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## We Know Better Than We Do: A Policy Framework for Child Welfare Reform

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# **WE KNOW BETTER THAN WE DO: A POLICY FRAMEWORK FOR CHILD WELFARE REFORM†**

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*The need for comprehensive reform of child welfare policies and systems has long been evident. This Article reports observations from the W.K. Kellogg Foundation-sponsored Families for Kids Initiative that seeks to expand services and support to families and reduce the time children spend in temporary care. The authors first provide an overview of the need for reforms such as those proposed by this initiative, suggesting that many child welfare studies, critiques, and proposed reforms have had similar objectives. The authors highlight lessons learned from how these reform goals are being developed, implemented, and practiced in ongoing programs across the nation and argue that change at multiple levels must occur for reform of this system to succeed. They identify nine methods being used to varying degrees by some of these initiatives to institutionalize reform goals and improve the quality and outcomes of child welfare legal and social service practice. By highlighting these evolving models of state law, agency administrative procedure and professional practice, the authors identify areas of reform for other jurisdictions. Child welfare reform rests upon new legislation mandates, more specific reasonable*

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efforts requirements, adoption of flexible funding mechanisms, capitated foster care contracts, timely court processes, better trained professionals, or cross-system data capability to monitor children in care. All of these policy and system reforms must be designed and implemented collectively for child welfare ideals to become operational.

## I. INTRODUCTION

The agencies, policies, funding streams, and public and private programs that make up the child welfare system have been controversial since their earliest inception.<sup>1</sup> Many programs—for example, family preservation programs<sup>2</sup>—have had mixed results for children and families. Conventional wisdom holds that the current legal and social service practices designed to identify children in need of placement, to serve and treat their families, to change the child's custody, and to provide reasonable alternative homes have failed many vulnerable children and families.<sup>3</sup> We are hampered even today by gaps in our knowledge, by outmoded and sluggish administrative procedures, and by a profound lack of commitment to invest in the families whose children are at risk.

Yet, the history of child protection and placement is also replete with intense idealism and altruism. Indeed, innovative approaches to improving specific sectors of the child welfare system, such as the early experiments in permanency planning, appear promising.<sup>4</sup> As these innovations become more institutionalized, however, they may create additional burdens in other areas of the system. For example, the recognition of

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1. See, e.g., Ann Hartman, *Children in a Careless Society*, 35 SOC. WORK 483 (1990); Lela Costin, *The Historical Context of Child Welfare*, in A HANDBOOK OF CHILD WELFARE: CONTEXT, KNOWLEDGE, AND PRACTICE 34 (Joan Laird & Ann Hartman eds., 1985).

2. For recent debates about family preservation, see Howard I. Bath & David A. Haapala, *Family Preservation Services: What Does the Outcome Research Really Tell Us?*, 68 SOC. SERV. REV. 386 (1994) (analyzing the design of family preservation service evaluations); Julia H. Littell, *Evidence or Assertions? The Outcomes of Family Preservation Services*, 69 SOC. SERV. REV. 338 (1995) (criticizing Bath and Haapala's analysis); Howard I. Bath & David A. Haapala, *Evaluation Outcomes of Family Preservation Services and the Way Ahead: A Reply to Littell*, 69 SOC. SERV. REV. 351 (1995) (responding to Littell's critique).

3. See DUNCAN LINDSEY, *THE WELFARE OF CHILDREN* 3-5 (1994).

4. See Janet Lahti, *A Follow Up Study of Foster Children in Permanent Placements*, 56 SOC. SERV. REV. 556-71 (1982) (finding that children placed in permanent homes had higher well-being scores than those placed in temporary homes).

the prevalence of child abuse and neglect in the 1960s and 1970s led to the establishment of statewide child protection reporting systems across the nation.<sup>5</sup> Once we put massive effort into these programs, however, we soon discovered that many children were lingering for years in foster care, drifting from one foster placement to another without returning to their homes or being adopted.<sup>6</sup>

This realization, and other similar realizations, led to another round of important practice innovations in child protection, including the improvement of assessment tools and counseling methods for troubled families, court reforms, and eventually, in 1980, federal legislation designed to speed up children's and families' moves toward permanence.<sup>7</sup> This legislation, however, has not been successfully implemented at the state, local, and tribal<sup>8</sup> levels. Thus, despite the well-intended reforms of 1980, new problems of the following decade, such as rising poverty and substance abuse, led to increasing numbers of children flooding the system's diagnostic, monitoring, service-providing, and legal capacities.<sup>9</sup> The number of children entering temporary foster care continued to increase, and the number of children in "foster care limbo" also remained unacceptably high.<sup>10</sup>

The need for comprehensive reform is reflected in the faces of foster children themselves. American foster children are disproportionately children of color. Children of color make up over 62% of the children in foster care in the twenty-one states from which the most recent data is available.<sup>11</sup> This figure demonstrates that, based on their representation in the general population, children of color are overrepresented in the

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5. See Douglas J. Besharov, *Gaining Control Over Child Abuse Reports: Public Agencies Must Address Both Underreporting and Overreporting*, PUB. WELFARE, Spring 1990, at 34, 34-36.

6. For recent analysis of the problem of foster care drift and what should be done, see KATE WELTY, NORTH AM. COUNCIL ON ADOPTABLE CHILDREN, A FRAMEWORK FOR FOSTER CARE REFORM: POLICY AND PRACTICE TO SHORTEN CHILDREN'S STAYS (1996) (on file with the *University of Michigan Journal of Law Reform*).

7. See Adoption Assistance and Child Welfare Act of 1980, Pub. L. No. 96-272, 94 Stat. 500 (1980) (codified as amended in scattered sections of 42 U.S.C.).

8. See Julian D. Pinkham, *Speaking to Tribal Judges on Improving Children's Court Practice in Child Abuse and Neglect Cases in Our Country: A Proposal for a Uniform Children's Code*, 31 U. MICH. J.L. REFORM 159 (1997).

9. See SUSAN WHITELAW DOWNS ET. AL., CHILD WELFARE AND FAMILY SERVICES: POLICIES AND PRACTICE 266 (5th ed. 1996).

10. See *id.*

11. See STAFF OF HOUSE COMM. ON WAYS AND MEANS, 104TH CONG., 1996 GREEN BOOK 749 (Comm. Print 1996).

foster care system.<sup>12</sup> Almost half of American foster children are African-American,<sup>13</sup> and African-American foster children usually wait for adoption longer than white children do.<sup>14</sup> Whatever the minority group in a given area—Hispanic, African-American, or Native American—that minority is nearly always overrepresented in the foster care population. Latino children constitute roughly 12% of the child population nationwide, but 14% of the children in out-of-home placement.<sup>15</sup> In Texas, a state with a high percentage of Latinos, while Latino children make up 21% of the overall child population and 21% of the child maltreatment victims, they represent close to 30% of the children in placement.<sup>16</sup> In large urban areas—Detroit, New York, and Chicago, for example—children of color may constitute 80–90% of the child welfare population.<sup>17</sup>

Some child welfare researchers attribute the field's major weakness to its lack of attention to prevention. One researcher finds that the field's residual nature (concentrating most of the resources at the tail end of the service continuum) causes more people to need child welfare intervention and treatment than would be necessary if families were adequately supported before their problems reached the crisis levels that threaten child well-being.<sup>18</sup> The child welfare system still focuses its efforts to develop family support services on families who enter the system by way of child maltreatment reporting mechanisms.<sup>19</sup> Some states may only offer services once there is a report to protective services. Thus, our social policies activate the most extensive interventions when we believe that disruption or severing of family ties is required. Unfortunately, the legal system, which is so critical for timely, effective, and targeted interventions on

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12. See JENNIFER CHEESEMAN DAY, U.S. DEPT OF COMMERCE, POPULATION PROJECTIONS OF THE UNITED STATES BY AGE, SEX, RACE, AND HISPANIC ORIGIN: 1993 TO 2050 P25-1104 (1993). Children of color age 18 and under comprised 33.45% of the child population nationally in 1995; thus, their representation in the foster care population in AFCARS reports from 21 states in December 1994, of 46.8% is greater than their representation in the general child population. *Id.*

13. See STAFF OF HOUSE COMM. ON WAYS AND MEANS, *supra* note 11, at 749.

14. See Judith K. McKenzie, *Adoption of Children with Special Needs*, THE FUTURE OF CHILDREN, Spring 1993, at 62, 63.

15. See ROBERT M. ORTEGA ET AL., LATINOS AND CHILD WELFARE/LATINOS Y EL BIENESTAR DEL NIÑO: VOCES DE LA COMUNIDAD 3-4 to 3-5 (1996) (on file with the *University of Michigan Journal of Law Reform*).

16. See *id.* at 3-3 to 3-5.

17. See McKenzie, *supra* note 14, at 69.

18. See LINDSEY, *supra* note 3 (examining and critiquing the residual approach to child welfare).

19. See *id.* at 4.

behalf of the child, has not modernized its statutes and procedures sufficiently to meet this great challenge.

Recognition of the need for comprehensive reform is not new to child welfare research. For example, almost a decade ago, two policy researchers conducted an extensive study of child welfare systems in the context of children and family social services across twenty-five sites in fifteen states.<sup>20</sup> They identified several institutional deficiencies that contributed to problems with foster care, including organizational fragmentation,<sup>21</sup> insufficient funding,<sup>22</sup> poor coordination between public child welfare and the courts,<sup>23</sup> and weaknesses in professional training and staffing.<sup>24</sup> Moreover, they proposed a comprehensive overhaul of policies and programs to address the needs of children and families at risk.<sup>25</sup>

In 1991, the National Commission on Children published its final report, a broad agenda for creating a national child and family policy strategy.<sup>26</sup> The report recommended a far-reaching array of policies and programs to ensure income security, improve health, improve education, prepare adolescents for adulthood, strengthen and support families, and protect vulnerable children.<sup>27</sup> The Commission's analysis of problems in child welfare and foster care led it to propose system-wide reforms at the federal, state, and local levels.<sup>28</sup> The major emphasis was a call for increased flexibility in spending for services intended to heighten support for families and children before, during, and after placement.<sup>29</sup> The Commission's report argues that multiple, interrelated changes are required to implement this flexibility and enhanced service delivery. These include changes in the fiscal structure of categorical programs,<sup>30</sup> changes in termination of parental rights laws at

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20. See Sheila B. Kamerman & Alfred J. Kahn, *Social Services for Children, Youth and Families in the United States*, 12 CHILDREN AND YOUTH SERVS. REV. 1 (1990).

21. See *id.* at 2.

22. See *id.* at 15.

23. See *id.* at 16.

24. See *id.* at 95.

25. See *id.* at 145-67.

26. NATIONAL COMM. ON CHILDREN, BEYOND RHETORIC: A NEW AMERICAN AGENDA FOR CHILDREN AND FAMILIES (1991)

27. See *id.*

28. See *id.* at iii.

29. See *id.* at 310-41.

30. See *id.* at 322.

the state level,<sup>31</sup> and changes in community awareness and involvement in these programs at the local level.<sup>32</sup>

Many recent efforts to reform child welfare, such as the W.K. Kellogg Foundation Families for Kids Initiative (FFK Initiative), also reject a piecemeal, single issue approach to reform in favor of a broad-based, comprehensive, systemic approach to working with the growing number of children and families who come in contact with the child welfare system. The Families for Kids Initiative aims to expand services and support to families and to reduce the amount of time children spend in temporary, substitute arrangements.<sup>33</sup> Changing a child's experience in the child welfare system, from one characterized by lengthy stays in foster care to one that quickly places him in a permanent setting, requires altering both the system's orientation and its practices.

In 1991, the W.K. Kellogg Foundation (the Foundation) created its Families for Kids Initiative with a vision of obtaining a permanent home within one year for all children in foster care.<sup>34</sup> The goal of the FFK Initiative is to support and advocate system innovations to promote a more family-friendly child welfare system for children placed in foster care, with reform flowing from a broad, community-based leadership.<sup>35</sup> As a guide to its grantees, the Foundation first identified five outcomes that it believed would lead to permanency for children, and then challenged communities to develop a consensus strategy for achieving the FFK Initiative vision reflected in those outcomes. The five outcomes that have guided the Families for Kids Initiative from the beginning are:

- (1) Comprehensive family support to help families (including birth, foster, or adoptive families) stay together and meet the challenges of everyday life.
- (2) One comprehensive, coordinated assessment process that covers the entire family.
- (3) One consistent caseworker or casework team throughout the intervention and placement process.

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31. *See id.* at 304.

32. *See id.* at 306.

33. *See* W.K. KELLOGG FOUND., *FAMILIES FOR KIDS: BUILDING THE DREAM* 7-10 (1996) (on file with the *University of Michigan Journal of Law Reform*).

34. *See id.* at 8-10.

35. *See id.* at 19-21.

- (4) One stable foster home placement in the child's community.
- (5) One year, at most, until placement in a permanent home.<sup>36</sup>

Against the backdrop of these five outcomes, the Families for Kids Initiative focuses on those children who are unlikely to return to their families of origin and the treatment of those children while they are in temporary placements.<sup>37</sup> Even the "family support" outcome targets services made available at the point that, unless proper services were provided, the child would be removed from the home and placed elsewhere.<sup>38</sup> The FFK Initiative focuses on foster care and adoption.

In July 1993, the Foundation awarded planning grants of \$100,000 each to nineteen communities in fifteen states for the "Visioning Stage" of the Families for Kids Initiative.<sup>39</sup> Community members first met in a variety of networking forums to gather information about needed reforms.<sup>40</sup> This planning stage engaged broad, diverse, and grassroots representatives, including the children and their families who are the targets of child welfare interventions.<sup>41</sup> In a concerted effort to address the disproportionate representation of children of color in the foster care system, the FFK Initiative developed proposals to monitor children more closely by ethnicity and race and to recruit more prospective foster and adoptive families in communities of color.<sup>42</sup> In December 1995, the Foundation granted an average of three million dollars to eleven communities to implement FFK Initiative projects. The eleven FFK Initiative teams set annual goals for the reduction of the number of children in foster care, with particular focus on the backlog of children who had been in care for several years.<sup>43</sup> The FFK Initiative teams implemented strategies to achieve the five outcomes within their specific local, county, tribal, and state contexts, and to sustain and institutionalize their reforms.<sup>44</sup>

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36. *See id.* at 10.

37. *See id.* at 8.

38. *See id.* at 10.

39. *See id.* at 11.

40. *See id.* at 13-17.

41. *See id.*

42. *See id.* at 13-14.

43. W.K. KELLOGG FOUND., FAMILIES FOR KIDS WHO WAIT: PROMISING DIRECTIONS FOR COMMUNITY BASED ADOPTION REFORMS 5 (on file with the *University of Michigan Journal of Law Reform*).

44. *See* W.K. KELLOGG FOUND., *supra* note 33, at 21-33.

While each FFK Initiative site is unique, with its own character and approach, each shares a common vision.

The problems of children in foster care have recently regained attention at the highest levels of our government, due in part to the efforts of the Families for Kids Initiative. On December 14, 1996, President Clinton issued an Executive Memorandum proposing to double, by the year 2000, the number of children adopted or permanently placed each year.<sup>45</sup> The President's Adoption 2002 Initiative holds promise for strong federal leadership to help the states address the problems of children in public foster care. Recently, Congress also responded to these concerns, by passing legislation that amends the Adoption Assistance and Child Welfare Act and promotes permanency planning, adoption, and kinship care.<sup>46</sup> The proposed federal assistance will include \$10 million for technical assistance and grants to state agencies and \$10 million for up to fifteen competitive grants to states to develop model strategies to achieve permanent placements for children in foster care.<sup>47</sup>

This Article addresses the policy reforms necessary to sustain a child welfare system that is both more integrated and more oriented toward meeting the five Families for Kids Initiative outcomes. These outcomes are not exclusive to FFK Initiative program efforts, but instead represent a commonly held view of ideal child protection and placement. This Article draws on observations about the experiences of the eleven FFK Initiative sites, reviews of site progress reports, foundation and evaluation team reports, FFK Initiative workshops, and discussions with nationwide professionals who are involved in the initiative. This Article outlines and analyzes models of state law, agency procedure, and professional practice that could be adapted to improve services to children in foster care in all jurisdictions.

Although drawn from the experiences of the eleven Families for Kids Initiative sites, this is certainly not a consensus document reflecting the views of the thousands of people involved in the FFK Initiative, nor does it reflect the views of the Foundation itself. Instead, the authors identify a comprehensive set of policy elements that have emerged from the FFK

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45. Memorandum on Adoption and Alternate Permanent Placement of Children in the Public Child Welfare System, 32 WEEKLY COMP. PRES. DOC. 2513 (Dec. 14, 1996).

46. See Adoption Promotion Act of 1997, H.R. 867, 105th Cong. (1997).

47. See *id.* § 12(a)-(c).

Initiative experience that, when taken together, provide a framework for broad child welfare reform.

We take a reflective stance on the operations of this system across its multiple levels in order to present a comprehensive set of policy, system, and practice elements through which the child welfare system may be reformed. This comprehensive set of reforms is an effective framework for successful child welfare reform. We have identified the ideal points of change necessary to transform policy goals into sustainable, operating objectives within a state or local services system. Although much of contemporary child welfare policy is federally based and federally funded, our framework transcends the level of particular government mandate—federal, state, tribal, or local.

Our central message is that child welfare reform must be broad-based and interdisciplinary. No single group and no single element of a system or a community—social agencies, family advocacy groups, the courts, the state legislature, or a state administrative agency—has the ability to meaningfully improve foster care on its own. The historical failure of piecemeal policy reforms suggests that community elements must work collectively. In the same vein, child welfare reform does not rest on any particular approach or program. The key to reform is not family preservation, reasonable efforts requirements, flexible funding mechanisms, managed care, capitated foster care provider contracts, timely court processes, or a trained cadre of child welfare professionals. The key to child welfare reform is none of these programs individually, but rather *all* of these elements collectively.

Some projects—such as efforts to precisely identify the barriers that cause foster care drift and delay—require better data. We are struck, however, by the considerable consensus among child welfare professionals over the last few decades as to child welfare reform. As the Families for Kids Initiative has pronounced from its beginning: “We know better than we do.” Our goal is to identify the current thinking on how to transform this system at multiple levels and pressure points. We also assume that success will require cooperation at all levels—from elected officials, judges, lawyers, agency administrators, caseworkers, and families.

This Article presents a comprehensive, broad-based, interdisciplinary framework for analyzing child welfare policy and practice. Part II presents and defines nine policy or practice methods by which the Families for Kids Initiative reform goals

can become institutionalized. Following the framework description, Part III uses specific examples from the eleven Families for Kids Initiative sites to demonstrate how these mechanisms for reform can be structured to promote the specific Families for Kids Initiative outcomes. In Section A, we show how the nine methods can be used to promote the first Families for Kids Initiative objective of family support. Section B addresses how the methods can promote the Families for Kids Initiative objectives regarding placement in foster care and permanency within one year.

Our hope is that this Article will help states and local communities evaluate the current strengths in their child welfare systems and identify the benchmarks for their future reform agendas. The communities can then assess which of the various elements of their foster care systems are indeed lagging behind and which are evolving in innovative ways.

## II. STRUCTURE AND DEFINITIONS FOR A CHILD WELFARE POLICY FRAMEWORK

In this Part, we present a comprehensive, broad-based, interdisciplinary framework for analyzing child welfare policy and practice. This Part presents and defines the nine policy or practice methods by which the Families for Kids Initiative reform outcomes can be institutionalized. We also define the scope of each method and provide a rationale for its inclusion in this policy framework.

*1. Legislation*—Legislation can establish a basic framework for comprehensive child welfare reform. Typically, the legislature defines general principles and policy directions and then delegates the responsibility for their implementation to the appropriate agencies. Legislation formally passed by a state's legislature and signed into law by the governor is essential for certain reform elements recommended in this Article. Budget allocations, changes in the legal grounds for termination of parental rights, or creation of alternative legal options for child permanency are among the policy reforms that may require statutory authority.

On the other hand, legislation may be an *optional* means for implementing other elements of policy reform. For example, a state mandate requiring reasonable efforts to prevent or eliminate the cause of a child's removal to out-of-home care

should ideally be imposed by statute, but reasonable efforts guidelines might also be implemented through administrative rules or agency policy. The optional nature of legislation as the means for implementing policy goals is made clearer by other examples. A state could develop a training and education program for caseworkers, judges and lawyers handling foster care cases with or without legislation that mandates the training or requires certain subjects in the curriculum. Likewise, while practice standards or certification for caseworkers, lawyers, and judges might be provided for by statute, they could also be enacted through court rules, administrative policies, or voluntary certification.

Despite the optional nature of statutory mandates, a legislative solution does have a number of advantages. A statute creates a clear governmental obligation that continues into the future, at least until the statute is formally amended. Statutory duties are also mandatory and enforceable by the courts. Good professional practice standards incorporated into a statute could more widely and quickly implement good professional practices than those practice standards that are not mandated by law.

On the other hand, state leaders might be reluctant to commit the state to legally binding obligations, and they may decide that some discretion and flexibility should be left to the executive branch, the courts, and, in specific areas, to the local communities. Opinions will differ on these points—one person's guarantee of sound and consistent policy for children and families for the foreseeable future is another person's legislative straitjacket. Insufficient research exists to assess whether the quality of the performance of the child welfare system differs according to the degree of statutory specificity.

We recognize that not every change in child welfare must be mandated by statute, but state law might best promote consistency in policy, equal access to services, and timely processes. Before instituting the framework developed in this Article, each state or tribe should examine its laws and administrative guidelines for their specificity and effectiveness promoting the child welfare reforms we advocate.

2. *Court Rules*—Each state supreme court enacts court rules that govern court procedures. The creation of substantive law is left to the legislature, but purely procedural law is determined by the state supreme court. Court rules can be very important in foster care litigation because they influence the

timing of court hearings, the grounds for continuance, the selection of the presiding judge, the appointment of counsel for a child, parent, or agency, the duties of the counsel, and the duties of the court in managing its child welfare docket. Procedural innovations should be designed to bring court processes in line with the goals of FFK Initiative child welfare reform framework.<sup>48</sup>

3. *Court Management*—More efficient and modern management of the juvenile and family courts would ameliorate some of the barriers to achieving the FFK Initiative outcomes. Our recommendations draw heavily upon three resources for court administration: the National Council of Juvenile and Family Court Judges' *Resource Guidelines: Improving Court Practice in Child Abuse & Neglect Cases*,<sup>49</sup> and two publications from the American Bar Association Center on Children and the Law, *Judicial Implementation of Permanency Planning Reform: One Court That Works*,<sup>50</sup> and *A Second Court That Works: Judicial Implementation of Permanency Planning Reform*.<sup>51</sup>

Each state is currently completing federally funded Court Improvement Project studies aimed at identifying needed reforms in foster care litigation.<sup>52</sup> The first phase of the Court Improvement Project, an assessment of the state courts' functioning and recommendations for reform, should be completed in most states in 1997. We expect that federal funds will be available in the near future to help the states implement reforms.<sup>53</sup> President Clinton's Adoption 2002 Initiative also promises assistance to the states for foster children in the form of technical assistance and competitive challenge grants

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48. See *infra* Part III.

49. NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, RESOURCE GUIDELINES: IMPROVING COURT PRACTICE IN CHILD ABUSE & NEGLECT CASES (1995).

50. MARK HARDIN, ABA CTR. ON CHILDREN AND THE LAW, JUDICIAL IMPLEMENTATION OF PERMANENCY PLANNING REFORM: ONE COURT THAT WORKS (1992).

51. MARK HARDIN ET AL., ABA CTR. ON CHILDREN AND THE LAW, A SECOND COURT THAT WORKS: JUDICIAL IMPLEMENTATION OF PERMANENCY PLANNING REFORM (1995).

52. See 42 U.S.C. § 670 (1994).

53. To obtain copies of each state's court assessment, contact Mark Hardin at the ABA Center on Children and the Law at markhardin@staff.abanet.org. For an analysis of data gathered from one state's project, see Paul E. Knepper and Shannon M. Barton, *The Effect of Courtroom Dynamics on Child Maltreatment Proceedings*, 71 SOC. SERV. REV. 288 (1997).

for developing model strategies to overcome the barriers to permanent placements for children.<sup>54</sup>

4. *Fiscal Structure*—At the federal, state, tribal, and local levels, agencies deal with complex funding streams and ever-evolving requirements for providing and financing child welfare programs and services. Fiscal structures are the means by which financial and other forms of capital are put into play. They may encompass tax policies, authorizing and appropriations legislation, program funding rules and regulations, and administrative funding practices. Authorizing legislation and adequate budget appropriations are all fundamental elements of the fiscal structure for child welfare. The current dominance of federal funding, with all of the categories and programs that we are accustomed to dealing with and manipulating, is in a state of flux. Creative approaches to restructuring current financing of programs can potentially secure and deploy additional resources to further the FFK Initiative outcomes of increasing family support and achieving timely permanence for children.

5. *Administration and Operations*—Every policy and procedural reform has its analog in administrative and managerial practices that insures its implementation in the long run. Modern management processes are a key ingredient in improving outcomes for children. Agencies need an efficient management structure with clear lines of responsibility and communication and the highest expectations for child welfare professional practices.<sup>55</sup> Change-oriented administrative practices, for example, are needed to implement a useful, well-utilized, and integrated computer system. Some business practices, such as performance-based contracts, can be adapted to improve service delivery and client outcomes. Labor unions representing agency staff and the labor-management negotiation process could help to improve the professionalism and flexibility of the child welfare workforce.

6. *Practice Standards*—Authoritative practice standards establish norms of professional practice that each professional

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54. See U.S. Dep't of Health and Human Servs., *Adoption 2002: A Response to the Presidential Executive Memorandum on Adoption Issued December 14, 1996* (last modified Feb. 18, 1997) <<http://www.acf.dhhs.gov/programs/cb/special/2002toc.html>> (on file with the *University of Michigan Journal of Law Reform*).

55. For a discussion of recent research on management structures in human service organizations, see Hillel Schmid, *Executive Leadership in Human Service Organizations*, in *HUMAN SERVICES AS COMPLEX ORGANIZATIONS* 98, 111–12 (Yeheskel Hasenfeld ed. 1992).

is expected to maintain. In a field fraught with ambiguity and a lack of consensus as to the proper role of certain professionals and professions, authoritative practice standards set guidelines for the conscientious caseworker, lawyer, or judge who strives to provide the very best professional service. Authoritative practice standards also provide a measure of minimum professional performance and thus assure some level of accountability. While a number of practice standards apply to providers in the child welfare system, they may not be consistently adhered to or required across jurisdictions. The highest level of professionalism in serving families and children must be achieved and maintained in the child welfare and foster care systems.

*7. Training and Education*—Because of the complexity of families' needs and the complexity of the service delivery system itself, quality training and professional education for all professions involved in child welfare must be interdisciplinary. Child-oriented and family-oriented reform necessitates that front line service providers and legal counsel continuously upgrade their knowledge and skills in such fields as child development, family law, cultural competence, and child welfare history. Quality professional training and education can occur in undergraduate, graduate, and professional education, as well as in continuing professional education programs. Jurisdictions should determine the level of training that all caseworkers, lawyers, and judges must have before handling cases on their own. States might also consider requiring continuing education units for certification in child protection and foster care.

*8. Outreach and Collaboration*—Reform of child and family services relies, in part, on innovative approaches to providing services across a wide array of programs and domains. Thus, it is important to focus on the prospects of improving outcomes for children and advancing the FFK Initiative outcomes through new models of outreach to and collaboration with outside agencies, organizations, and individuals. These activities may mean forming service delivery partnerships with other groups in the community or engaging the broader community in support for the agency's goals. Developing and continuing such outreach and collaborative programs is considered essential to improving child welfare systems. These projects are crucial supports for a comprehensive child welfare policy framework.

9. *Data and Information Systems*—The changes required to sustain innovative child welfare policy and practice depend on a large capacity to collect and analyze data across the spectrum of child welfare services and programs. Performance measures and criteria should be built into information systems and be readily accessible to both managers and front line staff. Administrative and operating systems must be capable of readily responding to information from databases in order to quickly identify and report outcomes not in accordance with stated goals and objectives. There must be coherent coordination between information systems, administration, and operation. This must be a reciprocal, two-way street in order for system reform to occur. Program decisions and change, as well as client-specific options, must be “data-driven.” Information system quality across every program level is an absolutely necessary prerequisite for transforming practice and policy in this area. As an example of the dearth of currently available information, a recent study found that the nationwide statistics on Latino children legally free for adoption and their average length of time awaiting adoption are unknown.<sup>56</sup>

In the next Part we highlight how these systems have been utilized to promote reform in accord with the Families for Kids Initiative outcomes.

### III. IMPLEMENTING POLICY REFORM FOR THE FFK OUTCOMES

#### *A. Increased Family Support*

The first Families for Kids Initiative outcome is that all families in contact with the child welfare system (including birth, foster, or adoptive families) will have ready access to services which can help them solve or cope with everyday problems and thus avoid disrupting the child’s living arrangement (the “family support” outcome). Increasing the family support services has two different focuses, each of which is very important to the long-term well-being of the child. The first focus is that the biological family (or family of origin) must be provided reasonable efforts to prevent or eliminate the need for placement. The second type of family

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56. See ORTEGA, *supra* note 15, at 1-2.

support focuses on the foster or adoptive family and ensures that resources and support services are available to allow them to care for the child on a stable and continuous basis. This section explores how a child welfare system can provide the necessary family support services through the nine methods of our policy framework.

*1. Legislation*—Legislation may help build family supports by mandating access to and monitoring of supportive services to families. State laws can: (1) establish a state philosophy regarding family support, (2) identify a core of services that constitute reasonable efforts, (3) grant courts the power to require reasonable efforts before a child may be removed from a home, (4) create mechanisms to encourage kinship care and extended family involvement with children at risk, (5) provide services and supports to foster parents, and (6) guarantee post-adoption services. Each of these legislative opportunities is discussed here.

First, state statutes can express the state's philosophy of supporting families and protecting children at risk. For example, in a statute recently enacted in South Carolina, the State sets out several general policy statements related to family support services.<sup>57</sup> It states, in part, that

Child Welfare Services must be based on these principles:

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- (3) State and community agencies have a responsibility to implement prevention programs aimed at identifying high risk families and to provide supportive intervention to reduce occurrence of maltreatment.
- (4) Services for families should be accessible and designed to encourage and enable families to adequately deal with their problems within their own family system.
- (5) All child welfare intervention by the State has as its primary goal the welfare and safety of the child.
- (6) Child welfare intervention into a family's life should be structured so as to avoid a child's

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57. See S.C. CODE ANN. § 20-7-480 (Law. Co-op. Supp. 1996).

entry into the protective service and foster care systems if at all possible.

- (7) The state's child welfare system must be designed to be child-centered, family-focused, community-based, and culturally competent in its prevention and protection efforts.<sup>58</sup>

Although the South Carolina legislature identifies the importance of family support and prevention services in very specific language, this language merely establishes a philosophy and an intent—the legislative language by itself does not create a statutory guarantee that specific supports will be there for every child in need.

Second, a state legislature can move beyond a statement of philosophy to require availability of certain core support services for children and their families. The concept of reasonable efforts to preserve families has been a cornerstone of federal child welfare policy for nearly twenty years.<sup>59</sup> This concept considers the biological family to be the placement of choice,<sup>60</sup> provided that the biological family responds to assistance and can provide proper care within a reasonable time after state intervention. The reasonable efforts concept also considers that it is also reasonable not to provide preservation or reunification services under circumstances where such efforts may threaten the child's safety or where chances of parental rehabilitation, and thus family reunification, are remote. Although the reasonable efforts requirement has been in effect for nearly two decades, it is misunderstood and often ignored.<sup>61</sup> While reasonable efforts provisions are currently required by federal law,<sup>62</sup> they are not necessarily incorporated into state statutes.<sup>63</sup> State statutes could set a minimum level of family support and require state court oversight of reasonable efforts.

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58. *Id.* § 20-7-480(A)(3)–(7).

59. See Adoption Assistance and Child Welfare Act of 1980, Pub. L. No. 96-272, 94 Stat. 500 (1980) (codified as amended in scattered sections of 42 U.S.C.) (incorporating "reasonable efforts" requirements into federal law).

60. See THEODORE J. STEIN, *CHILD WELFARE AND THE LAW* 38–39, 72 (1991).

61. See generally Judge Leonard P. Edwards, *Improving Implementation of the Federal Adoption Assistance and Child Welfare Act of 1980*, in NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, *supra* note 49, app. C at 139–68 (discussing the confusion surrounding the Adoption Assistance and Child Welfare Act of 1980 and its "reasonable efforts" requirement).

62. See Adoption Assistance and Child Welfare Act of 1980, Pub. L. No. 96-272, 94 Stat. 500 (codified as amended in scattered sections of 42 U.S.C.).

63. See Edwards, *supra* note 61, at 142–47.

Ideally, each state's statutes would further specify what level of family support would satisfy the reasonable efforts requirements when parental neglect or abuse places a child at risk of foster care. Safety of the child should be the first priority, and state law should not require reunification efforts where current conditions, past history, or both indicate that such efforts would be futile.

Certain services are so important that they should be available for each child and family.<sup>64</sup> But are certain services so fundamental that they should be legally guaranteed—either by state statute or by federal mandate? In April 1995, the Reasonable Efforts Advisory Panel, convened by the United States Department of Health and Human Services (USDHHS) at the request of the Congress, did not recommend a federally mandated set of core services but rather came to a consensus that each state should identify the most important services for its citizens.<sup>65</sup> The Reasonable Efforts Advisory Panel recommendation reflects a growing consensus in the field that certain services ought to be available to children and families in each state as part of the reasonable efforts requirement. The question remains, however, whether a core set of services should be mandated by statute or left to agency policy within a given state or tribal jurisdiction.

Third, courts can serve a critical function by requiring that the petitioning agency make reasonable efforts to prevent a

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64. A mandated set of core services to which families in need could be guaranteed access might include the following: emergency care (including access to respite care, both day care models and longer-term models of up to 7-14 days), parenting training that empowers parents (for example, providing involvement in and access to a service plan, and working on specific skills or knowledge areas such as the care of medically fragile children, child development, and system advocacy), a comprehensive range of social and family services (mental health, health, income support, educational, and legal services addressing multiple life domains), and transportation services.

There are publications available that help states provide better services to families against whom the state has intervened. See MARK HARDIN, ABA CTR. ON CHILDREN AND THE LAW, ESTABLISHING A CORE OF SERVICES FOR FAMILIES SUBJECT TO STATE INTERVENTION: A BLUEPRINT FOR STATUTORY AND REGULATORY ACTION (1992). Hardin notes an unfortunate imbalance in the law concerning the obligations of state child welfare agencies toward children and families. Agencies must coercively intervene against the family of a maltreated child, but there is no guidance or funding to provide specific services to help the family refrain from further maltreatment. Yet, if the family needs a particular service to allow the family to stay intact, the law—with few exceptions—does not explicitly require the agency to provide that service. See *id.* at ix.

65. See ABA CTR. ON CHILDREN AND THE LAW ET AL., REASONABLE EFFORTS ADVISORY PANEL MEETING, (April 21, 1995) (on file with the *University of Michigan Journal of Law Reform*).

child's removal from home, or by requiring a specific core set of services to prevent or eliminate the need for removal. State statutes should require that the agency demonstrate, as a condition of court-ordered removal of a child from the home, that it made reasonable efforts to prevent or eliminate the need for out-of-home placement. That is, the existing requirements under federal law<sup>66</sup> should be incorporated into state law. For example, the Mississippi statute provides:

(4) At the conclusion of the detention or shelter hearing, the youth court shall order that the child be released to the custody of the child's parent, guardian or custodian unless the youth court finds: . . .

(c)(i) That reasonable efforts have been made to maintain the child within his own home, but that the circumstances warrant his removal and there is no reasonable alternative to custody; or (ii) the circumstances are of such an emergency nature that no reasonable efforts have been made to maintain the child within his own home, and there is no reasonable alternative to custody. In the event that the court makes a finding in accordance with this subparagraph (ii), the court shall order that reasonable efforts be made towards reunification of the child with his family.<sup>67</sup>

The National Council of Juvenile and Family Court Judges observes that "[o]nce a child is removed it becomes logistically and practically more difficult to help a family resolve its problems."<sup>68</sup> State statutes should permit the court to order in-home services to protect the child, pending a full hearing, as an alternative to removal. Michigan, for example, provides that the court may order the child released to the custody of the parents "under such reasonable terms and conditions as are necessary for either the physical health or mental well-being of the child."<sup>69</sup> In practice, the Michigan courts order the parents to cooperate with services. The power of the court to order the state agency or its contractors to provide services is

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66. See Adoption Assistance and Child Welfare Act of 1980, Pub. L. No. 96-272, 94 Stat. 500 (1980) (codified as amended in scattered sections of 42 U.S.C.).

67. MISS. CODE ANN. § 43-21-309 (1972).

68. NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, *supra* note 49, at 30.

69. See MICH. COMP. LAWS ANN. § 712A.13a(3) (West 1993).

ambiguous, and may be non-existent. Some states, however, may wish to authorize the courts to order the child welfare agency to provide specific services to the child and her family in order to prevent removal.

Fourth, state laws can create mechanisms to encourage kinship care and extended family involvement. Agencies and courts are increasingly turning to kinship care (placement with relatives) as an alternative to formal foster placement outside the home and as a means of promoting family stability by stabilizing the child's stay within the extended family.<sup>70</sup> The recently enacted Personal Responsibility and Work Opportunity Reconciliation Act of 1996 requires states to give preference to placement with relative caregivers who meet all child protection standards.<sup>71</sup> A 1992 study by the Office of the Inspector General found twenty-nine states with policies requiring preference for placement with relatives.<sup>72</sup> Research indicates that children placed in kinship care may experience fewer numbers of placements and fewer changes in placements than children placed in non-relative foster homes.<sup>73</sup>

Kinship care may be an especially important alternative to publicly provided foster placement for children of color, who, according to demographic data, live more often with members of the family's larger kinship network. Census data show that over 16% of African-American, 10% of Hispanic, and just under 5% of white children have a grandparent living in the home.<sup>74</sup> In fact, the proportion of children who lived in doubled-up (with any other relatives or nonrelatives) families, with or without a parent in the home, was about one in seven for

70. See generally CHILD WELFARE LEAGUE OF AMERICA, *KINSHIP CARE: A NATURAL BRIDGE* (1994).

71. See Pub. L. No. 104-193, § 505, 110 Stat. 2105, 2278 (1996).

72. See CHILD WELFARE LEAGUE OF AMERICA, *supra* note 70, at 27.

73. See Mary I. Benedict & Roger B. White, *Factors Associated with Foster Care Length of Stay*, 70 CHILD WELFARE 45, 55 (1991); Fred H. Wulczyn & Robert M. George, *Foster Care in New York and Illinois: The Challenge of Rapid Change*, 66 SOC. SERV. REV. 278, 287-88 (1992). See generally Jill Duerr Berrick et al., *A Comparison of Kinship Foster Homes and Foster Family Homes: Implications for Kinship Foster Care as Family Preservation*, 16 CHILDREN & YOUTH SERVS. REV. 33 (1994) (reviewing demographics and attitudinal differences between kinship and nonkinship foster families).

74. See OFFICE OF THE ASSISTANT SECRETARY FOR PLAN. AND EVALUATION, U.S. DEPT. OF HEALTH AND HUMAN SERVS., *TRENDS IN THE WELL-BEING OF AMERICA'S CHILDREN AND YOUTH: 1996*, at 286 (1996) (on file with the *University of Michigan Journal of Law Reform*).

white children and one in three for African-American children in 1988.<sup>75</sup>

Legislation can encourage kinship care in many ways. First, state statutes can define "kin" broadly.<sup>76</sup> Second, legislation can provide for "stand-by guardianship" under circumstances where the parent is ill. In New York, for example, a stand-by guardian's authority begins when the parent or guardian dies, is incapacitated, or consents to the stand-by guardianship.<sup>77</sup> Third, state statutes can provide for temporary delegation of parental rights through guardianship or power of attorney.<sup>78</sup> Fourth, state law can explicitly create a preference for relative foster placement in the child protection process.<sup>79</sup> Fifth, legislation can guarantee that relative foster parents receive financial support sufficient to care for the child.<sup>80</sup> Subsidized guardianship can also help encourage kinship care, and some states are experimenting with federal waivers permitting the practice.<sup>81</sup> The consequence of such a policy, however, may be that relatives will be paid far more than poor parents would be paid to care for poor children, creating an unintended incentive to strip poor children from their biological parents.

Extended family could participate in the child protection process not only in their more traditional role as potential caregivers but also as problem solvers, support givers, and decisionmakers. An approach to decisionmaking in child protection cases that is spreading rapidly across the United States is that of the Family Group Conference, modeled after

75. See *id.* at 288.

76. See KAN. STAT. ANN. § 38-1502(t) (1996) (defining kin as "the child's relative" or "another adult with whom the child or the child's parent already has a close emotional attachment").

77. See N.Y. SURR. CT. PROC. ACT § 1726(4)(d) (McKinney 1996).

78. See WASH. REV. CODE ANN. § 11.88.030 (West 1987 & Supp. 1996).

79. For example, Washington's statute provides that:

Unless there is reasonable cause to believe that the safety or welfare of the child would be jeopardized or that efforts to reunite the parent and child will be hindered, such child shall be placed with a grandparent, brother, sister, stepbrother, stepsister, uncle, aunt, or first cousin with whom the child has a relationship and is comfortable, and who is willing and available to care for the child.

WASH. REV. CODE ANN. § 13.34.30(1)(b) (West 1993).

80. For a discussion of imbalances in government financial support to various caregivers, see MARIANNE TAKAS, ABA CTR. ON CHILDREN AND THE LAW, KINSHIP CARE AND FAMILY PRESERVATION: OPTIONS FOR STATES IN LEGAL AND POLICY DEVELOPMENT 27-33 (1987).

81. See *infra* Part III.A.5. For a full and helpful discussion of kinship care in a legal context, see TAKAS, *supra* note 80.

an approach used in New Zealand.<sup>82</sup> During a Family Group Conference, the extended family members of a child at risk (including legal or blood relatives and other significant persons in the child's life who may not be legal kin) are identified and invited to a conference in which the family members are asked to devise a plan to protect the child and to address the underlying deficiencies of the nuclear family.<sup>83</sup> The Family Group Conference not only engages the resources of the extended family in addressing a child's needs, but also serves as a form of alternative dispute resolution or problem solving. If the outcome of a Family Group Conference protects the child and provides for the child's future, the matter may be diverted from formal court hearing, although under some models the court remains involved by entering a formal order based on the extended family group's recommendations.<sup>84</sup> Pilot projects implementing versions of this model have begun throughout the United States, including Kansas<sup>85</sup> and Michigan.<sup>86</sup> Legislation can assist in outlining the essential nature of the conference and addressing the due process issues presented if custody of a child is altered or if monitoring of a child's safety is required.

The fifth goal that state legislation can achieve is providing services to foster parents. When biological parents and relatives are unavailable to children, stability with foster parents becomes critical for the child's adjustment. For some children, family stability may mean continuity in their foster home. Unfortunately, foster parents are often offered too little support and assistance.<sup>87</sup> Since in most states children experience

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82. See generally MARK HARDIN, ABA CTR. ON CHILDREN AND THE LAW, FAMILY GROUP CONFERENCES IN CHILD ABUSE AND NEGLECT CASES: LEARNING FROM THE EXPERIENCE OF NEW ZEALAND (1996). For an excellent discussion of Family Group Conferences, see Jolene Lowry, *Family Group Conferences as a Form of Court Approved Alternative Dispute Resolution*, 31 U. MICH. J.L. REFORM 57 (1997).

83. See Lowry, *supra* note 82, at 69-73.

84. See *id.* at 60-63.

85. See KAN. STAT. ANN. 38-1559 (1995). For further information, contact Kim Gillum, Kinship Care Coordinator, Kansas Children's Service League, 3616 S.W. Topeka Blvd., PO Box 5268, Topeka, Kansas 66605; (785) 274-3100; fax: (785) 274-3181.

86. For further information contact Wendy Lewis Jackson, Program Director, Families for Kids, The Grand Rapids Foundation, Waters Building, 161 Ottawa Avenue, N.W., Suite 209-C, Grand Rapids, Michigan 49503-2757; (616) 454-1751; fax: (616) 454-6455.

87. See Emily J. McFadden, *Practice in Foster Care*, in A HANDBOOK OF CHILD WELFARE: CONTEXT, KNOWLEDGE, & PRACTICE. 585, 614-16 (Joan Laird & Ann Hartman eds., 1985).

multiple placements,<sup>88</sup> maintenance and support of each foster placement could reduce turnover and provide greater family stability for a child. Access to information about the child in her home, training and peer support, and respite care are among the services that state law or administrative regulation could require for foster parents.

Finally, legislation is also an important tool for supporting and promoting adoption as a stable alternative for a child whose biological family is unable to provide for her. Adoption subsidies provide financial support for a child's board, care, and medical needs and are generally seen as an essential part of any well functioning child welfare system.<sup>89</sup> Adoption subsidies are available for special-needs children, but criteria for "special-needs" vary across the states,<sup>90</sup> and the longer children are in placements, such as temporary foster care, the more likely they will have special needs.<sup>91</sup> Most state laws provide for adoption subsidies,<sup>92</sup> but statutes or administrative regulations could further support adoptive families by guaranteeing post adoption services. Federal funding for adoption is also important and influential. By 1995, fourteen years after the federal adoption assistance payments began in 1981, government expenditures increased ten-fold and over 78,000 children received services.<sup>93</sup>

2. *Court Rules*—Since court rules primarily govern legal procedures, they have only limited applicability to supporting families. Rules may be important, however, in guiding a court to careful decisions before a child is removed from her home and in requiring post-termination of parental rights reviews. Court rules governing removal of a child from her home and out-of-home placement should focus the court's attention on reasonable efforts to prevent removal. For example, Michigan courts may place the child with someone other than a parent if the court finds all of the following conditions are met:

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88. See STAFF OF HOUSE COMM. ON WAYS AND MEANS, *supra* note 11, at 750–51. (detailing data from 15 states reporting that in 1990, 57% of the children in care experienced more than one placement, whereas the comparable figure in 1982 was 43%).

89. See Richard P. Barth, *Fiscal Issues and Stability in Special-Needs Adoptions*, PUB. WELFARE, Summer 1993, at 21.

90. See *id.* at 22.

91. See *id.* at 25.

92. See, e.g., ARIZ. REV. STAT. §§ 8-141 to -145 (West 1989 & Supp. 1996); FLA. STAT. ch. 409.166 (1995); MICH. COMP. LAWS ANN. § 400.115f-k (West 1992 & Supp. 1997); N.Y. SOC. SERV. LAW §§ 450–458 (McKinney 1992 & Supp. 1997).

93. See STAFF OF HOUSE COMM. ON WAYS AND MEANS, *supra* note 11, at 718.

- (a) Custody of the child with the parent presents a substantial risk of harm to the life, physical health, or mental well being of the child;
- (b) no provision of service or other arrangement except removal of the child is reasonably available to adequately safeguard the child from the risk . . . and
- (c) conditions of child custody away from the parent are adequate to safeguard the health and welfare of the child.<sup>94</sup>

Therefore, the court rule presumes reasonable efforts as a condition to removal. Michigan court rules also provide an example of post-termination of parental rights review:

If a child remains in foster care following the termination of parental rights to the child, the court shall conduct a review hearing, at least every 182 days, as required by [statute] to review the progress toward permanent placement of the child. The court shall make findings on whether reasonable efforts have been made to establish permanent placement for the child, and may enter such orders as it considers necessary in the best interest of the child.<sup>95</sup>

Thus the court is able to inquire not only about progress toward adoption or other permanent plan but also into the support being provided to the child and her caregivers to stabilize and maintain that placement.

3. *Court Management*—Timely caseload management should be rigorously applied from the first phase of a court case. Courts must recognize that delayed decisionmaking in early phases of the case, when the family is typically in acute crisis, can have dramatic negative effects on family dynamics.<sup>96</sup> Therefore, these decisions must be made promptly and efficiently. Courts should set rigorous time deadlines for action and monitor the case flow through the child welfare system. As recommended by the National Council of Juvenile and Family Court Judges, courts should calendar cases so that the

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94. MICH. CT. R. 5.965(C)(2).

95. MICH. CT. R. 5.974(J).

96. See NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, *supra* note 49, at 14, 30–32.

initial judge or judicial officer conducts all subsequent hearings, conferences, and trials pertaining to the family.<sup>97</sup>

The court should support, or even require, mediation or other forms of alternative dispute resolution, including Family Group Conferencing,<sup>98</sup> in the early stages of a case. Even the provision of prevention services (intended to avoid formal court action) may require attention by the court administrators.<sup>99</sup> The court managers and chief judge should have regular administrative meetings with the child welfare agency or agencies to address available community services, court practices, and problems. This practice is recommended by the National Council of Juvenile and Family Court Judges and takes place in many courts, including the FFK Initiative sites of Sonoma County, California, and Kent County, Michigan.<sup>100</sup>

In addition to previous recommendations, agencies could hire or reassign additional attorneys on a temporary basis to handle, as a priority, the backlog of cases for those children who have been in placement for over a year. Courts need to appoint attorneys for children and parents, as required by law, and treat these backlog cases with the same fairness as other cases, even while giving them docket priority. Courts could also create special dockets to handle backlog cases that may require more judicial officers for a limited "blitz" period. In addition, courts could make mediation, Family Group Conferencing, and other forms of alternative dispute resolution readily available to handle backlog cases.

4. *Fiscal Structure*—Federal funding is currently skewed toward maintaining out-of-home placements rather than providing assistance and services to families. This imbalance continues despite federal efforts since 1993 to encourage family preservation and family support.<sup>101</sup> Fiscal Year 1995 federal appropriations for Title IV-B, Part 1 services were \$292 million and for IV-B, Part 2, \$150 million, whereas Title IV-E expenditures for adoption assistance were \$411 million, and Title IV-E funds for foster care payments were \$3.05 billion.<sup>102</sup> When

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97. See *id.* at 33.

98. See *id.* at 132–38.

99. See Edwards, *supra* note 61, at 152–55.

100. See *id.*; see also HARDIN *supra* note 51, at 39–42 (detailing the system established in Kent County, Michigan).

101. See STAFF OF HOUSE COMM. ON WAYS AND MEANS, *supra* note 11, at 763 (discussing the 1993 creation of a new capped entitlement for "family preservation" and "family support services").

102. See *id.* at 695.

state match expenditures for these programs are added, the differences in magnitude of these programs are even greater. State and local officials thus need to leverage federal dollars to respond in a more balanced way to the needs of children and their families.

States can now retrospectively review the eligibility status of children in for-profit out-of-home care settings and, if appropriate, claim federal reimbursement. Local agencies could work with state administrators to maximize federal funds by identifying activities that the states could use to leverage federal funds. The reform agenda includes cooperating with state and local policy makers to aggressively implement federally reimbursable child welfare activities and services. States should also explore linkages to, and consideration of, other funding streams to expand the array of support services available to vulnerable children and families.

State-level authorizing legislation and adequate appropriations to maximize federal dollars may both be necessary to promote the flexible use of funds to increase services to families and children. One method calls for state and local governments to decategorize funds and authorize the creation of flexible fund pools to meet the diverse needs of birth, foster, and adoptive families. Iowa represents one example of a state's decategorization effort. In the late 1980s, Iowa enacted a statute which enables designated counties to flexibly utilize over twenty state and federal funding streams.<sup>103</sup> The statute creates local level "decat boards,"<sup>104</sup> through which communities may use this pool of flexible dollars to meet local needs.<sup>105</sup>

Establishment of interagency collaborative entities, whether at the state or local level, can greatly expand the child welfare system's access to services for clients. These collaborative bodies can creatively refinance services, freeing up local and state dollars to expand or enhance services and assist each other in drawing down additional federal dollars.

When dollars are scarce, a collaborative body can still increase access to services through Service Assurance Agreements. For example, a Service Assurance Agreement between the local child welfare agency and the local public health department can guarantee that foster children are appropriately immunized. Such interagency agreements

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103. See IOWA CODE ANN. § 232.188 (West 1994).

104. See *id.* § 232.188(2).

105. See *id.*

broaden the human services systems that can provide care for child welfare families.

An example of an interagency model that proved to be cost effective is the Ventura County, California, Children's Demonstration Project.<sup>106</sup> This program demonstrated the ability to avoid expenditures in other service categories through the delivery of family preservation, family reunification, and case management services.<sup>107</sup> The project used interagency agreements between mental health, special education, corrections, and other social service agencies to spell out each agency's responsibilities at intake, during treatment, and after care.<sup>108</sup> In addition, the project actively sought private donations from local retailers and medical providers of such things as clothing and dental care.<sup>109</sup>

Funding mechanisms must be flexible enough to finance an array of family support models, including both short and long-term approaches. Financing should be developed to permit treatment concepts such as unconditional care and individualized service plans, which should be available to families of origin, foster families, and adoptive families. A growing body of literature reflects the importance of utilizing flexible funds to meet each family's singular needs.<sup>110</sup> Each potential adoptive family and waiting child is unique and may require a different cluster of services. Flexible funding mechanisms that provide the means for caseworkers to access concrete services (clothing, food, and shelter) as well as soft services (substance abuse treatment, family counseling, music, and other recreational therapies) are critical. Mechanisms that could facilitate this include providing caseworkers with ATM cards to access funds up to a preset limit, and opening charge accounts at department stores with set dollar limits for certain concrete needs (such as clothing, housewares, and food).<sup>111</sup>

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106. See generally Daniel D. Jordan & Mario Hernandez, *The Ventura Planning Model: A Proposal for Mental Health Reform*, J. MENTAL HEALTH ADMIN., Spring 1990, at 7.

107. See *id.* at 39-40.

108. See *id.* at 38.

109. See *id.* at 38-39.

110. See ATELIA I. MELAVILLE ET AL., U.S. DEP'T OF EDUC. & U.S. DEP'T OF HEALTH AND HUMAN SERVS., TOGETHER WE CAN: A GUIDE FOR CRAFTING A PROFAMILY SYSTEM OF EDUCATION AND HUMAN SERVICES 57-59 (1993).

111. See, e.g., HEALTH, EDUC. & HUMAN SERVS. DIV., U.S. GEN. ACCOUNTING OFFICE, FOSTER CARE: STATE EFFORTS TO IMPROVE THE PERMANENCY PLANNING

States may also need to develop coordinated and targeted social funding programs to address the backlog of children who linger in placement. One Illinois agency has received a federal IV-E waiver to develop a special project to create permanence specifically for long term waiting children.<sup>112</sup> Illinois is demonstrating and evaluating a subsidized guardianship option for those children who have been in placement at least two years and for whom adoption or reunification is unlikely within another year.<sup>113</sup> These guardianships provide greater responsibility and discretion to caregivers who continue to receive federal maintenance and support funds. This option is expected to increase kinship care, to preserve cultural community ties, and to enhance permanence for these children.

*5. Administration and Operations*—Implementing and sustaining increased family support in child welfare requires consistent outcome-oriented management and administrative practices, as well as performance-based budgeting and personnel improvements at all levels and sectors of the system. All of the legislative, court, and fiscal reforms proposed in previous sections of this Article have their analogs in agency management. Reasonable efforts guidelines must be enforced, monitored, and practiced at every administrative level. The core set of services to be provided to families must be codified in administrative guidelines. Management at every level should be organized to insure access to, quality of, and adequacy of care, as well as the absence of any language or cultural barriers between families and service providers. These supports need to be available to all families (families of origin, foster, and adoptive families) in contact with the system at every stage of the care and placement continuum.

States can invoke the waiver process to achieve greater family support by developing child welfare demonstration projects. In late 1996, for example, USDHHS approved the implementation and evaluation of North Carolina's proposal to use federal funds to develop strategies to provide a broad range of new preventive services and to create incentives to

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PROCESS SHOW SOME PROMISE 9 (1997) (describing flexible funding mechanisms in Tennessee) (on file with the *University of Michigan Journal of Law Reform*).

112. See U.S. Dep't of Health and Human Servs., *HHS Approves Child Protection Waiver for Illinois* (visited Sept. 18, 1997) <<http://www.dhhs.gov/news/press/1996pres/960918b.html>> (on file with the *University of Michigan Journal of Law Reform*).

113. See *id.*

improve program performance.<sup>114</sup> Participating counties will receive performance bonuses for better management and can use the resulting savings for more family preservation and reunification services, respite care, family mediation, court-approved assisted guardianship, and post-placement support.<sup>115</sup>

Increasing family support also requires that administrators of child welfare programs at all levels and sectors implement the following reforms: high quality practice standards for professionals and service providers, up-to-date staff training and education, effective and creative outreach and interagency collaboration, and high quality information systems. The following sections offer recommendations regarding these categories. Agencies must reduce caseload volume if workers are to do all that is required to improve service delivery.

*6. Practice Standards*—All reforms in statutes, court rules, fiscal structures, and management processes, as well as the other reforms proposed in this policy framework, face the ultimate test of their effectiveness when a particular child welfare professional meets a child at risk and her family. There is no substitute for sophisticated standards of practice for social workers, lawyers, judges, and other professionals. The most enlightened policies on the books will not be implemented without a well-trained and sophisticated professional workforce following the highest norms of practice. Implementing these professional standards requires two steps: (1) developing and clearly writing these professional standards, and (2) enacting them by an authoritative source, such as an arm of state government, or other officially recognized bodies, so as to be binding and enforceable against individual professionals. Standards of professional conduct in child welfare could be implemented by statute, court rule, administrative rule, standards of professional conduct issued by professional licensing organizations, formal agency policy, or even by local court order.

A group can begin to develop standards by referring to a variety of professional standards already in existence. Judges,<sup>116</sup>

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114. See U.S. Dep't of Health and Human Servs., *HHS Approves Child Protection Waiver for North Carolina* (last modified Nov. 14, 1996) <<http://www.os.dhhs.gov/news/press/1996press/961114b.html>> (on file with the *University of Michigan Journal of Law Reform*).

115. See *id.*

116. See NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, *supra* note 49.

lawyers,<sup>117</sup> social workers,<sup>118</sup> and psychologists<sup>119</sup> all have some form of proposed or accepted standards in child welfare. Highly regarded standards from national groups, such as those of the American Bar Association,<sup>120</sup> are available for adaptation for local child welfare reform. While these national standards are extremely influential, they are not binding unless a particular state takes official action.

Attorneys become involved in a child welfare case once legal proceedings are initiated—for example, when the removal of a child is contemplated or when formal authority and supervision over the family is sought. In February 1996, the American Bar Association House of Delegates formally adopted the *Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases* (the *Standards*).<sup>121</sup> The *Standards* encourage attorneys to ask the court to order appropriate services to protect the child's interests.<sup>122</sup> Attorneys for all parties should be aware of the services available in the community and should encourage the use of alternative forms of dispute resolution, such as mediation and Family Group Conferencing. Attorneys for all parties in child protection proceedings should use these problem-solving techniques where protection of the child and stabilization of the family seems possible without formal court action.

The *Standards* are not legally binding upon lawyers in individual states, but they do provide a basis for developing standards that a state could enact in its court rules or in a similar authoritative source. The *Standards* recognize that many lawyers asked to represent children are not certain of the court's expectations: to remedy this, standard G-2 recommends a set of uniform written rules and procedures for court-appointed lawyers for minor children.<sup>123</sup> Although children are

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117. See American Bar Ass'n, *Proposed Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases*, 29 FAM. L. Q. 375 (1995).

118. See National Ass'n of Soc. Workers, *Code of Ethics* (visited Sept. 21, 1997) <<http://www.naswdc.org/code.html>> (on file with the *University of Michigan Journal of Law Reform*).

119. See MATHILDA B. CANTER ET AL., *ETHICS FOR PSYCHOLOGISTS: A COMMENTARY ON THE APA ETHICS CODE* (1994).

120. American Bar Ass'n, *supra* note 117

121. See Linda D. Elrod & Robert G. Spector, *A Review of the Year in Family Law: Children's Issues Take Spotlight*, 29 FAM. L. Q. 741, 752 (1996).

122. See American Bar Ass'n, *supra* note 117, at 387-88.

123. See *id.* at 397.

represented in child protection proceedings in all states,<sup>124</sup> state laws do not generally specify the role of the child's advocates.<sup>125</sup> The Children's Task Force of the State Bar of Michigan has recommended Guidelines for Advocates for Children which address responsibilities of lawyers, non-lawyer guardians ad litem, and court-appointed special advocates (CASAs).<sup>126</sup>

Formal evaluation of the quality of legal representation for children has revealed serious deficiencies.<sup>127</sup> A congressionally mandated study includes a chapter describing state laws governing the legal representation of children.<sup>128</sup> This study articulates a conceptual framework for the role of the child advocate.<sup>129</sup>

Ambiguity of role and lack of clear practice standards is not only a problem for lawyers representing children,<sup>130</sup> it is also a challenge for attorneys who represent parents or the child welfare agency. National standards for legal representation of the child welfare agency and of parents accused of child maltreatment are not available currently, but their development may be very important to improve professional practices.

*7. Training and Education*—Effective implementation of professional standards of practice requires the training and education of social workers, lawyers, and other child welfare professionals. Professional training of caseworkers should include information on available community supports, including

124. See 42 U.S.C. §§ 5106a(b)(6), 5106c(b)(1) (1994) (requiring that states provide independent representation to a youngster in child abuse or neglect cases that result in judicial proceedings as a condition of receiving federal funds).

125. Several states have formal standards in place for advocates representing children. See CAL. WELF. & INST. CODE §§ 102-104 (West Supp. 1997); COLO. REV. STAT. §§ 19-1-201 to -212 (Supp. 1996); N.Y. FAM. CT. ACT §§ 241-249 (McKinney 1983 & Supp. 1997); see also Albert E. Hartmann, *Crafting an Advocate for a Child: In Support of Legislation Redefining the Role of the Guardian ad Litem in Michigan Child Abuse and Neglect Cases*, 31 U. MICH. J.L. REFORM 237 (1997) (advocating adoption of legislation to clarify the roles of guardians ad litem and attorneys representing children). Kansas provides guidelines for guardians ad litem in an administrative order of the state supreme court. See Supreme Ct. of Kan., *Administrative Order No. 100: Re: Guidelines for Guardians ad Litem* (April 19, 1995) (on file with the *University of Michigan Journal of Law Reform*).

126. See STATE BAR OF MICH., CHILDREN'S TASK FORCE FINAL REPORT (1995).

127. See U.S. DEP'T OF HEALTH AND HUMAN SERVS., FINAL REPORT ON THE VALIDATION AND EFFECTIVENESS STUDY OF LEGAL REPRESENTATION THROUGH GUARDIAN AD LITEM (1993).

128. See *id.* § 2.1.

129. See *id.* § 3.1. See generally DONALD N. DUQUETTE, *ADVOCATING FOR THE CHILD IN PROTECTION PROCEEDINGS* (1980) (articulating a framework for the role of a child's advocate).

130. See Hartmann, *supra* note 125, at 237-39.

both primary services and non-traditional informal services. Knowledge about and utilization of informal community supports may be particularly important when working with families of color, where language or cultural barriers may impede family service.

Specialized training for lawyers in specific subfields of law is typically available only on the job, rather than from law school education. Recognition of the importance of child and family law in law school education, however, is increasing. The ABA Working Group on the Unmet Legal Needs of Children and Their Families recommended enhanced child advocacy training opportunities in law schools.<sup>131</sup> According to this report, every law school should offer its students the opportunity to learn about children's issues (including related topics such as poverty and disability law) as part of their substantive studies, and to represent children and families as part of clinical training programs during their law school years.<sup>132</sup> The 1995 Fordham Conference on Ethical Issues in the Legal Representation of Children recommends that "law schools should broaden clinical course offerings to include the representation of children by law students in clinical settings either through the establishment of a law school clinic, or through externships with child advocacy organizations."<sup>133</sup>

Attorney training should cover material relevant to achieving family stability for a child, including updates on available community services, discussion of other services that might be made available in the community, and criteria for referrals. Training should also include techniques of problem solving, mediation, and family conferencing. Those exercises invite the participation of extended family members as well as the family of origin.

Foster and adoptive parents should not be overlooked when considering training and education. They are potential educators and almost certainly in need of training themselves. Foster and adoptive parents can offer an important, and not often heard, viewpoint when developing training curricula.

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131. See AMERICAN BAR ASS'N PRESIDENTIAL WORKING GROUP ON THE UNMET LEGAL NEEDS OF CHILDREN AND THEIR FAMILIES, *AMERICA'S CHILDREN AT RISK: A NATIONAL AGENDA FOR LEGAL ACTION* 8 (1993).

132. See *id.*; see also Donald N. Duquette, *Developing a Child Advocacy Law Clinic: A Law School Clinical Legal Education Opportunity*, 31 U. MICH. J.L. REFORM 1 (1997).

133. *Recommendations of the Conference on Ethical Issues in the Legal Representation of Children*, 64 FORDHAM L. REV. 1301, 1306 (1996). For a description of the University of Michigan Child Advocacy Law Clinic, see Duquette, *supra* note 132.

They may also serve as instructors for training workshops, or they may want to offer their homes and families for valuable on-the-job training. In addition to being a training asset, foster and adoptive parents would benefit from some of the competency training listed above—including, for example, the areas of child development, family law, and cultural sensitivity.<sup>134</sup> Virtually all of the FFK Initiative sites offer specialized training to parents.<sup>135</sup> Youths involved in the system offer the child's perspective on these systems of care. Some FFK Initiative sites have also found it helpful to provide training to youth clients directly. An example of this type of training program is the New York FFK Initiative site's program for educating children about legal issues and preparing them for court appearances.<sup>136</sup>

8. *Outreach and Collaboration*—Outreach activities have the potential to increase family support by currying public support for general child welfare system reform. These activities can take the form of wide-reaching informational media campaigns directed at the general public, or they may aim at specific advocacy or consumer groups involved in providing other types of family support. Agencies might strategically recruit community members who have access to other types of family supports to sit on boards and provide input on agency policies, thereby creating linkages between child welfare and other community programs and services.

Finally, agencies could also organize client groups as advocates for change in the broader public arena, giving voice to the support needs of those in the system. For instance, agencies in the FFK Initiative have videotaped focus groups of children waiting for placements.<sup>137</sup> These tapes can now be used for media and public education presentations.<sup>138</sup> In some areas, groups of former and current foster care teens make presentations to various groups (including legislators and

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134. See McFadden, *supra* note 87, at 614–16.

135. See MASSACHUSETTS FAMILIES FOR KIDS, QUARTERLY REPORT 9–11 (Aug. 8, 1996); MONTANA FAMILIES FOR KIDS, QUARTERLY PROGRESS REPORT 9–11 (Apr. 30, 1996); MISSISSIPPI FAMILIES FOR KIDS, QUARTERLY PROGRESS REPORT 10 (Aug. 12, 1996) (all on file with the *University of Michigan Journal of Law Reform*).

136. See NEW YORK CITY, FAMILIES FOR KIDS CRUSADE, SITE VISIT REPORT 5-6 (June 5–7, 1996) (on file with the *University of Michigan Journal of Law Reform*).

137. See MASSACHUSETTS FAMILIES FOR KIDS, QUARTERLY REPORT 1–2 (June 21, 1996) (on file with the *University of Michigan Journal of Law Reform*).

138. See *id.*

judges) about their experiences in foster care—especially their need for stable placements.<sup>139</sup>

Child welfare agencies must collaborate with other community agencies because the child welfare system alone cannot provide the full range of services needed by troubled families. These other agencies include child-oriented and family services (for example, health, mental health, education, special needs, and recreation) as well as programs designed to help adults with issues such as employment, income support, and housing. Child welfare professionals must be aware of available services and must establish relationships with providers so that they can both refer clients to these services and represent their clients before such agencies. One example of this is the Cuyahoga County, Ohio, FFK Initiative site which has assigned “Family Service Units” to different neighborhoods for the purpose of assessing the ranges and gaps in services available to families.<sup>140</sup> The FFK Initiative program will then be able to refer families to the most appropriate providers.

Other agencies and programs may not have the resources to dedicate staff for this purpose. However, effective family preservation programs (a form of family support) require prior knowledge of existing services. Mississippi and North Carolina are identifying local family preservation programs to assist them in identifying relevant service providers.<sup>141</sup> Yet another option is to have other groups or individuals connect families with services. Churches in Mississippi and South Carolina, as part of the FFK Initiative, provide supportive services for foster and adoptive parents.<sup>142</sup> Volunteers might also conduct some family activities—preparing lifebooks for children, for example—so that agency workers do not become overburdened.

Many of the Families for Kids Initiative outreach efforts center on recruiting appropriate families for waiting children—particularly for children who have been waiting in foster care for over a year. Media campaigns, outreach to and

139. See MISSISSIPPI FAMILIES FOR KIDS, SITE VISIT REPORT 10 (Mar. 6–8, 1996) (on file with the *University of Michigan Journal of Law Reform*).

140. See OHIO FAMILIES FOR KIDS, QUARTERLY REPORT 6 (Apr. 1996) (on file with the *University of Michigan Journal of Law Reform*).

141. See MISSISSIPPI FAMILIES FOR KIDS, QUARTERLY REPORT 10 (May 2, 1996); NORTH CAROLINA FAMILIES FOR KIDS, QUARTERLY PROGRESS REPORT 8 (Apr. 30, 1996) (both on file with the *University of Michigan Journal of Law Reform*).

142. See MISSISSIPPI FAMILIES FOR KIDS, *supra* note 141, at 10; SOUTH CAROLINA FAMILIES FOR KIDS, SITE VISIT REPORT 2–3 (Apr. 10–12 1996) (on file with the *University of Michigan Journal of Law Reform*).

collaboration with communities of color and community-based agencies, and information sharing across agencies could be critical for reducing the backlog of children awaiting placements. Agencies might undertake special activities geared specifically to children who are currently waiting in the system. Several FFK Initiative sites have held picnics or other special events where prospective adoptive families can meet with children who are awaiting placement.<sup>143</sup> Massachusetts recently held an African-American and Latino "child adoption party."<sup>144</sup> Transportation was provided so that many families and children could attend.<sup>145</sup> While these types of events, as well as media activities, can be effective tools for piquing the interest of families considering adoption, timely follow-up with the families is necessary to maintain their interest. For example, Ohio has a toll-free number for interested families to call to speak with a social worker about adoption,<sup>146</sup> and South Carolina plans to institute a similar phone line.<sup>147</sup>

*9. Data and Information Systems*—Any change in child welfare policies and systems requires a fluid relationship between evaluation research, system monitoring, and feedback. The feedback must be communicated to policy makers, program administrators, service providers and client families. Local child welfare systems must respond and adapt to their own design strengths and weaknesses if any of the FFK Initiative outcomes are to be institutionalized as key components of these systems. Agencies must view system-wide data as basic input for planning services and policies, for individual case management, for budget processes, for determining and creating program accountability, and for assessing program implementation, effectiveness, and impacts. In other words, outcomes and data must be considered in every step of policy and program development, and evaluation and monitoring should be conducted at every step.

These data systems should include important information like policy and program manuals, and they should also activate automatic tickler files to promote timely reviews, risk assessment, and automated scoring information for child protection, foster care, adoption, and service delivery workers.

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143. See, e.g., MASSACHUSETTS FAMILIES FOR KIDS, *supra* note 135, at 6.

144. See *id.*

145. See *id.*

146. See OHIO FAMILIES FOR KIDS, QUARTERLY REPORT 4-5 (Aug. 1996) (on file with the *University of Michigan Journal of Law Reform*).

147. See SOUTH CAROLINA FAMILIES FOR KIDS, *supra* note 142, at 3.

Data systems should include rosters of community services to allow matching with client needs, and they should have the capacity to track client utilization and contact across public and private agencies and systems of care.

Federal legislation and policy regulations over the past decade have addressed the need for better data collection. In 1993, USDHHS established the Statewide Automated Child Welfare Information Systems, of which the Adoption and Foster Care Analysis and Reporting System (AFCARS) will be a component.<sup>148</sup> AFCARS requires states to improve child tracking across systems of care, but only for those cases where publicly funded foster care and adoption subsidies are provided.<sup>149</sup> Implementation of this reporting has only begun in the last year, and non-reporting penalties do not take effect until 1998.<sup>150</sup>

The Families for Kids Initiative promotes the expanded use and improved collection of data across the spectrum of system planning, case planning, and reform evaluation. Much of the effort in local sites and communities is directed at improving the knowledge bases and tracking systems, identifying time frames, and increasing awareness of children's status and needs. The coordination of data the initiative requires extends beyond public services to include involvement of other local agencies and private networks, such as church groups and national advocacy organizations.

For example, a critical set of goals in the Families for Kids Initiative in New York City involves improving the public child welfare system's capacity to locate family members, match children with foster or adoptive homes, increase interagency and resource information exchange, provide information system data to promote program planning and policy analysis, and interface local and state-level information systems.<sup>151</sup> Underlying the more specific goals of streamlining placements and casework and increasing family supports is the need to improve the city's information system so that it can accurately monitor care and outcomes for children.<sup>152</sup> This is especially

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148. See U.S. Dep't. of Health and Human Servs., "Dear Colleague" Memorandum from Federal Office of Child Support Enforcement to all State IV-D Directors (Visited Oct. 27, 1997) <<http://www.acf.dhhs.gov/programs/CSE/pol/dc19460c.html>> (on file with the *University of Michigan Journal of Law Reform*).

149. See 45 C.F.R. §§ 135.40(a)(2)-(3), 1355.53(b) (1996).

150. See 45 C.F.R. § 1355.40(a), (d).

151. See NEW YORK CITY, FAMILIES FOR KIDS CRUSADE, *supra* note 136, at 1-2.

152. See *id.*

crucial in a system with the magnitude and complexity of New York City's, where over 40,000 children in public foster care and adoption services are scattered throughout the five boroughs.<sup>153</sup>

Data can also be useful in assessing the quality, nature, duration, and effect of family support throughout the public and private child welfare system. Accomplishing this is particularly difficult, however, because services are often provided through contracts to a diverse set of programs, and the fiscal and administrative authority over the provision of care is often fragmented. Information systems should be designed to capture each type of service provided, its goals, and its outcomes. Services themselves must not only be monitored, but also somehow measured, with the treatment intervention coded and identifiable in the system. The system typically can then be a tool for casework planning, budgetary planning, allocation decisions, and overall program evaluation.

With appropriate data support, family support can be assessed in a timely fashion to help workers follow through with service provision and adaptation. The child welfare system must be made more accountable for accomplishing and measuring family support—at present, the system typically just notes the appearance of family support at various points in the continuum of placement and care.

### *B. Achieving Permanency in One Year*

In addition to the "family support" outcome, the Families for Kids Initiative identified four other outcomes for foster care reform. In a reformed system, children and families would be assured of:

(1) *One consistent caseworker or casework team:* Throughout the time a child spends in the child protection and placement system, and throughout the search for a permanent home, a family and child will deal with only one caseworker or casework team.

(2) *One coordinated assessment:* To evaluate a family's needs, the system will use a single, coordinated assessment process that involves all family members.

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153. *See id.*

(3) *One stable foster home:* A child placed in foster care will not be shuttled between foster homes. While awaiting permanent placement, each child will stay in a single, stable foster home in her community.

(4) *One year at most until placement in a permanent home:* Long delays in the courts and in matching children with nurturing families are extremely detrimental to healthy emotional development.<sup>154</sup>

In this section, we combine our analysis of these four outcomes and apply the nine methods of reform to them collectively. The reformers involved in the Families for Kids Initiative defined "permanent home" as a home that: provides a nurturing environment; provides a meaningful relationship with at least one loving adult; provides stability; provides a legally secure relationship; maintains cultural and community linkages; allows a continuing relationship with birth families when appropriate; and is valued by the community.<sup>155</sup>

1. *Legislation*—By setting the philosophy and tone of a state's child welfare system, legislation can highlight the importance of timely action and permanence in a child's life. It can require case planning and delivery of services in timely and specific time frames. Legislation is also a means of setting standards to achieve the kind of staffing pattern required for a single casework team and for coordinated assessments. State and private agencies could implement these concepts without enabling legislation, but if agencies are unwilling or unable to act, legislation could mandate these goals. For example states could enact statutes providing for multidisciplinary teams to evaluate child abuse and neglect cases; these teams would be an important first step in achieving the coordinated assessment.

Existing statutes do not necessarily require one coordinated assessment that covers the entire family. Michigan law, for instance, provides that "[t]he department . . . shall provide, directly or through the purchase of services from other agencies and professions, multidisciplinary services such as those of a pediatrician, psychologist, psychiatrist, public health nurse, social worker, or attorney through the establishment of regionally based or strategically located teams."<sup>156</sup> Kansas statute allows the court, upon the recommendation of an

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154. See W.K. KELLOGG FOUND., *supra* note 33, at 10–11.

155. See *id.* at 10.

156. MICH. COMP. LAWS ANN. § 722.629(1) (West 1993 & Supp. 1997).

authorized body, to appoint a multidisciplinary team "to assist in gathering information regarding a child alleged to be a child in need of care by reason of physical, mental or emotional abuse or neglect or sexual abuse. The team may be a standing multidisciplinary team or may be appointed for a specific child."<sup>157</sup>

Legislation could also specifically create a preference for a single coordinated assessment of any family in which child maltreatment was substantiated, and it could also specify the conditions for obtaining that assessment with or without parental consent. Legislation requiring a single assessment in every case, however, would not provide for individual cases and family variations that involve unique circumstances. A preference for a single assessment, unless otherwise ordered by the court, would maintain the needed agency and court discretion in specific cases.

Legislation can also require training of foster parents and provision of respite care or other supportive services. Although concurrent planning in foster care can be implemented without it, legislation could also explicitly authorize and quickly disseminate concurrent planning methods which may be important for stability and timeliness for youngsters. Washington state law, for example, requires the supervising agency to file a permanency plan with the court within sixty days from the time that it assumes responsibility for the case and allows that plan to have alternative, or concurrent, permanency planning goals.<sup>158</sup> The statute says in part:

The plan shall identify one of the following outcomes as the primary goal and may also identify additional outcomes as alternative goals: Return of the child to the home of the child's parent, guardian, or legal custodian; adoption; guardianship; or long-term relative or foster care, until the child is age eighteen, with a written agreement between the parties and the care provider; and independent living, if appropriate and if the child is age sixteen or older . . . .<sup>159</sup>

Legislation may also be necessary to achieve one of the legal corollaries to the one casework team principle: "one family/one

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157. KAN. STAT. ANN. § 38-1523a (1993).

158. See WASH. REV. CODE ANN. § 13.34.145(1)(a) (West Supp. 1997).

159. *Id.*

judge." Judge Leonard P. Edwards points out that when more than one judge hears a case, each successive judge must go back to the beginning to understand the procedural and factual history.<sup>160</sup> Ideally, the same judge would hear a child's legal case from beginning to end, unless the judge is disqualified under provisions of law governing bias or conflict of interest. Achieving "one family/one judge" in states where it is consistent with existing court structure can be accomplished through court management without statutory change. In states with complex jurisdictional structures, however, achieving "one family/one judge" may require statutory court reorganization or other significant modifications to the existing court structure.

Another legal corollary to the one casework team principle is "consistent legal representation for the agency, child, and parents." A statute could create a system of assignment of counsel for children and parents, establish conditions of training and education, and develop professional standards of legal representation in child welfare cases. Legislation could, for instance, create child welfare law offices that specialize in the representation of children and parents in child welfare cases. A statute could also create a preference for a single lawyer handling a child welfare case from beginning to end, no matter whom he represents. Legislation may be the optimal means to achieve the goal of consistent legal representation. Even though these practices could also be implemented on a voluntary basis or as a matter of local court policy, legislation carries the advantage of authority applicable to the entire state.

Legislation can also require court review before any placement or major service changes. Except in emergencies, the agency should be required to give seventy-two hours advance notice and a right to a hearing before any changes occur in a child's placement. Once the court has taken formal jurisdiction over a child, it enters dispositional orders incorporating the steps the parents must take to regain full custody of their child. Ideally, the court will review the agency's case plan,

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160. See Edwards, *supra* note 61, app. C at 149 ("Having multiple judges hear a case increases the possibility that facts will be forgotten. It reduces accountability. It can turn judicial review into an exercise of paper movement and can result in poor judicial decisions concerning placement of children.")

approve or modify it, and incorporate the plan into its dispositional order.<sup>161</sup>

Statutes should require that the agency develop, and the court approve, clear case plans for each child under the court's jurisdiction. Each plan should identify the following: (1) problems to be resolved before the court's involvement ends, (2) changes in parental behavior that must be achieved, (3) services to be provided to the parents to help achieve these changes, (4) a schedule of delivery of services, and (5) the deadlines and respective responsibilities of each party in providing services and achieving case plan goals. The case plan should identify any special needs of the child and any services required to meet those needs. The case plan should also set forth the terms and conditions of the parents' visits. For example, South Carolina statute provides:

(A) If the court orders that a child be removed from the custody of the parent or guardian, the court must approve a placement plan. A plan must be presented to the court for its approval at the removal hearing or within ten days after the removal hearing. If the plan is presented subsequent to the removal hearing, the court shall hold a hearing on the plan if requested by a party. The plan must be a written document prepared by the department. To the extent possible, the plan must be prepared with the participation of the parents or guardian of the child, the child, and any other agency or individual that will be required to provide services in order to implement the plan.<sup>162</sup>

The case plan and the court's order of disposition should be reassessed regularly. Federal law requires a review of children in foster care at least every six months,<sup>163</sup> and some state laws also set a six month minimum review period.<sup>164</sup> Because of the "child's sense of time"<sup>165</sup> and the importance of moving urgently

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161. See NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, *supra* note 49, at 54.

162. S.C. CODE ANN. § 20-7-764 (Law Co-op. 1976 & Supp. 1996). The statute, in its entirety, is a model for dispositional hearing legislation. The authors highly recommend that states enacting similar statutes carefully consult this South Carolina statute.

163. See 42 U.S.C. § 675 (5)(B) (1994).

164. See, e.g., MISS. CODE ANN. § 43-15-13 (Supp. 1997).

165. For a description of this concept, see JOSEPH GOLDSTEIN ET AL., *BEYOND THE BEST INTERESTS OF THE CHILD* 40-42 (1973).

to resolve problems within the family, the court should thoroughly review the case of each child in foster care at least quarterly.<sup>166</sup>

Washington state provides an example of the scope of the review:

(b) If the child is not returned home, the court shall establish in writing:

(i) Whether reasonable services have been provided to or offered to the parties to facilitate reunion, specifying the services provided or offered;

(ii) Whether the child has been placed in the least-restrictive setting appropriate to the child's needs, including whether consideration and preference has been given to placement with the child's relatives;

(iii) Whether there is a continuing need for placement and whether the placement is appropriate;

(iv) Whether there has been compliance with the case plan by the child, the child's parents, and the agency supervising the placement;

(v) Whether progress has been made toward correcting the problems that necessitated the child's placement in out-of-home care;

(vi) Whether the parents have visited the child and any reasons why visitation has not occurred or has been infrequent;

(vii) Whether additional services are needed to facilitate the return of the child to the child's parents; if so, the court shall order that reasonable services be offered specifying such services; and

(viii) The projected date by which the child will be returned home or other permanent plan of care will be implemented.<sup>167</sup>

A recent Government Accounting Office report notes that twenty-three states have enacted laws establishing requirements

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166. Michigan requires a review every 91 days for the first year in placement. See MICH. COMP. LAWS ANN. § 712A.19(3) (West 1993 & Supp. 1997); MICH. CT. R. 5.973(B)(2).

167. WASH. REV. CODE ANN. § 13.34.130(5)(b) (West 1993 & Supp. 1997).

regarding the timing of permanency hearings—requirements more stringent than those required by federal law.<sup>168</sup> State statutes could include a number of substantive and procedural items that promote permanency planning for children in foster care. These include timelines for foster care litigation, timelines for reasonable efforts findings, timelines for court implementation or ratification of an out-of-home placement, and timelines for quarterly reviews of children in placement. One of the most important procedural devices is the permanency planning hearing, a special type of review hearing that represents a deadline to determine the final direction of the case. Typically the hearing determines whether a child is to be returned to her parents in a relatively short period, or whether a petition to terminate parental rights will be filed.<sup>169</sup> The National Council of Juvenile and Family Court Judges recommends that a permanency planning hearing take place at least annually,<sup>170</sup> and further urges that courts not treat a permanency planning hearing as they would another review: “Maintaining the distinction between review hearings and permanency planning hearings is a key to achieving permanency for foster children.”<sup>171</sup> Michigan’s statute, for example, requires a permanency planning hearing 364 days after the entry of a dispositional hearing.<sup>172</sup>

Despite carefully focused and well-delivered services to a family, the best interests of the child may, in some situations, require termination of parental rights (TPR) to free the child for an alternative permanent placement. State statutes should provide substantive grounds for termination of parental rights that adequately protect the rights of biological parents but also recognize the child’s need for a permanent home where she is legally and emotionally secure.

Continuity of personnel is important to the child at this stage of the legal proceedings as well. The same judge who hears and monitors the child protection case should hear the termination proceeding, unless he is disqualified as a matter of

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168. See U.S. GEN. ACCOUNTING OFFICE, FOSTER CARE: STATE EFFORTS TO IMPROVE THE PERMANENCY PLANNING PROCESS SHOW SOME PROMISE 3 GAO/HEHS-97-73 (1997) (on file with the *University of Michigan Journal of Law Reform*).

169. See generally NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, *supra* note 49.

170. See *id.* at 79–80.

171. *Id.* at 78.

172. See MICH. COMP. LAWS ANN. § 712A.19a(1) (West 1993 & Supp. 1997); see also MICH. CT. R. 5.973(C)(2).

law. Court review of the child's situation should continue after TPR until adoption or other permanent placement is finalized.

Legislation should ensure that once a child is legally free for adoption, the adoption administrative process is clear and prompt. Examples of clear statutory standards for adoption are found in the Uniform Adoption Code.<sup>173</sup> Legislation and administrative regulations should provide for a post-adoption support structure to prevent potential adoption disruption. Adoption subsidies may be a critical factor for successful adoption of older or special needs children. Legislation can also authorize open adoptions, which, under the right circumstances, may be appropriate for a child who is connected with his or her biological family but whose biological parents are unlikely ever to be able to provide a proper home.<sup>174</sup>

Unfortunately, our legal system recognizes only two permanent statuses for children: traditional adoption and return to the custody of their biological parents. State laws should provide for other legally secure permanent placements for children in addition to this stark dichotomy. Kinship placements, as well as non-relative foster placements, could mature into long-term stable placements while still maintaining a connection between the child and her biological family. Permanent placements that fall short of adoption will not be right for all children, but in some cases may be ideal for achieving a psychological sense of stability and belonging. Research on children's well-being over the long run in each of these types of permanency options must continue in order to inform future policy and practice decisions.

Expanding legal options for permanence provides the child with legal protections against disruption of the placement while maintaining connections to the biological and extended families. These options may also be achieved for children when termination of parental rights is not legally possible. There are four characteristics of alternative permanency arrangements that states should explore. The legal arrangement should (1) ratify a personal relationship between a child and a caregiver; (2) vest parental powers in a person, not an agency; (3) be court approved; and (4) require clear and convincing evidence before a court can break the relationship.

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173. See UNIFORM ADOPTION ACT, 9 U.L.A. 15 (1988) (amended 1994).

174. See *infra* notes 184–189 and accompanying text.

Research reveals these examples from existing state laws:

(1) Permanent transfer of rights to a relative: Minnesota has a statute worth emulating. At a Permanency Planning Hearing, if the child is not returned home, permanent legal and physical custody may be given to a relative.<sup>175</sup> The social services agency is authorized to petition for this placement on behalf of the relative.<sup>176</sup> Permanent custody with the relative resolves the child protection case, entitles the child to remain with that relative indefinitely, and gives the relative full parental rights.<sup>177</sup>

(2) Permanent guardianship: Arizona's permanent guardianship statute is a good example of this type of legislation. The permanent guardians exercise broad rights over the child, except that the court may reserve certain rights to the birth or adoptive parents in the decree of permanent guardianship,<sup>178</sup> such as rights of visitation with the biological parents, siblings, and extended family.<sup>179</sup> The court decree of permanent guardianship divests the birth or adoptive parents of legal custody and guardianship but does not terminate their parental rights.<sup>180</sup> The decree of permanent guardianship does not affect a child's inheritance rights from the birth or adoptive parents.<sup>181</sup> Importantly, the decree of permanent guardianship cannot be revoked except by a showing by clear and convincing evidence that there is a significant change of circumstances and that revocation is in the child's best interests.<sup>182</sup>

(3) Long-term foster care: Long-term foster care could enhance a child's sense of security and belonging without terminating parental rights, while still preserving agency services and financial support. Unfortunately, long-term foster care may be greatly overused as a permanency plan and should be viewed with great suspicion by child advocates. Nonetheless, long-term foster care might be an option for a child who has positive and ongoing relationships with her birth relatives so that termination of parental rights and traditional adoption would deprive the child of a meaningful family connection. Long-term foster care might also be an appropriate

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175. See MINN. STAT. ANN. § 260.191 (3b)(a)(1) (West Supp. 1997).

176. See *id.*

177. See *id.* § 260.191 (3b)(a)(3)(d).

178. See ARIZ. REV. STAT. ANN. § 8-525(D) (West Supp. 1996).

179. See *id.* § 8-525.01(H).

180. See *id.* § 8-525.01(G).

181. See *id.*

182. See ARIZ. REV. STAT. ANN. § 8-525.02 (West Supp. 1996).

plan for a child with serious physical, emotional, or mental disabilities where adequate services could not be guaranteed in a subsidized guardianship or subsidized adoptive placement.<sup>183</sup> As with the other alternative permanent plans, long-term foster care fails as a legal option for permanence unless it results in a true long-term commitment between the child and the foster parents that the agency will fully support and that the court can and will protect and enforce.

(4) Open adoptions and post-adoption visitation: Washington has a successful open adoption statute. The statute permits the biological parents, the adoptive parents, the child placement agency, and the legal representative of the child to agree to communication or contact after the adoption, which is then ordered by the court.<sup>184</sup> The statute does not specify an age limit for the child.<sup>185</sup> The voluntary agreement is enforceable by the court, but failure to comply with the terms of an agreed order is not grounds for setting aside an adoption decree.<sup>186</sup> The court may modify the order under certain circumstances.<sup>187</sup> The Florida termination of parental rights statute permits parents or other relatives, including siblings, to maintain some contact with a child awaiting an adoption, if such contact is in the child's best interests.<sup>188</sup> The right of contact may be continued after adoption if it is found to be in the best interests of the child.<sup>189</sup>

2. *Court Rules*—Court rules promote timely permanence for a child by requiring continuity of the judge and attorney working on the case. Court rules, for example, can provide that once a judge is assigned to a child protection matter, he handles that case until it is dismissed from court jurisdiction. The judge may be removed from the case if he is disqualified under other provisions of law.

Once a formal appearance is filed, attorneys for the agency, parent, or child can be required to appear consistently and without substitution by other counsel. Nearly all states have a court rule similar to Michigan's, which provides: "[a]n attorney

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183. The authors would like to thank Joe Kroll, Executive Director of the North American Council on Adoptable Children, for setting out these conditions under which long-term foster care could be considered a viable option.

184. See WASH. REV. CODE ANN. § 26.33.295 (West 1997).

185. See *id.*

186. See *id.* § 26.33.295(3)

187. See *id.* § 26.33.295(4).

188. See FLA. STAT. ch. 39.469(5) (1995).

189. See *id.*

who has entered an appearance may withdraw from the action or be substituted for only on order of the court.”<sup>190</sup> The judge controls the continuity of counsel and should insist on it.

Court rules can also helpfully direct the juvenile or family court to order assessments in the preliminary stages of the child protection matter and to create a preference for a single court-ordered assessment covering the entire family. Finally, court rules can speed up the process to permanency by requiring court review before any placement changes; by monitoring of the foster placement and implementation of the case plan by the child’s attorney; and by notification of the foster parents of the hearing and their opportunity to be present at all hearings; and by time limits for termination litigation, strictly followed and enforced by the local court manager and by the state supreme court administrator.

*3. Court Management*—Few matters are as important to improving the child welfare legal system as implementing a rigorous caseload management system covering all stages of the court process. Guidelines for a case flow management system are available from the National Council of Juvenile and Family Court Judges<sup>191</sup> and the ABA Center on Children and the Law,<sup>192</sup> and should be adopted by the courts.

Changes in court management practices are helpful to achieving timely permanence by assuring consistent representation and quality assessments. The outcome of “one family/one judge” can be accomplished by a direct or individual calendaring system in which a case is assigned to a particular judicial officer who then conducts all subsequent hearings, conferences, and trials.

The court administrator, with the support of the judges, can also work to ensure consistency in attorney representation of agency, child, and parent. Consistency of legal representation may improve the legal and non-legal outcomes for all parties. Attorneys may also be expected to represent children and parents on a voluntary, pro bono basis. Although pro bono services to children and families are to be encouraged, a court system cannot obtain the consistent quality of legal services necessary without a core of experienced lawyers, and that requires

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190. MICH. CT. R. 2.117(C)(2); *see also, e.g.*, COLO. R. CIV. P. 121(c) § 1-1(2); OHIO JUV. R. 4(F); VT. FAM. CT. R. 15(f)(1)(B).

191. *See* NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, *supra* note 49, at 19–21.

192. *See* HARDIN, *supra* note 50, at 51–56; HARDIN, *supra* note 51, at 60–70.

adequate payment. This is important legal work and should be compensated accordingly.

It is equally important that children and families receive timely and comprehensive assessments. Selection of experts or a team of experts to conduct the assessment can sometimes become a legal issue as counsel for the various parties—agency, children, mother, father, and sometimes foster parents—try to find experts with philosophical views favorable to their position. The court administrator can help by compiling, with the assistance of the local social services community, a list of those experts who are qualified to conduct such assessments. The court administrator could also make a protocol available to expert assessors that would describe the court's procedures and expectations as to gathering additional information, speaking with parties and their attorneys, time schedule, and preparation of written reports and testimony. The court should be very sensitive to the professional schedules of experts called to testify and, whenever possible, should place them on call and accept their recommendations in writing or by deposition.

Interface between court managers and the social services community is very important in this area. Regular meetings between the court and the social services community should review the local experience, and the court should assure that the medical and mental health professionals performing child and family evaluations receive regular training sessions on the legal aspects of their work.

*4. Fiscal Structure*—Obtaining reimbursement from the numerous funding streams that underwrite the different phases of the child welfare system can contribute to fragmented care and delays in moving children through the continuum of services and placement. Organizations need fairly sophisticated financial management systems to allow “seamless” and efficient service delivery. Ideally, they should be able to pay for a service or program through more than one funding stream and to maximize the flow of resources from all public and private sources.

Efficiently using funds may mean looking at traditional sources of funds in new ways. For instance, lack of funding for psychological evaluations or other special assessments can be a barrier to the FFK Initiative outcome of a single coordinated assessment. Contract innovations, such as Cuyahoga County, Ohio's “no eject—no reject policy” in their private agency service

contracts,<sup>193</sup> are an excellent way to promote timely intervention and to assure one stable placement. In this case, providers must accept all agency case referrals (“no reject”) and they cannot bounce a child from foster care (“no eject”).

The purchase of needed support services, such as respite care for foster parents, is another method of encouraging a single placement. The FFK Initiative site in Massachusetts uses a system of vouchers for purchasing needed flexible supports for families.<sup>194</sup> In this case, the services are explicitly geared toward stabilizing a fragile foster home, but vouchers for flexible support could provide and promote family integrity for families at any place in the child welfare continuum. In the same vein, increased stability and permanence may result from expanding the use of adoption subsidies and post-adoption services such as therapy, respite care, and support groups. Research suggests that these can mitigate the risk of adoption disruption.<sup>195</sup>

Managed care in child welfare is an approach to financing that may create new incentives for the system to reduce costly placements in favor of less costly (per capita) investment in prevention services. Because agencies would manage both family services and child placements, they would gain financially if they can lower their placement rates and placement duration. Thus, preset capitated arrangements (or risk sharing contracts) may provide the fiscal incentives for reducing the time children spend in out-of-home care. Among the Families for Kids Initiative sites, Kansas has implemented a capitated child welfare system,<sup>196</sup> and Ohio is close to doing the same.<sup>197</sup> States desiring to move in this direction need to provide information and training to service providers, and they need to engage the provider community in the development of protocols, standards, and quality assurance mechanisms. It may also be important to develop a high level of consumer involvement in determining consumer satisfaction measures and other aspects of the system.

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193. See OHIO FAMILIES FOR KIDS, *supra* note 140, at 8.

194. See MASSACHUSETTS FAMILIES FOR KIDS, *supra* note 135, at 9.

195. See J.A. Rosenthal, *Outcomes of Adoption of Children with Special Needs, THE FUTURE OF CHILDREN*, Spring 1993, at 84–85.

196. See KANSAS FAMILIES FOR KIDS, SITE VISIT REPORT 5–7 (Apr. 12, 1996) (on file with the *University of Michigan Journal of Law Reform*).

197. See U.S. Dept of Health and Human Servs., *President Clinton Announces Approval of Child Protection Waiver for Ohio* (last modified Feb. 14, 1997) <<http://www.hhs.gov/news/press/1997pres/970214.html>> (on file with the *University of Michigan Journal of Law Reform*).

Other fiscal mechanisms to encourage the FFK Initiative outcome of timely movement toward permanency can be quite simple. In Kent County, Michigan, for example, legal guardianships are being expedited by the public child welfare system's payment of filing fees and other legal costs for low-income families.<sup>198</sup> Increasing the available funding for kinship care as an alternative form of foster care may also promote stability of placement. Currently, support for relative placement may be available through a variety of conflicting and inconsistent funding mechanisms. Relatives may be licensed as foster families and paid foster care maintenance rates, or they can be court-appointed legal guardians for their kin.<sup>199</sup> The federal IV-E waivers provide opportunities for states to fund other placement and care arrangements for children, such as subsidized guardianships.<sup>200</sup> In any of these financial and legal arrangements, careful case planning, monitoring, and professional practice to promote permanence should not be dictated by the funding source alone.

5. *Administration and Operations*—Practices that expedite case flow include concurrent planning systems, clear timelines and protocols (for activities such as completing assessments and case reviews), lower caseloads for professionals, flexible job descriptions, and flexible work schedules to promote quality professional practice. Large caseloads can lead to staff turnover from burnout, staff retention problems, and frequent staff medical leaves, all of which disrupt continuity in case flow and create delays for children and families.

Other administrative procedures that may help achieve permanency in one year include the following: expedited and better-coordinated licensing provisions for foster care and adoption to provide easier transitions between the two statuses; provision of respite services (and other family support services) for foster parents and adoptive parents; and outcome-oriented interagency management and coordination across the continuum of care and services in both the public and private sectors.

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198. See MICHIGAN FAMILIES FOR KIDS, ACTIVITY REPORT 2 (July 31, 1996) (on file with the *University of Michigan Journal of Law Reform*).

199. See *supra* notes 80–81 and accompanying text.

200. Since June 17, 1996, seven states—Delaware, Illinois, Indiana, Maryland, North Carolina, Ohio, and Oregon—have received such waivers. See U.S. Dep't of Health and Human Servs., *State Child Welfare Demonstration* (last modified July 18, 1997) <<http://www.hhs.gov/news/press/1997pres/970718b.html>> (on file with the *University of Michigan Journal of Law Reform*).

To increase the number of available foster care and adoptive homes, local and state agencies might develop practices that would ease the financial burden of becoming a parent and thereby enhance their recruitment and retention success. For instance, North Carolina established a "Foster/Adoptive Parents Fund" providing \$1500 grants to each of the eight lead counties.<sup>201</sup> This "seed money" can be used to cover expenses for group meetings such as refreshments, child care, transportation, and other costs associated with licensing foster and adoptive parents.

6. *Practice Standards*—Professional practice standards can provide guidelines for child assessments and monitoring that could result in better care and more timely permanence. Social work practice standards support the FFK Initiative outcome of a consistent caseworker and casework team. Research on children's resiliency and attachment theory each support the importance of having one consistent supportive adult in a child's life to minimize her life-risks.<sup>202</sup> The FFK Initiative offers a number of exemplars for the "one caseworker" concept throughout the child's sojourn in the child welfare system. In Lorain County, Ohio, for example, one caseworker is utilized from child protective services intake through adoption.<sup>203</sup> This model uses specialized workers (in adoption, foster care, and independent living) as consultative resources for the single caseworker.

Implementing specific practice standards regarding assessments will also help to move a case through the system. Structured decisionmaking instruments are useful tools for practitioners in determining risks and needs. Comprehensive assessments need to address both risk and need. An exemplary method of conducting comprehensive assessments is the wraparound services modality utilized by communities in Ohio.<sup>204</sup> This assessment approach identifies needs, risks, and strengths within the family and its environment across all life domains.<sup>205</sup> Physical, mental, economic, spiritual, social, recreational, safety, and shelter are just a few areas that this process could assess.

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201. See NORTH CAROLINA FAMILIES FOR KIDS, *supra* note 141, at 3.

202. See generally 1 JOHN BOWLBY, ATTACHMENT AND LOSS (1969).

203. See OHIO FAMILIES FOR KIDS, QUARTERLY REPORT 12 (Aug. 6, 1996) (on file with the *University of Michigan Journal of Law Reform*).

204. See OHIO FAMILIES FOR KIDS, *supra* note 203 (describing the assessment strategies used in the Ohio FFK Initiative counties).

205. See *id.*

Ensuring a single placement is also an assessment issue, since the key to achieving this goal is to secure a good fit between the child and the placement. This requires not only a comprehensive assessment of the child and family but also of the service providers. As a result of a litigation settlement agreement, the New York Families for Kids site is not only evaluating the child but also developing an agency classification system to assess whether an agency has the capacity to meet the child's needs.<sup>206</sup> These dual assessments and classification systems should reduce "placement bounce" by producing better matches between the child and her placement environment.

Concurrent planning models for casework practice promote timely permanence and the outcome of one foster home. Concurrent case planning involves several principles of practice while simultaneously developing two permanency plans.<sup>207</sup> Structured decisionmaking instruments assist caseworkers in determining the likelihood of a child's reunification with her family and guide the worker toward the development of the concurrent case plan for other permanency options. Washington and several other FFK Initiative sites are using concurrent case planning models to facilitate achievement of the "one foster home" outcome.<sup>208</sup> These models also require: (1) frequent parental visitation and full disclosure to and involvement of parents in planning, (2) written service agreements, (3) selection of foster homes which are culturally appropriate and have the potential for permanency, and (4) legal support to implement all the steps of the plan.

Ultimately, public and private caseworkers and their supervisors must be accountable for moving children into permanent homes in a timely manner. An exemplar of accountability on this issue is South Carolina's system. In that state, the local county director evaluates, among other things, the length of time children in that jurisdiction spend in foster care.<sup>209</sup> Another innovation from this Families for Kids Initiative site is the development and use of an Adoptive Agreement

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206. See NEW YORK CITY, FAMILIES FOR KIDS CRUSADE, *supra* note 136, at 7-8.

207. See Linda Katz, *Permanency Action Through Concurrent Planning*, ADOPTION & FOSTERING, Summer 1996, at 8, 10-11 (stating that concurrent planning involves differential diagnosis, full disclosure, written agreements, legal support, and visiting, as well as developing two permanency plans).

208. See WASHINGTON STATE FAMILIES FOR KIDS, SITE VISIT REPORT 10 (May 20-22, 1996) (on file with the *University of Michigan Journal of Law Reform*).

209. See SOUTH CAROLINA FAMILIES FOR KIDS, *supra* note 142, at 2.

Form (the Form) which serves as an adoption process checklist for workers.<sup>210</sup> The Form not only supplies workers with a useful tool to track a child's progress, but also helps the site identify barriers to adoption and the persons responsible for overcoming the barrier.<sup>211</sup>

Providing foster parents with critical health information about the children they are fostering can also promote the outcome of one placement home. Massachusetts and California use medical passports to assure that foster families know about behavioral and health problems which can unwittingly trigger placement disruptions.<sup>212</sup> Providing foster children with their medical history may also promote a sense of continuity with their family of origin.

Practice standards for attorneys are important for respecting a "child's sense of time" and achieving permanency within one year of placement. States should develop specific standards for representation of children, agencies, and parents in child welfare cases.<sup>213</sup> Whether incorporated into state statute, court rules, administrative requirements of the court as a condition of employment, or in pronouncements from an authoritative body (such as a state bar), the expectations of the attorneys working in this important field must be clear.

Children should moved through the system faster if professional consistency standards apply to legal representation as well as to casework. An attorney should stay with a case for as long as it is within the court's jurisdiction; substitution of counsel, or having another attorney cover a particular hearing, should be discouraged.

Beyond courtroom representation, practice standards should require the attorney to monitor a child's foster placement carefully. If a child or foster parent is in need of supportive services to maintain the placement, the attorney should request such services from the agency or the court. The attorney should also insist that the child not be removed from her placement without advance notice and an opportunity for hearing, unless the child's safety is at risk.

Finally, attorneys should know the law regarding timely action in foster care cases and should press for timely decisions in each case. One of an attorney's basic duties is to "[a]ttempt

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210. *See id.*

211. *See id.*

212. *See* MADELYN DEWOODY, *MEDICAID AND SUPPLEMENTAL SECURITY INCOME: OPTIONS AND STRATEGIES FOR CHILD WELFARE AGENCIES* 30-32 (1991).

213. *See supra* Part III.A.6.

to reduce case delays and ensure that the court recognizes the need to speedily promote permanency for the child."<sup>214</sup>

To facilitate the professionalism of foster and adoptive parents, some state-level foster and adoptive parent associations have developed their own practice standards. In the Washington State FFK Initiative program, the Foster Parent Association of Washington catalogued the best practices from around the county in a paper entitled "Innovative Practices Involving Foster Parents."<sup>215</sup> Standards for child welfare agency management are as important as standards for specific casework functions. External accreditation of both public and private agencies delivering child welfare services is recommended.

7. *Training and Education*—Investment in child welfare-focused social work training for caseworkers is an important strategic tool for building better services. Providing current caseworkers with additional training and graduate-level education with a child welfare specialization may improve staff morale and provide caseworkers with better skills. The costs of providing scholarships or tuition stipends to caseworkers enrolled in BSW/MSW programs with child welfare specializations are reimbursable expenses under federal law.<sup>216</sup>

Continuing professional education for direct, front line service providers may improve the timeliness of care to children in the system. A key element for flexibility, continuity, and efficiency may be "cross training," i.e., training staff to perform many different functions beyond their traditional subspecialties. Agencies could "cross train" current staff in child protection, foster care, and adoption, and they could hire new staff on the condition that they be "cross-trained." Such training practices move toward a comprehensive team approach.

Quality training for caseworkers is a critical means to promote the goal of timely permanence, but it can be undermined by caseworker turnover. Training programs should include elements designed to reduce turnover. Training can promote worker retention by giving workers the skills they need to make their jobs easier. Training can also facilitate consistent casework by enhancing all of the system's participants' understanding of the roles and responsibilities of other actors and of key aspects of the case. The South Carolina FFK Initiative site

214. American Bar Ass'n, *supra* note 117, at 378.

215. See WASHINGTON FAMILIES FOR KIDS, *supra* note 208, at 8.

216. See 45 C.F.R. §§ 235.63–235.66 (1995).

is using cross systems training to facilitate the goal of a consistent casework team of attorneys, law clerks, foster care parents, and adoption workers.<sup>217</sup>

Having the tools to conduct comprehensive assessments is of little utility unless participants receive comprehensive training on the use of these tools. New York is training over 8,000 public and private agency staff on how to use the protocol it has designed to determine risk during the child protective services investigation stage.<sup>218</sup> The New York State Risk Assessment System will enable workers to gather the necessary information to determine whether there is sufficient risk to warrant the child's separation from his family.<sup>219</sup> The training necessary for quality assessments could include these topics: child welfare, mental health care, domestic abuse, child support, extended family history, family strength assessment, sources of informal supports, recreation, spiritual needs, employment, and other life domain needs.

Additionally, caseworker training is an important element of maintaining children in one foster home. Caseworkers need to know how and when to anticipate problems in foster care, and which times of transition can be problematic (for example, school starting or holidays). The worker needs to have an arsenal of troubleshooting techniques when problems arise, including methods for supporting the foster parents. Caseworkers also need training in attachment and child development theory, concurrent case planning techniques, and ways to promote a child's sense of family continuity with her biological family while moving on to her new family.

The experience of the FFK Initiative sites speaks to the importance of foster and adoptive parent training and support groups. Montana is going one step further and including birth parents in its training programs.<sup>220</sup> Another interesting use of training in support of the "one foster home" outcome is also occurring in Montana. This FFK Initiative site is increasing its pool of respite care providers by training interested parents as respite care providers for therapeutic foster caregivers.<sup>221</sup> Caseworkers and foster parents also need training in issues of child development, effective team management and interaction

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217. See SOUTH CAROLINA FAMILIES FOR KIDS, SECOND QUARTERLY REPORT 6 (1996) (on file with the *University of Michigan Journal of Law Reform*).

218. See NEW YORK CITY, FAMILIES FOR KIDS CRUSADE, *supra* note 136, at 2.

219. See *id.*

220. See MONTANA FAMILIES FOR KIDS, *supra* note 135, at 9.

221. See *id.* at 24.

skills, cultural competency, health and safety precautions and procedures, and separation and loss issues.

While specialized legal training is widely recommended as a prerequisite to being appointed to represent children or parents, many lawyers engaged in child welfare practice do not have specialty training. The ABA's *Proposed Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases*<sup>222</sup> recommend that judges be involved in attorney training and that they recommend the minimum content for that training.<sup>223</sup> Likewise, the Fordham Conference Recommendations state that "[a] lawyer who represents children should be certified as a 'child advocate' by a state or national oversight body, and that "[c]andidates for certification should be mentored by more experienced lawyers."<sup>224</sup> The Conference recommends appropriate subjects for such attorney training<sup>225</sup> and also proposes that attorneys engage in continuing legal education.<sup>226</sup>

Judges are typically governed by state law and by state Codes of Judicial Conduct, but these provisions are rarely specific to child protection and foster care. No national group has yet developed a set of standards for judicial conduct in child welfare cases upon which a state could base its own clear and authoritative guidelines. However, the National Council of Juvenile and Family Court Judges has a number of publications useful to judges and state judicial associations interested in developing further standards.<sup>227</sup> A required level of training and a minimum period before rotating are among the most important standards to set for consistent and high quality judicial practice in this field.

Judges and lawyers must understand the importance of consistent casework, comprehensive assessments, stable placements, and timely movement through the system. Therefore, training in child development and the importance of continuity and trust in relationships is essential to the training of professionals who provide legal services to families and children. Training should cover the role of related professionals (such as social workers, psychologists, and psychiatrists),

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222. American Bar Ass'n, *supra* note 117.

223. *See id.* at 401-02.

224. *Recommendations of the Conference on Ethical Issues in the Legal Representation of Children*, *supra* note 133, at 1306.

225. *See id.*

226. *See id.*

227. *See generally* NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, *supra* note 49.

the most common means of family and individual assessment, and the limits of such evaluations. Lawyers and judges need to know that a comprehensive assessment should include, among other things, family drug and alcohol use, medical and mental health care, domestic abuse, child support issues, extended family history, employment, and educational histories. The means of assessing educational, developmental, and emotional needs of the child should be identified. Problems with inadequate or piecemeal assessments must be identified in attorney and judicial training.

Areas of training to promote stability of care include the child's need for continuity, concurrent planning, supporting foster parents, and anticipating problems in foster care. A child's need for permanence and stability should be the centerpiece of child welfare training, along with the value of a child's connection to her biological family. Means of achieving permanence should be thoroughly explored. A "child's sense of time" should be understood by attorneys and judges.

8. *Outreach and Collaboration*—Collaborative efforts are very important to realizing the goal of timely permanence. Collaboration may bridge the gap between workers, agencies, and systems that need to work together to ensure that a child is not lost in the system. To illustrate, various child welfare functions frequently are carried out by specialized workers. Investigatory functions might be handled separately from ongoing casework, or changes in case plans (e.g., from reunification to adoption planning) might trigger a shift of the case to a different worker. Administratively, these functions are often carried out across different units in an agency—for instance, child protective services is typically distinct from foster care, which is further separated from adoptive services. Some functions, however, might be carried out, in part or entirely, by different agencies.

Arrangements such as these mean that the challenge of providing consistent casework is even greater, and agencies must find creative strategies to enable collaboration. For example, a collaborative, cross-agency team approach could achieve the goal of consistent casework. Mississippi is creating Case Planning or Local Coordinating Care Committees made up of the "key players" in the case.<sup>228</sup> Three agencies in Kansas work

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228. See MISSISSIPPI FAMILIES FOR KIDS, *supra* note 135, at 9–10.

together on dual case plans for children in care.<sup>229</sup> Collaboration within an agency could also take place. One office in Montana has reorganized its staff into teams with intake and ongoing staff working together instead of in separate units.<sup>230</sup>

Outreach and collaboration are necessary actions to provide families with a comprehensive assessment. The different parts of the child welfare system described above might use different assessment tools for a case (depending on the plan for that case). Also, the child welfare system might not be aware of the various assessment instruments and techniques available from other fields (e.g., mental health, domestic violence). Therefore, assessing the child and the family requires collaboration within an agency, as well as reaching out to other groups to develop a comprehensive approach.

The Pima County, Arizona, FFK Initiative site uses "cross-functional assessment teams" made up of staff from the public child welfare system along with mental health specialists and a representative from Catholic Social Services.<sup>231</sup> In addition to these individuals, foster parents, and parent aides often attend case assessment reviews, adding an additional source of information for permanency planning.<sup>232</sup> Montana also recognizes the importance of the "non-professional" perspective. The University of Montana School of Social Work is charged with developing assessment guidelines for the sites, and as part of this process, researchers were to obtain input from consumers.<sup>233</sup>

Outreach efforts are also necessary to find appropriate placements for children. Foster care placements are more likely to be stable if an emphasis is placed on matching a child with an appropriate, rather than simply an available, foster family.<sup>234</sup> An appropriate placement, however, cannot take place unless workers have a large pool of foster homes from which to choose. Agencies must commit to recruiting and retaining foster families—especially families of color.<sup>235</sup> Kinship care placements are another way to achieve stable placements.

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229. See KANSAS FAMILIES FOR KIDS, PROGRESS REPORT 5 (Aug. 1996) (on file with the *University of Michigan Journal of Law Reform*).

230. See MONTANA FAMILIES FOR KIDS, SITE VISIT REPORT 14 (Apr. 23–25, 1996) (on file with the *University of Michigan Journal of Law Reform*).

231. See ARIZONA FAMILIES FOR KIDS, SITE VISIT REPORT 10–11 (May 1–3, 1996) (on file with the *University of Michigan Journal of Law Reform*).

232. See *id.* at 2.

233. See MONTANA FAMILIES FOR KIDS, *supra* note 135, at 12.

234. See generally DOWNS, *supra* note 9.

235. See *id.* at 281.

Some research has shown that children placed with kin are more likely than children placed in non-relative care to have stable foster care experiences.<sup>236</sup>

Agencies can use a variety of outreach strategies to recruit and retain foster families. Many sites use the media to raise awareness of the number of children waiting for placements and to directly recruit interested families.<sup>237</sup> Public presentations by foster families and children in care<sup>238</sup> can also heighten awareness and spark a family's interest in becoming a foster parent. Once in the system, agencies can link families with support systems so that their experience with the system remains positive.<sup>239</sup>

Specialized recruiting efforts should be directed at families of color, since children of color tend to wait longest for permanent homes.<sup>240</sup> An agency might design a special program to achieve this goal. Kansas, through its kinship conference pilot program, has staff devoted to recruiting African-American foster families.<sup>241</sup> The site also mails information on a regular basis to African-American churches in an effort to recruit adoptive families.<sup>242</sup> Washington State plans specialized contracts with community agencies to recruit families from various minority communities.<sup>243</sup>

However, simply increasing the number of families wishing to adopt will not necessarily achieve the goal of timely placement if an agency does not know which children are in need of placements. A community might have a number of different agencies working on adoption placements. A family recruited by one agency may not be an appropriate match for the children on that agency's waiting list, but a child on another agency's list might be a good match with the family. Outreach, communication, and information sharing across agencies are therefore vital for achieving this outcome. Washington State has developed a protocol and communications procedure that facilitates coordination between its Adoption Resource Exchange and

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236. See Jill Duerr Berrick et al., *A Comparison of Kinship Foster Homes and Foster Family Homes: Implications for Kinship Foster Care as Family Preservation*, 16 CHILDREN AND YOUTH SERVS. REV. 33, 59 (1994).

237. See MASSACHUSETTS FAMILIES FOR KIDS, *supra* note 135, at 6.

238. See *id.* at 1-2.

239. See *supra* Part III.A.8.

240. See *supra* note 14 and accompanying text.

241. See KANSAS FAMILIES FOR KIDS, *supra* note 196, at 10.

242. See KANSAS FAMILIES FOR KIDS, *supra* note 229, at 2.

243. See WASHINGTON STATE FAMILIES FOR KIDS, QUARTERLY REPORT 10 (May 10, 1996) (on file with the *University of Michigan Journal of Law Reform*).

Indian child welfare programs.<sup>244</sup> Similarly, Arizona holds interagency "match" meetings facilitating exchange between the state's Administration for Children, Youth, and Families adoption agencies, and FFK Initiative adoption recruitment staff.<sup>245</sup> By involving adoption agency staff early in the process, permanence planning may be likely to occur sooner.

Interagency collaboration is also important to reducing the backlog of children in placement. Like Arizona, the Massachusetts FFK Initiative program is facilitating monthly meetings between the Department of Social Services and the Adoption Resource Exchange.<sup>246</sup> In these meetings, all staff look specifically at the children needing placements in order to plan child-specific recruitment activities.<sup>247</sup> New York hires case "expeditors" and outposts these workers to various adoption agencies, especially those having trouble meeting their backlog milestones.<sup>248</sup> These staff members will work directly with agency staff to eliminate the backlog.

9. *Data and Information Systems*—Improvements in information systems, particularly in the efforts to link databases across agencies and sectors of care, can support the outcome of timely permanence by calling attention to the casework process and ensuring appropriate, comprehensive, and non-redundant assessments. It is difficult to imagine how interdisciplinary or multi-agency teams can coordinate and reduce the frequency and number of assessments without easy access to comprehensive and shared sources of information. A high quality data base would identify the number of intakes and assessment tools utilized in a case, automatically retrieve and score risk level on various dimensions, provide forms used across the local network of agencies, and allow workers to draw from and build upon prior assessments to monitor case progress and facilitate case review.

Many of the Families for Kids Initiative sites have developed innovative ways to improve tracking and monitoring of cases across child welfare programs. These innovations improve the quality of the assessment information available for

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244. See *id.* at 11.

245. See PIMA COUNTY FAMILIES FOR KIDS, PROGRESS REPORT 7 (May 22, 1996) (on file with the *University of Michigan Journal of Law Reform*).

246. See MASSACHUSETTS FAMILIES FOR KIDS, QUARTERLY REPORT 13 (Apr.–June, 1996) (on file with the *University of Michigan Journal of Law Reform*).

247. See *id.*

248. See NEW YORK FAMILIES FOR KIDS CRUSADE, *supra* note 136, at 10.

case review at any one place in the system and reduce duplication, fragmentation, and delays in case management services. During the courts' periodic review of case progress—at the decision point to assess need for post-adoption services, or for medical and educational planning for cases entering care—the case documentation should provide as comprehensive and exhaustive a set of assessment information on the child and family as was available at any other stage in the proceedings. Clearly, quality and accessible information systems can promote such goals.

For example, in South Carolina, the local evaluator has a way to track continuity of case management within the public child welfare system by examining "excess" time added to care by changes in case managers.<sup>249</sup> Kansas has a manual system for tracking waiting children through the court processes;<sup>250</sup> and Arizona utilizes "cross-functional teams" to manage services and review the case across the protective services, foster care, adoption, and related family services systems.<sup>251</sup> This case review team includes workers from each sector; many also invite the input of foster parents, parent aides, mental health specialists, and other providers with a stake in permanence.<sup>252</sup>

Stability of placements also can be tracked with adequate monitoring systems. Because of information presented by local evaluators in the South Carolina FFK Initiative site, for example, corrections in the number and quality of placements are being addressed.<sup>253</sup> South Carolina has found that the number of substitute care facilities and homes was inversely related to their use of sibling placements and positively related to the incidence of multiple placements.<sup>254</sup> Because it has this information, it can adjust its practices to reduce the number of moves and advocate for more frequent sibling placements for children in care.

In addition, the timing of a child's movement across the child welfare system can be identified and addressed by quality information retrieval on dates and intervals between system and court events. Data must be both available and

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249. See SOUTH CAROLINA FAMILIES FOR KIDS, *supra* note 142, at 13–14.

250. See KANSAS FAMILIES FOR KIDS, *supra* note 196, at 3.

251. See ARIZONA FAMILIES FOR KIDS, SITE VISIT REPORT 2 (May 1–3, 1996) (on file with the *University of Michigan Journal of Law Reform*).

252. See *id.*

253. See SOUTH CAROLINA FAMILIES FOR KIDS, *supra* note 142, at 13.

254. See *id.*

utilized on a frequent basis to speed up the intervention time frame. In the Kansas FFK Initiative site, the local evaluator is linking the various public and private state and local data systems to implement the state-legislated time frames for moving children through the system in a more timely fashion.<sup>255</sup>

Finally, in its initial planning stage, each FFK Initiative site identified the factors that contributed to its local case backlog and formulated plans for reducing the number of children in foster care drift and/or legally freed and awaiting adoption.<sup>256</sup> Eliminating the backlog once may not overhaul the system and prevent future children from falling into the same backlog, so different and multiple approaches may be required. Data collected to promote new case tracking strategies and to monitor the time lags in care is of paramount importance. Many of the sites have developed innovations to reduce the current backlog, and they report increased rates of adoption, more active recruitment of families, particularly families of color, and more attention to the plight of children in care across the broader community and policy context.<sup>257</sup> These changes in services are founded not only upon changes in policies and service practices, but also upon information systems that can generate accurate numbers of children in various statuses.

There are many examples of how current information systems contribute to the problems of the backlog itself, and many sites find that they must address these issues in order to move forward in their planning and system reforms. In Montana, for example, the multiple jurisdictions for child welfare do not currently have a coherent data system to allow, for example, comprehensive counts of children under state and tribal care, numbers freed for adoption, length of time spent in each type of placement, or the number of court events occurring prior to adjudication.<sup>258</sup> In Ohio, efforts to begin collecting information on children in several parts of the system led to the realization that "special needs" status

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255. See KANSAS FAMILIES FOR KIDS, *supra* note 196, at 4-5.

256. See, e.g., SOUTH CAROLINA FAMILIES FOR KIDS, *supra* note 142, at 12 (describing efforts to reduce backlog).

257. See W.K. KELLOGG FOUND. FAMILIES FOR KIDS: SUCCESSES AND CHALLENGES 1-4 (Dec. 1996/Jan. 1997) (on file with the *University of Michigan Journal of Law Reform*).

258. See MONTANA FAMILIES FOR KIDS, *supra* note 230, at 16.

was being underreported in the statewide data.<sup>259</sup> An accurate, effective, and appropriate count of the numbers of children with such needs who await permanency is critical for designing comprehensive approaches to reduce the case backlog.

## CONCLUSION

We have argued that child welfare reform designed to support families and increase permanence for children in placement must occur across the multiple levels of child welfare policy and systems—within federal, state, tribal, and local jurisdictions. We have identified a broad set of methods by which reform can evolve, including legislative statutes, court rules and management techniques, fiscal policies and structures, administration and program operations, professional practice standards and specialized training programs, community outreach and cross-agency collaboration, and improved information systems. We have illustrated the potential for these reforms by highlighting their implementation in innovative programs in several states and localities which are collaborating in the Families for Kids Initiative.

We have emphasized legislation and authority at the state level as the method most likely to bring about uniform standards for agencies, professions, and procedures across all parts of the complex child welfare system, including the courts, public agencies, private service programs, and local communities. The most sophisticated professional standards, innovative casework, and thorough legal procedure may be developed and practiced on a demonstration or pilot basis; but, unless these reforms are widely implemented, practiced, and mandated to apply to all cases, they will fail to transform the experiences of the families and children.

While attention to these various means for system and policy reform would motivate the states to institutionalize change in keeping with the Families for Kids Initiative goals, other procedures and system reforms may also be required. For instance, we have not addressed the general need for continuing innovation and research in the knowledge base

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259. See OHIO FAMILIES FOR KIDS, *supra* note 140, at 7.

and social service technology and practice. Improvements in what we understand and are able to do for at-risk children and families must continue to evolve, come into practice, and diffuse across the system in every state. Innovations that provide new assessment tools to address multi-cultural issues or that implement new models of service planning, such as wraparound services and concurrent planning, must continue to be rigorously scrutinized for effectiveness as they are replicated across the states. Additionally, we have proposed expanding a diverse set of permanency options to be developed in the state statutes which we expect to increase timeliness and children's well-being. Such innovations would be ideally demonstrated and carefully evaluated.

Even with adoption of some of these mechanisms, some problems are likely to persist as barriers to child welfare reform. These include resource constraints, cumbersome fiscal structures, and the continuing prevalence of demographic and economic conditions that increase the risk of child maltreatment. Poverty, deteriorated community conditions and inadequate services in inner-city and isolated rural areas, along with the plagues of substance abuse and violence in families, will continue to flood even the best residual system of child protection and placement. Starting in 1997, current welfare reform implemented according to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996<sup>260</sup> may increase demand for child welfare services. Without more attention to front-line supports and preventative resources for families and children within communities, we cannot hope to eliminate backlog and accomplish timely, quality, effective family support. Without widespread, comprehensive, front-end prevention programs, even the most proficient set of child welfare policies and programs will be in a race against the tide of suffering.

On a more optimistic note, some of the mechanisms that we advocate, and that Families for Kids Initiative programs across the nation have adopted, are oriented toward both prevention and treatment. If reforms were instituted or adopted in each policy means, from legislation and training to outreach and improved data, the awareness of child welfare concerns would broaden and the ability to help families would improve. Reform in each of these arenas in combination

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260. Personal Responsibility and Work Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (1996).

could theoretically free up resources, expand our expertise, increase political will and commitment at multiple policy levels, and increase the effectiveness of child welfare policy and practice.

