



Court Performance Measures in Child Abuse and Neglect Cases

Assessment Guide



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Court Performance Measures in Child Abuse and Neglect Cases: Guide to Judicial Workload Assessment



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Foreword

There are few acts that are more tragic than the abuse and neglect of children. Americans are a compassionate people, and the protection of children from those who would take advantage of their innocence and vulnerability understandably lies close to their hearts.

Sharing a long history of serving our Nation's children and an abiding commitment to promoting their welfare, it is only natural that the U.S. Department of Justice's Office of Juvenile Justice and Delinquency Prevention and the U.S. Department of Health and Human Services' Children's Bureau would join in this cause. After all, the children we seek to help are often one and the same, and, if we are to make a difference in their lives, it is essential not only to see each child as a whole person, but to act collaboratively with that understanding in mind.

The *Toolkit for Court Performance Measures in Child Abuse and Neglect Cases* is a significant product of this collaboration. Performance measurement is, to be sure, only a part of what needs to be done, but it is a vital part.

If we are to succeed in our efforts on behalf of children, we must know where we have been. In other words, we must objectively measure the effects of our activities and determine what works and—what is equally important—what does not.

The *Toolkit* has been designed and tested to provide practical and comprehensive guidance to the critical task of measuring court performance in child abuse and neglect cases. It is my hope and conviction that it will assist its users not only in undertaking performance measurement, but in enhancing the efficiency and effectiveness of the court's crucial role in our common mission: promoting the well being of every child.

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About the Toolkit

Performance Measurement: A Critical Need

Developing objective and qualitative measurements of practice is essential to a court's capacity to improve the effectiveness and efficiency of its operations and to sustain those improvements. Like child welfare agencies, juvenile and family courts must focus not only on the timeliness of case processing and decisionmaking, but also on the quality of the process and the outcomes resulting from the court's efforts.

Courts must focus on child safety by assessing their safety performance data and developing plans for improving the safety of children under their jurisdiction. Courts also must focus on ensuring secure, permanent homes for children in foster care and must improve their effectiveness in achieving permanency. In addition, courts need to determine how well they are protecting the rights of the children and adults who come before them. Finally, courts need to set aspirational performance goals in each of these areas—goals designed to focus efforts, motivate staff, evaluate achievements, and lead to better outcomes for children and families.

Few courts currently have the capacity to effectively measure their performance in child abuse and neglect cases. Whereas for-profit businesses have long taken for granted the need for performance measurement, it is still a relatively new concept for the Nation's courts. Yet, without this essential information, courts with jurisdiction over abuse and neglect cases cannot know what types of improvements they need to make and whether their efforts to improve are working.

Performance measurement makes it possible for courts to diagnose and assess areas in need of improvement and review progress in those areas. In this process, courts build improvements from a baseline of current practices and then conduct regular reassessments as reforms are implemented.

The purpose of the measures in the *Toolkit for Court Performance Measures in Child Abuse and Neglect Cases* is to help courts establish their baseline practices; diagnose what they need to improve; and use that information to

make improvements, track their efforts, and identify, document, and replicate positive results.

By capturing data for the 30 measures in the *Toolkit*, courts will be able to evaluate four areas of operation: child safety, child permanency, due process or fairness, and timeliness.

- ◆ **Safety (Measures 1A and 1B).** The goal of these two measures is to ensure that children are protected from abuse and neglect while under court jurisdiction. The performance outcome promoted by these measures is based on the principle of “first, do no harm.” Children should be protected from abuse and neglect, no child should be subject to maltreatment while in placement, and children should be safely maintained in their homes whenever possible and appropriate.
- ◆ **Permanency (Measures 2A–2E).** The goal of these five measures is to ensure that children have permanency and stability in their living situations. The permanency measures are closely related to timeliness measures but also include additional considerations. With this category, courts assess whether children change placements, whether cases achieve permanent legal status, and whether children reenter foster care (a possible safety issue as well). The permanency measures encourage courts to examine the “bigger picture” of the court experience for the abused or neglected child. In using the permanency measures, a court will need to obtain information from partner agencies such as the State child welfare system or private providers who track children placed in foster care.
- ◆ **Due Process (Measures 3A–3J).** The goal of these 10 measures is for the court to decide cases impartially and thoroughly based on evidence brought before it. Due process measures address the extent to which individuals coming before the court are provided basic protections and are treated fairly.
- ◆ **Timeliness (Measures 4A–4M).** The goal of these 13 measures is to minimize the time from the filing of the petition or emergency removal order to permanency. Courts generally are most familiar with timeliness measures. These measures help courts identify areas where they are doing well and areas



where improvement is needed. To ensure that courts can pinpoint specific stages of the hearing process in need of improvement, these measures must be comprehensive (applied to all stages of proceedings) and sufficiently detailed.

None of the measures includes a standard or benchmark of performance. Rather, the measures suggest a base of experience from which to develop reasonable and achievable benchmarks. The measures are designed to help courts improve services to maltreated children and their families, and it is important for courts to measure their progress toward achieving that goal. The measures are intended to be part of a process of continuing improvement. They are also intended to be developmental; that is, the measures can be refined as more is learned about the factors associated with a model process for handling child abuse and neglect cases.

The developers of the *Toolkit* expect courts to collaborate with child welfare agencies in applying these measures; for this reason, the court performance measures in the *Toolkit* are designed to be compatible with the Child and Family Services Review (CFSR) outcome measures developed for child welfare agencies. The *Toolkit* developers encourage courts to work with child welfare agencies to establish not only minimum acceptable standards of performance but also aspirational goals that challenge both stakeholders to improve even further.

The national court performance measures also reinforce the goals of other current Federal reform programs and legislation, including the Court Improvement Program (CIP) and the Adoption and Safe Families Act (ASFA). These initiatives recognize that courts, as well as State child welfare agencies, are crucial stakeholders in achieving positive outcomes for maltreated children who become involved in the child welfare system. Court performance has an impact on overall system performance in achieving safety and permanence for these children in a fair and timely manner.

History of the Performance Measures

The history of court performance measurement for child abuse and neglect cases began with a miniconference held in Scottsdale, AZ, on May 5, 1998. The miniconference was cosponsored by the Court Improvement Conference and the Conference of State Court Administrators' Court Statistics Project Advisory Committee. Participants worked with the following resource materials:

- ◆ Trial court performance standards and measurement system (prepared by the National Center for State Courts (NCSC) and funded by the Bureau of Justice Assistance (BJA)). These standards touched on five fundamental purposes of courts: access to justice; expediency and timeliness; equality, fairness, and integrity; independence and accountability; and public trust and confidence. Although general trial court standards could be applied to juvenile and family courts, miniconference participants perceived a need for measures and standards tailored specifically to child abuse and neglect cases.
 - ◆ Draft sets of child abuse and neglect performance measures developed by the American Bar Association (ABA) Center on Children and the Law, NCSC, and Walter R. McDonald & Associates, with comments and suggestions from the National Council of Juvenile and Family Court Judges (NCJFCJ).
 - ◆ A set of measurement goals from the National Court-Appointed Special Advocates Association.
 - ◆ Best practice recommendations for handling child abuse and neglect cases, outlined by NCJFCJ in *RESOURCE GUIDELINES: Improving Court Practice in Child Abuse and Neglect Cases*.
 - ◆ Technical assistance bulletins on information management in child abuse and neglect cases and judicial workload assessment in dependency cases, developed by NCJFCJ.
- Miniconference participants summarized key performance measures for dependency courts in a consensus statement, which was then presented in the following forums:
- ◆ To participants in the ABA Summit on Unified Family Courts, May 1998.
 - ◆ To child welfare professionals at the Permanency Partnership Forum, June 1998.
 - ◆ To managers of statewide automated child welfare information systems at the conference "Continuing To Build the Future: Using Automation for Children and Families," September 1998.
 - ◆ To juvenile and family court judges at the NCJFCJ Annual Conference, July 1998.
 - ◆ To judges, court administrators, and child welfare workers at "Improving Outcomes for Abused and Neglected Children," a symposium sponsored by the Bureau of Justice Assistance and the David and Lucile Packard Foundation, June 2000.

In addition, Dr. Ying-Ying Yuan prepared a critique of the performance measures in a September 1999 report for the ABA entitled “Feasibility of Implementing Court Self-Assessment Measures for Dependency Cases.”

The measures were then revised to reflect input from these sources, and the revisions were summarized by Dr. Victor E. Flango in an article entitled “Measuring Progress in Improving Court Processing of Child Abuse and Neglect Cases” (*Family Court Review*, Volume 39, pp.158–169, April 2001).

In their present form, the court performance measures in the *Toolkit* grew out of the Attaining Permanency for Abused and Neglected Children Project, conducted jointly by the ABA Center on Children and the Law, NCSC, and NCJFCJ, with funding from the David and Lucile Packard Foundation. Over a 3-year period, these measures were pilot tested to determine their applicability in different types of courts with different measurement needs and data collection capabilities. The measures were also examined for compatibility with the CFSR outcome measures for child welfare agencies. One result of this effort was the 2004 publication *Building a Better Court: Measuring and Improving Court Performance and Judicial Workload in Child Abuse and Neglect Cases*. This publication described dependency court performance measures for safety, permanency, due process, and timeliness. It also outlined a process for assessing judicial workload that encompasses both on-the-bench and off-the-bench aspects of dependency work.

The Children’s Bureau Project

After publishing *Building a Better Court*, the ABA, NCSC, and NCJFCJ received funding from the Children’s Bureau of the U.S. Department of Health and Human Services to support efforts by courts to improve their handling of child abuse and neglect cases. The Children’s Bureau project provided targeted technical assistance to six sites: Charlotte, NC; Clackamas County, OR; Little Rock, AR; Minneapolis, MN; New Orleans, LA; and Omaha, NE. During this project, the partnering organizations were able to test and refine the court performance measures, and data collection instruments at these sites.

The Children’s Bureau project helped the six sites do the following:

- ◆ Use the performance measures outlined in *Building a Better Court*—compatible with Adoption and Foster

Care Analysis and Reporting System (AFCARS) and CFSR measures—to assess their performance in abuse and neglect cases. This included evaluating each site’s capacity to generate data for each of the performance measures.

- ◆ Examine judicial workloads to determine whether judges were able to spend enough time on child abuse and neglect cases to make timely and well-considered decisions in these cases. The partnering organizations disseminated information about and provided technical assistance in judicial workload assessment.
- ◆ Develop a court-specific strategic plan for using performance and workload data to achieve increased accountability and better court performance.

A major goal of the Children’s Bureau project was to enhance the sites’ self-assessment capacity so they would be able to track and measure their own progress after their involvement in the project ended. This strengthened capacity also makes the sites better able to assess their ASFA compliance and CIP implementation. The project sought to enable project sites—and eventually all courts handling abuse and neglect cases—both to begin a process of continuing self-improvement and to help child welfare agencies determine the impact of court proceedings on achievement of CFSR outcomes.

The Strengthening Abuse and Neglect Courts Act Project

While the Children’s Bureau project was underway, the ABA, NCSC, and NCJFCJ received funding from the U.S. Department of Justice’s Office of Juvenile Justice and Delinquency Prevention (OJJDP) to help courts use automated management information systems to improve their performance in child abuse and neglect cases. The Strengthening Abuse and Neglect Courts Act (SANCA) project supported SANCA implementation in six States: Colorado, Florida, Georgia, Idaho, New Jersey, and Virginia.

At each site, the SANCA project partners helped improve automated management information systems, implement performance measurement, develop case-tracking capabilities, and perform other management information system functions specifically for child abuse and neglect cases. The SANCA project provided this assistance through meetings of representatives from all SANCA sites, onsite training and technical assistance to each site, and offsite consultation.

The SANCA project has not focused on improving court information systems as an end in itself. Rather, the focus has been on improving these systems in ways that will have the greatest positive impact on efforts to improve quality and timeliness in courts' handling of abuse and neglect cases, to target reforms for court improvement efforts, and, ultimately, to improve the lives of abused and neglected children.

The Toolkit Volumes

All the aforementioned work has culminated in the production of the *Toolkit for Court Performance Measures in Child Abuse and Neglect Cases*. The *Toolkit* content is informed by the experiences of the Children's Bureau and SANCA project sites.

In addition to providing detailed guidance about court performance measures for child abuse and neglect cases, the *Toolkit* offers a general approach—a way of thinking—that can help dependency courts successfully implement a performance measurement process. Using the *Toolkit*, dependency courts can:

- ◆ Establish a baseline of current practice, diagnose what they need to improve, and use that information to build and track improvement efforts.
- ◆ Measure their progress in achieving the goals of safety, permanency, and well-being for children.
- ◆ Identify and document practices that are achieving positive results and replicate those results.

The *Toolkit* includes the five volumes described below. Although each volume focuses on a particular audience, the *Toolkit* developers encourage everyone involved in court performance measurement for abuse and neglect cases to consult all the volumes for instruction, guidance, and inspiration.

Court Performance Measures in Child Abuse and Neglect Cases: Key Measures. This booklet outlines nine measures that the national partners have identified as key to determining court performance in child abuse and neglect cases. The booklet succinctly discusses the goal of each measure, data requirements, calculation and interpretation, and important related measures. It is an ideal tool for making the case for performance measurement to legislators, funders, and other high-level decisionmakers.

Court Performance Measures in Child Abuse and Neglect Cases: Implementation Guide. This step-by-step

guide provides practical advice on how to set up a performance measurement team, assess capacity (determine which measures the team can currently implement and which measures will require capacity building), prioritize among measurement needs, plan data collection activities, and use the data generated through the performance measurement process to plan reforms. The *Implementation Guide* uses examples from the Children's Bureau and SANCA project sites to illustrate key points. It also highlights lessons learned from the sites about performance measurement approaches, as well as challenges and strategies for overcoming those challenges. Performance measurement teams and project managers will find the *Implementation Guide* helpful as they plan and implement a performance measurement program and use results to drive improvement efforts.

Court Performance Measures in Child Abuse and Neglect Cases: Technical Guide. This comprehensive volume describes all 30 court performance measures for child abuse and neglect cases. The *Technical Guide* details the goals and purpose of each measure, discusses alternate or proxy measures, provides step-by-step specifications for calculating the measures, articulates what data elements need to be collected to produce each measure, suggests ways to present data effectively, and provides examples of how data obtained for each measure can be used in reform efforts. The *Technical Guide* also includes a detailed dictionary of technical terms and a flowchart outlining the typical child abuse and neglect hearing process. This volume is ideal for project managers and information technology (IT) staff tasked with obtaining performance measures. It will give them an in-depth understanding of all the measures, what is needed to obtain data for the measures, and how to report findings in a way that is easily understood by various target audiences.

Court Performance Measures in Child Abuse and Neglect Cases: User's Guide to Nonautomated Data Collection. Some courts may lack automated systems for gathering performance measurement data on abuse and neglect cases. Even if a court has adequate automation resources, certain performance measures (such as those assessing due process) may not be captured via automated systems. Furthermore, qualitative information can help to explain quantitative outcomes. This volume explains how to use nonautomated data collection methods—such as file review, court observation, interviews, and focus groups—to complete the performance measurement picture.

Court Performance Measures in Child Abuse and Neglect Cases: Guide to Judicial Workload Assessment. To improve their handling of abuse and neglect cases, courts need to be able to measure workloads as well as performance. Measuring judicial workloads makes it possible for courts to track existing resources and argue persuasively for additional resources when they are needed. This volume presents a method for obtaining data on judicial workloads in abuse and neglect cases which includes an assessment of what is required for best practice in these cases. Drawing on work from the pilot project sites, this volume discusses different approaches to workload analysis and provides tools for conducting analyses.

Toolkit DVD and Web Site

All *Toolkit* publications and related materials, such as presentations and instruments, are available on DVD and at www.courtsandchildren.org.

Acknowledgments

In developing this *Guide to Judicial Workload Assessment*, we reviewed studies conducted during the Packard Grant and the article in *Building a Better Court: Measuring and Improving Court Performance and Judicial Workload in Child Abuse and Neglect Cases* (2004). These earlier products were jointly developed by the American Bar Association (ABA), the National Council of Juvenile and Family Court Judges (NCJFCJ), and the National Center for State Courts (NCSC).

Most of the information in this guide is based on what we learned while working with a few courts supported by the Strengthening Abuse and Neglect Courts Act and Children's Bureau projects—Clackamas County, Oregon, and Pulaski County, Arkansas. We particularly thank Judge Dianne Darling from Clackamas County and Judges Wiley Branton, Rita Gruber, and Joyce Warren of Pulaski County. We are greatly indebted to several people in the Oregon Judicial Department—Nancy Miller, former Deputy State Court Administrator for Program Operations; Timothy Travis, Staff Counsel for Juvenile Law; Leola McKenzie, Assistant Director, Court Programs and Services Division; and Lynn Travis, former Juvenile Court Improvement Project Model Court Coordinator. We are equally indebted to Connie Hickman Tanner, Director of Juvenile Courts, Arkansas Administrative Office of the Courts (AOC), and Teri Hays, AOC Attorney *Ad Litem* Coordinator. Others who assisted with court observations in Arkansas included Donna Gay, AOC Staff Attorney; Marjorie Kesl, Attorney *Ad Litem*; Lisa McGee, Assistant Chief Counsel, Office of Chief Counsel; Lynn Pence, Attorney and Parent Counsel with the Center for Arkansas Legal Services; and Jennifer Keith Ferguson, Operations and Legal Director for Arkansas Advocates for Children and Families. We value and appreciate the experience of having worked with all of these individuals.

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The responsibility for sins of omission or commission, however, is solely ours.

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Contents

FOREWORD iii

ABOUT THE TOOLKIT v

ACKNOWLEDGMENTS xi

CHAPTER 1: INTRODUCTION 1

CHAPTER 2: THE JUDICIAL TIME LOG 9

CHAPTER 3: COURT OBSERVATION 13

CHAPTER 4: A DELPHI PROCESS 17

CHAPTER 5: CONCLUSIONS 19

ENDNOTES 25

APPENDIXES

- Appendix A: Judicial Time Log Worksheet 27
- Appendix B: Instructions to Judges for Completing Judicial Time Log Worksheet 29
- Appendix C: Judicial Workload Activity Code Sheet 31
- Appendix D: Court Observation Tool 33
- Appendix E: Instructions to Observers and Project Administrators for Conducting Court Observations 47



Introduction



This publication describes the design and use of a set of tools to help determine appropriate workloads for judges who hear child abuse and neglect cases.¹ This chapter examines:

- ◆ How new legal duties have increased the responsibilities of judges in dependency cases.
- ◆ Why it is important for workload analysis in child abuse and neglect cases to consider the amount of time it takes judges to comply with legal requirements and practice standards.
- ◆ What are the sources of law and practice standards in child abuse and neglect proceedings.
- ◆ What are the goals that shaped the preparation of these workload analysis tools.

Increasing Responsibilities of Courts in Child Protection Cases

Increasingly over the past 30 years, Congress and State legislatures have assigned important roles to the courts in child abuse and neglect cases. Lawmakers have expanded the courts' role in these cases as they have increasingly looked to courts to protect abused and neglected children. State and Federal legislation requires courts to oversee case planning for each child in foster care and to help ensure that foster children are placed in safe, permanent homes. Because of that legislation, judges must spend much more time on each case to faithfully implement the law.

Courts, however, have lagged in adjusting the workloads² of judges and other judicial officers³ to enable them to fulfill these additional new responsibilities. Many courts have not determined how many judges are needed to fulfill the letter and spirit of these mandates. Furthermore, the composition of court staff and the number of judicial officers are evolving as courts consider how best to process cases. The workload of these personnel is also critical.

Exhibit 1–1 shows some of the questions and issues that typically arise during child abuse and neglect hearings and the expansion of those issues during the past 30 years.

Exhibit 1–2 shows how more recent Federal mandates, especially after the enactment of the Adoption and Safe Families Act of 1997 (ASFA), have contributed to this trend.

Some of the trends contributing to the expansion of the role of the judiciary in child abuse and neglect cases are described below. Issues to be addressed by judges in child abuse and neglect cases have expanded in several ways.

First, judges must increasingly focus on achieving permanency for abused and neglected children. This focus now includes prevention of unnecessary placements in foster care, reunification of foster children with their families when appropriate, and timely finalization of new permanent placements for children who cannot return home within a reasonable time. Judges not only must oversee agency casework and services related to their attempts to achieve each of these goals but also must make judicial findings about the reasonableness of State efforts to accomplish each goal.

Second, judges have more responsibility to ensure children's safety and well-being. Recent Federal and State statutes require judges to focus more intensively on safety.⁴ Case plans now must address educational, medical, and mental health services for children; in most States, judges review the plans when they are formulated and periodically review the implementation of such plans.

Third, legal representation has expanded in child abuse and neglect cases. Attorneys are increasingly involved throughout the entire judicial process, instead of only during selected hearings. Further, additional parties who are generally represented by counsel are involved in the litigation. For example, noncustodial parents and putative fathers are increasingly represented by separate counsel. In addition, growing sensitivity to conflicts of interest leads to the involvement of additional attorneys. For example, more courts are appointing separate counsel for both parents, even those living together. The American Bar Association (ABA) now has demanding performance standards for attorneys representing all parties; as part of these standards, judges are asked to help ensure competent representation.

Exhibit 1–1. Issues Typically Resolved by Juvenile Courts in Abuse and Neglect Cases

1978	2008
Validity of allegations Custody, if allegations proven	Need for emergency placement Sufficiency of efforts to prevent placement Necessity of emergency relief other than placement (e.g., removal of perpetrator) Validity of allegations Custody, if allegations proven Visitation Sufficiency of case plan Sufficiency of efforts to implement case plan Sufficiency of efforts to reunify family Whether efforts to reunify the family are required Applicability of Indian Child Welfare Act (ICWA) and, if ICWA applies, issues such as tribal court jurisdiction Child’s long-term legal status (permanency hearing) Termination of parental rights Legal guardianship Sufficient efforts to place the child for adoption Approval or disapproval of adoption

Exhibit 1–2. New Federal Duties Imposed on Juvenile Courts Since the Enactment of ASFA

- ◆ Decisions about whether services to preserve or reunite families are required.
- ◆ Case-specific findings regarding the need to remove children from their homes.
- ◆ Case-specific findings regarding reasonable efforts to prevent unnecessary foster care placement, reunify families, and achieve permanency for children who cannot return home.
- ◆ Earlier and more tightly structured permanency hearings.
- ◆ Mandatory petitions for termination of parental rights.
- ◆ Rights of foster parents, preadoptive parents, and relative caregivers to appear in court and participate in hearings.
- ◆ Efforts to ensure timely interstate placements.
- ◆ New procedures to facilitate interstate litigation in foster care cases.

Fourth, additional and more stringent time limits have been imposed on the judicial process in child protection cases. Judicial time limits, which once applied to limited stages of the court process, now apply to more hearings at more stages of the process. The current trend is to apply time limits to every stage of the judicial process, including

termination of parental rights and adoption. Furthermore, judicial time limits are typically shorter than they used to be, allow fewer exceptions, and are enforced by some judges with increasing rigor.

Fifth, as explained above, additional parties (such as noncustodial parents and putative fathers) are increasingly

involved in the court process. More nonparty participants are increasingly involved as well, including court-appointed special advocate (CASA) volunteers and service providers. Federal legislation enacted in 2006 strengthened the role of foster parents in child abuse and neglect cases. Courts

must now ensure that foster parents receive notice of hearings and permit foster parents to participate in hearings. Exhibit 1–3 shows the increase in the types and frequency of hearings involving foster children during the past 30 years.

Exhibit 1–3. Typical Sequence of Hearings for Child in Foster Care Who Cannot Be Returned Home

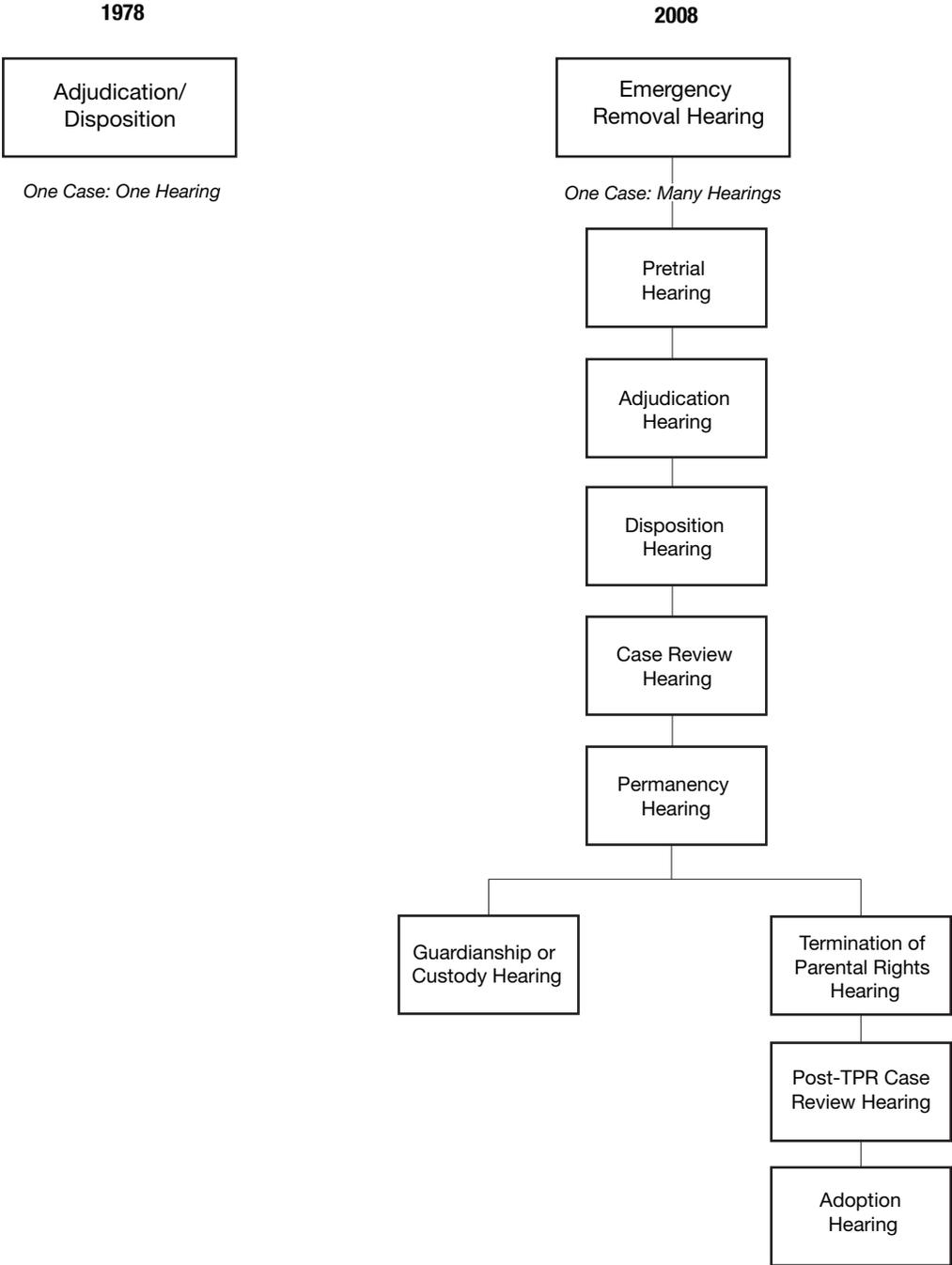


Exhibit 1–4. Typical Participants in Child Protection Cases

1978	2008
Caseworker Custodial parent(s)	Caseworker Custodial parent(s) Noncustodial or putative parent Separate attorney for each parent Child’s attorney or guardian <i>ad litem</i> * Agency attorney CASA volunteers* Foster parents Preadoptive parents Relative caregivers <i>*In some States or jurisdictions, they do not frequently participate in hearings.</i>

Exhibit 1–4 shows how the number and types of participants at most hearings have grown during the past 30 years.

In summary, although some courts have increased the amount of time that judicial officers can devote to each child abuse and neglect case,⁵ the number of judges is still insufficient to enable them to meet legislative requirements for handling child abuse and neglect cases. Based on recent State Court Improvement Program (CIP) reassessments,⁶ it is clear that many judges still cannot fulfill the letter and spirit of important Federal and State requirements. This is true, in part, because of the time required to implement recommended standards of practice during hearings.⁷ The result of these new legal requirements is widespread difficulty in complying with the requirements and in following best practices identified by leading judicial and attorney organizations. Because of the strain on judicial officers, lawyers, and court staff, some courts have become accustomed to truncated case review hearings, unprepared attorneys, and a lack of case-specific findings for simple uncontested hearings.

Why Appropriate Workloads Are a Key to Court Improvement

Judicial officers, attorneys, and court staff need manageable workloads so they can do a good job of hearing child abuse and neglect cases. Although adequate levels of judicial staffing do not ensure well-run courts, a competent judicial process is not possible without adequate staffing.

Judges with excessive workloads cannot carefully review their files to prepare for hearings. In child abuse and neglect litigation in most States, child protection agencies submit lengthy written reports (often with many attachments) prior to most substantive hearings. These reports typically describe the current circumstances of the child and family, explain any changes since the last hearings, outline the agency’s efforts to rehabilitate the family unit (if applicable), and frame issues for the court. When judicial officers do not have sufficient time to review these reports and other documents,⁸ hearings lack focus. Judges with excessive caseloads are forced either to scan complicated reports immediately before the hearing or not read them at all, and thus can miss issues important to children and families.

Judges with excessive workloads cannot schedule and complete hearings within reasonable timeframes. Crowded judicial calendars can force judges to set hearings, especially contested hearings, months in the future. This causes agencies and courts to miss legal deadlines, and delays the achievement of permanency for children and families. Although other important factors (such as judicial scheduling practices) also contribute to court delay, excessive judicial workloads are often a major factor.⁹

Additionally, judges with excessive caseloads cannot take sufficient time to communicate effectively with all of the parties involved, especially parents and older children. When this happens, the parties often fail to understand the litigation. Many parents who come before the court in child

abuse and neglect cases may not have a high school education, and often they cannot read. Further, English may be their second language.

Unless the judicial officer takes time to explain and to ask questions, even well-educated parties may not understand or remember what has happened when each hearing ends.

Overburdened judicial officers often cannot monitor case progress as the law requires. As shown in State court assessments and reassessments, a major reason for case delays in many courts is the lack of timely delivery of assistance and services to parties, which can make it impossible for courts to set case goals during permanency hearings as required by law.¹⁰ Delays in service delivery also often delay legal proceedings to free the child for permanent placement.¹¹

With proper workloads, judicial officers can help ensure that they receive confirmation of timely service delivery and, if not, they can schedule special court proceedings to determine and attempt to correct the causes of delays in service. Although improved judicial workloads are no guarantee that judges will limit service delays, they enable judges who have the proper skills and motivation to do so more effectively. Judges who rush through hearings are more likely to slight key issues that studies have shown are critical to successful family reunification, such as timely notice to all parties and visitation.

Finally, after hearings are completed, judicial officers with excessive caseloads cannot prepare timely court orders or appropriately detailed findings. It is important that judges prepare and distribute court orders at the conclusion of court hearings. This helps ensure that all parties clearly understand what is expected of them when they work together toward the case goal.

Such court orders should include certain specific findings, such as the legally required “contrary to the [interests] finding” when children are removed from home,¹² “reasonable efforts findings” following the child’s removal¹³ and at least once every year thereafter,¹⁴ and case review determinations.¹⁵

Detailed court orders are essential to help the judge create an accurate record that can be the basis for further hearings and legal proceedings, such as termination of parental rights. Court forms that list the elements of case-specific findings can help focus judicial attention on critical issues and enhance accountability for later performance.

In summary, although providing judges with sufficient time will not ensure that the practices mentioned above will improve, improvements in these practices cannot occur without sufficient time. When combined with other reform efforts, additional time can be an important factor in achieving critical court improvements.

Sources of Practice Standards

Given that excessive workloads contribute to the widespread gap in many jurisdictions between statutory requirements and practice, it is critical to analyze how much time is needed to implement specific key legal requirements. Likewise, it is important to take into account judicial practice standards, i.e., practices needed to enable judicial officers to fulfill the law’s spirit as well as its letter.

Fortunately, the Nation’s leading legal professional organizations have described such judicial practice standards. These standards are described in the *RESOURCE GUIDELINES*,¹⁶ which have been endorsed by the officers and Board of Trustees of the National Council of Juvenile and Family Court Judges, the ABA, and the Conference of Chief Justices. The *RESOURCE GUIDELINES* address the following for each of the key types of court hearings:

- ◆ The purpose of the hearing.
- ◆ The persons who should be present at the hearing.
- ◆ The issues the court should address at the hearing.
- ◆ The key decisions the court should make at the hearing.
- ◆ The content of the courts’ findings at the hearing.
- ◆ The duration of key court events to fully address issues.

Workload analysis can take into account the judicial standards and time estimates regarding the length of hearings described in the *RESOURCE GUIDELINES*. The requirements set forth in Federal and State laws and court rules are also important, as are the *ADOPTION AND PERMANENCY GUIDELINES*,¹⁷ which address additional functions required by ASFA. Workload studies could assist in future revisions of these documents by obtaining additional information from a variety of courts in different settings about how long it takes to conduct specific types of hearings when following these practice standards and fully complying with legal requirements.

Goals of Workload Analysis for Child Abuse and Neglect Cases

To reduce judicial workloads so that full compliance with the law and the implementation of judicial practice standards can be achieved, concerns voiced about workload should be based on strong logic and supporting data.

Recommendations resulting from a methodical workload study (and eventually flexible workload standards) can lend authority to legitimate requests for more judges (or, in the future, for other court personnel). For caseworkers, the Child Welfare League of America caseload standards have been a great help in dramatically reducing worker caseloads during the past 30 years. When complaints are made about a child welfare agency's errors or delays, it can be effective to argue that those errors or delays are caused by excessive worker caseloads, as shown by the agency's inability to comply with national caseload standards.

To better enable compliance with the law and fuller implementation of recommended standards of practice, workload analysis should do more than ensure more equitable distribution of judicial resources within or among judicial districts. Such an analysis should help judges achieve a high quality of decisionmaking. Thus, workload analysis should:

- ◆ Focus on the time needed to comply fully with the law.
- ◆ Take into account key standards of practice.
- ◆ Be objective and call for change only when needed.

To develop a comprehensive method to analyze judicial workloads in child abuse and neglect litigation, courts must address not only how much time is needed to handle cases but also how much time is needed to handle other aspects of the court's business. The term "workload" takes into account all of the types of work a judicial officer is expected to handle. Caseload analysis only addresses how many *cases* a judicial officer, attorney, or court employee should be expected to handle. Workload analysis calculates not only caseloads but also the time needed for non-case-related judicial activities.

Accordingly, judicial workload studies for child abuse and neglect litigation should answer the following questions:

- ◆ How much time does it take to conduct various types of hearings in child abuse and neglect cases that comply with practice standards and legal requirements?

- ◆ How much time is needed for judges to perform case-related work outside of court?
- ◆ How much time is needed for non-case-related activities?
- ◆ How can accurate estimates of the number of judges needed for a court be generated based on these data and taking into consideration the special off-the-bench responsibilities of dependency court judges?

Pilot Studies in Which the Tools Were Developed

This study is based on two pilot court studies to develop and test an experimental approach to evaluating judicial workload needs in child abuse and neglect cases. It was hoped that these pilot studies would develop and refine a methodology for future use. These two pilot studies in fact led to the development of the tools presented in this volume.

The two pilot studies focused exclusively on courts largely hearing child abuse and neglect proceedings (in these courts only child abuse and neglect, juvenile justice, and a small proportion of other domestic relations proceedings are heard). The studies included the judges actually hearing these child abuse and neglect cases and their support personnel, including assistants, bailiffs, and computer data entry staff.

The analysis in each pilot court was performed in two phases. In the first phase, current practice regarding the completeness of hearings and the amount of time taken by the court for different activities was measured. "Completeness of hearings" refers to the level of adherence to national practice standards and legal requirements for child abuse and neglect cases.

In the second phase, the courts and the study team tried to create conditions that would allow for more complete hearings. That is, the State and local courts arranged for more time to be available for each court hearing. The study team instructed judges about how the completeness of hearings would be measured and, as appropriate, the meaning of the identified practice standards and legal requirements.

The purpose of the two phases was to test the impact of the training and of the expanded availability of time on the completeness of the hearings. In addition, the

measurement of current practice in the first phase established a baseline from which to determine whether improvements could be made. Having two phases in future studies can be useful in demonstrating the effectiveness of the baseline conditions; however, as noted in the discussion of the use of the judicial time log and the court assessment tool in the next two chapters, it also increases the amount of time needed to collect workload data. We anticipate that future research in conjunction with courts will help to refine effective and efficient study methods, which will reduce some burden on participants.

Tools for Judicial Workload Analysis

The next two chapters discuss two main tools used in workload analysis—time log data collection and observation of courtrooms. A fourth chapter discusses the use of a Delphi process to build consensus among dependency court judges as to the optimal length of time needed for both in-court and out-of-court activities. A concluding chapter suggests implementation strategies to adapt these tools to specific situations.

The Judicial Time Log

This chapter focuses on the use of an instrument (tool) to measure the amounts of time judges spend on specific types of activities in child abuse and neglect proceedings. Information about times actually involved in specific court events (such as types of hearings and many other types of court activities), when combined with evaluations of how well and fully these events are accomplished, is invaluable to learning how much time is needed to *effectively* conduct such events so as to fulfill the letter and spirit of State and Federal requirements.

What Can Completion of the Judicial Time Log Accomplish?

A critical component of any workload study is the calculation of the average time spent on each work event. This can be done by asking judges to keep a time log (see below), taking measures of in-court time recorded by observers or court staff, using audio or video equipment that measures time, obtaining estimates derived from a panel of judges working iteratively, or a combination of these approaches.¹⁸

The judicial time log provided in this volume is a tool for capturing the actual time spent by judges hearing child abuse and neglect cases on various activities on a daily basis for a designated period of time. Time logs can be used to capture both on-the-bench activities and off-the-bench case-related and non-case-related judicial time.

In the two study sites for the *Toolkit* project, time logs were designed to be completed under two sets of conditions: The first phase established a baseline of current practice, and phase two occurred after judges completed a tutorial that provided instruction about the completion of time logs and reviewed mandated and nationally recommended standards of practice.

During the second phase, fewer hearings were scheduled so that judges could accommodate these recommended practices. Because the time log includes all work time spent during the course of the day and week, it captures the proportion of all work time spent on each activity, not just the total amount of time. The time log also notes non-work-time gaps, such as sick time, vacation, and holidays, so that a realistic estimation of available time can be made. Also, time spent on work that is not specifically related to the judges' in-court activities or specific cases, such as administrative time and training and educational activities, is captured.

Practice Tip: Although time logs provide comprehensive information about both on-the-bench and off-the-bench time, requiring judges to keep accurate time logs can be very demanding. Some alternative approaches can be explored—for example, a sampling of the types of hearings in which it is most important to measure time can be obtained, and then judges can be asked to record time for those events only (both during phase one and phase two). Routine, frequently occurring events can be measured by courtroom observers or court staff who can note the start time and finish time for such events during both phase one and phase two.

What Is the Judicial Time Log?

Each judge completes a judicial time log worksheet, a paper data collection instrument (appendix A), for each day he or she engages in judicial activities during the data collection periods. Each judge also is given instructions on how to complete the worksheet (appendix B) and a code sheet for the various types of judicial workload activities and tasks being recorded (appendix C).

Data collection begins with the judge recording the start time of each workday on the worksheet. For each task, the judge enters the appropriate codes for the task and the time when the task is finished. If a judge works outside normal work hours, works from home, resumes work later in the day, or works on weekends, he or she also records these times on the worksheet. The worksheet also allows for breaks in work time to be recorded. At the end of the data collection period, a complete record of all work activity for each day of the period has been recorded.



Judges are trained in data collection procedures before each data collection period begins. Judges are shown how to complete the instrument, definitions of the codes are discussed, and worksheet forms and code sheets are provided. If questions or concerns about completing the instrument arise during data collection, the judge or judge's assistant will contact the workload analysis coordinator.

When Should the Judicial Time Log Be Used?

The time log can be used to measure the duration of a wide range of judicial activities. When doing so, it is important to keep all other variables as consistent as possible; for example, the same judges, in the same locations, for the same period of time. Judges' schedules may vary by day of the week (e.g., a certain type of hearing or training activity may always occur on Fridays), so each day of the week should be equally represented during each phase. However, because it is not possible to keep some conditions that affect the expenditure of time, such as vacations, from changing, it is important to be aware of the possible impact of the inconsistency of these conditions. For example, if phase one occurs during January and phase two occurs during April, differences between workload in January and workload in April may be due to the time of year or a judge's vacation patterns rather than the intervention being measured. Data collection periods should be scheduled considering as many of these factors as possible.

How Should the Judicial Time Log Be Used?

If the study will be conducted in two phases, two data collection periods can be established for each court. The purpose of the first data collection period (phase one) is to determine a baseline (current practice) regarding the length of time judges spend on all activities. During the second data collection period (phase two), the caseload of each participating judge is reduced by a set number of hearings per day, which are transferred to a judge not participating in the study. If there are two phases to the study, the same judicial time log worksheet is used for both the baseline and caseload control periods.

If the jurisdiction does not use the two-phase approach, only one data collection period may be needed. In either case, prior to the start of data collection involving caseload control (fewer hearings per day), the judges receive refresher training on dependency court practice standards based on the *RESOURCE GUIDELINES* and Federal law. The training focuses on reinforcing the judges' adherence to the practice standards during the caseload control data collection period. Among other things, the judges review the hearing observation sheets, which focus on key practices set forth in the *RESOURCE GUIDELINES* and requirements of Federal law.

The judicial time log does not capture data on the nuances of a judge's decisionmaking practices. To capture this broader view, the time log should be used in conjunction with the court observation tool discussed in chapter 3. If judicial time logs are used in conjunction with court observations, judges should complete worksheets only when observers are in the court. To ensure that judges and observers use terminology consistently, observers should review the judges' worksheets during the first several days they are present.

The advantage to using a judicial time log to study workload is that it reflects actual time spent rather than the judge's recollection of how the time was spent, an observer's interpretation of how the time was spent, or a panel of judges' estimation of how time is typically spent. To date, the time logs have been used only by judges, but the logs could be adapted to capture data on how other court personnel spend their work time.

Additional Considerations

The approach discussed above is a comprehensive way to collect a full array of data on the tasks completed by judges on and off the bench. Depending on the needs of the court, the following approaches can also be considered:

- ◆ As discussed in chapter 3, observers of court hearings could keep detailed track of time for each hearing, thus eliminating the need for judges to keep time logs of on-the-bench time. Judges might still be asked to keep time logs of off-the-bench time.

- ◆ In some courts, hearing times are tightly scheduled and are quite consistent. In such courts, court calendars could be a source of data on specific times for standard types of hearings.
- ◆ Time logs for on-the-bench proceedings could be used only to measure time spent on specific types of hearings that are held less frequently.

If the approach to using time log data is adjusted, for example, to consider only specific types of hearings, then the data collection period can also be adjusted to increase the number of hearings for which data are collected.

Court Observation



A court observation process can provide valuable insight into judicial workload. Information obtained from a court observation process can be an additional source of data about the nature of judicial work and particularly about whether best practices are followed in hearings. However, the ability of a court observation process to provide accurate and meaningful data depends greatly on the skills and neutrality of the individuals who code hearings. In any observation process, therefore, attention must be paid to the selection and training of observers as well as to conducting reliability checks on the data generated by the observation process (more information will be provided later in this chapter).¹⁹

Why Use the Court Observation Tool?

Court observation is a key tool for capturing the time needed to conduct court hearings in accordance with legal requirements and nationally recommended practices. The court observation tool presented in this volume is a set of forms (appendix D) and instructions (appendix E) designed to capture the content and process crucial to each kind of hearing, as well as the depth of discussion in each hearing. The forms are based on the practice standards from *RESOURCE GUIDELINES: Improving Court Practice in Child Abuse and Neglect Cases* and on Federal legal requirements for child abuse and neglect cases.

The court observation forms, when used in conjunction with the time log, are also used for both phases of the workload analysis. The observations in phase one establish current practice. Phase two occurs after a judicial tutorial that reviews mandated and recommended practices. Judges schedule fewer cases for phase two so they can accommodate practices they may have consistently omitted in phase one because of lack of time or knowledge (for example, inquiry into “reasonable efforts,” or notice and service of process to missing parties). The results are analyzed to determine how many dependency cases a judge could manage if recommended strategies were used during court hearings to achieve the results mandated by the Adoption and Safe Families Act (ASFA) and related Federal and State laws.

What Is the Court Observation Tool?

Court observation is done by neutral observers who fill out forms designed to capture the content and process of

each hearing (see appendix D). A neutral observer is an individual experienced in the dependency court process who is not a participant in the observed judge’s cases or court. A neutral observer can be recruited from the State’s court improvement office or the State Supreme Court’s administrative staff; or the observer can be a lawyer from a dependency court in another jurisdiction, a retired judge, a law school faculty member, or a member of the private bar. The aim is to have a knowledgeable observer cover each significant kind of hearing for a specified period of time.²⁰

The issue of an observer’s bias or inaccuracy can be addressed in a number of ways. The first approach is through rigorous training of several observers in actual court hearings. Each individual’s observations of a hearing are compared to the observations of others to establish high inter-rater reliability. Because the court will train a number of observers, it can then decide whether to use one or more observers, depending on the court’s needs and resources during the observation period. A second approach to reducing inadvertent bias is to use more than one observer during the observation period.

A court may decide to cover all common hearings—emergency removal hearings, adjudications, disposition hearings, case review hearings, permanency hearings, termination of parental rights (TPR), and post-TPR—or to focus on the hearings that are most likely to be incomplete or that tend to delay outcomes. In the latter category are hearings for emergency removal/shelter care, case review, permanency, and post-TPR hearings.²¹

The forms in appendix D are specific to each major kind of hearing: emergency removal hearing (also referred to as probable cause hearing, shelter care hearing, etc.), adjudication, disposition hearing, case review hearing, permanency hearing, TPR hearing, and post-TPR hearing.

Each form provides space to enter the following information:

- ◆ Observer's name or other identifier.
- ◆ Judge's name or other identifier.
- ◆ Case number or other agreed-upon case identifier.
- ◆ Start and finish times for each hearing.

Part 1 captures the participants:

- ◆ Mother, father, child, and relatives.
- ◆ Attorneys or legal representatives for the child, parent(s), and agency.
- ◆ Providers, including social service personnel.

Part 2 observes how the judge sets up the hearing:

- ◆ Introduction of parties.
- ◆ Explanation of the case.
- ◆ Advice to parents and child about rights and responsibilities.

Part 3 lists issues appropriate to the kind of hearing being observed that relate to the child's best interests. Depending on the type of hearing, these issues might include the following:

- ◆ Child's service needs.
- ◆ Notice and service of process for missing parties.
- ◆ Paternity.
- ◆ Child support.
- ◆ Visitation.
- ◆ Suitability of current placement.
- ◆ Permanency goal.
- ◆ Reasonable efforts of the agency.
- ◆ Case plan.

In part 3, hearing quality, or the completeness of the discussion of issues, is captured with ratings of "1," "2," or "3." A rating of "1" indicates that the issue was raised by one person. A rating of "2" indicates that the issue was discussed by at least two people. A rating of "3" indicates that, in addition to the issue being raised, the judge or an attorney brought the parent or child into the discussion of the issue.²²

Part 4 includes the judge's findings and summations. This section captures not only whether mandated findings were

made, but also whether they were supported by case-specific facts as required by ASFA. Depending on the hearing, Part 4 might include the following:

- ◆ Finding on agency's reasonable efforts.
- ◆ Finding on parental compliance with case plan.
- ◆ Finding on appropriateness of permanency goal.
- ◆ Explanation of deadlines.
- ◆ Setting new hearing date.
- ◆ Distribution of court orders.

The forms leave room for an observer's comments in part 5. Helpful comments distinguish unusual features of the hearing observed; for example, comments may indicate that the hearing was shortened because an attorney did not appear or that the case was scheduled as a case review but, when a social worker remarked that it was time for the permanency hearing, it was designated as a permanency hearing without the requisite thorough reports.

The *RESOURCE GUIDELINES* establish standards both for the content of hearings and for the amount of time that should be set aside on the docket for each kind of hearing. The *RESOURCE GUIDELINES*, which are published by the National Council of Juvenile and Family Court Judges (NCJFCJ) and formally endorsed by the Conference of Chief Justices as well as the officers and Board of Trustees of the NCJFCJ and the American Bar Association, are the principal hearing-related standards for dependency cases. They must, of course, be supplemented by the requirements of Federal laws that have been enacted since their publication, especially by ASFA and its regulations.

One key premise of the *RESOURCE GUIDELINES* is that the court process should be "front-loaded"; that is, as many process and content issues as possible should be dealt with in the first hearing so that the case will not be delayed as litigation continues. Thus, 1 hour is recommended for the first substantive hearing (often called an emergency removal hearing, shelter care hearing, or probable cause hearing) and for the permanency hearing. Other hearings—uncontested adjudications, dispositions, case reviews, and uncontested terminations of parental rights—are recommended to be scheduled for ½ hour.

The approach recommended in connection with the use of these tools is to temporarily provide enough time to allow judges to conduct hearings that both comply with practices recommended in the *RESOURCE GUIDELINES* and fulfill all legal requirements related to the hearings.²³ This strategy

makes it possible to measure the actual time needed for properly conducted and substantive hearings. However, a court system using the court observation tool may have reason to modify some of the time durations in the *RESOURCE GUIDELINES*. For example, hearings for contested adjudications, contested TPRs, and contested case reviews, all of which will generally involve the extended examination and cross examination of witnesses. Each of these will likely take much longer than the times recommended by the *RESOURCE GUIDELINES* for adjudication, TPRs, and case reviews, because the *RESOURCE GUIDELINES* time estimates apply only to uncontested hearings.

Courts that also have dependency drug courts in which parenting is frequently reviewed may be able to conduct permanency hearings in less than an hour (for example, if a parent has failed drug court, a decision could be reached quickly that the child's return to the parent is unwise; conversely, if a parent has succeeded in drug court and is in compliance with the case plan, the child's return may be the obvious best outcome).

Once the observer's forms are completed, they are submitted to an analyst who derives projected workload from the accumulated data.²⁴

When Should the Court Observation Tool Be Used?

There are two options for using the court observation tool. It can be applied in two phases, with a break in between for a judicial tutorial, or in one phase that is preceded by a judicial tutorial. The two-phase strategy establishes a baseline of current practice in phase one, permitting analysis of gaps and problems that judges have in meeting legal mandates and using recommended practice standards. Phase two permits judges to address mandated and recommended practices more thoroughly because they have a lighter docket.

A court that chooses to use the court observation tool in one phase only foregoes analysis of current practice and focuses entirely on recommended practice.

An exploratory use of the court observation tool in two phases occurred in two courts in two different States. Both courts were juvenile-dependency courts in which judges handled dependency hearings 3 days a week in addition to their juvenile delinquency caseload. Dependency (or child abuse and neglect) hearings were observed for 10 consecutive workdays in phase one and again for 10 days in phase two. There was a 2-month break between the two

phases to analyze the phase one material and to prepare and conduct a judicial tutorial that identified omissions and provided resources for more thorough and complete hearings.

For courts in which judges carry a mixed caseload, with dependency hearings occurring once a week or less frequently, observations should take place over a longer period of time (for example, once a week for 6 weeks in each phase). To overcome limitations of time and geography, the results of observations of small numbers of cases in several rural courts could be combined.

This tool would not be a significant help in determining overall judicial workloads of individual judges in rural courts who only handle dependency cases occasionally; however, it can help identify the appropriate durations of key types of hearings and problems with the content and process of hearings in these courts. The forms could also be used in connection with court improvement reassessments and family services reviews.

For courts that choose to use the court observation tool in one phase, data collection times would be cut in half. For example, a court with a large dependency caseload would have court observations for 10 workdays. Courts with smaller workloads would make similar adjustments.

How Should the Court Observation Tool Be Used?

Appendix E contains instructions for using the court observation tool, including all of the information a court observer

Practice Tip: As previously mentioned, accurate coding of hearings is essential for meaningful results. To ensure accuracy, a small sample of hearings should be "check coded" by a second, experienced coder (i.e., the second coder codes the same hearing without reference to the original coding), who notes any discrepancies in the way the hearing was coded. All errors are then addressed in consultation with the original coder. Errors may be due to problems in understanding the observation form, differing interpretation of observed events, or problems with the coder's ability. Errors, once identified, can be reconciled and addressed in training. If a high rate of error occurs in the sample that is check coded, those hearing observations should be discarded for analysis purposes.

will need to conduct the observations, along with answers to frequently asked questions.

In brief, the two elements required for effective use of the tool are (1) trained observers who are experienced in dependency court process and (2) the court observation forms (contained in appendix D), which can be modified to include local court terminology.

Elements of effective observations include:

- ◆ Observations scheduled over consecutive workdays (for example, 10 days per phase in courts with heavy dependency dockets).
- ◆ An initial interview with the judge to establish how the judge manages the docket, hearings, and staff assignments, and to anticipate and resolve problems (for example, issues regarding terminology).

- ◆ Examination of case files prior to each day's hearings (where possible).
- ◆ Initial 2-day teamwork by two observers to ensure a consistent coding (or marking) process and inter-rater reliability, and a debriefing process which reviews any discrepancies in coding, corrects errors, and establishes a consistent coding approach.
- ◆ For each hearing, sufficient forms to cover any eventuality.
- ◆ Most important, attentive observation and coding (or marking of hearing observations) by experienced observers.

The instructions in appendix E cover the kinds of issues that can arise in hearings that proceed quickly. When used by experienced observers, the forms capture information about both the duration and the quality of the hearing, creating a factual basis on which to make workload recommendations.

A Delphi Process



Why Use a Delphi Process?

A Delphi process is a technique used to obtain estimates from a panel of experts. It differs from a focus group in that the experts have the opportunity to change their estimates based on feedback from the other panel members. Unlike a focus group, the Delphi process is iterative; that is, it is a search for consensus among the participants.

In a workload study, a Delphi process can be used to estimate the amounts of time judges need for in-court (hearings) and out-of-court activities. In addition, the Delphi approach estimates how long events would take if they were modified to follow best practices. Conducting a Delphi process as part of a workload analysis provides a means of involving participants in the workload assessment process; when judges participate in building consensus about time estimates and the weight given to different types of cases, workload findings have more credibility because judges know how those findings were derived

What Is a Delphi Process?

A Delphi process is a multistep procedure to build consensus on a particular area of interest based on the collective experience and expertise of the participants (in this case judges experienced at presiding over child abuse and neglect litigation).²⁵ In a Delphi process, judges who preside over child abuse and neglect litigation (the experts) are asked to estimate the amount of time they believe is necessary to dispose of cases (judges can be asked to estimate the amount of time each case event takes and/or the amount of time it takes to dispose of the case as a whole).

For example, judges may be asked to estimate the time needed to conduct an emergency removal hearing or a preliminary protective hearing. These estimates are then compiled and each judge on the panel receives his or her original estimate along with the group's average estimate of the time needed to dispose of that case event. Each judge is then asked if he or she would adhere to his or her initial response or would modify the response to more closely approximate the group's average. Based on this discussion, new averages are calculated until consensus is reached.

For dependency cases, the Delphi panel would identify key events, both on the bench and off the bench in a child abuse and neglect case and how much time it takes to complete each event.

What Was the Delphi Process in the Project Sites?

Based on the task structure defined for the project, a Delphi process was conducted at each project site to estimate the amounts of time judges need for in-court (hearings) and out-of-court activities. The Delphi sessions implemented in the two project sites modified the "traditional" Delphi process slightly by including information obtained from a survey given to the panelists prior to the Delphi session. Results from the survey guided the Delphi discussion.

In this study, the Delphi process involved the following steps:

1. A small group of judges (the Delphi group) responded to a survey asking about the amount of time they spent on specific judicial activities related to child abuse and neglect cases.
2. The project team prepared the survey results and the baseline times per hearing (for those judges who completed the time logs) to present to the Delphi group.
3. The Delphi group convened and was asked to develop consensus about the amount of time currently spent on the identified activities related to child abuse and neglect litigation. Among other things, the Delphi group viewed the survey results and the durations of baseline and experimental hearings.²⁶
4. The Delphi group was then asked to reach consensus as to the amount of time that would be required for "ideal" dependency practice.
5. Participants were asked to identify constraints on achieving that ideal.

The Delphi group of judges was asked both how much time they currently spent on different types of hearings and how much time would be appropriate for judges to spend on each type of hearing. The Delphi group was also asked

how much time would be appropriate for judges to spend on child abuse and neglect-related activities that do not concern specific cases before the court (i.e., off-the-bench activities that are not related to a specific case but are an important component of dependency work). Such activities included the following overall categories:

- ◆ Administrative (handling personnel matters, budgeting, staffing).
- ◆ Judicial training (receiving or conducting).
- ◆ Professional enhancement (reviewing articles, case law, statutes, etc., to keep current).
- ◆ Public education.
- ◆ Court improvement (meetings with stakeholders to discuss reforms related to abuse and neglect litigation).
- ◆ Community outreach (working with community groups, serving on boards or legislative committees).

How Should the Delphi Process Be Used To Inform the Workload Study?

Delphi sessions can be used to inform quantitative time-study data and to help adjust those data to estimate the length of time needed for more complete and thorough hearings. The Delphi sessions were facilitated by neutral parties familiar with the Delphi process, the time-study data, and the work of the dependency court judge.

The Delphi sessions involved a series of exercises in which the following consensus time values were established:

- ◆ Judge day value.
- ◆ On-the-bench dependency activity hearing duration (emergency removal hearing or preliminary protective hearing, adjudication hearing, disposition hearing, case review hearing, permanency hearing, TPR hearing).
- ◆ Off-the-bench dependency activity—case related (judicial time spent handling dependency cases off the bench).
- ◆ Off-the-bench dependency activity—non-case related (judicial time spent on dependency judicial functions not directly related to case processing).

The Delphi survey results and the baseline and experimental time-study data (as applicable) served as the starting point for consensus building among the expert judge participants. Projecting the survey data on an overhead

screen made the process both visual and auditory and thus more immediate.

Because dependency judges handle a range of caseload sizes and activities, expert participants can be asked if there are any significant judicial categories that would help in interpreting time-study data. These categories could include full-time versus part-time, administrative versus nonadministrative, and urban versus rural. The Delphi groups in Arkansas and Oregon found these distinctions helpful as they worked to achieve consensus on workload estimates.

Things To Consider When Implementing a Delphi Process

As previously mentioned, convening a Delphi session can be a valuable way to involve participants in the workload assessment process, thereby increasing the credibility of the findings. Delphi sessions also provide a valuable tool for exploring the quality of hearings and determining how long events would take if they were modified to follow best practices. Furthermore, Delphi groups provide an opportunity to more fully examine the off-the-bench, non-case-related activities that are part of judicial dependency work.

However, the reliability and validity of any estimates derived from the group are constrained by the participants' depth and breadth of experience. Strategies for improving the time estimates provided using the Delphi method follow:

- ◆ The Delphi session should be facilitated by a neutral party who is familiar with the Delphi process, the time log data, and the work of the dependency court judges.
- ◆ Involve all judges who hear dependency matters, or as many as possible, to increase the range of expert opinion (if the court also uses judicial officers, such as commissioners, referees, or masters, include them in the Delphi process as well).
- ◆ Encourage Delphi participants to think about the usual or typical case rather than unique or longer, more complex cases.
- ◆ Cross-check estimates against timed measures for case events or case types to keep the process grounded in reality.
- ◆ Use additional data collection procedures and sources of data (e.g., court observations and time logs) to supplement the Delphi study.

Conclusions

This chapter includes further comments regarding judicial workload analysis for child abuse and neglect cases, including a discussion of the following:

- ◆ Incorporating standards of practice into workload analysis.
- ◆ Additional recommendations for workload analysis using the tools presented earlier in this report.

Incorporating Standards of Practice Into Workload Analysis

The tools presented here help courts analyze the necessary workloads to enable courts to fulfill practice standards and comply with the law. Using these tools, courts can more closely approximate full compliance with the law and practice standards and control caseload demands. This approach requires relatively competent and very flexible courts and it can be used in most, if not all, States. To use this approach, it is not necessary to identify courts that already fulfill all essential standards of practice.

Focused, highly competent training on the rationale and details associated with each key standard of practice will make it more likely that courts will approach full implementation of practice standards and the law during the study period. This training must explain the purpose of each standard and engage judges interactively to foster their willingness to conduct thorough hearings (at least during the study period).

In addition, we recommend that observers (preferably with the assistance of other experts) provide detailed feedback and suggestions to judges at the beginning of the experimental period (phase two) to enable judges to implement judicial standards of best practice more fully before the formal time log or observation process begins. This underscores the need for training on implementation of standards, as well as the need for highly qualified and credible observers, as discussed earlier.

If baseline workload data are available, State courts conducting these studies might consider eliminating the baseline (nonexperimental) phase. Data obtained from the experimental period (phase two) can be compared with existing information about workload. It is important to keep in mind, however, that if the available baseline data did not

include an assessment of whether practice standards were implemented, or did not measure off-the-bench case-related and non-case-related activities, then comparisons drawn from the experimental phase will need to acknowledge those differences.

Specific Recommendations for Judicial Workload Analysis

This section contains recommendations for studies using a methodology similar to the one used in this study:

Planning the Study

1. **Build on current or prior larger scale studies where they exist.**

For States that analyze all categories of judicial workloads together, we recommend that the practice standards related to workload analysis for child abuse and neglect cases be designed to supplement the more general analysis. For example, if a State uses a weighted caseload analysis, then workload analysis regarding child abuse and neglect litigation should calculate an adjusted weight for these cases, which can supplement the data collected for the larger study and can be applied to existing formulas.

One means of adapting to existing State workload analysis is to use comparable units of analysis. For example, if a State uses a weighted caseload method that is based on the number of case filings, develop an approach for child abuse and neglect cases that does the same. This way the results can be combined.

In this study we calculated the amounts of time devoted to cases during a specific time period rather than preparing a projection of the total court time



during the life of a case. If the State bases workload measures on the number of case filings and there is reason to believe the courts will be amenable to combining results, we recommend shifting the measurement to make projections based on the judicial time needed per case.

2. Where possible, select sites with relatively high levels of practice and positive outcomes for children and families.

When selecting sites for these studies, seek out those courts that can most closely approach full compliance with standards of practice under modified conditions. In addition, look for courts that show positive outcomes for children and families. Even though there may be other reasons for positive outcomes, the existence of good outcomes for children and families will strengthen the credibility of the studies' recommendations.

3. At the beginning of each study, accurately classify hearing types in the local court using statewide terminology.

Terminology for hearings is not always consistent within a State. Specific types of hearings may have different names within the State and the names might be used in various ways, even within a single court.

Judges or court employees often use labels that are inconsistent with the terms used in State law and nationally recommended practice standards. For example, in one court we analyzed, hearings based on special motions were called reviews but were fundamentally different from case progress reviews.

When judges or court employees give labels to hearings that are inconsistent with State law and national standards, it can cause observers to fill out the wrong forms and enter incorrect data into the State information system regarding the frequency of hearings.

To avoid these problems, it is important for judges and court employees to be interviewed at the onset of the study. In this way observers can learn the local terms for hearings and judges can learn the criteria that will be used to determine the true nature of a hearing. As a result, judges and observers can create a common, more accurate lexicon.

To ensure that judges and observers use terminology consistently, observers should review the judges' time logs during the first several days they are present. Judges complete time logs only when observers are present in the court.

Gathering Data

4. Use time logs similar to those used in this study.

The time logs provided in this guide worked well in the project sites that tested the instruments: the logs provided the data needed, were implemented according to protocol, and were easy to comprehend and use. It is important to note that completion of the instruments requires commitment and effort on the part of the judges.

5. Provide judges with written instructions and training on the use of the time log.

We provided the judges with written instructions and then reviewed the instructions with them. This helped avoid misinterpretations about how to code and record the durations of various activities.

6. Use different hearing observation instruments for each type of hearing.

It is impractical to use only one form for all types of hearing observations. We tried this in one court, developing a backup form that could be used for any hearing for which another form was not appropriate. This all-purpose form proved difficult to use in our work with the project sites.

If a hearing is 5 or 10 minutes long, for example, it will be difficult to examine a lengthy hearing form and try to identify all of the issues that may or may not apply. Some aspects of the hearing could be missed because the observer is searching for the correct elements to check off on the form.

A better approach is for the observer and judge to discuss how this particular court labels hearings, the observer to read hearing reports in advance so that types of hearings can be anticipated, and the observer to check with the judge about the types of hearings set for each day (e.g., obtain a copy of the docket or calendar of hearings).

7. Consider eliminating a baseline analysis (phase one—current practice) if baseline workload data are already available.

The experimental aspect of this study was expensive and challenging to implement. Many of the costs and complexities can be avoided by eliminating the phase one (baseline) portion of the research if existing baseline data are already available (even if these data are limited). We recommend conducting a limited number of experimental studies in the future, using both phases, to further test and refine this methodology. The phase two approach (i.e., temporarily limiting workloads, helping courts more fully implement standards of practice and legal requirements, and then analyzing the workload implications of using best practices) can be quite useful in itself.

8. Use a modified version of the phase two portion of workload analysis.

We recommend (as explained above) providing an enhanced version of the phase two workload analysis. This requires improved training (explaining each element of best practices in detail) as well as mentoring judges when they do not fulfill best practice expectations.

In short, this approach involves actively helping selected courts approximate recommended practices as closely as possible under controlled workload demands. During the study, judicial dependency workloads are analyzed under these special conditions, including time measurements, observation of completeness of hearings, and analysis of out-of-court activities. This approach also requires identifying any best practices that were not followed under the controlled conditions and why.

For example, best practices may not have been implemented because of judges' resistance to changes in the way they conduct hearings, flaws in training or mentoring, institutional barriers (such as the unavailability of attorneys to appear at certain hearings), the irrelevance of certain recommended practices in some situations, or flaws in court observation. Followup interviews of judges, court staff, and others should help clarify these issues.

It is also important to find out how judges actually use the additional time provided by a lighter caseload and

then to clarify why and how this additional time did or did not contribute to improved hearing completeness, including specific best practices. Again, followup interviews are needed to accomplish this task.

We do not assume that the modified practices will continue after the research period is completed because the court must resume its former processes. If a court system is able to conduct such an experiment on a longer term basis, however, there should be periodic monitoring of court performance, perhaps accompanied by refresher training and mentoring.

9. Use highly qualified observers following detailed protocols.

As discussed in detail in chapter 2, only highly professional observers can make reliable and valid determinations about the completeness of hearings. Only highly trained court staff, researchers, and attorneys with years of specialized experience can correctly identify and classify hearing types and efficiently and accurately identify which best practices were and were not followed. In addition, observers need the credibility to enable them to provide effective feedback to the judge during the study.

To the extent possible, the assignment of observers should address issues of reliability of observation. This can be done during both training and observation. Observers should work as a team, at least for the first day or two of observations, to ensure consistency and accuracy in ratings. They should record their decisions about how to assign ratings under confusing conditions. Observers should also periodically confer and review each other's ratings to confirm their continued consistency in assigning ratings (see the Practice Tip in chapter 3, under "How Should the Court Observation Tool Be Used?" (p. 15), regarding "check coding" and inter-rater reliability).

Careful preparation for observations is needed, including advance familiarity with hearings and with the courtroom itself. Even experienced observers need training.

Information to be used to train observers and a protocol for hearing observations are provided in appendix E, Instructions to Observers and Project Administrators for Conducting Court Observations.

10. Observe only limited categories of hearings.

Two issues must be considered when contemplating which hearings to measure in terms of workload, given that the approach in this *Toolkit* provides comprehensive data but places some burden on the court and its personnel. The decision about which approach to use depends on a court's needs and current availability of data.

One approach is to focus on hearings that occur often and therefore take up the bulk of the court's time. Many of our observations during the pilot study included types of hearings that occur with relative infrequency. Focusing on fewer types of hearings can reduce the time burdens of studies such as this one. If future studies will focus on fewer types of hearings, we recommend the following as the top priorities. However, it is important to note that the types of hearings that should receive the highest priority for study may vary, particularly in States with relatively distinctive court processes:

- ◆ **Emergency removal hearings** (also called shelter care hearings, preliminary hearings, preliminary protective hearings, detention hearings, etc.), which occur within a short time after a child is removed from home. In most States, these are the first substantive hearings and they can play a major role in avoiding early case delays. "Front-loading" the court process (i.e., thoroughly considering the substantive issues related to the child's welfare in these early proceedings) is critical to engaging the parties and getting the process off to a good start. Further, there is very wide variation in the completeness of these hearings.
- ◆ **Case review hearings.** In States where courts conduct case review hearings, these are frequent hearings and it is important to study them. Case review hearings have a substantial impact on the pace and quality of litigation, and there is wide variation in the completeness of these hearings.
- ◆ **Permanency hearings.** There is also wide variation in the quality and completeness of permanency hearings. Many courts conduct permanency hearings as if they were case review hearings; the result is delayed permanency for children.

Permanency hearings should include a systematic and intense inquiry into the practicality of the possible permanent placement goals. Among other things, these hearings should explore whether and why it is necessary to give up on adoption as a case goal.

- ◆ **Post-TPR case review and permanency hearings.** There is particularly wide variation in the completeness and focus of post-TPR case reviews. If it is necessary to conduct many of these reviews, they should be considered a separate category. These hearings should focus on the timeliness and appropriateness of efforts to secure a legally permanent placement for the child. At this stage of the proceedings, the difference in function between a case review hearing and a permanency hearing is relatively minor.

Lower priority hearings that could also be studied include the following:

- ◆ **Adjudication.** Uncontested adjudications could be observed, particularly to determine whether court orders are prepared promptly and whether parties are asked to explain, in their own words, the reasons for court jurisdiction.
- ◆ **Disposition.** Disposition is an important stage of the court process. In this stage, the judge should thoroughly consider the case plan (in most States) and the need for out-of-home placement. Some courts do not give adequate attention to decisions about disposition.

Some of the lowest priority hearings that could be observed include the following:

- ◆ **Highly contested hearings requiring special settings.** Observation of these hearings is highly time consuming and unlikely to provide helpful data on the completeness of hearings. Future studies might, however, address the effects of efficient court processes on the durations of contested hearings.
- ◆ **Uncontested TPR hearings.** These hearings require careful efforts to ensure that parents give knowing and voluntary consent. In most courts, it will not be a high priority to observe this type of hearing.

- ◆ **Hearings on special motions and other miscellaneous proceedings.** It will probably be a waste of resources to observe large numbers of miscellaneous hearings or hearings on special motions. In addition, it is misleading to record a miscellaneous hearing as a common hearing type. For example, if a hearing is set for the sole purpose of resolving a dispute about visitation, it does not need to be rated as a case review hearing.

On the other hand, miscellaneous *substantive* hearings could be observed prior to TPR for the limited purpose of observing who was present and the judges' followup steps, including prompt issuance of court orders.

Another approach might be to focus on specific types of hearings that occur relatively rarely. This would be appropriate if a court already has a good estimate of the time needed for hearings that occur more frequently or if the court decides to gather data on such hearings in other ways. Hearings that occur infrequently sometimes take a considerable amount of time and often judges do not have as much experience with such hearings. Therefore, data on the completeness and appropriate duration of these hearings can provide guidance for judges who are conducting them for the first time.

Finally, an advantage to observing a limited number of types of hearings is that this approach may produce recommendations that can be scientifically supported for the duration of the hearings that are studied. This information not only will help determine the number of judges that are needed by the courts, but also can be very useful to judges and court staff in guiding them on the amount of time to set aside for these hearings.

11. Supplement other data collection methods with a Delphi session.

Delphi sessions provide a valuable means to explore the quality of hearings; determine how long hearings would take if they were modified to follow best practices; examine off-the-bench, non-case-related activities; corroborate observations; and increase the credibility of workload findings.

We strongly recommend that Delphi sessions be facilitated by a neutral party familiar with the Delphi process, the other data sources used in the workload study, and the work of the dependency court judge.

As many as possible of the judges and judicial officers who hear dependency matters should be included in the Delphi session, and participants should be encouraged to think about “typical” hearings rather than rare or complex events. We also strongly recommend that, during the Delphi session, participants be asked to reflect on timed measures for case events or case types (e.g., time log or hearing observation data).

Using Results of Workload Analysis

12. Require commitments to practice improvements as a condition to improved workloads.

Regardless of the study methodology, if courts are to be given additional judge time to improve their practices in child abuse and neglect cases, clear expectations should be set about the results of this additional time. A court with less than a perfect rating for the completeness of hearings should be required to agree to fully adopt a specific identified set of best practices.

If a court already has an extraordinary level of complete hearings and other best practices for out-of-court activities—and if this is possible only because of the judges' long working hours—it is appropriate to make workload adjustment so that judges can work regular hours. However, this should be the only exception to setting expectations for improved performance in connection with easing judges' workloads.

13. Tie improvements in judicial workloads to quality assurance regarding standards of practice.

When judges are given additional time to implement best practices, quality assurance (methodical periodic review of judges' performance) should take place to ensure that the agreed-upon practice improvements actually occur. Along with the financial investment for added judge time should come a small investment in quality assurance to ensure accountability. This accountability should continue at least until the agreed-upon improvements have been in place for a reasonable period of time.

Endnotes

1. In this guide, the term “child abuse and neglect cases” is used interchangeably with “dependency cases.” Both refer to cases in which court proceedings are brought under special State statutes and in which there are allegations of child abuse or neglect by adult family members.

2. The term “workload” rather than “caseload” is used here because workload is more inclusive. Although caseload refers to the number of cases that come before a judge, workload also encompasses other types of judicial work, such as administrative duties, training, public education, and working with community groups. As explained elsewhere, these non-case-related functions have become increasingly important and burdensome for courts that deal with matters related to child abuse and neglect.

3. “Other judicial officers” refers to individuals who hear cases and make judicial decisions under the supervision of judges. Titles of these officers include hearing officers, referees, magistrates, and commissioners. For the purposes of this guide, the terms “judge” and “judicial officer” are used interchangeably.

4. Public Law 103–89, amending 42 U.S.C. §§ 620–679; 65 Fed. Reg. 4020–4093 (January 25, 2000), amending 45 C.F.R. §§ 1355–1357.

5. Although national judicial workload data for dependency cases are not available, a number of the recent State Court Improvement Program judicial reassessments found that the duration of typical child abuse and neglect hearings appears to have increased, albeit unevenly. These reassessments were required as a condition of continued funding under the Federal Court Improvement Program.

6. Public Law 103–89, amending 42 U.S.C. §§ 620–679; 65 Fed. Reg. 4020–4093 (January 25, 2000), amending 45 C.F.R. §§ 1355–1357. Although the purpose of the original assessments was to determine the current state of practice in child abuse and neglect cases as of the mid- and late 1990s, the purpose of the reassessments was to determine the progress and direction of the courts in the early and mid-2000s under the Federal Court Improvement Program.

7. This conclusion is supported by a number of reassessment findings. See, for example, Arkansas Supreme Court Ad Hoc Committee on Foster Care and Adoption and the CIP Reassessment Team, *Arkansas Court Improvement (CIP) Reassessment Report* (Little Rock, AR: Arkansas Administrative Office of the Courts, 2005), pp. 20, 45, 49, 53–54; Hawaii Judiciary, *Hawaii Court Improvement Project Reassessment Report* (Honolulu, HI: Hawaii Judiciary, 2005), pp. 15–18, 21; K. Monahan, T. Richards, A. St. Onge, J. Larsen, M. Hardin, S. Noursi, and S. Caverly, *Michigan Court Improvement Program Reassessment* (Portland, ME: University of Southern Maine, Edmund S. Muskie School of Public Service, Cutler Institute for Child and Family Policy, and American Bar Association Center on Children and the Law, 2005), pp. 107–133, 133–137; University of Puerto Rico, *Assessment of Court Proceedings in Puerto Rico Related With Child Abuse and Neglect Under the Court Improvement Program* (Rio Pieoras: University of Puerto Rico, 2003), pp. 56–59.

8. Examples of other important documents include reports by guardians *ad litem* or CASA volunteers, motions and affidavits by attorneys, mental health reports, and reports by other service providers.

9. A number of CIP reassessments have identified excessive judicial workloads as a significant barrier to timely case processing. See, for example, Hawaii Judiciary, *Hawaii Court Improvement Project Reassessment Report* (Honolulu, HI: Hawaii Judiciary, 2005), p. 16; K. Monahan, T. Richards, A. St. Onge, J. Larsen, M. Hardin, S. Noursi, and S. Caverly, *Michigan Court Improvement Program Reassessment* (Portland, ME: University of Southern Maine, Edmund S. Muskie School of Public Service, Cutler Institute for Child and Family Policy, and American Bar Association Center on Children and the Law, 2005), pp. 86–90, 99; S. Young, *Vermont Juvenile Court: A Reassessment* (Montpelier, VT: Vermont Court Administrator’s Office, 2005), pp. 50, 88.

10. 42 U.S.C. § 675(5)(C) requires the court to conduct a permanency hearing within 12 months after a child is considered to have entered foster care. At that hearing, the court must determine the child’s permanency plan.



11. 42 U.S.C. § 675(5)(E)(iii) provides that, subject to certain exceptions, after a child has been in foster care for 15 of the most recent 22 months, the State must file a petition (or support another party's petition) to terminate the parental rights of the child's parents. One of the exceptions is that the State has not provided services to the family, within the times specified in the case plan, to achieve the child's safe return home.
12. 42 U.S.C. § 672(a)(2); 45 C.F.R. § 1356.21(d).
13. 42 U.S.C. § 672(a)(2); 45 C.F.R. § 1356.21(d).
14. 42 U.S.C. § 672(a)(2), 45 C.F.R. §§ 1356.21(b), (d).
15. 42 U.S.C. § 675(5)(B).
16. National Council of Juvenile and Family Court Judges, *RESOURCE GUIDELINES: Improving Court Practice in Child Abuse and Neglect Cases* (Reno, NV: NCJFCJ, 1995).
17. National Council of Juvenile and Family Court Judges, *ADOPTION AND PERMANENCY GUIDELINES: Improving Court Practice in Child Abuse and Neglect Cases* (Reno, NV: NCJFCJ, 2000).
18. For an overview of workload assessment methods, see American Bar Association Center on Children and the Law, National Center for State Courts, and National Council of Juvenile and Family Court Judges, "Assessing Judicial Workload," in *Building a Better Court: Measuring and Improving Court Performance and Judicial Workload in Child Abuse and Neglect Cases* (Reno, NV: NCJFCJ, 2004), pp. 28–53.
19. For general information about court observation procedures, see the *User's Guide to Nonautomated Data Collection* volume of this *Toolkit*.
20. Timing of court observations is discussed in the next section, "When Should the Court Observation Tool Be Used?"
21. In addition, if it is decided that judges should keep a time log for a sample of hearing types, then observation can be conducted for the same sample of hearings.
22. As the hearing progresses, an issue can first be rated "1," then "2," then "3." When results are analyzed, only the highest number is recorded.
23. Judges are asked to address all legal requirements that apply to each type of hearing, whether through State statutes or court rules or through Federal statutes and regulations. Key Federal requirements appear in Titles IV–B and IV–E of the Social Security Act and its regulations, including the Adoption and Safe Families Act (ASFA), the 2000 Federal regulations implementing ASFA, and more recent Federal statutory amendments.
24. The American Bar Association Center on Children and the Law, the National Council of Juvenile and Family Court Judges, and the National Center for State Courts can offer guidance and technical assistance in data analysis.
25. For a discussion of the Delphi method, see H.G. McDonald and C.P. Kirsch, "Use of the Delphi Method as a Means of Assessing Judicial Manpower Needs," *Justice System Journal* 3 (Spring) (1978): 314. See also the section on the Delphi process in American Bar Association Center on Children and the Law, National Center for State Courts, and National Council of Juvenile and Family Court Judges, *Building a Better Court: Measuring and Improving Court Performance and Judicial Workload in Child Abuse and Neglect Cases* (Reno, NV: NCJFCJ, 2004), pp. 46–51.
26. Data regarding baseline hearing lengths from the time log component of the study were not available for both of the Delphi sessions conducted. For the Delphi sessions in which data were not yet available, judges reacted to information from the survey findings only.

Judicial Time Log Worksheet

Date: _____

Page _____ of _____

Judge	

Number of Cases Today:			Time Started Work:				
Line #	Activity Area	Activity Code	Task Code	Finish Time	# of Cases	Comments	Drug Court
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							
12							
13							
14							
15							
16							
17							
18							
19							
20							



Instructions to Judges for Completing Judicial Time Log Worksheet



General Instructions

1. Start each workday with a new worksheet and enter the date.
2. If you use multiple worksheets for one date, enter the number of worksheets used for that date in the space provided at the top of the page.
3. Send in completed worksheets on a weekly basis.
4. Log all of your time during workdays from the beginning of work until the finish time of your last work-related activity on that date. See instruction below (#8) regarding nonwork time gaps on days that include work activities.
5. Base finish time for each task on actual finish time or your best estimate. Don't worry if you are a few minutes off.
6. Use the Comments section to indicate the number of cases and any brief notes when there is ambiguity about how to code something.
7. Record your activities and fill out worksheets for 4 weeks. The specific date for the end of data collection in this phase of the project has yet to be determined.

Specific Coding Instructions

8. To code non-work-related breaks in your day use the code: nonwork time gaps 202–14. For example:
 - a. If your last work-related activity occurs in the evening after you leave court, use the code nonwork time gaps 202–14 for the time between leaving work and resuming work activities.
 - b. Use this code for nonwork lunch breaks as well.
9. During weekends: If you work during two or more nonconsecutive time periods on a weekend day, use the same coding approach as a weekday. On a time log worksheet, enter the date, the time you start, and the time you finish each activity. Enter any nonwork time gaps.
10. Court waiting time 300–28 should include waiting for purposes other than the entry and exit of parties and should not include preparing the court order while in the courtroom.
11. Note when out-of-court activities are drug court related. Enter the number of drug court activities in the Drug Court column on the worksheet. For example, if 12 cases are addressed in the drug court staffing, enter 12. You may also use the Comments section to enter this information.
12. For all nondependency activities (NDA), use code 207. You do not need to enter any task code for NDA. NDA includes all non-dependency-related activities, case related or not, such as delinquency, domestic relationship, civil, and criminal matters. This applies whether the nondependency activity is in court or out of court. This could include nondependency hearings, orders, meetings, conferences, and training.
13. For activities that are both dependency and nondependency related, apportion time between the specific activity and code 207.
 - a. Unless a long time period is involved and the proportions are far from equal, the proportion of time should be recorded as 50–50 or otherwise equally divided if there are more than two types of activities.
 - b. If there is a long time period, roughly estimate the time proportions.

14. Break time in the course of administrative activities is coded as 201–15.
15. As noted above (#8), nonwork time gaps include the time between leaving court and resuming work activities later in the day. Code lunch breaks as a nonwork time gap 202–14.
16. When you work on more than one case during a time period, note the number of cases in the Comments section. For example, if you read several files in a particular time period, use the code for reviewing files and in Comments enter the number of files read.
17. If it is difficult to determine the exact number of cases worked on during a particular time period (e.g., how many court orders you filled out), consider using a separate page to count the number of cases, files, etc. Then enter the number in the Comments section.
18. There is a thin line between public education (205) and working with communities (206). The distinction is between information sharing and active problem solving. If the distinction is unclear, explain in the Comments section.
19. For combined adjudication-disposition hearings, use code 300–48.
20. The difference between case-related and non-case-related dependency activity is that non-case-related activity is associated with dependency but is not case specific.
21. When working on one case twice in 1 day, code all tasks associated with that case and point that out in the comments.
22. If you read the individual files of multiple siblings for a single hearing, count that as reading one file whether or not they are placed in the same placement.
23. If you prepare court orders for multiple siblings for a single hearing, count that as preparing one court order whether or not they are placed in the same placement.
24. Record e-mail as correspondence.
25. It is not necessary to code whether termination of parental rights (TPR) hearings or adjudications were granted or denied. Code the activity as a TPR hearing or adjudication, regardless of whether it was granted or denied.
26. When a TPR hearing is solely to decide best interests of the child following proof of the grounds for TPR, code as a TPR hearing.
27. When a TPR order is suspended until an adoptive placement is located, code as TPR. Do not code as post-TPR until the order is final.
28. VP means a review of voluntary placement (180-day hearing).
29. For activity codes 400, 401, and 402, use task code 42 for file review and review of written materials, reports, and exhibits.
30. If the task code planning (46) under case-related out-of-court activities (400, 401, or 402) applies to your work, note the nature of the task in the Comments section.
31. When you prepare an order during and immediately following a hearing, code the activity as part of the hearing. Preparing orders that occur as out-of-court activities should be coded separately, using task codes 400–45, 401–45, or 402–45 as appropriate.
32. Use code 401–44 for a case-related meeting, whether or not the meeting is to help prepare for a specific hearing.
33. Code guardianship review as 300–38. Use only when a child already has a permanent guardian and you are reviewing that permanency plan.
34. Code guardianship hearings that are not guardianship reviews as 300–41, other in-hearing task.

Judicial Workload Activity Code Sheet



Judicial Workload Activity Code Sheet		
Activity Area	Activity	Tasks
Non-case-related dependency activities (NCR)	200 Leave	10. Annual and other leave 11. Compensatory time and adjusted workweek 12. Industrial accident 13. Sick leave
	201 Administrative activities	15. Breaks (e.g., brief respite, informal time with judicial staff) 19. Personnel-related activities 20. Non-case-related meetings 23. Other administrative activities 24. Correspondence (mail/fax/e-mail/voice mail) 25. Telephone 26. Travel (e.g., to meetings, conferences, task force activities)
	202 Nonwork time gaps	14. Nonpaid or nonwork time gaps in workday (e.g., time spent on personal matters or breaks between work activities such as time between leaving court and resuming work later in the day)
	203 Training (receiving or conducting)	Use the following task codes for activities 203–206 as applicable: 17. Education, training, journals/articles 18. Providing/receiving public education 20. Non-case-related meetings 23. Other administrative activities 24. Correspondence (mail/fax/e-mail/voicemail) 25. Telephone 26. Travel (e.g., to meetings, conferences, task force activities)
	204 Professional enhancement	
	205 Public education	
	206 Working with communities	
Nondependency activities (NDA) Note: This includes all non-dependency activities, whether or not case related.	207 Nondependency activities (e.g., delinquency, domestic relations, civil, criminal, hearing, orders, delinquency-related meetings, conferences, training)	

Judicial Workload Activity Code Sheet		
Activity Area	Activity	Tasks
Case-related activities (CRA)	300 In-court hearings	27. Preparation other than documents (includes consultation with attorney, meetings, etc.) 28. Court waiting time 29. Emergency removal (shelter care/probable cause/preliminary protective/detention) 30. Pretrial 31. Adjudication 32. Disposition 33. Case review 34. Motions 35. Permanency 36. Termination of parental rights (TPR) 37. Post-TPR case review/permanency 38. Guardianship review 39. Voluntary placement review 40. Drug court 41. Other in-hearing task 48. Combined adjudication-disposition
Case-related out-of-court activities (CROC)	400 Hearing preparation	42. Review of files relevant for hearings, written materials, reports, exhibits 43. Case-related meeting 44. Preparing orders 45. Planning 46. Other case-related out-of-court activity
	401 Hearing followup	42. Review of files relevant for hearings, written materials, reports, exhibits 43. Case-related meeting 44. Preparing orders 45. Planning 46. Other case-related out-of-court activity
	402 Interim activities	42. Review of files relevant for hearings, written materials, reports, exhibits 43. Case-related meeting 44. Preparing orders 45. Planning 46. Other case-related out-of-court activity

Court Observation Tool

Observer: _____
 Judge: _____



Emergency Removal Hearing

(Also referred to as a probable cause hearing, shelter care hearing, temporary custody hearing, or preliminary hearing.)

Today's Date _____ Judicial Case Number _____ Start _____ Finish _____

1. Persons Present During Hearing

Family #

Mother

Father

Child

Relative(s)/Acquaintances _____

Attorneys #

Child

Parent

Agency/Government

Social Workers/Service Providers #

Primary Social Worker/Supervisor

Foster Parent/Other Service
 Provider(s) (number) _____

2. Did the judge:

	Yes
a) Introduce the persons present?	1
b) Explain the hearing in language understandable to parents and age-appropriate children?	1
c) Advise parties of their rights at the hearing?	1

3. Did the following issues come up during the hearing?

	Yes, mentioned the issue	Yes, and two or more persons mentioned the issue	Yes, and judge or attorney elicited parent or child's views on issue
a) Service needs of children (mental, medical, education, etc.)	1	2	3
b) Reasonable efforts to prevent placement	1	2	3
c) Whether removal from home is in the child's best interests	1	2	3
d) Need to place child away from noncustodial parent	1	2	3
e) Appropriateness of current placement	1	2	3
f) Appropriateness of placement of child with relative other than parent	1	2	3
g) Visitation with parents, if child is placed away from home	1	2	3
h) Visitation with siblings	1	2	3
i) Paternity	1	2	3

4. Did the judge:	Yes
a) Set the next hearing date before the parties left the courthouse (answer yes if court clerk did this)?	1
b) Prepare and distribute court orders before the parties left the courthouse?	1
c) Make case-specific findings concerning reasonable efforts?	1
d) Make case-specific findings regarding the need to remove the child from home?	1

5. Comments:

Observer: _____
 Judge: _____

Adjudication Hearing **Pretrial/Preadjudication Only**
 (Also referred to as jurisdictional hearing, fact-finding hearing, or trial.)

Today's Date _____ Judicial Case Number _____ Start _____ Finish _____

1. Persons Present During Hearing

- | | | |
|--|--|--|
| <p>Family #</p> <p><input type="checkbox"/> Mother</p> <p><input type="checkbox"/> Father</p> <p><input type="checkbox"/> Child</p> <p><input type="checkbox"/> Relative(s)/Acquaintances _____</p> | <p>Attorneys #</p> <p><input type="checkbox"/> Child</p> <p><input type="checkbox"/> Parent</p> <p><input type="checkbox"/> Agency/Government</p> | <p>Social Workers/Service Providers #</p> <p><input type="checkbox"/> Primary Social Worker/Supervisor</p> <p><input type="checkbox"/> Foster Parent/Other Service Provider(s) (number) _____</p> |
|--|--|--|

2. Did the judge:	Yes
a) Introduce the persons present?	1
b) Explain the hearing in language understandable to parents and age-appropriate children?	1
c) Advise parties of their rights at the hearing?	1

3. Did the following issues come up during the hearing?	Yes, mentioned the issue	Yes, and two or more persons mentioned the issue	Yes, and judge or attorney elicited parent or child's views on issue
a) Notice and service of process—missing parties	1	2	3
b) Paternity (if applicable)	1	2	3
c) Child support	1	2	3
d) Whether allegations of the petition are true	1	2	3
e) Appropriateness of current placement	1	2	3
f) Visitation with parents, if child is placed away from home	1	2	3

4. Did the judge:	Yes
a) Make specific findings as to whether each of the allegations of the petition is true?	1
b) Explain case deadlines and the consequences of missing the deadline?	1
c) Set the next hearing date before the parties left the courthouse (answer yes if court clerk did this)?	1
d) Prepare and distribute court orders before the parties left the courthouse?	1
e) Make case-specific findings concerning reasonable efforts to provide services?	1

5. Comments:

Observer: _____
 Judge: _____

Combined Adjudication/Disposition Hearing **Pretrial/Preadjudication Only**

Today's Date _____ Judicial Case Number _____ Start _____ Finish _____

1. Persons Present During Hearing

- | Family # | Attorneys # | Social Workers/Service Providers # |
|--|--|---|
| <input type="checkbox"/> Mother | <input type="checkbox"/> Child | <input type="checkbox"/> Primary Social Worker/Supervisor |
| <input type="checkbox"/> Father | <input type="checkbox"/> Parent | <input type="checkbox"/> Foster Parent/Other Service |
| <input type="checkbox"/> Child | <input type="checkbox"/> Agency/Government | Provider(s) (number) _____ |
| <input type="checkbox"/> Relative(s)/Acquaintances _____ | | |

2. Did the judge:	Yes
a) Introduce the persons present?	1
b) Explain the hearing in language understandable to parents and age-appropriate children?	1
c) Advise parties of their rights at the hearing?	1

3. Did the following issues come up during the hearing?	Yes, mentioned the issue	Yes, and two or more persons mentioned the issue	Yes, and judge or attorney elicited parent or child's views on issue
a) Service needs of children (mental, medical, educational, etc.)	1	2	3
b) Notice and service of process—missing parties	1	2	3
c) Paternity	1	2	3
d) Child support	1	2	3
e) Whether allegations of the petition are true	1	2	3
f) Appropriateness of current placement	1	2	3
g) Appropriateness of placement of child with relative other than parent	1	2	3
h) Visitation with parents, if child is placed away from home	1	2	3
i) Visitation with siblings	1	2	3
j) Where child will be placed	1	2	3
k) Terms of child and family's case plan	1	2	3
l) Reasonable efforts to prevent placement	1	2	3

4. Did the judge:	Yes
a) Make specific findings as to whether each of the allegations of the petition is true?	1
b) Explain case deadlines and the consequences of missing the deadline?	1
c) Set the next hearing date before the parties left the courthouse (answer yes if court clerk did this)?	1
d) Prepare and distribute court orders before the parties left the courthouse?	1
e) Make case-specific findings concerning reasonable efforts to provide services?	1

5. Comments:

Observer: _____
 Judge: _____

Disposition Hearing

Today's Date _____ Judicial Case Number _____ Start _____ Finish _____

1. Persons Present During Hearing

- | | | |
|--|--|---|
| Family # | Attorneys # | Social Workers/Service Providers # |
| <input type="checkbox"/> Mother | <input type="checkbox"/> Child | <input type="checkbox"/> Primary Social Worker/Supervisor |
| <input type="checkbox"/> Father | <input type="checkbox"/> Parent | <input type="checkbox"/> Foster Parent/Other Service |
| <input type="checkbox"/> Child | <input type="checkbox"/> Agency/Government | Provider(s) (number) _____ |
| <input type="checkbox"/> Relative(s)/Acquaintances _____ | | |

2. Did the judge:	Yes
a) Introduce the persons present?	1
b) Explain the hearing in language understandable to parents and age-appropriate children?	1
c) Advise parties of their rights at the hearing?	1

3. Did the following issues come up during the hearing?	Yes, mentioned the issue	Yes, and two or more persons mentioned the issue	Yes, and judge or attorney elicited parent or child's views on issue
a) Service needs of children (mental, medical, educational, etc.)	1	2	3
b) Need to place child away from custodial parent	1	2	3
c) Need to place child away from noncustodial parent	1	2	3
d) Appropriateness of current placement	1	2	3
e) Appropriateness of placement of child with relative other than parent	1	2	3
f) Visitation with parents, if child is placed away from home	1	2	3
g) Visitation with siblings, if children are separated	1	2	3
h) Where child will be placed	1	2	3
i) Terms of child and family's case plan	1	2	3

4. Did the judge:	Yes
a) Explain case deadlines and the consequences of missing the deadline?	1
b) Set the next hearing date before the parties left the courthouse (answer yes if court clerk did this)?	1
c) Prepare and distribute court orders before the parties left the courthouse?	1

5. Comments:

Observer: _____
 Judge: _____

Case Review Hearing

Today's Date _____ Judicial Case Number _____ Start _____ Finish _____

1. Persons Present During Hearing

- | | | |
|--|--|---|
| Family # | Attorneys # | Social Workers/Service Providers # |
| <input type="checkbox"/> Mother | <input type="checkbox"/> Child | <input type="checkbox"/> Primary Social Worker/Supervisor |
| <input type="checkbox"/> Father | <input type="checkbox"/> Parent | <input type="checkbox"/> Foster Parent/Other Service |
| <input type="checkbox"/> Child | <input type="checkbox"/> Agency/Government | Provider(s) (number) _____ |
| <input type="checkbox"/> Relative(s)/Acquaintances _____ | | |

2. Did the judge:	Yes
a) Introduce the persons present?	1
b) Explain the hearing in language understandable to parents and age-appropriate children?	1
c) Advise parties of their rights at the hearing?	1

3. Did the following issues come up during the hearing?	Yes, mentioned the issue	Yes, and two or more persons mentioned the issue	Yes, and judge or attorney elicited parent or child's views on issue
a) Service needs of children (mental, medical, educational, etc.)	1	2	3
b) Need to place child away from custodial parent	1	2	3
c) Need to place child away from noncustodial parent	1	2	3
d) Appropriateness of current placement	1	2	3
e) Visitation with parents, if child is placed away from home	1	2	3
f) Visitation with siblings, if children are separated	1	2	3
g) Ongoing efforts to notify missing parties or putative fathers (if applicable)	1	2	3
h) Ongoing efforts to determine paternity	1	2	3
i) Terms of child and family's case plan	1	2	3
j) Reasonable efforts to achieve permanency (return home or other permanent placement)	1	2	3
k) Progress toward permanency goal	1	2	3
l) Appropriateness of permanency goal	1	2	3

4. Did the judge:	Yes
a) Explain case deadlines and the consequences of missing the deadlines?	1
b) Set the next hearing date before the parties left the courthouse (answer yes if court clerk did this)?	1
c) Prepare and distribute court orders before the parties left the courthouse?	1
d) Make case-specific findings concerning reasonable efforts to achieve permanency?	1
e) Make specific findings concerning the parents' compliance with the case plan?	1
f) Make specific findings concerning terms of the case plan and whether revision is needed?	1

5. Comments:

Observer: _____
 Judge: _____

Permanency Hearing

(Also referred to as a permanency planning hearing, 12-month hearing, etc.)

Today's Date _____ Judicial Case Number _____ Start _____ Finish _____

1a. Persons Present During Hearing

Family #

- Mother
- Father
- Child
- Relative(s)/Acquaintances _____

Attorneys #

- Child
- Parent
- Agency/Government

Social Workers/Service Providers #

- Primary Social Worker/Supervisor
- Foster Parent/Other Service Provider(s) (number) _____

1b. First Permanency Hearing **Subsequent Permanency Hearing?**

2. Did the judge:	Yes
a) Introduce the persons present?	1
b) Explain the hearing in language understandable to parents and age-appropriate children?	1
c) Advise parties of their rights at the hearing?	1

3. Did the following issues come up during the hearing?	Yes, mentioned the issue	Yes, and two or more persons mentioned the issue	Yes, and judge or attorney elicited parent or child's views on issue
a) Service needs of children (mental, medical, educational, etc.)	1	2	3
b) Need to place child away from custodial parent	1	2	3
c) Need to place child away from noncustodial parent	1	2	3
d) Appropriateness of current placement	1	2	3
e) Appropriateness of placement of child with relative other than parent	1	2	3
f) Visitation with parents, if child is placed away from home	1	2	3
g) Visitation with siblings, if children are separated	1	2	3
h) Ongoing efforts to notify missing parties or putative fathers (if applicable)	1	2	3
i) Ongoing efforts to determine paternity	1	2	3
j) Terms of child and family's case plan	1	2	3
k) Reasonable efforts to achieve permanency	1	2	3
l) Progress toward the permanency goal	1	2	3
m) Appropriateness of the selected permanency goal	1	2	3
n) Permanency plan decision	1	2	3
o) Next steps to implement the permanency plan	1	2	3

4. Did the judge:	Yes
a) Explain case deadlines and the consequences of missing the deadlines?	1
b) Set the next hearing date before the parties left the courthouse (answer yes if court clerk did this)?	1
c) Prepare and distribute court orders before the parties left the courthouse?	1
d) Make case-specific written findings concerning reasonable efforts to achieve permanency?	1
e) Make specific findings concerning the parents' compliance with the case plan?	1
f) Make specific findings concerning terms of the case plan and whether revision is needed?	1
g) Make specific findings supporting the permanency planning decision?	1
h) Make specific findings concerning reasonable efforts to achieve permanency?	1
i) Make specific findings concerning appropriateness of all permanency goals higher in priority than selected goal?	1

5. Comments:

Observer: _____
 Judge: _____

Termination of Parental Rights (TPR) Hearing

Today's Date _____ Judicial Case Number _____ Start _____ Finish _____

1. Persons Present During Hearing

- | | | |
|--|--|---|
| Family # | Attorneys # | Social Workers/Service Providers # |
| <input type="checkbox"/> Mother | <input type="checkbox"/> Child | <input type="checkbox"/> Primary Social Worker/Supervisor |
| <input type="checkbox"/> Father | <input type="checkbox"/> Parent | <input type="checkbox"/> Foster Parent/Other Service |
| <input type="checkbox"/> Child | <input type="checkbox"/> Agency/Government | Provider(s) (number) _____ |
| <input type="checkbox"/> Relative(s)/Acquaintances _____ | | |

2. Did the judge:	Yes
a) Introduce the persons present?	1
b) Explain the hearing in language understandable to parents and age-appropriate children?	1
c) Advise parties of their rights at the hearing?	1

3. Did the following issues come up during the hearing?	Yes, mentioned the issue	Yes, and two or more persons mentioned the issue	Yes, and judge or attorney elicited parent or child's views on issue
a) Notice and service of process on all parents	1	2	3
b) Paternity of child	1	2	3
c) Whether evidence (or admissions) support grounds for termination	1	2	3
d) Whether termination is in the child's best interests	1	2	3
e) Appropriateness of post-termination case plan	1	2	3

4. Did the judge:	Yes
a) Prepare and distribute court orders before the parties left the courthouse?	1
b) Set the next hearing date before the parties left the courthouse (answer yes if court clerk did this)?	1
c) Make specific verbal findings of fact that fully supported the court's decision?	1

5. Comments:

Observer: _____
 Judge: _____

Post-Termination Case Review Hearing

Today's Date _____ Judicial Case Number _____ Start _____ Finish _____

1. Persons Present During Hearing

- | | | |
|--|--|---|
| Family # | Attorneys # | Social Workers/Service Providers # |
| <input type="checkbox"/> Mother | <input type="checkbox"/> Child | <input type="checkbox"/> Primary Social Worker/Supervisor |
| <input type="checkbox"/> Father | <input type="checkbox"/> Parent | <input type="checkbox"/> Foster Parent/Other Service |
| <input type="checkbox"/> Child | <input type="checkbox"/> Agency/Government | Provider(s) (number) _____ |
| <input type="checkbox"/> Relative(s)/Acquaintances _____ | | |

2. Did the judge:	Yes
a) Introduce the persons present?	1
b) Explain the hearing in language understandable to parents and age-appropriate children?	1
c) Advise parties of their rights at the hearing?	1

3. Did the following issues come up during the hearing?	Yes, mentioned the issue	Yes, and two or more persons mentioned the issue	Yes, and judge or attorney elicited parent or child's views on issue
a) Progress toward achieving adoption	1	2	-
b) Appropriateness and terms of adoption subsidy	1	2	-
c) Disclosure of child's history and disabilities	1	2	-
d) Efforts to recruit, screen, match adoptive parents for child	1	2	-
e) Progress of home studies of possible adoptive parents	1	2	-
f) Status and progress of adoption proceeding	1	2	-
g) Services to child	1	2	-

4. Did the judge:	Yes
a) Set the next hearing date before the parties left the courthouse (answer yes if court clerk did this)?	1
b) Prepare and distribute court orders before the parties left the courthouse?	1
c) Make case-specific findings concerning reasonable efforts?	1

5. Comments:

Instructions to Observers and Project Administrators for Conducting Court Observations



Purpose

The court observation tool captures information about the length of time hearings take when judges use nationally recommended practices to protect children in accordance with statutory mandates.¹ This information is used to project a manageable workload for dependency court judges.

Judicial hearing observation differs from court improvement observation in that it is mainly about time rather than quality. Because quality is an adjunct of time analysis, however, a few of the most important quality indicators are included on the observation forms (e.g., visitation, paternity, notice, and service of process). If the hearing process captures these quality indicators, the time allotment is likely to be accurate.

Implementation

The court observation tool requires two elements: neutral observers who are experienced in dependency court processes and court observation forms that capture the content and process of the hearing observed.

Observers

Observers should be recruited from outside the dependency court being observed. They should not engage in dependency practice before the judge being observed. Experienced observers can be recruited from the court improvement office, the highest State court's administrative staff, a law faculty, a dependency attorney from another jurisdiction, or the private bar.

During the first few days of observation it is a good idea to have two observers for each hearing. The observers can compare notes, work out problems in the marking process, and agree to submit one form. After the observers have learned the marking process, one experienced observer per hearing should be sufficient. The second observer can either cover other hearings or alternate with the first observer.

Observation Forms

Court observation forms have been provided for the most common kinds of dependency hearings. The names for these hearings differ from jurisdiction to jurisdiction, but observers should easily identify the applicable forms, as nearly all States follow essentially similar case processes. Observers should feel free to rename forms to match local practice. Included in this packet are:

1. Emergency removal hearing, also referred to as shelter care hearing, probable cause hearing, preliminary protective hearing, temporary custody hearing, or preliminary hearing.
2. Adjudication hearing, also referred to as jurisdictional hearing, fact-finding hearing, or trial.
3. Combined adjudication/disposition hearing.²
4. Disposition hearing.
5. Case review hearing.
6. Permanency hearing, also referred to as permanency planning hearing or 12-month hearing.
7. Termination of parental rights (TPR) hearing.
8. Post-termination case review hearing.

Each observation form begins with identifying information about the hearing:

1. Name or identifier of observer.
2. Name or identifier of judge.
3. Docket or case number or numbers for the case or cases being heard.
4. Start and finish times for the hearing.

Each observation form has five parts:

Part 1. Persons present during the hearing, typically:

- a. Mother, father, child, and relatives.
- b. Attorneys for the child, parents, and agency or government.

- c. Providers, including social workers, foster parents, and other service providers.

Part 2. Did the judge:

- a. Introduce persons present?
- b. Explain the hearing in language understandable to parents and age-appropriate children?
- c. Advise parties of their rights at the hearing?

Part 3. A list of issues that might arise relating to the best interests of the child, in accordance with indicators found in ASFA, regulations, and policies relating to the best interests of the child, as well as to hearing procedure. Depending on the type of hearing, these issues include such elements as service needs for children, notice and service of process, paternity, child support, visitation with parents and siblings, suitability of placement, reasonable efforts, and terms of the family's case plan.

To rate part 3 elements:

- a. If the issue was mentioned, the observer marks "1."
- b. If two or more persons mentioned the issue, the observer marks "2."
- c. If the issue was mentioned and, in addition, the judge or attorney elicited views on the issue from the parents or child, the observer marks "3."

The rating system for part 3 indicates how thoroughly an issue was discussed and helps measure the quality of the hearing.

Part 4 addresses the judge's findings and summations and requires a much narrower analysis. Laws and regulations require a judge to follow certain procedures. For example, when a judge makes a finding—for example, that an agency made reasonable efforts, or that a child will not be returned home—those findings are to be supported by reference to case-specific facts. By looking at the answers to part 4 questions, the data analyst will know that a judge either did or did not make a finding and, if so, that the finding was or was not supported by evidence and testimony in the case. Part 4 also notes whether a date was set for the next hearing and whether orders were immediately distributed.

Part 5 records comments from the observer. This is the place to capture any unusual details in the case that would affect the data analysis. For example, explain that a hearing took only 5 minutes because an attorney did not appear and a new hearing was set for a later date.

Recommended Procedure

Time Allotted

Courts have the option of conducting court observations in one phase with a judicial tutorial at the beginning or in two phases with a judicial tutorial between.

The One-Phase Option

Courts that focus only on performance that incorporates national standards of practice and legal mandates—without comparison to current court performance—can obtain useful data on workloads by observing courts over one relatively short period of time. Court observations should be preceded by a judicial tutorial or seminar that reminds judges of mandated and recommended practices. Training should be delivered by knowledgeable professionals, such as the director of the State's court improvement program teamed with a respected judge from another jurisdiction. Judges then schedule a lighter docket for the court observation period, in accord with times recommended in the National Council of Juvenile and Family Court Judges (NCJFCJ) publication *RESOURCE GUIDELINES: Improving Court Practice in Child Abuse and Neglect Cases*. Those times are:

1. Emergency removal (shelter care or probable cause) hearings: 1 hour
2. Uncontested adjudications: 30 minutes
3. Dispositions: 30 minutes
4. Case reviews: 30 minutes
5. Permanency hearings: 1 hour
6. Uncontested termination of parental rights: 1 hour

Data should be collected for at least 2 consecutive weeks for courts with high dependency caseloads, and for longer consecutive periods for courts that hear dependency cases 2 days a week or less often.

The Two-Phase Option

In the two-phase option, phase one measures current performance as a baseline and phase two measures performance that incorporates recommended national practice standards that meet all statutory mandates.

It is recommended that the equivalent of 2 weeks full-time observation be devoted to phase one and 2 weeks to phase two. Courts that do not hear dependency cases at least twice a week may spread the observation during

each phase over 3 weeks instead of 2, but the weeks in each phase should be consecutive.

There should be a pause between phases to collect and analyze data and compare those data with data from the judicial logs, if that tool is also in use. Certain weaknesses will be noted in any court's performance, arising from a variety of causes, such as heavy caseloads, insufficiently trained attorneys or social workers, or judges new to dependency practice. Once systemic weaknesses are identified, judicial training can be prepared and delivered. Typically, this would be 1-day or ½-day training that focuses on the areas needing improvement. As noted earlier, it is optimal if training is delivered by knowledgeable professionals, for example, the director of the court improvement program teamed with a respected judge in or out of the State.

For phase two, judges should be asked to schedule their dockets lightly, in accordance with recommended times in the NCJFCJ *RESOURCE GUIDELINES*. More time would be scheduled for contested cases that are expected to be time consuming. The point of phase two is to give judges time to be thorough.

Preparation

Before beginning court observation, observers should interview judges to learn how they customarily manage hearings, staff functions, and the docket. Observers may be unfamiliar with some terms and practices. This is a time to anticipate and resolve problems.

The observer should request permission to look at the case files before hearings begin each day. It is a great help to look at the current court reports and court orders from the previous hearing. The observer can fill out forms with initial identifying information. Knowing the context of the case will make it much easier to follow events in the hearing. If, however, the judge cannot make files available, the observer will have to gather all information from the docket and from the hearing itself.

The observer should look over the courtroom and learn where the attorneys, social workers, and parties are positioned before the bench. This will make it easier to follow the rapid introductions at the beginning of each hearing.

Observation

The observer should enter the courtroom with a printout of the day's docket, forms filled out with initial identifying

information (if case file reviews were permitted), and extra blank forms in case there are mistakes or the substance of the hearing changes (for example, a case review might change into a permanency hearing).

The observer should sit where there are clear sightlines to the judge and the other participants, even if the attorneys and parties have their backs to the observer.

The events in a hearing unfold rapidly, so the observer will have to be sufficiently familiar with the forms that items can be marked without delay.

Completion

Observation forms should be submitted promptly to the data analyst. The analyst who scans the forms as soon as they come in may be able to spot problems that can be raised with the observers and corrected (for example, failure to enter the finish time for the hearing or confusion over where to include witnesses among the participants).

Frequently Asked Questions

Questions Pertaining to Observations Generally

◆ How does one determine the start and finish times for a hearing?

Prior to any observations, the observer should note whether a clock controls the times (in some courts a clock is started when a hearing begins and stopped when it ends), or whether the judge or clerk announces when the hearing has started and finished. If either of those practices, or one similar, is in effect, those times should be noted as start and finish times on the observation form.

If there is no consistent practice indicating start and finish times, the observer should consider the start time to be when the case is called for the record, and the finish time when participants leave—or are asked to leave—counsel's table. After participants leave the judge may continue to write, but the observer would not know whether the judge is writing orders for the case just heard or working on another document. Therefore, the judge's writing time should not be included within the hearing time (it will be accounted for in the judge's log) unless the participants are still at counsel's table waiting for the judge's order.

- ◆ **What if a case is scheduled for a particular kind of hearing—for example, adjudication, case review, or termination of parental rights—but after the case is called it does not go forward as a full hearing?**

If the case does not go forward as a full hearing because preliminary matters must be dealt with, as in the case of a pretrial hearing, use the form for the hearing listed on the docket, and check the box “Pre-trial/Preadjudication Only”. If there is no box, such as for a case review hearing, add “pre-” to the title and explain in the Comments section.

If the case does not go forward because something is amiss—a witness does not appear, a parent is not brought in from the jail, the social worker does not appear—enter the start and finish times and note in the Comments section why the hearing was abbreviated.

- ◆ **What if the court system has an adjunct dependency drug court where many of the issues have already been aired? The hearing may be very short as a result. How should that be indicated?**

In the Comments section, note that the parents participate in a drug court where the relevant issues were recently discussed, so the hearing was unusually short.

Questions Pertaining to Part 1 of the Observation Forms

- ◆ **How does the observer account for more than one attorney appearing on behalf of parents, the child, or the government?**

Next to the appropriate box checked under “Attorney,” write the number of attorneys who appeared. For example, place a “2” next to “Parent” if each parent had an attorney present.

- ◆ **Hearings often are attended by many service providers of different kinds. For example, how does one indicate that a court-appointed special advocate (CASA), a foster parent, and a group home supervisor were present?**

Check the appropriate service provider box. Enter the number “3” on the line provided, and below that figure write “1 CASA, 1 foster parent, 1 group home supervisor.”

- ◆ **What if people in the courtroom who are not identified at the outset are later called upon by the judge to add information?**

Make an effort to record their presence. For example, if relatives are scattered about the courtroom and the judge recognizes them at some point in the proceeding, return to part 1 and mark how many relatives there are, to the best of your knowledge.

- ◆ **What if a parent or someone else is not present in the courtroom but participates by speakerphone, such as from jail or from out of State? Should they be marked as present?**

Yes. The observer might indicate that it was a telephone connection. For example, check the “Mother” box and next to it write “by telephone.”

Questions Pertaining to Part 2 of the Observation Forms

- ◆ **What if the court explains the hearing process and advises parties of their rights in some way other than by the judge, such as by video?**

That general practice would be described in the report produced after phase one. It would be up to those who prepare the judicial caseload model to decide if that sufficiently informs and protects participants. The observer would leave those boxes on the observation sheets blank, as observation only addresses what actually occurs in court.

Questions Pertaining to Part 3 of the Observation Forms

- ◆ **If an issue is raised by one person, then subsequently discussed by two persons, and finally directed by the judge to the parents or child, should the observer mark only “3” and erase the previous “1” and “2” figures?**

No. It is recognized that given the quick flow of events during a hearing, the observer will be marking as the issue is addressed. The data analyst will look only at the last column marked to determine how thoroughly the subject was discussed. There is no need to erase earlier marks.

- ◆ **What if an issue in Part 3 is not discussed because it is not pertinent to that particular case, rather than because it was overlooked? For example, sibling visitation might not be raised because there are no siblings, or parental visitation might not be raised because the parent is dead.**

Because the data analysis protocol looks only at large groups of statistics, not case-by-case statistics, it is not necessary to note why certain issues were not discussed in a particular case. However, if the court wishes to keep track of case-specific information (that is, use the observation sheets for additional analysis), the observer may write “NA” for “not applicable” to the left of the issue on the list—or make a comment to that effect in part 5.

- ◆ **What if the judge’s practice is not to repeat any of the information in the court report, but say only, “The court has received the social worker’s report. Are there any objections? If not, it will be entered”? The report might contain many of the issues listed in part 3, but they would not be discussed aloud.**

The observer’s job is to mark down only what is seen and heard in court. If an issue is discussed in court, it receives a “1,” “2,” or “3.” If it is not discussed, no mark is made. If the court’s practice is to enter the court report without discussing issues, that should be mentioned in the phase one report, and might be included as an element for training prior to phase two.

Questions Pertaining to Part 4 of the Observation Forms

- ◆ **What if a judge says “I find that the agency made reasonable efforts” without specifying a basis for that finding, but the observer noted in part 3 that there was discussion of the kinds of reasonable efforts made by the agency. Should the observer mark the Part 4 finding as supported by case-specific data?**

There is very little room for observer discretion in Part 4. The general rule is that unless the judge verbalizes specific findings of fact to support the court’s

decision, such as referring to details of an individual social worker’s testimony or to specifics of an agency’s report to the court, the finding has not been supported. However, there might be an unusual situation where efforts are thoroughly discussed and the judge then makes an almost immediate finding that the agency made reasonable efforts. That scenario would amount to unmistakable support for the finding.

Questions Pertaining to Part 5 of the Observation Forms

- ◆ **What kind of comments should go in part 5?**

For purposes of this protocol, helpful comments are those that identify unusual aspects of the hearing. For example, if a hearing lasted only 5 minutes, it could be noted that the reason was that the parent was not brought to court from jail. If the court wishes to use these observation forms for analysis beyond the current project, however, longer comments could be entered describing the hearing.

Endnotes

1. Mandates include The Adoption and Safe Families Act of 1997 (Public Law 105–89, 111 Stat. 2115) and other dependency-related Federal and State laws. Recommended practices include those set forth in National Council of Juvenile and Family Court Judges, *RESOURCE GUIDELINES: Improving Court Practice in Child Abuse and Neglect Cases* (Reno, NV: NCJFCJ, 1995).
2. In many courts adjudication and disposition hearings are combined. Therefore, a form that combines them is provided. For other hearings that may be combined, the observer should use the forms provided for both hearings but eliminate the introductory parts that do not apply to the second hearing (for example, introduction of parties and advisement of rights). Fasten the two observation forms together and submit them to the data analyst as one package.



**National Council of Juvenile and
Family Court Judges**



National Center for State Courts



**ABA Center on
Children and the Law**