

# Legislative Audit Division

State of Montana



Report to the Legislature

December 1998

## Performance Audit

### Foster Care Review Process

Department of Public Health and Human Services  
and Supreme Court

Since 1993, Montana has used two foster care review processes. We identified the strengths and weaknesses of each. We recommend creation of a new foster care review structure that incorporates the best elements of the existing processes.

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Members of the performance audit staff hold degrees in disciplines appropriate to the audit process. Areas of expertise include business and public administration, statistics, economics, computer science, and engineering.

Performance audits are performed at the request of the Legislative Audit Committee which is a bicameral and bipartisan standing committee of the Montana Legislature. The committee consists of six members of the Senate and six members of the House of Representatives.

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December 1998

To the Legislative Audit Committee  
of the Montana State Legislature:

We conducted a performance audit of the two foster care review processes: the Local Citizen Review Board Pilot Program under the administration of the Supreme Court and the Foster Care Review Committees under the administration of the Department of Public Health and Human Services. This report contains recommendations for creating a new foster care review process that incorporates the best elements of the existing processes.

We wish to express our appreciation to the Supreme Court staff and Department of Public Health and Human Services staff for their cooperation and assistance.

Respectfully submitted,

**Signature on file**

Scott A. Seecat  
Legislative Auditor



# **Legislative Audit Division**

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## **Performance Audit Report**

### **Foster Care Review Process**

**Department of Public Health and Human Services  
Supreme Court**

Members of the audit staff involved in this audit were Kent Wilcox and Mike Wingard.



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## **Elected, Appointed and Administrative Officials**

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Chuck Hunter, Administrator, Child and Family Services Division

Shirley Tiernan, Chief, Children's Services Bureau

Shirley Brown, Chief, Program Management Bureau

### **Supreme Court**

J. A. Turnage, Chief Justice

Patrick A. Chenovick, Administrator, Court Administration

Karen Sedlock, Supervisor, Local Citizen Review Board Pilot Program

Sherry Meador, Coordinator, Court Assessment Program

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### Introduction

The Legislative Audit Division approved a request from the Montana Supreme Court, Court Assessment Program Committee for a performance audit of the two processes for reviewing the cases of children placed in foster care. The Child and Family Services Division within the Department of Public Health and Human Services (DPHHS) administers the Foster Care Review Committees (FCRC) in 18 of 21 judicial districts. The Supreme Court administers the Citizen Review Board Pilot Program (CRB) in the other three judicial districts. These two processes provide general oversight of DPHHS foster care case activities.

Our audit examined respective program activities and outcomes related to foster care case reviews. During the audit, we identified the strengths and limitations of each process. This report makes recommendations to the legislature for creating a new foster care review process incorporating the best elements of each. This report also makes recommendations to the new foster care review entity and the Division regarding foster care reviews.

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### Foster Care Placements in Montana

Children who are allegedly or actually neglected or abused may be removed from their homes and placed in foster care by the DPHHS. The department is required to provide children in foster care with appropriate care and services, and develop and implement case plans designed to help children achieve permanency. Permanency is generally considered achieved when the child is returned home or adopted.

Federal and state laws require the case of a child in foster care be reviewed semi-annually to ensure the child is in an appropriate placement and necessary services are being provided. Montana statute also requires a district court hold a permanency hearing within 12 months of a child's placement in foster care.

## Report Summary

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### **Montana Has Two Foster Care Review Processes**

The 1981 Legislature enacted statutes creating Foster Care Review Committees in each judicial district. FCRC members are appointed by district court judges in consultation with the DPHHS, but are administered by the Division. In 1993, the Legislature enacted legislation creating the Local Citizen Review Board Pilot Program (CRB). CRB reviews replaced FCRC reviews in three judicial districts. Local CRB members are also appointed by district court judges, but the program is administered by the Supreme Court. According to proponents of the pilot program, a citizen review process under the administration of the Supreme Court could improve the outcomes of children in foster care by providing external accountability to the department, increasing participation by interested parties, and bringing new perspectives to the foster care review process.

Statute and administrative rules require FCRC and CRB reviews to determine whether department foster care activities are providing the appropriate care and services to children and families and to make recommendations regarding care and services provided to facilitate permanency for children.

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### **The Impact of Reviews on the Outcomes of Children in Foster Care is Unclear**

We were unable to identify substantial differences in the outcomes of children in foster care depending on whether an FCRC or a CRB reviewed foster care activities. Generally, both FCRC and CRB members agreed with division foster care placements and related activities. Also, recommendations resulting from the two review processes were similar. Furthermore, numerous other factors, such as the quality of treatment and professional services, Division activities, and judicial activities appear to more significantly affect the outcomes of children in foster care.

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### **FCRCs and CRBs Serve Different Entities**

FCRCs are considered by the department to be more effective at working with the department to resolve case problems encountered by social workers. However, FCRCs are seen as less independent of the department in terms of providing a critical evaluation of Division activities.

On the other hand, local CRBs are considered independent of the department and provide more critical oversight of Division activities.

Also, judges stated local CRB reviews are useful for monitoring ongoing foster care case activities. However, CRB reviews appear to be more “trial-like” and are less effective at working with the department to find solutions to problems than FCRC reviews.

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### **The Legislature Should Create a New Foster Care Review Process**

We believe the Legislature needs to identify one foster care review process that best meets the needs of the children and the state. During our audit, we identified strengths and limitations with both FCRCs and CRBs. We believe the Legislature should create a new foster care review process, incorporating the best elements of the existing FCRC and CRB processes. The following sections address our recommended changes.

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### **FCRC and CRB Reviews**

A Division representative participates in FCRC reviews and is involved in the FCRC’s development of findings and recommendations. This process helps ensure FCRC recommendations are understandable and can be implemented by the Division. However, some participants questioned the independence of FCRC reviews because of the Division’s level of involvement with reviews.

The CRB Pilot Program, on the other hand, excludes the department from participating in CRB deliberations when CRB findings and recommendations are developed. While this increases the appearance of independence, it can also result in problematic and/or unclear recommendations. To ensure the appearance of independence and promote the effectiveness of the review panel, we recommend the legislature establish requirements for a new review panel that incorporates membership requirements from both processes. Additionally, the administrative entity should establish procedures to allow for Division input into recommendation development while maintaining review panel independence.

## **Report Summary**

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### **The Scope of Foster Care Reviews Should be Clarified**

While the scope of CRB reviews is generally limited to oversight, existing statutes also state local CRBs will make findings and recommendations regarding other problems, solutions, or alternatives they believe should be explored. Some local CRB activities appeared to be more closely related to case management than general oversight. The Division, on the other hand, contends they have complete statutory authority to manage case activities and CRB reviews are limited to general oversight of Division activities. We believe the legislature needs to further clarify the review panel's oversight role in the review process.

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### **Participation by Interested Persons in Reviews**

The Division does not have practices in place to ensure all interested persons are identified for potential invitation to reviews. Consequently, persons with critical information may not be invited to participate in FCRC reviews. The CRB Pilot Program has established a formal process for identifying interested persons who may be invited to reviews. However, some CRB practices for involving interested persons in reviews can risk compromising confidentiality and limit full participation in reviews by interested persons and Division staff. The entity responsible for administering the review panel should establish policies and procedures regarding the identification and involvement in reviews by interested parties.

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### **The Review Panel Needs Formal Policies, Procedures, and Training**

We identified CRB practices, procedures, and actions that can potentially compromise confidentiality limit full participation by participants. We also noted the Division provides FCRC members with little or no training. The CRB program has developed a training curriculum, but provides local CRB members with limited training regarding the foster care system and department activities. The new administrative entity for the review panel should develop comprehensive policies and procedures to ensure consistency of agency operations. Additionally, the entity should develop and implement a training curriculum that addresses all aspects of the foster care review system for staff and review panel members.

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### **Interagency Communication and Coordination is Essential to the Review Process**

Communication and coordination weaknesses exist between the Division and CRB program. Existing communication and coordination methods can limit or slow the exchange of information necessary to achieve their mutual goals and objectives. The Division and the administrative entity responsible for the review panels need to develop and establish effective formal and informal lines of communication.

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### **Organizational Location of Review Panel Affects Appearance of Independence and Cost of Reviews**

The legislature needs to determine which agency should have responsibility for administering the new foster care review panel. However, the agency the legislature selects for administering the review panels will impact the appearance of independence. We present three potential legislative options for organizationally locating the administrative entity. The three options, in increasing order of appearance of independence and cost are:

1. Place the administrative entity within the Division.
2. Administratively attach the review panels to the DPHHS, but independent of the Division.
3. Place the administrative entity under the jurisdiction of the Supreme Court.

## **Report Summary**

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# Chapter I - Introduction

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## Introduction

The Legislative Audit Committee approved a request from the Montana Supreme Court, Court Assessment Program Committee for a performance audit of the two processes for reviewing foster care placements. The Department of Public Health and Human Services (DPHHS) administers Foster Care Review Committees (FCRC) in eighteen of the 21 judicial districts. The Supreme Court administers the Citizen Review Board Pilot Program (CRB) in the other three judicial districts. These two processes provide general oversight of department foster care case activities. This audit report presents information about the two processes. This report also makes recommendations to the legislature for creating a new foster care review process incorporating the best elements of each and makes recommendations to the new foster care review entity.

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## Audit Objectives

Our general audit objectives were to:

1. Identify the processes for reviewing foster care placements by the Citizen Review Board Pilot Program and the DPHHS.
2. Evaluate the impact of CRB and FCRC reviews on foster care placement outcomes.
3. Identify the strengths and limitations of each process.
4. Evaluate the usefulness of each process for judges and the DPHHS.
5. Based on the results of our review, determine if there is a need for both types of review processes.

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## Audit Scope and Methodology

The audit was conducted in accordance with government auditing standards for performance audits. The audit provides information about the FCRC and CRB processes for reviewing foster care placements.

As part of our examination, we judgmentally selected and reviewed a sample of foster care placement files closed between July 1, 1996 and June 30, 1997, which represented various geographic areas and the two types of review processes. We reviewed corresponding DPHHS and CRB documentation to evaluate the agencies' overall compliance with applicable statutes and rules. We also evaluated factors affecting the

## Chapter I - Introduction

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quality of FCRC and CRB reviews, including the time children were in foster care, feasibility and practicality of recommendations, and the characteristics of each review process. We interviewed numerous people involved in one or both processes, including:

- ▶ CRB management and staff.
- ▶ CRB and FCRC members.
- ▶ DPHHS management and staff.
- ▶ Judges.
- ▶ Foster parents.
- ▶ Attorneys.
- ▶ Service providers.

We reviewed information from other states using a citizen review process, as well as a national study comparing different foster care review processes. We also examined historical interagency communication and coordination issues between the DPHHS and CRB programs. For example, local CRBs rely on DPHHS to provide information and documentation about department and court case management activities. The DPHHS must also review and respond to CRB recommendations.

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### **Management Information Limitations**

Due to the limitations of the existing DPHHS and Supreme Court management information systems, data related to foster care review outcomes was incomplete, inaccurate, or not accessible. For example, while the DPHHS computerized management information system has the necessary information in individual records to examine foster care activities, it is not readily accessible for ongoing evaluation and cannot be compiled into a format which can employ statistically valid sampling. Additionally, according to DPHHS personnel, case information prior to 1996 is incomplete. We also noted errors in the CRB database that limited assurance its data is correct. This reduced the amount of historical information about the two processes and limited our ability to use management information generated by each entity's system. As a result, to evaluate the length of time children were in foster care, it was necessary to examine individual files.

### **Report Organization**

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This report is organized into four chapters. Chapter II provides background. The third chapter discusses the functions of CRBs and FCRCs. Chapter IV provides potential options for legislative consideration.



# Chapter II - Background

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## Introduction

Section 41-3-101, MCA, declares state policy, with regard to child abuse and neglect, is to ensure all children are accorded appropriate living environments to promote normal development, and to achieve these purposes, whenever possible, within a family environment. When children are removed from their parents or legal guardians for actual or alleged abuse or neglect, a fundamental goal of the state is to achieve a permanent placement for children. Permanency is generally achieved by reuniting the child with parents or placing the child in an appropriate adoptive home. When a child is removed from a home, the child's case proceeds through the state's foster care system until permanency is achieved or the child turns 18 years of age.

This chapter describes the roles of different state and local agencies and their key responsibilities regarding the placement and outcomes of children in foster care. The participants in the system include:

- ▶ Department of Public Health and Human Services (DPHHS) personnel who have responsibility for assuring appropriate care and services to children in foster care.
- ▶ County attorneys who typically represent the DPHHS in foster care-related issues before the district courts.
- ▶ District court judges who determine whether just cause exists to keep a child in foster care and decide whether to terminate parental rights.
- ▶ Guardians ad litem who are court-appointed representatives of children in foster care.

This chapter also describes the two systems in place for reviewing the status of children in foster care: the Foster Care Review Committee and the Citizen Review Board Pilot Program.

## Chapter II - Background

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### **Foster Care Placements in Montana**

DPHHS responds to and can initiate investigations of actual or alleged child abuse and neglect. The DPHHS has authority to temporarily remove a child from a home in which child abuse is alleged or actual. The department also must provide needed and appropriate care and services to children who are placed in foster care. While a child is in foster care, department responsibilities include:

- ▶ Determining the needs of children and parents to achieve potential reunification.
- ▶ Developing, implementing, and monitoring case plans and treatment plans to ultimately return the child to the parents or for placement in an appropriate adoptive placement.
- ▶ Securing and maintaining appropriate placements for children who are in foster care.
- ▶ Conducting treatment team meetings with department staff and contracted treatment professionals to identify a child's and/or parent's needs and associated treatment plans.
- ▶ Obtaining appropriate treatment services for children and parents, in accordance with the established case plan.
- ▶ Writing reports and reporting to the county attorney and the district court about the needs of the child and the parents.

While the department is responsible for determining services needed and providing care for children, the department generally relies upon county attorneys for representation in district courts. Typically, a county attorney is responsible for filing all foster care-related petitions with the district court regarding alleged abuse or neglect.

### **Types of Foster Care Legal Statutes**

Montana statutes specify several different legal statuses for children in foster care. A county attorney representing the department must petition a district court to grant the department temporary investigative authority (TIA) within 48 hours of a child's removal from the home. A TIA grants the department authority to provide protective care for a child while the DPHHS investigates allegations of abuse or neglect. Section 41-3-403(4), MCA, limits a TIA to no more than 90 days and permits only one 90 day extension of the TIA. Before expiration of a TIA, the county attorney must file a petition for one or more of the following:

- ▶ Temporary legal custody.
- ▶ Permanent legal custody to the department or other agency or person.
- ▶ Termination of parental rights.
- ▶ Dismissal of the case.

A county attorney also can petition for, and the court can grant, limited emancipation for a youth 16 years of age or older. Limited emancipation is a legal status conferred upon youth which allows them to exercise some, but not all, of the rights and responsibilities of a person who is 18 years of age or older.

At the request of the department, a county attorney can also petition a district court to grant temporary legal custody (TLC) of a child to the department, another agency, or person. A TLC authorizes the department to act in the child's best interests, including provision of medical care, counseling, treatment, or other services to meet a child's needs. Section 41-3-406(4), MCA, generally limits a TLC to six months, but the district court can extend a TLC. Typically, a district court grants a TLC extension if it determines a parent or guardian needs additional time to complete a treatment plan. We also documented instances in which a TLC was extended or granted until the child reached the age of 18 because a parent was unable to provide adequate care.

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### **District Courts are Required to Hold Permanency Plan Hearings**

Section 41-3-412, MCA, also requires the district court hold a permanency plan hearing within twelve months of a child's placement in foster care. Prior to the permanency plan hearing both the department and the guardian ad litem (GAL), a court-appointed representative for the child, must submit reports to the district court about the current status of the case, and a plan for achieving permanency. An attorney for the parents or guardian may also submit an informational report to the court regarding the case. The district court reviews the reports and information to determine the plan's appropriateness and orders the department to implement the permanency plan. The district court also orders the county attorney to petition the court within thirty days for one of the following:

## Chapter II - Background

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- ▶ Termination of parental rights.
- ▶ Temporary legal custody.
- ▶ Dismissal of the case.

The district court may enter any other order it determines is in the best interests of the child, including granting the department long-term custody of a child who is twelve years of age or older.

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### Federal and Montana Law Requires Reviews of Foster Care Placements

Congress passed The Adoption Assistance and Child Welfare Act of 1980 to prevent children from remaining unnecessarily in foster care and to facilitate permanency in children's lives. It states "in each case, reasonable efforts will be made (a) prior to the placement of a child in foster care, to prevent or eliminate the need for removal of the child from his home, and (b) to make it possible for the child to return to his home." Additionally, the law specifies:

- ▶ Children placed in out-of-home placements be in the least restrictive placement possible.
- ▶ A written case plan be in effect.
- ▶ Cases be reviewed on a semi-annual basis.
- ▶ Permanency plans be in effect within 18 months of the placement.

Montana statutes also set requirements for foster care reviews. Sections 41-3-1115(2) and 41-3-1010, MCA, require all children in foster care placements have their cases reviewed by an FCRC or local CRB within six months of placement in foster care and at least every six months thereafter while the child remains in foster care. Also, as noted previously, the district court must hold a permanency plan hearing within 12 months of placement in foster care.

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### Foster Care Reviews

Montana has three processes for reviewing foster care placements. District court judges must review and approve each petition for a TIA or TLC, review each foster care placement at the permanency plan hearing, and at other times they determine necessary. In addition, the 1981 Legislature enacted statutes creating a Foster Care Review Committee (FCRC) in every judicial district. An FCRC review is an administrative review administered by the Child and Family Services Division (Division) within DPHHS. Finally, the 1993 Legislature enacted the Local Citizen Review Board Pilot Program (CRB) creating local citizen

reviews of foster care placements as an alternative to FCRC reviews in designated judicial districts.

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### **Purpose of Foster Care Reviews**

Statute and administrative rules require FCRC and CRB reviews to consider:

- ▶ Whether the child, parents, and foster parents are receiving the services necessary to return the child home.
- ▶ Whether reasonable efforts are being made to return the child home.
- ▶ Whether the current placement is the most appropriate and least restrictive.
- ▶ Whether the child's treatment plan needs to be modified.
- ▶ Whether the child can be returned home, and if not, why?
- ▶ Visitation by the parents with the child.

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### **Foster Care Review Committees**

By statute each district court appoints FCRC members in consultation with the DPHHS. FCRCs can have up to seven members and they serve without compensation. An FCRC is required to include the following persons:

- ▶ A DPHHS representative, usually a social worker supervisor who is the designated chairperson.
- ▶ A youth court representative.
- ▶ A local school district representative.
- ▶ A person knowledgeable about the needs of children in foster care placements who is not a representative of the department.
- ▶ If there is one, the foster parent of the child whose case is under review.

If the child whose case is being reviewed is an Indian, a person familiar with Indian cultural and family matters must also be on the FCRC.

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### **The FCRC Review Process**

The Division typically schedules FCRC reviews of each foster care placement every six months. The FCRC or the Division may request more frequent reviews of individual cases. DPHHS policy requires the foster parents be notified. Birth parents must also be notified unless their parental rights have been terminated. Typically, parents and foster parents receive a formal letter from the Division informing them of the scheduled review about 10 days before the review. DPHHS policy also

## Chapter II - Background

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allows Division the option of inviting other persons to the review. These persons may be invited by letter or verbally. Other persons who may be invited include:

- ▶ The child.
- ▶ The child's attorney.
- ▶ The child's guardian ad litem.
- ▶ Other persons as appropriate.

During the review, a Division social worker provides a case summary. FCRC members may also review the child's school records, medical information, and basic case information such as names of family members, reason for foster care placement, and the child's placement history. FCRC members ask questions of review attendees, including the social worker, parents, and children.

At the end of the review, the FCRC members discuss findings and document recommendations for the department, the district court, and other attendees. All review attendees are asked to sign the recommendation form; parents, foster parents, and children are asked to indicate if they agree or disagree with the FCRC's recommendations.

After the review, the Division is required to provide the department and district court with the FCRC's findings and recommendations. DPHHS policy requires the department attempt to implement recommendations in the FCRC report. If FCRC recommendations are in conflict with the existing DPHHS case plan, the appropriate regional administrator is notified and is responsible for determining what action will be taken.

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### FCRC Review Costs

We were unable to determine Division costs associated with FCRC reviews because the Division does not formally track these costs. However, Division activities are typically limited to sending a notification letter to the parents and the foster parents, verbally informing therapists and counselors, scheduling reviews, and attending reviews.

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### **The Citizen Review Board Pilot Program**

The 1993 Legislature enacted legislation creating the Local Citizen Review Board Pilot Program Act. As a pilot program, the CRB has provided an opportunity to determine whether a different type of review process would benefit foster care placement outcomes. Citizen review processes in other states were first implemented in 1974, and by the 1990s approximately 22 states had citizen review processes operating in one or more jurisdictions. According to proponents of the pilot program, a local citizen review process under the administration of the judiciary improves the outcomes of children in foster care. CRB proponents stated local CRBs, as an external review process, are:

- ▶ Moving children to permanent placements more quickly.
- ▶ Providing external accountability to the Division.
- ▶ Increasing participation in the review process.
- ▶ Utilizing volunteers to review cases and bring new perspectives to the foster care review process.
- ▶ As an arm of the district courts, providing the courts with more information about children in foster care.
- ▶ Relieving DPHHS of the responsibility for reviewing cases.

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### **CRB Pilot Program Locations**

The Supreme Court administers the CRB Pilot Program and provides staff for its operation and coordination with judicial districts. The CRB program staff administer and support local citizen review boards in the following three judicial districts:

- ▶ Second Judicial District encompassing Silver Bow County (three boards).
- ▶ Fourth Judicial District encompassing Missoula and Mineral Counties (three boards).
- ▶ Eighteenth Judicial District encompassing Gallatin County (one board).

The CRB program is planning to implement a fourth local citizen review board process in the First Judicial District encompassing Lewis and Clark and Broadwater counties sometime in January 1999. All the judicial districts have volunteered to participate in the pilot program.

## **Chapter II - Background**

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### **Local CRBs are Composed of Volunteers**

The local CRBs are composed of volunteers from the respective judicial districts. Annually, each local review board selects a chairperson. Statute requires volunteers be recruited from groups with special knowledge of or interest in foster care and child welfare. Volunteers may not be employed by the DPHHS, an agency regulated by the DPHHS, or the district court. Local CRB members serve without compensation. A review of CRB documentation indicates most volunteers completed post-secondary education, work in, or have experiences with the following professions or fields:

- ▶ Law.
- ▶ Education.
- ▶ Sociology.
- ▶ Psychology or counseling.
- ▶ Education.
- ▶ Nursing.
- ▶ Private sector business.

In addition, some CRB members have served on FCRCs.

### **Who May Participate in CRB Reviews?**

Supreme Court Rules for Local Citizen Review Boards require the CRB program staff to provide written notice at least twelve days prior to a review to the following:

- ▶ The agency directly responsible for the care or placement of a child.
- ▶ The parents and/or their attorneys.
- ▶ Foster parents.
- ▶ Surrogate parents.
- ▶ Mature children or their attorneys.
- ▶ The court-appointed special advocate, guardian ad litem, or special advocate for the child.
- ▶ Other interested persons.

The primary Division social worker, or a knowledgeable representative, must also be present for the review unless excused by the local CRB.

### **The CRB Review Process**

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Division personnel or district court staff inform CRB staff of children in foster care. CRB staff schedule reviews, inform the Division, and request case file information which is provided to local CRB members before the review. Information the Division is required to provide the CRB program includes:

- ▶ A written case summary from the Division social worker.
- ▶ School and medical records.
- ▶ Psychological evaluations.
- ▶ Therapeutic reports.
- ▶ Treatment plans and case plans.
- ▶ District court orders.
- ▶ Any other case information the CRB staff considers necessary to review a foster care placement.

During the review, attendees are generally permitted to provide information about the case and CRB members question the Division social worker and attendees about the case and problems encountered. After this discussion, all attendees, including Division personnel, are excused from the review. CRB members then discuss the case and make findings and recommendations during a deliberation session. Findings and recommendations are mailed to the district court, the Division, and persons invited to the review. By statute the Division is required to review and implement CRB recommendations as appropriate and as resources permit. The Division must inform the CRB within 17 days of any recommendations that will not be implemented.

The district court also reviews the findings and recommendations of the CRB, and if it finds appropriate, schedule a review hearing on the case. CRB recommendations also become part of the district court case file. The district court must also give the CRB written notice of their actions relative to CRB recommendations.

## **Chapter II - Background**

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### **CRB Staffing and Funding**

CRB pilot program staff includes 2.5 FTE: 1 FTE for a program supervisor/coordinator, 1 FTE for a program coordinator, and .5 FTE for administrative support. The program supervisor and program coordinator both administer local CRB activities, such as:

- ▶ Scheduling and staffing reviews.
- ▶ Documenting and distributing CRB findings and recommendations.
- ▶ Maintaining CRB files.
- ▶ Coordinating CRB activities with the Division.

The Supreme Court Operations Program budgets for the CRB Pilot Program. The CRB budget for fiscal year 1997-98 was \$142,333 and for fiscal year 1998-99 is \$142,384. General Fund money accounts for 100 percent of the Supreme Court's budget for CRB operations.

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### **Children in Foster Care**

According to the Division, during calendar year 1997, there were 3,405 children placed in foster care statewide. However, since this number includes placements shorter than six months, many of these cases are not reviewed by either an FCRC or a CRB. For example, a child placed in foster care but who is returned home after less than a month would not have this case reviewed.

According to the CRB program, in the three judicial districts served by local CRBs there were 320 children in foster care whose cases were reviewed during calendar year 1997. Local CRBs in these locations conducted 527 reviews for the 320 children during this period. The Division was not able to provide the number of FCRC reviews for this time period.

# Chapter III - Differences Between CRBs and FCRCs

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## Introduction

A primary audit objective was to determine how the FCRC and CRB processes affect the outcomes of children in foster care. Our review included examining:

- ▶ Amount of time children are in foster care.
- ▶ Contents of FCRC and CRB reviews.
- ▶ Attendance at reviews by interested parties.
- ▶ Social work activities.

In this chapter we discuss the differences between the two processes.

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## Numerous Factors Affect the Time Children are in Foster Care

To determine the effect of review processes on the time children are in foster care, we interviewed participants and reviewed Division and CRB files associated with FCRC and CRB reviews. We selected a judgmental sample of foster care cases reviewed by local CRBs and FCRCs and closed during fiscal year 1997. We noted the time children were in foster care in judicial districts with CRB reviews ranged from 6 months to 91 months. The time children were in foster care in judicial districts with FCRC reviews ranged from 9 months to 57 months.

We found formal reviews are only one aspect of the foster care decision-making process. During the audit, we identified numerous factors impacting a child's time in foster care, such as:

- ▶ Judicial activity. Only judges can grant the DPHHS temporary or permanent custody of children, or terminate parental rights.
- ▶ DPHHS activity. The department is responsible for making placement decisions and overall management of foster care cases. Additionally, the department has adopted new strategies for achieving permanency for children, including utilizing "permanency specialists."
- ▶ State and federal laws. Statutes establish requirements for the foster care system relative to TIAs, TLCs, and permanency.
- ▶ County attorney activities. County attorneys are responsible for representing the DPHHS and petitioning the court in matters regarding custody of children.
- ▶ Attorneys for parents and children.

## **Chapter III - Differences Between CRBs and FCRCs**

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- ▶ Availability and quality of services.
- ▶ The Indian Child Welfare Act (ICWA). ICWA governs the placement and custody of Native American children in foster care, and tribes have certain authority regarding foster care placements.
- ▶ The age of children. A child's age can affect the success of foster care placements and/or the availability of potential adoptive placements.

While we acknowledge the importance of the FCRC and CRB review processes as an oversight control mechanism within the foster care system, we found the time children are in foster care is decidedly impacted by other entities and individuals. In addition, our review also indicated the time children are in foster care varies substantially between geographic areas, regardless of the type of review process.

We also reviewed a national study of different types of review processes that concluded neither citizen review nor administrative review panels resulted in different outcomes of foster care placements. The study indicated other factors, such as the quality of social workers, availability of treatment and service resources, level of family dysfunction, and judicial activity are the primary factors affecting foster care outcomes. According to the study, the effect of reviews, regardless of the type of review, is to ensure agencies are in compliance with the case plan and other requirements. Based on our audit work, both CRBs and FCRCs appear to serve that function.

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### **Case Information Provided to FCRC and CRB Members**

Case information the CRB Program staff receive from the Division is sent to CRB members about twelve days before a review. CRB members indicated the amount of time they spend reviewing case information before the review varies. They may review the information in detail or focus on summary information in files and reports. CRB members generally indicated summaries provided by Division social workers are well-written and valuable to their review.

On the other hand, FCRC members generally do not receive information before a review. Interviews with FCRC members indicated information provided during the review by the social workers and other attendees is

## Chapter III - Differences Between CRBs and FCRCs

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sufficient. The child's case file is also available at reviews for FCRC members to examine. In addition, some FCRC members said they are familiar with children's cases from other activities, such as school, and do not need to review a case file prior to reviews.

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### Contents of FCRC and CRB Recommendations are Similar

We reviewed recommendations from FCRC and CRB reviews. We noted substantial similarity in recommendations between the two processes. Local CRBs tend to make more specific recommendations regarding social workers' case management activities. Overall, FCRC and CRB recommendations generally did not indicate a need for significant change in foster care placements and often reinforced existing case activities.

We also noted few disagreements between the department and local CRB or FCRC recommendations. Since FCRC recommendations are made by consensus of FCRC members with input from the department, disagreements are rare. Disagreements between the department and the CRB happen more often, but CRB and Division management stated the two agencies still agree on recommendations 90-95 percent of the time. Chapter IV discusses the nature and cause of disagreements between the Division and local CRBs.

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### Persons Attending Reviews

The Division and the CRB have different requirements for formally involving interested persons in the reviews. The Division is only required to formally notify parents and foster parents; however, our review indicated the department may also informally notify service providers or other interested persons. Based on our file review the Division is generally in compliance with notification requirements.

In contrast, statute requires the CRB formally notify guardians ad litem (GALs), attorneys for parents and children, and any other person involved with the case such as service providers and extended family members, in addition to parents and foster parents. The CRB requests names of persons involved with a child from the local Division office, and may identify other participants at CRB reviews. We documented CRB reviews with as many as 16 persons invited, and reviews attended by more than 10 participants, excluding CRB members. Based on our review, the CRB is in compliance with notification requirements.

## **Chapter III - Differences Between CRBs and FCRCs**

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Interviews with Division personnel, FCRC and CRB members, and others indicated there are advantages and disadvantages to increasing the number of interested persons attending reviews. Generally, reviews attended by fewer persons create a more personal review in which attendees may be more willing to discuss confidential and sensitive information. However, this also may result in limiting perspectives about a case. Conversely, more persons attending reviews may limit the amount of time attendees have to present information, and some attendees may be less willing to discuss confidential or sensitive information.

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### **Conclusion: There are No Substantial Differences in Foster Care Outcomes**

Based on information obtained during our audit of the CRB and FCRC review processes, we were unable to identify substantial differences in the outcomes of foster care placements between the two review processes. Also, FCRC and CRB recommendations generally indicate agreement with department activities. Also, as noted previously, the national study indicated other factors, such as the quality of social workers, availability of treatment and service resources, level of family dysfunction, and judicial activity are the primary factors affecting foster care outcomes, not the review process.

Based on our audit work, we conclude that neither process appears to substantially affect a child's foster care placement by the Division or the time children are in foster care. We did determine during the audit, however, that each process has specific strengths and limitations but each serves a different role in reviewing foster care placements.

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### **FCRCs and CRBs Serve Different Entities**

During the audit we determined FCRCs tend to function according to the needs of the department. CRBs, under administration of the Supreme Court and directed by the district courts, tend to respond to the needs of district court judges. The following sections describe the differences and the associated strengths and limitations.

## Chapter III - Differences Between CRBs and FCRCs

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### **FCRCs Provide General Direction to the Division**

While FCRCs review cases for compliance with the case plan and appropriateness of placements, they focus more on problems identified during the review process or brought to the review by social workers. FCRC members discuss case elements with participants and provide the department with general direction and options for resolving identified problems to achieve permanency for the child.

FCRC members are typically professionals from parallel organizations or agencies and Division management and staff stated they have good working relationships with FCRC members. Generally, FCRC reviews are more likely to have fewer participants than CRB reviews. These two factors appear to promote free and open discussion about foster care placements, particularly with Division social workers. Social workers are more comfortable discussing confidential and sensitive case information within an FCRC review than a CRB review. For example, if children are in counseling for sexual abuse, social workers may be willing to discuss in specific terms a child's behavior and provide specific or detailed answers to questions from FCRC members, which facilitates the FCRCs' ability to provide useful and credible recommendations.

While the familiarity developed between the Division and the FCRC members facilitates problem solving, it may also impact the appearance of independence of FCRC reviews. FCRC members we interviewed stated they considered themselves independent of the department. However, other persons who have been involved in both FCRC and CRB review processes, including department management and staff, foster parents, and providers, indicated the FCRCs tend to be less independent than CRBs in terms of providing a critical evaluation of Division activities. Interviews indicated the perception of independence of FCRCs varies substantially between geographic areas.

## **Chapter III - Differences Between CRBs and FCRCs**

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### **CRBs Function as an Independent Control Mechanism Over Division Activities**

District courts provide direction and set the expectations of the local CRBs in their respective districts. District court judges who participate in the pilot program indicated CRBs are an “arm of the court,” providing important oversight of department activities. Persons interviewed who have participated in both CRB and FCRC processes stated CRBs stress being independent of the department. Judges also stated the CRB review process ensures they are informed about the current status of each case. Judges noted they rely on CRBs to identify issues or problems that may require judicial action.

CRB reviews may be more conducive to participation by parents and foster parents. Foster parents stated when attending FCRC reviews, they usually were not encouraged to participate in the review. Foster parents said CRBs were more likely to encourage their participation.

While CRBs are viewed as an independent control mechanism for monitoring department activities and keeping judges informed about the progress of cases, CRBs are seen by Division staff as being less effective at working with the department to find solutions to problems than FCRCs. CRB reviews were described and observed as “trial-like,” with Division personnel required to justify their actions.

# Chapter IV - Recommended Changes to the Foster Care Review Process

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## Introduction

The state of Montana currently has two separate foster care review systems: the FCRCs established in 1981 within the DPHHS, and the CRB, a pilot program started in 1993 and administered by the Supreme Court. While our audit identified no significant differences in foster care placement outcomes reviewed by these two systems, we did note the two processes serve different functions and purposes. Based on our review, the existence of two separate review processes does not assure consistency or equality in foster care reviews across the state, in content, practice, or purpose. We believe the legislature should create one foster care review process that best meets the needs of children in foster care and the long-term needs of the state.

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## The Legislature Should Create a New Foster Care Review Process

In the previous chapter, we identified the strengths and limitations of the existing foster care review processes. In this chapter, we make recommendations to the legislature for creating a new foster care review process. We also make recommendations to the administrative entity of the review panels regarding program operations. These recommendations to the Legislature and new foster care review panels incorporate the best elements from the FCRCs and CRBs which, we believe, will best serve the interests of children in foster care.

Our recommendations to the Legislature and the foster care review panels address the following issues:

- ▶ Independence of review panel volunteers.
- ▶ The scope of foster care reviews.
- ▶ Identification and involvement of interested parties in foster care reviews.
- ▶ The need for comprehensive policies, procedures, and training for review panel members.
- ▶ Interagency communication and coordination.

Finally, we also provide the Legislature with potential options for the organizational location of the entity administering review panels which affect the appearance of review panel independence, and discuss the associated potential costs.

## **Chapter IV - Recommended Changes to the Foster Care Review Process**

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### **FCRC Independence Issues**

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The statutory requirements for FCRC reviews may create the appearance FCRCs are less independent than CRBs. By statute, FCRC members are appointed by the district court judges in consultation with the department and typically consist of professionals from parallel agencies. Furthermore, the Division is responsible for administering reviews, and a social work supervisor typically acts as the chairperson of the FCRC. Consequently, there is an impression by parents, foster parents, and judges the Division controls the review. The degree of professional agreement and the consensus process used for developing recommendations can also create the impression FCRCs are not independent, although our observations and interviews suggest the FCRC members are actually quite independent of the department.

### **CRB Requirements**

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Conversely, local CRB reviews are considered independent foster care reviews for several reasons, including:

- CRB utilizes a public application process for recruiting board members.
- DPHHS personnel are excluded from CRB membership.
- Agencies parallel to the department are also not represented on the local CRBs.

Even more important to judges and some individuals we interviewed, the appearance of independence is preserved because DPHHS and other interested persons are excluded from the deliberation portion of the local CRB reviews. Much like a public trial, information is sought and provided during the hearing portion of the reviews; however, the local CRB members (like juries) deliberate and subsequently make decisions and recommendations without further interested party involvement.

While district court judges and others support exclusion of Division personnel from deliberations, Division staff are responsible for incorporating recommendations of the local CRB into their foster care case management activities. Division management and staff as well as some CRB members have indicated because of the Division's responsibility to implement recommendations, a Division representative should be present during deliberations both as a resource to the boards and to provide input on the feasibility of board recommendations. The reasoning of Division representatives is the social workers and/or their

## **Chapter IV - Recommended Changes to the Foster Care Review Process**

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supervisors are the most familiar with case specifics and department capabilities to implement CRB recommendations. Opponents of Division involvement in CRB deliberations suggest two factors as the over-riding reasons for the continued exclusion of Division personnel from CRB deliberations. These two factors are:

- Division involvement in CRB deliberations would result in a loss of the appearance of independence.
- The Division can appeal any recommendations which the Division does not agree with.

Our interviews, as well as review of documentation, suggest this philosophical difference of opinion between the Division and the CRB program has hindered the effectiveness of the CRB process in various ways, several of which are discussed in the following report sections. To address the concerns of both CRB proponents and Division representatives, we believe the new foster care process should resolve two procedural issues: the selection of members for the foster care review panels and the Division's concerns regarding lack of input during CRB deliberations. First, we believe the legislature should incorporate the general recruitment and membership requirements of the existing CRBs, but also consider expanding membership to address all federal requirements for review panel members which are currently considered in FCRC membership. Secondly, the entity administering the new foster care review panels should jointly establish procedures with Division personnel to incorporate Division input into panel deliberations which also addresses the independence issues of CRB proponents. These procedures should be mutually agreeable and have legislative endorsement via statutory language.

## **Chapter IV - Recommended Changes to the Foster Care Review Process**

### **Recommendation #1**

**We recommend the legislature:**

- A. Change the make-up of the foster care review panels which would replace existing FCRCs and CRBs in all judicial districts to incorporate aspects of both FCRC and CRB membership.**
- B. Require the administrative entity involved with the new foster care review panels to establish procedures for Division input into review panel deliberations while maintaining the appearance of independence.**

### **The Scope of Foster Care Reviews Should be Clarified**

Section 41-3-1010(5), MCA, indicates the scope of CRB reviews is primarily a general oversight of Division case activities related to the appropriateness of placements, compliance with case plans, and whether cases are progressing to alleviate the need for placement outside the family. However, statute also states local CRBs will make findings and recommendations regarding “other problems, solutions, or alternatives that the local citizen review board determines should be explored...” CRB program staff and district court judges interpret this as giving local CRBs authority to examine and make recommendations with regard to all department activities, including assessing and making recommendations about medical and mental health evaluations and subsequent treatment activities.

Department officials, however, believe existing statutes limit CRB activities to general oversight of case activities and grant the department complete authority to manage foster care placements.

Our review of organizational theory and observations of various organizations indicates the framework of sound interagency activities include a clearly defined division of responsibilities to ensure efficient and effective accomplishment of objectives. In addition, best management practices suggest an entity with oversight responsibilities be separate from and independent of activities they are expected to evaluate.

## **Chapter IV - Recommended Changes to the Foster Care Review Process**

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We identified instances where CRB activities appeared to be more of a case management-type activity than general oversight. Examples of CRB case management activities included:

- Reviewing some cases as frequently as every one or two months, rather than semi-annually.
- Recommending the Division facilitate mental health evaluations and treatment with specific therapists.
- Recommending physicians consider changes to prescribed medications.
- Reviewing cases outside the jurisdiction of the CRB and the district court.
- Intervening in internal Division personnel issues.

Our audit work suggests local CRB members, who often only review a child's case two to three times a year, generally do not appear to have the training, expertise, or case knowledge to fully evaluate the specific mental health, medical, or treatment needs of children and families. Furthermore, we believe efforts by local CRBs to direct social worker activities could potentially impair a board's ability to provide objective and independent oversight of foster care cases.

Based on our review of the two existing foster care review processes, we believe the scope of foster care reviews should be limited to oversight of department case management activities, verifying the department is providing services that meet children's needs as identified by social workers, medical professionals, and other treatment professionals. For example, oversight of Division activities could include determining whether a child is receiving the type of mental health care prescribed by a psychiatrist, but would not include evaluating whether the psychiatrist's diagnoses is appropriate or specifying the specific treatment facility or professional who would provide the services.

We believe statutory language should clearly describe a review panel's oversight role. Existing CRB statutory language, stating the CRB may make findings and recommendations regarding "other problems, solutions, or alternatives that the local citizen review board determines should be explored..." allows for a review panel to go beyond the boundary of a true oversight function.

## **Chapter IV - Recommended Changes to the Foster Care Review Process**

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### **Recommendation #2**

**We recommend the legislature clarify the oversight role of review panels in foster care placements.**

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### **Identification and Involvement of Interested Parties is Essential to the Review Process**

During the audit, we noted other interested persons significantly involved in the lives of children in foster care are not always formally notified of FCRC reviews. Based on interviews, having such persons present at reviews can provide better information for panel decision-making. For example, social workers stated it is helpful to have guardians ad litem (GALs) and therapists attend foster care reviews because they have more specific and detailed information about a child's case and current treatment efforts. Furthermore, in one FCRC location the Division acknowledged the importance of having GALs present and was in the process of modifying existing practices to ensure GALs were formally notified of all FCRC reviews.

In contrast to the Division's limited notification, CRB procedures require the Division to formally identify all interested parties in a child's foster care case and the CRB may invite them to a review.

While increased participation could generally be viewed as a positive, during our review of CRB activities we noted the informal procedures/actions for involving interested parties can risk compromising the confidentiality of case information and can limit full participation by interested parties. We noted instances of invitations or attendance by persons at CRB reviews which did not seem appropriate. In one instance, a step-parent who was court-ordered to have no contact with a child was allowed to attend the review with the child present. In other instances, persons were allowed to attend a review and listen to all testimony, although subsequent participation after their input was obtained was not necessary for the review.

According to Division personnel, as a result of the CRB not closely monitoring who is allowed to attend and remain at the reviews and not exercising more discretion about the information shared with review attendees, some social workers have not been forthcoming about

## **Chapter IV - Recommended Changes to the Foster Care Review Process**

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information they possess about placement circumstances. Specifically, social workers have been reluctant to share certain information due to professional concerns regarding confidentiality, including disclosing sensitive information which may endanger a child or others.

Currently, there are no formal policies and procedures regarding interested parties' participation in reviews. In contrast, another state with a program similar to the CRB program has formal guidelines for allowing persons to participate in reviews, including excusing persons from reviews after they present their information.

To improve review effectiveness and protect confidentiality, we believe the entity administering the review panels needs to establish a formal process for identifying and inviting interested parties to reviews. Additionally, we believe the review panels should have policies and procedures regarding the level of interested parties' participation.

### **Recommendation #3**

**We recommend the entity administering the new foster care review panels:**

- A. Establish policies and procedures that identify interested parties and ensure their proper level of participation.**
- B. Establish policies and procedures which ensure the foster care review process protects the confidentiality of information and participants.**

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### **The Review Panels Need Formal Policies, Procedures, and Training**

During our review, we identified CRB practices, procedures, and actions that appeared to reduce the overall effectiveness of the review process. These areas need to be addressed by the administrative entity responsible for the review panels. Formal policies and procedures in these and other operational areas will improve the understanding, consistency, and quality of review panel findings and recommendations.

Some recommendations from CRBs were not considered beneficial or supportable by Division personnel. Interviews, file reviews, and other

## **Chapter IV - Recommended Changes to the Foster Care Review Process**

documentation identified instances when local CRBs developed recommendations which:

- ▶ Could not be implemented. Division implementation of some recommendations would have violated district court orders or exceeded the statutory authority of the Division.
- ▶ Conflicted with prior CRB recommendations.
- ▶ Contradicted established practices intended to serve the child's best interests.
- ▶ Served a purpose unclear to the department. Local CRB recommendations did not address problems or concerns identified in CRB findings or had no substantiated basis.

The CRB Pilot Program has been promoted to the legislature and others as being a means of providing the Division with timely and credible input to the placement process. However, the CRB process has lost credibility with some Division personnel due to local CRBs not appearing to fully consider information provided to them, or because of CRB's demonstrated lack of information about the capabilities and limitations of the foster care system.

Current CRB practices for scheduling reviews and determining the extent of file information that needs to be provided at reviews are strengths of the CRB process. While these practices insure the review panel members have adequate time and information necessary to review Division compliance with established case plans and court orders, they are not formal policies. Additionally, these practices are not common to FCRC reviews.

A formal policy and procedure manual is a valuable tool and resource for providing guidance and assistance, and helps ensure consistency in agency operations. To improve the effectiveness of program staff and volunteers, we believe the review panels need a comprehensive policy and procedure manual to aid and support ongoing practices.

We also noted the CRB program has provided local CRB members with limited training regarding Division responsibilities, limitations, and

## **Chapter IV - Recommended Changes to the Foster Care Review Process**

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policies and procedures. CRB members interviewed also indicated a need for additional training relating to Division activities. We also identified CRB members who had received limited training in general. The foster care review program needs to develop and implement comprehensive training which ensures review program management, staff, and volunteers are fully informed about the overall foster care processes, including Division capabilities, policies, and procedures.

### **Recommendation #4**

**We recommend the administrative entity for the review panels:**

- A. Establish a formal comprehensive policies and procedures manual for panel operations.**
- B. Develop and implement a training curriculum which addresses all aspects of foster care, including Division activities and capabilities.**

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### **Interagency Coordination is Essential to the Review Process**

During our audit, we noted communication and coordination weaknesses between the CRB program and the Division. Discussions with Division personnel and CRB members indicated their shared primary goal is to achieve permanency for children. However, the activities of each were often considered suspect by the other, in part because of ineffective communication. Currently, the two agencies rely primarily on formal written communication, CRB reviews, and occasional interagency meetings to resolve differences or address issues. CRB coordinators and Division personnel may also occasionally discuss potential issues or coordinate reviews by telephone.

Best management practices suggest the need for various communication methods for coordinating activities to achieve similar objectives. Information exchanged between organizations can vary substantially in sensitivity, content, and purpose. Consequently, organizations need appropriate formal and informal lines of communication to exchange different types of information.

## **Chapter IV - Recommended Changes to the Foster Care Review Process**

To maintain the appearance of independence and fairness, the CRB program has promoted only formal lines of communication such as:

- ▶ CRB reviews.
- ▶ Documentation from Division case files.
- ▶ Formal recommendations to and responses from the Division.

In addition, the existing CRB program has an informal policy discouraging Division personnel to verbally present foster care case information to CRB members outside the presence of all review attendees. Furthermore, CRB management and district court judges have opposed allowing Division personnel any role in the development of findings and recommendations, stating the Division has an opportunity to formally respond to CRB recommendations.

These formal lines of communication appear to limit or slow the exchange of useful information between the CRB and Division. For example, some CRB members stated they sometimes need additional information from the department about policies, procedures, or capabilities to make informed findings or recommendations before making a decision. Under existing CRB practices, board members must typically either make decisions without departmental information or delay making recommendations until subsequent reviews. In addition, some information is not deemed suitable by Division personnel for formal communication during the public portion of the review process.

To promote effective communication between the Division and the new review program, the two entities should develop appropriate formal and informal communication processes. Examples of potential methods and/or activities for providing effective communication and coordination between the review panels and Division include:

- ▶ Scheduling regular meetings between review panel staff, volunteers, and Division management and staff to address problems encountered, concerns and/or questions by either entity, potential changes to review procedures, and training needs.
- ▶ Developing simplified documentation for Division responses to review panel recommendations.

## **Chapter IV - Recommended Changes to the Foster Care Review Process**

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- ▶ Using written communication instead of foster care reviews if a review panel requests verification of certain Division activities.
- ▶ Coordinating training for review panel staff, panel members, and department staff.

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### **Additional Management Information is Critical**

During the audit, we noted a lack of mutually agreeable outcome information from the CRB program and the Division related to foster care activities. For example, while the CRB program does compile some data, there is no CRB or department information such as comparison of the total time children are in foster care, the number of times children reenter the foster care system, or permanency achievement data.

Best management practices suggest agencies have measurable objectives and outcomes for evaluating program effectiveness. With reliable and comprehensive information, the review panels and the Division would be better able to evaluate the effectiveness of their respective activities. Since the review panels and the Division have similar goals – achieving permanency for children – the two entities need to jointly develop and implement methodologies for measuring established objectives and outcomes.

#### **Recommendation #5**

##### **We recommend:**

- A. The administrative entity for the review panels and the Division jointly develop and implement formal and informal communication strategies that help ensure effective inter-agency coordination.**
- B. The administrative entity for the review panels and the Division jointly develop measurable objectives and outcomes, as well as implement methodologies for evaluating review panel activities.**

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### **Where Should the Administrative Entity be Organizationally Located?**

In this report, we have recommended the legislature create a new foster care review process and made recommendations to the administrative entity regarding program operations. The legislature also needs to determine where the new foster care review process should be organizationally located. This will have budget implications and affect the review panels' appearance of independence. The following sections provide the legislature with information regarding these two issues.

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### **Cost of Reviews May be Impacted by the Agency Administering the Reviews**

The creation of a new foster care review process will have a budgetary impact regardless of where the administrative entity coordinating the reviews is located. Our audit work suggests the costs will likely increase in direct correlation to the level of appearance of independence the legislature wants to achieve. The following describes cost considerations in the creation of the options presented

To begin with, we were unable to fully identify the costs associated with either CRB or FCRC reviews. According to the Supreme Court, the average cost for each CRB review for fiscal year 1998 was \$297. However, this cost does not include any of the costs incurred by the Division for providing the majority of the information used in CRB reviews. We were also unable to determine the costs for FCRC reviews since the Division does not track costs associated with the administration of FCRC reviews. Furthermore, due to a lack of information regarding the number of children in the state whose cases require a review, we were unable to project potential costs for state-wide implementation of a new foster care review process.

Although we were unable to fully identify costs associated with either FCRC or CRB reviews, our audit work indicates placement of the administrative entity outside of the Division would not result in a one-for-one transfer of costs. The Division will incur some costs for reviews, regardless of who administers the reviews. Costs which cannot be transferred include Division personnel attending reviews, providing information to review panels, responding to review panel inquiries and/or recommendations, and other efforts necessary to coordinate activities with review panel management and staff.

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Our audit work also indicated the existing CRB review process requires Division resources not generally required for FCRC reviews. For example, social workers may spend up to an hour preparing for FCRC reviews compared with up to three hours preparing for CRB reviews. The additional time for CRB reviews appears to be primarily related to a more formal process requiring Division personnel compile case documentation, provide formal responses to CRB recommendations, and perform administrative tasks such as making copies of file information for local CRBs.

Implementing or expanding a review process outside the Division would likely incur start-up and operational expenses. The Division has already incurred costs for administering FCRC reviews, and has a fully developed operational and administrative support structure in place for conducting foster care reviews and other Division activities. Start-up and operational expenses that may be incurred by placing administration for the review panels outside the Division include:

- Personal services costs for review panel management and staff.
- Expenses related to obtaining satellite office space and/or rooms for conducting reviews.
- Travel costs such as lodging and meals for review panel staff and management.
- Costs for office equipment.
- Costs for transportation.

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### **Organizational Location of the Review Panel Affects the Appearance of Independence**

A review of information from other states, as well as in-state agency structures, suggests several legislative options for organizationally locating the administrative entity for the review panels. In the following sections we discuss potential legislative options for locating the administrative entity. We also discuss the costs we believe will be associated with increasing an appearance of independence.

## **Chapter IV - Recommended Changes to the Foster Care Review Process**

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### **Option 1**

The Legislature could place responsibility for the new review panels within the existing Child and Family Services Division. This option has the least appearance of independence. On the other hand, the Division has a fully developed administrative structure capable of administering reviews state-wide, and is currently doing so in 18 of the 21 judicial districts. We anticipate implementation of this option would require minimal start-up costs. In addition, the Division is capable of using existing facilities, management information systems, and equipment, thereby reducing operational costs. Additionally, adoption of the recommendations regarding independence on page 24 could improve the appearance of independence.

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### **Option 2**

The legislature could administratively attach the review panel administrative entity to the DPHHS. We noted other state boards and hearings entities (i.e., the Petroleum Tank Release Compensation Board and the Board of Pardons and Parole) which are administratively attached, but independent of an agency's control. This option provides a greater appearance of independence, but the administrative entity is potentially capable of utilizing existing DPHHS organizational structures, management information systems and other department resources currently in place throughout the state. However, there would be some additional costs associated with this option, including personnel to manage the review panels and staff to facilitate reviews.

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### **Option 3**

The legislature could place review panel administration under the jurisdiction of the Supreme Court, similar to the existing CRB program. We believe this option creates the greatest appearance of independence because the review panels would have no organizational ties to the DPHHS. However, this option would require additional start-up and operational costs that may not be realized under Option 1 or Option 2. The Supreme Court could utilize some of the existing resources currently used by the Local Citizen Review Board Pilot Program. However, the existing program structure and resources within the Supreme Court for reviewing foster care placements is limited to three or four judicial districts and would require additional resources to expand to all judicial districts.

## **Chapter IV - Recommended Changes to the Foster Care Review Process**

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### **Summary**

Since 1993, Montana has had two separate foster care review processes. We identified strengths and limitations of each. We recommend a new foster care review panel process that melds the best elements of both CRB and FCRC reviews be created.

We also believe the legislature needs to determine where to organizationally locate the new foster care review process. While a national study and our observations indicate there are numerous factors affecting the outcomes of children in foster care, the appearance of independence of the review is also important. Our review suggests the more organizationally independent the review process is from the organization conducting the foster care placement activities, the higher the degree of the appearance of independence. However, the higher the degree of the appearance of independence, the higher the programmatic costs. Development of a new statewide foster care review process via adoption of either Option 2 or Option 3 will require substantially more financial resources than presently required.



# **Department Response**

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**The Supreme Court of Montana**  
**Office of the Court Administrator**

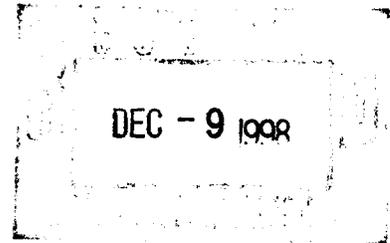
PATRICK A. CHENOVICK  
Court Administrator



JUSTICE BUILDING—ROOM 315  
215 NORTH SANDERS  
PO BOX 203002  
HELENA, MONTANA 59620-3002  
TELEPHONE (406) 444-2621  
FAX (406) 444-0834

December 8, 1998

Mr. Scott Seecat, Legislative Auditor  
Legislative Audit Division  
Room 135, State Capitol Building  
Helena, Montana 59620



Dear Mr. Seecat:

This is our response to the performance audit of the Foster Care Review Process. District Court Judges involved with the Citizen Review Boards also responded and if we received their comments, we have attached them. I apologize for the faxed print, but due to the exceptionally short turn-around time; our only other option was to exclude the comments.

We generally agree with the majority of the recommendations in the audit, as they apply to the current Citizen Review Boards Program. Implementation of recommendations regarding policy and procedure manuals, training curriculum and measurable objectives, methodologies and outcomes are currently underway.

Recommendation #2 regarding the oversight role of the CRBs can be implemented without legislative action. Board members and judges can work with Division and Court personnel to clarify the interpretation of "oversight" and include this definition in policy manuals. This action addresses audit concerns without limiting the flexibility of the Division, Boards or the Judiciary. Each child is unique; therefore, the parties involved need flexibility to meet the requirements of each individual case. Elimination of this flexibility would reduce the effectiveness of the review process.

Regarding the options presented in the report I suggest that one additional option be added. This option has the existing CRBs: 1) implement recommended policies and procedures; 2) develop an enhanced training curriculum; and 3) improve and expand its database. With these procedural adjustments in place, CRBs could be implemented statewide. This seems a laudable option for the legislature to consider.

The staff and I will be available for questions at the Audit Committee meeting as scheduled.

Sincerely,  
  
Patrick A. Chenovick  
Court Administrator

DEPARTMENT OF  
PUBLIC HEALTH AND HUMAN SERVICES



MARC RACICOT  
GOVERNOR

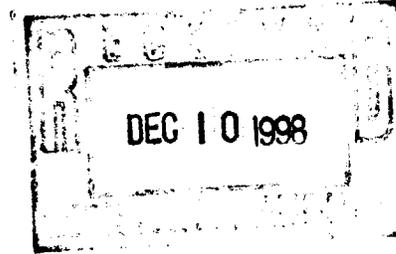
LAURIE EKANGER  
DIRECTOR

STATE OF MONTANA

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(406) 444-5956: C-WING

CHILD & FAMILY SERVICES DIVISION  
PO BOX 8005  
HELENA, MONTANA 59604-8005

December 10, 1998



Legislative Audit Division  
Room 135, State Capitol  
PO Box 201705  
Helena MT 59620-1705

Dear Mr. Seacat:

This letter is to provide a formal response to the recently completed audit regarding the Foster Care Review Process. We would like to thank Kent Wilcox and Mike Wingard for their work on the audit, and we compliment them for the quality of their study.

General Response to the Audit

For some time, the Department has believed that a single, consistent foster care review process would be beneficial and appropriate for both the children and families involved with the foster care system. A single process would aid consistency and fairness, and properly structured would provide both timely and independent review of foster care placements. We, therefore, concur with the overall recommendation that the legislature create a single foster care review panel process.

The foster care review process was designed, in part, to comply with one of the federal requirements for accessing federal foster care funding. All seven of Montana's Indian Reservations are required to comply with federal funding requirements because they access federal Title IV-E foster care funding via contract or agreement with the Department. Consequently, the Tribes must comply with the same federal requirements applicable to the State, including the requirement to conduct administrative reviews (foster care reviews) on each

Indian child in foster care for whom the Tribe is accessing federal funding. Currently, the Tribes utilize the foster care review process. In the event the legislature creates a single foster care review panel process, we recommend that the Legislature consider the need for consistency between the state and tribal review process as well as the need for consistency within the State system.

*Recommendation #1*

*We recommend the legislature:*

- A. Change the make-up of the foster care review panels which would replace existing FCRCs and CRBs in all judicial districts to incorporate aspects of both FCRC and CRB membership.*
- B. Require the administrative entity involved with the new foster care review panels to establish procedures for Division input into review panel deliberations while maintaining the appearance of independence.*

Agency Response:

We concur that the legislature should change the makeup of the foster care review panels to incorporate aspects of both FCRCs and CRBs. Although we believe that the general membership requirements of either CRB or FCRC would be effective, we believe the membership of the panel should continue to include the following three members who are currently required, by statute, to be members of the foster care review committee:

- a) someone knowledgeable in the needs of children in foster care placements who is not employed by the department or the youth court;
- b) the foster parent of the child whose care is under review (if there is one); and
- c) if the child whose care under review is an Indian, someone, preferably an Indian person, knowledgeable about Indian cultural and family matters who is appointed and effective only for and during that review.

Since no significant difference in outcomes was found between the two current processes, it seems that the current makeup of either group could be successful in a new process; however, we believe that requiring the above listed members would strengthen the new process.

We also concur that the administrative entity involved with the new foster care review panels should establish procedures for division input into review panel deliberations. Because the Division has case management responsibility for children in the foster care system, inclusion of division input in the deliberation phase of the review process would strengthen the efficacy of the foster care review panel recommendations.

*Recommendation #2*

*We recommend the legislature clarify the oversight role of review panels in foster care placements.*

### Agency Response

We concur with the recommendation that the legislature clarify the oversight role of review panels. The audit points out that some CRBs have stepped outside the role of providing independent review and recommendations by directing individual social workers to spend considerable additional time complying with their requests and recommendations and, in some cases, actively taking on a case management role that belongs to the department. A statutory clarification of the panel's role in oversight is appropriate and necessary.

#### *Recommendation #3*

*We recommend the entity administering the new foster care review panels:*

- A. Establish policies and procedures that identify interested parties and ensure their proper level of participation.*
- B. Establish policies and procedures which ensure the foster care review process protects the confidentiality of information and participants.*

### Agency Response

We concur with this recommendation.

#### *Recommendation #4*

*We recommend the administrative entity for the review panels:*

- A. Establish a formal comprehensive policies and procedures manual for panel operations.*
- B. Develop and implement a training curriculum which addresses all aspects of foster care, including Division activities and capabilities.*

### Agency Response

We concur. A well-trained, well-informed review panel will be more effective. Specialized training, supported by a comprehensive policy and procedure manual, will also help the review panel be more effective. Another factor affecting the need for training and support is the qualifications of the members of the panels. As discussed in the Agency Response to Recommendation No. 1, retaining the FCRC requirements which call for members familiar with child welfare issues may reduce the need for extensive training.

#### *Recommendation #5*

*We recommend:*

- A. The administrative entity for the review panels and the Division jointly develop and implement formal and informal communication strategies that help ensure effective inter-agency coordination.*

- B. The administrative entity for the review panels and the Division jointly develop measurable objectives and outcomes, as well as implement methodologies for evaluating review panel activities.*

Agency Response

We concur with this recommendation.

Agency Comments on the Organizational Location of Review Panels

While the audit report did not include specific recommendations regarding the location of the review panels, it did suggest three possible locations:

- a) Division of Child and Family Services;
- b) Department of Public Health and Human Services in a location other than Child and Family Services; or
- c) Supreme Court.

The Department prefers Option 1 because it is less costly and least disruptive. We are sensitive to the issue of maintaining the appearance of independence of the review panels. We believe that independence can be achieved through increased communication with the Courts and by implementing the recommendations regarding independence on Page 24 of the Performance Audit Report. Additional requirements which will impact the length of time children remain in the foster care system and the provision of services to children have recently been incorporated into the child welfare system. These requirements include newly enacted state and federal laws requiring the Division and the Courts to move children in foster care into a permanent placement more quickly. The child welfare system is more focused on the timely resolution of cases because of these requirements.

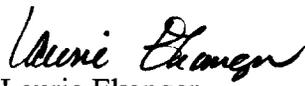
As mentioned in our general response to the Performance Audit Report, the Department respectfully requests that during the decision-making process the Legislature consider selecting the option which would provide consistency statewide and allow for consistency between the State and Tribal foster care review systems. The first option would allow the most consistency between the State and Tribal systems because it represents the option the Tribes could most likely implement.

Placing the review program with another part of the Department is another viable option. The appearance of independence would be improved under this option and the recommendations for improvement could be easily coordinated within the Department. This option would require higher expenditure, since a new organizational unit would need to be created in the Department.

The third option would require the highest cost and provide the least streamlined way of accomplishing the coordination of effort required to implement the suggested improvements in recommendations one through five.

The Department believes Option 1 to be the best option, with Option 2 as a second choice. Once again, thank you for the opportunity to respond to the Performance Audit Report on the Foster Care Review Process. We recognize the foster care review process is a complicated process involving many players and we appreciate the thoroughness with which your office conducted the audit.

Sincerely,

A handwritten signature in black ink, appearing to read "Laurie Ekanger". The signature is written in a cursive, flowing style.

Laurie Ekanger  
Director

cc: Charles L. Hunter, Administrator  
Child and Family Services Division



December 9, 1998

**STATE OF MONTANA**

**DISTRICT COURT**

**EIGHTEENTH JUDICIAL DISTRICT**

**DEPARTMENT ONE**

**THOMAS A. OLSON  
DISTRICT JUDGE**

**TAMZIN G. BROWN  
LAW CLERK**

**JANICE YURK  
COURT REPORTER**

**SHIRLEY VISSER  
EXECUTIVE ASSISTANT**

Legislative Audit Division  
Room 135, State Capitol  
P.O. Box 201705  
Helena MT 59620-1705

Re: Performance Audit  
Foster Care Review Process

Dear Auditors:

I have received a draft of the above audit. I found it very well written and informative. I hope you find my comments equally helpful.

As you correctly point out numerous times in the report, the length of time a child spends in foster care, depends on a number of factors, one of the most important of which is "judicial activity."

Simply stated, the more actively involved a judge becomes in the case, the more likely the case will be resolved and the child freed from foster care. Sadly, the judicial record of active involvement in cases throughout this country and in this state, is lacking.

I read the thrust of your report this way: Somehow agency review and citizen review should be merged, the areas of hostility should be eliminated, and the resulting board should mind their own business and not tell the department how to run their cases.

I suggest that independence is needed, that hostility or disagreement in the review process is healthy and needed, and that the department's performance actions should be reviewed and questioned.

Indeed, both federal and state law require that the department be tested on whether it has made reasonable efforts to prevent the removal of the child, and to reunify the family.

The reasonable effort requirement . . . is designed to ensure that families are provided with services to prevent their disruption and to respond to the problems of unnecessary disruption of families and foster care drift. [**Making Reasonable Efforts: Steps for Keeping Families Together**, National Council of Juvenile and Family Court Judges, page 41.]

The leading publication for improvement of court process and judicial involvement is **Resource Guidelines: Improving Court Practice in Child Abuse & Neglect Cases** published in 1995 by the National Council of Juvenile and Family Court Judges. I strongly recommend you read this valuable document. Here are some sample quotations:

Review hearings provide regular judicial oversight of children in foster care and can help judges identify inadequacies in government's response to child abuse and neglect. [Resource Guidelines, supra, p. 66.]

A plan may fail to specify agency services or particular behaviors and changes expected of parents. [Supra, p. 66.]

When the review hearing is challenging and demanding, greater consideration is given to the examination of all placement options. [Supra, p. 67.]

It is noted by the National Council that some states require judges do the review hearings, and in others agency or citizen board reviews are accepted. In Montana, we seem to have a mixed solution: judicial reviews when necessary, otherwise court appointed agency or citizen board reviews. Where judges choose not to do regular reviews in court, which I suspect is the general practice in Montana, we should heed the advice of the National Council:

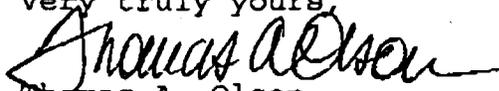
The best alternative or complement to judicial review is review by panels of judicially appointed citizen volunteers. Whatever form of review is used, it is critical that the parties be present and that questioning is conducted with rigor. [Supra, p. 67.]

The audit report seems to conclude that hostility which may have arisen between boards and the department is a bad thing. The Resource Guidelines shows that this hostility is inherent and healthy.

If we have erred in our review process in Montana, in my opinion, it is that agency and court reviews have tended to be "rubber stamps" for the agency. We have not been independent and aggressive. The Citizen Review Boards have met and filled this critical weakness.

If we return to in-house agency review, I fear we will have taken a step backwards in an area where we already have functioned inadequately.

Very truly yours,



Thomas A. Olson  
District and Youth Court Judge

cc: Judge Salvagni  
Gallatin Citizen Review Board  
Dorothy Filson  
Judges McLean  
Harkin  
Larson  
Henson  
Whelan  
Purcell



CHAMBERS OF  
JOHN W. LARSON  
DISTRICT COURT JUDGE

STATE OF MONTANA

FOURTH JUDICIAL DISTRICT  
MISSOULA AND MINERAL COUNTIES  
MISSOULA COUNTY COURTHOUSE  
200 WEST BROADWAY  
MISSOULA, MONTANA 59802-4292  
(406) 523-4773  
(406) 523-4739 FAX

December 9, 1998

Scott A. Seacat  
Legislative Auditor  
Room 1356, State Capitol  
P. O. Box 201705  
Helena, MT 59620

RE: Performance Audit Foster Care Review Process

Dear Mr. Seacat:

I am providing the following comments to the above draft performance audit. First, I believe the role of the court and the requirements of federal statute need more emphasis in the introduction, Chapter II, and in Chapter III the differences between Citizen Review Boards (CRBs) and Foster Care Review Committees (FCRCs). That description is attached as Exhibit "A".

Next as to Chapter IV, your recommended changes, specifically recommendation No. 2, I believe it is important to consider the natural resistance of the Department of Public Health and Human Services (DPHHS) to the change brought about by the 1993 Legislature. I believe the resistance of DPHHS is not due to any lack of clarity in the statute or in the governing federal laws and regulations. It is a natural and understandable reaction to change and as we related to you at the Judge's conference, that resistance was manifested in several ways. As your audit notes, most of those issues have been overcome. Exhibit "A" details the involvement of the Court which will be even more extensive under the Adoption & Safe Families Act of 1997. I believe the Legislature should allow this new process to work for another two years before implementing any changes to the CRB's role.

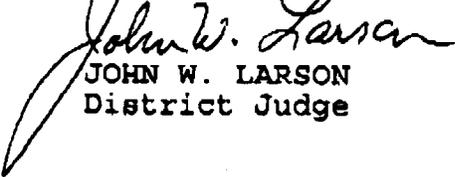
Finally, I want to concur on recommendation No. 5. I believe the CRB staff in Helena should be given credit for their efforts to develop this communication as well as their efforts to train and exchange information. This process did not exist prior to 1995.

Scott A. Seacat  
December 9, 1998  
Page Two

I also want to attach as Exhibit "B" the information prepared by the staff of the CRB detailing the shorter period time children are experiencing in care in those counties with CRBs. Again, CRBs are taking the lead in developing usable data for the courts and the legislature.

Thank you for the opportunity to comment and the interest of your staff.

Yours very truly,



JOHN W. LARSON  
District Judge

cc: Patrick Chenovick  
Court Administrator  
Montana Supreme Court  
215 North Sanders, Room 315  
Helena, MT 59620-3002

## Exhibit "A"

**DEPENDENCY**

The major tenets of the Adoption Assistance and Child Welfare Act of 1980 and the state legislation which followed after its passage are as follows:

1. The state must provide services to prevent children's removal from their homes in order to be eligible to receive any federal foster care funds. (See generally Public Law 96-272, 42 U.S.C., Sections 670 *et seq.*)

2. In order to qualify for those federal monies the court must make "reasonable efforts" findings that the state has in fact provided services to enable children to remain safely at home before they are placed in foster care.

3. The court must also determine whether the state has made "reasonable efforts" to reunite foster children with their biological parents. (42 U.S.C. Section 675(a)(15)(A); "Periodic Judicial Review of Children in Foster Care -- Issue Related to Effective Implementation," by Howard A. Davidson, *Juvenile and Family Court Journal* (May 1981), at pp. 61-69.)

4. The court must determine that there is a case plan developed to ensure placement "in the least restrictive, most family-like setting available located in close proximity to the parents' home, consistent with the best interests and needs of the child." (42 U.S.C. section 675 (5)(A), and 45 C.F.R. section 1356.21(a)(d).

5. The court must ensure that the status of every foster child is regularly reviewed and that a child is given a timely permanent placement, preferably in an adoptive setting, if return to the biological parents is not possible. (42 U.S.C., section (a)(15)(B); "The timeliness of the permanent plan is critical if the child is to avoid 'foster care drift,' the movement from foster home to foster home during a child's minority." See *Children in Need of Parents* by H. Maas and R. Engler, New York, NY, Columbia University (1959).)

6. The court is mandated to determine whether "reasonable efforts" have been provided by the social services agency to prevent removal of the child from the parents and to facilitate reunification after removal. ("Reasonable efforts" by state welfare agencies are required in every case requiring out-of-home placement under the Adoption Assistance and Child Welfare Act of 1980 (P.L. 96-272) as a condition of federal reimbursement for the state's Foster Care and Adoption Assistance Plan. 42 U.S.C. section 671 (a)(15). Additionally, the court must make an affirmative finding in each case that those services were provided. 42 U.S. C. section 672.

7. Additional review and earlier assessment of reasonable efforts is required under the Adoption and Safe Families Act of 1997.

Missoula County Citizen Review Board Statistics  
October, 1998

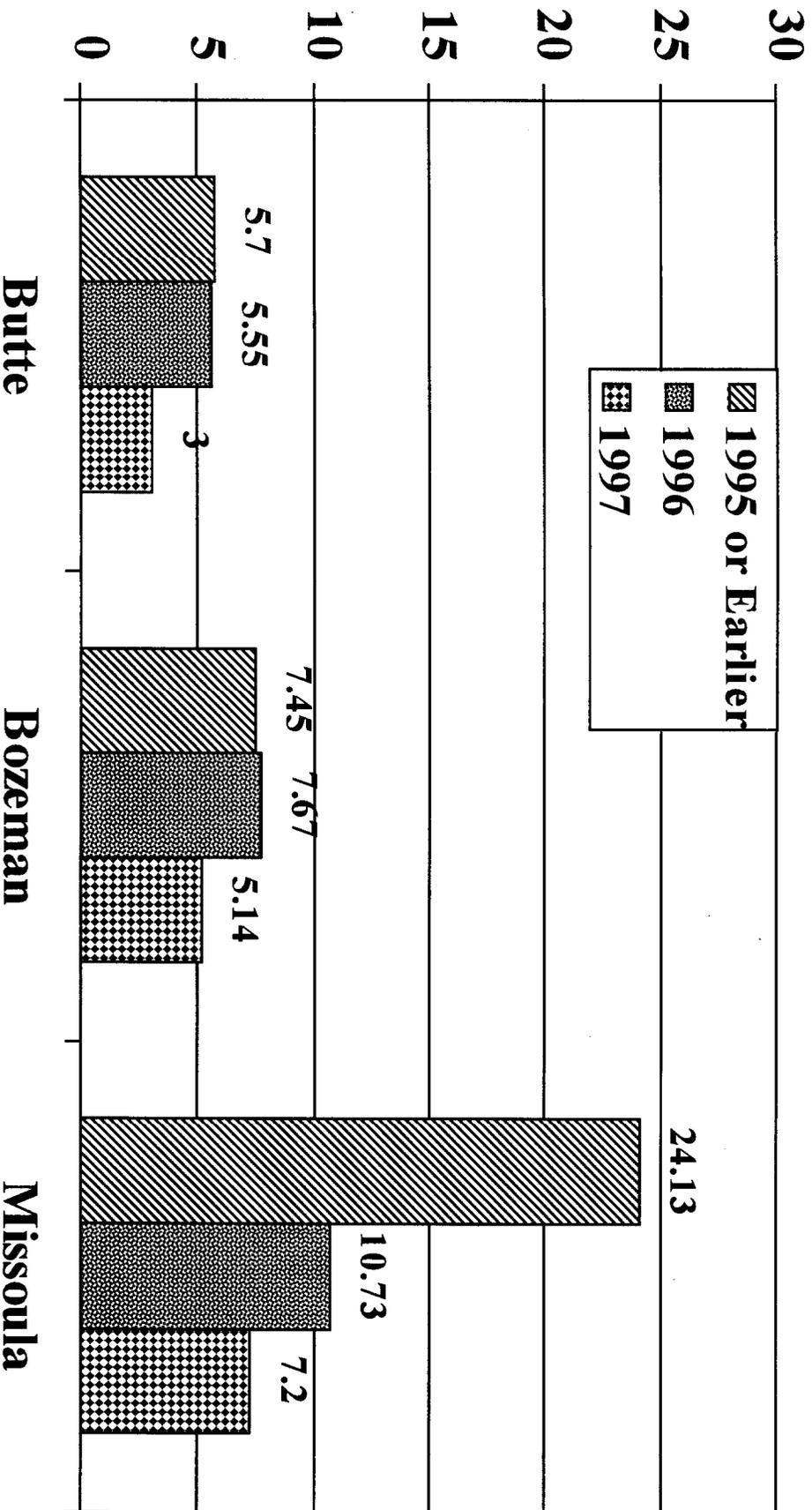
	<u>Beginning No.</u>	<u>New Cases</u>	<u>Closed Cases</u>
<u>1995</u>	194	39	33 10% adopted 19% returned home 39% emancipated 12% other
<u>1996</u>	200	35	38 13% adopted 31% returned home 44% emancipated 12% other
<u>1997</u>	197	20 (thru 11/97)	74 (thru 11/97) 17% adopted 35% returned home 29% emancipated 19% other

142 active cases as of 11/97 results in a 27% DECREASE of no. of children in foster care from Jan. 95 through Nov. 97.

It should be noted that decreases took placed prior to October 1997 statutory changes to permanency laws.

EXHIBIT  
 "B"

# Average Number of Months Youth Spent in TIA by District and Year



# Average Number of Months Youth Spent in TLC by District and Year

