

THE LONG ROAD HOME

A Study of Children Stranded in New York City Foster Care

NOVEMBER 2009

CHILDREN'S RIGHTS

CHAPTER 9:

LEGAL PROCEEDINGS IN FAMILY COURT

HIGHLIGHTS: LEGAL PROCEEDINGS IN FAMILY COURT

- **The Court's untenable caseload has been repeatedly documented by various entities, including the Court itself, for almost a decade, yet the number of judges has not been increased since 1991.** As of May 2009, the 26 judges in the Family Court Child Protective Specialty had an average caseload of 724 children and the 19.2 referees had an average caseload of 772 children. Eleven judges and seven referees had more than 800 children on their caseloads and three judges and one referee had more than 1000 children on their caseloads.

- **The length of time between children's entry into foster care and the Court's completion of Fact-Finding and Disposition was extremely long for many children.** The mean length of time from remand to disposition was 14 months; the median was 11 months.

- **More than half of children experienced delayed Permanency Hearings.** Fifty-five percent of children had one or more Permanency Hearings that were not completed within 30 days as required (during a two year period). Almost half (48%) of the delayed hearings were not completed timely because the Permanency Hearing Reports were not submitted timely by the foster care agencies, 20% because the Permanency Hearing Report did not sufficiently address the issues, 26% due to insufficient court time, and 24% because the provider agency caseworker was not present.

- **"Reasonable efforts" findings were made at virtually all Permanency Hearings, calling into question the threshold used to make these determinations.**

- **Termination of parental rights proceedings were extremely delayed for most children.**
  - 69% of children in the sample (who were not already legally free) did not have TPR petitions filed on their behalf. In many cases, the documented "compelling reasons" not to file did not appear to meet the letter or spirit of ACS' policy guidance, and, in some cases, no reason was documented.
  - The mean and median lengths of time from entry into foster care to filing the TPR petition regarding at least one parent were 3.2 and 2.5 years, respectively.
  - New York State regulations require that action be taken to legally free children within 30 days of the establishment of an Adoption goal. However, 59% of children did not have a TPR filed against either parent within 30 days.
  - The mean length of time from establishment of the Adoption goal to becoming legally free for adoption was 2.4 years; the median was 2.1 years. New York State regulations require that children "must be freed within 12 months after the establishment of the permanency planning goal of adoption," however, 77% of children were not legally free within that period of time.
  - The mean and median lengths of time from filing the first TPR petition to the date the child became legally free were 2.4 and 1.9 years, respectively. In addition, for more than a third of children who were legally free (34%), this process took more than two years to complete.
  - The mean length of time from the date children entered foster care until they became legally free was 5.4 years; the median was 4.8 years.
  - Given that many children in the study sample entered foster care a number of years ago, analyses were conducted to determine if the timeliness of TPR processes has changed over time. Although many of the more recent cases still had long delays in filing TPR petitions and completing TPR proceedings, there has been some improvement over time.

- **Stakeholders who participated in interviews and focus groups expressed concerns about the following:**
  - The negative impact of large judge and referee caseloads on permanency outcomes for children.
  - The Court's failure to impose sanctions when its orders are not followed by ACS and the foster care agencies.
  - The Court giving parents repeated opportunities over long periods of time to participate in services.
  - Poor quality casework, including the lack of assessments of progress, which can hamper the Court's ability to make timely decisions.
  - The failure of the parties to take aggressive legal action to seek relief from the Court and try to move cases through the system more quickly.

CHAPTER 9: LEGAL PROCEEDINGS IN FAMILY COURT

The Family Court plays an extremely important role in the permanency process for children in foster care. Based on the information that the parties in child walfare cases should provide, judges and referees must make critical decisions throughout a child and family's experience in the child welfare system, including determining the need for the child's removal from home; determining whether or not the parent(s) abused or neglected the child; regularly reviewing the status of children in foster care; ordering the services that are needed to address the concerns that brought and are keeping the child in foster care; and ensuring that each child achieves permanency either by safely returning home or through another means such as adoption or legal guardianship.

In New York City, each of the five counties has a separate Family Court, which is responsible for overseeing the cases of children in foster care, as well as many other types of cases, including custody and visitation, juvenile delinquency, and domestic violence cases.[174]

In December 2005, in an effort to improve permanency outcomes for children in foster care, the so-called "Permanency Law" was enacted in New York State. These new and revised laws include the requirement that two Permanency Hearings be held per year for each child in foster care (previously, only one hearing per year was held). The first Permanency Hearing must be held eight months after the court determines that the child must be removed from home and placed in foster care, and subsequent Permanency Hearings must be held every six months. The purpose of Permanency Hearings is to monitor a child's safety and well-being, the family's progress, and the efforts being made to either safely return the child home or find another permanent home for the child. The Court may also approve a child's discharge from foster care during a Permanency Hearing. In addition, the new law gives the Court continuing jurisdiction over children's cases until they are concluded. However, the law was passed with no additional resources and these additional hearings have been added to already overcrowded Family Court calendars.

This chapter provides the study findings pertaining to the operations and processes of the Family Court. Data were collected in this study regarding key Family Court processes for children in the study sample and their parents. Information about court issues was also gathered from interviews and focus groups conducted with parents, foster parents, attorneys (for children, parents, and the Administration for Children's Services [ACS]), and judges and referees.

Section I provides a general overview of challenges in the legal proceedings in Family Court pertaining to children in foster care.

Section II presents the study findings regarding factors that affect the quality of legal and Family Court practice, including caseloads and other resource and support issues for judges, referees, and the attorneys who represent children, parents, and ACS in the Family Court.

Section III presents the study findings regarding the type of legal authority for children's placement in foster care, the timeliness of the Fact-Finding and Disposition processes, and court review of voluntary placements.

174 This report concerns only child protection and foster care-related matters.

Section IV provides the study findings regarding Permanency Hearings, including court determinations regarding whether or not reasonable efforts to achieve permanency have been made, timeliness of Permanency Hearings, and reasons these hearings were not completed timely.

Section V provides the study findings regarding the timeliness of termination of parental rights (TPR) processes and other related issues.[175]

Section VI provides the study findings regarding cases referred for mediation.

I. OVERVIEW OF CHALLENGES IN LEGAL PROCEEDINGS

In 2000, the Special Child Welfare Advisory Panel, established as part of the *Marisol v. Giuliani* class-action lawsuit settlement, reported that New York City Family Courts were "characterized by crowded dockets, long adjournments and not enough attorneys to represent parents and children. With rare exceptions, hearings lack sufficient docket time for a true examination of the issues. A family that becomes the subject of an abuse or neglect proceeding in these courts can expect to return to court repeatedly and to remain involved in litigation for many months, and sometimes for years."[176]

In 2002, the Citizens Committee for Children released a report that found that the shortage of resources for the Family Court and attorneys representing all of the parties was preventing compliance with the timelines required by the federal Adoption and Safe Families Act (ASFA) and leading to delays in achieving permanency for children in foster care.[177]

In 2005, the Council of Family and Child Caring Agencies (COFCCA) released the results of a study it conducted of caseworker time spent in court.[178] Data were collected from seven foster care agencies regarding the time caseworkers spent in court pertaining to 610 Family Court visits. Workers spent approximately 1700 hours in Family Court for these 610 visits; only 300 of these hours (17.6%) were spent in actual hearings. Workers waited an average of 2.3 hours for hearings. In 16% of cases, workers waited more than four hours; in 13% of cases, workers waited for more than six hours. Almost 28% of cases were adjourned or rescheduled. The average hearing lasted 32 minutes.

In 2007, the Honorable Judith Kaye's State of the Judiciary report said that the Family Court is "desperately short of judicial resources" and called upon the legislature to add 39 more Family Court judges statewide.[179] Also in 2007, the New York City Bar Association's Council on Children issued a report calling the Permanency Law an unfunded mandate whose goals cannot be reached without additional resources.[180] In that same year, Children's Rights issued a report that identified the same problems in the Family Court.[181]

175 It should be noted that this study did not collect data regarding finalizing adoptions. The purpose of this study was to examine possible barriers to permanency for children who are still in foster care. Further, once a child is adopted, the case record is sealed.

176 Special Child Welfare Advisory Panel. (2000). *Advisory Report on Front Line and Supervisory Practice.* New York, NY: Special Child Welfare Advisory Panel, p. 44.

177 Citizens' Committee for Children. (2002). *The Adoption and Safe Families Act (ASFA) and the Family Court.* New York, NY: Citizens' Committee for Children.

178 Council of Family and Child Caring Agencies. (2005). *Time at Family Court.* New York, NY: COFCCA

179 Kaye, J. (2008). *The State of the Judiciary 2008, A Court System for the 21st Century.* Albany, NY: New York State Unified Court System.

180 New York City Bar Association's Council on Children. (2007). *The Permanency Law of 2005: An Unfunded Mandate—Critical Resource Needs for New York City's Children and Families*. New York, NY: New York City Bar Association's Council on Children.

181 Children's Rights. (2007). *At the Crossroads: Better Infrastructure, Too Few Results—A Decade of Child Welfare Reform in New York*

In the fall of 2008, planning began for a new court improvement effort known as the New York City Child Protective Initiative. According to the New York City Family Court, the initiative began to roll out various pieces in July 2009. The initiative is now overseen by the newly appointed Administrative Judge of the New York City Family Court, the Honorable Edwina Richardson-Mendelson. The initiative's stated goals are:

- "Earlier permanency for children
  - Faster time to disposition
  - Fact-finding completed well before permanency hearing
  - Faster resolution of termination of parental rights proceedings
- Every appearance meaningful
- Fewer and shorter adjournments
- Everyone appearing on time, prepared to go forward
- Continuous trials
- Expanded participation of children and youth in permanency hearings."[182]

Some stakeholders who participated in interviews or focus groups for this study acknowledged that some incremental improvements have been made in the Family Court in recent years. In addition, some advocates have said that the recent "shake-up" in judicial assignments announced during the summer of 2009 by Judge Richardson-Mendelson, was a positive sign of changes to come.

However, in the meantime, the quantitative data regarding the timeliness of key court processes and voluminous stakeholder feedback collected for this study yielded the same concerning findings as have been previously identified, including congested court calendars, long waits outside courtrooms before cases are called, and frequent and long adjournments.

Virtually all stakeholders indicated that Family Court caseloads are the major factor underlying many of the identified problems in Family Court. (Resource issues are described in Section II of this chapter.) Judges and referees themselves are extremely concerned about their caseloads, related court delays, and their effect on children's and families' lives. As one judge put it,

> *"I said 'I'm sorry, I can't hear your case today,' which I have to tell you, is the worst part of my job. I feel nauseous every time I have to tell [parents] that."*

However, in addition to resource issues, many stakeholders—parents, foster parents, attorneys, and judges and referees themselves—noted that the Court does not consistently use its full power to hold the parties in child welfare cases accountable for timely permanency outcomes for children and families. Children remain in foster care for years and the Court gives ACS and the foster care agencies repeated chances, and multiple hearing adjournments, to present evidence and/or provide necessary services to parents, even after they have been negligent in doing so. Stakeholders said that when the Court does issue orders, they often lack specificity, e.g., instead of ordering that X service must be provided by Y date, the order does not specify a date, which makes the order harder to enforce. Finally, by most accounts, the Court does not frequently or consistently use its power to impose sanctions when ACS and/or the foster care agencies have not complied with its orders.

City. New York, NY: Children's Rights. Available at http://www.childrensrights.org/policy-projects/new-york-city/

182 *New York City Child Protective Proceedings: Shared Action Goals and Steps* (undated). Provided to Children's Rights by the New York City Family Court, August 2009.

Indeed, as described in detail in Section IV of this chapter, the Court virtually always makes "reasonable efforts" findings, meaning that ACS and the foster care agencies have made reasonable efforts to achieve permanency for children in foster care. Reasonable efforts findings are required in order to receive federal funding for individual children in foster care. "No reasonable efforts" findings were made in only 1% of the hundreds of permanency hearings held for children in this study sample. This belies the long lengths of stay in foster care that these children and families were experiencing, as well as other data collected in this study regarding the varying intensity of service provision and the infrequency of caseworker contacts with children, parents, and resource parents.

Stakeholders also said that the Court gives parents repeated opportunities to participate in services toward the goal of family reunification, even after years of parents' inconsistent involvement in services and visits with their children. This practice may be reflected in the long lengths of time many children spend with unachieved Return to Parent (RTP) goals. As described in Chapter 1: Demographics, Case Opening, and Current Case Status, almost one-fifth of children in the study sample (who were not already legally free for adoption) had mothers and 37% of children had fathers whose whereabouts were unknown for part or all of the one-year review period. A common documented barrier to caseworker contacts with parents and parents' visits with their children was parents missing or canceling scheduled appointments or their whereabouts being unknown.

At the same time, stakeholders acknowledge that the Court's decision making can be hampered by poor quality casework by ACS and the foster care agencies. The Court depends on ACS and the foster care agencies to provide appropriate services to children and families and to make assessments about progress toward permanency in order to inform the Court's decision making. Judges and referees who participated in a focus group for this study expressed frustration with the quality of case practice and the fact that many caseworkers seem to see their role as only documenting parents' attendance at services rather than providing their clinical assessment of parents' progress to the Court, so that informed decisions can be made about permanency. As one judge and one ACS Family Court Legal Services attorney said,

> *"We're supposed to be a court and we take evidence and we hear witnesses and we're supposed to rule. ...If we were just doing that...we might actually do what we're supposed to be doing. The problem is that we're in the position of having to be social workers as well. So that takes time and energy and attention to a case...that we shouldn't be giving to cases...To do both, it's just impossible and it takes up so much, that's what takes up my time."*
>
> **Family Court Judge**

> *"The competency of the workers and oversight by their supervisors is often problematic and causes delays. Because of the poor supervisory oversight, the courts are monitoring more closely. There is a lack of trust by the courts that agencies are following up appropriately on cases."*
>
> **FCLS Attorney**

Thus, judges and referees may sometimes be maintaining Return to Parent goals for long periods of time due to their assessments that casework services provided to parents have been inadequate (although, as noted above, judges and referees rarely make "no reasonable efforts" findings).

In addition, judges and referees said that the parties infrequently make applications or motions to the Court for relief to address pressing issues.

Finally, some stakeholders expressed frustration that, short of the judicial reappointment process (which happens only every ten years) and processes for serious ethics violations, there is no viable complaint process for litigants when they have concerns about judges' or referees' conduct, for example, not spending enough time on the bench, failing to hold mandated hearings, and treating litigants poorly.

FAMILY COURT

"There's no teeth behind court orders. And so we get the Court to actually direct ACS to provide a service [but ACS does not comply with the order]. They don't sanction [ACS]... it's impossible to get them to sanction... More accountability for not doing things... in a reasonable amount of time, and [for] following court orders... would speed things up."

Attorney for Parents

"[The] agency wouldn't do IQ testing; [the] court ordered it, [the] agency took a long time to set it up."

JRP Attorney for Children

"Workers come to court and say we can't do XYZ unless we are court-ordered to do it. For example, they will say we need a court order to put preventive services in a home or to provide a homemaker. Someone at ACS is sending the message that costs have to be contained; therefore workers say they need to be court-ordered to provide the service so the agency/ACS has a 'defense' for ordering services."

FCLS Attorney

II. FACTORS THAT AFFECT THE QUALITY OF LEGAL AND FAMILY COURT PRACTICE

This section provides the study findings, and system-wide data where available, regarding caseloads and other resource issues for judges and referees and the attorneys who represent parties in foster care cases in Family Court.

A. JUDGE AND REFEREE CASELOADS

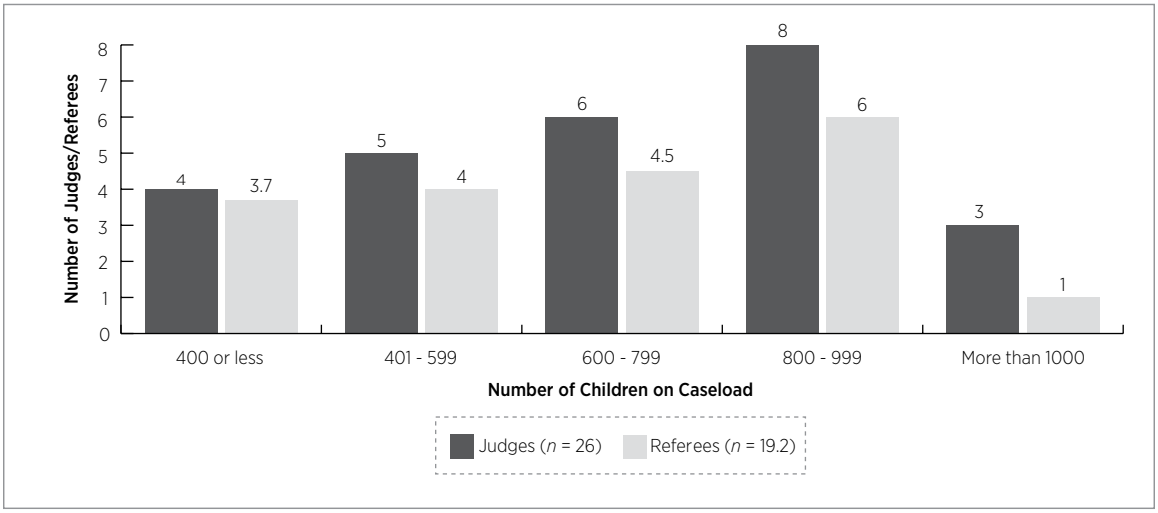
The caseloads of judges and referees in Family Court are a key factor in the Court's ability to carry out its obligations and move cases to permanency in a timely way. Family Court has been overburdened for many years. Since 1991, 47 judges have been assigned to New York City Family Court. Despite long-standing caseload concerns, the statutory doubling of the number of Permanency Hearings that went into effect in 2005, and a considerable increase in the number of abuse and neglect and voluntary placement petitions filed since 2006, the number of judges assigned to Family Court has not been increased. Additionally, only 26 of the 47 judges are assigned to the Child Protective Specialty of the New York City Family Court.

As of May 2009, the 26 judges in the Child Protective Specialty had an average caseload of 724 children and the 19.2 referees had an average caseload of 772 children. As shown in Figure 9.1, eleven judges and seven referees had more than 800 children on their caseloads and three judges and one referee had more than 1000 children on their caseloads.[183] As noted above, many of the judges, referees, caseworkers, and attorneys who participated in focus groups and interviews for this study reported that the judges and referees have far too many cases, which leads to frequent and lengthy adjournments and contributes to delayed permanency for many children and families.

183 Data provided to Children's Rights by the New York City Family Court, July 2, 2009.

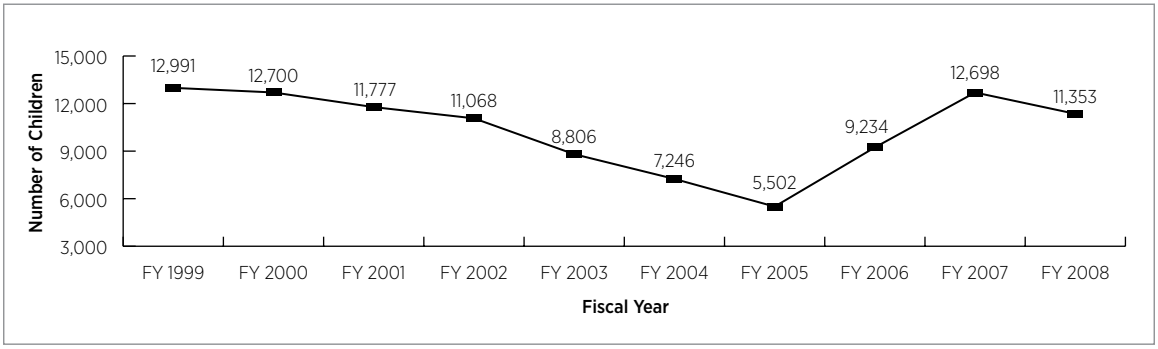
Increasing the number of judges requires action by the State Legislature. Indeed, there has been intense, although unsuccessful, advocacy during the last few years for more judges. Bills have been introduced and many groups, including the court system itself, continue to advocate for increasing the number of Family Court judges both in New York City and across the state.

Figure 9.1: Judge and Referee Caseloads as of May 19, 2009, by Number of Children[184]



For a snapshot of the child protective caseload trends in New York City Family Court, Figure 9.2 provides the number of Article 10 (abuse and neglect petitions) and Voluntary Placement petitions filed from FY 1999 through FY 2008.

Figure 9.2: Number of Children with Article 10 or Voluntary 358A Petitions Filed, by Fiscal Year[185]



184 Data provided to Children's Rights by the New York City Family Court, July 2, 2009.

185 New York City Administration for Children's Services. *ACS June 2000 Update* (2000). New York, NY: Office of Management and Research, p. 3 (Data for FYs 1999 and 2000). *ACS Update Annual Report 2005, Five Year Trend* (2007), p. 2 (Data for FYs 2001 – 2006). *ACS Update June 2008* (2008), p. 3 (Data for FYs 2007 and 2008). Each petition represents a single child.

IMPACT OF THE FAMILY COURT CASELOAD

"[There is] not enough court time for the case to proceed quickly." **JRP Attorney for Children**

"So maybe you have a teacher, maybe you have a caseworker, they testify, it takes two hours. The respondent testifies, it takes another hour or two. A half a day or a day for [the] case… instead it takes me two years to get that testimony." **Family Court Judge**

"Case adjournments during [the] adoption process prolong [the] length [of time children spend] in [the foster care] system." **Foster Care Caseworker**

"I couldn't get in touch with my worker because she was always in court. The agencies need to have someone separate to go to court, my worker is always in court and I could never reach her!" **Resource Parent**

"Parents give up. They give up. They get tired. They come to court, they sit there all day [just to hear the judge] say—this case is being adjourned." **Attorney for Parents**

"My suggestion is to prioritize the types of cases. Now obviously I'm talking about the placement cases. But I think that helping the judges handle everything, including the supervision of cases that involve educational neglect, the dirty home cases, mental illness cases. Those cases occupy a substantial part of the judge's time. So if there's any way to prioritize and make the non-kinship, domestic violence, the drug cases, the excessive corporal punishment, the sexual abuse, the physical abuse cases [a priority]. If the judges can reallocate their trial time or their calendars to accommodate those and… maybe… offload the supervision cases." **Family Court Judge**

B. LEGAL REPRESENTATION OF THE PARTIES IN FAMILY COURT

The following sections provide the study findings regarding resource issues pertaining to Family Court Legal Services (FCLS) attorneys, JRP Attorneys, and parents' attorneys.[186]

1. Family Court Legal Services Attorneys

As noted above, FCLS represents ACS and, by extension, the foster care provider agencies, on cases involving abuse and neglect allegations, voluntary placements, and Permanency Hearings. Children's Rights interviewed FCLS attorneys who were representing ACS in a sub-sample of the cases included in this study.[187]

a. FCLS Attorney Caseloads and Turnover

According to ACS, the average caseload for FCLS attorneys system-wide is 70 families.[188] The average caseload for the staff attorneys interviewed for this study was 82 families and the median was

186 Most data and other information in this section come from interviews that were conducted with FCLS attorneys and JRP attorneys and a focus group that was conducted with parents' attorneys. Certain individual pieces of information that were collected from interviewees were not collected from focus group participants. Thus the sections do not provide exactly the same information.

187 Interviewees included 17 staff attorneys and eight attorneys who were supervisors (but were representing ACS in cases involving children in the study sample). Three FCLS attorneys were each interviewed twice because, by chance, they were assigned to the cases of two children whose cases were selected for interviews. In the analyses of attorney caseload, experience, training, supervision, and access to resources, these attorneys' responses were included only once (see Appendix A: Methodology for details).

188 Data provided to Children's Rights by the Administration for Children's Services, June 18, 2009.

80 families.[189] It should be noted that average caseload statistics can mask the full extent of high caseloads. Indeed, five out of 17 (almost 30%) of the staff attorneys interviewed reported having 100 or more families on their caseload.

The American Bar Association's Standards Drafting Committee recommends a caseload of no more than 60 families for attorneys representing public child welfare agencies.[190]

Attorney turnover can lead to gaps in knowledge and court delays as newly assigned attorneys must take time to familiarize themselves with cases, interview clients and witnesses, and speak with professionals and family members. ACS reported a 21% turnover rate for FCLS attorneys in FY 2008.[191]

b. FCLS Attorneys' Experience and Training

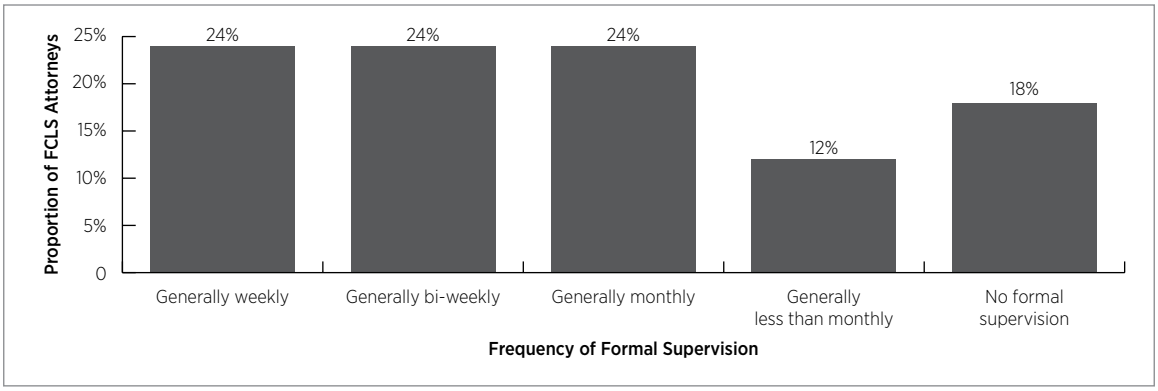
Thirty-six percent of the FCLS attorneys interviewed for this study had been an FCLS attorney for two years or less. Twenty-eight percent had more than 10 years of experience. The range of experience was six months to 23 years.[192]

All of the FCLS attorneys reported that they received in-service training during the last year. Reviews of the training were mixed. Although some FCLS attorneys found the trainings helpful, others noted that some of the trainings were not useful and did not focus enough on issues related to their daily practice.

c. FCLS Attorneys' Experience with Supervision

As shown in Figure 9.3, almost half (48%) of FCLS attorneys said they received formal supervision[193] weekly or bi-weekly; 12% reported receiving formal supervision less than monthly; and 18% reported that they did not receive formal supervision. Sixty-five percent of FCLS attorneys reported that their supervisors are "always" available for consultation. An additional 35% of FCLS attorneys reported that their supervisors are "usually" available. Most FCLS attorneys (88%) reported that the majority of time in supervision was spent discussing legal and/or clinical issues, as opposed to administrative issues.

Figure 9.3: Frequency of Supervision Provided to FCLS Attorneys (*n* = 17 attorneys)[194]



189 n = 17. FCLS attorney supervisors who were interviewed for this study were excluded from this analysis. Supervising attorneys typically have smaller caseloads than staff attorneys in order to carry out their supervisory functions.

190 American Bar Association. (2004). *Standards of Practice for Lawyers Representing Child Welfare Agencies*, p. 20. Retrieved September 9, 2009 from http://www.abanet.org/child/agency-standards.pdf

191 Data provided to Children's Rights by the Administration for Children's Services, June 18, 2009.

192 N = 25.

193 For the purpose of this study, "formal supervision" is defined as regularly scheduled, face-to-face meetings between the attorney and their supervisor.

194 FCLS attorney supervisors who were interviewed for this study were excluded from this analysis. Proportions do not total 100% due to rounding.

d. Resources for FCLS Attorneys

The availability of resources—support staff, adequate office space, and technology—can have a big impact on the ability of attorneys to fulfill their obligations. Many FCLS attorneys interviewed for this study reported the need for additional office space—noting many of their offices are crowded with coworkers and case files—as well as the need for additional support staff and laptops. FCLS attorneys also reported the need for additional paralegal support.

Figure 9.4 below summarizes the key resource issues identified by FCLS attorneys. It is notable that 88% said they never have access to a laptop; 40% said they "sometimes" or "never" have access to interpretation services; and 32% said they "sometimes" or "never" have access to private interview space.

Figure 9.4: Availability of Resources for FCLS Attorneys (*N* = 25, unless otherwise noted)[195]

	Always	Sometimes	Never
Adequate workspace	84%	8%	8%
Private interview space	68%	24%	8%
ACS laptop	8%	4%	88%
ACS cell phone	96%	0%	4%
ACS wireless device	96%	0%	4%
Interpretation services (*n* = 17)	58%	29%	11%
Clerical support	80%	20%	0%

2. JRP Attorneys for Children

The Legal Aid Society Juvenile Rights Practice (JRP) represents the majority of children in foster care.[196] Children's Rights interviewed a group of JRP attorneys who were representing a sub-sample of the children in the study.[197]

a. JRP Attorney Caseloads and Turnover

According to JRP, the average caseload for JRP attorneys for children is 163 children.[198] The New York State Office of Court Administration issued a new court rule effective April 2008 setting the maximum caseload of attorneys for children at 150.[199] The National Association of Counsel for Children (NACC) recommends caseloads of no more than 100 clients for attorneys representing children in abuse and neglect cases.[200] The reported turnover rate for JRP attorneys was 12% from June 1, 2008 to June 1, 2009.[201]

195 Proportions do not total 100% due to rounding.

196 Lawyers for Children also represents many children that have been abused and neglected or placed voluntarily in foster care by their parents. However, by design, all of the children in the study sample were represented by JRP.

197 Interviewees included 20 staff attorneys and three attorneys who were supervisors (but were representing children in the study sample). Three JRP attorneys were each interviewed twice because, by chance, they represented two children whose cases were selected for interviews. In the analyses of attorney experience, training, supervision, and access to resources, these attorneys' responses are included only once (see Appendix A: Methodology for details).

198 Data provided to Children's Rights by The Legal Aid Society, Juvenile Rights Practice, June 12, 2009.

199 N.Y. Comp. Codes R. & Regs. Tit. 22, § 127.5 (2009). The maximum caseload may be adjusted based on factors such as the level of activity required at different phases of a proceeding, the representation of multiple children in a case, and the availability and use of support staff.

200 Katner, D., McCarthy, P., Jr., Rollin, M., & Ventrell, M. (2001). *NACC Recommendations for Representation of Children in Abuse and Neglect Cases.* Denver, CO: National Association of Counsel for Children, p. 7.

201 Data provided to Children's Rights by The Legal Aid Society, Juvenile Rights Practice, July 31, 2009.

b. JRP Attorneys' Experience and Training

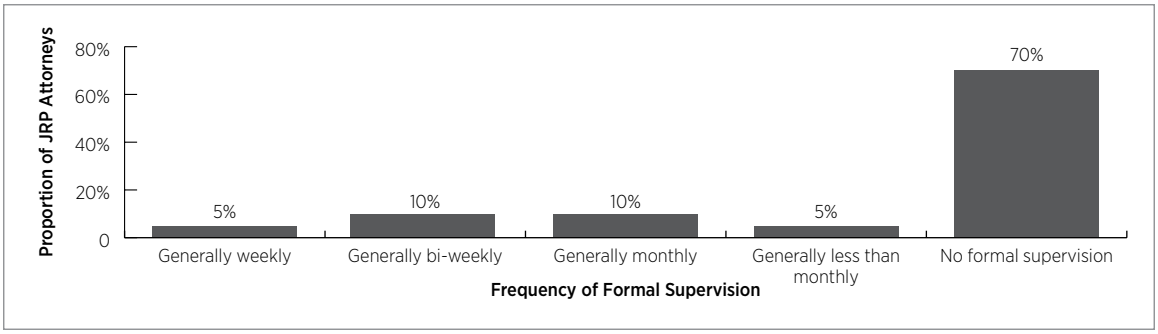
Seventeen percent of the 23 JRP attorneys interviewed had been a JRP attorney for two years or less. Fifty-seven percent had more than 10 years of experience. The range of experience was 1 to 33 years.

Virtually all (96%) JRP attorneys interviewed reported that they did receive in-service training; however, 30% of JRP attorneys stated that they did not receive training on how to approach youth's ambivalence or hostility toward adoption or to counsel youth on open adoption.[202]

c. JRP Attorneys Experience with Supervision

As shown in Figure 9.5 below, only 15% of JRP attorneys said they received formal supervision weekly or bi-weekly. However, the vast majority (95%) of JRP attorneys reported that their supervisors are "always" (50%) or "usually" (45%) available for consultation and indicated that supervision occurs on an as-needed basis. All (100%) of the JRP attorneys interviewed said that the majority of time in supervision was spent discussing legal and/or clinical issues, as opposed to administrative issues.

Figure 9.5: Frequency of Supervision Provided to JRP Attorneys (*n* = 20 attorneys)[203]



d. Resources for JRP Attorneys

Similar to FCLS attorneys, JRP attorneys interviewed for this study reported the need for additional office space—noting many of their offices are crowded with coworkers and case files—as well as the need for additional support staff. JRP attorneys reported the need for additional paralegal support and frequently stated that they need hand-held wireless devices or cell phones and additional social workers and clerical support.

Figure 9.6 below summarizes the key resource issues identified by JRP attorneys. It is notable that 87% of JRP attorneys said they "never" have access to a handheld wireless device; 78% said they "never" have access to a cell phone; 52% said they "sometimes" or "never" have access to private interview space; 39% said they "sometimes" or "never" have access to adequate workspace; and 37% said they "sometimes" or "never" have access to interpretation services.

202 *N* = 23.

203 JRP attorney supervisors who were interviewed for this study were excluded from this analysis.

Figure 9.6: Availability of Resources for JRP Attorneys (*N* = 23, unless otherwise noted)[204]

	Always	Sometimes	Never
Adequate workspace	61%	35%	4%
Private interview space	48%	48%	4%
JRP cell phone	9%	13%	78%
JRP wireless device	13%	0%	87%
Interpretation services (*n* = 22)	64%	32%	5%
Clerical support	57%	44%	0%

3. Attorneys for Parents

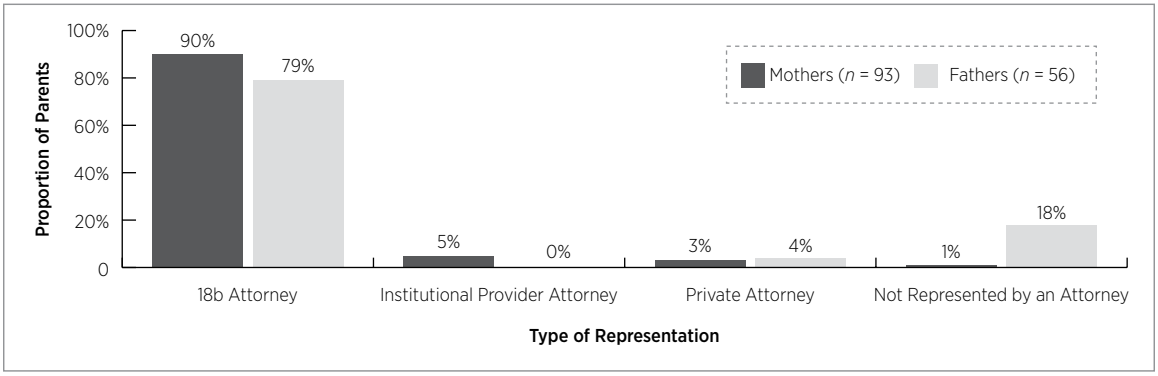
a. Type of Representation

Parents who cannot afford to hire an attorney can be represented by an attorney who is assigned by the court.[205] These court-appointed private attorneys—referred to as "assigned counsel" or "18b attorneys"—are typically solo practitioners and may also be assigned to represent children in Family Court. These attorneys must make an application in court in order to enlist the assistance of social workers and other professionals when needed.

Parents can also be represented by institutional providers, which are legal services organizations and university law clinics. In Manhattan, the Bronx, and Brooklyn, the institutional providers include the Center for Family Representation in Manhattan, Bronx Defenders, and the Brooklyn Family Defense Project—who have the largest contracts with the City to represent parents involved with the child welfare system. Institutional providers can offer training, supervision, and oversight of their attorneys as well as provide in-house support staff that may include social workers, paralegals, and parent advocates. Finally, a parent can hire a private attorney or may choose to represent him or herself.

As shown in Figure 9.7, most parents in this study were represented by assigned counsel (18b attorneys). (This was expected given that the large contracts with the three main institutional providers were implemented only two years ago, and the study sample criteria that all children were in foster care for at least two years as of September 30, 2008.)

Figure 9.7: Type of Legal Representation for Parents[206]



204 Proportions do not total 100% due to rounding.

205 N.Y. County Law §§ 722-722f (McKinney 2004).

206 Parents were excluded from this analysis if they were not a respondent on the case, unknown, whereabouts unknown (in some but not all circumstances), deported, or deceased or if the child was legally free as of September 30, 2008. Data were missing for four children as to their mothers and nine children as to their fathers. Proportions do not total 100% due to rounding.

Some parents who participated in focus groups for this study said that their attorneys do not return their phone calls and do not have or take enough time to meet with them before court. Parents' attorneys themselves identified the serious problem of not receiving the Permanency Hearing Report in time to review it with their clients prior to a hearing. (This is discussed in more detail in Chapter 4: Casework.)

It should be noted that Children's Rights attempted to obtain various pieces of system-wide data regarding parent representation from the Family Court, the office of Assigned Counsel, and the Law Guardian Programs of the First and Second Judicial Departments, Appellate Division, State of New York Unified Court System, including the proportion of parents represented by court-appointed attorneys versus institutional providers, caseload data, and data reflecting the frequency with which social workers are utilized by 18b attorneys. Unfortunately, these data are incomplete or not currently available.

b. Parents' Attorneys' Caseloads

Children's Rights requested law guardian/assigned counsel caseload data from the First and Second Judicial Departments' law guardian programs. The First Department covers the Bronx and Manhattan and the Second Department covers Brooklyn, Queens, and Staten Island. Caseload data were received for Brooklyn, Queens, and Manhattan. In 2008, attorneys serving on the law guardian/assigned counsel panels in these three boroughs had an average of 67 "cases."

> "[My attorney] doesn't return my phone calls. I call her, I left voice mails, she ain't got no time to speak to me. Before and after court, she don't speak to me."
>
> **Parent**

> "[My attorney] will meet with me before court, but that's not good. Because I'm the type of person—I need a plan."
>
> **Parent**

It should be noted that these data likely undercount the number of *clients* these attorneys are carrying for two reasons. First, the 67 "cases" includes include both "law guardian" cases, which may include *individual children* as well as *sibling groups*, and "assigned counsel" clients, which refer to individual adult clients.[207] Second, these attorneys are in private practice and may also represent clients who are not assigned by the Court and are not included in the caseload data. Caseloads of the three institutional providers range from 75-85 parents.[208]

The American Bar Association's Standards Drafting Committee recommends "a caseload of no more than 50-100 cases depending on what the attorney can handle competently.... The type of practice the attorney has, e.g., whether the attorney is part of a multidisciplinary representation team, also has an impact on the appropriate caseload size."[209]

c. Resources for Parents' Attorneys

Parents' attorneys—including both 18b attorneys and attorneys from each of the three institutional providers—who participated in the focus group for this study reported that when they have access to resources such as social workers and parent advocates, this can make a considerable difference in their ability to represent their clients and assist their clients in getting the services that they need. Parents who participated in a focus group for this study made similar comments.

As noted above, institutional providers do provide in-house support staff. 18b attorneys can obtain an order from the Court to engage the assistance of a social worker. However, no data are available regarding the frequency with which such requests are made and granted.

207 Data provided to Children's Rights by the State of New York Unified Court System, Appellate Division, Second Judicial Department, Law Guardian Program, July 2009.

208 Data provided to Children's Rights by the Center for Family Representation, the Brooklyn Family Defense Project, and the Bronx Defenders, August - September 2009.

209 American Bar Association. (2006). *Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases*, p. 32. Retrieved September 9, 2009 from http://www.abanet.org/child/clp/Parentstds.pdf

LEGAL REPRESENTATION OF THE PARTIES IN FAMILY COURT

"The father and me, we are the only two people that have been on the case from the beginning. There's new [caseworkers], multiple ACS lawyers, multiple law guardians [attorneys for the children], he's had different lawyers…for a variety of reasons…everybody's different except for him and me."

Family Court Judge

"We lose attorneys every two months because of the workload and stress." **FCLS Attorney**

"There are too many cases and not enough social work support." **JRP Attorney for Children**

"[The] physical space is a disaster, [it's like] a sardine can. [We are] cramped…three to an office [with] no private space."

JRP Attorney for Children

"Communication with the law guardian and [FCLS] attorney [is a concern]. [There's] not enough opportunity to communicate before court dates. Need to factor this time in."

Foster Care Caseworker

"I get a social worker [through a court order]…I tell the ACS attorneys who my social worker is. I give them the [contact] information [for] my social worker. In Brooklyn we have some really good social workers so a lot of them would come to court just for the conferences, and then that way they get to meet the caseworker, or the ACS worker… [and] they get invited to [agency conferences].

18b Attorney for Parents

III. COURT PROCEEDINGS WHEN CHILDREN FIRST ENTER FOSTER CARE: ARTICLE 10 AND VOLUNTARY PLACEMENTS

Although ACS can take a child into foster care on an emergency basis and obtain court approval within hours thereafter, all placements of children in foster care must be authorized by the Family Court. This section provides the study findings regarding various court proceedings that are required when children are remanded under Article 10 of the Family Court Act or placed voluntarily, including the length of time it takes to move cases from remand to Fact-Finding, Fact-Finding to Disposition, and remand to Disposition, and the timeliness of ACS' request for court approval of voluntary placements.

A. TYPE OF LEGAL AUTHORITY FOR PLACEMENT

Children can enter foster care as a result of one of two types of legal authority, either as the result of a court remand or of a voluntary placement. In order for a child to be placed as the result of a court remand, ACS must file a petition that states the allegations of abuse and/or neglect and request a child be remanded. A hearing is held and the Court must determine whether a remand is necessary to ensure the safety of the child. A voluntary placement occurs when a parent requests or agrees to voluntarily place their child and then signs a Voluntary Placement Agreement.

Ninety-seven percent of the children in the study sample were remanded and 3% were placed voluntarily by their parents.[210]

1. Children Who Enter Foster Care Via Court Remand

Prior to and following the remand of a child there are many hearings that may be held. Prior to obtaining a remand order, a 1027 hearing is held to address issues related to the removal of a child from his/her home. This hearing must be held within a day when it is either required or requested (depending on the case circumstances).[211] When the remand is granted by the Court, the parents (or another person that is legally responsible for the child) or the attorney for the child can request an emergency hearing—referred to as a 1028 hearing—in order to ask for the child's return home prior to the disposition of the case. This hearing must be held within three days of the request, which is typically made within a few days of the child's removal from his or her home.[212]

At the Fact-Finding Hearing, the Court is responsible for determining whether or not a child has been abused or neglected and by whom. In some cases, parents admit to the Court that they abused or neglected their child; in other cases a trial is held. When a trial is held, the judge then makes a decision regarding whether or not the legal standard of proof has been met to find that the child was in fact abused or neglected. If the legal standard is not met regarding any of the allegations in the petition, the petition must be dismissed and the child can return home. If the legal standard of proof is met for at least one allegation, the court makes a finding of abuse and/or neglect, i.e., that abuse or neglect has occurred. (The study findings regarding the types of Fact-Finding decisions that were made are provided in Chapter 1: Demographics, Case Opening, and Current Case Status.)

If the Court makes a finding, the case then moves to the Disposition Hearing. At this stage, the judge makes the decision regarding whether a child will go home or remain in foster care. If the judge determines that the child must remain in foster care, the judge will enter an order placing the child in care and enter additional orders, which may include orders regarding the permanency goal, service provision, and visit schedules between children and their parents.

Regardless of whether or not the Fact-Finding and/or Disposition Hearings have been completed, by law, the initial Permanency Hearing must begin eight months from the date the child was remanded. It is critical that the Fact-Finding and the Disposition (when applicable) are completed prior to the first Permanency Hearing because, as noted above, the purpose of Permanency Hearings is to monitor a child's safety and well-being, the family's progress, and the efforts being made to either safely return the child home or find another permanent home for the child. It is premature, in most cases, for the Court to be making decisions about the appropriate permanency plan for the child before the Court has even decided whether abuse or neglect has occurred, or made a determination at the Disposition Hearing regarding whether the child can return home, or made the necessary orders regarding needed services.

It is important to note that, as stated above, the only hearings that are required by statute to be held within a specific period of time are 1027 hearings, 1028 hearings, and Permanency Hearings. New York State law does not establish time frames within which Fact-Finding, Disposition, or Termination of Parental Rights Hearings must be held. The law states only that "the court shall give priority to proceedings ...involving abuse or in which a child has been removed from home before a final order of disposition. Any adjournment granted in the course of such a proceeding should be for as short a time

210 One child was initially remanded and later placed pursuant to a Voluntary Placement Agreement. This child is included here in the remand data.

211 N.Y. Fam. Ct. Act § 1027 (McKinney 2008).

212 N.Y. Fam. Ct. Act § 1028 (McKinney 2008).

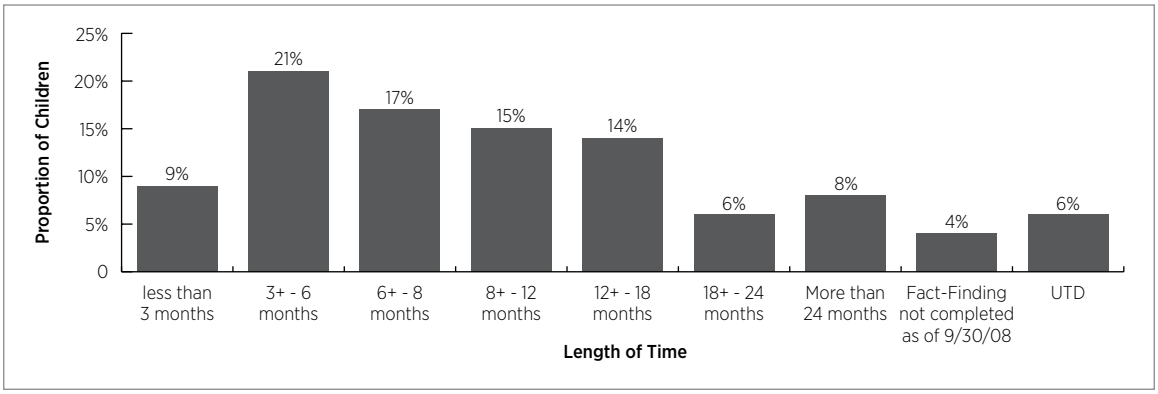
as is practicable.[213]" Given judges' caseloads and congested calendars, as discussed above, adjournments are typically for many months ahead and are a critical factor in delaying permanency for children in New York City.

The next sections provide data regarding the time frame from a child's remand into foster care to the completion of the Fact-Finding, the time frame from the Fact-Finding to the Disposition, and the overall time frame from remand to Disposition.

a. Time Frame from Remand of Child into Foster Care to Completion of Fact-Finding

The study collected data regarding how long it took from the remand of the child into foster care to the completion of the Fact-Finding. The mean and median lengths of time from remand to the Fact-Finding order were 10.6 and 7.9 months, respectively. The lengths of time ranged from less than three months to more than three years.[214] Figure 9.8 provides additional detail regarding the length of time from remand to the Fact-Finding order. As shown, one-third (32%) of children's cases took more than a year from remand to the completion of the Fact-Finding.

Figure 9.8: Length of Time from Remand to Fact-Finding Order (*n* = 132)[215]



For 47% of all children in the study sample, the Fact-Finding orders were entered more than eight months after the children were remanded. This eight month point is an important demarcation because, as noted above, the first Permanency Hearing must be held eight months after a child is remanded (Permanency Hearings are discussed in detail later in this chapter).

> "We've got cases that are being set for trial in January 2010 and the case just got filed [in the spring of 2009]."
>
> **Attorney for Parents**

213 N.Y. Fam. Ct. Act § 1049 (McKinney 2008).

214 *n* = 119. For children with one applicable parent, the length is the difference between the date of the remand and the date of the Fact-Finding order. For children with two applicable parents, the length is the difference between the date of remand and the later date of the Fact-Finding orders (if the orders as to each parent did not occur on the same date). Children's cases were excluded from this analysis if the child was placed pursuant to a Voluntary Placement Agreement; if the Fact-Finding preceded the remand; if data were missing as to whether or not the Fact-Finding was completed; if the date of the remand and/or the Fact-Finding order was unable to be determined; or if the Fact-Finding decision was still pending as of September 30, 2008. One additional child's case was excluded because the child was initially remanded and then placed pursuant to a Voluntary Placement Agreement prior to a Fact-Finding order.

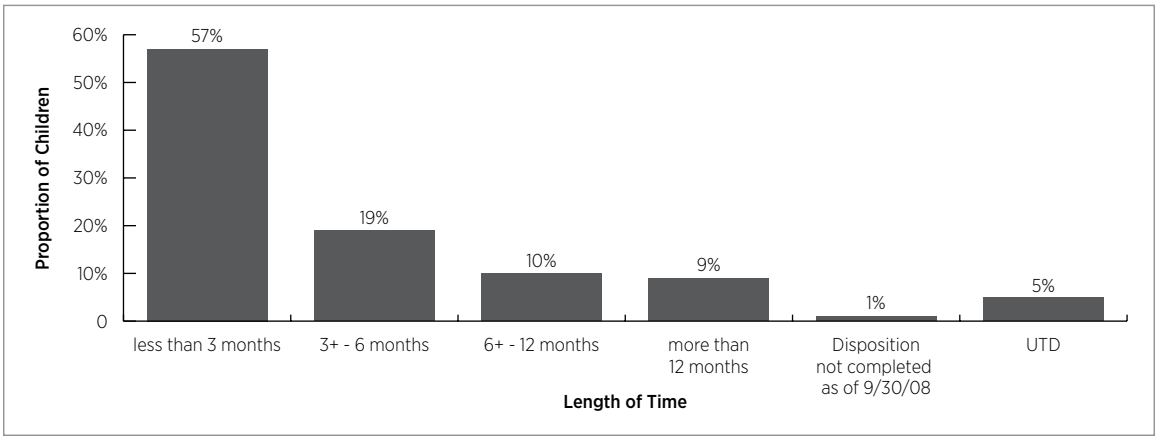
215 For children with one applicable parent, the length is the difference between the date of the remand and the date of the Fact-Finding order. For children with two applicable parents, the length is the difference between the date of remand and the later date of the Fact-Finding orders (if the orders as to each parent did not occur on the same date). Children's cases were excluded from this analysis if the child was placed Pursuant to a Voluntary Placement Agreement; if the Fact-Finding preceded the remand; or if data were missing as to whether or not the Fact-Finding was completed. One additional child's case was excluded because the child was initially remanded and then placed pursuant to a Voluntary Placement Agreement prior to a Fact-Finding order.

It should be noted that many of the children in this sample entered foster care before the Permanency Law was implemented. Thus, we analyzed the time from remand to Fact-Finding specifically for the sub-sample of 32 children (24%) who were remanded after Dec. 21, 2005.[216] In fact, for 58% of these children, the Fact-Finding was entered or still pending more than eight months after the children were remanded. In these cases, Permanency Hearings should have begun and may in fact have been completed prior to the Court even determining whether abuse or neglect had occurred.

b. Time Frame from Fact-Finding to Disposition

The mean and median lengths of time from Fact-Finding to Disposition were 4.3 and 2 months, respectively. The range was the same day to 6.2 years.[217] Figure 9.9 provides the lengths of time from Fact-Finding to Disposition for children in the study sample. For more than half of the children in the study sample (57%), the length of time from Fact-Finding to Disposition was less than three months. However, for 19% of children the length of time was more than six months.

Figure 9.9: Length of Time from Fact-Finding to Disposition (*n* = 127)[218]



216 *n* = 132. Children's cases were excluded from this analysis if they were remanded prior to Dec. 21, 2005; if they were placed pursuant to a Voluntary Placement Agreement; or if data regarding whether the Fact-Finding was completed as to all applicable parents was unable to be determined. The analysis also excludes one child who was initially remanded after Dec. 21, 2005 and then placed pursuant to a Voluntary Placement Agreement prior to a Fact-Finding order.

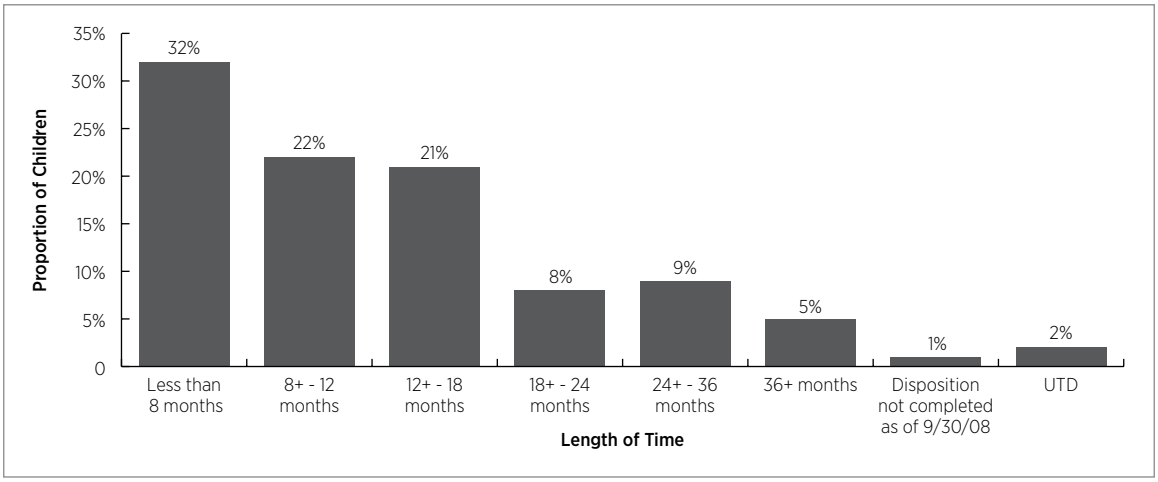
217 *n* = 120. For children with one applicable parent, the length is the difference between the date of the Fact-Finding order and the date of the Disposition order. For children with two applicable parents, the length is the difference between the date of the first Fact-Finding order and the later date of the Disposition orders (if the orders as to each parent were not made on the same date). Children's cases were excluded from this analysis if the child was placed pursuant to a Voluntary Placement Agreement; if the Fact-Finding preceded the remand; if the date of the Fact-Finding and/or Disposition order was missing; if the date of the Fact-Finding and/or Disposition was unable to be determined; if the Fact-Finding and/or Disposition decision was still pending as of September 30, 2008; or if data were missing as to whether the Fact-Finding and/or Disposition was completed. Regarding the longest length of time finding of 6.2 years, it should be noted that the second longest length of time was 1.6 years. Thus, this one case appears to be an outlier.

218 For children with one applicable parent, the length is the difference between the date of the Fact-Finding order and the date of the Disposition order. For children with two applicable parents, the length is the difference between the date of the first Fact-Finding order and the later Disposition order (if the orders as to each parent were not made on the same date). Children's cases were excluded from this analysis if the child was placed Pursuant to a Voluntary Placement Agreement; if the Fact-Finding preceded the remand; if the Fact-Finding was not yet completed; or if data were missing as to whether the Fact-Finding and/or Disposition was completed. One additional child's case was excluded from this analysis because the child was initially remanded and then placed pursuant to a Voluntary Placement Agreement prior to a Fact-Finding decision. Proportions do not total 100% due to rounding.

c. Time Frame from Remand to Disposition

The mean length of time from remand to Disposition was 14 months; the median was 11 months. The range was .2 months to 6.2 years.[219] Figure 9.10 provides detail regarding the length of time from remand to Disposition for the children in the study sample.

Figure 9.10: Length of Time from Remand to Disposition (*n* = 127)[220]



As noted above, since December 2005, the Court is responsible for holding the first Permanency Hearing when the child has been remanded for eight months (Permanency Hearings are discussed in detail later in this chapter). As shown in Figure 9.10 above, just less than one-third of children's cases (32%) moved from remand to Disposition in less than eight months.

Because many of the children in the study sample entered foster care before the "Permanency Law" was implemented, we analyzed the time from remand to Disposition specifically for the sub-sample of 31 children (24%) who were remanded after December 21, 2005 and had a Disposition that was either completed or pending as of September 30, 2008.[221] In fact, 72% of these children had Dispositions that took more than eight months. In these cases, Permanency Hearings should have begun and may in fact have been completed prior to entering the Disposition order.

In addition to analyzing the proportion of children who entered foster care after the "Permanency Law" was enacted in order to determine what proportion of these cases should have had a Permanency

219 *n* = 123. For children with one applicable parent, the length is the difference between the date of the remand and the date of the Disposition order. For children with two applicable parents, the length is the difference between the date of the remand and the later date of the Disposition orders (if the orders as to each parent were not made on the same date). Children's cases were excluded from this analysis if the child was placed pursuant to a Voluntary Placement Agreement; if the date of the remand and/or Disposition was unable to be determined; if the Fact-Finding and/or the Disposition was still pending as of September 30, 2008; if the Fact-Finding preceded the remand; or if data were missing as to whether or not the Fact-Finding and/or Disposition was completed. One additional child's case was excluded from this analysis because the child was initially remanded and then placed pursuant to a Voluntary Placement Agreement prior to a Fact-Finding decision.

220 For children with one applicable parent, the length is the difference between the date of the remand and the date of the Disposition. For children with two applicable parents, the length is the difference between the date of remand and the later date of Disposition (if the Disposition as to each parent did not occur on the same date). Children's cases were excluded from this analysis if the child was placed pursuant to a Voluntary Placement Agreement; if the Fact-Finding had not yet been completed; if the Fact-Finding preceded the remand; or if data were missing as to whether or not the Fact-Finding and/or Disposition was completed. One additional child's case was excluded from this analysis because the child was initially remanded and then placed pursuant to a Voluntary Placement Agreement prior to a Fact-Finding decision.

221 *n* = 127. Children's cases were excluded from this analysis if the Fact-Finding was still pending as of September 30, 2008; if they were placed pursuant to a Voluntary Placement Agreement; or if data regarding whether the Disposition was completed as to all applicable parents was unable to be determined. The analysis also excludes one child who was initially remanded after Dec. 21, 2005 and then placed pursuant to a Voluntary Placement Agreement prior to a Fact-Finding order.

Hearing prior to the Disposition of the case, we also analyzed whether the length of time from remand to Disposition has changed over time and particularly since the passage of Permanency Law. In order to assess change over time, we compared the mean length of time from remand to Disposition for children who were remanded prior to the Permanency Law (*n* = 92; mean = 14.5 months) to children who were remanded after the Permanency Law (*n* = 31; mean = 13.4 months).[222] The difference between the two groups was not statistically significant. Although this analysis does not control for other factors that might influence length of time from remand to Disposition, it does suggest that the length of time from remand to Disposition has not changed significantly since the Permanency Law was enacted.

As shown in the findings above, the length of time it takes for cases to proceed from remand to Disposition, whether children were remanded more recently or less recently, is, in many cases, an unacceptably slow process. In fact, each step of the way—from remand to Fact-Finding and from Fact-Finding to Disposition—too many children remain in foster care for many months or even years while each stage of the court process is completed.

Stakeholders, including attorneys for parents and judges, reported that, in some cases, many months after the child has been remanded, the parents will request a 1028 hearing, which is typically held a few days after a child is remanded. In these cases, the parents are asking the Court to consider returning their child(ren) to their care at a 1028 hearing because many months may have gone by, and the case is not moving forward in court. The parents may have completed the required services yet the Fact-Finding and/or Disposition Hearings have not yet occurred, so the parents request a 1028 hearing because, as noted above, these hearings must be held within three days of the request.

Virtually all of the stakeholders who participated in focus groups and interviews for this study talked at length about the number of adjournments and the length of time between adjournments for all types of court hearings (abuse and neglect, termination of parental rights, permanency) as being a critical concern. As seen in the findings above, abuse and neglect court decisions (as well as termination of parental rights court decisions, which are discussed in detail later in this chapter) can take a long time to complete while the children remain separated from their families and without a permanent home.

There are many reasons why Family Court cases are adjourned. For example, an attorney, a caseworker, or a parent may not be present; a witness may not be available; a party may not be ready to proceed; or the Court may not have sufficient time to complete the hearing on a given day. Each adjournment further delays the process and extends the child's stay in foster care. (This study did not collect quantitative data on the reasons for adjournments in Article 10 proceedings. Data were collected regarding reasons Permanency Hearings were not completed in a timely fashion; these data are provided in Section IV of this chapter.)

Another reason for adjournments noted by some stakeholders pertained to incarcerated parents sometimes not being brought to Family Court by their correctional facilities when their cases are scheduled to be heard. This is a multi-systemic issue that involves Family Court, which must complete the necessary paperwork to have the parent brought to Family Court, as well as the criminal justice system, which must process the paperwork and transport the parent. Regarding one case, a stakeholder noted that "Since the beginning, hearings got adjourned because the father was incarcerated. His facility required two weeks notice to produce the father at a hearing. Sometimes the facility would say they hadn't received proper notice. Sometimes the father didn't want to come to the hearing but didn't communicate that to his attorney."

222 Children's cases were excluded from this analysis if they were placed pursuant to a Voluntary Placement Agreement; if the Disposition was pending as of September 30, 2008; or if the date of remand and/or Disposition was missing. The analysis also excludes one child who was initially remanded and then placed pursuant to a Voluntary Placement Agreement prior to a Fact-Finding order.

FAMILY COURT ADJOURNMENTS

"Whether it's Permanency Hearings or any other type of matter…the calendars are being pushed out forever and that is not helping permanency."

Family Court Judge/Referee

"How can you have a court date six months apart?… [My attorney went] on vacation and ACS went on vacation… The judge went on vacation… While all of this is going on, the time frame for AFSA is going on."

Parent

"The mother is represented by a very strong advocate and there is always more litigation on this case than court time."

JRP Attorney for Children

2. Voluntary Placements

When a parent voluntarily places his/her child in foster care and the plan is for the child to remain in placement for more than 30 days, ACS must file a petition and a hearing must be held. During this hearing the Court reviews the Voluntary Placement Agreement signed by the parent and ensures that the parent's decision to place the child was in fact voluntary, that efforts were initially made to prevent the child's removal from home, and that ongoing efforts are being made to return the child home.

Six children in the study sample were placed on a voluntary basis. ACS filed the petition as required within 30 days for only one of these six children.

IV. PERMANENCY HEARINGS

As noted above, in 2005, a new "Permanency Law" was passed in New York State. These new and revised statutes include the requirement that Permanency Hearings be held eight months after the Court orders that a child be removed from his or her home and every six months thereafter for the duration of the child's stay in foster care.[223] The purpose of these hearings is to improve permanency outcomes for children through regularly scheduled judicial reviews of the case circumstances, the appropriateness of the permanency goals, and the efforts made to achieve permanency. The Court must also issue orders to expedite permanency and ensure the safety and well-being of children in foster care, as well as to determine when to discharge children from foster care.

The following sections present the study findings regarding various issues pertaining to Permanency Hearings, including "reasonable efforts" findings, timeliness of Permanency Hearings, and reasons that untimely hearings were adjourned.

The study collected data regarding the Permanency Hearings that were held for the children in the study sample during the two-year period from October 1, 2006 through September 30, 2008. (Note, this is a two-year period. The majority of other measures in the study cover a one-year period.) More than 500 Permanency Hearings were held during this time period pertaining to the children in the study sample.

223 N.Y. Fam. Ct. Act § 1089(a)(2)-(3) (McKinney 2008).

A. REASONABLE EFFORTS TO ACHIEVE PERMANENCY

After reviewing all of the evidence presented at each Permanency Hearing, the judge or referee must determine whether the foster care agency, and by extension ACS, made what are referred to as "reasonable efforts to achieve permanency" for each child. Making "reasonable efforts" entails providing casework and other services needed to either reunite a child with his or her family or to develop and finalize another permanency plan, such as adoption, if the child cannot safely return home. Making reasonable efforts is both a federal and New York State requirement, and affects the receipt of federal funding.

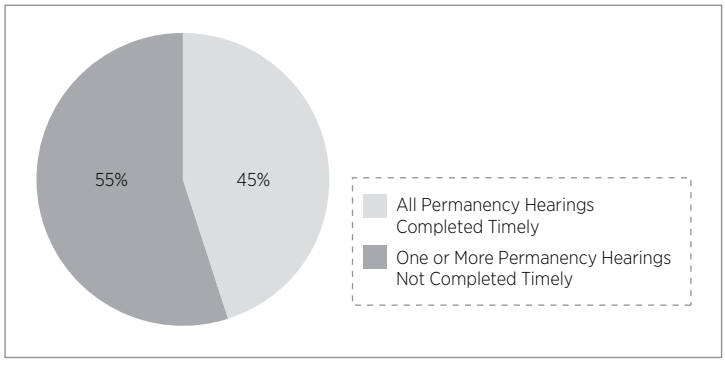
Data were collected for 463 of these hearings regarding whether the Court had determined that reasonable efforts to achieve permanency had been made by the foster care agency. The Court determined in all but six of these Permanency Hearings that reasonable efforts to achieve permanency had been made. Given that all of the children in the study sample had been in foster care for at least two years, and that many had been in care much longer, and given the quality of casework found in these cases (as described elsewhere in this report), the fact that in nearly all of the hearings the Court found that reasonable efforts to achieve permanency had been made raises questions regarding the threshold used to make these determinations, and the relevance of such findings.

As noted above, stakeholders said that the Court does not frequently or consistently use its power to hold ACS and the foster care agencies accountable through the use of court orders, sanctions, etc. These data may provide another example of this issue.

B. TIMELINESS OF PERMANENCY HEARINGS

New York State law requires that each Permanency Hearing be completed within 30 days of the date the hearing was scheduled to begin (commonly referred to as the Permanency Hearing Date Certain).[224] During the two-year period from October 1, 2006 through September 30, 2008, more than half (55%) of the children in the study sample had one or more Permanency Hearings that were not completed within 30 days as required. Delays in completing Permanency Hearings result in delayed court reviews and court orders and can have considerable impact on the length of time it takes for children to achieve permanency.

Figure 9.11: Proportion of Children with Timely Permanency Hearings During a Two-Year Period, by Child (*n* = 147)[225]

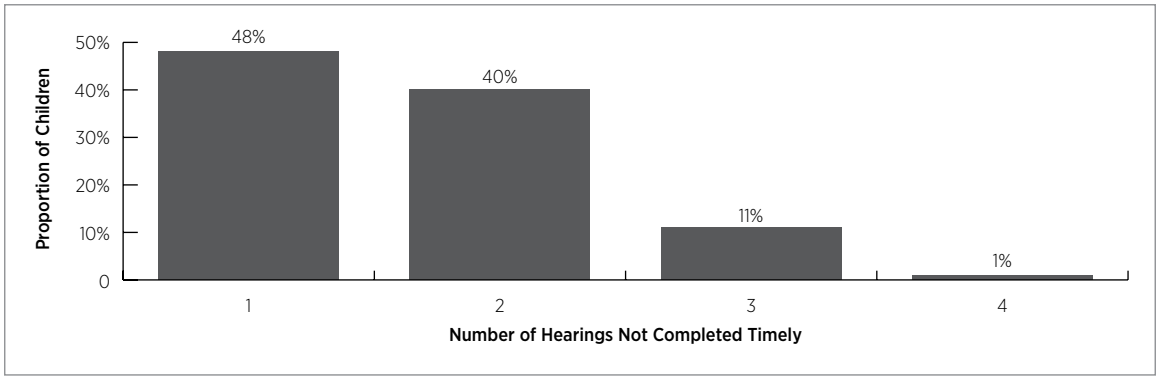


As noted above, 55% (81) of the children in the study sample had one or more Permanency Hearings that were not completed within 30 days, as required. Figure 9.12 provides the number of Permanency Hearings that were not completed within 30 days for these 81 children.

224 N.Y. Fam. Ct. Act § 1089(a)(2) (McKinney 2008).

225 *n* = 147. One child had no Permanency Hearings during the two-year period, and data were missing for five children.

Figure 9.12: Number of Permanency Hearings That Were Not Completed Timely, by Child (*n* = 81)



C. REASONS PERMANENCY HEARINGS NOT COMPLETED TIMELY

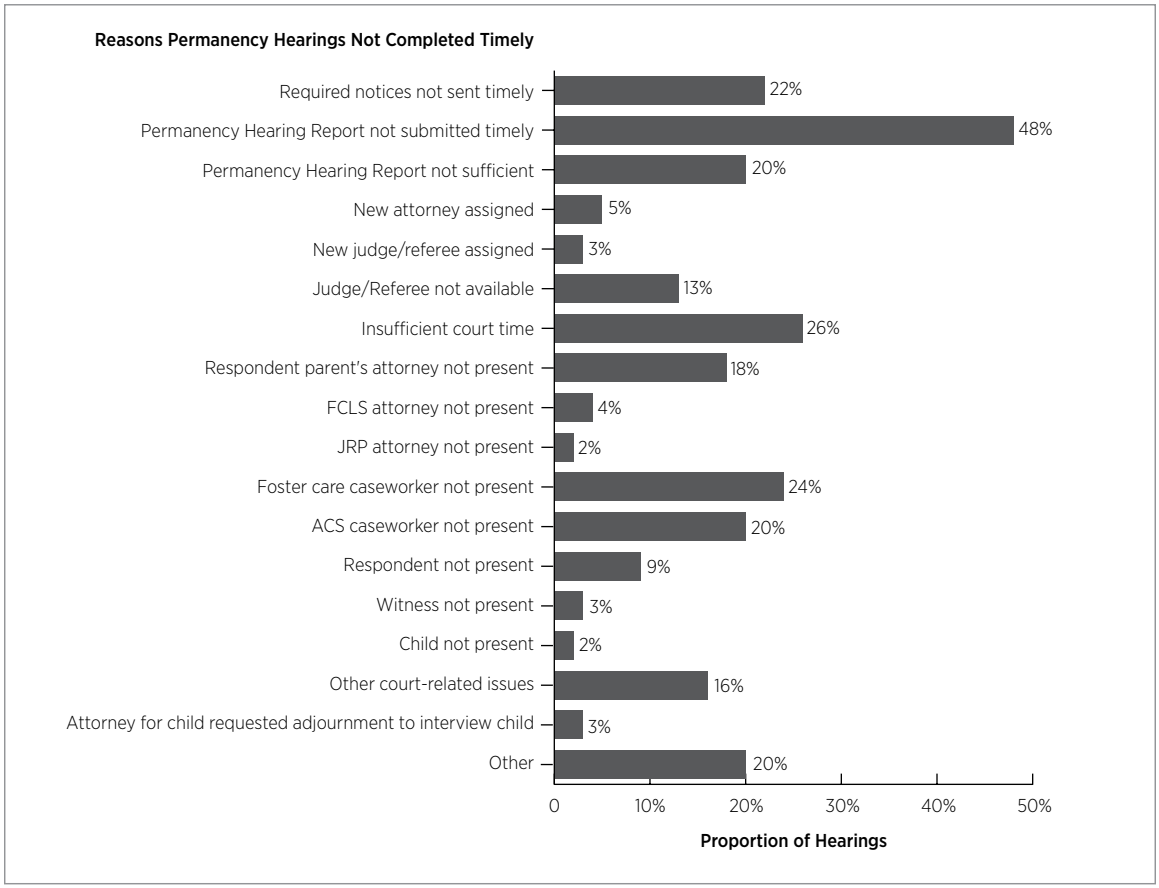
The figure above reflects a total of 134 hearings that were not completed timely. Figure 9.13 below provides the reasons, according to the JRP attorney for the child, that 91 of these Permanency Hearings were not completed within 30 days. (Data were not provided for the remaining 43 hearings.)

Almost half (48%) of the hearings were not completed within 30 days because the Permanency Hearing Reports, which are prepared and submitted by the provider agency caseworker (Permanency Hearing Reports are discussed in detail in Chapter 4: Casework) were not submitted to the parties timely, and 20% of hearings were not completed timely because the Permanency Report did not sufficiently address the issues in the case.

Insufficient court time was noted as a reason for not completing the hearing timely for 26% of delayed Permanency Hearings. Twenty-four percent of hearings were not completed timely because the provider agency caseworker was not present, and 20% were not completed timely because the ACS caseworker was not present. (In some cases both a provider agency caseworker and an ACS caseworker are assigned to the case.)

It should be noted that data regarding the reasons Permanency Hearings were not completed timely were provided by the JRP attorneys for the children; therefore it is possible that the data may not fully reflect instances in which Permanency Hearings were delayed because the JRP attorney was not present.

Figure 9.13: Reasons Permanency Hearings Were Not Completed Timely (*n* = 91 hearings)[226]



In addition to the data collected from the JRP attorneys, other stakeholders who participated in focus groups and interviews for this study reported many of the same reasons for Permanency Hearings not being completed timely, including caseworkers and/or attorneys not being present, the lack of Permanency Hearing Reports and/or late Permanency Hearing Reports, and crowded court calendars.

It is also important to bear in mind that, between Permanency Hearings, a party—the parent through their attorney, the foster care agency through the FCLS attorney, or the JRP attorney for the child, for example—can file a motion requesting that a case be put on the court's calendar to address a pressing issue, such as an application to return the child home before the next Permanency Hearing. Judges and referees who participated in a focus group for this study reported that these applications are rare and that it seems that foster care provider agencies are reluctant to affirmatively ask the court to send children home, regardless of the circumstances. Judges and referees noted that these requests are a primary function of the caseworker and the provider agency, yet, in practice, these requests are few and far between. It is their impression that foster care provider agencies do not want to risk being responsible for a bad outcome. Other stakeholders, particularly parents and parents' attorneys, reported that in some cases attorneys for children are reluctant to support recommendations to return children home, and judges and referees are reluctant to return children home. When considered all together, these concerns can lead to a stalemate for children and their families. These are complex decisions, but are ones that, based on comprehensive assessments and professional judgment, must be made.

226 Hearings were excluded from this analysis if the JRP attorneys for the children were not able to determine the reason(s) hearings were not completed timely, or if data were missing. Proportions do not total 100% because more than one reason for not completing a Permanency Hearing within 30 days could be selected.

PERMANENCY HEARINGS

"When you go to court in front of the judge, ACS goes to the judge with that Permanency Report. The judge reads it and it goes to trial. What [can] I do? I read [the Permanency Report], because by law you're supposed to get the Permanency Report too, so you can review it. I review the Permanency Hearing Report [and] 70% of the information is wrong. Seventy percent of it is misconstrued. She did this, she did this, she didn't do this—it's misconstrued information. And all the judge knows is what [they] give him."

Parent

"There is such a discrepancy between the Permanency Report and the case record sometimes and it's too late when you get [to] the TPR to find out… what's going on. If there's cases I'm dissatisfied with, I make them produce the case record…I want to know what's been going on."

Family Court Judge

"A lot of times caseworkers don't show up at all in court."

Attorney for Parents

"Sometimes there are too many issues going on in a case and not enough court time to discuss them all. Coordination of schedules with judges, lawyers, workers can be difficult."

FCLS Attorney

"Even Permanency Reports, which are now required to be provided in advance, are not. And parents are often faced with a really difficult choice, to go forward, without having prior notice of that report or an adjournment, which could cost months of delay. So I think reports and for the parents, any advocacy that we could provide, it's such an important piece. Because our clients, really, very often have a completely different perspective on what's written in that report."

Attorney for Parents

"Cases just don't move along quick enough. Reports are delayed [and] caseworkers don't come to Court."

JRP Attorney for Children

V. TERMINATION OF PARENTAL RIGHTS

In order for a child to be legally free for adoption, parental rights must be surrendered or terminated. The process for terminating parental rights involves multiple casework practices and legal procedures that must be completed in order to free a child for adoption. From establishing the Adoption goal to the signing of the court order that ultimately frees a child for adoption, the process can take anywhere from a few months to many years to complete. The following sections present data on various legal practices regarding parental rights, including voluntary surrenders and termination of parental rights (TPR) petitions, as well as the study findings regarding the process of moving TPR cases through the court system.[227]

227 It is important to note that, by design, none of the children in the study sample had been adopted. The purpose of this study was to examine the circumstances of children who were still in care. In any case, once a child is adopted, the case record is sealed and unavailable for review.

It should be noted that, although ACS' FCLS attorneys represent ACS and, by extension, the foster care provider agencies in abuse and neglect cases, Voluntary Placement cases, and Permanency Hearings, the provider agencies in New York City must employ attorneys or hire private attorneys to handle Voluntary Surrender and TPR cases. These attorneys' responsibilities include preparing and filing Voluntary Surrenders and TPR petitions, and representing the provider agencies throughout the TPR and adoption process.

A. VOLUNTARY SURRENDER OF PARENTAL RIGHTS

In some cases, parents make the difficult decision to voluntarily surrender their parental rights. During the one-year review period, surrenders were signed by two children's mothers and another child's father.[228] Two of these children became legally free as the result of the surrenders, which were signed when they had been in foster care for 6.7 and 8.8 years. For the third child, the mother had signed a surrender after the child had been in foster care for 4.6 years; however, the father did not sign a surrender, and the TPR case against him continued. This child was not yet legally free at the end of the review period. More detail regarding casework practice in relation to the surrender of parental rights is provided in Chapter 5: Adoption Casework.

B. BEGINNING THE TPR PROCESS

One of the requirements of the federal Adoption and Safe Families Act (ASFA), which was signed into law in 1997, is that a petition to terminate parental rights (TPR) be filed on behalf of children who have been in foster care for 15 of the most recent 22 months, except when there are "compelling" reasons, as discussed in Section 2 below.[229] It is important to bear in mind that foster care agencies are responsible for filing these petitions, but judges have the authority to order that these petitions be filed.

1. Filing TPR Petitions

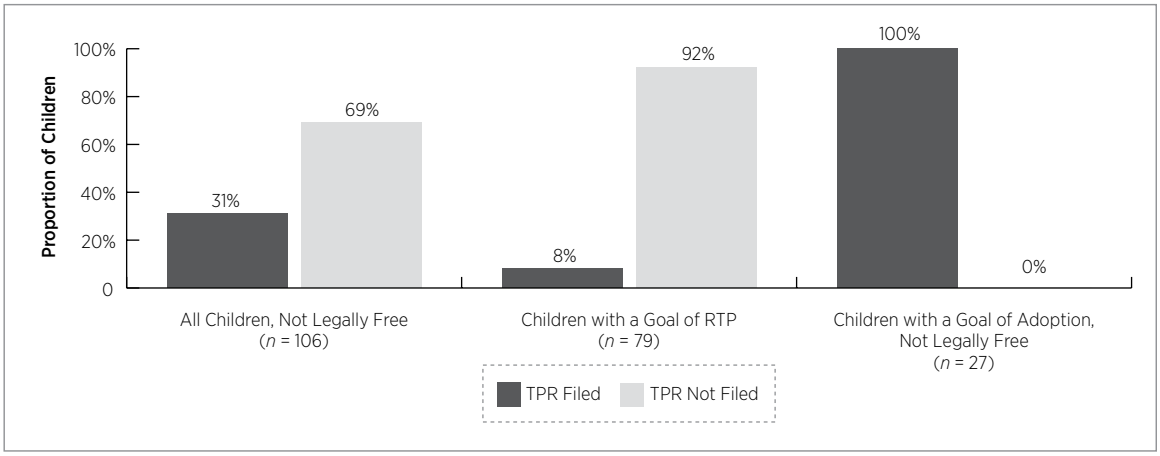
All of the children in the study sample had been in foster care for more than 15 of the most recent 22 months. In fact, by design, all of the children had been in foster care for at least two years. However, as shown in Figure 9.14, 69% of children in the sample who were not legally free did not have TPR petitions filed as of the last day of the review period.[230] Figure 9.14 also provides these data broken down by permanency goal. All of the children in the sample with a goal of Adoption had a TPR petition filed on their behalf, although most were very delayed, as described below. Eight percent of children with a goal of Return to Parent had TPR petitions filed.

228 *n* = 116. Thirty-seven children became legally free prior to the review period. Data were not collected regarding whether any of the parents of these 37 children signed a surrender.

229 Adoption and Safe Families Act of 1997, Pub. L. 105-89, 111 Stat. 2115 (codified as amended in scattered sections of 42 U.S.C.).

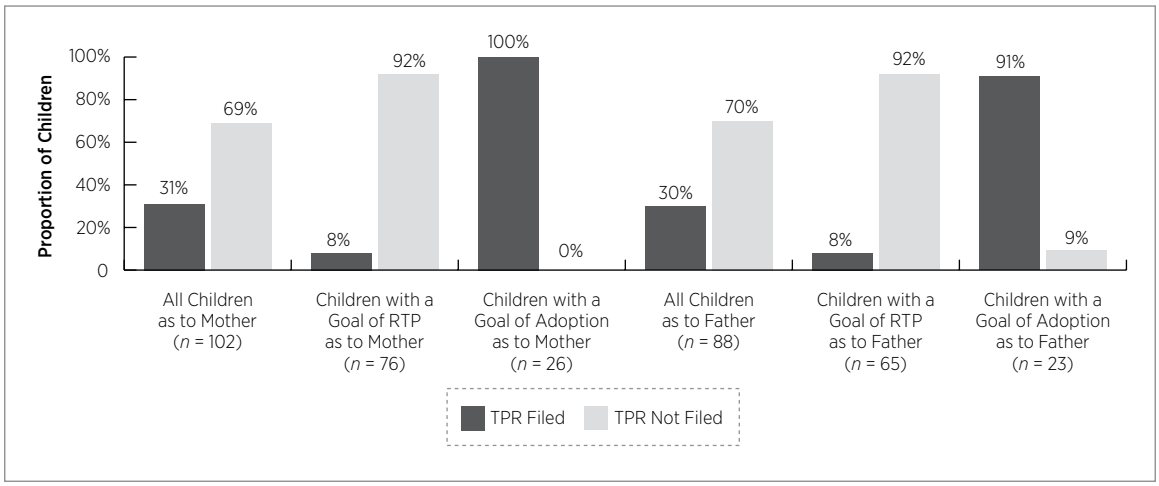
230 Analyses regarding whether a TPR petition was filed are based only on children in the study sample who were not legally free because a fixed proportion of children that were legally free as of September 30, 2008 was deliberately selected for inclusion in the study sample. To include these children in these analyses would therefore force a certain proportion of 'yes" answers to the question of whether or not TPR petitions were filed. Analyses of the timeliness of TPR filings and TPR proceedings include all children who had TPRs filed, regardless of whether the children were legally free.

Figure 9.14: Proportion of Children with a TPR Petition Filed[231]



Considering each parent separately, TPR petitions were not filed for 69% of mothers and 70% of fathers.[232] Data regarding the proportion of mothers and fathers against whom a TPR petition was filed are provided in Figure 9.15, for all children and by goal. As shown in this figure, TPR petitions were filed against 100% of mothers of children with a goal of Adoption (although most were delayed, as discussed below) and 8% of mothers of children with a goal of Return to Parent, and the findings are similar for fathers.

Figure 9.15: TPR Petitions Filed as to Mothers and Fathers[233]



In addition to collecting whether a TPR petition was filed, data were collected regarding when, during the course of the case, they were filed. For children that had a TPR petition filed on their behalf, we analyzed the length of time from the child's entry into foster care to the filing of the TPR petition as to at least one parent, which is the first step in the TPR legal process. As shown in Figure 9.16, of those

231 Children's cases were excluded from this analysis if the children were already legally free as of September 30, 2008, or if the relevant parent was unknown or deceased. Legally free children were excluded because a fixed proportion of children who were legally free as of Sept, 30, 2008 was deliberately selected for inclusion in the study sample. (More detail regarding sample selection is provided in Appendix A.) To include these children in this analysis would therefore force a certain proportion of "yes" answers to the question of whether or not TPR petitions were filed as to their parents.

232 Mothers: *n* = 102; fathers: *n* = 88. Children's cases were excluded from these analyses if the children were legally free as of September 30, 2008 or if the relevant parent was unknown or deceased.

233 Children's cases were excluded from this analysis if the children were already legally free as of September 30, 2008 or if the relevant parent was unknown or deceased. Data were missing regarding four fathers.

children with a TPR petition filed as to at least one parent, only 7% had the petition filed within 15 months of entering foster care.[234]

The mean and median lengths of time from children's entry into foster care to the filing of the TPR petition as to at least one parent were 3.2 and 2.5 years, respectively. The lengths of time ranged from seven months to 13.3 years.[235] Figure 9.16 provides detail regarding the length of time from foster care entry to the filing of the TPR petition as to at least one parent of children in the study sample. (Because only six children with a goal of Return to Parent had a TPR filed, Figure 9.16 does not break down the length of time from entry to filing by goal.)[236] One-third of children were in foster care for three years or more before a TPR petition was filed and one-fifth were in foster care for four or more years before a petition was filed.

Figure 9.16: Length of Time from Foster Care Entry to TPR Petition Filed as to at Least One Parent (*n* = 75)[237]

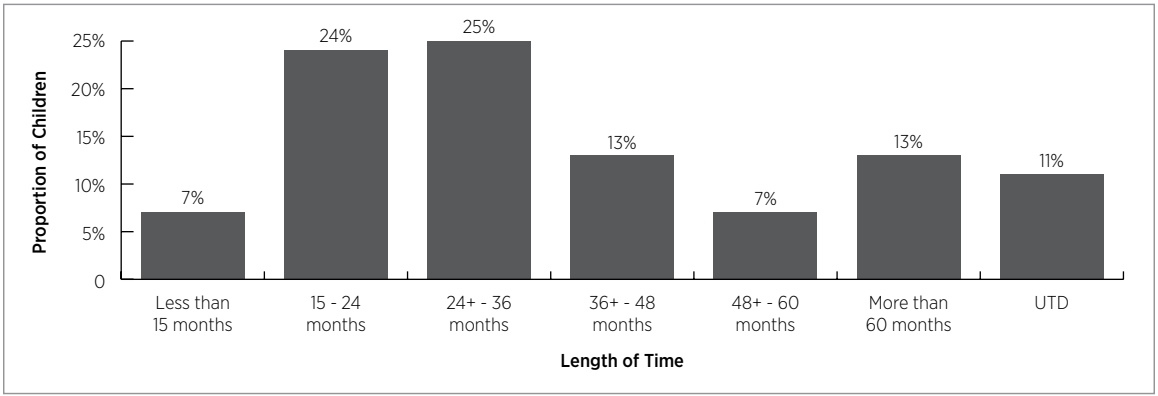


Figure 9.16 above reflects when a TPR was filed for any parent. Regarding mothers specifically, the lengths of time from the child's entry into foster care to the filing of TPR petitions ranged from 7 months to 13.3 years. Regarding fathers, the lengths of time from the child's entry into foster care to the filing of TPR petitions ranged from 14 months to 13.3 years.[238] Figure 9.17 provides the mean and median lengths of time from entry to the filing of TPR petitions as to mothers and fathers. As shown, there was practically no difference in the mean or median lengths of time from foster care entry to filing TPR petitions against mothers and fathers.

Figure 9.17: Mean and Median Length of Time from Entry to Filing TPR Petitions, by Parent, in Years[239]

	Mean	Median
Mothers (*n* = 64)	3.3	2.5
Fathers (*n* = 44)	3.4	2.5

234 *n* = 67. TPR petitions were filed as to at least one parent of 75 children in the sample. However, the date the TPR petition was filed as to either parent was unable to be determined regarding eight of these children.

235 *n* = 67. Children's cases were excluded from this analysis if the date the TPR petition was filed as to either parent was unable to be determined; or if both parents were unknown and/or deceased; or if no TPR petition was filed as to either of the child's parents.

236 Including the lengths of time from entry to TPR filing for the six children with a goal of Return to Parent does not meaningfully change the overall breakdown depicted in Figure 9.16. One child had a TPR filed less than 15 months after entering care, four children had a TPR filed between 24 and 36 months after entering care, and one child had a TPR filed between 36 and 48 months after entering care.

237 Children's cases were excluded from this analysis if no TPR was filed as to either parent, or if both parents were unknown or deceased.

238 Mothers: *n* = 64; fathers: *n* = 44. Children's cases were excluded from these analyses if a parent was deceased or unknown or if the date the TPR petition was filed was unable to be determined. Legally free children are included in this analysis and all subsequent "length of time" analyses because, unlike the data findings above regarding whether or not TPR petitions were filed, the length of time it took to file TPR petitions was not one of the sample selection criteria.

239 Children's cases were excluded from this analysis if a parent was deceased or unknown or if the date the TPR petition was filed was unable to be determined.

2. Compelling Reasons Not to File TPR Petitions

When a TPR petition is not filed for a child who has been in foster care more than 15 out of 22 months, foster care agencies are required to document a "compelling reason" for not doing so. According to federal law (ASFA), exceptions to the TPR filing requirement include general circumstances in which: 1) the child is being cared for by a relative; 2) filing a TPR petition would not be in the child's best interests; or 3) the family has not been provided with the services "necessary for the safe return of the child to the child's home."[240] New York State law requires a case by case determination regarding whether a TPR petition should be filed and provides the following list of circumstances that may excuse the local social services district from filing a TPR: 1) the child is being cared for by a relative; 2) filing a TPR petition is not in the child's best interest due to a "compelling reason;" or 3) the agency has not provided the parents with the services needed to ensure the safety of the child if the child were to return home. The law also identifies certain possible compelling reasons not to file a TPR petition, including situations in which the child is 14 years of age or older and will not consent to be adopted, there are insufficient grounds for filing a TPR petition, and the child has a permanency goal other than adoption. Compelling reasons must be based on the specific case circumstances and must consider the best interest of the child, as noted above.[241]

In order to provide further guidance to the foster care agencies, ACS issued a policy guidance bulletin that identified various case circumstances that "may constitute a compelling reason not to file a TPR for a particular child."[242] Similar to New York State law, this policy guidance states that the decision regarding whether or not to file a TPR petition must be based on the individual, "*child-specific*" case circumstances "in accordance with the child's *best interests*." The policy bulletin identified circumstances including the following: 1) a child over 14 years old who has been counseled but does not want to be adopted; 2) a child for whom a family setting will not currently meet his or her needs; 3) a child who has regular contact with his or her parent(s) and maintaining this contact and relationship benefits the child; 4) a child for whom the best and most likely permanency option is "something other than adoption" (such as legal guardianship by a relative); and 5) "at least one parent is actively being considered as a discharge resource for the child, and it is anticipated that such discharge is likely to occur within six months." (See Appendix B for the full policy guidance on this issue.)

This study collected the documented reasons for not filing TPR petitions as identified in the case records and compared them to the ACS policy guidance. Of the 71 children for whom a TPR petition was not filed as to either parent, 8% had case records that clearly documented at least one of the compelling reasons identified by ACS.[243] For these children (n = 6) the following reasons were noted: 1) for four children, the parent(s) was actively being considered as a discharge resource for the child and it was anticipated that such discharge was likely to occur within six months; 2) one child was 14 years old or older and did not want to be adopted; and 3) for one child, two compelling reasons were documented—the parent made regular contact with the child and maintaining their contact and relationship benefited the child, and the child was 14 years old or older and did not want to be adopted.

For an additional 19% of children, the reason documented was that the child was home on trial discharge or that the plan was to trial discharge the child.

For 11% of children, the agencies documented no compelling reason why they had not filed for TPR.

240 Adoption and Safe Families Act of 1997, Pub. L. 105-89, 111 Stat. 2115 (codified as amended in scattered sections of 42 U.S.C.).

241 N.Y. Soc. Serv. Law § 384-b (McKinney 2007).

242 New York City Administration for Children's Services. *ACS Bulletin 05-1, Connections Build 18 Procedures: Case Management*. Issued August 23, 2005.

243 Data were missing for 2 of the 73 children for which a TPR petition was not filed as to either parent.

For the remaining 62% of children other reasons were documented that did not appear to meet the letter or spirit of ACS' policy guidance. Examples of these other reasons included:

- documentation noting that the parent was "planning" for the child to return home, but providing no estimate of when final discharge might occur;
- documentation noting that the parent had "completed services," but providing no indication of when the child might return home; and
- documentation simply noting that the child's goal was Return to Parent, with no further explanation.

The above three examples do not appear to meet the letter or spirit of ACS' policy guidance, which suggests that a compelling reason not to file a TPR petition and to maintain a Return to Parent goal should include the likely time frame by when the child can return home and that this should be within approximately six months (see Appendix B). These examples noted above all focused on continuing efforts to return children home, but did not include any likely time frame for achieving that goal.

Of course, for children with a goal of Return to Parent for extended periods of time, the main concern is not simply whether a TPR has been filed or not (as TPR is a means to an end, not an end in and of itself), but rather how and when permanency is going to be achieved. As noted above, the decision regarding whether or not to file a TPR petition must be made on a case by case basis. Return to Parent goals should be meaningfully reevaluated regularly, as maintaining the goal of Return to Parent with no end in sight can result in children remaining in foster care for years and years. Many children in the study sample with a goal of Return to Parent had that goal for a very long time—the mean length of time children had a Return to Parent goal was 3.3 years and 24% of children had this goal for more than four years, and, as noted above, only 8% of children in the study sample with a goal of Return to Parent had a TPR petition filed on their behalf.

TERMINATION OF PARENTAL RIGHTS

"Agencies delay TPR even when it seems clear that parents can't care for their children."
Resource Parent

"But it came out, I guess, on the removal of the new baby and we… had all the evidence… and all the reports saying they could care for children and then it came out that basically the law guardian and the powers that be at the foster care agency and I think ACS, thought they were incapable. So… TPR should have been filed all the way back then and we could have been working on fighting that from the beginning."
Attorney for Parents

"Courts are reluctant to push TPR forward just to comply with letter of the law."
FCLS Attorney

"Maybe the court has overextended itself in this case allowing the mother so many chances."
JRP Attorney for Children

"[The] ASFA law [is] great but needs to be enforced more. [Parents] should be given [the] opportunity to get things together but ASFA must be enforced."
Foster Care Caseworker

"The child has been in care so long because [the] judge kept giving the parents many opportunities to get things together. [There was a] failed trial discharge, the child came back into care [and]… the agency had to continue offering services to the parents."
Foster Care Caseworker

Training for caseworkers and supervisors on what constitutes a compelling reason is needed so that appropriate and timely decisions can be made regarding when to file TPR petitions. In addition, judges and referees play an important role in determining when TPR petitions should be filed and can order that these petitions be filed within a specific period of time, regardless of the child's goal.

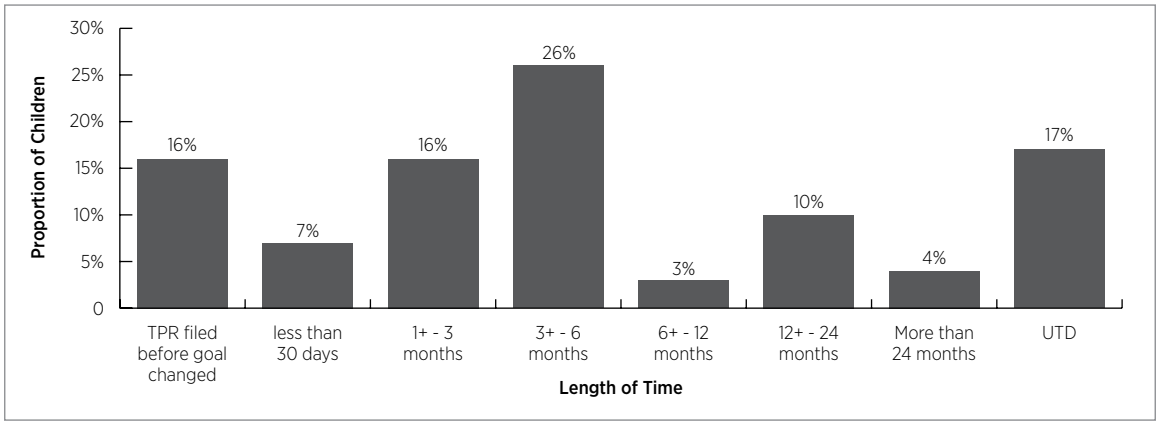
Many stakeholders who participated in focus groups and interviews for this study commented that, in some cases, the permanency goal remains Return to Parent longer than it should, noting that foster care provider agencies do not request that the goal be changed as soon as they should, and that judges and referees give parents too many chances over long periods of time, while the children remain in foster care for years.

3. Time Frame from Establishing the Adoption Goal to Filing TPR Petitions

The following section provides the study findings regarding the length of time it took to move from establishing the goal of Adoption to filing TPR petitions. The data are presented in two ways. First, the data are presented for the children in the study sample in order to illustrate the experiences of children. Second, the data are presented with regard to mothers and fathers in order to show whether there are differences in this practice pertaining to mothers and fathers.

We analyzed the data regarding the length of time from establishment of the Adoption goal to the filing of the TPR petition as to at least one of the child's parents. Among children who had a TPR filed as to at least one parent, the foster care agencies took more than three months from goal change to filing a TPR petition for 43% of children. Figure 9.18 provides the lengths of time for all children in the study sample who had a TPR petition filed as to at least one of their parents.

Figure 9.18: Length of Time from Adoption Goal Establishment to TPR Petition Filed, by Child (*n* = 69)[244]



New York State regulations require that an action be taken to legally free children within 30 days of the establishment of the Adoption goal.[245] However, 59% of children did not have a TPR filed for either parent (or one parent when only one parent was applicable) within 30 days.

244 For children with one applicable parent, the length is the difference between the date the child's permanency goal became Adoption and the date the TPR petition was filed as to that parent. For children with two applicable parents, the length is the difference between the date the child's permanency goal became Adoption and the date of the filing of the earliest TPR petition (if the TPR petitions as to each parent did not occur on the same date). Children's cases were excluded from this analysis if the child had a permanency goal of Return to Parent during the review period or if the child had a permanency goal of Adoption but a TPR petition had not yet been filed as to either parent as of September 30, 2008. Proportions do not total 100% due to rounding.

245 N.Y. Comp. Codes R. & Regs. Tit. 18, § 430.12(e) (2009).

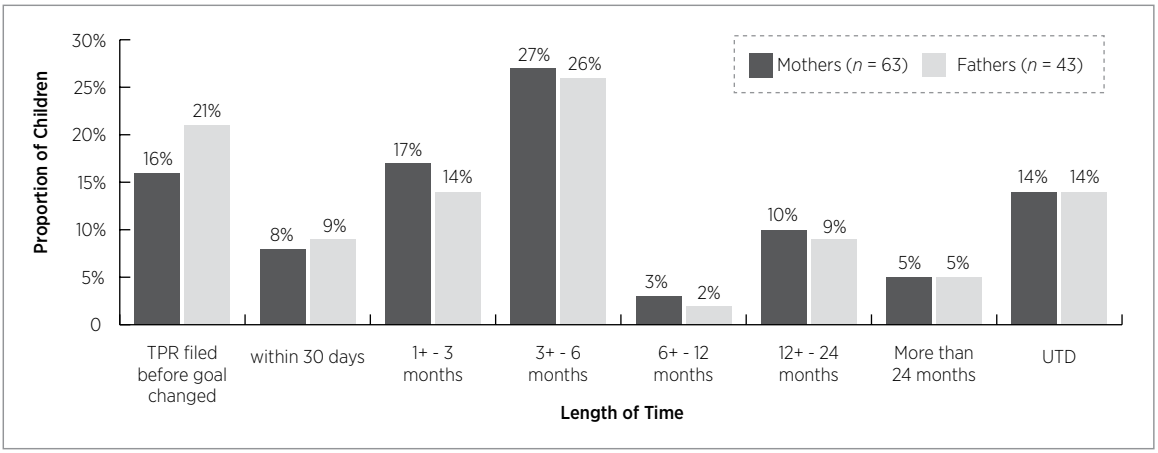
The lengths of time from establishing the permanency goal of Adoption to filing a TPR petition ranged from the same day to 6.5 years for both mothers and fathers. Figure 9.19 shows the mean and median length of time for each parent. As shown in Figure 9.19, the mean lengths of time are considerably larger than the median lengths of time, because the sample contains a few children who experienced very long lengths of time from goal change to the filing of TPR petitions. For example, three children had the TPR petition filed against their mother more than three years after their goal had been changed to Adoption.

Figure 9.19: Mean and Median Length of Time from Establishing Adoption Goal to Filing TPR Petitions, by Parent, in Months[246]

	Mean	Median
Mothers (*n* = 44)	8.5	4
Fathers (*n* = 28)	9.1	3.8

Figure 9.20 provides more detail regarding the lengths of time from the establishment of the Adoption goal to the filing of TPR petitions. As shown in the figure, for 16% of mothers and 21% of fathers, the TPR petitions were filed before the child's permanency goal was changed to Adoption.

Figure 9.20: Length of Time from Establishment of Adoption Goal to TPR Petition Filed, by Parent[247]



As noted above, New York State regulations require that "an action to legally free the child must be initiated within 30 days of the establishment of the permanency planning goal of adoption." As shown in Figure 9.20 above, a petition was not filed within that time frame for 62% of mothers and 56% of fathers.

Many stakeholders identified the initial stages of the TPR process as the point in time when fathers are sometimes first considered in both casework and legal practice. Prior to this point in many cases, little attention or effort is dedicated to engaging and working with fathers (for more detail regarding case practice with fathers see Chapter 4: Casework, Chapter 6: Caseworker Contacts, and Chapter 8: Services). When the time comes to terminate parental rights, petitions must be filed as to both legal parents. At this late stage, caseworkers must identify and search for fathers, if they have not previously done this as they should have, and this can be very difficult and time consuming.

246 Children's cases were excluded from this analysis if the child had a permanency goal of Return to Parent; if the child's permanency goal was changed to Adoption after the TPR petition was filed; or if the date the Adoption permanency goal was established and/or the date the TPR petition was filed was unable to be determined.

247 Children's cases were excluded from this analysis if the child had a permanency goal of Return to Parent during the review period or if the child had a permanency goal of Adoption but a TPR petition had not yet been filed as to their mother and/or father.

In Termination of Parental Rights cases, the law differentiates between so-called "consent fathers" —whose rights must be terminated or who must consent for a child to be adopted, and those who need only be notified of the termination proceeding and afforded an opportunity to be heard at the Disposition Hearing—so-called "notice only fathers." For example, for a child born out-of-wedlock, if a father is named on the child's birth certificate but has never presented himself as the father (e.g., never supported the child or has no relationship with the child), the Court may determine that he does not need to be named as a respondent in the termination case and that he is entitled only to be notified of the proceedings.

> "[There are] a lot of fathers that nobody ever talks to, nobody ever does anything with, until the TPR is filed and then they [say]—Oh, you know what, notify the father."
>
> **Attorney for Parents**

Some stakeholders, including attorneys for parents, noted that fathers are sometimes treated as "notice only" when they should in fact be named on the termination petition. For example, in one case reviewed for this study, the Court ordered the agency to file a petition to terminate the father's rights, rather than treating the father as a "notice only father," which was the foster care agency's intention. This is an example of many findings in this report regarding failing to or delaying working with fathers.

4. TPR Fact-Finding and Disposition

The following sections present the study findings regarding possible outcomes and interim actions that the parties can recommend and the court can take at both the Fact-Finding and Disposition stage of TPR processes, including withdrawing and dismissing petitions, suspending the judgment (i.e., Disposition) and the process of legally freeing children. These actions and outcomes can ultimately lead to permanency but, depending on how they are handled, can also create delays in achieving permanency.

A. TPR WITHDRAWN OR DISMISSED

A TPR petition may be withdrawn or dismissed for many reasons, including a change in case circumstances such as the death of a parent, insufficient evidence to support a TPR finding, or the decision by a parent to surrender their parental rights. In the study sample, the TPR petition had been withdrawn or dismissed for the mothers and/or the fathers of 9% of the children who were not legally free.[248]

B. SUSPENDED JUDGMENT

Once the judge has made the TPR Fact-Finding determination that one or more of the allegations (referred to as a "cause of action" in TPR petitions) in the TPR petition have been proven, the case then moves to the Disposition stage during which the judge must decide whether to terminate parental rights or provide the parent(s) with another opportunity to do what is necessary to have their child return home, which is referred to as a "suspended judgment." A suspended judgment typically includes specific tasks, such as services or parent/child visits, that the parent(s) must complete with the assistance of the foster care agency (referred to as "terms and conditions").

When a suspended judgment is granted, the parent is given up to one year to fulfill the specific orders of the Court. If the parent does not fulfill the orders of the Court, the Court may either extend the suspended judgment period for up to one additional year or move to free the child for adoption.[249] Although a successful suspended judgment outcome, which results in the child's return home, can be a positive outcome, the period of suspended judgment lengthens a child's stay in foster care, both for children who return home and, most importantly, for those who cannot return home.

248 *n* = 106.

249 N.Y. Fam. Ct. Act. § 633 (McKinney 2009).

A suspended judgment was ordered as to the mothers and/or the fathers of 6% of the children who were not legally free.[250] When the initial suspended judgment period ended, the mother of one child and the father of another child were granted extensions of the suspended judgments.

C. LEGALLY FREEING CHILDREN

Once the Court has determined that at least one cause of action has been proven and that a suspended judgment is either not appropriate or that the conditions of a suspended judgment were not met by the parent(s), the Court can then legally free the child for adoption. This is the last step in the TPR process. Once a child is legally free and all of the necessary arrangements and paperwork have been completed, the child can then be adopted (details regarding casework practice related to adoption are provided in Chapter 5: Adoption Casework).

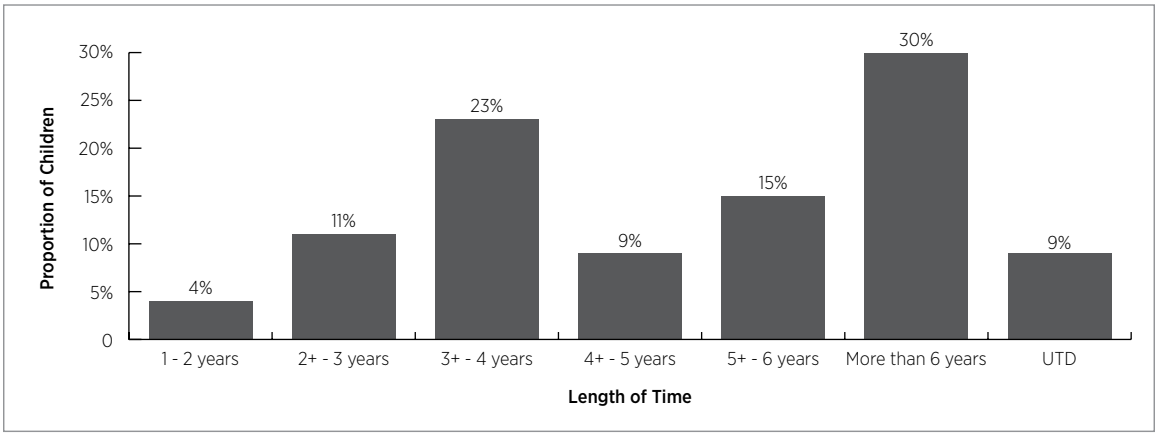
There were 47 children in the sample who had a goal of Adoption and were legally free. The following sections provide the study findings regarding various time frames related to freeing these children for adoption. Data are provided regarding the length of time from foster care entry to freeing, establishing the goal of Adoption to freeing, and the length of time from filing the TPR petition to freeing. It is important to note that although these 47 children were legally free, the process of finalizing the adoptions of these children had not yet been completed. Freeing children for adoption and completing adoptions are separate legal processes.[251] Indeed, for some of these children, an adoptive family still needed to be identified and licensed. More detail regarding issues related to completing the adoption process is presented in Chapter 5: Adoption Casework.

1. Entry to Freeing

The mean length of time from the date children entered foster care until they became legally free was 5.4 years and the median was 4.8 years. The range was 1.5 years to 13.3 years.[252]

For almost half of children (45%) who were legally free, more than five years passed from the day they entered foster care until they became legally free. Figure 9.21 provides detail regarding the length of time from foster care entry to the date children became legally free.

Figure 9.21: Length of Time from Foster Care Entry to Date Child Became Legally Free (*n* = 47)[253]



250 *n* = 106.

251 No data are presented in this report regarding adoption finalization because, by design, none of the children in the study sample were adopted. The purpose of this study was to examine barriers to permanency for children still in foster care. Further, when children are adopted, case files are sealed and unavailable for study.

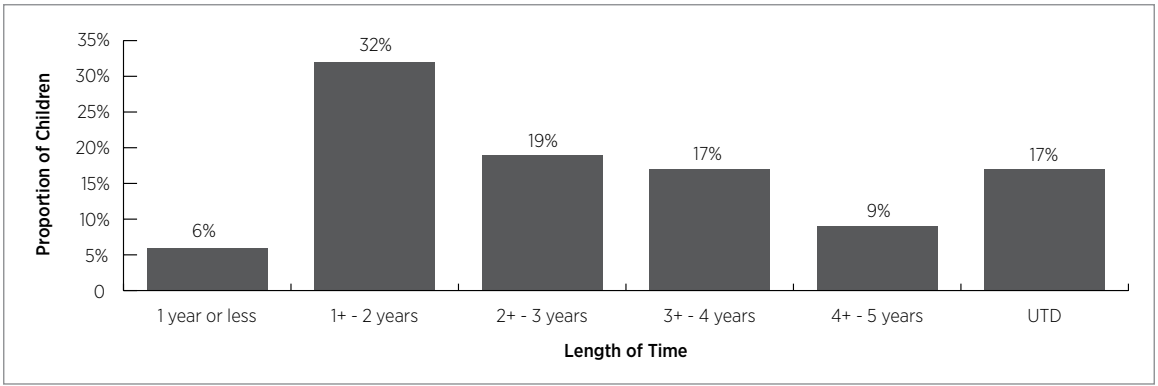
252 *n* = 43. Children's cases were excluded from this analysis if the date the child became legally free was unable to be determined.

253 Proportions do not total 100% due to rounding.

2. Establishing Adoption Goal to Legal Freeing

The mean length of time from establishment of the Adoption goal to legal freeing was 2.4 years and the median was 2.1 years. More than a quarter (26%) of the legally free children in the sample became legally free after more than three years with a goal of Adoption. The longest length of time from establishing the Adoption goal to freeing was 4.6 years.[254] Figure 9.22 provides the lengths of time from establishing the permanency goal of Adoption to becoming legally free for adoption.

Figure 9.22: Length of Time from Establishing Adoption Goal to Date Child Became Legally Free (*n* = 47)



New York State regulations require that children "must be freed within 12 months after the establishment of the permanency planning goal of adoption."[255] As shown in the figure above, 77% of children in the study sample were not legally free within that period of time. The responsibility for not meeting this requirement can lie with the foster care provider agency and/or court, depending on the case circumstances.

3. Filing TPR Petitions to Legal Freeing

For the 47 legally free children in the sample, the mean and median lengths of time from filing the first TPR petition as to either parent to the date the child became legally free was 2.4 and 1.9 years, respectively. The lengths of time ranged from 2 months to more than 8 years.[256] In addition, for more than a third of the children who were legally free (34%), this process took more than two years to complete. Figure 9.23 provides the lengths of time from filing the TPR petition to legal freeing for the children in the study sample.

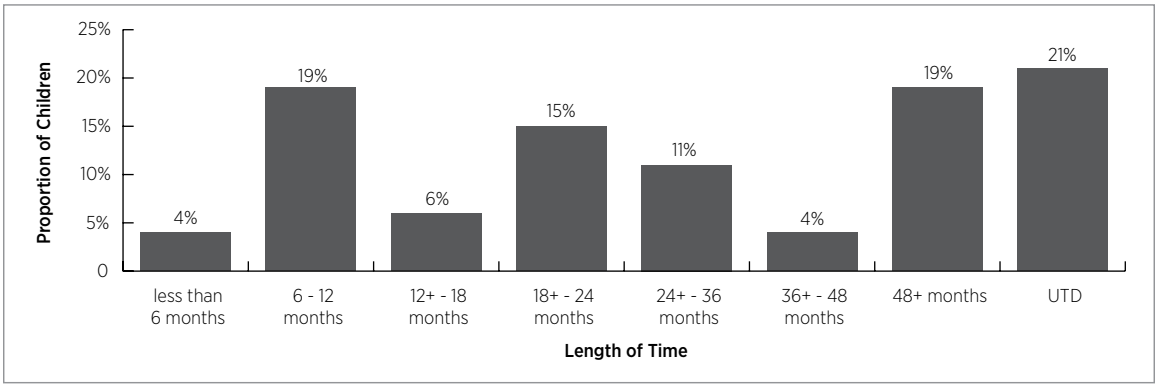
> "Monitoring of [foster care] agency adoption practice is needed. [There is] no system in place to monitor [the] agency's follow-up once a TPR is filed."
>
> **JRP Attorney for Children**

254 *n* = 39. Children's cases were excluded from this analysis if the date the permanency goal or the date the child became legally free were unable to be determined.

255 N.Y. Comp. Codes R. & Regs. Tit. 18, § 430.12(e) (2009).

256 For children with one applicable parent, the length is the difference between the date the TPR petition was filed as to that parent and the date the child became legally free. For children with two applicable parents, the length is the difference between date of the filing of the earliest TPR petition and the date the child became legally free. Children's cases were excluded from this analysis if the date the first TPR petition was filed as to at least one parent and/or the date the child became legally free was unable to be determined.

Figure 9.23: Length of Time from Filing of TPR Petition to Date Child Became Legally Free (n = 47)[257]



D. TPR APPEALS

Data were collected regarding the frequency of TPR appeals. Of all children with a goal of Adoption (74 children), 15% had a TPR on appeal.

E. HAS THE TPR PROCESS IMPROVED OVER TIME?

Many of the children in the study sample entered foster care many years ago, which raises an important question—has the TPR process improved over time? In order to address this question, we examined three of the data indicators discussed above—length of time from foster care entry to filing TPR petitions, length of time from filing TPR petitions to legal freeing, and length of time from foster care entry to legal freeing—to determine if these time frames have gotten shorter over the years. As discussed below and shown in Figures 9.24, 9.25, and 9.26, we found that the TPR process has improved over time. However, the process of filing TPR petitions and ultimately freeing children for adoption still takes many months or years to complete, which is also evident in Figures 9.24, 9.25, and 9.26 below, and does not happen at all for some children, even though the law requires it.[258]

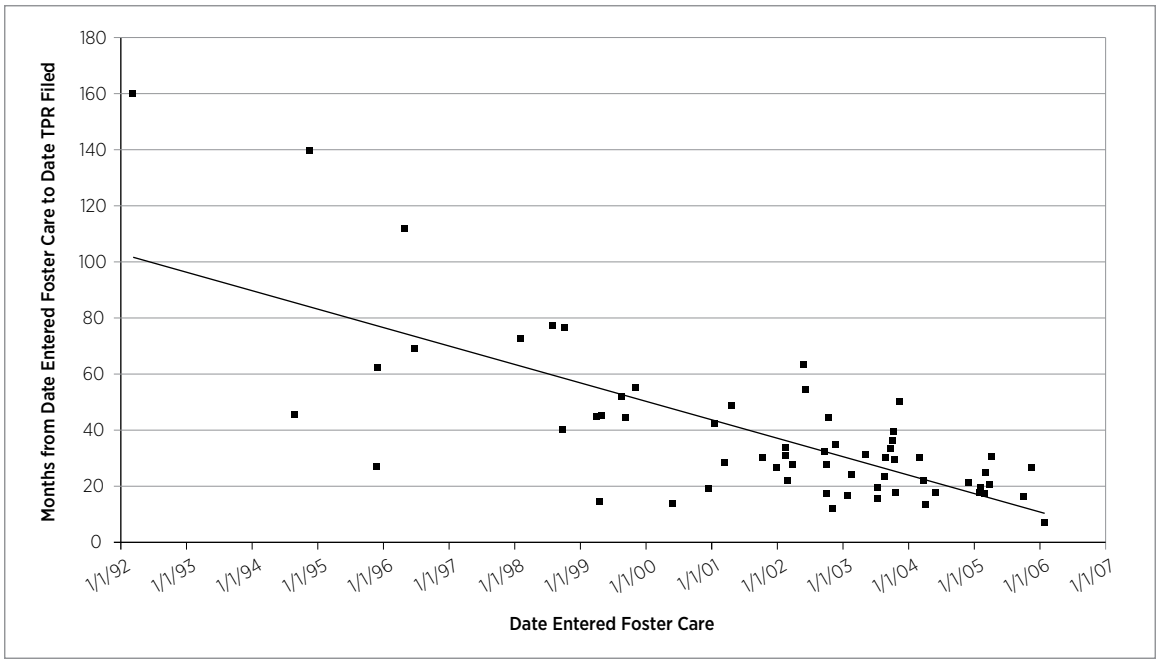
First, we examined the relationship between the date the child entered foster care and the length of time from entry to filing of the first TPR as to either parent (see Figure 9.24). Children who entered foster care more recently were significantly more likely to experience a shorter length of time between entry and the filing of the first TPR petition than children who entered foster care less recently.[259] Although this analysis does not control for other factors that might influence length of time from entry to TPR filing, it does suggest that timeliness of TPR filing has improved over time.

257 Proportions do not total 100% due to rounding.

258 Because the data collection period ended on September 30, 2008, children entering foster care most recently (or children with TPRs filed most recently, depending on the analysis) are less likely to be included in these analyses, as they are less likely to have achieved the milestones in question, simply because they have had less time to achieve the milestones in question (i.e., TPR filing or becoming legally free).

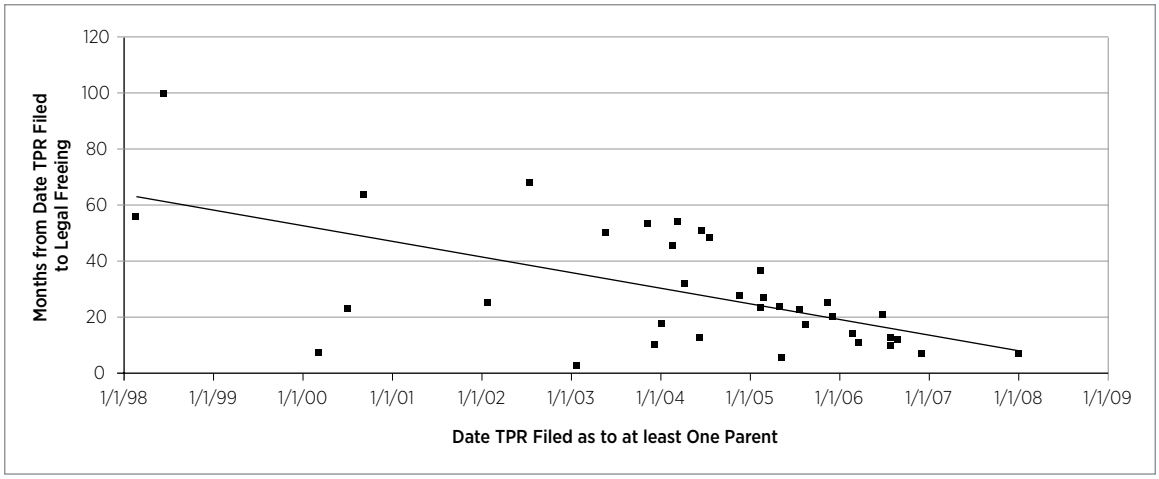
259 This correlation was statistically significant (p < .001).

Figure 9.24: Correlation Between Date Entered Foster Care and Months From Entry to Filing TPR as to at least One Parent[260]



Second, we examined the relationship between the date the first TPR petition as to either parent was filed and the length of time it took from the filing of the first TPR petition to legally freeing the child (see Figure 9.25). Children for whom TPR petitions were filed more recently were significantly more likely to experience a shorter length of time between TPR filing and freeing than children for whom TPR petitions were filed less recently.[261] Although this analysis does not control for other factors that might influence length of time from TPR filing to freeing, it does suggest that the length of time from TPR filing to freeing has gotten shorter over the years.

Figure 9.25: Correlation Between Date TPR Filed as to at least One Parent and Length of Time from TPR Filing to Legal Freeing[262]



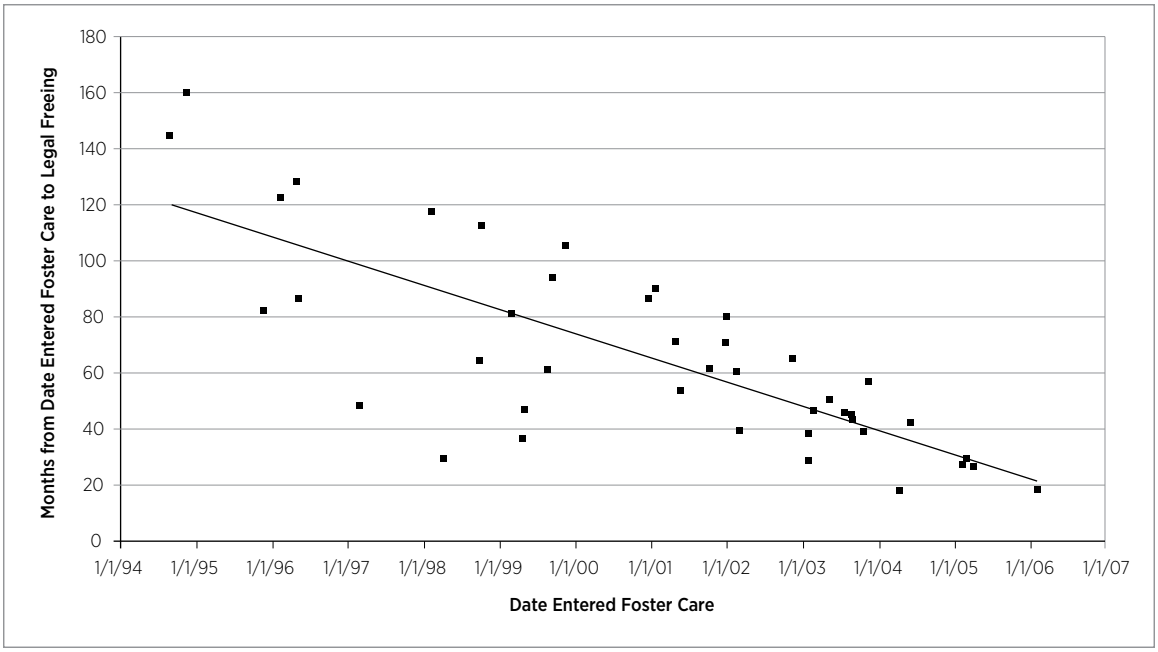
260 *n* = 67. Children's cases were excluded from this analysis if they did not have a TPR filed as to at least one parent or if the date the TPR petition was filed as to either parent was unable to be determined.

261 This correlation was statistically significant ($p < .001$).

262 *n* = 37. Children's cases are excluded from this analysis if they were not legally free or if the date the TPR petition was filed and/or the date the child became legally free was unable to be determined.

Finally, we examined the relationship between the date the child entered foster care and the length of time from entry to freeing (see Figure 9.26). Children who entered foster care more recently were significantly more likely to experience a shorter length of time between entry and freeing than children who entered foster care less recently.[263] Although this analysis does not control for other factors that might influence length of time from entry to freeing, it does suggest that the length of time from entry to freeing has gotten shorter over the years.

Figure 9.26: Correlation Between Date Entered Foster Care and Length of Time from Entry to Legal Freeing[264]



Although the timing of filing TPR petitions and freeing children for adoption remain extremely delayed and problematic, these three correlations indicate that there has been some improvement in the timeliness of these processes over time.

As discussed earlier in this chapter, many factors affect how long it takes to complete the freeing process. For example, foster care agencies frequently do not file TPR petitions within 30 days of establishing the Adoption goal, as required, and adjournments frequently delay the TPR process, as they delay Article 10 Fact-Finding and Disposition Hearings.

Stakeholders reported that the TPR process is often delayed due to issues with serving petitions. When a TPR petition is filed, the parents must be "served," meaning a copy of the petition must be personally delivered to the parents. According to stakeholders, the process of serving petitions

> "Adoption needs to be pushed more—maybe a judge that does only adoption is needed. Adoption cases should have a strict time frame from the time of... freeing."
>
> **Foster Care Caseworker**

> "The one family—one judge thing is nice on paper but if you're going to take six years, it's not helpful... I think you need an all-purpose part... and [a] 1028 part [and]... trial parts."
>
> **Family Court Judge**

263 This correlation was statistically significant ($p < .001$).

264 $n = 43$. Children's cases were excluded from this analysis if they were not legally free or if the date they became legally free was unable to be determined.

is often delayed for weeks or even months. Additionally, efforts (referred to as "diligent efforts") must be made to locate and serve parents whose whereabouts are unknown. Because years may have passed without any contact between the caseworker and the missing parent (frequently the father) or any efforts on the part of caseworker to locate the parent, this process can also take a considerable amount of time. These issues along with other issues discussed in this chapter, can impact how long it takes to move from filing a TPR petition to freeing a child.

E. TERMINATION OF PARENTAL RIGHTS WITH SPECIFIC POPULATIONS

1. Termination Proceedings and Parents with Serious Mental Illness and/or Cognitive Disabilities

As noted in Chapter 4: Casework, a substantial minority of children in the study had parents who had a serious mental illness and/or cognitive disabilities.[265] In addition to concerns about casework with and services for these families (described in Chapter 4: Casework), some stakeholders who participated in interviews and focus groups expressed concern that parents with serious mental illness and/or cognitive disabilities may have their parental rights terminated solely and inappropriately based on these conditions.

Of the 34 children whose mothers had a documented serious mental illness, 38% had a TPR filed against the mother and 62% did not. Of the 18 children whose mothers had a documented cognitive disability, 28% had a TPR filed against the mother and 72% did not. The difference between the frequency of TPR filing in cases involving a seriously mentally ill or cognitively disabled mother versus cases with mothers who did not have those conditions was not statistically significant.[266] However, these analyses should be viewed with caution because they are based on relatively small sub-samples of mothers who have these conditions.

It should be noted that data were not collected regarding whether parents' mental illness or mental retardation were in fact grounds for these particular TPR filings. In other words, it is possible that mental illness or mental retardation were not stated grounds in these TPR filings. In fact, as a general matter, TPR petitions that include mental health and mental retardation allegations are relatively rare systemwide. Data from the New York City Family Court indicate that 7.7% of the 4,718 TPR petitions filed from 2006 to 2008 included a mental health or mental retardation allegation.[267]

Finally, it should also be noted that even when parental mental illness or cognitive disability is a factor in a child welfare case, it may not be the defining issue. Assessments regarding whether parents with cognitive disabilities and/or serious mental illness can parent must consider a variety of factors, including, but not limited to, the particular conditions and parents' responsiveness to assistance and/or treatment. Other risk factors and circumstances that may be related or unrelated to the parents' cognitive disability or mental health condition, including the abuse and neglect that lead to the children entering foster care in the first place must also be considered. However, cases involving parents with cognitive disabilities and/or serious mental illness can create an additional layer of complexity and require skilled individuals who can make qualified assessments and appropriate recommendations to foster care agencies and the Court.

265 Data were collected regarding documented serious mental illness and cognitive delay among the parents of children in the sample who were not legally free. These data were not collected for children who were legally free.

266 Data provided in this section are based on analyses of TPR filings among children in the sample who were not legally free.

267 Data provided to Children's Rights by the New York City Family Court, August 2009.

2. Termination Proceedings and Incarcerated Parents

Among children in the sample who were not legally free for adoption (106 children), 10% percent (11 children) had a parent who was incarcerated at some point during the one-year review period.[268] The 11 children included three children whose mothers were incarcerated, seven children whose father was incarcerated, and one child whose mother and father were incarcerated. TPRs were filed against two of the mothers and three of the fathers. No TPRs were filed against the other two mothers and the other five fathers.

In addition to the fact that only a small group of cases in the sample involved an incarcerated parent, the study did not collect information on the length or location of or the reason for these parents' incarceration. Thus, meaningful analyses regarding case practice in this subset of cases, as specifically related to the parents' incarceration, is not possible.

However, parents' attorneys expressed concerns about a lack of adequate efforts to work with incarcerated parents generally in the system. These stakeholders identified concerns regarding the foster care agencies' lack of adequate outreach and engagement of incarcerated parents in planning for their children. In addition, parents' attorneys' noted some basic bureaucratic issues that hinder parents' participation in court proceedings. For example, when correctional facilities do not receive adequate notice about a hearing, they may not produce inmates for foster care-related court hearings.

Some advocates in the child welfare community have also expressed concerns about the possible hasty termination of parental rights of incarcerated parents, noting that ASFA timelines require the filing of a TPR petition when a child has been in foster care for 15 of the last 22 months, yet, for example, the median prison sentence for women in New York is more than three years.[269] Based on these concerns, legislation has been introduced in New York State that identifies a parent's incarceration or participation in a residential substance abuse program as possible compelling reasons not to file a TPR petition within this time frame. The justification for the bill states that "New York law *almost always* requires social services agencies to begin proceedings to terminate parental rights when a child has been in foster care for fifteen of the most recent twenty-two months [emphasis added]."[270]

However, according to the most recent system-wide data available from ACS, at least among the general population (not specifically incarcerated parents), termination of parental rights petitions are rarely filed at 15/22 (and this comports with the findings from this study). Of 7,210 children who entered care between September 1, 2006 and August 31, 2007 and hit their 22nd month during FY 2009, only 17.3% had a TPR petition filed.[271] However, these data pertain to the general foster care population (and also do not consider the existence of "compelling reasons" not to file). Data specific to TPR filings pertaining to incarcerated parents is necessary in order to fully explore this issue.

268 Data were collected regarding documentation of parents' incarceration among the parents of children in the sample who were not legally free. These data were not collected for children who were legally free.

269 Assembly bill A05462, retrieved October 7, 2009 from http://assembly.state.ny.us/leg/?bn=A05462

270 Assembly bill A05462, retrieved October 7, 2009 from http://assembly.state.ny.us/leg/?bn=A05462

271 Data provided to Children's Rights by the Administration for Children's Services, August 24, 2009.

VI. MEDIATION

Some stakeholders suggested that attorneys should make more of an effort to meet to discuss the possibility of settling more cases, which could result in the legal process moving more quickly while providing families with the services they need through agreement rather than court orders. Although this may take more time up front, in the long run it could save everyone—caseworkers, attorneys, judges and referees, and children and families—the time it takes to litigate cases. Mediation is one option for reducing the length of time involved in litigating cases.

Mediation is a process that brings the parties, caseworkers, and attorneys together outside of the courtroom in order to facilitate communication and resolve conflicts. In four of the five counties in New York City, the Family Court mediation process can be used to address a variety of issues that can prolong court proceedings and delay permanency for children, including determining the most appropriate permanency goal for a child, improving communication between a parent and a caseworker or developing a visit plan that works for the family, the child, and the resource parent.[272] Mediation sessions are led by a trained facilitator and the process is set up to be confidential and non-adversarial. An attorney can request that the judge or referee refer a case to the mediation program or a judge or referee can initiate the referral on his or her own. Currently, mediation serves only approximately 250 families per year,[273] which, of course, represents a tiny fraction of the approximately 17,000 children that are in foster care on any given day.

> "Too much energy is put into litigation. [We] need more mediation [and] collaboration."
> **FCLS Attorney**

> "To some extent, the adversary system is in and of itself a barrier to permanency."
> **Family Court Judge**

Of the 153 children in the study sample, six of the children's cases (4%) had been referred for mediation. These cases involved four children with a permanency goal of Return to Parent and two children with a permanency goal of Adoption (who were not legally free). Data were collected regarding the length of time from referral to beginning the mediation process, the length of time to complete the mediation process, and whether or not mediation resulted in an agreement between the parties; however, these sub-samples are too small to report.

272 As of the writing of this report, mediation was not available in Staten Island.

273 Data provided to Children's Rights by the New York City Court Alternative Dispute Resolution Coordinator, June 24, 2009.