

**THE ADOPTION AND SAFE FAMILIES ACT (ASFA) TRAINING SERIES**

**COLLABORATION WITH THE COURTS**

**TRAINER'S GUIDE**

**July 2004**

**Developed by  
The Institute for Child and Family Policy  
Edmund S. Muskie School of Public Service  
University of Southern Maine  
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## **COLLABORATION WITH THE COURTS**

### **Introduction**

The national vision for child welfare is that children will grow up in safe, nurturing and stable environments. To help achieve that vision, state and county child welfare agencies are striving to assure that their practice, systems and management approach ensure that clients needs are assessed quickly, that individualized services for children and families are available and delivered promptly, that the impact of the services is monitored and, if need be, that services are modified.

The emphasis on results and the use of data to measure progress toward the achievement of outcomes carry clear expectations for child welfare administrators, supervisors and managers. While agencies are making progress implementing Adoption and Safe families Act (ASFA), more work needs to be done to assure that the managerial and supervisory day to day decisions are informed by data and reports, that agencies refine internal administrative systems to support practice and that training continues to enhance the skills needed to successfully implement the practice, managerial and legal implications of ASFA.

The document you are reading is one in a set of trainer's guides designed to communicate information on the Adoption and Safe Families Act (ASFA) that goes beyond introductory, compliance based topics. While this material is designed primarily for training purposes, it certainly is adaptable to other forums, such as internal or external workshops, presentations, newsletters or briefings on ASFA and could be successfully presented to child welfare administrators, supervisors, managers, foster parents, caseworkers, providers, teachers and other community stakeholders.

### **The Training Series**

The trainer's guides in this series are:

#### **The Adoption and Safe Families Act (ASFA) and the Child and Family Services Reviews (CFSR): Using Outcomes to Achieve Results**

This trainer's guide highlights the major requirements of ASFA, presents federal outcomes and measures and systemic factors and provides an opportunity to discuss the philosophy, practice implications and results of the CFSR.

### **Action Planning: A Problem Solving Tool**

This trainer's guide introduces and demonstrates how the use of Action Planning can assist child welfare managers and supervisors in planning, managing and evaluating practice, systems and programs toward the achievement of desired outcomes.

### **Collaboration with Native American Tribes: ICWA and ASFA**

In the child welfare system Native American children have different service delivery systems as well as laws that apply to them. Therefore, individuals must ask different questions and make different assumptions in their efforts to identify and work with Native American children and families. Because of the importance of the interaction between the agency and tribes, this trainer's guide focuses on successful approaches to collaboration, the requirements of the Indian Child Welfare Act (ICWA) and ASFA and the practice considerations when working with Native American children and families.

### **Using Data to Measure Success**

Child welfare managers and supervisors are increasingly expected to be able to use data, information and reports to guide decision making and to determine what is working and what isn't working in the organization, with practice and in the service delivery system. This trainer's guide gives participants practice in analyzing reports and in using basic data tools for reading and interpreting data.

### **Change is all Around Us: Tools to Build Commitment to Change**

In most organizations change occurs constantly. In order to be effective in leading and modeling change management skills, supervisors and managers must understand the dynamics of avoiding resistance to change and how to build commitment to it. This trainer's guide includes a model for building commitment to change, provides an opportunity to build on these skills and includes use of a case study, *Family Net: An Automated Child Welfare Information System* which explores organizational and managerial issues when a major change in the workplace takes place.

### **Collaboration with the Courts**

ASFA promotes the concept that the child protective system involves a network of interrelated agencies and services. The courts, of course, are an essential piece of this network. This trainer's guide explores what the courts and child protective agencies identify as their main opportunities, challenges and needs as they work together and independently to carry out their required activities in child welfare cases.

## Notes on Using These Trainer's Guides

The Muskie project team expects that each agency will use the *Adoption and Safe Families Act (ASFA) Training Series* in a variety of ways, thus we designed the training guides to be easily modified to accommodate the differing needs of child welfare agencies. This approach enables each public child welfare agency to customize these training guides to meet its unique needs -- in effect to use the materials contained in this series to guide its own workshops, briefings and presentations. For example, some agencies will select and use material from all of the trainer's guides, others will use only one or two of the guides, while others will use these guides as a springboard to create their own materials to better suit their needs. The material in these guides is proven to accommodate and support this type of adaptation by child welfare personnel. At minimum, you will need to adapt the material by adding your agency's outcome measures, results of the Child and Family Services Review (CFSR), policies, regulations, data, reports and other state or county specific materials.

To increase usability, this trainer's guide and the others in the series have the same format. The pages are divided into two columns. One contains the text of the guide and the other sometimes contains notes on the text and also provides space for users to write their own notes.

Each guide begins with information on the length of time the session will take to complete, the rationale, the learning objectives, activities, sample materials, advance preparation, glossary of terms and an annotated bibliography. The Trainer's Instructions are guidelines for the way a presenter may want to organize the material and thus are an attempt to standardize content, not delivery style. The text (appearing in regular type) provides information on moving through the material, while the text in italic type is a suggestion for what the presenter might actually say as he/she presents the material. Of course, the material in the text can be modified or changed to suit the needs of the presenter and the group. Following the text of the guides are the handouts/overheads that accompany the text. These appear in the order that they are referenced in the text.

### Additional Resources

The *Adoption and Safe Families Act (ASFA) Training Series* builds on training material previously produced by the Institute for Child and Family Policy, Edmund S. Muskie School of Public Service at the University of Southern Maine:

- **Using Information Management to Support the Goals of Safety, Permanency and Well Being**, developed as part of a project funded by the Children's Bureau, Administration for Children and Families, U.S. Department of Health and Human Services under Section 426 of the Social Security Act, published September 27, 2000 (<http://www.muskie.usm.maine.edu/sacwis>) and

- **Bringing Together the Child Welfare Team**, developed as part of a project funded by the Children's Bureau, Administration for Children and Families, U.S. Department of Health and Human Services under Section 426 of the Social Security Act, published September 27, 2002 (<http://www.muskie.usm.maine.edu/asfa>).

Several talented experts in child welfare, curriculum design and the adult education field tested and provided feedback on these documents, including the trainer's notes, exercises and handouts, and helped polish the material to better convey the complex concept of outcomes based management.

The training guide(s) can be viewed/downloaded on the internet at <http://www.muskie.maine.edu/asfa>. Or, they can be ordered from the Clearinghouse, National Child Welfare Resource Center for Organizational Improvement, University of Southern Maine, One Post Office Square, 400 Congress Street, P.O. Box 15010, Portland, ME 04112. Phone: (207) 780-5813; Fax: (207) 780-5817; e-mail: [clearing@usm.maine.edu](mailto:clearing@usm.maine.edu).

## **Collaboration with the Courts**

### **Time**

Approximately 3 hours

### **Rationale**

A key component of bringing together the child welfare team involves strengthening the working relationships between the child welfare agency and court personnel around child protective cases. One place to start is by reflecting on the child protective system from both the court and the child welfare agency perspectives, emphasizing required and perceived roles, responsibilities, relationships and management issues from each viewpoint. This approach should result in an understanding of what the courts and child protective agencies identify as their main opportunities, challenges and needs as they carry out their required activities in child welfare cases.

### **Learning Objectives**

After completing this module, the participant should be able to:

- Explain the required and perceived roles and responsibilities of the court and the agency in the child protection system and how both are involved in achieving successful outcomes for children and families
- Define what the courts and child protective agencies identify as their main opportunities and barriers as they carry out their required activities in child welfare cases.
- Employ strategies for building positive working

This material is most effective when co-presented by the child welfare trainer and an agency attorney.

relationships between the child welfare agency and the court.

### **Activities**

- Case Study: Child Welfare Services in El Paso County, Colorado: Where Human Services and the Courts (60 minutes)
- Presentation: Invite a judge/court representative to discuss the role of the courts in child protective cases or how court practice has been changed by ASFA or what should be included in a petition or a locally identified topic.(60 minutes)
- Exercise: Explore how child welfare managers and supervisors can support the social worker/agency attorney relationship (30 minutes)
- Exercise: Explore successful approaches to working with the courts around ASFA implementation, such as preparing workers to testify, writing effective court reports and identifying the current procedures to help ensure productive, positive court/agency working relationships (30 minutes)

### **Sample Materials**

- Child Welfare Services in El Paso County, Colorado: Where Human Services and the Courts HO1
- AZ Republic Article HO2
- Attorney-Social Worker Responsibilities blank format HO3
- Attorney-Social Worker Responsibilities HO4
- Top Ten Tips for Effective Testimony HO5

Materials identified as HO # can be used as both handouts and overheads.

Child Welfare Services in El Paso County, Colorado: Where Human Services and the Courts was written by a case writer from the John F. Kennedy School of Government (KSG), Harvard University.

- Top Ten Tips for Effective Court Reports HO6

### **Advance Preparation**

Invite the judge/court representative.

Coordinate the presentation of the material with the agency attorney.

### **Glossary of Terms**

*Collaborate*: to work jointly with others, to cooperate with or willingly assist an agency or person with which one is not immediately connected.

### **Bibliography and Suggested Reading**

ABA Child Law Practice. (September 1999) *Helping Lawyers Help Kids*. Vol.17, No. 7.

Center for the Future of Children. (Winter 1996). *The Future of Children, The Juvenile Court*. The David and Lucile Packard Foundation, Vol. 6, No.3.

- The Nature of the Court Today, pp. 40-52. This article presents a description of the influences shaping the role, activities and jurisdictions of Juvenile Courts.
- Responsibilities and Effectiveness of the Juvenile Court in Handling Dependency Cases, pp.111-125.

Walker, N., Brooks, Catherine and Wrightsman, L. (1999). *When parents are not enough- the rights of children in the social services system*, Thousand Oaks, CA: Sage Publications, pp.103-137.

### **Trainer's Instructions**

1. Introduce the module by presenting the rationale and objectives.

2. Begin the discussion using the following as a guide:

*The child protective system involves several key players.*

Public child welfare agencies, the University of Maine and the University of Southern Maine have permission to reprint the case for educational purposes without cost or further permission from the KSG.

*One of the most complex, challenging relationships is that between the agency and the courts. Today we want to spend some time reflecting on the roles and responsibilities of the court and the agency in the child protection system, as well as explore successful approaches to working with the courts.*

3. Introduce the Child Welfare Services in El Paso County, Colorado: Where Human Services and the Courts case. Explain the ground rules for the case discussion:

- The facilitator's role is to ask questions that will generate discussion and bring out the key themes in the case
- There are no right or wrong answers—although some answers are more right than others
- The facilitator will express no opinions during the discussion but will sum up the key lessons learned at the end of the discussion.

4. Ask each person to spend a few minutes rereading and preparing to discuss the case. Let the group know that the discussion will center around several questions:

- What's this case all about? From your read of the case or personal experience what's El Paso County, CO like politically, geographically, economically?
- What did the El Paso County Department of Human Services look like before David Berns arrived in 1997?
- Before 1997, what did the Juvenile Court in the 4<sup>th</sup> Judicial District look like?
- Do you have any sense from the case or your experience if what was going on in child welfare in El

Notes in *italics* in the Trainer's instructions section are talking points, comments that the trainer may make directly to the participants or use to guide his/her presentation.

Paso County ---crowded courts, foster care populations growing, kids in care for a long time,--was similar to or different than what was going on in other child welfare agencies across the country in the 1990's?

- Then, in 1997, David arrives and almost immediately makes changes in the agency. You've talked about this topic before---what were some of his main reforms?
- And while David is doing all that, the legal system is doing some reforming also, isn't it?
- And it's not just the agency/courts as major players in the delivery of child welfare services, is it? Who else is involved?
- And what are they all trying to do?
  - What are the key roles, responsibilities of the agency in the child welfare system?
  - What are the key roles, responsibilities of the juvenile court in the child welfare system?
  - Other players
- So we have all these players and reforms going on, are there any areas of potential conflicts or is everything running smoothly? Voluntary services; Privatization ; Burden of hearings; Timelines; Lines of Communication
- What happens when you try to redefine the issue of abused and neglected children by placing it into the context of the problems associated with poverty? Because isn't that what this case is all about? — Spend money up front to help families with jobs, housing and childcare. Save in the long run by keeping parents working and their kids out of costly state foster

care. Reframing the issue

- What was the impact of the reforms on:
  - Agency managers?
  - Supervisors?
  - Workers?
  - Kids and Families?
  - Judges
  - GAL
- And what could be done to resolve some of those problems?
- So let's step back here and sum up the characteristics of the approaches/resolutions to the problems.
- Ok, so this approach to reform worked in El Paso County CO. Could it work elsewhere in the country? Why or why not?
- What major themes or issues emerge from this case that we can apply to other situations?

5. Wrap-up the case by summarizing the key points raised during the class discussion. You may want to highlight some information from an article published in April 2004 in an Arizona newspaper about Berns' efforts in both CO and AZ. (H02).

*Dave Berns is now the Director of the Department of Economic Security in Arizona. A recent article in the Arizona Times about him nicely sums up this case. Let me read you a few highlights...*

*For Berns, the business of revamping CPS requires three basic strategies: **wise use of money, measurable outcomes and empowering employees.** (Remember how DHS funded the increased number of judicial staff under Judge Toth and the County on call program---a wise use of money, indeed.)*

*Berns says measuring outcomes not only proves that money is being well spent but also, "If we can't show it on paper, no one will know that what we did was important." Berns believes in empowering employees, giving them freedom to use their expertise. He encourages employees to design programs, establish protocol and make decisions. Berns cautioned them, however, to include all sorts of people in their planning: co-workers, experts, community members, clergy, parents, children and non-profits. Smiling, he says, "Lone wolves tend to get shot." Note he doesn't include the courts in the list. It may be an oversight or it may be because, as he says in the case,...he 'wanted to use the court system only when it was absolutely necessary rather than an ordinary way of authorizing services'.*

Let me continue with the article, a few more highlights...Berns believes in investing money up front to save money in the end. *An oft-repeated example involves a great-aunt in Colorado who took in seven nieces and nephews when their mother no longer could care for them because of drug addiction. Facing eviction, the loss of her car and \$5,000 in debt, the great-aunt called child-welfare officials to give up the kids. A child-welfare supervisor asked Berns, "I can't give her \$5,000, can I?" They worked out how much it would be to place the seven children in foster care for a year: \$168,000. They got her the \$5,000. Another example of a wise use of money.*

*It's the kind of thinking that could have prevented something Berns saw here in Arizona. In December, he sat*

*in on a court hearing of a mother who had 20 prior CPS reports and was losing her seven children to state care. The case stretched back over 15 years. Again and again, the mother had been referred to parenting classes, counseling and drug rehabilitation, but she didn't follow through. Neither did CPS. That mother, Berns says, should have received job training, housing, child-care subsidies and drug treatment: "We could have given her hope."*

*"If we have no hope and don't believe we can be successful and accomplish great things," Berns says, "how can we convince our clients to be successful and believe they can accomplish great things?"*

6. Wrap-up the discussion of the case by asking for final questions/comment.

7. Introduce the agency attorney and move into that next activity. Have the attorney ask each participant to complete handout HO3, Attorney-Social Worker Responsibilities blank format. After 5 minutes, walk through each of the activities and ask for volunteers to share what they wrote down. Process the comments using over overhead HO4, Attorney-Social Worker Responsibilities. Ask the agency attorney to spend a few minutes expanding the concepts that come out of this discussion to include the various roles attorneys can have in the process, for example agency attorney, attorney for the child, attorney for the parents and reinforcing the agency's policies/procedures for building and maintaining positive relationships with the courts.

8. Move into the next activity, exploring successful approaches to collaborating with the courts around ASFA, related practice issues and ensuring the achievement of outcomes for children and families. Ask the participants to go into small groups sorted by supervisors and managers. Ask the supervisory group(s) to identify what they do to help prepare their workers to testify in court. Ask the manager's group(s) to identify what formal and informal procedures are in place to help ensure productive, positive court/agency working relationships. For example, what up front agreements are in place to assure the activities of the courts and agency are coordinated? What mechanisms are in place for tracking achievement of outcomes? What feedback loops exist to collect information on how things are going? What cross training opportunities exist? If there is cross training, how are the topics selected? Make sure that each small group appoints a recorder/reporter.

9. After 10 minutes have the group come back together and report on their discussions. Ask the supervisory groups to report on their discussion about preparing staff for court. Write the suggestions on a flipchart. Ensure that the following ideas are brought up:

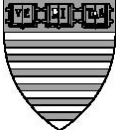
- I have observed court proceedings, met with the judge and identified for my workers the questions the judge asks most frequently so they can prepare.
- I have role played testifying in court with my workers. (Refer to HO5, Top Ten Tips for Effective Testimony)
- I checked with the worker to ensure that he/she has helped the child and family, understand what to expect in court.
- I review the court reports to be sure that they are organized, detailed, child specific, includes a

permanency plan etc. (Refer to HO6, Top Ten Tips for Effective Court Reports)

10. Ask the managerial group(s) to report on their discussions on the formal and informal procedures that are in place to help ensure productive, positive court/agency working relationships. Process with the group.

11. Ask for and address questions.

12. To wrap the session up, ask participants to reflect on and then share the key points they learned from these discussions and activities about collaboration with the courts and what actions they will take to improve the relationship.



## **Child Welfare Services in El Paso County, Colorado: Where Human Services and the Courts Meet**

*This case was written by Esther Scott, based on research by Chris Berdik, for use at the John F. Kennedy School of Government, Harvard University. Funding for the case was provided by the Edmund S. Muskie School of Public Service, University of Southern Maine, under a grant funded by the US Department of Health and Human Services, Children's Bureau. (0703)*

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When he took the reins of the El Paso County, Colorado, Department of Human Services (DHS) in 1997, David Berns brought with him an expansive vision and ambitious goals for the department's struggling child welfare services division. In recent years, the county had seen the number of its children in foster care rise steadily, and its child welfare budget balloon. Despite increases in resources to meet the growing demand, the department's performance in foster care services was less than stellar. Its scores on state-established measures for children in out-of-home placements, for example, were among the worst of Colorado's largest counties. The El Paso County Board of Commissioners had trained a worried eye on DHS and made clear its desire to curb runaway costs in child welfare.

Berns, however, came to DHS with the conviction that the child welfare budget crisis could be resolved not by cutting costs or services, but by getting "better outcomes" for the children and families under DHS care. Over the next several years, he would work to institute programs and services that would both strengthen the families of children at risk of abuse or neglect and make it easier for children in foster care to find permanent homes. These aims were in line with new state and federal laws, which made "permanency" for children in foster care a central concern of child welfare programs, by shortening the timeframes in which cases of children placed out of the home would be resolved, either through reunification with their families or through adoption.

But DHS was not the lone actor in child welfare in El Paso County. Under Colorado and federal law, the state juvenile court had assumed a prominent role in overseeing the child welfare agency's handling of abuse and neglect cases and in enforcing new statutory timelines. While the department focused its efforts on reducing the foster care population

through a variety of strategies, the court would concentrate its energies on meeting its mandate to ensure timely resolution of the cases that fell under its purview. Although DHS and the court shared the same ultimate goal of providing safe, permanent homes for their young and vulnerable charges, their paths to that end would at times diverge, creating tensions and frustrations on both sides of a still-evolving relationship.

### **Background: The Child Welfare “System” in El Paso County in 1997**

El Paso County comprised the area in and around the city of Colorado Springs, about 60 miles south of Denver. The community of roughly 500,000 was largely white—88 percent—and politically conservative, with Republicans outnumbering Democrats by almost two to one. Like much of the state, El Paso County had experienced a population boom in the 1990s; between 1990 and 2000, the number of residents in the area grew by roughly 30 percent. While it did not match the phenomenal pace of the overall population growth, one segment of the El Paso County community had also been steadily expanding during this period: children in foster care. According to Berns, their number had been increasing at the rate of ten percent a year, in keeping with a national trend that saw the number of children in foster care in the US double over the last two decades of the 20<sup>th</sup> century.<sup>1</sup>

Responsibility for children in foster care—and for all child welfare services in El Paso County—fell to the Department of Human Services, which also managed the county’s economic assistance programs, such as welfare and Medicaid. Every year, the agency’s Children and Family Services Division fielded many thousands of “community referrals” alleging child abuse and neglect. If an investigation by a DHS caseworker turned up evidence of abuse or neglect, the child at risk would at that point most likely enter “the system”—as many called the legal and bureaucratic machinery of child welfare services in the county—as a “dependency and neglect” (D&N) case. Typically, the D&N process began when the caseworker requested a court order permitting DHS to remove a child from its home and place it in a temporary foster care setting. Once granted, the removal set in motion a series of legal procedures—including temporary shelter hearings, plea hearings, adjudicatory hearings, dispositional hearings, and permanency planning hearings—which ultimately decided the fate of the child.

These proceedings could be complex affairs. Over the years, the number of parties to a D&N case had swelled, so that something of a crowd often gathered to sit in on the hearings. These included, in addition to a caseworker and a juvenile court judge, a county attorney, who represented DHS; legal counsel for the “respondent parents”; a “guardian ad litem,” an attorney appointed by the judge, and paid by the state, to represent the child’s interests in court; and, in some cases, a “court-appointed special advocate” (CASA), a volunteer specially trained to monitor a case and represent the child’s best interests in court.<sup>2</sup>

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<sup>1</sup> US General Accounting Office, “Adoption and Safe Families Act,” December 22, 1999, p.3.

<sup>2</sup> The El Paso County CASA, a nonprofit organization established in 1989, was one of about 700 such programs operating in the US. Somewhat unusually, in El Paso County CASA volunteers were sworn in as officers of the court and designated “interested parties” in D&N proceedings.

Colorado state law stipulated timelines for legal proceedings in a D&N case, setting limits on the number of days or months that could elapse between court actions. So, for example, an adjudicatory hearing—which could, if the parents requested, take the form of a jury trial—was expected to be held no later than 90 days after DHS formally filed a D&N petition (which stated the reasons for taking a child into custody); the dispositional hearing—in which DHS presented its “treatment plan” specifying what parents had to do to regain custody of a child—was to take place within 45 days of adjudication; the permanency planning hearing, which determined whether a child should be returned to its parents’ care or placed in an adoptive home, was to be held no later than 18 months after the original placement.<sup>3</sup> But, as a 1996 assessment of the juvenile court process in Colorado concluded, the system was rife with delays. For a variety of reasons—among them, parents who failed to show up for hearings, caseworker reports that were not filed, the adversarial nature of the proceedings—the statutory deadlines for legal proceedings were often missed, and children in foster care in Colorado could wait as long as five years for their permanency planning hearing.<sup>4</sup>

*New Timeframes.* Colorado was by no means alone in the delays that plagued its child welfare system. Nationwide, according to one report, increasing numbers of children were languishing in foster care for five years or more, largely due to “well-intentioned” but ultimately counterproductive efforts to “preserve the family [of a child removed from home] through prolonged and extensive services. . . .”<sup>5</sup> Concern about the skyrocketing foster care population and protracted stays in foster homes led Congress to pass the Adoption and Safe Families Act (ASFA) in 1997. The law, among other things, allowed states not to pursue efforts to return children to their homes if their parents had committed certain felonies or subjected their children to severe abuse or neglect; it also required states to begin the process of filing a petition to terminate parental rights if a child had been in foster care for 15 of the previous 22 months, or to document the reasons for not doing so. In addition, states were obligated to hold a hearing within one year of placement to determine, in Berns’ words, “the permanency goal for each child.”

Even before Congress acted, however, the Colorado state legislature had taken steps of its own to speed young children through its child welfare system. In 1994, it passed a law that sharply reduced the timeframes for legal proceedings for foster children under the age of six. For example, the law called for adjudicatory hearings to be held within 60 days after the D&N petition was filed, instead of 90, and for dispositional hearings to be held within 30 days of adjudication, instead of 45; permanent placements were expected to be completed within 12 months of the original out-of-home placements. The new statutory timetable, known as “expedited

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<sup>3</sup> Information about Colorado’s juvenile court process is taken from “Child Abuse and Neglect Cases in the Colorado State Courts,” a report of the Dependency and Neglect Court Assessment Advisory Council, June 27, 1996.

<sup>4</sup> Ibid. According to one CASA official, the average stay of a child in foster care in El Paso County was 3-6 years.

<sup>5</sup> GAO, December 22, 1999, pp. 3-4. Under earlier federal legislation, states were required to make “reasonable efforts” to prevent removal of a child or to return a child to its home. What constituted “reasonable” was not spelled out in the law.

permanency planning” (EPP), would not be fully implemented statewide for ten years, but it came early to El Paso County, where it began on a pilot basis in 1996.

It was at the juncture between these two new statutory mandates—one from the state just recently launched and one from the federal government soon to be implemented—that David Berns arrived in El Paso County in March 1997 to take up the post of director of its Department of Human Services.

### **David Berns at DHS**

Berns came to El Paso County after taking early retirement as director of the Office of Children’s Services in Michigan’s Family Independence Agency (formerly the Department of Social Services). His new agency had a staff of a little over 300 at the time and a total budget of roughly \$100 million. Over 20,000 homes in El Paso were served by the department every month, receiving welfare, food stamps, Medicaid, child care assistance, child welfare services, and other forms of assistance. When he arrived, Berns says, he found “many solid child welfare programs and staff,” but the department was stumbling under the burden of its burgeoning foster care population and child welfare costs that were growing at the eye-popping rate of 20 percent a year. Moreover, the results of its efforts on behalf of its foster care charges were mediocre at best. The state, Berns explains, rated each county on about 100 “factors” for children in out-of-home placements, reviewing every aspect of their care, including court actions, family service plans, medical check-ups, contacts with caseworkers, and permanency plans. El Paso County, he says, “consistently had one of the worst scores on those measures among the ten large counties in the state.”

When he interviewed for the job with the five-member elected board of county commissioners, Berns recalls, he was asked what cuts he would make “to live within a reasonable budget.” In response, he argued that the child welfare budget crisis was not due to “excessive services, programs, rates, or staff. They were going broke because [they] were getting such bad outcomes. . . . If we could keep children safe, increase permanency and strengthen families, we would save money because good outcomes are cheaper than the bad outcomes they had come to expect.” Berns’ argument carried the day; he was hired with the mandate “to invest our limited resources across the agency in ways that would improve outcomes.”

*Surveying the Scene.* As he looked about him, Berns was struck by the degree of court involvement in child welfare cases in El Paso County—and indeed all of Colorado. “It seemed like we had just a huge reliance on the court system, especially on out-of-home care,” he recalls. “. . . It was a more legalistic approach here than what I was used to.” In Michigan, he explains, “we had a lot of voluntary cases, where we would substantiate child abuse or neglect, and work with families without filing a petition with the court.” Only if the services agreed to in a voluntary treatment plan failed or “if there was an immediate issue that could only be resolved by placing the child,” Berns continues, “would we go to court.” By contrast, in El Paso County, even in cases with an “in-home service plan,” which kept the child in the care of its family, “we would often go into court and get protective supervision.” This would frequently prove to be the first step on a “slippery slope” that led to more extensive court involvement and foster care placement. “If the case wasn’t going exactly right,” Berns maintains, “even if we wanted to work more extensively with the family, there would

be other people—guardians ad litem, county attorneys, CASA volunteers—who would say, we don't think the family's doing well enough. And even my own workers might be saying that. And so it would be moved into the foster care system.”

Veterans at DHS agreed with Berns' assessment that the courts were seen, essentially, as a caseworker's first resort. “If we were concerned about a kid,” says Terrie Ryan-Thomas, an intake supervisor and former caseworker at DHS, “we pretty much went [to] the court immediately. And if you were a caseworker who had pretty good credibility with the judges, you could pretty much get an order for removal fairly easily.” In seeking early court intervention, notes Lloyd Malone, director of DHS' Children and Family Services Division, caseworkers were following what was considered best practice at the agency. “[We believed] that the best way to protect kids was through the system involvement,” he says. In fact, Malone points out, turning to the courts had been a matter of state policy. “That's how we were trained,” he notes. “We were trained by the state of Colorado and [its] regulations that that was what we should do, that we should take custody of the kid when there was a confirmed case [of abuse or neglect]. We were looked at with some degree of concern around the safety of kids if we didn't take custody.”

Berns proposed to change all that. The “legalistic” approach, he argued, was time-consuming and costly, often resulting in “expensive deep-end services,” which helped inflate the foster care population and, in the process, DHS' child welfare budget. He sought to reorient DHS toward a more voluntary and prevention-minded practice in which the courts became a last resort. Under this approach, Berns says, the department would “use the court system only when it was absolutely necessary rather than as a routine way of engaging in authorizing services.”

### **Changes at DHS**

*Privatization.* Before tackling the issue of how child welfare services were delivered at DHS, Berns first addressed the question of who should do the delivering. When he arrived at DHS, Berns says, roughly 70 percent of the department's ongoing foster care cases were being

managed by about 12 private child placement agencies (CPAs) in the area.<sup>6</sup> Although the caseload was high—Berns estimates 30 children per caseworker—there was considerable overlap between DHS and CPA employees on many cases, resulting in confusion for families and foster parents and occasional clashes between workers over the resolution of a case. “I'm thinking it's ridiculous to have two, three, four caseworkers on the same case,” Berns recalls, and asked himself, “Do I want to take this whole thing back and do it ourselves?”

Such a step, however, seemed to him fraught with risks: incurring the enmity of established agencies in the community, fighting the “political battle” to hire more permanent employees to take on the cases once handled by CPAs, finding hundreds of new foster homes to replace those recruited by private agencies. In the end, Berns chose the route taken in Michigan: to privatize foster care and give DHS workers the

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<sup>6</sup> Generally, these agencies recruited and trained foster parents. Most offered a range of support services as well and, in some cases, adoption services. The majority of CPAs were nonsectarian, but a few were Christian-based.

role of monitoring case management in the CPAs. Privatization, he maintains, would “give us more flexibility, more diversity” in serving the needs of children in foster care.

With the question of privatization settled, Berns turned his attention to “redefining” child welfare at DHS. The chief mechanism he would devise to implement his new ideas would entail, in Berns’ words, “massive changes in the way we do business.”

***Child Welfare and Welfare Reform.*** The central insight driving the changes Berns brought to child welfare services grew out of discussions with DHS staff, child welfare advocates, and other agencies in the community, which, Berns later wrote, “confirmed that poverty was a huge issue” for families that became involved with the child welfare system. From this, he concluded that DHS’ economic assistance programs—chiefly welfare—“must be the primary prevention program for child welfare and that child welfare must become an antipoverty program.”<sup>7</sup> This philosophy united DHS’ two major divisions under one mission—“to eliminate poverty and family violence in El Paso County”—and, perhaps more important, provided a conceptual framework for channeling welfare dollars into prevention services for children at risk.<sup>8</sup> National welfare reform legislation, enacted in 1996, had transformed traditional welfare (Aid to Families with Dependent Children) into “Temporary Assistance for Needy Families,” or TANF (pronounced “taniff”), and given states new flexibility in spending federal welfare money. In Colorado, that flexibility was delegated down to local government in the form of block grants— parcels of federal, state and local funds—to each county. Thanks to a sharply declining welfare caseload, El Paso County found itself in 1998 with an unexpected bonanza of \$6.5 million in TANF money which, Berns wrote, would “go unspent unless we [found] an appropriate use for it.” The county commission, he continued, “elected to invest the money in our families now.”<sup>9</sup>

The result was an array of supportive services available through TANF—including “kinship services” for grandparents who acted as their grandchildren’s guardians, day care assistance, substance abuse treatment, and domestic violence prevention programs. Families that entered DHS through its welfare division could voluntarily include services traditionally associated with child welfare in their “Individual Responsibility Contract,” and families coming to DHS through child welfare could become eligible for antipoverty programs associated with TANF. “Except probably on the far end of the spectrum,” says Barbara Drake, deputy director of DHS, “there is not that much difference between many of the families that we serve in our economic assistance programs and many of the families that we serve in child welfare. It’s often a matter of what door they enter our system through, what incident occurs that brings them to our attention.”

The staffs of DHS’ two divisions—those managing TANF programs and those managing child welfare programs—operated under a common set of “guiding principles” (see Exhibit 1), and the line separating the two functions became less

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<sup>7</sup> David Berns and Barbara Drake, “Combining Child Welfare and Welfare Reform at a Local Level,” *Policy and Practice*, March 1999, p. 27

<sup>8</sup> El Paso County, Berns and Drake noted in *Policy and Practice*, spent about \$34 million on child welfare services, and about \$60 million on various economic assistance programs.

<sup>9</sup> *Ibid.*, p. 28.

distinct. Child welfare workers could offer families under their care access to TANF resources and programs, and TANF workers could provide “strength-based” prevention services to families who might otherwise enter the child welfare system. On occasion, staff members actually “co-located” in each other’s offices. Thus, for example, a team of child welfare caseworkers moved to TANF to work with staff there on running the kinship services program. In addition to offering its own services for families in-house, DHS also created programs in partnership with other providers in the community, such as the local domestic violence prevention center and the mental health center.

For caseworkers, the proliferation of prevention-oriented programs significantly expanded the options available to them in working with troubled families. “We had two choices in the field before,” explains Ryan-Thomas. “It was either we are going to have to place kids ... and get them involved legally, or we walk away. Now suddenly we had this third option of providing services to families that I’m really worried about, and they don’t have to meet placement criteria. I don’t have to take them to court, and I can still provide them a family preservation service that might be really meaningful to them.” For Berns and other DHS officials, the new way of doing business, and the flexibility provided under welfare reform, allowed the department to implement, in Lloyd Malone’s words, “more responsive and helpful approaches” to families without having “to drag people into the system to give them some help.”

***The Gatekeepers.*** While the proliferation of voluntary programs gave caseworkers more options in handling cases of abuse and neglect, another new initiative encouraged them to think hard before resorting to the courts. This was an “on-call” program, which required a caseworker who wanted to place a child outside the home to consult first with a lawyer in the El Paso County Attorney’s Office.

The program was the brainchild of Chief Deputy County Attorney Aubrey Moses, who suggested it in part as a response to increasingly vocal criticism directed at DHS, and the courts, by members of a small “family advocacy” group in Colorado Springs, which charged that DHS had, among other things, “intimidated, threatened and coerced families with unneeded and unwanted services and case plans” and “employed abusive and intimidating techniques upon children to coerce false accusations from them.” The group’s numbers were not large, but it managed to get the ear of a county commissioner and some attention from the press. Although the family advocates’ allegations were ultimately judged to be unfounded, their protest led Moses to conclude that “the county attorney’s role really needed to be expanded in order to help the department achieve what it was trying to achieve. ... Maybe if they talked to us before placement, we can help out in this regard.”

Previously, the county attorney’s office had been “a very passive outfit,” involving itself only minimally with cases before they went to court. “As long as the facts added up,” Moses explains, “there wasn’t a whole lot of discussion.” This was at least partly due to the small size of the county attorney’s office and the large caseload of the county’s legal business it routinely handled. If something as intensive as the on-call program were to be instituted, the office would have to grow to accommodate the additional work. After trying and failing to win grant money from the state judicial department, Moses turned to DHS, which he was able to convince “that I was offering something that could help, and so they went ahead and just took the money out of their

own budget.” With the infusion of funds from DHS, the county attorney’s office grew from 4-6 lawyers plus four support staff members, to 10-11 attorneys supported by a staff of 15.

The on-call program, which was officially launched in 2000, served both a political and a practical purpose for DHS. For one thing, Moses notes, it allowed Berns to “show the county commissioners that the county attorney is reviewing each and every one of these cases, and we can count on it that when we file a case, there is a serious situation to warrant our involvement, and we are not placing a kid that shouldn’t be placed.” For another, Moses maintains, it forced caseworkers to “do a little bit more critical thinking.” In the past, according to Moses, caseworkers had met with little objection when they phoned judges or magistrates to ask for a court order to place a child out of its home. But faced with the prospect of consulting first with a county attorney, he continues, “they needed to have their ducks in a row. . . . My attorneys were not trained to be yes-men. They were trained to ask all the necessary questions” and to ensure that “we had exhausted other avenues to avoid placement. . . .”<sup>10</sup>

**Results.** Figures collected by the department attested to the changes wrought by the new programs and initiatives aimed at reducing court cases and the number of children in foster care. In 1998, of 8,884 referrals for alleged child abuse and neglect and “youth in conflict,” a total of 461 D&N petitions were filed in court by DHS’ intake unit; by 2001, the number of D&N petitions filed had slipped to 231, despite an increase in referrals to 9,333. The number of children placed outside the home by the intake unit had declined as well, from 251 in 1998, to 169 in 2001. Overall, the foster care population in El Paso County dropped from 603 in 1998 to 469 in 2001.

**Promoting Adoption.** While Berns’ various prevention strategies sought to lower the number of new children entering foster care, there were hundreds already in foster homes, some of whom had no prospect of returning to their original families. Berns had noticed that, in many instances, children were remaining with the same foster family or relatives for years without being adopted by them. A closer look revealed a number of disincentives to adopt in Colorado, which kept children in the legal and emotional limbo of open-ended foster care. Possibly the chief obstacle was the difference in the subsidy paid to foster and adoptive families. In Colorado, foster parents could receive as much as \$1500 a month, but the state had capped the adoption subsidy at a much lower figure: \$380 a month. For the many “special needs” children in foster care, who often required expensive treatments, this was a serious barrier to adoption, particularly since, as Berns points out, most foster and kinship care families were “very much on the low end of the income spectrum.” Moreover, once adopted, many of the children would lose the Medicaid coverage they were eligible for as foster children, as well as the support services provided them through child placement agencies.

Berns took a number of actions to remove these disincentives. First, he pointed

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<sup>10</sup> In addition to the on-call program, Moses created the position of “intake lawyer,” an attorney who worked with DHS intake caseworkers, advising them on when court intervention was warranted.

out to Colorado officials that the fixed cap on the state's adoption subsidy was essentially "illegal"—that is, he explains, under federal rules, the county "had to have the authority to negotiate up to the level [of the foster care subsidy] if it's in the best interests of the child." State officials concurred with this interpretation and, as Berns later wrote, "changed the state rules." As a result, adoption subsidies "could legally be negotiated up to the total payment received by the foster homes."<sup>11</sup> Other barriers were removed or at least lowered with the help of the federal Adoption and Safe Families Act of 1997. ASFA provided incentives for states to offer Medicaid to all newly adopted children; moreover, working with "key legislators" in Colorado, Berns helped convince the state legislature to extend Medicaid benefits retroactively to all adoption subsidy cases. The expansion of Medicaid, in turn, provided a mechanism for offering post-adoption behavioral health services to adopted children and their families.<sup>12</sup>

These and other modifications had a dramatic impact on adoptions in El Paso County. In 1996, adoptions were finalized for 49 children; by 1998, that number shot up to 230. In 1999, 216 children were adopted; in 2000, 214. Only in 2001, when the backlog of children waiting for permanent homes had been whittled down, did the number of adoptions decline, to 140. These figures represented not only the promise of secure homes for the adopted children, Berns points out, but significant savings in time and money for DHS. "By getting [a child] adopted," he says, "we saved fifty cents on the dollar, because we didn't have to keep going to court; we didn't have to have a guardian ad litem; we didn't have to have the county attorney; we didn't have to have caseworkers [appearing in court]. So we save all of the administrative expenses and get the kids permanency."

### **Changes in the Court**

While Berns was pursuing his goals for child welfare services at DHS, court officials in the Fourth Judicial District, which included El Paso County, had been working on a separate, though parallel, track to meet their own goals for improving the quality and timeliness of legal proceedings in D&N cases. The 1996 study of the Colorado state juvenile court system, paid for by a federal "Court Improvement Project" grant, had revealed serious failings in meeting the mandates of state and federal child welfare laws. "Data from the assessment," investigators wrote, "indicates that D&N cases are not handled in a timely manner and substantial delays exist in most counties." The report attributed the chronic delays to a wide range of problems in the system: a high number of case continuances, overburdened and under-prepared caseworkers, inadequate legal representation, absent or missing parents, and inefficient scheduling. In addition, the report noted, the "adversarial nature of court proceedings ... often forces respondent parents into very defensive and polarized positions, and can severely decrease the level of cooperation."

Even before the report was released, steps had been taken in the Fourth Judicial District to address some of the shortcomings the study noted. Under E. Richard Toth, then chief juvenile judge in the Fourth District, a mandatory mediation program had

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<sup>11</sup> David Berns, "Assuring That Adoptions Are Better Than Long Term Foster Care: One County's Perspective," in *Bridges*, Association of Administrators of the Interstate Compact on Adoption and Medical Assistance, Winter 2000, pp. 2-3.

<sup>12</sup> *Ibid.*, p. 3.

been introduced in 1995 for all D&N cases in which there were contested issues. Professional mediators gathered the interested parties in a case—parents, parents’ legal counsel, guardians ad litem, CASA volunteers, caseworkers—to try to hammer out an agreement in advance of a formal hearing. Often the issue at hand concerned the provisions of a treatment plan. If the parents “agree to do these things [in mediation],” Toth notes, “[such as] alcohol treatment, parenting classes, nutrition classes, individual therapy, family therapy, whatever they need to do—they are much more likely to follow through than if they have a contested hearing ... [where] the judge orders you to do these things. [That] takes a long time and, frankly, the longer the children are out of the home, the more the chance that they are never going to come back.”<sup>13</sup>

Toth took other measures to improve the performance of the juvenile court in the Fourth Judicial District. In part with funds from DHS and from the state court administrator, he beefed up the judicial staffing of the court, expanding its size from one “very part-time” juvenile judge and one magistrate to one full-time judge and four magistrates. By 2002, the juvenile court was staffed by three half-time judges and four full-time magistrates. Through the Court Improvement Project, he was able to hire case managers—a title that was later changed to “family court facilitator”—to smooth the flow of cases by holding meetings with the parties and ensuring that the necessary people and documents would be available for court hearings. In addition, Judge Toth tackled the problem of the guardians ad litem, who had received poor marks from the 1996 court study for their “minimal contact” with the children they were appointed to represent and their “minimal level of performance.” In place of the ad hoc arrangement whereby a judge appointed the guardian ad litem from a list of attorneys in private practice, he helped create a permanent Office of Guardians ad Litem in El Paso County, which grew to have a staff of eleven attorneys, as well as social workers and case coordinators. Finally, Toth helped draft a number of directives for the chief justice of Colorado’s Supreme Court that would expedite court proceedings by, for example, requiring pre-hearing family status reports from caseworkers and severely limiting the conditions under which continuances could be granted.

***Pilot Programs.*** When Toth retired as chief juvenile judge in 2001, his successor, Judge Theresa Cisneros, continued the court’s efforts to oil the machinery of child welfare legal proceedings. In the spring of 2002, she began a modest pilot program of pre-hearing conferences with families. Under the pilot, the parents in every fifth D&N case to come to court were given the opportunity to meet informally with Cisneros, outside the intimidating setting of the courtroom. “We [meet] back in chambers or in the jury room,” the judge explains, “and I don’t wear a robe. The parents get a chance to speak and ... to tell us what they think are the issues.” The meetings, it was hoped, would forestall future hostilities in court. Cisneros had noticed that if cases “were going to blow up, they were going to blow up at the preliminary protective proceeding”—formerly known as the temporary shelter hearing—which was typically the parents’ first encounter with the juvenile court system. “The pilot

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<sup>13</sup> According to an October 1999 report on “Dependency Mediation” by the Center for Policy Research in Denver, about 70 percent of cases sent to mediation were “able to resolve all of the issues during the session.” Mediation agreements, moreover, “appear[ed] to enjoy slightly better compliance” than non-mediated ones.

project,” she says, “[tries] to handle the cases in a less adversarial fashion, in hope of engaging the families sooner rather than later, because of the time constraints we’re under.” Early results seemed to bear out Cisneros’ hopes. “A lot of times,” says Jim Hustad, family court facilitator for the Fourth Judicial District, “we can get everything done in the pilot program that it takes six weeks of court hearings to do.”

A concern with time constraints and with keeping children out of foster care led to another pilot program—a “family drug court,” which began operating in the summer of 2002. The drug court was the idea of Regina Walter, a juvenile court magistrate, who saw it as a way of dealing with the dilemma posed by the 60 percent of D&N cases in which substance abuse was a major factor. These cases often resulted in the termination of parental rights and the permanent removal of the child from its home. But, Walter notes, “the parents continue to have more drug-exposed infants. . . . We’re yanking those kids from those families; they’re never returning. Then the family just continues to produce more children without the benefit of treatment.” It was difficult, she points out, to hold families to a treatment plan under the normal regimen of court hearings. “You end up in court the first time,” Walter explains, “and then you’re not back again for another 45 days. Then you’re not back again for another 60 days. When you have a deadline of one year on expedited permanency cases, the year is up and nothing has happened. . . . Those cases are zooming to termination.” By imposing intensive supervision—including weekly appearances in court—and treatment programs, the drug court, it was hoped, could “keep the children in the home and envelop the family with services.” The pilot program was supported with funds from the DHS foster care budget, on the theory that a drug court would allow children who otherwise would enter the foster care system to remain with their families.

In all of their endeavors at reform, court officials were keenly aware of the ticking clock of statutory deadlines. The shortened timeframes of both ASFA and the Colorado expedited permanency planning law presented a stark contrast with the more deliberate pace of legal proceedings in the past. “We used to start off slow” in a D&N case, recalls Judge Toth. “[We would] take the kid [from its home], have a hearing, see if the parents wanted a lawyer, and then set it over [i.e., continue to another date] for the lawyers to appear, and then set it over for the guardian ad litem to appear. And it would go on forever.” The new laws were intended to do more, however, than simply expedite. “The idea was not just to speed up,” Toth notes, “but to give the parents and the children a better shot at getting together by getting all the services and treatment plans and attorneys in place very, very early on in the case.” But the efforts of the court to meet the compressed timelines, and of DHS to avoid entanglement in lengthy legal proceedings, inevitably led to tensions.

### **Differences**

There were a number of areas of friction between DHS and the courts, which grew out of the innovations that one or the other had introduced in an effort to improve the way they served children at risk and comply with new state and federal mandates.

***Voluntary Services.*** Among some in the legal community, there were serious reservations about the wisdom of DHS’ new policy of encouraging families to sign on voluntarily to treatment plans, thereby avoiding the necessity to go to court. At its most extreme, says Lloyd Malone of DHS’ Children and Family Services, this concern

expressed itself in the warning that “if you provide voluntary services, you’ll have blood on your hands, because you won’t [be able to] help them and the kids will still be at risk. You’ll [be] walk[ing] away from your duty.” Child advocates worried over the criteria used to decide which families were considered appropriate to receive help on a voluntary basis. “I have concerns about some of the [cases] that are more high risk, whether they belong in voluntary services,” says Trudy Strewler, director of the El Paso County CASA program. “The ones that are less high risk I don’t have any problem with, but how do you draw that line?”

Others were troubled by the lack of information about the cases that were not being scrutinized by the courts. “There is no consulting with us on this,” says Juvenile Court Magistrate Regina Walter. “The department determines whether or not families will cooperate with the voluntary services, and they don’t communicate with the court on those cases. ... We don’t have any idea what it is that makes a case a voluntary case. We feel ... like we’ve been left out of the loop.”

Roughly 20 percent of the voluntary cases, Strewler reports, eventually ended up in juvenile court. For Walter, this represented valuable time lost in the battle to safeguard children at risk. “By the time [a case] gets to me,” she notes, “the family has already been involved with voluntary services for a year, and they haven’t done a damn thing and the family is not better.” But Malone points to DHS’ overall record of success in protecting children in their homes. The results of a recent federal review, he says, indicated that “Colorado has one of the best outcomes in the country regarding child safety.” Locally, he adds, El Paso County boasted “one of the best outcomes around the level of safety of kids, especially in the area of recidivism.” According to DHS’ 2001 annual report, the rate of re-abuse of children in the county in 2000 was 2.7 percent, compared to roughly 3.5 percent for the other large counties in the state and 11 percent nationwide.

But such figures notwithstanding, there persisted the concern that children outside the legal system might not be well served. The judicial role in child welfare cases, Malone observes, was “predicated on the notion ... that kids in the system won’t properly be dealt with without the eye of the court [on it].” Regina Walter essentially agreed. “I know it’s a pain in the neck for [DHS] to come to court,” she says. “I know it’s a pain in the neck for families to come to court. ... [But] when cases come to court, then I know what services are being provided and at what level, and that’s my preference.”

Not everyone connected with the courts, however, was critical of DHS’ efforts to pursue alternative ways of handling child welfare cases. Judge Toth praised Berns for making “a lot of resources available to these children and families. I think we have been able to unite more families earlier, instead of having to drag them through the mud for years and then terminate their rights.” Chief Juvenile Judge Theresa Cisneros also believed that families benefited from being able to bypass the intimidating environment of the courtroom. “My observation,” she says, “is that court systems are not ... necessarily that family-friendly, and because it’s an adversarial process, it isn’t conducive to allowing the family to work on the issues. ... I’m okay with voluntary services ... because I recognize that all families don’t need to be in the court system.” Moreover, she adds, in her experience, “when I have voluntary cases that grow to be a

real live dependency and neglect case, it looks to me like appropriate services have been in place. ... It doesn't look to me like a family is any worse off because we tried voluntary services."

**Privatization.** Perhaps to a lesser degree than with voluntary services, the privatization of foster care raised some concerns in the legal community as well. "The court," says DHS Deputy Director Barbara Drake, "has not been wholesale happy with the privatization. I think they felt that they had more control when it was public officials, public employees, answering to them with regard to kids in foster care." Trudy Strewler believed that the performance of caseworkers from child placement agencies was uneven, both in courtroom appearances and reports. "The system," she says, "is not working as well as it needs to," and in cases where CPAs were "not doing a good job," she adds, "DHS' monitoring is too far removed." However, Cisneros notes, "for the most part," the department was quick to react to "court concerns" about private agencies. "If we are seeing a problem that seems to be connected to a CPA," she explains, "if we let the powers that be over at DHS know and can identify with specificity what our concerns are, I think they're very responsive."

**The Burden of Hearings.** Contrary to expectations, the reduction in new D&N filings had not led to a corresponding drop in the number of court hearings on child welfare cases. "I haven't noticed that big of a reduction in my caseload as a result of [DHS] doing voluntary services," Cisneros reports. "It could be," she adds, "that we're picking that up with more reviews on other cases." Others agreed with this hypothesis. Lloyd Malone discovered from conversations with colleagues elsewhere in the state that El Paso County was having "anywhere from two to four times the number of hearings on a given case than are required by law or that are typically done in other counties across Colorado." He attributed the extra scrutiny by the Fourth Judicial District to its perceived need to "keep a closer eye" on the doings at DHS, possibly because of lingering doubts about voluntary services and privatization. To Berns, however, it was natural for the court to use freed-up time to monitor existing cases more carefully. "We've got an exceedingly caring and involved bench here," he says. "... If they don't have a new case, that means they have an opening on their docket for one they're already working on, so they're going to plow their time into making sure that things are done right."

Still, while acknowledging that "good judicial oversight can be very positive," Berns believed it could at times be "too much of a good thing." This was especially true because legal proceedings took "so darn much time," as Berns puts it, in paperwork and courtroom appearances. "We have a lot of hearings on individual cases," Cisneros acknowledges. "I think that's a frustration [for] the Department of Human Services. I think they're frustrated at how often they have to come to court." For DHS, time spent in the courtroom or preparing reports for the court was time not spent, in Berns' words, "working on the relationships with the families and figuring out what works and helping the families to be more successful."

But to some involved in child welfare, the increasing number of hearings and court procedures were attributable not so much to judicial zeal as to new statutory demands. As a result of provisions in ASFA and EPP, says Strewler, "we have more hearings, we have more reports. It's more demanding on our Department of Human

Services and also on our CASA program. Our staff and volunteers go three times as often to court. So we're all feeling it, across the boards. The court staff is feeling it—the clerks, the judges. ... As we expedited these processes, it moved children more quickly, but it also put a greater workload on all of the professionals that work within the system.”

*A Matter of Time.* Possibly the chief bone of contention between the court and DHS concerned the efforts of the Fourth Judicial District to move D&N cases to a faster resolution, in compliance with statutory deadlines. “Speeding up everything,” Cisneros says, “has created a certain amount of tension between the bench and the department.” From the court’s perspective, the timeframes in state and federal laws were, in the words of family court facilitator Jim Hustad, “strict statutory requirements.” As a result, Cisneros says, “the judges feel a tremendous pressure to get everything done in a quick fashion, because that’s what we’re being told to do.” But the court’s sense of urgency was not always shared in the same way by DHS. “It’s one of our frustrations,” Cisneros notes, “that we don’t feel like we get services in a timely fashion.” There were not, for example, enough mental health service providers to ensure that psychological evaluations were done quickly. “It’s unusual for me to get a psychological evaluation as part of a treatment plan any sooner than about 90 days,” Cisneros points out, “and that’s really pushing it. And by then, when you look at the EPP mandates, we’ve lost a quarter of the time. And so it’s frustrating. It’s a big frustration.”

In an effort to smooth lines of communication in the new, more intense environment of child welfare, a Memorandum of Procedures Committee was formed, made up of “every system player,” in Cisneros’ words—DHS, parents’ legal counsel, guardians ad litem, CASA, and the court—for the purpose on settling on “who had to do what by when.” While this led to some improvements, the court continued to press for quicker action from DHS, particularly in producing treatment plans. These plans were expected to be submitted in time for the dispositional hearing, which, in expedited cases, was to be held no more than 90 days after the initial D&N petition was filed. But for Cisneros, “three months is too long. That’s too far into these timeframes that we’re under. We want to set up a situation where everybody can come to grips with an appropriate treatment plan, get it started right away and not have any delay, even pending adjudication.<sup>14</sup> This, as Cisneros acknowledges, was a stretch for DHS. “We’re trying to figure out a way to frontload services and get it going quicker earlier on,” she says. Department officials, by contrast, “feel like they don’t have the time to figure out what the families need.”

While DHS officials generally sympathized with the bench’s need to comply with statutory deadlines, they chafed under its efforts to set even more stringent timeframes than those mandated by law. The juvenile court, Berns notes, generally required treatment plans within 30 days (instead of 90) of initial placement and, moreover, was contemplating even shorter timeframes. These abbreviated timelines, he argues, ignored the realities and the aims of the department’s work with families. “I would love to have ... a complete, individualized service plan for every family [ready

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<sup>14</sup> Under EPP, the dispositional hearing normally would be held within 30 days of adjudication.

earlier],” Berns maintains, “but it boils down to the practicalities.” DHS, he explains, was committed to “a process that truly wants to involve not only the client, but the extended family ... and having the families really driving their service plan.” As it was, the existing deadlines made it difficult to achieve this goal. “The timeframes that we have right now are problematic for us. We’re not able to get all of those things in. We’re looking for more flexibility in the other direction, the ability to use the full time permitted by law. A longer length of time would allow us to come up with a family-driven plan. The court wants a shorter time.” A strict adherence to the tighter deadlines sought by the court, Berns worried, “could result in ... more of a cookie-cutter [plan] ... [because] the family ownership of the plan and the true individualization of the service package couldn’t be done in that timeframe.”

***Lines of Communication.*** In some respects, the underlying issue between DHS and the court could be said to be the changing nature of their relationship. Since the federal government began giving the courts a larger role in overseeing the handling of child abuse and neglect cases—determining, for instance, whether the services provided by state and local agencies constituted “reasonable efforts” to keep families intact, or ensuring “timely permanency” for children<sup>15</sup>—the two entities, court and agency, had to find ways to work cooperatively but without compromising the independence of each. In El Paso County, there was a time, according to Judge Toth, when DHS and the bench were on very familiar terms. “When I first started on the bench 23 years ago as a juvenile magistrate,” he recalls, “... we would party with [DHS staff]. It likely appeared like we were ‘in bed’ with them, but we definitely were not.” Even after the socializing tailed off, informal contact continued on a regular basis, albeit more professionally. During his stint as chief juvenile judge, says Toth, “I would go to lunch with Dave Berns once a month to discuss ... issues [of concern].” In addition, he reports, there were meetings between “DHS supervisors and the magistrates and judge once a month, and we dealt with ... systemic issues.”

But the meetings stopped, in part, as Toth remembers, as a result of protests by “parents’ rights groups” and family advocates, who assailed what they saw as the coercive tactics of both DHS and the courts, and charged that the two colluded in the “whole sale violation” of parental rights. While dismissing these allegations as baseless, Toth nonetheless believed that it was unwise to continue the practice of regular get-togethers. “This is a very conservative county,” he observes, and the appearance of closeness between two public institutions would fuel suspicions of collusion. The resulting distance between the court and DHS was “healthy in the long run,” Toth maintains. “... We are the court. We wear the black robes. We’re neutral. We’re not on the side of DHS. We think it’s important that we work together in the sense of making each other better, but the perception of being in bed with each other is not a good one.”

Some in DHS lamented the loss of open lines of communication with the bench on issues of mutual concern. “The reality is,” David Berns argues, “that in dealing with kids and families we’re dealing with, basically, the ecology of our entire community. And because it’s that complex, you need a forum where you can have some pretty active conversations about how to make improvements and solve problems.” While

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<sup>15</sup> “Child Abuse and Neglect Cases in the Colorado State Courts,” p. 5.

DHS met with community groups on such matters, “we don’t have the courts at the table doing that with us anymore,” say Berns. “... We don’t really have a forum anymore for having discussions with [the court]. We don’t really have a way of getting them together and having discussions ... about program changes or process changes.” But Cisneros maintained that any issues that arose could be handled adequately on an ad hoc basis. “If there’s a system issue,” she says, “we can get that addressed somehow,” noting, as an example, the creation of the Memorandum of Procedures Committee to iron out some of the logistics of the hearings process. In any event, she adds, differences between the court and DHS, and the tensions that went with them, were inevitable and ultimately healthy. “They’re [i.e., DHS] the executive branch,” she says. “We’re the judicial branch. It’s a separation of powers issue. We will never agree with DHS 100 percent. There’s something wrong with a system that agrees with another system 100 percent.”

Some saw the evolving relationship between the court and DHS as a reflection of larger changes in the delivery of child welfare services. Looking back on a career in child welfare that spanned almost 30 years, Barbara Drake reflects that “we have lost that identification of the child welfare caseworker as a professional who has a distinct and unique role, ... whose job is more than writing court reports and connecting all the parts of the puzzle together. ... The fundamental role of knowing the family and ... being part of the catalyst for the family’s change is, I think, in many cases lost.” Privatization of casework services, a growing reliance on experts, and the increasing importance of federal child welfare laws, among other things, had contributed to a more formal and impersonal relationship between caseworkers and families. Moreover, Drake notes, “I think society has changed in the last 25 or 30 years, too, in that people do demand more legitimate reasons for involvement of the government and agencies in their lives.” That was “not necessarily bad,” she adds, “but it does tend to take some of the relationship piece out of it.” The same forces, Drake observes, had created more distance between the court and caseworkers. “I think the court used to trust the integrity and really listen to the caseworkers because they really knew the family. They knew what was going on; they were more in the hub with the family than on the periphery.”

Overall, however, Drake saw important benefits to children in the new child welfare climate. “When I first entered [the field],” she remembers, “there were a lot of kids hanging out in foster care, and that wasn’t good, either. There were kids that would go home after being in foster care for ten years.” Under the new philosophy of child welfare, “it’s almost like, if the system is going to be involved, their involvement needs to be brief, it needs to result in something. We need to move on.” On this point, the court was in agreement. Federal and state mandates, Judge Cisneros notes, imposed new burdens on agency and court workers alike. “Generally speaking,” she says, “my observation is that most of us are frustrated with the speed of the cases.” But, she adds, “I do think that ... the [laws] serve the kids much better. We can’t have these kids languish in foster care and then they grow up into the teenagers that are on my docket that are emancipated from foster care. So there’s a good reason to have [these laws].”

**Exhibit 1**



**Vision:** To eliminate poverty and family violence in El Paso County.

**Mission:** To strengthen families, assure safety, promote self-sufficiency, eliminate poverty, and improve the quality of life in our community.

**Guiding Principles:**

**System of care must:**

- √ be family-driven
- √ protect the rights of families
- √ allow smooth transitions between programs
- √ build community capacity to serve families
- √ emphasize prevention and early intervention
- √ be effectively integrated and coordinated across systems

**Services must:**

- √ be culturally respectful
- √ be evaluated for outcomes continually
- √ be delivered by competent staff
- √ be accessible, accountable, and comprehensive
- √ be individualized to meet the needs of families
- √ be strength-based and delivered in the least intrusive manner

## Can Star Czar Rescue CPS?

### **Dave Berns brings business savvy to social work**

Dave Berns is a social worker who thinks like a businessman. Spend money up front to help families with jobs, housing and child care. Save in the long run by keeping parents working and their kids out of Costly state foster care. Berns' approach to child welfare has pushed him to national prominence And landed him the job in Arizona to reform Child Protective Services. Appointed by the governor, he faces Senate confirmation this month.

For Berns, the business of revamping CPS will require three basic strategies: wise use of money, measurable outcomes and empowering employees. He uses terms like "investment strategies" and "long-term savings." In the touchy-feely world of social work, that kind of business talk is rare. But it has worked for Berns before.

Experts point to El Paso County, Colo., where Berns was director of Human services for seven years in one of the most compassionate and effective child-welfare programs in the country before coming to Arizona. There, Berns figured he could keep children safe, families together and out of poverty if they could get help before things got too bad. He got parents job training, housing, transportation, child-care subsidies and drug treatment and, as a result, prevented child abuse and neglect.

Now, Berns is director of the \$2 billion budget Department of Economic Security, Arizona's largest agency, and he has big plans for Arizona. If Berns accomplishes here what he did in Colorado, here's what to expect:

- \* One-third fewer children in foster care.
- \* Forty percent fewer foster children in residential treatment centers.
- \* Special-needs adoptions quadrupled.
- \* Dependency cases reduced by half.

Carol Kamin of the Phoenix-based Children's Action Alliance, a non-profit advocacy group, said Arizona has never seen the likes of Berns in the director's seat.

Someone like Berns is rare in any welfare agency, says Richard Wexler, director of the National Coalition for Child Protection Reform in Virginia. "He's applying common sense to child welfare. That's revolutionary." Knowing how to invest social-work time and money wisely put Berns on the short list of people across the country who have successfully turned around a troubled child-welfare agency. Wexler says if Berns can do the same in Arizona, he'll be the only person in America ever to do it twice.

Imposing, easygoing Berns is an imposing 6 feet 4. He's hard to miss as he hesitates in the middle of the cafeteria at DES, lunch tray in his hands, looking for somewhere to sit. He's easygoing. Still, he often startles people in the cafeteria when he introduces himself as the new director and asks if he can join them. "He was really nice," says Suzanne Kovalcik, an

administrative assistant in DES facilities management who had lunch with Berns in September. "He didn't just talk, he listened. And it wasn't for show. He was really interested. I'm very impressed with him."

At 57, after noted stints in Michigan and Colorado, Berns comes off as a combination boy next door and driven executive, as comfortable roller skating to disco tunes as testifying at the Legislature in a double-breasted suit.

Berns also epitomizes that business maxim about walking the walk. As the top man in El Paso County, he volunteered as a Salvation Army bell ringer and answered phones at a suicide-prevention hotline. He'd answer the phone, "Hi, it's Dave."

Berns, a Big Brother, has mentored three boys during 32 years. He just got a new little brother here. His new job in Arizona meant he had to miss playing Santa at the annual Christmas Party back in Colorado. "Playing Santa Claus and having 200 kids come up and give you a hug?" Berns says, smiling. "How much would you have to pay for that kind of pleasure?"

In the less huggable world of welfare politics, Berns has an uncanny ability to please both conservatives and liberals. President Bush has praised his program in Colorado. Berns helped write national welfare-reform legislation. He even made the liberal Wexler's list on his Web site, "Nine Ways To Do Child Welfare Right."

"You can hardly have anyone disagree with you that children should be safe and families should be supported," says Susan Kelly, a senior associate with the Center for the Study of Social Policy in Washington, D.C. Kelly's organization and the Harvard Kennedy School of Government are just two groups that have studied and praised Berns' work.

### **Blue-collar upbringing**

Born in the auto-factory city of Flint, Mich., the son of an electrician and a stay-at-home mother, Berns graduated in 1969 from Michigan State University with a degree in psychology. He worked as a welder at Fisher Body, a division of General Motors, while he waited for a job in the personnel office to open up. On Sept. 24 that year, auto workers went on strike. Berns wouldn't cross the picket lines. At 24, married with a baby, Berns took a job as a caseworker in the Michigan Department of Social Services welfare office in Shiawassee, a small town between Flint and Lansing. The strike ended but Berns stayed, even though he could make more money as a welder. He had discovered something fundamental about himself and welfare work: "I really liked helping people. Instead of focusing on their misery, I figured out how to help."

By 32, Berns was running the place as director of the Marquette County Department of Social Services. In 1989, he took the job as director of the state's Office of Children's Services. He retired seven years later, briefly considering a cross-country trip on his motorcycle. But he was offered the Colorado job and took it, eager to test his ideas about child welfare and see firsthand if they would work: "There, I learned that it could be done."

The job in Arizona was a chance to take what he had done on the county level in Colorado and see if it would work at the state level.

Rocked by a half-dozen high-profile abuse cases, Gov. Janet Napolitano in January 2003 appointed a commission to reform CPS and later went on a hunt for a new director. Napolitano says Berns' hire in August is her best as governor. "I'm looking forward to the day we're the national model for how to do child welfare right."

CPS' problems piqued Berns' interest in pursuing the Arizona job: "Crisis theory tells me an individual or organization is ripe for change at a time of crisis."

### **Spend now to save later**

Like a businessman with a long-term plan for his company, Berns believes in investing money up front to save money in the end. An oft-repeated example involves a great-aunt in Colorado who took in seven nieces and nephews when their mother no longer could care for them because of drug addiction. Facing eviction, the loss of her car and \$5,000 in debt, the great-aunt called child-welfare officials to give up the kids. A child-welfare supervisor asked Berns, "I can't give her \$5,000, can I?" They worked out how much it would be to place the seven children in foster care for a year: \$168,000. They got her the \$5,000. It was a wise use of money.

It's the kind of thinking that could have prevented something Berns saw here in Arizona. In December, he sat in on a court hearing of a mother who had 20 prior CPS reports and was losing her seven children to state care. The case stretched back over 15 years. Again and again, the mother had been referred to parenting classes, counseling and drug rehabilitation, but she didn't follow through. Neither did CPS. That mother, Berns says, should have received job training, housing, child-care subsidies and drug treatment: "We could have given her hope."

It's a thunderous Tuesday at the Rollero Family Skating Center in the West Valley, where Berns roller-skates twice a week. He sinks onto a bench, his skates tucked underneath, and calculates: He has lost 46 pounds since October, in part, because of the skating.

He likes numbers to reflect the work he has done. In El Paso County, Berns cut in half the number of petitions to remove children. He did it without compromising child safety. "It's really pretty straightforward, but it's also genius," says Barbara Drake, who took Berns' place as director in El Paso County and worked with him from 1997 to 2002. "So many kids would migrate into the child-welfare system if we didn't provide support." Berns says measuring outcomes not only proves that money is being well spent but also, "If we can't show it on paper, no one will know that what we did was important."

His bottom line: "Are kids safer? Are the families more economically secure?"

### **Shaking up DES**

Berns has shaken up Arizona's DES by telling employees they do not have to ask permission to do what's right as long as it's not against the law and it's in the best interest of children and families. He believes in empowering employees, giving them freedom to use their expertise. He encourages employees to design programs, establish protocol and make decisions. In January, at the first meeting of the team charged with implementing reforms adopted by lawmakers during a

special session earlier this year, Berns told the employees to figure out what needed to be done and do it.

Sharon Travis, an assistant program manager with the Department of Children, Youth and Families in Bisbee, says she thought, "I beg your pardon?" She and other employees looked bewildered. Travis has worked at DES since 1992, outlasting at least three directors. It was the first time anyone asked her opinion.

Berns cautioned them to include all sorts of people in their planning: co-workers, experts, community members, clergy, parents, children and non-profits. Smiling, he says, "Lone wolves tend to get shot." Now, Berns says, he will get out of the way and let his employees get to work: "It's not me. I turn over a great deal of power, authority and trust."

He can't wait to see the results. Within a year, he expects significant drops in welfare rolls and kids in foster care. He hopes more children will be adopted, fewer placed in institutions, and fewer hurt. "If we have no hope and don't believe we can be successful and accomplish great things," Berns says, "how can we convince our clients to be successful and believe they can accomplish great things?"

The Arizona Republic

Apr. 13, 2004

Karina Bland, Reporter

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<b>Attorney - Social Worker Responsibilities</b>		
<b>Responsibility</b>	<b>Who Should Do It?</b>	<b>As a Supervisor/Manager my responsibility is:</b>
Investigate report		
Discuss facts with police, medical professionals, teachers		
Decide whether court action is necessary		
Inquiry of Indian heritage/ancestry		
Prepare petition		
Notify parties of hearing		
Identify witnesses		
Prepare witnesses		
Prepare child witness		
Prepare exhibits for hearing		
Other court preparation		
Prepared disposition recommendation		
Present case in court		
Enter into agreements with parents		
Ongoing documentation		
Attend meetings with family		
Ongoing casework		
Ongoing legal issues, prepare for judicial reviews		
Decide when to terminate parental rights		
Refer case for criminal investigation/prosecution		

Sources: Russel, Robin. "Role Perceptions of Attorneys and Caseworkers in Child Abuse Cases in Juvenile Court." *Child Welfare* Vol. LXVII, Number 3, May-June 1988, 205-216. *See also* Herring, David J. *Agency Attorney Training Manual: Achieving timely Permanency for Children by Implementing the Private Model of Legal Representation for the State Agency in Child Abuse and Neglect Matters*. Pittsburgh: University of Pittsburgh Law School, 1992; Skarin, Gene D. "The Role of the Child Protective Agency's Attorney in Family Court." *Practicing Law Institute Criminal Law and Urban Problems* 171, March 1995, 431-468, 459-460. *Child Law Practice*, Vol.17, Number 7 Modified for training purposes. 'Reproduced by permission. All rights reserved. This information or any portion thereof may not be copied or disseminated in any way or by any means or downloaded or stored in any electronic database or retrieval system without the express written consent of the American Bar Association.'

<b>Attorney - Social Worker Responsibilities</b>	
<b>Responsibility</b>	<b>Who Should Do It?</b>
Investigate report	Caseworker
Discuss facts with police, medical professionals, teachers	Caseworker - may have discussions with attorney
Decide whether court action is necessary	Caseworker - may have discussions with attorney
Inquiry of Indian heritage/ancestry	Caseworker
Prepare petition	Legal assistant with information from caseworker and supervision by attorney
Notify parties of hearing	Law office by subpoena - if required; caseworker
Identify witnesses	Attorney - may have help from legal assistant
Prepare witnesses	Attorney - may have help from legal assistant
Prepare child witness	Attorney - may have caseworker present to emotionally support child; don't forget to collaborate with child's attorney or CASA
Prepare exhibits for hearing	Legal assistant and attorney; caseworker should provide organized case file
Other court preparation	Attorney with conversations with caseworker
Prepare disposition recommendations	Caseworker
Present case in court	Attorney
Enter into agreements with parents	Parent's attorneys should be present caseworker and/or attorney can work with parents and other should be included before agreement finalized
Ongoing documentation	Caseworker
Attend meetings with family	Caseworker sometimes attorney
Ongoing casework	Caseworker
Ongoing legal issues, prepare for judicial reviews	Attorney
Decide when to terminate parental rights	Caseworker in consultation with attorney; judge
Refer case for criminal investigation/prosecution	Caseworker

Sources: Russel, Robin. "Role Perceptions of Attorneys and Caseworkers in Child Abuse Cases in Juvenile Court." *Child Welfare* Vol. LXVII, Number 3, May-June 1988, 205-216. *See also* Herring, David J. *Agency Attorney Training Manual: Achieving timely Permanency for Children by Implementing the Private Model of Legal Representation for the State Agency in Child Abuse and Neglect Matters*. Pittsburgh: University of Pittsburgh Law School, 1992; Skarin, Gene D. "The Role of the Child Protective Agency's Attorney in Family Court." *Practicing Law Institute Criminal Law and Urban Problems* 171, March 1995, 431-468, 459-460. *Child Law Practice*, Vol.17, Number 7 Modified for training purposes. *'Reproduced by permission. All rights reserved. This information or any portion thereof may not be copied or disseminated in any way or by any means or downloaded or stored in any electronic database or retrieval system without the express written consent of the American Bar Association.'*

## **Top Ten Tips for Effective Testimony**

1. Be clear about what you know, don't dwell on what you don't.
2. Stay calm when your investigation is attacked.
3. Slow the questioner down.
4. Do not answer a question you don't understand.
5. Do not let them put words in your mouth.
6. Do not answer a yes or no question if you are not absolutely certain.
7. Act objective and professional.
8. Have an outline with you.
9. Know approximate dates or know where to look for them.
10. Tell the judge if you need to explain something---don't let them cut you off.

Remember---Nobody likes this. Think of why you are doing it.

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## **Top Ten Tips for Effective Court Reports**

1. Write clearly using easy to understand language and a readable format.
2. Provide an organized report.
3. Focus on the specific facts of the case – include a brief history of the facts leading to the child’s removal.
4. Clearly explain what services were offered to the family.
5. Clearly discuss the family’s compliance and progress including information about visitation.
6. Provide the court with a permanency plan for the child – you don’t want the court to provide you with one.
7. The plan should focus on safety, permanency and the best interests of the child.
8. The report as a whole should support the chosen permanency plan.
9. Consult with your attorneys to write a report that matches a proposed order.
10. Provide the court with the proposed order that you want.

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