

American Bar Association Remarks – Mr. Frenzel

The short movie you just watched is a preview of a longer product the Commission will release in August. The final DVD will highlight the challenges of court oversight for children in foster care and how the Commission's recommendations address those challenges. Throughout this past year, the Pew Commission was guided by the principle that every child needs a safe, permanent family. As the video shows, and as those of you doing this important work know, this principle often gets lost in bureaucracies and – sadly – in courts.

Over the year, the Commission heard from lawyers, judges, advocates, and psychologists on just how difficult working in the dependency arena is. We were fortunate enough to have several well-regarded judges and one preeminent psychologist, Dr. Joy Osofsky, on the Commission. These individuals were instrumental in helping us keep children's needs at the center of our deliberations. In doing so, the Commission was able to develop recommendations that focus on how reforming systems – specifically enhancing court oversight and restructuring federal financing – can help children get safe and permanent homes.

Let me begin with a short overview of the Commission's financing recommendations. I will go into a little more detail when we get to the courts. Our financing recommendations would give states new incentives and options to focus on getting children safe, permanent families. They would realign federal dollars so that states have more freedom to tailor services to meet children's needs. They call for more money in the right places and more accountability for how public dollars are used.

First, we call for preserving federal foster care maintenance and adoption assistance as a federal entitlement to the states – but with some improvements. Currently, the federal government contributes a portion of the cost of foster care *only* for those children whose family income is below the 1996 AFDC standard. The states, in contrast, pay for every child in foster care. We would eliminate this income requirement – or “de-link” federal foster care payments from AFDC.

In the name of justice, we propose treating Indian children and children who live in our territories the same as every other child in the United States who needs the protection of foster care.

Second, we recommend providing federal guardianship assistance to children who leave foster care to live with a permanent legal guardian. Under our proposal, this “subsidized guardianship” would become an important route to a permanent home when a court has determined that a particular child can neither return to his birth family nor be adopted.

Third, we call for creation of a flexible, indexed Safe Children, Strong Families Grant. It would combine what are currently Title IV-B, Title IV-E Administration and Title IV-E Training. Together, these sources represent more than half of the federal dollars in Titles IV-E and IV-B, most of which can only be used at present *after* a child has entered foster care. Under our proposal, this money could be used flexibly so that states can build a range of services – to protect children in their own homes, to promote safe family reunification, to move children to new families formed through adoption or guardianship, and to help those new families stay strong and stable. Recognizing that states need additional resources in this part of their child welfare system, we recommend that \$200 million be added to this grant in the first year. To

reassure states that this is funding they can always count on, we recommend that the grant grow each year by an index – specifically, the Consumer Price Index plus two percent.

Fourth, we recommend that, when states safely reduce foster care, they be permitted to “reinvest” the federal dollars saved into their Safe Children, Strong Families Grant – so long as they also reinvest the state dollars that are saved from reducing foster care. This provides another incentive for states to focus on permanence and provides an additional potential source of funding for the Safe Children, Strong Families Grant.

Fifth, to promote innovation and improved practice, we call for expanding and simplifying the child welfare waiver process. We also recommend providing incentives to states that improve their child welfare workforce and that increase all forms of safe permanence – adoption, guardianship, and reunification.

Finally, we call for stronger accountability through improvements to the current Child and Family Services Reviews process.

Let me turn now to the courts. As you all know, no child enters or leaves foster care without a judge’s decision. As the Chief Justice of Michigan and Pew Commissioner, Justice Maura Corrigan, points out - courts determine when a child has been abused or neglected; they decide whether a child returns home or is placed in foster care; they terminate parental rights and finalize adoptions. The courts are awash in dependency cases and charged with these weighty responsibilities.

Despite this critical role, the dependency courts often lack sufficient tools, information, and accountability to move children swiftly out of foster care and into permanent homes. The Pew Commission’s recommendations focus on ensuring that courts have what they need to fulfill their responsibilities to children and to the public trust. The Commission developed four major recommendations in the area of court oversight.

First, we call on every dependency court to adopt performance measures and use this information to improve their oversight of children in foster care. The Commission encourages courts to adopt the measures developed by the ABA Center on Children and the Law, the National Council for Juvenile and Family Court Judges, and the National Center for State Courts. When judges can track and analyze their caseloads, they can identify and deal with sources of delay that keep children in foster care longer than may be necessary. They can also identify groups of children in their caseload who may require special attention. Case tracking also provides critical information to Chief Justices as they assess the needs and overall performance of the dependency courts. To jump-start these efforts by state courts, the Commission has called on Congress to appropriate \$10 million dollars already authorized in the Strengthening Abuse and Neglect Courts Act for this purpose.

Second, we recommend incentives and requirements for effective collaboration between courts and child welfare agencies on behalf of children in foster care. These include new requirements that states and courts describe this collaboration in their state IV-E plans, Program Improvement Plans, and Court Improvement Program plans. The Commission also recommends that courts be given funding to training. This money would be used to provide training to all court personnel involved with dependency cases as well as joint training with the child welfare agency and other community agencies. Lastly, to further this collaboration, we recommend the establishment of state foster care commissions. These state commissions would ideally be lead by the state child

welfare agency administrator and the Chief Judge. In doing so, the leadership of the state would be modeling the importance of and need for this type of cooperation and collaboration when dealing with this important issue.

Third, we recommend several measures to give children and parents a stronger voice in court and more effective representation. We call on Congress to appropriate \$5 million in authorized funds for expansion of the Court Appointed Special Advocates program. We also call on state courts to require training for attorneys practicing in this field and for courts to be organized in a way that permits and encourages direct participation by children in proceedings that affect their lives. We recommend that states adopt standards of practice, preparation, education, and compensation for attorneys in dependency practice. To attract and retain attorneys who are competent to meet these standards, we urge Congress to support efforts such as loan forgiveness for those practicing in this area of the law.

Finally, for all of this to happen, we call on the Chief Justices and other state court leaders to make children a high priority in the courts. We call on the Chiefs to place oversight responsibility for the dependency courts directly in their offices. We recommend that they create dedicated courts to hear dependency cases and to build and support a corps of experienced dependency court judges. Finally, we recommend that they promote resource, workload and training standards for dependency courts, judges, and attorneys, standards of practice for dependency judges, and codes of conduct that encourage best practices in dependency courts.

We recognize that there are many challenges within this area. We believe that, if adopted, our recommendations would potentially remove major obstacles to securing safe, permanent, nurturing families for children. As a Commission, we sought practical, achievable recommendations that could win the support of Congress, the Administration, state officials, and state court leadership.

We're encouraged by the early positive responses we've received as we've discussed our recommendations with key audiences. The Commission now calls on these instrumental individuals, including all of you, to move forward. We must all work to not only implement our recommendations, but also to tackle other issues, such as increasing dependency attorney compensation and sorting out the problems with placements across state lines, to name a few – issues that require additional attention and action beyond what the Commission was able to give.

The Pew Commission's proposals are the result of hard choices and difficult compromises. We think they are bold, fair, and achievable. We hope they will spur thoughtful discussion, and we urge swift implementation. We need your help.