

Task Force on Legal Representation in Childhood Dependency

Report & Recommendations

Subcommittee on Quality Assurance

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Findings

Without essential information, child abuse and neglect systems cannot know what types of improvements are needed and whether efforts to improve practice are working.

[E]veryone involved in the protection of children is committed to the goals of safety, permanency, and well-being for every child. However, commitment to these goals is not enough. As stakeholders in whom the public has placed its trust, we must commit to a continuous process of improving and strengthening our dependency system and cross-system supports. Performance measurement is only one step in that process, but it is a critical first step.¹

Performance measures coupled with a quality assurance process can help systems “establish 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.”²

Quality assurance measures or performance measures are those specific measureable indicators that “help courts[, representation systems,] and child welfare agencies establish a baseline from which to measure the success of their improvement efforts and to identify areas where improvements are still necessary.”³ Specifically, the American Bar Association Center on Children and the Law has found that performance measures can be used to measure the impact of “rule, policy or practice changes on...representation in a jurisdiction.”⁴ They are an integral part of a Continuous Quality Improvement (“CQI”) processes. This process is often described as “identifying, describing and analyzing strengths and problems and then testing, implementing, learning from and revising solutions. Simplified, the model identifies the cyclical steps in

¹ Victor E. Flango & Neal Kauder, National Center for State Courts, *Court Performance Measures in Child Abuse and Neglect Cases: Key Measures* iii (2008) available at <https://www.ncjrs.gov/pdffiles1/ojdp/223567.pdf>

² *Id.* at v.

³ *Id.* at 1

⁴ American Bar Association Center on Children and the Law, *Indicators of Success for Parent Representation* 1 (2015).

a process of systems change—the plan, do, study, act model.”⁵ These efforts can improve dependency systems and a representation models [which in turn improve and also improve](#) outcomes for children and families in the process.

For these reasons, performance measurement, and other quality assurance efforts have been used by child welfare agencies for years to establish and gather regular and reliable sources of information that evaluate system performance, aid in decision-making, and report success and challenges to external stakeholders.⁶ In 2008, the Department of Justice with partners the National Center for State Courts, the National Council for Juvenile and Family Court Judges, and the American Bar Association (“ABA”) Center on Children and the Law found that “[l]ike child welfare agencies, juvenile and family courts must focus not only on the timeliness of case processing and decisionmaking [sic], but also on the quality of the process and the outcomes resulting from the court’s efforts.”⁷ In response, these organizations collectively released a guide to Court Performance Measures in Child Abuse and Neglect Cases urging courts across the county to engage in quality assurance efforts.⁸ Adding to the quality assurance movement, a 2012 convening of Court Improvement Program directors from Region VI of the Children’s Bureau discussing the importance of improving representation for parents led to the creation, piloting and eventual publication, in 2014, of Indicators of Success for Parent Representation authored by the ABA Center on Children and the Law.⁹ These tools have supported the gathering and reporting of quality assurance measures and the continuous quality improvement processes of states and jurisdictions across the country to monitor various aspects of the child welfare system including, in some states, systems of representation.¹⁰

In Oregon, the Juvenile Court Improvement Program (“JCIP”) began collecting and reporting timeliness data and system-wide performance measures in 1999. Each quarter, JCIP provides quarterly reports on these measures to all court administrators, presiding judges, juvenile court judges, and court staff. These reports are a periodic reminder to aid local stakeholders in their efforts to improve dependency court practice.¹¹ Because the problems of children and families involved in the juvenile dependency system cannot be solved by the judicial branch alone, in 2005 JCIP launched the JCIP Model Court Program to foster multidisciplinary, collaborative improvement efforts in our local communities. JCIP provided training on performance measures, facilitated self-assessments, and provided local JCIP model court teams with technical assistance and

⁵ National Counsel for Juvenile and Family Court Judges, *A Guide to Integrating Continuous Quality Improvements into the Work of Community Improvement Councils* 1 (2015).

⁶ Mary O’Brien and Peter Watson, National Child Welfare Resource Center for Organizational Improvement, *A Framework for Quality Assurance in Child Welfare* vii.

⁷ Victor E. Flango & Neal Kauder, *supra* note 1, at v.

⁸ *Id.* at iii.

⁹ American Bar Association Center on Children and the Law, *supra* note 4.

¹⁰ See, e.g., American Bar Association Center on Children and the Law, *supra* note 4 (describing efforts in Texas, Oklahoma, Louisiana, and Arkansas).

¹¹ Juvenile Court Improvement Program, *2012-2016 Strategic Plan* 1 (2012), available at <http://courts.oregon.gov/OJD/docs/OSCA/JFCPD/Juvenile/JCIPStrategicPlan.pdf>

support to implement continuous quality improvement processes at the circuit court level. In 2014, the Office of Public Defense Services (OPDS) launched a pilot program “the Parent and Child Representation Project” which has created significant system improvements with regard to how children and parents are represented in three counties in Oregon. To track the effect of these systemic changes OPDS has selected a set of performance measures which it is tracking and has engaged in a continuous quality improvement process.¹² To date, there are no quality assurance efforts that specifically target the district attorney or Department of Justice systems of representation in Oregon.

In Oregon, the Courts, the Department of Human Services, service providers, and attorneys who represent the government, children, and parents are all involved in dependency cases. Each entity has a different responsibility and plays a different role in the child welfare system.¹³ Although each entity is limited in its ability to individually “cause” any given outcome, and the level of influence each entity has on outcomes varies, each has some level of influence and the ability to affect outcomes in these cases.¹⁴ Additionally, the public holds all of these entities collectively accountable for the outcomes achieved for children who have been abused or neglected.¹⁵ To date, little has been done in Oregon to examine the impact that attorneys for the government, children, and parents have on any given outcome; however, the OPDS Parent Child Representation Program is beginning to examine the link between parents’ and children’s attorney performance and case outcomes. Moreover, little data is available in Oregon on basic outputs (measurable realities) of attorneys (parent, child, and government) in the dependency representation system. Consistent and reliable performance data is needed to ensure that Oregon’s dependency representation system not only provides efficient and effective legal services to all parties but also contributes to improving outcomes for and fulfilling the State’s responsibility to Oregon children and families.

Recommendations

Recommendation #1: The following Quality Assurance Outcome Measures should be collected and reported to assess the effect of the current model of representation and the effect of any changes to the model suggested by this Task Force and implemented by the legislature and the administration.

Although there are additional outcome measures that may be relevant to the representation model or dependency representation system (see appendix A) these

¹² See, Office of Public Defense Services, *Parent Child Representation Project Annual Report 2014-2015* (2016) (reporting on performance measures such as immediate and consistent access to multidisciplinary staff, caseloads, representation out of court, shelter hearing representation, case resolution, time to permanency, and client satisfaction).

¹³ Victor E. Flango & Neal Kauder, *supra* note 1, at 1.

¹⁴ *Id.*

¹⁵ *Id.*

priority measures are recommended for collection and use as part of the Continuous Quality Improvement Process (see recommendation #3) because of their overall importance, ability to provide information about known current systemic issues, and their potential correlation to representation (noting that representation is just one aspect of the dependency system that affects these outcomes). In addition, these measures have been recommended for collection in dependency representation and court systems by national organizations and states who have implemented quality assurance measures for representation systems.

| Performance Measure | Indicator | National documents that recommend this performance measure | Is this collected/ reported? |
|------------------------------|---|---|---|
| Outcome Measures | | | |
| Successful Permanency | Total percentage of children reaching permanency* | ABA Indicators of Success for Parent Attorneys ("Indicators of Success") ¹⁶ ; Toolkit for Court Performance Measures in Child Abuse & Neglect Cases ("Toolkit Measures") ¹⁷ | Currently Collected and Reported by DHS |
| | Reunification <ul style="list-style-type: none"> • Median Months to Reunification (FO.02.1) • Percent of cases where permanency found through reunification | Indicators of Success; Toolkit Measures | Currently Collected and Reported by DHS |
| | Adoption <ul style="list-style-type: none"> • Median Months to Adoption (FO.02.2) • Percent of cases where permanency found through adoption | Indicators of Success; Toolkit Measures | Currently Collected and Reported by DHS |
| | Guardianship <ul style="list-style-type: none"> • Median Months to Guardianship • Percent of cases where permanency found through guardianship | Indicators of Success; Toolkit Measures | Currently Collected by DHS |

¹⁶ American Bar Association Center on Children and the Law, *supra* note 4.

¹⁷ Victor E. Flango & Neal Kauder, *supra* note 1.

| Performance Measure | Indicator | National documents that recommend this performance measure | Is this collected/ reported? |
|--|---|---|------------------------------|
| Parent and Child Contact | Visitation Between Parents & Children <ul style="list-style-type: none"> Type Location Supervision | Louisiana Child Attorney Quality Assurance Indicators ("LA Indicators") ¹⁸ | Currently Collected by DHS |
| Timeliness of Hearings | Continuances and set overs <ul style="list-style-type: none"> Number Person requesting Reason | National Center for State Courts CourTools (with regard to hearings/trials) ¹⁹ | Not currently collected |
| <p>*Although the total percentage of children finding permanency may increase it is important to note that permanency outcomes may not necessarily all improve together—getting more children reunified and into guardianships, for example, might lead to a reduction in the percentage of children who are adopted, nonetheless, this scenario would still be an improvement in overall permanency outcomes.</p> | | | |

Recommendation #2: The following Quality Assurance Output Measures should be collected and reported to assess the current model of representation and the effect of any changes to the model suggested by this Task Force and implemented by the legislature and the administration.

Although there are additional output measures that may be relevant to the representation model or dependency representation system (see appendix A) these priority measures are recommended for collection and use as part of the Continuous Quality Improvement Process (see recommendation #3) because of their overall importance, ability to provide information about known current systemic issues, and their potential correlation to representation (noting that representation is just one aspect of the dependency system that affects these outputs). In addition, these systemic measures have been recommended for collection in dependency

¹⁸ *Indicators of Quality Representation Louisiana Children's and Parents' Attorneys* (2014).

¹⁹ National Center for State Courts, *CourTools: Trial Court Performance Measures, Measure 5* (2005) available at http://www.courttools.org/~media/Microsites/Files/CourTools/courttools_Trial_measure5_Trial_Date_Certainty.ashx.

representation and court systems by national organizations and states who have implemented quality assurance measures for representation systems.

| Performance Measure | Indicator | National documents that recommend this performance measure | Is this collected/ reported? |
|----------------------------|--|--|---|
| Output Measures | | | |
| Workload | Attorney caseload, separated by case type including, for example dependency, delinquency, child support, criminal, and other. Other commitments by attorneys (e.g., supervising, magistrate commitments) may be recorded as a percentage of FTE. | Indicators of Success | Generally not currently collected.* |
| | <u>Continuity of Representation- the percent of juveniles with both dependency and delinquency cases who are represented by the same attorney for all cases.</u> | | <u>Generally not currently collected.</u> |
| Out of Court Work | Parent/Child Attorney Participation in Out-of-Court Meetings: <ul style="list-style-type: none"> Type of meetings Time spent in meetings | Indicators of Success; LA Indicators | Generally not currently collected.* |
| | Attorney Client Contact: <ul style="list-style-type: none"> Frequency Nature of Contact (via phone, in person, immediately before court proceeding?) | Indicators of Success; LA Indicators | Generally not currently collected.* |
| Court Room Practice | Government Attorney Present at Court | Toolkit Measures | Not currently collected. |

Commented [LMcK1]: The Crossover group is recommending that one attorney be appointed for any cases involving the juvenile... this is something that could/should be added as a measure to track.

| Performance Measure | Indicator | National documents that recommend this performance measure | Is this collected/ reported? |
|--|--|---|-------------------------------------|
| Client Satisfaction | Client (parent, child, caseworker, DHS mgmt.) satisfaction | Indicators of Success; National Center for State Courts CourTools ²⁰ ; LA Indicators | Generally not currently collected.* |
| * Currently collected and monitored in OPDS PCRCP counties (Linn, Yamhill and Columbia). | | | |

Recommendation #3: A standing workgroup coordinated by the Judicial Department that includes representatives from DHS child welfare, the Department of Justice (“DOJ”), the Office of Public Defense Service (“OPDS”), and the Oregon District Attorneys Association (“ODAA”) should be formed to meet quarterly and implement the collection and reporting of the recommended quality assurance measures and engage in a basic continuous quality improvement process.

Understanding that Oregon has not systemically collected quality assurance outcome and output measures directly related to the dependency representation system, a workgroup should be formed to implement recommendations #1 and #2. As Oregon undertakes this work for the first time the workgroup should focus on creating a strong foundation and simple straight-forward means to collect and report these measures and provide recommendations for systemic improvement. The work of this group will ultimately provide the state, stakeholders, and representation entities with the information necessary for continuous conversations about and improvements to the dependency representation system.

The Judicial Department is best suited to provide ongoing leadership and coordination of this work because of the longstanding work of the Juvenile Court Improvement Program to develop and implement performance measures and assist local courts with continuous quality improvement activities to improve outcomes at the local level through local multidisciplinary model court teams.

Recommendation #4: Resources should be provided to the Judicial Department to coordinate and support these continuous quality improvement efforts described

²⁰ National Center for State Courts, *CourTools: Trial Court Performance Measures, Measure 1* (2005) available at http://www.courttools.org/~media/Microsites/Files/CourTools/courttools_Trial_measure1_access_and_fairness.ashx.

in Recommendation #3. Resources should also be provided to each entity supervising or coordinating the attorneys who practice in the dependency representation system (DOJ, OPDS, and ODAA) to support workgroup participation and the collection and reporting of quality assurance measures.

Juvenile and family law cases take up a significant share of the workload of many of Oregon's courts, and profoundly impact the lives of thousands of children and parents each year. Despite the importance of these cases to both courts and families, and despite Oregon being one of the first state court systems in the country to adopt and report statewide performance measures, OJD has, since 2009, provided very limited performance metrics, via detailed reports on juvenile dependency court practice statewide. The present lack of capacity to track caseloads and processing times for all court cases has left circuit courts unable to adequately monitor improvements in case processing, evaluate new programs or staffing patterns, or identify weaknesses in performance compared to other Oregon courts. Lack of data analysis and research capability also prevents the Office of the State Court Administrator, Chief Justice, trial courts, internal and external stakeholders, and the Legislature from making data-informed decisions on potential system, resource, and statute changes concerning Oregon's children and families. The limited dependency court performance measure work that OJD has accomplished in recent years has been funded through a federal Court Improvement Program grant. The OJD does not have the resources to lead and coordinate this multi-agency data collection, reporting, and continuous quality improvement process.

OJD would need dedicated staff to provide:

- ongoing leadership and coordination of the work group.
- data reporting, statistical analysis, and performance measure support for the new data measures that would be required of OJD (continuances & setovers, attorney presence at hearings...).
- expert advice and guidance (to DOJ, DAs, and OPDS) on sound data mining and reporting techniques and methodologies for collecting the workload and out of court measures.
- coordination of periodic client satisfaction surveys.
- coordination of annual report to the legislature on performance measures and continuous quality improvement activities.

A ~~1.5~~ FTE analyst would be needed to support this work at OJD for an estimated biennial cost of ~~\$109,014,218,028~~.

| | | | |
|--------------------------|---------------------------|-----------|----------------|
| Analyst 4 - Step 2 | | \$ | 5,659 |
| PERS | 16% | \$ | 894 |
| Mass Transit | 1% | \$ | 34 |
| Social Security | 8% | \$ | 433 |
| Pension Obligation Bond | 7% | \$ | 379 |
| Employee Relations Board | \$ 1.92 | \$ | 2 |
| Workers Comp | \$ 2.67 | \$ | 3 |
| Health Insurance* | \$ 1,681 | \$ | 1,681 |
| | monthly | \$ | 9,084 |
| | 12 mos | \$ | 109,014 |
| | .5 FTE per month | \$ | 4,542 |
| | 12 mos at .5 FTE | \$ | 54,507 |
| | Biennium at .5 FTE | \$ | 109,014 |

The entities who supervise or coordinate the attorneys who practice in the dependency system have limited experience in and capacity for quality assurance and continuous quality improvement processes. Building data collection tools, providing training and support to over 350 attorneys handling over 47000 hearings in 2014, creating and managing reports, and analyzing data are tasks which would require additional resources within the Office of Public Defense Services. Support for .2 FTE of an analyst position at OPDS will be needed to support this work, which, with salary and benefits would be an estimated biennium cost of \$29,760. DOJ as the agency's attorney would require additional resources to collect and analyze the quality improvement measures described above and to adequately provide statistics and actively participate in any statewide work group. Support for .2 FTE of a Research Analyst 1 (Step 2) position at DOJ will be needed to support this work, which, with salary and benefits would be an estimated biennium cost of \$34,791. Providing a limited amount of resources to support this work will ensure that these processes can be created and implemented in a meaningful way.