



Child Removal And Reunification

Research Report No. 490

Legislative Oversight And Investigations Committee

Kentucky Legislative Research Commission

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Child Removal And Reunification

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Abstract

This report examines the process by which the Department for Community Based Services (DCBS) determines whether removing children from their home is appropriate, and it attempts to determine whether judges are ruling not to reunify children after the family has completed a case permanency plan. Most of the 8,170 Kentucky youths in out-of-home care as of June 2024 arrived there following a series of events that included a report of alleged child maltreatment, a subsequent DCBS investigation that found enough safety concerns that a petition was filed with the courts requesting the child be removed, and the agreement of a judge. Since 2018, DCBS has typically received more than 100,000 reports of child maltreatment each year, resulting in roughly 45,000 investigations annually. Nearly 5 percent of investigations resulted in the removal of a child. Once a child is removed, the involved parties create a court-approved case permanency plan outlining the path to a permanent living situation for the child. Judges partially base their reunification decisions on the completion of the case permanency plan. Neither DCBS nor the Administrative Office of the Courts are documenting plan completeness in a manner that allowed staff to determine whether, and under what circumstances, judges rule not to reunify a child after all tasks on the permanency plan have been completed. In staff interviews, however, three judges indicated that such situations do happen, but that instances are rare and the circumstances are extreme. This report presents four recommendations related to data collection, program evaluation, and reporting back to the Legislative Oversight and Investigations Committee.

Foreword

Legislative Oversight and Investigations Committee staff appreciate all those who provided assistance with this report. Staff extend appreciation to the Cabinet for Health and Family Services, especially its Office of Legal Services, and to all staff of the Department for Community Based Services for their invaluable insights and assistance. Family court judges from three districts generously shared their expertise on reunification proceedings, and the legislative liaison for the Administrative Office of the Courts provided essential support in attempting to obtain data related to judicial decisions on reunification. This work benefited from the knowledge of other LRC committee staff regarding child dependency, neglect, and abuse investigations; court-appointed counsel; and recent statutory changes.

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Frankfort, Kentucky
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Summary

The Legislative Oversight and Investigations Committee requested that staff examine the Department for Community Based Services' (DCBS') procedures for removing children from their homes due to safety concerns. In addition, the committee wanted to address concerns that judges are not reunifying children even after families have fully completed their court-approved permanency plans. Staff analyzed child maltreatment investigation data from 2018 to 2023, concluding that DCBS generally adheres to federal and state mandates. However, areas of concern were identified. Due to inadequate documentation of family progress on court-ordered plans by both DCBS and the courts, it was impossible to evaluate judicial decisions regarding child reunification. Interviews with three family court judges revealed that, although there are instances when reunification is not warranted despite the family's compliance, they are exceptional and typically involve severe abuse cases.

Major Objectives And Conclusions

These are the study's major objectives, followed by the related conclusions:

Objective 1: Review the process for initial review and removal of children to determine if procedures are being followed.

- Federal and state laws require DCBS to conduct a safety and risk assessment for every investigated household. Tools used by DCBS comply with this requirement.
- Agency safeguards are in place for the child removal and child reunification processes, but there is insufficient data to evaluate effectiveness.
- From 2018 to 2023, children were removed from their households in 4.8 percent of cases.
- In 2023, investigators overrode recommended actions in 73.0 percent of cases. DCBS could provide only general reasons for these overrides, rather than case-specific reasons.
- Safety and risk assessments from 2023 included 2,012 cases with blank fields. It is unclear whether the fields represent a data issue or indicate that assessments were not conducted.
- DCBS does not currently have a formal policy on how its safety and risk assessment tools will be analyzed for effectiveness, but it has partnered with the company that designed the tools to develop a policy.

Objective 2: Review the child reunification process to determine if children are not returned to their families after case permanency plans are completed.

- Neither DCBS nor the Administrative Office of the Courts maintains readily accessible data on permanency plan completion at the time of reunification decisions or the specific reasons behind judicial rulings. As a result, the connection between case plan completion and reunification could not be analyzed.
- Three family court judges interviewed for the study indicated that rulings to not reunify the child after case plan completion do occur, but that they are rare and typically occur in extreme cases involving physical or sexual abuse. Ongoing or new issues can prevent reunification despite meeting the case plan requirements.

Secondary Objectives And Conclusions

These are the secondary objectives and conclusions for this study:

Objective 3: Evaluate whether there are incentives for guardians ad-litem and court-appointed counsel to prolong out-of-home cases.

- Guardians ad-litem and court-appointed counsel have more incentive to end a case than to prolong it.

Objective 4: Evaluate the feasibility of ending anonymous intake reports.

- Ending anonymous intakes could cause reporting issues, and the Department for Community Based Services has a strong preference for anonymous intakes.

Objective 5: Determine whether there is an appeal process for families whose child has been removed.

- The Department for Community Based Services has an appeal process. Information about the process is provided to families during the child removal process.

Recommendations

The department's inability to provide data-driven insights into case patterns from 2018 to 2023 raises concerns about accountability and transparency. High override rates for Structured Decision Making (SDM) tools, compounded by a lack of transparent justification, may indicate inconsistent decision making and result in negative consequences for child welfare.

Recommendation 2.1

The Department for Community Based Services should implement a process and schedule for evaluating all Structured Decision Making tools. Each evaluation should assess the tool's accuracy, its ability to provide data-driven explanation for agency decisions, and its impact on the agency's ability to protect children.

Recommendation 2.2

The Department for Community Based Services should review all instances where a supervisor overrode Structured Decision Making tool recommendations. The review should identify necessary changes to improve the agency's transparency in decision making, including collecting additional facts about cases or modifying TWIST to enable more detailed analyses.

Given the study's scope limitations and recent SDM tool implementation, DCBS should be granted time to comprehensively analyze identified challenges, determine root causes, develop solutions, and report back to the committee prior to further action.

Recommendation 2.3

The Department for Community Based Services should provide the Legislative Oversight and Investigations Committee a written update on its progress toward its evaluation of the Structured Decision Making tools by October 2025.

Staff were unable to address concerns about whether judges were ruling not to reunify children after a family completed its permanency plans, because neither DCBS nor the courts document plan completeness in a manner that allows for aggregate comparisons. Since the permanency plan measures a family’s progress, not documenting plan completeness hinders oversight and evaluation of the child reunification process.

Recommendation 3.1

The Department for Community Based Services should implement systemic tracking of the completion status of permanency plans throughout an out-of-home care case. These data should be collected and analyzed in aggregate and across years to inform policy, program development, and service delivery improvements aimed at achieving permanency for children. The department should work with the Administrative Office of the Courts to ensure that how it tracks such data is compatible with the CourtNet data system.

Chapter 1

Child Removal And Reunification

At its July 14, 2022, meeting, the Legislative Oversight and Investigations Committee directed staff to investigate whether appropriate procedures are followed when children are removed from homes due to potential maltreatment, and whether judges are reuniting children following the completion of court-ordered plans for permanency.

At its July 14, 2022, meeting, the Legislative Oversight and Investigations Committee (LOIC) directed its staff to investigate concerns regarding the Department for Community Based Services (DCBS). The first is whether the department adheres to appropriate procedures when deciding whether children should be removed from homes due to potential maltreatment. The second concern is whether judges are consistently reuniting children with their families after the completion of all requirements in the court-ordered plan for the child to reach permanency.

Background

The Department for Community Based Services (DCBS) plays a crucial role in investigating and safeguarding children from potential dependency, neglect, or abuse (DNA).

In the commonwealth of Kentucky, the well-being of children is a paramount concern, particularly in cases where allegations of dependency, neglect, or abuse (DNA) arise. DCBS plays a crucial role in investigating and safeguarding children from potential DNA. This evaluation assessed whether DCBS follows proper protocols at critical decision-making steps in the process of determining actions needed to protect a child victim of maltreatment, including petitioning a court to temporarily remove the child from home until identified safety concerns are remedied. It examines the alignment of DCBS' actions with both state and federal guidelines, ensuring that the removal of a child from home is truly in the child's best interest.

As of June 2, 2024, there were 8,170 children in out-of-home care in Kentucky.

As of June 2, 2024, there were 8,170 children in out-of-home care in Kentucky.¹ Most of these youths were removed following a series of events that included allegations of child maltreatment because of suspected DNA, a subsequent DCBS investigation substantiating the claim or providing other evidence of unsafe living conditions, the filing of a petition with the courts requesting that the child be removed, and the agreement of a judge. A DCBS caseworker would have worked with stakeholders to develop a case permanency plan to guide the child to a permanent home. The Kentucky courts will eventually determine whether the child can return to the family.

Major Objectives

This study had two major objectives.

The major objectives for this study were to review

- the process for initial review and removal of children to determine if procedures are being followed; and
- the child reunification process to determine if children are not returned to their families after case permanency plans are completed.

Study Scope

The child removal portion of this study focused on all reports of alleged child maltreatment submitted between January 2018 and December 2023 that met DCBS acceptance criteria and were subsequently referred to the appropriate regional office for further investigation. Although a child's safety may be assessed several times during an investigation, DCBS's initial decision is the riskiest because the investigator is making decisions about how best to protect a child based on the smallest amount of information. If the child is in danger, then waiting to remove the child could cause exposure to additional harm.

For the child reunification portion of the study, the scope was the judge's final decision to return the child to the family. Families may go before a judge multiple times to review case progress. If every hearing was reviewed, denials of reunification would appear to be more common than in actuality.

Major Conclusions

This study has eight major conclusions.

This report has eight major conclusions.

- Federal and state laws require DCBS to conduct a safety and risk assessment for every investigated household. Tools used by DCBS comply with this requirement.
- Agency safeguards are in place for the child removal and child reunification processes, but there is insufficient data to determine if safeguards are effective.
- From 2018 to 2023, children were removed from their households in 4.8 percent of cases.

- In 2023, investigators overrode suggested actions in 73.0 percent of cases. DCBS could provide only general reasons for these overrides, rather than case-specific reasons.
- Safety assessments from 2023 included 2,012 cases with blank fields. It is unclear whether the fields represent a data issue or indicate that assessments were not conducted.
- DCBS does not currently have a formal policy on how its safety and risk assessment tools will be analyzed for effectiveness, but it has partnered with the company that designed the tools to develop a policy.
- Neither DCBS nor the Administrative Office of the Courts (AOC) maintains readily accessible data on permanency plan completion at the time of reunification decisions or the specific reasons behind judicial rulings. As a result, the connection between case plan completion and reunification could not be analyzed.
- Three family court judges interviewed for the study indicated that rulings to not reunify the child after permanency plan completion do occur, but they are rare and typically occur in extreme cases involving physical or sexual abuse. Ongoing or new issues can prevent reunification despite meeting the plan requirements.

Structure Of This Report

Chapter 2 outlines the department's procedures for accepting reports of alleged child maltreatment, for investigating those allegations, and for making decisions on how best to protect a child victim. Although safeguards are in place to ensure steps are followed, the finding area discusses concerns about data from the new safety and risk assessment tools being used. It contains one major finding area and three recommendations.

Chapter 3 provides information on judges' decisions to reunify children with families once permanency plans are complete. It summarizes the out-of-home care case process, which involves the court system and case permanency plans. It then discusses a finding area regarding insufficient permanency plan data and anecdotal evidence from judge interviews. It contains one major finding area and one recommendation.

Appendix B contains information about three secondary objectives. The original research request included concerns about incentives for court-appointed legal representation to prolong cases, anonymous intake reporting, and an apparent absence of an appeal process. These concerns were separate from the main research topic but were reviewed.

Chapter 2

Determining When Child Removal Is Necessary

This chapter examines DCBS policies and procedures related to child removal due to DNA.

This chapter examines DCBS policies and procedures related to child removal. Specifically, it focuses on evaluating the process by which the department determines when it is necessary to remove a child from their home due to dependency, neglect, or abuse. It first outlines DCBS protocols for receiving and investigating child DNA allegations in accordance with federal and state laws. It then analyzes data from 2018 to 2023 to identify potential trends. DCBS generally complies with laws and removes children from their homes in 4.8 percent of cases, but this chapter highlights areas of concern such as deviations from recommended actions and the department's inability to provide data-driven answers to patterns found in case data.

Responding To Reports Of Child Maltreatment

Kentucky's Unified Juvenile Code recognizes the fundamental rights of children. When these rights are threatened, law requires DCBS to investigate and take actions necessary to ensure the child's safety.

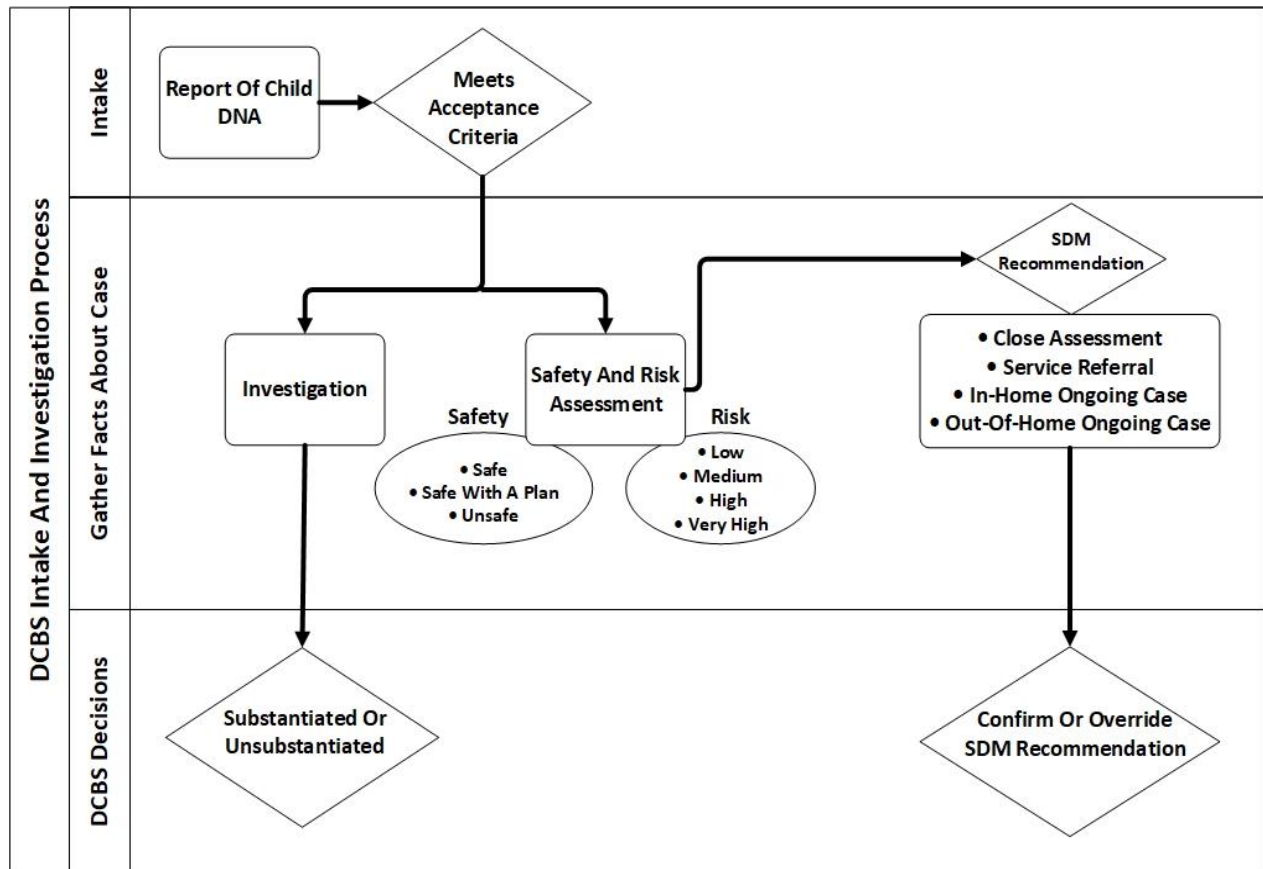
Kentucky's Unified Juvenile Code recognizes the fundamental rights of children, including their right to basic necessities; protection from harm or exploitation; opportunities for physical, mental, and emotional growth; access to education; and the right to a safe and supportive family environment.² When these rights are threatened, law requires DCBS to investigate and authorizes it to take the necessary actions to ensure the child's safety.³

Receiving Reports And Acceptance Criteria

When anyone knows or suspects a child is neglected, is abused, or has become dependent, law requires them to report the incident.

KRS 620.030 requires anyone who knows or suspects that a child is neglected; is physically, sexually, or emotionally abused; or has become dependent to report the incident to law enforcement, the commonwealth's attorney or county attorney, the DCBS statewide reporting system, or any DCBS office. Figure 2.A shows DCBS's process for handling reports. When the department receives a report, whether from a primary source or as a referral from another agency, a trained intake worker gathers information to determine whether the case meets DCBS acceptance criteria and, if so, how quickly the agency should respond.

Figure 2.A
Process For Receiving And Investigating Allegations Of Child Maltreatment



Note: DNA = dependency, neglect, and abuse; SDM = Structured Decision Making; DCBS = Department for Community Based Services.

Source: KRS Chapter 620; Kentucky. Department of Community Based Services. *SDM Intake Policy And Procedures Manual: Adult Protective Services*, Jan. 2024.

Table 2.1 presents the annual number of child maltreatment reports received by DCBS from 2018 to 2023, averaging nearly 100,000 per year. Since 2020, there has been a gradual increase in reported cases.

Table 2.1
Reports Of Alleged Child Dependency, Neglect, And Abuse
And Reports Meeting Acceptance Criteria
2018 To 2023

Year	Reports Of Child DNA	Reports Meeting Criteria	% Of Total
2018	110,088	56,286	51.1%
2019	107,869	50,644*	46.9
2020	89,849	44,969**	50.0
2021	90,311	38,862	43.0
2022	99,039	40,258	40.6
2023	98,839	41,130	41.6
Total/average	595,995	272,149	45.7%

*DCBS 2019 Annual Report shows 50,660 intakes that met acceptance criteria, 16 intakes more than DCBS data.

**DCBS 2020 Annual Report shows 44,985 intakes that met acceptance criteria, 16 intakes more than DCBS data.

Source: LOIC staff analysis of DCBS data.

Federal and state law dictate DNA reports that can be accepted for investigation. DCBS enters facts into a tool that recommends whether the case meets acceptance criteria, though DCBS workers and their supervisors can override the suggestion.

Federal and state laws dictate the types of reports DCBS can accept.⁴ The victim must be 17 years or younger, or age 18 to 21 and in DCBS care; the perpetrator must be a caregiver for, given access to, or entrusted with the care of the victim; and the facts must meet Kentucky’s jurisdictional requirement.^a DCBS collects information about the case through interviews and by entering specific facts into a standardized tool that recommends whether the case meets acceptance criteria; the final decision is up to the intake worker and their supervisor.^b Table 2.1 shows that the percentage of all reports deemed eligible for investigation has steadily declined since at least 2018. Nearly 46 percent of all reports submitted over the past 6 years met DCBS acceptance criteria and proceeded to the investigation phase.

Kentucky regulations specify the timeframe within which DCBS must conduct an in-person meeting with the involved family following report acceptance. The specific response times and examples of case facts necessitating each are:

- 4 hours for cases with a child fatality, near fatality, or high-risk threat;

^a The perpetrator does not need to be a caretaker if the report involves human trafficking, involves female genital mutilation, or is a joint investigation with law enforcement as outlined in KRS 620.040(3). A child is considered under Kentucky’s jurisdiction when physically present within the state’s geographical boundaries, as specified in KRS 610.010(2)(a).

^b A recent amendment to KRS 620.040, effective July 15, 2024, requires automatic acceptance of new reports from professional sources if similar allegations were made within the past 30 days. The amendment also mandates acceptance of reports from courts indicating child abuse or neglect and identifying a child as a plaintiff in active emergency or interpersonal protective order cases. This report includes data only through 2023 and does not reflect this recent legislation.

- 24 hours for cases where safety and risk threats are present, but there is no report of fatality or near fatality;
- 48 hours for cases where moderate levels of safety and risk are involved; or
- 72 hours for cases with low risk of maltreatment.⁵

Accepted reports are sent to regional offices for review. Rejected reports are recorded, and the caller is referred to community resources or the appropriate state agency.

All accepted reports are sent to the relevant regional DCBS office for further inquiries by a DCBS investigator. If a report does not meet criteria, the intake worker must keep a record of the allegation and refer the caller either to community resources or to the appropriate state agency.⁶

How Investigations Are Conducted

Child DNA investigations are regulated by federal and state laws. The laws provide limited guidance on the specifics of what must be included in risk and safety assessments, allowing flexibility for DCBS.

Child DNA investigations are complex, regulated by both federal and state laws. Although determining the veracity of initial allegations is crucial, this section focuses on mandated safety and risk assessments. These assessments are paramount in determining a child's immediate safety and potential risk for future maltreatment, factors that directly influence decisions regarding removal from the home.

DCBS currently uses Structured Decision Making (SDM) Safety and Risk Assessment tools to document information about the child, the family, and safety and risk factors.

Federal and state laws provide limited guidance on the specifics of what must be included in the risk and safety assessments, allowing DCBS flexibility in its approach. The department adopted a Structured Decision Making (SDM) Safety and Risk Assessment tool in October 2022, replacing the previous Assessment and Documentation Tool (ADT).⁷ Both tools require investigators to document information about the children, family composition, safety factors, and risk factors, but the SDM is designed to gather data directly linked to unsafe living conditions and future maltreatment risk. The ADT collected a broader range of information, but the SDM prioritizes data essential for child safety.

Safety And Risk Assessments

The SDM tool focuses on the immediate safety of the child and the potential risk of future maltreatment.

The SDM tool focuses on answering two questions:

- Are there immediate threats to a child's safety, and can the child safely remain in the home?
- What is the potential risk of the child being a victim of maltreatment in the near future?

Kentucky mandates the completion of a safety assessment within 3 working days of the end of the initiation response time. The risk assessment must be finished at least 5 working days before the

investigation concludes.⁸ The SDM tool uses information input by the investigator to generate safety and risk ratings for the household. The safety rating speaks to the immediate safety of children in the house and the risk rating to their future risk of maltreatment if they remain in the home.

The SDM recommends closing a case when the child faces no immediate danger. If the child is safe but risk factors are present, the tool suggests actions to mitigate the risk. If the child is unsafe, the tool recommends removal and initiation of out-of-home care.

Table 2.2 outlines how the SDM safety and risk-level assessments can guide investigators in making consistent and informed decisions regarding a child’s safety. The SDM recommends closing a case when the child faces no immediate danger and the family can provide adequate protection. For cases deemed safe but with moderate risk factors, the tool suggests connecting the family to relevant support services to mitigate identified concerns. In cases classified as safe but presenting high risk factors, the SDM recommends an ongoing in-home case with intensive supervision and support to protect the child. Alternatively, if the family agrees to actively address identified risks under DCBS monitoring, the SDM may recommend a *Safe with a safety plan* classification. Finally, when a child is determined to be unsafe, the tool recommends removal and initiating an out-of-home case.⁹

**Table 2.2
 Recommended Outcomes Based On Safety And Risk Assessments**

Safety Status	Risk Level		
	Low	Moderate	High/Very High
Safe	Close case	Service referral	In-home ongoing case
Safe with a safety plan	In-home ongoing case		
Unsafe	Out-of-home ongoing case (removal)		

Source: Kentucky. Department of Community Based Services. *Policy And Procedures Manual*, Sept. 2022.

SDM recommendations are not binding. Investigators may override the decisions, and supervisors may override investigators’ decisions. Court oversight is limited to cases where investigators file a petition to remove a child.

Although SDM tools can provide valuable guidance in supporting complex decision making, their outputs are not binding, and investigators may override the decisions. Investigators must exercise sound professional judgment, considering a range of factors including the child’s well-being, parental capacity, and available resources. These factors are weighed in conjunction with the SDM tool to determine the best course of action for each case. Ultimately, case management decisions rest with the investigators and their supervisors. Court oversight is limited to instances where the investigator files a petition with the court to have a child removed; otherwise, the department is the sole arbiter.¹⁰

A child removed from home is placed in foster care, with relatives, or in another setting. A case plan outlines steps for parents to regain custody. Court hearings monitor progress.

Once a child is removed from home due to abuse or neglect, a complex legal and social services process begins. A court usually grants the Cabinet for Health and Family Services temporary

custody, and the child is placed in foster care, with relatives, or in another appropriate setting. A case plan is developed outlining steps the parents must take to regain custody, and DCBS is responsible for ensuring adherence. Court hearings are held regularly to monitor progress. Reunification is usually the goal, but alternative permanent plans such as adoption or guardianship are considered if reunification is not possible. Throughout the process, the child’s well-being and safety remain the top priority.¹¹

Evaluating DCBS Compliance

DCBS’s compliance with federal and state laws was determined by analyzing case data from 2018 to 2023. DCBS included instructions on how to align the data with DCBS’s annual reports.

This section assesses DCBS’s compliance with federal and state laws governing child DNA investigations by analyzing agency-provided case data spanning from 2018 to 2023 that included specific instructions on how to process the data to align it with information published in DCBS’s annual reports.¹²

Requirement For A Safety And Risk Assessment

DCBS’s use of SDM tools or the Assessment and Documentation Tool complies with federal and state laws for safety and risk assessments.

Federal and state laws require DCBS to conduct a safety and risk assessment for every investigated household.¹³ The department’s use of either the ADT or SDM tools complies with this broadly defined requirement.^c In theory, the SDM tools should provide DCBS with a standardized framework that promotes consistent and evidence-based decision making, thereby enhancing the department’s ability to meet federal and state standards.

From 2018 to 2023, investigators petitioned for child removal in only 4.8 percent of cases. The most common action was to close the case.

Table 2.3 shows the number of child protection decisions made by DCBS investigators from 2018 to 2023. The most common action was for DCBS to close the case. The next most common was to open an in-home ongoing case, where the child remains at home but DCBS monitors the family’s progress toward mitigating the identified safety concerns. DCBS investigators petitioned the court for child removal in 4.8 percent of cases. Additionally, some cases lacked a clear DCBS decision.

^c There were no specific federal or state requirements detailing what must be included in risk and safety assessments until an amendment to KRS 620.040 was enacted, effective July 15, 2024, which requires DCBS to consider the “age and vulnerability of a child, particularly those five (5) years of age and under.” The SDM tool explicitly considers age and vulnerability, but there is a potential discrepancy with statute in that the SDM considers whether a child is age 4 and under as a factor influencing child vulnerability.

**Table 2.3
 Number Of Investigations By Decision Of Department For Community Based Services
 2018 To 2023**

Year	Close Assessment	In-Home Ongoing Case	Out-Of-Home Ongoing Case	Service Referral*	Blank	Total
2018	44,040	9,631	2,581	N/A	34	56,286
2019	40,223	7,959	2,408	N/A	54	50,644
2020	36,251	6,495	2,161	N/A	62	44,969
2021	30,729	6,035	2,057	N/A	41	38,862
2022	33,087	5,172	1,933	44	22	40,258
2023	33,328	4,965	2,033	662	142	41,130

*Service Referral was not a DCBS decision option from 2018 to 2021.
 Source: Staff analysis of DCBS data.

The number of cases with blank referrals is small relative to the total, but is concerning because the field is a proxy for tool completion.

When completed, these tools provide evidence of the department’s evaluation of a child’s safety. Although the number of cases per year with blank assessment outcomes is small relative to the total, these outcomes are concerning, especially given that the supervisory signature used as our proxy for tool completion is a major safeguard for this portion of DCBS’s investigation process.

How Useful Is The SDM Safety And Risk Assessment?

The effectiveness of the SDM tool was evaluated by the frequency in which its recommendations were overridden. The tool’s development included a risk fit study to determine if it accurately estimated the future of DCBS involvement in cases.

A practical approach to evaluating the effectiveness of the SDM tool is to analyze the frequency with which investigators adhered to its recommendations. The SDM tool was designed to comply with federal and state mandates, and its recommendations were informed by Kentucky’s historical case data. DCBS worked with Evident Change to develop the SDM, including a risk fit study to determine how well the tool assessments estimated the future of involvement among Kentucky families.¹⁴

Frequent overrides may indicate suboptimal decision making or deficiencies in the tool’s ability to assess case information.

Investigators should exercise professional judgment when using any assessment tool, but frequent overrides may indicate either suboptimal decision making or deficiencies in the tool’s ability to accurately assess case information. The ADT did not generate recommendations when in use; therefore, the only investigator overrides that could be evaluated were from cases in 2023 in which the SDM tool had been used.

Overrides Of SDM Recommendation

DCBS investigators deviated from SDM recommendations in 73.0 percent of cases.

DCBS investigated 35,405 cases using the SDM tools for 2023. Table 2.4 shows that DCBS overrode the SDM recommendations in 25,845 cases, or 73.0 percent of total cases. The complexity

and diversity of cases suggests that some deviation from SDM recommendations can be expected. However, DCBS should be concerned that most of its decisions are deviating from the tool used to assess the safety and risk of children.

Table 2.4
Number Of Department For Community Based Services Overrides
Of Structured Decision Making Recommendations
2023

Decision To Override	Recommendation						% Of Total
	Blank	Close Assessment	In-Home Ongoing Case	Out-Of-Home Ongoing Case	Service Referral	Total	
Yes	97	24,176	780	523	269	25,845	73.0%
No	44	3,918	3,881	1,325	392	9,560	27.0
Total	141	28,094	4,661	1,848	661	35,405*	100.0%

* This number differs from the 2023 total presented in Table 2.3 because this table includes only cases with an initial intake take after October 1, 2022—the date the SDM tool was implemented.

Source: Staff analysis of DCBS data.

DCBS was asked to explain why cases deviated from the recommended outcome, but it did not reference specific cases, and it provided only general reasons:

- Family declined services
- DCBS has lost contact with the family
- The family has moved
- The family structure has changed
- An open companion case exists
- Risk factors identified are static and cannot change¹⁵

Safety ratings from 2023 included 2,012 blank fields. DCBS staff stated that blanks appeared in cases prior to October 1, 2022, or because some intakes and investigations do not use the SDM tools. However, this data was entered after October 1, 2022.

Blank SDM Safety Rating Values. Safety ratings from 2023 included 2,012 blank fields. DCBS staff stated that blanks for those fields occurred because intakes in those cases were received prior to the October 1, 2022, SDM implementation, or because some types of intakes and investigations do not use the SDM tools.¹⁶ The intake dates used to calculate the number of blanks in the safety rating field occurred after October 1, 2022. Further, the dataset provided by DCBS does not identify the types of cases that do not use the SDM tool.^d It is reasonable to assume that some cases may not warrant a safety rating, but LOIC staff were unable to discern what specific instances generate blank safety rating values based on available data. Table 2.5 shows the number of DCBS decisions for each type of SDM safety rating for 2023.

^d DCBS indicated that the following types of cases do not use the SDM tools: non-caretaker human trafficking investigations, facility investigations, and foster parent investigations.

Table 2.5
Department For Community Based Services Decisions
By Structured Decision Making Safety Rating
2023

Safety Status	Blank	Close Assessment	In-Home Ongoing Case	Out-Of-Home Ongoing Case	Service Referral	Total
Blank	42	1,969	1	0	0	2,012
Safe	57	20,841	1,039	158	509	22,604
Safe with a safety plan	38	5,018	3,203	365	147	8,771
Unsafe	4	266	418	1,325	5	2,018
Total	141	28,094	4,661	1,848	661	35,405

Source: LOIC analysis of DCBS data.

The lack of comprehensive and data-based answers limited assessment of decisions. DCBS is continuing to refine SDM implementation, but the high number of overrides and the inability to provide explanations for deviations raised concerns.

The lack of comprehensive and data-based answers limited the assessment of these decisions. DCBS stated that it is continuing to refine SDM tool implementation, including a recent retraining of supervisors on the safety and risk assessments.¹⁷ However, the high number of overrides and the agency’s inability to provide more detailed explanations for deviations from SDM recommendations raises concerns about the transparency of DCBS’s decisions regarding child removal.

DCBS stated it had no formal policy on how SDM tools will be assessed or analyzed for effectiveness.

Concerns were further heightened when DCBS stated that it had “no current formal policy on how the tools will be assessed and analyzed for effectiveness.”¹⁸ Regular evaluations are essential to identify and address data quality issues, assess the tool’s overall performance, and make necessary adjustments. Without an evaluation process, the department risks relying on potentially flawed data to inform critical decision making, which could ultimately impact the well-being of children.

Review Findings

DCBS is generally compliant with requirements for policies and procedures, with some qualifications.

Complying with the study request required reviewing whether DCBS adheres to proper policies and procedures when determining what safety measures would best protect a child victim of maltreatment. Generally, the department is compliant, with some qualifications. Analysis of 2018 to 2023 investigation case data found:

- DCBS largely follows proper procedures when determining the best course of action to ensure a child’s safety, and
- DCBS decided to petition a court to remove the child in approximately 4.8 percent of cases.

Concerns with DCBS policies and procedures fell into areas of data management, procedural issues, and accountability and transparency.

The review revealed several issues related to the approved study parameters. Some problems may have straightforward explanations, but others could potentially indicate more systemic issues with far-reaching implications. The SDM tool is a relatively new implementation and will require adjustments to optimize its effectiveness. Concerns fall into three basic categories: data management issues, procedural issues, and accountability and transparency.

Data Management Issues

It is unclear whether blank recommendations indicate that an investigator did not conduct the assessment. In some cases, DCBS took an action but the data point documenting that action was blank.

Although some data entry errors are anticipated in large databases, errors for key data are an issue. For example, it is unclear whether blank SDM recommendations indicate that an investigator did not conduct a safety and risk assessment or if there is another explanation. Especially concerning were instances where DCBS clearly took an action but the data point documenting that action was blank. These blank cells potentially represent a data quality control issue, at the local, regional, or central office, or at all three. In theory, staff entering the information or supervisors approving the information would have been able to see information was missing.

DCBS could not provide data-driven explanations for why many investigations were closed when the SDM tool recommended otherwise.

Another potential data management issue became apparent when DCBS could not provide data-driven explanations for why it closed so many investigations when the SDM tool recommended otherwise. It is unclear if this is because The Workers Information System (TWIST) lacks the capacity for this information or if DCBS is not collecting the information to answer these questions. This may represent a larger systemic problem that deserves to be addressed. DCBS should collect sufficient information to explain the decisions it makes, not only on a case-by-case basis, but also in aggregate so that systemic issues can be evaluated. For example, an additional field in TWIST that documents reasons for closing a case against SDM recommendations may help the department better understand and explain patterns in its decision-making.

Oversight Issues

The high SDM override rate may indicate a larger problem with oversight of programs. Considering that SDM tools are aligned with agency policy, it remains unclear whether the high degree of overrides represents investigators acting against DCBS policy.

The high SDM override rate may indicate a larger problem with the department's oversight of its programs. Considering that SDM tools are aligned with agency policy, it remains unclear whether the high degree of overrides represents investigators acting against DCBS policy. Some degree of overrides is appropriate, but when investigators go against the tools in 73.0 percent of cases, overrides become the standard. DCBS needs to determine when the number

of overrides is too high. The high deviation rate may indicate that investigators and their supervisors do not have faith in the evidence-based recommendations. This deviation could be a training issue, with inadequate training on the SDM tool's purpose, functionality, and data interpretation leading to skepticism and misuse.

Accountability And Transparency Issues

The department's inability to provide data-driven answers regarding patterns in 2018 to 2023 case data raises accountability concerns. The high override rate indicates a potential for inconsistent and subjective decision making.

The department's inability to provide data-driven answers regarding patterns in its 2018 to 2023 cases raises concerns about accountability and the agency's ability to be transparent about its decisions. A lack of justification for individual decisions can create the appearance that there is not evidence-based reasoning behind the decision. The high override rate coupled with a lack of transparent justification indicates a potential for inconsistent and subjective decision making. This could lead to a range of negative outcomes, including missed opportunities to protect children, wrongful removal of children from their homes, and a lack of accountability for decisions that impact children's lives.

Given that the SDM tools were only recently implemented, it is appropriate to allow SDM time to review issues before reporting back to the committee.

Given that many of the identified problems were beyond this study's scope and that the SDM tools were only recently implemented, it is appropriate to allow DCBS time to further review these issues, determine root causes, craft solutions, and report back to the committee before further action.

Recommendation 2.1

Recommendation 2.1

The Department for Community Based Services should implement a process and schedule for evaluating all Structured Decision Making tools. Each evaluation should assess the tool's accuracy, its ability to provide data-driven explanation for agency decisions, and its impact on the agency's ability to protect children.

Recommendation 2.2

Recommendation 2.2

The Department for Community Based Services should review all instances where a supervisor overrode Structured Decision Making tool recommendations. The review should identify necessary changes to improve the agency's transparency in decision making, including collecting additional facts about cases or modifying TWIST to enable more detailed analyses.

Recommendation 2.3

Recommendation 2.3

The Department for Community Based Services should provide the Legislative Oversight and Investigations Committee a written update on its progress toward its evaluation of the Structured Decision Making tools by October 2025.

Chapter 3

Judicial Rulings On Child Reunification

This chapter examines decisions about family reunification after families have finished their permanency plan.

This chapter examines a crucial point in Kentucky’s child welfare system where decisions about family reunification are made: when families have finished their permanency plan. This plan outlines steps families must take to safely care for their children. A central question is whether judges consistently reunite children with their families after all permanency plan goals have been met. LOIC staff aimed to analyze 6 years of out-of-home care case data. However, neither DCBS nor the Administrative Office of the Courts maintains readily accessible data on permanency plan completion at the time of reunification decisions or the specific reasons behind judicial rulings. Although this information exists within individual case files, extracting and analyzing it on a large scale is not possible.

Readily accessible data on permanency plan completion was not available. Instead, policies and procedures governing reunification were reviewed to identify potential problems.

In lieu of data to analyze, LOIC staff reviewed policies and procedures governing reunification decisions to identify potential problems. This chapter delves into the specific guidelines and protocols established by DCBS and the courts. By scrutinizing this framework, this chapter provides insights into factors considered when determining whether a child can safely return to the family.

Kentucky’s Reunification Process

Kentucky law requires DCBS to work with the family, courts, and others to develop a permanency plan.

Removing a child from the home is one of the most serious steps a child welfare agency and the courts can take. Kentucky law recognizes this by requiring DCBS to work with the family, courts, and all others involved to develop a permanency plan for either reunification or finding the child another permanent home.

Permanency Plans

Permanency plans outline the family’s responsibilities and the ultimate permanency goal for the child.

Permanency plans are typically created within 5 business days after a court determines there is sufficient reason to remove a child from the home.¹⁹ Once approved by a judge, this legal document outlines the family’s responsibilities and the ultimate permanency goal for the child. Key elements include identifying the child’s specific needs, evaluating the family’s ability to care for the child, and creating a timeline for reaching a permanent living situation.

Plans are reviewed at least every 6 months and adjusted to fit the child's changing situation.

The plans may require parents to complete tasks like parenting classes, substance abuse treatment, or mental health counseling. Possible outcomes include reunification with parents, adoption, guardianship, or emancipation. The plan is reviewed at least every 6 months and adjusted to fit the child's changing situation.²⁰ The circumstances leading to children entering out-of-home care vary widely, resulting in similar variation in the specific goals and strategies of permanency plans.

The permanency plan informs the court on the family's progress toward permanency. DCBS is responsible for providing updates on the family's adherence to the plan, the child's progress, and any challenges encountered.

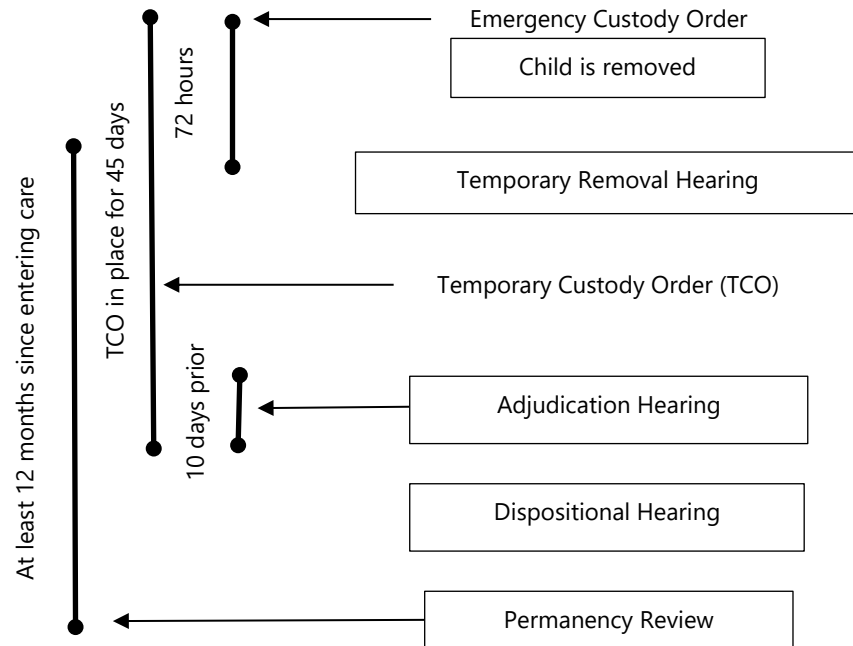
The permanency plan not only provides the family guidance, it also serves to keep the court informed on the family's progress toward permanency. DCBS bears a significant responsibility to the court in providing regular updates on the progress of a permanency plan, detailing the family's adherence to the plan, the child's progress, and any barriers or challenges encountered.²¹ This obligation ensures that the court has the information necessary for making informed decisions about the child's well-being and future. Although LOIC staff were not able to formally review whether DCBS fulfills this obligation to the courts, three family court judges interviewed for this study did not mention any problems receiving case plan updates from DCBS.²²

Timeframe For Judicial Review

Kentucky law establishes a framework for review of out-of-home care cases.

While judges can call for a review of an out-of-home care case at any time, Kentucky law dictates a basic framework for such reviews. Figure 3.A shows the timing of various court hearing in out-of-home care DNA cases.

**Figure 3.A
 Out-Of-Home Care Case Court Process**



Source: KRS Chapter 620.

During the initial hearing, a judge determines whether there is sufficient evidence to remove a child. During the case planning conference, a time for reunification or placement is established. Review hearings are held at least every 6 months. Permanency hearings address whether the child should be returned to the family or placed elsewhere.

The initial hearing, called a temporary removal hearing, is where a judge determines whether there is sufficient evidence to remove a child from the home due to abuse, neglect, or dependency. A subsequent case planning conference must be held within 10 calendar days of the temporary removal hearing and is when interested parties work together to establish a timeline for reunification or alternative permanent living arrangement.²³ Review hearings must be held at least every 6 months to assess progress toward case plan goals.²⁴ A permanency hearing must be held within 1 year of the child’s placement and is when the court addresses whether the child should be returned to the parent, placed for adoption, or placed with a permanent custodian.²⁵ If reunification is not feasible, the court may proceed with termination of parental rights and adoption or guardianship proceedings.²⁶

The following individuals have the right to be heard at court hearings: DCBS staff, the child’s parent, foster parents, prospective adoptive parent(s), fictive kin, or relatives providing care to the child.²⁷ At the permanency hearing, DCBS presents evidence to the court concerning the care and progress of the child since the last permanency hearing.²⁸ The department’s evidence should include:

- the length of time the child has been committed to the cabinet;
- the number, location, and date for each placement during the child’s commitment;
- the services and assistance provided to the parent or arranged by the cabinet and the results achieved;
- the efforts and progress of the child’s parent since the last case permanency plan and case progress report, including the number of parental visits and the extent, quality, and frequency of the parent’s communication with the child;
- the familial and institutional barriers to returning the child, and delivery of appropriate services needed by the child;
- recommendations for necessary services required to return the child home, or to facilitate another permanent placement; and
- recommendations for the permanency goal for the child.²⁹

The attorney for the parent, attorney for the child, or court-appointed special advocate may present evidence relevant to determining the child’s permanency goal.³⁰ Once the hearing concludes, the court issues a written order determining the permanency plan for the child. If necessary, the case may be rescheduled for further review of the family’s progress toward implementing the permanency plan.³¹

Insufficient Tracking Of Permanency Plan Completion Prevents Analysis

Although DCBS can track individual cases, it cannot analyze cases across the entire system. The Administrative Office of the Courts does not track aggregated data on permanency plan completion rates.

The permanency plan is crucial for DCBS and the court to monitor a family’s progress toward creating a safe home for the child. Although DCBS can track individual cases, it cannot analyze data across the entire system to identify trends. Additionally, AOC does not track aggregated data on permanency plan completion rates. This absence of comprehensive data limits both agencies’ capacity to evaluate the effectiveness of policies, procedures, and decisions over time.

A similar problem was encountered during a 2018 review of Kentucky’s foster care system. Progress was made on improving court action data, but the changes did not ensure that permanency plan completion was tracked.

LOIC staff encountered a similar problem in a 2018 review of Kentucky’s foster care system, resulting in a formal recommendation that DCBS and AOC “should cooperate to ensure the collection of the date of any DNA court action, the type of hearing, and the result. These data should be analyzed regularly to identify potential problems.”³² AOC testified that progress has been made on this recommendation.³³ However, the resulting changes did not include ensuring the ability to track aggregate data about the completeness of permanency plans at the time of various court hearings.

The lack of case plan records prevents analysis of reunification and denies DCBS access to useful information for internal review.

The lack of case plan records prevents analysis of reunification and denies DCBS access to useful information for internal review. Case plan completion records would allow DCBS to evaluate the effectiveness of case plans. If DCBS finds that children are not being returned after case plan completion, it may be able to look at those cases to determine common characteristics when children are not returned. It may find that some requirements are more difficult to meet or that families encounter similar issues between the completion of a case plan and the return of a child.

Judges Indicate They Rarely Deny Reunification After Case Plan Completion

Three family court judges from across Kentucky were interviewed for this study

LOIC staff interviewed three family court judges from various regions of Kentucky for this study—one from eastern Kentucky, one from western Kentucky, and one from central Kentucky. These judges represented a mix of urban and rural areas, providing a broad perspective on family courts across the state.

The judges said that not returning the child after completing the permanency plan is rare and typically occurs in extreme cases involving abuse. Ongoing or new issues can prevent reunification when case plan requirements are met.

They discussed cases where they must rule not to reunify a child even after the family completed the permanency plan tasks. All noted that such situations do happen, but that they are rare and typically occur in extreme cases involving physical or sexual abuse. The judges pointed out that ongoing or new issues sometimes prevent reunification despite meeting the case plan requirements. For example, one judge spoke of a case where the parent relapsed days before reunification was scheduled to occur, forcing the judge to deny reunification at that time.³⁴

Additionally, the judges noted that sometimes parents can agree to relinquish custody. This typically happens when the child is placed with a relative and the parents believe their child would be safer if remaining permanently with that individual.³⁵

Effects Of Limited Aggregate Case Plan Data

DCBS's inability to provide data on permanency plan completion prevented an evaluation of how often children are not reunited after permanency plans are completed. The decision to not aggregate and analyze this information creates a missed opportunity.

DCBS's inability to provide data on permanency plan completion precluded an evaluation of how often judges decided not to reunite a family even after all tasks in the permanency plan have been completed. Given the legal mandate for DCBS to update courts on family progress toward completing permanency plans, it is clear that the agency already collects some data on plan completion. However, the agency's decision to not aggregate and analyze this information to inform policy and practice creates a missed opportunity with far-reaching implications.

Examining permanency plan completion data would provide insights into the effectiveness of policies and programs aimed at achieving permanency for children. It would also equip the agency with data-driven evidence to support decisions and resource allocation.

By examining permanency plan completion data in aggregate, DCBS could identify trends, disparities, and areas for improvement in its services. This analysis would provide valuable insights into the effectiveness of its policies and programs aimed at achieving permanency for children. Additionally, it would equip the agency with data-driven evidence to support decision making and resource allocation. The absence of such data is concerning, given its relevance in high-stakes legal proceedings. Without a clear understanding of permanency plan progress, it is difficult to evaluate the efficacy of reunification efforts and to identify potential systemic issues that may be contributing to adverse outcomes for children. It remains unclear whether the department's inability to provide aggregate permanency plan completion data to LOIC staff is indicative of a data collection issue or whether the agency's data system will need to be updated to accommodate aggregate analyses of permanency plan data.

Recommendation 3.1

Recommendation 3.1

The Department for Community Based Services should implement systemic tracking of the completion status of permanency plans throughout an out-of-home care case. These data should be collected and analyzed in aggregate and across years to inform policy, program development, and service delivery improvements aimed at achieving permanency for children. The department should work with the Administrative Office of the Courts to ensure that how it tracks such data is compatible with the CourtNet data system.

Appendix A

Response From Cabinet For Health And Family Services

The Cabinet for Health and Family Services (CHFS) and the Department for Community Based Services (DCBS) have received and reviewed the draft Legislative Oversight and Investigations Committee (LOIC) Child Removal and Reunification Report. The Cabinet is committed to ensuring the safety and well-being of children.

The importance of the work completed by DCBS social workers and partners in ensuring the safety of children throughout every community in the Commonwealth cannot be overstated. The primary goal is to protect children from harm while supporting and strengthening families. The complexity of each case requires a balance between intervening to protect a child's immediate safety needs and providing the necessary resources and support to help families overcome challenges to unification.

The effectiveness of child welfare interventions depends on the ability to make well-informed, compassionate decisions guided by thorough assessments, best practices, and an understanding of the needs of families. Ensuring that children are removed from their homes only when absolutely necessary and that such decisions are based on comprehensive evaluations is essential to both protecting their safety and respecting their familial bonds.

The goal of the Cabinet is to create safe, nurturing environments for all children where they can thrive and reach their full potential and to ensure continuous improvement in practices, transparent evaluations, and an unwavering commitment to the safety and well-being of children and families.

Recommendation 2.1

“The Department for Community Based Services should implement a process and schedule for evaluating all Structured Decision Making tools. Each evaluation should assess the tool’s accuracy, its ability to provide data-driven explanations for agency decisions, and its impact on the agency’s ability to protect children.”

DCBS is working with Evident Change to evaluate and analyze the effectiveness of the Structured Decision Making (SDM) safety and risk assessment tools. Structured Decision Making is a national, evidence-based model that combines research with best practices to assist workers with consistent decision-making and assists agencies in determining how to allocate in-demand resources. Evident Change collects data nationally to inform the model, and Kentucky is learning from other states and contributing to this ongoing data analysis. DCBS is committed to ensuring fidelity in the application of the SDM tools. Kentucky, with the support of Evident Change, will continue to use our Continuous Quality Improvement process to evaluate data and implementation. The partnership between DCBS and Evident Change will involve regular assessment, data analysis, worker/supervisor surveys, and training to ensure that the SDM tools are used consistently and accurately.

Recommendation 2.2

“The Department for Community Based Services should review all instances where a supervisor overrode Structured Decision Making tool recommendations. The review should identify necessary changes to improve the agency’s transparency in decision-making, including collecting additional facts about cases or modifying TWIST to enable more detailed analyses.”

It is important to note that the social worker completes the overrides, not the supervisor. The supervisor is required to review and determine if the request is approved or unapproved. A worker must document the reason for an override to the case action guide in the narrative. DCBS conducted reviews of this narrative in 956 cases that contained a case action override. The most common reasons for overrides in the sample were for the following based on case type: the presence of a companion case that remained open in Unsafe and Closed assessment; child placed with relative or fictive kin and not in DCBS custody in Unsafe and In-Home ongoing case; and child placed in DCBS custody in Safe but with an OOHC flag.* The department agrees that an automated selection of an override reason would be beneficial and intends to build that into TWIST but believes an accompanying narrative should still be required. The decision by a social worker to override the recommended case action enables them to account for unique circumstances or factors that the tools may not fully capture. Overrides are expected to be documented with a clear rationale to ensure accountability and transparency, balancing the approach of the SDM tools with the social worker’s experience and insight.

Recommendation 2.3

“The Department for Community Based Services should provide the Legislative Oversight and Investigations Committee a written update on its progress toward its evaluation of the Structured Decision Making tools by October 2025.”

DCBS is committed to transparency and fidelity in our efforts to ensure the SDM tools are effectively supporting a social worker’s case decisions. DCBS is actively working with Evident Change to assess the fidelity and impact of the tools and will share progress with LOIC at appropriate intervals. DCBS is committed to a continuous quality improvement process in which evaluation is a necessary and important piece of implementation.

Recommendation 3.1

“The Department for Community Based Services should implement systemic tracking of the completion status of permanency plans throughout an out-of-home care case. These data should be collected and analyzed in aggregate and across years to inform policy, program development, and service delivery improvements aimed at achieving permanency for children. The department should work with the Administrative Office of the Courts to ensure how it tracks such data is compatible with the CourtNet data system.”

Currently, there is no way to connect a permanency outcome with a court decision. Significant and expensive TWIST modifications would be required for the suggested data elements and to

* OOHC = out-of-home care.

interface with court information systems that document court actions. DCBS will research this recommendation to determine its feasibility. Policy and practice are driven by data outcomes, but not all data is quantitative. Qualitative data, which comes from understanding and learning, is frequently used in behavioral science to drive decisions. This would also likely require the Administrative Office of the Courts to make modifications to CourtNet and would necessitate a person within the court system to have training and the ability to enter a judge’s decision into the data system.

To better analyze in aggregate and across years, an interface between systems is required. The Cabinet has created an estimate on the cost of developing such an interface, which is in the chart below. This estimate is dependent on the assumption that the Administrative Office of the Courts (AOC) will be willing and able to share their CourtNet data with the Cabinet, and it is unknown what system changes AOC may need.

Item	Estimate
Infrastructure & Hardware Cost	\$15,600.00
Staffing Cost: Database Administrator, Technical Analyst, Data Scientist	337,200.00
TWIST System Changes	500,000.00
Contingency (25%)	213,200.00
Total High-Level Estimate:	\$1,066,000.00

Appendix B

Review Of Court-Appointed Legal Representation, Anonymous Reporting, And The Appeal Process

While the body of this report delved into the child removal process and judicial decisions, this appendix focuses on additional concerns raised by committee members. These issues did not necessitate the same level of analysis. Instead, a comprehensive review of existing statutes, regulations, and relevant literature answered these concerns and provides potential avenues for legislative considerations.

The secondary concerns for this study were to review:

- whether guardians ad-litem (GALs) and court-appointed counsel (CACs) have a financial incentive to prolong child dependency, neglect, and abuse (DNA) cases;
- the feasibility and advisability of ending anonymous reports at intake; and
- whether there is an appeal process for children removed from their home.

Conclusions

- Guardians ad-litem and court-appointed counsel have a stronger incentive to end cases quickly rather than prolonging cases.
- Ending anonymous intakes could cause reporting issues, and the Department for Community Based Services has a strong preference for anonymous intakes.
- The Department for Community Based Services has an active appeal process. Information about the process is provided to families during the child removal process.

Incentives For Court-Appointed Counsel

One concern raised about the current system was whether the compensation court-appointed counsel receive for child DNA cases creates an incentive to prolong legal proceedings. Under KRS 620.100, the court must appoint counsel to the following parties of a child DNA case if they are unable to afford it pursuant to KRS Chapter 31:

- the child
- the parent who exercises custodial control or supervision
- the person claiming to be a de facto custodian, as defined in KRS 403.270

The statute also allows courts to appoint counsel to a nonparent who exercises custodial control or supervision of the child, but this is not mandatory.

Courts may also appoint a guardian ad-litem for the child. Court-appointed counsel and GALs often share similar qualifications and case types, leading to some overlap in their roles. However, a key distinction lies in their legal capacities. GALs operate under specific guidelines designed to protect a child's best interests, but CACs function as traditional attorneys representing a child's legal rights. Although it is possible for an individual to qualify as both a GAL and CAC, someone appointed as a CAC assumes the traditional attorney role rather than the GAL role.

KRS 620.100 stipulates that any of these CACs receive compensation. The court sets this rate, not to exceed \$500. However, for cases concluded in District Court, the maximum fee is capped at \$250. Regardless of whether appointed counsel represents a child as a guardian ad-litem or court-appointed counsel, Kentucky law imposes a maximum fee per case, irrespective of the number of children involved or case duration. This fee structure may incentivize attorneys to expedite case closure. However, judicial oversight provides safeguards against potential abuses, as judges can remove counsel who fail to fulfill their duties.

Anonymous Reporting Of Child Maltreatment

The initial request asked for a review into ending anonymous intakes due to potential abuse through false reporting. DCBS indicated strong resistance to ending anonymous reports. Its staff felt that requiring personal information could scare individuals away from reporting claims. Agency staff acknowledged there could be false reports but felt required to review any report that met intake requirements. Ignoring a report because it is potentially false could result in a child being harmed through the agency's inaction.³⁶

A review of the seven states bordering Kentucky found that none required personal information for reports but two had higher penalties for false reports.^a Kentucky classifies intentionally false reports of child abuse or neglect as a Class A misdemeanor.³⁷ Tennessee classifies the offense as a Class E felony.³⁸ Virginia classifies initial offenses as a Class 1 misdemeanor and subsequent offenses as a Class 6 felony.³⁹

Appeal Processes In Child Out-Of-Home Case Cases

Once a court has made a final dispositive ruling terminating parental rights, the parents or custodian may appeal that ruling through the judicial process. Additionally, there is an administrative appeal process through which parents, custodians, and other interested parties may appeal decisions made by DCBS.

Judicial Appeal Process

Per KRS 625.110, an order for the involuntary termination of parental rights is binding on all parties. However, any aggrieved party may appeal to the Circuit Court.⁴⁰ Parties aggrieved by the Circuit Court's decision may further appeal to the Kentucky Court of Appeals and ultimately

^a The seven states reviewed were Illinois, Indiana, Missouri, Ohio, Tennessee, Virginia, and West Virginia.

to the Kentucky Supreme Court.⁴¹ A disposition order, not an adjudication order, is the final and appealable order regarding a decision of whether a child is dependent, neglected, or abused.⁴²

An appeal in a DNA case is not a new trial but rather a review of the original court's proceedings to ensure legal errors were not made that materially affected the outcome. The court must make its final ruling within 90 days after the appeal case is submitted to it. The court may order the child's removal from a custodial parent pending appeal, but only based on sworn testimony or an affidavit demonstrating that the child would be in imminent danger if returned to his or her custodian.⁴³ Section 115 of the Constitution of Kentucky unequivocally mandates that parties in civil and criminal cases (including DNA cases) have a constitutional right to one appeal.⁴⁴ The right to an appeal exists even when the Court denies a petition to terminate parental rights.⁴⁵

After review, the appellate court may affirm, reverse, or remand the case back to the lower court for further proceedings. Appellate courts should set aside the findings of the trial court only if they are clearly erroneous, meaning that the record is lacking any substantial evidence to support factual findings.⁴⁶ The court must make all legal conclusions independent of the lower court (*de novo*) and must determine whether the child is neglected and what remedial action is taken for abuse of discretion.⁴⁷

DCBS Internal Appeal Process

DCBS's internal appeal process allows for certain decisions made by the agency to be reviewed and potentially reversed or modified. This process is distinct from judicial appeals in the court system. Kentucky regulations allow for two kinds of administrative appeals: service appeals and appeals of child abuse and neglect findings.

Service Appeals. A service appeal, as outlined in 922 KAR 1:320, allows individuals to challenge decisions made by the cabinet or DCBS regarding the provision, denial, modification, suspension, or termination of services and benefits. This appeal process provides a formal review (administrative hearing) for decisions that directly affect access to these services.

Various parties—including parents, foster and adoptive parents, kinship caregivers, adults, and nonparent relatives or fictive kin caregivers—have the right to request administrative hearings for a broad range of issues. Parents can appeal decisions related to the denial, modification, suspension, or termination of child welfare services, CPS case closures, service provision failures, and the suitability of a child's return home. Foster and adoptive parents can challenge reimbursement issues, adoption assistance eligibility, information provision, and home closure decisions. Out-of-jurisdiction adoptive parents can appeal delays or denials in child placement. Kinship caregivers may contest decisions regarding financial assistance under the Kinship Care Program. Additionally, individuals can appeal ineligibility for tuition waivers, educational vouchers, and decisions related to child welfare or protection services. Lastly, anyone aggrieved by the cabinet's actions or inactions regarding services or benefits under specific statutes or regulations has the right to an administrative hearing.

The regulation outlines situations that cannot be appealed through an administrative hearing. These include matters already decided by or under judicial review, issues previously resolved

through a final administrative decision, abandoned appeals, and those not submitted on time. Appeals are also not allowed for denials of foster, adoptive, or respite care services; kinship caregiver approvals due to noncompliance or child ineligibility; assessments of caregiver fitness; removal of a foster child due to abuse or neglect; and decisions on permanency goals or sibling reunification. Additional nonappealable issues include the closure of homes without placements in 2 years, contract terminations, legally mandated adjustments (except computational errors), per diem rates, nonrecommendations for specialized training, and requests for foster care maintenance payments for children not in legal custody. Discrimination complaints can be filed with the cabinet's Office of Human Resource Management.

For issues not eligible for review through an administrative hearing, the regulation provides a mechanism for filing service complaints. Individuals can submit written complaints to the service region administrator or the Office of the Ombudsman and Administrative Review. Additionally, a child who is in cabinet custody or who has aged out within the past 12 months can file a complaint through the ombudsman regarding the denial, modification, or termination of child welfare services, case closure, or the cabinet's failure to meet mandated timeframes, complete case plans, or protect a foster child's rights.⁴⁸ On July 1, 2024 the Office of the Ombudsman was moved from the Cabinet for Health and Family Services (CHFS) so that the Ombudsman could provide improved, independent oversight and accountability for CHFS.⁴⁹

Appeal Of Child Abuse And Neglect Investigative Findings

922 KAR 1:480 establishes specific appeal processes for individuals contesting DCBS findings of child abuse or neglect.⁵⁰ The process starts with the cabinet notifying the individual of a substantiated finding and providing the DPP-155 form to request an appeal. The cabinet then decides whether the appeal is eligible for an administrative hearing. After the hearing, a recommended order is issued, and parties can file written exceptions if they disagree. Aggrieved parties can seek judicial review following the guidelines in KRS 13B.140 to 13B.160 or KRS 23A.010.

Appeals are not permissible if

- a civil court has made a final determination on the matter;
- legal proceedings on the issue are ongoing;
- the appellant has been criminally convicted of an action that forms the basis of the cabinet's finding;
- a previous appeal resulted in a final administrative decision;
- the appeal is abandoned without good cause; or
- the investigation results in an unsubstantiated finding of abuse or neglect.

Endnotes

- ¹ Kentucky. Cabinet for Health and Family Services, Department for Community Based Services. “Statewide Foster Care FACTS. Based On All Children In OOHC On June 02, 2024 Source TWS-W058,” n.d. Web.
- ² KRS 620:010.
- ³ KRS 620.040.
- ⁴ 42 USC sec. 5106g; KRS 600.040.
- ⁵ 922 KAR 1:330; DCBS SOP 2.6; DCBS SOP 2.10.
- ⁶ 42 USC sec. 5106a(b)(2)(B)(xii); KRS 620.040; 922 KAR 1:330; DCBS SOP 2.1; DCBS SOP 2.2.
- ⁷ Melanie Taylor, director, Division of Protection and Permanency, Department for Community Based Services, Cabinet for Health and Family Services. “Protection and Permanency Transmittal Letter 22-16.” Oct. 1, 2022. Web.
- ⁸ Kentucky. Cabinet for Health and Family Services, Department for Community Based Services. “SOP 2.13 Structured Decision Making Safety and Risk Assessments Reasonable Efforts.” *Standards Of Practice Online Manual*. June 5, 2023. Web.
- ⁹ Kentucky. Department of Community Based Services. *SDM Intake Policy And Procedures Manual: Adult Protective Services*, Jan. 2024.
- ¹⁰ KRS 620.060.
- ¹¹ Kentucky. Cabinet for Health and Family Services, Department for Community Based Services. “When Your Child Is Removed From Your Care: Guide For Parents.” 2018. Web.
- ¹² Sarah A. Cooper, executive director, Office of Legislative and Regulatory Affairs, Cabinet For Health And Family Services. Secure file transfer (MOVEit) to Chris Hall, May 22, 2024.
- ¹³ 42 USC 5106a(b)(2)(B)(iv); KRS 620.040(1)(b) and (2)(b); 922 KAR 1:330.
- ¹⁴ Evident Change. “Safety And Risk Assessment Training. Trainer Guide.” May 2022, pp. 9-10, 18-19, 89, 97, 121-122. Web.
- ¹⁵ Elissa Fochtman, deputy legislative director, Cabinet for Health and Family Services. Email to Chris Hall, July 23, 2024.
- ¹⁶ Ibid.
- ¹⁷ Ibid.
- ¹⁸ Elissa Fochtman, deputy legislative director, Cabinet for Health and Family Services. Email to Chris Hall, Aug. 7, 2024.
- ¹⁹ Kentucky. Cabinet for Health and Family Services, Department for Community Based Services. “When Your Child Is Removed From Your Care: Guide For Parents.” 2018. Web.
- ²⁰ KRS 620.240.
- ²¹ Ibid.
- ²² Monica Lacy, family court judge, Wolfe County, Kentucky. July 23, 2024. Interview; Susan Wesley McClure, family court judge, Hopkins County, Kentucky. July 15, 2024. Interview; Tiffany Yahr, family court judge, Fayette County, Kentucky. July 12, 2024. Interview.
- ²³ KRS 620.180(2)(a)(1).
- ²⁴ Ibid.
- ²⁵ KRS 610.125(1).
- ²⁶ KRS 625.090; Kentucky. Cabinet for Health and Family Services, Department for Community Based Services. “SOP 1.2 Reasonable Efforts.” *Standards Of Practice Online Manual*. Dec. 3, 2010. Web.
- ²⁷ KRS 610.125(5).
- ²⁸ KRS 610.125(4).
- ²⁹ Ibid.
- ³⁰ KRS 610.125(5).
- ³¹ KRS 610.125(6) to (7).
- ³² Kentucky. Legislative Research Commission. *Kentucky’s Foster Care System*, Research Report 452, June 14, 2018, pp. 5-6. Web.
- ³³ Ashley Clark, executive officer, Department of Family and Juvenile Services, Administrative Office of the Courts. Meeting of the Legislative Oversight and Investigations Committee, Frankfort, Sept. 14, 2023. Presentation.

- ³⁴ Monica Lacy, family court judge, Wolfe County, Kentucky. July 23, 2024. Interview; Susan Wesley McClure, family court judge, Hopkins County, Kentucky. July 15, 2024. Interview; Tiffany Yahr, family court judge, Fayette County, Kentucky. July 12, 2024. Interview.
- ³⁵ Ibid.
- ³⁶ Melanie Taylor, director, Division of Protection and Permanency; Laura Begin, staff assistant, and Lesa Dennis, deputy commissioner, Department for Community Based Services; Eric Friedlander, secretary, Cabinet for Health and Family Services. Oct. 17, 2022. Interview.
- ³⁷ KRS 620.050(1).
- ³⁸ Tenn. Code Ann. sec. 37-1-413.
- ³⁹ Va. Code Ann. sec. 63.2-1513.
- ⁴⁰ KRS 23A.080 and 620.155.
- ⁴¹ KRS 22A.020; Kentucky Rules of Appellate Procedure Rule 2.
- ⁴² *C.L. v. Cabinet for Health and Family Services*, 653 S.W.3d 599 (Ky. Ct. App. 2022).
- ⁴³ *Anderson v. Cabinet for Health and Family Services*, 643 S.W.3d 109 (Ky. Ct. App. 2022).
- ⁴⁴ Ky. Const. sec. 115.
- ⁴⁵ *K.R.L. v. P.A.C.*, 210 S.W.3d 183 (Ky. Ct. App. 2006).
- ⁴⁶ *Yates v. Wilson*, 339 S.W.2d 458, 464 (Ky. 1960).
- ⁴⁷ *S.G. v. Cabinet for Health and Family Services*, 652 S.W.3d 655 (Ky. Ct. App. 2022).
- ⁴⁸ 922 KAR 1:320.
- ⁴⁹ Kentucky. Auditor of Public Accounts. *Auditor Ball Welcomes Commonwealth Office Of The Ombudsman To The Auditor's Office To Provide Accountability Of The Cabinet For Health And Family Services*. July 1, 2024. Web.
- ⁵⁰ 922 KAR 1:480.