Remarks of Chief Justice Maura D. Corrigan
House/Senate Judiciary Committee
Tuesday, June 22, 2004
9 a.m. / 1 p.m.

First of all, I thank the Committee for making time to hear us today. With me is my colleague whom all of you know, Justice Elizabeth Weaver. She will shortly give you an overview of our proposed changes to the Juvenile Code. What I would like to do first is to, very briefly, set the stage for you and explain why we need these statutory revisions. First of all, we seek these statutory amendments to avoid federal penalties in the form of lost federal aid. But our paramount consideration is giving foster children safe, permanent homes, whether with their biological parents or with others.

When it comes to improving our foster care system and the judicial branch's role in that system, we've had a series of thumps on the head, the most recent of which is the wave of federal audits that our state has undergone.

Beginning in 1999, Michigan underwent an HHS sponsored Child and Family Services review, which was directed primarily at the Family Independence Agency but also criticized the work of our trial courts. One of CFS' findings was that Michigan courts are not consistently holding permanency planning hearings at least once every 12

months. In addition, when courts did hold such hearings, the focus was not always on advancing permanency. In other words, some courts were not moving foster children toward permanent homes. Our statutes have more stringent timelines than the federal Adoption and Safe Families Act requires, and our state wasn't meeting our own statutory guidelines. In effect, we were penalizing ourselves. Recently, federal authorities approved a program improvement plan that resulted from that audit, so the pressure is on our state now to comply – or face $2.5 million in federal penalties.

Our state just completed – and failed -- another audit, this time having to do with the Social Security Act Title IV-E funding for children in foster care. I strongly disagree with the audit's conclusions. To me, it seems that the federal government is coming into our state and telling state judges how to word court orders, and telling us to do so in ways that elevate form over substance. We have appealed from the results of that audit. But in anticipation of future audits, we need to make sure that Michigan's calculation of statutory time frames tracks ASFA's requirements. Not only do we need to follow the federal timelines, but we also have to make sure that the event that triggers those timelines is the same one for both state and federal law. And, if we fail next year's

follow-up audit by the same percentage, our state will be penalized about $37 million in lost federal aid, in addition to the penalties from the Child and Family Services review.

To say all this is not to suggest that Michigan's foster care system is somehow uniquely flawed. I had the good fortune to serve on the Pew Commission on Children in Foster Care, which released its final report last month. We recognized that foster care is a national problem. But, like the threat of death, the possibility of paying huge penalties tends to focus the mind wonderfully.

We in the judicial branch have taken a hard look at the way we handle cases involving children in foster care. We have implemented several reforms. Both the Supreme Court and the Court of Appeals have made dependency cases, which is to say disputes over termination of parental rights and custody, a top priority. Both courts tag these cases as soon as they come in. The chief judge of the Court of Appeals and I personally monitor each such case in our respective courts every week. We've reduced unnecessary appellate delays in these cases by shortening some court filing deadlines and, in the Supreme Court, doing away with delayed appeals in dependency cases.

Out studies have found that a number of lawyer guardians ad litem, or LGALs, were not meeting with the children they were appointed to represent. In response, our State Court Administrative Office instituted a new requirement for LGALs: in order to be compensated for a court hearing, the LGAL must also submit an affidavit that he or she has met with the child. Since that requirement went into effect, I've heard from many attorneys who do this work, and they have made valid points. The current requirement is that the attorney meets face-to-face with the child before every hearing. I do recognize that attorneys who work in this field often take on many cases for low pay. It's also true that the current visitation requirement can be extremely burdensome, especially where the child lives out of state or at a significant distance from the attorney. Good lawyers are leaving this practice area because of the low pay and difficult conditions, and we can ill afford to lose them from the ranks of those who represent children.

It was with this background that the State Court Administrative Office convened a work group of judges, FIA officials, attorneys, social workers, and representatives of the Governor's Task Force for Children's Justice. Their

work addresses the concerns I have raised and others, and does so very effectively.

I will defer to Justice Weaver to give you the highlights of the proposed legislation. Again, thank you for hearing us.

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