Reassessment of State Court Performance in Children in Need of Protection or Services Cases

Prepared for:
Wisconsin Supreme Court
Children's Court Improvement Program

By:
Hornby Zeller Associates, Inc.

Principals:
Dennis E. Zeller, Ph.D., M.S.S.W.
Helaine Hornby, M.A.

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Principal Study Staff

Dennis E. Zeller, Ph.D., M.S.S.W.
Helaine Hornby, M.A.
Shawn Delaney, MA
Lawrence Santi, Ph.D.
Keith Metz, MA
Jeff Ross, MA
Karen Hallenbeck
Barbara Pierce, MA
Fred Sebesta, MA
Karisa Pankey
Angela Jacobs, MA
Felix Suen
Elizabeth Geiger
Timothy Reed
Aster Girma
Kathryn Caler, MLS

Consultants

Robert J. Levy, J.D., William L. Prosser Professor,
University of Minnesota Law School
Roberta K. Levy, Esq., Chief Judge of the Court of General Jurisdiction
Hennepin County, Minnesota (retired)

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Executive Summary

Study Purpose

The Wisconsin Supreme Court, Director of State Courts Office is the sponsor of this study, *Reassessment of State Court Performance in Children in Need of Protection or Services Cases*. The purpose of this study is to reassess Wisconsin Children's Court Improvement Program (CCIP) in light of the enactment of the Adoption and Safe Families Act (ASFA) of 1997, the final rule to implement ASFA in 2000, state legislation to implement ASFA in 2002 and CCIP reform efforts. Areas where these regulations impact court processes and which are therefore the foci of the study include:

- Adequacy of resources;
- Treatment of parties and witnesses;
- Quality of legal representation;
- Quality, depth and timeliness of hearings;
- Training and education of involved parties; and
- Collaborative efforts between the court, relevant agencies, tribes and the community.

Broadly, this assessment asks:

- To what extent do court processes contribute to or detract from the achievement of safety, permanency and well-being for children?
- To what extent do the courts meet state and federal mandates for timely proceedings?
- To what extent do court processes conform to professional standards of judicial practice?

Methods of Data Collection

Data collection methods employed to address these questions have included:

- Comparison of Wisconsin's Children's Code, Chapter 48, to federal rules and professional practice standards.
- Observation of court proceedings in 13 Wisconsin counties of various size and geographic spread.
- Interviews of over 130 relevant parties including judges, attorneys, parents, court staff and social services agency staff.
- Manual case file review of 800 randomly selected cases.
- Analysis of all Children in Need of Protection or Service cases (CHIPS) data in the Consolidated Court Automation Programs (CCAP) during two time periods, one before the changes in state law were enacted in 2002 and the other after, to discern whether the changes had any effect.

Findings

Wisconsin's Children's Code

Wisconsin Act 109 which was implemented in 2002 included many provisions designed to bring Wisconsin's Children's Code into conformity with ASFA. Key findings in the comparison of Wisconsin's Children's Code to federal requirements and best practice standards include:

- Wisconsin's Children's Code is consistent with federal statutory requirements.
- Wisconsin's Children's Code is consistent with the provisions in the National Council of Juvenile and Family Court Judges **Resource Guidelines** regarding the requirement to have explicit deadlines for each preliminary protective (temporary physical custody), adjudication, disposition, review and permanency planning hearings. The primary area of discrepancy relates to reviews of children in foster care whereby the National Council calls for 3-month reviews (which exceed federal standards) and the Children's Code calls for 6-month reviews.

CHIPS Processes and Compliance with State Provisions

Data from the Consolidated Court Automation Programs (CCAP) was used to study the CHIPS process and timeliness of hearings for the entire cohort of CHIPS cases initiated during Calendar Year (CY) 2002 which reached adjudication.

Many of the data elements necessary to measure the various intervals were missing in CCAP. For example, only 85 percent of the CHIPS cases that opened during CY 2002 showed evidence of one or more plea hearings in CCAP, even though all CHIPS cases are supposed to have one. Only 1,881 of the 4,604 cases (or 41 percent) had all the data items necessary to measure the various intervals.

Key findings relating to compliance with state law are as follows:

- Timeliness of CHIPS hearings declines as cases progress through the adjudication process. Specific results for plea, fact finding and dispositional hearings are given below.

  Plea Hearings

  - Over 90 percent of the cases with plea hearings have these hearings within the required 30 days.
  - In over 50 percent of the cases with plea hearings there are no continuances.
  - Among cases with continuances the most common other events before the plea hearing are orders appointing the GAL and summonses; the most common other events after the initial plea hearing are orders appointing counsel and filing of permanency plans with the court.
  - Judges sign the plea hearing order on the same day in 82 percent of the cases.

  Fact Finding Hearings

  - In 40 percent of the cases the initial fact finding hearing occurs within 30 days of plea hearing.
  - Over two-thirds are concluded in one session.

Dispositional Hearings

- About 50 percent have the first dispositional hearing within 30 days of the final plea hearing as required of cases without fact-finding hearings. The average duration is 52 days.

- Of the cases with fact finding hearings, about three-quarters have the first dispositional hearing within the required 30 days of the fact finding hearing.

- Almost three quarters of both types of dispositional hearings are concluded without continuances.

- In over 70 percent of the cases the order is signed on the same day as the dispositional hearing.

- The total number of cases using standardized forms for these hearings rose from 69 to 88 percent between 2001 and 2003.

Compliance with Federal Child Welfare Laws

Using information obtained by court observations, and the case file review, this section examines the courts' compliance with federal requirements. This focus of this analysis is contrary to the welfare of the child determinations, reasonable efforts determinations and the timeliness of termination proceedings.

- Between 2001 and 2003 there has been a discernable and sometimes substantial improvement in compliance. The following shows compliance with major federal requirements.

Contrary to the Welfare

- ASFA regulations require the judge to make a finding at the first hearing that it is contrary to the child's welfare to remain in the home. In 2003, compliance greatly improved over 2001, moving from 66 percent to 94 percent.

Reasonable Efforts

- *Temporary physical custody hearing*: Over 96 percent of the temporary custody hearings resulted in a reasonable efforts finding in 2003 and over 94 percent occurred within 60 days of removal as required. This compares to over 75 percent with findings in 2001 and over 97 percent occurring within 60 days.

- *Dispositional hearing*: Here the differences between 2001 and 2003 are negligible, whereby both had results around 97 percent in compliance.

- *Permanency planning hearing*: In 2001 a reasonable efforts to achieve the goals of permanency plan finding was made at the initial permanency hearing in over 90 percent of the cases compared to over 95 percent in 2003.

Permanency Planning Hearings

- Permanency planning hearings are required within 12 months of the child's removal and every twelve months thereafter. Compliance rose from 50 percent in 2001 to 75 percent in 2003 for the first hearing occurring within 12 months.

Termination of Parental Rights

- Federal law requires that when a child has been placed outside of the home for 15 of 22 consecutive months, a petition for termination of parental rights be filed or that the agency document that an exception is appropriate. Between 2001 and 2003, the court files show compliance rose from nearly 14 percent having a petition and another 35 percent having a reason, (49 percent compliance) to nearly 10 percent having a petition and over 70 percent having exceptions documented (80 percent compliance).

Court personnel are clear that CHIPS cases have top priority because of the ASFA and Title IV-E requirements. However, there was no consensus on the best practices to facilitate compliance with those requirements. In addition, the most common judgment of those interviewed is that while the requirements may or may not improve the timeliness of decisions, they do not add substantive meaning to the proceedings or improve the quality of decisions.

Indian Child Welfare Act

This section examines the relationship between state and tribal courts using the case file review, court observations and interviews. Specifically, this section reviews the familiarity of the courts with the Indian Child Welfare Act and its requirements, and the treatment of Native American parties in state court in terms of representation and opportunities for a full and adequate hearing. The key findings are:

- A large percentage of cases do not contain information on whether the child is subject to ICWA, including more than 40 percent for both the 2001 and 2003 samples at the point of the CHIPS petition.

- At the dispositional hearing stage, 93 percent of the 2001 sample cases had no indication of ICWA; however, this increased when looking at the 2003 sample where 49 percent lacked ICWA identification of applicability.

- The case file review validates information received from interviews and court observations that tribal representatives rarely attend proceedings in state court for Native American children. Discrepancies exist however between sources of information on providing notice. While the case file review shows that notice is always provided, some people reported they never see the tribes receiving notice.

Achievement of Federal Outcomes

Going beyond compliance with federal process requirements, this study examined how well Wisconsin is achieving federally mandated outcomes of reabuse and reunification to the extent possible using court records. Major findings are:

- None of the federal safety or permanency outcome measures can be replicated from court records alone.

- The best approximation to the federal reunification measure using court records alone comes from measuring the time from the child's removal to the time of the last court hearing, without regard to the child's discharge destination. Somewhat over half of the children had the last court hearing in 12 months in the 2001 sample (the more reliable one for this purpose).

Court Organization and Resources

Key findings in the review of how the courts are organized and how the availability of court resources affects their ability to perform include:

- Courts do not uniformly follow the national standard of having a single judge follow a case throughout its life.

- While most jurisdictions do not have courts dedicated to juvenile and family matters, many judges give juvenile hearings priority over their other matters making it difficult to assess the overall adequacy of the number of judges in the system.

- Meeting the statutory requirements, children under 12 years of age are represented by guardians *ad litem* who act in the interest of the children. Children age 12 and over are represented by public defenders who serve on behalf of the children.

- Court resources do not present a significant problem. Support staff and computer resources are adequate, though available meeting space can be an issue in smaller counties.

- Judges, court staff, attorneys and caseworkers generally believe that they have had sufficient training, be it formal or self-taught, to understand the requirements of ASFA and Title IV-E as they pertain to their jobs. Some judges have difficulty justifying the training time given the small percent of their caseload involved in these cases.

Quality of Proceedings

Using the case file review, court observations and interviews, this section addresses the quality and adequacy of the court proceedings in terms of notice of and participation in hearings, the legal representation provided by the courts, the duration of hearings and the information available to the court. Since the analysis for documentation of notice examined case files, any provision of notice not documented in the case files was not captured.

- Documentation of notice of the most recent dispositional hearing is present in the file for more than 72 percent of both mothers and fathers. For the permanency plan hearing this number increases to 76 percent.

- As determined by court observation, the most common participants in court proceedings are the primary players: district attorneys/corporation counsel (69.8 percent), guardians *ad litem* (70.4 percent), social workers (86.2 percent) and biological mothers (69.9 percent).

- Across all strata, judges consistently cite a noticeable variation in the aptitude of attorneys available for appointment. Additionally, a lack of preparation by parent's attorneys and public defenders is a common theme among respondents.

- The information available to the court is generally seen as adequate though not always made available in a timely manner. Often, respondents stated that agency workers made information available just before proceedings began.

- Participation by parents, guardians *ad litem,* adversary counsel for children and parents' attorneys decreases at the permanency hearing, i.e., by the time children have been in foster care 12 months.

Consolidated Court Automation Programs

This aspect of the report focuses not on what happens in the courtroom but rather on one of the tools the courts have for helping them do their work.

- Large scale changes to CCAP are not in order. The system appears to function adequately and efficiently as a case management system.

- The system does not function well in producing management information about court compliance with child welfare rules or about the outcomes achieved for children and families.

- Improvements could be made to permit routine production of compliance and outcome information and to open access to the raw data to county court systems for their own local purposes.

Summary and Recommendations

Overall, there have been significant improvements since the original 1997 Court Assessment[1] and also since the 2002 legislative reforms in the handling of child welfare cases throughout the Wisconsin court system. However, there are still some issues that exist. To address those issues, conclusions are offered in response to the three broad questions raised at the start of the analysis.

- To what extent do court processes contribute to or detract from the achievement of safety, permanency and well-being for children?

[1] Center for Public Policy Studies, An Assessment of Wisconsin State Court Performance in Cases Involving Children in Need of Protection or Services, April 28, 1997, Denver, Colorado

Overall, the observed processes seem to contribute to child safety, permanency and well-being. A number of successful practices and processes were observed. Some were consistently observed across all counties while others were county- or strata-specific, but they each serve as exemplars of good practice that can be applied to any county or area.

- To what extent do the courts meet state and federal mandates for timely proceedings?

Timeliness of hearings is a concern with regard to state-established timeframes. While there is improvement on the federal mandates, there is still a way to go. There is considerable variation around the state on meeting timeliness mandates in Wisconsin's Children's Code regarding hearings. Plea hearings are supposed to be held within 30 days of the filing of a CHIPS petition yet the compliance rate ranged from 70 percent to 98 percent. The fact finding hearing is supposed to take place within 30 days of the plea hearing. Yet, fewer than 36 percent met the standard. The dispositional hearing is supposed to take place within 30 days of the plea hearing. Yet, fewer than 44 percent met the standard.

- To what extent do court processes conform to legal and professional standards of judicial practice?

Generally, the processes are sound. The areas of concern relate to the lack of private space in some counties for parties to meet or youth to be sequestered from adults waiting for trial, the rotation schedule of judges which may interrupt the continuity of cases, and representation of parents in some instances.

Based on those findings a set of recommendations is offered to enhance the improvements already made by the Wisconsin Children's Court Improvement Program.

1. Local courts should provide additional meeting space in courts in smaller counties.

2. Local courts should assure that court schedules or waiting room configurations do not permit the mingling of children and youth with adults waiting for trial.

3. Local courts should assure to the extent possible that a single judge hears a case in its entirety.

4. The Director of State Courts Office should create a mechanism for providing county court personnel with periodic, e.g., monthly, extracts of CCAP information from which the local courts could generate their own reports.

5. The Director of State Courts Office should give consideration to standardizing the codes in the system for CHIPS cases, so that the court history of each case can be determined unambiguously from coded fields alone.

6. The Director of State Courts Office should create codes specifically for child welfare cases which permit identification of the following events: removal of the child from the home, physical discharge of the child from out of home placement, reason for the physical discharge from out of home placement, termination of court jurisdiction and return of the same child to the court system.

7. In conjunction with the reporting recommendations related to CCAP, the state courts should establish standard reports on the timeliness of critical events. (This will not be possible without some standardization of terminology for specific court events.) At a minimum, the results of the reports should be shared with court administrators. To create more pressure on the courts to improve their results, the reports could be published on a statewide basis.

8. The Director of State Courts Office should undertake an examination of the extent to which the lack of timeliness for certain hearings is a function of available judicial resources or other reasons.

9. The Director of State Courts Office should address whether there is a lack of timely notices in cases relating to Native American children.

10. The Director of State Courts Office should work with local courts to address ways to improve the quality and availability of legal counsel to represent parents and children.

11. The Wisconsin Judicial College should include information for all new judges on child welfare proceedings.

Chapter 1

Study Purpose

A system of checks and balances has been established in the United States to protect children who may be vulnerable to abuse and neglect by their own family members. The checks involve investigations by caseworkers into allegations of abuse and neglect and the balances involve reviews by courts into actions taken to remove children from their homes or place families under formal scrutiny. This report focuses on the questions of how well the courts in Wisconsin are fulfilling their duties to review cases involving children in need of protection in a timely manner; ensuring that proceedings are fair and balanced; and making decisions about permanent homes that will ultimately make children better off than they would have been without public intervention. The importance of these topics is so great that the federal government is supporting state courts financially to reassess their performance following an initial assessment performed in 1997.[2]

One of the contexts of the reassessment is the passage of the federal Adoption and Safe Families Act (ASFA) in 1997 which afforded new protections both to the children and their parents. Two of ASFA's major thrusts were to assure that public agencies did all they could to assist families before making decisions to remove children while, at the same time, assuring that children with little prospect of being returned to their families had timely decisions made about their futures.

The Wisconsin Supreme Court, Director of State Courts Office, is the sponsor of this study. It used a competitive bid process to select Hornby Zeller Associates, Inc. (HZA) to perform the study. HZA, with offices in five states, specializes in the evaluation of child welfare programs and has performed numerous court improvement studies elsewhere. HZA's team was supplemented by Robert J. Levy, J.D., the William L. Prosser Professor at the University of Minnesota Law School and of Roberta K. Levy, Esq., the recently retired Chief Judge of the Court of General Jurisdiction in Hennepin County, Minnesota. The study began in February 2004 and concluded in late fall of the same year.

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[2] The US Congress initiated a court improvement grant program through the 1993 Omnibus Budget and Reconciliation Act (OBRA) to assist state court systems in evaluating and improving their performance in processing child protection cases. In March 2003 the federal government mandated that state courts receiving federal court improvement funding needed to update their original assessments to incorporate strengths and weaknesses discovered in two recent federal reviews: the Child and Family Services Review and the Title IV-E foster care eligibility review.

The intent of this study is to reassess Wisconsin Children's Court Improvement Program (CCIP) in light of the Adoption and Safe Families Act of 1997, the final rule to implement ASFA in 2000, state legislation to implement ASFA in 2002 and CCIP reform efforts. Areas where these regulations impact court processes and which are therefore the foci of the study include:

- Adequacy of resources;
- Treatment of parties and witnesses;
- Quality of legal representation;
- Quality, depth and timeliness of hearings;
- Training and education of involved parties; and
- Collaborative efforts between the court, relevant agencies, tribes and the community.

This reassessment is not an analysis of the child welfare system *per se*. Rather it examines how the court itself contributes to an equitable and effective child welfare system. It will allow Wisconsin to secure federal funds for court improvement in its continuing efforts to upgrade practices in cases affecting children in need of protection. Broadly, this assessment asks:

- To what extent do court processes contribute to or detract from the achievement of safety, permanency and well-being for children?;
- To what extent do the courts meet state and federal mandates for timely proceedings?; and
- To what extent do court processes conform to professional standards of judicial practice?

Many data collection methods were employed to address these questions. First, Wisconsin's court rules as defined in Wisconsin's Children's Code, Chapter 48 were compared to federal rules and professional practice standards. Next, the researchers went on-site to 13 counties of various sizes and geographic areas to observe court proceedings; interview parties including judges, attorneys, court staff, social service agency staff and guardians *ad litem*; and conduct a manual case file review of 800 randomly-selected cases. In addition, the researchers analyzed all Children in Need of Protection or Service cases (CHIPS) data in the

Consolidated Court Automation Programs (CCAP) during two time periods; one before the changes in state law were enacted in 2002 and one after to discern whether the changes had any effect.

This report is organized into eleven chapters. Following the purpose and methodology chapters, the report describes Wisconsin's statutory framework and compares it to national standards; describes how a case is adjudicated and analyzes a statewide sample of CHIPS cases for timeliness of meeting state requirements; assesses how CHIPS cases comply with federal requirements in ASFA and Title IV-E; assesses compliance with the Indian Child Welfare Act; assesses the degree to which federal safety and permanency outcomes are achieved; describes broadly the staffing, training and physical resources such as space and equipment; analyzes the quality of legal representation and proceedings; analyzes the information system, CCAP; and presents conclusions and recommendations.

Chapter 2

Methodology

Overview

Three broad types of processes were used to conduct the review: systematic identification of the requirements and standards for which the court is responsible; collection of information about the extent to which those requirements and standards are being met; and assessment of that information to offer a determination on why the courts have been successful in some areas and not successful in others. Information derived from a series of activities was synthesized to provide the overall analysis and recommendations. These activities included:

- Review of the state and federal rules, as well as of professional practice standards relevant to state court processing of CHIPS cases;
- Examination of data from the court's management information system to aid in determining state court compliance with the relevant state rules and to assist in determining which information should be collected during the case file review and the court observations;
- Conduct of a case file review to aid in determining state court compliance with the relevant state and federal rules and achievement of positive client outcomes;
- Observation of court proceedings to aid in determining state court compliance with the relevant state and federal rules and achievement of positive client outcomes; and
- Interviews with judges, attorneys for both the child welfare agencies and for the clients in the system, caseworkers and child welfare administrators and other key stakeholders in the children's court system.

The following sections provide a more detailed explanation of the methodologies employed.

Review of Rules and Standards

HZA catalogued standards of state law, federal law and regulation, and national organizations which are applicable to the processing of CHIPS cases. This review of the rules and standards has resulted in a *Catalog of Standards for Judicial Practice in Child Welfare* (appended separately). While not evaluative itself, the catalog served as the benchmark for development of the data collection instruments. It served to identify the information to be collected and formed the basis by which the information would be measured to determine the state courts' conformity to rules, recommendations and practice standards.

Analysis of CCAP Data and the Management Information System Itself

This aspect of the review involved two separate processes and purposes. First, the Court's management information system, CCAP, was used as a data source for analyzing the courts' compliance with various state requirements. All CHIPS cases opened in two specified timeframes, 2001 and 2002, that went through the CHIPS adjudication process were selected for review. There were 5,065 cases in 2001 and 4,604 in 2002 that met the criteria. This review both described the pathways of cases and measured compliance with required events and timeframes. One of the reasons for selecting cases from 2001 and 2002 was to determine whether practice had changed since the introduction of new federal and state mandates.

The second process was a review of the system itself, along with recommendations for specific system enhancements. HZA focused not only on the technical aspects of the system but also on the business processes surrounding that system. HZA staff observed users of the system as they worked and asked questions about the ease of use. HZA also looked at the structure of the database and considered its utility both for tracking individual cases and for management reporting. Broadly, this review addressed the sufficiency of the information for the court about individual cases; completeness and accuracy of the cases; capacity to produce management information on a regular basis; and efficiency and effectiveness of the system to serve as a case management tool.

Case File Review

HZA examined court records for a sample of cases to collect the additional information beyond what CCAP could provide. The steps for conducting the case file review consisted of designing and drawing a sample of 800 cases for review across 13 randomly-selected counties; constructing the

data collection instrument (Appendix B); collecting the data; entering the data into a database; and merging it with the information on the same cases drawn from the automated system.

The counties in the state were divided, in consultation with the Director of the State Courts Office, into four strata. Counties were selected at random from each stratum. Milwaukee County formed its own stratum, while the other three strata were defined by the number of CHIPS cases under court supervision in each county.

The 800 cases were taken in two samples of 400 from each of the 13 counties. The first sample involved cases entering the court system during calendar year 2001. The second sample included cases that were adjudicated during calendar year 2003. Adjudicated cases were defined as cases that went from initial filing of the CHIPS petition to a dispositional order having been entered in calendar year 2003. A small sample of Termination of Parental Rights and Adoption cases was included. The sample periods were selected to measure the impact of changes which were implemented after legislative changes. The 2003 sample can provide evidence of court performance after the legislative implementation (in 2001 and 2002) of significant federal Title IV-E changes (including the Adoption and Safe Families Act of 1997). In addition to the specific changes made to Wisconsin's Children's Code, the legislative changes were accompanied by a major redesign of a number of standardized court forms. Many of the revised forms were specifically intended to bring court documents into greater consistency with new requirements in both state and federal child welfare law.

In each stratum, one hundred cases were reviewed for each sample. Since Milwaukee was the only county in stratum one, one hundred cases were selected from Milwaukee. Four counties were chosen in each of the other strata and 25 cases were read in each of these counties. The probability of a given case being selected within a stratum is equal to the probability of any other case being selected. County placement in the strata is shown in Table 2-1, below.

TABLE 2-1 COUNTY STRATA PLACEMENT		
COUNTY	COUNTY POPULATION[3]	STRATUM
Milwaukee County	906,248	1
Dane County	428,563	2
Waukesha County	358,442	2
Outagamie County	158,480	2
Kenosha County	146,315	2
Marathon County	123,584	3
Sheboygan County	110,136	3
Jefferson County	74,052	3
Sauk County	54,282	3
Columbia County	51,788	4
Monroe County	39,725	4
Green County	33,847	4
Burnett County	14,913	4

The case file review instrument was developed as a structured, fixed-answer tool which was strictly factual in nature. Case readers, therefore, were not allowed to make judgments. The instrument was designed to determine the extent to which the courts are in compliance with state and federal rules, as well as with the standards and recommendations of national organizations, and to determine the extent to which positive client outcomes, as defined in Titles IV-B and IV-E, are being achieved.

The case file review instrument focused on the court events in the child's case; the timeliness and content of court actions which occur during the interval between key events; the history of permanency plans reviewed by the court; the court actions in relation to the services provided to children and youth; the notifications provided to relevant parties to the action; and the occurrence of continuances and other delays, as well as the reasons for those. To a large extent, the instrument collected chronological histories of events. One of the constraints of both the case file review and the CCAP analysis is that court records do not show specific dates of entry into and discharges from foster care (only proxies) and many federal measures are based on those dates.

Court Observation

The court observation process was similar to the case file review in terms of the steps taken to develop and test the instrument. The goal was to observe 100 proceedings in the 13 counties with a reasonable distribution among the different types of proceedings.

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[3] http://www.census.gov/population/estimates/county/co-99-1/99C1_55.txt

The primary purposes of the court observation was to collect information on the quality of proceedings in an effort to explain why courts are and are not successful in meeting their mandates and contributing to the achievement of safety, permanency and well-being for children.

Information was collected on the time devoted to each hearing; presence of witnesses; introduction of evidence and legal arguments; legal representation of parents and/or children; treatment of participants; and quality and adequacy of information available to courts in child welfare cases. HZA staff conducted the observations in conjunction with staff from the Wisconsin Children's Court Improvement Project. The instrument (Appendix C) in this instance was semi-structured, meaning that the observers were instructed to note certain kinds of events, but not all of the answers were fixed as some responses required the judgment of the observer.

Interviews

Over 130 interviews were conducted with court personnel and other involved parties. Where possible, HZA conducted the interviews in coordination with the court observations. HZA worked with court personnel to identify the judges, attorneys, caseworkers, child welfare administrators and others involved in CHIPS cases to interview. Tribal representatives were included and several were interviewed by telephone after the fact. The primary purpose of the interviews was to help answer the question of why the state courts are successful in meeting some of the relevant requirements and contributing to some of the outcomes and not successful in relation to others. Opinions were also sought about how to improve the system. Separate interview instruments were designed for each category of interview participant, although the intent of the questions generally overlapped. The interview protocol is provided in Appendix D. Each instrument was semi-structured and designed to capture qualitative rather than quantitative data.

All interviews were conducted either in person or via telephone by HZA staff and its consultants, a family law professor and family court judge. Each interview resulted in a summary, by question, of the responses for each selected county. The primary method of analysis of the results was standard content analysis.

Chapter 3

Wisconsin's Statutory Framework

Scope of Chapter

This chapter provides a description of Wisconsin's Children's Code and compares it to federal requirements and best practice standards. Specifically, this chapter reviews:

- The CHIPS adjudication process;
- The custody determination process;
- Federal compliance; and
- Best practice conformity.

The information contained is generated from a review of statutes and key documents including Wisconsin's Children's Code, Title IV-E of the Social Security Act including amendments emanating from the Adoption and Safe Families Act, the **Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases** published by the National Council of Juvenile and Family Court Judges; and Wisconsin's Title IV-E reviews and Program Improvement Plans.

Key Findings

- Wisconsin's Children's Code is consistent with federal statutory requirements.

- Wisconsin's Children's Code is consistent with the provisions in the National Council's **Resource Guidelines** regarding the requirement to have explicit deadlines for each preliminary protective (temporary physical custody), adjudication, disposition, review and permanency planning hearings. The primary area of discrepancy relates to reviews of children in foster care whereby the National Council calls for 3-month reviews (which exceeds federal standards) and the Children's Code calls for 6-month reviews.

Discussion

CHIPS Adjudication and Custody Determination Processes

This section describes how a case moves through the adjudication and custody determination processes. The information is included for two purposes: it provides the basis by which Wisconsin's Children's Code can

be compared to federal statutory requirements and it sets the criteria to judge the timeliness of court proceedings in later sections of this report. Chapter 48 of the Wisconsin Statutes (otherwise known as the "Children's Code") specifies in great detail the process for handling CHIPS cases. This process is outlined in Figures 3-1 and 3-2, on the following pages.

The process begins when an intake worker receives a referral for a child who is potentially in need of services or protection as specified in Section 48.13 of the Children's Code (Wis. Stat. 48.13).[4] The intake worker conducts a preliminary intake inquiry, interviews any children who may have been taken into physical custody as a result of the referral incident, and ultimately makes a decision about how to pursue the referral (Wis. Stat. 48.067). The intake worker may also request that any children involved in the incident be taken into temporary physical custody per criteria specified in Wis. Stat. 48.205 (See Figure 3-2).

Within 40 days of receipt of the referral, the intake worker must decide to request that a CHIPS petition be filed with the local court, enter into an informal disposition regarding the referral incident or close the case (Wis. Stat. 48.24).

Requests that a CHIPS petition be filed are directed to either the district attorney or corporation counsel of the local jurisdiction (Wis. Stat. 48.25). This official has 20 days from the receipt of the request to make a decision to file the petition with the local court, refer the case back to the intake worker for further investigation or close the case.

Within 30 days of receipt of a CHIPS petition, the court must schedule a "plea hearing."[5] At this hearing (described in Wis. Stat. 48.30), the child and his or her parents (and any of their legal representatives) must be informed of the specific allegations contained within the petition, advised of their rights per Wis. Stat. 48.243 and asked to enter pleas with respect to these allegations.

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[4] Unless otherwise explicitly specified, all statutory references refer to Chapter 48 of the Wisconsin Statutes.

[5] In general, Wisconsin law regarding the time frames for various hearings in CHIPS cases distinguishes between cases in which a child is held in "secure custody" and those in which a child is held in "non-secure custody." For the most part, children taken into custody under CHIPS jurisdiction are held in non-secure custody (such as an emergency shelter, a foster home or the home of a relative) while secure custody is reserved for children who are also involved in serious delinquency cases or are at an extreme risk for further serious maltreatment if left in a non-secure facility. Typically, the deadlines for children being held in secure custody are shorter (usually 10 days) than they are for children being held in non-secure custody (30 days).

FIGURE 3-1. CHIPS ADJUDICATION PROCESS

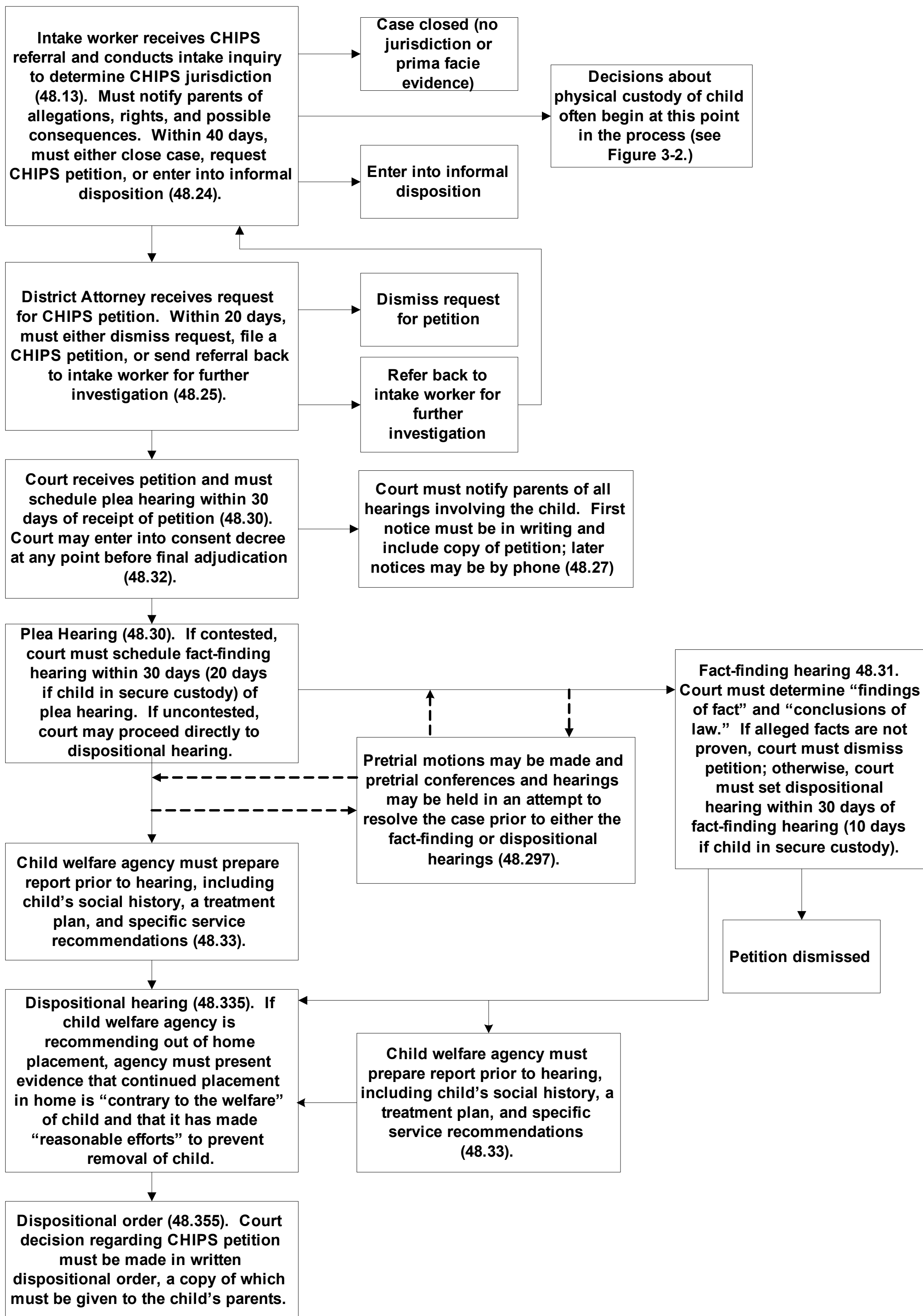
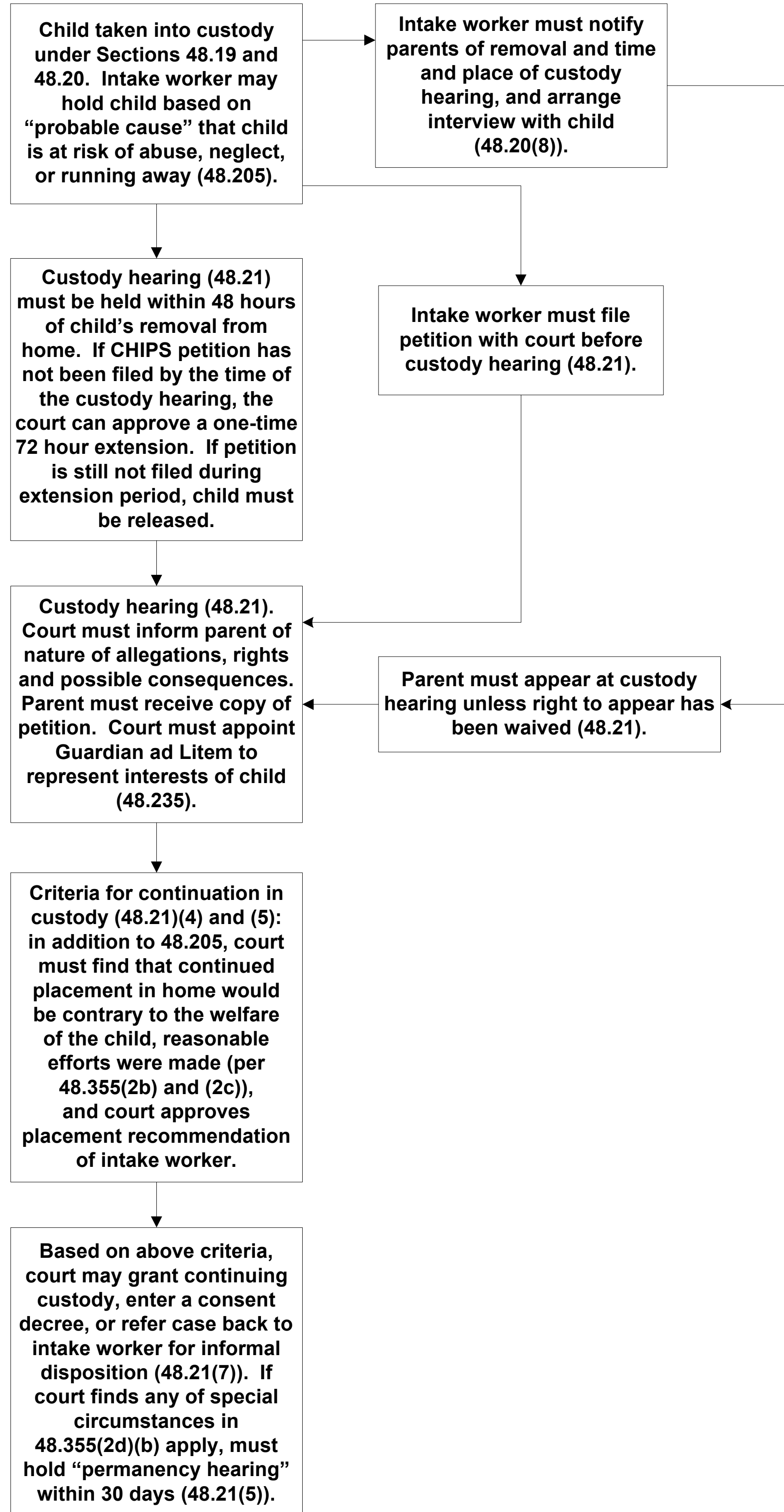


FIGURE 3-2. CUSTODY DETERMINATION PROCESS (PHYSICAL CUSTODY)



If any of the parties choose to contest any of the allegations in the petition, the court must schedule a “fact-finding hearing” within 30 days of the plea hearing. If the petition is not contested (either through an admission or a plea of “no contest”), the court must schedule a “dispositional hearing” within 30 days. (Wis. Stat. 48.30)

The fact-finding hearing attempts to determine whether or not the allegations in the CHIPS petition are “proved by clear and convincing evidence” (Wis. Stat. 48.31). The hearing is heard only by the judge unless one of the contesting parties has requested a jury trial at the plea hearing.

On the way to the fact-finding hearing, motions may be filed with the court and other hearings (referred to collectively as “pre-trial hearings”) may be held to sort out the various issues raised by the petition and to attempt to come to some sort of resolution of the case. At any point along the way, the court may decide either to dismiss the petition or to enter into a “consent decree” with the parties involved in the case.

If the fact-finding hearing provides “clear and convincing evidence” of the truth of the CHIPS allegations, the court must schedule a dispositional hearing within 30 days of the fact-finding hearing. So, regardless of whether or not the CHIPS petition is contested, the case will end up in a dispositional hearing, unless the case has been previously resolved by either dismissal or a consent decree which has the same force as a dispositional order.

Prior to the dispositional hearing, the child welfare agency must prepare and file with the court a report that includes a social history of the child, a recommended plan of care and treatment for the child, the objectives of the plan, and a description of specific services that will be used in the plan (Wis. Stat. 48.33). If the plan recommends that the child be placed in an out-of-home setting, a formal “permanency plan” (per Wis. Stat. 48.38) must also be submitted to the court within sixty days of removal.

After reviewing the evidence and testimony presented at the dispositional hearing, the court must issue a written “dispositional order” (Wis. Stat. 48.355) that includes findings regarding the CHIPS petition and the current living situation of the child. If the child is currently placed outside the home, the dispositional order must also include explicit statements that continued placement in the child’s home is “contrary to the child’s welfare” and that “reasonable efforts” were made to prevent the child’s removal from home.

The dispositional order also places the child under court supervision for a specified time period, and identifies both the placement status of the child

and any other conditions that must be met as part of the court's jurisdiction. If the child has been placed outside the home, the dispositional order must contain assurances that the parents of the child have been advised of the grounds for the termination of parental rights (TPR) (see Wis. Stat. 48.356). Indeed, the child's parents must be provided with a copy of the dispositional order, including any written TPR warnings.

Any CHIPS case that has gone through the process outlined above will be considered "adjudicated." As described above, the adjudication process can result in one of three possible outcomes: (1) the CHIPS petition is dismissed; (2) the case is resolved by means of a consent decree; or (3) the child is officially designated as "in need of protection or services" in a written dispositional order. In the case of the latter two outcomes, the child remains under court supervision as specified in either the consent decree or the dispositional order.

Consistency of Children's Code with Federal Law

Wisconsin Act 109, which was implemented in 2002, included many provisions designed to bring the Children's Code into conformity with ASFA. For example, the new law says that the court's reasonable efforts findings must be made on a case-by-case basis on circumstances specific to the child and shall document or reference in the court order the specific information on which those findings are based. This provision is consistent with the federal rule which prohibits using only check boxes to show compliance with reasonable efforts.

Table 3-1 maps the major federal provisions to the Children's Code. The absence of a Wisconsin reference does not necessarily mean that the state is out of compliance. For example, if the federal law states that a court transcript *may* be used to verify the required contrary to the welfare determination, it does not mean that it *has* to be permitted explicitly in state statute.

Conformity to the Indian Child Welfare Act is stipulated in the Children's Code in 48.028 by "The Indian Child Welfare Act 25 USC 1911 to 1963 supersedes the provisions of this chapter in any child custody proceeding governed by that act." The requirements of that act are listed here, however, as a reference.

One of the issues uncovered in the Title IV-E review was that contrary to the welfare findings were not consistently made in the first court order sanctioning the child's removal from home as required by 45 CFR 1356.21(c). In Wisconsin, the contrary to the welfare finding is typically made in the temporary physical custody order or the dispositional order.[6]

[6] Wisconsin Program Improvement Plan (PIP) for Title IV-E Review, Department of Health and Human Services, July 2002.

TABLE 3-1
MAJOR FEDERAL PROVISIONS MAPPED TO WISCONSIN'S CHILDREN'S CODE

FEDERAL PROVISION			WISCONSIN REFERENCE
Social Security Act Title IV-E	**45 CFR 1356.21 (c)**	Judicial determination that remaining in the home is "contrary to the welfare" (CTW) must be made in first court order sanctioning a child's removal from the home. Court orders containing the "CTW" judicial determination or transcripts of court proceedings reflecting this are acceptable documentation.	Chapter 48: Children's Code Subchapter III Section 48.21 (5)(b)
	45 CFR 1356.21 (d)	Judicial determinations must be documented on a case-by-case basis and so stated in the court order.	Chapter 48: Children's Code Subchapter III Section 48.21 (5)(b)
	45 CFR 1356.21 (d)(1)	If no reasonable efforts and contrary to welfare judicial determinations are included, a court transcript may be used to verify required determinations.	
	45 CFR 1356.21 (d)(2)	Affidavits or nunc pro tunc orders are not acceptable verification of judicial determinations.	Chapter 48: Children's Code
	45 CFR 1356.21 (d)(3)	Court orders referencing State law to substantiate judicial determinations are not acceptable.	Chapter 48: Children's Code
	45 CFR 1356.21 (1)(i)	Judicial determination of reasonable efforts to prevent placement must be made no later than 60 days from child removal date. (Actual removal date is the date child is removed from home; a child enters foster care the earlier of the date the court found the child neglected or abused or 60 days after the child's actual removal).	Chapter 48: Children's Code Subchapter V 48.315(2m)
Adoption and Safe Families Act of 1997 (PL 105-89) amendments to Title IV-E	**Section 101**	Conditions under which "reasonable efforts to preserve and unify families" are not required: • circumstances such as but not limited to abandonment, torture, chronic abuse and sexual abuse; • • manslaughter of another child of the parent; • conspired or solicited to commit such a murder or manslaughter; • results in serious bodily injury to the child or another child of the parent; and • been terminated involuntarily.	Chapter 48: Children's Code Subchapter VI 48.355
	Section 101 (ASFA) **45 CFR 1356.21 (h)(2)**	Permanency hearing must be held within 30 days after a determination that reasonable efforts are not required to preserve or reunify the family when there are aggravated circumstances as in the criteria above (otherwise at 12-month point; see next item) unless permanency hearing requirements were met at time of determination.	Chapter 48: Children's Code Subchapter V 48.355 (2d)

TABLE 3-1
MAJOR FEDERAL PROVISIONS MAPPED TO WISCONSIN'S CHILDREN'S CODE

FEDERAL PROVISION			WISCONSIN REFERENCE
Social Security Act Title IV-E	**45 CFR 1356.21 (2)(i)**	Judicial determination of reasonable efforts to finalize the permanency plan must be made within 12 months of foster care entry; permanency hearing is a state plan requirement not a Title IV-E eligibility requirement (45 CFR 1356.21(h).	Chapter 48: Children's Code Subchapter V 48.315(2m) Chapter 48: Children's Code Subchapter VII 48.38(5)
	45 CFR 1356.21 (3)	Otherwise, judicial determination must be made that reasonable efforts determination was not required; court may find the lack of efforts is reasonable, such as when there is no safe way to make efforts to prevent removal.	Chapter 48: Children's Code Subchapter V 48.355 (2d)
	45 CFR 1356.21 (h)(4)	An administrative body appointed or approved by the court may conduct a permanency hearing.	Chapter 48: Children's Code Subchapter V 48.38 (5) (ag)(am)
	45 CFR 1356.21 (e)	Trial home visits may not exceed six months unless court ordered; the time a child is home does not count toward the 15 of 22-month requirement referenced below.	Chapter 48: Children's Code Subchapter VI 48.365 (2g) b. 3.
	45 CFR 1356.21 (h)(3)	State must document to the court reasons for an alternative permanency plan; court may determine at a permanency hearing that there is a compelling reason the reunification, adoption or guardianship and relative placement are not in the child's best interest and may order another planned permanent living arrangement.	Chapter 48: Children's Code Subchapter VII 48.38 (4) (fg)
Adoption and Safe Families Act of 1997 (PL 105-89) amendments to Title IV-E	**Section 103**	State must file a TPR petition to the court (with certain exceptions) for children: • • • • manslaughter of another child of the parent; • attempted, conspired or solicited to commit such a murder or manslaughter; or • assault that resulted in serious bodily injury to the child or another child of the parent.	Chapter 48: Children's Code Subchapter VII 48.417
	Section 1356.21(o)	State must send notice of reviews and hearings to foster parents, pre-adoptive parents or relatives caring for a child and to be given an opportunity to be heard.	Chapter 48: Children's Code Subchapter VII 48.38(5m)
Indian Child Welfare Act of 1978 (PL 95-608, Title 25, Chapter 21)	**Section 1911(a)**	Indian tribe has primary jurisdiction over child custody proceedings for children on reservations.	Chapter 48: Children's Code Subchapter I 48.028
	Section 1911(b)	Indian tribe has primary jurisdiction over Indian child custody proceedings for children on reservations.	Chapter 48: Children's Code Subchapter I 48.028

TABLE 3-1
MAJOR FEDERAL PROVISIONS MAPPED TO WISCONSIN'S CHILDREN'S CODE

FEDERAL PROVISION			WISCONSIN REFERENCE
	Section 1911(c)	State courts will transfer jurisdiction over custody proceedings to tribe upon the petition of the child's parent or tribe and agreement of tribal court.	Chapter 48: Children's Code Subchapter I 48.028
	Section 1912(a)	In state court proceedings involving foster care placement of an Indian child, the party seeking the placement must provide notification to child's parents and child's tribe by registered mail.	Chapter 48: Children's Code Subchapter I 48.028
	Section 1912(b)	Court must appoint counsel for parents of indigent Indian child.	Chapter 48: Children's Code Subchapter I 48.028
	Section 1912(e)	Foster care placement may not be ordered without a court determination that continued custody by current custodian would result in serious emotional or physical damage.	Chapter 48: Children's Code Subchapter I 48.028
	Section 1912(f)	Termination of parental rights may not be ordered without a determination supported with evidence beyond a reasonable doubt.	Chapter 48: Children's Code Subchapter I 48.028
	Section 1913(a)	Parental consent to foster care placement or voluntary termination of parental rights shall not be valid unless executed in writing and recorded before a judge of a court of proper jurisdiction.	Chapter 48: Children's Code Subchapter I 48.028
	Section 1913(d)	Parent may withdraw consent in cases of voluntary termination of parental rights or adoptive placement.	Chapter 48: Children's Code Subchapter I 48.028
	Section 1914	Upon showing of certain violations of sections 1911, 1912 and 1913 of this title, the Indian child's tribe may petition for invalidation of foster care placement or voluntary termination of parental rights.	Chapter 48: Children's Code Subchapter I 48.028
	Section 1916(a)	Whenever a final decree of adoption has been vacated or set aside, a biological parent or prior Indian custodian may petition for return of custody.	Chapter 48: Children's Code Subchapter I 48.028
	Section 1917	Court must provide to an Indian individual that was adopted and has reached the age of eighteen, information about the individual's biological parents.	Chapter 48: Children's Code Subchapter I 48.028
	Section 1920	Court must return any child that has been improperly removed to the child's custodian.	Chapter 48: Children's Code Subchapter I 48.028
	Section 1921	Higher of State or Federal standards to protect rights of Indian custodians are to be applied in state and federal courts.	Chapter 48: Children's Code Subchapter I 48.028
	1951(a)(4)	Any state court that finalizes an adoption after November 8, 1978 involving an Indian child must provide to the Secretary the following information: Name and tribal affiliation of the child; Names and addresses of the biological parents; Names and addresses of the adoptive parents; and Identity of any agency with information that relates to the adoptive placement.	Chapter 48: Children's Code Subchapter I 48.028

The remedies in the PIP are to educate court staff and attorneys and to release updated forms, both of which have, in fact, been done. As discussed in a later chapter on compliance with federal law, these contrary to the welfare findings are now appearing in over 90 percent of the cases which started after 2003.

Conformity of Children's Code to Best Practices

Wisconsin's Children's Code is consistent with the provisions in the **Resource Guidelines** promulgated by the National Council of Juvenile and Family Court Judges regarding the requirement to have explicit deadlines for each preliminary protective (temporary physical custody), adjudication, disposition, review and permanency planning hearing.

The standards suggested by the National Council and the deadlines in the Children's Code are depicted in Table 3-2. The primary area of discrepancy relates to reviews of children in foster care. While the National Council suggests reviews every two to three months, the Children's Code requires six-month reviews, a standard which complies with federal requirements.

TABLE 3-2
NATIONAL COUNCIL BEST PRACTICES COMPARED TO WISCONSIN'S CHILDREN'S CODE

HEARING	STANDARD	CHILDREN'S CODE	COMMENT
Preliminary Protective	1-3 judicial working days after removal	48 hours	Two days is within 1-3 days
Adjudication	60 days from removal	60 days (including 40 days from referral to request CHIPS petition and 20 days from receipt of request to make a decision)	Complies
Disposition	30 days from adjudication	30 days from plea hearing	Complies
Review	Every 2-3 months	Six months from removal and every 6 months thereafter	Does not comply
Permanency	At least annually	Annually	Complies
Termination of Parental Rights	60 days from completion of service of process	30 days from filing of petition	Complies
Termination of Parental Rights	Personal service on both parents whenever possible	Service on "the parent or parents of the child unless the child's parent has waived the right to notice"	While statute describes what to do if father is not known, both parents should be served if both parents are known

In summary, there is a sound statutory basis for the child welfare program. The State has done a good job since the last court assessment in bringing the state into conformity with the Adoption and Safe Families Act and any other pending requirements.

Chapter 4

CHIPS Processes and Compliance with State Provisions

Scope of Chapter

This chapter uses data from the CCAP to study the CHIPS process for the entire cohort of CHIPS cases initiated during Calendar Year 2002 which reached adjudication.[7] Aside from a description of the process from the point of the initial filing of the petition to the final phase of the adjudication process, namely disposition, the analysis also focuses on the courts' conformity with state-level legal requirements, generally related to the timeliness of events. Where CCAP does not contain sufficiently detailed information, data from the two case file samples are used instead.

Key Findings

- Timeliness of CHIPS hearings declines as cases progress through the adjudication process.

  Plea Hearings

  - Over 90 percent of the cases with plea hearings have these hearings within the required 30 days.
  - In over 50 percent of the cases with plea hearings there are no continuances.
  - Among cases with continuances the most common other events before the plea hearing are orders appointing the GAL and summonses; the most common other events after the initial plea hearing are orders appointing counsel and filing of permanency plans with the court.
  - Judges sign the temporary physical custody hearing order on the same day in 82 percent of the cases.

[7] This analysis was also done for the cohort of CHIPS cases that opened during CY 2001. However, rather than reporting results for two parallel (and rather lengthy) analyses, this discussion focuses on the findings for CY 2002 and is supplemented by references to the earlier analysis, when appropriate.

Fact Finding Hearings

- In 40 percent of the cases the initial fact finding hearing occurs within 30 days of plea hearing.

- Over two-thirds are concluded in one session.

Dispositional Hearings

- About 50 percent have the first dispositional hearing within 30 days of the final plea hearing as required of cases without fact-finding hearings. The average duration is 52 days.

- Almost three-quarters are concluded without a continuance.

- Of the cases with fact finding hearings, about three-quarters have the first dispositional hearing within the required 30 days of the fact finding hearing.

- Almost three quarters of both types of dispositional hearings are concluded without continuances.

- In over 70 percent of the cases the order is signed on the same day as the dispositional hearing.

- The total number of cases using standardized forms for these hearings rose from 69 to 88 percent between 2001 and 2003.

- Many of the data elements necessary to measure the various intervals are missing in CCAP. For example, only 85 percent of the CHIPS cases that opened during CY 2002 showed evidence of one or more plea hearings in CCAP, even though all CHIPS cases are supposed to have one. Only 1,881 of the 4,604 cases (or 41 percent) had all the data items necessary to measure all of the various intervals described above.

Discussion

Using CCAP to Study the CHIPS Adjudication Process

Information on circuit court cases in the state of Wisconsin is available through the state's CCAP. Although the basic CCAP infrastructure is developed and maintained at the state level, participation in CCAP is determined at the level of individual circuit courts in the state's 72 counties. Local court officials may use CCAP to schedule and record all

court-related events and actions that occur as cases move through the court system. As such, CCAP has become an important case management tool within the Wisconsin Circuit Court System.

Although information about circuit court cases is available from CCAP through the internet using the SOAP interface, state law prohibits making information on juvenile cases (including CHIPS cases) publicly available. In the spring of 2004, HZA began working with CCAP Customer Services to obtain a special extract of data on CHIPS cases from the CCAP system. Prior to making those data available to HZA, CCAP Customer Services ensured that all information that might be used to identify individual parties to the cases (such as names, addresses, and social security numbers) was removed from the data extract.

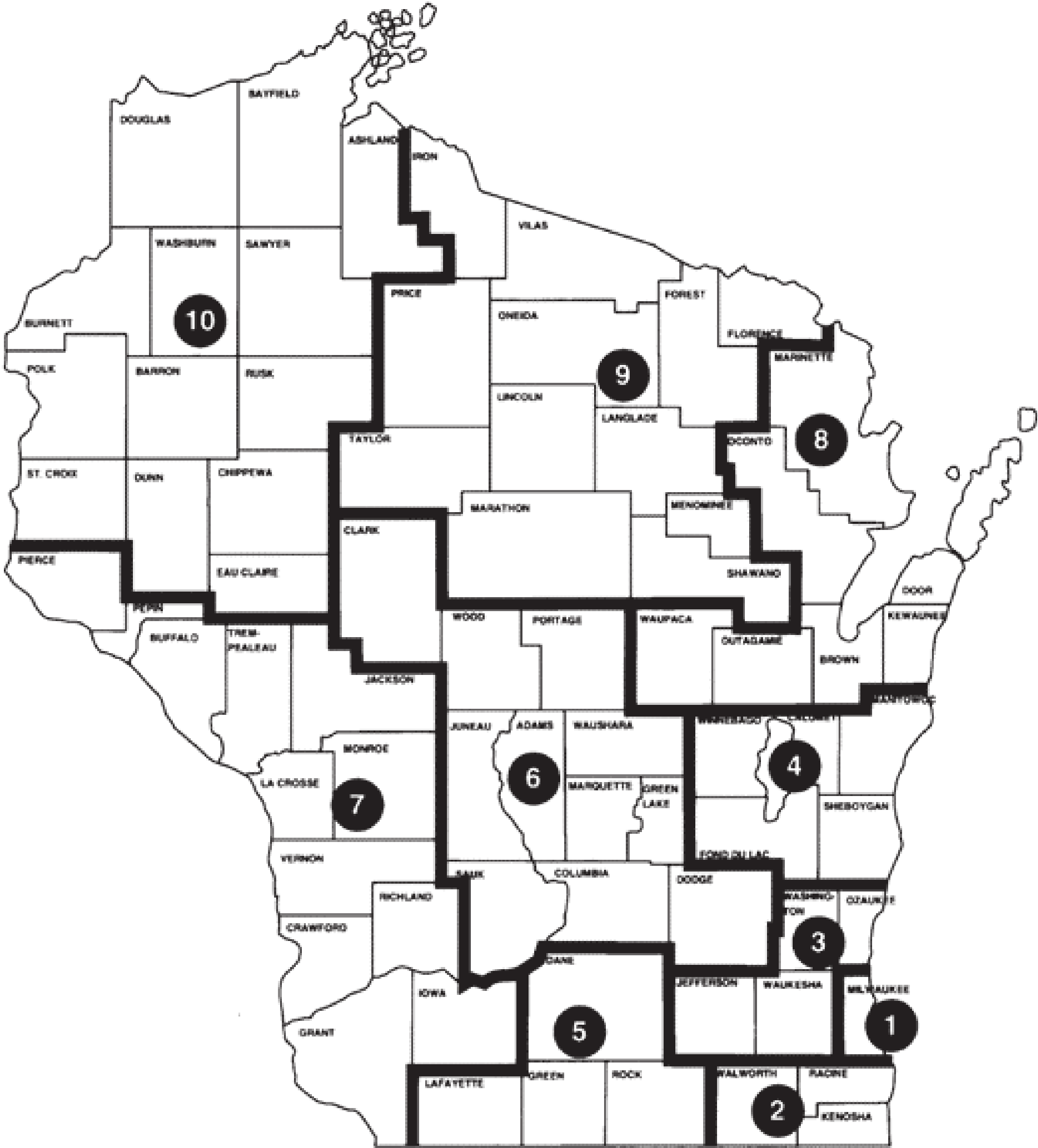
The present analysis uses this CCAP/CHIPS extract as the primary data source for an empirical analysis of the processes involved in the adjudication of CHIPS cases. Although this is a different purpose from the one for which CCAP was originally intended, the fact remains that CCAP is the single most comprehensive source of electronic information on circuit court cases in the state. Moreover, part of the purpose of this overall reassessment of the performance of state courts in the handling of CHIPS cases is precisely to determine CCAP's usefulness as a data source. The present analysis demonstrates by example some of the capacities and the limitations of the system in that regard.

While Chapter 10 is devoted to the examination of CCAP's characteristics, one important limitation is worth addressing here. Strictly speaking, the CHIPS process begins with a referral to an intake worker. However, CCAP does not become aware of a CHIPS case until an actual CHIPS petition has been filed and the case receives a court case number. It is apparent, therefore, that CCAP data cannot be used to study the universe of CHIPS referrals and intake processes that take place prior to the filing of a CHIPS petition. In particular, this means that CCAP cannot be used to determine how many referrals are either dismissed or resolved informally before they come to the attention of the court.

District Breakdown

In the analyses that follow, data are presented for the state as a whole as well as for the ten circuit court administrative districts within the state. A map showing the county components of the ten judicial districts is presented in Figure 4-1, on the following page.

FIGURE 4-1
MAP OF WISCONSIN'S JUDICIAL DISTRICTS



CHIPS Cases That Opened During 2002: An Overview

In CY 2002, 4,604 CHIPS cases were opened and subsequently went through the CHIPS adjudication process.[8] Almost 30 percent of these cases were filed in the single county of Milwaukee, which is the only county in Judicial District 1. This finding is not surprising, since Milwaukee is by far the largest county in the state. The remaining 70 percent of cases were distributed over the other nine districts, which include the other 71 counties in Wisconsin. Table 4-1 compares the number of CHIPS cases that were opened in 2002 to the population of children under the age of 18 in those districts. The result is a comparison of the rates of CHIPS case openings among judicial districts.

TABLE 4-1

NUMBER OF CHIPS CASES OPENED DURING CY 2002 AND ADJUDICATED BY MEANS OF A DISMISSAL, A CONSENT DECREE, OR A DISPOSITIONAL ORDER, BY JUDICIAL DISTRICT, IN RELATION TO THE NUMBER OF CHILDREN IN EACH DISTRICT

DISTRICT	N OF CASES	% OF CASES	POP < 18*	CASES PER 1000 POP <18
1	1,299	28.2	247,825	5.24
2	309	6.7	114,107	2.71
3	331	7.2	166,821	1.98
4	458	9.9	123,327	3.71
5	528	11.5	149,918	3.52
6	372	8.1	117,913	3.15
7	318	6.9	97,232	3.27
8	350	7.6	147,677	2.37
9	233	5.1	85,207	2.73
10	406	8.8	118,729	3.42
STATE	4,604	100.0	1,368,756	3.36

* Population under 18 years of age (2000 Census)

In the state as a whole, CHIPS cases opened at a rate of 3.36 for every 1,000 children under the age of 18 years. Across judicial districts, the "CHIPS rate" ranged from a high of 5.24 per 1,000 in District 1 (Milwaukee County) to a low of 1.98 per 1,000 in District 3 (which is made up of four suburban counties surrounding Milwaukee County on the northern and

[8] According to CCAP Customer Services, this number may or may not correspond to any previously published statistics. In particular, this number excludes any cases for which a new CHIPS petition was filed in CY 2002 that were later found to be part of previously existing CHIPS cases.

western sides). The preponderance of CHIPS cases originating in Milwaukee County can thus be seen as a function not only of its absolute size but also of its greater rate of CHIPS case openings per child.

Table 4-2 shows the average (mean) number of days that elapsed between the filing of a CHIPS petition and the case's adjudication by means of a dismissal, a consent decree, or a dispositional order. The data constitute a summary measure of the courts' "timeliness" in the processing of CHIPS cases, an attribute that is examined in greater detail in subsequent sections of this report.

Table 4-2 also shows that CHIPS cases filed during CY 2002 took around 97 days (just over three months) on average to be adjudicated.[9] The ten judicial districts show a fairly wide range of variation around the state average, from a high of 163 days in District 1 (Milwaukee County) to a low of around 47 days in District 10 (northwestern Wisconsin).

TABLE 4-2

AVERAGE (MEAN) NUMBER OF DAYS BETWEEN FILING OF CHIPS PETITION AND ADJUDICATION, BY JUDICIAL DISTRICT

DISTRICT	N OF CASES	MEAN
1	1,299	162.9
2	309	62.8
3	331	72.7
4	458	77.3
5	528	89.6
6	372	55.8
7	318	69.9
8	350	72.4
9	233	83.3
10	406	46.8
STATE	4,604	96.6

Plea Hearings

Timeliness

The first event that must take place after a CHIPS petition is filed is a "plea hearing" at which all parties to the petition are advised of the nature of the allegations contained in the CHIPS petition and their respective rights,

[9] The corresponding estimate from the 2001 analysis was 93 days.

options and duties within the CHIPS adjudication process. Parties are also asked if any of them wish to contest any allegations made within the petition.

The data in Table 4-3 show that of the 4,604 CHIPS cases that opened during CY 2002, 3,897 (or 85 percent) showed evidence of a plea hearing within the CCAP database. The percentage of cases with plea hearings varied across judicial districts, from a high of 93 percent in Districts 1 and 8 to a low of about 69 percent in Districts 3 and 10.

These findings are surprising, since a plea hearing should have been held for all cases. They also need to be interpreted with caution and point up some potential anomalies in using CCAP data for reporting. First, the plea hearing might indeed have taken place, but was simply not recorded in CCAP by local court authorities. It was not until 2001 that all Wisconsin counties were actually using CCAP for CHIPS cases. A second and even more likely possibility is that the plea hearing took place and was recorded in CCAP, but was not coded as a “plea hearing.” Individual county courts have a wide range of discretion regarding their use of the system, the types of cases they will use it for and the codes selected to record specific events.

TABLE 4-3

NUMBER OF CHIPS CASES OPENED DURING CY 2002 THAT HAD A PLEA HEARING RECORDED IN CCAP, BY JUDICIAL DISTRICT

DISTRICT	N OF CASES OPENED	WITH PLEA HEARING	
		N OF CASES	% OF CASES
1	1,299	1,208	93.0
2	309	223	72.2
3	331	229	69.2
4	458	410	89.5
5	528	478	90.5
6	372	282	75.8
7	318	248	78.0
8	350	326	93.1
9	233	213	91.4
10	406	280	69.0
STATE	4,604	3,897	84.6

At present, no fewer than five distinct codes were used to record a plea hearing, including a code indicating only “initial appearance.” In fact, if one were to search only for one of the four codes directly indicating “plea hearing” in CCAP among the cases initiated in 2002, one would find only 72 percent of the cases showing a plea hearing. Allowing for the code for

"initial appearance" to count as a plea hearing, as well, is what brings the figure to 85 percent.

Since events that occurred may not have been recorded or may have been recorded without enough detail to identify it as that particular type of event, the findings should be viewed as "minimal" or "conservative" estimates of compliance with any particular requirement. Thus, in the present context, one may conclude that 85 percent of CHIPS cases that opened during CY 2002 showed positive evidence within CCAP of having had at least one plea hearing, while realizing that the percentage in conformity is at least that much and probably higher.

Not only does the Children's Code require that a plea hearing be held for all CHIPS cases, it also specifies that that hearing "shall take place within 30 days after the filing of a [CHIPS] petition." Data bearing on the timeliness of plea hearings are presented in Table 4-4.

The data show that of the 3,897 plea hearings that were identified for the CY 2002 cohort of CHIPS cases, 3,592 (or 92 percent) appear to have been held within the prescribed 30-day interval. The average length of time between the filing of the CHIPS petition and the first plea hearing was just over 22 days, less than the prescribed limit. Across judicial districts, "compliance rates" were over 95 percent in Districts 3, 8, and 10, and under 90 percent in Districts 1, 2 and 4.

TABLE 4-4

AVERAGE (MEAN) NUMBER OF DAYS BETWEEN FILING OF CHIPS PETITION AND FIRST PLEA HEARING AND NUMBER OF CASES WITH FIRST PLEA HEARING WITHIN 30 DAYS OF CHIPS PETITION, BY JUDICIAL DISTRICT

DISTRICT	N OF CASES	MEAN	FIRST PLEA HEARING WITHIN 30 DAYS	
			N	%
1	1,208	27.5	1,085	89.8
2	223	15.3	192	82.4
3	229	18.7	225	98.3
4	410	25.3	359	87.6
5	478	21.7	448	93.7
6	282	20.7	264	93.6
7	248	14.3	225	90.7
8	326	10.8	322	98.8
9	213	22.6	196	92.0
10	280	19.9	276	98.6
STATE	3,897	21.8	3,592	92.2

Although the basic requirement is that a plea hearing be held within 30 days of the filing of the CHIPS petition, Wis. Stat. 48.315 specifies certain conditions under which delays, continuances, and extensions may be excluded from the calculation of time requirements. Table 4-5 shows the frequency with which plea hearings were continued for the CY 2002 cohort. Among the 3,897 cases for which evidence of a plea hearing was found in CCAP, the plea hearing appears to have concluded with a single hearing for in 53 percent of the cases and a continuance in 47 percent.[10] Among those with continuances, 1,214 cases (or 31 percent) experienced one continuance in the plea hearing, 459 (or 12 percent) had two continuances, while for the remaining cases (less than four percent), three or more separate dates were required to conclude the plea hearing phase.

TABLE 4-5

NUMBER OF CONTINUANCES OF PLEA HEARINGS, BY JUDICIAL DISTRICT

COUNTS

		CONTINUANCES			
DISTRICT	NUMBER OF CASES	0	1	2	3+
1	1,208	494	419	201	94
2	223	87	99	33	4
3	229	158	60	5	6
4	410	240	124	43	3
5	478	212	169	76	21
6	282	194	59	26	3
7	248	141	72	30	5
8	326	204	106	15	1
9	213	133	52	25	3
10	280	213	54	5	8
STATE	3,897	2,076	1,214	459	148

PERCENTAGES

		CONTINUANCES			
DISTRICT	TOTAL	0	1	2	3+
1	100.0	40.9	34.7	16.6	7.8
2	100.0	39.0	44.4	14.8	1.8
3	100.0	69.0	26.2	2.2	2.6
4	100.0	58.5	30.2	10.5	0.7
5	100.0	44.4	35.4	15.9	4.4
6	100.0	68.8	20.9	9.2	1.1
7	100.0	56.9	29.0	12.1	2.0

[10] The comparable numbers from the 2001 analysis was 60 percent with a single hearing and 40 percent with a continuance.

TABLE 4-5					
NUMBER OF CONTINUANCES OF PLEA HEARINGS, BY JUDICIAL DISTRICT					
COUNTS					
		CONTINUANCES			
DISTRICT	**NUMBER OF CASES**	**0**	**1**	**2**	**3+**
8	100.0	62.6	32.5	4.6	0.3
9	100.0	62.4	24.4	11.7	1.4
10	100.0	76.1	19.3	1.8	2.9
STATE	100.0	53.3	31.2	11.8	3.8

Activities Related to Plea Hearings

The data in Table 4-6 shed light on a number of different procedures that are occurring during the early phases of the CHIPS adjudication process. This table shows the most common events (other than plea hearings) that take place prior to and during the plea hearing phase. The table is structured to permit comparisons between cases that had only a single plea hearing and cases in which the plea hearing was continued one or more times. Among the latter group, an additional comparison can be made between events that took place prior to the initial plea hearing and events that took place during the various continuances.

TABLE 4-6						
EVENTS OCCURING BEFORE INITIAL PLEA HEARING AND BETWEEN INITIAL AND FINAL PLEA HEARINGS, BY NUMBER OF PLEA HEARINGS FOR CASE						
	CASES WITH ONLY ONE PLEA HEARING		**CASES WITH MORE THAN ONE PLEA HEARING**			
DESCRIPTION	**PRE-PLEA**		**PRE-PLEA**		**INTERPLEA**	
	N	**%**	**N**	**%**	**N**	**%**
Order Appointing Gal	1,032	49.7	820	45.0	221	12.1
Summons	874	42.1	937	51.5	360	19.8
Notice Of Hearing	777	37.4	397	21.8	415	22.8
TPC Order	752	36.2	478	26.2	128	7.0
TPC Hearing	672	32.4	553	30.4	61	3.3
Notice, N.O.S.*	559	26.9	700	38.4	285	15.7
Request For TPC Authorization	584	28.1	406	22.3	21	1.2
Order, N.O.S.*	419	20.2	358	19.7	428	23.5
Order Appointing Counsel	291	14.0	326	17.9	556	30.5

TABLE 4-6						
EVENTS OCCURING BEFORE INITIAL PLEA HEARING AND BETWEEN INITIAL AND FINAL PLEA HEARINGS, BY NUMBER OF PLEA HEARINGS FOR CASE						
	CASES WITH ONLY ONE PLEA HEARING		**CASES WITH MORE THAN ONE PLEA HEARING**			
DESCRIPTION	**PRE-PLEA**		**PRE-PLEA**		**INTERPLEA**	
	N	**%**	**N**	**%**	**N**	**%**
Hearing, N.O.S.*	453	21.8	191	10.5	337	18.5
Court Report Of Social Worker Filed	225	10.8	75	4.1	533	29.3
Permanency Plan Filed With Court	60	2.9	32	1.8	539	29.6
Pre-Trial Conference	66	3.2	7	0.4	235	12.9
Review Hearing	82	3.9	52	2.9	30	1.6
Notice Of Change Of Placement	79	3.8	43	2.4	161	8.8
Motion	67	3.2	28	1.5	102	5.6
Petition, N.O.S.*	67	3.2	34	1.9	66	3.6
Request, N.O.S.*	55	2.6	41	2.3	46	2.5
Status Hearing	19	0.9	8	0.4	215	11.8
Dispositional Hearing	16	0.8	6	0.3	200	11.0
Motion Hearing	15	0.7	5	0.3	40	2.2
N OF CASES	2,076		1,821		1,821	
*Not Otherwise Specified						

It appears in Table 4-6 that one of the major challenges of the early phase of CHIPS adjudication is ensuring that the various parties to the petition have appropriate legal representation during the proceedings. Legal representation is required for children in CHIPS cases where the child may be placed outside the home and the petition is contested. In such circumstances they have a right to counsel for all subsequent hearings as well. For children less than 12 years of age, the court may appoint a guardian *ad litem* rather than an adversary counsel (Wis. Stat. 48.23(3m)). guardians *ad litem* may be appointed directly by the court, although other types of legal representation are provided by the state public defender upon referral from the court, regardless of indigence status.

Legal representation for parents is required only when a child is the subject of a proceeding involving a contested adoption or the involuntary termination of parental rights or if the parent is under age 18. Practices for parental representation vary considerably from place to place.

Table 4-6 shows that guardians *ad litem* were appointed prior to the first plea hearing for almost half (50 percent) of the children who experienced a single plea hearing and for a comparable percentage (45 percent) of children who experienced more than one hearing. Only 12 percent of cases experiencing more than one plea hearing had a guardian *ad litem* appointed after the initial plea hearing. It thus appears that appointment of guardians *ad litem* for children is not, in itself, a great contributor to continuances in plea hearings.

On the other hand, "orders appointing counsel" appear to be more common after the initial plea hearing than before the hearing. Although it is not clear from this phrasing whether these orders applied to children or parents, it is not inconceivable that a significant portion of these orders are for parents. By and large the courts appoint guardians *ad litem* for children in a timely fashion but it is more difficult to obtain a clear picture for parents because attorneys are required only in certain circumstances and generally later in the case.

The data presented apply only to publicly-provided or publicly-ordered legal counsel. Wis. Stat. 48.23(5) specifies that any party to a CHIPS petition may retain counsel of its own choosing, at its own expense, but the CCAP data reviewed above do not include such forms of representation.

Providing adequate notice to parties prior to the plea hearing also appears to be a major pre-hearing activity within the CHIPS process. Wis. Stat. 48.27 requires that children, parents, foster parents, and other legal or physical custodians of children be given notice of all hearings regarding the petition (with the exception of hearings on motions). The first such notice must be in writing, while notices of subsequent hearings may be given by telephone at least 72 hours before the scheduled hearing. Thus it is that "notice of hearing" and "notice" appear to be fairly common events both before the initial plea hearing and later in the process.

The court may require the appearance of certain parties at various hearings, and such a requirement is reflected in the relative frequency of the "summons" activity prior to the initial plea hearing. Summonses were issued prior to 42 to 52 percent of the initial plea hearings, and before 20 percent of the continuances.

In addition to ensuring adequate legal representation and providing adequate notice of the plea hearing(s), activities relating to the physical custody of involved children seem to constitute a third major type of activity that takes place prior to the initial plea hearing. Over one-fourth of the cases involving only one plea hearing had some sort of custody-related activity prior to the hearing, including requests for authorization of temporary physical custody

(TPC), TPC hearings and TPC orders. The relative frequency of custody-related activities appears to be most intense prior to the initial plea hearing, and subsides among continued plea hearings.

One major class of activities that appears to be much more common in continued plea hearings than in initial plea hearings has to do with "court reports" and "permanency plans." Wis. Stat. 48.33 requires that child welfare agencies file reports on the social history of and recommended course of treatment for cases prior to the dispositional hearing, and in the case of children recommended for (or already placed in) out-of-home placements, a formal "permanency plan" (as described in Wis. Stat. 48.38), as well. The relative frequency of these events in continued plea hearings suggests that by this point in the process, parties are anticipating a dispositional hearing within a relatively short period of time.

The data presented in this section have shown that the time between the filing of a CHIPS petition and a completed plea hearing is a very active period in the life-cycle of a CHIPS case. Concerns with the legal representation and notification of involved parties and with the physical custody status of children in CHIPS cases seem to be fairly common at this stage of the case.

Still, the State as a whole seems to be doing a fairly good job of meeting the requirements for plea hearings. Even though evidence of a plea hearing could be found for only 85 percent of the CHIPS cases that opened during CY 2002, 92 percent of these cases had initial plea hearings within 30 days of the filing of the CHIPS petition.

Temporary Physical Custody Orders

Aside from literal compliance with the state's timeliness requirements, there are at least two related issues of interest about which information can be found in the case file review. The first has to do with the timeliness with which the judge signs the order emerging from the hearing. Even if the hearing is held within the prescribed time frames, it is not necessarily the case that the judge has issued the necessary order.

At the temporary physical custody hearing, the speed with which judges sign the order seems to have slowed. Among cases opened in 2001 the judge signed the order on the same day in 88 percent of the cases, and 90 percent of the orders were signed no later than the day after the hearing. Among those cases adjudicated in 2003, however, only 82 percent had a signed order on the same day as the hearing and eight calendar days had passed after the hearing before 90 percent of the orders were signed.

The second issue has to do with the form in which the orders are made. Largely to facilitate compliance with federal requirements, the Director of State Courts Office has created standardized forms for CHIPS orders and has encouraged judges to use them. At the stage of the plea hearing, progress does appear to have been made in this regard. Whereas among the 2001 cases read for the case file review only 43 percent used a standardized form and no form was found in 10 percent. In the 2003 sample 58 percent of the judges used the standardized form for the order and no form was found in five percent. Thus, the increase in the utilization of the standardized forms represented movement away from both non-standardized forms and the use of no form.

Fact-Finding Hearings

As was noted previously, for cases in which one or more parties challenges one or more of the allegations within a CHIPS petition, the court must schedule a "fact-finding hearing" within 30 days of the plea hearing. For the CHIPS cohort of CY 2002, only 257 of the 4,604 cases (or 5.6 percent) showed evidence within CCAP of such fact-finding hearings (Table 4-7).[11]

Previously noted questions about the quality of the CCAP data mean that this number should be interpreted as a "lower bound" or "conservative" estimate of the true proportion of CHIPS cases that actually experience fact-finding hearings.

Of the 257 cases with documented fact-finding hearings, only 244 showed evidence of a prior plea hearing, even though the occurrence of a plea hearing is a necessary condition for a fact-finding hearing. While the number is no doubt conservative, the nature of the legal requirements makes it necessary to restrict this analysis to those 244 cases with documentation of both plea hearings and fact-finding hearings.

[11] The comparable percentage in 2001 was 5.2 percent.

TABLE 4-7

NUMBER OF CHIPS CASES OPENED DURING CY 2002 THAT HAD FACT-FINDING (FFH) AND PLEA HEARINGS (PLEAH) RECORDED IN CCAP, BY JUDICIAL DISTRICT

COUNTS

DISTRICT	N OF CASES OPENED	N OF CASES W/FFH	N OF CASES WITH FFH AND PLEAH
1	1,299	74	72
2	309	2	2
3	331	25	24
4	458	11	11
5	528	10	9
6	372	14	12
7	318	21	20
8	350	33	33
9	233	41	40
10	406	26	21
STATE	4,604	257	244

PERCENTAGES

DISTRICT	N OF CASES OPENED	% OF CASES W/FFH	% OF FFH W/PLEAH
1	1,299	5.7	97.3
2	309	0.6	100.0
3	331	7.6	96.0
4	458	2.4	100.0
5	528	1.9	90.0
6	372	3.8	85.7
7	318	6.6	95.2
8	350	9.4	100.0
9	233	17.6	97.6
10	406	6.4	80.8
STATE	4,604	5.6	94.9

Data on the timeliness of such hearings are presented in Table 4-8.

TABLE 4-8				
AVERAGE (MEAN) NUMBER OF DAYS BETWEEN FINAL PLEA HEARING AND FIRST FACT-FINDING HEARING AND NUMBER OF CASES WITH FIRST FACT-FINDING HEARING WITHIN 30 DAYS OF FINAL PLEA HEARING, BY JUDICIAL DISTRICT				
DISTRICT	**N OF CASES W/FFH AND PLEAH**	**MEAN**	**FIRST FF HEARING WITHIN 30 DAYS**	
			N	**%**
1	72	139.1	19	26.4
2	2	0.0	2	100.0
3	24	85.2	1	8.3
4	11	101.2	3	27.3
5	9	85.8	2	22.2
6	12	63.3	5	41.7
7	20	30.4	13	65.0
8	33	41.9	16	48.5
9	40	51.2	23	57.5
10	21	38.7	13	61.9
STATE	244	80.1	97	39.8

Only 97 of these 244 cases (or 40 percent) had initial fact-finding hearings within 30 days of the last plea hearing. The average length of time between the last plea hearing and the first fact-finding hearing is 80 days, well above the legal limit of 30 days.[12] As usual, there is considerable regional variation around this state average, but the particularly small numbers of cases involved in this analysis make the reliability and interpretation of such inter-district differences particularly questionable.

The data in Table 4-9 show that over two-thirds (69 percent) of these fact-finding hearings are concluded in one session, while the remaining 31 percent experienced one or more continuances.[13] So, even though it appears that the state courts have a difficult time getting the first fact-finding hearing held "on-time," once the hearing is finally held it is dispatched quite efficiently.

Even with the serious questions about data quality with this small case-base, it appears that contested CHIPS petitions and consequent fact-finding hearings place a considerable burden on the attempt to adjudicate CHIPS cases in a "timely fashion."

[12] In 2001, the average length of time between plea hearing and fact-finding hearing was 69 days, although the percentage of cases having fact-finding hearings within 30 days of the plea hearing was still 36 percent.

[13] In 2001, 68 percent of the fact-finding hearings were concluded in a single session.

TABLE 4-9					
NUMBER OF CONTINUANCES OF FACT-FINDING HEARINGS, BY JUDICIAL DISTRICT					
COUNTS					
		CONTINUANCES			
DISTRICT	N OF CASES	0	1	2	3+
1	72	38	24	7	3
2	2	2	0	0	0
3	24	15	6	2	1
4	11	6	5	0	0
5	9	3	6	0	0
6	12	9	2	0	1
7	20	17	3	0	0
8	33	27	6	0	0
9	40	35	5	0	0
10	21	16	2	0	3
STATE	244	142	59	9	8
PERCENTAGES					
		CONTINUANCES			
DISTRICT	TOTAL	0	1	2	3+
1	100.0	52.8	30.6	9.7	4.2
2	100.0	100.0	0.0	0.0	0.0
3	100.0	62.5	25.0	8.3	4.2
4	100.0	54.5	45.5	0.0	0.0
5	100.0	33.3	66.7	0.0	0.0
6	100.0	75.0	16.7	0.0	8.3
7	100.0	85.0	15.0	0.0	0.0
8	100.0	81.8	18.2	0.0	0.0
9	100.0	87.5	12.5	0.0	0.0
10	100.0	76.2	9.5	0.0	15.0
STATE	100.0	68.9	24.2	3.7	3.3

Dispositional Hearings

Timeliness

Unless it has been dismissed at some point in the process or resolved by means of a consent decree, the final phase in the adjudication of a CHIPS case is the dispositional hearing. Among the 4,604 cases which opened in CY 2002, 4,198 had a disposition. Table 4-5 shows that 3,897 cases had evidence in CCAP of one or more plea hearings. However, the last

column of Table 4-10 shows that among the cases with documented plea hearings, only 1,881 (or 48 percent) showed evidence in CCAP of one or more dispositional hearings.[14] As with plea hearings, this finding is surprising since it might have been expected that at least 90 percent of these cases would have showed evidence of dispositional hearings. Thus, again the analysis begins with a universe that may be incomplete.

TABLE 4-10

UNIVERSE OF CY 2002 CASES FOR THE ANALYSIS OF THE TIMELINESS OF DISPOSITIONAL HEARINGS, BY JUDICIAL DISTRICT

	CASES WITH:		
DISTRICT	DISPOSITIONAL ORDERS	PLEA HEARINGS	PLEA HEARINGS AND DISPOSITIONAL HEARINGS
1	1,280	1,208	687
2	281	223	56
3	278	229	97
4	392	410	200
5	469	478	283
6	327	282	106
7	277	248	119
8	310	326	126
9	193	213	72
10	391	280	135
STATE	4,198	3,897	1,881

Time requirements for dispositional hearings depend on the prior path taken by the CHIPS case. For cases with fact-finding hearings, the dispositional hearing is supposed to be held within 30 days of the fact-finding hearing. For cases without fact-finding hearings, the dispositional hearing should be held within 30 days of the plea hearing. Data on the mix of these two types of cases are shown in Table 4-11.

[14] This is higher than the 44 percent of cases with dispositional hearings in CY 2001.

TABLE 4-11						
CASES WITH DISPOSITIONAL HEARINGS BY PRESENCE OR ABSENCE OF FACT-FINDING HEARING AND JUDICIAL DISTRICT						
DISTRICT	**CASES WITH DISPO. HEARINGS**	**PLEA HEARING ONLY**			**PLEA HEARING AND FACT-FINDING HEARING**	
		N	**%**		**N**	**%**
1	687	624	90.8		63	9.2
2	56	56	100.0		0	0.0
3	97	90	92.8		7	7.2
4	200	190	95.0		10	5.0
5	283	280	98.9		3	1.1
6	106	102	96.2		4	3.8
7	119	105	88.2		14	11.8
8	126	109	86.5		17	13.5
9	72	45	62.5		27	37.5
10	135	119	88.1		16	11.9
STATE	1,881	1,720	91.4		161	8.6

Of the 1,881 cases with evidence in CCAP of a dispositional hearing, 1,720 (or 91 percent) showed evidence of a plea hearing only; 161 cases (or nine percent) had fact-finding hearings in addition to plea hearings. In the following analyses, these two types of cases will be treated separately.

Table 4-12 begins the analysis of cases without fact-finding hearings. Of the 1,720 cases of this type, 851 (or around 50 percent) had their first dispositional hearings within 30 days of their final plea hearings. The average duration between last plea hearing and first dispositional hearing was 52 days.[15]

[15] For 2001, the comparable figures were 54 days (on average) from final plea hearing to first dispositional hearing, with 44 percent of cases having their first dispositional hearing within 30 days of the plea hearing.

TABLE 4-12				
AVERAGE (MEAN) NUMBER OF DAYS BETWEEN FINAL PLEA HEARING AND FIRST DISPOSITIONAL HEARING AND NUMBER OF CASES WITH FIRST DISPOSITIONAL HEARING WITHIN 30 DAYS OF FINAL PLEA HEARING, BY JUDICIAL DISTRICT (CASES WITHOUT FACT-FINDING HEARINGS)				
DISTRICT	**N OF CASES**	**MEAN**	**FIRST DISPO. HEARING WITHIN 30 DAYS**	
			N	**%**
1	624	68.7	183	29.3
2	56	30.3	41	73.2
3	90	43.1	27	30.0
4	190	53.7	121	63.7
5	280	47.5	139	49.6
6	102	48.3	64	62.7
7	105	28.0	88	83.8
8	109	32.5	67	61.5
9	45	37.3	33	73.3
10	119	33.4	88	73.9
STATE	1,720	51.7	851	49.5

As with other hearings in the CHIPS adjudication process, dispositional hearings may be continued for a valid reason, and the data in Table 4-13 show that 74 percent of these hearings were concluded in a single session.[16]

TABLE 4-13					
NUMBER OF CONTINUANCES IN DISPOSITIONAL HEARINGS, BY JUDICIAL DISTRICT (CASES WITHOUT FACT-FINDING HEARINGS)					
COUNTS					
DISTRICT	**N OF CASES**	**CONTINUANCES**			
		0	**1**	**2**	**3+**
1	624	325	209	51	39
2	56	53	3	0	0
3	90	60	21	7	2
4	190	187	2	1	0
5	280	240	28	9	3
6	102	93	9	0	0
7	105	100	4	1	0

[16] In 2001, 71 percent of the dispositional hearings for cases without fact-finding hearings were concluded in a single session.

TABLE 4-13

NUMBER OF CONTINUANCES IN DISPOSITIONAL HEARINGS, BY JUDICIAL DISTRICT (CASES WITHOUT FACT-FINDING HEARINGS)

COUNTS					
DISTRICT	**CASES**	**CONTINUANCES**			
8	109		10	40	4
9	45	42	3	0	0
10	119	115	3	1	0
STATE	1,720	1,270	292	110	48
PERCENTAGES					
DISTRICT	**TOTAL**	**CONTINUANCES**			
		0	**1**	**2**	**3+**
1	100.0	52.1	33.5	8.2	6.3
2	100.0	94.6	5.4	0.0	0.0
3	100.0	66.7	23.3	7.8	2.2
4	100.0	98.4	1.1	0.5	0.0
5	100.0	85.7	10.0	3.2	1.1
6	100.0	91.2	8.8	0.0	0.0
7	100.0	95.2	3.8	1.0	0.0
8	100.0	50.5	9.2	36.7	3.7
9	100.0	93.3	6.7	0.0	0.0
10	100.0	96.6	2.5	0.8	0.0
STATE	100.0	73.8	17.0	6.4	2.8

For cases with fact-finding hearings, the 30-day time requirement for dispositional hearings is measured from the fact-finding hearing rather than the plea hearing. Table 4-14 shows that the average duration between the last fact-finding hearing and the first dispositional hearing is around 29 days, and 74 percent of the cases with fact-finding hearings have their first dispositional hearing with the 30-day limit.[17]

[17] In 2001, the average length of time between last fact-finding hearing and first dispositional hearing was around 27 days, with 77 percent of the cases having had their initial dispositional hearings within 30 days of the last fact-finding hearing.

TABLE 4-14				
AVERAGE (MEAN) NUMBER OF DAYS BETWEEN FINAL FACT-FINDING HEARING AND FIRST DISPOSITIONAL HEARING AND NUMBER OF CASES WITH FIRST DISPOSITIONAL HEARING WITHIN 30 DAYS OF FINAL FACT-FINDING HEARING, BY JUDICIAL DISTRICT (CASES WITH FACT-FINDING HEARINGS)				
DISTRICT	**N OF CASES**	**MEAN**	**FIRST DISPO. HEARING WITHIN 30 DAYS**	
			N	**%**
1	63	23.7	46	73.0
2	0	*	*	*
3	7	13.6	6	85.7
4	10	20.8	10	100.0
5	3	44.0	2	67.0
6	4	30.8	3	75.0
7	14	46.6	10	71.4
8	17	29.6	14	82.4
9	27	31.4	21	77.8
10	16	33.3	7	43.8
STATE	161	28.5	119	73.9

Table 4-15 shows that nearly three-quarters (70 percent) of the dispositional hearings that follow fact-finding hearings are completed in one session (comparable to the 74 percent for dispositional hearings that directly followed plea hearings).[18]

TABLE 4-15					
NUMBER OF CONTINUANCES IN DISPOSITIONAL HEARINGS, BY JUDICIAL DISTRICT (CASES WITH FACT-FINDING HEARINGS)					
COUNTS					
		CONTINUANCES			
DISTRICT	**N OF CASES**	**0**	**1**	**2**	**3+**
1	63	18	27	13	5
2	0	0	0	0	0
3	7	5	1	1	0
4	10	9	1	0	0
5	3	3	0	0	0

[18] This is up from 68 percent from the 2001 analysis.

TABLE 4-15					
NUMBER OF CONTINUANCES IN DISPOSITIONAL HEARINGS, BY JUDICIAL DISTRICT (CASES WITH FACT-FINDING HEARINGS)					
COUNTS					
		CONTINUANCES			
DISTRICT	N OF CASES	0	1	2	3+
6	4	4	0	0	0
7	14	14	0	0	0
8	17	17	0	0	0
9	27	26	1	0	0
10	16	16	0	0	0
STATE	161	112	30	14	5
PERCENTAGES					
		CONTINUANCES			
DISTRICT	TOTAL	0	1	2	3+
1	100.0	28.6	42.9	20.6	7.9
2	*	*	*	*	*
3	100.0	71.4	14.3	14.3	0.0
4	100.0	90.0	10.0	0.0	0.0
5	100.0	100.0	0.0	0.0	0.0
6	100.0	100.0	0.0	0.0	0.0
7	100.0	100.0	0.0	0.0	0.0
8	100.0	100.0	0.0	0.0	0.0
9	100.0	96.3	3.7	0.0	0.0
10	100.0	100.0	0.0	0.0	0.0
STATE	100.0	69.6	18.6	8.7	3.1

Dispositional Orders

Again, the case file review provides information not available in CCAP about the timeliness of the judge's dispositional order and about the forms used in making that order. While previous analyses showed that the signing of the orders on temporary physical custody hearings was apparently becoming slower, that is not the case with dispositional orders. For both the 2001 and 2003 samples, 72 percent of the orders were signed on the same day as the dispositional hearing. Progress occurred, however, among the cases where the order was signed sometime after the hearing. For the 2001 sample, it was not until the 26th day after the hearing that 90 percent of the cases had a signed order. In contrast, for the 2003 sample 90 percent had a signed order by the 15th day after the hearing.

It might be noted that this same pattern is not reflected in the timeliness of signing of the orders coming out of the permanency planning hearings. Among the 2001 sample, the case file review showed that 92 percent of the cases had the order from the permanency planning hearing signed the same day as the hearing. By the time of the 2003 sample this figure was down to 78 percent and the 90 percent level was not reached until 39 days after the hearing.

There are three standardized forms intended for the results of the dispositional hearing. Two are designed to record the results of consent decrees, one for cases where the children remain in their own homes and one for cases in which the children are removed. The third form is for dispositional orders which were not reached by means of a consent decree, and this is the form which is most often used.

The 2001 sample showed all consent decree cases using only non-standard forms because the standardized forms were not introduced until 2002. Sixty-nine percent of all the cases disposed in the 2001 sample used the dispositional order, while nearly five percent showed no form at all in the record. By 2003 nine percent of the cases were using the standard consent decree forms (representing 48 percent of the consent decree cases) and 79 percent were using the dispositional order form. Fewer than three percent were using no form at all. Thus, the total proportion of cases in which a standardized form was used rose from 69 percent to 88 percent, with about half of that increase from the introduction of standard forms for the consent decree and half from increased use of the dispositional order form.

Despite the fact that most of the requirements related to the child's eligibility for federal funding will have already been met by the court hearings early in the case and by the timeliness of hearings thereafter, the use of standardized forms has shown growth in all types of hearings. Whereas only 35 percent of the orders emerging from permanency planning hearings for the 2001 sample were on standardized forms, 83 percent of those for the 2003 sample were. Even for change of placement hearings, the percentage of cases using the standardized forms increased from 21 percent for the 2001 sample to 50 percent for the 2003 sample of cases.

Summary

In spite of the uncertainty around the precise numerical estimates, the preceding analyses do permit some general conclusions about timeliness in the processing of CHIPS cases. The picture that emerges is of a process that starts out more-or-less "on-time," but lags further behind at every subsequent stage of the process.

Fully, 92 percent of cases have their initial plea hearings within 30 days of the filing of the CHIPS petition. However, only 53 percent of plea hearings are concluded in a single session, and these continuances slow the process. Getting from the plea hearing to the dispositional hearing is an even more time-consuming process, especially if the allegations in the CHIPS petition are contested and a fact-finding hearing is required. Even in the absence of a fact-finding hearing, only 50 percent of CHIPS cases get to their first dispositional hearings within 30 days of the plea hearing. In cases with fact-finding hearings, only 40 percent of the cases have their first fact-finding hearings within 30 days of the final plea hearing, although 74 percent of these cases get to their first dispositional hearings "on-time" once the fact-finding hearing has concluded.

Regardless of which path a CHIPS case takes, however, any of the estimates presented in this analysis suggest that the average CHIPS case takes much longer to process than the strict requirements of Wisconsin law would imply. These requirements would suggest a duration of 60 days from CHIPS petition to dispositional hearing for cases without fact-finding hearings, and an additional 30 days for cases with fact-finding hearings.

Chapter 5

Compliance with Federal Child Welfare Laws

Scope of Chapter

This chapter examines information obtained by court observations, interviews and the case file review related to the courts' compliance with federal requirements. The issues on which the discussion focuses include contrary to the welfare of the child determinations, reasonable efforts determinations and the timeliness of termination proceedings. Information is also provided on local practices and procedures designed to facilitate compliance with ASFA and Title IV-E.

Key Findings

- Between 2001 and 2003 there has been a discernable and sometimes substantial improvement in compliance with federal requirements.

  Contrary to the Welfare

  - ASFA regulations require the judge to make a finding at the first hearing that it is contrary to the child's welfare to remain in the home. In 2003, compliance improved over 2001, moving from 90 percent to 99 percent, while the percentage of findings which were documented in detail rose from 90 percent to 94 percent.

  Reasonable Efforts

  - *Temporary physical custody hearing*: Over 96 percent of the temporary custody hearings resulted in a reasonable efforts finding in 2003 and over 94 percent occurred within 60 days of removal as required. This compares to over 75 percent with findings in 2001 and over 97 percent occurring within 60 days.

  - *Dispositional hearing*: Here the differences between 2001 and 2003 are negligible, whereby both had results around 97 percent in compliance.

- *Permanency planning hearing*: In 2001 a reasonable efforts determination was made at the initial permanency hearing in over 90 percent of the cases compared to over 95 percent in 2003.

Permanency Planning Hearings

- Permanency planning hearings are required within 12 months of the child's removal and every twelve months thereafter. Compliance rose from 50 percent in 2001 to 77 percent in 2003 for the first hearing occurring with 12 months.

Termination of Parental Rights

- Federal law requires that when a child has been placed outside of the home for 15 of 22 consecutive months, a petition for termination of parental rights be filed or that the court document that an exception is appropriate. Between 2001 and 2003, compliance rose from nearly 14 percent having a petition and another 35 percent having exceptions documented (49 percent compliance) to nearly 10 percent having a petition and over 70 percent having exceptions documented (80 percent compliance).

- Court personnel are clear that CHIPS cases have top priority because of the ASFA and Title IV-E requirements. However, there was no consensus on the best practices to facilitate compliance with those requirements. In addition the most common judgment of those interviewed is that while the requirements may or may not improve the timeliness of decisions, they do not add substantive meaning to the proceedings or improve the quality of decisions.

Discussion

Compliance with Specific ASFA and Title IV-E Requirements

Contrary to the Welfare of the Child Determinations

Federal regulations require that the first court hearing ordering a child into out-of-home placement result in a formal, child-specific determination that remaining in his or her own home would be contrary to the welfare of the child. If that determination is not made at the first hearing, the child is not eligible for federal Title IV-E funding at any point during that removal episode.

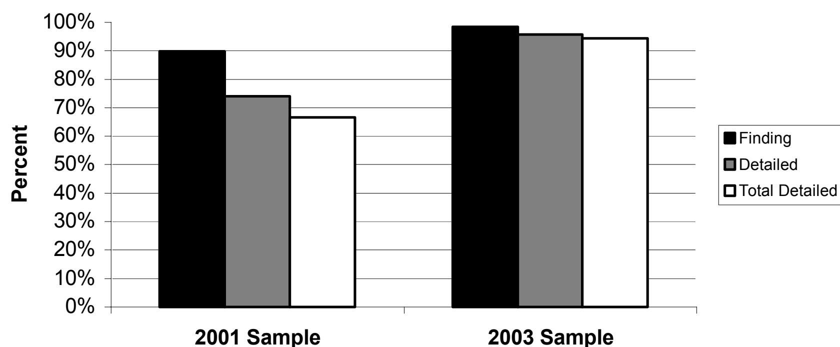
The study used two sources of data for this finding; the court observation and case file review. Court proceedings were observed in the thirteen sample counties to supplement the primary data collected through the case file review. Of the 113 different hearings observed, ten were identified as temporary physical custody hearings, generally the first hearing for a child who has been removed from the home. Court observers noted that the judge did make a finding that it was contrary to the child's welfare to remain in the home in seven of those hearings. In addition, the observers deemed those determinations to be child-specific in two of those hearings, that is they provided a rationale particular to the situation. There was no substantial difference during the observations between larger and smaller counties.

For the case review, as explained in the project methodology, two samples were drawn. The first involved cases entering the court system during calendar year 2001. The second sample consisted of cases that were adjudicated during calendar year 2003. By analyzing both groups, HZA is able to detect changes in practice and outcomes resulting from state legislation implementing ASFA effective July 2002.

The case review examined the most recent removal episode for each child who was placed out of the home. Detailed information was obtained on the most recent hearing of each type which had occurred in the case. While the most recent temporary custody hearing or plea hearing is not always the first hearing and therefore not always relevant for compliance with the requirement for a contrary to the child's welfare finding, the most recent hearing, as is shown in Figure 5-1, provides a fair representation of what happens at the first hearing. This is also a topic on which there is a fairly strong difference between the results from the 2001 sample and those from the 2003 sample.

Figure 5-1

Compliance with the Contrary to the Welfare Language Requirement



For the 2001 sample, 91.4 percent of the most recent temporary physical custody hearings in which the child was ordered into temporary custody had the contrary to the child's welfare language and among these 71.9 percent had language that was not only compliant but also detailed. The frequency with which detailed findings are found provides a measure of the degree to which the courts move beyond mere technical compliance. In this instance, one may conclude that, in at least 65.7 percent of the cases, judges documented that they had given serious, substantive consideration to the question of whether the removal from the home was necessary for the child's welfare.

When only those hearings which could be determined to be the first hearing are counted, the percentage of judges that documented with the appropriate language is 89.9 percent, with 74.1 percent of those showing language which was detailed. Thus, the results are roughly the same whether one examines the most recent hearing or the first hearing.

For the 2003 cohort, the results were decidedly better, both in relation to technical compliance and in relation to documentation of more thorough consideration of the issue. In 98.5 percent of the temporary custody hearings which could be determined to be the first hearing, the contrary to the welfare language was present and in 95.7 percent of those cases the language was both compliant and detailed. This means that 94.3 percent of all the cases were documented to have had a thorough review of the necessity of removing the child from the home to protect the child's welfare.

In each of the 2001 and 2003 samples there was only a handful of cases in which there was no order for placement at a temporary custody hearing but the child was instead placed as a result of the dispositional hearing. In these instances, the dispositional hearing would have been the first hearing after removal and therefore the one in which the contrary to the welfare language would have been required. In all of these cases the language was contained in the dispositional order.

Reasonable Efforts Findings

A second requirement related to Title IV-E eligibility is that the court make a finding that reasonable efforts have been made to prevent the child's placement into out-of-home care and that reasonable efforts have been made to achieve the child's permanency goal. The first of these determinations is required within 60 days of the child's removal and continued findings are required at later dispositional and permanency planning hearings. Because eligibility for Title IV-E does not begin until this finding is made by the court, many states require that the courts include that language in the first hearing. Because eligibility for Title IV-E does not begin until this finding is made by the court, many states require

that the courts include that language in the first hearing. While this is not an absolute requirement, a finding that reasonable efforts had been made to prevent the child's removal from the home at the first hearing ensures the child's eligibility and is generally considered the safest approach.

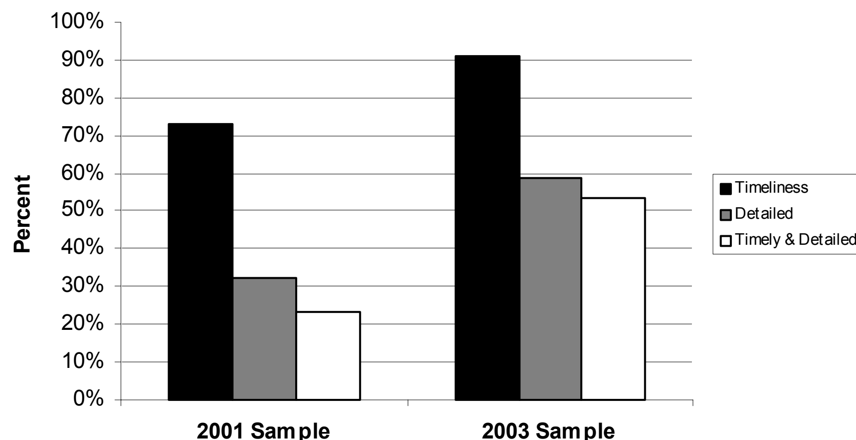
At Temporary Custody Hearings

There were ten temporary physical custody hearings at which observers were present. Reasonable efforts to prevent the removal or to achieve the permanency goal determinations were noted at six of these. As with the contrary to the child's welfare findings, this does not directly imply a 40 percent lack of compliance with the reasonable efforts provisions. It does, however, suggest that in many of the hearings there is not likely to be an open discussion regarding the level of efforts which have been made, either to prevent the removal or to achieve the permanency goal.

Within the larger sample provided by the case file review, there are again obvious differences in the results between the 2001 and 2003 samples as shown in Figure 5-2. For the 2001 sample, the court included reasonable efforts to prevent removal from the home in 75.2 percent of the temporary custody hearings and nearly all of these, 97.4 percent, occurred within 60 days of the child's placement, meaning that for 73.2 percent of the cases, this part of the requirement was met at the temporary custody hearing. However, among those orders occurring within 60 days, the finding was documented only through a check box in 67.9 percent of the cases. Another 6.0 percent were documented only with detailed child-specific information and 26.1 percent with a combination of a checked box and detailed child-specific information.

Figure 5-2

Compliance with the Reasonable Efforts Requirement: Temporary Custody Hearings



For the 2003 sample, 96.6 percent of the temporary custody hearings resulted in a finding regarding reasonable efforts and 94.3 percent of these occurred within 60 days of removal, meaning that 91.1 percent of the cases had such a finding at the temporary custody hearing and within 60 days of the child's removal. Moreover, the percentage of those occurring within 60 days in which the reasonable efforts were documented solely through a check box fell to 41.5 percent, with 3.0 percent documented solely through detailed child-specific information and 55.5 percent documented with a combination of the two methods.

When looking at the method of documentation of the reasonable efforts finding, there are some notable differences among counties of different sizes. For the 2001 sample, there was an almost perfect correlation between county size and use of a checked box as the sole means of documentation. In Milwaukee, 88 percent of the cases were documented this way, in other large-sized counties 77 percent, in medium-sized counties 11 percent and in small counties 30 percent. Only the medium-sized counties break the pattern and they do so by ignoring the check box in 30 percent of the cases and using only a detailed description of the efforts which have been made.

For the 2003 sample only Milwaukee is using a check box as the sole means of documentation, and the judges there are using that as the only documentation in 95 percent of the cases. In all other county size groups, a combination of the check box and a detailed description is used in more than 90 percent of the cases.

The other factor, beyond county size, which may have an impact on the documentation of reasonable efforts is the utilization of the standardized forms. Among the cases in the 2003 sample, none which used the standardized form for the temporary physical custody order used a check box alone as documentation. This contrasts with 41 percent of those in the 2001 sample which used the standardized form. In addition, use of a non-standardized form appears to be highly correlated with use of just a box for documentation, increasing from 83 percent of those using a non-standard form for the 2001 cases to 93 percent for the 2003 cases.

The obvious question this analysis raises has to do with the relationship between county size and utilization of the standardized forms. For the temporary physical custody hearings, nearly all of the changes in the utilization of standard forms between the 2001 and 2003 samples have come in the medium and smaller sized counties. Milwaukee shows non-standard forms for over 90 percent of both samples, while the other large counties show use of the standard forms for approximately 90 percent of both samples. The medium and smaller sized counties, on the other hand, showed 54 and 60 percent utilization, respectively, of the standard

forms for the 2001 sample and 87 and 99 percent, respectively for the 2003 sample. Thus, by the time of the 2003 sample, utilization of the standard form, county size and method of documentation were all so closely correlated, it is not possible to determine which are causes and which are effects.

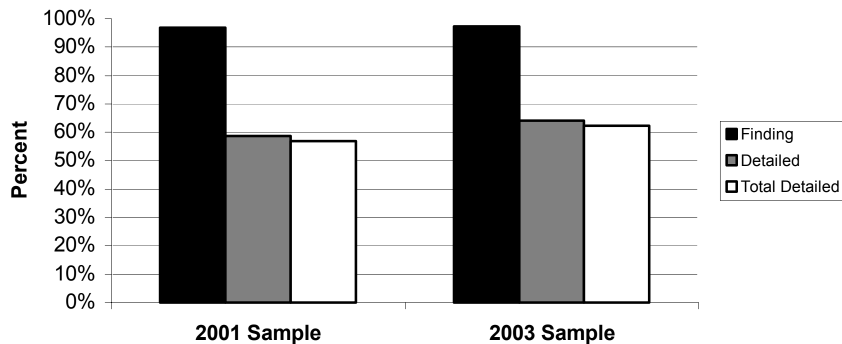
At Dispositional Hearings

Reasonable efforts findings are also made at the dispositional hearing, although the 60 day time frame is no longer relevant if a finding has already been made at the temporary custody hearing. Thus, the issue here is simply whether the finding was made and whether the language is detailed.

As shown in Figure 5-3, for the 2001 sample, 96.9 percent of the dispositional hearings resulted in a finding of reasonable efforts, with 41.2 percent of those documented solely through a checked box, 13.5 percent through detailed child-specific information and 45.2 percent through a combination of the two. The 2003 sample again shows improved performance, chiefly related to the nature of the documentation. Here, 97.3 percent of the hearings resulted in a finding of reasonable efforts with 36.1 percent documented only through a checked box, 1.8 percent with detailed child-specific information and 62.2 percent through a combination of the two.

Figure 5-3

Compliance with the Reasonable Efforts Requirement: Dispositional Hearings



These findings are not essentially different from those found with the temporary physical custody hearings. Milwaukee continues to use only check boxes as documentation of reasonable efforts; other counties consistently use a combination of the check box and a detailed explanation. In addition, utilization of standard forms is associated with a lesser likelihood of using only a check box, although not nearly as closely

associated as was the case for the temporary physical custody hearing. The difference lies in the correlation between county size and utilization of the standard forms. For the dispositional order, counties of all sizes are roughly equally likely to use the standard forms. Most size groupings show about 80 percent of the orders written on these forms, with only the medium-sized counties moving over the 90 percent mark. If one were to draw an overall conclusion on the subject from these data, it would be that use of the standard forms encourages more complete recording of reasonable efforts determinations, but ultimately county policy and practice, both in relation to the use of standard forms and in relation to the level of documentation desired, determines what is recorded.

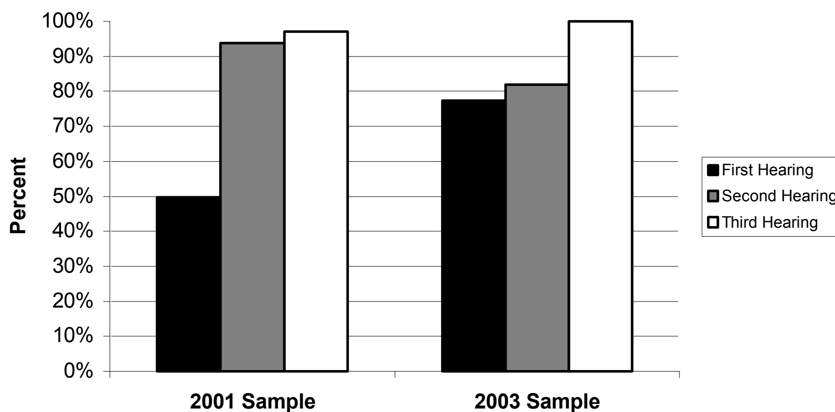
At Permanency Planning Hearings

Permanency planning hearings are required within 12 months of the child's removal from the home and every twelve months thereafter. Performance for both samples is better for the subsequent hearings than for the first one, and those in the 2003 sample show dramatically better results than those entering the system in 2001.

For the 2001 sample only 49.7 percent of the cases show the initial permanency planning hearing to have occurred within 12 months of removal, compared to 77.4 percent for the 2003 sample, see Figure 5-4. The time between the first and second permanency planning hearings was 12 months or less in 93.7 percent of the cases for the 2001 sample and 81.9 percent of the cases for the 2003 sample. The third permanency planning hearing occurred within 12 months of the second in 97.1 percent of the 2001 sample cases and in all of the few 2003 sample cases which remained in care sufficiently long to require a third permanency planning hearing.

Figure 5-4

Timeliness of Permanency Planning Hearings

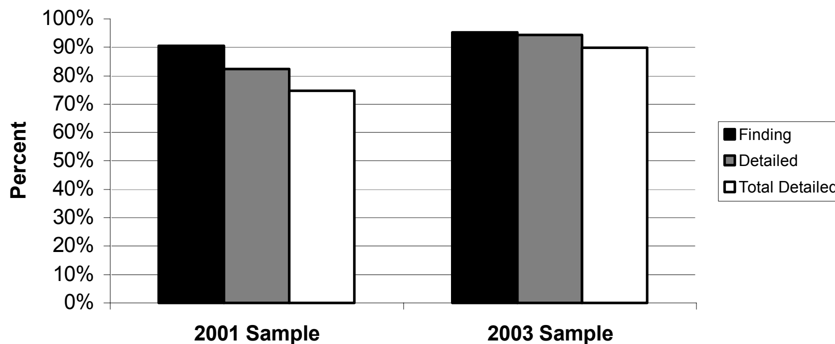


Among those children remaining in care long enough to have at least one permanency planning hearing, the 2001 sample of the case review showed that the court made a finding at the most recent permanency planning hearing regarding reasonable efforts to achieve the goals of the permanency plan in 90.6 percent of the cases. About one in six of these, 17.6 percent, were documented only through a checked box on a form while 19.5 percent had no checked box but detailed child-specific information and 62.9 percent were documented by both means.

For children placed outside the home in the 2003 sample, the court made a finding regarding reasonable efforts to achieve the goals of the permanency plan in 95.2 percent of the cases, with only 5.6 percent of those findings documented solely through a checked box, another 5.6 percent solely through detailed child-specific information and 88.8 percent through a combination of the two. In this instance, the improvement from the 2001 sample to the 2003 sample is in both the presence of the finding and in the level of detail, as shown in Figure 5-5.

Figure 5-5

Compliance with the Reasonable Efforts Requirement: Permanency Planning Hearings



The largest changes in the method of recording reasonable efforts determinations at the permanency planning hearing occurred in Milwaukee and in the medium-sized counties. Whereas in the 2001 sample, Milwaukee used a check box as the sole means of documentation in nearly a quarter of the cases, it did so in less than 10 percent for the 2003 sample. In the medium-sized counties the check box was used without elaboration in nearly 22 percent of the cases in 2001 but in fewer than eight percent in 2003. By the time the 2003 cases reached the permanency planning hearing, counties in all groups were using the combination of a check box and detailed information in more than 85 percent of the cases.

The major changes related to utilization of the standard forms which occurred between the permanency planning hearings for the 2001 and 2003 samples was the complete elimination of orders without any form and the virtual elimination of non-standard forms. In fact, in 2001 the standard forms did not exist, which is presumably what led to the increase in documentation through both check boxes and detailed information.

Termination of Parental Rights

Initiating the Petition

Federal law requires that when a child has been placed outside of the home for 15 of 22 consecutive months, a petition for termination of parental rights be filed or that an exception be documented. The court records are not always adequate for determining the exact periods during which a child has been out of the home, so there are a number of cases in which it was impossible to determine if the child has been out of the home for 15 of 22 consecutive months. For the 2001 sample this amounted to 16.6 percent of all the cases and for the 2003 sample 3.7 percent.

For the remaining 2001 sample cases, there was sufficient information in the court records of 80.2 percent of the children to indicate that they had been outside the home for 15 of 22 months. Among these 13.8 percent had a petition for termination of parental rights filed. Another 51.3 percent of the cases had exceptions documented, and 34.9 percent had neither a petition nor an exception. It should be noted, however, that exceptions are made by the child welfare agency and may not be documented in the file, even though one would expect the court to inquire about why no termination petition was being submitted. Among the 2003 sample cases, 29.4 percent of the cases had been out of the home for 15 of 22 consecutive months, with 9.7 percent of these having a petition for termination of parental rights filed. Another 70.4 percent had exceptions documented and 19.8 percent had neither a petition nor an exception.

These results produce two rather contradictory findings. First, the percentage of cases reaching the 15th month in care who have termination petitions declined from the 2001 sample to the 2003 sample, meaning that the obvious intent of the requirement is being met in fewer cases than in the past. On the other hand, the number of cases which are technically out of compliance, i.e., those in which there is neither a petition for termination of parental rights nor a documented exception, has declined, being cut nearly in half. It seems clear that both the child welfare agency and the courts are making a judgment that the intent of the requirement is wrong for a substantial number of cases. They are increasingly meeting the technicality of the requirement without meeting its substance. While this analysis will not argue with that judgment, it should be noted that this

approach will continue to present issues with future Child and Family Service Reviews in the items related to adoption. Specifically, it will be difficult to meet the 24-month measure, i.e., the requirement that 32 percent of all adoptions occur within 24 months of the child's removal from the home, in light of these delays.

Processing the Termination Petition

Once the petition for termination of parental rights (TPR) or adoption is filed with the court, the CHIPS case becomes a separate "TP" or "AD/JA" case, with its own distinct case number. Within CCAP there are no automatic linkages between the CHIPS case and any corresponding TP or AD/JA case. In order to be able to study these processes for this analysis, staff from the Director of the State's Courts, Office Children's Court Improvement Program did manual searches intra-county (not statewide) for any TP or adoption cases that might be associated with the CHIPS cases selected for the case-review samples. For the sample of children who began the CHIPS process during calendar year 2001, the manual searches found that 11.7 percent had TP cases associated with them and 5.5 percent ended in an adoption. For the sample of children adjudicated during calendar year 2003, the corresponding figures were 11.1 percent and 2.8 percent. The difference between the two samples in the percentage of cases going to adoption is probably due to the fact that the 2003 cases have been in the system for a shorter period of time than the 2001 cases, and it is to be expected that about two years from now, roughly five or six percent of the 2003 cases will have ended in adoptions. In fact, there may still be additional adoptions among the 2001 sample.

The data in Table 5-1 show that the average duration between the initial filing of the CHIPS petition to the filing of a TPR petition was 659 days for the 2001 sample and 338 days for the 2003 sample. When all relevant cases from the 2003 sample have had termination petitions filed, it may be expected that the median time for those cases will approximately equal that for the 2001 sample, nearly two years. For both cohorts it took around two months from the filing of the TPR petition to the issuance of a TPR order by the court.

TABLE 5-1

LENGTH (IN DAYS) OF VARIOUS TIME INTERVALS

	MEDIAN NUMBER OF DAYS	
INTERVAL	**2001 SAMPLE**	**2003 SAMPLE**
CHIPS Petition to TPR Petition	659.2	338.0
TPR Petition to TPR Order	59.0	65.0

Table 5-2 shows that for the 2001 sample over one-quarter of the petitions were for one or the other parent, while only 12 percent of the 2003 sample petitions targeted only one parent. A reasonable conclusion is that when the petition is filed earlier in the child's stay in care it is likely to reflect a more decisive turn towards adoption as the permanency goal. Termination of one parent's rights is not adequate for adoption (with certain exceptions specified in Wisconsin's Children's Code) and may reflect either moving towards eliminating one parent's connections to the child while maintaining the other's or a simple testing of the likelihood of success with the termination effort.

TABLE 5-2

TERMINATION PETITION BY PARENT

	2001 ENTRY	2003 EXIT
PETITION SEEKS TERMINATION OF PARENTAL RIGHTS OF:	**%**	**%**
Mother	19.1	6.5
Father	7.5	5.8
Both mother and father	73.4	87.8
Total	100.0	100.0

As shown in Table 5-3, two-thirds of the petitions involve involuntary terminations of parental rights for both parents. For the 2001 sample, one in five petitions were voluntary for both parents, but that figure falls to one in twelve for the 2003 sample, suggesting that voluntary relinquishments of parental rights may be more likely to occur later in the process, at least if it affects both parents. On the other hand, a relatively high percentage of the 2003 sample, 21 percent, involved voluntary petitions for the mother but involuntary petitions for the father. This may be a function of the level of involvement, or rather the lack of involvement, of many fathers in child welfare cases. When it is determined early on that the mother will not be able to care for the children and that the father is uninvolved and especially when his whereabouts are not known, one logical means of proceeding is to obtain a voluntary relinquishment from the mother and to proceed with an involuntary termination against the absent father.

TABLE 5-3		
VOLUNTARY/INVOLUNTARY STATUS OF TPR		
	2001 SAMPLE	**2003 SAMPLE**
TPR PETITION IS:	**%**	**%**
Voluntary for both parents	21.2	8.0
Voluntary for mother, involuntary for father	7.9	21.1
Voluntary for father, involuntary for mother	4.7	4.9
Involuntary for both parents	66.2	66.1
Total	100.0	100.0

This speculation is reinforced by the examination of which parents receive notice of the termination. As shown in Tables 5-4 and 5-5, in both samples, mothers are more likely to receive notice of the termination, while it is more likely for the record not to make clear whether the father received notice. Moreover, the probability that fathers either did not receive notice or that the record is unclear on the matter increased sharply between the 2001 sample and the 2003 sample, with the latter consisting largely of cases where termination proceedings were begun relatively early in the child's tenure in care.

TABLE 5-4		
RECEIPT OF NOTICE OR SUMMONS BY MOTHER REGARDING TPR PETITION AND TPR HEARING (FORM JC-1633, JC-1635, or JD-1724)		
	2001 SAMPLE	**2003 SAMPLE**
MOTHER HAS RECEIVED NOTICE:	**%**	**%**
Yes	73.2	79.6
No	9.5	0.0
Can't determine	17.4	20.4
Total	100.0	100.0

TABLE 5-5		
RECEIPT OF NOTICE OR SUMMONS BY FATHER REGARDING TPR PETITION AND TPR HEARING (FORM JC-1633, JC-1635, or JD-1724)		
	2001 SAMPLE	**2003 SAMPLE**
FATHER HAS RECEIVED NOTICE:	**%**	**%**
Yes	69.0	55.6
No	9.1	14.3
Can't determine	21.9	30.1
Total	100.0	100.0

Between the 2001 and the 2003 cases, there was a slight increase in the use of the standardized form for the petition, Table 5-6, with all of the increase attributable to the use of some form. In both samples, however, the standardized form is used in more than 90 percent of the cases, suggesting that this is one area in which the standardization has achieved almost universal acceptance.

TABLE 5-6

USE OF STANDARD FORM JC-1630 (PETITION FOR TERMINATION OF PARENTAL RIGHTS)

	2001 SAMPLE	2003 SAMPLE
RESPONSE	**%**	**%**
Yes	93.6	97.0
No	3.2	3.0
No, no form was found	3.2	0.0
Total	100.0	100.0

This pattern is repeated with the TPR orders. As Tables 5-7 and 5-8 show, most orders were done with the standardized form in 2001 and the utilization increased by 2003. In fact, for the small group of voluntary terminations, all used the standardized form in 2003.

TABLE 5-7

USE OF STANDARD FORM JC-1638 (ORDER CONCERNING TERMINATION OF PARENTAL RIGHTS [VOLUNTARY])

	2001 SAMPLE	2003 SAMPLE
	%	**%**
Yes	77.0	100.0
No	23.0	0.0
Total	100.0	100.0

TABLE 5-8

STANDARD FORM JC-1639 (ORDER CONCERNING TERMINATION OF PARENTAL RIGHTS [INVOLUNTARY]) INCLUDED

	2001 SAMPLE	2003 SAMPLE
	%	**%**
Yes	70.1	84.8
No	29.9	15.2
Total	100.0	100.0

As might be expected, the 2001 sample shows far more involuntary cases with permanency plans than do the less formal voluntary cases. Please see Tables 5-9 and 5-10. This is, however, another instance in which timing seems to play a role. The percentage of involuntary terminations with a permanency plan fell sharply between the two samples, perhaps because the time for the permanency planning hearing had not yet occurred. It is less clear why there should have been more permanency plans for voluntary terminations among the 2003 sample cases, but it could be that the process is becoming more formalized.

TABLE 5-9

PERMANENCY PLAN IN PLACE FOR THE CHILD (VOLUNTARY TERMINATION)

	2001 SAMPLE	2003 SAMPLE
	%	%
Yes	49.8	68.3
No	50.2	31.7
Total	100.0	100.0

TABLE 5-10

PERMANENCY PLAN IN PLACE FOR THE CHILD (INVOLUNTARY TERMINATION)

	2001 SAMPLE	2003 SAMPLE
	%	%
Yes	83.9	57.5
No	16.1	42.5
Total	100.0	100.0

Both samples show that over half of the petitions did not result in a trial, either before a jury or before the court. When trials did occur, they were more likely to be to the court for the 2001 sample and to a jury for the 2003 sample as illustrated in Tables 5-15. Again, this may have something to do with the dynamics of timing. Parents whose parental rights are petitioned for termination early in the child's stay in care may be more likely to seek a jury trial.

TABLE 5-11		
HOW TPR MATTER WAS TRIED		
	2001 SAMPLE	**2003 SAMPLE**
	%	**%**
Jury	6.9	25.1
Court	30.2	22.4
Neither	57.2	52.5
Can't determine	5.7	0.0
Total	100.0	100.0

For both the 2001 and 2003 samples, just under one in five termination petitions is dismissed against either the mother or the father or both. Table 5-16 reveals are some differences between the two samples, but none is sufficiently large to allow a pattern to be discerned.

TABLE 5-12		
DISMISSAL OF TERMINATION PETITION BY PARENT		
	2001 SAMPLE	**2003 SAMPLE**
	%	**%**
Mother	10.8	0.0
Father	7.0	9.3
Both mother and father	0.0	5.5
Neither parent	82.3	85.2
Total	100.0	100.0

Adoption

All analyses of the adoption cases need to be interpreted with care. Between the two samples, there were only 22 adoption cases in the case file review, 15 from the 2001 sample and seven from the 2003 sample. The small sample sizes make all results unreliable and comparisons between the two are sufficiently meaningless that only results from the 2001 sample will be shown.

Table 5-17 shows the length of time between various events. The average length of time between the initial filing of the CHIPS petition and the filing of a petition for adoption (AD) was 750 days. Adoption petitions followed TPR orders by an average of 69 days. It then took an average of 22 days from the filing of the petition for adoption to the adoption hearing. Overall, it took an average of 772 days (over two years) from the initial filing of the CHIPS petition to the order for adoption.

TABLE 5-13	
LENGTH (IN DAYS) OF VARIOUS TIME INTERVALS	
	MEDIAN NUMBER OF DAYS
INTERVAL	2001 SAMPLE
CHIPS Petition to AD Petition	750.0
TPR Order to AD Petition	69.0
AD Petition to AD Hearing	22.0
AD Hearing to AD Order	0.0
CHIPS Petition to AD Order	772.0

As with the petitions for termination of parental rights, it appears that the standardized forms have achieved nearly universal acceptance, as shown in Table 5-18. Over 90 percent of the petitions for adoption were completed on those forms. In this instance, however, the same level of acceptance was found for the standard form for the adoption order itself, Table 5-19.

TABLE 5-14	
USE OF A STANDARD PETITION FOR ADOPTION (FORM JC-1645)	
	2001 SAMPLE
RESPONSE	%
Yes	92.4
No	7.6
Total	100.0

TABLE 5-15	
USE OF A STANDARD ORDER FOR ADOPTION (FORM JC-1647)	
	2001 SAMPLE
RESPONSE	%
Yes	92.4
No	7.6
Total	100.0

Local Practices to Facilitate Compliance with ASFA and Title IV-E

All interviewed parties are clear that CHIPS cases have top priority because of the ASFA and Title IV-E requirements on them. There was no consensus on the best practices to facilitate compliance with those requirements. However, many counties noted that ASFA practices and procedures have formalized what has occurred for years and have not presented additional barriers.

Many courts use the CCAP Event and Activity report to monitor their timeliness on all cases, with special attention to CHIPS cases. In some courts, the district attorney's office tracks and informs parties of relevant dates while court clerks take on that task for other Courts, making sure that pre-trial hearings are held one month in advance of the permanency plan hearings and that disposition hearings are placed on the calendar within the time limits. One common practice across many counties is the use of common forms that specifically address the contrary to the welfare and reasonable efforts language required by ASFA. Additionally, some counties hold meetings on a regular basis between judges and social workers to address issues related to ASFA. As a result, the judges and other parties are more aware of the language and make special efforts to ensure that the appropriate findings are made.

In some counties, it was noted that the notifications regarding 15 or 22 months, permanency plan requirements, and the consequences related to TPR have created a climate of expected compliance with the case plan to move the processes more quickly than before. However, at least some of the judges, guardians *ad litem* and district attorneys believe that the ASFA language has added nothing substantive to the hearings or to the decision making. As one party put it, what used to be a five minute hearing is now a fifteen minute hearing because the judge is reading aloud the required language. Again though, parties agree that the judges were already attending to the issues pointed to by the language.

The net judgment is that the Courts ensure compliance through use of standard language and while the federal requirements may or may not improve timeliness, many of the permanency requirements in particular are seen as formalistic and without substance.

Chapter 6

Indian Child Welfare Act

Scope of Chapter

This chapter examines the relationship between state and tribal courts, the familiarity of the courts with the Indian Child Welfare Act (ICWA) and its requirements, and the treatment of Native American parties in state court in terms of representation and opportunities for a full and adequate hearing.

Information was drawn from the case file review, court observations and interviews conducted both within the 13 sample counties and with tribal groups across the state including members of the Bad River Band of Lake Superior Chippewas, the Ho-Chunk Nation, the Lac du Flambeau Chippewa Community, the Oneida Nation Appeals Commission, the Red Cliff Band of Lake Superior Chippewas, and the Stockbridge-Munsee Mohican Nation.

Key Findings

- A large percentage of cases do not contain information on whether the child was subject to ICWA, including more than 40 percent for both the 2001 and 2003 samples at the point of the CHIPS petition.

- At the dispositional hearing stage, 93 percent of the 2001 sample cases had no indication of ICWA; however, this improved when looking at the 2003 sample where only 49 percent lacked ICWA information.

- The case file review validates information received from interviews and court observations that tribal representatives rarely attend proceedings in state court for Native American children. Discrepancies exist however between sources of information on providing notice. While the case file review shows that notice is always provided, some people reported they never see the tribes receiving notice.

Discussion

Applicability of Act

From the case file review for the 2001 sample the CHIPS petition indicated that the child was subject to the provisions of the Indian Child Welfare Act in 1.4 percent of the cases in which there was a petition. For another 42.3 percent of the cases the petition indicated that the child was not subject to ICWA, while for 12.3 percent the issue was noted as unascertainable. No indication of whether ICWA applies could be found in the remaining 44 percent of the cases.

For the 2003 sample the results are not substantially different. Only 2.1 percent of the petitions indicated the child was subject to ICWA, while 41.9 percent indicated that the child was not. In 8.5 percent of the cases the record indicated that ICWA applicability was unascertainable and in nearly half, 47.5 percent, nothing existed in the record about ICWA.

There is a difference in results when the analysis separates Milwaukee from the remainder of the state, but the basic trends remain the same. Without Milwaukee, only 25 percent (instead of 44 percent) of the 2001 records and only 32 percent (instead of 47.5 percent) of the 2003 records show no indication of whether ICWA applies. Nearly all of the difference between Milwaukee and the rest of the state, however, appears in the distribution of cases between the categories of the child "not being subject to ICWA" and "nothing indicated." In other words, nearly identical percentage of children are identified as being subject to ICWA, whether the case is in Milwaukee or elsewhere, and only the recording of whether the question was asked seems to be different.

At the point of the dispositional hearing, 93.1 percent of the 2001 sample cases showed no indication regarding ICWA. In 5.4 percent of the cases the record indicated that ICWA did not apply and in less than two percent (1.5 percent) that its provisions had been followed. For the 2003 sample, improvement was evident with only 48.7 percent of the records showing no indication of ICWA. Another 46.1 percent of the records indicated that ICWA was not applicable and 5.2 percent of the records showed that ICWA provisions were applicable and had been followed.

The interviews conducted within the counties produced similar results to those noted in the case file review; namely, children were seldom subject to the provisions of ICWA.

During the court observations, observers noted whether ICWA was raised during the proceedings. As Table 6-1 indicates, ICWA was rarely raised, no matter the hearing type.

TABLE 6-1		
INDIAN CHILD WELFARE ACT RAISED BY OBSERVED HEARINGS[19]		
HEARING TYPE	**RAISED**	**NOT RAISED**
Temporary Physical Custody	1	7
Initial Appearance	3	30
Pre-trial	0	4
Fact Finding/Fact Trial	0	1
Disposition	1	17
Permanency Plan Hearing	0	20
Extension	0	9
Change of Placement	1	8
Revision	0	10
Miscellaneous		
Review/Status	2	7
Motion	0	2
Other	0	7
Total Observed	8	122

Providing Notice

Among the few cases in the 2001 sample in which the child was deemed subject to the terms of the Indian Child Welfare Act, all tribal representatives received notice of the permanency planning hearing and always by mail. However, none of the representatives appeared at the hearing. In the 2003 sample, where a few more cases were deemed to be subject to ICWA, 81.8 percent of the cases showed notice of the permanency planning given to tribal representatives, all of it again by mail. However, in only 20.7 percent of the cases did a tribal representative attend the most recent permanency planning hearing.

Differences within and across counties were evidenced among people interviewed on providing notice to the tribes. Within the same county, some people reported compliance with the statutory requirements for notice while others stated they had never seen a case in which a tribe had been given notice. Some counties reported that tribal representatives would often appear in court yet other counties noted that tribes avoid involvement in the process. In several cases it was noted that a good informal relationship between the tribes and counties existed and, though improving, they have yet to be solidified.

[19] A single hearing may have included multiple hearing types, such as a revision and extension or revision and change of placement.

Treatment of Parties and Relationship between State and Tribal Courts

From interviews with tribal parties, it appears that child protective matters are generally handled in tribal court and only in state court when cases go beyond the jurisdiction of the reservation. The relationship between the two court systems is seen as mostly positive; however, the strength of that relationship can vary by the county court system. One person noted that the Wisconsin Tribal Judges Association has helped to foster relationships in recent years resulting in increased cooperation between the county and tribal court systems.

Tribal representatives do not routinely attend hearings for Native American children; typically they only attend when an issue is in dispute. More often they will submit an affidavit to be presented in court or will be represented by telephone. All representatives interviewed agreed that Native American parties are treated fairly in court. Parties are allowed adequate opportunity to speak and to introduce information, and the cases as a whole are given sufficient time for an adequate hearing.

Child welfare representatives typically provide sufficient information for tribal attorneys; however, the timeliness of that information was noted as an issue.

Two types of recommendations emerged from those interviewed. One was that judges receive mandatory training to ensure their basic familiarity with ICWA. The second is that provision be made to hold state court systems responsible for providing notice to the tribes in a timely fashion of court proceedings involving children who are subject to ICWA.

Chapter 7

Achievement of Federal Outcomes

Scope of Chapter

Beyond simple compliance with federal process requirements, how well is Wisconsin achieving federally-mandated outcomes? This chapter answers that question by reviewing the available information related to the following:

- The frequency of children who have a subsequent abuse and neglect case after their first case; and
- The frequency of children returning home after one year in foster care.

Each of these questions is approached by examining data from the case file review to determine the extent to which that information can provide answers.

Key Findings

- None of the federal safety or permanency outcome measures can be replicated from court records alone.
- The best approximation to the federal reunification measure using court records alone comes from measuring the time from the child's removal to the time of the last court hearing, without regard to the child's discharge destination. Somewhat over half of the children had the last court hearing in 12 months in the 2001 sample (the more reliable one for this purpose.) No federal standard addresses prospective measurements. While this figure is consistent with findings from other states, Wisconsin will need to figure out if this is an acceptable level of performance. At a minimum, it can be the benchmark for future measurement.[20]

[20] Prospective measurements will always be lower than the federal standard of 76.2 percent.

Discussion

As part of its implementation of the ASFA, the Administration for Children and Families defined seven outcomes child welfare agencies are expected to meet with their client families and children: two related to safety, two related to permanency and three related to well-being. Each outcome is measured with multiple “items” reviewed during the Child and Family Service Review, and the determination of whether a state is achieving one or another of the outcomes is the result of a complex scoring system.

Among the items used to measure outcome achievement, however, there are six which are relatively straightforward and are derived from simple calculations. Two of these relate to safety: the percentage of child victims of maltreatment who experience a second incident of maltreatment within six months and the percentage of children in out-of-home care who become victims of maltreatment while in care. The other four are permanency measures: the percentage of children returned home within 12 months of entry into out-of-home care; the percentage of children adopted within 12 months of entry into care; the percentage of children who re-enter care within 12 months of a previous discharge; and the percentage of children in care less than 12 months who experience no more than two placement settings.

For at least some of these items, the courts share responsibility with the child welfare agency for ensuring appropriate outcomes for children and families, and any reassessment of the court’s effectiveness should examine not just the compliance with procedural rules and time frames but also the impact of court decisions on children and families.

There are at least two of the above six measures on which performance can be examined, if not exactly measured, with court records alone. They are: recurrence of maltreatment and reunification. The adoption measure cannot be examined because it was not possible to draw a sample based on exits from care and the type of prospective analysis which will be used for the reunification measure makes far less sense with the adoption measure. What can be said about adoption was, therefore, discussed in the previous chapter in relation to process issues. Finally, while one would want to measure re-entry, the absence of any information in the court records indicating when a child has returned home or otherwise been discharged makes that impossible.

The following pages, therefore, explore the substantive impacts of the actions taken by child welfare agencies and courts together, insofar as those can be measured from court records alone. The limitations on the ability to measure those impacts are also noted.

Reunification

The other outcome measure for which some approximation can be made involves the reunification of children in care. The federal measure examines all the children who return home to determine how many of those reunifications occurred within 12 months of the child's removal from the home. States in which at least 76.2 percent of the reunifications occur within 12 months of removal are considered to be in conformity with the national standard.

Because neither the child's removal from the home nor the child's return to the home represents a court event, these are not captured consistently in the court records. Nor, in fact, is the child's discharge destination. The paper record, in contrast to CCAP, often has somewhat more information on these issues, but the only item relevant to this measure where the written court records showed some consistency was in the removal date.

This makes it impossible to do the kind of retrospective measurement required in replicating the federal measure or comparing the state's results to the federal standard. However, there are sufficient validity problems with the federal measure[21] that it may be more beneficial to use a prospective approach in any event. In this instance, that would involve tracking all children who are removed from their homes within a given period and determining how many are discharged home within 12 months.

However, as noted previously, neither the child's discharge date nor the child's discharge destination is directly available in the court records. As proxies, this analysis calculates the total time from the first child's removal from the home to the last recorded court hearing. This ignores the question of what the child's destination was and it underestimates the length of time in care, since some children may stay in care for up to a year after the last hearing and may even have still been in care at the time the case was read. However, the vast majority of children leaving care within 12 months may be expected to be returning home and this method will give a general picture of how long children entering care remain under court supervision. Measuring length of stay by court events is also not inappropriate in relation to the federal outcome, because the Administration for Children and Families counts a child as discharged only at the end of court jurisdiction or six months after the physical discharge, whichever comes first.

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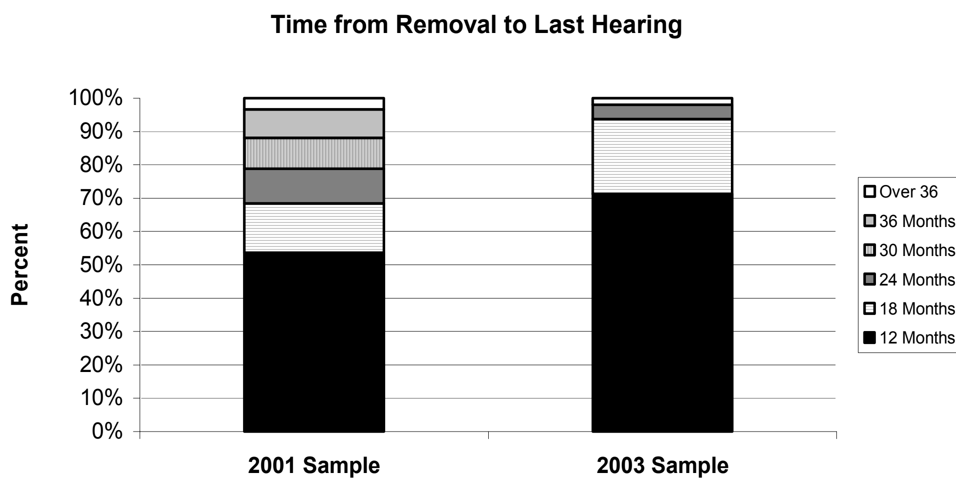
[21] See, for example, Dennis E. Zeller and Thomas J. Gamble, "Improving Child Welfare Performance: Retrospective and Prospective Approaches" ***Child Welfare***, in print.

For the 2001 sample, the median time between removal and the last court hearing is 11.2 months.[22] Just over half, 53.6 percent, of the children had the last court hearing within 12 months of removal. More than two-thirds, 68.4 percent, had their last court hearing within 18 months of the removal, 78.8 percent within 24 months, 88.1 percent within 30 months and 96.7 percent within 36 months. For the 2003 sample, the median is six months. As implied by that figure, half have their last hearing within six months, 71.3 percent within 12 months, 93.7 percent within 18 months and nearly all (98 percent) within 24 months, see Figure 7-2. The differences should not be surprising, because the 2003 sample, by definition, represents a population which entered care later and in most cases is probably still be in care. For this set of proxies to work effectively as a measure of the length of stay for children, there needs to be some level of confidence that a large majority of the children have been discharged at the time the analysis is run. That is probably the case for 2001 but not for 2003, so, again, the results from 2001 most likely represent the better estimate of the reunification outcomes for children.

While discharges generally mean permanency for children, in some cases the child simply ages out of foster care without having been provided a permanent home during childhood. This is the least desirable outcome for any foster child, and fortunately few children remain in care until the age of 18. Again, using the last court hearing as the end point, only one percent of the 2001 sample shows the child to be 18 at the time of that hearing. Another 4.8 percent are 17 at that time and might remain in care until their 18th birthdays. For the 2003 sample, none of the children were shown to be 18 at the time of the last hearing and 1.3 percent were 17. For neither sample, however, are the basic results likely to be overly affected by youth aging out of care.

Figure 7-2

Time from Removal to Last Hearing



[22] Because the court record does not provide a clear method for determining length of time in care, the median is a more appropriate measure than the mean. The mean could be overly-skewed by cases in which the last court hearing was simply the most recent hearing, with the child remaining in care.

Chapter 8

Court Organization and Resources

Scope of Chapter

To evaluate the performance of the court system in implementing State requirements, this chapter reviews how the courts are organized and how the availability of court resources aid or hinder their ability to perform. Specifically, this chapter reviews:

- The rotation schedules of judges and any impact they have on cases;
- The adequacy of time allotted to CHIPS, TPR and Adoption cases;
- The adequacy of court staff, computers and available space; and
- Training available for judges, court staff, attorneys and caseworkers.

The information contained in this chapter is generated from observed court proceedings and interviews with relevant parties.

Key Findings

- Courts do not uniformly follow the national standard of having a single judge follow a case throughout its life.
- While most jurisdictions do not have courts dedicated to juvenile and family matters, many judges give juvenile hearings priority over their other matters.
- Meeting the statutory requirements, children under 12 years of age are represented by guardians *ad litem* who act in the interest of the children. Children age 12 and over are represented by public defenders who serve on behalf of the children.
- Court resources do not present a significant problem. Support staff and computer resources are adequate, though available meeting space can be an issue in smaller counties.

- Judges, court staff, attorneys and caseworkers generally believe that they have had sufficient training, be it formal or self-taught, to understand the requirements of ASFA and Title IV-E as they pertain to their jobs. Training issues range from high caseworker staff turnover to an inability of judges to justify the time required given the small percent of their caseload involved in these cases.

Discussion

Court Organization

Rotation of Judges and Relationship between Judges and Cases

Wisconsin does not have a dedicated juvenile court system in all districts which hear all family-related court matters. Therefore most judges hearing CHIPS cases have responsibility for other civil and criminal trial matters. Within strata one and two of the study (Milwaukee, Dane, Waukesha, Outagamie and Kenosha), all sampled counties rotate judges, though they vary from having no set rotation plan to rotation every four years. The length of time a judge stays with a case is impacted by the county's rotation plan because a judge will stop handling his or her CHIPS cases when he or she is rotated to another type of case.

The method of distributing work among judges, even within rotational systems, also has an impact on the length of time a judge stays with a case. In strata one and two, intake is typically the responsibility of the Court Commissioner. One of the practice standards of the National Council of Juvenile and Family Court Judges is that cases *not* be shifted between judges and hearing officers at different stages of the proceedings. Within the systems which assign intake to Commissioners and the remainder of the case to judges, this standard is not met.

CHIPS, TPR and Adoption hearings comprise a small percentage of the judges' caseloads in strata three and four (Marathon, Sheboygan, Jefferson, Sauk, Columbia, Monroe, Green and Burnett), the smaller counties in the study. Between one and four judges are assigned to handle these cases in any given county, along with their criminal and/or civil cases. Judges share intake responsibilities, rotating responsibility for holding intake hearings on a monthly basis. Due to the small number of judges, it is very common for the judge originally assigned to a case during intake to maintain responsibility for that case as long as it is active.

One particular county in stratum four had a unique practice regarding judicial assignment. In contrast to counties which use round-robin types of assignment systems, this county uses a type of mini-rotation system for assigning cases. Each judge presides over juvenile intake cases for five

out of ten weeks. A judge is on intake for two weeks, off for three weeks, back on intake for three weeks and then off of intake for the remaining two weeks. Additionally, judges do not conduct a jury trial when they are sitting for juvenile intake. The cases assigned to a particular judge at intake remain with that judge for their entire time in the juvenile court. As with the counties which assign on a round-robin basis and have the judge handle the case throughout its life, this practice meets the practice standard of the National Council of Juvenile and Family Court Judges.

In another county, each of the four judges spends one month at a time on intake, being assigned all new cases which become active during that month. This includes all types of cases, including CHIPS, TPR, criminal, divorce, small claims, and so forth. Within a given type of case, the judge who began with the case maintains responsibility throughout its history. This includes re-assuming responsibility for the case when court jurisdiction has ended and, for whatever reason, the case returns.

The maintenance of continuity in the handling of cases does not extend to cases of different types. If a family is simultaneously involved in a divorce case and a CHIPS case, it would only be by accident that the same judge would hear the two cases. Judges are currently considering ways in which to improve coordination or even to assign a single judge to all matters involving a family, but the changing nature and composition of the families makes it challenging. It should be noted, however, that in states where there is a dedicated juvenile or family court system, cases are assigned by type, not by family, and trying to make assignments on both bases is only conceivable in a state like Wisconsin, where there is not a dedicated juvenile or family court.

Scheduling

Scheduling of CHIPS, TPR and Adoption hearings varies in the larger counties. Some schedule these hearings on a set day of the week, while others hold hearings every day.

In the smaller counties, all CHIPS, TPR and Adoption hearings are typically scheduled on a single day each week. Because of this structured schedule, judges often make scheduling allowances for cases that involve contested hearings. Most judges also give juvenile hearings priority over their other hearings and will re-schedule other hearings to meet time limits and other requirements for their juvenile hearings.

Representation

Across all strata, children under12 years of age are represented by guardians *ad litem* who act in the interest of the children. Children age12 and over are represented by public defenders who act on behalf of the children. The State is represented by either the district attorney's office or corporation counsel, with some counties in these strata dividing CHIPS, TPR and Adoption cases between the two. At times, the division of cases can create delays depending on the level of cooperation between the two offices.

Parents are not automatically assigned legal representation in CHIPS cases. In some counties, parents may request an indigency hearing to determine a fair and equitable rate for a court-assigned attorney from a pool of attorneys. In a few instances, when the court is aware that parents are not able to represent themselves (e.g., mental impairment), the court will appoint legal representation on their behalf. Many judges select specific attorneys for cases that will likely be more difficult (contested hearings, TPR cases, and so forth), while others will assign attorneys at random. A more in-depth discussion about legal representation can be found in Chapter 9, Quality of Proceedings.

Court Resources

Adequacy of Number of Judges

While many counties report that the number of judges is adequate to cover the juvenile caseload, the information is clouded by two factors. One is that, as shown below, many hearings do not occur within the state-required timeframes. Insufficient judicial time allotted to juvenile matters is no doubt a contributing factor. Second, judges in many jurisdictions have a mixed caseload of civil and criminal matters in addition to juvenile and family court cases. Because many give priority to CHIPS cases whenever possible, the question of adequacy can be answered only in relation to the entire caseload, not a particular segment. If there is a lack of judicial resources, it will not show up among CHIPS cases alone. One county in one of the larger strata noted that, at times, judges can be spread too thinly.

Adequacy of Time Allotted

Due to the priority given to CHIPS, TPR and Adoption cases, adequate time is generally allowed for these hearings. Judges make a point to allow all parties time to present relevant information, and since many parents do not have legal representation, judges make a concerted effort to ensure that parents are aware of their rights. Data from the court observations show that the overall average amount of time provided for all hearing types is 30 minutes.

Although adequate time is allowed for hearings, in one instance it was noted that the Court Commissioner frequently runs behind schedule on intake. It was also noted that some judges and commissioners engage in significant preparatory work to ensure sufficient time is given in the courtroom. A common concern was noted by some district attorneys in the smaller counties that it is becoming increasingly difficult for those offices to cover all the court activity for which they are required to be present. Because of the increasing caseload size, which includes non-CHIPS cases, some district attorneys say they cannot give full attention to all of the cases and have had to develop a standardized approach to them. If he or she is alerted to unique features in a case by the agency, the intake worker, a guardian *ad litem* or adversary counsel, the district attorney will give the case the additional time it may require. Adequacy of time is discussed further in Chapter 8, Quality of Proceedings.

Adequacy of Computers

The availability of computers and ancillary equipment appear to be adequate (CCAP is discussed in a separate chapter). One district attorney expressed that efficiency could be gained by having computers and printers available in the courtrooms; so that either the clerks (unlikely) or the district attorney could write the orders while still in the court room and then distribute them to all the parties present before they left.

Adequacy of Court Staff and Available Space

The adequacy of space was not a problem for counties in the larger strata. In the smaller strata however, a common complaint is the lack of available meeting space. In many instances, attorneys and clients are forced to meet in stairwells or other non-private areas to discuss their cases.

One of the standards of the National Council of Juvenile and Family Court judges is that courtrooms for children's proceedings be separate and apart from those used for adult civil and criminal cases. At least one county in the sample has only one courtroom for all proceedings. The observer was concerned that children often sit in the same room as adult inmates awaiting hearings. The judge also expressed concern that the practice sends a message to children that they are in court because they have done something wrong.

Another National Council standard is that persons not directly involved in court proceedings not be present in the courtroom. While a dozen states do permit open court hearings, Wisconsin excludes the general public. However, during court observation it was observed as a standard practice that people not directly involved were present. Generally it is up to the

discretion of the court whether or not to allow those people to stay. In some instances, casual friends were asked to leave and in one instance, even the court observer was asked to leave.

Across all strata, court support staff is more than adequate. Each of the judges has a judicial assistant who does all of his or her scheduling, among other tasks. In addition, there is always at least one court clerk assigned to each type of case, e.g., CHIPS, small claims, criminal, and so forth. These clerks take the court minutes, enter data into CCAP and pull files for the judges to review for the following week's hearings. It is generally acknowledged that the court clerks are especially vital to the efficient management of the court's day-to-day operations.

Training

For Judges

The judges reported receiving varying levels of training on the federal child welfare requirements. Some judges reported that when ASFA was first implemented in the state, the state child welfare agency and the Children's Court Improvement Program (CCIP) provided a one-half day to one-day training on ASFA. Several other judges reported attending a number of seminars on ASFA. The CCIP has sponsored child welfare seminars for judges in conjunction with the Office of Judicial Education. The CCIP has offered sponsorships to new judges to attend the National Council of Juvenile and Family Court Judges, Child Abuse and Neglect Institute.

While there is considerable training available to judges and a requirement that new judges attend judicial college, subjects relating to juvenile matters are not part of the basic judicial training. Rather, the focus is on the tools and techniques of judging. After an initial 10 credits, judges complete 60 credits over their six-year terms. Subjects may encompass any of the substantive areas covered by circuit court judges. If a judge fails to meet either the annual or the six-year requirement, he/she may get a three-month extension, but thereafter is suspended until the training requirements are met. Some people think juvenile and family court matters should be addressed at the initial training.

A review of the Wisconsin Supreme Court Judicial Education calendars for 2004 and 2005 shows one- and two-day seminar updates on juvenile and family law scheduled for each year. One concern noted about the available seminars is that it is difficult for judges to justify taking time away from their caseload to receive training on an issue relevant to only a small percentage of their overall caseload.

For Court Staff

Court staff report that they are generally familiar with the ASFA and Title IV-E requirements inasmuch as these pertain to their jobs. Commonly used forms have been modified to reflect the specific language required by the laws. The data in the case records reported in the chapter on Compliance with Federal Child Welfare Laws below affirm a much greater compliance with contrary to the welfare and reasonable efforts requirements throughout the Wisconsin court system.

For Attorneys

There was no consistent method by which attorneys familiarized themselves with the federal requirements. Some attorneys cited Continuing Legal Education (CLE) classes as primary sources for their ASFA and Title IV-E training, while others noted annual training sessions provided by the State. Many attorneys depend upon their experience in the courtroom for their ongoing education. In general, all parties feel they are adequately versed in the requirements but they are certainly open to a more systematic, consistently scheduled training protocol.

For Caseworkers

Again, from the interviews conducted, training among social workers was mostly adequate, however, in two counties it was noted as somewhat lacking. Low pay was cited as the cause for high turnover which, in turn, may contribute to the inadequate training of particular staff. One interviewee noted that the average tenure for social workers in his county was eight-and-a-half months.

Chapter 9

Quality of Proceedings

Scope of Chapter

This chapter examines the quality and adequacy of the court proceedings in terms of notice of and participation in hearings, the legal representation provided by the courts, the duration of hearings and the information available to the court.

Information in this chapter was generated from the case file review, court observations, and interviews.

Key Findings

- Documentation of notice of the most recent dispositional hearing was present for more than 72 percent of both mothers and fathers. For the permanency plan hearing this number increased to 76 percent.

- The most common participants in court proceedings are the primary players: district attorneys/corporation counsel (69.8 percent), guardians *ad litem* (70.4 percent), social workers (86.2 percent) and biological mothers (69.9 percent).

- Across all strata, judges consistently cite a noticeable variation in the aptitude of attorneys available for appointment. Additionally, a lack of preparation by parent's attorneys and public defenders is a common theme among respondents.

- The information available to the court is generally seen as adequate though not always made available in a timely manner. Often, respondents stated that agency workers made information available just before proceedings began.

- Participation by parents, guardians *ad litem,* adversary counsel for children and parents' attorneys decreases at the permanency hearing, i.e., by the time children have been in foster care 12 months.

Discussion

Notification of Hearings

One of the basic standards for child protective court hearings is that parents be notified of these hearings. The Children's Code requires notification of permanency and subsequent hearings such as termination and adoption. The National Council requires that non-custodial parents be notified of key hearings and lists others who should be present at various hearings, which implies notification.

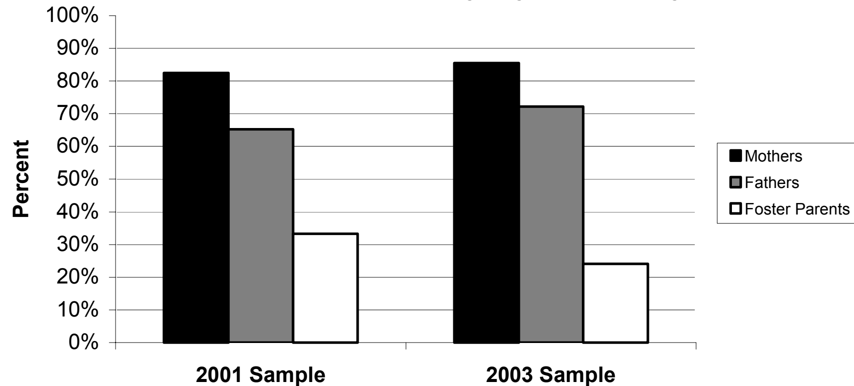
Without notification, parents and foster parents may be excluded from the court processes which determine the outcomes for the children in their care. The analysis here focuses only on dispositional and permanency planning hearings. The former are relevant for all cases while the latter relate only to children placed out of the home. The analysis examined case files for documentation of notice. Any provision of notice not documented in the case files was therefore not captured in the analysis.

Most Recent Dispositional Hearing

As shown in Figure 9-1, for cases in which the child was placed into temporary custody, 82.5 percent of the mothers in the 2001 sample received notice of the most recent dispositional hearing, compared to 89.6 percent of the mothers in which the child was not placed into temporary custody, Figure 9-2. In both instances there are relatively large percentages of cases in which it was not possible to determine whether notification was given: 15.6 percent for mothers whose children were placed into temporary custody and 10.4 percent of those where temporary custody did not occur. Only in 1.9 percent of the cases where there was temporary custody (none of the others) was there a positive determination that notice was not given. If one assumes that the only parties who do not receive notice are those where there is a positive statement in the record that notice was not given, then 98 percent of mothers received notice.

Figure 9-1

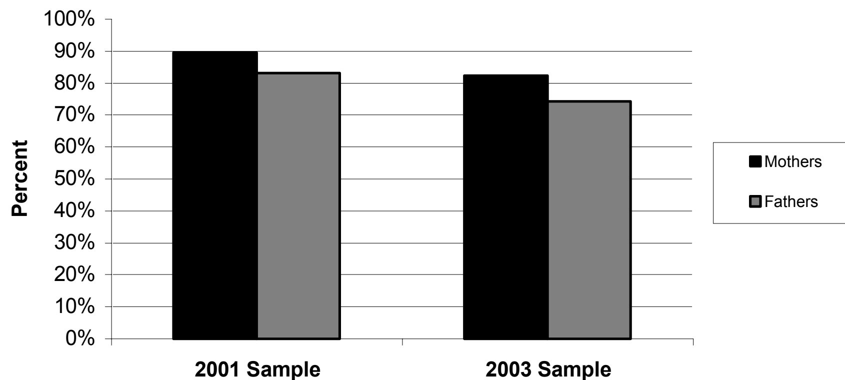
Notice Given of Most Recent Dispositional Hearing: Child Taken into Temporary Physical Custody



Documentation of notice for the most recent dispositional hearing was present for fathers of children in the 2001 sample who were placed into temporary custody in 65.2 percent of the cases, while fathers where the child was not placed into temporary custody were documented to have received notice in 83.1 percent of the cases.

Figure 9-2

Notice Given of Most Recent Dispositional Hearing: Child Not Taken into Temporary Physical Custody



For the 2003 sample, notice was documented for 85.5 percent of mothers with children placed into temporary custody, compared to 82.3 percent for mothers whose children were not placed into temporary custody. For fathers with children taken into temporary custody 72.2 percent received notice, while 74.3 percent of those in which the child was not taken into protective custody were noticed.

Aside from the fact that notice is given, the method of that notice may also be important. For the 2001 sample most notices to mothers were given at the previous hearing. In 63.8 percent of the cases the notices to mothers were

given in this manner for the most recent dispositional hearing (69.7 percent for those with children in temporary custody and 45.7 percent for those with children not in custody). Another 26.6 percent of all mothers received their notice through the mail (temporary custody: 22.5 percent; no temporary custody 39.2 percent), while 6.4 percent (5.1 percent with and 10.4 percent without) received notice through personal service. For the remainder, it was not possible to determine how notice was given; none received phone notice.

Over half of the fathers of children in the 2001 sample, 53.7 percent, for whom notice of the most recent dispositional hearing was documented received it at the previous hearing (58.3 percent with and 41.5 percent without temporary custody). Another 34.4 percent were noticed through the mail (29.1 percent with and 48.6 percent without). Most of the remaining fathers, 7.1 percent, were noticed through personal service (8.0 percent with and 4.7 percent without), with less than one percent receiving notice by phone.

The 2003 sample figures are similar to those for the 2001 sample. Again, nearly two-thirds of the mothers, 62.5 percent, received notice at the previous hearing (65.2 percent with children in temporary custody and 52.5 percent without children in temporary custody), while 23.9 percent received it through the mail (20.9 percent with and 35.6 percent without), 11.1 percent through personal service (10.9 percent with and 11.9 percent without) and 0.7 percent by phone (0.9 percent with and 0 percent without).

For the 2003 sample, 56.4 percent of the records showed that fathers (59.9 percent with and 43.6 percent without) received notice at the previous hearing and 30.0 percent through the mail (25.4 percent with and 46.5 percent without). Another 10.3 percent received notice through personal service (10.4 percent with and 9.9 percent without) and 2.3 percent (3.0 percent with and 0 percent without) by phone.

The largest change between the cohorts occurred in relation to foster parents, with fewer receiving mail notification and more receiving notification via personal service. Under half of the foster parents, 44.5 percent, received notice through the mail, 15.0 percent through personal service and 34.0 percent through notice given at the previous hearing. None were by phone.

The reasons for the differences in the notices, both in relation to who receives notice and how they receive it, need to be interpreted with care. If one assumes that notice is given unless there is a positive statement that it was not given, there will be little difference between mothers and fathers or between either parent for different custody statuses of the child. There are positive statements of no notice being given to mothers in one to five percent of the cases and for fathers in five to nine percent. On the

other hand, if one assumes that the documentation of notice reflects at least relative differences in actual notice, there are some likely explanations for this. For instance, the fact that fathers with children taken into temporary custody are noticed less often than fathers of children whose children remain in the home may reflect the greater involvement of the fathers in those cases where the children remain in the home. In fact, it may be that one of the reasons the children remain in the home is that the fathers are there. The data do not permit a determination as to whether this is the case, but neither do they suggest that the courts are more likely to fail to give notice simply because the children are in temporary custody.

Similarly, the preponderance of notices given especially to mothers at the previous hearing may be a function of the greater presence of mothers at hearings. That begs the question of whether some types of notice, or the timing of those notices, are more effective than others in generating participation, but clearly the court cannot give notice at a hearing to someone who is not present.

Most Recent Permanency Planning Hearing

For the 2001 sample all parties were more likely to have documentation of receiving notice of the permanency planning hearings than the dispositional hearings. Ninety percent of mothers received notice of the most recent permanency planning hearing, while fathers received notice in three quarters of the cases and foster parents were given notice about half of the time. This finding is consistent with state requirements in permanency hearings for notice within 10 business days of the review.

In the 2003 sample, on the other hand, the only noteworthy difference between notices for dispositional hearings and for permanency planning hearings is for foster parents. Here, 83.8 percent of the mothers were given notice of the most recent permanency planning hearing, compared to 67.7 percent of the fathers and 58.7 percent of foster parents.

The method of notice changes at the permanency planning hearing. While the majority of both mothers and fathers receive notice of the dispositional hearings at the previous hearing, notice of the permanency planning hearings is more likely to be given by mail. Notice was given by mail for 64.3 percent of the mothers in the 2001 sample and by notice at the previous hearing for 32.9 percent. Fathers were given notice by mail in 63.6 percent of the cases and at the previous hearing for 32.1 percent. Notice for foster parents was by mail in 85.4 percent of the cases and by notice at the previous hearing in 12.4 percent of the cases.

The results are similar for the 2003 sample. Here, mothers were given notice by mail in 56.8 percent of the cases and at the previous hearing in 37.1 percent. Notice to fathers was by mail in 64.4 percent of the cases and at the previous hearing for 30.5 percent. When foster parents received notice, 76.2 percent received it by mail and 18.1 percent at the previous hearing, the only group to show essentially the same pattern as for dispositional hearings.

Participation in Proceedings and Legal Representation

The point of examining notification of hearings is to determine the extent to which each party is given a reasonable opportunity to participate. The real question, however, is the extent to which those parties *do* participate. As determined by court observation, the most common participants in court proceedings are the primary players: district attorneys/corporation counsel (69.8 percent), guardians *ad litem* (70.4 percent), social workers (86.2 percent) and biological mothers (69.9 percent). Biological fathers are less likely to be present (35.4 percent), while children (18.9 percent) and foster parents (11.5 percent) seldom appear.

Appearances are consistently spread across the different hearing types, as shown in Table 9-1, with the exception of post-disposition hearings such as permanency planning, extension and revision hearings. For these types of hearings, appearances by district attorneys and corporation counsel are substantially fewer than they are for the other hearing types. There were no noticeable variations among the strata to account for this difference in participation.

The disparity in the appearance rates for biological mothers (67.3 percent) and biological fathers (32.7 percent) in court proceedings is also present in the rate of legal representation for each of these participants—35.8 percent for mothers and 20.8 percent for fathers. The rates of representation vary among the different hearing types with no discernible pattern for either mothers or fathers. The most substantial number of appearances for mothers' and fathers' attorneys occurs at initial appearance hearings as well as disposition hearings. This pattern is generally seen across all strata, with no other apparent trends appearing.

TABLE 9-1

PARTIES PRESENT IN COURT,
BY PROCEEDINGS

HEARING TYPE	MOTHER		FATHER	
	PRESENT	ATTORNEY PRESENT	PRESENT	ATTORNEY PRESENT
COUNTS				
Temporary Physical Custody	8	4	4	3
Initial Appearance	30	16	17	9
Pre-trial	3	3	1	0
Fact Finding/Fact Trial	1	1	0	0
Disposition	18	11	15	6
Permanency Plan Hearing	12	4	4	3
Extension	8	4	3	3
Change of Placement	6	4	1	2
Revision	8	6	2	2
Review/Status	8	2	4	4
Motion	1	1	0	1
Other	4	0	1	0
Total	107	59	53	33
Possible	159	159	159	159
HEARING TYPE	**MOTHER**		**FATHER**	
	PRESENT	**ATTORNEY PRESENT**	**PRESENT**	**ATTORNEY PRESENT**
PERCENTAGES				
Temporary Physical Custody	80.0	40.0	40.0	30.0
Initial Appearance	78.9	42.1	44.7	23.7
Pre-trial	75.0	75.0	25.0	0.0
Fact Finding/Fact Trial	100.0	100.0	0.0	0.0
Disposition	90.0	55.0	75.0	30.0
Permanency Plan Hearing	48.0	16.0	16.0	12.0
Extension	66.7	33.3	25.0	25.7
Change of Placement	60.0	40.0	10.0	20.0
Revision	66.7	25.0	16.7	16.7
Review/Status	66.7	50.0	33.3	33.3
Motion	25.0	25.0	0.0	25.0
Other	36.4	0.0	9.1	0.0
Total Average	67.3	35.8	32.7	20.8

Children are much more frequently represented than their parents, consistent with state law. As noted previously, guardians *ad litem* represent children in 70.4 percent of the hearings. When guardian *ad litem* representation is combined with adversary counsel representation, the rate of representation for all children climbs to 84.9 percent. Their representation is consistently high across all hearing types as well as across all strata. It should be noted that the statute is permissive on this issue, allowing some hearings to proceed without a guardian *ad litem* but requiring the presence of representation where children are alleged or found to be in need of protection (Wis. Stat. 48.235).

Most Recent Temporary Custody Hearing

As Table 9-2 demonstrates, the case file review shows mothers are more likely to participate in these hearings than are fathers or any party other than caseworkers. Nearly two-thirds of the mothers participate in temporary custody hearings, compared to less than two-fifths of fathers. The 2003 sample evidenced an increase in participation by both parents.

At this stage of the process, the next most likely participants are the guardians *ad litem*, who are appointed for each child under 12 for whom a CHIPS petition is filed. Although the number of cases with temporary custody hearings in which the child has not yet been placed into temporary custody is small, it is noteworthy that guardians *ad litem* are more likely to participate when the child is not yet in custody.

Aside from their own participation, parents may also seek representation from attorneys. Mothers are represented at the temporary physical custody hearing in about one in four cases, while fathers are in one in eight or ten cases. Although there are differences between the two samples, mothers are more likely to be represented by adversary counsel than are fathers in both groups of cases.

TABLE 9-2

PERCENT OF PARTIES PRESENT IN TEMPORARY CUSTODY HEARINGS, 2001 and 2003 SAMPLES

	2001	2003
Child	11.1%	22.6%
Mother	56.9%	64.9%
Father	36.2%	38.5%
Guardian *ad Litem*	38.9%	48.2%
Adversary Counsel For Child	13.9%	23.2%
Mother's Attorney	21.4%	25.4%
Father's Attorney	10.6%	12.6%
Caseworker	81.1%	91.7%

Most Recent Dispositional Hearing

With the exception of caseworkers, who nearly always participate, and children, who rarely do, participation increases at the dispositional hearings, as depicted in Tables 9-3 and 9-4. There are also more cases here in which the child is not in the custody of the county, and parental participation is more likely for these cases than it is for cases in which the child is not in his or her own home.

Representation of all parties also increases at this stage of the process. Over half of the cases show an attorney present for the mother and nearly half for the father. There is, however, a tendency for parents to have representation somewhat more often when the child is out of the home than when he or she remains at home, despite the fact that the parents themselves are more likely to attend the hearings in the latter instance. It is also noteworthy that children remaining in the home are more likely to attend the hearings than are children placed into foster care.

TABLE 9-3

PERCENT OF PARTIES PRESENT IN DISPOSITIONAL HEARINGS, 2001 SAMPLE

PARTY	CHILD IN TEMPORARY CUSTODY	CHILD NOT IN TEMPORARY CUSTODY	TOTAL
Child	19.6%	26.4%	21.2%
Mother	77.3%	93.3%	81.1%
Father	48.7%	67.4%	53.1%
Guardian *ad Litem*	84.5%	86.3%	84.9%
Adversary Counsel For Child	26.9%	23.6%	26.1%
Mother's Attorney	58.9%	46.8%	56.1%
Father's Attorney	43.6%	41.2%	43.0%
Caseworker	94.0%	97.1%	94.7%

TABLE 9-4

PERCENT OF PARTIES PRESENT IN DISPOSITIONAL HEARINGS, 2003 SAMPLE

PARTY	CHILD IN TEMPORARY CUSTODY	CHILD NOT IN TEMPORARY CUSTODY	TOTAL
Child	14.5%	23.9%	16.4%
Mother	74.2%	86.5%	76.8%
Father	52.9%	80.9%	58.7%

TABLE 9-4			
PERCENT OF PARTIES PRESENT IN DISPOSITIONAL HEARINGS, 2003 SAMPLE			
PARTY	**CHILD IN TEMPORARY CUSTODY**	**CHILD NOT IN TEMPORARY CUSTODY**	**TOTAL**
Guardian *ad Litem*	84.5%	85.3%	84.7%
Adversary Counsel For Child	30.2%	25.1%	29.1%
Mother's Attorney	54.1%	43.6%	51.9%
Father's Attorney	42.1%	39.1%	41.5%
Caseworker	93.1%	88.7%	92.2%

To some degree, parental attendance at the hearings is conditioned by the type of notice the parent received. In the 2001 sample, mothers were most likely to attend when notice was by personal service. The attendance rate for that method was 100 percent, although this represented a very small percentage of cases receiving notice. Mail notice was next most effective, showing 88.9 percent of the mothers receiving mail notice as attending the hearing. Notice given at the previous hearing, which was the most common form of notice, was nearly as effective, with 83.7 percent of the mothers attending.

Fathers were also more likely to attend the hearing if they received personal service notice. While this method was again the least frequent, 91.7 percent of the fathers served notice personally attended the hearing. With fathers, however, there is a sharp drop-off for all other types of notice. Those noticed at the previous hearing were at the most recent dispositional hearing in 68.4 percent of the cases, while those receiving notice by mail attended the hearing in 65.3 percent of the cases.

For the 2003 sample personal service was less effective for mothers. Those given notice by mail appeared at the hearing most frequently, appearing in 89.2 percent of the cases. Those given notice at the previous hearing appeared in 81 percent of the cases, while those served notice personally attended 79.4 percent of the time. The change in the ranking of notice by personal service may be merely an artifact of relatively small numbers of cases where personal service was used.

On the other hand, similar results are found for fathers. In this instance, notice at the previous hearing was most effective, causing 77 percent of fathers to attend the most recent dispositional hearing. At 75.8 percent attendance, mail notice was virtually equal to notice at the previous hearing.

Personal service, however, brought 49.4 percent of the fathers who had been given notice in that manner to attend the most recent dispositional hearing.

Most Recent Permanency Planning Hearing

If the previous analyses suggested that participation is likely to increase as the case continues, the participation rates for permanency planning hearings should dispel that notion, see Table 9-5. These hearings are generally held only for children who have been in care close to 12 months, and participation by parents, guardians *ad litem,* adversary counsel for children and parents' attorneys decreases at this point. One possible explanation is that parents have become less frequently involved in the process and, as a consequence, there is less to be adversarial about. That does not, of course, suggest that for those parents who do remain involved, the adversarial aspects are diminished, only that there may be fewer parents taking that stance this late in the process.

TABLE 9-5

PERCENT OF PARTIES PRESENT IN PERMANENCY PLAN HEARINGS, 2001 and 2003 SAMPLES

PARTY	2001	2003
Child	18.8%	18.6%
Mother	49.1%	52.6%
Father	30.5%	33.0%
Guardian *ad Litem*	73.9%	67.4%
Adversary Counsel For Child	20.0%	16.0%
Mother's Attorney	36.7%	27.2%
Father's Attorney	20.9%	16.4%
Caseworker	93.3%	97.1%

In the 2001 sample there was virtually no difference in the effectiveness of notice given at the previous hearing and notice given by mail. For the former, 55.8 percent of the mothers appeared at the most recent permanency planning hearing, while for the latter 52.6 did so. For fathers the corresponding numbers were 51.1 percent and 48.9 percent, respectively. Notice given at the previous hearing, which at the permanency planning hearing is not the most frequently used method, brought 68.9 percent of the mothers to attend. For those given notice by mail 60.2 attended. For fathers the results appear in the same order but are far starker. While 76.5 percent of fathers given notice at the previous hearing appeared at the permanency planning hearing, only 36.9 of those given notice by mail did so. This may, of course, have to do with the level of involvement of the fathers, with those given mail notice not having attended the previous hearing.

Most Recent Change of Placement Hearing

Only about ten percent of each sample showed even one change of placement hearing. Aside from the caseworker, the person most frequently attending the hearings is the guardian *ad litem*. Whether that means that the change of placement is most frequently contested on behalf of the child is not clear from the data. One would expect parents to be the more frequent protestors of a placement change and in fact mothers are the next most frequent attendees of the hearings. It is noteworthy, however, that for all groups other than caseworkers and fathers, attendance at the change of placement hearings declined for the 2003 sample. Fathers experienced a substantial increase in attendance, moving from 42 percent to over 58 percent.

If the parents are the ones protesting the proposed change of placement, one would expect that they would often be represented by counsel. This is the case, however, in fewer than half of the instances where the parents attended. In fact, representation for fathers declined between the two samples, even as the attendance of the fathers themselves increased. Some of this may be attributable to the notice given. While the record contained information that no notice was given to mothers in fewer than two percent of the cases in the 2001 sample and in none of the cases in the 2003 sample, there were notations in the record that fathers did not receive notice in 4.2 percent of the cases for the 2001 sample and in 10.1 percent of the cases for the 2003 sample. It is unclear why fathers' attendance would have increased as notice declined (although there was a slight increase in positive statements that notice was given to fathers, from 73.7 percent to 78.3 percent), but the relative lack of notice may have inhibited fathers from seeking counsel for the hearing as often as they might have liked. Table 9-6 shows the percent of parties present in the change of placement hearings.

TABLE 9-6

PERCENT OF PARTIES PRESENT IN CHANGE OF PLACEMENT HEARINGS, 2001 and 2003 SAMPLES

PARTY	2001	2003
Child	18.7%	14.6%
Mother	79.5%	65.2%
Father	42.0%	58.3%
Guardian *ad Litem*	81.0%	78.1%
Adversary Counsel For Child	18.8%	10.5%
Mother's Attorney	30.7%	27.8%
Father's Attorney	20.5%	17.5%
Caseworker	84.8%	87.7%

Grounds for Termination Notice

In the 2001 sample, 81.8 percent of the parents were given advised of the grounds for termination at the permanency planning hearing. In 86.8 percent of those cases, or 71.0 percent of the total, the warnings were attached to the court order.

For the 2003 sample, the corresponding percentages are 90.6 percent, 89.6 percent and 83.0 percent. Practice had improved by 2003.

Quality of Representation

Attorney Payments and Attorney Quality

The lack of preparation by parents' attorneys and public defenders is a common theme among interview respondents in strata one and two; often they meet with their client just prior to the hearing. Additionally, a lack of effort to gather relevant case information was noted, resulting in delays in the courtroom. The interview respondents also revealed that attorneys are not always knowledgeable about changes in the law. Their representation was described as pro forma and limited in time and imagination.

In strata three and four however, the consensus among the parties is that overall attorney quality is generally adequate. Despite this vote of confidence, across all strata judges consistently cited a noticeable variation in the aptitude of attorneys available for appointment. Whether that disparity was due to experience, general skill or just familiarity and trust between judge and attorney, judges consistently request specific attorneys for their more difficult cases that may require above normal quality of work.

In all counties citing problems with representation, pay was an issue. Attorney pay ranges from $40 to $70 an hour and one county has just reduced its guardian *ad litem* and parents' attorneys' rate. Some attorneys interviewed stated they will quit if the rate drops any lower.

Individual counties assume the cost for paying Guardians *ad Litem*, but parents themselves are responsible for compensating their appointed counsel and for guardians *ad litem* in some instances unless waived by judge. While practices vary among counties, the primary method for appointing counsel for parents is through an indigency hearing where a judge determines whether parents may be considered indigent and therefore qualified for Court-appointed representation. Despite this indigent finding, parents are still reportedly responsible for paying the attorney fees (though this can be waived depending on the county). As a result, in some counties a great deal of effort is spent trying to recoup attorney fees from parents who are unable to afford the standard rate.

Supply of Counsel

The supply of counsel within the larger counties, strata one and two, varies greatly as does their use by counties in various types of hearings. One county automatically appoints attorneys, another never appoints lawyers for parents in emergency detentions and CHIPS adjudication matters, and a third appoints attorneys only if requested, the parent is indigent, the representation is needed and self-representation is inadequate.

Again, budget considerations were noted by people interviewed; lack of funds has ended the presence of attorneys at the pre-trail hearing and has limited the number of CHIPS detention cases that receive counsel in one county. In another county, an interviewee stated that the supply of counsel was adequate, but barely so.

Within strata three and four, the consensus is that there is a more than adequate supply of counsel for both parents and children. This supply is often underutilized, however, because parents do not request indigency hearings to have counsel appointed as often as court officials think they should, often due to financial concerns.

Other Issues of Quality

Two other issues of quality were raised across all of the strata reviewed. The first is the small amount of time that parents and their counsel have to prepare together for a given hearing. The parties indicated that it was not at all uncommon for parents and counsel to meet for as little as ten to 15 minutes prior to a hearing to discuss facts and make decisions about the case, especially if the counsel has been recently appointed. Some parties felt that the lack of time prohibited counsel from providing quality representation and more time to meet and discuss case decisions with parents would be beneficial.

Another consistently noted issue was the burden placed on the district attorneys or corporation counsel. While the general consensus among the counties was that district attorneys and corporation counsel were quite good, it was also widely noted that they are overburdened by the caseload (not all CHIPS, TPR and Adoption) for which they are responsible. This can be attributable to the volume of cases and/or the amount of time spent per case. This issue manifests itself primarily in meeting with caseworkers and other court officials. However, all parties agreed that there existed a very strong working relationship between the caseworkers and the district attorneys and corporation counsel, despite the time constraints.

Court Appointed Attorneys

Despite the fact that state reimbursement for legal representation for parents in CHIPS cases ended several years ago, courts continue to appoint attorneys for a significant number of parents. Nearly half of the mothers in CHIPS cases have attorneys appointed for them by the court (47.3 percent in the 2001 sample and 43.5 percent in the 2003 sample), while roughly one-quarter of all fathers have attorneys appointed for them (27.4 percent for the 2001 cases and 27.1 percent for the 2003 cases). Of course, parents may be asked to pay for their attorneys. It should also be noted that over 80 percent of both samples show the appointment of the attorneys to occur in the first month of the case. This means courts are going well beyond the current legal requirement of appointing attorneys for parents.

Length of Hearings by Type

According to court observation data, review/status hearings and initial appearances take the least amount of time on average, as shown in Table 9-7. Change of placement and extension hearings take the longest on average. Permanency Plan hearings can be more contentious and therefore require more time than other hearings. The overall average amount of time needed for any hearing type is 30 minutes.

TABLE 9-7
MEDIAN LENGTH OF HEARING BY TYPE

HEARING TYPE	LENGTH OF HEARING (IN MINUTES)
Temporary Physical Custody	20
Initial Appearance	11
Pre-trial	10
Fact Finding/Fact Trial	30
Disposition	16
Permanency Plan Hearing	21.5
Extension	21
Change of Placement	72.5
Revision	17.5
Review/Status	14
Motion	36
Other	5

These statewide data are generally supported by the strata-level data, Table 9-8. Initial appearance and review status hearings are consistently short in duration, while disposition and extension hearings are just as consistently longer. The average duration of hearing types such as extension, change of placement, revision and motion hearings is significantly affected by extraordinarily long individual hearings.

TABLE 9-8				
AVERAGE LENGTH OF HEARING BY TYPE, BY STRATA				
HEARING TYPE	MEDIAN LENGTH OF HEARING (IN MINUTES)			
	STRATUM 1	STRATUM 2	STRATUM 3	STRATUM 4
Temporary Physical Custody	32.5	7.5	23	30
Initial Appearance	14.5	11	10	11
Pre-trial	0	19	0	10
Fact Finding/Fact Trial	0	0	0	30
Disposition	25	15	18.5	22.5
Permanency Plan Hearing	23	20	37	17.5
Extension	27	19.5	185*	7
Change of Placement	19	5	185**	30
Revision	15	20	185***	7
Review/Status	15	7	8	14
Motion	65	0	0	7
Other	7.5	1.5	15	0

**One hearing – Sheboygan County*
***Three hearings – Two in Sheboygan County and one in Jefferson County*
****Three hearings – All in Sheboygan County*

Number of Hearings that Started on Time

As shown in Table 9-9, the majority of the hearings (51.6 percent) start within 15 minutes of their scheduled start times. Coupled with the relatively short hearing durations, it appears that the courts make concerted efforts to minimize the impact of court proceedings for all participants.

TABLE 9-9	
NUMBER OF HEARINGS THAT STARTED AS SCHEDULED, BREAKDOWN BY TIME	
MINUTES LATE	NUMBER OF HEARINGS
On time	4
1 to 5 minutes	11
6 to 15 minutes	34
16 to 30 minutes	26
31 to 60 minutes	18
61 minutes or more	2

When broken down by strata, Table 9-10, we see that the two hearings that started more than one hour late both occurred in stratum one; yet, the greatest number of hearings that started between 31 minutes and 60 minutes late were held in the counties comprising stratum two.

TABLE 9-10
NUMBER OF HEARINGS THAT STARTED AS SCHEDULED BY STRATA, BREAKDOWN BY TIME

MINUTES LATE	NUMBER OF HEARINGS			
	STRATUM 1	STRATUM 2	STRATUM 3	STRATUM 4
On time	1	0	1	2
1 to 5 minutes	4	1	2	4
6 to 15 minutes	5	13	11	5
16 to 30 minutes	8	6	6	6
31 to 60 minutes	5	7	3	2
61 minutes or more	2	0	0	0

Continuances, Rescheduling of Hearings and Appeals

People interviewed in the largest counties, within strata one and two, noted that continuances did not present great problems although they had in previous years. More difficulties were found in scheduling subsequent proceedings than continuances and one county respondent noted that more judicial resources would make the system flow better.

However, the lack of attorney preparedness was highlighted as a reason for delays. Although judges expressed frustration with attorneys, and at times, agency readiness, their assertiveness and desire to make the system work in accordance with state values limited problems with delays.

In general, continuances, rescheduling of hearings and appeals do not affect the ability of the court to handle CHIPS, TPR and Adoption cases in strata three and four. As noted previously, courts give these cases priority over other case types due to the many time-sensitive requirements. In order to meet the CHIPS timelines (e.g., plea hearing within 30 days), the Court is even more reluctant to adjourn CHIPS cases than it is other kinds of cases.

For the statutory timelines to be waived, all parties have to agree formally that there is a need for a delay, and this is generally the result not of the normal causes of judicial delay (parties or attorneys not available) but rather of the need for additional substantive information, e.g., the results of a psychological examination which will have an impact on the decisions made. Lack of attendance by parties is another reason for rescheduling hearings, but in general the process of granting continuances,

rescheduling and appeals has not been seen as an impediment to achieving an outcome in the best interest of the child.

Quality and Adequacy of Information Available to the Court

None of the parties report significant difficulty in obtaining information from any of the others. Much of the information comes from the caseworker and everyone involved noted that the caseworkers provide adequate information. That information, however, is often provided only minutes before a hearing, forcing court officials to read the report quickly. In one stratum two county, the agency bureaucracy was highlighted for impacting the timeliness of information. Additionally, that bureaucracy can cause quality to suffer if cases are transferred through too many units of the agency.

Most judges are satisfied with the information received from the caseworkers and view the caseworkers as caring people who want to do a good job for children but who may not have adequate resources to perform their jobs optimally. Despite these obstacles, most people involved cited a strong working relationship with the caseworkers that enabled a free exchange of information. If further information is needed, caseworkers nearly always provide the information.

Impressions of Court Observers

In general, the observers' impressions of the key players in court proceedings were either "good" or "very good." They observed that all participants in the judicial process are treated fairly and are provided sufficient time to become active participants in court proceedings, regardless of hearing type or location.

The following tables (Tables 9-11, 9-12 and 9-13) rate the preparedness, organization and ability to respond to judges' questioning for district attorneys/corporation counsel, mother's attorneys, father's attorneys, guardians *ad litem* and adversary counsel.

In each of these categories, the majority of observers rated all parties as either good or very good. Across all categories where impressions were measured, the district attorney/corporation counsel was viewed most favorably, scoring above 80 percent for both good and very good ratings while the adversary counsel and guardians *ad litem* tended to be viewed less favorably.

TABLE 9-11					
IMPRESSIONS OF COURT PROCEEDINGS, PREPAREDNESS					
COUNT					
PARTICIPANT	**IMPRESSION RATING**				
	VERY GOOD	**GOOD**	**SATIS-FACTORY**	**FAIR**	**POOR**
Dist. Attorney/Corp. Counsel	33	40	14	0	0
Mother's Attorney	10	16	12	1	2
Father's Attorney	5	12	4	2	1
Guardian *ad Litem*	18	39	11	2	2
Adversary Counsel	5	3	6	0	1
PERCENTAGES					
PARTICIPANT	**IMPRESSION RATING**				
	VERY GOOD	**GOOD**	**SATIS-FACTORY**	**FAIR**	**POOR**
Dist. Attorney/Corp. Counsel	38%	46%	16%	0%	0%
Mother's Attorney	24%	39%	29%	2%	5%
Father's Attorney	21%	50%	17%	8%	4%
Guardian *ad Litem*	25%	54%	15%	3%	3%
Adversary Counsel	33%	20%	40%	0%	7%

TABLE 9-12					
IMPRESSIONS OF COURT PROCEEDINGS, ORGANIZATION					
COUNT					
PARTICIPANT	**IMPRESSION RATING**				
	VERY GOOD	**GOOD**	**SATIS-FACTORY**	**FAIR**	**POOR**
Dist. Attorney/Corp. Counsel	27	46	13	0	1
Mother's Attorney	12	14	12	2	0
Father's Attorney	6	11	3	2	1
Guardian *ad Litem*	15	39	12	1	2
Adversary Counsel	4	3	6	0	1
PERCENTAGES					
PARTICIPANT	**IMPRESSION RATING**				
	VERY GOOD	**GOOD**	**SATIS-FACTORY**	**FAIR**	**POOR**
Dist. Attorney/Corp. Counsel	31%	53%	15%	0%	1%
Mother's Attorney	30%	35%	30%	5%	0%
Father's Attorney	26%	48%	13%	9%	4%
Guardian *ad Litem*	22%	57%	17%	2%	3%
Adversary Counsel	29%	21%	43%	0%	7%

TABLE 9-13					
IMPRESSIONS OF COURT PROCEEDINGS, ABILITY TO RESPOND TO THE JUDGE'S QUESTIONS					
COUNT					
PARTICIPANT	**IMPRESSION RATING**				
	VERY GOOD	**GOOD**	**SATIS-FACTORY**	**FAIR**	**POOR**
Dist. Attorney/Corp. Counsel	29	44	12	0	1
Mother's Attorney	12	15	8	4	1
Father's Attorney	9	9	3	2	2
Guardian *ad Litem*	19	38	10	3	1
Adversary Counsel	5	2	5	0	1
PERCENTAGES					
PARTICIPANT	**IMPRESSION RATING**				
	VERY GOOD	**GOOD**	**SATIS-FACTORY**	**FAIR**	**POOR**
Dist. Attorney/Corp. Counsel	34%	51%	14%	0%	1%
Mother's Attorney	30%	38%	20%	10%	3%
Father's Attorney	36%	36%	12%	8%	8%
Guardian *ad Litem*	27%	54%	14%	4%	1%
Adversary Counsel	39%	15%	39%	0%	8%

Table 9-14 presents court observers' impressions of judges and Court Commissioners. They were rated on overall preparedness, organization, ability to ensure that parties are informed and sufficiently understand the proceedings, and for allowing foster parents the opportunity to speak in court or accounting for their written statements. Judges received considerably higher ratings from the court observers. They received a rating of very good or good 90 percent of the time for all categories except preparedness (88%). These observations coincide with information obtained through interviews with relevant parties.

TABLE 9-14					
IMPRESSIONS OF COURT PROCEEDINGS, OVERALL QUALITY OF JUDGE/COURT COMMISSIONER					
COUNT					
PARTICIPANT	**IMPRESSION RATING**				
	VERY GOOD	**GOOD**	**SATIS-FACTORY**	**FAIR**	**POOR**
Preparedness	38	50	10	1	2
Organization	36	57	6	0	2
Ensure Parties are Informed and Understand the Activities	58	33		0	3
Allowing Parties Sufficient Time to Present Evidence	42	28	0	0	1
Allowing Foster Parent Opportunity to be Heard or Account for Written Statement	8	9	1	1	0
PERCENTAGES					
PARTICIPANT	**IMPRESSION RATING**				
	VERY GOOD	**GOOD**	**SATIS-FACTORY**	**FAIR**	**POOR**
Preparedness	38%	50%	10%	1%	2%
Organization	36%	56%	6%	0%	2%
Ensure Parties are Informed and Understand the Activities	60%	34%	3%	0%	3%
Allowing Parties Sufficient Time to Present Evidence	59%	39%	0%	0%	1%
Allowing Foster Parent Opportunity to be Heard or Account for Written Statement	42%	47%	5%	5%	0%

Summary

This chapter used several measures of quality that have been adopted by other national groups. The first relates to notification of proceedings. In the earlier proceedings notice is generally documented in twp thirds to three-quarters of the case proceedings. The number rises for permanency and subsequent hearings, in conformance with Wisconsin statutes. Fathers are less likely to receive notice than mothers. A second

measure of quality is participation, and particularly participation by parents and their attorneys. Mothers attended in two-thirds of the court proceedings while fathers attended in about one-third. The rates of representation vary among the different hearing types with no discernible pattern for either mothers or fathers. The most substantial number of appearances for mothers' and fathers' attorneys occurs at initial appearance hearings as well as disposition hearings.

A third measure of quality is legal representation. The lack of preparation by parents' attorneys and public defenders is a common theme among people interviewed in the larger counties. The view was not generally shared in strata three and four counties. In all counties citing problems with representation, pay was an issue for parents' attorneys. Practices for paying (or not paying) parents' attorneys in cases of indigence vary by county.

Nonetheless, parents are appointed attorneys quite frequently. In 2003, over 43 percent of the mothers had attorneys appointed for them and over 27 percent of the fathers did. Of course, parents may be asked to pay for their attorneys.

Another measure is length of hearing. The overall average needed for any hearing type is 30 minutes but the range is quits large, from a few minutes to a few hours in some isolated cases. Over half of the hearings start on time and only two of more than 100 observed started more than an hour late.

Information available to the court was also assessed. None of the parties interviewed had significant problem getting information, but information from caseworkers was sometimes reported as late. Nonetheless, people reported good or excellent relations between court and child welfare staff which promote a free exchange of information and good decision making for the child.

Court players such as attorneys, guardians, corporation counsel and adversary counsel received high marks in relation to their preparedness, organization, and ability to respond to judges' questions.

Chapter 10

Consolidated Court Automation Programs (CCAP)

Scope of Chapter

This aspect of the report focuses not on what happens in the courtroom but rather on one of the tools the courts have for helping them do their work. The Consolidated Court Automation Programs (CCAP) was originally intended to track civil and criminal cases that appear in Circuit Court. The broad questions which are to be answered in this analysis could be asked about all types of cases, but the focus here is strictly on child welfare. Those questions include the following:

- Does the system's design theoretically provide sufficient information for the court about individual cases?
- Is the information actually in the system (as opposed to the information which is designed to be in the system) sufficiently complete and sufficiently accurate to provide adequate information for the court about individual cases?
- Does the system produce management information on a regular, periodic basis?
- Is the system efficient and effective as a case management system?

There is an additional question which is relevant to the examination of CCAP in relation to child welfare which may not be applicable to other types of cases: Does the system have the capacity to produce information on the outcomes for children and families, insofar as those outcomes are affected by the courts?

Key Findings

- Large scale changes to CCAP are not in order. The system appears to function adequately and efficiently as a case management system.
- The system does not function well in producing management information about court compliance with child welfare rules or about the outcomes achieved for children and families.

- Improvements could be made to permit routine production of compliance and outcome information and to open access to the raw data to county court systems for their own local purposes.

Discussion

Types of Systems

Broadly speaking, most automated systems which are designed to track cases over time are viewed either as management information systems or as case management systems. The former appeared on the scene earlier than the latter and were designed, as their name suggests, to produce information for managers. In most versions, the "user," whether a social worker, a judge or a bank teller, would not directly interact with the system. That would be done by a data entry operator. The problem with such systems was that the user had to provide the information to go *into* the system yet received little or no benefit *from* the system. The predictable result was that the information was often neither complete nor accurate.

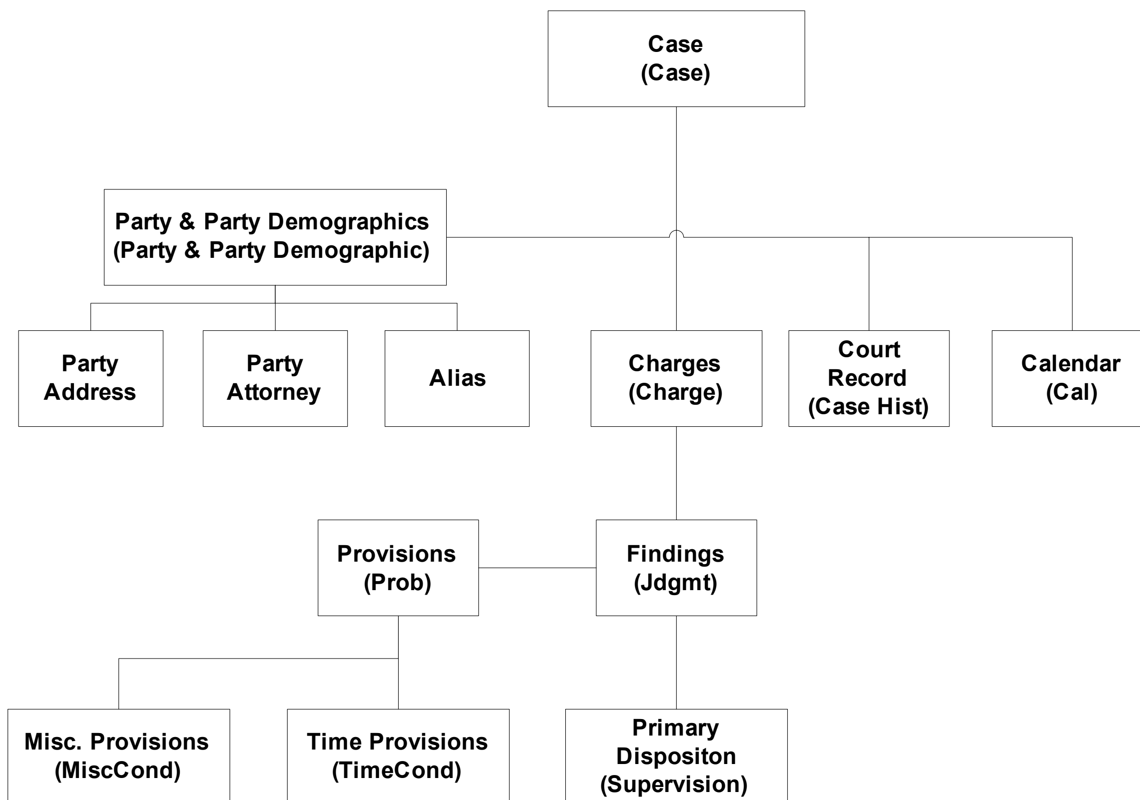
The solution to that issue came with new technology which allowed databases to be constructed as case management systems. Their chief purpose was to help the users perform their jobs. They generated letters, notices, receipts, court petitions and alerts for actions coming due, all in an effort to reduce the repetitive paperwork burden on the person doing the work. Unfortunately, in shifting attention to having systems do work instead of having them generate information, aggregated management information often got lost, leaving managers no better off than they were with the incomplete and inaccurate management information systems. This has certainly been the experience with such systems in public child welfare agencies and seems likely to be a feature of most case management systems.

Interviews with court personnel in several counties across the state, as well as with the Director of State Courts Office staff, suggest that CCAP is intended to be both a management information system and a case management system. To some extent it does fulfill both functions. As will be seen below, however, it performs the latter function more completely than the former.

Content and Structure

CCAP is an event-driven system and, like most event-driven systems, it is structured as a relational database. The basic unit which unifies the events recorded in the system is the case. As Figure 10-1 shows, all other data relates directly or indirectly to the case.

Figure 10-1
CCAP CONFIGURATION



The system distinguishes between two types of events: activities, which are events that are scheduled but have not yet occurred; and events, including documents, which have already occurred and therefore form part of the court record. Because activities represent scheduled court events, by definition some things cannot be activities because they are not scheduled, e.g., petitions and orders. Events are more inclusive and include petitions, orders, notices and other documents which are not scheduled, as well as court hearings.

A case is listed as being in “closed” status in CCAP once it has gone through the complete adjudication process. The case becomes open again when there are new activities, i.e., things which are scheduled to occur in the future. The history on each case, even after the case status has changed to “closed,” is continuous as long as court jurisdiction is maintained. If, however, court jurisdiction ends and the same person again comes before the court, a new case number is assigned.

As with nearly all case tracking systems, CCAP includes two types of fields: coded fields and comment fields. The former can be aggregated to create management reports, while the latter can be useful in managing

individual cases but do not provide a means of counting anything recorded in those fields. A key example of this involves petitions filed by the child welfare agencies for permanency planning hearings. There is no specific code for petitions for permanency planning hearings. As a result, the personnel entering the data generally use a generic "petition" code to indicate that a petition has been filed and then note in the additional text field what the petition was for. While this permits the court to determine for any individual child whether a permanency planning petition has been filed, it does not permit counts of children with those petitions.

Recording Cases

All CHIPS cases begin with a petition. When a new JC number, the case number which indicates that this is a CHIPS case, is entered into the system, the court record automatically shows a petition. Anything which happens before the petition is documented on paper only. In some counties, the demographic data and the petition charge are imported from the district attorney's system. However, the case number itself is manually determined; the system does not automatically generate case numbers. One county reported that it is possible to generate a JC number automatically, but that it does not use that function, and all of the personnel interviewed in all counties about their use of CCAP indicated that they manually enter the case number.

This manual entry of the case number is probably necessary within the current structure, because there is no event within the system which indicates when court jurisdiction has ended. It is therefore not possible to distinguish automatically between a new case and one in which the case is being re-activated after a disposition. When a new petition is entered, the information from CCAP, the existing paper records and the petition itself is presumably sufficient to allow this determination. It is that determination which defines whether a new case number will be assigned or an existing case number will be used.

When a new case is recorded, information about the case, the parties and the charges are entered, regardless of the type of case. On CHIPS cases, demographic information is only input for children, not for the parents. Parents are listed only for notices, one of the indications that the system is designed more to help court staff accomplish work than to produce management information.

The system also has some features which reduce the need for duplicate data entry. For instance, addresses can be copied from one party to another, so that court personnel do not have to enter the same address multiple times for different members of the same family. There are,

however, some things which cannot be copied from one case to another, e.g., the conditions of supervision specified in the court order.

CCAP has the capacity for permitting cross-referencing of one case with another, but the meaning of the cross-reference varies. For instance, some counties will cross-reference a CHIPS case with a criminal case involving someone else in the family. Cross-referencing is also done in some counties for cases involving siblings. It can also be used simply to connect a child to one of his or her own previous cases, either an earlier JC case, a termination of parental rights (TP) or an adoption (AD/JA) case.

Not all counties use cross-references, although the process is relatively simple. While the case on which data are being entered is active on the screen, court personnel only need to highlight any related cases and click.

In fact, the recording of cross-references, changes of address and other information which might be revealed during a court hearing but is not likely to become part of the order is determined by the practices and procedures of the county and the staff responsible for the recording. Recording information which becomes known at hearings is somewhat easier in counties like Milwaukee where there are CCAP computers located in the court rooms, allowing the clerks to record simultaneously with the occurrence of the events.

Staff in at least one county reported that the accuracy of recording may be different not merely because of access to computers in the courtrooms or other factors associated with the ease of recording, but also because of how the data are related to events occurring in the case. Information on case opening, data required for notices and information recorded during the court hearing itself are likely to be more accurate on this view since they are directly related to the work. Cross-references and other information which has no direct impact on immediate events may not be as accurate, because there is less incentive to have the data right.

What information is reported can vary from county to county. One county reported that the social security number is never recorded in the system, that the “In Custody” field under the Party tab is never checked upon case opening and that race is not recorded for CHIPS cases. Milwaukee personnel, however, reported recording virtually all activity, down to returns of mailed notices.

This study analyzed three types of child welfare cases in CCAP: CHIPS, termination of parental rights and adoption. There is, however, no automatic connection among these cases. When a TPR case is opened, the CHIPS case is closed; the same applies when the case moves from being TPR to being AD/JA. This creates a lack of continuity where time

sensitive requirements of the case can be lost in the transition from one type of case to another. To avoid this loss, court personnel in Milwaukee, and perhaps in other counties, enter the due date for the permanency planning hearing into the TPR case.

Perhaps the most notable feature of CCAP is the multiplicity of codes which can be used for any number of events. Some events, such as petitions for permanency planning hearings, have no specific codes which unambiguously identify them. However, even when there is a specific code for an event, there are often a variety of codes and labels which are used, depending on the county or even the individual judge. For instance, one county reported that hearings might be recorded as hearings, as extensions, as reviews or perhaps as something else, depending on what the judge calls it.

Some typical examples of how multiple labels and codes are given to the same event are seen Table 10-1.

TABLE 10-1
EXAMPLES OF MULTIPLE LABELS BY EVENT TYPE

EVENT TYPE	LABELS
Dispositional Hearing:	Adjudicated Hearing (coded both as ADJH and ADJHR)
	Disposition Hearing (coded as DH)
Temporary Physical Custody Order:	Order for temporary physical custody (OTPC)
	Order for temporary physical custody authorization (OTPCA)
	Order for temporary physical custody non-secure (OTPCN)
	Order for temporary physical custody secure (OTPCS)
	Order for secured custody (OSC)
	Order for non-secure custody (ONSC)
Order for Extension:	Order for Extension (OFE)
	Order for Extension – In Home Placement (OFEI)
	Order for Extension – Out of Home Placement (OFEO)

While not all of the codes in each of these groups denote precisely the same event, each group does contain a significant potential for both duplication and ambiguity. For instance, use of the code OTPC (order for temporary physical custody) leaves it ambiguous as to whether secure or non-secure custody is intended. The same is true, however, if one uses

the code OTPCA, and it is not at all clear what the difference between an order for temporary physical custody authorization and an order for temporary physical custody is.

In fact, it appears that many of the codes in the system have been designed to allow county courts to use the language and terminology which is most familiar to each of them. From a case management perspective, the multiplicity of codes is not problematic, because court personnel add narrative in the record which clarifies the intent. There may be some advantage to allowing each county to use its own terminology when recording court events. The management information implications of the coding structure are a different matter and will be examined below.

Compounding the issue of the multiplicity of codes which can be used for a single event are differences in local usage, which can result in multiple combinations of codes to denote the same event. For instance, the term "initial adjudication" is used to refer to any of three distinct outcomes: a dismissal, a consent decree or a dispositional order. It is not, however, possible to break the data down among the three outcomes to determine whether, for example, consent decrees occur more quickly than do dispositional orders. This is due to the differences in the utilization of CCAP across circuit courts. There are, for instance, no cases showing dismissals as an event in Milwaukee, although there are judgments of "dismissed" associated with cases with dispositional orders. It would appear, then, that Milwaukee's courts record both dismissals and dispositional orders as dispositional orders, while at least some other circuits record them under different event names. Either approach may be appropriate, but when both approaches are in use the data have limited utility for more discrete analysis.

CCAP Output: Querying and Reporting

Querying, i.e., determining whether a case exists in the system and finding the information recorded about it, is one of the more frequently conducted functions of the system and it is generally done by searching for the name of the child. The names of other family members are used to check whether the case is the appropriate one.

Management reports are those that aggregate information and allow trends to be tracked over time. Simple reports show items such as the numbers of CHIPS petitions filed by month and district. More complicated reports compare two events such as the time between hearings to determine if they meet state or federal standards. Counties gave different responses when asked what management reports they receive. In fact, court staff in Milwaukee reported that they receive no management reports and have developed their own database for that purpose. There appears

to be a significant overlap between what is recorded in CCAP and what is recorded in the separate Milwaukee system. However, the structure of the two systems is sufficiently different that Milwaukee staff believes they need their separate system to obtain the reports they need to monitor workloads and compliance with ASFA.

In one medium-sized county the court uses at least two reports to monitor its progress on timeliness: the Age of Pending Summary report and the Event and Activity report. The Age of Pending Summary is a case specific listing of cases with events coming due, ordered by the age of the initial filing, while the Event and Activity report is an aggregate report showing cases awaiting action and the length of time since the last action. One of the judges reported, however, that the two reports could not be correlated. The judge also wanted a drill down version of the Event and Activity report, i.e., a report which would permit him to identify the individual cases in each category shown in the report.

On the Wisconsin Court System website six circuit court statistical reports are published. The reports were revised in 2003 and are available on an annual basis, statewide and by county. The Yearend Caseload Summary shows the number of CHIPS cases pending at the beginning of the period, the number opened, disposed, transferred, adjusted and pending at the end of the period. The Age of Pending Summary shows the number of days a case has been pending, e.g., 0-30, 31-60 and the median age pending. The Disposition Summary shows the number disposed for the year and the method, e.g.., jury trial, court trial, stipulation and dismissal before trial. The Probate Disposition Summary shows the number of adoptions, but not necessarily through the child welfare system. The Juvenile Caseload Summary shows the same information as the Yearend Caseload Summary but breaks down juvenile cases into CHIPS, termination of parental rights, waiver of parental consent and adoptions, guardianships and commitments.

The reports are useful in tracking workload and case flow. They do not, however, show trends; only one year worth of data is displayed. Also, they are not structured to track performance information such as the number of cases that were completed in the required timeframes or the length of time it takes children to return home from foster care. No other reports were identified by any of the participants in the study.

Evaluating CCAP as a Management Information System

One significant decision which must be made by child welfare agencies and affirmed by the courts in CHIPS cases is whether to remove a child from the parental home (or, more precisely, the home in which the alleged maltreatment has occurred). Decisions about temporary physical custody

(TPC) of children in CHIPS cases are an integral part of this process. However, as noted in previous chapters, CCAP's capacity to track the custody status of children involved in CHIPS proceedings is quite limited.

CCAP's limitations in regard to the custody determination process exist at both ends of the process. First, CCAP is not a reliable source of information about when children are originally removed from their homes and placed into temporary physical custody. Second, CCAP is equally unhelpful about when a child was returned home or otherwise left temporary physical custody.

As noted in Chapter 5, the TPC process in CHIPS cases begins with a request or petition from an interested party for the court to authorize the child's removal from home and his or her placement in TPC. Upon receipt of such a request, the court must hold a TPC hearing within 48 hours. If the court determines that continued placement of the child in the home is "contrary to the child's welfare" and that "reasonable efforts" have been made to prevent the removal (while ensuring the child's health and safety), the court may issue a TPC order that authorizes the child's removal and placement into foster care.

Once a child has initially been taken into custody, specific changes in the child's placement can be made at the discretion of the court and the child welfare worker. The worker could file a request for a change of placement with the court in advance of the change, but must file a notice of change of placement when such a change has occurred or is anticipated. The court must notify parents, foster parents, the child's guardian *ad litem* and any other legal representatives of these parties of the change of placement.

If there are no objections to the change of placement from any interested parties, the court may issue an order authorizing the change. If there are objections, however, the court must hold a "change of placement" hearing at which these objections will be considered. The court will then issue an order either granting or denying the request for a change of placement.

There are over 20 specific codes within CCAP that have to do with one or another of these aspects of the custody process. As was noted previously, the choice of which particular code to use to record a custody-related event and whether or not the event is recorded at all are subject to the local conventions and practices of individual county courts. As such, there is room for considerable variation across counties (and judicial districts) in the ways in which specific custody-related events are entered into the CCAP database.

Of the 4,604 CHIPS cases that opened in CY 2002 and were eventually adjudicated, 2,728 (or 59.2 percent) showed evidence of one or more of the codes that indicate a custody-related event. However, due to variability in the recording conventions of the various counties, many of these cases include code combinations that are difficult to interpret. There may be requests for TPC authorization without evidence of TPC hearings or TPC orders, TPC hearings without TPC orders, requests for changes of placement without any initial TPC request, hearing or order, and so on. Thus, while these various codes and combinations may indicate that a child may have been in TPC at some point, they do not necessarily provide a clear idea of just when the child was initially removed from home, which is an essential reference point for measuring compliance with many provisions of federal Title IV-E law, including the more recent provisions of the Adoptions and Safe Families Act (ASFA) of 1997.

Part of the reason why CCAP does not capture the child's removal from the home is that the initial decisions regarding the custody of children often take place rather early in the overall CHIPS adjudication process, even prior to the petition. From the point of view of CCAP, however, a CHIPS case comes into existence only when a CHIPS petition has been filed with the court and the court assigns it a case number. Any events that take place prior to this point in time may or may not be reflected in CCAP, depending upon local practices. Since this is precisely the stage at which many initial custody decisions are made, this "grey area" has particular implication on the ability to follow the custody determination process within CCAP.

In addition to these problems in determining if and when a child is taken into custody, it is even more problematic to determine within CCAP if and when a child returns home or otherwise exits custody. Changes instituted in July 2002 may improve this situation for the future. Among these changes were the development of a new CCAP form (JD-1792) and code to record changes of placement from an out-of-home to an in-home placement. However, for the entry cohort of CY 2002, only 66 cases showed evidence of this particular kind of change of placement, suggesting minimal acceptance of the form, at least in the early stages of implementation.

Problems with the recording of custody-related events within CCAP have had at least three significant implications both for the analysis of this study as it was originally designed and for ongoing management of child welfare cases. First, CCAP data does not permit an analysis of the custody determination process, either by itself or, more importantly, in relation to other aspects of the CHIPS adjudication process. Second, the inability to determine when a child leaves custody and the status to which he or she exits (returned home, adoption and so forth) means that a "retrospective" analysis of children who leave custody (the common approach for federal

reports such as AFCARS) is also not possible. Finally, measuring compliance with any legal requirement that is measured from “date of initial removal from home” (and this includes most of the federal Title IV-E/ASFA requirements) is not reliable with the CCAP data.

Summary

Coming to reasonable conclusions about CCAP within the context of this study is difficult. CCAP was not originally designed for child welfare cases and few, if any, other types of cases are subject to the kinds of statutory and regulatory time frames which govern child welfare practice, including the court processes. Conclusions and recommendations which would be reasonable and even self-evident in relation to child welfare cases might not be feasible for a system designed to serve a much wider variety of needs.

Other considerations are that the use of CCAP is not required and courts which do use it operate in different ways. If CCAP does not capture local practice sufficiently to make it useful for the local courts, given each court’s specific procedures, participation in the system could decline, making the theoretical content and structure of the system irrelevant, at least at the state level.

With those cautions in mind, there are several conclusions to be drawn about CCAP. First, the virtual universality of the utilization of the system represents a major achievement for the Director of State Courts Office and an endorsement of the basic functioning of the system. As a case management system which is designed to assist court personnel in processing cases, CCAP is doing its job. No one interviewed for this analysis indicated having any difficulty in finding or interpreting information on individual cases. For purposes of tracking individual cases, querying for information about specific cases and scheduling judges’ time, there are few if any changes which should be made to the system.

Second, CCAP performs less well as a management information system. In part because of its flexibility for case management purposes, there is a lack of uniformity in the data which makes statewide reporting virtually impossible. On the other hand, in part because it is a statewide system, it cannot be expected to serve the local reporting needs of each individual county court system.

Third, the absence of an automatic generation of the case identifier is a feature which crosses the boundary between case management systems and management information systems. The manual entry of the case number requires that each county maintain a system for determining which numbers have been used and which should be used next, and the lack of a single identifier for a child in the system prevents effective

tracking of children across episodes of court jurisdiction. While that does not prevent the court from recognizing when a child has previously been involved with the system, it does prevent the production of aggregated information about how often that happens across all cases.

Recommendations for the improvement of CCAP primarily focus on standardization of the system and can be found in Chapter 11.

Chapter 11

Conclusions and Recommendations

This chapter organizes the conclusions and recommendations by the three broad study questions posed in the first chapter.

- To what extent do court processes contribute to or detract from the achievement of safety, permanency and well-being for children?
- To what extent do the courts meet state and federal mandates for timely proceedings?
- To what extent do court processes conform to legal and professional standards of judicial practice?

Conclusions

Overall, there appears to have been significant improvements since the 1997 Court Assessment[23] and also since the 2002 legislative reforms. The recommendations in the 1997 report focused on the need for training, conferences and greater communication among parties; the need for greater judicial oversight of CHIPS cases; the need for an automated case management infrastructure needed to monitor CHIPS cases; and a recommendation to develop a tribal locator network for connection of children from Indian tribes with resources from their tribes.

From this earlier set of recommendations, the one concerning tribal relations remains an issue and shows up in the recommendations below. The issues of judges not fully knowing the law and needing considerable training no longer seems to be the case. The call for an automated case management system has been addressed. The court observations did not reveal any concerns about judicial oversight of cases.

Since that report, however, other concerns have been raised resulting from the federal child and family services reviews and the Title IV-E reviews. While some improvements are evident, there is probably further to go to address these current concerns than those raised in earlier assessments. One issue raised in the Program Improvement Plan (Item 28) is that the agency should improve the process for determining when Terminations of Parental Rights are appropriate and it should facilitate

[23] Center for Public Policy Studies, An Assessment of Wisconsin State Court Performance in Cases Involving Children in Need of Protection or Services, April 28, 1997, Denver, Colorado

TPRs. In the 2003 sample of cases less than 10 percent of the children who had been in care 15 of the past 22 months had a termination petition filed. While 70.4 percent had been granted exceptions, about a fifth had neither a petition nor exception. One also wonders whether the number of exceptions granted is in keeping with the spirit of the law. Another PIP concern (Item 29B) was the need for judges to seek input from foster parents and other physical custodians in court hearings. While the court observers found foster parent input good or very good in 90 percent of the cases, the factor was ranked in less than 20 percent of the cases. That may be, however, because foster parent presence was not warranted in the other types of hearings. The third factor in the PIP relating to courts was that all actors in the child welfare system comply with the requirements of the Indian Child Welfare Act. That factor needs further work as discussed below.

To what extent do court processes contribute to or detract from the achievement of safety, permanency and well-being for children?

Overall, the observed processes seem to contribute to child safety, permanency and well-being. However, the data collected by the courts through CCAP do not permit a true accounting of questions such as whether children are reabused, what percent return home and how quickly children are reunified.

A number of successful practices and processes were observed. Some were consistently observed across all counties while others were county- or strata-specific; but they each serve as exemplars of good practice that can be applied to any county or area.

- Judges give priority to CHIPS, TPR and Adoption cases over other proceedings, given the time requirements placed on these types of cases. This priority results in more than adequate time for proceedings and ensures that time requirements are met.

- All court personnel (judges, attorneys, guardians *ad litem*, clerks and so on) and child welfare agency staff feel they have been given sufficient training and guidance on the Title IV-E and ASFA legislation requirements. As a result of this training, the documentation of the required findings concerning contrary to the child's welfare and reasonable efforts has become a normal part of the court process. In spite of the sufficient guidance, judges did report difficulty in taking time away from their caseload to attend trainings. One potential solution is to include juvenile case types in the mandatory training offered by the judicial college.

- While some concerns with the timeliness of information provided by child welfare agency staff were cited, a strong working relationship between court personnel and agency staff was also noted, especially in the smaller counties. This relationship enables a free exchange of information and if further information is needed, agency staff nearly always provide the information. Again, these efforts to foster strong connections among all relevant parties help to ensure that everyone has adequate and accurate information to make informed decisions about what's best for the children.

To what extent do the courts meet state and federal mandates for timely proceedings?

Timeliness of hearings is a concern with regard to state-established timeframes. While there is improvement on the federal mandates, there is still room for improvement.

- There is considerable variation around the state on meeting timeliness mandates in the Children's Code regarding hearings.

- Plea hearings are supposed to be held within 30 days of the filing of a CHIPS petition yet the compliance rate ranged from 70 percent to 98 percent. While on a statewide basis the mean number of days was 26.5, only 84 percent of the cases made the average.

- The first fact finding hearing is supposed to take place within 30 days of the final plea hearing. Fewer than 36 percent met the standard and the average number of days was 84.3.

- The first dispositional hearing is supposed to take place within 30 days of the final plea hearing. Fewer than 44 percent met the standard and the average number of days was 56.

- Continuances are granted routinely. Over 40 percent had at least one continuance of a plea hearing; one-third had continuances for fact finding hearings; and, a little over a quarter had them for dispositional hearings.

- While there is improvement in the percentage of cases with permanency planning hearings within 12 months of removal, nearly one-quarter of the hearings did not meet the standard.

- The lack of management information means that courts have no way to monitor their own achievement of timeliness or of federal outcome measures.

To what extent do court processes conform to legal and professional standards of judicial practice?

Generally, the processes are sound. The areas of concern relate to the lack of private space in some counties for parties to meet or youth to be sequestered from adults waiting for trial, and the rotation schedule of judges which may interrupt the continuity of cases.

- Judges allow more than sufficient time for all parties to make arguments, present witnesses and ask questions. This open communication ensures that all relevant information is revealed, which allows the court to make well-informed decisions for and about the children in question.

- While parent legal representation is not automatically provided, both judges and court commissioners make every effort to make parents aware of their right to legal representation and the avenues available to have representation provided. While not specifically child-related, the efforts to ensure that parents are fully aware of their options help to ensure that they are able to make informed decisions about what's best for their children. This, however, does not always result in the appointment of legal representation.

- Judges often will request specific attorneys to represent parents when they feel that a particular case may include contested hearings or otherwise be more difficult and complicated. The judges' familiarity with and trust in these attorneys further helps to ensure that the children are served as well as they possibly can be.

Recommendations

1. Local courts should provide additional meeting space in courts in smaller counties.

Dedicating even one or two rooms to the informal conversations between parties could increase their ability to share information and enhance trust in the confidentiality of the system. Several other states have supported special waiting areas and visitation centers for children and families. For example, in Pennsylvania the Philadelphia Dependency Court has new, child-friendly waiting rooms in three courtrooms. The State of Washington used court improvement funding to provide a child care facility for families attending King County court.

2. ***Local courts should assure that court schedules or waiting room configurations do not permit the mingling of children and youth with adults waiting for trial.***

This is a standard of the National Council of Juvenile and Family Court Judges that is violated in some jurisdictions and was also cited as a concern by judges.

3. ***Local courts should assure, to the extent possible, that a single judge hears a case in its entirety.***

In the absence of a separate juvenile or family court it is more difficult to achieve the standard of a "one family-one judge" approach which is being attempted in some states. Yet the National Council of Juvenile and Family Court Judges recommends "direct calendaring," whereby the case is assigned to a specific judge at the time it is first brought to court and this judge conducts all subsequent hearings, conferences and trials. (By contrast, courts with "master calendaring" reassign cases to different judges at different stages.) Direct calendaring is said to increase the judge's sense of ownership in the outcome of the case, reduce the time needed to review the file and increase the likelihood of consistent judicial interpretations and recommendations. The practice of one family-one judge is more common in smaller counties in Wisconsin, either by chance (there aren't that many judges) or by design. It is less common in the larger jurisdictions.

4. ***The Director of State Courts Office should create a mechanism for providing county court personnel with periodic, e.g., monthly, extracts of CCAP information from which the local courts could generate their own reports.***

CCAP is a useful system for case management. However, CCAP's flexible coding system for court events and variations in local practice makes it difficult to use for management reporting.

Large scale changes to CCAP are not in order. The system appears to function adequately and efficiently as a case management system which helps local courts schedule their hearings, notify relevant parties and track children through the court-related child welfare process. On the other hand, the system does not do very well at producing management information about court compliance with child welfare rules or about the outcomes achieved for children and families. A tightening and standardization of the system to permit information on compliance and outcomes to be generated routinely, as well as an opening up of the access to the raw data to county court

systems for their own local purposes, should be the next set of improvements in CCAP from a child welfare perspective.

Identifying reasonable mechanisms for improving the performance of CCAP, particularly in relation to its ability to produce management information for child welfare cases, requires taking sufficient note of the system's strengths and avoiding changes which would hinder the use of the system for case management purposes. CCAP was developed for purposes that are far broader than child welfare. Any changes need to preserve the original intent. In addition, local courts exercise a lot of judgment and discretion in how they use CCAP. The following recommendations are made with those caveats in mind.

This recommendation should require no change to the CCAP system itself. Rather, it takes the data which are already available in the system, with all of the local variations, and makes those data available to the counties. If the extracts are created in appropriately useable ways, one almost immediate benefit should be that Milwaukee, and perhaps other county court systems, can stop entering duplicate data into its own system, creating the records instead from CCAP. Even if the county wants to add data elements, by importing the CCAP data into its own system, it should be able to add whatever information it wants for whatever purpose it chooses.

Following this recommendation could go a long way towards solving half of the management information issues CCAP has. It would not produce new statewide reports, nor would it even, by itself, generate new reports at the county level. What it would do is make the data available to the counties so that if the county chose and had the resources to create its own management information, it could do so. Moreover, this could happen with no other change being made to CCAP.

5. ***The Director of State Courts Office should give consideration to standardizing the codes in the system for CHIPS cases, so that the court history of each case can be determined unambiguously from coded fields alone.***

This is not a definitive recommendation that the codes be standardized; it is a recommendation that the state staff responsible for the court system, together with representatives from the local courts, review the advantages and disadvantages of doing so in relation to the entirety of CCAP. It would, of course, be possible to identify a specific set of codes for child welfare cases both to

prevent those codes from being used elsewhere in the system and to prevent child welfare cases from using any other codes. Representatives would have to consider whether such actions would erode the integrated nature of the system.

The advantages of standardized codes should be clear. Without knowing exactly what type of hearing has been held or what type of order has been given, knowing, that is, from coded fields which can be aggregated across counties, it is not possible to know on a statewide basis whether Title IV-E and ASFA requirements are being met. In other words, the basic compliance questions cannot be answered. Individual counties may be able to answer those questions, if they enter the data consistently and appropriately for that purpose, but statewide information will not be available without standardization.

6. ***The Director of State Courts Office should create codes specifically for child welfare cases which permit identification of the following events: removal of the child from the home; physical discharge of the child from out of home placement; reason for the physical discharge from out of home placement; termination of court jurisdiction and return of the same child to the court system.***

Recommendation 6 is designed to enhance CCAP's capacity to monitor compliance with state and federal requirements. This recommendation is designed to enhance its capacity to measure outcomes for children in the child welfare system, especially with the addition of a definitive field noting the date of removal of the child; it would also result in improved monitoring of compliance.

The courts share responsibility with the county child welfare agencies for achieving safety and permanency for the children coming into the court system. For that reason, identifying not only what happens to individual children, which the courts can now do, but also what happens generally or in the aggregate to children who come into the system should be an important function. Those outcomes are generally not, however, well expressed in terms of court processes; they are best expressed in terms of changes in the child's own life situations, especially those which may require court action but which are not themselves court events.

The most difficult of the above items to record may be the end of court jurisdiction. Often, there will be no separate action which terminates jurisdiction; it will simply lapse when the extension order expires and no new petition is filed for a further extension.

Nevertheless, some means of identifying this date could be created, even perhaps automatically generating the date which could then be nullified by later action. The process of assigning case numbers in each court makes clear that courts already have the knowledge of when court jurisdiction has ended.

Perhaps the largest conceptual change involves some means of identifying when the child returns to the system. Without this, it is not possible to determine how often children return to the system after the court has ended jurisdiction. What is required, however, may not be a large physical change. The essential change needed would be some means, perhaps a special cross-reference field, for identifying the current court case as a case involving the same child as a previous case. In other words, it would not be necessary to keep the same case number, although that would presumably also serve the same function, but there should be a field in the current record which permits looking backwards to determine the child's previous history from the automated data.

7. ***In conjunction with the reporting recommendations related to CCAP, the state courts should establish standard reports on the timeliness of critical events. (This will not be possible without some standardization of terminology for specific court events.) At a minimum, the results of the reports should be shared with court administrators. To create more pressure on the courts to improve their results, the reports could be published on a statewide basis.***

Since there is no system of management reporting most county courts are probably not even aware of whether they are meeting the timeliness standards or not. This recommendation suggests that the first step to improving timeliness is to provide local courts with information on their current performance. The ideal reports would provide aggregate data and then "drill down" capacity so that the courts could see precisely which cases are not meeting the timeliness standards. For example, the report could show the percent of eligible cases with permanency plan hearings within 12 months and then a drill down to the specific cases which have not met the requirement.

Courts with higher percentages of compliance, particularly compared to their population size, should be encouraged to share their approaches with other courts at statewide meetings or at conferences.

8. ***The Director of State Courts Office should undertake an examination of the extent to which the lack of timeliness for certain hearings is a function of the judicial resources available.***

Because this study focused solely on juvenile cases, it was not possible to determine the cause of the lack of timeliness. As noted above, CHIPS and related cases comprise only a small proportion of judges' total workload, and it may be that when the total workload is examined one would find that there is simply not a sufficient number of judges to handle everything on a timely basis or that the existing resources are not distributed consistently with the workload on a geographic basis. It could, however, also be that those counties which are meeting the time frames consistently are better administered or less tolerant of delays or continuances in all types of cases, or that they experience more delays in non-CHIPS cases. While the previous recommendation suggested that courts need to be better informed about the timeliness records, that may not be sufficient to bring actual performance up to the standards. The Director of State Courts Office needs a broader effort to determine why time frames are not being met, followed by an effort to address the causes it finds.

9. ***The Director of State Courts Office should address whether there is a lack of timely notice in cases relating to Native American children.***

Several tribal attorneys recommended increased accountability for failure to provide timely notice. This, however, would not be feasible without changes to the regulatory provisions. A more readily attainable solution would be to address the reasons for late notice and attempt to rectify the problem at its source. This would involve an identification of Native American children sooner in the court process. As shown by the court observations, in all hearing types leading up to disposition, ICWA was raised only 9.5 percent of the time. Seeking earlier and more consistent input from all involved parties may be a start to providing more timely notice. Working collaboratively through organizations such as the Wisconsin Tribal Judges Association, the state court may also obtain correct mailing addresses.

10. ***The Director of State Courts Office should work with local courts to address ways to improve the quality and availability legal counsel to represent parents and children.***

Children should be represented by either guardians *ad litem* or adversary counsel whenever a child is alleged or found to be in need

of protection or services. In about 15 percent of the hearings counsel for children was not documented. Adversary counsel and guardians *ad litem* received lower ratings than other observed parties in court proceedings.

Apparently there is a good deal of history and case law around the issue of parental representation. Practices vary from automatic appointment of counsel to no appointed attorneys except in the circumstances provided by state law (contested terminations and adoptions).

The National Council states that "each party must be competently and diligently represented in order for juvenile and family courts to function effectively." While they say that courts should take active steps to ensure that parties have *access* to competent representation, they do not say that public entities have to pay for representation. Nonetheless, current practice seems to fall below the national standard in some locales. The state, working with local courts, should work at a minimum to assure that parties have *access* to *competent* representation.

One option is for the state to provide some type of incentive program of matching funds to support representation for all indigent parents in contested hearings where the child could be removed. Court Improvement Project or other resources could be considered. Another is for the state to stimulate the formation of legal clinics associated with law schools to represent indigent parents. In one state (Iowa) a $50 thousand grant from the Court Improvement Project assisted the legal clinic to obtain $1 million from a local foundation to form a children's rights center.

Related to the issue of available representation is attorney quality. One of the more consistent problems noted throughout this study is the pro forma nature by which attorneys handle cases. This impression was fed by the lack of time dedicated by attorneys to their child welfare caseload.

Courts do have resources at their disposal to impact the quality of representation. These range from specifying mandatory requirements for legal experience to imposing sanctions[24] for violations of court standards to providing family law experts who can assist through consultation.

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[24] Some state courts in other states impose sanctions such as terminating an attorneys appointment to represent a specific client, denial of further appointments or even fines or referral to the Bar committee for professional responsibility.

11. The Wisconsin Judicial College should include information for all new judges on child welfare proceedings.

While child welfare proceedings constitute a relatively small part of many judges' time overall, the importance of these proceedings to the lives of children, the complexity of the state and federal rules, and the amount of funding that stands to be lost for not following the rules together provide reason for giving special attention to this area of the law. It makes sense to spend some time at the initial judicial college at least exposing judges to this area of the law and providing materials that will assist them when they return to the courtroom. The American Bar Association Center on Children and the Law has many good reference materials that could be disseminated. One such publication is **Making Sense of ASFA Regulations** (2001). The following links have resources that could be provided to judges:

Publications	http://www.abanet.org/child/rclji/pub.html
Online materials	http://www.abanet.org/child/rclji/online.html
Books	http://www.abanet.org/child/catalog/books.html
Newsletter	http://www.abanet.org/child/courtworks.html

APPENDICES

A ***Catalog of Standards for Judicial Practice in Child Welfare (appended separately)***

B Case Reading Instrument

C Court Observation Form

D Interview Guide