

Children's Court Improvement Program WICWA Continuous Quality Improvement Data from the Onsite Reviews Conducted in 2015-2016

Introduction

The Wisconsin Indian Child Welfare Act (WICWA) Continuous Quality Improvement project, through the Children's Court Improvement Program (CCIP) is designed to improve adherence to WICWA requirements in the circuit court system, including use of qualified expert witnesses, providing notice, documentation of active efforts, and compliance with placement preferences in child in need of protection or services (CHIPS), juvenile in need of protection or services (JIPS), termination of parental rights (TPR), guardianship, and adoption cases. In addition, the project aims to increase collaboration and cooperation among the circuit courts, tribes, county child welfare agencies, attorneys, and other stakeholders.

The achievement of the WICWA Continuous Quality Improvement project's goals is assessed through onsite county reviews. Each onsite review is intended to examine a county's compliance with key provisions of WICWA and identify best practices and any areas that need improvement. In 2013-2014, the eight counties with the greatest number of circuit court cases subject to WICWA were reviewed. Data in these reviews was acquired via court file review as well as stakeholder focus groups and surveys.

In 2015-2016, court file reviews were conducted in an additional 12 counties that had a minimum number of WICWA cases that met the specified criteria listed below. Due to the relatively low number of cases per county in the 2015-2016 sample group, no focus groups or surveys were conducted.

Data Collection

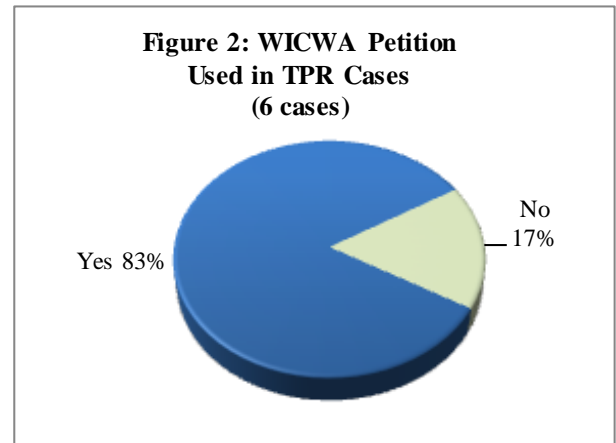
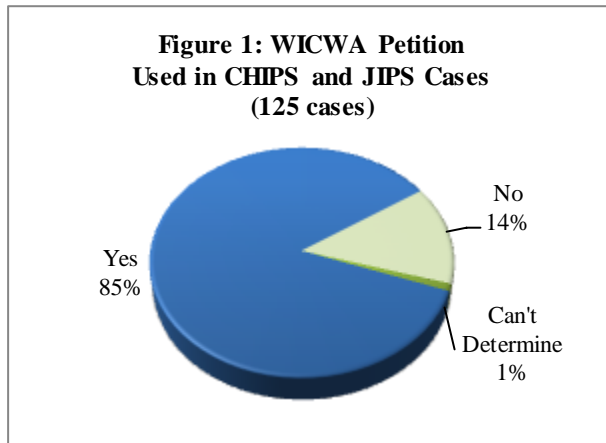
Court File Review. In each county reviewed, the case sample consists of CHIPS, JIPS, TPR, guardianship, and adoption circuit court cases that contain documentation that the case is subject to WICWA. The case must be filed within the last three years preceding the onsite review. In situations where a sibling group is involved, a maximum of two sibling cases will be reviewed. The minimum threshold for review of a county is three sibling groups or individual non-sibling child cases.

Results

In 2015-2016, CCIP staff conducted onsite reviews for the WICWA Continuous Quality Improvement project in twelve counties: Ashland County, Barron County, Douglas County, Eau Claire County, La Crosse County, Marathon County, Marinette County, Oconto County, Oneida County, Outagamie County, Sawyer County and Wood County. The information below compiles the findings from the court file reviews that occurred as part of these four onsite reviews. A total of 122 CHIPS cases, 3 JIPS cases, 6 TPR cases, 15 guardianship cases, and 2 adoption cases were reviewed.

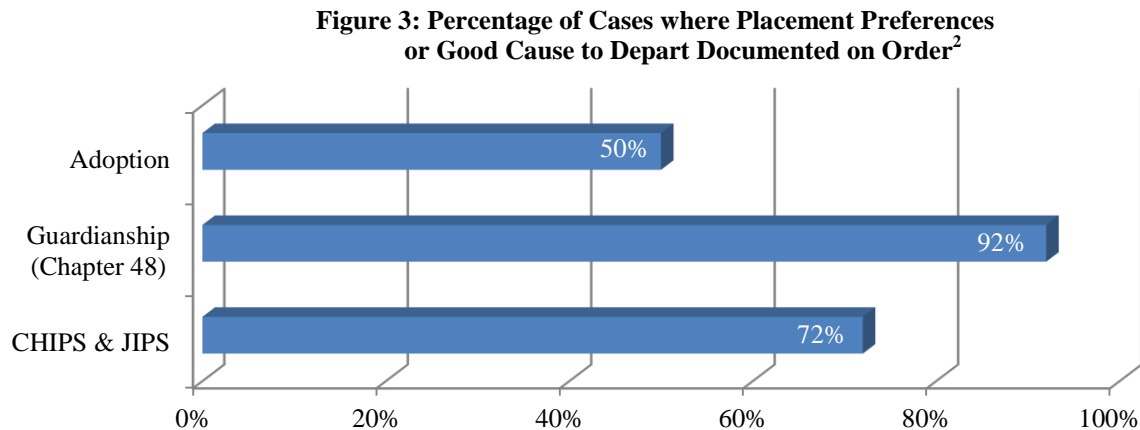
1. Identification of Indian Children

- In all reviewed counties, the WICWA version of the petition was routinely used for CHIPS, JIPS, and TPR cases.¹



2. Placement Preferences

- Documentation of placement preferences varied depending on the case and whether the ICWA version of the dispositional order was used.



3. Initial Notice

- Notice was provided to the tribe at least 10 days before the first hearing in:
 - 33% of the CHIPS and JIPS cases.³
 - 100% of the TPR cases.
 - 40% of the guardianship cases.

¹ In one case, no determination could be made regarding identification as no petition was available in the scanned case file and the original had been destroyed.

² The data for Figure 3 is as follows: 59/82 CHIPS and JIPS, 12/13 guardianship, and 1/2 adoption cases.

³ The majority of cases without 10 day notice were due to the counties routinely scheduling plea hearings in less than 10 days following the temporary physical custody hearing.

- In the majority of CHIPS and JIPS cases, initial notice was sent to the tribe through registered or certified mail.
- Areas of improvement include: providing notice to the parents through registered mail in all case types and providing registered mail notice to the tribe in TPR and guardianship cases.

Figure 4: Initial Notice to Parents and Tribe in CHIPS & JIPS Cases⁴

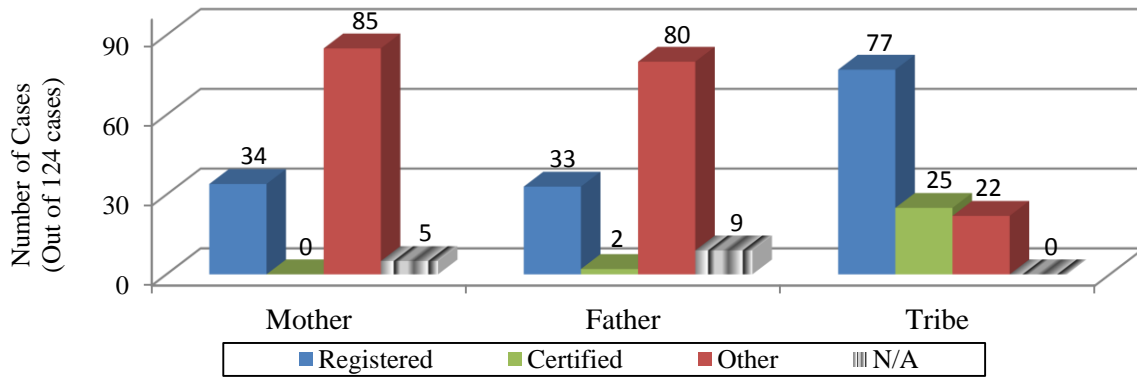


Figure 5: Initial Notice to Parents and Tribe in TPR Cases

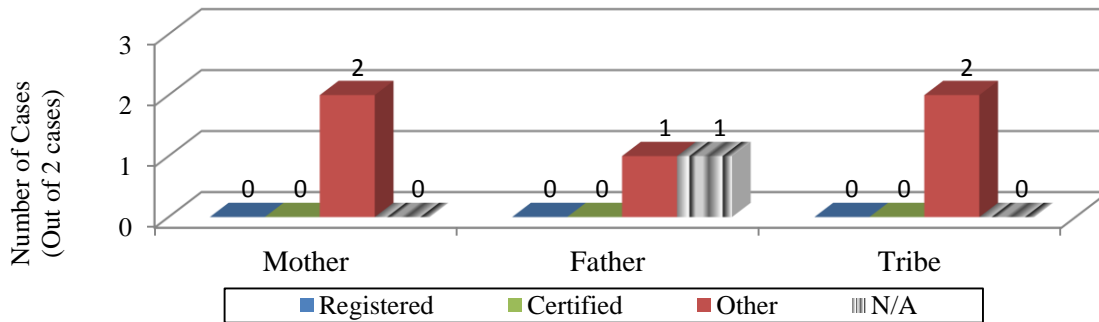
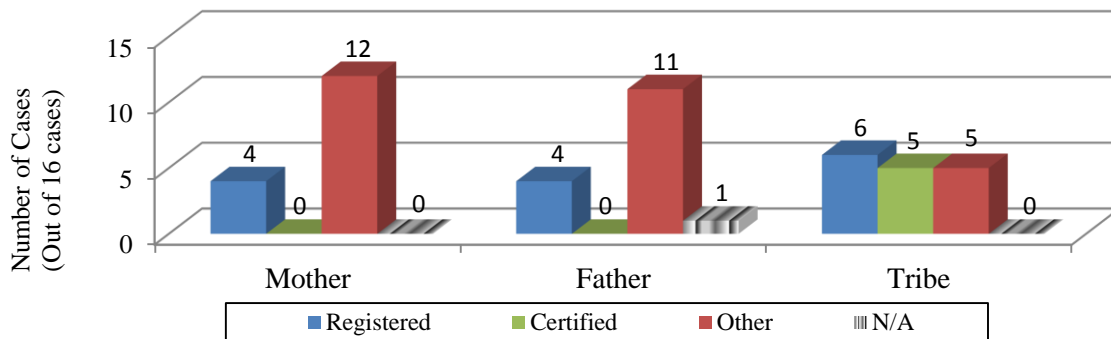


Figure 6: Initial Notice to Parents and Tribe in Guardianship Cases

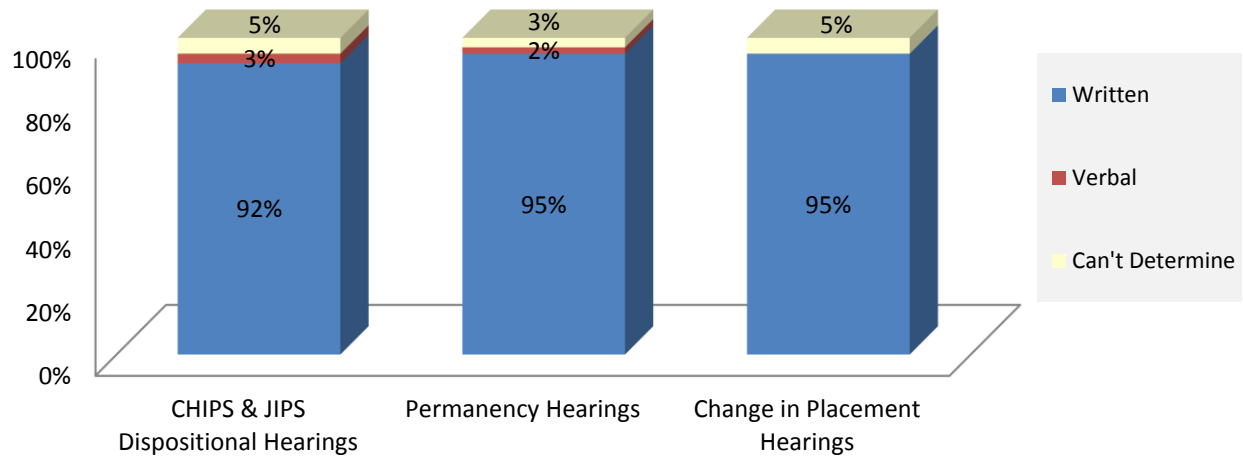


⁴ The “Other” category in Figures 4-6 includes regular mail notice, publication, personal service, and verbal notice.

4. Notice of Subsequent Hearings

- In the vast majority of cases, notice of dispositional and key post-dispositional hearings was provided to the tribe in writing as required by WICWA.
- Area of improvement: ensuring notice of subsequent hearings is provided to the tribe regardless of intervention or level of previous involvement in the case.

Figure 7: Subsequent Notice to the Tribe⁵

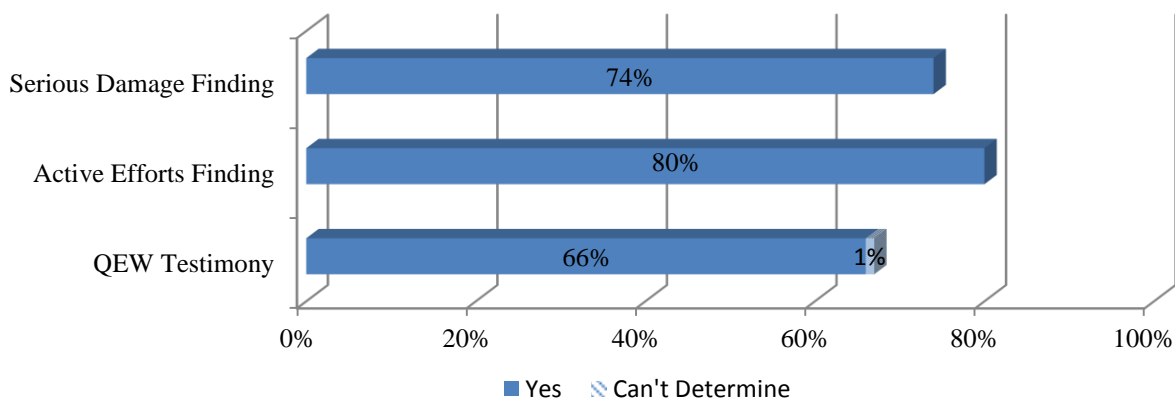


5. Court Findings and QEW Testimony

- The serious damage and active efforts findings were regularly made by the court in the CHIPS and JIPS cases.
- A number of counties have begun using the Statement of Active Efforts form (IW-1609), which has provided a greater level of detail and more accurate documentation of the nine activities the agency is required to conduct. This may account for the greater likelihood of this finding being made and done so in a child-specific manner.
- There were several cases where the court file lacked documentation that QEW testimony was provided despite the presence of a tribal representative in court. It is unclear whether testimony was provided but not documented in the hearing minutes or testimony was not provided.
- Areas of improvement: consistently making detailed, child specific findings; taking QEW testimony in all cases, including those where the tribe is in agreement with the placement; and the agency making diligent efforts to secure testimony from a first-tier qualified expert witness and, if unavailable, secure a QEW from a lower order of preference.

⁵ For Figure 7, there were a total of: 102 CHIPS and JIPS Dispositional Hearings, 64 Permanency Hearings, and 21 Change in Placement Hearings.

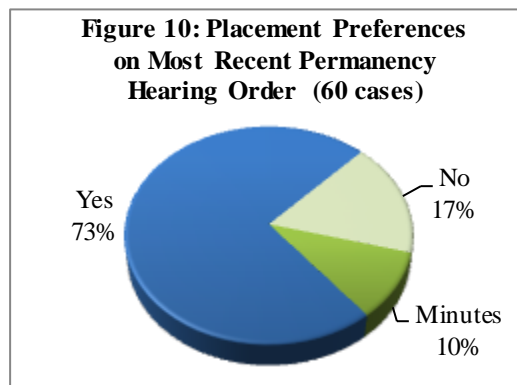
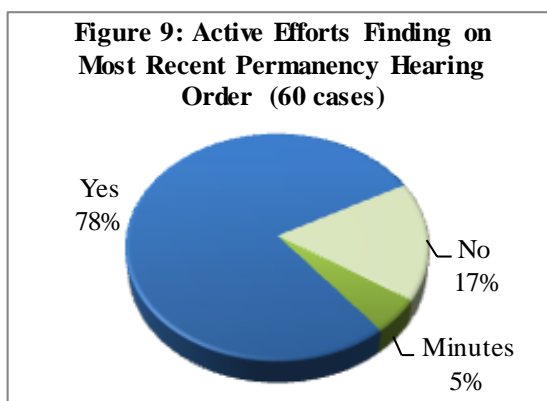
**Figure 8: Serious Damage, Active Efforts, and QEW Testimony
CHIPS and JIPS Case Sample (82 cases)⁶**



- All reviewed TPR cases resulted in voluntary termination; therefore, the serious damage and active efforts findings and QEW testimony were not required.
- Neither of the two guardianship cases filed under Ch. 54 contained the serious damage and active efforts findings or QEW testimony.

6. PERMANENCY HEARINGS

- In eight of the twelve counties, the Permanency Hearing Orders regularly contained documentation regarding the active efforts finding and placement preferences as required by WICWA.
- In the majority of cases where this information was not included on the Permanency Hearing Order, the WICWA version of the order was not used.

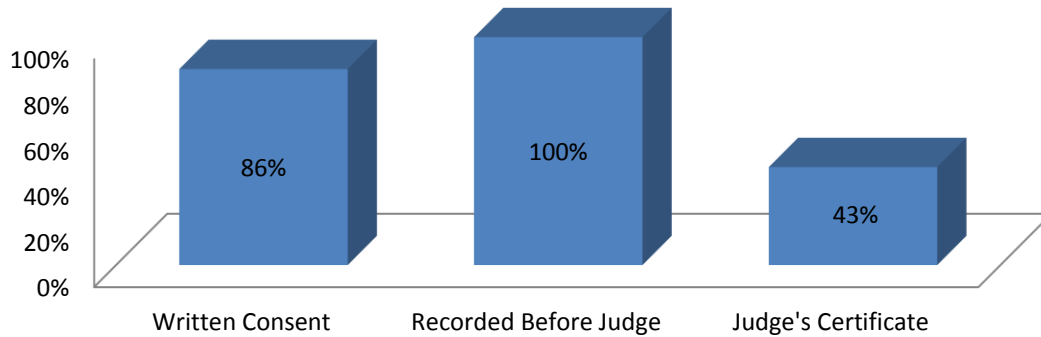


⁶ Includes a small number of cases where QEW testimony was provided through an affidavit. It is unclear whether, if challenged, use of an affidavit would meet the requirements of WICWA. Also includes cases where the active efforts and serious damage findings were made on the record and included in the case minutes.

7. VOLUNTARY CONSENT

- Almost all of the parental consents in the voluntary TPR cases were in writing and recorded before a judge. However, the consent did not contain the judge's certificate as required by WICWA in several instances, usually because form IW-1637 was not used.

**Figure 11: Voluntary Consent in TPR Cases
(7 consents)**



8. OTHER FINDINGS

- There was varying practice as to whether the WICWA circuit court forms were used consistently. Frequently, the non-WICWA version of the following forms were used: Request to Change Placement, Revise Dispo Order, Extend Dispo Order, Review Perm Plan (IW-1766), Permanency Hearing Order (IW-1791), and Order for Change in Placement (IW-1790). It is important to use these forms, as they contain the information and findings required under WICWA.
- Counties are improving their efforts to ascertain the child's Indian status at all stages of the case. Whenever this results in discovering that the case is subject to WICWA after disposition, it is necessary to comply with the WICWA requirements immediately, including notice, QEW testimony, placement preferences, active efforts, and serious damage findings.