

Arkansas Court Improvement (CIP) Reassessment Report

Arkansas Supreme Court Ad Hoc Committee
On Foster Care and Adoption and the
CIP Reassessment Team

October 2005

Arkansas Supreme Court Ad Hoc Committee on Foster Care and Adoption

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TABLE OF CONTENTS

Introduction

Acknowledgements v
 Arkansas’ Original Assessment, Report, and Progress 1
 Arkansas’ Reassessment and Methodology 2
 Overview of Arkansas’s Dependency-Neglect Procedure 8

Dependency Neglect Proceedings

Probable Cause Hearings 11
 Adjudication/Disposition Hearings 18
 No Reunification Hearings 28
 Six-Month Review Hearings 33
 Permanency Planning Hearings 40
 Termination of Parental Rights (TPR) Hearings 48
 Post TPR Reviews 24
 Appeals 59
 Other Court Issues
 Case Plans 61
 Foster Parents and Relative Participation 68
 Indian Child Welfare Act (ICWA) 73

Representation and Advocacy

Representation of Children – Attorneys 77
 Advocacy for Children – CASA 89
 Representation of Parents 95
 Representation of the State Agency 104

Case Flow Management

Scheduling Hearings 114
 Sufficiency and Timeliness of Notice to Parties 114
 Continuances 115
 Timeliness of Orders 118
 Mediation 119

Training

..... 123

Permanency Outcomes

..... 131

Appendices

Appendix A 2002 CIP Assessment of Progress

Appendix B: Survey Data

Appendix C: Court Observation Instruments

Appendix D: File Review Instruments

Appendix E: Interview Instruments

Appendix F: Supreme Court Administrative Order No.15

Appendix G: Methods of Monitoring and Instruments for AAL Program

Appendix H: AOC Dependency-Neglect Database Reporting Forms

Appendix I: AAL Manual – Table of Contents

Appendix J: CIP Conference Agendas

Appendix K: Act 1191 of 2005

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 - Hon. David Goodson, Circuit Judge, Second Judicial Circuit
 - Hon. Rita Gruber, Circuit Judge, Sixth Judicial Circuit
 - Hon. Jim Hudson, Circuit Judge, Eighth South Judicial Circuit
 - Hon. Gary Isbell, Circuit Judge, Fourteenth Judicial Circuit
 - Hon. Kirk Johnson, Circuit Judge, Eighth South Judicial Circuit
 - Hon. Baird Kinney, Circuit Judge, First Judicial Circuit
 - Hon. Mike Medlock, Circuit Judge, Twenty-second Judicial Circuit
 - Hon. Joyce Williams Warren, Circuit Judge, Sixth Judicial Circuit
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Introduction

Arkansas= Original Assessment, CIP Report, and Progress

In October 1994, Arkansas= Administrative Office of the Courts (AOC) applied for grant funds to participate in the Court Improvement Program. In December 1994, our state was awarded grant funds to conduct the assessment phase. By *per curium* opinion dated January 23, 1995, the Arkansas Supreme Court appointed an Ad Hoc Committee on Foster Care and Adoption, hereinafter *Athe Committee,@* to oversee the Court Improvement Program (CIP). Committee members were appointed to represent particular entities within the system, which included child welfare, the judiciary, attorneys, and advocacy organizations. In addition, many of the individuals selected had particular knowledge or experience with the foster care system through their work or through personal experiences in the system as foster and adoptive parents.

The Supreme Court charged the Committee with:

- (1) Guiding the assessment process
- (2) Evaluating the results of the assessment
- (3) Recommending areas for improvement
- (4) Overseeing the implementation of recommendations

It is important to note that the purpose of the federal project and the state program under the grant is to review the courts= process in handling dependency-neglect and foster care cases. However, separating the effects on children and families by the Department of Human Services (DHS) and the courts is often difficult. It is critical that DHS has enough caseworkers to provide necessary information to the courts and is able to provide necessary services to children and families for the courts to be able to finalize safe and permanent placements for children.

The AOC contracted with Arkansas Advocates for Children & Families in 1995-1996 to conduct an assessment of how Arkansas= juvenile courts handled dependency-neglect cases by using written surveys, conducting site visits for the purposes of court observations, personal interviews, case file reviews, and using other sources of information.

In February 1997, the Committee issued its report with major findings and recommendations regarding representation, legislation, and training. In August 2002, the Supreme Court Ad Hoc Committee on Foster Care & Adoption conducted an Assessment of Progress of the findings and recommendations resulting from the original CIP Assessment.

The Committee determined that the CIP had completed almost all of the recommendations which could be met solely through improvement of the courts' process. Significant progress was noted in the areas of representation, legislation, and training. Progress concerning these areas will be discussed in this report in the applicable sections. A copy of the 2002 Assessment of Progress is in Appendix A.

Arkansas' Reassessment and Methodology

Requirements of the reassessment were to examine the current strengths and challenges of the dependency-neglect court proceedings, building on the results of the original assessment and any evaluation of subsequent court improvement efforts. In conducting the reassessment, CIP formed a Reassessment Team to look at how Arkansas' juvenile division courts handle dependency-neglect cases, including the progress the state has made since the original assessment.

In September 2003, the Reassessment Team, along with personnel from the National Child Welfare Resource Center for Legal and Judicial Issues, held a planning retreat to develop a reassessment plan, including the roles and responsibilities of the participants in the reassessment. At this meeting the team developed the blueprint for the reassessment in which it was established that the focus of the reassessment would be on achieving permanency for children. The team wanted to address the effects of court improvements and, more importantly, whether they have made a difference for children by allowing them to be placed in safe and permanent homes in a timely manner.

The reassessment also examined the effectiveness of our state courts in carrying out related responsibilities for the protection of children and our courts' compliance with the Adoption and Safe Families Act (ASFA), the Indian Child Welfare Act (ICWA), and the Child Abuse Prevention and Treatment Act (CAPTA).

To evaluate the extent of conformity of our state courts' rules and practices with recommendations of national organizations concerned with the permanent placement of children, we looked to several sources for guidelines, including:

- *Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases* published by the National Council of Juvenile and Family Court Judges (NCJFCJ)
- *Adoption And Permanency Guidelines: Improving Court Practice in Child Abuse and Neglect Cases* published by the NCJFCJ
- *Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases* approved by the American Bar Association (ABA)
- *Recommendations for Representation of Children in Abuse and Neglect Cases* published by the National Association for Counsel of Children (NACC)
- The National Court Appointed Special Advocate Association (NCASAA) standards
- *Representing Parents in Child Protection Cases* published by the ABA and the National Legal Resource Center for Child Advocacy and Protection

- *Standards of Practice for Lawyers Representing Child Welfare Agencies* published by the ABA

In March 2004, the Reassessment Team met to develop instruments including surveys, court observation and file review forms. Interview and focus group questions were also developed. Survey, court observation and file review instruments were tested prior to being finalized by members of the Reassessment Team. The National Child Welfare Resource Center for Legal and Judicial Issues provided input and guidance in the development of these instruments.

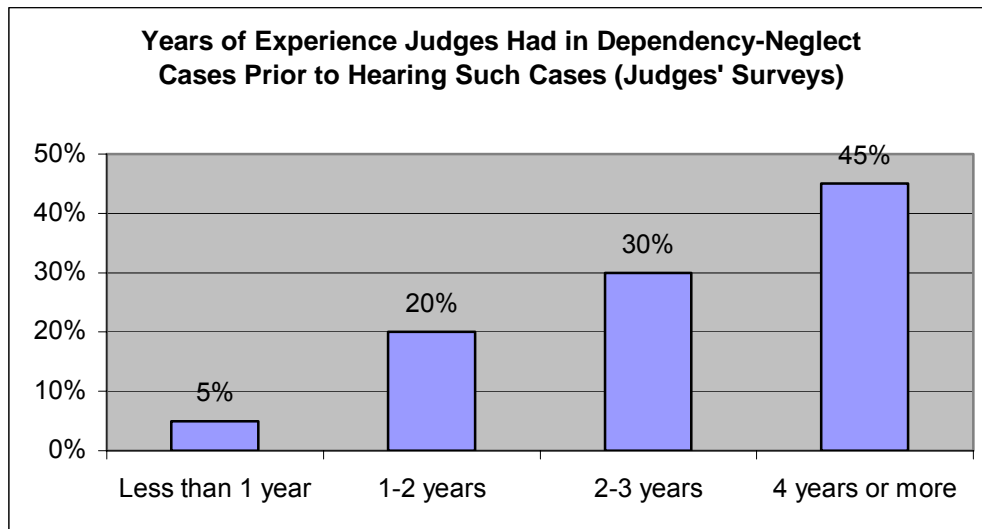
In conducting the reassessment, a significant source of information was the state-wide surveys of judges, attorneys, DCFS caseworkers and supervisors, CASA volunteers and staff, and foster parents. The Reassessment Team also selected twelve court sites to conduct site reviews using a CIP Team of attorneys, DCFS staff, CASA representatives and child advocates. At each court site, team members observed court, reviewed files and interviewed participants in the hearings. Focus groups were conducted with foster parents during their state-wide conference, agency attorneys, and attorneys ad litem. Other sources of data included the AOC dependency-neglect database, DHS statewide statistical records, OCC statistical records, and 2000 U.S. Census records. The American Bar Association (ABA) Center on Children and the Law provided assistance with data analysis.

Surveys: Surveys were mailed to judges, attorneys, CASA staff and volunteers, and foster parents. Surveys were also designed and disseminated to attorneys and DCFS caseworkers and supervisors for internet response. Response rates to the surveys were as follows:

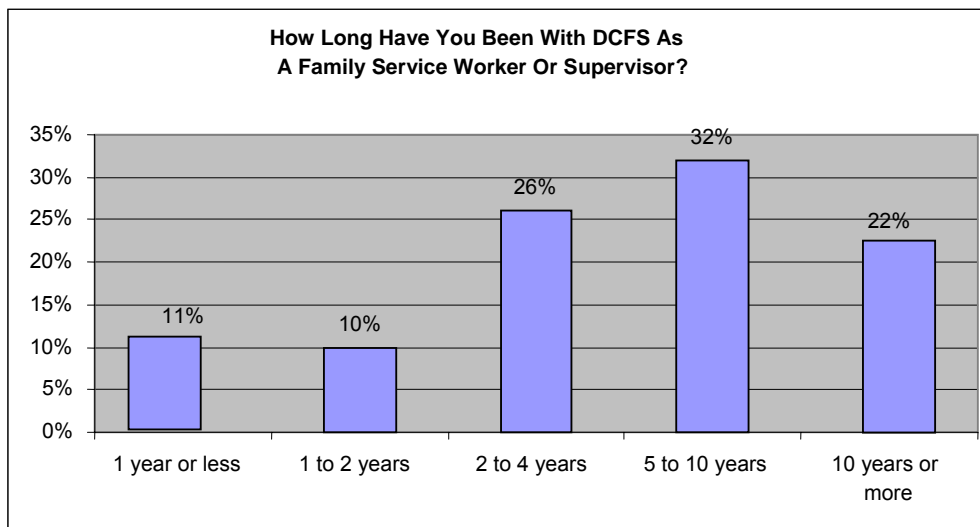
Number of Survey Recipients	Number of Responses
38 Judges (all who hear juvenile cases)	38 responses (100%)
264 Attorneys	151 responses (57%)
500 DCFS caseworkers and supervisors (all)	430 responses (86%)
1031 Foster parents	398 responses (39%)
43 CASA staff	22 responses (51%)
591 CASA volunteers	197 responses (33%)

It should be noted that the final judge’s survey was received after the statistical analysis. It was reviewed to assure that responses from that survey would not significantly change the data. Charts regarding judges’ surveys were compiled from 37 responses.

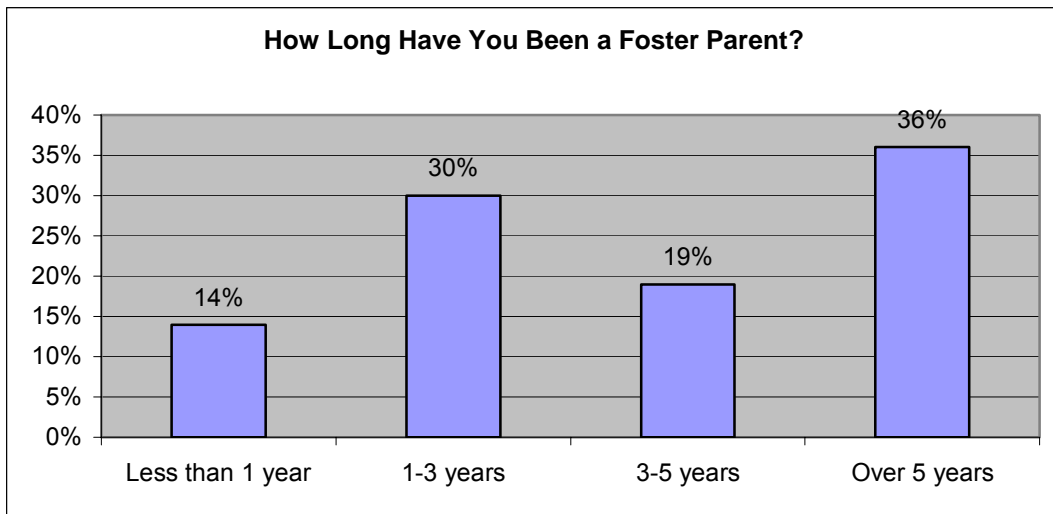
The surveys made inquiry as to the experience of the respondents. Judges who reported having prior experience were asked to indicate the number of years they had heard dependency neglect cases. Forty-five percent of them reported more than 4 years, 30% reported 2-3 years, 20% reported 1-2 years, and 5% of them reported less than 1 year.



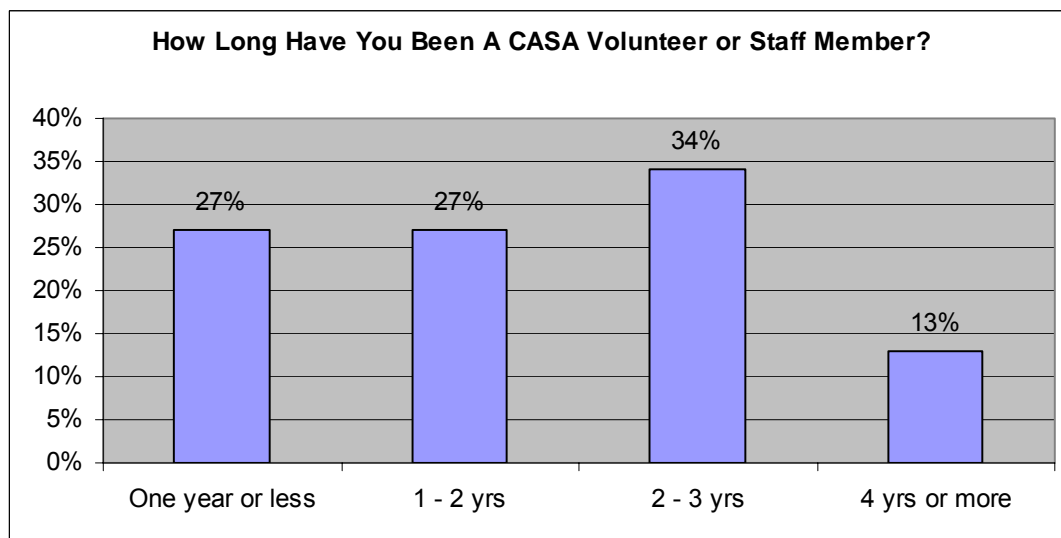
DCFS staff was asked about how long they had been a DCFS family service worker or supervisor. The responses showed that the majority (80%) had been on the job for over 2 years. Only 11% had been on the job for less than 1 year.



Foster parents were asked to provide information about the number of years they had been foster parents. Interestingly, the majority (54%) reported over three years with 36% over five years. Thirty percent of the foster parents reported that they had been foster parents from 1-3 years. A small minority of respondents (only 14%) were new foster parents with less than 1 year of experience.



When asked about the length of time they had been CASA volunteers or staff members, 27% of the CASA volunteers and staff responded less than one year and 47% reported more than two years.



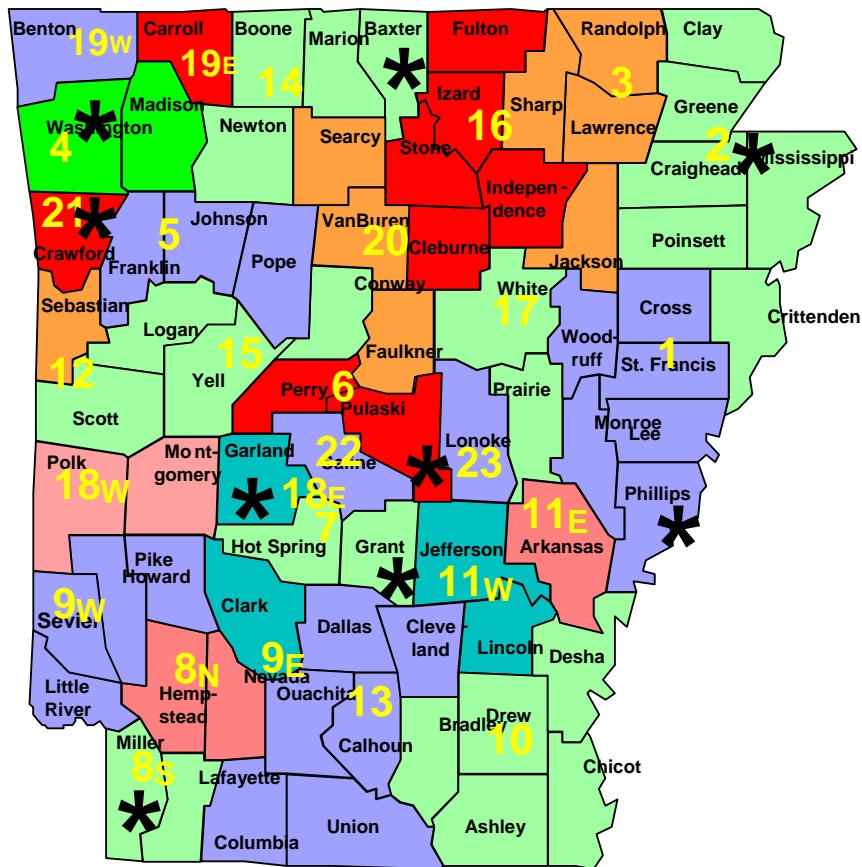
Many survey questions asked for a percentage answer such as “How often does...?” Those percentage responses were categorized into answers of *never*, *occasionally*, *often*, *usually*, and *always*, using the following scale:

- 0% = *never*
- 1% - 33% = *occasionally*
- 34% - 66% = *often*
- 67% - 99% = *usually*
- 100% = *always*

This scale is used throughout the report both in text and in tables. This is the same scale that was used throughout the original assessment, which has enabled the team to make useful comparisons. The current survey data is attached in Appendix B.

Court site visits: In conducting the reassessment, the team visited 12 court sites for court observation, personal interviews, and case file reviews. The sites were selected for their diversity in terms of the number of dependency-neglect cases, rates of child abuse, the number of foster care placements, and population under the age of eighteen. Judges were notified about the selection of their counties and were asked, first, if they were willing to participate, and second, to help reviewers select dates when a number of dependency-neglect cases were likely to be heard. A team approach was used for the site visits, with interviews and file reviews being conducted during the day of court observation. Additional days were needed at most site visits to complete the file reviews.

ARKANSAS JUDICIAL CIRCUITS



*** CIP Court Site Visits**

Court observations: Two observers spent at least one full day in each court, recording on an instrument the activities that occurred during dependency-neglect proceedings. Observers talked with parties and participants, when needed, to verify observations. They also reviewed all court files and exhibits of the cases observed. One member of the CIP Team attended all hearings to ensure consistency. Copies of Court Observation Instruments are in Appendix C.

Type of Hearing	Number of Hearings Observed
Probable Cause	9
Adjudication	19
Six-Month Review	32
Permanency Planning	26
Post-TPR Review	19
Total Hearings Observed	105

Interviews: During site visits, reviewers interviewed 102 individuals including the following:

People Interviewed	Number Interviewed
Attorneys	46
DCFS Caseworkers and Supervisors	36
Judges	11
CASA volunteers	10
Foster Parents	9
Total Number Interviewed	112

The CIP team worked in pairs to conduct interviews. Verification of the responses was established by sending the interviewees a copy of their responses for their review and correction. All people were interviewed individually with the assurance that their responses would remain anonymous in the report. DCFS supervisors and other court personnel helped assure availability of the interviewees. Copies of the Interview Instruments are in Appendix D.

Case File Reviews: During site visits, legal case files were reviewed. Cases were selected on the criterion that the first permanency planning hearing was held in 2003, and data were compiled on 185 cases. Copies of the File Review Instruments are in Appendix E.

Focus Groups: In addition to the site visit interviews, focus groups were conducted with foster parents and CASA volunteers during their state-wide conferences, with agency attorneys, and with AALs. The team attempted to conduct focus groups in five parts of the state for biological parents. Despite arrangements for transportation and dinner, attendance was poor.

Other Research Methods: In addition to surveys and information collected during site visits, the Reassessment Team used information from

- AOC dependency-neglect database
- Department of Human Services
- State-wide statistical records, and
- 2000 census data from the U.S. Census Bureau

Timeline information from the AOC dependency-neglect database which is collected from attorney ad litem reports was sent to the judges for their correction and/or confirmation to ensure accuracy.

Findings and Recommendations: The Supreme Court Ad Hoc Committee and the CIP Reassessment Team attended a three-day retreat in June 2005 to make initial findings and recommendations concerning the CIP Reassessment. The Committee decided to finalize its findings and recommendations in August. The Committee also planned for report distribution in the fall to include a press conference, a legislative committee hearing, and follow-up materials distributed throughout the year.

Overview of Arkansas' Dependency Neglect Procedure

Children in Arkansas who are neglected, abused, or abandoned are called Adependent-neglected.@ When courts remove dependent-neglected children from the custody of their parents, custody may be placed with the Division of Children and Family Services (DCFS) of the Department of Human Services (DHS), another licensed agency, a relative, or another individual. When a child is placed in the custody of the Department of Human Services, he or she is usually placed in a foster home.

Approximately 98% of all dependency-neglect cases in Arkansas begin with an emergency removal. Within 72 hours of the emergency removal, the agency must file a petition seeking ex parte emergency custody of the child. Within five business days after an ex parte emergency order, the court must conduct a probable cause hearing to determine if justification existed to remove the child and whether probable cause continues to keep the child out of the home.

Within 30 days of the probable cause hearing (with an additional 30 day continuance allowable for good cause shown) an adjudication hearing is conducted at which the petitioner must prove its case by a preponderance of the evidence. If a child is adjudicated dependent-neglected, a disposition hearing follows. The disposition hearing may be held immediately following or concurrent with the adjudication hearing, but in any event shall be held no more than 14 days following the adjudication. In practice, the disposition hearing is usually held immediately following the adjudication hearing, and the two would appear to the casual observer to be one hearing. In this report, this will be referred to as an adjudication/disposition hearing.

While a child is in an out-of-home placement, most cases start with the goal of providing services to correct the conditions that cause removal and to reunify the family. However, the court may, upon the request of the agency, attorney ad litem, or the court itself hold a no-reunification hearing to determine whether or not DHS shall provide services to reunite a child with his/her family.

When a dependent-neglected child is placed out-of-home, review hearings must be conducted every six months, with the first hearing within six months of the date the child was initially removed from the home. During the case, courts review a case plan which sets out a goal for the child and a plan for reaching that goal. The goal may change, for example, from seeking to return the child home to another permanent placement.

If a child remains in an out-of-home placement for twelve months, a permanency planning hearing is required to determine a permanent goal for the child. Permanency planning hearings are also required after a juvenile has been in an out-of-home placement for 15 of the previous 22 months and no later than 30 days after the court files a no-reunification services order. At that time, or before, a decision may be made to pursue a termination of parental rights so that the state may seek an adoptive home for the child. The Juvenile Code sets out statutory grounds for termination of parental rights. Ultimately a child in the dependency-neglect system may be returned to the home of his or her parent(s), may have the parents' rights terminated, or may remain the legal child of his or her parents but reside someplace else permanently. The goal is permanence for the child, and in Arkansas, the statutory standard is always the best interest of the child. If the goal after termination of parental rights is adoption, state law requires a review hearing every three months; otherwise, the cases continue to have six-month reviews. The court is required to conduct annual permanency planning hearings as long as the child remains in an out-of-home placement.

Dependency-Neglect Proceedings Flow Chart inserted here on final report.

Dependency-Neglect Proceedings

Probable Cause Hearings

🕒 *Recommended time to be allocated for emergency hearings: 60 minutes.*

Key decisions for court to make at an emergency hearing:

- ↪ *Shall the child be returned home immediately or kept in foster care before trial;*
- ↪ *What services will allow the child to remain safely at home;*
- ↪ *Will the parties voluntarily agree to participate in such services;*
- ↪ *Has the agency made reasonable efforts to avoid protective placement of the child;*
- ↪ *Are responsible relatives or other responsible adults available;*
- ↪ *Is the placement proposed by the agency the least disruptive and most family-like setting that meets the needs of the child;*
- ↪ *Will implementation of the service plan and the child=s continued well-being be monitored on an ongoing basis; and*
- ↪ *Provide further directions to the parties such as those governing future parental conduct and agency services to the child and parent agreed to prior to adjudication.*

If child is placed outside the home:

- ↪ *Describe who is to have custody and where child is to be placed;*
- ↪ *Specify why continuation of child in the home would be contrary to the child=s welfare (as required to be eligible for federal matching funds);*
- ↪ *Specify whether reasonable efforts have been made to prevent placement (including a brief description of what services, if any, were provided and why placement is necessary); and*
- ↪ *Specify the terms of visitation.*

🕒 *Set date and time of next hearing.*

Resource Guidelines pp.37-44

Probable Cause Hearings B Arkansas Law

Notice: An ex parte order of emergency removal must include notice to parent or guardian of the:

- Right to hearing and procedure for obtaining hearing (must be held within 5 business days of issuance of order);
- Right to representation by counsel;
- Right to appointed counsel if indigent and procedure for obtaining appointed counsel; and
- Location and telephone number of court and procedure for obtaining a hearing. **Ark. Code Ann. §9-27-314(b)(1).**

Reasonable Efforts - Initial Order: In the initial order of removal the Court must find:

- Whether it is contrary for the juvenile to remain at home;
- Whether removal and the reasons for the removal of the juvenile are necessary to protect the health and safety of the juvenile; and
- Whether removal is in the juvenile's best interest. **Ark. Code Ann. §9-27-328(b)(1).**

Time Constraints:

🕒 Probable Cause Hearing must be within 5 days of issuance of ex parte order. **Ark. Code Ann. § 9-27-315(a).**

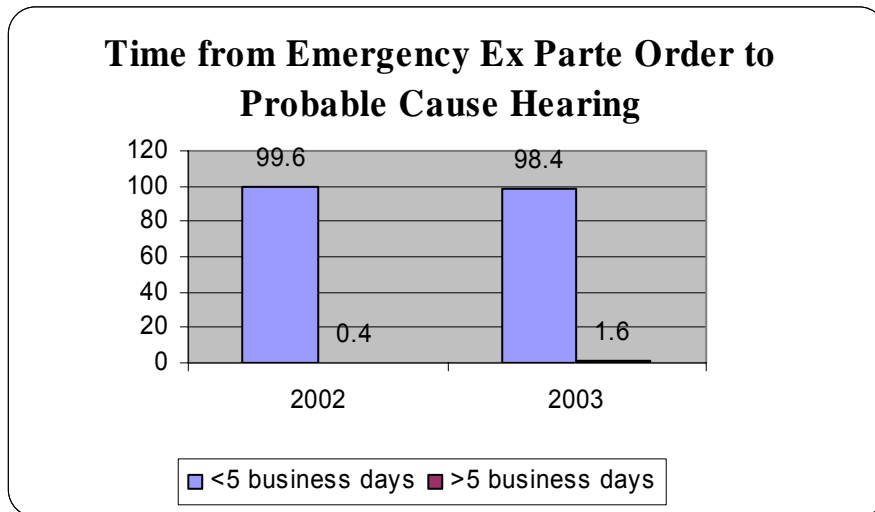
🕒 At a probable cause hearing, the court shall set the date and time for the adjudication to be held within 30 days of the probable cause hearing, and may be continued for no more than 30 days following the first 30 days on the motion of any party for good cause shown. **Ark. Code Ann. § 9-27-315(d)(1).**

Purpose:

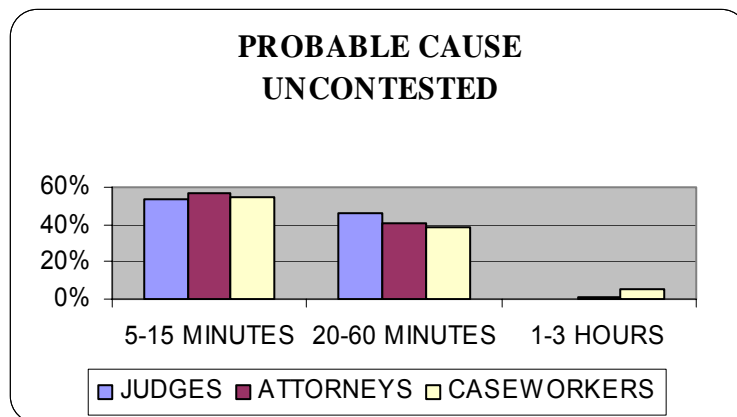
- To determine whether probable cause existed to protect the juvenile and to determine whether probable cause still exists to protect the juvenile.
- The court may consider issues of custody and delivery of services and may enter orders related to those issues. **Ark. Code Ann. § 9-27-315(a).**

Probable Cause Hearings B State Practice

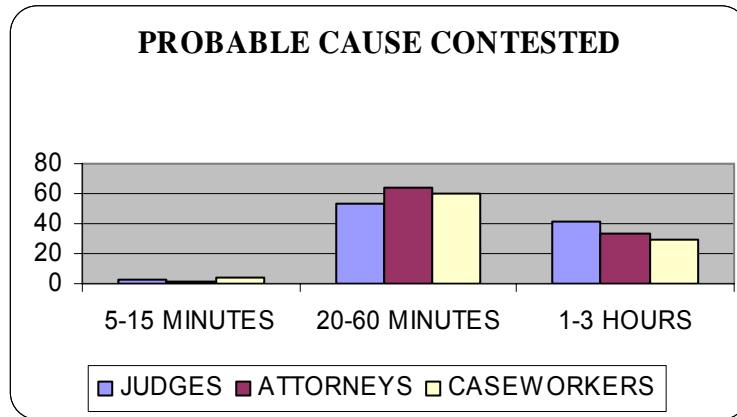
Timely Hearings: Data from the AOC dependency-neglect database revealed that in 2002 probable cause hearings were conducted timely in 99.6% of the cases filed and in 2003 there was a slight drop in the timeliness of hearings to 98.4%.



Hearing Time: Survey requested responses as to how long probable cause hearings typically lasted. Judges reported that uncontested probable cause hearings typically lasted 5-15 minutes (54%) and 20-60 minutes (46%). Attorneys reported that uncontested probable cause hearings typically lasted 5-15 minutes (57%) and 20-60 minutes (41%). Caseworkers reported that uncontested probable cause hearings typically lasted 5-15 minutes (55%) and 20-60 minutes (39%).



Judges reported that contested probable cause hearings typically lasted 5-15 minutes (3%), 20-60 minutes (54%), and 1-3 hours (41%). Attorneys reported that contested probable cause hearings typically lasted 5-15 minutes (1%), 20-60 minutes (64%), and 1-3 hours (33%). Caseworkers reported that contested probable cause hearings typically lasted 5-15 minutes (4%), 20-60 minutes (60%), and 1 to 3 hours (30%).



During court observations, nine probable cause hearings were observed. The average time for a probable cause hearing was 43 minutes, with the longest hearing at 82 minutes and the shortest hearing lasting 25 minutes. The nine probable cause hearings were observed in the following judicial circuits.

Judicial Circuit	Number of Probable Cause Hearings Observed
2 nd – Division 7	2
2 nd – Division 10	1
6th – Division 8	1
8th South	1
14th	2
18th East	1
21st	1
Total Observed	9

Six of these hearings were closed and three were open to the public. There was no request for a continuance in any of these hearings. Only in one hearing were the parties identified and sworn. In six of these hearings witnesses were identified and sworn.

In two of the probable cause hearings, the judge fully explained the purpose of the hearing to the parties and in two other hearings judges did so in a cursory manner. Only in one hearing did the judge inquire about Native American heritage of the parties.

During the hearings, the issue of paternity was discussed in five hearings, and in three hearings, the judge issued an order concerning paternity. In addition, the issue of child support was mentioned during two of these hearings and in one hearing the judge issued an order for child support.

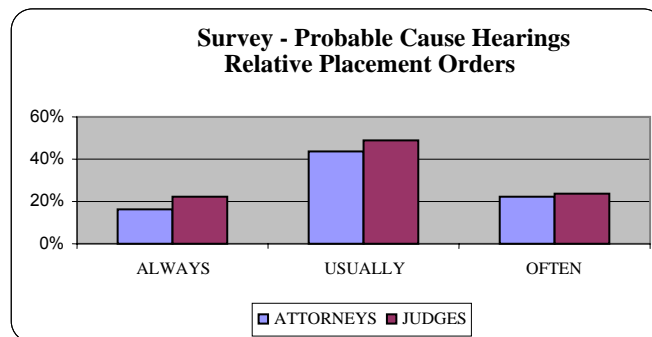
Notice: In surveys, 74% of the judges reported that they *always* and 24% of the judges reported that they *usually* ensure that the parties are identified at the probable cause hearing. Sixty percent of the attorneys reported that this is *always* done on the record.

Court observations revealed that mothers were present in all the hearings and represented by counsel. Fathers were present in four of the hearings and were represented by counsel in all four hearings. Also, a putative father attended a probable cause hearing. In these hearings, no parent counsel represented both parents at the probable cause hearing. Children were present in five of the hearings, and in one hearing, an infant was excused by the court. Judges inquired about proper notice to necessary parties who were not present in eight of the nine hearings, including putative fathers for multiple children. Five foster parents and three relatives were also present in the probable cause hearings.

Probable Cause Findings: In the surveys, judges and attorneys reported that findings of probable cause are made. Judges and attorneys both reported that the vast majority of the cases include a finding that probable cause continues to exist and that the child cannot be safely returned home at this hearing.

Court observations revealed that three out of nine of the probable cause hearings were contested, and in four cases the parents admitted to the petition. Witnesses were called to testify in six cases, and information was simply provided to the court by attorneys and caseworkers in four cases. The court found probable cause in seven of the observed cases, and the judge made detailed findings in four of the cases.

Relative placements are considered by the court when children cannot return home safely, according to the surveys. Attorneys reported that judges ordered relative placements to be explored at this stage of the hearing *always* (16%), *usually* (44%), and *often* (22%). Judges reported in the surveys that they order relative placements to be explored if a child cannot be returned home at the probable cause hearing *always* (22%), *usually* (49%), and *often* (24%).



Court observation revealed that, in six of the nine cases, information was provided to the court about the child’s placement. In five hearings, witnesses were called to testify about the child’s placement, and in one case, information was provided to the court about the child’s placement off the record. In two hearings, children were placed with siblings in only one case.

In surveys, attorneys reported that judges order visitation *always* (12%) and *usually* (59%), totaling 71%. Judges survey responses were similar in that they reported ordering visitation at probable cause *always* (16%) and *usually* (51%), totaling 67%. Court observation revealed that information about visitation was an issue in seven of the nine cases observed, with witnesses called to testify on the record in three hearings and information provided to the court in four hearings by parties and attorneys, but not by sworn testimony.

In the surveys, judges reported that they make orders concerning services for the children *always* (27%) and *usually* (41%), and services for the parent are ordered *always* (17%) and *usually* (34%). Attorneys reported that services for children are ordered *always* (26%) and *usually* (41%), and services for parents are *always* (17%) and *usually* (41%) ordered at this stage of the proceeding.

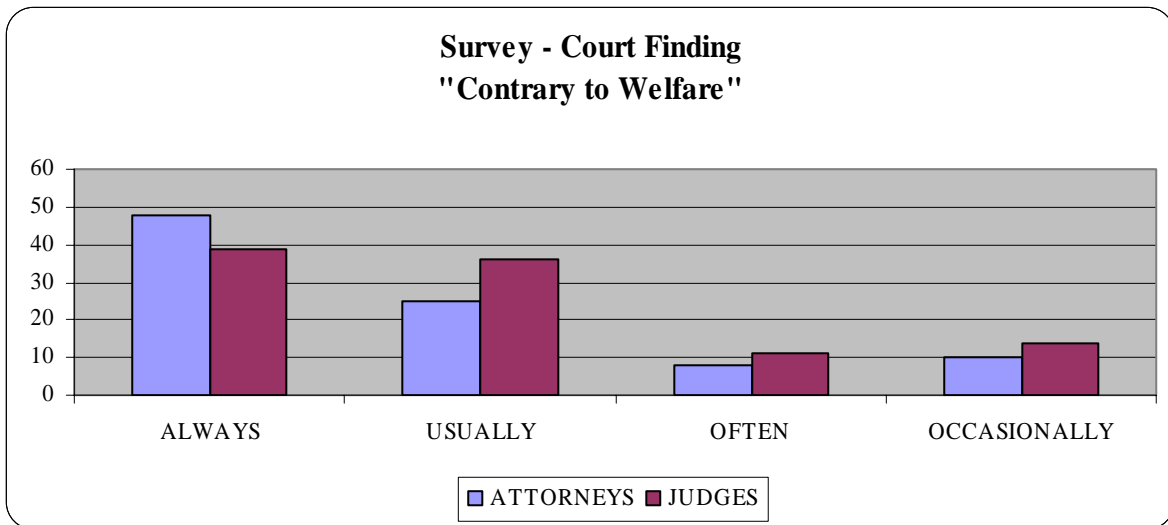
In court observation, witnesses testified about services in four cases and information was provided to the court in two cases by parties and attorneys not sworn. The need for services was discussed in five of the cases observed. The court ordered drug and alcohol assessments in four cases, psychological evaluations in three cases, and mental health evaluations in one case.

In addition to assessments and evaluations, courts observed ordered the following types of services:

- Parenting classes
- Drug Treatment
- Counseling
- Employment services
- Housing assistance
- Medical services
- Home studies on relatives

In one case observed, an AAL brought to a judge’s attention that a child’s eye glasses had been broken in her current placement and she was having difficulty seeing her school work. As a result, the judge ordered glasses for the child.

Reasonable Efforts: In surveys, attorneys reported that the court *always* (48%), *usually* (25%), *often* (8%), and *occasionally* (10%) makes a “contrary to the welfare” determination in the first court order authorizing the child’s removal. Judges reported that they *always* (39%) make a “contrary to the welfare” determination in the first court order authorizing the child’s removal. Judges reported that they *usually* (36%), *often* (11%) and *occasionally* (14%) make this finding in the first order of removal. In 98% of the dependency-neglect cases, the first order is the emergency ex parte order which precedes the probable cause hearing.



In surveys, when making “contrary to the welfare” findings, 54% of the judges reported that they *always* relied on the affidavit or other accompanying documents and 27% relied on this method *usually*. Only 14% of the judges reported that they *always* entered written findings that describe or cross reference to a description of the child’s individual circumstances and 31% said they *never* made such findings.

Most files did not have the emergency ex parte order in the court file at the time of the probable cause hearing for court observers to review the sufficiency of the emergency ex parte orders. When the ex parte emergency order was available in the file, the orders generally referred to the affidavit and did not provide any detail. Court observations revealed that judges made reasonable efforts findings on the record in four of the nine hearings observed.

Adjudication/Disposition Hearings

🕒 *Recommended time for adjudication and disposition hearing: a minimum of 30 minutes*

Key Decisions the Court Should Make at the Adjudication/Disposition Hearing:

- ↔ *Which allegations of the petition have been proved or admitted, if any;*
- ↔ *Whether there is a legal basis for continued court and agency intervention;*
- ↔ *Whether reasonable efforts have been made to prevent the need for placement or to safely reunify the family;*
- ↔ *What is the appropriate statutory disposition for the case and long-term plan for the child;*
- ↔ *Where the child should be placed;*
- ↔ *Does the agency=s proposed case plan reasonably address the problems and needs of the child and parent;*
- ↔ *The long-term plan for the child (e.g., remain in parent=s home, reunification with a parent or relative, permanent placement of child with a relative, placement of the child in a permanent adoption home);*
- ↔ *When required by state law and based upon evidence before the court, approve, disapprove or modify the agency=s proposed case plan;*
- ↔ *Determine whether there is a plan for monitoring the implementation of the case plan, and assuring the child=s continued well-being;*
- ↔ *Specify the terms of parental visitation;*
- ↔ *Specify parental responsibilities for child support;*
- ↔ *Determine when the case needs to be reviewed; and*
- ↔ *Set date and time of next hearing, if needed.*

Resource Guidelines pp. 49-52; 58-64

Adjudication/Disposition Hearings B Arkansas Law

Time Constraints:

🕒 The adjudication shall be held within 30 days of the probable cause hearing, and may be continued for no more than 30 days following the first 30 days on the motion of any party for good cause shown. **Ark. Code Ann. § 9-27-315(d)(1); §9-27-327 (B)(i).**

🕒 The disposition hearing may be held immediately following or concurrently with the adjudication hearing, but no later than 14 days after the adjudication hearing. **Ark. Code Ann. §9-27-329(c).**

Purpose:

- The Adjudication Hearing is to determine whether the allegations in a petition are substantiated by the proof. **Ark. Code Ann. §9-27-327(a).**
- Case plans are to be developed and filed with the court no later than 30 days after the juvenile is taken into care. DHS shall complete all parts of the case plan for which information is available prior to the adjudication hearing. **Ark. Code Ann. §9-27-402(a)(2).**
- The case plan is subject to court approval upon review by the court. **Ark. Code Ann. §9-27-402(a)(2).**

If a juvenile is found to be dependent-neglected, the circuit court may enter an order making any of the following dispositions:

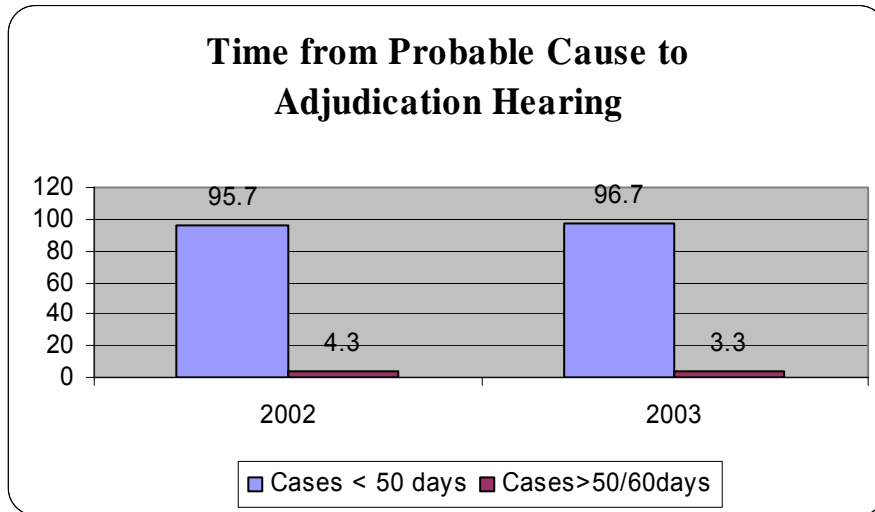
- Order family services;
- Transfer custody of the juvenile to the Department of Human Services, to another licensed agency responsible for the care of juveniles, or to a relative or other individual;
- Grant permanent custody to an individual upon proof that the parent or guardian from whom the juvenile has been removed has not complied with the orders of the court or upon proof that no reunification services should be required to reunite the juvenile with his or her parent or parents and that no further services or periodic reviews are required;
- Order that the parent, both parents, or the guardian of the juvenile attend a court-ordered parental responsibility training program, if available (may require proof of completion within a specified time period and payment of a fee covering the cost of the training program);
- Any custody order shall supersede an existing court order of custody and shall remain in full force and effect until a subsequent order of custody is entered by a court of competent jurisdiction; and
- Provide that any violation of its orders shall subject the parent, both parents, the custodian, or guardian to contempt sanctions. **Ark. Code Ann. §9-27-327(a).**

Reasonable Efforts: Within 60 days of removal the court must find:

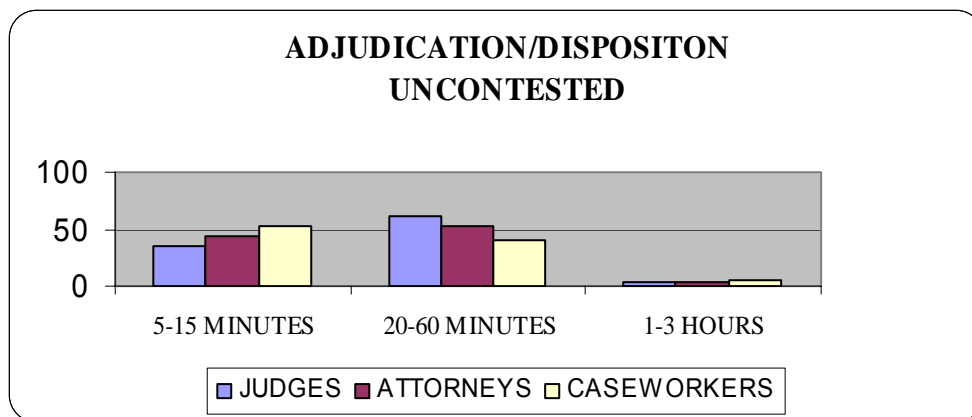
- Which family services were made available to the family before removal of the juvenile;
- What efforts were made to provide those family services relevant to the needs of the family before the removal of the juvenile, taking into consideration whether or not the juvenile could remain safely in the home while family services were provided;
- Why efforts to provide the family services did not prevent removal; and
- Whether efforts made to prevent the removal of the juvenile were reasonable based on the needs of the family and the juvenile. **Ark. Code Ann. §9-27-328(b)(1).**

Adjudication/Disposition Hearings B State Practice

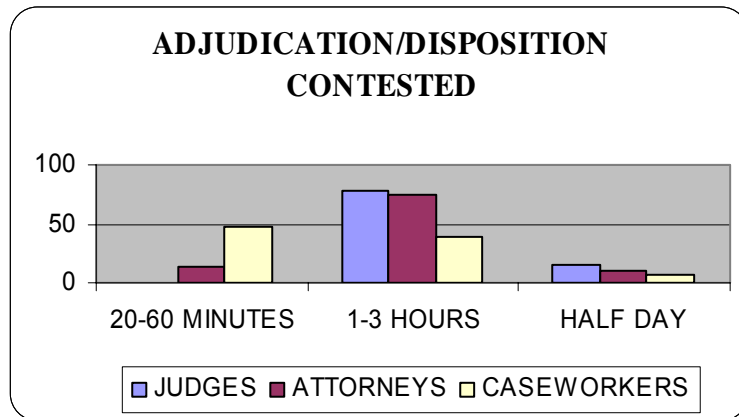
Timely Hearings: Data from the AOC dependency-neglect database revealed that in 2002, adjudication hearings were conducted within the statutory time frame in 95.7% of cases and there was improvement in 2003 with compliance at 96.7%.



Hearing Time: Most courts conduct the disposition hearing immediately following the adjudication hearing. Survey responses revealed how long adjudication/disposition hearings typically lasted. Judges reported that uncontested adjudication hearings typically lasted 5-15 minutes (35%) and 20-60 minutes (62%). Attorneys reported that they typically lasted 5-15 minutes (44%) and 20-60 minutes (53%), while caseworkers reported 5-15 minutes (53%) and 20-60 minutes (40%).



No judges reported that contested adjudication hearings typically lasted 20-60 minutes, but five percent indicated that such hearings lasted 5-15 minutes. Seventy-eight percent of the judges reported that contested adjudication hearings typically lasted 1-3 hours and 16% reported that they last half a day. Attorneys reported that contested adjudication hearings typically lasted 20-60 minutes (13%), 1-3 hours (74%), and half a day (11%). Caseworkers reported that contested adjudication hearings typically lasted 20-60 minutes (48%), 1-3 hours (39%), and half a day (6%).



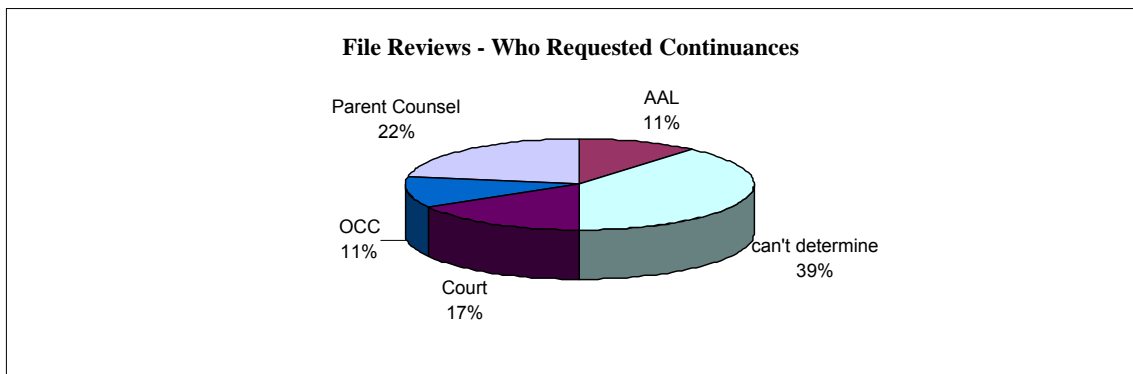
During court observations, 19 adjudication/dispositions were observed. The average time for an adjudication/disposition hearing was 60 minutes, with the longest hearing lasting three hours and the shortest hearing lasting three minutes because a party sought and was granted a continuance.

Judicial Circuit	Number of Adjudication/Disposition Hearings Observed
2 nd Division 10	2
2 nd Division 7	4
4 th	3
6 th Division 8	2
6 th Division 10	2
6 th Division 11	1
7 th	1
8 th South	1
14 th	1
18 th East	2
Total	19

Continuances were requested and granted in six of the 19 adjudication/disposition hearings observed and five of the six were in the same judicial circuit. Reasons for continuances were:

- Lack of counsel for parents
- Mother checked into drug rehab and not available
- Judge inquired and realized mother had not been properly served
- DHS witness (supervisor) not available to testify
- Requests from all parties due to multiple witnesses and insufficient time scheduled for hearing

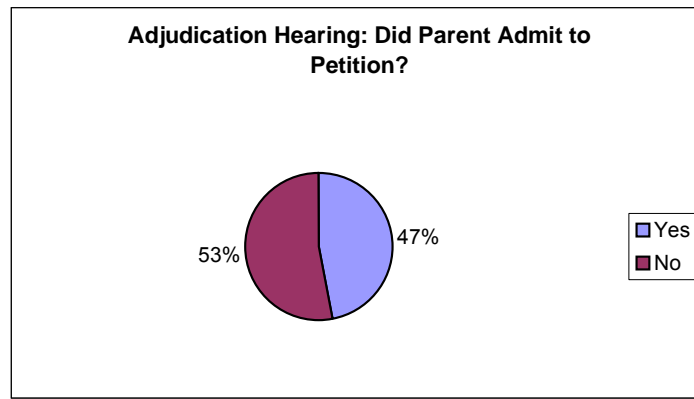
Of 185 case files reviewed, 18 continuances were requested and granted at adjudication/disposition. It could not be determined by the file review who requested 39% of the 18 continuances. Parent counsel or parents requested four (22%) continuances, the court had three (17%), and the OCC and AAL each requested 2 (11%).



Court observations revealed that mothers were present and represented by counsel in 13 of the 19 hearings that went forward. Fathers were present in eight of the hearings and were represented by counsel in six hearings. Four of the attorneys (one of whom was privately retained and not qualified pursuant to Supreme Court Administrative Order No. 15) represented both the mother and father at this hearing. Children were present in only four of the hearings. Judges inquired about notice in seven hearings, when parties were not present. In one hearing, a judge's inquiry revealed that the mother had not been properly served, the agency had served the grandmother and a continuance had to be granted. Four foster parents and nine relatives were also present at the 19 hearings.

Parties were identified and sworn on the record in five hearings observed and witnesses were sworn in and called to testify in only eight of the hearings. Judges explained the purpose of the hearings clearly and in detail in one hearing and in passing in 13 hearings. In one hearing, the judge inquired about Native American heritage.

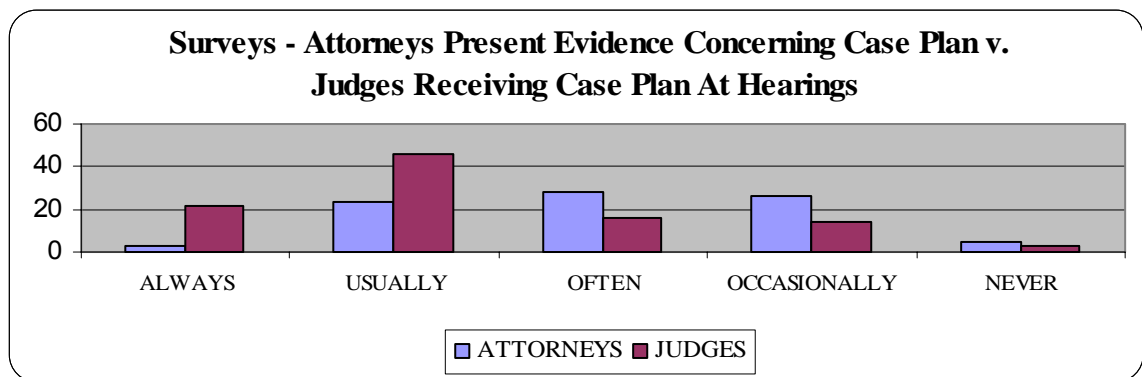
Six of the 13 observed adjudications were contested and the parent admitted to the petition in six cases. In one case, a mother admitted to the finding of dependency-neglect but not to the specifics alleged in the petition or affidavit.



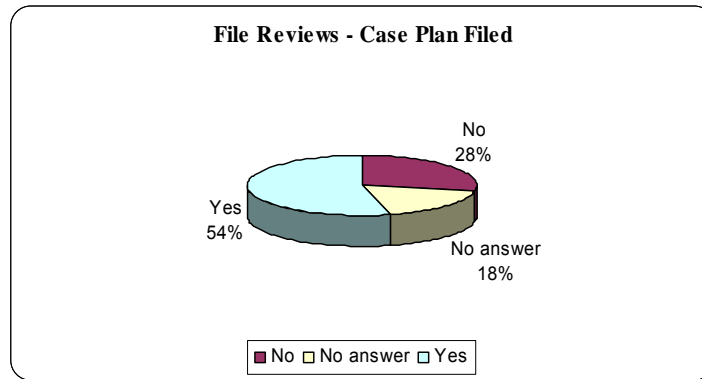
In the 13 adjudications observed, the court found dependency-neglect in 12 cases and dismissed one case in which the child was returned home. Of the 12 cases that were adjudicated, the majority of the courts made detailed findings as to the basis of the dependency-neglect, and only one court made a finding based on the stipulated facts in the affidavit.

Case plans: In the 1997 CIP Assessment Report, the Committee found that case plans were not developed and filed with the court before adjudication. Recommendations were made to change the law to require case plans to be filed with the court within 30 days of removal so that a court could review and approve the case plan goal at the adjudication/disposition hearing. This law was changed in 1997.

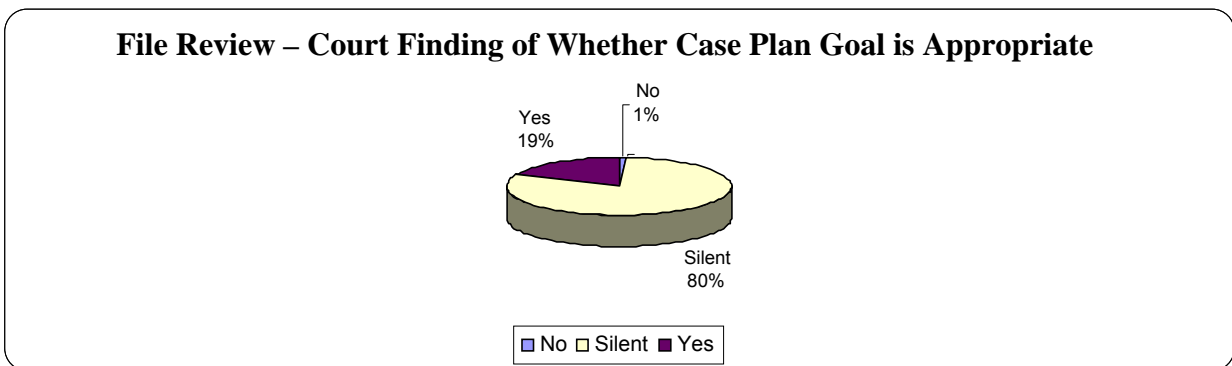
Despite the change in the law, attorneys reported that they present evidence concerning case plans at the adjudication/disposition hearings *always* (3%), *usually* (23%), *often* (28%), *occasionally* (26%), and *never* (5%). Judges reported in surveys that they *always* (22%), *usually* (46%), *often* (16%), *occasionally* (14%), and *never* (3%) are presented with a case plan at the adjudication/disposition hearing.



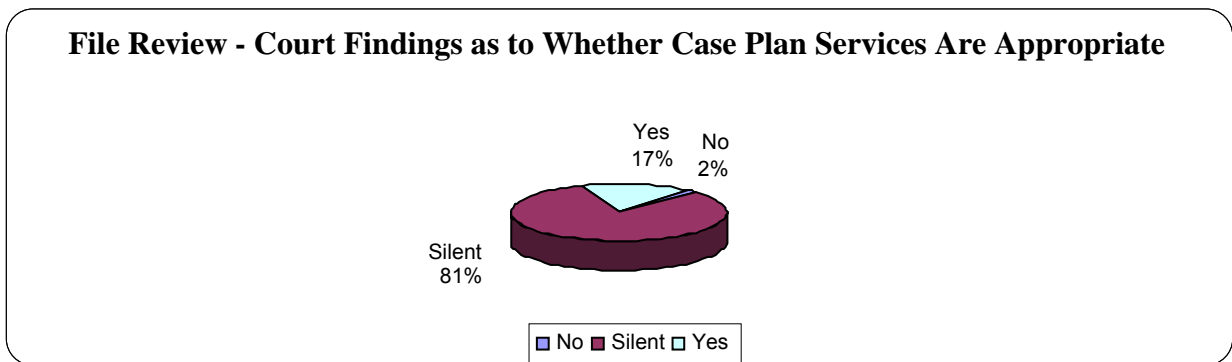
Court observations revealed that case plans with a goal of reunification were presented to the court in only eight of the 13 hearings. Case plans were found in only 54% of the case files reviewed.



When presented with a case plan, judges reported in surveys that they *always* (3%), *usually* (86%) or *often* (11%) find the case plan goal appropriate. However, file reviews revealed that court orders only noted that the case plan goal was appropriate in 19% of the case files reviewed. Court orders found the goal not appropriate in only two (1%) of the cases reviewed, and the orders were silent as to the appropriateness of the goal in the vast majority of orders reviewed.

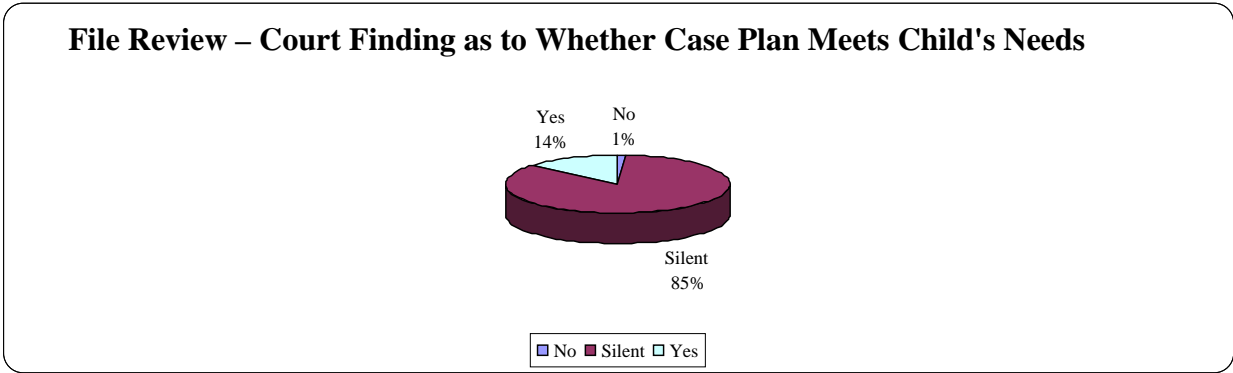


In file reviews, court orders found the case plan services appropriate in 17% of the cases and not appropriate in 2% of the cases. The court orders were silent as to the issue of case plan services in over 81% of the cases.



Judges also reported in surveys that they *always* (24%), *usually* (51%) or *often* (16%) find the case plan sufficient to meet the juvenile’s needs. However, file reviews found court orders

virtually silent on this issue. Court orders reflected that the case plan met the child’s needs in only 14% of the cases reviewed and that it did not in 1% of the cases reviewed. The other 85% of the orders were silent on whether the case plan was designed to meet the child’s needs.



Court Orders: Alternative placements are considered by the court when children cannot safely return home according to the surveys. Attorneys reported that they *usually* (23%), *often* (46%) or *occasionally* (26%) present evidence on alternative placements at the adjudication/disposition hearing. Judges reported that they order relative placements to be explored if a child cannot be returned home at the adjudication/disposition hearing *always* (24%), *usually* (45%), and *often* (22%).

Courts order a number of services for children and families to try and remedy the conditions that caused removal and to provide for the child. The surveys inquired as to what types of services attorneys requested and what types of services courts ordered at the adjudication/disposition phase of the proceeding.

Attorneys reported requesting counseling services *often* (34%) or *usually* (47%) and judges reported ordering these services *often* (44%) and *usually* (41%). Family therapy is requested by attorneys *often* (43%) or *usually* (35%) and judges indicated ordering this type of service *often* (51%) and *usually* (46%).

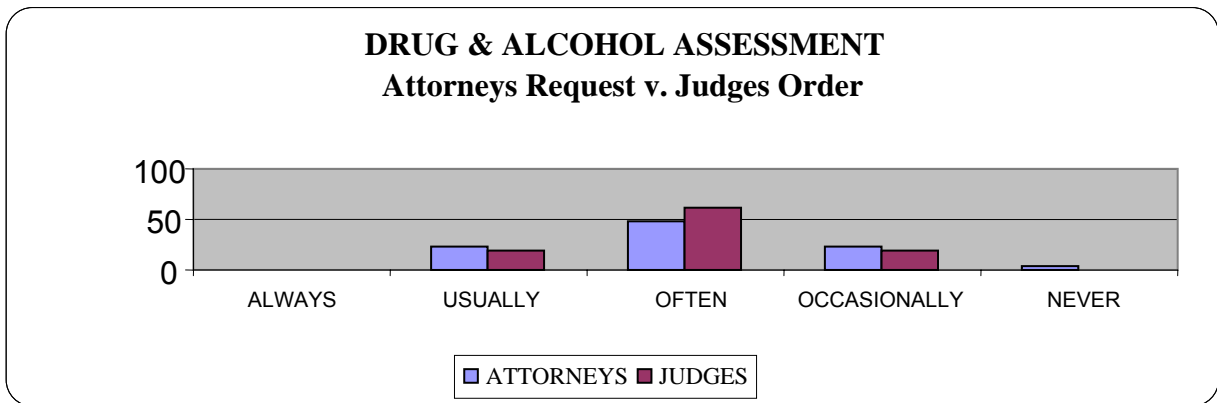
In efforts to reunify the family and to strengthen parenting skills, attorneys reported requesting parenting classes *often* (21%), *usually* (48%), and *always* (9%). Judges reported ordering these classes *often* (38%), *usually* (43%), and *always* (11%). Judges also noted that it is important that parenting classes are appropriate to address the needs of parents and that the parents demonstrate that they have gained the necessary skills to appropriately parent their children.

To help determine mental health issues affecting a child and his or her family, attorneys are requesting mental health evaluations *occasionally* (34%), *often* (39%) and *usually* (30%). Judges reported ordering evaluations *occasionally* (22%), *often* (49%), and *usually* (30%). When mental health issues are identified, more in-depth services are requested by attorneys *occasionally* (32%), *often* (41%), and *usually* (25%). Judges reported ordering these services *occasionally* (24%), *often* (51%), and *usually* (24%). Several judges noted a correlation between types of mental illness of parents and the types of abuse they see in their courts. For example, severe depression is more common in neglect cases. Courts are seeing an increase in the number of parents with a dual diagnosis of mental illness and drug and alcohol addictions.

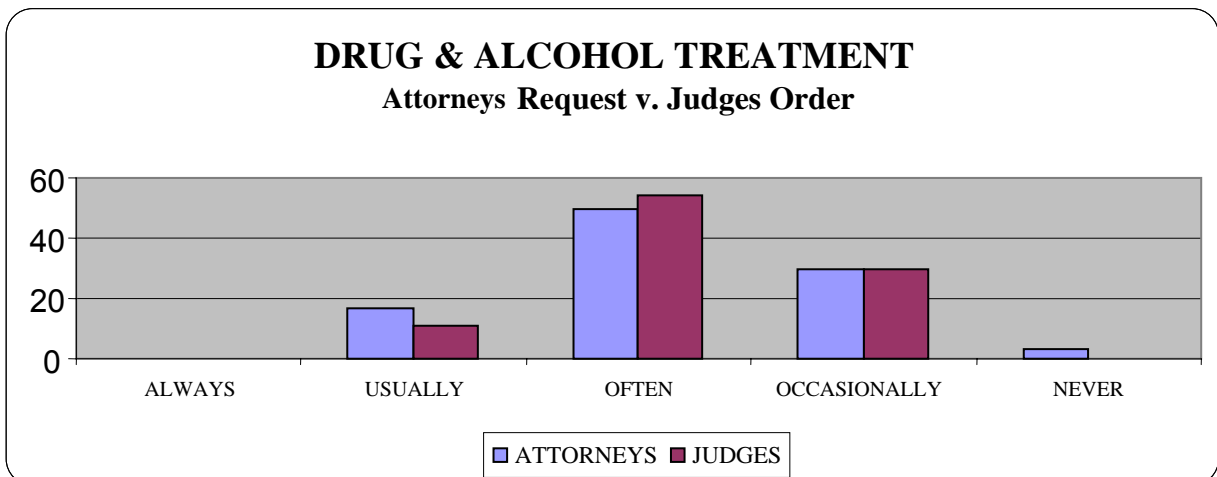
Legal Exhibit 70

According to DCFS' 2004 Annual Report Card, 1,373 children entered foster care due to substance abuse. Substance abuse was ranked as the second highest reason for children entering care, and neglect was ranked first. However, many judges noted that neglect often involves underlying substance abuse and mental illness issues.

In surveys, attorneys reported requesting drug and alcohol assessments *always* (0%), *usually* (24%), *often* (48%), *occasionally* (24%), and *never* (4%). Judges reported ordering such assessments *always* (0%), *usually* (19%), *often* (62%), *occasionally* (19%), and *never* (0%). Some judges order assessments at the probable cause hearing.



Attorneys reported that they requested treatment *always* (0%), *usually* (17%), *often* (50%), *occasionally* (30%), and *never* (3%). Judges reported that they ordered treatment *always* (5%), *usually* (11%), *often* (54%), *occasionally* (30%), and *never* (0%). In interviews, judges, attorneys, and CASA volunteers all expressed concern about the lack of availability for drug and alcohol assessments and treatment for parents in dependency-neglect cases. Caseworkers expressed frustration with the lack of funds available to serve their clients.



A judge commented in an interview that a real need exists for timely, intensive alcohol and drug treatment facilities for families with a follow-up program to give families a chance to rehabilitate. The judge asked, "How do you expect parents to rehabilitate when the services are not available?"

Attorneys do not routinely request child support, redirection of child support, or redirection of social security payments to benefit a juvenile in foster care. The majority of attorneys indicated in surveys that they only *occasionally* request such orders. Likewise judges reported that they *occasionally* make such orders, with a higher percentage towards redirection of benefits to support a child in foster care. File reviews revealed that child support was ordered in 17% of the files.

Reasonable Efforts: Judges reported that they make a reasonable efforts finding to prevent removal *always* (38%), *usually* (41%), *often* (5%), and *occasionally* (16%). Attorneys reported that the court makes a reasonable efforts finding to prevent removal *always* (46%), *usually* (39%), *often* (4%), *occasionally* (7%), and *never* (3%).

When making a reasonable efforts finding to prevent removal, the surveys revealed that courts use a number of ways to describe the agency's reasonable efforts, including language in the court order that cross references or refers specifically to evidence submitted to the court, including affidavits, and using check-off items from a detailed check list.

Data from the Office of Chief Counsel (OCC) shows that courts made "no reasonable efforts findings" in 14 cases in 2003 and in 32 cases in 2004. In court observations, in over half of the hearings the judge did not address reasonable efforts. In the five cases where the court did make a reasonable efforts finding, only one judge made a detailed finding.

An observer also noted that although the court did not address the issue of reasonable efforts in one hearing a "reasonable efforts finding" appeared in a written order distributed to the parties following the hearing. The order stated, "Reasonable efforts were made to preserve the family through prior supportive services cases and services to the family." This would indicate that orders presented to the judge contain the "reasonable efforts findings" language even though it is not always discussed in court. Other court participants agreed that this was common practice, and is, in fact, part of the boilerplate language in the order the OCC attorney prepares for each hearing.

No Reunification Hearing

No Reunification – CAPTA

The Secretary shall make grants to the States for purposes of assisting the States in improving the child protective services system of each such State in provisions, procedures, and mechanisms that assure the State does not require reunification of a surviving child with a parent who has been found by a court of competent jurisdiction to have committed murder of another child of such parent; to have committed voluntary manslaughter of another child of such parent; aided or abetted, attempted, conspired, or solicited to commit such murder or voluntary manslaughter or to have committed a felony assault that results in serious bodily injury to the surviving child or another child of such parent. **42 U.S.C. § 5106a (b)(2)(A)(xvi).**

No Reunification - ASFA

Reasonable efforts shall not be required to be made with respect to a parent of a child if a court of competent jurisdiction has determined that:

- the parent has subjected the child to aggravated circumstances (as defined in State law, which definition may include but need not be limited to abandonment, torture, chronic abuse, and sexual abuse);
- the parent has:
 - ◆ Committed murder, if the offense had occurred in the special maritime or territorial jurisdiction of the United States of another child of the parent;
 - ◆ Committed voluntary manslaughter, if the offense had occurred in the special maritime or territorial jurisdiction of the United States of another child of the parent;
 - ◆ Aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter; or
 - ◆ Committed a felony assault that results in serious bodily injury to the child or another child of the parent; or
 - ◆ The parental rights of the parent to a sibling have been terminated involuntarily.

If reasonable efforts are not made with respect to a child as a result of a determination made by a court of competent jurisdiction:

- A permanency hearing shall be held for the child within 30 days after the determination; and
- Reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanent placement of the child. **42 U.S.C. 671 (a) (15).**

No Reunification Hearings - Arkansas Law

Time Constraints:

≡ DHS, the attorney ad litem or the court shall provide written notice to the defendants of a recommendation of no reunification services at least 14 calendar days before the hearing.

≡ Court shall conduct and complete the hearing within 50 days of the date of written notice.

≡ Upon no reunification finding, the court shall hold a Permanency Planning Hearing within 30 days of the determination. **Ark. Code Ann. '9-27-327; -329**

No Reunification Grounds:

The parent has:

- ¬ Subjected the child to aggravated circumstances as defined in 9-27-303(6) including:
 - < abandonment;
 - < chronic abuse;
 - < extreme or repeated cruelty;
 - < sexual abuse;
 - < judicial determination that there is little likelihood that services will result in successful reunification; or
 - < the child has been placed in foster care or the custody of another person more than three times in the last 15 months;

- ^ Committed murder or voluntary manslaughter of any child;

- ∨ Aided, abetted, conspired, or solicited such a murder or voluntary manslaughter;

- ⇔ Committed felony battery or assault resulting in serious bodily injury to any child;

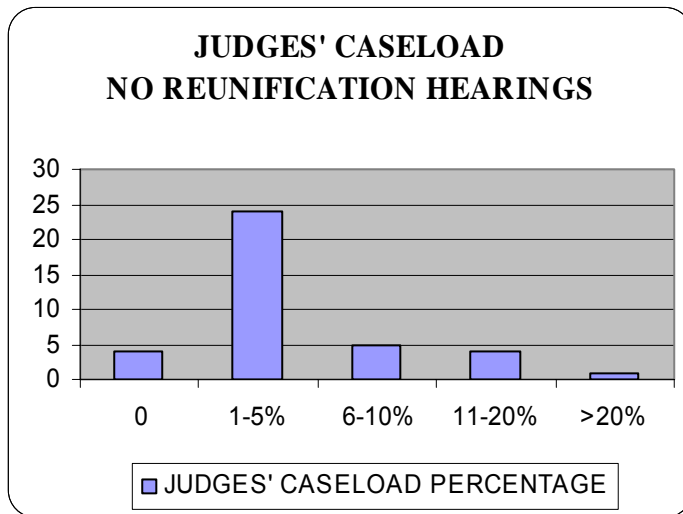
- ⇐ Had parental rights involuntarily terminated as to a sibling of the child; or

- ↑ Abandoned an infant as defined in 9-27-303(1). **Ark. Code Ann. '9-27-327; -329**

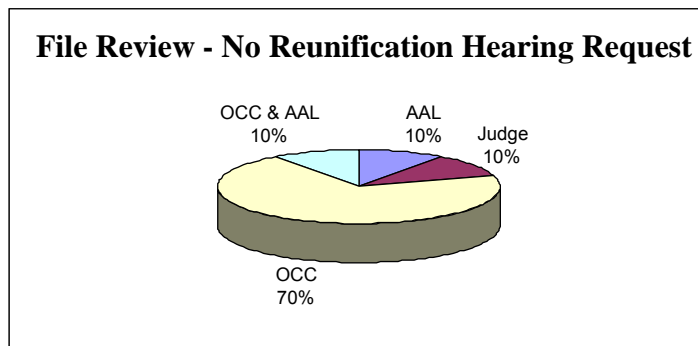
No Reunification Hearings - State Practice

Timely Hearings: No data was available during the review to determine if the no reunification hearings were held within the statutory time frame. Data as to whether courts were conducting the permanency planning hearing within 30 days following this hearing required by ASFA and state law was incomplete. The data that was available suggests that in 2002 and 2003 there were 54 no reunification hearings and that courts held the permanency planning hearing within 30 days in 43 of these cases. In the 11 cases that were late, five were held within 35 days, two were held within 60 days, one was within 75 days and two were over 90 days.

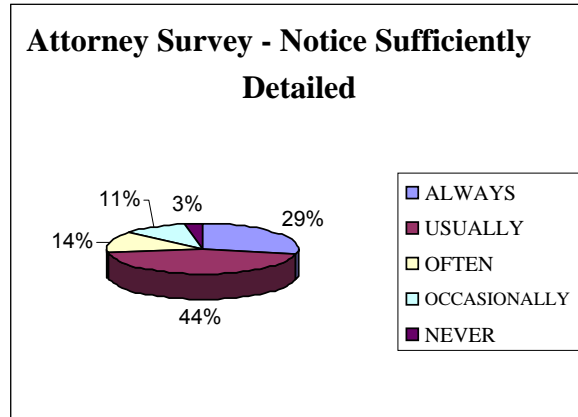
Hearings: In surveys, judges were asked in what percentage of cases they hold a no reunification hearing. Twenty-five judges (65%) responded that it had occurred in 1-5% of their cases. Five judges (14%) reported it had occurred in 6-10% and four judges (11%) reported it had occurred in 11-20%. This was consistent with the file reviews that revealed that 6% of the cases had a no reunification hearing.



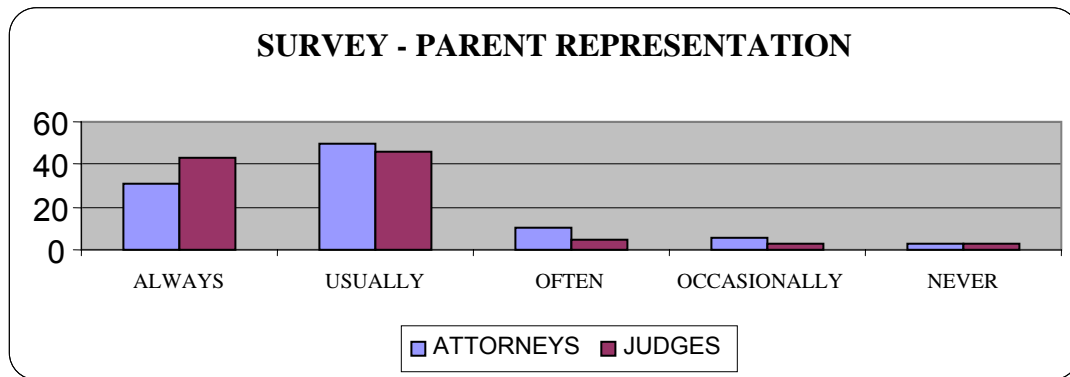
Surveys found that OCC is the most common petitioner for a no reunification hearing, although the AAL and courts also occasionally request such hearings. File reviews were consistent with the surveys and also revealed that in some cases the AAL and OCC attorney file a joint motion for a no reunification hearing.



In surveys, attorneys were asked how often notice is timely served on all the parties and they responded with *always* (21%), *usually* (51%), and *often* (16%). Attorneys responded that notice was more often than not sufficiently detailed, with 29% *always* and 44% *usually*.



Attorneys reported in surveys that parents are represented by counsel at no reunification hearings *always* (31%) *usually* (50%), *often* (10%), *occasionally* (6%), and *never* (3%). Judges reported that parents are represented at these hearings *always* (43%) *usually* (46%), *often* (5%), *occasionally* (3%), and *never* (3%).



Survey responses as to the grounds for no reunification services indicate that the most common ground is aggravated circumstances. The judges’ highest responses indicated that abandonment was the most common ground followed closely by sexual abuse, extreme and repeated cruelty, and chronic abuse. The lowest response rates were based on murder or voluntary manslaughter or aiding, abetting, conspiring, or soliciting to commit such a crime.

Attorney responses were very similar to the judges and indicating highest response rate for aggravated circumstance grounds followed by sexual abuse, chronic abuse, subjected to extreme or repeated cruelty, and abandonment. Their lowest response rates were also related to the criminal acts. File reviews showed a no reunification order in only seven of the 185 files reviewed and the ground most commonly used was aggravated circumstances.

Legal Exhibit 70

The Reassessment Team did not observe any scheduled no reunification hearings. However, an unusual no reunification request was made by the DCFS at a review hearing. It was unusual in that it was made only as to the youngest two children of a sibling group of five. The caseworker testified that the basis for the no reunification request was that although the agency had provided all available services, the mother had failed to comply with the case plan and court orders. The agency recommended an inappropriate goal of independence for the two younger children, ages 11 and 12, but recommended that the older three children remain in the mother's home.

Six-Month Review Hearings

“Review hearings are necessary because continuation of a child in foster care for an extended time has a negative affect (sic.) on the child.”

Resource Guidelines, p. 66.

🕒 *Recommended time to be allocated for six-month reviews: 30 minutes*

Key decisions for the court to make at a review hearing:

- ↪ *Whether there is a need for continued placement of a child;*
- ↪ *Whether the court-approved, long-term permanent plan for the child remains the best plan for the child;*
- ↪ *Whether the agency is making reasonable efforts to rehabilitate the family and eliminate the need for placement of a child;*
- ↪ *Whether services set forth in the case plan and the responsibilities of the parties need to be clarified or modified due to the availability of additional information or changed circumstances;*
- ↪ *Whether the child is in an appropriate placement which adequately meets all physical, emotional and education needs;*
- ↪ *Whether the terms of visitation need to be modified;*
- ↪ *Whether terms of child support need to be set or adjusted;*
- ↪ *Whether any additional court orders need to be made to move the case toward successful completion; and*
- ↪ *What time frames should be followed to achieve reunification or other permanent plan for each child?*

Resource Guidelines, pp. 70-72

Six -Month Review Hearings - Federal Law

Federal law requires that states maintain a case review system that assures:

- Each child has a case plan designed to achieve placement in a safe setting that is the least restrictive (most family like) and most appropriate setting available and in close proximity to the parents' home, consistent with the best interest and special needs of the child.
- Periodic reviews, no less frequently than once every six months by either a court or administrative review to determine continuing necessity and appropriateness of placement, extent of compliance with case plan, and extent of progress which has been made in alleviating or mitigating the causes necessitating placement, and to project a likely date for the child to return safely home or placed for adoption or legal guardianship.
- Review and update of child's health and education records and supplied to the foster parent or foster care provider with whom the child is placed at the time of each placement while child is in foster care. **42 U.S.C. 671(a)(16); 42 U.S.C. 675(5).**

Six-Month Review Hearings B Arkansas Law

Time Constraints:

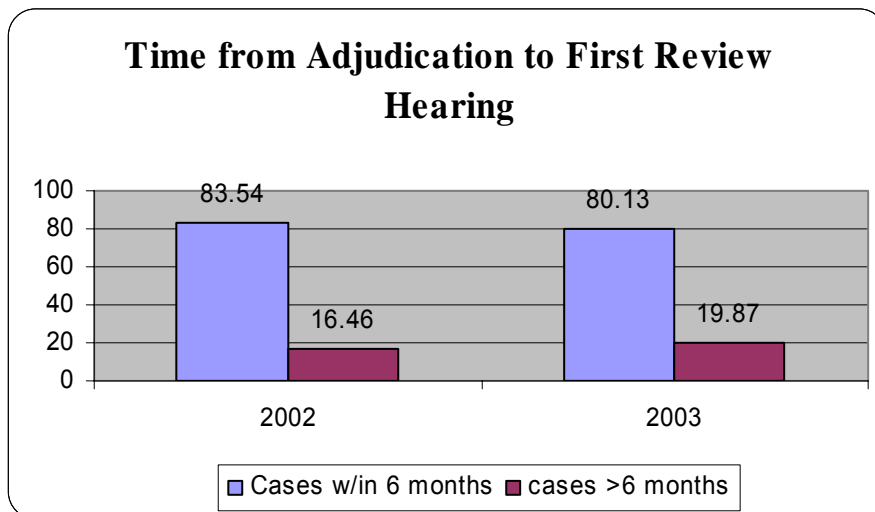
⌚ Court shall review out-of-home placements at least every six months when juvenile is placed out of home until a permanent order of custody, guardianship or adoption is entered or juvenile is returned to parent, guardian, or custodian and court has discontinued orders for family services. **Ark. Code Ann. '9-27-337(a)(1).**

Purpose: At each review hearing, the court reviews progress of the case plan and implementation of the court orders. Specifically, the court must determine:

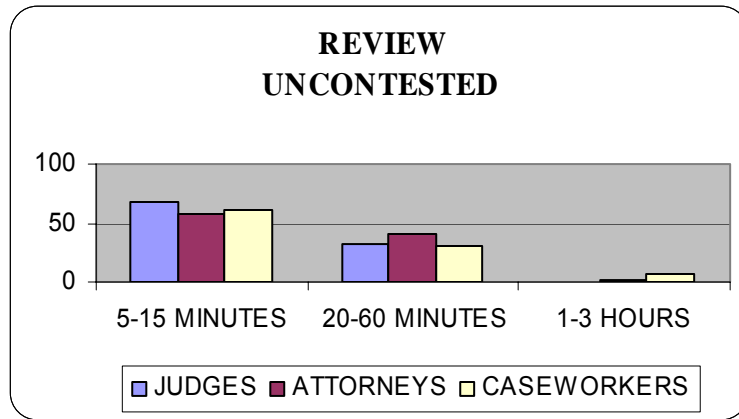
- Whether the case plan, services and placement meet the special needs and best interest of the juvenile, with the juvenile=s health and safety specifically addressed;
- Whether the State has made reasonable efforts to provide family services; and
- A projected date for the juvenile to return home or other alternatives, and what those alternatives are. **Ark. Code Ann. '9-27-337(b).**

Six-Month Review Hearings - State Practice

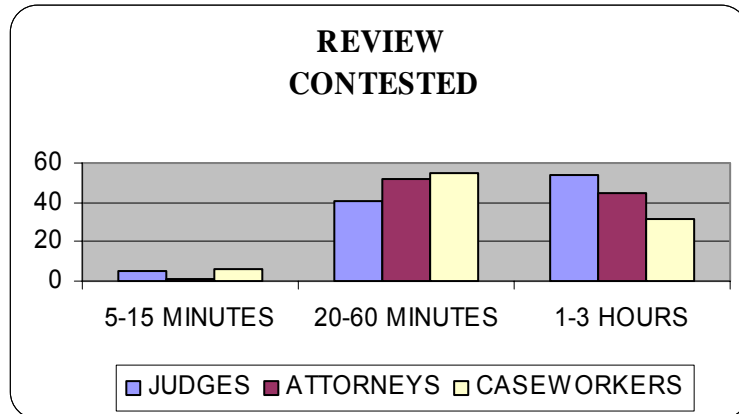
The dependency-neglect data analyzed was from the date of the adjudication hearing to the first review hearing. However, the data should have been from the date the child was first removed from home to the date of the first review. The CIP Reassessment Team also learned that the database did not distinguish between in and out-of-home placements for purpose of the review hearing timeline reports. The database will be corrected to address these errors. The data that is currently available from the database revealed that in 2002, review hearings were conducted within 6 months of the adjudication hearings in 83.54% of the cases and 16.46% in 2003.



Judges reported that an uncontested review typically lasted 5-15 minutes (68%) and 20-60 minutes (32%). Attorneys reported that they typically lasted 5-15 minutes (58%) and 20-60 minutes (41%), while caseworkers reported 5-15 minutes (61%), 20-60 minutes (31%), and 1-3 hours (6%).



Judges reported that contested review hearings typically lasted 1-3 hours (54%), 20-60 minutes (41%) and 5-15 minutes (5%). Attorneys reported half day (2%), 1-3 hours (45%), 20-60 minutes (52%) and 5-15 minutes (1%). Caseworkers reported that they took half day (3%), 1-3 hours (32%), 20-60 minutes (55%) and 5-15 minutes (1%).



The CIP team observed 32 review hearings, with the average length of time being 45 minutes. The longest review lasted three hours and fifty minutes, and the shortest review lasted five minutes.

Judicial Circuit	Number of Review Hearings Observed
2 nd Division 7	3
2 nd Division 10	2
4 th	4
6 th Division 8	4
6 th Division 10	1
6 th Division	3
7 th	4
8 th South	2
14 th	2
18 th East	3
21 st	4
Total	32

Of the 32 review hearings observed, two continuances were requested. One continuance was requested by parent counsel who did not attend the hearing. The court denied the continuance, but following the hearing closed the case. Another continuance was requested by all parties waiting on paternity and drug test results. The hearing was rescheduled within the next month.

Only in one case did a judge provide a clear and detailed explanation of the hearing to the parties. In five cases, judges stated that it was a review hearing or that they were there to review the case. Only in one court did the judge inquire as to Native American heritage and as to whether a foster parent had anything they wished to say at a review hearing.

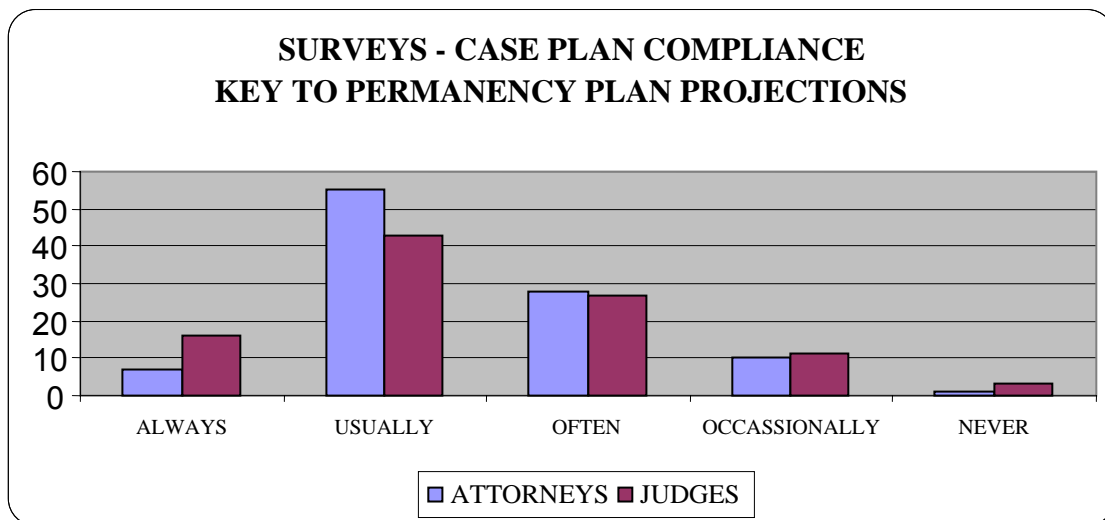
Court observations revealed that mothers were present and represented by counsel in 26 of the 30 hearings that went forward. Fathers were present in 20 of these hearings and were represented by counsel in 17 hearings. Five of the attorneys (one of whom was retained and not qualified pursuant to Administrative Order No. 15) represented both the mother and father at this hearing. The judge advised parties that did not already have counsel of their right to counsel in four cases, and in three hearings, the judge told the parties how to obtain counsel. Children were present in 16 of the review hearings. Judges inquired about notice in four hearings, when parties were not present, but did not do so in 15 hearings. Four foster parents and ten relatives were also present at the review hearings. Two different AALs called foster parents as witnesses to testify as to how the children were doing in two different cases.

The Reassessment Team was concerned about the quality of information provided to the court in many hearings. Only in seven cases were parties identified and sworn on the record. Witnesses were identified, sworn, and testified on the record in 18 cases. The practice of almost half the courts observed appeared to be more like a court-initiated staffing, with parties and attorneys providing information to the court. One court did not have any witnesses testify or provide any current information about the health, safety and well-being of the children in foster care during the entire day of observation. Only three courts had witnesses testify under oath at every review hearing.

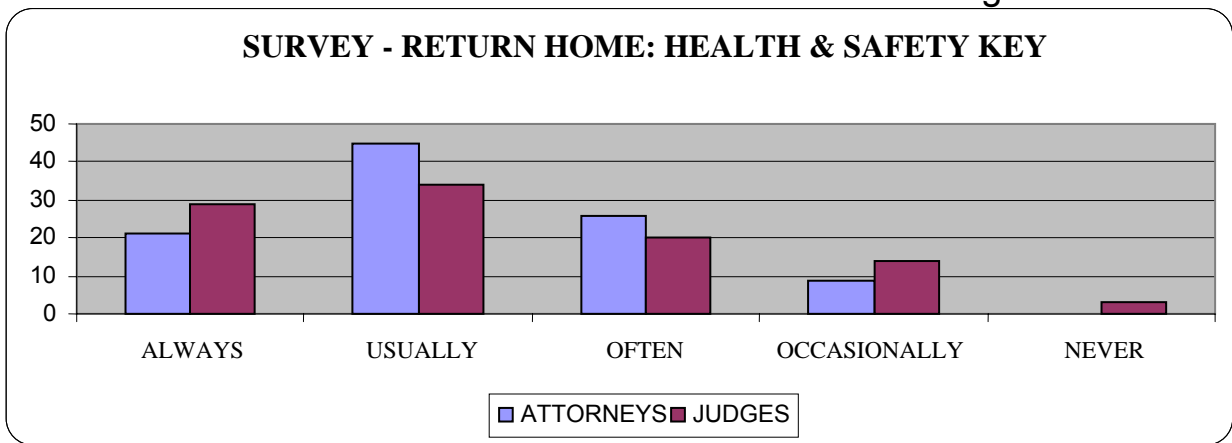
Legal Exhibit 70

A major purpose of a review hearing is for the court to determine whether the case plan, services and placement meet the special needs and best interest of the juvenile, with the juvenile's health and safety specifically addressed. In 18 of the cases observed there was testimony or information provided to the court about the parties' compliance with the case plan. In seven other cases court reports were admitted into evidence that provided some information about the parents' compliance with the case plan.

Federal and state law requires a projected time for the juvenile to return home or the identification of other permanent alternatives. Surveys inquired as to how often the recommendation for a projected permanency plan is based on compliance with the case plan. Attorney surveys revealed that they *always* (7%), *usually* (59%), *often* (28%), *occasionally* (10%), and *never* (1%) base their recommendation based on case plan compliance to assist the judge in making a permanency plan for the child. Judges reported that they *always* (16%), *usually* (43%), *often* (27%), *occasionally* (11%), and *never* (3%) consider the extent of case plan compliance in determining a projected permanency plan for a child at a review hearing.

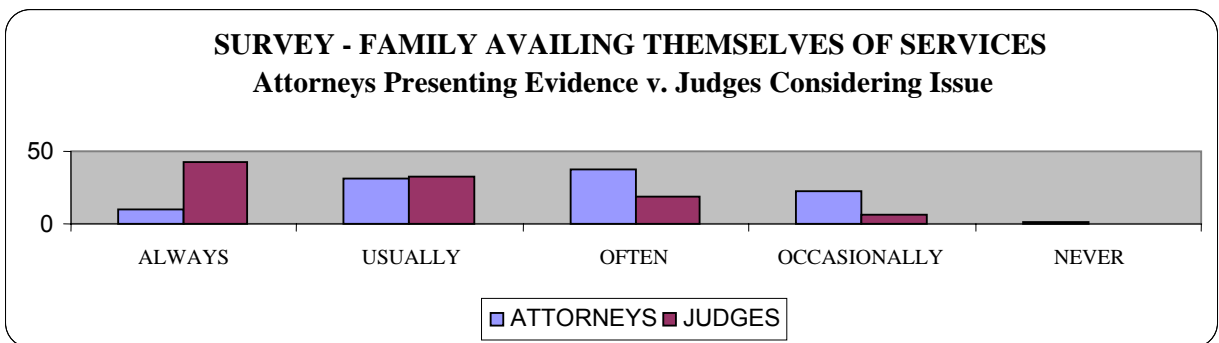


Attorneys were asked how often their recommendation to return a child to their parents is dependent upon whether the child's health and safety can be protected by the parents. Attorneys reported *always* (21%) *usually* (45%), *often* (26%), *occasionally* (9%) and *never* (0%). Judges responded *always* (29%), *usually* (34%), *often* (20%), *occasionally* (14%) and *never* (3%) that their recommendation for a permanency projection to return home is based on whether the child's health and safety can be protected if returned home.

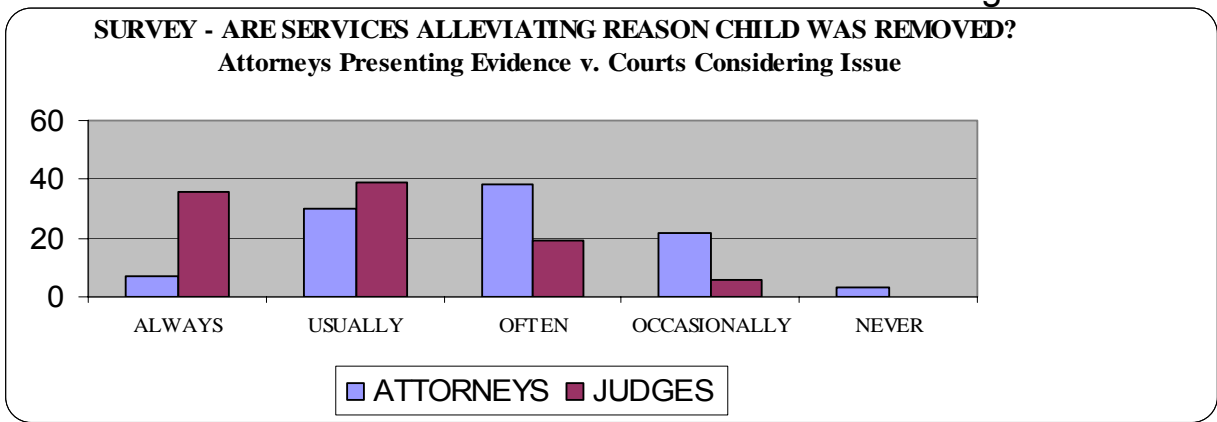


Judges reported in surveys that they *always* and *usually* (81%) entered orders as to whether a child’s needs are being met at review hearings. However, attorneys reported that they present evidence on this issue *always* and *usually* (37%) at this stage of the case. This might be explained by the practice that was observed in many courts where witnesses were not called. Instead, reports were filed, although not always admitted into evidence. Attorneys and others provided the court with information in a staffing-like setting as to whether the child’s needs were being met.

Attorneys were asked how often they present evidence on whether the family is availing themselves of DHS services. Attorneys reported *always* (10%), *usually* (31%), *often* (37%), *occasionally* (22%), and *never* (1%). Judges reported that they consider this issue *always* (42%), *usually* (33%), *often* (19%), *occasionally* (6%), and *never* (0%).



Attorneys were asked how often they present evidence on whether the services provided to the family are alleviating the reason that caused the child to be removed. Attorneys reported *always* (7%), *usually* (30%), *often* (38%), *occasionally* (22%), and *never* (3%). Judges reported that they consider this issue *always* (36%), *usually* (39%), *often* (19%), *occasionally* (6%), and *never* (0%).



Of the 30 cases observed, children had been returned home at prior hearings in 14 cases while the court continued monitoring. In three cases, children were placed with relatives and courts ordered relative placements explored in seven additional cases. The judge ordered reports or assessments in ten of the cases observed. Three of the cases were closed following the review hearing based on the parents’ progress in complying with the case plan and court orders. The court had monitored the in-home placement in each of these cases for three to six months. Judges scheduled the date and time for the next hearing in 20 cases.

Permanency Planning Hearings

Maintaining the distinction between review hearings and permanency planning hearings is a key to achieving permanency for foster children. Resource Guidelines, p. 78

🕒 *Recommended time for Permanency Planning Hearing - 60 minutes*

Key issues as to child

- ↪ *Health, safety and education information about the child*
- ↪ *Description of child's current placement and behavior*
- ↪ *Description of services provided to child, child's progress, and any remaining issues needed to be addressed*
- ↪ *Status of siblings and relationship and contact with each other*
- ↪ *Why is the proposed plan in the child's best interest?*

Reunification

- ↪ *Have the conditions or circumstances that led to removal been corrected?*
- ↪ *How often is visitation occurring and what is the impact on the child?*
- ↪ *What is the date and the detailed plan for the child's safe return home and what follow-up is needed?*
- ↪ *What are the plans to continue services for the family?*
- ↪ *If a change of school will occur, what will be done to prepare for that transition?*

Termination

- ↪ *What reasonable efforts were made to reunify?*
- ↪ *Are there facts that support TPR grounds?*
- ↪ *Are there relatives willing to adopt? Foster parents? If an adoptive home must be recruited, what efforts are being made to identify potential adoptive homes? Are there adults with whom this child has a special relationship?*
- ↪ *Will counseling need to occur to assist the child?*

Permanent Guardianship or Custody

- ↪ *Why is this preferable over return home or TPR and adoption?*
- ↪ *What reasonable efforts were made to reunify the family?*
- ↪ *What are the facts and circumstances that demonstrate the appropriateness of the individual or couple to serve as a permanent family for the child? Who are all the people living in the home?*
- ↪ *Has there been full disclosure to the family of the child's circumstances and special needs?*
- ↪ *What is the plan to ensure that this is a permanent home for the child?*
- ↪ *What contact will occur between the child, siblings, parents, relatives?*
- ↪ *What financial support will be provided by the parents?*
- ↪ *What services need to continue for the child, and how will services continue after custody or guardianship is ordered?*
- ↪ *If the child is not already placed in this home – Why not? – What transition is needed?*

Another Permanent Planned Living Arrangement (APPLA)

- *Why is this preferable over return home or TPR and adoption, guardianship or permanent custody?*
- *What reasonable efforts were made to reunify the family?*
- *How will this plan provide stability and permanency for the child?*
- *What contact will occur between the child, siblings, parents, and relatives?*
- *What services are needed to continue for the child and how will services continue?*
- *If the child is not already placed in current placement – Why not? – What transition is needed?*
- *If eligible for independent living services, are services being provided to prepare the child for independence?*

Adoption & Permanency Guidelines pp.67-67

Federal Law – Adoption and Safe Families Act (ASFA)

The permanency hearing must be held by a court or a court approved administrative body not under the supervision or direction of the state agency. **45 C.F.R. ' 1355.20.**

The permanency hearing must be held no later than 12 months after the date the child is considered to have entered care or within 30 days of the judicial determination that reasonable efforts to reunify the family are not required. **45 C.F.R. ' 671.**

Pursuant to ASFA, at the permanency hearing the court must determine when the child will be:

- Returned to the parent
- Placed for adoption with the State, following a petition for termination of parental rights
- Referred for legal guardianship
- Placed permanently with a fit and willing relative
- Placed in another planned permanent living arrangement but only when the state has documented a compelling reason and other plans would not be in the child's best interest. **45 C.F.R. ' 1355.20(a); 45 C.F.R. ' 1356.21(h)(3).**

The court must also make a judicial determination regarding reasonable efforts to finalize the permanency plan. **45 C.F.R. ' 1356.21(b)(2)(ii).**

Permanency Planning Hearing B Arkansas Law**Time Constraints**

⌚ The Permanency Planning Hearing shall be held:

- No later than 12 months from the time a juvenile enters an out-of-home placement; or
- After a juvenile has been in an out-of-home placement for 15 of the previous 22 months, excluding trial placements with parents and time on runaway status; or
- No later than 30 days after the court files a no reunification services order. **Ark. Code Ann. '9-27-338(a).**

Purpose: At the hearing, based upon the facts of the case, the court shall enter one of the following permanency goals, listed in order of preference

—Return juvenile to parent, guardian or custodian at the permanency planning hearing if it is in the best interests of the juvenile and the juvenile=s health and safety can be adequately safeguarded; or

^Authorize plan for termination of parent-child relationship so that the child is available to be adopted unless the:

- child is being cared for by a relative and termination of parental rights is not in the best interest of the child;
- DHS has documented in the case plan a compelling reason why TPR is not in the child=s best interest and the court approves the compelling reason as documented in the case plan; or
- DHS has not provided services to the family of the juvenile consistent with the time period in the case plan, as deemed necessary for the safe return of the child to the child=s home;

∨Authorize plan for guardianship;

⇔Authorize plan for permanent custody;

⇐Continue goal of reunification only when:

- Parent is complying with the case plan and court orders;
- Parent is making significant measurable progress towards achieving goals and diligently working toward reunification;
- Parent can demonstrate genuine sustainable investment in completing the requirements in the case plan and following the orders of the court in order to retain reunification as the permanency goal; and
- Reunification can occur within a time frame consistent with the child=s developmental needs;

↑↑Independence shall be selected only if:

- Reunification cannot occur within a time frame consistent with the child=s developmental needs;
- The juvenile cannot be reunited with the juvenile=s family;
- Another permanent plan is not available; and
- A compelling reason exists why termination of parental rights is not in the juvenile=s best interest; or the juvenile is being cared for by a relative and termination of parental rights is not in the best interests of the juvenile. **Ark. Code Ann. '9-27-338(a)(4)**

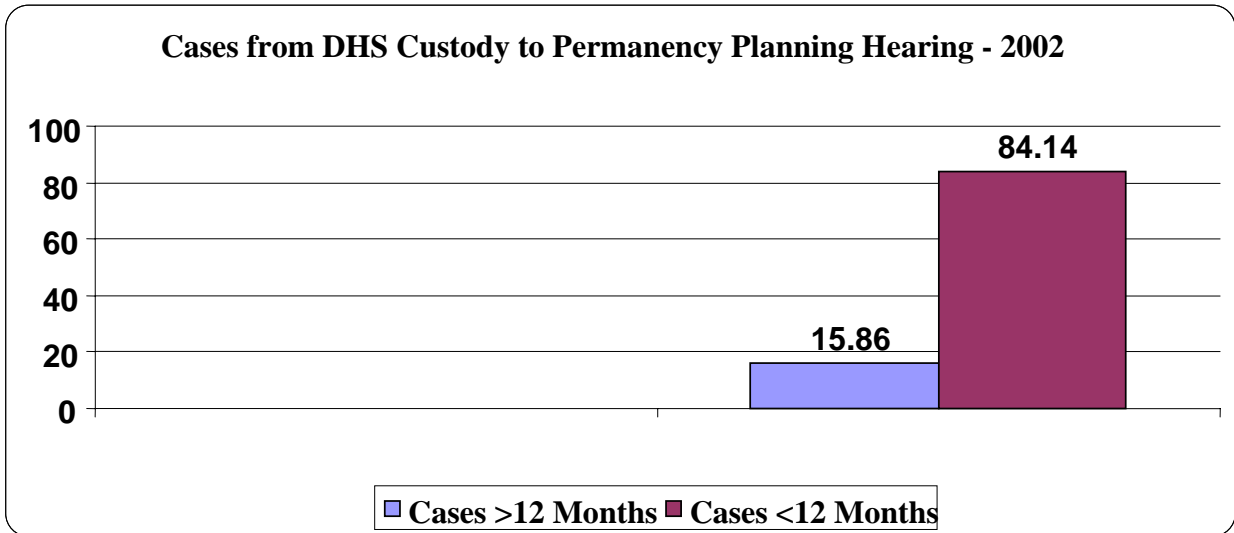
During the reassessment, the CIP Project Director drafted legislation on behalf of the Arkansas Judicial Council. Act 1191 of 2005 was adopted and amends the permanency hearing to replace the goal of independence with another planned permanent living arrangement (APPLA) which shall include a permanent planned living arrangement and addresses the quality of services, including but not limited to independent living services, if age appropriate, and a plan for the supervision and nurturing the juvenile will receive. **Ark. Code Ann. § 9-27-338(c)(6).**

A new section was added to the code that requires the court to make a written finding and to describe whether DHS has made reasonable efforts to finalize a permanency plan for the juvenile at the permanency planning hearing. **Ark. Code Ann. § 9-27-338(d).** Act 1191 of

2005 is found in Appendix K.

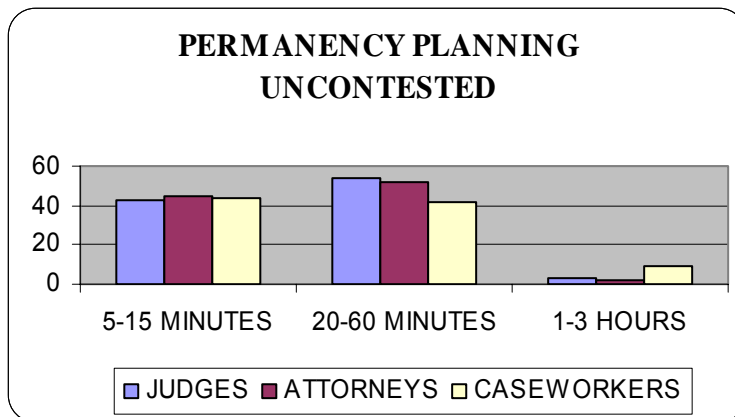
Permanency Planning Hearings - State Practice

Court data indicated the permanency planning hearings were conducted timely in 84.14% of the cases in 2002.

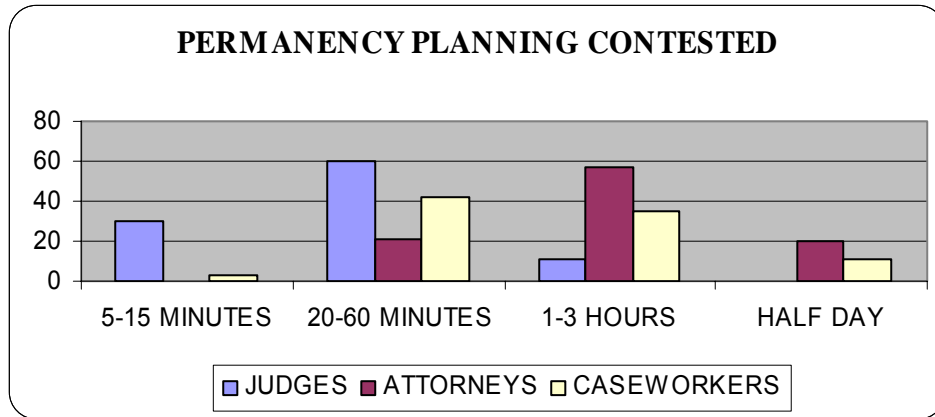


Federal and state law requires that a permanency planning hearing be held every year until a child leaves foster care. The surveys asked how often a permanency planning hearing is conducted at least 12 months following the first permanency planning hearing if the child remains in an out-of-home placement. Judges responded that this *always* (67%) and *usually* (28%) occurred, compared with attorneys responses that it *always* (41%) and *usually* (45%) occurred.

Judges reported that uncontested permanency planning hearings typically lasted 5-15 minutes (43%) and 20-60 minutes (54%). Attorneys reported that they last typically lasted 5-15 minutes (45%) and 20-60 minutes (52%), while caseworkers reported 5-15 minutes (22%) and 20-60 minutes (50%).



Judges reported that contested permanency planning hearings typically lasted 5-15 minutes (30%), 20-60 minutes (60%), 1-3 hours (11%), and half a day (0%). Attorneys reported 5-15 minutes (0%), 20-60 minutes (21%), 1-3 hours (57%), and half a day (20%). Caseworkers reported that they took 5-15 minutes (3%), 20-60 minutes (42%), 1-3 hours (35%), and half a day (11%).



The CIP team observed 26 permanency planning hearings and the average length of time for this critical hearing was 32 minutes, with the longest hearing lasting over three hours, and the shortest hearing lasting five minutes.

Judicial Circuit	Number of Permanency Planning Hearings Observed
1 st	2
2 nd Division 7	2
2 nd Division 10	2
4 th	3
6 th Division 8	2
6 th Division 10	1
6 th Division 11	6
7 th	1
8 th South	1
14 th	1
18 th East	3
21 st	2
Total	26

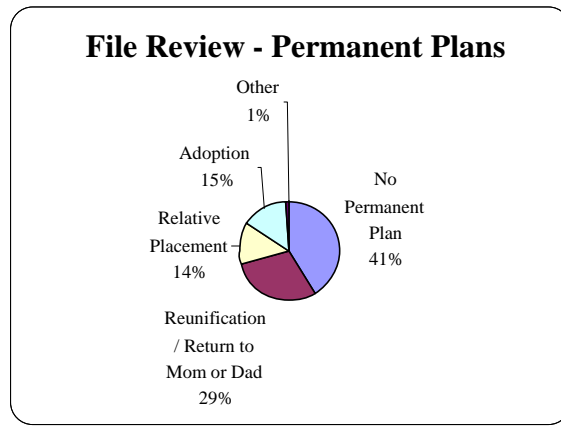
Continuances were requested in three of the cases observed, two by parent counsel and one by OCC. One court denied a continuance by parent counsel and another court continued the hearing to a date and time certain within the next month. Only in two cases did a judge provide a clear and detailed explanation of the hearing to the parties. Observers noted that in two cases a hearing was docketed as a review, but the OCC attorney, at the end of the hearing, said, “Judge this needed to be a permanency planning hearing.”

Six of the 26 hearings were post-termination permanency planning hearings; as a result, one would expect parents at 20 of the hearings. Mothers were present and represented by counsel at 13 of the hearings that went forward. Two mothers who attended the permanency planning hearing did not have counsel and two mothers who did not attend had counsel. Fathers were present in only eight hearings and were represented by counsel in all hearings. In one hearing, the father was not present but had counsel.

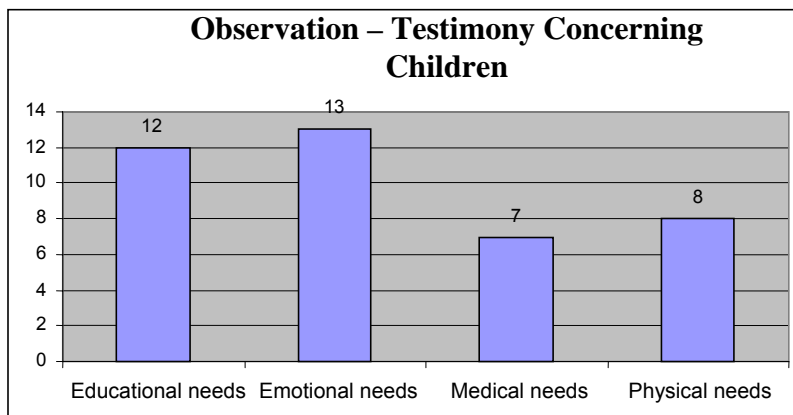
Children were present in 13, or half, of the permanency planning hearings. Judges inquired about notice in eight of the hearings when parties were not present, but did not do so in eight hearings when parties were not present. Four foster parents and seven relatives were also present at the permanency planning hearings observed.

The CIP team was concerned that many permanency planning hearings seem to be considered “just another review” and attorneys and caseworkers did not provide courts with information to finalize a permanency plan as envisioned for this hearing. Only in 15 (58%) of the cases observed, was a permanency plan ordered by the court. Of these permanency plans ordered, half were for independence, the least desirable permanency plan available for a child. It is also interesting to note that availability of an appropriate independent living program is seen as a factor in delaying permanency for children according to the survey, despite an increase in federal funds for such services. Other permanency plans ordered by the courts at the observed hearings included three plans for reunification and five plans for adoption. Case plan and court order compliance, an essential component for the court to consider in determining an appropriate permanency plan, were addressed in only half of the cases observed.

Forty-one percent of the 185 files reviewed did not have a permanent plan for a child. Twenty-nine percent of the files had a permanent plan as return home, including placement with mom or dad, 14% had a plan for relative placements, but not custody, and 14% had a plan for adoption. The other two files included one with a plan for the child to reach majority age and another for custody with a family friend.

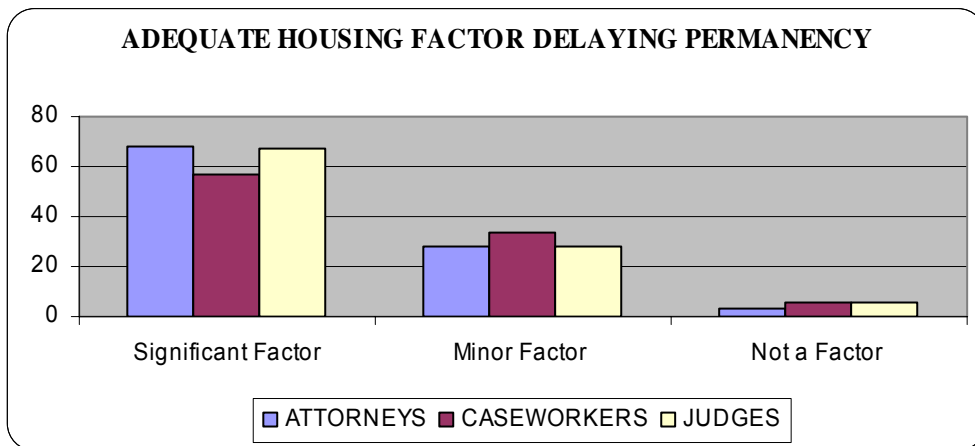
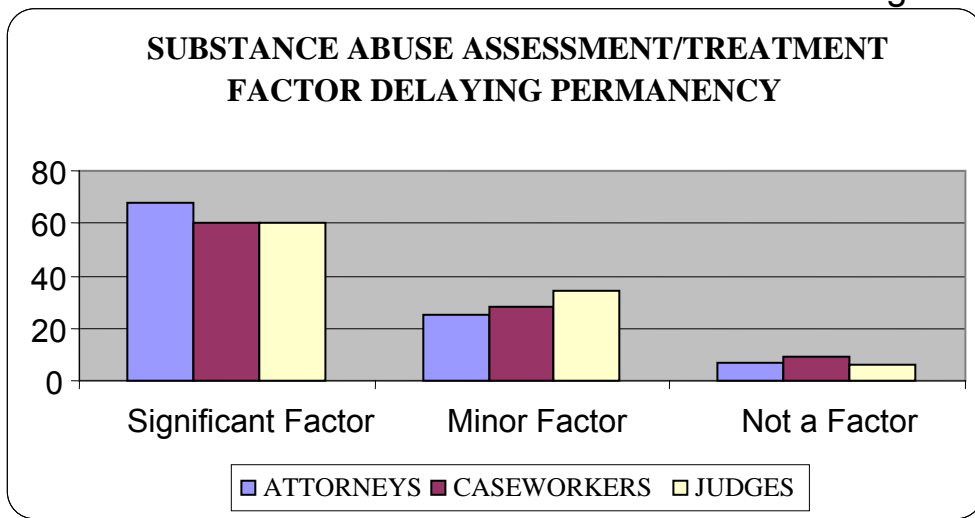


Although court observers did not see hearings focus on finalizing permanency plans for children, there was more evidence offered to the court at the permanency planning hearing regarding the needs of the children. Fourteen witnesses, including two foster parents, were called by two AALs, in two different cases, to testify about the children’s placement. The following chart illustrates how many times witnesses testified as to the needs of the children in the hearings observed:



Visitation was also discussed more thoroughly in the permanency planning hearings, with witnesses being called most often by the OCC attorney, followed by the AAL. Services were also considered by the court.

Drug and alcohol treatment and adequate housing remain critical service needs for parents. Surveys show that these areas are significant factors in the delay of permanency for children. Attorneys and judges rated substance abuse assessment and treatment as the most significant factor delaying permanency for children. Caseworkers ranked it second, with appropriate placement for the child first. Attorneys and judges ranked adequate housing second as the most significant factor delaying permanency, while caseworkers ranked it third.



Reasonable Efforts: Judges reported in surveys that they make a finding of reasonable efforts to finalize a permanency plan *always* (38%), *usually* (35%), *often* (24%), and *occasionally* (3%). Attorneys reported that the court makes a reasonable efforts finding to finalize the permanency plan *always* (38%), *usually* (40%), *often* (12%), *occasionally* (10%), and *never* (1%).

Surveys revealed that when making a reasonable efforts finding to finalize the permanency plan, courts use a number of ways to describe the agency’s reasonable efforts including: describing such efforts in the court order, using language in the court order that cross references or refers specifically to evidence submitted to the court, including affidavits or findings of adjudication, and using check-off items from a detailed checklist.

Court observations revealed that the court made a general reasonable efforts finding on the record in five cases and that no judge made a finding of reasonable efforts to finalize the permanency plan on the record.

Termination of Parental Rights Hearings

Termination of parental rights proceedings must be conducted with great care and with full procedural protections to parents and children. A petition for termination of parental rights must provide the parent(s) with fair notice of the grounds for termination...[and]... must be served in a time and manner allowing for adequate preparation and legal representation. Both parents= and children=s rights are at stake; a@mistaken@ termination of parental rights may needlessly deprive a child of a home and contact with parents and the extended family, while a delayed termination may result in missed opportunities for permanency for a child. Therefore, both reasonable timetables and active involvement by the courts in maintaining the pace of the litigation and eliminating unnecessary delays are imperative. Resource Guidelines, p. 88.

🕒 *Recommended time for termination of parental rights hearings - 60 minutes*

Key decisions for the court at termination of parental rights hearing:

- ↪ *Whether the statutory grounds for termination of parental rights have been satisfied.*
- ↪ *Whether termination of parental rights is in the best interest of the child.*

The court=s written findings of fact and conclusions of law at a termination of parental rights hearing should:

- ↪ *Indicate whether or not termination of parental rights is granted;*
- ↪ *Address whether the grounds for termination were satisfied and, if so, whether termination is in the best interests of the child;*
- ↪ *Be sufficient for the purpose of appellate review; and*
- ↪ *Set schedule for subsequent judicial review.*

Resource Guidelines p. 99

Termination of Parental Rights -- ASFA

The state agency must file a petition to terminate parental rights for foster children in care for 15 of the last 22 months unless:

- The child is being cared for by a relative;
- There is a documented compelling reason not to terminate; or
- The agency has not provided necessary and/or appropriate services to help reunify the family. **45 C.F.R. ' 1356.21(i)**

Termination of Parental Rights - Federal Law

In the case of a child who has been in foster care under the responsibility of the State for 15 of the most recent 22 months, or, if a court of competent jurisdiction has determined a child to be an abandoned infant (as defined under State law) or has made a determination that the parent has committed murder of another child of the parent, committed voluntary manslaughter of another child of the parent, aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter, or committed a felony assault that has resulted in serious bodily injury to the child or to another child of the parent, the State shall file a petition to terminate the parental rights of the child's parents (or, if such a petition has been filed by another party, seek to be joined as a party to the petition), and, concurrently, to identify, recruit, process, and approve a qualified family for an adoption, unless:

- The child is being cared for by a relative;
- The State agency has documented in the case plan (which shall be available for court review) a compelling reason for determining that filing such a petition would not be in the best interests of the child; or
- The State has not provided to the family of the child, consistent with the time period in the State case plan, such services as the State deems necessary for the safe return of the child to the child's home. **42 U.S.C. § 675(1)(E).**

Termination of Parental Rights -- Arkansas Law

Time Constraints:

- ≡ Upon the court's determination that the goal is termination of the parental rights, DHS shall file a TPR petition within 30 days of the order.
- ≡ If the Court determines the new permanency goal to be termination of parental rights, DHS shall file the TPR petition no later than the 15th month after the child's entry into foster care.
- ≡ The court shall conduct and complete the TPR hearing within 90 days from the date the TPR petition is filed, unless continued for good cause as articulated in the written order of the court.

Notice: The petitioner shall provide the parent(s) or putative parent actual or constructive notice. **Ark. Code Ann. '9-27-341(b)(2).**

Purpose:

- To clear a juvenile for permanent placement.
- To provide permanency in a juvenile's life where a return home is contrary to the juvenile's health, safety or welfare, and it appears from the evidence that the return to home cannot be accomplished in a reasonable period of time, as viewed from the juvenile's perspective. **Ark. Code Ann. '9-27-341(a).**

Grounds: It is in the child's best interest and one of the following:

The child was adjudicated dependent-neglected, has been out of home for 12 months and despite meaningful efforts to rehabilitate, conditions which caused the removal have not been remedied;

The child lived outside the home for 12 months, and the parents willfully failed to support or maintain contact;

The presumptive legal father is not the biological father;

The child was abandoned;

The parent has executed consent to TPR or adoption;

The juvenile court has found the child to be a victim of dependency-neglect as a result of neglect or abuse that could endanger the child's life or sexual abuse or sexual exploitation perpetrated by the juvenile's parent(s);

Subsequent to the dependency-neglect petition, other factors or issues arose which demonstrate return is contrary to child's health, safety or welfare; and despite the offer of appropriate family services, the parent has manifested the incapacity or indifference to remedy the subsequent issues or factors which prevent return to the family home;

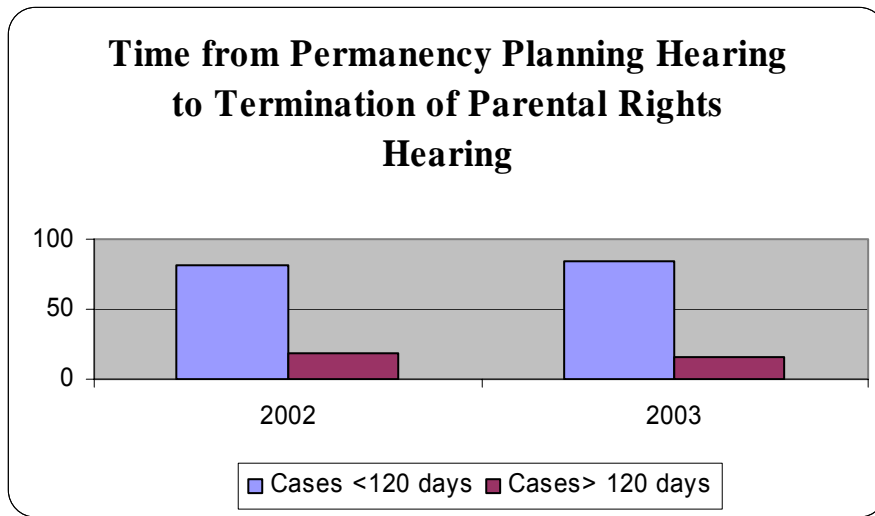
The parent is sentenced in a criminal proceeding for a period of time which would constitute a substantial period of the child's life; or

The parent is found by a court of competent jurisdiction to have:

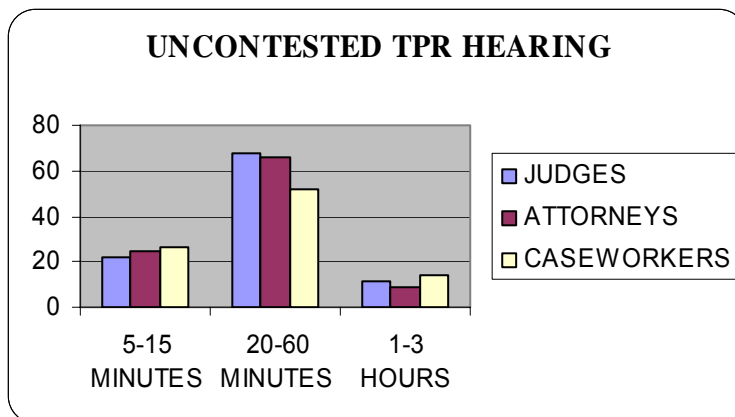
- Committed murder or voluntary manslaughter of any child;
- Aided, abetted, attempted, conspired or solicited to commit such murder or voluntary manslaughter;
- Committed a felony battery or assault that results in serious bodily injury to any child;
- Subjected the child to aggravated circumstances as defined in 9-27-303(6);
- Had parental rights involuntarily terminated as to a sibling of the child; or
- Abandoned an infant. **Ark. Code Ann. '9-27-341(b).**

Termination of Parental Rights - State Practice

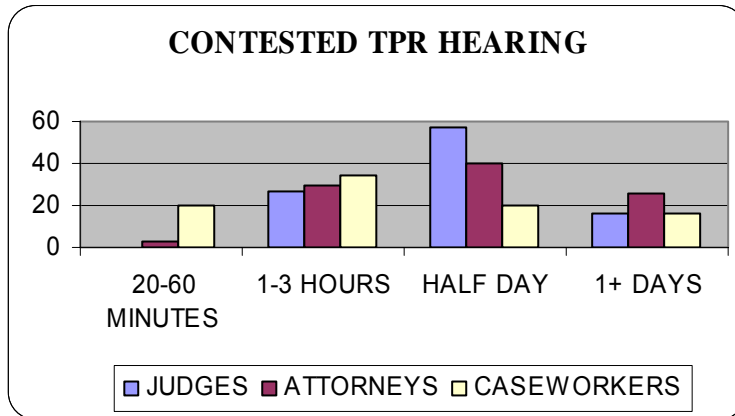
Court data indicated that termination hearings were timely conducted in 81.2% of the cases in 2002. In 2003, compliance was improved to 83.84%.



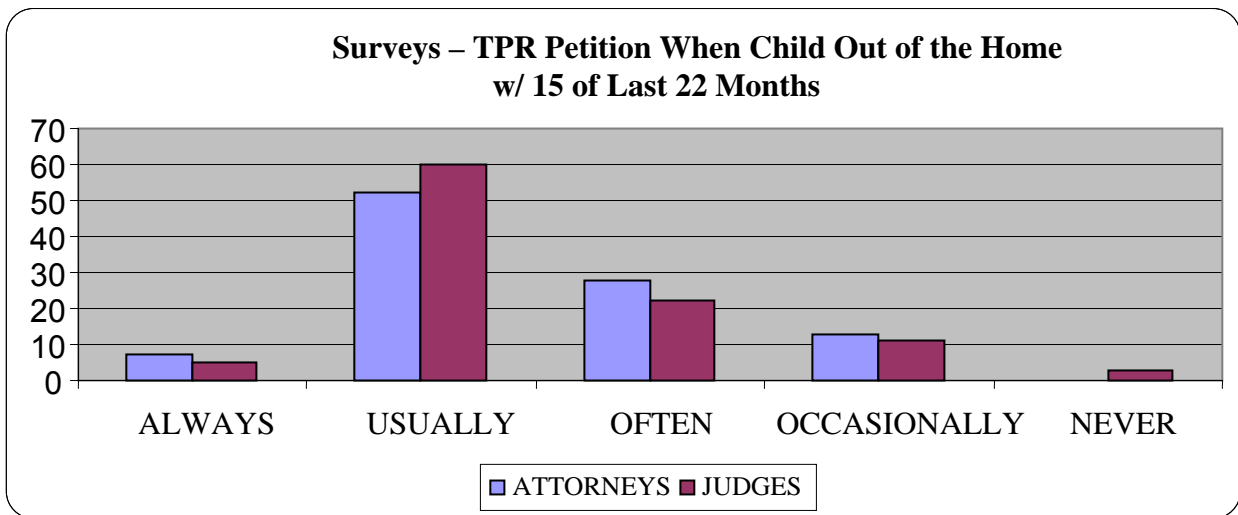
Judges reported that uncontested termination of parental rights hearings typically lasted 5-15 minutes (22%), 20-60 minutes (68%), and 1-3 hours (11%). Attorneys reported that they typically lasted 5-15 minutes (25%), 20-60 minutes (66%), and 1-3 hours (9%). Caseworkers reported 5-15 minutes (26%), 20-60 minutes (52%), 1-3 hours (14%), over a day (1%), and did not know (6%).



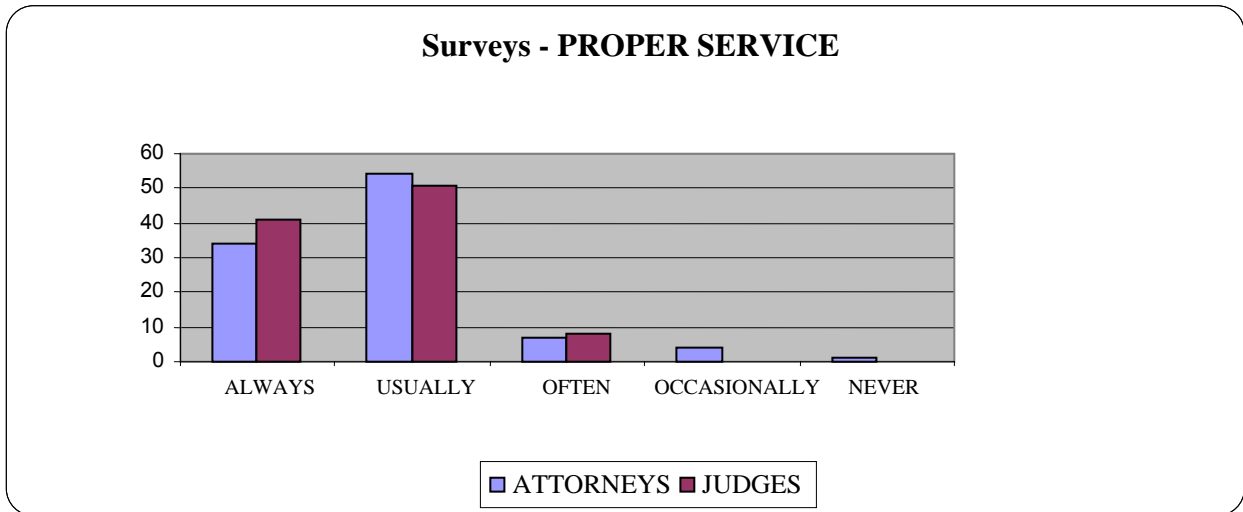
Judges reported that contested termination of parental rights hearings typically lasted 1-3 hours (27%), half a day (57%), and 1 plus days (16%). Attorneys reported that they typically lasted 20-60 minutes (3%), 1-3 hours (30%), half a day (40%), and 1 plus days (26%). Caseworkers reported 20-60 minutes (20%), 1-3 hours (34%), half a day (20%), 1 plus days (16%), and they did not know (9%).



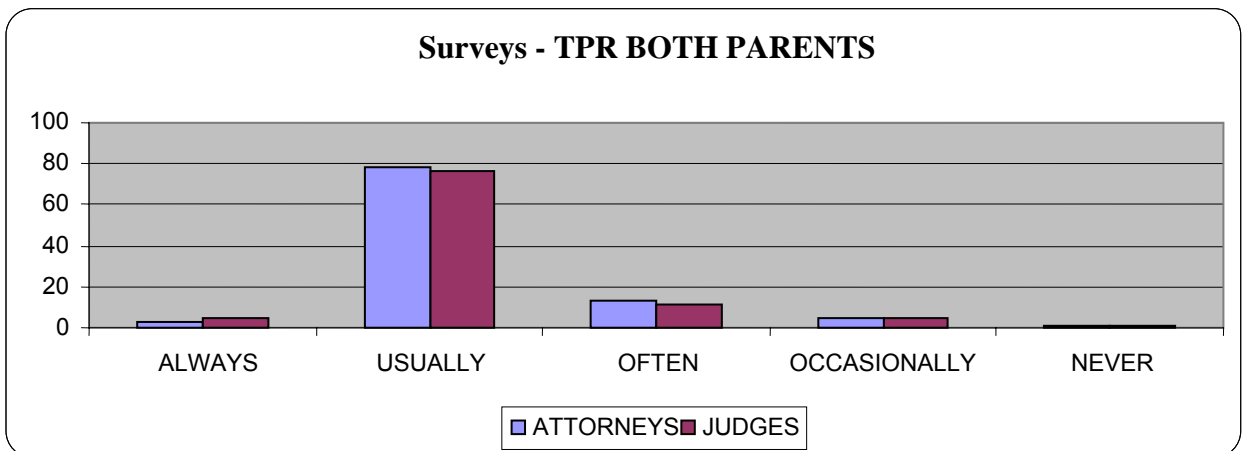
Judges reported that DHS files a TPR petition when a child has been in an out-of-home placement for 15 of the last 22 months *always* (5%), *usually* (60%), *often* (22%), *occasionally* (11%), and *never* (3%). Attorneys reported that this occurred *always* (7%), *usually* (52%), *often* (28%), *occasionally* (13%), and *never* (0%).



A key to ensuring timely termination of parental rights is proper service to the parties. The survey asked how often all parties, including putative fathers, are properly served. Judges responded *always* (41%), *usually* (51%), and *often* (8%). Attorneys responded that this occurs *always* (34%), *usually* (54%), *often* (7%), *occasionally* (4%), and *never* (1%).



Respondents were also asked how often termination was sought as to both parents in the original termination petition. Judges reported that this occurred *always* (5%), *usually* (76%), *often* (11%), *occasionally* (5%), and *never* (3%). Attorneys responded that both parents are named in the original termination petition *always* (3%), *usually* (78%), *often* (13%), *occasionally* (5%), and *never* (1%).



Attorneys responded that they *always* (55%), *usually* (36%), *often* (6%), *occasionally* (3%) and *never* (1%) present evidence on the best interest of the child at termination hearings. They reported that they *always* (42%), *usually* (42%), *often* (11%), *occasionally* (5%) and *never* (1%) present evidence regarding an appropriate placement for the child at these hearings.

There were no court observations of any termination of parental rights hearings and file reviews did not focus on termination hearings.

Post-TPR Review Hearings

Post-Termination of Parental Rights Reviews – Arkansas Law

≡ After an order of termination of parental rights is filed, the court shall review the case at least every three months when the goal is adoption and, in other cases, every six months until permanency is achieved for that juvenile. **Ark. Code Ann. '9-27-341(f)**.

During the reassessment, the CIP Project Director drafted legislation on behalf of the Arkansas Judicial Council that was passed in the 2005 General Session to clarify the court's role at a post termination review. Act 1191 of 2005 was adopted and will provide a new section in the Juvenile Code for post-termination reviews. Act 1191 of 2005 is found in Appendix K. The new law, which is effective August 12, 2005, will provide that:

The court shall review the case at least every 3 months when the goal is adoption and in other cases every six months until permanency is achieved. **Ark. Code Ann. § 9-27-360(a)**.

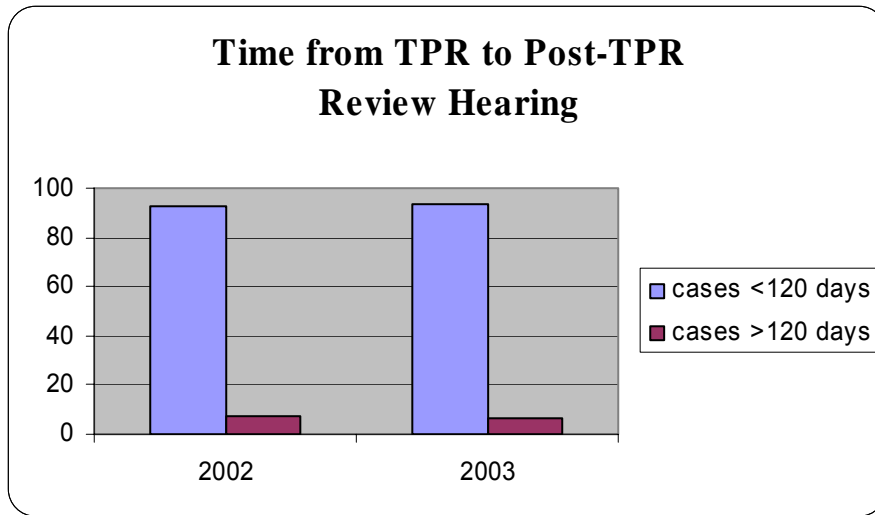
The court shall consider DHS and the juvenile's compliance with the case plan and court order to finalize the permanency plan and determine whether the:

- Case plan, services, and placement meet the special needs and best interest of the juvenile with the juvenile's health, safety and educational needs specifically addressed;
- DHS has made reasonable efforts to finalize a permanency plan for the juvenile; and
- Case plan is moving towards an appropriate permanency placement for the juvenile. **Ark. Code Ann. § 9-27-360(b-c)**.

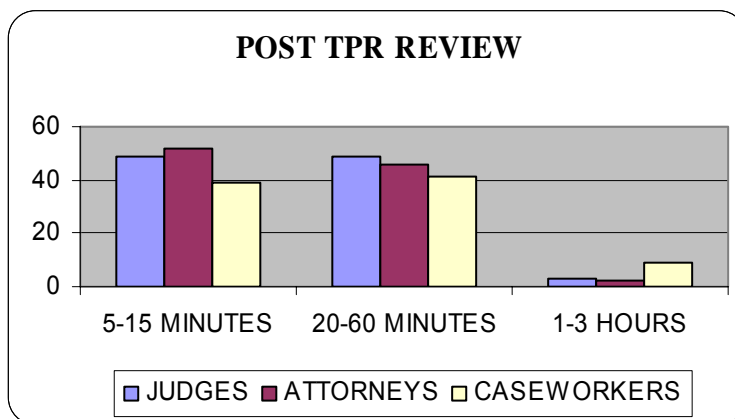
Court orders shall be completed and distributed to the parties within thirty days or prior to the next hearing, whichever is sooner. **Ark. Code Ann. § 9-27-360(d)**

Post-TPR Review Hearings – State Practice

The data was collected based on the assumption that following a TPR the goal would be adoption. Data was calculated to capture post-TPR reviews based on the 3-month time frame; however, that was not always the case goal or the case goal was later changed. The database will be corrected to address the various case goals and timelines required. The data currently available revealed that post-termination review hearings were conducted timely 93.96 % in 2002 with a similar rate in 2003 at 93.21%.



Judges reported that post-termination of parental rights review hearings typically lasted 5-15 minutes (49%), 20-60 minutes (49%), and 1-3 hours (3%). Attorneys reported that they typically lasted 5-15 minutes (52%), 20-60 minutes (46%), and 1-3 hours (2%), while caseworkers reported 5-15 minutes (39%), 20-60 minutes (41%), 1-3 hours (9%), half a day (2%), more than one day (1%) and did not know (8%).



The CIP team observed 19 post- termination review hearings with the average length of time being 16 minutes, the longest 35 minutes, and the shortest three minutes.

Judicial Circuit	Post TPR Review Hearings Observed
2 nd Division 10	1
2 nd Division 7	2
6 th Division 8	1
6 th Division 10	3
6 th Division 11	4
14 th	4
21 st	4
Total	19

The most often observed practice of the courts appeared to be a short, court-initiated staffing with parties and attorneys providing updates. Even more often, there was a lack of progress on the adoption plan. In 12 of the cases observed, the case plan goal of adoption was discussed. Attorneys and judges expressed frustration with the delay in DCFS adoptions. In several hearings, adoption specialists were not present or were late coming to court. When they appeared, they did not have the information to enable the court to see how the cases were progressing.

One case observed and file reviewed involved a child who had been removed on 2/3/2002 with the TPR granted on 11/6/2003. The child luckily was in an adoptive placement, but the adoption had not been finalized because of subsidy delays as a result of the child’s special needs. In another case observed, two children were removed on 3/15/2003, and the TPR was finalized on 8/14/2003. The new adoption specialist testified that, because of the adoption delay, they would have to redo the home study and start the paperwork again to finalize the adoption, causing another delay.



The most troubling post-TPR case observed and file reviewed, however, was a case that involved a child who had been in foster care since 1/21/1991. A termination petition was filed in June 1994, but the subsequent TPR hearing did not occur until over a year later in September 1995. In January 1996, there were indications in the court file of an adoptive placement. The child’s sister was adopted and the child was forgotten. From January 1996, through May 1997, there was no documentation that the court ever reviewed her case. Only two case plans were ever filed with the court; one in January 1991, and one in March 2004. The day of observation, her case was set for a post-TPR review, just a few days before she turned 18. No one had staffed her case. In addition, the caseworkers and attorneys did not know anything about her legal and service options under the independent living program.

According to DCFS' Annual Report Card, the following number of children had their parental rights terminated, but had not been placed in adoptive homes in the following years:

Number of Children w/ TPR Not Placed in Adoptive Homes	
2003	2004
459	393

Despite the number of children eligible for adoption, children are not finding permanent placements in adoptive homes. The dependency-neglect database compared data on the reasons cases were closed in 2003 and 2004. In 2003, 302 children were adopted, and in 2004, 362 children were adopted.

Finalized Adoptions	
2003	2004
302	362

Surveys also asked about delays in adoptions. Judges, attorneys and caseworkers found the following to be factors in delaying the permanent plan of adoptions for children:

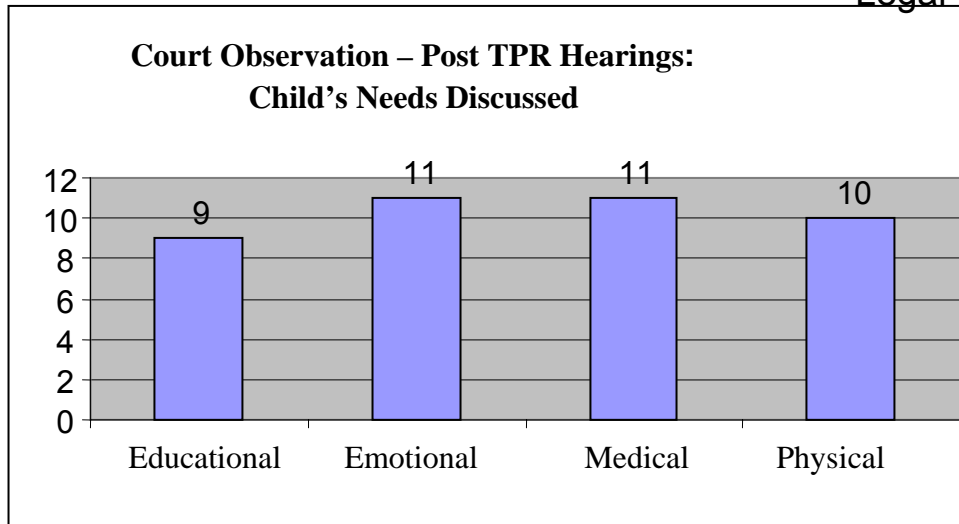
- Adoption study not completed timely
- Adoption summary not complete on children
- Lack of child specific recruitment
- Child does not wish to be adopted

Something needs to be done to speed up and streamline the process. Adoption specialists are not getting involved early on.

Attorney Interview

Court delays were listed as a factor, but were not rated statistically as a significant factor by the respondents. During court observations, one judge ordered the agency to let him know as soon as the paperwork on the adoption was ready so that he could clear his calendar to schedule the adoption hearing.

Another purpose of a post -TPR review hearing is for the court to determine whether the case plan, services, and placement meet the special needs and best interest of the juvenile, with the juvenile's health and safety specifically addressed. Only in five of the 19 post-TPR hearings observed were witnesses called, but the child's educational needs were addressed in nine of the cases, the child's emotional and medical needs were discussed in 11 of the cases, and the child's physical needs were addressed in 10 cases.



Only in one hearing did the judge ask foster parents if they had anything to say. In seven cases, judges informed the DCFS caseworker of their obligation to comply with the court orders to finalize the adoptions. No pre-adoptive parents were asked to provide information to the court. In five cases the judge issued a court order immediately following the hearing.

Appeals

Appeals – Arkansas Law

Rule 2. – Appealable matters – Priority

Appeals in juvenile cases shall be made in the same time and manner provided for appeals from circuit court. Pending an appeal from any case involving a juvenile out-of-home placement, the circuit court retains jurisdiction to conduct review hearings.

In juvenile cases where an out-of-home placement has been ordered, orders resulting from the hearings set below are final appealable orders:

Adjudication and disposition hearings;

Review and permanency planning hearings if the court directs entry of a final judgment as to one or more of the issues or parties and upon express determination supported by factual findings that there is no just reason for delay of an appeal, in accordance with Ark. R. Civ. P., Rule 54(b); and

Termination of parental rights. **Ark. R. App. P. – Civil 2**

Appeals – State Practice

One of the CIP recommendations from the original assessment was to expedite appeals. As a result, the Arkansas Supreme Court adopted a rule change to prioritize dependency-neglect appeals. The Reassessment Team reviewed data on 25 published appeals in dependency-neglect cases over a two-year period. Five of the cases were appeals of the dependency-neglect adjudication and 20 were appeals of termination of parental rights.

The average number of days from a TPR hearing or order to the appeals decision was 443 days; ranging from 285 to 684 days.

The average number of days from the date the appeal was lodged to decision was 286 days; ranging from 159 to 527 days.

The average number of days from TPR to the appeal being lodged was 149 days; ranging from 79 - 241 days.

The average number of brief extensions per case is 4.5. The largest number of brief extensions was nine for one case.

➤ In 23 of the 25 cases, DHS asked for at least one time extension for filing briefs. The most brief extensions requested and granted in a single case was two.

➤ In 23 of the 25 cases, the appellant(s) asked for additional time to file briefs at least once. The most brief extensions requested and granted to an appellant was six in one case.

➤ In 21 of the 25 cases reviewed, a brief extension was granted to the minor child(ren) at least once. The most in any one case was two extensions.

There were five withdrawals of counsel, but these did not affect the timeliness of the appeal because they all happened prior to the first brief deadlines.

Two cases had various motions for additional time and one had a motion to vacate the oral argument, which was denied. These motions did not appear to affect time significantly.

Case Plans

Case Plans - Federal Law

Federal law mandates that a state plan must provide for the development of a case plan for each child receiving foster care maintenance payments under the state plan and provides for a case review system with respect to each such child. **42 U.S.C. § 671(a)(16).**

“Case Plan” is defined in federal law as follows:

(1) The term “case plan” means a written document which includes at least the following:

(A) A description of the type of home or institution in which a child is to be placed, including a discussion of the safety and appropriateness of the placement and how the agency which is responsible for the child plans to carry out the voluntary placement agreement entered into or judicial determination made with respect to the child in accordance with section 472(a)(1) [42 USCS § 672(1)(1)].

(B) A plan for assuring that the child receives safe and proper care and that services are provided to the parents, child, and foster parents in order to improve the conditions in the parents’ home, facilitate return of the child to his own safe home or the permanent placement of the child, and address the needs of the child while in foster care, including a discussion of the appropriateness of the services that have been provided to the child under the plan.

(C) To the extent available and accessible, the health and education records of the child, including :

(i) The names and addresses of the child’s health and educational providers;

(ii) the child’s grade level performance;

(iii) the child’s school record;

(iv) assurances that the child’s placement in foster care takes into account proximity to the school in which the child is enrolled at the time of the placement;

(v) a record of the child’s immunizations;

(vi) the child’s known medical problems;

(vii) the child’s medications; and

(viii) any other relevant health and education information concerning the child determined to be appropriate by the State Agency.

(D) Where appropriate, for a child age 16 or over, a written description of the programs and services which will help such child prepare for the transition from foster care to independent living.

(E) In the care of a child with respect to whom the permanency plan is adoption or placement in another permanent home, documentation of the steps the agency is taking to find an adoptive family or other permanent living arrangement for the child, to place the child with an adoptive family, a fit and willing relative, a legal guardian, or in another planned living arrangement, and to finalize the adoption or legal guardianship. At a minimum, such documentation shall include child specific recruitment efforts such as the use of State, regional and national adoption exchanges including electronic exchange systems. **42 U.S.C. § 675(1).**

Case Plans - Arkansas Law

A case plan shall be developed in all dependency-neglect cases; and any case involving an out-of-home placement. **Ark. Code Ann. § 9-27-402(a).**

DHS shall be responsible for developing case plans in all dependency-neglect cases, and in FINS or delinquency cases when custody is transferred to the agency, pursuant to Ark. Code Ann. §9-27-328. **Ark. Code Ann. § 9-27-402(a).**

The case plan shall be developed in consultation with the juvenile's parent, guardian, or custodian, and, if appropriate, the juvenile, juvenile's foster parents, the court-appointed special advocate, the juvenile's attorney ad litem; and all parties' attorneys. **Ark. Code Ann. § 9-27-402(a)(1)(A).**

If the parents are unwilling or unable to participate in the development of the case plan, the department shall document that unwillingness or inability and provide this written documentation to the parent, if available. The department shall then prepare a case plan conforming as nearly as possible to the requirements set forth in this section. **Ark. Code Ann. § 9-27-402(a)(1)(B).**

A parent's incarceration, by itself, does not make a parent unavailable to participate in the development of a case plan. **Ark. Code Ann. § 9-27-402(a)(1)(C).**

The case plan shall be developed and filed with the court no later than 30 days after the date the petition was filed or the juvenile was first placed out of home, whichever is sooner. **Ark. Code Ann. § 9-27-402(a)(2)(A).**

If the department does not have sufficient information prior to the adjudication hearing to complete all of the case plan, the department shall complete those parts for which information is available. **Ark. Code Ann. § 9-27-402(a)(2)(B).**

All parts of the case plan shall be completed and filed with the court thirty (30) days after the adjudication hearing. **Ark. Code Ann. § 9-27-402(a)(2)(C).**

Case plans shall be signed and distributed to all parties and distributed to the juvenile's attorney ad litem, CASA, if appointed, and foster parents, if available. **Ark. Code Ann. § 9-27-402(a)(3).**

Case plans shall be subject to modification based on changing circumstances. **Ark. Code Ann. § 9-27-402(a)(4)(A).**

All parties to the case plan shall be notified of any substantive change to the case plan. **Ark. Code Ann. § 9-27-402(a)(4)(B).**

A substantive change to a case plan includes, but is not limited to, changes in the juvenile's placement; in the visitation rights of any party; or in the goal of the plan. **Ark. Code Ann. §9-27-402(a)(4)(C).**

If the child remains in the home, the case plan shall include at a minimum:

- A description of the problems being addressed;
- A description of the services to be provided to the family and juvenile specifically addressing the identified problems and time frames for providing services;
- A description of any reasonable accommodations made to parents in accordance with the Americans with Disabilities Act to assure to all the parents meaningful access to services;
- The name of an individual known to be or who is named as the father or possible father of the juvenile and whose paternity of the juvenile has not been judicially determined; and
- A description of how the juvenile's health and safety will be addressed. **Ark. Code Ann. § 9-27-402(b).**

If the child is in an out-of-home placement, the case plan must include at a minimum:

- A description of the problems being addressed;
- A description of the services to be provided to the family and juvenile specifically addressing the identified problems and time frames for providing services;
- A description of any reasonable accommodations made to parents in accordance with the Americans with Disabilities Act to assure to all the parents meaningful access to services;
- The name of an individual known to be or who is named as the father or possible father of the juvenile and whose paternity of the juvenile has not been judicially determined;
- A description of the permanency goal;
- The specific reasons for the placement of the juvenile in care outside the home, including a description of the problems or conditions in the home of the parent, guardian, or custodian which necessitated removal of the juvenile, and the remediation of which will determine the return of the juvenile to the home;
- A description of the type of out-of-home placement selected for the juvenile including a discussion of the appropriateness of the placement;
- A plan for addressing the needs of the juvenile while in the placement, with an emphasis on the health and safety safeguards in place for the child, including a discussion of the services provided within the last six (6) months;
- The specific actions to be taken by the parent, guardian, or custodian of the juvenile to eliminate or correct the identified problems or conditions and the period during which the actions are to be taken;
 - The plan may include any person or agency that shall agree to and be responsible for the provision of social and other family services to the juvenile or the parent, guardian, or custodian of the juvenile.
- Visitation rights and obligations of the parent, guardian, or custodian and the state agency during the period the juvenile is in the out-of-home placement;
- The social and other family services to be provided to the parent, guardian, or custodian of the juvenile, and foster parent, if any, during the period the juvenile is in placement and a timetable for the provision of those services;

- To the extent available and accessible, the health and education records of the juvenile, pursuant to 42 U.S.C. 675(1);
- A description of the financial support obligation to the juvenile, including health insurance of the juvenile's parent, parents, or guardian;
- Description and the location of siblings. If siblings have been separated, a statement of the reasons for separation and the efforts that have been and will be made to enable the siblings to maintain regular contact while separated and to be reunited as soon as possible;
- When appropriate for a juvenile age sixteen (16) and over, the case plan must also include a written description of the programs and services which will help the juvenile prepare for the transition from foster care to independent living; and
- A written notice to the parent(s) that failure of the parent(s) to comply substantially with the case plan may result in the termination of parental rights, and that a material failure to comply substantially may result in the filing of a petition for termination of parental rights sooner than the compliance periods set forth in the case plan itself. **Ark. Code Ann. § 9-27-402(c).**

The case plan is subject to court review and approval. **Ark. Code Ann. § 9-27-402(d).**

A parent's, guardian's or custodian's participation in the development or the acceptance of a case plan shall not constitute an admission of dependency-neglect. **Ark. Code Ann. § 9-27-402(e).**

Case Plans - State Practice

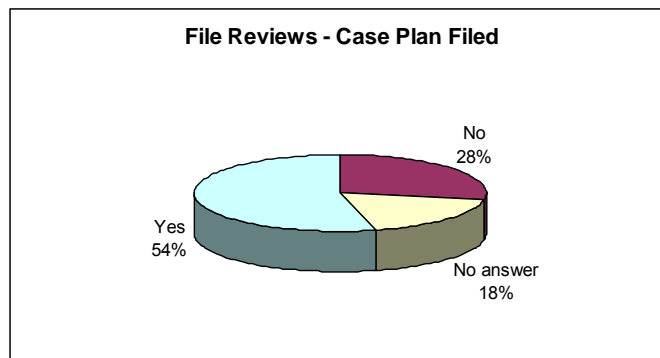
Case plans presented to the Court: In the original assessment, judges expressed frustration over not receiving case plans. At that time, state law did not require that case plans be submitted to the court. This was one of the recommendations of the original assessment and was enacted into state law soon after the original assessment. The original assessment noted that the Arkansas law did not include the federal requirements that the health and education records of the child be included in a case plan. The Committee recommended that the Juvenile Code be amended to require that case plans include the health and education records of foster care children so that Arkansas law would conform to federal requirements. Also added to the law in 1997, was the requirement that the case plan be filed no later than 30 days after the date the petition is filed or the juvenile is first placed out-of-home, whichever is sooner.

This fundamental change in Arkansas law regarding case plans came about with a shift in philosophy of the roles of the agency and the court. It was determined that the case plan should be the roadmap to permanency for all parties so that all would have a clear description of all parties' expectations and responsibilities. The concept was that the DCFS would develop the case plan based on the strengths and needs of the family and with input from all parties, interested stakeholders, and attorneys, subject to the approval of the court. With this approach to developing a case plan, the agency would no longer wait for the court to issue orders for services; rather, the court would be provided with at least a partial case plan at the adjudication, with a complete plan to be developed no later than 30 days after adjudication. However, the Reassessment Team found that practice has not followed the law.

Legal Exhibit 70

When asked whether case plans are presented to the court at the adjudication/disposition hearing, judges' responses were *always* (22%), *usually* (46%), *often* (16%), *occasionally* (14%), and *never* (3%). Attorneys reported case plans are *always* (13%), *usually* (37%), *often* (17%), *occasionally* (29%), and *never* (5%) presented to the court at adjudication/disposition hearings.

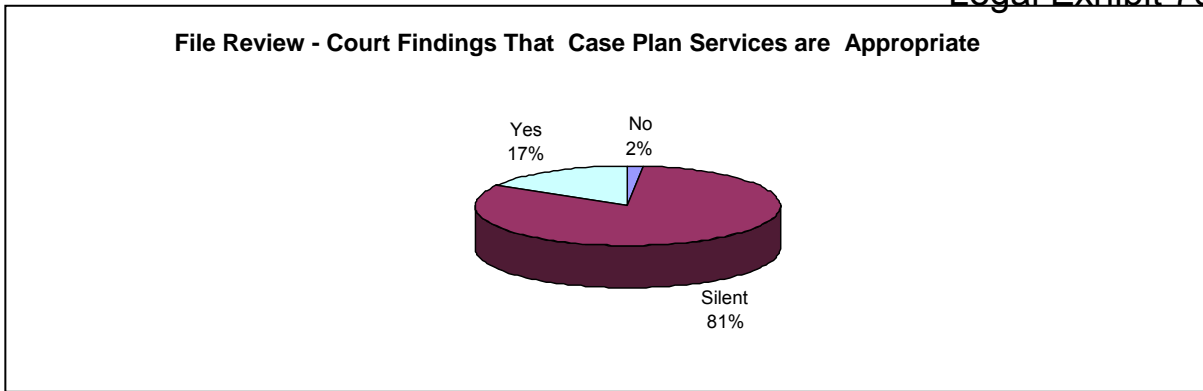
Court observation revealed that case plans were presented to the court in only eight of the 13 observed adjudication/disposition hearings. In 18 of the 32 review hearings, information regarding compliance with case plans was provided to the court through testimony or other means. In seven other cases, court reports were admitted into evidence that provided some evidence of case plan compliance. At the permanency planning hearings, case plans were addressed in 13 of the 23 hearings. However, case plans were in only 54% of the case files reviewed.



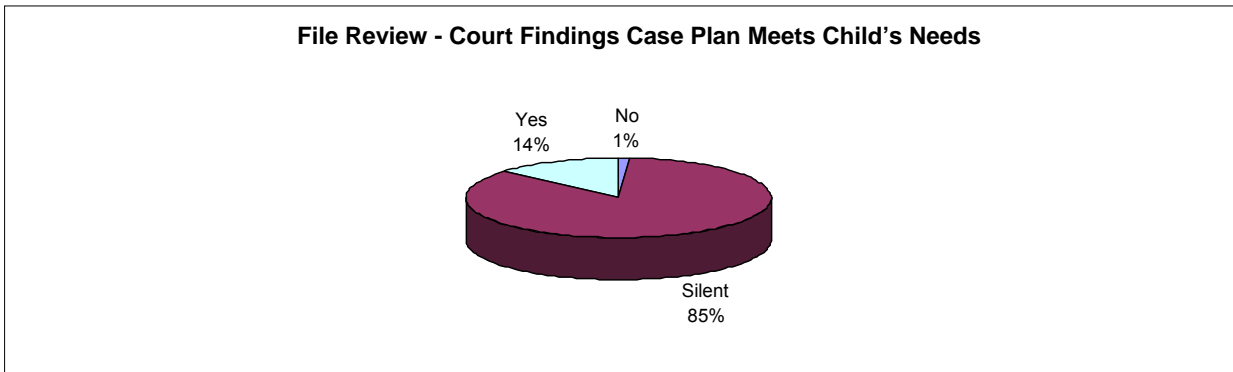
In the original assessment, file reviewers found actual copies of case plans in only 3.8% of the files. Seemingly, the 54% in the reassessment would appear to be progress, but one must remember that at the time of the original assessment, state law did not require the case plan to be filed with the court, as has been the law since 1997.

Case Plan Findings: Judges' survey responses reported that they *always* (3%), *usually* (86%), or *often* (11%) find the case plan goal appropriate. They reported that they consider the appropriateness of the case plan services *always* (24%), *usually* (51%), *often* (16%), *occasionally* (5%), and *never* (3%). Further, judges' survey responses reported that they *always* (3%), *usually* (78%), or *often* (11%) find the case plan sufficient to meet the juvenile's needs.

However, in the file reviews, 80% of the adjudication orders reviewed were silent on the issue of whether the case plan was appropriate. Court orders noted that the case plan was appropriate in 19% of the case files. File reviews found 81% of the orders were silent as to a finding of appropriateness of the case plan services, with 17% having an affirmative finding of appropriateness as to the case plan services, and 2% having a negative finding.



Similarly, of case files reviewed, 85% were silent as to the finding that the case plan meets the child’s needs, with only 14% having an affirmative finding that the case plan meets the child’s needs and 1% having a negative finding.



Participation in case plan staffings: When asked about the participation of various individuals in developing the case plan, caseworkers’ survey results were:

	Never 0%	Occasion-ally 1%-33%	Often 34%-66%	Usually 67%-99%	Always 100%
a. Parents	2%	9%	19%	49%	21%
b. Parents' attorneys	12%	40%	16%	23%	9%
c. Child (if age appropriate)	2%	20%	18%	38%	22%
d. Foster parents	6%	31%	21%	28%	13%
e. Attorney ad litem	8%	25%	16%	33%	18%
f. OCC attorney	18%	40%	14%	22%	7%
g. CASA volunteer (when appointed)	21%	25%	13%	29%	11%
h. Other relatives	18%	63%	10%	7%	3%
i. Additional stakeholders (e.g. therapist, juvenile officer, school representatives)	14%	53%	17%	11%	5%

Legal Exhibit 70

When foster parents and CASA staff and volunteers were asked in the surveys about their attendance at case plan staffings, they indicated a higher rate of attendance for themselves than what was indicated in the caseworker survey. Foster parents reported that they attend staffings *always* (27%), *usually* (24%), *often* (9%), *occasionally* 23%, and *never* (17%). CASA staff and volunteers, when asked how often they attend staffings, reported *always* (29%), *usually* (38%), *often* (12%), *occasionally* (15%), and *never* (5%).

In court observations, it was noted that one judge asked parents and juveniles if they had participated in the development of the case plan. If not, another case plan staffing was scheduled. Some judges, at probable cause hearings, order a case plan staffing to be scheduled while all parties are present, thus avoiding problems of notice, and set a date certain by which the case plan must be filed with the court.

Perceptions of Purpose: Participants' perceptions of the purpose of the staffing for the case plan vary widely. In a focus group, an OCC attorney demonstrated a misunderstanding of the purpose of the case plan staffing with this remark:

“Staffings should be an explanation of the case plan and not a negotiation. If a party disagrees with the case plan, that issue should be raised in court.”

Caseworkers demonstrated a wide variety of staffing procedures. When asked in interviews “what happens in a staffing?” they replied:

- Discuss case plan, make sure all understand.
- Discuss orders, needs of family, what it takes to get kids home.
- Everyone has their say-so and then they sign the form.
- Case plan already developed. We go over line by line. Write in if more needed, take things out, retype if many corrections. Judge at probable cause gives ideas of parents' requirements.
- We present case plan, ask “do you feel this is what you need?” Big old gab session about case plan.
- Discuss where we are in the case. Go over the case plan which is developed before staffing.
- Establish goals of the case. What should be in case plan. Includes court orders and then what the parents want is added in there.

Foster Parent & Relative Participation

Foster Parent & Relative Participation – ASFA

The foster parents of a child and any pre-adoptive parent or relative providing care for the child are provided with notice of, and an opportunity to be heard in any review or hearing to be held with respect to the child, except that this subparagraph shall not be construed to require that any foster parent, pre-adoptive parent, or relative providing care for the child be made a party to such a review or hearing solely on the basis of such notice and opportunity to be heard. **42 U.S.C. 675 (5)(G).**

Foster Parent & Relative Participation – Arkansas Law

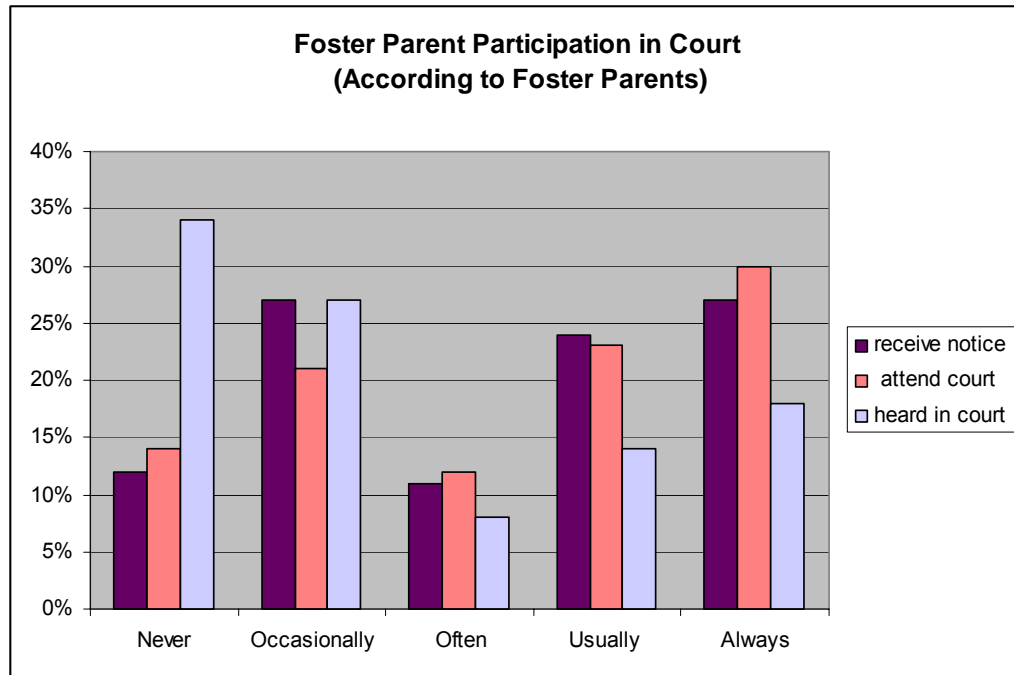
- The Department of Human Services shall provide to foster parents and pre-adoptive parents of a child in department custody notice of any review or hearing to be held with respect to the foster child.
- Relative caregivers shall be provided notice by the original petitioner in the juvenile matter.
- The court shall allow foster parents, pre-adoptive parents, and relative caregivers an opportunity to be heard in any review or hearing held with respect to a child in their care.
- Foster parents, adoptive parents, and relative caregivers shall not be made parties to the review or hearing solely on the basis that the persons are entitled to notice and the opportunity to be heard. **Ark. Code Ann. §9-27-325(l).**

Foster Parent & Relative Participation – State Practice

Foster parents and relatives provide valuable insight to the court as to the child's health and safety needs and may provide resources to the family. Court observations revealed that foster parents were present at five of nine probable cause hearings, four of 19 adjudication hearings, four of 30 review hearings, and four of 23 permanency hearings. Relatives were present at a slightly higher rate: three of nine probable cause hearings, nine of 19 adjudication hearings, ten of 30 review hearings, and seven of 23 permanency hearings.

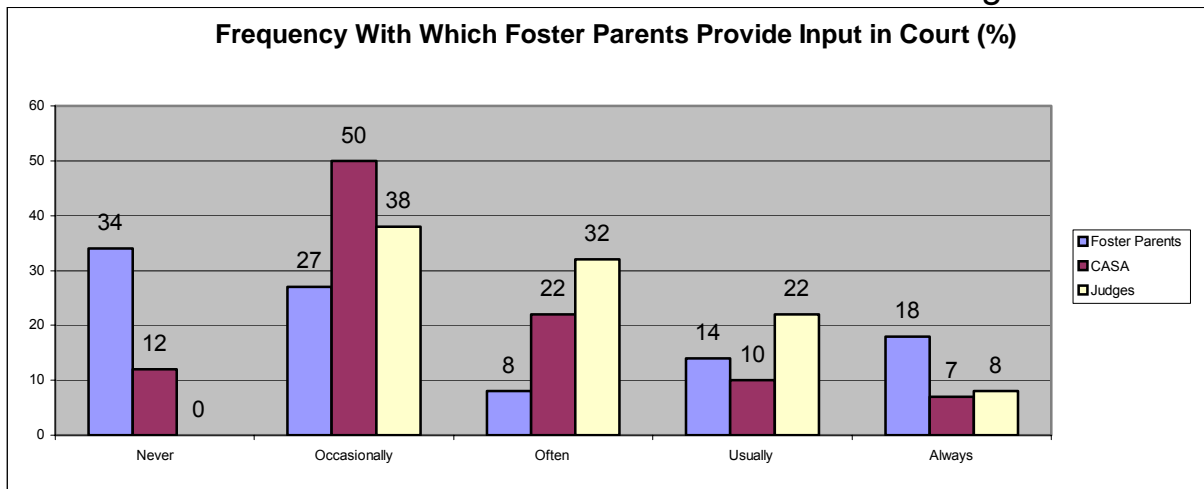
File reviews were not a good tool to determine the presence of foster parents and relatives because the court orders do not always list everyone who is present at the hearing. From the information in the orders, the presence of relatives was indicated in at least some of the hearings in 77 of the 185 case files reviewed. Court orders indicated the presence of foster parents in only 11 of the 185 files, but it should be noted that the foster parents may well have been present at hearings, even if their presence was not noted in the orders. Two of the nine foster parents interviewed during court observations indicated that they had never attended court before, but were asked to be present the day of the observation.

When asked in surveys about receiving timely court notice, 27% of the foster parents reported *always*, 24% reported *usually*, 11% reported *often*, 27% reported *occasionally*, and 12% reported *never*. In response to whether they attend court, 30% reported *always*, 23% reported *usually*, 12% reported *often*, 21% reported *occasionally*, and 14% reported *never*. On the issue of whether they have the opportunity to make comments or “be heard” 18% reported *always*, 14% reported *usually*, 8% reported *often*, 27% reported *occasionally*, and 34% reported *never*.

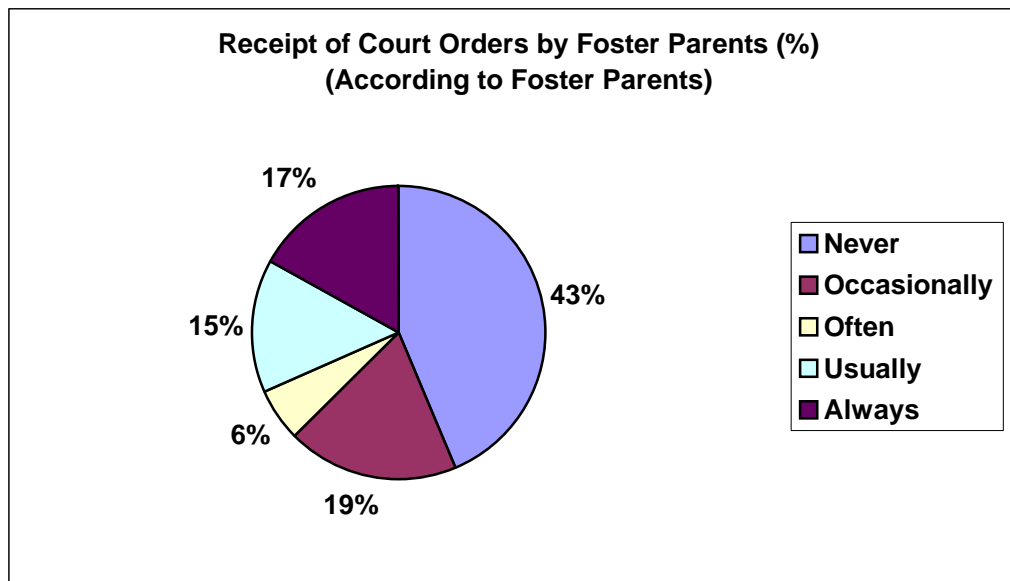


Focus groups of foster parents were held at the state-wide foster parent conference. While foster parents spoke of some positive experiences with individual courts that sought their input, foster parents generally expressed frustration with the court system. A foster parent stated, “We are trained a certain way to deal with these children. We are the ones who care, but we are not allowed to have a voice.” A focus group of agency attorneys had varying opinions regarding the role of foster parents in hearings. Some indicated their input was critical to the case while others expressed problems with foster parents being overly zealous or overly invested with the child.

Survey results reveal that foster parents believe that they provide less input in court, in contrast to the perception of judges and CASA staff and volunteers. More specifically, 34% of the foster parents who responded to surveys reported that they *never* have an opportunity to provide input in court as compared with 0% of the judges and 12% of CASA respondents. In addition, 27% of foster parents reported that they *occasionally* have an opportunity to provide input in court, as compared with a much higher percentage of judges (38%) and CASA (50%). Interestingly, 18% of foster parents reported that they *always* have opportunities to provide input in court, and only 7% of CASA and 8% of judges reported so.

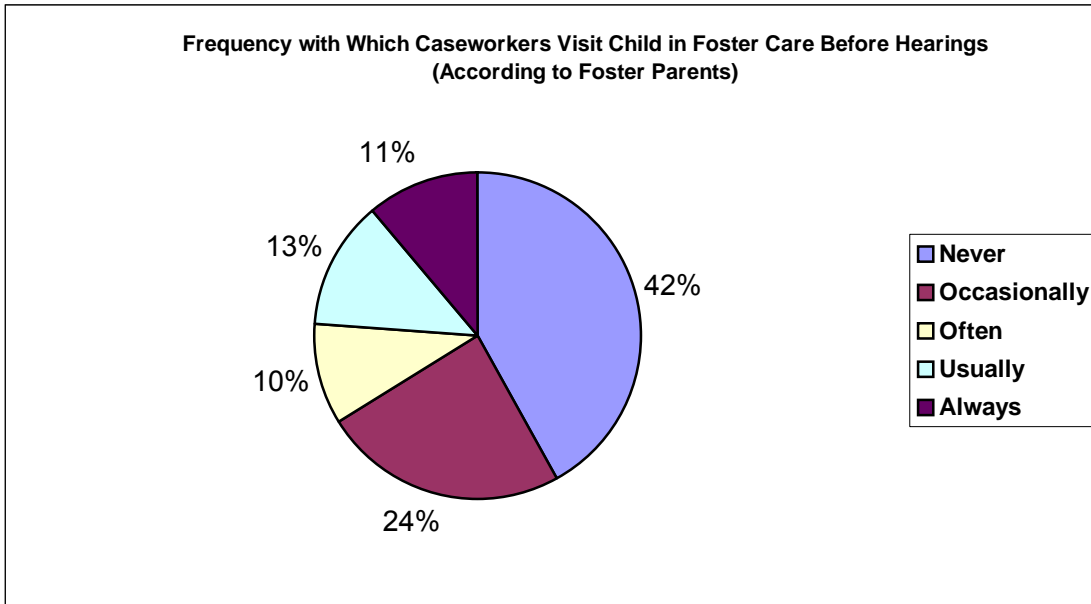


When foster parents were asked to report about the frequency with which they receive court orders, 43% of them reported that they *never* receive them. Six percent reported that they *often* receive them, 15% reported that they receive them *usually*, and 17% reported that they *always* receive court orders. Only 19% reported that they *occasionally* receive orders.

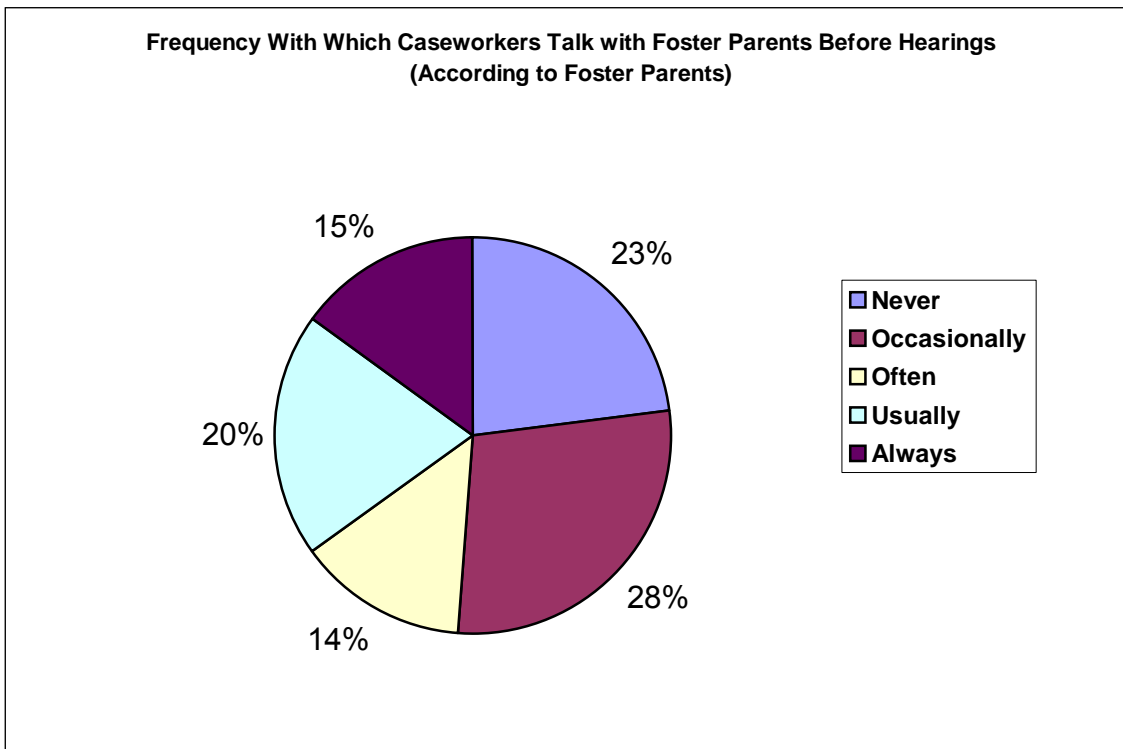


When foster parents were asked about the frequency with which caseworkers speak with the children before hearings, 32% of foster parents reported *never*, 24% reported *occasionally*, 18% reported *usually*, 13% reported *often*, and another 13% reported *always*.

When asked about the frequency with which caseworkers visit children before court hearings, 42% of foster parents reported *never*, 24% reported *occasionally*, 13% reported *usually*, 11% reported *always*, and 10% reported *often*.



When asked about the frequency with which caseworkers talk with them before court hearings, 28% of foster parents reported *occasionally*, 23% reported *never*, 20% reported *usually*, 15% reported *always*, and 14% reported *often*.

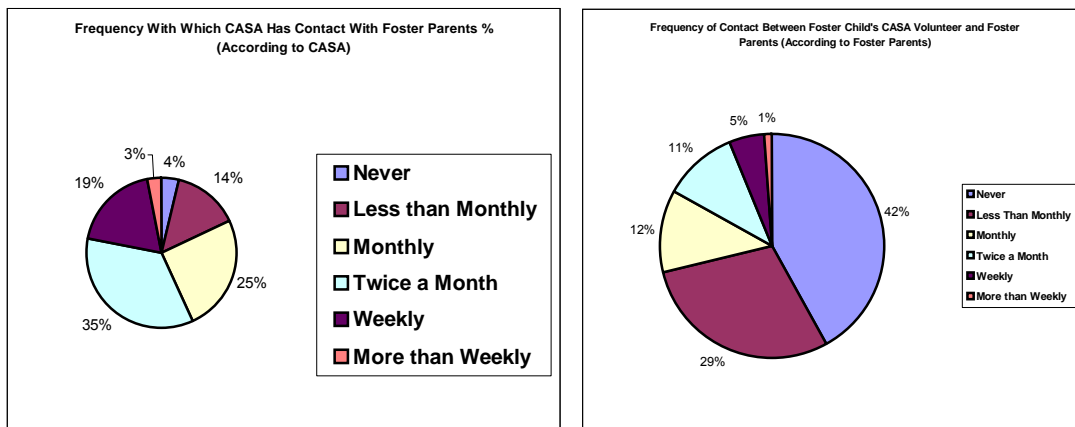


Legal Exhibit 70

When asked how often the attorney ad litem talks with the foster parents before the day of the hearing, 5% of the foster parents reported *always*, 11% reported *usually*, 5% reported *often*, 15% reported *occasionally*, and 64% reported *never*.

In response to a similar question posed to foster parents regarding how often the child's attorney ad litem talks to the child before the day of the hearing, 8% reported *always*, 11% *usually*, 7% *often*, 17% *occasionally*, and 57% reported *never*. When asked how often the attorney ad litem visits the child in the foster home before the day of the hearing, 3% of the foster parents reported *always*, 4% reported *usually*, 5% reported *often*, 8% reported *occasionally*, and 80% reported *never*.

When CASA volunteers and staff were asked about the frequency of contact they have with foster parents, 35% of them reported that this contact occurs *twice a month*, 25% reported that this contact occurs *monthly*, 19% reported that that this contact occurs *weekly*, 14% reported that this contact occurs *less than monthly*, 4% reported that this contact *never* occurs, whereas 3% reported that this contact occurs *more than weekly*. When foster parents were asked about the frequency of contact they have with CASA volunteers, 42% of them reported *never*, 29% reported *less than monthly*, 12% reported *monthly*, 11% reported *twice a month*, 5% reported *weekly*, and 1% reported *more than weekly*.



When asked how often foster parents participate in developing the case plan, 41% of DCFS supervisors and caseworkers reported *always* or *usually*. In their response to the similar question: "How often are you included in the development of your foster child's case plan?", thirty-nine percent (39%) of foster parents reported *always* or *usually*. Six percent of the DCFS staff reported that foster parents *never* participate in the development of the case plan, compared to 18% of the foster parents who report they are *never* included in the development of the case plan. Only 10% of the DCFS supervisors and caseworkers report that other relatives are *always* or *usually* included in the development of the case plan.

Foster parents obviously feel very isolated in our court system. This was reflected in their interviews and focus groups as well as their surveys. The survey results from similar questions posed to foster parents and other groups show that the foster parents have a perception that needs to be addressed.

Indian Child Welfare Act

Federal Law - Indian Child Welfare Act (ICWA)

The federal Indian Child Welfare Act (ICWA) 25 U.S.C. § 1901 et seq. applies when

- T The proceedings are child custody proceedings; and
- T The child is an “Indian child.”

Child custody proceedings under ICWA include:

- T Foster care placements,
- T Termination of parental rights,
- T Pre-adoptive placements, and
- T Adoptive placements.

ICWA proceedings have additional legal requirements which include:

- T Inquiry as to Native American heritage,
- T Notice to the tribe,
- T A higher burden of proof, and
- T Placement priorities.

Arkansas does not have any statutes regarding Native American children and dependency-neglect issues. Judges have been trained to follow federal law. The only appellate case which has dealt with issues of the Indian Child Welfare Act (ICWA) is *Burks v. Arkansas Department of Human Services*, 76 Ark. App. 71, 61 S.W.3d 184 (2001), where the trial judge was upheld for compliance with ICWA’s burden of proof of beyond a reasonable doubt for termination of parental rights and the ICWA “qualified expert witness” guidelines.

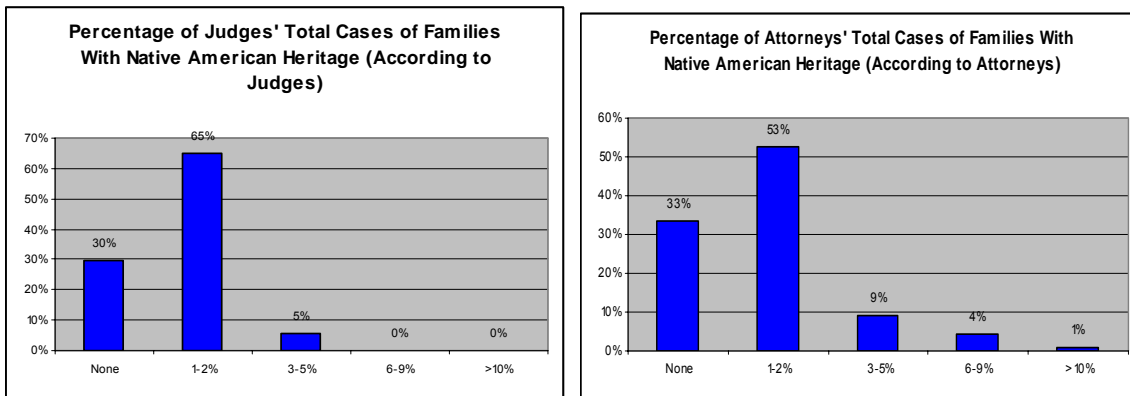
State Practice - Indian Child Welfare Act

Arkansas has no federally recognized tribes within the state. When a child identified as eligible for membership in a tribe comes to the attention of DCFS, the child is referred to the DHHS Office of Chief Counsel (OCC). OCC contacts the tribal officials to determine whether or not the tribe will intervene or take jurisdiction of the case.

Native American Population: According to the 2000 U.S. Census, the overall American Indian population of Arkansas was 0.7%, with only 11 of our 75 counties having an American Indian population in excess of 1.0%. The highest Native American population of any county in the state is 2.0%. Attorney responses to the survey question regarding the percentage of their caseload of families of Native American heritage reflect this population.

When attorneys were asked to report about the percentage of families of Native American heritage in their total caseload, 33% of them reported there were none. Fifty-three per cent reported that families with Native American heritage comprise 1-2% of the families they serve; 9% reported that Native American families are 3-5% of the families they serve; 4% reported that Native American families are 6-9% of the total number of families they serve, and 1% of

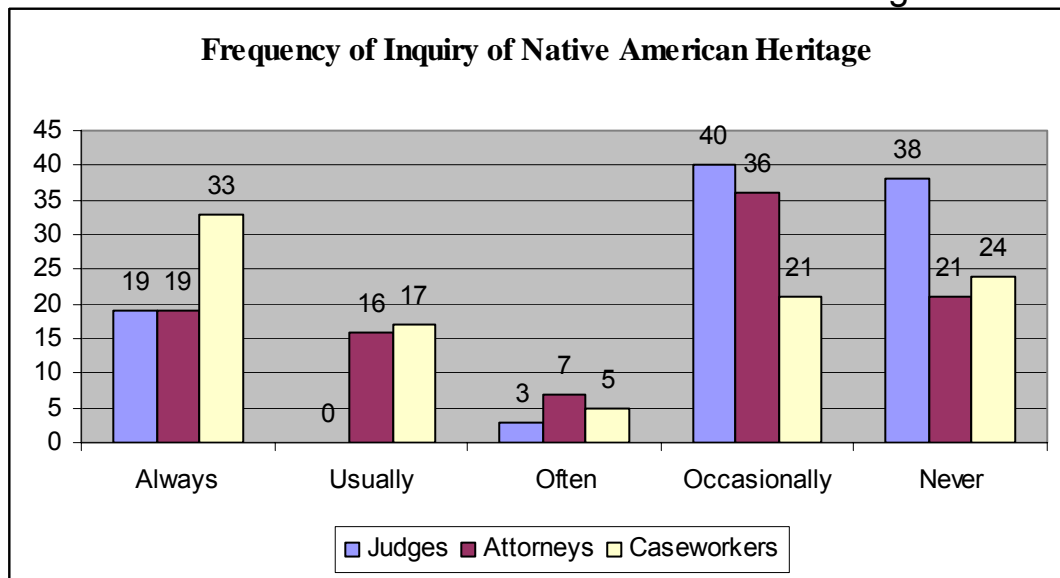
them reported that Native American families are more than 10% of the total number of families they serve. When judges were asked about the percentage of dependency-neglect cases involving families with Native American heritage, the numbers were very similar to those reported by the attorneys:



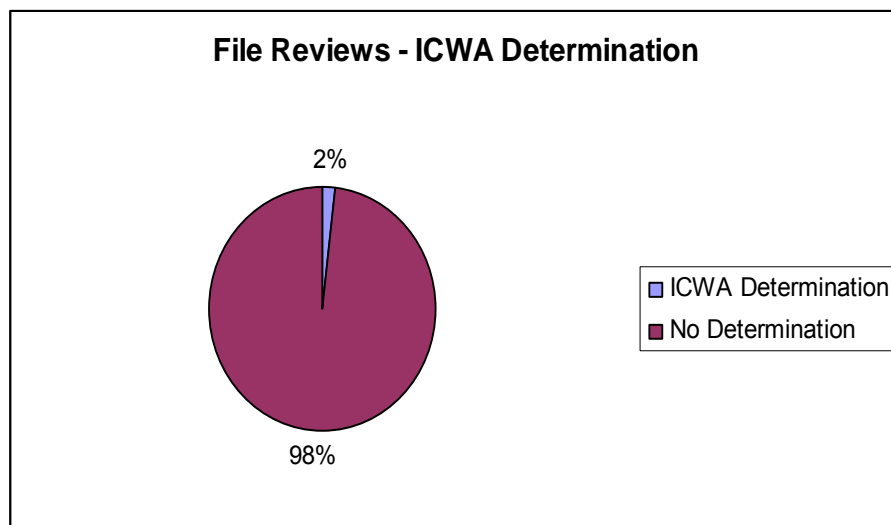
Native American Heritage Inquiry: With a low population of Native Americans, the issue of ICWA does not arise in many of the dependency-neglect cases. This tends to cause those involved in the child welfare system to overlook this extremely important issue. DCFS responses to the surveys show a low rate of inquiry as to whether or not a child coming before the court may be Native American. This is surprising in that inquiry is required by DCFS’ policy and a reminder appears on one of the entry screens in their database system.

Forty-five percent of the caseworkers responded that they *occasionally* or *never* make such inquiry. Only 33% indicate they *always* make inquiry and 17% respond that they *usually* inquire as to whether or not a child coming before the court may be Native American.

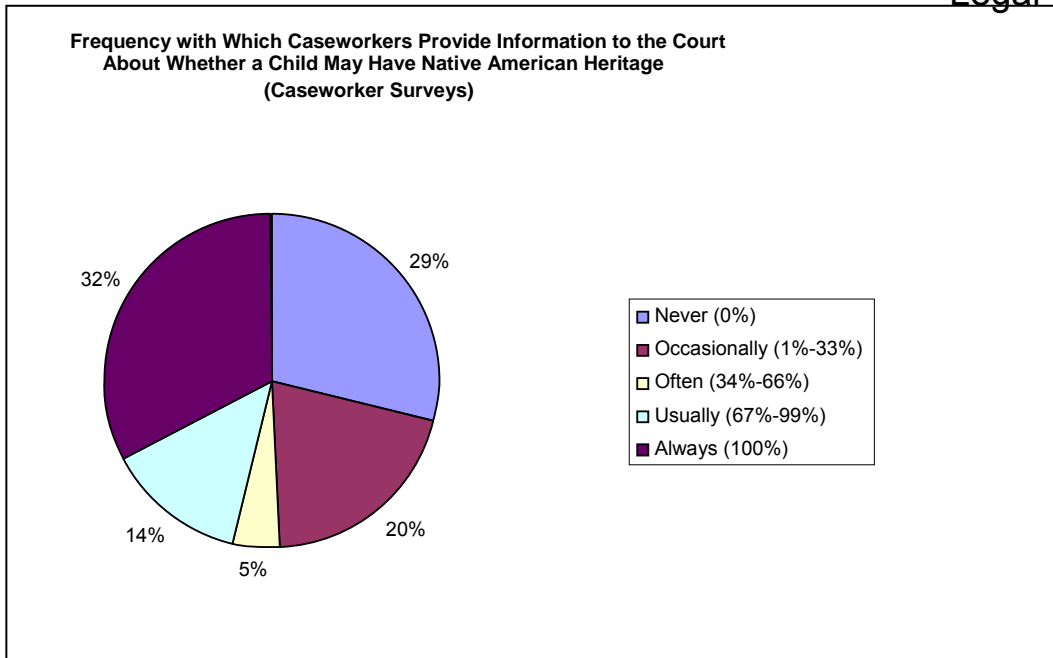
When attorneys were asked about the frequency with which they ask about Native American heritage in their dependency-neglect cases, 21% of them indicated that they *never* inquire, 36% reported *occasionally*, 7% reported *often*, 16% reported *usually*, and 19% reported *always*. When asked how often they inquire about Native American heritage on dependency-neglect cases, judges reported that 38% *never* inquire, 40% *occasionally*, 3% *often* and 19% *always*.



File reviews showed only 2% of the cases reviewed had an ICWA determination:

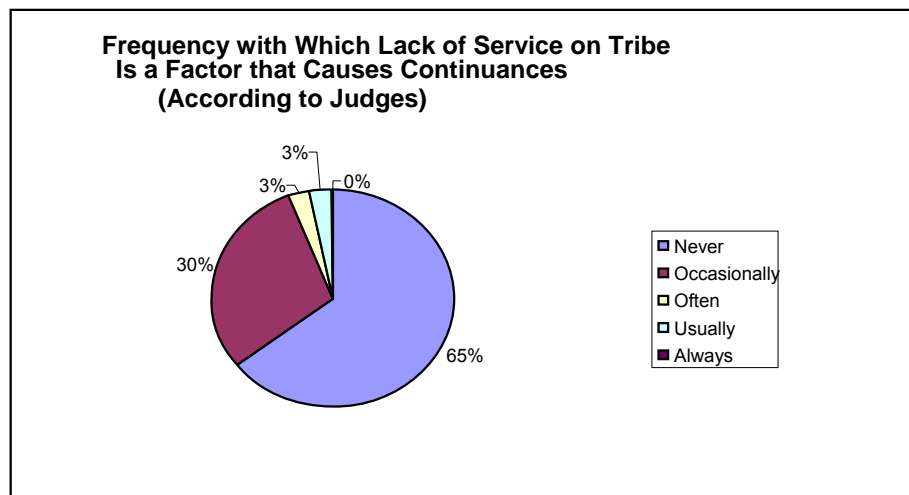


Caseworkers are not providing the court with information regarding Native American heritage on a consistent basis. Thirty-two percent of the caseworkers surveyed reported that they *always* provide information to the court, 14% reported *usually*, 5% reported *often*, 20% reported *occasionally*, and 29% reported *never*.



Court observation revealed that only three of the twelve judges observed inquired about whether the parties had Native American heritage. It was also raised by parties and was an issue in two other cases.

Continuances Due To Lack of Service on Tribe: Regarding lack of service on the tribe as being a factor in continuances, judges reported this to be a very small factor. Sixty-five percent of the judges reported *never*, 30% of them reported *occasionally*, 3% reported *often*, 3% reported *usually*, and 0% of the judges reported always.



Program Improvement Plan (PIP) – ICWA Training: As part of Arkansas’ Program Improvement Plan (PIP), training on ICWA was provided to judges, attorneys, and DCFS staff. Judges and attorneys were also provided with the ICWA folders with checklists from the National Council of Juvenile and Family Court Judges (NCJFCJ).

Judges were asked to report about the benefit they gained from previous trainings on ICWA and any future training they would like to have related to ICWA. Eighteen reported prior benefits from previous trainings, and 22 expressed interest in attending future training.

Representation and Advocacy

Representation of Children – Attorneys

NCJFCJ Attorney Standards

All attorneys should:

- Actively participate in every critical stage of the proceedings
- Introduce and cross examine witnesses as needed to protect the client
- File and argue motions and file appeals as needed to protect the client
- Develop dispositional proposals for the court
- If the child is removed from the home, determine the contact the agency has had with the parents and child
- Thoroughly investigate the case at every stage of the proceedings
- Conduct a full interview with the client
- Interview all key witnesses
- Review all documents submitted to the court
- Review agency's file and any pertinent law enforcement reports
- Obtain or subpoena necessary records such as school reports, medical records, and case records
- When necessary, arrange for independent evaluations of children or parents
- Stay in regular contact with clients

- Continue to remain in contact with the agency and monitor case progress between court hearings

*National Counsel of Juvenile and Family Court Judges
Resource Guidelines & Standards of Practice for Lawyers Who
Represent Children in Abuse and Neglect Cases*

ABA Standards for Children's Representation - General Duties

- Obtain copies of all pleadings and relevant notices
- Participate in depositions, negotiations, discovery, pretrial conferences, and hearings
- Inform other parties and their representatives that he or she is representing the child and expects reasonable notification prior to case conferences, changes of placement, and other changes of circumstances affecting the child and the child's family
- Attempt to reduce case delays and ensure that the court recognizes the need to speedily promote permanency for the child
- Counsel the child concerning the subject matter of the litigation, the child's rights, the court system, the proceedings, and lawyer's role, and what to expect in the legal process
- Develop a theory and strategy of the case to implement at hearings, including factual and legal issues
- Identify appropriate family and professional resources for the child

ABA Representation Actions to be Taken

- Meet with the child to prepare for court hearings and case reviews
- Investigate thoroughly including a review of records, documents, and court files concerning family; contact other lawyers, CASA volunteers, parents and caregivers, and all professionals working with the child; review all evidence; and attend all hearings and other proceedings involving legal issues, including school case conferences or staffings concerning the child
- File pleadings as necessary
- Request necessary services
- Give consideration to the child with special needs
- Negotiate settlements

ABA Standards At Hearings

- Attend all hearings

- Explain proceedings to the child
- Make appropriate motions and objections
- Present necessary evidence
- Determine whether the child should be present at the hearing and if the child should testify. Also, address issues relating to the child's testimony
- Continue representation as long as court maintains jurisdiction

Post Hearing

- Review the court's order for accuracy
- Communicate the court's order to the child
- Assure implementation of the court's order

Appeal

- Decide whether to appeal and seek any temporary order to protect the child
- Participate in the appeal
- Explain the outcome of the case to the child

ABA Standards of Practice For Lawyers Who Represent Children in Abuse and Neglect Cases

NACC Standards for Children's Representation - Systematic Safeguards

- Attorney must be competent, independent, and zealous.
- Attorney must have adequate time and resources to handle the cases.
- Attorney must understand his/her role and duties.
- Attorney must present the child's position to the court.
- Children must have confidential communication with their attorney.
- Children should be involved as litigants in the entire process.
- Children need judicial review of adverse decisions.
- Attorney should be held accountable by the child client.
- Attorney must have a fair opportunity to be effective in the court system on the child's behalf.

Advocacy Duties

- Attorney must fully understand the child's case.
- Attorney must have meaningful communication with the child.
- Attorney must be loyal to the child.
- Child must have full benefit of the attorney.

Advocacy Issues

- Attorney must advocate for timely and permanent resolution.
- Attorney must assure that the child's immediate and basic needs are met.
- Attorney should advocate for family relationships for the child when appropriate.
- Attorney should assure that the child is protected from unnecessary harm resulting

from the legal proceedings

*National Association of Counsel for Children (NACC) Recommendations
for Representation of Children in Abuse and Neglect Cases*

Representation of Children B Federal Law B CAPTA

Section 107 of CAPTA, amended by Congress in 2003, provides that the Secretary shall make grants to the States for purposes of assisting the States in improving the child protective services system of each such State in provisions and procedures requiring that in every case involving an abused or neglected child which results in a judicial proceeding, a guardian ad litem, who has received training appropriate to the role, and who may be an attorney or a court appointed special advocate who has received training appropriate to that role (or both), shall be appointed to represent the child in such proceedings to obtain first-hand, a clear understanding of the situation and needs of the child and to make recommendations to the court concerning the best interests of the child. **42 U.S.C. § 5106a (b)(2)(A)(xiii).**

Representation of Children B Arkansas Law

There is hereby created a Division of Dependency-Neglect Representation within the Administrative Office of the Courts which shall be staffed by a court-appointed special advocate coordinator and an attorney coordinator. **Ark. Code Ann. § 9-27-401(a).**

The Director of the Administrative Office of the Courts is authorized to employ or enter into professional service contracts with private individuals or businesses or public agencies to represent all children in dependency-neglect proceedings. **Ark. Code Ann. § 9-27-401(b)(1).**

The Supreme Court shall adopt standards of practice and qualifications for service for all attorneys who seek employment or contracts to provide legal representation to children in dependency-neglect cases. **Ark. Code Ann. § 9-27-401(b)(4).**

In its administration of the system, the Administrative Office of the Courts is charged with the authority and responsibility to establish and maintain a system that: equitably serves all areas of the state; provides quality representation; makes prudent use of state resources; and works with those systems now in place to provide an appropriate level of representation of children and courts in dependency-neglect cases. **Ark. Code Ann. § 9-27-401(b)(5)(B).**

The court shall appoint an attorney ad litem who shall meet standards and qualifications established by the Arkansas Supreme Court to represent the best interests of the juvenile when a dependency-neglect petition is filed or when an emergency ex parte order is entered in a dependency-neglect case, whichever occurs earlier. **Ark. Code Ann. § 9-27-316(f)(1).**

The court may appoint an attorney ad litem to represent the best interest of a juvenile involved in any case before the court and shall consider the juvenile's best interests in determining whether to appoint an attorney ad litem. **Ark. Code Ann. § 9-27-316(f)(2).**

Each attorney ad litem shall:

- File written motions, responses or objections at all stages of the proceedings when necessary to protect the best interests of the juvenile;
 - Attend all hearings and participate in all telephone conferences with the court unless excused by the court; and
 - Present witnesses and exhibits when necessary to protect the juvenile's best interest.
- Ark. Code Ann. § 9-27-316(f)(3).**

Each attorney ad litem shall be provided access to all records relevant to the juvenile's case, including but not limited to school records, medical records, court records relating to the juvenile and his or her family; and Department of Human Services records, to the extent permitted by federal law. **Ark. Code Ann. § 9-27-316(f)(4).**

An attorney ad litem shall represent the best interests of the juvenile. If the juvenile's wishes differ from the attorney's determination of the juvenile's best interest, the attorney ad litem shall communicate the juvenile's wishes to the court in addition to presenting his determination of the juvenile's best interests. **Ark. Code Ann. § 9-27-316(f)(5).**

Supreme Court Administrative Order Number 15 contains requirements for initial qualification training and clinical requirements, as well as continuing education. Also included are the standards of practice for attorneys. The full text is located in Appendix F of this report.

Representation of Children - State Practice

History and General Practice: At the time of the original assessment, there was not a statewide program for attorneys ad litem (AALs). The original assessment found, "that children were not adequately represented in dependency-neglect cases and, even when they were represented, the quality of representation was minimal or poor." Arkansas law required the appointment of a guardian ad litem to represent the best interests of a child and to advocate for the child's articulated wishes. At that time, there were very few attorneys who specialized in representation of children in abuse and neglect cases and paid with county funds. In other parts of the state, the court appointed public defenders or any attorney who happened to be in court that day to represent a child, if a child was represented. There were no standards or requirements for training or experience in order to be appointed.

Act 708 of 1997 of the Arkansas Legislature called for the establishment of a statewide system of employment or contracts for AALs to represent children in all dependency-neglect proceedings. The Act established a Division of Dependency-Neglect Representation ("Dependency-Neglect Division") within the AOC to oversee and implement the program. The Act further instructed the Arkansas Supreme Court to adopt standards of practice and qualifications for attorneys receiving contracts, or being employed, to represent children. A Representation Subcommittee of the Ad Hoc Committee was established and developed the standards. The subcommittee identified prerequisite qualifications, standards of practice, and caseload standards for AALs. These recommendations were adopted by the Committee and provided to the Arkansas Supreme Court. In June 1999, the Supreme Court issued a Per Curiam Order adopting the Committee's standards. The qualifications, standards of practice, and contracts for AAL services became effective on January 1, 2000 and were revised per Administrative Order No. 15 in September 2001.

Legal Exhibit 70

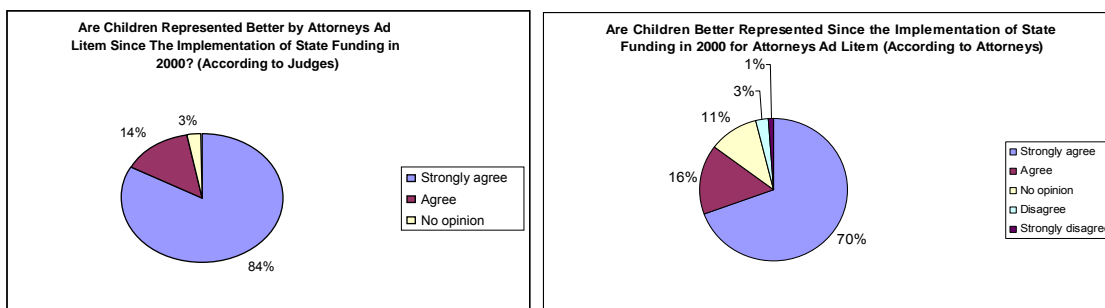
In January 2000, the state implemented contracts for AALs to ensure that every child in a dependency-neglect proceeding received representation by a qualified AAL. The standard practice is that the judges appoint an attorney ad litem in each dependency-neglect case at the time they sign the emergency order placing the child into the custody of the DCFS or when a dependency-neglect petition is filed. During the first year of implementation, the AOC contracted with attorneys to represent children in every judicial circuit. Between January 2000 and June 2001, 14 full-time and 70 part-time AALs represented 4,504 children.. By 2004, the program had 22 full-time employees and 57 contractors representing 4,940 children.

Performance monitoring: As part of the monitoring and oversight of the AAL program, Dependency-Neglect Division staff developed a database program with information provided monthly by the AALs on specifically designed reporting forms. The forms document the findings and proceedings for every hearing in which representation was provided to the child. They provide data to help measure compliance with standards of practice required by the Supreme Court Administrative Order No. 15, and they provide data to assist the AOC in administering program resources. To receive reimbursement for services rendered, AALs must complete and submit a monthly invoice for incurred expenses along with the required monthly reporting forms. This information allows the Dependency-Neglect Division staff to monitor attorneys' compliance with the standards of practice and to monitor the benefits of the AAL representation for children and their families.

To assure quality in representation, a package of several monitoring tools has been developed and implemented. These monitoring tools include surveys, input from judges, data analysis, office audits, file reviews, court observations, and other tools. See Methods of Monitoring and monitoring instruments at Appendix G.

Training and resources: The AOC provides AALs with comprehensive training and a continuing legal education program as well as support services. Examples include initial qualification training, semi-annual training conferences, an AAL Resource Manual, a Program Policy and Procedure Manual, equipment and legal reference materials, and 'on-call' technical support and research for questions from the field.

Quality of representation: Survey respondents were asked whether they believed that children were better represented by AALs since the implementation of the state program and funding in 2000. Ninety-eight percent of the judges agreed or strongly agreed that they are. Of the attorneys responding, 86% agreed or strongly agreed that they are.



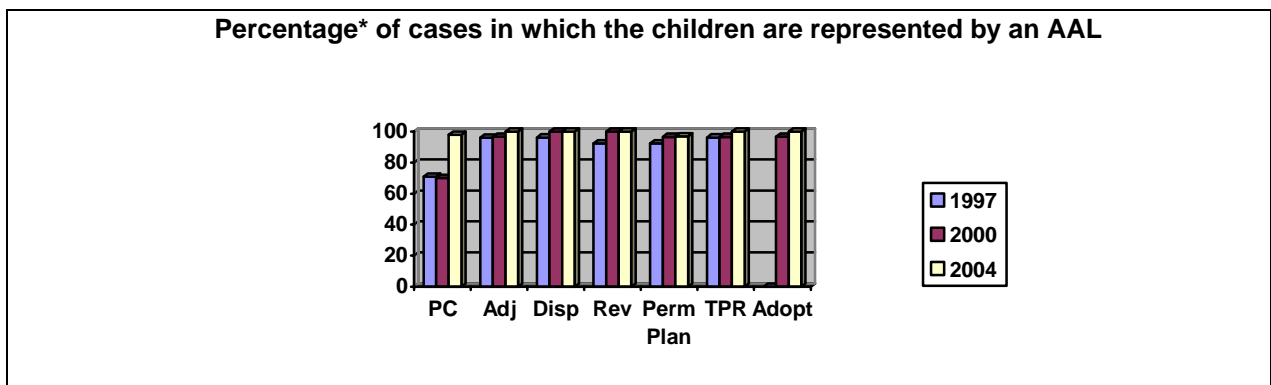
Legal Exhibit 70

Further, court observations noted that the AALs held child safety, permanency for the child, the child's well being, compliance with statutory time frames, and compliance with federal and state law in high priority in the vast majority of cases.

Interviews were conducted with judges, CASA volunteers, caseworkers, foster parents, and attorneys. Interviewees generally had very positive things to say about the representation provided by the AALs and offered the following recommendations as to areas for continued improvement:

- AALs should do more home visits and have a better rapport with their clients – CASA volunteer
- Meet with kids before court and prepare them for trial – CASA volunteer
- AALs should meet with them prior to the day of court – Caseworker
- See the child more often in their placements – Caseworker
- AALs should attend staffings – Caseworker
- Part-time AALs wear too many hats – pulled too many ways with other interests – Attorney
- In a focus group, parents said that all attorneys should be better prepared and all evidence should be gathered and reviewed prior to bringing everyone to court.

Level of representation: Since the implementation of the AAL program, the state has achieved 97 - 100% representation of children by AALs at all dependency-neglect hearings.

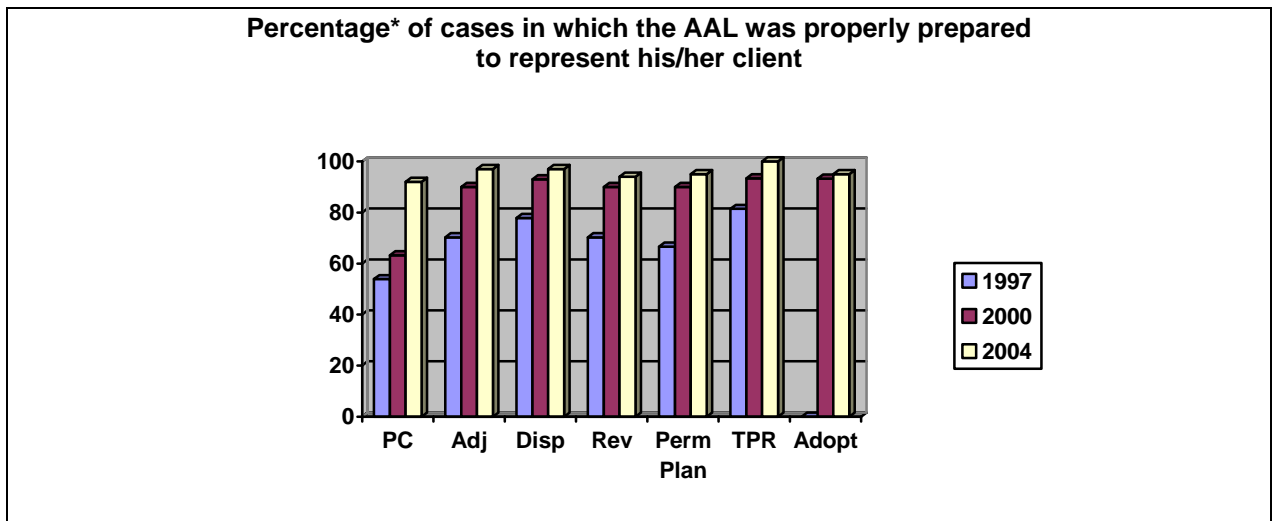


*(Percentage of Survey Respondents answering Usually or Always)

In the court hearings observed, the AAL was present to represent the child in every case. Case file reviews also consistently showed that the AAL was present for hearings, except for one judicial circuit. In that circuit several case files reviewed noted that the AAL was excused from the hearing, but yet found that the child was adequately represented.

Stability in representation: The program is reaching a level of stability in providing uninterrupted representation for children in dependency-neglect cases. Survey results and AOC dependency-neglect database statistics show that the same attorney ad litem *always* or *usually* represents the same child at all stages of the dependency-neglect proceedings in 98 - 100% of all cases. This is an improvement over the original assessment which rated this stability indicator at 75 – 85%.

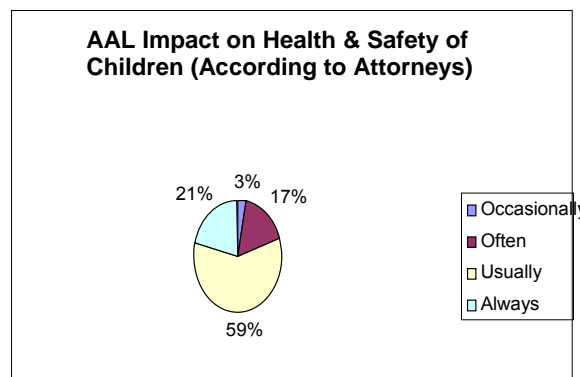
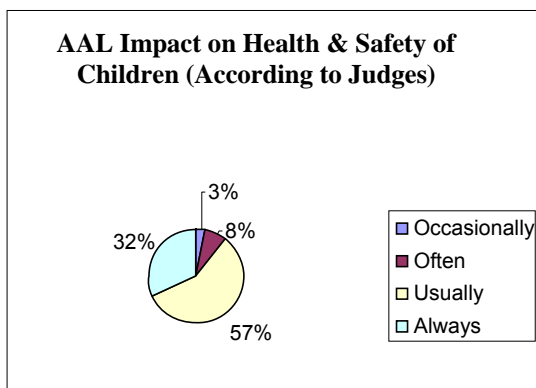
Quality in representation – preparedness: The AAL program has also seen continuous improvement in the quality of representation and preparedness of the attorneys. Judges have found that AALs are currently prepared to represent their clients in 100% of TPRs, 97% of adjudications/disposition hearings, 95% of permanency planning and adoption hearings, 94% of review hearings, and 92% of probable cause hearings.



*(Percentage of Survey Respondents answering *usually* or *always*)

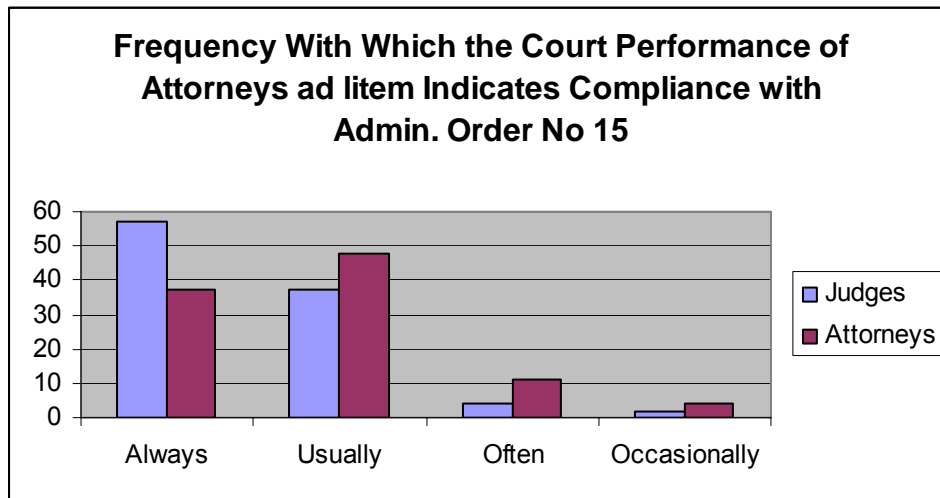
Attorney responses were fairly consistent with the judges’; however, the caseworkers rated the AALs a bit lower in this category, showing them prepared to represent their clients in 93% of TPRs, 87% of adjudication/disposition hearing, 92% of permanency planning, 93% of adoptions, and 91% of reviews hearings.

Quality in representation – effectiveness: Survey respondents were also asked whether they believe that the attorney ad litem has a positive effect on the health and safety of the children they represent. Eighty-nine percent of the judges agreed that they *always* or *usually* do. Of the attorneys responding, 80% agreed that they *always* or *usually* do.



Court observations were consistent with survey results in that the AALs were primarily concerned with the child’s safety and well-being in over 80% of the cases observed.

Compliance with Administrative Order No 15: Standards of practice for AALs in representation of children are specified in Administrative Order No 15. Ninety-four percent of judges reported that, based on court performance, AALs are in compliance with Administrative Order No. 15 *usually* or *always*. Eighty-five percent of the attorneys responded that the AALs are in compliance *usually* or *always*.



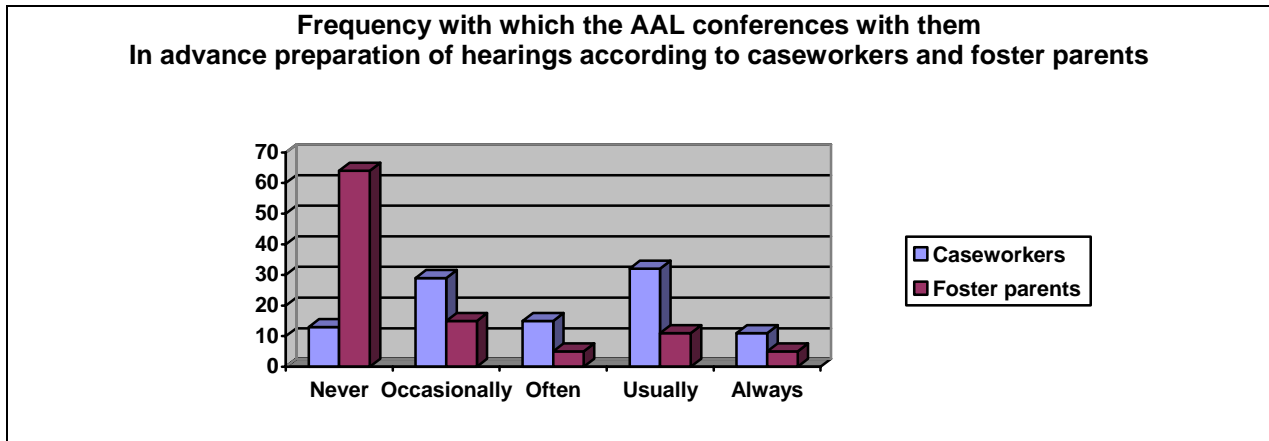
Presenting evidence: While an AAL usually does not have the burden of proof, he/she still has an obligation to present evidence and testimony when in the client’s best interest. Forty-nine percent of the judges reported that an AAL *usually* presents significant evidence and testimony in court; 27% report they *always* present significant evidence and testimony in court; 19% report *often*; and 5% report *occasionally*.

Court file review data showed that AALs offered exhibits in 4% of the cases reviewed. During court observations, in cases where witnesses testified, the CIP team observed AALs calling and questioning witnesses. In addition, AALs were the only attorneys that called foster parents to testify.

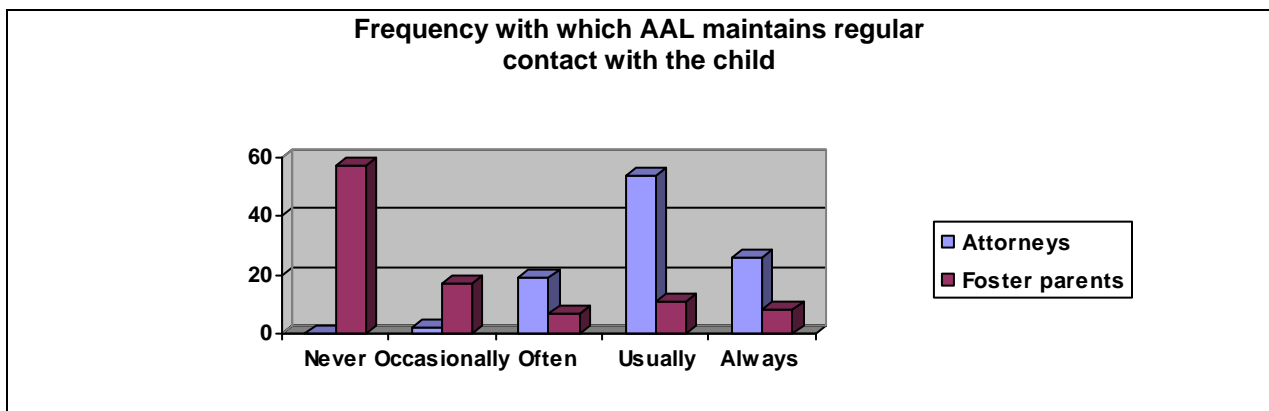
Attendance at case plan staffings: In surveys, 54% of DCFS caseworkers reported that AALs *always* or *usually* participate in the case plan staffings. Sixteen percent reported that the AALs *often* participate. AOC dependency-neglect database reports show that the AALs attend approximately 1.5 meetings per year per case which indicates that staffing attendance may be relatively low.

Pretrial conferencing: DCFS caseworkers and foster parents were asked how often the AALs confer with them before hearings. Forty-three percent of DCFS caseworkers said that it was *usually* or *always*. Only 16% of foster parents said that it was *usually* or *always*. AOC dependency-neglect database reports show fairly frequent monthly contacts with stakeholders including caseworkers, foster parents, attorneys, service providers, and parents. AALs log in

3.77 such contacts per case, per month on average.



Contacts with client: A requirement of Administrative Order No 15 is that the AAL shall interview the child and also explain to the child the proceedings and the role of the AAL in terms the child can understand. Statewide survey data concerning AALs’ contacts with their clients was somewhat conflicting. Eighty-one percent of attorneys surveyed responded that the AAL conducts necessary interviews with the child *usually* or *always*. Also, 80% of the attorneys agreed that the AAL maintains regular contact with the child *usually* or *always*. Foster parents, however, had a different perception. A majority, 57%, stated that the AAL *never* talks to the child before the day of the hearing and 80% said that the AAL *never* visits the child in the home prior to hearings.

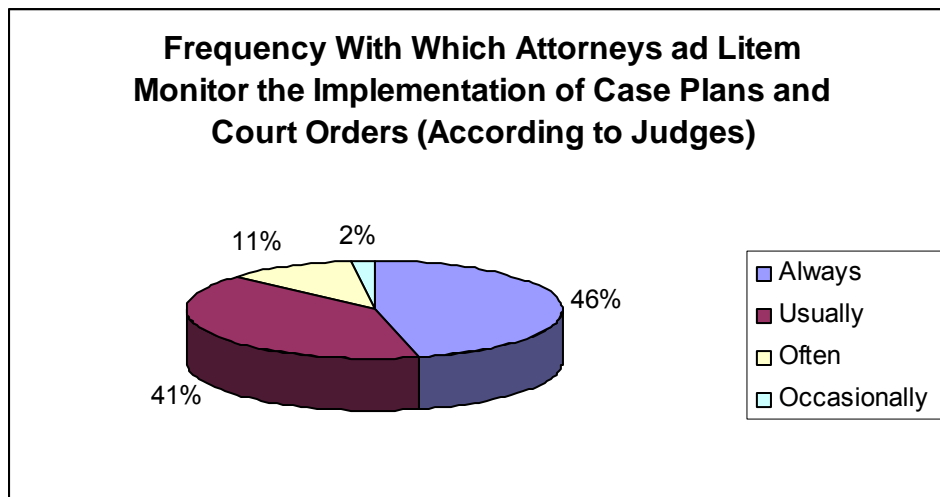


Of nine foster parents interviewed, four indicated fairly regular contact with the AAL. Also, data from the AOC dependency-neglect database shows that the AALs are averaging 7.2 contacts per client per year on their cases.

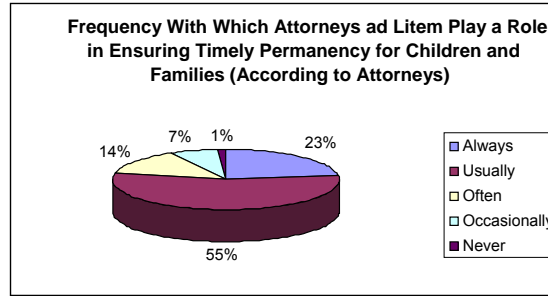
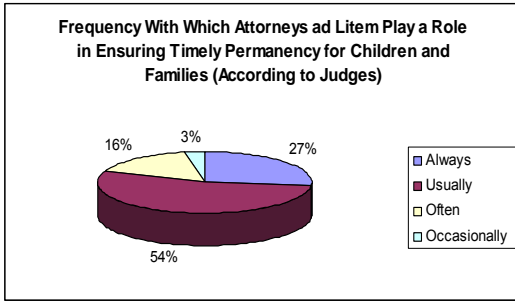
CASA volunteers interviewed had varying perspectives. Some were very satisfied with the AAL contacts with the children: “We have a good AAL. The AAL goes on visits with the CASA volunteer, meets kids prior to court, and prepares them for trial.” Others felt that the AAL needed to “...do home visits and have a better rapport with the clients.” Likewise with the caseworkers, some had very positive impressions: “AALs do a pretty good job, keep communications going with caseworkers, and see the child as much as possible.” Conversely, some caseworkers said that, “Some [AALs] don’t visit their clients. Some I never hear from until court.” In the foster parent focus groups, the participating foster parents stated that the AAL doesn’t routinely visit with them or prepare the child adequately for court.

It is notable that, while not an AAL performance standard, CASA volunteers, caseworkers, and foster parents frequently discussed the issue of AALs visiting foster children in their placements. These groups perceive this as a positive action for the AAL to take as a part of representation. Based on the AOC dependency-neglect database, AALs contact their clients in a variety of settings including schools, DCFS offices, residential treatment centers, detention centers, court buildings, AAL offices, foster homes, and relative placements. Other non-traditional settings include restaurants and recreational facilities. Also, the AALs have contact with their clients through telephone calls, e-mails, and letters. Consequently, the disparity in perceptions regarding AAL contacts with their clients may be influenced by the AALs using a variety of contact locations and methods of which the other groups may be unaware.

Monitoring case plans and orders: A requirement of the Administrative Order No. 15 AAL standards is that the AAL monitor implementation of case plans and court orders. Forty-six percent of the judges reported that the attorneys ad litem *always* monitor the implementation of case plans and court orders and 41% reported *usually*.

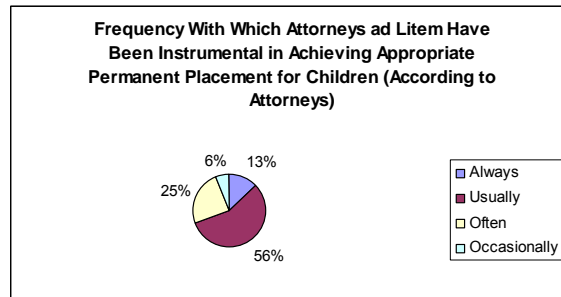
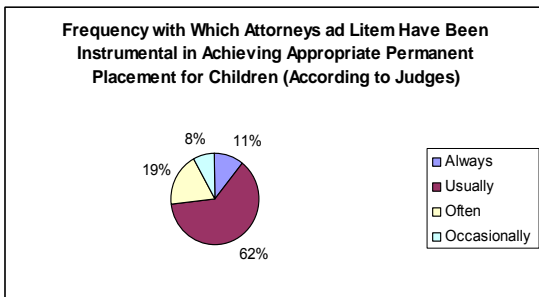


Ensuring timely permanency: Twenty-seven percent of the judges reported that AALs *always* play a role in ensuring timely permanency for children and families, 54% reported *usually*, 16% reported *often*, and 3% reported *occasionally*. Twenty-three percent of the attorneys reported that AALs *always* play a role in ensuring timely permanency for children and families, 55% reported *usually*, 14% reported *often*, 7% reported *occasionally*, and 1% reported *never*.



In comparison, a 2000 follow-up survey to the original CIP assessment showed that AALs play an important role in assuring timeliness of the case progress in 80% of the cases.

Ensuring appropriate permanency: Judges’ and attorneys’ responses were again very similar on the survey issue of whether the AALs have been instrumental in achieving appropriate permanent placement for children. Sixty-nine percent of the judges and 73% of the attorneys rated the AALs as being instrumental in this regard.



Court Appointed Special Advocates

Advocacy for Children - Court-Appointed Special Advocates (CASA)

National CASA Standards: The National Court Appointed Special Advocate Association (NCASAA) requires that all member programs comply with standards in 12 areas, including program mission and purpose, program governance, program implementation, graphics, national and state affiliation, human resources management, volunteer management, financial management, public relations, planning and evaluation, and record keeping.

Volunteers must complete a rigorous screening process, at least 30 hours of initial training, and at least 12 hours annually of continuing education. Training must include:

- Roles and responsibilities of a CASA volunteer
- Juvenile court process
- The dynamics of human behavior associated with child abuse and neglect
- Relevant Arkansas and federal laws
- Confidentiality and record keeping practices
- Child development
- Child abuse and neglect
- Permanency planning and resources
- Community agencies and resources
- Communication and information gathering
- Advocacy
- The special needs of the children served, differences in cultural and socio-economic norms, values, and heritage
- Identification of personal and institutional bias or discrimination as it relates to the children and families being served
- Court observation

Volunteers may not work more than two cases without explicit written justification. Volunteer supervisors may only supervise 30 advocates. The volunteer's job duties must include:

- Reviewing records
- Interviewing appropriate parties involved in the case, including the child
- Determining if a permanent plan has been created for the child and whether appropriate services, including reasonable efforts, are being provided to the child and family
- Submitting a signed written report with recommendations to the court on what placement and services are best for the child
- Attending court hearings
- Maintaining complete records about the case, including appointments, interviews, information gathered about the child and the child's life circumstances

Volunteers are required to have supervisors review their reports prior to submitting them to the court, but a supervisor may not change information in a report without a volunteer's knowledge and consent. Volunteers must maintain confidentiality of records at all times.

CASA - Arkansas Law

Since the original assessment, Arkansas law has been amended to state that the director of the Administrative Office of the Courts is authorized to:

- Establish a statewide court-appointed special advocate program
- Provide grants or contracts to local court-appointed special advocate programs
- Work with judicial districts to establish local programs by which circuit courts may appoint trained volunteers to provide valuable information to the courts concerning the best interests of children in dependency-neglect proceedings **Ark. Code Ann. § 9-27-401(c).**

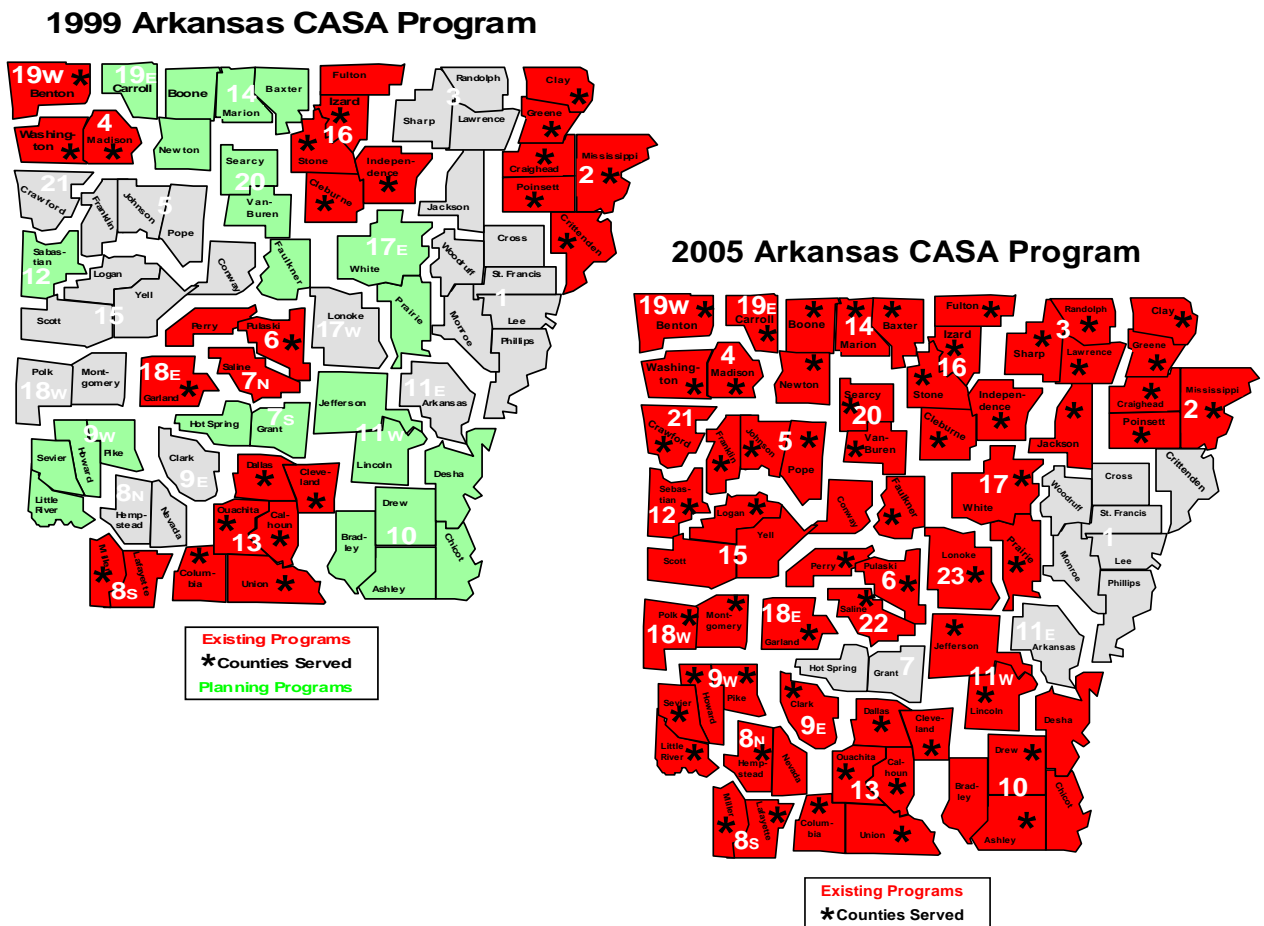
The court may appoint a CASA volunteer from a program which shall meet all state and national CASA standards to advocate for the best interest of juveniles in dependency-neglect proceedings. **Ark. Code Ann. § 9-27-316(g)(1).**

No CASA volunteer shall be assigned a case before completing a training program in compliance with national and state standards, and being approved by the local CASA program which will include appropriate criminal background and child abuse registry checks. **Ark. Code Ann. § 9-27-316(g)(2).**

Each CASA shall investigate the case to which he or she is assigned to provide independent factual information to the court through the attorney ad litem, court testimony or court reports. The CASA may testify if called as a witness. When the CASA prepares a written report for the court, the advocate shall provide all parties with a copy of the written report seven business days prior to the relevant hearing. Each CASA volunteer shall monitor the case to which he/she is assigned to ensure compliance with the court's orders. **Ark. Code Ann. § 9-27-316(g)(3).**

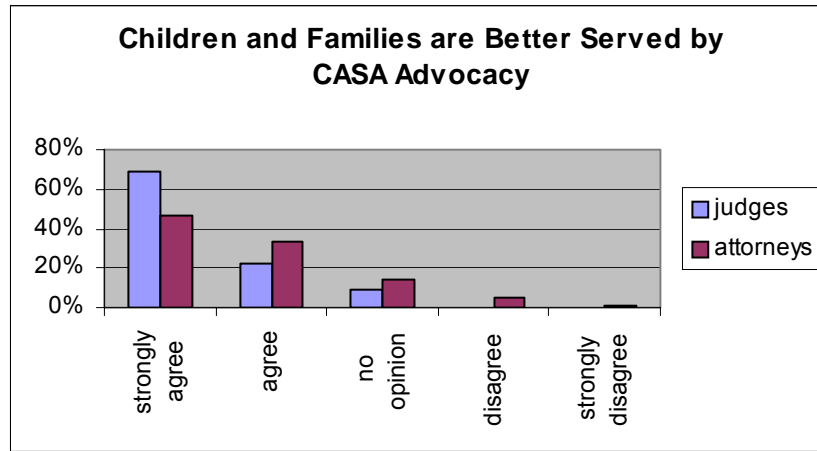
CASA – State Practice

The previous CIP assessment recommended statewide implementation of the CASA program. During the original assessment, the AOC in conjunction with the CIP received a grant from the NCASAA to develop a statewide CASA program. The number of CASA programs in Arkansas increased from seven in 1998 to 21 programs in 2005. These programs serve 25 of Arkansas’s 28 judicial circuits and 55 of Arkansas’s 75 counties.

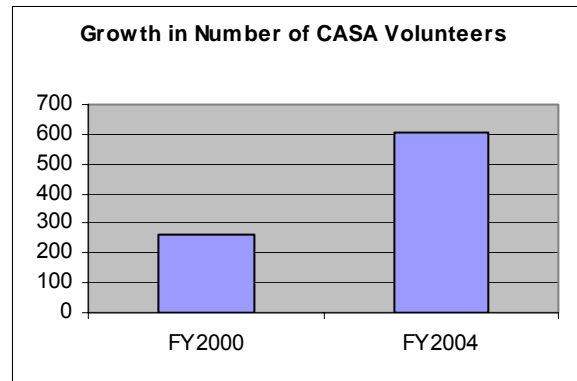
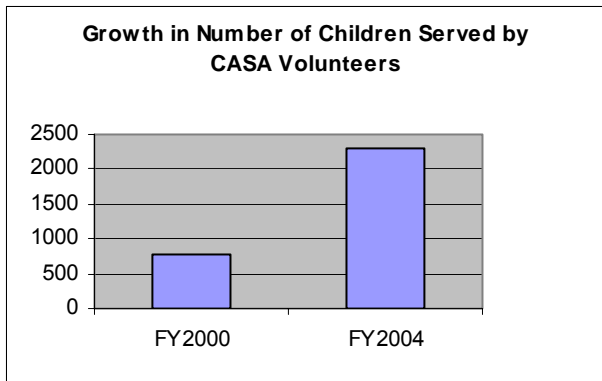


In survey responses during the current reassessment, 89% of judges indicated that they have CASA programs; 86% of attorneys responded that a CASA volunteer had been appointed in one or more of their cases. Judges’ and attorneys’ surveys indicated that CASA volunteers are most often appointed at the adjudication hearing. This is confirmed by CASA volunteers’ surveys, in which 47% indicated that on their last case they were appointed at the adjudication hearing.

In surveys, 91% of the judges *agreed* or *strongly* agreed that children are better served in their court since implementation of the statewide CASA program and local CASA program grants. Eighty percent of the attorneys *agreed* or *strongly* agreed.

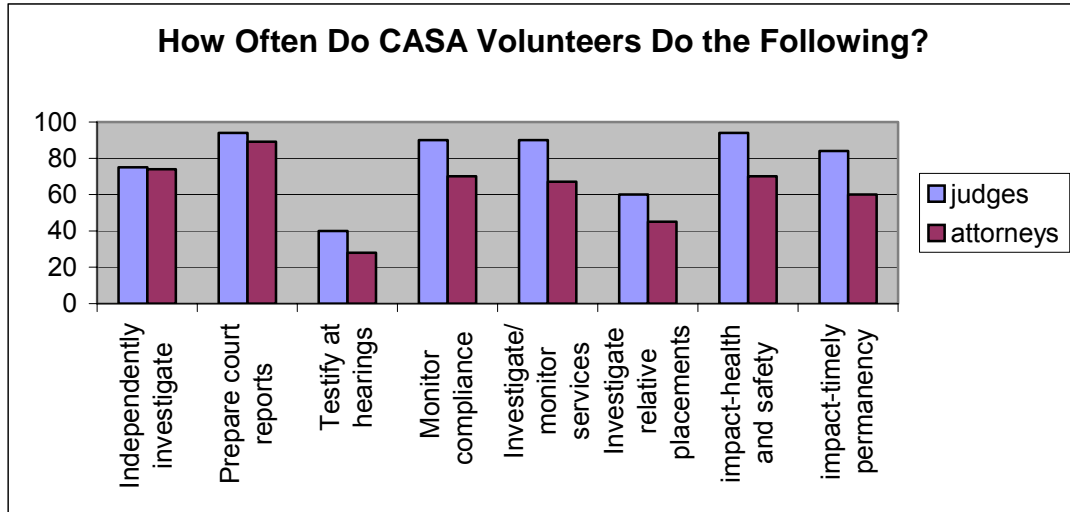


The number of children served by CASA volunteers has increased from 781 in FY2000 to 2,308 in FY2004. The number of CASA volunteers statewide has increased from 262 in FY2000 to 608 in FY2004.



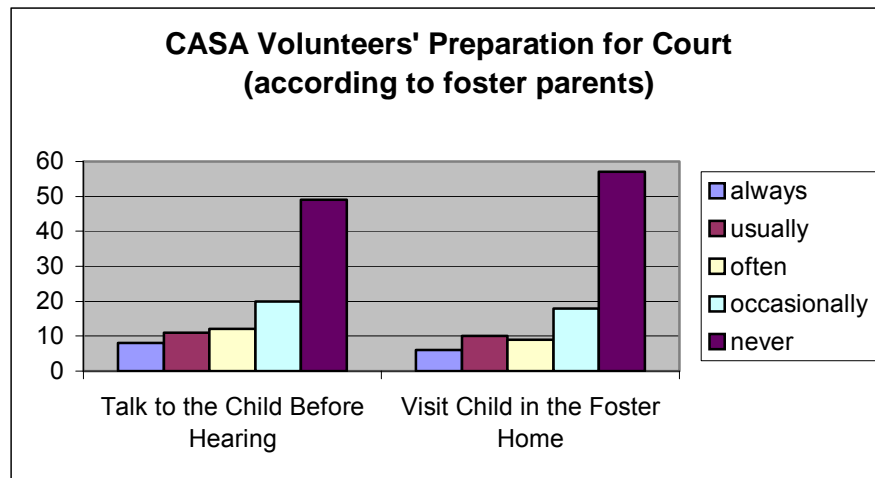
Work of CASA Volunteers: CASA volunteers are perceived by both judges and attorneys as *usually* or *always* doing their assigned tasks. In response to the multi-part question: How often do CASA volunteers do the following, 75% of judges responded *usually* or *always* that volunteers conduct an independent investigation of the case, 94% to prepare court reports, 40% to testify at hearings, 90% to monitor compliance of court orders and case plans, 90% to investigate and monitor services for the child and family, 60% to investigate potential relative placements for the child, 94% to having a positive impact on the health and safety of the children for whom they advocate, and 84% to having a positive impact on timely permanent placement for the children for whom they advocate.

Attorneys' responses were also positive on the actions of CASA volunteers, but somewhat less so than judges. Seventy-four percent responded *usually* or *always* that volunteers conduct an independent investigation of the case, 89% to prepare court reports, 28% to testify at hearings, 70% to monitor compliance of court orders and case plans, 67% to investigate and monitor services for the child and family, 45% to investigate potential relative placements for the child, 70% to having a positive impact on the health and safety of the children for whom they advocate, and 60% to having a positive impact on timely permanent placement for the children for whom they advocate.

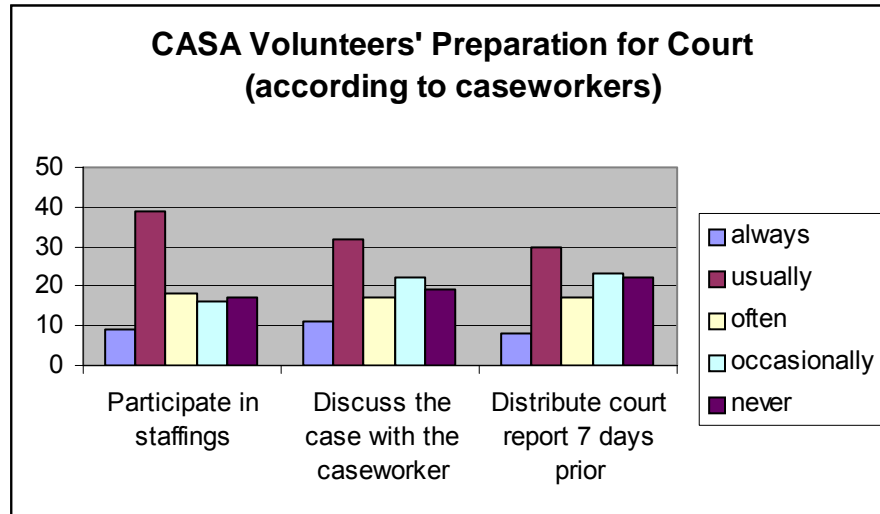


It is interesting to note that the lowest response from both judges and attorneys was to whether the CASA volunteers testify at hearings. As is discussed in the hearings section of this report, many courts are not routinely taking formal testimony from witnesses at many hearings.

The positive perception of the work of CASA volunteers is not shared by foster parents whose responses regarding talking to the child and foster parents and visiting the foster home were mostly rated as *never* and *occasionally*. This is consistent with the data and findings in the section of this reassessment dedicated to foster parents, many of whom feel disconnected from the court process.



DCFS caseworkers had very mixed perceptions of CASA volunteers' preparation for court.



Support by the state CASA office: The Arkansas CASA office part of the AOC’s Division of Dependency-Neglect and provides technical assistance and training to local CASA programs. Services include an annual conference for staff and volunteers, quarterly meetings for program staff, technical assistance via phone calls, e-mail and site visits, a website (www.arkansascasa.org), a quarterly newsletter, legislative update, board development, administration of \$1,000,000 annually in grants appropriated by the Arkansas legislature, public relations, volunteer recruitment, new program development, data tracking, and recognition. In addition, the Arkansas CASA office provides a customized volunteer training curriculum in conjunction with the NCASAA.

The Arkansas CASA office also actively participates in the National CASA Association Quality Assurance (QA) process, conducting regular site visits and assisting programs to be in compliance with national and state standards. At this time, all of the Arkansas CASA programs have either successfully completed the QA process or are actively completing the assessment.

Parent Representation

ABA/ National Legal Resource Center for Child Advocacy and Protection Parent Counsel Standards

Attorneys Should

- Discuss the matter with the client sufficiently in advance to have time to investigate and prepare the case
- Conduct a thorough, independent investigation
- Conduct formal discovery, if needed
- Interview and subpoena necessary witnesses in advance of the hearing
- Conduct any needed research of legal issues pertaining to the case
- Continue with the case until specifically relieved

Parent counsel should seek a productive working relationship with the agency as this may help expedite resolution of the case, minimize needlessly contentious relationships between parents and the agency social workers, and facilitate negotiated settlements.

Representing Parents in Child Protection Cases

Representation of Parents - Arkansas Law

Parents and guardians have a right to counsel in all proceedings to remove custody from a parent or guardian or to terminate parental rights.

A parent or guardian shall be advised in the dependency-neglect petition or ex parte emergency order and at their first appearance before the court of right to counsel at all stages of the proceedings and the right to appointed counsel if indigent. **Ark. Code Ann. § 9-27-316(h)(1).**

Court shall appoint counsel upon parent or guardian's request, and Court's determination of indigency. **Ark. Code Ann. § 9-27-316(h)(2).**

Appointment of counsel shall be made sufficiently in advance of court appearance to allow adequate preparation and consultation with client. **Ark. Code Ann. § 9-27-316(h)(4).**

Court shall order financially able parents or guardians to pay all or part of reasonable attorney's fees and expenses for court-appointed representation of the parent or guardian:

Following a review by the court of an affidavit of financial means completed and verified by the parent, and determination by the court of an ability to pay. **Ark. Code Ann. § 9-27-316(h)(3).**

The parent or guardian's attorney shall be provided access to all relevant records **Ark. Code Ann. § 9-27-316(h)(5).**

Supreme Court Administrative Order No. 15: In September 2001, the Supreme Court issued Administrative Order No. 15, adopting the Ad Hoc Committee's recommendations. The order contains requirements for initial qualification training and clinical requirements, as well as continuing education, and standards of practice for attorneys who represent parents in dependency-neglect cases. The full text is located in Appendix F of this report.

Representation of Parents - State Practice

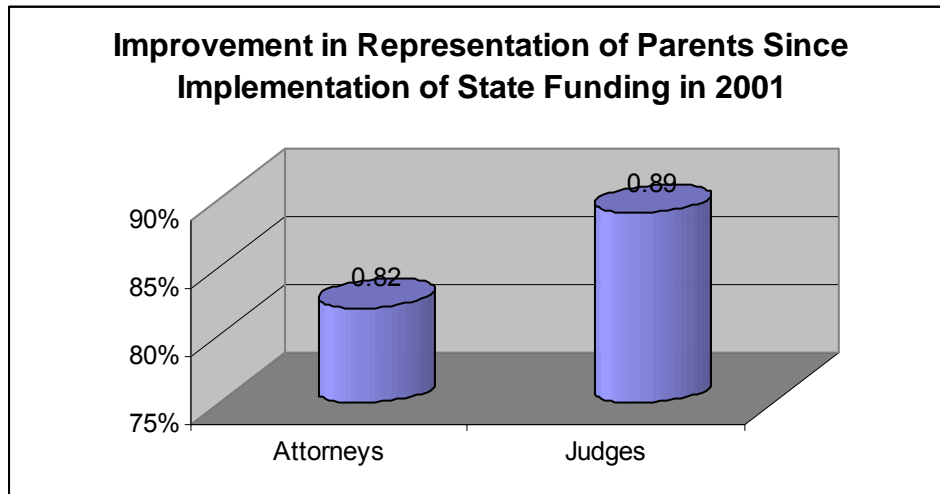
History and General Practices: The original assessment found that indigent parents were not always represented by counsel when the custody of their children was at issue in dependency-neglect proceedings, and even when they were represented by counsel, the attorneys were not consistently prepared. Prior to the implementation of the state-sponsored indigent parent counsel system, when attorneys were appointed to represent parents, judges appointed public defenders, legal services attorneys, and in a few districts, attorneys were appointed and paid for with county funds. However, due to limited county funds, it was unlikely for an appointment to occur at the early stages of the dependency-neglect proceedings as required by law. Instead, if counsel was appointed, appointments were most likely to be made at termination of parental rights hearings. In addition, there were no standards of representation and/or qualifications for attorneys representing indigent parents.

Act 1267 of 2001 established authority for the appointment and payment of attorneys to represent indigent parents in dependency-neglect cases and provided for the Arkansas Supreme Court to adopt qualifications and standards of practice for these attorneys. The Arkansas Judicial Council, Juvenile Judges' Committee, in conjunction with the Ad Hoc Committee, developed the funding and system structure of the indigent parental counsel initiative. The Juvenile Judges' Committee adopted a case-based funding formula to reimburse attorneys for reasonable attorney's fees and expenses. The AOC's Division of Dependency-Neglect is charged with the equitable distribution and accounting of these funds. The Supreme Court issued qualifications and standards of practice for attorneys representing indigent parents and guardians in Supreme Court Administrative Order No. 15.

Since state funding became available in August 2001, the AOC has provided training to 359 attorneys and 321 attorneys throughout the state have become qualified to represent indigent parents. In FY 2004, 118 qualified parent counsel actively provided representation and courts made 3,494 appointments for qualified counsel to represent indigent parents. The AOC continues to make available initial and ongoing training for attorneys wishing to represent indigent parents in dependency-neglect proceedings. In addition, two experienced attorneys provide additional technical and research assistance to attorneys appointed to represent indigent parents throughout the state.

The AOC provides parent counsel with a comprehensive training and continuing legal education program as well as support services. Examples include initial qualification training, semi-annual training conferences, and "on-call" technical support for questions from the field to be answered by two experienced parent counsel.

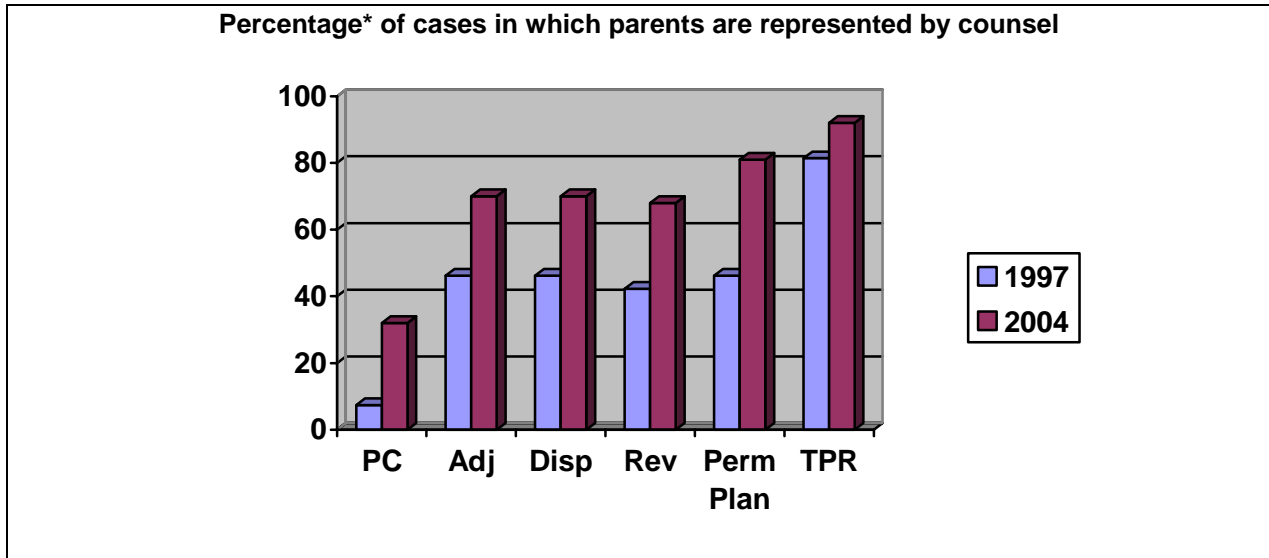
Quality of representation: Survey respondents were asked whether they believed that parents are better represented by parent counsel since the implementation of state funding in 2001. Eighty-nine percent of the judges reported that they agree or strongly agree that there has been an improvement in representation of parents since the implementation of state funding in 2001. Eighty-two percent of the attorneys reported that they agree or strongly agree that there has been an improvement in representation of parents since the implementation of state funding in 2001.



Interviews were conducted with CASA volunteers, caseworkers, foster parents, and attorneys. Most interviewees agreed that parent counsel generally do a good and thorough job and offered the following recommendations for continued improvement:

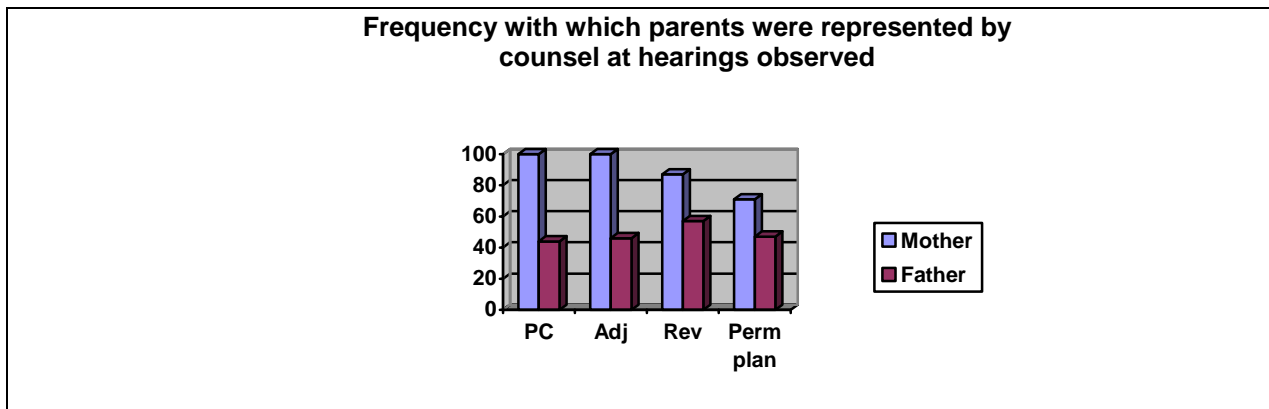
- More contact with parents – Caseworker
- More pretrial work. Inform parents of their rights – Caseworker
- Stand up for them and believe in them more – Caseworker
- Parent counsel needs to make sure that clients fully understand the proceedings – CASA volunteer
- Parent counsel sometimes don't understand fidelity to their clients – Attorney
- In a focus group, parents said that all attorneys should be better prepared and all evidence should be gathered and reviewed prior to bringing everyone to court.

Level of representation: Since the availability of parent counsel funding and the ensuing training and support services for qualified parent counsel, the state has seen a marked improvement in the level of representation for parents. Comparing the judge's survey responses from 1997 and 2004:



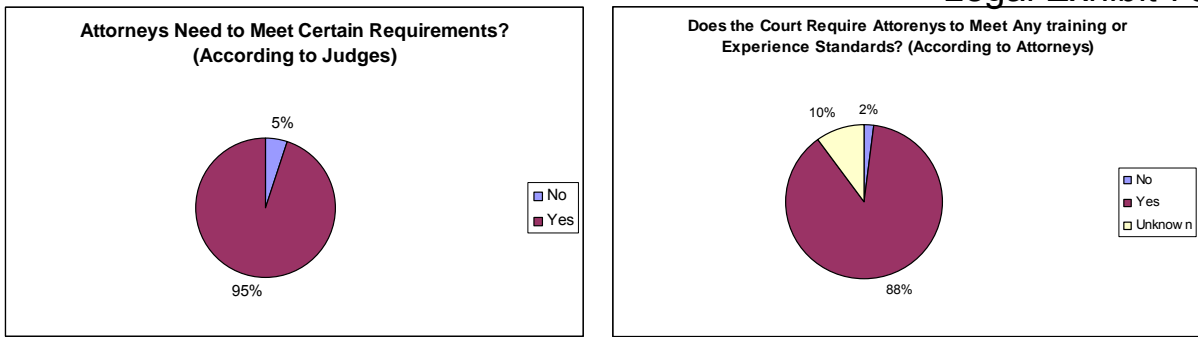
*(Percentage of Survey Respondents answering *usually* or *always*)

In the court hearings observed, an attorney for the mother was present in the vast majority of cases. However, representation level for the fathers was not as consistent by virtue of custody not having been removed from them.



When asked in the statewide survey the general question, “How often are indigent parents represented by attorneys” 78% of the DCFS caseworkers responded that parents were *always* or *usually* represented. Sixty-eight percent of the CASA volunteers responded that parents were *always* or *usually* represented.

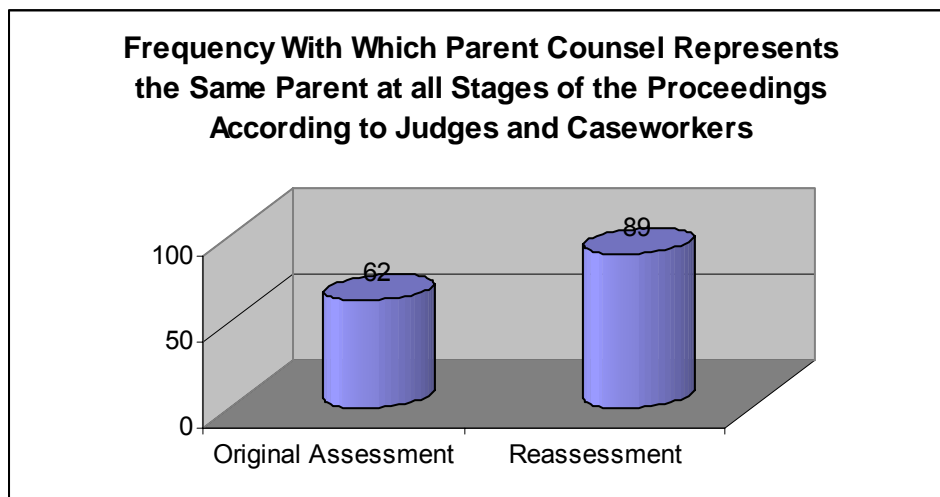
Quality of representation – specific qualification: Parent counsel is also better trained in dependency-neglect cases. Ninety-five percent of the judges reported that attorneys need to meet certain requirements whereas 5% reported that do not need to. Eighty-eight percent of the attorneys reported that the judges required them to meet certain requirements.



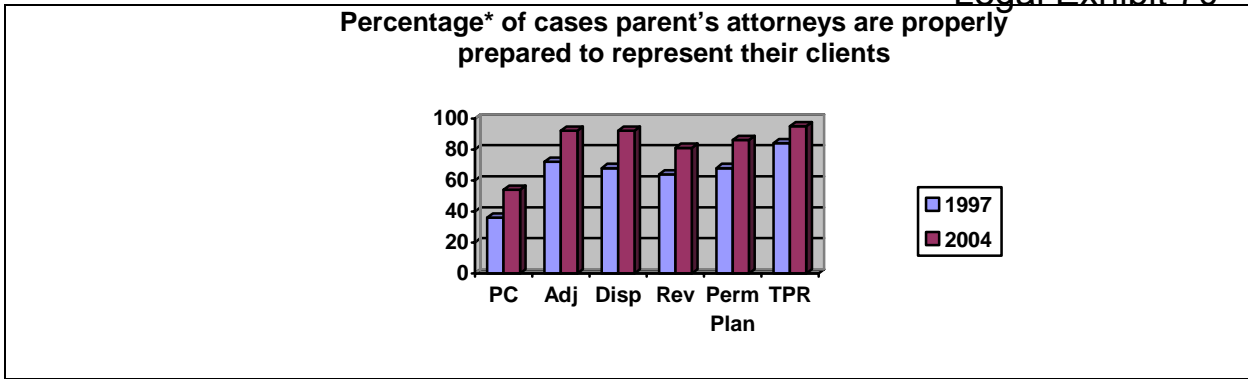
Again, this is a substantial improvement over the original assessment wherein 70.4% of judges replied that they required no special training or experience of parent counsel.

Attorney focus group participants advised that when non-qualified parent counsel is retained, those attorneys often do not understand the law and practice as it pertains to dependency-neglect hearings. This causes delays and drains court resources. The attorneys recommend that the standards of practice should apply to all members of the bar and that they should be trained and qualified before representing parents.

Stability in representation: The system of parent counsel appointment is reaching a level of stability in providing uninterrupted representation for parents in dependency-neglect cases. Survey results show that the same parent counsel represents the same parent at all stages of the dependency-neglect proceedings in 86 - 92% of all cases. This is an improvement over the results of the original assessment where judges and caseworkers responded that the same parent counsel represents the same parent in all stages of the case in 59 - 64% of the cases.

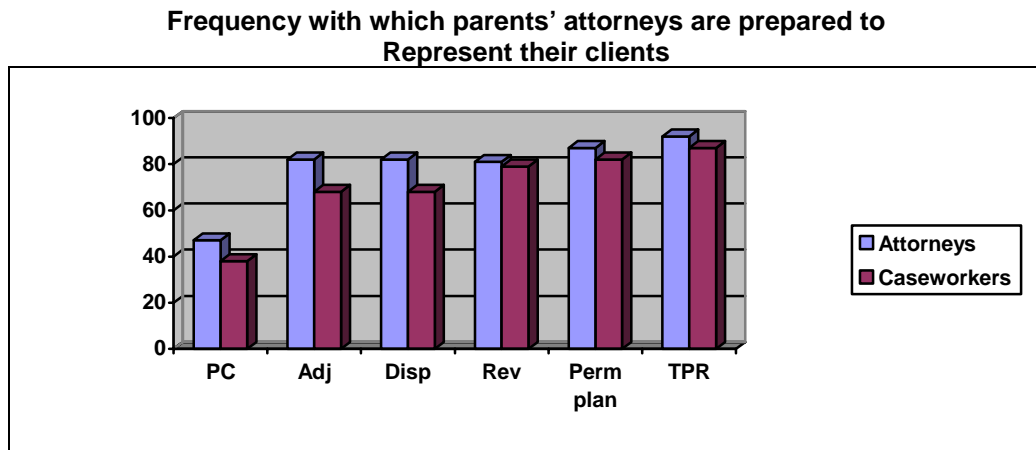


Quality in representation – preparedness: Parent representation has continuously improved in the quality of representation and preparedness of the attorneys. Judges reported that parent counsel are currently prepared to represent their clients in 95% of TPR hearings, 92% of adjudication/disposition hearings, 86% of permanency planning hearings, 81% of review hearings, and 54% of probable cause hearings.



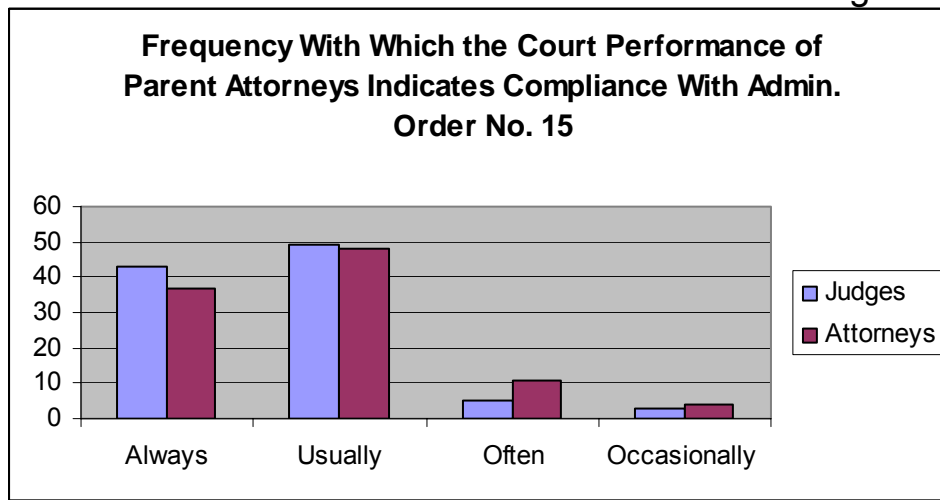
*(Percentage of Survey Respondents answering *usually* or *always*)

In comparison, 82% of the attorneys and 87% of the caseworkers responded that parent counsel is currently prepared to represent their clients at TPR hearings. Eighty-six percent of the attorneys and 68% of the caseworkers responded that parent counsel is prepared to represent their clients at adjudication/disposition hearings. Eighty-seven percent of the attorneys and 82% of the caseworkers responded that parent counsel is prepared to represent their clients at permanency planning hearings. Eighty-one percent of the attorneys and 79% of the caseworkers responded that parent counsel is prepared to represent their clients at review hearings. Forty-seven percent of the attorneys and 38% of the caseworkers responded that parent counsel is prepared to represent their clients at probable cause hearings.

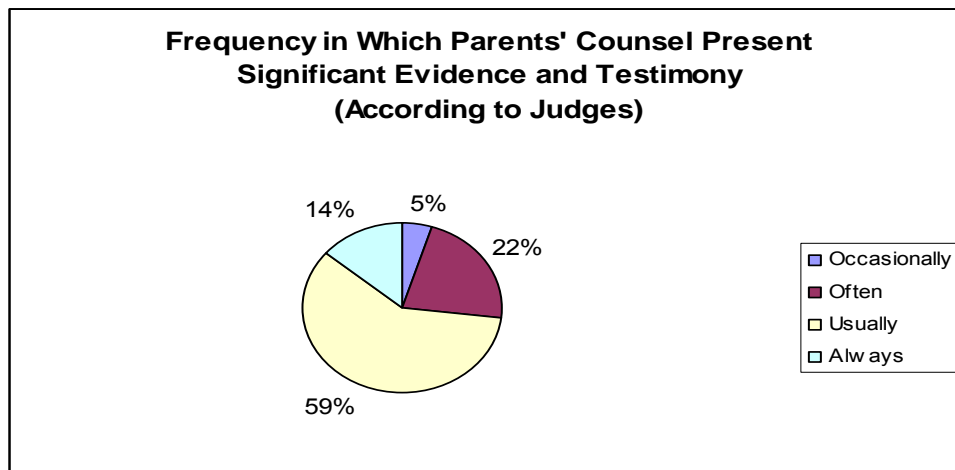


*(Percentage of Survey Respondents answering *usually* or *always*)

Compliance with Administrative Order No. 15: The standards of practice for parent attorneys are specified in Administrative Order No. 15. Ninety-two percent of the judges reported that, based on court performance, attorneys who represent indigent parents are in compliance with Administrative Order No. 15 *usually* or *always*. Eighty-five percent of attorneys responded that parent attorneys are in compliance *usually* or *always*.



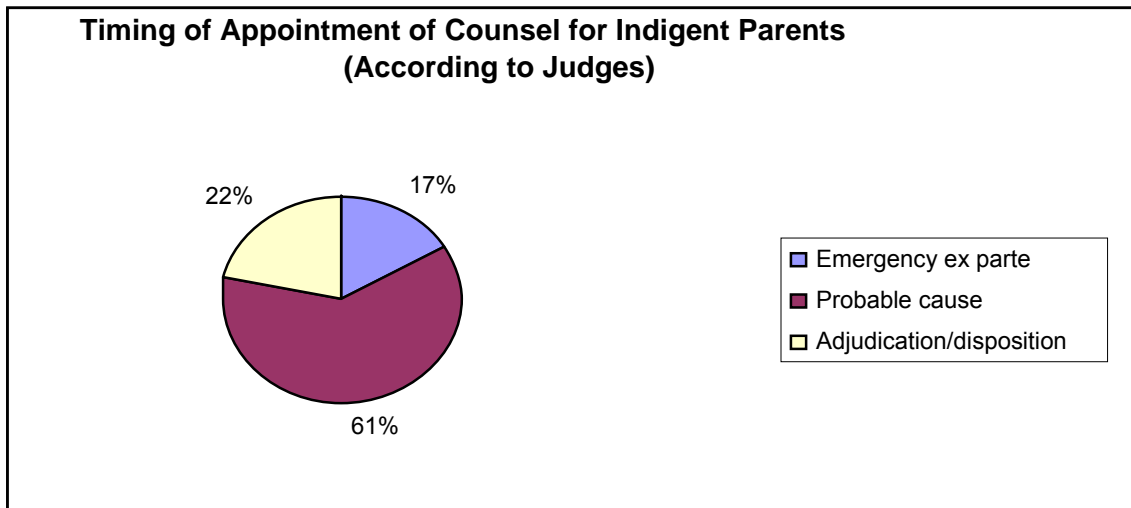
Presenting evidence: Fourteen percent of the judges reported that parent’ counsel *always* presents significant evidence and testimony; 22% reported *often*; 59% reported *usually*; and 5% reported *occasionally*. No one responded *never* to this survey question.



During court observations, parent counsel called a few witnesses and routinely questioned witnesses at the majority of the hearings. These results represent a significant improvement over the original assessment.

Attendance at case plan staffings: In surveys, 32% of DCFS caseworkers responded that parent counsel *always* or *usually* participate in the case plan staffings. Sixteen percent of caseworkers said that parent counsel *often* participates.

Stage of the case at appointment: Seventeen percent of the judges reported in surveys that they appoint parent counsel for indigent parents in the emergency ex-parte order, 61% reported that they appoint counsel in the probable cause hearing, and 22% reported in the adjudication/disposition hearing.

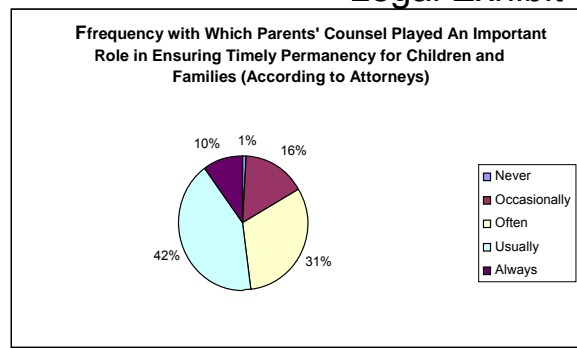
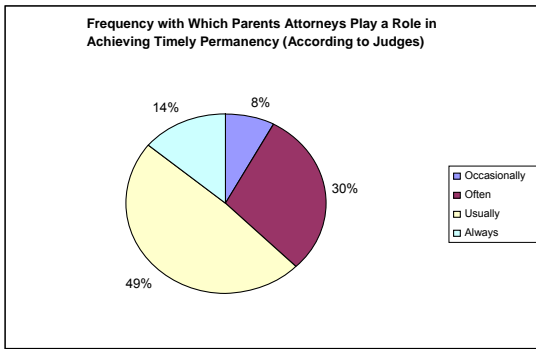


In interviews conducted as a part of the CIP reassessment, CASA volunteers and DCFS caseworkers were asked what impact it has on the dependency-neglect case when parent counsel is not appointed until later stages of the case. Responses included:

- The likelihood of reunification is diminished when parent counsel is not appointed until late in the case. CASA volunteer
- You have to re-do a lot of information to bring the attorney up to speed. CASA volunteer.
- It has a big impact – you have to re-do your reunification efforts. Caseworker
- The parent isn't being heard and they're not getting services or visitation. No one speaks up for them. Caseworker
- Lack of parent counsel delays permanency. We're not a perfect organization and parent counsel helps with accountability. Caseworker
- It's harder to make the parent understand what they need to do if they don't have an attorney. Caseworker.

In focus groups, OCC attorneys stated that they believe parent counsel is in a better position to help achieve a parent's compliance with case plans and court orders, which helps the overall case progress.

Ensuring timely permanency: Fourteen percent of the judges reported that parents' attorneys *always* play a role in achieving timely permanency, 30% reported *often*, 49% reported *usually*, and 8% reported *occasionally*. No one responded *never* to this survey question. Ten percent of attorneys reported that parents' attorneys *always* play an important role in ensuring timely permanency for children and families, 42% reported *usually*, 31% reported *often*, 16% reported *occasionally*, and 1% reported *never*.



Representation of the State Agency

The ABA has published the *Standards of Practice for Lawyers Representing Child Welfare Agencies*. The ABA notes that this list is not inclusive but contains key aspects of the agency attorney's role. The standards include:

General Duties

- Fully understand and comply with all relevant federal and state laws, regulations, policies, and rules.
- Promote timely hearings and reduce case continuances.
- Protect and promote the agency's credibility.
- Cooperate and communicate on a regular basis with other professionals and parties in a case including the client/agency.

Advice and Counsel

- Provide advice and counsel to the client/agency about all legal matters related to individual cases as well as policy issues and periodically monitor the case.

Court Preparation

- Develop a case theory and strategy to follow at hearings and negotiations.
- Prepare or help prepare the initial petition and all subsequent pleadings.
- Timely file all pleadings, motions, and briefs.
- Obtain all documents and information needed, including copies of all pleadings and relevant notices filed by other parties.
- Participate in all depositions, negotiations, discovery, pretrial conferences, mediation sessions, and hearings.
- Participate in settlement negotiations and attempt speedy resolution of the case.
- Develop a case timeline and tickler system.
- Subpoena and prepare all witnesses, including the client.
- Ensure proper notice is provided to all parties and necessary caretakers.

Hearings

- Prepare for and attend all hearings.
- Prepare and make all appropriate motions and evidentiary objections.
- Present case in chief, present and cross-examine witnesses, prepare and present exhibits.
- In jurisdictions where a jury trial is possible, participate in jury selection and drafting jury instructions.
- Request the opportunity to make brief opening and closing arguments when appropriate.
- Prepare or help prepare proposed findings of fact, conclusions of law, and orders when they will be used in the court's decision.

Post Hearings/Appeals

- Follow all court orders pertaining to the attorney for the client/agency.
- Review court orders to ensure accuracy and clarity and review with agency when necessary.
- Take reasonable steps to ensure the agency complies with court orders.
- Consider and discuss with the agency the possibility of appeal.
- If a decision is made to appeal, timely file the necessary paperwork while the appeal is pending.
- Communicate the results of the appeal and its implications to the agency.

Ethical and Practice Considerations

- Ensure a conflict resolution system is created.
- Understand and comply with state and federal privacy and confidentiality laws.
- Initiate and maintain positive working relationships with other professionals in the child welfare system.
- Play an active role in deciding whether the child should testify and/or be present in the courtroom during hearings.

*ABA Standards of Practice For Lawyers
Representing Child Welfare Agencies.*

These standards also include a section containing obligations for agency attorney managers under the heading of Administrative Responsibilities.

Organization: DCFS is represented by its Office of Chief Counsel (OCC). In addition to the Chief Counsel, the office has a deputy chief counsel; two attorney supervisors, 35 full-time field attorney positions, and support staff. Most of the field attorneys have a full-time secretary. As of the 2005 Legislative Session, six new field attorney positions have been added which will bring the total number of attorney positions to 41. The six newest positions are expected to be funded after July 1, 2005. In addition to the OCC field attorney staff, the OCC employs a full-time appellate attorney for all dependency-neglect appeals.

During the reassessment period, OCC had 32 full-time attorneys. In both 2003 and 2004, OCC attorneys had an approximate average of 92 dependency-neglect cases. In addition, they had an approximate average of 6.5 Adult Protective Services cases, 12 Central Registry Administrative Hearings, and 3.5 Appeals of Central Registry Administrative Hearings. There is no caseload cap for OCC attorneys. In focus groups, OCC attorneys stated that they feel overwhelmed by their caseload and often must “triage” their cases. They also indicated that they lose a lot of time traveling from one court to another. The caseload is not evenly distributed and some OCC attorneys have fewer cases than others depending on whether they have to travel, have multiple judges, or multiple courts. The highest total caseload for any OCC attorney in 2003 ranged from 163 – 212 cases. In 2004, the highest caseload range was 167 – 190 cases.

Legal Exhibit 70

The attorney supervisors provide intensive orientation and training for new attorneys. This includes setting up observations of other attorneys, review of the OCC Policy and Procedure Manual, and mentoring and co-counseling with the new attorney in court. The level of orientation depends on the experience of the new attorney.

Training programs are provided for the OCC attorneys including group trainings once per year (and more often if funding allows). OCC attorneys may also attend the two major educational conferences produced by the AOC and CIP funds are made available to provide scholarships for their attendance at the Children and the Law Conference. Resource materials are provided to the OCC attorneys including a manual of forms and resources, which includes a database summary of child welfare court decisions since 1980. Comprehensive order and pleading templates are also provided to OCC attorneys to assist them in the production of thorough legal documents. The OCC also provides specialized training, such as trial skills workshops, as funding permits.

OCC attorneys are monitored in various ways. Each attorney submits a monthly report of caseload and case activities to the attorney supervisor. The OCC also maintains a database of case information to help track and monitor compliance with standards and timelines. Also, attorney supervisors conduct court observations, file reviews, and communicate with others in the court system to monitor attorney performance. Finally, surveys are conducted of judges, attorneys, caseworkers and others to assess the effectiveness and performance of the OCC attorneys. In focus groups, OCC attorneys stated that they felt they were well-supervised.

All OCC attorneys have a comprehensive annual performance evaluation under the guidelines of the state's Office of Personnel Management. These include the following standards for OCC attorney performance:

Pre-trial performance indicators

- Witness preparation
- Review and approval of investigation affidavits
- Preparation and filing of petitions and orders and proper service of process
- Issuance of subpoenas to necessary witnesses
- Filing of any necessary motions
- Attendance at case plan staffings (if needed)
- Preparation of the legal case
- Compliance with OCC Policy and Procedure Manual in all work functions

Court Performance Indicators

- On time arrival
- Timely objections as needed
- Professional appearance
- Making of sound court record
- Courtesy to clients, court, and others
- Zealous representation of client
- Appropriate responses to objections by opponents

- Compliance with OCC Policy and Procedure Manual in all work functions

Post-Court Performance Indicators

- Drafting and filing of orders with all necessary language within 30 days of hearings
- Distribution of orders
- Staffings with clients when appropriate
- Evaluation of ruling to determine if adverse to client
- Notification to supervising attorney immediately of any adverse decisions
- Case management; review dates; notice of hearings
- If required, 6 month review of cases with out-of-home placement and 12 month reviews for permanency planning
- Completion of monthly report and itinerary
- Completion of case file narrative and compliance with the Court Rules and OCC policies on appeals
- Compliance with OCC Policy and Procedure Manual in all work functions

Technical Assistance

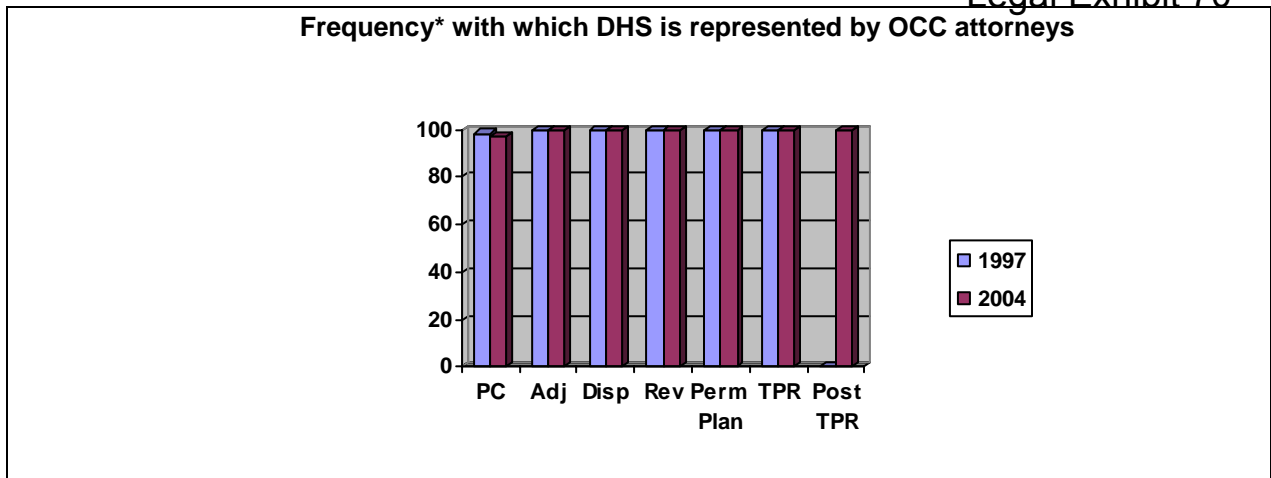
- Working knowledge of Juvenile Court, Child Maltreatment Act, APS law, FOIA, APA, Civil Procedure, Evidence Rules
- Courteous assistance to client
- Timely responses
- Attendance at CLE opportunities and attendance at internal meetings as needed
- Training of clients

Supervision of Legal Secretaries

- Approve leave requests
- Pre-approve travel expenses and review travel forms/invoices before submission to supervising attorney
- Performance reviews, timely preparation of standards, and timely evaluation and processing of review
- Accurate monthly reporting
- Review of case file

Representation of the Agency - State Practice

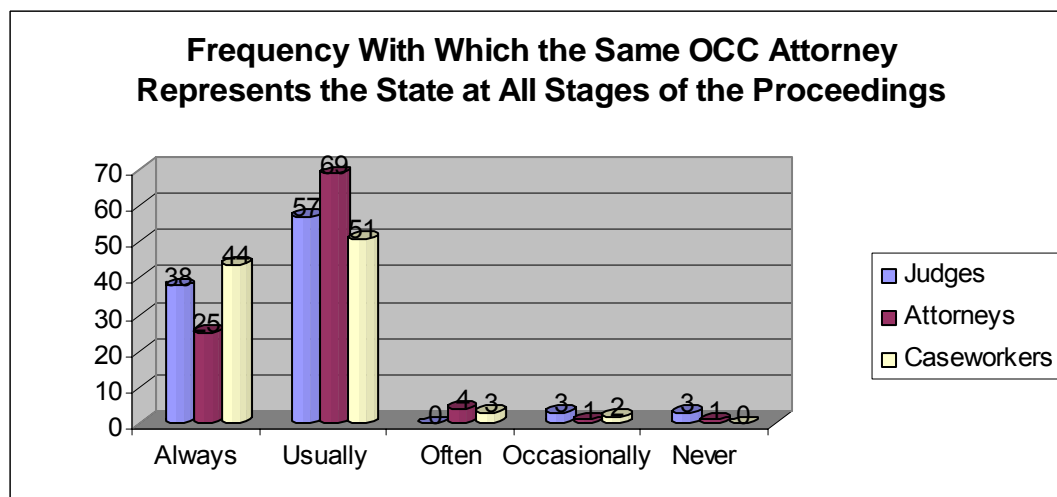
Level of representation: As found in the original assessment, DHS is represented by counsel 97 - 100% of the time, generally by the same attorney at all stages throughout the lifetime of a case. Judges, attorneys, and DCFS caseworkers gave the same responses.



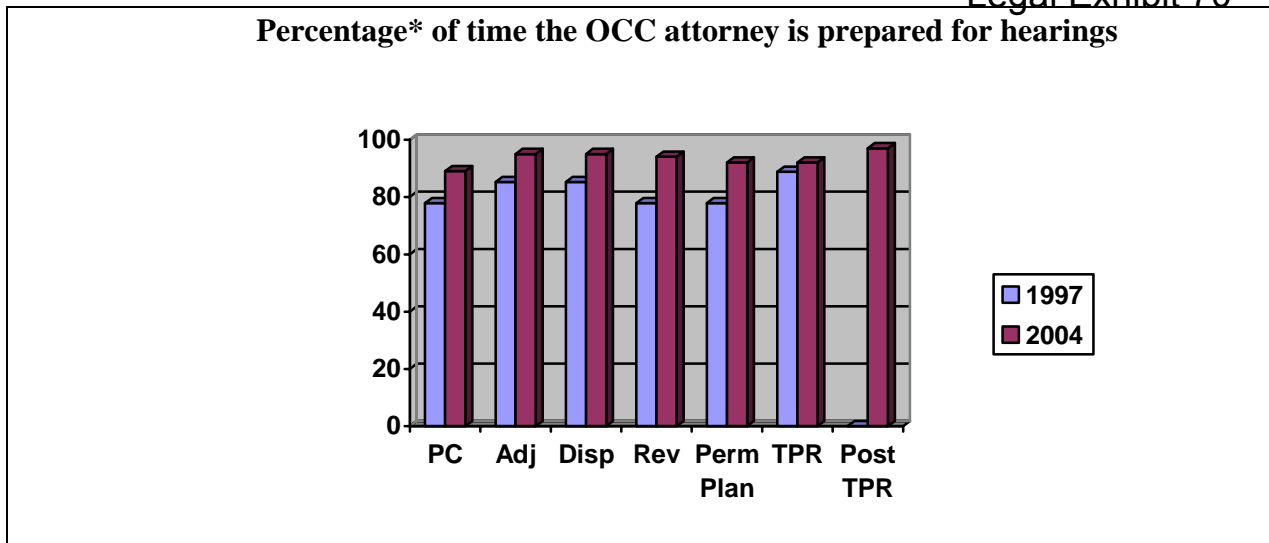
*(Percentage of Survey Respondents answering *usually* or *always*)

In the court hearings observed, the OCC attorney was present in 100% of all hearings observed.

Quality of representation - stability: Responses from judges also show a high frequency with which the same OCC attorney represents the state in all the different stages of a dependency-neglect case. Survey responses from attorneys and caseworkers also indicate that the same OCC attorney represents DHS at all different stages of the case *always* or *usually*.



Quality of representation – preparedness: Both the ABA standards and the OCC’s internal performance evaluation guidelines contain requirements for proper case preparation. The OCC division has seen continuous improvement in the quality of representation and preparedness of its attorneys. In surveys, 97% of judges said that OCC attorneys are prepared to represent their clients in post-TPR hearings, 95% in adjudication/disposition hearings, 94% in review hearings, 92% in permanency planning and TPR hearings, and 89% in probable cause hearings.



*(Percentage of Survey Respondents answering *usually* or *always*)

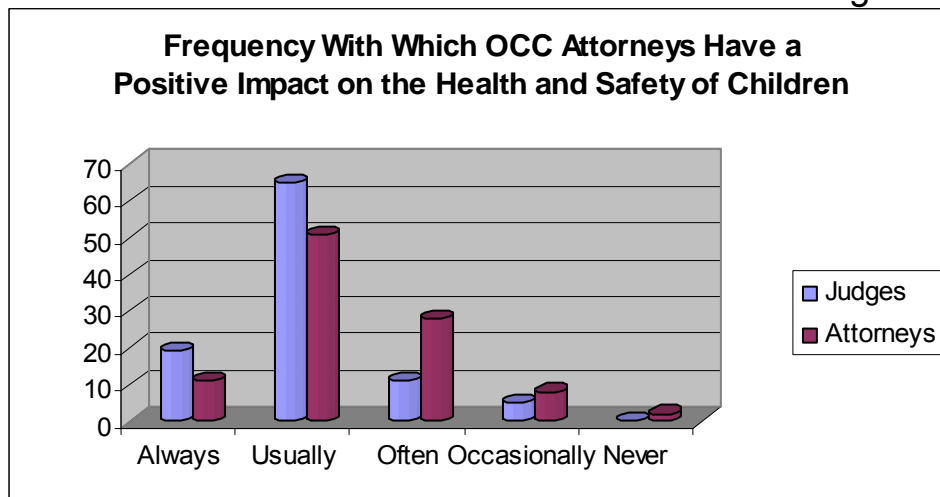
Ninety percent of DCFS caseworkers reported in survey responses that OCC attorneys are *usually* or *always* prepared to represent them in post-TPR review hearings, 89% said they were prepared in adjudication/disposition hearings, 88% in review hearings, 88% in permanency planning hearings, 91% in TPR hearings, and 95% in probable cause hearings.

Court observations revealed that OCC attorneys were generally prepared, but there were several cases in which it was evident that they had not prepared the caseworkers prior to the hearing. This was generally more apparent in judicial circuits where the attorneys had higher caseloads.

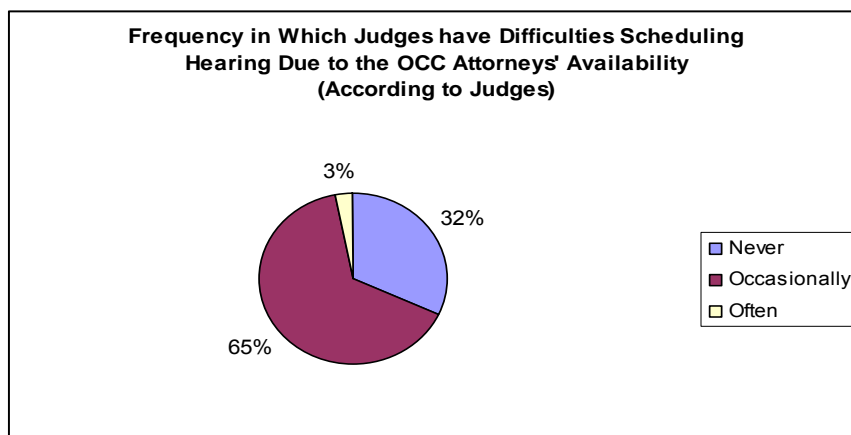
Interviews and focus groups were conducted with caseworkers, parents, and attorneys who offered the following recommendations as to areas of continued improvement:

- Half the time, our OCC attorney just skips DHS and cuts deals with others. It’s embarrassing when she disregards caseworkers. Caseworker
- We have no preparation. We’d like to review cases prior to court. Caseworker
- Sometimes it takes a while to get requested orders. Caseworker
- OCC attorneys need to learn the rules of civil procedure and rules of evidence. Attorney
- OCC attorney’s heart is in the right place but they lack in preparation. Attorney
- In a focus group, parents said that all attorneys should be better prepared and all evidence should be gathered and reviewed prior to bringing everyone to court.

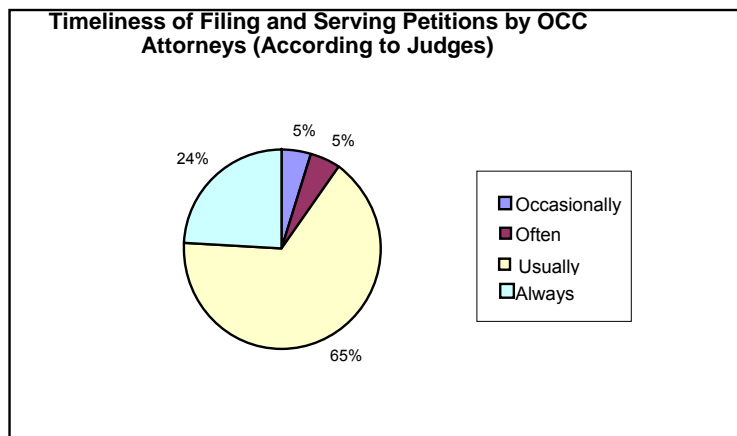
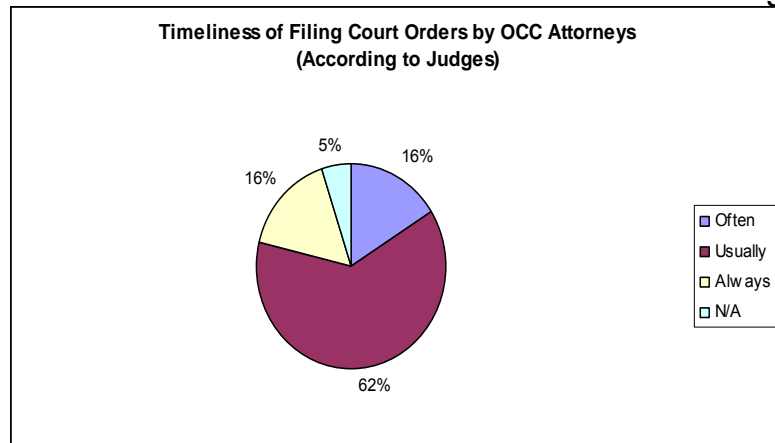
Quality of representation – effectiveness: Sixty-five percent of the judges reported in surveys that OCC attorneys *usually* have an impact on the health and safety of children, 19% reported that they *always* have an impact on the health and safety, 11% reported often, and 5% reported *occasionally*. Fifty-one percent of the attorneys reported that OCC attorneys *usually* have an impact on the health and safety of children, 11% reported always, 28% reported *often*, 8% reported occasionally, and 2% reported never.



Attorney availability: Thirty-two percent of the judges responded in surveys that they *never* have difficulty scheduling hearings due to the OCC attorneys’ unavailability, 65% responded that this factor was *occasionally* a problem, and 3% responded that it is *often* a problem.

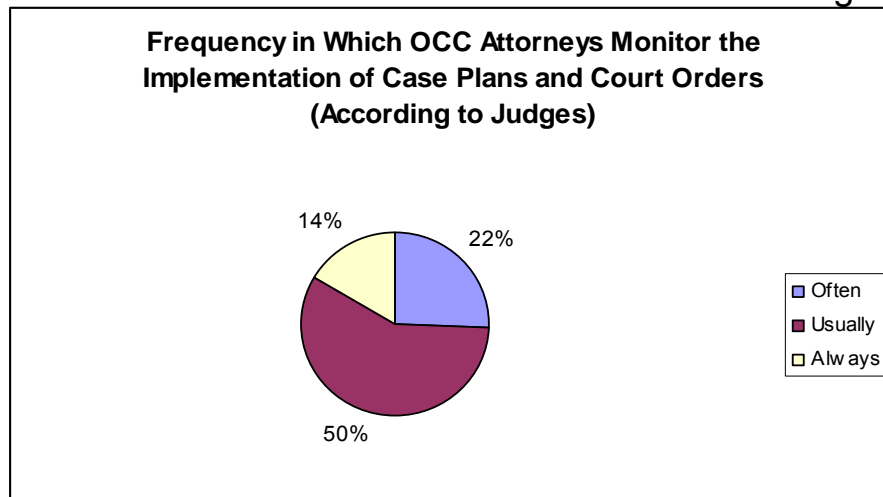


Timeliness of legal activities: In surveys, judges were asked how often the OCC attorney timely files court orders and how often the OCC attorney timely files and serves petitions. The vast majority of the responses to both questions were *usually* and *always*.

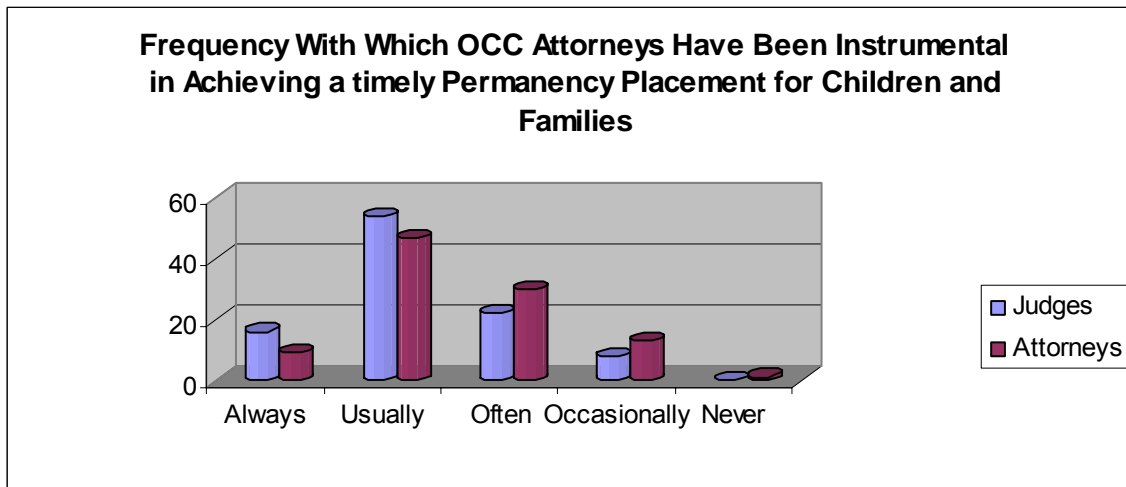


Attendance at case plan staffings: Surveys of DCFS caseworkers show that 29% noted that OCC attorneys *always* or *usually* participate in the case plan staffings. Fourteen percent said that they *often* participate.

Monitoring of case plans and orders: Fifty percent of the judges reported that OCC attorneys *usually* monitor the implementation of case plans and court orders. Twenty-two percent reported that they *often* monitor these, and 14% reported that they *always* monitor the implementation of case plans and court orders.



Ensuring timely permanency: Fifty-four percent of the judges reported that OCC attorneys have *usually* been instrumental in achieving a timely permanency placement, 22% reported *often*, 16% reported *always*, and 8% reported *occasionally*. Forty-seven percent of the attorneys reported that OCC attorneys have *usually* been instrumental in achieving a timely permanency placement, 30% reported *often*, 9% reported *always*, 13% reported *occasionally*, and 1% reported *never*.



Case Flow Management

The Resource Guidelines provide that, in the majority of cases, courts should hold hearings on originally scheduled dates. In order to do that, attorneys and parties must understand that trial dates are firm. Major interruptions in contested hearings should not be allowed; it should be unusual for a hearing not to be completed as scheduled or shortly thereafter.

The Guidelines suggest that one way to keep hearings on schedule is to set hearing dates in open court with parties and advocates present to receive a written court order which sets out the date and time of the next hearing.

The Guidelines suggest the following as the basic tools of case flow management:

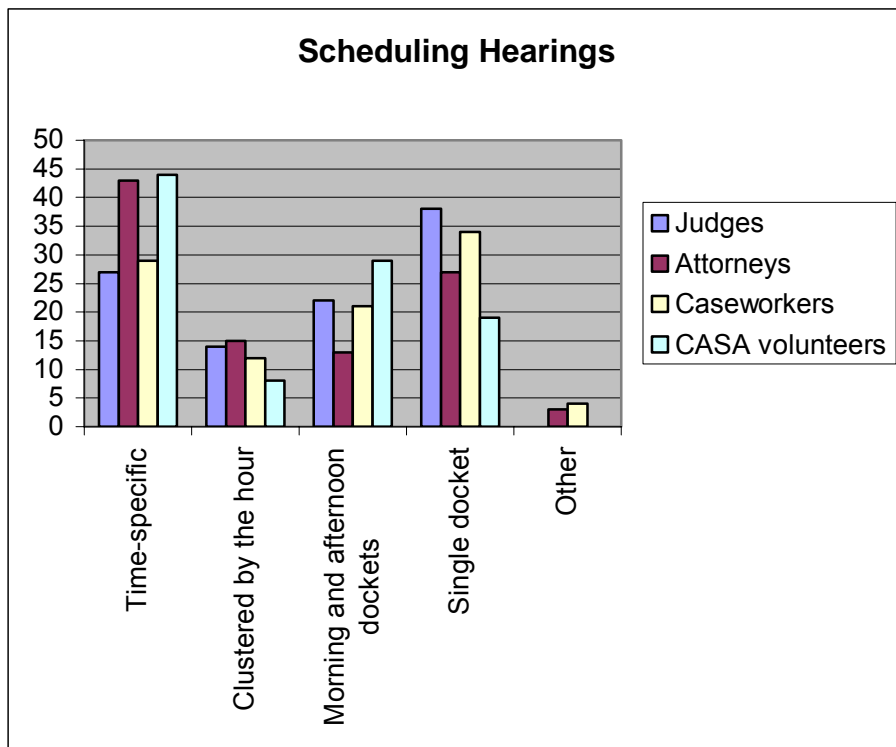
- *Judicial leadership and commitment to timely decisions in dependency-neglect case;*
- *Standards and goals including timetables for different stages of litigation and explicit deadlines for each hearing*
- *Monitoring and information system monitoring by court staff and an information system capable of spotting delays and measuring court progress in case flow management*
- *Scheduling for credible (firm) court dates*
- *Court control of continuances*
- *Use of direct calendaring*

The Guidelines also suggest that courts must firmly and effectively control continuances, and make the following recommendations with respect to continuances

- *Continuances should never be allowed simply because of inconvenience to attorneys or parties*
- *Continuances should never be allowed solely by stipulation of the parties*
- *Continuances should not be granted on the authority of administrative personnel*
- *Continuances should be allowed only for illness of attorneys or parties*
- *Reasons for continuance should be included in the court record*

Resource Guidelines pp. 20-21

Scheduling Hearings: A recommendation from the original assessment was for courts to set specific times for specific hearings. Since the original assessment, courts in Arkansas have increased the practice of scheduling hearings at specific times or clustering hearings by the hour. Twenty-eight percent of judges now report scheduling time-specific hearings and an additional 14% report clustering hearings by the hour. Of other participants surveyed, 58% of attorneys, 41% of caseworkers and 52% of CASA volunteers reported that their courts schedule hearings either at specific times or clustered by the hour. Unfortunately, 36% of judges reported that they continue to schedule all cases at the same time.



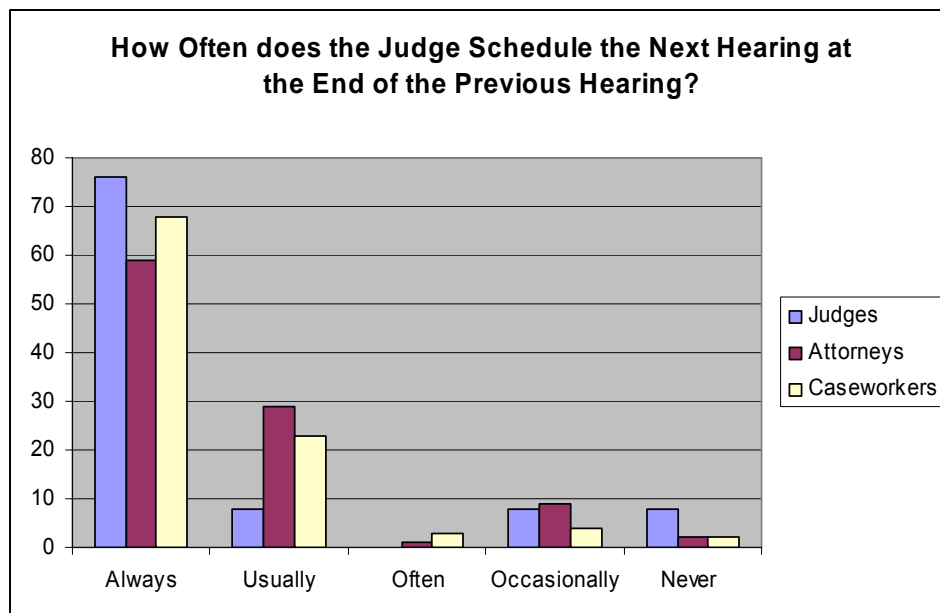
In the original assessment, 22% of the judges reported that they scheduled time for each case. Of others surveyed, 22% of attorneys and 13% of caseworkers reported that judges scheduled hearings at individual times for each case. Also in the original assessment, 30% of judges, but 55% of attorneys and 69% of caseworkers, reported that all hearings were set at the same time.

Closed Hearings: A recommendation in the original CIP assessment was that judges should conduct closed hearings in dependency-neglect cases. Arkansas law provides that all hearings shall be closed. Yet, only two-thirds of judges in Arkansas are holding closed hearings. One obstacle to holding closed hearings is the practice of not scheduling cases at specific times. Because older courthouses have no waiting areas, the judges leave their courtrooms open. Other judges disagree philosophically with closed hearings.

Sufficiency and Timeliness of Notice to Parties: Arkansas law provides that notice shall be served in manner provided by the ARCP - Rule 5. However, in court observation, problems with proper notice were documented. In both probable cause and permanency planning hearings two-thirds of the cases all parties either received proper notice or were present. However, in one-third of the cases, the judge did not inquire about proper notice as to all

necessary parties. In adjudication/disposition hearings, the judge inquired about proper notice in seven of the 19 cases when a party was not present but in four cases the judge did not inquire. In one of the adjudication hearings where the court did inquire about proper notice, the judge had to continue the case because the mother had not had proper notice. Review hearings were even more problematic: In just under half of the hearings (47%), the judge did not inquire as to proper notice.

Announcing Hearing Dates: One of the recommendations from the original assessment was that judges schedule the next hearing at the end of each hearing. This ensures that a hearing is scheduled within the timeline required by law and provides all parties present with notice. Judges reported they are *always* (76%) or *usually* (8%) doing this. Only 8% of judges reported they are *never* doing this. Of the others surveyed, 88% of attorneys and 91% of caseworkers reported judges *usually* or *always* announce the next scheduled hearing at the end of each hearing in open court.



Observation largely supported this survey result. In most of the hearings observed, the judges scheduled the date and time of the next hearing.

This is a significant improvement over the original assessment, when only 52% of judges and attorneys responded that the next hearing date was *always* scheduled at adjudication and review hearings and only 39% indicated that the next hearing date was *always* scheduled at TPR hearings. There was, and continues to be, a legitimate reason for not announcing the first post TPR review: The court may not want parents whose rights have been terminated to have notice of subsequent hearings.

Continuances: A recommendation from the original assessment was that continuances should be granted sparingly and only for extraordinary circumstances. File review data indicated that continuances were relatively uncommon, but in court observation, six of 19 adjudication hearings (32%) were continued. It should be noted that five were in a single judicial district.

Of the 32 review hearings observed, only two (6%) were continued and two of 26 (8%) permanency planning hearings were continued.

In surveys, 94% of attorneys reported that cases are continued only *occasionally*. When asked why cases were continued, the survey responses in order of frequency were

- Interstate Compact on Placement of Children (ICPC)
- Lack of or delay in the service of process on parents
- Failure to identify or locate parents
- Inadequate court time to hear case
- Witness not available
- Attorney for parent(s) not available
- Parent(s) not available
- Evidence not available

Other, less frequently cited, reasons for continuances were

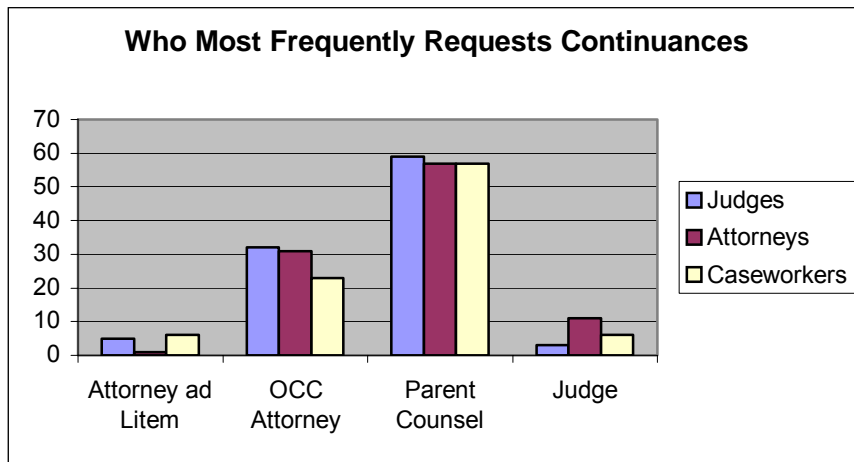
- Failure to timely serve notice of process
- Failure to timely file or serve report or document
- Appointment of attorneys for parent(s) delayed
- Caseworker not available
- Attorney for parent not prepared
- Child not available
- Judge not available
- Attorney ad litem not available
- Caseworker not prepared

Responses given very infrequently were

- OCC attorney not available
- Lack of service on tribe in cases with Native American children
- OCC attorney not prepared
- AAL not prepared
- Appointment of attorney ad litem delayed

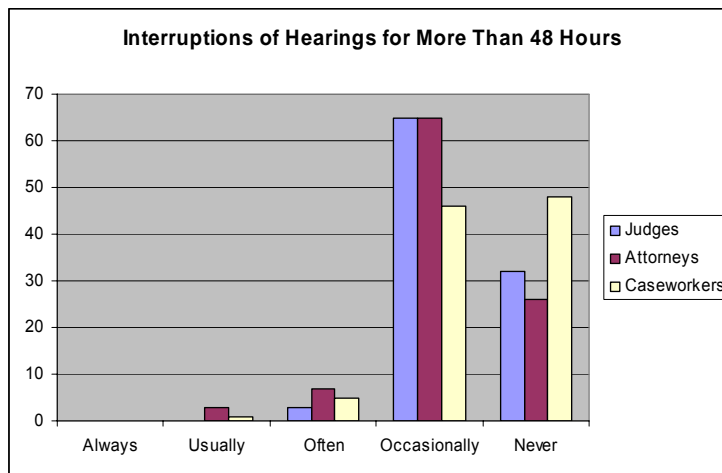
When judges were asked about reasons for continuances, the ones most often cited were ICPC, attorney for parents not available, witness not available, lack of or delay in the service of process on parents, appointment of attorneys for parent(s) delayed, failure to identify or locate parents, and parents not available.

When asked who most frequently requests continuances, responses from judges, attorneys, and DCFS caseworkers were very similar. All three groups said that parent counsel is most likely to request continuances. Fifty-nine percent of judges cited parent counsel and 57% of both attorneys and DCFS caseworkers agreed that parent counsel is most likely to request a continuance. The OCC attorney was the next most likely to request a continuance. Thirty-two percent of the judges reported that an OCC attorney was likely to request a continuance, as did 31% of attorneys, and 23% of caseworkers. The AAL and the court itself were the least likely to request continuances.

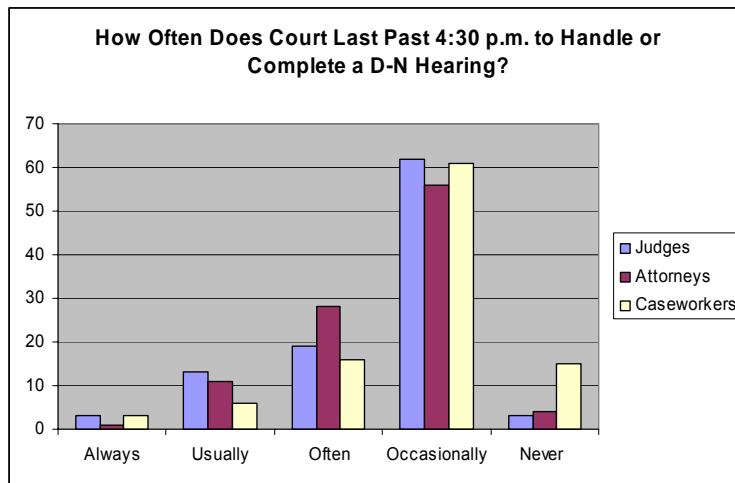


Foster parents and CASA volunteers often reported in interviews that they do not receive timely notification of continuances.

Hearing Interruptions: Judges, attorneys, and DCFS caseworkers all agreed that dependency-neglect hearings are only *occasionally* interrupted for more than 48 hours (excluding weekend and holidays) due to the court not having enough time for the scheduled hearing. None of the judges, 10% of the attorneys, and 6% of the caseworkers reported that hearings are interrupted for more than 48 hours *often, usually, or always*.



Surveys also asked how often court lasted past 4:30 p.m. to handle or complete a dependency-neglect hearing. Sixty-five percent of judges reported that court goes past 4:30 p.m. *never or occasionally*, with 35% saying *often, usually or always*. When attorneys were asked about court lasting past 4:30 p.m., 60% said *never or occasionally*, with 40% saying *often, usually, or always*. Caseworkers replied less often that court lasted past 4:30 p.m. Seventy-six percent said *never or occasionally*, with 25% saying *often, usually, or always*.



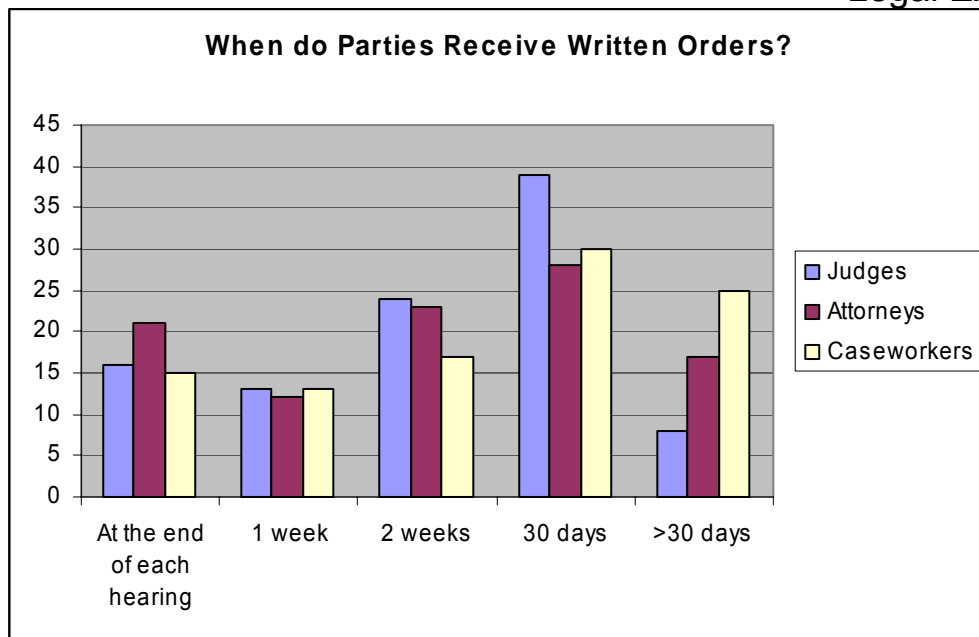
Timeliness of Orders

At the conclusion of the hearing, the court’s written findings of fact and conclusions of law should be prepared and distributed in person to the parties. This should occur at the conclusion of the hearing while the parties are still present. Handing out an order and findings addressing the issues gives the parties an immediate, written record of what has been decided, what they are expected to do prior to the next hearing, any social services voluntarily accepted, and the date and time of the next hearing.

Resource Guidelines, p. 40

In the original assessment, the Committee found that “court orders are not filed in a timely manner following hearings.” As a result, a recommendation was made to change the law to require orders to be filed within 30 days of the hearing or prior to the next hearing, whichever is sooner. One of the recommendations of the CIP in Arkansas has been that all parties receive written orders immediately after a hearing. To this end, the CIP conducted a pilot project in which seven courts received grants for court technology. Courts were required, as a condition of these grants, to issue court orders immediately and to hold time-certain hearings. According to the survey data, only a few courts issue orders immediately: 16% of judges, 21% of attorneys and 15% of caseworkers reported this.

Perceptions vary as to how often it takes more than 30 days for an order to be issued: Only 8% of judges gave this response, but 17% of attorneys and 25% of caseworkers did. This may be because the judges see the orders to sign them well before the attorneys and caseworkers receive them.



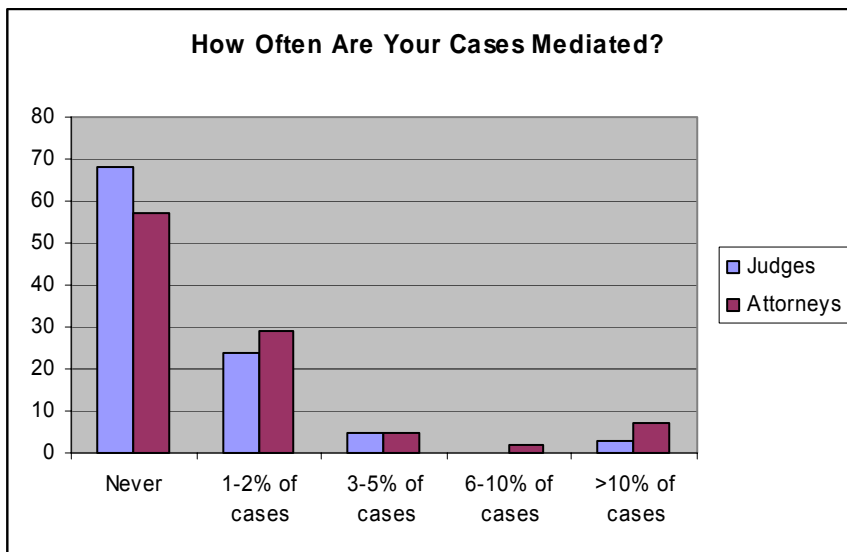
Of hearings actually observed, a written order was issued immediately in two out of nine probable cause hearings (22%), eight out of 19 adjudication/disposition hearings (42%), and six out of 26 permanency planning hearings (23%). Only four of the 13 courts observed (31%) issued and distributed orders to all parties immediately after any hearing.

During the CIP Reassessment, the CIP Project Director drafted legislation (Act 1191 of 2005) on behalf of the Arkansas Judicial Council to add the requirement that orders be filed and distributed to the parties within 30 days of the hearing or prior to the next hearing, whichever is sooner.

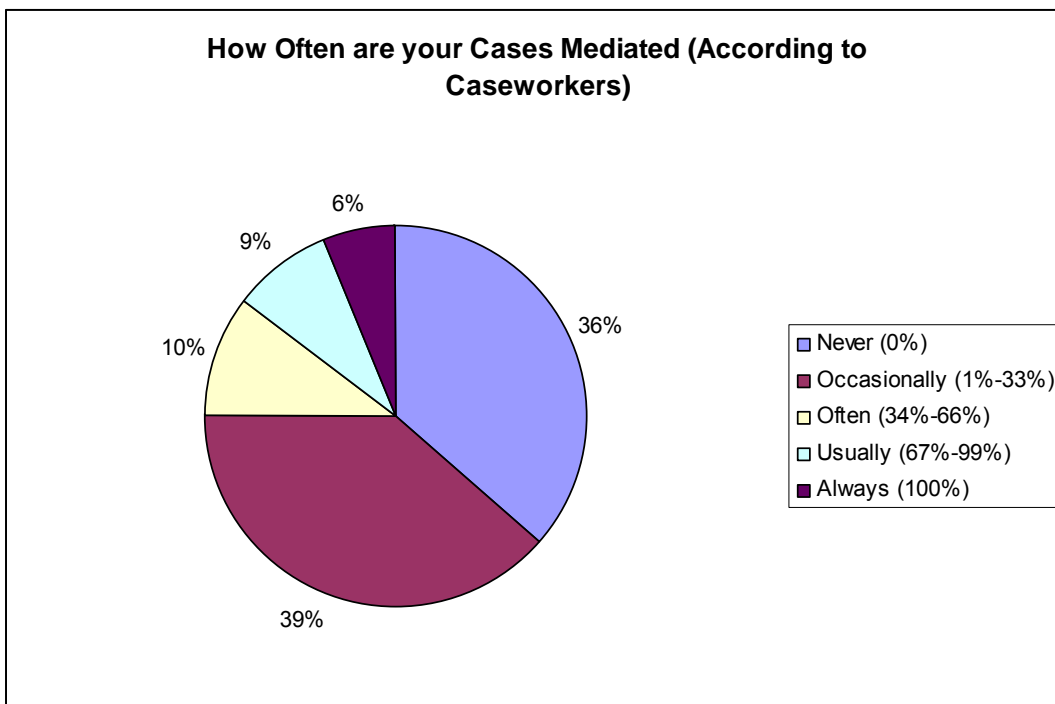
Mediation: The CIP in Arkansas has recommended mediation in dependency-neglect cases. In 2000, an evaluation was conducted of a Mediation Program Pilot Project. This evaluation included 171 mediation sessions involving 44 families. This evaluation found that the average length of time between initial case filing and permanent placement was 295 days for mediated cases and 553 days for non-mediated cases. Of the mediation sessions held, 61% ended in a written agreement. For adjudication/disposition hearings, mediated cases took an average of 91 minutes in court versus 113 minutes in court for non-mediated cases (Court-Referred Mediation of Dependency-Neglect Cases: A Study of the First Year).

Since the pilot, CIP has expanded the mediation project statewide. However, despite the positive outcomes of the pilot project and good experiences reported in interviews, relatively few judges are ordering mediation. In FY05, only 40 mediations were conducted statewide. In surveys, 68% of judges reported they *never* order mediation, and 29% do so in less than 5% of cases. Only 3% of judges refer more than 10% of their dependency-neglect cases to mediation.

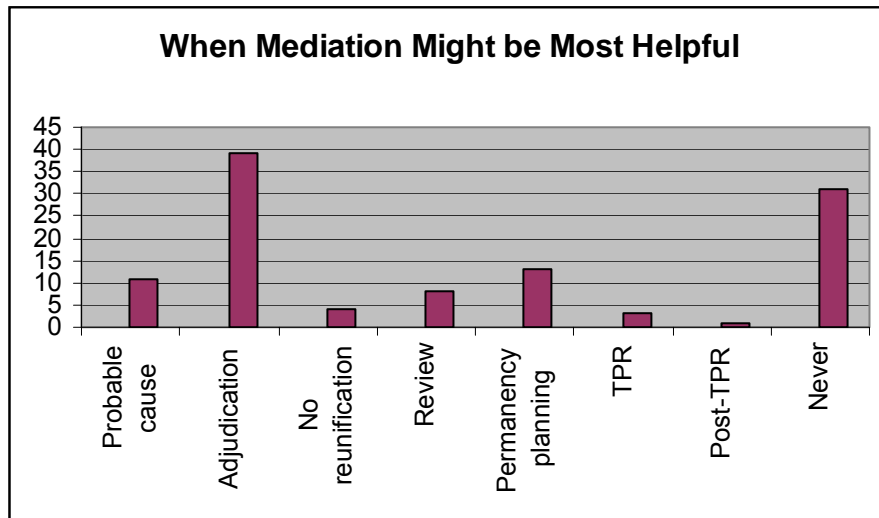
Attorneys' responses were similar in that the majority (57%) said their cases are *never* ordered to mediation. Another 29% responded that this occurred less than 2% of the time. Only 7% of attorneys reported that more than 10% of their cases are ordered to mediation.



One-third of CASA volunteers reported that they had participated in mediation. Of DCFS caseworkers, 75% said they *never* or only *occasionally* participate in mediation.

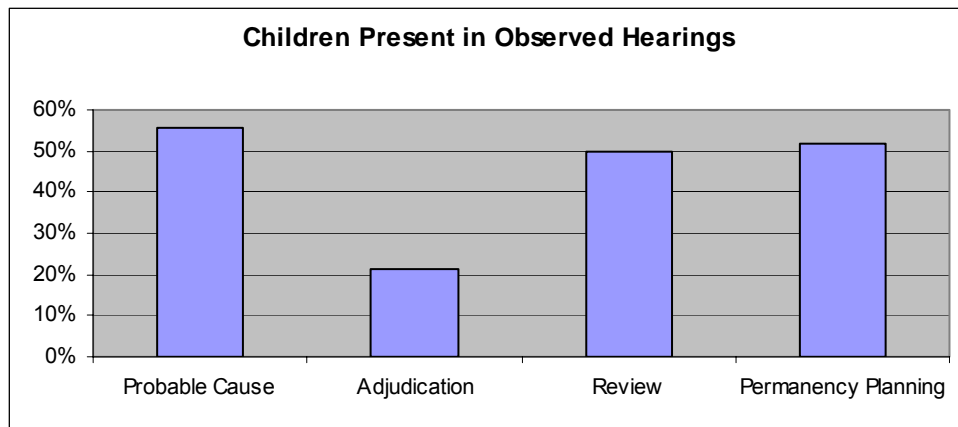


In answer to the question, “When would it be most beneficial to your client to mediate a dependency-neglect case?” the most frequent response from attorneys was adjudication, at 39%, followed by *never*, at 21%.



Of the 40 mediations conducted in FY05, 20 resulted in an agreement (50%), six in a partial agreement (15%), seven in no agreement (18%), four were halted, and no information was available on three. On average, mediation sessions lasted just over three hours. Twelve judges in eight judicial districts referred cases to mediation in FY05.

Children in Court: Arkansas law states the court may proceed to hear the case only if the juvenile is present or excused for good cause by the court. Interview data and court observation both showed that children’s presence in court is very inconsistent. Interviews of attorneys and caseworkers indicated that in many jurisdictions the child attends court if they are over the age of ten. In some cases, the judge leaves it to the AAL to decide whether to excuse the child, and in others, DHS makes the decision. Factors mentioned in the interviews included the child missing school, the age and maturity of the child, and whether any party has indicated they will be calling the child as a witness. Interviews indicated the issue of whether the children attend hearings varies from the children being required to be present unless they are excused to the children not being present unless a party indicates they should be present. At least one judge requires the AAL to obtain written approval from the judge for the child to be excused from attending a hearing. Of the hearings observed, children were present at 56% of the Probable Cause hearings, 21% of the Adjudication hearings, 50% of the Review hearings, and 52% of the Permanency Planning hearings.



Legal Exhibit 70

In observation, the age of the child did not seem to be a determining factor of whether or not the child was present. The children who were present ranged in age from infancy to teenagers. Their participation was most common at the probable cause hearings and least common at the adjudication/disposition hearings.

Training

Before becoming involved in an abuse and neglect case, attorneys should have the opportunity to assist more experienced attorneys in their jurisdiction. Attorneys should also be trained in, or familiar with:

- *Legislation and case law on abuse and neglect and foster care, termination of parental rights, and adoption of children with special needs.*
- *The causes and available treatment of child abuse and neglect.*
- *The child welfare and family preservation services available in the community and problems they are designed to address.*
- *The structure and functioning of child welfare agency and court system, the services for which the agency will routinely pay, and services for which and agency refuses to pay or is prohibited by state law or regulation from paying.*
- *Local experts who can provide attorneys with consultation and testimony on the reasonableness and appropriateness of efforts made to maintain the child in the home.*

Resource Guidelines p. 23

Training - Federal Law – CAPTA

[I]n every case involving an abused or neglected child which results in a judicial proceeding, a guardian ad litem, who has received training appropriate to the role, and who may be an attorney or a court appointed special advocate who has received training appropriate to that role (or both), shall be appointed to represent the child in such proceedings. **42 U.S.C. § 5106a (b)(2)(A)(xiii).**

Training - Arkansas Supreme Court Administrative Order No. 15

Supreme Court Administrative Order No.15, found in Appendix F, sets out the training requirements and clinical prerequisites for both AALs representing the best interests of children and parent counsel appointed to represent indigent parents in dependency-neglect cases.

The training required by Administrative Order No. 15 includes ten hours of initial training which must include

- Child Development
- Dynamics of abuse and neglect
- Attorney roles and responsibilities, including ethical considerations
- Relevant state law, federal law, case law, and rules
- Family dynamics, which may include but is not limited to, the following topics: substance abuse, domestic violence and mental health issues

- DCFS policies and procedures

Additional initial legal education may include, but is not limited to

- Grief and attachment
- Custody and visitation
- Resources and services
- Trial and appellate advocacy

There is also a clinical prerequisite of assistance in representation with an experienced attorney in the following hearings

- Probable Cause
- Adjudication/Disposition
- Review
- Permanency Planning
- Termination of Parental Rights

Following completion of the initial ten hours of legal education set out above, at least four hours per year of continuing legal education related to representation in dependency-neglect cases is required to maintain the dependency-neglect qualification. **Supreme Court Administrative Order No. 15**

Training -- CASA Training Requirements

No court-appointed special advocate shall be assigned a case before completing a training program in compliance with National Court Appointed Special Advocate Association and state standards. **Ark. Code Ann. § 9-27-316.**

CASA volunteers must complete at least 30 hours of initial training, and at least 12 hours annually of continuing education. Training must include

- Roles and responsibilities of a CASA volunteer
- Juvenile court process
- The dynamics of human behavior associated with child abuse and neglect
- Relevant Arkansas and federal laws
- Confidentiality and record keeping practices
- Child development
- Child abuse and neglect
- Permanency planning and resources
- Community agencies and resources
- Communication and information gathering
- Advocacy
- The special needs of the children served, differences in cultural and socio-economic norms, values, and heritage
- Identification of personal and institutional bias or discrimination as it relates to the children and families being served
- Court observation

Training B State Practice

In the original assessment the issue of training touched nearly every area the Committee considered. The Committee made findings and recommendations about training related to specific issues. The Committee agreed that everyone involved in the dependency-neglect system needed training on every aspect of the system. Committee members agreed that training is crucial to the success of the foster care system. The Committee favors both interdisciplinary training and intradisciplinary training for judges, attorneys, caseworkers, foster parents, service providers, Court Appointed Special Advocate (CASA) volunteers, court personnel, law enforcement officers, and anyone else who has a role in the system.

Tremendous progress has been made since the original assessment in 1997, at which time the Committee's finding regarding training was: Very limited organized training exists for attorneys who represent children and parents in dependency-neglect cases.

The original assessment report contained five recommendations about training:

- T Develop and provide additional training for attorneys who represent children and parents in dependency-neglect cases.
- T Judges, attorneys, guardian/attorneys ad litem, advocates, caseworkers, and everyone involved in dependency-neglect cases need more training on all aspects of reasonable efforts, including "how to measure reasonable efforts."
- T Judges, attorneys, guardians/attorneys ad litem, advocates, caseworkers, and everyone involved in dependency-neglect cases need training with respect to case plans.
- T Develop and provide training for all parties concerning all types of hearings.
- T Develop and provide training for judges, caseworkers, and attorneys specific to six-month review hearings.
- T Develop and provide training for judges, caseworkers, and attorneys specific to permanency planning review hearings.
- T Conduct a "train the trainers" so as to have a core group to conduct on-going training; the Ad Hoc Committee is one pool of potential trainers from which to draw.

In August 2002, the Committee held a retreat for the purpose of assessing its progress toward implementing these recommendations. At that time it was determined that all training recommendations had been completed and that training should be on-going.

Train the Trainers: In August 1999, a "Train the Trainers" was conducted on effective case plans and court reports with assistance from the National Resource Center on Permanency Planning and the American Bar Association Children & the Law Center. Approximately 40 participants representing teams from all ten DCFS areas were trained on the Adoption Safe Families Act (ASFA) and Arkansas law regarding case plans, court reports, concurrent planning, and permanency planning. These teams then conducted trainings in their respective areas of the state.

Comments from Evaluations of Case Plan & Court Report Training

The effectiveness of using the teamwork approach in finding solutions was most useful. I will encourage all area workers to start thinking more about concurrent planning as soon as children are placed out-of-home.

This program has assisted me in knowing what the judge needs in order to determine permanency for the child.

Useful for me to take back to my staff for them to develop better case plans and write better court reports.

In November 1999, “Train the Trainers: Improving Court Practice in Dependency-Neglect Proceedings” was conducted to develop a core group to conduct on-going training. This week-long event was sponsored by the National Council of Juvenile and Family Court Judges (NCJFCJ), the AOC, and the CIP. Participants included judges, attorneys, CASA staff, a trainer from the Mid-South Academy/UALR School of Social Work, and DCFS.

In August 2000, a “Train the Trainers” was held to develop a pool of trainers equipped with the tools needed to conduct trainings on the ASFA regulations. This training was developed as a joint effort of the AOC, the CIP, CASA staff, DCFS, and The Arkansas Commission on Child Abuse, Rape and Domestic Violence. Participants included judges, attorneys, CASA, and DCFS personnel. Teams from each area of the state attending this training returned to their areas to conduct regional and local trainings on the ASFA regulations.

Judicial Training: The circuit judges who hear juvenile cases are provided with two and a half days of specialized training each year. Topics have included Improving Court Practice in Dependency-Neglect Cases, Dependency-Neglect Mediation, the Court’s Role in Case Plans, What Judges Need to Know about Infants and Toddlers in the Child Welfare System, Childhood Trauma and Neurophysiologic Development, ICWA, evidence issues at TPR hearings, case law updates, permanency planning, mental health issues, child development, and ethics. Speakers have included staff from the national resource centers, judges from other states, and medical and mental health professionals. There is also a session each year for the juvenile judges to meet with and hear from DHHS personnel, including DCFS and the Division of Youth Services (DYS).

Judicial Conference training sessions pertaining to permanency have included:

- Partnership for Permanency – Through a Child’s Eyes (1997)
- Case Building to Permanency (1997)
- Impact of Substance-Affected Parties in Permanency Planning (1999)
- ASFA (1999)
- ASFA Regulations (2000)
- Making it Permanent. Efforts to Finalize Permanency Plans for Foster Children (2002)
- Permanency Planning for Adolescents (2003)
- Permanency Planning Hearings: It’s Not Just Another Review (2004)
- Improving Outcomes for Older Youth (2004)

These conferences have been well received by the judges, with overall ratings from the evaluations ranging from 4.67 to 4.85 on a scale of 1 – 5. Attendance ranges from 50% to 67% of the circuit judges that hear dependency-neglect cases. Agendas from these conferences are included in Appendix J.

Judge Conference Evaluation Comments

- “Making it Permanent” was the most useful part of the program to me.
- The fact that relapse is a part of recovery for a meth addict will be useful information to share.
- Made me realize I do many things without knowing the real effects my actions will have on these kids.
- Information on Chaffee and Independent Living for teens was most useful.
- The meeting with DHS was the most useful part of the program to me. It is good to be able to identify mutual problems, even if there are not many good answers.

Children & the Law Conference: Held annually in the spring, this is a three-day conference primarily for judges and attorneys. It has three tracks:

- T Dependency-neglect;
- T Domestic relations; and
- T Juvenile justice.

The first Children & the Law Conference was held in May of 1998. It has been an annual event with the exception of 2003, when seven regional trainings were held around the state. At the first Children & the Law Conference, 150 attorneys and judges attended. The conference has grown each year and now over 325 judges and attorneys attend this conference.

Permanency, always being a major factor in dependency-neglect cases, has been the subject of many training sessions of this conference. Some examples include

- Permanency Planning Hearings (1998)
- Permanency Planning and Termination of Parental Rights Hearings (1999)
- ASFA Regulations (2000)
- Is ASFA Working? (2002)
- Independent Living Services and Permanency (2004)
- APPLA and Permanency for Teens (2005)

Agendas for the Children and the Law Conferences are included in Appendix J. These conferences have received overall ratings above 4.25, on a scale of 1 – 5 from the participant evaluations.

Children & The Law Evaluation Participant Comments

- Practical continuing legal education – what a novel idea!
- [I gained an] overall increase in the practical working knowledge on children’s issues.
- Teenage Mothers’ Rights [most useful part of program]. I learned what a teenage mother needs in terms of her own ad litem versus [her needs] as a mother.
- Excellent review of dynamics between parent counsel, DHS, and other agencies.
- The roles various family members play in dysfunctional families [most significant thing learned].

CASA Conference: The CASA Conference is held annually in the fall. The first CASA Conference was in 1998 with 140 participants and has grown to approximately 400 participants. This is a two-day training with tracks for legal issues, advocacy, and CASA program building. The primary audience of this conference is CASA volunteers and staff and DCFS caseworkers, but judges, attorneys, foster parents, and providers are also encouraged to attend. CIP offers scholarships to DCFS for caseworkers and foster families to attend the CASA Conference. Permanency for children is always a major issue, and past presentations regarding permanency have included

- Case Building to Permanency (1998)
- Adoption and Safe Families Act (1998)
- ASFA Regulations (2000)
- Preparing Children for Adoption (2000)
- Permanency Efforts Based on Age (2001)
- Permanency for Teens (2001)
- Case Building to Permanency (2002)
- Making it Permanent: Efforts to Finalize Permanency Plans for Foster Children (2002)
- Understanding and Using Concurrent Planning to Achieve Permanency (2003)
- Preparing Teens for Independent Living (2004)

Participants have consistently given this conference an overall rating of 4.27 and above on a scale of 1-5.

CASA Participant Evaluation Comments

Thank you, thank you, thank you! I have absorbed enormous amounts of information in the last couple of days.
 The panel of foster children was the highlight of the conference.
 Topics were ones that are timely and well thought out.
 How mediation works [most significant thing learned].
 All our roles in the lives of children are tied together.

Cross-Discipline Training: A Training Coordinator was hired by the AOC in March 2000 to provide ongoing cross-disciplinary training across the state. Cross-disciplinary training has

been provided to judges, attorneys, caseworkers, foster parents, CASA volunteers, service providers, police officers and investigators. Emphasis was placed on working with the training programs already in place to serve as a catalyst for institutional change.

Mid-South Academy has a contract to provide new caseworker training and supervisor training. The Training Coordinator works with Mid-South Academy and conducts the training module on hearings and court testimony for new caseworkers and new social service aides. The Training Coordinator provides follow-up training on court preparation and testimony to DCFS county offices on an as-requested basis. In a mock trial setting, each caseworker uses his/his own court report and case plan to practice and evaluate his/her preparation of court testimony. If requested, the trainer then observes the actual hearing to evaluate the testimony and make further recommendations for improvement.

The AOC and the CIP assist the Alternative Dispute Resolution (ADR) Commission and the UALR Bowen School of Law in their trainings of dependency-neglect mediators, and the Juvenile Intake and Probation Officers Certification Training includes a dependency-neglect component.

The Training Coordinator works with Mid-South Academy in planning their Child Abuse Conference which is held each spring and is attended by judges, attorneys, DCFS caseworkers, social workers, mental health professionals, CASA staff, foster parents, and others in the juvenile justice field. Other conferences and trainings for which the training coordinator provides planning assistance and training sessions include the annual Foster Parent Conference, Guidance Counselors' Conference, and training on court testimony for the medical staff at Arkansas Children's Hospital.

Best Practices Institute: In December of 2004 a Best Practice Institute was conducted. At this three day retreat, an interdisciplinary approach was used. Working both in their separate groups and in interdisciplinary sessions, representatives from the various disciplines involved in dependency-neglect cases (judges, AALs, parent counsel, OCC attorneys, DCFS caseworkers, and CASA volunteers) began developing best practice recommendations.

At the 2005 Children & the Law Conference, the final day of the conference was devoted to Best Practices. Sessions were presented for AALs, parent counsel, and OCC attorneys. Each discipline met in a separate session led by a panel comprised of their peers who had attended the December 2004 institute. These sessions centered on discussions of best practice techniques for each type of hearing in a dependency-neglect case. The sessions were widely embraced by the attorneys and produced many innovative and progressive suggestions. Evaluations from the conference indicate that many considered this the most significant part of the conference and suggested additional such sessions in the future. Plans are already in the works to continue this dialogue and training. The CASA volunteers and DCFS caseworkers will have the same types of sessions regarding best practices at the CASA conference in September 2005 and sessions are planned for the judges' annual conference in November 2005.

Best Practices was great – really good suggestions! - We want more.
Comment from 2005 Children & the Law Evaluation

State Program Improvement Plan (PIP) – ICWA Training: As part of Arkansas’ Program Improvement Plan (PIP), training on ICWA was provided to juvenile judges, attorneys and DCFS caseworkers. Juvenile judges received training on ICWA at their 2001 annual conference. This topic has also been presented at the 2000 CASA Conference and the 2004 Children & the Law Conference. Judges and attorneys were also provided with the ICWA folders with the checklists developed by the Permanency Planning for Children Department of the NCJFCJ.

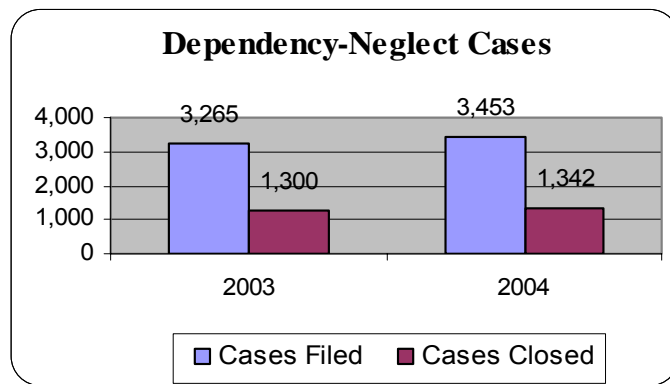
Attorney ad Litem and Parent Counsel Qualification Training: The AOC provides the initial ten hours on continuing legal education required by the Supreme Court Administrative Order No. 15 at least twice a year, usually once in the spring and again in the fall.

To maintain their qualification, attorneys must acquire four hours of CLE in any of the training categories each year after their initial training. The AOC and the CIP provide several opportunities for attorneys to acquire this CLE each year.

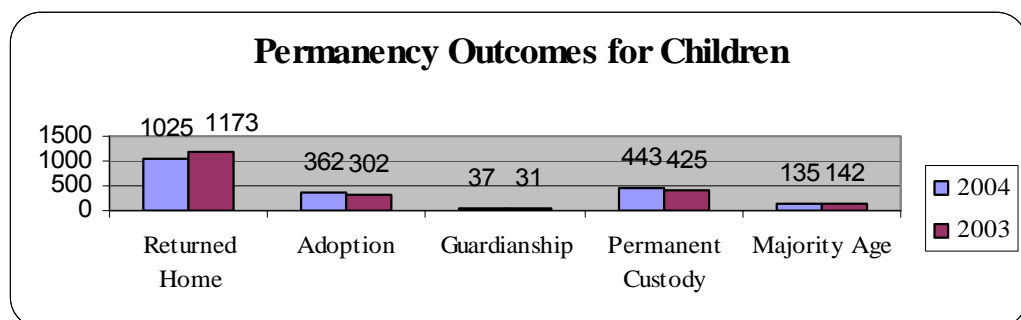
Permanency Outcomes 2003 -2004

When the CIP Reassessment Team first began its work in September of 2003, in planning the reassessment, one of the most important issues to the CIP Reassessment Team was whether the effects of court improvements made over the last five years have, or are, making a difference for children by allowing them to be placed in safe and permanent homes in a timely manner. Evaluation experts cautioned that we would not be able to correlate any specific improvements to a particular permanency outcome because of the diverse factors in our foster care system without depriving a child or a parent of essential rights or services.

Many factors impact the health, safety, and permanency for children in our foster care system. In addition to the impact on children of abuse and neglect, their well-being is affected by the number and stability of their foster care placements, the availability of mental health services and other services, the actions of the court and DCFS, and their connections with their families. Understanding these limitations and that the review was limited to court actions, the Reassessment Team thought it was important to develop baseline data for future evaluation to see what, if any, issues it might raise. In the original assessment, the only data the AOC had was the number of cases filed and disposed of each year. Looking at that data in 2003 and 2004, the number of cases filed has grown faster than the percentage of cases closed.



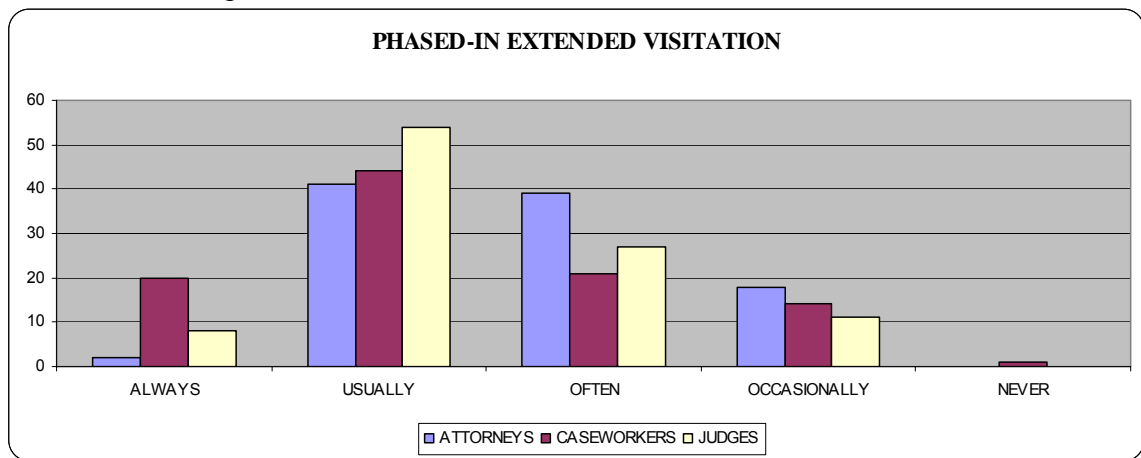
The AOC now has a dependency-neglect database to track timeliness of court hearings, what is happening in a particular case for a specific child, and permanency outcomes for children, including time frames, and the age, race, and gender of the children involved. In 2003, 2,073 children had the following permanency outcomes in the 1,300 cases that were closed. In 2004, 1,998 children had the following permanency outcomes in the 1,342 cases that were closed. In 2003, 57% of the children were returned home compared with 51% in 2004.



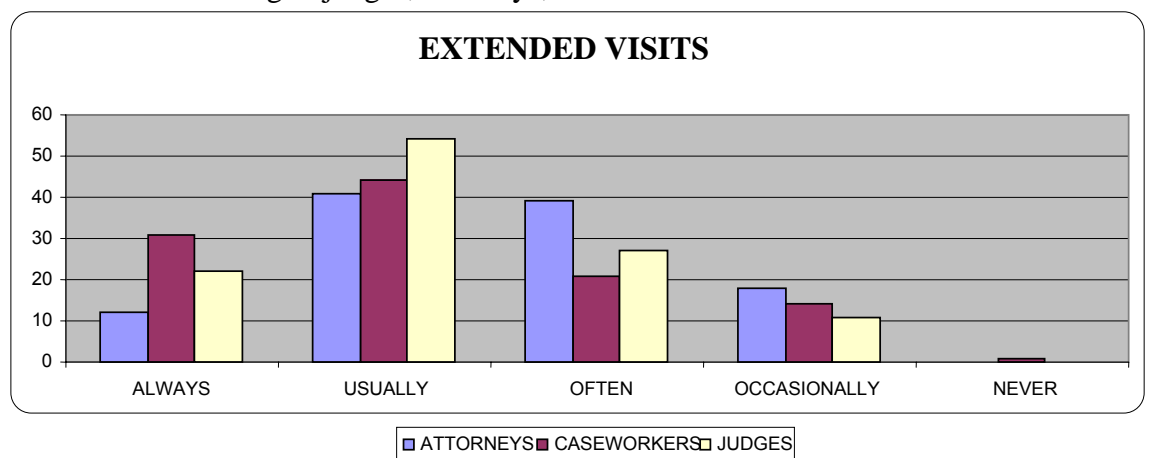
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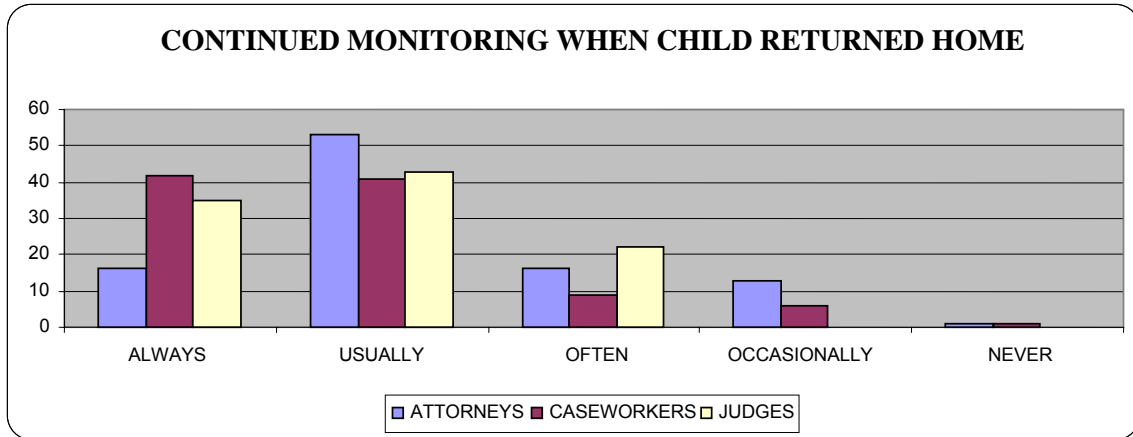
Since both state and federal law (ASFA) focus on health and safety as the paramount concern for a child who is returned home, and much training has been offered in this area, the CIP team designed several survey questions about the practice of how children are returned home. Survey responses indicated that the general practice is for the court to conduct a hearing immediately prior to a child returning home. Another common court practice is a hearing on the issue of the child returning home, with an order that it occur only when certain criteria are met. Parties are required to submit reports indicating that the conditions have been met and a stipulated order may then be circulated to return the child home. Any party can object to the circulated order and/or request a hearing if necessary.

Visitation is a key to successful reunification. It is an essential tool for the assessment of parental function and parents' commitment to their children. Recent studies have shown that parents who have more frequent and successful visitation are more likely to be reunited with their children. According to surveys, most courts hear testimony or receive reports regarding visitation before returning a child home.



One issue that has been stressed in CIP training has been to look at the best interest of the child and to transition the child back into the home while monitoring the child's progress to ensure health and safety. According to surveys, the following charts indicate the frequency with which the courts use phase-in, extended visits with the parents, and continued monitoring prior to returning a child home according to judges, attorneys, and caseworkers.

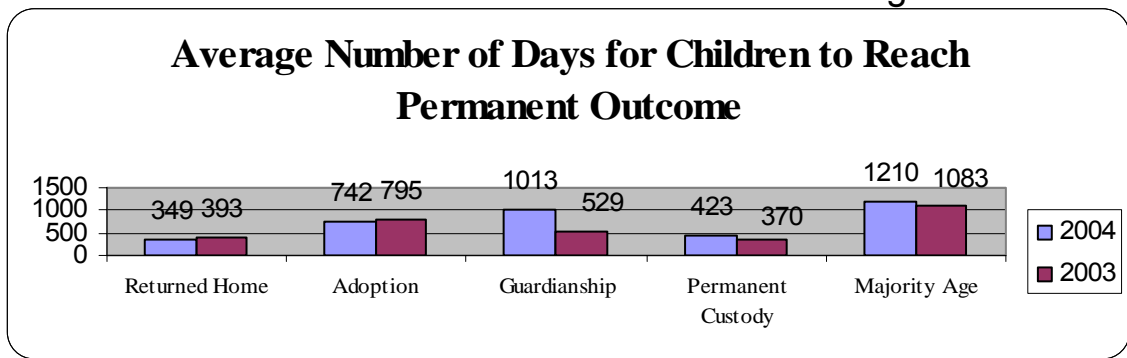




The court observations were consistent with the surveys with respect to the courts' continued monitoring of a case when a child is returned home. Half of the review hearings observed involved children who had been returned to the parents while the court continued to monitor the progress of the family and the child's health and safety. The Reassessment Team also observed that judges closed three cases in three different courts following a review hearing conducted after the children had been returned home at a prior hearing. The courts retained jurisdiction to monitor the progress of the in-home placement and ensure the health and safety of the child.

Consequently, permanency outcome data indicated that in the last two years, 277 children left foster care simply because they reached majority age. They had no permanent home. Children's Bureau statistics indicate that we must pay attention to these young people who face barriers that will continue to plague their own ability to become productive adults. Among the young women, six in ten will become pregnant. Only half will graduate from high school. One in four will end up homeless, at least for one night, and half will end up unemployed. It is incumbent on our child welfare system and courts to ensure that no child leaves foster care without a comprehensive permanent plan and a healthy bond with a responsible adult who can continue to offer support as the youth transitions to adulthood.

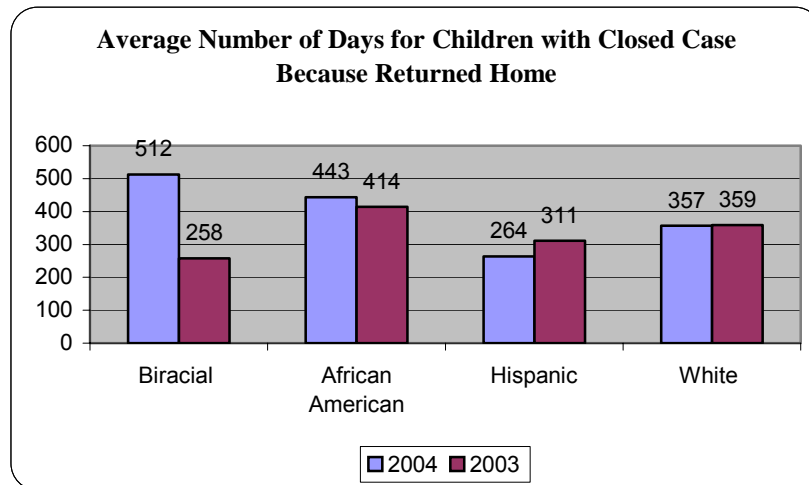
The children who reached majority age in 2004 spent, on average, over three years in foster care before turning 18. The AOC database allows CIP to track the time it takes for children to reach permanency, from the time they enter foster care until the time their case closes and they are living in a safe and permanent placement. While the average time continues to decrease for children who had cases closed in 2004 when they were returned home or had adoptions finalized, the average time increased for guardianships, custody, and for those children who reached majority age. The most dramatic increase in time spent in foster care was for children for whom guardianships were granted in 2004. The number of days taken to finalize guardianships in 2004 was nearly double the time taken in 2003.



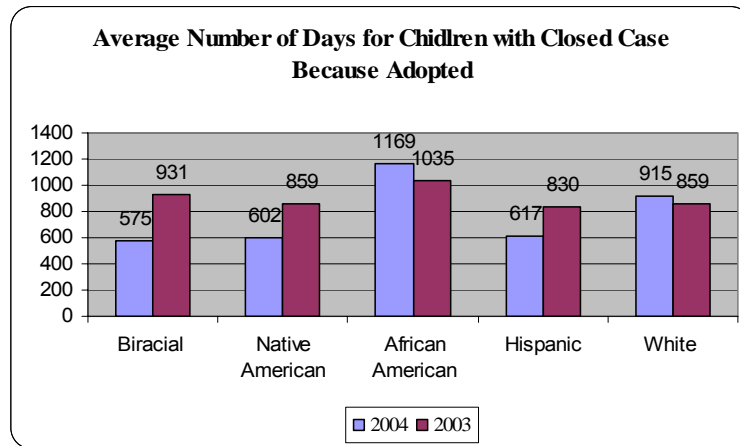
In analyzing the change in length of cases between 2003 and 2004 for children of different races, disparities are realized. During analysis, it was discovered that the database used for collection of this data allowed for “unknown” or “unstated” entries. This amounted to as much as 15% of the total population in some categories. The database has now been corrected to require that a race be entered for each child.

The length of time for reaching the permanency outcomes of adoption, children aging out of the system, permanent custody, and return to a parent or relative, was longer for African American children between 2003 and 2004. Cases took longer for biracial children when the permanency outcome was permanent custody and return to parent or relative. Caucasian children had longer cases when the permanency outcome was adoption, aging out of the system, or guardianship. Hispanic children comprised the only group that consistently saw a decrease in the number of days to reach the permanency outcomes discussed herein.

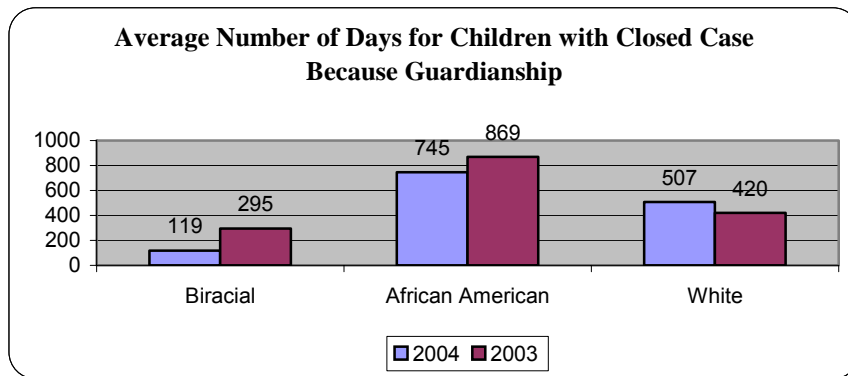
In comparing the children who returned home to a parent or relative by race in 2003 to 2004, cases lasted 98% longer for biracial children and 7% longer for African American children.



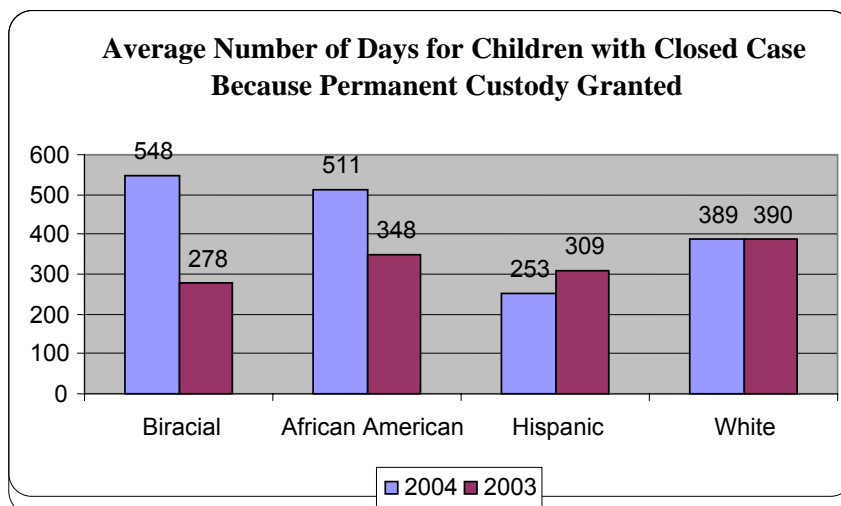
In analyzing the change in the length of time for children who were adopted in 2003 to 2004, it took 13% longer for African American children and 7% longer for white children to be adopted.



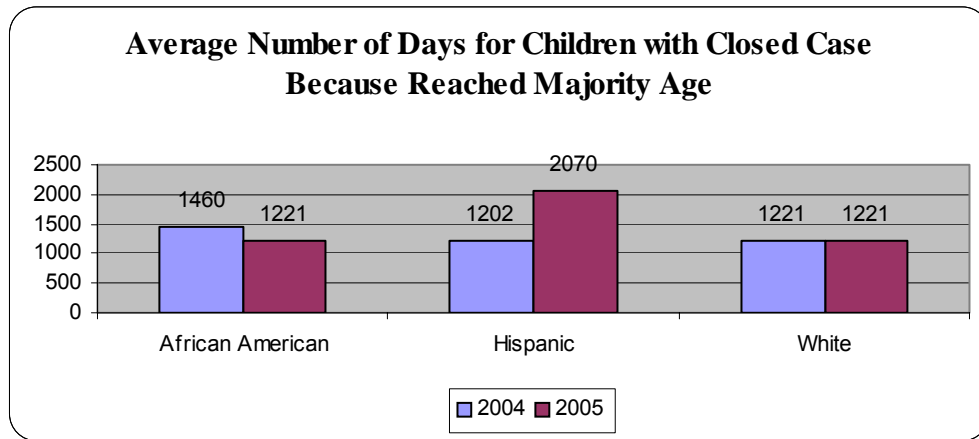
For children whose cases ended in guardianship, guardianships took 21% longer for white children, while biracial and African American children had shorter time in foster care in 2003 compared to 2004.



Cases ending in permanent custody lasted 97% longer for biracial children and 47% longer for African American children than for the other reported races from 2003 to 2004.



Of the children for whom permanency was achieved by reaching majority, the cases took 33% longer for African American children and 44% longer for white children from 2003 to 2004.



CIP has identified many areas in which courts are better serving children and families. Significant progress has been made in holding hearings in a timely fashion, spending adequate time at those hearings, issuing court orders in a timely manner, and providing the children and parents with qualified representation and advocacy. As the reassessment indicates, there is still room for improvement to ensure that Arkansas’ abused and neglected children are a priority. No child should enter or leave the foster care system without a judge making a decision based on the child’s best interest to protect his/her health, safety and well-being. Our courts must continue to ensure that our children are protected and that they find safe and permanent homes in a timely fashion. CIP shall continue to track permanency outcomes and evaluate any racial and gender disparities to ensure that efforts are made to seek permanency in a timely manner for all our children in foster care, and CIP shall work with the AOC Court Automation Project, judges, attorneys and trial administrators to improve data collection and ensure the availability of a state-wide data management system to local courts.