

Volume

1

TENNESSEE SUPREME COURT IMPROVEMENT PROGRAM



A Re-Assessment of
Tennessee's Judicial Process in
Foster Care Cases

A Re-Assessment of Tennessee's Judicial Process in Foster Care Cases

Produced under the auspices of the Tennessee Court Improvement Program of the Tennessee Supreme Court, Administrative Office of the Courts, and the provisions of Section 13712 of Subchapter C, Part I of the Omnibus Budget Reconciliation Act of 1993: Grants for State Courts.

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Prepared by:

Nyasha N. Justice, Esq.
Court Improvement Program Attorney
Email: Nyasha.Justice@tscmail.state.tn.us

And

Leslie Barrett Kinkead, Esq.
Court Improvement Program Coordinator
Email: Leslie.Kinkead@tscmail.state.tn.us

Request additional copies of this report from:

Administrative Office of the Courts
511 Union Street • Suite 600
Nashville, TN 37219
Phone 615.741.2687 • Fax 615.741.6285

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Divider 1: Overview of Report





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Overview of Tennessee Court Improvement Program, Tennessee Court & Child Welfare Systems

Purpose of the Re-Assessment

The Court Improvement Program (CIP) was created as part of the Omnibus Budget Reconciliation Act (OBRA) of 1993¹. As a requirement of the original allocation of the CIP grant, OBRA provided that state court systems conduct an assessment of foster care and adoption laws and judicial processes, and develop and implement a plan for system improvement. Tennessee's assessment and plan of improvements were completed in 1997.

In 2003, the U.S. Department of Health and Human Services, Children's Bureau, mandated a re-assessment of the juvenile courts particularly taking into account the requirements of the Adoption and Safe Families Act (ASFA) of 1997²; Tennessee's implementation of ASFA legislation; and the CIP implementation of the original plan of improvements.

An advisory committee was formed in 2003 to provide input for the re-assessment and has contributed to the recommendations based on the findings of the Re-assessment. The committee is comprised of members of the Tennessee Council of Juvenile and Family Court Judges (TCJFCJ), Tennessee Court Services Association (TCSA), Department of Children's Services (DCS), Foster Youth Advisory Council, Tennessee Commission on Children and Youth (TCCY), Office of the Attorney General, Tennessee Judicial Conference, private attorneys, Select Committee on Children and Youth of the state legislature, Vanderbilt University School of Law and Child and Family Policy Center, CASA, Tennessee Foster Care Association, Legal Aid, Department of Mental Health and Developmental Disabilities and Department of Health.

The original assessment evaluated the extent to which courts met the requirements of federal and state laws as they pertained to child dependency and neglect. The re-assessment reviews not only the compliance of federal and state laws in regard to children in foster care who are dependent but also those who have been removed from their homes because of delinquent or unruly offenses.

This assessment utilizes a combination of quantitative and qualitative methods to collect in-depth information on court practices related to children in foster care. The methods utilized are:

- A review of state laws to determine compliance with federal mandates and professional practice standards;
- A distribution of statewide surveys to key stakeholder groups in the juvenile court system;
- Completion of judicial file reviews of juvenile court cases in four counties; and
- Focus groups or interviews conducted with key stakeholder groups in the juvenile court system in two counties.

This report is organized into two volumes. Volume I contains four chapters. Chapter I includes the overview of the re-assessment; a description of Tennessee's court system; a history and description of the activities of the CIP since 1998; and a description of the Tennessee's child welfare system.

Chapter II reviews Tennessee's statutory framework and compares it to federal law and national standards.

Chapter III provides an assessment of the findings of the data collected from the statewide surveys and judicial case file reviews. Chapter III will address the following topics:

Methods of Assessment:

- A detailed explanation of the methodology employed in the re-assessment is provided

Quality of Proceedings

- Completeness and depth of hearings
- Representation of parties
- Independent living services for older youth
- Quality and treatment of parties

Organizational Issues

- Docketing and caseload management
- Judicial time to prepare and conduct hearings, including sufficiency of court staff
- Management information systems
- Adequacy of training and training needs

Chapter IV includes a summary of findings and recommendations based on the findings.

Volume II contains the instruments used in the Re-assessment for the two phases of data collection: statewide quantitative data and the qualitative data generated in the four counties. The instruments including the judicial file review instrument, surveys, focus groups and interview guides.

Current and former CIP staff contributing to various components of the Re-assessment includes:

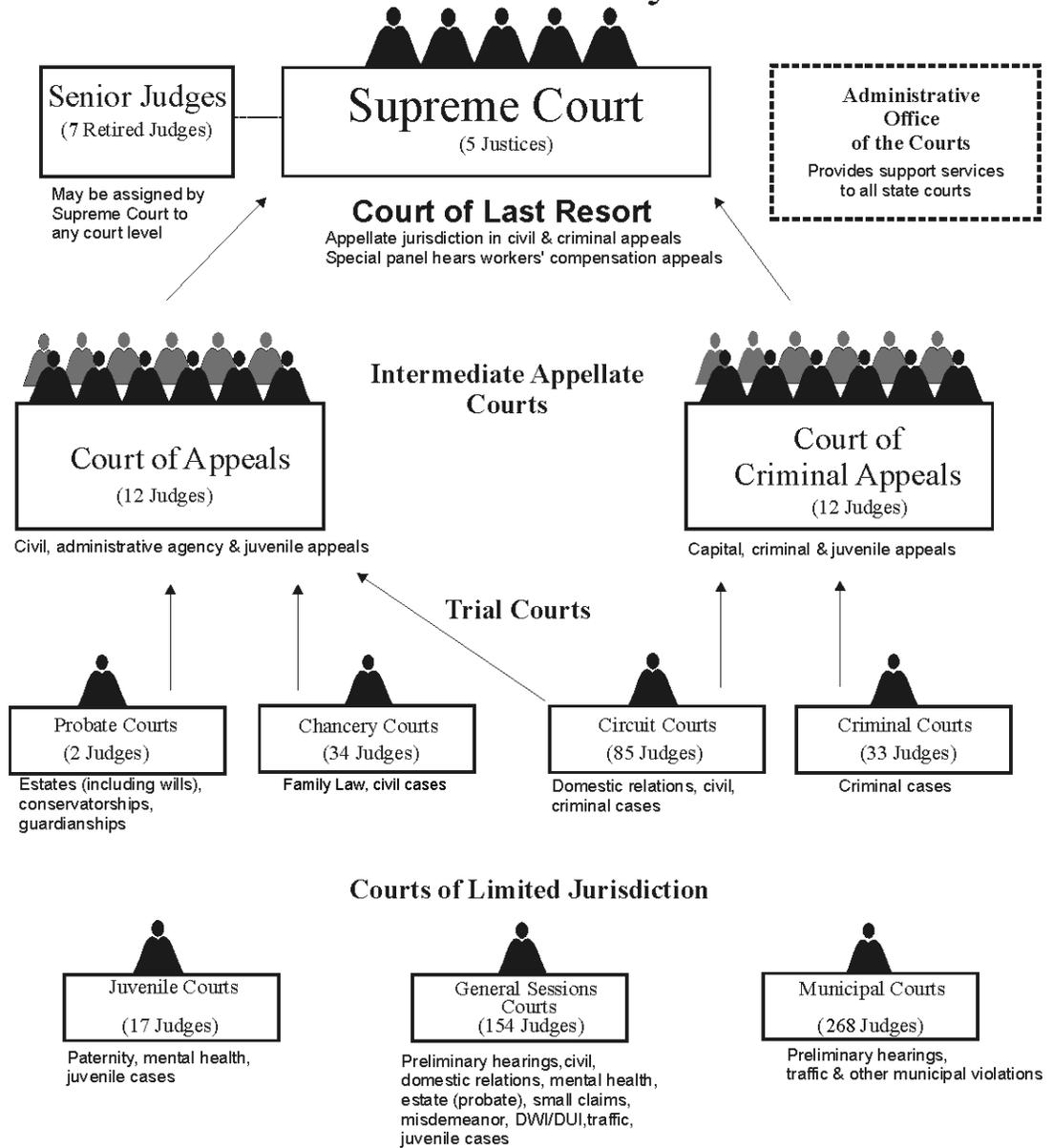
- ✧ Leslie Barrett Kinkead, Esq., CIP Coordinator
- ✧ Nyasha N. Justice, Esq., CIP Attorney
- ✧ David Wilsterman, Data Analyst
- ✧ Jules Marquart, Ph.D., Re-Assessment Coordinator
- ✧ Wendy Borthwick, CIP Administrative Assistant
- ✧ Stacy Miller, CIP Attorney
- ✧ E. Scott Neely, Esq., Data Collector
- ✧ Sheila Odusote, Data Collector
- ✧ Murray Smith, Esq., Data Collector
- ✧ LaShawn Williams, Esq., Data Collector

The CIP staff would like to thank Cindy Wood MacLean, Esq. for her contribution in editing the report. We also wish to acknowledge the Re-assessment Advisory Committee for its contributions, especially for the recommendations included in this report. Finally, staff wishes to thank those at the Administrative Office of the Courts for all the assistance provided, including Connie A. Clark, Director and the Tennessee Supreme Court.

Description of the Tennessee Court System

Tennessee does not have a unified court system. Some courts are administered by the counties, while others are administered by the state. As of April 2005, the support services for all courts in Tennessee are under the umbrella of the Administrative Office of the Courts. Cases involving allegations of child abuse and neglect may be heard in a number of courts, including general sessions courts, probate courts, and juvenile courts, as well as circuit and chancery courts. See Figure 1:

Tennessee Judicial System



The 95 counties of Tennessee are divided into 31 judicial districts. Within each of these districts are Circuit Courts and Chancery Courts, as provided by the state constitution. There are separate Criminal Courts in the metropolitan areas. In other counties, the Circuit Court hears both civil and criminal cases. Every county is additionally served by courts of limited jurisdiction, such as Juvenile Courts and General Sessions Courts, which are funded by their counties.

Where there are separate Juvenile Courts, those courts have exclusive jurisdiction in proceedings involving minors alleged to be dependent and neglected, delinquent and unruly. Juvenile Courts also have concurrent jurisdiction with Circuit, Chancery, and Probate Courts in some areas.

The Supreme Court is the highest court in the state. The current chief justice is Frank F. Drowota, III. The five justices are nominated by the Judicial Selection Commission, appointed by the Governor and are elected at the next general election through a "yes-no" retention vote for eight-year terms. (All Tennessee appellate judges are elected through this procedure and serve eight-year terms.) The majority of the Supreme Court's workload consists of cases appealed from lower state courts.

The Court of Appeals hears appeals in civil cases from trial courts and certain state boards and commissions. The court has twelve members, who sit in panels of three in Jackson, Nashville and Knoxville. All decisions made by the Court of Appeals may be appealed to the Tennessee Supreme Court.

The Court of Criminal Appeals, created by the legislature in 1967, hears trial court appeals in felony and misdemeanor cases, as well as post-conviction petitions. The twelve members sit monthly in panels of three in Jackson, Nashville and Knoxville, or elsewhere as necessary. All decisions of the Court of Criminal Appeals may be appealed to the Supreme Court by permission, except capital cases, which are appealed automatically.

The state's trial courts include Chancery, Criminal, Circuit and Probate Courts. With the exception of probate judges, trial judges are nominated by the Judicial Selection Committee, appointed by the governor and then run for election within their judicial districts at the next general term.

Description and History of the Tennessee Court Improvement Program

The Tennessee Supreme Court received the initial Court Improvement grant in 1995 and appointed the Permanency Planning Commission³ to oversee and direct the original assessment of juvenile courts and plan for improvements. Members of the Commission included representatives from TCJFCJ, DCS, Tennessee Clerks of Court Conference, TCCY, Office of the Attorney General, Tennessee Judicial Conference, private attorney, Select Committee on Children and Youth of the legislature, Vanderbilt University School of Law and Child and Family Policy Center, CASA, Task Force on Domestic Violence, child psychiatrist, foster child, Tennessee Foster Care Association and Tennessee Supreme Court.

Tennessee's original assessment and plan for improvements were completed in 1997 and reported in the *Tennessee Court Improvement Program for Juvenile Dependency Cases: An Assessment of Tennessee's Court Performance and a Plan for Improvements*⁴ (hereafter referred to as *1997 Program Report*). The plan of improvements incorporated seven major categories: 1) changes in state law affecting child dependency cases; 2) changes in court procedures; 3) changes in the way children and families are treated; 4) education for judges and other court personnel; 5) training for attorneys; 6) relations with DCS; and, 7) collaboration among other parties. Eighteen original initiatives were set forth in the

plan of improvements to address each category and to be implemented by the CIP.⁵ This report will address each category and summarize the activities completed.⁶

Changes in State Law and Court Procedures

1. Tennessee Supreme Court Rule 40: Guidelines for Guardians ad Litem for Children in Juvenile Court Neglect, Abuse and Dependency Proceedings. The Tennessee Supreme Court adopted Rule 40 in 2002. The Rule clarifies that a guardian ad litem (GAL) in child dependency cases shall be a licensed attorney and function as an attorney, rather than a witness or special master; and defines the GAL's responsibilities. CIP staff participated in drafting the Rule.
2. Expedited Appeals in Termination of Parental Rights Cases. In 2004, the Tennessee Supreme Court adopted Rule 8A of the Tennessee Rules of Appellate Procedure which was subsequently approved by resolutions of the General Assembly and became effective July 1, 2004. The Rule provides for special procedures to expedite appeals as of right in termination of parental rights cases. The CIP staffed the committee appointed by the Supreme Court that developed recommendations for the new rule.
3. Compensation for Court Appointed Attorneys. A number of changes have been made since 1997 in the method and amount of compensation for court-appointed attorneys in child dependency cases. After the original assessment addressed the incongruence of fees for GALs and parents' attorneys, T.C.A. § 37-1-150 was modified in 1999 and granted responsibility of payment of GAL fees to the AOC. The Supreme Court has amended its rule regarding compensation to equalize and improve compensation for GALs and parents' attorneys.
4. Kinship Care. CIP staff participated in the drafting and passage of legislation that allows a parent to provide for a caregiver of his/her child without the necessity of court intervention during the period the parent is not able to care for the child, through the designation of a power of attorney.
5. Resource Guidelines⁷ of the National Council of Juvenile and Family Court Judges. The CIP staff distributed copies of the *Resource Guidelines* to all newly elected judges at the Judicial Academy in 1998; sends copies to newly appointed judges; provides copies to court staff, private attorneys and DCS attorneys as requested; and follows the principles of the *Guidelines* in developing training and written materials.
6. Sample Orders in Child Dependency Proceedings. In 2002, DCS attorneys and the CIP staff drafted and distributed sample judicial orders that include the mandatory "reasonable efforts" and "contrary to the welfare of the child" findings.

Changes in the Way Children and Families are Treated

1. Handbook for Parents and Guardians in Child Abuse and Neglect Cases⁸. The CIP and DCS staff developed the *Handbook* in 2000 as a resource for parents and is available in both English and Spanish. Both versions may be found on the Tennessee Supreme Court's website at: www.tsc.state.tn.us.
2. Child Abuse and Neglect Video for Parents. The CIP worked with the AOC and a local production company to produce a video in 2002, that explains the juvenile court procedures in child dependency cases. The video is available in seven languages: Arabic, English, Kurdish, Laotian, Russian, Spanish and Vietnamese. The video has been distributed to all the juvenile courts. CIP funds were used to produce copies of the video and to purchase a TV/VCR for those juvenile courts who did not have access to one.
3. Alternative Dispute Resolution (ADR). In 2002, Tennessee Supreme Court Rule 31, which governs court appointed alternative dispute resolution, was amended and expanded the definition of "court" to include general sessions and juvenile courts "when exercising the jurisdiction of courts of record." This allowed for the inclusion of child dependency cases and was a result of the CIP's collaboration with the Tennessee Supreme Court's ADR Commission.

In 2002, the CIP, ADR, and Domestic Violence divisions of the AOC sponsored a two-day statewide seminar on the use of alternative dispute resolution in child dependency cases. In 2003, the CIP staff through the AOC applied for and received a Byrne Grant to develop a pilot program to provide mediation in child dependency and termination of parental rights cases in the Knox County Juvenile Court.

Education for Judges and Other Court Personnel

1. Judicial Education. Since the original assessment the CIP has sponsored a day of training at the annual Tennessee General Sessions Judges Conference and has included a variety of topics and numerous national speakers.

Also since 1998, the CIP staff has presented a number of educational programs on ASFA at the annual and mid-winter meetings of the Tennessee Council of Juvenile and Family Court Judges Conference and the annual and regional conferences of the Tennessee Court Services Association. In 2002, CIP sponsored a train-the-trainer program through the National Child Welfare Resource Center on Legal and Judicial issues of the American Bar Association (ABA).

Following the elections for all judges in 1998, the AOC provided a week of training. The CIP provided a full day of training on juvenile court law and procedure.

The CIP has expended funds for scholarships for approximately twenty judges to attend programs at the National Council of Juvenile Judges College and Judicial College in Reno since 2002.

2. Child Dependency Benchbook. The *Benchbook* was first published in 1999, and the fourth edition completed in 2005. It includes sections on statutory law, case law, sample orders, checklists for each of the hearings in child dependency cases based on the *Resource Guidelines* and resource information. The *Benchbook* has been provided to all judges, is available in hardback and on the Tennessee Supreme Court's website, www.tsc.state.tn.us.
3. Foster Care Review Board Training. Foster Care Review Board Training is by far the most visible and widely recognized initiative of the CIP. Since 1998, this training has been provided by CIP staff at the local level and is offered to foster care review board members, judges, court staff, local attorneys, DCS staff and attorneys, CASA volunteers, members of the Tennessee Commission on Children and Youth, foster parents and other interested parties at each site. By the end of 2000, the CIP staff had reached the goal of completing training for all foster care review boards in the state. Approximately 90% of the boards have received follow-up training. In 2004, CIP staff completed the Third Edition of the *Foster Care Review Board Training Manual*.

Preparation and Training for Attorneys

1. Continuing Legal Education Programs for Local Bar Associations and Courts. The CIP staff develops and presents programs for local bar associations and juvenile courts. Since 2000, CIP staff has offered a basic five-hour advocacy program, *Legal Advocacy in Child Dependency and Termination of Parental Rights Cases*. Local juvenile court judges are encouraged to attend these programs which are approved for continuing legal education credits. At each of the trainings the CIP manual, *Legal Advocacy in Child Dependency and Parental Rights Cases*⁹, is distributed to attorneys and judges. Depending upon the needs of the local bar associations or courts, other trainings have also been developed by the CIP, including the following topics: best practices in child dependency and delinquency cases; how GALs and CASAs can work together; special education issues; applying ASFA to delinquent children; and legislative and caselaw updates.
2. Statewide and Regional Continuing Legal Education Programs. Since 2002, the CIP has served on a committee that has planned and produced two statewide multidisciplinary methamphetamine conferences in 2003 and 2005, addressing the implications of the use and manufacturing of methamphetamine, particularly in relation to drug endangered children. The CIP participated in the development and production of a statewide, multidisciplinary CPS conference in 2004. The CIP produced a regional one-day conference on immigration law and children in 2003. In 2000, CIP staff chaired the legal track committee for a statewide adoption conference that focused on the recruitment and retention of foster and adoptive homes.
3. Scholarships for attorneys. In 2002, the CIP funded scholarships for attorneys to attend the National Association of Counsel for Children, 25th National Children's Law Conference; and the 2002 National Juvenile Justice Title IV-E Conference in

Texas. In 1998, CIP provided funds for scholarships for five attorneys to attend the Rocky Mountain Child Advocacy Training Institute in Denver.

4. Child Dependency Representation Project. The CIP, through the AOC, applied for and received a one-year Byrne grant in July 2000, to evaluate the use of full-time attorneys to meet the legal needs of children and parents at a pilot site in Cheatham County, a rural county northwest of Nashville. Prior to the end of the grant, Dickson County, an adjacent rural county, was included in the project.
5. Tennessee Association of Legal Services (TALS) Project. The CIP, through the AOC, entered a two-year contract with the Tennessee Association of Legal Services (TALS) to provide training and support to lawyers appointed to represent children and parents in dependency proceedings through six legal services offices across the state.

Relations with the Department of Children’s Services

1. Collaboration with DCS. Since its inception, the CIP has utilized attorneys and other representatives from DCS in its training programs. A DCS attorney usually presents the section on termination of parental rights law at the attorney training, *Legal Advocacy in Child Dependency and Termination of Parental Rights Cases*. In addition, DCS attorneys and/or staff are present at the foster care review board trainings specifically to answer policy questions. CIP staff has consistently modified both of these programs to include educational topics as requested by the Department. DCS attorneys have presented at various other programs sponsored by the CIP. DCS personnel are invited to attend all CIP sponsored events. CIP staff has also presented at DCS educational programs.

Since 2004, DCS General Counsel’s Office and CIP staff have been involved in a joint effort to develop on on-line training for GALs in order to comply with the 2003 amendment to the Child Abuse Prevention and Treatment Act that requires pre-appointment training of GALs. It is anticipated this training will be completed by the end of 2005.

During 2003-2004, the DCS General Counsel’s Office, CIP staff and a foster parent, who provides training nationally, jointly developed training on the Tennessee Foster Parents Bill of Rights. Two sessions were piloted in Davidson County for foster parents, court staff, foster care review board members, DCS staff and private attorneys. The original plan was to present the program in all DCS regions; however, because of changes within DCS the training has been suspended. CIP sponsored and funded trial skills training provided by the ABA National Child Welfare Resource Center on Legal and Judicial Issues for all the DCS attorneys in 1998.

2. Child and Family Service Reviews. Tennessee participated in the Child and Family Services Review in June 2002. The CIP *Strategic Plan* includes activities to address issues regarding safety, permanency, and child and family well-being as outlined in

the CFSR that are relevant to the judiciary. Ongoing activities related to each federal goal are:

- Safety: educating judges and attorneys on depth and quality of preliminary hearings and on judicial “contrary to the welfare” and “reasonable efforts” findings.
- Permanency: educating judges on their authority to review placement decisions and monitoring permanency plans; and educating judges, foster care review boards and attorneys about placement and visitation for siblings.
- Well-being: promoting DCS’s efforts of engaging families at CIP-sponsored events; educating judges, foster care review boards and attorneys on the requirement for judicial oversight of the provision of services for children and families; focusing educational efforts on depth and quality of permanency hearings; and educating the judiciary to ensure termination of parental rights petitions are finalized expeditiously.

Collaboration Among Other Parties

In addition to the examples of collaboration discussed previously, the CIP has collaborated with the following groups on various projects:

- Tennessee Bar Association, Juvenile & Children's Law Section. The Section is currently proposing a train-the-trainer program where CIP staff will educate experienced attorneys in child dependency cases to present the program, *Legal Advocacy in Child Dependency and Parental Rights Cases*, to attorneys in their communities.
- Tennessee Youth Advisory Council. Two members of the Council serve on the CIP Re-assessment Committee. The Council has recently produced two publications for youth in custody regarding children’s rights in child dependency cases and information on the GAL. Both brochures are available on the Tennessee Supreme Court’s website at www.tsc.state.tn.us. The CIP has agreed to distribute copies to juvenile courts and at future training events. In addition, Tennessee Supreme Court Justice E. Riley Anderson addressed the 2004 Tennessee Youth Action Conference and spoke about his experiences with the foster care system as a child.
- Tennessee Court Services Association. Since 2003, CIP has presented a session on child dependency law at the annual conference of court staff.
- CASA. CIP has presented training at CASA new volunteer and in-service educational programs since 2001.
- Tennessee Alliance for Legal Services. In 2004, the CIP funded a project to translate the Tennhelp website into Spanish. The website provides information about community resources throughout the state.

- Department of Corrections. CIP funded speakers for the Ninth National Conference of Women Working in Corrections that was held in Memphis in 2002.

Tennessee's Child Welfare System

The Tennessee Department of Children's Services (DCS) was established in 1996 through legislation combining several state departments, which served the needs of children and their families. Like many states, Tennessee has been challenged with finding the optimum administrative scheme to deliver services for children and youth who are in state custody, or at significant risk of entering custody, and their families. The integration of all such services in 1996 resulted in the creation of DCS which provides child protective services, foster care, adoption, reunification and permanency services, programs for delinquent youth, probation/aftercare, and treatment and rehabilitation programs for identified youth.

Administratively, DCS currently has separate divisions administering services to delinquent, unruly and dependent children respectively. There are approximately 10,000 children in state custody. The Office of Child Permanency oversees foster care, adoption, reunification, kinship support, and resource home recruitment, support and retention. The Division of Juvenile Justice oversees the care and management of delinquent youth in state custody. The division serves approximately 2,000 delinquent youth and oversees the operation of five DCS hardware-secure, residential facilities.

DCS also is geographically divided into 12 regions to administer service delivery to children and families. The 12 DCS regions are: Davidson, East, Hamilton, Knox, Mid-Cumberland, Northeast, Northwest, Shelby, South Central, Southeast, Southwest and Upper Cumberland.

In addition to the traditional IV-E federal funds for foster care, Tennessee has utilized federal Medicaid funds (administered through TennCare, Tennessee's Medicaid managed care demonstration project) for many of the residential treatment services provided for children in state custody. While this funding mechanism has maximized Tennessee's ability to draw down federal funds to provide residential treatment services for children in state care, it has also created a complex legal environment in which DCS must meet not only the requirements of federal child welfare law and regulations but also must meet all federal Medicaid requirements. As a result, in 1998 DCS became a state defendant in litigation related to the state's failure to meet its obligations under federal Medicaid law. DCS has been operating under a consent decree related to the provision of early, periodic, screening, diagnosis, and treatment (EPSDT) services for children as required by Medicaid as well as a lawsuit regarding the provision of an appropriate grievance system when Medicaid-funded treatment services are delayed, denied, or ended.

Additionally, Tennessee has been challenged regarding its provision of federally required child welfare services. On September 1, 2001, a federal class action lawsuit was settled. *Brian A. v. Sundquist*¹⁰ alleged that DCS failed in its provision of federally required child welfare services to children in foster care. Included in the class of plaintiffs in the *Brian A.* lawsuit were children who are or will be in state custody as dependent and unruly children. The settlement agreement is premised on the general principles of federal child welfare legislation - safety, permanency and child and family well-being.

The juvenile courts are a key component to Tennessee's child welfare system. Other key players include the volunteer foster care review boards which assist the courts in oversight of cases, Court Appointed Special Advocates (CASAs), foster parents, the attorneys who serve as guardians ad litem and counsel to the parents, residential service providers, and most importantly, the children in foster care themselves.

A key role of the Court Improvement Program has been to work with DCS to develop training programs for the various participants in the system to help each segment understand its role in assuring that children in foster care not only receive the services needed while in care but that also the ultimate goal for every child is to achieve permanency as soon as possible.

Divider 2: Review of Laws





Review of Laws

Federal Law..... 13

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Review of Laws

Federal Law

Adoption & Safe Families Act

On November, 19, 1997, the Adoption and Safe Families Act, Public Law 105-89 (ASFA) was signed into law. The primary purpose of ASFA was to remedy the chronic problems with the child welfare system.¹¹ This was a task ASFA's predecessors had failed to accomplish.¹² Continuing with the goals of the Adoption Assistance and Child Welfare Act, the tenets of ASFA are safety, permanency and child and family well-being. Recognizing the need of the child to be safe in custody and to achieve permanency more expeditiously, ASFA empowered the states with the necessary tools and incentives to achieve the following:¹³

- Safety as a non-negotiable principal in decision making and the delivery of services.
- Specifying when efforts to prevent removal or to reunify a child are not required.
- Requiring criminal record checks of prospective foster and adoptive parents.
- Shortening the time frames for conducting review and permanency hearings.
- Requiring states to make reasonable efforts to finalize a permanent placement.
- Establishing time frames for filing termination of parental rights petitions.
- Establishing performance standards with financial penalties for child welfare systems failing to show improvement in their outcomes.

The Foster Care Independence Act

In December of 1999, the Foster Care Independence Act was signed into law.¹⁴ Title I of the Act is the Chafee Foster Care Independence Program (CFCIP). Chafee replaced the Independent Living Program (ILP) created in the mid-1980s and expanded the eligibility criteria under the ILP which had only allowed services to children age 16 to 18. Chafee provides services to youth if they are likely to remain in custody until age 18; are between the ages of 14 – 21; or to former foster youth who left custody after the age of 17.5 years but have not yet reached the age of 21 years. The Chafee legislation provides increased support services, such as additional education or training, housing assistance, counseling and other services to foster youth to assist in their transition from foster care to adulthood.

In some of its provisions, the Act:

- Increases funds to states to assist youths to make the transition from foster care to independent living.
-

- Recognizes the need for special help for youths ages 18 to 21 who have left foster care.
- Offers states greater flexibility in designing their independent living programs.
- Establishes accountability for states in implementing the independent living programs.

Brian A. v. Sundquist¹⁵ – Child Welfare Class Action Lawsuit

On September 1, 2001, a federal class action lawsuit against the Tennessee Department of Children’s Services (DCS) was settled. *Brian A. v. Sundquist* alleged that DCS failed in its provision of federally required child welfare services to children in foster care. Included in the class of plaintiffs in the *Brian A.* lawsuit were children who are or will be in state custody as dependent and unruly children. The settlement agreement is premised on the general principles of federal child welfare legislation: safety, permanency and child and family well-being. Basic principles of the settlement agreement include:

- All children should have the opportunity to grow up in a safe and nurturing environment.
- The state should make reasonable efforts to avoid foster care placement.
- Family ties should be maintained and children should be placed with relatives when possible.
- Foster care is temporary and children should be placed in a permanent home as quickly as possible.
- All children in need of welfare services should receive full and equal access to the best available services.
- Children should be in the least restrictive, most family-like setting possible, within close proximity to the home from which they were removed.
- Placements should meet the children’s needs; services should address the trauma of foster care and the family problems that resulted in the removal.
- Families should participate in planning and decision-making.
- All parties in judicial proceedings should be provided a fair hearing and their constitutional and other legal rights should be enforced and recognized.
- The state shall provide monetary resources and documentation of the implementation of the agreement.

The initial settlement agreement in *Brian A.* entailed a 54-month plan for how services are to be administered, as well as outcome and performance measures that must be fulfilled to terminate judicial oversight. The settlement agreement mandated sweeping changes in the administration of services to Tennessee’s children and families in the child welfare system. Some of the major changes are outlined below:

✧ **Regional Services**

- A full range of community-based services shall be available in each region, including intensive family services for reunification transition period, intensive home-based crisis intervention services to prevent foster care disruption, and adoptive family intensive home-based crisis intervention services to prevent disruption.
- An independent expert shall conduct a statewide needs assessment of resources and placements to determine the need for new or different placements and services and where those are to be located.
- DCS shall maintain a statewide, regional and local program for recruitment of foster and adoptive homes.

✧ **Staff Qualifications and Caseload Caps**

- A Case Manager (CM) 1 shall have a maximum caseload of a fifteen children. A bachelor's degree is required and a Social Work degree is preferred.
- A CM 2 shall have a maximum caseload of twenty children. A CM2 must be promoted from a CM 1 or have one year of field experience.
- A CM 3 shall have a maximum caseload of twenty children. A CM3 must be promoted from a CM 2 or have two years of field experience.
- An adoption CM shall have a maximum caseload of twelve children.

✧ **Staff Training**

- Director of Training position created in DCS Central Office
- Regional training units
- Comprehensive child welfare training and retraining with identical training for contract agencies

✧ **Placement of Children**

- Children shall be placed within a 75-mile radius of the home from which they are removed.
- Children shall not remain in emergency facilities for more than 30 days and shall not be placed in more than one shelter within any 12-month period.
- Children shall be placed in the least restrictive most home-like setting.
- Siblings shall be placed together. If a sibling group is separated at the initial placement, the case manager shall make immediate efforts to locate or recruit a family where they can be reunited.
- Children with the permanency goal of adoption shall be placed with a pre-adoptive family.

- Foster homes shall have a maximum three foster children and a maximum six total children. Sibling groups of six or more may be placed in the same foster home.
- Children under the age of six shall not be placed in a group home.
- Children shall not be placed in a residential treatment center or group setting with a capacity in excess of eight children.
- Children shall not be placed in a detention facility unless charged with a delinquent offense or ordered by a court.

✧ **Face to Face Contact Between Case Managers and Children**

- Children shall be visited by the case manager as frequently as necessary to assure the child’s adjustment to the placement, that services are being received, and to address needs that are not being met
- At initial or new placements, the case manager must have a minimum of six contacts in first eight weeks, with three visits at the child’s placement. During the next eight weeks, the case manager shall visit once every two weeks, and twice a month thereafter
- Private contract agency caseworkers are likewise required to visit children in their placements.

✧ **Education/Medical/Psychological Needs**

- Children shall be placed in community schools and have access to appropriate education, including special education services.
- All “in house” schools shall be evaluated, including schools in group, residential, and institutional facilities to assure access to appropriate educational services.
- An education specialist and a lawyer specializing in representing children’s educational needs shall be assigned to each of the twelve regions.
- Children shall receive an assessment including a medical evaluation and, if indicated, a psychological evaluation prior to or within 30 days of placement in custody.
- A medical director shall be hired in DCS central office.

✧ **Planning for Children**

- A family conferencing meeting shall occur within seven days of custody between the case manager, parent(s) or guardian(s) and the child, if twelve years old or older. The purpose of the meeting is to discuss the problems that necessitated custody, determine the appropriateness of the child’s placement, identify possible relative placements, set visitation between the child and parent, begin an assessment of needs of child and family, arrange a schedule of contacts between the parents and case manager and begin a diligent search for absent parent(s).

- A permanency plan staffing shall occur within fifteen days of custody. The staffing shall be attended by the case manager, team leader, private agency contract worker, parent(s) or guardian(s), the child, if twelve years old or older, foster parent(s), guardian ad litem, CASA and the parent's attorney. All reasonable efforts shall be made to enable the parents and foster parents to attend, including scheduling the staffing at a convenient time and arranging for childcare and transportation. The purpose of the staffing is to discuss the problems that necessitated custody, identify changes and services needed for the parents for reunification to occur, determine the appropriateness of the child's placement, schedule and determine the reasonable efforts needed to allow visitation between the child and parent, arrange a schedule of contacts between the parents and case manager and begin a diligent search for absent parent(s).
- In addition to the required court reviews, foster care review board hearings and the permanency hearing, DCS shall review all permanency plans of children at 6, 12, 15, 21 and 24 months of custody. The plan shall be reviewed every 3 months when the child is in custody for 2 or more years. The review shall include the case manager, team leader, private agency contract worker, parent(s), foster parent(s) (unless their attendance would be inappropriate), the child if twelve years old or older, guardian ad litem, CASA and parent's attorney. All reviews shall be scheduled to facilitate attendance by parents and child and shall be offered to be rescheduled if inconvenient, or assistance offered for childcare and transportation.
- Children may have concurrent goals.
- Children with the goal of reunification after twelve and fifteen months must be reviewed, documentation must show compelling reasons why child cannot be returned home within specified and reasonable time period, and additional services required must be identified.
- Children may have a goal of relative placement if the relative is willing to assume long-term responsibility, has legitimate reasons for not wanting to adopt and it is in the best interest of the child. There must be a long-term placement agreement signed by the relative and DCS.
- Children must be fifteen or older to have a goal of permanent foster care/planned permanent living arrangement. The reasonable efforts made to return the child home, place with a relative or placed for adoption must be documented in the record.
- Children must be sixteen years or older to have a goal of independent living. (Editors note: this is not a goal allowed under ASFA but is a skill that age-appropriate children should receive.)

✧ **Parent-Child and Sibling Visitation**

- Children with a goal of reunification must have parent-child visits in homelike settings. Parent-child visits start immediately after the child

has entered foster care and occur, at a minimum, every two weeks for no less than one hour.

- Siblings who are not placed together shall have sibling visitation in the parent's home, foster home or the most homelike setting available at a minimum of once a month for an hour or more.

✧ **Discharge Planning for Children Who Return Home or Placed with Relative**

- A discharge staffing shall be held for all children who return home or are placed with a relative to determine services necessary to ensure the child's safety and stability. The staffing shall be attended by the case manager, team leader, private agency contract worker, parent(s) or relative assuming custody, foster parent(s) (unless their attendance would be inappropriate), the child if twelve years old or older, guardian ad litem, CASA and parent's attorney.
- A 90-day trial home visit shall be recommended to the court. The case manager shall visit the child three times the first 30 days and two times per month the remaining 60 days. The case manager shall contact service providers and visit the school at least once per month.
- A final discharge staffing, including the case manager, child and parent or relative, shall be held to determine the appropriateness of final discharge.

✧ **The Goal of Adoption**

- Adoption process of seeking and securing an adoptive home shall begin as soon as the child's goal becomes adoption. A process shall be developed for making legal risk placements.
- A petition to terminate parental rights shall be filed within 60 days of the goal being changed to adoption.
- Cases must be transferred to the adoption unit.
- Children who have not been placed for adoption within three months after being legally freed for adoption must be reviewed by a specialized adoption team.
- Children who have not been placed for adoption within six months of being legally freed for adoption shall be referred to a private agency with success in obtaining adoptive homes.

The Brian A. Contempt Settlement Agreement

As a result of a contempt petition filed in November 2003, another settlement agreement was reached between the parties in *Brian A.* The contempt settlement agreement reaffirmed the parties' commitment to the original *Brian A.* settlement agreement and mandated the development of a formal implementation plan.¹⁶ The

purpose of the implementation plan is to provide a framework to bring DCS into compliance with the original settlement agreement by establishing priorities and timeframes for progress and demarcating whom is responsible and accountable, the resources required and the tracking/reporting of said progress. The implementation plan addresses the following substantive areas:

- Leadership and Management
- Creating and Sustaining a Sufficient and Well-Qualified Workforce
- Child and Family Team Meetings
- Child Protective Services
- Placement Process
- Foster, Kinship and Adoptive Home Development and Support
- Resource Development
- Data Management
- Quality Assurance

Indian Child Welfare Act

The Indian Child Welfare Act (ICWA) found at 25 U.S.C. § 1901 et. seq. impacts children who are covered by its protection in Tennessee just as it does in every other state. ICWA applies when proceedings are child custody proceedings as defined in 25 U.S.C. § 1903(1) and the child is an “Indian child” as defined in 25 U.S.C. § 1903(4).

In determining whether ICWA applies in a given case, or not, the following are defined as “child custody” proceedings:

- Foster care placements - 25 U.S.C. § 1903(1)(i)
- Termination of parental rights proceedings - 25 U.S.C. § 1903(1)(ii)
- Pre-adoptive placements - 25 U.S.C. § 1903(1)(iii)
- Adoptive placements - 25 U.S.C. § 1903(1)(iv)

It should be noted that ICWA does not apply to juvenile delinquency proceedings.

A child is defined as an Indian child under ICWA if:

- He or she is an unmarried person under the age of 18; and
- The child is a member of a federally recognized Indian tribe or the child is the biological child of a member of a federally recognized Indian tribe and the child is eligible for membership in any federally recognized Indian tribe. 25 U.S.C. § 1903(4). Tennessee has no federally recognized tribes or reservations.¹⁷

Determining ICWA applicability at the earliest point possible point in a dependency proceeding is key to ensuring that a child entitled to such protections does not

inadvertently have his or her permanency negatively affected because the courts and/or DCS did not properly comply with ICWA.

If ICWA applies to a child, significant differences, including but not limited to the following, attach to proceedings:

Notice: The court must find that proper notice has been given to all appropriate tribes or the U.S. Secretary of Interior if the tribes cannot be identified. 25 U.S.C. § 1903(12).

Ward of tribal court: The court must find whether the child is a ward of a tribal court, which thereby deprives a juvenile court of jurisdiction. 25 U.S.C. § 1911(a).

Burden of proof: In the preliminary hearing, the court must find by clear and convincing evidence that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. The proof must include testimony by a qualified expert. 25 U.S.C. § 1912(e). In a termination of parental rights proceeding, this finding must be made by proof beyond a reasonable doubt including the testimony of a qualified expert. 25 U.S.C. § 1912 (f).

Placement: The court must specify whether the placement of the child outside of the home meets the priority placement preferences (extended family, foster home approved by tribe, Indian foster home approved by a non-Indian licensing agency or an institution for children approved by an Indian tribe or operated by an Indian organization) mandated by ICWA. If the placement does not fit within the mandated preferences the court must find that the child's tribe issued a resolution establishing a different order of preferences or there is good cause to not follow the placement preferences. 25 U.S.C. § 1915.

Appointment of counsel: The court must determine whether it is in the best interest of the child to appoint counsel. Since Tennessee does not provide for the appointment of counsel for children in dependency proceedings, such a finding would require the court to notify the Interior Secretary upon appointment of counsel so that reasonable fees and costs can be appropriated. 25 U.S.C. § 1912(b).

The National Council of Juvenile and Family Court Judges has published a technical guidance setting out ICWA checklists which provide assistance to the courts in complying with ICWA in dependency proceedings.

State Law

Tennessee Code Annotated

Titles 36 and 37 of the Tennessee Code Annotated (T.C.A.) are the sections of the Tennessee statutory law that primarily encompass family law, child welfare law and juvenile court process. Since 1998, these two titles have undergone substantive amendments and additions to comply with ASFA and *Brian A.* The amendments and additions to the T.C.A. reflect the tenets of the federal initiatives – safety and permanency. Additionally, there were significant changes to Titles 36 and 37 in 1996 when custodial services for all children (dependent, unruly, and delinquent) were consolidated under one state department, DCS.

The following sets out particular statutes which provide the framework for child welfare law in Tennessee. There will be further discussion of pertinent sections of Titles 36 and 37 in Chapter III.

T.C.A. § 36-1-113 – Termination of Parental Rights: This statute establishes concurrent jurisdiction among chancery, circuit, and juvenile courts to hear termination of parental rights cases. The statute further sets out the grounds for termination and complies with ASFA in pertinent part as well. Further, the statute sets out that the following have standing to petition for termination of parental rights: the prospective adoptive parent(s) of the child, any licensed child-placing agency having custody of the child, the child’s guardian ad litem, a court appointed special advocate (CASA) agency, or DCS.

T.C.A. § 37-1-101 – Purpose: This statute provides that the purpose of juvenile courts include, among other things, “provid[ing] for the care, protection, and wholesome moral, mental and physical development of children coming within its provisions....[and] [a]chiev[ing] the foregoing purposes in a family environment whenever possible, separating the child from such child’s parents only when necessary for the welfare or in the interest of public safety.”

T.C.A. § 37-1-103 – Exclusive original jurisdiction: This statute grants juvenile courts with exclusive original jurisdiction over proceedings in which a child is alleged to be dependent and neglected, unruly or delinquent.

T.C.A. § 37-1-117(c) – Preliminary hearing when child is alleged dependent and neglected: This statute provides that a preliminary hearing must be held no later than three days after a child’s removal, excluding Saturdays, Sundays, and legal holidays, to determine whether probable cause exists for such removal.

T.C.A. § 37-1-119 – Petition – who may make: This statute provides that any person who has knowledge of the facts may bring a petition in juvenile court. The impact of this statute is that anyone has standing to bring a dependent and neglected cause of action in juvenile court.

T.C.A. § 37-1-130 – Dependent or neglected child – disposition: This statute sets out the dispositional alternatives available to juvenile courts when finding a child dependent and neglected.

T.C.A. § 37-1-131 – Delinquent child – disposition: This statute sets out the dispositional alternatives available to juvenile courts when finding a child delinquent.

T.C.A. § 37-1-132 – Unruly child – disposition: This statute sets out the dispositional alternatives available to juvenile courts when finding a child unruly.

T.C.A. § 37-1-137 – Commitment of delinquent children to department of children’s services: This statute sets out the sentencing alternatives and procedures when committing a delinquent child to the department of children’s services.

T.C.A. § 37-1-149 – Guardian ad litem. Special advocate: This statute authorizes the court to appoint a guardian ad litem in any case in which the child’s interest require such an appointment and mandates the appointment if there has been a report of harm filed. The statute also permits the appointment of a non-lawyer court appointed special advocate (CASA).

T.C.A. § 37-1-150 – Cost and expense for care of child: Among other things this statute provides that the administrative office of the courts will pay for the reasonable compensation of guardians ad litem in child abuse cases if parties are indigent. In other circumstances, the county may be liable for these costs or they may be charged as court costs.

T.C.A. § 37-1-151 – Parents’ liability for support: Among other things, this statute requires the court to order parents to pay child support to DCS when a child is placed in state custody.

T.C.A. § 37-1-159 – Appeals: In pertinent part, this statute provides that appeals of dependent and neglected cases shall be de novo to the circuit court while appeals of termination of parental rights cases shall be to the court of appeals.

T.C.A. § 37-1-166 – Orders committing or retaining a child within the custody of the department of children’s services – required determinations: This statute sets out the reasonable efforts requirements in Tennessee. The statute also provides the authority for concurrent planning for children in foster care in subsection (g)(6).

T.C.A. § 37-1-401 et. seq. and 37-1-601 et. seq.: This portion of the code outlines the statutory provisions for mandatory child abuse reports and child sexual abuse reporting as well as requirements for DCS and the courts when dealing with these cases.

T.C.A. § 37-2-401 et. seq.: This portion of the code sets out the statutory framework for foster care law in Tennessee and will be discussed in detail in Chapter Three.

Court Rules

Court rules of practice and procedure also provide a significant source of legal authority in Tennessee. Pursuant to its inherent authority to manage the judicial system, the Supreme Court has established Supreme Court Rules that govern practice in most Tennessee courts. Additionally, the Supreme Court has adopted a number of other rules of practice and procedure that are ratified by the general assembly and thereby have the same force as statutory law that impact various courts in the state.¹⁸ A brief review of relevant rules follows.

Supreme Court Rules

The Tennessee Supreme Court has adopted 45 rules of which two have a direct relation to child welfare law. Rule 13 governs the compensation for counsel of indigent defendants and Rule 40 provides for guidelines for Guardians ad Litem. Details of each of these rules and their impact on dependency proceedings are outlined below.

✧ **Rule 13. – Compensation for Counsel for Parents, Guardians ad Litem for Children and Counsel for Children**

Supreme Court Rule 13 applies to appointments of counsel for parents, guardians ad litem for children and counsel for children in indigency cases. The Rule sets the hourly compensation rate and maximum compensation per proceeding. The Rule provides for payment of expenses incident to appointed counsel's representation. Provisions for reimbursement of expenses associated with court reporters, transcripts, and foreign language court interpreters are also included. Finally, Supreme Court Rule 13 provides for the appointment and compensation of experts, investigators, and other support services for indigent parties.

✧ **Rule 40. Guidelines for Guardians ad Litem**

On February 5, 2002, the Supreme Court adopted Rule 40 which established guidelines for guardians ad litem (GAL). The drafting of Rule 40 was the product of a workgroup consisting of Court Improvement staff, members of the Permanency Planning Commission and the Juvenile Justice Committee of the Tennessee Bar Association. Specifically, Rule 40 clarifies that the GAL shall be attorneys and shall not serve as a witness or special master. Rule 40 lists the responsibilities and duties of the GAL both in and out of court; provides guidelines for contact between the GAL and the child; and identifies the proper course of action when the child's best interest, as determined by the GAL, conflict with the child's preferences.

Tennessee Rules of Appellate Procedure

❖ Rule 8A. Appeals as of Right in Termination of Parental Rights Cases

Rule 8A became effective July 1, 2004, and establishes special procedures to expedite appeals as of right in termination of parental rights proceedings.

The significant differences between this Rule and the procedures in other types of appeals include:

- The notice of appeal in a termination of parental rights proceeding shall indicate that the appeal involves a termination of parental rights case.
- The date for filing the transcript has been decreased from 90 days to 45 days after the filing of the notice of appeal.
- Filing objections to the transcript must be made within 10 days (rather than 15 days) after service of notice of the filing of the transcript.
- In addition to the papers excluded from the record pursuant to T.R.A.P., Rule 24(a), any portion of a juvenile court file of a child dependency, delinquency or status offense case that has not been properly admitted into evidence at the termination of parental rights trial shall be excluded from the record.
- Approval of the record by the trial judge is reduced from 30 days to 20 days after the expiration of the period for filing objections. If not approved by the judge within this time, the record is deemed to have been approved.
- Transmission of the record by the clerk of the trial court to the appellate court must be completed within 5 days of the approval of the record by the trial judge or by operation of the automatic-approval, whichever occurs first. Trial court clerks must give priority to completion of the record in termination of parental rights cases over other types of cases. If the record cannot be completed within this time period the trial court clerk must request an extension of time from the appellate court. Extensions of time for completion of the record are disfavored and will be granted by the appellate court only upon a particularized showing of good cause. The time for completing the record shall not be extended more than 60 days after the date of the filing of the transcript.
- The appellee's brief must be filed 20 days after the filing of the appellant's brief instead of 30 days.
- Extensions of time in an appeal of a termination of parental rights proceeding are disfavored and will be granted by the appellate court only upon a particularized showing of good cause.

To provide notice of the new appellate procedure timelines to the respondents in termination of parental rights proceedings at the trial court level, the Supreme Court also adopted a new Rule 9A of the Tennessee Rules of Civil Procedure and an amendment to Rule 39(a) of the Tennessee Rules of Juvenile Procedure. Both Rules require the original petition for termination of parental rights contain notice of Rule 8A.

Because there was no provision for a stay in the Rules of Juvenile Procedure as in the Rules of Civil procedure, the Supreme Court also adopted T.R.J.P. 39(g)(4):

Rules of Juvenile Procedure

The Tennessee Rules of Juvenile Procedure are promulgated pursuant to the statutory authority granted to the Supreme Court. The Rules are “intended to provide a simple and practical means of operating in juvenile court in a manner which will adequately implement the law.”¹⁹ The Rules became effective July 1, 1984, and have not had any major amendments since their enactment.²⁰ Although the Rules do not comprehensively address abuse and dependency cases²¹, there are several rules that have a direct impact on the abuse and neglect cases. The following Rules need to be reviewed for their compliance with the changes in federal and state law since the Juvenile Rules were enacted:

- Rule 13. Intake in Dependent and Neglected and Abuse Cases.
- Rule 16. Preliminary Hearings in Dependent and Neglected and Abuse Cases.
- Rule 17. Time Limits on Scheduling Adjudicatory Hearings.
- Rule 20. Responsive Pleadings and Motions.
- Rule 22. Consent Decrees in Civil Matters.
- Rule 25. Discovery.²²
- Rule 27. Trial by the Court.
- Rule 37. Guardian Ad Litem.
- Rule 39. Termination of Parental Rights.

Divider 3: Findings





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Survey & Case File Review Findings

Methods of Assessment

This assessment utilizes a combination of quantitative and qualitative methods to collect in-depth information on court practices related to child dependency, unruly, and delinquency proceedings of children in foster care. Statewide information was collected through surveys of key stakeholder groups in the child welfare system. Judicial file reviews of juvenile court cases were completed in four counties; and focus groups or interviews were conducted in three counties.

The statewide surveys were distributed to the following key stakeholder groups:

- judicial officers,
- foster youth between the ages of 14 and 18 years,
- guardians ad litem (GALs), parents' attorneys and attorneys representing delinquent and unruly children,
- foster parents,
- foster care review board (FCRB) members and
- Department of Children's Services (DCS) attorneys.

The survey questionnaires contain standard sections and items, as well as questions targeted to each respondent group. Each survey questionnaire was pilot-tested by members of the analogous stakeholder group.

The original evaluation plan included case studies in five counties, which included judicial case file reviews, court observations, document review, and interviews or focus groups with key stakeholder groups. Judicial case file reviews were completed in four counties. Due to time constraints, the judicial case file review in one county was not finished. The statewide surveys and judicial case file reviews will be described in more detail below.

Focus groups were conducted in two of the five counties with stakeholder groups in child dependency, unruly, and delinquency cases: children over the age of 14, birth families, foster families, GALs, parents' attorneys who represent delinquent and unruly children, FCRB members, child welfare agency case managers, supervisors and attorneys, and Court Appointed Special Advocates (CASAs). The focus group interview guides contain common questions about the main topics of interest, along with questions tailored to the role of the stakeholder group being interviewed. The focus group meetings were audio taped and extensive notes taken. In addition,

individual or small group interviews were conducted with judicial officers (juvenile court judges and referees), juvenile court clerks, court staff, the DCS regional administrator and supervising attorney.

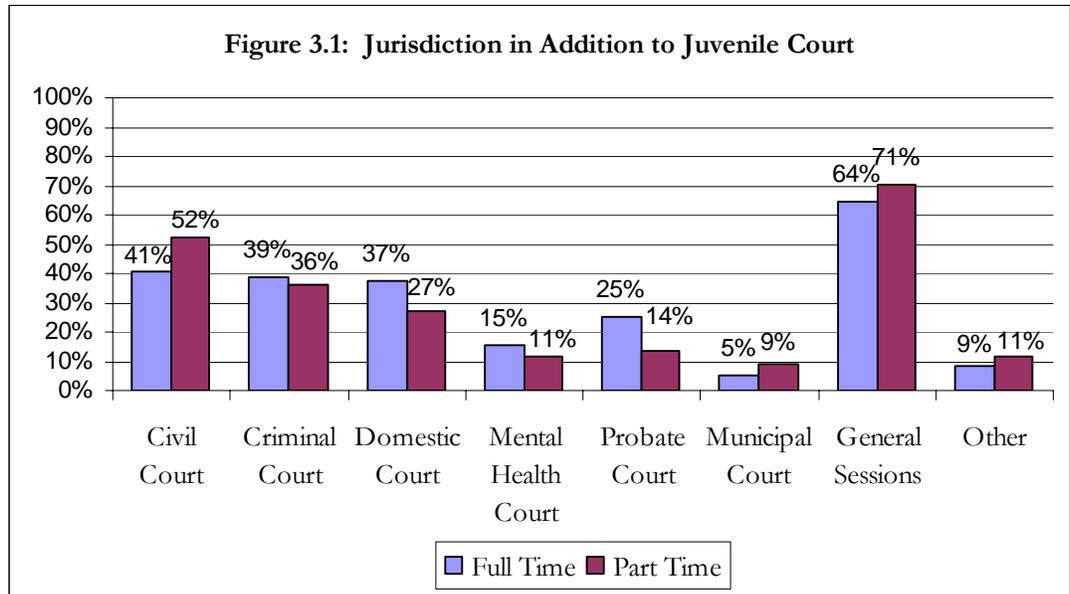
Statewide Surveys

Judicial Officers

A total of 130 surveys were distributed to all judges and referees with juvenile court jurisdiction. Three judges who had recently taken the bench and those judges who do not hear child dependency, delinquency and unruly cases were excluded. Seventy-nine percent (79%) or a total of 103 surveys, were returned.

Ninety-five percent (95%) of judicial officers surveyed are licensed attorneys. Approximately 50% have presided as juvenile court judge for less than one term of eight years. Almost 20% have officiated over juvenile court for four or more terms. Ninety-two percent (92%) report having experience in juvenile court cases prior to assuming their judicial role.

All judicial officers surveyed have juvenile court jurisdiction. In addition, 80% of full-time judges and almost 95% of part time judges have other types of jurisdiction as illustrated in Figure 3.1.



Almost 60% of the judges are full time judicial officers. Those who are part-time judges serve in their capacity as a judicial officer a mean of 89 hours per months and a median of 80 hours. Part-time judges report a range of 10 to 200 hours per month.

Judges report spending an average of 25% of their total time on child abuse/neglect cases, 22% on delinquency cases and 15% on unruly cases. The average total time spent on children's cases is 62%.

Private Attorneys Who Represent Parties in Juvenile Cases

Surveys were distributed to a random sample of 296 attorneys selected from those attorneys who submitted claims to the AOC in child dependency, delinquency and/or unruly cases during the past year. A total of 135 surveys, 46%, were returned. Attorneys who practice in 93 of the 95 counties in the state completed the survey.

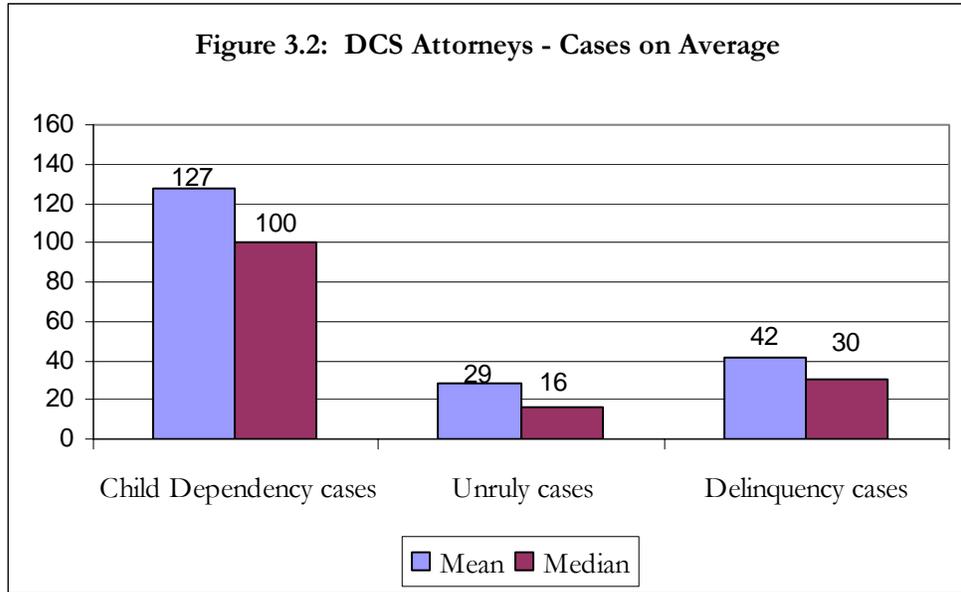
The attorneys surveyed report representing parties in juvenile proceedings for approximately 10 years on average. They report the percentage of their practice's devoted to representing parents in child dependency cases as 18%; representing children as GAL in child dependency cases at 9%; and representing youth in unruly or delinquency cases at 8%. GALs report an average of 16 new cases in the past year and counsel for parents indicate opening an average of nine new cases. Attorneys representing unruly and delinquent children report an average of 22 new cases.

Attorneys Representing the Department of Children's Services (DCS)

Surveys were distributed to 57 DCS attorneys, including all supervising attorneys, assistant general counsel and education attorneys. Seventy-two percent (72%) were returned or a total of 41 surveys.

Forty-four percent (44%) of the DCS attorneys surveyed report being in their position for 2 years or less, 37% from three to five years, and 15% for nine years or more. DCS attorneys report a diverse range in caseload size.

Figure 3.2 illustrates the mean and median of the DCS attorneys' monthly caseloads in child dependency, unruly and delinquency cases. The attorneys report a range in monthly caseload size in child dependency cases of 25 to 313; and a range of one to 200 for both unruly and delinquency cases. Three attorneys state they do not carry a regular caseload.

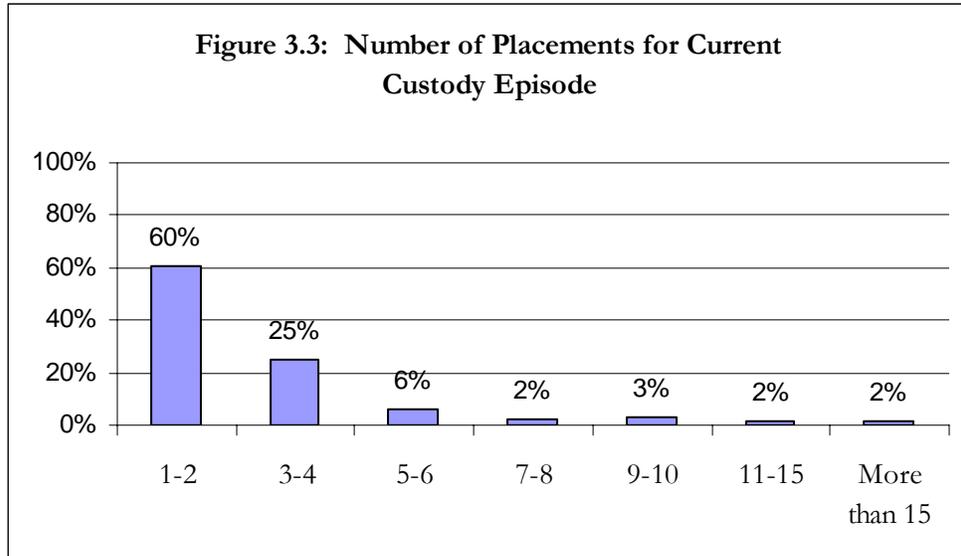


Foster Youth

Surveys were distributed to the DCS Independent Living Specialists in each of the 12 DCS regions to be completed by foster youth involved in independent living programs. A total of 237 surveys were returned. Youth from 62 of the 95 counties in the state completed the survey.

Foster youth responding to the survey are between the ages of 14 and 17 years old, with the average age of 16 years. Fifty-three percent (53%) are male and 47% female. Three percent (3%) of youth report being of Hispanic origin. The following racial makeup is reported: 65% Caucasian, 33% African American, and 1% each American Indian, Asian and Native Hawaiian/Pacific Islander.

Almost one-third of youth have been in state custody more than one time. Thirty-five percent (35%) report being placed in state custody the most recent time for child dependency; 47% for a delinquent offense, 11% for an unruly offense and 7% did not know the reason. Almost one-third have been placed in state custody more than once for a median of two custody episodes. Youth report spending an average of 13 months during their most recent stay in custody, with a range of 1 month to 6 years. Figure 3.3 depicts the number of placements youth report for their current custody episode.



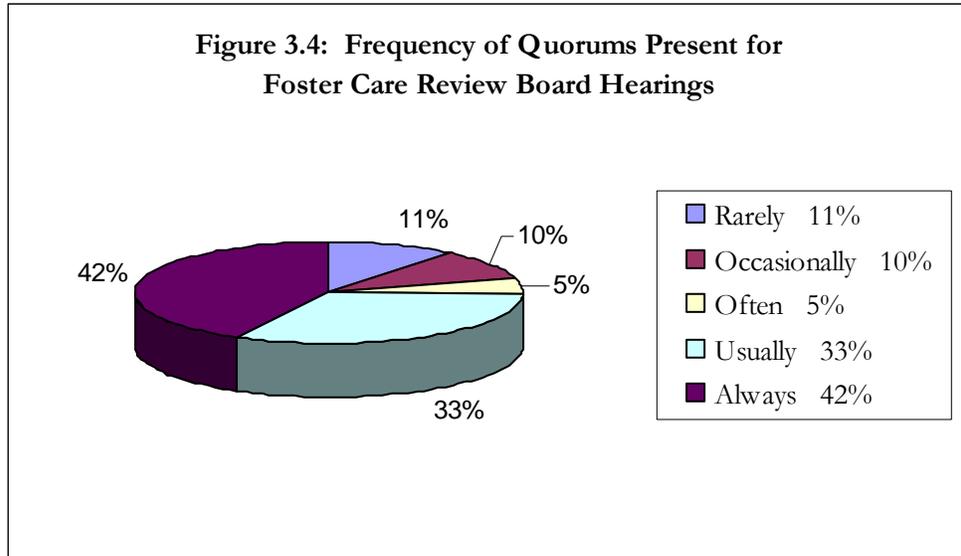
One-third of youth state they are currently living in a foster home; 53% in a group home; 9% in a residential treatment center; 4% with their parent(s); and 1% each with a relative and in a pre-adoptive home. Youth report they have been in their current placement an average of 6 months.

Foster Care Review Boards

Eighty-eight counties in the state have one or more foster care review boards. A total of 125 surveys were distributed to the chairperson or a member of each board. A total of 88 surveys or 70% were returned.

Seventy-six counties have one foster care review board (FCRB). One county has 12 boards; one has seven boards; two have five boards; two have four boards; one has three boards; five have two boards; and seven counties do not have a board. T.C.A. § 37-2-406 requires counties with a population of more than 100,000 to have a minimum of seven members and counties less than 100,000 are required to have a minimum of five members. The reported number of members per board is 5-7 members at 60%; 8-10 at 27%; 1-4 at 11%; and 2% have more than 11 members.

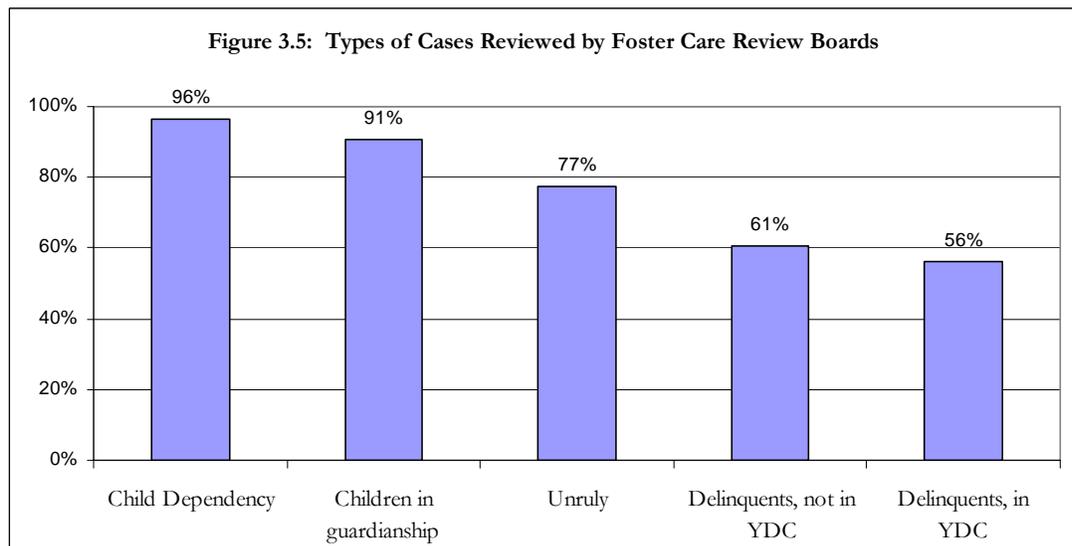
Figure 3.4 illustrates how often the boards report having a quorum. Twenty-one percent (21%) report “rarely” or only “occasionally” having a quorum to hear the reviews. When a quorum is not present, 27% state the hearings are rescheduled and 28% report the reviews are completed.



Eighty-eight percent (88%) of members report their board meets monthly; 6% meet bi-weekly and 5% meet bi-monthly. Three boards report meeting only when cases are due to be reviewed. Of those boards that meet monthly and bimonthly, 57% report reviewing an average of less than 10 cases each month; 36% hear 10-19 cases; 5% hear 20-29 cases; and 2% hear 30 or more cases. Those boards that meet less than once a month report as follows: 50% on average hear 30-39 cases; and 25% each review 10-19 cases and 20-29 cases.

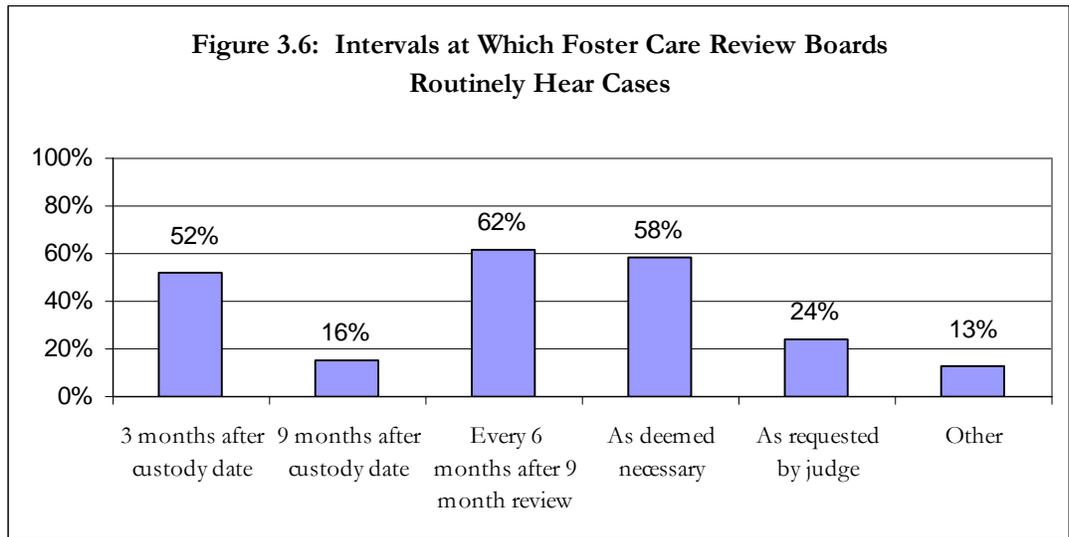
Fifty-four percent (54%) of board members report DCS is responsible for scheduling the hearings and 44% state the court has that responsibility. Ninety-eight percent (98%) state they do not experience problems receiving notice of the hearing dates.

Figure 3.5 illustrates the types of cases the boards hear.



T.C.A. § 37-2-406 requires the court or FCRB to review the cases of children entering custody within three months of the date of custody, again at nine months and every six months thereafter, as long as the child remains in custody. The court and FCRB may review the child’s case as often as necessary.

Figure 3.6 depicts the intervals at which FCRBs hear cases. Only half the boards report hearing the initial review at three months of the child entering custody. Less than 20% report hearing the case within nine months of the child entering custody. Either courts are hearing these reviews or they are not being completed. It is encouraging that almost 60% report reviewing cases as the board deems necessary as this means they are monitoring the cases more than the minimum requirements.



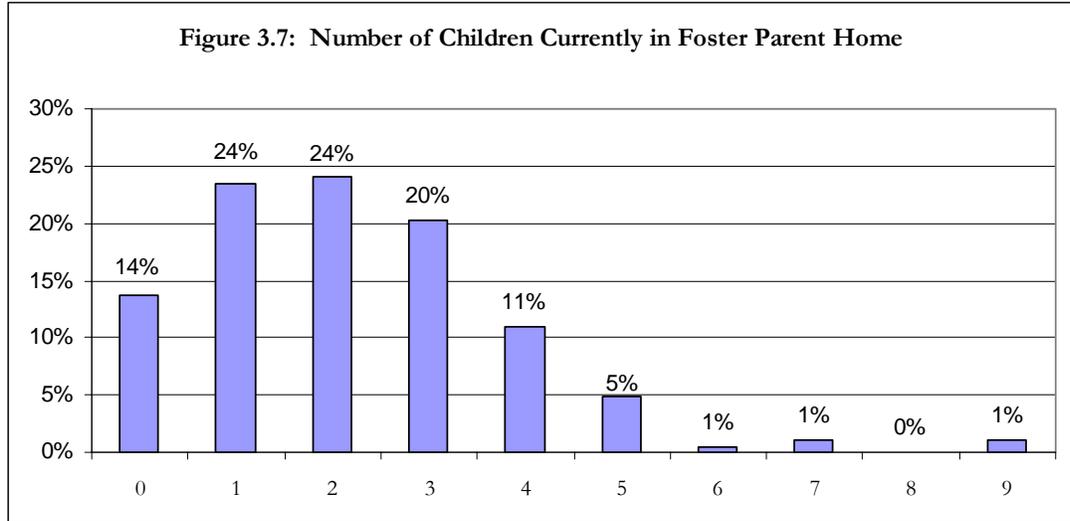
Foster Parents

There were two distributions of surveys to foster parents. First, surveys were provided to all foster parents who attended the annual foster parent conference in 2004. The second dissemination was provided to the Foster Parent Associations in counties where surveys were not returned after the initial distribution. A total of 183 surveys were returned. Foster parents completed surveys from 64 of the 95 counties in the state.

The foster parents surveyed reported having been an approved foster parent for the following durations:

- 9% less than one year:
- 62% 1-5 years:
- 12% 6-10 years:
- 9% 11-15 years:
- 2% 16-20 years: and
- 5% more than 20 years.

Seventy-six percent (76%) of foster parents reported fostering 25 or fewer children; 11% each fostered 26-50 and 51-200 children, 2% fostered more than 200 children. Figure 3.7 illustrates the number of children currently being fostered by the foster parents responding to the survey.



Foster parents reported providing care for the following specialized groups of foster children:

- 70% of foster parents care for sibling groups:
- 57% provide respite care:
- 52% care for infants:
- 49% offer emergency placements:
- 42% care for teens:
- 31% care for children with behavioral problems: and
- 21% care for medically fragile children.

Over 80% of foster parents report, they decided to foster children “to help the children” and over one-third did so to adopt a child. Twelve percent (12%) indicate they became a foster parent to foster a relative child or the child of a friend and 7% because they knew of a child who needed fostering.

Judicial Case File Reviews

A random sampling of judicial case file reviews in four counties was completed for children adjudicated to be dependent, delinquent and unruly, using a standardized review instrument. These reviews were conducted by part-time data collectors who were either attorneys or law students. The CIP staff attorneys reviewed each completed instrument for accuracy.

Description of Counties

Four counties were selected for detailed analysis. Three of these participated in the original assessment. One county was selected due to its designation as a Model Court by the National Council of Juvenile and Family Court. The three grand regions of Tennessee are represented by the selected counties. Two of the counties are urban and two are rural. The counties will not be identified by name based on an agreement made with the counties when they were asked to participate.

✧ COUNTY I

The United States Census 2000 (hereafter referred to as Census) classified this county as an urban area. According to the Census, children under 18 years represent 28.2% of the population. Thirteen percent (13%) of the families residing in this county live below the poverty level. The racial and ethnic makeup is:

- 47.3% Caucasian
- 48.6% African American
- 0.2% American Indian and Alaska Native
- 1.6% Asian
- 0.09% Native Hawaiian and Other Pacific Islander
- 1.2% other race
- 1.0% two or more races
- 2.6% Hispanic or Latino (of any race)

File reviews were conducted of a random sample of children in DCS custody from January 1, 2002 to July 15, 2004. During this period, a total of 1,927 children were in DCS custody from this county. Seventy-one (71) cases were reviewed. Of these, 95% were adjudicated as dependent, and 11% as delinquent. None were unruly. The median age of the children is 10 years. Forty-six percent (46%) of those children were male and 57% female. The racial and ethnic makeup of the sample was: 82.1% were African American, 15.1% Caucasian, and 2.8% other/unknown.

A second review limited to child dependency cases only was conducted for those children entering custody between August 1, 2004 to November 15, 2004. The second review was done to determine whether a change in court policy resulted in an increase in appropriate judicial “contrary to the welfare” and “reasonable efforts to prevent

removal” findings. One hundred sixty five children adjudicated as dependent entered custody during August 1 and November 15, 2004. A total of 35 files were reviewed for this period.

✧ COUNTY II

The Census classified this county as an urban area. According to the Census, children under 18 years represent 22.2% of the population. Ten percent (10%) of the families live below the poverty level. The racial and ethnic makeup of this county is:

- 67.0% Caucasian
- 25.9% African American
- 0.3% American Indian and Alaska Native
- 2.3% Asian
- 0.1% Native Hawaiian and Other Pacific Islander
- 2.4% some other race
- 2.0% two or more races
- 4.6% Hispanic or Latino (of any race)

File reviews were conducted of a random sample of children in custody from July 1, 2000 to June 30, 2003. Of the 2,251 children in DCS custody during this period, 126 cases were reviewed. Of these, 75% were adjudicated as dependent, 26% as delinquent and 4% as unruly. The median age of the children was 12 years. Fifty-six percent (56%) of the children in DCS custody were male and 44% female. The racial and ethnic makeup of the sample was: 57.1% African American, 34.9% Caucasian, 1.6% American Indian, 1.6% Hispanic; and 4.8% multiple races.

✧ COUNTY III

County III is a rural county. According to the Census, children under 18 years represent 25.7% of the population. Eleven percent (11%) of the families in this county live below the poverty level. The county’s racial and ethnic makeup is:

- 62.5% Caucasian
- 35.9% African American
- 0.2% American Indian and Alaska Native
- 0.2% Asian
- 0.0% Native Hawaiian and Other Pacific Islander
- 0.4% some other race
- 0.8% two or more races
- 1.0 % Hispanic or Latino (of any race)

File reviews were conducted of a random sample of children in custody from July 1, 2001 to June 15, 2004. Of the 115 children in DCS custody during this period, 22 cases

were reviewed. Fifty four percent (54%) were adjudicated as dependent, 27% as delinquent and 18% as unruly. The median age of the children was 14 years. Forty-one percent (41%) were male and 59% female. The racial and ethnic makeup was: 54.6% African American, 36.4% Caucasian, 4.5% Hispanic and 4.5% multiple races.

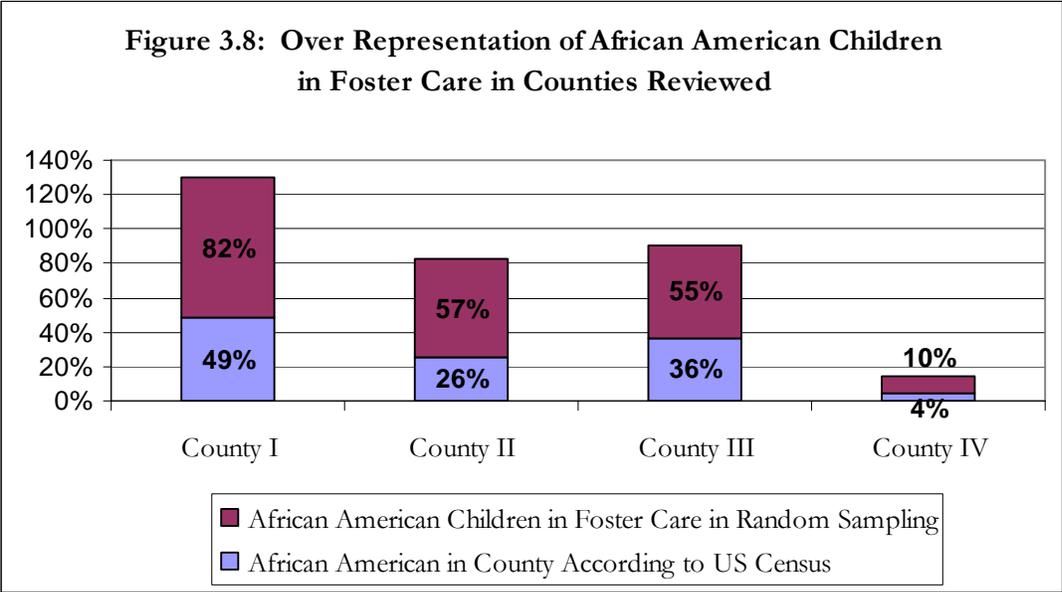
✧ COUNTY IV

This is a rural county. According to the Census, children under 18 years represent 23.2% of the population. 10.2 % of the families residing live below the poverty level. The racial and ethnic makeup is:

- 93.4% white
- 3.9% African American
- 0.3% American Indian and Alaska Native
- 0.8% Asian
- 0.0% Native Hawaiian and Other Pacific Islander
- 0.4% some other race
- 1.2% two or more races
- 1.1% Hispanic or Latino (of any race)

File reviews were conducted of a random sample of children in custody from July 1, 2000 to June 30, 2003. During this period, a total of 214 children were in DCS custody from this county. A total of 30 cases were reviewed. Of these cases, 53% were adjudicated as dependent, 33% as delinquent and 4% as unruly. The median age of the children was 14 years. Fifty-six percent (56%) were male and 44% female. The racial and ethnic makeup is: 80% Caucasian, 10% African American, 3% American Indian and 7% multiple races.

In each of the case file review counties African-American children are over-represented in state custody in proportion to the population of African-Americans in each county, according to Census 2000. Figure 3.8 illustrates the percent of African-American children in state custody above the population percent of African-Americans residing in the county.



Quality of Proceedings

Completeness & Depth of Hearings

Commencement of the Proceedings

Tennessee has four statutory means by which a child may be removed from his/her home – by court order; pursuant to the laws of arrest; by a statutorily enumerated person with reasonable belief that the child is dependent/neglect; and by a statutorily enumerated person with reasonable belief that the child has runaway. T.C.A. § 37-1-113; T.R.J.P. 5. DCS policy allows for a child to enter custody by means of the parent, guardian or custodian voluntarily placing the child into custody upon the signing of a voluntary placement agreement.

1. Upon a sworn petition or sworn testimony the court may enter a temporary emergency order for the removal of the child from the custody of the child's parents, guardian or custodian. T.C.A. § 37-1-114,128(b)(2), T.R.J.P. 5(d)(1). An order that brings an alleged dependent child into temporary custody is referred to as a Protective Custody Order. An order that brings an alleged delinquent or unruly child into custody is most often referred to as an arrest order.²³ Both of these orders are pursuant to an ex parte hearing either by sworn testimony or a sworn petition. Any person who has knowledge of the facts alleged or is informed and believes that they are true may file a petition. T.C.A. § 37-1-119, T.R.J.P. 8. The petition must be verified and contain facts which brings the child into the jurisdiction of the court; a statement that it is in the best interest of the child and public that the proceeding be brought; name, age and address of the child; name and address of the parent, guardian or custodian of the child; and if the child is in custody, the place of detention and time taken into custody. T.C.A. § 37-1-120, T.R.J.P. 9. If the order is pursuant to sworn testimony, a petition must be filed within two judicial days of the child being taken into custody
2. Pursuant to the laws of arrest, a child may be taken into custody by a law enforcement officer with or without a warrant or by a private citizen. T.C.A. § 40-7-101.
3. A law enforcement officer, a DCS social worker or a duly authorized officer of the court may take a child, who is reasonably believed to be subject to an immediate threat to the child's health or safety, or to abscond or be removed from the jurisdiction, into custody without a court order or the filing of a petition. T.C.A. § 37-1-113, 114; T.R.J.P. 5(d)(2). In any event, the petition must be filed within two judicial days of the child being taken into custody. T.R.J.P. 5(d)(4).
4. A law enforcement officer or duly authorized officer of the court may take a child into custody if there are reasonable grounds to believe that the child has

run away from the child's parents, guardian or other custodian. T.C.A. § 37-1-113.

Initial Summons

Upon the filing of a petition, or issuance of an order taking a child into custody, the court must direct the issuance of a summons to all proper and necessary parties requiring them to appear before the court. T.C.A. § 37-1-121(a), T.R.J.P. 5(d)(3). In the event of an emergency, immediate threat to the safety of a child or fear that the child will abscond or be removed from the jurisdiction of the court, the court may endorse upon the summons an order to bring the child into immediate custody. T.C.A. § 31-1-121(d).

The Indian Child Welfare Act (ICWA) requires that additional notification be sent upon the removal of a Native American child qualifying under ICWA. Notice must be given by registered mail with return receipt requested to the parent, Indian custodian and tribe.²⁴ If the identity of the tribe(s) is not known, notice must be given by registered mail with return receipt requested to the Secretary of the Interior.²⁵

Preliminary/Detention Hearings

A hearing must be held for any child that has been removed from the custody of his or her parent, guardian or custodian prior to a hearing on the petition. For a dependent child this hearing is referred to as a preliminary hearing. In the matter of a delinquent or unruly child the hearing is referred to as a detention hearing.

The preliminary hearing is precipitated by the removal of a child pursuant to a protective custody order. The preliminary hearing must occur within three judicial days of the child's removal. T.C.A. § 37-1-117(c). The purpose of the hearing is to determine if the child's removal is required due to the child being subject to an immediate threat to the child's health or safety to the extent that delay for a hearing would likely result in severe or irreparable harm, or the child may abscond or be removed from the jurisdiction of the court. T.C.A. §§ 37-1-114(a)(2), 37-1-117(c).

Ninety-five percent (95%) of judges indicate that preliminary hearings are scheduled in every dependency proceeding; however, only 45% report that the preliminary hearings "always" occur within three judicial days. Ninety-one percent (91%) of judges state that detention hearings are scheduled in every delinquency proceeding; however, only 68% indicate that the detention hearings "always" occur within three judicial days. Judges listed four primary reasons as to why preliminary and detention hearings were not held within three judicial days: continued to obtain counsel; preliminary hearing waived; unavailability of the docket; and parent is not present or unable to be located.

Table 3.1: Frequency With Which Judges Report Participants “Usually” or “Always” Appear at Preliminary Hearings

Child	GAL	CASA	Custodial Parent/ Guardian	Atty. For Custodial Parent	Non-Custodial Parent	Atty. For Non-Custodial Parent	DCS Case Mgr.	DCS Atty.	Foster Parent
48%	55%	28%	85%	60%	32%	31%	87%	87%	19%

Table 3.1 depicts those who judges report “usually” or “always” appear. DCS attorneys and case managers and custodial parents are the most likely to be present at the preliminary hearing. Despite the right to counsel, twenty-five percent (25%) of custodial parents present at the preliminary hearing are not represented by counsel. It is conceivable that custodial parents are waiving their right to counsel or the courts are proceeding with the preliminary hearings without custodial parents having the benefit of counsel.

According to the judges’ survey, there is no disparity between the degree of participation between non-custodial parents and their counsel. However, only 32% and 31% of non-custodial parents and their counsel, respectively, “usually” or “always” participate in the preliminary hearing. The data suggests that non-custodial parents are not receiving notice of the preliminary hearing though it cannot be ascertained whether the lack of notice is due to unknown identity/location or a systemic practice of not serving the non-custodial parent with the initial summons prior to the preliminary hearing.

Judges report that children “usually” or “always” attend the preliminary hearing 48% of the time. *Brian A.* requires any child 12 years old or older to attend hearings. The 2003 DCS Annual Report indicates 38% of the dependent children in custody were between the ages of 13 to 18 years old. Judges report GALs are “usually” or “always” present at the preliminary hearing 55% of the time. The data suggests children are under-represented by counsel at the preliminary stage. The data supports two additional hypotheses: GALs may not be appointed routinely before the preliminary hearing, and there may be substantial apathy among GALs regarding the significance of the preliminary hearing.

The absence of foster parents from preliminary hearings is striking. Only 19% “usually” or “always” attend. Foster parents’ attendance rate at other hearings is more than double that of the preliminary hearing. This suggests that preliminary hearings may be perceived to be inconsequential, or that foster parents are not receiving adequate notice of the preliminary hearing.

According to the surveys, the presence or absence of attorneys at the preliminary hearings directly affects the sufficiency of hearings and the examination and cross examination of witnesses. In 27% of cases, DCS is the only party “usually” or “always” represented by counsel. This is despite the fact that 55% of preliminary hearings are

continued, primarily to obtain counsel for the parties. The presence or absence of attorneys also affects the sufficiency of evidence – and the testing of evidence through cross examination - concerning reasonable efforts, alternatives to placement and visitation.

A detention hearing is precipitated by an arrest order, authorizing physical custody of a delinquent or unruly child. For a delinquent child the detention hearing must occur within three judicial days but in no event later than 84 hours of the child being placed in detention. T.C.A. § 37-1-117(b)(1). The purpose of this hearing is to determine if the child’s detention is required by statute. For an unruly child, the detention hearing must occur within 24 hours excluding non-judicial days. T.C.A. § 37-1-114(b). The purpose of this hearing is to determine if there exists probable cause that the child has violated a valid court order.

Table 3.2: Frequency at Which Judges Report Participants “Usually” or “Always” Appear at Detention Hearings

Child	Attorney for Child	Custodial Parent/Guardian	Non-Custodial Parent	DCS Case Mgr.	DCS Atty.	Treatment Provider
89%	70%	84%	28%	50%	38%	16%

Table 3.2 depicts the attendees at the detention hearing that “usually” or “always” appear, as reported by judges. The child, custodial parent and attorney for the child are the most likely to be present at the detention hearing. The fact that 100% of children are not present at these hearings is troubling, since the hearing is held because the child’s freedom is being curtailed through detention. Approximately 19% of children are not “usually” or “always” represented by counsel at the detention hearing. Children may be waiving their right to counsel or the courts are proceeding with the detention hearings without children having the benefit of counsel.

According to the judges surveyed, non-custodial parents are under-represented in their presence at detention hearings. As with preliminary hearings, the data suggests that non-custodial parents are not receiving adequate notice of the detention hearings. The absence of non-custodial parents at the detention hearing reduces the alternatives available to the court, e.g. placement with the non-custodial parent.

The court must make several findings at this stage of the proceeding. For any child committed to state custody the court must find whether reasonable efforts have been made to prevent removal of the child from the home. T.C.A. § 37-1-166. In making this determination the court must make three findings based on a probable cause standard of proof:

- That there is no less drastic alternative to removal;
- That reasonable efforts have been made to prevent the need for removal of the child from such child's family; and

- That continuation of the child's custody with the parent or legal guardian is contrary to the best interests of the child.

The Adoptions and Safe Family Act (ASFA) requires that “contrary to the welfare of the child” finding be made in the first court order that physically removes the child from the home.²⁶ Additionally, ASFA requires the order to contain the factual basis supporting the “contrary to the welfare” findings.²⁷

There are differences in how the different groups surveyed perceive the frequency of these findings. Forty eight percent (48%) of judges indicate that they “always” include the factual basis for their findings in protective custody orders. In contrast, 98% of DCS attorneys indicate that judges make a “contrary to the welfare” finding but only 30% indicate judges “always” include the factual basis in the same orders.

The disparities were significantly larger with regard to delinquent and unruly children. Forty-one percent (41%) of judges indicate that they “always” include the factual basis for the finding within the arrest or attachment order. Meanwhile, 92% of DCS attorneys indicate that judges make a “contrary to the welfare” finding but only 10% of DCS attorneys state that judges “always” include the factual basis for the finding within the arrest or attachment order.

Table 3.3 details the percent of “contrary to the welfare” findings made in the first order physically removing the child in the case file review counties. It is consistent among the four counties that judges, in delinquency cases, are not making the “contrary to the welfare” finding with a factual basis for the finding in the order. Yet the counties vary in how often they are making the finding in dependent and unruly cases.

ASFA also requires that the “reasonable efforts to prevent removal” finding be made within 60 days of the removal of the child from his or her home and the order contain the factual basis supporting the finding.²⁸ Nevertheless less than 60% of judges report that a written finding of “reasonable efforts to prevent removal” is “always” made in the protective custody order or preliminary hearing order. Only 29% of the judges report that these orders include a factual basis for the finding. DCS attorneys supported the judges’ assertions by reporting that the courts include a factual basis for the finding in the order only 22% of the time.

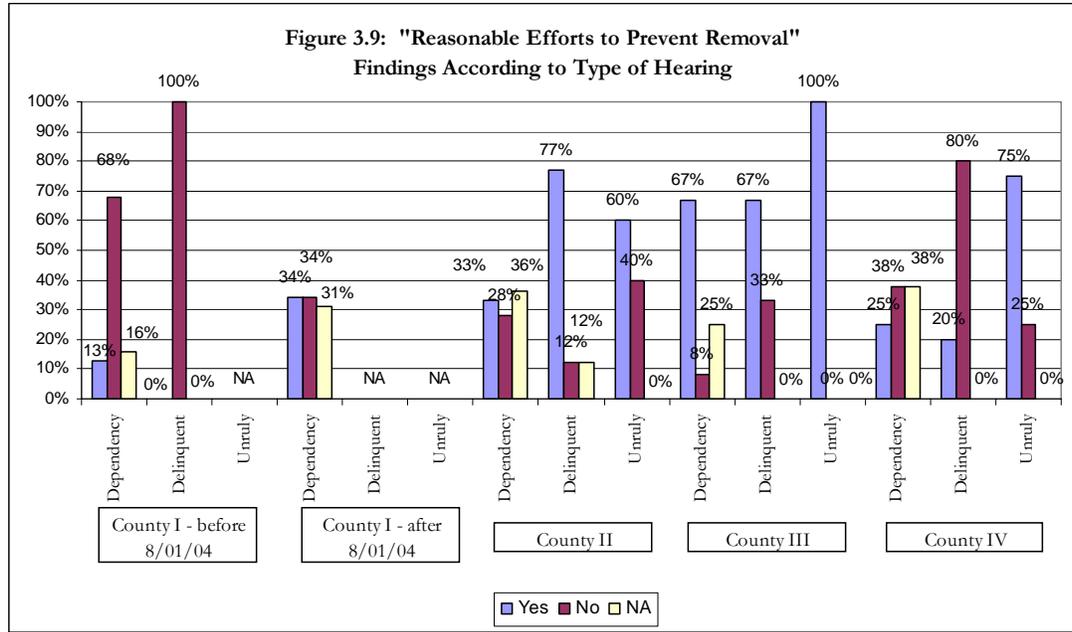
It is difficult to compare the results of the original assessment with those of the re-assessment because: 1) the original assessment was completed prior to the enactment of ASFA; and 2) ASFA modified some of the requirements of the “contrary to the welfare” and “reasonable efforts” findings. The original assessment found that only a third of the judges were regularly making reasonable efforts findings and 8% were making written findings.

Table 3.3: Frequency of “Contrary to the Welfare” Findings in First Judicial Order

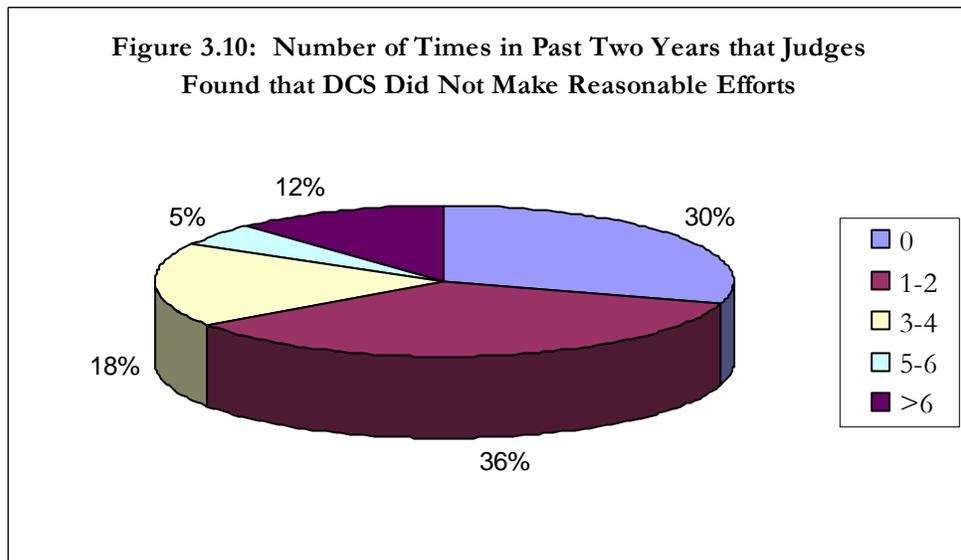
	Findings Present	Findings Not Present	N/A
County I - Before 8/1/04			
Dependency	50%	48%	1%
Delinquent	27%	73%	0%
Unruly	-	-	-
County I - After 8/1/04			
Dependency	66%	31%	0%
Delinquent	-	-	-
Unruly	-	-	-
County II			
Dependency	52%	45%	1%
Delinquent	27%	73%	-
Unruly	80%	20%	-
County III			
Dependency	83%	17%	-
Delinquent	0%	100%	-
Unruly	25%	75%	-
County IV			
Dependency	75%	25%	-
Delinquent	10%	90%	-
Unruly	50%	50%	-

The frequency of the reasonable efforts finding in delinquency cases is significantly lower than that of dependent cases. Only 32% of judges report “always” making the written “reasonable efforts” finding in arrest or attachment orders, and 45% report “always” making the written finding in detention orders. However, only 29% of the judges report “always” including the factual basis for the findings. The data suggests that judges may not understand ASFA requirements, particularly with delinquent children.

Figure 3.9 details percents and orders containing the “reasonable efforts to prevent removal” findings per adjudication type in the case file review counties.



The court’s ability to control and monitor compliance with its orders is paramount in how effective the court is. Figure 3.10 depicts the how often in the past two years that judges have made a negative reasonable efforts finding, that is, a finding that DCS did not make reasonable efforts to prevent removal from the home, to reunify the child or to finalize the permanency plan.



The largest group of judges, 36%, report having made a negative reasonable efforts finding one to two times over the past two years. Thirty percent (30%) say they have not made a negative finding in the past two years. Only a few judges are consistently making this finding.

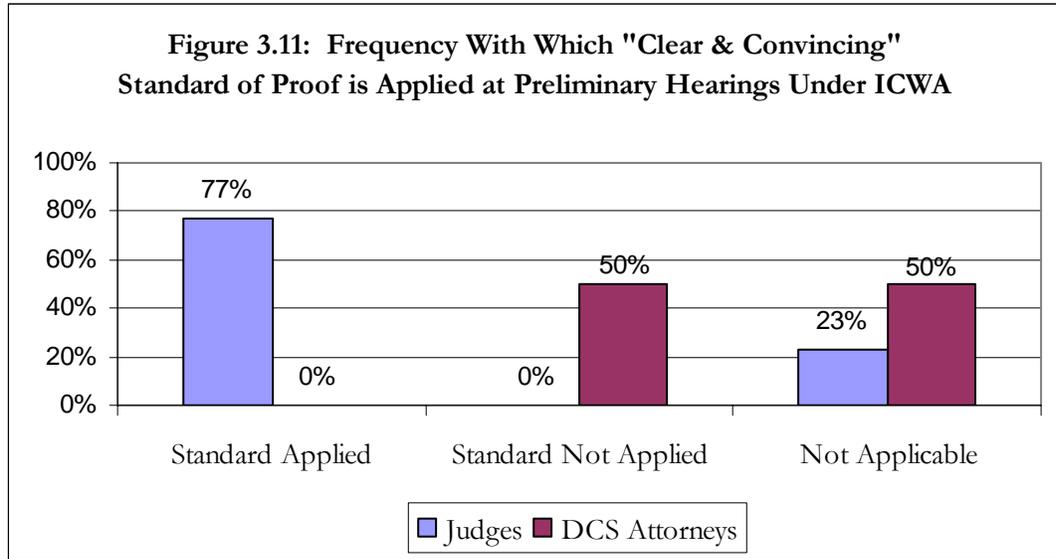
Table 3.4: Frequency of Judicial Findings that DCS Has Not Made Reasonable Efforts

	Findings Made	Findings Not Made	N/A
County I			
Dependency	0%	100%	0%
Delinquent	0%	100%	0%
Unruly	-	-	-
County II			
Dependency	16%	84%	0%
Delinquent	0%	100%	0%
Unruly	0%	100%	0%
County III			
Dependency	0%	100%	0%
Delinquent	0%	100%	0%
Unruly	0%	100%	0%
County IV			
Dependency	13%	88%	0%
Delinquent	20%	80%	0%
Unruly	25%	75%	0%

Table 3.4 depicts the percent of cases where judges in the case file review counties have made a negative reasonable efforts finding. The case file review data is consistent with the data collected in the judges’ survey.

The Indian Child Welfare Act (ICWA) has different timeframes and a higher standard of proof at preliminary hearings than provided by state law. A preliminary hearing cannot occur until ten days after notice to the tribe has been attained.²⁹ If service was through the Office of the Interior Secretary there is an additional 15-day delay before the hearing can be held.³⁰ One hundred percent (100%) of judges and DCS attorneys who have had an ICWA case in the past two years report sending notice to the tribe. Of the three ICWA cases reviewed in the case file counties, proper notice was sent to the tribe in two of the three cases.

The standard of proof at preliminary hearings under ICWA is clear and convincing evidence. Figure 3.11 illustrates the percentage of judges and DCS attorneys, who reported applying a “clear and convincing evidence” standard of proof at ICWA preliminary hearings. There is some disparity between what judges and DCS attorneys report occurring at the preliminary hearings involving Native American children. Judges report always applying the heightened standard of proof while DCS attorneys indicate it is never applied. Of the three cases reviewed in the counties, only two cases had preliminary hearings. Neither court in the case file review applied the “clear and convincing” standard of proof.



ICWA also requires expert witness testimony at the preliminary hearing. The expert must have actual knowledge of the tribe’s cultures and traditions. In order for the court to find clear and convincing evidence, the expert must testify that failure to remove the child is likely to result in serious physical or emotional harm.³¹ If the above criteria are not met, the removal of the child is not permitted.

Adjudicatory Hearings

The proceeding in which the court determines whether the factual allegations of the scheduled petition to be heard are true is called the adjudicatory hearing. T.R.J.P. 28(a). Adjudicatory hearings are to be scheduled within 30 days of the child entering DCS custody; or being detained in detention; or within 72 hours of an unruly child being detained. T.R.J.P. 17(a). Delinquency and unruly proceedings may be closed door hearings excluding the general public. T.C.A. § 37-1-124. Caselaw sets out the parameters for courts who desire to close any such hearings to the public.³² Dependent and neglected hearings are closed to the public. T.R.J.P. 27(a).

Twenty-five percent (25%) of judges report “always” holding the adjudicatory hearing within 30 days of a dependent child entering custody. Fifty-seven percent (57%) report the same for delinquent children who have been detained.

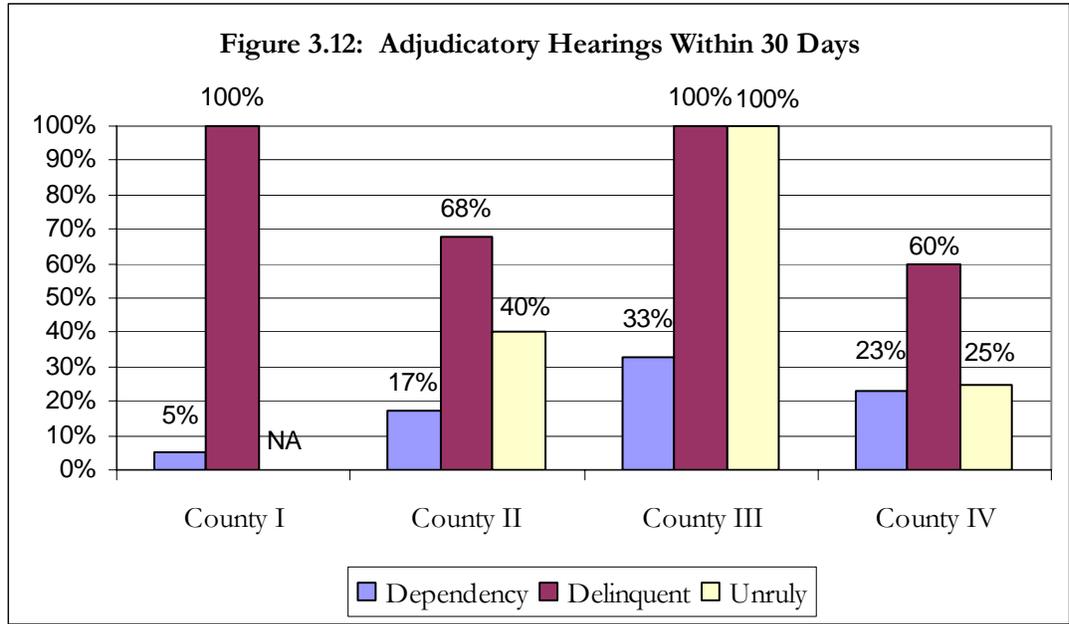


Figure 3.12 illustrates the proportion of cases in the case file review counties in which adjudicatory hearings were held within thirty days of custody. Adjudicatory hearings for dependency cases in the four counties are not usually held within thirty days. However, the majority of delinquency cases are held within thirty days of the child’s detention. The disparity between the two may be attributed to the cost of housing children. The county, not the state, bears the cost of housing a child in detention, whereas, the state of Tennessee bears the cost for housing dependent children. Nineteen percent (19%) of judges report “always” holding the adjudicatory hearing within 30 days for a delinquent child who is not detained, as opposed to 57% of judges reporting the same for a child who is detained.

According to judicial surveys, adjudicatory hearings for detained unruly children are “usually” or “always” held within 72 hours of the child’s removal in 89% of cases. However, DCS attorneys indicate that 35% of the judges “occasionally” commit an unruly child to custody without certification from the Family Crisis Intervention Program. DCS attorneys further indicated that 47% of judges “occasionally” adjudicate unruly children as dependent to circumvent the certification requirement for unruly children.

Judges overwhelmingly report conflicting attorney schedules as the primary reason for the adjudicatory hearings being delayed, with insufficient notice and inadequate trial preparation by attorneys as a distant second and third, respectively.

Table 3.5: Frequency With Which Participants “Usually” or “Always” Appear at Adjudicatory and Dispositional Hearings (Judges’ Survey)

Participant	Dependency Proceeding	Delinquent Proceeding
Child	57%	88%
GAL	85%	NA*
CASA	58%	NA*
Child’s Attorney	NA*	85%
Custodial Parent	89%	87%
Custodial Parent’s Attorney	89%	NA*
Non-custodial Parent	60%	51%
Non-custodial Parent’s Attorney	58%	NA*
DCS Case Manager	87%	65%
DCS Attorney	89%	50%
Foster Parent	48%	NA*
Treatment Provider	NA*	44%

* NA indicates the given participant was not a listed selection on the survey.

Table 3.5 depicts the participants, as reported by judges that “usually” or “always” appear at the adjudicatory hearing. The level of participation at the adjudicatory stage is significantly higher than the preliminary hearing and other hearings, as will be discussed later. The increase may represent both the significance participants attribute to this stage of the proceeding (e.g. the determination of “guilt”) and that parties have notice of the proceedings.

GALs, parents’ attorney and DCS attorneys are “usually” or “always” present in over 80% of the adjudicatory and dispositional hearings. DCS attorneys report 74% of the time that hearings are “usually” or “always” of sufficient length to allow all parties to participate, while parents’ attorneys and GALs report the frequency as 61%.

Judges perceive GALs as “usually” or “always” presenting testimony or evidence at the adjudicatory and dispositional hearings 65% of the time. DCS attorney’s perception of the same was 56%. However, 40% of GALs report “usually” or “always” presenting

testimony or evidence. Judges perceive parent’s attorneys as “usually” or “always” presenting testimony or evidence at the adjudicatory and dispositional hearings 80% of the time. DCS attorneys report the same. However, 70% parents’ attorneys report “usually” or “always” presenting testimony or evidence.

Judges perceive children’s attorneys as “usually” or “always” presenting evidence at the adjudicatory and dispositional delinquency hearings 76% of the time and 67% for an unruly proceeding. However, 64% of attorneys representing delinquent and unruly children report they “usually” or “always” present testimony or evidence.

With the exception of attorneys representing unruly children, there is a significant disparity between the perception and actual trial practices of GALs, attorneys for delinquent children and parents’ attorneys. GALs, attorneys representing delinquent children and parent’s attorneys estimate their trial practices as consistently lower than what the judges indicate.

Upon an evidentiary hearing on the petition, the court must make findings as to whether the child is dependent or has committed the delinquent or unruly act. T.C.A. § 37-1-129(a)(1). Additionally, if the court finds that a child is dependent and neglected, the court must address whether either the parents or custodian of the child has committed severe child abuse. T.C.A. § 37-1-129(b); T.R.J.P. 28(f)(1)(iii). These findings should be detailed in the order specifying the facts proven to arrive at the finding. The standard of proof for dependency and unruly adjudicatory proceedings is clear and convincing evidence. T.C.A. § 37-1-129(c); T.R.J.P. 28 (e) and (f). The standard of proof for delinquency adjudicatory proceedings is beyond a reasonable doubt. T.C.A. § 37-1-129(b); T.R.J.P. 28(d).

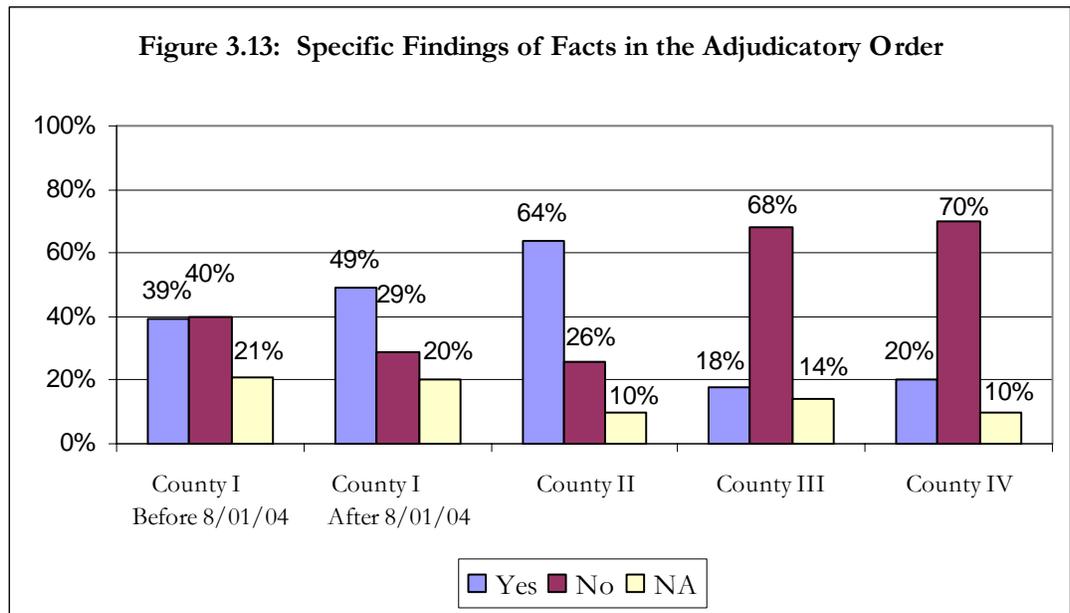


Figure 3.13 illustrates the proportion of adjudicatory orders in the case file review counties that had case specific facts. With the exception of County II, the majority of

the applicable adjudicatory orders did not contain case-specific facts. Each of these courts needs improvement in this area.

Dispositional Hearings

The purpose of the dispositional hearing is to design an appropriate plan to meet the needs of the child. T.R.J.P. 32. The disposition hearing is separate and distinct from the adjudicatory hearing although it may be held immediately following the adjudicatory hearing. T.R.J.P. 32(a). Seventy percent (70%) of judges report “usually” or “always” holding the adjudicatory and dispositional hearings at the same time in dependency proceedings. Seventy-six percent (76%) of judges report the same in delinquency proceedings. Judges report conflicts in attorneys’ schedules as the primary reason for dispositional hearings not being held in a timely manner. Inadequate preparation by parent’s attorneys or GALs and insufficient notice are a distant second and third.

Table 3.5 on page 31 depicts the participants that “usually” or “always” appear at the dispositional hearing. As stated previously, the participation percentages are substantially higher during the adjudication/disposition phase than any other phase of the proceedings.

Tennessee Code Annotated gives the courts discretion in deciding the disposition for dependent, delinquent and unruly children. There are three alternatives for disposition available to the court for dependent children: remain with the parent; temporary custody with a qualified person; or temporary custody with DCS. T.C.A. § 37-1-130.

For delinquent children, there are seven alternatives for disposition:

- Treating the child as dependent for purposes of disposition;
- Placing the child on probation;
- Placement in a local publicly operated facility;
- Commitment to the custody of DCS;
- Assessment of a fine;
- Commitment to the custody of a county DCS; or
- Community Service.

T.C.A. § 37-1-131

There are five alternatives for disposition available to the court for unruly children:

- Probation³³;
- Assessment of a fine;
- Community service;
- Placement with a person; or
- Commitment to the custody of DCS. T.C.A. § 37-1-132(a) and (b)(1). However, DCS’s Family Crisis Intervention Program must certify there is no less drastic

measure other than court intervention before being committed to the custody of DCS as an unruly child. T.C.A. § 37-1-132(b)(2).

The court must make several findings at this stage of the proceeding. If the child is committed to state custody, the court must find whether reasonable efforts have been made to prevent removal of the child from the home. T.C.A. § 37-1-166(d). In making this determination the court must make three findings:

- That there is no less drastic alternative to removal;
- That reasonable efforts have been made to prevent the need for removal of the child from such child's family; and
- That continuation of the child's custody with the parent or legal guardian is contrary to the best interests of the child.

Again, ASFA requires that a “reasonable efforts to prevent removal” finding be made within 60 days of the child’s removal from the home. DCS attorneys indicate that judges “always” make the finding within 60 days of the child entering custody 39% of the time and 61% indicate judges “usually” make the finding within 60 days. Fifty-nine percent (59%) of judges indicate that they “always” make a “reasonable efforts” finding at the adjudicatory/dispositional hearing. Judges indicate that if the basis for the finding is a DCS document, only 34% “usually” or “always” make a written finding that incorporates the document by reference. Over 60% of these findings result from testimony and evidence submitted regarding reasonable efforts by DCS.

In making this determination judges report most commonly addressing the following range of issues illustrated in Table 3.6:

Table 3.6: Issues Addressed by Judges in Making Findings of Reasonable Efforts to Prevent Removal

Issue	Rarely	Occasionally	Often	Usually	Always
Needs of child and family	6%	13%	22%	30%	29%
Services available before removal	11%	6%	20%	32%	32%
Efforts of DCS to provide services	2%	11%	17%	43%	28%
Why services did not prevent removal	18%	14%	19%	29%	19%
If applicable, why reasonable efforts to reunify the child and family are not required	12%	12%	14%	34%	28%

The Department of Children’s Services is not required to make reasonable efforts to return the child to his or her home when the following circumstances are present:

- Aggravated circumstances pursuant to T.C.A. § 36-1-102;

- The parent has been convicted of enumerated criminal offenses³⁴; and
- Parental rights have been involuntarily terminated to sibling of half-sibling. T.C.A. § 37-1-166(g)(4).

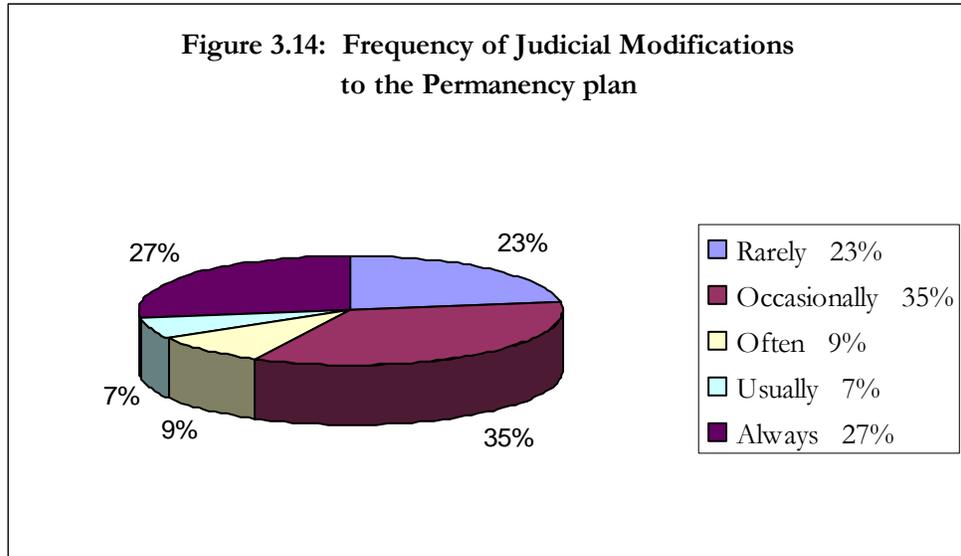
When these circumstances are present, 65% of DCS attorneys report “usually” or “always” requesting the court to make a finding that reasonable efforts are not required. Yet, only 5% of judges indicate that dependency cases “usually” meet the criteria that reasonable efforts are not required. The data suggests that courts may be reluctant to find that reasonable efforts are not required.

Ratification of Permanency Plan Hearings

Permanency plans must be ratified by the court within 60 days of the child entrance into custody. T.C.A. § 37-2-403(a). There are four permanency goals: return to parent; placement with a fit and willing relative; adoption; and planned permanent living arrangement. The court is charged with the task of reviewing the permanency goals and statement of responsibilities in the plan.

If the parties have agreed on the contents of the plan a hearing is not required. If no agreement can be reached, the court is to hold an informal hearing to decide the permanency goal(s) and statement of responsibilities. T.C.A. § 37-2-403(a)(4)(A) and (B). Seventy-eight percent (78%) of judges report holding a hearing to ratify the permanency plan in a dependency proceeding with the parties present and 64% indicate doing so in delinquency proceedings. However, less than 40% of DCS attorneys report that the court “usually” or “always” holds an evidentiary hearing to ratify the plan. The disparity in responses may be attributed to the meaning of “holding an evidentiary hearing” and what this entails.

The court must find that the permanency plan is in the best interest of the child before ratifying the plan. T.C.A. § 37-2-403(a)(3). To make this finding the court must review the appropriateness of the goal(s), services and responsibilities. Figure 3.14 illustrates the percent to judges who modify the permanency plan when the goals and services are inappropriate.



More than a third of judges “usually” or “always” make modifications to the permanency plan when the plan is inappropriate. Yet 58% of judges report “occasionally” or “rarely” making modifications to the plan when it is inappropriate. The data suggests the courts may need to review the plans more closely for appropriateness. This is consistent with one attorney’s perception that “the court needs to be more involved in the services provided by DCS- the monitoring of the case regarding services... Once the child is in state custody, the court often rubber stamps an inadequate permanency plan.”

Foster Care Review Board Hearings (FCRB)/Judicial Reviews

Foster care cases are to be reviewed by the court at set intervals as long as the child remains in care, specifically 90 days after a child enters custody and every six months thereafter. T.C.A. § 37-2-404(a). The court at its discretion may delegate the responsibility of reviewing the cases to the foster care review board. T.C.A. § 36-2-406. Sixty-eight percent (68%) of judges report having at least one board. The FCRB conducts 83% of the 90 day reviews and 86% of the six month reviews. The statute allows judges to review the cases more frequently if needed. Forty-three percent (43%) of judges report holding reviews more often than required by statute.

The purpose of these hearings, pursuant to T.C.A § 37-2-404(b), is to review the progress of the case by assessing:

- The child’s safety;
- The necessity and appropriateness of continued foster care placement;
- The compliance of all parties to the statement of responsibilities; and
- The progress towards mitigating the causes necessitating foster care.

Table 3.7 lists the issues addressed at the reviews and how often each is addressed as reported through the surveys of FCRB members; DCS attorneys; and GALs, the child’s attorney and parents’ attorneys.

Table 3.7: Issues that are “Almost Always” and “Always” Addressed by FCRB			
Issues Addressed	FCRB Members	DCS Attorneys	GALs, Child’s Attorneys & Parent’s Attorneys
Safety of Child	85%	81%	59%
Appropriateness of Continued Foster Care	97%	91%	59%
DCS’s Compliance with Plan Responsibilities	87%	76%	49%
Parent’s Compliance with Plan Responsibilities	93%	76%	67%
Progress Towards Mitigating The Need for Foster Care	90%	76%	54%
Direct Referrals to the Court	61%	19%	32%

DCS is to provide reports detailing the child’s progress in the case to assist the court or board in making their findings or recommendations. Boards that have the responsibility of reviewing the case make advisory reports to the court within 30 days after the hearing, detailing DCS’s progress in facilitating the permanency plan. T.C.A. § 37-2-406(c)(1)(A). At its discretion, the Board can make a direct referral to the judge to hear a foster care case within 10 days for emergencies and 30 days for non-emergencies. T.C.A. § 37-1-406(c)(1)(B). Sixty-one percent (61%) of board members report making direct referrals to the court. However, DCS attorneys state that direct referrals to the court are only made 19% of the time.

Board reviews are considered hearings and parents are entitled to notice and have the right to be present. T.C.A. § 37-2-404(b).

Table 3.8 lists the attendees at FCRB hearings who “usually” or “always” attend FCRB hearings as reported by board members. FCRB members report having an inclusive list of individuals present at hearings. DCS case managers, children over the age of 12, biological parents and foster parents have the highest participation rate of those attending dependency FCRB hearings. The same is true for delinquency proceedings.

Table 3.8: Participants Who “Usually” or “Always” Appear at Foster Care Review Board Hearings		
Participant	Dependency Proceeding	Delinquent Proceeding
Child	43% (<age 12) 68% (>age 12)	60%
GAL	49%	NA*
Child’s Attorney	NA*	18%
Biological Parent	68%	63%
Parent’s Attorney	32%	NA*
Court Staff	55%	51%
Child’s Therapist	14%	10%
DCS Case Manager	96%	86%
DCS Attorney	11%	12%
Foster Parent	81%	54%
Residential Facility Staff	50%	39%

* NA indicates the given participant was not a listed selection on the survey.

Foster youth and foster parents surveyed report their attendance at hearings to be significantly lower than that reported by board members. Only 47% of foster youth over the age of 12 and 61% of foster parents report attending FCRB hearings.

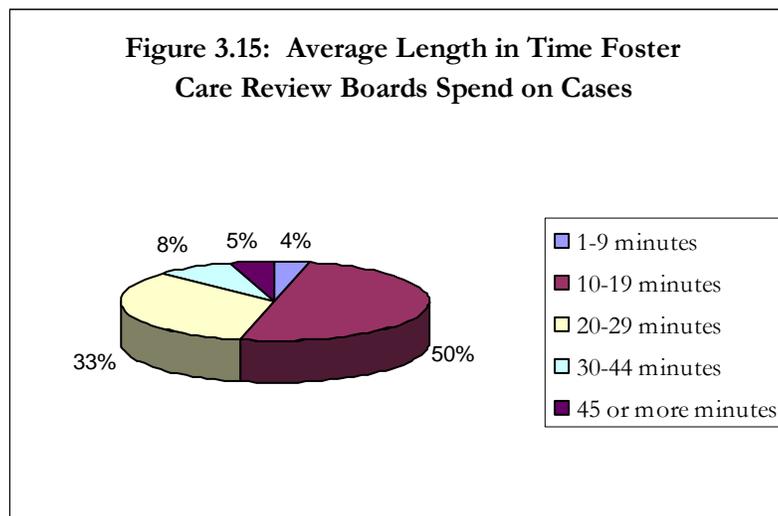
Forty percent (40%) of board members state hearings are “never or rarely” continued because the child is not present. The following data suggests that notification and accessibility of the FCRB hearings may be a barrier to greater attendance. Foster parents overwhelmingly indicate that DCS is the entity providing notice of FCRB hearings. The majority of foster parents report “usually” or “always” receiving notice of FCRB hearings 60% of the time and notice comes within a week of the hearing. Over 70% of foster parents report that DCS provides no assistance so that the foster parent can attend the hearings, i.e. baby-sitting, transportation, though the data does not indicate if assistance had been requested. One foster parent stated that board hearings should be held at night so that the hearings would be more accessible. Forty percent (40%) of foster parents report never receiving notification regarding the final recommendations of the FCRB.

Only 48% of foster youth report having received notice of FCRB hearings. Sixty percent (60%) of boards “rarely” obtain a progress report from the child by other means (i.e., letter, telephone conference call, etc.) when the child is unable to attend. Only 33% of foster youth indicate being “satisfied” or “very satisfied” with their experiences with the board. The data suggests that both foster youth and foster parents may feel disenfranchised from the FCRB process.

Attorneys are a noticeable absence from FCRB hearings. The process of scheduling board hearings may be a barrier to attorneys’ attendance. Several attorneys commented that FCRB hearings are scheduled without consideration of attorneys’ schedule. Thirty six percent (36%) of parents who are present are not represented by counsel during the FCRB hearing.

The absence of attorneys from the FCRB process has a direct effect on the completeness and depth of these hearings. Eight-two percent (82%) of DCS attorneys report that they “rarely” present testimony or evidence at FCRB hearings. Fifty-five percent (55%) of GALs, children’s attorneys and parent’s’ attorneys report they “rarely” present testimony or evidence at FCRB hearings.

A correlation can also be drawn between the absence of attorneys and the duration of the hearings as shown in Figure 3.15 below. FCRB members report the majority of hearings lasting between 10 and 19 minutes. Fifty three percent (53%) of board hearings are under 20 minutes. The data suggests that it is unlikely that participants have the opportunity to engage in detailed and meaningful discussion regarding the child’s progress or that FCRB members can address issues that they are statutorily obligated to address.



The data suggests that the hearings are addressing the issues that are mandated by statute. However, given the short duration of FCRB hearings the completeness and depth to which the issues are addressed may be questioned.

Permanency Hearings

As long as a child remains in foster care the court must review the case every 12 months. T.C.A. § 37-2-409(a). A review must also be held within 30 days of a finding by the court that reasonable efforts to reunify the family are not required. T.C.A. § 37-1-166(g)(5)(A). Judges report “usually” or “always” holding a permanency hearing within 12 months of the child entering custody 97% of the time.

The purpose of the permanency hearing is to review the permanency plan and goal(s) for the child, evaluate the progress of the parties and decide if the child should remain in custody. Among the permanency options available to the court are return to parent; placement with a fit and willing relative; termination of parental rights; placement adoption; referral for legal guardianship; or placement in another planned permanent living arrangement. T.C.A. § 37-2-409(b).

To retain a child in the custody of DCS, the court must make following findings pursuant to T.C.A. § 37-1-166(d):

- There is no less drastic alternative to removal;
- Reasonable efforts have been made to make it possible for the child to return home or finalize another permanent placement; and
- Continuation of the child's custody with the parent or legal guardian is contrary to the best interests of the child.

Table 3.9 lists the participants who should participate in permanency hearings. Participation of attorneys at the permanency hearing is significant. Fifteen percent (15%) of custodial parents in attendance are not represented by counsel at the permanency hearing despite having a right to counsel at this stage. Custodial parents continue to be under-represented by counsel at pivotal hearings throughout the dependency proceedings. The data does not indicate what percent, if any, of these custodial parents have waived their right to counsel.

Attendance of foster parents and non-custodial parents, as reflected in the previous hearings, also remains consistently low at the permanency hearings. The absence of these individuals equates to a loss of a source of information regarding the case. One foster parent surveyed stated “how can we have input, when we aren’t notified about the hearings at all or too late to do anything?” Over 90% of foster parents report they do not testify. One-quarter of foster parents indicate they have had information about the child or family but were not allowed to testify.

Table 3.9: Participants Who “Usually” or “Always” Appear at Permanency Hearings

Participant	Dependency Proceeding	Delinquent Proceeding
Child	49%	57%
GAL	71%	NA*
CASA	45%	NA*
Child’s Attorney	NA*	53%
Custodial Parent	82%	67%
Custodial Parent’s Attorney	67%	NA*
Non-custodial Parent	37%	32%
Non-custodial Parent’s Attorney	35%	NA*
DCS Case Manager	86%	75%
DCS Attorney	82%	71%
Foster Parent	45%	NA*
Treatment Provider	NA*	36%

* NA indicates the given participant was not a listed selection on the survey.

Permanency hearings are meant to be full evidentiary hearings. The surveys showed that only seventy-four percent (74%) of DCS attorneys report that permanency hearings are “usually” or “always” evidentiary hearings. DCS attorneys perceive GALs as “usually” or “always” presenting testimony or evidence at permanency hearings 24% of the time. This is consistent with GALs’ reports that 28% “usually” or “always” presenting testimony or evidence. DCS attorneys perceive parent’s attorneys as “usually” or “always” presenting testimony or evidence at the permanency hearing 35% of the time. However, 57% of parent’s attorneys report “usually” or “always” presenting testimony or evidence.

Ninety percent (90%) of judges “usually” or “always” make a finding in the permanency hearing order that DCS has made reasonable efforts to either prevent removal, reunify the family or finalize another permanent placement. Seventy-eight percent (78%) of DCS attorneys report that judges “usually” or “always” include a factual basis for a finding that reasonable efforts have been made to reunify the family.

Table 3.10 depicts the frequency of permanency hearing orders that include findings that DCS has made reasonable efforts to reunify the family in the case file review counties. In three of the counties judges are not making the finding in delinquency cases the majority of the time. This may point to a training need that the statutory requirements of ASFA apply to all children in foster care.

Table 3.10: Frequency of Findings of Reasonable Efforts to Reunify the Family

	Finding Present	Finding Not Present	N/A
County I			
Dependency	4%	13%	83%
Delinquent	18%	36%	45%
Unruly	-	-	-
County II			
Dependency	53%	25%	22%
Delinquent	50%	12%	38%
Unruly	80%	20%	0%
County III			
Dependency	33%	8%	58%
Delinquent	0%	17%	83%
Unruly	75%	0%	25%
County IV			
Dependency	13%	56%	31%
Delinquent	0%	80%	20%
Unruly	25%	25%	50%

Table 3.11 identifies the issues most commonly addressed by judges when making a reasonable efforts finding on reunification.

Table 3.11: Issues Addressed by Judges when Making a Reasonable Efforts Finding to Return the Child Home

Issue	Rarely	Occasionally	Often	Usually	Always
Services provided to effect return	8%	14%	21%	35%	22%
Adequacy of permanency plan in addressing problems and needs of child and family	10%	11%	22%	31%	27%
Tasks outlined for parents/guardians/caretakers	5%	11%	21%	34%	28%
Family’s agreement with plan	11%	8%	18%	32%	31%
Need for modifications to proposed permanency plan	14%	23%	19%	25%	19%

If “return to parent” is no longer a permanency goal, the court must make findings that reasonable efforts have been made to finalize another permanent placement. Seventy-six percent (76%) of DCS attorneys indicate that judges “usually” or “always” include a factual basis for that finding.

Table 3.12 details the permanency hearing orders with findings that DCS has made reasonable efforts to finalize another placement in the case review counties. Again there is a disparity among the counties in making the mandated findings. County II makes the finding in the majority of its applicable cases; however a fourth of dependency cases move forward without the finding. Training is needed on the requisite findings when “return to parent” is no longer a goal.

Table 3.12: Frequency of Findings of Reasonable Efforts to Finalize Another Permanent Placement

	Findings Present	Findings Not Present	N/A
County I			
Dependency	4%	5%	89%
Delinquent	18%	45%	36%
Unruly	-	-	-
County II			
Dependency	53%	25%	22%
Delinquent	50%	12%	38%
Unruly	80%	20%	0%
County III			
Dependency	8%	0%	83%
Delinquent	0%	0%	100%
Unruly	0%	0%	75%
County IV			
Dependency	13%	25%	63%
Delinquent	0%	10%	0%
Unruly	0%	0%	100%

When the plan contains concurrent goals, the best practice is for the court to make a finding of reasonable efforts to facilitate each goal on the permanency plan. Only 29% of judges indicate that they “usually” or “always” include a factual basis that reasonable efforts have been made toward each goal.

Table 3.13: Frequency of Reasonable Efforts Findings Towards Concurrent Planning

	Findings Present	Findings Not Present	N/A
County I			
Dependency	1%	11%	87% ^a
Delinquent	0%	36%	64%
Unruly	-	-	-
County II			
Dependency	21%	33%	46%
Delinquent	4%	0%	96%
Unruly	0%	60%	40%
County III			
Dependency	0%	42%	58%
Delinquent	0%	0%	100%
Unruly	0%	50%	50%
County IV			
Dependency	6%	44%	50%
Delinquent	0%	30%	70%
Unruly	0%	0%	100%

Table 3.13 illustrates the frequency of permanency hearing orders with findings that DCS made reasonable efforts towards each goal in the permanency plan in the case file review counties. Findings were not made where applicable in the majority of the cases in each county. This may indicate another area in which training is needed.

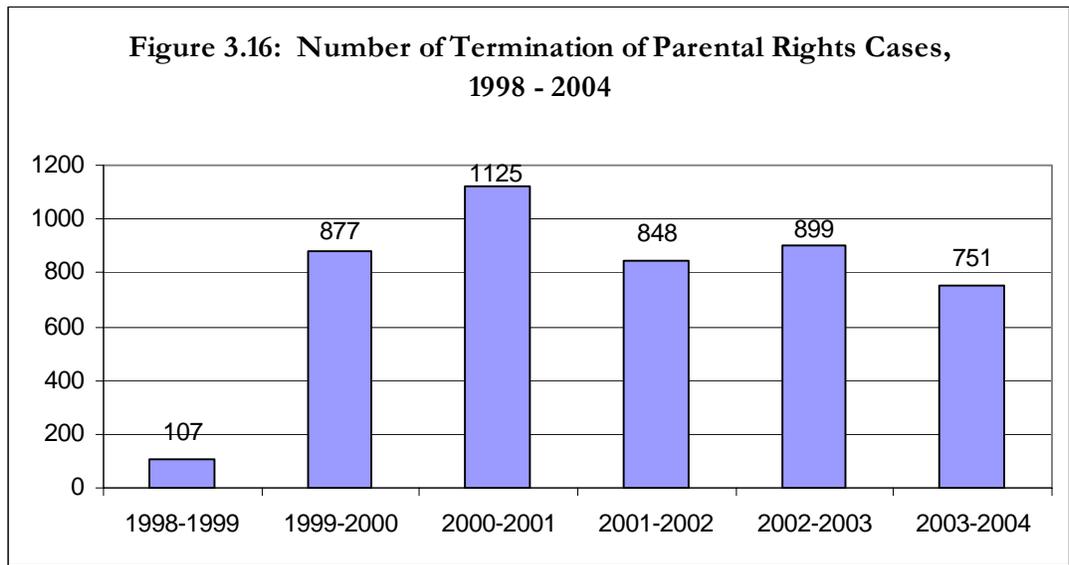
If there is a sole goal of “planned permanent living arrangement,” DCS must provide a compelling reason why other goals are not suitable for the child. Eighty-three percent (83%) of judges report that a compelling reason is documented in the court order.

Revised permanency plans are often ratified at the permanency hearing. The court must find that the permanency plan is in the best interest of the child before ratifying the plan. T.C.A. § 37-2-403(a)(3).

If the child is 16 or older, the court must make findings as to the services necessary for the child to make the transition from foster care to independent living. T.C.A. § 37-2-409(b)(1). Seventy-six percent (76%) of judges report “usually” or “always” making this finding in the court order. However, only 22% of DCS attorneys indicate that judges “usually” or “always” make a finding as to what services are needed for youth to transition to independent living. Sixty-seven percent (67%) of foster youth indicate that the court “sometimes” or “rarely” asks them or their GAL/attorney if any additional services are needed. The disparity in perception suggests that this may be an area for training.

Termination of Parental Rights Hearings

Parental rights can be terminated either voluntarily or involuntarily. A parent can voluntarily terminate their parental rights through the surrender process. A surrender may be made to prospective adoptive parents, DCS or a licensed child placing agency. T.C.A. § 36-1-111. Most often a parent’s rights are terminated involuntarily through the filing of a termination of parental rights petition. Figure 3.16 illustrates the increase in the number of termination of parental rights cases for children in DCS custody since 1998.³⁵ The increase coincides with the implementation of ASFA and the increase in the number of DCS attorneys.



Only prospective adoptive parents, a child licensing agency with custody of the child, the GAL, CASA, or DCS can file a petition to terminate parental rights. T.C.A. § 37-1-113(b). A termination of parental rights proceeding is a formal evidentiary hearing where parties must be given notice, and they have the right to counsel. T.R.J.P. 39. Service in a termination of parental rights proceeding is pursuant to the Rules of Juvenile Procedure. T.C.A. § 36-1-117(m)(2). Service of the TPR petition can be perfected by personal service, registered or certified mail or publication. T.R.J.P. 10.

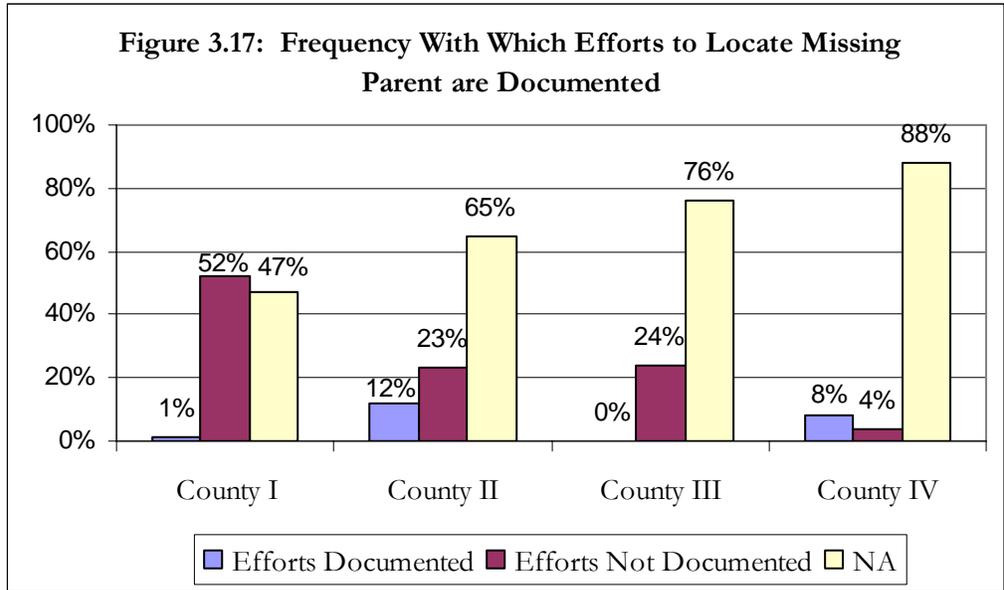
Table 3.15 illustrates the attendees at the termination of parental rights hearing as reported by the judges surveyed. Even with the severity and finality of termination proceedings, non-custodial parents’ presence is significantly lower than that of custodial parents. This trend persists throughout the hearings in both dependency and delinquency proceedings.

Table 3.15: Participants Who “Usually” or “Always” Appear at Termination Hearings

Participant	Dependency Proceeding	Delinquent Proceeding
Child	41%	52%
GAL	71%	NA*
CASA	47%	NA*
Child’s Attorney	NA*	62%
Custodial Parent	80%	63%
Custodial Parent’s Attorney	79%	NA*
Non-custodial Parent	49%	43%
Non-custodial Parent’s Attorney	32%	NA*
DCS Case Manager	77%	64%
DCS Attorney	78%	64%
Foster Parent	54%	NA*
Treatment Provider	NA*	29%

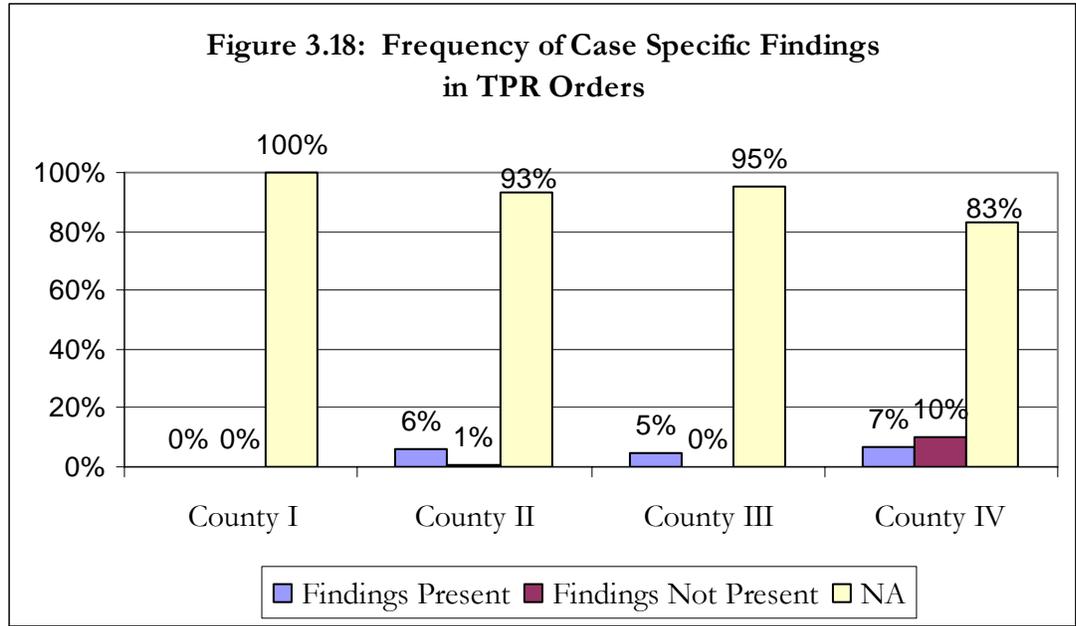
* NA indicates the given participant was not a listed selection on the survey.

Figure 3.17 illustrates how frequently efforts to locate a missing parent are documented in the file/orders in the file review counties. Of the applicable cases, Counties I and III are not documenting efforts to find missing parents within the orders. Counties II and IV are not consistently documenting efforts to find missing parents.



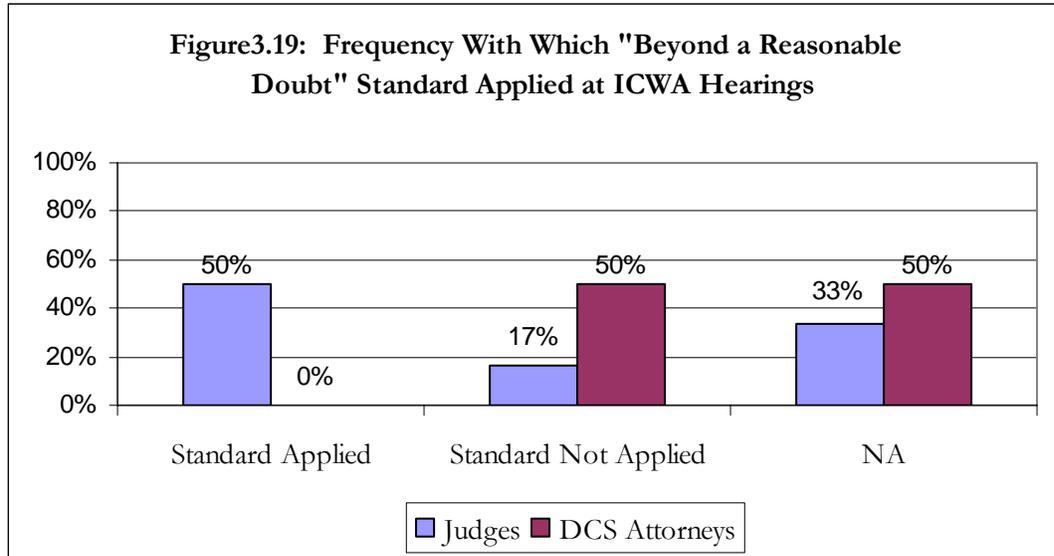
With the exception of the non-custodial parent’s attorney, the presence of attorneys is prevalent during the termination proceeding. DCS attorneys surveyed perceive GALs as “usually” or “always” presenting testimony or evidence at termination hearings 71% of the time. However, 57% of GALs report “usually” or “always” presenting testimony or evidence. DCS attorneys perceive parents’ attorneys as “usually” or “always” presenting testimony or evidence at the termination hearing 92% of the time. DCS attorneys’ perception of parents’ attorneys is exactly the same. However, 81% of parents’ attorneys report “usually” or “always” presenting testimony or evidence.

The court must make specific factual findings and conclusions of law by clear and convincing evidence to terminate parental rights. The court must find that both that the legal grounds for termination have been proven and that termination is in the best interests of the child. T.C.A. § 37-1-113(c)(1) and (2). Figure 3.18 details the TPR orders in the case file review counties with case specific findings of facts. County IV’s TPR orders do not contain case specific facts in the majority of their TPR orders. Yet, County III had case specific facts in all of their applicable TPR orders.

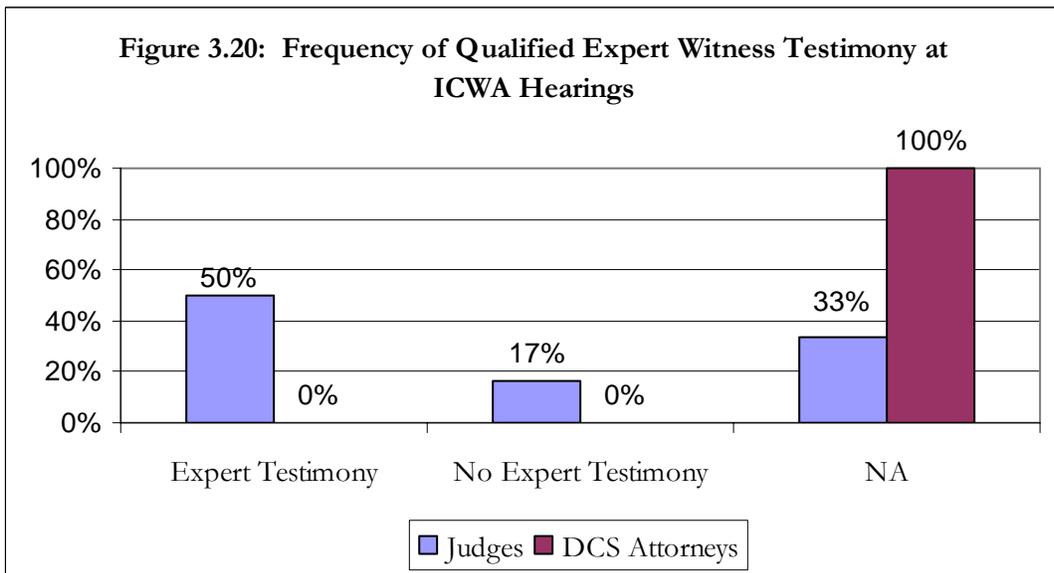


The TPR order must be entered within 30 days of the termination hearing. T.C.A. § 37-1-113(k). Judges surveyed report that the final order from termination proceedings is “usually” or “always” entered within 30 days of the hearing 85% of the time. Eighty-six percent (86%) of judges indicate orders in termination cases are drafted by DCS. Sixty-nine percent (69%) of judges further report that DCS’s termination orders are timely filed. The data does not reflect the number of cases taken under advisement by the judge.

ICWA requires a higher standard of proof at the termination proceeding. The standard of proof is beyond a reasonable doubt.³⁶ Figure 3.19 illustrates the results of the survey of judges and DCS attorneys regarding the standard of proof utilized. Judges report always using the heightened standard of proof while the majority of DCS attorneys report this standard is not utilized.



Pursuant to ICWA, an expert witness is also required at this proceeding to testify that continued custody of the child by the parent is likely to result in serious emotional or physical damage to the child.³⁷



Again, judges and DCS attorneys see the frequency of expert testimony at ICWA hearings differently. Of the three applicable cases in the case files, only one case had expert testimony via an affidavit from the tribe. This may indicate an area where training is needed.

Relief from Judgments & Appeals

The court may vacate or modify its own orders on the following grounds: fraud or mistake; lack of personal/subject matter jurisdiction; newly discovered evidence; and changed circumstances. T.C.A. § 37-1-139(a) and (b); T.R.J.P. 34.³⁸

Many appeals from juvenile court are de novo. Criminal courts or courts with criminal jurisdiction hear appeals from final orders in delinquency matters. Circuit courts hear appeals of final orders in dependency and unruly proceedings. T.C.A. § 37-1-159, T.R.J.P. 36. Sixty-one percent (61%) of DCS attorneys report appealing the decision of the court within the last two years. However, the frequency at which GALs, attorneys representing delinquent and unruly children and parents' attorneys file appeals is significantly lower. Eighty percent (80%) of GALs indicate they "rarely" file appeals in dependency proceedings while 60% of parent's attorneys indicated the same. Seventy-percent (70%) of attorneys representing delinquency and unruly children "rarely" appeal the decision of the court. Appeals from an order terminating parental rights are directly to the Court of Appeals. T.C.A. § 36-1-124. Seventy-seven percent (77%) of GALs indicate they "rarely" file appeals in termination proceedings while 58% of parent's attorneys indicated the same.

As discussed in Chapter II, T.R.A.P. 8A became effective July 1, 2004. This Rule was enacted to expedite appeals in termination of parental rights cases. According to DCS Office of the General Counsel in the appeals filed after July 1, 2004, the average number of days from the filing of the notice of the appeal to the mandate of the appellate court is 282 days. In cases filed prior to the enactment of the Rule, the average number is 407 days for the same period. The Rule has decreased the time for an appeal in children's cases by approximately four months.

Representation of Parties

Tennessee statutory and caselaw provides the right to an attorney for parents in child dependency and termination of parental rights cases, and for children in delinquency and unruly proceedings. It is mandatory that the court appoint a guardian ad litem (GAL) for children in proceedings resulting from a report of harm and in termination of parental rights proceedings, except those that are uncontested.³⁹

Tennessee Supreme Court Rule 40 provides guidelines for GALs. The rule clarifies that the GAL shall be a licensed attorney and shall function as an attorney rather than a witness or special master. The Rule delineates the responsibilities of the guardian ad litem in investigating cases, meeting with the child and presenting evidence in court.

T.C.A. § 37-1-149 provides for the appointment of the GAL. This statute was amended in 2004 to comply with the Child Abuse Prevention and Treatment Act and requires the GAL receive training in accordance with the role prior to appointments.

In addition to providing for the appointment of the GAL, T.C.A. § 37-1-149 addresses the appointment of a Court Appointed Special Advocate (CASA), a non-lawyer special advocate who acts in the best interest of a child.

The original assessment, as reported in the *1997 Program Report*, identified the paucity of advocates for parents and children as a barrier to permanency in child dependency cases. The report revealed that less than one-third of children were represented by a GAL and parents by an attorney from the preliminary hearing through the permanency hearing. Children were represented in only 40% of the termination of parental rights proceedings. Less than 70% of parents had counsel at the termination of parental rights hearing. Half of the judicial officers noted that parents usually or often waived their right to an attorney. It was also noted that parents waive this right without understanding the consequences. Low compensation rates and long delays in receiving payment for court appointed attorneys were seen as barriers in the representation of children and parents.⁴⁰

Prior to 1999, DCS compensated guardians ad litem, while the AOC provided compensation to counsel for indigent parents in child dependency and termination of parental rights cases through the Indigent Defense Fund. Fees for the GALs and parents' attorneys were incongruent. In 1999, T.C.A. § 37-1-150 was modified to provide that the AOC compensate GALs. Rule 13 was amended to provide for equal compensation for guardians ad litem and parents' attorneys; and, the compensation scheme was modified to reflect the multiphasic nature of child dependency cases by allowing compensation at both the adjudicatory/dispositional and post-dispositional phases. In 2004, the caps for the post-dispositional phase were increased. The AOC also compensates attorneys appointed for children in delinquency and unruly cases.

The original assessment as reported in the *1997 Program Report* discussed the deficient number of DCS attorneys. The *1998 Program Report* acknowledged that the shortage of

DCS attorneys was also a significant barrier to permanency.⁴¹ At that time, DCS employed 18 attorneys, including two in the Office of General Counsel. These attorneys were responsible for the litigation of 11,000 in foster care.

Currently, DCS employs 68 attorneys and 13 paralegals. Of the judges surveyed, almost one-third indicated that the greatest improvement in his/her court is the increased involvement of DCS attorneys in court proceedings.

This section will examine the data regarding the representation of parties in child dependency, termination of parental rights, delinquency and unruly proceedings, and assess parents' attorneys, GALs, attorneys for delinquent and unruly youth and DCS attorneys. This section will also assess the data concerning the CASA programs.

Appointment of Counsel

In the statewide survey, 45% of juvenile court judges report they routinely appoint attorneys for parents prior to the preliminary hearing in child dependency cases. Forty one percent (41%) report they appoint routinely appoint attorneys at the preliminary hearing. Four percent (4%) of the judges state they initially appoint counsel for parents at the adjudicatory hearing and 1% at the termination of parental rights hearing. Seven percent (7%) indicate counsel is appointed only upon request by the parent,⁴² and 2% indicate they usually do not appoint attorneys for parents. When there is a conflict, 90% of the judges report they “usually” or “always” appoint separate counsel for both parents.

Ninety-five percent (95%) of the judges state they notify parents of their right to be represented by counsel. The majority (91%) notifies parents by verbal notice in court; 56% by verbal notice out of court; and almost 20% provide notice by mail.

In child dependency cases, 54% of the judges indicate the initial appointment of the GAL is made prior to the preliminary hearing and 44% indicate such appointments are made at the preliminary hearing. However only 55% of the judges report GALs attend the preliminary hearing. One percent (1%) of the judges state they initially appoint the GAL at the adjudicatory hearing and 1% at the termination of parental rights hearing

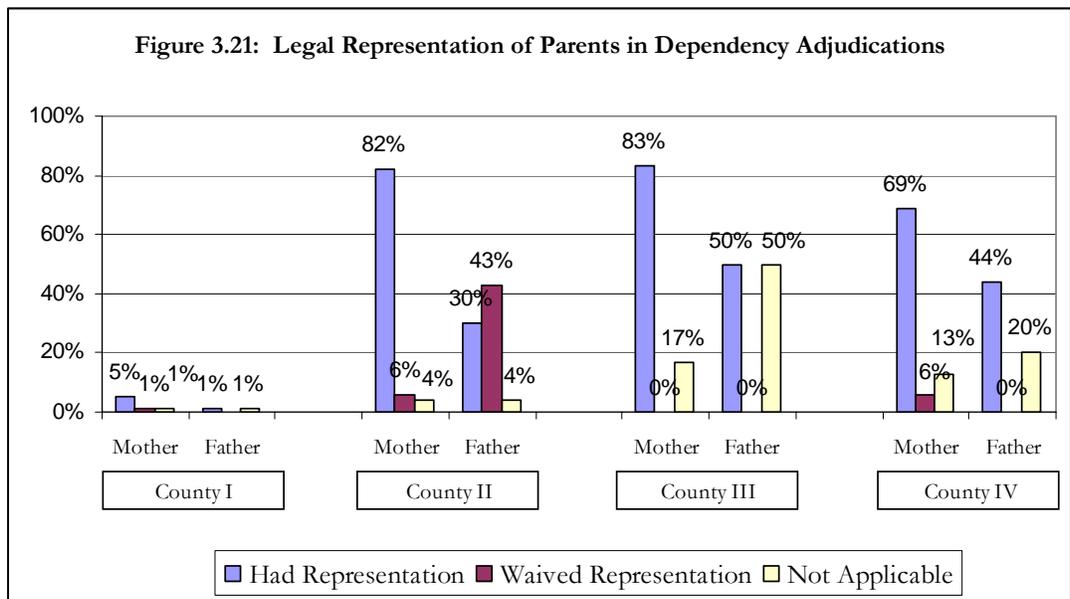
Attorneys indicate they “usually” or “always” receive timely notice of the court appointment of counsel 68% of the time.

Forty-six percent (46%) of judges report they have an insufficient number of attorneys in their counties to meet the representation needs of children and parents in juvenile court. They indicate 45% of the time they “often” have difficulty scheduling hearings due to attorneys' scheduling conflicts.

Percentage of Parties Represented by Counsel

For child dependency cases filed by DCS, 91% of the judges indicate counsel is “usually” or “always” appointed for indigent parents. Eighty-eight percent (88%) of the DCS attorneys report judges “usually” or “always” appoint attorneys for indigent parents. Judges claim parents “usually” or “always” waive their right to counsel only 2% of the time.

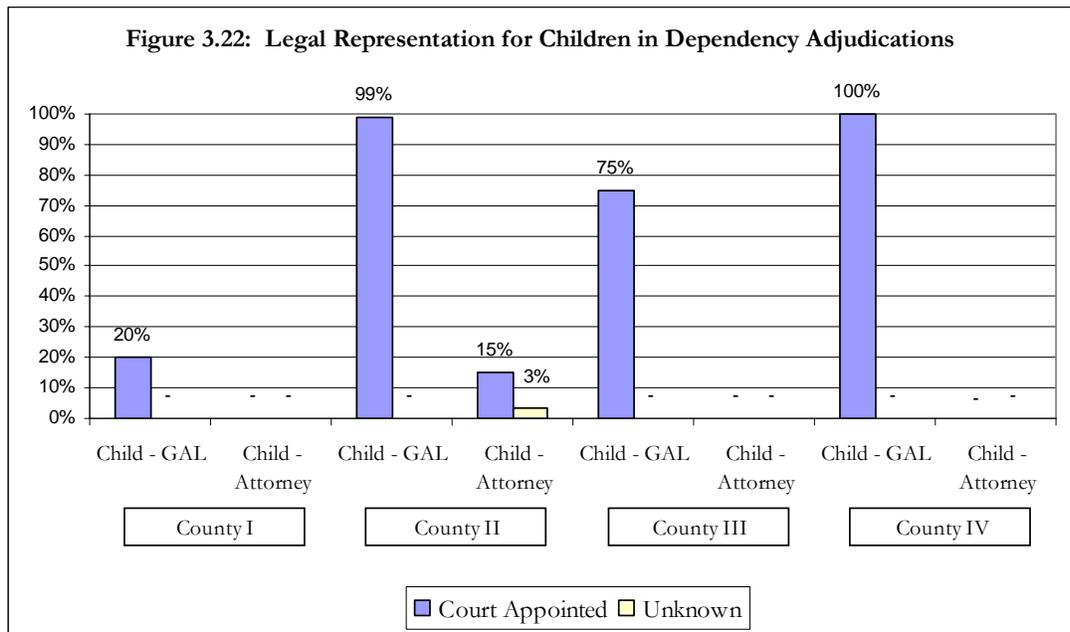
This is a substantial increase in the number of parents represented in child dependency cases from the original assessment. The *1997 Program Report* indicated less than one-third of parents were represented at this phase of the proceedings. In addition, the number of parents waiving their right to an attorney has decreased considerably in the past eight years. The *1997 Program Report* reported that half of the judges said parents “usually” or “always” waived their right to counsel. In child dependency cases filed by someone other than DCS today, attorneys for parents are “usually” or “always” appointed 63% of the time according to the judges. Figure 3.21 illustrates how often parents have counsel in dependency proceedings in the case file review counties.



County I is not appointing attorneys for indigent parents. As reported in the Methods of Assessment Section, County I has the highest proportion of families living below the poverty level among the counties studied. Yet, County I has the lowest rate of appointing counsel for indigent mothers and fathers, 3% and 1%, respectively. Consistent among the counties is the under-representation of fathers by appointed counsel. It cannot be ascertained from the data if fathers are systematically being denied appointed counsel or if fathers are not present at the court proceedings to have counsel appointed.

In child dependency proceedings filed by DCS, 92% of the judges report a GAL is “usually” or “always” appointed. DCS attorneys indicate GALs are “usually” or

“always” 91% of the time. Foster parent surveys report foster children “usually” and “always” have a GAL 45% of the time; and 20% of the time foster parents do not know if the child has representation. Surveys of foster youth in DCS custody indicate that 67% of those questioned currently have a GAL and 20% did not know. Of those who were not currently represented by a GAL, 44% state they were represented at one time, 20% said they were never represented and 37% indicate they did not know if they were ever appointed counsel. In proceedings filed by someone other than DCS, the appointment rate of the GAL according to the judges is “usually” or “always” in 76% of the cases. Figure 3.22 depicts the percent of children in the case file review counties with GALs.



Here too, County I is failing to appoint GALs for children in state custody as required by federal and state law. Only 20% of children were appointed GALs and only three percent of attorneys are being appointed in County I. DCS is the only party consistently represented by counsel in dependency proceedings in County I. County III also needs to improve in appointing GALs for children in state custody.

Across the state, however, the number of children represented in child dependency proceedings has grown from the original assessment. In the *1997 Program Report*, less than one-third of children were represented. Unlike parents, children cannot waive their right to a GAL, so the rate of appointment should be 100%. The fact that not all children are represented may be the result of an insufficient number of attorneys in the counties to meet the representational needs of families in juvenile court. The fact that a considerable number of foster youth and foster parents do not know if the youth is represented by a GAL is especially problematic. This may be that attorneys’ communication and direct involvement with the child client is less than adequate.

In termination of parental rights petitions filed by DCS, 99% of the judges indicate counsel is “usually” or “always” appointed for indigent parents. DCS attorneys report attorneys for parents are “usually” or “always” appointed 98% of the time. Only 3% of the judges report parents “usually” or “always” waive the right to counsel in these proceedings. In termination of parental rights petitions filed by someone other than DCS, judges report they “usually” or “always” appoint counsel for parents in 80% of the cases.

Ninety-eight percent (98%) of DCS attorneys report GALs are “usually” or “always” appointed in termination of parental rights cases. Appointment is mandatory in all termination cases except those that are uncontested.⁴³ As with representation in child dependency phase, there is a significant increase from the original assessment in the number of parents and children represented in termination of parental rights proceedings. The *1997 Program Report* indicated children were represented in only 40% and parents 70% of the termination of parental rights proceedings.

In delinquency cases (not including petitions disposed of by informal adjustment), 94% of judges report an attorney is “usually” or “always” appointed to represent the child. For children who have accrued a third unruly petition, 65% of the judges indicate the children “usually” or “always” receive a court-appointed attorney. Sixty-four percent (64%) of the delinquent and unruly foster youth report they are represented by counsel at the proceeding resulting in custody with DCS. Eight percent (8%) report they do not know if they were represented. The data does not indicate the percentage of children who waive their right to an attorney. There is a noteworthy discrepancy in what the judges and foster youth report regarding representation. Again, this may suggest insufficient attorney communication and direct involvement with the child client. In addition, the data indicates unruly children are under-represented by counsel.

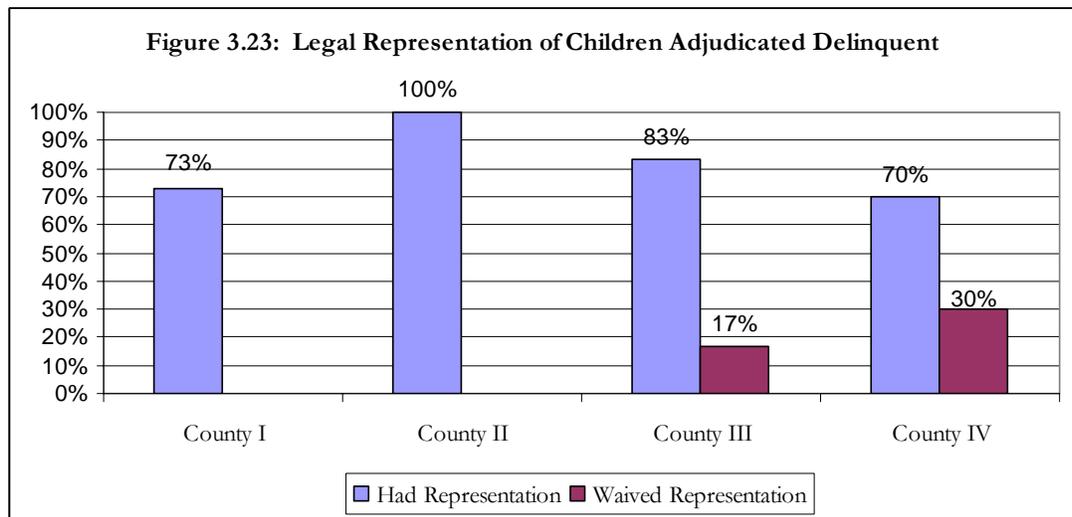
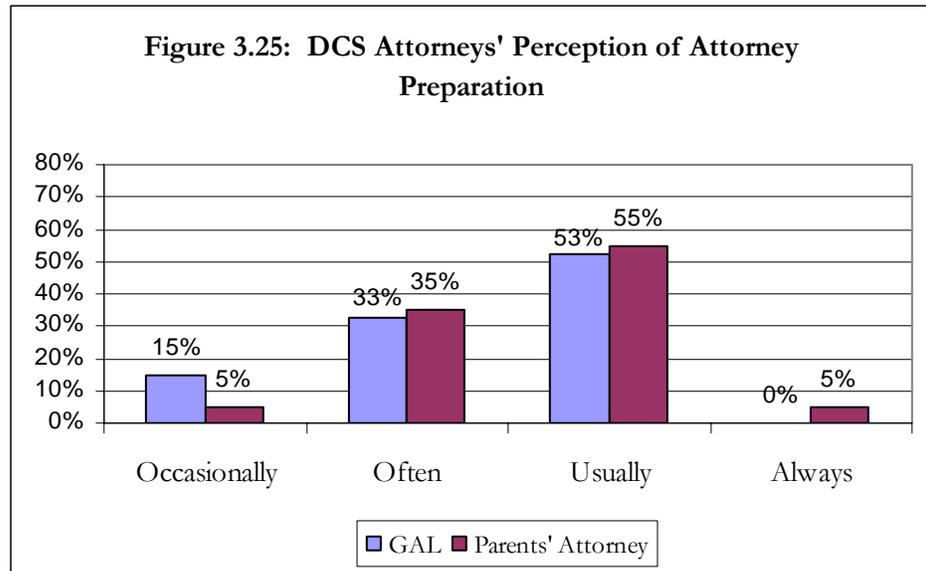
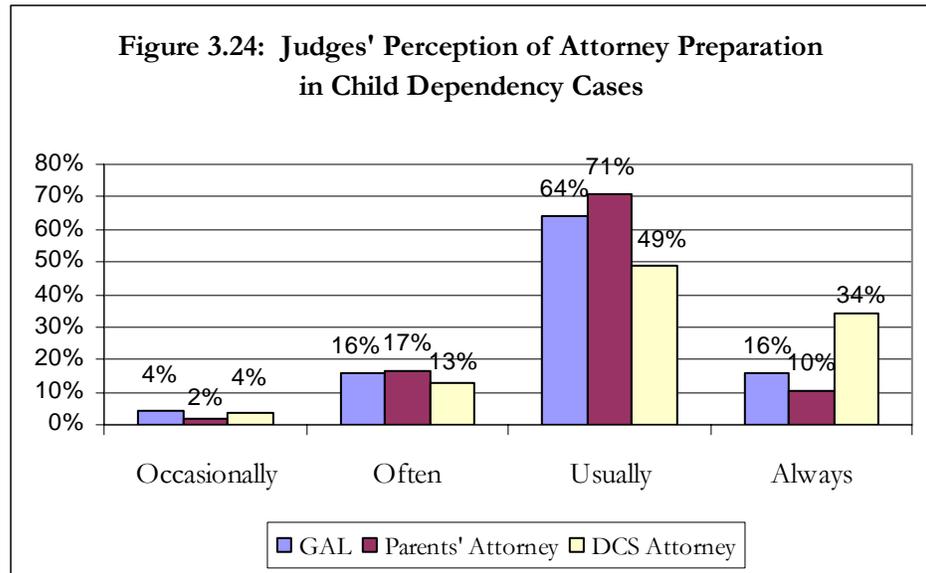


Figure 3.23 details the percent of delinquent children with appointed counsel in the case file review counties. In contrast to the appointment of the GALs in dependency proceedings, County I appointed counsel to 73% of delinquent foster youth.

Completeness of Pre-hearing Preparation by Advocates

Figures 3.24 & 3.25 illustrate the judges' assessment of how often GALs, counsel for parents and DCS attorneys are adequately prepared for court hearings; and the opinion of DCS attorneys regarding the preparation by GALs and parents' attorneys.

As the graphs indicate, judges view DCS attorneys as “always” prepared for court hearings, twice that of GALs and three times more often than parents' attorneys. DCS attorneys perceive GALs and parents' attorneys as being “usually” or “always” prepared 53% and 60% of the time, respectively; while the judges' perceptions are higher at 80% for GALs and 91% for parents' attorneys.



When asked how often the attorneys obtain copies of families' DCS files, 51% of the parents' attorneys responded that they "usually" or "always" do while less than 40% of GALs report doing so. Thirty-five percent (35%) of the parents' attorneys and 40% of the GALs surveyed report they "usually" or "always" acquire their client's medical, psychological or psychiatric records. GALs indicate they "usually" or "always" obtain the child's education records only 32% of the time. Less than 40% of parents' attorneys "usually" or "always" receive these same records of the child.

A correlation can be drawn between the perception of judges and DCS attorneys regarding the preparedness of GALs and parents' attorneys for court hearings and the low percentages described by GALs and parents' attorneys in obtaining the client's/family's records. Questions should be raised about the amount of knowledge these attorneys have when proceeding to trial or settling the case; and when litigating at judicial reviews and permanency hearings. A discussion of how often attorneys present testimony or evidence at each of the court hearings is included in the following section.

GALs report 36% of the time they typically first meet the child at the preliminary hearing. They indicate they "almost always/always" typically meet with the child as follows: 40% at the courthouse; 32% at their office; 18% at the home of the parent/guardian; 12.5% at the child's foster home; 7% at the DCS office; and 3% at the child's school. However, seventy-two percent (72%) of foster youth indicate they first meet the GAL in the courthouse. Only 3% of foster parents report the GAL "usually" or "almost always" meets with the child at their home. There is a considerable disparity between the assertions of the GALs and foster youth as to where the two typically meet. Nevertheless, both report the majority of contact is at the courthouse.

Almost one-fifth of youth report they do not know the GAL's name. One-third does not know how to contact the GAL. Only 30% of youth surveyed contact the GAL when they have a problem. In delinquency and unruly proceedings, 60% of youth report they do not know how to contact their attorney.

Less than 20% of foster youth state the GAL "almost always" spends time getting to know them or their situation. This is in sharp contrast to the 69% of GALs who report they "almost always" get to know the child and his or her situation. Approximately 40% of youth report the GAL "almost always" inquires about his or her preference while the attorneys indicate they do so more than twice that amount at 84%. The disparities in the data may be attributed to the definition of "getting to know" and what that entails. It is possible that foster youth may be measuring their contact with the GAL against their association with the DCS case manager. When asked what difficulties the attorneys face in serving as GAL, one attorney responded, "Often our client is unable to understand the process and my role due to age and developmental problems."

Foster parents report they "almost always" or "usually" know the GAL's name and telephone number only 35% and 22% of the time, respectively. Sixty-three percent (63%) of foster parents state the GAL "never" contacts them to discuss the child and 27% state they are only "occasionally" contacted. One foster parent surveyed maintains that in "(o)ver 30 years of foster parenting I have never met a GAL."

Another states ‘(w)hen you live with a child 24/7 you learn a lot about them, their personality, tendencies, etc., a lot of the evidence that DCS and the GAL have would make more sense if our information was considered.’ Only 3% of foster parents report the GAL “almost always” or “usually” meets with the child on a day or time other than immediately before the court hearing. One foster parent claims, “I have never had a GAL meet my kids ahead of time – 30 kids!!” The data illustrates a poor perception by foster youth and foster parents of the GALs and the performance of their duties.

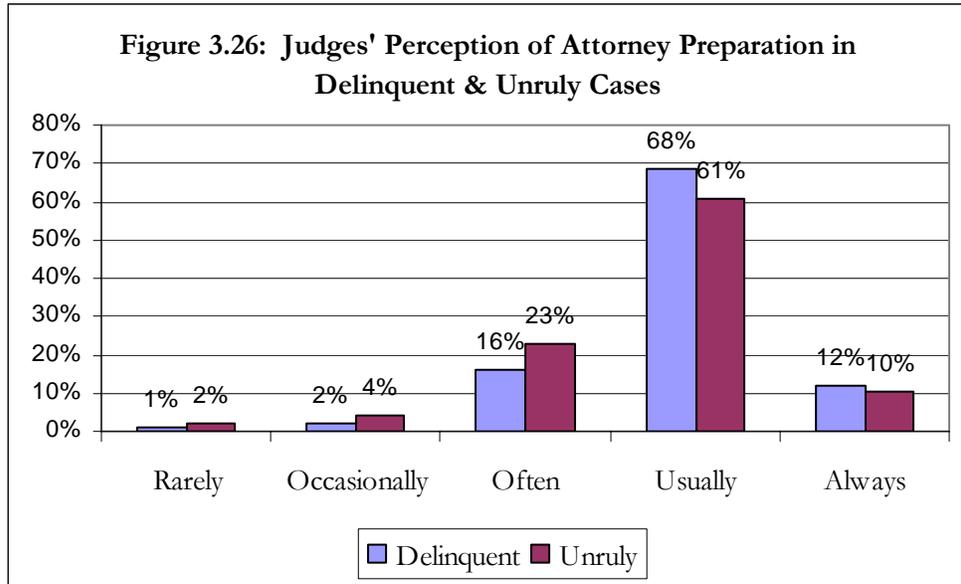
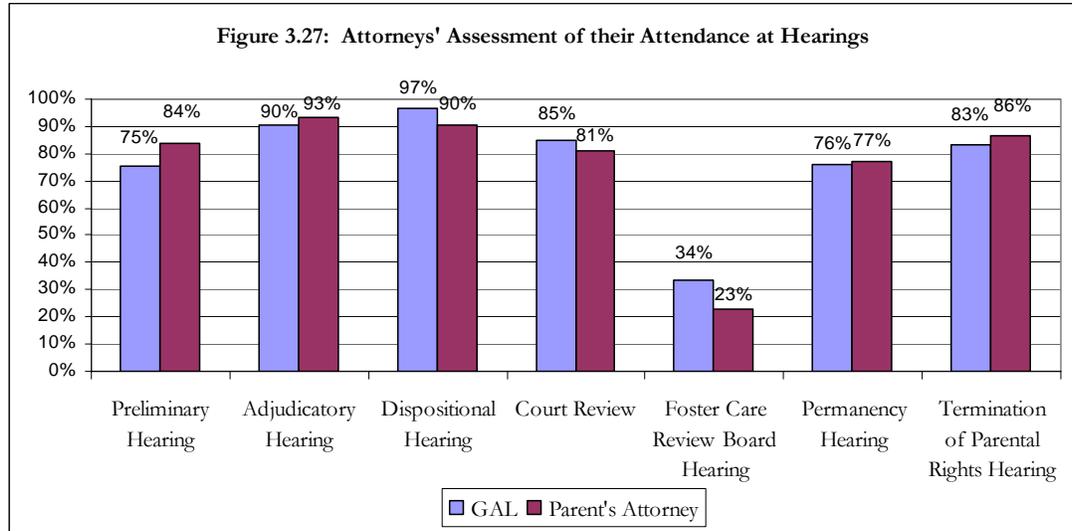


Figure 3.26 depicts the judges’ perception of how often attorneys for delinquent and unruly youth are adequately prepared for court hearings. Attorneys for delinquent and unruly youth report “always” conducting an investigation by obtaining police reports, interviewing witnesses, etc., almost 40% of the time. This is not borne out by the data in Figure 3.26 as assessed by the judges.

Level of Active Involvement by Advocates during Court Hearings

Attorneys for delinquent and unruly youth report “always” conducting an investigation by obtaining police reports, interviewing witnesses, etc., almost 40% of the time. This is not borne out by the data in Figure 3.27, as assessed by the judges.



Ninety-nine percent (99%) of DCS attorneys surveyed report they “usually” or “always” attend child dependency hearings. They indicate less than 50% of the time they “usually” or “always” attend delinquent or unruly hearings where the child is committed to DCS custody. However, more than 60% state they “usually” or “always” attend delinquent or unruly hearings subsequent to the child’s placement in custody. The data does not indicate why DCS attorneys are not attending the delinquent or unruly hearings, especially those where the children are in foster care.

Over 80% of the judges report that parents’ attorneys “usually” or “always” present testimony or evidence in court hearings. Judges also state that only 65% of GALs present testimony or evidence in court hearings. Judges indicate 76% of the time attorneys for delinquent children and 67% of attorneys for unruly children “usually” or “always” present testimony or evidence in court hearings. However, 64% of attorneys representing delinquent and unruly children report “usually” or “always” presenting testimony or evidence.

Parents’ attorneys and GALs were surveyed regarding their practice of presenting testimony or evidence at the adjudicatory/dispositional hearings, court reviews, permanency hearings and termination of parental rights proceedings. DCS attorneys were surveyed regarding their perceptions of the GALs and parents’ attorneys presentation of testimony or evidence. The following results indicate a significant higher participation by attorneys representing parents and children at the adjudication/disposition and termination of parental rights hearings than at court reviews or permanency hearings.

Adjudicatory/dispositional hearings: Parents’ attorneys and GALs report “usually” or “always” presenting testimony or evidence 70% and 40% of the time, respectively. DCS attorneys’ perception of the same is 80% for parents’ attorneys and 56% for GALs, higher than the actual practice reported.

Court reviews: Forty-three percent (43%) of the parents' attorneys surveyed and 24% of the GALs report "usually" or "always" presenting testimony or evidence. DCS attorneys' perception of the same is 36% for parents' attorneys and 27% for GALs.

Permanency hearings: Forty-seven percent (47%) of the parents' attorneys and 28% of the GALs report "usually" or "always" presenting testimony or evidence. DCS attorneys' perception of the same is 35% for parents' attorneys and 24% for GALs.

Termination of parental rights hearings: Eighty-one percent (81%) of the parents' attorneys and 58% of the GALs report "usually" or "always" presenting testimony or evidence. DCS attorneys' perception of the same is 92% for parents' attorneys and 71% for GALs, higher than the actual practice reported.

GALs report they "almost always/always" explain to children what will happen in court proceedings almost 80% of the time. Foster youth were asked if the GAL explains "what is going on in your case." One-third report the GAL "never/rarely" provides an explanation. One-half of foster youth indicate that the GAL attends court hearings; however, one-third of youth maintain that the GAL "rarely/never" actively participates at court hearings. GALs report "almost always/always" having contact with the child before each hearing almost 60% of the time. Youth report the same at 25%.

In delinquency and unruly proceedings, over 85% of foster youth report they plead guilty to a charge. They indicate the attorney explains the charges and the right to a trial over 90% of the time. Over one-third of the youth believe they did not have a choice about pleading guilty and over one-half state the attorney did not explain the duration of their potential custody with DCS.

Involvement of Advocates through All Stages of the Proceedings, Between Proceedings, and Duration of Assignment

One-half of parents' attorneys and 55% of GALs indicate they "usually or always" attend permanency plan staffings. Less than 20% of both indicate they attend the DCS child and family team meeting held within seven days of custody. However, only a quarter of the parents' attorneys report they are "usually" or "always" contacted by DCS to schedule staffings and child and family team meetings. Only one-third of GALs report they are contacted by DCS to schedule meetings. Almost 50% of GALs report "never/rarely" meeting with the child prior to staffings. When attorneys were asked what difficulties they face in serving as GAL, one responded, "I don't get enough notice of DCS scheduling to be present."

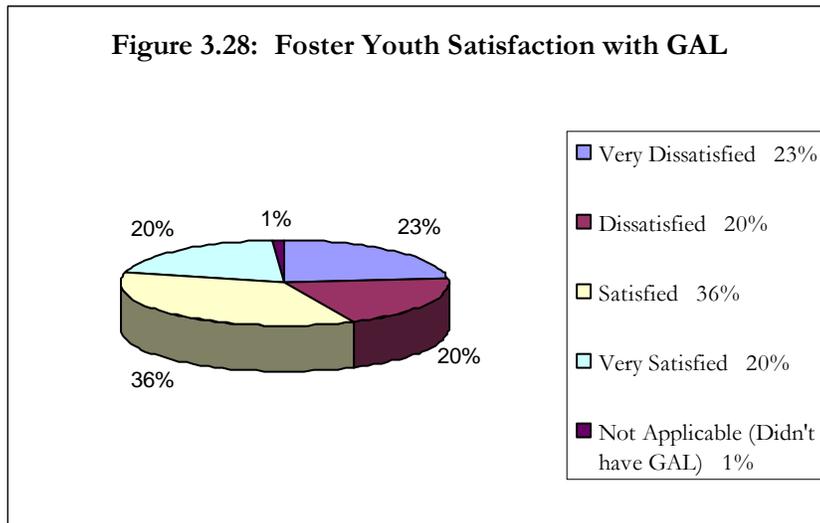
Only one-third of GALs and less than a quarter of parents' attorneys report attending foster care review board hearings. Foster care review board members surveyed indicate GALs are present at almost 50% of the hearings while parents' attorneys attend almost a third. However, less than 15% of board members indicate GALs and parents' attorneys "usually" or "always" actively participate at the hearings.

Judges report 60% of the time that GALs “usually” or “always” monitor the implementation of permanency plans and court orders in child dependency cases. Over 50% of counsel for parents and GALs report they file pleadings with the court when adequate services are not provided to meet the children’s or families’ needs. Almost one-third of parents’ attorneys and 20% of GALs report they “wait for the next scheduled hearing.” However, more than 50% of judges indicate parents’ attorneys and GALs “rarely” or “occasionally” bring the case back to court when services are not provided in accordance with the permanency plan. DCS attorneys report 60% of the time for parents’ attorneys and 78% of the time for GALs that they “rarely” or “occasionally” bring the case back to court.

Sixty-eight percent (68%) of foster youth indicate their GAL never or rarely has contact between hearings and staffings. Less than 20% of GALs report not having contact. Approximately one-half of GALs indicate they “almost always/always” attempt to help the child with problems while in custody while less than a quarter of youth report the same.

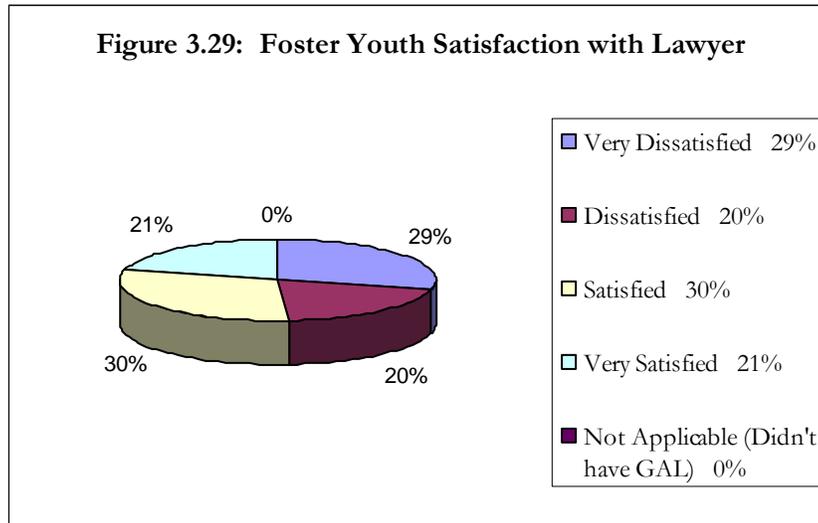
Foster parents report less than 20% of the time the GAL “usually” or “always” has sufficient knowledge of the child and family to make appropriate recommendations to the court. Foster parents perceive they are “usually” or “always” treated with respect by the GAL approximately one-half of the time and “never” are treated with respect almost one-third of the time. Almost 50% assess their working relationship with the GAL as “unacceptable.”

Figure 3.28 illustrates the foster youths’ satisfaction with the representation of the GAL.



In delinquent and unruly proceedings, 87% of foster youth report not having contact with their attorney after being placed in DCS custody.

Figure 3.29 illustrates the foster youths' satisfaction with the representation of the attorney in delinquency and unruly cases.



Forty-four percent (44%) of the GALs report they typically withdraw from representation after the child leaves custody or is adopted. Parents' attorneys report the same at 29%. Ten percent (10%) of both indicate they withdraw after the adjudication. Almost 20% of GALs and 30% of parents' attorneys state they withdraw after the disposition. This means that one-third or more of children and parents are not represented at the critical post-dispositional phase of child dependency proceedings. Less than 30% of counsel for parents and GALs obtain a court order to withdraw from a case.

The Relationship between the GAL & Child: Tennessee Supreme Court Rule 40

Tennessee Supreme Court Rule 40 requires the GAL to establish and maintain a relationship with the child through direct contact via observation or client interview depending on the age and development of the child. Rule 40 also mandates that contact occur: prior to court hearings; or when apprised of emergencies or significant events affecting the child. More than 80% of judges indicate they enforce compliance by the GAL with Supreme Court Rule 40. However, the responses of foster youth and foster parents indicate that GALs are not complying with Rule 40's requirements regarding contact with the child.

Table 3.14 illustrates GALs' and foster youths' perception of how often GALs "almost always" do the following in establishing and maintaining a relationship with their client.

Table 3.14: Differences Between GALs and Foster Youth Perception of Attorney Practices

	GALs	Foster Youth
Spend Time Getting to Know the Child and His/Her Situation	69%	17%
Explain What Will Happen in Court	79%	41%
Observe Visitation or Interaction between the Child and Parents	19%	NA*
Keep in Touch between Hearings and Meetings by Calling or Visiting	33%	13%
Help with Problems the Child is Having in Custody	48%	24%
Ask the Child His/Her Preferences	84%	39%

*NA indicates the option was not a listed selection on the survey.

There exists a wide disparity between the type of interaction that GALs and foster youth report is “almost always” occurring. Most GALs, 84%, report asking the child about his/her preference. Almost 50% of GALs state they request the appointment of an attorney when a conflict arises between the child’s preference and best interest. In contrast, 39% of foster youth report being asked their preferences by the GAL. Seventy-nine percent (79%) of GALs state they routinely explain what will happen in court while 69% report spending time getting to know the child and his/her situation. Only 19% percent of GALs indicate observing visitation or interaction between the child and parents. The variance in responses indicates a serious issue regarding the performance of GALs responsibilities in establishing and maintaining a relationship with the child. Two inferences are possible. First, GALs are employing bare minimums in complying with the provisions of Rule 40. Second, there exists a barrier in communication between GALs and the children they represent.

As previously discussed, most contact between the child and GAL occurs at the courthouse. Fifty-six percent (56%) of GALs state they “almost always” have contact with the child before each hearing. However, foster youth report the same at 25%. Seventy-eight percent (78%) of foster parents indicate that GALs “never” meet with the child other than immediately before the hearing or during court. One foster youth surveyed states that he/she would be more satisfied with the GAL if the GAL would “meet with me prior to hearings and so on to understand my side of the cases.” As will be discussed in the Quality of Treatment of Parties Section, the majority of judges report having limited waiting space for parties to wait. Given that the majority of meetings between GALs and foster youth are occurring at the courthouse before the hearings, questions can be raised as to the length and depth of these conversations and privacy afforded these conversations.

Compensation of Attorneys in Juvenile Proceedings

More than 50% of attorneys report compensation for GALs and parents’ attorneys is “not at all” adequate. Forty-percent (40%) state compensation is “somewhat” adequate, while less than 10% indicate compensation is “quite” or “completely” adequate.

Tennessee Supreme Court Rule 13 provides for compensation of court appointed attorneys in juvenile proceedings. Rule 13 sets hourly rates for appointed counsel in juvenile proceedings at \$40.00 per hour for time reasonably spent in trial preparation and \$50.00 per hour for time reasonably spent in court. Rule 13 defines “time reasonably spent in court” as time spent before a judge on the case to which the attorney has been appointed to represent the indigent party. Rule 13 also set caps on the maximum amount that can be paid to an attorney. Table 3.15 illustrates the maximum allowable amounts under Rule 13 per adjudication type.

Table 3.15: Maximum Allowable Attorney Compensation Under Tennessee Supreme Court Rule 13

	\$500.00	\$750.00	\$1000.00
Adjudication Phase of Dependency Proceeding	✓		
Juvenile Charged with a Misdemeanor	✓		
Juvenile Charged with Third Unruly Offense	✓		
Post-Adjudication Phase of Dependency Proceeding		✓	
Termination of Parental Rights Proceeding			✓
Juvenile Charged with Non-Capital Felony			✓

Both the hourly rates and the maximum caps are problematic issues for attorneys. Several attorneys commented that Rule 13 does not take into account the work required in dependency proceedings, particularly as it relates to Tennessee Supreme Court Rule 40. One attorney commented “(Rule 13) does not take into account the long term work of a GAL...I have been a GAL for over five years attending all FCRB staffings, permanency plan hearings, etc., with hundreds of hours of preparation and time spent with my clients. When asked to assume long term duties, the pay should reflect the level of work required.” Rule 13 does allow each of these caps to be doubled upon a finding by the court that the case is “complex and extended.”

Judges and DCS attorneys concur with the sentiments of private attorneys regarding the adequacy of payment under Rule 13. A judge noted that the “minimal hourly rate” under Rule 13 reduces the number of attorneys available to represent children. A DCS attorney stated “...the pittance AOC pays is a barrier to effective parent representation.”

Several attorneys also expressed consternation over the process of requesting payment under Rule 13. The AOC pays claims for appointed counsel pursuant to Rule 13. One-fourth of surveyed attorneys specifically commented on the billing process of the AOC. “Tedious, slow, overly scrutinized and inadequate” are terms used by attorneys to describe the AOC billing process.

Lack of knowledge on the scope of Rule 13 and how to properly apply for payment and expenses may contribute to the attorneys’ frustration with the procedural aspects of Rule 13. Though Rule 13 allows for payment of expert witness fees, less than 15% of court-appointed attorneys have ever requested funding for expert witnesses in juvenile court cases.

Court Appointed Special Advocates (CASA)

T.C.A. § 37-1-149 provides for the appointment of a CASA, a non-lawyer special advocate trained in accordance with the standards of the Tennessee Court Appointed Special Advocates Association (CASA) to act in the best interest of a child before, during and after court proceedings. The CASA conducts an investigation and makes reports and recommendations pertaining to the welfare of a child as directed by the court. In child dependency cases CASA may be appointed in addition to the mandatory appointment of the GAL.

There are a total of 15 CASA programs that operate in 26 of the 95 counties in the state. Judges served by a CASA program report “usually” or “always” appointing a CASA volunteer in 28% of child dependency cases filed by DCS and in 31% of cases filed by someone other than DCS.

Figure 3.30 illustrates how frequently CASA “usually” or “always” attends court hearings as reported by the judges. As with attorneys, CASA volunteers most frequently attend the adjudicatory/dispositional hearings.

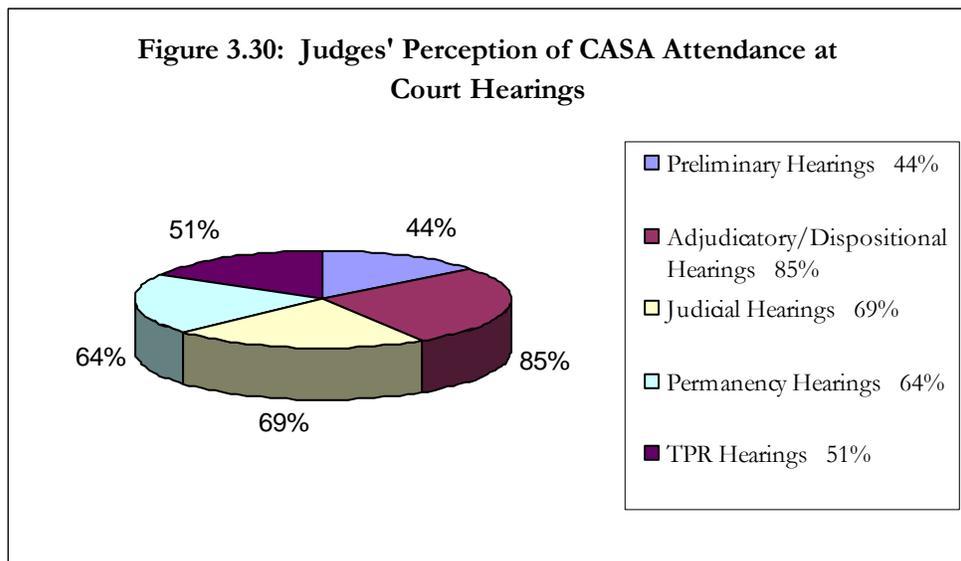
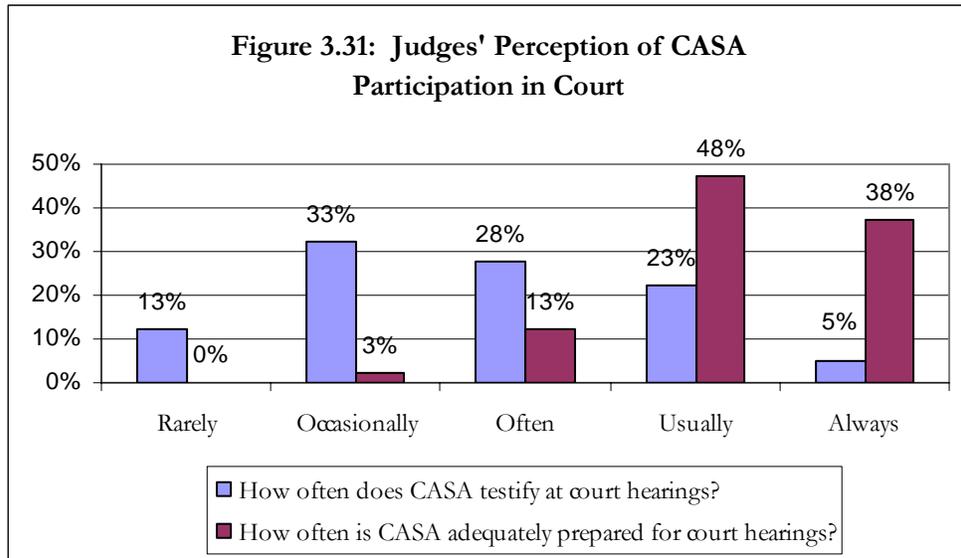


Figure 3.31 depicts how often CASA testifies at and is adequately prepared for hearings as reported by the judges.



Almost 70% of the judges report CASA “usually” or “always” remains on the cases until the child leaves foster care.

More than 60% of parents’ counsel and GALs have represented a child or parent where CASA was also appointed for the child. Forty-five percent (45%) of attorneys report in these cases they “usually” or “always” have contact with the CASA volunteer; and 45% and 41% indicate they work “very well” and “fairly well” with the volunteers, respectively. One third of the attorneys surveyed indicate CASA is “very effective” and 45% indicate CASA is “effective” in juvenile cases. DCS attorneys report the same at 17% and 57%, respectively. Almost 40% of attorneys indicate they have concerns about CASA.

Only 13% of the foster youth surveyed indicate they are currently represented by a CASA volunteer while one-third did not know if they were. Of those youth who were not currently represented by CASA, 8% reported they were represented at one time and 37% did not know if they had been represented. Foster youth report meeting with CASA an average of 6 times.

Forty-two percent (42%) of foster parents surveyed had a foster child where CASA was appointed. Foster parents indicate CASA “almost always” came to their home to meet with the child 14% of the time; however, none of the foster youth reports this. Almost two-thirds of the youth questioned indicate CASA “sometimes” visits them at their placement and just over one-third indicate CASA “never/rarely” visits them. Almost 30% of foster parents report CASA “never” visits the child at their home.

Youth report CASA “almost always/always” contacts them by phone 18% of the time; and, has visited them at school and with their birth parents at a rate of 10% each.

Figure 3.32 illustrates the range and frequency of issues addressed by CASA with foster youth as reported by the youth.

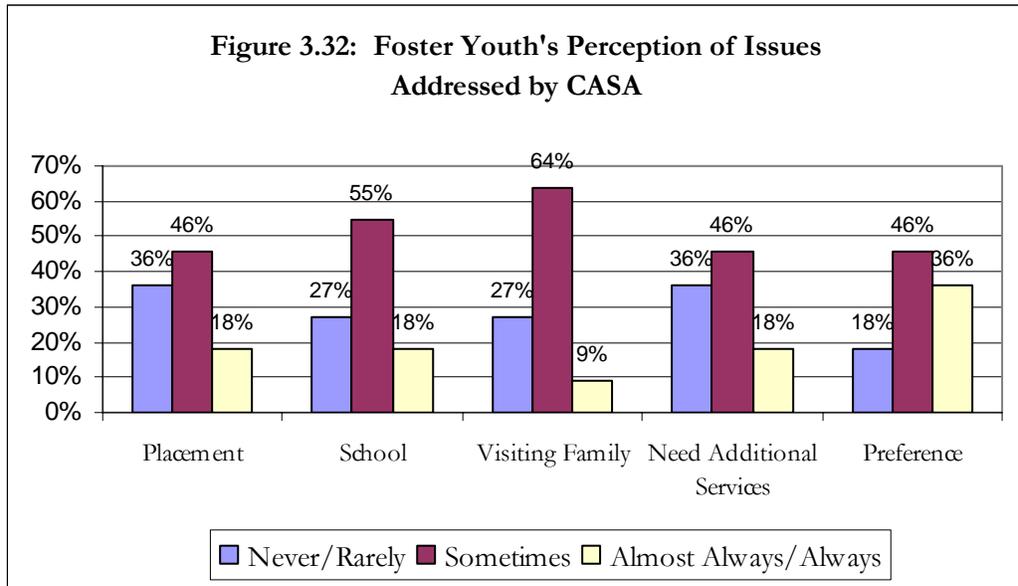
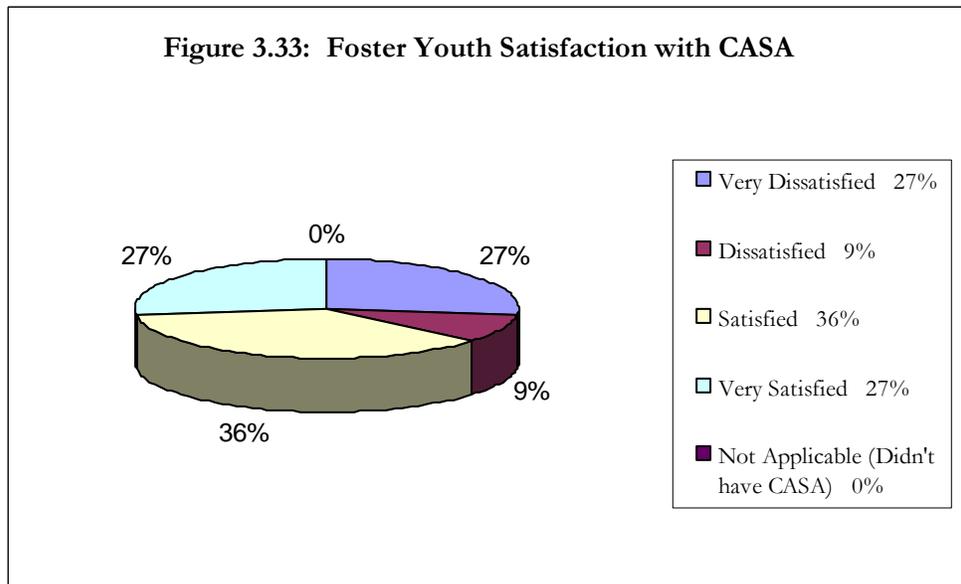


Figure 3.33 depicts the foster youths' satisfaction with CASA.



Approximately 40% of foster parents indicate CASA volunteers “usually” or “always” contact them to discuss the child; however, almost 20% state CASA “never” contacts them. Almost 90% of foster parents feel they are “usually” or “always” treated with respect by CASA, though 12% report they are “never” treated with respect. Foster parents report over 60% of the time CASA volunteers “usually” or “always” have

sufficient information about the child to make a recommendation to the court. Foster parents assess their working relationship with CASA as “excellent” and “good” both at 29% and 18% as “unacceptable.”

Independent Living Services

The John H. Chafee Foster Care Independence Program of the Foster Care Independence Act is a grant to assist states and localities in establishing and carrying out programs designed to assist foster youth likely to remain in foster care until 18 years of age and youth who have left foster care because they attained 18 years of age, and have not yet attained 21 years of age, to make the transition from foster care to independent living.

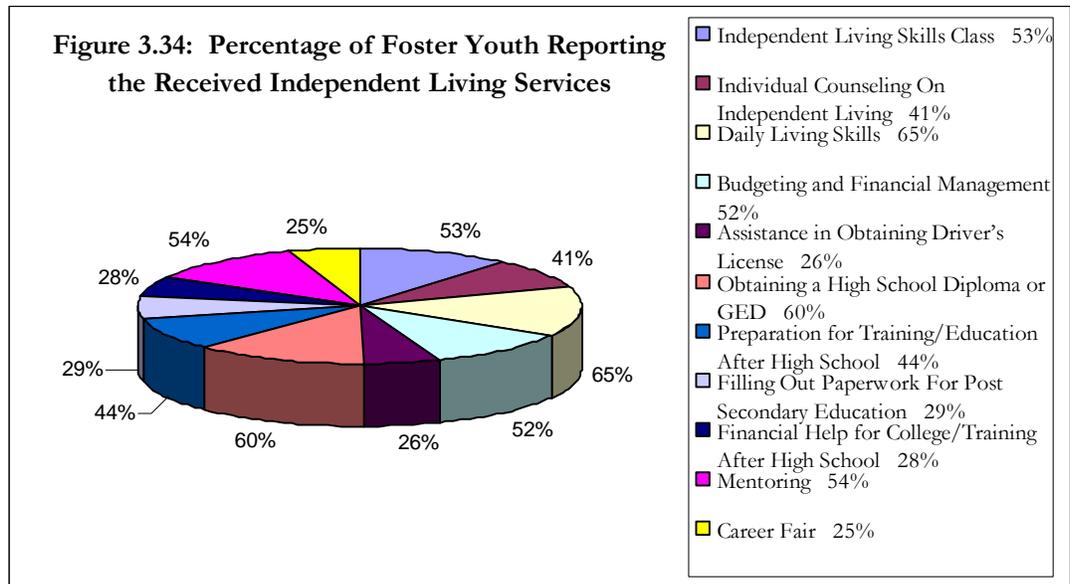
DCS uses funds from the Chaffee Program along with other federal and state funds to administer independent living services to foster and former foster youth beginning at the age of 14. DCS policy lists the following as services that must be available to help foster youth transition into adulthood:⁴⁴

- Assisting youth in obtaining a high school diploma;
- Assisting youth in obtaining a G.E.D. before they leave care, if a high school diploma is not feasible;
- Assisting youth with career exploration, vocational training, job placement and retention;
- Providing training in daily living skills, training in budgeting and fiscal management skills;
- Providing preventive health activities (including smoking avoidance, nutritional education, and pregnancy prevention);
- Providing services such as tutoring to increase educational outcomes;
- Providing training and employment services;
- Providing preparation for post secondary training and education;
- Providing youth opportunities to have connections with mentors and positive interactions with adults;
- Providing financial, housing, counseling, employment education, and other appropriate supports and services for young people ages 18 to 21 years formerly in foster care, voluntary/post custody status.

DCS has Independent Living Specialists whose sole responsibility is to provide independent living services to children in state custody. Seventy percent (70%) of foster youth surveyed, report they have received information from DCS regarding independent living services. “They have taught me some things that I can use in the future that I had no clue about before.” These were the thoughts of a foster youth responding to the survey regarding independent living services.

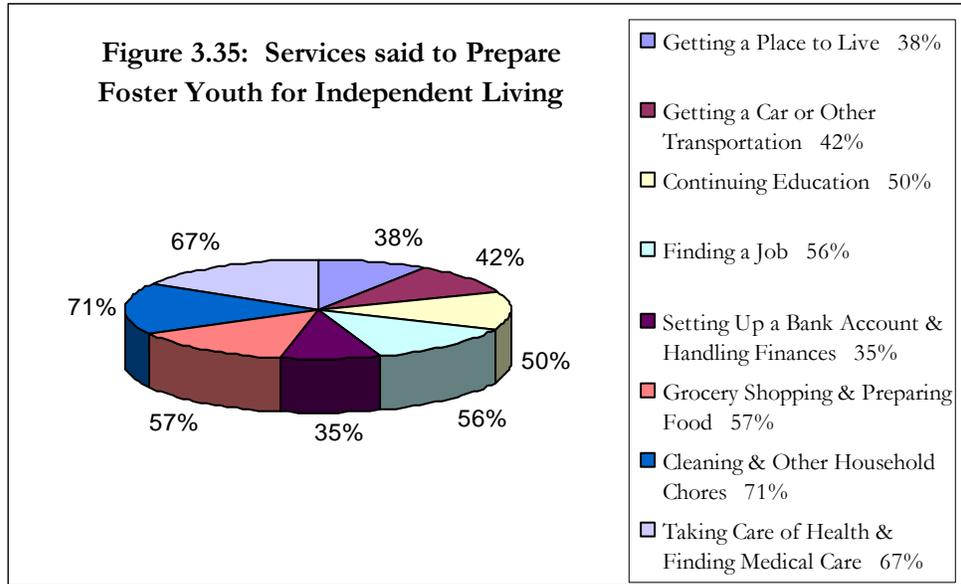
Upon reaching the age of 14, children in state custody must be provided independent living services. To facilitate individualized independent living services foster youth are given an independent living assessment. Only 52% of foster youth surveyed indicate having been given the assessment. Even fewer, 30%, know the results of their assessment. One foster youth states, “no one has told me when I can start services and my score from the purple and white papers (the independent living assessment).”

Any youth who is age 15½ years or older shall have an Independent Living Case Plan (ILCP) developed for his/her case manager. The plan is a written description of the programs and services that will help a youth prepare for the transition from foster care to independent living. For a foster youth who is age 16 or older and in out-of-home care, the ILCP must be a part of the child’s permanency plan.⁴⁵ Forty-four percent (44%) of foster youth report having independent living services included in their permanency plans. One foster youth stated that his/her plan needed to be improved to help him/her “become independent and live on my own.” Figure 3.34 details the percent of foster youth who have had specific independent living services.



“There is more to life than the household,” stated one foster youth commenting on needed services to become independent after leaving state custody. As depicted in Figure 3.34, services seem to focus on basic living skills and completion of education through high school. The data indicates a lack of emphasis on services to assist foster youth in post secondary education. There also exists a failure to comprehensively provide services in the area of post-secondary education. Forty-four percent (44%) of foster youth receive preparation for post-secondary education or vocational skills. However, only 28% receive assistance in filling out paperwork for the same. Only 29% indicate receiving financial assistance for post secondary education.

Sixty-eight percent (68%) of foster youth state being “satisfied” or “very satisfied” overall with the independent living services they have received. However, their responses depict individual areas where more focus is needed in the delivery of independent living services to foster youth. Figure 3.35 details the percent of foster youth who are “very well” prepared to transition to independent living in stated areas.



Foster youth’s indication of how “very well” prepared they are to transition into independent living correlates to the independent services they have received. Again, the data depicts primary focus on daily living skills. Cleaning/household chores and taking care of health/finding medical care are the independent living skills that foster youth report being the most prepared to handle upon their transition to independent living. Foster youth indicate being least prepared to handle their finances and obtain living quarters. The data illustrates the foster youth are ill-prepared to make a successful transition to independent living. When asked what information was needed to assist in becoming independent upon leaving custody, one foster youth reported needing help with “setting up a banking account, getting a credit card, how to do your taxes, and handling your finances.”

Upon reaching 18 years of age (19 for delinquent youth) foster youth may elect to receive voluntary post custody services from DCS. These voluntary services include foster care room and board, case management services, financial support for education or job training, and other independent living services as deemed necessary.⁴⁶ For children who elect not to participate in post-custody services, the Transition Living Program is available. This program is intended to prevent homelessness for former foster youth.⁴⁷ The following services are available in the Transition Living Program: case management, crisis intervention, information and referral services, educational planning, employability assistance, GED preparation, housing and utility assistance, and life skills instructions.

Information regarding post-custody services is not being successfully conveyed to foster youth. Less than 60% of foster youth report having knowledge of post-custody services available to them.

Quality of Treatment of Parties

Pursuant to the Tennessee Rules of Juvenile Procedure, dependency proceedings are closed to the public. Judges have discretion in prohibiting the public from other juvenile proceedings. Yet 19% of foster youth indicate “never” or “rarely” having a closed hearing in juvenile court. A DCS attorney reported, “Some courts still don’t have closed sessions for cases. People mill around the courtroom.” One foster youth responded that courts could improve how they work with foster youth by “having the juvenile court out of the public view.” The availability of physical space may be a barrier to courts conducting closed hearings. Eighty percent (80%) of judges report having sufficient courtrooms available for juvenile cases; however, only 43% of judges indicate having adequate waiting room for parties in juvenile cases.

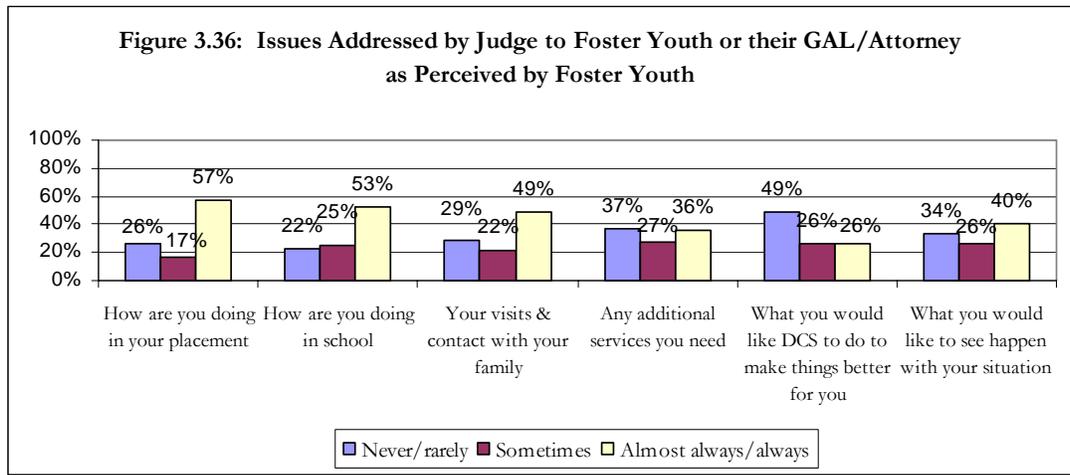
Despite having their hearings open to the public, foster youth feel that they are treated with respect by the court. Sixty-two percent (62%) of foster youth state they were treated with respect by court staff and the judge. Foster parents echo the sentiments of foster youth. Foster parents indicate they are “usually” or “always” treated with respect over half of the time. Sixty-eight percent (68%) of judges’ report that they “usually” or “always” explain to the parties the permanency process and what will occur next. DCS attorneys concur, with 71% indicating the same. DCS attorneys and private attorneys, 90% and 84% respectively, state that the judge explains his/her decision to the parties before leaving court.

The data above suggests the judges are making an effort to educate parties regarding juvenile court proceedings, though improvement is still needed. Fifty-nine percent (59%) of foster youth state they are “fairly well” or “very well” able to understand the purpose and content of their court hearings. Fifty-six percent (56%) of foster youth state they understand their appeal right and how to accomplish an appeal. However, the courts are not utilizing the available tools provided to help to explain the court process. Seventy-one percent (71%) of judges’ report they are not using videotapes provided by the CIP. The videotapes explain dependency proceedings and parents rights in the family’s primary language.

Being informed does not equate to being involved. Foster parents and foster youth report they are not actively involved in juvenile court hearings. Foster parents report “usually” or “always” testifying at hearings 27% of the time. One foster parent surveyed stated, “Usually the court does not address foster parent’s concern during the hearings.” A fourth of foster parents report they have pertinent information about the case but not being allowed to testify. The majority of foster parents, 59%, say they do not having enough input into the court’s decision concerning their foster children. One foster parent reported being told by the judge, “Remember you are just a foster parent.” The data indicates that foster parents perceive that some juvenile courts do not value their input.

Foster youth have similar concerns about their own involvement in court hearings. One foster youth surveyed stated the court should “listen to me,” while another believes the

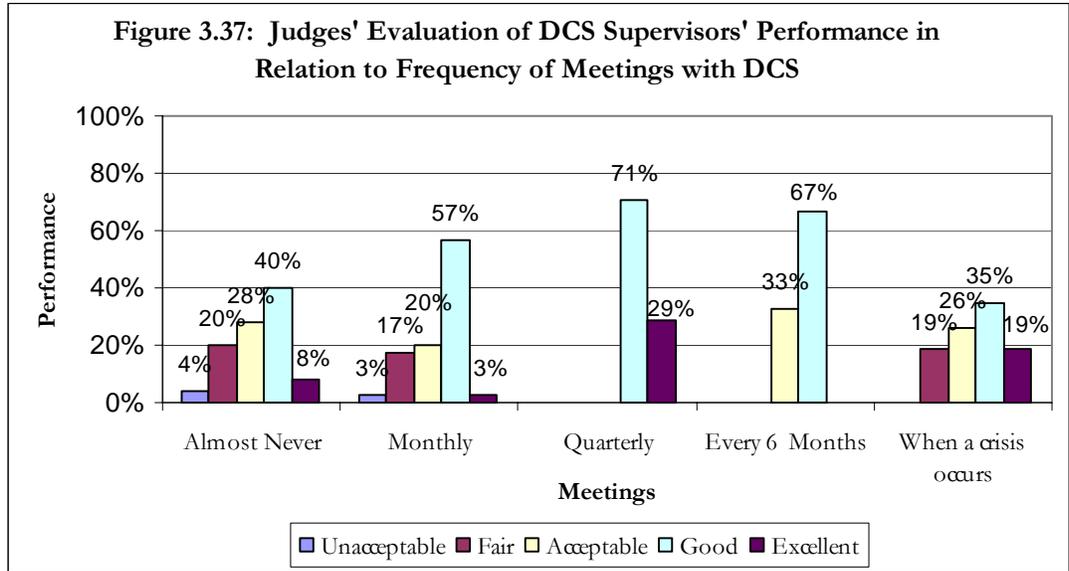
court should “take my concerns in consideration.” Figure 3.36 illustrates foster youth’s perception of how often judges inquire about issues pertinent to foster youth.



Fifty-seven percent (57%) of foster youth state that judges “almost always/always” ask about their progress in their placement. Placement issues are important to foster youth particularly as it relates to visitation. One foster youth stated that judges should “move kids closer to home even though I’m not that far. There are kids who live eight hours away and it’s very hard for them to get visits. I know that would be hard.” Yet, only forty-nine percent (49%) of foster youth indicate judges ask about visitation and contact with their families. Foster youth report that judges inquire the least about the following issues: any additional services needed; what DCS could do to make things better; and what foster youth would like to see happen. A foster youth offered a suggestion as to how the process could be improved for families, “By asking more questions about what I really need, instead of what they think I need.”

DCS is a party to most juvenile proceedings. The relationship that exists between the court and the local DCS staff has a bearing on how effectively the court carries out its responsibilities and, in turn, it has an impact on the other parties and stakeholders. The majority of judges, 48%, assess the relationship between their local DCS and the court as “good”, while 23% assess the relationship as “excellent.” Sixty-one percent (61%) of judges assess the performance of DCS case managers as “good” or “excellent.” The performance of DCS supervisors is assessed by 58% of judges as “good” or “excellent.”

Figure 3.37 suggests that judge’s perceptions of DCS supervisors are more favorable when regular meeting between the court and DCS occur. Commenting on the improvements in custody cases since 1998, one judge surveyed stated there was “better communication, more DCS staff and attorney involvement.”



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Organizational Issues

Docketing and Caseflow Management

Almost 50% of judges surveyed indicate they have written local court rules regarding juvenile court procedures and policies, which include the setting and continuance of cases. Local rules of practice for the juvenile courts in Davidson, Hamilton, Knox and Shelby Counties are published at *Tennessee Code Annotated, Court Rules Annotated 2004, Volume 2*.

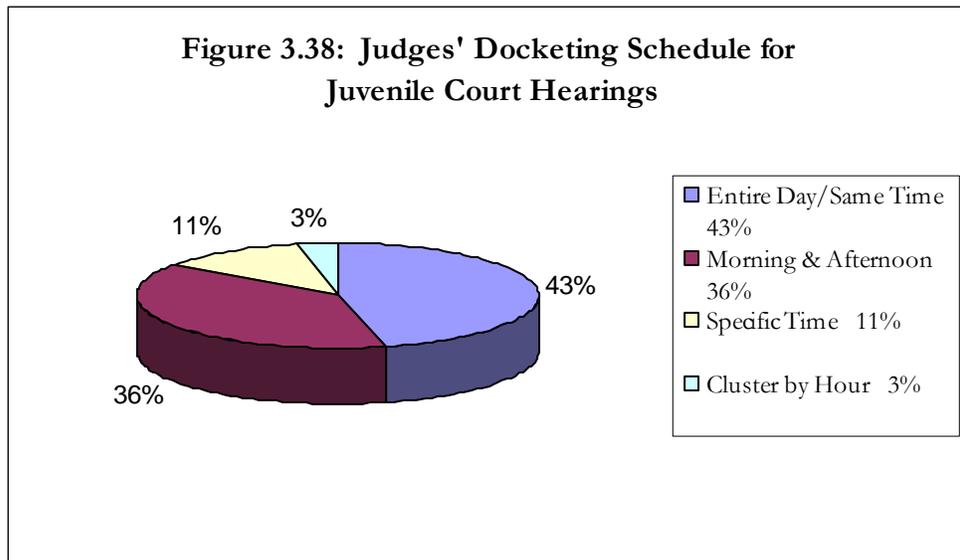


Figure 3.38 illustrates how judges surveyed report docketing juvenile cases. The largest group of judges, 43%, docket all cases for an entire day at the same time. Several attorneys surveyed complain of an “overloaded” docket. This potentially requires parties and attorneys to remain in court all day, causing parents to miss work and children to miss school. One foster parent surveyed stated that courts “need to be more organized and timely,” while another indicated that “they [judges] make small children sit all day in court for no reason.” Thirty-six percent (36%) of judges report scheduling morning and afternoon dockets. Only 11% of judges docket hearings at a specific time and 3% cluster cases by the hour.

Setting one all-day docket has many disadvantages. It contributes to the inability to have closed hearings due to limited waiting space, as discussed in the Quality of Treatment of Parties Section. It limits the ability to hold full evidentiary hearings in a timely manner. One DCS attorney reported, “a trial requiring more than eight hours of testimony will end up being spread over three to four months”. Setting an all day docket may discourage attorneys from taking juvenile appointments. As one attorney surveyed stated, “a five minute announcement may take three hours of waiting.” As discussed in the Representation Section, attorneys are only paid the higher “in-court” rate for time spent before the judge. Thus, the hours spent waiting for a case to be

called cannot be billed by an attorney at the higher hourly rate. “(Courts) need to do a better job setting hearing times so the wait for the hearing is not so long,” was one attorney’s suggestion to the survey for important changes that need to be made in the way juvenile cases are handled.

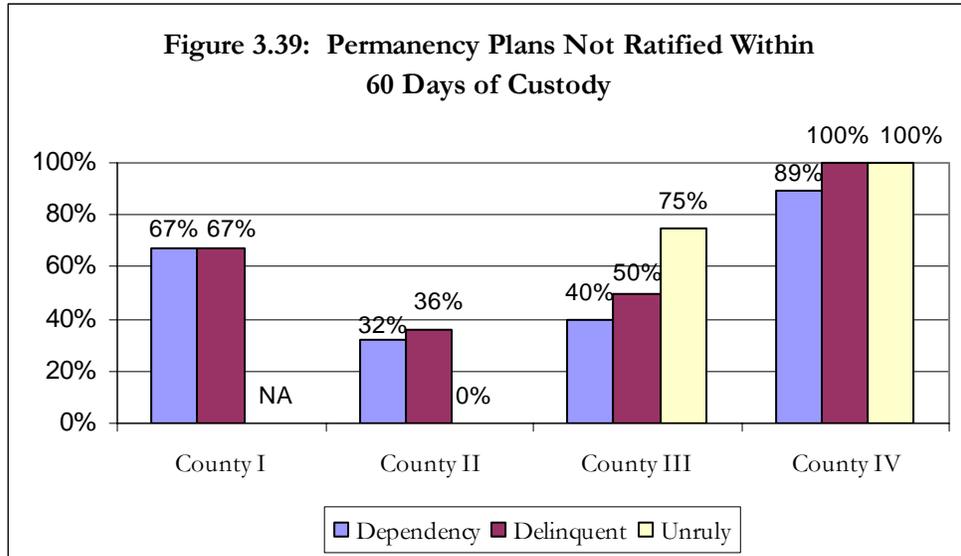
Judges, DCS attorneys and private attorneys report that in over 80% of the cases the judge “usually” or “always” announces the next hearing in the case before the parties leave the court. While this may improve the attendance of parties at the hearings, it still does not help to manage the docketing of cases if all cases are continued to a given date at the same time.

Though pre-trial or settlement conferences may assist in docketing and case management, only one-third of judges’ report using these conferences in child dependency cases. Almost one-half of DCS attorneys report using pre-trial or settlement conferences in 0-20% of their cases.

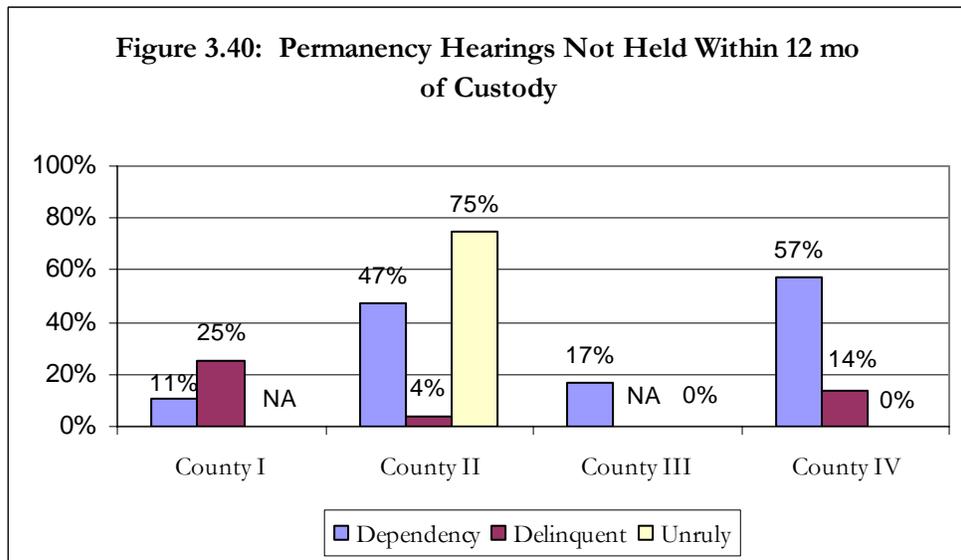
Continuances also contribute to how well dockets are managed. Seventy percent (70%) of judges indicate they “usually” or “always” grant a continuance when the parties stipulate. DCS attorneys state that judges “rarely” deny a continuance when stipulated 97% of the time. Twenty percent (20%) of judges report that the clerk or court staff is authorized to grant continuances without the judge’s prior approval. The data does not indicate the reasons for continuances, except due to insufficient notice to parties or witnesses. Judges report nearly 20% of the time they “usually” or “always” grant a continuance due to insufficient notice, while only 5% of DCS attorneys report the same.

Several groups indicated that continuances are a problem in juvenile court and that changes need to be made in why and how continuances are granted. A judge stated, “Fewer delays and continuances [are needed]. The cases need to move through the system faster.” An attorney noted, “It frequently takes two or three continuances before we are given a full evidentiary hearing.”

The efficiency and timeliness of decision-making impacts the effectiveness of the court. Continuances in cases of children in foster care delay permanency and may result loss of federal dollars. Almost one-third of DCS attorneys indicate judges “often” or “usually” grant continuances that result in non-compliance with federal or state timelines. Figure 3.39 illustrates the percentage of permanency plans not ratified and permanency hearings not held within the statutorily mandated timeframes of the four counties participating in the case file review.



Each of the four counties (except county II in unruly cases) are out of compliance with both state and federal laws requiring a permanency plan to be ratified within 60 days of the child entering custody. The data does not indicate whether the failure to ratify the plans within the timeframe is a docketing issue or a lack of knowledge of the statutory timeframes. This may indicate a needed area of training.



Counties I and III are holding the majority of permanency hearings within 12 months of the child entering custody. A significant disparity exists between the adjudication types in County II with unruly children faring worse than delinquent and dependent children in the timeliness of their permanency hearings. Given this disparity, the failure to hold timely permanency hearings does not appear to be a training issue. Among each county courts are adjudicating at least one type of case within the required time

period. The data suggests the failure to hold hearings in a timely manner may be likely a docketing and/or case management issue.

Judicial Time to Prepare/Conduct Hearings

Not all juvenile court judges in Tennessee are full-time judges. Forty-three percent of judges surveyed indicate they are part-time judges. Figure 3.41 depicts the numbers of new cases filed juvenile courts within the past 12 months. Fifty percent (50%) of full-time judges state they had more than 500 new cases in the last 12 months. The majority of part-time judges indicate a new caseload of 101 to 300 during the past year.

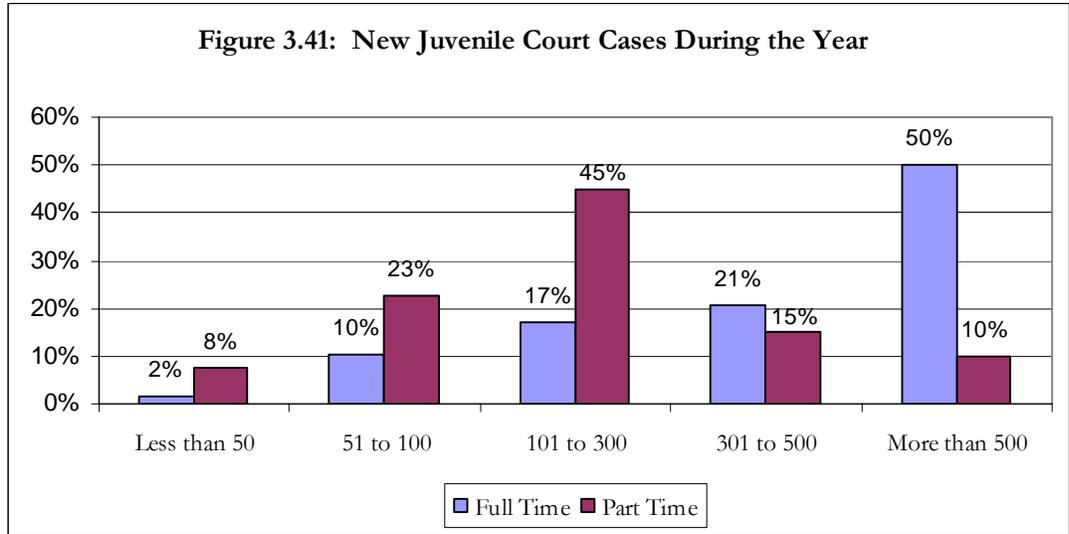
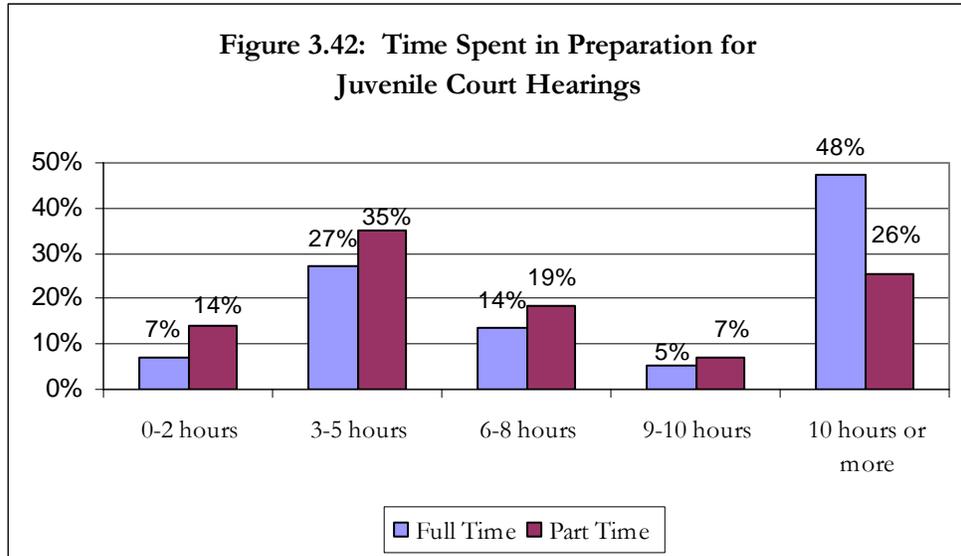
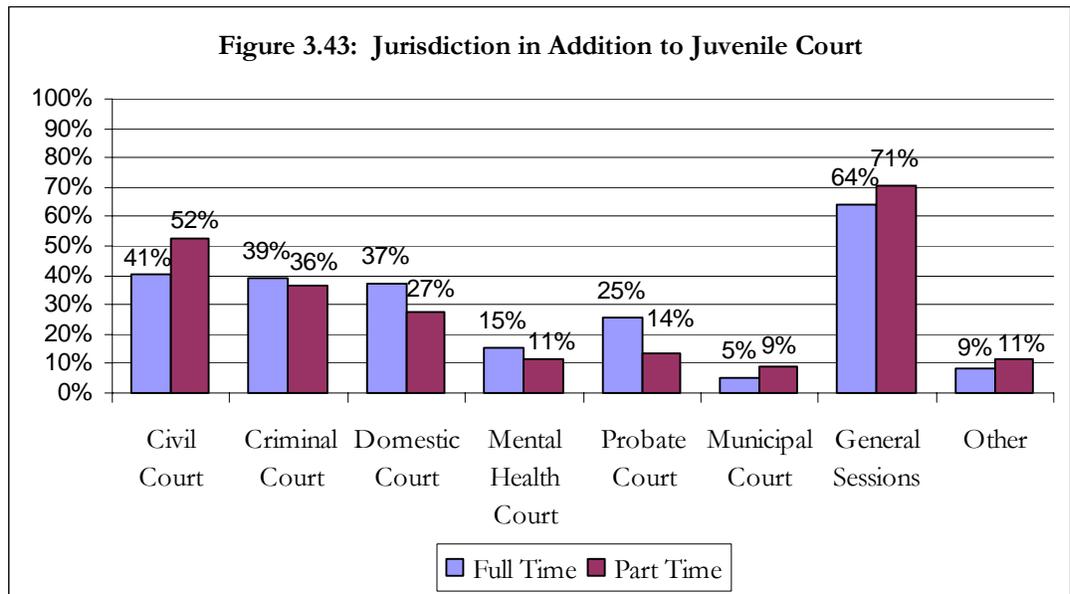


Figure 3.42 illustrates the length of time judges, both full and part-time, spend each month preparing for court. This preparation includes conducting research and reading files or reports. Judges indicate DCS staff “usually” or “always” submits complete and timely reports to the court 80% of the time and treatment providers “usually” or “always” provide timely reports to the court more than one-half of the time.

Forty-eight percent (48%) of full-time judges spend more than 10 hours per month preparing for court. In contrast, thirty-five percent (35%) of part-time judges spend three to five hours preparing for court. Given the volume of new cases, the data indicates that judges do not spend a significant amount of time preparing for court. The data raises more issues than it answers. Are judges reading reports prior to hearings and if so, what reports? Are the parties aware and have they agreed to this? If not, is it ethical for judges to review a document prior to it being entered into evidence at a court hearing? These questions will require further review.



The varying judicial responsibilities of the judges may offer an explanation as to the amount of preparation. The majority of juvenile court judges have judicial responsibilities in courts of differing jurisdictions. Figure 3.43 depicts the jurisdictions held by the judges, in addition to their juvenile court jurisdictions.

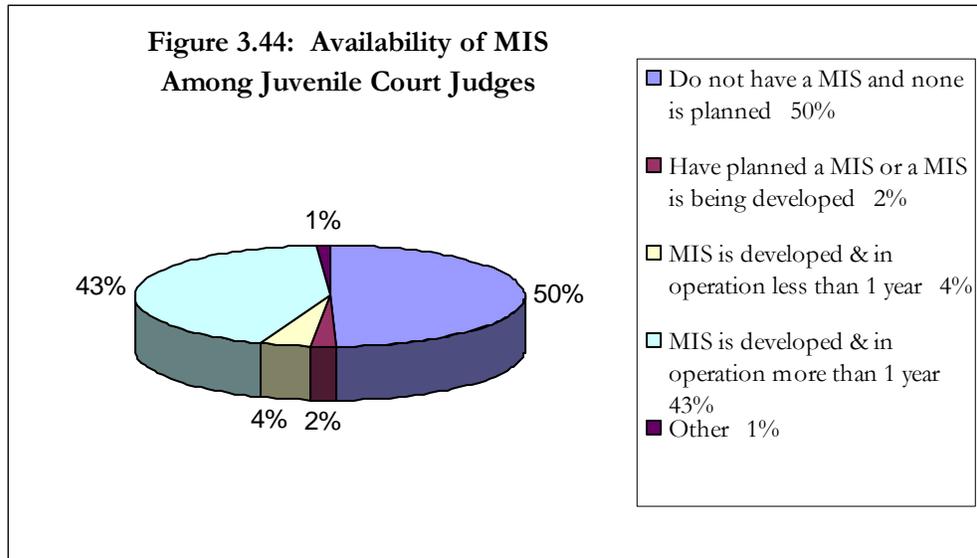


Eighty percent (80%) of full time juvenile court judges report having jurisdiction over cases other than juvenile matters. Almost 95% of part-time judges report the same. The varying responsibilities of juvenile court judges limit the frequency of juvenile dockets. One DCS attorney surveyed commented, “The ones [judges] with General Sessions are very locked-in to certain days and can rarely have a two day trial without a break.”

The availability of court staff may also have an effect on preparation. Forty-nine percent (49%) of full-time judges report they do not have sufficient court staff to meet the needs of children and families that come before the court while 59% of part-time judges report the same. There exists a huge disparity among the number of staff in courts across the state. One-judge reports having 75 court staff while three judges report having no staff. Full-time judges report a median of five court staff. Part-time judges indicate they have one staff member.

Management Information Systems (MIS)

Tennessee does not have a statewide Management Information System (MIS). Over 90% of judges surveyed, report having computers and email available in the courthouse. However, only 27% of judges report that their staff routinely uses email. Figure 3.44 illustrates the proportion of juvenile judges who have an operational management information system (MIS) available.

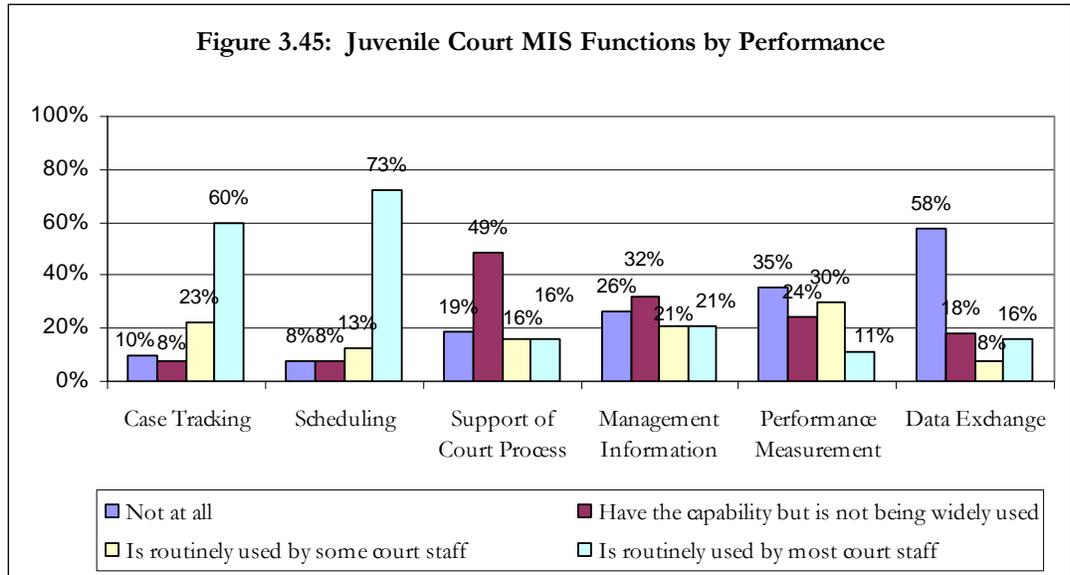


Fifty percent (50%) of judges state they do not have a system and do not plan to implement one. Two percent (2%) of judges are in the process of developing a MIS while four percent (4%) have a MIS that has been operational less than a year. The data may suggest a reluctance on the part of juvenile courts to utilize technology as a means of managing juvenile court cases but does not indicate reasons for this. However, costs and availability of funds may be a contributing factor. As a general rule, the state does not contribute to MIS for juvenile courts and the courts must depend on funding at the county level. One judge stated that "...little or no money is available" to upgrade systems.

Forty-three percent (43%) of judges state they have had an operational MIS for over a year. Fifty percent (50%) of these systems are described as custom-built systems. Thirty percent (30%) of the MIS are "canned" systems from a software company while 20% are "canned" systems that have been adapted for the court.

The majority of judges express an overall satisfaction with the effectiveness of the court's MIS. Fifty-six percent (56%) of judges report the MIS meets the needs of the court "fairly well". However, only seven percent (7%) of judges indicate the court's MIS "completely" meets the needs of the court. The data suggests that the majority of the MIS used by juvenile court may be outdated and in need of upgrades. "New software that tracks cases (and) provides more information about hearings and status of

cases,” is what one judge said is needed from the court’s management information system. Figure 3.45 illustrates the function and use of the MIS in juvenile courts.



Courts that have a MIS are not comprehensively utilizing their MIS. Data exchange between agencies is the only function that the majority of judges report as not being an available in their MIS. Judges report that most staff routinely uses only two functions: case tracking and scheduling. Support of court process (i.e. automated reminders), management information and performance measurement are functions that are underutilized by the court. Several judges indicated that computer training is needed to assist the courts with their technology needs. Another states the need for “consistent technical support who could set up and maintain [the] system and... maximize program capabilities.” By utilizing the complete functions of their management information systems, courts may be able to meet the needs of the children and families they serve more effectively.

Adequacy of Training & Training Needs

The Court Improvement Program sponsors the majority of education on child dependency law throughout the state. According to the Tennessee Commission on Continuing Legal Education and Specialization the CIP was the 16th largest sponsor (of 1036 sponsors) of CLE credits in the state in 2003 and was the 14th largest sponsor in 2002.⁴⁸ The CIP offers two primary legal training curricula: Legal Advocacy in Child Dependency and Termination of Parental Rights and Foster Care Review Board Training. The CIP will also offer training on specific areas of child welfare law as requested by the courts, state and local bar associations and other child welfare professionals.

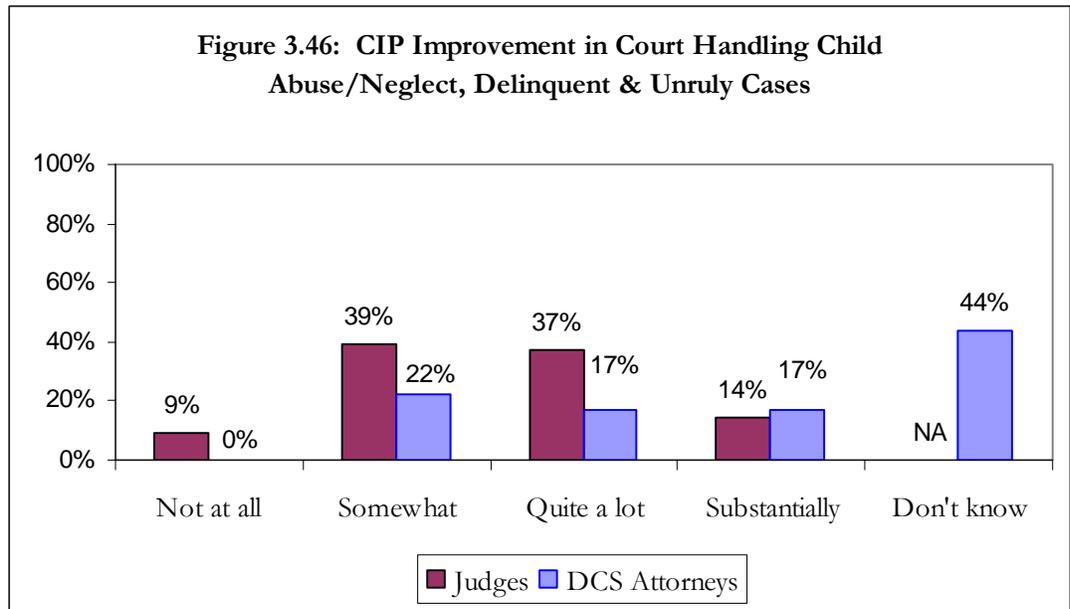


Figure 3.46 illustrates the perception of the judges and DCS attorneys surveyed of the extent the CIP has assisted in improving how the judges handle juvenile court cases. The largest group of judges, 39%, perceive the CIP as “somewhat” improving how the court handles dependency, delinquent and unruly case; while 37% of judges report the same as “quite a lot.” DCS attorneys indicate the same as 22% and 17%, respectively.

Over 80% of FCRB members surveyed state, they have attended CIP training and 76% indicate that the CIP has been the only agency to provide training in the last three years.

Figure 3.47 depicts the perception of judges, DCS attorneys and FCRB members regarding the extent the CIP program has improved the foster care review board process in their respective counties. The largest group of judges, 35%, report the process has “somewhat” improved and 32% state it has improved “quite a lot.” DCS attorneys report the same as 22% and 17%, respectively. Twenty-seven percent (27%) of FCRB members state the CIP has “somewhat” improved their review of cases and 32% state the same as “quite a lot.” The disparity between the perceptions of the

judges, FCRB members and DCS attorneys may be explained by the level of interaction with the FCRB. As discussed in the Completeness and Depth of Hearings Section, DCS attorneys are “usually” or “always” present at FCRB hearings 11% of the time for dependency cases and 12% for delinquent cases.

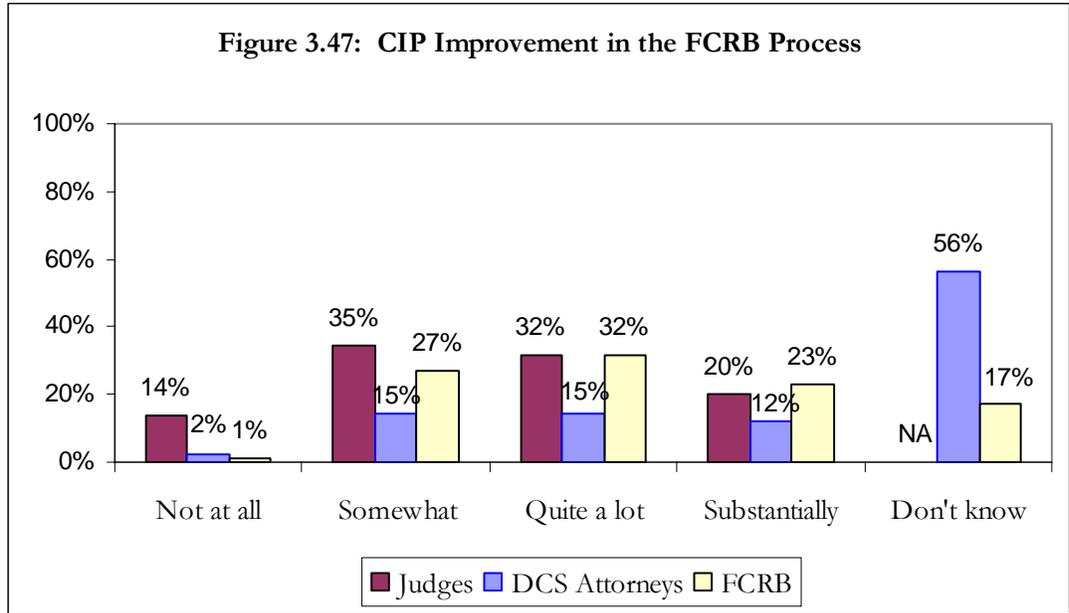
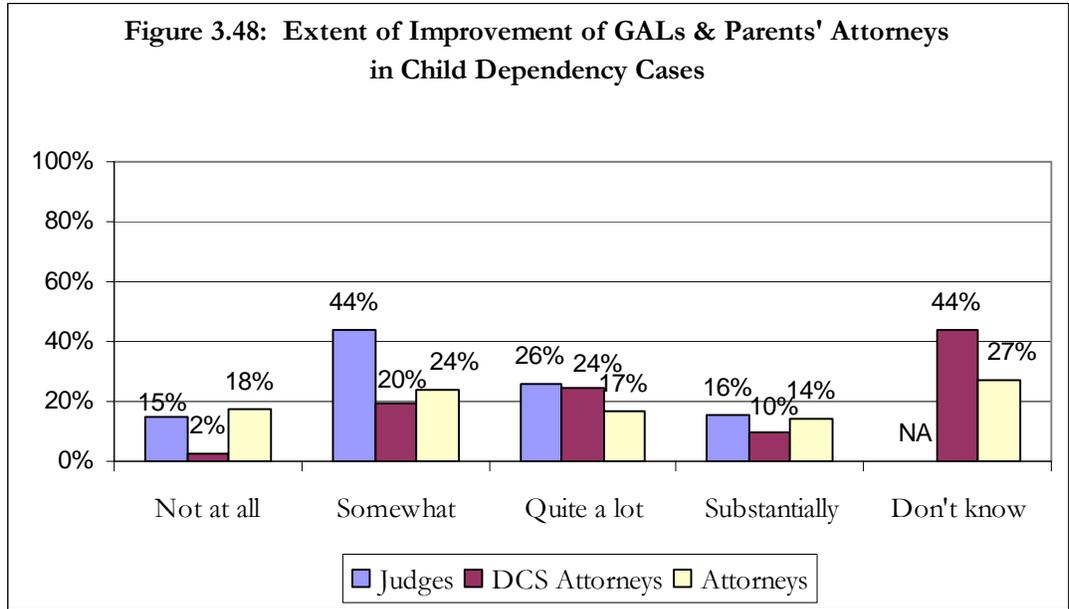


Figure 3.48 details the perception of judges, DCS attorneys and private attorneys regarding the extent the CIP has improved the quality of representation of GALs and parent’s attorneys in child dependency cases. The largest group of judges, 44% indicates that representation has been “somewhat” improved and 26% of judges report representation has been improved “quite a lot.” DCS attorneys report the same at 20% and 24%, respectively.

Twenty-four percent (24%) of GALs and parent’s attorneys state the CIP has “somewhat” improved their handling of dependency cases and 17% state the same as “quite a lot.”

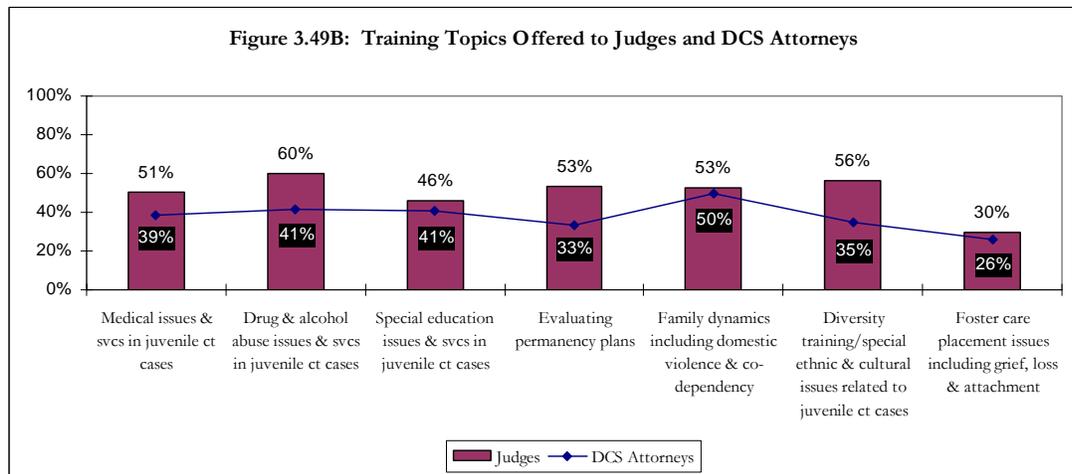
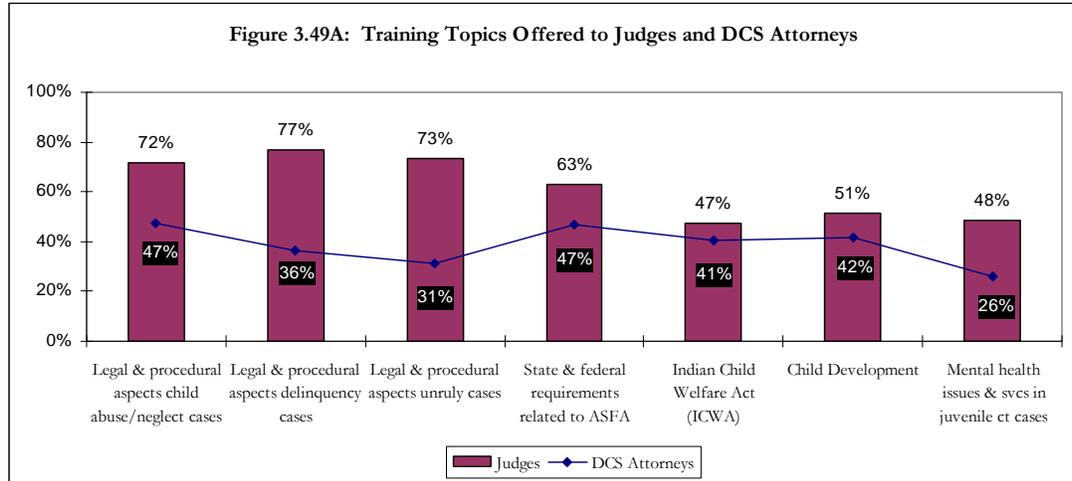
Approximately 50% of DCS attorneys indicate they do not have knowledge of whether the CIP has improved how the various groups handle juvenile cases. This is an indication that the CIP staff needs to work more closely with the DCS attorneys.



The majority of judges and DCS attorneys report having prior knowledge of juvenile court proceedings before being elected judge or employed by the department. Specifically, 60% of judges and 62% of DCS attorneys state they had education or training specific to juvenile court issues. Figure 3.49A and Figure 3.49B compare the prior training topics judges and DCS attorneys received. Over 50% of judges received training on the following topics:

- Legal and procedural aspects of child abuse/neglect cases,
- Legal and procedural aspects of delinquency cases,
- Legal and procedural aspects of unruly cases,
- State and federal requirements related to ASFA,
- Child development,
- Medical issues and services in juvenile cases,
- Drug and alcohol abuse issues and services in juvenile cases,
- Evaluating permanency plans,
- Family dynamics and
- Diversity training

The largest proportion of DCS attorneys, 50%, received training on family dynamics prior to handling juvenile cases. The data shows that more judges received a wider range of training topics than did DCS attorneys.



Only 30% of GALs, parent’s attorneys and attorneys representing delinquent and unruly children indicate being familiar with juvenile court proceedings before taking appointments in juvenile court. This indicates that these attorneys are learning the law as they proceed with juvenile cases. One DCS attorney surveyed suggested that “a requirement that all people on the GAL and Parent Attorney appointments list receive training before taking cases” be instituted.⁴⁹

However, when asked about training issues that need to be addressed, the majority of judges, 53%, report the greatest need is foster care placement issues, including grief, loss and attachment. Over 50% of DCS attorneys report the most needed training topics are foster care placement issues and diversity training/special ethnic and cultural issues.

The opposite is true for private attorneys and FCRB members. Over 50% of GALs, parents’ attorneys and attorneys representing delinquent or unruly children report they need training on each of the topics listed above, with the exception of legal and procedural aspects of child dependency cases. Over 50% of FCRB members indicate training is needed for each topic except three: legal and procedural aspects of child

dependency cases, state and federal requirements related to ASFA, and child development. Legal and procedural aspects of child dependency cases consistently was the least requested training topic among the groups.

Figures 3.50 to 3.58 collectively detail the training topics that judges, DCS attorneys, parent’s attorneys, attorneys representing delinquent and unruly children and FCRB members would like to receive.

The various groups’ needs differ widely. GALs, parent’s attorneys and attorneys representing delinquent or unruly children, and board members clearly state that training on delinquency and unruly issues are paramount, while judges and DCS attorneys are comfortable with their knowledge base on these issues. The same is true for the following training topics:

- ICWA,
- Mental health issues and services,
- Medical health issues and services,
- Drug alcohol abuse issues and services,
- Special education issues and services and
- Family dynamics and mediation.

However, based on the differing responses between judges and DCS attorneys to the survey questions regarding compliance with ICWA, it appears this is a necessary topic for additional training.

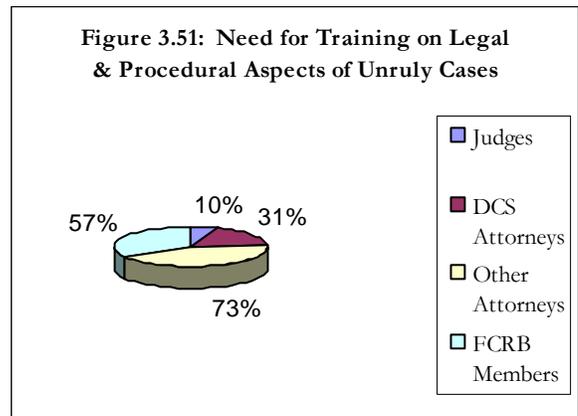
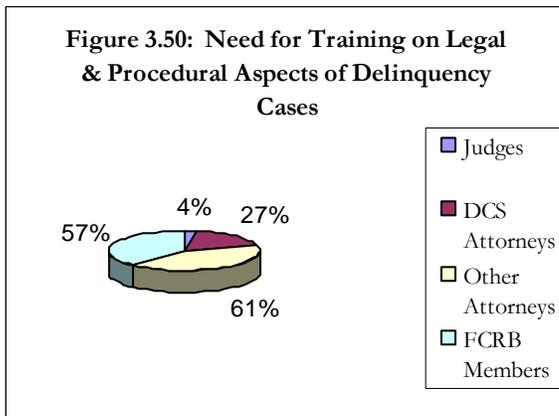


Figure 3.52: Need for Training on Indian Child Welfare Act

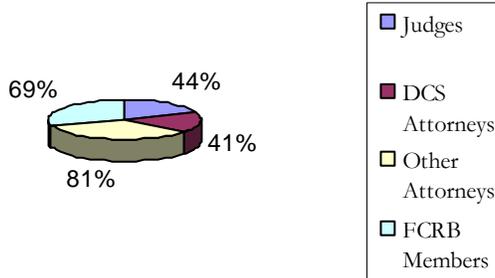


Figure 3.53: Need for Training on Mental Health Issues & Services

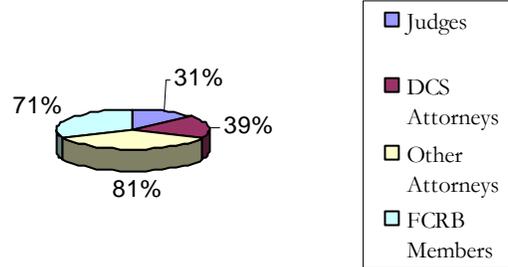


Figure 3.54: Need for Training on Medical Issues & Services

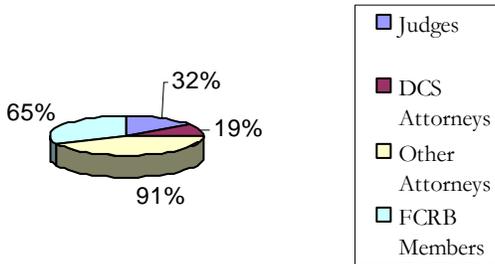


Figure 3.55: Need for Training on Drug/Alcohol Abuse Issues & Services

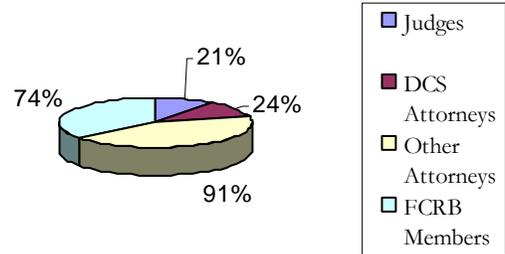


Figure 3.56: Need for Training on Special Education Issues & Services

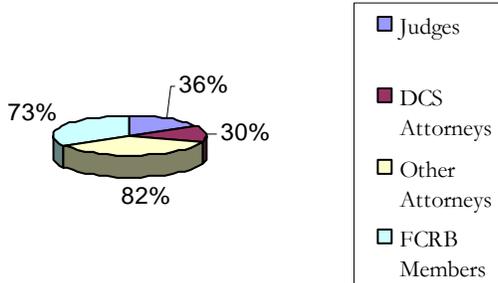
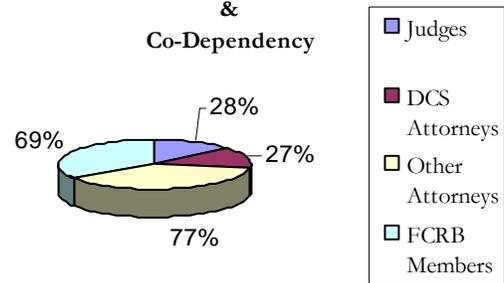
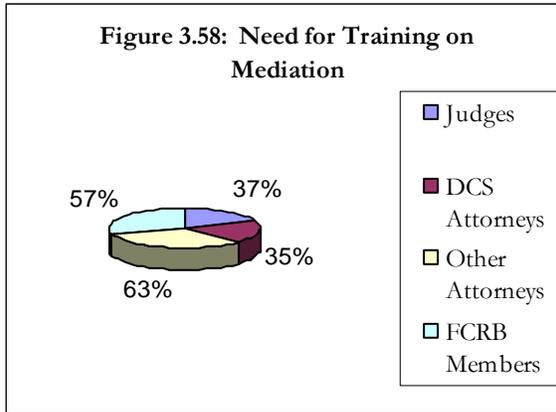


Figure 3.57: Need for Training on Family Dynamics, i.e. Domestic Violence & Co-Dependency

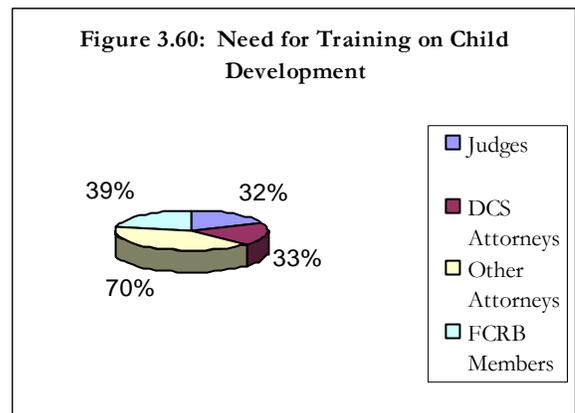
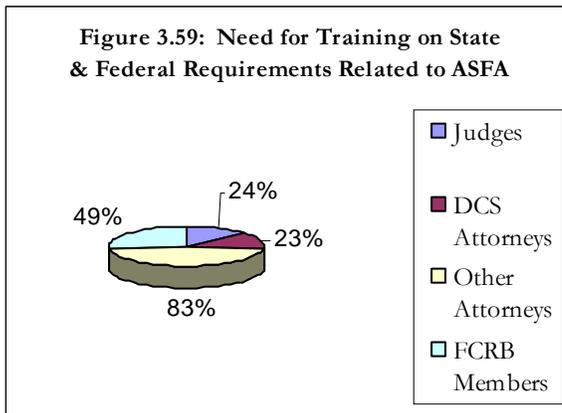


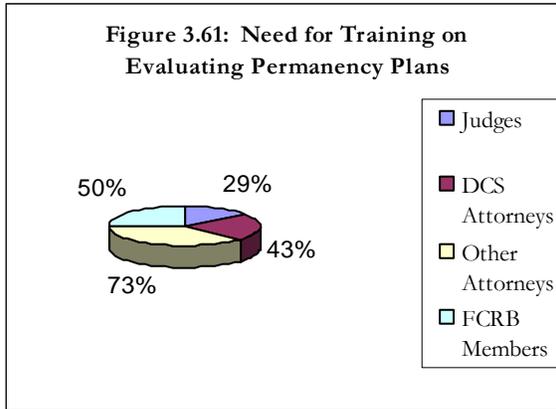


GALs, parent’s attorneys and attorneys representing delinquent or unruly children indicate they need training on:

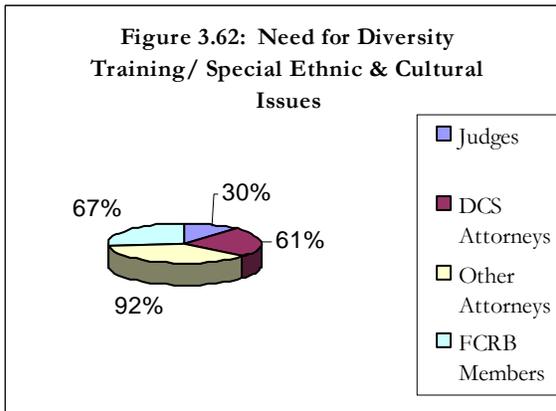
- State and federal requirements of ASFA,
- Child development and
- Evaluating permanency plans.

One attorney specifically stated that, “More extensive training [on] state and federal requirements is needed, as well as some type of training or informational packet on what services and funds are available to children and parents and how best to access same.”

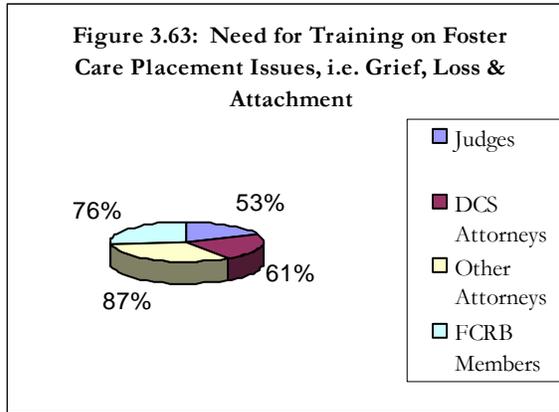




DCS attorneys, board members, GALs, parent’s attorneys and attorneys representing delinquent or unruly children all indicate an interest in diversity training on special ethnic and cultural issues. The majority of judges, 70%, indicate they do not require diversity training. However, given the trend of over-representation of African-American children in state custody in each of the review counties, as discussed in the Methods of Assessment Section, diversity training may be needed among the judges as well as a specific training on the over-representation of African-American children in foster care.



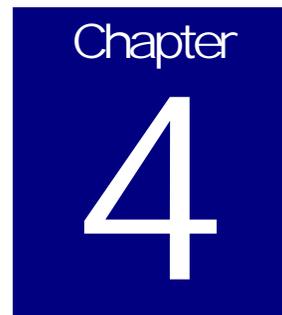
Foster care placement issues is the only topic that the majority of all groups would like to have offered.



The data indicates that GALs, parent’s attorneys and attorneys representing delinquent or unruly children followed by FCRB members are in need of a wide range of training topics. The opposite is true for judge and DCS attorneys. Both judges and DCS attorneys have semi annual conferences/trainings available to them that are coordinated by state agencies. In addition, judges and DCS attorneys are reimbursed for their expenses associated with these trainings. Specialization and accessibility may offer an explanation among the groups as to the wide range of topics being requested.

Divider 4: Recommendations





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Recommendations

Chapter

4

The Re-assessment found that the most significant organizational barriers in the Tennessee juvenile court system that affect the permanency of children in foster care are:

- Lack of sufficient funding;
- Absence of uniform distribution of resources;
- Conflicting jurisdictions of juvenile court judges; and
- Lack of technology

Changes in State Laws and Court Procedures

✧ Review of Laws

As discussed in Chapter II, certain rules in the Tennessee Rules of Juvenile Procedure conflict with sections of the Tennessee Code Annotated. Additionally, there is statutory inconsistency regarding the appointment of counsel for children who may be at risk of entering state custody. The Re-assessment Advisory Committee recommends the Tennessee Supreme Court appoint a working group to review the discrepancies and determine whether the Rules and/or the Code should be modified. The Committee proposes that the members of the working group be drawn from the:

- Tennessee Council of Juvenile and Family Court Judges (TCJFCJ),
- Tennessee Court Services Association (TCSA),
- Tennessee Clerks of Court Conference,
- Tennessee Bar Association,
- Private attorneys who practice in juvenile court,
- Department of Children's Services,
- Tennessee Commission on Children and Youth,
- Tennessee General Assembly,
- Tennessee Youth Advisory Council (TYAC),
- Office of the Attorney General, and
- Other identified interest groups impacted by these recommendations.

First, the Rules of Juvenile Procedure that need to be addressed are:

- Rule 13. Intake in Dependent and Neglected and Abuse Cases.
-

- Rule 16. Preliminary Hearings in Dependent and Neglected and Abuse Cases.
- Rule 17. Time Limits on Scheduling Adjudicatory Hearings.
- Rule 20. Responsive Pleadings and Motions.
- Rule 22. Consent Decrees in Civil Matters.
- Rule 25. Discovery.⁵⁰
- Rule 27. Trial by the Court
- Rule 37. Guardian Ad Litem.
- Rule 39. Termination of Parental Rights.

Second, appointment of counsel for unruly children differs from that of counsel for dependent and delinquent children. T.C.A. § 37-1-126 needs to be examined to determine whether the Code should be amended to allow for the appointment and compensation of counsel for any child who is at risk of entering state custody.

Third, as reported in Chapter III, there is confusion regarding the requirements of the Indian Child Welfare Act (ICWA). The reason may be that ICWA is only referred to in Title 36 of the Tennessee Code Annotated. The requirements of ICWA need to be reviewed for inclusion in Title 37 and possible expansion under Title 36.

Finally, as there exists a lack of consistency in making the “contrary to the welfare” findings, the statutes and rules relative to detention and orders of attachment (T.C.A. § 37-1-114 and T.R.J.P. 11) should be reviewed to determine if provisions regarding “contrary to the welfare” findings should be added.

✧ **Evaluation of Rule 8A of Tennessee Rules of Appellate Procedure**

As discussed in Chapters II and III, the Tennessee Rules of Appellate Procedure were modified effective July 2004 to allow for expedited appeals in termination of parental rights cases. Since the Rule became effective, appeals average 282 days from the filing of the notice of the appeal to the mandate of the appellate court. Prior to the Rule change, the average length of time for an appeal in TPR cases was 407 days. Further assessment of the Rule, specifically the various timeframes, should address whether modifications are necessary to ensure more timely permanency for children waiting to be adopted.

Completeness and Depth of Hearings

✧ **Compliance with Federal and State Foster Care Laws**

The number of judges who make reasonable efforts findings has risen significantly since 1997. Judges are not consistently making the “contrary to the welfare” findings or including facts to support the finding in the first order that physically removes the child from the home (including protective custody orders, attachments, arrest and detention hearing orders). The majority of judges are making “reasonable efforts to prevent removal” findings within 60 days of the child’s removal from the home, they

are not consistently including the facts to support the finding in the orders. Most judges are holding the permanency hearing within 12 months of the child entering foster care. More judges are complying with the 12-month requirement for making a finding of “reasonable efforts to reunify the family or to finalize another permanent placement” than with the timeframes required for “contrary to the welfare” and “reasonable efforts to prevent removal.” In addition, more judges are including the factual basis to support the finding in the permanency hearing orders than in the earlier orders. Where these findings are based on an extraneous document, judges are not incorporating the document by reference in the court order.

In response to these assessment findings, the Advisory Committee recommends that courts utilize uniform orders and forms. DCS is beginning the process of reviewing and modifying the uniform pleadings and orders originally prepared by DCS and CIP attorneys for use in juvenile proceedings. A representative from the TCJFCJ should be included initially in this process in order to obtain support from juvenile court judges. In addition to the existing documents, additional forms and orders should be evaluated, i.e. uniform arrest and detention orders, attachments, and “contrary to the welfare” affidavits.

Supplemental education concerning these findings is imperative for juvenile court judges as and other participants in these cases who may have responsibility for reviewing and drafting orders that require the findings. In the judicial training curriculum on these topics, particular emphasis should be placed on incorporating extraneous documents by reference in court orders.

Since DCS is not usually present at the delinquency proceedings committing children to state custody, District Attorneys General practicing in juvenile court should also be trained in the necessary findings. It is recommended that the Supreme Court seek the cooperation of the District Attorneys General Conference to address this issue.

Further, probation officers and youth service officers should learn about the required findings in delinquent cases. The annual basic juvenile court training (a.k.a. “Core Curriculum”) needs to include this subject in its curriculum. Other training seminars for juvenile court staff should also consider this subject for inclusion.

Based on the differing survey results regarding the Indian Child Welfare Act (ICWA) and “evidentiary” hearings, it is recommended that these issues be included in the curriculum for future judicial training. It may also be appropriate to train a selection of attorneys in each grand division on the requirements of ICWA and ask the judges to appoint one of these attorneys to any case where ICWA may apply.

❖ **Foster Care Review Boards**

Foster youth, attorneys and foster parents are not consistently attending the foster care review board hearings. While the hearings appear to be addressing the issues that are mandated by statute, the brevity of these hearings calls into question the completeness and depth of their review.

The CIP staff will continue to provide Foster Care Review Board Training for each county. The Advisory Committee recommends that juvenile court judges take a more active role in the recruitment of board members and that judges recognize the work of these volunteers at least annually. The Committee suggests that judges ask their legislators to be involved in the foster care review board in order to focus their attention on the plight of children in foster care. Though state law recommends an attorney serve on the board, few actually do so. The Committee recommends that judges look to the retired attorneys in their communities to serve on review boards.

The Committee further recommends that both judges and court staff receive training regarding foster care and citizen review boards. Vehicles to incorporate this training should be explored through both TCJFCJ and TJCSA.

The current commissioner of DCS has expressed an interest in pursuing Title IV-E funding for training of the boards. It is recommended that the AOC engage in discussions with DCS and apply for this funding.

Representation of Parties

✧ Appointment of Attorneys

The rates of the appointment of parents' attorneys and GALs in child dependency and termination of parental rights cases have risen significantly since 1997. However, almost 50% of the courts still do not have enough attorneys in their counties to meet the growing need for representation in juvenile court. The Committee suggests judges approach both new admittees to the bar as well as their retired attorney populations to explore their willingness to represent parties in juvenile court proceedings. It is suggested that judges attend the local bar's "Bridge the Gap" meetings which are designed to indoctrinate new attorneys to the legal profession.

Still problematic is the fact that courts are not consistently appointing attorneys at the earliest stage of the proceedings and attorneys are not representing parties throughout the entire case. These issues are addressed in CIP trainings and should continue to be addressed with judges and attorneys.

✧ Adequacy of Representation

Adequacy of representation is a paramount issue for attorneys who represent parties in juvenile courts. The Advisory Committee acknowledges that training and compensation are two crucial elements that impact this problem.

• Training Needs

Attorneys are not consistently preparing for court hearings by obtaining discovery. They are not consistently attending or actively participating at all hearings by presenting

evidence. They are not involved through all stages of the proceedings such as DCS family and team meetings and FCRB hearings. The shortcomings in the adequacy of representation have a direct effect on permanency for children in foster care.

In response to this important issue, CIP staff will continue to provide training for attorneys in child dependency and termination of parental rights cases. However, as discussed in Chapter III, other training options must be made available for attorneys in order to improve the adequacy of representation. CIP and DCS attorneys are in the process of developing an on-line training program for GALs. It should be completed by the end of the year.

Another option in correcting this issue is for the CIP staff to join with the Tennessee Bar Association (TBA) Juvenile and Children's Law Section to provide a "train the trainer" program. In this way, experienced attorneys can instruct local attorneys using the CIP curriculum, *Advocacy in Child Dependency and Parental Rights Cases*. The CIP may need to pay a small honorarium to these instructors while the TBA provides the necessary equipment.

The TCJFCJ may wish to explore joint training for judges and attorneys. TCJFCJ may want to review the joint judge-attorney training model currently used by the Tennessee Judicial Conference (organization of state trial and appellate court judges). The Judicial Conference's Bench-Bar Committee plans a joint training session on current topics of interest for judges and lawyers as a part of its annual meetings with the TBA. This may be a good model for juvenile court judges. Training topics that judges and attorneys have indicated as necessary can be found in the Adequacy of Training and Training Needs Section.

The Advisory Committee acknowledges that the CIP's basic training curriculum is necessary, but it also recognizes that the attorneys' training curriculum must be expanded to include the diversity provided to the judges and DCS attorneys. The Committee recommends the AOC explore collaborating with the Continuing Legal Education Commission and the Departments of Children's Services, Mental Health and Developmental Disabilities, Education and Health to allow the attorneys to attend appropriate trainings provided by these Departments throughout the state and receive continuing legal education credits. There is a particular need for attorneys to receive in-depth information about mental health, addiction, special education, and child development issues which could be provided by these Departments.

The Committee also proposes that CIP staff and the TYAC discuss incorporating former foster youth in the educational programs for GALs.

- **Compensation**

The original CIP assessment in 1997 found that the lack of adequate compensation for court appointed attorneys affects the permanency process for children in custody. This remains the case today. Many issues impact the state of the foster care system and inadequate compensation is one. The Committee recommends that when assessing

necessary resources for children and families, compensation for attorneys should also be addressed.

- **Enforcement of Tennessee Supreme Court Rule 40**

Although judges indicate they enforce compliance with the requirements under Rule 40, foster youth indicate that the relationship with the GAL does not meet that required by the Rule. In the enforcement of Rule 40, a suggestion that is currently being implemented by at least one juvenile court judge is to have the GAL certify in court that contact has been made with the child. Judges should ensure that GALs represent children until the child is no longer in foster care.

Treatment of Parties

- ✧ **Foster youth and Foster parents**

There is a noteworthy lack of attendance of foster parents at court hearings. Future training should stress the need of the courts to monitor notice to foster parents at all court hearings. Foster youth and foster parents believe they are not being heard. Judges are responsible for ensuring that foster youth, foster or pre-adoptive parents are allowed to testify when present at the hearings. In addition, monitoring is necessary to ensure that youth, age 14 or older, are receiving independent living services and that these services are tailored to individual needs. Finally, youth in foster care should be provided timely information on post-custody services.

- ✧ **Non-custodial parents**

The surveys indicate that non-custodial parents are rarely present at court hearings. Training curriculum should include the topic of the diligent efforts required by DCS to locate absent non-custodial parents and the resources DCS has available to do this. Monitoring these efforts is also critical, starting with the first court hearing. Continuing to do so throughout the case until the parent is located is also critical.

- ✧ **Publications for Children**

As discussed in Chapter I, the TYAC has recently produced two brochures, one explaining children's rights in juvenile court in child dependency proceedings, and the second provides information about the GAL. The brochures are currently available on the AOC's website at www.tsc.state.tn.us. Additionally, the CIP will distribute the brochures to the TCJFCJ, TCSA, and private attorneys who practice in Juvenile Court. DCS has also agreed to provide the brochures to foster youth.

✧ Resources for Parents

The *Handbook for Parents* published by the CIP and discussed in Chapter I will be reviewed and updated by the CIP staff. This publication will continue to be distributed to the juvenile court judges and court staff as grant funds allow.

Less than 30% of judges are utilizing the video for parents describing the court process in child dependency cases. The CIP has provided this video to all juvenile courts and purchased TVs and VCRs for those courts that did not have the equipment. The CIP staff should determine the reasons for the underutilization of the video and continue to distribute it as needed.

✧ Alternative Dispute Resolution

As discussed in Chapter I, the CIP through the AOC received a Byrne Grant to implement a mediation program in child dependency and termination of parental rights cases. An evaluation of this program, which terminates June 30, 2005, will be completed by CIP staff to determine its effectiveness.

Organizational Issues

As found in the original assessment, judges continue to docket cases for an entire day at the same time. This results in hardships on the parties and attorneys who must wait at the courthouse for the case to be called. In addition, most courts do not have sufficient waiting areas.

The granting of continuances contributes to children's length of stay in foster care. Continuances can result in the loss of federal funds and they affect how well dockets are managed. When the parties agree to continuances, they are usually granted. Docket management and granting continuances are areas that individual judges may be able to modify. Few courts are utilizing pretrial or settlement conferences and judges may wish to incorporate this process in docket management. Another suggestion is the utilization of scheduling orders by attorneys to deter continuances based upon conflicting attorney's schedules. Judges have the ability to control the granting of continuances and could adopt stricter local rules on the continuing of juvenile cases.

The juvenile courts lack a unified management information system (MIS). The TCJFCJ appointed the AOC director as its director this year. Prior to this, the AOC did not collect data in juvenile cases and data regarding child dependency cases was not collected by any agency. The AOC is in the process of conducting a study for a juvenile court data collection system upgrade or replacement. The AOC is documenting the business requirements and researching methods to automate the data collection process to make it easier for the courts to recover and transmit accurate information. After the study is complete the AOC will seek approval to continue to the next phase of the project. In this next phase a new system will be designed, either by an outside agency/vendor or within the AOC.

Conclusion

There have been various improvements in the Tennessee juvenile court system since the 1997 assessment. Improvement has been made in the following areas:

- Appointment of counsel for parents;
- Appointment of GALs for children;
- Inclusion of foster youth at court hearings;
- Increase in the number reasonable efforts findings;
- Development of standards for GALs;
- Increase in the number of DCS attorneys;
- Increase in termination of parental rights proceedings;
- Expedition of appeals in termination of parental rights cases; and
- Increase child dependency training for judges, court staff, foster care review boards and attorneys.

Although the Re-assessment shows improvements in the judicial system regarding children in foster care, it is also recognized that there remain numerous areas that continue to need improvement as referenced above. The CIP staff will continue to work with the juvenile court judges and staff, FCRBs, attorneys, DCS, CASA and other agencies involved with children in foster care to implement these recommendations.

Divider 5: Endnotes



Endnotes

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- ¹ Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66
- ² Adoption and Safe Families Act (ASFA) of 1997, Pub. L. No. 105-89. The CIP was reauthorized by ASFA through 2001 and through 2006 by the Promoting Safe and Stable Families Amendments, Pub. L. No. 107-133.
- ³ The Tennessee Supreme Court elected to dissolve the Permanency Planning Commission in February 2002.
- ⁴ Cindy MacLean & Rebecca Shea, *Tennessee Court Improvement Program for Juvenile Dependency Cases: An Assessment of Tennessee's Court Performance and a Plan for Improvements*, 1997.
- ⁵ 1) Amend Tennessee Code Annotated (T.C.A.) to provide procedural safeguards for parents; 2) amend T.C.A. to expedite appeals from final orders in dependency cases; 3) adopt and distribute the Resource Guidelines of the National Council of Juvenile and Family Court Judges; 4) establish an office for statewide foster care review within the AOC; 5) develop competency standards for guardians ad litem and attorneys who work with dependency cases; 6) abolish CLE age exemptions for active state lawyers and judges; 7) initiate pilot programs in alternative models of family conflict resolution; produce publications for children and families which explain dependency proceedings; 8) initiate a pilot project to improve appointment methods for attorneys; 9) sponsor NITA-type training for attorneys; 10) improve curricula of law schools as they pertain to juvenile dependency; 11) develop and administer regional training sessions for judges and court personnel; 12) administer a mandatory program at Judicial Academy focusing on dependency case management; 13) encourage improved communication among child welfare agencies, 14) court staff and the bar; 15) initiate a public relations campaign aimed at recruiting foster and adoptive homes in conjunction with DCS; work with DCS in providing uniform training to all foster parents, 16) staff and agencies which contract with DCS; 17) encourage better communication between schools and social service agencies; and 18) promote coordination between juvenile courts and courts with criminal jurisdiction, district attorneys general and DCS.
- ⁶ For a detailed description of all program activities see the following annual reports: Cindy MacLean, *The Tennessee Supreme Court Improvement Program: The Program Report for the Year February 22, 1997- February 21, 1998*; Cindy MacLean, *The Tennessee Supreme Court Improvement Program: The Program Report for the Year February 22, 1998- February 21, 1999*; Cindy MacLean, *The Tennessee Supreme Court Improvement Program: The Program Report for the Year February 22, 1999- February 21, 2000*; Cindy MacLean, *The Tennessee Supreme Court Improvement Program: The Program Report for the Year February 22, 2000- February 21, 2001*. Cindy MacLean, *The Tennessee Supreme Court Improvement Program: The Program Report for the Year February 22, 2001- February 21, 2002*. Cindy MacLean and Leslie Barrett Kinkead, *The Tennessee Supreme Court Improvement Program: The Program Report for the Year February 22, 2002- May 31, 2003*; Leslie Barrett Kinkead, *The Tennessee Supreme Court Improvement Program: The Program Report for the Year May 31, 2003 – May 31, 2004*.
- ⁷ DAVID E. GROSSMANN, NAT'L COUNCIL OF JUV. AND FAM. CT. JUDGES, RESOURCE GUIDELINES: IMPROVING COURT PRACTICES IN CHILD ABUSE & NEGLECT CASES, NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES (1995).
- ⁸ TENN. SUP. CT. COURT IMPROVEMENT PROGRAM & TENN. DEPT. OF CHILDREN SERVS., THE TENNESSEE HANDBOOK FOR PARENTS AND GUARDIANS IN CHILD ABUSE & NEGLECT CASES (2000).
- ⁹ LESLIE BARRETT KINKEAD & NYASHA N. JUSTICE, LEGAL ADVOCACY IN CHILD DEPENDENCY AND PARENTAL RIGHTS CASES (4th ed. 2004).
- ¹⁰ *Brian A. v. Sundquist*, No. 3-00-0445, U.S.D.C. (M.D. Tenn., Docket Entry No. 109, July 27, 2001).
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- ¹¹ DEBRA RATTERMAN BAKER ET AL., MAKING SENSE OF ASFA REGULATIONS: A ROADMAP FOR EFFECTIVE IMPLEMENTATION 3 (Diane Boyd Rauber ed.) (2001).
- ¹² The Adoption Assistance and Child Welfare Act of 1980, Pub. L. No. 96-272; The Child Abuse and Prevention Treatment Act of 1974, Pub. L. No. 93-247
- ¹³ *Federal Register*: January 25, 2000 (Volume 65, Number 16) Rules and Regulations.
- ¹⁴ 42 U.S.C.S. § 677 (LexisNexis 2005).
- ¹⁵ *Brian A. v. Sundquist*, No. 3-00-0445, U.S.D.C. (M.D. Tenn., Docket Entry No. 109, July 27, 2001).
- ¹⁶ *Brian A. v. Sundquist*, No. 3-00-0445, U.S.D.C. (M.D. Tenn., Docket Entry No. 190, December 30, 2003).
- ¹⁷ MAUREEN MCKISSACK ET AL., NATIVE AMERICAN RESOURCE DIRECTORY FOR JUVENILE AND FAMILY COURT JUDGES 78 (2003).
- ¹⁸ Tenn. Juv. Proc. Rule 1 Advisory Commission Comments, (LexisNexis 2005).
- ¹⁹ Tenn. Juv. Proc Rule 39(g) of was amended in 2004 in conjunction with TRAP Rule 8A Appeals as of Right in Termination of Parental Rights Cases
- ²⁰ The Advisory Commission in their comments acknowledges that there are few specific references to abuse cases in the rules. The Commission advises that reference be made to the law contained in the relevant code sections of the juvenile courts chapter for more particular criteria and requirements regarding such abuse cases.
- ²¹ Issues regarding discovery in juvenile court are currently under study by the Supreme Court's Advisory Commission on Rules and Practice. It is unclear what action may be taken or how any action may impact dependency proceedings.
- ²² Issues regarding discovery in juvenile court are currently under study by the Supreme Court's Advisory Commission on Rules and Practice. It is unclear what action may be taken or how any action may impact dependency proceedings.
- ²³ Depending upon the county or region the terminology may differ. In addition to arrest order the following terminology is used interchangeably: Detention Order, Shelter Order and Attachment Order.
- ²⁴ 25 USCS § 1912 (LexisNexis 2005).
- ²⁵ *Id.*
- ²⁶ 45 C.F.R. § 1356.21(c) (LexisNexis 2005)
- ²⁷ 45 C.F.R. § 1356.21(d) (LexisNexis 2005)
- ²⁸ 45 C.F.R. § 1356.21(b),(d) (LexisNexis 2005)
- ²⁹ 25 U.S.C. § 1912(a) (LexisNexis 2005)
- ³⁰ *Id.*
- ³¹ 25 U.S.C. § 1912(e) (LexisNexis 2005)
- ³² *State v. James*, 1995 Tenn. App. LEXIS 533 (Tenn. Ct. App., 1995)
- ³³ An adjudicated unruly child must also have been found to be guilty of violating a valid court order to be placed on probation under the supervision of DCS.
- ³⁴ The enumerated offenses are as follows: murder of a sibling or half-sibling or any other child residing in the home; voluntary manslaughter of sibling, half-sibling or any other child residing in the home; aided or abetted, attempted, conspired, or solicited, to commit such a murder or such voluntary manslaughter of a sibling, half-sibling or nay other child residing in the home; or felony assault that results in serious bodily injury to the child, sibling, half-sibling or any other child residing in the home.

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- ³⁵ As reported June 2005 by the Office of the General Counsel, Tennessee Department of Children's Services. The increase coincides with the addition of DCS attorneys. In 1998, there were a total of 12 DCS attorneys. In 1999, DCS began increasing the number of field and central office attorneys. Today there are 68 DCS attorneys.
- ³⁶ 25 U.S.C. §1912(f) (LexisNexis 2005)
- ³⁷ *Id.*
- ³⁸ The latter does not apply to orders terminating parental rights; dismissal orders or delinquency committal orders to the custody of DCS or an institution.
- ³⁹ Tenn. Juv. Proc. Rule 39 (e) (LexisNexis 2005).
- ⁴⁰ *1997 Program Report*, p. 36-39.
- ⁴¹ *1998 Program Report*, p. 16.
- ⁴² "Upon request of the parent" was not a response provided on the *Survey of Judicial Officers*. Since 7% of the judges provided this option as an answer it is included as a response.
- ⁴³ State of Tennessee Department of Children's Services, Administrative Policies and Procedures in 16.52 Independent Living Services Available to Youth/ Young Adults 14-21 Years of Age (January 2005).
- ⁴⁴ State of Tennessee Department of Children's Services, Administrative Policies and Procedures in 16.58 Independent Living Case Plan (January 2005).
- ⁴⁵ State of Tennessee Department of Children's Services, Administrative Policies and Procedures in 16.51 Provision of Post Custody Services to Young Adults Exiting Care at 18 or 19 Years of Age (January 2005).
- ⁴⁶ State of Tennessee Department of Children's Services, Administrative Policies and Procedures in 16.55 Transitional Living Services (January 2005).
- ⁴⁷ The Tennessee Commission on Continuing Legal Education and Specialization has not released the 2004 Tennessee CLE Market Share Data.
- ⁴⁸ The Child Abuse and Prevention Act was amended in 2003 to require training of attorneys before accepting GAL appointments. The CIP and DCS are in the process of developing an on-line training for GAL in the state of Tennessee. The first segment of this training will be operational by the summer of 2005.
- ⁴⁹ Issues regarding discovery in juvenile court are currently under study by the Supreme Court's Advisory Commission on Rules and Practice. It is unclear what action may be taken or how any action may impact dependency proceedings.
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