

STATE OF WEST VIRGINIA
FULL PERFORMANCE EVALUATION
OF THE
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
FOSTER CARE AND ADOPTION

Lack of Management Information
System

Adoption Unit Backlog

Visitation After Termination of
Parental Rights

Unsigned Court Orders

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Antonio E. Jones, Ph.D.
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January 10, 1998

The Honorable Billy Wayne Bailey
State Senate
Drawer A
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The Honorable Vicki Douglas
House of Delegates
Building 1, Room E-213
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Charleston, West Virginia 25305-0470

Dear Chairs:

Pursuant to the West Virginia Sunset Law, we are transmitting a Full Performance Evaluation of the Department of Health and Human Resources - Foster Care and Adoption, which will be presented to the Joint Committee on Government Operations on Saturday, January 10, 1998. The issues covered herein are "Lack of Management Information System; Adoption Unit Backlog; Visitation After Termination of Parental Rights; and, Unsigned Court Orders."

Sincerely,

A handwritten signature in black ink, appearing to read "Antonio E. Jones".

Antonio E. Jones

AEJ/wsc

Joint Committee on Government and Finance

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Executive Summary

Foster care is a service provided for children who, for any of a great number of reasons, must live apart from their own families for planned period of time. Foster care provides a substitute living situation for such children in both foster family homes and in group or institutional care. Two resources or types of foster family care: temporary or permanent, each with its individual and specific function, are available for use in planning and meeting the needs of children being served.

For those children who must be separated from their homes, the agency is charged by law with the responsibility of developing and administering a foster care program. *W. Va. Code* §49-2-1 states that “It shall be the responsibility of the state department to provide care for neglected children who are committed to its care for custody or guardianship.”

This report is a Full Performance Evaluation on Foster Care and Adoption within the Department of Health and Human Resources. This report presents four issues relating to foster care and adoption.

ISSUE AREA 1: The Department of Health and Human Resources Lacks a Management Information System that will Allow it to Monitor Basic Information or Progress of Children in Foster Care and Adoption.

According to a briefing provided by the Department of Health and Human Resources for the Legislative Auditor, “the agency is charged with the responsibility of developing and administering a foster care program.” However, in order to manage foster care and adoption, the Department of Health and Human Resources must know where every child is located, the status of their care and their progress toward a permanent home or living arrangement. The appropriate points of progress for children in foster care are laid forth in the Rules of Procedure for Child Abuse and Neglect Proceedings and are based on the *W. Va. Code* §49-6-1, *et seq.*

The primary cause of the inability of the Department of Health and Human Resources to properly oversee foster care and adoption is that the information provided by the current management information system (the Social Services Information System or SSIS) is insufficient to monitor guidelines in the *W. Va. Code* §49-6-1, *et seq.* as contained in the Rules of Procedure for Child Abuse and Neglect Proceedings.

The Department of Health and Human Resources cannot measure performance without the basic ability to determine *how many children are in care, where these children are, or if these children even exist?* Without knowing who the children are or where they are, the Department of Health and Human Resources lacks the ability to be accountable for them or to hold case workers accountable for them. *Ultimately, children are the ones who incur the greatest cost.*

ISSUE AREA 2: Two hundred-fifty eight (258) children legally free for adoption are Waiting to be Transferred to the Adoption Unit.

Chapter 15420 of the Social Service Manual states that **“As soon as it is possible to identify a child’s need for an adoptive family, a referral of that child must be made to the Adoption Exchange. All new state wards must be referred within thirty (30) days of SSIS legal status change to guardianship.”** Furthermore, “All children who are currently legally free and appropriate for adoption, must be registered on the Adoption Exchange no later than thirty (30) days of receipt of this manual material.

The Legislative Auditor’s sample of cases revealed 14 children were waiting to be transferred to the adoption unit, although full parental rights had already been terminated. Upon further inquiry, the four DHHR adoption supervisors confirmed **a total of two hundred fifty-eight children were waiting to be transferred to the adoption units.**

The caseload of an adoption worker is controlled by the unit supervisor. These supervisors stated that 15-18 cases is an ideal workload for adoption workers, although most carry more than the ideal. In addition to the low case standard, there are only 13 Adoption workers for the 4 Regions. This means that the foster care worker must continue to monitor the progress of children who are legally free to be adopted. Foster care workers are taking it on themselves to do the job of the adoption worker and find homes for these children, despite the fact that some workers have caseloads of over 30 children and are not trained to do adoptions.

It is difficult for the adoption unit to find adoptive families for children as quickly as possible, when they are not able to take all of the cases. The ability for the DHHR to hire more adoption workers would give more children the chance to get adopted.

ISSUE AREA 3: Courts allow for visitation after the termination of parental rights, robbing the child or children of stability and permanency.

West Virginia *Code* §49-6-5(6) states “...Upon a finding that there is no reasonable likelihood that the conditions of neglect or abuse can be substantially corrected in the near future, and when necessary for the welfare of the child, terminate parental, custodial or guardianship rights and/or responsibilities of the abusing parent and commit the child ... to the permanent guardianship of the state department or a licensed child welfare agency.” According to W. Va. *Code* §49-6-5, children “need consistent, close interaction with fully committed adults, and are likely to have their own emotional and physical development retarded by numerous placements.”

When termination of parental rights is essential to the well-being of the child, court ordered visitation complicates the permanency plans and confuses the child. Permanent out-of-home placement is achieved only when the child has been placed in a permanent, court-approved, and ratified foster care home, or the child has been adopted or emancipated..W. Va. *Code* §49-6-2 allows courts to consider continued visitation when parental rights are terminated due to neglect or abuse.

When the judiciary grants visitation after the parents have proven themselves unfit or unable to care for the child, the state has a difficult time placing the child in a stable, permanent living arrangement. Adoptive families are hesitant to become involved with a child when the child has court ordered contact with the perpetrators of abuse or neglect.

ISSUE AREA 4: Six Percent of our Sample of Foster Care Court Orders Reviewed Were Unsigned by the Circuit Court Judge.

The West Virginia Department of Health and Human Services (DHHR) is required to have certain information in each child's case records including; 1) Initial petition seeking DHHR custody; **2) Court order granting DHHR custody and all subsequent petitions and orders;** and 3) Voluntary placement agreements and/or voluntary relinquishments.

According to §51-3-4 of the West Virginia *Code*, the orders of every court shall be **signed by the judge** and entered as a record. Furthermore, §51-3-4 states, "Courts of record must speak by their records. What is not thereby made to appear does not exist in law...Unless and until the proceedings of a court are recorded and **signed** as required by this section they can have no force or efficacy whatever."

While reviewing the case files, the Legislative Auditor found that all of the court orders in the files were not signed by the circuit court judge. Of the 2,313 court orders that the Legislative Auditor reviewed, **134** did not have a signed copy in the case files. Possible causes include: (1) DHHR workers are not receiving court orders from the circuit clerk's office; and (2) DHHR workers are not filing the court orders in the case files.

The most serious effect from having unsigned court orders involves possible legal entanglements. Thus, children may be staying in the system longer than necessary, especially ones who are waiting to be adopted.

In addition, **DHHR estimates that this amount applied to 421 children at 73% reimbursement rate projected over a 12-month period. If this is correct, the state is losing \$5.1 million dollar annually in federal title IV-E funding, due to court orders being completed incorrectly or not signed at all.**

Objective, Scope and Methodology

Objective and Scope

This full performance evaluation of the Department of Health and Human Resources, Foster Care and Adoption was conducted in accordance with the West Virginia Sunset Law, Chapter 4, Article 10 of the West Virginia *Code*, as amended. A full performance evaluation is a means to determine for an agency whether or not the agency is operating in an efficient and effective manner and to determine whether or not there is a demonstrable need for the continuation of the agency. According to the West Virginia Sunset Law, the evaluation will help the Joint Committee on Government Operations determine the following:

- if the agency was created to resolve a problem or provide a service;
- if the problem has been solved or the service has been provided;
- the extent to which past agency activities and accomplishments, current projects and operations and planned activities and goals are or have been effective;
- if the agency is operating efficiently and effectively in performing its tasks;
- the extent to which there would be significant and discernable adverse effects on the public health, safety or welfare if the agency were abolished;
- if the conditions that led to the creation of the agency have changed;
- the extent to which the agency operates in the public interest;
- whether or not the operation of the agency is impeded or enhanced by existing statutes, rules, procedures, practices or any other circumstances bearing upon the agency's capacity or authority to operate in the public interest, including budgetary, resource and personnel matters;
- the extent to which administrative and/or statutory changes are necessary to improve agency operations or to enhance the public interest;
- whether or not the benefits derived from the activities of the agency outweigh the costs;
- whether or not the activities of the agency duplicate or overlap with those of other agencies, and if so, how the activities could be consolidated;
- whether or not the agency causes an unnecessary burden on any citizen by its decisions and activities;
- what the impact will be in terms of federal intervention or loss of federal funds if the agency is abolished.

Methodology

A list of all children in the foster care and adoption program was requested by the Legislative Auditor. The Department of Health and Human Resources provided a list of children from their financial data base. The lists were divided into twenty-seven areas which are located within four regions. The data base for each area is divided into two separate lists; the recipient list and the family list. The list includes the name of the caseworker and the children assigned to the worker. The recipient list contains; the child's name, type of service (foster care/adoption), date of custody and living arrangement. The family listing provides the birth date of each child, gender, social security number, address and race.

A data base was created by entering each child with a service code 10 (Foster care) or service

code 14 (adoption). The child's name, date of custody, date of the report, area number, living arrangement and case worker's name was recorded from the recipient list. This information was cross referenced to the family list to obtain the birth date, gender and race of the child. This data was entered for twenty-seven areas. The current structure of DHHR is four regions with a certain number of counties in each region. The child population, as determined by the computer data from DHHR for the four regions is as follows: Region One - 1,188, Region Two - 1,333, Region Three - 773 and Region Four - 655. The total population for the state, as of August 31, 1997, was 3,943 children. There are 975 children that are completed adoptions who receive financial assistance.

A random sample of 456 cases was taken. The data was sorted by area and assigned to one of the four regions based on geographical location. The data was resorted by regions and by alphabetical order of the child's last name. Sample sizes were calculated using population rate of study characteristic equal to five percent, tolerate rate of five percent and a reliability rate of ninety-nine percent. The percentages were applied to each region to determine the sample size required for testing. The sample sizes for the regions is as follows; Region One - 114, Region Two - 115, Region Three - 108 and Region Four - 106. Each child was assigned a corresponding number for sample selection. A table of random numbers were generated using "Epistat" for each region. The selection of children was made by applying the random number to the corresponding number assigned to the child. The children selected are assigned a number as follows; region number (R-1), area number (A-1), and line number (1638). This was done to provide the child with confidentiality of their records.

Interviews conducted with Department of Health and Human Resources staff at the state and county levels. The 456 case files were reviewed and discussed with the workers from county offices. Cases were evaluated by examining birth certificates, court orders and SSIS log sheets. Determinations were made with an instrument designed by the Legislative Auditor to test cases for compliance with state, federal and program guidelines. This performance evaluation complied with **Generally Accepted Government Auditing Standards (GAGAS)**.

ISSUE AREA 1: The Department of Health and Human Resources Lacks a Management Information System that will Allow it to Monitor Basic Information or Progress of Children in Foster Care and Adoption.

According to the Social Service Manual the Department of Health and Human Resources for the Legislative Auditor, “the agency is charged with the responsibility of developing and administering a foster care program.” However, in order to manage foster care and adoption, the Department of Health and Human Resources must know where every child is located, the status of their care and their progress toward a permanent home or living arrangement.

The appropriate points of progress for children in foster care are laid forth in the Rules of Procedure for Child Abuse and Neglect Proceedings and are based on the *W. Va. Code §49-6-1, et seq.* Table 1 summarizes some of the specific program time periods which need to be monitored by DHHR through management information.

Table 1 Specific Progress Time Periods	
Time Period	Progress
Within 10 days of continuation of emergency custody or transfer of custody	Preliminary hearing
Within 30 days of order for preadjudicatory improvement period	Family case plan
Within 30 days of temporary custody order (if preadjudicatory improvement period has been ordered, then as soon as possible or within 60 days at the conclusion of the improvement period) *	Final adjudicatory hearing
Within 45 days of the entry of the adjudicatory order (no later than 60 days if improvement period has been ordered)	Dispositional hearing
Within 18 months of final disposition order (unless there are extraordinary reasons that warrant delay)	Permanent placement

*Length of improvement periods vary depending on the judge’s discretion.

Information provided by the current management information system (the Social Services Information System or SSIS) is insufficient to monitor guidelines in the *W. Va. Code §49-6-1, et seq.* as contained in the Rules of Procedure for Child Abuse and Neglect Proceedings.

The Legislative Auditor’s Office requested a list of all children in the foster care and adoption program. DHHR was unable to produce such a list. Instead, DHHR provided the Legislative Auditor’s Office with a list of children from their financial database. The lists were divided into 27 areas which are located within the four regions. The database for each area is broken down into two separate lists. The list includes the name of each case worker and the children assigned to the worker. Each worker has a recipient listing and a family listing. The *recipient listing*

has the following information: child's name, type of service (foster care/ adoption), date of custody and living arrangement. The *family listing* provides the birth date of each child, gender, social security number, address and race. The printouts were a total of 22.5 inches thick. Each inch of printouts contained 229 pages of data. This would translate into an average of 5,152 pages.

The children were entered with a service code of 10 (foster care) or service code 14 (adoption) its own database. It took five members of the Legislative Auditor's staff 14 days to cross reference the children and enter them into the database with the following information: child's name, date of custody, area number, living arrangement, case worker's name, birth date, gender and race.

In order to compare the Department of Health and Human Resources performance with the standards contained in the Rules of Procedure, the information had to be obtained through the county offices case records as none of this information was contained in the Department's management information system. Table 2 illustrates some of the Rules and whether this information is contained in the Department's management information system.

Table 2	
Important Information for Children in Foster Care	
Rules and Procedures for Child Abuse and Neglect	Contained on SSIS Yes/No
Date of custody	Yes
Birth date of child	Yes *
Preliminary hearing within 10 days of custody	No
Improvement period ordered: Yes/No	No
Final adjudicatory hearing within 30 days of temporary custody or 60 days of conclusion to improvement period	No
Completion of case plan	No
Post adjudicatory improvement periods ordered	No
Permanency plan completed	No
Permanent placement of child after 18 months of final dispositional order	No
* Although there is a field for the child's birth date on the SSIS printout, 299 children lacked a birth date (including 7 children already adopted).	

The *Child Welfare League of America* publishes a yearly book of statistics. In the 1997 statistics book, much of the information about West Virginia was not available. West Virginia was

not able to provide the *League* with such figures as the following:

- the number of children with substantiated reports of child abuse;
- median number of months children spent in care;
- the average age of children reported as abused or neglected;
- children in out-of-home placement by known placement type;
- race/ethnicity of children in out-of-of home care; or
- the relationship of offenders to children substantiated as abused and neglected.

In total, the Department was unable to provide the *League* with information to complete 35 of the 133 (26%) figures and tables.

Without proper data, the department lacks the ability to perform the basic functions of management. For example, the only way to track the children in the West Virginia foster care system is to manually calculate the dates as indicated in each child's case files. Further, when asked by the Legislative Auditor to provide a list of children waiting to enter an adoptive unit the Department of Health and Human Resources had to call each region and request the information. After counting the children as requested, supervisors in the regional offices phoned their responses back to the state office.

The Department of Health and Human Resources lacks the ability to determine whether cases are being controlled so that children's cases are meeting statutorially set time standards. Thus, DHHR lacks the ability to adequately control its foster care cases. One of the main tenants of control is to compare performance with standards. However, the Department of Health and Human Resources cannot measure performance without the basic ability to determine *how many children are in care, where these children are, or if these children even exist? Ultimately, children are the ones who incur the greatest cost.* Without knowing who the children are or where they are, the Department of Health and Human Resources lacks the ability to be accountable for them or to hold case workers accountable for them. One caseworker had a child in foster care for a year and informed the Legislative Auditor that he/she had never met the child.

DHHR presently cannot allocate staff with adequate knowledge of work loads. If backlogs occur in moving children through the foster care system, then the allocation of staff should be able to be changed to resolve the problem. However, the lack of an adequate management information system prevents the Department of Health and Human Resources from knowing when modifications to individual case workers' and county's work levels need changed. This can prevent the timely reallocation of staff.

The Department of Health and Human Resources lacks the ability to organize according to the problems associated with different types of caseloads and needs of children, e.g., abused and neglected or juvenile delinquents. The Department of Health and Human Resources lacks the ability to plan for budget or other problems that may be projected from management information about its caseload of foster care and adoption.

Recommendation 1:

The Legislative Auditor recommends that the Department of Health and Human Resources continue its development of a new management information system to allow monitoring of the status of each child in its custody. (See Appendix E for Agency's Overview of F.A.C.T.S.)

Recommendation 2:

The Legislative Auditor recommends a follow up audit of the Department of Health and Human Resources' new management information system to determine if it has improved the ability to maintain accountability of children in custody.

ISSUE AREA 2: Two hundred-fifty eight (258) children legally free for adoption are Waiting to be Transferred to the Adoption Unit.

The Department of Health and Human Resources *Social Service Manual* (Chapter 15000), states the responsibility of the agency is to "...provide whatever services are necessary to get to know and understand the child and his needs, to give him as full a life as possible, and to find his adoptive family as quickly as is consistent with good practice."

In addition, the *Social Service Manual* (Chapter 15420) states, "As soon as it is possible to identify a child's need for an adoptive family, a referral of that child must be made to the Adoption Exchange. All new state wards must be referred within thirty (30) days of SSIS legal status change to guardianship." Furthermore, "All children who are currently legally free and appropriate for adoption, must be registered on the Adoption Exchange no later than thirty (30) days of receipt of this manual material."

The job of the adoption unit is to find adoptive families for children whose parents rights have been terminated. According to the Office of Social Services, West Virginia had 815 children in state guardianship as of August 1997, which increased from the previous year. Interviews with foster care workers and adoption workers indicated a backlog of children waiting to be transferred to the adoption unit. The Legislative Auditor's sample of cases revealed that 16 children were waiting to be transferred to the adoption unit, although full parental rights had already been terminated. Upon further inquiry, the four DHHR adoption supervisors confirmed a total of two hundred fifty-eight children were waiting to be transferred to the adoption units. Table 3 indicates by region the number of children waiting to be transferred.

**Table 3
Children Waiting To Be Transferred**

REGION	Number of Children
One	41
Two	52
Three	124
Four	41
Total	258

Our review of 456 sample case files showed that these children, ranging in age from 2-11 years, have been waiting for transfer between 8 days and 40 months. The waiting period begins at the time of termination of parental rights.

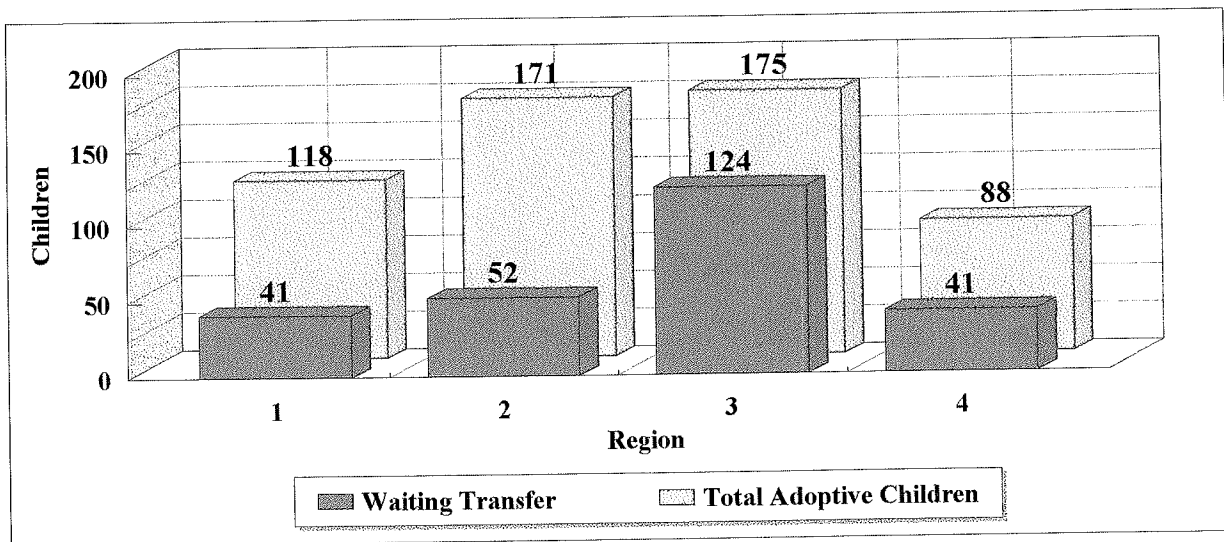
As shown in Table 4, workers are currently working on a total of 294 cases; added to the 258

cases waiting to be transferred, 552 children in the state are waiting to be adopted. Thus, 47% of adoptable children are still being served by a foster care worker rather than an adoption worker. Graph 1 shows a comparison of the number of children in the state waiting to be adopted, to the number of children's cases that are waiting to be transferred to the adoption unit.

Table 4
Summary of Children Available For Adoption and Caseloads

Region	Cases serviced by Adoption Worker	Cases Waiting to be Transferred to the Adoption Unit	Total	Number of Workers	Average Number of Cases per worker
1	77	41	118	3	26
2	119	52	171	5	24
3	51	124	175	2	26
4	47	41	88	3	16
Total	294	258	552	13	23

Graph 1
Comparison of Total Adoptive Cases to Waiting Cases



The caseload of an adoption worker is controlled by the unit supervisor. These supervisors stated that 15-18 cases is an ideal workload for adoption workers, although most carry more than the ideal. Table 4 also indicates that in three of the four regions, the caseloads average about 25 cases per worker. If Region 4 applied these same standards, they would nearly eliminate their backlog. In addition to the low case standard, there are only 13 adoption workers for the 4 Regions. This

means that the foster care worker must continue to monitor the progress of children who are legally free to be adopted. Foster care workers are taking it on themselves to do the job of the adoption worker and find homes for these children, despite the fact that some workers have caseloads of over 30 children. Not only does this add to the job of the permanency worker, but it decreases the amount of time that the worker can spend with other families and children. Despite this, the DHHR has not hired any additional adoption workers to deal with the increasing number of state wards.

The Legislative Auditor's Office was unable to determine the cost of keeping children in foster care compared to the cost of them being adopted. We do know that the highest state pays to foster families is \$400/month, which does not include children with special needs. The Legislative Auditor's Office made 2 requests to the Department of Health and Human Resources for financial information, including the cost of children in foster care. According to DHHR officials, a communication breakdown between our DHHR liaison and the Budget Office had occurred and that the financial information will be provided to us for the next report.

It is difficult for the adoption unit to find adoptive families for children as quickly as possible, when they are not able to take all of the cases. The ability for the DHHR to hire more adoption workers would give more children the chance to get adopted, and out of the foster care system.

Recommendation 3:

The Department of Health and Human Resources should hire additional adoption workers to eliminate the backlog of children waiting for adoption.

ISSUE AREA 3: Courts allow for visitation after the termination of parental rights, robbing the child or children of stability and permanency.

West Virginia Code §49-6-5(6) states,

“...upon a finding that there is no reasonable likelihood that the conditions of neglect or abuse can be substantially corrected in the near future, and when necessary for the welfare of the child, terminate parental, custodial or guardianship rights and/or responsibilities of the abusing parent and commit the child to the permanent sole custody of the nonabusing parent, if there be one, or, if not, to either the permanent guardianship of the state department or a licensed child welfare agency.”

Case law, in *R.J.M.*, 164 West Virginia 496, recognizes the effects of instability on a child. Children “need consistent, close interaction with fully committed adults, and are likely to have their own emotional and physical development retarded by numerous placements.”

Children in foster care exist in limbo, waiting for the system to provide a permanent living arrangement. As the length of time a child spends in the system increases, the chance of adoption decreases. This suspended animation creates mental and emotional trauma, creating a vicious cycle which makes the child even more difficult to place in a permanent situation. Court ordered, department supervised visitation is costly to the state in terms of the amount of time required to coordinate and oversee the visits. Rewarding an adjudged unfit parent with visitation does not benefit the child in any way.

In two cases reviewed by the Legislative Auditor, court ordered visitation occurred after the termination of parental rights. In one case the court found eminent danger existed to the well-being of infant children. Department efforts to prevent the placement of the children, through special services and in home improvement periods were not effective. The court ordered that custody of the children be placed with the Department of Health and Human resources. Thirteen months later, parental rights were severed. The court ordered that the parents be allowed to visit with the children under Department supervision.

In another case, the court found that the parents had taken no action to identify the perpetrator of abuse and that the child, due to his medical, emotional and development problems, is in need of specialized care. In light of the parents’ actions, the court found that it was not in the best interest of the child to plan for reunification with the family. Parental rights to the child were terminated. Permanent care, custody and control of the child was given the Department of Health and Human Resources. Neither parent was entitled to further visitation with the child; however, custody of two siblings was placed with the Department at the same time, and the mother was granted Department-supervised visitation.

When termination of parental rights is essential to the well-being of the child, court ordered visitation complicates the permanency plans and confuses the child. Court rules 33 and 36 of the

Rules of Procedure for Child Abuse and Neglect allow for terms of visitation during the disposition hearing process. The disposition hearing determines the appropriate placement of a child adjudged to be abused and neglected. Rule 32 requires the dispositional hearing to take place “within forty-five days of the entry of the final adjudicatory order unless an improvement period is granted... and then no later than sixty days.” Permanent out-of-home placement is achieved only when the child has been placed in a permanent, court-approved, and ratified foster care home, or the child has been adopted or emancipated. Case law, in *Carlita B.*, 185 West Virginia 648, allows courts to consider continued visitation when parental rights are terminated due to neglect or abuse.

Judicial interpretation of state law varies significantly from one court to another. Caseworkers reported to the Legislative Auditor that judges and/or prosecuting attorneys lack standard responses to and interpretations of child welfare law. In the absence of specific standards in the code, courts may weigh each case individually.

When the judiciary grants visitation after the parents have proven themselves unfit or unable to care for the child, the state has a difficult time placing the child in a stable, permanent living arrangement. Adoptive families are hesitant to become involved with a child when the child has court ordered contact with the perpetrators of abuse or neglect.

Impact of Possible Federal Legislation:

New federal legislation, the Adoption and Safe Families Act of 1997, represents a fundamental shift in the philosophy of child welfare, from a presumption that the primary consideration ought to be the return of the child to the home, to one in which the health and safety of the child is paramount. This Act requires states to begin termination of parental rights proceedings in certain types of cases, such as when a child has been in foster care for fifteen out of the previous twenty-two months or is legally abandoned. This affects 654 children currently in West Virginia’s foster care system. The law allows states to begin termination proceedings within thirty days and to make reasonable efforts to place the child for adoption when the child has been subjected to “aggravated circumstances” or parental rights to a sibling have been given up voluntarily. The *Code of West Virginia*, §49-6-5, allows for the total severance of parental rights when there is clear and convincing evidence that the infant child has suffered extensive physical abuse while in the custody of the parents and there is no reasonable likelihood that the conditions of abuse can be substantially corrected.

Recommendation 4:

Amend §49-6-2 of the Code to prohibit continued visitation when parental rights are terminated.

ISSUE AREA 4: Six Percent of our Sample of Foster Care Court Orders Reviewed Were Unsigned by the Circuit Court Judge.

The West Virginia Department of Health and Human Services (DHHR) is required to have certain information in each foster care child's case records. The files are divided into various "blocks" such as Legal, Narrative, Correspondence, and Medical. Effective July 1, 1987, a new block in the Social Services record was developed for each individual child who enters foster care. The block was initially supposed to be labeled "Foster Care." Some of the required contents of this block include: 1) Initial petition seeking DHHR custody; 2) Court order granting DHHR custody and all subsequent petitions and orders; and 3) Voluntary placement agreements and/or voluntary relinquishments.

According to §51-3-4 of the West Virginia *Code*, the orders of every court shall be signed by the judge and entered as a record. Furthermore, *Meyers v. Washington Heights Land Co.* states, "Courts of record must speak by their records. What is not thereby made to appear does not exist in law." *Douglas v. Feay* states, "Unless and until the proceedings of a court are recorded and signed as required by this section they can have no force or efficacy whatever."

While reviewing a sample of case files, the Legislative Auditor found that all of the court orders in the files were not signed by the circuit court judge (See Table below). Of the 2,313 court orders that the Legislative Auditor reviewed, 134 did not have a signed copy in the case files. For example, the Legislative Auditor found that four court orders terminating parental rights were not signed by a judge.¹

Unsigned Court Orders

Total Court Orders	Court Orders Not Signed	Orders Not Signed Terminated Parental Rights
2,313	134	4

The Legislative Auditor's Office cannot pinpoint the exact causes of unsigned court orders in foster care case files. However, possible causes include: (1) DHHR workers are not receiving court orders from the circuit clerk's office; and (2) DHHR workers are not filing the court orders in the case files.

The most serious effect from having unsigned court orders involves possible legal entanglements. For example, in four of the cases found, the order was to terminate parental rights. If adoption occurs and parental rights have not legally been terminated, obviously, the children and parents involved will be adversely affected.

¹ Three of the four were regarding both parental rights and the fourth had only one parent's rights terminated.

Thus, children may be staying in the system longer than necessary, especially ones who are waiting to be adopted. Foster/adoptive parents who are willing and able to adopt may have to wait because of delays in the court system caused by unsigned orders. By not having signed copies of court orders, DHHR workers must make additional efforts to obtain copies of these orders if adoption occurs. In addition, workers may be following invalid court orders. In essence, DHHR is at the mercy of the court system when it pertains to getting orders signed. DHHR staff cannot proceed with trying to get children adopted if court orders are not signed and sent to the Department.

When the Legislative Auditor's Office conducted field work at the various DHHR offices throughout the state, the staff noticed that the court orders were located in both the Legal block and the Foster Care or IV-E/IV-B block of the file. Some duplicates of the court orders were found in one block or the other. The court orders are an integral part of the foster care/adoption process and should be maintained in consistent order from county to county. For example, a file in one county was transferred to another county. The case file contained missing court orders and obsolete forms. In addition, there were no originals of the voluntary placement agreement. The worker had to reconstruct the history of the child's placement. In conducting the field work, the Legislative Auditor was told that there were hearings held, but in some cases orders were not filed with the circuit court and therefore were not in the case records. In another case, both parental rights were terminated but there was no court order attesting to this fact. The Legislative Auditor was told that even records within the same region can vary from county to county.

POTENTIAL LOSS OF FEDERAL TITLE IV-E REIMBURSEMENT

Discussion with DHHR officials further indicates the problems with court orders. DHHR researched the loss of Federal Title IV-E reimbursement for foster care due to certain language in court orders needed to qualify for reimbursement. DHHR officials informed the Legislative Auditor's Office:

Federal Title IV-E foster care legislation requires that court orders, placing children in out-of-home care reflect judicial determinations that remaining in the home is contrary to the child's welfare and that reasonable efforts to prevent removal were made or were not possible. When these determinations are not reflected in an order the state may not claim reimbursement for the cost of care for an otherwise-eligible child. The State code mandates these determinations in Chapter 49-6, the neglect abuse section of the Code, but does not in Chapter 49-5, the juvenile section.

The West Virginia State Supreme Court issued standardized court orders reflecting required determinations for all types of custody in 1994, yet a significant number of orders placing children in care do not reflect these determinations.

Between April and December 1997, 421 youth found to be otherwise eligible could not be claimed for federal reimbursement due to lack of required language in court orders. Over one-half (288) were removed due to delinquency.

As of December, the average monthly social service cost of foster care direct payments per child is \$1397.76. This represents a significant loss of federal monies, solely due to language in court orders.

DHHR estimates that this amount applied to 421 children at 73% reimbursement rate projected over a 12-month period. If this is correct, the state is losing \$5.1 million dollar annually in federal title IV-E funding, due to court orders being completed incorrectly or not signed at all.

This information agrees with the Legislative Auditor's Office's field interviews of DHHR employees. Numerous DHHR employees stated that there are problems with the court system. According to one employee, due to new judges in the circuit court system and the number of civil, criminal, and juvenile cases the county has a large backlog of cases. Prosecutors have had and are having a hard time getting court dates. This particular county is getting all of its new cases heard, but there are so many cases that it is difficult to get the old cases heard before the court.

Another DHHR employee stated that the court system varies from county to county, making it difficult for workers to anticipate the actions of the court. Each judge requires various paperwork to be filed and in a timely manner. Some judges attempt to work with the DHHR workers, giving them the needed time, while others do not. If the court system were able to operate more evenly, it would be very helpful to the worker. The aforementioned examples illustrate why DHHR workers may have a difficult time in getting children adopted. Delays in the court system and the degree of variance in the court system on a state level may contribute to why some children are staying in the system for such a long time.

Recommendation 5:

The Legislative Auditor recommends that DHHR monitor legal orders in foster care cases.

Recommendation 6:

DHHR should petition the appropriate circuit court judges to sign the 134 unsigned court orders identified by the Legislative Auditor's Office and also to 421 court orders which were not issued following the West Virginia State Supreme Court's standardized court orders as set forth in 1994. DHHR should then attempt to obtain additional federal funding for those cases which, after signed and/or modified court orders, allow foster children to qualify for Title IV-E or Title IV-B funding.

APPENDIX A
Demographics of West Virginia Foster Care

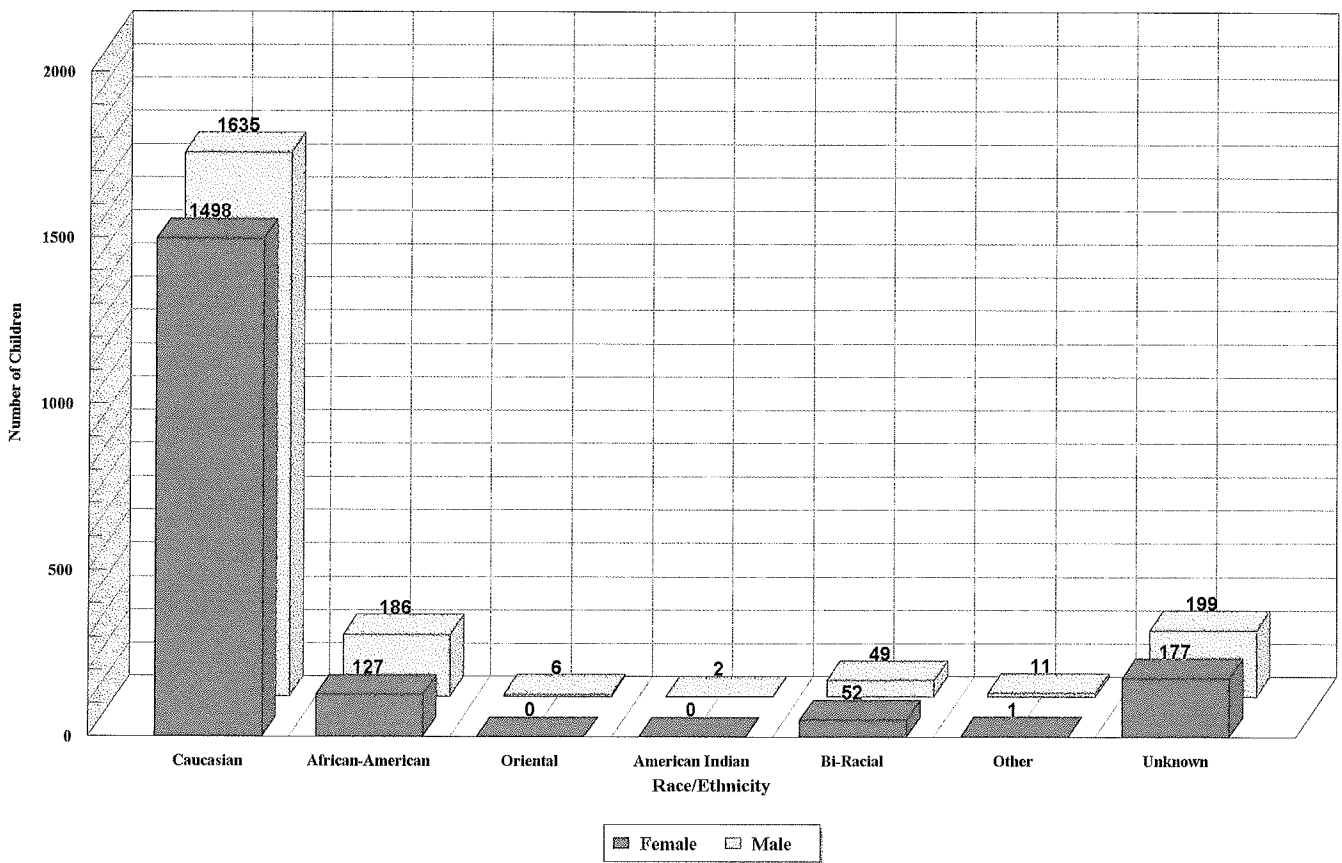
Demographics of West Virginia Foster Care

Description	Female	Male	Total	% of Total
Age				
Under 1	69	54	123	3.12%
1-5 years	271	284	555	14.08%
6-12 years	480	455	935	23.71%
13 or more years	941	1178	2119	53.74%
Unknown	94	117	211	5.35%
Total	1855	2088	3943	100.00%
Time in Foster Care System (in Months)	Female	Male	Total	% of Total
0-6	513	598	1111	28.18%
7-12	320	403	723	18.34%
13-18	258	316	574	14.56%
19-24	160	174	334	8.47%
25-36	215	234	449	11.39%
37-48	138	133	271	6.87%
49-60	86	81	167	4.24%
61-72	48	47	95	2.41%
73-84	39	30	69	1.75%
85-96	14	19	33	0.84%
97-108	19	20	39	0.99%
109-120	13	12	25	0.63%
121-132	9	4	13	0.33%
133-144	11	7	18	0.46%
145-156	5	5	10	0.25%
157-168	5	3	8	0.20%
169-180	1	0	1	0.03%
181-192	1	1	2	0.05%
193-204	0	1	1	0.03%
Total	1855	2088	3943	100.00%

Living Arrangement:	Female	Male	Total	% of Total
Own Home	9	13	22	0.56%
Relative	88	77	165	4.18%
One Parent	160	167	327	8.29%
Adoptive Home	34	20	54	1.37%
Temporary Foster Home	1031	1000	2031	51.51%
Long-Term Foster Home	23	16	39	0.99%
Permanent Foster Home	47	46	93	2.36%
Emergency Shelter	1	0	1	0.03%
Halfway House	5	3	8	0.20%
Free Foster Home	8	10	18	0.46%
Small Group Home Agency Operated	4	15	19	0.48%
Public Institution	54	67	121	3.07%
Private Institution	353	611	964	24.45%
WV School Deaf and Blind	0	1	1	0.03%
Mental Institution	2	0	2	0.05%
Detention Facility	1	7	8	0.20%
Correctional	0	3	3	0.08%
Unknown	35	32	67	1.70%
Total	1855	2088	3943	100.00%
Race:	Female	Male	Total	% of Total
Caucasian	1498	1635	3133	79.46%
Afro-American	127	186	313	7.94%
Oriental	0	6	6	0.15%
American Indian	0	2	2	0.05%
Bi-Racial	52	49	101	2.56%
Other	1	11	12	0.30%
Unknown	177	199	376	9.54%
Total	1855	2088	3943	100.00%

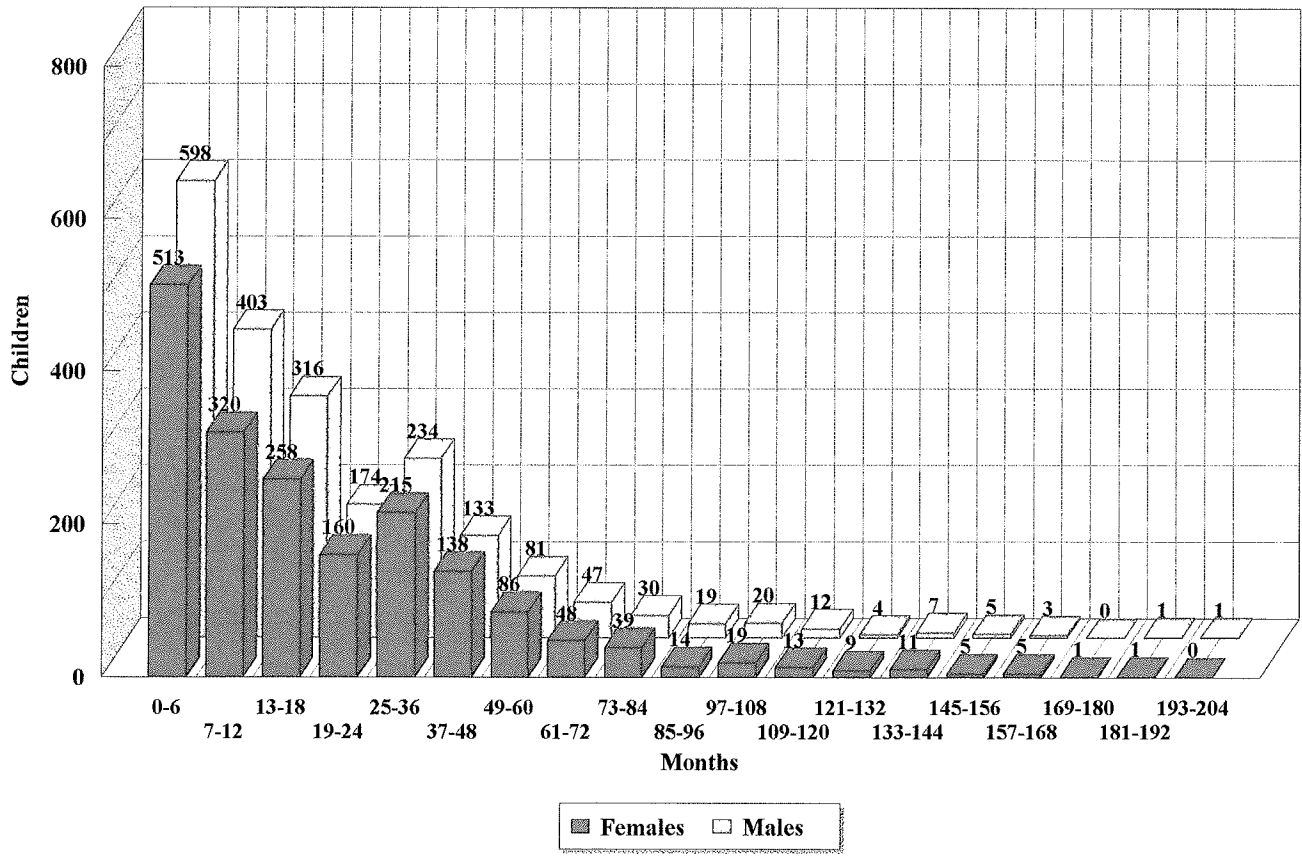
APPENDIX B
Children in Foster Care
(By Race/Ethnicity)

Children In Foster Care
By Race/Ethnicity



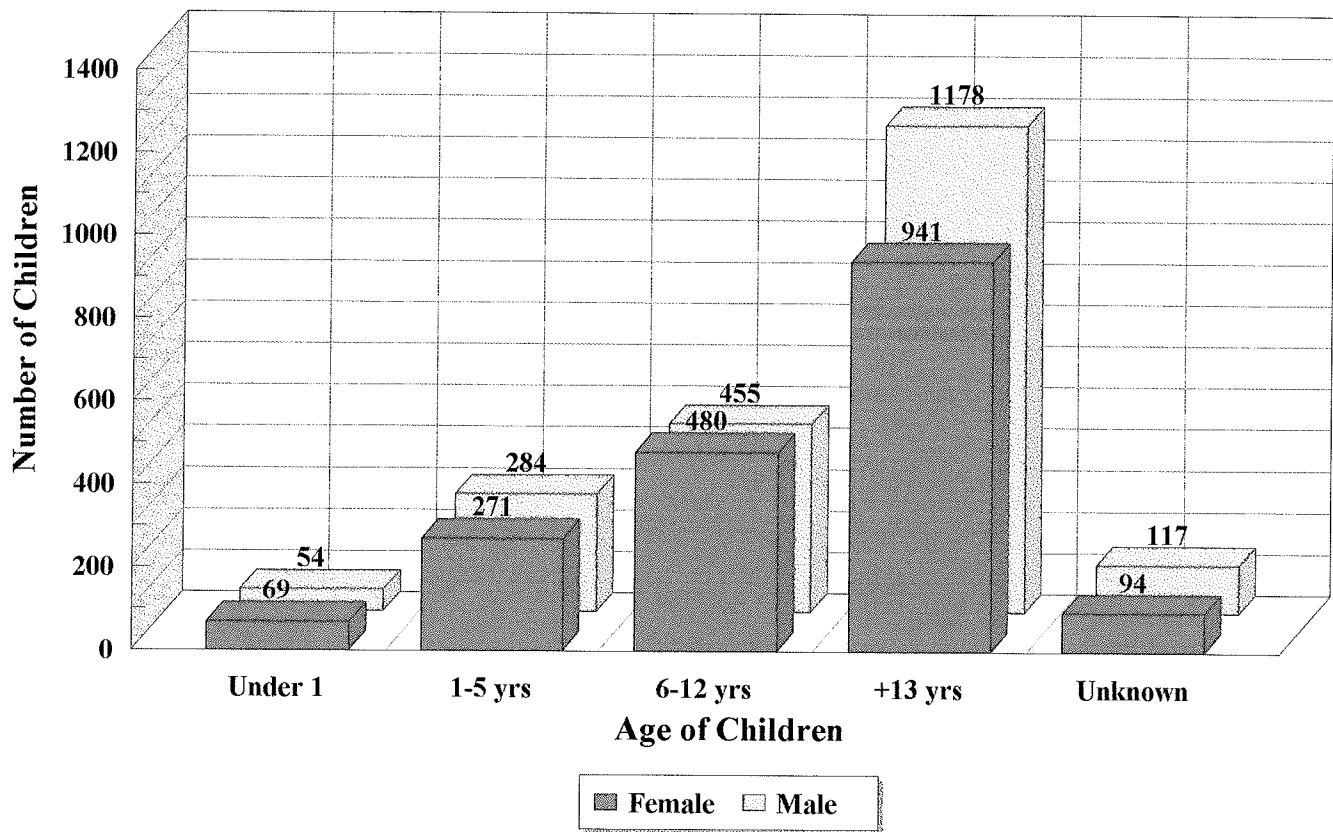
APPENDIX C
Time in Foster Care System

**Time In Foster Care
By Months**



APPENDIX D
Children in Foster Care
(by Age and Gender)

**Children in Foster Care
By Age and Gender**



APPENDIX E
Agency's Overview of F.A.C.T.S.



**STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES**

**Cecil H. Underwood
Governor**

**Office of the Secretary
State Capitol Complex, Building 8, Room 206
Charleston, West Virginia 25305
Telephone: (304) 558-6634 Fax: (304) 558-1130**

**Joan E. Ohi
Secretary**

January 7, 1998

**Antonio E. Jones, Ph.D., Director
Performance Evaluation and Research Division
West Virginia Legislature
Building 1, Room W-314
Charleston, West Virginia 25305-0610**

Dear Dr. Jones:

In response to your December 30, 1997 letter requesting a description of the Families and Children Tracking System (FACTS) as it relates to foster care and adoption and the status of cases currently on the system, the following information is provided.

FACTS is a statewide automated child welfare application. The design of the system is based upon the casework processes for child protective services, youth services, child care services, foster care/adoption services, providers of services, court, and foster care/adoption home finding services. In addition, all payments associated with each service will be generated from the FACTS application. FACTS will provide case record management for line staff as well as the means to extrapolate data for reporting and information collection purposes.

The processes for foster care and adoption begin with intake and continue through case closure. In other words, all of the requirements for these two programs are reflected in FACTS from the beginning referral until the case is no longer serviced by DHHR. The requirements meet state and federal statutes, agency policies and the federal reporting requirements for Adoption and Foster Care Analysis and Statistics (AFCARS).

FACTS was implemented statewide on September 4, 1997. Since October 1, 1997, social workers are converting active cases into the application and concurrently initiating all new cases in the application. The plan is to eliminate the use of the SSIS system for child welfare cases on February 1, 1998.

A general outline of the data structure for foster care and adoption services is as follows:


- ▶ General client demographic information for each family member
- ▶ General demographic information for all collaterals for the case
- ▶ History of all contacts for the case that includes such information as date, type of contact, purpose, participants and a narrative related to the outcome of the contact
- ▶ Child assessment for each child placed in foster care or adoption
- ▶ Service plans
- ▶ Visitation plans that includes a log for all visits with the family
- ▶ Permanency plans
- ▶ Conditions that lead to removal from the family
- ▶ History of all placement episodes
- ▶ Pre-placements and trial visits
- ▶ Placement plans
- ▶ Unmet placement needs
- ▶ Court processes (petition information, notifications for hearings, court reviews, court reports, history of hearings, current legal status, multidisciplinary team meetings plus results)
- ▶ Adoption subsidy eligibility
- ▶ Adoption affidavit of information disclosure
- ▶ Adoptive family information
- ▶ Payments for child care (demand payments, automatic payments, subsidy payments)
- ▶ Maintenance of child accounts
- ▶ Study, certification, and management of foster care and adoption providers
- ▶ Licensing approval and management of foster care placement facilities
- ▶ Contract approval and management of child placement facilities and placing agencies

Antonio E. Jones, Ph.D.
January 7, 1998
Page 3

Since FACTS is an extremely comprehensive system that contains over 6,000 data elements within approximately 320 screens, it is difficult to provide a description of the data and functionality of the system. I would like to suggest that a better understanding could be gained through a demonstration by the FACTS staff. The demonstration could concentrate in the foster care/adoption area related to the specific data collected, reporting capabilities, edits, checks, and system prompts. If you would find this helpful, I would be pleased to make the arrangements.

I am hopeful this information is beneficial. If I can be of further assistance or provide you with additional information, please let me know.

Sincerely,


Joan E. Ohi
Secretary

JEO/bh

APPENDIX F
Agency' Response



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Cecil H. Underwood
Governor

Office of the Secretary
State Capitol Complex, Building 3, Room 206
Charleston, West Virginia 25305
Telephone: (304) 558-0684 FAX: 558-1130

Joan E. Ohl
Secretary

January 9, 1998

Antonio E. Jones, Ph.D., Director
Office of Legislative Auditor
Performance Evaluation and Research Division
West Virginia Legislature
Building 1, Room W-314
Charleston, West Virginia 25305-0610

RECEIVED

JAN 09 1998

RESEARCH AND PERFORMANCE
EVALUATION DIVISION

Dear Dr. Jones:

The Department of Health and Human Resources accepts the evaluation report on foster care and adoption done by the Office of the Legislative Auditor. The recommendations outlined by the analysis and contained in the report will be thoroughly reviewed by the Department for areas in need of further evaluation and improvement. Where specific examples of problems were identified and referenced in the report, the Department would like case names and the names of the district offices so that these problems can be addressed as soon as possible.

Issue Area 1: The Department of Health and Human Resources lacks a Management Information System that will allow it to monitor basic information or progress of children in foster care and adoption.

Recommendations: The Legislative Auditor recommends that the Department of Health and Human Resources continue its development of a new management information system to allow monitoring of the status of each child in its custody.

The Legislative Auditor recommends a follow up audit of the Department of Health and Human Resources' new management information system to determine if it has improved the ability to maintain accountability of children in custody.

It is acknowledged that our present Social Service Information System (SSIS) does not have the capacity necessary to manage all the information needed and required by the foster care and adoption programs, including what is required as a result of new State legislation or WV

Antonio E. Jones
Page Two
January 9, 1998

Supreme Court's Court Rules for Abuse and Neglect Proceedings. This inadequacy is a national problem that was recognized by the federal government in the creation of the Statewide Automated Child Welfare Information Systems (SACWIS) program that provides funding for states to develop updated information management systems for child welfare. West Virginia's SACWIS system, the Families and Children Tracking System (FACTS), has finalized the development phase and will complete the conversion from SSIS by February 1, 1998. Additional information on FACTS is provided in the attached letter from Secretary Joan Ohl to Antonio Jones dated January 7, 1998.

While FACTS will provide the Department with the opportunity and tools to manage the foster care and adoption programs, it will not solve all the problems experienced in the actual casework process. A computer system is not a substitute for sufficient staffing levels, well trained and tenured staff, experienced supervisors, quality representation, and good casework practice.

Issue Area 2: Two hundred and fifty-eight children legally free for adoption are waiting to be transferred to the Adoption Unit.

Recommendation: The Department of Health and Human Resources should hire additional adoption workers to eliminate the backlog of children waiting for adoption.

When the Adoption Unit was developed in 1994, it was never the expectation that the limited number of adoption workers (12) would be able to handle all the cases of those children in state guardianship for whom adoption is the permanency plan. Staff in the district Children's Service Units continue to have responsibility for children on their caseloads who are available for adoption, which includes all adoption related activities. These cases are sometimes not the main focus of Children's Service Workers due to the emergency nature of Child Protective Services and Foster Care.

With the creation of the Adoption Unit, the Department has seen a dramatic rise in the number of foster children who have been adopted from a low of 37 in 1992 to a high of 195 in 1996. This amounts to more than a five-fold increase in only four years. The attached chart gives a visual perspective of the increase in adoption finalizations over the last eight years. The Department has committed to continuing to increase the number of foster children adopted by signing an agreement with the United States Department of Health and Human Services' Administration for Children and Families. Doubling the number of adoptions finalized by the year 2002 is the charge to the states mandated by President Clinton's Adoption 2002 initiative.

Antonio E. Jones
Page Three
January 9, 1998

The Department fully recognizes the need for additional adoption staff not only to take over more of the adoption casework that currently cannot be transferred to the Adoption Unit, but to fulfill the commitment made to increasing finalized adoptions. A budget improvement package has been requested for fiscal year 1999 for funds for an additional twelve adoption workers, two supervisors, and two support staff to be allocated across the state based on the location of children available for adoption.

Issue Area 3: Courts allow for visitation after the termination of parental rights, robbing the child or children of stability and permanency.

Recommendation: Amend §49-6-2 of the Code to prohibit continued visitation when parental rights are terminated.

The report's recommendation that section §49-6-2 of the West Virginia Code be amended to prohibit the continued visitation of biological parents in cases where parental rights are terminated will require further study by the Department. The Department appreciates the Legislative Auditor's viewpoint on this issue and will contact other states on their casework practice in these circumstances.

While the court ordered visitation of biological parents with a child may complicate that child's permanency plan or confuse the child, there are some instances, based on individual case situations, where continuation of visitation is in the best interest of the child. Open adoption is utilized in many cases across the nation so that children can have continuity of their history and maintain bonds that are important and meaningful to the child. Often open adoption is utilized with parents who are so physically or mentally challenged that they cannot properly care for the child but are still concerned and loving parents. In other times, an older child whose rights have been terminated may not wish to be adopted and will express a strong desire to maintain some contact with his or her biological family. A child's right to voice his or her hopes and preferences is critical and is an essential element of social work ethics.

Issue Area 4: Six percent of our sample of foster care court orders reviewed were unsigned by the Circuit Court Judge.

Recommendation: The Legislative Auditor recommends that DHHR monitor legal orders in foster care cases.

DHHR should petition the appropriate circuit court judges to sign the 134 unsigned court orders identified by the Legislative Auditor's Office and also to 421 court orders which were not issued following

Antonio E. Jones
Page Four
January 9, 1998

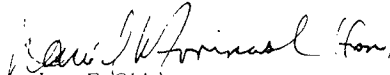
the West Virginia Supreme Court's standardized court orders as set forth in 1994. DHHR should then attempt to obtain additional federal funding for those cases which, after signed and/or modified court orders, allow foster children to qualify for Title IV-E or Title IV-B funding.

The Department recognizes that practices differ in every Circuit Court. In many circumstances the lack of timely signed court orders is due to the length of time needed to obtain signatures from the various court participants including parent's attorneys, Guardians Ad Litem, Prosecuting Attorneys, and Judges. The lack of signed court orders affects the ability of the Department to claim Title IV-E federal reimbursement funding for social service maintenance costs of foster care placements. This amounts to an approximate annual loss of \$5,154,882.96 in federal IV-E reimbursement. Additional information on IV-E foster care is provided in the attached report that is referenced by the Legislative Auditor. The recommendation that the Department monitor legal orders in foster care cases is appropriate and warranted.

In response to the recommendation that the Department petition the court to have 134 court orders signed, the Department will work with the Prosecuting Attorney's Offices and Circuit Clerks to obtain signatures where needed. The Department will address the problem identified with court orders placing juveniles in Department custody through revisions to Chapter §49-5 of the West Virginia Code. This is a necessary change that will bring the State into compliance with the new Adoption and Safe Families Act passed by Congress in November 1997. This change will allow the Department to claim federal IV-E funding for juveniles.

The Department would like to express its appreciation for the opportunity to respond to the performance evaluation report on foster care and adoption.

Sincerely,


Joan E. Ohi
Secretary

Attachments



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Cecil H. Underwood
Governor

Office of the Secretary
State Capitol Complex, Building 3, Room 206
Charleston, West Virginia 25305
Telephone: (304) 558-0684 Fax: (304) 558-1130

Joan E. Ohi
Secretary

January 7, 1998

RECEIVED

JAN 09 1998

**RESEARCH AND PERFORMANCE
EVALUATION DIVISION**

Antonio E. Jones, Ph.D., Director
Performance Evaluation and Research Division
West Virginia Legislature
Building 1, Room W-314
Charleston, West Virginia 25305-0610

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Antonio E. Jones, Ph.D.
January 7, 1998
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Antonio E. Jones, Ph.D.
January 7, 1998
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I am hopeful this information is beneficial. If I can be of further assistance or provide you with additional information, please let me know.

Sincerely,



Joan E. Ohl
Secretary

JEO/bh

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DHHR - OFFICE OF THE SECRETARY → SERGI

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Antonio E. Jones Ph.D.
Director

December 30, 1997

Jane Ohl, Secretary
Department of Health and Human Resources
Building 3, Room 206
State Capital Complex
Charleston WV 25305

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JAN 09 1998

RESEARCH AND PERFORMANCE
EVALUATION DIVISION

Dear Secretary Ohl:

As part of our audit of Foster Care and Adoption, we have developed a database from information received from SSIS printouts. We are aware of your new system, FACTS, which we understand will be used to maintain management information on foster care and adoption. We are requesting a description of the FACTS system as it relates to foster care and adoption and the status of cases currently on the system. Thank you for your response to this inquiry.

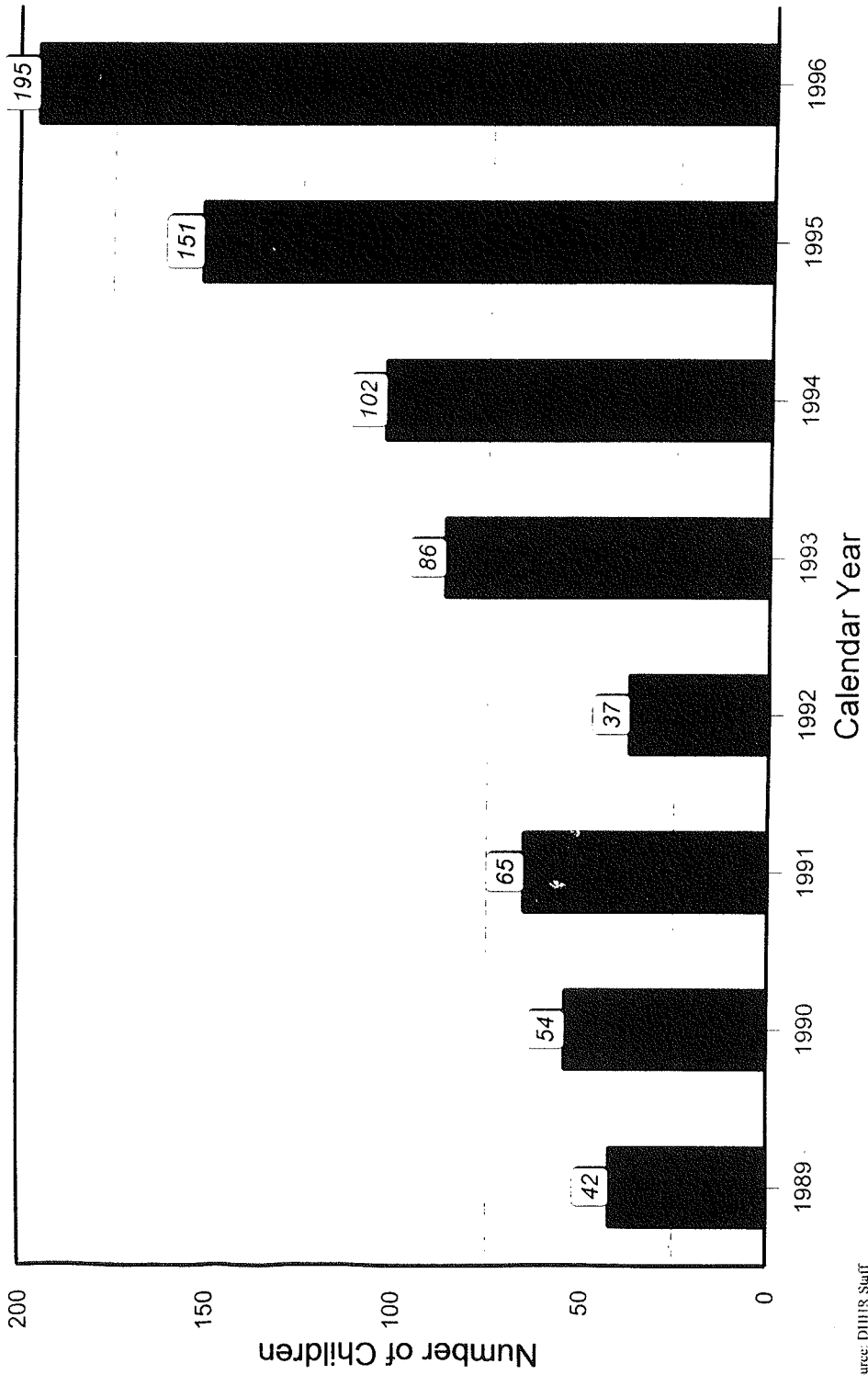
Sincerely,

Antonio E. Jones
Director

Joint Committee on Government and Finance

ADOPTION TRENDS IN WEST VIRGINIA

Finalized Adoptions



Source: DHHS Staff
Revised: May 1997

TITLE IV-E FOSTER CARE

DEFINITION

Title IV-E refers to a section of the 1980 amendment to the Social Security Act which allows for federal payments to states for Foster Care and Adoption. Eligible children are children in state custody and out-of-home placement who would meet AFDC eligibility requirements except for their removal from the home of a parent or specified relative and whose removal was made in accordance with protections and procedures specified in the Social Security Act.

The state can claim reimbursement for approximately 73% of the foster care maintenance costs for children determined to be IV-E eligible and 50% of administrative costs.

Title IV-E was not negatively affected by Welfare Reform, as Congress included a provision freezing IV-E eligibility requirements as they were in the State as of June, 1996.

FUNCTIONS OF THE TITLE IV-E UNIT

The Title IV-E Unit determines eligibility for this funding source for all children in foster care and subsidy adoption statewide. Children's Services workers collect eligibility information and submit it to the unit. Reviews are made every six months on eligible children to verify continuing eligibility and reimbursability.

Reimbursability refers to conditions which must be met each month a child is in placement in order for the state to claim federal payments for foster care expenditures.

Eligibility determinations also include identification of other sources of benefits available to a child in foster care, such as SSI, SSA, child support (which can be claimed and applied to the cost of the child's care) and referral of children who have health insurance through a parent(s) to the Office of Medical Services' Third Party Liability Unit.

LOSSES DUE TO LANGUAGE IN COURT ORDERS

Federal Title IV-E foster care legislation requires that court orders, placing children in out-of-home care reflect judicial determinations that remaining in the home is contrary to the child's welfare and that reasonable efforts to prevent removal were made or were not possible. When these determinations are not reflected in an order the state may not claim reimbursement for the cost of care for an otherwise-eligible child. The State Code mandates these determinations in Chapter 49-6, the neglect/abuse section of the Code, but does not in Chapter 49-5, the juvenile section.

The West Virginia State Supreme Court issued standardized court orders reflecting required determinations for all types of custody in 1994, yet a significant number of orders placing children in care do not reflect these determinations.

Between April and December 1997, 421 youth found to be otherwise-eligible could not be claimed for federal reimbursement due to lack of required language in court orders. Over one-half (288) were removed due to delinquency.

As of December, the average monthly Social Service cost of foster care direct payments per child is \$1397.76. This represents a significant loss of federal monies, solely due to language in court orders:

\$ 1,397.76	Average Monthly Social Service Cost of Foster Care Direct Payment Per Child
x 421	Otherwise-Eligible Children
<hr/>	
\$ 588,456.96	COST Per Month
x .73	Reimbursement Rate
<hr/>	
\$ 429,573.58	LOSS Per Month
x 12	Months Per Year
<hr/>	
\$ 5,154,882.96	ANNUAL LOSS

Average Monthly Cost = SSIS report of monthly expenditures divided by number of foster children for whom payments have been made.

