

Termination of Parental Rights by Jury Trials in Arizona
A Second Year Analysis

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by

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Introduction

A primary function of the juvenile court system is to preside over matters involving dependency (child abuse and/or neglect) and the termination of parental rights (TPR). A dependency action begins when a petitioner, usually Child Protective Services (CPS), alleges "... that the parents or guardians of a child have abused and/or neglected the child to such a degree that the state must formally intervene, at least temporarily, to ensure that the child is protected."¹ If it is determined by the juvenile court that a child is dependent, the child is adjudicated as such. A juvenile court judge will preside over the dependency case until the dependency action is dismissed either because the child can safely be reunified with the child's parent(s), some other safe permanent living arrangement has been made, or the child has reached the age of majority.

No later than one year after a dependent child has been removed from the parents, the judge is required to determine the most appropriate permanent plan for the child. If the child cannot be safely returned to a parent and the permanent plan is adoption, the judge must order the petitioner (CPS in most cases) to file a motion to terminate parental rights. The filing of this motion is the most common manner in which the termination of parental rights is initiated in a dependency case.² The judge who hears and decides the motion (in what is known as a "bench trial") is the same judge who has presided over and decided all issues in the underlying dependency action.

In December of 2003, during a special session of the state legislature, the mission of Child Protective Services (CPS) was redefined to be: "(1) protect children (2) promote the well being of a child in a permanent home and (3) strengthen the family and prevent abuse and neglect."³ During discussions and key negotiations both before and during the special session of the legislature, it became clear some people had concerns that reforms to CPS could lead to the removal of more children from their parents' homes. As a reaction to these perceptions, one legislator proposed that parents should have the option of requesting a jury trial in cases involving the termination of their parental rights. This was suggested as a means of giving parents as much due process as possible in these cases, and providing a systemic check and balance to the process.

¹ Children's Action Alliance. *Terminating Parental Rights by Jury Trial in Arizona: A First-year Look*. May 2005. (pg. 11). The Children's Action Alliance report covered Arizona's first-year experiences with TPR jury trials and was prepared in cooperation with the Office of the Arizona Attorney General and the Administrative Office of the Arizona Supreme Court. The current report has been prepared for the Administrative Office of the Arizona Supreme Court, Dependent Children's Services Division.

² There are two ways to initiate termination actions. The most common way is for the court to order the petitioner in the dependency to file a *motion* to terminate parental rights. A.R.S. § 8-533 (A), also allows any person or agency who "has a legitimate interest in the welfare of a child ...[to] file a petition for the termination of the parent-child relationship..." See also Arizona Rules of Procedure for the Juvenile Court, Rule 64(A).

³ Children's Action Alliance (pg. 12).

The emergence of Arizona's jury trial law, Arizona Revised Statute (A.R.S) § 8-223, came about within the context of reforms to the state's Child Protective Services system, and reads as follows:

A hearing to terminate parental rights that is held pursuant to section 8-537 or 8-863 shall be tried to a jury if a jury is requested by a parent, guardian or custodian whose rights are sought to be terminated.

A.R.S § 8-223 will sunset (i.e., it will no longer exist) on December 31, 2006, unless the legislature chooses to reauthorize it.⁴

Before A.R.S. § 8-223 took effect, a parent who wished to contest the termination of parental rights only had the option of having a bench trial where the judge acted as the sole "trier" of the facts, and made the decision as to the issue of termination. Now, parents who want to contest the termination of their parental rights have the right to request a trial by jury. If a parent's rights are terminated, either by bench or jury trial, "... it means there has been a finding that the parent is incapable on a long term basis of providing a safe, permanent and stable home for the child, and it is in the child's best interest to have the parent's rights terminated."⁵

Purpose

This report augments the first-year analysis of jury trials in cases involving the termination of parental rights. The initial analysis captured the first-year experiences of key parties involved in TPR jury trials and presented preliminary data on the frequency, resolutions, and timeliness of both types (bench and jury) of termination trials. Where possible, this updated analysis compares and contrasts current findings with those delineated in the first-year report. It also includes more recent information on bench and jury trials, as well as preliminary information not covered in the first-year assessment.

Methodology

The topics covered in this updated analysis reflect most of the key issues identified in the first-year report. The statistics cited herein were provided by a number of sources including the Office of the Arizona Attorney General (Child and Family Protection Division, herein referred to as the Office of the Attorney General or the AG), the Administrative Office of the Arizona Supreme Court (AOC), the juvenile courts in Maricopa and Pima Counties, the jury commissioners for the two urban courts, and the Office of Court-Appointed Counsel in Pima County. While the quality and range of data have improved and expanded since the first-year look at jury trials, the scope of this second-year update is still limited and all findings and statistics should be considered preliminary. To supplement available statistics, and to get some sense of any changes in perspectives since the first-year analysis, follow-up interviews were

⁴ Children's Action Alliance (pg. 12).

⁵ Children's Action Alliance (pg. 11).

conducted with judges and assistant attorneys general.⁶ The two jury commissioners in Maricopa and Pima Counties were also interviewed, for the first time, to garner their perspectives on TPR jury trials. Almost all of the persons interviewed for this update were originally interviewed for the first-year study and their perspectives (some of which have changed over time) offer important insights that go beyond the data.

The statistical charts and tables presented in the next section of this report are drawn from different sources and some cover different time frames than others. A number of the charts and tables are county-specific while others include statewide information. While this may prove confusing to some, it reflects continuing differences among agencies and/or counties in the quantity and types of information available, and the ways that information is tracked. We have tried to reconcile these differences in formats that make sense and that paint a realistic picture of the most recent two years of jury trial experiences.

In most instances, the charts and tables reflect statistics from the Office of the Attorney General or the juvenile courts in Maricopa and/or Pima Counties. As Arizona's most populous counties, these two juvenile courts encounter the highest number of termination hearings (almost 80 percent of all TPR motions/petitions filed in Arizona over the past three state fiscal years were filed in these two counties).

When possible, TPR jury trial data are compared to bench trial data. However, readers should be careful drawing conclusions from such comparisons, particularly when it comes to comparing trial outcomes. As documented in the first-year analysis, and as reconfirmed in the next section, the number of completed jury trials (i.e., to verdict) during the second year⁷ remained small in comparison to the number of completed bench trials. This limits the ability to make more definitive conclusions regarding jury and bench trial outcomes.

⁶ To gain a full accounting of what interviewees reported in the first-year analysis, the reader should review the Children's Action Alliance report which included interviews with judges, assistant attorneys general, attorneys for parents and children, as well as CPS case managers.

⁷ All references to the "second year" of TPR jury trials refer to the December 18, 2004 through December 3, 2005 period (or a similar time frame as specified). This period actually reflects 11 ½ months.

Key Findings

Finding #1: Termination filings (motions and petitions) have increased dramatically (73 percent) in Arizona over the past three fiscal years.

As shown in Table 1 below, the legislation enabling parents to request jury trials in TPR matters in Arizona coincided with a substantial rise in filings of termination motions and petitions.

Table 1 - TPR Motions And Petitions Filed By County State Fiscal Year 2003 through 2005⁸				
County	FY2003	FY2004	FY2005	TOTAL
Apache	1	6	8	15
Cochise	24	29	30	83
Coconino	1	6	13	20
Gila	9	10	12	31
Graham	3	10	8	21
Greenlee	0	0	1	1
La Paz	1	1	0	2
Maricopa	219	385	507	1,111
Mohave	14	29	34	77
Navajo	0	9	20	29
Pima	270	309	328	907
Pinal	20	29	32	81
Santa Cruz	0	2	0	2
Yavapai	35	36	50	121
Yuma	17	21	20	58
TOTAL	614	882	1,063	2,559

⁸ Data provided by the Office of the Arizona Attorney General, Child and Family Protection Division. These figures include a small number of termination petitions initially filed by private parties that subsequently became state filings (i.e., CPS substituted for the private party).

Overall, statewide TPR filings increased by 73 percent from July 1, 2002 through June 30, 2005. At the county level, the most notable change occurred in Arizona's most populous area, Maricopa County, where filings rose a dramatic 76 percent from FY2003 to FY2004 and 32 percent from FY2004 to 2005. TPR filings in Pima County, Arizona's second most populous region, also increased during this period, but less dramatically than in Maricopa County – up 14 percent from FY2003 to FY2004 and up 6 percent from FY2004 to 2005.

The dramatic rise in TPR filings was not limited to the two metropolitan counties. Most of the state's 13 rural jurisdictions also experienced increases in termination actions, some every bit as dramatic as the increase in Maricopa County. For example, Navajo County did not have a single TPR motion filed in FY2003 but had 20 motions filed in FY2005. Mohave County went from 14 filings in FY2003 to 34 in FY2005 (a 70 percent increase). And, Yavapai County jumped from 35 filings in FY2003 to 50 in FY2005 (a 43 percent increase).

The reasons for the large increase in termination filings are complex and exceed the scope of this analysis. However, it is important to keep these figures in mind as we examine what has happened with TPR jury and bench trials over the past two years.

Finding #2: Despite the sharp rise in termination filings, the total number of TPR jury trial requests from parents did not significantly increase from the first to second year in which parents could request jury trials.

At first glance, one might anticipate that the sharp increase in TPR filings would logically lead to a similar increase in requests for TPR jury trials. However, as shown in Table 2 below, TPR jury trial request data for December 18, 2003 (again, the date parents involved in termination matters could begin requesting jury trials) through December 3, 2005, do not reflect corresponding increases in jury trial requests.

**Table 2 – TPR Jury Trials Requested
(12/18/03-12/03/05)**

County	Jury Trial Requests First Year (12/18/03-12/17/04)	Jury Trial Requests Second Year⁹ (12/18/04-12/03/05)	Total Requests	Percent Change from 1st to 2nd year (For counties with 10 or more requests)¹⁰
Apache	0	2	2	n/a
Cochise	14	8	22	- 42%
Coconino	2	0	2	n/a
Gila	2	1	3	n/a
Graham	1	1	2	n/a
Greenlee	0	0	0	n/a
La Paz	0	0	0	n/a
Maricopa	54	61	115	+ 13%
Mohave	7	6	13	- 14%
Navajo	1	3	4	n/a
Pima	70	57	127	- 19%
Pinal	1	0	1	n/a
Santa Cruz	0	0	0	n/a
Yavapai	10	3	13	- 70%
Yuma	5	1	6	n/a
TOTAL	167	143	310	- 14% statewide

⁹ Again, please note that the second year period reflects 11 ½ months.

¹⁰ Percent changes for counties with smaller numbers of jury trials can be highly skewed and, therefore, were not included in this calculation. For example, if a county goes from one jury trial request to three jury trial requests, there is a 200 percent increase though the total number of jury trial requests remains small.

Overall, jury trial requests *decreased* 14 percent statewide from the first to the second year period. As indicated, when looking at counties that have received 10 or more jury trial requests, Maricopa County was the only county to experience an increase, and that increase was a somewhat modest 13 percent.

The lack of an overall increase in jury trial requests during the second year period should be viewed with great caution and should not be construed to mean that requests may decrease in the future. Arizona's experience with TPR jury trials is only two years old and it is possible that jury trial requests could unexpectedly rise in one or more counties for any number of reasons, including continuing increases in dependency and termination filings. As will be discussed later in this report, any substantial increases in jury trial requests in the future may pose additional costs for counties and are likely to add to burgeoning workloads already stressed by rising dependency¹¹ and termination filings.

Finding #3: Certain parental and/or case characteristics are more likely to result in jury trial requests.

Interview perspectives

The first-year analysis suggested that parents who have chronic substance abuse problems and/or serious mental health issues, or who were incarcerated at the time the TPR motion was filed, were more likely to request jury trials than others. This is still the prevailing perception, although parental incarceration did not appear to be as much of a salient factor as it did in the first year.

Interviewees reported that parents with chronic substance abuse problems are more likely to request a jury trial because they are in denial about their addiction, and their ability to parent. Other parents with chronic substance abuse problems may request a jury trial because they want more time to participate in treatment. Parents with serious mental health issues request a jury trial because they continue to struggle with mental illness and the effects it has on their ability to parent, and they can not fully comprehend the situation surrounding possible termination of their parental rights.

When incarcerated parents make a request for a jury trial, they may do so because they have lost their liberty and are less inclined to give up any rights they may still have. They may also feel the need to be present in court when decisions are made. Although some parents may make the request in order to

¹¹ Statistics provided by the Office of the Arizona Attorney General, Child and Family Protection Division, show there were 3,208 dependency petitions filed in state fiscal year (FY) 2003, 3,893 filed in FY2004 (a 21 percent increase over FY2003), and 4,329 filed in FY2005 (an 11 percent increase of FY2004). These statistics include dependency petitions filed by the AG, privately-filed petitions, supplemental dependencies, privately-filed supplemental petitions, and substituted dependencies.

get out of prison for a few days, interview participants did not appear to consider this to be as much of a factor as it was in the first year.

Judges and assistant attorneys general noted that parents involved in the criminal justice system, or facing potential criminal charges, are also more likely to make a jury trial request. Parents facing criminal charges for child abuse, for example, may have another lawyer handling their criminal case. This lawyer may advise the parent that any admission made in a termination matter can be used against the parent in the criminal proceeding, and this attorney may feel that a jury trial is a better route to take.

Key participants in TPR matters continue to report that jury requests occur more frequently in cases where certain grounds for termination are alleged by the state. It is believed jury requests are made more frequently in “time in care” cases. These are cases in which the child has been removed from the parent's home and has been in care for fifteen months or longer, during which time CPS alleges, as a ground for termination, that it has made diligent efforts to provide services to the parent but the parent either can not or will not “remedy” the circumstances which prevent reunification.¹²

Jury trials may also be more likely to be requested when the issue is a father's absence, and the father believes he has compelling reasons why he failed to establish paternity within statutorily prescribed timelines.¹³

Finding #4: Through December 3, 2005, a total of 34 TPR jury trials were completed to verdict compared to 336 TPR bench trials.

As shown in Table 3 below, five of Arizona's 15 counties experienced completed jury trials during this two-year period. In the first year following passage of the jury trial statute, only four counties carried out completed jury trials. Yavapai County joined this group when it completed its first jury trial in early December 2005.

¹² A.R.S. § 8-533 B, delineates the grounds for terminating parental rights. A.R.S. § 8-533 B (8) (a) (b), states that one of the grounds is “The child is being cared for in an out-of-home placement under the supervision of the juvenile court, the division or a licensed child welfare agency responsible for the care of the child has made a diligent effort to provide appropriate reunification services and that either of the following circumstances exists...The child has been in an out-of-home placement for a cumulative total period of fifteen months or longer pursuant to court order or voluntary placement pursuant to section 8-806, the parent has been unable to remedy the circumstances which cause the child to be in an out-of-home placement and there is a substantial likelihood that the parent will not be capable or exercising proper and effective parental care and control in the near future.”

¹³ Pursuant to A.R.S. § 8-533 B (5) and (6), it is grounds for termination when a father does not establish paternity in a timely manner. A.R.S. § 8-533 B (5), states “[t]hat the potential father failed to file a paternity action within thirty days of completion of service or notice prescribed in section 8-106, subsection G., A.R.S. § 8-533 B (6), states “[t]hat the putative father failed to file a notice of claim of paternity as prescribed in section 8-106.01.”

Table 3 – TPR Jury And Bench Trials Completed In 5 Counties¹⁴ (12/18/03-12/03/05)¹⁵		
County	Jury Trials Completed	Bench Trials Completed
Maricopa	12	187 ¹⁶
Mohave	2	17
Pima	18	51 ¹⁷
Yavapai	1	53 ¹⁸
Yuma	1	28 ¹⁹
TOTAL	34	336

The number of completed TPR bench trials continued to exceed the number of completed jury trials through the second year. As shown above, a total of 336 TPR bench trials were completed in the five counties that experienced completed TPR jury trials through this period.

Finding #5: The vast majority of both TPR jury trials and bench trials completed during the two-year period resulted in termination on all or some of the children listed in TPR motions/petitions.

Updated statewide jury trial statistics show the following:

¹⁴ *Completed* jury trials refer to those hearings in which a jury was impaneled, the trial was actually held, and the jury reached a verdict. *Completed* bench trials are defined as those that were actually held before a judge, and that resulted in judicial rulings and findings of fact at the conclusion of or after the completed hearings.

¹⁵ Completed bench trial data were provided by the Office of Arizona Attorney General and the juvenile courts in Maricopa, Pima, and Yavapai Counties. Bench trial data for Maricopa and Pima Counties cover the December 18, 2003 through October 31, 2005 period.

¹⁶ The Maricopa County bench trial data reflect the number of *parents* listed on termination petitions that resulted in completed bench trials (and for which trial outcome data were available). Therefore, this total should be viewed as an estimate of actual completed TPR bench trials in Maricopa County.

¹⁷ As in the first year report, the Pima County Juvenile Court bench trial count only includes those cases when parents verbally waived their right to a jury trial and requested a bench trial. Therefore, the number of completed bench trials in that county should be considered an undercount. The Maricopa, Mohave, Yavapai and Yuma County numbers reflect bench trials requested and/or set without a specific request for a bench trial. These counts may also contain some cases that started as jury trial requests but then reverted to bench trials.

¹⁸ The number of completed bench trials in Yavapai County may be a slight undercount because a small number of separate trials (for cases involving multiple parents, for example) may have been held.

¹⁹ The Yuma County figure does not include termination adjudications that occurred at initial termination or publication hearings that preceded scheduled bench trials.

Of the 34 jury trials completed in the five counties through December 3, 2005-

- 30 (or 88 percent) of the completed jury trials resulted in verdicts terminating parental rights on all or some of the children, and
- Four (or 12 percent) of the completed jury trials resulted in parental rights not being terminated.

Of the 336 bench trials completed during this period in the same five counties-

- 310 (or 92 percent) of the completed bench trials resulted in judicial rulings terminating parental rights on all or some of the children, and
- 26 (or eight percent) of the completed bench trials resulted in parental rights not being terminated.

In other words, while the number of completed jury trials remained relatively low through the second year, both jury and bench trials seem very likely to result in termination of parental rights.

Interview perspectives

There is no consensus as to whether jury trials are more or less likely to result in the termination of parental rights than bench trials. Some interview participants stated there was no difference between a jury trial and bench trial regarding the likelihood of either resulting in the termination of parental rights. Others believe jury trials are less likely to result in termination. There is a perception that, if the child is placed with a parent's relative, juries have a hard time understanding why it is in the best interests of a child to terminate parental rights. There is also a belief among those interviewed that juries, rather than judges, are inclined to give parents more time to change their behavior in "time in care" cases. This is especially true when there is evidence of partial or recent compliance with the CPS case plan.

Some believe, conversely, that jurors are more likely to terminate because they are shocked by the evidence and they are less tolerant than judges of the parents' behaviors. One point all interviewees agreed on, however, is that if there is any difference between bench trials and jury trials with respect to the likelihood of termination it is a very small one.

Finding #6: Many requested jury trials are never held. The vast majority of jury trial requests (86 percent) have not resulted in completed jury trials.

Of the statewide total of 310 jury trial requests, 39 trials were still pending as of December 3, 2005. This means that 271 of the 310 jury trials requested between mid-December 2003 and early December 2005 resulted in some other form of case outcome or resolution. Excluding the 39 pending

trials,²⁰ 14 percent of all jury trial requests *statewide* resulted in cases with jury trials being completed to verdict. This is very close to the percentage identified in the first-year report. This means, statewide, 237 cases (or 86 percent) of the jury trial requests, excluding pending matters) resolved during this two-year period without completed trials.

Table 4 below provides the breakdown of jury trial requests and the number and percentage of those cases that resulted in completed jury trials in the five applicable counties.

Table 4 - Number & Percent Of Jury Trials Requested That Resulted In Completed Jury Trials <i>Maricopa, Mohave, Pima, Yavapai, and Yuma Counties only</i> (12/18/03-12/03/05)			
County	Jury Trials Requested <i>(excluding pending cases)</i>	Jury Trials Completed	Percentage of requests resulting in completed jury trials
Maricopa	98	12	12%
Mohave	12	2	17%
Pima	110	18	16%
Yavapai	11	1	9%
Yuma	6	1	17%
TOTAL	237	34	14%

As shown above, only 14 percent of the jury trial requests received in these five counties resulted in actual completed jury trials.

Data from the five counties also allow us to examine the outcomes of jury trial requests that did *not* result in completed trials. Table 5 contains this updated resolution information.

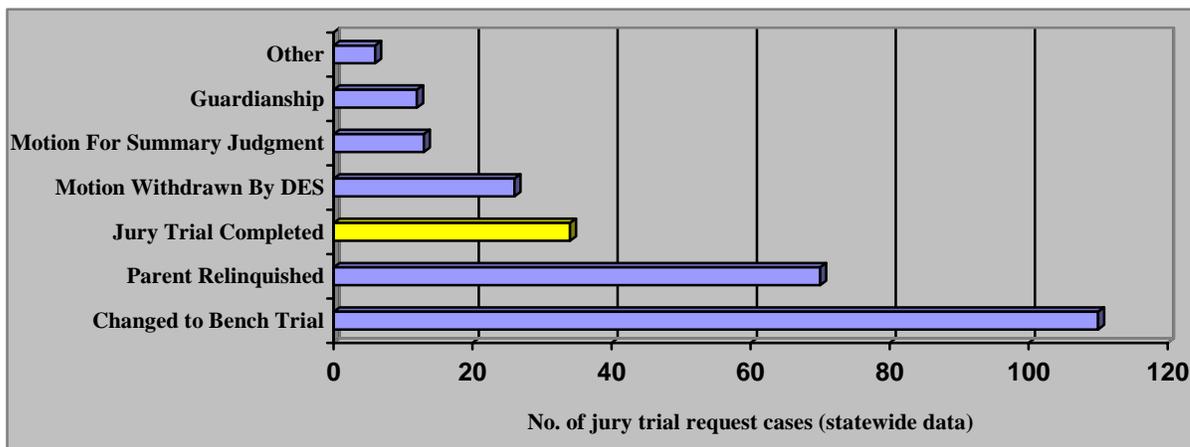
²⁰ As in the first-year analysis, it makes sense to exclude jury trials pending as of December 3rd because we do not know if these trials will be completed or not.

Table 5 – Resolutions Of Jury Trial Requests When Trials Are <i>Not</i> Held (Statewide Data) (12/18/03-12/03/05)		
Resolution	Number Of Cases (N=237)	Percentage of jury trial requests reaching resolution without a jury trial being held
Jury trial request withdrawn by parent; bench trial ordered.	51	22%
Parent failed to appear at trial; bench trial held in absentia.	10	4%
Right to jury trial denied by judge due to non-appearance of parent at pretrial conference; bench trial ordered.	49	21%
Parent relinquished; jury trial vacated.	70	30%
Guardianship agreed to; trial vacated.	12	5%
Motion for summary judgment granted; parental rights terminated.	13	5%
Motion for termination withdrawn by DES (CPS).	26	11%
Dependency adjudication set aside; no trial.	1	<1%
Father found not to be biological father through DNA testing; jury trial vacated.	1	<1%
Judge ruled parent’s jury trial request was defective; judge ordered bench trial.	1	<1%
Awaiting information.	1	<1%
Case plan changed to family reunification.	2	<1%

As indicated (by combining the figures in the first three rows of Table 5), 110 cases that originated as jury trial requests (41 percent of all jury trial requests, excluding pending cases) resulted in bench trials being held or ordered *after* jury trials were initially requested. An additional 70 cases that originated as jury trial requests (30 percent of all jury trial requests, excluding pending cases) resulted in parents relinquishing their parental rights *before* their jury trials were commenced.

Figure 1 offers another view of these jury trial request outcomes, and includes completed jury trials for comparative reference.

Figure 1 - Resolutions Of Jury Trial Requests (12/18/03-12/03/05)



The data in Figure 1 confirm that most of the cases that begin as TPR jury trial requests resolve before trials are ever held, either by a change to a bench trial after the original jury trial request or by parents relinquishing their parental rights before jury trials are ever held. Later in this report, we will take a look at how often these relinquishments occurred on the first day jury trials were set to commence.

Interview perspectives

During the first year that A.R.S. § 8-223 took effect, parents were exercising their right to a jury trial, although for various reasons many of these trials were never held. This is still the case. The reasons cited in the first year analysis that contribute to this are still at issue.

Parents request the right to a jury trial in order to preserve it. If they do not make the request early they will lose the right.²¹ Consequently, many parents make the request even if they are unsure about what they really want. Often, closer to the trial date, parents realize they will not prevail at a jury trial and choose to forgo it. They relinquish their parental rights or fail to appear at the initial termination hearing, pretrial conference, status conference or the trial itself. Failure to appear at any of these hearings

²¹ Arizona Rules of Procedure for the Juvenile Court, Rule 66.1 (B), states “[t]he request for a jury trial shall be signed personally by the parent or by counsel of record, filed and served on the petitioner prior to the initial termination hearing provided by Rule 65 of these rules or, if counsel is appointed at the initial termination hearing, within twenty days of appointment of counsel. If the written request for jury trial is signed by counsel of record, the counsel must avow that the request for the jury trial has been made by the parent. Failure to file and serve the request in a timely manner constitutes a waiver of the right to a trial to a jury...”

can result in the court finding that the parent(s) has waived the right to a jury, and may result in the termination of parental rights.²²

As it gets closer to trial, attorneys for parents have a better assessment of the case, and may advise their clients that a jury trial is not in their clients' best interest. The assistant attorney general (who prosecutes the termination action for the state) may discover that they do not have enough evidence to prevail, and advise CPS to withdraw the motion. In addition, parents may have changed their behavior to such a degree that CPS no longer believes termination is warranted.

Mediation that occurs after a request for a jury trial may result in an alternative resolution to the case. Also since the first year, judges in several counties have started to conduct optional settlement conferences with a judge presiding over the settlement conference as opposed to a mediator. Many of these judges reported that they have been able to settle a significant number of cases prior to trial.

Currently, in the two urban courts, parents may request a jury trial as a means of obtaining a different judge to decide their case. In a bench trial, the judge who hears and decides the termination trial is the same judge who has heard and made all the decisions in the underlying dependency action. Often, in the urban jurisdictions, the judge presiding over a jury trial is not the same judge who presided over the underlying dependency action. If a parent arrives in court on the day of a scheduled jury trial, and requests to have a bench trial instead, to avoid further delay, the judge who is assigned to preside over the jury trial will sometimes hear the bench trial. This gives parent(s) what they wanted all along, a different judge to hear and decide the case.

Judges and assistant attorneys general we interviewed provided additional reasons for the low numbers of jury trials being held, as listed below:

- Parents may make a request for a jury trial to use as a bargaining chip with CPS, as leverage in the hope of getting CPS to reconsider the case and change the plan to guardianship; or to obtain a favorable agreement for post-adoption contact.
- Parents may make the request to delay the process in order to have more time to work on being compliant with the case plan, or to avoid the inevitable, the loss of their children.

²² Arizona Rules of Procedure for the Juvenile Court, Rule 64 (C), states that the notice of the initial termination hearing shall advise the parent that "... failure to appear at the initial hearing, pretrial conference, status conference or termination adjudication hearing, without good cause, may result in a finding that the parent, guardian or Indian custodian has waived legal rights, including the right to trial to a jury, and is deemed to have admitted the allegations in the motion or petition for termination...that the hearings may go forward in the absence of the parent, guardian or Indian custodian and may result in the termination or parental rights based upon the record and evidence presented."

- Parents may relinquish their rights prior to trial because they do not want to have a finding of termination used as grounds by the state in a subsequent termination proceeding involving another one of their children.²³

Most of the persons interviewed for this update feel that CPS is more likely to withdraw a motion to terminate when a jury trial is set, as opposed to when a bench trial is set. These interviewees stated that CPS needs more evidence to prevail in a jury trial than a bench trial because juries are unpredictable. Therefore, CPS may withdraw the motion even when it is not in the best interests of the child. A few believe that this is not the case, and whether a bench or jury trial is set has no impact on the child protection agency's decision to withdraw a motion to terminate.

Finding #7: In contrast to jury trial request cases, two-thirds (66%) of TPR bench trials requested or set during this period resulted in completed bench trials.

Bench trial outcome data were obtained from the five counties that experienced completed jury trials during this period. These data show that, for this two-year time frame, two-thirds (66 percent) of bench trials requested or set were completed. Table 6 displays this information.

²³ One of the grounds the state can allege in a motion or petition to terminate parental rights is “[t]hat the parent has had parental rights to another child terminated within the preceding two years for the same cause and is currently unable to discharge parental responsibilities due to the same cause.” A.R.S. 8-533 B (10).

**Table 6 - Number/Percent Of Bench Trials Requested Or Set
That Resulted In Completed Bench Trials
Maricopa, Mohave, Pima, Yavapai, and Yuma Counties only
(12/18/03-12/03/05)²⁴**

County	Bench Trials Requested Or Set²⁵	Bench Trials Completed	Percent resulting in completed bench trials
Maricopa	307	187	61%
Mohave	47	17	36%
Pima	61	51 ²⁶	84%
Yavapai	55 ²⁷	53	96%
Yuma	39	28	72%
TOTAL	509	336	66%

The Maricopa County Juvenile Court identified 307 TPR bench trials that were *requested or set* from December 18, 2003, through October 31, 2005. Of these 307 cases, 187 (61 percent) resulted in completed bench trials. Of the 120 cases that resolved before the actual bench trial dates, 89 resulted in termination due to parental non-appearance at hearings before the trial date;²⁸ 17 resulted in the court granting termination on at least one child; seven resulted in dismissal of the TPR motion/petition; six resulted in the court accepting relinquishment before the trial commenced; and in one case the TPR motion/petition was withdrawn by DES.

In Mohave County, there were 47 bench trials set during the two years in question,²⁹ 17 (36 percent) of which resulted in completed trials. Of the 30 cases that resolved without bench trials being completed, all resulted in the termination of parental rights. Specifically, 12 resulted in consents by at

²⁴ Again, the Maricopa and Pima County data cover the 12/18/03-10/31/05 period.

²⁵ Table 6 only includes cases for which outcome data were available.

²⁶ The Office of the Arizona Attorney General in Pima County reported 136 bench trials were actually completed during this time frame, which would reflect 85 additional TPR bench trials completed that were not "requested" by parents in Pima County. However, outcome data for these 85 additional bench trials were not readily available.

²⁷ Represents a best estimate provided by the Office of the Arizona Attorney General.

²⁸ Some juvenile court statistics code this as parental "default" but it is not really a default. There is a court hearing held but because the parent does not appear, the hearing is truncated and the decision may be made based only on a court report and CPS's best interest testimony.

²⁹ Information provided by the Office of the Arizona Attorney General.

least one parent to relinquish parental rights, and 18 resulted in termination due to non-appearance of at least one parent.

In Pima County, the juvenile court provided outcome data on 61 requested bench trials during the same period. These data indicate that 51 (84 percent) of these cases resulted in completed bench trials. Of the 10 cases that resolved without bench trials being completed, five resulted in relinquishments, two resulted in termination due to non-appearance, two were withdrawn by DES (and changed to guardianship), and one was dismissed by the court. Again, the Pima County data likely represent an undercount because they are limited to cases where parents specifically requested bench trials.

In Yavapai County, there were approximately 55 bench trial cases set during this period and 53 (96 percent) of which resulted in completed bench trials. DES withdrew its TPR motions/petitions in both of the cases that resolved before trial - one involved a permanent plan change to family reunification and the other involved a change to guardianship.

In Yuma County, there were 39 bench trials set during this period and 28 (72 percent) of these resulted in completed bench trials. Of the 11 that resolved before the actual bench trial date, two were adjudicated at the initial termination hearing and termination was ordered (due to parent not appearing at the hearing); six were adjudicated at the publication hearing stage and all of these resulted in termination rulings (again, due to parental non-appearance); two resulted in relinquishments prior to the trial dates; and one resulted in a termination motion being withdrawn by DES.

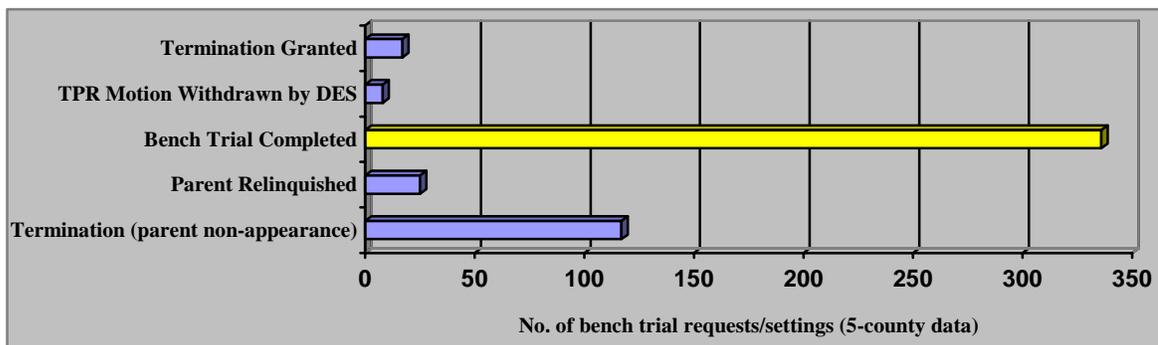
Table 7 displays the non-completed bench trial outcomes for the five counties.

**Table 7 - Resolutions Of Bench Trials Requested Or Set When Trials *Not* Held
Maricopa, Mohave, Pima, Yavapai and Yuma Counties
(12/18/03-10/31/05)**

Resolution	Number Of Cases (N=173)	Percent of bench trial requests/settings reaching resolution without trial held
Termination granted; parental non-appearance	117	68%
Termination granted on at least one child before trial completed	17	10%
Parent relinquished; bench trial vacated	25	14%
TPR motion/petition dismissed	8	5%
TPR motion/petition withdrawn by DES; permanent plan change to guardianship or reunification	6	3%

As indicated, 117 (68 percent) of the cases for which bench trials were set but *not* held ended in termination of the parents' rights due to non-appearance of the parents at a court hearing preceding the bench trial. What seems particularly interesting here is the comparatively low rate (14 percent or 25 cases) of parent relinquishments that occurred *before* bench trials were held. Earlier, we noted that 30 percent of jury trial request cases resulted in parent relinquishments *before* jury trials were held. Figure 2 offers another view of these bench trial request/setting outcomes, and includes completed bench trials for comparative reference.

**Figure 2 - Resolutions Of Bench Trial Requests/Settings (12/18/03-12/03/05)
Maricopa, Mohave, Pima, Yavapai, and Yuma counties**



The data in Figure 2 reinforce the finding that bench trials, when requested or set, are more likely to be completed than jury trials and that a substantial number (117) of parents scheduled for bench trials end up losing their parental rights by failing to appear for hearings before their bench trials commence.

Interview perspectives

Current interviewees believe that more parents are opting for bench trials over jury trials. Most agreed when a bench trial is scheduled it is more likely to be held compared to when a jury trial is scheduled. One reason given why bench trials are more likely to be held is that as the time scheduled for the jury trial nears, parents come to realize they are uncomfortable having a jury hear all the alleged details of their behavior and lives. There is a perception that parents are more comfortable appearing before the judge than the jury, as they have appeared before the judge throughout the dependency action, and the judge is already familiar with the facts.

Others posited that when bench trials are scheduled they are more likely to be held than jury trials because many of the attorneys who represent parents are inexperienced with trying a case to a jury. There is a perception that some attorneys may be intimidated by jury trials. Therefore, these attorneys try harder to settle the case or convince their clients to withdraw the jury trial request and opt for a bench trial. Jury trials are also harder on the attorneys' calendars because they may require more preparation time as well as more time in court. It is particularly hard on parents' attorneys in rural counties, as there are not many of them, and they often handle cases outside of the juvenile arena. It is believed this too may give an extra incentive to an attorney to find an alternative to a jury trial.

Finding #8: Only 57 percent of TPR jury trial cases in Maricopa County for which potential jurors were summoned to court actually resulted in completed jury trials. This is far below the more typical 83 percent jury trial completion rate reported for all other types of jury trials in Maricopa County. Data from Maricopa and Pima Counties also confirm that a substantial number of TPR jury trials are cancelled on the first day they are set to commence.

We obtained preliminary statistics from the juvenile courts and from the jury commissioners in Maricopa and Pima Counties for this purpose. These statistics represent a smaller subset of scheduled jury trials and are limited to those events in which jurors were actually summoned and called to court to hear TPR jury trials. In Maricopa County, between January 1, 2004, and November 1, 2005, there were 21 TPR jury trials for which potential jurors were summoned to court to hear. In 12 of these cases jury trials were held. This means only 57 percent of TPR cases in which potential jurors were summoned and came to court to hear resulted in a jury trial. The remaining 43 percent (nine) of these cases resolved at the time or just before the jury trial was set to commence. For the same time period, in Maricopa County, potential jurors were summoned for 2,324 non-TPR jury trials (e.g., adult civil and criminal trials), and 1,922 trials were actually held in these cases. This means 83 percent of all other types of jury trial cases, which potential jurors came to court to hear, actually resulted in a jury trial.

In Pima County, data provided by the county jury commissioner reveal that out of 23 TPR jury trials actually set for jurors to hear, only 11 or 48 percent resulted in jury trials being held, while 12 or 52 percent resolved the day before or on the day a trial was to commence (comparison data for other types of jury trials were not immediately available in Pima County).

The first-year analysis emphasized the additional preparation time and workload demands that jury trials place on attorneys and case managers involved in these matters. Specifically, the first year look highlighted how these key participants have to prepare for jury trials whether the trials are actually held or not. By looking at how often these cases resolve within 24 hours (or on the actual day) of their scheduled start times, we get some sense³⁰ of how often key parties must fully prepare for jury trials that are never held.

Interview perspectives

The jury commissioners in the two urban courts noted TPR jury trials seem to be cancelled on the scheduled day of trial more frequently than jury trials in other types of cases. Due to the fact that TPR jury trials make up a small percentage of the over-all number of jury trials, the jury commissioners did not

³⁰ It is also likely that key parties spend substantial time preparing for jury trials that go away even earlier than the day before or day of trials being set to commence.

perceive this as having a major impact on their workloads. However, mileage does have to be paid to potential jurors who appear for jury duty, even if the jury trial is cancelled. The jury commissioners noted that, if the number of TPR jury trials greatly increases and they continue to be frequently cancelled on the day they are scheduled to begin, it will become a problem and costs will increase. In addition, there is a concern that as more people take time away from their lives to appear as potential jurors for trials that are not held, there may be a deleterious effect on the public's perception of the judicial system.

Finding #9: In Pima County, through October 2005, TPR jury trials have taken an average of 113 days from the point of a child's permanency hearing to completion (or verdict), versus 148 days for TPR bench trials.

The first-year report³¹ indicated that, in Pima County, jury trials took an average of 121 days to complete from the point of a child's permanency hearing, versus 137 days for TPR bench trials. Updated Pima County data (for the December 18, 2003 through October 31, 2005 period) reveal that, through the second year, it took an average of 113 days (a decrease of eight days) from the final permanency hearing to jury trial completion. For bench trials, it took an average of 148 days (an increase of 11 days) from the final permanency hearing to bench trial completion in Pima County.

During the first year, the Pima County Juvenile Court also reported an average of 68 days from the point of a jury trial request to the start of trial as compared with an average of 50 days to the start of a bench trial. The second-year numbers point to a slight increase in the average number of days (73) it has taken from the request to the start of a jury trial, and a minimal increase in the average number of days (51) it has taken to the start of a bench trial.

Lastly, we obtained data on the duration of completed jury and bench trials (from the start of actual trials to verdict or judge's ruling, respectively) for both Maricopa and Pima Counties. In Maricopa County, through October 2005, it has taken an average of four days from start to completion of a jury trial (to verdict), and an average of 41 days from the start of a bench trial to a judge's ruling. In Pima County, where it took an average of five days from the start of jury trials to verdict during the first year, the average duration of completed jury trials dropped to just over four days. For completed bench trials, the average for bench trials decreased from 34 days during the first year to 30 days through October 2005.

As discussed in the first-year assessment, the longer periods for completion of bench trials (from the final permanency hearing to the judge's ruling) evident in Pima County³² reflect a number of factors

³¹ Children's Action Alliance (see pg. 16).

³² While similar data were not immediately available from Maricopa County, it is still likely that TPR bench trials take longer to complete, from the final permanency hearing to the judge's ruling, in Arizona's most populous county than it takes for TPR jury trials to be completed.

including court calendar demands and scheduling practices. Also, in bench trials, judges in Pima County (and Maricopa County too) often take matters under advisement at the conclusion of these hearings and issue written findings of fact and rulings days or weeks later (up to 60 days after the bench trial is held). This is not the case in the three rural counties that have experienced completed jury trials, where the judges are more likely to rule from the bench at the conclusion of bench trials than judges in the urban jurisdictions.

Finding #10: During the past two years, direct costs for TPR jury trials were substantially higher than direct costs for TPR bench trials - counties have been 100 percent responsible for covering these additional costs.

The first-year report described, in general terms, some of the direct costs unique to TPR jury trials.³³ More specific direct cost data have become available through the second year and these allow us to draw some important, albeit preliminary, cost comparisons between TPR jury and bench trials. In Maricopa County, a total of \$19,581 was paid out to jurors (in mileage and jury fees) for the 21 trials that jurors were called to hear during the January 2004 through October 2005 period. Obviously, there are no juror mileage costs or fees in TPR bench trials.

In Pima County, we were able to obtain preliminary cost figures that included total costs associated with jurors, plus figures that allow us to compare the costs associated with court-appointed counsel (attorneys under contract with the county who represent either children or parents) in TPR jury and bench trials.³⁴ Table 8 displays this information.

³³ Children's Action alliance (pgs. 26-27).

³⁴ The juror cost data provided by the Pima County Jury Commissioner reflect 23 jury trial cases that were set for trial (18 of which resulted in completed trials). The cost comparison data provided by the Office of Court-Appointed Counsel (OCAC) in Pima County are based on actual fees paid by the county in 18 jury trials (17 completed, one started but not completed) and 52 bench trials (51 completed and one started but not completed). It should be noted that one jury trial case was excluded from the OCAC analysis because of its exceptionally high cost - \$102,078 – which dramatically skewed the average jury trial cost figure.

Table 8 – Comparison Of Direct Costs In Jury And Bench Trials³⁵
Pima County only (1/01/04-10/31/05)

	Jury Trial Costs	Bench Trial Costs
Juror-related fees (including mileage and juror fees)	\$25,590.93	0
<i>Average court-appointed counsel fees</i>	\$11,771.46 <i>per case</i>	\$6,678.66 <i>per case</i>

The Pima County cost data shown above reveal some distinct and significant direct cost differences between TPR jury and bench trials. For the January 2004 through October 2005 period, \$25,590.93 was paid to jurors in Pima County. During the same time, the average cost per case for court-appointed counsel (OCAC) in TPR jury trials was substantially higher (\$5,092.80 or 76 percent) than the average OCAC cost tied to bench trials. Simply put, on a cost per case basis, jury trials involve significantly higher costs than bench trials and, under present circumstances, these costs are borne completely by the counties.

Finding #11: When a jury or judge rules against termination, it is unlikely that the child's placement will immediately change.

Interview perspectives

If a judge or jury decides not to terminate a parent's rights, it does not mean that the child is immediately returned home. At this point, the child has already been adjudicated dependent. Current and past interviewees reported most often that the child will stay in the same placement, either in foster care, with a relative, or another out of home setting, while CPS develops a new case plan. At some later point in the case, the child's placement may change, but typically only if there is a change in circumstance with the child or the placement. The new case plan may be family reunification, guardianship, long term foster care, or independent living. Any transition back with a parent will be a slow process, and only if the parent shows compliance with the new case plan to such a degree that the factors which led to the

³⁵ These are preliminary direct cost figures for Pima County only. There probably are additional direct costs associated with jury trials, including the costs of requiring expert witnesses to appear in person at jury trials (this is much less likely to occur in bench trials). However, additional direct cost data were not immediately available for this report.

underlying dependency have been remedied. A subsequent motion to terminate may be filed at some later point, if new evidence or grounds exist.

Finding #12: Unlike jury trials, bench trials in the two urban courts are not held on consecutive days. This segmented scheduling practice, plus the time taken by some judges to construct detailed written findings and rulings, and the likelihood that they will take these matters under advisement, all contribute to the extra time it takes to reach final disposition in bench trials. In contrast, in the three rural counties, bench trials take less time to complete than jury trials.

Interview perspectives

There has been no change from the first-year in how bench trials are scheduled in the urban or rural courts. All courts schedule bench trials before the same judge who heard the underlying dependency action, in keeping with the one family/one judge policy.³⁶ Current court rule does not allow a parent to request a different judge for a bench trial from the one assigned to the original dependency case.

In the two urban courts, bench trials are not held on consecutive days. Bench trials are scheduled on days and times that fit into the crowded court docket, and scheduled to accommodate the attorneys' busy calendars. The first day of a bench trial may be scheduled to begin weeks before the last day the trial is set to end. This scheduling practice of setting non-consecutive days of bench trials is done to avoid having to continue hearings in other cases. It has, however, contributed to the fact that the completion of bench trials takes longer than the completion of jury trials.

It was reported that since the first year, judges are making an effort to schedule days of bench trials closer together. Some judges who have set aside consecutive days on their calendars to hear jury trials, may double book a bench trial with a jury trial. That way, if the jury trial does not occur, the court can hear the scheduled bench trial on consecutive days.

Current interviewees reported the courts have experienced instances where one parent requests a jury trial and the other parent wants a bench trial. There is no uniform rule on how the courts handle situations when parents differ on the type of trial they want. It is left to the discretion of the individual judge, and decided on a case-by-case basis. Some judges indicated they will try the cases together and let the jury decide the issue of termination as to one parent, and the judge will decide as to the other parent.

³⁶ The "one family/one judge" approach to handling child welfare cases reflects a nationally recognized guideline and practice recommended by the National Council of Juvenile and Family Court Judges and the American Bar Association in dependency and termination of parental rights cases. It is a strongly preferred practice because it allows for the same judge to preside over a case from the first dependency hearing (the preliminary protective hearing) through permanency, and the eventual close of the case. Allowing for the same judge to follow a case from start to finish gives the child and the family the best possibility that the case plans relate to specific needs of the child and the family, and allows a judge to develop a greater perspective of the case, and see the impact that judicial decisions have had on the child and the family.

Other judges feel having the cases tried at the same time may confuse the jury, by having a party and attorney present asking questions of witnesses and eliciting information that the jury will not ultimately consider. Therefore, these judges bifurcate the trial on separate days, with the bench trial being held before the judge who presided over the underlying dependency case.

All counties hear jury trials on consecutive days. As noted in the first-year report, in order to accommodate this scheduling practice and make it work with the busy juvenile court docket, the two urban courts have had to depart from the one family/one judge policy. In Maricopa County, two juvenile court judges who hold court in the downtown superior court building, hear all of the TPR jury trials. In addition to hearing all of the TPR jury trials, they have their own dependency and TPR caseloads. Unlike other juvenile court judges, they do not hear delinquency cases. During each month, each of these judges has set aside one week to hear jury trials.

In Pima County, all jury trials are held downtown in the superior court building, and are presided over by juvenile court judges. Nine juvenile judges are on a rotating schedule for these proceedings. Over a nine-week span, each judge takes three or four days of a week to go downtown to preside over a TPR jury trial. This is a change from the first year when one juvenile court judge was specially assigned to hear all of the TPR jury trials for a significant period of time. One of the reasons the rotation was implemented was to avoid substantial amounts of “down time” (i.e., time when a trial scheduled to be heard is not held, leaving the judges' calendar empty) on a specially assigned judge's docket. In the three rural courts, the same judge who presided over the dependency case will preside over the jury trial.

Finding #13: Jury trials can have adverse effects on court calendars whether or not they occur.

Interview perspectives

As reported in the first year, all interviewees agreed that TPR jury trials have a large impact on the court calendar. They take more time in court to try than bench trials. The time it takes to preside over a jury trial is time a judge can not use to hear other cases. For the two judges in Maricopa County, who set aside one week of each month to hear TPR jury trials, it means that they have one less week every month to hear other cases.

In Pima County, TPR jury trials begin on Tuesday and are usually set for three or four days. This means that for three or four days of each week of the month, one of nine juvenile court judges is unavailable to hear other cases. In addition, attorneys who are in a scheduled jury trial do not have time on their calendars to set hearings in other cases.

At least some assistant attorneys general and judges in Pima County sense that, when jury trials occur, hearings in other dependency cases are being continued. This is due to the fact that attorneys who

are in a TPR jury trial are unavailable to appear in their other scheduled hearings. However, persons interviewed in the other counties did not share this perception. Maricopa County participants indicated that, although a continuance in another dependency case could happen as a result of an attorney being in a TPR jury trial, it is not typical. Often, attorneys who are in a TPR jury trial in Maricopa County will find another attorney to appear on their behalf in their other scheduled cases. In Mohave County, it was reported that dependency cases do not seem to be continued when a TPR jury trial is held, but there have been instances when domestic relations cases have been continued.

Finding #14: While jury trials are supposed to take priority over other hearings and case management activities, it has been difficult in Maricopa County to hold jury trials within 90 days of the permanency hearing.

Interview perspectives

Current interviewees revealed jury trials do, or are supposed to, take precedence over other hearings. In Maricopa County, however, many expressed concern that while TPR jury trials are supposed to take priority over other hearings and case management activities, they do not. There are only two weeks out of each month when jury trials are being scheduled. Of these weeks, there is one judge scheduled per week to hear a TPR jury case. There is only so much time on these judges' dockets and, as a result, at least some jury trials are being scheduled past the 90 day time line required by Arizona court rules.³⁷

In addition, although not frequent, the situation has occurred when two cases scheduled to be tried at that same time are ready to proceed on the scheduled date. In these instances, the Maricopa County Juvenile Court has had some difficulty finding other judges who are willing or able to hear one of the jury trials. Interviews revealed this has caused a continuance in at least one of the scheduled trials in Maricopa County.

Finding #15: Jury trials continue to pose substantially higher workload demands than bench trials for most key parties.

Interview perspectives

In the first-year analysis, it was reported that attorneys and CPS case managers estimated a jury trial requires from three to ten times more work than a bench trial.³⁸ In the current review, all interviewees reaffirmed that jury trials are more work for attorneys and case managers than are bench

³⁷ Pursuant to Arizona Rules of Procedure for the Juvenile Court, Rule 66 (B), if a motion to terminate parental rights has been filed, the trial shall be held no later than 90 days after the permanency planning hearing.

³⁸ Children's Action Alliance (pg. 25-26).

trials. However, at least some of the increase in work tied to jury trials reflects the fact that many attorneys have had little or no jury trial experience. Interviewees stated that as attorneys gain experience with jury trials they will become easier to prepare for.

The courts have taken steps to minimize the workload demands attorneys experience with jury trials. In Pima County, a status/motion in limine hearing is now set two weeks before the jury trial, in front of the judge assigned to the trial. This gives the parties an opportunity to better assess if the case is really going to trial. If the parents do not appear at this hearing, the court can find they have waived the right to a jury trial. During the first-year, this hearing was held the Friday before the case was set to go to a jury trial.

A similar practice has been instituted in Maricopa County. Presently, a pretrial conference is set before the judge presiding over the jury trial. This occurs ten to fourteen days before the trial date. Parents are now required to appear at this hearing, as opposed to the first year when parents were not required to appear. Again, if a parent fails to appear at the hearing, the court can find the parent has waived the right to a jury trial.

In Yavapai County, the court also has instituted a pretrial conference that occurs thirty days before a scheduled jury trial. As in the urban courts, if the parents do not appear, the court can find the parents have waived the right to a jury trial.

The Office of the Attorney General has also taken steps to reduce the workload impact of jury trials. In Maricopa County, there is now a specialized group of assistant attorneys general who handle all cases set for TPR jury and bench trials.³⁹ This allows the remaining attorneys in the Child and Family Protection Division to focus on other dependency cases. In Pima County, the assistant attorney general assigned to a TPR jury trial will usually have another attorney assisting with the trial. And, in Mohave County, a second assistant AG has been hired along with additional support staff to handle the growing workload.

TPR trial participants generally agree that it takes more time for a judge in court to try a jury trial than a bench trial, and more time is spent in court deciding pre-trial issues. In this respect, jury trials are more work for the judges than bench trials. Judges also have to contend with jury instructions and voir dire, both of which are unnecessary in bench trials. Some interviewees, however, noted that jury trials relieve judges from having to make difficult termination decisions, and alleviate some of the pressures

³⁹ Before Arizona instituted its landmark court improvement reforms in the mid to late 1990s, the Office of the Attorney General had a termination trial team that served in a similar capacity.

(particularly in the urban courts) associated with writing detailed findings and rulings after the completion of bench trials. In these respects, jury trials can be less work for judges than bench trials.

Jury commissioners in the two urban counties reported that TPR jury trials have not increased their workloads. Both stated that because TPR jury trials make up such a small percentage of the total number of jury trials their impact is negligible. And, since TPR jury trials are held in the downtown superior court buildings (where jury commissioners are located), the commissioners have been able to handle TPR jury cases the same way they handle all other jury matters (e.g., they have not had to change the number of jury summonses they send out, etc.).

Both jury commissioners, however, indicated that if jury trials were to be held at the juvenile courts, it would have a significant impact on their workloads. This would require extra staff to work at the juvenile court centers, along with all the tools these personnel need to perform their jobs (e.g. computers, phones, desks, etc.). They would have to summon separate pools of jurors each week specifically for the juvenile courts, rather than drawing from the existing superior court jury pools. A new jury summons specific for juvenile courts would have to be created. And, juvenile court facilities would have to be remodeled to accommodate jurors (e.g. jury assembly rooms, jury deliberation rooms, and court rooms with jury boxes would have to be built).

In the first-year analysis, concern was expressed that, because of the unique nature of TPR cases, substantially larger numbers of potential jurors would have to be questioned in order to find the eight required for a TPR jury. This does not now appear to be the case. Typically, thirty-five persons are called to a courtroom to be questioned as potential jurors in a TPR case. In Maricopa County, this is comparable to the number of jurors in all other types of short civil trials. In Pima County, 30 prospective jurors are typically called for other types of civil cases lasting less than a week. In both urban courts, it is slightly less than the 40 jurors typically needed in criminal cases when an eight person jury is required.⁴⁰

The general perception across our interviews is that more resources are needed to handle the increased workload caused by TPR jury trials. Currently, attorneys expressed the need for both additional attorneys and support staff who specialize in assisting with TPR jury trials. Some judges and attorneys expressed the need to have more judges available to hear TPR jury cases.

If the TPR jury legislation continues, key trial participants in the two urban courts suggested the need to consider having juvenile courts modified to hold TPR jury trials at juvenile court centers, instead of the downtown superior court buildings. In Pima County, trying jury trials in the downtown courthouse

⁴⁰ Interviews with Bob James, the Jury Commissioner in Maricopa County, and Kathy Brauer, the Jury Commissioner in Pima County. This excludes criminal cases involving sexual offenses and murder which require many more jurors.

creates specific problems for juvenile court judges, because they must leave their chambers for a number of days to go downtown and hear TPR jury trials. This makes it challenging for these judges to conduct other juvenile court business during their assigned jury trial time. Some interview respondents stated that holding TPR jury trials in remodeled juvenile court courtrooms would allow attorneys and CPS case managers to be available during the day to appear in their other (non-jury) court hearings, including those occurring before the jury trial is scheduled to begin, or when there is a break in the jury trial. This could help prevent the delay of other cases, and allow for consistency in representation by attorneys and CPS case managers.

Finding #16: The vast majority of bench and jury trials are appealed but jury trials have more elements that can lead to mistrials.

Interview perspectives

Interviewees stated there has been no change in the frequency of appeals since the first year. Almost all bench and jury trials that result in the termination of parental rights are appealed but these cases are not being heard on an expedited basis. There has been no change in court procedure, rule, or statute regarding the length of time it takes for an appellate decision. Our interviews did confirm that a judicial committee has been exploring possible changes in the Arizona Court Rules of Procedure that may serve to expedite the time it takes for appellate decisions in TPR cases to be handed down.

Mistrials occur when a jury is exposed to inadmissible evidence that a judge determines may influence the jury's ultimate decision with respect to the case. Mistrials are extremely rare in bench trials because judges are presumably able to put aside any inadmissible evidence they may have heard and not let it influence their ultimate decision in the case.

Since December of 2004, at least one mistrial in a TPR jury case has occurred, which was a trial originally set for four weeks. A mistrial was granted after the first week of testimony. The reason for the mistrial was a witness testified to facts which the court had previously ruled were inadmissible. There have not been any mistrials in a bench trial during the two year period.

Finding #17: The two urban courts are experiencing delays in permanency hearings that may reflect the indirect effects of jury trials.

Perhaps the most important question regarding TPR trials, both jury and bench, is their impact on timely permanency for children. In an ideal environment, all courts would be able to schedule and hold timely jury or bench trials, key parties involved in these hearings would have time to adequately prepare without having to shuffle critical responsibilities for other children on their caseloads, and permanent

(e.g., adoptive or guardianship) placements would be readily available for children unable to return home. With growing dependency and termination filings, however, the situation in Arizona is certainly not ideal.

Preliminary data provided by the juvenile courts in Maricopa and Pima Counties reveal that a substantial number of permanency hearings have been rescheduled for dependent children during the past 22 months. In Maricopa County, there were 1,194 permanency hearings rescheduled out of a total of 5,775 scheduled⁴¹ from January 1, 2004 through October 31, 2005 (i.e., 21 percent of all permanency hearings in Maricopa County were rescheduled). In Pima County, there were 302 permanency hearings rescheduled out of a total of 1,758 scheduled during the same time frame (i.e., 17 percent of all permanency hearings in Pima County were rescheduled). It is important to emphasize that these permanency hearings may have been rescheduled for a variety of reasons. At present, we cannot say how or to what extent the demands associated with jury (or bench) trials contributed to these rescheduling frequencies, but they certainly deserve careful analysis. In at least some cases, delays in permanency hearings signify delays in final permanency for children.

Interview perspectives

In the first-year jury trial report, interviews revealed no consensus among key jury trial participants as to whether jury trials promote or detract from timely permanency for children who are subjects of the jury trial process compared to children involved in bench trials.⁴² However, interviews conducted for the first-year assessment, and interviews conducted for this update, revealed that jury trials *may* foster delays in the timing of key hearings (including permanency hearings) for children who are *not* immediately involved in jury trial matters. The first-year report noted that the impact of jury trials on other children has not been measured but should be in any further evaluation of the jury trial process.⁴³

The persons we interviewed for this update reported there are times that, due to a case manager's involvement in a TPR jury trial, court reports in other cases have been late and the provision of services for clients in other cases have been delayed. In addition, in at least one court, some attorneys participating in jury trials have encountered difficulties keeping in contact with other clients. Psychologists and psychiatrists under contract with CPS have also faced the additional demands posed by jury trials. These experts are often subpoenaed to testify in jury trials and, as a result, have less time to perform other important responsibilities including the evaluation and treatment of other CPS-involved children and families.

⁴¹ For both Maricopa and Pima Counties, at least some of the rescheduled events are multiple rescheduled hearings for the same cases/families.

⁴² Children's Action Alliance (pg. 27).

⁴³ Children's Action Alliance (pg. 28).

Despite these concerns, there remains no consensus about the degree to which other cases experience a negative impact as a result of a jury trial being set and/or held. While some feel there is significant impact, others feel it is very minor.

The limited scope of this update prevented a comprehensive analysis of how the two types of trials affect the timing of permanency decisions for children who are *not* the immediate subjects of TPR trials. Such an analysis would require reliable comparative data and measurement of variables that may directly (and, perhaps more importantly, *indirectly*) affect the timing of final permanency outcomes. While this may be a complex endeavor, the need for such an evaluation seems even more relevant as the state contemplates continuation of the jury trial statute and the numbers of dependency and termination filings continue to climb.

Finding #18: There have been no changes in court rules or statutes with respect to the roles of the Guardian Ad Litem (GAL), Court Appointed Special Advocate (CASA), or the child's attorney at jury trials.

Interview perspectives

The first-year analysis highlighted the need to clarify the roles of GALs, CASA volunteers, and children's attorneys at jury trials.⁴⁴ Our recent interviews confirmed no court rules or statutes have been enacted to clarify these roles since the first year jury trial requests were permitted. Currently, key parties seem divided on whether there needs to be any clarification by court rule or statute. Some believe the roles that a GAL, CASA, and child's attorney have in a jury trial, and their level of participation in the trial, is better left to the court's discretion, to be decided on a case-by-case basis. Others feel these roles need to be better defined, so jurors can have a clear understanding of why these people are involved in a case, and what the differences are between them. Others feel there is a broader need to clarify the roles of GALs and CASA volunteers in all dependency matters.

Finding #19: More specialized training is still needed for key parties involved in termination trials (jury and bench).

Interview perspectives

The first-year analysis recommended that specialized training opportunities be made available for key parties involved in both types of termination trials. At this time, all current interviewees acknowledged they have received some training with respect to TPR jury trials. There is, however, a sense that the attorneys and CPS case managers involved in these trials still need more training. As noted

⁴⁴ Children's Action Alliance (pg. 23).

earlier, many of the attorneys for parents or children, and assistant attorneys general, are inexperienced when it comes to trying cases before juries. They may still require additional training in this area. In addition, it was reported CPS case managers need more specialized training in how to testify before a jury, as do the experts who contract with CPS. As for judges, a number of interview participants conveyed that judges who are familiar with presiding over other types of jury trials do not have difficulties presiding over TPR jury trials.

Finding #20: Overall, there appear to be mixed opinions regarding whether or not parents should continue to have the right to request a jury trial when the state initiates a motion or petition to terminate parental rights.

Interview perspectives

Several interviewees felt very strongly that parents should continue to have the right to a jury trial in TPR cases. They contend when parents face losing the right to their child, parents should be given the same due process rights the law gives to individuals accused of committing crimes. At a very minimum, they believe parents should be given the same due process rights as individuals litigating matters with much less at stake (e.g. car accidents etc.).

In contrast, others we spoke with expressed strong beliefs that justice is not served by having jury trials in TPR cases. They claim one of the reasons this legislation was enacted is because there is a perception that judges are not fair and impartial in TPR cases - a contention they feel is untrue. Those who oppose continuing the parental right to request a TPR jury trial believe the legislation has shifted the focus of child welfare cases away from abused and neglected children. They feel that, because of this legislation, permanency for children is being delayed and the best practice principles in child welfare cases, as outlined by the National Council of Juvenile and Family Court Judges,⁴⁵ are being eroded.

And then there are those key parties who continue to struggle with the jury trial issue. On the one hand, these individuals believe parents should be afforded the right to a jury trial in TPR cases, but on the other hand, they perceive it to be causing delays in permanency for abused and neglected children. They emphasized the need to find a way to reconcile this situation so TPR jury trials can take place without delaying permanency for children.

⁴⁵ National Council of Juvenile and Family Court Judges. (2000) *Adoption and Permanency Guidelines: Improving Court Practice in Child Abuse and Neglect Cases*. Reno, Nevada. (Page 5) The purpose of the *Adoption and Permanency Guidelines* is "to set forth the essential elements of best practice for the court processes that lead to a permanent home for children who cannot be reunified with their families."

Conclusions

One of the more surprising findings of this second-year look at jury trials is the fact that jury trial requests have not increased in Arizona despite a sharp rise in TPR motions/petitions over the past three fiscal years. Judges and attorneys interviewed for this paper offered a number of possible reasons for this initial no-growth phenomenon. However, the lack of an increase in jury trial requests should not be construed to mean increases could not occur in the future or that the right of parents to request jury trials in TPR matters has not had a significant impact. It certainly has and this update provides a number of important examples.

Parental substance abuse, mental illness, and criminal justice system involvement continue to be important factors that may sway cases toward jury trials. Preliminary trial outcome data for completed jury and bench trials indicate that both are likely to result in the termination of parental rights. Similar to the first-year report, the second year shows that, in the relatively small number of cases where juries or judges decided not to terminate parental rights, children were rarely immediately returned to their parents care.

TPR bench trials continue to be much more likely to be completed than jury trials with 66 percent of all bench trials requested or set being completed versus only 14 percent of jury trial requests resulting in actual completed trials (to verdict). A substantial number of jury trials in Maricopa and Pima Counties are vacated the day before or the day of trial. In the two urban courts, completed jury trials, infrequent as they may be, continue to take less time than completed bench trials (in calendar days) from the final permanency hearing to jury verdict or judicial ruling. As in the first year, congested juvenile court calendars and scheduling practices in the urban areas appear to be the biggest contributors to this finding. The reverse is true in rural courts where judges and assistant attorneys general reported that bench trials are completed in shorter time frames than jury trials.

Direct costs associated with jury trials (including juror-related costs and the costs for court appointed counsel for parents or children) appear to be substantially higher than those for bench trials. In Pima County alone, court appointed counsel-related costs were 76 percent higher in jury trial cases (per case) than bench trial cases during this two-year period.

Higher workload demands for attorneys, CPS case managers, and others involved in jury trials were reconfirmed in this follow up analysis while dependency petition filings continued to increase statewide. Almost all TPR bench and jury trials resulting in termination continue to be appealed and

these appeals take substantial time to resolve. And, in the two urban courts, a substantial number of permanency hearings are being rescheduled which may reflect the indirect impact of jury trial cases.

Overall, there are mixed opinions among judges and assistant attorneys general regarding whether or not parents should continue to have the right to request a jury trial when the state initiates a motion or petition to terminate parental rights. While this follow-up assessment provides at least some additional information that was not available during the first-year analysis, there is a need for more careful tracking and evaluation over the next year and beyond, if the right to a jury trial continues after the December 2006 sunset date.

Summary of Key Findings

This report is intended to provide a second-year update on the status of jury trials in termination of parental rights (TPR) proceedings in Arizona. When possible, TPR jury trial data and outcomes are compared to TPR bench trials. The report contains 20 key findings derived from available data and/or interviews with judges and assistant attorneys general who were involved in completed jury trials during the December 18, 2003 through December 3, 2005 period. These findings should still be considered preliminary given the relatively young history of TPR jury trials in the state.

Finding #1: *Termination filings (motions and petitions) have increased dramatically (73 percent) in Arizona over the past three fiscal years.*

Finding #2: *Despite the sharp rise in termination filings, the total number of TPR jury trial requests did not significantly increase from the first to second year in which parents could request jury trials. In counties that have received 10 or more jury trial requests over the past two years, only Maricopa County experienced an increase in requests from the first to second year (an increase of 13 percent).*

Finding #3: *Certain parental and/or case characteristics are more likely to result in jury trial requests. These include chronic substance abuse by parents, parental mental illness, "time in care" cases where children have been in out of home placement for extended periods, parental involvement in the criminal justice system, and other factors.*

Finding #4: *Through December 3, 2005, a total of 34 TPR jury trials were completed to verdict compared to 336 TPR bench trials.*

Finding #5: *The vast majority of both TPR jury trials and bench trials completed during the two-year period resulted in termination on all or some of the children listed in TPR motions/petitions. TPR jury and bench trials both seem likely to result in the termination of parental rights.*

Finding #6: *Many requested jury trials are never held. The vast majority of jury trial requests (86 percent) have not resulted in completed jury trials.*

Finding #7: *In contrast to jury trial request cases, two-thirds (66%) of TPR bench trials requested or set during this period resulted in completed bench trials.*

Finding #8: *Only 57 percent of TPR jury trial cases in Maricopa County for which potential jurors were summoned to court actually resulted in completed jury trials. This is far below the more typical 83*

percent jury trial completion rate reported for all other types of jury trials in Maricopa County. Data from Maricopa and Pima Counties also confirm that a substantial number of TPR jury trials are cancelled on the first day they are set to commence.

Finding #9: *In Pima County, through October 2005, TPR jury trials have taken an average of 113 days from the point of a child's permanency hearing to completion (or verdict), versus 148 days for TPR bench trials.*

Finding #10: *During the past two years, direct costs for TPR jury trials were substantially higher than direct costs for TPR bench trials. Specifically, \$19,581 was paid to jurors in Maricopa County and \$25,590.93 was paid to jurors in Pima County. Additionally, in Pima County, the average cost (\$11,771.46 per case) for court-appointed counsel (OCAC) in jury trials was substantially higher than the average OCAC cost (\$6,678.66 per case) for bench trials. This represents a cost difference of \$5,092.80 (76 percent higher) per jury trial case in Pima County. Counties bear 100 percent of these additional costs.*

Finding #11: *When a jury or judge rules against termination, it is unlikely that the child's placement will immediately change.*

Finding #12: *Unlike jury trials, bench trials in the two urban courts are not held on consecutive days. This segmented scheduling practice, plus the time taken by some judges to construct detailed written findings and rulings, and the likelihood that they will take these matters under advisement, all contribute to the extra time it takes to reach final disposition in bench trials. In contrast, in the three rural counties, bench trials take less time to complete than jury trials.*

Finding #13: *Jury trials can have adverse effects on court calendars whether or not they occur.*

Finding #14: *While jury trials are supposed to take priority over other hearings and case management activities, it has been difficult in Maricopa County to hold jury trials within 90 days of the permanency hearing (as required by Arizona court rule).*

Finding #15: *Jury trials continue to pose substantially higher workload demands than bench trials for most key parties.*

Finding #16: *The vast majority of bench and jury trials are appealed but jury trials have more elements that can lead to mistrials.*

Finding #17: *The two urban courts are experiencing delays in permanency hearings that may reflect the indirect effects of jury trials.*

Finding #18: *There have been no changes in court rules or statutes to clarify the roles of Guardians Ad Litem, Court Appointed Special Advocates, or children's attorneys at jury trials since the first year review of jury trials was completed.*

Finding #19: *More specialized training is still needed for key parties involved in termination trials (jury and bench).*

Finding #20: *Overall, there appear to be mixed opinions regarding whether or not parents should continue to have the right to request a jury trial when the state initiates a motion or petition to terminate parental rights.*