



ISSUE BRIEF

HEALTHY ORGANIZATIONS

What are some key considerations for the **consent decree process**?

With almost half of state child welfare systems either operating under a court-ordered consent decree or pending litigation, there is a strong possibility that new child welfare leaders may inherit an agency under litigation or be faced with one during their tenure.

On the one hand, litigation is significantly time-consuming, with the average life span of a consent decree about 17 years, and expensive, with the cost of legal fees, monitoring, and consulting fees estimated to reach or surpass \$15 million over the lifetime of a single agreement. Consent decrees can leave child welfare leaders feeling they have little recourse but to follow the plaintiffs' road map for reform, no matter the efficacy or efficiency. The rigid requirements often result in the stifling of innovation and are frequently beyond the ability of even high-performing child welfare systems to meet.

However, many child welfare agencies have used some attributes of consent decrees as a tool for successful systemic reform. Litigation can facilitate a transparent and public commitment from the governor's office, provide the leverage needed to obtain and maintain funding and resources by the legislature, and offer the opportunity to re-examine policies and practices and prioritize agency goals. The challenge is to balance the benefits that a consent decree can bring to the agency with its inherent limitations, and use it as a vehicle to bring about needed change.



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Lessons from leaders¹

The following section draws upon the collective experiences and lessons learned from child welfare agencies that have exited or are currently under consent decrees.

Choosing performance measures

If the decision is made to enter into a settlement agreement, child welfare agencies need to prepare for success at the negotiating table. A strong negotiating team should include, in addition to child welfare leaders, program staff when appropriate, internal and external data experts, and nationally recognized social scientists who can speak to the research. It is especially important to have internal data experts and a statistician at the table who know the agency's data inside and out so they can analyze and push back on the design of certain measures when necessary.

Another important consideration is the need to shift from process-focused measures to outcome-focused measures. When caseworkers are overly focused on the frequency of activities and services, they may not have the time to be concerned with the quality or effectiveness of those activities and services for the families they serve. Monitoring structures should focus more on child and family outcomes and the quality of the interventions, rather than on process improvements.

Thinking and planning for exit from the consent decree should begin early, during the construction of the measures. In structuring settlements, explicit exit terms should be included. It is important that initial decrees address how compliance is defined, the length of time a compliance standard must be sustained, whether all the standards must be achieved and sustained simultaneously, and how exceptions to the standard are defined. There needs to be a shared understanding by all involved of what is being measured, and how and why it is being measured.

Role of the monitor

Since the role of the court monitor is to assess the agency's performance and regularly report to the court on the extent to which the agency is meeting its obligations, it is critical for child welfare leaders to establish and maintain close working relationships with monitors. A positive relationship is advantageous, since effective monitors facilitate communication and mediate disputes between the parties and, thus, can validate the agency and its reform effort to the public. The court monitor should be someone who respects the nexus between authority and responsibility and is an honest broker who can assess the reform effort based on relevant data and informed expert analysis. Court monitors should be familiar with the agency policy and practice to the extent possible and have a fair amount of child welfare expertise.



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While the court monitor does need broad access to agency personnel, agency records, and documents, a monitor should not have unfettered access to the agency. It is important to strike a balance between providing monitors with the information they need to make informed assessments and decisions but not allowing them to be intrusive in a way that distracts and disrupts staff, and results in significant additional work that detracts from effectively serving children and families.

Access to data

Another essential strategy is the ability to gather, understand, analyze, and accurately portray quantitative and qualitative data about system performance. Accurate data are necessary for shaping and structuring an agreement and developing a reform plan, managing any change initiative, and ultimately for demonstrating progress sufficient for a successful exit. Data can help determine what areas of practice may need the most attention and what measures can best capture improvement. Once again, it is critical to have an internal data expert at the table who is steeped in the data and can push back on the plaintiffs when needed. It is also important to have a nationally recognized external data expert and/or statistician who can serve as a neutral party, speak to the data, and help explain the data to the plaintiffs.

To gain legitimacy with the courts, plaintiffs, and public, agencies need to use their own data to tell the story of their work and build confidence with key stakeholders and policymakers of progress being made. Data

should be used to support claimed improvements and accomplishments in the child welfare system. Staff should be able to articulate how the data tie back to child and family outcomes. Training and coaching should be provided to help staff identify which data are important to their work, what the data mean, and how data should be used.

While access to data is critical to telling the story and measuring progress, agencies should exercise caution to avoid becoming overly data driven. In complying with a settlement, supervisors and managers may develop a compliance mentality, resulting in requiring staff to carry out activities without giving equal attention to how well they perform the work and whether these interventions and services are best for children and families over the long term.

Communication strategies

The creation and execution of a well-articulated, solid communication plan, for both internal and external constituents, is key to establishing trust with staff and stakeholders. The agency should be focused on transparency throughout the process to change negative public perceptions and to open new opportunities for dialogue and collaboration. By owning responsibility for what has happened but also demonstrating commitment to addressing what needs to change, the agency sends the message that it knows the system best and can be trusted to manage it.

Reform in child welfare is like moving a mountain with a plastic shovel and a pail. You look around for the heavy earth-moving equipment. It's not coming, and you realize that you need to start digging.

— DR. VIOLA MILLER

FORMER COMMISSIONER FOR TENNESSEE
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The agency should cultivate relationships with external stakeholders with credibility in the community who can speak to the agency's strengths at times when the agency cannot, or should not, be speaking about them. The press plays an important role in keeping child welfare in the public eye and reporting on developments in the case when appropriate. By developing relationships with the media and being transparent about the challenges as well as highlighting successes, the media will begin to see beyond the current crisis and report on positive stories.

Internal communication at all levels is just as important as external communication. One of the most difficult stages of federal court oversight is sustaining the outcomes over time once compliance is reached, while also managing the day-to-day work of the agency. At this point, staff may encounter "consent fatigue," where they can become consumed with sustaining compliance. Agency leadership should be consistently communicating to staff that the focus is on quality case practice rather than on merely complying with the terms of the consent decree. Small wins can help to boost staff morale, so celebrate progress made along the way.

External collaboration

Given the complexities and longevity of child welfare consent decrees, there is value in engaging with stakeholders and articulating their shared responsibility for child and family safety and well-being. Expertise comes in many forms and includes the voices of clients, community stakeholders, child welfare

professionals, foundations, and other local, state, and national partners. Partners who play the role of "informed neutrals" are helpful in such varied tasks as facilitating negotiations leading to a settlement, providing an unbiased view of a system's strengths and weaknesses, providing technical support in strategic planning, acting as the court's eyes and ears, and mediating conflicts throughout the course of litigation.

Ensuring sustainability post-exit

For those states that have exited a consent decree, reassuring the monitor and the judge that they would be able to sustain the improvements made into the future, absent oversight of the court, was critical. Codifying certain consent decree strategies into administrative code or state statute provided evidence to the court that effective practice would be sustained and made it more difficult for funding to be cut for those areas post-exit.

Other common themes across jurisdictions that have exited consent decrees included the necessity to become a self-reflecting and self-correcting agency, building internal capacity to use data, and creating systems able to diagnose problems and make changes accordingly. Agencies built system infrastructure that identified areas needing improvement and then produced corrective action strategies to address performance, and they were better able to demonstrate how the current interventions would be monitored and sustained and how future challenges would be adequately addressed.

¹ The information in this report was gathered from an October 2016 Casey Family Programs convening that brought together child welfare leaders from 18 jurisdictions and experts to share their experiences operating under a consent decree.

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