

## EXECUTIVE SUMMARY:

### 2011 REASSESSMENT OF JUVENILE DEPENDENCY CASE PROCESSING IN OREGON'S COURTS

It has been seven years since the Juvenile Court Improvement Program (JCIP) last conducted a statewide assessment of juvenile dependency case processing in Oregon's courts. Since that assessment, state and federal laws have continued to increase the oversight responsibilities of juvenile court judges. At the same time, courts and others who serve children and families have seen dramatic reductions to their funding.

Budget reductions for the Oregon Judicial Department (OJD) have become standard and are likely to continue. In the 2009-11 biennium, the OJD experienced a 15% reduction in General Fund dollars. The current 2011-13 budget includes an additional 7.5% overall reduction in the first year with the possibility of more cuts in 2012. Budget cuts have resulted in significant staff reductions. The OJD's Court Programs and Services Division, which housed JCIP, was eliminated last biennium resulting in the loss of 22 employees. Those losses affected the Citizen Review Board (CRB) and centralized support and coordination of various court programs and functions, such as treatment courts, family court facilitation, and performance measure monitoring. Additionally, all OJD staff were required to take between 10 and 14 furlough days on a rotating basis in the 2009-11 biennium in order to keep local courthouses open for regular business hours.

Social services that support children and families—child welfare, mental health, self-

sufficiency, schools, and law enforcement—are also in crisis. Reductions in Department of Human Services (DHS) budgets, along with the end of federal stimulus money, create a bleak picture for future budgets.

Despite this economic crisis, Oregon's courts, JCIP, CRB, DHS, Office of Public Defense Services (OPDS), and community partners have continued to work together to meet the needs of Oregon's children and families. The reassessment team saw many examples of judicially led reforms and initiatives throughout the state to make the best use of limited resources.

As in previous assessments, the reassessment team gathered and analyzed statewide data from OJD and DHS case management systems as well as statewide surveys, focus groups, and interviews. Additionally, the reassessment team conducted an in-depth analysis through file reviews, court and CRB observations, and interviews in seven Oregon counties: Baker, Jackson, Lane, Lincoln, Malheur, Marion, and Multnomah.

Like past assessments, this reassessment makes comparisons with national standards published by the National Council of Juvenile and Family Court Judges (NCJFCJ) in 1995 and assumes that juvenile court hearings best serve children and families when:

- All the necessary parties, including parents, children, attorneys, Court Appointed Special Advocates (CASAs), relatives, and foster parents are in

attendance,

- Enough time is docketed to allow for adequate review of the case and for making all necessary findings of fact and conclusions of law.
- The court enters detailed legal orders that clearly memorialize findings and expectations, using language all parties understand.

In order for the above to happen, judicial officers and professionals who do this work need adequate support and training.

This reassessment also bases its findings on Oregon's standards and performance measures related to the OJD's *Justice 2020 Goals* as well as standards and expectations relating to Indian Child Welfare Act (ICWA) compliance and court consultation with children. Additionally, the reassessment uses the key measures and improvement strategies articulated in the U.S. Department of Justice's Office of Juvenile Justice and Delinquency Prevention, *Toolkit for Court Performance Measures in Child Abuse and Neglect Cases (2008)*, which builds on the NCJFCJ's work.

## **SUMMARY OF IMPROVEMENTS SINCE 2004**

### ***INCREASED USE OF ELECTRONIC DOCUMENTS***

Since 2004, the OJD has continued to make improvements to juvenile dependency processes through the use of technology. JCIP, local judges, the CRB, and DHS have collaborated to pilot a variety of strategies for electronic distribution of discovery, court reports, and orders. In some counties, it is now possible for courts to maintain

electronic juvenile dependency legal and social files. The CRB receives case material for reviews electronically from DHS offices in 29 counties and nearly 60% of volunteer board members receive electronic files to prepare for reviews. Additionally, JCIP is working to enhance electronic model juvenile dependency judgment forms. The enhanced forms will be a bridge between current paper forms and future forms within the Oregon eCourt system.

### ***INCREASED ATTORNEY PARTICIPATION IN JUVENILE COURT PROCEEDINGS***

The presence of attorneys representing parents and children at juvenile court proceedings has increased significantly over the past six years. Increased attorney presence at shelter hearings in some counties has resulted in improved advocacy and case planning, and is paving the way for similar improvements across the state.

### ***INCREASED INNOVATION AND COLLABORATIVE COURT IMPROVEMENT***

The reassessment team saw many local examples of judicially led system reforms, including use of the Court Catalyzing Change Bench Card; revised shelter hearings that frontload judicial, attorney, and child welfare attention to dependency cases; adoption of protocols for consulting with children in dependency cases; and court and community collaboration that improves access to services for children in foster care.

Two initiatives, in particular, present substantial opportunities to improve Oregon's child welfare and juvenile court systems. First, the Casey Family Programs Safe and Equitable Reduction in Foster Care Initiative, established in eight Oregon counties (three of which were reassessment

study counties), incorporates many of the best practices discussed in this reassessment. Second, JCIP has encouraged statewide adoption of the NCJFCJ Courts Catalyzing Change Bench Card. This bench card encourages careful consideration of initial removal decisions and assists judges in reducing or eliminating implicit bias in decision making. Its use encourages other best practices, such as early appointment of attorneys and placement of children with relatives. While research into the bench card's effectiveness is in the early stages, the results are promising.<sup>i</sup>

### ***IMPROVED PROCESSING OF DEPENDENCY AND TERMINATION OF PARENTAL RIGHTS APPEALS***

As a result of cross-disciplinary, judicially led efforts, the Oregon Court of Appeals and OPDS have instituted administrative reforms resulting in faster resolution of dependency appeals and improved representation for children and parents.

### ***CONTINUED CROSS SYSTEMS TRAINING AND ADVISORY EFFORTS***

JCIP has continued to collaborate with CRB, DHS, OPDS, the Oregon Commission on Children and Families (OCCF), and community partners such as Casey Family Programs to provide training throughout the state. These trainings have strengthened links between child welfare initiatives such as the Oregon Safety Model and court practices.

## **2011 FINDINGS AND RECOMMENDATIONS**

### ***FULLY IMPLEMENT THE 1997 AND 2004 ASSESSMENTS' RECOMMENDATIONS***

Implementation of court improvement efforts varies widely among judicial districts. Whether local courts have adopted recommendations from earlier assessments is a function of local priorities, resources available for innovation, and willingness to change. Some counties fully embrace best practices, while others struggle to implement changes. For example, some courts continue to schedule hearings in blocks ("bucket" or "cattle call" dockets) that increase wait time for participants and, in some counties, contribute to a chaotic atmosphere in the courtroom. Some courts also continue to schedule hearings after participants leave the courtroom, increasing the burden on court staff, DHS, and attorneys to notify participants of the next proceeding. Where local courts continue these practices, resistance to change is strong. *The 2011 Reassessment recommends:*

- JCIP should provide assessment and support to all jurisdictions in the implementation of the fundamental court improvement practices recommended in earlier assessments, such as time-certain hearings and appointing counsel at shelter hearings.
- JCIP Advisory Committee should analyze and make recommendations to the Chief Justice on how centralizing or regionalizing dependency court services might be incorporated into a strategic plan to re-engineer state courts.

### ***INCREASE USE OF MODEL COURT FORMS***

Some local juvenile courts use form orders that are incomplete, confusing, or outdated. Many forms have evolved over the years according to local court practices, are long and cumbersome for judges, and confusing for participants. Others, though short and less cumbersome, lack prompts for judges to make important findings. *The 2011 Reassessment recommends:*

- All courts should implement the revised model juvenile dependency judgment forms.
- JCIP should provide adequate training and technical support for judges and juvenile court staff who use the model juvenile dependency judgment forms.

### ***INCREASE PARTY AND PARTICIPANT PRESENCE AT JUVENILE COURT PROCEEDINGS***

The presence of attorneys representing parents and children at juvenile court proceedings has increased significantly over the past six years.<sup>ii</sup> Child presence, on the other hand, has decreased statewide at all proceedings, except for review and permanency hearings. Court forms do not consistently prompt judges to document foster parent or relative presence at dependency proceedings, therefore, their presence was difficult to verify during file reviews. Conversely, CRB Findings and Recommendations reports consistently prompt coordinators to note whether foster parents or relatives are present. According to the file reviews, foster parents were present at more than half of CRB reviews.

In the statewide surveys, foster parents reported being routinely invited to both court and CRB reviews, however, some foster parents reported being discouraged

from attending these proceedings. Foster parents also reported having significantly more opportunities to speak during CRB reviews than in court hearings.<sup>iii</sup> *The 2011 Reassessment recommends:*

- JCIP should ensure that information documenting child, foster parent, and relative presence can and will be tracked in the Odyssey Case Management System of Oregon eCourt.
- CRB should develop and pilot use of a court hearing notice statement to be delivered by CRB coordinators to foster parents at reviews to supplement DHS notice of court hearings.
- JCIP should continue judicial training on the importance of inquiry into relative and foster parent presence.
- JCIP should continue training foster parents about participation in juvenile dependency proceedings. Training efforts should consider whether relative foster parents might have different training or support needs from those of community foster parents.
- JCIP should continue to encourage local courts to require attorney presence at shelter hearings.
- JCIP should encourage OPDS to explore splitting payment for the initial jurisdictional hearing, so part of the initial payment is tied to attending shelter hearings.

### ***IMPROVE TIMELINESS OF JUVENILE COURT PROCEEDINGS***

Statewide, Oregon has met goals for time-to-jurisdiction and time-to-first permanency hearing. During 2010, of those dependency petitions adjudicated outside the 60-day timeline, only 34% had “good cause” findings

for the delay documented in OJIN. Oregon courts resolve about half of termination of parental rights (TPR) petitions in less than six months.<sup>iv</sup> *The 2011 Reassessment recommends:*

- JCIP should assess if delay in service of summons results in a corresponding delay in the adjudication of dependency and termination petitions.
- JCIP should develop a comprehensive TPR case management report that allows JCIP and local courts to analyze and address reasons for delay in TPR cases, including whether they are due to requests for continuances or when the initial trial is set.

### ***INCREASE ELECTRONIC DISCOVERY AND REPORT DISTRIBUTION***

Oregon is moving towards electronic distribution of discovery and reports, but practices vary widely throughout the state. Some jurisdictions continue to rely on paper distribution through mail, fax, or centralized mailboxes at the courthouse. Other jurisdictions are far along in the implementation of electronic distribution methods. Changes to DHS and OJD case management systems (ORKids and Oregon eCourt respectively) will continue to offer new opportunities to streamline discovery and court filing processes. Attorneys for parents and children as well as CASAs need to adapt their hardware and software infrastructure to be able to efficiently access and organize electronic discovery. *The 2011 Reassessment recommends:*

- JCIP staff should continue to support trial courts and the CRB in implementing efficiencies through electronic exchange of documents to prepare courts for the transition to Oregon eCourt.

- JCIP should compile and maintain a list of electronic discovery strategies that include a description of hardware and software requirements for users and stakeholders.
- JCIP should make technology acquisition to support electronic discovery implementation for juvenile court participants and court staff a priority when awarding mini-grants.

### ***IMPLEMENT SETTLEMENT CONFERENCES AND MEETINGS***

Opportunities for case-specific, cross-disciplinary meetings where parties can discuss issues related to their juvenile cases have dwindled since the last reassessment. Most of the study counties hold some form of settlement conferences, but their utility varies depending on when they are scheduled, where they are held, and how much time participants devote to meetings. Parents participating in focus groups reported that settlement conferences were chaotic and confusing. Child Safety Meetings under the Oregon Safety Model, which supplanted early Team or Family Decision Meetings, were not designed to include all juvenile court participants or link case planning to court processes. *The 2011 Reassessment recommends:*

- All judges should order parties to participate in settlement conferences that are scheduled between 30 and 45 days after the shelter hearing.
- JCIP should work with DHS to develop and evaluate a pilot project that combines DHS Child Safety Meetings with judicial settlement conferences.

## ***IMPROVE CASE- SPECIFIC FINDINGS AND JUDICIAL INQUIRY***

Judicial time devoted to juvenile court hearings in Oregon has never met national standards due, in part, to increases in juvenile court judges' oversight responsibilities without a corresponding increase in the time available to conduct hearings. Overall, judicial resources have declined since the 2004 reassessment.

The time restrictions severely limit judges' ability to receive input from all participants and to produce detailed, case specific judgments. Findings related to education, visitation, and other measures of well-being have been statutorily mandated since 2004, however, these findings are significantly less likely to be made than reasonable efforts findings.<sup>v</sup> Additionally, courts are most likely to make reasonable efforts findings by checking boxes and omit the "brief" description of those efforts required by statute.

Compounding the negative consequences of time restrictions is the courts' reliance on attorneys to consult with their child clients on permanency planning. Few local courts have implemented protocols to assure children's presence at permanency hearings or their consultation about their permanency plan. *The 2011 Reassessment recommends:*

- Courts should have sufficient time to write case-specific orders and judgments.
- Courts should work with DHS, CASA, CRB, and court appointed counsel to implement protocols to ensure consultation with children about their permanency plans based on JCIP's 2009 "Courts Consulting with Children"

protocols.

- JCIP staff should explore ways to update OJD's Judicial and Staff Workload Studies to assess adequacy of judicial and staff time devoted to juvenile dependency cases.

## ***IMPROVE ICWA COMPLIANCE***

Judges are more likely to document active efforts findings than other findings required by ICWA. Local prosecutors and DHS continue to struggle with identifying and using expert witnesses to justify removal decisions. Tribal participation in child welfare cases varies depending on the tribe involved. A lack of understanding about differing levels of participation among tribes may lead to confusion or frustration among other juvenile court participants. Tribal child welfare workers report that attorneys and CASAs rarely contact tribes regarding case planning issues. *The 2011 Reassessment recommends:*

- JCIP should ensure that judicial and community training on implementation of the new model juvenile dependency forms should include particular attention to the prompts for inquiry into ICWA eligibility at every proceeding until the issue has been resolved; inquiry whether tribes received notice of the proceeding; and documentation that the court's findings included expert witness testimony .
- JCIP should work with its Improving Court Compliance with ICWA Committee to develop and sponsor training on government-to-government relations and communication with Native American tribes for judges and juvenile court participants.

- JCIP should work with its Improving Court Compliance with ICWA Committee to create guidelines for working with expert witnesses in ICWA proceedings including criteria for qualifying a witness as expert in a tribe’s culture as well as criteria for determining what type of expertise is needed to address specific removal issues.

**CONTINUE IMPROVEMENTS IN APPELLATE COURT DISPOSITION OF JUVENILE DEPENDENCY AND TERMINATION APPEALS**

Establishing a juvenile dependency appeals unit in OPDS has created a concentration of expertise in juvenile dependency and termination law. While the Court of Appeals has reduced the case processing time for dependency appeals, there has been little change in the amount of time it takes to complete a petition for review to the Oregon Supreme Court. *The 2011 Reassessment recommends:*

- JCIP should continue to explore ways to support the Supreme Court in reducing the amount of time it takes to resolve petitions for review.
- JCIP should look for opportunities to collaborate with the OPDS juvenile appeals unit for attorney training.

**PROPOSED STRATEGIES FOR IMPLEMENTING REASSESSMENT RECOMMENDATIONS**

The recommendations in this report are fewer than those in previous reports in recognition of the fiscal reality, as well as the substantial foundation for court reform efforts that already exist in Oregon. To

implement the recommendations in this report, existing court improvement efforts should be enhanced through:

- 1) **Careful implementation of the model juvenile dependency forms** that includes direct training and consultation for local juvenile court judges and their staff on technical implementation as well as the legal and best practices rationale behind each change; training for juvenile court professional and volunteer participants; and ongoing technical assistance and monitoring to ensure the forms work as intended.
- 2) **Continued use of data tracking for measuring judicial workload and performance measures.** The reassessment offers a number of opportunities for improvement that may be based on tracking local court performance. JCIP staff and its advisory committees should prioritize particular areas for improvement and advocate for electronic data collection methods through OJIN and Oregon eCourt.
- 3) **Continued support for local model court teams and existing training programs,** including JCIP/DHS Road Shows and the OPDS and Oregon Criminal Defense Lawyers Association’s training academy.
- 4) **Continued collaboration with CRB, DHS, local Commissions on Children and Families, Oregon Tribes, and community partners (both local and national).** Oregon benefits from assistance from Casey Family Programs, the National Council of Juvenile and Family Court Judges, and other resource centers involved with juvenile court improvement.

## COMPARISON OF FILE REVIEW FINDINGS: 2004 AND 2011

The table below shows statistically significant changes between the 2004 and 2011 assessments for data points that were gathered for both assessments. The arrows indicate direction of significant changes with a p-value less than or equal to 0.05. The odds that the differences below are due to chance is less than 1 in 20 ( $p < 0.05$ ).

	2004	2011	Direction of Change
<b>SHELTER HEARINGS</b>			
<i>Presence</i>			
Mother's Attorney	40%	78%	↑
Father's Attorney	20%	54%	↑
Child's Attorney	45%	78%	↑
Foster parent (includes relative foster parents)	0%	4%	↑
<i>Findings</i>			
Other visitation	1%	6%	↑
Does ICWA apply	86%	74%	↓
<i>ICWA</i>			
ICWA placement preference	78%	21%	↓
<b>JURISDICTIONAL AND DISPOSITIONAL HEARINGS</b>			
<i>Presence</i>			
Father	46%	61%	↑
Father's Attorney	47%	64%	↑
Child's Attorney	72%	86%	↑
Tribe	58%	27%	↓
Relative (excludes relative foster parents)	9%	2%	↓
<i>Findings</i>			
Parental visitation	47%	69%	↑
Concurrent plan designated	35%	53%	↑
<i>ICWA</i>			
Continued custody likely to result in serious damage	20%	45%	↑
ICWA placement preference	50%	20%	↓
<b>REVIEW HEARINGS</b>			
<i>Presence</i>			
Mother	55%	66%	↑
Mother's Attorney	62%	75%	↑

Father	31%	48%	↑
Father's Attorney	34%	57%	↑
Child's Attorney	75%	93%	↑
DA/AAG	48%	31%	↓
CASA	9%	21%	↑
Relative (excludes relative foster parents)	10%	5%	↓
<b>Findings</b>			
Reasonable/active efforts to prevent removal	54%	69%	↑
Future efforts to reunify	53%	46%	↓
Parental visitation	28%	54%	↑
Next date	79%	80%	↑
<b>CRB REVIEWS</b>			
<b>Presence</b>			
Mother	23%	56%	↑
Mother's Attorney	20%	42%	↑
Father	9%	28%	↑
Father's Attorney	9%	36%	↑
Child's Attorney	39%	64%	↑
CASA	21%	33%	↑
Foster parent (includes relative foster parents)	29%	55%	↑
<b>Findings</b>			
Prevent removal	57%	100%	↑
Number of visits with parents	25%	52%	↑
Next date	17%	27%	↑
<b>PERMANENCY HEARINGS</b>			
<b>Presence</b>			
Mother	35%	54%	↑
Mother's Attorney	40%	62%	↑
Father	14%	32%	↑
Father's Attorney	20%	45%	↑
Child's Attorney	69%	93%	↑
DA/AAG	34%	25%	↓
CASA	17%	26%	↑
Relative (excludes relative foster parents)	9%	2%	↓
<b>Findings</b>			
Reasonable/active efforts to prevent removal	90%	67%	↓
Specific services, specific time	19%	68%	↑
Efforts to support concurrent plan	35%	57%	↑
Why not higher plan	37%	45%	↑
Next date	65%	55%	↓

Notes:

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<sup>i</sup> [Right from the Start: The Courts Catalyzing Change Preliminary Protective Hearing Benchcard Study Report -- Testing a Tool for Judicial Decision-Making, July 26, 2011, http://www.ncjfcj.org/content/view/1499/347/](http://www.ncjfcj.org/content/view/1499/347/)

<sup>ii</sup>  $P < 0.0005$  The p-value is the probability that an observed change or difference is the result of random chance. A difference is considered significant if the p-value is less than or equal to 0.05. In this instance, the odds that the difference in attorney presence is due to chance is less than 1 in 2000 ( $p < 0.0005$ ).

<sup>iii</sup>  $P < 0.005$  In this instance, the odds that the difference in foster parents' opportunity to speak is due to chance is less than 1 in 200 ( $p < 0.005$ ).

<sup>iv</sup> The Time to TPR report tracks the number of TPR petitions resolved within six months of the date the petition was filed. This six month timeline was met in 53% of TPR cases in 2010 and in 57% of TPR cases in the second quarter of 2011.

<sup>v</sup> One or more of the well-being findings, including the number of placements, number of schools attended, number of face-to-face visits with DHS caseworker, and progress toward graduation, were made on 54% of judgments in the file review. The reasonable efforts finding was made on 76% of judgments in the file review.  $P < 0.0005$ .