) and as close to the child's home as is practical.
- ◆ Ensure that the child is attending school, preferably the school the child attended before removal from home.

- ◆ Determine whether the child needs immediate services, such as evaluations or medical care, and issue orders accordingly.
- ◆ Issue orders regarding conduct expected of parents and services to be provided by the child welfare agency.
- ◆ Determine whether the agency made reasonable efforts to avoid having to remove the child from home.
- ◆ Formally notify the parties of the litigation through service of process.
- ◆ Schedule the next hearings in the case.

Active and effective representation of the parents is important to ensuring that the emergency removal hearing fulfills its functions. Effective representation of parents can help accomplish the following:

- ◆ Prevent the unnecessary removal of a child from home by carefully evaluating the level of danger in the home and considering possible safe alternatives to removal.
- ◆ Limit the trauma both the child and parents may experience because of their separation by proposing early and frequent parent-child visits (supervised only as necessary).
- ◆ Speed casework when a child must be removed, by proposing early evaluations of the parents and the family unit and by making a more complete record, during the hearing, of the facts leading up to the removal of the child.
- ◆ Ensure that the child receives services that are needed immediately, such as medical care, psychological evaluation, and trauma counseling.

- ◆ Prevent any unnecessary interruption in the child's education and ensure that educational services for the child will be appropriate.

To achieve these goals, the attorney should meet the parents before the emergency removal hearing. The attorney should do the following:

- ◆ Observe the parents' condition and circumstances, ascertain their wishes, and understand their version of the events leading up to State intervention.
- ◆ Conduct a quick investigation or inquiry regarding the facts of the case; include a discussion with the caseworker.
- ◆ Discuss the case with attorneys and advocates for the other parties in the litigation.
- ◆ Prepare for the hearing as thoroughly as time allows.

Of course, the early appointment of attorneys for parents does not guarantee that they will fulfill these responsibilities prior to the hearing. They will, however, at least have the opportunity to do so. If the parents' attorneys are not involved prior to the emergency removal hearing, the court is more likely to place children away from the parents.

Parents' attorneys are important not only before and during the emergency removal hearing but throughout all stages of the litigation.³ Many parents in abuse and neglect cases—especially individuals who are relatively uneducated and/or inarticulate—cannot effectively present legal arguments and issues that would work in their favor. Many are facing difficult life crises, including the trauma of having their child taken from them. Finally, in any type of litigation, it is difficult for people to view their own case objectively. For these reasons, parents need attorneys to help them present their cases effectively.

Even more broadly, attorneys help to achieve procedural fairness for parents. Their involvement supports the public's sense of justice (i.e., that it is unfair to take children away from parents without giving parents a chance to defend themselves effectively in court). Furthermore, parents' attorneys help to ensure that complete and accurate information is provided to the judge and also support fair and equal application of the law.

Implementation Issues

Multiple Persons Identified as Possible Father

It is not unusual in child abuse and neglect cases for multiple men to be named as possible fathers of the child. Depending on State law and the facts of each case, it may or may not be appropriate to appoint an attorney for each possible father.

For purposes of this measure, it should be sufficient that an attorney is appointed for at least one identified father before the emergency removal hearing. When multiple possible fathers are identified, it may not be necessary or appropriate to appoint counsel for all of them (e.g., a man whose formal denial of paternity has been accepted by the government or child welfare agency). This measure is not designed to make such distinctions.

Whether the Mother and Father Should Be Assigned Separate Attorneys

In most abuse or neglect cases, it is appropriate to appoint separate attorneys for the mother and the father. This is because the parents are likely to have conflicting interests. For example, if only one parent is found to have abused or neglected the child, the other may be entitled to custody—especially if the nonabusing parent agrees to separate from the other parent and limit that parent's access to the child.

For purposes of this measure, it should be sufficient for court staff to identify the individual(s) whom the attorney represents. For example, if one attorney is appointed to represent both parents, this fact must be recorded, and the appointment date should apply to both parents.

It is beyond the scope of this measure to compute how often attorneys are appointed to represent both parents in those cases where separate counsel should have been appointed because of conflicts of interest. (Conflicts of interests between parents exist in a high percentage of child abuse and neglect cases.) It is, however, possible to compute how often the same attorney is appointed to represent both parents.

Information Storage

For this performance measure, the information system must permanently store data on the timing of the original appointment of the parents' attorneys. Some systems are not currently set up to do this; instead, each time a new attorney is appointed, the system deletes information on prior appointments. Such systems must be reconfigured to retain information on each parent's first attorney.

Defining "In Advance Of"

This measure records the percentage of cases in which the parent's attorneys are appointed in advance of the emergency removal hearing. A key question is whether "in advance of" means at least the day before the hearing or can also include appointment on the day of the hearing, perhaps at least a few hours before the hearing begins.

In defining this aspect of the measure, courts should consider the importance of allowing a reasonable amount of time for the attorney to discuss the case with the parent, the caseworker or the caseworker's attorney, and other attorneys involved in the case. Courts also need to consider whether it is realistic to appoint attorneys prior to the day of the hearing, and whether it is practical to record the time of day when appointments occur and hearings begin.

Whether it is realistic to appoint attorneys prior to the day of the emergency removal hearing depends largely on the legal deadline for these hearings. For example, in States where the hearing must take place within 48 hours of the child's removal from home (excluding weekends and holidays), appointing attorneys before the day of the hearing should not be difficult. If, however, the deadline is 24 hours (including weekends and holidays), consistently appointing attorneys before the day of the hearing will be more difficult.

Whether it is practical to record the appointment time depends in part on whether the application software has been programmed to capture this information. A simple approach is for a court employee to click a "radio button" or a check box on a screen to indicate whether an attorney was appointed prior to the emergency removal hearing ("yes" or "no"). Other approaches, which require comparing the appointment time to the hearing time, include:

- ◆ The court employee who completes the appointment document could fill in a data entry screen for the appointment date and time. (Alternatively, the appointment date and time could be entered when the attorney confirms the appointment.)

- ◆ If a court employee completes an electronic form that includes appointment date and time, the system could automatically capture and save that information.

If an attorney is chosen or appointed by someone located outside the court, the court might consider the appointment to have occurred at the moment the court transmitted its request for an attorney to the outside organization. Alternatively, the court might ask the organization to notify it of the exact appointment time and then enter that information in the system.

Clearly, having to record the appointment time may involve extra work for court employees. The next consideration is whether the extra effort will consistently yield accurate information and, if so, whether the information will be worth the additional effort.

If it is impractical either to appoint an attorney before the day of the emergency removal hearing (because of constraints imposed by a State deadline for these hearings) or to capture the time of the appointment, the best practical substitute may be to measure how often a parent's attorney was present during these hearings (see *Toolkit Measure 3G: Presence of Advocates During Hearings*).

Many courts may have standardized procedures that make the timing of attorneys' appointments obvious (e.g., all parents' attorneys are appointed at the emergency removal hearing). If such procedures are widespread in the State, a sensible alternative to developing a precise measure might be for courts to simply report their procedures. In many States, however, practices vary enough to make implementing this performance measure worthwhile.

State Laws and Court Rules

Courts may wish to use this measure even if State law does not require the appointment of parents' attorneys before emergency removal hearings. As long as State law does not prohibit such appointments, the court can measure its performance relative to best practice regarding early appointments.

Measuring More Than One Time of Appointment

It may be sensible to measure the percentage of cases complying with each of several possible times of appointment of parents' attorneys, as opposed to making this an "all or nothing" measure.⁴ For example, a measure might

show the percentage of cases in which parents' attorneys were appointed at the following points:

- ◆ In advance of the emergency removal hearing.
- ◆ At the beginning of (or during) the hearing.
- ◆ Within X days after the hearing.
- ◆ Within X or more days after the hearing, but at least Y days before adjudication.
- ◆ Later than any of these alternatives.

It is particularly important to measure a full range of possible times for the appointment of fathers' attorneys. The difficulty of identifying fathers at the very beginning of the case sometimes necessitates not appointing attorneys for fathers before the emergency removal hearing.

Knowing exactly when attorneys are appointed is an important indicator of the quality of representation. The earlier appointment occurs, the sooner the interests of the parent begin to be represented. Early appointment may enable the case to proceed faster, minimizing the length of separation between parent and child and clearing the way for delivery of needed services earlier rather than later. Thus, the more refined the measurement of appointment timing, the more information individual courts and judges will have regarding their performance.

Different Categories of Attorneys for Parents

Some States and local courts use various types of attorneys to represent parents. These may include staff attorneys (working for legal services, a public defender's office, or other nonprofit organizations), contract attorneys (contracting individually with the court or as members of a consortium or contracting law firm), and attorneys selected from appointment lists.

Knowing which types of attorneys tend to be appointed earlier may be useful. For example, if appointments are slowest for attorneys selected from a list, the court may make a special effort to speed up such appointments. If appointments are fastest for contract attorneys, that may be an argument in favor of using contracts.

Business Rules

Basic Rules

1. Select a date range for the report.
2. The universe included in this measure is all cases for which an emergency removal hearing was held within the date range selected. (*A*)
3. For each case in (*A*), determine when parents' attorneys were assigned. Then sort the cases into four categories: (*B*) attorney for mother appointed prior to hearing date, (*C*) attorney for mother not appointed prior to hearing date, (*D*) attorney for father appointed prior to hearing date, (*E*) attorney for father not appointed prior to hearing date, (*F*) attorneys appointed for both mother and father prior to hearing date, (*G*) attorneys for both mother and father not appointed prior to hearing date.
4. Compute the percentage of cases in each of these categories by dividing the number of cases in each category by (*A*).

A note about the business rules: If more than one possible father has been identified in a case, include the case in category (*D*) or (*F*) if an attorney was appointed for at least one identified father prior to the hearing.

Possible Modifications

1. Report separately by demographic categories, such as parents' race/ethnicity.
2. Include later appointment categories, such as at the hearing, within X days after the hearing, at or within X days after adjudication, and more than X days after adjudication.
3. Compute separately the number and percentage of cases in which one attorney is appointed to represent both parents.
4. Compare results for different type of attorneys (staff attorneys, contracts, appointment lists).
5. Correlate the results of this measure with other outcomes, such as the achievement of permanency (*Toolkit Measure 2A*), timeliness of permanency (*Measure 4A*), and timeliness of adjudication (*Measure 4B*).

Data Elements

These elements apply specifically to this measure. For elements that apply to all measures, see “Universal Data Elements,” page 7. For definitions of data elements, see appendix D, “Data Element Dictionary,” page 289.

Required Elements

- ◆ Emergency removal hearing date-time.
- ◆ Appointment of advocate date-time.
- ◆ Party ID.
- ◆ Party type.
- ◆ Advocate ID.

Optional Elements

- ◆ Adjudication date.
- ◆ Father’s race/ethnicity.
- ◆ Mother’s race/ethnicity.
- ◆ Advocate type.

Related CFSR Standards

No Child and Family Services Review standard for State child welfare agencies relates specifically to *Toolkit Measure 3D*.

Reporting the Data

As with other *Toolkit* measures, *Measure 3D* lends itself to a variety of tabular and graphic presentations. State Court Improvement Projects will need presentations that show performance statewide and for each jurisdiction. Individual courts will want to see how their performance compares with that of other courts and with the State as a whole, and also whether their performance has improved or declined over time.

The samples that follow use hypothetical data for a fictitious State to demonstrate how results for this measure might be reported in tables and graphs.

Sample 3D–1 is a basic tabular report for this measure in one judicial district, showing the percentage of cases in which attorneys were appointed for mothers and fathers prior to the emergency removal hearing. The table shows that in all courts in Judicial District A, early appointments are far more common for mothers than for fathers. Court B has the highest rates of early appointment for both mothers (78 percent) and fathers (45 percent). The bar graph in sample 3D–2, based on data from the table, focuses on early appointment rates for mothers and clearly shows how each court’s percentage compares with the percentages for other courts and for the district as a whole. A similar graph could be produced for fathers.

Sample 3D–1. Appointment of Parents’ Attorneys Prior to Emergency Removal Hearing, by Court, 2006: Judicial District A

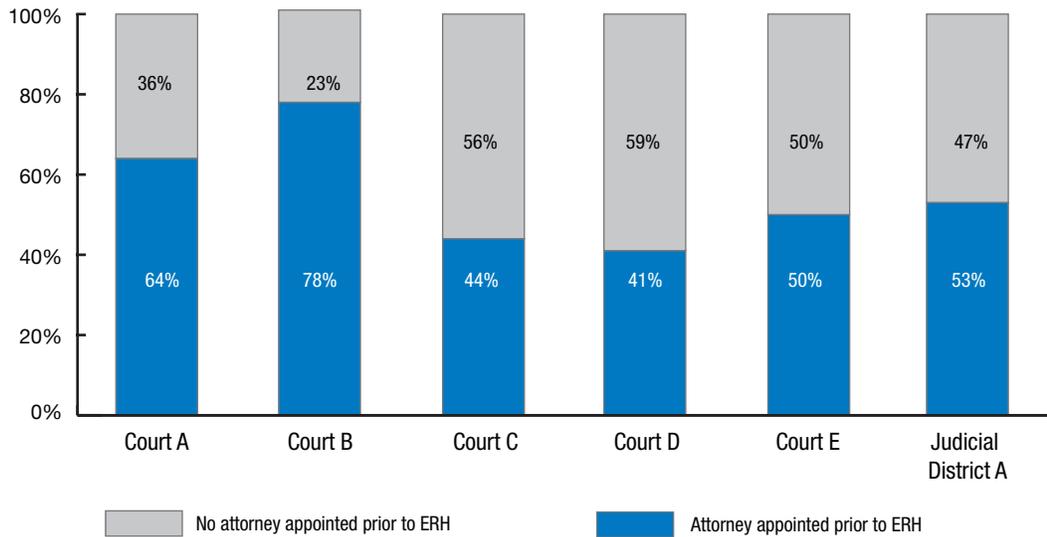
Court	Mother				Father				Total Number of Cases
	Appointed Prior to ERH		Not Appointed Prior to ERH		Appointed Prior to ERH		Not Appointed Prior to ERH		
	Number of Cases	Percent	Number of Cases	Percent	Number of Cases	Percent	Number of Cases	Percent	
A	160	64%	89	36%	80	32%	169	68%	249
B	155	78%	45	23%	90	45%	110	55%	200
C	115	44%	145	56%	65	25%	195	75%	260
D	123	41%	180	59%	39	13%	264	87%	303
E	220	50%	220	50%	112	25%	328	75%	440
Districtwide	773	53%	679	47%	386	27%	1,066	73%	1,452

Note: Percentages may not add up to 100 because of rounding.

Sample 3D–3 analyzes trends in early appointment rates from 2003 through 2006, statewide and for each judicial district. The State made impressive gains in early appointments for mothers, from 19 percent in 2003 to 47 percent in 2006. Judicial Districts C and D both had no early

appointments for mothers in 2003; District C improved to 47 percent in 2006, District D to 37 percent. Early appointments for fathers lagged statewide; the best performance was District E's 33 percent in 2006.

Sample 3D–2. Percentage of Cases With Appointment of Attorney for Mother Prior to Emergency Removal Hearing, by Court, 2006: Judicial District A



Sample 3D–3. Percentage of Cases With Appointment of Parents' Attorneys Prior to Emergency Removal Hearing, by Judicial District, 2003–2006

Judicial District	2003		2004		2005		2006	
	Mother	Father	Mother	Father	Mother	Father	Mother	Father
A	46%	19%	45%	18%	50%	53%	53%	27%
B	0%	0%	5%	1%	18%	7%	34%	16%
C	0%	0%	12%	8%	23%	12%	47%	15%
D	16%	4%	19%	7%	35%	9%	37%	5%
E	34%	23%	27%	22%	48%	29%	65%	33%
Statewide	19%	9%	21%	11%	43%	16%	47%	19%

Note: Percentages may not add up to 100 because of rounding.

The statewide improvements shown in sample 3D–3 suggest that all districts implemented reforms between 2003 and 2006, but the wide range of early appointment rates for both mothers and fathers in 2006 suggests that important differences remain in the practices of the five districts. Although the courts should be commended for steady improvements, it is especially important to find out why District D’s rates for fathers remain so low and determine what reforms are needed.

The chart in sample 3D–4 illustrates trends for Judicial District C, where early appointment of counsel for parents began in 2004. It clearly shows the divergence in trends for mothers and fathers. A chart like this would raise many questions about the reasons for the diverging trends; what is important to note here is how effectively the chart shows the divergence. This type of chart is an excellent tool for bringing issues to the attention of judicial leadership in a district.

In addition to these samples, several other presentations may be useful for this measure. For example, if the measure is expanded to document rates for different types of attorneys (staff, contract, etc.) or appointment times (before the hearing, during the hearing, etc.), bar graphs might be segmented to compare these rates, or the rates might be compared in side-by-side pie charts. Side-by-side pie charts could also show comparisons between a local court and the State as a whole or compare rates for several years.

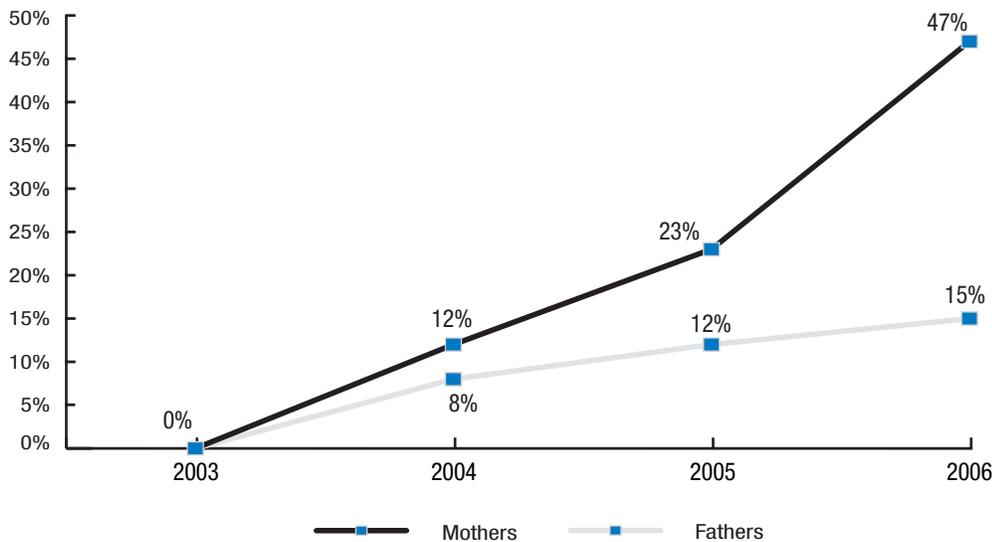
Factors That May Affect Results

State Law Regarding the Early Appointment of Parents’ Attorneys

State law may specify when attorneys are to be appointed for parents. Some laws may require legal assistance at all stages of the case. Because advance appointment of an attorney is necessary for effective representation, such laws could be interpreted to require appointment prior to the emergency removal hearing. Other laws require appointment at the emergency hearing or after the filing of the petition (in effect blocking early appointment). It may, however, be possible to interpret such laws in a way that permits early appointment, or to argue that early appointment actually is necessary under the State constitution, because parents are entitled to effective representation at all critical stages of legal proceedings.

Most conducive to early representation for parents are statutes or local court rules requiring immediate appointment of an attorney as soon as the court is informed that a child has been removed from home and a hearing must be scheduled.⁵

Sample 3D–4. Percentage of Mothers and Fathers With Appointment of Attorney Prior to Emergency Removal Hearing, 2003–2006: Judicial District C



Understanding the Importance of Emergency Removal Hearings and the Role of Parents' Attorneys at Those Hearings

When courts understand the potential benefits of a thorough emergency removal hearing and the role of parents' attorneys in the hearing, they are more likely to take steps to ensure early appointment of counsel. Judges and attorneys must understand the appropriate roles of parents' attorneys in the emergency removal hearing.

Overcoming Administrative Obstacles

There are a number of potential obstacles to the early appointment of parents' attorneys. For example, the court may be in the habit of making appointments during or after the emergency removal hearing. There may not be enough attorneys available to meet with clients on short notice. The court may be reluctant to pay the costs associated with early involvement of parents' attorneys in the litigation process. Finally, judges and court staff may believe (correctly or incorrectly) that appointments cannot occur until parents have been financially screened.

Overcoming these obstacles often requires determination and persistence. Nevertheless, many courts consistently appoint parents' attorneys before emergency removal hearings.

Possible Reforms

If the data from this performance measure indicate room for improvement in providing for early legal representation of parents, the court should consider possible reforms. Specific reforms will, of course, depend on local conditions and the court's analysis of the best procedures for accomplishing this goal. Courts might, for example, consider the following improvements:

- ◆ Support the enactment of a State law requiring appointment of parents' attorneys as soon as a court is notified of a case.
- ◆ Adopt a State or local court rule requiring appointment of parents' attorneys as soon as a court is notified of a case.
- ◆ Establish a local practice of appointing parents' attorneys immediately upon receiving information that an emergency removal hearing will be scheduled.

- ◆ Arrange for the attorney and the parent to meet at the courthouse a few hours before the emergency removal hearing.
- ◆ Revise judicial contracts with attorney organizations to require parents' attorneys to accept appointments and begin their work on the case before the emergency removal hearing.
- ◆ Establish standards of representation specifying immediate actions parents' attorneys must take upon receiving an appointment.

Endnotes

1. "Emergency removal hearing" refers to the hearing that State law dictates must take place shortly after a child is removed from home in an emergency situation. One purpose of the hearing is to give parents the opportunity to seek the immediate return of their child. The emergency removal hearing is variously known as the shelter care hearing, temporary removal hearing, initial hearing, preliminary hearing, detention hearing, and preliminary protective hearing.
2. See National Council of Juvenile and Family Court Judges, *RESOURCE GUIDELINES: Improving Court Practice in Child Abuse and Neglect Cases* (Reno, NV: NCJFCJ, 1995), pp. 40–41.
3. Note, however, that this measure is not intended to address overall representation of parents. *Measure 3J: Continuity of Counsel for Parents* also relates to the quality of representation for parents, as does *Measure 3G: Presence of Advocates During Hearings* (if results are broken down by category of advocate).
4. It is especially important to measure different possible times of appointment for fathers' attorneys. Because it may be difficult to identify the father at the beginning of a case, it may not be possible to appoint an attorney for him before the emergency removal hearing.
5. Increasing numbers of courts are appointing attorneys for parents as soon as the court learns that a child has been removed from home. See *Status Report 2005: A Snapshot of the Child Victims Act Model Court Project* (Reno, NV: NCJFCJ, 2005). Although some courts express the concern that attorneys cannot be appointed until the parents' financial eligibility for court-appointed counsel has been determined, prior financial screening

may not actually be required by State law. Furthermore, the added cost of early appointments reportedly is small. If the court appoints counsel for parents and subsequent screening determines they are not financially eligible for appointed counsel, the parents can choose whether to hire (and pay for) the attorney who represented them at the emergency removal hearing. Most parents accused of abuse or neglect are, in fact, financially eligible for court-appointed counsel, and most who are not financially eligible elect to hire the appointed attorney who represented them in the emergency removal hearing.



Advance Notice of Hearings to Parties

Definition: Percentage of child abuse and neglect cases with documentation that written notice was given to parties in advance of every hearing.

Explanation: This measure shows how often individual parties entitled to notice (including both parents) receive advance written notice of each hearing.

Purpose: To help courts evaluate how consistently they are providing advance written notice of hearings.

In a broader sense, this measure is intended to improve attendance of parties at hearings. Attendance at hearings is important to the quality of litigation, and providing written notice is one of the most important things that courts can do to encourage attendance.

When parties are consistently present at hearings throughout the case, the quality of the litigation improves for the following reasons:

- ◆ Parties can propose actions by the court and either support or oppose actions proposed by others.
- ◆ When parties are consistently present and feel they have participated in court decisions, they may be more likely to comply with court orders.
- ◆ Parties can provide information to judges, helping to ensure the accuracy and completeness of information on which judges base their decisions.
- ◆ Parties are more likely to understand what is happening in court and the actual meaning of court orders, which may make them more likely to comply with the orders.
- ◆ Scheduling of future hearings can be done “on the spot”—more efficiently and with less need for rescheduling.

A party's absence from hearings may not prevent the court from issuing the necessary orders to protect the child. However, failure to notify parties (resulting in absence from hearings) may have more subtle adverse effects on the child, such as:

- ◆ Parties who are absent from hearings may be less likely to seek and obtain visitation rights. (Research has shown the value of visitation to foster children.)¹
- ◆ Parties who are absent from hearings may be less involved in the case, which may interfere with the eventual success of a reunification plan.

- ◆ When parties are absent and, therefore, cannot be questioned during hearings, important records that may be useful in later stages of the litigation (e.g., contested proceedings for reunification, adoption, or legal guardianship) are lost.
- ◆ If reunification fails, the case for termination of parental rights (TPR) or legal guardianship is weakened if parties were not notified of hearings, advised about the case, or offered—on the record—opportunities for services and other assistance.

For related discussions, see *Toolkit Measure 3B: Service of Process to Parties* and *Measure 3H: Presence of Parties During Hearings*.

Implementation Issues

Arguments Against This Measure

Some courts are reluctant to implement this measure, based on arguments such as the following:

- ◆ At the end of each hearing, the court provides verbal notice of the time of the next hearing. Therefore, written notice is not necessary.
- ◆ The court hands out written notice at hearings, so further notice is not necessary.
- ◆ Notifying parties of court hearings and helping them get to court is the responsibility of the child welfare agency, not the court.

Sending advance written notice to parties is necessary even if the court provides verbal or written notices during hearings. Repeated notice helps to ensure that parties will appear at the next hearing. Furthermore, not all parties may be present when notices are provided during hearings. Finally, as with many areas covered by the *Toolkit*

measures, notice to parties should be a responsibility shared by agencies and courts.

Data Collection

One challenge in implementing this measure is the extra effort that may be required to collect the necessary information and enter it into the computerized information system. Many courts do not currently notify parties in writing of hearings in child abuse and neglect cases. Employees in these courts may not be accustomed to entering and maintaining current addresses for parties (as opposed to contact information for the attorneys). Such courts may encounter challenges in capturing all of the information needed for this measure.

Methods of Notice To Be Included in This Measure

Although the basic method of notice is written notice by mail, possible alternatives or additions to this measure can include, for example, verbal notice (possibly provided when the parties are in court or by telephone) or written notice handed out at the end of each hearing.

Verbal Notice

If written notice is required, it is not essential to also report, for purposes of this measure, whether verbal notice was also provided. Although redundant notice of hearings is desirable, courts need to balance the need for specific information and the effort required to obtain and report that information. To report verbal notice, court staff must be especially observant, conscientious, and consistent in entering information at a time when they are likely to be distracted by other duties. Furthermore, if written notice is distributed at the end of each hearing, it is likely that verbal notice was also given—because scheduling the hearing probably involved a discussion in the presence of the parties in open court.

Written Notice at the End of the Hearing

Recording the distribution of a written notice at the end of each hearing would place more modest demands on the court staff compared to documenting verbal notice. The system could be programmed to enter this information automatically when the notice is generated; alternatively, court staff could enter the information on the data entry screen by filling in a check box or using a drop-down list.

Another option is to include information about the next hearing in court orders, combining the court order and the notice form. A disadvantage of this approach, however, is that although it may be relatively easy to consistently complete and distribute notices at the end of each hearing, it may be difficult to achieve the same consistency with court orders (especially for complex hearings).

Rather than having court employees record, for each hearing, whether notices were handed out to all parties present, the court could choose to assume that all preprinted notices were distributed. Although this may be a less reliable indicator, the court may decide it is an acceptable compromise to save time. Of course, an automated solution will be possible only with a relatively sophisticated system that maintains information used for performance measurement in a readily accessible form when the notice is produced.

Mailed Notice

Regardless of whether notice is provided during each hearing, notice by mail is an essential part of this measure. First, redundant notice is especially important in abuse and neglect cases, as discussed earlier. Second, a court's effort to notify parties who are not present at hearings is a critical factor in best practice.

Parties Whose Location Is Unknown

This measure should take into account, but not excuse, situations in which the court does not provide written notice because the whereabouts of a particular party is unknown. When there is no known address for a party, or mail has been returned, this measure should consider notice not to have been provided.

Best practice is for courts to insist that child welfare agencies persist in their efforts to locate missing parties. A high percentage of unknown locations indicates a shortcoming of both the court and the agency and should be reflected in reports for this measure. Reports on failure to notify missing parties might distinguish between parties whose location was known and those whose location was unknown.

Identifying All Persons Who Must Be Notified

Many court information systems record the sending of notices in the register of actions.² However, because register files are very large, extracting notice data from them may

be difficult. In addition, the system may not specify who has been sent notice. Therefore, this measure may require some adaptations of the management information system, even if some of the necessary data are present.

The simplest way to enable the management information system to identify all parties who should be notified of hearings is to include in the list of parties to receive notice only those parties who have been successfully served (see *Measure 3B: Service of Process to Parties*). For parties who have received service of process but have not appeared, courts should provide notice of each subsequent hearing, unless and until the judge orders that such notice is no longer necessary.

Court staff should record in the case management system when a party's location is unknown or changes from known to unknown. This information will make it possible to report separately on failures to notify parties whose location was known and failures to notify those whose location was unknown. It will also help users track and report on efforts to locate missing parties during ongoing litigation (e.g., in TPR proceedings).

Notice to Foster Parents³

Foster parents live with the child on a daily basis and typically have invaluable information for the court. Foster parents also participate in implementation of the case plan. Furthermore, foster parents often become adoptive parents (in fact, most foster children who are adopted are adopted by their foster parents).

Some of the considerations that apply to parents, who are parties and must be notified of hearings (see earlier discussion under "Purpose"), also apply to foster parents, who may or may not be notified of hearings.⁴

Notice to foster parents is addressed separately in *Toolkit Measure 3F: Advance Written Notice of Hearings to Foster Parents, Preadopted Parents, and Relative Caregivers*. A court may instead choose to incorporate notice to foster parents in *Measure 3E*; if so, additional issues arise (see discussion in *Measure 3F*).

Percentage of Cases Versus Percentage of Hearings

This measure is defined as the percentage of cases in which all parties received advance notice of all hearings. An alternative definition is the percentage of *hearings* in which all parties received advance notice. Using hearings

as the basis for the calculation simplifies analysis of the data and makes it possible to report on hearings during any time period (as opposed to reporting only on closed cases). The two approaches are discussed further under "Business Rules" and "Presenting the Data."

Specifying When Notice Is Due

This measure should recognize only notice that is provided sufficiently in advance of each hearing to give the parties a realistic opportunity to attend. Ideally, State laws or court rules should specify a deadline for mailing notices. If such a deadline exists, this measure should reflect it. In the absence of a specified deadline, the measure should use a reasonable timeframe. It is important that courts understand how far in advance of hearings notice is expected.

Notice to Children

In States where children are considered parties, they must receive notice and should be included in this measure. Elsewhere, courts should decide what constitutes best practice with regard to notifying children and reflect that practice in this measure. Ideally, State laws or court rules should specify circumstances in which children should receive notice. Regardless of whether criteria for notifying children are based on legal specifications or best practice, it is important that courts understand the criteria. State statutes or State or local court rules may specify whether this depends on the child's age. Note, however, that a recent change in Federal law requires that the court "consult" with "the child" during permanency hearings.⁵ This requirement has not yet been clarified by Federal regulations or policy.

In any case, some courts have determined that children over a certain age should attend hearings and receive notice, unless a court order specifies otherwise. Analysis of this measure can be customized to reflect this and other definitions of best practice with regard to notifying children.

Notice to Attorneys as Substitute for Notice to Parties

In many types of court proceedings, it is considered sufficient to notify attorneys of future court dates without contacting the parties involved. Attorneys are expected to keep parties informed, and parties are expected to realize the importance of attending. In many child abuse

and neglect cases, however, attorneys for parents and children do not inform their clients of hearing dates and, in particular, do not remind parties as the hearing date approaches. (This problem may be more serious in these cases compared to other case types because (a) attorneys are less accountable to their clients, who do not pay their fees, and (b) there is less risk of reversal for incompetent representation compared to, for example, criminal cases.) Furthermore, parents involved in these cases often have many problems and tend not to be attentive to matters such as hearing dates. Therefore, it is recommended that notice to attorneys *not* be considered a sufficient substitute for notice to the parties themselves. A possible exception would be that notice to children could be made through their attorneys and/or guardians *ad litem*, perhaps based on age.

Procedural Hearings

Because individual parties need not be present at (or notified of) purely procedural hearings, this measure should not report on notices for these types of hearings.⁶ Procedural hearings should be clearly identified as such, and court staff (and possibly judges) may need training in this regard.

Notice for Different Types of Hearings or Parties

A court may want to break down the data for this measure by type of hearing. For example, if a court suspects a problem with permanency hearings, it may want to analyze how often parties receive advance notice of these hearings.

A court that wants to determine specifically *who* is not receiving advance notice may choose to break down the data for this measure by type of party (mothers, fathers, legal guardians, foster parents).

Business Rules

Basic Rules

1. Select a date range for the report.
2. The universe included in this measure is all cases closed within the date range selected. (A)

3. For each case in (A), build a record in a dataset for each party entitled to notice for each hearing, documenting the following information for each hearing: hearing date, party ID, party type, party entitled to notice date, legal notice deadline, notice method of delivery, and notice date.
4. Evaluate the data in (A) and sort the cases into two categories: (B) all parties entitled to notice received mailed written notice in accordance with legal deadlines for every hearing or (C) some parties entitled to notice did not receive mailed written notice in accordance with legal deadlines for some hearings.
5. Compute the percentage of cases in each of these categories by dividing the number of cases in each category by (A).

A note about the business rules: “Notice” refers to a mailed written notice. The types of parties entitled to notice include, but are not necessarily limited to, mothers and fathers; other types of parties may include, for example, legal guardians, foster parents, children above a certain age, and court-appointed special advocate (CASA) volunteers (see “Possible Modifications,” below.) For each hearing, it is necessary to determine whether each party was entitled to notice for that particular hearing (a father may not have been identified before some hearings or a CASA volunteer may have been appointed after the hearing). As noted earlier, the universe of cases in this measure may be based on hearings rather than cases (see “Possible Modifications,” below).

Possible Modifications

1. Report separately by type of party entitled to notice.
2. Report separately by type of hearing.
3. By gathering and analyzing additional data, report separately by age of case at closure, by type of hearing, and/or by method of notice delivery.
4. Define the universe of cases in the report as those for which a specific type of hearing was held during the reporting period, rather than closed cases. (In hearings-based analyses, cases may be opened or closed, as long as the hearings were held during the selected date range. These analyses make it possible for the court to evaluate its recent performance.)
5. Track whether each party’s current location is known; either exclude missing parties from reports, or report separately for that category.

Data Elements

These elements apply specifically to this measure. For elements that apply to all measures, see “Universal Data Elements,” page 7. For definitions of data elements, see appendix D, “Data Element Dictionary,” page 289.

Required Elements

- ◆ Party ID.
- ◆ Party entitled to notice date.
- ◆ Hearing date.
- ◆ Notice date.
- ◆ Notice method of delivery.
- ◆ Legal notice deadline.
- ◆ Case closure date.

Optional Elements

- ◆ Hearing date.
- ◆ Abuse and neglect filing date.
- ◆ Notice method of delivery.
- ◆ Hearing type.
- ◆ Address unknown status date.
- ◆ Party type.

Related CFSR Standards

No Child and Family Services Review standard for State child welfare agencies relates specifically to *Toolkit Measure 3E*.

Reporting the Data

As with other *Toolkit* measures, *Measure 3E* lends itself to a variety of tabular and graphic presentations. State Court Improvement Projects will need presentations that show performance statewide and for each jurisdiction. Individual courts will want to see how their performance compares with that of other courts and with the State as a whole, and also whether their performance has improved or declined over time.

The samples that follow use hypothetical data for a fictitious State to demonstrate how results for this measure might be reported in tables and graphs.

Sample 3E–1 is a basic tabular report for this measure, showing the percentage of cases in which all parties entitled to notice received notice for every hearing and the percentage of cases in which at least one party who was entitled to notice for a particular hearing did not receive it. The data are based on cases closed in 2005 and are compared for the State’s five judicial districts.

Sample 3E–1. Advance Notice of Hearings, by Judicial District, Cases Closed in 2005

Judicial District	Notice Given to All Parties for All Hearings				Total Number of Cases
	Yes		No		
	Number of Cases	Percent	Number of Cases	Percent	
A	121	23%	409	77%	530
B	154	19%	671	81%	825
C	101	23%	339	77%	440
D	22	6%	321	94%	343
E	35	33%	72	67%	107
Statewide	433	19%	1,812	81%	2,245

Sample 3E-2 presents data for one court. This sample compares the percentage of *hearings* in which advance notice was provided versus was not provided for specific types of parties.

Note that the data are based on hearings held during 2006; the actual cases in the sample may be either opened or closed.

It is important to understand the difference between samples 3E-1 and 3E-2. Sample 3E-2 reports rates of successful notification for *each type of party* for all hearings held during a specific timeframe, whereas 3E-1 reports the rate of successful notification of *all parties collectively* for every hearing throughout the life of the case.

In a State where all parties are notified in the vast majority of hearings, the analysis illustrated in sample 3E-1 could distinguish between very good and truly excellent performance. Sample 3E-2, because it analyzes data by type of party instead of for all parties collectively, may be more useful in a State where notice is less consistent. In addition, 3E-2 enables a court to see its performance in notifying specific types of parties.

The bar graph in sample 3E-3 illustrates results from the table in sample 3E-2.

The table in sample 3E-4 presents additional detail for the data from sample 3E-2, breaking down the notification numbers for each type of party in two ways: notification success by notice delivery method, and notification failure by party's location status (address known or unknown).

Note again that the calculations in these samples are based on hearings, not cases.

As in sample 3E-2, 3E-4 shows an overall notification success rate of 82 percent for this court, which means that in 82 percent of the times that a particular party was entitled to receive advance notice of a particular hearing, that party did receive notice—either verbally in court, through a written notice distributed in the courtroom, or by mail. The numbers in sample 3E-4 provide the following additional information for the court:

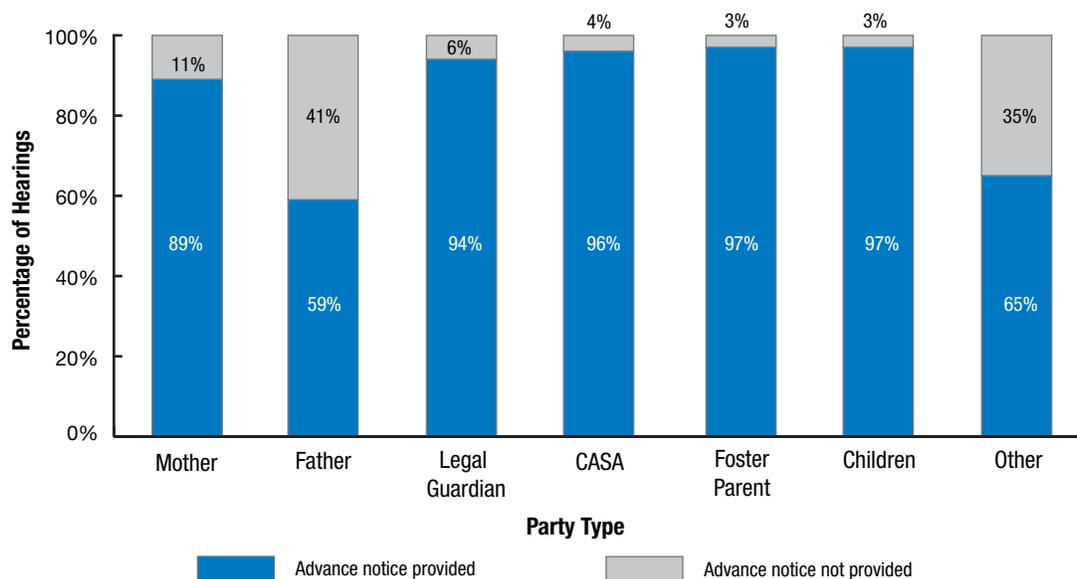
- ◆ Parties who were present in the courtroom usually received dual notice (i.e., both verbal and written) of the next hearing. However, notification was somewhat more common by verbal notice than by written notice, perhaps because some parties leave the courtroom before written notices are distributed.
- ◆ Notification by mail was far less common, perhaps because the court in this example only mails notices to those parties who do not receive written or verbal notice in the courtroom.
- ◆ The numbers of hearings for which parties did not receive advance notice are far larger in the “address unknown” column than in the “address known” column, indicating that lack of a current address usually was the reason the court failed to notify a party of a hearing. The “address known” column may reflect situations in which court staff failed to send a notice even when the party's address was known.

Sample 3E-2. Advance Notice of Hearings Held in 2006, by Party Type: Court X

Party Type	Total Parties	Total Hearings	Advance Notice Provided to Parties			
			Yes		No	
			Number of Hearings	Percent	Number of Hearings	Percent
Mother	280	980	872	89%	108	11%
Father	375	1,312	774	59%	538	41%
Legal guardian	67	235	220	94%	15	6%
CASA*	120	420	403	96%	17	4%
Foster parent	200	700	679	97%	21	3%
Children	100	351	340	97%	11	3%
Other	15	52	34	65%	18	35%
Total	1,157	4,050	3,322	82%	728	18%

*Court-appointed special advocate.

Sample 3E-3. Advance Notice of Hearings Held in 2006, by Party Type: Court X



Sample 3E-4. Advance Notice of Hearings Held in 2006, by Party Type, Notice Method, and Party's Location Status: Court X

Party Type	Total Parties	Total Hearings	Advance Notice Provided to Eligible Parties						
			Yes				No		
			Number of Hearings			Total Percentage of Hearings With Notice Provided	Number of Hearings		Total Percentage of Hearings With Notice Not Provided
			Verbal Notice	Written Notice in Court	Mail Notice		Party's Address Known	Party's Address Unknown	
Mother	280	980	632	632	240	89%	27	81	11%
Father	375	1,312	280	267	494	59%	54	484	41%
Legal guardian	67	235	120	112	100	94%	4	11	6%
CASA*	120	420	155	143	248	96%	4	13	4%
Foster parent	200	700	600	600	79	97%	5	16	3%
Children	100	351	250	75	90	97%	3	8	3%
Other	15	52	20	15	14	65%	5	13	35%
Total	1,157	4,050	2,057	1,844	1,265	82%	102	626	18%

*Court-appointed special advocate.

It is also possible to mine additional information from the table in sample 3E–4. For example, because it is this court’s practice to mail notices only when parties do not receive verbal or written notices in court, the fact that the court mailed 240 notices to mothers suggests that mothers were absent from court in 240 out of the 980 hearings, or 24 percent of the time. Overall, parties may have been absent in 1,265 out of 4,050 hearings, or 31 percent of the time.

Factors That May Affect Results

Judges’ and Attorneys’ Attentiveness to Notification Issues

Court staff may be tempted to “cut corners” and not always provide advance written notice of hearings (e.g., not consistently mailing notices to parties who were absent from the most recent hearing). Judges and attorneys need to pay close attention to notification practices and insist on consistent written notification.

Clarity and Specificity of State Law Regarding Notice to Parties

Although any judge or attorney understands that parties must be notified in advance of hearing dates and times, some subtleties regarding notice are less widely understood. For example, if a parent missed the last hearing, is that parent entitled to notice of the next hearing? If a parent failed to appear at the adjudication, is that parent entitled to notice of later disposition, review, and permanency hearings? Are some, or all, putative fathers entitled to notice of each hearing? State laws or court rules may not clearly answer such questions.

Judges and attorneys may also have questions regarding *how* notice must be provided. Is it sufficient to provide verbal notice in court of the time and place of the next hearing? Precisely what information must be included in that notice? Is it sufficient to provide notice of hearings to parents’ attorneys rather than the parents themselves? Must notices use a particular form or language? Again, State laws or court rules may not address these issues.

Finally, State law may or may not require redundant notice for parties in child abuse and neglect cases. Because of their life situations, parents in these cases often require repeated assistance from the court and the child welfare agency to be clear about the court process, what is

expected of them, and when they should appear in court. Redundant notices of hearings, like reminders of medical appointments, help to ensure that parents are present in court when they need to be. Maintaining a record of these notices also shows that parties have had ample opportunity to attend if they choose to do so.

Judges’ and Attorneys’ Appreciation of the Importance of Parties’ Presence at Hearings

Many judges and attorneys do not fully understand the importance of securing the presence of all parties at all substantive hearings. The earlier discussion of the purpose of this measure explains how the parties’ presence improves the quality of abuse and neglect litigation and how their absence may adversely affect outcomes for the child.

Possible Reforms

If the data from this performance measure indicate room for improvement in notifying parties of hearings, the court should consider possible reforms. Specific reforms will, of course, depend on local conditions and the court’s analysis of the causes of failure to notify parties. A court might, for example, consider the following improvements:

- ◆ Support a State law or adopt a State or local court rule setting forth specific requirements for advance notice of hearings. Require redundant notice (i.e., verbal and written notice, when possible, at the end of each hearing and written notice shortly before each hearing).
- ◆ Incorporate notice of the next hearing in the court order. (This step is practical only if court orders are consistently sent to the parties.) Alternatively, develop notice forms. If possible, automatically generate a computerized form (that already includes basic case information) for each hearing. The computerized form could have blanks for the next hearing’s date, time, and type, and could also include a brief generic explanation of hearing types.
- ◆ Require, as part of the court order, judicial findings regarding which parties were present at each hearing and whether absent parties had received written advance notice of the hearing. Specify whether parties were served written notice in court and by mail.
- ◆ In judicial and attorney training programs, include information regarding the importance of advance

notification of hearings and the steps judges and attorneys should take to ensure proper notification.

- ◆ Require and measure court notification of foster parents regarding the time, date, and location of court hearings. (See earlier discussion of foster parent notification.)
- ◆ Clarify practices regarding when notice is to be provided for children. For example, a court rule might require notification of all children over a certain age unless the judge specifically orders otherwise.
- ◆ Require that notice of hearings be provided to parties rather than only to attorneys for parties.

Endnotes

1. L.M. McWey and A.K. Mullis, “Improving the Lives of Children in Foster Care: The Impact of Supervised Visitation,” 53 *Family Relations* 293 (2004).
2. The “register of actions” usually is a list of official documents, hearings, and court orders, including dates, and is called a “docket” in some courts.
3. Federal law [42 U.S.C. § 675(5)(G) as amended by Public Law 109–239, § 8(a) (2006)] actually requires notice not only of foster parents, but also of “preadoptive parents” and “relative caregivers.” For the sake of brevity, however, in this measure we refer only to notice to foster parents. Note that preadoptive parents caring for children nearly always are also foster parents (assuming the term “preadoptive parents” refers to persons actually caring for the child) and, in addition, relative caregivers who are not also foster parents generally have custody or guardianship of the child and

therefore are independently entitled to notice as parties. Most State laws follow the language of the Federal law and also require notice to preadoptive parents and relative caregivers.

4. Although Federal law [42 U.S.C. § 675(5)(G) as amended by Public Law 109–239, § 8 (a) (2006)] and most State statutes require that foster parents be notified of court hearings and have the opportunity to be heard, many courts and child welfare agencies do not follow through in practice.
5. 42 U.S.C. § 675(5)(C)(iii), as amended by Public Law 109–171 (2006)]
6. “Procedural hearings” refers to hearings in which the court may issue orders regarding the court process itself (i.e., the “mechanics” of the process). For example, such hearings may address admissibility of evidence, pretrial exchange of information (discovery), or how a forthcoming trial will be organized. By contrast, in nonprocedural (i.e., substantive) hearings, the court may issue orders directing parties to take (or refrain from taking) specific actions, or orders otherwise affecting the rights of the parties outside of court. Examples of substantive hearings include emergency removal, disposition, review, and permanency hearings.

Although Federal law does not explicitly distinguish between procedural and substantive hearings, it seems sensible for courts and agencies to make the distinction in considering their notification practices. For the relevant Federal statutory language, see 42 U.S.C. § 675(5)(G), as amended by Public Law 109–239, § 8(a) (2006).

Advance Written Notice of Hearings to Foster Parents, Preadoptive Parents, and Relative Caregivers



Definition: Percentage of child abuse and neglect cases with documentation that written notice was given to foster parents, preadoptive parents, and relative caregivers in advance of every hearing for which they were entitled to notice.

Explanation: This measure shows how often foster parents, preadoptive parents, and relative caregivers receive advance written notice of each nonprocedural hearing for which they are entitled to receive notice.

Purpose: To help courts evaluate how consistently they are providing advance written notice of hearings to foster parents, preadoptive parents, and relative caregivers.

In a broader sense, this measure is intended to encourage courts to notify foster parents, preadoptive parents, and relative caregivers of hearings. Once courts have gathered data on notification consistency, they are encouraged to collaborate with child welfare agencies to develop effective means for promoting foster parents' attendance at hearings. Although notification is not the only thing courts do that affects foster parents', preadoptive parents', and relative caregivers' attendance at hearings, notification is essential.¹

Having foster parents, preadoptive parents, and relative caregivers present at hearings is important to the case because foster parents live with the child on a daily basis and typically have invaluable information for the court. Their input helps to ensure the accuracy and completeness of the information on which judges base their decisions. In addition, preadoptive parents and relative caregivers who attend hearings are more likely to understand what is happening in court and are in a better position to help implement the judge's orders. Furthermore, preadoptive parents and relative caregivers often become adoptive parents (most foster children who are adopted are adopted by foster parents).²

Implementation Issues

Arguments Against This Measure

Some courts may be reluctant to implement this measure because they feel that notifying foster parents, preadoptive parents, and relative caregivers of hearings is the responsibility of the child welfare agency, not the court. Although legally this responsibility may fall to the agency and not

the court, the more important consideration is that, for whatever reason, foster parents, preadoptive parents, and relative caregivers usually are not present at hearings.³ As with many areas covered by *Toolkit* measures, notice to foster parents, preadoptive parents, and relative caregivers should be a responsibility shared by agencies and courts.

Data Collection

One challenge in implementing this measure is the extra effort that may be required to collect the necessary information and enter it into the computerized information system. Currently, most judicial information systems do not store information about whether (and when) notice of hearings is provided to foster parents, preadoptive parents, and relative caregivers, and few court employees are accustomed to entering such information.

Methods of Notice To Be Included in This Measure

Although the basic method of notice is written notice by mail, possible alternatives or additions to this measure can include, for example, verbal notice (possibly provided when the parties are in court or by telephone) or written notice handed out at the end of each hearing. It is important to note that because foster parents, preadoptive parents, and relative caregivers typically are not required or expected to come to court and because Federal policy requires such notice only for review and permanency hearings held by the court,⁴ foster parents, preadoptive parents, and relative caregivers often will not be present in court to receive notice.

Identifying Foster Parents, Preadoptive Parents, and Relative Caregivers

To notify foster parents, preadoptive parents, and relative caregivers, the court must first obtain their names and addresses from the child welfare agency. Many agencies currently do not provide this information. An agency may be concerned that some biological parents might get access to their addresses from the court file and then harass or interfere with the them.⁵

When the court provides written notice of a hearing, the notice generally must appear in the court record. The content of the court record is available to parents and their attorneys. Thus, to avoid giving biological parents access to foster parents', preadoptive parents', or relative caregivers' addresses, the court must ensure that any copies of the notice sent to them are kept in a paper file with addresses redacted or addresses not printed on the file copy. Online access to addresses is easier to control with the security available through automated systems. Alternatively, agencies and courts may use notice forms that do not include the names or addresses of foster parents, preadoptive parents, or relative caregivers.

To determine who meet the definitions of foster parents, preadoptive parents, and relative caregivers, we recommend that courts rely on child welfare agency definitions. It is worth noting that the categories of preadoptive parents and relative caregivers are not highly significant: First, preadoptive parents are nearly always also foster parents (assuming this term refers to persons actually caring for the child); second, relative caregivers who are not also foster parents generally have custody or guardianship and are therefore are full parties to the case, who are independently entitled to notice. Likewise, courts must rely primarily on child welfare agencies to identify persons serving in those capacities.

Specifying When Notice Is Due

This measure should recognize only notice that is provided sufficiently in advance of each hearing to give the foster parents, preadoptive parents, and relative caregivers a realistic possibility to attend. If State laws or court rules specify a deadline for mailing notices, this measure should reflect that deadline. In the absence of a specified deadline, the measure should use a reasonable timeframe.

Hearings for Which Notice Is Required

Because foster parents, preadoptive parents, and relative caregivers not having custody need not be present at (or notified of) purely procedural hearings, this measure should not report on notices for these types of hearings.⁶ Procedural hearings should be clearly identified as such, and court staff (and possibly judges) may need training in this regard.

As noted above, Federal policy interpreting the recent Federal statutory amendment states that notice to foster parents, preadoptive parents, and relative caregivers is required only for review and permanency hearings. Some States have chosen, however, to require such notice at all nonprocedural hearings where children are placed in foster care.

Business Rules

Basic Rules

1. Select a date range for the report.
2. The universe included in this measure is all cases closed within the date range selected. (A)
3. For each case in (A), build a record in a dataset for foster parents, preadoptive parents, and relative caregivers entitled to notice for each nonprocedural hearing, documenting the following information for each hearing: hearing date, party ID, party type, party entitled to notice date, legal notice deadline, notice method of delivery, and notice date.
4. Evaluate the data in (A) and sort the cases into two categories: (B) foster parents, preadoptive parents, and relative caregivers entitled to notice received mailed written notice in accordance with legal deadlines for every hearing or (C) some foster parents, preadoptive parents, and relative caregivers entitled to notice did not receive mailed written notice in accordance with legal deadlines for some hearings.
5. Compute the percentage of cases in each of these categories by dividing the number of cases in each category by (A).

A note about the business rules: "Notice" refers to a mailed written notice.

Possible Modifications

1. By gathering and analyzing additional data, report separately by age of case at closure, by type of hearing, and/or by method of notice delivery.
2. Define the universe of cases in the report as those for which a specific type of hearing was held during the reporting period, rather than closed cases. (In hearings-based analyses, cases may be opened or closed, as long as the hearings were held during the selected date range. These analyses make it possible for the court to evaluate its recent performance.)
3. Calculate notice to foster parents, preadoptive parents, and relative caregivers for different hearing types.
4. Calculate notice to foster parents, preadoptive parents, and relative caregivers only for review and permanency hearings.

Data Elements

These elements apply specifically to this measure. For elements that apply to all measures, see “Universal Data Elements,” page 7. For definitions of data elements, see appendix D, “Data Element Dictionary,” page 289.

Required Elements

- ◆ Party ID.
- ◆ Party type (foster parents, preadoptive parents, and relative caregivers).
- ◆ Party entitled to notice date.
- ◆ Hearing start date.
- ◆ Notice date.

- ◆ Legal notice deadline.
- ◆ Case closure date.

Optional Elements

- ◆ Abuse and neglect petition date.
- ◆ Notice method of delivery.
- ◆ Hearing type.

Related CFSR Standards

No Child and Family Services Review standard for State child welfare agencies relates specifically to *Toolkit Measure 3F*.

Reporting the Data

As with other *Toolkit* measures, *Measure 3F* lends itself to a variety of tabular and graphic presentations. The two samples that follow use hypothetical data for a fictitious State to demonstrate how results for this measure might be reported in tables and graphs.

Samples 3F–1 and 3F–2 both report basic findings for the measure—the percentage of cases in which foster parents, preadoptive parents, and relative caregivers did versus did not receive written notice for every nonprocedural hearing—for individual courts in one judicial district.

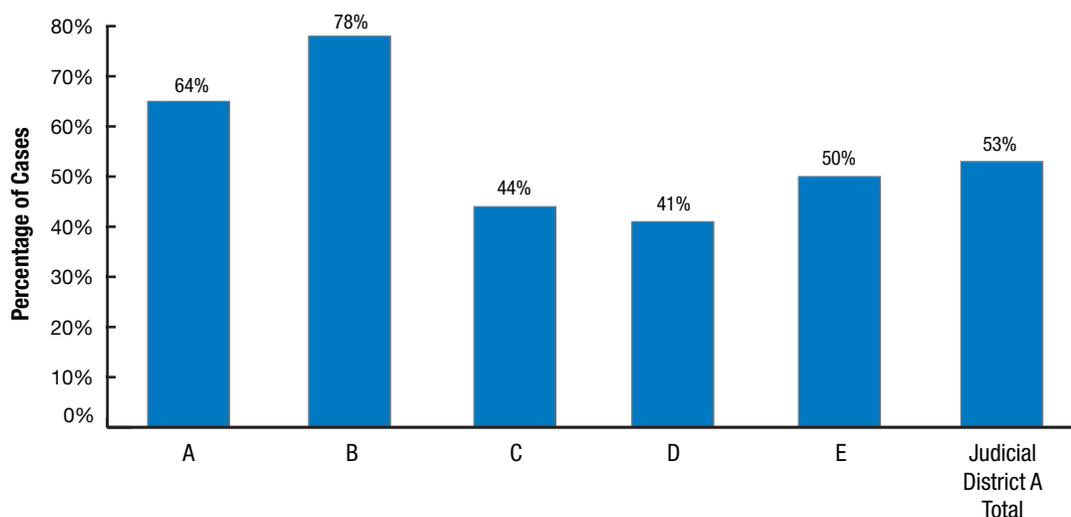
In addition to these samples, tables, bar graphs, and pie charts can be used to show how different districts compare to each other and to the State as a whole. Trend lines can be used to illustrate performance over time. See other measures for examples.

Sample 3F–1. Advance Notice of Hearings to Foster Parents, Preadoptive Parents, and Relative Caregivers, by Court, Cases Closed in 2006: Judicial District A

Court	Notice Provided to Foster Parents for All Hearings				Total Number of Cases
	Yes		No		
	Number of Cases	Percent	Number of Cases	Percent	
A	160	64%	89	36%	249
B	155	78%	45	23%	200
C	115	44%	145	56%	260
D	123	41%	180	59%	303
E	220	50%	220	50%	440
Districtwide	773	53%	679	47%	1,452

Note: Percentages may not add up to 100 because of rounding.

Sample 3F–2. Advance Notice of Hearings to Foster Parents, Preadoptive Parents, and Relative Caregivers, by Court, Cases Closed in 2006: Judicial District A



Factors That May Affect Results

Judges' Appreciation of the Importance of Foster Parents, Preadoptive Parents, and Relative Caregivers' Presence at Hearings

Judges who understand why it is important for foster parents, preadoptive parents, and relative caregivers to be present in court are more likely to require notice to them.

Attentiveness to Notification of Foster Parents, Preadoptive Parents, and Relative Caregivers

If a court does not recognize its responsibility for notifying foster parents, preadoptive parents, and relative caregivers of hearings, it is unlikely to communicate the importance of timely notice to court staff and child welfare agency caseworkers, who in turn may not make the extra effort required to notify those who did not attend the most recent hearing. Judges, child advocates, and agency administrators and supervisors all need to share responsibility for ensuring notification of them by paying close attention to notification practices and insisting that court staff and caseworkers consistently provide timely notice.

Clarity and Specificity of State Law Regarding Notice to Foster Parents, Preadoptive Parents, and Relative Caregivers

Judges and attorneys may have questions regarding *how* notice should be provided to foster parents, preadoptive parents, and relative caregivers. For example, is it sufficient to provide verbal notice in court of the time and place of the next hearing? For reasons discussed above, we recommend notice by mail as well as verbal and written notice at hearings.

Other questions are precisely what information must be included in the notice? Must notices use a particular form or language? State laws may or may not address these issues, and they should be addressed in forms or court rules.

Judicial Workloads

Because it takes time to supervise the consistent provision of advance notice to foster parents, preadoptive parents, and relative caregivers, judicial workloads may affect the results for this measure.

Possible Reforms

If the data from this performance measure indicate room for improvement in notifying foster parents, preadoptive parents, and relative caregivers of hearings, the court should consider possible reforms. Specific reforms will, of course, depend on local conditions and the court's analysis of the causes of failure to notify foster parents, preadoptive parents, and relative caregivers. A court might, for example, consider the following improvements:

- ◆ Introduce a State law or local court rule setting forth specific requirements for notifying foster parents, preadoptive parents, and relative caregivers of hearings.
- ◆ Incorporate notice of the next hearing in the court order. (This step is practical only if court orders are consistently sent to the parties.) Alternatively, develop notice forms. If possible, automatically generate a computerized form (that already includes basic case information) for each hearing. The computerized form could have blanks for the next hearing's date, time, and type, and could also include a brief generic explanation of hearing types.
- ◆ In judicial and attorney training programs, include information regarding the importance of notice to foster parents, preadoptive parents, and relative caregivers and the steps judges and attorneys should take to ensure proper notification.
- ◆ Analyze judicial workloads and use the results of this analysis to improve scheduling practices so judges have more time to attend to matters such as notification of foster parents, preadoptive parents, and relative caregivers.

Endnotes

1. Although Federal law [42 U.S.C. § 675(5)(G), as amended by Public Law 109–239, § 8(a) (2006)] and many State statutes require that foster parents, preadoptive parents, and relative caregivers be notified of court hearings and have the opportunity to be heard, many courts and child welfare agencies do not follow through in practice.
2. U.S. Department of Health and Human Services, Administration for Children and Families, Administration on Children, Youth and Families, Children's Bureau, *Interim Estimates for FY 2003 as of June 2006 (10)*, www.acf.hhs.gov/programs/cb.

3. U.S. Department of Health and Human Services, Administration for Children and Families, Administration on Children, Youth and Families, Children's Bureau, *Findings From the Initial 2001–2004 Child and Family Services Reviews*, www.acf.hhs.gov/programs/cb. In many States, child welfare agencies, as opposed to courts, are required by law to notify foster parents, preadoptive parents, and relative caregivers of hearings. Even in those States, however, foster parents, preadoptive parents, and relative caregivers report that they do not consistently receive notices from agencies.

Although courts in many States are not legally required to notify foster parents, preadoptive parents, and relative caregivers of hearings, a recent amendment to Federal law, 42 U.S.C. § 638(b), as amended by Public Law 109–239, § 8(b) (2006), now calls on courts to at least ensure that notice is provided. Under this amendment, the adoption of a court rule requiring notice to foster parents, preadoptive parents, and relative caregivers is a condition of maintaining the courts' eligibility to receive Federal funds for the Court Improvement Project.

4. U.S. Department of Health and Human Services, Administration for Children and Families, Administration on Children, Youth and Families, Children's Bureau, *Federal Child Welfare Policy Manual, TITLE IV–E, Foster Care Maintenance Payments Program, State Plan/Procedural Requirements*, § 8.3C.2b, Case review system, notice and right to be heard.
5. Although it is generally good practice for biological parents to have the addresses of foster parents, preadoptive parents, and relative caregivers, some biological parents involved in child abuse and neglect cases (e.g., those whose backgrounds include violent criminal offenses or mental health problems such as serious conduct disorders) should not be trusted with such information.
6. "Procedural hearings" refers to hearings in which the court may issue orders regarding the court process itself (i.e., the "mechanics" of the process). For example, such hearings may address admissibility of evidence, pretrial exchange of information (discovery), or how a forthcoming trial will be organized. By contrast, in non-procedural (i.e., substantive) hearings, the court may issue orders directing parties to take (or refrain from taking) specific actions, or orders otherwise affecting the rights of the parties outside of court. Examples

of substantive hearings include emergency removal, disposition, review, and permanency hearings.

Although Federal law does not explicitly distinguish between procedural and substantive hearings, it seems sensible for courts and agencies to make the distinction in considering their notification practices. For the relevant Federal statutory language, see 42 U.S.C. § 675(5)(G), as amended by Public Law 109–239, § 8(a) (2006).

Presence of Advocates During Hearings

Definition: Percentage of child abuse and neglect cases in which legal counsel for the government or other petitioner and for other parties who have been served is present at every hearing.

Explanation: This measure shows how consistently advocates are present in court during hearings. The measure includes the government, the petitioner, and other parties who have received service of process. It does not include potential parties who have not been served (e.g., a missing parent), because the court generally does not appoint counsel for such parties.¹ (See *Toolkit Measure 3B: Service of Process to Parties*.)

Purpose: To help courts evaluate whether the government, the petitioner, and other parties who have been served are consistently represented by advocates at hearings.

It is important for advocates to participate in court hearings throughout the litigation for a number of reasons:

- ◆ **The stakes are high.** Hearings affect the immediate lives and the futures of children and their families. At stake are the well-being of the child and the survival of the family as a unit. Because the stakes are so high, each party must be represented by a well-trained advocate.
- ◆ **Advocates have a major impact during hearings.** Advocates decide which facts to present to the judge, thus largely determining the facts on which the judge's decision is based. Advocates also help to frame the arguments and issues for the judge. Advocates who are attorneys decide what laws, legal principles, and legal arguments to assert.
- ◆ **Parties need knowledgeable representation.** Without counsel, many important facts known to parties—as well as parties' points of view—may not be heard. Parents may not be fully literate, children and youth cannot advocate effectively for themselves, and child welfare agency caseworkers often can be overwhelmed by opposing counsel. In addition, parties may not understand the relevance or appreciate the importance of particular facts or may not know how to present the facts effectively.
- ◆ **Advocates make valuable contributions to judicial decisions.** To make the best decisions for children and families, judges need to hear balanced and complete facts and legal arguments. Advocates can provide the needed facts and clearly articulate the parties' points of view. They can also address the challenging legal

issues that often arise in abuse and neglect cases, such as the rights of unwed and noncustodial fathers; the rights to notice, confrontation, and cross-examination of witnesses (in hearings where rules of evidence do not apply); Federal requirements affecting child abuse and neglect; and State and Federal confidentiality and privacy laws and rules.

- ◆ **Advocates need to be present in court to build or shape the record.** Important facts may be introduced during review hearings and permanency hearings. Parties may make critical admissions, and evidence may be presented regarding services to families. When elicited in earlier hearings, this type of information can be used (if necessary) to impeach witnesses who later testify to the contrary. Advocates can rely on such information to narrow the factual issues (through stipulation) for later hearings. Parties can propose factual findings or instructions to parties, intending to ask the judge to take judicial notice (e.g., of the court-approved case plan and the court order directing the parties to comply with the case plan) later in the process.
- ◆ **Caseworkers may be barred from appearing without counsel.** A caseworker who represents an agency in court without counsel may be engaging in the unauthorized practice of law. At least one State supreme court has so held. Because of laws against the unauthorized practice of law, some judges have barred caseworkers from appearing without counsel.

For related discussions of the importance of involving children's advocates and parents' attorneys in the emergency removal hearing, see *Toolkit Measure 3C: Early*



Appointment of Advocates for Children and Measure 3D: Early Appointment of Counsel for Parents.

Implementation Issues

Need for This Measure

Some courts may feel that this measure is unnecessary because they already know how often attorneys appear at hearings. In many courts, either all types of attorneys are nearly always present in court, or certain categories of attorneys routinely do not appear in certain types of hearings. In either case, implementing this measure may not be worth the effort, especially if a court's performance in this area is already obvious to all.

However, in States that are creating statewide judicial performance measurement, this measure can be invaluable, because presence of advocates in hearings may vary from court to court (or even among judges within a county or judicial district). Furthermore, this measure can help a court see which types of hearings advocates miss most often and which types of advocates most often miss hearings.

Which Hearings To Include in This Measure

It may not be necessary for all advocates to attend isolated types of hearings (e.g., certain uncontested motions). However, court systems should think carefully before excluding a specific type of hearing from this measure. All substantive hearings should be included whether contested or not; these include emergency removal, adjudication, disposition, review, permanency, and termination of parental rights (TPR) hearings. Most procedural hearings should also be included.

Presence of Advocates for Parties Who Do Not Receive Service of Process

It is recommended that this measure not count the presence or absence of advocates for parties who have not yet been served or have not become active parties in the litigation. Courts generally are not expected to appoint counsel for parties not served, nor should they be.² For calculations of how consistently parties receive service of process, see *Measure 3B: Service of Process to Parties*.

Of course, some parties do not require service of process. The petitioner becomes a party by filing the petition. Usually, the government files the petition and thereby becomes a party. In those relatively unusual cases where private individuals file abuse or neglect petitions, the government is either served or otherwise joined as a party. In any case, because it is a party, the government should be included in this measure, and it is important that the government be represented by counsel.

Parents Who Waive the Right to Counsel or Are Financially Ineligible for Appointed Counsel

Another question is whether, for purposes of this measure, parent's counsel should be considered absent from court if a parent has waived the right to court-appointed counsel. A court may feel that such absences should be excluded from the measure because the parent has declined representation. However, because waivers of counsel may be encouraged by some courts (and therefore prevalent), excluding them from this measure is not recommended. Instead, it is recommended that the measure be enhanced to calculate separately absences attributable to waiver of counsel.

Courts may also be interested in the proportion of parents who are found to be financially ineligible for appointed counsel.³ It is recommended that courts consider calculating separately absences of counsel for parents who were financially ineligible for appointed counsel.

The reason for recommending that waivers and financial ineligibility not be excluded from this measure is that the percentage of parents who are not represented by legal counsel—for these reasons—may reflect on the quality of court performance. Some judges and court staff discourage representation, whereas others encourage it. Some jurisdictions have stricter financial screening requirements than others; in some States, requirements vary from county to county. A high rate of representation generally reflects a high level of court performance.

Entering the Data

Data entry for this measure may require additional work for court staff. In every hearing, someone must observe and record whether the advocate for each party is present. In many jurisdictions, court staff already routinely record this information in the minute order (a short summary of the

hearing prepared by court staff) or the official court order. The challenge is to modify the automated management information system in a way that avoids duplication of effort. Courts may need to work with information systems personnel to develop the most efficient and effective data entry method.⁴

If court staff do not already enter such information as part of their duties, persuading them to do so may present a challenge. As with other performance measures, court administrators must be committed to ensuring that the necessary information is consistently and accurately recorded.

Reporting on Different Categories of Advocates

It is important for judges and court administrators to know whether certain categories of advocates are absent from hearings more often than others. Having this kind of information makes it easier to diagnose and correct a problem.⁵ Advocates may be categorized, for example, as private attorneys, court-appointed attorneys, government attorneys, court-appointed special advocate (CASA) volunteers, or guardians *ad litem* (GALs). Advocates may also be categorized according to the type of party they represent: mothers, fathers, legal guardians, child welfare agencies, and children.

Percentage of Cases Versus Percentage of Hearings

This measure is defined as the percentage of cases in which parties are represented by legal counsel at every hearing. An alternative definition is the percentage of *hearings* in which these advocates are present. If advocates are frequently absent, the percentage of cases in which advocates were present at all hearings will be extremely low, and a hearings-based calculation may produce more informative results. If, on the other hand, advocates are rarely absent, a hearings-based percentage will be very high, and a case-based calculation may be more informative. Another consideration is that a hearings-based calculation makes it possible to report on hearings during any time period (as opposed to reporting only on closed cases).

Reporting on Different Categories of Hearings

In many courts, advocates are most often absent from particular categories of hearings, such as emergency removal hearings or review hearings. Reporting separately on categories of hearings can help courts and the State court system diagnose why legal representation is lacking in these hearings.

Cross-Tabulating Categories of Advocates and Hearings

The ability to determine which categories of advocates consistently attend or miss specific categories of hearings can be helpful. Although this level of detail may not be necessary in routine reports, it is useful to build into the system the capacity to generate such reports as the need arises.

Identifying Individual Advocates

This measure may also be enhanced to identify individual advocates present at hearings. This will make it possible to determine the percentage of attorneys who neither attend hearings nor secure substitutes to attend on their behalf. (Note, however, that this measure differs from *Measure 3I: Continuity of Advocates for Children* and *Measure 3J: Continuity of Counsel for Parents*.) This would also make it possible for courts to identify attorneys who are frequently absent and to reprimand them or drop them from appointment lists.

Business Rules

Basic Rules

1. Select a date range for the report.
2. The universe included in this measure is all cases closed within the date range selected. (A)
3. For each case in (A), build a record for each hearing, documenting whether legal counsel was present for each party served prior to that hearing. Then sort the cases in (A) into two categories: (B) all parties were represented by counsel at every hearing or (C) some parties were not represented by counsel at some hearings.

4. Compute the percentage of cases in each of these categories by dividing the number of cases in each category by (A).

A note about the business rules: Exclude from the record for each hearing any party (other than the government and the petitioner) who had not received service of process at the time of the hearing. But for emergency removal hearings occurring prior to adjudication, count attorneys for all parties served prior to adjudication, whether or not such parties were served prior to the emergency removal hearing.

Possible Modifications

1. Report on how consistently the three main categories of advocates (attorneys for parents, attorneys for the government,⁶ and advocates for children) were present at all hearings. In addition, report detail for different categories of children’s advocates (e.g., distinguish between children’s attorneys and nonattorney representatives such as GALs or CASA volunteers), and distinguish between mothers’ and fathers’ attorneys.
2. In addition to, or instead of, basing calculations on the percentage of cases in which advocates were present for all parties (or in which different categories of advocates were present) at all hearings, base calculations on the percentage of hearings in which all advocates (or different categories) were or were not present. (In hearings-based analyses, cases may be opened or closed, as long as the hearings were held during the selected date range. These analyses make it possible for the court to evaluate its recent performance.)
3. Report separately on specific categories of hearings (e.g., emergency removal, adjudication, disposition, review, permanency, TPR). The universe for the calculation could be either all hearings in the selected date range, or all cases closed in the selected date range.
4. Report on the percentages of specific categories of hearings in which specific categories of advocates are present.
5. Report separately by demographic categories, such as child’s race/ethnicity and age.
6. Report separately on absence of representation for parties who have waived their right to court-appointed counsel and/or parties found to be financially ineligible for court-appointed counsel. (The alternative of excluding such absences from the calculation is not recommended.)
7. By gathering data on attendance at hearings by individual advocates, report on the percentage of advocates who neither attend hearings nor send substitutes on their behalf.

Data Elements

These elements apply specifically to this measure. For elements that apply to all measures, see “Universal Data Elements,” page 7. For definitions of data elements, see appendix D, “Data Element Dictionary,” page 289.

Required Elements

- ◆ Case closure date.
- ◆ Party ID.
- ◆ Party type.
- ◆ Service of process date.
- ◆ Advocate ID.
- ◆ Appointment of advocate date-time.
- ◆ Advocate-party link.
- ◆ Advocate present at hearing.
- ◆ Hearing date.

Optional Elements

- ◆ Advocate type.
- ◆ Hearing type.
- ◆ Waiver of counsel.
- ◆ Financial ineligibility of parents for appointed counsel.

Related CFSR Standards

No Child and Family Services Review standard for State child welfare agencies relates specifically to *Toolkit Measure 3G*.

Reporting the Data

As with other *Toolkit* measures, *Measure 3G* lends itself to a variety of tabular and graphic presentations. State Court Improvement Projects will need presentations that show performance statewide and for each jurisdiction. Individual courts will want to see how their performance compares with that of other courts and with the State as a whole, and

also whether their performance has improved or declined over time.

The samples that follow use hypothetical data for a fictitious State to demonstrate how results for this measure might be reported in tables and graphs.

Sample 3G–1 is a basic tabular report for this measure, showing the percentage of cases in which all parties were versus were not represented by legal counsel at every hearing. The data are based on cases closed in 2006 and are compared for the State’s six judicial districts.

Although the percentage of cases with full representation may seem low, such a conclusion could be misleading. In fact, with the exception of Judicial Districts E and F, the percentages in the table suggest the following:

- ◆ No categories of hearings or parties are consistently lacking legal representation (if either were the case, the percentages would be much lower).
- ◆ It is likely that in any given hearing, all parties were represented.

To understand why this is the case, assume the following is true for Judicial District F: All parties except the government were represented 100 percent of the time. Government attorneys were present 100 percent of the time in every type of hearing except for emergency removal hearings where, as a matter of longstanding practice, they were never present. In 96 percent of the cases brought to court, an emergency removal hearing is held, because the child welfare agency seldom brings cases to court without first removing a child from home. Therefore, because most cases have an emergency removal hearing, and because

in these hearings one party (the government) is unrepresented, it follows that in less than 4 percent of cases are all parties represented in all hearings in the case.

This example demonstrates how a court can have a very low percentage for this measure even when all parties are represented in the vast majority of hearings. As noted earlier, reporting on the percentage of cases with full representation at every hearing (as opposed to the percentage of hearings with full representation) is most useful in States where attendance by counsel is generally high, as in this hypothetical example. In such States, a case-based measure can serve as a sensitive indicator of the performance of different courts or districts. If a hearing-based measure were used, the percentages in the table would be much higher (and more favorable) but less informative.

The bar graph in sample 3G–2 illustrates the data from the table in sample 3G–1.

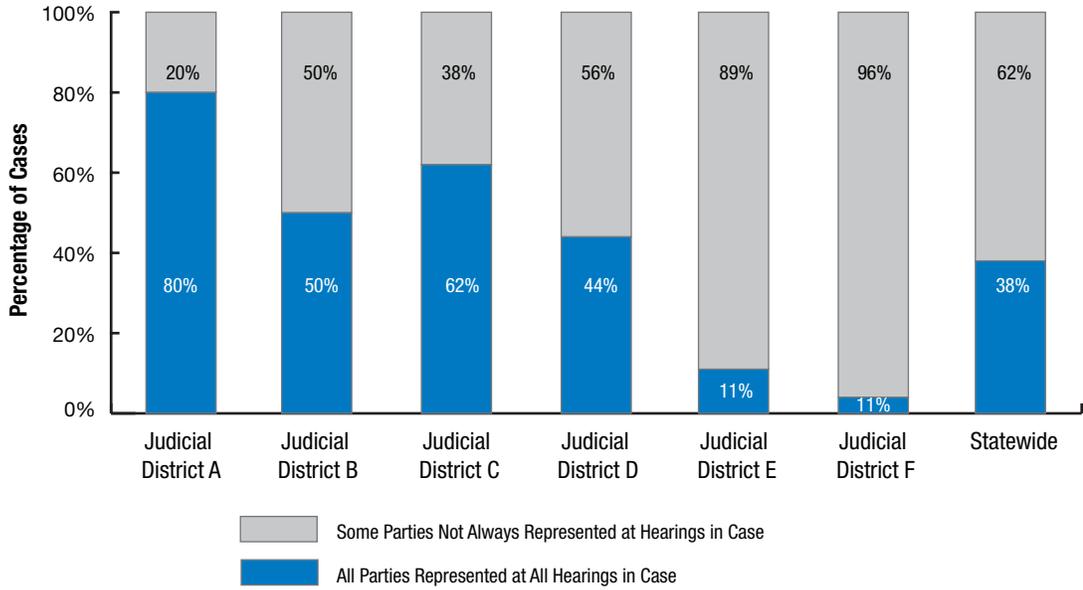
The table in sample 3G–3 presents legal representation percentages by type of hearing, for one juvenile court that hears dependency cases only. The data are based on hearings held during July–December 2006 and include both opened and closed cases.

The kind of information in sample 3G–3 is a valuable addition to that presented in 3G–1. A key piece of information in 3G–3 is that emergency removal hearings and reviews generally did not have full representation for all parties. On the other hand, all parties were usually represented at most of the other types of hearings. It is also possible to infer that it is not a matter of uniform policy or practice for any one category of advocates (e.g., parents’ attorneys) not to attend a specific type of hearing; if that were the case,

Sample 3G–1. Legal Representation of Parties at Hearings, by Judicial District, Cases Closed in 2006

Judicial District	All Parties Represented at All Hearings in Case				Total Number of Cases
	Yes		No		
	Number of Cases	Percent	Number of Cases	Percent	
A	175	80%	43	20%	218
B	24	50%	24	50%	48
C	78	62%	48	38%	126
D	65	44%	82	56%	147
E	34	11%	275	89%	309
F	6	4%	153	96%	159
Statewide	382	38%	625	62%	1,007

Sample 3G–2. Legal Representation of Parties at Hearings, by Judicial District, Cases Closed in 2006



Sample 3G–3. Legal Representation of Parties at Hearings During July–December 2006, by Type of Hearing: Court X

Type of Hearing	All Parties Represented				Total Number of Hearings
	Yes		No		
	Number of Hearings	Percent	Number of Hearings	Percent	
Emergency Removal	35	10%	320	90%	355
Adjudication	220	82%	48	18%	268
Disposition	230	81%	54	19%	284
Permanency	194	67%	95	33%	289
Review	43	20%	167	80%	210
TPR*	12	100%	0	0%	12
Average	734	52%	684	48%	1,418

*Termination of parental rights.

the percentage for that type of hearing would be zero. It is, however, quite possible that certain individual attorneys consistently did not attend emergency removal hearings and review hearings. The ability to identify such attorneys could be a useful additional function for the system.

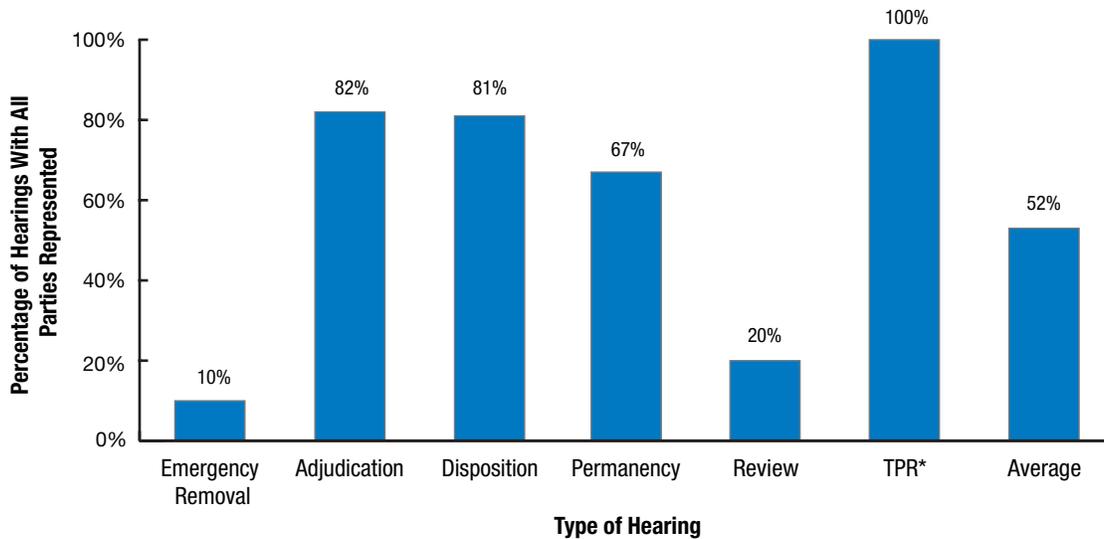
The bar graph in sample 3G-4 illustrates the data from the table in sample 3G-3.

The table in sample 3G-5 is similar to sample 3G-3 but breaks down legal representation by type of party rather than type of hearing. Sample 3G-5 reports on the percentage of parties who were represented by counsel at every

hearing held during July–December 2006. It indicates that legal representation was least consistent for fathers and guardians. Such data can help the court and the child welfare agency identify what changes may be needed in representation practices.

The line graph in sample 3G-6 looks at party-specific representation trends over a 3-year period, enabling the court to assess whether changes in representation policies are having the desired effect. The graph shows that, with one exception (child welfare agencies), representation of parties has improved since 2004; the improvement is most notable for fathers (from 18 percent in 2004 to 38 percent

Sample 3G-4. Legal Representation of Parties at Hearings During July–December 2006, by Type of Hearing: Court X

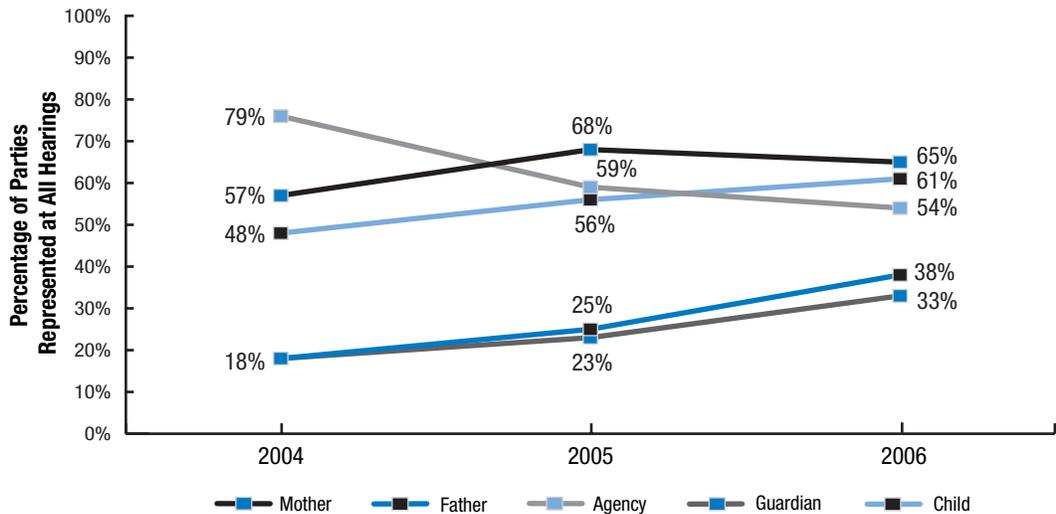


*Termination of parental rights.

Sample 3G-5. Legal Representation of Parties at Hearings During July–December 2006, by Type of Party: Court X

Type of Party	Party Represented at All Hearings				Total Number of Parties
	Yes		No		
	Number of Parties	Percent	Number of Parties	Percent	
Mother	480	65%	260	35%	740
Father	201	38%	325	62%	526
Agency	465	54%	404	46%	869
Guardian	42	33%	87	67%	129
Child	620	61%	400	39%	1,020
Average	1,808	55%	1,476	45%	3,284

Sample 3G–6. Legal Representation of Parties of Hearings During 2004–2006, by Type of Party: Court X



in 2006). Note that this kind of graph can become difficult to read if there are too many lines crossing at too many points.

Factors That May Affect Results

State Laws and Local Court Rules

State laws and court rules may (1) require advocates, particularly attorneys, to be present during all hearings; and (2) clarify whether presentation of the child welfare agency’s case by a caseworker without an attorney present constitutes unauthorized practice of law at every type of hearing.

Judges’ Expectations

If State laws or court rules do not clearly specify representation requirements, individual judges must decide whether it is acceptable for a party not to be represented by an attorney or other advocate, either in individual instances or routinely for particular categories of hearings.

Standards for Advocates

States can adopt standards that address the attendance issue for any category of advocate. Many States have adopted standards for children’s attorneys, calling for them

to appear at every hearing. The American Bar Association (ABA) has adopted such standards for attorneys representing children, parents, and child welfare agencies.⁷ The National CASA Association (based in Seattle, Washington) sets standards for CASA programs; individual programs may have policies requiring CASA volunteers to be present at all substantive hearings.

Review and Enforcement of Laws, Rules, and Standards

For State laws, court rules, and standards to be fully effective, processes must be in place for evaluating how well they are implemented and for systematically enforcing them. This can be done in various ways.⁸ Implementing this performance measure can help a jurisdiction monitor and enforce compliance with legal requirements and standards regarding advocates’ participation in hearings.

Possible Reforms

If the data from this performance measure indicate room for improvement in legal representation at hearings, the court should consider possible reforms. Specific reforms will, of course, depend on local conditions and the court’s analysis of the causes of incomplete representation. A court might, for example, consider the following improvements:

- ◆ Introduce a State law or local court rule requiring attorneys and other advocates for all parties (including attorneys for the government) to be at all hearings following their appointment.
- ◆ Adopt standards for all categories of attorneys—those representing parents, children, and the government—requiring their presence at all hearings.
- ◆ Clarify requirements regarding the unauthorized practice of law, to make it clear that caseworkers cannot represent child welfare agencies in court without the presence of an attorney.
- ◆ Systematically enforce laws, rules, and standards calling for the participation of attorneys (and other advocates, such as CASA volunteers) in all hearings.
- ◆ In judicial and attorney training programs, include information about the importance of attorney involvement in all hearings.

Endnotes

1. A few jurisdictions appoint counsel for missing parents (see discussion under “Presence of Advocates for Parties Who Do Not Receive Service of Process,” and endnote 2). In such jurisdictions, this measure might be modified accordingly.
2. Some jurisdictions do require the appointment of attorneys for missing fathers to help ensure that they receive notice and to represent their interests. This practice is not recommended, because (a) there are more efficient and cost-effective ways to ensure reasonable efforts to locate and notify fathers (e.g., imposing this obligation on agency and court staff) and (b) attorneys have no way to know the wishes and interests of missing fathers.
3. In some States, financial eligibility criteria for appointed counsel are inconsistent or are inconsistently applied. If a State has uniform criteria for court-appointed counsel and uniform processes for financial screening, measuring the proportion of parents who are denied court-appointed counsel is less important.
4. One technical solution to minimizing the data entry burden is to program the computer screen default to attorneys who attended previous hearings and then require staff to either affirm that all were present at the current hearing or make changes to reflect who was, or was not, there. Check boxes might be used for this purpose.
5. If, for example, government attorneys frequently miss hearings, solutions may include developing and enforcing standards and rules of attendance for government attorneys, and clarifying State law and policy regarding the unauthorized practice of law by unrepresented caseworkers.
6. Attorneys for the government may include attorneys employed by the State or local child welfare agency, attorneys employed by the State attorney general, employees of the county attorney or district attorney, or private attorneys retained by the agency.
7. The National Association of Counsel for Children has endorsed the ABA standards for children’s attorneys (with slight modifications) as well as the ABA standards for government attorneys and parents’ attorneys.
8. For example, in at least one State, attorneys who request payment of fees for representing children must describe how they have complied with a number of requirements, including attendance at hearings. Attendance by government attorneys can be enforced by the employing government entity or by the court.

Presence of Parties During Hearings

Definition: Percentage of child abuse and neglect cases in which parties who have been served are present at every substantive hearing.¹

Explanation: This measure shows how often parties attend substantive court hearings.

Purpose: To help courts evaluate how consistently parties are present at substantive hearings.

It is important for parties to participate in substantive court hearings throughout the litigation for a number of reasons:

- ◆ **The stakes are high.** Hearings affect the immediate lives and the futures of children and their families. At stake are the well-being of the child and the survival of the family as a unit.
- ◆ **Parties have a major impact on hearings.** Parties often have the best knowledge of the pertinent facts, which they can share with their advocates to present to the judge during the hearing. Parties can ensure that advocates understand their point of view and advance arguments to the judge with that point of view in mind.
- ◆ **Not attending hearings places parties at a distinct disadvantage.** Without access to parties during hearings, advocates are less effective in arguing on their behalf. Furthermore, absence from hearings may create the impression that a party is not concerned with the outcome of the litigation or may cause the judge to be less mindful of the party's interests and concerns.
- ◆ **Attending hearings facilitates parties' compliance with court orders.** When parties are present at hearings, the judge can address orders and instructions directly to them and will be in a stronger position to hold them accountable for compliance. In addition, parties will be more likely to fully understand what is expected of them. They can observe the judge and listen to verbal pronouncements, which may include important details that are missing from written court orders.
- ◆ **Parties who attend hearings can contribute to the record.** When parties are present at hearings, they can help the advocates and judge develop a full record of the case. For example, during review and permanency hearings, both advocates and judges should have the opportunity to question the parties regarding their compliance with the case plan and their progress toward case goals.

- ◆ **Parties should experience the full emotional impact of the hearing.** If they do not attend hearings, parties may find it easier to disregard the court process and may feel alienated from it. It is especially important that the judge's instructions and cautions have an impact on parents, who often must modify deeply ingrained behaviors. A child who is old enough to understand the proceedings may benefit from being present during the exchange between the judge and the parents, and the child's presence may also affect the parents' response. Caseworkers should be present when court orders are issued, so they are motivated to follow the court's instructions.

For related discussion, see *Toolkit Measure 3E: Advance Notice of Hearings to Parties*.

Implementation Issues

Need for This Measure

Some courts may be reluctant to implement this measure because they feel that it is the responsibility of the parties or the parties' representatives, not the court, to ensure that parties appear at hearings. Courts may feel that parties who do not appear are demonstrating their lack of commitment to achieving a favorable case outcome.

Although these views have some validity, there is much that courts can do to encourage attendance at hearings, and there are important reasons for doing so. Most importantly, the involvement of parties helps to achieve successful outcomes for abuse and neglect cases. Furthermore, it is understandable that the parents in these cases may sometimes fail to appear, given the likelihood that their lives are in turmoil, that the court process may seem strange and even frightening to them, and that the hearings may seem uneventful and difficult to understand.



Therefore, courts should measure how often parties attend hearings and should set a goal of achieving high rates of attendance.

Presence of the Caseworker

It is recommended that courts measure the presence or absence in court of the primary caseworker as the representative of the government. The primary caseworker is the child welfare agency employee who maintains direct contact with the parents, child, and foster parents and is responsible for developing and implementing the case plan. The primary caseworker's presence in court is important because valuable information may be omitted from the caseworker's written report to the court and may become apparent only during questioning at the hearing.

If the primary caseworker changes shortly before a hearing, and the former caseworker still works for the agency, both the former and current caseworker should appear at the hearing.

Presence of Parties Who Have Not Received Service of Process

An important consideration for this measure is whether to count the presence or absence of parties (especially fathers) who have not become active parties in the litigation. Because fathers often cannot be located and notified, and because their involvement in court proceedings is an important consideration, it is recommended that this measure count their presence or absence if they have been served, regardless of whether they have become active parties. For calculations of how consistently all parties receive service of process, see *Toolkit Measure 3B: Service of Process to Parties*.

Similarly, because service of process generally cannot have occurred prior to emergency removal hearings, when counting parties present at that hearing, it is logical to count the presence or absence of parties not yet served (including at least one father) for the purpose of this measure.

Entering the Data

Data entry for this measure may require additional work for court staff. In every hearing, someone must observe and record whether each party is present. In many jurisdictions, court staff already routinely record this information in the minute order (a short summary of the hearing prepared by

court staff) or the official court order. The challenge is to modify the automated management information system in a way that avoids duplication of effort. Courts may need to work with information systems personnel to develop the most efficient and effective data entry method.²

If court staff do not already enter such information as part of their duties, persuading them to do so may present a challenge. As with other performance measures, court administrators must be committed to ensuring that the necessary information is consistently and accurately recorded.

Reporting on Different Categories of Parties

It is important for judges and court administrators to know whether certain categories of parties are absent from hearings more often than others. Having this kind of information makes it easier to diagnose and correct a problem.³ Categories of parties whose presence in court might be computed separately include mothers, fathers, primary caseworkers, age-appropriate children, and legal guardians.

Reporting on Different Categories of Hearings

In many courts, parties are most often absent from particular categories of hearings, such as emergency removal hearings or review hearings. Reporting separately on categories of hearings can help courts determine whether this is the case.

Cross-Tabulating Categories of Parties and Hearings

The ability to determine which categories of parties consistently attend or miss specific categories of hearings can be helpful.⁴ Although this level of detail may not be necessary in routine reports, it is useful to build into the system the capacity to generate such reports as the need arises.

Business Rules

Basic Rules

1. Select a date range for the report.
2. The universe included in this measure is all cases closed within the date range selected. (A)

3. For each case in (A), build a record for each substantive hearing, documenting whether each party was present. Then, sort the cases in (A) into two categories: (B) all hearings were attended by all parties or (C) some hearings were not attended by all parties.
4. Compute the percentage of cases in each of these categories by dividing the number of cases in each category by (A).

A note about the business rules: In general, exclude from the record for each hearing any party (other than the government and the petitioner) who had not received service of process at the time of the hearing. But for emergency removal hearings occurring prior to adjudication, count all parties served prior to adjudication, whether or not served prior to the emergency removal hearing.

Possible Modifications

1. Report on attendance of *all parties for each type* of substantive hearing (emergency removal hearings, adjudication, disposition, etc.).
2. Report on attendance by each party type (mother, father, agency, child, etc.) at *all* substantive hearings.
3. Report on attendance *by each party type at each type* of substantive hearing.
4. Report on the presence at hearings of at least one person identified as father of the child, regardless of whether or not the father has been served.
5. Report on the presence of all categories of parties, regardless of whether they have been served, at emergency removal hearings.

Data Elements

These elements apply specifically to this measure. For elements that apply to all measures, see “Universal Data Elements,” page 7. For definitions of data elements, see appendix D, “Data Element Dictionary,” page 289.

Required Elements

- ◆ Party ID.
- ◆ Party type.
- ◆ Service of process date.
- ◆ Hearing date.
- ◆ Party present at hearing.

Optional Elements

- ◆ Hearing type.
- ◆ Father’s race/ethnicity.
- ◆ Mother’s race/ethnicity.

Related CFSR Standards

No Child and Family Services Review standard for State child welfare agencies relates specifically to *Toolkit Measure 3H*.

Reporting the Data

As with other *Toolkit* measures, *Measure 3H* lends itself to a variety of tabular and graphic presentations. State Court Improvement Projects will need presentations that show performance statewide and for each jurisdiction. Individual courts will want to see how their performance compares with that of other courts and with the State as a whole, and also whether their performance has improved or declined over time.

The samples that follow use hypothetical data for fictitious judicial districts and courts to demonstrate how results for this measure might be reported in tables and graphs.

Sample 3H–1 is a basic tabular report for this measure, showing the percentage of cases in which all parties were versus were not present at every hearing. The data are based on cases closed in 2006 and are compared for three courts in Judicial District 1.

The table in sample 3H–2 shows the attendance of various types of parties at four types of hearings.⁵ The data are based on hearings held during 2005 and are shown for a single three-judge court. The bar graph in sample 3H–3 illustrates data from the table.

This type of report could help a court determine which types of parties attend hearings less frequently than others and which types of hearings are less well attended. There may be many reasons for low attendance. This report, especially when viewed together with reports for *Toolkit Measure 3B: Service of Process to Parties* and *Measure 3E: Advance Notice of Hearings to Parties*, can provide a starting point for diagnosing the reasons for low attendance and developing strategies for improving attendance by key parties at key hearings.

To illustrate the value of information about the attendance of different types of parties at different types of hearings,

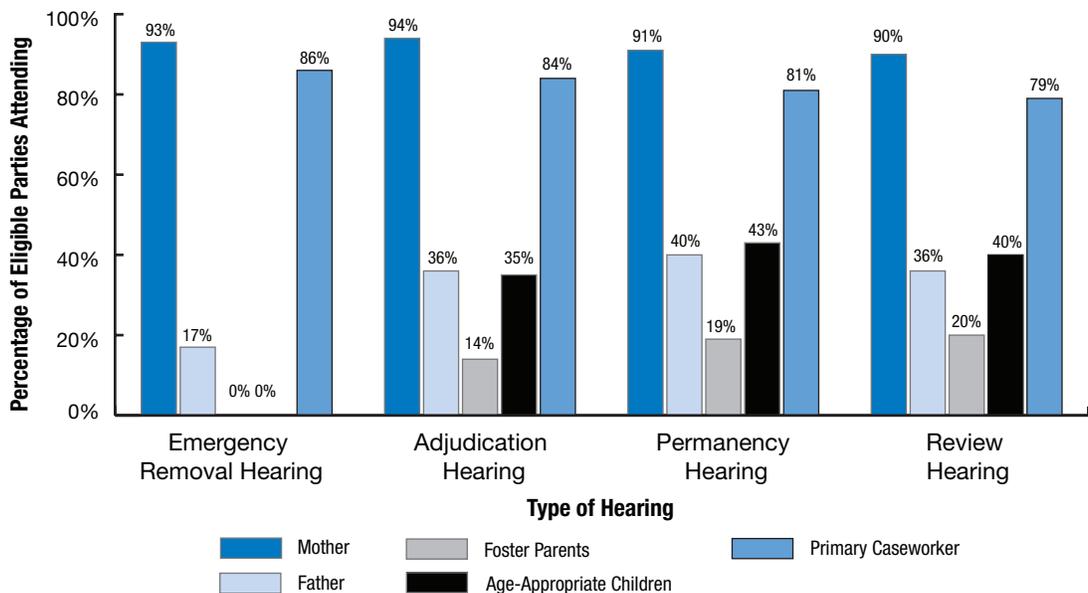
Sample 3H-1. Attendance of Parties at Hearings, by Court, Cases Closed in 2006: Judicial District 1

Court	All Parties Present at All Hearings in Case				Total Number of Cases
	Yes		No		
	Number of Cases	Percent	Number of Cases	Percent	
A	230	17%	1,120	83%	1,350
B	450	68%	210	32%	660
C	650	65%	350	35%	1,000
Districtwide	1,330	44%	1,680	56%	3,010

Sample 3H-2. Attendance of Eligible Parties at Selected Types of Hearings During 2005, by Party Type: Court A

Party Type	Emergency Removal Hearings			Adjudication Hearings			Permanency Hearings			Review Hearings		
	Total Hearings	Number Attended	Percent Attended	Total Hearings	Number Attended	Percent Attended	Total Hearings	Number Attended	Percent Attended	Total Hearings	Number Attended	Percent Attended
Mother	350	326	93%	340	320	94%	156	142	91%	313	282	90%
Father	350	60	17%	340	122	36%	156	63	40%	313	113	36%
Foster parents	n/a	n/a	n/a	282	40	14%	130	25	19%	260	52	20%
Age-appropriate children	n/a	n/a	n/a	170	60	35%	72	31	43%	144	58	40%
Primary caseworker	350	301	86%	340	286	84%	156	126	81%	313	247	79%

Sample 3H-3. Attendance of Eligible Parties at Selected Types of Hearings During 2005, by Party Type: Court X



note in samples 3H–2 and 3H–3 the low percentage of **fathers** attending emergency removal hearings. It is important to determine why fathers are often absent from these critical hearings. One possibility is that they are not being identified or notified in time, especially if the hearings are held within 24 to 48 hours of the child’s removal from home. If it is practical to calculate the percentage of fathers who were notified prior to the emergency removal hearing (see *Toolkit Measure 3E: Advance Notice of Hearings to Parties*), it would also be helpful to calculate the percentage of those not present who were versus were not notified of the hearing. Such a calculation could help the court evaluate the impact of notification on fathers’ attendance at these hearings.

Samples 3H–2 and 3H–3 also show that attendance by **primary caseworkers** ranged from 79 percent to 86 percent, depending on the type of hearing. This means that in 14 to 21 percent of hearings, either no one from the child welfare agency attended, or the attending caseworker was not the primary worker.

These samples assume that 50 percent of cases involve **age-appropriate children** (i.e., children who are eligible to attend hearings).⁶ The samples show, for example, a 35-percent attendance rate for age-appropriate children at adjudication hearings—the number attending (60)

divided by the number of relevant hearings (170). Similarly, the samples assume that fewer cases involve **foster parents** than biological parents, and the attendance rates for foster parents are based on a proportionately reduced number of hearings. **Legal guardians** could also be added to this report, but the numbers for any one court are likely to be too small to be meaningful statistically.

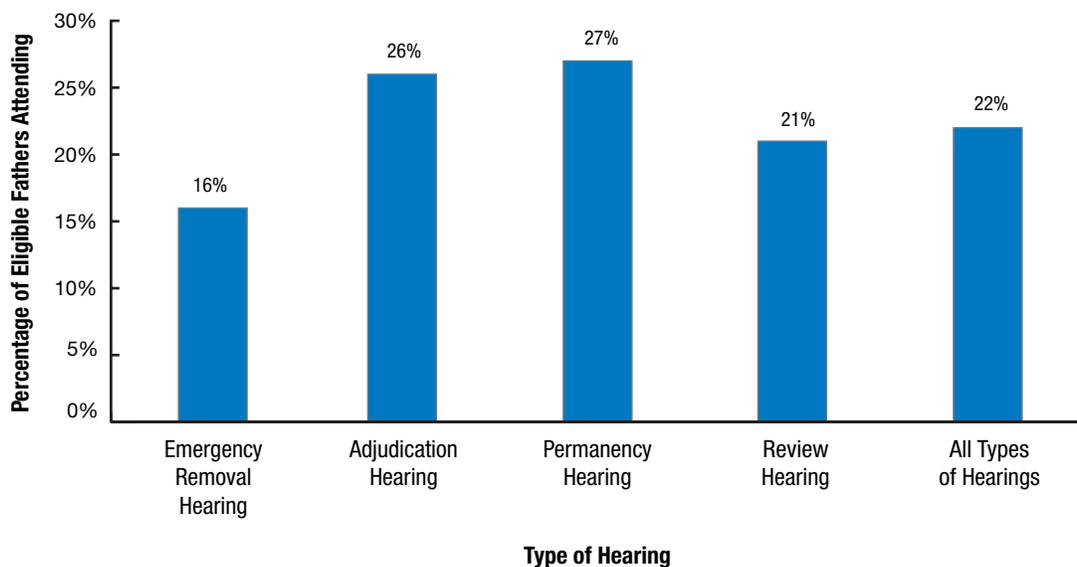
The table in sample 3H–4 shows the attendance of fathers at four types of hearings held during 2005 in five courts in a large metropolitan judicial district. Although attendance of fathers is low for all courts and all hearing types, the “total” column shows that overall attendance of fathers is considerably better in Courts A and C than in the other courts, and that Court D is significantly below the district-wide norm. Similar reports could be devised to show attendance by other types of parties (mothers, caseworkers, etc.) or by all parties for one type of hearing.

Because of the complexity of the table in sample 3H–4, any graph based on the same data should focus on a specific element. Too many elements (courts, party types, hearing types) can make a graph difficult to read. The bar graph in sample 3H–5 illustrates districtwide data from the table. Alternatively, each court’s results could be the subject of an individual graph, comparing attendance to a districtwide or statewide goal or average.

Sample 3H–4. Attendance of Fathers at Selected Types of Hearings During 2005, by Court: Judicial District 1

Court	Emergency Removal Hearings			Adjudication Hearings			Permanency Hearings			Review Hearings			All Types of Hearings		
	Total Hearings	Number Attended	Percent Attended	Total Hearings	Number Attended	Percent Attended	Total Hearings	Number Attended	Percent Attended	Total Hearings	Number Attended	Percent Attended	Total Hearings	Number Attended	Percent Attended
A	350	60	17%	340	122	36%	156	63	40%	313	113	36%	1,159	358	31%
B	260	52	20%	250	70	28%	115	32	28%	230	28	12%	855	182	21%
C	175	53	30%	150	57	38%	69	22	32%	138	41	30%	532	173	33%
D	190	13	7%	175	30	17%	81	6	7%	161	8	5%	607	57	9%
E	460	51	11%	380	57	15%	175	40	23%	350	63	18%	1,365	211	15%
Districtwide	1,435	229	16%	1,295	336	26%	596	163	27%	1,192	253	21%	4,518	981	22%

Sample 3H–5. Attendance of Fathers at Selected Types of Hearings During 2005: Judicial District 1



Factors That May Affect Results

Time-Certain and Party-Friendly Scheduling

A major factor influencing parties' attendance at hearings is the extent of the burden attendance places on them. Scheduling hearings for specific times and then starting hearings on time reduces that burden. By contrast, if parties must wait for hours for hearings to begin, fewer can and will attend—and it is unrealistic for judges to expect them to do so.

Another factor is parties' availability to appear in court. If judges consult parties (as well as advocates) concerning their availability to appear in court at specific times, attendance at hearings is likely to improve.

Finally, with sophisticated case management software, courts can try to schedule hearings at times that are convenient for child welfare agency staff as well as for the court and advocates. For example, software can be programmed to suggest a hearing date and time that coordinate with the primary caseworker's presence at court for other purposes.

Treatment of Parties in Court

Parties are more likely to attend hearings if they perceive the hearings to be meaningful events in which they

actually participate. They are more likely to attend if the judge and court staff treat them with courtesy and if the judge directly questions them in court.

Quality, Thoroughness, and Transparency

Parties are more likely to attend hearings when they observe “things really happening” that appear to make a difference. By contrast, parties will feel that their presence is not important or necessary if, for example, hearings take place in chambers without parties present, if hearings seem cursory, or if parties have difficulty understanding what is going on.

Motivating Caseworkers

Caseworkers often play a critical role in ensuring that parents, children, and foster parents appear in court. It is important for the court to understand what motivates caseworkers to encourage or discourage attendance by parties.

When court proceedings are substantive and thorough, a caseworker may see the benefit of having parties present (particularly in having the judge hear what the parties have to say) and may encourage the parties to attend, caution them as necessary, and instruct them to participate in the case plan. On the other hand, a caseworker may find it inconvenient for parents, older children, or foster parents

to be present in court, where they might contradict the caseworker's statements or make requests contrary to those made by the caseworker.

To increase the likelihood that caseworkers will encourage parties to attend hearings, the court can question caseworkers about their efforts to notify parties of hearings. It can also schedule additional hearings if parties fail to appear, especially if the caseworker appears not to have done enough to encourage attendance. Caseworkers will come to see that it is in their own interest to encourage attendance, thereby avoiding the inconvenience of an additional hearing.

Judges' Expectations

Judges decide whether repeated absences from court are permitted and what excuses for absence are acceptable. Judges must also decide whether to enforce their rules, as necessary, through court orders and, on occasion, bench warrants and contempt proceedings.

State Laws and Local Court Rules

State laws and court rules can (1) specify that parties are to attend all substantive court hearings; (2) allow for limited exceptions and require specific procedural steps for exceptions to apply; (3) specify proceedings and possible sanctions to enforce the presence of parties; (4) specifically address the presence of parents (including noncustodial parents, children (especially of a specified age), primary caseworkers, and others named as parties.

Court Order Forms

Courts can add standard or optional provisions to forms for court orders, which direct parties to be present during the next hearing. To allow for exceptions, such orders might specify or refer to a procedure for requesting delays or special permission not to attend.

Possible Reforms

If the data from this performance measure indicate room for improvement in the attendance of parties at hearings, the court should consider possible reforms. Specific reforms will, of course, depend on local conditions and the court's analysis of the causes of parties' failure to attend. A court might, for example, consider the following improvements:

- ◆ Develop and enforce written guidelines for the presence of age-appropriate children in court.
- ◆ Order parties to appear at hearings, and order caseworkers to remind and assist them as necessary.
- ◆ Introduce a State law or local court rule requiring judges to order parties (including age-appropriate children and primary caseworkers) to attend court hearings, subject to specified exceptions.
- ◆ Establish procedures to limit exceptions allowing parties to miss court appearances. For example, require the court to state its reasons for not ordering the presence of parties, set deadlines for parties or their advocates to request exceptions in nonemergency situations, and require affidavits or statements from parties explaining their reason for not wanting to be present.
- ◆ Modify court order forms to require parties to be present, except under special circumstances.
- ◆ Schedule additional hearings when parties fail to appear, particularly when caseworkers make insufficient effort to ensure their presence.
- ◆ Adopt caseflow management to ensure time-certain scheduling of hearings.
- ◆ Develop scheduling software that can take into account the needs of agency staff.
- ◆ In judicial, attorney, and caseworker training, include information about the importance of the parties' involvement in all hearings. For caseworkers, also explain how parties' involvement is in the best interests of the agency as well as the parties.

Endnotes

1. "Substantive hearings" address issues affecting the behavior of parties, such as where the child will be placed, visitation arrangements, services to be provided, orders addressed to parties, and sanctions for disobeying court orders. Examples of substantive hearings include emergency removal, adjudication, disposition review, permanency, and termination of parental rights hearings. By contrast, procedural (i.e., nonsubstantive) hearings concern the "mechanics" of the court process. For example, such hearings may address admissibility of evidence, pretrial exchange of information (discovery), or how a forthcoming trial will be organized.

2. One technical solution to minimizing the data entry burden is to program the computer screen default to parties who attended previous hearings and then require staff to either affirm that all were present at the current hearing or make changes to reflect who was, or was not, there. Check boxes might be used for this purpose.
3. If, for example, fathers or age-appropriate children frequently miss hearings, solutions may include developing and enforcing guidelines concerning their presence.
4. For example, it might be useful for a State court system to know that fathers are rarely present at emergency removal hearings in certain parts of the State.
5. For the sake of simplicity, the sample assumes that there is one mother and one father for each case.
6. Age-appropriate children may attend hearings more regularly in some jurisdictions than in others, and the age at which children may attend varies among States. National Council of Juvenile and Family Court Judges, *RESOURCE GUIDELINES: Improving Court Practice in Child Abuse and Neglect Cases* (Reno, NV: NCJFCJ, 1995) recommends that age-appropriate children be present at all of the types of hearings listed in these samples.

Continuity of Advocates for Children



Definition: Percentage of child abuse and neglect cases in which the same legal advocate represents the child throughout the case.

Explanation of measure: This measure shows how consistently children in abuse and neglect cases are represented by one advocate throughout the life of the case.

Purpose: To help courts evaluate how often children's legal representation in the courtroom is stable throughout the life of the case.

Consistency of legal representation for children is an important factor affecting the quality of child abuse and neglect litigation. Advocates can do a better job when they represent their clients at all stages of the proceedings, from the date of removal through termination of parental rights (TPR) or the child's return home. Consistency of representation is important for a number of reasons:

- ◆ **The advocate has a greater sense of responsibility for the case.** With this enhanced sense of "ownership," the advocate feels more able to influence the ultimate outcome of the case and, therefore, more accountable for the results.
- ◆ **The advocate is better prepared for each new hearing.** Having represented the child at previous hearings, the advocate can review the file more efficiently, interview the child more effectively, and grasp the pertinent facts more easily. Furthermore, advocates who represent clients during all stages of each case deal with fewer families overall and thus can get to know the families better. Handling all stages of the case helps the advocate understand the complexities of each family's situation.
- ◆ **The advocate more readily learns about child welfare law and practice.** Following cases from beginning to end helps advocates understand how cases evolve and enables them to handle early hearings in a way that effectively lays the groundwork for later hearings. Advocates also learn about "marginal" families in general and gain an understanding of the child welfare agency.
- ◆ **Children benefit.** With one advocate throughout the case, the child feels connected to the advocate and comfortable relying on that individual for protection and a good outcome. When one advocate is replaced by

another, it is disconcerting for the child, especially if the new advocate knows little about the case or the family. The child may feel forced to depend on a stranger. Finally, changes in advocate may add to the sense of instability already experienced by a child who has been removed from home.

Of course, there occasionally are circumstances in which it is necessary and appropriate to change a child's advocate. For example, an advocate may be called away by a family emergency, or it may be necessary to replace an advocate who is not doing a good job.

Implementation Issues

Identifying Advocates

The case management system must store information about the persons who actually advocate for the child at each hearing over the life of the case, not just the advocates appointed for the child. This measure requires recording the name of the individual advocate who actually appears on behalf of the child, not just the name of a law firm, public defender's office, or court-appointed special advocate (CASA) program.

To accurately identify advocates in cases and link them to parties, it usually is helpful to use a code such as an attorney's bar number. Using a code helps to avoid problems that can arise when names are misspelled or two advocates have the same name. (The larger the scale of the system, the more likely that advocates will be misidentified.) Ideally, programs should be written to make it easy for court staff to accurately record the identity of an advocate appearing for a child and to call up identifying information about an advocate.

Alternatives for Computing This Measure

Although this measure is defined as the percentage of cases in which the same advocate appears for the child throughout the case, different approaches might be more useful in States where multiple advocates commonly appear for the same child in a case (e.g., where more than one court is typically involved in a case).

One alternative is to examine the percentage of cases in which one, two, three, or more advocates represent the child. Where most cases involve multiple advocates, such a calculation could provide useful distinctions for determining the extent to which children lack stable representation. Another useful approach is to report on the average (or mean) number of advocates per case.

States that rarely have one child advocate per case might also consider calculating the proportion of hearings in which the child's primary advocate (i.e., the advocate present at the most hearings) was not present. For example, this approach would distinguish between (a) cases in which the primary attorney only missed 2 of 10 hearings (the 2 were handled by different substitute attorneys) and (b) cases in which 3 different attorneys each handled several hearings. Representation for the child is far less consistent in (b) than in (a).

Reporting on Different Categories of Advocates

Depending on the State or locale, children's advocates may be attorneys or nonattorneys (including CASA volunteers). In addition, depending on State law and local interpretations of the law, attorneys may represent the wishes of the child, present their own opinion of what is in the child's best interest, or both.

These distinctions raise several issues. Should this measure be applied separately to each type of representation? For example, if both CASA volunteers and attorneys for children serve in a State's courts, should changes in each category be recorded separately? What if CASA volunteers speak for children in one court, and attorneys in another? What if one or the other is appointed only for select stages of the litigation?

Thus, changes in representation might be measured separately for specific types of legal representatives used by the court so that comparisons between various types of representation can be made.

When More Than One Court Is Involved in a Case

In some States, one court hears the early stages of child abuse and neglect cases, another hears TPR proceedings, and still another hears legal guardianship or adoption proceedings. Regardless of a State's court structure, it is best practice to have only one advocate for a child throughout all proceedings. If a State falls short in this regard, this measure should not be redefined in a way that obscures the problem.

A State may encounter formidable barriers to calculating this measure if cases are heard in more than one court. For example, different courts may have different application modules (computer programs designed to deal with particular types of cases), or the case number may change as the case moves from court to court (requiring the creation of links to ensure a complete record).

Another possibility is that the management information system in one or more of the courts involved in a case may not capture data on the number of child advocates per case. Correcting that shortcoming may have to be a long-term goal.

Business Rules

Basic Rules

1. Select a date range for the report.
2. The universe included in this measure is all cases closed within the date range selected. (*A*)
3. For each case in (*A*), build a record for each hearing, documenting the presence of a legal advocate representing the child. Then sort the cases in (*A*) into three categories: (*B*) no advocates appeared for the child throughout the case, (*C*) one advocate appeared throughout the case, or (*D*) more than one advocate appeared.
4. Compute the percentage of cases in each of these categories by dividing the number of cases in each category by (*A*).

Possible Modifications

1. If appropriate, substitute "attorney, guardian *ad litem*, or CASA" for "legal advocate."

2. Report separately on cases with two, three, and more than three advocates for the child.
3. Report on the average (mean) numbers of advocates representing the child per case.
4. In each case, separately identify the advocate who represented the child in the largest number of hearings. Report on the percentage of hearings in which anyone other than that advocate represented the child. (This report is a quality measure—the percentage of hearings in which the child may have been represented by an advocate with relatively little knowledge of the case.)
5. Report separately by age of case at closure. That is, calculate and compare the number of advocates per case, basing categories on the length of time cases were open (less than 1 year, 1–2 years, etc.).
6. In States where more than one category of legal representation exists, report separately for different categories of representation for children, rather than limiting the report to the most predominant category. (Alternatively, if most cases are handled by one category of representative, limit the measure to that category.)

Data Elements

These elements apply specifically to this measure. For elements that apply to all measures, see “Universal Data Elements,” page 7. For definitions of data elements, see appendix D, “Data Element Dictionary,” page 289.

Required Elements

- ◆ Case closure date.
- ◆ Party ID.
- ◆ Party type.
- ◆ Hearing date.
- ◆ Advocate ID.
- ◆ Advocate-party link.
- ◆ Advocate present at hearing.

Optional Elements

- ◆ Advocate type.
- ◆ Abuse and neglect petition date.

Related CFSR Standards

No Child and Family Services Review standard for State child welfare agencies relates specifically to *Toolkit Measure 3I*.

Reporting the Data

As with other *Toolkit* measures, *Measure 3I* lends itself to a variety of tabular and graphic presentations. The samples that follow use hypothetical data for a fictitious court to demonstrate how results for this measure might be reported in tables and graphs. Additional examples may be found in *Toolkit Measure 3J: Continuity of Counsel for Parents*, which parallels this measure.

Sample 3I–1 uses a tabular format to present data on representation of children in a single court that uses two specialized judges to hear abuse and neglect cases. The table is based on cases closed during 2006 and shows the percentage of children who were unrepresented and the percentages represented by one, two, three, and more than three attorneys over the course of the case—with additional detail by age of case (i.e., how long the case was open). This table combines two of the “possible modifications” mentioned in the section on “Business Rules.” A similar format could be used to report for a different category of legal representative, such as CASA volunteers.

(Note that a more basic report for this measure, simply showing the percentage of cases with one and more than one advocate—which reflects the definition and basic business rules for the measure—would look more like sample 3J–1 in *Measure 3J*.)

The table in sample 3I–1 shows that the number of attorneys tends to increase with the age of the case. Among cases closed after 3 or more years, 22 percent of children had more than three attorneys. Although older cases might be expected to have more attorneys, this percentage may indicate that the court’s policy regarding substitution of advocates is too lenient.

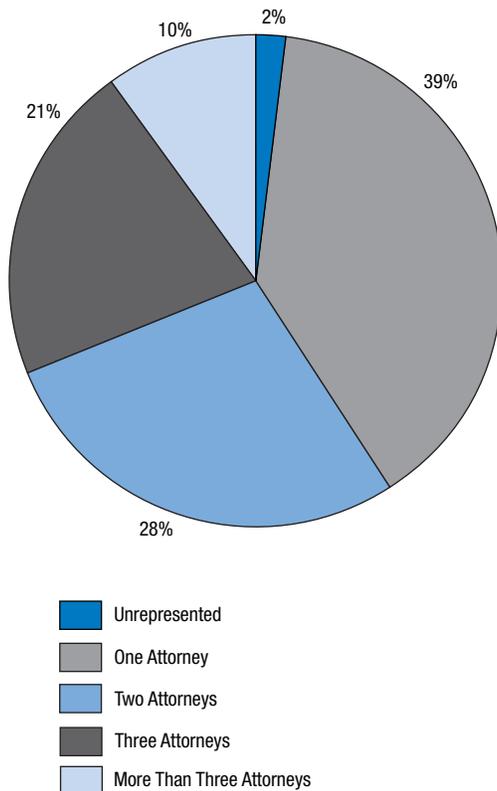
Because of the complexity of this table, a graph that attempted to represent all of the data would be too confusing. A better choice is to focus on the totals from the table, as in the pie chart in sample 3I–2.

Sample 3I-1. Number of Attorneys Representing Child Throughout Life of Case, by Age of Case, Cases Closed in 2006: Court X

Age of Case	Unrepresented		One Attorney		Two Attorneys		Three Attorneys		More Than Three Attorneys		Total Number of Cases
	# of Cases	%	# of Cases	%	# of Cases	%	# of Cases	%	# of Cases	%	
0-6 mos.	8	18%	35	78%	2	4%	0	0%	0	0%	45
7-12 mos.	2	2%	70	67%	27	26%	4	4%	2	2%	105
13-24 mos.	0	0%	45	40%	34	30%	24	21%	10	9%	113
25-36 mos.	0	0%	9	13%	20	29%	27	40%	12	18%	68
>36 mos.	0	0%	4	5%	34	39%	31	35%	19	22%	88
Total	10	2%	163	39%	117	28%	86	21%	43	10%	419

Note: Percentages may not add up to 100 because of rounding.

Sample 3I-2. Percentage of Cases in Which Child Was Unrepresented by Legal Counsel or Represented by One, Two, Three, or More Than Three Attorneys Throughout Life of Case, Cases Closed in 2006: Court X



Factors That May Affect Results

Routine Substitutions and Withdrawals of Advocates for Children

In some courts, children’s advocates frequently (and even casually) arrange for others to take their place for individual abuse and neglect hearings. If they can ask a colleague to fill in for them, they may give precedence to other types of proceedings or even schedule vacations that conflict with previously scheduled hearings. These practices are most common among attorneys who work for private law firms or public law offices such as public defender programs.

Judges should not tolerate such practices. When individual judges refuse to accept substitutions, except for compelling reasons, this practice will become less widespread. Similarly, advocates should not be allowed to withdraw from abuse and neglect cases, absent specified types of extenuating circumstances.

Court Rules

If court rules prohibit substitutions of children’s advocates (especially attorney advocates) for specific hearings and limit withdrawals of advocates appointed to represent children, more judges will feel justified in blocking such actions, and continuity of representation for children will improve.

Court rules can also establish strict criteria for exceptions and outline procedures to help deter substitutions and withdrawals. For example, substitutions and withdrawals are likely to decrease if advocates must file written motions (accompanied by statements of supporting facts) requesting approval of such actions, and if the court must enter findings to grant these motions.

Contractual Provisions

Rather than permitting practices that cause unstable representation for children, the court's contracts for legal representation can bar or strictly limit substitutions and also limit withdrawals. To be fully effective, these provisions must be enforced.

Education of Judges and Advocates

Education and training programs for judges and advocates can provide information on the importance of consistent representation for children. Presentations describing the experiences and views of former clients could be helpful.

Court Organization

As noted earlier, some States divide jurisdiction over child abuse and neglect cases among several courts. For example, one court hears cases from removal through review and permanency hearings, another hears TPR proceedings, and a third hears adoption and guardianship proceedings. In other States, one court hears all stages of these cases. When jurisdiction is divided, each court may appoint a different advocate for the child. However, it is possible for different courts to coordinate appointment of counsel to ensure continuity of representation.

Possible Reforms

If the data from this performance measure indicate room for improvement in reducing the number of cases in which children are represented by more than one advocate, the court should consider possible reforms. Specific reforms will, of course, depend on local conditions and the court's analysis of reasons for inconsistency in children's legal representation. A court might, for example, consider the following improvements:

- ◆ Establish statewide and/or local court rules barring substitutions of counsel, with limited exceptions. Also limit the resignation of counsel for children. Include procedural provisions, such as written motions, supporting affidavits, and judicial findings, to deter substitutions and resignations.
- ◆ In education and training programs for judges and advocates, include information on the importance of consistent representation for children.
- ◆ Add requirements for continuous representation to contracts with children's advocates.
- ◆ If different courts handle different phases of abuse and neglect cases, develop written procedures to ensure that the same advocate represents the child in each court.
- ◆ Improve compensation, caseloads, and working conditions of child advocates to reduce the motivation for substitutions and resignations.
- ◆ Work with courts in neighboring jurisdictions to limit scheduling conflicts for attorneys who practice in more than one jurisdiction. For example, if courts A and B both have abuse and neglect cases scheduled for Monday and Thursday, conflicts are likely to arise for attorneys who practice in both courts. Such situations often exist in rural areas.

Continuity of Counsel for Parents

MEASURE 3J



Definition: Percentage of child abuse and neglect cases in which the same legal counsel represents the parent throughout the case.

Explanation: This measure shows how consistently parents in abuse and neglect cases are represented by one attorney throughout the life of the case.

Purpose: To help courts evaluate how often parents' legal representation in the courtroom is stable throughout the life of the case.

Having the same attorney throughout the life of the case is an important (although not the only) factor affecting the quality of legal representation for parents. Attorneys can do a better job when they represent their clients at all stages of the proceedings, from the date of removal through termination of parental rights (TPR) or the child's return home. Consistency of representation is important for a number of reasons:

- ◆ **The attorney has a greater sense of responsibility for the case.** With this enhanced sense of "ownership," the attorney feels more able to influence the ultimate outcome of the case and, therefore, more accountable for the results.
- ◆ **The attorney is better prepared for each new hearing.** Having represented the parent at previous hearings, the attorney can review the file more efficiently, interview the parent more effectively, and grasp the pertinent facts more easily. Furthermore, attorneys who represent clients during all stages of each case deal with fewer families overall and thus can get to know the families better. Handling all stages of the case helps the attorney understand the complexities of each family's situation.
- ◆ **The attorney more readily learns about child welfare law and practice.** Following cases from beginning to end helps attorneys understand how cases evolve and enables them to handle early hearings in a way that effectively lays the groundwork for later hearings. Attorneys also learn about "marginal" families in general and gain an understanding of the child welfare agency.
- ◆ **Parents benefit.** With one attorney throughout the case, the parent feels connected to the attorney and

comfortable relying on that individual. When one attorney is replaced by another, it is disconcerting for the parent, especially if the new attorney knows little about the case or the family. If a parent has worked with an attorney and tried to follow that attorney's advice, it can be frustrating when a new attorney offers different advice. The parent may feel forced to depend on a stranger, who knows little about the situation, for assistance in court.

Of course, there occasionally are circumstances in which it is necessary and appropriate to change a parent's attorney. For example, an attorney may be called away by a family emergency, or it may be necessary to replace an attorney who is not doing a good job.

Implementation Issues

Identifying Attorneys

The case management system must store information about the attorneys who actually represented the mother and father at each hearing over the life of the case, not just the attorneys appointed to represent the mother and father. This measure requires recording the name of the individual attorney who actually appears on behalf of each parent, not just the name of a law firm or the public defender's office.

To accurately identify attorneys in cases and link them to parties, it usually is helpful to use a code such as an attorney's bar number. Using a code helps to avoid problems that can arise when names are misspelled or two attorneys have the same name. Ideally, computer programs should make it easy for court staff to accurately record the

identity of an attorney appearing for a parent and to call up identifying information about an attorney

Alternatives for Computing This Measure

Although this measure is defined as the percentage of cases in which the same attorney appears for the parent throughout the case, different approaches might be more useful in States where multiple attorneys commonly appear for the same parent in a case (e.g., where more than one court is typically involved in a case).

One alternative is to examine the percentage of cases in which one, two, three, or more attorneys represent the parent. Where most cases involve multiple attorneys, such a calculation could provide useful distinctions for determining the extent to which parents lack stable representation. Another useful approach is to report on the average (or mean) number of attorneys per case.

States that rarely have one attorney per case might also consider calculating the proportion of hearings in which the primary attorney for the mother or father (i.e., the attorney present at the most hearings) was *not* present. For example, this approach would distinguish between (a) cases in which the primary attorney only missed 2 of 10 hearings (the 2 were handled by different substitute attorneys) and (b) cases in which 3 different attorneys each handled several hearings. Representation for the parent is far less consistent in (b) than in (a).

When More Than One Court Is Involved in a Case

In some States, one court hears the early stages of child abuse and neglect cases, another hears TPR proceedings, and still another hears legal guardianship or adoption proceedings. Regardless of a State's court structure, it is best practice to have only one attorney for a parent throughout all proceedings. If a State falls short in this regard, this measure should not be redefined in a way that obscures the problem.

A State may encounter formidable barriers to calculating this measure if cases are heard in more than one court. For example, different courts may have different application modules (computer programs designed to deal with particular types of cases), or the case number may change as the case moves from court to court (requiring the creation of links to ensure a complete record).

Another possibility is that the management information system in one or more of the courts involved in a case may not capture data on the number of attorneys for each parent per case. Correcting that shortcoming may have to be a long-term goal.

Business Rules

Basic Rules

1. Select a date range for the report.
2. The universe included in this measure is all cases closed within the date range selected. (*A*)
3. For each case in (*A*), build a record for each hearing, documenting the attorneys representing the mother and father. Then sort the cases in (*A*) into six categories: (*B*) no attorney appeared for the mother throughout the case, (*C*) one attorney for mother throughout the case, (*D*) more than one attorney for mother throughout the case, (*E*) no attorney appeared for the father throughout the case, (*F*) one attorney for father throughout the case, (*G*) more than one attorney for father throughout the case.
4. Compute the percentage of cases in each of these categories by dividing the number of cases in each category by (*A*).

A note about the business rules: Where *more than one father* is named in the case, select only one to include in the calculations, using the following order of preference: (1) the man determined by the court to be the biological or adoptive father (whichever applies), (2) the man identified by the court as legal guardian, (3) the first man named as father who was appointed counsel, or (4) if no named father was appointed counsel, the named father whose name comes first alphabetically.

Possible Modifications

1. Report separately on cases with two, three, and more than three attorneys for parents.
2. Report on the average (mean) numbers of attorneys representing the mother and father per case.
3. For each parent in each case, separately identify the attorney who represented that parent in the largest number of hearings. Report on the percentage of hearings in which anyone *other* than that attorney

represented the parent. (This report is a quality measure—the percentage of hearings in which the mother or father may have been represented by an attorney with relatively little knowledge of the case.)

4. Report separately by age of case at closure. That is, calculate and compare the number of attorneys per case, basing categories on the length of time cases were open (less than 1 year, 1–2 years, etc.).
5. Report separately by mother's and father's race/ethnicity

Data Elements

These elements apply specifically to this measure. For elements that apply to all measures, see “Universal Data Elements,” page 7. For definitions of data elements, see appendix D, “Data Element Dictionary,” page 289.

Required Elements

- ◆ Case closure date.
- ◆ Party ID.
- ◆ Party type.
- ◆ Hearing date.
- ◆ Advocate ID.
- ◆ Advocate-party link.
- ◆ Advocate present at hearing.

Optional Elements

- ◆ Abuse and neglect petition date.
- ◆ Father's race/ethnicity.
- ◆ Mother's race/ethnicity.
- ◆ Waiver of counsel.
- ◆ Hearing type.

Related CFSR Standards

No Child and Family Services Review standard for State child welfare agencies relates specifically to *Toolkit Measure 3J*.

Reporting the Data

As with other *Toolkit* measures, *Measure 3J* lends itself to a variety of tabular and graphic presentations. State Court Improvement Projects will need presentations that show performance statewide and for each jurisdiction. Individual courts will want to see how their performance compares with that of other courts and with the State as a whole, and also whether their performance has improved or declined over time.

The samples that follow use hypothetical data from a fictitious State to demonstrate how results for this measure might be reported in tables and graphs.

Sample 3J–1 uses a tabular format to show the legal representation status of mothers and fathers—the percentage

Sample 3J–1. Number of Attorneys Representing Parent Throughout Life of Case, by Judicial District, Cases Closed in 2005

Judicial District	Mother						Father						Total Number of Cases
	No Attorneys		One Attorney		More Than One Attorney		No Attorneys		One Attorney		More Than One Attorney		
	# of Cases	%	# of Cases	%	# of Cases	%	# of Cases	%	# of Cases	%	# of Cases	%	
A	7	2%	96	29%	230	69%	121	36%	45	14%	167	50%	333
B	19	7%	56	21%	190	72%	81	31%	34	13%	150	57%	265
C	4	2%	45	20%	178	78%	28	12%	10	4%	189	83%	227
D	23	5%	88	20%	325	75%	46	11%	200	46%	190	44%	436
E	6	3%	24	13%	156	84%	15	8%	37	20%	134	72%	186
Statewide	59	4%	309	21%	1,079	75%	291	20%	326	23%	830	57%	1,447

Note: Percentages may not add up to 100 because of rounding.

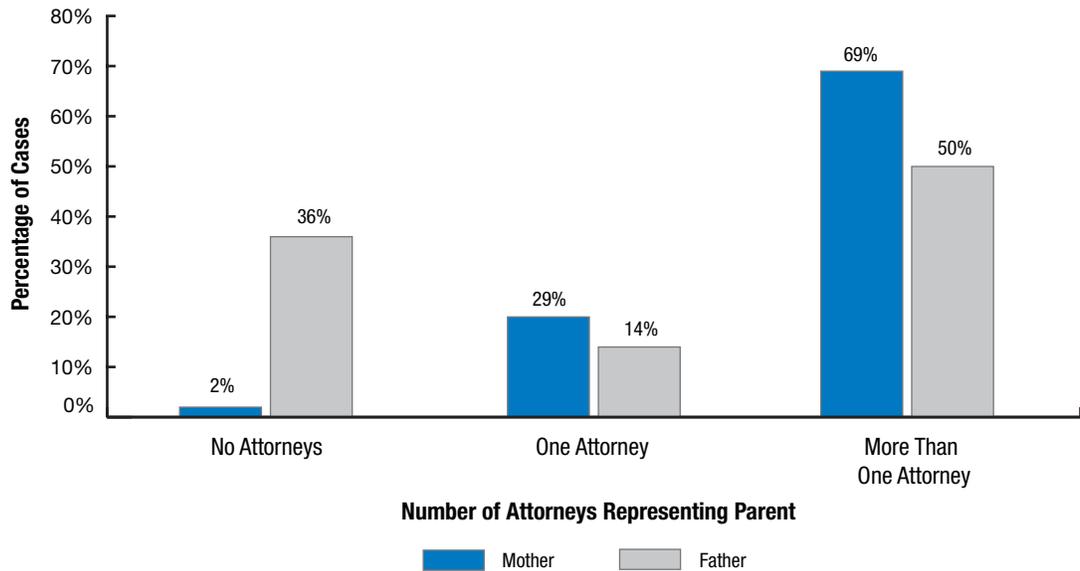
of cases in which the parent was unrepresented by an attorney throughout the life of the case, represented by the same attorney at all hearings, and represented by different attorneys. The data are based on cases closed in 2006 and are compared for five judicial districts.

Although this measure focuses on the continuity of representation for parents from hearing to hearing, the measure also reveals how often parents are unrepresented by legal counsel throughout the case. As the statewide totals in this table show, a far larger proportion of fathers than mothers are unrepresented throughout the case: 20 percent of fathers compared to only 4 percent of mothers. The table also shows marked differences from district to district; for example, only 8 percent of fathers were unrepresented in District E, compared to 36 percent in District A.

The bar graph in sample 3J–2 is drawn from the statistics in the table and highlights the difference in the stability of representation for mothers as compared with fathers in Judicial District A. The graph clearly shows that not only are fathers much more likely than mothers to be unrepresented throughout the case, but also those who are represented are much less likely to have the same attorney at every hearing.

Sample 3J–3 shows trends in parents’ legal representation status in one court, based on cases closed from 2001 to 2005. The table shows a steady increase over the 5-year period in the percentage of parents represented by just one attorney throughout the life of the case, from 16 percent to 48 percent for mothers, and 9 percent to 37 percent for fathers.

Sample 3J–2. Number of Attorneys Representing Parent Throughout Life of Case, Cases Closed in 2005: Judicial District A



Sample 3J–3. Percentage of Cases in Which Parent Was Unrepresented by Legal Counsel or Represented by One, Two, or Three or More Attorneys Throughout Life of Case, Cases Closed in 2001–2005: Court X

	Mother				Father			
	No Attorneys	One Attorney	Two Attorneys	Three or More Attorneys	No Attorneys	One Attorney	Two Attorneys	Three or More Attorneys
2001	3%	16%	54%	27%	56%	9%	11%	25%
2002	2%	21%	50%	27%	44%	19%	22%	15%
2003	3%	27%	44%	26%	43%	17%	27%	13%
2004	2%	34%	40%	24%	27%	30%	23%	10%
2005	1%	48%	38%	13%	32%	37%	23%	8%

The table in sample 3J–3 could be simplified considerably by eliminating all of the columns except the second one for each parent, to show trends in the percentage of cases in which the same attorney represented the parent at every hearing. That data could also be highlighted in a line graph, as shown in sample 3J–4. The upward slope of both lines immediately tells the viewer that representation is becoming more consistent for both mothers and fathers, and the percentages show that there is still room for improvement.

Factors That May Affect Results

Routine Substitutions and Withdrawals of Parents’ Attorneys

In some courts, parents’ attorneys frequently (and even casually) arrange for others to take their place for individual abuse and neglect hearings. If they can ask a colleague to fill in for them, they may give precedence to other types of proceedings or even schedule vacations that conflict with previously scheduled hearings. These practices are most common among attorneys who work for private law firms or public law offices such as public defender programs.

Judges should not tolerate such practices. When individual judges refuse to accept substitutions, except for compelling reasons, this practice will become less widespread.

Similarly, attorneys should not be allowed to withdraw from abuse and neglect cases, absent specified types of extenuating circumstances. Furthermore, law offices should be discouraged from rotating attorneys rapidly among assignments—a practice that results in different attorneys being involved at different stages of the same case.

Court Rules

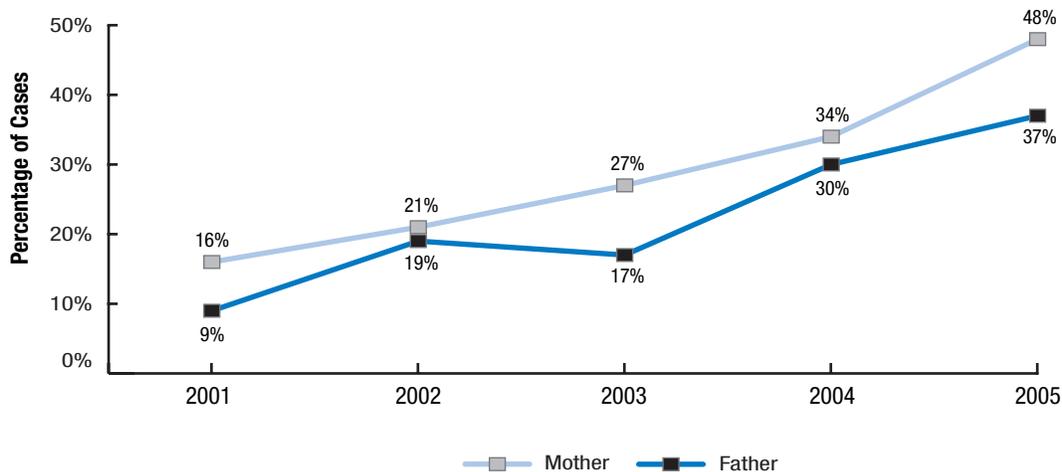
If court rules prohibit substitutions of parents’ attorneys for specific hearings and limit withdrawals of attorneys appointed to represent parents, more judges will feel justified in blocking such actions, and continuity of representation will improve.

Court rules can also establish strict criteria for exceptions and outline procedures to help deter substitutions and withdrawals. For example, substitutions and withdrawals are likely to decrease if attorneys must file written motions (accompanied by statements of supporting facts) requesting approval of such actions, and if the court must enter findings to grant these motions.

Contractual Provisions

Rather than permitting practices that cause unstable representation for parents, the court’s contracts for legal representation can bar or strictly limit substitutions and

Sample 3J–4. Percentage of Cases in Which Parent Was Represented by the Same Attorney at Every Hearing, Cases Closed in 2001–2005: Court X



also limit withdrawals. To be fully effective, these provisions must be enforced.

Education of Judges and Attorneys

Education and training programs for judges and attorneys can provide information on the importance of consistent representation for children. Presentations describing the experiences and views of former clients could be helpful.

Court Organization

As noted earlier, some States divide jurisdiction over child abuse and neglect cases among several courts. For example, one court hears cases from removal through review and permanency hearings, another hears TPR proceedings, and a third hears adoption and guardianship proceedings. In other States, one court hears all stages of these cases. When jurisdiction is divided, each court may appoint a different attorney for the parent. However, it is possible for different courts to coordinate appointment of counsel to ensure continuity of representation.

Possible Reforms

If the data from this performance measure indicate room for improvement in reducing the number of cases in which parents are represented by more than one attorney, the court should consider possible reforms. Specific reforms will, of course, depend on local conditions and the court's

analysis of reasons for inconsistency in parents' legal representation. A court might, for example, consider the following improvements:

- ◆ Establish statewide and/or local court rules barring substitutions of counsel, with limited exceptions. Also limit the resignation of counsel. Include procedural provisions, such as written motions, supporting affidavits, and judicial findings, to deter substitutions and resignations.
- ◆ In education and training programs for judges and attorneys, include information on the importance of consistent representation for parents.
- ◆ Add requirements for continuous representation to contracts with parents' attorneys.
- ◆ If different courts handle different phases of abuse and neglect cases, develop written procedures to ensure that the same attorney represents the parent in each court.
- ◆ Improve compensation, caseloads, and working conditions of attorneys for parents to reduce the motivation for substitutions and resignations.
- ◆ Work with courts in neighboring jurisdictions to limit scheduling conflicts for attorneys who practice in more than one jurisdiction. For example, if courts A and B both have abuse and neglect cases scheduled for Monday and Thursday, conflicts are likely to arise for attorneys who practice in both courts. Such situations often exist in rural areas.

Time to Permanent Placement



Definition: Average (median) time from filing of the original petition to legal permanency.

Explanation: This measure shows how long it takes for children in abuse and neglect cases to achieve legal permanency, following the filing of the original petition. “Legal permanency” means that there is a permanent and secure legal relationship between the adult caregiver and the child.

Purpose: To help courts evaluate their success in eliminating needless delays in achieving legal permanency for children in abuse and neglect cases.

Placement in safe, legally permanent homes as soon as possible is a central goal in Federal law and most State laws regarding children in court-ordered foster care. Measuring and comparing average times to permanency makes it possible to identify courts with good practices and those that need improvement—an important step in diagnosing the causes of delays and developing strategies for addressing delays.

This measure is related to *Toolkit Measure 2A: Achievement of Child Permanency*, which shows the percentage of children in foster care who reach legal permanency by reunification, adoption, or legal guardianship.

Implementation Issues

Legal Characteristics of Permanent Placement Options

The three preferred legal placement options are family reunification, adoption, and legal guardianship.

Family Reunification

Family reunification, followed by closure of the court case, restores the original legal position of the family prior to court involvement. The parents have undivided legal decisionmaking power regarding the child (subject to mandatory education laws, child labor laws, etc.). The parents no longer must accept supervision by the child welfare agency. Strong legal barriers (i.e., required proof in court of further abuse or neglect), comparable to those for parents with no court involvement, block future removal of the child from the home.

Adoption

The legal position of adoptive parents is essentially the same as that of biological parents who have had no adjudication of child abuse or neglect.

Legal Guardianship

“Legal guardianship” refers to legal placement options, established by State law, that are consistent with the Federal statutory definition¹ of legal guardianship. Legal guardians are not subject to the oversight of the public child welfare agency. They generally have full decision-making authority over a child, as with biological and adoptive parents. In some States, however, the legal guardians’ legal security against removal of the child is weaker than for most biological and adoptive parents. That is, in some States, if biological parents seek to regain custody of the child, the guardian may need to prove those parents unfit to resume care. This position is the reverse of that of the biological or adoptive parents, who can maintain control of the child unless they are proved unfit as parents. On the other hand, some States have amended their guardianship laws to create legal preferences for keeping children with legal guardians when challenged by parents.

In some States, more than one legal option may fall within the definition of “legal guardian.” For example, both “legal custody”² and guardianship (pursuant to the probate code) may qualify as legal guardianship. Thus, some jurisdictions may wish to include more than one form of legal guardianship in this measure.

“Another Planned Permanent Living Arrangement”

Some jurisdictions may wish to include APPLA in this measure, as Federal law³ recognizes APPLA as a type of permanency plan. However, what many States consider

to be APPLAs are actually legal arrangements that do not provide legally permanent placements. For example, simply deciding to continue a child in foster care is not an APPLA. If this is encompassed by a State's definition of APPLA, it is inappropriate to count APPLAs in this measure.

States that define the term APPLA narrowly, as intended by Federal law,⁴ may appropriately include APPLA in this measure. For example, if State law authorizes a court to order a permanent placement with a specific foster parent and that placement cannot be disrupted without a court order, a State may choose to include that placement within the measure.⁵ A State might even choose to include as an APPLA a group home placement for a child who is unable to live with a family, if an adult commits to serving as a lifelong mentor and substitute parent for the child, and the child accepts that relationship.

Calculating Times for Different Legal Permanency Options

Because a court may be effective in achieving permanency with some placement options but not others, it is important to calculate this measure separately for the different options. A single calculation combining all options is less informative. Furthermore, if APPLA is included as an option in a combined calculation, the timeliness of permanency based on numerous APPLAs may be misleading.

Case Outcomes Not Constituting Permanency

Case outcomes that do not constitute permanency and therefore should not be included in the time calculations include "aging out," independent living, emancipation, and other nonpermanent legal placement categories.

Aging Out

If the court closes a case because a child has "aged out" of its jurisdiction, and the child remains in foster care after case closure, that child will be considered to have achieved legal permanency only if the court has ordered permanent placement with the foster parent(s) as an APPLA.

Independent Living

Cases labeled "independent living" (e.g., youth who are receiving services to help them function better after reaching adulthood) should not be classified as having achieved permanency. An independent living situation does not meet the goal of legal permanency, which should include, among

other things, having a permanent family upon reaching adulthood. Effective services to help youth function independently upon reaching adulthood, although commendable and helpful, have little to do with permanency.

Emancipation

As with independent living, "emancipation" is sometimes used as a euphemism for aging out of foster care. In addition, an emancipated youth may be a young person who is granted some aspects of adult legal status before reaching the age of majority. For example, depending on State law, an emancipated youth may be granted the right to live alone without any adult supervision and to enter into certain contracts.⁶

Other Nonpermanent Legal Placement Categories

Examples of other categories of court case closure that would not be considered legal permanency for purposes of this measure include death of child, transfer of the case to another geographic jurisdiction (e.g., another State's court system or another judicial district), transfer of the case to another agency, and a runaway or missing child. The Federal Adoption and Foster Care Reporting System (AFCRS), which applies to State child welfare agencies, includes the following nonpermanent placement categories for foster care "discharge": emancipation, transfer to another agency, runaway, and death of the child.⁷

Children who are transferred to another jurisdiction before case closure or who die in foster care (presumably through no fault of the State) should not be included in this measure, because such cases are not a reflection of the State's degree of success in achieving timely permanency. Likewise, a runaway or other missing child or a child who is transferred to another agency (e.g., a juvenile justice agency or developmental disabilities agency) also does not achieve permanency and therefore should not be included in this measure regarding the timeliness of permanency. Such cases usually reflect the court's and the child welfare agency's success in planning, oversight, and decisionmaking with regard to the child.

Other Measures as Context

As is often the case, data based on this measure should be considered in light of data based on other measures. For example, while it is helpful to know how long it takes to achieve permanency, it is also helpful to know percentage of children reaching permanency by the time the case is closed (*Toolkit Measure 2A: Achievement of Child*

Permanency). It is also useful to know what percentage of permanent placements subsequently break up, making it necessary for the child to reenter foster care (*Toolkit Measures 2D: Reentry Into Foster Care After Return Home* and *2E: Reentry Into Foster Care After Adoption or Guardianship*).

Measure Limited to Youth in Foster Care

This measure should be limited to youth in foster care. Otherwise, it would substantially reflect the percentage of abused and neglected children who come before the court but never enter foster care rather than the percentage of children in foster care who have achieved permanency. (Note that the rate of permanency for children who come before the court but never enter foster care, excluding categories such as children who die while in foster care or who are transferred to another jurisdiction, would be close to 100 percent.)

If courts prefer to include all youth under court jurisdiction in this measure, they should maintain separate statistics on the permanency rate for youth in foster care.

Choosing a Start Date for Measuring Time to Permanency

Considerations in choosing a start date for this measure are (1) consistency with start dates for most of the other timeliness measures, (2) consistency with State statutory framework regarding timelines, (3) consistency with related child welfare agency performance measures, and (4) ease of obtaining data. Possibilities include the date the original petition is filed, the date the child is removed from home, the date of the first court order authorizing removal, and the date of the emergency removal hearing.

Date Original Petition Is Filed

The date the petition is filed is clear and easily applied. Because the start date is based on the beginning of the litigation, the measure will include cases in which the child was never removed from home. (Sometimes a child may remain at home with the parents throughout the case, albeit under court supervision.) Moreover, if a child enters foster care long after the petition is filed, the calculated time to permanency will be much longer than the time the child actually spends in foster care.

Thus, when the original petition date is used as the start date, this becomes in essence a measure of the length of the court case leading to permanency. If a court wishes to focus instead on children's loss of permanency based on the length of time they are actually placed outside the home, another start date (e.g., date of removal, as discussed below) may be preferable. Another reason for considering other options would be if a court experiences frequent but uneven delays in filing petitions.⁸

Date Child Is Removed From Home

Using the removal date as the start date is similar to the child welfare agency's use of the foster care placement date, except the calculation will also include children who are placed with relatives not licensed as foster parents.

The rationale for using the removal date as the start date is that the time to permanency should relate to the child's experience of not having a permanent home. The assumption is that children most intensely feel the lack of permanency only after removal. As long as they are left at home, even if under the supervision of the child welfare agency and court, they have not experienced the trauma of being separated from their parents and generally do not feel a loss of permanency as they would in foster care.

On the other hand, data regarding the removal date must come from the child welfare agency and might not be readily available. Persuading the agency to provide the information in a format that court staff can easily retrieve may take time and effort, as may convincing staff to consistently enter the information. The development of automated data exchange capabilities may eventually make it easier for agencies and courts to share such information.

Date of First Court Order Authorizing Removal of the Child From Home

The first court order authorizing removal may be (a) an *ex parte*⁹ removal order, (b) an emergency *non ex parte* removal order (where all parties had the chance to be heard), (c) an emergency removal hearing order that occurs within a few days after removal and typically is the court's first substantive involvement in the case, or (d) any later removal order that occurs at a subsequent hearing.

One advantage of this start date is that it is based on action by the court itself; therefore, it is unnecessary to obtain information from the agency. Moreover, court staff may already be entering information on court orders into

the court information system. Finally, this start date filters out cases in which the child is not removed from the home.

On the other hand, court employees may be unaccustomed to referring to this date, and using it as a start date for the measure may require extra training and programming to facilitate data entry.

Date of Emergency Removal Hearing

In the absence of reliable information from the child welfare agency on removal dates, the court may choose to use emergency removal hearing dates as a proxy (substitute) start date.¹⁰ The date of this hearing should be readily available to any court. (Every State has a standard deadline for this hearing; that deadline is shortly after the removal date.)

One potential drawback to substituting the emergency removal hearing date for the removal date is that the calculation will omit cases in which the child is first removed from home later in the process, such as at the disposition or review hearing. If such late removals are rare, the emergency removal hearing date may be an acceptable start date for this measure.

Separate Start Dates for In-Home and Out-Of-Home Cases

Courts may choose to adapt this measure to calculate timeliness separately for cases in which the child remains at home and cases involving out-of-home care. The petition filing date could be used as the start date for in-home cases, the removal date as the start date for out-of-home cases.

Identifying the Date Permanency Is Achieved

Calculations of the date that permanency is achieved may vary depending on the category of permanency. For reunification, the recommended date is the date the case is closed following the child's return home (i.e., the court's jurisdiction over the case has ended). For adoption or legal guardianship, the recommended date is the date on which the adoption or guardianship is finalized. If the court that hears abuse and neglect cases does not also preside over adoption and guardianship proceedings, there may be significant delays between the date the adoption or guardianship is finalized and the date the original court closes

its case. Realistically, however, permanency is achieved as soon as the adoption or legal guardianship is finalized.

Business Rules

Basic Rules

1. Select a date range for the report.
2. From the cases that were closed within the date range selected, the universe included in this measure is children who were in foster care at some time while their case was open. (A)
3. From dataset (A), select the cases in which the reason for closure meets the State's definition of a permanent placement (e.g., family reunification, adoption, or legal guardianship). (B)
4. For each case in (B), compute the number of days from filing of the petition to closure, and store this number in the case record.
5. Determine the *median* time to permanency in (B) by finding the number of days that falls midway between the shortest and longest cases (see calculation note, below).
6. Determine the *average* time to permanency in (B) by counting the number of cases (C), totaling the days for all cases (D), and dividing (D) by (C).

Calculation note: With an odd number of numbers, the median is simply the middle number; e.g., the median of 2, 4, and 7 is 4. With an even number of numbers, the median is the mean of the two middle numbers; e.g., the median of 2, 4, 7, and 12 is 5.5 (4 plus 7 divided by 2).

Possible Modifications

1. Report on median and average time to permanency separately for each type of permanency (reunification, adoption, legal guardianship).
2. Report separately on cases by categories such as child's race/ethnicity, child's age, or age of case at closure.
3. Add other permanency options legally recognized under State law as additional case closure categories, if applicable.
4. Expand the measure by also including children who were placed with relatives at some point in the case.

- In addition to the median and average values, calculate and report 75th and 90th percentiles. Such a report can clearly show not only the typical case but also “outliers” (less common, yet still accounting for significant proportions of cases).

Data Elements

These elements apply specifically to this measure. For elements that apply to all measures, see “Universal Data Elements,” page 7. For definitions of data elements, see appendix D, “Data Element Dictionary,” page 289.

Required Elements

- ◆ Case closure date.
- ◆ Abuse or neglect petition date.
- ◆ Case closure reason (includes reunification, adoption, or legal guardianship).

Optional Elements

- ◆ Foster care flag = “yes.”
- ◆ Case closure reason (includes all legal permanent placement types recognized under state law).

Related CFSR Standards

The following Child and Family Services Review (CFSR) standards for State child welfare agencies are related to *Toolkit Measure 4A*:

CFSR PC1A1: *Of all children discharged from foster care to reunification in FY 2004 who had been in foster care for 8 days or longer, what percentage was reunified in less than 12 months from the date of the latest removal from home?*

CFSR PC1A2: *Of all children exiting foster care to reunification in 2004 who had been in foster care for 8 days or longer, what was the median length of stay in months from the date of the most recent entry into foster care until the date of reunification?*

CFSR PC1A3: *Of all children entering foster care for the first time in the second 6 months of FY 2003 who remained in foster care for 8 days or longer, what percentage was reunified in less than 12 months of the date of entry into foster care?*

CFSR PC2A1: *Of all children who were discharged from foster care to a finalized adoption in FY 2004, what percentage was discharged in less than 24 months from the time of the latest removal from the home?*

CFSR PC2A2: *Of all children who were discharged from foster care to a finalized adoption in FY 2004, what was the median length of stay in foster care (in months) from the time of removal from the home to the time of discharge from foster care?*

There are three key differences between these CFSR measures and *Toolkit Measure 4A*. First, *Measure 4A* computes the median/average time only, whereas the CFSR measures compute both medians and percentages. Second, *Measure 4A* reflects children’s time under court jurisdiction, whereas the CFSR measures reflect their time in foster care (regardless of whether they were under court jurisdiction). Third, *Measure 4A*, under the basic business rules, computes a single time for all types of permanency, whereas the CFSR measures compute times separately for reunification and adoption.¹¹

Reporting the Data

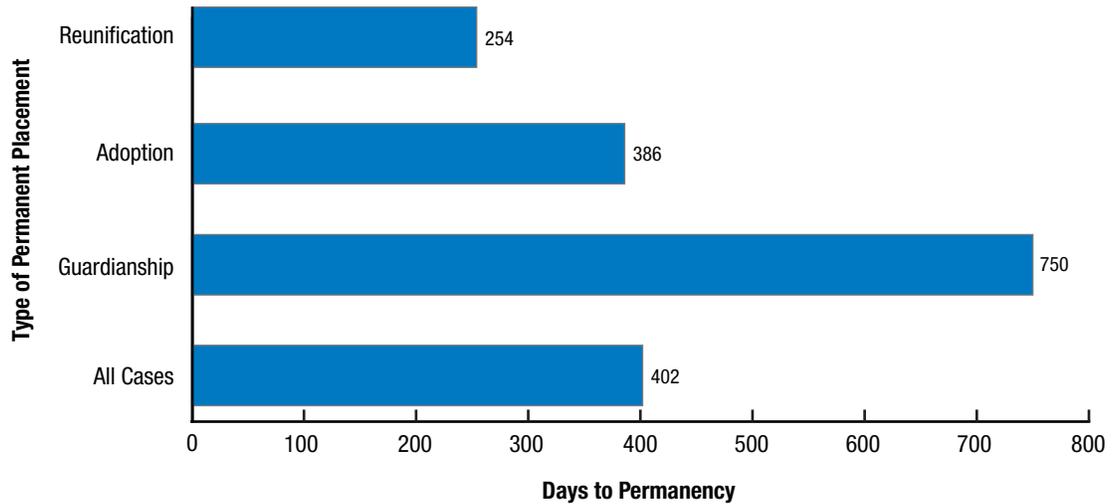
As with other *Toolkit* measures, *Measure 4A* lends itself to a variety of tabular and graphic presentations. State Court Improvement Projects will need presentations that show performance statewide and for each jurisdiction. Individual courts will want to see how their performance compares with that of other courts and with the State as a whole, and also whether their performance has improved or declined over time.

The samples that follow use hypothetical data from fictitious jurisdictions to demonstrate how results for this measure might be reported in tables and graphs.

Sample 4A–1. Median Days From Petition to Permanency, by Type of Placement, Cases Closed in 2005: Court X

Permanent Placement Type	Median Days
Reunification	254
Adoption	386
Guardianship	750
All Cases	402

Sample 4A–2. Median Days From Petition to Permanency, by Type of Placement, Cases Closed in 2005: Court X



The table in sample 4A–1 shows one court’s median days from petition to permanency for three types of permanent placement, based on cases closed in 2005. A similar table could present data statewide or for a particular judicial district.

The bar graph in sample 4A–2 illustrates the data from the table in 4A–1.

Sample 4A–3 presents median, percentile, and average values for each of five judicial districts in a small State. By including the percentiles, the table shows the “outliers”—the length of time it takes the shortest cases (the 25th percentile level) and the longest cases (the 90th percentile level) to go from petition to permanency. For example, Judicial District D has the most extreme outliers within the longest 10 percent of cases: At the 90th percentile level, it

takes 602 days for a case to go from petition to permanency. Even though District D has the second fastest median time in the State, its longest cases are taking much more time than the longest cases take statewide. Not surprisingly, District D has the second highest average days to permanency.

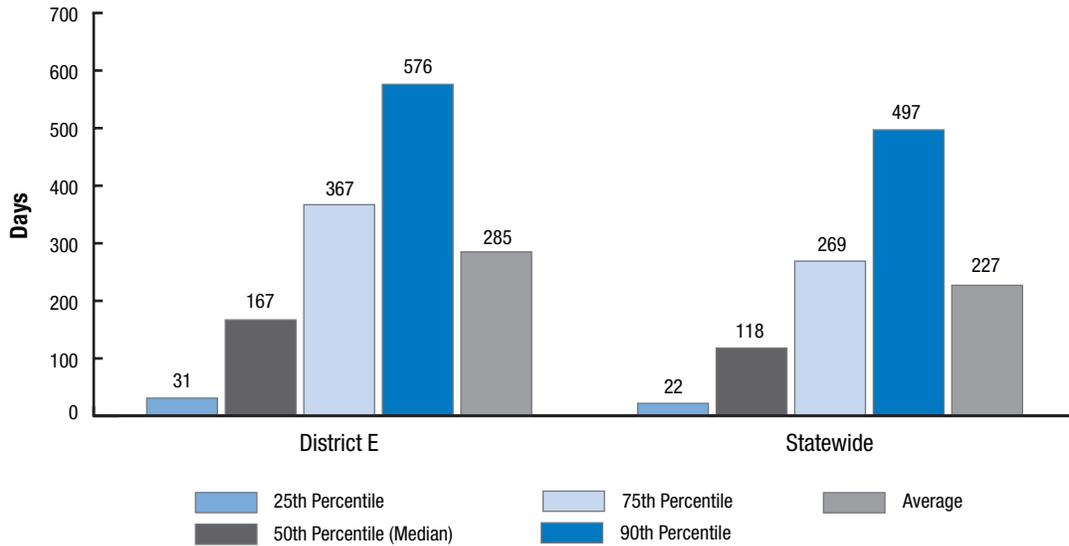
The bar graph in sample 4A–4 illustrates selected data from the table in sample 4A–3. Although a variety of bar graphs or line graphs could be created from the table, simple graphs showing only a portion of the data from the table are most likely to communicate information effectively.

The table in sample 4A–5 compares time to permanency by child’s race/ethnicity, based on cases closed during 2005 in one medium-sized judicial district. Such information may

Sample 4A–3. Days From Filing of Petition to Permanency, Cases Closed in 2005, by Judicial District

Judicial District	25th Percentile	50th Percentile (Median)	75th Percentile	90th Percentile	Average	Number of Cases
A	12	79	278	552	230	76
B	24	110	220	457	203	89
C	23	135	190	299	162	113
D	19	101	290	602	253	45
E	31	167	367	576	285	200
Statewide	22	118	269	497	227	523

Sample 4A–4. Days From Filing of Petition to Permanency, Cases Closed in 2005: Judicial District E and Statewide



be more useful to a district in the form of a bar graph, as in sample 4A–6.

A note about reporting: A variety of other tables and graphs could be produced for this measure, showing, for example, breakdowns by child’s age at case closure or by additional categories of permanency. In deciding what information to share with local courts, State-level staff might take into consideration the apparent importance of the numbers, the cost of producing reports, and the need to avoid “statistical overload.” It may make sense to e-mail a few graphs and post more on an intranet.

Factors That May Affect Results

This section suggests some possible court-related reasons for performance results related to timeliness in achieving permanency. Because factors may be different for reunification, adoption, and legal guardianship, they are described separately for each of these permanency options.

For a broader discussion of factors, see the related discussion in *Toolkit Measure 2A: Achievement of Child Permanency*. Many of the factors discussed in *Measure 2A* also apply to this measure. The discussion that follows is relatively brief and focuses on those factors most closely related to timeliness.

Sample 4A–5. Average Days From Petition to Permanency, by Child’s Race/Ethnicity, Cases Closed in 2005: Judicial District X

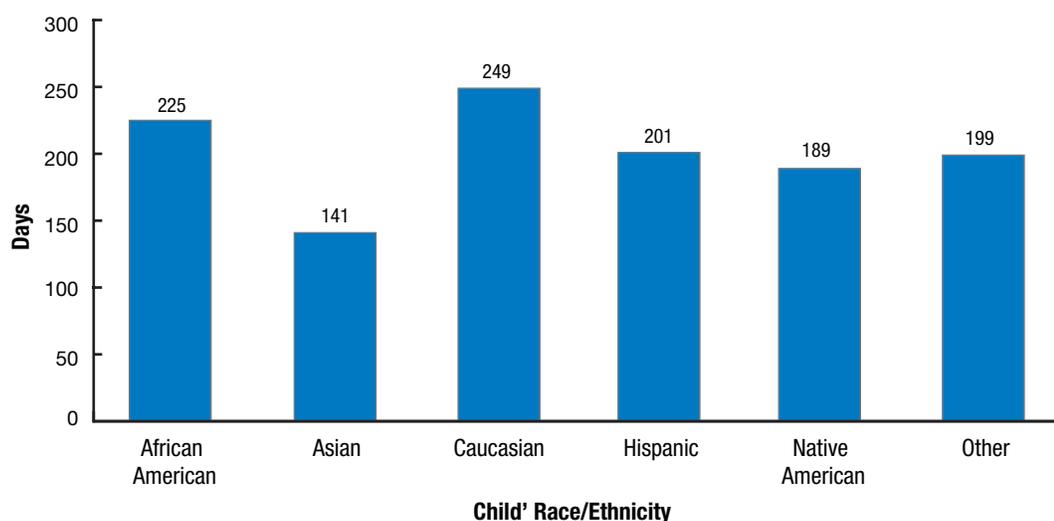
Child’s Race/Ethnicity	Average Days to Permanency	Number of Cases
African American	225	65
Asian	141	21
Caucasian	249	66
Hispanic	201	37
Native American	189	45
Other	199	17
Average	201	251

Factors Affecting Family Reunification Timeliness

Knowledge of Judges and Advocates Regarding Safety Planning

The impact of judges and advocates on the timeliness of reunification depends in part on their ability to analyze safety issues. To help resolve cases quickly, they need to know what services are available, what constitutes a good case plan, and how to recognize when conditions are safe enough for reunification.

Sample 4A–6. Average Days From Petition to Permanency, by Child’s Race/Ethnicity, Cases Closed in 2005: Judicial District X



Involvement of Judges and Advocates in Reunification Planning

The impact of judges and attorneys on the timeliness of reunification also depends on the intensity of their involvement in the reunification planning process. By examining plans carefully, keeping tabs on implementation, and scheduling early and substantive review and permanency hearings, they can help to ensure that parents, caseworkers, and service providers do not let matters slip and delay progress on the case.

Legal Criteria and Judicial Conditions for Reunification

A clear goal supported by clear, stable criteria for reunification makes it possible for parents and caseworkers to focus on the necessary steps to achieve the goal. If the criteria change as the case moves forward, momentum is lost as services are dropped and new approaches introduced.

In addition to clear legal criteria, parents need to know the specific conditions they must meet before the child can return home. The judge should work with the parties to establish these conditions, focusing on actual changes the parents need to make rather than on activities (such as attending a program) that may or may not make the home safer for the child.

Factors Affecting Adoption Timeliness

Knowledge of Judges and Advocates Regarding Adoption

Judges and advocates need to know enough about the adoption process to be able to ask pertinent questions, identify sources of delay, and request or issue orders to address problems. They also need to be able to identify and reject weak excuses for delays or refusals to pursue adoption. Finally, they should be aware that adoption is an option for a wide range of children and that many resources are available for placing children and providing assistance following adoption.

Involvement of Judges and Advocates in the Adoption Process

Judges and advocates need to be actively involved in maintaining the momentum of the adoption process. This includes holding frequent review hearings when necessary and overseeing agencies' efforts to place children in adoptive homes.

Judges and advocates must not allow reunification plans to continue once it becomes clear that such plans cannot succeed. In extreme cases, special steps are required to secure early adoption. Such steps may include judicial findings that reunification efforts are not required, early permanency hearings to consider changing the permanency plan from reunification to adoption, and early filing of petitions for termination of parental rights (TPR).

Finally, judges and advocates need to remain actively involved after TPR if a prospective adoptive family has not yet been identified and approved. Frequent, in-depth reviews and permanency hearings after TPR can greatly reduce delays in adoption.

Legal Criteria and Procedures Relevant to Adoption

The efficiency of TPR procedures is an important factor in the timeliness of adoption. For example, mediation, effective pretrial proceedings, and strong caseload management to reduce delays (including timelines governing the court process in TPRs) can dramatically shorten TPR proceedings and decisions. Similarly, the grounds for TPR and the case law interpreting those grounds can affect the timeliness of TPR and adoption.

Adoption law and procedure are also important. Arbitrary procedural barriers and overly complex procedures add to the amount of time required. Adoptions can unravel because of the strain that long waits impose on adoptive parents and children.

Factors Affecting Legal Guardianship Timeliness

Knowledge of Judges and Advocates Regarding Legal Guardianship

Because legal guardianship proceedings are relatively uncommon, judges and advocates must make a special effort to become familiar with them. For example, they should understand the financial implications of legal guardianship for the guardians, the legal procedures to achieve guardianship, and the legal protections (or lack thereof) of guardianship under State law.

Involvement of Judges and Advocates in Guardianship Planning

Judges and advocates can help speed the guardianship process by paying attention to and staying involved in planning for guardianship. For example, they can ensure timely home studies of the guardian household. If multiple courts must be involved, they can take steps to expedite and coordinate the proceedings.

Legal Criteria and Judicial Conditions for Legal Guardianship

If the law makes legal guardianship a permanent placement for a child, the legal grounds for establishing guardianship

should reflect that fact. Generally speaking, legal grounds for guardianship should require proof that (a) the child should not or cannot be returned to his or her parents within a reasonable time and (b) legal guardianship, rather than adoption, is in the child's best interests.

Procedures to establish legal guardianship should be efficient but should also provide strong legal protections for the parents and child. For example, State laws that allow the same court that heard the abuse and neglect case to also decide whether to grant legal guardianship strengthen procedural protections for the parties (e.g., by providing court-appointed counsel for parents) and enhance the efficiency of the permanency process.

Finally, the legal characteristics of legal guardianship should reinforce the legal permanency of the arrangement, for the sake of both the child and the guardian. Legal guardians should not be subject to ongoing supervision by the State child welfare agency and should not be highly vulnerable to custodial challenges by biological parents.

Possible Reforms

If data from this performance measure indicate room for improvement regarding the percentage of cases resulting in permanent placements, the court should consider possible reforms. Specific reforms will, of course, depend on local conditions and the court's analysis of the best procedures and steps for achieving permanency in its jurisdiction.

The sections that follow present examples of additional actions a court might take to improve permanency rates for reunification, adoption, and legal guardianship.¹²

Family Reunification

- ◆ Take more time to address safety issues during reviews and permanency hearings.
- ◆ Before accepting other permanency plans during permanency hearings, require evidence that the child cannot safely return home, even with realistically available services and help.
- ◆ Train judges and attorneys on safety issues, such as focusing on the capacity of parents and relatives to keep the child safe, focusing on the special vulnerabilities of children, and understanding other basic elements of good safety analysis. The training should include how to address these issues in review and permanency hearings.

- ◆ Secure the assistance of skilled forensic psychologists and psychiatrists in analyzing the safety of reunification.
- ◆ Improve agency reports to the court by working with the agency to develop new forms (or supplements to forms) in connection with recommendations for reunification. The forms should address matters such as the reasons why reunification is or is not now safe; how relatives will be involved, when appropriate, to help oversee the child's safety; and transitional visitation arrangements. (See endnote 12.)
- ◆ Adopt new forms (or supplements to forms) to be used for court orders for family reunification. The forms should address matters such as those noted above for agency reports. (See endnote 12.)
- ◆ Before case closure, implement family group conferencing models that involve the family in making safety plans to maintain their children in a safe and secure environment upon reunification.
- ◆ Simplify procedures for terminating parental rights, thereby encouraging agency workers and attorneys to seek that option and reducing delays.
- ◆ Train caseworkers to document and present to the court better information regarding reunification.

Legal Guardianship

- ◆ Take more time to address the possibility of legal guardianship during reviews and permanency hearings, at least for cases in which family reunification and adoption are seriously questioned as proper case goals.
- ◆ Review ongoing cases to ensure that sufficient steps are being taken to recruit guardians, properly screen applicants, conduct thorough and timely home studies, and make timely decisions. This review helps avoid the need to make hasty decisions later in the process or to choose among insufficiently qualified candidates.
- ◆ Before accepting lower priority permanency plans (such as APPLAs) during permanency hearings, require evidence that the child cannot or should not be placed in a legal guardianship.
- ◆ Revise legal procedures for guardianship to simplify the process.
- ◆ If legal protection for guardians against biological parents seeking to regain custody is inadequate under State law, amend statutes to correct the problem.
- ◆ Train judges and attorneys on legal guardianship issues, such as the process to establish legal guardianship, including, where applicable, coordination between the court handling the guardianship proceeding and the court handling the abuse and neglect case; the financial implications of legal guardianship, including possible financial benefits available; the legal rights and obligations of legal guardians under State law; and consent to guardianship.
- ◆ Revise forms for legal guardianship to help simplify the process, clarify the authority and responsibilities of the guardian, and set forth the reasons for choosing legal guardianship rather than reunification or adoption.
- ◆ Train caseworkers to document and present to the court better information regarding legal guardianship.

Adoption

- ◆ Take more time to address adoption issues during reviews and permanency hearings.
- ◆ Review ongoing cases to ensure that sufficient steps are being taken to recruit adoptive parents, properly screen applicants, conduct thorough and timely home studies, and make timely decisions. This review helps to avoid the need to make hasty decisions later in the process or to choose among insufficiently qualified candidates.
- ◆ Before accepting other nonreunification permanency plans during permanency hearings, require evidence that the child cannot or should not be adopted.
- ◆ Train judges and attorneys on adoption issues, such as the details of the bureaucratic steps in the process, adoption recruitment, adoption screening and selection, financial barriers, and issues concerning adolescents.
- ◆ Revise the legal grounds for terminating parental rights to eliminate inappropriate barriers to adoption for children who are unable to return home within a reasonable time, when adoption is in their best interests.

Endnotes

1. 42 U.S.C. § 675(7) states that:

The term ‘legal guardianship’ means a judicially created relationship between child and caretaker which is intended to be permanent and self-sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child: protection, education, care and control of the person, custody of the person, and decision-making. The term ‘legal guardian’ means the caretaker in such a relationship.
2. The term “legal custody,” when used as a type of permanent placement, means a court order that gives indefinite custody (permanent care and control) of a child to an individual or couple. Used in this sense during child abuse or neglect proceedings, legal custody would survive after the proceedings have been closed. However, not every State has the option of awarding legal custody of this type in the course of child abuse and neglect proceedings. The term “legal custody” is different from “physical custody” in that legal custody connotes full legal decisionmaking powers concerning the child, whereas physical custody generally means little more than the right to physical care and control of the child. Another type of custody in child abuse and neglect proceedings, “temporary custody,” typically means custody that lasts only as long as the abuse or neglect case remains open. Note, however, that the precise meaning of custody, legal custody, physical custody, and temporary custody can vary from State to State.
3. 42 U.S.C. § 675(5)(C).
4. For further discussion regarding the meaning of the statutory term “another planned permanent living arrangement,” see Fiermonte, C., and J. Renne, *Making It Permanent: Reasonable Efforts To Finalize Permanency Plans for Foster Children* (Washington, DC: American Bar Association, 2002), pp. 78–81.
5. Although “permanent foster family care” is not as legally permanent as reunification, adoption, or legal guardianship, it is significantly more so than conventional foster placements. “Permanent foster family care” should be distinguished from “long-term foster care,” which generally means that the State or court has given up on securing a legally permanent placement for the child. The Federal Adoption and Safe Families Act of 1997 [42 U.S.C. § 675(5)(C)] eliminated long-term foster care, so defined, as an acceptable permanent placement option. If, however, the term is used under State law or practice in a narrower, more precise sense to actually mean “permanent foster family care,” it may be considered as another type of legal permanent placement option for purposes of this measure.
6. Some States authorize legal emancipation before age 18 under certain circumstances, typically after a youth has reached age 16 or 17.
7. 45 C.F.R. § 1355, Appendix A, Section I(X)(B).
8. For example, the validity of the measure may be reduced if petitions are filed during emergency removal hearings and the court encounters delays in scheduling these hearings.
9. An *ex parte* order is generated by a judge without requiring all of the parties to the controversy to be present.
10. During the emergency removal hearing, the court decides whether to return the child home or place the child in foster care. Such hearings may be known by a variety of other names, such as temporary removal, initial, preliminary, detention, preliminary protective, or shelter care hearings.
11. The CFSR designation “PC1” refers to Permanency Composite 1: Timeliness and Permanency of Reunification. PC1 includes components A (timeliness) and B (permanency), each of which includes separate measures. Thus, “PC1A1,” for example, refers to Permanency Composite 1, Component A, Measure 1. “PC2” refers to Permanency Composite 2: Timeliness of Adoption, which includes three components, each with separate measures. Each permanency composite combines its component measures into a single “national standard,” which is the 75th percentile of a scaled score taking values from 50 to 150. Although CFSR does not have a national standard for each component measure, a child welfare agency would need to score near the 75th percentile for most of the components to meet the national standard for the composite. The following tables illustrate the PC1 and PC2 components and measures:
12. See also Fiermonte, C., and J. Renne, *Making It Permanent: Reasonable Efforts To Finalize Permanency Plans for Foster Children* (Washington, DC: American Bar Association, 2002).

CFSR Permanency Composite 1. Component Measures, Range and Median Scores, and Composite National Standard

	Range	Median	National Standard
Permanency Composite 1: Timeliness and permanency of reunification	50–150	102.0	122.6 or higher
Component A: Timeliness of Reunification			
Of all children discharged from foster care to reunification in FY 2004 who had been in foster care for 8 days or longer, what percent were reunified in less than 12 months from the date of the latest removal from home? (This includes the “trial home visit adjustment.”)	44.2–88.8%	69.5%	No standard
Of all children exiting foster care to reunification in 2004 who had been in foster care for 8 days or longer, what was the median length of stay in months from the date of the most recent entry into foster care until the date of reunification? (This includes the “trial home visit adjustment.”)	2.0–13.7 months	6.5 months	No standard
Of all children entering foster care for the first time in the second 6 months of FY 2003 who remained in foster care for 8 days or longer, what percent were reunified in less than 12 months of the date of entry into foster care? (This includes the “trial home visit adjustment.”)	15.7%–65.4%	35.3%	No standard
Component B: Permanency of reunification			
Of all children exiting foster care to reunification in FY 2003, what percentage reentered foster care in less than 12 months?	1.6%–29.8%	15%	No standard

CFSR Permanency Composite 2. Component Measures, Range and Median Scores, and Composite National Standard

	Range	Median	National Standard
Permanency Composite 2: Timeliness of adoption	50–150	96.5	102.1 or higher
Component A: Timeliness of adoptions of children discharged from foster care			
Of all children who were discharged from foster care to a finalized adoption in FY 2004, what percent were discharged in less than 24 months from the time of the latest removal from the home?	6.4–74.9%	27.1%	No standard
Of all children who were discharged from foster care to a finalized adoption in FY 2004, what was the median length of stay in foster care (in months) from the time of removal from the home to the time of discharge from foster care?	16.2–55.7 months	32.0 months	No standard
Component B: Progress toward adoption for children who meet ASFA time-in-care requirements			
Of all children in foster care on the first day of FY 2004 who were in foster care for 17 continuous months or longer, what percent were adopted before the end of the fiscal year?	8.0–25.1%	18.0%	No standard
Of all children in foster care on the first day of FY 2004 who were in foster care for 17 continuous months or longer, what percent became legally free for adoption (i.e., a TPR was granted for each living parent) within 6 months of the beginning of the fiscal year?	0.2–17.2%	9.0%	No standard
Component C: Progress toward adoption of children who are legally free for adoption			
Of all children who became legally free for adoption during FY 2004, what percent were discharged from foster care to a finalized adoption in less than 12 months?	18.9–85.2%	43.7%	No standard

Time to Adjudication



Definition: Average (median) time from filing of the original petition to adjudication.

Explanation: This measure shows how long it takes from the date the proceedings have formally begun to the date on which the case has been adjudicated. “Adjudication” refers to the court’s formal finding, at the conclusion of the adjudication hearing, whether or not the petition alleging child abuse or neglect has been sustained. If the petition is not sustained, the case is dismissed. If the petition is sustained, the court has legal authority and responsibility, at a minimum, to determine who will gain custody of the child. The court will also have ongoing responsibility to oversee the case until the child is safe in his or her own home or has been placed in a new permanent home.

Purpose: To help courts evaluate an important element not only of their efficiency but also of their impact on abused and neglected children. The timeliness of adjudication figures significantly in the timeliness of permanency for abused and neglected children, especially those who have been placed in foster care. This is true partly because case planning, which requires cooperation between the family and child welfare agency, often cannot effectively begin until the court has resolved whether the child is legally considered to have been abused or neglected. In addition, the more quickly adjudication is completed, the shorter the period of anxiety and uncertainty for parent and child while awaiting the outcome of the case.

The timeliness of adjudication is also important, if less critically so, for children not placed in foster care before adjudication. (Some children can remain safely at home or with an adult relative until adjudication, when the family is placed under the temporary supervision of the agency and court.) Waiting for the court to decide whether there has been abuse or neglect is not easy for these children and their families. Only after adjudication does the family know with certainty whether it must cooperate with the child welfare agency and follow longer term court orders.

This measure is related to *Toolkit Measure 4C: Timeliness of Adjudication*, which shows the percentage of cases that are adjudicated within 30, 60, and 90 days after filing of the petition.

Implementation Issues

Combined Adjudication-Disposition Hearings

Courts sometimes conduct adjudication immediately before disposition, in what court staff may view as a single hearing. Because such hearings address two distinct functions, staff must record separate adjudication and disposition dates for purposes of the *Toolkit* performance measures.

The possibility of data entry errors in this regard may be avoided through system design, staff training, and quality control. For example, the data entry screen can provide prompts asking whether an adjudication hearing also involved disposition and vice versa. Judges can inform staff when a hearing includes both adjudication and disposition. The titles and content of court orders should reflect when adjudication and disposition are combined in a single hearing.

Choosing a Start Date for Measuring Time to Adjudication

A key consideration in choosing the start date for measuring time to adjudication is whether State laws or court rules set legal deadlines for adjudication. If so, courts should select a start date that will help them measure the extent of their compliance with such requirements. Aside from State law, there are arguments for using each possible start date. These dates include the following:

- ◆ **Date the original petition is filed.** In addition to cases in which the child is removed from home prior to adjudication, this clearly defined date will include cases in which the child is not removed. If a court frequently experiences filing delays of more than 2 or 3 days, however, it should consider other options.
- ◆ **Date the child is removed from home.** Using this start date to calculate the timeliness of adjudication

encourages the court to address the very earliest, most critical delays related to the court process.

- ◆ **Date of emergency removal hearing.** In the absence of reliable information from the child welfare agency on removal dates, the court may choose to use the emergency removal hearing date as a proxy (substitute) start date.¹ The date of this hearing should be readily available to any court. (Every State has a standard deadline for this hearing; that deadline is shortly after the removal date.)

For a related, more detailed discussion of start dates, see *Toolkit Measure 4A: Time to Permanent Placement*.

Separate Start Dates for In-Home and Foster Care Cases

Courts may choose to adapt this measure to calculate timeliness of adjudication separately for cases in which the child remains at home and cases involving out-of-home care. The petition filing date could be used as the start date for in-home cases and the removal date as the start date for out-of-home cases.

Choosing a Completion Date for Measuring Time to Adjudication

Possible completion dates for this measure include the beginning of the adjudication hearing, the completion of that hearing, the entry of the adjudication order, and the date that order becomes final. The best choice is the date the adjudication hearing is completed. At that point, the court's decision regarding whether or not the child was abused or neglected is first known. It is then clear whether the court will take jurisdiction of the case and whether the family and agency must negotiate and implement a case plan.

Business Rules

Basic Rules

1. Select a date range for the report.
2. The universe included in this measure is all cases with an adjudication date within the date range selected. (A)
3. For each case in (A), compute the number of days from filing of the petition to adjudication, and store this number in the case record.

4. Determine the *median* time to adjudication in (A) by finding the number of days that falls midway between the lowest and highest number of days (see calculation note below).
5. Determine the *average* time to adjudication in (A) by counting the number of cases (B), totaling the days from filing to adjudication for all cases (C), and dividing (C) by (B).

A note about the business rules: Under the basic rules, the universe for this measure includes both open and closed cases. The measure could also be limited to closed cases only or open cases only.

Calculation note: With an odd number of numbers, the median is simply the middle number; e.g., the median of 2, 4, and 7 is 4. With an even number of numbers, the median is the mean of the two middle numbers; e.g., the median of 2, 4, 7, and 12 is 5.5 (4 plus 7 divided by 2).

Possible Modifications

1. When the child has been removed from home prior to the filing of the petition, count the start date from the date of removal or from the date of the emergency removal hearing.
2. Limit the measure to include only children who were in foster care before the filing of the petition.
3. Separately measure the time to adjudication for children removed from home and children not removed from home prior to the filing of the petition.
4. Separately measure the time to adjudication for children removed from home or not removed from home prior to the adjudication.
5. In addition to the median and average values, calculate the time to adjudication at the 25th, 75th, and 90th percentiles.
6. Also calculate the percentage of cases that meet the national standard of 60 days from the filing of the petition to the adjudication.
7. Report on cases separately by type of abuse or neglect (when available).

Data Elements

These elements apply specifically to this measure. For elements that apply to all measures, see “Universal Data

Elements,” page 7. For definitions of data elements, see appendix D, “Data Element Dictionary,” page 289.

Required Elements

- ◆ Abuse or neglect petition date.
- ◆ Adjudication date.

Optional Elements

- ◆ Removal date.
- ◆ Emergency removal hearing date-time.
- ◆ Placement type.
- ◆ Placement beginning date (first placement date, if more than one)
- ◆ Type of abuse or neglect.

Related CFSR Standards

No Child and Family Services Review standard for State child welfare agencies relates specifically to *Toolkit Measure 4B*.

Reporting the Data

As with other *Toolkit* measures, *Measure 4B* lends itself to a variety of tabular and graphic presentations. State Court Improvement Projects will need presentations that show performance statewide and for each jurisdiction. Individual courts will want to see how their performance compares with that of other courts and with the State as a whole, and also whether their performance has improved or declined over time.

The samples that follow use hypothetical data for a fictitious State to demonstrate how results for this measure might be reported in tables and graphs. Note that it may be useful to combine data from *Measures 4B* and *4C* in some reports.

The table in sample 4B–1 shows quarterly trends in one court’s median days to adjudication over a 6-year period. This court clearly has had ups and downs in its performance. In the first quarter of 2001, the median days to adjudication jumped from 80 to 105 (an increase of more than 25 percent), beginning a reversal of the downward trend of the previous four quarters. Such a precipitous change calls for close examination to determine the cause. This 6-year history indicates that the court took action to

adjudicate cases more quickly, eventually meeting with considerable success. The median days for the most recent quarter (68) are down almost 40 percent from the 110-day high point in the fourth quarter of 2001.

The line graph in sample 4B–2 uses data from the table to illustrate the overall downward trend in this court’s median days to adjudication. It clearly shows how long it took the court to bring its performance back to the pre-2001 level and then to improve performance even further.

Sample 4B–3 uses a tabular format to compare median, average, and selected percentile values for days to adjudication in a small State’s five judicial districts during 2005.

Sample 4B–1. Quarterly Trends in Time to Adjudication, 2000–2005: Court X

Quarter	Median Days From Filing of Petition to Adjudication
2000 Q1	89
Q2	83
Q3	87
Q4	80
2001 Q1	105
Q2	108
Q3	108
Q4	110
2002 Q1	102
Q2	100
Q3	97
Q4	95
2003 Q1	95
Q2	92
Q3	90
Q4	82
2004 Q1	78
Q2	85
Q3	75
Q4	83
2005 Q1	77
Q2	75
Q3	70
Q4	68

Because the State has a statutory requirement of 60 days, the table also includes the percentage of cases that meet that standard. (The national standard, as set forth in the *RESOURCE GUIDELINES*,² is also 60 days.)

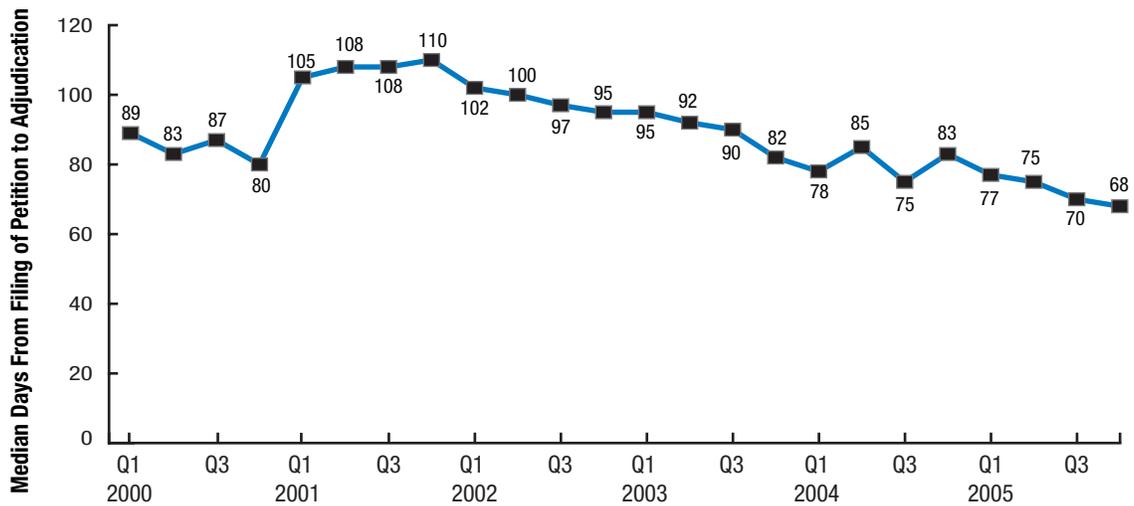
The table shows that judicial districts A, B, and C meet the State and national standard for a median of 60 days to adjudication. The statewide median of 62 days comes close to the standard, and 54 percent of cases statewide were adjudicated within 60 days.

Of course, it is not possible to meet a 60-day deadline for adjudication in every case, even with best practices to avoid delays. For example, if a custodial parent disappears, locating the parent and completing service of process may take longer than 60 days. Such cases can take much longer than is typical. On the other hand, many cases settle early and adjudication may take place shortly after

the case begins (e.g., during a pretrial hearing or even an emergency removal hearing). By calculating percentile values in addition to medians and averages, courts can capture such timeliness “outliers” and evaluate their frequency. For example, in sample 4B–3, the statewide 75th-percentile value of 86 means that 75 percent of cases were adjudicated in 86 or fewer days, and 25 percent took longer.

Using data from the table, the bar graph in sample 4B–4 illustrates the average and median days to adjudication for all five courts and the district as a whole. This graph makes it easy to see how the courts compare to each other and to the overall performance of the district. The shorter the bar, the faster the time to adjudication—and the better the performance of the court.

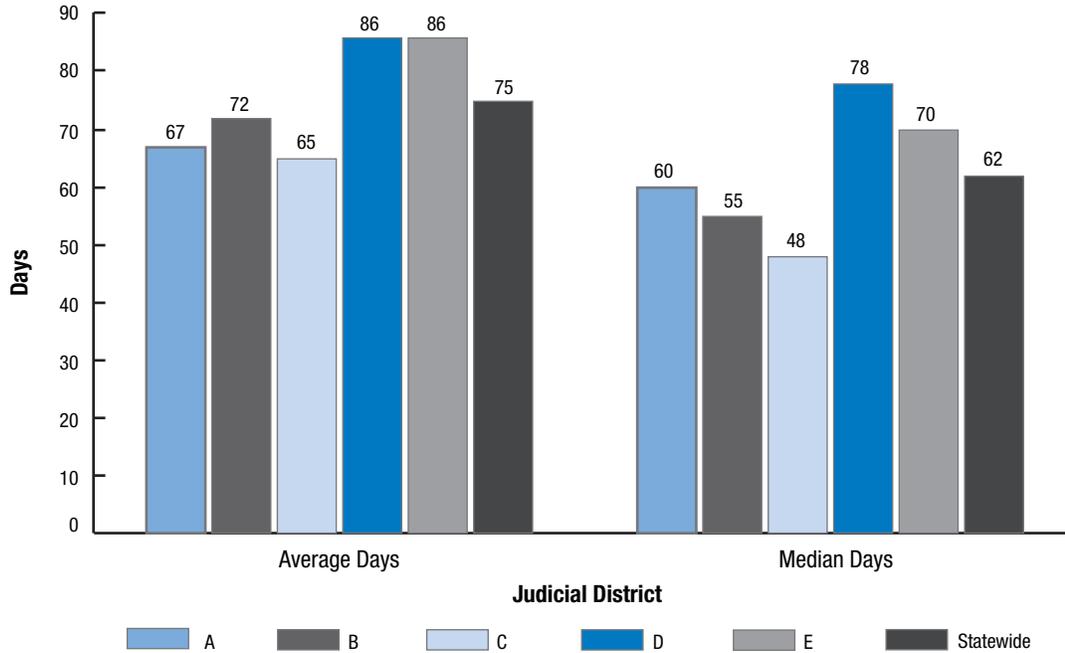
Sample 4B–2. Quarterly Trends in Time to Adjudication, 2000–2005: Court X



Sample 4B–3. Time to Adjudication for Cases Adjudicated in 2005, by Judicial District

Judicial District	Days From Filing of Petition to Adjudication					% of Cases Adjudicated Within 60 Days
	25th Percentile	50th Percentile (Median)	75th Percentile	90th Percentile	Average	
A	30	60	74	102	67	50%
B	40	55	87	105	72	62%
C	21	48	80	109	65	65%
D	37	78	99	129	86	35%
E	25	70	89	160	86	60%
Statewide	31	62	86	121	75	54%

Sample 4B–4. Average and Median Days From Filing of Original Petition to Adjudication, by Judicial District, 2005



Factors That May Affect Results

Court Control of Scheduling

By using effective caseload management, courts can set firm schedules and expectations for the timeliness of all stages of the court process. Caseload management includes court control of scheduling, short timeframes for steps in the court process, and strict limits on the granting of continuances.

In contrast, if the child welfare agency and the attorneys set the pace of the process, the timing of the adjudication hearing is likely to reflect their preferences. For example, busy attorneys may seek frequent delays for perceived tactical advantages.

Timely Service of Process on Parties

Speedy service of process on all parties is an important factor in timely adjudication. The child welfare agency must be diligent in quickly identifying and locating parties, preparing court papers for service of process, and making referrals to those who actually serve the papers.

Early and Effective Emergency Removal and Pretrial Hearings

Early emergency removal hearings can speed the completion of adjudication. Parties who are present at the emergency removal hearing can be served at that hearing. Emergency removal hearings can also help the agency and the court identify and locate other parties to be served if not present at the emergency removal hearing. Effective emergency removal hearings can also begin to clarify and narrow the issues for adjudication.

Similarly, pretrial hearings can reduce delays and narrow issues before the adjudication hearing. Pretrial hearings can review the progress of efforts at service of process, determine whether or not the case will be contested, and set or confirm the adjudication hearing date. By narrowing the issues, pretrial hearings can shorten adjudication hearings, thus allowing more cases to be adjudicated in less time.

Possible Reforms

If the data from this performance measure indicate room for improvement in the timeliness of adjudication, the court

should consider possible reforms. Specific reforms will, of course, depend on local conditions and the court's analysis of the best procedures for accomplishing this goal. A court might, for example, consider the following improvements:

- ◆ Meet with the sheriff's office or other entity responsible for service of process, to design more efficient procedures.
 - ◆ Set and enforce shorter time limits for emergency removal hearings.
 - ◆ Strengthen emergency removal hearings by requiring agencies to be more diligent in their efforts to induce parties to be present.
 - ◆ Hold earlier pretrial hearings or require pretrial hearings in every case where service of process has not been completed within a specified date.
 - ◆ Meet with agency representatives and attorney groups to identify and reduce delays in adjudication.
 - ◆ Assign court employees responsibility for monitoring delays in adjudication and bringing delays to the attention of the judge.
- ◆ Set and enforce strict criteria for granting continuances.
 - ◆ Overall, set and enforce shorter time limits for adjudication.
 - ◆ Implement a preadjudication mediation program.
 - ◆ Support a wide range of more general legal and judicial system improvements related to this measure.

Endnotes

1. During the emergency removal hearing, the court decides whether to return the child home or place the child in foster care. Such hearings may be known by a variety of other names, such as temporary removal, initial, preliminary, detention, preliminary protective, or shelter care hearings.
2. See National Council of Juvenile and Family Court Judges, *RESOURCE GUIDELINES: Improving Court Practice in Child Abuse and Neglect Cases* (Reno, NV: NCJFCJ, 1995), p. 47.

Timeliness of Adjudication



Definition: Percentage of cases that are adjudicated within 30, 60, or 90 days after the filing of the original petition.

Explanation: This measure shows the percentage of child abuse and neglect cases that are adjudicated within reasonable periods of time following the filing of the petition.

Purpose: To help courts evaluate an important element not only of their efficiency but also of their impact on abused and neglected children. The timeliness of adjudication figures significantly in the timeliness of permanency for abused and neglected children, especially those who have been placed in foster care. This is true partly because case planning, which requires cooperation between the family and child welfare agency, often cannot effectively begin until the court has resolved whether the child is legally considered to have been abused or neglected. In addition, the more quickly adjudication is completed, the shorter the period of anxiety and uncertainty for parent and child while awaiting the outcome of the case.

The timeliness of adjudication is also important, if less critically so, for children not placed in foster care before adjudication. Waiting for the court to decide whether there has been abuse or neglect is not easy for these children and their families. Only after adjudication does the family know with certainty whether it must cooperate with the child welfare agency and follow longer-term court orders.

This measure is related to *Toolkit Measure 4B: Time to Adjudication*, which shows the average (median) time from filing of the petition to adjudication.

Implementation Issues

Combined Adjudication-Disposition Hearings

Courts sometimes conduct adjudication immediately before disposition, in what court staff may view as a single hearing. Because such hearings address two distinct functions, staff must record separate adjudication and disposition dates for purposes of the *Toolkit* performance measures.

The possibility of data entry errors in this regard may be avoided through system design, staff training, and quality control. For example, the data entry screen can provide prompts asking whether an adjudication hearing also involved disposition and vice versa. Judges can inform staff when a hearing includes both adjudication and disposition. The titles and content of court orders should reflect when adjudication and disposition are combined in a single hearing.

Choosing a Start Date for Measuring Timeliness of Adjudication

A key consideration in choosing the start date for measuring timeliness of adjudication is whether State laws or court rules set legal deadlines for adjudication. If so, courts should select a start date that will help them measure the extent of their compliance with such requirements. Aside from State law, there are arguments for using each possible start date. These dates include the following:

- ◆ **Date the original petition is filed.** In addition to cases in which the child is removed from home prior to adjudication, this clearly defined date will include cases in which the child is not removed. If a court frequently experiences filing delays of more than 2 or 3 days, however, it should consider other options.
- ◆ **Date the child is removed from home.** Using this start date to calculate the timeliness of adjudication encourages the court to address the very earliest, most critical delays related to the court process.
- ◆ **Date of emergency removal hearing.** In the absence of reliable information from the child welfare agency on removal dates, the court may choose to use the emergency removal hearing date as a proxy (substitute) start date.¹ The date of this hearing should be readily available to any court. (Every State has a standard deadline for this hearing; that deadline is shortly after the removal date.)

For a related, more detailed discussion of start dates, see *Toolkit Measure 4A: Time to Permanent Placement*.

Separate Start Dates for In-Home and Foster Care Cases

Courts may choose to adapt this measure to calculate timeliness of adjudication separately for cases in which the child remains at home and cases involving out-of-home care. The petition filing date could be used as the start date for in-home cases and the removal date as the start date for out-of-home cases.

Choosing a Completion Date for Measuring Timeliness of Adjudication

Possible completion dates for this measure include the beginning of the adjudication hearing, the completion of that hearing, the entry of the adjudication order, and the date that order becomes final. The best choice is the date the adjudication hearing is completed. At that point, the court's decision regarding whether or not the child was abused or neglected is first known. It is then clear whether the court will take jurisdiction of the case and whether the family and agency must negotiate and implement a case plan.

Business Rules

Basic Rules

1. Select a date range for the report.
2. The universe included in this measure is all cases with an adjudication date within the date range selected.
 - (A)
3. For each case in (A), compute the number of days from filing of the petition to adjudication, and store this number in the case record. Then divide the cases in (A) into four categories based on the number of days from filing to adjudication, as follows: within 30 days (B), between 31 and 60 days (C), between 61 and 90 days (D), and more than 90 days (E).
4. Compute the percentage of cases in each of these categories by dividing the number of cases in each category by (A).

Possible Modifications

1. When the child has been removed from home prior to the filing of the petition, count from the date of removal or from the date of the emergency removal hearing.

2. Limit the measure to include only children who were in foster care before the filing of the petition.
3. Separately measure the time to adjudication for children removed from home and children not removed from home prior to the filing of the petition.
4. Separately measure the time to adjudication for children removed from home and not removed from home prior to the adjudication.
5. Report on cases separately by type of abuse or neglect.

Data Elements

These elements apply specifically to this measure. For elements that apply to all measures, see "Universal Data Elements," page 7. For definitions of data elements, see appendix D, "Data Element Dictionary," page 289.

Required Elements

- ◆ Abuse or neglect petition date.
- ◆ Adjudication date.

Optional Elements

- ◆ Removal date.
- ◆ Emergency removal hearing date-time.
- ◆ Placement type.
- ◆ Placement beginning date (the earliest date, if more than one).
- ◆ Type of abuse or neglect.

Related CFSR Standards

No Child and Family Services Review standard for State child welfare agencies relates specifically to *Toolkit Measure 4C*.

Reporting the Data

As with other *Toolkit* measures, *Measure 4C* lends itself to a variety of tabular and graphic presentations. State Court Improvement Projects will need presentations that show performance statewide and for each jurisdiction. Individual courts will want to see how their performance compares with that of other courts and with the State as a whole, and

Sample 4C–1. Time to Adjudication, by Court, 2005: Judicial District 1

Court	Days From Filing of Original Petition to Adjudication								Average Days	Median Days	Total Cases
	1–30 Days		31–60 Days		61–90 Days		More Than 90 Days				
	#	%	#	%	#	%	#	%			
A	23	15%	60	40%	46	31%	21	14%	55	53	150
B	12	16%	44	60%	17	23%	0	0%	48	43	73
C	18	41%	23	52%	2	5%	1	2%	50	58	44
D	44	75%	7	12%	8	14%	0	0%	25	26	59
E	6	6%	34	36%	39	41%	15	16%	45	60	94
Districtwide	103	25%	168	40%	112	27%	37	9%	45	48	420

Note: Percentages may not add up to 100 because of rounding.

also whether their performance has improved or declined over time.

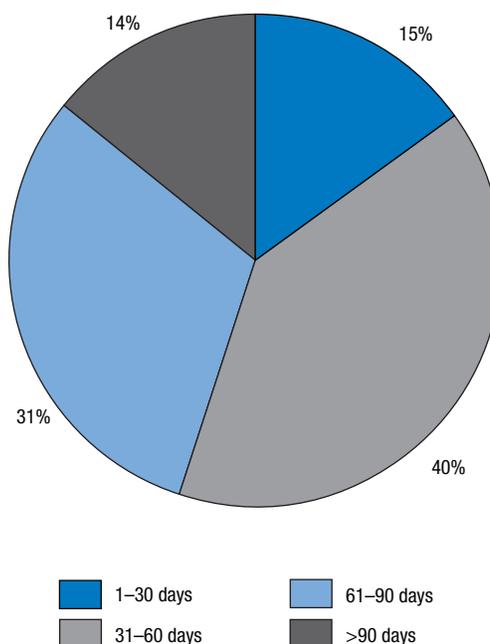
The samples that follow use hypothetical data for a fictitious State to demonstrate how results for this measure might be reported in tables and graphs. Note that it may be useful to combine data from *Measures 4B* and *4C* in some reports.

The table in sample 4C–1 compares the timeliness of adjudication in five different courts in one judicial district during 2005. Court D had the timeliest adjudications by far: all of its adjudications occurred within 90 days of filing, 86 percent occurred within 60 days, and 75 percent occurred within 30 days. By contrast, Court E held 83 percent of its adjudications within 90 days, 42 percent within 60 days, and just 6 percent within 30 days. This table also presents median and average data from *Measure 4B*, providing a full picture of timeliness to adjudication in this district.

A pie chart, as in sample 4C–2, is a good way to illustrate one court’s performance, based on the *Measure 4C* data from the preceding table. Multiple charts displayed side by side would be useful for comparing courts.

The bar graph in sample 4C–3 illustrates the percentage of cases adjudicated within 60 days, adding up the information from the first two sets of columns in sample 4C–1 (percentage of cases adjudicated within 1–30 days plus percentage of cases adjudicated within 31–60 days). It displays the districts in order of performance, with the best performers at the right. The graph makes it easy to

Sample 4C–2. Distribution of Cases by Days From Filing of Original Petition to Adjudication in 2005: Court A



see the range of performance and to compare each court to the districtwide average (three are above the average, two below).

Factors That May Affect Results

Court Control of Scheduling

By using effective caseflow management, courts can set firm schedules and expectations for the timeliness of all stages of the court process. Caseflow management includes court control of scheduling, short timeframes for steps in the court process, and strict limits on the granting of continuances.

In contrast, if the child welfare agency and the attorneys set the pace of the process, the timing of the adjudication hearing is likely to reflect their preferences. For example, busy attorneys may seek frequent delays for perceived tactical advantages.

Timely Service of Process on Parties

Speedy service of process on all parties is an important factor in timely adjudication. The child welfare agency must be diligent in quickly identifying and locating parties, preparing court papers for service of process, and making referrals to those who actually serve the papers.

Early and Effective Emergency Removal and Pretrial Hearings

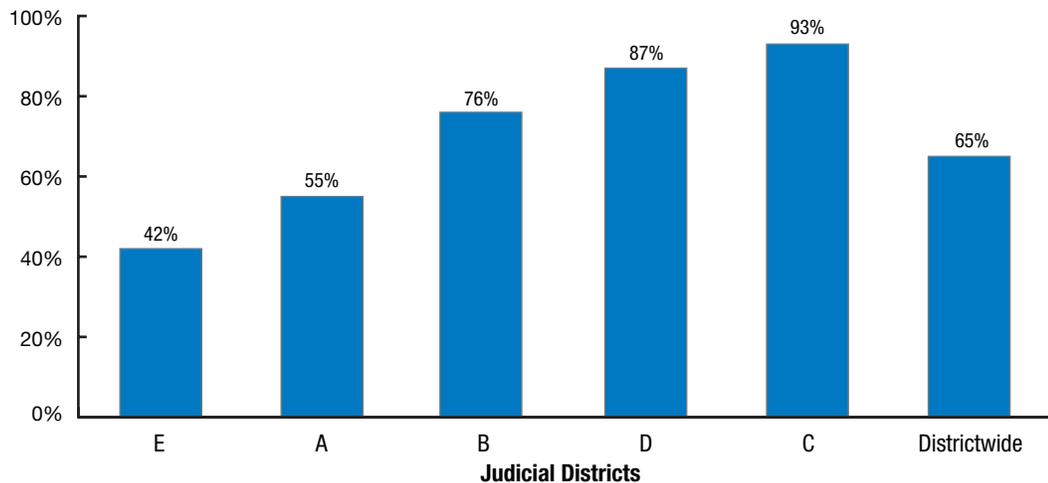
Early emergency removal hearings can speed the completion of adjudication. Parties who are present at the emergency removal hearing can be served at that hearing. Emergency removal hearings can also help the agency and the court identify and locate other parties to be served if not present at the emergency removal hearing. Effective emergency removal hearings can also begin to clarify and narrow the issues for adjudication.

Similarly, pretrial hearings can reduce delays and narrow issues before the adjudication hearing. Pretrial hearings can review the progress of efforts at service of process, determine whether or not the case will be contested, and set or confirm the adjudication hearing date. By narrowing the issues, pretrial hearings can shorten adjudication hearings, thus allowing more cases to be adjudicated in less time.

Possible Reforms

If the data from this performance measure indicate room for improvement in the timeliness of adjudication, the court should consider possible reforms. Specific reforms will, of course, depend on local conditions and the court's analysis of the best procedures for accomplishing this goal. A court might, for example, consider the following improvements:

Sample 4C-3. Percentage of Cases Adjudicated in 2005 Within 60 Days After Filing of Petition, by Court: Judicial District 1



- ◆ Meet with the sheriff's office or other entity responsible for service of process to design more efficient procedures.
- ◆ Set and enforce shorter time limits for emergency removal hearings.
- ◆ Strengthen emergency removal hearings by requiring agencies to be more diligent in their efforts to induce parties to be present.
- ◆ Hold earlier pretrial hearings or require pretrial hearings in every case where service of process has not been completed within a specified date.
- ◆ Meet with agency representatives and attorney groups to identify and reduce delays in adjudication.
- ◆ Assign court employees responsibility for monitoring delays in adjudication and bringing delays to the attention of the judge.

- ◆ Set and enforce strict criteria for granting continuances.
- ◆ Overall, set and enforce shorter time limits for adjudication.
- ◆ Implement a preadjudication mediation program.
- ◆ Support a wide range of more general legal and judicial system improvements related to this measure.

Endnote

1. During the emergency removal hearing, the court decides whether to return the child home or place the child in foster care. Such hearings may be known by a variety of other names, such as temporary removal, initial, preliminary, detention, preliminary protective, or shelter care hearings.

Time to Disposition Hearing



Definition: Average (median) time from filing of the original petition to the disposition hearing.

Explanation: This measure shows how long it takes from the time a case begins to the disposition hearing. “Disposition hearing” refers to the hearing in which the court, following adjudication, decides who will have temporary legal custody of the child.¹

Purpose: To help courts evaluate the timeliness of the disposition hearing, particularly for children who have previously been placed in foster care. Timeliness of disposition is a significant factor in the timeliness of permanency, particularly in States where the court approves or modifies the terms of the case plan at the disposition hearing. The disposition hearing generally represents the first formal consideration of the case plan by the court and firmly establishes the plan for the child. Furthermore, at this hearing, the court decides whether or not to authorize placement of the child into foster care for an extended period of time.

The timeliness of disposition is also important for children not placed in foster care before adjudication. Waiting for the court to decide about the case plan and the terms of court and agency oversight is difficult for these children and their families. In addition, there is the possibility that the court will decide at the disposition hearing to remove the child from home.

This measure is related to *Toolkit Measure 4E: Timeliness of Disposition Hearing*, which shows the percentage of cases in which disposition occurred within 10, 30, and 60 days after adjudication.

Implementation Issues

Combined Adjudication-Disposition Hearings

Courts sometimes conduct disposition hearings immediately after adjudication, in what court staff may view as a single hearing. Because such hearings address two distinct functions, staff must record separate adjudication and disposition hearing dates for purposes of these *Toolkit* performance measures.

Judges can inform staff when a hearing includes both adjudication and disposition. The titles and content of court orders should reflect when adjudication and disposition are combined in a single hearing.

Finally, because there is a substantial risk that court staff will enter data indicating that only one of these hearings took place, case management system designers, trainers,

and quality control personnel must devote special attention to this issue.

Choosing a Start Date for Measuring Time to Disposition

A key consideration in choosing the start date for measuring time to disposition is whether State laws or court rules set legal deadlines for disposition hearings to be held. If so, courts should select a start date that will help them measure the extent of their compliance with such requirements. Aside from State law, there are arguments for using each possible start date. These dates include the following:

- ◆ **Date the original petition is filed.** In addition to cases in which the child is removed from home prior to adjudication, this clearly defined date will include cases in which the child is not removed. If a court frequently experiences filing delays of more than 2 or 3 days, however, it should consider other options.
- ◆ **Date the child is removed from home.** Using this start date to calculate the timeliness of disposition encourages the court to address the very earliest, most critical delays related to the court process.
- ◆ **Date of emergency removal hearing.** In the absence of reliable information from the child welfare agency on removal dates, the court may choose to use the emergency removal hearing date as a proxy (substitute) start date.² The date of this hearing should be readily available to any court. (Every State has a standard deadline for this hearing; that deadline is shortly after the removal date.)

For a related, more detailed discussion of start dates, see *Toolkit Measure 4A: Time to Permanent Placement*.

Choosing a Completion Date for Measuring Time to Disposition

Possible completion dates for this measure include the beginning of the disposition hearing, the completion of that hearing, the entry of the disposition order, and the date that order becomes final. The best choice is the date the disposition hearing is completed. At that point, the parties will know that they are obliged to implement a case plan, either under the terms specified by the court or (in States where the court does not perform that function) as specified by the child welfare agency.

Business Rules

Basic Rules

1. Select a date range for the report.
2. The universe included in this measure is all cases with a disposition hearing date within the date range selected. (A)
3. For each case in (A), compute the number of days from filing of the petition to completion of the disposition hearing, and store this number in the case record.
4. Determine the *median* time to disposition in (A) by finding the number of days that falls midway between the lowest and highest number of days (see calculation note below).
5. Determine the *average* time to disposition in (A) by counting the number of cases (B), totaling the days from filing to disposition for all cases (C), and dividing (C) by (B).

Calculation note: With an odd number of numbers, the median is simply the middle number; e.g., the median of 2, 4, and 7 is 4. With an even number of numbers, the median is the mean of the two middle numbers; e.g., the median of 2, 4, 7, and 12 is 5.5 (4 plus 7 divided by 2).

Possible Modifications

1. When the child has been removed from home prior to the filing of the petition, count from the date of removal or from the date of the emergency removal hearing.

2. Limit the measure to include only children who were in foster care before the filing of the petition.
3. Separately measure the time to disposition for children removed from home and not removed from home prior to filing of the petition.
4. In addition to the median and average values, calculate the time to adjudication at the 25th, 75th, and 90th percentiles. Also calculate the percentage of cases that reached disposition within 30, 60, and 90 days from filing of the petition.
5. Report on cases separately by type of abuse or neglect.

Data Elements

These elements apply specifically to this measure. For elements that apply to all measures, see “Universal Data Elements,” page 7. For definitions of data elements, see appendix D, “Data Element Dictionary,” page 289.

Required Elements

- ◆ Abuse or neglect petition date.
- ◆ Disposition hearing date.

Optional Element

- ◆ Removal date.
- ◆ Emergency removal hearing date-time.
- ◆ Type of abuse or neglect.
- ◆ Placement type.
- ◆ Placement beginning date (the earliest date, if more than one).

Related CFSR Standards

No Child and Family Services Review standard for State child welfare agencies relates specifically to *Toolkit Measure 4D*.

Reporting the Data

As with other *Toolkit* measures, *Measure 4D* lends itself to a variety of tabular and graphic presentations. State Court Improvement Projects will need presentations that show performance statewide and for each jurisdiction. Individual

courts will want to see how their performance compares with that of other courts and with the State as a whole, and also whether their performance has improved or declined over time.

The samples that follow use hypothetical data for a fictitious State to demonstrate how results for this measure might be reported in tables and graphs. Note that it may be useful to combine data from *Measure 4D* with data from *Measure 4B: Time to Adjudication* or *Measure 4E: Timeliness of Disposition Hearing* in some reports.

The table in sample 4D-1 compares the average and median days from filing to disposition for the five judicial

Sample 4D-1. Average and Median Days From Filing of Original Petition to Disposition Hearing, by Judicial District, 2006

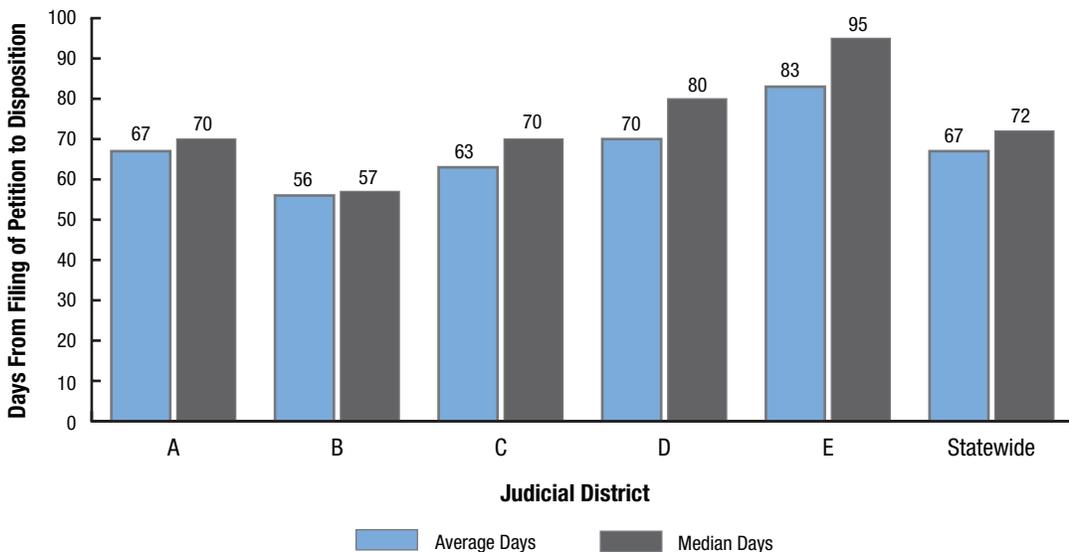
Judicial District	Average Days	Median Days	Total Cases
A	67	70	239
B	56	57	264
C	63	70	520
D	70	80	243
E	83	95	368
Statewide	67	72	1,634

districts in a small State. The bar graph in sample 4D-2 illustrates the statistics from the table. The disposition hearings in this State are very timely, and the differences among districts are relatively small. Even so, it might be worthwhile to investigate why disposition hearings are so much timelier in District B than in District E.

In addition to medians and averages, it might also be useful to report time to disposition at the 25th, 75th, and 90th percentiles, to get a clearer picture of the fastest and slowest cases. For a related discussion, see *Measure 4A: Time to Permanent Placement*, "Reporting the Data," sample 4A-2.

Sample 4D-3 provides a more detailed look at when dispositional hearings are occurring in the different districts. The table shows that District B has a relatively high proportion of cases reaching disposition within 30 days after filing. Such cases may have been rushed, as could happen if, for example, an early adjudication and disposition occurred on the same day, with insufficient time to consider the case plan. To check that possibility, the district could analyze the quality and completeness of case plans in the 30-day disposition category. If the analysis shows that these case plans were relatively complete or that early reviews were scheduled to review and revise the plans, then District B should be pleased by the frequency of these early disposition hearings.

Sample 4D-2. Average and Median Days From Filing of Petition to Disposition Hearing, by Judicial District, 2006



By adding the percentages of cases in the first three categories of the previous table, the bar graph in sample 4D-4 shows the percentage of cases reaching disposition within 90 days—the national standard, as set forth in the *RESOURCE GUIDELINES*.³ The chart makes it possible

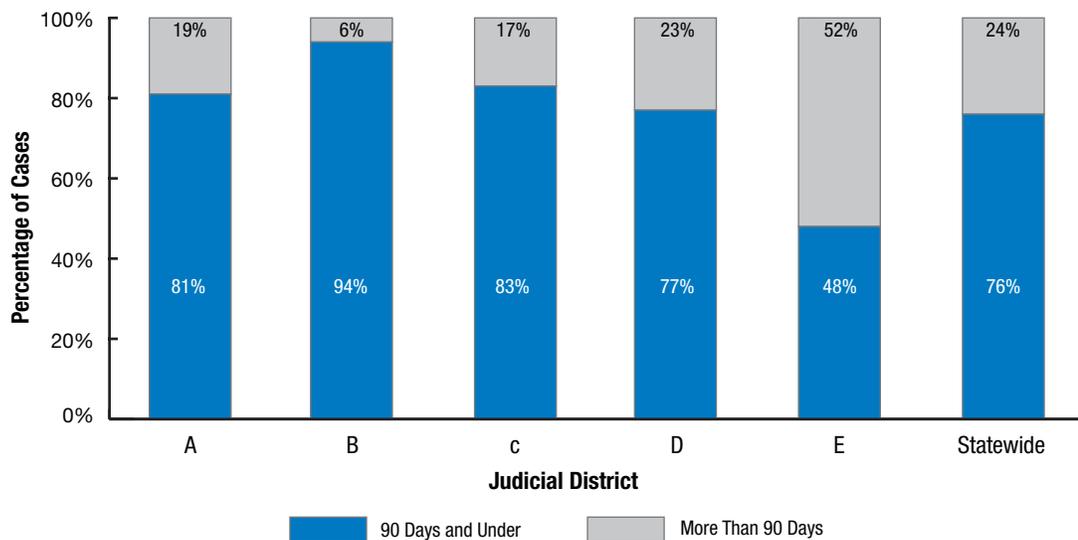
to compare each district's performance to the statewide average and to the national standard. It shows, among other things, that unless this State has a legal deadline for disposition hearings that is substantially shorter than 90

Sample 4D-3. Time to Disposition Hearing in 2006, by Judicial District

Judicial District	Days From Filing of Original Petition to Disposition Hearing								Total Cases
	1–30 Days		31–60 Days		61–90 Days		More Than 90 Days		
	# of Cases	%	# of Cases	%	# of Cases	%	# of Cases	%	
A	15	6%	79	33%	100	42%	45	19%	239
B	33	13%	116	44%	99	38%	16	6%	264
C	45	9%	201	39%	187	36%	87	17%	520
D	15	6%	69	28%	103	42%	56	23%	243
E	23	6%	80	22%	75	20%	190	52%	368
Statewide	131	8%	545	33%	564	35%	394	24%	1,634

Note: Percentages may not add up to 100 because of rounding.

Sample 4D-4. Percentage of Cases Reaching Disposition Within 90 Days of Filing, by Judicial District, 2006



days, the courts' performance in three of the districts (B, C, and A) is excellent.

Factors That May Affect Results

Court Control of Scheduling

By using effective caseflow management, courts can set firm schedules and expectations for the timeliness of all stages of the court process. Caseflow management includes court control of scheduling, short timeframes for steps in the court process, and strict limits on the granting of continuances.

In contrast, if the child welfare agency and the attorneys set the pace of the process, the timing of the disposition hearing is likely to reflect their preferences. For example, busy attorneys may seek frequent delays for perceived tactical advantages.

Timeliness of Adjudication

Disposition cannot take place until adjudication has occurred. Therefore, all of the steps in the court process that contribute to the timeliness of adjudication (as discussed in *Toolkit Measure 4C: Timeliness of Adjudication*) also contribute to the timeliness of disposition.

Timeliness of Predisposition Reports

Most courts require the child welfare agency to file a report to the court with recommendations regarding disposition. If this report is submitted to the court and mailed to the parties well in advance of the disposition hearing, both the court and the parties can become familiar with the issues in the case and be prepared for the hearing.

Timeliness of the predisposition report affects not only the timeliness of the disposition hearing but also the quality of the hearing. Without a timely report, parties are less likely to offer useful criticisms of the proposed case plan, suggest refinements, and present counterproposals.

Despite the importance of timely predisposition reports, it is common practice for child welfare agencies to file these reports close to or during the disposition hearing. When this happens, the parties have legitimate cause to request a delay in the hearing so they can investigate the sources of information used in the report, line up witnesses to respond to proposals, and prepare for the hearing.

Possible Reforms

If the data from this performance measure indicate room for improvement in the timeliness of disposition, the court should consider possible reforms. Specific reforms will, of course, depend on local conditions and the court's analysis of the best procedures for accomplishing this goal. A court might, for example, consider the following improvements:

- ◆ Establish caseflow management techniques, conduct training, and periodically measure and report on the results.
- ◆ Set and enforce shorter time limits for disposition hearings.
- ◆ Involve the child welfare agency in meetings and training programs aimed at improving the timeliness of agency predisposition reports. Also include others who contribute information to these reports or prepare their own reports.
- ◆ Set and enforce strict policies regarding the timely filing of predisposition reports.
- ◆ Assign court employees responsibility for monitoring delays in disposition hearings and bringing delays to the attention of the judge.

In addition, the "Possible Reforms" section of *Toolkit Measure 2A: Achievement of Child Permanency* lists reforms that affect the timeliness of the overall court process. These reforms are also relevant to this measure.

Endnotes

1. When the court approves a child's continued placement in foster care, it generally awards temporary custody (or the State's equivalent to temporary custody) to the child welfare agency. In many States, the court makes a number of additional decisions during the disposition hearing, such as approving or modifying the case plan, setting terms of visitation, and issuing a variety of other orders.

There are two possible sources of confusion regarding the function and purpose of disposition hearings. First, many courts use the term "disposition" to refer to the closing of the case. By contrast, the term "disposition hearing," as generally used in child protection cases, is a relatively early stage of litigation. Second, Federal foster care law prior to 1997 used the term "dispositional hearing" in

reference to a hearing that would take place within 18 months after removal from the home and annually thereafter. The Adoption and Safe Families Act of 1997, Public Law 103–89, amending 42 U.S.C. § 675(5)(C), changed the term “dispositional hearing” to “permanency hearing,” shortened the deadline for the first permanency hearing, and tightened the functions of the permanency hearing. Accordingly, a permanency hearing generally takes place much later than a disposition hearing (as the term is used herein). Whereas the disposition hearing is intended to set the initial long-term case goal for the child, the permanency hearing is intended to set the final case goal.

2. During the emergency removal hearing, the court decides whether to return the child home or place the child in foster care. Such hearings may be known by a variety of other names, such as temporary removal, initial, preliminary, detention, preliminary protective, or shelter care hearings.
3. See National Council of Juvenile and Family Court Judges, *RESOURCE GUIDELINES: Improving Court Practice in Child Abuse and Neglect Cases* (Reno, NV: NCJFCJ, 1995), p. 55.

Timeliness of Disposition Hearing



Definition: Percentage of cases in which the disposition hearing occurs within 10, 30, or 60 days after adjudication.

Explanation: This measure shows the percentage of child abuse or neglect cases for which a disposition hearing is held within reasonable periods of time following adjudication. “Disposition hearing” refers to the hearing in which the court, following adjudication, decides who will have temporary legal custody of the child.¹

Purpose: To help courts evaluate the timeliness of disposition hearings, which is especially important for children who have been placed in foster care before adjudication.

Timeliness of this hearing is a significant factor in the timeliness of permanency, particularly in States where the court approves or modifies the terms of the case plan at the disposition hearing. This hearing generally represents the first formal consideration of the case plan by the court and firmly establishes the plan for the child. Furthermore, at this hearing, the court decides whether or not to authorize placement of the child into foster care for an extended period of time.

The timeliness of the disposition hearing is also important for children not placed in foster care before adjudication. Waiting for the court to decide about the case plan and the terms of court and agency oversight is difficult for these children and their families. In addition, there is the possibility that the court will decide, at the disposition hearing, to remove the child from home.

This measure is related to *Toolkit Measure 4D: Time to Disposition Hearing* which shows the average (median) time from filing of the original petition to the disposition hearing.

Implementation Issues

Combined Adjudication-Disposition Hearings

Some courts routinely conduct the disposition hearing immediately after the adjudication, in what court staff may view as a single hearing. Because such hearings address two distinct functions, staff must record separate adjudication and disposition hearing dates for purposes of the *Toolkit* performance measures.

Judges can inform staff when a hearing includes both adjudication and disposition. The titles and content of court

orders should reflect when adjudication and disposition are combined in a single hearing.

Finally, because there is a substantial risk that court staff will enter data indicating that only one of these hearings took place, case management system designers, trainers, and quality control personnel must devote special attention to this issue.

Possible Concerns About Very Early Disposition Hearings

A very short time between adjudication and disposition may or may not be a positive indicator of court performance. The question is whether the quality of dispositions suffers when they often take place on the day of adjudication or shortly thereafter.

For example, where disposition immediately follows adjudication and, due to the lack of time to prepare for disposition, there is little careful focus on disposition, this is reason for concern. It is important that the disposition hearing consider very carefully whether to place or continue the child in foster care, what will be the permanency goal for the case (reunification, adoption, legal guardianship, etc.), and the terms of the case plan. On the other hand, if disposition often immediately follows adjudication, but the parties receive predisposition reports well in advance *and* disposition orders are consistently specific and well crafted, it is an indication of excellence.

Choosing a Start Date for Measuring Time From Adjudication to Disposition Hearing

Possible start dates for this measure include the beginning of the adjudication hearing, the completion of that hearing,

the entry of the adjudication order, and the date that order becomes final. The best choice is the date the adjudication hearing is completed because that is the recommended completion date for *Toolkit Measure 4B: Time to Adjudication*.

Choosing a Completion Date for Measuring Time From Adjudication to Disposition

Possible completion dates for this measure include the beginning of the disposition hearing, the completion of that hearing, the entry of the disposition order, and the date that order becomes final. The best choice is the date the disposition hearing is completed. At that point, the parties will know that they are obliged to implement a case plan, either under the terms specified by the court or (in States where the court does not perform that function) as specified by the child welfare agency.

Business Rules

Basic Rules

1. Select a date range for the report.
2. The universe included in this measure is all cases with a disposition hearing date within the date range selected. (A)
3. For each case in (A), compute the number of days from adjudication to completion of the disposition hearing, and store this number in the case record. Then divide the cases in (A) into four categories based on the number of days from adjudication to disposition, as follows: within 10 days (B), between 11 and 30 days (C), between 31 and 60 days (D), and more than 60 days (E).
4. Compute the percentage of cases in each of these categories by dividing the number of cases in each category by (A).

Possible Modifications

1. Limit the measure to include only children who were in foster care before the filing of the petition.
2. Separately measure the time from adjudication to disposition for children removed from home and not removed from the home prior to the disposition.

3. Also compute median and average values for time from adjudication to disposition.
4. Report on cases separately by type of abuse or neglect.

Data Elements

These elements apply specifically to this measure. For elements that apply to all measures, see “Universal Data Elements,” page 7. For definitions of data elements, see appendix D, “Data Element Dictionary,” page 289.

Required Elements

- ◆ Adjudication date.
- ◆ Disposition hearing date.

Optional Elements

- ◆ Type of abuse or neglect.
- ◆ Removal date
- ◆ Placement type.
- ◆ Placement beginning date (the earliest date, if more than one).

Related CFSR Standards

No Child and Family Services Review standard for State child welfare agencies relates specifically to *Toolkit Measure 4E*.

Reporting the Data

As with other *Toolkit* measures, *Measure 4E* lends itself to a variety of tabular and graphic presentations. State Court Improvement Projects will need presentations that show performance statewide and for each jurisdiction. Individual courts will want to see how their performance compares with that of other courts and with the State as a whole, and also whether their performance has improved or declined over time.

The samples that follow use hypothetical data for a fictitious State to demonstrate how results for this measure might be reported in tables and graphs. Note that it may be useful to combine data from *Measure 4E* with data from *Measure 4D: Time to Disposition Hearing*.

The table in sample 4E–1 compares the timeliness of disposition in five judicial districts during 2006. Court D held the timeliest disposition hearings: 85 percent occurred within 10 days of adjudication, 89 percent within 30 days. By contrast, District A held only 43 percent of its disposition hearings within 10 days of adjudication and 58 percent within 30 days.

It is also interesting to compare Districts A and B. District A's percentages were much higher than District B's for cases heard within 10 days of adjudication but much lower than District B's for cases heard 11–30 days after adjudication; thus, District B's percentage of cases heard within 30 days was higher than District A's (68 percent compared to 58 percent).

One possible reason why the results are so different for Districts A and B is that District A might routinely combine adjudication and disposition hearings, while District B might do so only when the parties are well prepared for the disposition hearing at the time of adjudication. Of course, while this hypothesis is worth considering in studying the two courts, only a careful study of local conditions will identify the true causes of the differences.

The fact that the median values for Districts C, D, and E are zero means that disposition hearings usually occur on the same day as adjudication. It might be helpful to review samples of files from these districts to assess the timeliness and thoroughness of predisposition reports sent to the parties.

The table in sample 4E–2 shows trend data for one judge who spends about 20 percent of her time hearing child abuse and neglect cases. As the table indicates, the judge has gradually reduced the days from adjudication to disposition over a 5-year period.

Sample 4E–3 uses trend lines to show time from adjudication to disposition for the same court over the same 5-year period. Based on the trend lines for the four time-to-disposition categories, it appears that the overall trend is positive. For example, the percentages of cases taking 31 to 60 days and more than 60 days have decreased, which is a good sign. The increase in the percentage of cases taking 1 to 10 days is also a good sign, but only if parties are receiving timely, thorough predisposition reports so they can be adequately prepared for the hearings.

Sample 4E–4 also uses trend lines, this time to show average and median times from adjudication to disposition for the same court. This figure also indicates a positive overall trend.

Factors That May Affect Results

Court Control of Scheduling

By using effective caseflow management, courts can set firm schedules and expectations for the timeliness of all stages of the court process. Caseflow management includes court control of scheduling, short timeframes for

Sample 4E–1. Timeliness of Disposition Hearings, by Judicial District, 2006

Judicial District	Days From Adjudication to Disposition								Average	Median	Total Cases
	1–10 Days		11–30 Days		31–60 Days		More Than 60 Days				
	# of Cases	%	# of Cases	%	# of Cases	%	# of Cases	%			
A	321	43%	114	15%	218	29%	87	12%	34	28	740
B	112	18%	312	50%	141	23%	53	9%	26	26	618
C	1,786	64%	213	8%	354	13%	421	15%	14	0	2,774
D	856	85%	45	4%	36	4%	75	7%	9	0	1,012
E	1,211	76%	141	9%	76	5%	175	11%	11	0	1,603
Statewide	4,286	64%	825	12%	825	12%	811	12%	19	11	6,747

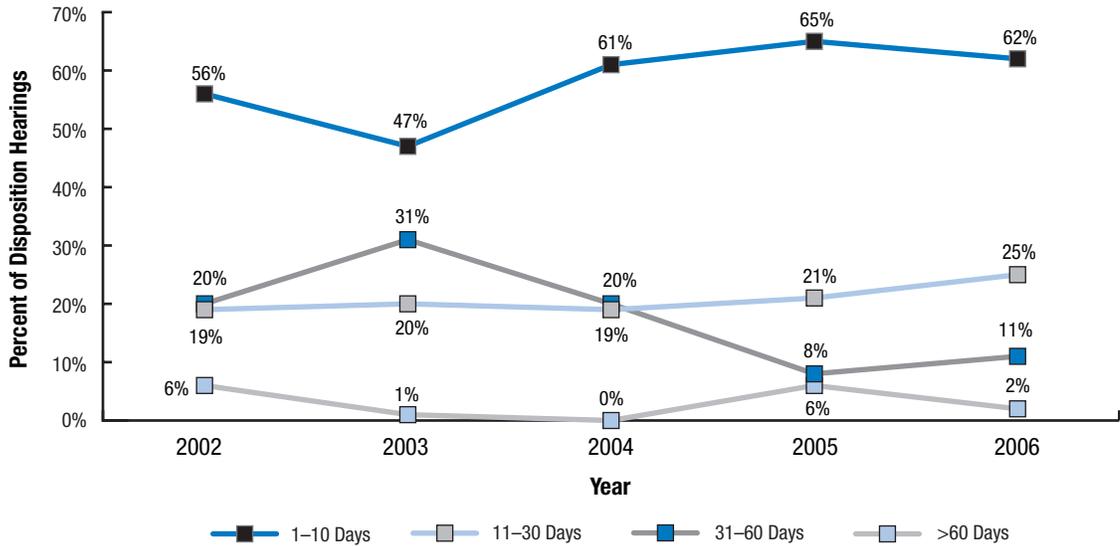
Note: Percentages may not add up to 100 because of rounding.

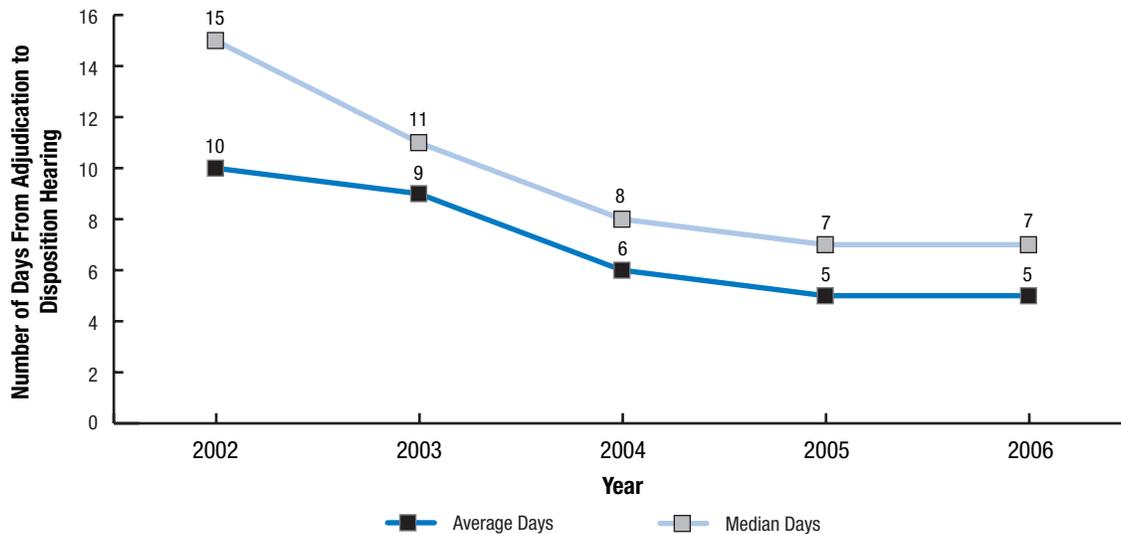
Sample 4E-2. Time From Adjudication to Disposition Hearing, 2002–2006: Court X

Year	Days From Adjudication to Disposition Hearing								Average	Median	Total Cases
	1–10 Days		11–30 Days		31–60 Days		More Than 60 Days				
	# of Cases	%	# of Cases	%	# of Cases	%	# of Cases	%			
2002	50	56%	17	19%	18	20%	5	6%	10	15	90
2003	33	47%	14	20%	22	31%	1	1%	9	11	70
2004	49	61%	15	19%	16	20%	0	0%	6	8	80
2005	66	65%	21	21%	8	8%	6	6%	5	7	101
2006	68	62%	27	25%	12	11%	2	2%	5	7	109
5-yr. average	266	59%	94	21%	76	17%	14	3%	7	10	450

Note: Percentages may not add up to 100 because of rounding.

Sample 4E-3. Days From Adjudication to Disposition Hearing, 2002–2006: Court X



Sample 4E–4. Average and Median Days From Adjudication to Disposition Hearing, 2002–2006: Court X

steps in the court process, and strict limits on the granting of continuances.

In contrast, if the child welfare agency and the attorneys set the pace of the process, the timing of the disposition hearing is likely to reflect their preferences. For example, busy attorneys may seek frequent delays for perceived tactical advantages.

Timeliness of Predisposition Reports

Most courts require the child welfare agency to file a report to the court with recommendations regarding disposition. If this report is submitted to the court and mailed to the parties well in advance of the disposition hearing, both the court and the parties can become familiar with the issues in the case and be prepared for the hearing.

Timeliness of the predisposition report affects not only the timeliness of the disposition hearing but also the quality of the hearing. Without a timely report, parties are less likely to offer useful criticisms of the proposed case plan, suggest refinements, and present counterproposals.

Despite the importance of timely predisposition reports, it is common practice for child welfare agencies to file these reports close to or during the disposition hearing. When this happens, the parties have legitimate cause to request a delay in the hearing so they can investigate the sources of information used in the report, line up witnesses to respond to proposals, and prepare for the hearing.

Possible Reforms

If the data from this performance measure indicate room for improvement in the timeliness of disposition, the court should consider possible reforms. Specific reforms will, of course, depend on local conditions and the court's analysis of the best procedures for accomplishing this goal. A court might, for example, consider the following improvements:

- ◆ Establish caseflow management techniques, conduct training, and periodically measure and report on the results.
- ◆ Set and enforce shorter time limits for disposition hearings.
- ◆ Involve the child welfare agency in meetings and training programs aimed at improving the timeliness of agency predisposition reports. Also include others who contribute information to these reports or prepare their own reports.
- ◆ If disposition hearings occur very quickly after adjudication and are not thorough or complete, enhance requirements for disposition by strengthening the content of predisposition court reports and postdisposition court orders.
- ◆ Set and enforce strict policies regarding the content and timely filing of predisposition reports.
- ◆ Assign court employees responsibility for monitoring delays in disposition hearings and bringing delays to the attention of the judge.

Endnotes

1. When the court approves a child's continued placement in foster care, it generally awards temporary custody (or the State's equivalent to temporary custody) to the child welfare agency. In many States, the court makes a number of additional decisions during the disposition hearing, such as approving or modifying the case plan, setting terms of visitation, and issuing a variety of other orders.

There are two possible sources of confusion regarding the function and purpose of disposition hearings. First, many courts use the term "disposition" to refer to the closing of the case. By contrast, the term "disposition hearing," as generally used in child protection cases, is a relatively early stage of litigation.

Second, Federal foster care law, 42 U.S.C. § 675(5)(C), at one time used the term "dispositional hearing" in reference to a hearing that would take place within 18 months after removal from the home and annually thereafter. The Adoption and Safe Families Act of 1997, Public Law 103–89, amending 42 U.S.C. § 675(5)(C), changed the term "dispositional hearing" to "permanency hearing," shortened the deadline for the first permanency hearing, and tightened the functions of the permanency hearing. Accordingly, a permanency hearing generally takes place much later than a disposition hearing (as the term is used herein). Whereas the disposition hearing is intended to set the initial long-term case goal for the child, the permanency hearing is intended to set the final case goal.

Timeliness of Case Review Hearings



Definition: Percentage of cases in which the court holds hearings to review case plans within the time limits set by law.

Explanation: This measure shows how consistently courts conduct hearings to review case plans within time limits set by State and Federal law.¹

Because Federal law allows case reviews to be conducted either by a court or by administrative (that is, nonjudicial) review,² some States seek to fulfill Federal case review requirements using only administrative reviews. Some States that opt to comply with Federal requirements through administrative review still must conduct judicial case review hearings to satisfy the requirements of State law. In those States, courts may disregard the Federal deadline for purposes of this measure and may instead apply the applicable deadline from State law—even if State law falls short of complying with Federal deadlines.

Purpose: To help determine how well courts comply with Federal and State laws that set time limits for case review hearings.

Because case review hearings are intended to help ensure more timely permanency for children, the timeliness of these hearings is important. Courts must accomplish a number of tasks during case review hearings.³ These include:

- ◆ Checking whether the child welfare agency is providing services as specified in the case plan.
- ◆ Checking whether parents are cooperating with the case plan and complying with prior court orders.
- ◆ Reviewing, and when necessary revising, the goals, tasks, and timetables set forth in the case plan, and issuing orders to ensure timely completion of essential tasks.
- ◆ Reviewing progress toward accomplishing long-term case goals.
- ◆ Determining whether the permanency goal for the child is still appropriate and, if necessary, resetting the target date for accomplishing the goal.
- ◆ Reviewing the appropriateness of the child's placement with regard to safety, education, medical care, and psychotherapy or other special care.

Complexities, Proxies, and Barriers to Capturing This Information

Start Date for Case in Measuring Time to First Review Hearing

The start date for this measure can be based on either the Federal or the State deadline, whichever is earlier. If it is difficult to determine the legal start date, close approximations are possible—some examples are provided below.

Possible start dates for calculating the deadline for completing the first case review hearing may include the following:

- ◆ Date petition is filed.
- ◆ Date child is removed from home.
- ◆ Date of emergency removal hearing.
- ◆ Date child is considered to have entered foster care.

Date Petition Is Filed

This clearly defined date presents no complications in States that rely entirely on administrative, rather than judicial, review to satisfy Federal case review requirements. But if the State seeks to satisfy Federal case review requirements through judicial review, it must consider carefully whether to use the date of the petition as a start date, as the petition date does not figure in Federal case

review deadlines. The deadline for the first Federal case review is based on the date of removal and the date the court found that the child was abused or neglected. If abuse and neglect are first determined at the emergency removal hearing and petitions are filed later, using the petition date as a start date either risks noncompliance or requires complicated programming to adjust for possible delays in filing the petition.

In contrast, if petitions are always filed no later than the hearing in which the court makes findings of abuse and neglect, and always within 60 days following removal, there is little risk of missing Federal deadlines by using the petition filing date as a start date. Assume that State law tracks the Federal deadline, which requires the first review hearing to occur within 6 months of the earlier of the following dates: 60 days after the removal of the child from home, or the date the court first determined that the child had been abused or neglected. Because the petition is consistently filed on or before both of those dates, reviews occurring within 6 months after the filing of the petition will be in compliance.

Finally, State law may set a start date that occurs before the filing of the petition. For example, State law may set a deadline for review hearings based on the date of a child's removal from home, but may not require the petition to be filed until after the removal. If that is the case, courts must adjust the deadlines for review hearings to take into account the time between removal and the filing of the petition.

Assume that under State law review hearings are due 180 days after the date of removal, and petitions must be filed within 3 days after the date of removal. Courts might choose to calculate the deadline for review hearings based on 177 days after the petition is filed. For the date of filing the petition to work as a substitute for the removal date, the filing deadline must occur within a set period after the removal date.

Date Child Is Removed From Home

For States where the deadline for review hearings is based on the date the child is removed from the home and placed in foster care, using that date as the start date is the most accurate approach to determining the timeliness of review hearings.

Another advantage to using the removal date as the start date is that this automatically filters out in-home cases, in which children remain at home under court jurisdiction.

Most States do not require judicial review hearings for children who are under court jurisdiction but living at home.

The main problem with using the removal date as the start date is that some courts have trouble consistently finding out the removal date from State agencies. Courts that cannot reliably learn the removal date from State agencies might consider choosing a substitute start date, such as the date the petition is filed or the date the emergency removal hearing takes place.

Date of Emergency Removal Hearing

To understand how and why the date of the emergency removal hearing might work as a start date for this measure, consider the following example:

In a particular State, statutes require review hearings within 6 months after children are removed from home and placed in foster care. But State law allows from 2 to 4 days following the removal date to hold an emergency removal hearing, depending on whether the removal date falls on a weekday or on a weekend or holiday.

Under those circumstances, courts might choose to program their computers to set the first review hearing within 6 months minus 4 days following the emergency removal hearing.

Date Child Is Considered To Have Entered Foster Care

Many States' laws set deadlines for review hearings that use the Federal start date: the date that the child is considered to have entered foster care.

Federal law defines the date the child is considered to have entered foster care as the earlier of either the date of the first judicial finding that the child has been subjected to child abuse or neglect or 60 days after the date the child is removed from the home.⁴

If the required judicial findings are entered within 60 days after removal, the start date will be the date of the finding of abuse or neglect, but if the finding occurs later, the start date will be 60 days after the date of actual removal. To set review hearings to occur within 12 months following this complex start date (and to measure how often this happens) requires careful computer programming.

Date Review Hearing Occurs

Another important milestone regarding this performance measure is when the review hearing is considered to have

occurred. Alternatives include the date the review hearing begins, the date the review hearing is completed, the date the review hearing order is entered, and the date that the review hearing order becomes final.

To select an appropriate date, consider the underlying purpose of this measure. The timeliness of the review hearing is important because not until the completion of that hearing does the court announce its orders adjusting the case plan and requiring parties to move the case forward by providing services for the child. This is important to placing the child permanently. Therefore, we recommend that the deadline for this measure be based on the date the hearing is completed.

Business Rules

Basic Rules

1. Run this report using a sample of closed cases.
2. Select as the starting point for purposes of measuring the due date of the first case review hearing either: (1) the date the petition is filed, (2) the date of the emergency removal hearing, (3) the date of the child's removal from home, or (4) the date the child is first considered to have entered foster care.
3. If (1), (2), or (3) is selected, skip to step 4 below. If (4) is selected, follow the directions below to determine how to calculate the actual start date for each case:
 - a. Determine at which hearing—emergency removal hearing or adjudication—the judicial finding of abuse and neglect occurs in the State. This is based on State law and should therefore be consistent throughout the State.
 - b. If the judicial finding occurs at removal, use the removal date as the start date. If the finding occurs at adjudication, use the earlier of the actual adjudication hearing date or 60 days after the removal date as the start date. Continue with step 4 below.
4. Select a date range for the report (date case closed). (A)
5. Select cases falling within the date range for the preliminary sample. (B)
6. Based on State or Federal law and the start date selected above, determine the maximum legally permissible number of days from the start date to the first review hearing. (C)
7. For each case in (B), determine the length of the case (from the start date selected above to case closure date). Eliminate from (B) any cases that are not as old as (C) (cases that are not old enough at closure to have had a review hearing).
8. For the cases remaining in (B) after step 7, create a record in the dataset with the following information:
 - a. The start date for the case (as determined above).
 - b. The date the first case review hearing was due (based on State or Federal law as determined in step 6 above).
 - c. The date the first case review hearing was held. If no review hearing was held, store "00/00/0000."
 - d. The date each subsequent review hearing was due, i.e., second hearing due date, third hearing due date, and so forth.
 - e. The date each subsequent review hearing was actually held, i.e., second hearing, third hearing, and so forth. If no hearing was held, store the date as "00/00/0000."
 - f. For cases with two removal dates for one child, treat the events occurring from the second removal date forward as though this segment of the case were a separate case. Then, evaluate the hearing dates in the same manner as described above in steps 8a–e and below in step 9.⁵
9. Evaluate the data for each case as follows:
 - a. If the first case review hearing was held in a timely fashion, store a "Y" in another field for the first hearing. If the first review hearing was not held in a timely fashion, or not held at all ("00/00/0000" was stored as the first review hearing date), store an "N" for the first hearing.
 - b. Continue to evaluate the timeliness of each subsequent review hearing. Store a "Y" or an "N" to indicate timely or untimely hearing dates.
10. Count the number of cases in which all first review hearings were held in a timely fashion. (D)

11. Calculate the percentage of cases with timely first review hearings by dividing (D) by (B).
12. Count the number of cases where all review hearings were held in a timely fashion. (E)
13. Calculate the percentage of cases with all review hearings held in a timely fashion by dividing (E) by (B).
14. Count the total number of review hearings. (F)
15. Count the number of review hearings held in a timely fashion. (G)
16. Calculate the percentage of timely review hearings by dividing (G) by (F).

Possible Modifications

- ◆ Also report on average and/or median number of days from removal to the first review hearing and between review hearings.
- ◆ Report separately on the timeliness of first review hearings and subsequent review hearings.
- ◆ Report separately on the timeliness of review hearings after termination of parental rights (TPR).
- ◆ Report on the percentage of review hearings held in a timely fashion in a specified time period (e.g., calendar year) using both open and closed cases.

Data Elements

These data elements apply specifically to this measure. For elements that apply to all measures, see “Universal Data Elements,” page 7. For definitions of data elements, see appendix D, “Data Element Dictionary,” page 289.

Required Elements

- ◆ Abuse or neglect petition date (if needed for “start date,” as described above).
- ◆ Removal date (if needed for “start date,” as described above).
- ◆ Adjudication date (if needed for “start date,” as described above).
- ◆ Emergency removal hearing date-time.
- ◆ Case closure date.
- ◆ Case review hearing date.

Optional Elements

- ◆ Last TPR finalized date.

Reporting the Data

As with other *Toolkit* Measures, *Measure 4F* lends itself to a variety of tabular and graphic presentations. State Court Improvement Projects will need presentations that show performance statewide and for each jurisdiction. Individual courts will want to see how their performance compares with that of other courts and with the State as a whole, and also whether their performance has improved or declined over time.

The samples that follow use hypothetical data for a fictitious State to demonstrate how results for this measure might be reported in tables and graphs.

Bar charts or pie charts are useful for illustrating the percentage of cases in which review hearings meet the legal deadline. Using this approach, the State Court Improvement Project might compare performance in several parts of the State and compare performance in recent years.

Courts might also use trend lines to compare the percentage of review hearings that comply with legal deadlines during successive years or shorter successive time periods. In another example, two separate and differently colored trend lines might compare the State as a whole with a particular judicial district.

Another way to illustrate this measure is to use bar graphs to report the median or mean number of days to the review hearing. However, calculating median and mean numbers of days (as opposed to percentages that do, and do not, comply with legal requirements) will require additional programming.

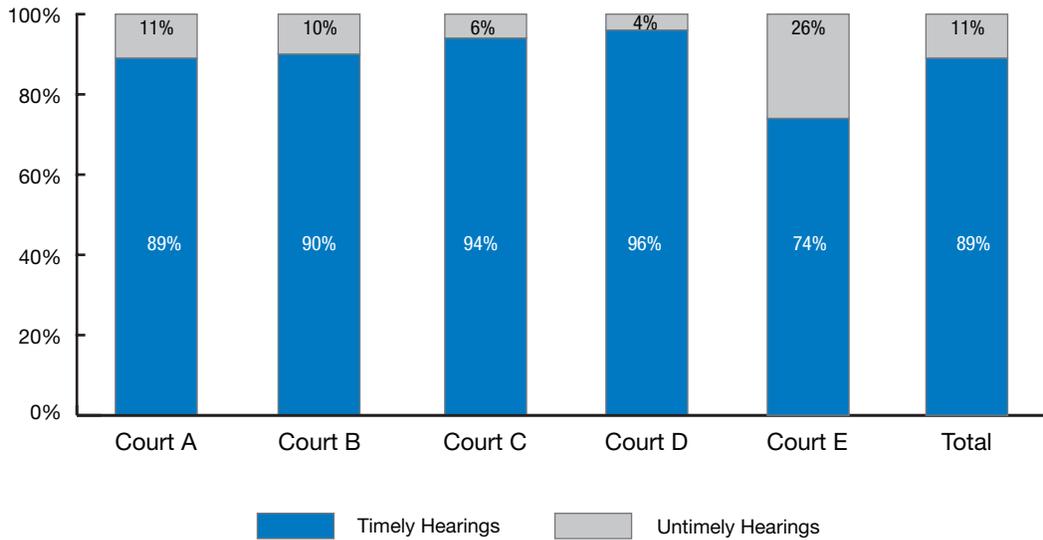
Sample 4F–1 is based on statistics from a fictitious county with five courtrooms (Courts A through E). It shows the percentage of first court review hearings (the first review hearings following the opening of each case) that occurred on time. Compliance percentages range from 74 percent to 96 percent for individual courts, and 89 percent for the whole county. During the first round of Federal-State Child and Family Services Reviews (CFSRs), percentages below 90 were not sufficient to meet CFSR requirements.

In sample 4F–2, the vertical stacked bar graph shows, within each bar, the percentage of first review hearings that were held timely and those that were late (or not held) for five courtrooms. This graph clearly demonstrates

Sample 4F–1. Timely vs. Untimely First Review Hearings, by Court, Cases Closed in 2005: County ABCDE

Court	Cases in Which First Review Hearings Were Held in a Timely Fashion		Cases in Which First Review Hearings Were Not Held in a Timely Fashion		Total Number of Cases in Which First Review Hearings Were Due Before Closure
	Number of Cases	Percent	Number of Cases	Percent	Number
Court A	85	89%	10	11%	95
Court B	93	90%	10	10%	103
Court C	160	94%	11	6%	171
Court D	120	96%	5	4%	125
Court E	78	74%	28	26%	106
Total	536	89%	64	11%	600

Sample 4F–2. Timely vs. Untimely First Review Hearings, by Court, Cases Closed in 2005: County ABCDE



the performance of each court and enables the viewer to compare each court with the other courts and with the total for the jurisdiction.

Sample 4F–3 is based on statistics from a small State with four judicial districts. It focuses not on the percentage of cases in which all subsequent review hearings were held on time, but rather on the percentage of the subsequent review hearings themselves that were held on time. Sample 4F–4 depicts this information in a horizontal bar graph.

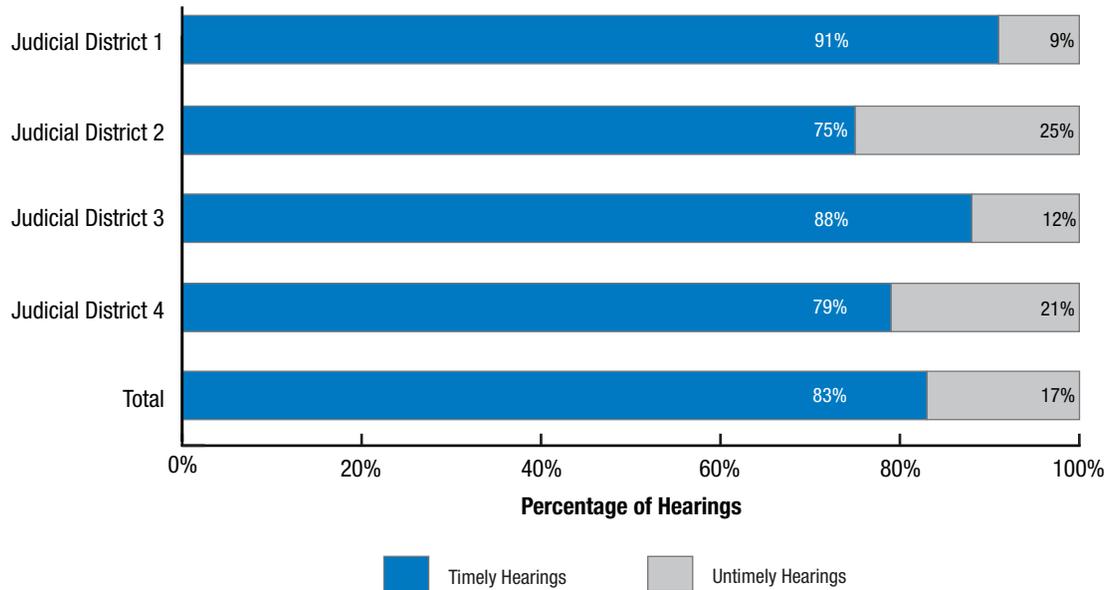
Sample 4F–5 is based on statistics from the same fictitious county as sample 4F–1. Sample 4F–5 shows the percentage of cases in which all review hearings occurred on time before the case was closed. These compliance percentages are lower than for the first review hearings. This is logical given that most cases included more than one subsequent review hearing. Based on the overall compliance percentage, this county does not meet the requirements for CFSRs.

Sample 4F–6 represents the total compliance percentage for the county, and is based on the totals in the bottom row of data from sample 4F–5.

Sample 4F-3. Timely vs. Untimely Subsequent Review Hearings, by Judicial District, 2006

Judicial District	Subsequent Review Hearings Held in a Timely Fashion		Subsequent Review Hearings Not Held in a Timely Fashion		Total Subsequent Review Hearings
	Number	Percent	Number	Percent	
Judicial District 1	430	91%	45	9%	475
Judicial District 2	440	75%	145	25%	585
Judicial District 3	541	88%	76	12%	617
Judicial District 4	330	79%	88	21%	418
Total	1,741	83%	354	17%	2,095

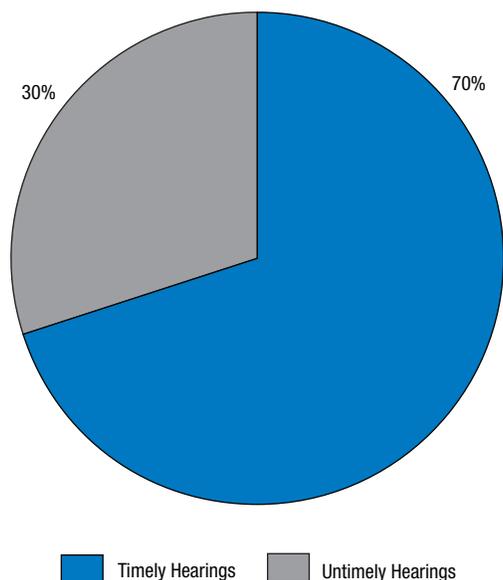
Sample 4F-4. Timely vs. Untimely Subsequent Review Hearings, by Judicial District, 2006



Sample 4F-5. Timely vs. Untimely Review Hearings, by Court, Cases Closed in 2005: County ABCDE

County ABCDE	Cases in Which All Review Hearings Were Held Timely		Cases in Which Not All Review Hearings Were Held Timely		Total Number of Cases in Which Subsequent Review Hearings Were Due Before Closure
	Number of Cases	Percent	Number of Cases	Percent	
Court A	60	63%	35	37%	95
Court B	87	84%	16	16%	103
Court C	125	73%	46	27%	171
Court D	90	72%	35	28%	125
Court E	59	56%	47	44%	106
Total	421	70%	179	30%	600

Sample 4F–6. Timely vs. Untimely Review Hearings, Cases Closed in 2005: County ABCDE



Possible Factors Affecting Court Performance

Degree of Court Control Over Scheduling

By managing caseload effectively, courts can set firm schedules and expectations for the timeliness of all stages of the court process. Caseload management includes judicial control of scheduling, short timeframes for steps in the court process, and strict limits on granting continuances.

By contrast, if agencies and attorneys set the pace of the litigation, the timing of hearings is likely to be based on the pace of the slowest among them. Busy attorneys and caseworkers may seek frequent delays, and attorneys may seek delays for perceived tactical advantage.

Timely Submission of Prehearing Reports

Timely review hearings depend on the timely submission of prehearing reports, especially by child welfare agencies. When reports are filed late, parties often have a legitimate

basis for requesting a delay—lack of notice regarding the facts submitted and agency proposals.

Timely submission of reports requires oversight and diligence on the part of the court. Ensuring timely reports often leads to ongoing struggle between courts and child welfare agencies. When courts take the time and trouble to make sure that agency executives and staff understand the significance of timely reports, this struggle may be avoided.

Timely Adjudication and Disposition Hearings

When adjudication and disposition hearings are timely, there typically is less pressure to delay case review hearings. Timely adjudication and disposition hearings mean that the court has had ample prior opportunity to review and approve the case plan.

Careful Monitoring of Deadlines

Deadlines for review hearings can easily be missed. Because Federal deadlines for review hearings are complex and can easily be misunderstood, States following those deadlines must take special care to comply. States that have by law imposed their own simpler and stricter deadlines for review hearings must follow those deadlines instead.

Possible Reforms

- ◆ Organize and participate in caseload management training as part of an overall effort to reduce delays and meet court deadlines.
- ◆ Refine and enforce deadlines for adjudication, disposition, review, and permanency hearings.
- ◆ Develop and enforce strict grounds and procedures for continuances.
- ◆ Track and measure delays in adjudication, disposition, review, and permanency hearings.
- ◆ Develop a project to reduce delays.
 - ◇ Assign to court employees the responsibility for monitoring delays in review hearings and bringing those delays to the judges' attention.
 - ◇ Involve agency representatives, attorney groups, and others.

- ◇ Identify causes of delays in adjudication, disposition, and review hearings.
- ◇ Identify and implement solutions.
- ◆ Work with the child welfare agency to speed submission of court reports.
 - ◇ Assign to court employees the responsibility to work with the agency on this issue.
 - ◇ Train agency staff on the importance of early reports.
 - ◇ Threaten to schedule and then schedule extra hearings when reports are submitted late.
 - ◇ Develop a simple process for caseworkers to submit supplemental information that becomes known too late to include in the regular report.
 - ◇ Insist that attorneys review the reports well before hearings are scheduled to begin.
 - ◇ Ensure that judges review reports before hearings.
- ◆ Monitor due dates of review hearings.
 - ◇ Train court staff on review hearing deadlines.
 - ◇ Assign staff to monitor and ensure timely review hearings.
 - ◇ Enhance computers to project dates for review hearings, schedule hearings, and provide advance reminders of hearing due dates.
 - ◇ Develop and implement, if necessary, manual methods to identify due dates for review hearings, set hearing dates accordingly, and provide reminders.

- ◆ Set review hearings earlier than their due dates to allow for common minor delays.

The specific measures a court takes will depend on local conditions and the court's analysis of the principal causes of delayed review hearings.

Endnotes

1. Federal law requires that reviews occur at least once every 6 months. 42 U.S.C. § 675(5)(B). The preamble to Federal regulations adopted in 2000 states that the first 6-month review must take place within 6 months after a child is "considered to have entered foster care." 65 *Federal Register* 4030–32 (January 25, 2000). The date a child is considered to have entered foster care is the earlier of the date the court finds that the child is abused or neglected or 60 calendar days after the child is removed from home. 42 U.S.C. § 675(5)(F), 45 C.F.R. § 1355.20(a). States may set stricter deadlines by calculating the deadline from the date of actual removal from home or by setting intervals of less than 6 months.
2. 42 U.S.C. § 675(5)(B).
3. 42 U.S.C. § 675(5)(B).
4. 42 U.S.C. § 675(5)(F).
5. The reason for this exception is that when a child is returned home and custody is given to the parents, but the case remains open and the child is removed from the home a second time, a first review hearing is again due within the time specified by Federal or State law following the second removal date (6 months in many States) as though it were a new case.

Time to First Permanency Hearing



Definition: Average (median) time from filing of the original petition to first permanency hearing.

Explanation: This measure shows how long it takes to complete the first permanency hearing. Under this measure, the time begins to run with the filing of the original petition and ends on the day the first permanency hearing is completed.

Purpose: To comply with minimum times set by Federal and State laws by which States must complete permanency hearings.

Compliance with this measure is important for several reasons.

- ◆ **At permanency hearings, courts determine the long-term direction of the case**, whether toward family reunification, adoption, relative placement, legal guardianship, or another planned permanent living arrangement (APPLA). Completing these hearings on a timely basis is important to achieving timely permanent homes for foster children, a central goal of child welfare litigation.
- ◆ **Permanency hearing time limits are specified by law.** Nearly every State has enacted legislation to implement Federal time limits for these hearings, and many have set deadlines stricter than those of the Federal Government.
- ◆ **Federal reviews test States' compliance with permanency hearing time limits.** This is addressed in Child and Family Services Reviews (CFSRs) and indirectly in Title IV–E eligibility reviews. Although Title IV–E eligibility reviews technically determine whether judicial findings of reasonable efforts to achieve permanency are timely, the time limits for those findings coincide with the time limits for permanency hearings, and those determinations are commonly made during permanency hearings. If noncompliance is found in either of these reviews, it can have potentially negative financial consequences.

Complexities, Proxies, and Barriers to Capturing This Information

Start Date for Measuring Time to First Permanency Hearing

Because Federal and State laws set deadlines for the completion of permanency hearings, State courts should know how well they are complying with those deadlines. To select a start date for this measure, determine the Federal and State start dates and use whichever is earlier. If it is difficult to collect data regarding the legal start date, close approximations are usable.

Start dates for hearings after the first hearing are generally based on the date of completion of the previous permanency hearing. This is discussed below.

Selecting the correct start date for the first permanency hearing, however, is more complicated. Possible start dates for the first permanency hearing include the following:

- ◆ Date abuse or neglect petition is filed.
- ◆ Date child enters foster care.
- ◆ Date of emergency removal hearing.
- ◆ Date of court order authorizing the child's placement into foster care.
- ◆ Date child is considered to have entered foster care.

The key consideration in choosing among these alternatives is the State or Federal law that governs the time limits for the first permanency hearing. The start date for the Federal deadline is the date that a child is “considered to have entered foster care.” Federal law defines that date as the earlier of either the date of the first judicial finding that the child has been subjected to child abuse or neglect,

or 60 days after the date the child is removed from the home.¹

To apply this start date, one must know at what stage of the court proceedings under State law a court finds “whether a child has been subjected to abuse or neglect.” Depending on State law, this may occur at the emergency removal hearing or at adjudication.

It is also important to remember that Federal law allows States to use earlier start dates than the date a child is considered to have entered foster care in setting the deadline for the first permanency hearing.

Date Petition Is Filed

Although the petition filing date provides a clearly defined start date, Federal law does not use this date in calculating case review deadlines. Therefore, the petition date may differ from the applicable start date under Federal and State law.

In some States in which the start date is based on the date the child is considered to have entered foster care, the date the petition is filed can be used as a start date if abuse and neglect are first determined at the emergency removal hearing and petitions must be filed at that time. In those States, because emergency removal hearings occur well before 60 days after a child enters foster care, they are the effective start date for the Federal deadline. If petitions are filed later, however, using the date the petition is filed can be problematic.

In other States, using the date the petition is filed as the start date can present problems because the petition is filed either before or after the emergency removal hearing, or the court first finds that a child has been subjected to abuse or neglect in the adjudication hearing.

Date Child Actually Enters Foster Care

In some States the deadline for permanency hearings is based on the date the child actually enters foster care, which is earlier than the Federal start date and therefore complies with Federal law. In these States, this is the most accurate approach to determining the timeliness of permanency hearings.

In addition, using the date of actual entry into foster care as the start date automatically filters out children not in foster care. Using the date of entry as the start date automatically excludes “in-home cases,” in which children remain at home under court jurisdiction, or cases in which children are placed in the custody of relatives. Permanency hearings

are not required for children who are under court jurisdiction but not in foster care.

The main problem with using the date of entry as the start date is that some courts have trouble consistently finding out the date of entry from State child welfare agencies. Courts that cannot reliably learn the date of entry into foster care might consider choosing a substitute start date, such as the date the petition is filed or the date that the emergency removal hearing occurs.

Date of Emergency Removal Hearing

To understand how and why the date of the emergency removal hearing might work as a start date for this measure, consider the following example:

State law requires permanency hearings to occur within 1 year after each child is placed in foster care. But State law can allow up to 4 days from actual entry into foster care to hold an emergency removal hearing, taking into account evenings, weekends, and holidays. Under those circumstances, a court may program its computers to set the first permanency hearing within 1 year minus 4 days following the emergency removal hearing.

As with the date of actual entry into foster care, using the date of the emergency hearing filters out children who are not in foster care. But a child may enter foster care after the emergency removal hearing, in which case the child should not be counted in this measure.

Date of Court Order Authorizing Entry of Child Into Foster Care

Another possible start date for this measure is the date of the first court order authorizing the entry of the child into foster care. This date avoids the problem posed by using the emergency removal hearing as a start date, that a child may enter care after that hearing and therefore may not be counted.

This start date is workable, however, only if a court order is nearly always issued at or very near the date the child enters foster care, the written order has the correct issue date, and the date the court order is issued is recorded in the judicial management information system.

Date Child Is Considered To Have Entered Foster Care

Many States' laws set deadlines for permanency hearings that use the Federal start date, the date that the child is considered to have entered foster care. As noted above,

Federal law defines that date as the earlier of either the date of the first judicial finding that the child has been subjected to child abuse or neglect or 60 days after the date the child is removed from the home.²

Therefore, if the required judicial findings are entered prior to 60 days after removal, the start date will be the date of the finding of abuse or neglect, but if the finding occurs later, the start date will be 60 days after the date of actual removal. To set permanency hearings to occur within 12 months following this complex start date (and to measure how often this happens) requires careful computer programming.

Completion of Permanency Hearing

Another important consideration regarding this performance measure is when to consider the permanency hearing to have occurred. Alternatives include the date the permanency hearing begins, the date the permanency hearing ends, the date the permanency hearing order is entered, and the date that the permanency hearing order becomes final.

Applicable Federal guidelines used in reviewing cases help simplify this issue. If a transcript or other record can be produced to show the date that the permanency hearing was completed and that the hearing met Federal requirements, then the date the hearing was completed can be used to determine compliance. If, however, it is necessary to refer to the court order to show compliance, the date of the court order will be definitive.

Aside from Federal reviews, it is helpful to consider the underlying purpose of the measure. A permanency hearing is held to establish a relatively definitive permanency plan for the child. At that point, the case will proceed toward family reunification, termination of parental rights followed by adoption, or another type of permanency.

Generally, the case can proceed once the permanency hearing is over, rather than waiting until the permanency order is signed.

Business Rules

Basic Rules

Basic specifications to measure median time from a start date to the date of the first permanency hearing are based on a start date of one of the following: (1) date of filing of petition; (2) date of actual entry into foster care; (3) date

of emergency removal hearing; (4) date of order for child's entry into foster care; or (5) date the child is considered to have entered foster care, as defined by 42 U.S.C. § 675(5) (F).

This set of specifications assumes that only closed cases belong in the sample. If the court decides to examine recent performance to report on open cases, it must select only open cases that are old enough to have been eligible for a permanency hearing. Then, it may simply calculate the percentage of cases from this group in which the permanency hearing was held within 12 months of the starting date, rather than calculate the average or median days as called for in this measure.

Open cases must have been open long enough to have been eligible for at least the first permanency hearing to be due, whether or not the hearing was actually held on time or at all. In practice, this means that the cases should be at least 12 months old if the starting date is measured from removal or filing of the petition, or at least 14 months old if the starting date is measured from when the child is considered to have entered foster care. If open cases are shorter in length than these timeframes, the first permanency hearing will not be due.

1. Select the starting point for measuring the due date of the first permanency hearing by using one of the following: (1) date of filing the petition; (2) date of actual entry into foster care; (3) date of emergency removal hearing; (4) date of order for child's entry into foster care; or (5) date the child is "considered to have entered foster care."
2. If (1), (2), (3), or (4) is selected, skip to step 3. If (5) is selected, follow the directions below to calculate the actual start date for each case:
 - a. Determine at which hearing—emergency removal hearing or adjudication—the judicial finding of abuse and neglect occurs in the State. This is based on State law and therefore should be consistent throughout the State.
 - b. If the judicial finding occurs at the emergency removal hearing, use the date of the emergency removal hearing as the start date.
 - c. If the finding occurs at adjudication, use the earlier of two dates: either the date of completion of the adjudication hearing or 60 days after the date of actual foster care entry.
 - d. Continue with step 3 below.

3. Select a date range for the report (date case closed). (A)
 4. Select and count cases falling within the date range (case closure date). (B)
 5. For each case in (B), calculate the number of days from the start date to the date of the first permanency hearing, and store each number in a dataset. If no first permanency hearing was held, remove that case from (B). You can also increment a counter to track the number of cases where no first permanency hearing was held. (This measure does not call for tracking the number of cases in which a permanency hearing was due but never held; however, that number may help supplement this measure.)
 6. Find the median case in the database (the case in the exact middle with half of the cases below it and half of the cases above it). (C)
 7. Add together the number of days for all cases in (B). The total will be (D).
 8. Compute the average time by dividing (D) by (B).
- b. If the judicial finding occurs at the emergency removal hearing, use the date of the emergency removal hearing as the start date.
 - c. If the finding occurs at adjudication, use the earlier of two dates: the date of completion of the adjudication hearing or 60 days after the date of actual entry into foster care.
 - d. Continue with step 4 below.
4. Select a date range for the report (date case closed). (A)
 5. Select cases falling within the date range for the preliminary sample. (B)
 6. For each case in (B), determine the age of the case at closure. Eliminate from (B) the following cases:
 - a. If the petition filing date or the removal date is used as the start date, remove from (B) any case that is less than 12 months old.
 - b. If 60 days after the date of actual entry into foster care is used as the start date, remove from (B) any case that is less than 14 months old.
 - c. If the adjudication date is used as the start date, remove from (B) any case that is less than 12 months old.
 7. For the cases remaining in (B) after step 6, create a record in a database with the following information:
 - a. The start date for the case.
 - b. The date the first permanency hearing was held. If no permanency hearing was held, store "00/00/0000."
 - c. The date of each subsequent permanency hearing (second hearing, third hearing, and so forth).
 - d. For cases with two removal dates for one child, treat the time period from the second removal date forward as though it were a separate case, and evaluate the hearing dates as described below in step 8.³
 8. Evaluate the data for each case as follows:
 - a. If the date of the first permanency hearing was timely (within 12 months of the start date), store a "Y" in another field for the first hearing. If the first permanency hearing was not timely or was not held at all ("00/00/0000" was stored as the first

Calculation note: With an odd number of numbers, the median is simply the middle number; e.g., the median of 2, 4, and 7 is 4. With an even number of numbers, the median is the mean of the two middle numbers; e.g., the median of 2, 4, 7, and 12 is 5.5 (4 plus 7 divided by 2).

Alternative Specifications for Measuring the Percentage of All Permanency Hearings That Are Timely

1. Run this report using a sample of closed cases.
2. Select the starting point for measuring the due date of the first permanency hearing by using either: (1) date of filing the petition, (2) date of actual entry into foster care, (3) date of emergency removal hearing, (4) date of order for child's entry into foster care, or (5) date the child is "considered to have entered foster care."
3. If (1), (2), (3), or (4) is selected, skip to step 4 below. If (5) is selected, follow the directions below to calculate the actual start date for each case:
 - a. Determine at which hearing—emergency removal hearing or adjudication—the judicial finding of abuse and neglect occurs in the State.

permanency hearing date), store an “N” for hearing number one.

- b. If the date of the second hearing was within 12 months of the first hearing, store a “Y” for hearing number two. If the date of the second hearing was more than 12 months after the first hearing, store an “N” for hearing number two.
 - c. Evaluate the timeliness of each subsequent permanency hearing (each hearing must have been held within 12 months of the previous permanency hearing, regardless of whether the previous hearing was timely or late). Store a “Y” or an “N” to indicate timely or untimely hearing dates.
9. Count the number of permanency hearings held in all cases. (C)
 10. Count the number of timely permanency hearings. (D)
 11. Calculate the percentage of timely permanency hearings by dividing (D) by (C).

Data Elements

These elements apply specifically to this measure. For elements that apply to all measures, see “Universal Data Elements,” page 7. For definitions of data elements, see appendix D, “Data Element Dictionary,” page 289.

Required Elements

- ◆ Abuse or neglect petition date (if needed for “start date,” as described above).
- ◆ Foster care entry date (if needed for “start date,” as described above).
- ◆ Emergency removal hearing date-time (if needed for “start date,” as described above).
- ◆ Adjudication date (if needed for “start date,” as described above).
- ◆ Court-ordered entry into foster care date.
- ◆ Case closure date.
- ◆ Permanency hearing date.

Reporting the Data

As with other *Toolkit* Measures, *Measure 4G* lends itself to a variety of tabular and graphic presentations. State Court

Improvement Projects will need presentations that show performance statewide and for each jurisdiction. Individual courts will want to see how their performance compares with that of other courts and with the State as a whole, and also whether their performance has improved or declined over time.

The samples that follow use hypothetical data for a fictitious State to demonstrate how results for this measure might be reported in tables and graphs.

This measure involves a simple number (the median or average) and is well represented through bar charts, including side-by-side bar charts. Graphs illustrating trend lines may help compare performance over different time periods.

Both sample 4G–1 and sample 4G–2 (based on fictitious statewide statistics) illustrate the performance of a particular State regarding its average and median days to the first permanency hearing. Except for 2003, there is steady improvement from year to year. There is still much reason for concern, however, because the median date is very close to the legal deadline.

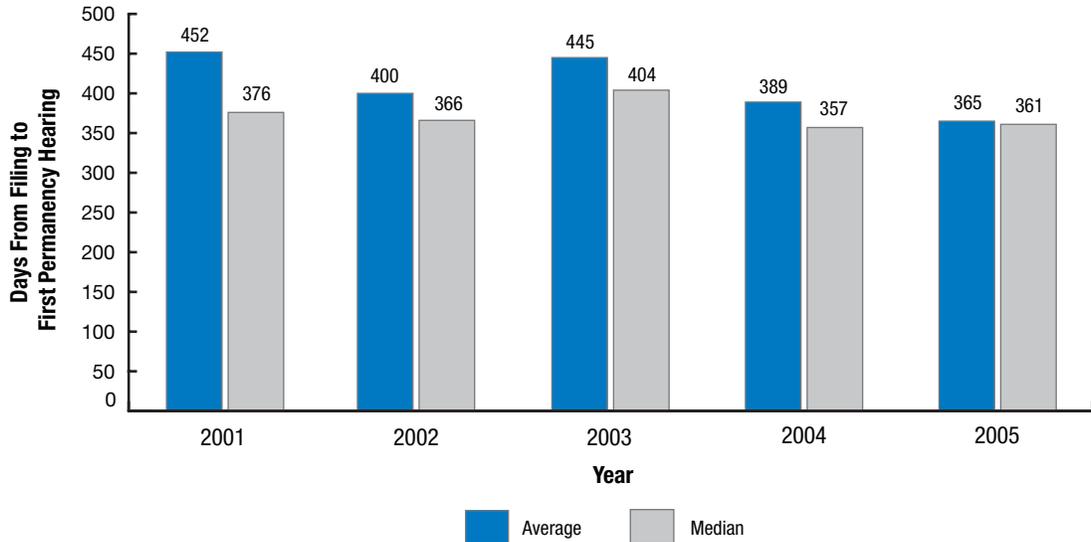
Both sample 4G–3 and sample 4G–4 (also based on fictitious statistics) illustrate the performance statewide regarding the percentage of cases in compliance with the Federal deadline for the first permanency hearing. They show steady improvement from 2001 to 2005. Nevertheless, a significant percentage of the first permanency hearings misses the Federal deadline.

Perhaps even more helpful would be a table or graph showing the percentage of cases in which all permanency hearings were held within the legal deadline. The alternative specifications for this measure provide for such a table or graph.

Sample 4G–1. Days From Filing to First Permanency Hearing, Cases Closed in 2001–2005: Statewide

Year	Average	Median
2001	452	376
2002	400	366
2003	445	404
2004	389	357
2005	365	361

Sample 4G–2. Days From Filing to First Permanency Hearing, Cases Closed in 2001–2005: Statewide



Sample 4G–3. Compliance With Federal Time Standards for First Permanency Hearing, Cases Closed in 2001–2005: Statewide

Year	Cases in Compliance (<12 months)		Cases Out of Compliance (>12 months)		Total Cases
	Number of Cases	Percent	Number of Cases	Percent	
2001	123	35%	225	65%	348
2002	167	46%	200	54%	367
2003	189	55%	156	45%	345
2004	226	74%	78	26%	304
2005	280	89%	34	11%	314

Possible Factors Affecting the Level of Court Performance

Degree of Court Control Over Scheduling

By using effective caseflow management, courts can set firm schedules and expectations for the timeliness of all stages of the court process. Caseflow management includes judicial control of scheduling, short timeframes for steps in the court process, and strict limits on the granting of continuances.

By contrast, if the agencies and the attorneys set the pace of the litigation, the time of the hearing is likely to be based on the pace of the slowest among them. Busy attorneys or

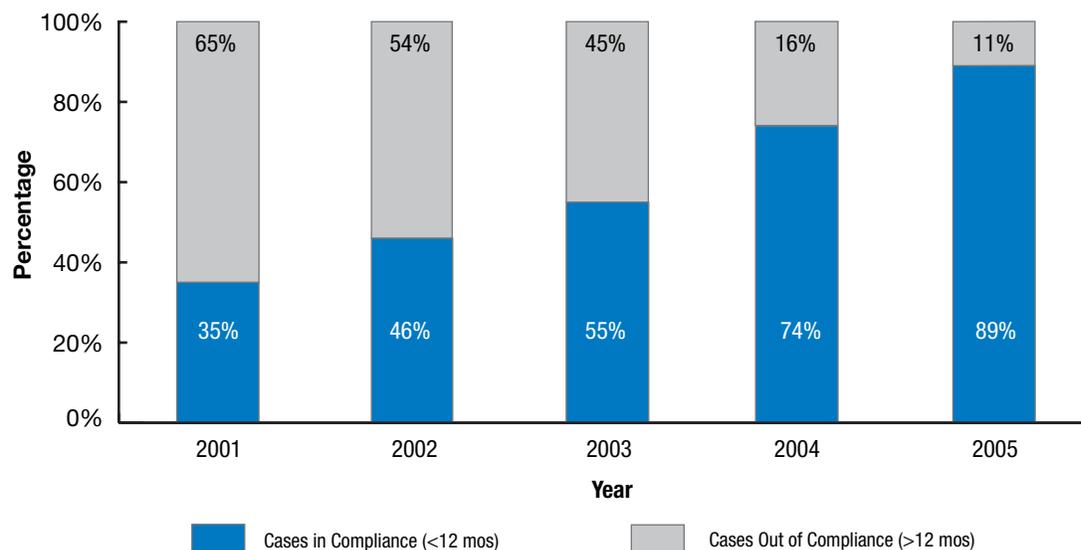
caseworkers may seek frequent delays based on workload or for perceived tactical advantage.

Timely Submission of Reports

Timely permanency hearings depend on timely submission of reports or petitions (as State law requires), especially by child welfare agencies. When reports or petitions are filed late, parties often have a legitimate basis for requesting a delay—lack of notice regarding the facts submitted and agency proposals.

Timely submission of reports or petitions requires oversight and diligence on the part of the court. Ensuring timely reports often leads to an ongoing struggle between courts and child welfare agencies. When courts take the time and

Sample 4G–4. Compliance With Federal Time Standards for First Permanency Hearing, Cases Closed in 2001–2005: Statewide



trouble to make sure that agency executives and staff understand the significance and importance of timely reports, this struggle may be avoided.

Timely Disposition and Review Hearings

When disposition and foster care review hearings are timely, there typically is less pressure to delay permanency hearings. Timely disposition and review hearings mean that the court has had ample prior opportunities to fine-tune, test, adjust, and fully implement the case plan.

Careful Monitoring of Deadlines

Deadlines for permanency hearings can easily be missed. Because Federal deadlines for permanency hearings are complex and can easily be misunderstood, States following these deadlines rather than their own simpler and stricter deadlines must take special care to comply.

Possible Reforms

- ◆ Organize and participate in caseload management training as part of an overall effort to reduce delays and meet court deadlines.
- ◆ Refine and enforce deadlines for adjudication, disposition, review, and permanency hearings.
- ◆ Develop and enforce strict grounds and procedures for continuances.
- ◆ Track and measure delays in adjudication, disposition, review, and permanency hearings.
- ◆ Develop a project to reduce delays.
 - ◇ Assign to court employees the responsibility for monitoring delays and bringing them to the judges' attention. This could be done using automated information system exception reports.
 - ◇ Identify causes of delays in adjudication, disposition, review, and permanency hearings.
 - ◇ Involve agency representatives, attorney groups, and others.
 - ◇ Identify and implement solutions.
- ◆ Work with the child welfare agency to speed submission of court reports.
 - ◇ Agree on the deadlines.
 - ◇ Assign to specific court employee(s) the responsibility to work with the agency on this issue.
 - ◇ Train agency staff on the importance of early reports.
 - ◇ Threaten to schedule, and then schedule, extra hearings when reports are submitted late.
 - ◇ Develop a simple process for caseworkers to submit supplemental information that becomes known too late to include in the regular report.

- ◇ Insist that attorneys review the reports well before hearings are scheduled to begin.
- ◇ Ensure that judges review reports before hearings.
- ◇ Monitor due dates of permanency hearings.
 - ❖ Train court staff on permanency hearing deadlines.
 - ❖ Assign staff to monitor and ensure timely permanency hearings.
 - ❖ Enhance computers to project dates for permanency hearings, schedule hearings, and provide reminders of hearing due dates.
 - ❖ Develop and implement, if necessary, manual methods to identify due dates for permanency hearings, set hearing dates accordingly, and provide reminders.

- ❖ Set permanency hearings earlier than their due dates to allow for common minor delays.

The specific measures a court takes to ensure timely permanency hearings will depend on local conditions and the court's analysis of the principal causes of delays.

Endnotes

1. 42 U.S.C. § 675(5)(F).
2. 42 U.S.C. § 675(5)(F).
3. This exception occurs because when a child is returned home and custody is given to the parents (but the case remains open), and the child is subsequently removed from the home a second time, a first permanency hearing is again due within 12 months of the removal date just as though it were a new case.

Time to Termination of Parental Rights Petition



Definition: Average (median) time from filing of the original petition to filing the petition for termination of parental rights (TPR).

Explanation: This measure shows how long it takes from the date the original child abuse or neglect petition is filed to the date the termination of parental rights petition is filed. TPR means that a parent is permanently deprived of all rights to a child, including custody, visitation, or participation in decisionmaking for the child. TPR also means that the child may be adopted by a new parent without notice to or the consent of the parent whose rights have been terminated.

Purpose: To help the courts determine how long it takes from the date the original abuse and neglect case began (when the original petition was filed) to the date the petition for TPR was filed.

Termination of parental rights is a pivotal stage in the court process because it allows a child to be adopted. It is a gateway to permanency for children who cannot return home safely.

The time from the beginning of the original proceedings to the filing of the TPR petition also represents the period during which the child welfare agency and family are working together to reunify the family. This time period must comply with the target times set forth in Federal and State law. Under Federal law, the norm is supposed to be within 15 months of entry into foster care.¹

The time to TPR reflects the efficiency of much of the court process, including the combined timeliness of the early steps, adjudication, disposition hearing, review hearings, and permanency hearings.

The time to TPR also reflects the quality of the stages of the court process. For example, even if the adjudication is timely, it will not effectively advance the case toward TPR if all parents were not properly notified and served beforehand. In that instance, it may become necessary late in the case to search for the parent(s) not originally served, delaying TPR.

Likewise, TPR proceedings may be delayed when reviews and permanency hearings are timely, but not thorough. Assume, for example, that during a review hearing, a court fails to challenge a child welfare agency's failure to arrange timely services. By failing to acknowledge the problem and order corrective steps, the court probably has delayed TPR. But if, at that review hearing, the court requires the agency to correct the deficiency, it may facilitate timelier family reunification or speed TPR if reunification efforts fail.

In another example of how failure to achieve timely TPR can work against the child's best interest, assume that, at a permanency hearing, a court does not conduct a thorough review of a recommendation to continue a permanency plan of reunification, accepts that plan, and that plan is later determined to not have been in the best interest of the child. The court has needlessly prolonged TPR. But if, instead, the court carefully questions the reunification plan, recognizes that reunification has already failed, and orders a petition for TPR, this will speed TPR and adoption.

Some child welfare agencies and their attorneys may delay initiating TPR until they can show that the parents have failed to improve over a long period of time. In some cases, it may be better for the children that TPR take place as soon as it is clear that reunification is not possible within a reasonable time. The child may best be served in these instances by going forward with a strong case for TPR, even though that case may be vigorously contested.

Delays in TPR may also reflect delays in services and/or weaknesses in child welfare agency performance. If essential services are delivered late in the case, TPR may not be considered until the services have been delivered and have failed to produce results. This means the child is forced to wait for the opportunity for a permanent new home.

Finally, this measure can help courts determine their success, and that of public child welfare agencies, in complying with Federal and State laws setting deadlines for the filing of TPR petitions. Federal law requires that petitions for the termination of parental rights be filed by the time children have been in foster care for 15 of the last 22 months.² Many States have enacted legislation to implement this Federal law, and some require State agencies

either to petition for TPR within the deadline or to submit documentation to the court showing that an exception applies. As discussed below, one can use this measure to roughly calculate the level of compliance without necessarily precisely tracking every detail of Federal laws and regulations.

This measure cannot separate out the extent to which delays in initiating TPR proceedings are caused by the court, the child welfare agency, or others. But by considering the time to TPR petitions in light of the times to adjudication, disposition, and permanency hearings, important clues will emerge. These clues can help courts identify precise causes of delays by reviewing selected individual cases at specific points in their procedures.

Complexities, Proxies, and Barriers to Capturing This Information

Importance and Appropriateness of This Measure

One argument against courts including this measure among its performance measures for child abuse and neglect litigation is that filing petitions is the responsibility of the executive branch, not the courts. Although that argument is worth considering, compelling counterarguments exist. First, an entire child abuse or neglect case comprises a single set of court proceedings, from the time of removal from home to the time a child is returned home and the case dismissed, or the child is adopted, ages out, or is placed in legal guardianship. A child abuse case cannot be dismissed until one of those outcomes (or their legal equivalents under State law) has occurred.

The implication of a TPR petition's being only part of a single set of court proceedings in a child abuse or neglect case is that it does not start new litigation even if it is filed in another court, but rather represents an important point in the ongoing resolution of the matter for the benefit of the child. Accordingly, the courts share a responsibility to ensure that this point in the litigation occurs on a timely basis.

Courts have the power and responsibility to cause TPR petitions to be filed. By setting a goal of adoption during a permanency hearing, the court requires the State to file a

petition for TPR.³ Furthermore, by determining that reasonable efforts are not required,⁴ a court may set in motion a permanency hearing, in which the court may cause the State to file a TPR petition.⁵

Whether To Measure Precise Compliance With Federal Deadlines for Filing Termination of Parental Rights Petitions

Before deciding whether to precisely track compliance with Federal deadlines for filing TPR petitions, State courts should carefully consider the complexity of the deadlines, all of the information needed to track compliance, access to such information and obstacles to obtaining access, the added burden for court staff who must enter the data, and the additional computer programming required to calculate compliance.

Many courts will find it impractical, at least for the near future, to precisely measure compliance with Federal law governing the filing of TPR petitions. In some States, courts may be able to rely on the State child welfare agency to measure compliance for certain counties or regions of the State.

Given the available data, other States may prefer to track compliance with some, but not all, of the technical provisions of Federal law. Following are some of the specific technical requirements raised by Federal statutes and regulations regarding the deadline for TPR petitions, and the challenges they present.

Exceptions to Federal Deadline for Filing Termination of Parental Rights Petitions

If the courts want to capture precisely the extent to which they meet Federal and State deadlines for TPR petitions, they need to note three exceptions when the deadlines for filing TPR petitions do not apply.

- ◆ The child is being cared for by a relative. (The State may, or may not, decide to include this as an exception.)
- ◆ A State agency has documented in the case plan (which shall be available for court review) a compelling reason for determining that filing such a petition would not be in the best interests of the child.

- ◆ The State has not provided to the family of the child, consistent with the time period in the State case plan, such services as the State deems necessary for the safe return of the child to the child's home, if reasonable efforts to reunify the family are required to be made with respect to the child.⁶

To be able to take these exceptions into account, the courts must either rule on the exceptions themselves or obtain information about them from the responsible public agency. This should not prove difficult in States with laws that require them to file for TPR within the deadline unless the court grants an exception, or in States whose laws require them to file documentation of the exception with the court. In the many States that require neither, the courts will have to arrange for agencies to provide this information to accurately measure compliance with Federal law.

Additional Deadlines for Filing Termination of Parental Rights Petitions

Federal law and regulations also require that petitions for TPR be filed within 60 days after a court has determined a child to be an abandoned infant,⁷ or after a parent has been convicted of certain felonies.⁸ Tracking compliance with these deadlines requires automated information exchange from other courts that handle criminal and child abuse and neglect proceedings or reliable information from the child welfare agency. Not only must State law clearly call for findings that an infant is abandoned, but also data must be exchanged with any other court that might find the infant to be abandoned.

On the other hand, State courts may choose to measure compliance only with the requirement that a TPR petition be filed when a child has been in foster care for 15 of the previous 22 months (see the next section), not the deadlines regarding abandoned infants and parents guilty of specific felonies, as the latter situations are rare.

Calculating Whether Children Have Been in Foster Care for 15 of the Last 22 Months, Including Discounting "Trial Home Visits"

Under Federal law, the State must file a petition for TPR when a child has been in foster care for 15 of the last 22 months. This deadline suggests two issues of interpretation:

- (1) What is foster care for the purpose of this deadline?
- (2) When should a child be considered to have left foster care?

Practically speaking, whether or not a child is in foster care is based on who has custody of the child. If a State child welfare agency (or another public agency having a contract with the State child welfare agency) has custody of a child whom the agency has placed away from home, the child is considered to be in foster care.⁹ Conversely, if a child is no longer in the custody of the child welfare agency, the child generally is no longer in foster care.¹⁰ This situation occurs when a child is returned home and the child's custody is transferred back to the parents (with or without closing the cases) or when a child is placed in the custody of a relative or a private agency.

A more complicated situation occurs when the court returns a child home without taking custody away from the public agency. If the child is considered to be having a "trial home visit" with parents, the duration of the visit should not be taken into account when calculating the deadline for filing the TPR petition.

A trial home visit is a relatively short visit home to prepare the child to return home permanently.¹¹ A trial home visit may last no longer than 6 months, unless the court authorizes a longer visit.¹²

The significance of whether or not a child's temporary return home is a trial home visit is twofold:

- ◆ If a child's return home does not qualify as a trial home visit, and the child later reenters foster care, the foster care "clock" will start again because the child will be starting a new stay in foster care.
- ◆ If a child's return home is considered a trial home visit, the foster care "clock" is suspended during the visit, and the duration of the visit does not count in calculating the deadline for the TPR petition.¹³

Given the complexity of the regulations regarding trial home visits, special additional data elements and programming are needed to enable the court's information system to determine whether the TPR petition is filed within Federal deadlines. First, the court must be informed when and if a child is returned home and must enter that information into its information system. Second, the court's information system must record whether or not the court approved the child's return home as a trial home visit. If the visit extends beyond 6 months, or beyond the time period the court has

approved for the visit, it will not qualify as a trial home visit.

Third, the court's information system must record any judicially granted extension of the trial home visit. A judicial extension enables the visit to qualify as a trial home visit even if it lasts longer than 6 months.

Finally, the court's information system must be able to determine whether a child's return home is a trial home visit (based on information from the agency or a court order), and deduct the duration of any trial home visit when calculating the deadline for filing a petition for TPR.

Taking into account trial home visits is demanding in terms both of the data the court must obtain and enter, and the required programming. If either is impractical, courts can choose to set stricter standards than required by Federal law by disregarding trial home visits and counting them as time in foster care for the purpose of the deadline.

Start Date for Measuring Time to Termination of Parental Rights Petition

Because both Federal and State laws¹⁴ set deadlines for the filing of TPR petitions, State courts should know how well they are complying with the strictest of those deadlines. To select a start date for this measure, use the earlier of the Federal or State start dates. If it is difficult to collect data regarding the legal start date, close approximations are possible.

Federal regulations do not identify the start date for the filing of TPR petitions to terminate the rights of parents who have committed specified crimes.¹⁵ It can be either the date the child actually enters foster care or the date that the court finding that the parent committed the crime becomes final, whichever comes later. The start date for the filing of the TPR petition in the case of a finding that a child is an abandoned infant is the date that finding becomes final.

Possible start dates based on the length of time a child has been in foster care (the overwhelming majority of cases) include the following:

- ◆ Date the abuse or neglect petition is filed.
- ◆ Date the child actually enters foster care.
- ◆ Date of the emergency removal hearing.
- ◆ Date the child is "considered to have entered foster care," which is the start date specified by Federal law.

There are reasons why each may or may not be appropriate in a given State.

Federal law defines the date that a child is "considered to have entered foster care" as the earlier of either the date of the first judicial finding that the child has been subjected to child abuse or neglect or 60 days after the date the child is removed from the home.¹⁶

To apply this start date, one must know at what stage of the State court proceedings a court finds "whether a child has been subjected to abuse or neglect." Depending on State law, this may occur at the emergency removal hearing or at adjudication.

Federal law allows States to use start dates earlier than the date a child is considered to have entered foster care in setting the deadline for filing the TPR petition.

Date Petition Is Filed

Using the date the petition is filed as a start date may create a problem if the petition date differs from the applicable start date under Federal and State law.

In States in which the start date is based on the date the child is considered to have entered foster care, and if abuse and neglect are first determined at the emergency removal hearing and petitions are filed at that time, then the date the petition is filed is a viable start date. In these States, emergency removal hearings occur well before 60 days after a child enters foster care, making their dates effective as start dates for the Federal deadline.

In other States, using the date of the petition as the start date can present problems either because the petition is filed either before or after the emergency removal hearing, or because the court first finds that a child has been subjected to abuse or neglect in the adjudication hearing.

Date Child Actually Entered Foster Care

In some States the deadline for filing the TPR petition is based on the date of the child's entry into foster care, which is earlier than the Federal start date and therefore complies with Federal law. In these States, using this date as the start date of the measure is the most accurate approach to determining the timeliness of TPR petitions.

Using the date of actual entry into foster care to start the "clock" automatically filters out children not in foster care, because it automatically excludes "in-home cases" in which children remain at home under court jurisdiction. TPR petitions are not required for children who are under court jurisdiction but not in foster care.

The problem with using the date of entry as the start date is that courts may have trouble consistently finding out the date of entry from State agencies. Courts that cannot reliably learn the date of entry into foster care might consider choosing a substitute start date, such as the date the petition is filed or the date that the emergency removal hearing takes place.

Date of Emergency Removal Hearing

To understand how and why the date of the emergency removal hearing might work as a start date for this measure, consider the following example:

State law requires TPR petitions to be filed when a child has been in foster care during 15 of the most recent 22 months following the child's entry into foster care. But State law also allows up to 4 days from removal of the child from home (and actual entry into foster care) to hold an emergency removal hearing, taking into account evenings, weekends, and holidays.

Under those circumstances, a court may program its computers to determine whether the TPR petition is filed at or before the time a child has been in foster care for 15 of the most recent 22 months, less 4 days, following the child's actual entry into foster care.

As with the date of actual entry into foster care, the date of the emergency hearing filters out children who were not in foster care. But a child may enter foster care after the emergency removal hearing, in which case the child should not be counted in this measure.

Date of Court Order Authorizing Entry of the Child Into Foster Care

Another possible start date for this measure is the date of the first court order authorizing the entry of the child into foster care. This avoids the problem posed by using the emergency removal hearing as a start date, that a child may enter care after that hearing and therefore not be counted.

This start date is workable, however, only if a court order is nearly always issued at or near the date a child is removed from home and enters foster care, and the date of issuance of the court order is recorded in the court management information system.

Date Child Is Considered To Have Entered Foster Care

Many States' laws set deadlines for filing the TPR petition that use the Federal start date, the date that the child is considered to have entered foster care. As noted above, Federal law defines that date as the earlier of either the date of the first judicial finding that the child has been subjected to child abuse or neglect or 60 days after the date on which the child is removed from the home.¹⁷ To determine that a child has been in foster care for 15 of the most recent 22 months after the child is considered to have entered foster care (and to measure how often this happens) requires careful computer programming.

Completion Date for This Measure

Another important consideration is whether to base the date of the TPR petition on the date the TPR petition is filed regarding the first parent or the last parent.¹⁸ It is preferable to use the date the petition is filed for the last parent, because only after termination of all parents' rights is a child freed for adoption. Furthermore, the Federal and State deadlines apply to all parents.

In many States, a judicial termination of parental rights is not required if parents sign a consent to adoption (or in some States, a consent to TPR). Based on State law, this consent may or may not have to be signed in the presence of a judge. Given that signing consent to adoption fulfills the purpose of TPR in some States, it is recommended that this measure be calculated in one of two ways, depending on State law.

- ◆ In States where an adoption cannot go forward without a separate proceeding to terminate parental rights—even when a parent has already signed a consent to adoption—use the date the TPR petition regarding the last parent is filed.
- ◆ In States where an adoption can go forward without a separate TPR proceeding when a parent signs a consent to adoption, use the earlier of the following dates:
 - ◇ The date the last parent signed a consent to adoption.
 - ◇ The date a petition was filed to terminate the last parent's rights.

To use the second approach, the court will need the agency to routinely provide either the dates of parental

consent to adoption or TPR, or copies of parents' signed consent to adoption or TPR. Court employees will have to enter this information into the court's data system.

Business Rules

Basic Rules

1. Run this report using a sample of cases for which TPR petitions have been filed.
2. Select a date range for the report (date TPR petition is filed).¹⁹
3. Select and count cases for which the TPR petition date falls within the date range selected. (A)
4. For each case in (A), compute the number of days from the filing of the original abuse or neglect petition to the filing of the TPR petition. Store each number in a dataset.
5. Find the median case in the dataset (the case that has the same number of cases below and above it). (B)
6. Add the number of days for all cases in (A) together. (C)
7. Compute the average time by dividing (C) by (A).

Calculation note: With an odd number of numbers, the median is simply the middle number; e.g., the median of 2, 4, and 7 is 4. With an even number of numbers, the median is the mean of the two middle numbers; e.g., the median of 2, 4, 7, and 12 is 5.5 (4 plus 7 divided by 2).

Possible Modifications

- ◆ Count, in all cases, from the date of actual entry into foster care rather than from the date of the original abuse or neglect petition.
- ◆ Calculate this measure based on the date of the emergency removal hearing.
- ◆ Report separately on cases by demographic categories, including age and ethnicity.
- ◆ Calculate compliance with Federal and State statutes regarding filing of TPR when a child has been in foster care 15 of the past 22 months:
 - (1) Deduct from the calculation of how long a child has been in foster care the duration of trial home visits.
 - (2) Restart the calculation of how long a child has been in foster care as of the point the child returned to foster care after leaving foster care (that is, the agency no longer had custody).

Data Elements

These elements apply specifically to this measure. For elements that apply to all measures, see "Universal Data Elements," page 7. For definitions of data elements, see appendix D, "Data Element Dictionary," page 289.

Required Elements

- ◆ Abuse or neglect petition date.
- ◆ Last TPR petition date.

Optional Elements

- ◆ Emergency removal hearing date-time.
- ◆ Foster care entry date.
- ◆ Placement beginning date.
- ◆ Placement end date.
- ◆ Placement type.
- ◆ Removal date.
- ◆ Trial home visit begin date.
- ◆ Trial home visit end date.
- ◆ Adjudication date.
- ◆ Last consent to adoption date.
- ◆ Court-ordered entry into foster care date.

Related CFSR Standards

Federal Child and Family Services Review (CFSR) Permanency Composite 2, "Timeliness of Adoption," includes three components: (A) timeliness of adoptions of children discharged from foster care, (B) progress toward adoption of children who meet Adoption and Safe Families Act (ASFA) time-in-care requirements, and (C) progress toward adoption of children who are legally free for adoption.

Within component A, one measure is loosely related to *Toolkit Measure 4H*:

CFSR Permanency Composite 2. Component Measures, Range and Median Scores, and Composite National Standard

	Range	Median	National Standard
Permanency Composite 2: Timeliness of adoption	50–150	96.5	102.1 or higher
Component A: Timeliness of adoptions of children discharged from foster care			
Of all children who were discharged from foster care to a finalized adoption in FY 2004, what percent were discharged in less than 24 months from the time of the latest removal from the home?	6.4–74.9%	27.1%	No standard
Of all children who were discharged from foster care to a finalized adoption in FY 2004, what was the median length of stay in foster care (in months) from the time of removal from the home to the time of discharge from foster care?	16.2–55.7%	32.0%	No standard
Component B: Progress toward adoption for children who meet ASFA time-in-care requirements			
Of all children in foster care on the first day of FY 2004 who were in foster care for 17 continuous months or longer, what percent were adopted before the end of the fiscal year?	8.0–25.1%	18.0%	No standard
Of all children in foster care on the first day of FY 2004 who were in foster care for 17 continuous months or longer, what percent became legally free for adoption (i.e., a TPR was granted for each living parent) within 6 months of the beginning of the fiscal year?	0.2–17.2%	9.0%	No standard
Component C: Progress toward adoption of children who are legally free for adoption			
Of all children who became legally free for adoption during FY 2004, what percent were discharged from foster care to a finalized adoption in less than 12 months?	18.9–85.2%	43.7%	No standard

Of all children in foster care on the first day of FY 2004 who were in foster care for 17 continuous months or longer, what percent became legally free for adoption (i.e., a TPR was granted for each living parent) within 6 months of the beginning of the fiscal year?

The CFSR composite measure, however, is less helpful than *Toolkit Measure 4H* in measuring and identifying court-related delays concerning TPR.

One key difference between *Toolkit Measure 4H* and the CFSR measure is that *Toolkit Measure 4H* involves the computation of the average (median) time period prior to termination of parental rights, whereas the CFSR measure involves the computation of the proportion of children freed for adoption within 6 months. Another key difference is that the sample of cases on which the CFSR measure is based differs greatly from the sample of cases for *Toolkit Measure 4H*. Whereas the case sample for the CFSR measure consists of cases in which children have been in foster care for 17 months or more, the case sample for *Toolkit Measure 4H* includes all cases closed within a specific date range (for example, within a year) in which the

termination of parental rights occurred. A final difference is that whereas *Toolkit Measure 4H* measures the timeliness of TPR petitions, the CFSR measure addresses the time to completion of TPR.

The combined components of Permanency Composite 2 form a single national standard for the composite measure on the timeliness of adoption. This national standard is the 75th percentile of a scaled score, taking values from 50 to 150, rather than a percentage.

Although there is a single composite national standard, it is possible to get a general idea of the level of performance expected regarding each individual measure, including the *Toolkit* measures. Results for most of the *National Performance Measures* must be near or above the 75th percentile if the State is to meet the national standard for the composite measure.

The CFSR composite standard shows how the individual measures and components are combined to establish a national standard for the composite measure on timeliness of adoption.

Reporting the Data

As with other *Toolkit* measures, *Measure 4H* lends itself to a variety of tabular and graphic presentations. State Court Improvement Projects will need presentations that show performance statewide and for each jurisdiction. Individual courts will want to see how their performance compares with that of other courts and with the State as a whole, and also whether their performance has improved or declined over time.

The samples that follow use hypothetical data for a fictitious State to demonstrate how results for this measure might be reported in tables and graphs.

This measure involves only a simple number (the median or average) and is effectively illustrated through bar charts or line graphs to compare results from year to year or to display the results of multiple measures, as in the samples below.

Percentiles regarding timeliness: For courts that use tables to show performance regarding this measure, besides computing medians and averages, the court might also compute the time to TPR hearings at the 25th, 75th, and 90th percentiles to get a better idea of the time to TPR hearings for the fastest and slowest cases. Another alternative is to look at the range of times for all cases.

The types of sample tables and graphs for other measures that compute average and median time intervals from filing to a major case processing milestone, such as *Toolkit Measure 4I: Time to Termination of Parental Rights and Toolkit Measure 4A: Time to Permanent Placement*, are suitable for reporting data for this measure. Please refer to those sections for types of recommended sample reports.

Sample 4H–1 provides a historical perspective on a fictitious court’s performance on multiple performance measures over a 5-year period. This table combines

information produced for six performance measures into one report, which provides a more comprehensive view of this court’s efforts to improve performance in timeliness of hearings.

The cases evaluated to find the median days for each performance measure are those cases that reached a particular milestone during the year, regardless of when they were filed or whether they reached any other milestones that year. For example, the individual cases evaluated to find the median days for *Toolkit Measure 4B: Time to Adjudication* are those for which an adjudication hearing was held that year. They may differ from those cases examined to find the median days for *Toolkit Measure 4H: Time to Termination of Parental Rights Petition*.

This court began with a relatively high number of days for the median case to progress to each of the main milestones of case processing in 2001. By 2005, the court had succeeded in reducing the number of days for the median case to reach every milestone measured.

Sample 4H–2 displays this same data using a line graph.

Possible Factors Affecting Level of Court Performance

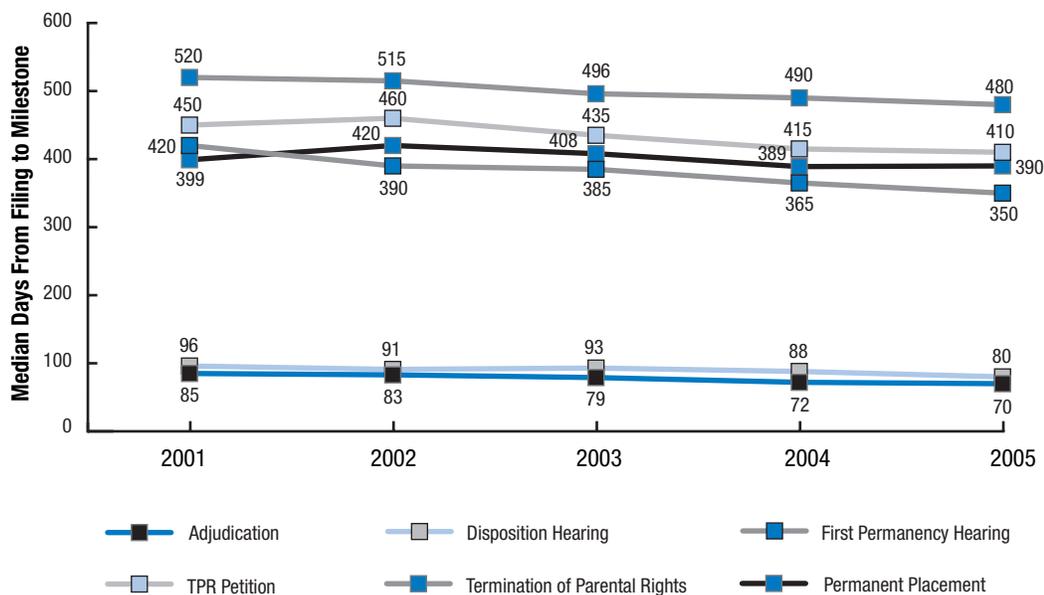
Degree of Court Control Over Scheduling

Courts must use effective caseflow management to set firm schedules and expectations for the timeliness of all stages of the court process. Caseflow management includes controlling judicial scheduling, setting short but realistic timeframes for steps in the court process, and setting strict limits on the granting of continuances.

Sample 4H–1. Comparison of Median Days for Milestones Reached in 2001–2005: Court X

Median Days From Filing of Original Petition to:	2001	2002	2003	2004	2005
Adjudication	85	83	79	72	70
Disposition Hearing	96	91	93	88	80
First Permanency Hearing	420	390	385	365	350
TPR Petition	450	460	435	415	410
Termination of Parental Rights	520	515	496	490	480
Permanent Placement	399	420	408	389	390

Sample 4H–2. Comparison of Median Days From Filing to Milestones Reached in 2001–2005: Court X



By contrast, if agencies and attorneys set the pace of the litigation, the time of the hearing is likely to be based on the pace of the slowest among them. Busy attorneys or caseworkers may seek frequent delays based on workload or for perceived tactical advantage.

Timely Service of Process on the Parties in the Original Proceedings

An important factor contributing to timely TPR is the speed of service of process on all parties in the original abuse or neglect case. Such speed requires diligence on the part of the child welfare agency in quickly identifying and locating parties, timely preparation of court papers for service or process, and timely referral to those who will serve the papers. It also includes efforts to locate and serve process on missing parties, when necessary, after the original adjudication.

Timeliness and Effectiveness of Earlier Stages of the Court Process

As discussed above, the timeliness of TPR reflects how all of the earlier stages of the court process leading up to TPR are handled. The writeups of a number of measures detail specific factors related to stages in this court process. See the writeups for the following *Toolkit* measures: *4B: Time to Adjudication*, *4C: Timeliness of Adjudication*, *4D: Time to*

Disposition Hearing, *4E: Timeliness of Disposition Hearing*, *4F: Timeliness of Case Review Hearings*, and *4G: Time to First Permanency Hearing*. *Toolkit Measure 4H: Time to Termination of Parental Rights Petition* helps courts assess the combined timeliness of court proceedings in child abuse and neglect cases.

Possible Reforms

- ◆ Meet with the sheriff’s office, child welfare agency, and other entities responsible for serving process and locating missing parties to develop a more effective and efficient service of process.
- ◆ Set and enforce shorter time limits for earlier court hearings.
- ◆ Clarify and improve the court process leading to the TPR trial, including initial and pretrial hearings, discovery, trial, and preparation of the court order.
- ◆ Assign to court employees the responsibility for monitoring delays in litigation and bringing them to the judges’ attention.
- ◆ Set and enforce strict criteria for the granting of continuances.
- ◆ Take more time to address the possibility of TPR during reviews and permanency hearings.

- ◆ Identify and act on appropriate cases where reasonable efforts to reunify the family are not required.
- ◆ Review ongoing cases to ensure that sufficient steps are being taken to achieve reunification and adoption.
- ◆ Train judges and attorneys on TPR issues and procedures.
- ◆ Train caseworkers on preparing cases for TPR.

The specific measures a court takes will depend on local conditions and its analysis of the principal local causes of delays in filing TPR petitions.

Endnotes

1. 42 U.S.C. § 675(5)(E).
2. 42 U.S.C. § 675(5)(E) provides in part that:

[I]n the case of a child who has been in foster care under the responsibility of the State for 15 of the most recent 22 months ... the State shall file a petition to terminate the parental rights of the child's parents (or, if such a petition has been filed by another party, seek to be joined as a party to the petition), and, concurrently, to identify, recruit, process, and approve a qualified family for an adoption, unless—

 - (i) at the option of the State, the child is being cared for by a relative;*
 - (ii) a State agency has documented in the case plan (which shall be available for court review) a compelling reason for determining that filing such a petition would not be in the best interests of the child; or*
 - (iii) the State has not provided to the family of the child, consistent with the time period in the State case plan, such services as the State deems necessary for the safe return of the child to the child's home, if reasonable efforts of the type described in section 471(a)(15)(B)(ii) are required to be made with respect to the child.*
3. 42 U.S.C. §675(5)(C) provides in part that:

[W]ith respect to each [child in foster care] procedural safeguards will be applied, among other things, to assure each child in foster care under the supervision of the State of a permanency hearing to be held, in a family or juvenile court or another court (including

a tribal court) of competent jurisdiction, or by an administrative body appointed or approved by the court, no later than 12 months after the date the child is considered to have entered foster care (as determined under subparagraph (F)) (and not less frequently than every 12 months thereafter during the continuation of foster care), which hearing shall determine the permanency plan for the child that includes whether, and if applicable when, the child will be returned to the parent, placed for adoption and the State will file a petition for termination of parental rights, or referred for legal guardianship, or (in cases where the State agency has documented to the State court a compelling reason for determining that it would not be in the best interests of the child to return home, be referred for termination of parental rights, or be placed for adoption, with a fit and willing relative, or with a legal guardian) placed in another planned permanent living arrangement.

4. Reasonable efforts to prevent removal or to reunite a child with his or her parents are not required where:
 - ◆ The court has determined that the parent has subjected the child to aggravated circumstances as defined by the State.
 - ◆ A court has determined that the parent has been convicted of certain categories of crimes, including homicide, voluntary manslaughter, or felony assault of another child of the parent or such attempted crimes against other children of the parent, including the child who is the subject of the court procedure.
 - ◆ The parental rights of the parent with respect to a sibling have been involuntarily terminated.
5. That is, when a court determines that reasonable efforts to reunify the family are not required, pursuant to 42 U.S.C. § 671(15)(D), the court must schedule a permanency hearing, at which the court may determine that the permanency plan is adoption and that the State must file a petition to terminate parental rights.

42 U.S.C. § 671(15)(E) provides in part that:

[I]f reasonable efforts of the type described in subparagraph (B) are not made with respect to a child as a result of a determination made by a court of competent jurisdiction in accordance with subparagraph (D)—

- (i) a permanency hearing (as described in section 475(5)(C)) shall be held for the child within 30 days after the determination.
6. 42 U.S.C. §§ 675(5)(E)(i), (ii), (iii).
 7. 45 C.F.R. § 1356.21 (i)(1)(ii).
 8. Federal regulations specify that there must be a TPR petition within 60 days following conviction for the following felonies: murder or voluntary manslaughter of another child of the parent; aiding or abetting, attempting, conspiring, or soliciting to commit murder or voluntary manslaughter of another child of the parent; or felony assault that results in serious bodily injury to the child or another child of the parent. 45 C.F.R. § 1356.21 (i)(1)(iii).
 9. 42 U.S.C. § 672(a)(2). It is possible for an agency to have responsibility for a child's placement and care without having legal custody, but the Federal Government has never defined exactly in what circumstances this may occur.
 10. 42 U.S.C. § 672(a)(2).
 11. 65 *Federal Register* 4056 (January 25, 2000).
 12. 45 C.F.R. § 1356.21(e).
 13. 45 C.F.R. § 1356.21 (i)(1)(i)(C).
 14. Some, but not all, States have statutes or court rules setting deadlines for the filing of TPR petitions.
 15. See note 8 above for the list of specified offenses.
 16. 42 U.S.C. § 675(5)(F).
 17. 42 U.S.C. § 675(5)(F).
 18. Because there may be more than one putative father and because the State may separately petition to terminate the rights of two or more putative fathers, we speak of the "last" rather than the "second" parent. Also, the State may petition to terminate the rights of an adoptive parent (e.g., the spouse of a biological parent) as well as those of the biological parents.
 19. The court may choose to develop reports of this measure—as for other time-based measures—using a date range based on the time children entered foster care. It may wish to report on the timeliness of TPR with reference to different times that the cases were opened. Using this kind of analysis, the sample should be limited to cases that are closed. There may be later TPR petitions to reopen some closed cases, and annual comparisons will leave out the longest cases. However, this approach has the advantage of comparing and evaluating the majority of TPR cases that presumably are closed within a reasonable time. When used in conjunction with samples of recently closed cases, this can show the percentage of TPR proceedings that are closed relatively early and thus contribute to an understanding of the overall pace of filing TPR petitions.

Time to Termination of Parental Rights



Definition: Average (median) time from filing of the original child abuse and neglect petition to the termination of parental rights (TPR).

Explanation: This measure shows how long it takes from the date the original child abuse and neglect petition is filed to the date the termination of parental rights proceeding is completed. Termination of parental rights means that a parent is permanently deprived of all rights to a child, including custody, visitation, or participation in decisionmaking for the child. TPR also means that the child may be adopted by a new parent without notice to or the consent of the parent whose rights have been terminated.

Purpose: The purpose of this measure is to enable the court to determine how long it takes the court to reach TPR from the time the original abuse and neglect case began.

Termination of parental rights is a pivotal stage in the court process because it allows a child to be adopted. It is a gateway to permanency for children who cannot return home safely.

The time to TPR is a period during which the family is stressed and uncertain concerning its future. From the time that a child is taken from the family to the time of TPR, neither the child nor the parents know whether or when the family unit will be permanently restored. Because this is a time of anxiety and hardship for both children and parents, it is important to keep the time to TPR as short as possible. Measuring and reporting on this time interval helps courts focus on the impact of scheduling decisions.

The time to TPR reflects the efficiency of much of the court process. It represents both the timeliness and the quality of early stages in the court process, such as adjudication, disposition, review, and permanency hearings. Even if adjudication is timely, it will not effectively advance the case toward TPR if all parents have not been properly notified and served beforehand. In that instance, it may become necessary late in the case to launch the first search for the parent not originally served, thus delaying TPR.

Likewise, TPR proceedings may be delayed when reviews and permanency hearings are timely but not thorough. Assume that, during a review hearing, a court fails to challenge a child welfare agency's failure to arrange timely services. By failing to acknowledge the problem and order corrective steps, the court probably has delayed TPR. But if, at that review hearing, the court requires the agency to correct the deficiency, it may facilitate timelier family reunification or speed TPR if the reunification efforts fail.

In another example of how failure to achieve timely TPR can work against the child's best interest, assume that, at a permanency hearing, a court does not conduct a thorough review of a recommendation to continue a permanency plan of reunification, accepts that plan, and that plan is later determined to not have been in the child's best interest. The court has needlessly prolonged TPR. But if, instead, the court carefully questions the reunification plan, recognizes that reunification has already failed, and orders a petition for TPR, this will speed TPR and adoption.

Furthermore, delays in achieving TPR may be caused by delays in the completion of the TPR proceedings themselves. TPRs, on average, are by far the most heavily contested and time-consuming proceedings in child abuse and neglect litigation. In most States, TPR requires a new service of process. Contested TPRs take far longer than any other type of contested proceeding in these cases.

Some child welfare agencies and their attorneys may delay initiating TPR until they can show that the parents have failed to improve over a long period of time. In some cases, it is better for the children that TPR take place as soon as it is clear that family reunification is not possible within a reasonable time. The child may best be served in these instances by going forward with a strong case for TPR, even though that case may be vigorously contested.

Delays in TPR may also reflect delays in services and/or weaknesses in child welfare agency performance. If essential services are delivered late in the case, there may be no case for TPR, even if the child is forced to wait for the opportunity for a permanent new home.

This measure cannot separate out the extent to which delays in TPR are caused by the court, the child welfare agency, or others. But by considering the time to TPR; the times to adjudication, disposition, and permanency hearings; and the time from TPR petition to TPR, important clues will emerge. These clues can help courts identify precise causes of delays by reviewing selected individual cases at specific points in their procedures.

Complexities, Proxies, and Barriers to Capturing This Information

Start Date for Case in Measuring Time to Permanency

One possible consideration in choosing the start date for measuring the time to TPR is consistency with the start dates for most other timeliness measures, particularly *Toolkit Measure 4K: Time From Disposition Hearing to Termination of Parental Rights Petition*. Conversely, courts may choose different start dates for different measures to get different views of timeliness.

Aside from consistency with other measures, there are reasons for and against several possible alternative start dates. The time to TPR may be measured from the following dates:

- ◆ Date abuse and neglect petition was filed.
- ◆ Date child is removed from home.
- ◆ Date of first court order authorizing child's removal from home.
- ◆ Date of emergency removal hearing.
- ◆ Date child is considered to have entered foster care, which is the start date under Federal law.

Date Abuse and Neglect Petition Was Filed

The date the original child abuse and neglect petition was filed is the recommended start date for most jurisdictions. It is a clearly defined and convenient start date because the legal proceedings formally begin on this date and because all courts have access to this information. In jurisdictions where the filing of the petition can be delayed, however, using this date can obscure early sources of court delay.

Although delays in filing a petition would normally be regarded as outside the court's responsibility, in some States, the courts themselves review and approve original petitions before they may be filed and so may be the cause of delays. Where petitions are filed during emergency removal hearings, courts can delay the timing of petitions through delays in scheduling emergency removal hearings.

Date Child Is Removed From Home

Calculating the timeliness of termination based on the date of the child's removal from home encourages the court to address the earliest and most critical delays related to the court process. Agencies also use this start date, at least where children are placed in foster care as opposed to being placed with relatives.¹

The reason for measuring time to TPR is related to the experience of children not having permanent homes. It is likely that children feel the lack of a permanent home most intensely after having been removed from home. As long as children are left at home, even under the supervision of the child welfare agency and court, they have not undergone the trauma of separation from parents and generally do not feel a loss of permanency as they do in foster care.

On the other hand, the child welfare agency may not make accurate data regarding the date of removal consistently available to courts. It may take time and effort to train the agency to provide this information in a form that is easily retrievable by court staff and to train court staff to record this information. Eventually, the agency may be able to share this information through automated electronic data exchange.

Date of First Court Order Authorizing Removal of the Child From Home

The first court order authorizing the child's removal from home may be (a) an *ex parte* removal order, (b) an emergency *non ex parte* removal order (where all parties had the chance to be heard), (c) an emergency removal hearing order, which typically occurs within a few days after the child is removed from home and is the court's first substantive involvement in the case, or (d) any removal order that occurs at a later hearing.

An advantage of this start date is that, since it is based on action by the court itself rather than the child welfare agency, it does not require obtaining information from the agency. A related advantage is that court staff may already enter information regarding removal orders into the court information system. A final advantage is that this start date

filters out purely in-home cases, as discussed in previous *Toolkit* measures.

A disadvantage of this start date could be that court employees are not used to referring to it and, therefore, it may require extra training and programming.

Date of Emergency Removal Hearing

If a court does not receive reliable information from the child welfare agency regarding the date of removal, the court may choose the date of the emergency removal hearing² as a substitute start date. The date of the emergency removal hearing is readily available to any court. Each State sets a standard deadline for emergency removal hearings (or their equivalent) shortly after the date of removal.

Using the date of the emergency removal hearing as a proxy for the removal date eliminates cases in which children are first removed from home at later stages of the case, such as at a disposition or review hearing. If such late removals are rare in a jurisdiction, it may be acceptable to use the date of the emergency removal hearing as the sole beginning date for this measure.

Date Child Is Considered To Have Entered Foster Care

If the start date for this measure is to be consistent with *Toolkit Measure 4H: Time to Termination of Parental Rights Petition*, the start date must be the date the child is “considered to have entered foster care.” This start date is designed to help States measure compliance with the Federal deadline for TPR petitions. Federal law requires States to file TPR petitions by the time that children have been in foster care for 15 of the most recent 22 months following the date they were considered to have entered foster care.³

Federal law states that a child shall be considered to have entered foster care on the earlier of either the date of the first judicial finding that the child has been subjected to child abuse or neglect or 60 days after the date the child is removed from the home.⁴

If the required judicial finding is entered before 60 days after removal, the start date for *Toolkit Measure 4I* will be the date of the finding, but if the finding occurs later, the start date will be 60 days after the date of actual removal. Then, the deadline will begin to run at whichever start date is the date the child is considered to have entered foster care. Using this variable start date requires careful programming.

Completion of Termination of Parental Rights

Another important consideration regarding this performance measure is when to consider the TPR proceeding to be over. Alternative suggestions include the dates of completion of the TPR hearing, the date the judge signs the TPR order, and when the order becomes legally final. An additional consideration is whether this should be the date of the TPR of the first parent or the last parent. It is recommended that the completion date be the date that the TPR of the last parent would be final if not appealed.

Date of Completion of Termination of Parental Rights Hearing

The date of completion of the TPR hearing is not recommended as an end date for this measure. When the court has completed other types of hearings such as adjudication, disposition, and permanency, the parties generally move on to the next stage of the case immediately.⁵ By contrast, completion of the TPR hearing does not legally free the child for adoption, thus preventing the parties from initiating adoption proceedings in most States.

Date Termination of Parental Rights Order Is Signed

The date the TPR order is signed is closer to being an appropriate end date. The problem with this date as a completion date, however, is that parties still cannot move forward to the next stage of the case. An adoption proceeding cannot be initiated until after the order becomes final.

Date Termination of Parental Rights Order Is Final

The TPR order is final on the date on which a petition for adoption can be filed. A complication with this end date, however, is that many TPR cases are appealed, in which case the date the TPR order becomes final includes the time needed for the appellate process. This is inappropriate because these measures are designed only to aid in the evaluation of trial court performance and trial courts have limited influence over the timeliness of appeals. Instead, it is preferable to develop separate measures or methods for appellate courts to measure the timeliness of their appeals.

In addition, trial courts in abuse and neglect cases could add an entirely separate measure to address those parts of the appellate process for which they are responsible. For example, they might measure the timeliness of the completion of the record on appeal. This approach is

practical, however, only if individual courts handle enough appeals to make the additional measure useful.

Date Termination of Parental Rights Order Would Be Final if Not Appealed

For most courts, the recommended end date is the date the TPR order will be final if it is not appealed. In many States, parties have 30, 60, or 90 days after the TPR order is signed to file an appeal, depending on the individual State.

From the perspective of the trial court judge, the appeal deadline represents the true end of the TPR. If the case is not appealed, only then can the prospective adoptive parents immediately file a petition for adoption. If the case is appealed, the length of the appeal should not reflect on the performance of the trial court itself.

Although this is also true using the date the court order is signed as the end date, the date the order would be final if not appealed (the end of the appeal period) more closely reflects the true completion of TPR. In addition, if the date the TPR order would become final is used as the end date for this measure, this may help persuade the courts or the State legislature to reduce the length of time it takes for a TPR order to become final (shorten the appeal period).

Date of Termination of Parental Rights of All Parents

Legal permanency is not possible without TPR of all parents, and it is recommended that this measure be calculated based on the completion of TPR of all parents.

In some States, consent to adoption may be used in lieu of TPR. In those States, it is recommended that the measure be calculated using one of the following approaches, depending on State law.

- ◆ The date on which either the parental rights of the last parent⁶ were terminated or the last parent signed a consent to adoption (whichever applies).
- ◆ The date on which TPR of the last parent is finalized.

There may, however, be practical barriers to using the finalized TPR or the consent to adoption of the last parent as the end date. In some States, it may be difficult to program the logic necessary for the management information system to recognize the last parent or to distinguish between cases where it is necessary to bring a TPR proceeding for all parents or for only one parent.

Solving this problem may require special efforts, such as changing the law to require the agency to inform the court when such consents are signed; collecting new data; or retraining court staff. In that case, it may be more practical to use the TPR of the first parent as the end date.

Business Rules

Basic Rules

1. Run this report using a sample of cases for which a TPR would be finalized if not appealed. The TPR in question may be for the first parent or the last parent, as determined by the jurisdiction. In lieu of TPR, a jurisdiction may use the consent to adoption date for either the first or last parent, if it applies.
2. Select a date range for the report (date the TPR order would be final if not appealed). (State law specifies a number of days [e.g., 30, 60, or 90 days] after the TPR order is signed by the trial court judge within which the order will be final if an appeal is not filed.)
3. Select and count cases where the date of TPR falls within the date range selected. (*A*)
4. For each case in (*A*), compute the number of days from filing of the original abuse or neglect petition to the date the order for TPR was final (or would be final if it had not been appealed). Store each number in a dataset. (*B*)
5. Find the median case in the dataset (*B*) (the number midway between the lowest and highest number of days). (*C*)
6. Add the number of days for all cases in (*A*) together. (*D*)
7. Compute the average time by dividing (*D*) by (*A*).

Calculation note: With an odd number of numbers, the median is simply the middle number; e.g., the median of 2, 4, and 7 is 4. With an even number of numbers, the median is the mean of the two middle numbers; e.g., the median of 2, 4, 7, and 12 is 5.5 (4 plus 7 divided by 2).

Possible Modifications

- ◆ Limit the measure to include only children who were in foster care before the filing of the TPR petition and for whom parental rights were later terminated.

- ◆ Limit the measure to include only children who were in foster care before the filing of the TPR petition and for whom parental rights were later terminated, but count from the date of the emergency removal hearing.
- ◆ Count, in all cases, either from the date of removal of the child from home, date of the emergency removal hearing, date of the court order authorizing removal of the child, or date the child is considered to have entered foster care, rather than from the date of the TPR petition. Do not mix start dates in one analysis.
- ◆ Report separately on cases by demographic categories, including age and ethnicity of children.
- ◆ Add a separate measure to calculate the length of time from the date the TPR order is signed to the date the trial court or court reporter has completed the record for appeal and submitted it to the appellate court. (This would measure the trial court's contributions to the timeliness of appeals.)

Data Elements

These elements apply specifically to this measure. For elements that apply to all measures, see “Universal Data Elements,” page 7. For definitions of data elements, see appendix D, “Data Element Dictionary,” page 289.

Required Elements

- ◆ Abuse or neglect petition date.
- ◆ Last TPR finalized date.

Optional Elements

- ◆ Removed from home flag.
- ◆ Removal date.
- ◆ Emergency removal hearing date-time.
- ◆ Foster care entry date.
- ◆ Removal order date.
- ◆ Last consent to adoption date.
- ◆ Last TPR record on appeal submission date.
- ◆ Last TPR order signed date.

Related CFSR Standards

Federal Child and Family Services Review (CFSR) Permanency Composite 2, “Timeliness of Adoption,” includes three components: (A) timeliness of adoptions of children discharged from foster care, (B) progress toward adoption for children who meet Adoption and Safe Families Act (ASFA) time-in-care requirements, and (C) progress toward adoption of children who are legally free for adoption.

Within CFSR Permanency Composite 2, the following measure relates to *Toolkit Measure 4I* and concerns the termination of parental rights. The CFSR measure, however, is less helpful than *Toolkit Measure 4I* in measuring and identifying court-related delays regarding TPR.

Of all children in foster care on the first day of FY 2004 who were in foster care for 17 continuous months or longer, what percent became legally free for adoption (i.e., a TPR was granted for each living parent) within 6 months of the beginning of the fiscal year?

One key difference between *Toolkit Measure 4I* and the CFSR measure is that *Toolkit Measure 4I* involves the computation of the average (median) time period prior to the achievement of TPR, whereas the CFSR measure involves the computation of the proportion of children freed for adoption within 6 months. Another key difference is that the sample of cases on which the CFSR measure is based differs greatly from the sample of cases for *Toolkit Measure 4I*. Whereas the sample of cases for the CFSR measure consists of cases in which children have been in foster care for 17 months or more, the sample of cases for *Toolkit Measure 4I* includes all cases closed within a specific date range (for example, within a year) in which the termination of parental rights occurred.

The components of Permanency Composite 2 together form a single national standard for the composite measure on the timeliness of adoption. This national standard is the 75th percentile of a scaled score, taking values from 50 to 150, rather than a percentage.

Although there is a single composite national standard, it is possible to get a general idea of the level of performance expected regarding each individual measure, including the *Toolkit* measures. The results for most of the *Toolkit* measures must be near the 75th percentile if the State is to meet the national standard for the composite measure.

CFSR Permanency Composite 2. Component Measures, Range and Median Scores, and Composite National Standard

	Range	Median	National Standard
Permanency Composite 2: Timeliness of adoption	50–150	96.5	102.1 or higher
Component A: Timeliness of adoptions of children discharged from foster care			
Of all children who were discharged from foster care to a finalized adoption in FY 2004, what percent were discharged in less than 24 months from the time of the latest removal from the home?	6.4–74.9%	27.1%	No standard
Of all children who were discharged from foster care to a finalized adoption in FY 2004, what was the median length of stay in foster care (in months) from the time of removal from the home to the time of discharge from foster care?	16.2–55.7 months	32.0 months	No standard
Component B: Progress toward adoption for children who meet ASFA time-in-care requirements			
Of all children in foster care on the first day of FY 2004 who were in foster care for 17 continuous months or longer, what percent were adopted before the end of the fiscal year?	8.0–25.1%	18.0%	No standard
Of all children in foster care on the first day of FY 2004 who were in foster care for 17 continuous months or longer, what percent became legally free for adoption (i.e., a TPR was granted for each living parent) within 6 months of the beginning of the fiscal year?	0.2–17.2%	9.0%	No standard
Component C: Progress toward adoption of children who are legally free for adoption			
Of all children who became legally free for adoption during FY 2004, what percent were discharged from foster care to a finalized adoption in less than 12 months?	18.9–85.2%	43.7%	No standard

Reporting the Data

As with other *Toolkit* measures, *Measure 4I* lends itself to a variety of tabular and graphic presentations. State Court Improvement Projects will need presentations that show performance statewide and for each jurisdiction. Individual courts will want to see how their performance compares with that of other courts and with the State as a whole, and whether their performance has improved or declined over time.

The samples that follow use hypothetical data for a fictitious State to demonstrate how results for this measure might be reported in tables and graphs.

This measure involves only a simple number (the median or average) and is effectively illustrated through bar charts or trend lines.

Sample 4I–1 is based on a fictitious judicial district with five courts. The table presents the minimum amount of information that should be reported for this measure for each court and statewide on a yearly basis. It shows the average

and median time from filing of the petition to finalization of TPR in courts throughout the district.

Once a jurisdiction has accumulated statistics for several years, it is possible to look at trends in performance over time. Sample 4I–2, based on a fictitious State, represents the median and average number of days from the original child abuse and neglect petition to final TPR from 2002 to 2005. If the goal is to reduce the number of days to final TPR, such a graph may be particularly useful to chart progress.

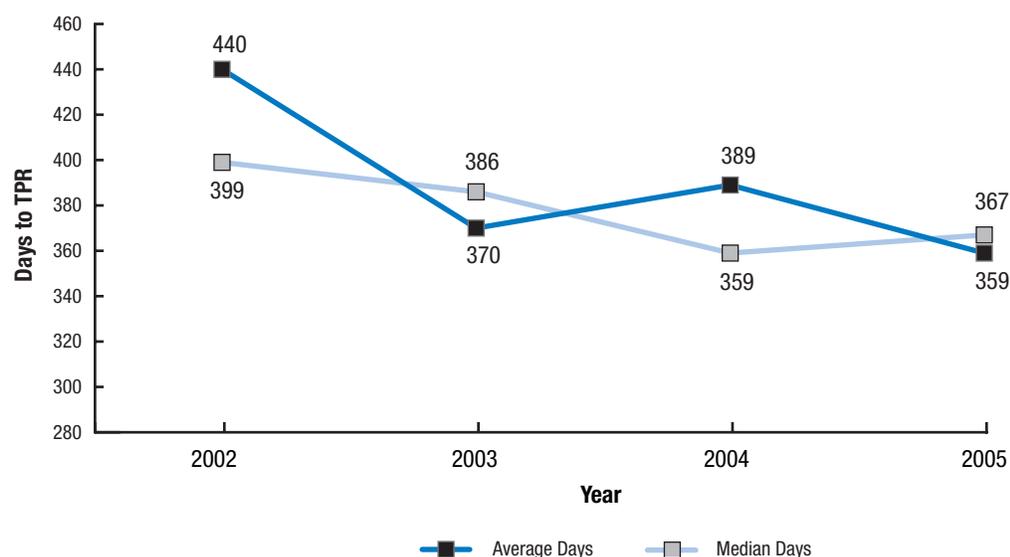
Sample 4I–3 is based on fictitious statistics from a single State. This table provides a comparative analysis of the time to TPR based on foster children’s age and ethnicity. As illustrated, adoptions of Caucasian children occur much more quickly than for children from other ethnic groups. TPRs are slowest for African Americans and children in the “other” category. TPRs also occur most quickly for children 4 years old and younger.

Sample 4I–3 includes the number of cases on which the statistics are based. The statistics for categories with few

Sample 4I-1. Time to Termination of Parental Rights, 2005: Judicial District 1

Court	Number of Cases	Average Days	Median Days
Court A	23	293	284
Court B	12	366	342
Court C	45	322	356
Court D	68	412	409
Court E	102	404	445
Judicial District 1	250	359	367

Sample 4I-2. Time to Termination of Parental Rights, 2002–2005: Statewide



children may be more volatile from year to year than those with many children, because large changes in one or two cases may have a more significant effect on the average or median in a smaller group. If a cell holds no data, the notation “n/a” should be used to indicate that there is no information on which to base a calculation, rather than “0” (which would mean that the average or median time was 0 days).

Sample 4I-3 also shows differences in the times to TPR for different age groups of children. Although times from petition to TPR are relatively short, they are shortest for children in the under 4 years old category.

The information in this table could be the source of several different graphs, but it is important to limit the amount of information in each graph to avoid crowding and confusion. Sample 4I-4 shows the statewide average and median days from petition to TPR by ethnicity for 1 year.

Sample 4I-5 shows average and median days from petition to TPR by both ethnicity and age for a single court.

Although this performance measure looks specifically at the average and median time to TPR, an alternative is to look at the distribution of cases across time categories. Sample 4I-6 incorporates the actual time (instead of the average or median time) for each case from petition to TPR, and then assigns it to a time category, showing the percentage of cases that fall into 6-month categories. Sample 4I-7 illustrates this information for one county.

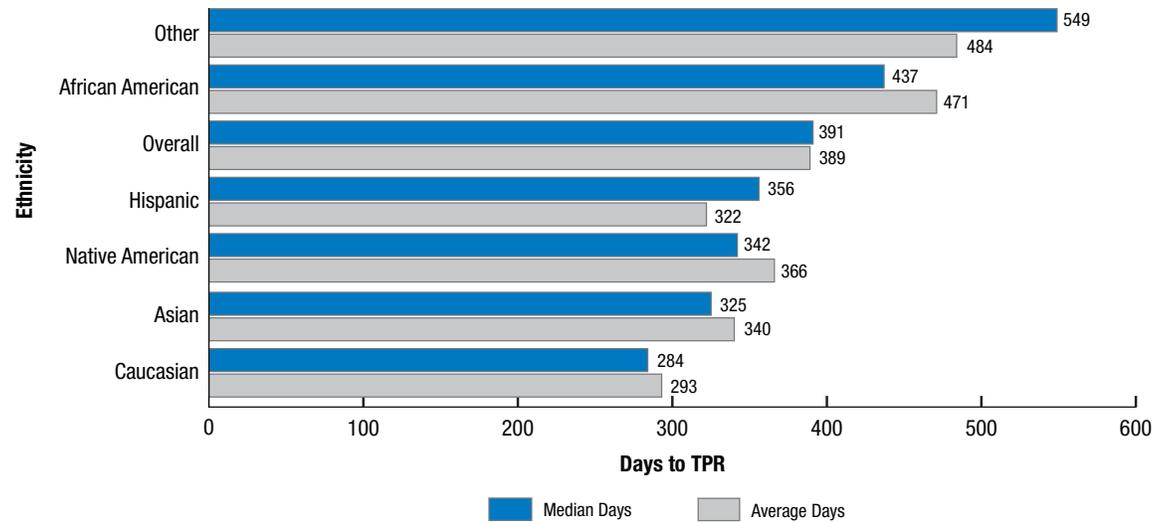
Although samples 4I-6 and 4I-7 facilitate numerous comparisons, it is useful to provide a digest of the most significant information.

- ◆ In this State, the bulk of cases (59 percent) are completed in the three time categories that together span 13–30 months.

Sample 4I–3. Time to Termination of Parental Rights by Age and Ethnicity of Child, 2005: Statewide

Ethnicity	Up to 4 years			5–9 years			10–14 years			15–18 years			All Cases		
	Number of Cases	Average Days	Median Days	Number of Cases	Average Days	Median Days	Number of Cases	Average Days	Median Days	Number of Cases	Average Days	Median Days	Number of Cases	Average Days	Median Days
Caucasian	73	194	145	89	248	290	100	340	320	3	390	380	265	293	284
African American	146	398	276	201	505	498	134	577	530	8	402	443	489	471	437
Asian	23	304	322	12	376	327	0	n/a	n/a	0	n/a	n/a	35	340	325
Native American	105	300	330	66	376	380	48	390	290	2	399	367	221	366	342
Hispanic	27	331	420	21	290	345	3	345	303	0	n/a	n/a	51	322	356
Other	23	389	588	19	603	578	14	433	499	0	510	529	56	484	549
Overall	397	319	347	408	480	484	299	417	388	13	340	344	1,117	389	391

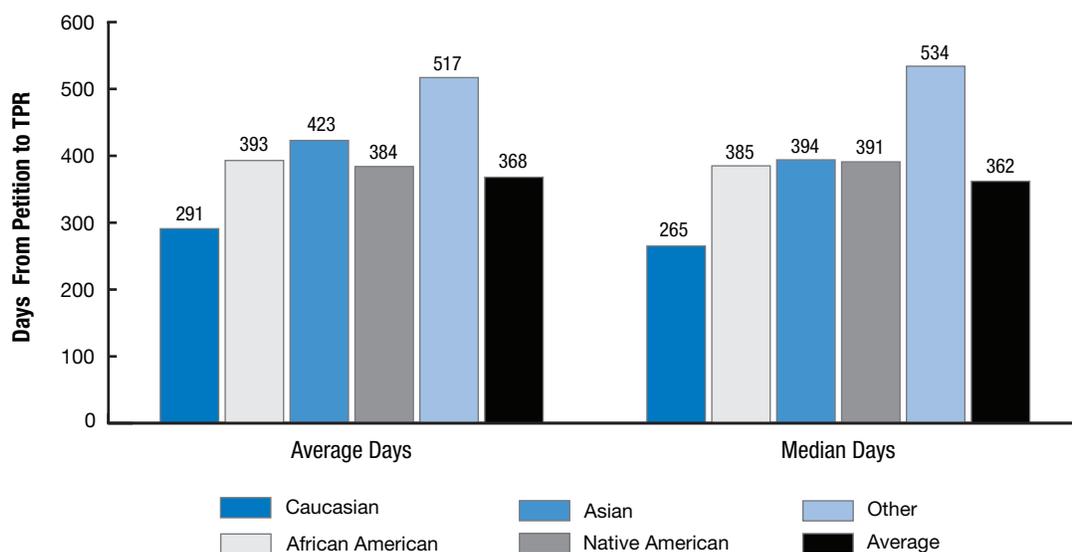
Sample 4I–4. Time to Termination of Parental Rights by Ethnicity of Child, 2005: Statewide



- ◆ By adding the percentages in the first three time categories under the column heading “Statewide,” one can see that 29 percent of the TPRs finalized in the State were completed in 18 months or less.
- ◆ By comparison, County A completed 51 percent of the finalized TPRs in 18 months or less.

Sample 4I–7 also compares the TPR timing of cases closed in 2005 in County A and identifies the proportion of “early TPRs,” TPRs occurring without extended efforts to reunify the family.

Sample 4I-5. Average and Median Days From Petition to Termination of Parental Rights by Child's Ethnicity, 2002–2003: Court A



Sample 4I-6. Time to Termination of Parental Rights for Finalized TPRs by County, 2005: Statewide

Months	County A		County B		County C		County D		Statewide	
	# of cases	%								
1–6	0	0%	0	0%	3	1%	1	1%	4	1%
7–12	34	14%	6	10%	8	3%	8	7%	56	8%
13–18	93	37%	9	15%	19	8%	12	10%	133	20%
19–24	69	28%	18	31%	23	9%	19	15%	129	19%
25–30	22	9%	12	20%	66	27%	34	28%	134	20%
31–36	16	6%	4	7%	68	28%	17	14%	105	16%
37–42	9	4%	9	15%	33	14%	16	13%	67	10%
43–48	6	2%	1	2%	10	4%	12	10%	29	4%
>48	1	0%	0	0%	14	6%	4	3%	19	3%
Total	250	100%	59	100%	244	100%	123	100%	676	100%

Note: Percentages may not add up to 100 because of rounding.

Possible Factors Affecting the Level of Court Performance

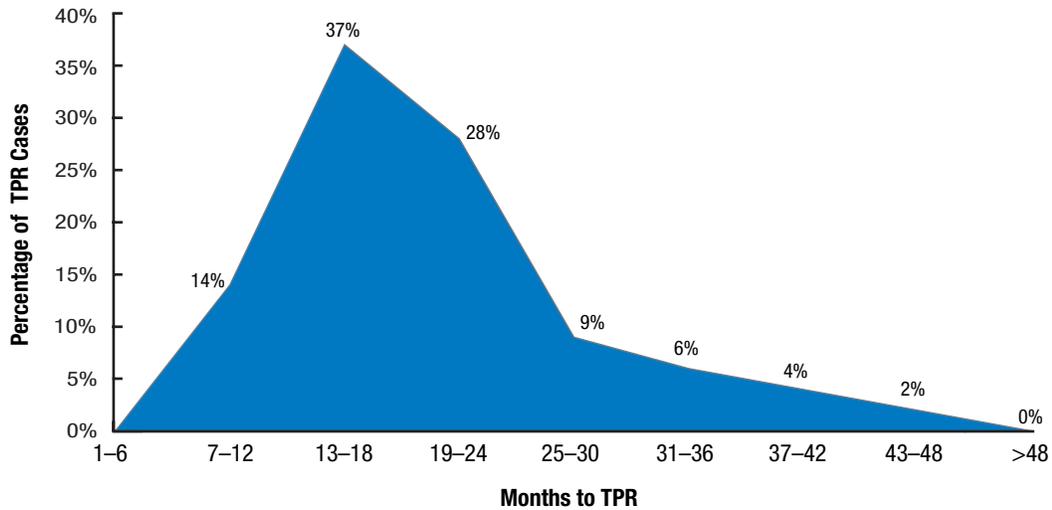
Degree of Court Control Over Scheduling

Courts must use effective caseload management to set firm schedules and expectations for the timeliness of all stages of the court process. Caseload management

includes controlling judicial scheduling, setting short but realistic timeframes for steps in the court process, and setting strict limits on the granting of continuances.

By contrast, if agencies and attorneys set the pace of the litigation, the time of the hearing is likely to be based on the pace of the slowest among them. Busy attorneys or caseworkers may seek frequent delays based on workload or for perceived tactical advantage.

Sample 4I–7. Time to Termination of Parental Rights, 2005: County A



Timely Service of Process on the Parties

An important factor contributing to timely TPR is the speed of service of process on all parties. Such speed requires diligence on the part of the child welfare agency in quickly identifying and locating parties, timely preparation of court papers for service or process, and timely referral to those who actually will serve the papers. Moreover, for TPR, timely service of process sometimes requires substitute service, particularly by publication. Therefore, part of ensuring timely service of process is developing and implementing an efficient procedure for service by publication.

Timeliness and Effectiveness of Earlier Stages of the Court Process

As discussed above, the timeliness of TPR reflects how all of the earlier stages of the court process leading up to TPR are handled. The writeups of a number of different measures detail specific factors related to the various parts of this court process. See the writeups for the following *Toolkit* measures: *4B: Time to Adjudication*, *4C: Timeliness of Adjudication*, *4D: Time to Disposition Hearing*, *4E: Timeliness of Disposition Hearing*, *4H: Time to Termination of Parental Rights Petition*, *4K: Time From Disposition Hearing to Termination of Parental Rights Petition*, and *4M: Timeliness of Adoption Proceedings*. *Toolkit Measure 4I: Time to Termination of Parental Rights* helps courts assess the combined timeliness of many steps in the court process in child abuse and neglect cases.

Possible Reforms

- ◆ Meet with the sheriff’s office, child welfare agency, and other entities responsible for serving process to develop a more effective and efficient service of process.
- ◆ Set and enforce shorter time limits for earlier court hearings.
- ◆ Clarify and improve the court process leading to the TPR trial, including initial and pretrial hearings, discovery, trial, and preparation of the court order.
- ◆ Set and enforce strict, specific time limits to govern each step of the court process from filing to completion of TPR.
- ◆ Implement a project with agency representatives, attorney groups, and other organizations to identify and reduce delays in TPR and all stages of the court process leading to TPR.
- ◆ Assign to court employees the responsibility for monitoring delays in litigation and bringing them to the judges’ attention.
- ◆ Set and enforce strict criteria for the granting of continuances.
- ◆ Take more time to address the possibility of TPR during reviews and permanency hearings.

- ◆ Identify and act on appropriate cases where reasonable efforts to reunify the family are not required.
- ◆ Train judges and attorneys on TPR issues and procedures.
- ◆ Revise TPR forms that help make the process more efficient while protecting the rights of the parties.
- ◆ Train caseworkers on preparing cases for TPR.
- ◆ Support a wide range of more general legal and judicial system improvements related to this measure.

The specific measures a court takes will depend on local conditions and its analysis of the principal local causes of delays related to termination of parental rights.

Endnotes

1. Agency performance measures begin with the date the child is placed into foster care and do not include placements with relatives where the relatives have custody of the child.
2. An emergency removal hearing is the hearing that occurs within a short time of a child's emergency removal from home, in which the court decides whether to promptly return the child home or place the child in foster care. In different jurisdictions the emergency removal hearing may be called a variety of other names such as temporary removal hearing, initial hearing, preliminary hearing, detention hearing, preliminary protective hearing, and shelter care hearing,
3. 42 U.S.C. §§ 622(b)(10)(B)(ii), 675(5)(E); 45 C.F.R. § 1356.21 (i)(1)(i). In addition, if a court has determined the child to be abandoned (as defined under State law), or has made a determination that the parent murdered another child of the parent; committed voluntary manslaughter against another child of the parent; aided, abetted, or conspired to commit such a murder or voluntary manslaughter; or committed a felony assault that seriously injured the child or a sibling, the State must file a petition for termination of parental rights. 42 U.S.C. § 675(5)(E).
4. 42 U.S.C. § 675(5)(F); 45 C.F.R. § 1355.20(a).
5. For example, after the disposition hearing is completed, in most courts the agency is immediately able to implement the court orders. Likewise, after a permanency hearing in which a judge orders the agency to initiate TPR proceedings, the deadline verbally announced by the judge will apply.
6. Because there may be more than one putative father and because the State may separately petition to terminate the rights of two or more putative fathers, we speak of the "last" rather than the "second" parent. Also, the State may petition to terminate the rights of an adoptive parent (e.g., the spouse of a biological parent) as well as those of the biological parents.

Timeliness of Termination of Parental Rights Proceedings



Definition: Percentage of cases for which there is a final order within 90, 120, and 180 days of the filing of the termination of parental rights (TPR) petition.

Explanation: This measure shows how long it takes from the date the termination of parental rights proceedings have formally begun to the date TPR is finalized.

Termination of parental rights means that a parent is permanently deprived of all rights to a child including custody, visitation, or participation in decisionmaking for the child. TPR also means that the child may be adopted by a new parent without notice to or the consent of the parent whose rights have been terminated. This measure includes all cases for which a TPR petition was filed, regardless of the outcome.

Purpose: The purpose of this measure is to enable the court to determine how long it takes the court to reach a decision on TPR from the time that TPR began.

Termination of parental rights is a pivotal stage in the court process because it allows a child to be adopted. It is a gateway to permanency for children who cannot return home safely.

The time from TPR petition to finalization of TPR represents a period in which the biological parents, the child, and prospective adoptive parents (if any), are in suspense concerning the outcome. When TPR proceedings extend for a long time, prospective adoptive families sometimes break up under the stress. Because this is a period of such stress and uncertainty, it is important to keep it as short as possible.

Delays in achieving TPR can be severe. TPRs are by far the most heavily contested and time-consuming proceedings in child abuse and neglect litigation. In most States, TPR requires a new service of process. A far higher percentage of TPRs are contested than any other proceedings, and they take far longer. In many courts, all of this is compounded by repeated continuances or setovers and long periods of time between segments of the TPR trial.

Complexities, Proxies, Additions, and Barriers to Capturing This Information

Date Termination of Parental Rights Proceedings Have Been Completed

An important consideration regarding this performance measure is when to consider the TPR proceeding to be

completed. Alternative suggestions include the date of completion of the TPR hearing, the date of the judge's signature on the TPR order, the date when the order becomes legally final, and the date the order would be legally final if not appealed.

Date Termination of Parental Rights Hearing Is Completed

The date of completion of the TPR hearing is not an acceptable end date for this measure. When the court completes other types of hearings such as adjudication, disposition, and permanency hearings, the parties generally can proceed immediately to the next stage of the case. For example, in most courts, after the disposition hearing is completed, the child welfare agency can immediately implement the court orders. Likewise, after a permanency hearing in which a judge orders the agency to initiate TPR proceedings, the deadline announced by the judge will apply. By contrast, completion of the TPR hearing does not legally free the child for adoption, thus impeding the parties from initiating adoption proceedings in most States.

Date Termination of Parental Rights Order Is Signed

The date the TPR order is signed is closer to being an appropriate end date. However, signing the order does not enable parties to proceed to the next stage of the case. An adoption proceeding cannot be initiated until the order becomes final.

Date Termination of Parental Rights Order Is Final

The date the TPR order is final is the date on which a petition for adoption can be filed. A complication with using this end date, however, is that many TPR cases are appealed. When this occurs, the date the TPR order becomes final includes the time required for the appellate process. It is inappropriate, however, to count appellate delays in this measure, which is designed to aid in the evaluation of trial court performance only. Trial courts have limited influence over the timeliness of appeals. Instead, it is preferable to develop separate methods for appellate courts to measure the timeliness of their appeals.

An alternative to using the date that the TPR order is final as the end date may be for trial courts in abuse and neglect cases to add an entirely separate measure to address those parts of the appellate process for which they are responsible. For example, they might measure the timeliness of the completion of the record for appeal. This approach is practical, however, only if individual courts handle enough appeals to make the additional measure useful.

Date Termination of Parental Rights Order Would Be Final If Not Appealed

For most courts, this is the recommended end date. For example, in a particular State, a party has 30 days to file an appeal after the TPR order is signed by the trial court judge. The recommended end date in that State should be 30 days after the TPR order is signed by the trial court judge. In a State where the deadline is 60 days after the signing of the TPR order, that would be the end date for this measure.

From the perspective of the trial court judge, this date represents the true end of the TPR. If the case is not appealed, only then can the prospective adoptive parents immediately file a petition for adoption. If the case is appealed, the length of the appeal should not reflect on the performance of the trial court.

The date that the order becomes final if not appealed more closely reflects the true completion of TPR than the date the order is signed. In addition, if the date the TPR order becomes final is used as the end date, it may help persuade the courts or the State legislature to improve performance by reducing the length of time it takes for a TPR order to become final.

Business Rules

Basic Rules

1. Run this report using a sample of cases for which a TPR proceeding has been finalized, regardless of the outcome (TPR is granted or denied). The TPR in question may be for either the first or the last parent, as determined by the jurisdiction. In lieu of TPR, a jurisdiction may also use the consent-to-adoption date for either the first or last parent, if it applies.
2. Select a date range for the report (date the TPR order would be final if not appealed). State law specifies a number of days (e.g., 30, 60, or 90 days) after the TPR order is signed by the trial court judge, within which the order will be final if an appeal is not filed.
3. Select and count cases where the TPR finalized date falls within the date range selected. (*A*)
4. For each case in (*A*), compute the number of days from filing of the TPR petition to the date the order for TPR was final (or would be final if it had not been appealed). Store each number in a dataset. (*B*)
5. Count the number of cases from (*B*) that fall into each range: 1–90 days (*C*), 91–120 days (*D*), 121–180 days (*E*), and 181 or more days (*F*).
6. Calculate the percentage in each category by dividing the number of cases in the category by (*A*) (example: C/A = percentage of cases finalized in 1–90 days).

Possible Modifications

1. Calculate the average and median time for cases where the TPR was granted.

Data Elements

These elements apply specifically to this measure. For elements that apply to all measures, see “Universal Data Elements,” page 7. For definitions of data elements, see appendix D, “Data Element Dictionary,” page 289.

Required Elements

- ◆ Last TPR petition date.
- ◆ Last TPR finalized date.

Optional Elements

- ◆ Last TPR granted.
- ◆ Last consent to adoption date.

Related CFSR Standards

Federal Child and Family Services Review (CFSR) Permanency Composite 2, “Timeliness of Adoption,” includes three components: (A) timeliness of adoptions of children discharged from foster care, (B) progress toward adoption for children who meet Adoption and Safe Families Act (ASFA) time-in-care requirements, and (C) progress toward adoption of children who are legally free for adoption.

Within CFSR Permanency Composite 2 one measure is loosely related to *Toolkit Measure 4J*:

Of all children in foster care on the first day of FY 2004 who were in foster care for 17 continuous months or longer, what percent became legally free for adoption (i.e., a TPR was granted for each living parent) within 6 months of the beginning of the fiscal year?

The CFSR measure, however, differs from *Toolkit Measure 4J* and is less helpful in measuring and identifying court delays related to TPR. One key difference between *Toolkit Measure 4J* and the CFSR measure quoted above is that *Toolkit Measure 4J* involves computing how long the judicial proceedings for TPR take, whereas the CFSR measure is not limited to the time of the judicial proceedings. Another key difference is that although the CFSR measure captures only cases within which TPR has occurred within 6 months, *Toolkit Measure 4J* also addresses the percentage of cases in which TPR occurs within 90 and 120 days.

The combined components of Permanency Composite 2 form a single national standard for the composite measure on the timeliness of adoption. This national standard is the 75th percentile of a scaled score, taking values from 50 to 150, rather than a percentage.

Although there is a single composite national standard, it is possible to get a general idea of the level of performance expected regarding each individual measure, including *Toolkit Measure 4J*. Results for most of the *Toolkit* measures must be near the 75th percentile if the State is to meet the national standard for the composite measure.

CFSR Permanency Composite 2. Component Measures, Range and Median Scores, and Composite National Standard

	Range	Median	National Standard
Permanency Composite 2: Timeliness of adoption	50–150	96.5	102.1 or higher
Component A: Timeliness of adoptions of children discharged from foster care			
Of all children who were discharged from foster care to a finalized adoption in FY 2004, what percent were discharged in less than 24 months from the time of the latest removal from the home?	6.4–74.9%	27.1%	No standard
Of all children who were discharged from foster care to a finalized adoption in FY 2004, what was the median length of stay in foster care (in months) from the time of removal from the home to the time of discharge from foster care?	16.2–55.7 months	32.0 months	No standard
Component B: Progress toward adoption for children who meet ASFA time-in-care requirements			
Of all children in foster care on the first day of FY 2004 who were in foster care for 17 continuous months or longer, what percent were adopted before the end of the fiscal year?	8.0–25.1%	18.0%	No standard
Of all children in foster care on the first day of FY 2004 who were in foster care for 17 continuous months or longer, what percent became legally free for adoption (i.e., a TPR was granted for each living parent) within 6 months of the beginning of the fiscal year?	0.2–17.2%	9.0%	No standard
Component C: Progress toward adoption of children who are legally free for adoption			
Of all children who became legally free for adoption during FY 2004, what percent were discharged from foster care to a finalized adoption in less than 12 months?	18.9–85.2%	43.7%	No standard

Reporting the Data

As with other *Toolkit* measures, *Measure 4J* lends itself to a variety of tabular and graphic presentations. State Court Improvement Projects will need presentations that show performance statewide and for each jurisdiction. Individual courts will want to see how their performance compares with that of other courts and with the State as a whole, and whether their performance has improved or declined over time.

The samples that follow use hypothetical data for a fictitious State to demonstrate how results for this measure might be reported in tables and graphs.

Sample 4J-1 is from a small fictitious State and shows data from each judicial district and statewide.

This table facilitates comparison among the judicial districts and between an individual district and the entire State. For example, these numbers show that Judicial District A completed TPR proceedings for every case within 120 days in 2005, but the State as a whole completed only 78 percent within that time (that is, 33 percent of cases took between 1 and 90 days and 45 percent took between 91 and 120 days).

A pie chart can be used to illustrate the performance of one judicial district at a time, as seen in sample 4J-2. Comparisons can be shown best in bar graphs.

Sample 4J-3 shows statewide average and median times of TPR proceedings during a 5-year period.

Although this table shows trends for the State as a whole, similar tables can show trends for individual judicial districts and even individual judges.

The data in sample 4J-3 become even more meaningful if the accompanying graph compares actual performance to

a statutory timeframe or goal that has been established for completion of TPRs. Adding the line showing the 120-day goal (see sample 4J-4) demonstrates that this State has not yet achieved its goal, but is now heading in the right direction.

Factors That May Affect Results

Degree of Court Control Over Scheduling

Courts must use effective caseflow management to set firm schedules and expectations for the timeliness of all stages of the court process. Caseflow management includes controlling judicial scheduling, setting short but realistic timeframes for steps in the court process, and setting strict limits on the granting of continuances.

By contrast, if the agencies and the attorneys set the pace of the litigation, the time of the hearing is likely to be based on the pace of the slowest among them. Busy attorneys or caseworkers may seek frequent delays based on workload or for perceived tactical advantage.

Timely Service of Process on the Parties

An important factor contributing to timely TPR is the speed of service of process on all parties. Such speed requires diligence on the part of the child welfare agency in quickly identifying and locating parties, timely preparation of court papers for service or process, and timely referral to those who actually will serve the papers.

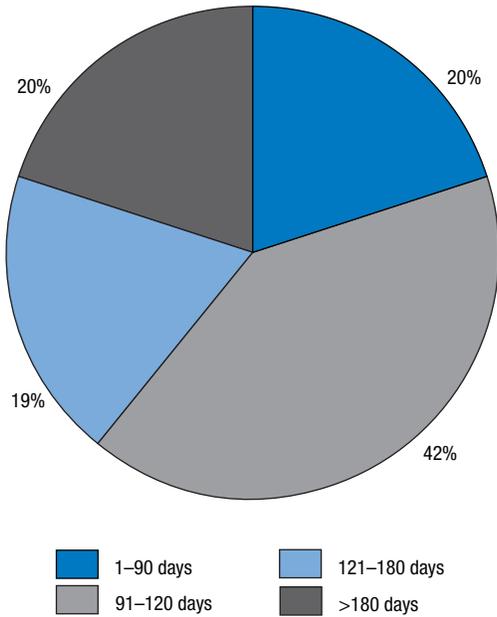
Moreover, for TPR, timely service of process sometimes requires substitute service, particularly by publication. Therefore, part of ensuring timely service of process is developing and implementing an efficient procedure for service by publication.

Sample 4J-1. Timeliness of Termination of Parental Rights Proceedings by Judicial District, 2005

District	1-90 days		91-120 days		121-180 days		>180 days		Total Cases
	# of Cases	%	# of Cases	%	# of Cases	%	# of Cases	%	
District A	45	71%	18	29%	0	0%	0	0%	63
District B	19	17%	77	68%	18	16%	0	0%	114
District C	28	20%	60	42%	27	19%	28	20%	143
District D	36	54%	21	31%	8	12%	2	3%	67
Statewide	128	33%	176	45%	53	14%	30	8%	387

Note: Percentages may not add up to 100 because of rounding.

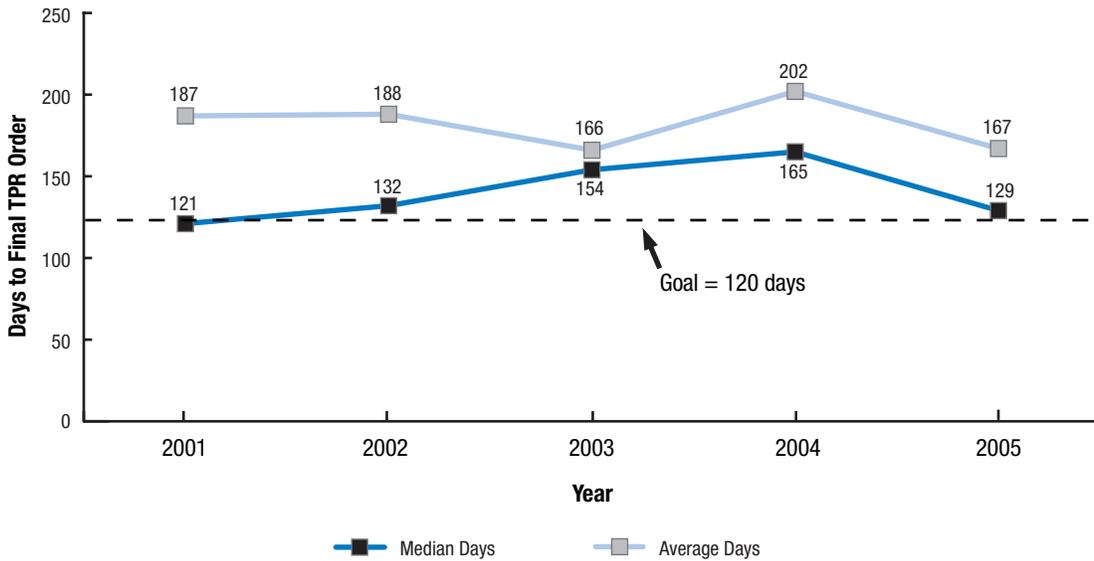
Sample 4J-2. Timeliness of Termination of Parental Rights Proceedings, 2005: District C



Sample 4J-3. Timeliness of Termination of Parental Rights Proceedings, 2001-2005: Statewide

Year	Median Days	Average Days
2001	121	187
2002	132	188
2003	154	166
2004	165	202
2005	129	167

Sample 4J-4. Timeliness of Termination of Parental Rights Proceedings, 2001-2005: Statewide



Possible Reforms

If the data show that there is room to improve the timeliness of adjudication, a court might consider the following improvements:

- ◆ Meet with the sheriff's office, child welfare agency, and other entities responsible for service of process to develop a more effective and efficient service of process.
- ◆ Set and enforce shorter time limits for earlier court hearings. Assume that a child has been in foster care for 17 months, as required by the Federal measure. The 6-month time period within which the child must have become legally free is not limited to the time period after TPR proceedings begin. Enforce specific and strict time limits to govern each step of the court process from filing to completion of TPR.
- ◆ Implement a project with child welfare agency representatives, attorney groups, and other organizations to identify and reduce delays in TPR.
- ◆ Assign to court employees the responsibility for monitoring delays in TPR litigation and bringing them to the judges' attention.
- ◆ Set and enforce strict criteria for the granting of continuances.
- ◆ Train judges and attorneys on TPR issues and procedures.
- ◆ Revise TPR forms to make the process more efficient while protecting the rights of the parties.
- ◆ Train caseworkers on TPR.

The specific measures a court takes will depend on the local conditions and its analysis of the principal local causes of delays related to the termination of parental rights.

Time From Disposition Hearing to Termination of Parental Rights Petition

Definition: Percentage of cases in which the termination of parental rights petition (TPR) is filed within 3, 6, 12, and 18 months after the disposition hearing.

Explanation: This measure shows how long it takes from the date of the disposition hearing to the date of the filing of the termination of parental rights petition¹ or motion. Termination of parental rights means that a parent is permanently deprived of all parental rights, including child custody, visitation, and participation in decisionmaking for the child. The court may arrange for the child to be adopted by a new parent without notifying or gaining the consent of the parent whose rights have been terminated.

Purpose: To enable the court to determine how long it takes from the time the court has completed the disposition hearing to the time the TPR petition is filed. If delays are identified, the court can begin working to speed up this process and thereby improve the quality of litigation.

In child abuse and neglect cases, the disposition hearing is the context in which the court, following adjudication of the abuse and neglect petition, decides who will have legal custody of the child. When the court approves a child's continued placement in foster care, the court generally awards temporary custody (or the State's equivalent) to the child welfare agency. In many States, the court makes a number of additional decisions during the disposition hearing, such as approving or modifying the case plan, setting the terms of visitation, and issuing a variety of other orders. In nearly every jurisdiction, the agency presents a predisposition hearing report outlining the agency's overall goal and plans for the child.

Termination of parental rights is a pivotal stage in the court process because it allows a child to be adopted. It is a gateway to permanency for children who cannot return home safely.

The time from the disposition hearing to the filing of the TPR petition represents the time between the formal approval of placement into foster care (and, in many States, the formal approval or modification of the agency's case plan) and the time that proceedings are begun to legally free a child for adoption. During this period, the child welfare agency is formally working to reunify the family.

The time from the disposition hearing to the filing date of the termination petition also reflects the quality of review hearings and permanency hearings. TPR petitions can be delayed when review and permanency hearings are timely, but not thorough or penetrating. Assume that during a review hearing, a court neglects to challenge a child welfare agency's failure to arrange timely services. By failing to

note the problem and order corrective steps, the court probably has delayed TPR. But if at that review hearing the court requires the agency to correct the deficiency, this may facilitate timelier family reunification or, if reunification efforts fail, speed up the process of TPR.

In another example of how failure to achieve timely TPR can work against the child's best interest, assume that, at a permanency hearing, a court does not conduct a thorough review of a recommendation to continue a permanency plan of reunification, accepts that plan, and that plan is later determined to not have been in the child's best interest. The court has needlessly prolonged TPR. But if, instead, the court carefully questions the reunification plan, recognizes that reunification has already failed, and orders a petition for TPR, this will speed TPR and adoption.

Furthermore, delays in achieving TPR may be caused by delays in the completion of the TPR proceedings themselves. TPRs, on average, are by far the most heavily contested and time-consuming proceedings in child abuse and neglect litigation. In most States, TPR requires a new service of process. Contested TPRs take far longer than any other type of contested proceeding in these cases.

Some child welfare agencies and their attorneys may delay initiating TPRs until they can show that the parents have failed to improve over a long period of time. In some cases, it is better for the children that TPR take place as soon as it is clear that family reunification is not possible within a reasonable time. The child may best be served in these instances by going forward with a strong case for TPR, even though that case may be vigorously contested.



Delays in TPR may also reflect delays in services and/or weaknesses in child welfare agency performance. If essential services are delivered late in the case, there may be no case for TPR, even if the child is forced to wait for the opportunity for a permanent new home.

This measure cannot distinguish which delays in termination petitions are caused by the court, by the child welfare agency, or by others. But, as indicated earlier, when combined with the results of other measures, the causes can be clarified. By reviewing selected individual cases and specific points in their procedure, courts can identify the precise causes of the delays.

Complexities, Proxies, Additions, and Barriers to Capturing This Information

Basing the Date the Termination Petition Is Filed on the Date of Filing for the First or the Last Parent

Another important consideration is whether the date of the TPR petition should be based on the date the petition was filed for the first parent or the date it was filed for the last parent.² It is recommended that the date for the last parent be used, because a child is freed for adoption only after the termination of all parents' (or putative parents') rights. As discussed earlier, this measure should reflect the date the agency formally declares it no longer is working toward a family reunification. Until the agency has initiated termination proceedings against the last parent, this step has not yet occurred.

It is important to note that not all children are freed for adoption through a TPR proceeding. In some States, children can be freed for adoption when parents sign a consent to termination. State law may or may not require that this consent be signed in the presence of a judge. Given that providing written consent to adoption fulfills the purpose of TPR in some States, it is recommended that this measure be calculated in one of the following ways, depending on State law:

- ◆ In States where an adoption cannot go forward without a separate TPR proceeding—even when a parent has already signed consent to adoption—use the date on which the termination petition of the last parent was filed.
- ◆ In States where an adoption can go forward when a parent signs a consent to adoption without a separate proceeding to terminate parental rights, use the earliest of the following dates:
 - ◆ Date of consent to adoption.
 - ◆ Date final TPR petition was filed.

To use the second approach, the court will need to have the agency routinely provide either the dates of parental consent to adoption or copies of the parents' signed consent to adoption. Furthermore, court employees will have to enter this information into the court's data system.

Business Rules

Basic Rules

1. Run this report using a sample of cases for which a termination petition has been filed.
2. Select a date range for the report (date of the termination petition).
3. Select and count cases in which the date of the petition falls within the date range selected (*A*).
4. For each case in (*A*), compute the number of days from the date of the disposition hearing to the filing of the TPR petition. Store the elapsed time in a dataset. (*B*)
5. Find the median number of days from the disposition hearing to the filing date of the TPR petition in dataset (*B*). The median is the time midway between the slowest and fastest cases. (*C*)
6. Add the number of days for all cases in (*B*) together. (*D*)
7. Compute the average time from the disposition hearing to the TPR filing by dividing (*D*) by (*A*).

Calculation note: With an odd number of numbers, the median is simply the middle number; e.g., the median of 2, 4, and 7 is 4. With an even number of numbers, the median is the mean of the two middle numbers; e.g., the median of 2, 4, 7, and 12 is 5.5 (4 plus 7 divided by 2).

Possible Modifications

- ◆ For States that do not have TPR petitions, use the date of the TPR motion. If the State has neither petitions nor motions, use the date of the TPR hearing.

- ◆ Limit the measure to cases in which the children were in foster care before the filing of the petition and in which parental rights were eventually terminated.
- ◆ Report on the time that has elapsed between the original petition and the petitioning of the last parent for TPR.
- ◆ Report separately on cases by categories (types of abuse or neglect, child’s ethnicity, age of child, and so forth.)

Data Elements

These elements apply specifically to this measure. For elements that apply to all measures, see “Universal Data Elements,” page 7. For definitions of data elements, see appendix D, “Data Element Dictionary,” page 289.

Required Elements

- ◆ Disposition hearing date.
- ◆ Last TPR petition date.

Optional Elements

- ◆ Last TPR motion date.
- ◆ Last TPR hearing date.
- ◆ Foster care flag = “yes.”
- ◆ Last consent to adoption date.

Reporting the Data

As with other *Toolkit* measures, *Measure 4K* lends itself to a variety of tabular and graphic presentations. State Court Improvement Projects will need presentations that show performance statewide and for each jurisdiction. Individual courts will want to see how their performance compares with that of other courts and with the State as a whole, and also whether their performance has improved or declined over time.

The samples that follow use hypothetical data for a fictitious State to demonstrate how results for this measure might be reported in tables and graphs.

Sample 4K–1 is based on statistics from a fictitious State with five courts:

During 2006, 25 percent of TPR petitions in this State were filed within 6 months after the disposition hearing. A larger percentage of early TPR petitions may be appropriate in jurisdictions that provide strong preventive services such as intensive home-based services prior to most foster placements. In cases in which intensive preventive services have been provided, reunification services (after removal from the home) may not need to be as extensive. In States where a relatively high percentage of families receive intensive preventive services prior to disposition, it is far likelier that TPR proceedings will take place early.

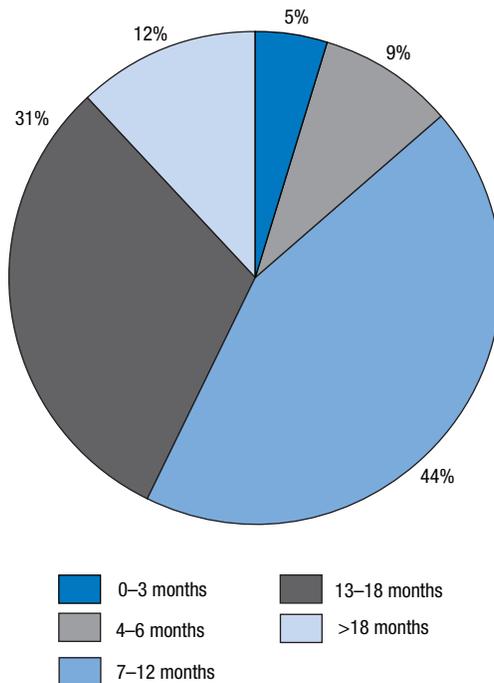
Sample 4K–1 shows that the number of “early” termination petitions is very low in Court C. This may reflect weaknesses in preventive services, a reluctance by the agency or its attorneys to initiate early proceedings, or the agency’s prior lack of success in achieving early TPR in

Sample 4K–1. Months From Disposition Hearing to Filing of Termination of Parental Rights Petition, 2006: Statewide

Court	0–3 months		4–6 months		7–12 months		13–18 months		>18 months		Total Cases
	#	%	#	%	#	%	#	%	#	%	#
Court A	20	5%	34	9%	174	44%	121	31%	46	12%	395
Court B	90	10%	160	18%	400	45%	220	25%	21	2%	891
Court C	9	2%	40	10%	79	19%	133	32%	156	37%	417
Court D	15	2%	158	18%	180	21%	225	26%	280	33%	858
Court E	84	31%	92	33%	61	22%	26	9%	12	4%	275
Statewide	218	8%	484	17%	894	32%	725	26%	515	18%	2,836

Note: Percentages may not add up to 100 because of rounding.

Sample 4K-2. Months From Disposition to Filing of Termination of Parental Rights, 2006: Court A



Court C. By contrast, in Court E the percentages are much higher. This may reflect good early preventive services and best practices, or it may mean the agency and court are too hasty in seeking to terminate parental rights.

Sample 4K-2 represents the performance of Court A. This pie chart shows that 14 percent—a relatively high percentage—of the TPR petitions filed during 2006 were filed 6 months or sooner after the completion of the disposition hearing. In many of these cases, the court may have found that reasonable efforts to achieve reunification were not required,³ or grounds for TPR may have applied according to which the State did not have to prove that reasonable reunification efforts were made.

Possible Factors Affecting the Level of Court Performance

Even more than many others, this measure reflects a combination of the level of performance of the courts, the child welfare agency, and its service providers.

Degree of Court Control Over Scheduling

Using effective caseload management, courts can set firm schedules and expectations for the timeliness of all stages of the court process. Caseload management includes, among other things, judicial control of scheduling, short timeframes for steps in the court process, and strict limits on the granting of continuances.

If the agencies and attorneys set the pace of the litigation, the time of the hearing is likely to be based on the pace of the slowest among them. Busy attorneys or caseworkers may seek frequent delays based on workload or for perceived tactical advantage.

Timeliness and Frequency of Review and Permanency Hearings

As suggested earlier, review and permanency hearings can play a powerful role in advancing permanency plans for children in foster care. To do so, they must be timely and as frequent as required. If there are ongoing delays blocking case progress, late review and permanency hearings are often the inevitable result.

Quality of Review and Permanency Hearings

Although review and permanency hearings can play a powerful role in advancing permanency plans for children in foster care, they also can be ineffectual. This depends in large part on the thoroughness and incisiveness of the hearings themselves.

Quality and Timing of Court Reports

One important factor determining the quality of review and permanency hearings is the quality and timing of court reports. Both advocates and the judge depend on these reports for information about the progress of the case and for proposals for revised case plans and case goals. If reports are filed well before the hearings and include both good current case information and thoughtful recommended plans, the quality of discussion and argument at the hearings will be greatly improved.

Appropriateness and Timeliness of Delivery of Family Services

In many instances, delays in the delivery of family services hinder the progress of cases. For example, when there are long waiting lists for substance abuse treatment, it is difficult for agencies to either reunify the family or seek termination of parental rights on a timely basis. Reunification usually will not be possible until the successful completion of treatment, and there will be no grounds for termination until the treatment has actually been offered or provided.

Of course, the courts are not responsible for the timeliness or quality of services. But the services can affect the courts' ability to meet their statutory responsibility to make timely permanency decisions for foster children. Courts can at least point out to responsible government bodies the impact of service delays or insufficiencies on the timeliness of termination proceedings.

Quality of Advocacy

Also key to the timeliness of these proceedings is the quality of advocacy. Good advocates identify and address slow casework or services. They argue against ill-advised case plans or case goals.

Willingness of Caseworkers and Advocates To Initiate Termination Proceedings

One important factor in the timing of termination petitions is the willingness of caseworkers and advocates to file petitions within a reasonable time. Delays may reflect a hesitancy on the part of agencies or their attorneys. As mentioned earlier, some agencies and their attorneys delay initiating TPR until parents have repeatedly demonstrated a failure to improve. In jurisdictions where advocates for children can file these petitions, the advocates can affect the timeliness of termination of parental rights.

Possible Reforms

- ◆ Set and enforce shorter time limits for review and permanency hearings.
- ◆ Set early review and permanency hearings in challenging cases.

- ◆ During review and permanency hearings, carefully review whether sufficient steps are being taken to achieve reunification and/or adoption.
- ◆ Take more time to address the possibility of TPR during review and permanency hearings.
- ◆ Identify and act on appropriate cases in which reasonable efforts to reunify the family are not required.
- ◆ To ensure greater thoroughness and care, enact laws or adopt court rules to strengthen procedures for review and permanency hearings.
- ◆ Revise State laws and court rules to set deadlines for TPR petitions after a judge sets a permanency plan of adoption at a permanency hearing. Also revise State laws and court rules to allow judges to set special deadlines. Clarify that setting such deadlines does not disqualify the judge from hearing the TPR proceeding.
- ◆ To ensure greater thoroughness and care, adopt mandatory court forms for review and permanency hearings. Allow exceptions only with State approval.
- ◆ Work with agency representatives, attorney groups, and other organizations to identify and reduce delays between the disposition and TPR petitions.
- ◆ Develop a plan to systematically inform governmental bodies of service delays that reduce the court's ability to make timely permanency decisions.
- ◆ Work with the child welfare agency to provide feedback on the quality of casework (including forensic casework) by its staff.
- ◆ Train judges and attorneys in review and permanency hearing management.
- ◆ Train caseworkers to prepare for review and permanency hearings and TPR cases.

The specific measures a court takes will depend on local conditions and its analysis of the principal local causes of delays between the disposition hearing and the TPR petition.

Endnotes

1. Some States do not require a petition for termination of parental rights. In those States, the start date should be the date of the filing of the motion leading to TPR. In those few States that require neither a petition nor a motion, the completion of this measure should be the day that the date of the TPR hearing is scheduled.
2. Because there may be more than one putative father (or there may be both a biological and an adoptive father or mother), and because the State may separately petition to terminate the rights of two or more putative fathers, the term “last,” rather than “second,” parent is used.
3. 42 U.S.C. §§ 671(a)(15)(D), (E).

Timeliness of Adoption Petition



Definition: The percentage of cases in which the adoption petition is filed within 3, 6, and 12 months after the termination of parental rights (TPR).

Explanation: This measure shows how long it takes from the date of termination of parental rights to the date the adoption petition is filed. Termination of parental rights means that a parent is permanently deprived of all parental rights, including custody, visitation, or participation in decisionmaking for the child.

TPR also means that the child may be adopted by a new parent without notice to and without the advance written consent of the parent whose rights have been terminated. Adoption means that the adoptive parents and child have a legal relationship that is essentially identical to the legal relationship between a child and biological parents whose parental rights are intact.

Purpose: To enable the courts to determine how long it takes from the time a child is legally freed for adoption until proceedings for adoption have formally begun. Adoption is the final step in securing a permanent and legally secure parent-child relationship for a foster child who cannot safely be returned to his or her biological parents.

During the period between TPR and the filing of the adoption petition, the child welfare agency may be involved in a number of activities, such as:

- ◆ Searching for prospective adoptive parents.
- ◆ Evaluating prospective adoptive parents.
- ◆ Introducing the prospective adoptive parents to the child.
- ◆ Providing prospective adoptive parents and the child with education and counseling regarding adoption.
- ◆ Gathering the documentation necessary for initiating the adoption.
- ◆ Arranging for an adoption subsidy or other support for the adoptive family (including assisting with attorney fees).
- ◆ Working with an attorney for the prospective adoptive parent.

While this is going on, adoptive parents need to learn about the child, evaluate their own willingness and suitability to adopt the child, secure an attorney, and—with the help of their attorney—evaluate any proposed adoption subsidy or other types of financial assistance.

At the same time, the court should help ensure that both the child welfare agency and the prospective adoptive parents are fulfilling their responsibilities. The court must ensure that the adoption process is moving forward

efficiently. The court must periodically review each case from the time parental rights are terminated until the adoption has become final. During these review hearings (and permanency hearings), the court must make sure the child continues to be well cared for, track the progress toward adoption, and encourage the agency and prospective adoptive parents to avoid unnecessary delays in completing the process.

Thus, the courts have a significant, but far from exclusive, responsibility for moving cases to adoption. The public child welfare agency and any private adoption agencies involved also play an important role. This measure cannot distinguish the impact of the activities of the courts, the public child welfare agency, and private adoption agencies on the timeliness of adoption petitions. Further study is required to examine the role of each entity. This measure shows how timely adoption proceedings begin following TPR. By measuring the time that elapses between TPR and the initiation of adoption proceedings, this measure helps identify States and localities in which issues causing delay may require further work and study.

For example, if there are unusually long delays between TPR and the filing of adoption petitions in a particular locality, it is up to the local court, the public child welfare agency, and any private adoption agencies involved to collaborate in studying the overall process and determining the reasons for the delay. In conducting such a study, the court, attorney representatives, the child welfare agency, and others can work together to:

- ◆ Prepare a detailed, step-by-step description of the process.
- ◆ Measure the actual times for each step in the process.
- ◆ Examine several cases in detail and then identify the specific causes of delay.
- ◆ Redesign and streamline the overall process.

Complexities, Proxies, Additions, and Barriers to Capturing This Information

Importance and Appropriateness of This Measure

An important argument against courts implementing this measure is that filing adoption petitions is not the responsibility of the courts or even of the executive branch, but rather of the prospective adoptive parents. Although this is a serious point, there are strong counterarguments. First, a child abuse or neglect case progresses along a continuum—starting when a child is removed from home and ending with the moment the case is dismissed and the child is returned home, or the child is adopted, ages out, or is placed in legal guardianship. A child abuse case cannot be considered as complete until one of those outcomes (or their legal equivalents under State law) has occurred. The time that elapses between termination of parental rights and the adoption petition is an important step in that process.

Furthermore, courts have the responsibility to help ensure that adoption petitions are timely. Courts conduct review hearings and permanency hearings after TPR to help ensure timely progress toward adoption. It is their legal responsibility to check on the progress of agencies and prospective adoptive parents and to issue orders, when needed, to overcome barriers to timely adoption. It is also their responsibility to determine whether the agency has made reasonable efforts to finalize the permanency plan of adoption.

Start Date of This Measure—Completion of Termination of Parental Rights

Another important consideration regarding this performance measure is when to consider the TPR proceeding to

be over. Suggestions have included the date of completion of the TPR hearing, the date of the judge's signature on the TPR order, or the date when the order becomes legally final. An additional consideration is whether this should be the date of the termination of parental rights of the first, or last,¹ parent. It is recommended that the start date for this measure be the date that the termination of parental rights of all parents (or putative parents) is final.

Date of Completion of Termination of Parental Rights Hearing

The date of completion of the TPR hearing should not be used as a start date for this measure. When the court has completed other types of hearings such as adjudication, disposition, and permanency hearings, the parties generally can move on to the next stage of the case immediately.² By contrast, completion of the TPR hearing does not legally free the child for adoption, thus preventing the parties from initiating adoption proceedings in most States.

Date TPR Order Is Signed

The date the TPR order is signed is closer to being an appropriate start date. The problem with this date as a start date, however, is that parties still cannot move forward to the next stage of the case. An adoption proceeding cannot be initiated until after the order becomes final.

Date TPR Order Is Final

The date the TPR order is final is the date on which a petition for adoption can be filed. This is the recommended start date for this measure.

Date of Termination of Parental Rights for All Parents

Another important consideration is whether the start date of this measure should be based on the date of termination of parental rights of the first, or last, parent. Because the filing of the adoption petition is not possible without the termination of parental rights of all parents, it is recommended that this measure be calculated based on the date when the rights of all parents would be final if not appealed.

In some States, consent to adoption may be used in lieu of termination of parental rights. It is recommended that this measure be calculated using one of the following approaches, depending on State law:

- ◆ The date on which either the termination of parental rights of the last parent were finalized if not appealed

or the last parent signed a consent to adoption (whichever applies), in States where an adoption can go forward without prior termination of parental rights.

- ◆ The date on which the termination of parental rights of the last parent is finalized, in States where an adoption cannot go forward without prior termination of parental rights.

Availability of Data Regarding the Date the Adoption Petition Is Filed

Many courts hearing child abuse and neglect cases do not also handle the adoption. Such courts may not consistently be informed of the date of the adoption petition. Furthermore, some courts hearing adoptions believe they cannot share that information due to the confidentiality of adoption proceedings. Finally, most agencies do not routinely provide the date of the adoption petition to the court hearing the dependency case.

To solve these problems, dependency courts must either (a) work out arrangements with courts hearing adoptions, possibly including convincing them that the law allows them to share detailed case-by-case information; or (b) get the agency to routinely and accurately provide this information, preferably as part of its standard preadoption court reports. In either case, if the data are not provided electronically from the adoption court or the child welfare agency, the court will need to provide data entry screens for entering this information, train court employees to consistently enter this data, and secure the cooperation of court staff responsible for data entry.

Business Rules

Basic Rules

1. Run this report using a sample of cases for which an adoption petition has been filed.
2. Select a date range for the report.
3. Select all cases where the date the adoption petition is filed falls within the selected date range. (A)
4. For each case in (A), compute the number of days from finalized termination of parental rights to the date the adoption petition is filed and store each number in a dataset. (B)
5. Count the number of cases in (B) that fall into each of the following categories: (C) 1–90 days, (D) 91–180 days, (E) 181–365 days, and (F) more than 365 days.
6. Calculate the percentage of total cases represented by each category by dividing the number of cases in each category (C, D, E, F) by (A) (example: (C)/(A) = percentage of petitions filed within 1–90 days after termination of parental rights).

Data Elements

These elements apply specifically to this measure. For elements that apply to all measures, see “Universal Data Elements,” page 7. For definitions of data elements, see appendix D, “Data Element Dictionary,” page 289.

Required Elements

- ◆ Last TPR finalized date
- ◆ Adoption petition date.

Optional Elements

- ◆ Last consent to adoption date.

Related CFSR Standards

Federal Child and Family Services Review (CFSR) Composite 2, “Timeliness of Adoption,” includes three components: (A) the timeliness of adoptions of children discharged from foster care, (B) progress toward adoption for children who meet Adoption and Safe Families Act (ASFA) time-in-care requirements, and (C) progress toward adoption of children who are legally free for adoption.

Component C includes one measure that is loosely related to *Toolkit Measure 4L: Timeliness of Adoption Petition*.

Component C measures the percentage of all children who became legally free for adoption during FY 2004 who were discharged from foster care to a finalized adoption in less than 12 months.

The CFSR measure, however, is less helpful in measuring and identifying court delays related to the timeliness of adoption petitions. One key difference is that the CFSR measure requires a finalized adoption, as opposed to a mere petition for adoption, as in *Toolkit Measure 4L*. Another key difference is that whereas the CFSR measure only captures cases in which adoption has occurred within 12 months, *Toolkit Measure 4L* also separately reports the

CFSR Permanency Composite 2. Component Measures, Range and Median Scores, and Composite National Standard

	Range	Median	National Standard
Permanency Composite 2: Timeliness of adoption	50–150	96.5	102.1 or higher
Component A: Timeliness of adoptions of children discharged from foster care			
Of all children who were discharged from foster care to a finalized adoption in FY 2004, what percent were discharged in less than 24 months from the time of the latest removal from the home?	6.4–74.9%	27.1%	No standard
Of all children who were discharged from foster care to a finalized adoption in FY 2004, what was the median length of stay in foster care (in months) from the time of removal from the home to the time of discharge from foster care?	16.2–55.7 months	32.0 months	No standard
Component B: Progress toward adoption for children who meet ASFA time-in-care requirements			
Of all children in foster care on the first day of FY 2004 who were in foster care for 17 continuous months or longer, what percent were adopted before the end of the fiscal year?	8.0–25.1%	18.0%	No standard
Of all children in foster care on the first day of FY 2004 who were in foster care for 17 continuous months or longer, what percent became legally free for adoption (i.e., a TPR was granted for each living parent) within 6 months of the beginning of the fiscal year?	0.2–17.2%	9.0%	No standard
Component C: Progress toward adoption of children who are legally free for adoption			
Of all children who became legally free for adoption during FY 2004, what percent were discharged from foster care to a finalized adoption in less than 12 months?	18.9–85.2%	43.7%	No standard

percentage of cases in which adoption occurs within 3 and 6 months.

Components A, B, and C together form a single “national standard” for the composite measure on the timeliness of adoption. This national standard is the 75th percentile of a scaled score taking values from 50 to 150, rather than a percentage.

Although there is a single composite national standard, it is possible to get a general idea of the level of performance expected regarding each individual measure, including the *Toolkit* measures. The results for most of the *Toolkit* measures must be near the 75th percentile if the State is to meet the national standard for the composite measure.

Reporting the Data

As with other *Toolkit* measures, *Measure 4L* lends itself to a variety of tabular and graphic presentations. State Court Improvement Projects will need presentations that show performance statewide and for each jurisdiction. Individual courts will want to see how their performance compares with that of other courts and with the State as a whole, and

whether their performance has improved or declined over time.

The samples that follow use hypothetical data for a fictitious State to demonstrate how results for this measure might be reported in tables and graphs.

Sample 4L–1 shows the timeliness of adoption petitions in a small fictitious State with four judicial districts.

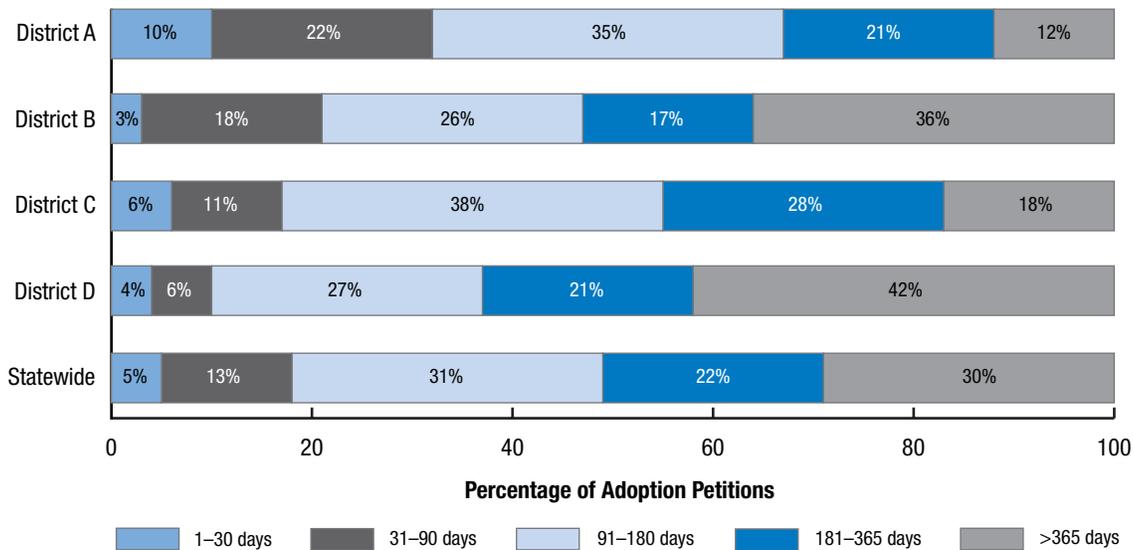
Given the very small percentage of adoption cases filed within 30 and even 90 days after the completion of TPR, these data show that there are delays in this process. However, the relatively small percentage of cases in which it takes more than 1 year until the adoption petition is filed suggests that there are relatively few extreme delays in completing the adoption for those cases that proceed to adoption. However, it should be noted that this measure deals only with cases that proceed to adoption, not those which are reported in *Toolkit Measure 2B: Children Not Reaching Permanency*, which deals with children leaving foster care without permanency following the termination of their parents’ rights.

Sample 4L-1. Timeliness of Adoption Petitions, by Judicial District, 2005

District	1-30 days		31-90 days		91-180 days		181-365 days		>365 days		Total Adoptions
	#	%	#	%	#	%	#	%	#	%	
District A	10	10%	21	22%	34	35%	20	21%	12	12%	97
District B	6	3%	35	18%	50	26%	33	17%	70	36%	194
District C	12	6%	22	11%	78	38%	58	28%	38	18%	208
District D	9	4%	15	6%	65	27%	49	21%	100	42%	238
Statewide	37	5%	93	13%	227	31%	160	22%	220	30%	737

Note: Percentages may not add up to 100 because of rounding.

Sample 4L-2. Timeliness of Adoption Petitions, by Judicial District, 2005



Note: Percentages may not add up to 100 because of rounding.

Sample 4L-2 provides a visual comparison of the performance of the four judicial districts and the State as a whole.

Sample 4L-3 compares the timeliness of adoptions of different age groups of children.

The times to the filing of the adoption petition are longer for children 10 to 14 years old than for youth 15 to 18 years old. Not surprisingly, the times to the filing of the adoption petition for children 1 to 4 years old are the shortest, suggesting that older children are more difficult to place with adoptive parents.

Sample 4L-4 presents the same information in graphic form.

Factors That May Affect Results

Frequency and Quality of Posttermination Review Hearings and Permanency Hearings

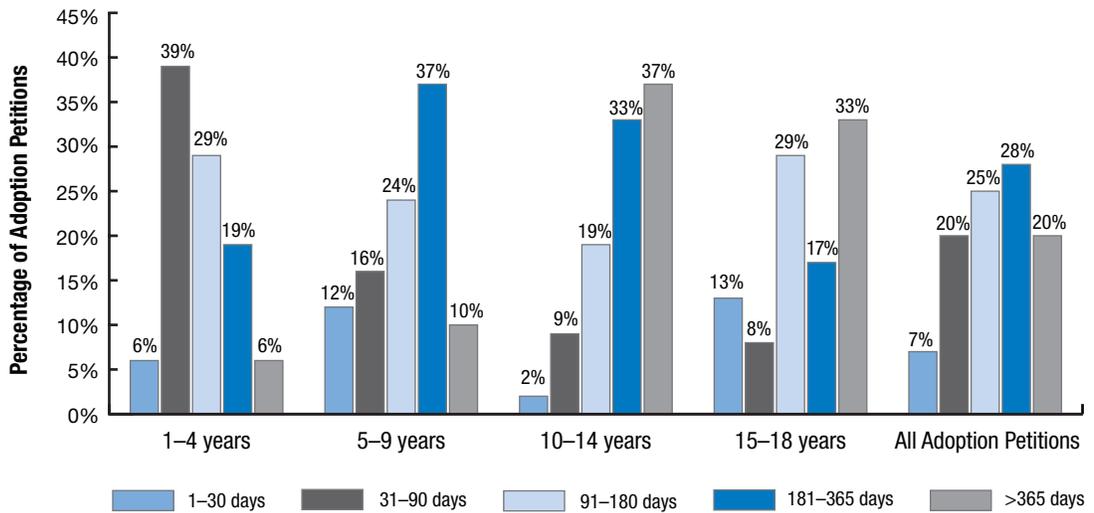
Perhaps the most important thing that courts can do to hasten adoption petitions is to conduct frequent and

Sample 4L-3. Timeliness of Adoption Petitions, by Child's Age, 2006: Court A

Child's Age	1-30 days		31-90 days		91-180 days		181-365 days		>365 days		Total Adoptions
	#	%	#	%	#	%	#	%	#	%	
1-4 years	4	6%	24	39%	18	29%	12	19%	4	6%	62
5-9 years	6	12%	8	16%	12	24%	18	37%	5	10%	49
10-14 years	1	2%	5	9%	11	19%	19	33%	21	37%	57
15-18 years	3	13%	2	8%	7	29%	4	17%	8	33%	24
All Adoption Petitions	14	7%	39	20%	48	25%	53	28%	38	20%	192

Note: Percentages may not add up to 100 because of rounding.

Sample 4L-4. Timeliness of Adoption Petitions, by Child's Age, 2006: Court A



Note: Percentages may not add up to 100 because of rounding.

penetrating review and permanency hearings after TPR. These hearings can help not only examine, clarify, and remedy sources of delay but also keep the attention of the public and private agencies on these cases. When courts conduct frequent review and permanency hearings that include a vigorous questioning process, workers are strongly encouraged to continue focusing on the case.

Judicial and Attorney Expertise Regarding Adoption of Children in Foster Care

To make review and permanency hearings effective, judges and attorneys must ask good questions and help develop workable ways to overcome barriers and address the causes of delay. They need to be informed about interstate placement laws; adoption subsidies, Social Security, and other public benefits for adopted children; all phases of the agency adoption process; and the legal requirements and procedures regarding adoption.

Possible Reforms

- ◆ Pass laws or adopt court rules calling for frequent review and permanency hearings following TPR.
 - ◆ Pass laws or adopt court rules setting forth issues to be addressed during post-TPR review and permanency hearings.
 - ◆ Adopt forms for agency reports and court orders to be used in post-TPR review and permanency hearings. The forms should include a list of key questions to be addressed.
 - ◆ Develop training curricula regarding adoption and require that judges and attorneys handling these cases participate in the training.
- ◆ Implement a project with agency representatives, attorney groups, and others to reduce delays between TPR and adoption. Work with the group to develop time guidelines for each step in the process. Assign to court employees the responsibility for monitoring delays and bringing them to the judges' attention.
 - ◆ Set and enforce strict criteria for the granting of continuances.
 - ◆ Ensure that courts get enough information to determine whether or not the agency has made reasonable efforts to finalize adoption.
 - ◆ Take the time to review ongoing cases to ensure that sufficient steps are being taken to achieve adoption.

Of course, the specific steps a court takes to improve its performance on this measure will depend on local conditions and on the court's analysis of the principal local causes of delays related to filing adoption petitions.

Endnotes

1. Because there may be more than one putative father (or there may be both a biological and an adoptive father or mother), and because the State may separately petition to terminate the rights of two or more putative fathers, the term "last," rather than "second," parent is used.
2. For example, after the disposition hearing is completed in most courts, the agency can implement the court order immediately. Likewise, after a permanency hearing in which a judge orders the agency to initiate termination of parental rights proceedings, the deadline announced by the judge will apply.



Timeliness of Adoption Proceedings

Definition: Percentage of adoption cases finalized within 3, 6, and 12 months after the filing of the adoption petition.

Explanation: This measure shows how long it takes from the filing of an adoption petition for a child in foster care to the date the adoption becomes final. Once the adoption is final, the adoptive parents and child have a legal relationship that is in all essential ways identical to the legal relationship between biological parent and child when parental rights are intact.

Purpose: To measure the amount of time between the filing of the adoption petition and the conclusion of adoption proceedings for children in foster care. Adoption is the ultimate legal step in achieving permanency for a foster child who cannot return home. It also is a culturally and symbolically important step that represents the permanence of the new parent-child relationship.

In most cases involving children in foster care, adoptions occur after biological parents have either consented to adoption or have had their parental rights terminated. Accordingly, relatively few adoptions (as opposed to termination of parental rights [TPR] proceedings) are contested. However, adoptions can be contested in many States where foster parents or others seek to adopt without the permission of the child welfare agency that has custody of the child.

In addition, in some States foster parents and others can petition for adoption without parental consent or prior termination of parental rights. In these cases, adoption proceedings may be delayed due to a contest between the biological (or current adoptive) parent and the prospective adoptive parent. In all but a few jurisdictions, however, this is relatively rare.

Instead, delays in adoption proceedings most often are caused by delays in the court process or in the child welfare agency's completion of required procedures and documentation. In addition, substantial delays may occur where the law requires the child to be placed in the adoptive home for an extended period before the adoption becomes final. Although this requirement may not apply when foster parents seek to adopt the child (as is the case in a large percentage of adoptions of children in foster care), it can be a major source of delay in the finalization of adoptions by persons other than former foster parents.

Complexities, Proxies, and Barriers to Capturing This Information

Completion of Adoption

An important consideration for this performance measure is how to define the conclusion of the adoption proceeding. It can be defined as one of the following:

- ◆ Date of completion of the adoption hearing.
- ◆ Date judge signs the adoption order.
- ◆ Date adoption order is legally final.
- ◆ Date order would become legally final if not appealed.

These possible definitions are described in the following sections. A good date of completion for this measure is the date the order would become legally final if not appealed.

Date of Completion of Adoption Hearing

The date the adoption hearing is completed could serve as an end date for this measure because this is the day of the adoption ceremony—a symbolically important event. On the other hand, this is not necessarily the date that the adoption takes effect.

Date Adoption Order Is Signed

The adoption order is usually signed on the day of the adoption hearing because relatively few adoption cases for children in foster care are contested. The question is whether the adoption is final on that date.

Date Adoption Order Is Final

The date the adoption order is final depends on State law. When the adoption is not contested, there will be no appeal, and this will not affect the date of finality. Thus, except in a small number of cases, this is an appropriate date. When the adoption is appealed, however, this adds days to the length of the proceedings that should not be attributed to the trial court judge.

Date Adoption Order Would Be Final if Not Appealed

The best end date for this measure is probably the date the adoption order would be final if not appealed. This date represents the true end of the adoption from the perspective of the trial court judge. This end date takes into account the few contested adoptions that are appealed.

Business Rules

Basic Rules

1. Run this report using a sample of cases for which an adoption has been finalized (date the adoption order would be final if not appealed).
2. Select a date range for the report.
3. Select all cases where the date the adoption would be final if not appealed falls within the selected date range. (A)
4. For each case in (A), compute the number of days from the filing of the adoption petition to the date the adoption would be final if not appealed. Store each number in a dataset. (B)
5. Sort the cases from (B) into the following categories: (C) 1–90 days, (D) 91–180 days, (E) 181–365 days, and (F) more than 365 days.
6. Calculate the percentage of total cases represented by each category by dividing the number of cases in each of the categories (C, D, E, F) by (A). (For example: (C)/(A) = percentage of cases finalized in 1–90 days).

Data Elements

These elements apply specifically to this measure. For elements that apply to all measures, see “Universal Data Elements,” page 7. For definitions of data elements, see appendix D, “Data Element Dictionary,” page 289.

Required Elements

- ◆ Adoption petition date.
- ◆ Adoption finalized date.

Related CFSR Standards

Federal Child and Family Services Review (CFSR) Permanency Composite 2, ‘Timeliness of Adoption,’ includes three components: (A) the timeliness of adoptions of children discharged from foster care, (B) progress toward adoption for children who meet Adoption and Safe Families Act (ASFA) time-in-care requirements, and (C) progress toward adoption of children who are legally free for adoption.

Component C includes one measure that is loosely related to *Toolkit Measure 4M: Timeliness of Adoption Proceedings*. Component C calculates the percentage of all children who became legally free for adoption during FY 2004 who were discharged from foster care to a finalized adoption in less than 12 months.

The CFSR measure, however, is less helpful in measuring and identifying court-related delays related to the timeliness of adoption petitions.

One key difference is that the *Toolkit* measure includes a computation of how long the judicial proceedings for adoption take, whereas the CFSR measure is not limited to the time of the judicial proceedings. That is, the CFSR measure encompasses the period of time between termination of parental rights and the filing of the adoption petition, whereas the *Toolkit* measure does not. Another key difference is that whereas the CFSR measure only captures cases in which adoption has occurred within 12 months, the *Toolkit* measure also addresses the percentage of cases in which adoption occurs within 3 and 6 months.

Components A, B, and C form a single “national standard” for the composite measure on the timeliness of adoption. The national standard is the 75th percentile of a scaled score taking values from 50 to 150, rather than a percentage.

CFSR Permanency Composite 2. Component Measures, Range and Median Scores, and Composite National Standard

	Range	Median	National Standard
Permanency Composite 2: Timeliness of adoption	50–150	96.5	102.1 or higher
Component A: Timeliness of adoptions of children discharged from foster care			
Of all children who were discharged from foster care to a finalized adoption in FY 2004, what percent were discharged in less than 24 months from the time of the latest removal from the home?	6.4–74.9%	27.1%	No standard
Of all children who were discharged from foster care to a finalized adoption in FY 2004, what was the median length of stay in foster care (in months) from the time of removal from the home to the time of discharge from foster care?	16.2–55.7 months	32.0 months	No standard
Component B: Progress toward adoption for children who meet ASFA time-in-care requirements			
Of all children in foster care on the first day of FY 2004 who were in foster care for 17 continuous months or longer, what percent were adopted before the end of the fiscal year?	8.0–25.1%	18.0%	No standard
Of all children in foster care on the first day of FY 2004 who were in foster care for 17 continuous months or longer, what percent became legally free for adoption (i.e., a TPR was granted for each living parent) within 6 months of the beginning of the fiscal year?	0.2–17.2%	9.0%	No standard
Component C: Progress toward adoption of children who are legally free for adoption			
Of all children who became legally free for adoption during FY 2004, what percent were discharged from foster care to a finalized adoption in less than 12 months?	18.9–85.2%	43.7%	No standard

Although there is a single composite national standard, results for most of the measures (including the CFSSR measure) must be near the 75th percentile if the State is to meet the national standard for the composite measure.

Reporting the Data

As with other *Toolkit* measures, *Measure 4M* lends itself to a variety of tabular and graphic presentations. State Court Improvement Projects will need presentations that show performance statewide and for each jurisdiction. Individual courts will want to see how their performance compares with that of other courts and with the State as a whole, and also whether their performance has improved or declined over time.

The samples that follow use hypothetical data for a fictitious State to demonstrate how results for this measure might be reported in tables and graphs.

Sample 4M–1 reports fictional statewide statistics comparing the time from the adoption petition to the finalization of adoption over four categories: 1–60 days, 61–180 days, 181–365 days, and more than 365 days.

These statistics help courts answer the question, “How quickly are adoptions finalized after an adoption petition is filed?” They also facilitate comparison among jurisdictions. For example, if one adds the first two time categories together (1–60 days and 61–180 days), 48 percent of adoptions statewide are finalized within 180 days (13 percent plus 35 percent), but in District D only 25 percent are finalized in 180 days. By comparison, District A shows the best performance within 180 days—59 percent of adoptions are finalized in that timeframe.

Sample 4M–2 is a bar graph that depicts all the data in the table just shown.

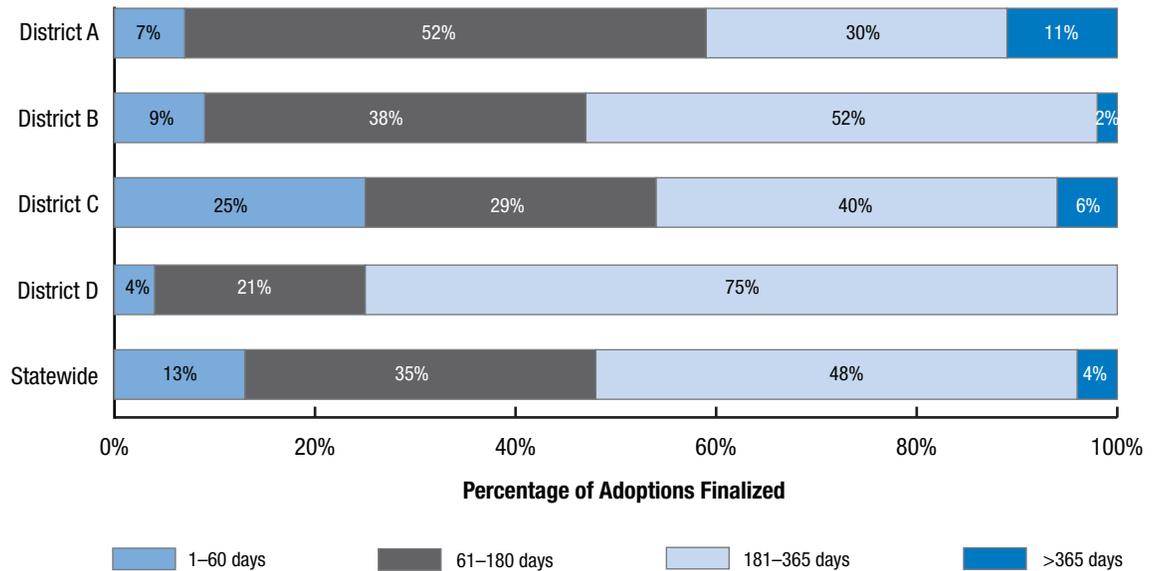
Sample 4M–3 compares the statewide performance in finalizing adoptions with the goal established by the courts for each year from 2001 to 2005. This is one way to simplify the data and to focus on the most important aspect of the performance measure—how it relates to an accepted standard. Although this fictional State had a goal of 55 percent of adoptions finalized within 180 days in 2001, only 35 percent of adoptions were achieved within 180 days during that year. This State improved performance each year from 35 percent of adoptions finalized within 180

Sample 4M-1. Timeliness of Adoption, by Judicial District, 2005

District	1-60 days		60-180 days		181-365 days		>365 days		Total Adoptions
	#	%	#	%	#	%	#	%	
District A	2	7%	14	52%	8	30%	3	11%	27
District B	6	9%	25	38%	34	52%	1	2%	66
District C	12	25%	14	29%	19	40%	3	6%	48
District D	1	4%	5	21%	18	75%	0	0%	24
Statewide	21	13%	58	35%	79	48%	7	4%	165

Note: Percentages may not add up to 100 because of rounding.

Sample 4M-2. Timeliness of Adoption, by Judicial District, 2005

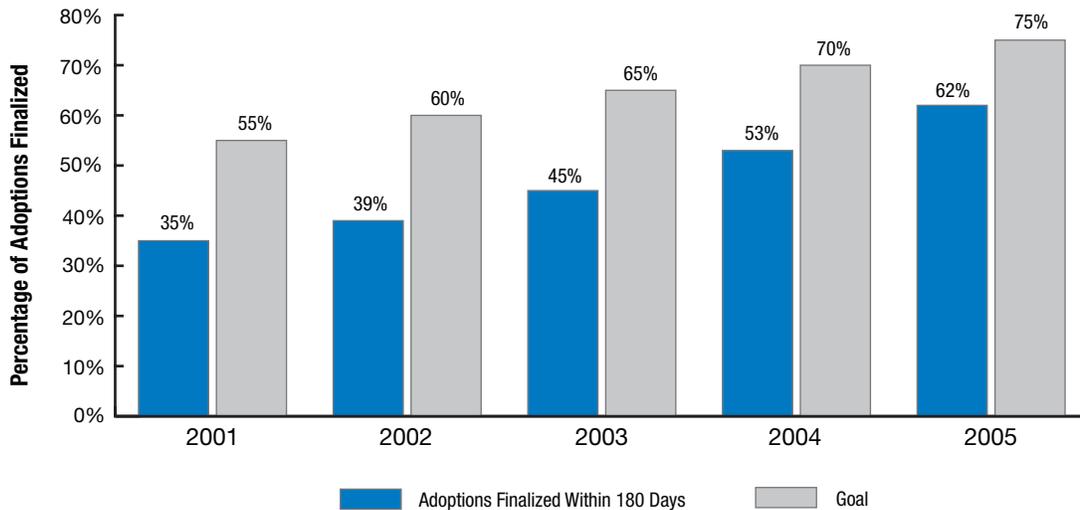


Note: Percentages may not add up to 100 because of rounding.

Sample 4M-3. Adoptions Finalized Within 180 Days, 2001-2005: Statewide

Year	Total Number of Adoptions	Adoptions Finalized Within 180 Days		
		Number of Adoptions	Percent of Adoptions	Goal
2001	230	81	35%	55%
2002	257	100	39%	60%
2003	290	131	45%	65%
2004	325	172	53%	70%
2005	408	253	62%	75%

Sample 4M–4. Comparison of Percentage of Adoptions Finalized Within 180 Days With Goals, 2001–2005: Statewide



days in 2001 to 62 percent in 2005. The gap between the performance and the goal was also narrowed from 20 percent in 2001 (55 percent minus 35 percent = 20 percent) to 13 percent in 2005 (75 percent minus 62 percent = 13 percent), even as the number of adoptions nearly doubled. A State could set a goal using any of the time categories.

Sample 4M–4 is a bar graph that compares the State's performance to its goals for finalization of adoption for each year from 2001 to 2005. The graph depicts the State's steady progress toward achieving its goals even as the goal itself increased.

Factors That May Affect Results

Court Control of Scheduling

Through effective caseload management courts can set firm schedules and expectations for the timeliness of all stages of the court process. Caseload management includes judicial control of scheduling, short timeframes for steps in the court process, and strict limits on the granting of continuances.

On the other hand, if the agencies and the attorneys set the pace of the litigation, the time of the hearing is likely to be based on the pace of the slowest among them. Busy

attorneys or caseworkers may seek frequent delays based on workload or for a perceived tactical advantage.

Quality and Frequency of Court Review Hearings While the Adoption Is Pending

By conducting periodic review hearings while the adoption is pending, courts can ensure that the adoption process is moving forward in a timely manner. If the judges conducting reviews are familiar with the agency's adoption process, they will be in a good position to identify and help correct needless delays.

Adoption Waiting Periods

It makes sense to require the child to be placed in an adoptive home for a set time period before finalizing an adoption. State law should include within this time period the time the child is in foster care with the prospective adoptive parent.

Possible Reforms

- ◆ Conduct frequent review hearings, if necessary, after an adoption petition has been filed.

- ◆ Enact State laws allowing time in foster care with the prospective adoptive parent to be subtracted from adoption waiting periods.
- ◆ Assign to court employees the responsibility for monitoring delays in the adoption process and bringing them to the judges' attention.

- ◆ Train judges and attorneys in adoption issues and both court and agency adoption procedures.

The specific measures a court takes to achieve more timely adoptions should be based on local conditions and the court's own analysis of the best steps to accomplish that goal.

List of Performance Measures



Number	Safety Measures	Short Definition
1A	Child Safety While Under Court Jurisdiction	Percentage of children who are abused or neglected while under court jurisdiction.
1B	Child Safety After Release From Court Jurisdiction	Percentage of children who are abused or neglected within 12 months after the case is closed following a permanent placement.
Permanency Measures		
2A	Achievement of Child Permanency	Percentage of children in foster care who reach legal permanency by reunification, adoption, or legal guardianship.
2B	Children Not Reaching Permanency	Percentage of children in foster care who do not reach legal permanency by reunification, adoption, or legal guardianship.
2C	Children Moved While Under Court Jurisdiction	Percentage of children who reside in one, two, three, four, or more placements while under court jurisdiction.
2D	Reentry Into Foster Care After Return Home	Percentage of children who return to foster care pursuant to court order within 12 and 24 months of case closure following reunification.
2E	Reentry Into Foster Care After Adoption or Guardianship	Percentage of children who return to foster care pursuant to court order within 12 and 24 months of case closure following adoption or placement with a legal guardian.
Due Process and Fairness Measures		
3A	Number of Judges Per Case	Percentage of child abuse and neglect cases in which the same judicial officer presides over all hearings.
3B	Service of Process to Parties	Percentage of child abuse and neglect cases in which all parents receive written service of process of the original petition.
3C	Early Appointment of Advocates for Children	Percentage of child abuse and neglect cases in which an attorney, guardian <i>ad litem</i> (GAL), or court-appointed special advocate (CASA) volunteer is appointed in advance of the emergency removal hearing.
3D	Early Appointment of Counsel for Parents	Percentage of child abuse and neglect cases in which attorneys for parents are appointed in advance of the emergency removal hearing.
3E	Advance Notice of Hearings to Parties	Percentage of child abuse and neglect cases with documentation that written notice was given to parties in advance of every hearing.
3F	Advance Written Notice of Hearings to Foster Parents, Preadoptive Parents, and Relative Caregivers	Percentage of child abuse and neglect cases with documentation that written notice was given to foster parents, preadoptive parents, and relative caregivers in advance of every hearing for which they were entitled to notice.
3G	Presence of Advocates During Hearings	Percentage of child abuse and neglect cases in which legal counsel for the government or other petitioner and for other parties who have been served is present at every hearing.

Number	Safety Measures	Short Definition
3H	Presence of Parties During Hearings	Percentage of child abuse and neglect cases in which parties who have been served are present at every substantive hearing.
3I	Continuity of Advocates for Children	Percentage of child abuse and neglect cases in which the same legal advocate represents the child throughout the case.
3J	Continuity of Counsel for Parents	Percentage of child abuse and neglect cases in which the same legal counsel represents the parent throughout the case.
Timeliness Measures		
4A	Time to Permanent Placement	Average (median) time from filing of the original petition to legal permanency.
4B	Time to Adjudication	Average (median) time from filing of the original petition to adjudication.
4C	Timeliness of Adjudication	Percentage of cases that are adjudicated within 30, 60, or 90 days after the filing of the original petition.
4D	Time to Disposition Hearing	Average (median) time from filing of the original petition to the disposition hearing.
4E	Timeliness of Disposition Hearing	Percentage of cases in which the disposition hearing occurs within 10, 30, or 60 days after adjudication.
4F	Timeliness of Case Review Hearings	Percentage of cases in which the court holds hearings to review case plans within the time limits set by law.
4G	Time to First Permanency Hearing	Average (median) time from filing of the original petition to first permanency hearing.
4H	Time to Termination of Parental Rights Petition	Average (median) time from filing of the original petition to filing the petition for termination of parental rights (TPR).
4I	Time to Termination of Parental Rights	Average (median) time from filing of the original child abuse and neglect petition to the termination of parental rights (TPR).
4J	Timeliness of Termination of Parental Rights Proceedings	Percentage of cases for which there is a final order within 90, 120, and 180 days of the filing of the termination of parental rights (TPR) petition.
4K	Time From Disposition Hearing to Termination of Parental Rights Petition	Percentage of cases in which the termination of parental rights (TPR) petition is filed within 3, 6, 12, and 18 months after the disposition hearing.
4L	Timeliness of Adoption Petition	Percentage of cases in which the adoption petition is filed within 3, 6, and 12 months after the termination of parental rights (TPR).
4M	Timeliness of Adoption Proceedings	Percentage of adoption cases finalized within 3, 6, and 12 months after the filing of the adoption petition.

Stages of the Juvenile Court Process in Child Abuse and Neglect Cases



This appendix provides a background to enable persons not already expert in child abuse and neglect proceedings to understand the court process in these cases. It begins with a simple chart of a typical sequence of hearings in a child abuse or neglect case, using the terminology most common in the States (figure B-1). Following the chart is a narrative description of the key stages of the juvenile court process in a child abuse or neglect case.

Following the description of each stage is a discussion of key practice issues regarding that stage. Readers wishing only the most basic information about each stage may simply read the first several “overview” paragraphs describing each stage.

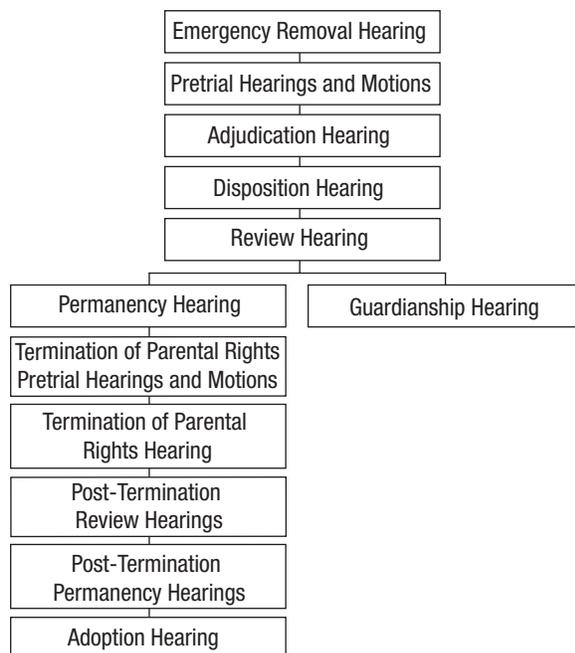
Near the end of this appendix is a table (table B-1, p. 275) that shows the different possible rights and legal status of parents (or putative parents, in cases where a child’s paternity is in dispute) at different stages of the proceedings. Following the table is an explanation of the legal statuses it describes.

Taken as a whole, this appendix is intended to serve as a primer to persons who are unfamiliar with the legal process in child abuse and neglect cases and who will be involved in conducting performance measurements for this type of litigation.

Before proceeding to the specific stages of the legal process, it is helpful to consider two basic principles that should guide the court and the parties at every stage. First, the juvenile court process is best understood as a series of decisions concerning the future of the child. Each hearing should logically flow from the previous hearing and set the stage for the future hearings. That is, each hearing and decision must be handled in light of both its immediate and its long-term consequences. Second, the judge and the parties need to be aware of how they affect the speed of the court proceedings. Unwarranted delays in court proceedings interfere with case planning and ultimately delay legal permanency for children.

The following chart shows the typical stages of the court process in the usual sequence.

Figure B-1. Typical Sequence of Hearings for Foster Child Unable To Return Home



Emergency Removal Hearings

Overview

In certain emergency situations involving suspected child abuse or neglect, the law permits police officers and (in some States) caseworkers to remove children from their parents without first obtaining permission from a judge or judicial officer. However, in emergency situations where the child is not in such imminent danger that it is unsafe to contact a judge or judicial officer before removal, many States require police or caseworkers to apply for a court order before removal.

After a child has been removed from home in an emergency, the “emergency removal hearing” occurs. This hearing—which, depending on the State, may also be called a “shelter care hearing,” “detention hearing,” “preliminary hearing,” or “preliminary protective hearing”—is required whenever a child is removed from the home without first giving the child’s parents or custodian the opportunity to challenge the decision in court.

An emergency removal hearing must be held shortly after the child’s removal from the home, typically within 1 to 3 days. Such hearings tend to be very brief and informal. In some courts, emergency removal hearings are conducted without attorneys.

The central issue at the emergency removal hearing is whether the child should be held in foster care, returned home, or temporarily placed with a relative or familiar caretaker until the trial of the case. In deciding whether the child can safely remain at home, the court may take into account the availability of outside services and supervision that might be provided to the family in the home. Other issues that may come up in the hearing include the expulsion of an alleged abuser from the home rather than removing the child, ordering evaluations of children and parents, and ordering temporary services.

Emergency removal hearings have gradually taken on additional functions related to achieving timely permanency for foster children. It is increasingly common during the emergency removal hearing for courts to do the following: (a) determine whether there are safe alternatives to removing the child from the home (for example, providing services in the home or removing the abuser from the home); (b) ensure that all parties learn about the court proceedings and are formally served as early as possible; (c) order early physical or psychological evaluations of parties; (d) decide whether children can be placed with relatives

rather than strangers; and (e) make sure that parents, many of whom have little education, understand the nature of the proceedings.¹

Judges and attorneys must embrace these additional functions of the hearing. Judges must be willing and able to set aside enough time so that these added functions can be performed responsibly.

Key Practice Issues at Emergency Removal Hearings

The court and the child welfare agency should notify parents and involve them in the legal proceedings as rapidly as possible after removal. This involvement speeds the legal proceedings and in some cases can speed family reunification, which limits the traumatic effects of parent-child separation. To involve the parents, caseworkers must make immediate efforts to locate them, notify them that the child is in custody, and advise them of the time and place of the next court proceeding.

Rapid appointment of advocates for the parents and the child also helps speed the abuse or neglect case. Parents should be given the opportunity to meet with their attorneys before the emergency removal hearing. On the other hand, it is permissible and reasonable for child welfare workers to interview parents before they have attorneys so long as the parents are not in police custody.

It is essential for the child protective services agency staff to document the circumstances surrounding the emergency removal, to prepare not only for the abuse or neglect trial but also for later court proceedings. A vivid and accurate account of the circumstances compelling the child’s removal can set the tone for the entire court process. Accordingly, child protective services agency staff should consistently prepare precise, factual descriptions of what they saw and heard to convince the court to remove the child; take written or recorded statements from important witnesses at the time of the removal; record not only the names and addresses of witnesses but also the means of contacting the witnesses should they change addresses; and take photographs and preserve physical objects that are important evidence in the case.

Adjudication

Overview

The next major event, the adjudication hearing, is also referred to as the “fact-finding hearing,” “jurisdictional

hearing,” or “trial.” The adjudication hearing is the trial in which it is decided whether the child has, in fact, been abused or neglected. The adjudication is based on facts or circumstances alleged in the petition, the legal document that outlines the State’s case against the parents. Testimony and documents submitted at the adjudication must conform to relatively strict rules of evidence. If the court finds that the facts alleged in the petition are accurate, the court can assume jurisdiction over the case. That is, the juvenile court has the power to make certain critical decisions concerning the child’s future, including who will have the responsibility for the child’s placement and care.

It is not unusual for the adjudication to be preceded by one or more pretrial hearing(s) to schedule and prepare for the adjudication. Pretrial hearings can be helpful in ensuring that service of process has been completed, discovery is complete, witnesses are available, and the court has scheduled sufficient time for the adjudication hearing.

At adjudication, it once was enough to decide whether the child had been abused or neglected and therefore fell within the court’s jurisdiction. Knowledgeable practitioners now realize, however, that a carefully handled adjudication lays the groundwork for later judicial decisions.

Key Practice Issues at Adjudication

It is important that the judge and the parties focus carefully on the judicial findings at adjudication. They must keep in mind that the specific characteristics of the abuse or neglect, as determined by the judge, will shape later interventions by the child welfare agency and later decisions by the judge. For example, if the finding is physical abuse of a child by a parent unable to control her temper, the agency case plan will be quite different than if the finding were physical abuse by a parent under the influence of narcotics. In the past, before the law required written family reunification plans, the exact findings at adjudication were less critical.

In addition, the court findings at adjudication typically must now address the deficiencies of both parents. For example, assume that a mother has physically abused a child and the father has failed to visit or support the child. The father remains unwilling to care for the child. In this case, it is important to enter findings concerning maltreatment by both mother and father. Based on those findings, the case plan should describe what reunification services, if any, both parents will receive. On the other hand, the father may have maintained a close relationship with the child, and it may be appropriate to award him custody without the need

for further services, in which event the child protection case can be dismissed.

It is important to give all parents (or putative parents) formal notice of the case at the beginning of the case. This includes not only parents who have lost legal custody after a divorce proceeding but also unmarried, absent fathers or putative fathers. Involving noncustodial parents and unmarried fathers not only protects all parents’ rights but also helps avoid long-term case delays. If a noncustodial parent is first brought into a case long after the child has been placed in foster care—and after the agency has finally given up working with the custodial parent—work with the newly involved parent must begin from scratch. When all parents are involved from the beginning, however, agencies can reach a final decision concerning the child more rapidly. Furthermore, noncustodial parents or their close relatives sometimes may be able to help the child while he or she is in foster care (for example, through providing child support or visiting the child) or they even may become caregivers.

Cases may be delayed when a noncustodial parent or unwed father cannot be located, when a parent lives out of State, or when paternity has not been legally determined. On the other hand, in any of these situations, it may make sense to proceed with adjudication before providing notice or determining paternity. If the court proceeds with the adjudication then, as soon as possible after adjudication, the agency should give proper legal notification (or notice) about the case to the missing or out-of-State parent, or take immediate steps to resolve the question of paternity. Whether or not the court should go ahead with the adjudication before notifying both parents or before resolving paternity may depend on State law or may be a judgment call for the court.

Legal notice should be given to a noncustodial parent or unwed father as soon as possible both because the noncustodial parent should have the opportunity to come to court and seek custody of the child and because delays in notice can delay permanency for the child. Likewise, when there is a putative unmarried father (a man who is potentially the father), it is critical to establish quickly whether he has legal rights as a parent. In many cases, this will require early paternity testing to determine if he is the child’s biological father. If a putative father does turn out to have parental rights, he should be able to participate in the court proceedings.

Disposition Hearing

Overview

Many courts now hold a separate “disposition hearing” following the adjudication. Disposition is the stage of the juvenile court process in which, after adjudication, the court determines whether the child may be placed in foster care, determines custody (who will be awarded the authority to care for and supervise the child), and, in many cases, sets the conditions under which the child is placed. State law in all but a few States distinguishes disposition from adjudication, although not all States use the terms “disposition hearing” or “dispositional hearing.”

Although in the past, courts typically decided simply whether to transfer custody to the State and authorize foster care, courts are now expected to review the long-term goal and short-term plan for the child. In many States, the court is expected to approve or modify a written case plan submitted by the child protection agency.

Agency case plans set forth, among other things, the goals of State intervention, tasks to be performed by parents and the child protection agency to achieve those goals, and timetables for their accomplishment. Case plans often identify the providers of various services for the child and family and address basic logistical issues to ensure that those services are provided. In addition, case plans often set forth arrangements for parent-child visits and, where applicable, visits among siblings. Before permanency planning, there was no separate disposition hearing. Rather, at the conclusion of the adjudication hearing, the court would simply decide, without further discussion, whether or not to transfer custody of the child to the agency for placement into foster care.

The exact timing of the disposition hearing depends on both State law and the practice of the particular court. Disposition may take place immediately following adjudication or at a separate hearing some time after adjudication. Although disposition typically occurs within several weeks of removal, in some courts it occurs many months after removal.

In most States, most rules of evidence that must be followed at adjudication do not apply at the disposition hearing. For example, the court may receive and consider secondhand, or hearsay, evidence during the disposition hearing. But even in States where hearsay evidence is allowed during the disposition hearing, opposing attorneys generally have the right to subpoena and cross-examine

the authors of any agency disposition reports submitted to the court. In addition, because the court decides different issues at disposition than at adjudication, the parties have the right to present additional evidence about disposition after the adjudication has been completed.

Most States require the child protection agency to submit a written predisposition report to the court for the purpose of explaining and justifying its recommendations and proposed plan. In some States, the predisposition report needs to be made available to the parties at least several days in advance of the disposition hearing to give them the opportunity to analyze and critique the agency’s recommendations.

Key Practice Issues at Disposition

Parties and their attorneys should plan and conduct disposition proceedings with great care. The court not only makes important decisions at the disposition hearing, including whether or not to place the child into foster care, but also may create an important record. For example, besides deciding whether the child will remain in foster care for an extended period of time, the court may specify what the agency and the parents are expected to accomplish over the next several months.

Court rules and agency policy should require and enforce the early submission of predisposition reports so that the reports can contribute meaningfully to an intelligent disposition. Because these reports can be very influential in court, it is important that they not only inform the judge about the case but also help the judge decide what to include in the court order following the disposition hearing. To inform and help the judge, the report should both explain the family problems that contributed to the abuse or neglect, and suggest exactly what the agency and parents should do to resolve these problems and to meet the child’s immediate needs.

A disposition report should include recommendations for disposition and explain the reasons for the recommendations. If removal is recommended, the report should outline how the child is likely to be harmed if left in the home, what services were provided to keep the child at home, and what should be done after removal to minimize the adverse affects of the family’s separation. This report should also include recommendations on visitation and contact between parents and child.

If a case plan is completed prior to disposition, it might be attached to, or incorporated into, the predisposition report.

The court's disposition order may then approve or modify the plan the caseworker proposes in the predisposition report. Because this is a possibility, the plan should be clear, specific, and in the best interests of the child.

When a specific, court-ordered case plan has been in effect, it often is easier for a judge to resolve a case decisively. If a parent has fully complied with a court-ordered case plan and met all conditions for the child's return, the judge is more likely to return the child home without further delay. On the other hand, if a parent has failed to comply with the plan and has failed to make progress, the judge is more likely to approve a permanent plan for the child that does not involve returning home, such as adoption. Overall, a judge is more likely to rely on a case plan that was approved by the court as opposed to a plan unilaterally prepared by a caseworker. This is especially true when all parties had the opportunity to present evidence before the court approved the plan.

Another possible reason to propose a detailed disposition order is to persuade the court to resolve disagreements concerning, for example, services, visitation, or medical or mental health evaluations. When the court resolves those disagreements, this encourages parents and their attorneys to cooperate with the agency, and makes it harder for the parents' attorneys to argue in later hearings that the agency was unreasonable or that the parents had good reasons for refusing to cooperate with the agency.

However, a detailed disposition order raises the risk that the parties will feel locked into the plan even after circumstances change or new information comes to light. Except in emergency situations, parties may feel compelled to follow a case plan that has become obsolete, unless they can quickly schedule a court hearing to request changes in the plan.

Review Hearings

Overview

After disposition, most State courts conduct periodic review hearings to ensure that a child does not remain in foster care too long.² Review hearings examine case progress and the current well-being of the child. They also review progress under the current case plan, correct the plan as appropriate, and revise timetables to achieve case goals. During review hearings, the judge decides whether and how to modify court orders concerning the child's placement and care and examines the child welfare

agency's efforts to secure long-term safety and permanency for the child.

Review hearings generally must take place at maximum predetermined intervals, such as once every 6 months, but judges may set earlier times for review hearings based on the circumstances of the case. For example, a judge may schedule the next review hearing for a date soon after the result from an anticipated psychiatric evaluation is expected. Such scheduling enables the court and the parties to readjust the case plan after the psychiatric information becomes available. In addition, judges may set especially frequent review hearings in cases that require more intense judicial monitoring.

Not every State's laws require courts to conduct review hearings following disposition. Among the States that require periodic judicial review hearings, State laws vary regarding how often reviews must take place, what issues the court is to examine during the review, and what procedures must be followed during the hearing. Federal law requires a review at least once every 6 months that may be conducted by a court, a child welfare agency or other administrative body, or a citizen review board.³

Some States use a combination of periodic judicial and nonjudicial reviews. In some States, periodic reviews are conducted by the child welfare agency or by volunteer citizen review boards, and court proceedings may build on these earlier reviews.

Most States require the agency to submit a written prereview hearing report to the court to explain and justify its recommendations and propose revisions to the case plan. An agency's prereview hearing report serves the same basic purposes as a predisposition report. In some States, the prereview hearing report must be made available to the parties at least several days in advance of the disposition hearing to give them the opportunity to analyze and critique the agency's recommendations.

Key Practice Issues at Review Hearings

As with the predisposition report, it is important to send the prereview hearing report to the parties well in advance of the hearing. This allows more informed testimony at the review hearing.

Generally, a prereview hearing report should describe the efforts the agency and parents have made to achieve safety and permanency for the child, explain what progress has occurred in the case, describe the child's current

circumstances and condition, and recommend changes in case goals and activities.

Review proceedings provide an opportunity to develop a record of how the case has progressed since the last court hearing. Because both the parents and the child welfare agency may still be working toward a common goal of family reunification, a full and frank disclosure of how the case is progressing may be much more possible than in a later, more adversarial proceeding, such as in a hearing for termination of parental rights. Parties may wish to place in the record what services have been (or have not been) offered to the family since the last court hearing; what efforts and progress, or lack thereof, the parents have made to respond to such services; what strengths the family has demonstrated; and what problems remain within the family.

Not all courts are willing to specify goals, tasks, and services for the parties as part of the court order. In some States, State law may limit what the judge can order.

Permanency Hearings

Overview

Federal law also requires a different type of postdisposition hearing to move the case forward to permanency. This hearing is most commonly known as a permanency hearing.⁴ The permanency hearing is designed to be a decision point for the final direction of the case. The permanency hearing was created because some judges were indecisive at routine progress review hearings and some child welfare agencies continued to pursue family reunification for years.

Permanency hearings differ from review hearings in that the purpose of a review hearing is to oversee and refine the case plan, whereas the purpose of a permanency hearing is to set a permanent goal or devise a permanency plan for the child. Although either a court or a court-appointed or -approved administrative body may hold a permanency hearing, in practice permanency hearings are nearly always conducted by courts.

The amendments to Title IV–E of the Social Security Act set forth in the Adoption and Safe Families Act of 1997⁵ were designed to tighten the timing and procedures of permanency hearings. For example, if a child has not been returned home by the time of the permanency hearing (up to 14 months after placement) and returning the child home continues to be unsafe, the permanency hearing

must decide on a new permanent placement goal for the child.

If the judge decides that the new case goal is adoption, the judge is also to direct the agency to file a petition to terminate parental rights. Thus, a permanency hearing must determine the child's permanent status. This new Federal requirement and others place major new demands on courts hearing child protection cases and make the need for court reform even more pressing.

The parties, including age-appropriate children, must be able to participate in the permanency hearing. As in review hearings, foster parents must receive notice and have the opportunity to be heard.

When deciding on a permanency plan, the court is to place highest priority on return home, adoption, legal guardianship, or other permanent placements with relatives. Before approving the placement of a child in some other planned permanent living arrangement, the agency must document and the court must find that there is a "compelling reason" why the higher priority options are not in the child's best interest.

Courts must conduct permanency hearings within 12 months after a child is considered to have entered foster care and then at least once every 12 months thereafter as long as the child remains in foster care. When a court determines that the agency is not required to try to help a child safely return home, it must conduct a permanency hearing within 30 days.

There are similarities and differences in the issues that arise in review and permanency hearings. In both, the child welfare agency presents its efforts to achieve a safe and permanent placement for the child. In the permanency hearing, however, the agency must also convince the court to find that the agency has made "reasonable efforts" to achieve this goal. If the case goal is family reunification, in both types of hearings the agency will present evidence on the parents' efforts to enable the child to return home safely and on what progress, if any, parents have made in achieving the goal of reunification.

On the other hand, whereas the review hearing focuses on possible adjustments and refinements in the current case plan, the permanency hearing determines the most appropriate permanent goal, or permanency plan, for the child. Accordingly, the parties' preparation for the two types of hearings may vary. For the review hearing, the parties must prepare to explain and defend needed adjustments

in the case plan. For the permanency hearing, the parties must show why they propose return home, adoption, legal guardianship, permanent placement with a relative, or another planned permanent living arrangement. In addition, they must show why all other choices are not practical or not in the child's best interests, and propose a specific plan to achieve the proposed permanent goal and a timetable for achieving it.

Note, however, that permanency hearings often incorporate the functions of review hearings. For example, when a permanency hearing and a review hearing are due at or about the same time, the court may conduct a hearing that performs the functions of both. Moreover, as time passes and it becomes increasingly apparent whether or not a child will eventually return home, review hearings often become more like permanency hearings. The court need not wait until the permanency hearing to decide to return a child home, approve proceedings for legal guardianship, or permanently place a child with a relative. Similarly, parties need not wait until the permanency hearing to initiate court proceedings to terminate parental rights and legally free a child for adoption.

Key Practice Issues at Permanency Hearings

The child welfare agency's prepermanency hearing report should describe the agency's recommended permanency plan, explain why other alternatives are not recommended, and propose specific steps and timetables to finalize the plan. As with other court reports, it is important that the agency submit it well in advance of the hearing.

Termination of Parental Rights Hearings

Overview

If a child cannot be returned home following the permanency hearing, there may be termination of parental rights (TPR) proceedings to free the child for adoption. In some States, termination is referred to as "permanent commitment" or "permanent guardianship" with the right to consent to adoption. Whatever term is used, this legal action permanently ends the parents' rights to visit or communicate with the child and removes their right to make any decisions concerning the child. It also eliminates the need for parental consent as a precondition for the child's adoption.

In the TPR hearing or hearings, the court must decide whether clear and convincing evidence exists to show that the child cannot safely return home.⁶ If it is shown that the child cannot safely return home, the court must then decide whether termination will benefit the child, for example, whether adoption is a practical solution.⁷ After the court formally terminates parental rights, adoption hearings may take place.

Termination of parental rights is a decision with extremely important implications for the child and the family. It involves complete and final severance of a parent's legal rights and responsibilities to the child.

In most States, termination of parental rights requires a new set of legal proceedings, including a new written set of allegations against the parent (the petition), new formal notice to the parents (summons), and a separate hearing or set of hearings. In many States, termination is the most formal of legal proceedings in child protection cases, more formal even than the adjudication. It is the proceeding most likely to be appealed to a higher court. In some States, termination is heard in a different court than the one that heard the earlier stages of the child protection proceedings.

Key Practice Issues Regarding TPR Proceedings

Preparation for a contested TPR case usually requires the child welfare agency to assemble a detailed and focused case history. In a typical TPR proceeding, the agency must demonstrate the following: the original parental problems or maltreatment that caused the child to be placed in foster care, the efforts by the child welfare agency and others to resolve the problem and unify the family, the inadequacy of the parents' responses to agency efforts to help, and the necessity for termination of parental rights to meet the child's current needs. Moreover, the agency needs to present a plausible plan to secure a new permanent home for the child. The success of a TPR case typically depends on the quality of both the agency's casework and the services and assistance provided to parents.

The most basic issue in a TPR proceeding is whether a reasonable likelihood exists that the child will be safe if it is returned to its parents. Although the grounds for termination of parental rights set forth in State laws vary and must be carefully adhered to, the chief focus of TPR cases concerns whether the child cannot or should not be reunited with his or her parents.

Five basic indicators can show that a child should not return home. When the facts are strong enough, one indicator alone may be sufficient to demonstrate that a return is unlikely, but more often, a combination of indicators will apply.

First, the child may be unable to return because the parent has demonstrated an extreme lack of interest in or commitment to the child. Key examples are a parent's failure to visit or communicate with the child while the child is in foster care, or a pattern of needlessly leaving the child with others for prolonged periods of time and then failing to pick up the child as agreed. When such behavior has extended over time and the agency has been supportive in helping the parent maintain contact and a relationship with the child, parental disinterest can be a strong basis for termination. In many States, parental disinterest comes under the legal heading of abandonment, though abandonment grounds can be more or less stringent depending on the State.

Second, the child may be unable to return because the parent has failed to make necessary adjustments to prepare for the child's return despite help from the child welfare agency and other service providers. This is the most common ground for termination of parental rights. The agency must prove that a child cannot return home by demonstrating that it has tried everything reasonable and possible to reunify the family, but the parent is still not ready to care for the child. To present proof of this type, the agency must demonstrate that the court and the child welfare agency formulated a program for the parent to alleviate the problems that caused the continued parent-child separation. The agency also needs to prove that it diligently attempted to follow through with its program of assistance, and that the parent persists in conduct that prevents the return of the child. Making this case for the termination of parental rights is specifically centered on the history of the parent's problems with and behavior toward the child, and on the agency's involvement with the family.

Third, return may be inappropriate because of the unusual severity or repetition of abuse or neglect. Parental mistreatment of a child may be so chronic or severe that ever returning the child home presents an unacceptable risk.

Fourth, return may be impractical because a diagnosable condition makes the parent unable to assume care of the child. Parental "condition" refers to an incapacity so severe that the parent cannot care for the child, such as intractable mental illness, mental deficiency, or in rare cases,

extreme physical disability. Cases of this type should be provable without reference to parental fault. A diagnosis by an expert is usually critical proof in these cases. If a parent suffers from a condition that renders him or her totally unable to care for the child, it may or may not be necessary under State law to show that the agency has attempted to work with the parent.

Fifth, return may be inappropriate because, as a result of the parent's past behavior, the child is unalterably averse to returning home. Even though the parent may now be capable of providing appropriate care for the child, returning home may trigger a severe emotional reaction in a child because of abusive past experiences in the home. This basis for termination may or may not exist under State law.

Besides demonstrating that a child cannot return home and satisfying the statutory grounds for termination of parental rights, it generally is necessary to demonstrate that termination will result in an appropriate permanent placement for the child.

Alternatives to Termination of Parental Rights

In some cases where children cannot return home, adoption may be inappropriate or unfeasible. For example, a child may be old enough to block adoption legally and may not want to be adopted in spite of the agency's best counseling efforts. Or, perhaps, a State's adoption subsidy benefits (or the availability of other services) are not sufficient to meet the needs of a child with extreme special needs. The possibility and amount of adoption subsidies and the availability of other needed services should be thoroughly explored in such cases. If adoption is not possible, it may be necessary to consider alternatives, such as (permanent) legal guardianship, or "another planned permanent living arrangement," such as court-ordered or -approved permanent placement with a specific foster parent or parents.

These alternatives often have the following disadvantages compared to adoption: the risk of further court battles over custody, continued State supervision, and the fact that the new parent may not have sole responsibility for the child. In some cases, where no subsidies or other economic supplements are available, the financial impact on the new parents may be devastating.

It is important that the parties and the court not only understand the legal and practical implications of these alternative arrangements, but also learn to use them in

a way most likely to make them permanent and secure. For example, parties can help reduce the risk of disrupted guardianships by requesting ceremonies to recognize the permanency. If, as in many States, a different court must approve a legal guardianship, the attorney for the legal guardians may need to introduce into the court record proof of the prior abuse or neglect to make it more difficult for parents to later seek the return of the child.

Parties and judges also need to be aware of the impact of State law on the practicality of different types of permanent placement arrangements. States can relieve some of the financial burdens of legal guardianship by providing guardianship subsidies (legal payments to guardians of certain former foster children). State laws can also make it difficult for parents to regain custody after legal guardianship is established, thus making guardianship a relatively safe legal choice.

State laws that allow ongoing limited contacts or communication under prescribed conditions between biological parents and children after adoption can forestall battles over termination of parental rights and make adoption more acceptable to some parties.

Division of Parental Rights and Responsibilities for Children in the Child Welfare System

When the juvenile court and child welfare agency assume control of and responsibility for a foster child, the result may be erosion of parental responsibilities and, in many cases, a fragmentation of control of and responsibility for the child. The following section describes the transfer of rights and responsibilities regarding a child as the result of child protection court proceedings.

Table B–1 illustrates some of the types of legal status regarding children in the child welfare system and the parental rights and duties attached to each. Although it illustrates the variations in the legal status of biological parents, this table does not show the full extent of fragmentation of control over the child among the juvenile court, public and private welfare agencies, and foster parents.

In this table, N/A indicates that the right or duty is inapplicable. Shaded areas indicate that rights and duties exist. Blank spaces indicate that the parent does not have that right or duty.

Table B–1. Erosion of Parental Rights and Duties

Parental Rights and Duties	Legal Status					
	Full custody (birth parents)	Protective supervision	Foster care (agency temporary custody)	Legal guardianship	Termination of parental rights	Full custody (adoptive parent)
Care and companionship of the child						
Freedom from court or child welfare agency supervision						
Right to hearing prior to removal of child from parental home			N/A	N/A	N/A	
Duty of support and right to visit				Parents retain these rights unless parental rights have been terminated		
Major decision (such as surgery, marriage, or military service of child)			In many States, parents retain these rights			
Right to seek return of parental rights in court	N/A					N/A

Source: Hardin, M., "The Erosion of Parental Rights," in S. Downs and K. Taylor, *Permanent Planning for Children in Foster Care: Resources for Training*, Washington, DC: U.S. Department of Health and Human Services, DHHS Publication No. [OHDS] 81–30790, 1980.

The far left column lists some basic rights and responsibilities that parents in our society have in regard to their children. The first column under “Legal Status” illustrates the scenario where the parents retain full custody and the children are not subject to the jurisdiction of the juvenile court. In this case, the parents retain all parental rights listed.

The second column under “Legal Status” illustrates “protective supervision,” a situation in which the juvenile court has determined through a formal proceeding that it has jurisdiction over a child not receiving proper care, but nevertheless has decided that the child or children may remain at home.

Protective supervision means that the juvenile court has jurisdiction over the child, but the child remains with the parent by court order. The child cannot be removed from the home without a further court hearing, but the parent must cooperate with and submit to the supervision of the child welfare agency as specified in the court’s disposition order. In many States, the juvenile court may set forth specific conditions that the parents must meet while the child remains in their care. The child welfare agency ordinarily may clarify or add to such conditions, depending upon the wording of the court order.

The third column under “Legal Status” shows the legal status of a child in court-ordered foster care. When a child is in foster care, biological parents cannot live with the child but are permitted to visit and may be required to pay support. The parents retain the right to request that the court return the child to their care and to share in planning the visiting and support schedules.

This status differs from the situation in which parents voluntarily place their children in foster care without a court proceeding. Parents generally lose less legal authority over the child through a written foster care agreement than through court proceedings, although the fact that a child has been in foster care will have a bearing if a court proceeding subsequently takes place.

Generally, biological parents of children in court-ordered foster care retain whatever other rights have not been taken from them: For example, most biological parents of children in foster care have the right to be consulted concerning the child’s educational and medical care. Some States require biological parents of children in foster care to give permission for the child’s major medical care, driver’s license, enlistment in the armed services, and marriage.

Legal control over and responsibility for a child is most fragmented when a child is in foster care. First, the juvenile court itself assumes control over and responsibility for the child far greater than that of other courts that make decisions that affect children. Other court proceedings that affect children, such as suits for damages on behalf of injured children, suits for government benefits (Social Security or welfare), and divorce cases in which the custody of the child is at issue, are usually far less intrusive on the family. Even in a divorce case, the court does no more than assign custody and visitation in a decision resolving a conflict between two private contesting parties.

In a juvenile court proceeding, as described earlier, the court assumes a supervisory function and may set conditions on the parents, review case progress, or even consider the appropriateness of the case plan. Furthermore, juvenile court proceedings are considered ongoing, whereas the custody decision in a divorce decision is generally regarded as final unless it is appealed or a new case is initiated.

When the court authorizes foster care, it usually awards temporary custody of the child to the public child welfare agency. The agency will, subject to any conditions set by the court, decide where to place the child, supervise the foster home, develop the child’s case plan, and arrange or oversee services for the child. These responsibilities not only may be divided among different employees and subdivisions of the agency but also may be divided between the public child welfare agency and a private child placement agency in those jurisdictions in which the public agency arranges for a private agency to place the child in foster care and work with the foster family.

In the case of foster family care, day-to-day care of the child is delegated to foster parents. Foster parents are bound by many legal constraints regarding the care they provide. They must meet licensing standards, comply with the rules of the agency, adhere to the terms of the contract they enter into with the agency, and accept supervision by the responsible public or private agency caseworker. This situation is in striking contrast to the ordinary legal position of the family in our society, which operates with far more autonomy.

Because the foster parent spends time with the child and the social worker often depends on the foster parent for information about the child’s daily functioning, the foster parent often has a substantial influence on important decisions affecting the child. Still, foster parents may need

agency permission to make many routine decisions, such as securing services for the child or dealing with schools. Some public agencies have created special categories of foster care parents who are delegated additional authority over and responsibility for the child. Particularly notable are the categories of permanent foster parents, who may have additional medical and educational responsibilities, and specialized foster parents, who have special training and expertise to deal with the particular handicaps or problems of the individual child.

The fourth column under “Legal Status” refers to the situation in which a child is placed in “legal guardianship.” This term from Federal law refers to a legal arrangement in which a court grants an individual or couple legal authority over a child, the legal authority is intended to be permanent, and the individual or couple is not subject to agency oversight or control in the upbringing of the child. Legal guardians may be relatives, family friends, or, sometimes, foster parents who change to this more permanent status.

When a legal guardian has been assigned, the rights of the parent are similar to those of a noncustodial parent after a divorce. The legal guardian is responsible for the daily care of the child and makes all significant decisions regarding the child. Neither the juvenile court nor the child welfare agency has responsibility for or control over the child or legal guardian. The biological parent can seek return of the child, as a noncustodial parent can sue to regain custody after a divorce.

In many respects, State laws vary regarding legal guardianship. The procedures for establishing legal guardianship and the terminology used vary from State to State. Depending on the State, legal guardianship may be called “legal custody” or even “managing conservatorship” by a private individual. Finally, the degree of legal difficulty for parents seeking to regain the child after a legal guardianship varies from State to State. If parental rights are terminated before a legal guardianship is established, parents rarely can regain custody of the child through court proceedings.

The fifth column under “Legal Status” presents the biological parents’ legal status after the termination of parental rights is finalized. At this point, the biological parent has permanently lost all rights and responsibilities for the child, including the right to ask the court to change its decision. Since the child is usually still in foster care at this point, responsibility for the child remains fragmented between the court, agency and foster parents, but excludes the

biological parents. Generally, termination of parental rights is ordered in contemplation of a subsequent adoption by new parents.

The last column under “Legal Status” refers to the authority of the adoptive parents. Adoptive parents obtain essentially the same rights to care and control of the child that the biological parents had originally (compare the far left and far right columns under “Legal Status.”). An exception is that, in States that allow birth parents to retain limited rights to contacts or communication with the child in certain cases, adoptive parents must respect those continuing rights.

Endnotes

1. National Council of Juvenile and Family Court Judges, *RESOURCE GUIDELINES: Improving Court Practice in Child Abuse and Neglect Cases* (Reno, NV: NCJFCJ, 1995), Chapter III (D)–(E).
2. Although semiannual case progress reviews may be conducted by a court, the State child protection agency, or a foster care review board, postdisposition “permanency hearings,” which are required within 12 months of the date the child is considered to have entered foster care and annually thereafter, can only be held by courts or court-approved entities. 42 U.S.C. § 675(5)(C).
3. 42 U.S.C. § 675(5), (6).
4. Adoption and Safe Families Act of 1997, Public Law 105–89, § 302, amending 42 U.S.C. § 675(5).
5. *Ibid.*
6. See M. Hardin, R. Lancour, American Bar Association Center on Children and the Law, and Edna McConnell Clark Foundation, *Early Termination of Parental Rights: Developing Appropriate Statutory Grounds* (Chicago, IL: American Bar Association, 1996), p. 9.
7. *Ibid.*

Calculation Guide



#	Performance Measure	Required Data	Business Rules for Calculating Measure
1 Safety			
1A	Child Safety While Under Court Jurisdiction	<ul style="list-style-type: none"> Abuse or neglect petition date Abuse or neglect incident date Case closure date 	<ol style="list-style-type: none"> The universe of cases included in this measure is children that were under the court's jurisdiction (had an open case) during a time period such as a calendar year. (A) From dataset (A), select only cases for which abuse or neglect occurred during that time period (i.e., cases with an abuse or neglect incident date during that time period). Count the number of cases meeting this criterion. (B) Compute the percentage of children with new abuse or neglect in that time period by dividing (B) by (A). <p>Computation note: In the computation, (B) is the numerator population and (A) is the denominator population.</p>
1B	Child Safety After Release From Court Jurisdiction	<ul style="list-style-type: none"> Case closure date Abuse or neglect petition date (i.e., the new petition following case closure) 	<ol style="list-style-type: none"> The universe of cases included in this measure is children for whom cases were closed as a result of permanent placement (adoption, reunification or legal guardianship) during a time period such as a calendar year. (A) From dataset (A), select only cases for which a new petition alleging abuse or neglect of the same child was filed during the 12 months following case closure. Count the number of cases meeting this criterion. (B) Compute the percentage of children with new abuse or neglect following case closure by dividing (B) by (A). A note about the business rules: The report for this measure cannot be run until at least 12 months after the end date of the time period selected for the universe of cases (i.e., dataset A). For example, if the reporting time period was for cases closed in calendar year 2004 (January–December), the report could not be run before January 2006.
2 Permanency			
2A	Achievement of Child Permanency	<ul style="list-style-type: none"> Foster care flag = “yes” Case closure date Case closure reason (e.g., adoption, legal guardianship, reunification) 	<ol style="list-style-type: none"> Select a date range for the report (e.g., for a report spanning a 12-month period, select beginning and ending dates 12 months apart). From the cases that were closed within the date range selected (A), exclude cases that were closed because the child died, was transferred to another geographic jurisdiction (e.g., to another judicial district or State), or was never in foster care while the case was open. (B) Count the number of cases in (B) for which the case closure reason is one of the permanent placements recognized by the State (C). The remaining cases in (B) are those for which the case closure reason is a nonpermanent placement. (D) Compute the overall rate of permanency by dividing (C) by (B). Compute the overall rate of nonpermanency by dividing (D) by (B). Divide (C) into categories, each representing one type of permanent placement at case closure: family reunification (category 1), adoption (category 2), legal guardianship (category 3). If the State recognizes other permanent placement categories such as Another Planned Permanent Living Arrangement (APPLA), create a fourth category, and so forth. Divide (D) into categories, each representing a nonpermanent placement type (category 5, category 6, etc.) Compute the overall rate of permanency by dividing (D) by (C).

#	Performance Measure	Required Data	Business Rules for Calculating Measure
2	Permanency		
2B	Children Not Reaching Permanency	<ul style="list-style-type: none"> Foster care flag = “yes” Case closure date Case closure reason 	<ol style="list-style-type: none"> Select a date range for the report (e.g., for a report spanning a 12-month period, select beginning and ending dates 12 months apart). From the cases that were closed within the date range selected (A), exclude cases that were closed because the child died, was transferred to another geographic jurisdiction (e.g., to another judicial district or State), or was never in foster care while the case was open. (B) Count the number of cases in (B) for which the case closure reason is one of the permanent placements recognized by the State. (C) The remaining cases in (B) are those for which the case closure reason is a nonpermanent placement. (D) Compute the overall rate of permanency by dividing (C) by (B). Compute the overall rate of nonpermanency by dividing (D) by (B). Divide (C) into categories, each representing one type of permanent placement at case closure: family reunification (category 1), adoption (category 2), legal guardianship (category 3). If the State recognizes other permanent placement categories such as APPLA, create a fourth category, and so forth. Divide (D) into categories, each representing a nonpermanent placement type (category 5, category 6, etc.) Compute the percentage of cases in each category by dividing the number of cases in that category by (B).
2C	Children Moved While Under Court Jurisdiction	<ul style="list-style-type: none"> Case closure date Placement beginning date 	<ol style="list-style-type: none"> Select a date range for the report. The universe included in this measure is children whose cases were closed during that date range. (A) From dataset (A), select cases with one placement before case closure (B), two placements before case closure (C), three placements before case closure (D), four placements before case closure (E), five placements before case closure (F), and more than five placements before case closure (G). Compute the percentage of cases in each category (B through G) by dividing the number of cases in each category by (A).
2D	Reentry Into Foster Care After Return Home	<ul style="list-style-type: none"> Foster care flag = “yes” Case closure date Case closure reason = reunification Child returned to foster care date 	<ol style="list-style-type: none"> Select a date range for the report (the beginning and ending date for case closure). The ending date must be at least 24 months ago. From the cases that were closed within the date range selected, the universe included in this measure is children who were in foster care at some time while their cases were open and whose cases were closed as a result of court-ordered permanent reunification. (A) From dataset (A), select cases in which the child was returned to foster care within 12 months after closure (B), and between 13 and 24 months after closure (C). Compute the percentages of children returned to foster care within these two time periods by dividing (B) and (C) by (A).

#	Performance Measure	Required Data	Business Rules for Calculating Measure
2 Permanency			
2E	Reentry Into Foster Care After Adoption or Guardianship	<ul style="list-style-type: none"> Foster care flag = “yes” Case closure date (original case) Case closure reason = adoption or legal guardianship Child returned to foster care date 	<ol style="list-style-type: none"> Select a date range for the report (the beginning and ending date for case closure). The ending date must be at least 24 months ago. From the cases that were closed within the date range selected, the universe included in this measure is children who were in foster care at some time while their cases were open and whose cases were closed as a result of adoption or legal guardianship. (A) From dataset (A), select cases in which the child was returned to foster care within 12 months after case closure (B), and between 13 and 24 months after case closure (C). Compute the percentage of children returned to foster care within each of these two time periods by dividing (B) and (C) by (A).
3 Due Process and Fairness			
3A	Number of Judges Per Case	<ul style="list-style-type: none"> Hearing date Case closure date Judicial officer presiding at hearing 	<ol style="list-style-type: none"> Select a date range for the report The universe included in this measure is all cases that were closed within the date range selected (A). For each case in (A), build a record for each hearing held in the case documenting the presiding judicial officer. For each case in (A), compare the officer presiding at the first hearing against the officer presiding at each subsequent hearing, and divide (A) into two categories: (B) cases in which the hearing officer did not change in subsequent hearings and (C) cases in which the hearing officer did change in at least one subsequent hearing. Compute the percentage of cases in each of these categories by dividing the number of cases in each category by (A).
3B	Service of Process to Parties	<ul style="list-style-type: none"> Adjudication date Party ID Party type Party entitled to service date Service of process date Case closure date 	<ol style="list-style-type: none"> Select a date range for this report. The universe included in this measure is all cases closed within the date range selected for which adjudication has been conducted on the original or amended petition and on any supplemental petition adding parties. (A) For each case in dataset (A), determine who is entitled to service of process (to include, but not necessarily be limited to, the mother and a father). Then, for each case, determine which parties received service of the original or amended petition, and sort the cases into two categories: (B) cases in which all parties entitled to service received service and (C) cases in which some parties who were entitled to receive service were not served. Compute the percentage of cases in each of these categories by dividing the number of cases in that category by (A). A note about the business rules: The universe of cases in this measure may be defined in various ways, but must always meet the requirement explained in rule 2. If a supplemental petition filed after adjudication adds parties, this measure should encompass service of process on those new parties. In such circumstances, the reopened or supplemental adjudication must have been completed for the case to be included in the universe for this measure.

#	Performance Measure	Required Data	Business Rules for Calculating Measure
3	Due Process and Fairness		
3C	Early Appointment of Advocates for Children	<ul style="list-style-type: none"> Emergency removal hearing date-time Appointment of advocate date-time Party ID Advocate ID Advocate-party link 	<ol style="list-style-type: none"> Select a date range for the report. The universe included in this measure is all cases for which an emergency removal hearing was held within the date range selected. (A) For each case in (A), determine when a child advocate was assigned. Then, sort the cases into two categories: (B) advocate appointed prior to hearing date and (C) advocate not appointed prior to hearing date. Compute the percentage of cases in each of these categories by dividing the number of cases in each category by (A).
3D	Early Appointment of Counsel for Parents	<ul style="list-style-type: none"> Emergency removal hearing date-time Appointment of advocate date-time Party ID Party type Advocate ID 	<ol style="list-style-type: none"> Select a date range for the report. The universe included in this measure is all cases for which the emergency removal hearing was held within the date range selected. (A) For each case in (A), determine when parents' attorneys were assigned. Then sort the cases into six categories: (B) attorney for mother appointed prior to hearing date, (C) attorney for mother not appointed prior to hearing date, (D) attorney for father appointed prior to hearing date, (E) attorney for father not appointed prior to hearing date, (F) attorneys for both mother and father appointed prior to hearing date, (G) attorneys for both mother and father not appointed prior to hearing date. Compute the percentage of cases in each of these categories by dividing the number of cases in each category by (A). A note about the business rules: If more than one possible father has been identified in a case, include the case in category (D) or (F) if an attorney was appointed for at least one identified father prior to the hearing.

#	Performance Measure	Required Data	Business Rules for Calculating Measure
3	Due Process and Fairness		
3E	Advance Notice of Hearings to Parties	<ul style="list-style-type: none"> • Party ID • Party entitled to notice date • Hearing date • Notice date • Notice method of delivery • Legal notice deadline • Case closure date 	<ol style="list-style-type: none"> 1. Select a date range for the report. 2. The universe included in this measure is all cases closed within the date range selected. (A) 3. For each case in (A), build a record in a dataset for each party entitled to notice for each hearing, documenting the following information for each hearing: <ul style="list-style-type: none"> • Hearing date • Party ID • Party type • Party entitled to notice date • Legal notice deadline • Notice method of delivery • Notice date 4. Evaluate the data in (A) and sort the cases into two categories: (B) all parties entitled to notice received mailed written notice in accordance with legal deadlines for every hearing or (C) some parties entitled to notice did not receive mailed written notice of the hearing in accordance with legal deadlines for some hearings. 5. Compute the percentage of cases in each of these categories by dividing the number of cases in each category by (A). <p>A note about the business rules: “Notice” refers to a mailed written notice. The types of parties entitled to notice include, but are not necessarily limited to, mothers and fathers; other types of parties may include, for example, legal guardians, foster parents, children above a certain age, and court-appointed special advocate (CASA) volunteers. For each hearing, it is necessary to determine whether each party was entitled to notice for that particular hearing (a father may not have been identified before some hearings or a CASA volunteer may have been appointed after the hearing). As noted earlier, the universe of cases in the measure may be based on hearings rather than cases.</p>

#	Performance Measure	Required Data	Business Rules for Calculating Measure
3	Due Process and Fairness		
3F	Advance Written Notice of Hearings to Foster Parents, Preadoptive Parents, and Relative Caregivers	<ul style="list-style-type: none"> • Party ID • Party type (foster parents, preadoptive parents, and relative caregivers) • Party entitled to notice date • Hearing start date • Notice date • Legal notice deadline • Case closure date 	<ol style="list-style-type: none"> 1. Select a date range for the report. 2. The universe included in this measure is all cases closed within the date range selected. <i>(A)</i> 3. For each case in <i>(A)</i>, build a record in a dataset for foster parents, preadoptive parents, and relative caregivers entitled to notice for each nonprocedural hearing, documenting the following information for each hearing: <ul style="list-style-type: none"> • Hearing date • Party ID • Party type • Party entitled to notice date • Legal notice deadline • Notice method of delivery • Notice date 4. Evaluate the data in <i>(A)</i> and sort the cases into two categories: <i>(B)</i> foster parents, preadoptive parents, and relative caregivers entitled to notice received mailed written notice in accordance with legal deadlines for every hearing or <i>(C)</i> some foster parents, preadoptive parents, and relative caregivers entitled to notice did not receive mailed written notice in accordance with legal deadlines for some hearings. 5. Compute the percentage of cases in each of these categories by dividing the number of cases in each category by <i>(A)</i>. <p>A note about the business rules: “Notice” refers to a mailed written notice.</p>

#	Performance Measure	Required Data	Business Rules for Calculating Measure
3	Due Process and Fairness		
3G	Presence of Advocates During Hearings	<ul style="list-style-type: none"> • Case closure date • Party ID • Party type • Service of process date • Advocate ID • Appointment of advocate date-time • Advocate-party link • Advocate present at hearing • Hearing date 	<ol style="list-style-type: none"> 1. Select a date range for the report. 2. The universe included in this measure is all cases closed within the date range selected. (A) 3. For each case in (A), build a record for each hearing, documenting whether legal counsel was present for each party served prior to that hearing. Then sort the cases in (A) into two categories: (B) all parties were represented by counsel at every hearing or (C) some parties were not represented by counsel at some hearings. 4. Compute the percentage of cases in each of these categories by dividing the number of cases in each category by (A). <p>A note about the business rules: Exclude from the record of each hearing any party (other than the government and the petitioner) who had not received service of process at the time of the hearing. But for emergency removal hearings occurring prior to adjudication, count attorneys for all parties served prior to adjudication, whether or not such parties were served prior to the emergency removal hearing.</p>
3H	Presence of Parties During Hearings	<ul style="list-style-type: none"> • Party ID • Party type • Service of process date • Hearing date • Party present at hearing 	<ol style="list-style-type: none"> 1. Select a date range for the report. 2. The universe included in this measure is all cases closed within the date range selected. (A) 3. For each case in (A), build a record for each substantive hearing, documenting whether each party was present. Then sort the cases in A into two categories: (B) all hearings were attended by all parties or (C) some hearings were not attended by all parties. 4. Compute the percentage of cases in each of these categories by dividing the number of cases in each category by (A). <p>A note about the business rules: In general, exclude from the record of each hearing any party, other than the government and the petitioner, who had not received service of process at the time of the hearing. But for emergency removal hearings occurring prior to adjudication, count all parties served prior to adjudication, whether or not served prior to the emergency removal hearing.</p>
3I	Continuity of Advocates for Children	<ul style="list-style-type: none"> • Case closure date • Party ID • Party type • Hearing date • Advocate ID • Advocate-party link • Advocate present at hearing 	<ol style="list-style-type: none"> 1. Select a date range for the report. 2. The universe included in this measure is all cases closed within the date range selected. (A) 3. For each case in (A), build a record for each hearing held in the case, documenting the presence of a legal advocate representing the child. Then sort the cases in (A) into three categories: (B) no advocates appeared for the child throughout the case, (C) one advocate appeared throughout the case, or (D) more than one advocate appeared. 4. Compute the percentage of cases in each of these categories by dividing the number of cases in each category by (A).

#	Performance Measure	Required Data	Business Rules for Calculating Measure
3	Due Process and Fairness		
3J	Continuity of Counsel for Parents	<ul style="list-style-type: none"> Case closure date Party ID Party type Hearing date Advocate ID Advocate-party link Advocate present at hearing 	<ol style="list-style-type: none"> Select a date range for the report. The universe included in this measure is all cases closed within the date range selected. (A) For each case in (A), build a record for each hearing, documenting the attorneys representing the mother and father. Then sort the cases in (A) into six categories: (B) no attorney appeared for the mother throughout the case; (C) one attorney for mother throughout the case, (D) more than one attorney for mother throughout the case, (E) no attorney appeared for the father throughout the case, (F) one attorney for father throughout the case, (G) more than one attorney for father throughout the case. Compute the percentage of cases in each of these categories by dividing the number of cases in each category by (A). <p>A note about the business rules: Where <i>more than one father</i> is named in the case, select only one to include in the calculations, using the following order of preference: (1) the man determined by the court to be the biological or adoptive father (whichever applies), (2) the man identified by the court as legal guardian, (3) the first man named as father who was appointed counsel, or (4) if no named father was appointed counsel, the named father whose name comes first alphabetically.</p>
4	Timeliness		
4A	Time to Permanent Placement	<ul style="list-style-type: none"> Case closure date Abuse or neglect petition date Case closure reason (includes reunification, adoption, or legal guardianship) 	<ol style="list-style-type: none"> Select a date range for the report. From the cases that were closed within the date range selected, the universe included in this measure is children who were in foster care at some time while their case was open. (A) From dataset (A), select the cases in which the reason for closure meets the State's definition of a permanent placement (e.g., family reunification, adoption, or legal guardianship). (B) For each case in (B), compute the number of days from filing of the petition to closure, and store this number in the case record. Determine the median time to permanency in (B) by finding the number of days that falls midway between the shortest and longest cases (see calculation note below). Determine the average time to permanency in (B) by counting the number of cases (C), totaling the days for all cases (D), and dividing (D) by (C). <p>Calculation note: With an odd number of numbers, the median is simply the middle number; e.g., the median of 2, 4, and 7 is 4. With an even number of numbers, the median is the mean of the two middle numbers; e.g., the median of 2, 4, 7, and 12 is 5.5 (4 plus 7 divided by 2).</p>

#	Performance Measure	Required Data	Business Rules for Calculating Measure
4	Timeliness		
4B	Time to Adjudication	<ul style="list-style-type: none"> Abuse or neglect petition date Adjudication date 	<ol style="list-style-type: none"> Select a date range for the report. The universe included in this measure is all cases with an adjudication date within the date range selected. (A) For each case in (A), compute the number of days from filing of the petition to adjudication, and store this number in the case record. Determine the <i>median</i> time to adjudication in (A) by finding the number of days that falls midway between the lowest and highest number of days (see calculation note below). Determine the <i>average</i> time to adjudication in (A) by counting the number of cases (B), totaling the days from filing to adjudication for all cases (C), and dividing (C) by (B). <p>A note about the business rules: Under the basic rules, the universe for this measure includes both open and closed cases. The measure could also be limited to closed cases only or open cases only.</p> <p>Calculation note: With an odd number of numbers, the median is simply the middle number; e.g., the median of 2, 4, and 7 is 4. With an even number of numbers, the median is the mean of the two middle numbers; e.g., the median of 2, 4, 7, and 12 is 5.5 (4 plus 7 divided by 2).</p>
4C	Timeliness of Adjudication	<ul style="list-style-type: none"> Abuse or neglect petition date Adjudication date 	<ol style="list-style-type: none"> Select a date range for the report. The universe included in this measure is all cases with an adjudication date within the date range selected. (A) For each case in (A), compute the number of days from filing of the petition to adjudication, and store this number in the case record. Then divide the cases in (A) into four categories based on the number of days from filing to adjudication, as follows: within 30 days (B), between 31 and 60 days (C), between 61 and 90 days (D), and more than 90 days (E). Compute the percentage of cases in each of these categories by dividing the number of cases in category by (A).

#	Performance Measure	Required Data	Business Rules for Calculating Measure
4	Timeliness		
4D	Time to Disposition Hearing	<ul style="list-style-type: none"> Abuse or neglect petition date Disposition hearing date 	<ol style="list-style-type: none"> Select a date range for the report. The universe included in this measure is all cases with a disposition hearing date within the date range selected. (A) For each case in (A), compute the number of days from filing of the petition to completion of the disposition hearing, and store this number in the case record. Determine the <i>median</i> time to disposition in (A) by finding the number of days that falls midway between the lowest and highest number of days (see calculation note below). Determine the <i>average</i> time to disposition in (A) by counting the number of cases (B), totaling the days from filing to disposition for all cases (C), and dividing (C) by (B). <p>Calculation note: With an odd number of numbers, the median is simply the middle number; e.g., the median of 2, 4, and 7 is 4. With an even number of numbers, the median is the mean of the two middle numbers; e.g., the median of 2, 4, 7, and 12 is 5.5 (4 plus 7 divided by 2).</p>
4E	Timeliness of Disposition Hearing	<ul style="list-style-type: none"> Adjudication date Disposition hearing date 	<ol style="list-style-type: none"> Select a date range for the report. The universe included in this measure is all cases with a disposition hearing date within the date range selected. (A) For each case in (A), compute the number of days from adjudication to completion of the disposition hearing, and store this number in the case record. Then divide the cases in (A) into four categories based on the number of days from adjudication to disposition, as follows: within 10 days (B), between 11 and 30 days (C), between 31 and 60 days (D), and more than 60 days (E). Compute the percentage of cases in each of these categories by dividing the number of cases in category by (A).

#	Performance Measure	Required Data	Business Rules for Calculating Measure
4	Timeliness		
4F	Timeliness of Case Review Hearings	<ul style="list-style-type: none"> • Abuse or neglect petition date (if needed for “start date”) • Removal date (if needed for “start date”) • Emergency removal hearing date-time (if needed for “start date”) • Adjudication date (if needed for “start date”) • Case closure date • Case review hearing date 	<ol style="list-style-type: none"> 1. Run this report using a sample of closed cases. 2. Select the starting point for purposes of measuring the due date of the first case review hearing either: (1) the date the petition is filed, (2) the date of the emergency removal hearing, (3) the date of the child’s removal from home, or (4) the date the child is first considered to have entered foster care. 3. If (1), (2), or (3) is selected, skip to step 4 below. If (4) is selected, follow the directions below to determine how to calculate the actual start date for each case: <ol style="list-style-type: none"> a. Determine at which hearing—emergency removal hearing or adjudication—the judicial finding of abuse and neglect occurs in the State. This is based on state law and should therefore be consistent throughout the State. b. If the judicial finding occurs at removal, use the removal date as the start date. If the finding occurs at adjudication, use the earlier of the actual adjudication hearing date or 60 days after the date of removal as the start date. Continue with step 4 below. 4. Select a date range for the report (date case closed). (A) 5. Select cases falling within the date range for the preliminary sample. (B) 6. Based on State or Federal law and the start date selected above, determine the maximum legally permissible number of days from the start date to the first review hearing. (C) 7. For each case in (B), determine the length of the case (from the start date selected above to case closure date). Eliminate from (B) any cases that are not as old as (C) (cases that are not old enough at closure to have had a review hearing). 8. For the cases remaining in (B) after step 7, create a record in the dataset with the following information: <ol style="list-style-type: none"> a. The start date for the case (as determined above) b. The date the first case review hearing was due (based on State or Federal law as determined in step 6 above). c. The date the first case review hearing was held. If no review hearing was held, store “00/00/0000.” d. The date each subsequent review hearing was due, i.e., second hearing due date, third hearing due date, and so forth. e. The date each subsequent review hearing was actually held, i.e., second hearing, third hearing, and so forth. If no hearing was held store the date as “00/00/0000.” f. For cases with two removal dates for one child, treat the events occurring from the second removal date forward as though this segment of the case were a separate case. Then evaluate the hearing dates in the same manner as described above in steps 8a–e and below in step 9. <p>Note: The reason for this exception is that when a child is returned home and custody is given to the parents, but the case remains open and the child is removed from the home a second time, a first review hearing is again due within the time specified by Federal or State law following the second removal date (6 months in many States) as though it were a new case.</p> <p><i>(continued on following page)</i></p>

#	Performance Measure	Required Data	Business Rules for Calculating Measure
4	Timeliness		
4F	Timeliness of Case Review Hearings (continued)		<p>9. Evaluate the data for each case as follows:</p> <ul style="list-style-type: none"> a. If the date of the first case review hearing was held in a timely fashion, store a "Y" in another field for the first hearing. If the first review hearing was not held in a timely fashion, or not held at all ("00/00/0000" was stored as the first review hearing date), store an "N" for the first hearing; b. Continue to evaluate the timeliness of each subsequent review hearing. Store a "Y" or an "N" to indicate timely or untimely hearing dates. <p>10. Count the number of cases in which all first review hearings were held in a timely fashion. <i>(D)</i></p> <p>11. Calculate the percentage of cases with timely first review hearings by dividing <i>(D)</i> by <i>(B)</i>.</p> <p>12. Count the number of cases where all review hearings were held in a timely fashion. <i>(E)</i></p> <p>13. Calculate the percentage of cases with all review hearings held in a timely fashion by dividing <i>(E)</i> by <i>(B)</i>.</p> <p>14. Count the total number of review hearings. <i>(F)</i></p> <p>15. Count the number of review hearings held in a timely fashion. <i>(G)</i></p> <p>16. Calculate the percentage of timely review hearings by dividing <i>(G)</i> by <i>(F)</i>.</p>

#	Performance Measure	Required Data	Business Rules for Calculating Measure
4	Timeliness		
4G	Time to First Permanency Hearing	<ul style="list-style-type: none"> • Abuse or neglect petition date (if needed for “start date”) • Foster care entry date (if needed for “start date”) • Emergency removal hearing date-time (if needed for “start date”) • Adjudication date (if needed for “start date”) • Court-ordered entry into foster care date • Case closure date • Permanency hearing date 	<p>Basic specifications to measure median time from a start date to the date of the first permanency hearing are based on a start date of one of the following: (1) date of filing of petition; (2) date of actual entry into foster care; (3) date of emergency removal hearing; (4) date of order for child’s entry into foster care; or (5) date the child is considered to have entered foster care, as defined by 42 U.S.C. § 675(5)(F).</p> <p>This set of specifications assumes that only closed cases belong in the sample. If the court decides to examine recent performance to report on open cases, it must select only open cases that are old enough to have been eligible for a permanency hearing. Then, it may simply calculate the percentage of cases from this group in which the permanency hearing was held within 12 months of the starting date, rather than calculate the average or median days as called for in this measure.</p> <p>Open cases must have been open long enough to have been eligible for at least the first permanency hearing to be due, whether or not the hearing was actually held on time or at all. In practice, this means that the cases should be at least 12 months old if the starting date is measured from removal or filing of the petition, or at least 14 months old if the starting date is measured from when the child is considered to have entered foster care. If open cases are shorter in length than these timeframes, the first permanency hearing will not be due.</p> <ol style="list-style-type: none"> 1. Select the starting point for measuring the due date of the first permanency hearing by using one of the following: (1) date of filing the petition; (2) date of actual entry into foster care; (3) date of emergency removal hearing; (4) date of order for child’s entry into foster care; or (5) date the child is “considered to have entered foster care.” 2. If (1), (2), (3), or (4) is selected, skip to step 3. If (5) is selected, follow the directions below to calculate the actual start date for each case: <ol style="list-style-type: none"> a. Determine at which hearing—emergency removal hearing or adjudication—the judicial finding of abuse and neglect occurs in the State. This is based on State law and therefore should be consistent throughout the State. b. If the judicial finding occurs at the emergency removal hearing, use the date of the emergency removal hearing as the start date. c. If the finding occurs at adjudication, use the earlier of two dates: either the date of completion of the adjudication hearing or 60 days after the date of actual foster care entry. d. Continue with step 3 below. 3. Select a date range for the report (date case closed) (A). 4. Select and count cases falling within the date range (case closure date) (B). 5. For each case in (B), calculate the number of days from the start date to the date of the first permanency hearing, and store each number in a dataset. If no first permanency hearing was held, remove that case from (B). You can also increment a counter to track the number of cases where no first permanency hearing was held. (This measure does not call for tracking the number of cases in which a permanency hearing was due but never held; however, that number may help supplement this measure.) 6. Find the median case in the database (the case in the exact middle with half of the cases below it and half of the cases above it). (C) 7. Add together the number of days for all cases in (B) The total will be (D). 8. Compute the average time by dividing (D) by (B). <p>Calculation note: With an odd number of numbers, the median is simply the middle number; e.g., the median of 2, 4, and 7 is 4. With an even number of numbers, the median is the mean of the two middle numbers; e.g., the median of 2, 4, 7, and 12 is 5.5 (4 plus 7 divided by 2).</p>

#	Performance Measure	Required Data	Business Rules for Calculating Measure
4	Timeliness		
4H	Time to Termination of Parental Rights Petition	<ul style="list-style-type: none"> Abuse or neglect petition date Last TPR petition date 	<ol style="list-style-type: none"> Run this report using a sample of cases for which TPR petitions have been filed. Select a date range for the report (date TPR petition is filed). <p>Note: The court may choose to develop reports of this measure—as for other time-based measures—using a date range based on the time children entered foster care. It may wish to report on the timeliness of TPR with reference to different times that the cases were opened. Using this kind of analysis, the sample should be limited to cases that are closed. There may be later TPR petitions to reopen some closed cases, and annual comparisons will leave out the longest cases. However, this approach has the advantage of comparing and evaluating the majority of TPR cases that presumably are closed within a reasonable time. When used in conjunction with samples of recently closed cases, this can show the percentage of TPR proceedings that are closed relatively early and thus contribute to an understanding of the overall pace of filing TPR petitions.</p> Select and count cases for which the TPR petition date falls within the date range selected. (A) For each case in (A), compute the number of days from filing of the original abuse or neglect petition to the filing of the TPR petition. Store each number in a dataset. Find the median case in the dataset (the case that has the same number of cases below and above it). (B). Add the number of days for all cases in (A) together. (C) Compute the average time by dividing (C) by (A). <p>Calculation note: With an odd number of numbers, the median is simply the middle number; e.g., the median of 2, 4, and 7 is 4. With an even number of numbers, the median is the mean of the two middle numbers; e.g., the median of 2, 4, 7, and 12 is 5.5 (4 plus 7 divided by 2).</p>
4I	Time to Termination of Parental Rights	<ul style="list-style-type: none"> Abuse or neglect petition date Last TPR finalized date 	<ol style="list-style-type: none"> Run this report using a sample of cases for which a TPR would be finalized if not appealed. The TPR in question may be for the first parent or the last parent, as determined by the jurisdiction. In lieu of TPR, a jurisdiction may use the consent to adoption date for either the first or last parent, if it applies. Select a date range for the report (date the TPR order would be final if not appealed). (State law specifies a number of days [e.g., 30, 60, or 90 days] after the TPR order is signed by the trial court judge within which the order will be final if an appeal is not filed.) Select and count cases where the date of TPR falls within the date range selected. (A) For each case in (A), compute the number of days from filing of the original abuse or neglect petition to the date the order for TPR was final (or would be final if it had not been appealed). Store each number in a dataset. (B) Find the median case in the dataset (B) (the number midway between the lowest and highest number of days). (C) Add the number of days for all cases in (A) together. (D). Compute the average time by dividing (D) by (A). <p>Calculation note: With an odd number of numbers, the median is simply the middle number; e.g., the median of 2, 4, and 7 is 4. With an even number of numbers, the median is the mean of the two middle numbers; e.g., the median of 2, 4, 7, and 12 is 5.5 (4 plus 7 divided by 2).</p>

#	Performance Measure	Required Data	Business Rules for Calculating Measure
4	Timeliness		
4J	Timeliness of Termination of Parental Rights Proceedings	<ul style="list-style-type: none"> Last TPR petition date Last TPR finalized date 	<ol style="list-style-type: none"> Run this report using a sample of cases for which a TPR proceeding has been finalized, regardless of the outcome (TPR is granted or denied). The TPR in question may be for either the first or the last parent, as determined by the jurisdiction. In lieu of TPR, a jurisdiction may also use the consent-to-adoption date for either the first or last parent, if it applies. Select a date range for the report (date the TPR order would be final if not appealed). State law specifies a number of days (e.g., 30, 60, or 90 days) after the TPR order is signed by the trial court judge, within which the order will be final if an appeal is not filed. Select and count cases where the TPR finalized date falls within the date range selected. (A) For each case in (A), compute the number of days from filing of the TPR petition to the date the order for TPR was final (or would be final if it had not been appealed). Store each number in a dataset. (B) Count the number of cases from (B) that fall into each range: 1–90 days (C), 91–120 days (D), 121–180 days (E) and 181 or more days (F). Calculate the percentage in each category by dividing the number of cases in the category by (A) (For example, $(C)/(A)$ = percentage of cases finalized in 1–90 days).
4K	Time From Disposition Hearing to Termination of Parental Rights Petition	<ul style="list-style-type: none"> Disposition hearing date Last TPR petition date 	<ol style="list-style-type: none"> Run this report using a sample of cases for which a termination petition has been filed. Select a date range for the report (date of the termination petition). Select and count cases in which the date of the petition falls within the date range selected. (A) For each case in (A), compute the number of days from the date of the disposition hearing to the filing of the TPR petition. Store the elapsed time in a dataset. (B) Find the median number of days from the disposition hearing to the filing date of the TPR petition in dataset (B). (C) The median is the time midway between the slowest and fastest cases. Add the number of days for all cases in (B) together. (D) Compute the average time from the disposition hearing to the TPR filing by dividing (D) by (A). <p>Calculation note: With an odd number of numbers, the median is simply the middle number; e.g., the median of 2, 4, and 7 is 4. With an even number of numbers, the median is the mean of the two middle numbers; e.g., the median of 2, 4, 7, and 12 is 5.5 (4 plus 7 divided by 2).</p>

#	Performance Measure	Required Data	Business Rules for Calculating Measure
4	Timeliness		
4L	Timeliness of Adoption Petition	<ul style="list-style-type: none"> Last TPR finalized date Adoption petition date 	<ol style="list-style-type: none"> Run this report using a sample of cases for which an adoption petition has been filed. Select a date range for the report. Select all cases where the date the adoption petition is filed falls within the selected date range. <i>(A)</i> For each case in <i>(A)</i>, compute the number of days from finalized termination of parental rights to the date the adoption petition is filed and store each number in a dataset. <i>(B)</i> Count the number of cases in <i>(B)</i> that fall into each of the following categories: <i>(C)</i> 1–90 days, <i>(D)</i> 91–180 days, <i>(E)</i> 181–365 days, and <i>(F)</i> more than 365 days. Calculate the percentage of total cases represented by each category by dividing the number of cases in each category <i>(C, D, E, F)</i> by <i>(A)</i>. (For example, $(C)/(A)$ = percentage of petitions filed within 1–90 days after termination of parental rights.)
4M	Timeliness of Adoption Proceedings	<ul style="list-style-type: none"> Adoption petition date Adoption finalized date 	<ol style="list-style-type: none"> Run this using a sample of cases for which an adoption has been finalized (date the adoption order would be final if not appealed). Select a date range for the report. Select all cases where the date the adoption would be final if not appealed falls within the date range selected. <i>(A)</i> For each case in <i>A</i>, compute the number of days from filing of the adoption petition to the date the adoption order would be final if not appealed. Store each number in a dataset. <i>(B)</i> Sort the cases from <i>(B)</i> into the following categories: 1–90 days <i>(C)</i>, 91–180 days <i>(D)</i>, 181–365 days <i>(E)</i>, and more than 365 days <i>(F)</i>. Calculate the percentage of total cases represented by each category by dividing the number of cases in each of the categories <i>(C, D, E, F)</i> by <i>(A)</i> (For example, $(C)/(A)$ = percentage of cases finalized in 1–90 days).

Combined Data Element Dictionary



Data Element Name	Content	Definition
Abuse or Neglect Incident Date	mm/dd/yyyy	The date an incident of abuse or neglect occurred while the child was under the jurisdiction of the court under the initial petition.
Abuse or Neglect Petition Date	mm/dd/yyyy	Date the petition was filed with the court alleging child maltreatment, such as abuse or neglect or whatever it is called under State law such as “child in need of care,” “child in need of services,” “dependent child,” etc. If there has been more than one such petition affecting an individual child, this refers to the first child maltreatment petition filed. If more than one such petition has been filed, compare the petition dates to determine which is a subsequent petition.
Abuser	name	The name of the person who abused the child while the child was under the jurisdiction of the court.
Abuser Relationship	alphanumeric code	The relationship of the abuser to the child who was abused while the child was under the jurisdiction of the court. May include father, mother, foster mother, foster father, other relatives, counselor, teacher, or others.
Abuser Visitation Status	Y/N	A yes/no flag indicating whether the abuser of a child under the jurisdiction of the court had been granted visitation with the child.
Address Unknown Status Date	mm/dd/yyyy	The date the party’s address became unknown and notices stopped being sent.
Adjudication Date	mm/dd/yyyy	Date the adjudication hearing was completed. Adjudication refers to the hearing in which the court determines whether or not the allegations of the petition were proved and, if so, the court should take jurisdiction (responsibility for and power concerning the case).
Adoption Finalized Date	mm/dd/yyyy	The date the adoption order would be final if not appealed.
Adoption Petition Date	mm/dd/yyyy	The date the adoption petition was filed.
Advocate ID	alphanumeric	The bar number or other ID number of the advocate representing a party.
Advocate Present at Hearing	alphanumeric	The ID of the advocate representing a party at a hearing (e.g., mother’s attorney, child’s guardian <i>ad litem</i> (GAL), father’s attorney).
Advocate Type	alphanumeric code	The type of advocate representing the party such as private attorney, court-appointed attorney, government attorney, court-appointed special advocate (CASA), GAL, other.
Advocate-Party Link	advocate ID-party ID	The link between the advocate and the party the advocate represents, e.g., mother, father, child, agency, guardian.
Allegations Sustained	Y/N	A flag indicating whether the allegations of reabuse or re neglect were sustained by the court. For jurisdictions that require supplemental petitions when children are reabused or re neglected.
Appointment of Advocate Date-Time	mm/dd/yyyy/hhhh:mm	The date and time the court appoints the party’s first attorney.

Data Element Name	Content	Definition
Case Closure Date	mm/dd/yyyy	Date case closed.
Case Closure Reason	alphanumeric code	If case closed because of permanent placement, permanent placement type; if case closed for other reasons, shorthand description of such reason or nonpermanent placement type. State law may provide for additional types of permanent placements such as court-ordered permanent foster placements and permanent legal custody. Other reasons for nonpermanent placements may include, for example, transfer to another jurisdiction, death of the child, child missing, transfer of nonpermanent custody (as in delinquency cases). Another Planned Permanent Living Arrangement (APPLA) definitions vary from State to State.
Case Review Hearing Date	mm/dd/yyyy	The date the case review hearing was completed. A case review hearing is a hearing, following the disposition hearing, in which the court determines the whether the current case plan is appropriate, whether it is being implemented by the parties, whether the child's needs are being met, whether sufficient progress is being made in the case, and other issues. Federal law requires case reviews to take place at least once every 6 months. States can decide whether or not case reviews will be conducted by courts and may also require them to occur more often than required by Federal law.
Child Returned to Foster Care Date	mm/dd/yyyy	The date a child is returned to foster care after closure of the original case following reunification, adoption, or guardianship.
Child's Date of Birth	mm/dd/yyyy	Date child was born. Used to calculate child's age.
Child's Race/Ethnicity	alphanumeric	The ethnic identity of the child may be defined differently depending on the State. In the 2000 U.S. Census, the following racial categories are used: American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, and White. Ethnic categories include Hispanic or non-Hispanic. A person could list more than one race and could be listed as Hispanic or non-Hispanic regardless of race. http://www.census.gov/population/www/socdemo/race/racefactcb.html
Court-Ordered Entry into Foster Care Date	mm/dd/yyyy	The date of the court order ordering a child to be placed in foster care.
Disposition Hearing Date	mm/dd/yyyy	Date the disposition hearing was completed.
Emergency Custody Order Date	mm/dd/yyyy	If the court uses the issuance of an emergency custody order as indication of (proxy for) reabuse or neglect in place of other methods.
Emergency Removal Hearing Date-Time	mm/dd/yyyy/hhhh:mm	The date and time when the emergency removal hearing started.
Father's Race/Ethnicity	alphanumeric code	The ethnic identity of the child's father may be defined differently depending on the State. In the 2000 U.S. Census, the following racial categories are used: American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, and White. Ethnic categories include Hispanic or non-Hispanic. A person could list more than one race and could be listed as Hispanic or non-Hispanic regardless of race. http://www.census.gov/population/www/socdemo/race/racefactcb.html
Financial Ineligibility of Parents for Appointed Counsel	Y/N	A flag indicating that the party is financially ineligible for appointment of counsel by the court according to guidelines established in the jurisdiction.

Data Element Name	Content	Definition
Foster Care Entry Date	mm/dd/yyyy	Date the child entered foster care.
Foster Care Flag	Y/N	A yes/no flag indicating whether the child was in foster care during the period of time in which the court case was open.
Hearing Date	mm/dd/yyyy	The date the hearing was completed.
Hearing Start Date	mm/dd/yyyy	The date the hearing was started.
Hearing Type	alphanumeric code	The type of hearing conducted, such as adjudication, disposition, review, permanency.
Judicial Officer Presiding at Hearing	alphanumeric	The name or ID number of the judicial officer who actually presided at the specific hearing.
Last Consent to Adoption Date	mm/dd/yyyy	The date the last parent or putative parent signed a consent to adoption of the child, clearing the way for the child to be adopted.
Last TPR Finalized Date	mm/dd/yyyy	The date the termination of parental rights (TPR) order for the last parent would be final if not appealed.
Last TPR Granted	Y/N	Whether the TPR petition for the last parent was granted.
Last TPR Petition Date	mm/dd/yyyy	The date of filing of the TPR petition for the last parent. TPR refers to the termination of parental rights, which eliminates all of the rights of the biological or adoptive parent to the child including the right to contest the child's adoption.
Last TPR Hearing Date	mm/dd/yyyy	The date of the completion of the TPR hearing or trial for the last parent.
Last TPR Motion Date	mm/dd/yyyy	The date of filing of the motion for termination of parental rights of the last parent.
Last TPR Order Signed Date	mm/dd/yyyy	The date the TPR order for the last parent is signed.
Last TPR Record on Appeal Submission Date	mm/dd/yyyy	The date the record on appeal of the TPR for the last parent is submitted to the appellate court.
Legal Notice Deadline	integer	Number of days prior to hearing date notice must be mailed or provided to parties by other means.
Mother's Race/Ethnicity	alphanumeric code	The ethnic identity of the child's mother may be defined differently depending on the State. In the 2000 U.S. Census, the following racial categories are used: American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, and White. Ethnic categories include Hispanic or non-Hispanic. A person could list more than one race and could be listed as Hispanic or non-Hispanic regardless of race. http://www.census.gov/population/www/socdemo/race/racefactcb.html
Notice Date	mm/dd/yyyy	The date the notice of hearing was mailed out or provided to the parties in the courtroom.
Notice Method of Delivery	alphanumeric code	Method by which the notice of hearing is delivered to the party, such as first-class mail, by phone, handed out in courtroom, or as part of the court order.
Party Entitled to Notice Date	mm/dd/yyyy	The date the party joined the case and became entitled to notice of hearing.
Party Entitled to Service Date	mm/dd/yyyy	The date the party joined the case and became entitled to service of process.

Data Element Name	Content	Definition
Party ID	alphanumeric	Unique number or other designation assigned to a party to the case.
Party Present at Hearing	Y/N	A flag indicating whether a party was present in the courtroom for a hearing.
Party Type	alphanumeric	The role of a party in the case, such as mother, father, legal guardian, foster parent, agency worker, child.
Permanency Hearing Date	mm/dd/yyyy	The date the permanency hearing was completed.
Placement Beginning Date	mm/dd/yyyy	The date a child moves to a placement location while under court jurisdiction.
Placement End Date	mm/dd/yyyy	The date a child moves out of a placement location while under court jurisdiction.
Placement Type	alphanumeric code	The child's living situation, whether in the home in which the child was living before State intervention, foster care (foster care might be subdivided into subcategories such as foster family care, foster group homes, and foster residential placements), and placement with relatives (which may be subdivided into relative foster care placements or relative non-foster-care placements)
Removal Date	mm/dd/yyyy	The date a child is removed from the home by the child welfare agency.
Removal Order Date	mm/dd/yyyy	The date of signing of the court order ordering removal of the child from the home.
Removed From Home Flag	Y/N	(Used if no removal date is known) Indicates a child was removed from home prior to the filing of the abuse or neglect petition.
Service of Process Date	mm/dd/yyyy	The date the party was served with the initial abuse or neglect petition, or any supplemental or amended petitions.
Supplemental Petition Date	mm/dd/yyyy	For jurisdictions that require supplemental petitions when children are reabused or neglected.
Trial Home Visit Begin Date	mm/dd/yyyy	The date a child begins a temporary home for the purpose of determining readiness to return home permanently.
Trial Home Visit End Date	mm/dd/yyyy	The date a child ends a temporary home for the purpose of determining readiness to return home permanently.
Type of Abuse or Neglect	alphanumeric code	The type of child maltreatment alleged in the initial or subsequent petitions, such as physical, neglect, sexual. Whether it is practical and useful to include the type of maltreatment and, if so, what the categories should be will depend on whether there are clear and distinct categories specified under State law or pursuant to rules or procedures governing the preparation of petitions.
Waiver of Counsel	Y/N	A flag indicating that a party has waived the right to counsel.



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Children and the Law**