Wisconsin Children's Court Initiative (CCI)
Summary Report

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PAGE

APPENDICES

A. INTRODUCTION

1. CHILDREN'S COURT INITIATIVE OVERVIEW

The Children's Court Initiative (CCI) is a comprehensive, collaborative project created by the Director of State Courts Office, Children's Court Improvement Program designed to strengthen circuit court processing in Chapter 48 cases. The mission of CCI is to assist the court system and those providing services to it in achieving safety, permanency, due process, and timeliness outcomes for children and families in child welfare proceedings. CCI works in partnership with the Department of Children and Families and its Continuous Quality Improvement (CQI) program. The goal of CQI is to improve child welfare practice. CQI staff review agency child welfare case files and conduct in-depth interviews about the specific cases they are reviewing. When schedules permit, CCI and CQI staff travel in unison to conduct simultaneous reviews of the same counties to minimize disruption and duplication.

CCI is an internal review designed to determine whether counties are meeting minimum practice standards and to identify best practices and any areas that need improvement. The CCI Advisory Committee established performance measures in child in need of protection or services (CHIPS) and termination of parental rights (TPR) cases. Case processing as it relates to the performance measures is assessed and tracked through on-site county reviews. The preliminary observations from each on-site review are shared orally at an exit conference at the conclusion of the review. The formal findings are presented in the form of a written report approximately three months after the on-site review. The on-site review and report do not address all aspects of the child welfare system as it related to the courts, but cover a discrete number of issues as described by the performance measures. Approximately fifteen counties are reviewed each year.

CCI reviews have occurred in all of the counties in Wisconsin, with the exception of Menominee County because the child welfare cases are heard in tribal court, not circuit court. The Children's Court Improvement Program is in the process of developing a new continuous quality improvement program that will replace CCI to promote ongoing monitoring and assessment of case processing.

2. PERFORMANCE MEASURES[1]

With the goal of improving outcomes for children and families, combined with attempting to prevent the loss of future federal funding, the CCI Advisory Committee established safety, permanency, due process, and timeliness performance measures based on provisions of state and federal law, such as the Adoption and Safe Families Act (ASFA) and Indian Child Welfare Act (ICWA); findings from the federal Child and Family Services Review in Wisconsin; federal Title IV-E funding requirements; and best practice principles outlined in the "Resource Guidelines: Improving Court Practice in Child Abuse & Neglect Cases"[2] and "Building a Better Court: Measuring and Improving Court Performance and Judicial Workload in Child Abuse and Neglect Cases" Guide and Toolkit.[3]

The performance measures can be summarized as follows:
Safety: Children are safe from abuse and neglect, and maintained in their own home whenever possible.
Permanency: Children have permanence and stability in their living situation.
Due Process: Proceedings are conducted in a fair, thorough manner with effective judicial oversight.
Timeliness: Children's permanence and stability are met through timely proceedings and decision-making.
ICWA: When applicable, proceedings are conducted in accordance with the Indian Child Welfare Act.

[1] See Appendix A: CCI Performance Measures.
[2] Published by the National Council of Juvenile and Family Court Judges (NCJFCJ).
[3] Published by the American Bar Association-Center on Children and the Law, National Center for State Courts, and NCJFCJ.

3. METHODOLOGY

Three data collection methods were utilized during the on-site reviews to evaluate the performance measures mentioned above: court file review, court observation, and focus groups.

Court File Review. The CHIPS and TPR case samples for the court file review were randomly selected cases filed by the District Attorney's Office, Corporation Counsel's Office, or contract attorney for the child welfare agency. The date range for the samples was chosen to reflect current practice while also capturing cases with post-dispositional activity (e.g., changes of placement and permanency plan hearings).

Court Observation. The hearings for the court observation were selected randomly with the requirement that they be hearings for publicly filed CHIPS or TPR cases. However, if there were a limited number of hearings held for publicly filed CHIPS and TPR cases during the on-site review, hearings for juvenile in need of protection or services (JIPS) or delinquency cases may also have been observed. If there was a sibling group, information on only one of the children was captured.

Focus Groups. The standard CCI focus groups were with judges, circuit court commissioners, district attorneys, corporation counsels, guardians ad litem, defense attorneys, court-appointed special advocates, initial assessment workers, caseworkers, agency management, foster parents, foster children, and tribal representatives. In addition, information was obtained from the juvenile clerks through a pre-visit worksheet and informal discussions.

4. SUMMARY REPORT

This Summary Report compiles the data, findings, and best practices from the CCI on-site reviews conducted in 71 counties from September 2005 to March 2011.[4] A total of 2,052 CHIPS cases and 761 TPR cases were reviewed, 438 hearings were observed, and over 700 focus groups were conducted during the on-site reviews. Achievement of the stated performance measures is often expressed in percentages. The data contained in this report represents general case processing trends, but note that the statistics provided may not represent the quality of current practice due to the amount of time that has lapsed since the first review in 2005.

B. SAFETY

1. "CONTRARY TO THE WELFARE" AND "REASONABLE EFFORTS TO PREVENT REMOVAL" FINDINGS

When Congress established the "contrary to the welfare" and "reasonable efforts to prevent removal" findings requirement through the Adoption and Safe Families Act and Title IV-E of the Social Security Act, it was their intent to keep children safely in their own home whenever possible and ensure that children and parents are receiving services needed to preserve or reunify the family. In addition, Congress provides federal funding to states for eligible children placed in out-of-home care. However, if judicial findings are not correctly made concerning "contrary to the welfare" and "reasonable efforts to prevent removal," the child is ineligible for this funding.

[4] Please note that the counties listed in this report for the best practice examples are not necessarily the only counties utilizing these practices, but were the counties where the practice was identified as part the CCI on-site review.

The initial order removing the child from the home in a CHIPS case must include findings that continued placement of the child in his or her home is contrary to the welfare of the child and that the agency has made reasonable efforts to prevent removal of the child from the home.[5]

The child was removed from the home in 1,450 of the CHIPS cases reviewed.

- 97% of the written orders authorizing removal included the "contrary to the welfare" finding.
- 95% of the written orders authorizing removal included the "reasonable efforts to prevent removal" finding.

In a few of the counties that were reviewed, the temporary physical custody order and CHIPS dispositional order contained a general statement when addressing the "contrary to the welfare" finding.[6] It is unclear whether future federal Title IV-E reviews will accept general statements such as these as meeting the requirement that the finding be detailed and child-specific. Therefore, best practice is to include information about the circumstances related to that individual child's out-of-home care episode.

In some of the cases where the "reasonable efforts to prevent removal" finding was not made in the written order, the third box indicating that reasonable efforts are not required pursuant to Wis. Stat. § 48.355(2d) was checked in error. This usually occurred when there were emergency conditions that resulted in the immediate removal of the child and this box was accidently checked instead of the second box. In other instances, the provisions of Wis. Stat. § 48.355(2d) did not apply to the case (e.g., there was no judgment of conviction).

An attachment to the order was occasionally used to make the "contrary to the welfare" and "reasonable efforts to prevent removal" findings. Making the findings through an attachment is not the preferred method of documentation. If an attachment is used, it must be referenced on the written order for each applicable finding and directly attached to the written order.

Information from the CCI reviews suggests that the court typically addressed the "contrary to the welfare" and "reasonable efforts to prevent removal" findings orally on the record in some manner. The level of detail and whether the specific phrase, "contrary to the welfare" or "reasonable efforts to prevent removal," was stated varied by judicial officer.[7]

2. BEST PRACTICE EXAMPLES

- Creating a local form that contains information about the "contrary to the welfare" and "reasonable efforts to prevent removal" findings, which the caseworker completes and provides to the court prior to applicable hearings. [Shawano, Crawford, Washington, Sheboygan, Outagamie, Dunn, Calumet, Chippewa, and Lincoln Counties]

- Presenting detailed testimony concerning the "contrary to the welfare" and "reasonable efforts to prevent removal" findings at relevant hearings. [Green County]

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[5] See Wis. Stat. §§ 48.21(5), 48.355(2)(b)6., and 48.357(2v); Adoption and Safe Families Act (P.L. 105-89); and 45 C.F.R. 1356.21.

[6] Examples of the general statements include: "parents are not available," "the child is at risk of abuse/neglect in the parental home," and "home conditions are unsafe."

[7] For example, some judicial officers would adopt the "ASFA findings" or adopt the findings contained in the report submitted by the caseworker, instead of stating each of the findings orally on the record.

C. PERMANENCY

In order to promote stability and expedite permanency for abused and neglected children placed out of the home, state and federal laws have been created giving the court oversight responsibility in the child's permanency planning. These laws require timely and thorough reviews of the permanency plan and require the agency to make reasonable efforts to achieve the goal of the child's permanency plan. Failure to comply with these laws may result in a possible delay in reaching permanency as well as loss of federal Title IV-E funding.

1. EVALUATIONS OF THE PERMANENCY PLAN

The permanency plan for children placed out of the home must be reviewed by the court or administrative review panel no later than 6 months after the child was removed from the home. If the permanency plan is reviewed by an administrative review panel, a review summary must be filed with the court within 30 days of the review. The permanency plan has to be reviewed again no later than 12 months after the child was removed from the home by the court.[8]

a. 6-Month Permanency Plan Review

The child was placed out of the home 6 months or longer in 791 of the CHIPS cases reviewed.

- 83% of the cases had the permanency plan reviewed no later than 6 months after removal.

Permanency plan reviews were heard by an administrative review panel at some point during the sample period in 54 counties. An administrative review occurred in 452 of the cases reviewed.

- 72% of the review summaries were filed within the statutorily required 30 days after the administrative review.

b. 12-Month Permanency Plan Hearing

The child was placed out of the home 12 months or longer in 324 of the CHIPS cases reviewed.

- 88% of the cases had a permanency plan hearing conducted no later than 12 months after removal.[9]

The permanency plan hearing and CHIPS dispositional hearing were held at the same time in a few of the counties, but only the dispositional hearing notice and order requirements were adhered to. Combining the hearings is permissible provided that the parties are also notified of the permanency plan hearing as required by Wis. Stat. § 48.38(5m) and a Permanency Plan Hearing Order (Form JD-1791), which contains the findings required under Wis. Stat. §§ 48.38(5)(c) and (5m)(e), is also completed.

It was observed that caseworkers did not consistently file the request for the permanency plan hearing (Form JD-1766) far enough in advance to allow the parties to be notified of the hearing at least 30 days prior to the hearing, as required by statute.[10] It is unclear the extent to which this contributed to the lack of timely permanency plan hearings in the data listed above.

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[8] See Wis. Stat. §§ 48.38(5) and (5m), and 42 U.S.C. 675(5)(C).

[9] In several of the cases where a permanency plan hearing was not conducted within 12 months of removal, the hearing occurred less than 30 days late.

[10] See Wis. Stat. § 48.38(5m)(b).

Some of the focus group participants had concerns about the quality and effectiveness of permanency plan hearings. They characterized permanency plan hearings as brief and lacking a substantive discussion about the child, permanency plan, and parents' compliance with the dispositional order. They noted this to be particularly true when the parents and child were not present at the hearing.

c. "Reasonable Efforts to Achieve the Goal of the Permanency Plan" Finding

The permanency plan hearing order must include a determination as to whether reasonable efforts were made by the agency to achieve the goal of the permanency plan.[11]

A permanency plan hearing was held in 523 of the CHIPS cases reviewed.

- 96% of the permanency plan hearing orders included the "reasonable efforts to achieve the goal of the permanency plan" finding.

The court almost always addressed the "reasonable efforts to achieve the goal of the permanency plan" finding orally on the record in some manner at permanency plan hearings. However, the level of detail and whether the specific phrase, "reasonable efforts to achieve the goal of the permanency plan," was stated varied by judicial officer.

2. BEST PRACTICE EXAMPLES

- Creating a questionnaire that is sent to individuals involved in the case, such as parents and caregivers, to provide written information and input at the permanency plan review. [Calumet, Wood, and Milwaukee Counties]

- Sending a form or letter to the parties prior to the permanency plan hearing inviting them to participate in the review process, explaining the purpose of the hearing, and providing information about submitting comments in writing. [Marquette, Lafayette, Monroe, Racine, and Vilas Counties]

- Scheduling the permanency plan hearing within the statutory timeframe at the conclusion of the dispositional hearing or previous permanency plan hearing. [Dunn and Milwaukee Counties]

D. DUE PROCESS

There should be judicial and other procedures through which children and all other interested parties are assured fair hearings and their constitutional and other legal rights are recognized and enforced.[12]

1. NOTICE OF HEARINGS

Notice of hearings is required to be provided to parents in CHIPS and TPR proceedings. When applicable, notice of hearings in CHIPS and TPR proceedings must also be provided to non-parental caregivers and the Indian child's tribe.[13]

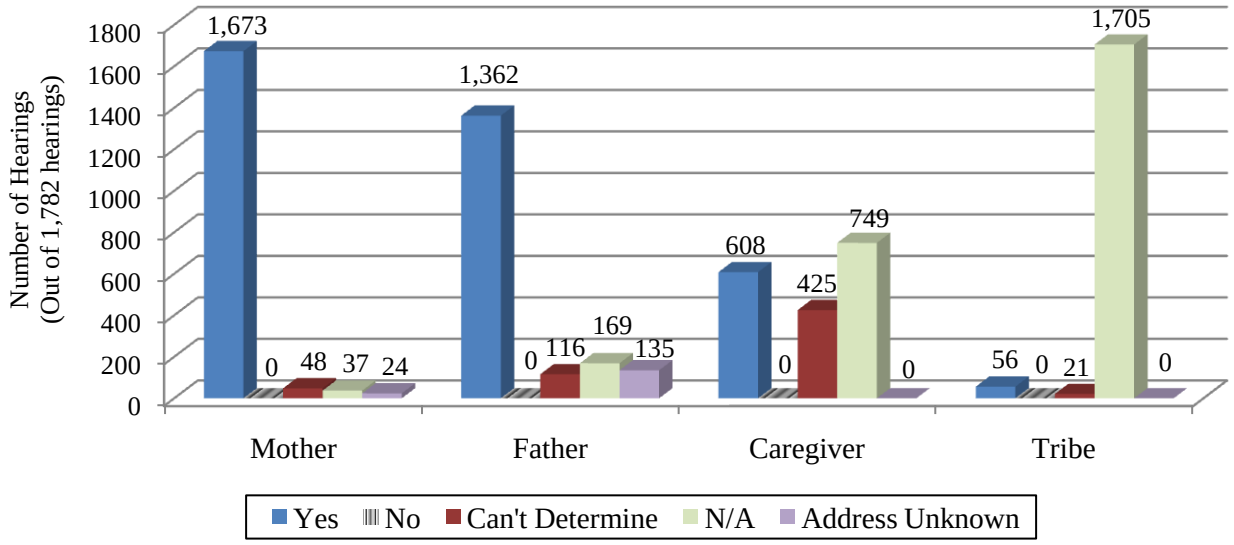
[11] See Wis. Stat. §§ 48.38(5)(c)7. and (5m)(e), and 45 C.F.R. 1356.21(b)(2).
[12] See Wis. Stat. § 48.01(1)(ad).
[13] See Wis. Stat. §§ 48.27(3)(a)1. and 48.42(2g), and Indian Child Welfare Act, 25 U.S.C. 1912(a).

Notice of hearings in CHIPS and TPR cases was routinely provided to parents and documented in the court file. Nevertheless, focus group participants commented that more of an effort should be made to identify and locate fathers. Some counties were more successful in this regard because the court routinely asked about the efforts made to locate and identify the father or made an inquiry of the mother when the father's name or address was listed as unknown.

The court files lacked documentation that notice was provided to the caregiver in a significant number of cases. While focus group statements and the attendance of caregivers at the hearings indicated that notice was typically provided to the caregiver in some manner, it was not always provided consistent with statutory notice requirements. For example, notice was mailed to the child in care of the caregiver instead of the caregiver directly or the caseworker verbally notified the caregiver informally of the hearing.

When a case was identified as being subject to the Indian Child Welfare Act (ICWA), notice of hearings was routinely provided to the tribe and documented in the court file. However, the court files lacked documentation that the first notice to the tribe was sent via registered mail as required by ICWA (see Section F below). Furthermore, it was unclear whether the child was subject to ICWA in some of the CHIPS cases that were reviewed because the section pertaining to ICWA applicability in the CHIPS petition and dispositional order was not completed.

Figure 1: Notice Given for the CHIPS Dispositional Hearing[14]



[14] In Figures 1-5, "Can't Determine" represents those instances where the court file lacked documentation that notice of the hearing was provided to the mother, father, caregiver, or tribe. For purposes of the CCI review, notice can be provided in writing, orally, or through publication.

Figure 2: Notice Given for the Most Recent Permanency Plan Hearing

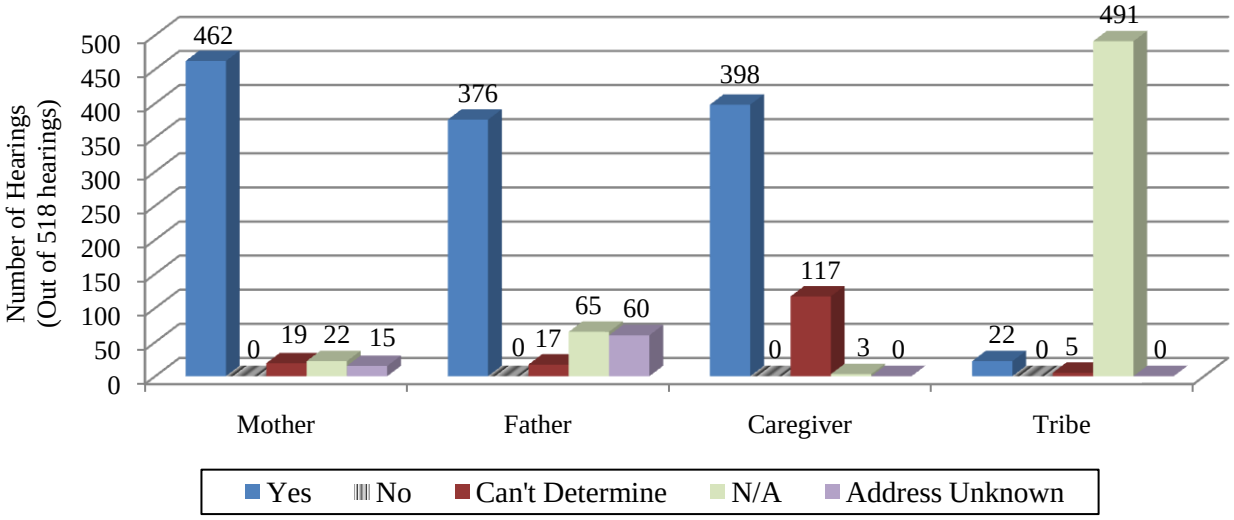


Figure 3: Notice Given for the Most Recent Change of Placement Hearing[15]

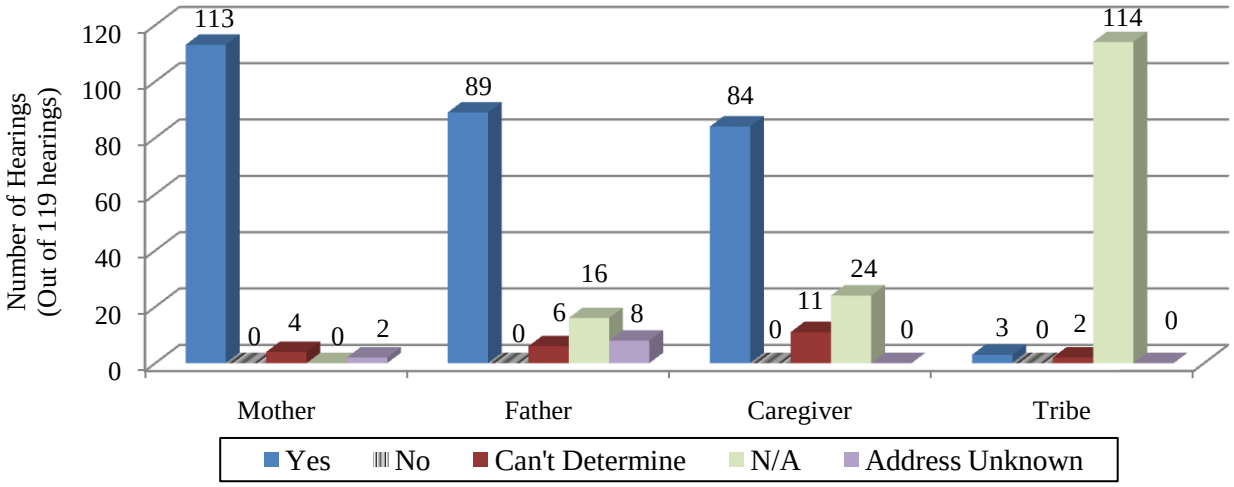
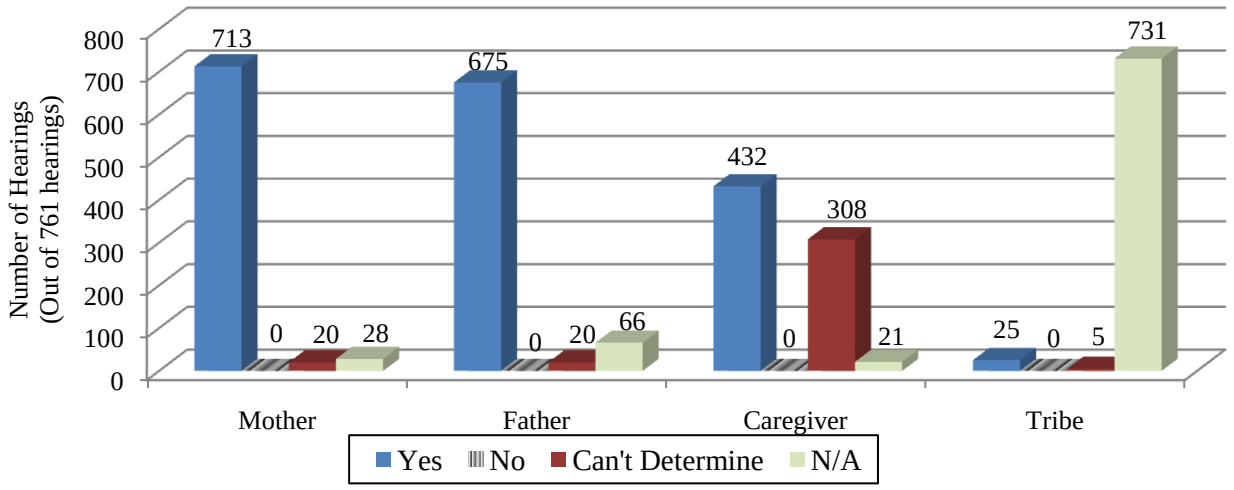
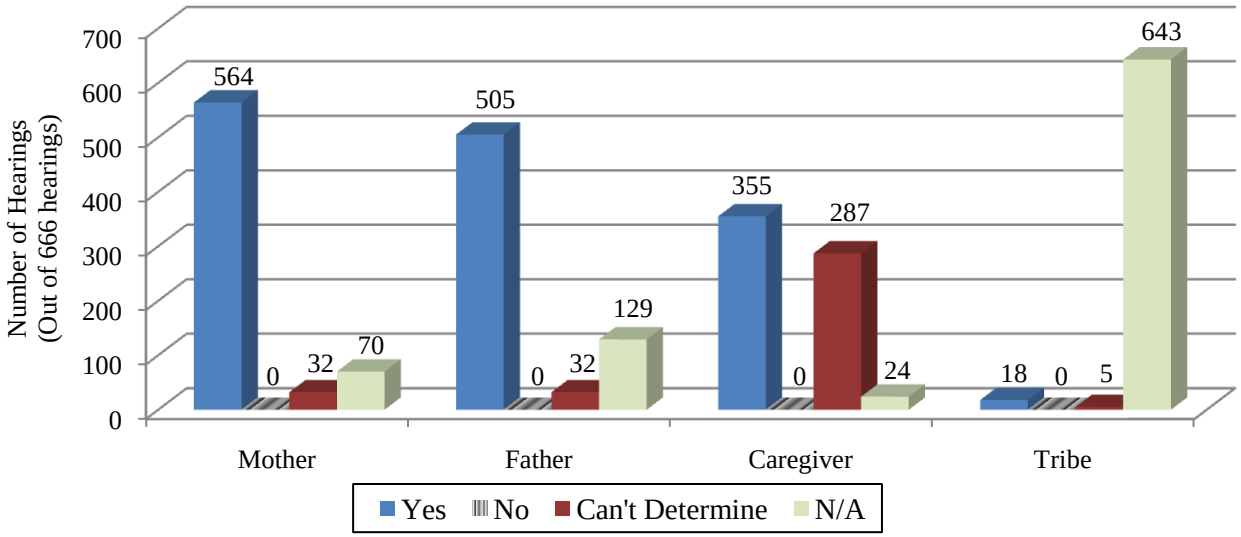


Figure 4: Notice Given for the TPR Hearing on Petition



[15] This figure does not contain data from 32 counties because this performance measure was added after reviews were conducted in those counties.

Figure 5: Notice Given for the TPR Dispositional Hearing



a. Best Practice Examples

- Creating a form that the caseworker completes and provides to the court with the most current or updated addresses for the parties in the case. [Dane and Milwaukee Counties]

2. CHANGES OF PLACEMENT

Changes of placement that occur after disposition in a CHIPS case must follow the notice requirements set forth in statute to allow the case participants an opportunity to object to the change of placement in a timely manner and minimize disruption to the child if the court determines the proposed change is not in the child's best interest. If emergency conditions necessitate an immediate change of placement, notice of the change of placement must be sent or a hearing must be held within 48 hours.[16] When there are not emergency conditions, a child's placement shall not be changed until either a hearing is held or 10 days after the notice of change of placement is sent to the court and parties.[17]

In the CHIPS cases reviewed, a change of placement occurred after disposition on 701 occasions.

- 94% of the changes of placement occurred with formal notice or a hearing to the court.
- 66% of the changes of placement had an associated order for change of placement.
- In 55% of the non-emergency changes of placement, the change of placement occurred after a hearing was held or 10 days after the notice of change of placement was sent to the court.[18]
- In 80% of the emergency changes of placement, notice of the change of placement was sent or a hearing was held within 48 hours of the change of placement.[19]

[16] See Wis. Stat. §§ 48.21(1)(a) and 48.357(2).
[17] See Wis. Stat. §§ 48.357(1)-(2m).
[18] Eleven of the counties are not included in this data because the performance measure was added after reviews were conducted in those counties.
[19] Thirty-four of the counties are not included in this data because the performance measure was added after reviews were conducted in those counties.

It was discovered during the CCI reviews that notice of the change of placement was not always provided to all of the case participants, especially caregivers. It was also observed that some of the changes of placement were characterized as an emergency when the conditions did not necessitate an immediate change of placement. Due to a lack of clarity in the statutes, there was confusion on the part of judges, attorneys, and caseworkers regarding the proper procedure to follow when there was a change in the child's placement prior to disposition or an emergency in-home to out-of-home change of placement after disposition.

3. OPPORTUNITY TO BE HEARD IN COURT

a. Parents

Court observation and focus group statements indicated that judicial officers routinely gave parents an opportunity to participate in court by soliciting information directly from them or their attorneys. The extent to which the parent participated in hearings seemed to vary greatly depending on a number of factors, such as the circumstances of the case, whether the parent was represented by counsel, and the judicial officer hearing the case.

b. Caregivers

Wisconsin statutes provide non-parental caregivers with the right be heard by making a written or oral statement at court hearings in CHIPS and TPR cases.[20] Moreover, it is beneficial for the court to hear from caregivers since they usually have information about the child that would be relevant to the proceedings. This is an area that was found to be in need of improvement in the federal Child and Family Services Reviews (CFSR) conducted in Wisconsin.

Caregivers were routinely given an opportunity to be heard at hearings in the majority of the counties that were reviewed. However, the level of caregiver participation appeared to be dependent upon the judicial officer and hearing type. It was reported that some caregivers were either uncomfortable making a statement in court without first being asked to do so or unaware that they could submit a written statement if they were unable to attend the hearing. Examples of the practices utilized by the judicial officers who excelled in this area include: soliciting input directly from the caregivers at every hearing, thanking caregivers for attending the hearing, and asking caregivers if they need anything from the court or agency to assist them care for the child.

c. Best Practice Examples

- Using a plea questionnaire, Notice of Rights and Obligations, waiver of attorney, or appellate rights notification form in CHIPS and TPR cases. [Jefferson, Crawford, Brown, Shawano, Columbia, Adams, St. Croix, Barron, Dane, Pierce, Washington, Waukesha, Sheboygan, Kenosha, La Crosse, Eau Claire, Lafayette, Marinette, Iron, and Lincoln Counties]

- Holding frequent review hearings after disposition in CHIPS cases to assess the progress made towards meeting the dispositional conditions, evaluate the child's well-being, and provide an update to the court. [La Crosse, Trempealeau, Crawford, and Vernon Counties]

[20] See Wis. Stat. §§ 48.27(3)(a)1m. and 48.42(2g)(am). Prior to January 2010, the statutes gave caregivers an opportunity to be heard at hearings.

4. REPRESENTATION FOR PARENTS

The "Resource Guidelines" and "Building a Better Court" publications promote timely appointment of counsel for all parties involved in CHIPS and TPR proceedings to ensure that a party's due process rights are protected at all stages of the proceeding. In addition, Wisconsin case law has held that the court must exercise its discretion to determine whether to appoint counsel for a parent in a CHIPS case whenever a parent requests counsel or the circumstances otherwise raise a reasonable concern that the parent will not be able to provide meaningful self-representation.[21]

a. Procedure for Appointing Attorneys for Parents in CHIPS Cases

The 71 counties reviewed employed various procedures for appointing attorneys for parents in CHIPS cases:

- The court made a determination on a case-by-case basis after considering the parent's financial circumstances and other relevant factors, such as the parent's ability to understand the proceeding and act on their own behalf. [33 counties]
- The court required that parents who were requesting an attorney complete a written form regarding their ability to pay for an attorney, typically the Petition for Appointment of an Attorney, Affidavit of Indigency and Order form. [21 counties]
- The court did not have a procedure for appointing attorneys for parents in CHIPS cases and, at its discretion, rarely appointed attorneys for parents in CHIPS cases. [11 counties]
- The court held an Indigency Hearing prior to appointing counsel for the parent to gather information regarding the parent's financial circumstances. [3 counties]
- The court routinely appointed attorneys for parents in CHIPS cases. [3 counties]

b. Other Findings

In the counties where attorneys were regularly appointed for qualifying parents in CHIPS cases, focus group participants viewed this as a positive practice and believed that it expedited the process, contributed to the parent's understanding and participation in the case, and resulted in fewer appeals. Conversely, focus group participants in the counties where attorneys were rarely appointed for parents expressed concern that not providing representation in appropriate cases had a negative impact on the parent's ability to comprehend the proceeding and meaningfully participate in the case.

Attorneys were regularly appointed for parents in TPR cases, either through the State Public Defender's Office or by the court. The court would frequently adjourn the hearing on the petition to give parents additional time to go to the State Public Defender's Office or retain their own counsel. While focus group participants felt that securing representation for the parent outweighed the delay associated with the adjournment, they would like to see a process put into place that would accomplish this with minimal delay.

c. Best Practice Examples

- Having attorneys on-call and immediately available for appointment for parents at temporary physical custody hearings in CHIPS cases. [Milwaukee County]

[21] See *State v. Tammy L.D.*, 238 Wis. 2d 516, 617 N.W.2d 894 (Wis. Ct. App. 2000).

- Regularly appointing attorneys for qualifying parents in CHIPS cases. [Waupaca, Green, Rock, Washington, Waukesha, Milwaukee, La Crosse, Trempealeau, Jackson, Brown, Dane, Outagamie, Marathon, Winnebago, Juneau, Lafayette, Dodge, Douglas, Calumet, Monroe, Chippewa, Kewaunee, Lincoln, and Vilas Counties]

- Matching the circumstances of the case with the most appropriate attorney or guardian ad litem when making appointments. For example, appointing an attorney who is located in close proximity to where the family lives to facilitate communication. [Rock, Waushara, and Kewaunee Counties]

5. REPRESENTATION FOR CHILDREN

The "Resource Guidelines" and "Building a Better Court" publications promote timely appointment of counsel for all parties involved in CHIPS and TPR proceedings to ensure that a party's due process rights are protected at all stages of the proceeding. Furthermore, Wisconsin statutes require that a child be represented by a guardian ad litem, adversary counsel, or both in CHIPS and TPR cases, depending on the age of the child, circumstances and stage of the case, and case type.[22]

a. Procedure for Monitoring Guardian ad Litem Training

At the time of the CCI review, 30 counties had a procedure in place for monitoring the guardian ad litem training required under Supreme Court Rule 35.01.

b. Attendance of Child's Guardian ad Litem or Adversary Counsel at Key Hearings[23]

In 54 of the counties, the appointment of the guardian ad litem (GAL) for the child typically occurred prior to the temporary physical custody (TPC) hearing so that the child's best interest was represented at the initial hearing in the case. As illustrated in the figures below, the GAL or adversary counsel for the child regularly attended key hearings in CHIPS and TPR cases.

Figure 6: GAL/Adversary Counsel Present at the TPC Hearing (1,375 hearings)

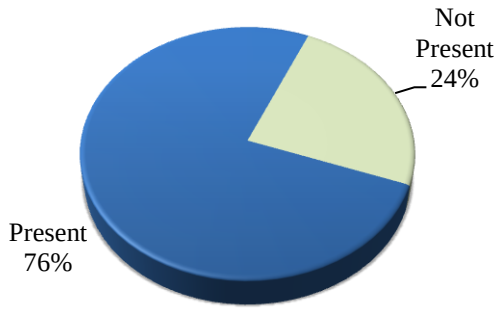
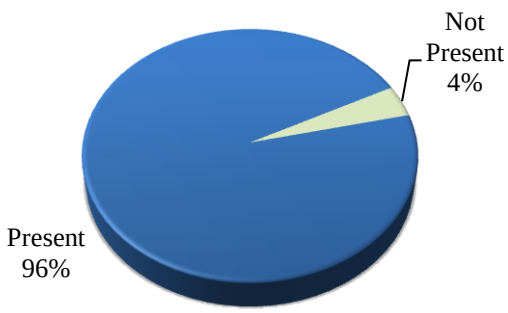


Figure 7: GAL/Adversary Counsel Present at CHIPS Dispositional Hearing (1,782 hearings)



[22] See Wis. Stat. §§ 48.23 and 48.235.

[23] In Figure 6, TPC stands for temporary physical custody. In some counties, the temporary physical custody hearing is known as detention hearing, custody hearing, or emergency custody hearing.

Figure 8: GAL/Adversary Counsel Present at the Most Recent Permanency Plan Hearing (518 hearings)

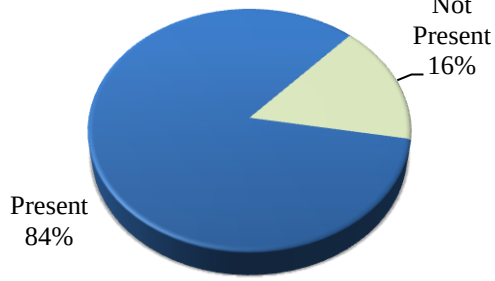


Figure 9: GAL/Adversary Counsel Present at the Most Recent Change of Placement Hearing (182 hearings)

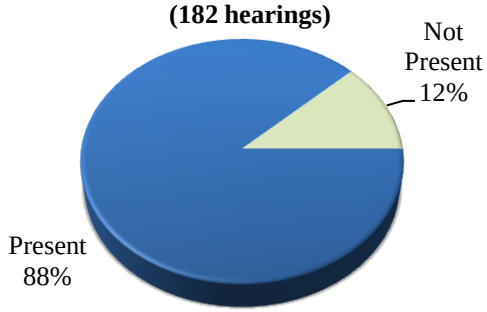


Figure 10: GAL/Adversary Counsel Present at the TPR Hearing on Petition (761 hearings)

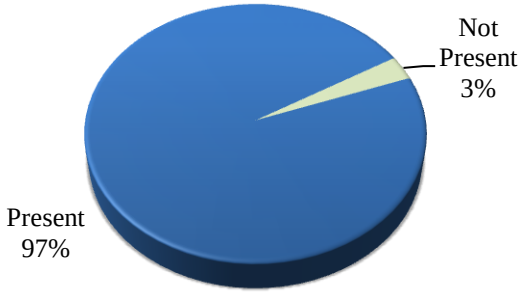
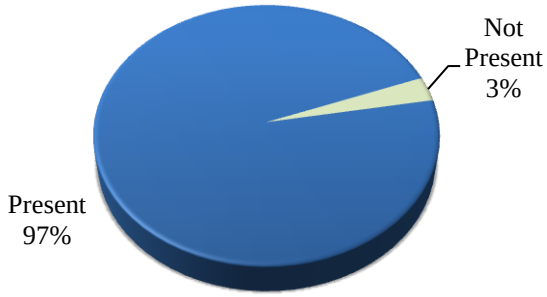


Figure 11: GAL/Adversary Counsel Present at TPR Dispositional Hearing (666 hearings)



c. Other Findings

Concerns were repeatedly raised regarding the consistency of guardian ad litem performance in CHIPS and TPR cases. While the performance of some guardians ad litem was described as exceptional, focus group participants questioned whether all guardians ad litem met with and interviewed the child as required by statute.[24] It was also reported that when the guardian ad litem did meet with the child, it was often a brief meeting right before court. Furthermore, a common complaint was that guardians ad litem did not talk directly to parents, foster parents, or other individuals involved in the case to obtain an independent opinion about what was in the child's best interest, but based their recommendation solely on conversations with the caseworker or the caseworker's written report.

In a few counties, focus group participants suggested that the court standardize or clarify the role of the guardian ad litem post-disposition in CHIPS cases, including whether the appointment continues after disposition and which activities the guardian ad litem is permitted or expected to participate in.

Focus group participants commented on the low rate of pay for attorneys appointed by the court to serve as guardian ad litem. Focus group participants believed that the rate of pay should be increased, and if it is not, they were concerned that it would be difficult to find well-qualified and experienced attorneys to take these appointments.

[24] See Wis. Stat. § 48.235(3)(b).

Adversary counsel was not appointed for children 12 years of age or older in CHIPS cases as required by statute in a number of the counties that were reviewed.[25] Typically, a guardian ad litem was appointed to represent the child instead.

d. Best Practice Examples

- Establishing a policy or written agreement requiring guardians ad litem to meet or contact the child unless excused by the court. [Waukesha, Lafayette, Dane, and Milwaukee Counties]

- Guardians ad litem attending agency staffings, Coordinated Services Team meetings, or administrative permanency plan reviews. [Eau Claire, La Crosse, Lincoln, Dunn, Portage, Vilas, Ashland, Chippewa, Oneida, and Iron Counties]

- Developing a form to evaluate guardian ad litem performance. [Brown and Racine Counties]

- Attaching a document to the CHIPS dispositional order outlining the GAL's duties, activities the GAL is authorized to perform in the case, and the agency's role in keeping the GAL informed after disposition. [Lafayette County]

- Holding regular meetings between the court and guardians ad litem or providing regular training for guardians ad litem. [Kenosha, Waukesha, and Sauk Counties]

6. NUMBER OF JUDICIAL OFFICERS

It is important to keep the number of judicial officers presiding over a case at a minimum to promote consistency and continuity. This is particularly true for CHIPS and TPR cases given their complex nature, the fact that it is a highly specialized area of the law that changes frequently, and the length of time some of the cases are involved in the court system.[26]

a. Findings

Thirty-one of the counties were one-judge counties at the time of the CCI review. In 18 counties, a circuit court commissioner regularly heard CHIPS pre-dispositional hearings, such as temporary physical custody hearings, plea hearings, and pre-trials.

In the counties with more than one judge, 13 counties had judges designated to hear CHIPS, TPR, and other juvenile cases. With the exception of the hearings heard by the court commissioner, the multi-judge counties made an effort to have the same judge preside over the hearings in a child's case whenever possible in most of the jurisdictions.

[25] See Wis. Stat. §§ 48.23(1m)(b)2. and 48.23(3m).

[26] See Resource Guidelines (NCJFCJ), page 19; Building a Better Court (ABA, NCSC, NCJFCJ), page 10; and Adoption and Permanency Guidelines, page 5.

Figure 12: Number of Judicial Officers in Each Case
CHIPS Case Sample

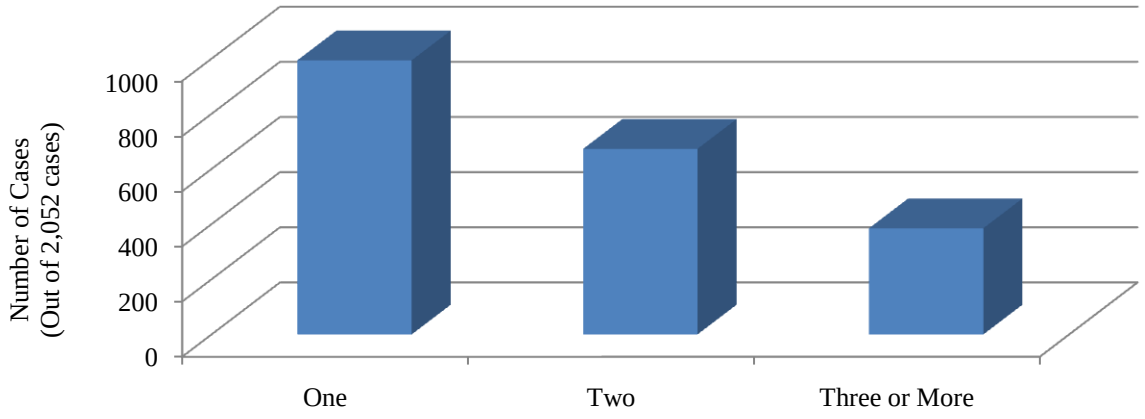
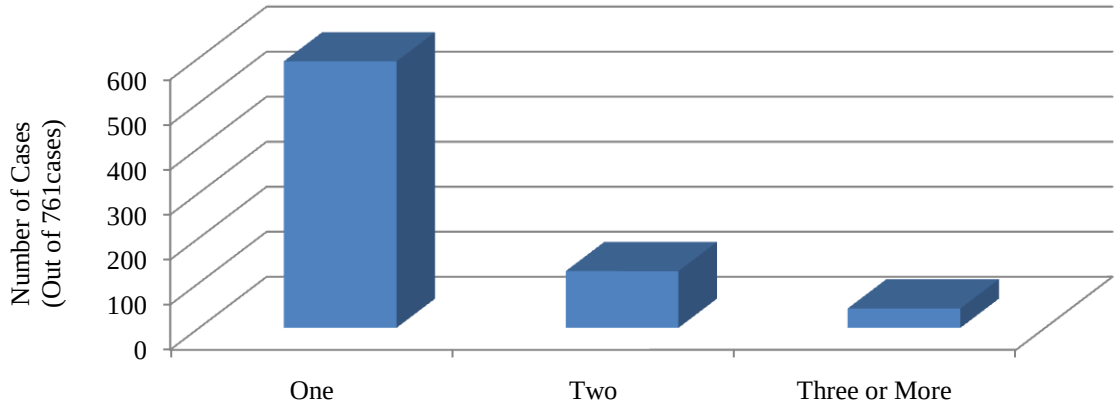


Figure 13: Number of Judicial Officers in Each Case
TPR Case Sample



b. Best Practice Examples

- Having a Unified Family Court or one judge-one family system in counties with more than one judge, where the same judge assigned to the child's CHIPS case also hears the other cases involving the family, such as the paternity case, parent's criminal case, etc. [La Crosse, Dunn, Door, and Chippewa Counties]

E. TIMELINESS

As explained in the "Resource Guidelines: Improving Court Practice in Child Abuse & Neglect Cases," making timely decisions, reducing delays, and expediting CHIPS and TPR cases contribute to achieving permanence for children more quickly.[27]

[27] Published by the National Council of Juvenile and Family Court Judges (NCJFCJ). See also "Building a Better Court" Guide (ABA, NCSC, NCJFCJ), page 11.

1. COURT ORDERS

Court orders should not only be filed timely, but the current standard circuit court forms should be used to ensure that the required findings are made for the associated hearing. As previously mentioned, failure to make certain findings in the court order could impact the receipt of federal Title IV-E funds.

a. Findings

Almost all of the orders examined as part of the CCI court file reviews were filed within 30 days and the majority of the orders were the appropriate circuit court form. In the cases where the appropriate circuit court form was not used, it was typically an old version of the order.

Figure 14: Orders Filed Within 30 Days[28]

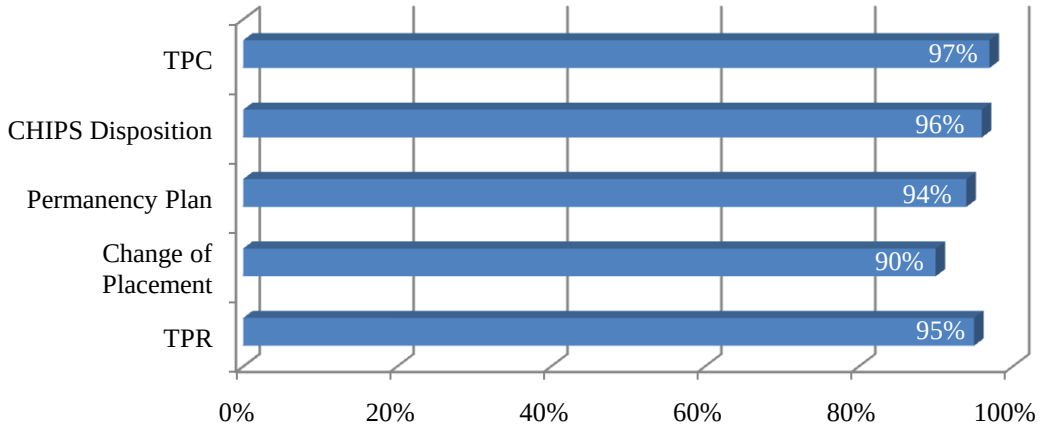
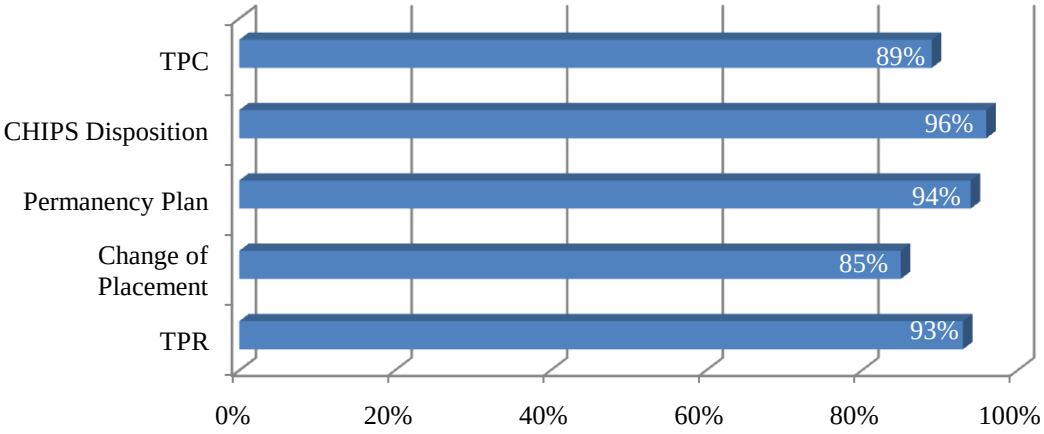


Figure 15: Written Orders Using Current Standard Circuit Court Forms[29]



In a number of the counties, the person responsible for drafting the order had a proposed order prepared prior to the hearing, which would be modified to reflect any changes made by the court during the hearing. Focus group participants appreciated this practice as it assisted the court in making the applicable findings orally on the record.

[28] The data for Figure 14 is as follows: 1,329/1,369 TPC orders, 1,707/1,782 CHIPS disposition orders (consent decrees and dispositional orders), 480/512 permanency plan hearing orders, 163/181 change of placement orders, and 777/814 TPR orders.
[29] The data for Figure 15 is as follows: 1,217/1,369 TPC orders, 1,717/1,782 CHIPS disposition orders (consent decrees and dispositional orders), 479/512 permanency plan hearing orders, 153/181 change of placement orders, and 755/814 TPR orders.

Some of the focus groups in the counties where the caseworkers were responsible for preparing CHIPS court orders expressed concern over this practice. Specifically, it was stated that the caseworkers did not have sufficient training or legal knowledge to prepare the orders, which led to inaccuracies and duplication of efforts.

b. Best Practice Examples

- Distributing court orders to the parties at the end of the hearing. [Buffalo, Shawano, Trempealeau, Jefferson, Pierce, Racine, Columbia, Marquette, Green, Waukesha, Dane, Milwaukee, Lafayette, Douglas, and Forest Counties]

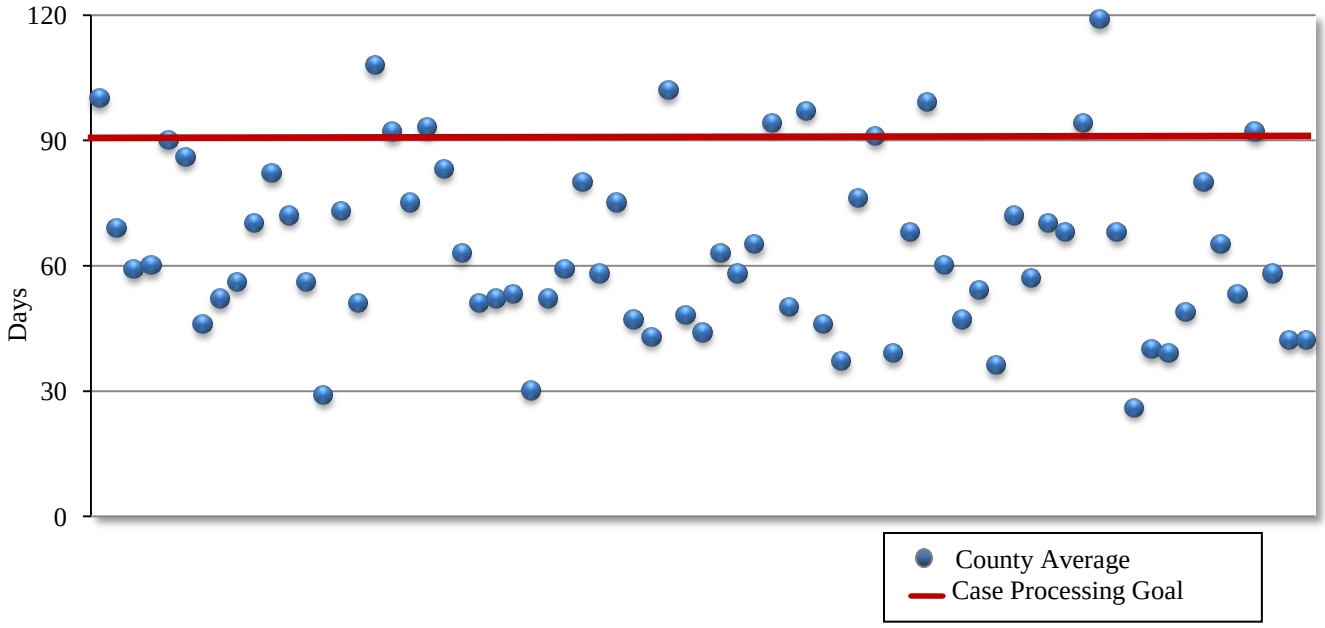
- Court files containing documentation that the orders were mailed to the parties, such as an Affidavit of Mailing. [Pepin, Clark, Rusk, Iowa, Pierce, Racine, Langlade, Sauk, La Crosse, Polk, Oconto, Winnebago, Iron, Wood, Forest, Marinette, Grant, Fond du Lac, Chippewa, Kewaunee, Portage, and Vilas Counties]

2. TIMELINESS OF COURT PROCEEDINGS

a. Length of Time between Petition and Disposition

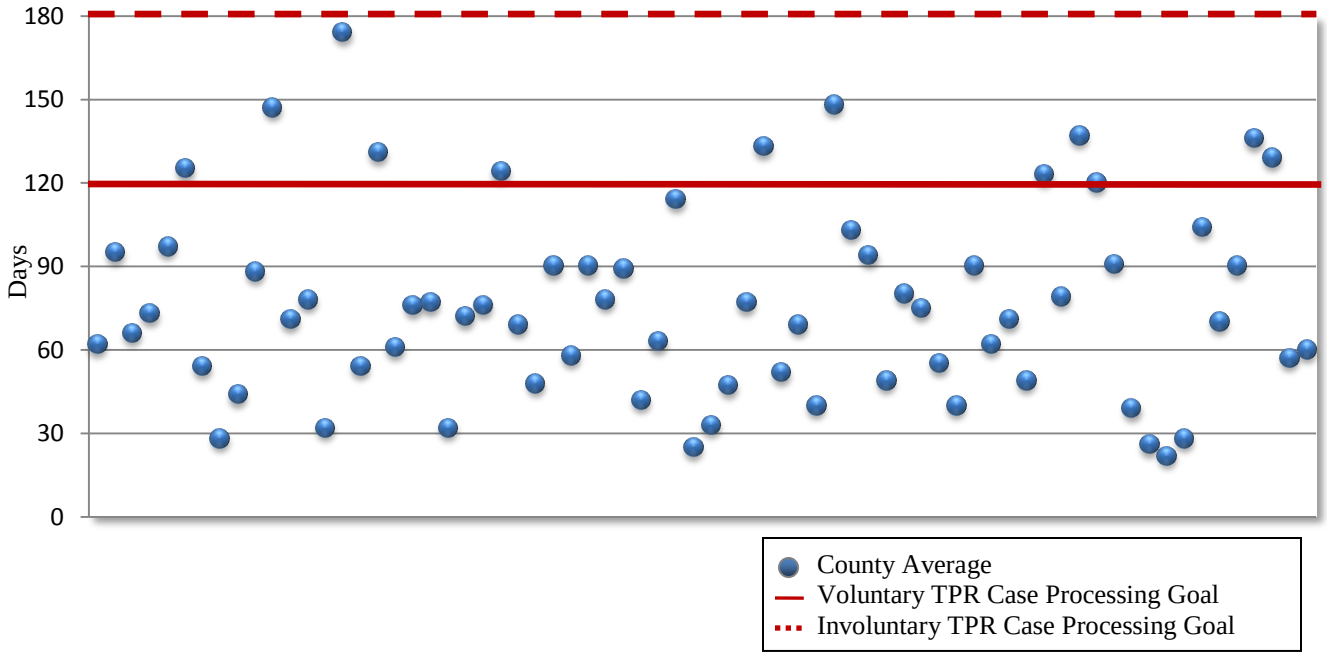
The Wisconsin Committee of Chief Judges, Case Processing Time Standards Subcommittee has established case processing goals of 90 days for CHIPS cases, 120 days for voluntary TPR cases, and 180 days for involuntary TPR cases.[30] These standards were established after considering the statutory time limits and allowance for reasonable extensions of the time requirements as permitted by statute. As illustrated in the figures below, CHIPS and TPR cases were generally heard consistent with statutory requirements and the case processing goals in the majority of the counties that were reviewed.

Figure 16: Length of Time Between CHIPS Petition and Disposition[31]
(Court File Review)



[30] See Wisconsin Director of State Courts Office Informational Bulletin #09-11, which establishes the following goals: 85% of the CHIPS cases will be disposed within 90 days, 95% of the voluntary TPR cases will be disposed within 120 days, and 95% of the involuntary TPR cases will be disposed within 180 days.
[31] Disposition for Figures 16 and 17 is the date of the hearing with a dispositional order, consent decree, or dismissal.

Figure 17: Length of Time Between TPR Petition and Disposition
(Court File Review)



b. Delays and Continuances

Overall, the courts regarded CHIPS and TPR cases as a priority. In 59 counties, the information from the reviews suggested that cases were generally heard timely without unnecessary delay or frequent continuances. Focus group participants mentioned that the following practices contributed to the timely processing of CHIPS and TPR cases: judicial oversight in scheduling; judicial officers limiting continuances; early appointment of attorneys; use of mediation; setting and enforcing deadlines for discovery in contested cases; use of pre-trials; use of video and telephone conferencing; providing paperwork for the parents to apply for court-appointed counsel early in the case; and having designated judges hearing juvenile cases.

The other 12 counties exhibited notable delay or continuance issues related to the processing of CHIPS or TPR cases. The reasons for the delay or continuance problems were varied and included: parties routinely waiving time limits; the judicial intake system utilized by the court resulting in judge "shopping" and continuances; coordinating attorneys' schedules; difficulty finding time on the court's calendar; not scheduling the next hearing while in court; substitution of the judge; limited availability of jury trial dates; pending criminal charges; waiting for psychological evaluations to be completed; allowing multiple adjournments to allow parties more time to resolve contested cases; attorneys not prepared for court; and not coordinating case events to alleviate multiple hearings for the same child.

It was noted that holding juvenile hearings on a designated day or time was an efficient and positive practice. In addition, focus group participants appreciated when the court made an effort to schedule juvenile hearings at times that would not interfere with the child's school attendance.

3. COURT REPORTS

Thirty of the counties had a local rule requiring the agency to file the court report within a specified period of time prior to the CHIPS dispositional hearing. The local rule ranged from 48 hours to 5 days. In a few of the other counties, the court set a due date for the court report in each case.

- The median length of time the agency court report was filed prior to the CHIPS dispositional hearing was 5 days.
- The court report was filed within the timeframe prescribed by the local rule in 68% of the cases.

A common statement made by focus group participants was that parents and attorneys did not always receive the court report in time to sufficiently review it before the dispositional hearing. This was reported in both counties with and without a local rule.

In a small number of counties, the agency provided an oral court report, instead of a written report, for children placed in the home pursuant to Wis. Stat. § 48.33(2). However, when an oral report was provided, it was not transcribed and made part of the record as required by statute and it did not typically include all of information required under statute.

F. INDIAN CHILD WELFARE ACT

1. APPLICABILITY

There were 92 cases in the court file review subject to the Indian Child Welfare Act (ICWA): 67 CHIPS cases, 18 TPR cases filed as involuntary, and 7 TPR cases filed as voluntary. It is possible that there were additional CHIPS and TPR cases subject to ICWA, but not identified as such in the court file.

As mentioned above, it was unclear whether the child was subject to ICWA in some of the CHIPS cases reviewed because the section pertaining to ICWA applicability in the CHIPS petition and dispositional order was left blank. Information from the focus groups in several of the counties suggests that the agency did not consistently make a sufficient inquiry into the child's Indian status or use the ICWA forms on eWiSACWIS, such as the Screening for Child's Status as Indian form.

2. NOTICE

The first notice in a CHIPS or involuntary TPR case subject to ICWA must be sent to the parents, Indian custodian, and tribe by registered mail with return receipt requested.[32]

ICWA applied in 85 of the CHIPS and involuntary TPR cases that were reviewed.

- 15 of the 85 (18%) cases contained documentation in the court file that notice of the proceeding was sent to the tribe by registered mail with return receipt requested.

In four of the cases where the court file did not contain documentation that notice was sent via registered mail, it was reported that it was done but the documentation was in the Corporation Counsel's case file. Although other counties did not report having a similar practice, it is unknown whether notice was provided in any of the other cases without being documented in the court file.[33]

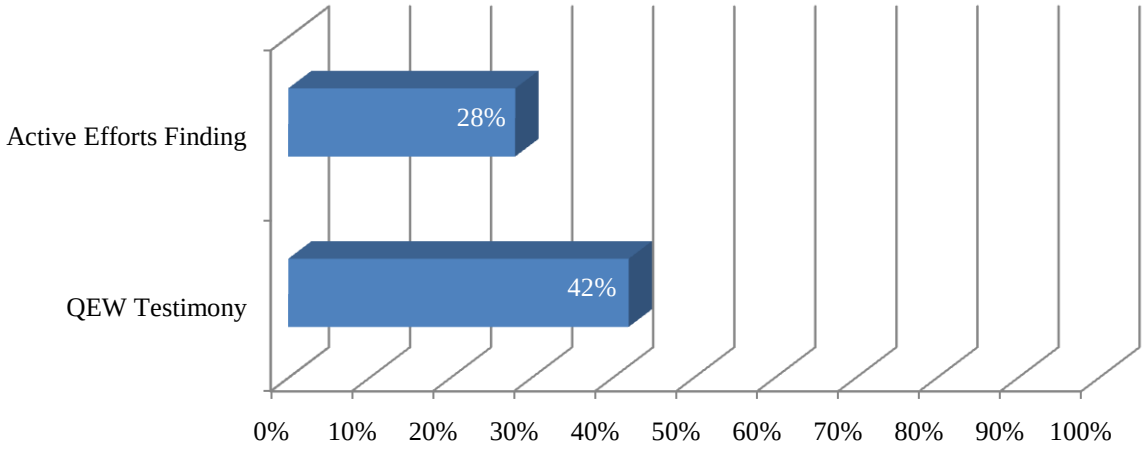
[32] See 25 U.S.C. 1912(a).

[33] As of December 2009, Wisconsin statutes require the person who sends the first notice in a case subject to ICWA to file the return receipts with the court. See Wis. Stat. § 48.028(4)(a).

3. ACTIVE EFFORTS AND QUALIFIED EXPERT WITNESS TESTIMONY

In CHIPS and involuntary TPR cases subject to ICWA, the court must make a finding that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.[34] Testimony from a qualified expert witness (QEW) that continued custody of the child by the parent is likely to result in serious emotional or physical damage to the child is also required.[35]

Figure 18: Active Efforts Finding and QEW Testimony[36]
(67 cases)



In several of the CHIPS cases where QEW testimony was not provided and the active efforts finding was not made, the court and parties were under the belief that these requirements did not apply when the tribe was in agreement with the proposed out-of-home care placement. Once it was explained during the CCI review that these requirements apply regardless of whether the tribe is in agreement with the placement or not, the court indicated that these requirements would be followed in the future.

4. OTHER FINDINGS

ICWA requires that the parent's consent in a voluntary TPR case be executed in writing, recorded before the judge, and accompanied by the judge's certificate that the terms and consequences of the consent were explained in detail and fully understood by the parent.[37] In the majority of the voluntary TPR cases subject to ICWA, the consent was neither in writing nor accompanied by a judge's certificate.

Focus group participants reported that the court generally gave representatives from the tribe an opportunity to participate at hearings and treated them with respect. It was noted that regular meetings between tribal representatives and the county agency or court staff occurring in a few of the counties was a positive practice that resulted in improved communication and outcomes.

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[34] See 25 U.S.C. 1912(d).
[35] See 25 U.S.C. 1912(e).
[36] An active efforts finding and QEW testimony were not required in 25 of the 92 cases subject to ICWA because: the child returned home prior to fact-finding/disposition, the parents' rights were terminated voluntarily in the TPR case, the case was dismissed, or the case was transferred to tribal court prior to fact-finding/disposition. It is important to note that it cannot be conclusively determined from the CCI review protocol whether these requirements were met, only whether there was evidence in the circuit court file indicating that it occurred.
[37] See 25 U.S.C. 1913(a).

G. OTHER FINDINGS

1. CASE MANAGEMENT AND COURT RELATED ISSUES

Judicial Officers: In regards to juvenile cases, information from the CCI reviews suggests that judicial officers were generally respectful of case participants, prepared for court, and genuinely interested in the child's well-being. Focus group participants also remarked that, by and large, judicial officers made a concerted effort to comply with statutory requirements and time frames.

Juvenile Clerks: Focus group participants frequently noted that the work performed by the juvenile clerks contributed to the system running smoothly. The CHIPS and TPR court files were well organized. As for the utilization of CCAP in CHIPS and TPR cases, counties routinely cross-referenced sibling cases, but not the CHIPS and TPR cases for the same child.[38]

The juvenile clerks in a few of the counties alternated case numbers between JC and JV case types, instead of numbering the cases sequentially within a case type (e.g., 04JC1, 04JC2, 04JC3… and 04JV1, 04JV2, 04JV3…) as directed by the Model Record Keeping Juvenile Procedures. Additionally, juvenile guardianship cases were occasionally opened as a JC case, instead of a JG or GN case as directed by the Model Record Keeping Juvenile Procedures.

Court-Agency Relations: Focus group participants indicated that the court and agency typically had a good working relationship. The coordination and communication between the court and agency was promoted in some counties by holding regular meetings. In the counties without regular meetings, several focus group participants expressed an interest in setting meetings between the court, agency, and other stakeholders to facilitate additional dialogue about procedural and administrative issues.

CASA Program: Ten of the counties had a Court Appointed Special Advocate (CASA) program at the time of the CCI review.[39] Focus group participants felt that CASA was a beneficial program, whose volunteers provided additional monitoring of the case and valuable information to the court. However, in some of the counties, it was mentioned that the attorneys and caseworkers did not always receive a copy of the reports that the CASA volunteers generated.

Petitioning Attorneys: In a number of counties, it was reported that the attorneys in the District Attorney's Office or Corporation Counsel's Office who handled the CHIPS and TPR cases were responsive, accessible, and knowledgeable about juvenile law. Furthermore, focus group participants appreciated it when the attorneys participated in case staffings, conducted training for agency staff, attended the administrative permanency plan reviews, or met regularly with the agency to discuss cases moving toward TPR. Focus group participants also felt that it was beneficial to have attorneys dedicated to the handling of CHIPS and TPR cases, since it is such a highly specialized area of the law.

On the other hand, focus groups in some of the other counties reported that the representation provided by the District Attorney's Office or Corporation Counsel's Office was an area that needed improvement. It was specifically mentioned that there was a lack of preparation and communication with the parties in the case, insufficient knowledge about the cases and law, or delay in filing TPR petitions or drafting court orders. While focus group participants recognized that this was often due in part to high caseloads and insufficient staffing levels, they felt strongly that juvenile cases should have been given a higher priority.

[38] Cross-referencing the CHIPS and TPR cases for the same child is a new policy in the Model Record Keeping Juvenile Procedures.

[39] Manitowoc, Brown, Columbia, Dane, Milwaukee, Kenosha, Sauk, Vernon, and La Crosse Counties had an established CASA program, and Rock County recently started a CASA program.

Some child welfare agencies contracted with a private attorney to file TPR petitions on their behalf. Focus group participants from those counties noted that it was helpful to have an attorney who specialized in TPR cases. They also commented that contracting with a private attorney expedited the filing of TPR cases and achieving permanency for children.

Court Orders: Some of the counties had a practice of generating a new temporary physical custody order for hearings that were not temporary physical custody hearings, such as plea and status hearings. While this is permissible, it is not necessary to generate another order for temporary physical custody if the child remains out of the home at the same placement with the same conditions of custody.

A number of the CHIPS dispositional orders did not include the name of the foster home or residential treatment center where the child was placed, but instead stated "licensed foster home" or "residential treatment facility." If the child is placed outside the home, Wis. Stat. § 48.355(2)(b)2. requires that the dispositional order include the specific name of the place or facility.

2. AGENCY RELATED ISSUES

Practice: Overall, initial assessment workers and caseworkers were described as dedicated, knowledgeable about their cases, and prepared for court. Nevertheless, staff turnover and lack of training for new caseworkers in some counties were cited as having a negative effect on agency performance. While the relationship between caseworkers and attorneys was generally characterized as positive, it was mentioned that the caseworkers could have provided the attorneys with more information about the status of the case and decisions made by the agency after disposition.

It was reported that the agency typically made an effort to utilize relative placements instead of foster care if appropriate. However, the need for the agency to make more of an effort to identify, locate, and involve fathers was raised in several counties.

Statements were made that the CHIPS dispositional conditions for supervision or return were frequently confusing, overwhelming for parents, and not individualized to the case. Moreover, focus group participants believed that the parents' compliance with the dispositional order would have improved if the caseworkers had been clearer about their expectations and prioritized the issues that were most important to achieving reunification.

Foster Parents: The support provided to foster parents by the Foster Care Coordinator, such as timely communication, training updates, regular home visits, annual functions, and support group meetings, was recognized as a strength in a few of the counties. Nonetheless, the communication and support provided to foster parents in some of the other counties was identified as an area that needed improvement. Focus group participants provided the following examples of support that was lacking in those counties: follow-through and responsiveness by the agency, information about the child at the time of placement, respite care available to foster parents, and training after foster parents have been licensed.

Services: There were a number of services that focus group participants listed as beneficial to the children and families being served in their county. Some of these services include: parent aides, homemaker services, Birth to Three Program, wraparound services, Community Response Program, Coordinated Services Teams or Family Group Conferencing, home visitation program, in-home counseling, Family Resource Center, Big Brothers/Big Sisters, Family Training Program, Parenting Resource Group, Child Advocacy Center, volunteer drivers, and day treatment programs.

The following services were most frequently reported as lacking or difficult to access for children and families: transportation for parents, foster homes, availability of supervised visitation, preventative and early intervention services, mental health services for children (particularly child psychologists and psychiatrists), bilingual service providers, mentors for children and parents, alcohol and drug abuse treatment for children, treatment for sexual assault victims and perpetrators, and dental professionals accepting public insurance. Furthermore, focus group participants repeatedly expressed concern over budget cuts to child welfare agencies across the state, which have negatively impacted the services for families, placement of children in specialized care, and agency staffing levels.

3. BEST PRACTICE EXAMPLES

- The court and agency meeting regularly to discuss policy and administrative issues individually, in a large group, or at the agency's unit meetings. [Burnett, Washburn, Waupaca, Milwaukee, Crawford, St. Croix, Sauk, Polk, Eau Claire, Richland, Washington, Dodge, Dunn, Oneida, Outagamie, Walworth, and Taylor Counties]

- Use of treatment courts (e.g., AIM court, drug court, and mental health court) in cases involving parents and juveniles, which improves case monitoring, coordination, and collaboration. [Ashland, Barron, and Eau Claire Counties]

H. CONCLUSION

The courts, child welfare agencies, tribes, and legal community all play a key role in the processing of child welfare proceedings. Given the increased emphasis on evidence-based practice and frequent changes in policy and law, it is essential for the court and other stakeholders to examine their county's performance related to safety, permanency, due process, and timeliness outcomes in CHIPS and TPR cases. This should be an ongoing and collaborative process as it will produce greater and longer lasting results. Furthermore, a continuous quality review process not only identifies areas that need improvement, but also best practices and areas of strength. The results from the CCI reviews and performance measures established by the CCI Advisory Committee provide a foundation for future continuous quality review efforts that occur at the county and state levels.