

CHILDREN ADRIFT

IDENTIFYING BARRIERS TO PERMANENCY AND WORKING TOWARD SOLUTIONS

WESTCHESTER CHILDREN'S ASSOCIATION

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About the Westchester Children's Association

Founded in 1914, the Westchester Children's Association (WCA) is the County's only independent, multi-issue child advocacy organization. WCA works to identify the unmet needs of children, to inform the public and policy-makers about them, and to advocate for innovative solutions. Through research, public awareness and advocacy, we mobilize community resources to improve children's lives, today and in the future.

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INTRODUCTION

Currently over eight hundred children are in foster care in Westchester County. Like Grace and Robert, the children you will meet in the following pages, it is not unusual for them to remain “adrift” for years. By the time these children have a permanent and safe home, they have virtually grown up in foster care, a situation clearly at odds with the intent of the foster care system and all current child development literature. Foster care is meant to be a “temporary” safe haven for children until a stable and permanent arrangement can be made. However, several factors have contributed to prolonging the time a child spends in foster care, including the law’s emphasis on reunification of the family, legal standards and court procedures making termination of parental rights difficult, and an overburdened Department of Social Services and Family Court.

No one--parents, children, foster families, social workers, family court judges or child advocates--is satisfied with the current system of foster care. Throughout the country, the faces of children neglected, abandoned and abused by troubled parents have been seen on local newscasts and in front-page news stories. In response to this national problem, Congress enacted the Adoption and Safe Families Act (ASFA)¹, which President Clinton signed on November 19, 1997. On February 9, 1999 New York passed its enacting legislation mandated by AFSA and promulgated regulations to comply with the Federal Act. These new statutes require local departments of social services, law departments and the courts to adhere to shorter time frames for moving children from foster care to permanency, either with their original families or with new, adoptive families.

The Westchester Children's Association (WCA) formed the Foster Care and Adoption Committee to study the County’s current system of foster care and permanency planning, and to make recommendations for improvements to the system. WCA is a non-profit child advocacy organization which works to identify the unmet needs of children, and to promote innovative policies and programs to meet those needs. The Foster Care and Adoption Committee included members of the WCA Board, Family Law Attorneys, foster care and adoption service providers and other interested and knowledgeable citizens.

¹ Adoption and Safe Families Act, Public Law 105-89.

To study the issue and develop the following report, the members of WCA's Foster Care and Adoption Committee met with key practitioners and policy makers in foster care and discussed the current practices in Westchester County. The Committee is extremely grateful to those interviewed who shared their experience and insight so generously. The interviewees are listed in alphabetical order, with the date of our interview and the title they held at that time:

Wendy Breitner, PhD, Director of the Family Program at the Westchester Institute of Human Development (WIHD) at the Westchester Medical Center (September 15, 1998);

Glenda Bryan, Westchester County Department of Social Services foster care caseworker (February 24, 1999);

Attorney Kenneth Bunting, Law Guardian (November 5, 1998);

Hon. Joan O. Cooney, Supervising Judge, 9th Judicial District, Family Court (March 1, 1999);

Sheryl Dicker, Executive Director, the Permanent Judicial Commission on Justice for Children (March 16, 1999);

Riki Feldman, Senior Assistant County Attorney (February 24, 1998);

Hon. Linda Jamieson, Westchester Family Court Judge (October 13, 1998);

Ted Salem, Assistant Commissioner, Department of Social Services (DSS) (January 16, 1998);

Hon. Adrienne Scancarelli, Supervising Judge of the Family Court, 9th Judicial District, White Plains (April 21, 1998);

Edith Shields, Supervising Probation Officer, Westchester Department of Probation (December 21, 1998);

The Committee also interviewed three foster care parents in Westchester County—**Edith Cabral, Margaret Twyne and Rosemary Jones**—on April 6, 1999. Their insights, from the front lines of the foster care experience, were particularly enlightening.

Although the interviewees shared their thoughts and opinions with us, the conclusions drawn by the Report and the recommendations presented are those of the Westchester Children's Association alone.

The Report begins with a **case history** of one family's experience in the foster care system. It identifies **barriers to permanency** exemplified in the case history and defined by those interviewed. It reviews successful **models of practice** from around the country and, finally, **recommends** changes in Westchester's policies and practices which will benefit children in the County's care, now and in the future. The goal of this study is to focus public attention on the needs of children in foster care and to galvanize government, community leaders and child welfare professionals to implement needed changes.

While this report was in preparation, several important and positive changes have occurred within the various systems impacting foster care in Westchester County. For example:

- ◆ Hon. Joan Cooney the Supervising Judge of the Family Court, has centralized handling of most abuse and neglect cases in the Family Court in White Plains.
- ◆ She has instituted bi-weekly case conferences involving the Department of Social Services, the County Attorney's office, and service providers.
- ◆ The Westchester Institute for Human Development completed a major project to promote adoption of children with developmental delays. As part of the project, WIHD worked closely with the Department of Social Service to update individual case summaries presented to potential adoptive parents and created a video highlighting some of the waiting children.
- ◆ The Department of Social Services has begun an internal self-assessment and review of its child welfare services and will engage the Child Welfare League of America in a year-long self-study process. Also, DSS has revamped its internal authorization procedures, thus addressing issues relating to prompt payment raised in interviews with foster parents and service providers.

We have tried to acknowledge these initiatives in the body of the report and applaud these efforts to improve outcomes for these most vulnerable children.

CASE STUDY

The following is a summary of an actual case in Westchester County which is illustrative of the experiences of many children in foster care. The names of all parties have been changed to protect their privacy.

Robert and Grace Preston entered the foster care system in Westchester County in October of 1993, when Robert was six and Grace was four and a half. They were removed from their parents' home because their mother has serious drug abuse and psychiatric problems and their father is an alcoholic. Now, over five years later and after an emotional roller coaster ride of pain and uncertainty, Robert and Grace are finally free to be adopted by their foster family, but it has been a long and frustrating "ride" for everyone involved.

Consider the following chronology of events in connection with Robert and Grace's experiences in foster care:

October 12, 1993: Robert and Grace are placed in foster care because of concerns of neglect. Robert and Grace's mother, Margaret Preston, has a history of drug abuse and psychiatric problems. At the time the Yonkers court determined the children should be removed from the home, Margaret was having a particularly difficult time. Officially, the reason for the removal was a charge of "neglect" because she left the children alone for hours. Robert and Grace are initially placed in foster care in the home of Mary White.

October 28, 1993: Petition alleging neglect against both Margaret and David Preston is filed in Yonkers Family Court. Prestons file for a 1028(a) hearing to contest the removal and also entered a denial to the charge of neglect.

December 1993: Margaret is hospitalized for psychiatric reasons. The children's father, David Preston, has a drug and alcohol problem and the couple is having problems with domestic violence.

January 1993: Fact finding hearing in Yonkers Family Court on charge of neglect. Finding of neglect against Margaret and David with regard to Grace and Robert. Placement in foster care of Robert and Grace is extended for one year.

March 1994: Robert and Grace are moved to a new foster home after WIHD conducted an evaluation and assessment of the foster care situation and it was determined that the children should be moved. DSS decided that the original foster family was not providing age appropriate stimulation for the children. Robert and Grace are placed with a Yonkers family, the Fosters, a couple in their 50s whose children are grown. Grace and Robert begin receiving therapy to help deal with their anger and fears associated with being removed from

their home. Grace is diagnosed with Attention Deficit Disorder (ADD) and has a learning disability.

November 1994: Margaret and David separate. (Robert is 7 years old, Grace is 5 ½)

December 1994: Robert reports to his social worker that there was "pot" at his father's house when Robert was visiting.

April 1995: Margaret does not show up for three consecutive appointments for parent/child therapy and is reportedly using drugs again.

November 1995: Margaret becomes pregnant with David's child. (Robert is 8, Grace is 6 ½)

March - July 1996: David begins parent/child therapy with Robert and Grace. DSS's plan during this time is to return the children to their father's custody if parent/child therapy is successful.

July 1996: Margaret gives birth to baby Jilly Preston. David visits Margaret and Jilly at the hospital with alcohol on his breath. Social worker tells David that if he wants to continue parent/child therapy, he must enroll in a substance abuse program.

September 1996: David Preston tells the social worker that he is enrolled in a substance abuse program, however, the program indicates that he has not attended since August 19, 1996. Plan to return Robert and Grace to their father is abandoned when David refuses to continue the substance abuse program. Margaret is declared unfit to care for Jilly because of psychological impairment. Jilly Preston is placed in foster care with different family from her siblings.

October 1996 - January 1997: Margaret continues to have problems with substance abuse and mental illness. She is imprisoned for assaulting David. While Margaret is in prison, she asks to see Robert and Grace. The children express to their therapist at WIHD that they do not want to visit their mother in prison. Grace indicates that she is afraid of the prison and Robert says he does not want to see his mother "behind bars." The children also feel that they are settling into a stable life with the Fosters and want to continue to live with them. The therapist writes to Robert and Grace's caseworker at DSS, describes the children's fears and recommends that they not be forced to visit their mother against their wishes. WIHD therapists continue to work with the children toward the goal of visits to Margaret and also continue to document why they believe it is not in the children's best interest to visit Margaret. (Robert is 9, Grace is 7 ½)

March 1997: Grace tells her psychologist that she does not want to see her mother and that she wants to live with the Fosters. Mr. Preston makes no attempt to resume therapy or contact with Robert and Grace.

May 1997: Robert and Grace continue to resist visiting their mother. They are both doing well in school; Robert attends an after school program for gifted and talented children. Grace

is improving academically since receiving support for her ADD and learning disability. She is also involved in baseball and Brownies. The team of psychologists working with Grace and Robert write to the children's DSS caseworker to recommend that a plan for permanency be resolved, whether it be reunification with the Prestons or adoption by the Fosters. The psychologists explain that the uncertainty of the last four years of foster care have been very difficult for Robert and Grace. They also state in the letter that any further attempts to reunify with their parents would cause them unnecessary stress. It is clear by the inferences in the letter that the psychologists are recommending termination of the Prestons' parental rights.

May 5, 1997: Petition for Termination of Parental Rights (TPR) of Grace and Robert filed by county attorney on behalf of DSS. If petition is granted, all parental rights of David and Margaret will be terminated.

June 1997: Margaret is released from prison. Grace and Robert are brought to visit her against their wishes. Later that month, Margaret is hospitalized because of psychiatric and substance abuse problems.

June 26, 1997: Hearing for TPR in Family Court. The court makes a finding of permanent neglect, but suspends the judgment in order for further "reasonable efforts" to be made to attempt to reunite Margaret with Robert and Grace by DSS and the service providers. Margaret meets with WIHD therapist to discuss parent/child therapy with all three children - Robert, Grace and Jilly. However, therapy does not begin because Margaret is hospitalized again for psychiatric reasons.

August 14, 1997: Margaret and David admit permanent neglect with regard to Grace and Robert. David indicates to the court that he is willing to voluntarily relinquish his rights to the children; Margaret will not voluntarily relinquish her parental rights and the Judge suspends judgment against Margaret for nine months.

October 1997: Director of WIHD writes to DSS caseworker strongly suggesting termination of Margaret's parental rights. At his point, there is general agreement among the service providers working with Margaret, Robert and Grace that reunification was not advised. However, at the court hearing at the end of October, the judge orders additional "due diligence" to reunite the mother with her children.

November 1997 - January 1998: Because of court ruling and under pressure from DSS, Margaret begins parenting classes with Jilly. Robert and Grace are not a part of the classes because they are doing well with the Fosters, and because of their wish not to visit or be involved with their mother. DSS reluctantly agrees. Margaret suffers further psychiatric problems, is hospitalized again, and is diagnosed with psychoaffective disorder, bipolar type and schizoid personality. (Robert is 10, Grace is 8 ½)

February 1998: Robert and Grace have been with the Prestons for four years. There is no doubt in the minds of those familiar with Robert and Grace that their experience with the Fosters has been, and continues to be a positive one. Initially, the Fosters had no intention of

becoming the adoptive parents of Robert and Grace. However, over time they have become emotionally attached to the children and decide, in February, that they would seek to have the children adopted when, and if, the children become free. They had no idea of the emotional turmoil they would face when they agreed to be foster parents.

April 16, 1998: County Attorney files an order to show cause seeking to revoke suspended judgment based on the charge that Margaret has not been cooperating with the conditions of the suspended judgment. Margaret has not been going to her required appointments at WIHD to work on parenting skills and her psychiatric issues. She has missed eight appointments.

July 14, 1998: There is a fact finding hearing in Family Court on the charge that Margaret was in violation of the terms of her suspended judgment. There is testimony that Margaret had missed several appointments at WIHD and when she finally did show up, she was refused therapy because she had already missed so much. The judge misunderstood how long Margaret had been missing treatment and felt that she should not have been turned away. The judge orders another six month suspended judgment because she feels Margaret hasn't had enough of an opportunity for therapy. The County Attorney objects to the suspended judgment indicating that it is time to terminate Margaret's rights to Robert and Grace. The law guardian representing the children agrees that it is time to terminate Margaret's rights.

August 1998: During the summer, Margaret comes to realize that that she is not able to parent Robert and Grace and recognizes that they are in a positive and stable environment with the Fosters. Surrender is a heartbreaking decision for Margaret. All of the professionals involved with her know she has tried hard to overcome her problems and that it takes courage for her to recognize her own limitations. However, before Margaret is ready to give up Robert and Grace for good, she wants to meet with the Fosters to assure herself that she is doing the right thing. She also wants to discuss the possibility of future visits with the children and of maintaining a relationship with them. The Fosters agree to allow Margaret to visit the children if she is substance free and her behavior with them is appropriate.

September 1998 - December 1998: DSS district manager generates surrender documents for Margaret's signature with the approval of the County Attorney. There is a delay in finding a court date for executing the surrender, which causes anxiety and uncertainty for Robert, Grace and the Fosters. In addition, as the legal process drags on, Margaret begins to have doubts about voluntarily surrendering her rights to Robert and Grace. Margaret had seen some articles in the newspaper about children being shuttled from foster home to foster home and she does not want this for Robert and Grace. It is very important to Margaret that the Fosters are the family who adopt Robert and Grace and she wants written assurances in the court papers that this will occur. She also needs assurance that she will be able to visit the children after the adoption is finalized. Unfortunately, neither of Margaret's concerns can be addressed in the court papers because of the laws relating to foster care and adoption in New York. In the surrender documents, the court can only indicate that the Fosters would be the "first preference" as Robert's and Grace's adoptive parents. In addition, the court papers

cannot indicate that Margaret has any remaining legal rights to her children once she has surrendered her rights. (Robert is 11, Grace is 9 ½)

December 1998: Because Margaret can not be assured about the issues of designating the Fosters as the adoptive parents and her visitation rights, she changes her mind about voluntarily surrendering her rights to Robert and Grace. After four and a half years of the foster care roller coaster, this news is devastating to the Fosters and the children. The Foster become so frustrated with DSS, the courts, and the system that they are ready to give up on their plans to adopt Robert and Grace. The Foster's decision whether to pursue adoption of Robert and Grace is "hanging by a thread" and the stability and permanency the children need seem out of reach once again.

January 6, 1999: The County Attorney files another petition to show cause alleging, once again that Margaret violated the terms of the suspended judgment issued in July.

February 8, 1999: At the hearing on the issue of violating the suspended judgment, Margaret realizes she is going to lose her rights to Robert and Grace one way or another. She decides to surrender her rights voluntarily and puts her intention on the record. Robert and Grace are now free to be adopted by the Fosters.

May 1999: The Fosters have had a hard time getting information about adoption from DSS's adoption unit in order to facilitate the adoption of Robert and Grace. Robert and Grace, therefore continue their status as foster children and the Fosters continue to work within a system that seems to only work against them.

October 1999: Robert and Grace have been in foster care for five years. Although they have adjusted to life with the Fosters, their adoption has yet to be finalized and they cannot yet be legally recognized as a family. (Robert is 12 years old, Grace is 10 ½ years old)

BARRIERS TO PERMANENCY

As exemplified in the preceding case history, and identified in numerous interviews, Westchester's current system stumbles over significant barriers in providing permanency to children in foster care. The Committee found that these barriers fall into three general categories: lack of resources, inadequate flow of information, and attitudinal challenges.

A. LACK OF RESOURCES

Lack of sufficient resources - including funding, staffing, available services and technical support – make the task of providing an efficient and well functioning foster care system impossible. Every person interviewed for this Study indicated that the lack of resources was a problem in Westchester County.

1. DSS caseworkers are hampered by inadequate and cumbersome office technology and overwhelmed by the seriousness and complexity of the cases they handle.

“Case workers are supposed to stay on the same case from placement in care through adoption phases, and because of turnover and heavy caseloads, cases tend to lose momentum and can be delayed”. [Ted Salem]

“Case Management requires a lot of “juggling”. Currently I have a case load of approximately 20 children which represents 5 to 10 families and, in my experience cases take approximately two years to be resolved.” [Glenda Bryan]

“The high turnover of caseworkers at DSS is also a problem with the current foster care system. One of my foster children is on her third worker. I will call a caseworker with a question or a problem and the response will be that either the caseworker has left or is not available. It is very frustrating.” [Rosemary Jones, Foster parent]

“There is a high rate of “burn out” for DSS case workers and if a child has been placed in a workable foster care situation, it is easier to simply let it continue.” [Judge Linda Jamieson]

“DSS currently has an unreliable computer system (known as “Connection”). The Foster Care Unit’s ability to know its population depends upon technology. We have come up with an ad hoc internal tracking system, but it is very labor-intensive.” [Chris Biaggi, Director of the Program Office, DSS]

2. Court mandated services for parents and children are not adequate to meet the demand, especially under the new time frames required under the Adoption and Safe Families Act.

“More money will be needed to provide adequate services, in particular mental health services and money to help find adoptive families and promote adoptions.” [Judge Cooney]

“Parents trying to reunite with their children are dealing with a lot of conflicting interests which are difficult to manage – drug treatment, visitation responsibilities, therapy, and transportation problems.” [Glenda Bryan]

3. Family Court, the County Attorney’s office and the Probation Department lack funding and resources to manage and monitor heavy caseloads, especially in light of the new mandates of ASFA.

“Significant improvements in the child and adoption proceedings depend upon improvement in the courts. The problems associated with crack, HIV-AIDS, homelessness and domestic violence have increased caseloads in the court system without an increase in resources to the courts that hear those cases.” [Sheryl Dicker]

“An investigation is supposed to be completed within 30 days of the order, however, (we) routinely ask the court for an extension of time to complete the investigation because of lack of staff to handle them.” [Edith Shields, Probation Officer]

“Family Court has had a certain confusion about its role since its inception. There was a belief that children should be treated differently from adults. The court should be ‘individualized’, tailoring the remedy to fit the case. However, with increased caseloads and over-burdened staff, the court became more passive and less responsive to children.” [Sheryl Dicker]

“County attorney’s office likes to have a “slam dunk” case. Currently there are about 20 attorneys, which is not enough to deal with all of the cases. No paralegals handle cases, they just file papers and attorneys often have to do typing.” [Riki Feldman]

2. **There are not enough qualified foster care families available in Westchester County to provide the care necessary.**

“Edith and Rosemary each have four foster children who range in age from 18 months to 11 years old. Edith’s foster children are Romel age 9; Tonette age 11, and twins Talika and Tamika age 10. Rosemary’s foster children include: Alexander, 18 months old; Shawn age 2; Mary Beth age 5 and Jaquana age 8. Jaquana has been with Rosemary since she was two weeks old and she is in the process of adopting her. Margaret currently has three foster children – Joseph ‘Jojo’, age 2; and Anthony and Jason ages 7 and 12 respectively. Ms. Twyne also has adopted son, Theodore who is 5 years old.”

“Many foster parents are disgusted with the inefficiency of the system and that is the reason they haven’t joined the foster parent support group.” [Rosemary Jones, Foster parent]

B. INADEQUATE FLOW OF INFORMATION

The free flow of information between and among the various parts of the foster care system is essential to achieve effective outcomes for children and their families. Currently, effective communication is often lacking.

1. **Family Court in Westchester County does not receive sufficient information about the family or the child on which to base its decision on whether to terminate the parental rights of a birth parent.**

“Early involvement by the attorney, parents and caseworkers who provide meaningful input, and judges who stay on top of their caseloads are essential to meaningful reform.” [Sheryl Dicker]

“There is now more of a demand to focus on the child, to look at the child as an individual. It would be beneficial to look at the needs of the child and the parent from the beginning”. [Judge Cooney]

“Family Courts in New York do not receive sufficient information about the family or the child on which to base their decisions. The parties to the cases often do not help and up to half of the caseworkers do not provide vital information on their cases. [Sheryl Dicker]

“Judges are autonomous regarding their decisions. Judges can only make decisions on the information presented to them in court. The adversarial system does not allow all information to come out.” [Dr. Breitner]

“...[J]udges rarely see the child in court and therefore, may lose track of the child’s needs”. [Riki Feldman]

- 2. Foster families and potential adoptive families do not receive sufficient information about the child prior to placement, and often feel a lack of support and communication from DSS during the child’s stay. This barrier is particularly important to overcome if Westchester is to increase the availability of adoptive homes for foster children.**

“Evaluations and summaries of kids up for adoption are not current and are not positive. The summaries are written in jargon and are not understandable to most people.” [Dr. Breitner]

“Prospective foster parents do not get enough information about the children coming into their homes. They often do not get an investigative report on the child and are not told important information and possible risks the child poses. For example, one child had a history of setting fires and the foster parents did not know about it.” [Foster parents in Westchester County]

“Our homes get checked out thoroughly by DSS before a child can be placed there, but we do not get any information on the child.” [Foster parents in Westchester County]

“If there is a disagreement between the caseworker and the foster mom about some aspect of the child’s care, the foster parent can complain to the resource worker, however, resource workers are employed by DSS. On the whole, foster parents have no choice but to go through DSS.” [Foster Parents in Westchester County]

“Three issues are the most important to foster parents, (1) late payment to foster parents; (2) day care providers weren’t getting their proper funding; and (3) when children first arrive at foster homes, the foster parents should receive, up front, \$100, WIC payment and a Medicaid card for the child. This last recommendation, they believe, will make the transition to foster care, for the child and the foster parents, an easier experience.” [Foster Parents in Westchester County]

“Foster parents sometimes have a difficult time getting the mandated special rates for special or exceptional children. I have been trying for 3 months to get the right amount. Finally, I told my resource worker not to come back without the check. Finally, I received the check shortly after that exchange. The point is that if you don’t repeatedly complain and become a ‘squeaky wheel’, you do not get a positive response from DSS.” [Edith Cabral, Foster parent]

“There is a lack of availability of attorneys for foster care/adoptive parents. The social services law requires that adoptive parents are entitled reimbursement of attorney’s fees with a maximum of \$2,000. The court can review the fee to determine if it is reasonable. However, it often takes a long time for DSS to reimburse parents for their costs and therefore, the cost of the attorney can still be an obstacle for adoptive parents.” [Judge Jamieson]

3. **There is a history of professional tension, even antagonism, between DSS and the county attorneys which interferes with their ability to work together productively, communicate effectively, provide needed services and assure compliance with court orders.**

“When I was in New Rochelle, there was a strong sense of teamwork and the cases could often be resolved quickly – teamwork and communication are important.” [Judge Cooney]

“Many attorneys argue with the caseworkers and vice versa. Caseworkers can talk to law guardians, but many don’t because of negative attitudes toward attorneys. And, caseworkers have to check with their supervisors before making decisions regarding their cases. Therefore, many cases linger. [Kenneth Bunting, Attorney]

“DSS and the County Attorneys need to work together more cooperatively. There needs to be more continuity with social workers dealing with foster care situations. Judges moving from court to court in Westchester County can hurt cases.” [Judge Cooney]

C. ATTITUDINAL CHALLENGES

Many of those interviewed expressed their view that Westchester County’s foster care community does not reflect an attitude of immediacy when it comes to providing permanent homes for children in foster care. Consequentially, children spend too long in foster care

while the birth parents get “chance after chance”. In addition, many felt that deciding the fate of a child in such an adversarial way was detrimental to the goal of permanency.

1. No one in Westchester County has a sense of urgency to provide foster children with permanent homes.

“The system takes too long and children suffer from not having the security of a permanent home.” [Edith Cabral, Foster Parent]

“It is always hard to take a child away from its birth parent – DSS hates to do it and the courts especially hate it and they give the mother “chance after chance” to get her act together.” [Rosemary Jones, Foster parent]

“Once a child is free for adoption, the case is transferred to the DSS adoption unit. The unit currently has only two workers, which slows down the process. A lot of the work and investigation ends up being done twice, further slowing the process.” [Judge Jamieson]

“In initiating termination proceedings, lawyers are afraid to go to court. Currently, there are far more suspended judgments, in some courts, so the feeling is ‘why bother’, the case will only be suspended. In some cases, however, suspended judgments can serve to get the family moving. The Yonkers court doesn’t want to make any permanent judgments. [Dr. Breitner]

“In order for there to be a sense of “time is the essence” with finalizing adoptions, there needs to be an outside political force making adoptions a priority for the state.” [Judge Jamieson]

“Some kids indicate that they don’t want to go back to their birth families, but no one listens. There has been overkill of what is necessary for the ‘reasonable efforts’ requirements to be satisfied.” [Kenneth Bunting, Attorney]

2. Culture in Westchester County’s foster care system in DSS and the Family Court is anti-termination and anti-adoption.

“Foster care and adoption should be a child driven machine, not a parent driven machine.” [Judge Cooney]

“The current system for adoptions in Westchester County is obsolete and a nightmare. In the past some courts have been known for being skeptical about adoptions and the experience can be unpleasant for all parties involved.” [Judge Jamieson]

“Families wait for a long time for adoptions to become finalized. DSS workers don’t have the skills or training to market kids who are available for adoption. Foster care placement is not done with adoption in mind.” [Dr. Breitner]

“The County has to think differently to solve its problems and the place to start is with DSS.” [Kenneth Bunting, Attorney]

“More parents would be willing to surrender their parental rights if New York allowed ‘open adoptions’. In actual practice unenforceable arrangements are made between birth parents and adoptive parents for continued involvement by the parent surrendering her rights.” [Judge Jamieson]

“The culture in Westchester County is anti-adoption.” [Adoptive parent].

“There is no real effort currently being made to recruit adoptive parents. When there is no concurrent planning, valuable time is lost for the child and the system is losing potential foster families. [Dr. Breitner]

“Judges are inherently opposed to termination cases. There needs to be a strong policy with regard to TPR and adoption procedures standards and goals need to be as clear as possible.” [Riki Feldman]

“The scenario might be different if Westchester had open adoptions. New York City has “conditional surrenders” in which the mother continues contact with the child. However, in Westchester, when a caseworker broaches the subject of surrender, she cannot guarantee to the parent that she will have some contact with the child.” [Glenda Bryan]

3. The adversarial nature of the foster care system and the lack of early case conferencing result in longer foster care stays for the children and missed opportunities for early resolution.

“Because the system is inherently adversarial, the birth parents’ attorney will tell them not to cooperate with DSS – not to speak to them and not go to counseling.” [Riki Feldman]

“A meeting early on, with all of the players, would help to get an idea about the birth mother. I can tell from the outset if the mother is going to come back.” [Margaret Twyne, Foster parent]

“It is a good idea to have an initial meeting with the judge, parents, and foster parents to make a plan for the child’s future. This would help to avoid some of the problems they are facing. The child could come to the meeting at the end so he/she understands what’s going on and feels safe.” [Foster parents]

“It is good for all parties concerned, for foster parents and birth parents to meet especially when parents are surrendering rights.” [Dr. Breitner]

“By improving communication between the parties and focusing on the individual case issues, solutions are developed in non-adversarial proceedings. The bias against mediation could be ameliorated by educating the lawyer to its benefits in other states’ experiences.” [Sheryl Dicker]

“There should be team structures. Teams would include County Attorney, law guardian, caseworker. I suggest an interdisciplinary approach in conjunction with DSS.” [Kenneth Bunting, Attorney]

PROMISING MODELS

The Committee looked at six model practices for possible application to Westchester County. The first four—court reform, concurrent planning, case conferencing and open adoption—each have components that were deemed to have promise for Westchester. The others—wraparound services and privatization—offered interesting ideas for consideration but were not seen to be as relevant or helpful for the children in foster care in Westchester.

A. COURT REFORM

The Permanent Judicial Commission on Justice for Children was designated by the New York Court of Appeals in 1994 to implement the State Court Improvement Project, a four year federally funded project to assess and improve foster care, termination of parental rights and adoption proceedings. Sheryl Dicker is the Commission's Executive Director and has overseen the project. The results of these efforts can be found in "Interim Report to the Court of Appeals on the State Court Improvement Project". The report includes an analysis of federal and state child welfare laws, a profile of the state's foster care population and results of a survey of key participants in the child welfare system statewide. Finally, the Commission took a detailed look at the handling of cases in selected counties.

The Commission found that the most effective courts have specific characteristics that make them successful:

- (1) effective court leadership, meaning that each jurisdiction has had a judge who provides sustained, and consistent and strong leadership;
- (2) a clear philosophy within the court regarding permanency;
- (3) a strong statutory framework, which includes expedited time frames and tight controls on adjournments.
- (4) the creation of dependency units to handle child welfare matters;
- (5) the establishment of a front-loaded system which would allow sufficient time for planning and calendaring each case;

- (6) one judge handles specific cases throughout its life;
- (7) cooperation and collaboration between the court and the social service agency;
- (8) a strong social service system that provides effective preventative and family preservation services;
- (9) non-adversarial dispute resolution includes the use of mediation;
- (10) development of good information about children in care and their families utilizing a high quality data system that tracks the children by needs, and by their case.

The Committee found many of the characteristics described in the Commission's report to be pivotal to meaningful court reform in Westchester County. In particular, the need for judicial leadership is paramount. It is only the judge who can hold all parties to a clear time frame and outcome goals. Along with leadership, a good information system is vital so decisions can be based on the most up-to-date and complete information about a child and family. Non-adversarial dispute resolution, such as mediation, was identified by the Commission as well as WCA's interviewees as an effective tool for improving the outcomes for children in the child welfare system.

Of the individuals interviewed by the Committee, non-adversarial dispute resolution, or mediation, was identified as a particularly effective tool for improving family court's treatment of child welfare cases. Mediation is important because, by improving communication between the parties and focusing on issues, solutions are more substantial and individualized. Other forms of non-adversarial dispute resolution mechanisms are pre-trial conferences and family group conferences. These forms of case conferencing are discussed later in this section.

In Pennsylvania, the Allegheny County Department of Children, Youth, and Families created a partnership with the Pittsburgh Mediation Center to mediate adoptions in situations where parental rights are being terminated. Through mediation, all interested parties have an opportunity to have their concerns taken into account in the development of an adoption agreement. This has reduced the likelihood of the adoption being contested or its provisions violated. The adoption mediation project in Allegheny is funded through a grant from the Department of Health and Human Services. The families are referred to mediation by the

court or Children, Youth and Families (CYF) based on their willingness and ability to participate. The families are also screened by a therapist to make sure they are capable of mediating effectively. Mediation can allow families to reach arrangements to make the adoption more open, within boundaries set by a judge. While mediation could not be used to alter the termination of rights, birth parents could be assured of some contact with the child or could be given updates on his or her progress.

Several of the Committee's recommendations are drawn from this model and are pivotal to effective reform in Westchester County.

B. CONCURRENT PLANNING

Concurrent Planning is an approach in which the child welfare system works toward the goal of family reunification while simultaneously developing an alternative permanency placement – usually adoption. Permanency for the child is the primary goal of this approach.

In the current system of child welfare as practiced in many jurisdictions, the primary focus is put on services to the birth parents with a goal of reunification. In contrast, concurrent planning is a system in which permanency for the child is primary. It provides a very focused approach with the birth parents - they are fully informed, actively involved, and in better control of the outcome. The birth parents are told that the child may be placed for adoption should they not be able to remedy the problems they face within a specific period of time. This harsh reality, it is believed, may trigger a crisis situation in the minds of some birth parents, resulting in an increased effort to improve.

In this model, children who must be removed from their homes are placed with specially recruited and trained foster families who are prepared to adopt the child should reunification become impossible. Concurrent planning has been very successfully implemented at Lutheran Social Services of Washington and Idaho (LSS).² This program utilizes small caseloads, staff teamwork with group supervision, specially trained caretakers, open adoption options, and private attorney representation to overcome legal delays. LSS

² Katz, Linda. *Concurrent Planning Fulfills Intent of P.L. 96-272*, Interstate Compact Newsletter, Winter, 1995.

combines their administrative divisions for foster care and adoption to create one permanency unit.

For LSS a successful case is defined by permanent placement. This means family reunification, kinship care, or adoption. During the process, LSS is forthright with all involved in the case, including the birth parents, the child, the court, the foster parents, attorneys, and relatives. The LSS program requires caseworkers to a more extensive individual assessment of the child when the child first enters the system, and also that services required by the child and birth family be available in a timely fashion.

ASFA provides that reasonable efforts to place a child for adoption or legal guardianship may be made concurrently with reasonable efforts to reunify families.³ ASFA also authorizes the Secretary of Health and Human Services to provide technical assistance to states encouraging adoptions, including models to encourage concurrent planning. This section of ASFA was not mandated to the states and New York chose not to adopt it. However, Westchester County is nevertheless free to adopt concurrent planning as a policy and practice in its own reforms.

Linda Katz writes in her article, Concurrent Planning: Fifteen Years Later, “Washington, like most states, has found that even without concurrent planning the majority of foster child adoptions are with foster parents. The extra value in concurrent planning lies in the training and preparation that permanency planning families receive, and the clearly defined goals/expectations that the agency communicates to birth parents. From the very beginning, each foster/adopt family is prepared to be an agent of stability in the child’s life and serve as a bridge to the birth family.”

Several people interviewed by the Committee felt concurrent planning would vastly improve the foster care system in Westchester County. For example, Dr. Wendy Breitner, Director of the Westchester Institute of Human Development (WIHD) said that it is a “terrible shame” that there is no concurrent planning in Westchester County. She said that

³ Adoption and Safe Families Act, Public Law 105-89, Section

valuable time is being lost with the traditional system of permanency planning and, consequently, the system is losing potential foster families. Glenda Bryan, a Department of Social Services Caseworker-Foster Care says, in practice they are doing it (concurrent planning) now, even though it is not mandated. For example, in cases where she is working with a mother who is mentally retarded, she will approach the issue of surrender and adoption while continuing to pursue reunification. The matter has to be brought up delicately, as most women do not want to be seen as voluntarily giving up their child.

Concurrent planning is an achievable goal for Westchester County. Concurrent planning can achieve permanency for a child without conflicting with “reasonable efforts” towards reunification.

C. CASE CONFERENCE MODEL

Various models of Case Conferencing have been adopted by child welfare systems around the country and have shown promise in reducing out-of-home placements and achieving permanency for children. In general, this approach involves bringing professionals and family together early in the process to work as a team to address issues facing the family/child. Team members work as equals in developing a plan for each child and family. The committee reviewed three different examples of the case conference model. The first two models are geared specifically to situations in which the child can remain at home with the birth parents, and the third model pertains to situations in which the child has been placed into foster care.

The first model of case conferencing, developed in Santa Clara County, California--the Family Conference Model--is designed to build a stronger bond between the family, the community, and the government. The focus of this program is on removing the risk from the home rather than the child from the home. This is done through services, support, and monitoring. This model looks at removing the child and terminating parental rights as a drastic last step. In Santa Clara, “The underlying tenets of this model rely on tapping the energy and resources the family possesses and directing them toward the care and protection

of the child. It also provides a forum in which family members can speak freely about their feelings, without fear of repercussions.”

There are three phases to The Family Conference Model – the introduction, the meeting and the decision. The first phase, the introduction, brings together the family, the social worker, the facilitator, and other individuals involved with the child, explains the purpose of the meeting, and certain ground rules are set. A discussion is begun with the family as to how to deal with the concerns about the child. Phase two of this process is a meeting attended only by family members in which they discuss the best way to deal with the problem. The third phase involves bringing back the social worker and facilitator and others along with the family to come to a final decision on a plan that would be best for the child. Finally, when the plan is conceived and agreed upon, it is put into writing and signed by the family members.

This process promotes reunification with the parents, but if that fails, there is involvement with the extended family which makes placement with kin a viable option. According to the Santa Clara County Model, “There is also increasing recognition that if remaining with the parent(s) is not possible, kinship care, when appropriate, is clearly the next best alternative. Studies have shown that children appear to fare better in kinship care than in non-relative care.”

There are many anticipated benefits of the Family Conferencing Model. The Santa Clara County Model identifies ten advantages.

- (1) an increase in relative placements,
- (2) greater stability in placements,
- (3) shorter length of time spent by children in out-of-home care,
- (4) higher incidence of siblings remaining together,
- (5) increase in the use of voluntary placement services,
- (6) decrease in the number of court continuances, and
- (7) a decrease in the number of cases that go to trial for resolution,
- (8) an increase in the percentage of cases that successfully reunify families,

- (9) a system-wide cost benefit,
- (10) lower incidence of subsequent maltreatment of children following reunification, and an increase in satisfaction concerning the children and family members.

Since Westchester traditionally has not used kinship foster care extensively, implementation of this approach would require a change of direction and might result in higher foster care costs.

The second model is the case facilitation model from Dubuque County, Iowa.⁴ This county has changed its system to provide individualized help to families when necessary. “Case facilitation” is a process that includes the family, social workers, neighbors, educators, and other interested parties who will meet regularly to develop a case plan. Case facilitation encourages front-line social workers to look for alternatives to traditional services and consider the range of preventive and treatment services for children and families. The effects of case facilitation in Dubuque have been substantial. Families have become equal partners in the planning and decision making over services; new services were created out of the needs of individual families; agencies were forced to address turf issues and work more cooperatively on the team; new service providers have been brought into the fold; and out-of-county placements were reduced while in-home services were dramatically increased.

According to the Iowa Department of Human Services, Dubuque County was able to reduce its placements in group care by sixty percent between 1990 and 1997. Over this same period, the county also reduced placements into family foster care by about one-third. To help prevent children from ever entering the formal child-welfare system, Dubuque established a crisis-intervention program that responds quickly to families who voluntarily request the service. A local nonprofit service provider works with the families for up to twenty-one days in order to help them resolve the crisis, connect them with other services in the community, and avoid when possible judicial hearings, out-of-home placements, and other expensive, time-consuming child-welfare practices and procedures. In 1997, more than

⁴ Rust, William., *Decat in the Hat*, Advocasey (1998).

eighty percent of the families in the crisis-intervention program were effectively served, and did not become open child-welfare cases.

This model of case conferencing might fruitfully be explored as part of DSS's intent to evaluate community-based child welfare services, using local informal and professional resources to strengthen family functioning.

The third case conferencing model is the New York City Administration for Children's Services' 72-hour child safety conference protocol. In this model, the child has already been removed from the home and has been taken into protective custody by the state and placed in foster care.

The 72-hour child safety conference is a team meeting that involves the family, their support system, and other professionals involved with the family. The goal of the meeting is to reach a consensus about a plan that protects the children, preserves or reunifies the family, and establishes permanency for the child. The conference includes participants who have had significant experience with the child and family, for example, relatives, teachers, doctors, clergy, and police. This conference is based on the idea that the safety and protection of children must be shared and supported by the community at large working in tandem with the public agency to ensure the best possible outcome.

The child safety conference is held within 72 hours after a child has been removed from his or her home, or within 72 hours of a caseworker's request for pre-removal conference. The conference is led by the ACS supervisor who gives a brief description of the purpose of the conference, the process, and the ground rules. The caseworker will then present the findings of the investigation, relevant family case history, and the status of the case, including a current safety plan. The family and other members of the conference then have the opportunity to present their perspectives on the current situation. After thorough discussion and development of a consensus decision, an action plan is established, with tasks and goals identifying whom will do what and by when. The final step is the child's safety conference conclusion. The supervisor/facilitator will summarize the written child safety

conference report, including the safety plan and action steps. The facilitator will then present all participants with a copy of the child safety conference agreement.

D. OPEN ADOPTION

“Open” adoption is an alternative to the traditional and longstanding practice of “closed” adoption where the birth parents have no knowledge of, nor have a say in who adopts their child. And, in most cases, the adopted child does not know the identity of or any other personal information about the birth parents. Open adoption allows the birth parents to have input in who adopts their child, and allows them to continue to have contact with their child after adoption is finalized. It provides, “a healthy, positive adoption experience for all parties. It’s a win-win-win situation,” says Methodist Family & Rehabilitation Services of San Antonio, Texas.⁵

The practice of open adoption, when implemented correctly, is one that can greatly increase the comfort level of a birth parent giving up her child and therefore, increase the likelihood that she will do so voluntarily. More importantly, in practice it has been shown to facilitate permanency for the child including the option of adoption.

The concept of open adoption has gained support in recent years. The birth parent benefits from open adoption because it permits them to be more involved in decisions about the future of their child. The experience of Methodist Family & Rehabilitation Services shows that open adoption allays birth parents’ fears about whether the baby is really loved, provides ongoing information about the child, and helps birth parents feel more confident in their decision. However, open adoption very clearly defines that the adoptive parents are the legal parents of the child, and that the child does not have two mothers or two fathers. Open adoption can also benefit the adoptive families. They may have less fear of the birth parents

⁵ *What is Open Adoption? Open Adoption Provides a ‘Win Win Win’ Situation.* Methodist Family & Rehabilitation Services, 1999.

changing their mind, and feel more of a sense of permission to be parents to the child because they were chosen by the birth parents or with the birth parents consent.

Most important are the benefits that the *child* experiences from open adoption. As the child grows older, this process provides the answers to questions that may arise about birth parents. It provides them with accurate medical and familial background information. This information can also help to give the child a sense of identity without threatening the child's bond with the adoptive family.

Current research supports the benefits of open adoption as well. Research done by Dr. McRoy entitled "Family Process" describes how adoptive parents in open adoptions are able to talk more openly about adoption with their children, and are less fearful that the birth mother will try to take her child back. Dr. Marianne Berry from the California Longitudinal Study on Adoption found that children of open adoptions have fewer behavioral problems than children of closed adoptions.

Adoption Counseling Triad in Albuquerque, New Mexico has a comprehensive open adoption program. For the adoptive parents, there is an orientation, along with required reading. The adoptive parents are then taught the program philosophy, and the myths of adoption. Two examples of these myths include: birthparents do not care about the children they relinquish, and if the adoptee really loved his/her adoptive parents and family, he/she would not have to search for birthparents. As part of this process, the adoptive parents then submit a personal information form, and make up a file/album that will be presented to birthparents. An autobiography is prepared including, personal physical characteristics, personality, interests, lifestyle, religion, goals, feelings about sharing the adoption, and birthparents.

Triad also develops a comprehensive plan for the birthparents including counseling on a variety of subjects through their child's 18th birthday. Open adoption is NOT co-parenting, all legal rights to the child will be relinquished by the birth parents. Grieving that

may take place afterwards is part of a normal and healthy process. The goal of Triad is to assist all parties in arriving at a mutually agreed upon plan. There are individual counseling and support groups available to birthparents, and participation in strongly encouraged.

Glenda Bryan, Department of Social Services Caseworker-Foster Care suggested that many birth mothers know that they cannot properly care for their child, but don't want to relinquish all contact with the child. She indicated that some birth mothers might be more willing to voluntarily place their child for adoption if Westchester had a system of open adoptions. Judge Linda Jamieson also felt that more parents would be willing to surrender their parental rights if New York allowed open adoptions. New York City uses "conditional surrenders" to effect "open" adoptions in which the birth mother continues contact with the child. However, New York State law does not presently provide a legal way to guarantee to the birth parent that they will have any contact with the child.

Open adoption promotes the goals of permanency for the child and a greater comfort level for birth parents who decide to relinquish their parental rights. These goals are in accordance with the recommendations of the Committee.

E. WRAPAROUND MILWAUKEE

The Wraparound Milwaukee program⁶ provides individual services to children under eighteen who have emotional, behavioral, and mental health care needs. This program allows children to remain in their communities instead of transporting them to an institutional facility. This approach depends on the support of professionals who believe in and have the skills to support client functioning.

The "wraparound" approach focuses on bringing individualized program of care to the child instead of trying to fit the child into a previous service category. Wraparound

⁶ Goldman, Sybil K., Faw Leyla. *Volume IV: Promising Practices in Wraparound. Promising Practices in Children's Mental Health*. 1998 Series.

Milwaukee involves the formation of a team whose role is to “wrap” the needed services around the child and family. The team consists of extended family members, neighbors, important teachers, friends, care coordinators, therapists, and probation officers. Ron Rogers, program supervisor at St. Charles Youth and Family Services says, “One of the nicest things about wraparound, is that the family has a huge input into the child’s plan of care.”

There are three qualifications for a child to be eligible for the Wraparound Milwaukee program. First, the child must have a current diagnosable mental health disorder. Second, the child must be involved in two or more Milwaukee service systems, among the mental health, child welfare, or juvenile justice systems. Finally, the child has to have been identified for out-of-home placement in a residential treatment center, or for a return visit from such a facility with the availability of wraparound services.

Each child’s needs are assessed by their team, who then develop a plan of care utilizing existing resources and services available through Milwaukee Wraparound. The plan must explore specific areas of concern for the child such as family, safety/crisis intervention, legal problems, psychological status, and educational and vocational goals. According to Rogers “...the team determines the child’s treatment needs and the best way to meet those needs.”

Wraparound Milwaukee includes assessing outcome components that are to be achieved consistently throughout the program. Outcomes may include things such as school attendance, juvenile justice charges, restrictiveness in living situation, and behavioral functioning. Graduation from Wraparound Milwaukee takes place when the goals of the plan are met and only after approval by the intake team and the courts. The average length of stay in the program is fourteen months.

Wraparound Milwaukee has grown significantly since it first began. Project Director Bruce Kamradt attributes the success of Wraparound Milwaukee to many factors including

the state's assumption of responsibility for a population of youth that has not been effectively served in the past with demonstrable positive outcomes for that group. Additionally, it started with a small pilot and grew only as resources and expertise grew. Building relationships with all systems, and developing confidence that the job could be done was also important, as was blending funding streams to ensure flexibility in the use of money. Finally, developing a system of community services and providers that involves the whole community in the projects and implementing effective support mechanisms for good quality assurance was necessary.

Funding for this program comes from three main sources. The first is a \$15 million federal grant from the Center for Mental Health Services. This grant was awarded in 1994, and is being used over a period of five years. Second, Milwaukee County's child welfare department pays a case rate of \$3,300 per month per child (down from \$4,700 per month previously paid by child welfare and juvenile justice had been paying for residential placements for the same population of youth). Finally, the program uses a Wisconsin Medicaid capitation rate of \$1,400 per month per Medicaid-eligible child. Bruce Kamradt, says, "Our strategy is to save dollars by using less institutional care and reinvest those dollars into Wraparound Milwaukee, thus increasing our capacity to serve more children."

The Westchester Department of Social Services has considered a Wraparound Milwaukee - type program as a possibility for Westchester County. This model echoes themes and procedures that are already well-developed in Westchester, such as the Single Point of Entry conferences currently held between DSS, Community Mental Health, and Youth Bureau to determine the best residential placement for each child. The Wraparound approach also shares elements with Westchester's system of community Networks through which individualized plan of community based services are developed for children with Serious Emotional Disturbances and their families.

F. PRIVATIZATION

The Privatization Model is designed to dramatically speed up the process in which a child goes from being available for adoption, to actually being adopted. Transferring the responsibility from public social services departments to private non-profit organizations achieves this goal.

Under the Privatization Model, a contractor receives a one-time fixed payment, or capitation rate, per child, regardless of how long the child stays in foster care. This money covers maintenance costs for the child, services to the child, services to families, a child who re-enters the system, administrative costs, accountability, and contractor risks. If a child stays in care less than seven or eight months, then the contractor would make money, because they wouldn't spend the full capitated amount. On the other hand if the child remains in care longer than seven or eight months then the contractor is still responsible for the costs of the child even if that exceeds the allotted amount of money. This gives the contractor a financial incentive to work harder to get the child in some sort of permanent situation, whether that is reunification with the birth parents, or with adoptive parents. To enable this process to move at a faster rate, the contractors adopt a policy of concurrent planning.

Privatization introduces the concept of competition, which had not been a factor in the previous system. Competition forces non-profit organizations to rethink how they do business, and on what they choose to spend money. Virginia Rodman, of Lutheran Social Services of Kansas and Oklahoma feels that private non-profit organizations can specialize in services in a way the state could not. She says "In the state agencies, each social worker had multiple responsibilities, child abuse was a mandated service, family preservation was a mandated service, but adoption was not and so it fell by the wayside. Our workers have only adoption as their priority."

In Kansas, privatization has also provided a massive marketing effort that has noticeably increased the number of adoptions per month, and the number of inquiries from prospective families. The number of adoptions has risen from 30 to 50 per month, and the number of inquiries from families has jumped from 50 to 450 per month.

The private organizations contracted in Kansas must meet five adoption outcome measures as part of their contracts. The most important is placement. If the organization fails to place 70% within 180 days and 90% within a year, they will lose their contract. It is also extremely important that the adoption placements are successful. The rate of failed adoption must stay below 10%, or the organization will lose its contract. The purpose of the outcome measures is to insure that the contractors value the child's safety at all times. At least 90% of the children in a contractor's care must never suffer neglect or abuse. So far the contractors have been 98% successful. Another outcome measure requires the contractors to be responsible for the child's well being for a full year after he/she has been placed in a permanent home.

There are some critics of the new system of Privatization. Some worry that financial constraints could lead private agencies to limit care to the most troubled, and costly, foster children. Rick Spano, director of Trinity Episcopal Foster Home in Lawrence, Kansas says "For about 30% of the kids, long-term foster care is the best option, and those kids' needs will not be served by this new system."

If adoption is the primary goal of foster care reform, this program can be seen as a success. However, providing services to the child and the family continue to be an important element of reform. The program does not appear to work for the foster children in most need, namely those with physical or emotional special needs.

RECOMMENDATIONS

If Westchester County is to achieve its foster care goals and address the current barriers to permanency, it is clear that changes will have to be made by its Family Court, by DSS, by the County Attorney's office and by service providers.

In addition to other policy and program recommendations presented below, the Committee recommends that Westchester County establish a multi-disciplinary **Advisory Council on Permanency for Children**. The Council, appointed by the County Executive, would be empowered to develop collaborative and innovative approaches to overcome the current systemic barriers to permanency for children and to monitor progress toward compliance with the Adoption and Safe Families Act. The Council would build on and expand the interdisciplinary conferencing already taking place under the auspices of the Family Court.

We recommend that the Council be co-chaired by DSS and the Family Court, and include representation from the County Attorney's Office, foster and adoptive parents, law guardians, service providers, advocacy groups and others with relevant expertise. The Council's work should be coordinated with Westchester's newly established Children's Policy Council. Establishment of the Council would in itself begin to address the barriers associated with lack of communication and lack of urgency in achieving permanency for children.

The following recommendations are presented in relation to the identified barriers they are meant to address:

Lack of Resources

- **Department of Social Services should have increased resources, particularly for adequate training and technological support.**

Helping more children leave foster care for permanent homes will undoubtedly require subtle shifts by workers in the children's services department of DSS. Whatever methods DSS adopts to achieve this outcome will require thorough and ongoing training of workers and supervisors. Westchester County DSS in recent years has had no internal training unit, the

only large county in the state without one. Plans are currently underway to reinstate this capacity within the Department. Also, workers need technological support to reduce their burden of paperwork and help them better manage the complex needs of the children and families in their caseloads. Ideally, such a technological system would work with or replace the existing NY State Connection system. However, even if this is not possible, Westchester should seek ways to use technology to increase worker efficiency and effectiveness.

- **DSS should increase staffing of the adoption unit, and should aggressively recruit and support foster and adoptive families, increasing the pool of foster parents by 20%.**

There is currently a shortage of licensed foster homes in the County. Many children eventually freed for adoption have special needs and nearly all adoptive placements will be with the child's foster family. The County should build on the work produced by Westchester Institute for Human Development as part of its recently completed project of promoting adoptions of children with developmental disabilities. The project included better and more targeted outreach to families, better "marketing" of foster care and adoption to potential parents and better communication of each child's strengths and challenges. DSS should provide pre-and post-termination support, perhaps through a unit of specialized adoption workers, or through community-based contracts, to foster families likely to adopt.

- **Family Court should receive additional funding—for staff and support technology—to allow the Court to provide activist leadership and to effectively monitor the timely implementation of permanency planning.**

Since becoming head of the Family Court for the 9th Judicial District, Judge Joan Cooney has centralized handling of all abuse and neglect cases in White Plains. While this will allow the court to exert greater leadership and control over cases, it creates an administrative burden that requires additional resources. At a minimum, New York State should provide funding through the Office of Court Administration for a clerk and a computer to effectively use existing technology to track and calendar cases.

- **Adequate mental health and social services, including pre- and post-adoptive services should be developed through contracted providers.**

The new timeframes mandated by the Adoption and Safe Families Act will have little effect in speeding permanency if families must endure lengthy waits for mandated services. DSS, as part of its self-assessment process, is planning to review its service contracts. It is essential that effective services be expanded or new services developed to meet the goals set by ASFA. Ultimately, this may require additional funding. Along with children's advocates across the state, we believe New York State should eliminate its block grant for children's services which has forced localities to reduce or eliminate non-mandated services.

Inadequate Flow of Information:

- **Westchester should involve all relevant parties early in the decision making and permanency planning process.**

Judge Cooney has implemented a system of early judicial conferencing in abuse and neglect cases . We recommend that DSS replicate or build on this concept by engaging birth parents, caseworkers, extended family, foster parents and service providers in service planning conferences. Such conferences would be beneficial in cases where the child has been removed from the home as well as cases remanded to Mandated Preventive Services with the child remaining at home.

- **DSS and County Attorney staff should participate in cross-systems training on permanency planning and should work cooperatively from case inception to discharge.**

The County's key partners in child welfare, DSS and the County Attorney, must develop a consistent, joint philosophy and approach to achieving permanency for children. In addition to the early case conferencing mentioned above, we believe joint training can be effective in building a cohesive approach that will eliminate inter-departmental tension and achieve better outcomes for children.

- **DSS should improve its communication with and support of foster parents and, in accordance with ASFA, insure that they are apprised of all phases of permanency planning for the children in their care.**

ASFA grants foster parents new status in the child welfare process and this new status must be addressed in DSS training and procedures. DSS has already made changes in this direction. For example, it has revamped its internal procedures for payment authorization which will help foster parents and other service providers receive payments more promptly. Along with timely payments, foster parents will need timely and comprehensive information about the physical, social, emotional and legal status of the children in their care.

Attitudinal Challenges:

- **To maintain a sense of urgency in achieving permanency for children, Family Court judges should provide strong, sustained and consistent leadership throughout the process.**

As pointed out in the report of the Permanent Judicial Commission on Justice for Children, strong judicial leadership is crucial in effective permanency planning. Ideally, a single judge should handle each case, and should hold all parties to strict timeframes.

In Westchester, Judge Cooney has taken several steps to provide such leadership: she has centralized handling of most abuse and neglect cases in White Plains and has implemented early judicial conferencing on such cases. We applaud these efforts and urge the Yonkers Family Court to institute similar processes. To further streamline the adoption process, we recommend that the courts consider the use of DRL 112(6)(8), which allows for an adoption petition to be filed simultaneously with a petition to terminate parental rights.

- **Westchester County should adopt concurrent planning.**

Concurrent planning should be formally piloted by DSS in those cases where termination of parental rights seems most likely. In such cases, a form of “informal concurrent planning” seems to already be practiced. Formalizing the process would give the Department a chance to assess its effectiveness.

- **In order to minimize the adversarial nature of the court processes, Westchester County should implement alternative means of resolution, such as mediation. New York State should consider recognizing “open adoption” in some cases.**

Although formal recognition of “open adoption” would require state legislative action, Westchester courts should consider using conditional surrenders in appropriate cases. In addition, mediation is a tool that can be used to reduce the adversarial nature of the court proceedings and help all concerned parties reach a conclusion that best serves the interest of the child.

CONCLUSION

In order for Westchester County’s foster care system to reach a higher standard of care for its children, all of the parties involved--community leaders, DSS, parents, foster parents, caseworkers, therapists, law guardians, and social service administrators and the Family Court judges--must work together to develop and implement reforms which focus on the needs of the child. The recommendations made in this Study promote this theme and provide a framework for change.

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Appendices

Appendix 1

Profile of Foster Care in Westchester County

A. Who are Westchester's Foster Care Children?

There are currently 858 children in foster care in Westchester County. The "typical" child entering foster care in Westchester County is a five and a half year old boy with a single mother who has either a mental illness or a substance abuse problem – sometimes both. He has at least two siblings. He has been removed from his home involuntarily because of an indication that he has been neglected or abused by his birth mother. During the 2 to 3 years that this boy will spend in foster care, DSS will work hard to reunite him with his birth mother. The boy's caseworker will refer his birth mother to programs and services designed to help her become capable of caring for him again. However, the odds are that his mother will ultimately lose her rights to care for him, and that he will either be adopted by his foster family or spend the rest of his childhood in some form of foster care. At eighteen years of age he will "age out" of the system and will be completely on his own unless he agrees to abide by a judicially approved "plan for independence".

To get a more specific view of Westchester's foster children, consider the following statistics. Of the 858 children in the foster care system in Westchester County, 25 are infants; 142 are between 1 and 5 years old; 300 are between 6 and 13; 256 are between 14 and 17; and 135 are 18 to 21 years old. The average age of a child entering foster care is five and a half years of age.

TABLE I

<i>AGE</i>	<i>PERCENT</i>	<i>TOTAL</i>
Infant	2.9%	25
1-5	16.6%	142
6-13	35%	300
14-17	29.8%	256
18-21	15.7%	135

858

Source: Westchester Department of Social Services

When a child is placed in foster care, a “permanency plan” is developed by DSS with input from the caseworker, birth parents, services providers, and the county attorney assigned to the case. This plan sets forth an individualized strategy for that child and identifies one of four permanency goals for the child: return to parent, adoption, independent living or adult custodial care.

Because the mandates of New York’s foster care statutes emphasize the reunification of the family, the majority of children in care have the goal of reuniting with their parents. 563 or 68% of Westchester’s children have the goal of reunification with the parents, 14 have goal of living permanently with a relative, 123 are expected to be discharged to independent living, 141 have the goal of adoption, and 9 will enter adult custodial care because of physical or mental problems. (See Table II). Nancy Travers, Deputy Commissioner of DSS of Westchester County, has indicated that 85% of the County’s foster children who are adopted end up with their foster-care families. Additionally, of the 141 children with the goal of adoption, many are older and suffer from various medical and psychiatric conditions. Of the children identified as having a goal of adoption, 72% are over the age of five and 12% are over fourteen.

TABLE II

<i>PERMANENCY GOAL</i>	<i>PERCENT</i>	<i>TOTAL</i>
Return to Parent	65.6%	563
Return to Relative	2.6%	22
Independent Living	14.3%	123
Adoption	16.4%	141
Adult Custodial Care	1.0%	9
TOTAL:	100%	858

Source: Westchester County Department of Social Services

Currently, the Westchester County Probation Department is handling about eighteen adoption investigations per month. While most of the children in foster care who have the

goal of adoption will be adopted by their foster parents, there remain approximately forty children freed for adoption for whom no adoptive family has been identified. These children are referred to as “legal orphans,” children whose legal ties to their families have been severed, but who continue in foster care with permanency an illusive goal.

B. Who are the birth parents to Westchester’s Foster Care Children?

According to DSS a “typical” birth parent to a child in foster care is an unmarried female, between twenty-three and twenty-six years of age, with no high school diploma, having an average of three children and a history of mental illness or substance abuse. Some birth parents suffer from “dual diagnosis”, meaning that they have both mental illness and substance abuse.

DSS states that the group of birth parents with dual diagnoses is the most difficult group with which to work and the most likely to have their parental rights terminated. A trend among birth mothers, whose children have been placed in foster care, is to become pregnant during the period that they are separated from their children. This phenomenon is referred to as “replacement”, since it is thought that the mother is attempting to replace the children that have been taken from her.

C. Who are the foster parents?

How does Westchester County find foster care parents? DSS’ adoption unit has the responsibility of recruiting potential foster care families. DSS does this by putting ads in local papers such as “Pennysaver”, contacting local houses of worship, and networking through current foster care parents. The County also maintains a hotline number for families interested in becoming foster families – 285-KIDS. Despite these efforts, the consensus among the foster care community is that there needs to be a more aggressive recruitment of foster care families in the County.

In order to become foster parents in Westchester County, an individual or couple must undergo a certification process mandated by the state. The process begins with an initial

screening over the phone and participation in an orientation program about being a foster parent. Actual training for foster care parents involves five to eight training sessions on issues such as separation and loss, child development, and emotional awareness and well-being. An important aspect of training is making sure that the foster parents understand their role in the child's life. Foster care is meant to be temporary and the goal for the child, in most cases, is reunification with the birth parent. Despite the goal of reunification, the foster parents interviewed by the Committee indicated that they always become emotionally attached to the child.

Once the training is completed, the potential foster parent is assigned to a social worker at DSS who prepares a comprehensive home study making sure that the foster home environment is safe and nurturing. A criminal background check is the next step in the certification process. Under ASFA's new mandates, criminal record checks must be made of all prospective foster and adoptive parents and all persons in the household over eighteen years of age. The records check requirement is retroactive including all current certified and approved foster parents and is to be done as part of the certification process or when a renewal occurs.

A person cannot be a foster or adoptive parent if there has been a conviction or criminal charge brought against them, or anyone over eighteen in their household, for child abuse, neglect, spousal abuse, crime against a child or child pornography; any felony conviction for certain violent crimes, or any drug related offense within the last five years. And, a safety assessment will be done if any other criminal conviction exists of the foster or adoptive parent or of a person in the household over eighteen. If the criminal background investigation is favorable, the home study is then transferred to the foster care unit and a resource worker makes one final physical check of the home. The home is then added to the list of certified foster homes and becomes available for placement of a child.

Matching a child to a foster family is accomplished by means of a questionnaire filled out by the potential foster family. It asks questions about the family's makeup and about their preferences for a foster child, i.e. age, sex, and ethnicity. The questionnaire asks about what

kinds of behaviors a foster family will tolerate and if they are willing to take a child with difficult emotional or physical problems.

Any information DSS has about the child is also taken into consideration when placing the child in a foster home. Unfortunately, DSS often has very little information about the child entering care and the initial match with a foster care home may not be an appropriate one. When a mismatch occurs, the child will be placed in a home more appropriate. For example, a foster family may not be prepared to handle a child with severe emotional problems which may not have been evident when placement was first made.

In an effort to make better matches and recruit more foster care and adoptive homes for disabled children, the NYS Office of Mental Retardation and Developmental Disability has awarded WIHD a grant to focus its attention on and develop better methods to assess problems associated with developmentally disabled children in foster care.

Foster parents are paid monthly by the state for the caring services. The rate is determined by a sliding scale depending upon the extent of the child's needs. For example, a foster parent caring for a child with Downs' Syndrome would be paid at a higher rate than a parent caring for a child with minor emotional problems.

The foster parents interviewed by the Committee were all single parents between the approximate ages of thirty-five and seventy years of age. According to DSS however, there is no typical profile of a foster parent. Anyone who meets the certification requirements and is willing to provide a home and a loving heart to a child is accepted.

D. How does a child enter Foster Care in Westchester County?

Approximately 225 to 250 children enter foster care in Westchester each year. A child may be removed from its birth parents and placed into a foster home either voluntarily or involuntarily. In all placements, whether voluntary or involuntary, DSS first conducts an

investigation to locate relatives of the child. If no suitable relative can be located, DSS will place the child in a certified foster home.

Voluntary Placement

A voluntary placement of a child in foster care is accomplished through an execution of a surrender of guardianship and custody order or through the execution of a voluntary placement agreement transferring temporary custody and care to DSS. Generally, the courts in Westchester have very high standards; strictly scrutinizing due diligence by DSS when removing a child from his or her birth home. In addition, the law requires that there must be a judicial determination that “reasonable efforts” have been made prior to the child’s placement to preserve the family unit, to prevent the need for the child to be placed, or to make it possible for the child to return home⁷.

A surrender of guardianship and custody order is drawn when the birth parent voluntarily places the child in foster care and gives up all parental rights to the child to DSS. This can occur when the child is an infant - the classic scenario of a birth mother “giving her child up for adoption” immediately after the child is born. The child is then placed with a foster family who is interested in adopting. Assuming this placement is successful, the foster family will adopt the child once their necessary homestudy and background checks are completed. However, a surrender of guardianship can, and often does, occur after the child has been in foster care for some time. In that case, the birth parent has worked toward the goal of reunification, but has not been successful because of factors such as a persistent drug problem or mental illness. Some of the issues surrounding surrender of guardianship are discussed further in the following section of this Report.

Another voluntary method of foster care placement is when a birth parent transfers only “care and custody” to DSS. This arrangement is considered temporary and birth parents retain their parental rights to the child. Prior to accepting the transfer of a child, DSS must conduct an immediate investigation to locate relatives of the child for possible placement and

⁷ These procedures are governed by N.Y. Social Services Law 383-c

siblings of the child so that they can be placed together. The terms of the voluntary placement agreement between the birth mother and DSS establish the criterion for the placement itself and set forth the determination by the court that the placement is proper. A care and custody placement can be for a specified time or until certain criterion are met. Usually, the permanency plan developed by DSS will set out certain conditions the birth parent must meet in order for the child to be returned home, such as pursuing drug treatment or attending parenting classes.

In accordance with ASFA, the biological parent must be informed at the time the child is transferred, that if the child remains in foster care for fifteen of the most recent twenty two months, the agency may be required to file a petition to terminate parental rights (TPR). If DSS determines the child will remain in care for more than thirty days, a petition for placement (SSL Section 358-a hearing) must be initiated within thirty days of placement by DSS.

Another method of removing a child voluntarily, which is referred to as an “emergency voluntary” removal, is where the birth parent is incapacitated in some way and there is no one else to care for the child, for example, if the parent is either hospitalized, is in prison or dies. The procedures for an emergency voluntary removal, i.e. placement, permanency plan, and reviews, are the same as those for other voluntary removals.

Involuntary Placement

The majority of children are removed from their home involuntarily. There are three categories of involuntary removals: juvenile delinquents⁸, a person in need of supervision (PINS)⁹, or an abused or neglected child¹⁰. According to DSS, approximately 150 to 200 of

⁸ pursuant to Article 3 of the Family Court Act (FCA).

⁹ pursuant to Article 7 of the FCA.

¹⁰ Pursuant to Article 10 of the FCA.

the children currently in foster care in Westchester County are either juvenile delinquents or PINS and, in the great majority of cases, are assigned to a foster care residential facility by the Department of Probation. Juvenile delinquents and PINS foster care children are the least likely to be adopted and most likely to spend their entire childhood in a foster care residential facility until they reach independence.

The most common reason for involuntarily removing a child from the home is an indication of abuse or neglect of the child by the birth parent or guardian, referred to as an “Article 10” proceeding since its provisions appear in Article 10 of the Family Court Act (FCA).

When abuse or neglect of a child is suspected, it may be reported to the State Central Register of Child Abuse and Maltreatment (SCR) through a toll free phone number. Child Protective Services (CPS) is responsible for receiving and investigating all reports of child abuse, and within 24 hours of the report, must investigate. If CPS determines there is “imminent risk” to the child’s life or health, the child must be removed from the home within 24 hours of the finding. This is referred to as a “temporary emergency removal”. The policy reason for the expedited timeframes is clear: removing a child from a threatening environment outweighs the necessity for meticulous procedures. However, when determining if temporary removal is appropriate, the court will also consider whether imminent risk to the child could be eliminated by issuing a temporary order of protection directing the removal of the parent from the home.

If “imminent risk” to life or health is not found, but there is an indication of some neglect or abuse, CPS has 60 days to determine if child maltreatment has occurred, i.e. whether the report of neglect or abuse is founded or unfounded. According to Riki Feldman, most Article 10 proceedings are resolved by parental admissions and plea bargains are used to settle the case. Where there is no finding of “imminent danger”, children are placed in foster care only after reasonable efforts have been made by DSS to preclude placement and those efforts are continued following placement.

Once a child is placed in foster care, the parents have the right to a hearing (Section 1028(a)) to contest removal and the allegation of neglect. The parent must file a petition demanding such a hearing within 72 hours of the child's removal. In addition, at almost any point during an Article 10 proceeding, the court can order DSS to provide for other services for the child and the child's family to facilitate the protection of the child, the rehabilitation of the family and, if appropriate, the discharge of the child from foster care.

The Westchester Institute for Human Development (WIHD) has been contracted by DSS to provide many of these services associated with foster care placement and ongoing services for the birth parents, the child and foster parents. WIHD currently provides the following services: psychological evaluation of the children; home study on foster parents; parent/child relationship assessments; initial interview with birth parents; parenting stress index, family interviews; ongoing parent and case worker conferences to discuss the child's needs and seminars on parenting for foster parents.

Under New York law, a child is considered abandoned if there has been no communication or visitation by the parent in six months. The parent must exhibit more than "a flicker of interest" in the child to defeat a claim of abandonment. The court must also show that there was a diligent search to find the parents or anyone legally responsible for the child. If the child is deemed "abandoned," the court will commence a proceeding to transfer guardianship, as well as care and custody of the child, to DSS. The case will then be referred to the County Attorney's Office (CAO) to file the TPR to free the child for adoption. An abandonment case is the easiest to dispose of, according to the CAO, since there is no need to demonstrate reasonable efforts to reunite the family, and an abandoned child can be free for adoption within seven or eight months.

The CAO in Westchester County currently has twenty-three attorneys. There are ten "abuse and neglect" attorneys, five child support attorneys, and eight juvenile delinquency attorneys. In 1998, the "neglect and abuse" attorneys were extremely busy in Family Court. Statistics show that the three Family Courts, in White Plains, New Rochelle and Yonkers,

handled 346 case reviews, 44 voluntary surrenders, 1,200 neglect cases, 35 abuse cases, 74 guardianship cases and approximately 250 adoptions.

E. What happens to the child once placed in care?

Once a child has been placed in care and before a TPR is filed, the mandates for a permanency plan are the same regardless of the reason for placement, including the requirement of reasonable efforts to reunite parent and child.

Where appropriate, the child's permanency plan will include a schedule for visitation by the birth parents. In most cases, the birth parent must visit with the child at least once every two weeks to maintain a meaningful relationship with the child. The terms of the visitation are developed by the caseworker and sometimes include the presence and involvement of a service provider, like WIHD which provides a variety of services.

WIHD currently provides the following services: developmental assessments of children placed in foster care; In-Home assessments of all placements within 2-4 weeks of placement; brief assessments of (birth) parental functioning and the parent-child relationship to help determine the need for services; ongoing clinical services to the children; parent training services to the birth parents together with their children; and ongoing, supportive, in-home services to foster families whose foster children are especially difficult to manage. WIHD collaborates closely with DSS while providing these services, including making recommendations for permanency planning.

Once the child's permanency plan is in place and the caseworker has developed a plan, it is reviewed every six months. The review, referred to as the Service Plan Review (SPR), takes place at DSS and includes the DSS caseworker, the caseworker's supervisor, the birth parents, the attorneys and service providers. The permanency plan is discussed and revised depending upon the developments of the past six months. The CAO is not currently involved in the SPR, but it has been suggested that it would be useful to have their input at this early stage. Riki Feldman thought that early CAO involvement in planning for the child would facilitate the flow of information between DSS and the CAO, however, this additional involvement by CAO would cause a further strain on its already overburdened staff.

Under the new mandates of ASFA for all categories of foster care children, the initial permanency hearing in Family Court must take place within one year of the date the child enters foster care. Thereafter, permanency hearings must take place at least every twelve months. Judge Cooney believes that the new required permanency hearing will help the court maintain better accountability of the child's permanency plan. This requirement will not only allow the judge to be more abreast of the legal issues associated with the child's case, but also to become more familiar with the totality of the child's circumstances.

Under New York law enacting ASFA, if the court determines that maintenance of the parent/child relationship is not in the best interests of the child, "reasonable efforts" to reunite them are not necessary. For example, if the child has been subjected to "aggravated circumstances," defined in New York as "severe and repeated child abuse," reasonable efforts will not be made to reunify the family. Under these circumstances, the permanency hearing for the child would be held within thirty days of placement, rather than twelve months, and the TPR filed immediately.

A permanency hearing is held in Family Court to review the foster care status of the child and the appropriateness of the permanency plan developed by DSS. At this hearing, the judge determines whether and when the child: will be returned to the parent; placed for adoption; referred for legal guardianship; or placed with a relative. The judge may also extend the current foster care placement for up to twelve months. The permanency hearing is a "new animal" according to the CAO and no one is clear about how it will actually work in day to day practice. It has been suggested by some that an extension of placement hearing could also act as a permanency hearing. Judge Cooney disagrees. She believes that the permanency hearing and the hearing for extension of placement are separate events. Judge Cooney believes that the permanency hearing addresses broader issues for the child, including a review of the permanency plan, rather than simply extending placement. Accordingly, an extension of placement could be ordered during a permanency hearing. However, permanency planning cannot be included in an extension hearing.

If reasonable efforts to reunite the child with the birth parents are required, DSS will refer the birth parents to the available and appropriate services. In addition, the judge has the discretion to appoint a law guardian to represent the child's legal rights and a separate attorney to represent the birth parents if they are indigent.

A new aspect of the law provided by ASFA gives foster parents or a relative caring for the child the right to notice of all permanency hearings and affords them the opportunity to be heard at these hearings. However, foster parents are not afforded party status and therefore, are not entitled to counsel and cannot ask the court for any action on their behalf. The three foster parents interviewed by WCA's Committee were not aware of this change and they all were very interested in going to any court hearings affecting their foster children.

The extension of placement hearing occurs depending upon the duration of the previous extension, i.e., every six, nine or twelve months. The cycle of SPRs, permanency hearings and extension of placement hearings continue until either the child is successfully reunited with the birth parent or it has been determined that reunification is not appropriate and the case is referred to CAO for termination. A referral to CAO recommending a petition to terminate parental rights (TPR) contains an exhaustive file in which the DSS case worker has detailed the reasonable efforts made to reunite the family, and the family's and child's responses to these efforts.

The length of time a child is in foster care prior to such a TPR referral varies widely and depends upon many factors, the most important being the birth parents' ability to resolve the issues which precipitated the child's removal. Currently, the length of time spent in foster care before TPR can be anywhere from 13 months to 4 years. Once the case is referred to the CAO, it is assigned to one of the staff attorneys for evaluation. Assignments are made on the basis of caseload and the history of the family involved. Some families are involved in the foster care system repeatedly and the county attorney familiar with that family will handle the case.

If the CAO determines that there are sufficient legal grounds to file a TPR, a petition will be drafted and filed with the court. Two to five percent of the cases referred are sent

back to DSS because the CAO believes that there is not sufficient legal ground to file the TPR. Depending upon the case, the filing of the TPR by a staff attorney after the referral can take anywhere from thirty days to a year. Delay in filing the TPR can be caused by a heavy caseload in the CAO, a particularly complex case, or problems locating the parties to notify them of the proceedings. A preliminary hearing to address the issues presented in the TPR will occur within approximately sixty days after the filing of the TPR.

Unless the parents have abandoned him, or there are circumstances whereby “reasonable efforts” are not necessary, the child must be in foster care for twelve months before a termination proceeding can be pursued. For a biological parent to have his/her parental rights terminated, the state must prove that the child is “permanently neglected” by a standard of “clear and convincing” evidence. Under New York law, “permanently neglected” means that the birth parents have failed, for a period of over one year from the date the child entered foster care, to “substantially and continuously or repeatedly” maintain contact with or plan for the future of the child although physically and financially able to do so. This is a very high level of proof that requires the county attorney to have a very strong case against the parent. Both the philosophy of the court and the mandates of the law make it difficult to terminate the rights of a parent.

A TPR can be resolved at the preliminary hearing or at any stage in the legal process if the parties, the attorneys and the judge can reach an agreement. Such an agreement would include an admission by the birth parent of permanent neglect and an immediate disposition by the judge. If however, no agreement is reached, the TPR proceeds. The fact-finding hearing is the next stage and occurs approximately sixty days after the preliminary hearing. This is the stage that most resembles a trial – testimony is given under oath and the attorneys for the parties make cases for their clients before the judge. At the conclusion of this hearing the judge will decide if the evidence is “clear and convincing.” If this evidentiary standard is met, the judge will make a finding of permanent neglect.

The dispositional hearing occurs approximately thirty days after fact finding. At the dispositional hearing on a TPR based on permanent neglect, the judge can do one of three

things: dismiss the petition and return the child to the parent, terminate the parents' rights to the child, or suspend judgment. (Sec. 631)

According to State Law and County practice, when a judge suspends judgment in a TPR, the case is held in a suspended state and the court will instead set certain terms or conditions the parent must meet if the judgment is to be reversed. The maximum duration of a suspended judgment is one year. More often, in practice, they are issued for six to nine months, and under exceptional circumstances, can be extended for an additional year. ASFA does not change this.

If there is evidence that a parent has failed to abide by the terms and conditions set by the court, the CAO will file a petition to "show cause" that there has been a violation of the suspended judgment. The effect of this filing is to force the judge to make a decision on the TPR – either continue the suspended judgment or, if the parent is found to be in violation, to finalize the TPR. The birth parents can appeal the decision of the judge that can take up to four years. [See "Diagram I" for a schematic version of this process].

F. How does a child leave foster care?

The ultimate goal for all foster care children is to leave foster care and attain a stable, safe and permanent home. The various ways in which a child leaves foster care are

1. by being returned to the parent,
2. returned to a relative,
3. being adopted,
4. becoming independent or
5. entering an adult custodial facility.

Having a child successfully returned to his birth parents continues to be the best case scenario for a child in foster care. When this is not possible, the next choice is to place the child with a relative who is willing and able to care for the child. If neither the birth parents nor a willing relative are available, the child becomes free for adoption. The most common way a child becomes free for adoption is when the birth mother voluntarily surrenders her

rights to the child – either at birth or after an unsuccessful attempt by DSS to reunite parent and child.

When a birth parent surrenders guardianship to DSS, as well as custody and control, all parental rights to that child are surrendered to DSS. Before a surrender of parental rights is finalized and the child is free for adoption, the court must be satisfied that DSS encouraged the maintenance of an intact family. The elements of proof at a surrender hearing are quite stringent. The parent must understand that he or she is giving up all rights to the child; the surrender must be completely voluntary; the parent must be unable to care for the child; and reasonable efforts must have been made to reunite the parent with the child.

In Westchester County the County Attorney's office does not utilize or accept "extra-judicial" surrender conferences, meaning that all surrenders must come before a judge rather than simply before a notary with witnesses. According to Judge Jamieson, the judge will thoroughly question the birth parent creating a complete record to insure that the birth parents' rights are not being exploited and that they fully understand the finality of their decision. A birth parent has forty-five days from the execution of an extra-judicial surrender document to change her mind and revoke the surrender. However, once the forty-five days have passed the parent's right to revoke the surrender is considered waived.

Under New York law's conditional surrender, a birth mother can indicate who she would prefer to have adopt her child. If, however, this does not occur, the surrender becomes void. The child is not automatically returned to the birth parent, but the birth parent can request a hearing at this point. In addition, New York does not recognize "open adoptions" where the birth mother and the adopting family agree that the birth mother will continue to have a relationship with the child after adoption.

If a foster care child is still in care at fourteen years of age, adoption becomes unlikely and DSS begins a program to teach the child self-sufficiency skills. This self-sufficiency program requires the child to formulate future goals, training for job interviews,

resume writing, and other skills for independent living. The child and DSS must bring this plan before a judge for approval.

At eighteen years of age, those children who remain in foster care must sign a consent form, once a year until they reach twenty-one, agreeing to abide by their plan for independent living. If they fail to sign the agreement, the individual will not be entitled to live in a state residential facility or receive services. At twenty-one years of age, unless the person has a mental or physical disability which would not allow them to live independently, the person “ages out” of foster care, and is not entitled to any services associated with the foster care system. After the age of 18, the young person is longer under the jurisdiction of the Family Court.

Appendix 2

Federal and State Law Affecting Foster Care

1. Existing Law Prior to ASFA

The Child Welfare Reform Act of 1979 (CWRA) was intended to have the effect of “averting an impairment or disruption of a family which will or could result in the placement of a child in foster care; enabling a child who has been placed in foster care to return to his family at an earlier time than would otherwise be possible; or reducing the likelihood that a child who has been discharged from foster care would return to such care”. (Footnote: SSL Section 409). The CWRA has four major interlocking components including preventive services, fiscal incentives, planning requirements, and a record keeping system.

The Adoption Assistance and Child Welfare Act of 1980 (AACWA) established Title IV-E funding of the Federal Social Security Act. The AACWA is, in large part, considered to be the law in New York that regulates federal funding for foster care, which is referred to by DSS workers as “Title IV-E”. In order for the state to receive matching funds for a child’s placement into foster care under Title IV-E, there must be a judicial determination that “reasonable efforts” were made to prevent or eliminate the need for removal of the child from his or her home. “Reasonable efforts” vary depending upon circumstances and the needs of the family, but usually consist of services provided in order to assist the parent in caring for the child.

Once in foster care, Federal law requires that the child’s foster care placement be subject to periodic court review. Prior to ASFA, the initial court review for an abused or neglected child and certain categories of juvenile delinquents were required to be held within the first twelve months of placement. For voluntarily placed foster children, PINS and some other categories of juvenile delinquents, the initial review was held within the first eighteen months of placement. The mandates of the AACWA and the CWRA are incorporated into New

York Law through the Social Services Law (SSL) and the Family Court Act (FCA). (SEE SSL Section 392(2); Family Court Act Sections 353 (5); 756-a, 1055).

2. The Adoption and Safe Families Act

On November 19, 1997, President Clinton signed into law the Adoption and Safe Families Act of 1997 (“ASFA”), Public Law 105-89. The President and the Congress characterized this bill as a major step to strengthening the child welfare system. ASFA is widely regarded as the most significant piece of federal child welfare legislation in twenty years, improving the child welfare system in response to children’s safety, need for permanency, and general well being. ASFA requires states to change standards and procedures in all areas of current foster care systems in order to remain eligible for federal funds under Titles IV-B and IV-E of the Social Security Act. The previous statutory requirements had been criticized by many people in government and social services who believe that the “reasonable efforts” requirement, in particular, resulted in the return of children to dangerous homes.

ASFA, therefore, represents a philosophical pendulum swing away from promoting family preservation and reunification toward safety and removal of the child from a potentially damaging family situation with quicker termination of parental rights.

A. Section 101 – Reasonable Efforts

ASFA continues the long-standing requirement that states make “reasonable efforts” to eliminate the need to remove children from their homes and, when possible, to reunify families. However, ASFA further provides that reasonable efforts to preserve and reunify families shall not be required where: (1) the parent has subjected the child to aggravated circumstances (as defined by state law); (2) the parent has committed certain violent crimes against the child or another child of the parent; or (3) the parent has had his or her parental

rights terminated with respect to a sibling of the child. ASFA leaves the definition of “aggravated circumstances” to the states in their enabling legislation.

If the court finds that reasonable efforts are not required for the reasons described above, a permanency hearing must be held within thirty days. In determining what reasonable efforts are necessary with respect to a child, and in carrying out such reasonable efforts, the child’s health and safety must be of paramount concern.

B. Permanency Hearings – Section 302

ASFA provides that the state must hold an initial permanency hearing for foster children, within twelve months of the date the child first entered foster care and every twelve months thereafter. At this permanency hearing, the court determines the appropriateness of the child’s permanency plan, including whether and when the child should be returned to the parent, placed for adoption, referred for legal guardianship, or placed in another planned permanent living arrangement.

Under prior law, permanency hearings were to be held within eighteen months for most categories of foster care children and the starting time was determined from the “date of placement”, a date usually later than “the date the child enters foster care” as identified by ASFA. Under ASFA, the child “enters foster care” on the date of the abuse or neglect finding or sixty days after removal, whichever is earlier. In addition to the earlier permanency hearings, the Act provides that certain persons must be given notice and an opportunity to be heard at the permanency hearing. This group includes any foster parent of the child, any pre-adoptive parent, or any relative providing care for the child.

C. Termination of Parental Rights – Section 103

In addition to earlier planning requirements, ASFA requires that termination petitions be filed where: a child has been in foster care for fifteen out of the last twenty-two months; a court determines a child to be abandoned; or a court determines a parent has murdered or committed voluntary manslaughter, or committed a felony assault that resulted in serious bodily injury.

A termination petition does not have to be filed if: the child is being cared for by a relative (at state option); the state has documented in the plan a compelling reason why it would not be in the best interests of the child to file a petition; or the state has not provided necessary services for the safe return of the child consistent with the time period in the permanency plan.

D. Concurrent Planning – Section 101(B)

ASFA provides that reasonable efforts to place a child for adoption or a legal guardianship may be made concurrently with reasonable efforts to reunify families. ASFA also authorizes the Secretary of Health and Human Services to provide technical assistance to states on encouraging adoptions, including models to encourage concurrent planning.

E. Criminal Background Checks – Section 107

ASFA requires states to provide procedures for criminal record checks for prospective foster care and adoptive parents who will receive foster care maintenance payments or adoption assistance payments on behalf of the child. States which adopt this provision must not approve any foster or adoptive parent for federal foster assistance payments when a background check reveals a felony conviction for child related offenses at any time or for a

felony conviction and other offenses that were committed in the past five years. States can opt out of this provision through state legislation or a letter from the governor to the Department of Health and Human Services.

F. Timing Requirements

States were required to pass enacting legislation complying with ASFA by November 19, 1997, except if a state had to enact legislation to implement certain state plan requirements in order to comply with the Act. In such situation, a state's legislation must become effective by the first day of the calendar quarter following the end of the first legislative session. If a state does not enact complying legislation within the required time period, state and local government will lose millions of dollars in federal aid for foster care under Titles IV-B and IV-E of the Social Security Act.

3. New York Enacting Legislation

New York's deadline for enacting ASFA legislation was January 1, 1999. However, the compromise bill was not passed and signed by Governor Pataki until February 11, 1999. Steve Christian, Senior Policy Specialist, Children and Families Program, National Conference of State Legislatures, which oversees states' legislative activity, indicated that New York's legislation was the "most controversial" of the fifty states. Political differences between the predominantly Democratic State Assembly and Republican controlled State Senate made it difficult to achieve a meaningful compromise. In the end, New York passed what has been described as "minimalist" legislation that basically parrots the statutory language requirement of ASFA. There are however, some clarifications and variations worth noting.

In accordance with ASFA, New York's legislation provides that, for all categories of foster children, the health and safety of the child is paramount when providing reasonable efforts to unify the family. New York enumerates the same circumstances under which reasonable efforts are not required as ASFA, including a situation in which "aggravated circumstances" exists. ASFA left the states to define "aggravated circumstances" and in New York's legislation, it is defined as "severe and repeated child abuse". Under the new New York legislation, if there is a determination of no need for reasonable efforts based upon aggravated circumstances, the TPR can be filed immediately. However, the court must wait one year before commencing a TPR and the actions of the parent during the course of that year are considered. New York law requires that a permanency hearing be held within twelve months of placement for all categories of foster care children – voluntary, PINS, JD and Article 10.

New York State law on termination of parental rights is also similar in language to ASFA. However the New York State legislation sets forth five specific circumstances in which there are "compelling reasons" for a TPR not to be filed: (1) the child is in care on a PINS or JD order; (2) the child has a permanency goal other than adoption; (3) the child is fourteen or older and will not consent to adoption; (4) there are insufficient grounds for a TPR; (5) the Article 10 disposition is still pending.

It is unclear whether these are the only examples of compelling reasons that can be cited, or if the court has the discretion to recognize others. This confusion was expressed by some of the participants at the Fordham Forum. There was a "wait and see" attitude regarding further clarification on what constitutes "compelling reasons" not to file a TPR. On the other hand, it is important to note that even if there is documentation of "compelling reasons," the judge may still order a filing of a TPR. Under (4) the judge still seems to have wide latitude to support family reunification and even thwart the time requirements of Section 103.

New York State has opted for the Criminal History Checks provisions set forth by ASFA. Criminal record checks will be made of all prospective foster and adoptive parents and all persons in the household over eighteen years of age. This includes all current certified and approved foster parents and all adoptive parents who have not completed the adoption process. New York now specifically prohibits a person from being a foster or adoptive parent if: (1) they have any felony conviction for child abuse, neglect, spousal abuse, crime against a child, or child pornography; (2) any felony conviction of the foster or adoptive parent involving violence including rape, sexual assault or homicide but not including physical assault or battery unless that was within the last five years; (3) any drug related offense of the foster or adoptive parent within the last five years.

New York's legislation contains no additional funding for the courts or for DSS for increased services. The New York legislation is effective on the date of passage, but it is clear that actual implementation of the provisions may take a year or more.

Many of those interviewed by the Committee had particular concerns about the effect of the shortened timeframes and changes in TPR contained in New York's legislation. Glenda Bryan, a caseworker for DSS, felt that, the new legislation requiring that a termination proceeding be instituted if a child has been in foster care for fifteen of the last twenty-two months does not take into consideration the realities of the process of recovery of the parent. In Ms. Bryan's experience, a person in drug rehab often relapses at least once before being able to recover completely. If this occurs, she will not have the time to bounce back before a termination proceeding goes forward. Glenda Bryan also felt that the new legislation would create more "legal orphans", because many older children whose parents' rights have been terminated would not be adopted and therefore, would continue in the system with no parents and no hope for any parents.

Ted Salem indicated that the new legislation might give DSS more leverage to influence birth parents to change. Under this reasoning, the abbreviated time frames will motivate parents to obtain services earlier and make them more committed to recovery. Kenneth Bunting said that rules must be clear about what birth parents must do within a set

time frame in order to avoid termination of rights. Only with full disclosure to the birth parents will this mandate be fair and effective.

Foster parents interviewed had different views on the requirements of the new legislation. Although all three women agreed that the system takes too long and children suffer because of it, two believed that giving a birth parent fifteen to twenty-two months to get her “act together” was enough. Another foster mother disagreed, stating that every birth mother’s situation is different and that makes it hard to have a cut off time.

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