

SUPREME COURT OF APPEALS
STATE OF WEST VIRGINIA

NOV 16 1995

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M E M O R A N D U M

TO: ABUSE/NEGLECT COMMITTEE MEMBERS
FROM: RICHARD ROSSWURM *Richard*
Chief Deputy
DATE: 15 November 1995
RE: Final Report; Further Task

Enclosed is a copy of the final Committee report. Also enclosed are Judge Broadwater's submission letter and Appendices 8 and 9 (you previously received the other appendices). The report was delivered yesterday to the Supreme Court Clerk for formal filing and to each of the Justices. Commendations to Committee members and to John Hedges for first-rate work.

Please note that the Committee will have one more task: reviewing and commenting on a re-draft version of abuse/neglect procedural rules. When this is available, we will distribute it, call for written comments, distribute those, and then have a teleconference to arrive at a Committee commentary for submission to the Supreme Court.



FIRST JUDICIAL CIRCUIT
OHIO, BROOKE AND HANCOCK COUNTIES

W. CRAIG BROADWATER, CHIEF JUDGE
OHIO COUNTY COURTHOUSE
WHEELING, WEST VIRGINIA 26003
(304) 234-3794

November 13, 1995

Honorable Thomas E. McHugh
Chief Justice
West Virginia Supreme Court of Appeals
State Capitol
Charleston, WV 25305

RE: State of West Virginia,
ex rel. S.C. v. Lewis
191 W.Va. 185

Dear Chief Justice McHugh:

In the decision of Jennifer A. v. Burgess, No. 21009, (July 16, 1993), the W.Va. Supreme Court of Appeals ordered the creation of an advisory committee to develop comprehensive and workable guidelines for the W.Va. Department of Health & Human Resources for use by caseworkers, courts, law enforcement and the community. This Committee, comprised of representatives of the above disciplines, assumed additional duties as required by the S.C. decision after the completion of the Committee's original goals.

As required by the West Virginia Supreme Court of Appeals in the decision of State of WV ex rel. S.C. v. Lewis, 191 S.E.2d 185 (W.Va. 1994), enclosed for filing is the Final Report and Recommendations of the West Virginia Supreme Court of Appeals Advisory Committee on Child Abuse and Neglect.

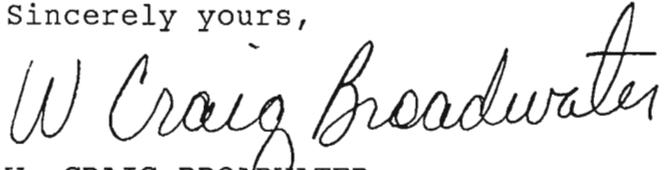
In addition to a statewide foster care inventory, the Committee, utilizing the services of Dr. Patricia Ryan have identified a number of barriers to permanency placement and have developed recommendations as to each barrier.

Honorable Thomas E. McHugh
November 13, 1995
Page Two

Re: State, ex rel. S.C. v. Lewis

These are contained in the Final Report. While the Committee recognizes that much remains to be done, we feel that we have recognized problems and proposed workable solutions. We urge the Court to charge the Court Improvement Oversight Board with the continuing challenge of insuring permanent homes for our State's children, free of abuse and neglect.

Sincerely yours,



W. CRAIG BROADWATER
Chairperson, Advisory Committee
on Abuse and Neglect

WCB/dmc

cc: Ancil G. Ramey
Clerk of the Supreme Court

FINAL REPORT AND RECOMMENDATIONS
OF THE WEST VIRGINIA
SUPREME COURT OF APPEALS
ADVISORY COMMITTEE
ON CHILD ABUSE AND NEGLECT

November 13, 1995

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	BACKGROUND	3
III.	OVERVIEW OF ADVISORY COMMITTEE WORK	7
	A. <u>Jennifer A. v. Burgess</u> Report	7
	B. <u>S.C.</u> Foster Care Inventory	8
	C. Patricia Ryan Report	11
	D. Transition of Committee Work to the Oversight Board of the Court Improvement Project	13
IV.	IDENTIFIED BARRIERS TO PERMANENCY AND ADVISORY COMMITTEE RECOMMENDATIONS TO REDUCE OR ELIMINATE THESE BARRIERS	16
	1) A. <u>BARRIER</u> -- Permanency decisions are hindered by continuing confusion regarding the balancing of parental and children's rights	16
	B. <u>RECOMMENDATIONS</u>	18
	2) A. <u>BARRIER</u> -- Misapplication or excessive reliance upon the adversary process by the attorneys for the parties impedes the case progress	19
	B. <u>RECOMMENDATION</u>	19
	3) A. <u>BARRIER</u> -- The procedural law now in effect in abuse and neglect proceedings is confusing	20
	B. <u>RECOMMENDATIONS</u>	20
	4) A. <u>BARRIER</u> -- Delay in the judicial process is a major obstacle to achieving permanency for abused and neglected children	21
	B. <u>RECOMMENDATIONS</u>	22

5) A. **BARRIER** -- Pre-adjudicatory improvement periods are subject to excessive and inappropriate use, and lead to detrimental delay in permanency planning 23
 B. **RECOMMENDATIONS** 25

6) A. **BARRIER** -- Delay and uncertainty in permanency planning results from failure to address issues regarding absent and unknown parents in child abuse and neglect proceedings 27
 B. **RECOMMENDATIONS** 27

7) A. **BARRIER** -- The failure of the court to timely enter written, specific orders at each step of abuse and neglect proceedings has a profound negative effect on the entire process 28
 B. **RECOMMENDATIONS** 29

8) A. **BARRIER** -- Time requirements for abuse and neglect cases are not met in many instances due to lack of a workable and uniform case-flow management system 29
 B. **RECOMMENDATIONS** 30

9) A. **BARRIER** -- Prolonged post-adjudicatory improvement periods substantially diminish the likelihood of successful permanency planning 31
 B. **RECOMMENDATIONS** 31

10) A. **BARRIER** -- Extensions granted in the appeal process routinely delay permanency planning efforts 31
 B. **RECOMMENDATIONS** 32

11) A. **BARRIER** -- There is no mechanism to monitor and enforce the priority of abuse and neglect cases on circuit court dockets 32
 B. **RECOMMENDATIONS** 32

12) A. **BARRIER** -- Children feel unrecognized in the court process in abuse and neglect cases 33
 B. **RECOMMENDATIONS** 33

13)	A.	<u>BARRIER</u> -- There are no system-wide procedures for the coordination or consolidation of inter-related cases involving the common allegations of child abuse and neglect	33
	B.	<u>RECOMMENDATIONS</u>	34
14)	A.	<u>BARRIER</u> -- Many circuit judges do not have sufficient training and information to effectively handle child abuse and neglect cases	35
	B.	<u>RECOMMENDATIONS</u>	35
15)	A.	<u>BARRIER</u> -- Attorneys representing children and parents in abuse and neglect proceedings generally lack the necessary training, and are insufficient in number	37
	B.	<u>RECOMMENDATIONS</u>	37
16)	A.	<u>BARRIER</u> -- Prosecuting attorneys lack the direction and support, as well as uniform procedures, for the handling of child abuse and neglect cases	38
	B.	<u>RECOMMENDATIONS</u>	39
17)	A.	<u>BARRIER</u> -- Inadequacies in foster care and adoption services are a major obstacle to permanency planning and placements in this State	40
	B.	<u>RECOMMENDATIONS</u>	41
18)	A.	<u>BARRIER</u> -- DHHR staffing, in terms of funding, numbers, organization and training, results in low priority for permanency planning efforts	44
	B.	<u>RECOMMENDATIONS</u>	45
19)	A.	<u>BARRIER</u> -- There are no uniform formats and procedures for the proper preparation and filing of case plans . .	47
	B.	<u>RECOMMENDATIONS</u>	47
20)	A.	<u>BARRIER</u> -- The CASA system is under-utilized and lacks a source of public funding	50
	B.	<u>RECOMMENDATIONS</u>	50
21)	A.	<u>BARRIER</u> -- The "system" for handling abuse and neglect matters is fragmented	51
	B.	<u>RECOMMENDATION</u>	51

22)	A.	<u>ADDITIONAL RECOMMENDATIONS OF THE ADVISORY COMMITTEE TO REDUCE OR ELIMINATE BARRIERS TO ACHIEVING PERMANENCY</u>	51
	B.	<u>ADVISORY COMMITTEE COMMENTARY ON THE RECOMMENDATIONS IN THE PATRICIA RYAN REPORT.</u>	55
V.		CONCLUSION.	59
VI.		APPENDICES	
	1.	Advisory Committee Members	Tab 1
	2.	Advisory Committee Final Report of July 15, 1994	Tab 2
	3.	CPSS Forms	Tab 3
	4.	Proposed Rules of Procedure for Child Abuse and Neglect Proceedings	Tab 4
	5.	Multidisciplinary Team Model Protocol	Tab 5
	6.	Foster Care Inventory Instrument and Instructions	Tab 6
	7.	Patricia Ryan's Report and Harry Burgess's Memorandum	Tab 7
	8.	Proposed Revisions to W.Va. Code § 49-6-21(b)	Tab 8
	9.	Uniform Case Plan Format	Tab 9

I.

INTRODUCTION

The West Virginia Supreme Court of Appeals Child Abuse and Neglect Advisory Committee respectfully submits the following Final Report in response to the Court's expanded directives to the Committee set forth in State ex rel. S.C. v. Lewis, 191 W.Va. 184, 444 S.E. 2d 62 (1994). Consistent with the fundamental charge given to the Advisory Committee in the S.C. decision, the core of this Report is the set of identified **barriers** to permanency in child placements, and the corresponding **recommendations** to reduce or eliminate these barriers, set out in Section IV.

Several preliminary points about these barriers and recommendations are noted by the Advisory Committee.

First, the Committee has endeavored to comprehensively identify all significant barriers and address each by appropriate recommendations. The Committee fully recognizes that the Court and other agencies of State government cannot address many of these barriers without mutual cooperation and support, along with additional resources.

Second, a significant portion of the barriers are categorized by constituent groups (e.g., judges, prosecutors, DHHR, etc.). The comprehensive listing of barriers manifests the point that the problems are system-wide. These problems generally cannot be isolated along group lines, and many are common to all groups. The Committee's decision to

organize parts of the Report by constituency is simply for the purpose of providing focus on unique responsibilities and aspects of each group.

Finally, the substantial number of barriers, and accompanying recommendations, should not be a detriment to immediate action on the most pressing problems. In the Conclusion, Section V of this Report, the Committee has set out the thrust of its highest-priority concerns. This is not to say that dealing with other problems should wait, but that limited resources and time often force choices. In its effort to document a comprehensive identification of issues, it is the Committee's hope that this Report will usefully serve as a foundation for the Court's deliberations and for future work by other groups focusing on additional areas of concern.

II.

BACKGROUND

In Jennifer A. v. Burgess, No. 21009 (July 16, 1993), the West Virginia Supreme Court ordered the creation of a statewide advisory committee under the direction of Judge W. Craig Broadwater of the Circuit Court of Ohio County. The initial charge of the committee was to develop a comprehensive and workable set of guidelines for use by Department of Health and Human Resources (hereinafter, "DHHR") caseworkers (and other involved persons from law enforcement, the courts and the community) in the investigation of allegations of sexual abuse of children and the handling of such cases in the agency, civil and criminal processes, through completion. Members of this Advisory Committee on Child Abuse and Neglect (hereinafter "Advisory Committee") represent a cross-section of persons from the executive, legislative and judicial branches of government, various types of community-service agencies and the private sector with experience and professional involvement in providing services for children and families in cases of child abuse and neglect. Advisory Committee members are listed in Appendix 1.

In State ex rel. S.C. v. Chafin, 191 W.Va. 184, 444 S.E. 2d 62 (1994), at 74, the Supreme Court noted the Advisory Committee's broader mission and approach:

"to investigate the possibility of creating regional teams from within the individual counties, to develop and recommend rules of procedure for handling investigation, treatment and resolution of child abuse and neglect cases and to develop and

recommend workable and comprehensive guidelines for handling investigation, treatment and resolution of child sexual abuse cases.

"Among the committee's goals and objectives is to minimize case-processing time and maximize effective delivery of services and to facilitate permanency planning. The committee further established its methods as identifying problems in the field; evaluating what other states and counties are doing; reviewing West Virginia law and limitations under federal rules and regulations (especially as perceived by the DHHR); identifying what other agencies and committees are doing; drafting rules, outlines and guidelines and submitting them to this Court; and recommending statutory changes."

The content and specifics of the sexual abuse guidelines were left to the Advisory Committee's collective judgment following information-gathering, study and review. The Court did make one specific recommendation -- that the Advisory Committee formulate a task force or team approach within each community or county to identify, act upon, and follow through each reported case of child sexual abuse. The Court directed that a progress report from the Advisory Committee be provided one year following the date of the order in Jennifer A. v. Burgess.

Nine months later, the Court issued an opinion in State ex rel. S.C. v. Lewis, 191 W.Va. 184, 444 S.E.2d 62 (1994). In S.C., the Court had been presented with a petition for writ of habeas corpus and writ of mandamus involving a sixteen-year-old child who had been in the temporary custody of the State for almost three years. The principal allegations were: a) failure to comply with the statutory limits on duration of temporary custody; b) failure to comply with statutory requirements for filing timely and meaningful child case plans and permanency plans; c) failure to comply with statutory requirements for judicial review of cases involving children not permanently placed after twelve months

of Department custody; and d) failure to comply with statutory requirements to file reports with the circuit court when a child in Department custody receives more than three placements within one year.

The Court in S.C. re-emphasized its concerns earlier stated in In re Carlita B., 185 W. Va. 613, 408 S. E. 2d 365 (1991):

Some means of systemic review of child neglect and abuse cases must be established. Otherwise, the statutory time frames that govern their processing and the mandatory, periodic status reports that must be filed with the court are too easily overlooked. If such safeguards are rendered meaningless by a failure or inability to monitor cases, neglected and abused children may become lost in the very system that is designed to rescue them.

In view of the circumstances presented in the S.C. case, the Supreme Court determined the need to expand the role of the Advisory Committee beyond the original directives stated in Jennifer A. v. Burgess. The additional charge to the Advisory Committee in S.C. included the following:

1. To conduct a statewide inventory of all children who have been in the foster care system of this State for more than one year so as to: a) identify barriers to obtaining permanent homes for these children; and b) make recommendations to this Court for eliminating or reducing those barriers;
2. To develop a uniform reporting format to be used by C.P.S. workers in preparing family case plans as well as children's case plans, so as to: a) promote uniformity and clarity; and b) make plans amenable to outside review;

3. To develop procedures for both the DHHR and the circuit courts which ensure that a case plan has been properly prepared by the DHHR and filed with the circuit court in individual cases;
4. To ensure that time frames for all aspects of the case plan are complied with;
5. To require the case plan to be a discrete part of the record in each case;
6. To develop procedures by which the progress and time tables of case plans are to be monitored by both DHHR and the circuit courts, so as to: a) ensure that case plans are adhered to; and b) ensure case plans remain appropriate in individual cases; and
7. To develop any additional plans and procedures which will ensure more effective and efficient permanency planning for children in DHHR care.

III.

OVERVIEW OF ADVISORY COMMITTEE WORK

A. Jennifer A. v. Burgess Report

On July 15, 1994, the Advisory Committee filed with the Court its "Final Report of the Advisory Committee on Child Abuse and Neglect," relating to the original directives to the Advisory Committee set out in Jennifer A. v. Burgess. Appendix 2. Integral to the Advisory Committee's Jennifer A. report was the accompanying submission of three products of the Committee's work.

First, the Committee submitted a set of Child Protective Services System (CPSS) Forms designed to facilitate meaningful and expeditious assessment, investigation and handling of child abuse and neglect cases at the agency level. Appendix 3. Second, the Committee drafted and provided the Court, for review and promulgation, proposed "Rules of Procedure for Child Abuse and Neglect Proceedings." These proposed rules establish a much-needed procedural framework for the uniform and orderly progress of child abuse and neglect cases as they move through the judicial system. Appendix 4. Third, the Advisory Committee submitted the "Multidisciplinary Team (MDT) Model Protocol" for the development of community-based teams, including law enforcement, that would integrate and oversee the entire process of each case of alleged child abuse and neglect, from the initial allegation or report from whatever source to the final resolution of the case, including permanent placement. Appendix 5.

In addition to the proposed CPSS Forms, Rules of Procedure, and MDT Model Protocol, the Advisory Committee's Jennifer A. report sets forth nine specific recommendations for future action to ensure beneficial use of these proposed tools. These specific recommendations, in the Advisory Committee's opinion, are key measures that must be addressed in order to create a unified and effective system to deal with child maltreatment in this State. Appendix 2, at pages 4-11 (and Minority Report attached thereto.)

B. S.C. Foster Care Inventory

The initial task in the expanded role of the Advisory Committee set out in the S.C. decision was the directive to conduct a statewide inventory of all children who have been in foster care for more than one year. As stated by the Court in S.C., the purpose of this inventory was to aid and the guide the Advisory Committee in its fundamental objective "to identify barriers to obtaining permanent homes for these children and to make recommendations to this Court for eliminating or reducing those barriers."

Child welfare agencies and the courts must ensure that a safe and stable environment is secured for each affected child during the pendency of their abuse and neglect case. Beyond this immediate need, a safe and permanent home, of course, should be the central criterion for the successful final outcome of every case of child abuse and neglect. Developments in both Federal and State law emphasize that the focus must be on achieving safe permanency as quickly as possible, whether by family reunification or

otherwise. On the Federal level, this is a principal aim of the Adoption Assistance and Child Welfare Act of 1980 (P.L. 96-272). State law also reflects this important objective (e.g., West Virginia Code §§ 49-2 -14; 49-6-8). As the Supreme Court recently observed: "[Children] deserve to know where and with whom they are going to live and to be secure in the knowledge that there will eventually be some continuity in their fragile lives." In re Brian D., No. 22558 (July 19, 1995).

In order to be genuinely useful in identifying barriers to permanency, the Advisory Committee recognized that the S.C. inventory needed to provide a broad range of information on children in the foster care system. The methodology for the inventory was devised through a collaborative effort on the part of the DHHR and the Advisory Committee. An ad hoc group of DHHR State office personnel and field staff drafted the initial instrument for use in the data gathering process, which was then reviewed and revised in consultation with the Advisory Committee. The DHHR made a decision to expand the inventory to cover all of the children in the custody of the Office of Social Services in out-of-home placement, rather than limiting it to those in foster care for more than one year. This expansion addressed the need of the DHHR for relevant and accessible data to use in planning for the overall child welfare programs, including child protective services, foster care and adoption services. The Advisory Committee's task of identifying barriers to permanent placement was also aided by this expanded census data.

The population inventory included all children in State custody and in out-of-home placement on a specific date -- September 7, 1994. This census covered all children in

State foster care for any reason, including those in care because of abuse and neglect, a handicapping condition, and those children in care as a result of adjudication in the juvenile justice system. The collection of data was accomplished first by having the field social workers for the child population complete a form for each child in their caseload. See Appendix 6 for the inventory instrument and instructions. Each form was then reviewed and edited by the field supervisors. In order to ensure complete data, a second review and edit was conducted by State office staff. It should be noted that at all levels within the DHHR, a tremendous amount of staff time and effort was devoted to a thorough inventory and compilation of data.

Beyond mere numbers, by obtaining a comprehensive picture of all children in State foster care at a set point in time, the inventory was designed to provide: 1) characteristics of the children and the circumstances of their cases that could influence the length of time in care; 2) indicators of issues that need to be looked into further regarding effective permanency planning; and 3) general information for use in current case-tracking, planning and management. The inventory format and methodology were designed to obtain the needed census as well as basic characteristics of each child's case, with the time constraints of the Advisory Committee's work in mind. Certainly, a gathering and tracking of similar census data over a period of time (e.g., 2-3 years) would provide better comparative data. This initial inventory, however, was intended to address the more immediate need for a cross-sectional analysis of the current situation.

It was subsequently decided that even within the time constraints for the Advisory Committee's work, some benefit of comparative data could be obtained by updating the inventory census in February 1995. This update allowed a determination as to which children had left foster care (as well as when they left and where they went) since the initial census in September 1994. The Advisory Committee notes that the design and purpose of this set of relatively static data has some inherent limitations for comparative analysis. This census does, however, provide the basic framework for any later dynamic study that may be intended to obtain true comparative data.

C. Patricia Ryan Report

The data collected in the S.C. inventory provided the Advisory Committee with valuable information regarding basic demographics (e.g., how many children in State custody, and where) as well as characteristics of the children in each individual case. Although a number of issues relating to barriers to permanency could be identified from the inventory data, the Advisory Committee decided to maximize its efforts in identifying such issues by also obtaining extensive statistical analysis of selected characteristics of the children's cases and of counties (including agency offices within each county) where their cases were handled.

Patricia Ryan, Ph.D., of the National Foster Care Resource Center at Eastern Michigan University, was engaged by the Advisory Committee to review the data,

conduct statistical analysis of the selected characteristics, and provide her own recommendations relating to the statistical findings. Dr. Ryan's work utilized the September 1994 census information as well as the February 1995 updated data.

The primary dependent variable of interest in Dr. Ryan's analysis was the length of time children spent in State care. It is considered a "dependent" variable since variation in the length of time in care is seen as being caused by, i.e., it depends on, variation in other factors. In this analysis, these other factors, usually termed "independent variables," included age, race and sex of the child; the reason for coming into care; placement resources in the community; caseworker's background and caseload; and other demographic, legal system, social service system, and county characteristics.

These factors were analyzed in relation to four categories of the dependent variable, time in care: 1) those who left care after six months or less; 2) those who left care after more than six months but less than twelve months; 3) those who were in care more than 12 months but less than 18 months whether they had left or remained in care; and 4) those who were in care more than 18 months whether they had left or remained in care.

Another significant dependent variable in the analysis given the circumstances in the S.C. case was the number of moves experienced by each child while in care. Dr. Ryan examined the association between characteristics of the child or the case and variation in the number of moves to determine whether there were significant relationships which might influence permanency planning. In addition, Dr. Ryan

performed separate analyses on cases in which adoption or permanent foster care was the permanency plan but parental rights had not been terminated, to determine whether there were factors of interest unique to these cases.

Dr. Ryan's report, "Challenges to Permanency in West Virginia," was submitted to the Advisory Committee on September 8, 1995. Appendix 7. The data summary and statistical analysis provided valuable insights for the Advisory Committee's work of identifying barriers to permanency in child placements. Additionally, the Advisory Committee has separately considered Dr. Ryan's thirteen recommendations set out at the conclusion of her report. The Advisory Committee will discuss these recommendations in a subsequent part of this final report, as most of these proposals fit within the Advisory Committee's own recommendations for eliminating or reducing barriers to achieving permanency for children in state care.

D. TRANSITION OF COMMITTEE WORK TO THE OVERSIGHT BOARD OF THE COURT IMPROVEMENT PROJECT

In January 1995, the Supreme Court formed the Court Improvement Oversight Board (hereinafter "Oversight Board"). Membership of the Oversight Board is similar in make-up to the Advisory Committee, comprised of judicial officers, DHHR personnel, prosecuting and private attorneys, private agency service providers and other persons directly involved with cases of child abuse and neglect. Several of the Advisory

Committee members have also been appointed to the Oversight Board, including Judge Broadwater, chairman of both bodies. The Oversight Board was created to initiate and oversee the Court Improvement Program for this State, a Federally funded four-year grant program established in the Omnibus Budget Reconciliation Act of 1993.

The Court Improvement Program is intended to permit participating states, over a multi-year period, to assess and evaluate court-related functions that impact abuse and neglect cases. Ultimately, the primary undertakings of the Court Improvement Program are directed toward improving the judicial system's management and handling of issues concerning the placement of children, reasonable efforts relating to removal and reunification, decisions approving continuance in foster care, termination of parental rights, and adoption or other permanent placement.

During the initial year of the Court Improvement Program in this State, the Oversight Board is completing a statewide assessment of all aspects of judicial performance relating to the child placement issues, and will develop an improvement plan. This assessment has involved intensive information gathering in five "focal" judicial circuits, as well as information sampling on a statewide basis. Pertinent information has been obtained from judges, prosecutors, attorneys, DHHR workers and court appointed special advocate (CASA) representatives through personal interviews and written questionnaires. Additional information has been obtained by detailed review of court files in child abuse and neglect cases, and courtroom observations of hearings in the five focal circuits.

In view of the completion of the Advisory Committee's work with the filing of this Final Report, the advent of the Court Improvement Program is a greatly encouraging development. Much of the work and recommendations of the Advisory Committee, such as the proposed Rules of Procedure and the MDT Model Protocol, are aimed at needed improvements in judicial management of abuse and neglect cases. Nevertheless, in order to achieve sustained improvement, any recommended changes that are implemented must be supported by on-going evaluation and revision. Well-entrenched systemic problems are not cured overnight. It is the hope of the Advisory Committee that, in addition to its other tasks, the Oversight Board will continue to monitor and evaluate court-related changes implemented from this Final Report. Finally, to better facilitate this transition, the Advisory Committee has noted in this Report several barriers to placement that would benefit from future attention and work of the Oversight Board.

IV.

IDENTIFIED BARRIERS TO PERMANENCY AND ADVISORY COMMITTEE RECOMMENDATIONS TO REDUCE OR ELIMINATE THESE BARRIERS

- 1) A. **BARRIER** -- Permanency decisions are hindered by continuing confusion regarding the balancing of parental and children's rights.

In every child abuse and neglect case there will understandably be certain tensions between parents' and children's rights. However, too often uncertainty regarding the balancing of these rights gives in to a well-entrenched presumption that the right of parents to improve supersedes the right of children to permanency. For example, local caseworkers may receive conflicting messages arising from Federal requirements for reasonable efforts and from their agency regarding "mandatory" improvement periods. The objective of achieving permanency for an abused or neglected child does include efforts toward reunification with the child's family. Federal law, however, makes it clear that permanent homes are to be arranged for children unable to be reunited with their families within a reasonable time. See 42 U.S.C. §§ 427(a)(2)(C); 675(1)(B); 675(5)(B); and 675(5)(C). Misconceptions about State law in the judicial process also exacerbate this confusion. In many circuits, improvement periods are deemed an automatic right.

Misplaced emphasis upon parental rights to the detriment of genuine progress in achieving permanency is apparent in the legal system. Preliminary data from the recent survey of judges, attorneys and DHHR workers throughout the State in the work

undertaken in the Court Improvement Program illustrate the bias toward parental rights -- a bias that translates into detrimental delay in many cases where reunification is not a realistic goal. In the questionnaires sent to circuit judges, attorneys and DHHR caseworkers this question posed was: "Do you see terminating parental rights as the last resort, after every other possibility has failed over a long period of time?" The preliminary data reveal the following responses, with interesting variations among the three groups:

Circuit judges: yes - 60%; no - 37%; do not know - 3%

Attorneys: yes - 70.5%; no 23%; do not know (or no response) - 7%

DHHR workers: yes - 88.5%; no (or no response) - 11.5%

It is axiomatic that termination proceedings must be conducted with full procedural protections for both parents and children. The potential for reunification should not, however, become the "tail that wags the dog." The Supreme Court has repeatedly noted that not every speculative possibility for reunification must be exhausted before termination of parental rights, and yet the vast majority of judges, social workers and attorneys still operate under this basic misapprehension of the law. And the Court has recently held: "Cases involving children must be decided not just in the context of competing sets of adults' rights, but also with a regard for the rights of the child(ren)." In the Matter of Brian D., Jeffrey D., Sherrie D. and Allen D. v. Nanny, No. 22558 (July 19, 1995), Syl. Pt. 7. A prompt determination whether reunification is possible is critical

to the child's emotional well-being, and to preserving chances for a permanent placement outside the home.

B. **RECOMMENDATIONS**

1. The problem of parents' versus children's rights should be effectively addressed at the caseworker and prosecuting attorney level, by clear direction from the DHHR State Office to caseworkers and to prosecuting attorneys regarding the responsibilities that the law places on the State to promptly identify the needs of children at risk. This direction should require that, in every case, inquiry and determination of the prognosis and recommendation for reunification of parent(s) and child(ren) should be made no later than the first review hearing with the multidisciplinary team.
2. Judges, attorneys and caseworkers who do not believe in termination of parental rights or who insist upon inordinate periods of time before proceeding with termination should receive instruction on current law, including case law developments, reflecting the modern understanding of the need for prompt determinations regarding prospects of reunification and the need for permanence in child placement.

2) A. **BARRIER** -- Misapplication or excessive reliance upon the adversary process by the attorneys for the parties impedes the case progress.

Too often, the attorneys for the various parties in child abuse and neglect proceedings reduce case review meetings to proceedings so highly adversary that no forward action results. Unwarranted delay occurs when attorneys who lack understanding of the process draw battle lines between the Department and the parties, losing sight of the primary objective of achieving permanency for the child(ren). Attorneys do not have to abandon their advocacy duties in representing their clients in these proceedings. But resort to adversarial tactics at the review stages, in particular, leads to a breakdown in the multidisciplinary team efforts to resolve problems regarding possible reunification or potential placements.

B. **RECOMMENDATION**

Attorneys for all parties involved in child abuse and neglect proceedings should be educated on the special nature of abuse and neglect proceedings. While advocacy certainly plays a role, the approach to resolution of these cases differs from other civil and criminal cases. Successful outcomes do not always fit a win-lose scenario. Attorneys need to understand when to drop their adversarial guard and participate in the review process in a meaningful manner.

3) A. **BARRIER** -- The procedural law now in effect in abuse and neglect proceedings is confusing.

Confusing procedural law is one reason for a serious lack of uniformity among judges and circuits. In addition, because of the way things are done by a particular judge, cultural influences in a particular area, and other local systemic idiosyncrasies, there is substantial confusion regarding what procedures to follow and how best to accomplish a particular end. For example, some jurisdictions have preliminary hearings in all cases, thinking they are for "probable cause" determinations, rather than their true statutory purpose (i.e., reasons for emergency taking). Additionally, preliminary information from the Court Improvement Program case file reviews indicates that in some circuits dispositions are conducted without first completing an adjudicatory hearing.

B. **RECOMMENDATIONS**

1. The proposed Rules of Procedure for Child Abuse and Neglect Proceedings should be promulgated by the Court, incorporating any recent case law developments.
2. At both the judicial and agency levels, uniform and understandable policies, rules, procedures and/or protocols must be developed for the various responsibilities of prosecutors, DHHR workers and court personnel.

3. The statutory provisions governing child abuse and neglect proceedings need revised in a manner to provide a sequential/chronological order to the statutes, with clear definitions.

4) A. **BARRIER -- Delay in the judicial process is a major obstacle to achieving permanency for abused and neglected children.**

Numerous continuances are routinely granted in spite of prohibitions under both statutory and case law. Abuse and neglect cases are often difficult to bring to hearing where dockets are crowded, further delaying the process. For example, in the recent Court Improvement Program survey, judges, attorneys and DHHR caseworkers were asked to estimate how often, on the scheduled day of contested abuse and neglect adjudications, it was necessary to reschedule the hearing for another day. Fifty-four percent of the responding judges said that such rescheduling occurred often or occasionally. Of the responding attorneys, 61.5% indicated that rescheduling on the day of the hearing occurred often or occasionally, and 61% of the DHHR caseworkers indicated similarly. Although this particular Court Improvement Program question was limited to adjudicatory hearings, the responses are indicative of the generally pervasive practice of putting off abuse and neglected hearings. This delay appears to result, at least in part, from ambivalence by judges and other participants in confronting the issues of abuse and neglect and a desire to put off such confrontation. Because of the difficulties in bringing these cases to hearings, agreed orders are a routine practice in many circuits.

These orders more often reflect a compromise of adversary positions than a determination of the best interests of the child(ren). More importantly, these orders also have the effect of delaying the final hearings on petitions for termination.

B. RECOMMENDATIONS

1. Absent a compelling reason, hearings in all child abuse and neglect proceedings should be held on the date originally scheduled for each such hearing. Under most circumstances, other matters on a court's docket must not take precedence over abuse and neglect hearings. As the Supreme Court noted in Syllabus Point 1 of In re Carlita B.: "Child abuse and neglect cases must be recognized as being among the highest priority for the court's attention. Unjustified procedural delays reek havoc on a child's development, stability and security." Additionally, adequate time should be allowed for these hearings so as to avoid interruptions.
2. Submission and entry of "routine" agreed orders on substantive matters in abuse and neglect cases, without judicial hearing and review on the record, should be prohibited. This avoids the danger of a compromise of adversarial positions simply to avoid the necessity of a particular hearing. Even where the parties are in essential agreement on the matters to be heard, it is vital that the court conduct an on-the-record review of these matters. The court should be given the reasons behind the agreement and be satisfied that the proposed agreed order is in the best interests of the child(ren).

Agreed orders without review have the negative effect of keeping the judge out of the decision-making process. The court must serve a managerial and directive function throughout the entire course of the case. Regular court review, including review of those matters in proposed agreed orders, ensures that the court will see that appropriate services are being provided to affected families and children, and that the case is progressing at the proper pace.

3. Courts should not permit automatic or agreed continuances of hearings, and no continuances of hearings should be granted without a demonstrated good cause. Court administrative personnel should not be authorized to grant continuances. The reason for any continuance should be made a matter of record during a hearing; and continuances should be granted only in situations of absolute necessity. This is consistent with the high priority of these abuse and neglect proceedings on the court's docket, and a firm policy against continuances would serve to reinforce this priority position.

- 5) A. **BARRIER -- Pre-adjudicatory improvement periods are subject to excessive and inappropriate use, and lead to detrimental delay in permanency planning.**

Under the current system, at any time before the final adjudicatory hearing on the merits of a child abuse and neglect case, a parent-respondent may move for a pre-adjudicatory improvement period of three to twelve months. Under West Virginia Code §

49-6-2, this motion must be granted unless the State or children can prove the existence of compelling circumstances justifying denial. Given the current law, when a court grants a pre-adjudicatory improvement period all too often it is not in the best interests of the child or family because the court has not yet determined any facts or circumstances regarding whether or not a child has been abused or neglected. The pre-adjudicatory improvement period places "the cart before the horse" in that it gives the parent(s) up to twelve months to work toward goals before the facts of the case have been determined. Service providers of all kinds, including therapists and counselors, consistently report that treatment is generally ineffective until the person being treated has acknowledged the existence of the problem. Until there has been a final adjudication on the merits of the case, whether by admission or evidentiary hearing, the process of treating concrete, identified problems cannot begin. Thus, up to a year can be wasted while family members go through the motions of attending therapy and other programs but do not really benefit from them since no final determination of the actual nature of the problems has been made.

Another significant problem created by the pre-adjudicatory improvement period is the loss of crucial evidence. Under the current law, at the final adjudicatory hearing, only evidence regarding the allegations contained in the petition can be heard; no evidence regarding developments in the case during the pre-adjudicatory improvement period may be considered. If a pre-adjudicatory improvement period has been granted at the preliminary hearing, or earlier, then up to one year may pass before any evidence is taken

on the merits of the case. A year or more having passed since the events giving rise to the petition, witnesses may not be available, the caseworker may not remember the details of the incidents in question, there may be a different caseworker, documents and records may be lost, and everyone involved in the case may have significantly reduced memory of the facts at issue, possibly tainted by the developments during the year of the pre-adjudicatory improvement period. This loss of crucial evidence benefits no one.

Finally, another problem is that the current law encourages agreements or deals for pre-adjudicatory improvement periods simply so that the parties and attorneys can put off time-consuming case preparation and evidentiary hearings. When the final adjudicatory hearing eventually takes place, additional case preparation time is often necessary because of the need to re-discover events and evidence which have become stale.

B. **RECOMMENDATIONS**

1. The pre-adjudicatory improvement period should be eliminated from the statutory framework governing child abuse and neglect cases. Elimination of the pre-adjudicatory improvement period would not deprive parents and families of the opportunity to remediate the circumstances giving rise to child maltreatment. Rather, it would permit the parties to actually determine what the circumstances were before attempting to remediate them, through a post-adjudicatory improvement period where appropriate.

2. If not entirely eliminated, pre-adjudicatory improvement periods should be re-designed as an extraordinary remedy of short duration. Although the preferred recommendation is to eliminate this practice because of the resulting significant problems of excessive use and delay, at the very least the statutory provisions regarding pre-adjudicatory improvement period should be amended to minimize the problems. The revisions should include:
 - a) shifting the burden of proof to obtain a pre-adjudicatory improvement period so as to require the parent(s) to show, by clear and convincing evidence, compelling reasons to justify why an improvement period should be granted; and
 - b) limiting the duration of such improvement periods to no more than three months. The recommended revisions (if elimination is not feasible) are contained in the proposed revisions to West Virginia Code § 49-6-2(b). Appendix 8.
3. If current law is not changed, social workers, judges and attorneys should be educated as to appropriate grounds for denial of a pre-adjudicatory improvement period so it is not applied inappropriately; for example, a compelling reason to deny the improvement period exists when parents do not admit to the allegations since they are then not treatable and thus an improvement period is fruitless.

6) A. **BARRIER** -- Delay and uncertainty in permanency planning results from failure to address issues regarding absent and unknown parents in child abuse and neglect proceedings.

In many cases of alleged child abuse and neglect, only one parent or other non-parental custodian is involved. A common occurrence involves the situation of an alleged abusing or neglectful mother with a number of children when the children have different fathers or putative fathers. Failure to include absent parents in abuse and neglect petitions and involve them in the proceedings can significantly affect the progress of the case as well as the outcome. Absent parents may be important sources of information for the court, may provide a placement alternative for the affected children, and may be a source for child support. Additionally, failure to include such absent parents in the petition and proceedings poses significant problems for permanency planning due to questions and confusion over termination of absent parents' rights.

B. **RECOMMENDATIONS**

1. Allegations of abandonment, or other pertinent grounds, should be included for every absent parent in petitions for abuse or neglect by an actual custodian of the child. As the Court has recently held in Syllabus Point 6 of In re Christina L. and Kenneth J.L., Nos. 22803 and 22084 (July 11, 1995): "When the West Virginia Department of Health and Human Resources seeks to terminate parental rights where an absent parent has abandoned the child, allegations of such abandonment should be included in the petition and

every effort made to comply with the notice requirements of W. Va. Code, 49-6-1 (1992)."

2. Notice should be given to all absent parents early on in the proceedings, and a clear record should be preserved establishing the steps taken to provide such notice. Actual notice or at the least a good faith effort at notice, provided to all absent parents, putative fathers and other persons who may have some legal right to custody, minimizes potential delay in completing permanency planning. Additionally, a record of such notice must be preserved in order to permit expeditious termination of parental rights when appropriate.

- 7) A. **BARRIER** -- The failure of the court to timely enter written, specific orders at each step of abuse and neglect proceedings has a profound negative effect on the entire process.

The circuit court's findings and conclusions at each stage of abuse and neglect proceedings lay the foundation for subsequent planning and action. Unless these findings and conclusions are set forth in a written order and are specific to the particular circumstances of the individual case, problems often go unidentified and action that the court may expect even on identified problems may not be effectively undertaken. The court's findings provide direction and guidance for involved agencies and counsel, thereby lessening the inaction which many times arises from confusion over who has

responsibility for what. Additionally, if orders are not timely prepared and entered, the next stage of the proceeding is likely to meet with delay.

B. **RECOMMENDATIONS**

1. The circuit courts must use, as required by Supreme Court Administrative Order, the form orders previously provided through the Court Administrator's Office for child abuse and neglect proceedings. These form orders provide a uniform format for orders at each stage of the proceeding, yet allow and encourage inclusion of specific and individualized findings for each case.
2. Orders at each abuse and neglect hearing should be generated immediately at the conclusion of each hearing through the use of computer-stored forms and formats that can be individualized with specific findings, signed and provided to all parties and counsel.

- 8) A. **BARRIER -- Time requirements for abuse and neglect cases are not met in many instances due to the lack of a workable and uniform caseflow management system.**

In order to keep child abuse and neglect cases as a top priority, the judicial system must demonstrate an unmistakably strong commitment to keep each case on track. If a particular order does not get entered or a hearing gets continued, nothing may happen for long periods of time. Additionally, without adequate advance planning, many hearings

end up getting delayed or continued because parties and counsel are not prepared to address the matters expected by the court.

B. RECOMMENDATIONS

1. A comprehensive and computerized tickler system should be established in each county to track all abuse and neglect cases to ensure that time standards are being met and all necessary steps are being taken.
2. While the DHHR is now planning a statewide computer data base for abuse and neglect cases, judicial timelines should be tracked through every phase with the above-recommended court computer system to ensure accurate and continuous tracking.
3. Circuit courts should require 5 - 7 day status conference hearings (pre-trial) before each adjudicatory hearing in abuse and neglect cases in order to ensure that all parties and counsel, as well as the court, are prepared to conduct a meaningful hearing.
4. A regular judicial review should be conducted on each case, at least quarterly, until a) the child has been returned home and the case has been dismissed; b) the child has been adopted; or c) the child has been placed in a permanent foster home.

- 9) A. **BARRIER** -- Prolonged post-adjudicatory improvement periods substantially diminish the likelihood of successful permanency planning.

A post-adjudicatory improvement period can be a valuable tool when there is a reasonable basis to find that family reunification is a substantial likelihood following a period of training, treatment, and other remedial and rehabilitative efforts. However, without a definitive family case plan that includes a firm time-frame, many times post-adjudicatory improvement periods are repeatedly extended and can drag out for years. This unquestionably has a detrimental impact upon the affected child's sense of security and place, and can result in lost opportunities for permanent placement.

B. **RECOMMENDATIONS**

1. Circuit courts must be encouraged to make realistic assessments and specific findings on the record regarding whether a post-adjudicatory improvement period presents a reasonable likelihood for success.
2. The multidisciplinary treatment team process should be utilized, with quarterly review before the judge, to maintain control over the improvement period process and to direct its closure in a timely fashion.

- 10) A. **BARRIER** -- Extensions granted in the appeal process routinely delay permanency planning efforts.

Attorneys for parents whose rights have been terminated routinely are granted one or two extensions of the four-month appeal period normally allowed. These requests for

extensions are often not justified by any legitimate circumstance, but are sought because of the low priority placed upon abuse and neglect cases by attorneys.

B. **RECOMMENDATIONS**

1. Substantially limit the allowable grounds for obtaining an extension of the appeal period in abuse and neglect cases, and limit such extensions to one (of short length).
2. Include in the Supreme Court Rules of Appellate Procedure an expedited appeal process for abuse and neglect cases.

- 11) A. **BARRIER** -- **There is no mechanism to monitor and enforce the priority of abuse and neglect cases on circuit court dockets.**

Caseload management systems are of limited effectiveness if judges and other court personnel are not committed to moving and deciding cases, particularly those that may get off track for one reason or another. Although writs of prohibition and mandamus are effective in some instances, these extraordinary proceedings add another layer of complexity and delay to the involved case. A simpler procedure for ensuring progress would provide a more routine system of accountability in every case.

B. **RECOMMENDATIONS**

1. The Court should adopt the proposed Rules of Procedure for Child Abuse and Neglect Proceedings in order to promote a uniform and regular process for the conduct of these cases.

2. The Court should establish and appoint a state oversight committee to provide a mechanism for receiving, reviewing and resolving referrals of problem cases which are not being timely or effectively resolved on a local level. (See Appendix 2, Recommendation number 1 of the Advisory Committee's July 15, 1994 report.)

- 12) A. **BARRIER** -- Children feel unrecognized in the court process in abuse and neglect cases.

In most circumstances, children should be present at some point in the judicial proceedings, preferably at an early stage, to give the judge the opportunity to observe them. Age-appropriate children can provide the court with information as to their perception of their own needs, interests and concerns. Older children will often have questions regarding their circumstances, the case plan, and projected time-frames for achieving case plan goals.

- B. **RECOMMENDATION**

Judges should be trained and encouraged to include children in significant hearings and in multidisciplinary team reviews, when age-appropriate.

- 13) A. **BARRIER** -- There are no system-wide procedures for the coordination or consolidation of interrelated cases involving common allegations of child abuse and neglect.

In many situations, there may be two or more cases that relate to the same allegations of child abuse and neglect. For example, allegations of child maltreatment may be at issue before a family law master in a custody/divorce case, while at the same time the same issues are involved in a civil abuse and neglect proceeding. Jurisdictional questions and inconsistent rulings, among other problems, can only result in substantial confusion among the parties regarding custody, visitation and other rights and obligations.

B. **RECOMMENDATIONS**

1. Evidence concerning allegations of abuse and neglect of any family member should be admitted and preserved in the record of all proceedings affecting the custody of children.
2. Changes, such as those in the Advisory Committee's proposed Rules of Procedure, should be made in the judicial system to ensure the full sharing of information among magistrates, family law masters and judges in child abuse situations, so that visitation can be terminated or closely supervised when necessary.
3. The Advisory Committee's proposed Rule of Procedure (Rule 4) regarding consolidation and transfer of cases involving allegations of abuse and neglect, and jurisdictional priorities over such cases, should be adopted and uniformly applied in all circuits.
4. The Court Appointed Special Advocate (CASA) system should be expanded to all fifty-five counties, and consideration should be given to extending the

CASA or other child advocacy system to include, when there are allegations of child abuse or neglect, domestic relations cases, criminal cases and juvenile delinquency cases. In order to meet this objective, the CASA should be publicly funded.

- 14) A. **BARRIER** -- Many circuit judges do not have sufficient training and information to effectively handle child abuse and neglect cases.

Child abuse and neglect cases impose special obligations on circuit judges to provide constant leadership and oversight concerning case progress. In these cases, the judge does not simply make a one-time decision concerning the care, custody and placement of a child, but rather makes a series of decisions over a long period. The judge must effectively manage the litigation as well as consistently deal with an on-going and changing situation. The leadership role of the judge is vital to process, as the court involvement occurs simultaneously with agency efforts to assist the family; and because of the multitude of persons dealing with the child and family, there is increased potential for confusion and delay.

B. **RECOMMENDATIONS**

1. Judges should be required to undergo mandatory instruction and training relating to the handling of abuse and neglect cases, with the minimum equivalent of six hours of continuing legal education per every two-year reporting period. A significant portion of this judicial training should focus

upon circuit judges' vital leadership role in abuse and neglect cases.

Resource manuals and comprehensive listings of available child service agencies should also be provided to all circuit judges, and regularly updated.

2. More effective caseload management practices should be adopted and made uniform for each circuit, including comprehensive management of the case through a regular judicial review process, at least quarterly, until a permanent placement is achieved.
3. In tandem with the adoption of effective caseload management practices, the Supreme Court should adopt specific reporting and accountability standards for child abuse and neglect cases to ensure that circuit judges maintain the progress of these cases within the time standards. The Court Administrator's Office should regularly compile and report the caseload statistics for each circuit court relating to abuse and neglect cases. These caseload reports should be available to the public upon request.
4. Accountability and timeliness with respect to judicial progress should also be promoted through the creation of the statewide oversight committee recommended in this Advisory Committee's July 15, 1994 report. (See Appendix 2, Recommendation number 1.)

- 15) A. **BARRIER** -- Attorneys representing children and parents in abuse and neglect proceedings generally lack the necessary training, and are insufficient in number.

Attorneys representing parties in abuse and neglect cases are generally unfamiliar or uninformed in the following respects: a) representing children as outlined in the Court's decision in Jeffery R.L.; b) available options for services and placements; c) child development issues; and d) law and procedure in child abuse and neglect cases. Due to this lack of information and training, these attorneys have a tendency to give these cases a low priority. Often, these attorneys are also inadequately prepared to address the issues at the various reviews and hearings. This lack of preparation may also be attributed, at least in part, to the "burn out" resulting from the low number of attorneys taking appointments of these cases.

B. **RECOMMENDATIONS**

1. The mandatory continuing legal education training requirements for attorneys appointed to child abuse and neglect cases [West Virginia Code § 49-6-2(a)] should be expanded to include all attorneys in the state. All attorneys should be required to participate in a minimum of three hours of such training per every two-year reporting period.
2. The previously recommended statewide oversight committee should be authorized to investigate or audit the performance of any attorney who exhibits a pattern of failing to adequately carry out professional

responsibilities in these cases and to report such failures to the State Bar Ethics Committee.

3. The State Bar should consider a program to address the need for more attorneys, and wider participation, in child abuse and neglect cases.
 4. The West Virginia University College of Law should be encouraged to offer courses and internships relating to child abuse and neglect.
 5. The Board of Law Examiners should be directed to add an essay question on the West Virginia Bar Examination that pertains to child abuse and neglect law.
 6. The Supreme Court, through the Court Administrator's Office, should make a specific recommendation to the legislature that the hourly rates and funding for attorney appointments in child abuse and neglect cases should be increased.
 7. Circuit judges should be encouraged, particularly following mandatory CLE for all attorneys relating to child abuse and neglect law, to appoint a greater cross-section of each local bar to abuse and neglect cases.
- 16) A. **BARRIER** -- Prosecuting attorneys lack the direction and support, as well as uniform procedures, for the handling of child abuse and neglect cases.

A substantial amount of confusion exists over the professional role of local prosecuting attorneys in relation to the DHHR. State law does not adequately address

whether an attorney-client relationship exists between local prosecutors and the DHHR, or whether the agency stands in a position similar to other law enforcement agencies. Additionally, there is no uniformity of procedures in the various prosecuting attorney offices across the State which, in turn, leads to confusion and delay when DHHR staff attempt to pursue cases in different counties. Lack of training and information available to prosecutors also leads to the similar tendency discussed with respect to the attorneys for children and parents regarding lack of priority and preparation in these cases. Finally, in many counties there are too few prosecutors on staff (particularly in the part-time prosecutor counties) to adequately cover child abuse and neglect cases in addition to other prosecutorial responsibilities.

B. **RECOMMENDATIONS**

1. The State Prosecuting Attorneys' Association should collaborate with the DHHR to develop uniform policies and procedures for handling civil child abuse and neglect cases so that agency workers can pursue such cases in the various counties in an effective manner.
2. By legislation or otherwise, maximum per attorney caseload standards for prosecuting attorneys' offices should be adopted and enforced.
3. In addition to mandatory CLE for all attorneys in child abuse and neglect cases, specialized training for prosecuting attorneys relating to these types of cases should be made available.

4. The Oversight Board of the Court Improvement Program should investigate and study the issue of the role of the prosecutor in relation to the DHHR and make appropriate recommendations for clarification of this role.

- 17) A. **BARRIER** -- Inadequacies in foster care and adoption services are a major obstacle to permanency planning and placements in this State.

This Committee finds the foster care system in this State woefully inadequate both in terms of quantity (e.g., low number of homes and unavailability of therapeutic foster care for special needs children) and quality (e.g., lack of training, support and resources for foster parents).

Regarding quantity issues, as a fundamental proposition there are not enough foster care homes in most communities to serve local children. Placement of children in foster homes outside of their home county gives rise to added problems affecting permanency planning. For example, if a child from Cabell County is placed in foster home in Wood County, it is often difficult for the Wood County foster parents to get to the Cabell County review hearings. Additionally, children placed with family preservation agencies outside of their home community oftentimes show up in their new schools without adequate communication of the child's history and needs. There are also instances of

poor use of available resources (i.e., "over serving") when children are placed in specialized foster care with family preservation agencies.

Problems relating to the quality of foster care generally fall into the following categories: a) no transition into foster care (or any moves between foster homes); b) foster parents lack understanding of the court process; c) foster parents not being adequately monitored or supported; d) not enough home finders to conduct home studies; e) foster parents lacking training in how to deal with children with special needs; f) DHHR often taking too long to transfer cases from CPS/foster care to adoption worker; g) bias against foster parents becoming adoptive parents (including onerous paperwork and training requirements); h) lack of adoptive homes for hard-to-place children; i) inadequacy of foster care system for handling special and deeply troubled children needing placement; and j) non-inclusion or discouragement of foster parents in participation on multidisciplinary teams and in court.

B. RECOMMENDATIONS

1. The court system, in cooperation with the DHHR, needs to encourage and promote more involvement of foster parents in the court process, particularly review hearings.
2. Out-of-state placements should not be rejected in the foster home placement process if within the child's "greater community" and cost effective. (For example, a placement across the Ohio River from Wheeling is closer than Elkins.)

3. The Advisory Committee places fundamental emphasis on the recommendation that the legislature fund budgetary increases for additional child protective services staff; for raising foster care rates; and for additional foster care/permanency social work staff.
4. Greater emphasis, by way of increased staff and home development, should be devoted to home-finding and preparation of home studies to address the backlog of requests for approval of homes for final adoption and permanent foster care.
5. More community foster homes need to be found in every region of the State, through the following measures: a) extensive media campaign to recruit foster and adoptive homes; b) more training, monitoring and financial support for foster homes; c) consideration of non-traditional families as possible sources for foster care; and d) use of existing groups, such as churches, to encourage people to become foster parents.
6. The DHHR should establish policies and procedures for transition into foster homes and between foster homes, by the following: a) emphasizing to staff the importance of transition for children and urging better preparation when a child needs to be moved; and b) developing of a sufficient number of small group homes for transition of previously hospitalized or incarcerated children or children returning from treatment facilities back into their own community.

7. As to the inadequacy of the foster care system for the handling of special-needs children: a) DHHR social workers should not be required to handle more cases than they can adequately address. More staff must be hired and trained, not only in short-term CPS, but also in permanency planning, home-finding and adoption; b) the DHHR needs to develop placement alternatives which are something more than foster care and less than psychiatric hospitals (intermediate care facilities that can be protectively secured for juvenile non-offenders as well as status offenders); and c) children need their own specialized child services worker, who remains with the case until resolved, not several generic workers who change according to where the child is in the process.
8. Although this Committee is wary of the concept of "managed care," it is the apparent direction the system will be taking for the foreseeable future. Accordingly, the emphasis should be placed upon a balanced system of care, with the right numbers and types of homes in every community to serve child populations. Additionally, a managed care system must monitor privatized foster care to hold the private agency accountable to the care system goal, which in this case is permanent placement. Financial incentives should be developed to promote permanent placements by private agencies. Finally, in this regard the Advisory Committee recommends that the

Oversight Board of the Court Improvement Program closely review and monitor managed care developments that affect the foster care system.

- 18) A. **BARRIER** -- **DHHR staffing, in terms of funding, numbers, organization and training, results in low priority for permanency planning efforts.**

DHHR workers are overworked (caseloads too high) and burned out. It is not surprising, therefore, that a high turnover rate of caseworkers is common across the State. This chronic problem of too much work for too little staff leads to a lack of continuity with service providers; intermittent communication with foster parents; lack of time to make effective referrals, lack of time to devote to permanency planning (i.e., if child is safe, caseworkers move on to next crisis); lack of time to visit children; and services for parents not delivered in a timely manner. Caseworkers also lack training in significant respects; most noteworthy as observed by the Committee are the following: a) caseworkers have their own biases, such as the earlier-noted bias common to judges, attorneys and caseworkers regarding parents' rights being favored over children's permanency interests (too much emphasis on family preservation--beyond reasonable efforts); b) caseworkers lack understanding of the legal process, which makes them vulnerable to intimidation by attorneys and judges; c) case plans are too general and lack concrete goals; and d) caseworkers lack understanding of appropriate roles, leading to tension between DHHR workers and CASA representatives.

Although emphasis on the need for additional CPS workers is appropriate, the least recognized and greatest need is for full staffing of long-term, permanency planning and adoption workers. Improved investigation and court intake are bringing more children in, but the staffing needs for moving children out of the system and into safe and permanent homes are neglected.

Finally, with respect to DHHR staff, it is the Committee's collective observation that the decision-making process within the agency is too cumbersome. While the worker who is on the frontline is best able to observe the situation of the child at risk and is best able to make recommendations regarding permanency, in rural counties decisions regarding termination are often made by regional officials who never have personal contact with the children or their parents, possibly resulting at least uninformed, if not bad, decisions. Many times, off-site personnel refuse to change their position despite evidence that the initial decision was wrong.

B. RECOMMENDATIONS

1. Inadequate staffing should be addressed through the following: a) more staff with smaller caseloads, for long-term foster care, permanency planning, and adoption workers as well as for intake CPS workers; and b) adequate funding for preventive and early intervention services to families who are having trouble but are not yet in crisis.
2. With respect to training of DHHR staff, the Committee recommends the following: a) develop guidelines for when family preservation efforts are

most effective and the reasonable limits of such efforts; b) assertiveness training for more effective in-court conduct; c) instruction for development of realistic, timely and extensive case plans; d) training to educate workers that adoption or permanent placement will not always be in a "perfect" family; and e) training to address caseworker defensiveness that grows out of years of dealing with frustrations in trying to deal with solving victims' problems and feeling they "own" the problems. Rather, it is a community problem for all groups to solve together, and caseworkers alone are not responsible and must open up the decision-making process.

3. With respect to procedures within the DHHR, the Committee makes the following recommendations: a) better transitions must be established for children (between placements/between workers); b) cooperative involvement with multidisciplinary teams must be an established policy within the DHHR; c) the problem of cumbersome DHHR decision-making between the local and regional offices must be resolved by restructuring the process so that the decision-makers are directly accountable and answerable to the parents, children and foster parents. In this regard the decision-maker (whether from the local or regional office) should attend all pertinent review hearings.

19) A. **BARRIER** -- There are no uniform formats and procedures for the proper preparation and filing of case plans .

Without an individualized child case plan, there is no guide for meaningful permanency planning and review. Each case necessarily involves a significant number of persons providing services or assistance for the child's ongoing care and for development of the permanent placement. However, if the case plan is not readily understandable, it will not be effectively utilized. Preliminary information gleaned from the review of over 100 court files in abuse and neglect cases as part of the survey work recently conducted incident to the Court Improvement Program reveals that a significant number of court files contained no child case plan, and case plans that were found exhibited a wide variation in both format and content. West Virginia Code § 49-6-5 requires that a child's case plan must be filed with the court and provided to parties and counsel at least five days prior to the dispositional hearing. It is noteworthy that the preliminary data from the judges questionnaire in the Court Improvement Program survey indicate that 46% of responding judges usually do not receive the child's case plan within this time frame.

B. **RECOMMENDATIONS**

1. Uniform case plans (similar to Appendix 9) must be developed by the DHHR, and mandated for use by the Department and the courts. The format should include the following sections:

Section 1 -- Introductory information concerning child and circumstances

Section 2 -- Recommendation of outside placement

Section 3 -- Recommendations concerning children already outside the home

Section 4 -- Conditions to change (behavioral objectives)

Section 5 -- Recommendations concerning termination of parental rights

Section 6 -- Other information

Section 7 -- Identification of permanency plan

The Advisory Committee notes that the proposed child case plan format is not intended to stifle the creativity of CPS workers in development of individualized case plans. Rather, the form is intended to standardize the format so courts and involved parties can effectively use review time in each case to sort out what has been done and what is needed to be accomplished.

The "conditions to change" is the most important component of the child case plan and needs to be outcome specific rather than a generalized laundry list. Although certain "boilerplate" conditions to change are provided as a menu of choices, this is not an all-inclusive list for use in every case.

2. The DHHR and the court system should implement mutually compatible computer systems and should explore an integrated computer system for automatically tracking the due date for filing the case plan in every child abuse and neglect proceeding, as well as for tracking other case milestones. The tracking system should issue reports of delinquent cases to the DHHR.

State Office and the Supreme Court Administrator's Office on a monthly basis.

3. The multidisciplinary team system and its quarterly judicial review procedures should be implemented on a statewide basis to ensure that the child case plan time frames and objectives are adhered to and remain appropriate on an individualized basis in every case.
4. The Court Administrator's Office should develop a checklist for judges to use as a guide for time frames on all significant aspects of each case and provide an inventory of what should be in each case file and each child case plan.
5. A procedure should be developed to ensure that all child case plans are disseminated to all parties and filed with the court. This procedure could be as simple as adopting a requirement for certificates of service to be appended to all case plans which list all parties served and the date filed with the court.
6. Children in juvenile delinquency proceedings often end up in foster care. Although this Committee focused its time and efforts on child abuse and neglect cases, it is recommended that every child in foster care have a case plan, including those children committed to foster care via juvenile delinquency proceedings. The Court Improvement program Oversight Board should continue to develop and monitor this recommendation.

20) A. **BARRIER** -- The CASA system is underutilized and lacks a source of public funding.

In the several counties of this State where the CASA program has been implemented, it has demonstrated its effectiveness in making substantial contributions toward the meaningful and timely progress of child abuse and neglect cases. However, at this point there are simply not enough CASA programs and representatives to provide the needed services. In some areas of the State, acceptance of the CASA representatives into the process also seems to be slow in coming.

B. **RECOMMENDATIONS**

1. The Court should adopt the proposed procedural rules recognizing and providing legitimate standing for CASA representatives. (Appendix 4, Rules 69-87.)
2. Legislation establishing the CASA system on a statewide basis should be encouraged, including funding. By this legislation, the CASA system should be expanded to all fifty-five counties and consideration given to extending CASA representation to include, when there are allegations of child abuse or neglect, domestic relations cases, criminal cases and juvenile delinquency cases.
3. The CASA program should be encouraged to develop its own strong state organization with state CASA standards and monitoring.

4. Training of judges and attorneys relating to child abuse and neglect cases should encourage acceptance and use of CASA representatives in the process, and also encourage attorneys and judges to personally participate in CASA training.
5. A pilot project should be conducted in one or more counties in which the CASA program would be elevated to "party" status with the right to counsel where needed. This pilot project could be developed and monitored by the Court Improvement Program Oversight Board.

21) A. **BARRIER** -- The "system" for handling abuse and neglect matters is fragmented.

The various agencies dealing with abuse and neglect, including the courts, too often move in their own separate directions rather than in coordinated efforts: e.g., with respect to domestic, abuse/neglect, criminal proceedings; services to families; the application of expertise.

B. **RECOMMENDATION**

The agencies involved need to explore the development of a family court as a way to lessen fragmentation by fostering a more coordinated and systematic approach.

22) A. **ADDITIONAL RECOMMENDATIONS OF THE ADVISORY COMMITTEE TO REDUCE OR ELIMINATE BARRIERS TO ACHIEVING PERMANENCY**

- 1) MULTIDISCIPLINARY TREATMENT TEAMS

Multidisciplinary treatment teams (MDTs) must be developed and utilized in every case where court proceedings have been initiated. The State should develop a state-wide network of integrated multidisciplinary treatment teams to service all areas with respect to MDT investigation, treatment and permanency planning. This integrated network process should be generic and not be duplicative of IPPC, IEP, DHHR administrative reviews, etc., and should be developed so as to incorporate these elements, eliminating unnecessary and duplicative meetings.

The following general policies should be implemented to ensure the success of the MDT review process: a) DHHR should furnish a MDT coordinator, on at least a regional basis, who shall maintain a log of all children in cases where abuse and neglect or juvenile delinquency proceedings have been initiated. The coordinator should keep a record of when the first the MDT is convened and whether the case is staffed by a MDT at least every six months in delinquency cases and every three months in abuse/neglect proceedings. This coordinator would also be responsible for providing technical assistance. b) One case manager should be assigned per case for treatment and permanency planning purposes -- capable of crossing multidisciplinary lines and convening and chairing the necessary treatment and planning MDT. c) The DHHR shall publish the name, location and telephone number of the regional MDT coordinator. d) If any service provider believes a MDT is necessary but has not been convened, the provider should contact the regional coordinator for assistance in appointment of a temporary case manager to initiate and convene an MDT for the child; the MDT may then select a

permanent case manager. e) If any MDT member, service provider or the regional coordinator requires more assistance ensuring the effective operation of the MDT and the achievement of a safe and permanent home for the child, the case may be referred to the local case oversight committee and, as necessary, to the state oversight committee, if one is created as recommended.

The statewide network should use community-based MDTs to ensure that every member of a family where child maltreatment or juvenile delinquency has occurred has access to treatment and other needed services, both individually and as a group. The availability of treatment by trained professionals may be on a regional basis if necessary.

Statewide multidisciplinary training should be conducted, including information on treatment options and permanency planning in all instruction for members of multidisciplinary treatment teams, prosecuting attorneys, judges and other key personnel.

2) STATE OVERSIGHT COMMITTEE

As previously recommended in the Advisory Committee's July 15, 1994 report, the Supreme Court should appoint a state oversight committee to continually identify systemic problems in the investigation, treatment, and resolution of cases involving child maltreatment or juvenile delinquency, and to recommend administrative or legislative changes as necessary to address these problems. This committee should also be available for technical assistance to local or regional MDTs. The committee should be able to refer specific cases to the Juvenile Justice Committee or other appropriate office

for enforcement, if necessary. An evaluation system should be established under the auspices of the state oversight committee to address the meeting of goals and objectives and the effects of changes on victims and other involved in the process.

3) SERVICES AND PLACEMENT INFORMATION

In order to assure that professionals and other interested parties are aware of services and placement options which are available, the DHHR needs to: a) provide better training for caseworkers regarding the community services systems available for cases; and b) compile and distribute to all interested parties a community resources manual with alternatives for placement and services, regularly updated.

4) PUBLIC AWARENESS

Through community outreach by forums in every community, the public should be made aware of the need to make child protective services, foster care and permanency planning priorities, and the need for a community response, via the statewide implementation of MDTs, and otherwise. To further this priority, policy-makers and the courts should develop and define the "Rights of Children in West Virginia."

5) RESOURCES

In order to maintain the high priority of abuse and neglect cases, all involved parties must be encouraged to optimize the available resources and to focus additional efforts in securing more resources for sufficient DHHR staff, trained prosecutors, trained law enforcement and publicly funded CASA representatives. This optimization of available resources and efforts to secure additional funding should also be

extended to support services for families such as counseling, substance abuse treatment, day care, parent education, in-home services, nutrition, counseling and budgeting.

6) CHILD FATALITY REVIEW TEAM

The Advisory Committee recommends, by appropriate legislation or other means, the establishment of a state child fatality review team to investigate and report upon any suspected non-accidental child deaths and all child deaths occurring while a child is in state custody.

B. ADVISORY COMMITTEE COMMENTARY ON THE RECOMMENDATIONS IN THE PATRICIA RYAN REPORT

Set out below are the 13 recommendations made by Patricia Ryan in her September 8, 1995 report to the Advisory Committee. The interlineated bracketed text accompanying each recommendation is the Advisory Committee's added commentary.

1. Use the current study as a first step in a prospective study of children in care, expand the current population of children and youths to include a larger number of children who were returned home in less than a year, collect more detailed data on the situations leading to care, the service plans, and the services that were provided and not provided in order to learn more about the types of cases which are most successfully served within the current system and the those which may need a different approach. Additional data would only have to be collected for a sample of the children in care for over eighteen months.
[Commendable goal; but limited resources should be utilized for additional services at this time]
2. Develop community and agency resources to increase early identification of and intervention in families where children are at risk or likely to become at risk. Document the need for community resources (e.g., sexual abuse

treatment, substance, abuse treatment, housing) that are necessary to preserve families and/or return children home in a timely manner.
[Mental health resources are particularly lacking.]

3. Integrate child protective services and foster care services so that foster care assessment can build upon and be integrated with protective service assessments and to assure that services are more continuous, and in order to be able to document failure of pre-care interventions as part of the body of evidence for termination of parental rights.
[This is a high priority recommendation.]
4. Undertake a study of the reason that so many of the children in care experience so many moves. This should include the availability of foster family resources within a short distance of the child's home and sufficient resources to keep children together and the level of training necessary for foster families to be able work successfully with the types of children who come into care, help those with very difficult behaviors, and maintain the placement.
[No additional commentary.]
5. Develop a foster family retention and recruitment plan to assure that there are sufficient foster family resources to place children with a short distance of their home, place siblings together and assure that children in care will not experience unnecessary moves.
[The Committee fully concurs, and recommends as a high priority.]
6. Recognize that there is great variation in the families of children in care and develop a variety of case prototypes that may be selected as the starting point for working with families.
[No additional commentary.]
7. Develop assessment protocols that will provide a realistic assessment of the risks to children within their families, the changes needed in order to return children home with focus on the specific behaviors or conditions that must be changed and a structured way of evaluating progress toward changes in these areas. The plans and action steps intended to effect these changes (e.g., substance abuse treatment, mental health treatment, parent education) should not be confused with the changes needed (abstinence, improved parenting).

[This should be a high priority; CARF is an attempt to address this issue, and the Committee supports its further development.]

8. Establish a system of supervisory reviews to assure that the permanency plans entered into children's records are realistic and that systematic progress is being made toward accomplishing the goal. This is equally important for providing assistance to the family when the plan is return home or to relatives and in moving toward termination of parental rights when the plan is, or becomes, adoption.
[This system should be judicial supervisory reviews, so as not to duplicate efforts.]
9. Review requirements for child and family plans to be submitted to the court. Is the relative infrequency of these reports as noted here an indication that they are currently in some way inadequate for court purposes or an indication that court decisions are, or perceived to be, totally independent of the social service plan? Whatever the outcome, the data suggest a need for greater collaboration between court and agency.
[The Committee agrees -- see Committee discussion and recommendations regarding case plans.]
10. Review the way in which improvement periods are used as this was frequently identified as a barrier to permanency. The data are consistent in showing that improvement periods are not helpful and may increase the time in care as well as the number of moves while in care. Improvement periods that do not include a plan and supporting services for decreasing maltreatment or the risk of maltreatment are clearly not helpful and may lead to an increase in the damage done to the child and the family. The result may delay progress toward making and implementing permanency plans. Improvement periods should only be granted with a clear statement of the objectives (behavioral changes) to be accomplished and the services and resources that will support the objectives.
[The Committee agrees -- see Committee discussion and recommendations regarding pre-adjudicatory improvement periods.]
11. Review procedures for termination of parental rights to assure that documentation of the need for termination is not postponed simply because family preservation is the preferred outcome regardless of the reasonability of achieving return home or to relatives; and in order to determine why

children for whom the plan is adoption wait so long for termination of parental rights. Determine the greatest barriers to termination of parental rights in order to speed up the process in appropriate cases. Examine the appropriateness of termination of parental rights when no adoptive family is likely to be available.

[The Committee agrees (except for last sentence) and finds this to be a high priority--see Committee discussion and recommendations regarding confusion over balancing parental and child rights.]

12. Undertake a systematic study of caseload size to determine the extent to which workers are able to provide services necessary for timely implementation of permanency plans. The study should focus on the development of appropriate norms or standards based on the time necessary to provide appropriate levels of services rather than merely studying what workers are currently doing.

[The Committee feels this is a low priority; a similar study has been done (see Harry A. Burgess Memorandum following Ryan Report, Appendix 7).]

13. Examine worker and supervisory training to assure that staff have the necessary skills especially in the areas of case assessment, case planning, and working with the court.

[See Committee discussions and recommendations on training throughout its Report.]

V. CONCLUSION

The common themes that pervade the barriers to permanency detailed above are fragmentation and delay, both local and statewide, in the efforts of the "players" charged by our law to deal with abuse and neglect. These dual problems result in systemwide failures to provide coordinated services to children and their families and to expeditiously secure safe and permanent homes for children when allegations of abuse or neglect arise.

Thus, one of the Committee's principal long-term recommendations is the establishment of a family court system, which would address the issues of child maltreatment in a coordinated and comprehensive fashion without the competition for its time posed by the other civil and criminal case dockets. In the meantime, the trust of the Committee's recommendations is to address the need to overcome these barriers by fostering the achievement of the recommended steps for system improvement in the form of cooperative protocols and uniform rules, inter alia.

More particularly, the Committee notes that national studies have consistently demonstrated that all successful permanency initiatives for children in abuse and neglect cases require the existence of five essential factors. To achieve these five factors, cooperative action is essential and the Committee's recommendations are directed to assuring their existence:

First, children must have appropriately trained advocates who have a high sense of urgency as to the effect on children of the passage of time.

Second, multidisciplinary teams must engage in investigation, treatment and permanency planning, with full participation by parents and children as appropriate.

Third, family case plans must require clear behavioral changes for reunification and must adopt a well-defined process for evaluating the feasibility of achieving necessary changes within a reasonable time.

Fourth, child case plans must provide clear goals and steps for securing a safe and permanent home within an expeditious time, with a well-defined process for monitoring the child's status and for effecting any needed changes in order to achieve safe permanency.

Fifth, the courts must exert their leadership role, particularly by way of conducting regular judicial reviews, with meaningful involvement on the part of the players and, as appropriate, by parents and children. Only the courts can hold all of the players and parties accountable, and only the courts can assure that safe permanency for children is achieved expeditiously.

Because the Committee shares the Court's deep concern for the well-being of our State's children and their families, the Committee appreciates the opportunity to provide the Court with such assistance as this Report might offer.

Proposed Amendment to §49-6-2(b)

In any proceeding under this article, any parent or custodian may, prior to the final adjudicatory hearing, move to be allowed one improvement period of three months, in order to remedy the circumstances or alleged circumstances causing the abuse or neglect.

The parent or custodian must show, by clear and convincing evidence, compelling reasons to justify why an improvement period should be granted.

The lack of previous social or other services to the parent or custodian shall not be considered compelling reasons to grant an improvement period, and the improvement period shall not be granted unless (1) the parent or custodian recognizes the conditions which have caused the abuse or neglect and/or are jeopardizing the child's safety, and (2) the parent or custodian demonstrates a willingness and ability to participate in the development of a plan for treatment of the underlying conditions causing the abuse or neglect and for protection of the child's safety.

The court may require temporary custody with a responsible relative, which may include any parent, guardian, or other custodian, or the state department or other agency during the improvement period.

An order granting such improvement period shall require the department to prepare and submit to the court a family case plan in accordance with the provisions of section three, article six-d of this chapter.