TPR Timeliness Report

June 2023





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Section I: Background

The Termination of Parental Rights (TPR) Timeliness Workgroup was formed in 2017. The Department of Children and Families (DCF) and Children's Court Improvement Program (CCIP) wanted to learn more about practices related to TPR proceedings and their impact on achieving timely permanency. Timeliness to permanence had been identified as a widespread concern through multiple sources: findings from all three rounds of the Child and Family Services Reviews (CFSR); timeliness measure reports generated by CCIP through the University of Wisconsin Institute for Research on Poverty (IRP); feedback received by DCF and CCIP from stakeholders; and reports produced by DCF using the Statewide Automated Child Welfare Information System (eWiSACWIS) data.

Project Overview

DCF and CCIP reviewed a sample of cases to understand barriers to timeliness and identify potential areas of improvement. Several variables including county size, geographic location, and a minimum number of TPR cases were used to select sixteen counties to be a part of the review: 15 counties from the balance of state (BOS) and the Division of Milwaukee Children Protective Services (DMCPS).

County staff, court staff and legal representatives from the 16 counties responded to surveys about the TPR process in their jurisdictions. A total of 467 surveys were returned: 352 surveys completed by representatives of the county workforces and 115 surveys were completed by court and legal representatives.[1]

Case file information from all 16 counties were reviewed utilizing a structured review tool, including information stored in both eWiSACWIS and circuit court records stored in CCAP. Data and findings were contextualized within two separate groups; cases in which the TPR took less than 120 days to complete after filing and those in which the TPR took more than 120 days to complete. The decision to use the threshold of 120 days was two-fold. First, the 120-day standard is used as part of the court system's case processing standards. Second, when initially evaluating the cases from the 16 counties of study, in looking at the length of time from petition to disposition, there seemed to be a natural divide around the 120-mark.

Disposition for all cases occurred in calendar years 2019 through 2021. Only those cases which were filed by or on behalf of the county were included in the review; privately filed TPR cases were excluded. In addition, all cases reviewed were required to have at least one parent for whom the petition was filed as an involuntary TPR, as to avoid skewing the data with voluntary proceedings that would be likely to resolve in a shorter timeframe. Cases were randomly selected and accounted for distribution across the reviewed counties and calendar years. Please note that county identifying information has been removed.

Project Counties:
Filing TPR petition to disposition in less than 120 days: 55 cases
Filing TPR petition to disposition more than 120 days: 89 cases

Milwaukee County:
Filing TPR petition to disposition in less than 120 days: 10 cases
Filing TPR petition to disposition more than 120 days: 40 cases

[1] The selected 16 counties did not include tribal child welfare professionals or tribal legal representatives.

Report Structure

The TPR Timeliness Workgroup recognizes the difference in case practice between Milwaukee County and the balance of state. The report is therefore separated into a section for the 15 project counties from the balance of state and a section for Milwaukee County (DMCPS) to ensure that the differences in case practice represented by the survey results and file review data are presented for each system.

Section III and Section IV will cover information regarding data, impacts, system review regarding the child welfare system, and court and legal practice information for the project counties. Section V and Section VI will cover information regarding data, impacts, system review regarding the child welfare system, and court and legal practice information for Milwaukee County. Recommendations may be found in Section VII and additional resources may be found in Appendix A.

Assumptions and Findings

When reviewing the surveys, several assumptions were identified as potential barriers to TPR timeliness and were reviewed by the TPR Timeliness Workgroup. Below are some of the initial assumptions and takeaways.

Placements with Relatives

Following the review of survey results and file reviews, the workgroup determined children who are placed with relatives have more timely outcomes; maintaining children within their families while ensuring safety and permanence demonstrates the importance of implementing family first principles. The workgroup found that children who were placed with relatives were more likely to have a TPR disposition occur in less than 120 days and were more likely to have one or two placements during their time in out-of-home care.

Communication Between County Agencies & Legal Partners

The survey results indicated that communication between child welfare agencies and legal partners impacted the timeliness of cases. Counties identified that their TPR processes were positively impacted when they had regular consults between county child welfare and legal partners, spent time building a professional relationship to develop better trust, and had clear processes with clarified responsibilities of each professional.

Workforce Support

Staff turnover was identified as a barrier to timeliness because it impacts the continuity of a case and the resources available to complete the TPR process. In the project counties and Milwaukee County, cases that were more than 120 days, were more likely to have three or more case managers during the out-of-home care episode. Conversely, cases that were less than 120 days were more likely to have only one or two case managers during the out-of-home care episode. When counties can address circumstances that may cause staff turnover, timeliness should be positively impacted. While the data suggests a relationship between the number of case managers and length of time to TPR disposition, analysis cannot account for all other variables that may contribute to timeliness; therefore this factor cannot be viewed as causation.

Judicial Capacities & Court Calendars

Survey respondents identified additional barriers that the workgroup determined were circumstantial to county case practice such as judicial capacities, and court calendars. More specifically, this predominantly includes difficulty in scheduling TPR hearings due to the coordination of calendars not

just for the court, but also the multiple attorneys who are likely to be involved in this type of case. This may be further exacerbated by the need to schedule a multi-day Fact-Finding Hearing. While these situations may impact TPR timeliness, they vary widely by county and need to be addressed on an individual county basis.

Jury Trials

The availability of jury trials as an option to determine grounds at a Fact-Finding Hearing was also identified as an assumed barrier to TPR timeliness by all survey stakeholder groups. The court file review data reflected that there was not a significant difference in the length of time to disposition in those cases which went to a Fact-Finding Hearing, irrespective of whether that proceeding was heard by the court or a jury. However, a significant increase in time between petition and disposition was observed in cases where a jury trial was requested. Furthermore, the number of jury trial requests was significantly less in cases disposed in less than 120 days (2%) versus those that were more than 120 days (64%).

The reported delay due to jury trials may be due to perceptions of the amount of additional work that is required for a jury trial (e.g., additional information gathering, increase discovery requests, witness and exhibit preparation, and pre-trial motions). Because of the numerous factors that may exist leading up to or at issue in a Fact-Finding Hearing, the workgroup was unable to determine if the availability of jury trials delayed TPR timeliness based on completed file reviews and determined that further review would be necessary to affirm or deny this assumption.

Section II: Wisconsin's Child Welfare Transformation Priorities

Since 2018 Wisconsin has been progressively working toward transitioning the child welfare system to support children remaining in their family homes: Putting Families First. This change in priority and philosophy started a year after the TPR Timeliness Workgroup began its work. This increased focus of keeping families intact may decrease the number of TPRs over time. TPR is an important tool when it has been determined to be in the best interest of the child, all efforts to place the child with relatives and/or siblings have been exhausted, authentic engagement has been provided to the biological parents, services have been offered to biological parents, and a permanent placement has been identified. In these situations, DCF would expect the county and legal partners to be working together to complete the termination of parental rights process in a timely manner. Conversely, expediting termination of parental rights is ill-advised when the aforementioned determinations have not been made.

Section III: Project Counties' TPR Process: Child Welfare System

Child Welfare Survey and Case File Review Findings

Survey questions and their responses that are referenced in this section may be found in Appendix B. Specific questions will be listed in parenthesis after the corresponding data, e.g., (PC-CW-Q1).

The 130 survey respondents from the project county child welfare agencies included five directors, 11 agency managers, 34 supervisors, 70 child welfare professionals, and 16 respondents who identified their role as "other".

Systemic and Statutory Barriers

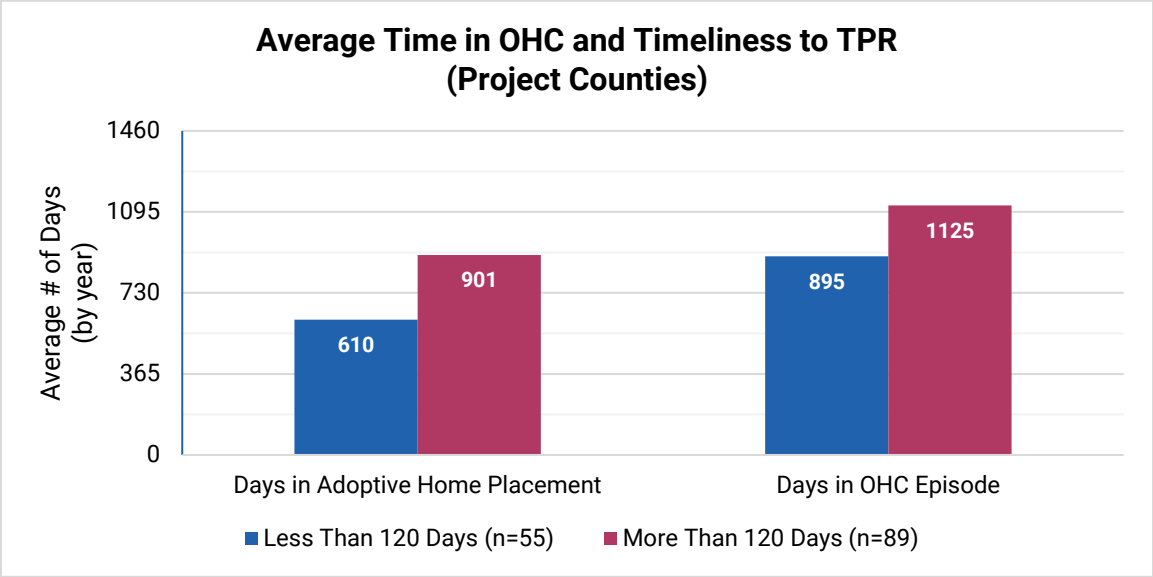
Survey questions explored both systemic and statutory barriers impacting the completion of a timely TPR. Systemic barriers result from policies, practices, or procedures at the county or state level and have potential solutions that can often be mitigated. Remedies to statutory barriers are more difficult to affect. Fifty-seven percent of child welfare respondents cited systemic barriers (PC-CW-Q81 and Q82) and 18% cited statutory barriers (PC-CW-Q83 and Q84).

When survey responses are compared to case review findings, two perceived barriers were not validated in the case record review data:

- Paternity is often cited as a barrier, but case record reviews did not support paternity to be a cause for delay; and
- Perception of jury trials causing delays via survey did not impact timeliness in the case record review data.

Days in Out-of-Home Care

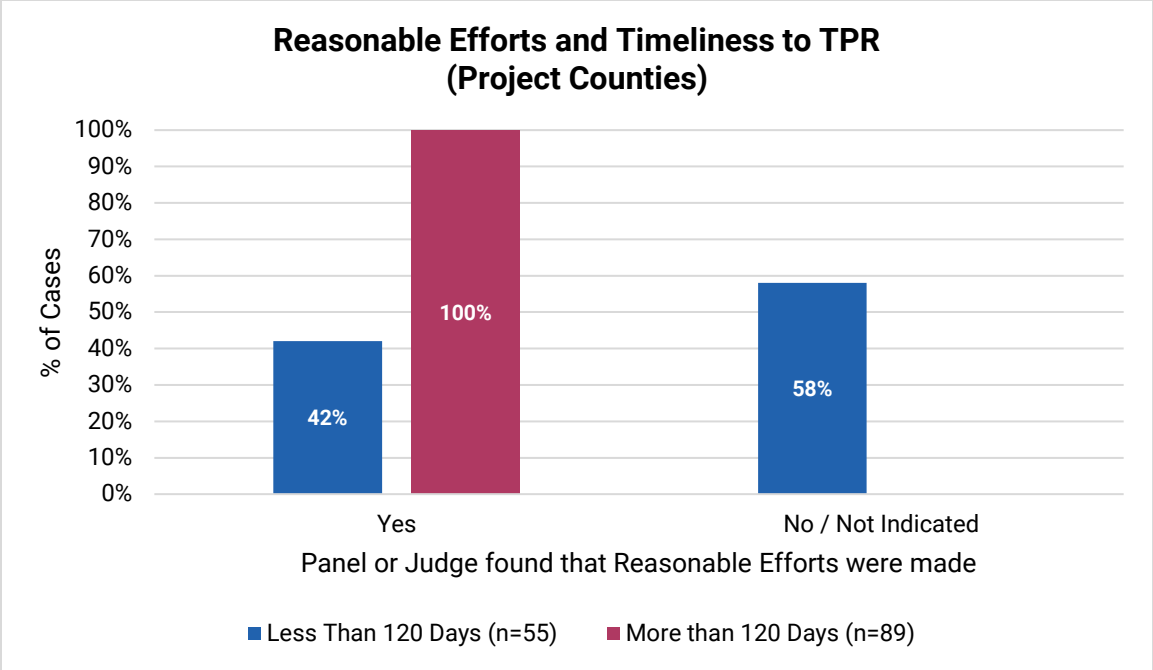
The number of days in out-of-home care appears to be correlated with TPR timeliness. Children who reached TPR disposition less than 120 days after filing were in their adoptive home placement on average 291 fewer days than children who reached TPR disposition in more than 120 days after filing. Children who reached TPR disposition less than 120 days after filing were in out-of-home care on average 230 fewer days than children who reached TPR disposition in more than 120 days after filing. These numbers represent nearly one year less, which is a significant amount of time in a child's life.



Reasonable and Active Efforts

An important safeguard for families is the requirement that agencies engage in reasonable efforts to ensure that children achieve reunification. "Reasonable efforts" describes activities of social services agencies that aim to provide the assistance and services needed to preserve and reunify families. The federal Title IV-E program requires states to make reasonable efforts to preserve and reunify families (i) prior to the placement of a child in foster care, to prevent or eliminate the need for removing the child from the child's home; and (ii) to make it possible for a child to safely return to the child's home (42 U.S.C. § 671(a)(15)). More guidance regarding reasonable efforts may be found on page 83 of Wisconsin's Ongoing Service Standards and in Wis. Stat. § 48.255(1)(f).

It is important to note that reasonable efforts were documented in eWiSACWIS[2] for 42% of the cases that reached TPR disposition in less than 120 days, whereas 100% of the cases that took more than 120 days to reach TPR disposition had clearly documented reasonable efforts. Case practice should be thorough and encompassing of all standards to ensure children and families receive all available opportunities for reunification before a TPR petition is filed. This includes documenting all reasonable efforts in eWiSACWIS.



The Wisconsin Indian Child Welfare Act (WICWA) provides specific guidance regarding active efforts in comparison to the federal Indian Child Welfare Act (ICWA). Wisconsin Stat. §§ 48.028(4)(g)1.a-h detail the nine specific activities required to achieve "active efforts" in cases where WICWA applies and the requirement for adequate documentation of reasoning when the activities are not completed. The Active Efforts Guide notes, "it is also important to acknowledge that it is not the obligation of the tribes

[2] Reasonable efforts findings in underlying CHIPS cases were not reviewed as part of the court file review and may differ from the data documented by the child welfare agency.

to meet the active efforts requirement, but the petitioner's obligation to seek and request assistance from the child's tribe to assist the petitioning agency in meeting the requirements."[3]

Of the 144 cases reviewed, only two involved an American Indian child. Neither of these cases were subject to ICWA and WICWA and did not meet the requirements for active efforts. Given the small case size, a full review of TPR timeliness for cases subject to ICWA and WICWA would not provide accurate data. However, the review certainly indicates that it is imperative to document and subsequently comply with ICWA and WICWA requirements, ensuring that tribal child welfare agencies are given proper notice and opportunity to be involved.

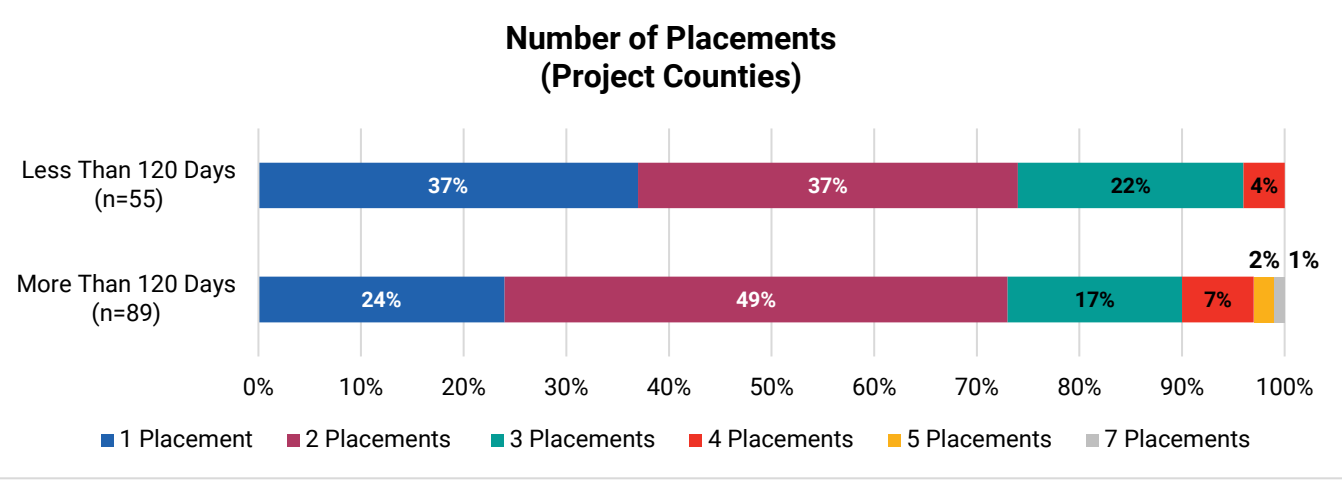
Services

In the survey portion of this project, a "lack of services for parents to meet conditions" was cited as a systemic barrier to achieving timely permanency. However, file reviews found that services were routinely listed in permanency plans, indicating that child welfare professionals are providing parents with opportunities to engage in services. That being said, delays or waitlists associated with receipt of services and/or whether additional services were needed to achieve reunification were variables that were not explored as part of this project.

Placement

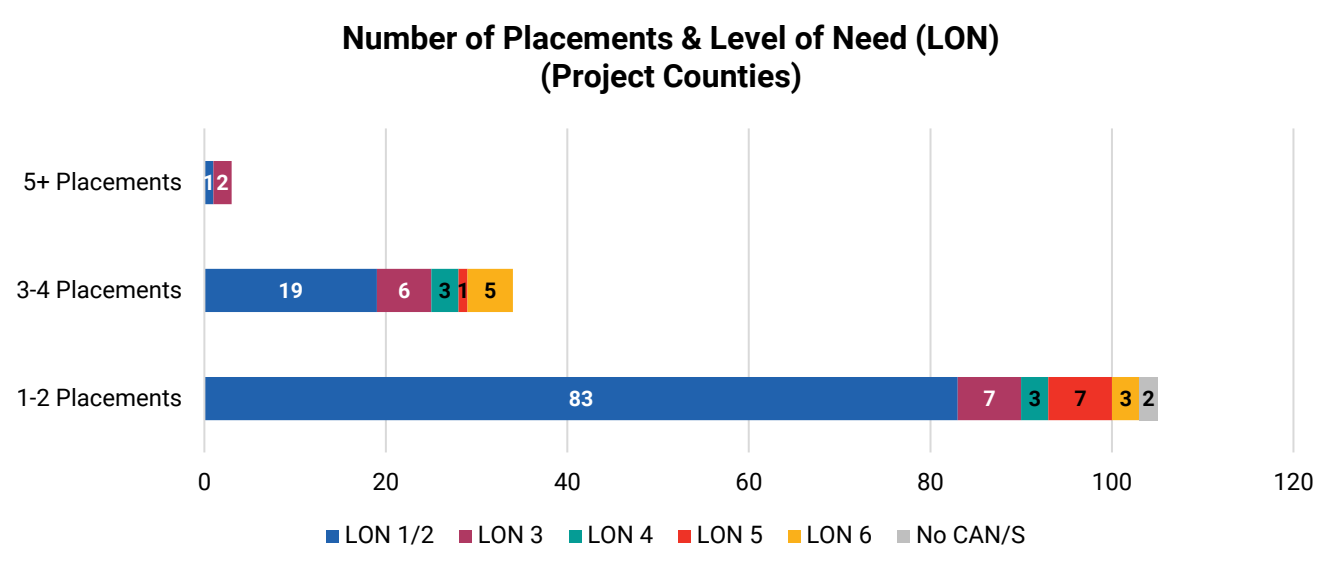
Number of Placements

According to the file reviews, there is no correlation between the number of placements that a child experiences and the length of time from TPR filing to disposition. Seventy-four percent of cases that achieved disposition in less than 120 days and 73% of cases that achieved disposition in more than 120 days both had one or two placements. Children who had four or more placements may see an increase in length of time from filing to TPR disposition, but the sample size is too small to make a conclusion.



[3] Wisconsin Indian Child Welfare Act State Advisory Board: Active Efforts Sub-committee. (2019.) Active Efforts: A Child Welfare Practitioner's Guide for Meeting the WICWA Active Efforts Requirement, DCF-P-464. https://dcf.wisconsin.gov/files/publications/pdf/464.pdf.

There is no correlation between level of need (LON), the number of placements that a child experiences, and the length of time between TPR filing to disposition. The graph below outlines the LON and number of placements for each child. 100% (n=22) of children who had a LON 4, 5, or 6 had fewer than four placements prior to TPR.



Marital Status

One unanticipated barrier that the workgroup noted was marital status. DCF 50.05(1)(a) states that applicants who desire to become prospective adoptive parents must be, "An adult married couple who live together, have been married for at least one year on the date of application, and are applying for a home study jointly." Societal norms have changed over the years and couples may not be married but are in long-term committed relationships. If both parents desire to adopt jointly, they need to become married and then wait an additional year, even if they were in a committed relationship. In practice there are instances where a spouse may not be residing in the home. Even if the parent in the home is able to provide adequate care and supervision, the wording of this statute would prohibit the couple from adopting until both were able to reside in the same residence. This is a barrier for those in the armed forces, individuals needing medical care or rehabilitation, as well as other situations.

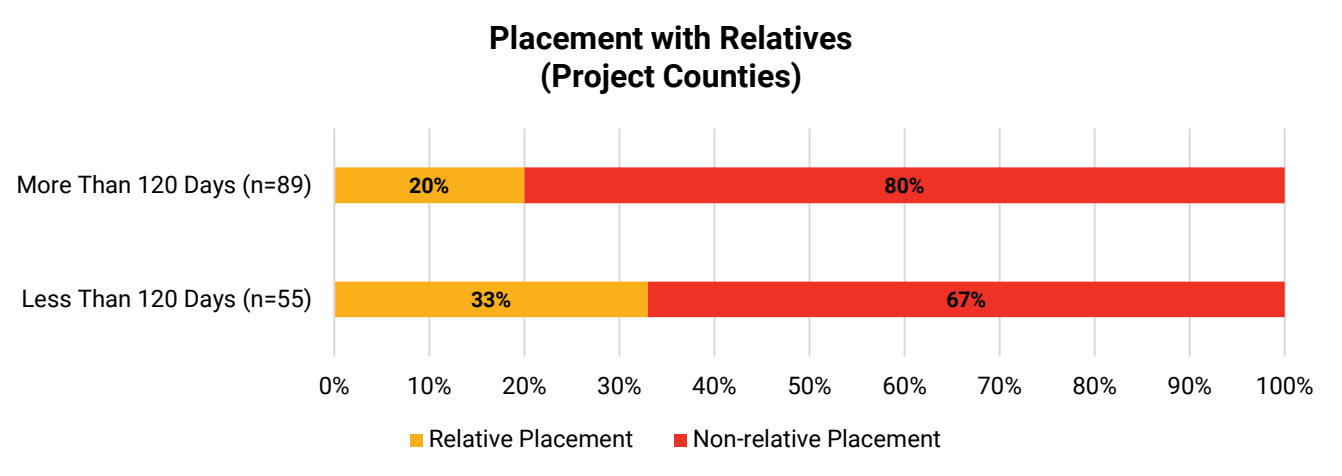
Maintaining Family Connections

The Ongoing Services Standards (2022) states, "There are many considerations when determining an appropriate placement for a child. At a minimum, the agency must consider placements that are in the child's best interests and document in the case record that a placement is either unavailable or inappropriate if the following are not met with the child's placement. These considerations must be made at initial placement and any time there is a change of placement for the child" (p. 163). Three of the considerations listed relate to maintaining family connections:

- Placement with a fit and willing relative.
- Placement with siblings.
- Placement proximity to the child's parents within 60 miles.

Placement with Relatives

Beginning in 2018 a DCF priority was identified to place children with a relative and/or siblings to maintain connection with their family. By the time children enter the TPR process, it is likely that a non-relative has been identified as an adoptive resource, though relatives may not have been fully explored as a resource early in the case. Placing children with relatives must be an area that child welfare professionals prioritize throughout the life of a case. Not only do children who are placed with relatives fare better emotionally,[4] the case file reviews showed that they reached permanency more quickly than children placed with non-relatives.



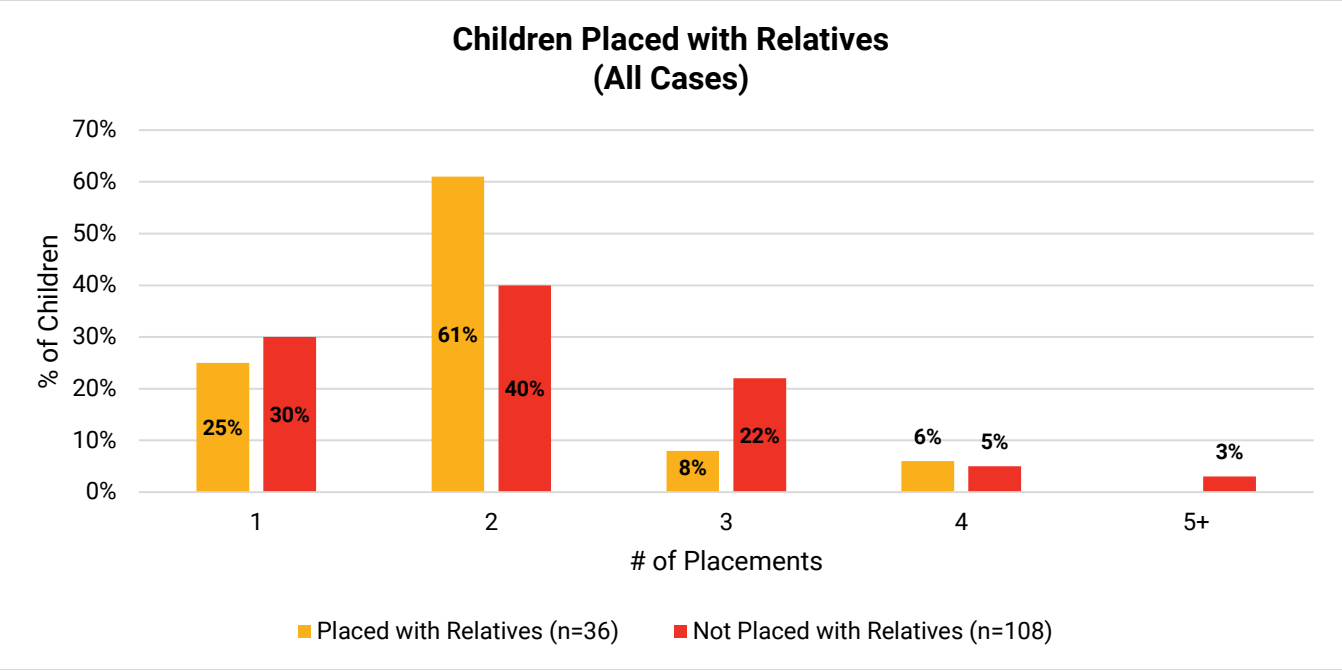
When children are connected to their family, they have greater stability and more permanency options. Placing children with relatives "helps maintain familial and cultural connections and **must be prioritized more frequently, especially for Black and American Indian families and other communities in the child welfare system that have experienced racial inequality and discrimination" (Child Welfare Information Gateway, 2022).**[5]

Casey Family Programs (2019) found that "children in kinship care have:

- More stability in placement and greater likelihood of remaining with siblings.
- Lower rates of both re-abuse and institutional abuse.
- Better behavioral and mental health, exhibited by fewer internalizing and externalizing behaviors, better adaptive behaviors, fewer psychiatric disorders, and better emotional health.
- Higher likelihood of achieving permanency through guardianship with their relative caregivers to maintain life-long connections with their family if they are unable to safely return home."

[4] Epstein, H. R. (2017, July 1). *Kinship Care is Better for Children and Families*. American Bar Association. Retrieved December 14, 2022, from https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol-36/july-aug-2017/kinship-care-is-better-for-children-and-families/

[5] Child Welfare Information Gateway (2022, May 4). Preserve culture and families with relative and kinship care. Retrieved December 14, 2022, from https://content.govdelivery.com/accounts/USACFCWIG/bulletins/3095635



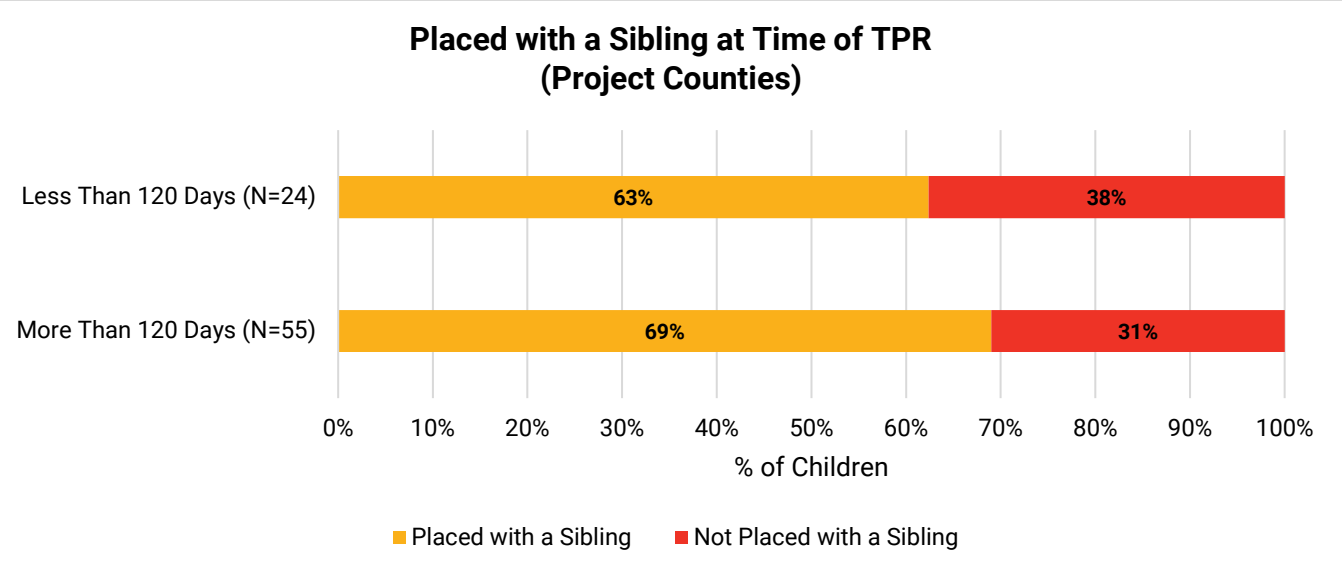
Reasons that were given in the surveys for not placing with a relative were grouped into five main areas:

- Child's level of need required specialized care
- Placed with a minor sibling, who may also live with a relative or in some cases, the sibling had been adopted previously by a non-relative
- Relative placement had previously been tried unsuccessfully
- Bond with foster family; child was placed at birth into the foster home
- Large sibling group made finding placement to keep all siblings together difficult

Placement with Siblings

The longest relationship any person will have is with their sibling. Therefore, at a minimum, "when siblings are placed apart, each sibling, or his/her caregiver, when appropriate, should know where the other sibling is and how to reach him/her." (Ongoing Services Standards, 2022, p. 180). Ideally, siblings would be able to reside together in their pre-adoptive home, however, there are sometimes justifiable reasons why placement together cannot occur. When placement in the same home is not possible, ongoing standards outlined that face-to-face sibling interaction should be provided at a minimum of once a month and other contact such as letters, calls and emails are encouraged.

Of the cases reviewed, 79 children had a sibling in care at the time of TPR. Sixty-seven percent (n=53) of children were placed with a sibling at the time of TPR. The remaining 65 children either did not have siblings or did not have siblings in care at the time of their TPR.



The two most common reasons documented in the permanency plan regarding why a child was not placed with a sibling were:

- Relatives or foster home where siblings were placed were unable or unwilling to take the sibling(s).
- The child's and/or siblings' level of need was too high for one placement to manage.

Reasons for why the relatives could not accept placement of another sibling were not explored as part of this project.

Proximity of Placement to Family

Placement proximity to the child's parents within 60 miles is a consideration when placing a child in out-of-home care. Eighty-two percent of all children in the case reviews were within 60 miles of their biological parent(s). Some of the reasons cited for having children placed farther from their parents included:

- Parents moved after the placement was made,
- Children were placed with a relative who resides more than 60 miles away, and
- The children require a placement that can meet the child's special needs.

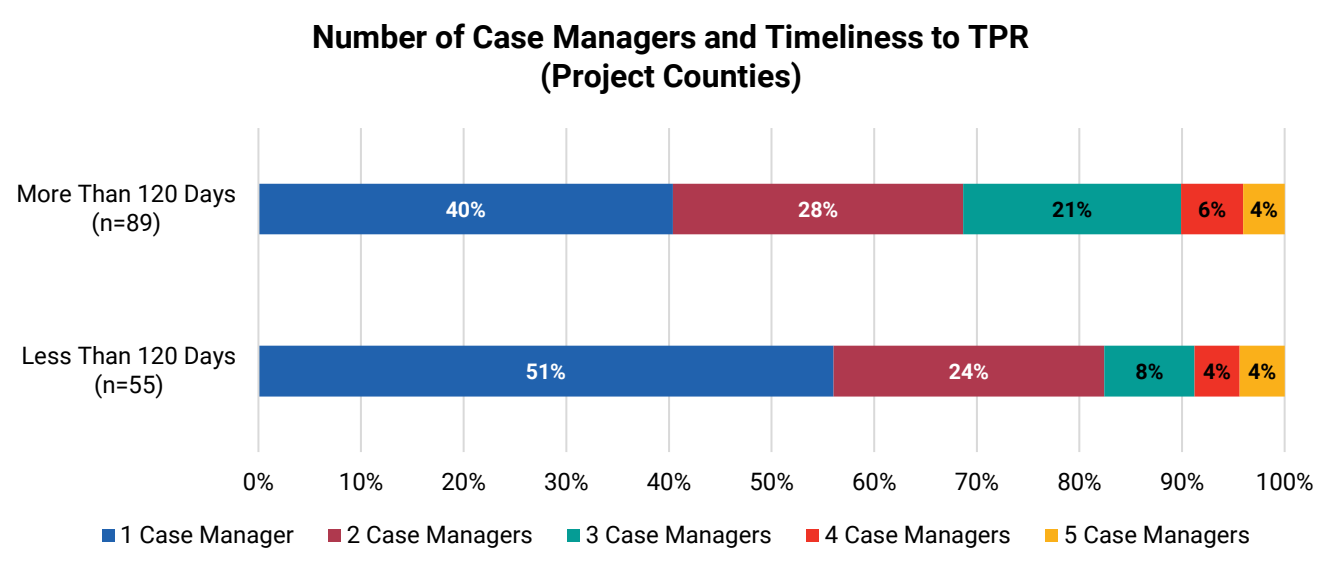
The distance a child was placed from their parent was identified as a potential barrier to more timely permanence.

Child Welfare Professionals' Impact on Outcomes

Children and families are impacted by staff turnover as it disrupts the continuity of case practice that they receive. When cases are transferred between multiple staff, there may be a delay in permanency for a child. The National Technical Assistance and Evaluation Center for Systems of Care (2008) stated "The child welfare field often is characterized by high staff turnover, which can lead to low staff morale, excessive workloads for those who remain, and most importantly, feelings of rejection and

insignificance by the child or family."[6] Casey Family Programs (2018) found that "Turnover during critical junctures in a child's placement may result in resource parents losing the support they need to maintain a placement, as well as escalation of a child's behaviors. The depth of a child welfare professional's cultural competency and understanding of children's needs may also be contributing factors to placement stability."[7]

Case record reviews revealed a relationship between timeliness to TPR and number of case managers. The majority (75%) of cases that achieved TPR disposition in less than 120 days had only one or two child welfare professionals, while 31% of cases that took more than 120 days had three or more case managers.[8] This finding is consistent with existing research that staff turnover can negatively affect multiple child welfare permanency outcomes, including case length.[9] [10]



Child welfare professional turnover may be confounded by additional factors such as professionals new to the field or to the TPR process. Survey respondents identified inexperienced child welfare professional as a potential barrier. In the case file review, it was not possible to determine the child welfare professionals' level of experience to discern if this is contributing to a delay in permanency. TPR training is typically offered to child welfare professionals either at orientation or when the training becomes available. These times may not be optimal as new child welfare professionals have numerous

[6] National Technical Assistance and Evaluation Center for Systems of Care (2008). *Challenges and strategies in following an individualized, strengths-based approach.* Child Welfare Information Gateway. Retrieved December 14, 2022, from https://www.childwelfare.gov/pubs/acloserlook/strengthsbased/strengthsbased3/

[7] Casey Family Programs (2018). Strong families. Retrieved December 7, 2022, from https://www.casey.org/media/SF_Placement-stability-impacts_2021.pdf

[8] When pulling data regarding the number of ongoing child welfare professionals assigned to a case, only the child welfare professionals who were designated as the "primary" staff on the case were included. Some counties regularly utilize a team on a case; this information was not used in the data collected.

[9] Ryan, J. P., Garnier, P., Zyphur, M., & Zhai, F. (2006). Investigating the effects of caseworker characteristics in child welfare. *Children and Youth Services Review*, 28(9), 993–1006. https://doi.org/10.1016/j.childyouth.2005.10.013

[10] Williams, N.J. & Glisson, C. (2013). Reducing turnover is not enough: The need for proficient organizational cultures to support positive youth outcomes in child welfare. *Child Youth Services Review*, 35(11), 1-17. https://doi.org/10.1016/j.childyouth.2013.09.002

areas of practice in which to become competent and training specific to TPR may not feel relevant at the time that it is offered. According to survey responses, child welfare professionals entering the field may not have to prepare a TPR for months or even years into their practice.

Fifty percent of survey responses identified that all child welfare professionals are trained on TPR processes, 43% indicated some child welfare professionals are trained on TPR processes, and 2% identified that their county does not require training on TPR process. Respondents were asked when training was offered, and 16% indicated during orientation, 5% responded when the child welfare professional has a pending TPR, and 55% indicated when the training became available.

Permanency Planning

Much of the case practice prior to TPR is documented in the permanency plan. Formal goals are set and should be agreed upon by the child welfare professional, family and youth as well as being monitored by the court at periodic reviews. These goals are intended to move the family toward the identified permanency outcome, most typically reunification.[11]

Ongoing Services Standards (2022) states "Concurrent planning is a process of working on one permanence goal while at the same time establishing and implementing an alternative permanence goal that involves simultaneous activities to move a child more quickly to permanence. It involves a mix of meaningful family engagement, targeted case practice, and legal strategies aimed at achieving timely permanence" (p. 80). Assessing the need for concurrent planning involves early assessment of the conditions that led to the child's placement into out-of-home care, the strengths of the family, and the likelihood of reunification within 12 to 15 months that is culturally respectful and based on the family's history and current functioning. The assessment is based on a review of factors that make timely reunification more or less likely. This allows the child welfare professional and child's team to make determinations about the family's capacity to benefit from reunification services and the need for alternative planning. By no means should the presence of such conditions be construed to mean reasonable efforts to reunify the child are not required unless they meet the statutory criteria for instances where reasonable efforts are not required as stated in s. 48.38(4m) and 938.38(4m) Wis. Stats.

The Child Welfare Information Gateway (n.d.) states "The history of child welfare in the United States can be characterized by a continuous thematic shift between family preservation and child safety. The 1970s saw a number of efforts to reduce children's time in foster care and expedite paths to permanency. The 1997 Adoption and Safe Families Act (ASFA) (P.L. 105–89) marked the first-time issues related to permanency were explicitly stated in legislation, which was pivotal in changing the landscape of child welfare practice. This law connected safety and permanency by demonstrating how each factor was necessary in achieving overall child well-being. While ASFA made clear that child safety was paramount, it also provided a new way of defining permanency for children and youth in foster care. The law specified that States had to improve the safety of children, promote adoption and other permanent homes for children who needed them, and support families. ASFA also required child protection agencies to provide more timely assessment and intervention services to children and families involved with child welfare. Additionally, ASFA paved the way for the legal sanction of concurrent planning, simultaneously identifying and working on a secondary goal, such as

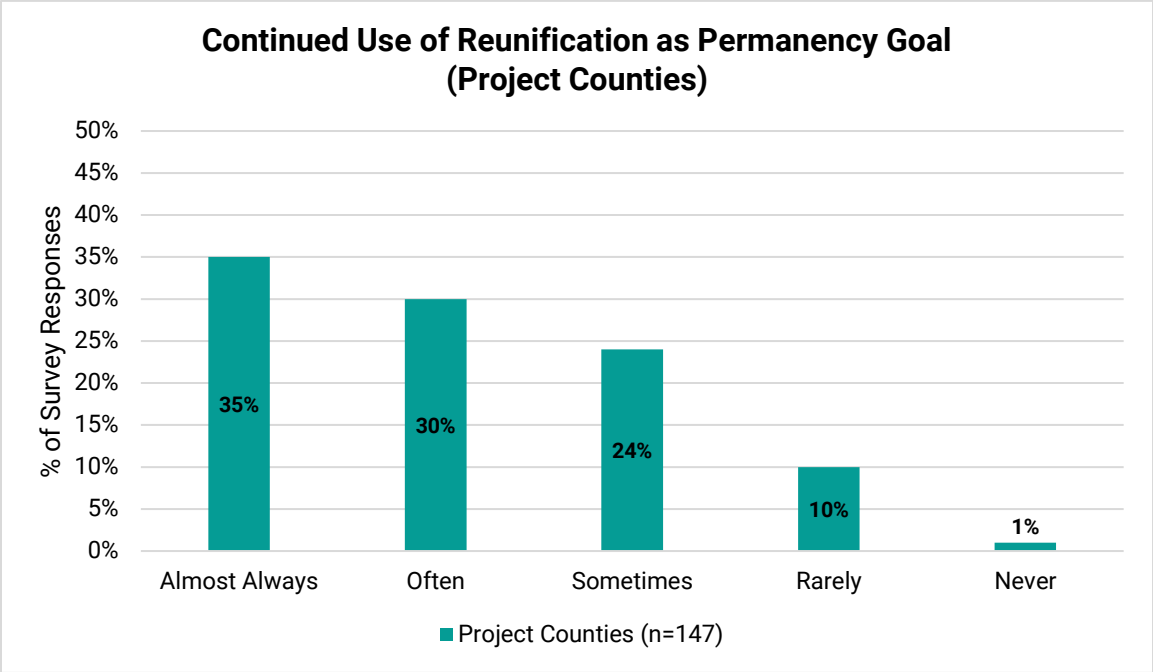
[11] Wisconsin Department of Children and Families (2021). *Wisconsin out-of-home care (OHC) report: Annual report for calendar year 2020*. Retrieved from https://dcf.wisconsin.gov/files/cwportal/reports/pdf/ohc.pdf

guardianship, with a relative, by requiring that agencies make reasonable efforts to find permanent families for children in foster care should reunification fail."[12]

Ongoing Services Standards (2022) states "The federal Adoption and Safe Families Act (ASFA) [42 USC 675 (5)(E) and 45 CFR 1356.21(i)] specifies that a TPR petition must be filed for a child who has been in out-of-home care for 15 of the last 22 months…When an agency does not file a TPR petition within the ASFA timelines, one or more compelling reasons must be documented as an exception. For additional information, refer to DCFS Memo Series 2007-18, "ASFA Exception to Filing a TPR Petition" (p. 85).[13]

In the survey, 57% of child welfare professionals identified that they "almost always" or "often" utilize ASFA exceptions. The file reviews found that 83% of all cases reviewed utilized an ASFA exception prior to TPR petition.

In the project counties, 65% of child welfare professionals "always" or "often" use concurrent planning to acknowledge reunification as a goal while also working towards termination of parental rights, even when they believe reunification is unlikely. Respondents identified that they determine if reunification should remain a permanency goal until the TPR is finalized but is dependent on the progress that a parent makes toward their goals.



TPR Referral and Filing

Some of the survey responses surrounding delays in filing indicate unfamiliarity with the overall court processes involved in a TPR case. Other barriers cited could be related to the number of persons involved in the decision-making process. Expecting an "entire staff" to agree on filing a TPR may be

[12] Child Welfare Information Gateway (n.d.). Concept and history of permanency in U.S. child welfare. Retrieved December 8, 2022, from https://www.childwelfare.gov/topics/permanency/overview/history/

[13] Additional information about the federal Adoption Safe Families Act (ASFA) [42 USC 675 (5)(E) and 45 CFR 1356.21(i)] can be found in Ongoing Services Standards (2022) and the DCFS Memo Series 2007-18, "ASFA Exception to Filing a TPR Petition."

more challenging than a discussion with a few staff who are more intimately aware of the complexities of the family.

One solution mentioned by a county is ensuring that the district attorney/corporation counsel has all the information they need prior to submitting the referral. Sixty-eight percent of survey respondents said their county uses standing meetings or consultations to determine whether a case is appropriate for TPR. The majority of survey respondents said child welfare professionals could not file the TPR without first having a meeting with the district attorney/corporation counsel.

Respondents were asked how long it typically takes for the prosecuting attorney to file the TPR once it was referred to them. Answers ranged from as few as two to four weeks to more than two months.

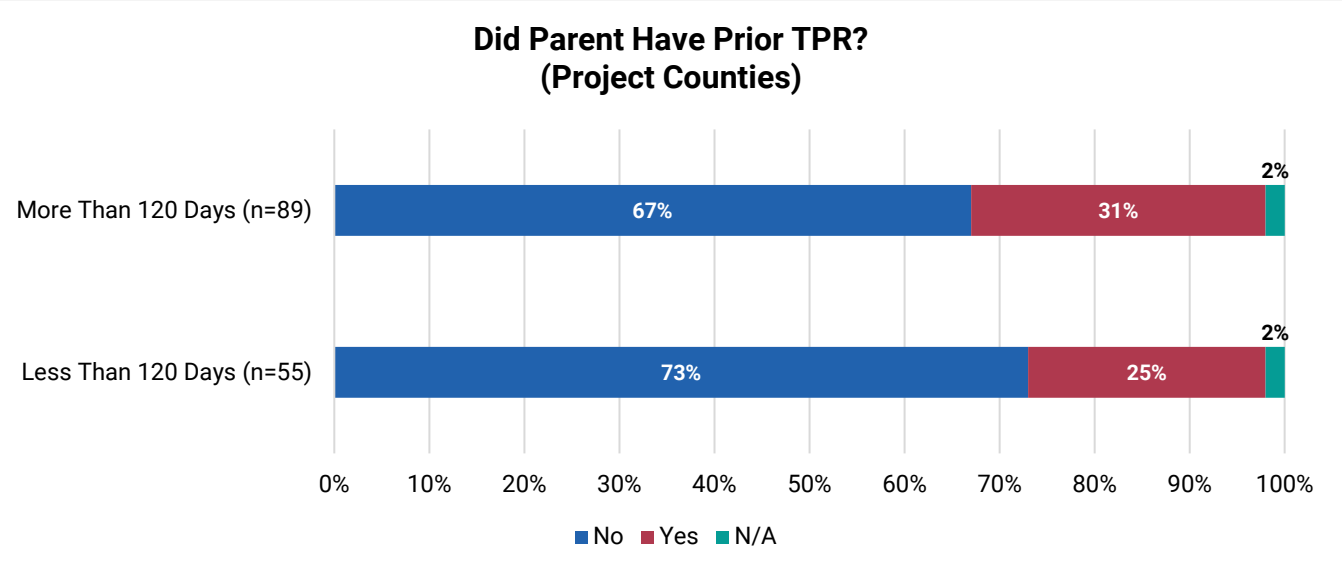
Child welfare professionals cited issues with waitlists, completing the needed paperwork, a shortage of legal staff, ICWA and WICWA compliance, and caseload size as reasons to why the attorney is not getting the TPR filed in a timely manner. Others indicated that voluntary cases move more quickly and wait times appear to vary based upon the filing grounds.

The workgroup was curious if another reason for delay might be attributed to the prosecuting attorney sending the petition back to the child welfare professional for revisions. Thirty-seven percent of respondents answered "yes" and 40% answered "unsure/I don't know".

Many of the reasons given as to why the attorney refused to file or sent the referral back could have been avoided if there had been communication between the child welfare professional and prosecuting attorney (PC-CW-Q79 and 80).

Previous Terminations

In the case file reviews, there were similar percentages of parents with a prior termination of parental rights for another child in both the less than and more than 120-day groups. This would indicate that a previous TPR does not mean that the county will move the case to termination more quickly than parents who had no prior TPR. The workgroup did not break this section down by voluntary or involuntary TPR and did not separate out cases where the TPR had occurred more than three years prior.



Adoption Process

Of the 144 cases reviewed, 138 were placed with an adoptive resource at the time the TPR was filed. Counties may proceed with a TPR whether there is an adoptive resource or not, however it is generally considered best practice not to proceed with a TPR without an identified adoptive resource. In situations where the pre-adoptive home backs out prior to the finalization of the TPR, the county should again work to reengage family members and rescind the petition until an adoptive placement is found. Child welfare professionals should utilize the Public Adoption Referral Checklist form (DCF-F-5056-E) prior to the filing of a petition for a TPR.

The Ongoing Services Standards (2022) outlines the steps for making a referral to the Public Adoption agency. Despite having steps outlined in standards, there was significant variation amongst answers to Q70, which asked "In your county, at what point in the permanency planning process does your agency consult with the Public Adoptions unit?" There was variation even amongst child welfare professionals in the same county. This observation held true in the case file review, where the workgroup saw variability within the referral process.

Time to Adoption Finalization

The workgroup looked at the time it took once the court granted the TPR Order until the Adoption Order was finalized. When a termination of parental rights is granted, the court grants the state guardianship. In Wisconsin, the state contracts with several regional child placing agencies to administer the public adoption program. After the case is transferred to the contract agencies, there is minimal difference among the public adoption regions in the time it takes from the TPR order to adoption finalization.

Section IV: Project Counties' TPR Process: Court and Legal Practice

Survey and File Review Findings

In addition to the eWiSACWIS case file reviews, the TPR Timeliness Workgroup collected court file data from the Consolidated Court Automation Programs (CCAP) case management system for the same cases. These reviews encompassed the same selected cases as the child welfare agency reviews above and were divided between those cases which were more than 120 days from TPR filing to disposition and those under that threshold. Disposition for all cases occurred in calendar years 2019 through 2021. Only those cases which were filed by or on behalf of the county were included in the review; privately filed TPR cases were excluded. In addition, all cases reviewed were required to have at least one parent for whom the petition was filed as an involuntary TPR, as to avoid skewing the data due to purely voluntary proceedings that would be likely to resolve in a shorter timeframe. Cases were randomly selected and accounted for distribution across the reviewed counties and calendar years. Please note that county identifying information has been removed.

Case resolution in less than 120 days was due largely to these matters resolving in one of two ways:

1. Parents in this cohort were far more likely to be found in default, or
2. They entered a no contest or voluntary plea early in the court process.

This was evidenced by collateral observations within the reviews and supported in data on dispositional outcomes (cited below). Further, due to the shared characteristics of these cases, many of the variables analyzed in the file review netted small sample sizes and may not be statistically significant. To this end, readers are cautioned from making any inferences from court file data attributed to cases that were disposed in less than 120 days.

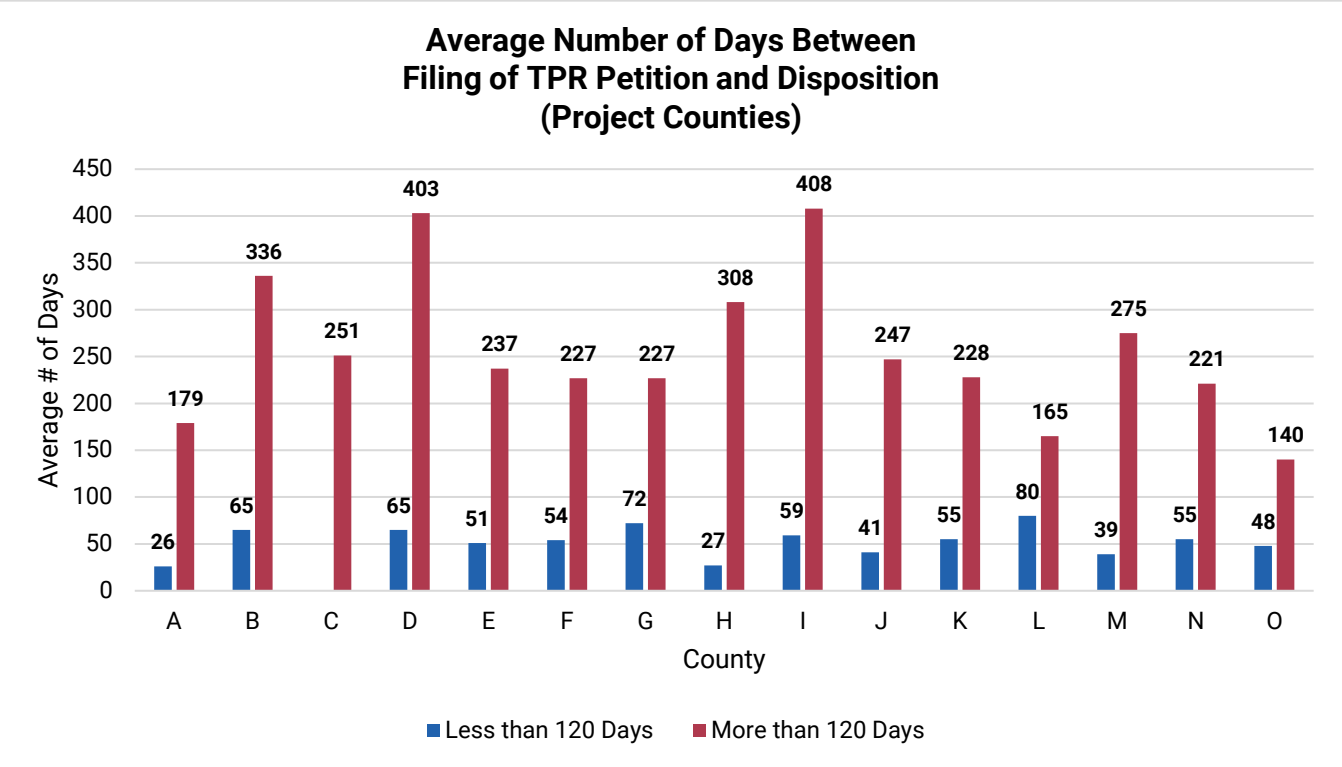
Court Process

General Findings

Below is the average number of days between filing of the TPR petition and entry of disposition for the cases reviewed from each of the project counties only (excluding Milwaukee County). The period from filing to disposition was determined to encompass the time during which the circuit court has the most control over case progression and would provide the most accessible information. Appellate issues were not reviewed as a part of this project. Similarly, the court file review did not include data related to entry of an adoption order, as that proceeding may occur in a different county than where the TPR was granted (§ 48.83(1) Wis. Stat.).

For those cases taking more than 120 days from filing of the TPR petition to entry of disposition, the average number of days to completion ranged from 140 days to 408 days, a difference of 268 days. The weighted average of time across the 15 counties was 257 days.

In the court file reviews for cases that are less than 120 days, the averages ranged from 26 to 80 days, a 54-day difference. The 14-county weighted average was 53 days.[14]

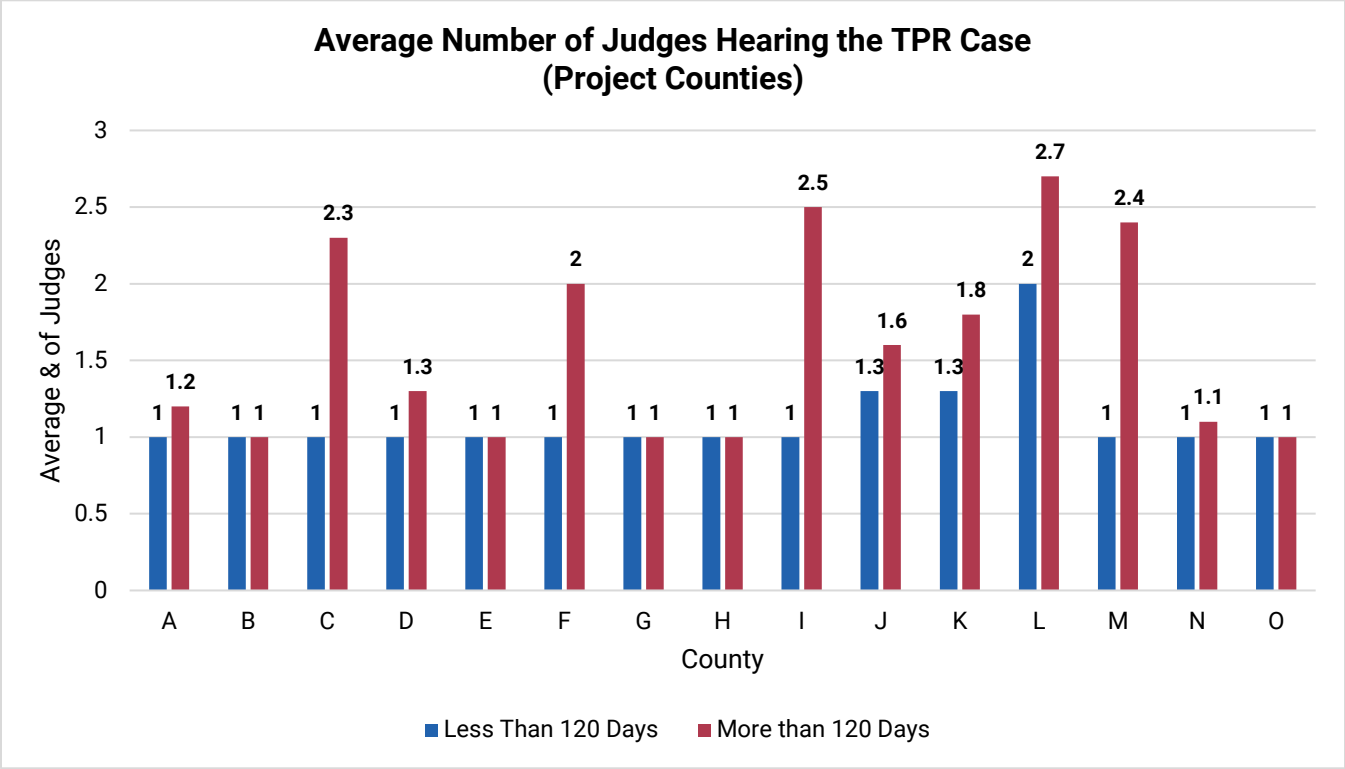


Judicial practice in Wisconsin varies as it pertains to circuit court intake and rotation practices in counties. The workgroup wished to account for this practice variance by collecting information regarding the number of judges hearing matters within each TPR case.[15] The figures below were established based upon the number of judges named in an on-the-record proceeding in the TPR case. Permanency hearings that were held in the TPR case were not included in the data unless the reviewer was able to ascertain that other scheduled matters were heard in the same hearing. In addition to providing some insight into the aforementioned practice the number of judges may also increase as a result of judicial substitution; an issue that contributes to a potential delay identified in the legal stakeholder surveys and discussed further below ("Adjournments").

[14] One reviewed county ("C") had no cases identified that met selection criteria and went to disposition in less than 120 days.

[15] No one-judge counties were reviewed as part of this project, as none of these counties had a minimum threshold of reviewable cases.

In cases taking more than 120 days, the greatest number of judges hearing one TPR case was four, with an average of 7.4 hearings occurring in the case. This issue will be explored in additional detail below.



File reviews of cases that took less than 120 days to achieve disposition revealed that only one judge presided over the majority of cases. In relation, the average number of hearings held in this cohort was two; providing little opportunity for the observation of any variance in length of time based upon number of judges hearing the case.

Parent Attributes

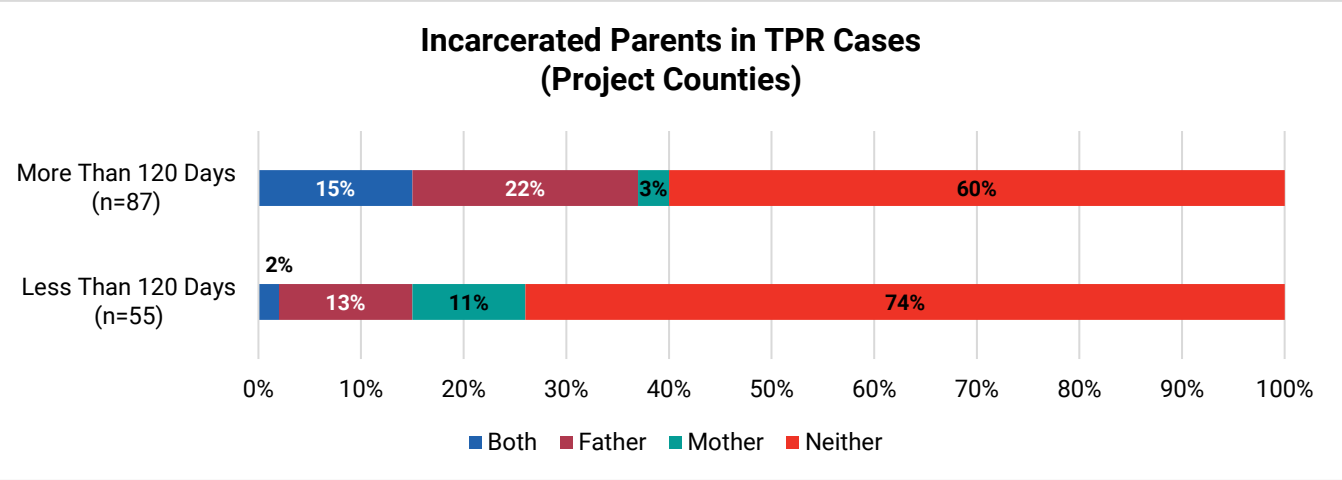
Although most of the information collected as a part of the court file reviews centered around in-court processes, certain parental demographic information was collected based upon the opportunity to contribute to delay and/or being identified as a barrier in the surveys.

Paternity establishment is an issue which has historically been cited as a cause for delay in child welfare proceedings, including the TPR process. In this project, the child welfare surveys indicated a level of concern with paternity issues leading to delay. However, in the legal stakeholder surveys, 80% of judicial and 83% of attorney respondents reported that paternity not being established occurred "rarely" or "never" as a reason for TPR case adjournment. This is also seen in the court file review data, relying upon information in the petition as to paternity status. In the cases that were more than 120 days, 80% (n=70) had paternity adjudicated prior to filing of the TPR or there as a presumed father due

to marriage.[16] Of those cases without an adjudicated father, only two resulted in any court action to address paternity, neither of which resulted in significant delay.

In the course of reviewing case minutes and parent attorney information, additional anecdotal information was collected regarding parent mental health and competency. In at least four of the cases taking more than 120 days, parent mental health played some notable role in the TPR proceedings. This included the need for competency evaluation, which resulted in the need to appoint guardian ad litem for a parent. This adds to the complexity of the proceedings and increases time needed to accommodate party schedules.

While parent incarceration was not a noticeable theme of the legal stakeholder surveys, it was identified in the child welfare responses as a barrier. Recognizing that incarceration could cause delays in the court and legal processes, the workgroup collected information as a part of the court file reviews to identify whenever a parent was indicated in the record as being in jail, prison, or other correctional placement. This information was determined via review of the party information in CCAP, the parental address field of the Petition for Termination of Parental Rights, and in court notes and minutes referencing any term of incarceration during the pendency of the TPR case. Delays related to incarceration that were observed in the court file review included difficulties in providing notice and case documentation to incarcerated parents, location and transport, limitations on jail and prison videoconferencing availability, and lack of communication between attorneys and in-custody clients.

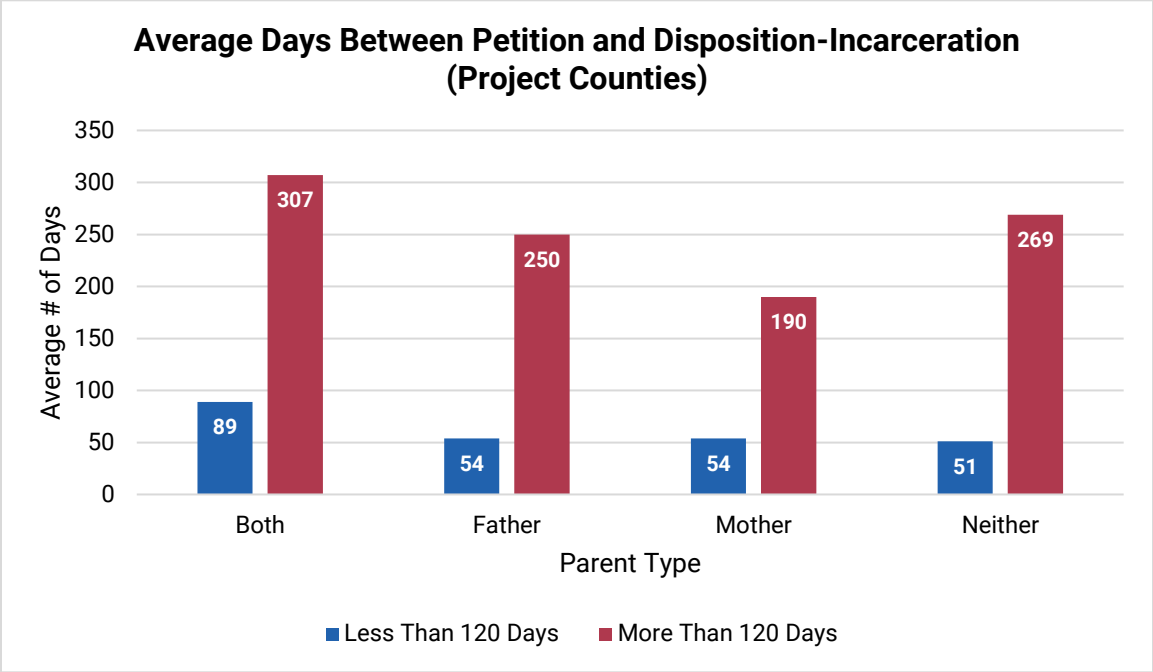


A small number of survey responses referred to parental incarceration extending timelines by making it difficult to provide services prior to filing of the TPR petition and in locating and facilitating court appearance for parents in custody or seeking treatment. It was further mentioned that the occurrence of delays based on long-term incarceration or in-patient treatment had increased because of COVID.

While conducting the court file reviews, it was determined that information should be collected as to parental incarceration and timeframe differences that may exist when one or more parent is in custody at some point in the TPR case. For the data below, incarceration was noted wherever a parent's address was listed as a jail, prison, or other correctional facility (i.e., alternative to revocation program),

[16] Six additional cases did not seek termination of the father's rights due to prior TPR, death, or other reason not specified on the petition.

where a parent appeared for a hearing in-person or virtually while in-custody, or when other reference to a parent being in-custody was noted in the court record. Information was collected only once per parent, regardless of any duration or other qualifier of the incarceration.



For the cases that were less than 120 days,[17] any difference in the length of time between petition and disposition due to parental incarceration was negligible. This includes one case in which both parents experienced incarceration during the case.

As to the cases taking more than 120 days,[18] the average time to disposition was lower when only one parent was incarcerated during the pendency of the case. While the length of time was markedly lower for mothers than those cases where neither parent was incarcerated, this is likely due to the small sample size and a greater occurrence of mothers entering a voluntary or no contest plea. The increase in time where both parents experience incarceration is expected and more significant.

Appointment of Counsel

Availability of an adequate number of attorneys to represent parents in TPR cases was a common refrain in all stakeholder surveys. This was evidenced in "Survey: Barriers", (Appendix B: Q82 and Q84) and elsewhere by judicial and attorney respondents. While some individualized survey responses reflected that the available attorneys lacked experience and/or needed training about TPR cases, such information could not be quantified via file review. When asked for impressions as to the "number of attorneys available to work on TPR cases…compared to the number of attorneys needed in order to avoid undue delays in TPR proceedings", for attorneys representing parents the results were as follows:

[17] For the less than 120 days graph: Both n=1; Father n=7; Mother n=6; Neither n=41.
[18] For the more than 120 days graph: Both n=13; Father n=19; Mother n=3; Neither n=52.

- Attorneys
    - Twenty-six percent responded there were “significantly fewer” attorneys available to represent parents than are needed, with 40% indicating “somewhat fewer”.
    - By contrast, the same surveys reflected that 72% of respondents indicated there were “about the right number” of guardians ad litem (GAL) available and 60% indicated there were “about the right number” of prosecutors.
- Judges
    - Forty-one percent responded there were “somewhat fewer” attorneys to represent parents than are needed, with no judges selecting “significantly fewer.”
    - Fifty-five percent indicated that there was “about the right number” of attorneys available to represent parents.
    - Judges were more inclined to perceive there were “about the right number” of all attorneys, responding at 77% and 91% for prosecutors and GALs, respectively.

The survey also collected information from judges regarding the appointment of counsel for parents in Child in Need of Protection or Services (CHIPS) proceedings, as Wisconsin does not have statutory provision for appointment by the Office of the State Public Defender (SPD) in these types of proceedings.[19] Interest in CHIPS attorney appointment arises out of the TPR Timeliness Workgroup’s belief that representation at this stage of a child welfare proceeding may contribute to quicker TPR outcomes, as the representation may continue to any subsequent TPR case, negate time to appointment in the TPR case, and reduce delays in obtaining and processing discovery since the attorney may already have access to pertinent information. Twenty-one judges responded that they appoint counsel to parents in CHIPS cases at county expense in some circumstances; though a small number indicated that such appointments might be rare in their jurisdiction. There was also a wide variety of factors that were cited in determining whether a parent would be appointed an attorney in the underlying case; including appointing an attorney whenever a parent requested counsel, applying *Joni B.*[20] factors, ascertaining whether the parent had diminished capacity, or prognosticating whether the facts of the CHIPS case suggested that a TPR may be a likely outcome.

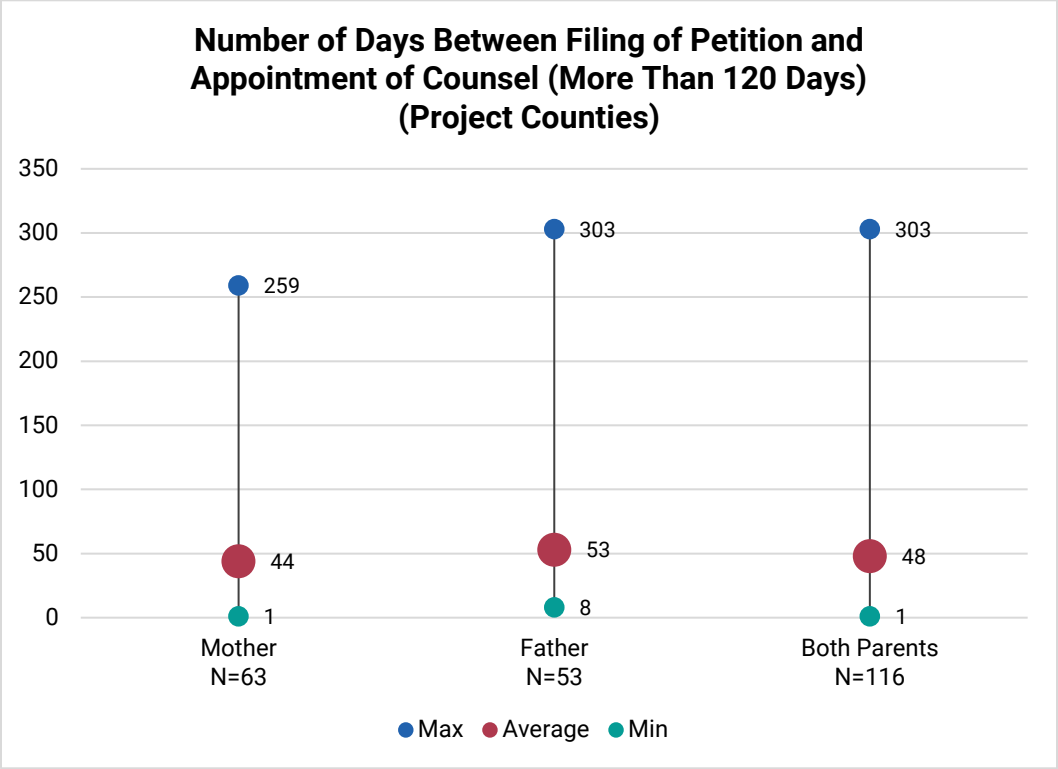
While the reported practice of regularly appointing CHIPS counsel is encouraging, the data collection was unable to discern for TPR outcomes where a parent was represented by counsel in the underlying CHIPS case and/or where that specific attorney representation continued into the TPR case. Anecdotally, the reviewed cases appeared to show infrequent overlap in representation across the CHIPS and TPR cases. The data supports this finding, as the average time from filing of the TPR petition to the appointment of counsel was exhibited to be lengthy in both the more than and less than 120-day cases.

It is possible that this is related to the difference in available attorney pools for county and SPD appointments; additionally, due to the specialized nature of TPR cases, there are often fewer attorneys knowledgeable in this area and/or willing to take these cases at the statutorily set SPD rate.

While delays attributed to appointment of counsel cannot be directly tied to lack of available attorneys, long shared concerns have been raised about the availability of counsel in all case types; particularly as

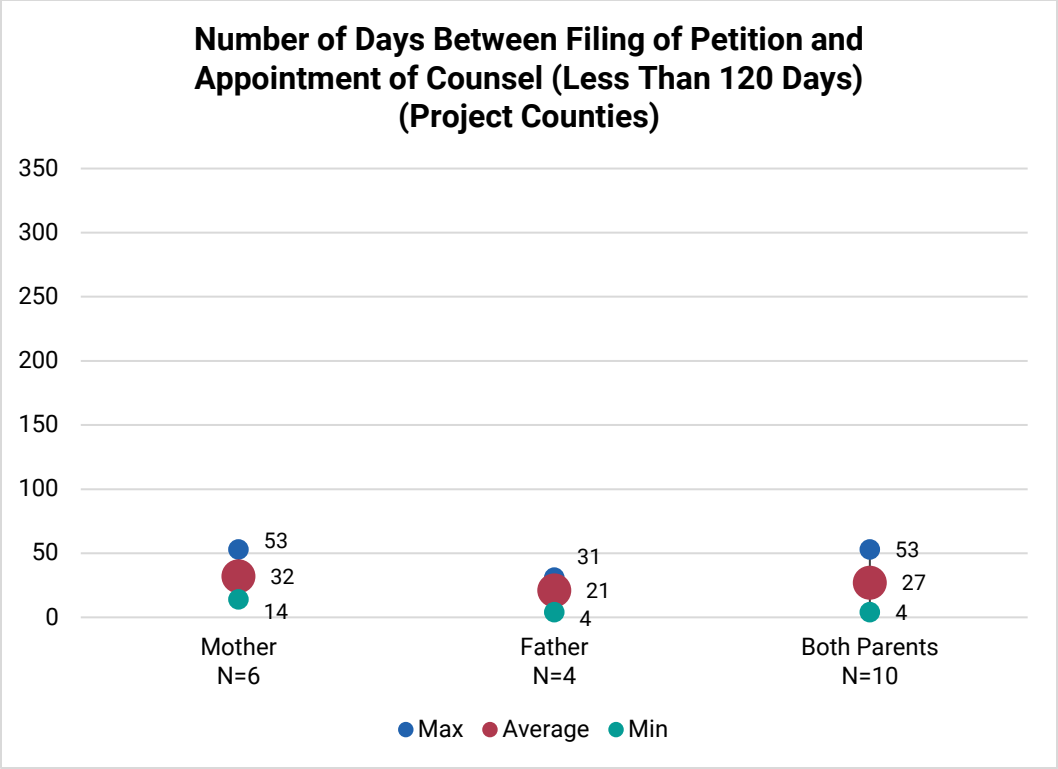
[19] Except for WICWA cases and a five-county pilot program, as set forth in § 48.233 Wis. Stats.
[20] *Joni B. v. State*, 202 Wis. 2d 1, 549 N.W.2d 411 (1996).

it pertains to both staff attorneys and private attorneys assigned by the SPD.[21] However, the data contained in the graphs below does not differentiate delays in appointment that may be due to lack of available attorneys for assignment, conflicts of interest, parent inaction, or other cause of delay.[22]



[21] Hatfield, Christine. "Wisconsin public defenders stress need for solutions to agency staffing shortage, case backlog." *wpr.org.* https://www.wpr.org/wisconsin-public-defenders-stress-need-solutions-agency-staffing-shortage-case-backlog. Accessed 8 July 2022.

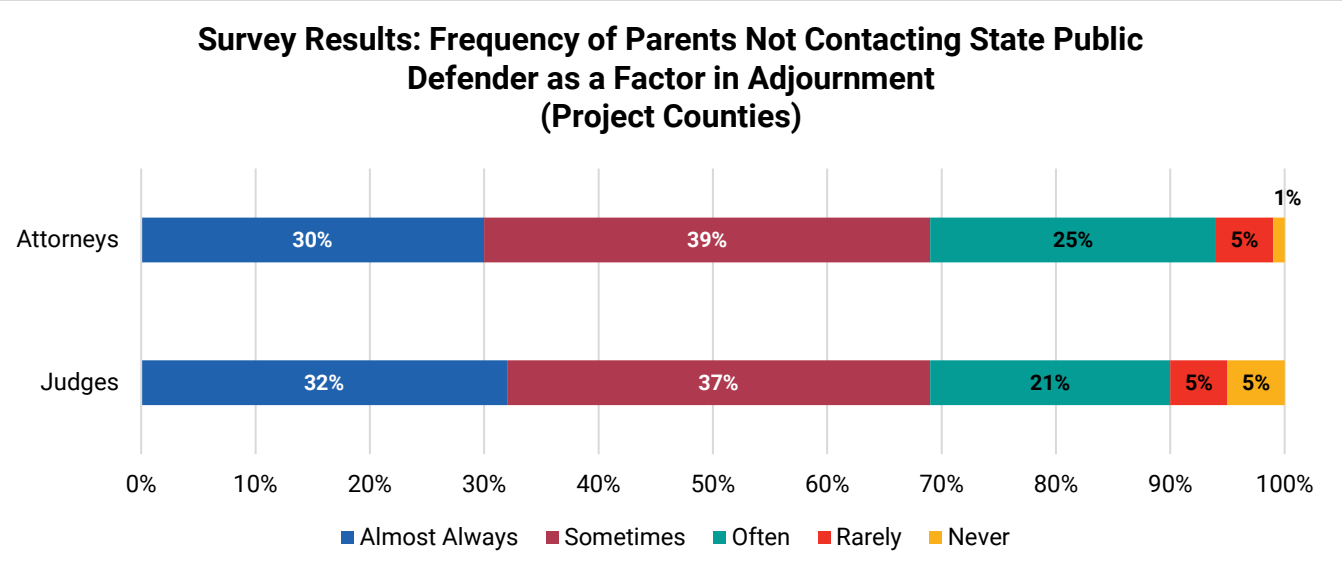
[22] As determined by the date of the filing of an Order Appointing Counsel, Notice of Appearance, review of court minutes and notes, or the appearance of an attorney in a hearing, whichever occurred earliest.



Regarding time to attorney appointment, the judge and attorney stakeholder groups were asked for impressions as to why these delays are occurring. The leading perceived reason for delay was that parents were not contacting the SPD to obtain an attorney in a timely fashion, despite many of the counties indicating that they have processes for apprising parents of their right to an attorney prior to the Hearing on the Petition (e.g., providing contact information along with the petition and/or initial notice, child welfare professionals providing SPD information to parents prior to filing, and having SPD attorneys available on-site or nearby to immediately assess for indigency). The attorney and judge survey responses mirrored each other in their perceptions of this issue, as evidenced in the graph below illustrating the frequency with which these stakeholders observe adjournments as a result of parents not contacting SPD to obtain counsel.

- Attorneys were more apt than judges to cite lack of a sufficient number of attorneys available or willing to take TPR cases (14% “almost always” and 24% “often” vs. zero% and five percent, respectively).
- Attorneys also cited SPD conflict rules as contributing to delays (10% “almost always” and six percent “often” vs. zero percent and five percent for judges). This difference is likely due to SPD staff attorney response, as judges and others may not often be aware when attorney conflicts are discovered prior to appointment of TPR counsel.

Attorneys also reported that they often are appointed to represent parties with little time prior to the next hearing in the proceeding, which results in the need for additional adjournments and continuances to speak with the client and to review the file.



Adjournments

In developing the TPR Timeliness Project, the workgroup focused heavily on analyzing adjournments and continuances as drivers of delay in timely adjudication of TPR cases. During the initial phases of the project, CCIP and DCF mapped the TPR processes from both the agency and court/legal perspectives. From there, various bottlenecks were identified as being susceptible to causing measurable delay via adjournment. The exact causes for adjournment vary and may be case-specific; however, the responses from attorneys and judges to the "Systemic: Barriers" portion of the survey outlined several themes contributing to delays. Many of these themes were previously suspected; however, the responses further narrowed the focus for the court file reviews. Additionally, specific survey questions were asked to obtain quantitative impressions around these adjournments:

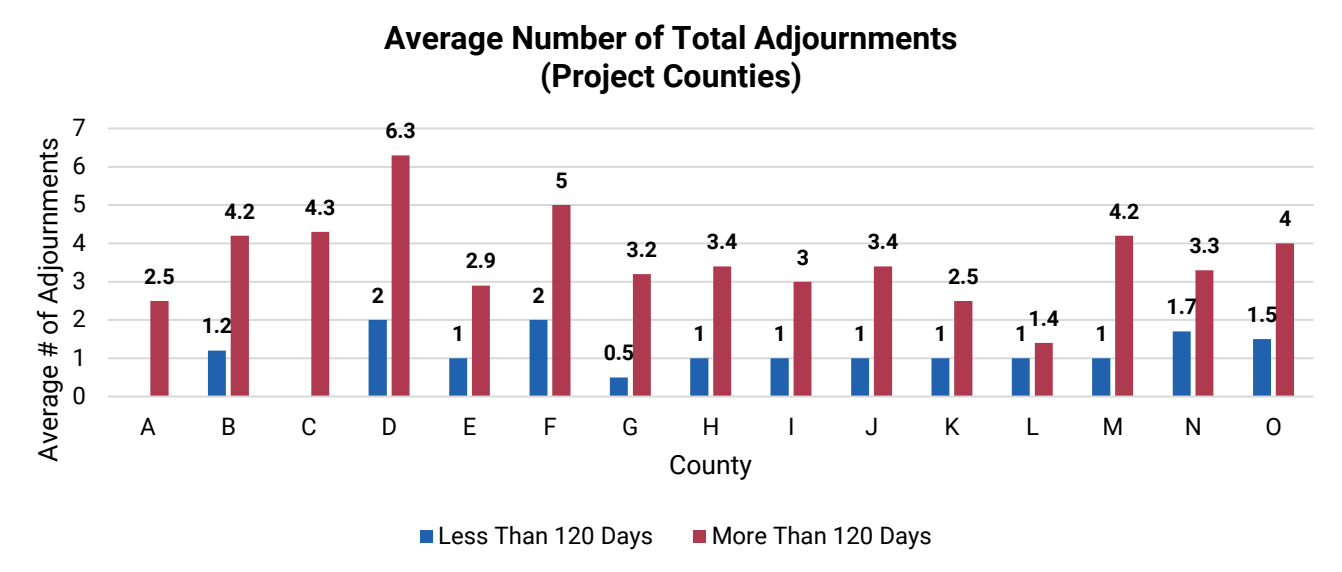
- Attorneys
  - Thirty-nine percent reported that the Hearing on the Petition was "almost always" adjourned and 35% indicated they were "often" adjourned.
  - As to the cause of these adjournments, attorneys stated that the most common reason for adjournment of the Hearing on Petition was due to obtaining counsel for parents; with 39% reporting that this was the cause of adjournment "almost always" and 46% reporting "often". The next closest basis cited was parent non-appearance at three percent "almost always", 25% "often", and 49% "sometimes". In comparison, 40% of the judicial responses indicated that parent non-appearance "sometimes" contributed to adjournment.
  - Although all other causes of adjournment of the Hearing on Petition received minimal response from the attorneys, they were more apt to cite substitution/recusal of judge as a reason for adjournment; 31% responding this occurred "sometimes" (vs. 15% of judges responding the same).

- Judges
    - Thirty-three percent responded that the Hearing on the Petition in TPR cases was "almost always" adjourned, with 29% stating that they were "often" adjourned.
    - Judges cited that the most common reason for adjournment of the Hearing on Petition was due to obtaining counsel for parents; with 25% reporting that this was the cause of adjournment "almost always" and 40% reporting "often". The next closest basis cited was for issues with providing notice; however, the drop-off was considerable at 11% "almost always" and five percent "often".
    - Amongst judges, the following causes received no responses as "almost always" or "often": substitution/recusal of judge, insufficiency of petition, and paternity establishment.

The graphs below indicate the average number of adjournments occurring in the more than and less than 120-day court file reviews. These are for any adjournment occurring throughout the life of the case, from the Hearing on the Petition through entry of the Dispositional Order; they also include the rescheduling of any hearing where the case record and notes reflect that such a delay occurred. To that end, it is possible that some adjournments occurring off the record may not have been captured in the data; however, it is unlikely that such instances were widespread throughout the selected cases nor prevalent across the project counties.

The goals of this project are not to eliminate all causes of adjournment, as such action is a discretionary tool of the court that may often be difficult to avoid, necessary for due process protection, or preferable to other outcomes (e.g., dismissal and re-filing of the petition). However, requests for adjournment should be considered with scrutiny and granted sparingly and only for good cause. Based upon correlation data cited below, there is at least some statistical suggestion that adjournment may be connected to (but not necessarily the cause of) longer times to TPR disposition.

As shown below, very few adjournments were found within the less than 120-day cases; with roughly half of the counties experiencing an average of one adjournment during the pendency of the TPR case. This data coincides with the outcomes of this group of cases often resulting in default or voluntary pleas early in the case. See additional information in the "Fact Finding and Grounds" section below.



To better explore any potential connection between adjournment and length of time from filing of the TPR petition to disposition, correlation analysis was performed to determine the extent to which these delays may be connected to time to case disposition. Correlations reflect the strength of the association between the two variables, but this association does not mean that one variable caused the other variable ("correlation is not causation"). Any association may be due to other factors that cause both outcomes or may even be purely coincidental. The closer the correlation number is to one or negative one, the stronger the relationship between the two variables, positively or negatively.

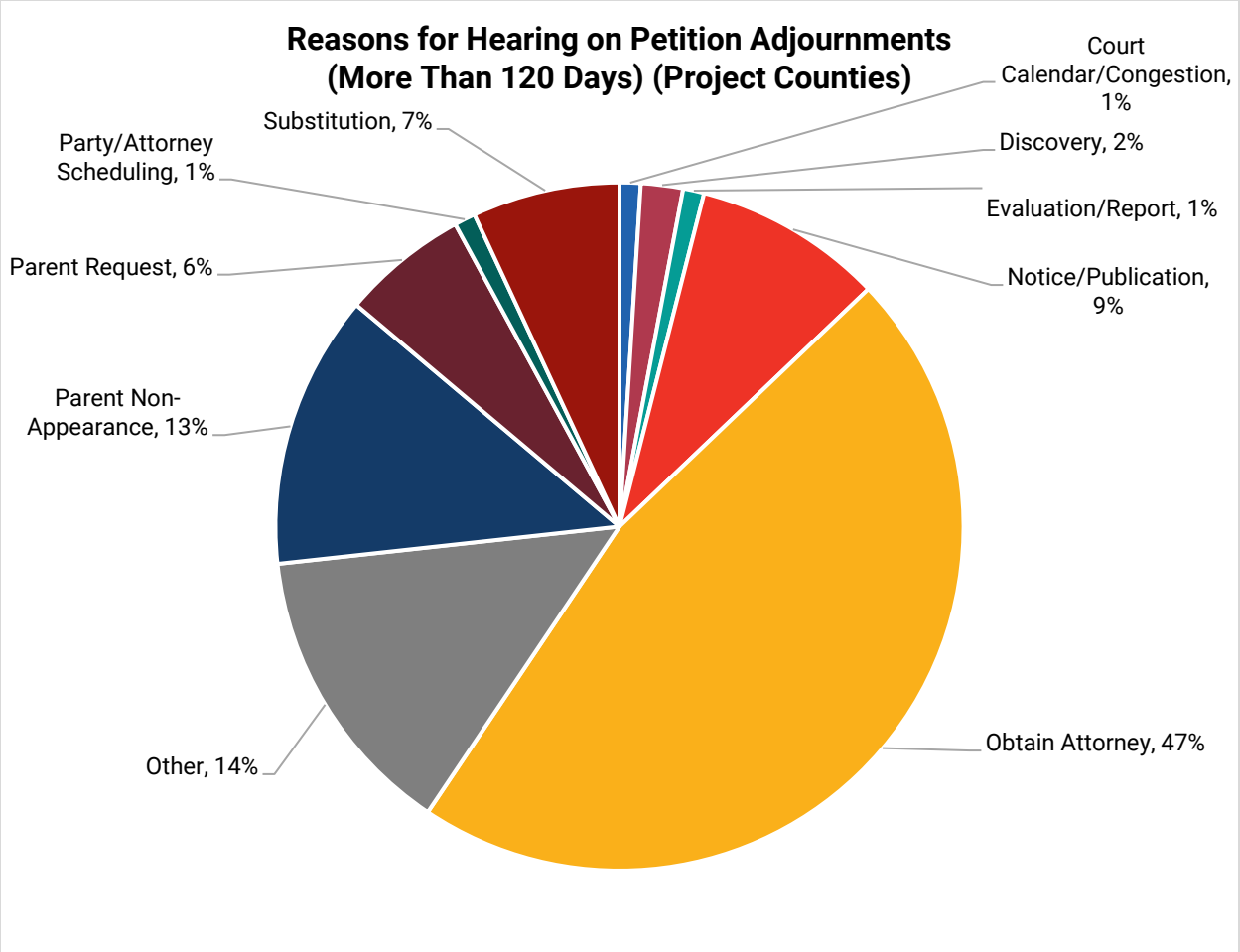
There exists a "moderately positive" (0.62) correlation between the number of adjournments and length of time for those cases taking less than 120 days from TPR filing to disposition. For those cases taking more than 120 days, the correlation coefficient is only slightly lower than the shorter case timeframes, at the "moderate positive" level (0.56). These correlations, while not reflecting adjournments as a cause of lengthier times to disposition, suggest that there is a statistical relationship between the two data points being compared.

Based upon the survey responses and in further analyzing court file data regarding adjournments, the majority of these delays are occurring at the Hearing on the Petition phase. This is not surprising, as this hearing is the point in time that begins the in-court process and thus sets the tone and trajectory for the remainder of the case. It is also at this point that certain rights are triggered, such as notice and right to an attorney, and statutory time limits begin. This is evidenced by 95% (83 of 87) cases taking more than 120 days found to have experienced at least one adjournment of the Hearing on the Petition. By comparison, even though the less than 120-day cases exhibited few total adjournments, 45% (25 of 55 cases) of these cases had an adjournment of the Hearing on the Petition.

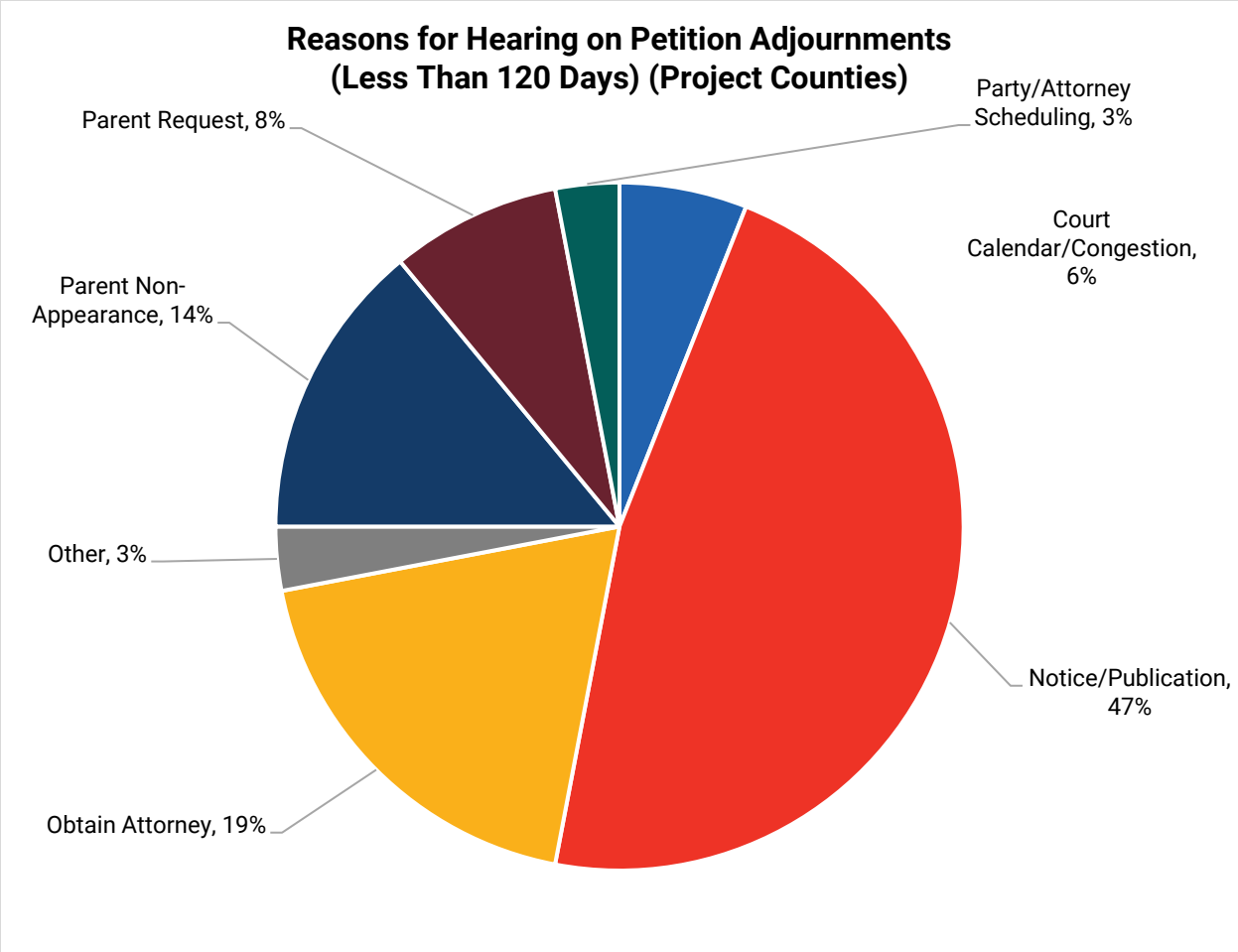
The court file review collected the basis for each adjournment occurring at the Hearing on the Petition phase of the proceeding. The graphs below indicate these causes for each occurrence, including where multiple adjournments of this hearing occurred within the same case. As referenced above, the leading cause of adjournment of the Hearing on the Petition for cases taking more than 120 days was for parents to obtain legal representation; this accounted for nearly half of all adjournments of the Hearing on the Petition. In the same set of more than 120-day cases, parent non-appearance accounted for 13% of the adjournments of this hearing. It should be noted that this accounted only for parents who did not appear after being properly noticed of the hearing. With this in mind and comparing the data to the perceptions of attorneys and judges in the survey, parent non-appearance may have been overrepresented as a concern where notice is the core issue. Combining non-appearance with delays for notice or publication moves this data to be closer to the responses seen in the surveys.

In the more than 120-day court file reviews, the “other” category accounted for the second highest number of overall adjournments of the Hearing on the Petition. The individual reasons for these adjournments, while seemingly isolated, are worth noting.

- A significant, but indeterminate number of adjournments in this group appeared to be related to parent counsel not being fully prepared for the Hearing on the Petition. This was determined by the court record and minutes, which often reflected attorneys being appointed very shortly prior to the initial or previously adjourned Hearing on the Petition; allowing for very little time for the attorneys to review the petition and speak to the client.
- Two adjournments occurred in this category where the petition required amendment due to insufficiency of the filing and/or incorrect information or attachments were provided, without being formally challenged or motioned for dismissal.
- At least two cases were adjourned for inquiry into Indian child status for purposes of applying ICWA and WICWA. While it was eventually determined that ICWA and WICWA did not apply and such inquiries are important at any stage of a child welfare proceeding that may involve a statutorily defined Indian child, this is an inquiry that should have already been made in the underlying CHIPS proceeding.
- At least four cases experienced adjournments predicated upon parental competency concerns, including the need for evaluation and/or appointment of a guardian ad litem for a parent. In general, most courts in the review counties appeared more cautious in disposing of TPR cases where a parent had an alleged or established mental health concern. This included hesitancy to enter a voluntary plea or default.
- A noticeable but indeterminate number of adjournments resulted from motion practice prior to completion of the Hearing on the Petition. The most common of these motions was to vacate default findings that had previously been entered due to parent non-appearance. It was noticeable amongst this subset that the bringing of such a motion often led to multiple adjournments (e.g., for the county to respond, additional time needed for hearings, briefing, and court decisions). The review and this report make no representations as to the validity of these challenges nor whether the motions were accurately decided; however, under most of the circumstances, the motions were granted, and the action recommenced against the moving parent. In a limited number of instances, this also resulted in the other parent withdrawing a voluntary or no contest plea in response to the previously defaulting parent re-entering the litigation.
- Finally, although not noted as a primary rationale for any adjournment of the Hearing on the Petition, records reflect that COVID may have played an indirect role in some adjournments (e.g., party or attorney illness and Zoom difficulties).

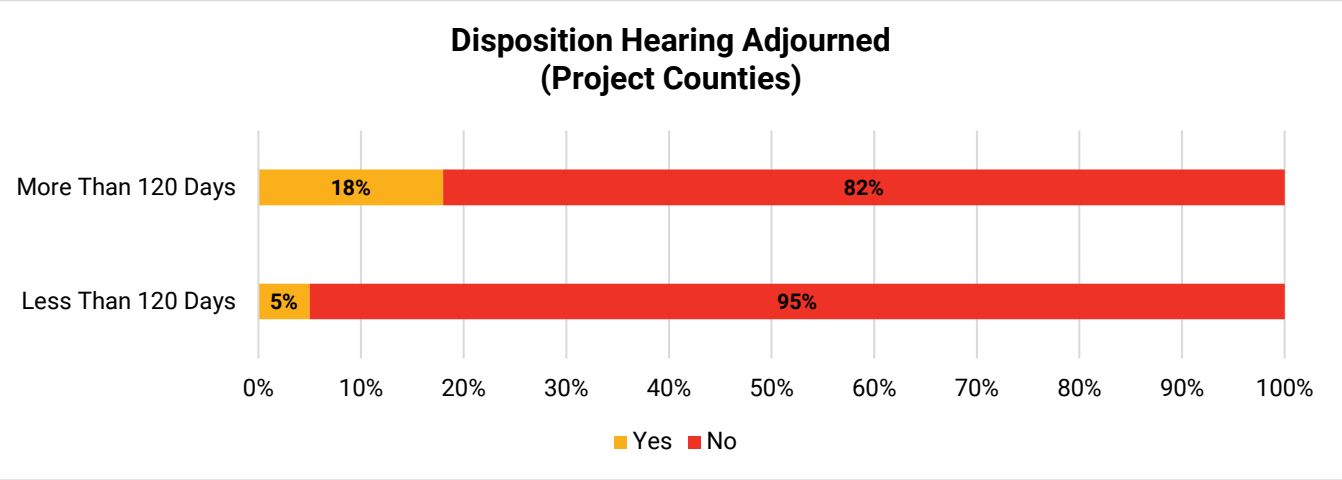


Amongst those cases taking less than 120 days, the leading cause of adjournment of the Hearing on the Petition was to provide notice or publication. This, along with the relatively high number of parental non-appearances, appears to be in-line with the significant number of default outcomes experienced in this cohort. The next most common cause of adjournment was related to appointment of counsel; however, many of the cases were not contested, but parents wanted to consult with an attorney prior to entry of a plea. To this end, it may be beneficial to explore options for parents to obtain legal advice earlier in the proceedings when in a non-contesting posture.



A similar correlation analysis was performed to analyze the association between adjournment and length of time when considering adjournments occurring exclusively at the Hearing on the Petition. While the strength of association remained relatively steady and "moderately positive" for the less than 120-day cohort (0.55), there was a noted difference when considering the cases that took more than 120 days. When eliminating delays at other junctures, such as trial or disposition, the correlation coefficient declined to the "weak positive" category (0.20). This suggests that, while a larger quantity of adjournments occur at the Hearing on the Petition, the lengths of delay may be less than those adjournments that occurred at later junctures. In particular, the need to reschedule trials later in the life of the case often resulted in much lengthier delays.

In contrast to the Hearing on the Petition, the Dispositional Hearing was adjourned far less often than other proceedings. This was true of both data sets, as seen below. These adjournments were largely due to these hearings being contested, necessitating additional time for testimony or reports, as well as additional motions for consideration by the court. There was additional indication that a small number of cases (fewer than five) experienced delays due to COVID and lack of in-person appearances.



Trial adjournments are covered in the "Fact Finding and Grounds" section below.

Interim Activities and Hearings

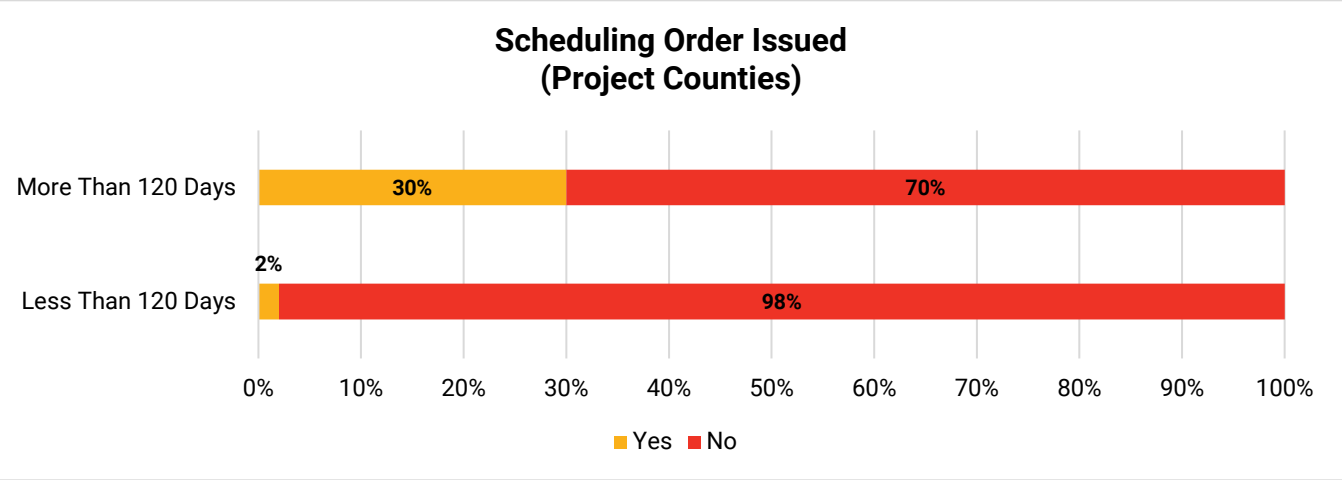
The court file review process also looked at activities that may take place during the pendency of a TPR case that may potentially impact timeliness and dispositional outcomes. These activities may be fully under the control of the court (e.g., issuing scheduling orders), be dependent on actions of the parties (e.g., filing of motions), or a combination thereof (e.g., mediation).

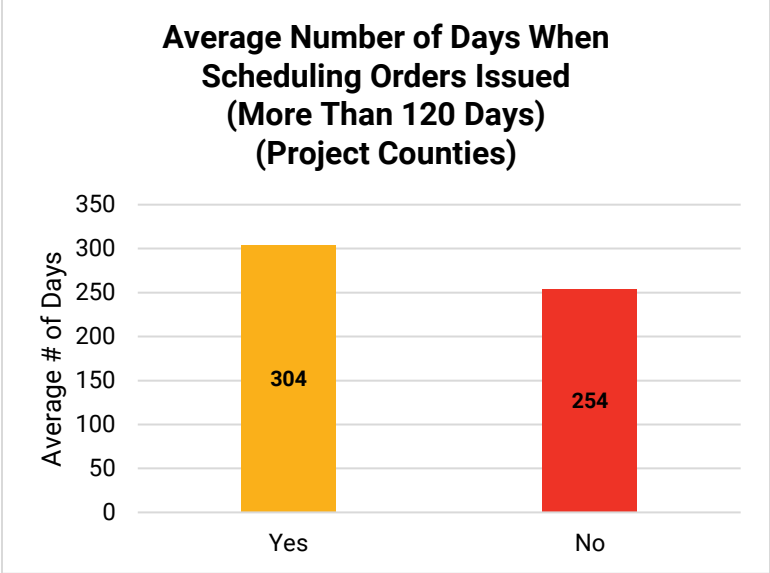
Scheduling orders have been identified as a best practice for setting the pace and expectations for the TPR in-court proceedings. This includes survey responses from at least one judge who indicated that they observed a positive impact on timeliness by utilizing scheduling orders on a regular basis and entering them sooner in the proceedings. It was suggested that this approach helps to emphasize the need to comply with discovery in a timely fashion. Meanwhile, attorney surveys reflected that use of these orders is inconsistent and may vary by judge or circumstance (75% of responses). The remainder indicated that scheduling orders were either never issued in that county's TPR cases or that they were unsure whether they were ever utilized.

While scheduling orders are subject to revision due to the needs of the case, nonetheless they help guide what should be occurring throughout the life of the case. This may include putting the parties on notice as to when the court expects specific tasks, such as discovery or motions practice to be completed. It also ensures that hearings are placed on the court calendar early in the proceeding, rather than attempting to find time later for hearings on an as-needed basis.

From anecdotal information observed in the court file reviews, scheduling orders are typically, but not always, contemplated when a jury trial is requested. This was certainly the case for the less than 120-day case sample, wherein the sole case with a jury trial request was accompanied by a scheduling order. In the more than 120-day sample, scheduling orders coincided much more sparsely with requests for jury trials; occurring in only 30% (26) of the cases, whereas jury trial requests were made in

64%. In comparing the average number of days from filing of the petition to disposition, those cases taking more than 120 days had a longer time to disposition when there was a scheduling order. However, it should be noted that this increase may be due to scheduling orders being utilized more commonly in more complex and contested cases.





The court file reviews also sought to capture data related to motions practice. Since motions brought by adversary counsel for parents may vary significantly based upon the factual and procedural history of both the TPR and underlying CHIPS filing, identifying specific areas of focus were not identified. Additionally, this project does not seek to limit the ability of parents and their attorneys to bring substantive motions, especially when seeking to defend Constitutional and statutory rights. However, data was collected regarding prosecutorial motions for summary judgment in order to determine whether the occurrence of such motions may have an impact on timeliness outcomes.

While no cases in the sample that were resolved in less than 120 days experienced a motion for summary judgment, such activity took place in 31 of 86 reviewed cases (36%) in the more than 120-day cases. Of the 31 cases, 68% (n=21) had summary judgments granted by the court. Within the 10 cases that had motions for summary judgment filed, but not granted, at least four of the motions had been withdrawn. The withdrawn motions included matters where parents entered voluntary pleas or were found in default prior to the motion being decided. As with the use of scheduling orders, as seen above, the average time from petition to disposition remained relatively constant at 300 days. Based on anecdotal data not captured within the court file review process, it would appear that prosecutors bringing motions for summary judgment often did so quite late into the court process and/or in response to motions filed by adversary counsel.

The reviews also looked at the use of mediation as a method for resolving TPR cases. Mediation has been utilized as an attempt to resolve TPR cases in a small number of counties and under varying circumstances and approaches. The court file reviews, and survey results indicated that the practice is very rare in the project counties. Over 83% of the judicial respondents indicated that they do not use mediation or had never ordered it in a TPR case. Meanwhile, amongst attorney respondents that figure dropped to 46%; though an additional 28% indicated that mediation was “rarely” ordered.

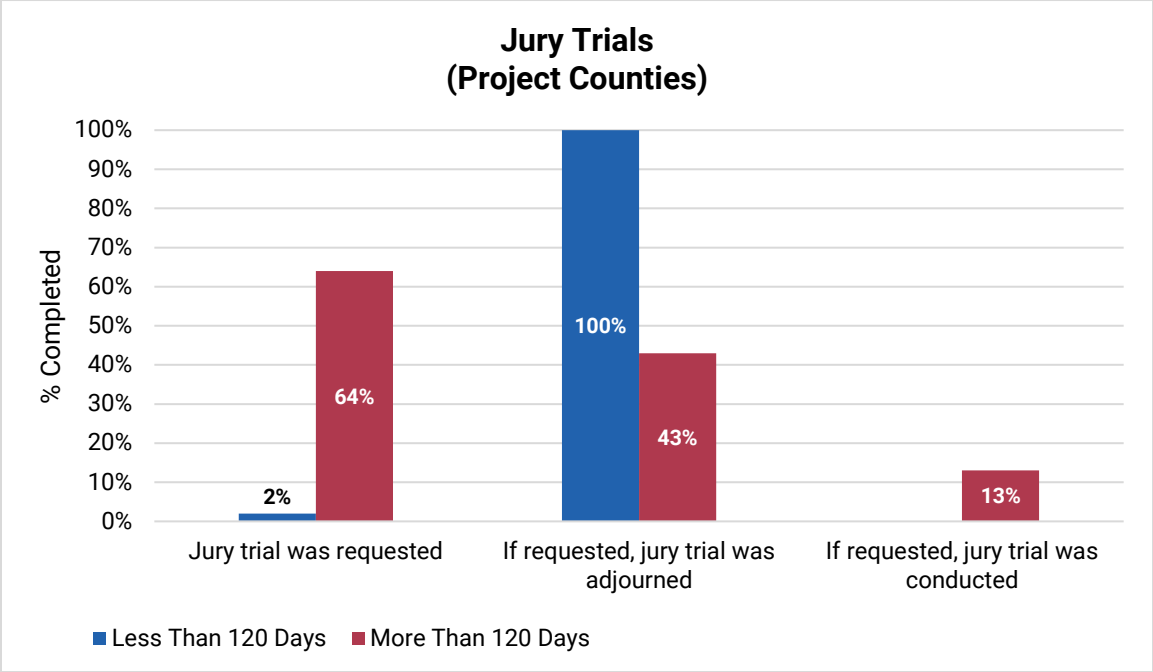
Judges were asked about barriers to the use of mediation and cited most commonly that mediation was not ordered because of a lack of interest or request by the parties. This was next followed by citing a lack of county financial resources to fund mediation. The use of mediation as a means of resolving TPR cases was also viewed unfavorably by the courts in a small response pool.

An additional barrier that may exist for use of mediation includes the lack of legally enforceable post-TPR contact agreements for families, which often adds to the perception that there is little that the county may offer as benefit to parents involved in a mediated TPR.

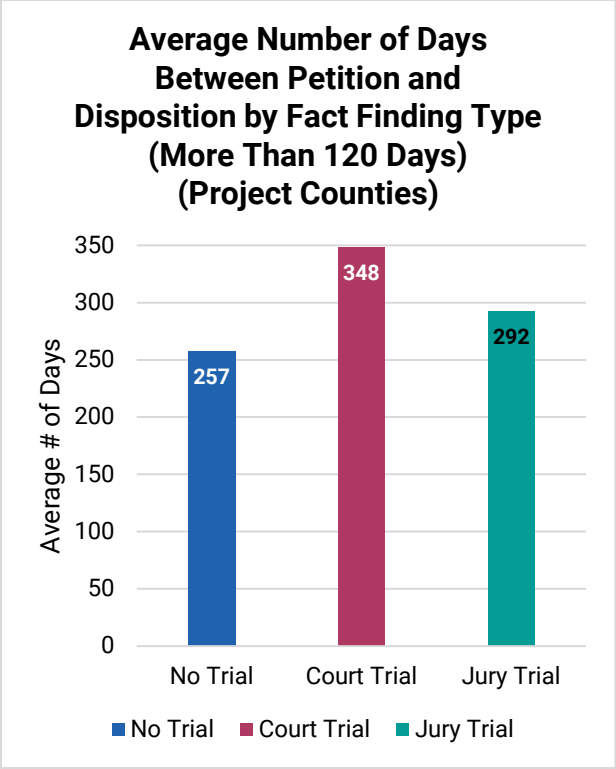
Fact Finding and Grounds

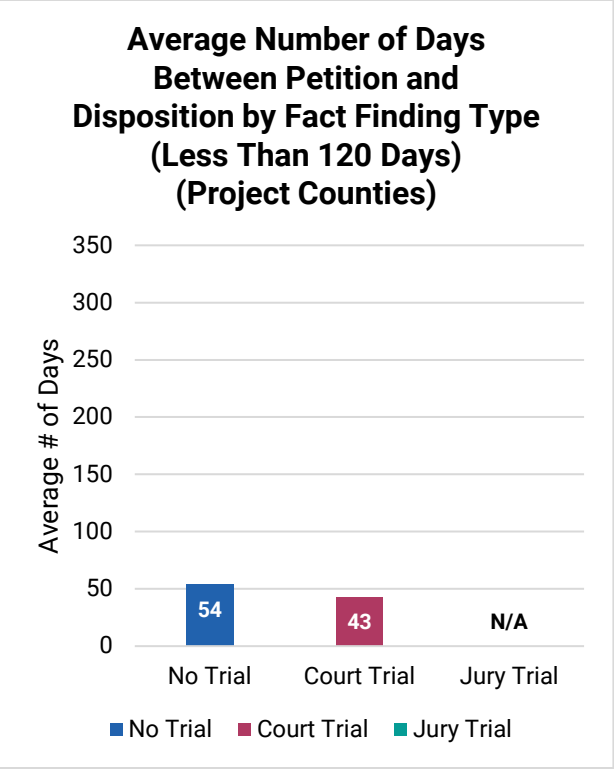
As illustrated in the survey responses (PC-LS-Q84), the statutory right to a jury trial at the grounds phase of a TPR Fact-Finding Hearing is often cited as an impediment to disposing of TPR cases in a timely manner. Based on this feedback, the court file review examined the use of, and timeliness measures associated with court and jury trials. While this information may be relevant in addressing practice issues, the availability of jury trials in TPR cases is a statutory consideration that is outside the scope of this project.

In the cases at hand, it should be immediately noted that only one trial was requested amongst the less than 120-day case cohort. This skews the graphs below, as the single request was adjourned and ultimately did not result in any trial being conducted. For the more than 120-day cases, nearly two-thirds of all cases (56 of 87) had a jury trial request.

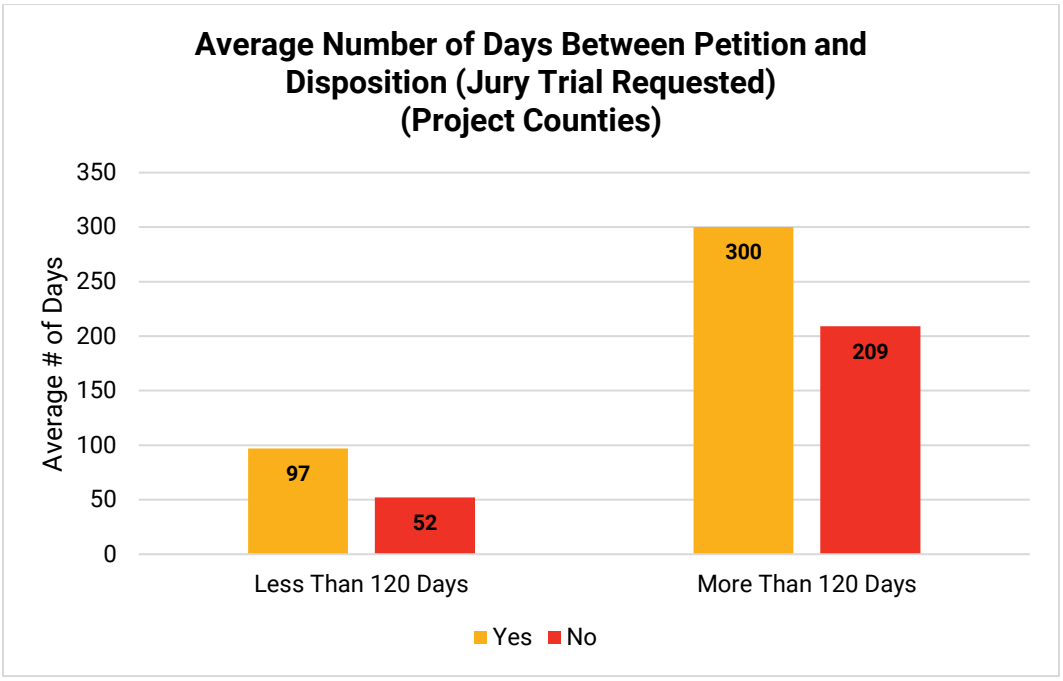


Of the 48 cases where a jury trial was scheduled on the court's calendar, the trial was adjourned or rescheduled in 21 of the cases and eventually only seven cases had a jury trial conducted for either parent. Coincidentally, court trials were conducted in the same number of cases. In comparing the time from petition to disposition and noting the very small sample sizes, those cases where a jury trial was held averaged 292 days and the court trials averaged 348 days.

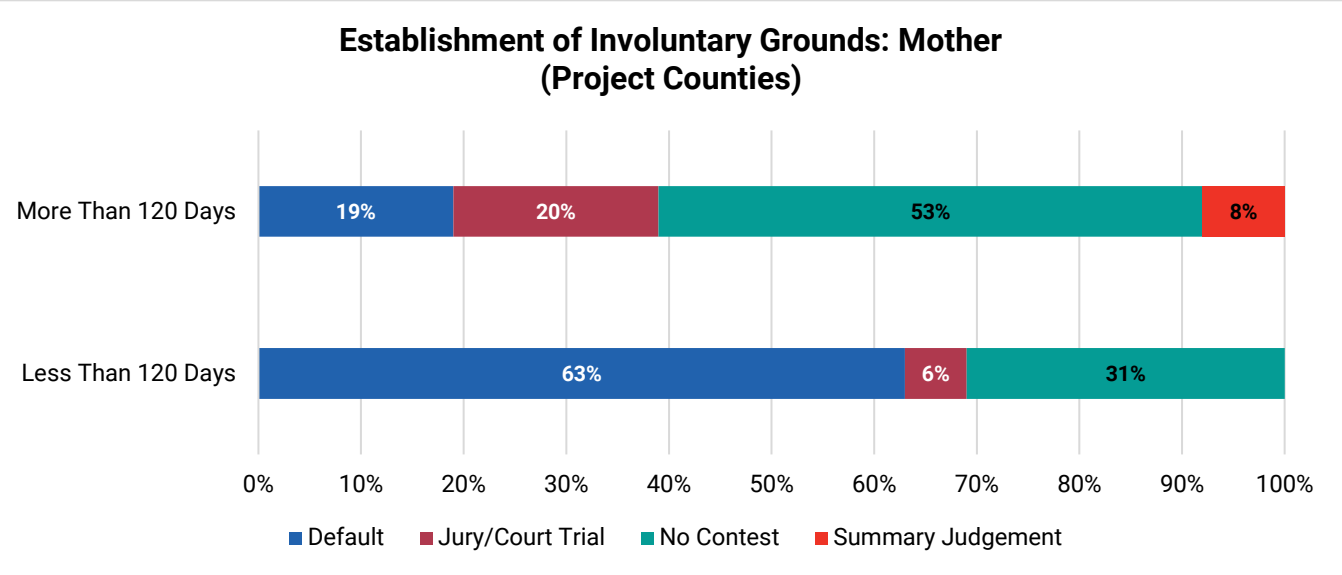




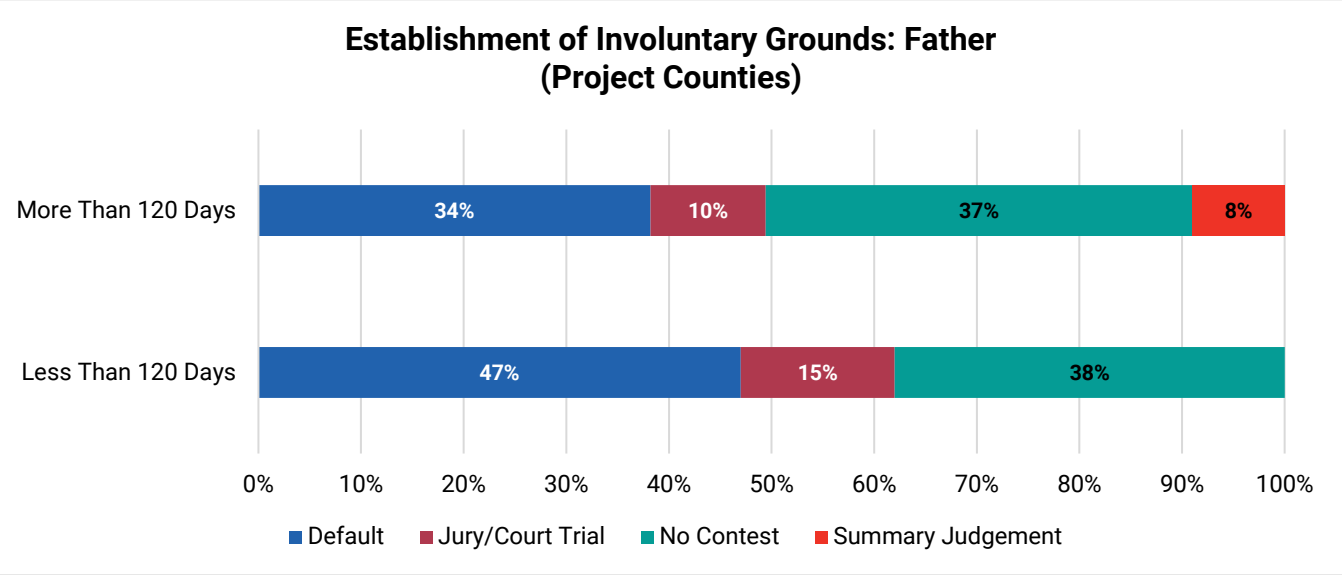
Comparison was also made in relation to the average number of days to disposition for cases based upon when a jury trial request was made. In both subsets of cases, those with jury trial requests had noticeably lengthier time to disposition; however, these outcomes should be considered cautiously for reasons previously stated as to the limitations of this data.



The court file reviews also explored how TPR grounds were established. As can be seen in the graphs below, the outcomes for mothers and fathers differ in ways that are not necessarily unsuspected. Fathers in the more than 120-day sample were almost twice as likely than mothers to be found in default or have a summary judgment entered, whereas mothers were twice as likely to have grounds established at either a court or jury trial.

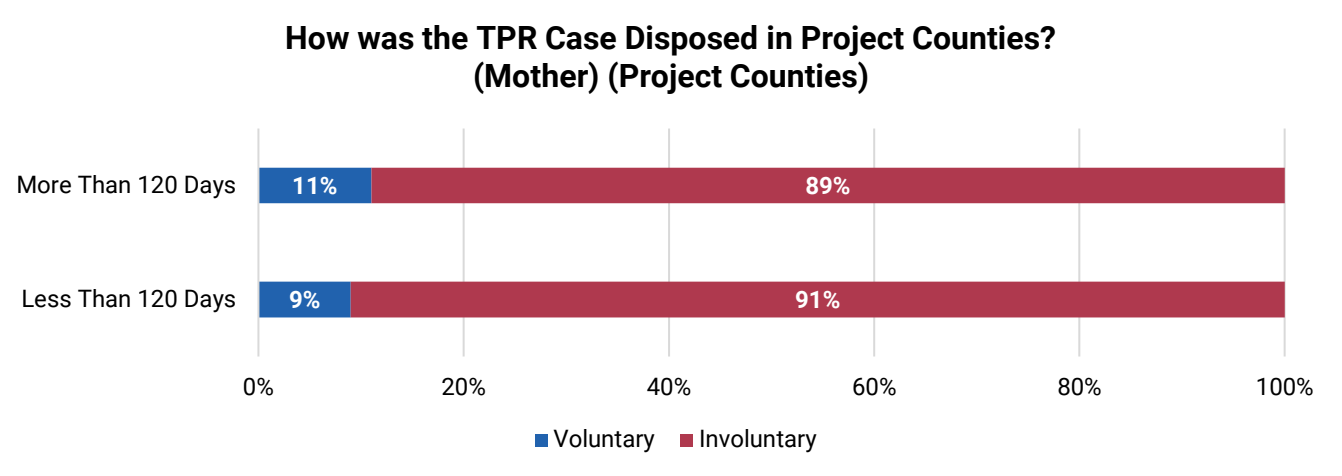


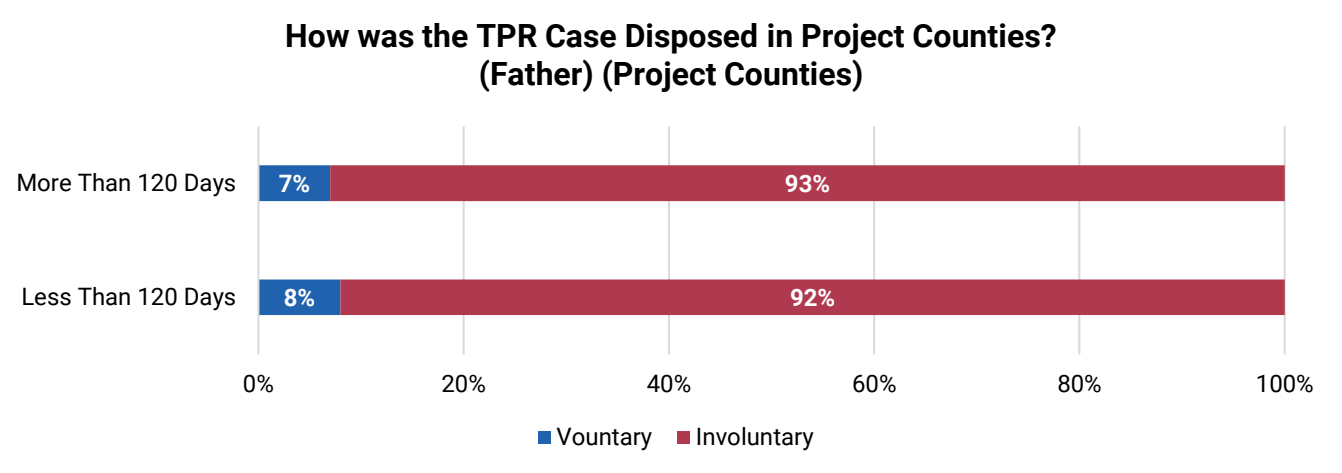
For fathers, entry of a no contest plea remained the leading result for securing a grounds finding in the TPR cases taking more than 120 days. This figure remained constant among the shorter subset of cases, while default also became the leading result; though by a lesser margin than amongst mothers, which increased dramatically amongst this group.



Disposition

The dispositional phase of the TPR case is explored in the graphs below.[23] It should be noted for these purposes that the term "voluntary" denotes cases wherein the petition was filed under or amended to reflect voluntary grounds for the respective parent and that parent entered a voluntary consent. As can be seen, the vast majority of all reviewed cases resulted in involuntary dispositions and that there was little to no variance between mothers and fathers or between the longer and shorter cases. This owes largely to no "true voluntary" cases being included in the review (cases filed as and disposed of as voluntary only), since those cases would likely skew toward resolution in less than 120 days. Further, it should be noted that these figures differ from the data above regarding a "no contest" grounds finding, as those are still considered an involuntary resolution and often result in a contested Dispositional Hearing.





[23] Also referred to as the "best interests" phase.

ICWA & WICWA

The federal Indian Child Welfare Act (ICWA)[24] and Wisconsin Indian Child Welfare Act (WICWA)[25] establish specific party rights and provide child welfare casework and legal requirements for child custody proceedings involving an Indian child. ICWA and WICWA apply to TPR cases and add to the complexity of applicable child welfare proceedings and are often cited as areas in need of training and assistance.[26] With these concerns in mind, data was collected as to whether ICWA and WICWA applied to any of the cases reviewed.

However, in the court file reviews for both the more than and less than 120-day cases none of the identified cases involved Indian children therefore, no data can be provided as to whether ICWA and WICWA applicability may contribute to timeliness.

[24] 25 U.S.C. §21

[25] §48.028 Wis. Stat., et. al.

[26] See also: CCIP's WICWA Continuous Quality Improvement reviews.
Comparison Report: https://www.wicourts.gov/courts/programs/docs/cqicomparereport.pdf
Summary Report: https://www.wicourts.gov/courts/programs/docs/cqireport.pdf

Section V: Milwaukee County's TPR Process: Child Welfare Systems

Child Welfare Survey and Case File Review Findings

Survey questions and their responses that are referenced in this section can be found in Appendix C. Specific questions will be listed in parenthesis after the corresponding data, e.g., (MKE-CW-Q1).

The 74 survey respondents from Milwaukee County included 10 agency managers, 26 supervisors, 32 child welfare professionals and six respondents who identified their role as "other".

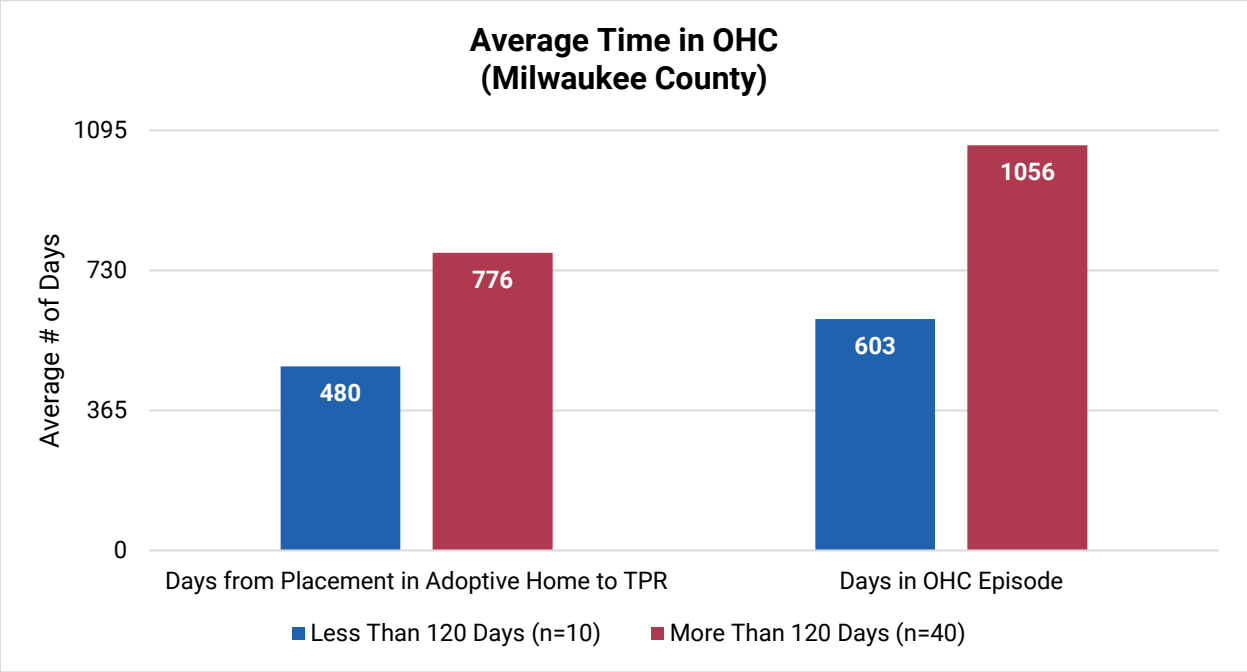
Systemic and Statutory Barriers

The workgroup explored both systemic and statutory barriers in the survey questions. Seventy percent of Milwaukee County child welfare respondents cited systemic barriers (MKE-CW-Q81 and Q82) and 21% cited statutory barriers (MKE-CW-Q83 and Q84) as impacting the delay of termination of parental rights.

Several identified statutory barriers are not directly related to statute, but rather interpretation and practice of the law or policy, e.g., the appeals process being slow, ineffective counsel, or parents who do not appear in person but are not found in default.

Days in Out-of-Home Care

The number of days in out-of-home care appears to be correlated with TPR timeliness. Children who reached TPR disposition less than 120 days after filing were in their adoptive home placement on average 296 fewer days than children who reached TPR disposition in more than 120 days after filing. Children who reached TPR disposition in less than 120 days after filing were in out-of-home care on average 453 fewer days than children who reached TPR disposition in more than 120 days after filing. This means that the latter group often experiences a stay in out-of-home care that is 1.24 years longer than in the shorter group; this is a significant amount of time in a child's life.



Reasonable and Active Efforts

An important safeguard for families is the requirement that agencies engage in reasonable efforts to ensure that children achieve reunification. "Reasonable efforts" describes activities of social services agencies that aim to provide the assistance and services needed to preserve and reunify families. The federal Title IV-E program requires states to make reasonable efforts to preserve and reunify families (i) prior to the placement of a child in foster care, to prevent or eliminate the need for removing the child from the child's home; and (ii) to make it possible for a child to safely return to the child's home (42 U.S.C. § 671(a)(15)). More guidance regarding reasonable efforts can be found on page 83 of Wisconsin's Ongoing Service Standards and in Wis. Stat. § 48.255(1)(f).

The federal Indian Child Welfare Act (ICWA) requires that these efforts meet the higher standard of active efforts. WICWA details nine specific activities required to achieve active efforts. These can be found in Wisconsin Stat. §§ 48.028(4)(g)1.a-h. The Active Efforts Guide notes, "it is also important to acknowledge that it is not the obligation of the tribes to meet the active efforts requirement, but the petitioner's obligation to seek and request assistance from the child's tribe to assist the petitioning agency in meeting the requirements."[27]

Indicating reasonable or active efforts in the permanency plans does not appear to be part of the casework practice in Milwaukee County, as none of the cases had these findings documented in eWiSACWIS[28].

ICWA and WICWA were cited as a reason for a delay in permanence in the Milwaukee County surveys. In the case file reviews, only one child was eligible and enrolled in a tribe. Given the small case size, a full review of TPR timeliness for cases subject to ICWA and WICWA would not provide accurate data. However, the review indicates that it is imperative to document and subsequently comply with ICWA and WICWA requirements, ensuring that tribal child welfare agencies are given proper notice and opportunity to be involved.

Services

In the surveys, access to services, specifically mental health, was identified as a systemic barrier. In the file reviews, Milwaukee County child welfare professionals documented that birth parents were offered services. Quality, type of service, or follow-through of a service was not assessed as part of this project. There appears to be a need to evaluate the services that are provided to parents including availability, service type, and outcomes for individuals who participate.

Placement

Marital Status

One unanticipated barrier that the workgroup noted was marital status. DCF 50.05(1)(a) states that applicants who desire to become prospective adoptive parents must be, "An adult married couple who live together, have been married for at least one year on the date of application, and are applying for a home study jointly." Societal norms have changed over the years and couples may not be married but are in long-term committed relationships. If both parents desire to adopt jointly, they need to become

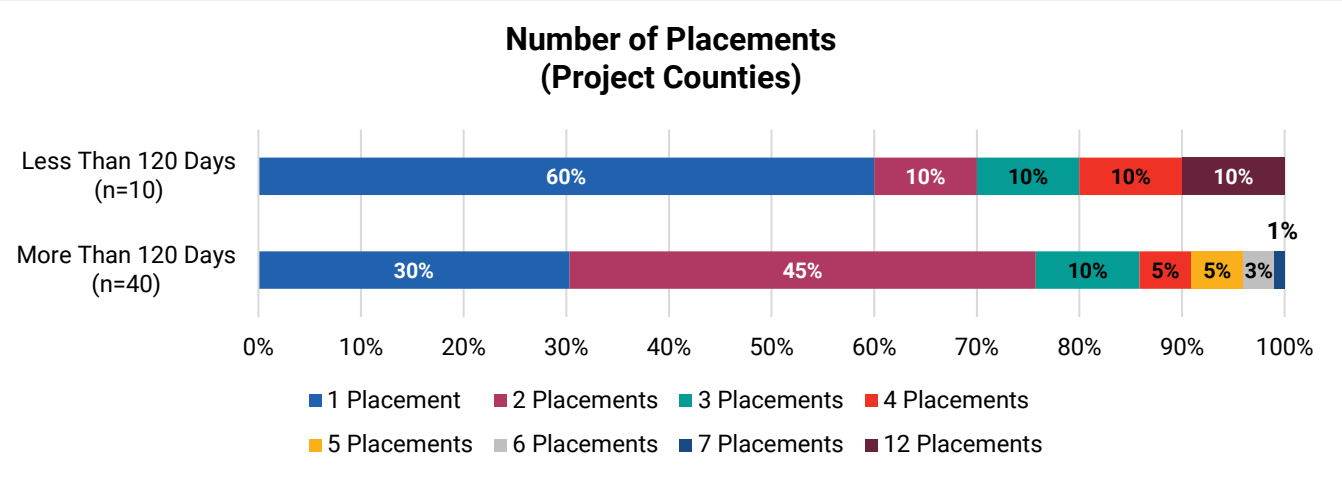
[27] Wisconsin Indian Child Welfare Act State Advisory Board: Active Efforts Sub-committee. (2019.) Active Efforts: A Child Welfare Practitioner's Guide for Meeting the WICWA Active Efforts Requirement, DCF-P-464. https://dcf.wisconsin.gov/files/publications/pdf/464.pdf

[28] Reasonable efforts findings on court orders in the underlying CHIPS cases were not reviewed as a part of this project.

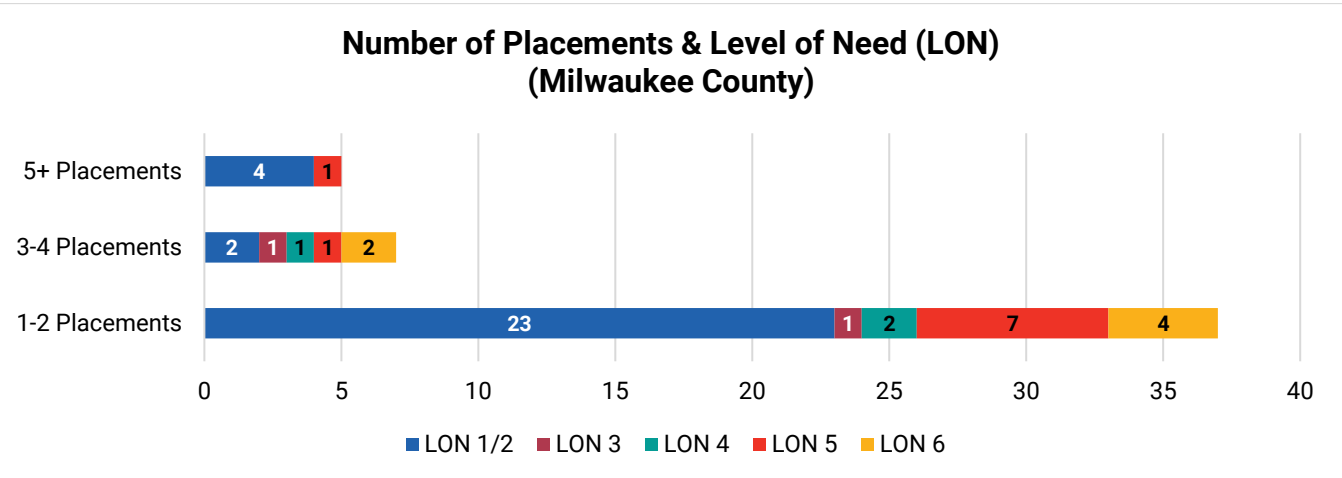
married and then wait an additional year, even if they were in a committed relationship. In practice there are instances where a spouse may not be residing in the home. Even if the parent in the home is able to provide adequate care and supervision, the wording of this statute would prohibit the couple from adopting until both were able to reside in the same residence. This is a barrier for those in the armed forces, individuals needing medical care or rehabilitation, as well as other situations.

Number of Placements

According to the file reviews, there is no correlation between the number of placements that a child experiences and the length of time from filing to TPR disposition in Milwaukee County. Seventy percent of cases that achieved disposition in less than 120 days and 75% of cases that achieved disposition in more than 120 days had one or two placements. Children who had four or more placements may see an increase in length of time from filing to TPR disposition, but the sample size is too small to make a conclusion.



There is no correlation between level of need (LON), the number of placements that a child experiences, and the length of time between TPR filing to disposition. The graph below outlines the LON and number of placements for each child. Ninety-four percent (n=17) of children who had a LON 4, 5, or 6, had less than four placements prior to TPR disposition.



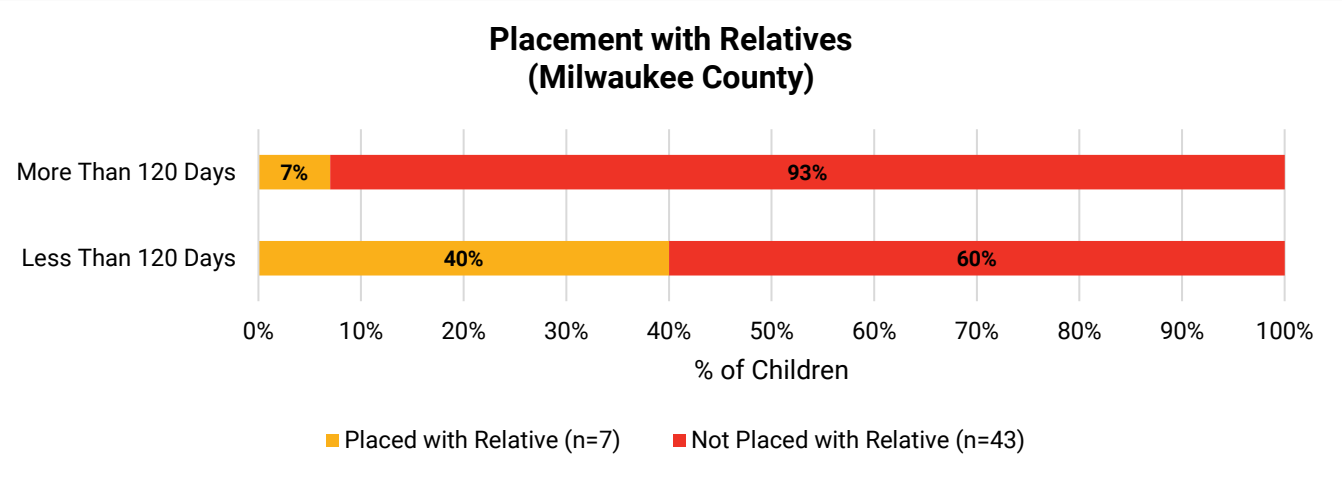
Maintaining Family Connections

The Ongoing Services Standards (2022) states, "There are many considerations when determining an appropriate placement for a child. At a minimum, the agency must consider placements that are in the child's best interests and document in the case record that a placement is either unavailable or inappropriate if the following are not met with the child's placement. These considerations must be made at initial placement and any time there is a change of placement for the child" (p. 163). Three of the considerations listed relate to maintaining family connections:

- Placement with a fit and willing relative.
- Placement with siblings.
- Placement proximity to the child's parents within 60 miles.

Placement with Relatives

Beginning in 2018 a DCF priority was identified to place children with a relative and/or siblings to maintain connection with their family. By the time children enter the TPR process, it is likely that a non-relative has been identified as an adoptive resource, though relative adoptions are possible. Placing children with relatives must be an area that child welfare professionals prioritize throughout the life of a case. Not only do children who are placed with relatives fare better emotionally, the case file reviews showed that they reached permanency more quickly than children placed with non-relatives. In Milwaukee County, 93% (n=37) of the children in Milwaukee whose cases were more than 120 days were not placed with a relative. 55% (n=22) of children whose cases were more than 120 days had consideration of three or more relatives documented in eWiSACWIS.



Placing children with relatives "helps maintain familial and cultural connections and must be prioritized more frequently, especially for Black and American Indian families and other communities in the child welfare system that have experienced racial inequality and discrimination" (Child Welfare Information Gateway, 2022).[29]

[29] Child Welfare Information Gateway (2022, May 4). Preserve culture and families with relative and kinship care. Retrieved December 14, 2022 from https://content.govdelivery.com/accounts/USACFCWIG/bulletins/3095635

Casey Family Programs (2019) found that "children in kinship care have:

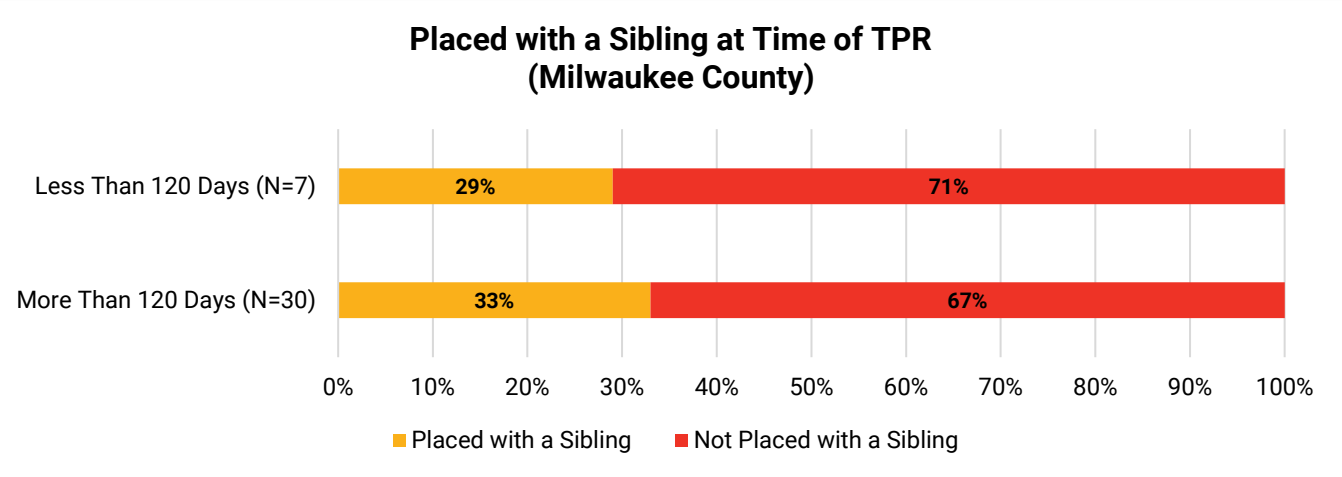
- More stability in placement and greater likelihood of remaining with siblings.
- Lower rates of both re-abuse and institutional abuse.
- Better behavioral and mental health, exhibited by fewer internalizing and externalizing behaviors, better adaptive behaviors, fewer psychiatric disorders, and better emotional health.
- Higher likelihood of achieving permanency through guardianship with their relative caregivers to maintain life-long connections with their family if they are unable to safely return home."

Reasons that were given in the surveys for not placing with a relative were grouped into five main areas:

- Child's level of need required specialized care,
- Placed with a minor sibling, who may also live with a relative or in some cases, the sibling had been adopted previously by a non-relative,
- Relative placement had previously been tried unsuccessfully,
- Bond with foster family; child was placed at birth into the foster home, and
- Large sibling group made finding placement to keep all siblings together difficult.

Placement with Siblings

Of the 50 Milwaukee County cases reviewed, 37 children had a sibling in care at the time of TPR. Thirty-two percent (n=12) of these children were placed with that sibling at the time of TPR. The remaining 13 children either did not have siblings or did not have sibling in care at the time of their TPR.



The two most common reasons documented in the permanency plan regarding why a child was not placed with a sibling were:

- Relatives or foster home where siblings were placed were unable or unwilling to take the sibling(s).
- The child's and/or siblings' level of need was too high for one placement to manage.

Reasons why relatives could not accept placement of another sibling were not parsed out as part of this project.

Proximity of Placement to Family

Placement within 60 miles of a child's parent(s) is another requirement for placements in out-of-home care (Ongoing Services Standards, 2022, p. 161). In Milwaukee County, 87.5% of children that had cases longer than 120 days were within 60 miles of a parent, compared to 70% of cases less than 120 days.

Child Welfare Professionals' Impact on Outcomes

The National Technical Assistance and Evaluation Center for Systems of Care (2008) stated "The child welfare field often is characterized by high staff turnover, which can lead to low staff morale, excessive workloads for those who remain, and most importantly, feelings of rejection and insignificance by the child or family."[30] Casey Family Programs (2018) found that "Turnover during critical junctures in a child's placement may result in resource parents losing the support they need to maintain a placement, as well as escalation of a child's behaviors. The depth of a child welfare professional's cultural competency and understanding of children's needs may also be contributing factors to placement stability.[31]

Staff turnover was cited as a reason for delays in the Milwaukee County surveys, and the correlation is evident in the file reviews. Ninety percent (n=10) of cases that were less than 120 days and 55% (n=22) of the cases that were longer than 120 days had one or two child welfare professionals.[32] This finding is consistent with existing research evidence that staff turnover can negatively affect multiple child welfare permanency outcomes, including case length.[33] [34]

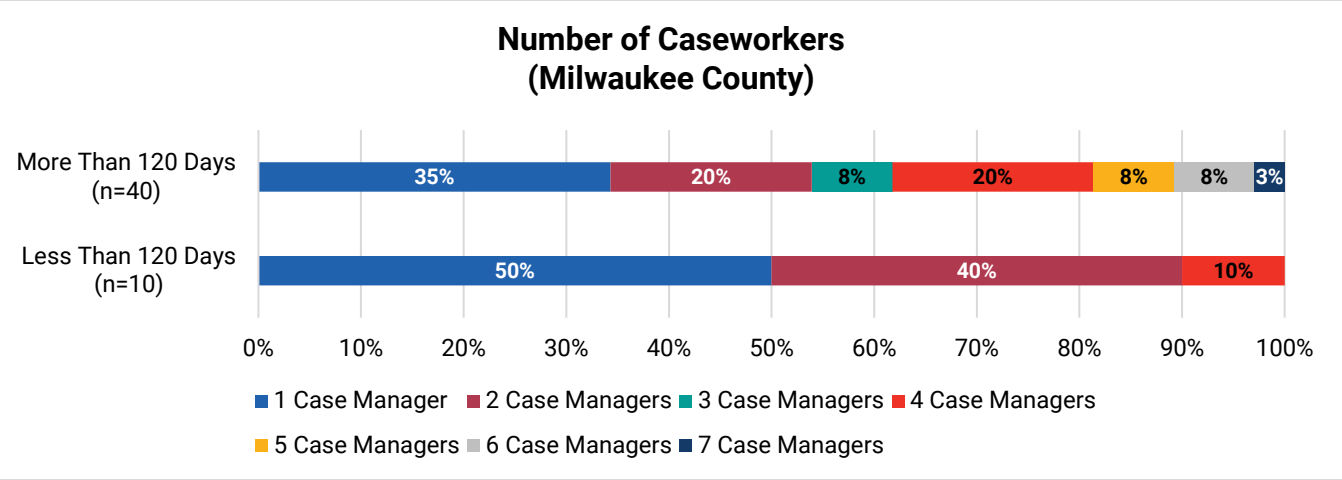
[30] National Technical Assistance and Evaluation Center for Systems of Care (2008). *Challenges and strategies in following an individualized, strengths-based approach*. Child Welfare Information Gateway. Retrieved December 14, 2022, from https://www.childwelfare.gov/pubs/acloserlook/strengthsbased/strengthsbased3/

[31] Casey Family Programs (2018). Strong families. Retrieved December 7, 2022, from https://www.casey.org/media/SF_Placement-stability-impacts_2021.pdf

[32] When pulling data regarding the number of ongoing child welfare professional s assigned to a case, only the child welfare professional s who were designated as the "primary" staff on the case were included. Some counties regularly utilize a team on a case; this information was not used in the data collected.

[33] Ryan, J. P., Garnier, P., Zyphur, M., & Zhai, F. (2006). Investigating the effects of caseworker characteristics in child welfare. *Children and Youth Services Review*, 28(9), 993–1006. https://doi.org/10.1016/j.childyouth.2005.10.013

[34] Williams, N.J. & Glisson, C. (2013). Reducing turnover is not enough: The need for proficient organizational cultures to support positive youth outcomes in child welfare. *Child Youth Services Review*, 35(11), 1-17. https://doi.org/10.1016/j.childyouth.2013.09.002



Flower et al.'s (2005) review of turnover in Milwaukee County child welfare ongoing case management staff showed that increases in the number of staff changes were correlated to lower chances of permanency achievement.[35]

The survey results found that 43% of respondents identified that TPR training is typically offered to child welfare professionals either at orientation and 29% identified that TPR training is completed when the training becomes available. These times may not be optimal as new child welfare professionals have numerous areas of practice in which to become competent and training specific to TPR may not feel relevant at the time that it is offered. According to survey responses, child welfare professionals entering the field may not have to prepare a TPR for months or even years into their practice.

Permanency Planning

Much of the case practice prior to TPR is documented in the permanency plan. Formal goals are set and should be agreed upon by the child welfare professional, parents and youth as well as being monitored by the court at periodic reviews. These goals are intended to move the family towards the identified permanency outcome, most frequently reunification.[36]

Ongoing Services Standards (2022) states, "Concurrent planning is a process of working on one permanence goal while at the same time establishing and implementing an alternative permanence goal that involves simultaneous activities to move a child more quickly to permanence.

It involves a mix of meaningful family engagement, targeted case practice, and legal strategies aimed at achieving timely permanence" (p. 80). "Assessing the need for concurrent planning involves early assessment of the conditions that led to the child's placement into out-of-home care, the strengths of the family, and the likelihood of reunification within 12 to 15 months that is culturally respectful and based on the family's history and current functioning. The assessment is based on a review of factors that make timely reunification more or less likely. This allows the child welfare professional and child's team to make determinations about the family's capacity to benefit from reunification services and the need for alternative planning. By no means should the presence of such conditions be construed to

[35] Flower, C., McDonald, J., & Sumski, M. (2005, January). Review of Turnover in Milwaukee County Private Agency Child Welfare Ongoing Case Management Staff. Milwaukee, WI. Retrieved from https://www.uh.edu/socialwork/_docs/cwep/national-iv-e/turnoverstudy.pdf.

[36] Wisconsin Department of Children and Families (2021). *Wisconsin out-of-home care (OHC) report: Annual report for calendar year 2020*. Retrieved from https://dcf.wisconsin.gov/files/cwportal/reports/pdf/ohc.pdf

mean reasonable efforts to reunify the child are not required unless they meet the statutory criteria for instances where reasonable efforts are not required as stated in s. 48.38(4m) and 938.38(4m) Wis. Stats."

The Child Welfare Information Gateway (n.d.) states, "The history of child welfare in the United States can be characterized by a continuous thematic shift between family preservation and child safety. The 1970s saw a number of efforts to reduce children's time in foster care and expedite paths to permanency. The 1997 Adoption and Safe Families Act (ASFA) (P.L. 105–89) marked the first-time issues related to permanency were explicitly stated in legislation, which was pivotal in changing the landscape of child welfare practice. This law connected safety and permanency by demonstrating how each factor was necessary in achieving overall child well-being. While ASFA made clear that child safety was paramount, it also provided a new way of defining permanency for children and youth in foster care. The law specified that States had to improve the safety of children, promote adoption and other permanent homes for children who needed them, and support families. ASFA also required child protection agencies to provide more timely assessment and intervention services to children and families involved with child welfare. Additionally, ASFA paved the way for the legal sanction of concurrent planning, simultaneously identifying and working on a secondary goal, such as guardianship, with a relative, by requiring that agencies make reasonable efforts to find permanent families for children in foster care should reunification fail."[37]

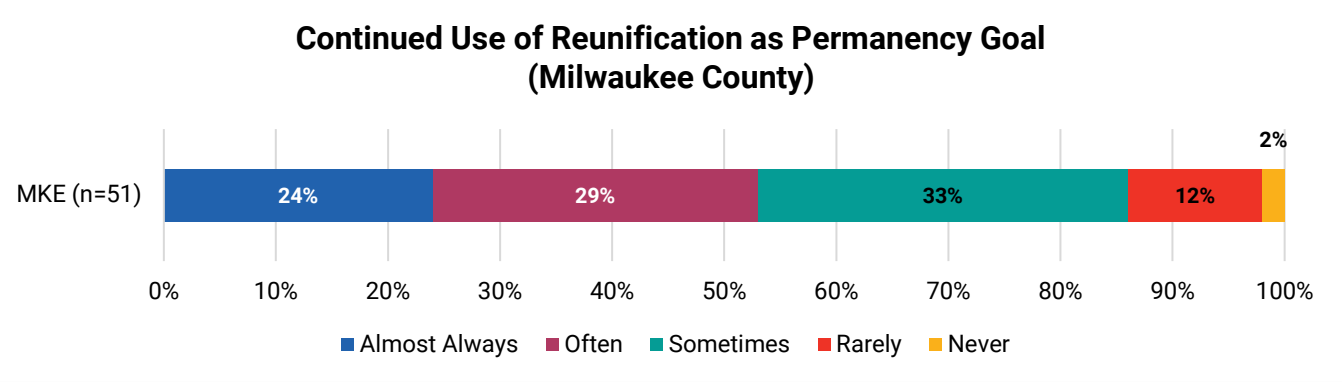
Ongoing Services Standards (2022) states "The federal Adoption and Safe Families Act (ASFA) [42 USC 675 (5)(E) and 45 CFR 1356.21(i)] specifies that a TPR petition must be filed for a child who has been in out-of-home care for 15 of the last 22 months…When an agency does not file a TPR petition within the ASFA timelines, one or more compelling reasons must be documented as an exception. For additional information, refer to DCFS Memo Series 2007-18, "ASFA Exception to Filing a TPR Petition" (p. 85).[38]

In the survey, 77% of child welfare professionals identified that they "almost always" or "often" utilize ASFA exceptions. The file reviews found that 47% of all cases reviewed utilized an ASFA exception prior to TPR petition.

[37] Child Welfare Information Gateway (n.d.). Concept and history of permanency in U.S. child welfare. Retrieved December 8, 2022, from https://www.childwelfare.gov/topics/permanency/overview/history/

[38] Additional information about the federal Adoption Safe Families Act (ASFA) [42 USC 675 (5)(E) and 45 CFR 1356.21(i)] can be found in Ongoing Services Standards (2022) and the DCFS Memo Series 2007-18, "ASFA Exception to Filing a TPR Petition."

In Milwaukee County, 53% of child welfare professionals "always" or "often" use concurrent planning to acknowledge reunification as a goal while also working toward termination of parental rights, even when they believe reunification is unlikely. Respondents identified that they determine if reunification should remain a permanency goal until the TPR is finalized but is dependent on the progress that a parent makes toward their goals.



TPR Referral and Filing

Sixty percent of Milwaukee County responses stated that they "almost always" or "often" used standing meetings or consultations to determine whether a case is appropriate for TPR. Fifty-eight percent of respondents identified that the standing meetings or consultations are typically held "as needed." The staff who are generally invited to the consultations around the filing of a TPR include the child welfare professional(s), their supervisor, permanency consultant, permanency supervisor, and GAL for the child.

Forty-eight percent of Milwaukee staff said they would not be able to file a TPR petition without having a meeting with the district attorney/corporation counsel. Conversely, 40% of the Milwaukee County staff said that they would be able to file a TPR petition without having a meeting with the district attorney/corporation counsel.

Thirty-three percent of child welfare professionals said that once a case is referred to the prosecuting attorney for the filing of a TPR, it takes one to two months for the attorney to file the TPR and 37% said that it takes more than two months. Respondents who added a comment in the survey report that the length can "actually drastically vary from case to case". The consensus seems to be that the length is inconsistent, and one respondent wrote "many times they may not actually file at all."

Petitions being sent back for revisions is more of a norm than an exception. Sixty-seven percent of respondents in Milwaukee County report having a TPR petition sent back from the prosecuting attorney (MKE-CW-Q79 and 80).

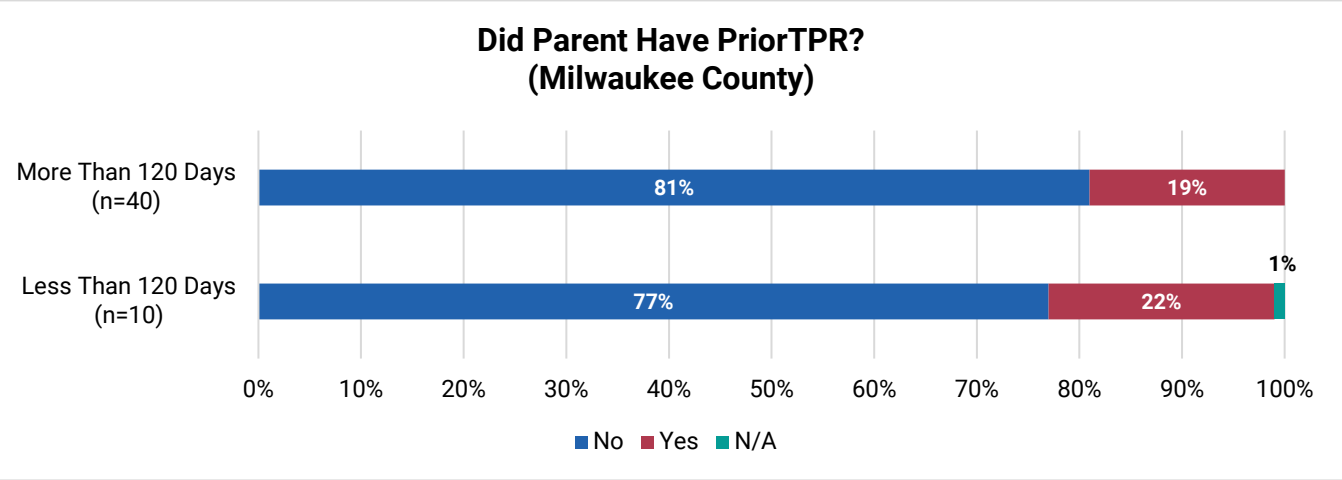
Reasons why the prosecutor would not accept and file for termination of parental rights may include:

- Child welfare professionals should not be sending incomplete referrals,
- Compliance with Wisconsin Indian Child Welfare Act (WICWA), and
- Parents are making efforts towards reunification.

Some respondents identified that the prosecutor may be unwilling to file because they "don't think they can win." This notion is subjective and may highlight that the prosecutor does not feel confident proving the case based on the information they have been provided.

Previous Terminations

In the case file reviews, there were similar percentages of parents with a prior termination of parental rights in both the less than and more than 120-day groups, which would indicate that a previous TPR does not mean that the county will move the case to termination more quickly than parents who had no prior TPR. The workgroup did not break this down by voluntary or involuntary TPR and did not separate out cases where the TPR had occurred more than three years prior.



Adoption Process & Time to Adoption Finalization

Of the 50 cases reviewed, 49 were placed in an adoptive resource at the time the TPR was filed. Only 20% of these cases identified that an adoption referral had been made. The cases were maintained by the same agency after TPR disposition due to Milwaukee County maintaining cases from pre- to post-TPR.

Section VI: Milwaukee County's TPR Process: Court and Legal Practice

Survey and File Review Findings

In addition to the eWiSACWIS case file reviews, the TPR Timeliness Workgroup also collected court file data from the Consolidated Court Automation Programs (CCAP) case management system. These reviews encompassed the same selected cases as the child welfare agency reviews above and were divided between those cases that were more than 120 days from TPR filing to disposition and those under that threshold. Disposition for all cases occurred in calendar years 2019 through 2021. Only those cases which were filed by or on behalf of the county were included in the review. Similarly, all cases reviewed were required to have at least one parent for whom the petition was filed as an involuntary TPR as to avoid skewing the data due to purely voluntary proceedings that would be likely to resolve in a shorter timeframe. Cases were randomly selected to account for distribution across calendar years.

Given the significant differences in TPR case volume, child welfare agency and court structures and practices, and unique challenges present in Milwaukee County, it was determined that it be reviewed and reported separately from the other counties in the TPR project as to avoid skewing the overall data or underrepresenting Milwaukee County cases. This approach also allowed for a larger and more representative sample size for Milwaukee County, particularly regarding cases taking more than 120 days from filing of the TPR to entry of disposition (n=40). As to the cases taking less than 120 days between those benchmarks (n=10), it reflected largely the same results as were present in the other project counties.

Case resolution in fewer than 120 days was due largely to these matters resolving in one of two ways; parents in this cohort were far more likely to be found in default or to enter a no contest or voluntary plea early in the court process, as evidenced by collateral observations within the reviews and supported in data on dispositional outcomes (cited below). Further, due to the shared characteristics of these cases, many of the variables analyzed in the file review netted small sample sizes and may not be statistically significant. To this end, readers are cautioned from making any inferences from court file data attributed to cases that were disposed in less than 120 days.

Court Process

General Findings

Milwaukee County's TPR practice differs significantly from elsewhere in the state; however, statutory requirements for a TPR are constant. Therefore, where helpful for perspective, general comparative observations are made to the other county information. Any differences in comparisons may or may not be attributable to county-specific practice in Milwaukee County.

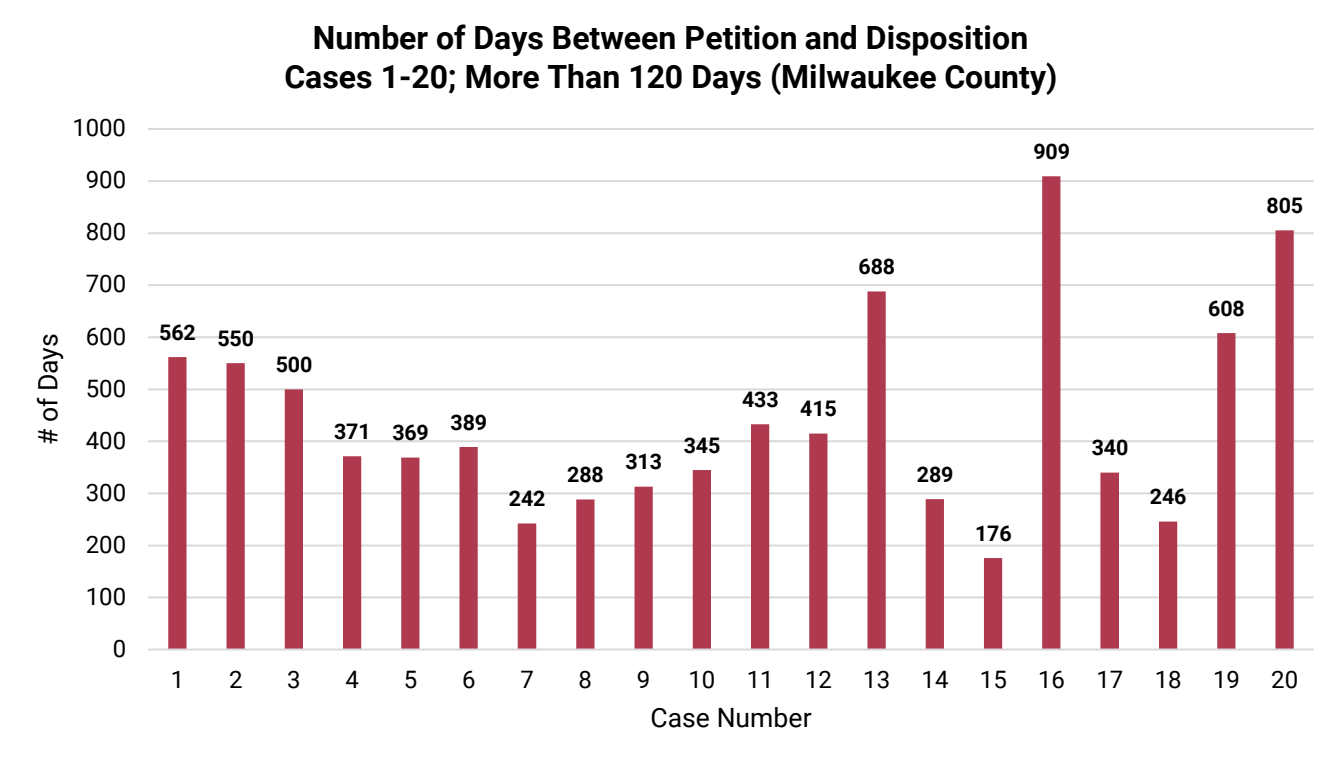
The focus of the court file reviews for Milwaukee County, as with the other project counties, emphasized the period of time from filing of the TPR petition to entry of disposition as being one where the circuit court has the most control over how the case progresses. This timeframe also provides the most accessible information for review.

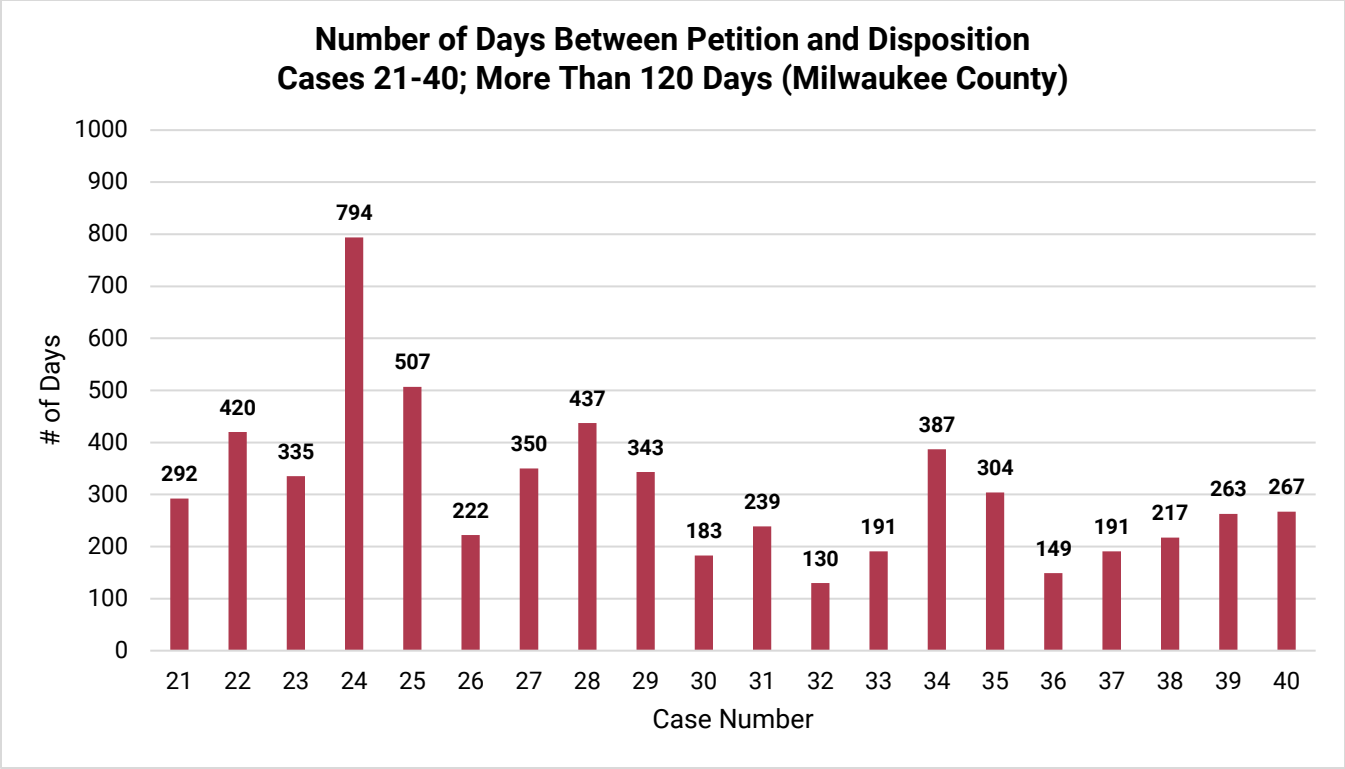
While the survey results for Milwaukee County, along with historical information, reflects that Milwaukee County experiences a higher frequency of appeals on average compared to other counties,

data was not collected on this point nor considered in how information is represented; however, it should be noted that appellate practice may contribute to longer times to adoption finalization.

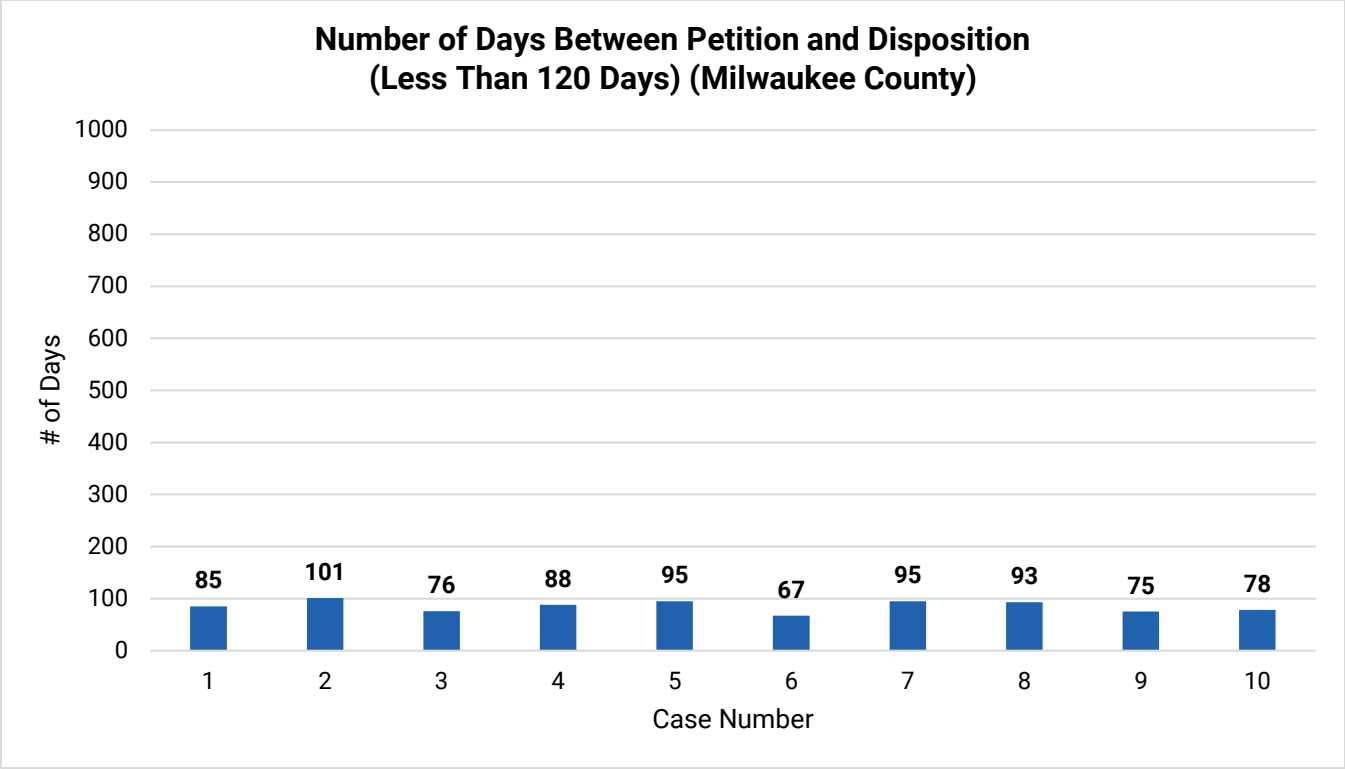
The Milwaukee County review was conducted using the same case selection criteria as the other project counties. The sample size for Milwaukee County was significantly higher than any other counties, given the higher volume of TPR cases filed in the county. Forty cases were selected for the more than 120-day group and ten were selected to represent those taking less than 120 days from filing to disposition. Fewer less than 120-day cases were selected, as throughout the review process for all counties it was observed that these cases lacked identifiable practice variances that contributed to quicker timeliness outcomes.

As seen in the graph below, the court file reviews for Milwaukee County for cases taking more than 120 days from filing of the TPR petition to disposition ranged from 130 to 909 days (a difference of 779 days), with an average of 377 days within the sample. This places Milwaukee County as the third longest average time within the overall project and is 120 days longer than the weighted average for the other project counties. While extreme outliers within the review may have contributed to this figure, almost half of the more than 120-day cases (n=17) took in excess of a year to complete. Within that subgroup, three cases took over two years to complete. In two cases, the extended timeframes were partially the result of two trials being conducted; the first having resulted in a mistrial. Additionally, it appeared that COVID may have been a greater contributor to general delays in Milwaukee County than in other project counties, based upon individual survey responses, case notes, and anecdotal information obtained outside of this project.





The cases for the less than 120-day sample ranged from 67 to 101 days (a difference of 34 days), with the average length of time from petition to disposition being 85 days. As with the less than 120-day cases reviewed for the other project counties, caution should be applied in making any inferences from this data set. Shortened times to TPR typically exist when a parent enters a no contest or voluntary plea at the Hearing on the Petition or where a default finding occurs early in the case. Further exploration of the support for this assertion is contained in the “Fact-Finding and Grounds” and “Dispositions” sections below.



The court file reviews for Milwaukee County also captured the number of judicial officers presiding over hearings within the TPR case. However, the structure of the Milwaukee County Children's Court provides for two judges dedicated to a TPR docket. This results in relative stability across the lifetime of a case, as far as the number of judges hearing the TPR case. This is evident in the data reflecting an average of only one. One judge per case for the less than 120-day cohort and 1.9 for those cases taking more than 120 days.

Parent Attributes

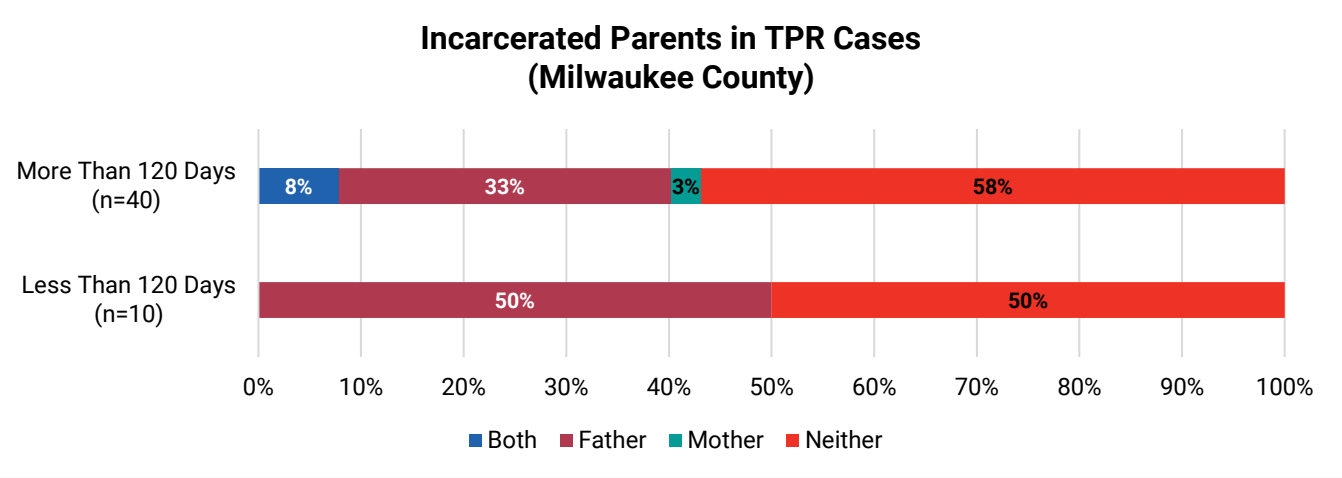
Although paternity establishment may contribute to difficulties in the TPR referral and filing processes, as raised in the child welfare professional surveys, Milwaukee County attorney respondents indicated that this was not often a cause for delay in the TPR proceeding. Seventy-five percent of attorney respondents reported that paternity not being established occurred "rarely" or "never" as a reason for case adjournment, with the remaining 25% indicating this occurred only "sometimes". In the cases that were more than 120 days, 60% (n=24) of the cases had paternity adjudicated prior to filing of the TPR or there was a presumed father due to marriage. None of the cases reviewed experienced adjournments or continuances based upon the issue of paternity, based upon case notes and record events.

Although fathers appeared to largely be identified and/or adjudicated at the time of TPR filing, a factor that was present in Milwaukee County TPR cases that was not seen as frequently in the court file reviews for the other project counties was sibling group cases involving multiple fathers. While data specific to associated sibling cases was not collected, court records and notes identified at least five cases where finalization of TPR was delayed due to issues surrounding a sibling case. For instance, notice and appointment of counsel issues, litigation by another father, adjournment of trial, and other delays in the tracking sibling case often meant that cases experienced a longer amount of time between finding of grounds and disposition in the reviewed case.

The Milwaukee County court file review of cases that were more than 120 days also included delays related to the need for language interpreter services. In the two cases reviewed that required interpretation, delays occurred where the need for language services were not addressed in advance of the hearing, or an interpreter was not available at the scheduled time.

As was the case with other project counties, no judicial or attorney feedback raised concerns regarding parent incarceration as a driver of delay in TPR cases; however, child welfare professionals identified incarceration as a barrier. The graphs below indicate whether one or both parents experienced a term of incarceration.[39] It is of note that fathers were more likely to be incarcerated in the Milwaukee County cases than in the other county reviews.

Delays related to incarceration were seen in the court records of both the less than and more than 120-day cohorts, particularly as it related to fathers. These issues included numerous difficulties in having the parent transported to court or available to appear via other means, including specific reference to transport orders not being made and court schedules running behind. These challenges existed in both pre- and post-COVID timeframes. Finally, it was observed in a small number of cases that scheduling conflicts occurred with parents' criminal cases, which were given priority over the TPR matter.



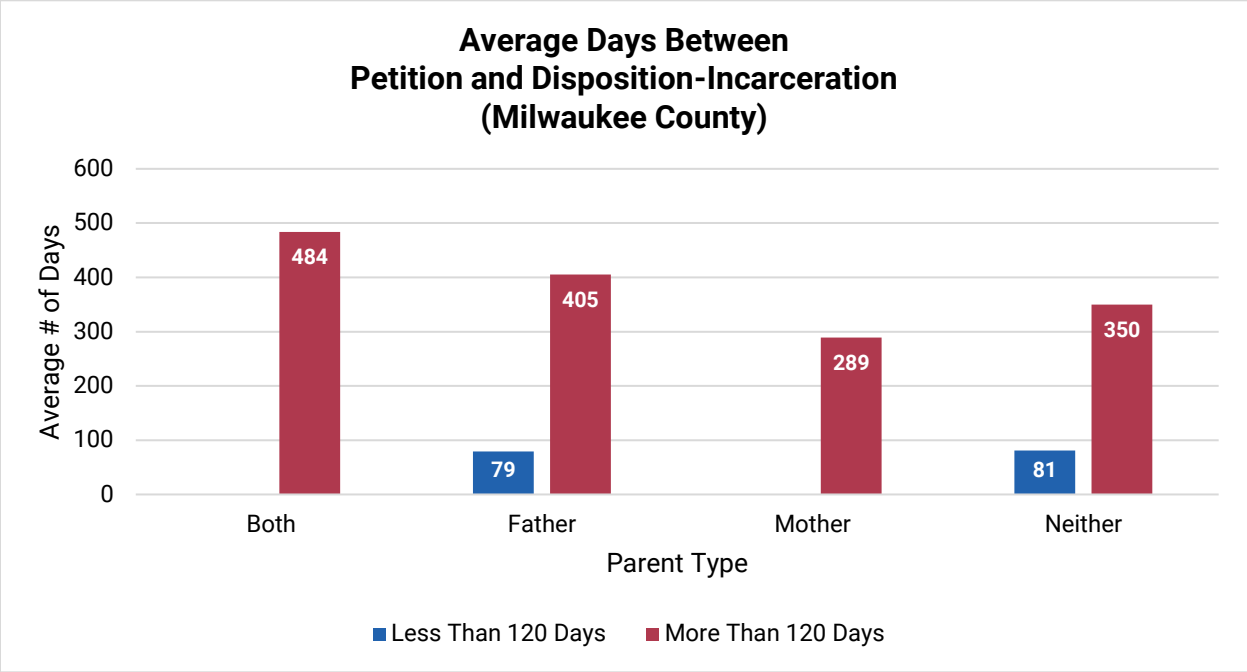
Regarding the length of time from TPR petition to disposition for incarcerated parents, having both the mother and father experience a term of incarceration during the pendency of the TPR case appears to have extended the case timeframes in the more than 120-day sample.[40] While the time to disposition was somewhat shorter for mothers, caution must be applied to this finding given the sample size of one. For the less than 120-day cases,[41] data followed closely with trends seen in the other project counties as there was no significant difference in time to disposition where the father was incarcerated in comparison to when neither parent experienced incarceration. This is based on a small sample size,

[39] Incarceration status was determined by a parent being present in some form of jail or correctional placement, as recorded in the party information in CCAP, the parental address field of the Petition for Termination of Parental Rights (circuit court form JC-1630), and in court notes and minutes referencing any term of incarceration during the pendency of the TPR case.

[40] For the more than 120 days graph: Both n=3; Father n=13; Mother n=1; Neither n=23.

[41] For the less than 120 days graph: Father n=5; Neither n=5.

with only five fathers included in the less than 120-day review. Additionally, no mothers in this group experienced incarceration during the TPR case.



In addition to incarceration, court file reviews also sought to collect anecdotal information from the court records as to whether a parent was receiving any sort of in-patient mental health or substance use treatment, as this participation may contribute to extended timeframes due to the parent's unavailability for court. For Milwaukee County, this issue was not raised in any record. This is not to state that such circumstances did not occur, but rather that they were not a factor of note concerning adjournments.

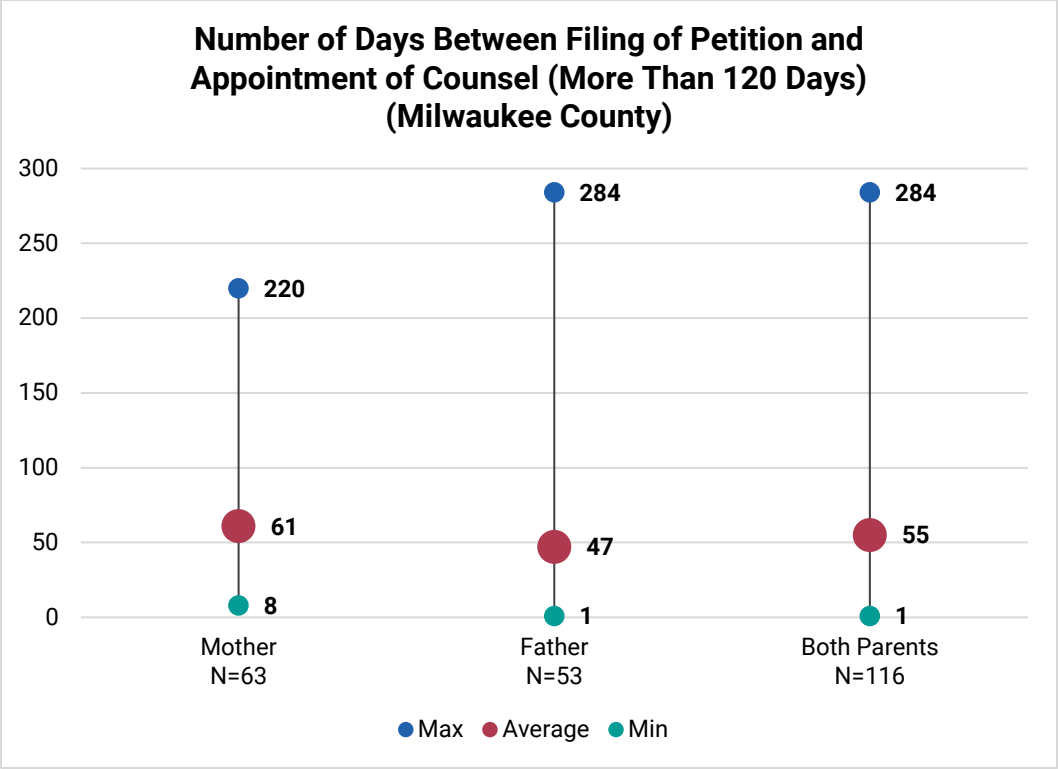
Regarding mental health, anecdotal information was collected about parental mental health and competency. In at least two of the cases that were more than 120 days, parent mental health played some notable role in the TPR proceedings, extending the time to disposition through the need for evaluation and appointment of guardian ad litem for the parent. While these delays are necessary in order to protect the rights of the parent, it should be noted that both instances involved competency being raised very late in the proceedings, including at the final pre-trial, and resulted in adjournment of a scheduled trial.

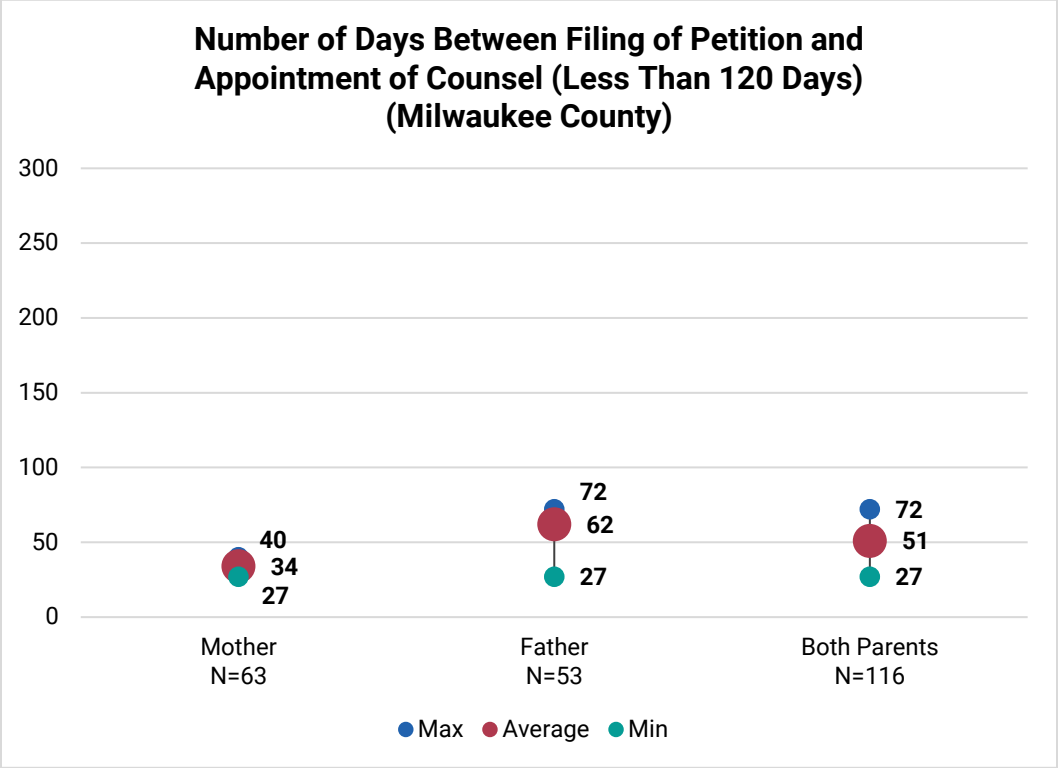
Appointment of Counsel

Availability of an adequate number of attorneys to represent parents in TPR cases is a statewide concern, which is also seen in Milwaukee County. As seen in the attorney responses in "Survey: Barriers", (Appendix B: Q82), lengthy times to attorney appointment are viewed as a systemic barrier to timely completion of TPR cases. Additionally, the attorney respondents reported that appointment of counsel was cause for adjournment of the Hearing on the Petition "almost always" at a rate of 62%, 15% stated that this occurred "often", and 23% responded "sometimes". It should be highlighted that none of the responses indicated that they had experienced these adjournments "rarely" or "never". Data for these delays at the Hearing on the Petition phase is explored in further detail in the "Adjournments" section.

The attorney survey responses also showed a perception that the primary reason for delays related to appointment of counsel is inaction on the part of parents in contacting the SPD office, with 46% of responses stating this occurs “almost always”. Further, survey comments indicated a belief that the SPD could do more to engage parents following a TPR filing instead of relying upon the parents to contact them. By comparison, 8% of the responses indicated this occurs “rarely”. Not having attorneys available and willing to take TPR cases as a basis for delays in appointment of counsel was more evenly distributed as a response, but with some bias towards this being a factor “sometimes” or “rarely” (each at 31%). Attorney conflicts were not viewed as a regular factor contributing to delay.

The graphs below illustrate the range and averages for times to appointment of counsel in the reviewed Milwaukee County TPR cases. While significant outliers exist, particularly in the more than 120-day sample, averages across all samples exceed one month, with most approaching or exceeding two months from the date of the filing of the petition.


Number of Days Between Filing of Petition and Appointment of Counsel (More Than 120 Days) (Milwaukee County)
300
250
200
150
100
50
0
220
61
8
284
47
1
284
55
1
Mother N=63
Father N=53
Both Parents N=116
Max
Average
Min


Number of Days Between Filing of Petition and Appointment of Counsel (Less Than 120 Days) (Milwaukee County)
300
250
200
150
100
50
0
40
34
27
72
62
27
72
51
27
Mother N=63
Father N=53
Both Parents N=116
Max
Average
Min

Adjournments

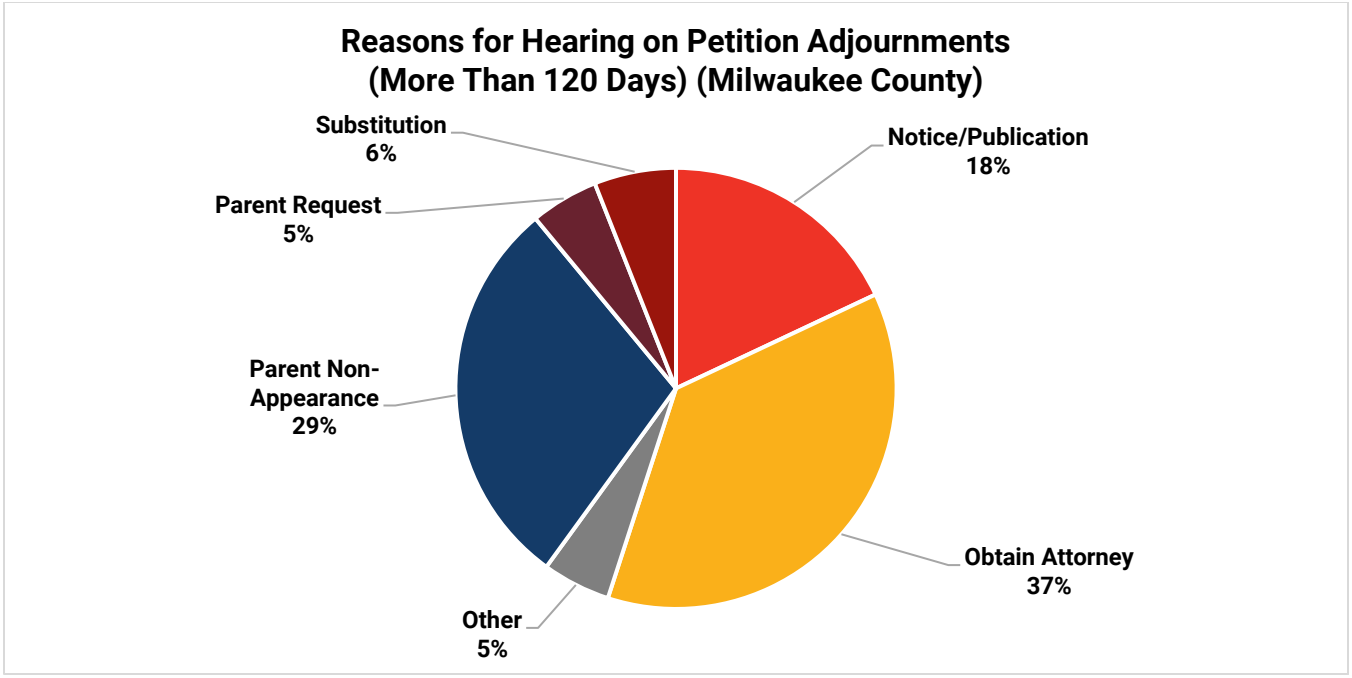
Overall adjournments[42] for those cases taking more than 120 days in Milwaukee County ranged from zero to 11, with an average of seven adjournments occurring throughout the life of the case. However, the adjournments of the Hearing on the Petition for this group were comparatively low, averaging 1.6 adjournments. Meanwhile, total adjournments for those cases taking less than 120 days ranged from zero to two, with an average of 1.5 adjournments per case. Given that these cases were most likely to result in a no contest plea or default finding at the Hearing on the Petition, any adjournments were almost exclusively during this initial hearing. Only two adjournments in this cohort occurred at a later phase, particularly at the Dispositional Hearing.[43]

The goals of this project are not to eliminate all causes of adjournment, as such action is a discretionary tool of the court that may often be difficult to avoid, necessary for due process protection, or preferable to other outcomes (e.g., dismissal and re-filing of the petition). However, the range of average number of adjournments suggests that use of adjournments and continuances should be done sparingly and when necessary, in the interest of justice or as required to conduct the case.

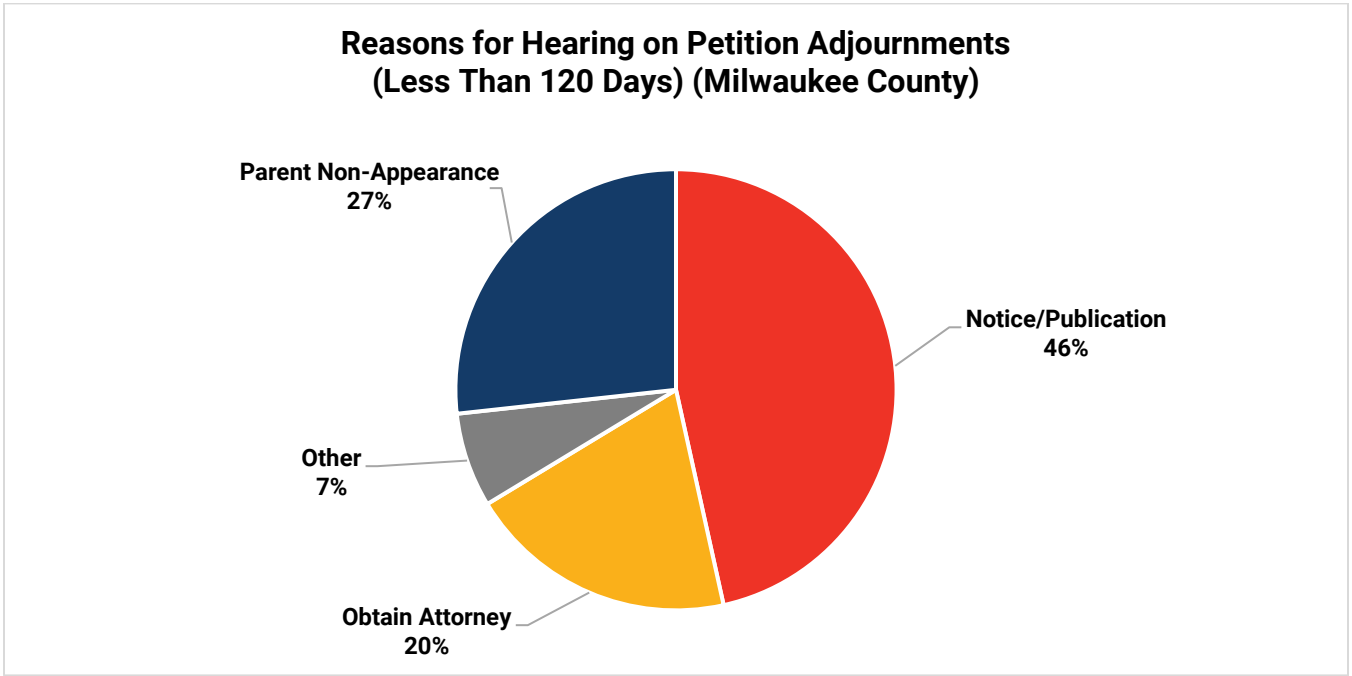
The court file review also collected the basis for each adjournment occurring at the Hearing on the Petition. The graphs below indicate these causes for each occurrence, including where multiple adjournments of this hearing occurred within the same case. As suggested by the survey results and data on time to appointment of counsel, the leading cause of adjournment of the Hearing on the Petition for cases taking more than 120 days was for parents to obtain legal representation, which accounted for 37% of all adjournments of the Hearing on the Petition. In the same set of more than 120-day cases, parent non-appearance accounted for 29% of the adjournments of this hearing. It should be noted that this accounted only for parents who did not appear after being properly noticed of the hearing. Those cases where notice or publication were not fully complied with at the time of the Hearing on the Petition also accounted for a significant number of adjournments at 18%.

[42] For purposes of review, this data includes any adjournment occurring throughout the life of the case, from the Hearing on the Petition through entry of the Dispositional Order and includes the rescheduling of any hearing where the case record and notes reflect that such a delay occurred. To that end, it is possible that some adjournments occurring off the record may not have been captured in the data.

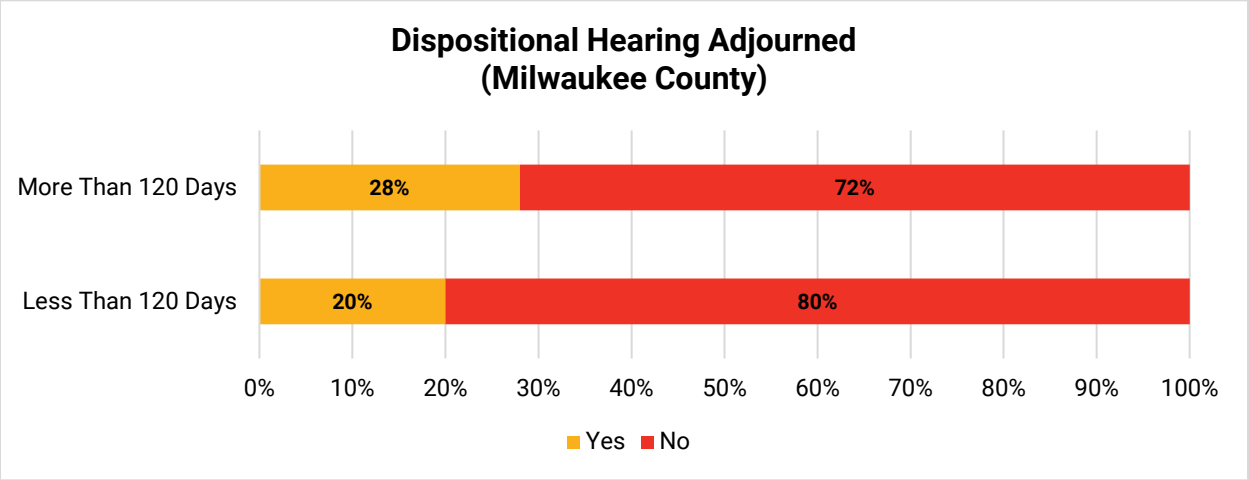
[43] These delays were associated with court calendar congestion and parental non-appearance, respectively.



In the cases taking less than 120 days from filing of the petition to disposition, notice and publication delays were the basis for nearly half of all adjournments of the Hearing on the Petition. This, along with parental non-appearance accounting for 27% of adjournments, appears to be in-line with the significant number of default outcomes experienced in cases concluding in less than 120 days. Appointment of counsel also contributed to a significant number of adjournments, despite this cohort rarely resulting in contested litigation.



While the Dispositional Hearing is typically adjourned with less frequency than the Hearing on the Petition, as alluded to above, the Milwaukee County review samples indicated a slightly higher occurrence of these adjournments than was seen elsewhere. This was true of both sample groups, as seen below.



Information collected as to the drivers of these adjournments indicated that more time is often required for these hearings than is allotted or available in the court's schedule, especially for contested hearings. This rationale for delay was expressed in 12 of the cases taking more than 120 days and one of those taking less than 120 days. This does not account for instances where parties were not prepared to proceed or otherwise requested additional time to prepare for hearings (three cases) nor when the court adjourned the matter to make written findings (one case). Other causes for adjournment of the Dispositional Hearing that were noted amongst the cases taking more than 120 days included substitution of judge (one case), judicial transfer based on rotation schedule (one case), and the filing of a petition for guardianship prior to disposition (one case). Finally, COVID shutdowns or issues related to remote proceedings as a result of public health orders were prominently featured in the record, being the cause of eight adjournments in the more than 120-day group.

Trial adjournments are covered in the "Fact Finding and Grounds" section.

Interim Activities and Hearings

The court case review also examined a number of activities that may take place during the pendency of a TPR case that may potentially impact timeliness and dispositional outcomes. These activities may be fully under the control of the court (issuing scheduling orders), be dependent on actions of the parties (filing of motions), or a combination thereof (mediation).

Scheduling orders have been identified as a best practice for setting the pace and expectations for the TPR in-court proceedings and emphasizes the need to comply with discovery in a timely manner. The attorney survey responses reflected that use of these orders in Milwaukee County was a regular occurrence, with 77% responding that they were "always" issued in TPR cases, regardless of the judge.

This is supported by court file review data reflecting that scheduling orders were issued in nearly all reviewed cases more than 120 days where a party contested the petition.[44]

While scheduling orders are subject to revision due to the needs of the case, nonetheless they help guide what should be occurring throughout the life of the case. This may include putting the parties on notice as to when the court expects specific tasks, such as discovery or motions practice, to be completed. It also ensures that hearings are placed on the court calendar early in the proceeding, rather than attempting to find time later on for hearings on an as-needed basis. These effects are seen in the relative lack of adjournments based upon discovery delays, which is mentioned only five times as the rationale for adjournment.[45]

The court file reviews also sought to capture data related to motions practice. Since motions brought by adversary counsel for parents may vary significantly based upon the factual and procedural history of both the TPR and underlying CHIPS filing, identifying specific areas of focus were not identified.

Additionally, this project does not seek to limit the ability of parents and their attorneys to bring substantive motions, especially when seeking to defend Constitutional and statutory rights. However, data was collected in regard to prosecutorial motions for summary judgment in order to determine whether the occurrence of such motions may have an impact on timeliness outcomes.

No cases in the less than 120-day sample experienced a motion for summary judgment, and only one motion for summary judgment was filed in the cases taking more than 120 days. That motion was granted by the court. Because of these small figures, any connection between motions for summary judgment and timeliness cannot be determined; however, this data may suggest that such motions occur rarely in Milwaukee County TPR cases. Additionally, in the case in which summary judgment was motioned and granted, significant delays (but not adjournments) were experienced between hearings as a result of the case being filed near the onset of COVID and public health orders impacting the court.

The reviews also looked at the use of mediation as a method for resolving TPR cases. Mediation has been utilized as an attempt to resolve TPR cases in a small number of counties and under varying circumstances and approaches. Attorney survey results for Milwaukee County indicated that the use of mediation in TPR cases was very rare, but that case backlogs following COVID shutdown had led to increased efforts to resolve cases short of trial. Additional information from Milwaukee County judges outlines the use of informal, voluntary “case conferencing” to assist in concluding cases prior to trial. Of the more than 120-day cases reviewed, four (10%) had some record of mediation or case conferencing, with one case being resolved short of trial.[46] All of the uses of mediation occurred in timeframes after the onset of COVID. No cases in the less than 120-day group used mediation.

A barrier that may exist for the effective use of mediation in Milwaukee County TPR cases includes the lack of legally enforceable post-TPR contact agreements for families. Per the Milwaukee County

[44] For the more than 120-day sample, scheduling orders were issued in 37 of 40 cases (93%) and only those where a jury trial had been requested or scheduled. No jury trials were requested or scheduled in the less than 120-day sample.

[45] Four of the five discovery-based adjournments resulted in delay of the Fact-Finding Hearing. Additional information gathered indicates that the requests for adjournment were made due to parent non-appearance at depositions.

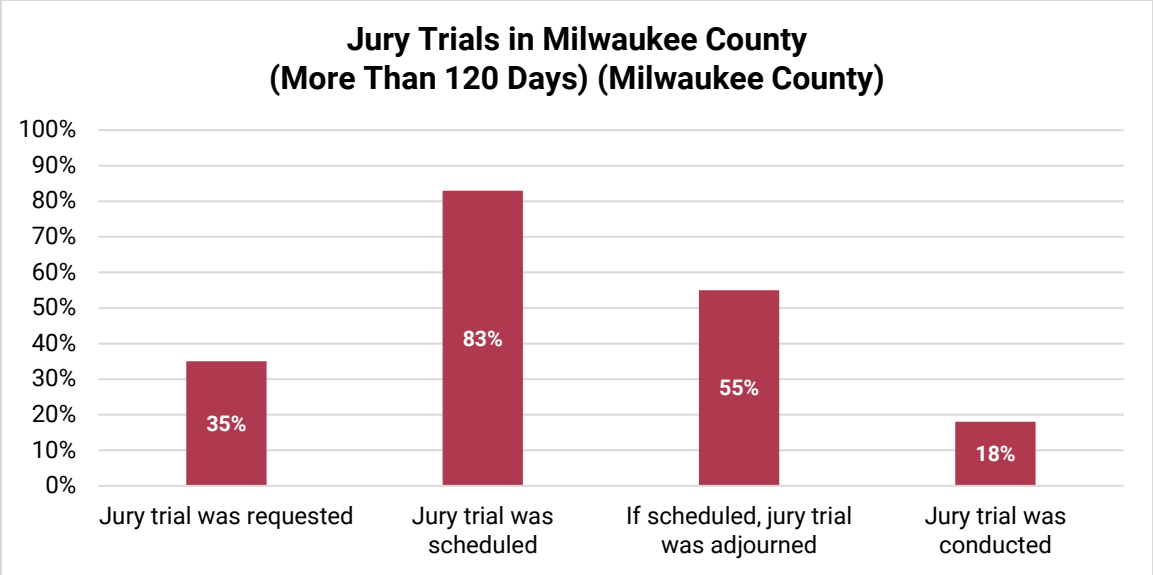
[46] One of the cases resulted in a default, while the other two resulted in a trial for at least one of the parents.

attorney surveys, some respondents were skeptical to the use of mediation and viewed it as ineffective and a means of pressuring parents to enter no contest pleas. However, this was tempered by statements indicating that they had not experienced mediation or case conferencing enough to determine whether it would be a positive practice moving forward. Multiple attorneys referred to the county's use of Permanency Consultants as a positive practice that helped to avoid involuntary TPR filings or narrow issues that would be pertinent at a Fact-Finding Hearing.

Fact Finding and Grounds

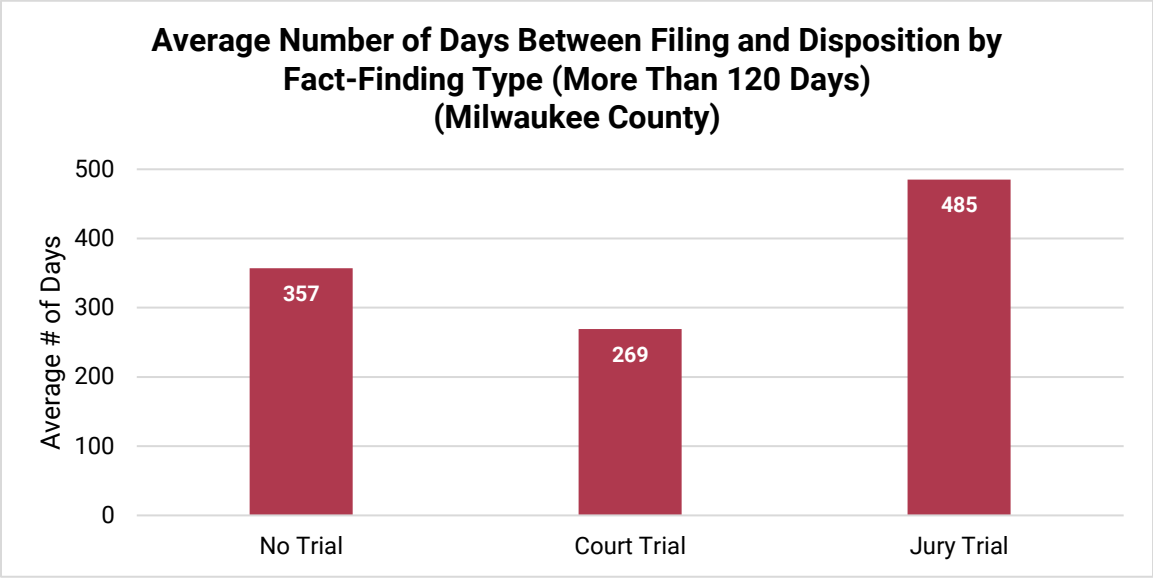
As was seen in the survey responses, both generally and specific to Milwaukee County (see: "Survey: Barriers" Q84), the statutory right to a jury trial at the grounds phase of a TPR Fact-Finding Hearing is often cited as an impediment to disposing of TPR cases in a timely manner. This issue is brought into further focus for Milwaukee County in additional attorney survey responses. Numerous attorneys highlighted TPR trial backlogs, which have been exacerbated by COVID-related issues. While the county did make adaptive efforts to conduct jury trials during the pandemic, opening an auxiliary court space at the Milwaukee County Zoo, the number of judges hearing TPR matters, and the availability of courtroom space and resources limit the ability to resolve these matters more efficiently. In addition to the higher volume of TPR cases filed in the county, jury trials are scheduled at a higher rate than elsewhere within the project counties. This most often results in trials being "stacked" on the court calendar, necessitating rescheduling for those cases that do not resolve prior to trial or are not able to be heard on that date.

Similar to information presented regarding use of scheduling orders, court records and notes reflect that the jury trial request and scheduling process differed in Milwaukee County in comparison to the other project counties. In Milwaukee County, the court almost exclusively reserves the right to jury trial for parents and sets a trial date unless the parent indicates that they do not wish to contest the petition. This is perceived differently in the attorney survey responses where 76% of respondents stated that jury trial demands are "almost always" made, with the full remainder indicating that the demand is made "often". Nonetheless, the practice of reserving the right to and scheduling trials is supported by data collected in the court file reviews, as can be seen in the graph below. The rate at which jury trial requests were made by a parent, as determined in the minutes of the Hearing on the Petition, was significantly lower than the rate at which jury trials were scheduled. A jury trial was scheduled in 33 of the 40 cases and, of those cases, the jury trial was adjourned over half the time. Whether the jury trial was ultimately conducted tracked closely with the rate of occurrence in the other project counties.



None of the cases reviewed in the less than 120-day sample had a trial (to the court or jury) requested, scheduled, or conducted.

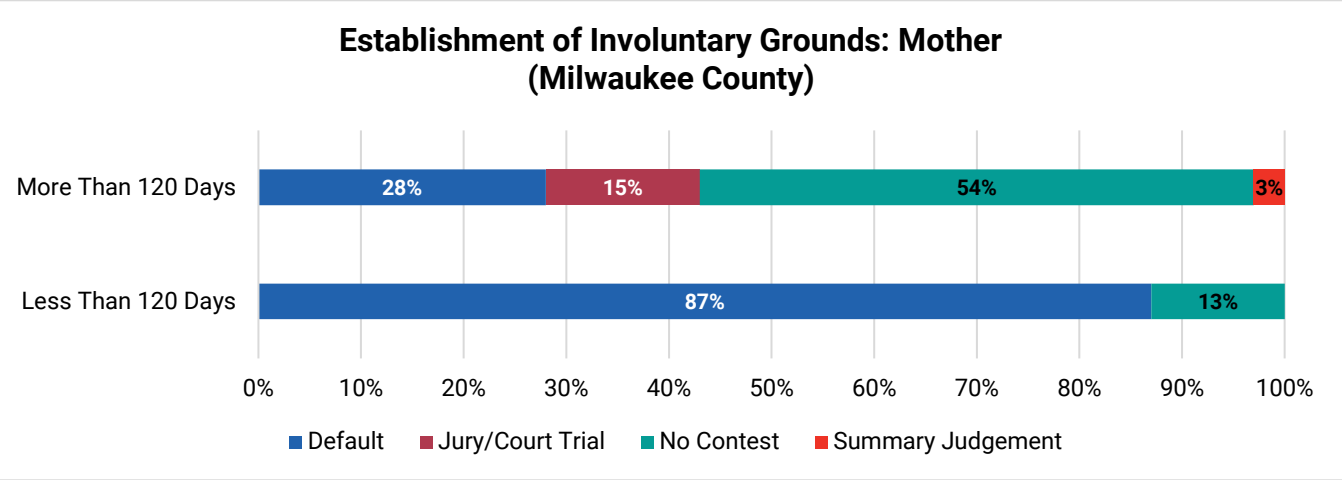
In comparing the time from petition to disposition and noting the very small sample sizes,[47] those cases where a jury trial was held averaged 485 days and those with a court trial averaged 269 days. Both of these figures deviated from the average amount of time to disposition present in those cases where no trial was conducted.

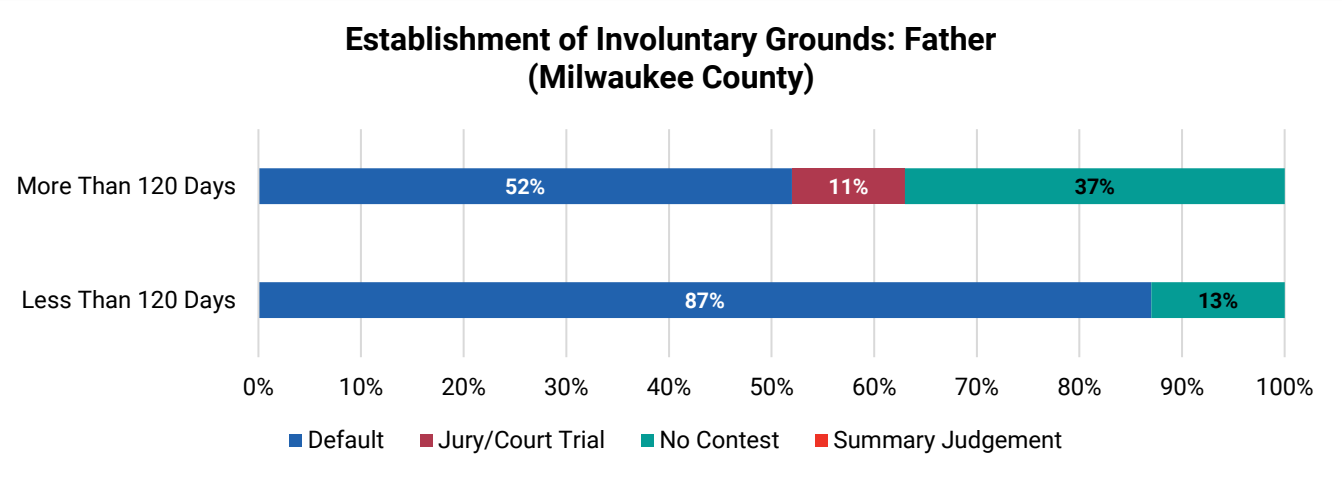


The court file reviews also explored how TPR grounds were established. For those cases in the less than 120-day group, outcomes for mothers and fathers were identical as it pertains to the rate at which grounds were established by either a no contest plea or default. This follows trends seen elsewhere with regard to how these shorter timeframe cases have grounds established, though Milwaukee County

[47] Jury trials n=7; court trials n=2.

experienced an overall higher rate of default within the sample cases. Similarly, fathers were more likely to be found in default in those cases taking more than 120 days than were mothers. Anecdotally, the reviews showed that the rate of default could be higher than what is represented in the data. Though not quantified, numerous instances were seen where the court had previously found a parent in default and then vacated the finding. The reasons for this action varied but was often done to allow a parent to enter a voluntary consent or no contest plea; however, it was also observed that this action lengthened the case where the parent contested the dispositional phase and/or additional litigation was spurred by the other parent.

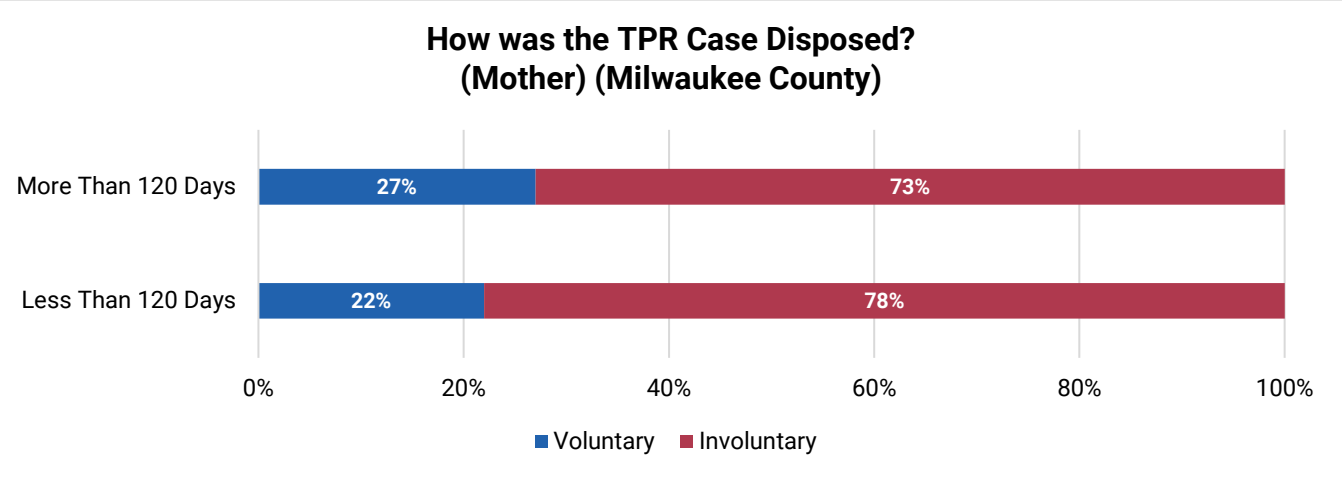


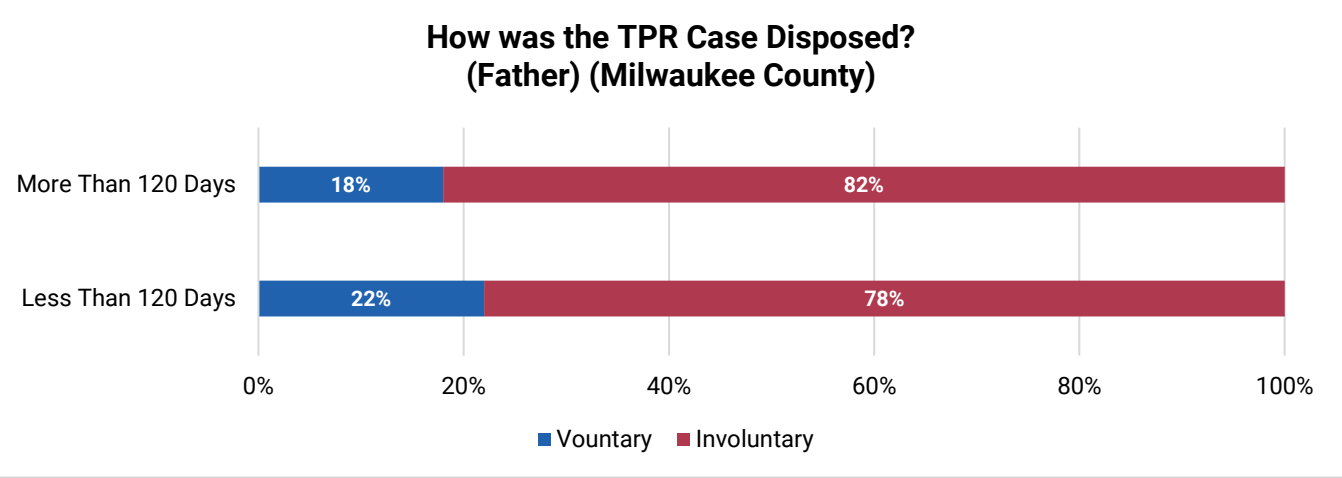


Milwaukee County court file data indicated a higher prevalence of adjournments for the Fact-Finding Hearing than was seen in the other project counties. Adjournment of the Fact-Finding Hearing occurred in almost half (18 of 40) of the cases. Additionally, multiple adjournments often occurred at this stage for each case, with as many as six adjournments occurring; the average number of Fact-Finding Hearing adjournments amongst this subset of cases was 1.9. While many of the reasons for these adjournments have been covered throughout this report (e.g., mental health, vacating of default findings), the primary causes of delay were attorney requests to reschedule (n=8), COVID-related (n=7), court calendar congestion/stacking (n=4), and discovery delays (n=4).

Disposition

The dispositional phase of the TPR case is explored in the graphs below. It should be noted for these purposes that the term "voluntary" denotes cases wherein the petition was filed under or amended to reflect voluntary grounds for the respective parent and that parent entered a voluntary consent. As can be seen, the vast majority of all reviewed cases resulted in involuntary dispositions and that there was little to no variance between mothers and fathers or between the longer and shorter cases. This owes largely to no "true voluntary" cases being included in the review (cases filed as and disposed of as voluntary only), since those cases would likely skew toward resolution in less than 120 days. Further, it should be noted that these figures differ from the data above regarding a "no contest" grounds finding, as those are still considered an involuntary resolution and often result in a contested Dispositional Hearing.





One unique issue related to disposition that was observed in Milwaukee County was the use of a "hold open", wherein a parent enters either a voluntary consent or no contest plea and the Dispositional Hearing is delayed allowing the parent to continue to make efforts to comply with the underlying CHIPS Dispositional Order. These delays in disposition may be up to six months and were utilized in two of the cases included in the more than 120-day cohort. In both instances, a finding was ultimately made that it was in the best interests of the child to terminate the parent's rights. While such an approach may be useful in resolving TPR cases ahead of trial and may allow for positive efforts by a parent, an extension

of the TPR case can delay permanence by a significant amount of time. Use of these hold opens were rare amongst the reviewed cases and feedback from judges indicates that their use is viewed less positively than may have been the case in the recent past.

ICWA & WICWA

The federal Indian Child Welfare Act (ICWA)[48] and Wisconsin Indian Child Welfare Act (WICWA)[49] establish specific party rights and provide child welfare casework and legal requirements for child custody proceedings involving an Indian child. ICWA and WICWA can add to the complexity of TPR cases and are often cited as areas in need of training and assistance.[50] With these concerns in mind, data was collected as to whether ICWA and WICWA applied to any of the cases reviewed. In the court file reviews for Milwaukee County, one of the cases reviewed in the more than 120-day group involved an Indian child; however, the court record did not reflect any delays related directly to any requirements or rights associated with ICWA and WICWA.

[48] 25 U.S.C. §21

[49] §48.028 Wis. Stat., et. al.

[50] See also: CCIP's WICWA Continuous Quality Improvement reviews.
Comparison Report: https://www.wicourts.gov/courts/programs/docs/cqicomparereport.pdf
Summary Report: https://www.wicourts.gov/courts/programs/docs/cqireport.pdf

Section VII: Summary and Recommendations

In cases where a termination of parental rights has been determined to be in the best interest of the child, all parties should have the opportunity for effective and efficient services, support, and representation.

It should be noted that since the TPR Timeliness project started in 2017, there have been two additional joint workgroups between DCF and CCIP focused on permanency plan changes and tailored dispositional orders. It is hoped that both the permanency plan revamp and the tailored dispositional orders project may positively impact timeliness. For more information on these initiatives, please refer to Wisconsin Court System - Children's Court Improvement Program.

Child welfare case practice should make efforts to expedite permanency through the parallel development of an alternative solution for cases where returning to the family of origin might not be an option. Such an approach honors a child's attachments and best interests while also acknowledging that reunification is not always the safest or best option. When concurrent planning is well supported and implemented effectively, it can provide an efficient and compassionate approach for helping birth parents and pre-adoptive parents work together toward the best interests of the child and expedite permanency.[51]

TPR timeliness is an important part of good child welfare practice but should not be prioritized above offering the family all of the needed services and supports to be reunified. In addition, when reunification is not in the child's best interests, county child welfare agencies will have exhausted all efforts to locate, engage, and place children with relatives or those with whom they have an established emotional connection with.

The following recommendations are reflective of the case review findings and survey data in supporting a timely TPR process, as well as ensuring that family engagement is continuously valued.

Child Welfare Workforce Support

Workforce Support

A key finding of this project reflects current research, most notably the effects of turnover or changes in the professional team on timeliness to permanence for a child. Both the court process and county process reflected significant delays correlated with child welfare professional turnover. All efforts around workforce support should remain at the top of the priorities for continued system change.

As was evident from the survey responses and related to a changing and evolving child welfare workforce, the training that is currently offered does not appear to meet the demand and timing of when child welfare professionals need it. In order to mitigate the concern:

- Counties can ask for training from their local legal stakeholders, which many already receive, in addition to WCWPDS trainings.
- Counties may utilize practice information from child welfare professionals who have experience of the TPR process in their county.
- Child welfare professionals may access resources regarding various legal topics on CCIP's website.

[51] Child Welfare Information Gateway (2018). Concurrent planning for timely permanence. Retrieved January 26, 2023, from: https://www.childwelfare.gov/pubPDFs/concurrent_planning.pdf

Collaboration Between County Agencies and Court Partners

Communication

The most cited tactic to improve timeliness was communication between the child welfare agencies and legal stakeholders prior to TPR filing. Ongoing consultation throughout the life of the case between supervisors and their staff along with joint discussions with legal partners should:

- Decrease misunderstandings,
- Minimize the number of petitions sent back for editing, and
- Improve determination of what additional efforts should be made by parents or if a TPR petition is ready to be submitted.

A best practice to consider is establishing a meeting cadence to review cases. This will provide opportunities for child welfare agencies to prioritize cases that have a concurrent goal of TPR, or in which the agency is looking to add or change a permanency goal to include TPR.

Another issue raised in the surveys was a delay in filing after a petition has been referred to the district attorney/corporation counsel. Conversations regarding the status of a case can be addressed at regular intervals, which makes all parties accountable to one another.

- Surveys identified that when each role has clear expectations and procedures for the preparation and referral of the case, timeliness can improve. This should include an understanding of responsibilities and scope.

Finally, counties may wish to convene a multi-disciplinary group to examine their current child welfare and court practices involved in TPR cases from referral to adoption. In doing so, these groups should identify areas of efficiency and improvement, which may contribute to timelier TPR outcomes.

Referral Process

There is currently no standardized statewide referral packet for county agencies to use when providing district attorney/corpore counsel with the information needed to file a termination of parental rights petition. Given the nature of the cases and timeframes involved, attorneys responsible for prosecuting TPR cases should process referrals from the county child welfare agency in a timely fashion and avoid any unnecessary delays, meeting face-to-face whenever possible. The agency should be provided with timeframes for decisions and actions, as well as communicating about any delays as they occur. Additional information or discussions should be sought as soon as is practicable. Any decision not to file a TPR should be communicated to the agency immediately.

- This workgroup created the TPR Readiness Meeting Checklist to assist child welfare professionals and attorneys in the TPR referral process. It is designed to promote a more efficient process and consistent practice across the state.

Court Process

Timely Appointment of Counsel

Appointment of counsel is a driver of delays, particularly early in the proceedings. Availability of quality counsel to represent parents in TPR cases, and the timely appointment thereof, were concerns expressed in all survey response stakeholder groups and was reflected in court file reviews on reasons for adjournment of the Hearing on the Petition. In the TPR cases taking more than 120 days, the most common reason for adjourning the Hearing on the Petition (47% of the adjournments) was for the parent(s) to obtain counsel.

- County court systems should analyze their current practices for informing parents of their right to counsel and how to obtain representation, with a focus on early interventions to encourage parents to obtain counsel prior to the Hearing on the Petition.
    - This may include developing a screening process to determine whether a parent is contemplating entering a no contest plea or voluntary consent and may support the appointment of court-appointed counsel to ensure that these pleas are entered timely, while also ensuring that the rights of parents are protected.
    - It may be helpful for the court to have discussions with the local state public defender's office (SPD) to coordinate efforts to streamline the appointment process and remove any barriers.
- Judicial officers should carefully consider circumstances when a parent has not obtained counsel to determine whether the delay is due to lack of attorney availability or party inaction. Where appropriate, the court may wish to order parents to contact the SPD and provide default warnings for failing to obey the court's order, as well as enter a denial on behalf of parents in order to keep the case progressing.

High-Quality Legal Representation

High quality legal representation is vital to ensuring a well-functioning child welfare system. ACYF-CB-IM-17-02

- Some counties have helped to address legal representation needs by applying for federal Title IV-E reimbursement to increase access to prosecutors and court-appointed attorneys. See Appendix A for additional information on Title IV-E reimbursement strategies.
- A smaller number of counties have created their own standards and incentives for those attorneys serving as GAL in Ch. 48 proceedings, including offering free continuing legal education opportunities that may be mandatory in order to receive case assignments. Counties should consider establishing their own local standards for GAL appointment, evaluating performance, and examining the reimbursement structure to determine whether avenues may exist to help support practitioners.
- High-quality attorney practice includes skilled motion practice for all interests being represented and is necessary to ensure procedural justice and efficient court processing. While motion practice can result in additional court hearings and/or extended timeframes; when utilized appropriately it can be an effective tool in protecting parents' rights, narrow the issues to be determined at trial, and/or resolve the case short of trial through negotiated settlement or summary judgment.
- There are TPR related resources, training opportunities, and online learning activities available on the CCIP E-Learning website: https://wicciptraining.com/. The learning activities are particularly helpful for newer attorneys or those who do not frequently handle TPR cases. Courts may want to encourage or require GALs and adversary counsel to watch the online learning activities before being placed on the appointment lists.

Judicial Case Management

Increased and focused judicial case management in TPR cases is a method to reduce delay. Given the delays associated with adjournments, judges should closely scrutinize requests for any adjournment or continuance. Adjournments of proceedings should not be perfunctory; being granted only in limited circumstances for good cause and delay the proceedings only as long as is necessary.[52]

- Issuing scheduling orders, especially in complex cases, apprises the parties of clear timeframes and expectations for activities that may occur in the TPR case, including exchange of discovery, filing of motions, and trial. Further, these orders should be amended throughout the life of the case, should those timeframes be delayed or otherwise altered.
- It was noted in the reviews that default findings presented challenges in some cases, including confusion over the elements necessary to make the finding or vacating default findings when unnecessary or inadvisable. CCIP will develop resources and training to support building judicial knowledge on when and how to make default findings, including guidance on providing warnings and utilizing written orders. Information will be available to judicial officers via the annual Child Welfare Law Orientation; a training that is now mandatory for all circuit court judges to attend during each six-year term.

Three checklists were developed to guide judges and child welfare professionals through the basics of a TPR proceeding: TPR Hearing on the Petition, TPR Voluntary Consent, and TPR Dispositional Hearing. While these checklists are designed to highlight key questions that the court should ask, it is not necessarily an exhaustive list and questions may need to be modified based on the specific circumstances of the case. The checklists can also be used to guide child welfare professionals as they prepare for a TPR.

Child Welfare Priorities

Placement with Relatives

When safety cannot be ensured in the parental home, the first call should be to family. As the data showed, all project counties have more children placed in non-relative homes awaiting permanency than with relatives. Those youth who are placed with relatives achieve permanency sooner and had fewer placements.

- Locating and engaging relatives should be done as soon as it is known an out-of-home placement is needed.
    - If family is not immediately available at the time of placement, the child welfare agency should still seek out and engage family members. This includes infants placed in foster care directly from the hospital.
    - Child welfare professionals should continually search for family connections and engage family throughout the life of a case. The Child Welfare Information Gateway's "Family Engagement: Partnering with Families to Improve Child Welfare Outcomes" (2021) identifies "Engaging families in the casework process promotes the safety, permanency, and well-being of children and families in the child welfare system and is central to successful practice."

[52] s. 48.315(2), Wis. Stats.

- Local agencies can refer children to Coordinated Services Team (CST) and Children's Long-Term Support (CLTS) or other programs to provide special care for in-home services that can support and maintain a relative placement.
- Relatives of a half-sibling can be approved for foster care licensure. Even if placement does not occur, efforts to keep connections with siblings should be continuous, as siblings are the longest lasting connection a person will have.
- Local child welfare agencies can grant waivers and request exceptions through DCF for relative caregivers when licensing for foster care. Non-safety related waivers for relatives can be found in the DCF Ch 56 Annotated Version.
- Child welfare professionals should help relatives understand the permanency options of guardianship and adoption. The differences between the two options are to be explored thoroughly with each person to ensure they understand the outcomes and requirements of each.

ICWA & WICWA

Starting at intake, child welfare professionals should ask all families if they have any tribal affiliation and follow through with required notice. It is imperative that counties and legal stakeholders partner with Tribes to ensure that active efforts and requirements of WICWA are upheld in Indian Child Welfare (ICW) cases. If there is a reason to suspect that the case involves an Indian child (i.e., member of a tribe OR eligible for membership and the biological child of a member), the child welfare staff should make active efforts and apply the other requirements until it is determined that WICWA does not apply.[53]

Other recommendations regarding ICWA and WICWA are to identify a Qualified Expert Witness (QEW) and have them available to testify at an involuntary termination of parental rights hearing.[54]

Marital Status

In the surveys from both Milwaukee County and the project counties, marital status was identified as a barrier. Wis. Stat. § 48.82 states that an unmarried adult can adopt as a single parent. Wisconsin Admin. Code § DCF 50.05 specifies that adoptive parents must live together and have been married more than a year.

- The TPR Timeliness Workgroup would advocate for DCF to consider what options are available within the existing administrative code, and what options may exist for revision to allow more flexibility and discretion for unmarried two parent households to adopt jointly.

Notice

Current language in Wisconsin Stat. §§ 48.42(2g) and 48.42(4)(b)4 requires that local child welfare agencies give constructive notice in a newspaper to parents, so they are aware of the termination of

[53] The Active Efforts: A Child Welfare Practitioner's Guide for Meeting the WICWA Active Efforts Requirement provides statute references, recommended activities for petitioning agency, and potential benefits of tribal contact.

[54] The Wisconsin Indian Child Welfare Act (WICWA): Qualified Expert Witness policy brief 2013-05 was issued on 10/16/2013. It outlines implementing guidelines including QEW testimony, QEW tiers, expert testimony, and out of state resources.

parental rights hearings. Only 10% of U.S. adults often get their news from a printed publication similar to a newspaper.[55]

Child welfare professionals should communicate information to the birth parents including notice of upcoming hearings. Parents should be aware of timelines and the court process through effective counsel and their case manager informing them of their rights and responsibilities which includes attendance at court hearings.

Local Child Welfare Agency to Public Adoption Agency Case Transition

Local child welfare agencies in the balance of the state transfer their cases to the Public Adoption Program. During the case file reviews, it was noted that there are discrepancies by county in the length of time between TPR and adoption finalization.

- DCF should pursue further exploration into the transition process from local child welfare agencies to the Public Adoption Program to understand practice variations, and to establish practice guidelines to enhance consistency statewide.

[55] The Pew Research Center (2021) shared an article "More than eight-in-ten Americans get news from digital devices," which outlined how Americans access news. They found that American adults primarily utilize digital devices rather than print, television, and radio. Retrieved from https://www.pewresearch.org/fact-tank/2021/01/12/more-than-eight-in-ten-americans-get-news-from-digital-devices/

Section VIII: Conclusion

DCF and CCIP acknowledge that a termination of parental rights is a traumatic event for all parties involved and should never be taken lightly nor expedited for the sake of complying with arbitrary timeframes. DCF and CCIP encourage all local child welfare agencies to meet with their legal stakeholders who impact termination of parental rights hearings in their jurisdictions and determine what recommendations can be implemented to positively impact the TPR process.

DCF hopes that through more intentional efforts to put families first, more children will be served in their homes and the frequency of termination of parental rights will diminish. For families where termination of parental rights is necessary, the hope is that the process will be trauma-informed, family-centered, and transparent in all aspects of the process.

Thank you to the participating counties and legal stakeholders who provided valuable insight into the termination of parental rights process.

Contributors

Members of the TPR Timeliness Workgroup were comprised of CCIP representatives (Bridget Mauerman and Justin Wolff), IRP representatives (Steve Cook and Lisa Klein Vogel), and DCF representatives (currently Kristie Buwalda and Jonathan Wilcoxen; previously Jonelle Brom, Katie Sepnieski, Danielle Karnopp, Erin Miess, Frances Bass, Michael Hoffmeister, and Quatonda “Moe” Green).

Appendix A: Resources

DCF Resources

Ongoing Services Standards

https://dcf.wisconsin.gov/files/cwportal/policy/pdf/ongoing-services-standards.pdf

The Child Welfare Ongoing Service Standards (2022) "provide a framework for the ongoing case process and focus on safety, permanence, and well-being for children and their families served under Wisconsin Statute Chapters 48 and 938. Practice expectations set by the Standards ensure families statewide receive consistent, effective, and responsive intervention that supports the change process."

eWiSACWIS User Guides for Case Work

https://dcf.wisconsin.gov/knowledgeweb/training/ewisacwis-user-guides/case-work

The eWiSACWIS User Guides for Case Work provide resources and materials to support different processes such as ICPC, ICWA and WICWA, Permanency Planning, etc.

Permanency Plan Writing Guide

https://dcf.wisconsin.gov/files/ewisacwis-knowledge-web/quick-reference-guides/case-permanency/policy-permanency-plan-guide.pdf

DCF developed a writing guide to "provide consistency, clarity and efficiency when writing permanency plans." The permanency plan serves as a tool for communication with parents/caregivers, children, and their family members, court parties, and other individuals in providing supports and services to the family. The permanency plan provides the parties with an update on the progress towards the child or youth's identified permanency goal.

ICWA & WICWA Resources

Wisconsin Indian Child Welfare Act (WICWA)

https://dcf.wisconsin.gov/wicwa

The WICWA website provides history of WICWA, WICWA requirements, forms, publications, and resources.

Tribal Affairs Office

https://dcf.wisconsin.gov/tribalaffairs

The Tribal Affairs Offices serves as a liaison to tribal governments, tribal organizations, the urban tribal population, the general public, and DCF staff. This site outlines family services programs, tribal consultation, tribal information, and tribal child welfare professional resources.

WICWA Online Resources for Child Welfare Professionals

https://media.wcwpds.wisc.edu/foundation/WICWA_Online_Resource/

This resource can be utilized by Child Welfare Professionals who have completed the required WCW PDS trainings outlined on the page. The training offers information regarding access, identification, notice, active efforts, protective planning, qualified expert witness (QEW), placement preference, juvenile services, adoption TPR, and tribe contact information.

WICWA Judicial Checklist

https://www.wicourts.gov/courts/programs/docs/ccipwicwa.pdf

- Judicial Checklist – Wisconsin Indian Child Welfare Act

CCIP Resources

https://www.wicourts.gov/courts/offices/ccip.htm

TPR Timeliness Project Materials

The following resources may be found on CCIP's training website under the TPR Timeliness Project Tab: https://www.wicciptraining.com/Resources

TPR Overview

- TPR Flowchart and Types of Default

Checklists

- Judicial Checklist – TPR Voluntary Consent
- Judicial Checklist – TPR Hearing on the Petition
- Judicial Checklist – TPR Dispositional Hearing
- TPR Readiness Meeting Checklist

Sample Motions and Orders

- Scheduling Order
- Order to Appear
- Motion and Order for Summary Judgment

Title IV-E Resources

Wisconsin Title IV-E Foster Care and Adoption Assistance Program

https://dcf.wisconsin.gov/title4e

The Wisconsin Title IV-E Foster Care and Adoption Assistance Program website provides information on the Title IV-E reimbursement programs and instructions for counties to apply to participate in the program.

Title IV-E Legal Representation of Parents and Children

https://dcf.wisconsin.gov/title4e

The Title IV-E page offers resources that counties can utilize which provides funding for GALs and attorneys for parents appointed by the court in CHIPS and TPR cases. More information including the application may be found under the IV-E Administrative Claiming and Reimbursement Program tab.

External Resources

Casey Family Programs

https://www.casey.org/kin-first-approach/

Casey Family Program's developed an issue brief titled "*Why should child protection agencies adopt a kin-first approach?*" In the issue brief, they outline the differences between kinship care and non-relative foster care. They provide resources and strategies for agencies to develop a kin-first approach.

Appendix B: Project Counties' Survey Responses

Project Counties: Child Welfare

Barriers

PC-CW-Q81: In your opinion, are there any systemic barriers that get in the way of the timely resolution of TPR cases in your county? By systemic barriers, we mean barriers resulting from policies, practices, or procedures in your county or at the state level. This may include court, legal, or child welfare systems.

57% of respondents answered "yes".

PC-CW-Q82: If you indicated yes to (Q81), what are the systemic barriers that you believe get in the way of the timely resolution of TPR cases in your county?

- Lack of staff (child welfare professionals, attorneys, etc.)
- Inexperienced child welfare professionals (unfamiliar w/court process)
- Delay in locating permanent resource(s)
- Paternity not established
- Prosecutor not willing to file contested TPR or Guardianship
- Lack of services for parents to meet conditions
- Birth of another child; wait to file until all have been OOH for 15+ months
- Incarcerated parents
- Concurrent plan; need to wait 6 months after adding TPR

PC-CW-Q83: In your opinion, are there any laws or statutory barriers that get in the way of the timely resolution of TPR cases in your county?

18% of respondents answered "yes".

Compared to systemic barriers, most respondents were either unsure or did not believe there were statutory barriers.

PC-CW-Q84: If you indicated yes (to Q83), what are the statutory barriers that you believe get in the way of the timely resolution of TPR cases in your county?

- Licensing rules to approve relatives
- Court Appointed Special Advocates (CASA) and Guardians ad Litem (GAL) taking side of foster parents
- Marital status; can only adopt as single parent or married living together
- Closed adoption: more voluntary TPRs likely if parents knew there could be some contact
- Scheduling and conducting a jury trial for the Fact-Finding Hearing, as opposed to trying the matter to the court only.

TPR Referral and Filing

PC-CW-Q79: In TPR cases referred to the prosecuting attorney, has that attorney or office ever refused to file a TPR or sent back a referral for any reason?

37% of respondents answered "yes" and 40% answered "unsure/I don't know".

PC-CW-Q80: If you answered yes to the last question, under what circumstances did the prosecuting attorney refused to file or returned the TPR referral?

- Missing or insufficient information
- ICWA

- Child not in an approved adoptive resource
- Birthparents started engaging in resources/services
- Child not agreeing to be adopted
- Lack of grounds
- Prosecutor will not agree to filing a contested TPR
- Prosecutor too busy and asked child welfare professional to refer again in 6+ months
- Diligent efforts not made
- Parent incarcerated
- Child welfare professional referred case but due to length of time that elapsed, and it not being filed, they will send back for updates to timelines, loss of ground, update forms

Project Counties: Legal Stakeholders

Barriers

PC-LS-Q81: In your opinion, are there any systemic barriers that get in the way of the timely resolution of TPR cases in your county? By systemic barriers, we mean barriers resulting from policies, practices, or procedures in your county or at the state level. This may include court, legal, or child welfare systems.

- 39% of Attorney respondents answered "yes"
- 29% of Judicial respondents answered "yes"

Compared to the child welfare surveys (56%), legal partners attributed delayed TPR to systemic barriers less often, though identified numerous specifics in Q82.

PC-LS-Q82: If you indicated yes to (Q81), what are the systemic barriers that you believe get in the way of the timely resolution of TPR cases in your county?

- Attorneys
    - Prosecutorial caseload
    - Low pay for parent attorneys, resulting in few willing to take TPR cases
    - Lack of parent representation in the underlying CHIPS case
    - Infrequency of filing TPR cases in smaller jurisdictions
    - Lack of judicial training on TPR
    - Civil discovery process is time-intensive
    - Delay in locating family placement options
    - Lack of services for parents to meet conditions
    - Ineffective GAL practice
    - Two-phase system for grounds and disposition causes confusion and mistakes
    - Jury trial right and court calendar availability for Fact Finding
- Judges
    - Limited juvenile court time and availability
    - Prosecutorial turnover
    - Lack of available parent attorneys
    - Substitution
    - Unprepared attorneys
    - Agency record access delaying discovery
    - Calendar congestion for court and attorneys

PC-LS-Q83: In your opinion, are there any laws or <u>statutory</u> barriers that get in the way of the timely resolution of TPR cases in your county?

- 16% of Attorney respondents answered "yes"
- 10% of Judicial respondents answered "yes"

PC-LS-Q84: If you indicated yes (to Q83), what are the statutory barriers that you believe get in the way of the timely resolution of TPR cases in your county?

- Attorneys
- Restrictive requirements for foster licensing and family placements
- Two-phase system for grounds and disposition is a disincentive to pre-Fact Finding resolution
- Right to jury trial
- Unrealistic statutory timeframes are very rarely followed, with good cause to extend being routinely found
- No right to appointed counsel in the underlying CHIPS case
- Lack of statutorily enforceable open adoption agreements
- Judges
- Service requirements for notice
- Lack of available Public Defender-appointed attorneys
- Right to jury trial
- Onerous default procedures allow parents to leave and re-enter cases
- Civil discovery process
- Difficult standards for summary judgment

Appendix C: Milwaukee County's Survey Responses

Milwaukee County: Child Welfare

Barriers

MKE-CW-Q81: In your opinion, are there any systemic barriers that get in the way of the timely resolution of TPR cases in your county?

70% of respondents answered "yes" compared to 57% of respondents from the other counties.

MKE-CW-Q82: If you indicated yes to (Q81), what are the systemic barriers that you believe get in the way of the timely resolution of TPR cases in your county?

- Courts and legal:
  - Court congestion and calendaring practices, exacerbated by COVID
  - Court dates are set far out
  - Postponing trials multiple times
  - Courts being doubled booked
  - Multiple adjournments due to lack of proper notice/lack of proper paperwork from legal parties
  - DA's office will not approve TPR without an identified adoptive resource
  - Judges and assistance district attorneys (ADA) continue to support reunification despite the lack of engagement or behavioral changes
  - Parents fire their attorneys and do not hire a new attorney in a timely manner
  - If the case is not 6 months post-disposition TPR will not be filed
- Other:
  - ASFA guidelines - parents making some progress but not enough to reunify
  - Attorneys and judges being averse to concurrent planning at the very beginning of a case due to wanting the parent to have a positive experience, so they do not disengage from coming to court. As a result, judges only order the goal of Reunification at the first Perm Plan Hearing.
  - Adversarial nature of legal proceedings negatively impacting the child welfare professional-client relationship
  - Legal parties and judges not agreeing with the child welfare professional's recommendations
  - Implicit bias and systemic racism
  - Tribes not supporting TPR/adoption in ICWA cases due to cultural considerations
  - DMCPS waits until the 15-month mark to refer the case for TPR
  - Getting the paternity paperwork and birth certificates in a timely process
  - Allowing parents multiple times to appear before defaulting them
  - Opinions about adoptive resources or case managers
  - Length of time for licensed placement before filing

MKE-CW-Q83: In your opinion, are there any laws or statutory barriers that get in the way of the timely resolution of TPR cases in your county?

21% of respondents answered "yes", that there are statutory barriers which impact timely resolution of TPR cases. This is slightly higher than 18% of respondents from the project counties.

MKE-CW-Q84: If you indicated yes (to Q83), what are the statutory barriers that you believe get in the way of the timely resolution of TPR cases in your county?

Statutory barriers which were cited included:

- Marital status can pose a barrier to someone being approved to adopt
    - Families struggle affording or managing the divorce process in a timely manner
- The eligibility and the amount of adoption assistance can pose a barrier to a family making the final commitment to adopt
- The appeals process is slow
- The right to a jury trial
- TPR trials not taking priority with attorneys
- Ineffective assistance of counsel
- Issues of notice
- ASFA - 1 year/15 months doesn't provide parents enough time to make life changes especially if they do not engage immediately
- Parents who do not come/attend court are given numerous chances

Permanency Planning

MKE-CW-Q79 In TPR cases referred to the prosecuting attorney, has that attorney or office ever refused to file a TPR or sent back a referral for any reason?
67% of respondents report having a TPR sent back from the prosecuting attorney.

MKE-CW-Q80: If you answered yes to the last question, under what circumstances did the prosecuting attorney refused to file or returned the TPR referral?
Reasons that were cited for having the TPR sent back included:

- Missing or insufficient information
- ICWA
- Child not placed in an approved adoptive home
- Birth parents recently began engaging in services and/or visits
- Child unwilling to be adopted
- Choose Guardianship instead of adoption as permanency goal
- Prosecutor does not agree on the ground for termination
- Prosecutor does not want to file TPR on a sibling (often because they want to wait until both siblings have been in out-of-home a certain length of time)
- “Don’t have the time”
- “Don’t think they can win”

Milwaukee County: Legal Stakeholders

Barriers

MKE-LS-Q81: In your opinion, are there any <u>systemic</u> barriers that get in the way of the timely resolution of TPR cases in your county? By systemic barriers, we mean barriers resulting from policies, practices, or procedures in your county or at the state level. This may include court, legal, or child welfare systems.
50% of Attorney respondents answered “yes”
MKE-LS-Q82: If you indicated yes to (Q81), what are the systemic barriers that you believe get in the way of the timely resolution of TPR cases in your county?

- Attorneys
    - Inefficient TPR referral policies

- Judicial caseload, highlighting backlogs as a result of COVID
- Lengthy times to appointment of counsel
- Consistent delays in the discovery process
- Incomplete family caregiver inquiry
- Frequent appeals

MKE-LS-Q83: In your opinion, are there any laws or <u>statutory</u> barriers that get in the way of the timely resolution of TPR cases in your county?
25% of Attorney respondents answered “yes”

MKE-LS-Q84: If you indicated yes (to Q83), what are the statutory barriers that you believe get in the way of the timely resolution of TPR cases in your county?
Attorney respondents for Milwaukee County primarily focused on the right to jury trial at Fact Finding as a statutory barrier that contributes to longer TPR timeframes. Also cited was that the statutory timeframe requirements are unrealistic and often disregarded or extended as a perfunctory measure.