

Iowa Supreme Court Select Committee
- *To Review State Court Practices*
In Child Welfare Matters



Iowa Court Improvement Project
Reassessment Report
June 2005

Iowa Supreme Court Select Committee
To Review State Court Practices
In Child Welfare Matters

A Reassessment of Iowa's Court Performance
In Child Abuse and Neglect Cases

Submitted to the Iowa Supreme Court
June 2005



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Iowa Supreme Court Select Committee

-To Review State Court Practices in Child Welfare Matters

June 10, 2005

To the Chief Justice and Members of the Iowa Supreme Court:

Your Committee to review state court practices in child welfare matters is pleased to present the following report, with its findings on the progress of our courts in being more responsive to the needs of Iowa's children and families. In addition, the Oversight Committee brings recommendations to continue the improvement made possible through your continued support and the essential funding from the Department of Health and Human Services, Children's Bureau.

The committee's findings and recommendations are based on the results of an in-depth review of the court process in nine counties of the state. Throughout this process the committee sought to obtain direct observation of the court process, review of case files, and comprehensive input from litigants, lawyers, judges, administrative staff and a variety of child welfare professionals involved in these proceedings. The committee's perspective on these issues was similarly enhanced by the ethnic, gender, geographical and professional diversity of its members, as well as the hands-on approach of the staff who conducted the observations, interviews and file reviews.

Any credible assessment is necessarily critical and this committee's assessment of our court's performance in child welfare matters is no exception. Strengths were recognized and applauded. Any criticisms inherent in our report are constructively intended and it is hoped they will be received in the same spirit.

With this report, we also submit a two-year plan to improve our court's performance in child welfare matters. Your committee believes the plan's implementation will enhance the court's ability to provide meaningful oversight in child welfare matters and will achieve the ultimate goal of permanent, safe, secure homes for the children under the protection of the court.

We thank you for the challenge of this undertaking. The committee hopes that the court finds our recommendations have merit and directs us to proceed with the plan for improvement.

/s/ Gayle Vogel

Judge Gayle Vogel
Committee Co-Chair

/s/ William Owens

Judge William Owens
Committee Co-Chair

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Acknowledgments

The Court Improvement Project and its Oversight Committee would like to thank the nine pilot sites and the more than 350 individuals who contributed their time and talents to this research project. The county sites which participated are: Buchanan, Cerro Gordo, Clinton, Jasper, Lee, Linn, Madison, Pottawattamie, and Woodbury. With their cooperation and assistance, we were able to identify the strengths and areas for improvement. With their continued support, we will implement changes to improve the court system for Iowa's children and families.

Special thanks to the following organizations and individuals for their contributions to our successful reassessment:

The Iowa Supreme Court for their support to pursue this effort to improve the juvenile court process.

The State Court Administrator for his support and guidance in fulfilling this federal requirement while making this a valuable exercise for the courts.

The Chief Judges, District Court Administrators, and other court personnel who worked with the reviewers to organize their research in each of the nine counties.

The judges who, through their time and expertise, assisted the reviewers in understanding the local practices, and in granting access to records, and court hearings.

The National Resource Center on Legal and Judicial Issues of the American Bar Association for their valuable consultation and leadership.

Summary of Study

In March 2003, the Children's Bureau of the Department of Health and Human Services issued a new Program Instruction for the Court Improvement Program, which extended the CIP program funding through 2006. Two very important requirements were added: 1) submission of a strategic plan for court improvement and 2) a reassessment of the state court's performance in foster care and adoptions, along with a plan to implement the recommendations arising from the assessment.

This report is a summary of the results of the reassessment, including staff recommendations for consideration by the Oversight Committee in developing the strategic plan for 2005-2006. More than 350 individuals from the nine county sites provided input for the assessment study. The participants included individuals from all levels of involvement with Child In Need of Assistance (CINA) cases and their family members involved in the court system. Professionals included judges, district court administrators, clerks of court and their staff, attorneys representing all parties, foster parents, CASA and Iowa Citizens' Foster Care Review Board, staff of the Department of Human Services, and provider agencies.

The primary areas chosen for Iowa's CIP 2004 assessment were: (1) quality of hearings, including completeness and depth, (2) the quality of representation provided to the parties, and (3) the timeliness of hearings and decisions. These were chosen based on the requirements from the Department of Health and Human Services and by consensus of the Oversight Committee.

During the assessment, many positive features of current practice were identified. Compliance with required judicial determinations have increased and permanent plans are being accomplished for most of Iowa's children. There is a high level of continuity in representation for parents and children. Most county attorneys, in representing the state, remain on the cases for the entire length of the case. Most hearings are held in a timely manner. Most outstandingly, orders are being distributed in a far more timely manner than the guidelines established, assuring family and professionals alike of clear direction from the judge.

The judges hearing the majority of CINA cases are very experienced. Many provide consistency to children and families by hearing all stages of the same CINA case. The use of judicial inquiry is exemplary in some courts, leading to quality hearings which support the progress of families and inform them of areas where safety of their children is still an issue.

During the next two years, the committee plans to provide leadership to assist in the improvement of the judicial oversight of the permanency process. In response to the results of the reassessment, the Oversight Committee recently initiated the formation of two task forces to address the most prominent statewide issues – quality hearings and quality representation. The Oversight Committee has used this reassessment report added to the task force recommendations to develop a strategic plan for continuous improvement of the juvenile court permanency process for children in Iowa, as well as assist the counties which participated in the reassessment with issues of improvement unique to their area.

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Reassessment Report

Introduction

As part of the Omnibus Budget Reconciliation Act of 1993, also known as the Family Preservation and Support Act, Congress set aside \$35 million in entitlement grants to state courts over a four-year period. The funding was designated to be used to improve court handling of abuse, neglect, foster care, and adoption cases [Public Law 103-66, 13711(d) (2) and 13712]. Under these grants, each recipient state court system was to (a) conduct a rigorous assessment of how state courts are handling abuse, neglect, and foster care litigation, (b) develop a plan to improve the administration of justice in foster care cases, and (c) implement the plan, contingent upon continued funding. The original plan of the Iowa Court Improvement Project was published in 1996.

In March 2003, the Children's Bureau of the Department of Health and Human Services issued a new Program Instruction for the Court Improvement Program funding. The Program Instruction, which extended the CIP program funding, included two very important requirements:

- 1) Submission of a strategic plan for court improvement, updated annually, and
- 2) Perform a reassessment of the state court's performance in foster care and adoptions, including a plan to implement the recommendations arising from the assessment.

Study Process

The purpose of this study was to update the state's earlier assessment findings, evaluate the state's progress on its CIP reform efforts, and identify strengths and challenges related to court practices and procedures. The Program Instruction indicated the reassessment should be an evaluation of the courts' effectiveness, timeliness, and quality of particular proceedings in dependent court. More specifically, there was a call to evaluate the extent of conformity of the State court rules and practices with federal requirements and recommendations of the National Council of Juvenile and Family Court Judges, the National Child Welfare Resource Center on Legal and Judicial Issues (ABA) and other national organizations concerned with the permanent placement of children. Each state was encouraged to use The Resource Guidelines: Improving Court Practice in Child Abuse & Neglect Cases, a publication of NCJFCJ, as a guide for "best practice".

In developing recommendations, CIP projects were to address the most crucial reform issues as defined in federal guidelines. These included:

- Improving judicial competence and leadership
- Limiting workloads to improve judicial decisions
- Developing automated information systems to track cases and measure performance
- Strengthening communication and linkages with child welfare agencies and attorneys
- Improving legal representation for all parties, and
- Improving notice to and treatment of parties.

The primary areas chosen for Iowa's CIP 2004 assessment were: (1) quality of hearings, including completeness and depth, (2) the quality of representation provided to the parties, and (3) the timeliness of hearings and decisions.

Parties Responsible for Conducting the Study and Developing A Plan for Improvement

In 1995, the Iowa Supreme Court appointed the Iowa Supreme Court Select Committee to Review State Court Practices to oversee this court improvement project. This appointed group is now referred to as "the Oversight Committee". Its members were selected to represent the major stakeholders in the child welfare system, including the Department of Human Services, foster parents, attorneys, judges, and court administrators.

The Oversight Committee of the Iowa Court Improvement Project approved a plan to review the practices of nine counties. CIP staff, Chief Judges and District Court Administrators worked together to select the review sites. The Clerks of Court for each county site were contacted to schedule the reviews. Court Improvement Project staff provided the reassessment services themselves rather than contract for these services. The Oversight Committee, Court Improvement staff and State Court Administration wanted a close-up look at the court process, with an eye toward assisting the local county sites and the districts in developing local improvement plans.

More than 365 hearings were reviewed and 350 individuals from the nine sites provided input for the assessment study. The participants included judges, district court administrators, clerks of court and their staff, attorneys representing all parties, foster parents, CASA and FCRB, staff of the Department of Human Services, provider agency staff, and families. CIP staff accomplished the interviews, distribution and analysis of questionnaires, focus groups, data gathering, court observation, and analysis of the results through the cooperation of the county court staff.

CIP Reassessment Process

The instruments and methods used during the data collection and analysis were modified from those used in the first assessment and adapted from the American Bar Association Center on Children and the Law, the National Council of Juvenile and Family Court Judges, and the states of Minnesota, New Mexico and Utah.

To obtain a broad array of information, the study included concrete data from case files and court hearings, on-site observation data, and from surveys and interviews the perceptions of those who work with child abuse and neglect cases on a daily basis to gain the most accurate view of the court process in Iowa.

The review process included the following:

- 1) Nine counties were reviewed, including at least one from each judicial district and at least one from each Department of Human Services Service Area. The sites that participated were: Buchanan, Cerro Gordo, Clinton, Jasper, Lee, Linn, Madison, Pottawattamie, and Woodbury counties.

- 2) All site visits included files reviews, court observations, interviews with judges and court personnel, and a focus group with attorneys. In some sites, interviews with parents and DHS staff were possible.
- 3) The review required a minimum of three days in each site. Reviewers made additional visits to some sites to accomplish the required number of court observations.
- 4) 128 case files were reviewed covering 365 hearings. Case files were selected by local court personnel from all CINA cases that had a hearing within the prior 3 months.
- 5) 68 court hearings were observed and analyzed by CIP staff. The types of CINA hearings observed were: emergency removal, adjudication, custody and guardianship, dispositional, permanency hearings, permanency review, termination of parental rights, adoption, and motion to intervene. Investigators were not able to observe each type of hearings in each site. The hearing schedule was not modified to accommodate the reviewers, so not all types of hearings were observed.
- 6) Questionnaires were sent by email or postal service to the following groups: foster parents, DHS case managers and supervisors, attorneys (juvenile public defenders, contract attorneys, and county attorneys), judges, court personnel, CASAs, and the Foster Care Review Board.
- 7) Interviews and focus groups were held in each site. Judges and court administration staff from each site were individually interviewed. While each site was asked to arrange for the interview of parents, only one site was able to arrange for a parent to be interviewed. Attorneys participated in a focus group in each site.
- 8) Individual county reports were written with the focus on local practice. The reports were provided to the chief judge, district court administrator and lead juvenile judge in each county site. They were also received by the State Court Administrator and the CIP Oversight Committee of the Court Improvement Project.
- 9) This Final Report presents the results and recommendations of the reassessment, with a focus on issues of statewide relevance.

All attempts have been made to place the performance of the courts in their context. Results include how other systems affect the performance of the courts. However, this study does not include an analysis of other systems such as the Iowa Department of Human Services (DHS), Court Appointed Special Advocates (CASA), etc., except in relation to their impact on the courts' performance and oversight role.

Iowa Court System

Iowa has 99 counties and is divided into eight judicial districts. The trial court is called the District Court and is the point of entry for most cases.

Every year the Iowa District Court handles over one million cases; approximately 87,442 indictable criminal cases (serious and aggravated misdemeanors and felonies), 72,316 civil cases; 11,925 juvenile matters (delinquency, and child abuse and neglect); 1,800 termination of parental rights actions; 8,683 civil commitment hearings; 16,000 probate matters; 93,170 small claims; and 756,455 simple misdemeanors and civil infractions. Juvenile cases showed an increase of over 2,000 cases since the initial study from 1995.

In each of Iowa's eight judicial districts, there is a chief judge who administratively oversees all judicial officers and supervises court employees within the district. Each judicial district has a district court administrator who assists the chief judge in these administrative tasks.

The Iowa Supreme Court is the highest court in Iowa's judicial system and consists of seven justices appointed by the governor. The Supreme Court is the administrative head and policy-making body of Iowa's statewide court system. It also is vested with the power to license persons to practice law in Iowa.

The Court of Appeals consists of nine judges who are appointed by the governor. The Iowa Court of Appeals reviews appeals from the trial courts that have been transferred to it by the Supreme Court. A decision of the Court of Appeals is final unless the Iowa Supreme Court grants further review. When Court of Appeals' opinions are published they become precedent for subsequent cases. The majority of appeals filed in Iowa are decided by the Court of Appeals.

Each of Iowa's eight chief judges, the chief judge of the court of appeals, and the chief justice serve on the Iowa Judicial Council. The Iowa Judicial Council advises the supreme court with respect to the supervision and administration of the judicial branch. (The information above has been excerpted from the Iowa Judicial Branch web page, 2005).

IOWA'S JUDICIAL DISTRICTS



Iowa Population- 2003
(Source: U.S. Census Bureau)

District 1	366,057
District 2	460,202
District 3	330,594
District 4	188,060
District 5	643,451
District 6	392,088
District 7	289,796
<u>District 8</u>	<u>273,814</u>
Total	2,944,062

Overview of Iowa's Juvenile Court System

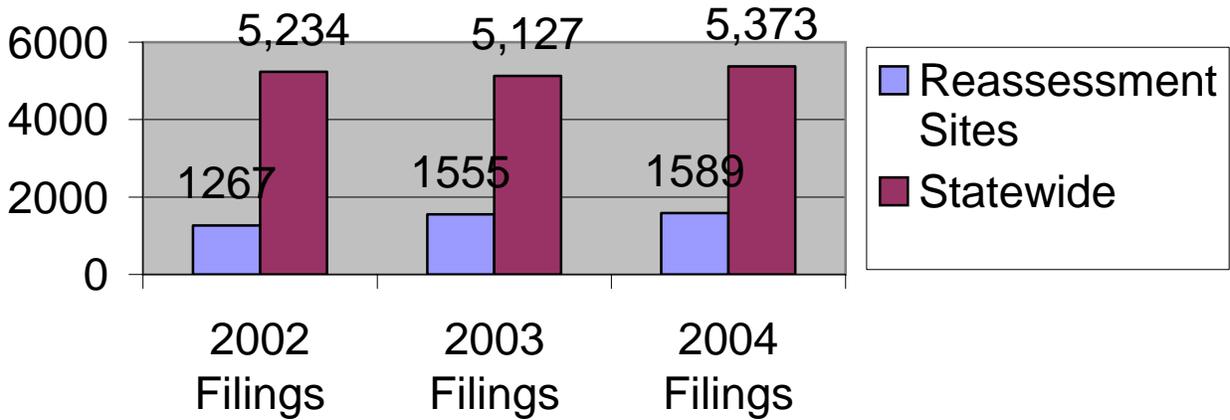
Iowa has a separate court that handles many legal issues involving children. The juvenile court is a specialized court within the district court. A child may enter the Iowa court system as a Child in Need of Assistance (CINA) or as a Delinquent. Juvenile matters are heard by district judges, district associate judges, and associate juvenile judges, as designated by the Chief Judge of each judicial district to act as judges of the juvenile court.

In Iowa a child under the age of 18 can be adjudicated to be a child in need of assistance under Iowa Code section 232.2 (6). The state is required to prove that the child is in fact a child in need of assistance within the meaning of one or more of the 16 CINA statutory grounds. Most commonly used grounds for adjudication are physical abuse, neglect, sexual abuse, or failure on the part of the parent or caretaker to exercise a reasonable degree of care in supervising the child. The state, which is represented by the county attorney, is often opposed in these cases by the child's parent(s). However, parents are sometimes in agreement that their child is in need of services or out-of-home placement. In most CINA proceedings, the parents are provided an attorney at state expense if they are unable to afford one. Additionally, the child is provided a guardian ad litem to represent the child's interests in all CINA proceedings. (The term guardian ad litem basically means that the attorney not only represents the stated wishes of the child, but also undertakes an independent investigation to determine what is in the child's best interests). In some cases, a child is represented by an attorney as well as a guardian ad litem.

Even prior to the time of the adjudication hearing, the state can seek to remove the children from the custody of their parents if the children are in imminent danger to their lives or health. A juvenile judge may remove children from their home without a hearing if a person who is familiar with the case presents evidence that the children are in imminent danger. If children are removed without a hearing, a hearing must be held within 10 days after the children's removal from the home. The court's first attempt must always be to keep families together if this can be done safely, without exposing the child to harm. Iowa has family preservation services in all parts of the state. If family preservation services would alleviate the immediate danger to children, they must be used before a removal. Additionally, Iowa law provides that if only one parent or adult in the home poses a risk to the children, then the court can enter an order removing the parent/adult posing a risk from the home rather than the children.

Iowa has experienced rising caseloads evidenced in the increased number of petitions filed and hearings held for Child in Need of Assistance (CINA) cases. Additionally, there has been an overall rise in the number of termination of parental rights petitions filed and hearings held. For more information regarding the juvenile court process in Iowa, see the "Timeframe for CINA Hearings" in the appendix.

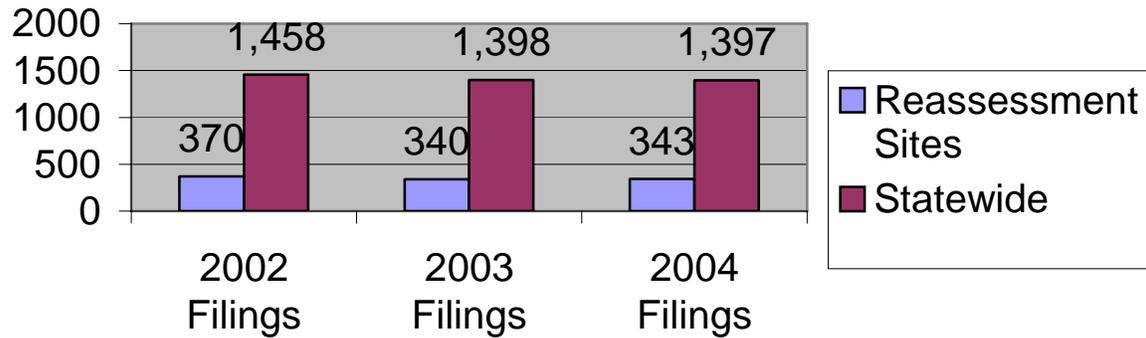
Comparison of CINA Petition Filings Between Reassessment Sites and Statewide Filings



The reassessment sites represented:

24% of the total CINA Petition Filings in 2002
30% of the total CINA Petition Filings in 2003
30% of the total CINA Petition Filings in 2004

Comparison of TPR Petition Filings Between Reassessment Sites and Statewide Filings



The reassessment sites represented:

25% of the total TPR Petition Filings in 2002
24% of the total TPR Petition Filings in 2003
25% of the total TPR Petition Filings in 2004

Research Findings and Recommendations

This section summarizes the features of current practices in Iowa's courts to conduct complete and in-depth court hearings for the purpose of promoting safe, timely, and permanent placements for children in foster care. The Iowa Code, Chapter 232, contains all the relevant provisions for Child in Need of Assistance cases. The Iowa statutes either are in compliance with or exceed the Federal mandates of the Adoption and Safe Families Act.

QUALITY OF HEARING

Primary items reviewed for this category included:

- Court room hearings
- Participant attendance
- Continuances
- Quality and timeliness of information presented for judicial decision making

Setting of Hearings

The Resource Guidelines indicate that best practice is for all hearings to be held in the courtroom with all parties present. There were clear differences in hearing settings among county review sites. For many sites court hearings are routinely held in the courtroom, with a minimal amount of chamber hearings and paper reviews. A few sites, however, hold the majority of hearings in the judges' chambers or by paper review. Five sites schedule hearings by set times per case. Four sites are still using block scheduling for certain days or for particular types of hearings. By observation, interviews and case file reviews, the following results were identified.

Strengths:

Using the best practice guideline that all hearings are to be held in the courtroom, with all parties present, investigators found that judges who routinely serve in juvenile court are more likely to have hearings in the courtroom. They also demonstrate a stronger understanding of the practice required for child welfare cases.

Exemplary practices observed, include:

- Full hearings in the courtroom
- High levels of parental participation, attendance of CASAs, private providers, relatives, foster parents and other caretakers
- Active judicial inquiry of parents, children, CASAs, foster parents and other caretakers
- Acknowledgement of caretakers and other supporters of the family and the important role they play

Concomitant results of strong judicial leadership that supported courtroom hearings are:

- a) Parental attendance and involvement is higher when actual hearings are held in the courtroom.
- b) Parents have opportunity to speak for themselves, have opportunity to ask questions about the proceedings, and hear the judge's conclusions personally.
- c) Attorneys are more likely to have face-to-face contact with their clients, are better informed and represent their clients more thoroughly.
- d) Court orders provide more detail of the information presented at the hearing and more clear direction for the participants.
- e) Time certain scheduling, that is, set times for a case to be heard, is identified in the Resource Guidelines as best practice. This practice is deemed a more effective utilization of court time, participants' time, and the time of the other professionals involved in the case.

Challenges:

Sites that routinely had hearings or conferences in the judge's chambers had the greatest challenges including:

- Failing to meet the federal requirements and best practices
- Little or no judicial inquiry, a critical component for informed judicial decision making
- Lowest attendance of and involvement or follow-through from parents, leading to more failed cases
- A record was seldom made, so no documentation of the hearing or progress of the case is available for appeal
- Lack of opportunity to be heard by foster parent or alternative caregiver

The following challenges were identified when the practices of block scheduling, hearings in judges' chamber, and paper reviews were used:

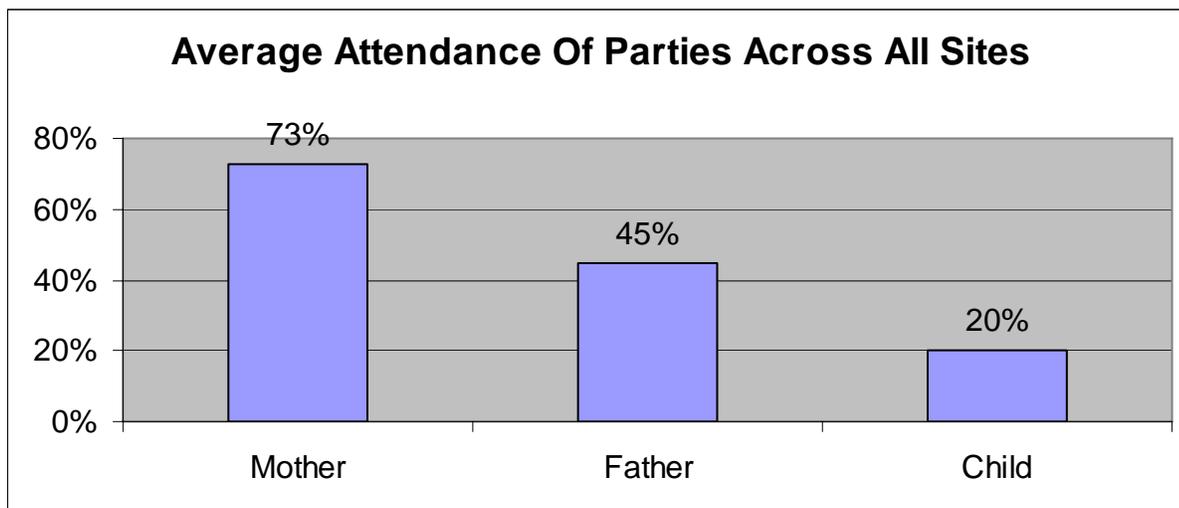
- a) Required determinations in court orders are less accurate.
- b) The judge has little opportunity to directly inquire of the family or other participants when in chambers, relying only on the attorneys and sometimes the case manager for information to understand the situation or the possible need for further services.
- c) There is a higher emphasis given to achieving stipulations. The use of stipulations was reportedly used to avoid the need for contested hearings, not because it was in the best interest of parents or children.
- d) Judges who infrequently hear juvenile cases tended to rely on the other professionals more for procedural questions and were the most likely to hold chamber hearings or paper reviews.

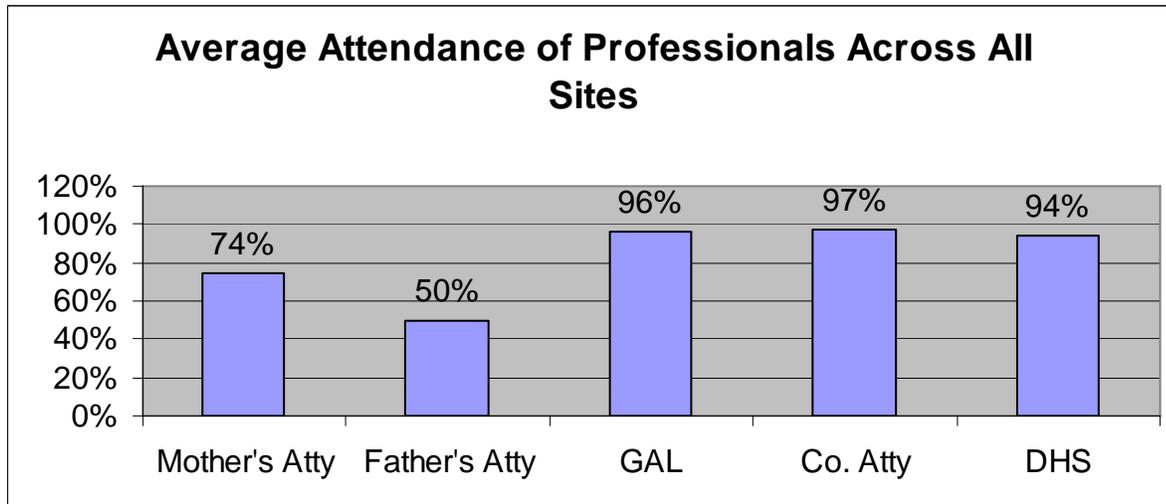
Appearance of Parties

Reviewers found a wide range of practices when comparing appearance rates across sites. In courts where the judge held courtroom hearings and held an expectation that all parties and professionals appear for hearings, attendance was much greater than at court hearings seldom held in the courtroom. In addition, attorneys in some sites indicated that hallway conferences and chambers conferences were used frequently to save time and protect the family from having to go through the adversarial court process. Some attorneys indicated that they have encouraged their families to stay away from the hearing.

The range of parent attendance was 47% to 94% for mothers and 21% to 69% for fathers. In addition, one might expect that the professionals would be present at all scheduled hearings. A review of the charts below show there is room for improvement. Range of other caretaker attendance was 7% to 27% for relatives, and 0% to 28% for foster parents. Few foster parent or other caretaker reports were seen in court files. Additionally, in the 63 hearings observed, only 5 hearings had caretakers present. Regardless of the setting, many foster parents reported being unaware they could attend the court hearings or were hesitant to attend.

Foster parents were one of the groups surveyed for the reassessment. The most frequent reasons foster parents gave for not attending hearings were: hesitancy to be seen by or to meet the birth parents; work schedule conflicts; lack of encouragement, or outright discouragement to attend by case manager, County Attorney, GAL, or judge; logs and reports were submitted in lieu of appearance; or a belief that what they had to say would not matter. Some indicated that they were not informed in a timely manner.





Continuances

The Resource Guidelines states, “When juvenile court proceedings are allowed to proceed at the pace of other civil litigation, children will spend years of their childhood awaiting agency and court decisions concerning their future. The oversight role of the judge is critical to continued progress of a case. The court must have a firm and effective policy on continuances. Continuances should not be allowed because hearing dates prove inconvenient for attorneys, judges or parties; neither should continuances be granted based upon the stipulation of the parties.”

With this in mind, and recognizing that continuances are addressed in juvenile court training for judges and attorneys, the investigators were dismayed to see a broad use of continuances. In the review of 128 case files, which included information on 365 hearings, the range of use of continuances granted was 12% of cases in one site to 92% of the cases reviewed in another county. Most frequent reasons for granting continuances were:

- Attorney not appointed yet
- Change of attorney due to conflict
- No reports or incomplete reports submitted
- Lack of notification to one or more parties
- Attorney or parent emergencies
- Contested hearing needed more time, or
- Parties were given more time to complete treatment of services

Strengths:

Six of the nine county sites used continuances in less than 50% of the cases reviewed. The file review showed:

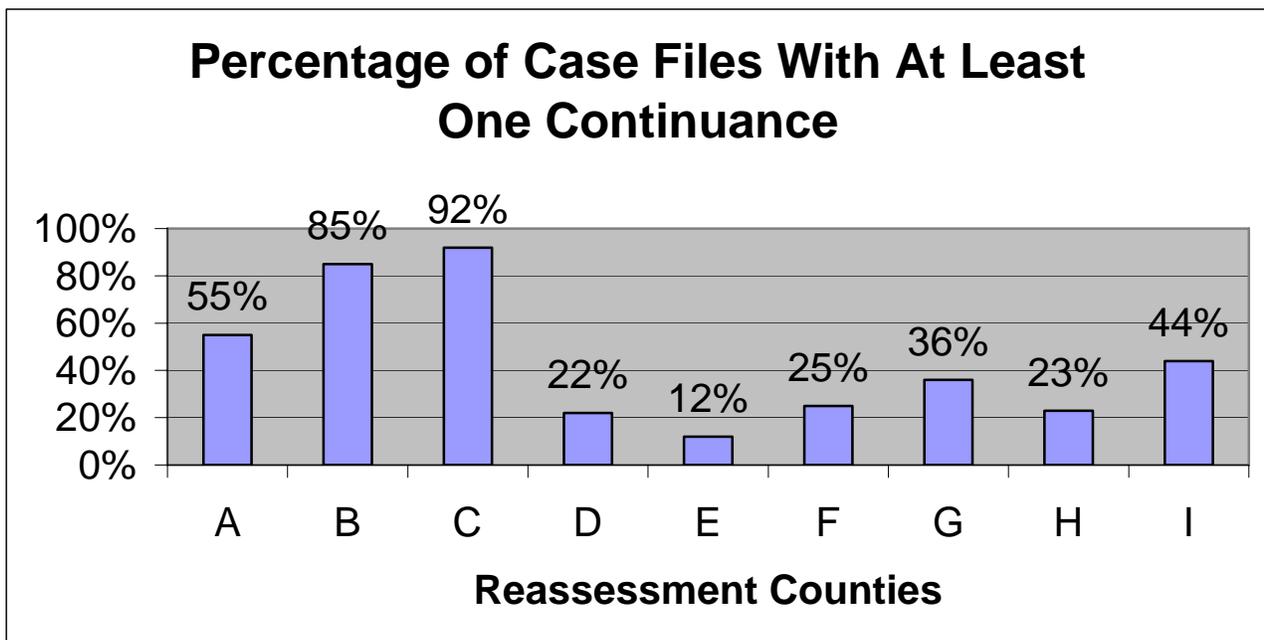
- a) A trend of reduction in continuances in the more recent hearings compared to hearings that were held before the federal guidelines were implemented.

- b) Judges are becoming more conservative in their granting of continuances.
- c) Leadership of the judge has created a culture that juvenile court is important and will not be superseded by criminal court or other obligations.
- d) Attorneys have begun requesting fewer continuances, in part due to clear expectations of the judge and in part due to their growing awareness of the federal guidelines, best practice and what is good for children.
- e) An excellent practice has emerged of coordinating scheduling of the next hearing at the present hearing, thus helping to assure that cases are moving within federal timelines.

Challenges:

3 sites had continuances in over 50% of their cases.

- a) Continuances were granted with only stipulation of the parties as the reason, or what appeared to be little review with no reason stated.
- b) Rotating judges or judges who fill in are less familiar with the timeframes and thus granted more continuances.
- c) There was a sentiment expressed in some sites that criminal court took priority over juvenile court, so if an attorney had cases scheduled in both courts, the criminal case took precedence.



Information Provided to the Court

Reviewers found a wide range of practices within and across all sites with regard to timeliness of submission, quality and completeness of reports. Leadership of the judge was the most important determinant in the timeliness and quality of the reports received; the more clear the judge was about what timeframe and what content was expected, the more those requests were adhered to. The quality of information also was related to the experience and dedication of the individual report writer. Despite anecdotes of additional reports being required by judges, there were no redundant reports or requests for additional reports that were apparent in the courtroom or in the case files.

In addition, there was great diversity of preparedness and activism on the part of attorneys to get information before the court. While judicial leadership had some part in the quality of representation, some attorneys were very passive despite clear expectations from the judge while others did an exemplary job. Others were unprepared and had not met with their client since the last hearing. At one site, an attorney indicated he was quitting as a juvenile attorney because he felt if he advocated zealously for his client, the client would be punished by the state agency. These variations in representation impacted the amount of information that was offered to the judge. The quality of representation will be discussed further in a later section of this report.

Judges who heard cases in the courtroom used inquiry to supplement the written reports. This procedure helps to assure that the needs of the clients, children or parents, were getting met. Some respondents indicated that if the issue of reasonable efforts is addressed by anyone during a hearing, then the inquiry is sufficient and the judge's only responsibility is to make a written finding. While this practice is sufficient to meet the reasonable efforts requirements, the standard set by the National Council of Juvenile and Family Court Judges states that "complete and in-depth hearings include the active verbal participation of the judge inquiring during the hearings of all the parties regarding their participation in the case plan. This reassessment, as in the assessment in 1996, found that family members were more motivated and involved when the judges were verbally engaging in the courtroom. Yet, responses received and observations of the reviewers demonstrated that hallway or chamber conferences are still being used routinely in some areas.

This is a continuing pattern that was previously identified in the initial assessment of 1996. It was reported in the 1996 report that hallway conferences designed to reach stipulation are "preferred in order to keep conflict out of the courtroom and eliminate the need for formal hearings under the assumption this is better for the families. This unfounded belief deprives families of their right to a full and fair hearing and often results in children remaining in the system longer." It was reported that this is done 1) to save time and relieve the judge from having a full contested hearing, 2) to prevent DHS from targeting their client, or 3) it is pointless to have them attend since DHS recommendations are "always" approved, similar to reasons expressed in the current assessment.

Strengths:

- a) The case plan was the most consistent report found in the court file or entered into evidence. This document was mentioned in all interviews and questionnaire responses as the most important piece

of evidence used to inform the court, with the narrative section of the case plan or a one page summary of progress toward goals, when available, as the most helpful part of the report to the court.

- b) Most respondents to the survey indicated the quality of the DHS reports is adequate to good.
- c) Judicial inquiry is routinely used in some jurisdictions, and is essential to bring forth information not available through reports or attorney examination.

Challenges:

- a) Judicial inquiry, examination, or testimony does not occur at all hearings, leaving the case plan as the only source of information for judicial decision making.
- b) There was consistent criticism by attorneys and judges that the format of the case plan was complex, difficult to understand especially when there was inadequate time to review the case plan, and it lacked concrete actions in many cases.
- c) In the comment section of the surveys, the quality and timeliness of reports were routinely criticized. In the case file review, it was typical to have reports submitted no more than 2 days before the hearing. While uncommon, there were instances where hearings were continued because reports had not been received, were incomplete, or were handed out at the start of the court hearing.
- d) There is a wide variability of attorney performance, leaving families and children vulnerable to barely adequate representation.
- e) While quality of the case plan was rated adequate to good, in the comment section of the surveys and in interviews, the following are common criticisms:
 - 1. There was rarely any demonstration of parents' participation in the development of the plan.
 - 2. Some case plans showed no modification from one hearing to the next when other information suggested that there had been progress toward goals, the circumstances had changed, or new services or goals had been added.
 - 3. Some case plans showed no permanency goal when submitted for the permanency hearing.

QUALITY OF REPRESENTATION

Primary items reviewed for this category included:

- Attendance at hearings
- Active participation on the part of the attorneys
- Responses from questionnaires regarding quality
- Attorney focus group results

Reviewers found a wide range of practices when comparing sites. It was evident that statewide and within review sites, there is great inconsistency in the expectations of attorneys and inconsistency in the quality of representation ranging from exemplary to barely adequate.

There are a number of committed attorneys who have 15 years or more experience in juvenile court. They attend training on juvenile issues regularly and look for opportunities to learn more. They are active in child welfare issues, providing leadership on a local and state level to improve things for children and families.

However, there is also disparity in the understanding of what is best practice by attorneys, a lack of awareness of the “Resource Guidelines” of the National Council of Juvenile and Family Court Judges, the ABA’s “Representing Parents in Child Welfare Cases” and “Standards of Practice for Lawyers Representing Child Welfare Agencies”, “The Legal Representation of Children in Dependency Court” by National Association of Counsel for Children, Iowa Rules of Juvenile Procedure, and other resources that are used routinely in the court and in the CIP/Drake Legal Clinic annual attorney training.

A majority of respondents indicated that the quality of representation was inadequate, sometimes due to heavy caseloads, inadequate pay, or lack of motivation. Some attorneys reported a sense of frustration and hopelessness in focus groups and on surveys that they do not represent their clients in ways that they know is “best practice” because of the child welfare culture in their community. They had concern for retribution against themselves or their clients. Words to describe the culture they thought operated in their counties included: “have clients fly under the radar”, “the best way is to have the parents stay home the day of the court hearing”, “I tell my clients the quickest way to get DHS out of your life is to just do whatever DHS says.”

Strengths:

General strengths:

- a) There is very little turnover of attorneys who have elected to practice in juvenile court. Many respondents had 15 plus years of experience. Most reported that they had a calling, were very interested in juvenile work, or saw it as their opportunity to provide pro bono work in a meaningful way.
- b) Most attorneys in all roles reported that they thought it was in their clients’ best interest to reach stipulated agreements rather than have contested hearings. This reduces the adversarial nature of the court process.
- c) Equally, some attorneys reported they saw their role as trying to reach agreement where possible, yet advocating for their clients for those issues that clients were not in agreement.
- d) Reviewers observed excellent active and informed attorney participation, especially in sites where judges routinely held thorough court hearings and made their expectations clear.

Strengths Specific to County Attorneys:

Cases are maintained by the same attorney until closing in 8 of the 9 sites. 87% of respondents rated the performance of county attorneys as good, very good or excellent.

Strengths Specific to Guardians ad Litem:

Respondents indicated that most Guardians ad Litem are well informed about child abuse and neglect issues, are good advocates for the child's best interest, and are committed to this work.

Strengths Specific to Parents' Attorneys:

Effective attorneys for parents demonstrated the ability to work toward stipulated agreements, yet were effective in contested hearings. They requested additional services, denied allegations, or contested parts of the case plan, while agreeing for their client to those parts for which agreement could be reached.

Challenges:

General Challenges: The most prominent challenges are:

- a) Inconsistency of the quality of representation within sites and across sites.
- b) Lack of awareness or agreement on best practices in juvenile court.
- c) Influence of local court culture that deviates away from the federal rules of compliance, rules of juvenile procedures and best practice guidelines.

Specific to County Attorneys:

- a) In sites where judges rotate frequently, county attorneys do much of the order preparation. Modification of model orders which satisfied federal requirements have left those orders out of compliance.
- b) Responses to surveys in some sites indicated that county attorneys do not advocate for DHS, but rather represent their citizens, leaving DHS without representation.
- c) Some respondents indicated a lack of timely filings by the county attorney, not tracking timelines or adhering to the required timelines.
- d) In one site, the county attorney was assigned to juvenile court by the day of the week, rather than remaining on the same cases until closure.

Specific to the Guardians ad litem:

- a) Responses to surveys were very consistent that GALs as a whole are not fulfilling their duty.
- b) Surveys reflected the perception that GALs are not involved in their clients' cases, more likely accepting the report from DHS as fact, rather than actually visiting the client. This criticism was reiterated in every site by foster parents, other professionals and case managers.
- c) There is inconsistency regarding fulfillment of the duties of the GALs. Some GALs suggested the statutory requirements are unrealistic and duplicative and should be reviewed. Some GALs are unwilling to complete all the requirements; some judges will provide an order that exempts the GALs from some of the activities.

Specific to parents’ attorneys:

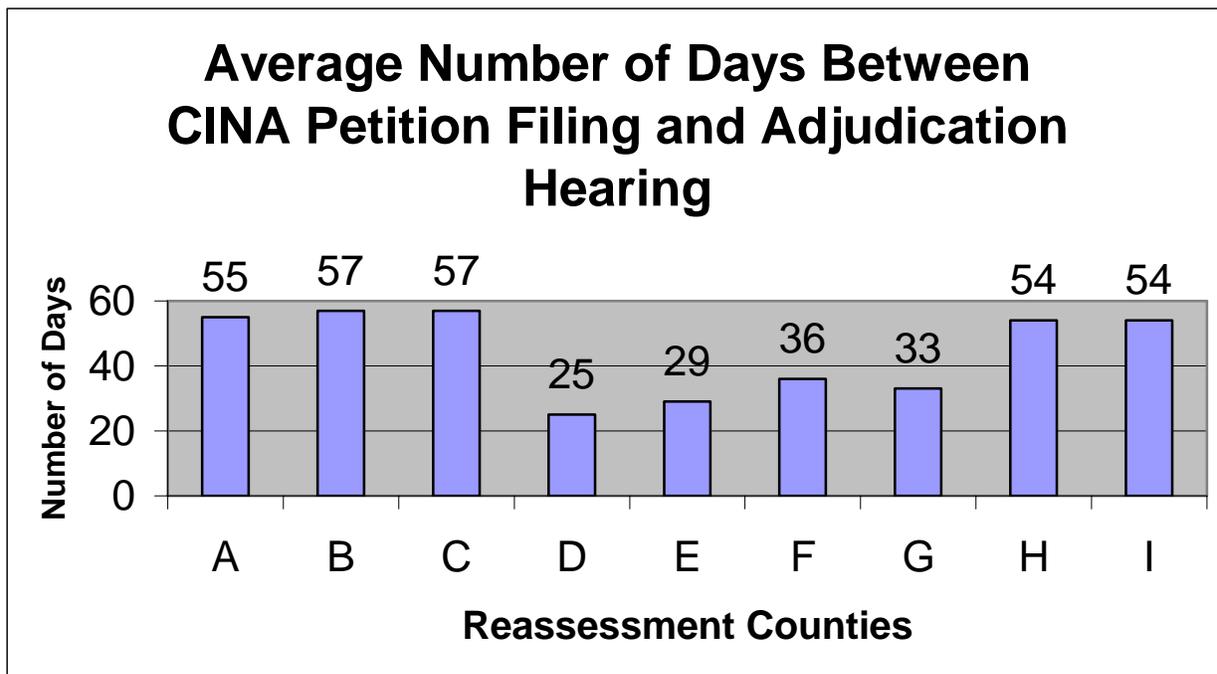
- a) Survey responses and court observation indicated that there was a lack of contact with clients by parents’ attorneys prior to court.
- b) Responses also indicated some attorneys respond in a perfunctory way to serving their client, such as accepting the DHS position as fact, only meeting their client outside the courtroom prior to a hearing, etc.
- c) Some attorneys indicated they felt like they were going through the motions most of the time and took little opportunity to truly advocate for their client.
- d) Some attorneys encouraged their clients to waive their right to counsel for a particular hearing rather than continue the hearing due to attorney time conflict. In some review sites where parental attendance was low, attorneys reported encouraging their clients not to attend court hearings, indicating that it has been more harmful to have them attend, either because the parents present in a negative way or because it turns out to be an opportunity for the Guardian and DHS to focus on their deficiencies.
- e) Many attorneys also reported that they encourage their clients to accept stipulated agreements, not because of full agreement, but because it might be the fastest and least harmful way to get out of the system, or to prevent conflict.

KEY TIME FRAMES

The following key time frames were examined through case file reviews.

1. CINA Petition filing to Adjudication Hearing

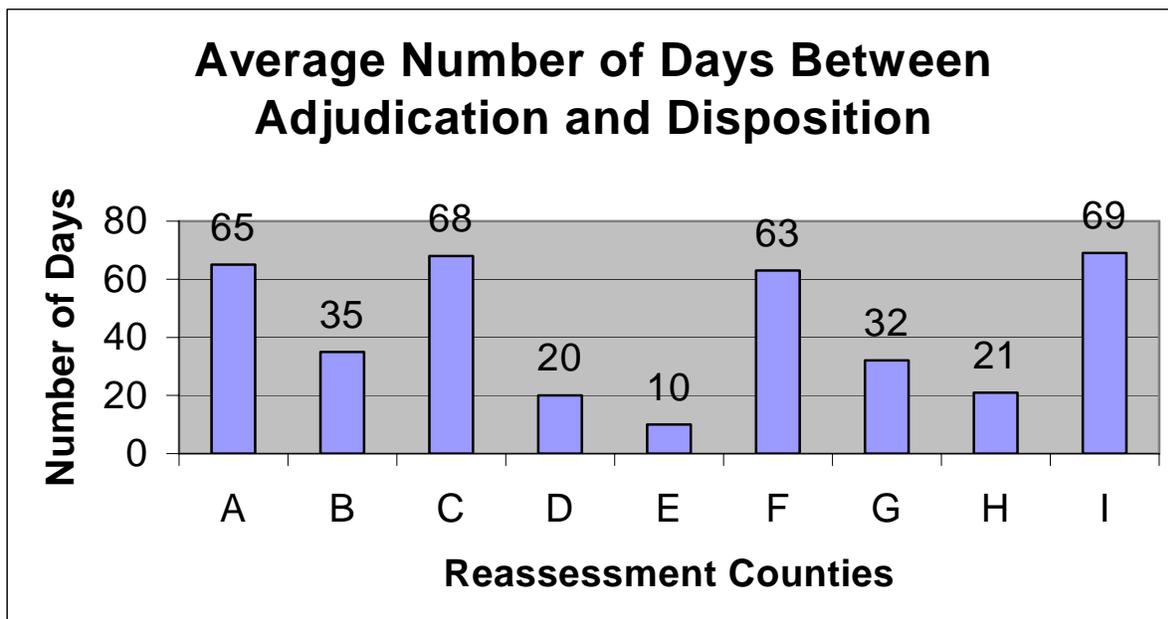
The guideline: The Iowa Juvenile Court Benchbook recommends that the time between filing of the CINA Petition and the Adjudication hearing be **no more than 30 days**.



The results: The range of averages in the review sites was **25 days to 57 days**. Two counties were within the recommended timeframe. Two counties were only over the recommended timeframe by a few days. Five counties were at least 24 days over the recommendation, averaging between 54 to 57 days from the filing the petition and holding the adjudication hearing.

2. Adjudication to Disposition

The guideline: The Iowa Juvenile Court Benchbook recommends that the time between the adjudication and dispositional hearings be **30 days for those in shelter and 40 days for those in other placements**.

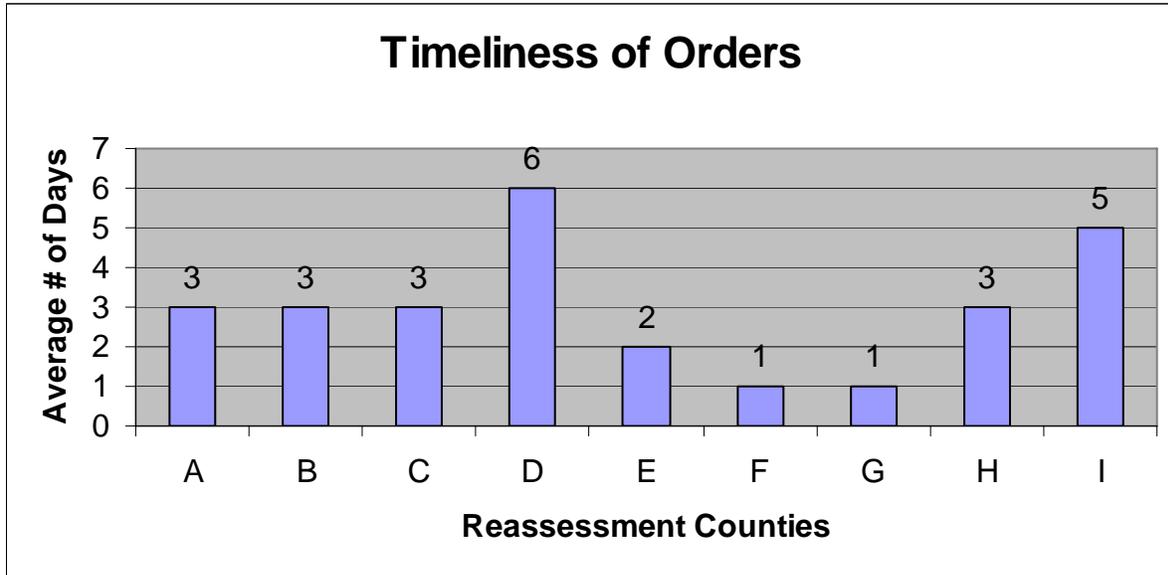


The results: The range of averages was 10 days to 69 days, with 4 counties averaging more than 62 days between the two hearings, and 5 counties averaging 35 days or less. One of those counties averaged 10 days between adjudication and disposition.

3. Timeliness of orders

The guideline: The “**Resource Guidelines Improving Court Practice in Child Abuse and Neglect Cases**” indicates that best practice is to issue the court order at the end of the hearing. Court rules indicate that all hearings have a ruling completed within 60 days.

The results: The range of completed orders for the nine review sites was from 0 days to 6 days, well within what would be considered good practice. The percent of orders by site that were made available on the same day of the hearing ranged from 87% to 32%.



Strengths of key timeframes:

- a) Orders are available very quickly, giving direction to the family, DHS, providers and caretakers. This is a very important document that provides the roadmap for families and professionals alike. Under the tight time constraints of child welfare cases, receiving the order in a timely manner assures the family of maximum opportunity to understand the requirements and work toward their success.
- b) Some delays in hearings are planned by the court, allowing families the time to resolve the issues that brought them to court and eliminate the need for adjudication or disposition.

Challenges to key timeframes:

- a) Many Iowa Courts reviewed were not in compliance with guidelines or best practice recommendations for timing between hearings. Possible reasons offered by surveys and court orders for these delays included:
 - Lack of docket time
 - Lack of availability of attorneys
 - Planned delays for families to resolve their own situations

The most prominent reasons observed or determined by the reviewers included:

- Frequent continuances
 - Lack of docket time
 - Lack of awareness on the part of judges and other professionals
- b) Many factors and community cultures exist that contribute to lack of adherence to recommended timeframes. These include antiquated processes that no longer serve a legitimate purpose, lack of awareness of federal and state requirements, judicial reliance on other professionals to lead the process, and convenience for the professionals.

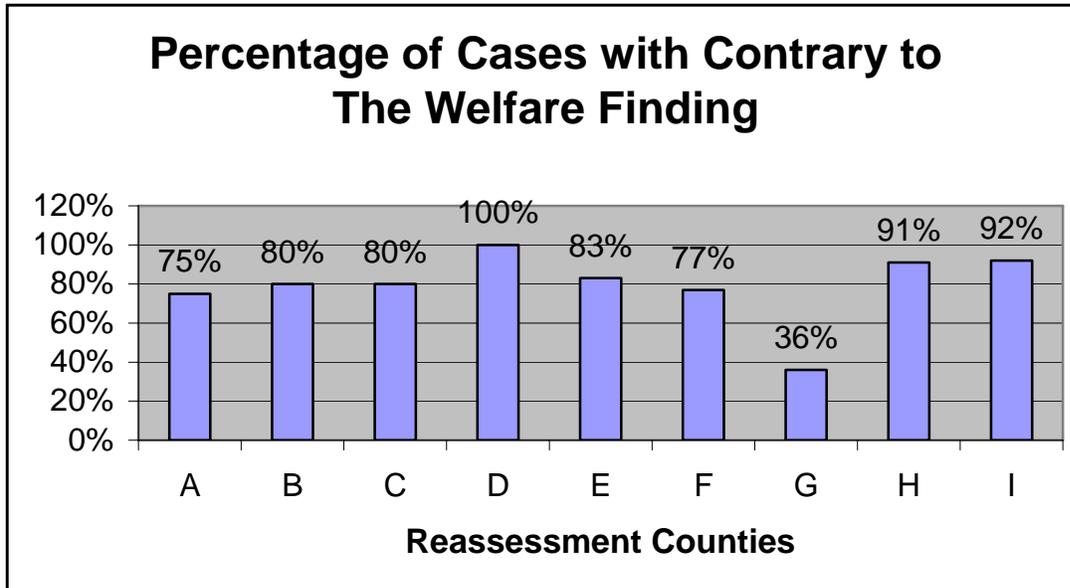
Further assessment, by individual site, is needed before solutions can be developed to increase the occurrence of more timely hearings.

Federal Compliance

Federal requirements are measured primarily through court order language compliance and timely hearings. Contrary to the welfare/best interests findings must be in the first court removal order. Reasonable efforts language must be in a court order issued within 60 days of removal and every 12 months thereafter. The regulations also require a permanency hearing within the first 12 months of out of home placement and within every 12 months thereafter. If a state does not meet these requirements, they are not eligible to draw down federal reimbursement for any cases that come into the system.

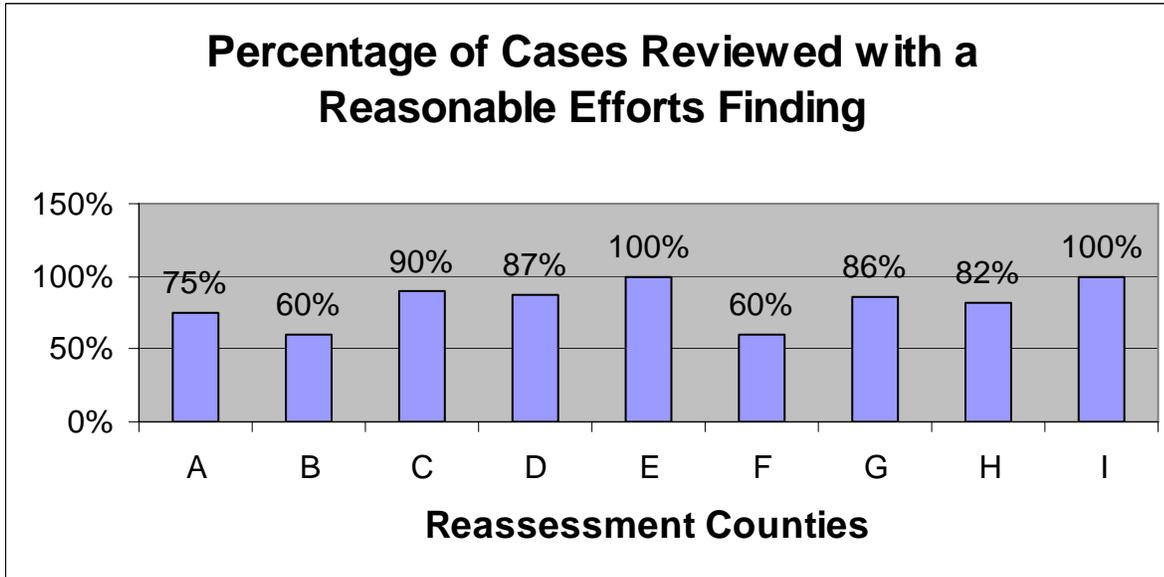
1. Contrary to the Welfare/Best Interest (CTW/BI) is required 100% of the time in the first removal orders. If CTW/BI is not in the first order, that case will not be eligible for federal reimbursement for the period that child is out of the home.

In the sites reviewed, CTW/BI was found in the first removal order 100% to 75% of the time in eight of the nine review counties, with only one county achieving the 100% requirement. The ninth county included the appropriate removal language only 36% of the time. This low county rate is of special concern because the cases without the requisite language are ineligible for federal reimbursement for foster care service and administration funds. In this specific county, there is a high rate of residential placements, which is also a more costly placement alternative than foster home care.



2. Reasonable Efforts language is required within the first 60 days of placement for 95% of the cases in order for a state to be eligible for reimbursement. If the Reasonable Efforts determination is not present in a specific case, that case is no longer eligible for federal reimbursement until a judge does make the determination.

In the sites reviewed, Reasonable Efforts language was present in a range from 100% to 75% of the time. There were only two counties achieving 100% compliance. All other counties did not meet the compliance determination of 95%. The actual cases where the determination is not made are not eligible to receive reimbursement until the necessary determination is made.



3. Permanency Hearings: Federal requirements state that permanency hearings must be held within 12 months of an out of home placement and every 12 months thereafter until a permanent placement is achieved and the case is closed.

The range of averages for our review sites for 12-month permanency hearings was 7 to 12 months after removal. Seven of the nine sites had an additional case that was so far out of compliance that reviewers did not include it in the average, as inclusion would far distort the reality of overall compliance. The extreme cases were noted in the individual county reports. Even though those cases were rare, funding reimbursement would not be received from the federal government until the permanency hearing was held for these cases. More importantly, it means that there are children who are still waiting extraordinary periods of time for establishment of permanency.

Strengths of all key timeframes:

- a) The percentage of compliance statewide has increased.
- b) Three sites demonstrated compliance at 90% or above both in Contrary to the Welfare and in Reasonable Efforts Determinations in a timely manner.
- c) Most cases, either through file review or observation, during this review were heard prior to the 12-month time. However, due to incomplete or inaccurate data, no previous measure for permanency hearing comparison was available.

Challenges of all key timeframes:

- a) There continue to be orders that are not in conformity to federal requirements, which reduces case by case funding for services to the children and families and jeopardizes statewide federal reimbursement.
- b) Three sets of model orders have been approved and are recommended for use; yet, their use is inconsistent, spotty at best.
- c) The quality of the orders actually used in several sites is dependent on a variety of local practices. Drafting of orders is being done by a variety of individuals, including attorneys, county attorneys rather than judges. In some sites, approved model orders have actually been modified to satisfy some local practice but result in non-compliant orders, stipulated agreements have been drafted as orders prior to the hearing without including findings, or old form orders developed prior to the ASFA continue to be used.
- d) There is a higher likelihood of error when rotating judges or judges who hear juvenile cases infrequently serve on juvenile cases. The judges report that this is primarily due to their lack of familiarity with the requisite language and timeline requirements. They also indicate that they tend to rely on the county attorneys and attorneys for the order language.
- e) As mentioned above, each of the seven sites had at least one case that was out of compliance by a year or more. For example, one child has been in out-of-home care since 10/01 and there is no court order or other indication that a permanency hearing has been held. In another site, a child had been in out of home care for 30 months before a permanency hearing was held. While it is understandable that a case might occasionally fall through the cracks, in seven counties there was at least one case out of 15 cases that had reached those egregious lengths.
- f) The statewide court tracking system is rarely utilized to identify those cases that need a permanency hearing. Because of lack of consistency in order titles, the Clerk of Court offices have great difficulty in determining the type of hearing held, leading to lack of data entry or inaccurate data.
- g) The state agency, DHS, does have a tracking system that is used to identify and flag cases for the case managers; however that information is not available to the court or county attorneys.

CONCLUSIONS

While each county had its strengths and challenges, this report calls attention to common themes that deserve attention statewide. The primary themes identified are:

1. Judicial Leadership

Topics considered within judicial leadership are:

- Case management issues of docketing, timeliness of hearings and continuances
- Quality of hearings, including setting, attendance and involvement of parties and caretakers
- Quality of information, inquiry including testimony, discussion in the courtroom or written reports
- Federal and state compliance
- Consistent application of best practices and standards of procedures
- Accountability, including accurate and timely data, routine feedback, and review of federal requirements compliance

Judicial leadership provided the structure and direction in the most effective courtrooms. This was demonstrated through clear expectations regarding behavior, attendance, quality of representation, quality of information, timely reports, judicial inquiry, and courtroom hearing process. Where judicial leadership was less direct or inconsistent, the courtroom expectations were also less clear and the process drifted away from best practice.

Judges who rotated frequently or rarely heard juvenile cases reported that they tended to rely on other professionals for the expertise regarding hearing process and expectations. This has led to processes that are convenient but less consistent and that delay the establishment of overall permanency for children and families.

There is presently no timely and accurate feedback provided to judges regarding timeframes for cases, compliance with federal requirements, or routine data tracking. Most judges who serve on the juvenile bench regularly monitor for timeliness and compliance in a variety of ways to assure they meet federal requirements. Other judges rely on the other professionals to be aware of the timeframes and other requirements. The tightened timeframes and increased caseloads have led even very informed judges to shorten times and completeness of hearings, leading to reduced quality of hearings and reduced information to make permanent decisions.

2. Quality of Representation

Most respondents regarded quality of representation as an issue that needed to be reviewed further. While judicial leadership can impact the quality of representation, this issue warrants discussion and review in its own right.

There are many experienced attorneys who participate because they are committed to juvenile practice. They demonstrate understanding of the requirements, the need of children and families for expeditious permanency, and the important role that attorneys play.

However, with no approved or endorsed standards of best practice, issues arising are:

- Lack of awareness or inconsistent use of uniform guidelines and expectations
- Lack of familiarity with their client and preparation for hearings
- Lack of specific requirements to practice in juvenile court
- Lack of advocacy for clients

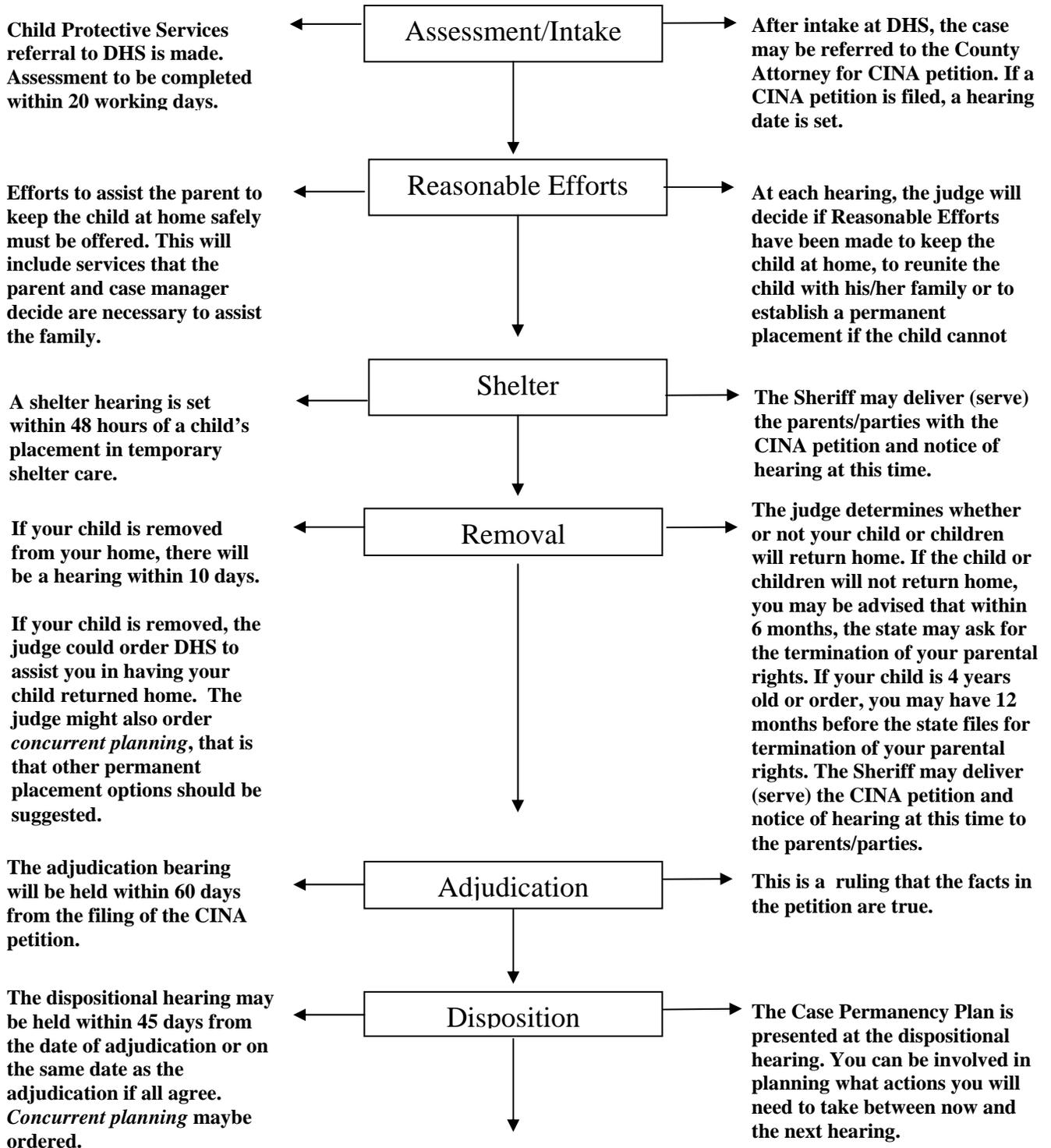
Recommendations

To address the areas needing improvement, it is recommended that:

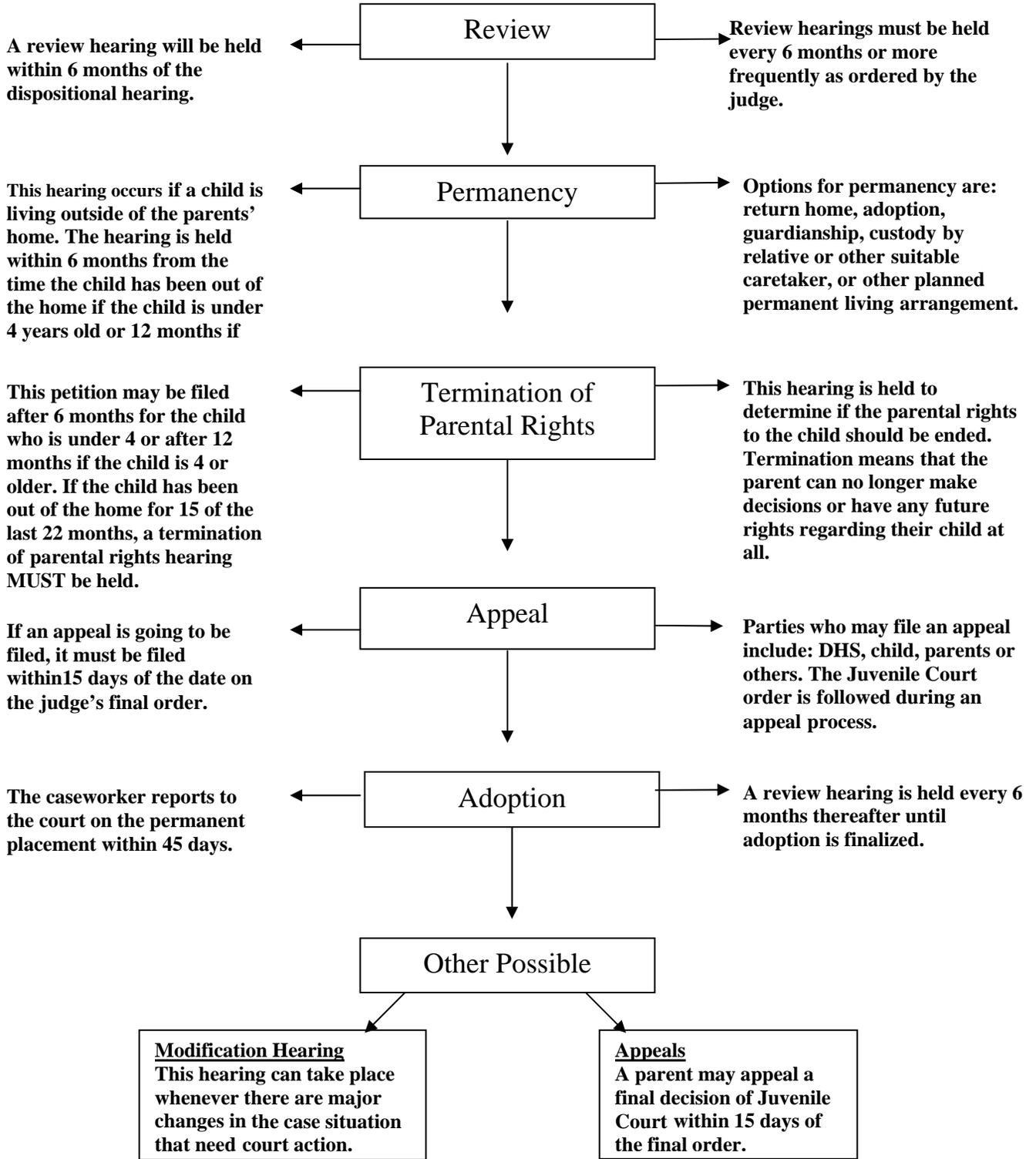
- a) CIP implement a task force to address the quality of the court process, looking at the role of judicial leadership and its impact on the essential elements of due process.
- b) CIP implement a task force to address the quality of representation, including a review of the training presently available, and addressing the areas of improvement for each of the roles, including Guardians ad Litem, parents' representatives, and representation by the county attorneys.
- c) CIP assemble a data work group to improve the availability of accurate data to inform judges and assist in monitoring for compliance. This data work group should include, at a minimum, representatives from the Office of Juvenile Justice Planning Data Warehouse, ICIS, and the Iowa Department of Human Services.
- d) Development of a quality review process to monitor compliance and improvement on an ongoing basis, both within districts and statewide.
- e) CIP provide assistance to interested districts in developing a plan for improvement.
- f) CIP work with interested districts to develop a self-assessment tool that could be used by any county or district to monitor themselves.

APPENDIX

TIME FRAME FOR CINA HEARINGS

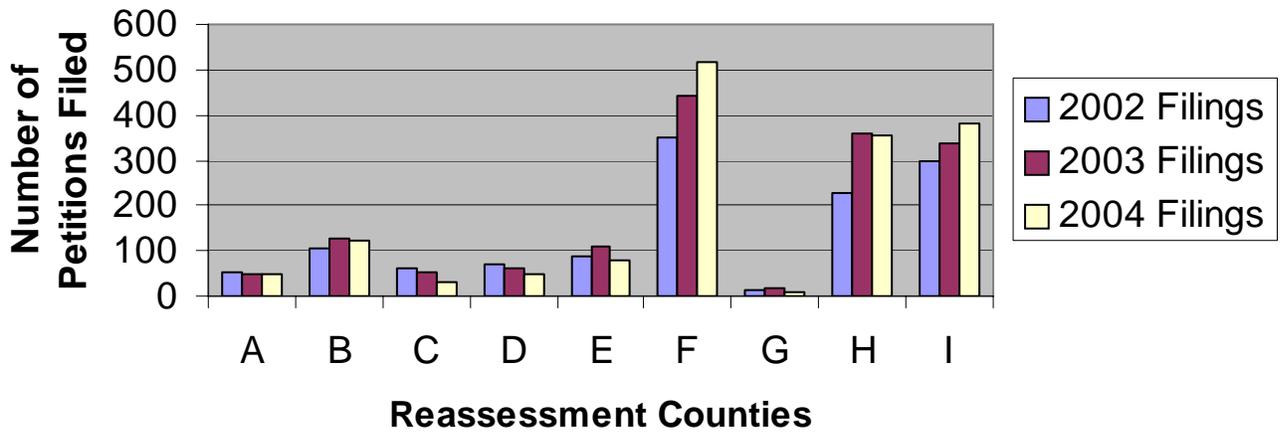


TIME FRAME FOR CINA HEARINGS, continued

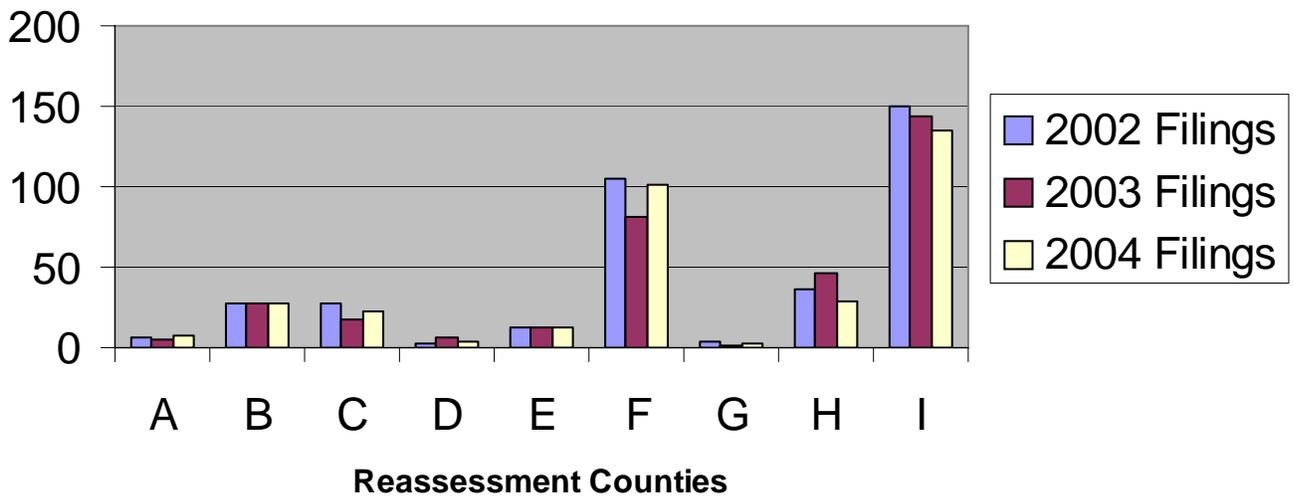


Data Sources:	Total from All Reassessment Sites
Interview Participants	70
Case Files Reviewed	128
Court Hearings Observed	68
Surveys	240
Number of Court Hearings Included in the Reassessment	365

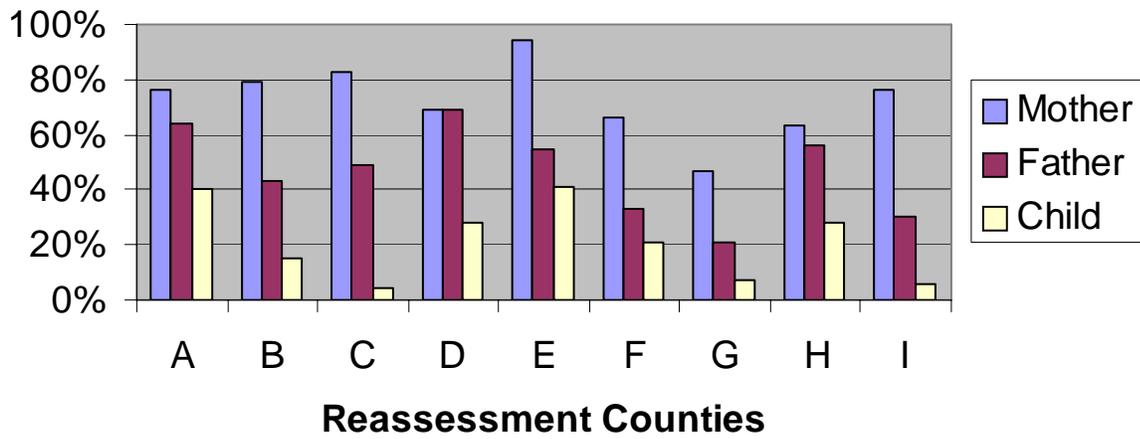
CINA Petition Filings



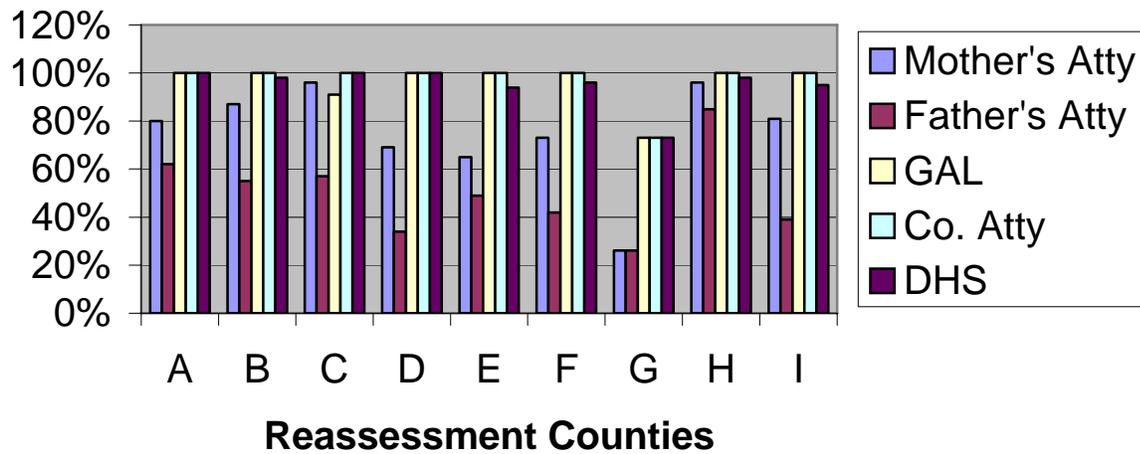
TPR Petition Filings



Parties Attendance At Hearings By Site



Attendance of Professionals At Hearings



1996 Assessment

Average Number of Days For Each Time Frame as Reported by Judges and Attorneys

	Judges	Attorneys
From filing of CINA Petition to uncontested adjudication hearing	22 days	25 days
From filing of CINA Petition to completion of contested adjudication hearing	40 days	45 days
From completion of adjudication hearing to completion of dispositional hearing	33 days	38 days
From filing of CINA Petition through filing of petition for termination of parental rights	542 days	529 days
From filing of termination of parental rights petition to completion of trial court proceedings in uncontested cases	59 days	57 days
From filing of termination of parental rights petition to filing of order terminating parental rights	90 days	85 days
From filing of termination order to finalization of adoption	340 days	248 days

2004 Reassessment

Average Number of Days For Each Time Frame as Reported by Judges and Attorneys

	Judges	Attorneys
From filing of CINA Petition to uncontested adjudication hearing	25 days	32 days
From filing of CINA Petition to completion of contested adjudication hearing	45 days	48 days
From completion of adjudication hearing to completion of dispositional hearing	42 days	46 days
From filing of CINA Petition through filing of petition for termination of parental rights	439 days	393 days
From filing of termination of parental rights petition to completion of trial court proceedings in uncontested cases	44 days	87 days
From filing of termination of parental rights petition to filing of order terminating parental rights	142 days	108 days
From filing of termination order to finalization of adoption	290 days	195 days