

### **III. Conclusion**

#### **Where we were:**

The original assessment that was completed in 1996 identified seven areas of concern:

- A. Case management
  - 1. Limiting continuances
  - 2. Information Management (Access between JCMS and CAPS data systems)
- B. Representation
  - 1. Representation of Children (development of additional CASA programs)
  - 2. Representation of Parents
  - 3. Representation of CFS (fund training for attorneys and judges, amend statutes to clarify the burden of proof requirements at each stage)
  - 4. Law School Course/Clinical Program (child advocacy class offered at Law School)
- C. Consistency in the Courts' Handling of Child Abuse and Neglect Cases
  - 1. Statutory Changes (to clarify existing law)
  - 2. Timely Preliminary Hearings (using video conferencing for hearings in rural sites)
  - 3. Magistrates/Special Masters
- D. Reasonable Efforts
  - 1. Reasonable Efforts Hearing
  - 2. Reasonable Efforts Training
- E. Judicial Oversight
  - 1. Addressing Specific Services in Orders
- F. Review Hearings
  - 1. Six Month Review Hearings
  - 2. Post Termination Reviews
- G. Indian Child Welfare Act
  - 1. Education
  - 2. Statutory Reference
- I. Proposed Adoption Legislation
  - 1. Statutory Changes

The data for this assessment was obtained from surveys, court hearing observations, interviews and case reviews in five counties. The action steps needed to address these concerns were included in the assessment and completed. The concern about the inconsistency in the six-month reviews is no longer relevant, since there are no longer two separate review systems operating in Montana.

#### **Where we are now:**

An online survey was sent out to approximately 700 recipients: district court judges, attorneys, CFS caseworkers and CASA volunteers. In addition, foster parents were asked to complete the survey via a web link on the Montana State Foster/Adoptive Parent Association newsletter. Overall, 279 surveys were received, or 40.58%. Questions were asked about court process, preparation, effectiveness, and training among others. In addition, over 340 cases were selected for case review from the same five counties that were selected in the assessment. Because the Child and Family Services Review (CFSR), a federal audit that was completed in 2002, identified many concerns, a strict time parameter was placed on eligible cases for this review. CFSR devised and implemented its Program Improvement Plan in 2003 to address the concerns from the CFSR. To give this plan time to be implemented and some results stemming from the corrective actions gained, cases for this review had to be filed on or after 10/1/2003 and had to be open cases for at least six months. Case numbers were pulled up from a query on JCMS for Hill, Yellowstone, Lincoln and Lewis and Clark counties, and from the Cascade County Management Information System for cases in that county. A total of 346 cases were identified as having been opened since 10/1/2003 and of those, reviews were conducted on 224 cases. The majority of those not being reviewed were not open the required six

months. Other reasons were because of change of venue, loss of jurisdiction, and having cases misidentified as Youth in Need of Care cases, when in fact, they were Surrogate Parent or Adoption cases.

Both the web survey and the case reviews indicate that some of the same problems identified in the 1996 assessment and the 2002 CFSR are still a concern.

A. Continuances: Show cause hearings were continued in 42.41% of the cases reviews, for adjudicatory hearings in 44.6% of the cases and for TLC hearings in 46.9%. The primary reasons listed by judges and attorneys for the continuances were failure to locate the parents, lack of or delay in the service of process on parents and lack of service on the Tribe in ICWA cases. In the case reviews, the main reasons indicated for continuances of the adjudicatory hearing were unavoidable delays in noticing parties to the case (20 cases) and ICWA timelines (15 cases).

B. Representation: Since the passage of the Public Defender Bill, timely representation for parents is a moot issue. GAL's were appointed to children in almost all cases at the show cause hearing or even before. Opinion among the survey respondents was that CFS attorneys, parents' attorneys, attorney guardians ad litem and CASA volunteers were all important to the timely outcome of a case, and usually prepared for and present at hearings. Almost half of the attorneys, however, had not received any training prior to representing parties in child abuse and neglect cases. Leslie Halligan, CFS attorney from Missoula, is currently teaching Child Advocacy at the U of M School of Law. Prior to her teaching, Ann Gilkey taught this class for several years. This was a direct result of the 1996 assessment.

Over half of the attorneys answering the survey indicated they have had training in key areas of child advocacy such as legal and procedural aspects of abuse and neglect cases, ICWA, federal and state requirements. Almost half indicated having training in child development, foster care placement issues, and drug/alcohol abuse and its effect on parenting/treatment options, among others.

C. Consistency in the Courts' handling of DN cases was not seen in the case file reviews. The court process was different in each of the five counties and sometimes differed among the judges in Lewis & Clark, Yellowstone and Cascade Counties. Several of the judges schedule hearings by the statutory requirements and others combine hearings. Lewis & Clark County often combines the show cause, adjudicatory and dispositional hearings, based on a stipulation from the parents and in several cases, because of the stipulation, even cancelled the show cause hearing. Another difference noted was the number of treatment plans ordered for parents. Several cases had four or more treatment plans ordered, extending the time in placement for the child in the case.

Statutory changes were made to clarify existing law in each Legislative session since 1997. Timely preliminary hearings: Video conferencing is being used occasionally. There weren't questions on the survey asking about whether the hearings were being held by video conference. The case file reviews weren't conducted in judicial districts where travel is often necessary. However, the majority of show cause hearings were scheduled timely, even though many were continued.

Magistrates/Special Masters: The Fourth Judicial District Court has two special masters assisting the judges.

D. Reasonable efforts language was found in 94.4% of the show cause orders and in over 95% of the adjudicatory orders. 100% of the judges who responded to the survey reported they make a finding regarding reasonable efforts. 42.9% of these judges also report always entering findings describing the reasonable efforts made and 35.7% reported they usually (67%-99%) made these same specific findings. They also reported, almost unanimously, that they have received training in federal and state requirements and legal and procedural aspects of child abuse and neglect cases.

E. Judicial oversight of cases, specifically addressing specific services in orders, was the point of several questions on the survey and the case review form.

In over 91% of the case files reviewed, the court order contained language that reasonable services had been provided to the parent to prevent removal of the child or to make it possible for the child to safely return home (absent a finding that reasonable efforts are not required).

In addition, 60% of the judges said they usually consider whether the family is availing themselves to CFS services and 53.3% usually consider whether the services are alleviating the reason the child was removed. (Usually: 67-99% of the time)

26.7% said they always consider whether the services are alleviating the reason the child was removed and 20% said they always consider whether the family is availing themselves to CFS services.

F. Six-month review hearings are conducted by Foster Care Review Committees statewide, now that the Citizen Review Boards are an unfunded mandate. The only exception is a CRB program that continues to operate in the 1<sup>st</sup> Judicial District. Post-termination reviews were almost non-existent in the cases that were reviewed because of the length of time being reviewed. All of the cases had been opened less than two years, a time frame in which you'd expect to see very few post-termination reviews. There were several questions pertaining to post-termination reviews on the survey, but they didn't specifically address the issue of whether these hearings were being held.

G. Indian Child Welfare Act: The majority of judges, attorneys and CFS caseworkers reported they always or nearly always inquire as to whether the children in a case are of Native American heritage and if the case falls within the ICWA parameters. In addition, most of the judges and attorneys report having received ICWA training. The only ICWA issue is the continuances granted because of having to give notice to the Tribe at the show cause hearing and ICWA timeframes causing delays at the adjudicatory phase of the case. A new statutory reference was passed in 1997 and in 2005, the state statutes in Title 41 were brought into compliance with the Federal law.

I. Adoption legislation was proposed and adopted in the 1997 Legislature.

New concerns from the CFSR, apart from the concerns of the 1996 assessment, were also identified. The CFSR Program Improvement Plan addressed the areas that needed improvement and the reassessment was mandated to also address these areas. The results indicate that while Child and Family Services has implemented corrective action, solving the problem is not always within their abilities. The case file reviews found that hearings aren't being held timely in all cases, all orders aren't being received in a timely fashion and required federal language isn't being written into every order. In addition, overworked staff and lack of additional funding result in children lingering too long in the system.

Several district court judges in Montana have implemented a treatment model into their courtrooms. Four family treatment courts are currently in operation, along with two adult treatment courts and two youth drug courts. The family court in Yellowstone County is the longest running family model, having been started in June 2001. Cost savings demonstrated in a program evaluation, spanning a four-year time frame, show for every extra dollar spent on drug court, there is a \$4.74 savings. The savings were calculated using three factors: the decrease in foster care costs, an increase in the tax base because of increased employment and the savings realized in court costs associated with less cases ending in a termination of parental rights. The children in this study spend about one-third as much time in foster care as the children in a control group, being reunified more quickly because of the availability of increased services. These courts have been financed through federal grants, Congressional appropriations, non-profit agencies and county budgets. All of these courts have been successful, decreasing the recidivism of drug and alcohol offenses and helping the clients to become clean, sober productive citizens. Other district courts are interested in implementing the treatment model but a lack of funding has been a deterrent. A legislative bill is being planned to request funding for drug courts in the 2007 session.

***Where do we go from here:***

The Montana delegation that attended the National Leadership Summit on the Protection of Children formulated a Work Plan (Appendix III), slated to be completed by 2007, to deal with the delays in permanency for children. This goal will be reached by decreasing the length of time children spend in care and improving consistency, continuity, and uniformity of court practice statewide. In conjunction with this work plan, a new strategic plan will be developed from the reassessment by the Court Assessment Program Advisory Committee, concentrating on limiting continuances, establishing continuity within the child protection arena, decreasing the appellate timeframe, and focusing on the case with the child's best interests as the priority of every action.

# Court Assessment Program

Montana's Court Assessment Program, under the direction of the Supreme Court Administrator, was established in 1994 with a continuing grant from the federal government through the Department of Health and Human Services. Its purpose is to assess and assist Montana District Courts in moving abuse and neglect cases through the court system and achieving permanency for children as quickly as possible. Helping to achieve this goal is the CAP Advisory Council which is comprised of legislators, several District Court judges, a Tribal judge, a Supreme Court Justice, a county attorney, a probation officer, a District Court Administrator, the Administrator of Child and Family Services, several CFS program managers, Supreme Court staff, the supervisor of the Child Protection Unit at the Attorney General's office, a staff member of the State Bar, several Guardians ad litem, a staff member of Montana Legal Services, a neuropsychologist and a foster parent.

CAP continues to be funded with the federal grant and a required 25% state general fund match. The budget for FY06 is \$112,093 federal and \$37,155 state general fund.

CAP has one FTE, who coordinates the CAP grant and generally serves as the project director of drug court grants administered through the Supreme Court. Currently, Lewistown Family Treatment Court is operating under a three-year SAMHSA grant of approximately \$70,000 per year. CAP also has been successful in receiving another congressional appropriation for FY2006 in the amount of \$266,552 that will help to sustain family drug courts in Billings, Miles City and Butte, and a juvenile drug court in Missoula.

CAP has established a mini-grant process to fund projects that helps to further its mission in helping children achieve permanency by contributing to:

- ❖ start-up and sustainability costs of several Court Appointed Special Advocate programs in the state;
- ❖ parent education programs in Great Falls, Missoula, Roundup, and Bozeman;
- ❖ start-up costs for several drug courts;
- ❖ a forensic interview room on the Hi-Line;
- ❖ start-up funding for a new State Board of Directors for CASA;
- ❖ a supervised visitation project in Cut Bank;
- ❖ a developmental assessment clinic in Pablo for the CS&K Tribes;
- ❖ a domestic violence impact study on children in Billings.

A federally mandated reassessment of court practice was completed by CAP in November 2005, which identified the strengths and weaknesses of our current system. There are several areas of concern, which will be addressed at a statewide summit on the protection of children that is being held in August. Delays in a child's permanent placement will be the main focus, along with the

lack of continuity within the courts. Collaboration between the courts and Child and Family Services will also be addressed, specifically to correlate to the next Child and Family Services federal review.

A new CAP strategic plan will be developed for the next three-four years, depending on the length of time covered by the next federal appropriation for the CAP programs. Current funding expires in FY 2006, but a recent development has helped to ensure the continuation of the CAP programs. The Pew Commission conducted a study on foster care in 2003 and made several recommendations to Congress. In the Budget Deficit Reduction Act of 2006, Congress appropriated \$50 million for court case management and analysis of dependency cases, at the rate of \$10 million per year (2006-2010) and \$50 million for training of judges and attorneys and cross-training of social workers in dependency cases. These funds are to be applied for and administered by the state's CAP program, so it's felt the program is secure for the next five years.

## Critical Time Lines in State Law: A Brief Review of Montana Statutes

Time lines relating to court procedures, petitions, hearings (exceptions may apply).

- An **abuse or neglect petition** must be filed within 2 working days, excluding weekends and holidays, of emergency placement of a child unless arrangements acceptable to the agency for the care of the child have been made or voluntary protective services provided. 41-3-301, MCA. (This is the "48-hour rule" that is an issue with the new court rules requiring a separate petition for each child - see October 20, 2005 notebook for a copy of the rule. The reference to "48 hours" was amended to "2 working days, excluding weekends and holidays" in 2001.)
- Except as provided in the Indian Child Welfare Act, otherwise stipulated by the parties, or unless an extension is granted by the court, a **show cause hearing** must be held within 20 days of the filing of the initial petition. 41-3-301, 41-3-432, MCA. (This had been changed from 20 days to 10 days in 2001, and subsequently changed back to 20 days in 2003.)
- An **adjudicatory hearing** must be held within 90 days of a show cause hearing. Exceptions to the time limit may be allowed only in cases involving newly discovered evidence, unavoidable delays, stipulation by the parties, and unforeseen personal emergencies. 41-3-437, MCA.
- If a child is adjudicated a youth in need of care, the court shall set a date for a **dispositional hearing** within 20 days. 41-3-437, 41-3-438, MCA.
- A parent or other person having legal custody of a child named in a petition must be served personally with a copy of the initial petition and the petition to terminate at least 5 days before the date set for the hearing. 41-3-422, MCA.
- There is the presumption that the termination of parental rights must be initiated by filing a petition if the child has been in foster care for 15 out of 22 months unless other circumstances exist. 41-3-422, and 41-3-443, MCA and ASFA<sup>1</sup>.
- If reasonable efforts to provide preservation or reunification services need not be provided, then a permanency hearing must be held within 30 days. 41-3-423, 41-3-438, and 41-3-445, MCA and ASFA.
- Permanency hearings must also be held: (1) No later than 12 months after the initial court finding that the child has been subjected to abuse or neglect or 12 months after the child's first 60 days of removal from the home, whichever comes first; and (2) within 12 months of a permanency hearing and every 12 months thereafter until the child is permanently placed in either an adoptive or a guardianship placement. 41-3-445, MCA and ASFA
- A finding of "reasonable efforts to prevent removal" or "reasonable efforts to prevent removal or reunify not required" must be in a court order within 60 days of the date of the child's removal from the home to be eligible for IV-E funds or adoption subsidy.
- Courts must comply with ASFA in making specific findings within certain time frames in order to receive IV-E (federal) funding and adoption subsidy.

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<sup>1</sup>ASFA refers to the Adoption and Safe Families Act of 1997.

- Foster Care Review Committee is to review the foster care status of a child receiving federal funds within the time lines established under the ASFA. 41-3-115, MCA and 45 USC 675(5).

Other CFSD time lines:

- An initial investigation of an anonymous report must result in the development of independent, corroborative, and attributable information within 48 hours for the investigation to continue. 41-3-202, MCA.
- If a report is unfounded, the report must be destroyed within 30 days. 41-3-202, MCA.
- Within 60 days after beginning an investigation, the investigating social worker must report to the department and, upon request, to the family. 41-3-202, MCA.
- If a voluntary protective services agreement is terminated by a party to the agreement, a child who has been placed in temporary out-of-home placement must be returned to the parents within 2 working days unless an abuse and neglect petition is filed by the department. 41-3-302, MCA.
- At least 3 working days before a permanency hearing, the department must and the guardian ad litem, attorney, or advocate may submit a report regarding the child to the entity that will conduct the review. 41-3-445, MCA.

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