



A SECOND PROGRESS REPORT

COUNCIL FOR COURT EXCELLENCE

District of Columbia Child Welfare System Reform

J U N E 2 0 0 4

FOREWORD

In October 2002, the Council for Court Excellence (CCE) issued our first public report containing performance data on the District of Columbia child welfare system, entitled *District of Columbia Child Welfare System Reform – A Progress Report*. The report quantified the progress of the system leaders – the Family Court of DC Superior Court, the Child and Family Services Agency (CFSA), and the Office of the Attorney General – in complying with the federal and DC Adoption and Safe Families Acts (ASFA), laws designed to reduce a child's stay in foster care, and the DC Family Court Act of 2001, which provides the tools to meet ASFA requirements. The report established a baseline to measure progress and noted the beginning of positive change. CCE stressed the importance of measuring and monitoring the system's performance as a means of ensuring continued progress. CCE's message, borrowed from, *Reinventing Government*, was that "what gets measured gets done."¹

Following the issuance of the October 2002 report, Congress provided CCE with funds "to continue ongoing independent oversight ... [of the DC child welfare system and to provide] ... an annual

report to Congress [on ASFA and Family Court Act compliance.]" It is with these resources from Congress, as well as continued funding from the Annie E. Casey Foundation, the Freddie Mac Foundation, and the Trellis Fund, that CCE undertook a second study of the DC child welfare system in the latter half of 2003. The results of this second study, detailed in a comprehensive May 6, 2004 report to Congress, are summarized for the public here.²

CCE extends its thanks to the many organizations and individuals who contributed to this study, particularly the Family Court judicial officers and the Juvenile and Neglect Branch Clerk's Office for providing access to courtrooms and case files. We issue special thanks to Family Court Presiding Judge Lee F. Satterfield; Olivia Golden, former Director of CFSA; Brenda Donald Walker, Interim Director of CFSA; Robert Spagnoletti, DC Attorney General; and Janet Maher, formerly the liaison between CFSA and the Office of the Attorney General. Special thanks also go to the Center for the Study of Social Policy for sharing data, child welfare expertise, and professional insights. In addition, CCE thanks its project consultants from the

National Center for State Courts, the National Council of Juvenile and Family Court Judges, and the American Bar Association, who helped develop the research methodology and instruments and analyzed the data collected.

Last, but not least, we express our sincere appreciation to our financial supporters – the United States Congress, the Annie E. Casey Foundation, the Freddie Mac Foundation, and the Trellis Fund – for their dedication to the children of DC and for their recognition that system reform does not happen overnight. CCE also thanks the GEICO Corporation for printing this report as a public service.

1. D. Osborne and T. Gaebler, *Reinventing Government: How the Entrepreneurial Spirit is Transforming the Public Sector*, Reading, Mass.: Addison-Wesley Publishing Company (1992) at 146.

2. The October 2002 report and the detailed report to Congress, *District of Columbia: Compliance with the Adoption and Safe Families Acts and the District of Columbia Family Court Act* are available at <<http://www.courtexcellence.org/publiceducation/reports.shtml>>.



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Introduction



This is the Council for Court Excellence's (CCE) second progress report to the community on the District of Columbia's efforts to bring the city's child protection system into compliance with the federal and local Adoption and Safe Families Acts (ASFA) and the District of Columbia Family Court Act of 2001. CCE's first public report, *District of Columbia Child Welfare System Reform: A Progress Report*, released in 2002, noted that while the system was improving, there was much more work to be done to bring the system into compliance with ASFA standards. The purpose of this second

report is to update the community on the progress of the city's child protection system over the past two years.

CCE's second progress report is more comprehensive than the first. CCE reviewed 1,708 child neglect and abuse court case files for children who entered the DC child welfare system over a six-year period, January 1, 1998 through June 30, 2003. CCE studied the children's cases that entered the system each year as a separate group or "cohort" based upon their year of admission into the system. This "admission cohort" approach allowed CCE to track the system's performance on behalf of children over time, as each new law was implemented. CCE also observed 352 child neglect and abuse court proceedings, interviewed the leaders of the child welfare system, made site visits, and conducted surveys and focus groups.

CCE's research shows that DC's neglected or abused children are better off than they were two years ago, though there is still a need for improvement. The results show steadily increasing compliance rates with federal and local ASFA deadlines, as well as nearly complete compliance with the Family Court Act. More importantly, these improvements are beginning to translate into shorter stays in foster care for some, though not all, DC children. Children who can safely be reunited with their families are going home, on average, in less than one year's time. This is a significant improvement from the days prior to ASFA and the Family Court Act, when it took nearly two years, on average, to reunite DC children with their families.

Admission Cohorts

This report compares the city's performance on behalf of children whose neglect or abuse cases entered the system over three time intervals:

- Cohort 1:** Children who entered the system in 1998 and 1999, prior to the city's implementation of ASFA or the Family Court Act;
- Cohort 2:** Children who entered the system in 2000 and 2001, during the initial ASFA implementation period; and
- Cohort 3:** Children who entered the system in 2002 and 2003, as ASFA implementation continued and the Family Court Act implementation occurred.

1. The city's compliance with various ASFA deadlines for reaching decisions in child neglect and abuse cases is improving steadily, particularly in cases where the child has been removed from home.
2. Since 2002, mediation has been conducted within approximately 30 days after the start of nearly 100% of child neglect and abuse cases. This early mediation has resulted in full or partial settlements of more than 90% of those cases, thereby speeding their resolution.
3. The city is increasingly holding a permanency hearing within 14 months of a child's removal from home. It is close to full compliance with the requirement to decide the child's permanency goal at that hearing, but it must do a much better job of setting a date for achieving that goal.
4. Parents are not consistently notified of ASFA reunification deadlines. CCE court observers reported that the court discussed ASFA reunification deadlines in only one of the 13 initial hearings observed and in only 10 of the 170 permanency hearings at which parents or other family members were present.
5. DC children who can be safely reunified with their families are now going home in less than one year—less than half the time it took before the city began implementing ASFA in 2000.
6. Over 1,000 children now in foster care in the District have a permanency goal of adoption, but over one-third of them are not yet placed in pre-adoptive homes. In cases CCE studied that have been open since 1998, 47% of the children have an unrealized goal of adoption.
7. The District of Columbia created and locally funded a subsidized guardianship program that began in fiscal year 2002, aimed at placing more foster children in permanent homes. Under the program, finalized guardianships have increased from 13 in 2002, to 113 in 2003, and 89 in the first half of 2004.
8. The Family Court reports that approximately 25% of DC children in the system will reach adulthood and leave the child welfare system without finding a permanent family. Though the court and CFSA have created programs that reach some of the children in this population, not all children are aware of these services.
9. Since implementation of the Family Court Act, all child neglect and abuse court cases and other family law cases are being handled by judicial officers with experience and expertise in family law who have volunteered for extended terms of Family Court service. Family Court officers generally ensure that parents and other lay persons understand court proceedings and permit them to speak and ask questions.
10. The Mayor, with the assistance of the Family Court, has established a multi-agency liaison office at the courthouse designed to help coordinate social services for court-involved families. The Mayor has made less progress in integrating the computer system of the Family Court with the systems of District of Columbia social service agencies.

Overview of the DC Child Neglect and Abuse System



The organizational structure of the DC child protection system is comparable to a three-legged stool. The three legs or supporting organizations that share responsibility for making the system work well are:

1. the Child and Family Services Agency (CFSA), which receives and investigates reports of child neglect and abuse and provides services to children and their families;
2. the Office of the Attorney General (OAG),³ which prosecutes the cases and provides legal support until permanency is achieved or the case is otherwise closed; and
3. the DC Superior Court Family Court, which adjudicates the cases and oversees progress toward permanency and case closure.

The Child and Family Services Agency

The *LaShawn A. v. Williams* federal class-action lawsuit was filed against the city

15 years ago to force reform in the Child and Family Services Agency, a process that is nearing completion. This year, CFSA's court-appointed monitor found that while some additional improvements are necessary, the agency has achieved many of the performance benchmarks that will bring CFSA into full compliance by 2006 with the federal court's Modified Final Order.⁴ Unfortunately, Olivia Golden, the Director of CFSA who has guided the agency through the transformation process over the past three years, stepped down in April 2004. However, the management team she recruited remains in place at this time.

The Office of the Attorney General

Under the leadership of Attorney General Robert Spagnoletti, the Office of the Attorney General's Child Abuse and Neglect Section has maintained the high staffing levels it achieved in late 2001 and early 2002. The Section has about 45 full-time attorney positions, which has enabled it for the first time to provide legal support in child neglect and abuse cases not just through adjudication and disposition but all the way through to the achievement of permanency. Each assistant attorney general is assigned to handle cases before one judicial team

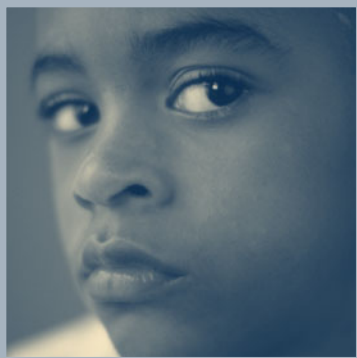
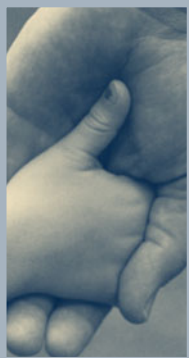
comprised of an associate judge and a magistrate judge. This new organizational practice lends consistency and familiarity to the process and enables the assistant attorney general to attend all hearings.

The DC Superior Court Family Court

The DC Superior Court Family Court, led by Presiding Judge Lee Satterfield, has undergone a major transformation. Most of the changes required by the District of Columbia Family Court Act of 2001 were implemented within the Act's two-year implementation period. Perhaps the most significant change is that all child neglect and abuse cases and other family law cases are being handled by judicial officers with experience and expertise in family law who volunteered for Family Court service.

3. Formerly the Office of the Corporation Counsel, renamed by Mayor Anthony Williams's executive order May 26, 2004.

4. *LaShawn A. v. Williams*, *An Assessment of the District of Columbia's Progress in Meeting the Implementation and Outcomes Benchmarks for Child Welfare Reform*, Center for the Study of Social Policy (January 2004).



When a child becomes a victim of neglect or abuse, ASFA deadlines impose a sense of urgency that did not exist previously, requiring parents to act quickly to remedy the cause of neglect or abuse—or risk losing their children.



The Adoption and Safe Families Acts

The federal Adoption and Safe Families Act of 1997⁵ recognized what child development experts have long known: childhood is a critical time for personality formation and brain development. To thrive and grow, children need a consistent, protective, and nurturing relationship with an adult.⁶ When a child becomes a victim of neglect or abuse, ASFA deadlines impose a sense of urgency that did not exist previously, requiring parents to act quickly to remedy the cause of neglect or abuse—or risk losing their children. ASFA represents a public policy shift away from prolonged efforts at family reunification toward prompt, permanent, and safe placement of children.

The major provisions of the federal ASFA include:

Clarification of Reasonable Efforts

Under ASFA, child safety is the top priority in determining whether the social service agency must make “reasonable efforts” to prevent the child’s removal from home or to reunite the child with her family. When “aggravated circumstances” exist, the “reasonable efforts” requirement does not apply, and the agency has authority to remove children immediately, and without providing services.

Federal reimbursement for foster care expenses is available only if the court makes a finding of reasonable efforts within 60 days of a child’s removal from home.

Contrary to the Welfare

At the first court hearing after a child’s removal from home, the court must determine whether it is contrary to the child’s welfare to remain at home. A “contrary to the welfare” finding also is required before there can be federal reimbursement of foster care expenses.

Permanency Hearings

Within 12 months of a child’s entry into foster care (or 14 months after the child’s removal from home, since a child is considered to have entered foster care 60 days after removal), the court must decide the child’s permanency goal—reunification with her family, adoption, permanent guardianship or custody with a relative, or an alternative living arrangement—and set a timetable for its achievement.

Termination of Parental Rights

A petition to terminate parental rights (TPR) of the child’s birth parents must be filed if the child has been in foster care for 15 of the last 22 months. This is aimed at freeing the child for prompt adoption.

The TPR requirement does not apply if:

1. the child is living with a relative,
2. the agency failed to provide necessary services to assist the family, or
3. other compelling reasons exist.

The Adoption and Safe Families Amendment Act of 2000,⁷ DC’s ASFA statute, was enacted to conform DC

law with the federal ASFA. In addition to mirroring the federal ASFA requirements, the DC ASFA creates additional hearing deadlines for the trial and disposition hearing that vary depending upon whether the child is removed from home.

The Family Court Act

The District of Columbia Family Court Act of 2001,⁸ enacted by Congress in late 2001, lays out the structure and tools necessary to meet ASFA deadlines. The Family Court Act requires:

- Transfer to the D.C. Superior Court Family Court of child neglect and abuse cases that were being handled in other divisions of the court;
- Creation of a Family Court whose judicial officers have experience and expertise in family law and have volunteered to serve extended terms of service;
- Implementation of the One Family/One Judge approach, whereby the same Family Court judicial officer hears a neglect or abuse case from beginning to end and related family law cases involving the same family;
- Implementation of a computerized case tracking and management system;
- On-site coordination of social services;
- Use of alternative dispute resolution techniques; and
- Expansion of physical facilities to accommodate all Family Court functions.

5. Pub.L.No. 105-89 codified at 42 U.S.C. § 670-72 & 675.

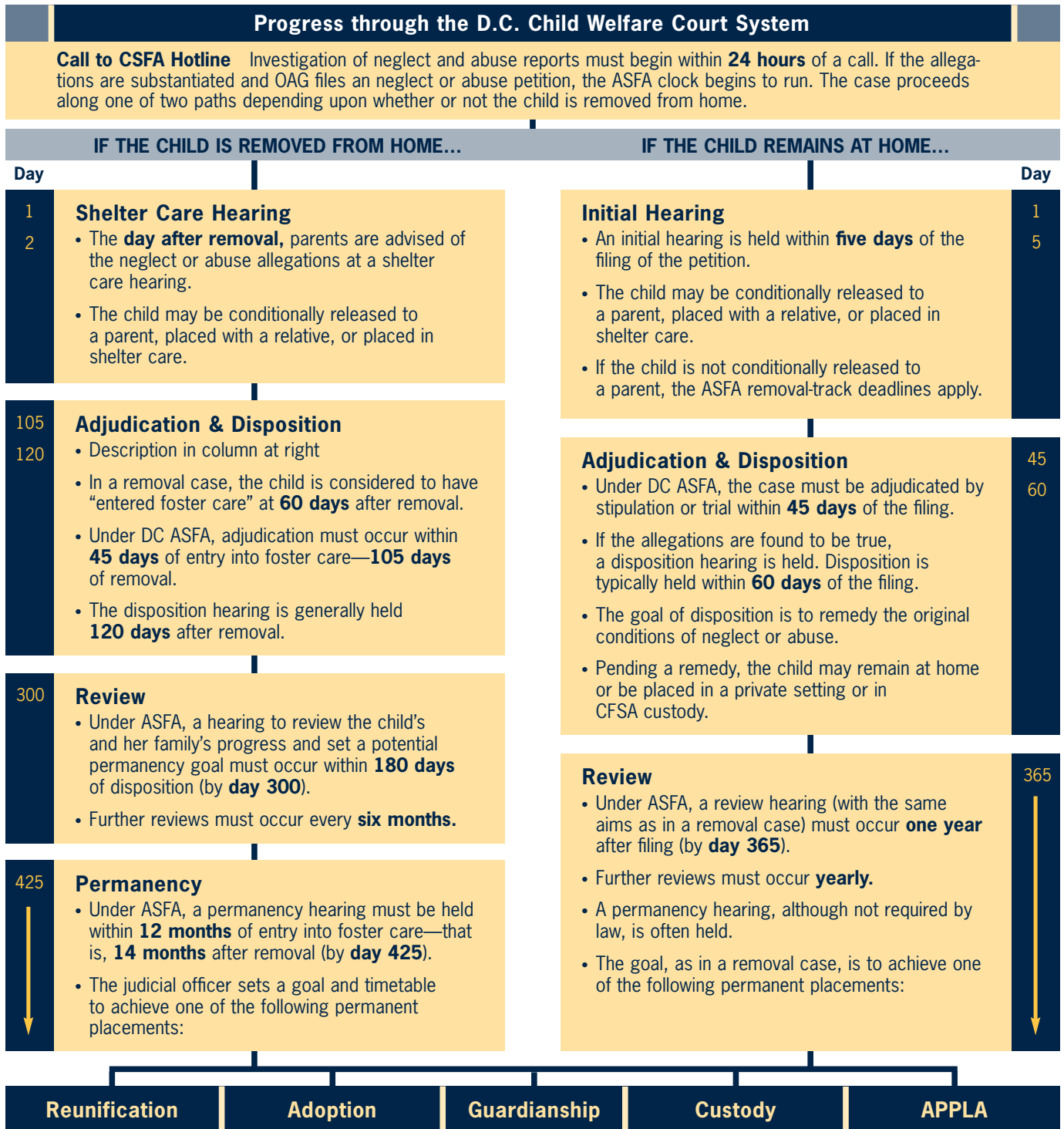
6. *Developmental Issues for Young Children in Foster Care*, American Academy of Pediatrics, Vol 106, Number 5 (2000) at 1145-1150.

7. DC Law 13-315 codified at DC Code §§ 4-1301 *et seq.* and DC Code §§ 16-2301 *et seq.*

8. Pub.L.No. 107-114 codified at DC Code § 11-1101 *et seq.*

Findings and Analysis on ASFA Compliance

This section outlines the process and timeline for handling child neglect and abuse cases in the District of Columbia and analyzes the city's compliance with ASFA hearing deadlines and other ASFA requirements. A flowchart is included as a visual aid.



Report child abuse and neglect in DC



202/671-SAFE

...it could save a child's life.



A. Case Chronology

1. Reports of Neglect or Abuse and Investigation

Reports of suspected child neglect or abuse are made through the CFSA Hotline (202-671-SAFE), which was established in late 2001. CFSA reports that the Hotline receives an average of 612 calls per month, including requests for information and referral as well as reports of neglect and abuse.⁹

CFSA policy requires social workers to begin an investigation of a report of child neglect or abuse within 24 hours of a call to the Hotline and to complete the investigation within 30 days. According to the recent Center for the Study of Social Policy study, 95% of child neglect or abuse reports are accepted for investigation. Approximately 32% of investigations are “substantiated” for child neglect or abuse, a figure the Center for the Study of Social Policy reports is consistent with national experience. The Center for the Study of Social Policy also reports that only 39% of investigations are completed within

the 30-day deadline and only 78% are completed within 60 days, a delay that raises concern about children's safety and well-being.

2. Substantiated Cases – The ASFA Clock Begins to Run – Day 1

Every substantiated case in which CFSA determines that the child's safety requires removal from home must be brought to OAG for the preparation of a Family Court petition alleging neglect or abuse. If, after reviewing the case, the assistant attorney general (the government's prosecutor) determines that there is a factual and legal basis for alleging neglect or abuse, she will file a petition in Family Court. For ASFA purposes, the clock begins to run from the date the child was removed

from home. In each of the years analyzed by CCE's study, about 75% of the children in the case file sample were removed from their homes.

If a child is not removed but CFSA feels that the court's authority would be helpful in enforcing necessary services, CFSA may ask that OAG file a petition in the case. These “in-home cases” account for about 25% of the cases in CCE's sample for each of the years studied. If OAG declines to file a petition in Family Court, CFSA may handle a case within the agency. According to the DC Courts' 2003 annual report, CFSA was managing 4,384 children's court-involved neglect and abuse cases at the end of December 2003, in addition to those it was managing as agency cases.

3. The Shelter Care Hearing or Initial Appearance – Day 2 (Removal Cases) or Day 5 (In-Home Cases)

When a child has been removed from home, the first hearing, called a shelter care hearing, must take place the next day (excluding Sundays). If the child is not removed from home, the first hearing, called the initial appearance, must take place within five days of the filing of the petition. Over the six years studied, the Family Court has consistently held shelter care hearings and initial appearances within statutory time frames.

The Healthy Families/Thriving Communities Collaboratives

Even though neglect or abuse allegations may not be substantiated in a given case, CFSA may provide services to any family it finds at risk. As CFSA becomes more focused on prevention and early intervention, the city's seven Healthy Families/Thriving Communities Collaboratives have become important resources. The Collaboratives are nonprofit civic organizations with which CFSA contracts to provide neighborhood-based services to families and children in need.

9. Facts and figures in this report on the CFSA Hotline were obtained from *An Assessment of the Functioning of the Child Neglect and Abuse Hotline of the District of Columbia Child and Family Services Agency*, Center for the Study of Social Policy (January 20, 2004), available at <<http://www.cssp.org>>.

After information is presented by the child's social worker, the guardian *ad litem* (the child's attorney), and the parents' attorneys, the judicial officer makes three important decisions with the child's safety and best interests as the determining factors. First, the court decides whether remaining at home is "contrary to the welfare" of the child. The court made a "contrary to the welfare" finding in 100% of the cases CCE studied that were filed in 2003. Second, the court determines whether CFSA made "reasonable efforts" to prevent the child's removal.¹⁰ Finally, the court decides where the child will live until adjudication. The court may conditionally release the child to her parents, or place her with a relative, or in shelter care (temporary foster care). Shelter care is the most common placement.

When parents or other relatives were present at the initial hearings, the court explained the purpose of the hearing and ensured that they understood the proceedings in all but one of the 10 initial hearings that CCE observed. In nine of the hearings, the parties were offered an opportunity to speak or ask questions. Observers reported, however, that

the court discussed the important deadlines for reunification of the child with her parents in only one initial hearing. Parents should be informed as soon as possible that if they fail to correct the conditions of neglect or abuse within a limited time, their parental rights could be terminated.

4. Adjudication and Disposition

When the District charges that a child has been neglected or abused, the Family Court must "adjudicate" or decide whether the charges of neglect or abuse are valid, either through an agreement, called a stipulation, or by trial. If the parties are unable to come to an agreement during mediation, which is conducted in all newly filed neglect and abuse cases, or at any time prior to the scheduled trial date, the case will proceed to trial. The trial is a fact-finding hearing where the government must prove the charges "by a preponderance of the evidence," showing that the charges are more probably true than not.

If the government succeeds in proving its charges, the disposition hearing takes place. This hearing focuses on correcting the conditions of neglect or abuse and

determining where the child will live until conditions are remedied—at home, with a relative, or in foster care ("committed to CFSA"). The most common placement of DC children at the disposition hearing is in foster care. The parties also begin to plan for the child's permanent placement by identifying potential permanency goals, and at this stage of the case it is permissible to plan two alternative goals, in case the preferred goal cannot be achieved.

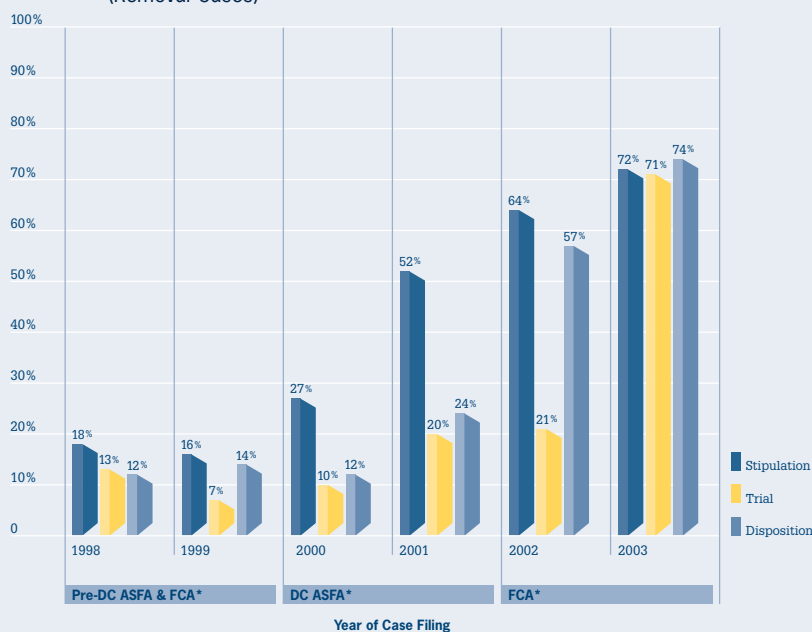
A. Children Removed From Home – Day 105 and Day 120

As Figure 1 below indicates, by admission cohort, the city has made steady progress in reaching compliance¹¹ with ASFA's 105-day adjudication deadline in stipulated cases (rising from 18% for 1998 cases to 72% for cases filed in 2003), though compliance in cases adjudicated by trial generally has been lower (21% or less until 2003, when the rate jumped to 71%). The city has made considerable progress in complying with the DC statute's 120-day disposition deadline. For cases filed in 2002, the compliance rate was 57%, and it rose to 74% for cases filed in the first half of 2003. While these figures are impressive, more work must be done to reach 100% compliance.

B. Children Remaining in the Home – Day 45 and Day 60

As Figure 2 right indicates, by admission cohort, compliance with DC ASFA's 45-day adjudication deadline for cases of children not removed from home has been low, regardless of whether a case was adjudicated by stipulation or by trial. Except for cases filed in 2003, when the compliance rate for stipulated cases

Figure 1: Trial/Stipulation & Disposition – Compliance with DC ASFA Deadlines (Removal Cases)



SOURCE: COUNCIL FOR COURT EXCELLENCE 2004

* **Pre-DC ASFA & FCA:** cases filed prior to the DC Adoption and Safe Families Act or the Family Court Act

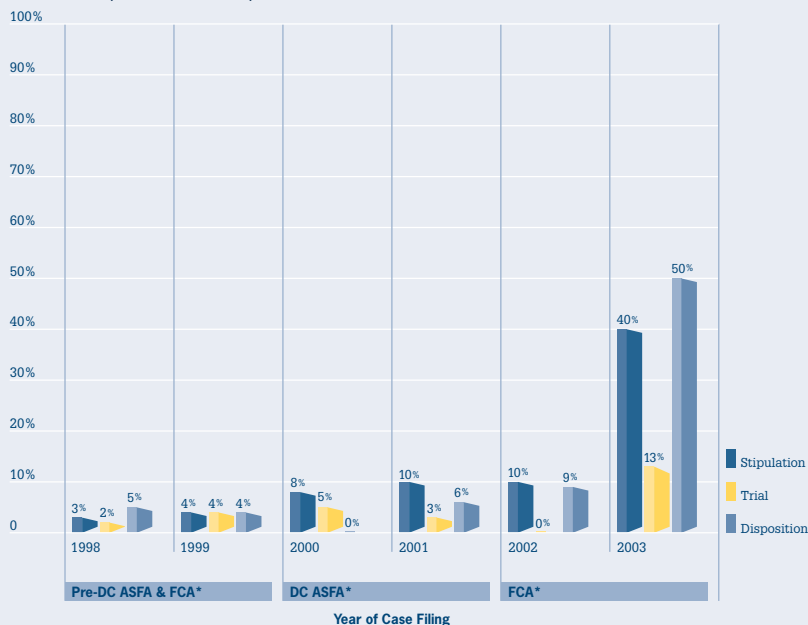
* **DC ASFA:** cases filed after the DC Adoption and Safe Families Act

* **FCA:** cases filed after the Family Court Act

10. The Court actually has 60 days from the date the child is removed to make this finding; however, in DC, this finding was made at 88% of the shelter care or initial hearings in 2003.

11. Cases are considered to be ASFA compliant if they reached stipulation or a trial was held within the 105-day deadline or they were dismissed within the deadline, except for cases in which OAG declined to file a petition, which are not included in the compliance calculations.

Figure 2: Trial/Stipulation & Disposition – Compliance with DC ASFA Deadlines (In-Home Cases)



SOURCE: COUNCIL FOR COURT EXCELLENCE 2004

* **Pre-DC ASFA & FCA:** cases filed prior to the DC Adoption and Safe Families Act or the Family Court Act

* **DC ASFA:** cases filed after the DC Adoption and Safe Families Act

* **FCA:** cases filed after the Family Court Act

rose to 40%, CCE's data indicate that the compliance rate has been 10% or less. The city's compliance with DC ASFA's 60-day statutory deadline for disposition of in-home cases reached 50% for cases filed in the first half of 2003.

5. Review Hearing – Day 300 (Removal Cases) or Day 365 (In-Home Cases)

The Family Court must hold a review hearing for children who have been removed from their home within six months of the disposition and every six months thereafter unless a permanency hearing has been held instead. In practice, this results in a 300-day deadline for the first review hearing (180 days from the disposition hearing, which must be held by day 120). For in-home children, a review hearing must be held once a year.

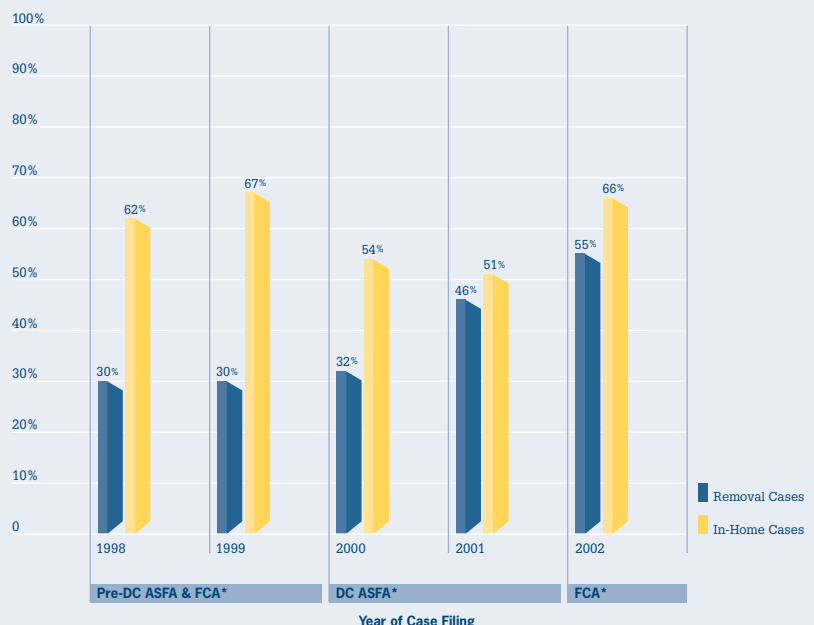
At the review hearing, the court determines whether the child's current placement is safe and appropriate, evaluates whether the family and CFSA are complying with plans to remedy the neglect, and reviews plans for the child's potential permanent placement. If it appears that the primary permanency goal may not be feasible, an alternative

permanency goal should be pursued. For example, a child may have a primary goal of reunification, but CFSA may also begin to plan for adoption in the event that the reunification is not successful.

As Figure 3 below indicates, by admission cohort, the compliance rate in removal cases with the review hearing deadline has shown little progress since

1998, although it increased to 55% for cases filed in 2002. The compliance rate with the review hearing deadline for in-home children reached 66% in 2002, although it still remained far below 100% and has shown no clear progress since 1998. Year 2003 is omitted, because no cases in CCE's 2003 sample had been pending long enough to reach the 300-day deadline.

Figure 3: Review Hearings – Compliance with ASFA Deadlines



Properly informed decisions can be made at court hearings only if everyone with a stake in the case attends. Attendance at Family Court review hearings has increased over time for all participants and is particularly impressive for the assistant attorneys general and social workers, who attended 100% of the review hearings held for cases filed in 2003.¹² Birth parents have always been notified of court hearings by their attorneys. Now, as required by ASFA, CFSA is notifying foster and pre-adoptive parents, guardians, and relatives of the date and time of review and permanency hearings, so their attendance at these hearings likely will increase.

6 . Permanency Hearing – Day 425 (Removal Cases)

Because ASFA was designed to prevent children from lingering in foster care, it sets a firm date for making decisions about a child's future. The Family Court is required to hold a permanency hearing for children who have been removed from home within 12 months of the child's entry into foster care (or 14 months after the child's removal from home, since a child is considered to

have entered foster care 60 days after removal).¹³ In addition to covering the issues that must be addressed at review hearings, the court must decide what the child's permanent placement goal will be – reunification with the birth parent(s), adoption, guardianship, custody, or an alternative planned permanent living arrangement. Alternative or concurrent permanency goals are no longer permitted. The court also must set a timetable for achieving the permanency goal.

Figure 4 indicates, by admission cohort, that the Family Court is increasingly holding permanency hearings within the ASFA deadline of 14 months or 425 days from removal. No data are shown for the 2003 admission cohort, because those cases had not reached the permanency hearing deadline at the time of CCE's research. For children's cases filed in 2002, 87% had a permanency hearing within the deadline (or were closed by the deadline).

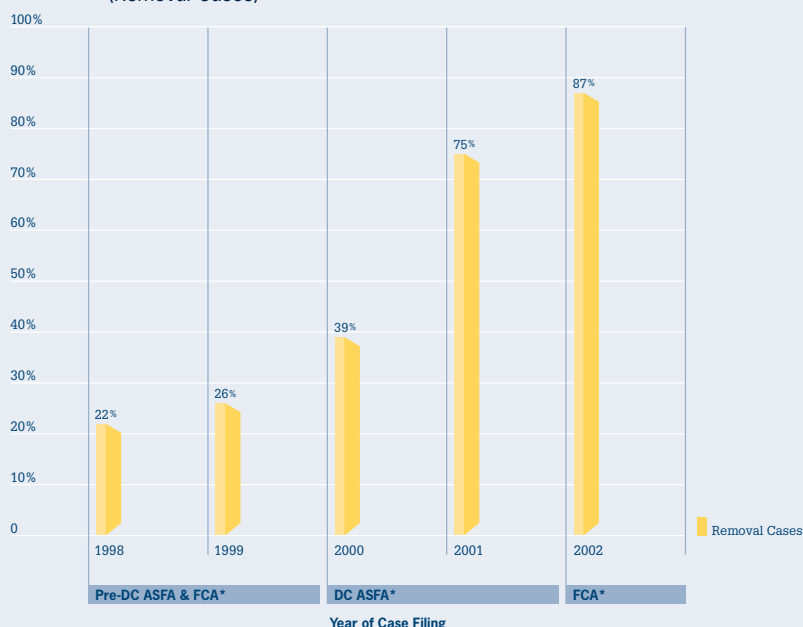
However, CCE's research found that the court does not always fulfill the two requirements for a permanency hearing. Figure 5 on the next page shows by

cohort that the court made a decision about the child's permanent placement goal 80% to 85% of the time since 1998, but performance on setting a date for achieving the placement is far below what it needs to be and has not increased over time, unlike other compliance measures. Moreover, CCE's court observers found that judicial officers discussed reunification deadlines in only 10 of the 170 permanency hearings at which parents were present. No data are shown for the 2003 admission cohort, because those cases had not reached the permanency hearing deadline at the time of CCE's research.

While few judicial officers discussed permanency deadlines, CCE court observers reported that judicial officers did make efforts to ensure that parents and other lay persons understood the proceedings in 165 of the 184 permanency hearings in which those persons were present. The court also permitted parents and other lay persons to speak or ask questions in 176 of those 184 hearings.

As was true for Review Hearings, attendance at permanency hearings has increased over time for all participants. Social workers attended 100% of permanency hearings in CCE's 2003 case sample, while assistant attorneys general and attorneys representing mothers attended approximately 95%. Once again, having all stakeholders present makes for higher-quality decisions. It is considered good practice to make the court's order available for distribution or mailing at the end of every hearing,

Figure 4: Permanency Hearing – Compliance with ASFA 425 Day Deadline (Removal Cases)



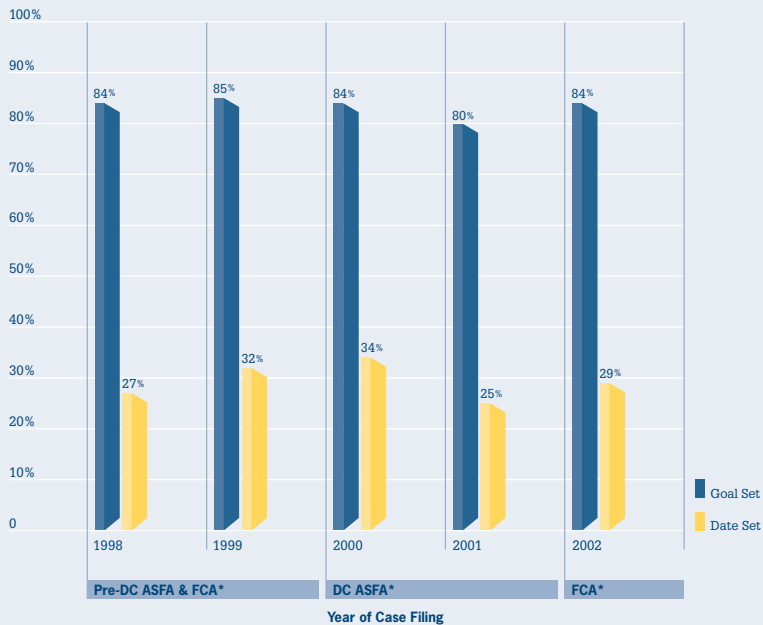
SOURCE: COUNCIL FOR COURT EXCELLENCE 2004

- * **Pre-DC ASFA & FCA:** cases filed prior to the DC Adoption and Safe Families Act or the Family Court Act
- * **DC ASFA:** cases filed after the DC Adoption and Safe Families Act
- * **FCA:** cases filed after the Family Court Act

12. Compliance with the Review Hearing timeframe is not reported for cases filed in 2003 because none of those cases were technically required to have a review hearing by June 30, 2003. However, review hearings were held in some 2003 cases, and data on attendance at Review Hearings include those hearings.

13. Though not required, the Family Court does hold permanency hearings for children not removed from home. For cases filed in 2002, 74% of the permanency hearings were held within 425 days.

Figure 5: Quality of Permanency Hearing - "Goal Set" and "Date Set" Compliance Rate (Removal Cases)



SOURCE: COUNCIL FOR COURT EXCELLENCE 2004

* **Pre-DC ASFA & FCA:** cases filed prior to the DC Adoption and Safe Families Act or the Family Court Act

* **DC ASFA:** cases filed after the DC Adoption and Safe Families Act

* **FCA:** cases filed after the Family Court Act

so that everyone has a record of the decisions made and the actions ordered as well as the date and time of the next hearing. However, court orders were made available in only 174 or 64% of the 271 permanency hearings that CCE observed.

B. Achieving Permanency

Under ASFA, there are four preferred permanency options available to DC children removed from their homes because of neglect or abuse – reunification, legal custody, adoption, or guardianship. If, for compelling reasons, none of these options is appropriate, a child may have a permanency goal of “another planned permanent living arrangement,” defined as kinship care, placement with another relative, or independent living.

CCE found that tracking case outcomes through court files is difficult. Therefore, the case outcome information presented in this report must be interpreted cautiously. Before March 2004, Family Court child neglect and abuse case files did not consistently record the child’s outcome

unless the child was either reunified with his parent(s) or stayed in the system until reaching majority at 21 years of age. In addition, about 35% of the cases CCE reviewed remain open and the children have not yet reached a permanent home. Many of the cases, in CCE’s sample of 1,708 case files, that remain open are cases filed in 2002 and 2003. These cases were still within ASFA deadlines. However, 25% of the cases from the sample that were filed in 1998 and 1999 also remain open. These children have lingered in DC foster care far longer than ASFA or good practice permits.

1. Reunification and Legal Custody

Traditionally, child welfare legislation across the country has reflected the philosophy that children should remain with their parents unless it is not in the children’s best interests. The social service agency must make “reasonable efforts” to prevent the removal of the child from the home or to reunite the child with her parents if the child is removed. CFSA, in recent years, has embraced this policy of family preservation by providing services

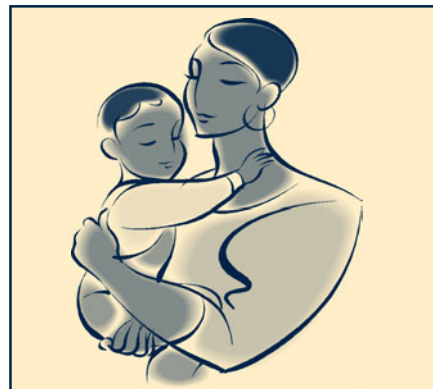
aimed at preventing unnecessary family disruptions through the seven neighborhood-based “Collaboratives” located throughout the city.

Of the cases reviewed by CCE that have closed, most closed because the children were reunified with their parents or were never removed in the first place. Children whose cases closed due to reunification also spent much less time in the system than those who left through adoptions, guardianships, or who reached age 21. The average length of time to case closure for reunified children fell from 20 months in 1998 and 1999 to only 8.5 months in 2002 and 2003.

Legal custody is a goal related to reunification. Generally, a goal of legal custody is chosen when a non-custodial parent who is not involved in the neglect or abuse case is identified as a prospective caregiver of the child. To achieve permanency, that parent must obtain custody of the child. The court reports that two percent of children with open cases have a permanency goal of legal custody.

Family Treatment Court Pilot Program

Modeled after programs in New York, Florida, Ohio, and Virginia, the Family Treatment Court Program, begun in 2003, gives mothers a chance to rebuild their lives and their families within ASFA timelines. The pilot project is designed for substance-abusing mothers whose children are in the DC neglect system. Mothers who qualify for the program are permitted to live with their children at the treatment facility while undergoing six months of rigorous, supervised drug treatment. In addition, the women receive job training and classes in household management, budgeting, and parenting. After six months, the women enter a six-month aftercare program. One of the most significant advantages of the program is that it enables children to stay out of foster care and remain with their mothers. Because the mothers are receiving treatment and no longer using drugs, there is a greater chance that they and their children can become families again.



many more DC children await adoption. In 2003, 1,127 DC children had a goal of adoption, but only 315 adoptions were finalized. Of the open cases in CCE's 1998 sample, 47% of the children are awaiting adoption, five years after their cases began.

2. Adoption

Adoptions and guardianships are much more difficult to track than reunifications. Under Family Court procedures, they require the opening of new case files, which are not consistently referenced in the original neglect or abuse case file.

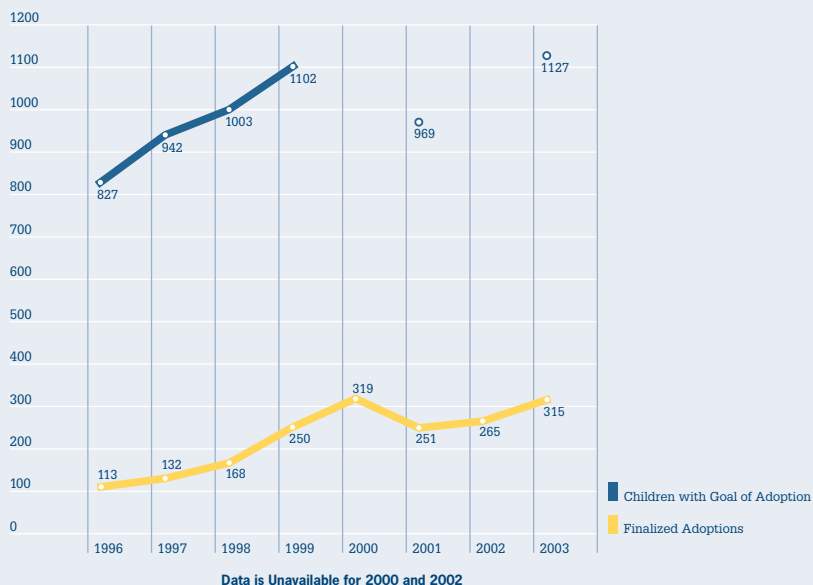
Cases in CCE's sample that indicated a finalized adoption or guardianship occurred took significantly longer to close than reunification cases. And as

Figure 6 indicates, even though the number of adoptions continues to rise,

The difficulty of using court files to track children who leave foster care through adoption makes it difficult to determine the causes of the delay in achieving adoption. Analyzing the causes of delay must be a priority, so that more children can find permanent families.

Some of the delay may result from the complexity of the adoption procedure. Under ASFA, the District must file a petition to terminate parental rights (TPR) for any child in out-of-home care for 15 of the previous 22 months, or in certain other egregious cases. In most states, parental rights are terminated before adoption proceedings begin. However, the District combines the TPR and adoption proceedings by automatically granting the TPR through the finalized adoption. Rather than simplifying the process, combining the cases actually introduces greater uncertainty. Because birth parents have 30 days to appeal a termination of parental rights, some prospective adoptive parents may be reluctant to provide pre-adoptive homes for children whose ties to their birth families have not been fully severed.

Figure 6: Adoptions of DC Children in Foster Care



Some delay comes from the difficulty in locating a pre-adoptive home for children seeking adoption. Though CFSA has worked to increase the number of pre-adoptive homes, 35% of the 1127 children with a permanency goal of adoption are without a pre-adoptive home.

3. Guardianship

Guardianship is a legal arrangement in which the court appoints an adult to care for the child, without terminating the parental rights of the child's biological parents. This legal arrangement is well-suited to relative caregivers who want to provide a stable, permanent home for the child but are not able to assume the legal and financial obligations of becoming an adoptive parent or do not want to cut the child's ties to her parents. Legal guardianships present tremendous potential in the District, where nearly 25% of children in foster care are placed with relatives.

Recognizing this potential, the District has created a subsidized guardianship program. The subsidy is available to relative caretakers who are appointed as legal guardians by the court and who qualify on the basis of financial need. By easing the financial burden of caring for a child, the program gives the child a permanent home and allows her to maintain her relationship with her biological family.

The subsidized guardianship program, though small, has grown quickly. Thirteen guardianships were completed in fiscal year 2002, when the program began. In fiscal year 2003, the number grew to 110, and through only half of fiscal year 2004, 89 guardianships had been completed. Because the program is still relatively small, CCE's case sample included very few completed guardianships. As the program expands, CCE expects that children with a case goal of guardianship will reach permanency more quickly.

4. Another Planned Permanent Living Arrangement/Independent Living

ASFA recognizes that some flexibility is necessary to find the best homes for children. However, under ASFA, "another planned permanent living arrangement," or APPLA, should be assigned as a case goal for a child in foster care only as the last option, after reunification, custody, adoption and guardianship have all been ruled out as possibilities. APPLA is most frequently assigned as a case goal for older children who are placed in independent living. According to the Presiding Judge of the Family Court, almost 25% of the Family Court's neglect cases involve children who will achieve independence without finding permanent families.

Older children in foster care have needs distinct from those of younger children. Generally, older children have been in foster care substantially longer and have had more placements. National studies show that children leaving foster care are at increased risk of involvement with the criminal justice system, teen pregnancy, and homelessness. Judges, foster parents, and even teenagers who participated in CCE focus groups spoke of the lack of basic support services for older children—such as mental health services, educational services, and drug treatment—as a major problem. Social workers, teenagers and attorneys representing children complained about the lack of internship and work opportunities. The key concern for young people was their inability to influence the decision-making concerning their own futures.

To some extent, the unusually high number of older children in DC foster care is due to the District's commitment to providing care for children up to the age of 21, unlike most states, where children must leave the system at age 18. But it is also the result of years of poor practice that failed to emphasize finding permanent families for foster children in a timely manner. CFSA, OAG, and the Family Court are making efforts to improve services to children who will leave foster care as adults. They also are working to ensure that more children find permanent homes rather than exiting the system without ever finding a family.

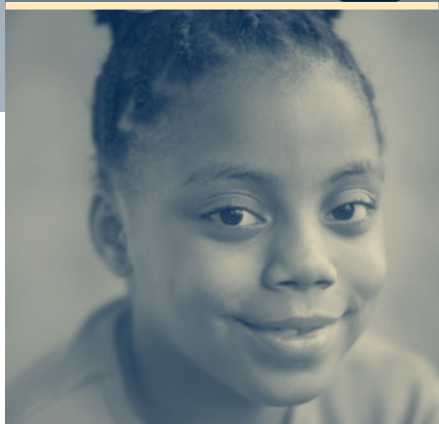
ASFA Compliance – Conclusion

The District of Columbia is making the shift in policy and practice that is necessary to improve the safety, permanency, and well-being of its neglected and abused children. The city is working hard to meet ASFA deadlines and to make the findings required by ASFA. As a result, some children are beginning to spend less time in foster care. DC must stay the course and work more effectively to overcome the remaining obstacles to achieving timely permanency for all of its vulnerable children.

Benchmark Permanency Hearings

To avoid the particular obstacles faced by older youths in the foster care system, the Family Court created the Benchmark Permanency Hearing Pilot Program. Since September 2003, 60 youths age 16 or older with a court-approved permanency goal of APPLA-Independent Living have participated in the Benchmark Hearings. The hearings are informal (everyone sits around a large table) and attended by the child, her social worker, her guardian *ad litem*, the judicial officer, and any other persons invited by the child. The Benchmark Hearings attempt to help these young people set goals for themselves, establish positive relationships with caring adults, and ensure the coordination of services vital to a successful transition to independence.

Findings and Analysis on Family Court Act Compliance



1. Transferring Child Neglect and Abuse Cases to the Family Court

The Family Court Act ended the Superior Court's practice of assigning post-disposition child neglect and abuse cases to all of its 59 judges, including many judges outside the Family Division. Nearly all of the 3,500 child neglect and abuse cases pending outside the Family Court were either transferred to the Family Court or closed by the end of August 2003.

CCE received only positive comments from members of its focus groups regarding the transfer of neglect and abuse cases to the Family Court. A typical comment was, "The judges who want to do the work are now the only ones involved." The judicial officers themselves also expressed their pleasure with the new system. One commented, "It's great to talk with someone who knows what [we] are talking about. We are all able to bounce ideas off of one another." Many people commented upon the improvement in the scheduling of child neglect and abuse cases. An assistant attorney general noted, "Individuals are before one to two judges versus being before eight judges."

2. Creation of a Family Court of Judicial Officers With Experience and Expertise in Family Law and a Commitment to Serve a Multi-Year Term of Service

A. Judges Who Volunteer for Family Court Service

The Family Court Act states that only judges who volunteer for the assignment may serve on the Family Court. The Family Court is fully staffed with 15 associate judges and 16 magistrate judges. Twelve associate judges already serving in the Superior Court volunteered in 2002 to serve on the new Family Court, and three additional vacancies were filled by new appointees in late 2003. The Family Court Act created the magistrate judge positions and required the prompt appointment of some magistrates to handle the transfer of cases from outside the Family Court. The Family Court created 10 teams, each consisting of an associate judge and a magistrate judge, to handle newly filed child neglect and abuse cases. The remaining 11 Family Court associate and magistrate judges handle other family law matters such as domestic relations, juvenile delinquency, child support, and mental health cases.

B. Experience and Expertise in Family Law

Each Family Court associate and magistrate judge has expertise and experience in family law, as required by the Family Court Act. Twelve of the associate judges who serve on the Family Court have prior experience from service in the Family Division, two of the three newly appointed associate judges served in the Family Division as magistrate judges (formerly hearing commissioners), and the third has an extensive background of public service and expertise in mental health law.

Because of the large number of applicants for the new magistrate judge positions, the Chief Judge was able to select highly qualified individuals with extensive experience and expertise in family law. Many have experience either

defending or prosecuting child neglect and abuse cases. Several have experience in juvenile justice, mental health, custody, adoption, paternity, and other family law areas.

C. Serving a Multi-Year Term

To improve expertise and provide continuity for families with cases before the Family Court, the Family Court Act requires longer terms of service than was the practice before the Act. The 12 Family Court associate judges who were serving on the Superior Court when the Family Court Act was passed are serving three-year terms. Associate judges appointed to Superior Court after the Family Court Act who volunteer for Family Court must serve at least five-year terms. The Magistrate Judges are serving four-year terms.

The associate judges who participated in CCE's focus group had mixed feelings about the term of service requirement. When asked how they felt about the requirement, some judges supported it. One replied, "I volunteered for this, so I want to do it." Others felt that the commitment was too long. One judge said, "Saying I have to sign up for three years means I won't be coming back. Now my expertise will be unavailable."

D. Ongoing Training

As required by the Family Court Act, Family Court judicial officers participate in "an ongoing program... [of interdisciplinary] training in family law and related matters." In 2003, the judicial officers and Family Court personnel participated in a variety of mandatory and voluntary training programs: a mandatory full-day interdisciplinary training session; periodic evening sessions; a mandatory two-day "division" training held in December 2003, which included an update on ASFA; and a number of outside sessions on other family law matters.¹⁴ In addition, the Family Court has two attorney

advisors on staff to provide guidance on ASFA compliance, monitor and track changes in legislation, and research issues of general interest.

3. One Family/One Judge

The Family Court Act requires the Family Court to implement the One Family/One Judge approach to handling child neglect and abuse cases. Under this approach, the same judge handles a child neglect or abuse case from filing to case closure. Also, depending upon the extent to which the One Family/One Judge approach is implemented, the judge may handle family law cases involving the same family that arise out of or are related to the neglect or abuse case. The benefits of the approach include more informed decision-making, better coordination, and consistency and convenience for families.

A. Neglect and Abuse Cases

The Family Court has made significant progress in reducing the number of judges handling a child neglect or abuse case. Before the Family Court Act, one judge handled the initial hearing, a second judge handled the status hearing (now replaced by a pre-trial conference), and a third judge handled the adjudication and disposition. The case might then have been transferred outside the Family Division to a fourth judge who would handle post-disposition proceedings. If the child was to be adopted, a fifth judge might handle the adoption case. In contrast, now the magistrate judge who is assigned to a case at the initial hearing or the associate judge member of the team handles the case all the way through to permanency.

B. Related Cases

The Family Court devised a One Family/One Team plan for handling family law cases related to neglect and abuse cases. The plan consisted of four phases in which the judicial teams gradually expanded the types of cases they handle. Phase 1 included permanency actions arising out of child neglect and abuse cases, such as TPR/adoption and

guardianship. Phase 2 included child support and post-disposition juvenile cases. Phase 3 included related cases that do not arise out of the neglect or abuse case, such as domestic relations and mental health cases of immediate family members.

The plan's final phase called for expanding the team approach to include social workers, assistant attorneys general, and children's and parents' attorneys. Thus far, assistant attorneys general have been added to the teams and, for the most part, the judges and AAGs are happy with the team approach. Since early 2004, by agreement, CFSA and the Family Court have been assigning cases on a geographical basis rather than using the team approach. It is unclear if the Family Court still intends to pursue a team approach with attorneys representing children or parents.

According to the Family Court, when a new child neglect or abuse case is filed, the Family Court's case coordinators search court records for related cases and present their findings to the assigned judge. In 89 of the 271 permanency hearings CCE observed, the judicial officer seemed aware of or asked about related cases involving the same family. However, CCE court observers saw few related cases being heard along with neglect and abuse cases.

4. Implementation of a Computerized Case Tracking and Management System

A. Integrated Justice Information System (IJIS)

The Family Court Act directed the Superior Court to implement its planned Integrated Justice Information System (IJIS) in the Family Court before doing so in other court divisions. IJIS is an automated data system designed to help the court manage its caseload and share appropriate data with District agencies. By the end of 2003, with the exception of the Paternity and Child Support Unit,¹⁴

IJIS was made available to all court users in the Family Court as well as users in the Multi-Door Dispute Resolution Division (where Family Court cases are mediated).

B. Safe Passages Information Suite (SPIS)

The Family Court Act also requires that the Mayor design a plan to integrate the computer systems of certain DC service agencies, such as CFSA, the Department of Health, and the DC Housing Authority, with those of the Superior Court. The purpose of the Act's mandate is to enable service agencies to access and share appropriate information to better serve children and families who come before the Family Court.

Under the Mayor's plan,¹⁵ the Office of the Chief Technology Officer (OCTO) is working to develop the Safe Passages Information Suite (SPIS), which is intended to connect IJIS with computer systems in the city's many service agencies. While the District has made progress in developing SPIS, it has encountered several obstacles, including confidentiality and privacy issues, as well as inaccurate and poor-quality data. OCTO is working on solutions to these problems, but the process is difficult and time-consuming. The biggest obstacle, however, is lack of money. The project is estimated to cost \$66 million. With only \$36 million expected to come from District capital funds, the projected shortfall is \$30 million. Although the Family Court Act authorizes federal funds to support this mandate, CCE does not believe the city has requested federal funding.

In the interim, the Court and CFSA have created alternative means of exchanging information. The Family Court downloads case scheduling information on a nightly basis to the Child and Family Services Agency's FACES computer information system and provides court orders to CFSA staff who scan them into FACES. In addition, work is being done to enable CFSA and OAG to file documents with the Family Court electronically.

14. All Superior Court judicial officers must also attend a two-day training session in the spring of each year. This mandatory training focuses on court-wide issues.

15. The Paternity and Child Support unit of the Family Court currently uses the collections database of the Office of the Attorney General.

16. *Supporting the Vision: Mayor's Plan to Integrate the District of Columbia Social Services Information Systems with the Family Court of the DC Superior Court* (July 8, 2002).



Continuing mediation of child neglect and abuse cases through the Multi-Door Dispute Resolution Division is a key strategy of Family Court.

—Lee F. Satterfield, Presiding Judge of the Family Court

5. On-site Coordination of Social Services

The Family Court Act required the Mayor to establish and maintain a social services liaison office on-site at the Family Court to address the service needs of children and families who come before the court. The Mayor's Services Liaison Office opened its doors in February 2003. The office houses representatives from the DC Public Schools, the DC Housing Authority, CFSa, the Department of Health, and the Department of Mental Health. Though not stationed on-site, representatives from the Metropolitan Police Department and OAG are also liaison partners and are available by telephone during business hours.

As of March 2004, the liaison office had satisfied a total of 899 service requests. The majority of requests dealt with housing or education. Social workers and assistant attorneys general reported to CCE that the office is useful in addressing a family's service needs when the social worker has exhausted her own resources. Parents' attorneys told CCE that they view the office as a general one-stop resource center.

6. Use of Alternative Dispute Resolution Techniques

Early case mediation, or "ASFA Mediation," began as a pilot project in 2002. Conducted by the Court's Multi-Door Dispute Resolution Division within 30 days of the initial hearing, ASFA mediation is a form of negotiation moderated by a neutral party called a mediator. The mediation focuses on both case planning to help the family correct the conditions that brought the case to court and accountability for the child neglect and abuse allegations. Because it expedites the case process, mediation offers children and families an opportunity to achieve reunification or another form of permanency within ASFA deadlines.

ASFA mediation has been highly successful. In 2003, with 652 children's cases referred to mediation, the overall settlement rate was 92%; 48% of mediations led to full settlements and 43% to partial settlements. A full settlement is an agreement on both a case plan and a stipulation. A partial settlement is an agreement on either a case plan or a stipulation.

7. Expansion of Physical Facilities to Accommodate all Family Court Functions

The Family Court Act required the Superior Court to provide a family-friendly environment to better serve the users of the Family Court. Construction is underway on an interim Family Court space plan that will consolidate 75% of Family Court operations, including all public operations,¹⁷ within the Superior Court building. Phase I of the interim plan will be finished in July 2004 and will consolidate Family Court support services and provide additional courtrooms, hearing rooms, and judges' chambers; an expanded Mayor's Services Liaison Office; a new family waiting room; and a centralized filing and intake center. A long-term space plan that would consolidate all Family Court operations in one location is contingent upon additional funding from Congress.

Family Court Act Compliance – Conclusion

The Family Court has embraced the changes and challenges presented by the Family Court Act. It has complied with nearly every requirement of the Act, with the exception of some long-term projects. The Mayor's office is fulfilling its responsibility under the Act to operate an on-site liaison office, but it is making slow progress integrating the Court's computer system with the systems of the city's social service agencies.

17. See Government Accounting Office, *D.C. Family Court, Progress has Been Made in Implementing its Transition*, (January 2004) at 30-31 (summarizing the numerous steps necessary to complete the interim Family Court space plan).

Recommendations for Action

- 1. Notify Parents Orally and In Writing of ASFA Reunification Deadlines** – Parents’ attorneys, social workers, and judges, in particular, have an obligation to advise parents whose children have been removed from their care of ASFA reunification deadlines. Advice should be given early and often, orally and in writing, as long as reunification is a possible goal.
- 2. Improve the Quality of Permanency Hearings to Expedite Permanency** – As required by ASFA, a date for achieving a child’s permanency plan must be set at the initial permanency hearing, and the parties must work to achieve the child’s permanency goal by that date.
- 3. Expedite Permanency for Children with the Goal of Adoption** – More than 1,000 DC foster children have a permanency goal of adoption but have not yet been adopted. CFSA and the Family Court must work to overcome impediments to timely adoption.
- 4. Improve Coordination of Appropriate Services** – Routinely ordering a multitude of services solely because they are available should not be allowed to continue. CFSA, the court, and other parties including the family must cooperate to
 1. identify the family’s needs;
 2. create an individual service plan that works with the family’s strengths and circumstances; and
 3. re-evaluate the plan regularly to ensure that the services continue to be effective, properly sequenced, and aimed at finding a permanent home promptly for the child.
- 5. Avoid Assigning a Goal of APPLA** – Too many DC children were badly served by the formerly dysfunctional DC child welfare system and will likely leave that system as young adults without finding permanent families. More work must be done to ensure that all system participants understand when another planned permanent living arrangement is an appropriate permanency goal and make every effort to find children permanent homes with families.
- 6. Locate Funding to Implement the Safe Passages Information Suite** – Federal funding should be sought to close the \$30 million gap in funding that is required to implement the Mayor’s Safe Passages Information Suite, a computerized information sharing system called for by the Family Court Act to integrate the Family Court’s information system with the information systems of the city’s social service agencies.
- 7. Expand the Capacity of the Mayor’s Service Liaison Office** – For the Mayor’s Liaison Office to meet the increasing demand for its services, it must have additional space for conducting private meetings and a means of recording the number of multi-service referrals it receives, including the number that are successfully resolved.
- 8. Make Court Orders Available at the End of the Hearing or Shortly Thereafter** – Court orders should be available for distribution or mailing at the end of a hearing so that all parties have a written record of the court’s rulings, including the date and time set for the next hearing.

Conclusion



The District of Columbia child protection system is performing significantly better now than a few years ago. Hearings are being held in a more timely manner, children who can be reunified with their families are going home faster, the city has created and funded programs that enhance the options available to relatives who want to care for children, and the Family Court has implemented many of the requirements of the Family Court Act. These accomplishments are well worth celebrating. It is important to realize, however, that overall system improvement can never guarantee against bad occurrences in an individual case.

Though the system has made remarkable progress, CCE identified several areas that require further research:

Length of Time in Foster Care for Children Who Are Not Reunified

It is clear that adoptions and guardianships take longer to complete than reunifications. To make well-reasoned decisions, the city's leaders need to monitor and understand the delay in achieving permanency for children who cannot return to their parents.

Tracking Re-Entry Into the Foster Care System

Nationally, 28% of children admitted to foster care in 1990 re-entered care over the next 10 years. CCE found no evidence that children have been tracked to determine the extent of re-entry in the District. Tracking re-entry is critical to evaluating the quality of the system, particularly as CFSA moves to a more prevention-oriented practice and the Family Court moves toward prompter permanency and case closure.

Decrease in Child Neglect and Abuse Case Filings

There has been a 45% decrease over the past two years in the number of new child neglect and abuse case filings by the Office of the Attorney General in Family Court. Further study is required to determine whether this is good or bad news—whether the decline has resulted from a real drop in the occurrence of neglect or abuse or from laxer enforcement.

Children in Both the Neglect and Juvenile Systems

Studies conducted in various jurisdictions consistently find high rates of juvenile delinquency among children who have spent time in foster care. It is likely that many children now in the city's juvenile delinquency system are unfortunate products of the previously dysfunctional foster care system. Every effort must be made to identify these children and to rehabilitate them so they can live productive lives.

CCE looks forward to supporting and evaluating city officials' continued efforts to place children in safe, nurturing and permanent homes.

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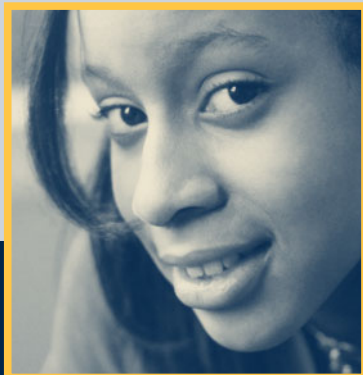


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