

Iowa Supreme Court Improvement Project for Child in Need of Assistance Cases



A Plan for Improvement of Iowa's Court Performance in Child Abuse and Neglect Cases

Submitted to the Iowa Supreme Court
September 1996

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Court Improvement Project for CINA Cases
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Summary of Study

This report includes the plan for improvement which is the result of an assessment study of Iowa's court performance in child abuse and neglect cases. It is an expression of the court's commitment to the achievement of excellence in these cases.

More than 500 individuals from across the state of Iowa provided input for the assessment study. The participants included professionals from all levels of involvement with Child in Need of Assistance (CINA) cases and family members involved in the court system.

The purpose of this study was to identify changes which would improve the court's ability to oversee the CINA process. This goal was accomplished by conducting a one-year assessment, completed in 1996, and implementing a three-year improvement plan, to be completed by 1999.

The primary areas of investigation during the one-year assessment were: (1) the completeness and depth of court hearings, (2) the quality of representation provided to the parties, (3) the timeliness of decisions, (4) the quality of treatment of parties, and (5) judicial workloads, expertise and training.

During the assessment, many positive features of current practice in the courts were identified. Judicial determinations of reasonable efforts are being made in most cases and permanent plans are being accomplished for Iowa's children. There is a high level of continuity in representation for parents and children. Many county attorneys, who represent the state, remain on the same cases for the entire time.

The judges currently hearing the majority of CINA cases are very experienced and many provide consistency to children and families by hearing all stages of the same CINA case. Most routine

CINA hearings are heard in a timely manner, and waiting times before hearings are reasonable.

During the next three years, the committee hopes to provide leadership to improve judicial oversight of the permanency process, including termination, appeal, and final disposition. There are plans to improve the quality of representation and informed participation of families involved in the court system. The improvement plan provides for the formation of task forces to develop plans for training, evaluation, and legislative review.

Background of Study and Improvement Plan

As part of the Omnibus Budget Reconciliation Act of 1993, also known as the Family Preservation and Support Act, Congress set aside \$35 million in entitlement grants to state courts over a four-year period. The funding is to be used to improve court handling of abuse, neglect, foster care, and adoption cases [Public Law 103-66, §§ 13711(d)(2) and 13712]. An important clarification of Congressional intent appears in the House Conference Report accompanying the legislation. (See August 4, 1993 Congressional Record, pages H6012-H6013.)

Under these grants, each state court system (a) conducted a rigorous assessment of how state courts are handling abuse, neglect, and foster care litigation, (b) developed a plan to improve the administration of justice in foster care cases, and (c) will implement the plan.

The plan for improvement will be implemented contingent upon continued funding. The state courts are responsible for providing matching funds equal to 25% of the total award for each year funded by the federal government.

Parties Responsible for Conducting Study and Plan for Improvement

The Iowa Supreme Court has appointed the Iowa Supreme Court Select Committee to Review State Court Practices in Child Welfare Matters to oversee this court improvement project. This appointed group will be referred to as “the committee” for the remainder of this report.

The committee includes members who represent trial court and appellate judges, private child welfare service provider agencies, Iowa Department of Human Services, attorneys, Court Appointed Special Advocates, Iowa Citizen Foster Care Review Boards, juvenile court officers, the Iowa Legislature, foster/adoptive parents, and county boards of supervisors. The committee hired a full-time director responsible for the research and administration of the project.

The committee will provide oversight of the task forces during the three years of implementation of the improvement plan.

Methodology of Study

The instruments and methods used during the data collection were developed by the American Bar Association Center on Children and the Law. In addition, professional staff members from the Center on Children and the Law provided consultation services.

It was the intention of this study to rely on information provided by individuals in the state of Iowa who work with child abuse and neglect cases on a daily basis. It was assumed that these individuals are the most qualified to provide information on their daily practices, the practices of those with whom they work, their concerns about the process, and their ideas for improvement.

The first round of data collection was a statewide survey conducted by the distribution of questionnaires concerning local practices for CINA cases.

Six questionnaires were used for this study: (1) judges, (2) attorneys, including county attorneys, private juvenile attorneys, and juvenile public defenders; (3) district court administrators, (4) child welfare workers, including Department of Human Service workers (DHS), Juvenile Court Officers (JCO) assigned to CINA cases, and Indian Child Welfare Workers (ICWW), (5) Court Appointed Special Advocates (CASA), and (6) Iowa Citizen Foster Care Review Boards (ICFCRB).

The second phase of data collection was conducted during site visits in six Iowa counties: Audubon, Mills, Dallas, Story, Linn and Muscatine. The methods used included interviews, court observations, and judicial file reviews.

The site visits offered the opportunity to study specific courts in detail and receive feedback about the development of the improvement plan.

Improvement Plan

This report includes a summary of the recommendations developed into a plan for improvement.

Numbers and percentages in parentheses reflect research findings described in detail in the complete report. To obtain the complete report, please request copies from:

State Court Administrator's Office
Court Improvement Project for CINA Cases
State Capitol Building
Des Moines, Iowa 50319
Phone (515) 281-3393
FAX (515) 281-6265

Improvement Plan Timeline

Second Year Tasks (September 1996 - August 1997)

September 1996	Assemble task forces for recommendations: <ol style="list-style-type: none">1. Judicial Oversight of the Permanency Process2. Termination, Appeal and Final Disposition5. Code and Rules Review
March 1997	Complete studies and reviews of current statutes and procedures
April 1997	Draft recommendations
June 1997	Hold regional meetings for input on recommendations
August 1997	Propose changes to the legislature Complete work of task forces for recommendations 1, 2, 5

Third and Fourth Year Tasks (September 1997 - August 1999)

September 1997	Assemble task forces for recommendations: <ol style="list-style-type: none">3. Service Improvement4. Training Plan and Evaluation6. Quality of Representation
March 1998	Have training materials prepared for publication Plan training and implement evaluation of changes Prepare materials for service improvement Conduct needs study for improving the quality of representation
September 1998- August 1999	Continue work of the three task forces established in September 1997

1. Judicial Oversight of the Permanency Process

Recommendation

Improve the effectiveness of judicial oversight of the permanency process to achieve more timely decisions and final resolution of cases.

Rationale

There is a specific need for judges to make more determinations of reasonable efforts to reach 100% for temporary removal hearings (73%) and dispositional hearings (82%). Judges are not addressing the issues of workers' diligence in assuring services were provided (51% of the time) and the promptness of availability of services (52% of the time) as aggressively as needed.

Judges should engage in verbal inquiry concerning reasonable efforts more often (68%).

Permanency hearings should be held more consistently. Sixty-seven percent (67%) of judges reported routinely requiring that a permanency hearing be held after a child has been in foster care 12 months. When a permanency hearing was held, judges reported not consistently (51%) requiring a showing that termination is not in the best interest of the child. Judges do not usually (49%) order a county attorney to file a termination when it meets the criteria and is appropriate.

More time should be scheduled on the docket to provide in-depth and complete review hearings so judges can make improved quality decisions and bring more cases to completion. (The average contested review hearing was 60 minutes, the average non-contested review hearing was 15 minutes). Court observations revealed

several non-contested review hearings lasting three to seven (3-7) minutes due to the use of hallway conferences and in-chamber conferences.

The primary reason for the short time allowance for hearings and the use of hallway conferences is the lack of available court time to conduct complete and in-depth court hearings. The secondary reason is the belief this practice is preferred in order to keep conflict out of the courtroom and eliminate the need for formal hearings under the assumption this is better for the families. This unfounded belief deprives families of their right to a full and fair hearing and often results in children remaining in the system longer.

There is a lack of good communication between the courts and other parties who participate in the permanency process concerning the legal mandates and court requirements for CINA cases. Judges and child welfare workers reported 48% of the courts have less than one meeting per year with DHS. Approximately 56% of the courts provide training less than once every other year.

Role of Task Force

The role of the task force will be to:

- 1) review current permanency statutes and procedures including time standards and rules,
- 2) develop recommendations for legislative and procedural changes to propose to the Supreme Court,
- 3) develop training recommendations to include in training plan,
- 4) investigate and propose new permanency options, and
- 5) review and recommend changes and training for reasonable efforts.

2. Termination, Appeal, and Final Disposition

Recommendation

Improve the timeliness of the initiation and completion of termination of parental rights proceedings including the appellate process and increase the effectiveness of judicial oversight of post-termination proceedings to achieve timely and permanent homes for children.

Rationale

The Iowa courts are not providing adequate oversight of the termination process. This is causing lengthy delays in terminations and adoptions.

Judges and attorneys reported the length of time from the filing of a CINA petition through filing of a petition for termination of parental rights is between 529-542 days. Information from the site visits revealed court files with lengths of 1000-1780 days. The reported time frames from the filing of the termination order to finalization of adoption was between 248-340 days. Reports by participants in the site visits included many cases that took 712-1070 days.

Many participants reported they preferred long-term foster care as the permanency option of choice instead of termination and adoption.

Judges should consistently hold termination review hearings to move cases to final disposition. Judges reported the average length of time between post-termination review hearings was eight months. The range of responses reported by judges was holding no post-termination review hearings to holding a review hearing every 24 months.

During the post-termination review hearings being held, judges reported not consistently requiring a specific finding that DHS has made “every effort” to find an adoptive placement six months after the termination of parental rights (45%). In addition, judges reported that they are not consistently requiring documentation that a child has been placed on the state adoption exchange (24%).

Participants reported poor communication by the courts to DHS and county attorneys regarding legal mandates and the court’s expectations concerning CINA cases and terminations. Site visits revealed many areas of confusion and a lack of knowledge for DHS workers related to the filing of termination petitions including: (1) a lack of knowledge concerning the grounds for filing a petition, (2) when reasonable efforts requirements had been met and if that is a requirement, (3) the time frames for filing petitions, (4) who has the authority to file a termination petition, and (5) the options available when the parties disagree about whether a petition should be filed on the part of DHS workers. Participants reported that the roles and responsibilities of DHS and the county attorneys office concerning terminations was unclear.

Role of the Task Force

The role of the task force will be to:

- 1) conduct a survey of statewide termination timelines and practices,
- 2) conduct termination case file reviews,
- 3) develop recommendations for legislative changes and procedure changes, and
- 4) recommend training needs.

3. Service Improvement

Recommendation

Improve communication of rights and duties to litigants of the court system, and improve the notification procedures and require early identification of parties.

Rationale

The responses from family members during the site visits indicated they were often overwhelmed by the court process. After the hearings, they still felt uninformed about the implications of court decisions and their responsibilities. Parents reported their attorneys were not providing adequate information. Some of the judges did not appear to actively participate in the hearings. (Exceptions were noted.)

Poor identification of parties, service of notice, and subsequent lack of atten-

dance at hearings by non-custodial parents, and missing parents are causing continuances and delays. Currently, there is no statewide uniform procedure for serving notice.

Non-custodial parents or their attorneys are served written notice, on the average, 83% of the time as reported by attorneys. Research participants identified the need for more aggressive and comprehensive searches for missing parents to avoid delays and continuances at later stages of the CINA proceedings.

Role of Task Force

The role of the task force will be to:

- 1) develop informational materials to distribute to litigants statewide,
- 2) recommend statewide notification procedures, and/or
- 3) investigate ways to encourage early involvement by parents.

4. Training Plan and Evaluation

Recommendation

Improve the expertise of those directly involved with child abuse and neglect cases.

Rationale

As mentioned in the other recommendations for improvement, many areas have been identified for training, consultation and evaluation for better decision-making. There will be a need for training and the development of training materials during the third and fourth years of the court improvement project to address the needs identified in this report.

Some of the areas identified in the assessment included: (1) improved quality of representation for children and parents, (2) improved judicial orientation and training, and (3) better coordination between DHS, county attorneys, attorneys, and judges for timely decision-making for permanence.

Role of the Task Force

The role of the task force will be to:

- 1) coordinate with all activities of the court improvement program and develop a comprehensive training plan,
- 2) activities could include the development of training materials, district meetings about changes, and/or interdisciplinary training or meetings to improve coordination of the court and child welfare systems,
- 3) develop evaluation methods for the court improvement project, and
- 4) contribute to the efforts of recording statistics on abuse and neglect cases.

5. Code and Rules Review

Recommendation

Improve the clarity and utility of the statutory law and court rules concerning child abuse and neglect cases that affect permanence, termination and appeals.

Rationale

This research project received many comments and recommendations for changes in the legislative code concerning child abuse and neglect cases. There have been previous studies with recommendations that were not implemented and deserve consideration.

Many parties would like to undertake a complete review to change many of the inconsistencies and clarify the ambiguous areas of the code. These changes will allow many of the needed reforms, mentioned in the other sections of the improvement plan, to follow with new court procedures.

Role of the Task Force

The role of this task force will be to:

- 1) review the Iowa Code - Ch. 232, Div. I, III, and IV, and
- 2) recommend legislative changes.

6. Quality of Representation

Recommendation

Improve the quality of representation of children by evaluating and reviewing statewide practice standards and implementing changes.

Rationale

The rates of compensation for court-appointed attorneys across the state were reported to be between \$40.00 per hour and \$60.00 per hour with the typical maximum of \$500.00 (range of \$300.00 - \$2,500.00) before additional approval is required. Public defenders reported that in most cases, their rate of compensation was lower than the court-appointed attorney rate in their county.

Although there is a high level of consistency with the county attorneys and the cases they handle, often very high caseloads are required for county attorneys and public defenders. Due to the limitation of the data in this area the extent of the problem cannot be generalized for the entire state. During the site visits, caseloads of 250-350 or more were reported for county attorneys and public defenders. This caseload size provides little or no time for quality representation.

Parents should be encouraged to obtain representation at earlier stages of the child's court involvement. Judges and attorneys reported approximately 65-70% of the custodial parents and 35-45% of the non-custodial parents have attorneys represent them in CINA cases. The lowest percentage of representation is during removal hearings.

Parents and children are not always receiving high quality representation. Parent's attorneys are not always adequately prepared for contested hearings

as seen by the low frequency of talking to the clients and caseworkers before the day of the hearing (as low as 37%), interviewing service providers before the day of the hearings (12-36%), and investigating alternative services that might be provided to their clients' children (7-29%).

Children's attorneys/GALs are not always adequately prepared to represent their clients in contested hearings based on the low frequency of events done in preparation, talking to the client (when age-appropriate) before the day of the hearing (as low as 33%), and talking to the case worker before the day of the hearing (51- 76%). Activities reported as done less than half the time by children's attorneys are: (1) visiting their clients in the home before the hearings, (2) finding out how their (school) age clients are doing in school, (3) interviewing service providers before the day of the hearing, and (4) investigating alternative services for child or family.

It was reported that only about half the time the parties and their attorneys meet to discuss matters prior to a review hearing. When parties do meet to discuss positions prior to a review hearing (or other hearings) it is usually immediately prior to the scheduled review time in hallway or in-chambers conferences. Family members did not support the practice of hallway conferences.

Role of the Task Force

The role of the task force will be to:

- 1) establish uniform guidelines and expectations,
- 2) develop training materials,
- 3) draft report forms to document client contacts, and
- 4) develop recommendations for statutory changes.

Other Documents Available Concerning this Study

The complete set of documents available include:

- 1) Complete Study**
- 2) Improvement Plan - this document**
- 3) Executive Summary**

Obtain the documents listed above from the address listed on the title page of this report.

4) Volume Two

The second volume may be of use to individuals who desire to view the research instruments, code books, research findings and report formats in more detail than provided in this document. Volume two is located at the:

1. Iowa Supreme Court, Capitol Building, Des Moines, Iowa
2. Drake Law School Library, Des Moines, Iowa
3. University of Iowa College of Law, Iowa City, Iowa

The following is a listing of the contents included in volume two.

- 1) Questionnaires used for the statewide surveys
- 2) Codebooks for the questionnaires
- 3) Specific research findings by question and by topic
- 4) Instruments used for site visit interviews, court observations and case file reviews
- 5) Report format for site visits
- 6) Specific reports written about each county