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IMPROVING PARENTS' REPRESENTATION IN DEPENDENCY CASES: A WASHINGTON STATE PILOT PROGRAM EVALUATION

NATIONAL COUNCIL OF
JUVENILE AND FAMILY COURT JUDGES

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NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES

Office of Juvenile Justice and Delinquency Prevention

IMPROVING PARENTS' REPRESENTATION IN DEPENDENCY CASES: A WASHINGTON STATE PILOT PROGRAM EVALUATION[1]

Improving legal representation for parents of dependent children is at the forefront of reform efforts throughout many jurisdictions across the country. As noted in the National Council of Juvenile and Family Court Judges' *RESOURCE GUIDELINES*, "Each party must be competently and diligently represented in order for juvenile and family courts to function effectively."[2] Proper representation by defense attorneys will help to ensure that parents of dependent children retain their right to due process, as well as assist the court in complying with state and federal case processing time frames for achieving permanency for and ensuring the safety of children.

In 2000, the Washington State Office of Public Defense (OPD) created a parents' representation pilot program, at the request of the state's legislature, to address the need for improved legal representation for parents. This pilot program aimed to provide enhanced legal representation to parents in dependency and termination cases.

Pilot Program Implementation

The Washington State Legislature appropriated $500,000 to the OPD and mandated the following objectives for the pilot program:[3]

- Provide better representation to parents: Attorneys will communicate regularly with their clients, provide them with meaningful legal counsel and advice, and properly prepare their cases for court hearings and negotiations.
- Decrease the number of court delays caused by overburdened parents' attorneys: Reduce parents' attorneys' caseloads to manageable levels, and require them to refrain from requesting continuances based on their unavailability for court hearings due to over-scheduling.[4]
- Increase compensation for parents' attorneys: Raise the payment level per case to an amount more equal to the funding provided to the state for initiating and pursuing dependency and termination cases.

Complying with an additional mandate calling for the program to be implemented in both eastern and western Washington, the OPD chose the Benton-Franklin Juvenile Court and the Pierce County Juvenile Court to serve as pilot demonstration sites. This allowed the program to be tested in a rural setting (a combined Benton County and Franklin County juvenile court in eastern Washington) and an urban setting (Pierce County in western Washington).

In addition to demographic differences between the two pilot counties, the model of defense representation also differed. Benton-Franklin Juvenile Court contracts part-time with four private attorneys, while Pierce County Juvenile Court utilizes a public defender's office with one supervisor and four full-time parents' attorneys. The pilot program added two half-time attorneys to Benton-Franklin Juvenile Court, as well as two full-time attorneys to Pierce County Juvenile Court. The additional attorneys were necessary to meet the maximum caseloads of 90 cases per full-time defense attorney and 45 cases per part-time defense attorney established by the legislature. All pilot program attorneys are ultimately under the direction and supervision of the OPD.

The pilot program also increased the level of support staff and services available to parents' attorneys. The Pierce County Public Defender's Office added two paralegals and two social workers to decrease the

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[1] This *Technical Assistance Brief* is adapted from a full report written by the Permanency Planning for Children Department of the National Council of Juvenile and Family Court Judges that was submitted to the Washington State Office of Public Defense in January 2003. The author of this *Technical Assistance Brief* wishes to thank Melissa Litchfield, Dionne Maxwell, Ph.D., Sophia Gatowksi, Ph.D., and Shirley Dobbin, Ph.D., who contributed to the data collection and analysis phases of the study. Additionally, the evaluation would not have been possible without the assistance of the clerks at the Benton-Franklin Juvenile Court and the Pierce County Juvenile Court.

[2] *RESOURCE GUIDELINES: Improving Court Practice in Child Abuse & Neglect Cases.* (1995). National Council of Juvenile and Family Court Judges. Reno, NV, p. 22.

[3] Bridge, B.J., Moore, J.I. (2002). "Implementing Equal Justice for Parents in Washington: A Dual Approach." *Juvenile and Family Court Journal*, Vol. 53(4), pp. 31-41.

[4] Evaluation of this goal was not included in the current study due to budgetary and scope limitations. However, compliance with statutory timeframes was examined by this evaluation.

staffing discrepancy between the Public Defender's Office and the Attorney General's Office and the Department of Social and Health Services. This funding allowed pilot attorneys to utilize expert evaluators, to increase discovery, and to increase the number of documents submitted to the court.[5]

County Demographics

		Benton County	Franklin County	Pierce County
Population		142,475	51,015	719,407
Persons under 18 years old		29.7%	34.6%	27.2%
Race				
White		86.2%	61.9%	78.4%
Black or African American		0.9%	2.5%	7.0%
American Indian, Alaska Native		0.8%	0.7%	1.4%
Asian		2.2%	1.6%	5.1%
Native Hawaiian, Other Pacific Islander		0.1%	0.1%	0.8%
Other		7.0%	29.0%	2.2%
Persons reporting two or more races		2.7%	4.1%	5.1%
Hispanic or Latino origin[6]		12.5%	46.7%	5.5%
White, not of Hispanic/Latino origin		81.7%	47.6%	76.0%
Median Household Income		$47,044	$38,991	$45,204
Dependency Petition Filings[7]	1998	Benton-Franklin: 113		Pierce: 389
	1999	121		402
	2000	160		507
	2001	117		511

Role of a Pilot Attorney

Since July 2000, pilot attorneys have attended two specialized trainings per year and an annual conference. The following guidelines for pilot attorney practice were developed to reflect the "counselor-at-law" aspect of the attorney-client relationship:[8]

A. Meet and communicate regularly with the parent
   1) Describe case procedures and timelines
   2) Enable parents to candidly communicate
   3) Facilitate agreements by realistically evaluating allegations and evidence with parents
B. Ensure parents have adequate access to services, including visitation
   1) Explain the importance of reasonable efforts services to parent-clients
   2) Develop a thorough knowledge of the resources available to parent-clients
   3) Explore with parents ways to effectively participate in services
   4) Ask parents for feedback if obstacles prevent their participation, and follow up with the agency and in court when appropriate
C. Prevent continuances and delays within attorney's control
   1) Treat dependency and termination cases as the highest priority
   2) Avoid over-scheduling whenever possible
   3) Request unavoidable continuances if they are needed for substantive reasons
D. Prepare cases well
   1) Conduct high-quality, early case investigation
   2) Use discovery appropriately
   3) Prepare for and participate in settlement conferences and other resolution opportunities
   4) Obtain experts and evaluators for cases involving psychological, bonding, or similar issues, when appropriate
   5) Draft well-researched and written trial memoranda and other documents
   6) Litigate hearings and trials if no agreement is reached

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[5] For example, attorneys in Benton-Franklin were furnished funds for part-time parents' investigators and for expert evaluators.
[6] According to the U.S. Census Bureau: "People who identify their origin as Spanish, Hispanic, or Latino may be of any race" so they are included here in the applicable race categories. See www.census.gov.
[7] Although there was an increase in the number of petition filings, the annual increase was not found to be statistically significant.
[8] *Supra* note 3.

National Council of Juvenile and Family Court Judges' Evaluation

In November 2002, the OPD contracted with the Permanency Planning for Children Department of the National Council of Juvenile and Family Court Judges to conduct a limited evaluation of the pilot program.

The evaluation of the pilot program was based on data collected through a review of hearing protocols and procedures, and a comparative case file analysis of a random sample of dependency (or child protection) cases, both pre- and post-pilot program implementation. The evaluation gathered information pertaining to case demographics, compliance with mandated case processing timeframes, child's out-of-home placement, and case closure outcome and date.

Specifically, the evaluation reviewed court case files opened after January 1, 1998 with a case closure date between February 1, 2000 and July 31, 2000 (pre-pilot cases) or between February 1, 2002 and July 31, 2002 (pilot cases). These study periods ensured that both samples were subject to the same shortened case processing timeframes mandated by the Adoption and Safe Families Act and Washington State Statutes.

The final evaluation sample for data analysis included 144 cases.[9] Three sub-samples were created out of the larger sample. The Pre-Pilot Sample was comprised of 57 cases, and the Pilot Sample was comprised of two sub-samples: those cases that were initiated prior to the pilot program implementation but were completed during the pilot (Pilot Sample A, 48 cases); and those cases that were opened after the pilot program implementation and utilized all of the practices of the pilot during their case history (Pilot Sample B, 39 cases).

Case Demographics

	Overall Sample	Pre-Pilot Sample	Pilot Sample A	Pilot Sample B
Number of cases	144	57	48	39
Total number of children	208	81	67	60
Average number of children per case	1.4	1.4	1.4	1.5
Average age of child at petition filing (years)	4.8	5.3	4.2	4.7
Mother incarcerated at some point during case	10.4%	7.0%	16.7%	7.7%
Mother's whereabouts unknown	9.0%	7.0%	14.6%	5.1%
Father incarcerated at some point during case	9.7%	8.8%	10.4%	10.3%
Father's whereabouts unknown	18.1%	19.3%	20.8%	12.8%
Previous history with the Department	77.1%	77.2%	77.1%	76.9%
Previous history with the Court	45.1%	52.6%	39.6%	41.0%
Interstate Compact for the Placement of Children	5.5%	10.5%	0%	5.1%
Indian Child Welfare Act	2.8%	1.8%	2.1%	5.1%

Petition Allegations

	Overall Sample (N=131)	Pre-Pilot Sample (N=52)	Pilot Sample A (N=44)	Pilot Sample B (N=35)
Mother				
Abused/Neglected	90.8%	47.5%	95.5%	85.7%
Dependent	100%	100%	100%	100%
Abandoned	0.8%	0%	1.1%	0%
Father				
Abused/Neglected	87.7%	82.1%	96.0%	85.0%
Dependent	100%	100%	100%	100%
Abandoned	1.4%	0%	4.0%	0%

[9] The number represented by "N" throughout this *Technical Assistance Brief* is the number of cases in the study that contained appropriate documentation for analysis and therefore may fluctuate. The number represented by "n" is the number of cases out of the population (N) that fit the analysis criteria (i.e., the sample).

Petition Allegations (continued)

Other Caregiver				
Abused/Neglected	93.3%	100%	100%	83.3%
Dependent	100%	100%	100%	100%
Abandoned	0%	0%	0%	0%

The types of presenting problems of the parents that were noted in the petition did not have a statistically significant effect on the final outcome of the case. The presence of substance abuse as a presenting problem was also found to not have a statistically significant impact on the final outcome of the case.

Presenting Problems

	Overall Sample (N=94)	Pre-Pilot Sample (N=41)	Pilot Sample A (N=26)	Pilot Sample B (N=27)
Substance abuse	70.2%	75.6%	76.9%	55.6%
Domestic violence	24.5%	19.5%	38.5%	18.5%
Parents with criminal history	20.2%	17.1%	23.1%	22.2%
Mental health issues	17.0%	17.1%	15.4%	18.5%
Sexual abuse	12.8%	14.6%	3.8%	18.5%
Medical neglect	8.5%	7.3%	7.7%	11.1%
Severe physical abuse	4.3%	0%	11.5%	3.7%
Child developmentally delayed	1.1%	2.4%	0%	0%
Mother in foster care	1.1%	0%	0%	3.7%

Summary of Major Findings

Cases in the evaluation sample were analyzed for timing of hearings and statutory compliance, length of time in out-of-home placement, and case outcomes.

Timing of Hearings and Statutory Compliance

The Revised Code of Washington requires that:

- A *shelter care hearing* be held within 72 hours after the child is taken into custody (excluding weekends and holidays) (WASH. REV. CODE §13.34.060);
- A *fact-finding hearing* be held no later than 75 days after the filing of the petition, unless exceptional reasons for a continuance are found (WASH. REV. CODE §13.34.070);
- A *dispositional hearing* be held immediately after entry of the findings of fact, unless there is good cause for continuing the matter for up to 14 days (WASH. REV. CODE §13.34.110);
- The initial *review hearing* be held six months from the beginning date of the placement episode or no more than 90 days from the entry of the dispositional order. *Review hearings* are to be held every six months thereafter (WASH. REV. CODE §13.34.138);
- A *permanency planning hearing* be held in all cases where the guardianship order or permanent custody order has not previously been entered. The *permanency planning hearing* must take place no later than 12 months following the current placement episode (WASH. REV. CODE §13.34.145).

Percentage of Cases Compliant with Statutory Timeframes

	Pre-Pilot Sample	Pilot Sample A	Pilot Sample B
Shelter Hearing	61.8%; *n=34; N=55*	60.4%; *n=29; N=48*	58.3%; *n=21; N=36*
Fact-Finding Hearing	73.5%; *n=36; N=49*	72.7%; *n=32; N=44*	66.7%; *n=20; N=30*
Disposition Hearing	73.3%; *n=22; N=30*	84.8%; *n=28; N=33*	100%; *n=25; N=25*
Review Hearing	88.9%; *n=24; N=27*	81.8%; *n=27; N=33*	87.0%; *n=20; N=23*
Permanency Planning Hearing	63.9%; *n=23; N=36*	65.9%; *n=29; N=44*	100%; *n=21; N=21*

The majority of cases heard by both the Benton-Franklin Juvenile Court and the Pierce County Juvenile Court are compliant with statutory timeframes. Although slight decreases in the court's overall compliance with statutory time frames were observed in some areas (i.e. *shelter hearing, fact-finding hearing, review hearing*), there are significant reductions in the average number of days and the range of days from

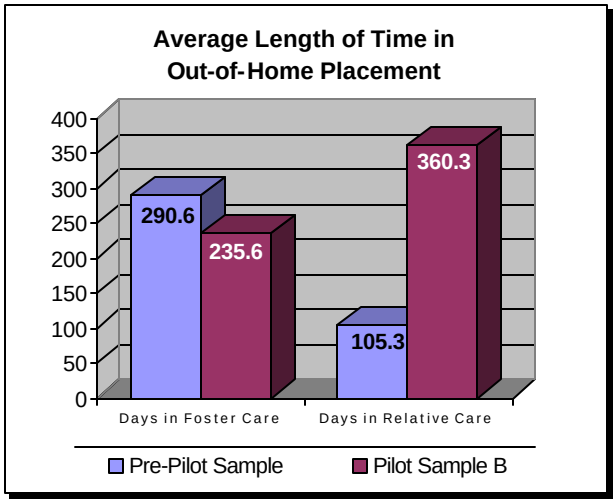
removal to *shelter hearing*. During the **Pre-Pilot Sample, the *shelter hearing* was held, on average, 6.35 days from removal** with a range of 0 to 130 days. During **Pilot Sample B, the *shelter hearing* was held, on average, 4.81 days from removal** with a range of 1 to 22 days. The most common timeframe for both samples was 3 days. This reduction indicates a practically significant trend towards increasing future compliance.

Average (Mean) Length of Time from Court Event to Court Event in Days

	Pre-Pilot Sample	Pilot Sample A	Pilot Sample B
Petition Filing to Shelter Hearing	6.4	10.6	4.8
Petition Filing to Fact-Finding Hearing	67.0	77.5	75.9
Fact-Finding Hearing to Disposition Hearing	14.1	10.5	0.3
Dispositional Order to Review Hearing	97.1	135.7	109.7
Removal to Permanency Planning Hearing	344.8	369.7	251.9

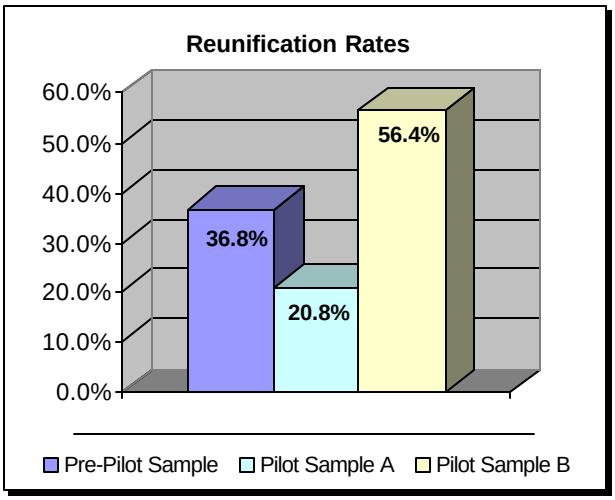
Length of Time in Out-of-Home Placement

When examining the length of time the child(ren) spent in out-of-home care across samples, only the Pre-Pilot Sample (N=20) and the Pilot Sample B (N=19) were compared.[10] The average number of days spent in foster care decreased between the Pre-Pilot Sample, 290.6 days, and Pilot Sample B, 235.6 days. In contrast, the average number of days spent in relative care increased from the Pre-Pilot Sample, 105.3 days, to Pilot Sample B, 360.3 days.



Case Outcomes

Cases in the Pre-Pilot Sample (N=57) and Pilot Sample B (N=38) resulted in reunification, at 36.8% and 56.4% respectively.[11] A large increase in reunifications can be seen between the Pre-Pilot Sample, the timeframe without enhanced pilot program representation, and Pilot Sample B, the timeframe capturing cases initiated after pilot program implementation. In addition, cases involving termination of parental rights decreased from 41.3% in the Pre-Pilot Sample to 22.9% in Pilot Sample B. Adoption (51.1%) was the most common outcome in Pilot Sample A (N=47).



Previous history with the court was determined to be statistically significant with respect to the likelihood of reunification as an outcome. Cases in **Pilot Sample A that had a previous history with the court were 2.9 times more likely to have an outcome of reunification** than cases in the Pre-Pilot Sample with a previous history with the court. Additionally, cases in **Pilot Sample B that had a previous history with the court were 6.9 times more likely to have an outcome of reunification** than cases in the Pre-Pilot Sample. This statistically significant increase in the likelihood of reunification may correspond to the enhanced representation in the pilot cases.

[10] Due to the nature and length of the samples, the Pre-Pilot Sample and Pilot Sample B were compared to examine the effects of the pilot program on the cases prior to program implementation against those cases receiving the full benefits of the completely implemented program without being influenced by the transitional timeframe (Pilot Sample A).
[11] *Ibid.*

Data provided by the State of Washington, Office of the Administrator for the Courts indicate that a new dependency petition was not filed on any case that researchers coded as having an outcome of reunification.

Case Outcomes

	Pre-Pilot Sample (N=57)	Pilot Sample A (N=47)	Pilot Sample B (N=38)
Reunification	36.8%	20.8%	56.4%
Adoption	35.1%	51.1%	18.4%
Aged-out	15.8%	14.9%	7.9%
Custody, non-offending parent	3.5%	4.2%	7.7%
Parent obtained custody through Superior Court	7.0%	2.1%	2.6%
Permanent ward of the state	0%	4.3%	2.6%
Kinship guardianship	0%	2.1%	2.6%
Transferred to Tribal Court	1.8%	0%	0%

Conclusion

Although its scope was limited (i.e. restricted to an archival review of court records), the evaluation found a noticeable difference in case processing timeframes, time spent in out-of-home care, and case outcomes among each of the samples. While the pilot program may not be the sole explanation for these outcomes (e.g. other factors may include changes made by the court and child welfare agency including systemic reforms implemented to address ASFA compliance), it is evident that the pilot program succeeded in having a positive impact on the legal representation of parents of dependent children.

For more information about the Washington State Office of Public Defense Parents' Representation Pilot Program, please contact:

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