

Supreme Court Children's Commission
Hearing Quality Observation Project
March 2014

An analysis of due process and child well-being indicators in Texas child welfare hearings

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Acknowledgements

The creation and production of this project and this report was funded by the Supreme Court of Texas Permanent Judicial Commission for Children, Youth and Families (Children's Commission) with help from the federal Court Improvement Program. The materials in this series should not be construed as an advisory or ruling by or from the Supreme Court of Texas on specific cases or legal issues. These materials are solely intended to address the improvement of the law, the legal system, and the administration of justice.

The Children's Commission would like to thank the Honorable Robin D. Sage, a Senior District Court Judge and Jurist in Residence for the Children's Commission, and Tara Grigg Garlinghouse, University of Pennsylvania Law School, J.D. Candidate, and Harvard Kennedy School of Government, M.P.P. Candidate, 2014. Their efforts and leadership on the project will serve to improve the quality of child welfare hearings across Texas.

The Children's Commission would also like to thank the many Texas judges and support staff that welcomed Judge Sage and Ms. Garlinghouse into their courtrooms and provided access to court files in order to conduct and complete the project.

The Children's Commission was created by order of the Supreme Court of Texas in 2007 to help improve the judicial handling of child-protection cases through improvements in judicial practice, child welfare policy and legislation, technology, training, and court improvement pilot projects. Chaired by Supreme Court Justice Eva Guzman, Children's Commission membership includes officials from DFPS and CPS, non-profit foundation and state bar leaders, private attorneys, legislators, judges, and other leaders in child protection. The Children's Commission also consults with an advisory group that represents the many and varied disciplines involved in the child welfare system. The Commission's mission is to strengthen courts for children, youth and families in the Texas child-protection system and thereby improve the safety, permanency, and well-being of children.

Please visit the Children's Commission website at: www.texaschildrenscommission.gov or contact us at children@txcourts.gov.

I. Executive Summary

Background of the Hearing Quality Observation Project

Texas is home to more than 7 million children. On any given day, Texas has over 30,000 children in the care of the Department of Family and Protective Services (DFPS). Almost half of these children have been in state custody at least one year. Those who remain in foster care after a year and a half stand a good chance of lingering in the state's care for another year or two, mainly because the urgency of finding them permanent homes all but vanishes once their legal case ends at Texas' statutorily required 12-month deadline. Also, as a child's time in foster care increases, court oversight diminishes, advocates and attorneys are often dismissed from the case, and the roles of those who remain involved become unclear.

The Supreme Court of Texas Permanent Judicial Commission for Children, Youth and Families (Children's Commission) continually examines the role of the judicial system in improving lives and outcomes of children and families involved in the Texas child welfare system. Court practices have a profound impact on a child's ability to exit the foster care system in a timely manner, especially exiting to what is considered to be a good outcome. Courts are also in a unique position to help ensure parties have good legal representation and experience court hearings that are meaningful and thoughtful enough to provide a sense of quality and fairness.

The judicial system in Texas is decentralized and there is a great deal of variation in the judicial handling of child welfare cases across its 254 counties. In the summer of 2013, the Children's Commission conducted an observation and data collection study, called the Hearing Quality Observation Project, involving 164 child welfare hearings held across Texas. The primary purpose of the project was to establish a baseline about the quality of court hearings occurring in child welfare cases in Texas, including hearing factors such as timeliness and length, depth of issues discussed, party and judicial compliance with the Texas Family Code, parental due process, party engagement, children's appearance in court, attorney preparedness, and attorney and parent satisfaction with legal representation.

The courts observed were in urban and rural areas, district courts, county courts at law, and Child Protection Courts (CPC), presided over by district judges, associate judges, and CPC associate judges.

The court observations involved the use of an observation tool designed to capture whether relevant issues were addressed at hearings by using a set of Due Process and Well-Being Indicators to track the frequency with which issues were discussed in the hearing or case file. The observation tool also captured data on the type of hearing, hearing length, which parties were present and the parties' level of engagement, and how the lawyers in the case advocated on behalf of their clients. Case file reviews were

also conducted for each of the cases observed in court to gather background information on the history of the case. There were 36 quality indicators affecting due process and child well-being as well as federally mandated findings related to reasonable efforts and the Indian Child Welfare Act (ICWA). The tool also measured steps taken to inform parties of the case status, upcoming scheduled hearings, and next steps. Although not all indicators were relevant or applicable in every hearing due to the unique characteristics of each case and the type of hearing observed, making note of those addressed or not addressed highlighted areas needing further training and/or statutory or policy changes.

Indicators

Due Process Indicators	<ul style="list-style-type: none"> •Identify All Parties Present •Inquire About Absent Parties •Address Service on Parties •Issue Orders Regarding Parties without Service •Admonish Parents of Right to an Attorney •Admonish Parents of Termination of Parental Rights •Indian Child Welfare Act Inquiry •Reasonable Efforts Finding •Issue Clear Orders and Next Steps •Set Next Hearing
Well-Being Indicators	<ul style="list-style-type: none"> •Current and Alternative Placement •Mediation or Family Group Decision-making •Visitation with Parents, Frequency of Attendance, and Changes •Visitation with Siblings •Educational Plans and Needs •School Readiness, Education Decision-maker, School Stability, IEPs/Special Education, Enrollment/Records, Extracurricular Activities, Grades/Passing •Medical Care •Psychotropic Medication, Appropriateness, Side Effects, Taking as Prescribed

The Hearing Quality Observation Project included data collection and analysis and the production of this report, which includes findings from the data collected and recommendations to address these findings. The study, as discussed more fully below, highlights several important issues: 1) courts should schedule a maximum of 15 hearings per half day; 2) hearings must last at least ten minutes to allow sufficient time to address the relevant and pertinent issues and thus result in an effective and meaningful hearing; 3) courts and the child welfare agency must engage more actively, and deeply, in a discussion regarding reasonable efforts, which is required by state and federal law; and 4) Texas must continue efforts at training legal stakeholders about ICWA.

This report does not conclude that hearings which do not address every relevant due process and well-being indicator are *de facto* inadequate or insufficient. But, based on the experience of the Children's Commission and research from experts in this field, there is a strong view that ensuring procedural fairness and delving into child and family well-being leads to better child and family outcomes. While it may be sufficient to cover at least the indicators that are statutorily required, an ideal court hearing would cover all of the indicators relevant to a case. That said, despite the uniformity of statutory timelines and evidentiary standards across the state, courts must also acknowledge that judicial processes, community culture and resources, and expectations vary widely and that because children and families are unique, courts must respond to those families in an individualized manner.

II. Overview of Hearing Quality Observation Project Recommendations

The Hearing Quality Observation Project revealed that the majority of Texas child welfare courts address statutorily required issues at some point in the case and many are assessing aspects of due process and well-being. However, there are indicators, both statutorily required and best practices, which would benefit children and families if addressed more often in court. A full report on the following recommendations is included in Section V.

PROCESS AND STRUCTURE

- **Consider using specialized judges**
- **Engage in or access more judicial training**
- **Use bench book, bench cards, and checklists**
- **Set smaller dockets**
- **Hold longer hearings, but at least 10 minutes in length**
- **Set hearings for specific times rather than at one time on a docket**
- **Consider using a uniform case management tool**

FEDERAL MANDATES

- **Make reasonable efforts findings from the bench**
- **Make an in-court inquiry regarding the applicability of ICWA**

HEARING PROCEDURES AND REQUIREMENTS

- **Frontload procedural issues**
- **Address service of parties at every hearing until resolved**
- **Admonish parents of right to an attorney at every statutory hearing**
- **Review court reports**

CHILD AND FAMILY WELL-BEING

- **Inquire about and consider alternative placements more often**
- **Review Permanency, Concurrent and Transitional Living Plans more often**
- **Require that youth attend court**
- **Address sibling visitation when siblings are not placed together**
- **Engage parents, family members, foster parents, and youth in hearings**
- **Discuss medical care and psychotropic medication in greater depth**

CONTINUOUS QUALITY IMPROVEMENT

- **Communicate findings with relevant stakeholders**
- **Promote training and education of indicators, the Hearing Observation Project and recommended changes**
- **Repeat the study every 2-3 years to measure improvement**

III. Project Methodology

A. Study Observers

The observations were conducted by the Honorable Robin D. Sage, a Senior District Court Judge with over 23 years of experience hearing child abuse and neglect cases and currently a Jurist in Residence for the Children's Commission, and Tara Grigg Garlinghouse, University of Pennsylvania Law School, J.D. Candidate, and Harvard Kennedy School of Government, M.P.P. Candidate, 2014.

B. Observation Tool

The observation tool used during the project was developed by the Children's Commission in partnership and consultation with the American Bar Association Center on Children and the Law and the U.S. Administration of Children and Families Children's Bureau. Indicators were selected based on whether they were mandated by statute or best practice and relevant to the Texas child welfare system. There were 36 quality indicators affecting due process and child well-being. The project also included interviews of parents and attorneys regarding legal representation. There were 14 hearing Due Process Indicators potentially relevant to a hearing depending on the stage of the proceedings, the number of parties in the case, the history of the case, and which parties were present, and there were 22 possible Well-Being Indicators potentially relevant in a hearing, including placement, visitation, education, medical care and psychotropic medication. Special emphasis was placed on due process, such as appointment of legal counsel, service of the lawsuit, and admonishments regarding potential termination of parental rights, and on child well-being, such as education and medical care, including use of psychotropic medications. The observation tool captured basic information on the length of the hearing, the start time, delay in start time, and whether the hearing was recorded or translated.

C. Judges | Courts | Geography

The study involved observations of 164 hearings conducted by 19 judges in 16 courts in 12 counties. The courts were selected to provide a representative sample of the different types of courts in Texas that handle child welfare cases. The type of court varies considerably across Texas – judges may be appointed or elected to the bench and courts may specialize in child welfare cases or may have a broad range of cases of which child welfare cases constitute only a small part; some courts are located in major urban areas while others are in rural locales. A map of all of the hearing observation sites is included in Appendix A.

All judges who participated in the study were asked to participate due to their location, court type or child welfare population. Due to the variability in dockets, prior arrangements were made to coordinate the observation and file review of each case observed. Also, on the day of the observation, attorneys who regularly practice in the

courtroom were asked whether the judge was conducting that day’s hearings in the jurisdiction’s typical fashion to ensure the observations were capturing standard procedures in that particular court. The observation sessions were scheduled for an entire morning or an entire afternoon, usually in only one court per day.

Almost 80% of the hearings observed occurred in urban areas, i.e., Dallas, Houston, San Antonio, Austin, Ft. Worth, Edinburg, Tyler, and Corpus Christi. About 40% of the hearings were in CPCs, which covered both rural and urban areas in the study.¹ Approximately 10 hearings per court were observed, with a total of roughly 10 between a district judge and an associate judge in those counties where both a district judge and an associate judge in a single court preside over child welfare cases. A complete breakdown of courts and judges with court characteristics and judicial practices can be seen in the court profiles in Appendix B.

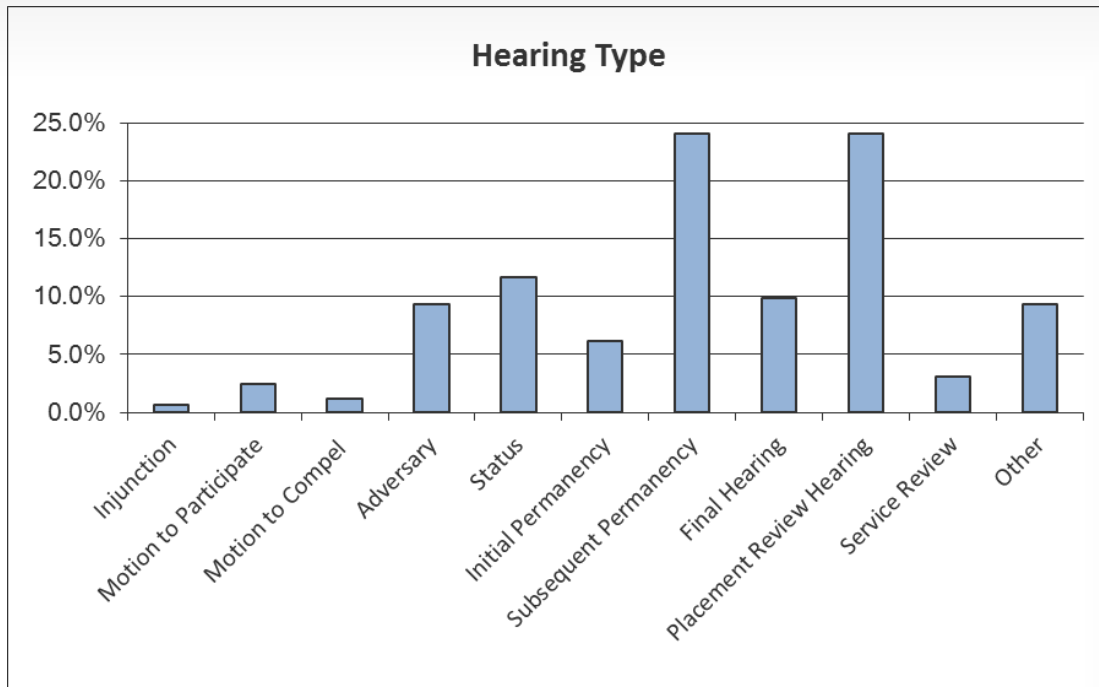
Number of Hearings Observed by Geographic Region	
Corpus Christi	6
Fort Bend County (Rural Area Near Houston)	9
Amarillo	11
Burnet (Rural Central Texas)	11
San Antonio	11
Tyler	11
Austin	12
Edinburg/McAllen	13
Fort Worth	14
Dallas	18
Midland (Permian Basin)	23
Houston	25

D. Hearing Type

The observation tool captured data on the different types of hearings routinely held in child welfare cases. All of the major types of hearings in Texas Child Protective Services (CPS) cases were observed, including hearings held both during the Temporary Managing Conservatorship (TMC) and Permanent Managing Conservatorship (PMC) phase of the case. Permanency Hearings comprised about 30% and Placement Review Hearings comprised approximately 25% of the hearings observed. Contested, lengthy final hearings and trials were not observed as they did not meet the parameters of this study.²

¹ Child Protection Courts are specialty courts wherein an associate or assigned judge hears child abuse and neglect cases exclusively. Link to OCA map of Child Protection Courts: <http://www.courts.state.tx.us/courts/pdf/CPC-Map09012013.pdf>

² There is no “Final Hearing” governed by the Texas Family Code specific to child welfare cases; final hearings refer to hearings or trials held to settle legal issues, such as custody, in the case. A final hearing may also be referred to as a “trial on the merits,” “final order hearing,” or a “prove-up hearing.”



E. Start time | Time in Court | Recorded | Language Assistance

The observation tool captured basic information on the start time of the hearing, the length of the hearing, the delay in start time, and whether the hearing was recorded or translated.

F. Hearing Indicators: Due Process | Well-being | Relevancy | Applicability

The observation tool included hearing indicators that covered two categories: 1) due process factors, such as service on the parents, compliance with ICWA, attorney appointment, and setting the next court hearing; and 2) child well-being factors including family visitation, child education, and psychotropic medication. Additional indicators, referred to as “depth indicators,” evidenced a deeper judicial exploration of visitation, education, and psychotropic medication issues and were included to measure whether it went beyond a high-level inquiry. An indicator was considered addressed in the hearing if it was brought up at some point by the judge, the attorneys, or a party. However, not all indicators were relevant in each hearing due to the unique characteristics of each case and the type of hearing observed.

Due Process Indicators were calculated, taking into account that many of them happen only once in the case, i.e., the parents are served or ICWA is established as opposed to a child’s well-being, which is an ongoing inquiry. Other examples include PMC cases where parental rights are terminated and service on the parents was required at an earlier stage in the case, so discussing service is no longer relevant in the Placement Review Hearing. In other cases where parents already have an attorney or the parents are not present at

the hearing, there is no need for the judge to admonish the parents regarding their right to legal counsel. Thus, each hearing had different indicators relevant to that case.³

Courts are also charged with overseeing a child's mental, emotional, and physical well-being while in foster care. Though certain hearings focus more on preserving and considering a parent's constitutional right to family integrity, other hearings are intended to explore how the child is doing in out of home care. Whether the Well-Being Indicators are relevant in a particular hearing depends on the type of hearing and the specific details of the case. For example, in Adversary Hearings, the child has been in the custody of DFPS for less than 14 days and many of the Well-Being Indicators are unknown at this point in the case. At Permanency Hearings, if a child is not on psychotropic medications, whether the child is experiencing side effects is not applicable. As such, Well-Being Indicators were calculated differently for the Adversary and final hearings since those hearings are focused on due process and resolving the legal rights of parents and not as focused on the well-being of the child like the Permanency and Placement Review Hearings, although a child's well-being will always be a factor for a court to consider when determining the best interest of the child.

Although not as relevant at Adversary and final hearings, visitation, education, and psychotropic medication were often addressed in some capacity. For the percentage of hearings that addressed visitation, education, or psychotropic medication in depth, the number of hearings that discussed these issues in greater depth was used as the denominator in the calculation instead of the total number of Adversary or final hearings. This also helped highlight that parent due process is emphasized during the Adversary and final hearings over child well-being.

For Status and Permanency Hearings, all indicators were considered relevant unless the case specifics made them irrelevant. The percentages calculated for Status and Permanency Hearings, which included the well-being depth indicators, were based on all of the hearings except those where the indicator was deemed irrelevant. Placement Review Hearings were calculated in the same way, except that most of the Due Process Indicators did not apply.

Not applicable or "NA" was marked for indicators deemed not relevant given the specifics of the case; "NA" was often identified in the case file review. For example, if ICWA had been addressed in a previous hearing and noted in the file, it did not need to be addressed in the hearing just observed. If the child did not have siblings, sibling visitation was not relevant. The indicators marked "NA" were omitted from the data included in the findings, and for each case, percentages were calculated based on the relevant indicators covered in the hearing, covered in just the case file, or not covered at all. A similar calculation was done for each indicator to determine how often the indicator was addressed in the hearings or case files when relevant. Occasionally, when

³ Please see Appendix C for a more detailed explanation of how relevance for the indicators was established.

the raw numbers were very small and distorted the information when converted into percentages, the number and not the percentage was reported.

Relevancy of Due Process Indicators:

- *Identification of All Parties Present for the record*: Relevant for every hearing, even if all parties are familiar with each other.
- *Inquiry About Absent Parties*: Relevant only if parties are absent.
- *Service on Mother*: Relevant during certain types of hearings. If a parent was present, service could be presumed. Service was not relevant in Placement Review Hearings.
- *Service on Father*: Relevant if father has been identified, then same relevancy as Mother.
- *Service on Father 2, Father 3, and Other*: Relevant if these are parties to the case.
- *Orders regarding Parties without Service*: Relevant if at least one party requiring service not yet served.
- *Parents Admonished of Right to an Attorney*: Relevant only when the parent was present and did not already have an attorney.
- *Parents Admonished May be Subject to Restriction or Termination of Parental Rights*: Relevant when parents were present in the hearings leading up to the final hearing.
- *Indian Child Welfare Act (measured only the inquiry of whether ICWA applied)*: Relevant for every hearing until the inquiry has been made and noted in the file or on the record.
- *Reasonable Efforts*: Relevant at almost every hearing. Note: orders that contained boilerplate language regarding reasonable efforts were not considered evidence that reasonable efforts were addressed for purposes of this study.
- *Clear Orders/Next Steps*: Relevant for every case.
- *Set Next Hearing*: Relevant in every hearing observed except dismissals.

Well-being Indicators:

- *Current and Possible Alternative Placement*: Current placement was relevant in every case, but there were some cases where discussion of an alternative placement was not relevant. For example, child placement with grandparents who have committed to adopt.
- *Mediation or Family Group Decision-making*: Relevant because mediation and family group decision-making conferences could be discussed at almost all hearings.
- *Visitation with Parents*: Relevant in all hearings where parental rights were not terminated and in PMC cases where parents were still involved.
- *Frequency of Visitation, Rate of Attendance, and Changes to Visitation Plan/Schedule*: Depth indicator when visitation was addressed.
- *Visitation with Siblings*: Relevant if siblings were not in the same placement.
- *Educational Plans and Needs*: Relevant for school-age children and toddlers.

- *School Readiness/Early Childhood Intervention (ECI), Education Decision-maker, School Stability, Individualized Education Plans (IEP)/Special Education, Enrollment/Records, Extracurricular Activities, Grades/Passing (school-related placement services), Post-Secondary Goal*: Depth indicators when education discussed.⁴
- *Medical Care*: Relevant in almost all hearings.
- *Psychotropic Medication*: Relevant if child on psychotropic medication.⁵
- *Psychotropic Medication Taken as Prescribed, Appropriateness of Medication, Side Effects*: Depth indicators when child prescribed psychotropic medication.

G. Hearing Engagement | Legal Advocacy

The observation tool also captured which parties and attorneys were present and how they participated in court. For parties, court engagement was rated as low, medium, or high. Most participants were considered to have medium engagement, unless they said almost nothing or were a particularly active participant in the hearing. Attorneys were measured based on what issues they brought to the court’s attention and their methods of advocacy, such as oral motions or calling a witness. Judges, parent attorneys, and parents were also invited to complete surveys about judicial and attorney practices and satisfaction with legal representation and the court process. An in-depth analysis of the attorney and parent satisfaction surveys is not included in this report.

H. File Review

After the hearing observation occurred, a file review was conducted for each case to secure background information and look for elements on the observation tool that were available in the file but not addressed during the hearing. Another purpose of the file review was to identify indicators that were not applicable to the case, as was discussed above. Indicators “from the file” represent indicators that only showed up in the file and not in the court hearings.

⁴ Tex. Fam. Code Ann. §263.004, effective September 1, 2013, after the study was completed.

⁵ Tex. Fam. Code Ann. §§263.306; 263.506 (effective September 1, 2013, after the study was completed).

IV. Findings

A. Court Process & Structure

I. Number of Judges

Based on file reviews, about two-thirds of the cases had only one judge and about one-third had two judges who presided throughout the life of the case. Very few cases had more than two judges. Most cases that had more than one judge fell into one of two categories: 1) the observed judge succeeded another judge who was no longer on that bench; or 2) the court had an associate judge who assisted in handling the hearings.

II. Language Assistance

In 91% of the cases, no interpretation was provided; however, the observation project did not measure whether translation was needed in any particular case. Of the 9% of cases that had some type of translation, only about half were formally interpreted. Other translation assistance was provided informally through a friend, a CPS caseworker, or a court employee.

III. On the Record

The vast majority, 85%, of the hearings had a record made. A little more than one-quarter (26%) were recorded by a recording device rather than by a reporter on staff with the court.

IV. Witnesses Sworn

Witnesses were not sworn in a little over half of the cases (54%).

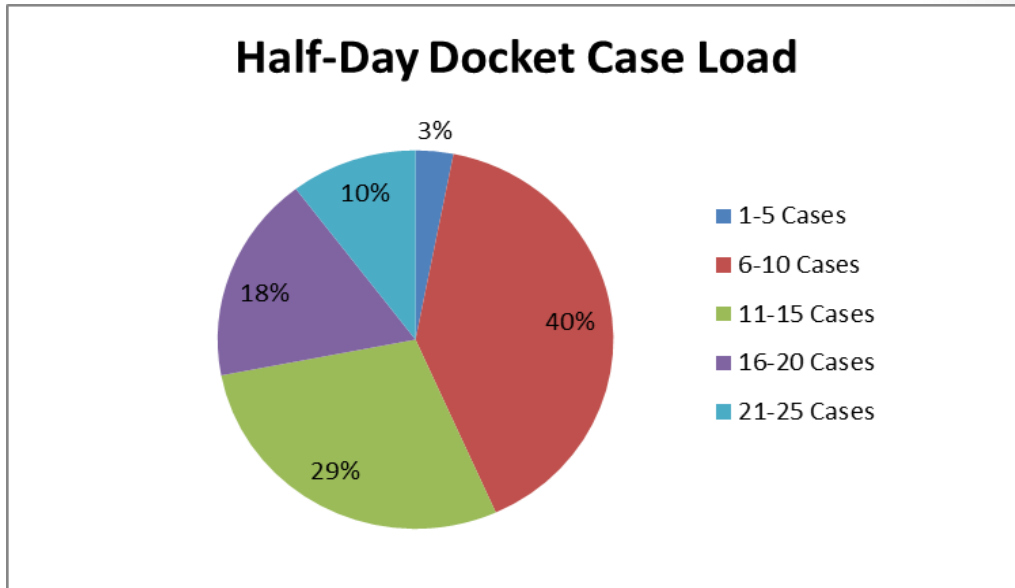
V. Docket Caseload

Most courts operated and set dockets by the half-day, considered to be a time period of less than four hours. Some had only a one or two-hour CPS docket during the half-day. Other courts set one docket for the whole day. Some courts scheduled several cases on dockets once or twice a week, while others set several cases on the docket in the morning and afternoon almost every day.

The timing and length of the hearing observations varied based on court practice, but information on the docket load was collected based on how many hearings were set to be heard on either the morning docket or the afternoon docket, which was the length of time dedicated to conduct observations during the project. Over 40% of the hearings observed were from courts with 10 cases or less on the docket for half of a day. Almost 30% of the hearings had 11-15 cases on the half-day docket, 18% had 16-20 cases, and just over 10% of the hearings were from two dockets that each had over 20 cases to be heard on a half-day docket.⁶

⁶ Note that these were two courts from the same county.

Judges and attorneys voiced concerns about very crowded dockets, especially in large jurisdictions. A high volume of cases on the dockets means there is less time for courts to hear all of the scheduled cases as thoroughly and completely as courts with fewer cases on their dockets. The courts in the study varied greatly in the number of cases set for some portion of either the morning or the afternoon from as low as five to as high as 25 cases for a half-day docket.



Courts with very high caseloads have less time to address a high percentage of the relevant indicators for each hearing. Conversely, courts with only 7-14 cases on their half-day dockets were able to address the highest percentage of the quality indicators.

According to the table below, there are few differences between having up to 10 and having up to 15 cases on the docket for some portion of the day. However, there is a significant difference with dockets of greater than 15 cases where the percentage of indicators addressed in the hearings goes down and the percentage not addressed overall goes up. Results are notably worse for dockets with more than 20 cases set in a half-day.

Average Relevant Indicators Addressed in Hearings by Half-Day Docket Load				
# of Cases	% of Due Process Indicators in Hearing	% of Well-Being Indicators in Hearing	% Overall Addressed in Hearing	% Overall Not Addressed
1-10	48%	38%	42%	42%
11-15	46%	39%	41%	40%

16-20	38%	34%	34%	48%
21+	24%	25%	26%	58%

VI. Hearing Length

Analysis of the relevant factors the courts considered during the hearing indicates that shorter court hearings addressed fewer relevant indicators. And, as hearing length increased, so did the number of indicators discussed. The hearings observed lasted anywhere between **1 and 81 minutes**; 50% of the hearings lasted longer than 12 minutes. The time spent on Adversary, Status, and initial Permanency Hearings was pretty consistent, lasting on average 15 minutes. Subsequent Permanency Hearings were slightly longer on average than Placement Review Hearings and other special hearings⁷ that were not statutorily required but set as a follow-up to a specific matter. The Placement Review Hearings and special hearings were the shortest, lasting only 10-12 minutes on average. Contested final hearings predicted to last a few hours were omitted from the study. Half of the uncontested final hearings observed in the study lasted 11 minutes or less.

Average Hearing Length in Minutes								
	Overall	Advr	Status	Initial Perm	Subseq. Perm	Final	Service Review /Other	Plcmt Review
Avg	15	15.9	15.1	15.9	16.6	21.3	10.9	12

There was not a great difference in the number of factors considered in hearings lasting zero to five minutes and those lasting six to 10 minutes. The 10-minute mark appears to be an important threshold because, after this point in time, the number of indicators discussed significantly increased. Of note, the number of indicators discussed then rose only slightly above that mark for hearings lasting 11 to 25 minutes. Hearings lasting 25 to 30 minutes addressed the highest number of indicators. Hearing length does not reflect the time judges spent out of court reviewing reports and case files. Although few judges responded to the survey question about how much time they spent out of court reviewing the file, of those who responded, the time spent out of court reviewing reports and case files ranged from five to 15 minutes.

Though it would certainly be ideal for hearings to last 25 minutes, the docket load and limited resources of many child welfare courts make this a difficult standard to achieve in

⁷ "Service Review/Other" refers to hearings that were not statutorily required but were set by the judge to track progress on the case or to address specific issues, for example, a Motion to Participate or changes to the visitation schedule.

all hearings. But, the findings suggest that all hearings should last a minimum of 10 minutes, which may be more feasible for many child welfare courts. Particularly difficult cases should be heard for as long as necessary to address all issues relevant to the case.

Average Relevant Indicators Addressed in Hearings by Hearing Length				
Minutes	% of Due Process Indicators	% of Well-Being Indicators	% Overall Addressed	% Overall Not Addressed
0-5	33%	25%	27%	56%
6-10	34%	28%	30%	53%
11-15	51%	40%	44%	39%
16-20	51%	48%	49%	35%
21-25	49%	47%	47%	36%
26-30	55%	39%	45%	34%
30+	54%	57%	57%	24%

VII. Court Type

When considering the percentage of indicators discussed in hearings there is almost no difference between rural and urban courts. Overall, CPCs discussed a higher percentage of the relevant indicators than other types of courts.

Also, indicators for all of the individual courts were compared in order to determine whether certain characteristics of courts correlate with addressing a greater number of quality indicators. There were several courts that consistently addressed relevant indicators, but the courts and judges were relatively different from one another. For example, two courts that consistently addressed relevant indicators were different in that one was a CPC and the other a District Court, each had different average hearing lengths, different docket caseloads, and one was rural while the other was urban.

The CPCs in the study were different from the district courts in that they handle nothing but child welfare cases. The judges are also specially trained in child welfare law, and each court uses a common case management system and has support staff that is also trained to use it. The CPCs also scheduled no more than 15 cases for a half-day and spent an average of 17.5 minutes per hearing. Overall, CPCs covered 46% of all relevant indicators during the hearings. CPCs generally discussed over half of the Due Process Indicators in the hearing and 40% of the Well-Being Indicators. Combining the indicators observed during the hearings with those addressed in the court files, the CPCs addressed 62% of the Due Process and Well-Being Indicators. The two courts that addressed the greatest number of indicators most consistently across all of the hearings observed were CPC courts. Non-CPC courts covered about 34% of the relevant indicators during the hearings, and when combined with the indicators addressed in the court files, addressed a little over 50% of all relevant indicators.

Average Relevant Indicators Addressed in Hearings by Geography/Court Type				
	% of Due Process Indicators	% of Well-Being Indicators	% Overall Addressed	% Overall Not Addressed
Rural (CPC & Non)	43%	36%	39%	44%
Urban (CPC & Non)	41%	36%	38%	46%
CPC (Rural & Urban)	55%	40%	46%	38%
Non-CPC (Rural & Urban)	35%	34%	34%	48%

B. Federal Mandates

I. Reasonable Efforts

The Texas Family Code has codified federal statutes to require DFPS make “reasonable efforts to avoid removal, to reunify the child with the parents, and to finalize the permanency plan for the child.”⁸ Federal funding for DFPS is tied to reasonable efforts findings.

These findings are important because they hold the caseworker and the child welfare agency accountable for the case work done to promote family stability and the child’s safety, well-being, and permanency. Despite this potential for accountability, a vast majority of the courts observed made no specific reasonable efforts findings or mentioned reasonable efforts during the hearings but rather included boilerplate language about reasonable efforts in the court orders. Almost every judge that participated in the study said that the absence of and inadequate work done by caseworkers is the biggest problem they confront. Making specific reasonable efforts findings from the bench potentially sends a message that there is a minimal acceptable level of case work required in these important proceedings.

In 2012, as part of the federal Title IV-E Audit, the U.S. Administration of Children and Families Children’s Bureau found certain audited Texas court orders to be deficient in language regarding child specificity and reasonable efforts related to finalizing a child’s permanency plan. Several court orders reviewed used boilerplate language and check boxes or blanks that either were incomplete or did not include the child’s name. Title IV-

⁸ Tex. Fam. Code Ann. §§ 262.107(a)(3); 262.201(b)(3); 263.306(E); and 263.503 (a)(8).

E deficiencies can cost the state thousands of dollars in disallowed federal foster care payments that must be repaid to the federal government from the state's general revenue.

Courts must make reasonable efforts findings in three situations: 1) to prevent or eliminate the need to remove a child from their home; 2) to reunify the child with the parent as soon as possible; and 3) when reunification cannot be achieved, to attain permanency as laid out in the child's alternative permanency plan.⁹ Only 10% of all of the observed hearings addressed reasonable efforts by DFPS to prevent or eliminate the need for removal, to reunify with the parent, or to finalize an alternative permanency plan. Approximately 90% of the cases had boilerplate language regarding reasonable efforts in court orders located in the case file. Almost half of the Adversary Hearings addressed the reasonable efforts required at the beginning of a case to prevent the removal of a child. However, once the child was removed, later hearings very rarely mentioned reasonable efforts to reunify the children with parents, although some courts did assess progress on the family service plan. Less than 10% of the Permanency and Placement Review Hearings addressed DFPS efforts to finalize the children's permanency plans.

II. Indian Child Welfare Act

Any child who is an unmarried person under the age of eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe qualifies for certain protections under the Indian Child Welfare Act.¹⁰

If a child before the court falls within the parameters of ICWA, it will affect the court's jurisdiction and evidentiary requirements and the child's placement. Only 4% of the judges observed addressed ICWA in the hearing. Parties and judges appeared to be unaware of ICWA or relying on the case files to establish ICWA applicability. Failure to address ICWA can have serious ramifications for the child and the family because discovering a child's Native American status late in the case can cause traumatic placement disruptions and delay permanency. Relying on agency data may also be detrimental to the case. Observations revealed that often the caseworker had incomplete or incorrect data, i.e., information from only one parent or from a caseworker who filled out the required forms based on the visual appearance of the child. These assumptions are problematic because the appearance of the child is not necessarily indicative of Native American heritage.

An inquiry into the applicability of ICWA did not happen in either the hearing or the case file in 60% of the cases. Only 4% of hearings addressed ICWA and only 39% of the case files addressed ICWA. Some case files of the 39% that addressed ICWA indicated the child was not Native American due to their identification as African American, Hispanic,

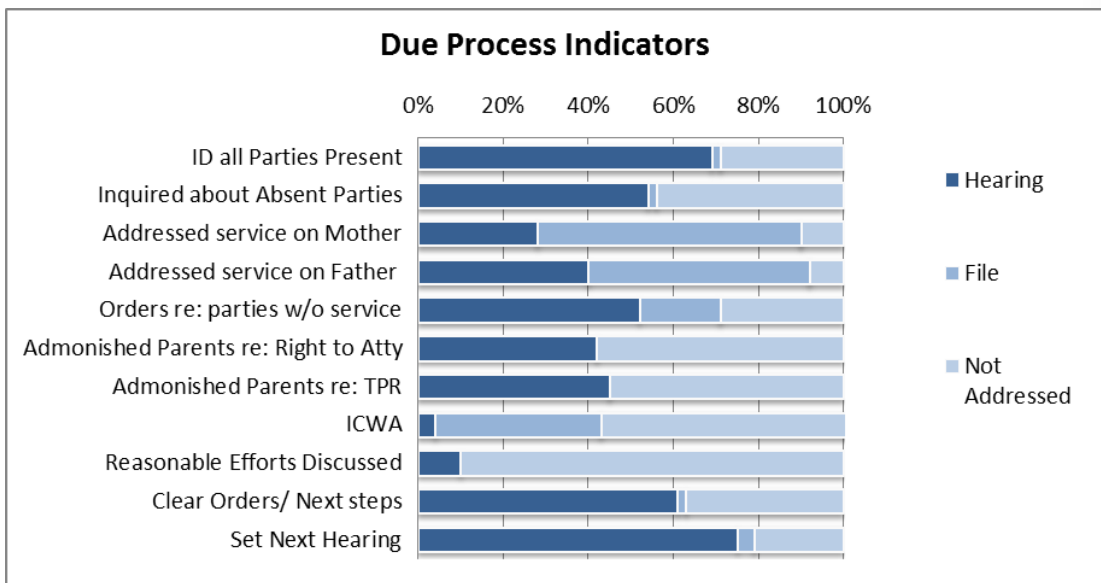
⁹ The Federal Adoption and Safe Families Act of 1997, 42 U.S.C. § 671(a)(15).

¹⁰ Indian Child Welfare Act of 1978, 25 U.S.C. § 1901, *et seq.*

or Caucasian. This may indicate faulty assumptions about when and whether ICWA applies.

C. Hearing Due Process Indicators

Hearing Due Process Indicators were used to measure efforts at ensuring fairness for the parties, making federally mandated findings related to reasonable efforts, and taking steps to inform parties of the case status and what to expect next. There were 14 hearing Due Process Indicators potentially relevant to a hearing depending on the stage of the proceedings, the number of parties in the case, the history of the case, and which parties were present at the time of the hearing.



I. Identification of Parties and Inquiry about Absent Parties

Courts were consistent about inquiring about parties and absent parties except at Placement Review Hearings. Also observed during Placement Review Hearings, judges rarely inquired about youth presence in court and little was noted in the case file about their attendance.

II. Service on Parties

Issues such as service on parties were addressed most of the time early in the case; however, service inquiries lessened as the case progressed, even when parties were aware that service had not been completed on one of the parents involved in the case.

III. Right to Court Appointed Attorney

Parents were admonished of their right to an attorney early in the case, usually at the Adversary Hearing. However, admonishments regarding the right to an attorney diminished as the case progressed even when the issue of legal counsel was not resolved.

That said, of the 68 attorneys who were interviewed as part of the project, the majority reported that judges make attorney appointments early in the process, either upon removal of the child, right before the Adversary Hearing, or at the Adversary Hearing.

IV. Hearing Delays

Very few of the hearings were postponed – only 5%. However, most of the cases delayed in starting by 45 minutes or more. Courts use many different docketing practices, from setting a certain number of cases on the docket every hour to setting all of the cases on the docket at one time in the morning and calling cases as parties are present and ready. While a few cases were called close to the docket time, most parties waited an hour or more for their case to be called, and in some courts, parties waited over four hours.

V. Court Reports

DFPS must file court reports in advance of all Adversary, Status, Permanency and Placement Review Hearings, but only the Permanency and Placement Review Hearing Report must be filed at least 10 days in advance, with copies provided to various parties and case participants.¹¹ Court reports are also filed by Court Appointed Special Advocates (CASA) at these hearings, if one is appointed as the Guardian ad Litem (GAL).¹² Slightly over 50% of the CPS court reports were filed timely; 20% of the cases had missing CPS court reports. CASAs were appointed in a little over half of the cases observed and about one-third of those had a written report filed by CASA.

VI. Entry of Court Orders

Most court orders were signed on the day of the hearing and filed on the day they were signed. The longest delays between signing and filing happened around the beginning of the new calendar year. A few courts had a practice of filing the order before they were signed.

VII. Extensions Granted

Of the cases reviewed that were post-Status Hearing, 19% had been granted an extension under Texas Family Code Section 263.401.¹³ Also, two extensions were granted during the actual observation of two Permanency Hearings; one extension was granted for the family to work toward reunification and the other was granted because the father unexpectedly returned the child to DFPS.

VIII. Setting Next Hearing

The judge set the next hearing date from the bench in 60% of the cases.

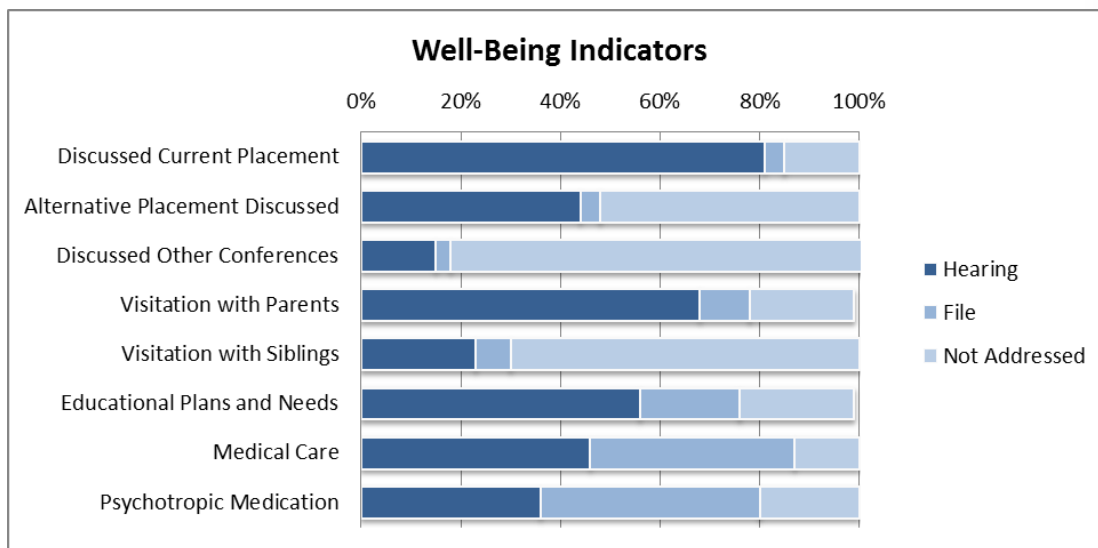
¹¹ Tex. Fam. Code Ann. §§ 263.303; 263.502.

¹² Court Appointed Special Advocates are volunteers appointed to represent a child's best interest in cases affecting the parent child relationship filed by a governmental entity. See Texas Family Code §107.011.

¹³ Tex. Fam. Code Ann. § 263.401.

D. Child and Family Well-being

Although Well-Being Indicators become more relevant as the case progresses, a few indicators came up consistently in over half of the hearings. For example, 81% of the hearings discussed the current placement of the child, and 68% discussed visitation with parents, with 51% addressing the frequency of visitation. About 56% of the hearings addressed the educational plans and needs of the children. But, a number of depth indicators often went unaddressed, such as rates of attendance at visitation, changes to the visitation plan, and visitation of siblings. Additionally, although educational needs of the child were often discussed with regards to passing and placement in school, few hearings or case files addressed Individualized Education Programs (IEP) for students receiving special education services, Early Childhood Intervention (ECI) for younger children, school stability, extracurricular activities, post-secondary goals, or identification of the educational decision-maker.¹⁴ While the issue of psychotropic medications came up frequently in the hearings and case files for children prescribed medication, hearings rarely addressed whether the child was taking the medication as prescribed, its appropriateness, or side effects.

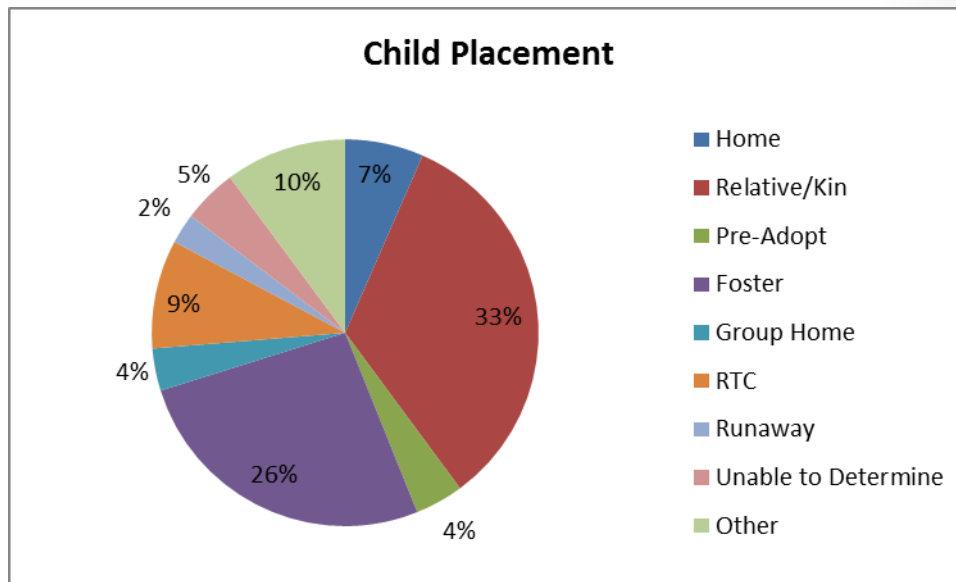


I. Child Placement (Current and Alternative)

The vast majority of children involved in the hearings resided outside of their parents' homes in kinship placements (33%), non-kinship foster homes (26%), Residential Treatment Centers (RTC) (9%), transitional living placements or emergency shelters (10%), group homes (4%), or pre-adoptive homes (4%), and a small percentage were on runaway or unable to determine (2%, 5% respectively). Seven percent resided at home.

¹⁴ Of note, Tex. Fam. Code Ann. §263.004 went into effect in September 2013 after the observations occurred.

Most courts addressed the child's current placement, but fewer addressed the issue of alternative placements.



II. Visitation with Parents & Siblings

It is DFPS policy to provide visitation to siblings who are placed separately, unless a court has ordered otherwise.¹⁵ However, visitation with siblings was rarely discussed, even when children were placed separately.

III. Education Plans and Needs

The educational needs of the child came up in over half of the hearings, but there was little in-depth discussion about specific educational needs or issues except in Placement Review Hearings, which had a particular emphasis on the educational plans and needs of the child, especially with regards to special education and school enrollment.

IV. Medical Care | Psychotropic Medication

Medical care was addressed in a little less than half the cases and psychotropic medication use came up in only a small number of cases, even when the issue was relevant.

V. Length of Time in Care

The average length of time in care was a little over a year (368 days), but the median time was 252 days,¹⁶ meaning that half of the children had been in care 36 weeks or less.

¹⁵ 40 Tex. Admin. Code §700.1327 (2012) (Dept of Family and Protective Services); Dept. Fam. & Prot. Serv., Child Protective Services Handbook, Section 6415.2.

¹⁶ The statistical numbers presented provide a holistic perspective of the data. The average takes into account all cases, including cases that might be extreme outliers (for example, one child in care for 3,484 days brings the average up even though most cases are much lower). The median is the 50% mark – half of the cases are lower and half of the cases are higher, so it is often a better reference point than the average.

There was wide variation in the length of time in care, as was expected since the observation project involved all of the hearings required by statute. The length of time in care appears to be within a normal range for the Adversary Hearing, Status Hearing, initial and subsequent Permanency Hearings, and final hearing; however, the minimum time in PMC was 77 days, accounting for the children who had just entered PMC, but the maximum time in PMC was over 8.5 years.

Average Length of Time in Care in Days by Hearing Type								
	Overall	Adversary	Status	Initial Perm	Subseq. Perm	Final	Placement	Time in PMC
Average	368	19.5	62.9	165.9	263.5	381.8	907.3	677.5

VI. Engagement of Youth and Parties

The presence of parents, children, and care takers at the hearings allows them to be fully informed about what is happening in the case, and when asked to participate in the hearing, the information they share can be integral to helping judges make decisions that will support the child and the family. However, children were present at less than 20% of the hearings. At least one parent was present at 64% of the hearings before a final order was granted. About 15% of caretakers and only a handful of non-kinship foster parents were present at the hearings. The presence of children often depended on the judge's expectation of children attending court, i.e., some judges expected children to be present, if at all possible, while other judges believed it detrimental for a child to attend court. Even judges who expect children to attend hearings allow for exceptions, such as if the child lives very far away or has a school obligation.

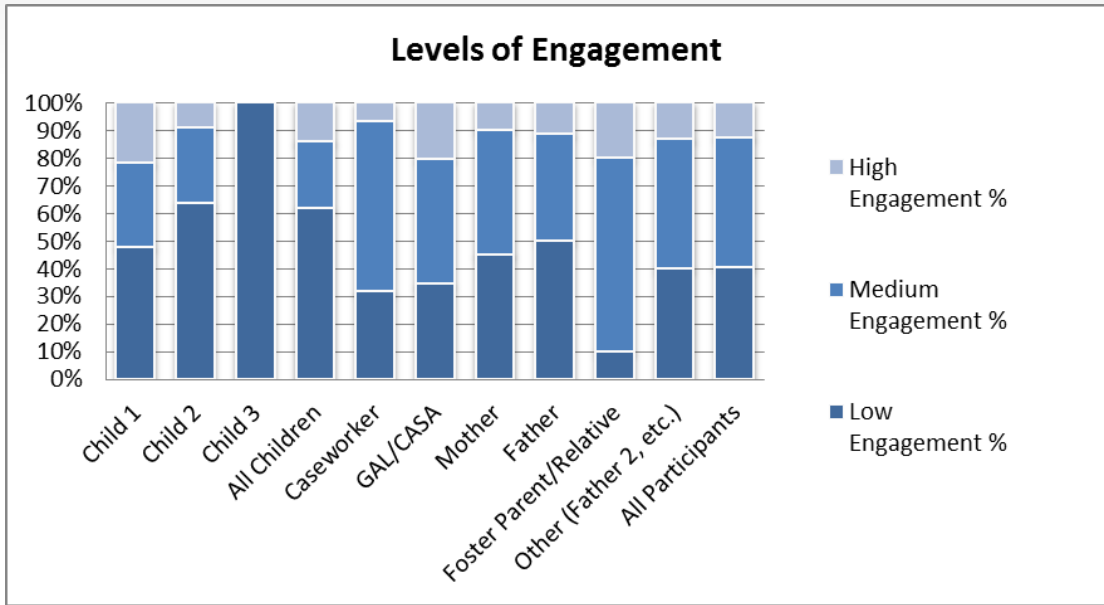
Caseworkers and CASAs can provide essential information and context not always available to the lawyers in the case, so their presence in the hearings assists in bringing up pertinent issues and providing clarification for complex situations. Caseworkers were present in almost 90% of the hearings observed. CASA was present in 55% of the cases observed. The extent of the participation of the CASA in the observed hearings was largely dependent on the judge's courtroom practice.

When children were present, there was a significant increase in the number of quality indicators addressed in the hearings -- a 19 percentage point increase in Due Process Indicators, a 14 percentage point increase in Well-Being Indicators, and a 15 percentage point increase overall. In the cases where children were present at the hearing, 56% of the relevant indicators were addressed.

Average Percent Relevant Indicators Addressed When Parties Present					
Parties Present	Average Hearing	% Due Process	% Well-Being Indicators in	% Overall Addressed in	% Overall Not

	Time (in minutes)	Indicators in Hearing	Hearing	Hearing	Addressed in Hearing
All Hearings	15:00	43%	36%	39%	44%
Children	15:40	64%	50%	56%	31%
Mothers	17:56	44%	39%	40%	44%
Fathers	18:40	41%	42%	41%	44%
CASA	17:15	49%	40%	43%	41%

Altogether, parties were given the opportunity to speak 60% of the time, with caseworkers and foster parents given the opportunity to speak 80% of the time. Mothers were given the opportunity to speak a little over half of the time, but fathers and children were given the opportunity to speak less than half of the time. If parties were given the opportunity to speak, the vast majority, over 90% for each group, said something to the court. Levels of engagement varied for all parties but hovered at medium engagement for most participants. CASAs and foster parents had a greater proportion of high engagement; parents and children had a greater proportion of low engagement. The levels of engagement track with the opportunity to speak in court – parties given more opportunities to speak in court have high engagement and parties with fewer opportunities to speak in court have lower engagement. It is unclear from the data why that is the case, but it is possible that parties who appear in court more often are more comfortable with speaking during hearings. Also, parents and children may be intimidated by the court process given the importance of the issues at hand and thus more fearful and reluctant to participate.



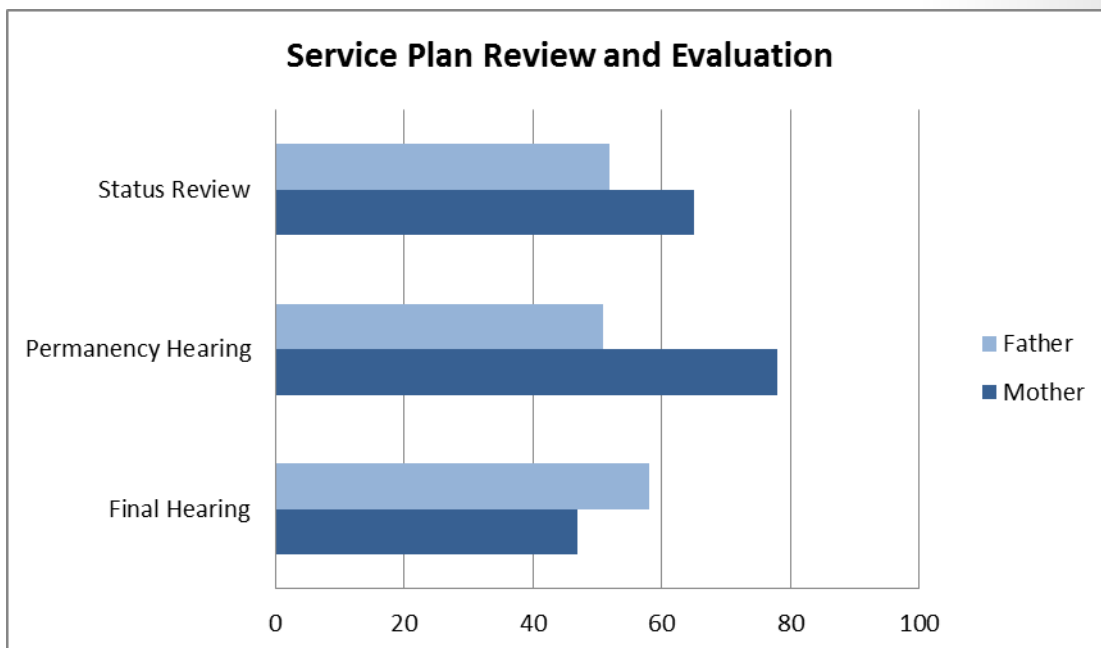
VII. Family Service Plan Review

Family Service Plans are developed in consultation with parents to identify what is required to ameliorate the reasons their child has been brought into foster care. Family Service Plans are filed with the court to allow the judges to gain an understanding of what parents are asked to address in order to achieve reunification or some other outcome. Elements often discussed include counseling, parenting classes, securing a job, finding housing, family violence counseling, random drug testing, drug assessments, visitation, paying child support, contacting the caseworker, and completing psychological or psychosocial evaluations. The table below is based on case file reviews conducted to assess the frequency that certain requirements were present in the Family Service Plan.

Family Service Plan Requirements		
Requirement	Mother	Father
Counseling	88%	73%
Parenting Classes	70%	71%
Securing a Job	52%	48%
Housing	64%	56%
Family Violence Counseling	34%	26%
Random Drug Tests	83%	69%
Drug Assessment	82%	74%
No Criminal Conduct	14%	15%
Child Visitation	44%	39%
Child Support	25%	29%
Caseworker Contact	40%	35%
Psychological Evaluation	84%	66%
Other	40%	42%

Courts are to review the elements of and the parents' compliance with the service plan during Status and Permanency Hearings. Tracking progress on service plans during the statutory hearings leading up to the final hearing is particularly important because parental rights are often terminated based on their failure to comply with their service plan.¹⁷ In the hearings observed, mothers and fathers were most often asked to go to counseling, attend parenting classes, have random drug testing and drug assessments, and complete a psychological evaluation of some kind.

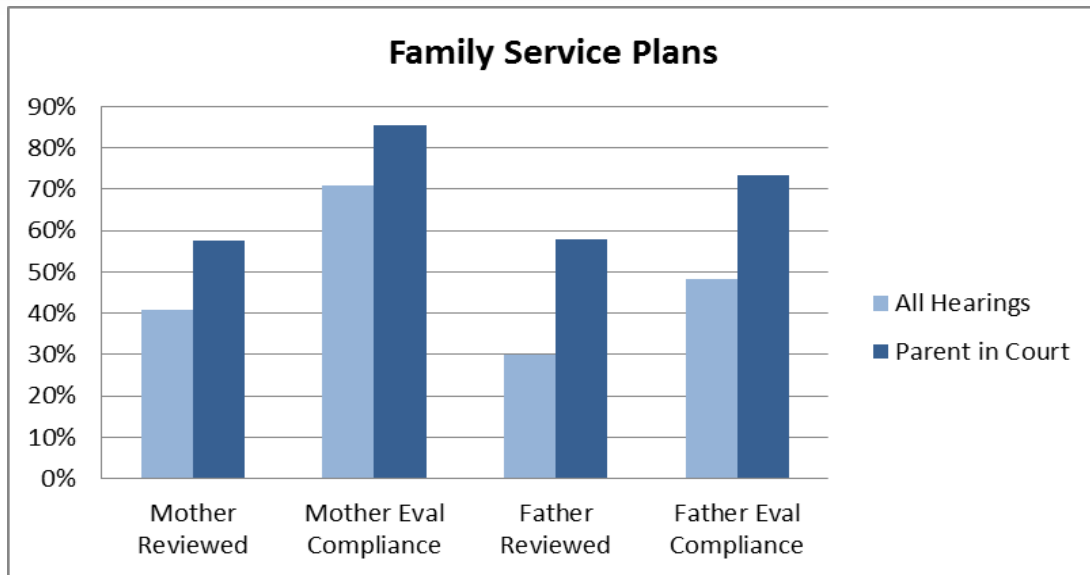
At the Status Hearings, courts review elements of the service plans to determine appropriateness and so parents have a full understanding of what is expected of them in order for reunification to occur. Permanency Hearings, held at 120 days and again at 300 days, evaluate whether parents are complying with the family service plan.



At the Status Hearings observed and without parents present, courts reviewed the mothers' service plans 65% of the time and the fathers' service plans 52% of the time. At the Permanency Hearings observed and without the parents present, courts evaluated the mothers' compliance with the service plans 78% of the time and evaluated the fathers' compliance with the service plans 51% of the time. Only 47% of the mothers' service plans and 58% of the fathers' service plans were reviewed by the court at final hearings.

However, when parents were present, their service plans were reviewed 58% of the time at all types of hearings; compliance with the plans for mothers was evaluated 85% of the time and compliance with the plans for fathers' was evaluated 74% of the time. The presence of parents in the courtroom appeared to make it more likely that the court would review the elements of the service plan and evaluate the parent's compliance.

¹⁷ Tex. Fam. Code Ann. § 161.001(1)(O).



VIII. Permanency and Concurrent Plans

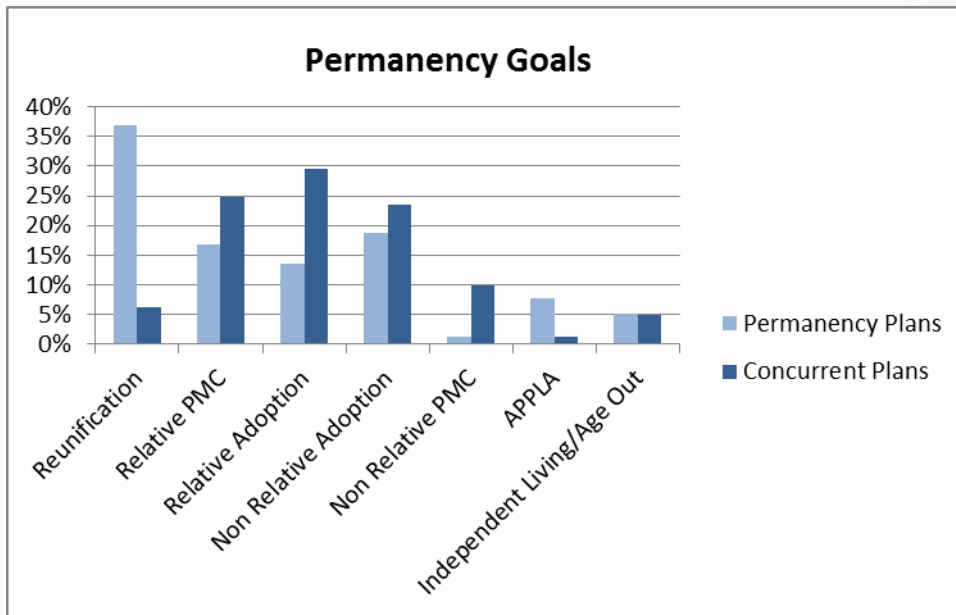
All children receiving services, whether in family-based safety services or in conservatorship, have a permanency plan. It consists of the primary permanency planning goal for the child and, in the case of a child for whom DFPS has been appointed temporary or permanent managing conservator, one or more alternate or concurrent permanency planning goals.¹⁸ It also states the specific steps to be taken to achieve the goal or goals, with responsibilities and timeframes established for taking those steps, and a discussion of the efforts made to achieve the goal or goals.

Permanency plans should be reviewed starting at the initial Permanency Hearing and thereafter during every hearing for the duration of the case.¹⁹ There were a total of 202 children across all of the cases observed. Permanency plan goals were determined at the hearing or from the case file for only 157 children. About one-third (32%) of the hearings did not evaluate the permanency plan as required by statute.²⁰ However, the permanency plan was reviewed in 69% of the relevant hearings when the child was present, indicating that the presence of the child helps facilitate discussions of permanency. Over 35% of the permanency plans were reunification; only about 12% were Another Planned Permanent Living Arrangement (APPLA) or Independent Living. Concurrent plans were noted primarily in the case file for 82 children and 25% of the concurrent plans were reviewed in court. Many of the concurrent plans were relative adoption, relative PMC, or non-relative adoption. Less than 10% of the concurrent plans were APPLA or Independent Living.

¹⁸ Dept. Fam. & Prot. Serv., Child Protective Services Handbook, §§ 6214; 6211.4.

¹⁹ Tex. Fam. Code Ann. § 263.3025.

²⁰ *Id.*



IX. Transitional Living Plan Review

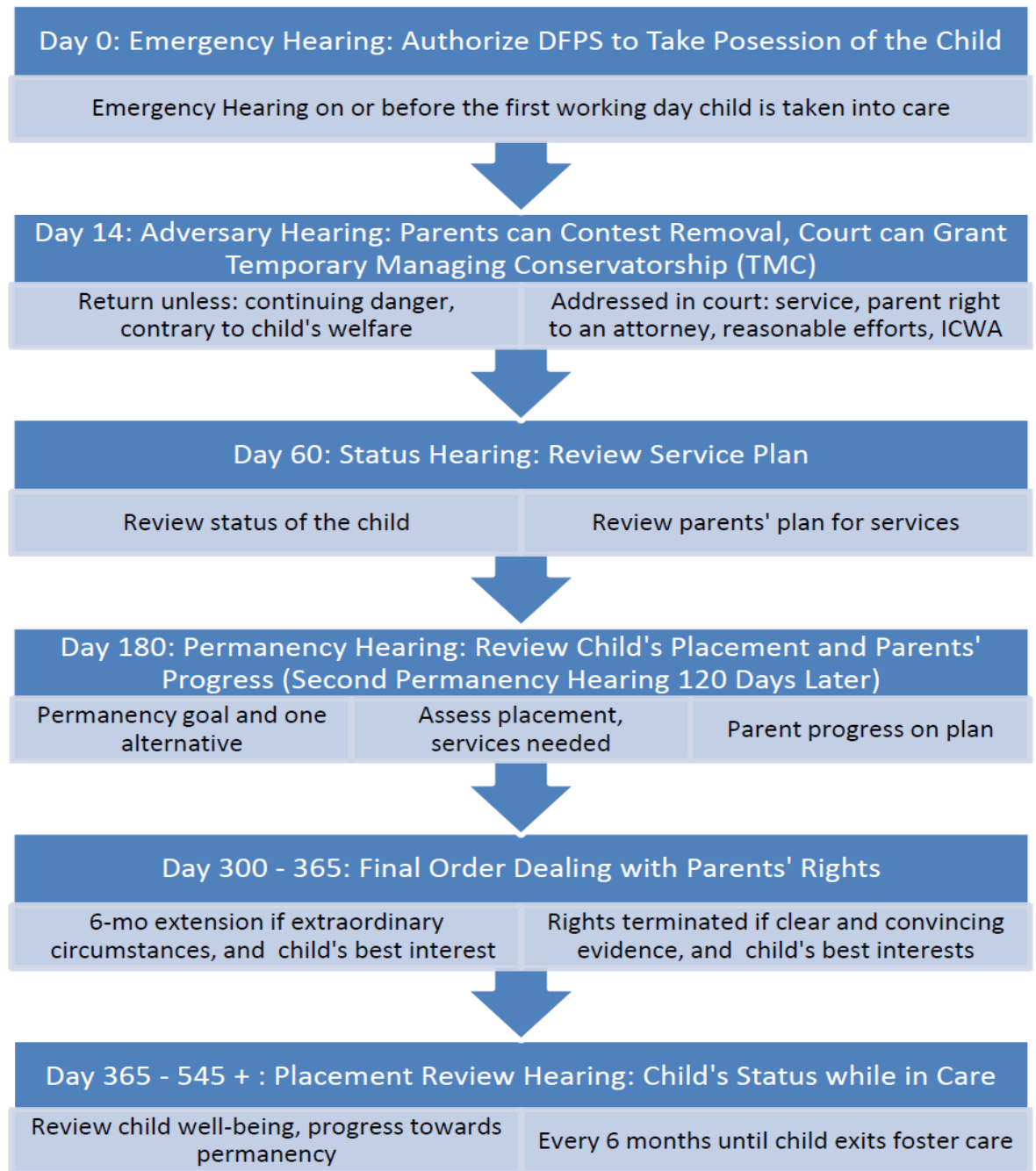
Transitional living plans identify services for older youth in care to assist them in obtaining positive permanency or helping them transitioning from foster care. The plan is reviewed by a youth’s caseworker every six months as part of the development of the child’s service plan and within 90 days before the date that the youth leaves foster care (whether that occurs when the youth ages out of care at 18 years old, or it occurs later, when the youth leaves extended foster care).²¹ In the hearings, there were a total of 28 children that met the criteria. Just over 60% of their plans were reviewed in court. Eight children with transitional living plans were present in the hearings. Six had their plans reviewed, and two did not, suggesting that transitional living plans are more likely to be reviewed when the youth is present. Of the plans reviewed, 83% addressed plans for the youth after exiting the foster care system and half addressed Preparation for Adult Living Services.

Transitional Living Plan						
Elements	Living Plan	Relationships	PAL	Docs	Disability	Child was Over 18
% that Included Element	83%	39%	50%	11%	39%	44%

²¹ Dept. Fam. & Prot. Serv., Child Protective Services Handbook, § 6274.1.

E. Analysis by Hearing Type

I. Flow of Statutory Hearings:



Generally, hearings were conducted as dictated by the Texas Family Code and held timely with very few continuances. For a more in-depth analysis of the Hearing Quality Indicators, it is helpful to analyze the indicators by hearing type where some indicators are more relevant than others.²²

II. Adversary Hearing

At the Adversary Hearing, the parent has the opportunity to contest DFPS' removal of the child, so a primary issue for the court to determine is whether there is a continuing danger that warrants granting DFPS conservatorship of the child. This hearing, above all others except a final hearing, involves a parent's constitutional right to the care and custody of the child and satisfying federal and state statutory requirements for infringing on that right. Almost all of the Due Process Indicators are relevant at this hearing and issues like ICWA and reasonable efforts should also be addressed in court. Since the child has not been in care for very long, there is little information available on the well-being measures and no family plan of service or permanency plan has been developed. The study observed 15 Adversary Hearings conducted by seven judges in seven courts. Almost all of the courts were urban and about half were CPCs.

The charts below demonstrate which indicators from the observation tool were addressed at the hearing or in the file.

Adversary Hearing Due Process Indicators			
Indicator	Relevant	% discussed in the Hearing	% mentioned or noted in the File
Identified All Parties Present	Yes	93%	NA ²³
Inquired About Absent Parties	Yes	69%	0%
Addressed Service on Mother	Yes	83%	17%
Addressed Service on Father 1	Yes	83%	17%
Addressed Service	Yes, When Applicable	100%	0%

²² Please see Appendix D for additional tables and charts.

²³ Parties were almost always identified in the court orders, but the orders were not yet in the file during the file review. The file review snapshot looks like the parties present were never mentioned in the file, but this is not completely accurate because if the file reviews were completed a few days later this information would have been available.

on Father 2			
Addressed Service on Father 3	Yes, When Applicable	100%	0%
Addressed Service on Other	Yes, When Applicable	100%	0%
Orders Regarding Parties w/o Service	Yes, When Applicable	80%	20%
Admonished Parents re: Right to an Attorney	Yes, when Parents are Present w/o Attorney	100%	0%
Admonished Parents re: Termination of Parental Rights (TPR)	Yes, when Parents are Present	80%	0%
ICWA	Yes	7%	7%
Reasonable Efforts	Yes	47%	0%
Clear Orders/Next Steps	Yes	73%	0%
Set Next Hearing	Yes	79%	7%

Adversary Hearing Well-Being Indicators			
Indicator	Inquiry	% discussed in the Hearing	% mentioned or noted in the File
Discussed Current Placement	Not required	87%	0%
Alternative Placement Discussed	Not required	67%	0%
Discussed Mediation, Family Group Conference (FGC), Other	Not required	13%	0%
Visitation with Parents	Not required	53%	0%
<i>Frequency of Visitation</i>	<i>Indicator of depth if visitation discussed</i>	100% of the 53% that discussed Visitation	0%

<i>Rate of Attendance</i>	<i>Indicator of depth if visitation discussed</i>	25% of the 53% that discussed Visitation	0%
<i>Changes to Visitation Plan/Schedule</i>	<i>Indicator of depth if visitation discussed</i>	100% of the 53% that discussed Visitation	0%
Visitation with Siblings	Not required	20%	0%
Educational Plans and Needs	Not required	53%	0%
<i>School Readiness (ECI)</i>	<i>Indicator of depth if education discussed</i>	2 hearings	0%
<i>Educational Decision-Maker</i>	<i>Indicator of depth if education discussed</i>	3 hearings	0%
<i>School Stability</i>	<i>Indicator of depth if education discussed</i>	1 hearing	0%
<i>IEPs/Special Education</i>	<i>Indicator of depth if education discussed</i>	3 hearings	0%
<i>Enrollment/Records</i>	<i>Indicator of depth if education discussed</i>	3 hearings	0%
<i>Extracurricular Activities</i>	<i>Indicator of depth if education discussed</i>	0%	0%
<i>Grades/Passing (Placement Services)</i>	<i>Indicator of depth if education discussed</i>	3 hearings	0%
<i>Post-Secondary Educational Goal</i>	<i>Indicator of depth if education discussed</i>	0%	0%
Medical Care	Not Required	67%	7%
Psychotropic Medication	Not Required	20%	7%
<i>Taking as Prescribed</i>	<i>Indicator of depth if meds discussed</i>	33% of the 20% that discussed psych meds	0%
<i>Appropriateness of Medication</i>	<i>Indicator of depth if meds discussed</i>	33% of the 20% that discussed psych meds	0%
<i>Side Effects</i>	<i>Indicator of depth if</i>	0%	0%

meds discussed

Overall, there were 18 to 19 relevant indicators applicable in the Adversary Hearings observed. The observed hearings lasted, on average, 15 minutes. Service of parties was addressed in every case observed, either in the hearing or in the case file, and all parents present without attorneys were admonished of their right to a court appointed attorney, if indigent and opposed to the suit. Judges inquired about absent parties in a little over two-thirds of the hearings where relevant. ICWA, however, was only addressed in 14% of the total cases (7% in hearing and 7% in file). Findings that for the child to remain in the home is contrary to the welfare of the child and that reasonable efforts were made to eliminate or prevent removal and allow the child to return were made in less than half of the 15 hearings observed. More than half of the Adversary Hearings observed addressed 80% of the relevant Due Process Indicators, indicating that judges and attorneys are making strong efforts to protect important due process rights of parents. Current and alternative placements, visitation with parents, medical care and education were also discussed at a majority of the Adversary Hearings.

III. Status Hearings

The purpose of the Status Hearing is to review the development and status of the family plan of service and the child’s status in care. Many of the Due Process Indicators are not required but should come up in the hearing if they are a continuing issue in the case or were not established in the Adversary Hearing. For example, the Adversary Hearing should address service, but service on a few of the parties could be lingering issues at the Status Hearing and beyond. As demonstrated in the table below, since many of the procedural issues are handled in the Adversary Hearing, addressing service and informing parents of their right to an attorney was only relevant in a handful of cases. However, there are still a few Due Process Indicators that should occur in each Status Hearing. Since the court is tasked in this hearing with reviewing how the child is doing in care, all of the Well-Being Indicators should be discussed when relevant in the case.

The charts below demonstrate which indicators from the observation tool were addressed at the hearing or in the file.

Status Hearing Due Process Indicators			
Indicator	Relevant	% discussed in the Hearing	% mentioned or noted in the File
Identify All Parties Present	Yes	74%	NA
Inquired About	Yes	64%	0%

Absent Parties			
Addressed Service on Mother	Yes	24%, 3 cases not addressed	59%
Addressed Service on Father 1	Yes	37%, 3 cases not addressed	47%
Addressed Service on Father 2	Yes, When Applicable	3 hearings, 1 case not addressed	2 in case file
Addressed Service on Father 3	Yes, When Applicable	None Applicable	2 in case file
Addressed Service on Other	Yes, When Applicable	1 hearing	2 in case file
Orders Regarding Parties w/o Service	Yes, When Applicable	2 hearings, 1 case not addressed	2 in case file
Admonished Parents re: Right to an Attorney	Yes, when Parents are Present w/o Attorney	2 hearings, 2 not addressed	0%
Admonished Parents re: TPR	Yes, when Parents are Present	40%	0%
ICWA	Yes	0%	37%
Reasonable Efforts	Yes	11%	0%
Clear Orders/Next Steps	Yes	63%	0%
Set Next Hearing	Yes	74%	0%

Status Hearing Well-Being Indicators			
Indicator	Relevant	% discussed in the Hearing	% mentioned or noted in the File
Discussed Current Placement	Yes	84%	0%
Alternative Placement Discussed	Yes	37%	0%
Discussed Mediation, FGC, Other	Sometimes	11%	5%

Visitation with Parents	Yes	68%	0%
<i>Frequency of Visitation</i>	<i>Indicator of depth</i>	47%	5%
<i>Rate of Attendance</i>	<i>Indicator of depth</i>	21%	5%
<i>Changes to Visitation Plan/Schedule</i>	<i>Indicator of depth</i>	42%	0%
Visitation with Siblings	Yes, if siblings and not placed together	13%	0%
Educational Plans and Needs	Yes, if age appropriate, and now required by Texas Family Code	53%	11%
<i>School Readiness (ECI)</i>	<i>Indicator of depth if age-appropriate</i>	17%	8%
<i>Educational Decision-Maker</i>	<i>Indicator of depth</i>	7%	0%
<i>School Stability</i>	<i>Indicator of depth</i>	14%	0%
<i>IEPs/Special Education</i>	<i>Indicator of depth</i>	14%	7%
<i>Enrollment/Records</i>	<i>Indicator of depth</i>	36%	0%
<i>Extracurricular Activities</i>	<i>Indicator of depth</i>	8%	0%
<i>Grades/Passing (Placement Services)</i>	<i>Indicator of depth</i>	36%	0%
<i>Post-Secondary Educational Goal</i>	<i>Indicator of depth</i>	0%	0%
Medical Care	Yes	42%	21%
Psychotropic Medication	Yes	2 hearings	42%
<i>Taking as Prescribed</i>	<i>Indicator of depth if on medication</i>	2 hearings	0%
<i>Appropriateness of Medication</i>	<i>Indicator of depth if on medication</i>	1 hearing	1 case

<i>Side Effects</i>	<i>Indicator of depth if on medication</i>	0%	1 case
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The study observed 19 Status Hearings lasting on average 13-15 minutes. The hearings were conducted by 10 judges in 10 courts. About one-fifth of the hearings were in rural areas and CPC judges administered 40% of the hearings.

Status Hearings had an average of 27 relevant indicators largely due to the increase in Well-Being Indicators discussed in comparison to the Adversary Hearing that may be relevant even when Due Process Indicators are not. There was a decrease in the number of relevant Due Process Indicators addressed from a median of 83% in Adversary Hearings to 43% in Status Hearings. Although the focus of a Status Hearing shifts to how the children and parents are doing and the service plan, there were service issues that went unaddressed in some of the hearings. Parents who appeared without an attorney were often not informed of their right to an attorney or admonished about the possibility of termination of their parental rights. Effective September 1, 2013, judges are required to admonish parents of their right to an attorney at every hearing conducted under Texas Family Code Chapter 263.²⁴

For the Well-Being Indicators discussed at the Status Hearings, most courts addressed the child’s current placement, but fewer addressed the issue of alternative placement. Two-thirds of the hearings addressed visitation with parents, but in cases where siblings were placed separately, only 13% of the hearings also discussed sibling visitation. The educational needs of the child were mentioned in over half of the hearings, but very few of the depth indicators regarding education were addressed. Regarding the health of the child, medical care was addressed 42% of the time, but psychotropic medication came up in only 11% of the Status Hearings, with extremely limited discussion of the depth indicators. The indicators addressed at the Status Hearings paint a picture of a broad sweep of the child Well-Being Indicators with an emphasis on the current placement of the child and visitation with the parents, which appears to be an appropriate emphasis. Though the case files contain some additional information on the indicators, 52% of the relevant indicators were not addressed in either the hearing or the case file.

IV. Initial Permanency Hearings

Even more than Status Hearings, Permanency Hearings are intended to thoroughly review the child’s placement and the parents’ service plan progress; there is less emphasis on the Due Process Indicators that focus on protection of parental rights and more emphasis on the well-being of the child and whether parents are making progress towards reunification or another permanency goal. The initial Permanency Hearing is the mid-point between the Adversary and the final hearing, so a thorough assessment of the

²⁴ Tex. Fam. Code Ann. § 263.0061.

child and family status is essential and all Well-Being Indicators can be relevant, depending on the specifics of the case.

The charts below demonstrate which indicators from the observation tool were addressed at the hearing or in the file.

Initial Permanency Due Process Indicators			
Indicator	Relevant	% discussed in the Hearing	% mentioned or noted in the File
Identified All Parties Present	Yes	80%	NA
Inquired About Absent Parties	Yes	78%	0%
Addressed Service on Mother	Yes	25%, 1 case not addressed	63%
Addressed Service on Father 1	Yes	50%, 2 cases not addressed	25%
Addressed Service on Father 2	Yes, When Applicable	1 hearing, 1 case not addressed	0%
Addressed Service on Father 3	Yes, When Applicable	1 hearing	0%
Addressed Service on Other	Yes, When Applicable	None Applicable	None Applicable
Orders Regarding Parties w/o Service	Yes, When Applicable	1 hearing, 2 cases not addressed	0%
Admonished Parents re: Right to an Attorney	Yes, when Parents are Present w/o Attorney	1 hearing	0%
Admonished Parents re: TPR	Yes, when Parents are Present	57%	0%
ICWA	Yes	0%	30%
Reasonable Efforts	Yes	10%	0%
Clear Orders/Next Steps	Yes	90%	0%

Set Next Hearing	Yes	90%	0%
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Initial Permanency Hearing Well-Being Indicators			
Indicator	Relevant	% discussed in the Hearing	% mentioned or noted in the File
Discussed Current Placement	Yes	80%	0%
Alternative Placement Discussed	Yes	40%	0%
Discussed Mediation, FGC, Other	Sometimes	0%	10%
Visitation with Parents	Yes	60%	0%
<i>Frequency of Visitation</i>	<i>Indicator of depth</i>	50%	0%
<i>Rate of Attendance</i>	<i>Indicator of depth</i>	30%	0%
<i>Changes to Visitation Plan/Schedule</i>	<i>Indicator of depth</i>	40%	0%
Visitation with Siblings	Yes, if siblings and not placed together	0%	0%
Educational Plans and Needs	Yes, if age appropriate, and now required by Texas Family Code	60%	20%
<i>School Readiness (ECI)</i>	<i>Indicator of depth if age-appropriate</i>	20%	0%
<i>Educational Decision-Maker</i>	<i>Indicator of depth</i>	0%	0%
<i>School Stability</i>	<i>Indicator of depth</i>	14%	0%
<i>IEPs/Special Education</i>	<i>Indicator of depth</i>	29%	0%
<i>Enrollment/Records</i>	<i>Indicator of depth</i>	71%	0%
<i>Extracurricular</i>	<i>Indicator of depth</i>	29%	0%

<i>Activities</i>			
<i>Grades/Passing (Placement Services)</i>	<i>Indicator of depth</i>	43%	0%
<i>Post-Secondary Educational Goal</i>	<i>Indicator of depth</i>	0%	17%
Medical Care	Yes	70%	20%
Psychotropic Medication	Yes	67%	22%
<i>Taking as Prescribed</i>	<i>Indicator of depth if on medication</i>	2 hearings	0%
<i>Appropriateness of Medication</i>	<i>Indicator of depth if on medication</i>	2 hearings	0%
<i>Side Effects</i>	<i>Indicator of depth if on medication</i>	1 hearing	0%

The study observed 10 initial Permanency Hearings lasting on average 16 – 17 minutes in seven courts with seven different judges from a mix of rural, urban, and CPC courts.²⁵ Overall, the discussion of the Due Process Indicators was much higher than in Status Hearings, particularly identifying the parties present, providing clear orders and next steps, and setting the next hearing date, though there were still a few cases where service should have been addressed and it was not. There was also a similar trend regarding the Well-Being Indicators as in the Status Hearings, especially with regards to discussing placements and visitation. A very similar percentage of initial Permanency Hearings as Status Hearings discussed current placements, alternative placements, other conferences, and the breadth and depth of visitation. Notably, none of the issues regarding sibling visitation were ever addressed in the initial Permanency Hearings, even in those cases where it was applicable. There was an increase in the number of hearings that addressed educational plans and a substantial uptick in each depth indicator, indicating that education was discussed more deeply in initial Permanency Hearings than in Status Hearings. There was a substantial increase observed at the initial Permanency Hearings in the discussion of medical care, psychotropic medication, and the depth of care.

Initial Permanency Hearings had, on average, 27 relevant indicators. Although there was a substantial increase overall in the percentage of indicators addressed in both the hearings and the files and in each category of indicators, there were still about 48% of the issues that were never addressed.

²⁵ Note that there was a much smaller sample size of initial permanency hearings than most other types of hearings.

V. Subsequent Permanency Hearings

Subsequent Permanency Hearings serve much of the same purpose as initial Permanency Hearings. The Hearing Quality Indicators are the same as the initial Permanency Hearing.

The charts below demonstrate which indicators from the observation tool were addressed at the hearing or in the file.

Subsequent Permanency Due Process Indicators			
Indicator	Relevant	% discussed in the Hearing	% mentioned or noted in the File
Identify All Parties Present	Yes	72%	NA
Inquired About Absent Parties	Yes	67%	3%
Addressed Service on Mother	Yes	25%	63%
Addressed Service on Father 1	Yes	43%	46%
Addressed Service on Father 2	Yes, When Applicable	33%, 1 case not addressed	56%
Addressed Service on Father 3	Yes, When Applicable	3 hearings	2 cases
Addressed Service on Other	Yes, When Applicable	None Applicable	1 case
Orders Regarding Parties w/o Service	Yes, When Applicable	50%	13%
Admonished Parents re: Right to an Attorney	Yes, when Parents are Present w/o Attorney	1 hearing, 3 not addressed	0%
Admonished Parents re: TPR	Yes, when Parents are Present	58%	0%
ICWA	Yes	0%	44%
Reasonable Efforts	Yes	8%	0%

Clear Orders/Next Steps	Yes	62%	8%
Set Next Hearing	Yes	90%	8%

Subsequent Permanency Hearing Well-Being Indicators			
Indicator	Relevant	% discussed in the Hearing	% mentioned or noted in the File
Discussed Current Placement	Yes	72%	10%
Alternative Placement Discussed	Yes	36%	3%
Discussed Mediation, FGC, Other	Sometimes	26%	0%
Visitation with Parents	Yes	59%	5%
<i>Frequency of Visitation</i>	<i>Indicator of depth</i>	38%	0%
<i>Rate of Attendance</i>	<i>Indicator of depth</i>	33%	0%
<i>Changes to Visitation Plan/Schedule</i>	<i>Indicator of depth</i>	36%	0%
Visitation with Siblings	Yes, if siblings and not placed together	11%	4%
Educational Plans and Needs	Yes, if age appropriate, and now required by Texas Family Code	44%	15%
<i>School Readiness (ECI)</i>	<i>Indicator of depth if age-appropriate</i>	19%	15%
<i>Educational Decision-Maker</i>	<i>Indicator of depth</i>	0%	0%
<i>School Stability</i>	<i>Indicator of depth</i>	17%	0%
<i>IEPs/Special Education</i>	<i>Indicator of depth</i>	31%	14%

<i>Enrollment/Records</i>	<i>Indicator of depth</i>	36%	4%
<i>Extracurricular Activities</i>	<i>Indicator of depth</i>	14%	7%
<i>Grades/Passing (Placement Services)</i>	<i>Indicator of depth</i>	46%	4%
<i>Post-Secondary Educational Goal</i>	<i>Indicator of depth</i>	12%	0%
Medical Care	Yes	51%	44%
Psychotropic Medication	Yes	41%	43%
<i>Taking as Prescribed</i>	<i>Indicator of depth if on medication</i>	17%	0%
<i>Appropriateness of Medication</i>	<i>Indicator of depth if on medication</i>	26%	0%
<i>Side Effects</i>	<i>Indicator of depth if on medication</i>	9%	4%

The study observed 39 subsequent Permanency Hearings lasting on average 15-16 minutes with 10 judges in nine courts. About one-quarter were from rural jurisdictions and about half in CPC courts. The trends in the Due Process Indicators for the subsequent Permanency Hearings are very similar to the initial Permanency Hearings with some drops in indicators, possibly due to the larger sample size of subsequent Permanency Hearings. Although it is less likely that service or the appointment of an attorney is relevant at a second or third Permanency Hearing, there were hearings where service issues went unaddressed, even though the final hearing was on the horizon. And, there were three instances where parents appeared without attorneys at the subsequent Permanency Hearing and were not advised of their right to an attorney.²⁶

There are also very similar trends with regards to placement discussion and parent visitation in the Well-Being Indicators. The vast majority of hearings discussed the current placement of the child but did not address possible alternative placements. Even though there was clear evidence that parent visitation is an important point of discussion in many hearings, sibling visitation was very rarely addressed for children who were placed separately from their siblings.

²⁶ The statutory requirement to admonish parents of the right to a court appointed attorney if they appeared opposed and indigent at all hearings held under Chapter 263 was effective September 1, 2013, after the observation project ended. There was no information in the files regarding indigence or request for an attorney.

Interestingly, education, medical needs, and psychotropic medication were addressed less frequently in subsequent Permanency Hearings than in the initial Permanency Hearing, but information about these issues appeared in the court reports filed in the case. For example, the Permanency Hearing court report lists any medication and dosage and includes school and education information, which some judges reported reviewing before the hearing. Also, at the second and third Permanency Hearings, the courts may be dealing more with case resolution and the parent's progress toward the permanency goal or setting the case for mediation or trial in order to meet the statutory deadline for a final order.

VI. Final Hearing

The final hearing is a trial on the merits or final order hearing for the court to decide whether the child will be reunified with a parent, the parental rights will be voluntarily relinquished or involuntarily terminated, or the child will be placed in the conservatorship of another adult or the state without termination of parental rights. Child Well-Being Indicators are not as relevant in the final hearing, but because the court is charged with making its orders based in part on the best interest of the child, well-being is often considered, especially in contested final hearings. The study observed 16 final hearings conducted by nine judges in eight courts. A handful of the hearings were in rural counties and almost half were in CPC courts. None of the final hearings observed were contested hearings or trials.

The charts below demonstrate which indicators from the observation tool were addressed at the final order hearing or in the file.

Final Due Process Indicators			
Indicator	Relevant	% of Hearings that addressed the issue	% mentioned or noted in the File
Identified All Parties Present	Yes	81%	NA
Inquired About Absent Parties	Yes, When Applicable	57%	7%
Addressed Service on Mother	Must be Resolved	21%, 2 cases not addressed	64%
Addressed Service on Father 1	Must be Resolved	33%	67%
Addressed Service	If Applicable Must be	3 hearings	1 case

on Father 2	Resolved		
Addressed Service on Father 3	If Applicable Must be Resolved	None Applicable	1 case
Addressed Service on Other	If Applicable Must be Resolved	None Applicable	1 case
Orders Regarding Parties w/o Service	If Applicable Must be Resolved	None Applicable	None Applicable
Admonished Parents re: Right to an Attorney	Not Applicable – <i>attorney should be appointed at this stage.</i>		
Admonished Parents re: TPR	Not Applicable – <i>this is the final order hearing.</i>		
ICWA	If not Previously Addressed	13%	44%
Reasonable Efforts	Yes	13%	0%
Clear Orders/Next Steps	Yes	64%	0%
Set Next Hearing	Yes	69%	0%

Final Hearing Well-Being Indicators			
Indicator	Inquiry	% of Hearings that addressed the issue	% mentioned or noted in the File
Discussed Current Placement	Not required	81%	6%
Alternative Placement Discussed	Not required	67%	33%
Discussed Mediation, FGC, Other	Not required	19%	6%
Visitation with Parents	Not required	70%	30%

Frequency of Visitation	<i>Indicator of depth if visitation discussed</i>	63% of the 70% of hearings where visitation was discussed	1 case
Rate of Attendance	<i>Indicator of depth if visitation discussed</i>	57% of the 70% of hearings where visitation was discussed	1 case
Changes to Visitation Plan/Schedule	<i>Indicator of depth if visitation discussed</i>	0%	1 case
Visitation with Siblings	Not required	50%	50%
Educational Plans and Needs	Not required	30%	70%
School Readiness (ECI)	<i>Indicator of depth if education discussed</i>	0%	2 cases
Educational Decision-Maker	<i>Indicator of depth if education discussed</i>	0%	0%
School Stability	<i>Indicator of depth if education discussed</i>	0%	0%
IEPs/Special Education	<i>Indicator of depth if education discussed</i>	25% of the 30% of hearings where education was discussed	2 cases
Enrollment/Records	<i>Indicator of depth if education discussed</i>	25% of the 30% of hearings where education was discussed	1 case
Extracurricular Activities	<i>Indicator of depth if education discussed</i>	20% of the 30% of hearings where education was discussed	2 cases
Grades/Passing (Placement Services)	<i>Indicator of depth if education discussed</i>	40% of the 30% of hearings where education was discussed	2 cases
Post-Secondary	<i>Indicator of depth if</i>	0%	0%

<i>Educational Goal</i>	<i>education discussed</i>		
Medical Care	Not Required	20%	80%
Psychotropic Medication	Not Required	23%	77%
<i>Taking as Prescribed</i>	<i>Indicator of depth if meds discussed</i>	1 case of the 23% of hearings where psych meds were discussed	1 case
<i>Appropriateness of Medication</i>	<i>Indicator of depth if meds discussed</i>	1 case of the 23% of hearings where psych meds were discussed	1 case
<i>Side Effects</i>	<i>Indicator of depth if meds discussed</i>	0%	0%

In general, between the actual hearings observed and file reviews, the final hearings observed covered around 75% of the relevant indicators compared to only 50% of the relevant indicators addressed between the case files and hearings for other hearing-types. The fewer indicators that are relevant and addressed drives up the percentage of indicators addressed overall.

VII. Placement Review Hearings

Placement Review Hearings are for children in the PMC of the state. All children who do not exit the foster care system to reunification or permanent placement with a relative will enter PMC. Children can be in PMC with and without termination of parental rights. As in the TMC stage, the goal of the court, attorneys and guardians ad litem, CASAs if appointed, and the child welfare agency is to move the child to a permanent placement as soon as possible. These hearings, more than others, should place a greater emphasis on the well-being of the child since they are in the permanent care of the state. Most of the Due Process Indicators, like service and parent admonishment, are no longer relevant.

The charts below demonstrate which indicators an ideal Placement Review Hearing should address and the percentage of Placement Review Hearings from the study that addressed each relevant indicator.

Placement Review Due Process Indicators

Indicator	Relevant	% of Hearings that addressed the issue	% mentioned or noted in the File
Identified All Parties Present	Yes	50%	NA
Inquired About Absent Parties	Yes, When Applicable	33%	0%
Addressed Service on Mother	Not Relevant		
Addressed Service on Father 1	Not Relevant		
Addressed Service on Father 2	Not Relevant		
Addressed Service on Father 3	Not Relevant		
Addressed Service on Other	Not Relevant		
Orders Regarding Parties w/o Service	Not Relevant		
Admonished Parents re: Right to an Attorney	Not Relevant		
Admonished Parents re: TPR	Not Relevant		
ICWA	If not Previously Addressed	8%	50%
Reasonable Efforts	Yes	5%	0%
Clear Orders/Next Steps	Yes	54%	0%
Set Next Hearing	Yes	60%	8%

Placement Review Hearings Well-Being Indicators

Indicator	Relevant	% discussed in the Hearing	% mentioned or noted in the File
Discussed Current	Yes	93%	3%

Placement			
Alternative Placement Discussed	Yes	45%	8%
Discussed Mediation, FGC, Other	Sometimes	8%	3%
Visitation with Parents	Yes, When Applicable	71%	29%
<i>Frequency of Visitation</i>	<i>Indicator of depth</i>	56%	19%
<i>Rate of Attendance</i>	<i>Indicator of depth</i>	29%	7%
<i>Changes to Visitation Plan/Schedule</i>	<i>Indicator of depth</i>	60%	7%
Visitation with Siblings	Yes, if siblings and not placed together	38%	17%
Educational Plans and Needs	Yes, if age appropriate, and now required by Texas Family Code	65%	23%
<i>School Readiness (ECI)</i>	<i>Indicator of depth if age-appropriate</i>	15%	8%
<i>Educational Decision-Maker</i>	<i>Indicator of depth</i>	3%	0%
<i>School Stability</i>	<i>Indicator of depth</i>	29%	9%
<i>IEPs/Special Education</i>	<i>Indicator of depth</i>	42%	31%
<i>Enrollment/Records</i>	<i>Indicator of depth</i>	33%	25%
<i>Extracurricular Activities</i>	<i>Indicator of depth</i>	20%	17%
<i>Grades/Passing (Placement Services)</i>	<i>Indicator of depth</i>	15%	17%
<i>Post-Secondary Educational Goal</i>	<i>Indicator of depth</i>	17%	10%
Medical Care	Yes	38%	43%

Psychotropic Medication	Yes	43%	38%
<i>Taking as Prescribed</i>	<i>Indicator of depth if on medication</i>	22%	16%
<i>Appropriateness of Medication</i>	<i>Indicator of depth if on medication</i>	23%	0%
<i>Side Effects</i>	<i>Indicator of depth if on medication</i>	7%	10%

The study observed 40 Placement Review Hearings lasting on average 10-12 minutes and conducted by 11 judges in 11 courts. Two of the judges only heard Placement Review Hearings on their dockets the day of the observation. The hearings were from a mixture of rural, urban, and CPC courts. The Placement Review Hearings had about 22 relevant factors to review, which are fewer than other hearings. It should be noted that progress towards permanency once a child is placed in PMC is not necessarily captured in the indicators outside of discussing the placement; an additional important focus is the child's well-being while working toward permanency. Discussing the current placement happened in almost all cases and close to half of the hearings discussed an alternative placement. The relevant Well-Being Indicators were discussed only 35% of the time in the hearing, but the case files also included information about the child's well-being. Significantly, there was also more information in the case file at this point in the case.

Placement Review Hearings had a particular emphasis on the educational plans and needs of the child, especially with regards to special education and school enrollment. This is likely due in part to the importance of education in the lives of children in PMC who tend to be older and the recent push in Texas to enhance the educational experiences of children in foster care.

F. Legal Advocacy

The issues involved in child welfare hearings are complex and family situations are often complicated, so lawyers for the parties play an integral role in presenting the necessary information in court and helping children and parents achieve safe and stable outcomes. All of the hearings observed had a lawyer for the child welfare agency except for the few cases where the state's attorney did not appear.²⁷ A vast majority of the cases (76%) also had an Attorney *Ad Litem* (AAL) for the child. The children who did not have an attorney were in PMC and it is likely their attorneys were dismissed at the entry of the final order appointing DFPS as PMC. A good proportion of the cases had mothers' attorneys (45%)

²⁷ In one case, the Dept had been non-suited, and in two others, the court was conducting a service review on an Extended Foster Care case.

and about one-third had fathers' attorneys (33%). There were only 14 hearings with attorneys for Father 2 present (9% percent of hearings), and 6 hearings with interveners present. A few cases also had other types of parties present: 1) an AAL for the mother; 2) separate AALs for children in the same family; and 3) Father 3 attorneys.

Lawyers in Hearings			
Type of Attorney	Present	Absent	Substitute
State's Attorneys	98%	0%	0%
Mothers' Attorneys	45%	14%	7%
Father 1 Attorneys	33%	19%	3%
Father 2 Attorneys	9%		
Attorneys <i>Ad Litem</i>	76%	9%	6%
Intervener/Other	9%		

Attorneys differed in the advocacy measures used and the issues they brought up for discussion. As methods of advocacy, attorneys presented oral or written reports formally and informally, called witnesses, and provided documents to the court that were submitted in evidence. About one-quarter of all attorneys presented an oral report before the court and 16% called or questioned witnesses. Attorneys often advocated for client services, family contact, or placement change, even when they did not file pleadings or make oral reports. Mothers' attorneys advocated most often for services, and mothers' attorneys, fathers' attorneys, and AALs had similar rates of advocacy for family contact, placement change, and other issues. The parties were very similar in the frequency and type of advocacy method employed, with state's attorneys doing a little less in the hearings and mother's attorneys doing a little more.

	Advocacy Methods				Issues Raised			
	Oral	Report	Witness	Docs	Services	Family Contact	Placement Change	Other
All Parties	8%	26%	16%	3%	15%	14%	11%	10%
State's Attorney	5%	21%	21%	7%	7%	4%	4%	7%
Mother Attorney	11%	28%	24%	1%	30%	24%	16%	16%
Father Attorney	9%	20%	13%	2%	22%	19%	19%	17%

AALs	9%	40%	15%	1%	23%	25%	16%	12%
CASA	10%	40%	NA	NA	14%	19%	11%	7%

V. Recommendations

The hearing quality observation project revealed that the majority of Texas child welfare courts address statutorily required issues at some point in the case and many courts are sufficiently assessing aspects of the child’s well-being while in foster care. There are a few indicators, both statutorily required and national best practices, which might result in better outcomes for children and families, if addressed more often in court. While some information does appear in the case file, the presence of the information in the case file does not necessarily mean that the judge, the parties, or the attorneys are fully informed about the issue or that the information is correct and up to date. Therefore, it is advisable that judges and attorneys discuss as much of the information relevant to the case in the court hearings as possible. The following recommendations highlight areas of inquiry that should be discussed more often in the courtroom and efforts courts can take to enhance the depth and breadth of the information presented.

I. Court Structure and Process

a. Consider using specialized judges and/or engage in more specialized training

The CPC courts observed covered more relevant indicators and had higher engagement of parties than non-CPC courts, even after controlling for geography and other factors such as docket size. Generally, CPC judges are specially trained judges who have a singular attention to child protection cases. Their dockets are structured in a way that allow more time per case and increased engagement with cases and parties, and the courts have a case management system that systematizes the workload. These three factors, working together, help ensure that cases heard in CPC courts address statutory requirements, implement best practices, and engage parties in the proceedings. Jurisdictions should evaluate whether they might move toward specialization of the judges handling these cases and judges who handle these cases should strive to engage in specialized training to more effectively bring children to safe, permanent outcomes. Specialized training is offered by the Children’s Commission, the Texas Center for the Judiciary, and the State Bar of Texas, as well as national organizations.

b. Judges should consider the use of the bench book, bench cards and checklists

Although experience handling these cases is beneficial, even experienced and specialized judges did not consistently cover all areas of inquiry. Judges may find that checklists, bench cards or other aids designed to remind judges of the relevant factors result in more thorough and meaningful hearings.

c. Set Fewer Cases on the Dockets to Allow for More Thorough Hearings.

The study shows that there is a clear cut-off point of 15 cases to be heard on the docket for a half-day, either in the morning or the afternoon. Beyond 15 cases, there was a marked decrease in the number of indicators addressed in the hearings and the review of plans for children and families as larger dockets naturally have more time constraints. Full consideration of the issues at play in a case enhances child and family well-being; docket case load impacts the breadth and depth of the discussions in the hearings. In balancing the need to hear as many cases as possible in a given day, 15 seems to be the maximum number of cases where there is enough time and resources to cover the necessary issues in each hearing.

d. Increase Length of Time of Hearings

Not surprisingly, hearing length is directly associated with the number of issues addressed in court. According to the study, hearings that lasted 25 minutes or more covered the most issues in depth and breadth, had higher engagement of parties, and addressed plans for the children and parents. However, at 25 minutes per hearing, a court could only schedule about 10 hearings in half a day. The maximum of 15 cases for a half-day is recommended, and even when the optimal length of 25 minutes cannot be achieved in every case, hearings should always last longer than 10 minutes. The study showed that there was a dramatic difference in hearings that lasted less than 10 minutes and hearings that lasted more than 10 minutes as indicated by the jump in the percentage of relevant indicators addressed. This is especially true in Placement Review Hearings, which were more likely to last only a few minutes compared to any other type of hearing. Hearings should last a bare minimum of 10 minutes, but judges should aspire to spend 25 minutes on a hearing when possible.

e. Statutory Hearings Should Be Set at Specific Times

Many families, caseworkers, and attorneys spent up to four hours waiting for their cases to be heard. Such delays cost both time and money. Caseworkers spending long days in court are deterred from work on other cases. Also, a child or youth waiting for a hearing to be called might miss school for a good portion of the school day. One court observed set a case for hearing every 20 minutes throughout the docket and another set three to seven cases every hour; these might be promising docketing practices other judges might consider. Judges should avoid setting all cases at one time but rather attempt to set their cases in different time slots throughout the docket or in small clusters of a few cases per hour to cut the waiting time. Local docketing changes should be examined to determine whether setting hearings at specific times will help decrease waiting times, which in turn could reduce attorneys' fees and other costs related to lengthy wait-times.

f. Judges Should Read Court Reports Prior to Hearing

Due to the limited time for hearings, reading CPS, CASA, and attorney ad litem reports, if filed in the court's jurisdiction, prior to the hearing will help the judge focus on important issues for each child and avoid the need to fish for information. In addition to reading these reports, judges should review dockets and court files to check service on parties, ICWA compliance, timely appointment of attorneys, and other issues.

g. Judges Should Use Bench Books, Bench Cards, or Checklists

Using bench cards or checklists to prepare for the hearing, judges could note issues that especially need to be addressed at the hearing. A short time of preparation would help judges conduct effective hearings in the limited time available.

II. Federal Statutorily Required Findings

a. Make Reasonable Efforts Findings from the Bench

The Texas Family Code has codified federal statutes that require the agency to make reasonable efforts to avoid removal, to reunify the child with the parents, and to finalize the permanency plan for the child.²⁸ These findings are important because funding for the child welfare agency is tied to them, but more importantly, an articulation of the reasonable efforts helps hold the child welfare agency accountable for the work done outside the courtroom to promote family stability and the child's safety, well-being, and permanency. However, a vast majority of the courts made no specific findings or even mentioned reasonable efforts but rather included boilerplate language on reasonable efforts in the court orders. If judges take the initiative to make specific reasonable efforts findings in court, it will spur a more substantive discussion of the agency's efforts with children and families at every point in the case. Almost every judge who participated in the study said that the absence and inadequate work done by case workers is the biggest problem they confront. Making reasonable efforts findings from the bench, which are directed at DFPS and their efforts to assist the family rather than to the parent and their compliance or progress against the plan, sends a message that there is a minimally acceptable level of case work in these important proceedings.

Also, in 2012, as part of the federal Title IV-E Audit, the Children's Bureau found certain Texas court orders to be deficient in child specificity and reasonable efforts related to finalizing a child's permanency plan. Several court orders reviewed used boilerplate language, check boxes, and blanks that were either not completed or did not include the child's name. Courts should make child-specific findings and reasonable effort findings on the record as well as in their court orders.

²⁸ Tex. Fam. Code Ann. §§ 262.107(a)(3); 262.201(b)(3); 263.306(E); and 263.503 (a)(8).

b. Greater Emphasis on Determining the Applicability of ICWA

ICWA requires the court to make a finding regarding whether a child under the jurisdiction of the court is a member or is eligible to be a member of a Native American Indian tribe. If a child before the court falls within the parameters of ICWA, it will affect the court's jurisdiction as well as placement issues. Only 4% of the judges observed addressed ICWA in the hearings. Judges appeared to be unaware of ICWA or were relying on the case files to establish ICWA information. Failure to address ICWA can have serious ramifications for the child and the family because discovering a child's Native American status late in the case can cause traumatic placement disruptions and delay permanency. Relying on agency data may also be detrimental to the case. Observations revealed that often the caseworker had incomplete or incorrect data, i.e., information from only one parent or from a caseworker who filled out the required forms based on the visual appearance of the child. These assumptions are problematic because the appearance of the child is not necessarily indicative of the child's heritage. Since CPS data should not be relied on exclusively, it is imperative that judges take the initiative to ask about ICWA early on in the case, preferably at the Adversary Hearing and note in the court's order and file that the question was asked and answered.

III. Due Process Requirements

a. Frontload Procedural Issues by Addressing Them During Early Hearings

If all of the procedural issues are addressed at the beginning of the case, there is more time to spend on other issues such as child well-being and family service plans in later hearings. Judges should address all of the procedural issues, such as service on the parties, ICWA, notice to extended family members, and establishing parentage during the Adversary and Status Hearings. Adopting this procedure would also help to avoid an extension being granted due to failure to meet due process requirements in the case.

b. Continue to Address Service at Every Hearing

Judges and attorneys do a good job bringing up service at the beginning of the case, but lingering service issues are often not brought up in court again, leaving them unresolved until very late in the case. Judges should continue to address service when it is an issue after the Adversary Hearing, particularly if legal pleadings are amended. Especially if a parent is not present, judges should inquire about service at the Status Hearing and the initial and subsequent Permanency Hearings, if necessary.

c. Admonish Parents of Right to an Attorney At Every Statutorily Required Hearing

Parents often appeared without an attorney at later stages in the proceedings and were not admonished of their right to an attorney. It is possible that the judge had

admonished the parent in previous hearings, but it was not noted in the file. The Texas Family Code now requires that the court admonish the parent of his or her right to a court appointed attorney at every hearing held under Chapter 263.²⁹

IV. Child and Family Well-Being

a. Review Permanency Plans and Concurrent Plans More Often

One-third of hearings did not review permanency plans for the children. Moreover, concurrent plans were very rarely reviewed in court. The primary purpose of the court proceedings is to move children to permanency, either by reunification or through some other means, so it is imperative that the court review both the primary permanency plan and the concurrent plan, which acts as a contingency plan in case the primary goal cannot be reached. The court should review the plan, whether it is achievable, and progress on achieving the plan. This review also aids the court to make findings that DFPS has made reasonable efforts toward finalizing a child's permanency plan.

b. Give More Emphasis to Child Well-Being in Placement Review Hearings

It is essential that judges take time to inquire about the well-being, education, and health of the child, particularly those in long-term foster care who rely on the child welfare agency and the court to ensure their quality of life. If a child is not thriving in care, the judge is often the last resort to change the life of that child. Placement Review Hearings that are short in length do not adequately address the child's well-being and fail to provide appropriate oversight of the agency or identify necessary changes the child may need. Judges should take time to ensure they receive a full picture of the child's situation, not simply a caseworker's opinion that the "child is doing OK." Judges should delve into the child's medical care, use of psychotropic medications, education, and placement.

The Texas Family Code now requires that judges inquire about psychotropic medications and, in many of the hearings observed, whether the child was taking medication was addressed either in the case file or the hearing. However, courts should do more than just ask about whether the child is taking medication. Psychotropic medications have become an important focal point in child welfare in Texas and discussions regarding a child's use of them should include asking if the medication is appropriate, whether the child is taking it as prescribed, and if there are any side effects. Inquiry should include exploration of alternative medications or modifications that might be effective. Judges should also specifically inquire of older youth their opinions and feelings about the medical care they are receiving and about medications they may be prescribed.

²⁹ Tex. Fam. Code Ann. § 263.0061.

c. Address Sibling Visitation when Siblings are not Placed Together

Very often when siblings were in separate placements, sibling visitation was not addressed in the hearing or in the case file. If siblings who have a relationship with each other are placed apart, maintaining contact may be vital to their well-being. Courts should ensure that appropriate sibling contact and visits are occurring.

d. Consider Alternative Placements More Often

Many courts only looked for alternative placements for a child only when the current placement was breaking down. However, it is not uncommon in DFPS cases for a seemingly strong and fitting placement to break down quickly and with little warning. Judges should always inquire of DFPS about alternative plans and placement options to help ensure stability for the child in the event the child's current placement needs to be changed.

e. Require Children to Attend Court Whenever Possible

In addition to being a statutory requirement, when children were in court, more relevant issues were addressed in the hearing and the child's plans were more likely to be reviewed.³⁰ It has become a national best practice for children to be present at their court hearings, especially as children get older and can better understand what is happening in their cases. Many judges had standing orders that permitted the absence of children from court due to a school obligation or distance, but very few made efforts to have the child present or participating by phone whenever possible. The presence of children had a much more significant impact on the court proceedings than the presence of any other party, indicating that important issues that directly impact the child are more likely to be addressed in court as a result of the child's attendance.

f. Engage Children and Parents During Hearings

The study demonstrated that parties engaged with the court almost every time they were asked to participate, but that judges asked questions of children and parents much less often than CASAs and caseworkers during hearings. In some cases, children attended court but were left in the hallway or conference rooms and never got to see or talk to the judge. Similarly, many parents attended the hearings but were never asked to participate or provide their perspectives to the court. Judges should more actively engage children and parents in proceedings by asking them to participate more often, which will bolster their confidence and engagement in the proceedings.

g. Encourage Caregivers, Particularly Non-Kinship Foster Parents, to Attend Court and Engage Them in Process

³⁰ Tex. Fam. Code Ann. §§ 263.302; 263.501.

Kinship caregivers were present at many of the hearings but non-kinship foster parents were only present in a handful of cases. The Family Code states that the foster parent and relatives providing care for the child are entitled to be heard in the Permanency and Placement Review Hearings.³¹ Courts may glean valuable information about the child's status from foster parents and other caregivers, so these persons involved with the children should be encouraged to attend hearings and participate in the dialogue.

V. Continuous Quality Improvement

a. Communicate the Study Findings with Relevant Stakeholders

The findings of the Hearing Quality Observation Project have important implications for judges, attorneys, and child welfare professionals. The results of the study will be communicated with the Children's Commission and the judges who participated in the observations, but it is important that dissemination of the information not stop there. The findings should also be shared with other judges, legislators, child welfare agency workers, county commissioners, and attorneys involved in child welfare proceedings. These stakeholders can take the information in the report and implement policy that effectuates the recommended changes in a way that is appropriate for their community. This collaborative effort across different sectors of the child welfare community will also ensure more comprehensive solutions so the weight of implementing best practices does not rest solely on the judges.

b. Promote Training and Education of Indicators, Hearing Quality Observation Project, and Recommended Changes

The study identifies several areas for further emphasis in child welfare hearings going forward, both with regards to statutory requirements and the implementation of best practices. Training opportunities tailored to educate the child welfare lawyers and judges on the specifics of the indicators and how to change practice to address them more often would be very helpful in realizing some of the recommended changes.

c. Repeat the Study every 2-3 Years to Measure Improvement

It is important to track changes and improvements in Texas child welfare courts over time. This study serves as a baseline of data and information and another study should be conducted in two to three years to observe practice changes and implementation of the recommendations.

³¹ Tex. Fam. Code Ann. § 263.501.

The Difference Quality Judicial Education Can Make

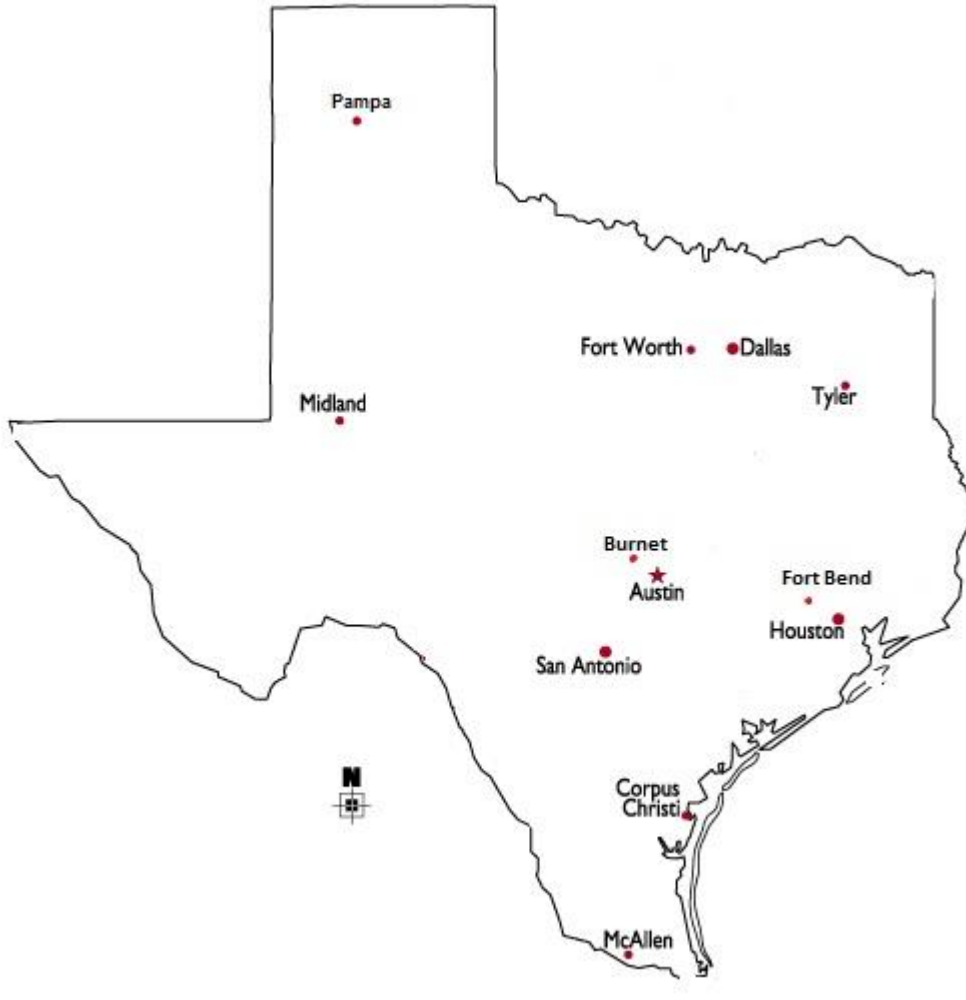
In October 2012, the Children's Commission held a Permanency Summit that was attended by 17 judges who brought multidisciplinary teams to learn about why permanency is so important for children in foster care. The judge-led teams worked to develop practice changes they thought feasible for their jurisdiction and returned home to implement them. In comparison to judges in the study who didn't attend the Permanency Summit, the average time for children to be in care was one month shorter in the jurisdictions of the judges who did attend. Also, the hearings of the Permanency Summit judges were an average of 5 minutes longer. Judges who attended the Permanency Summit covered 50% of the Due Process Indicators (compared to 37% for those who did not), 41% of the Well-Being Indicators (versus 33% for those judges who did not attend), and 46% of the indicators overall versus 34% for those judges who did not attend. Judges who went to the Permanency Summit reviewed permanency plans 56% of the time while judges who did not reviewed them 33% of the time. Children were also in a quarter of the courts of attendees but only 10% of the courts of non-attendees.

In February 2013, the Children's Commission held an Education Summit that was attended by over 200 child welfare, judicial and education stakeholders. Several Texas judges who attended the Summit were included in this Hearing Observation Project. According to the data collected, the judges who attended the 2013 Education Summit covered substantially more relevant education well-being issues at 67% than judges who did not attend at 39%. Judges who were present at the Education Summit also covered more in-depth education indicators at 41%, compared to 29% of the relevant education depth indicators covered by judges who did not attend the Summit.

These results reveal the effectiveness of good judicial education and training.

Appendices

Appendix A: Map of Observation Sites



Appendix B: Court Profiles

<p>San Antonio, Bexar County</p>	<ul style="list-style-type: none"> • Urban • Specialty County Children’s Court • Appointed Specialized Judge • 11 hearings observed • 15 cases on docket for half-day • Almost all attorneys, including parent attorneys, appointed on petition date (especially for mothers) • Determines indigence after appointment, but only sometimes • No CASA after termination
<p>Burnet, Burnet County</p>	<ul style="list-style-type: none"> • Rural • Child Protection Court • Appointed Specialized Judge • 11 hearings observed • 14 cases on the docket for half-day • Parent attorneys appointed at Adversary Hearing if appear in opposition and show indigence
<p>Corpus Christi, Nueces County</p>	<ul style="list-style-type: none"> • Urban • Elected County Court at Law • 6 hearings observed • 7 cases on the docket for half-day • All parties (child/parents) get attorney at removal, but one attorney for both parents; all attorneys dismissed at final order • Standing order for children to attend court • Some form of GAL report
<p>Dallas, Dallas County (Family Court)</p>	<ul style="list-style-type: none"> • Urban • Elected District Family Court • 7 hearings observed • 21 cases on the docket for half-day • All Placement Review Hearings • Some parents still present; some AALs dismissed • CASA dismissed after final PMC order
<p>Dallas, Dallas County (Juvenile Court)</p>	<ul style="list-style-type: none"> • Urban • Elected District Juvenile Court • 11 hearings observed • 24 cases on the docket for half-day • Parents’ attorneys appointed as soon

	<p>as possible – at or before Adversary Hearing</p> <ul style="list-style-type: none"> • Requires AAL reports
Richmond/Fort Bend, Fort Bend County	<ul style="list-style-type: none"> • Rural • Child Protection Court • Appointed Specialty Judge • 9 hearings observed • 11-15 cases on the docket for half-day • Parents’ attorneys appointed as soon as possible, often at or before Adversary Hearing
Houston, Harris County (308th Family Court)	<ul style="list-style-type: none"> • Urban • Elected District Family Court • Appointed Associate Judge observed in Family District Court • 3 hearings observed • 6 cases on the docket for half-day • Parents’ attorneys appointed before Adversary Hearing; AALs dismissed at final hearing
Houston, Harris County (309th Family Court)	<ul style="list-style-type: none"> • Urban • Elected District Family Court • Appointed Associate Judge observed in Family District Court • 5 hearings observed • Up to 14 cases on the docket for half-day • Parents’ attorneys appointed at removal or before Adversary Hearing; AALs dismissed at final hearing
Houston, Harris County (313th Juvenile Court)	<ul style="list-style-type: none"> • Urban • Elected District Juvenile Court • One case heard by Associate Judge in Juvenile District Court, and remainder heard by District Court Judge • 8 hearings observed • Up to 15 cases on the docket for half-day
Houston, Harris County (314th Juvenile Court)	<ul style="list-style-type: none"> • Urban • Elected District Juvenile Court • 5 hearings observed with Elected District Judge, 4 with Appointed Associate Judge • 9 hearings observed • Up to 10 cases on the docket for half-day
Edinburg/McAllen, Hidalgo County	<ul style="list-style-type: none"> • Urban • Child Protection Court

	<ul style="list-style-type: none"> • Appointed Specialty Judge • 13 hearings observed • 10 cases on the docket for half-day • All attorneys appointed at removal or prior to Adversary Hearing • No CASA appointments
Pampa, Gray County	<ul style="list-style-type: none"> • Rural • Child Protection Court • Appointed Specialized Judge • 11 hearings observed • 16 cases on the docket • Requires parents to appear in opposition and show indigence prior to appointing attorney
Permian Basin area (Crane, Ector, Howard, and Midland Counties)	<ul style="list-style-type: none"> • Some rural, some urban • Child Protection Court • Appointed Specialized Judge • Observed CPC for 2.5 days(11 cases Midland, 1 case Crane, 7 cases Ector, 4 cases Howard County) • Up to 10 cases on docket for half-day • Parents' attorneys appointed at or before Adversary Hearing, sometimes at filing of petition • Attorneys often serve in dual role of AAL and GAL
Fort Worth, Tarrant County	<ul style="list-style-type: none"> • Urban • Elected District Juvenile Court • Appointed Associate Judge • 14 hearings observed • 12 cases on docket for half-day • CASA reports orally except in contested cases • AAL is dual role; CASA is friend of the court
Austin, Travis County (PMC docket)	<ul style="list-style-type: none"> • Urban • Elected District Civil Court • 5 hearings observed on PMC docket • 9 cases on docket for half-day • Docket 3 cases an hour • All parents' attorneys dismissed and some AALs at final order

<p>Austin, Travis County (TMC docket)</p>	<ul style="list-style-type: none"> • Urban • District Civil Court • Appointed Associate Judge • 7 hearings observed on TMC docket • 17 cases on docket for half-day • Docket 5-6 cases an hour • All attorneys typically appointed before Adversary Hearing, with a large number of cases going to county-based Offices of Child and Parent Representation
<p>Tyler, Smith County</p>	<ul style="list-style-type: none"> • Urban • Elected District Family Court • 11 hearings observed • 16 cases on docket for half-day • Parents' attorneys typically appointed at or before Adversary Hearing • Has a system of county contract attorneys

Appendix C: Establishing Relevance and Maintaining Data Integrity

Length of Time in Care

To determine length of time in care, the study looked at the difference between the hearing observation date and the date the case was filed. For cases in PMC, the study looked at the difference between the final order date and the date of the hearing observation.

Delay and Hearing Length

To see how long parties waited for their case to be heard, the time the case was set on the docket was subtracted from the time the case actually started. Some cases were all set at one time and some cases were docketed every half-hour or every hour. Docketing practices largely predicted how long parties had to wait for their case to be called. For hearing length, the study looked at the difference between start time and end time.

Overall Hearing Quality Indicators

Many indicators in the study appeared both in the hearing and in the case file. However, in order to simplify the data analysis and to isolate the indicators that were not discussed in the hearings, if an indicator came up in both the hearing and the file, it was counted as “hearing;” if it came up solely in the file, it was counted as “file.”

Due Process Hearing Quality Indicators

For the Due Process Indicators, only the indicators relevant to a particular hearing were counted. To determine which Due Process Indicators were relevant, each hearing was analyzed according to the type of hearing, the judge’s practices, and other relevant contextual information. For each indicator, this included:

- 1) *Identified All Parties Present*: Always relevant, even if all parties were familiar with each other.
- 2) *Inquired About Absent Parties*: Relevant only if parties absent.
- 3) *Addressed Service on Mother*: At certain points in the case (after termination) or if the mother is present, this is not relevant. However, it was still identified in the case file.
- 4) *Addressed Service on Father*: Same process as Mother, however there had to be a father identified.
- 5) *Addressed Service on Father 2, Father 3, and Other*: This required the existence of those individuals.
- 6) *Orders Regarding Parties without Service*: The relevance of this factor required that at least one party was not served at the time of the hearing observation.
- 7) *Admonished Parents re: Right to an Attorney*: This was included when the parent was present and did not already have an attorney.

- 8) *Admonished Parents regarding TPR*: This was relevant only before PMC and only then when parents were present.
- 9) *ICWA, Reasonable Efforts, Clear Orders/Next Steps, and Set Next Hearing*: These measures did not require cross-verification with any of the other data; they were used as identified by the survey instrument.

Once the appropriate designation was assigned to each variable, each individual hearing was analyzed to identify the percentage of relevant factors that were addressed in that particular hearing, in the case file, or not at all. From this information, the number and percentage of relevant quality indicators addressed in hearings was derived.

Child Well-Being Hearing Quality Indicators

There was much variation in how the Well-Being Indicators were captured during the various observation sessions. Because every indicator could be addressed at every hearing, the observers tracked when an indicator either was addressed in the hearing or in the file as well as when there was no evidence at the hearing or in the file. However, certain indicators were considered essential and relevant at some hearings but not others. In particular, with the exception of “current placement,” most Well-Being Indicators were not expected to come up in Adversary, final hearings, or most special hearings. Due to the nature and purpose of these hearings, missing Well-Being Indicators were considered “NA,” whereas in the other types of hearings the Well-Being Indicators applicable given the specifics of the case were expected to be reviewed. For Adversary and final hearings, the “depth” indicators such as frequency of visitation, school stability, and side effects of psychotropic medication were only counted if the chief indicator (visitation, education and psychotropic medication) was addressed in the hearing in the first place.

For all hearing types, Well-Being Indicators were considered “NA” if they did not apply given the specifics of a case. For example, if a parent’s rights were terminated or the child did not have siblings placed in another home, visitation with these family members was not applicable. The relevance of education indicators also depended largely on the age of the child. For most types of hearings, all aspects of educational well-being were expected to be addressed, unless the child was not school-aged, in which case the Early Childhood Intervention indicator would be relevant, but special education and other school-age indicators would not. The medication depth indicators were only expected to be addressed if it could be determined that the child was on medication from the hearing or some other information provided in the case file.

Similar to the Due Process Indicators, once the data was audited to ensure the appropriate designation for each variable for each hearing (hearing, file, NA, or nothing), the Well-Being Indicators were analyzed to see how often they came up when relevant in the hearings, in the files, or not at all. The process was repeated for each individual hearing to find the number and percentage of relevant Well-Being Indicators addressed in hearings.

Court Engagement

The study gathered information on which parties were present, which were asked to speak, who spoke, and each individual’s level of engagement. To understand how the court engaged

certain parties, the study took the number present and looked at the percentage *of those present* who were asked to speak. Then the percentage *of those who were asked to speak* that actually spoke was derived. The study looked at what percentage of those engaged had low, medium, and high engagement to break down each category of participants by level of engagement.

Legal Representation: Which Parties Should be Present

This information was extremely hard to capture and understand because there is a lot of room for missed indicators in the hearing and in the file. For instance, an attorney for a parent may not have been present at the hearing, but there are many possible explanations for this: 1) the attorney should have been there and wasn't; 2) no attorney had been appointed for the parent yet because the parent had not appeared in opposition and established indigence, which is a prerequisite for court appointed legal counsel; 3) the hearing being observed was the parent's first appearance so the attorney had not yet been appointed; or 4) the attorney had been dismissed. Determining which situation applied to the attorney's absence required knowledge of the court's practice and knowledge of whether the parent had ever appeared in opposition and met the indigence requirement. Many of the case files revealed whether an attorney had been appointed and if the parent had appeared in opposition. However, there were also several instances where attorneys for the parents were present but the data on whether the attorney was appointed was missing from the file. There were attorneys who made an appearance even though there was no documentation of the appointment in the case file, and there were attorneys who did not appear even though there was an order in the file appointing them.

In order to determine whether attorneys for the parents were appointed and should be present for the hearing, the study compared the variables below:

- 1) *Admonished Parents about the Right to an Attorney*: The goal was to identify cases where this was missing from the hearing when it should have been addressed; TMC cases were identified where parents were present without an attorney but no mention was made about a right to an attorney. If a parent had never been admonished of a right to an attorney, no attorney should be present.
- 2) *Mother Present*: If the mother was not present but it was a PMC case, the entry was "NA." "Absent" was marked for mothers who were not present and it was a hearing before PMC. The presence of the mother had implications for whether an attorney should be present.
- 3) *Mother Attorney Appointed/Mother Attorney Present*: If an attorney had been appointed but none was recorded as present in the case, the study looked to see if there was an explanation for the absence based on the type of hearing or court protocol for attorney appointments. Though attorneys are only required to be appointed once a parent establishes indigence and appears in opposition to the suit, several courts moved to termination without appointing an attorney when the parent had been served, but never appeared. In essence the court issued a default judgment. If an attorney was appointed and the study could not determine an excuse for their absence, or if it was a very late stage in the case where there

ostensibly should have been an attorney appointed at some point but they were not there, the attorney was labeled “absent.”

- 4) *Father Present*: Same process as for others.
- 5) *Father Attorney Appointed/Father Attorney Present*: Same process as used for mother’s attorneys.
- 6) *AAL Present*: If an AAL was not present, the study tried to determine if the attorney was dismissed after TMC. If not, the attorney was labeled “absent.”
- 7) *Hearing Type* and *Judicial Practices*: Used to inform whether missing attorneys should be present.

Legal Representation: Quality Indicators

There were eight indicators used to assess the level of advocacy provided by an attorney. Attorneys could make a motion orally, give an oral report to the court, present documents, call witnesses, or advocate for services, family contact, placement change, or something else. The tool captured the percentage of the attorneys who used each advocacy method and what the attorneys were advocating for more family contact, a different visitation schedule or services.

Permanency Plan and Concurrent Plan Evaluation

There are instances when permanency plans should be reviewed and others where they could be reviewed, but it is not required. For the purposes of this section, a plan is only considered “evaluated” if it was discussed in the hearing even though many files also addressed the plans. The measures for child 2 and child 3 were only counted when there were multiple children in a case. The information in this section was not consistent – for different hearing types when plans were not reviewed, sometimes it was entered as “no review” and sometimes it was entered as “NA.” The assumptions below helped to standardize the information:

- 1) *Adversary, Motions to Compel, and Motions to Participate Hearings*: “NA” for all permanency and concurrent plan reviews unless they were reviewed in the hearing (one case).
- 2) *Initial and subsequent Permanency Hearings*: Both the permanency and concurrent plans should be reviewed.
- 3) *Final hearing*: For purposes of this report, it was determined that a review of the permanency plan during a final hearing was relevant and expected, but that review of the concurrent plans was not expected, even though it could be. The data was standardized so that permanency plans were expected to be evaluated in court, but not concurrent plans (“no review” for missing permanency plans and “NA” for missing concurrent plans).
- 4) *Placement Review Hearings and Service Reviews*: Permanency plans and concurrent plans should be reviewed in court and if they were not reviewed, the observation tool was marked “no review.”
- 5) *Special Hearings*: These were addressed on an individual basis based on the purpose of the hearing and the context of the case. For hearings on motions to change

placements, monitor placement, or change the goal of the case, both the permanency and concurrent plans were expected to be reviewed. In every other special hearing, review of the permanency and concurrent plan was labeled “no review” if the plan was not reviewed in court.

The percentage of the permanency plans reviewed by the court was derived by taking the total number of permanency plans that should have been reviewed and dividing that number by the total number of plans that were reviewed for a total percentage reviewed. The process was repeated for concurrent plans.

Permanency Plans and Source

The study looked at the percentage of permanency plans available for all children that were discussed in the hearing and found in the case files.

Concurrent Plans and Source

The exact same methodology was used for the concurrent plans.

Child Transitional Living Plan

It was also difficult to determine if missing information in this section was omitted or NA since the observation tool did not record the ages of the child. To determine whether transitional living plans should be reviewed, the study relied mostly on how the data was entered and also considered the context of the case. There were two children whose plans were not reviewed because they were on runaway status. If a child had a Transition Plan, it was assumed that the plan should be reviewed at all hearings except Adversary and final hearings.

Family Service Plan

As part of this project, “reviewed” means that the court verbally covered or discussed the elements of the family service plan in court. “Evaluated compliance” means that the court addressed in court with the parties whether parents were working to accomplish the requirements of the service plans. Obviously, the line between reviewing and evaluating gets blurred. However, Adversary Hearings, most special hearings, and Placement Review Hearings were not evaluated for family service plan review or compliance except where the court held a Placement Review Hearing and the parental rights were not terminated. In cases where a parent is still working services, review would be appropriate. Status Hearings, Permanency Hearings, service reviews, final hearings, and some special hearings focused on family services should review the service plans both for mother and fathers who have service plans in place. When review or evaluation did not occur in one of these hearings, it was marked as not reviewed.

Time for Filing Orders

The study examined the date the order was created, signed, and filed. The time lapse between these events was recorded.

Court Reports

CPS Court Reports

The “timely” court report percentage is that percentage of court reports filed according to the statutory requirement of 10 days prior to the hearing.

CASA Reports

This is the total percentage of hearings where CASA reports were filed.

Appendix D: Comprehensive Charts Overall and by Hearing Type

March 2014

Hearing Quality Observation Project

Supreme Court Children's Commission

Hearing Quality Indicators Addressed in Individual Hearings

	# of Relevant Indicators	# Addressed in Hearing	# Addressed in File	# Not Addressed	% Addressed in Hearing	% Addressed incl. File	% Not Addressed
Average	23.2	8.9	3.7	10.5	39%	56%	44%
Median	23	8	3	10	37%	58%	42%
Max	35	24	15	26	89%	95%	87%

Due Process Indicators Addressed in Individual Hearings

	# of Relevant Indicators	# Addressed in Hearing	# Addressed in File	# Not Addressed	% Addressed in Hearing	% Addressed incl. File	% Not Addressed
Average	7.9	3.4	2.0	2.5	43%	68%	32%
Median	8	3	2	2	43%	71%	29%
Max	13	10	10	10	100%	100%	100%

Well-Being Indicators Addressed in Individual Hearings

	# of Relevant Indicators	# Addressed in Hearing	# Addressed in File	# Not Addressed	% Addressed in Hearing	% Addressed Total	% Not Addressed
Average	15.4	5.5	1.8	8.1	36%	50%	50%
Median	17	5	1	7	35%	50%	50%
Max	22	16	14	22	100%	100%	100%

Relevant Indicators Addressed in Adversary Hearings

	% of Due Process in Hearing	% of Due Process incl. File	% of Well-Being in Hearing	% of Well-Being incl. File	% Overall Addressed in Hearing	% Overall Addressed incl. File	% Overall Not Addressed
Average	69%	81%	66%	69%	63%	72%	28%
Median	83%	89%	67%	71%	63%	74%	28%
Max	91%	100%	100%	100%	89%	92%	47%

Relevant Indicators Addressed in Status Hearings

	% of Due Process in Hearing	% of Due Process incl. File	% of Well-Being in Hearing	% of Well-Being incl. File	% Overall Addressed in Hearing	% Overall Addressed incl. File	% Overall Not Addressed
Average	43%	66%	32%	39%	35%	48%	52%
Median	43%	67%	29%	41%	32%	48%	52%
Max	89%	100%	67%	75%	68%	81%	81%

Relevant Indicators Addressed in Initial Permanency Hearings

	% of Due Process in Hearing	% of Due Process incl. File	% of Well-Being in Hearing	% of Well-Being incl. File	% Overall Addressed in Hearing	% Overall Addressed incl. File	% Overall Not Addressed
Average	54%	74%	38%	45%	43%	53%	47%
Median	61%	83%	38%	44%	46%	52%	48%
Max	75%	100%	75%	82%	75%	85%	87%

Relevant Indicators Addressed in Subsequent Permanency Hearings

	% of Due Process in Hearing	% of Due Process incl. File	% of Well-Being in Hearing	% of Well-Being incl. File	% Overall Addressed in Hearing	% Overall Addressed incl. File	% Overall Not Addressed
Average	46%	74%	33%	43%	37%	53%	47%
Median	50%	80%	30%	41%	35%	56%	44%
Max	80%	100%	80%	92%	78%	85%	87%

Relevant Indicators Addressed in Final Hearings

	% of Due Process in Hearing	% of Due Process incl. File	% of Well-Being in Hearing	% of Well-Being incl. File	% Overall Addressed in Hearing	% Overall Addressed incl. File	% Overall Not Addressed
Average	41%	72%	34%	73%	37%	73%	27%
Median	38%	75%	33%	78%	38%	77%	23%
Max	88%	100%	67%	100%	76%	92%	57%

Relevant Indicators Addressed in Placement Review Hearings

	% of Due Process in Hearing	% of Due Process incl. File	% of Well-Being in Hearing	% of Well-Being incl. File	% Overall Addressed in Hearing	% Overall Addressed incl. File	% Overall Not Addressed
Average	34%	60%	36%	52%	36%	55%	45%
Median	33%	60%	35%	53%	34%	56%	44%
Max	80%	100%	88%	94%	86%	95%	83%

Appendix E: Ideal Court Hearings

Adversary	Status	Permanency	Final	Placement Review
<ul style="list-style-type: none"> • ID all parties/inquire about absent parties • Address service • Admonish parents re: right to an attorney and termination • ICWA • Reasonable Efforts • Clear orders/set next hearing • Court engagement • Quality legal representation • Court engagement • Quality Legal Representation 	<ul style="list-style-type: none"> • ID all parties/inquire about absent parties • Discuss current and alternative placement • Discuss other conferences • Visitation with parents and siblings • Educational plans and needs • Medical care • Psychotropic medication • Child Permanency Plan/Concurrent Plan • Family Service Plan • Court reports • Clear orders/set next hearing • Court engagement • Quality legal representation 	<ul style="list-style-type: none"> • ID all parties/inquire about absent parties • Discuss current and alternative placement • Discuss other conferences • Visitation with parents and siblings • Educational plans and needs • Medical care • Psychotropic medication • Child Permanency Plan/Concurrent Plan • Family Service Plan • Transitional Living Plan • Court reports • Clear orders/set next hearing • Court engagement • Quality legal representation 	<ul style="list-style-type: none"> • ID all parties/inquire about absent parties • Discuss current and alternative placement • Discuss other conferences • Visitation with parents and siblings • Educational plans and needs • Medical care • Psychotropic medication • Child Permanency Plan/Concurrent Plan • Family Service Plan • Transitional Living Plan • Clear orders/set next hearing • Court engagement • Quality legal representation 	<ul style="list-style-type: none"> • ID all parties/inquire about absent parties • Discuss current and alternative placement • Permanency roundtable • Visitation with siblings/contact with parents • Educational plans and needs • Medical care • Psychotropic medication • Child Permanency Plan • Transitional Living Plan • Court reports • Clear orders/set next hearing • Court engagement • Quality legal representation (if applicable)

Appendix F: Timing Charts

Length of Time in Care by Hearing Type (Days)

	Overall	Adversary	Status	Initial Perm	Subseq. Perm	Final	Placement	Time in PMC since Final Order
Average	368	19.5	62.9	165.9	263.5	381.8	907.3	677.5
Median	252	20	53	140	252	351	759.5	497
Std. Dev.	460	9.8	40.4	86.4	72.3	92.5	704.2	745.5
Min	1	1	39	91	164	293	109	77
Max	3484	37	196	357	525	587	3484	3130

Hearing Delay by Hearing Type (Minutes)

	Overall	Adversary	Status	Initial Perm	Subseq. Perm	Final	Service Rev/Other	Placement
Average	56	60	52.4	67.7	62.1	38.8	55.4	41.6
Median	45	43	50	44.5	50	35.5	54	25
Std. Dev.	52	58.3	29.6	64.4	60.1	47.3	42.5	50.2
Min	-10	-10	10	-1	-5	-3	3	-5
Max	255	185	135	190	255	155	157	208

Hearing Length by Hearing Type (Minutes)

	Overall	Adversary	Status	Initial Perm	Subseq. Perm	Final	Service Rev/Other	Placement
Average	15	15.9	15.1	15.9	16.6	21.3	10.9	12
Median	12	13	13.5	17.5	15	11	9.5	10
Std. Dev.	12	19.5	8.4	10	11.1	18	6.9	11.3
Min	1	0	4	2	3	4	3	1
Max	81	81	30	33	60	57	27	70

Signing and Filing of Orders

	Days from Hearing until Signed	Days from Signing until Filed
Average	4	0
Min	0	-11
Max	106	15

Site _____ Judge _____ Case No. _____ # Judges _____ No. of cases set on docket/hour _____ Rural/Urban/CPC _____ Language Assisted: Y/N
 Date filed _____ Dismissal Date _____ Ext: Y/N Hearing Date _____ Hearing Set Time _____ Start _____ End _____ Witnesses Sworn: Y/N
 Hearing Type: Inj _____ NE _____ MTP _____ MTC _____ Adv _____ Status _____ IPH _____ SP _____ Final _____ Extm _____ Plcmt _____ Svc Rev _____ Record: Y/N
 Current Placement: Home _____ Relative/Kin _____ Pre-Adopt _____ Foster _____ Group Home _____ RTC _____ TYC _____ Runaway _____ UDT _____ Hearing Postponed: Y/N

QUALITY HEARING INDICATORS			
DUE PROCESS	Hearing	File	NA
ID all Parties Present			
Inquired about Absent Parties			
Addressed service on Mother			
Addressed service on Father 1			
Addressed service on Father 2			
Addressed service on Father 3			
Addressed service on Other			
Orders regarding parties without service			
Admonished Parents re: Right to Attorney			
Admonished Parents re: TPR			
ICWA (previously established Y/N)			
Reasonable Efforts Discussed / Addressed			
Clear, Child / Party-Specific Orders / Next steps			
Set Next Hearing			

QUALITY HEARING INDICATORS	
CHILD WELL-BEING	Hearing
Discussed Current Placement	
Alternative Placement Discussed	
Discussed Other Conferences (mediation/FGDM)	
Visitation with Parents	
Frequency of Visitation	
Rate of Attendance	
Changes to Visitation Plan/Schedule	
Visitation with Siblings	
Educational Plans and Needs	
School Readiness (ECJ)	
Educational Decision-Maker	
School Stability	
IEPs/Special Ed.	
Enrollment/Records	
Extracurricular Activities	
Grades/Passing (Placement Services)	
Post-Secondary Educational Goal	
Medical Care	
Psychotropic Medication	
Taking as Prescribed	
Appropriateness of Medication	
Side Effects	
Other	

COURT ENGAGEMENT			
Party	Present	Oppty	Speak
Child 1			Engaged (L/M/H)
Child 2			
Child 3			
CW			
GAL/CASA			
MO			
FA			
FP/Rel			
Other			
Other			

PARENT LEGAL REPRESENTATION HISTORY			
	Mother	Father 1	Father 2
Appeared in Opposition			Father 3
Advised of Right to Attorney			
Request Attorney			
Indigence Determined			
Attorney Appointed/Denied			
Stage Appointed			

QUALITY LEGAL REPRESENTATION INDICATORS												
State	Present	Sub.	Pleadings	Motions	Oral	Report	Services	Fam Contact	Fint Chg	Other	Docs	Witness
Mo Atty												
FA1 Atty												
FA2 Atty												
AAL/Child												
GAL/CASA												
Intervenor												
Other												

CHILD PERMANENCY PLAN REVIEW										
Child 1	Perm Plan			Concurrent Plan			Eval Progress		Changes	
	F/H	Fam. Reun. NonRel. Adopt	Rel. PMC APPLA IL/AO	F/H	Fam. Reun. NonRel. Adopt	Rel. PMC APPLA IL/AO	Fam. Reun. NonRel. Adopt	Rel. PMC APPLA IL/AO		
Child 2	F/H	Fam. Reun. NonRel. Adopt	Rel. PMC APPLA IL/AO	F/H	Fam. Reun. NonRel. Adopt	Rel. PMC APPLA IL/AO	Fam. Reun. NonRel. Adopt	Rel. PMC APPLA IL/AO		
Child 3	F/H	Fam. Reun. NonRel. Adopt	Rel. PMC APPLA IL/AO	F/H	Fam. Reun. NonRel. Adopt	Rel. PMC APPLA IL/AO	Fam. Reun. NonRel. Adopt	Rel. PMC APPLA IL/AO		

CHILD TRANSITIONAL LIVING PLAN REVIEW											
Youth 1	Living Plan			Relationships			Docs		Over 18		Changes
	Y/N	Y/N	PAL	Y/N	Y/N	Y/N	Y/N	Y/N	Y/N	Y/N	Y/N
Youth 2											

FAMILY SERVICE PLAN REVIEW																																
Mother	Eval Comp		Chng		Csig		Pntg		Job		Home		FV Csig		RDT		Drug Asses		No Crime		Visit		C/S		CW Contact		Psych Eval		Other			
	Father 1																															
Father 2																																
Father 3																																

Last Orders	Y/N		Type		Date		Signed		Filed		Court Reports		Y/N		Timely?		Dt Filed		
												CPS							
												CASA							
												Ext. at Hearing							Reason: