



# Arizona Court of Appeals Division One

**CourTools FY2012**



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## CourTools: A <sup>ii</sup>roduction

In June 2008, the Arizona Supreme Court established the Appellate CourTools Committee to evaluate and recommend measures by which Arizona's appellate courts can track and improve performance using a methodology developed by the National Center for State Courts. By tracking the life of appeals from initiation until resolution, Arizona's appellate courts aim to improve their performance and provide transparency and accountability to the public. Only a handful of appellate courts across the country have undertaken this project, and Division One is committed to measuring and updating this information on an annual basis.

The Committee selected three performance measures for Arizona's appellate courts to use: (1) Time to Disposition; (2) Case Clearance; and (3) Age of Pending Caseload.<sup>1</sup> An explanation of these measures and their results follow.

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<sup>1</sup> In Fiscal Years 2009 and 2011, the Committee also used an anonymous biennial Appellate Bar and Trial Bench Survey as a performance measure. We anticipate repeating that survey in 2013.

## Time to Disposition

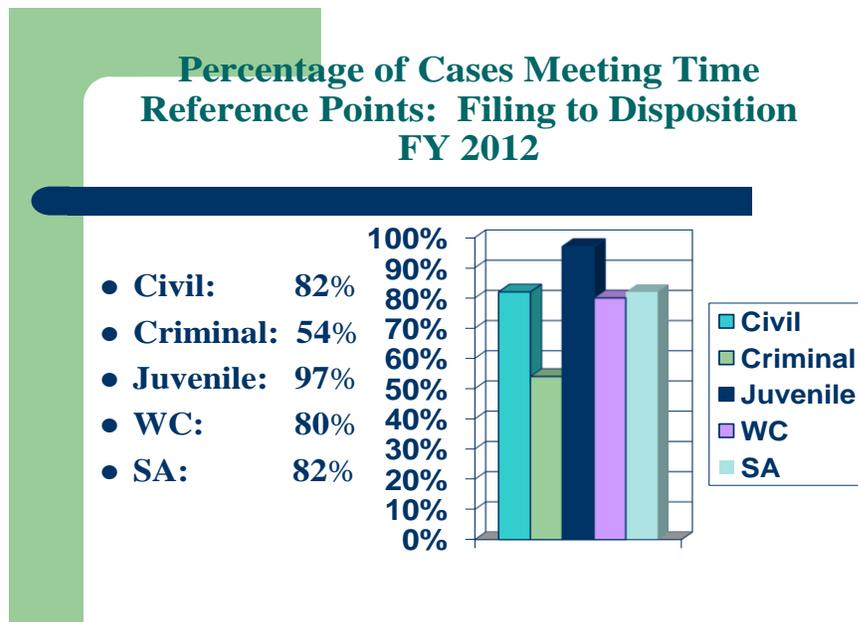
**Time to Disposition** measures the percentage of cases that were decided by a selected time reference point for the court's primary case types (civil, criminal, juvenile, special actions, and workers' compensation cases) during the court's **fiscal year** (July 1 – June 30). The purpose of this assessment is to measure stages of appeals against the same fixed points in successive years. For purposes of reference points, the court selected periods of time in which approximately 75% of its cases in the various case types and stages were decided in the years prior to Fiscal Year ("FY") 2009. Commencing with FY 2010 and continuing with FY 2011 and FY 2012, we measured our results against our performance in FY 2009 with an eye toward determining the effects of changes in funding, personnel levels, the efficiency of record gathering, and the like.

## Filing-to-Disposition Measure

The court selected the following number of days as time reference points for resolving cases measured from the day an appeal or special action is initiated by a party to the day a case is decided:<sup>2</sup>

Civil:	400 days
Criminal:	375 days
Juvenile:	275 days
Special Actions (“SA”):	25 days
Workers’ Compensation (“WC”):	300 days

In FY 2012, the percentage of cases that met these reference points was as follows:



<sup>2</sup> This means, for example, that the reference point for civil appeals from initiation to decision is 400 days, for criminal appeals is 375 days, and so forth.

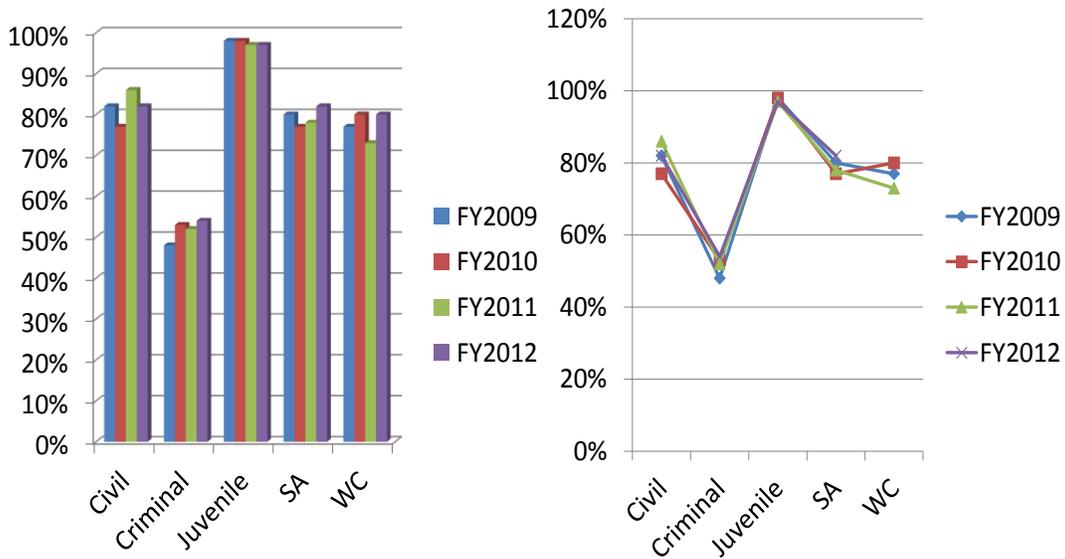
Compared to FY 2011, the court saw a slight increase in the time to disposition for civil cases, while the processing time for criminal cases was relatively identical. The percentage of criminal cases meeting this reference point goal remains a challenge, due in part to problems in having a complete record timely transmitted to the appellate court. The volume of criminal appeals, extended staff shortages and budgetary constraints in the trial court all seem to be factors in why court reporters continue to have difficulty completing and transmitting the official transcripts of criminal court proceedings in a timely fashion. The Court of Appeals closely tracks the preparation and filing deadlines for transcripts, and conducts “show cause” hearings every two weeks to try to reduce this delay. Our court will continue to work collaboratively with superior court personnel, including court reporter supervisors, to resolve delays in the filing of transcripts. The court has also taken steps to reduce continuances provided to counsel for the submission of appellate briefs; however, constitutional due process mandates applicable to criminal appeals appropriately affect the court’s ability to unduly restrict careful review and preparation of meaningful appellate briefs by counsel and, as necessary, by the defendant.

The percentage of workers’ compensation cases meeting the target goal increased by 7%, while the filing to disposition measure for special

actions continued to improve, this latest fiscal year by 4%. Juvenile cases are mandated by statute to have priority, and the percentage of these appeals meeting the time reference points in FY 2012 (97%) remained essentially identical to the percentages in the prior three years.

The following graphs illustrate the comparison between the fiscal years:

### Time from Filing to Disposition FY 2009 - 2012



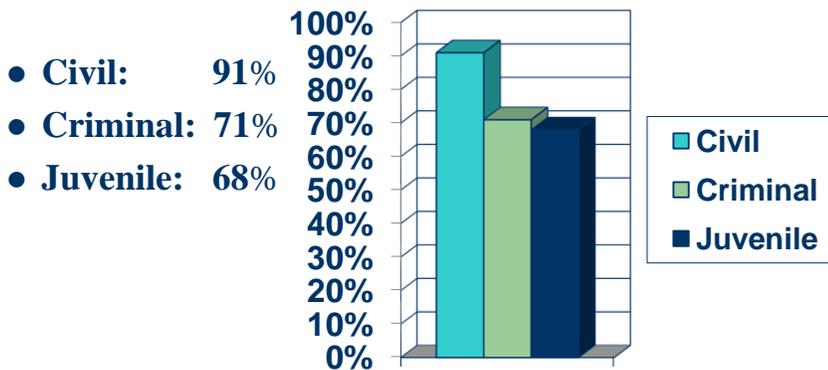
## Stage Measurements

In order to understand the pace of appeals through various points in case-processing, the court also set the following time reference points for the various stages of an appeal:

1. Target reference times, as measured by case type, from the time a party files a notice of appeal in the superior court to the time that court notifies Division One of the appeal (inapplicable to SA and WC cases):

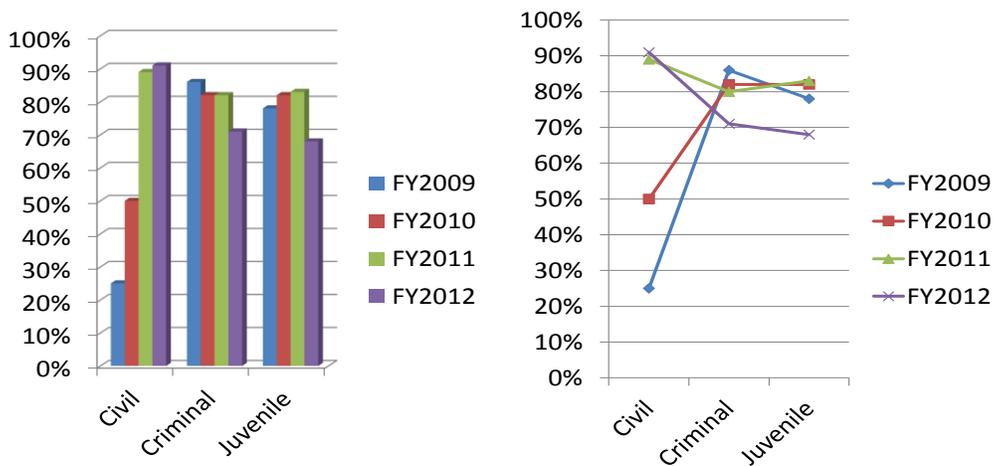
Civil:	40 days
Criminal:	8 days
Juvenile:	5 days

### Percentage of Cases Meeting Time Reference Points: Transmittal of Notice of Appeal FY 2012



Compared to FY 2011, this beginning phase of the appellate process (as initiated by the trial court) in FY 2012 saw continued improvement in civil appeals meeting the target reference point. The initial phases of both criminal and juvenile appeals were extended in FY 2012 as compared to prior years, and we will continue to work with superior court staff concerning the timely transmittal of the notice of appeal to our court. The numbers, however, are affected by the fact Maricopa County now transmits notices of appeal in juvenile cases twice a week, rather than on an as-filed basis, which makes it difficult, if not impossible, to meet the five day target point in many cases. The following graphs illustrate the comparison between the fiscal years:

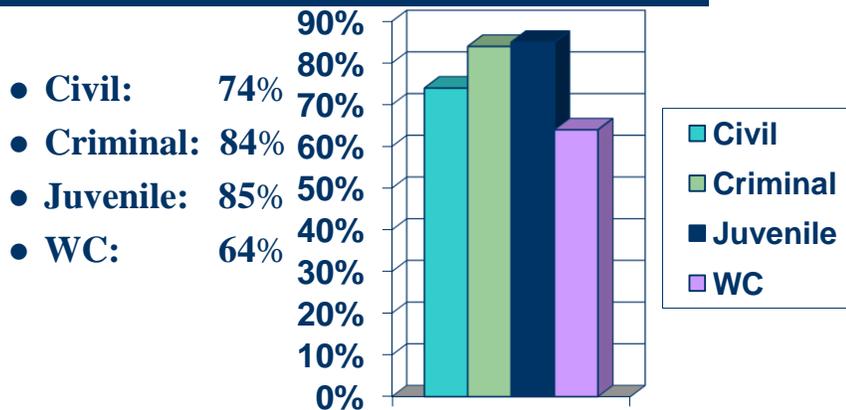
**Time from Filing Notice of Appeal to Delivery of Notice to Court of Appeals  
FY 2009 - 2012**



2. Target reference times, by case type, as measured from the day all records and briefs are filed in Division One (when the case is “at issue”) to the time the case is decided (inapplicable to special actions):

Civil:	225 days
Criminal:	150 days
Juvenile:	100 days
WC:	150 days

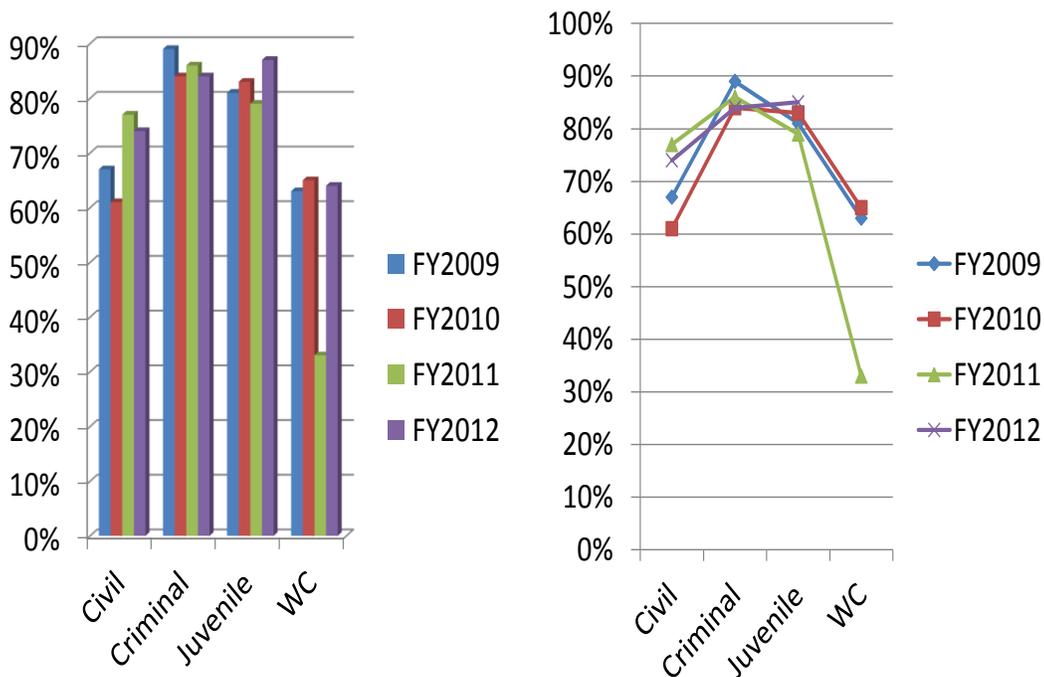
**Percentage of Cases Meeting Time Reference Points: At Issue to Decision  
FY 2012**



Compared to FY 2011, the percentage of both civil and criminal appeals meeting the target reference point remained relatively the same. The number of juvenile cases meeting the target reference point improved by 6%. As noted in last year’s report, the workers’ compensation statistic for FY 2011 was substantially lower as compared to FY 2010; however, that

number was skewed by the comparative few numbers of workers' compensation appeals that year, and the exceptionally aggressive disposition target goal established. In FY 2012, the percentage of workers' compensation appeals meeting the target reference point nearly doubled, returning to a more historically consistent performance level. The following graphs illustrate the comparison between the fiscal years:

### Time from Filing all Records and Briefs to Disposition FY 2009 - 2011

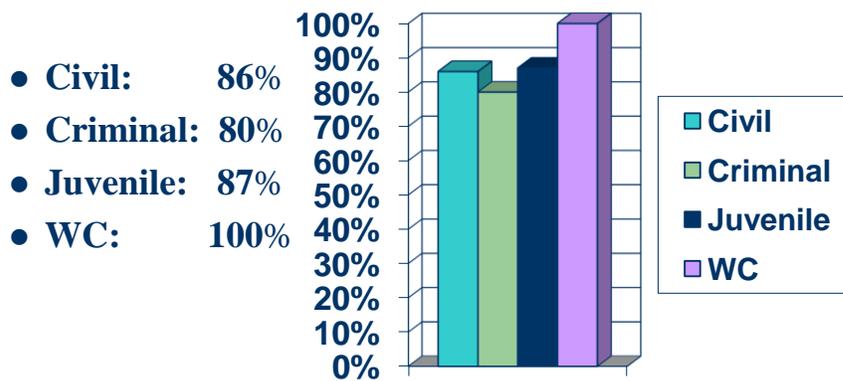


3. Target reference times, by case type, as measured from the day the panel of judges hears a case and takes it “under advisement” to the day the

panel issues its decision (Interlocutory appeals, otherwise known as “special actions” are not measured in this particular analysis):

Civil:	120 days
Criminal:	90 days
Juvenile:	40 days
WC:	100 days

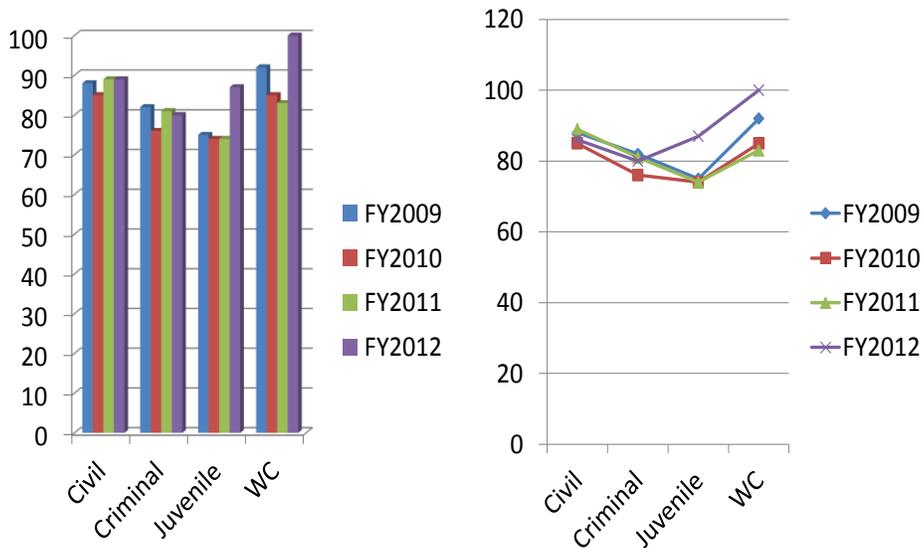
### Percentage of Cases Meeting Time Reference Points: Under Advisement to Decision FY 2012



Compared to FY 2011, the court overall maintained or improved its performance. The percentage of both civil and criminal cases meeting the reference point decreased slightly, but the percentages of both juvenile and workers’ compensation cases meeting the target reference point increased significantly. The number of juvenile cases meeting the target reference point increased by 13%, while the percentage of workers’ compensation

cases meeting the target reference point increased by 17%. The following graphs illustrate the comparison between the fiscal years:

### Time from Under Advisement to Decision FY 2009 - 2012



### Conclusion

Having statistics covering multiple fiscal years allows us to compare performance and draw some conclusions about whether Division One’s case processing has improved as compared to earlier years. This is particularly true when examining the data related to stages.

From an over-all standpoint, in all case types except criminal appeals, the court continues to see improvement in meeting or exceeding the filing-to-disposition benchmark reference points. This is particularly true once the

record from the lower court is complete, the briefs are filed by the parties and the case is set on a calendar for consideration. Despite budget cuts that were put in place some years ago, the judges and court staff through creative use of technology have been able to work more efficiently, and remain committed to reducing the time to appellate disposition in all case types.

As previously noted, however, only 54% of criminal appeals met the filing-to-disposition time reference point. At the same time, however, a substantial number of criminal appeals met or exceeded the reference points for the measured stages. Indeed, once all records and briefs in criminal appeals were filed in the court, 84% of the cases in FY 2012 met the given time reference point from that point until disposition by a panel of judges. It is evident that these appeals are being “delayed” in a stage not specifically measured by CourTools: The time period starting from the date in which the appeal is initiated to the date the superior court record and transcripts are complete and transmitted, and all briefs are filed by the parties.

Division One has been aware of this statistical anomaly for some time and has been working with the superior courts and their court reporters to expedite completion of the record and, most particularly, transmission of hearing and trial transcripts. We have also changed our practices regarding granting continuances of dates for filing briefs and have reduced the number

of continuances (and the length of continuances) granted. As noted above, the court holds “show cause” hearings at least every two weeks to assist in expediting the filing of transcripts and briefs.

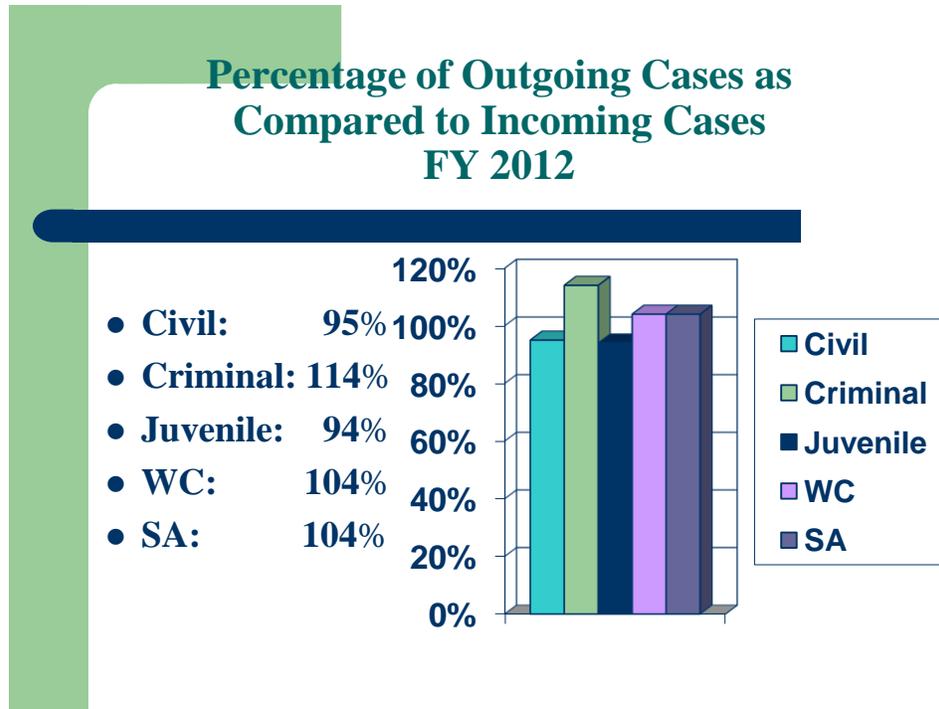
An additional factor affecting criminal appeals is that, in many instances, the lawyer appointed to represent the defendant on appeal is not the same lawyer who represented the defendant in the trial proceedings. Unless privately retained, new counsel must go through a court-appointment process. The newly-appointed defense lawyer is ethically required to carefully review all of the pre-trial and trial proceedings, and determine whether there are any arguable questions of law that are not frivolous. This painstaking process often causes the lawyer to ask for additional trial court transcripts and for additional time to complete such review. If there are such arguable questions of law, those discrete issues are identified and briefed. If counsel concludes there are no arguable questions of law that in his or her view are not frivolous, a notice is filed with the court certifying that conclusion, and asking the appellate court to review the entire record for fundamental error. State appellate courts are obligated to conduct such time-consuming review pursuant to the mandate of the United States Supreme Court.

Additionally, once counsel files the certification as described above, the defendant is entitled to disagree with the lawyer's assessment, and submit his or her own supplemental brief. Finally, in relatively rare instances, as a result of the court's own independent review of the record for fundamental error, the court may identify an issue and order the parties to submit supplemental briefing. In short, the constitutionally-mandated due process requirements for criminal appeals may, in some cases, extend the time until the appeal is considered "at issue" for up to two years.

### Case Clearance

**Case Clearance** measures the number of decided cases in a fiscal year as a percentage of the number of new cases filed that year. The point of the measurement is to assess how efficiently the court is resolving older cases as it accepts and processes newly filed appeals. Our goal is to have a 100% clearance rate, which means the court resolves at least the same number of cases as the number newly filed that year; in that fashion, the danger of a growing backlog of cases -- particularly in an era of budget challenges -- is minimized.

In FY 2012, Division One achieved the following case clearance rates:

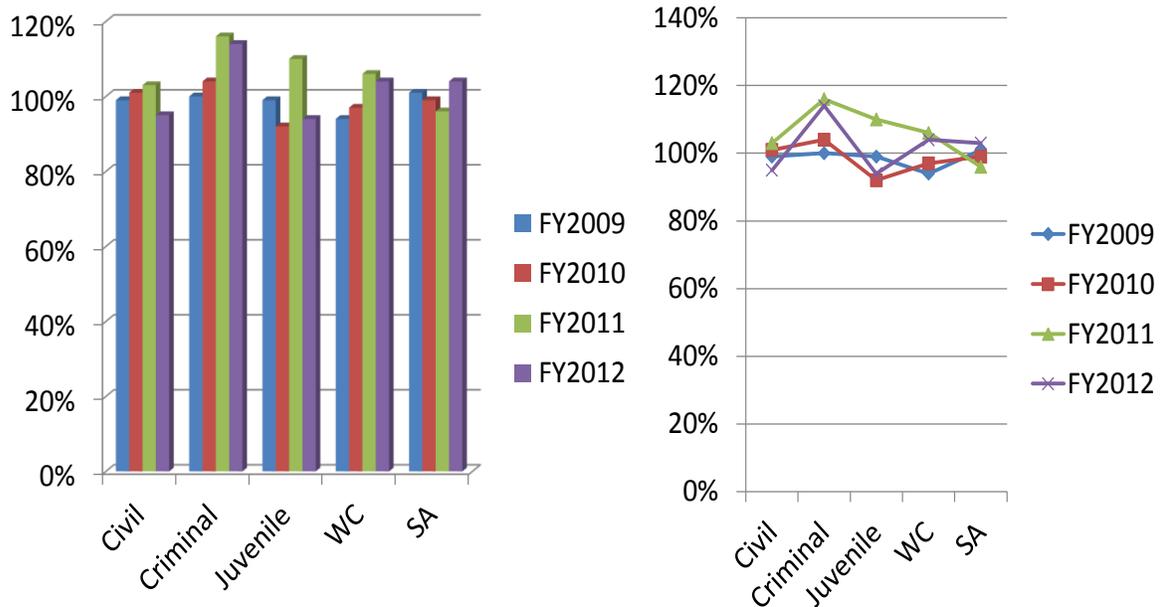


Overall, the blended case clearance rate for all case types in FY 2012 was 102%. By individual case type, compared with FY 2011, the court maintained or improved its case clearance rate in FY 2012 for criminal, workers' compensation and special action cases, but fell behind slightly in clearing civil and juvenile cases. Our preliminary analysis indicates that the increasing complexity of some civil filings is one potential explanation for the clearance rate on civil cases falling slightly below the 100 % mark. On a calendar basis analysis, the clearance rate for juvenile cases increased to

96%. These appeals have priority by statute, and we will continue to monitor and resolve them on an expedited basis.

The following charts show the comparison between FY 2012 and the prior three fiscal years:

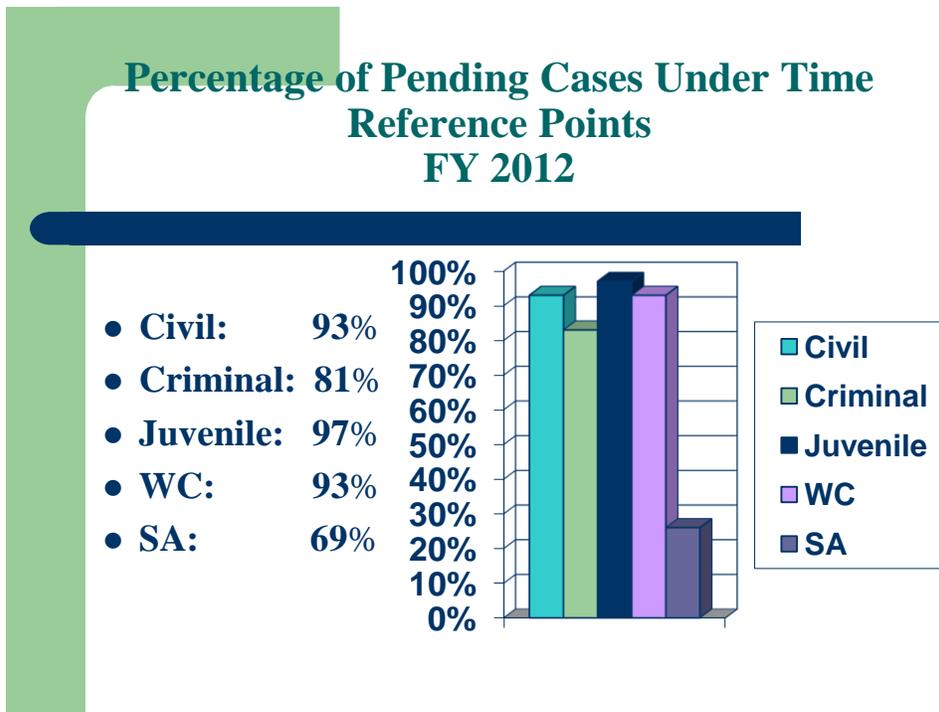
**Percentage of Cases Resolved as Compared to Incoming Cases  
FY 2009 - 2012**



## Age of Pending Caseload

This measurement is intended to provide information about the age of Division One's complement of pending but not yet decided cases. Specifically, the measurement calculates the percentage of cases pending at the end of a fiscal year that had not reached the time reference points identified for the Time to Disposition Measure described above.

The percentage of all cases pending at the end of FY2012 that had not reached the time reference points is as follows:

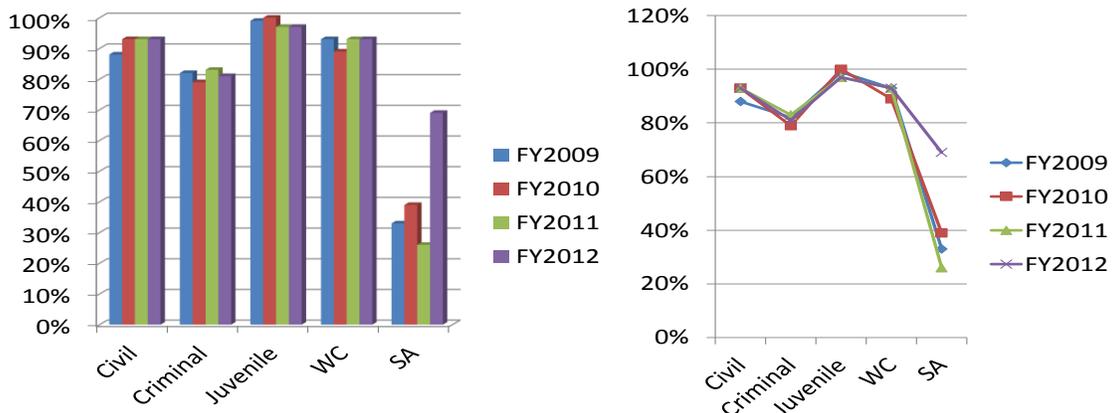


The Age of Pending Caseload measurement shows that at the end of FY 2012, Division One's pending cases were relatively new, as most had not yet reached their time reference points. For example, 97% of the pending

juvenile cases had not yet reached their time reference point. Although 69% of the special actions pending at the end of FY 2012 had not yet met their time reference point, this result does not demonstrate that Division One’s pending special actions were particularly aged because only 56 special actions remained pending at the end of FY 2012. The statistics indicate that the court considered and resolved 313 special actions that year and, indeed, 82% of all special actions met the filing-to-disposition reference point established for FY 2012 (an increase of 4% over the prior fiscal year).

On the whole, Division One’s age of pending cases remained substantially the same at the end of FY 2012 as compared with the end of FY 2011, as depicted in the following graphs:

**Percentage of Pending Cases Under Time Reference Points  
FY 2009 - 2012**



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