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**Statement of  
The Honorable Bill Frenzel, Chairman  
The Honorable William H. Gray, III, Vice Chairman  
Pew Commission on Children in Foster Care  
Before the Subcommittee on Human Resources  
of the House Committee on Ways and Means  
July 13, 2004**

Chairman Herger, Mr. Cardin and Members of the Subcommittee, thank you for the opportunity to appear before you today. I am testifying on behalf of the Pew Commission on Children in Foster Care. In particular, I am joined in my testimony by the Commission's Vice Chair, former Congressman Bill Gray, whose schedule did not permit him to attend today.

On behalf of the Commission, we thank the Members of the Subcommittee for their continued commitment to improving outcomes for children in foster care. We also thank the staff, both majority and minority, for their dedicated work on this issue.

The Pew Commission on Children in Foster Care shares this Committee's desire to protect children from abuse and neglect, and ensure that they all have safe, permanent families. Efforts to help children who have suffered abuse and neglect have traditionally benefited from strong bipartisan support, and today's hearing embodies the ongoing efforts of leaders from both parties and all branches and levels of government to ensure that the nation does a better job of caring for children in foster care.

Supported by a grant from The Pew Charitable Trusts, the Commission examined two key aspects of the foster care system: Federal child welfare financing and court oversight of child welfare cases. Our charge was to develop far-reaching, yet achievable recommendations to improve outcomes for children in the foster care system. On May 18 of this year, the Commission released its final report and recommendations. Our full report, "Fostering the Future: Safety, Permanence and Well-Being for Children in Foster Care" and all supporting materials can be found on the Commission's web site at [www.pewfostercare.org](http://www.pewfostercare.org).

Throughout an intensive year of work, we were guided by the principle that every child needs a safe, permanent family. This was the starting point for the Pew Commission and a steady compass throughout our deliberations. We revisited this principle at every meeting to ensure

that our final recommendations were totally focused on producing better outcomes for children.

Federal financing and court oversight are at the root of many of the problems that frustrate child welfare administrators, case workers and judges as they seek to move children quickly from foster care to safe, permanent homes – or to avoid the need to put them in foster care in the first place. Indeed, reform in these two areas could pave the way for significant improvements in how the nation cares for children who have been abused or neglected.

As a Commission, we sought to craft practical recommendations that could win the support of Congress, the Administration, State officials, State court leadership, and the children and families involved with the child welfare system. We are encouraged by the positive responses we have received thus far from these key audiences, and we are honored to have the opportunity to share our recommendations with this Subcommittee today.

### **Financing Child Welfare**

As you know, current Federal funding mechanisms for child welfare encourage an over-reliance on foster care, at the expense of other services to keep families safely together and move children swiftly and safely from foster care to permanent families. Toward this end, the Commission proposes a fundamental restructuring of existing financial resources, as well as targeted new investments that will provide real returns to our children and our nation. We call for strong incentives for States to focus on permanency, a secure and reliable Federal-State funding partnership, greater flexibility for States in how they can use Federal dollars to respond to the needs of children and families, and greater accountability for improving outcomes for children.

Mr. Chairman, we greatly appreciated the opportunity to review your very thoughtful discussion draft. Many of its provisions are consistent with the recommendations of the Pew Commission. Your draft is a very positive step forward, and we commend you for that. We also thank you for this opportunity to suggest some changes and additional provisions that reflect our recommendations and that we believe would enhance your legislative efforts to improve outcomes for children.

Let me begin with the Commission's financing recommendations.

We call for preserving both foster care maintenance and adoption assistance as an uncapped Federal entitlement to the States – but with some improvements, based on our strong conviction that *all* children who are abused or neglected deserve the joint protection of their State and the Federal government. Specifically, we call for eliminating income requirements for Federal foster care and adoption assistance – or “de-linking” from the 1996 AFDC income standards – and for treating Indian tribes and U.S. Territories as States when it comes to administering child welfare programs

for their children. We were pleased that you include both of these provisions in your draft legislation.

We also called for the de-link to be cost-neutral to both the Federal government and the States and to be structured in such a way that it avoids creating fiscal winners and losers among the States.

Our recommendation of cost neutrality in this provision was one of many difficult choices we had to make as a Commission. We were very cognizant of the Federal deficit and of the difficult budgetary climate in the States. We worried about creating the potential for States to supplant existing State foster care dollars with new Federal dollars, in essence shifting costs from the States to the Federal government without any net increase in child welfare funding. In the end, we decided that we wanted new investments in child welfare to go to preventing the need to place children in foster care and to services that will help children leave foster care quickly and safely.

Your draft currently caps foster care maintenance payments. We recommend maintaining that entitlement without a cap. The members of the Pew Commission feel strongly that protecting children who cannot stay safely in their own homes is a shared Federal-State responsibility – and that the Federal government should maintain its responsibility, especially if the need for foster care increases dramatically for reasons beyond the control of State policymakers, as was the case in the early 1990s.

Mr. Chairman, we recognize that you designate the TANF Contingency Fund as a safety net for States that experience severe increases in foster care. In a capped system, a contingency fund is essential. But in our deliberations, we concluded that an uncapped system was a better approach, in part because the Contingency Fund is hard for States to access in a timely manner and may not contain sufficient funds to respond to a nationwide surge in the need for foster care.

Nevertheless, we share your goal of reducing the over-reliance on foster care that the current funding structure encourages – we just differ in how to do so. The Pew Commission recommends options and incentives that together provide very powerful encouragement to the States to seek out safe alternatives to foster care. These include an additional route to permanency through subsidized guardianship, increased flexibility in how States can use Federal child welfare dollars to meet children's needs, the opportunity for States that reduce their foster care use to reinvest the Federal dollars saved in services to children, and the provision of bonuses to States that increase all forms of safe permanence. The experience of the very successful Adoption Incentive Program clearly demonstrates that, when the Federal government provides incentives to States to achieve certain goals, States will respond.

Mr. Chairman, you include two of these incentives in your discussion draft – creating a flexible Safe Children, Strong Families Grant and allowing States to reinvest unused foster care funds in that grant. We hope that you will also include our other

two provisions as well, so that States have every opportunity and every reason to put their energy into reducing the need for foster care.

In particular, we strongly urge you to include our recommendation to provide Federal guardianship assistance to children who leave foster care to live with a permanent legal guardian. This would provide an additional route to permanence for some children in foster care. In developing this recommendation, we were particularly sensitive that it not adversely affect adoptions from foster care. We were therefore careful to draw “bright lines” that clearly define when a court could determine that guardianship would be appropriate for an individual child. Specifically, we say that guardianship assistance should be available only when all of the following circumstances exist:

- When a child has been removed from his or her home and the State child welfare agency has responsibility for placement and care of the child;
- When a child has been under the care of the State agency for a given period of time, to be determined by the State;
- When a court has explicitly determined that neither reunification nor adoption are viable permanency options for a particular child; and
- When a strong attachment exists between a child and a potential guardian who is committed to caring permanently for the child.

We further recommend that Federal requirements related to guardianship assistance be consistent with Federal requirements related to foster care and adoption. For example, States would have to conduct a criminal record check before a guardianship is approved.

Under the Title IV-E waiver program, several States have obtained waivers to test subsidized guardianship programs as part of an overall effort to increase permanence for children involved in the child welfare system. One of these States, Illinois, has completed an extensive evaluation of its guardianship program. The evaluation found that over five years, subsidized guardianship provided permanence for more than 6,800 children who had been in foster care, and that discussing all permanency options helped to increase the number of adoptions. In fact, during that same period, Illinois experienced increases in both guardianships and adoptions from foster care.

We were pleased that your draft bill includes a flexible grant that combines Title IV-E Administration and Training and Title IV-B and includes guaranteed funding increases every year. This is consistent with the Commission’s recommended Safe Children, Strong Families Grant. States need both flexibility and additional funds to build a continuum of child welfare services. They also need the assurance that those funds will grow at a predictable rate. The Commission recommends that these funds grow according to an index – specifically, 2 percent plus the CPI. Your draft legislation calls for annual growth of \$200 million for 10 years.

We further recommend that, when States safely reduce the use of foster care, they be permitted to reinvest the Federal dollars they would have expended into their Safe Children, Strong Families Grant – so long as they also reinvest the State dollars that are saved from reducing foster care. This provides another incentive for States to focus on permanence and provides an additional potential source of funding for the Safe Children, Strong Families Grant. Your draft bill includes a similar reinvestment provision. Because we recommend that foster care maintenance remain an uncapped entitlement, we would not allow these funds to be reserved for foster care maintenance in later years.

To promote innovation and improved practice, we call for new incentives for improvements in the child welfare workforce and for promoting all types of safe permanency. For States that meet certain workforce targets, the Federal government would provide a one percentage point increase in the match rate for the Safe Children, Strong Families Grant. The enhanced match rate would provide an incentive for States to continue to make investments in two critical areas: (1) improving the competence of the overall workforce and (2) lowering caseloads. If we are going to demand better outcomes from child welfare systems, then we must be prepared to invest in improving the quality of the child welfare workforce. Mr. Chairman, we urge you to consider adding these workforce incentives to your bill.

To help children move out of foster care and into safe, permanent families as quickly as possible, we also recommend that Congress create a new Permanence Incentive modeled on the successful Adoption Incentives Program recently reauthorized by this Subcommittee. Under our plan, States would receive incentive payments for increasing the percentage of children who leave foster care through one of three paths to safe permanence: adoption, guardianship, or reunification. To be eligible for any payment, States would have to maintain or increase its rates in all three areas.

Finally, we call for stronger accountability through improvements to the current Child and Family Services Reviews process, which we hope you will include in your bill. Specifically, we recommend that the CFSR's include more and better measures of child well-being and use longitudinal data to yield more accurate assessments of performance over time. We call on Congress to direct the National Academy of Sciences to convene an expert panel to recommend the best outcomes and measures to use in data collection. In addition, we recommend that the U.S. Department of Health and Human Services direct a portion of any penalties resulting from the review process into a State's Program Improvement Plan.

### **Strengthening Courts**

Let me turn now to the courts. The Commission recognized that when effective financing reforms are coupled with important court reforms, the result is better outcomes for children. Mr. Chairman, we were delighted to see provisions in your draft that reflect this same understanding.

For years, the courts have been the unseen partners in child welfare – yet they are vested with enormous responsibility. No child enters or leaves foster care without a judge’s decision. Courts are responsible for ensuring that public officials meet their legal responsibilities to keep children safe, secure permanent homes for them, and promote their well-being when they are under the State’s protection.

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

First, we call on every dependency court to adopt performance measures and use this information to improve their oversight of children in foster care. When judges can track and analyze their caseloads, they can identify and deal with sources of delay that keep children in foster care longer than may be necessary. They can also identify groups of children in their caseload who may require special attention. Case tracking also provides critical information to Chief Justices as they assess the needs and overall performance of the dependency courts. We built our recommendation here on substantial work done by the American Bar Association’s Center on Children and the Law, the National Center for State Courts, and the National Council of Juvenile and Family Court Judges.

Your discussion draft includes provisions related to the Court Improvement Program. In particular, it includes tracking court performance measures as an important component of the program, which we applaud. It also includes guaranteed funding for the Court Improvement Program at a higher level than is currently projected – about \$7 million in new funds every year. We recommended \$10 million in the first year specifically to jump-start tracking of court performance measures and such sums as necessary in future years. We commend you for guaranteeing Court Improvement Program funding for 10 years, and hope you will consider increasing the funding level and designating funds specifically for tracking court performance measures. The success of the Court Improvement Program is strong evidence of the value of investing in improvements in the nation’s dependency courts.

Second, although they share responsibility for these children, courts and agencies often don’t do a good job of communicating or working together. We recommend incentives and requirements for effective collaboration between courts and child welfare agencies on behalf of children in foster care. These include new requirements that States and courts describe this collaboration in their State plans and Court Improvement Program plans, as well as joint training and the establishment of State foster care commissions that can promote this collaboration. Your discussion draft includes requirements for State plans, and we urge you to add court-agency collaboration to that list. We also urge you to consider additional funding to promote joint training by courts and child welfare agencies. The Pew Commission

recommended an additional \$10 million to courts, both for training court personnel and for joint training of court and child welfare staff.

Third, we recommend several measures to give children and parents a stronger voice in court and more effective representation. For example, we call on Congress to appropriate \$5 million for expansion of the Court Appointed Special Advocates program. We also call on State courts to require training for attorneys practicing in this field and for courts to be organized in a way that permits and encourages direct participation by children in proceedings that affect their lives.

## **Conclusion**

Children deserve more from our child welfare system than they are getting now. For this to happen, those on the front lines of care – caseworkers, foster parents, judges and others – need the support necessary to do their jobs more effectively. And the public needs to know that, with this support, every part of the chain of care – from the Federal government to the States to the courts – can reasonably be held to high standards of accountability for the well-being of children.

The Commission's firm resolve is to ensure that all of our recommendations – taken together – promote greater safety, permanence, and well-being for abused and neglected children, while also ensuring greater public accountability for what happens to every child whose life we touch. Our proposals are the result of hard choices and difficult compromises. This Subcommittee faces similar challenges. We hope our work can provide common ground for your discussions going forward.

In closing, we would like to thank the Subcommittee again for the opportunity to discuss our recommendations. On behalf of the Pew Commission on Children in Foster Care, we look forward to working with every Member of this Subcommittee and their staff to implement reforms to improve outcomes for children in foster care.