



STRATEGY BRIEF

HEALTHY ORGANIZATIONS

How can **child protection agencies** respond to litigation?

Litigation has become an increasingly common means to try to reform what the public perceives as failing government systems, and the number of child protection agencies involved in litigation has been steadily increasing in recent decades. Available data as of October 2019 indicate that:

- **Litigation is widespread:** 33 jurisdictions have faced 34 child welfare class actions.
- **Litigation is expensive:** On average, \$15 million has been spent in court fees, monitors, and consultants, and millions more to manage data requirements and invest in capacity building needed to comply with terms and outcome measures.
- **Litigation is lengthy:** It takes an average of 17-plus years from settlement agreement to exit, and an average of almost 15 years for current consent decrees. There are currently 15 jurisdictions operating under a consent decree or settlement agreement, with 11 having been in place for at least a decade, and four having been in place for 25 to 30 years.

Please see [Can you share a summary of child welfare consent decrees?](#) for more information on which jurisdictions are operating under a consent decree, which are pending, and which have exited.



casey family programs

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Key Themes¹

The following section draws on the collective experiences and lessons learned from child welfare agency leaders whose agencies currently are under consent decrees or have exited. It presents a sampling of different strategies and approaches to consider at all levels of litigation, with a recognition that this is just a starting point and there is still much more to learn on this topic.

Preventing the lawsuit

Child welfare lawsuits are expensive, time-consuming, and can hamper innovation as agencies focus on meeting the decree requirements. For agencies truly struggling with a severe lack of resources and support, consent decrees can serve as an impetus for system change, infusing funding and increasing the capacity and visibility of the agency. However, there is also a “tipping point” for these decrees, which ultimately reflect the law of diminishing returns, whereby such agreements over time become more of a burden and distraction to those agencies that have successfully sustained many much needed improvements. While the debate over the pros and cons of litigation as a strategy for sustainable reform persists, the best approach is to avoid litigation in the first place. The following strategies emerged as those that can be helpful in preventing litigation.

Create adequate infrastructure

It is important to ensure that all the elements of a well-functioning and effective child protection agency are in place so that, in the face of a crisis, leadership can communicate that the infrastructure needed to analyze what happened, course-correct, and continually assess for future risk is available. This approach lets the public know that, while it is not possible to prevent every crisis, the agency is a learning organization, and has everything it needs to respond to emerging issues and make needed improvements. Participants observed that a robust and transparent continuous quality improvement (CQI) system, data collection, and management plan will go a long way toward preventing litigation.

Cultivate strategic partnerships

Another strategy is to be proactive and cultivate strong relationships with the Governor’s office, legislators, legal advocates, providers, and other stakeholders who can speak to the agency’s credibility. Partners who play the role of “informed neutrals” have been helpful in providing an unbiased view of a system’s strengths and weaknesses in a time of crisis. In addition, there is great value in engaging with stakeholders to emphasize a shared responsibility for child and family safety and well-being, and to build a 21st century child and family well-being system.

Build relationships with media

Rather than shy away from the media, it is critical to build strategic relationships with the press prior to a lawsuit being filed. The media play an important role in keeping child welfare in the public eye, and building public confidence and trust in the system. When agencies develop strong relationships with members of the local media and are transparent about challenges as well as highlighting successes, news outlets begin to see beyond the current crisis and report on positive stories that offer more balanced, nuanced narratives of agency strengths and areas for growth to the general public.

Fighting the lawsuit

For states that have been unable to prevent a court filing, there are strategies to respond to a pending lawsuit. Many of these strategies overlap with and complement those recommended to prevent litigation in the first place.

Share the management plan

Leaders who chose to fight the litigation instead of entering into a settlement agreement stressed the importance of having a clear business and performance management plan in place that conveys how the agency can self-manage and self-correct. They recommended that the agency come to the table prepared with a transformation plan — complete with a strong vision, clear goals, and strategic measures — and unequivocally state leadership’s commitment to following through with the business plan and sustaining

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improvement over time. There should be updated data available and CQI processes in place to demonstrate the agency's commitment to transparency and accountability.

Enlist allies

Another successful strategy is to bring in a range of local allies who are opposed to the lawsuit and have them speak to the positive work the agency is doing. These critical stakeholders can provide a neutral and unbiased view to the judge about the agency's strengths and challenges. One jurisdiction, for example, convened a group of local legal advocates to serve as credible messengers for the agency and speak on its behalf.

Propose alternative oversight mechanisms

In some instances, agencies have been able to make the case that while litigation would be costly and burdensome, there are alternative oversight mechanisms that could be implemented to keep control within the agency but also provide transparency on improvements and progress made. For example, one jurisdiction negotiated the creation of a settlement subcommittee, made up of two representatives from the county and two representatives from the plaintiff's office, who will meet monthly for four years. This jurisdiction must track outcomes and share them back with the committee, but the agency is not under direct court oversight or required to meet certain process measures.

Leading under a consent decree

As of October 2019, 15 child protection agencies are operating under a consent decree. While there are inherent challenges in leading system transformation while also meeting the often capricious requirements of these complex settlement agreements, many leaders spoke of the need to use the consent decree as a tool to help accomplish a mission and vision. Leaders who have had to navigate their agencies through various stages of reform post-consent decree describe their experiences as "[leading under a cloud](#)."

Align consent decree with vision and values

Child welfare leaders acknowledge the tension of leading an agency with a clear mission and vision while also needing to adhere to the consent decree. By aligning the consent decree with the agency's vision, an agency can determine how the different measures fit in the context of its transformation plan. Many consent decree measures may be the right ones to track (caseload standards, for example), but the leader needs to connect the dots back to how these measures reflect the core values of the agency.

Engaging families first

It is essential to protect staff from the minutiae of the consent decree so they can concentrate on the important work: engaging and partnering with children and families. Otherwise, the consent decree measures have a tendency to distract staff and foster a culture of compliance. Agency leadership should be consistently communicating to staff a focus on quality case practice rather than on merely complying with the terms of the consent decree.

Relationship with court monitor

Court monitors emphasize the need to establish transparency and trust in the relationship so that the agency and the monitor can share obstacles and problem-solve together. A key strategy is to formalize the relationship from the onset, starting with candid conversations about how best to work together, and setting up processes to put that into action. The role of the court monitor is a fiduciary one, similar to that of a board, and monitors should not be involved in day-to-day operations of the agency.

Message progress

Another recommended strategy when operating under a consent decree is the creation and execution of a well-articulated communications plan for both internal and external stakeholders. An agency focused on transparency through consistent messaging can help to change negative public perceptions and open new opportunities for dialogue and collaboration. It helps to build relationships with newspaper editorial

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boards and editors, in addition to reporters, and find outside champions to speak to the agency's credibility and progress through regular op-eds and social media posts.

States should be clear about the agency's position and message to avoid being drowned out by the messaging coming from the plaintiffs' attorneys. Rather than talking about the lawsuit, leaders should communicate how the agency is moving toward becoming part of a 21st century child and family well-being system, emphasize that Family First will be implemented to safely reduce the need for foster care, and highlight data points that illustrate improvements in child safety.

Outcome measures

Another essential strategy is to have clearly defined outcome measures from the beginning and, if possible, choose measures similar to those in other states so that there is an available comparison. Leaders also raised the question of: "*How good is good enough?*" They cited the challenging processes for modifying conditions for exit, even when the agency has achieved a significant level of transformation, maintained improvement for long periods of time, and is heralded nationally as an innovative, well-functioning system. Plaintiffs' counsel can at times be inflexible around reassessing how to define success, and may continually move the bar forward. In addition, it can be a challenge to gather data that is dependent on other system partners (such as behavioral health), or otherwise not available within the child welfare system itself.

Exiting a consent decree

Once an agency exits a consent decree, the work is far from over. Six jurisdictions have exited a consent decree. Even so, they will need to continue to report on outcomes and show that they are sustaining the progress they made during the life of the court monitoring.

Sustainability

Common themes across jurisdictions that have exited consent decrees include: become a self-reflecting and self-correcting agency; build internal capacity to use and manage data; and create a CQI approach to regularly diagnose problems, make adjustments, and reassess. Agencies that have exited decrees still are expected to continue to collect data for the courts, post-exit. It is important to build capacity and partnerships to maintain improvements and continue to track outcomes for a certain period of time, post-exit.

Collaboration

Just as families continue to need positive support once they are no longer involved with the child welfare system, agencies that exit consent decrees continue to need the support of their allies and advocates to facilitate progress toward systems transformation. There is great value in engaging local advocates, service providers, and elected officials to work collaboratively with the agency to help maintain transparency and accountability, as well as adequate funding and a positive public perception.

To learn more, visit [Questions from the field](#) at [Casey.org](#).

1 The information in this report was gathered from a September 27-28, 2019 Casey Family Programs convening that brought together child welfare leaders from 23 jurisdictions and experts to share their experiences operating under a consent decree.

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