EVALUATION OF THE CHILD PROTECTION CASE MANAGEMENT PROCEDURE AND THE LEWISTON MEDIATION PROJECT

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EXECUTIVE SUMMARY

Like many other states in the nation, Maine has developed improved procedures for handling its child protection docket. In June 1999, the Maine District Court instituted a Case Management Procedure for child protection cases. Intended to help the Court administer the Child and Family Services and Child Protection Act, 22 M.R.S.A. Secs. 4001 et seq, it is designed to allow the state to comply with the federal Adoption and Safe Families Act (ASFA) and to have judges actively direct the course of child protection litigation through Case Management Conferences. At the same time, Maine has been experimenting with the use of mediation to settle child protective services cases in one of its district courts.

The Maine Court Improvement Project commissioned a study in the spring of 2001 to examine these new procedures. The focus of the study is two-fold: to assess how well the case management system is working, and to determine whether the use of mediation for child protection cases in Lewiston has been effective in helping parties to reach satisfactory agreements. The study was conducted by Hornby Zeller Associates, Inc. (HZA) in conjunction with Monahan Research Services, a team chosen after a competitive bidding process.

To evaluate the Case Management Procedure, interviews, focus groups and court file reviews were conducted in the five communities which were the focus of the study—Biddeford, Caribou, Lewiston, Portland and Skowhegan—and court file reviews only were conducted in seven additional courts. Participants in the interviews and focus groups included judges, assistant attorneys general, parents' attorneys, guardians *ad litem,* psychologists and mental health providers, Department of Human Services (DHS) caseworkers and supervisors, and court clerks. In all, over 275 cases were reviewed, over 20 interviews were conducted and over five focus groups were held.

To evaluate the Lewiston pilot mediation project, Lewiston participants from the above groups were asked to comment specifically on issues relating to mediation; data from more than 300 questionnaires completed by parents, professionals and mediators was compiled and analyzed; and interviews were conducted with mediators and parents.

CASE MANAGEMENT PROCEDURE

The Case Management Procedure prescribes the course of child protection litigation. The critical junctures in this procedure are:

- Opportunity for a summary preliminary hearing after the court enters a preliminary protection order;
- Case management conference;
- Jeopardy hearing;
- Case management conference prior to judicial review;
- Judicial review/permanency planning hearing;
- Subsequent case management conference/judicial review; and
- Termination of parental rights hearing.

The Procedure establishes timeframes within which each of the above should occur. At each conference or hearing the judge is directed to encourage parties to reach satisfactory resolution; refine issues where they are contested; independently review all settlements; and ensure that the settlements comply with the spirit and provisions of the Act.

Conclusions

The Case Management Procedure appears to be moving the majority of child protection cases through the court system in a timely fashion; however, in a considerable proportion of the cases the Case Management Conference either does not occur or occurs later than the Procedure specifies.

At least two thirds of all the cases reviewed are following the steps and timeframes outlined in the Procedure. The most notable exception is the Case Management Conference itself, which occurs within the required 30 days from the filing of the Petition in only one third of the cases.[1] Compliance with other deadlines, such as judicial reviews and permanency planning hearings, is much higher.

The Case Management Procedure appears to be an effective tool in promoting the early settlement of cases, though not necessarily in the way envisioned by the Procedure. It also delivers other benefits to participants such as addressing paternity issues early in the case and focusing on service needs and visitation plans. It is not clear whether the Procedure results in a reduction in contested hearings.

[1] If one extends the timeframe to 60 days, the percent of cases with the initial Case Management Conference doubles.

The Case Management Procedure mandates that all parties come before the judge at specific intervals for a Case Management Conference or Judicial Review. In the vast majority of cases most of the parties—parents, Assistant Attorneys General, Department of Human Services agents, guardians *ad litem*, are indeed present. This assemblage of people on a specific date and time provides an opportunity for them to work out problems and differences and often to settle all or some of the issues in dispute. What may not have been anticipated is that these agreements are for the most part reached outside the courtroom prior to the Case Management Conference or Judicial Review rather than before the judge or as a result of the judges' encouragement or direction. In those instances where a judge *does* employ techniques to encourage settlement or to signal a direction he/she frequently can assist in producing agreements, thus avoiding contested hearings.

The initial Case Management Conference also enables the court to resolve issues regarding paternity and the Indian Child Welfare Act; to establish services for parents; and to expedite the provision of discovery materials. The post-jeopardy Judicial Review/Case Management Conference provides an opportunity for the court to oversee compliance with service plans, to warn and/or encourage parties, to modify services and visitation as appropriate, and to resolve or narrow issues in conflict.

In a significant number of the cases either the judge finds agreement on all issues at the Case Management Conference or the judge signs the jeopardy order on the same date as the hearing, indicating the avoidance of a contested hearing. Because the court does not have a data base reflecting the number of contested hearings in child protection cases before the institution of the Case Management Procedure, it is not known whether the Procedure has resulted in fewer of those hearings overall.

The majority of children who have been in the system long enough for a permanency hearing retain the goal of return to parent or relative as a result of that hearing. However, once termination proceedings have occurred, the result generally is termination of parental rights whether by parental consent or not.

Permanency hearings are not required until fourteen months from the child's removal from home or twelve months from a jeopardy order. Several more months may elapse before a termination hearing is required. Because the Case Management Procedure is relatively new, only a small number of the cases reviewed had reached that juncture so the findings of the evaluation should be viewed as preliminary. Of the cases with permanency hearings, sixty percent retained the goal of return to parent while thirteen percent were

recommended for placement with relatives and eight percent for adoption. For those few cases reviewed (17) in which a termination proceeding was completed, over three-quarters resulted in the termination of parental rights.

These early findings indicate that some people's fears that the new requirements would promote children being permanently removed from their homes merely to reach a deadline has not been realized. However, from the file review it was not possible to tell how many children who were recommended to be returned home actually were.

Significant obstacles exist to full implementation of the Case Management Conference to "actively encourage the parties to arrive at agreement" and thus achieve the goal of early resolution and settlement of cases. They are:

- The reluctance of judges to taint a case by expressing an opinion prior to a finding of jeopardy, when the judge is also be the trier of fact at a later contested hearing in the same case;
- Insufficient time on the docket to conduct a Case Management Conference consistent with the purpose and goals of the Procedure; and
- Judges not being sufficiently comfortable or trained to direct the Case Management Conference in the way envisioned.

Judges have varying degrees of discomfort with being asked to play the dual roles of negotiator and fact-finder in child protection cases. In one court, the judges largely defer to the assistant attorney general to resolve the case. In another court, the judge is experienced and comfortable with the role of encouraging settlement and being a fact-finder. Other judges feel that they simply cannot employ strategies to promote settlement in a 15-minute block of time.

The number of judicial events mandated under the Statute and Case Management Procedure has resulted in overburdened court calendars and incomplete implementation of the Procedure.

Even though the mandated Case Management Conferences and other hearings called for in the Procedure enable the judges to know the cases better and to keep the cases moving forward, they have served to clog the docket and overburden the judges in certain courts. (One court went from seven days per month of child protective cases before the change to the current twelve to thirteen days per month. Statewide, Maine district courts went from 3,500 judicial events in child protective cases in 1995 to 11,000 in 2000.)

There are a number of issues associated with the ordering and delivery of services to families which can be alleviated by the judicial branch. These relate to the use of psychological evaluations, the approval of service plans which are either inadequate or unrealistic, and the approval of visitation plans which are too restrictive or infrequent.

Psychological evaluations are being requested routinely, and can become controversial where there is a perception that evaluators are biased. There are also substantial delays in receiving evaluation reports. Service plans are sometimes "cookie cutter," and are not necessarily appropriate and realistic for the parents and families involved. The visitation opportunities offered for approval by the court are often inadequate in terms of quantity and quality.

The perception of the goals of the Case Management Procedure, and whether those goals are being met, vary among the various constituencies who use it.

Some believe that the goal is to increase settlement and reduce the caseload, which in the opinion of most participants has not happened. Others believe that the Procedure is dictated by federal mandates to insure that federal monies will not be lost because of exceeding or failing to meet certain requirements. Some believe the deadlines are being met; others do not. Still others say that they were never informed about the goals of these changes, and have no idea what they were designed to accomplish.

Recommendations

The judicial branch should take steps to increase the effectiveness of the Case Management Procedure by advocating for additional judicial resources and more administrative support for child protection cases.[2] Other obstacles include attitudes and skills. Some judges think these conferences are inappropriate or ill advised. They may be persuaded otherwise by seeing the positive impacts in courts where the Conferences are used frequently. Judges who want to increase their skills in this area should have opportunities through training and observation to do so.

Another way to increase the effectiveness of the Procedure is to reduce or ease up on some of the requirements. For example, since most Case

[2] This may require legislative appropriation.

Management Conferences are now occurring within 60 days, rather than the 30 days set out in the Procedure, without any known harm to parties, some consideration should be given to changing the deadline to 45 days, a compromise. Also, there are instances where the scheduling of Judicial Reviews/Case Management Conferences is cumbersome and costly in time to some or all of the participants. Since the federal law does not require all parties to be present at each judicial review, the judicial branch may consider a method for identifying which cases would benefit from the presence of the parties and which could have a more scaled-back approach.

The judicial branch should also promote the sharing of information among courts and clerks regarding management of their child protection dockets. Some scheduling systems are more streamlined, resulting in better-managed dockets. Forums should be convened in which judges and clerks can learn from each other and adopt a set of "best practices." Techniques with the potential for promoting early settlement of cases, such as providing proposed draft orders to parties prior to the initial Case Management Conference, should be considered.

Actively managing cases means that judges should exercise greater discretion in the review of service and visitation plans. Judges may not rely as heavily on ordering psychological evaluations, instead considering their necessity in the particular case. They should also ensure that service plans are appropriate and realistic for parents and families. Where possible, services which would enable children to remain in the home (e.g., in-home parenting educators) or increase the likelihood of reunification (e.g., adequate, supported visitation) should be encouraged and approved. In addition, wherever possible, judges should promote and approve visitation arrangements which are creative, flexible and realistic and which provide the greatest opportunity for positive parent-child interaction.

To the extent possible, the court should also address other services to families, such as housing and transportation, which could significantly impact their compliance with services and the likelihood of reunification.

Finally, the judicial branch should address the misconceptions in the legal community about the purpose and requirements of the Case Management Procedure. Clarifying the purpose could give the various constituencies a better understanding of, and a feeling of greater investment in, the Procedure. Summarizing the requirements in a brief, abstract form may help to increase compliance with the timeframes.

MEDIATION PILOT PROJECT

The use of mediation in child protective cases was initiated in June of 1999, with the Lewiston District Court as the pilot site. The goals were to help parents better understand what was expected of them; to assist DHS with identifying parents who were capable of parenting; to improve compliance on the part of parents through mediated agreements, as opposed to court orders following a contested hearing; and to reduce the number of subsequent contested hearings, thereby resulting in cost savings to the court. A co-mediation model was to be used, drawing from a team of male and female mediators.

In the initial design of the project, cases were randomly selected for mediation. That design was changed when it became clear that some cases were more conducive to this approach than others, particularly when mediation had been attempted after parties had already reached agreement on important issues or those that remained did not seem appropriate for this approach. In the latter design, only cases which the judge and/or the parties believed might benefit from mediation were referred.

Conclusions

Mediation provides a positive process for parents involved in child protective cases.

Mediation provides a safe and respectful setting in which parents are able to communicate, feel listened to and be understood. Parents report that mediation provides an opportunity to talk about what they want and generally to understand what they need to do.

Mediation is particularly helpful in addressing and resolving issues around visitation and services. Most sessions result in partial or complete agreement on at least some issues. However, it is not known whether these agreements are satisfactory and lasting and lessen the amount of court time needed ultimately to resolve the cases.

Most participants believe that some type of agreement was reached in their case, or that their case made progress in some way. However, because there was no follow-up to the mediation sessions, it is not known

whether the agreements were satisfactory and lasting and whether they avoided the necessity for contested hearings or further negotiation.

Mediation generally did not save time in the way it was implemented in the original pilot study. However, there was improvement when the method for selecting cases was altered.

A mediation session takes longer than any given court hearing. Sixty percent of the mediation sessions take less than ninety minutes while many court hearings take only 15 minutes. However, the issue for many of the professionals was that the session went over old ground. If the mediation replaced rather than duplicated what had transpired it would be more efficient. After the cases were selected purposefully, rather than at random, professionals tended to see a savings in time spent.

Mediation may not be effective in improving the ability of parents and DHS to work together.

While about half the parents said that mediation improved their ability to work with DHS, only twelve percent of DHS workers and AAGs reported improvement. Since the success of an improved working relationship needs to be mutual, it is questionable whether mediation is having a positive impact in this respect. In addition, while mediation is intended to give all parties an equal say in the proceedings, there is a reported imbalance of power between DHS and the parents, particularly parents whose children have been removed from their home. About half of the parents thought the mediation sessions were very fair while three-quarters of the professionals reached that conclusion. Even with highly skilled mediators the perceived imbalance of power cannot be overcome.

When comparing results from the mediation sessions which took place during the period of random selection with those of deliberate selection, the following results can be observed:

- Parents are equally satisfied with mediation under either condition.
- Professionals have a more positive attitude about mediation under the new arrangement with regard to settlements reached, productivity of sessions and overall effectiveness.
- Professionals also have a more positive view about time spent on mediation when cases are deliberately selected as with the new model.

Recommendations

The judicial branch should consider the following:

Before deciding whether to expand mediation of child protection cases to other courts, explore the receptiveness of the courts, the local DHS office and the local bar to the process; and involve all three constituencies from the outset in establishing the project and setting protocols.

Develop protocols for the kinds of cases which are appropriate for mediation based on types of issues presented, which stage of the process the case is at, level of interest and willingness of parties to engage in the process, and the availability of other appropriate forums in which to resolve the contested issues.

Look at other non-judicial forums besides formal mediation, such as team or network meetings (these are organized by DHS and generally involve DHS, parents and services providers, and sometimes parents' attorneys) as alternatives to mediation, particularly where parties have disagreements on issues such as services and visitation.

In any future mediation projects, provide for follow-up in the form of case file review and/or interviews with parties to determine the true impact of mediation on the court process and on reducing the need for court time and court involvement in the case.

CONTEXT

Like many other states in the nation, Maine has developed improved procedures for handling its child protection docket. In June 1999, the Maine District Court instituted a Case Management Procedure for child protection cases. Intended to help the Court administer the Child and Family Services and Child Protection Act, 22 M.R.S.A. Secs. 4001 et seq, it is designed to assure that the Court honor its obligations under the Act in a timely and thorough fashion. The intent of the law and procedures is, in part, to have judges actively direct the course of child protection litigation through Case Management Conferences. The ultimate hope, of course, is that a more efficient and productive set of procedures would benefit the children and families affected.

The modified law and new procedures consist, in large part, of timeframes and directives for the expeditious processing of cases involving allegations of abuse and neglect. These include: conferences of the parties in the judge's presence at marked intervals along the way; orders to cover essential elements of the cases; and appropriate family services to be delivered in a prompt fashion. The Case Management Procedure calls for the active involvement of many parties including the parents, the Department of Human Services, attorneys and guardians *ad litem*. It asks judges to direct litigation through Case Management Conferences, pretrial conferences and conferences of counsel; to encourage parties to reach mutually satisfactory resolution; and to refine the issues if a contested hearing is required.

In addition to the implementation of the Case Management Procedures, one pilot project was instituted in Lewiston to establish mediation sessions to help parties reach agreements without formal courtroom litigation.

Adoption and Safe Families Act

Maine's Child and Family Services and Child Protection Act, together with the Case Management Procedures, are designed to bring the state into compliance with provisions of the federal Adoption and Safe Families Act of 1997 (P.L. 105-89) (ASFA). This broad-ranging federal statute includes specific time requirements for certain actions such as case planning, permanency hearings, and filings for termination of parental rights (TPR). Those requirements arise out of a legislative intent for agencies to make more timely decisions about the futures of children in foster care, that is to

shorten the timeframes for permanency while ensuring that the childrens' safety and well-being are being addressed. It also reinforces the concept that permanency planning must begin at the time of placement, at a minimum by documenting a sound planning process and all of the efforts that are being made to address family problems that led to foster care. ASFA focuses on results in the context of parental and agency accountability. While it contains many requirements, it also contains many exceptions. ASFA should be viewed as a framework for decision making, leading towards permanency, rather than a hard and fast set of rules.

Maine's amended statute added the 120-day timeframe for jeopardy hearings and, like ASFA, states that children in foster care for 15 of the last 22 months must have a hearing on a Termination of Parental Rights (TPR) petition or an approved alternative living plan. ASFA permits alternative permanent plans to be made if they are approved by the court. Exceptions for filing a TPR petition include that the child is living with a relative and intends to stay there, the state can document compelling reasons for not seeking termination on the basis of the child's best interests, or services were not provided to the parents (that is, the state has not made reasonable efforts).

Maine's Case Management Procedure follows the ASFA requirement that judicial reviews be conducted six months after a child enters foster care and that a permanency hearing be held within twelve months. At the hearing, there must be a determination of whether/when the child will be returned home, placed for adoption, referred for legal guardianship, or accorded a different permanent living arrangement.

Purpose of Study

Two years after the introduction of the new system, the Judicial Branch, working with members of the Maine Court Improvement Project (MCIP), requested a study of how well the Case Management Procedure is working. This report reflects the findings of an independent team of consultants who reviewed the implementation of the Procedure in the spring and summer of 2001.

The focus of the study was two-fold: to assess how well the case management system is working; and to determine whether the use of mediation in Lewiston has been effective for helping parties to reach satisfactory agreements that result either in partial or complete settlement of cases.

Towards these ends, a set of study questions was developed by the Maine Court Improvement Project for this review:

1. How well is the Case Management system working?
   a. Are initial and subsequent Case Management Conferences serving a useful function?
   b. Is the court meeting the statutory deadlines for processing child protection cases?
   c. What are the strengths of the current system?
   d. How can it be improved?

2. Do court orders thoroughly address issues pertinent to each stage of the proceedings, including findings related to reasonable efforts?

3. Are court proceedings, including permanency planning hearings, being conducted in compliance with the case management process?

4. What are the perceived gaps in services available to families?
   a. Are services delivered in a timely way?

5. Has the use of mediation in Lewiston been an effective and efficient tool in helping parties reach satisfactory agreements that result in partial or complete settlement of cases?

Methodology

A variety of methods was used to collect information for this study. Working with the Judicial Branch, five areas across the state were selected as focus communities: Biddeford, Caribou, Lewiston, Portland and Skowhegan. In these, both qualitative research in the form of interviews and focus groups was conducted and randomly selected case files were reviewed. In seven additional courts (Bath, Calais, Ellsworth, Farmington, Millinocket, Presque Isle and Rockland), court files were reviewed. Person-to-person and telephone interviews were conducted with seven District Court Judges, six Assistant Attorneys General and several Lewiston mediators as well as parent participants. Focus groups were conducted with psychologists and mental health service providers, clerks of court, parents' attorneys and guardians *ad litem,* and Department of Human Services' caseworkers and supervisors. Questionnaires that had been developed by a prior consultant to evaluate the Lewiston mediation project were data entered and analyzed.

The sites selected for the data gathering were chosen to be representative of a variety of caseload sizes and for geographic distribution. Districts ranged from those with fewer than 25 annual case filings (e.g., Caribou) to those with over 75 (e.g., Lewiston). Similarly, counties ranging from York in the south to Aroostook in the north were chosen.

HZA guided a randomly selected review of case files to obtain empirical data on how the case management system is being implemented. HZA defined the sample, developed the instrument, made modifications based on a field test of the instrument by Administrative Office of the Court (AOC) staff; HZA also provided training to the reviewers who were court personnel.

Two samples were drawn for this review:

Sample One.

Timeframe:	November 1, 1999 – February 28, 2001
Selection:	Cases Opened during Period
Sample:	Every Third Case

Sample Two.

Timeframe:	November 1, 2000 – April 30, 2001
Selection:	Cases With Permanency Hearing or Termination of Parental Rights during Period
Sample:	All Cases

The first was designed to capture cases which began after the new procedure was initiated. The second was designed to capture cases which had reached the point of permanency hearings or termination of parental rights hearings regardless of when they started. Inclusion of the second sample was intended to provide a large enough number of cases with these types of hearings than would have been obtained using the Sample One definition. The reviewers captured information in the files up to the time they were read (June 2001).

All courts in the state were divided into four categories, based upon the number of filings per year. This was done to determine whether compliance with the proceedings varied by size of court. The selected courts and total filings in those courts are shown below.

Selected Courts by Number of Filings in Fiscal Year 2000				
	Class Size by Number of Filings			
	1 1 – 25	2 26 – 50	3 51 – 75	4 76+
West Bath		30		
Biddeford			69	
Calais	23			
Caribou	22			
Ellsworth		49		
Farmington	16			
Lewiston			73	
Millinocket	4			
Portland				113
Presque Isle		26		
Rockland	24			
Skowhegan			59	

In the report there are several references to "Class Size." Class 1 aggregates information for the courts in the table above with 1 to 25 filings per year; Class 2 refers to the courts with 26 to 50, and so forth. The courts in each class are shown below together with the total number of cases read in Sample One.[3]

Categorizations of Class Size			
Class 1	Class 2	Class 3	Class 4
Calais Caribou Farmington Millinocket Rockland	West Bath Ellsworth Presque Isle	Biddeford Lewiston Skowhegan	Portland

The total number of cases with usable information totaled 225 for Sample One and 54 for Sample Two.

The study was designed so that more than one data collection method would be used to capture information on each question. This approach assures that the researchers will not be biased by a given data source or collection method.

[3] In this report, Sample Two is used for only one analysis, that of Permanency Hearings and Termination of Parental Rights Hearings.

The following table shows the relationship between the questions and the data gathering techniques used in this study.

Study Questions by Data Gathering Techniques	Focus Groups and Interviews	Mediation Surveys	Court Records
How well is the case management system working? • Are Case Management Conferences serving a useful function? • Is the court meeting the statutory deadlines for processing child protection cases? • What are the strengths of the current system? • How can it be improved?	X X X X		X
Do court orders thoroughly address issues pertinent to each stage of the proceedings?	X		X
Are court proceedings being conducted in compliance with the case management process?	X		X
What are the perceived gaps in services available to families? • Are services delivered in a timely way?	X X		
Has the use of mediation in Lewiston been an effective and efficient tool in helping parties reaches satisfactory agreements that result in partial or complete settlement of cases?	X	X	

The remainder of this study is presented in two parts: Case Management Procedure and Mediation Pilot Project. Each part contains its own findings, conclusions and recommendations.

CASE MANAGEMENT PROCEDURE

Findings

Court Proceedings

This section reports on the findings from the case file review, the interviews and the focus groups. Rather than presenting the conclusions of the evaluators, this section presents the opinions of the people contacted and the results of the case file review. The subsequent sections of Conclusions and Recommendations present the evaluators' perspectives.

The Case Management Procedure prescribes the course of child protection litigation. The critical junctures in this procedure are:

- Opportunity for a summary preliminary hearing after the court enters a Preliminary Protection Order;
- Case management conference;
- Jeopardy hearing;
- Case management conference prior to judicial review;
- Judicial review/permanency planning hearing;
- Subsequent Case Management Conference/judicial review; and
- Termination of parental rights hearing.

At each step of the Procedure the judge is directed to encourage parties to reach satisfactory resolution; refine issues where they are contested; independently review all settlements; and ensure that the settlements comply with the spirit and provisions of the Act.

Petition for Child Protection and Summary Preliminary Hearing

DHS initiates proceedings by filing a petition for child protection order which may include a request for a Preliminary Protection Order for Child Protection (hereinafter referred to as a PPO).

In 2000, approximately 1000 petitions were filed in courts across the state. In 76 percent of the cases, the filing of a petition resulted in a PPO being signed according to the files reviewed. There was considerable variation by class size, with Class 2 having the highest proportion (79%) and Class 4 the lowest (57%).

The Case Management Procedure instructs judges to appoint attorneys for each parent and a guardian *ad litem* (GAL) to represent the children at the time of granting the PPO. Virtually every child was appointed a GAL

and most mothers were appointed attorneys. There was compliance with these requirements in the following percentage of cases:

Counsel appointed for mother	96%
Counsel appointed for father	88%
Guardian *ad litem* appointed for child	99.5%

The vast majority of hearings on preliminary protection orders, 88 percent, are scheduled within the 10-day requirement; in 80 percent of the cases the hearing is voluntarily waived by the mother and in 66 percent of the cases by the father. The summary preliminary hearing is a procedural safeguard; however, if the parents consent to the *ex parte* order rather than request a hearing, there are no findings made by the court. Parents' attorneys often advise them to choose this route.

One of the features of the Case Management Procedure is to involve all relevant parties at the hearings. At the Summary Preliminary Hearing, the mother, the mother's attorney, the assistant attorney general (AAG), and an agent of the Department of Human Services (DHS) are all present in about three-quarters of the cases. The father and the father's attorney are there in about half of the cases with attendance by any other parties such as relatives dropping off drastically.[4]

If, at the Preliminary Hearing, the judge finds that returning the child to his or her custodian would place the child in immediate risk of serious harm, the judge continues the preliminary protection order pending a full jeopardy hearing. That finding is made in 84 percent of the cases on a statewide basis. There are fairly sizeable variations among the courts with the smaller courts having a much higher percentage of contested preliminary protection orders (over 90%) compared to the larger courts (76%). The table below shows the percentage of cases in which there are findings of immediate risk of serious harm by the courts in the study, organized by class size.

[4]The Procedure instructs judges to appoint attorneys when the names and addresses of the parents are known. The percentage of fathers and their attorneys involved throughout these proceedings are lower than those of the mothers because either the father is unknown, his whereabouts are unknown, or he chooses not to be involved.

Cases with Findings of Immediate Risk of Serious Harm			
Class 1	**Class 2**	**Class 3**	**Class 4**
Calais Caribou Farmington Millinocket Rockland	West Bath Ellsworth Presque Isle	Biddeford Lewiston Skowhegan	Portland
94%	91%	76%	76%

In these instances, where serious risk has been determined, the judge is expected to address that status and the requirements of reunification. This occurred in about two-thirds of the cases. Class 3 courts do not do well with this requirement with only 10 percent in compliance. The other three exceed 80 percent.

One of the ways the federal Adoption and Safe Families Act promotes the speedy handling of cases is to introduce the concept of "aggravating circumstances." These are situations in which the court may truncate or eliminate the reunification requirement due to a parents' actions or history.

In the cases reviewed, only seven percent had such a finding at the Preliminary Hearing while ten percent had the finding at the Jeopardy Hearing and seven percent at the Judicial Review. When an aggravating factors is found, DHS may either forego or cease reunification efforts; in addition, the Permanency Planning Hearing is to be commenced within 30 days.

In 80 percent of the cases with aggravating factors found at the Summary Preliminary Hearing stage, a Permanency Planning Hearing was ordered; however in none of these was the date set to occur within 30 days.

Another federal requirement, mirrored in 22 M.R.S.A., is that the judge make a reasonable efforts finding. This means that the judge determines that DHS has taken the steps that one would consider reasonable at this point in the process to serve the family in a way that would prevent the removal of the child. The judge made such a finding in 87 percent of the cases.[5]

[5] This is not to say that DHS made or has not made reasonable efforts but that the judge made a finding, in compliance with the Case Management Procedure.

Case Management Conferences

The Case Management Procedure for Child Protection Cases requires that judges "actively direct the course of child protection litigation through Case Management Conferences, pretrial conferences, and conferences of counsel." The Procedure mandates that the initial Case Management Conference take place within 30 days of the filing of the Petition. It further requires that the judge address specific items at that conference, and issue a Case Management Order at the close of the conference.

Under the procedure, Judicial Review Hearings must be held, the first within six months of the entry of a jeopardy order, and subsequent ones every six months thereafter. If there is no agreement on an order at that time, these hearings can be conducted as Case Management Conferences.

This first Case Management Conference is one of the focal points of the Case Management Procedure. It is at this conference that the judge attempts to obtain agreements among the parties in order to avoid adversarial procedures that are represented by the Jeopardy Hearing.

One of the central evaluation questions in this study is whether initial and subsequent Case Management Conferences are serving a useful function. The team was asked to focus in particular on the initial Case Management Conference. Issues examined were the timeliness of the conferences, the scheduling and duration of the conferences, whether the judges actively encourage the parties to settle issues in dispute, and whether the judges address the parents directly. Because this conference happens early in a case, it affords the opportunity for parties to come together and reach agreement, thereby avoiding the time and expense of a later contested hearing on jeopardy and other issues. Therefore, another issue explored is the extent to which agreements are reached at the time of the initial Case Management Conference.

Pre-jeopardy Conferences

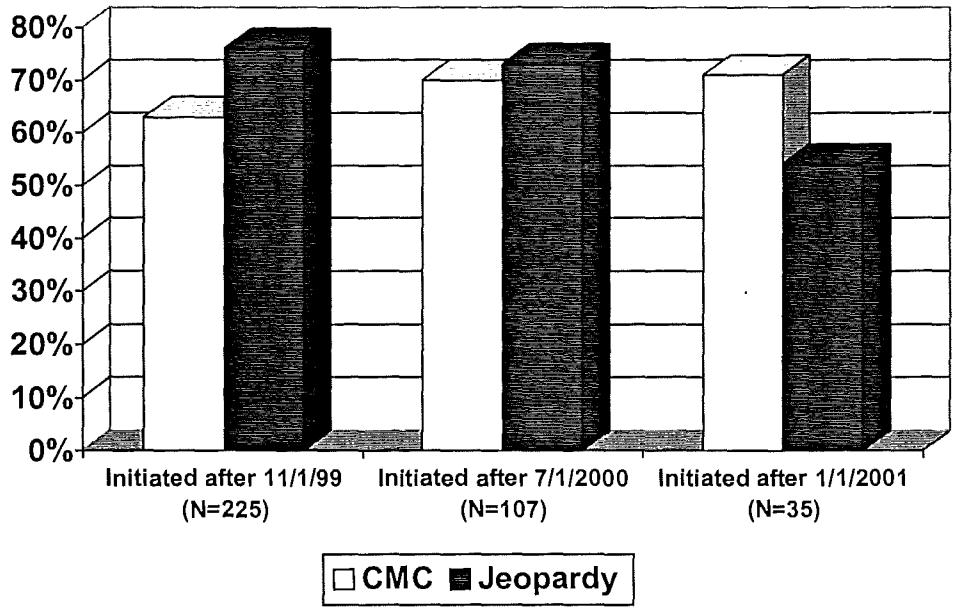
Timeliness

Before answering the timeliness question it is important to examine the extent to which the Case Management Conference occurs at all. For all the cases with a petition for child protection initiated after November 1, 1999, the Case Management Conference occurred in 63 percent of the cases. One may assume that some cases are resolved between the filing of the petition and the time of the Case Management Conference,

explaining why over one-third have no Case Management Conference. However, there were more cases in the sample (76%) with a Jeopardy Hearing, which comes later in the process, than there were with a Case Management Conference, suggesting that the procedure itself is not being fully implemented.

Because this evaluation occurred shortly after the Case Management Procedure was initiated, HZA examined the proportion of cases with both Case Management Conferences and Jeopardy Hearings at different case filing initiation points. As shown below, the result is that more Case Management Conferences are occurring over time. That is, for cases initiated after January 1, 2001, 70 percent had a Case Management Conference, as opposed to 63 percent for the whole sample. In the graph below, the proportion of cases with Jeopardy Hearings goes down in the later time frame because only 196 of the original 225 cases had been in the system long enough to warrant such a hearing.

Percent of Cases with Case Management Conferences and Jeopardy Hearings by Case Initiation Date



The implementation of Case Management Conferences is occurring fairly uniformly throughout the state as suggested by the Class size analysis below. The range is 58 percent to 64 percent.

Cases with an Initial Case Management Conference			
Class 1	**Class 2**	**Class 3**	**Class 4**
Calais Caribou Farmington Millinocket Rockland	West Bath Ellsworth Presque Isle	Biddeford Lewiston Skowhegan	Portland
64%	58%	64%	62%

With regard to timeliness, only 37 percent of the cases with Case Management Conferences met the 30-day timeframe in the Procedure. An additional 52 percent occurred over the next 30 days. In total, 87 percent of the cases with a Case Management Conference had it within 60 days.

Usefulness

All participants in this study report that the initial Case Management Conference is an important event in the case, and is useful in a number of ways:

- If there has been no Preliminary Protection Order, parents and attorneys meet each other for the first time;
- All parties come together for the first time;
- DHS information is made available to all parties;
- Services are established;
- Judge becomes familiar with case;
- Issues such as service, paternity, and whether the Indian Child Welfare Act applies are raised and/or resolved; and
- Parties discuss and reach settlement prior to the conference.

Data from the case file review substantiate the high rates of attendance of the various parties at the Case Management Conference. In about 85 percent of the cases, the mother's attorney, AAG and GAL are present. The mother, father's attorney and DHS are present in 75 to 80 percent of the cases, whereas the father is present in about 58 percent.

Though it is reported that parents' attorneys may not be knowledgeable about their clients' cases by the time of this conference, no one believed that it would be more beneficial to hold the conference later than the 30-day deadline currently called for in the Procedure.

Duration

It is generally the case that these first Case Management Conferences are scheduled every 15 minutes in the five focus communities. Certain days are set aside in the court calendar specifically for these conferences. While some courts may begin the scheduling by allowing 30 minutes for the conferences, as the need arises to schedule others to meet the applicable deadlines, the time available for each case is reduced.

The length of time spent before the judge varies, depending upon the specific needs of the case and which of the following scenarios apply:

- An agreement has been reached prior to the conference and the parties come before the judge to put the agreement on the record (5-10 minutes);
- The parties have not reached an agreement, and the judge tries to assist the parties in resolving issues in dispute or attempts to refine the issues to be heard at the jeopardy hearing (15-20 minutes or more); or
- The parties have not reached an agreement and the conference proceeds as a pre-trial (10-15 minutes).

Active Encouragement of Settlement

There is significant variation among the courts regarding the extent to which judges "actively encourage the parties to arrive at agreement concerning the nature of the jeopardy" as well as the most appropriate disposition. One of the courts will question the parties about the sticking points when the judge feels that this intervention might be helpful. Often parties will ask for help during the conference. Where possible, the judge will get the parties to stipulate to certain facts and will then offer an opinion based on those facts. Even where that has not happened, this judge may state a hypothetical ("if the facts show X, then I would rule Y") to give the parties a sense of what the judge is thinking. Where issues remain outstanding, this judge will attempt to refine and narrow the issues for a later hearing.

At the other end of the spectrum is a court which does not actively encourage parties to reach an agreement, except in cases where the attorneys indicate they have a problem with a case, or where they specifically ask for input. Even then, the judges in this court are very concerned about maintaining impartiality, and are reluctant to express any opinions prior to a jeopardy finding. One of the judges expressed discomfort with "strong-arming" tactics used in a video demonstrating strategies which could be used to encourage settlements. In this court, if

the parties have no agreement prior to the initial Case Management Conference, that conference will generally proceed as a pre-trial.

In the remaining three courts, judges are making some degree of effort either to refine and narrow issues, or to get parties to settle issues which remain in dispute. There are various strategies employed to promote settlement:

- Sending parties out to negotiate further;
- Chambers conferences;
- Getting parties to stipulate to facts; or
- Making comments and asking questions designed to let the attorneys know what the judge's thoughts and concerns are.

One of the judges recognized that there is room for improvement: "I'm not as aggressive as I could be." The other two feel overwhelmed by the number of cases on their docket and by the effort required to meet deadlines, and have not found the time and/or strategies effective to implement this aspect of the Case Management Procedure. As one of these judges expressed, "I'm doing everything I dare do, and I'm not getting very far. Maybe I'm not very skilled."

A final interesting finding in this area is that perceptions of the degree to which judges are actively encouraging agreement vary among individuals and groups. In one court, the AAG's opinion is that the judge uses the Case Management Conference to bring parties closer together and asks questions designed to let them know how the judge is viewing the case. However, from the perspective of the attorneys for the parents, the Case Management Conference is used by the judge to schedule and manage cases, and is essentially a pre-trial conference. In their view, the judge does not mediate or comment on their cases, which would be improper, since the same judge would be hearing the case later.

Addressing Parents

All judges address parents directly at the initial Case Management Conference, but judges report doing so more liberally after an agreement has been reached or a jeopardy order has been entered. Again, there is variation in how this is approached based upon the court and the personality of the judge. A couple of the judges talk to parents routinely and are quite comfortable with this practice. However, even one of these stated, "It needs to be done with kid gloves." Other judges express similar sentiments about the care and caution which must be exercised when addressing parents directly, along with greater degrees of discomfort. One of the specific

discomforts raised is having to ask attorneys' permission and knowing that they do not approve of the judge talking directly to their clients.

Judges and other respondents offer the following examples of the types of questions asked and statements made to parents:

- Do you understand what this agreement requires you to do?;
- It is very important that you comply with these services if you want to get your children back (or keep them in your home);
- Time is of the essence. It is important that you begin services immediately;
- The consequences of not complying could be the permanent loss of your children; and
- If you agree to services, it does not mean you are admitting to the allegations of jeopardy.

Many judges, as well as parents' attorneys, feel that parents are anxious, frightened, and even in shock at these hearings (if their children have been removed), and are not necessarily able to comprehend and appreciate what the judge is saying to them. Mental health and cognitive issues can also be factors. Parents' attorneys say that these factors make it difficult for the judges' comments to have a lasting beneficial effect on their clients. One attorney commented that the judge's message is very important "for the few parents who get it."

Agreements Reached Prior to or at Case Management Conferences

Most of the five focus communities report that agreements are reached prior to the initial Case Management Conference in at least some cases. In some courts the AAGs submit proposed draft orders to the parties prior to this conference. A couple of AAGs bring an order to the first Case Management Conference only when the parties have agreed to the exact language of the jeopardy finding. These AAGs reported that they do not have enough time to draft proposed orders for all of their cases.

Once the proposed orders are sent to parties, or once the first Case Management Conference is scheduled, the negotiation begins. Sometimes this is conducted by the AAG, other times by the DHS workers, and sometimes by both. AAGs report that whether or not the caseworker conducts the negotiation depends upon the experience level of the caseworker. One AAG says it is almost always the caseworker since the AAG has to be in court. Most often agreements are reached at the courthouse, just prior to the Case Management Conference, and are put on the record during the Case Management Conference. Some respondents,

however, state that the majority of agreements in their district are reached just prior to the jeopardy hearing, often in the court corridors.

The review of the case records shows that an agreement was entered on all issues in 18 percent of the cases, at the Case Management Conference, obviating the need for a contested Jeopardy Hearing. In 37 percent of the cases either an agreement was entered on all issues or the jeopardy order was signed on the same date as the hearing, again a sign of agreement reached in advance.[6] In addition, the Jeopardy Hearing started and ended on the same date in 46 percent of the cases, indicating the likelihood that the hearing was not contested or that agreement was quickly reached on the remaining issues.

Agreements are also reached prior to the first Case Management Conference regarding evaluations, the provision of services, and visitation. Because of the expedited time lines, all parties understand the importance of undergoing evaluations and beginning services as soon as possible, even where there will be a contested hearing on the issue of jeopardy. Cases involving serious abuse—physical or sexual abuse—and where children have been removed from the home rarely reach settlement on the issue of jeopardy prior to the first Case Management Conference. Parties may stipulate to certain dispositional issues (e.g., children's residence, evaluations, services, visitation) conditional upon a finding of jeopardy at a later point.

Summary of Issues Relating to the Initial Case Management Conference

The following table summarizes some aspects of Case Management Conferences discussed above and shows the similarities between, and variations among, the five focus communities. With the exception of the final item, this information is reported in interviews and focus groups.

[6] In 18 percent of the cases the judge found agreement on all issues at the Case Management Conference; in 24 percent of the cases the jeopardy order was signed on the same date as the hearing; however, if you remove the duplication between the two groups, the result is 37 percent.

Summary Issues for Initial Case Management Conference					
Issues Examined	**Biddeford**	**Portland**	**Lewiston**	**Skowhegan**	**Caribou**
Scheduled time	15 min.	15 min.	15 min.	30 min.	All at 9:00 (25-30 cases per day)
Duration (before judge)	10-15 min.	5-20 min.	15 min.	5-15 min.	20-45 min.
Proposed order from AAG to parties prior to first Case Management Conference (perception)	Yes	No	No	Yes	No
Judicial encouragement of settlement (perception)	Yes/No	No	Not enough time	Yes	Yes/No
Agreements reached prior to first Case Management Conference (perception)	40-50%	Very few	Few	75%	Most
Jeopardy order signed same day as Jeopardy Hearing (generally signifying agreement reached prior to Jeopardy Hearing) (case file review)	31%	29%	32%	61%	0%

Post-jeopardy Conferences and Judicial Reviews

Generally, respondents in the various constituencies agree that the post-jeopardy Case Management Conferences are useful. However, they are not being greatly used. Only 6 percent of the cases read had a second event specifically designated as a Case Management Conference.[7] One person said being in court more often "keeps everyone on their toes." The judges in particular believe that these mandated conferences help them to keep up with what is transpiring in their cases. Some judges believe that these later Case Management Conferences are even more useful than the initial conference, since they now have a blueprint for the case, in the form of a jeopardy order and a service plan. They stated that they are more comfortable, once "armed with an order," to talk to parents more directly about what they need to do, and to offer encouragement and/or warnings to all parties. The issues most often dealt with at Judicial Reviews (JR)/Case Management Conferences are visitation and services.

[7] 60 percent had judicial reviews .

However, one district said that the costs in the amount of time taken up—for judges, attorneys and DHS workers—outweigh the benefits. Particularly when the parties are cooperating, there seems to be no point in requiring them to show up to say they have no disagreements. One person pointed out that because there is a small bar involved in varying capacities in these cases, often that means that these attorneys will spend the entire day at court. While several DHS groups did share this concern about the expenditure of time, and how it prevents caseworkers from doing other parts of their jobs, neither parents' attorneys nor GALs raised this specific concern.

There is consensus that the post-jeopardy order Case Management Conferences provided the following benefits and opportunities:

- To stress the importance of complying with services, and to tell or remind parents of the timeline;
- To hold all parties accountable (parents and DHS);
- To provide encouragement and/or warnings to parties, as appropriate;
- To modify services and visitation; and
- To resolve or narrow issues in conflict.

Attendance at judicial reviews is comparable to earlier hearings with the exception of fathers and their attorneys, many of whom have dropped out of the process by this point. Attendance is most prevalent among four parties: the AAG (95%), the DHS agent (90%), the GAL (88%), and the mother's attorney (83%). The mother herself appears in three-quarters of the reviews. Agreement is reached in 85 percent of the cases.

Alternative or Adjunct to Case Management Conferences: Team/Network Meetings

Several people discussed the usefulness of meetings hosted by DHS which include parents/caretakers, service providers, DHS, and in some instances, the parents' attorneys. These can be called "team meetings" or "network meetings." One parent's attorney commented, "Team meetings are the best things to move my cases along." By comparison, this person observed, Judicial Reviews/Case Management Conferences are quick and do not have service providers present. One DHS group said that network meetings are better than Judicial Reviews/Case Management Conferences for working out issues. This group expressed strong feelings that the Case Management Conferences are for the convenience of the judge, but are very inconvenient

for DHS workers, and that the cases just "zoom on through" these proceedings without any substantive discussion.

In another district, DHS schedules team meetings just prior to the Judicial Review/Case Management Conferences. If there are remaining disagreements, the parties discuss them with the judge, who indicates where he or she is leaning with regard to the issues. This helps the parties decide whether to come to agreement or pursue the issues at a contested hearing.

Nearly all respondents agreed that the most important aspect of any of these venues is *the bringing together of all the parties*, which provides an opportunity to work out problems and issues and move the case forward.

Scheduling Issues

The first judicial review takes places within the six-month timeframe in 91 percent of the cases. In one court, an AAG reported that contested hearings at the point of Judicial Review are sometimes delayed up to six months beyond the six-month review date. The understanding there is that as long as the JR/Case Management Conference is held, even if another order is not entered because there are contested issues, the court has fulfilled its requirements.

One of the five court districts schedules the JR/Case Management Conference to occur within five months of the jeopardy order, so that if there are contested issues and a hearing must be scheduled, there is time remaining before the six-month deadline. In another court, however, it was reported that sometimes orders are written up and signed, even though there are outstanding contested issues and there has been no hearing to decide those issues. This court reads the law to require an order to be entered at the six-month review point. The order will read, "DHS alleges X; Defendant alleges Y."

There is some confusion about what constitutes compliance with the procedural rules for contested hearings which occur after the jeopardy hearing. One question is whether an order must be entered following the JR/Case Management Conference even when the issues remain in conflict. Also, there is the question of who has the responsibility for identifying which cases do have outstanding issues and will need a Case Management Conference and possibly a hearing, so the court can take that into account in its scheduling.

Additional Case Management Conferences

Only one judge discussed using Case Management Conferences more often than they are mandated in the procedures. This judge leaves open the possibility of having an additional Case Management Conference later, when a previously scheduled Case Management Conference has been conducted as a pretrial conference because of contested issues, when the judge feels a case would benefit from it. This judge also commented that the most important Case Management Conferences can occur after termination of parental rights, when the judge can inquire about, among other things, what services are being offered to the child and about the status of adoption efforts.

Another judge said that it would be more useful to have a second Case Management Conference two weeks prior to the date of the jeopardy hearing, since most cases in that district settle during that period. However, the judge said that it would be impossible to do that because of lack of judge and court time.

Permanency Planning and Termination Hearings

There is a perception that the judicial review and permanency planning hearing are generally accomplished in the same judicial event, rather than two separate ones, and separate or consolidated orders will be issued, depending upon the court, once there is an agreement or a conference/hearing. In 94 percent of the cases (N=53)[8], the permanency hearing is combined with another judicial hearing such as the judicial review. The GAL and DHS agent are most heavily represented at the permanency hearing followed by the mother's attorney, mother and AAG. GALs appeared in 100 percent of the cases which reached this stage, while DHS appeared in 93 percent. The AAGs begin to drop off, with attendance, in somewhat more than half the hearings.

Agreement is reached in 79 percent of the cases and orders are issued which describe not only the plan and services for the child, but also the permanent living arrangement, as described below.

With regard to the Termination of Parental Rights hearings, the people most often present are the AAG and DHS agent (84% of the time each), the GAL (79%), the mother's attorney (67%), and the mother (61%).

[8] Sample Two was used in the analysis for this section only.

Of the 17 cases in the study in which a termination hearing was completed, the table below displays the result. Eight-two percent of the cases resulted in termination for the mother, either through consent or involuntary termination, and seventy-seven percent resulted in termination for the father. Caution should be taken in interpreting the result due to the small numbers in the sample. However, these data indicate that when a cases gets to the stage of a termination proceeding, there is far greater likelihood than not that the result will be termination.

Results of Cases with Completed Termination Hearings (N=17)

	Parental Rights Not Terminated		Parent Consented to Termination		Termination Ordered without Consent	
	No.	Pct.	No.	Pct.	No.	Pct.
Mother	3	18%	8	47%	6	35%
Father	4	23%	5	29%	8	47%

Court Orders

Court orders in child protection cases are frequently prepared by the AAGs, particularly where they are entered by agreement of the parties. In most courts where a contested hearing has been held, the judge prepares the findings and order. The Case Management Conference order forms are filled out by the judges by hand at the time of the conference.

Some of the problems reported with regard to meeting the deadlines for the issuance of court orders in the Case Management Procedure are as follows:

- Family illness or staff changes in the AAGs' offices;
- Continuances because of absence of critical witness(es) or attorney conflicts;
- Judges writing orders following TPR hearings; or
- Judges awaiting evaluations at point of TPR.

The general perception is that jeopardy orders are being entered in a timely fashion and are given the highest priority, while orders following JRs

and TPRs may not be because they are not considered as high a priority. The perception is borne out. The following table shows the percent of cases in which orders are rendered within the specified time frames. In the cases read, jeopardy orders were made in a timely way in 68 percent of the cases, whereas judicial review orders and termination orders were timely in two-thirds to three-quarters of the cases.

Compliance with Timeframes for Court Orders	Total Sample
Jeopardy order date within 120 days of child protection petition filing (N=175)	68%
Jeopardy order signed within 21 days of end of jeopardy hearing (N=148)	72%
Judicial review order signed within 21 days of review (N=49)	67%
Termination of Parental Rights order within 21 days of hearing (N=12)	75%

The Case Management Procedure specifies, in many instances, what should be addressed in the court orders for the various conferences and hearings. One way to address thoroughness is to determine if the judge addressed the specified areas in the orders.

Case Management Conferences

In conducting the Case Management Conferences, the judges confirmed that the parties had been notified in 69 percent of the cases, addressed paternity in 75 percent of the cases, and addressed the Indian Child Welfare Act in 73 percent of the cases. In other words, there is a high degree of compliance with some of those basic requirements in the order. While not always relevant in a case, issues of placement were addressed in 58 percent, children's needs in 42 percent and services or tests ordered in 49 percent.

At the Case Management Conference, the judge identified unresolved issues in 66 percent of the cases. Thus, while the conferences generally did not last for extended periods of time, many of the key issues were addressed in most of the instances. He or she issued a Case Management/Pretrial Order in 100 percent of the cases.

Judicial Reviews

At the Judicial Reviews, the judges' orders have very high compliance in the areas of reasonable efforts findings made (94%) and in including a plan for the child, such as reunification or adoption (90%). However, specific findings regarding reasonable efforts have not been included in orders until recently. Only one judge reported routinely inquiring into specific reasonable efforts by DHS and insisting that they be included in the orders. The remaining judges and AAGs said they understood that they needed to replace the boilerplate language with specific findings relating to reasonable efforts to be in compliance with the statute. A number are now beginning to do this, and others are preparing to do so.

The orders were not as consistently thorough in the areas of parental compliance with the plan (60%) and identifying services for the child (54%).

A couple of the parents' attorneys' groups were not pleased with the lack of specificity in the orders with regard to reunification plans and family service plans. One of them commented that "Parents aren't getting enough of a road map for what they need to do to get their kids back."

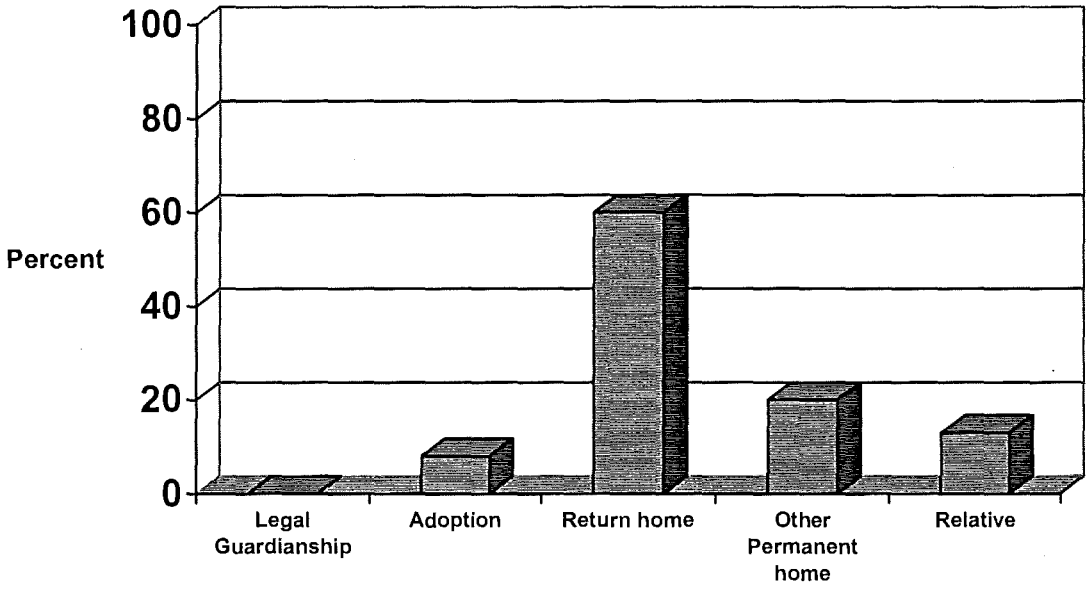
Permanency Planning Hearings

At this stage 96 percent of the orders are compliant with regard to making a reasonable efforts finding and in addressing the permanent plan for the child. Services for the child are addressed in about 57 percent of the cases and parental progress with the plan in 68 percent.

At this hearing, the judge determines if the child will be returned home, adopted, referred to legal guardianship, placed with a relative or placed in another permanent living arrangement. Sixty percent of the children whose cases reach this stage of the process continue with the goal of return to home, and another 13 percent either continue with or are given a permanency goal of placement with relatives. Aside from the goal of legal guardianship, for which no cases appeared, adoption was the goal least frequently ordered. People have expressed a fear that the expedited decisions called for by the Adoption and Safe Families Act and Maine's statues and procedures would result in an increased number of terminations. The results shown here suggest quite the opposite. Even at this late stage of the process, cases are far more likely to maintain the goal of return home than any other, including adoption. In fact, judges are more likely to order any other permanency option than one requiring the

termination of parental rights. The judicial recommendations at the permanency hearing are displayed in the graph below.

Judicial Determination of Permanent Plan



Timeframes and Deadlines

The Case Management Procedure contains many timeframes in which events are to occur. As discussed above, many of these mirror the federal law.

The table on the following page displays all of the major timeframe requirements together with the percentage of cases meeting the requirement. Information is displayed for each of the four class sizes as well as for the total sample. The (N=) designation after each requirement in the left hand column represents the number of cases in the sample for which the requirement is relevant.

Compliance with Case Management Procedure Timeframes by Class Size and Total Sample	Class 1		Class 2		Class 3		Class 4		Total Sample Percent
	No.	Pct.	No.	Pct.	No.	Pct.	No.	Pct.	
Preliminary hearing held within 10 days of preliminary protection order signed (N=145)[9]	55	89%	28	93%	36	97%	26	100%	94%
Case management conference held within 30 days of petition filing (N=136)	51	27%	22	14%	35	34%	28	57%	33%[10]
Aggravating factor found at summary preliminary hearing and permanency planning hearing held within 30 days (N=7)[11]	5	0%	0	0%	2	0%	0	0%	0%
Jeopardy hearing order date within 120 days of filing (N=175)	59	58%	27	78%	44	61%	45	82%	68%
First Case Management Conference/Judicial Review date within 6 months of Jeopardy Order (N= 94)[12]	33	97%	13	85%	17	82%	31	94%	91%
Permanency hearing date within 14 months of removal from home or 12 months from Jeopardy Order, whichever is earlier (N=47)	18	89%	5	100%	15	93%	9	100%	92%
Second case management conference (judicial review) within six months of first judicial review (N=28)[13]	6	100%	3	67%	8	63%	11	64%	71%
Hearing on petition to terminate rights held with child in care 15 of most recent 22 months (N= 17)	8	75%	3	33%	3	67%	3	0%	79%

[9] Sixty-three or 29 percent have no hearing recorded.
[10] Eighty-seven percent were held within 60 days.
[11] Five of the seven cases with aggravating factors at this stage were in Biddeford; neither the Rockland or Lewiston cases had a date set or a hearing. In Biddeford there were two dates set; one with no hearing and one hearing held with no date set.
[12] 131 cases had no information, that is 60 percent either had no hearing or did not get to this stage in the process.
[13] While 75 percent are in compliance for the third review, there are only eight meeting the criteria.

The previous table shows that there is a high rate of compliance with timeliness in many areas. In general, there is about 80 percent compliance with all of the major requirements with the following exceptions: the Case Management Conferences being held within 30 days of the petition filing; the aggravating factors finding resulting in a quick permanency hearing; the second judicial review being held within six months of the first; and the cease reunification hearing being held within 21 days of the motion filing date. The last has so few cases that the result is not significant.

Participants described cases prior to the new procedure in which children remained in DHS custody for four to five years before parental rights were terminated, and even longer before they were adopted. Sometimes cases would not come before the court for a year or more, and when they did, no real action or forward motion necessarily resulted. This no longer happens. Now, jeopardy orders are entered within four months of the petition, and a permanency plan is in place 10-12 months after that. In places where adoption is the appropriate disposition, it can take place within two years.

Benefits, Drawbacks and Impact

Overall, participants in this study believe that the expedited timeframes set out in the Case Management Procedure are improvements over the previous system, and that they work to the benefit of children. At the same time, all participants agree that there are situations in which the timeframes result in unfortunate to tragic outcomes.

Service providers, more than any other group studied, believe strongly that the expedited timelines should not be lengthened. They say that three to four months is enough time for them to determine which parents will change and which will not. Many of the parents they treat already have long histories of DHS and mental health provider involvement. And, in cases where there is some attachment between parent and child and some demonstrated capacity for change, the court can and will extend the deadlines.

All groups agree that the timelines work to the benefit of the children, particularly the youngest children, but not necessarily for the parents. DHS caseworkers themselves acknowledge that, "We are asking parents to do the impossible," and "a year is not a long time to make the kind of changes we are asking parents to make." At the same time, both DHS and the judges say they have considerable flexibility and discretion to extend the deadlines in cases where that is appropriate.

Despite the fact that such discretion is allowed under the statute and procedure, a couple of judges expressed concern that the timeframes will be applied too mechanically. This could result in parents' rights being terminated when, with a little more time, they might not have to be. One of these judges fears that judges "will march to the clock too much," and not exercise their discretion in these cases. AAGs and DHS seem to be more comfortable with the timelines, and particularly with the flexibility they have to not seek termination of parental rights when it is not in the best interests of the child.

Parents' attorneys believe that the timelines are observed to the detriment of parents with longstanding problems who, but for those problems, have the potential to be good parents. Also, in cases involving very young children, the timelines are reported to be applied more strictly, favoring the best interests of the child over the parent. In some of these cases, parents are complying with services to the best of their ability, and are even demonstrating change, but not fast enough.

Many respondents maintain that the timelines do not make sense for parents with substance abuse. "Those are the real tragedies," one judge commented, since they will almost surely not get cured in a year.

The strong consensus among all groups is that the timelines work well for most of the cases in the system. But, as one parents' attorney expressed, "when it doesn't it's terrible, horrible."

Scheduling to Meet Deadlines

Several judges expressed strongly that the mandated deadlines are unrealistic for courts with large dockets or for one-judge districts (Lewiston and Caribou). In these courts, judges must exercise discretion about which cases to give priority to—usually those involving infants and children in DHS custody—since they know they will not be able to meet the deadlines for all cases. There is some variation from court to court in the willingness to meet CP deadlines *at any cost*, even if that means delaying every other kind of case. One judge commented that "people [with other kinds of cases] are screaming," and that judge is less willing to dedicate even more court time to child protection cases. In other courts, all other cases are sent to the back of the line to meet the child protection deadlines.

The strongest feelings elicited from participants in this study regarding failure to meet deadlines came from a couple of DHS groups. One group felt that, because of heavy DHS and court

caseloads, neither is complying with deadlines as they should. The other DHS group felt that the judge is not making enough court time available, is continuing cases too often, and is not complying with deadlines. They routinely object to continuances when they realize that the case will then be out of compliance with federal mandates. One caseworker expressed his frustration this way: "I'd rather be ruled against than wait two years for a ruling."

Impact

Only a few respondents believe that parental rights are being terminated more often now than before the new timelines. In fact, one AAG said that he was afraid the court would become a "termination factory" and that has not happened. People agree that cases move along more quickly, and that it is possible for children to be adopted sooner than before when that is in the child's best interests or for another permanent living arrangement to be made.

There is a general perception that rather than changing the outcomes (i.e., termination v. reunification) of child protective cases, the new timelines are bringing the cases to their most likely conclusion in a shorter period of time. Some participants even express the opinion that the expedited timelines are causing both DHS and the courts to proceed more cautiously at the point of asking for or granting termination of parental rights.

Some of the benefits cited by participants in other districts are:

- Lawyers and judges have more time with the case;
- Parents are more involved in the case, and are clearer about what is expected of them;
- Treatment is more focused, goal-oriented and behavior-specific; and
- Cases are resolved more quickly.

Services

Two of the research questions at the heart of this study involve the delivery of services to children and families. Specifically at issue are the adequacy of service resources and the timeliness of service delivery. In discussing these issues, however, it is useful to distinguish among three categories raised by those interviewed for the study: evaluations, services and visitation. Each of these is discussed in turn.

Evaluations

In many cases, the first thing requested and/or ordered is an evaluation of the parent. It is generally conducted by a mental health professional, usually a psychologist or psychiatrist, and it may cover psychological stability, capacity to parent and/or substance abuse. In some instances, evaluations of the child may be done as well. While there is a great deal of disagreement about evaluations, all sources agreed on one point: there are significant problems with evaluations.

Evaluations are done in more cases than are really necessary. The issues in the case may be clear and an evaluation will have nothing to add—e.g., a case where there is a well-documented history of substance abuse. Yet, parties may insist on having an evaluation as a strategic legal or casework ploy or because it is "What has always been done." This view is reflected by some of the following comments by DHS employees:

- *If you don't have an expert, you can just kiss the case goodbye;*
- *Judges have asked us to do fewer evaluations, but somehow we always seem to get lulled back into doing them as a safety net. It's what we're used to; and*
- *Evaluation shouldn't be the basis of a case, but it helps us work better with the parents.*

There are delays ranging from two to six months in obtaining evaluations. No geographic area of the state has a sufficient number of qualified professionals with the time and the willingness to conduct these evaluations. As would be expected, rural areas have the fewest resources. Even where there are professionals in the county, many do not want to be involved in litigation which could involve having to testify in court, and many will not accept Medicaid rates for their services.

Selecting an evaluator is problematic. Each side–parents and their attorneys on the one hand and DHS and AAGs on the other–often has a preferred evaluator. Each side mistrusts the other side's evaluators. Agreeing on a single person can be difficult. On occasion, judges have ordered two separate evaluations, a tactic that may lead to fairness but also to delay. Parents' attorneys have expressed the following:

- *DHS evaluators are worse than biased; they are careless; and*
- *If your client gets a good report, DHS sends him back for a second opinion. Sometimes it's just a fishing expedition.*

Delays in getting reports can interfere with adherence to the statutory time frames involved in child protection cases. By the time an evaluator is selected, an appointment arranged, the assessment completed, and a report issued, anywhere from four to 12 months might have elapsed. Particularly in cases where the parent is not yet receiving treatment, or is not receiving appropriate services for his or her problem, these delays can have serious consequences. As one guardian said "You want to move on to the next stage of the case but, the evaluation information is still just dribbling in late."

The irony with evaluations is that all parties seem to agree that fewer evaluations are needed than are performed, but cases continue to drift because there are not enough professionals to conduct the evaluations. "Need" appears to be lower than "demand." If the level of adversarial maneuvering could be reduced, the number of evaluations would diminish, the resources would more closely approximate the need, and the cases would move forward more quickly. It may, however, be difficult to achieve a reduction in adversarial maneuvering.

Service Availability

In all but the most adversarial cases, it is generally agreed that services can and should begin right away. Often the service needs are obvious, and the expedited timelines mean it is critical that services begin as soon as possible. Because of the time frames, delays in the provision of services can have a significant impact on the course of a case. Twelve to fifteen months after a petition is filed, DHS submits a proposed permanent plan for each child. If services are delayed, the parents' chances of demonstrating change within that time frame will be reduced.

All groups in this study report that there are often delays in the initiation of services. Such delays are mostly attributed to shortages of therapists and other professionals, and/or failure on the part of DHS caseworkers to act promptly in making the necessary arrangements for their clients. Both of the rural areas included in this study reported deficiencies in nearly all types of service providers.

The most frequently and strongly recommended type of service by all participants is in-home parenting skill educators. Many suggest that if these services were more readily available, there would be fewer removals of children from their homes and more successful reunifications. One Assistant Attorney General reports that DHS caseworkers do not have time to go into the homes to help parents

themselves, and are afraid to return children to their homes without some type of in-home support.

In addition to in-home parenting skill educators, the services respondents believed to be in shortest supply include:

- Treatment for perpetrators of domestic violence;
- Treatment for sexual offenders; and
- Residential facilities with staff to serve both mothers and children.

Even when services have been identified and arranged, there remain obstacles to their actual delivery. There is a strong consensus among people across the state about the following obstacles:

- Lack of transportation, or unreliable transportation;
- Unwieldy distances between parents and services, even when transportation is available;
- Conflict between scheduling of services and work hours;
- Mental health and/or substance abuse problems which hinder the client's ability to utilize the services; and
- Parents' lack of understanding about what is expected of them.

Some of these barriers are systemic and reflect insufficient resources. If more services were provided in more locations and for more hours of the day, the first three listed could be improved.

While there are areas of broad agreement about the inadequacy of specific services and the seriousness of delays in obtaining services, each of the groups interviewed has its own particular perspective. For instance, providers emphasize that too many services are being ordered by the courts and that the specific services selected are often the result of negotiations between DHS and parents' attorneys rather than informed by professional judgment. Alternatively, parents' attorneys, DHS representatives and Assistant Attorneys General all acknowledge that parents are often asked to accomplish the impossible, being required to cooperate with a number of services which are only available during their work hours. In addition, parents' attorneys charge that DHS uses a "one-size-fits-all" approach to service delivery, providing a standard set of interventions rather than services specifically tailored to the needs of the specific family. Yet another perspective is that there is inequity among the DHS regions in terms of what services are available; there is no common core.

Visitation

Nearly all participants agree that changes need to be made in the way visitation occurs between parents and children in DHS custody. Respondents are adamant that there are inadequate opportunities for visitation between parents and children, and that the inadequacies have a significant impact both on the well-being of children and families and on the ultimate outcome of these cases, particularly where very young children are involved[14]. Following are the suggestions offered by participants for improving visitation:

- More visitation hours;
- Realistic visitation hours (e.g., weekends and evenings);
- More, and more qualified, visitation supervisors;
- Visitation center, with parent educators on site;
- Visitation used therapeutically and constructively; and
- Supported visitation in realistic settings with advice and direction, especially where reunification is likely.

Improvements Suggested by Participants

All participants interviewed for this study were asked to offer suggestions for how the case management system could be improved. Because many of the suggestions logically flow from the role played by the participant (except for those related to improving services for families and children, addressed above), most of them are grouped accordingly.

Court Resources

The judges believe strongly that more judges and more court time should be devoted to child protection cases, in order to manage these cases as they are intended under the current case management system. The degree of dedication of the judges and the emotional toll taken by these cases emerged strikingly from the interviews. The following suggestions were made by the judges, except for the final one, which came from other sources:

- More judge time;
- More court time;
- Reduced docket;
- Specialized judges;
- More administrative support;

[14] Studies have shown conclusively that there is a correlation between parental visits of children in foster care and the likelihood that the child will return home.

- One staff person dedicated to permanent custody (PC) cases: to record hearings, fill out Case Management Conference forms, keep database, do scheduling, handle all PC administrative support;
- More support from AOC for PC cases (PC case is "the most important kind of case.");
- Permission for judges independently to pursue grant monies for pilot projects in their courts; and
- Mandated or more widespread use of meetings among parties outside of court to reduce the amount of court time.

One judge expressed strong feelings that there should be no mandate for judges dedicated to PC cases, since that would be too stressful ("Dedicated judge would need psychiatric care") and no mandate for one judge/one family, which would wreak havoc with scheduling.

Procedural or Statutory Issues

The following suggested improvements came from various sources:

- Revisit making the PPO hearing a summary hearing, and the subsequent loss of due process the rights for parents;
- Recruit, train and pay more to obtain more and better parents' attorneys. "These most important cases go to the least experienced attorneys." (Currently even attorneys considered to be incompetent get called by the clerks when no one else is available. Also, many experienced attorneys go on to do only GAL work.);
- Recruit more GALs , especially non-attorneys (CASA does not respond quickly enough);
- Provide proposed orders to parties one week before the Case Management Conference, where possible;
- Make more effort to get agreements at an earlier stage;
- Provide more notice of dates of contested hearings (currently is 5-10 days in some courts);
- Clarify what constitutes compliance regarding JR/Case Management Conference contested hearing orders;
- Define exceptions allowing for extensions of JR order (There are currently good cause extensions for jeopardy order and TPR petition, but none for JR.); and
- Pass an open adoption statute. (This suggestion is offered with great feeling by numerous groups.)

Communication Issues

The following suggestions were offered by parents' attorneys, who would like better access to DHS and to the court to resolve treatment issues:

- Provide for telephone conferences with judges on issues like service provider agreements, OR
- Have CMOs that know about cases available to be called to discuss these kinds of issues;
- Allow parents' attorneys to communicate with DHS caseworkers by e-mail (problem of getting phone calls returned); and
- Provide training to service providers regarding court timeframes and deadlines, and implications of what they say regarding "long term treatment."

A judge who would like a better flow of information between DHS and parents' attorneys, to increase the possibility of settling cases or issues at the initial Case Management Conference, suggested an improved system for getting DHS case file contents to parents' attorneys earlier in the case.

DHS Issues

One DHS group said that caseworkers cannot have trusting social work relationships with clients anymore because of the size of their caseloads. "Addressing the workload issue would do more good for the kids than changing any court system. Fewer kids would be in court because of improved case work being done." Others commented that the time spent in court—sometimes hours, waiting for a few minutes before the judge for a Case Management Conference—takes away from caseworkers' ability to do other things, such as conduct visits to families. This is a widespread frustration among caseworkers.

Another comment related to events in the courthouse prior to the first Case Management Conference was from DHS workers who described the scene: "It's a scramble to get an agreement so we don't have to go to trial." "The AAG goes from attorney to attorney like a hummingbird." Many of the DHS groups feel that their AAGs are not advocating for their positions in the cases. They often feel shut out of the negotiations, particularly when agreements are reached in chambers without them present.

In one district, DHS feels that their AAG recommends agreements which are "unwieldy, unsafe and impractical" and puts pressure on DHS to settle by saying, "That's what the judge wants; that's all we can get." Another participant said he would rather go to a jeopardy hearing and lose than have the AAG compromise to such an extent. Two clear suggestions for improvement emerged from these discussions:

- Smaller DHS caseloads/increased number of caseworkers; and
- Process of negotiating should be out in the open, with all parties present, not behind closed doors.

Resources for Children and Families

(See Services Section for more extensive observations regarding services to children and families.)

The following recommendations came from a variety of sources, including judges, service providers and parents' attorneys:

- Provide parents with practical assistance to help with reunification—particularly in securing or maintaining housing;
- Provide more support for children to prepare for loss of parents through TPR;
- Recruit more foster homes which are located in the same area as families;
- Provide more support to foster homes to prevent institutionalization of children; and
- Give more priority to kinship placement by DHS and the courts.

Clerks

Clerks had recommendations relating to greater efficiency in managing their workloads, as well as for improved communication and information-sharing among the clerks and between the PC clerks and DHS:

- Conduct regional meetings between clerks and DHS caseworkers, so that they can better understand what each group does and how they can better work together;
- Install PCs and copiers in the courtroom, so that orders can be generated at the end of a Case Management Conference, and copies given to everyone there. (In high-volume PC courts, clerks can spend an entire morning doing nothing but

copying orders, not including attesting the copies and mailing them out to all of the parties.);

- Institute a computerized scheduling system, with judges and clerks having access to the same information, so that they can coordinate scheduling; and
- Provide an opportunity for clerks to get together and share information and learn from each other, particularly on issues of scheduling, meeting deadlines and managing the PC docket. (No time allowed for this at seminars and other events which they attend.)

Conclusions

The Case Management Procedure appears to be moving the majority of child protection cases through the court system in a timely fashion; however, in a considerable proportion of the cases the Case Management Conference, one of the centerpieces of the new Procedure, either does not occur or occurs later than the Procedure specifies.

At least two thirds of all the cases reviewed are following the steps and timeframes outlined in the Procedure. The most notable exception is the Case Management Conference itself, which occurs within the required 30 days from the filing of the Petition in only one third of the cases.[15] Compliance with other deadlines, such as judicial reviews and permanency planning hearings, was much higher.

The Case Management Procedure appears to be an effective tool in promoting the early settlement of cases, though not necessarily in the way envisioned by the Procedure. It also delivers other benefits to participants such as addressing paternity issues early in the case and focusing on service needs and visitation plans. It is not clear whether the Procedure results in a reduction in contested hearings.

The Case Management Procedure mandates that all parties come before the judge at specific intervals for a Case Management Conference or Judicial Review. In the vast majority of cases most of the parties—parents, Assistant Attorneys General, Department of Human Services agents, guardians *ad litem*, are indeed present. This assemblage of people on a specific date and time provides an opportunity for them to work out problems and differences and often to settle all or some of the issues in dispute. What may not have been anticipated is that these agreements are for the most part reached outside the courtroom prior to the Case Management Conference or Judicial Review rather than before the judge in the courtroom or as a result of the judges' encouragement or direction. In those instances where a judge *does* employ techniques to encourage settlement or to signal a direction he/she frequently can assist in producing agreements, thus avoiding contested hearings.

The initial Case Management Conference also enables the court to resolve issues regarding paternity and the Indian Child Welfare Act; to

[15] If one extends the timeframe to 60 days, the percent of cases with the initial Case Management Conference doubles.

establish services for parents; and to expedite the provision of discovery materials. The post-jeopardy Judicial Review/Case Management Conference provides an opportunity for the court to oversee compliance with service plans, to warn and/or encourage parties, to modify services and visitation as appropriate, and to resolve or narrow issues in conflict.

In over a third of the cases either the judge finds agreement on all issues at the Case Management Conference or the judge signs the jeopardy order on the same date as the hearing, indicating the avoidance of a contested hearing. Because the court does not have a data base reflecting the number of contested hearings in child protection cases before the institution of the Case Management Procedure, it is not known whether the Procedure has resulted in fewer of those hearings.

The majority of children who have been in the system long enough for a permanency hearing retain the goal of return to parent as a result of that hearing. However, once termination proceedings have occurred, the result generally is termination of parental rights whether by parental consent or not.

Overall, the expedited timeframes for making permanency decisions for children are being met and cases are being attended to, rather than left to drift. Children no longer appear to be getting "lost"

Permanency hearings are not required until fourteen months from the child's removal from home or twelve months from a jeopardy order. Several more months may elapse before a termination hearing is required. Because the Case Management Procedure is relatively new, only a small number of the cases reviewed had reached that juncture so the findings of the evaluation should be viewed as preliminary. Of the cases with permanency hearings, sixty percent retained the goal of return to parent while thirteen percent were recommended for placement with relatives and eight percent for adoption. For those few cases (17) in which a termination proceeding was completed, over three-quarters resulted in the termination of parental rights.

These early findings indicate that some people's fears that the new requirements would promote children being permanently removed from their homes merely to reach a deadline has not been realized. However, from the file review it was not possible to tell how many children who were recommended to be returned home actually were.

Significant obstacles exist to full implementation of the Case Management Conference to "actively encourage the parties to arrive at agreement" and thus achieve the goal of early resolution and settlement of cases. They are:

- The reluctance of judges to taint a case by expressing an opinion prior to a finding of jeopardy, when they may also be the trier of fact at a later contested hearing in the same case;
- Insufficient time on the docket to conduct a Case Management Conference consistent with the purpose and goals of the Procedure; and
- Judges not being sufficiently comfortable or skilled to direct the Case Management Conference in the way envisioned.

Judges have varying degrees of discomfort with being asked to play the dual roles of mediator and fact-finder in child protection cases. In one court, the judges largely defer to the skill and experience of the assistant attorneys general. In another court, the judge is experienced and comfortable with the role of encouraging settlement and being a fact-finder. Other judges feel that they simply cannot employ strategies to promote settlement in a 15-minute block of time.

The number of judicial events mandated under the Statute and Case Management Procedure has resulted in overburdened court calendars and incomplete implementation of the Procedure.

Even though the mandated Case Management Conferences and other hearings called for in the Procedure enable the judges to know the cases better and to keep the cases moving forward, they have served to clog the docket and overburden the judges in certain courts. (One court went from seven days per month of child protective cases before the change to the current twelve to thirteen days per month. Statewide, Maine district courts went from 3,500 judicial events in child protective cases in 1995 to 11,000 in 2000.)

There are a number of issues associated with the ordering and delivery of services to families which can be alleviated by the judicial branch. These relate to the use of psychological evaluations, the approval of service plans which are either inadequate or unrealistic, and the approval of visitation plans which are too restrictive or infrequent.

Psychological evaluations are being requested routinely, and can become controversial where there is a perception that evaluators are biased. There are also substantial delays in receiving evaluation

reports. Service plans are sometimes "cookie cutter," and are not necessarily appropriate and realistic for the parents and families involved. The visitation opportunities offered for approval by the court are often inadequate in terms of quantity and quality, and generally do not serve to improve the parent-child bond.

The perception of the goals of the Case Management Procedure, and whether those goals are being met, vary among the various constituencies who use it.

Some believe that the goal is to increase settlement and reduce the caseload, which in the opinion of most participants has not happened. Others believe that the Procedure is dictated by federal mandates to insure that federal monies will not be lost because of exceeding or failing to meet certain requirements. Some believe the deadlines are being met; others do not. Still others say that they were never informed about the goals of these changes, and have no idea what they were designed to accomplish.

Recommendations

Unless otherwise specified, these recommendations are directed to the Judicial Branch.

1. **Address the obstacles which exist to using Case Management Conferences to "actively encourage the parties to arrive at agreement."**

   Perhaps the most significant obstacle is insufficient court time to conduct a Case Management Conference. Most Conferences are scheduled for only 15 minutes, which would seem too short a time for effecting significant changes in many cases. The dockets are so crowded that most of the conferences cannot occur in a timely way. Overcoming this will require additional judicial resources as well as more administrative support. Since a good deal of effort has already gone into making child protective cases a high priority, the judicial branch may need additional funding to make this a reality.

   Other obstacles include attitudes and skills. Some judges think these conferences are inappropriate or ill advised. They may be persuaded otherwise by seeing the positive impacts in courts where the Conferences are used frequently. Judges who want to increase their skills in this area should have the opportunity to do so though training and observation.

2. **Promote the sharing of information among courts and clerks around managing their child protection dockets.**

   Some scheduling systems are more streamlined resulting in better managed dockets. The judicial branch should design forums or include in current conferences or meetings time for the judges and clerks to have the opportunity to learn from each other and to adopt what might be called "best practices."

3. **Promote the use of proposed orders prior to the initial Case Management Conference and other strategies employed in courts which have a high degree of compliance with the provisions of the Case Management Procedure.**

One strategy for generating agreement at the Case Management Conference which appears to have promise is to have a draft proposed order ready for review. If possible, the court should track the relationship between the submission of draft proposed orders in advance of the initial Case Management Conference, as well as other practices related to negotiating and settling cases, and the relative percentage of cases which reach agreement in the early stages.

4. **Convene facilitated forums to improve communications in courts where relationships between constituencies are in conflict.**

This study identified a couple of courts where there is a decidedly more adversarial atmosphere in child protective cases between and among various participants, but particularly between judges and DHS. In these courts, the judges feel that DHS is being unreasonable, and DHS feels that the judges favor the parents. Both of these courts reported problems in using the Case Management Procedure to encourage parties to reach agreement. It would be useful for the parties to meet, using a professional facilitator, in an attempt to iron out agreements and decrease the adversarial atmosphere. The initial focus should be on the common mission that each branch shares, the well-being of children, and how best to achieve that.

5. **Consider non-court meetings which result in agreement of the parties as an acceptable alternative to a full Judicial Review; also consider allowing parents' attorneys to attend these meetings.**

DHS hosts meetings involving parties which often result in agreements on issues in dispute, particularly relating to visitation and services. When issues are resolved in these forums, it may be unnecessary and inefficient to require all parties to appear before the judge to report their agreement. However, since federal law requires a third-party review every six months, the judge would have to review and approve the agreements.

These meetings should not be a substitute for Judicial Review /Case Management Conferences where there are problems

with the provision of or compliance with services, or other issues of concern to any of the parties.

6. **Consider modifying the Case Management Procedure to streamline requirements.**

Another way to increase the effectiveness of the Procedure is to reduce or ease up on some of the requirements. For example, since most Case Management Conferences are now occurring within 60 days, rather than the 30 days set out in the Procedure, without any known harm to parties, some consideration should be given to changing the deadline to 45 days, a compromise. Also, there are instances where the scheduling of Judicial Reviews/Case Management Conferences is cumbersome and costly in time to some or all of the participants. Since the federal law does not require all parties to be present at each judicial review, the judicial branch may consider a method for identifying which cases would benefit from the presence of the parties and which could have a more scaled-back approach or even a paper review. An example is given in the recommendation above, where the parties have reached agreement through a team meeting involving the parents and sponsored by DHS prior to the six-month review.

7. **Judges should exercise greater discretion in ordering evaluations and in approving service and visitation plans.**

Judges should exercise greater discretion regarding the ordering of evaluations by ensuring that they are truly necessary. They should also ensure that service plans developed by DHS are appropriate and realistic for parents and families. Where possible, services which would enable children to remain in the home (e.g., in-home parenting educators) or increase the likelihood of reunification (e.g., substance abuse treatment) should be encouraged and approved.

To the extent possible, consideration should also be given to assisting families with services such as housing and transportation, which may significantly impact their compliance with services and the likelihood of reunification.

Inadequate visitation can interfere with the parent-child bond, lead to problems for children and ultimately to the loss of parental rights. In the interim, this failing can interfere with reunification efforts. Wherever possible, judges should promote visitation arrangements which are creative, flexible and realistic and which provide the greatest opportunity for positive parent-child interaction. For some families, this might mean unstructured, in-home visits; for others, it might mean highly structured, supervised visits at agency sites. Not every family will require the same arrangements.

8. Communicate goals of the Case Management Procedure to the various constituencies.

The *perception* of the goals of the Procedure vary among the groups studied. Some believe that the goal is to increase settlement and reduce the caseload, which in the opinion of most participants has not happened. Others believe that the Procedures are dictated by federal mandates to insure that federal monies will not be lost because of exceeding or failing to meet certain requirements. Some believe the deadlines are being met; others do not. Still others say that they were never informed about the goals of these changes, and have no idea what they were designed to accomplish. Clarifying the purpose could give the various constituencies a better understanding of, and a feeling of greater investment in, the Procedure. Perhaps the results of this report can provide a vehicle for educating people on the results to date of implementing the Procedure.

MEDIATION PILOT PROJECT

Introduction

The use of mediation in child protective cases was initiated in June of 1999, with the Lewiston District Court as the pilot site. The goals were to help parents better understand what was expected of them; to assist DHS with identifying parents who were capable of parenting; to improve compliance on the part of parents through mediated agreements, as opposed to court orders following a contested hearing; and to reduce the number of subsequent contested hearings, thereby resulting in cost savings to the court. A co-mediation model was to be used, drawing from a team of male and female mediators.

The mediation pilot was originally authorized for one year, with the expectation that 100 randomly-chosen cases at various procedural stages would undergo mediation, and that another 100 cases would be chosen as a control group for evaluation purposes. However, the random selection approach resulted in cases being referred to mediation which were not benefiting from the process. Parties were confused and frustrated by a process which did not make sense to them, particularly when they already had an agreement or when the issues they were facing were not appropriate for mediation. In response to these problems, the design was changed, and only cases which the judge and/or the parties believed might benefit from mediation were referred. The project was extended for approximately another year, to allow cases which were purposefully referred to mediation to go through the process. The project ended on August 15, 2001.

Because this was a pilot project, the participants were asked to complete a survey at the conclusion of the mediation. Those surveys formed one of the bases of this evaluation. They were supplemented by interviews and focus groups with participants.

This section of the report presents the impact of the Mediation Pilot Project from the perspective of the parents and other relatives, the professionals (i.e., parents' attorneys, Assistant Attorneys General , guardians *ad litem* and DHS workers), the mediators and the judge. Information from participants was gathered through these surveys, as well as through interviews and focus groups. Surveys were distributed to the participants (i.e., parents and other relatives, professionals and mediators) in 67 mediation sessions. Ninety-five surveys were completed by a parent or other relative (53% by mothers, 39% by fathers, 8% by grandparents or other family member), 322 were completed by the professionals (31% by parents

attorneys), 27% by DHS workers, 19% by AAGs, 18% by GALs), and 67 by the attending mediator for each specific case for which the mediation session was held. Interviews were conducted with a judge and AAG, two mediators and four parents. Two focus groups were held in the Lewiston area, one which included DHS staff and a second which included guardians and parents' attorneys.

Once the evaluation was essentially complete, about 8 percent more questionnaires were submitted since the project had been extended. The evaluators compared responses on selected questions between the original set and the new set to see if the change in design had a material impact on the results.

Evaluators were asked in the Request for Proposals to address the question:

Has the use of mediation in Lewiston been an effective and efficient tool in helping parties reach satisfactory agreements that result in partial or complete settlement of cases?

Description of Mediation Sessions

As a general rule, sessions begin with the parents who offer their view of the circumstances surrounding the case and what they hope will be achieved. DHS workers are then asked to present the details of the case along with a history of the family and the services that have been offered and/or provided guardians *ad litem* (GALs) provide a broad overview from the perspective of the child, and the court representatives (i.e., attorney, AAG) present the legal issues involved.

The mother's attorney, AAG and/or DHS caseworker participated in at least 90 percent of the mediation sessions. Most parents (91%) were accompanied to mediation by their attorneys; seven percent did not have legal representation and two percent had lawyers but attended without them. The child and his/her foster parent(s) were the least likely to participate, with each group reported to participate in three percent of the sessions.

The following table identifies the types of individuals who participated in the mediation sessions.

Mediation Session Participants

Type of Participant	% of Attendance
DHS Caseworker	97%
Assistant Attorney General (AAG)	91%
Mother's attorney	90%
Mother	89%
Guardian *ad litem* (GAL) – attorney	78%
Father's attorney	67%
Father	64%
CASA GAL	21%
Other professional	19%
Other family and/or friends	15%
Child(ren)	3%
Foster parent(s)	3%

The mediation sessions involved families with a variety of problems. Seventy-four percent had previously been involved in abuse or neglect matters. Of the parents who were involved, 50 percent had serious substance abuse problems and 20 percent had a severe

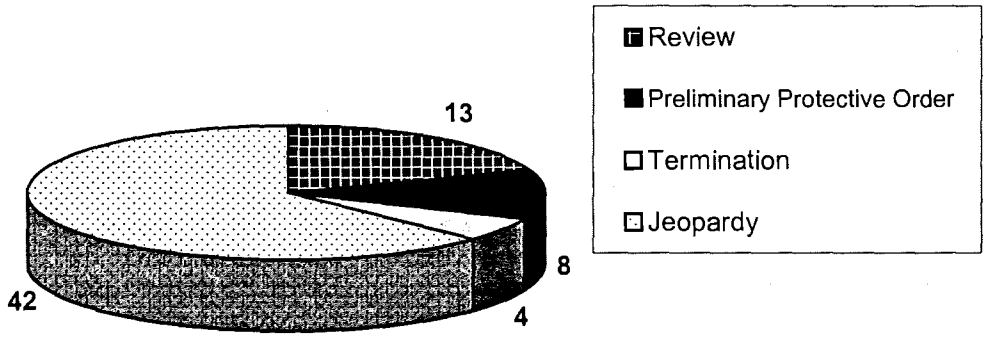
mental disability.[16] Fifteen percent of the sessions involved custody and/or visitation disputes between parents.

The demographics of the families are reflective of the population served in the Lewiston area. Almost all (91%) of the families were Caucasian. Seventy-three percent of the parents were between the ages of 20 and 39, while 11 percent of the parents were teens.

Circumstances

In theory at least, a case at any stage of the proceedings could be handled by mediation so long as there were outstanding issues to be decided. In fact, almost two-thirds of the mediations involved jeopardy determinations.

Mediations by Case Type
(as reported by professionals)
(N=67)



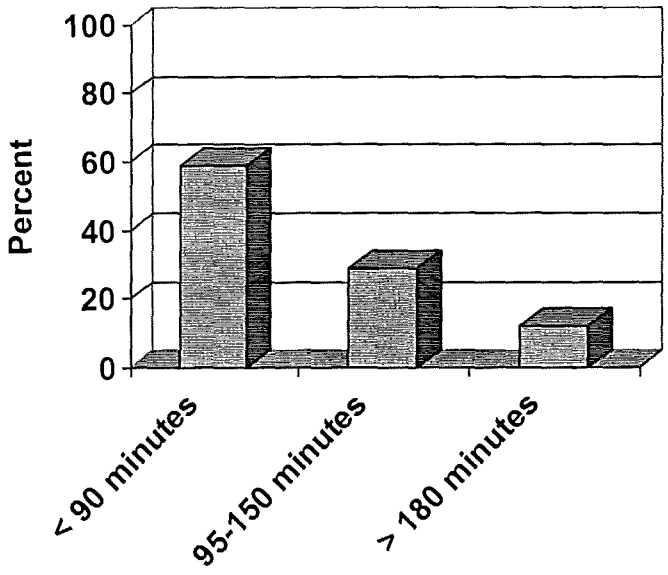
At the time of mediation, nearly half of the children (44%) were living in foster homes. One-quarter of the families still had their children at home. The remainder of the children were living with relatives or were placed somewhere else (12% and 18%, respectively).

Fifty-seven percent of the cases involved allegations of failure to protect, while over half involved allegations of neglect. Physical abuse allegations were present in 28 percent of the cases and sexual abuse in 19 percent. Seven percent of the allegations involved a child out of control.

[16] The mediators completed the form describing the parents. The form asks whether the case involves a parent with severe mental disability and, in another question, serious substance abuse by a parent.

There were no mandated time limits for mediation sessions. In actuality, the lengths of the sessions varied greatly. Slightly over half (59%) were 90 minutes or less. Almost a third of all of the sessions lasted between 95 and 150 minutes, while another 12 percent lasted over three hours.

Time to Conduct Mediation Sessions



Findings: Perceptions of Various Groups

Parents

Eighty-eight percent of the parents stated that the mediation was somewhat or very helpful to them. Those with children still at home were unanimously positive, with 63 percent reporting that they found mediation to be very helpful. Those who have children living with relatives answered positively in slightly more than half the cases (56%), with the remaining 44 percent reporting that they did not find mediation to be very helpful.

Helpfulness of Mediation (as reported by parents/relatives)

	All Parents (N=91)	Mothers (N=49)	Fathers (N=35)	Parents with Children at Home (N=23)	Parents with Children in Foster Care (N=42)	Parents with Children Living With Relatives (N=10)
Very helpful	53%	49%	59%	63%	53%	12%
Somewhat helpful	35%	43%	27%	37%	37%	44%
Not very helpful	12%	8%	14%	-	10%	44%
Not helpful	-	-	-	-	-	-

In the surveys which they completed, parents were presented with positive statements on topics such as their participation in the mediation sessions and their view of the sessions' value. They were asked whether they agreed or disagreed with each statement. On all statements, approximately half of the parents (46% to 65%) chose the response that indicated strongest agreement. The area in which parents expressed the greatest satisfaction involved getting the chance to speak about the issues they wanted to address (65%). Only 10 percent of the parents reported that they did not feel that what they had to say was understood.

Although the mothers' responses overall were comparable to the fathers', 67 percent of the fathers reported that they felt listened to, while only 48 percent of the mothers reported feeling this way.

Parents'/Relatives' Perceptions of Mediation (N=91)				
	Very True	Sort of True	Not Very True	Not True
I got a chance to talk about what I wanted to talk about.	65%	30%	3%	2%
I felt listened to.	55%	33%	9%	3%
I felt that what I had to say was understood.	56%	32%	10%	2%
Mediation helped my to understand what I need to do.	56%	31%	9%	4%
Mediation helped me understand what DHS will do.	49%	40%	6%	5%

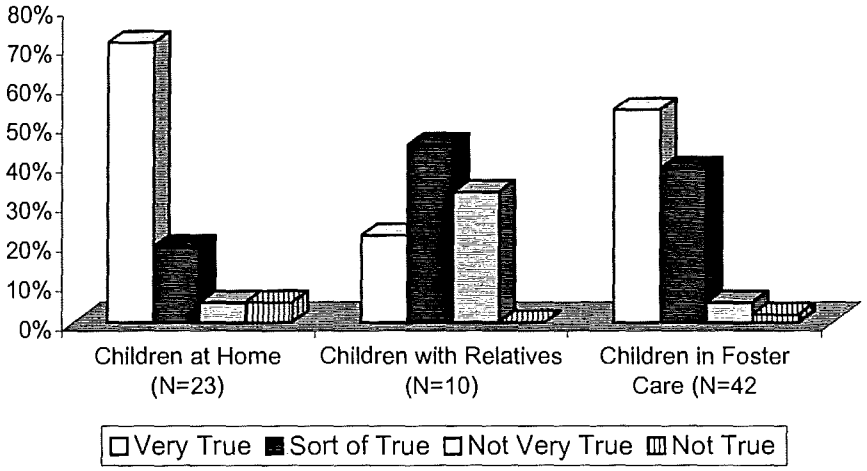
While 40 percent of the parents whose children were living with relatives responded negatively when asked if they felt listened to, 65 percent of parents with children at home and 54 percent of parents with children in foster care responded positively. When asked about whether they felt as though they got a chance to talk about what they wanted to talk about, most parents responded positively across all placement situations. Parents with children at home were the most positive overall.

As depicted in the following graphs, parents whose children were living with relatives responded less positively about some areas of mediation than either those whose children were at home or those whose children were in foster care.

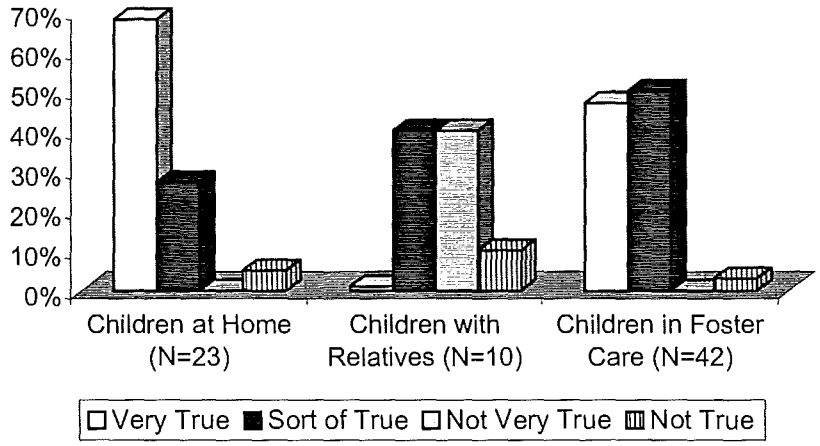
Seventy-one percent of parents with children at home and 62 percent of parents with children in foster care responded positively when asked if they felt that what they had to say was understood. Only 10 percent of the parents who had children placed with relatives responded the same way, with the majority of these parents reporting that this statement was not very true.

When asked if they agreed with the statement "Mediation helped me to understand what I need to do," 71 percent of the parents with children at home, and more than half of the parents with children in foster care found this statement to be very true. Forty-five percent of the parents with children in the placement of relatives found this statement to be sort of true for them.

Mediation Helped Me to Understand What I Need to Do



Mediation Helped Me to Understand What DHS Will Do



Sixty-eight percent of parents with children at home responded positively when asked if they felt that mediation helped them to understand what DHS will do. Ninety-seven percent of the parents of children who are in foster care responded that this statement was very or sort of true, while 40 percent of parents whose children are placed with relatives responded that it was sort of true and another 40 percent responded that it was not very true.

Eighty-six percent of parents stated that it was somewhat or very true that they were included in decision-making at the session. Fathers and mothers expressed similar levels of satisfaction in that regard. There were significant variances, however, when the parents were categorized according to their children's living situation. All parents whose children were at home stated that they felt included, while only 84 percent of parents with children placed with relatives and 70 percent of parents with children placed in foster care offered that opinion.

I Felt Included in the Decision-making Process (as reported by parents/relatives)

	All Parents (N=91)	Mothers (N=49)	Fathers (N=35)	Parents with Children at Home (N=23)	Parents with Children in Foster Care (N=42)	Parents with Children Living With Relatives (N=10)
Very true	55%	51%	61%	64%	51%	40%
Somewhat true	31%	36%	27%	36%	33%	30%
Not very true	5%	9%	-	-	5%	20%
Not true	9%	4%	12%	-	10%	10%

For the most part, parents' comments in the interviews were consistent with what was reported in the surveys, in terms of having the opportunity to speak and be heard. While not everyone spoke up during the mediation—some let their attorneys speak for them ("he probably knew what to say better than I did"), they all knew that they could speak if they chose to.

One parent said he liked the openness of the mediation, how "the cards were all on the table" and no one was hiding anything. During mediation this person felt that he could interrupt his attorney and ask him questions when he didn't understand something. He felt that he could never do that in court. Another person said that mediation gave parents the right to "stand up and defend yourself."

Parents were asked to compare their experience in court with their experience in mediation. While some parents were surprised and/or overwhelmed by the number of people attending the mediation, they were not nearly as intimidated as they were in court hearings. One woman said she didn't feel like the "bad person" at mediation and she liked "brainstorming" and "chatting" around a table with the other participants. Another parent said that court is intense and he feels

very nervous, since what happens there is final. He did not feel as nervous at mediation, since everyone there had to agree.

All but one of the parents interviewed said they were treated fairly and respectfully during the mediation. In the one exception, the participant felt that the mediator allowed the other parent to make disparaging comments, leaving this participant humiliated and discouraged and not able to talk, which resulted in the other person dominating the session.

Professionals

As depicted in the following tables, in nearly three-quarters of the cases (74%), the professionals felt that the mediation session was productive (very or somewhat). Among the professional groups, the AAGs had the lowest opinions of the sessions' productivity, while parents' attorneys and guardians had the highest. Professional opinions on the productivity of mediation also varied by the type of case. Productivity was judged the highest in PPO mediations and lowest in Termination mediations.

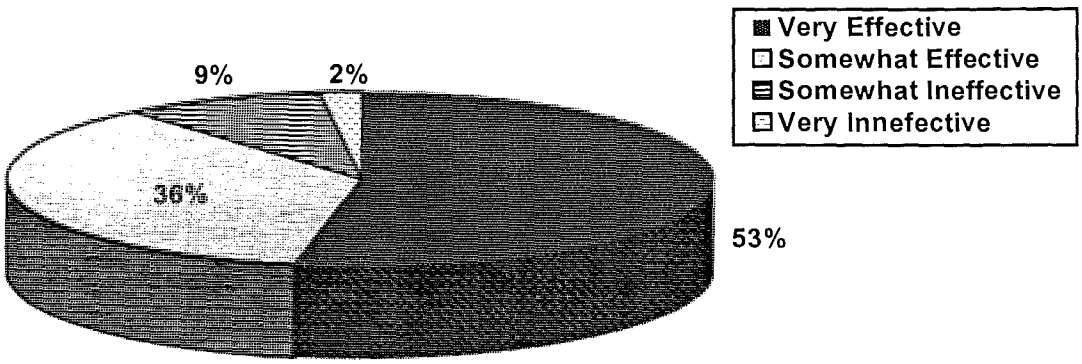
Perceptions of Mediation by Type of Professional

	All Professionals (N=311)	Parents' Attorneys (N=94)	AAGs (N=60)	Guardians (N=57)	DHS (N=84)
Very productive	15%	17%	15%	25%	5%
Somewhat productive	59%	60%	50%	53%	67%
Somewhat unproductive	19%	18%	27%	19%	18%
Very unproductive	7%	5%	8%	3%	10%

Perceptions of Mediation by Type of Case

	PPO (N=39)	Jeopardy (N=195)	Review (N=57)	Termination (N=17)
Very productive	16%	16%	16%	-
Somewhat productive	69%	57%	53%	65%
Somewhat unproductive	10%	19%	28%	18%
Very unproductive	5%	8%	3%	17%

Effectivenss of Mediator in Focusing on Appropriate Issues
Attorneys' and Other Professionals' Responses
(N=315)



Overall, professionals had very positive opinions about the mediators' attitude and conduct. One hundred percent said that they were impartial and 89 percent said that they were either very or somewhat effective.

Comparison of Parents' and Professionals' Perception of Fairness

Both parents and professionals had a positive opinion about the fairness of mediation, although somewhat more professionals were positive. Ninety-five percent of the professionals judged it to be very or somewhat fair, while 87 percent of the parents did so. Again, the perceptions of parents were colored by whether they had their children. Only 30 percent of the parents with children living with relatives rated the process as very fair; even here, 50 percent more considered it to be somewhat fair.

Comparison of Parents' and Professionals' Perception of Fairness

	Professionals (N=311)	All Parents (N=91)	Mothers (N=49)	Fathers (N=35)	Parents with Children at Home (N=23)	Parents with Children in Foster Care (N=42)	Parents with Children Living With Relatives (N=10)
Very fair	74%	55%	52%	57%	68%	50%	30%
Somewhat fair	21%	32%	38%	26%	23%	36%	50%
Not very fair	4%	10%	10%	11%	9%	7%	20%
Not fair	1%	3%	-	6%	-	7%	-

Findings: Effectiveness

Whether mediation is ultimately evaluated to be effective depends upon the goals that were established. These include helping parents better understand what was expected of them; assisting DHS to identify parents who were capable of parenting; improving compliance with mediated agreements; and reducing the number of subsequent contested hearings. The design of this study did not permit all of these questions to be answered.[17] However, this section provides findings on some of the questions and offers proxies on others. It addresses greater voice and understanding, agreements reached, ability to work together, impact on safety and efficiency. It concludes with a comparison between the new and the old cases and a discussion of the study's limitations.

Greater Voice and Understanding

As reported in the section on parent perceptions, mediation is largely successful in giving parents a voice in the process. Only five percent disagreed with the statement that they had a chance to talk about what they wanted. Twelve percent took some exception to the idea that they felt listened to, while 88 percent said the statement was very or sort of true. Over 80 percent said mediation helped them to understand what they are supposed to do.

Agreements Reached Overall

While each of the parties was asked in their surveys about the degree to which agreements were reached, they did not always agree among themselves on the answer. Parents were more likely to conclude that an agreement had been reached, while professionals were more apt to conclude that either a partial agreement or no agreement had been reached, and mediators concluded that more cases reached a partial agreement.

The table below describes to what extent each of the three groups believed that an agreement or settlement had been reached.

[17] Questionnaires were designed by a prior evaluator and the design did not permit follow up on cases to determine compliance with agreements.

Effectiveness of Mediation Sessions (as reported by mediators)			
Effectiveness Rating	Parents/Relatives (N = 95)	Professionals (N=287)	Mediators (N=62)
Agreement/settlement reached	55%	28%	34%
Partial agreement/settlement reached	25%	36%	53%
No agreement/ settlement reached	20%	36%	13%

Participants in the DHS focus group stated that they ended up with an agreement in only one case. However, they also said it was good to get everyone together in one place, particularly additional family members who attended mediation but who did not attend their network meetings.

Some of the specific areas in which mediation sessions attempted to foster agreement were placement of the child, visitation with the child and services to be recommended for the family. Mediators reported that a decision was reached in at least 70 percent of the cases with a decision more likely (90%) to be made regarding visitation as compared to placement (73%). At least one service was recommended for a family member be it for the mother, father and/or child.

Placement

In nearly three-quarters of the cases, the parties were able to reach agreement on the child's placement. On those with agreements, about 83 percent were to remain in placement, with half of those in a foster or group setting. Compared to cases that go to court, the number of children who remain in placement is comparable when mediation is used. In 83 percent of the court cases, the children are ordered removed from home. In 83 percent of the cases with an agreement on placement, the children remain or are placed in foster care.

Visitation

In all but ten percent of the cases there was agreement on questions of visitation. Participants of the mediation sessions agreed that supervised visitation was warranted for 76 percent of the cases, 67 percent by DHS workers and nine percent by family or friends. Unsupervised visits were agreed upon for six percent of the cases. Frequency of visits was another factor for which agreement was sought. A set number (i.e., twice a month, once a month) was agreed upon for 67 percent of the cases. It was agreed that the DHS

caseworker would make that decision for 15 percent of the cases. No visits were to be allowed for eight percent of the cases.

Mediators reported that the mediation process was especially helpful in cases involving infants who had been removed by DHS. Bringing the parties together early in the case provided the opportunity to reach agreement on visitation, thus enabling the parent-child bond to be established or maintained.

Services

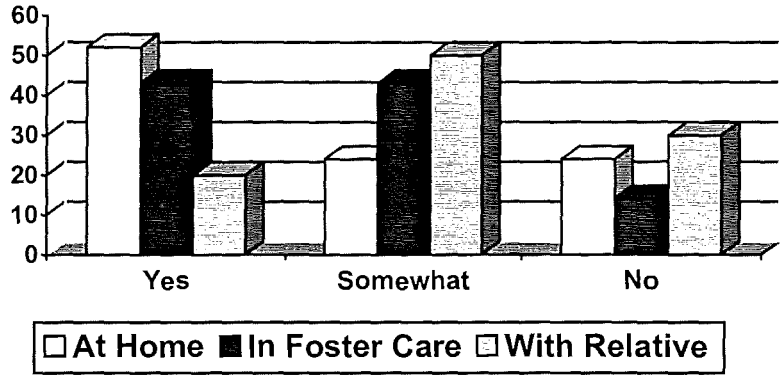
Compliance with the service plan was discussed in about half of the cases. Full or partial agreement was reached in three-quarters of those where it was discussed. In somewhat less than half the cases in which specific services such as counseling, parent classes or drug and alcohol treatment were discussed, there was an agreement on the result.

Ability to Work Together

More parents reported an improvement in the ability to work together as a result of mediation than did professionals. Nearly half of the parents (46%) reported that improvement had been made. Forty-seven percent of the mothers stated the ability to work with the DHS caseworker had improved and 44 percent of the fathers stated the same. The degree to which an improvement had been made varied by where the child resided. Parents were more apt to respond positively when the child remained at home.

The following graph displays parental responses by the placement of their children.

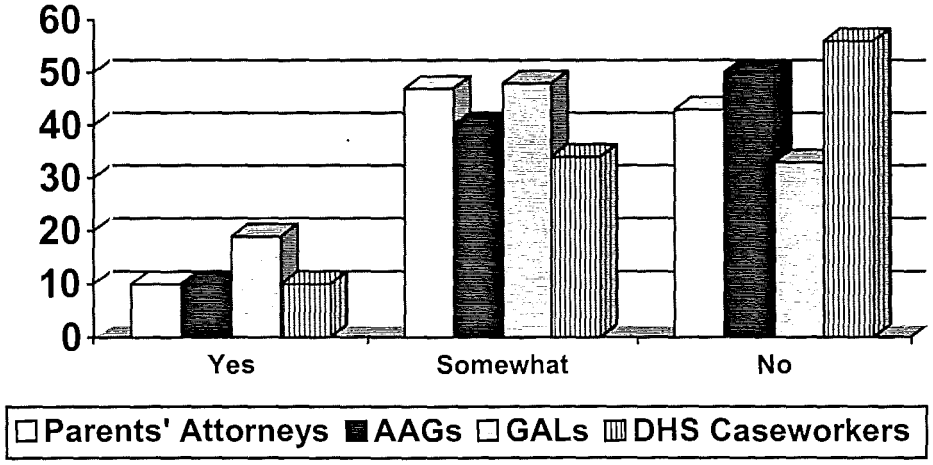
Improvement in the Ability of Parents and DHS to Work Together
Perspective of the Parents



Many professionals simply did not know if relationships had improved (32% overall), with GALs and DHS caseworkers the least likely to form a conclusion. Of the professionals who did form a conclusion, only 12 percent stated that the ability to work together had improved. At least fifty percent of the AAGs and DHS caseworkers reported that there had been no improvement.

The following graph describes the variances among the professionals on the degree to which an improvement had been made.

Improvement in the Ability of Parents and DHS to Work Together
Perspective of the Professionals



Impact on Safety of Children

It is a matter of speculation as to whether mediation has had an effect on the safety of children; however, one third of the professionals believed that it increased safety with the GALs being most optimistic and the DHS workers the least. Safety was believed to be most likely increased in PPO mediations (42%) and least likely affected by termination mediations (25%). It should be noted, however, that significantly more of the professionals answered "do not know" to this question, than answered either yes or no.

Increase Safety of Children					
	All Professionals N=307	Parents' Attorneys N=95	AAGs N=58	Guardians N=54	DHS N=84
Yes	34%	39%	28%	43%	21%
No	23%	15%	28%	15%	36%
Do not know	43%	46%	44%	42%	43%

Efficiency

It is ultimately not clear that mediation saves time. Fifty percent of the professionals reported that it did not. Participants in interviews and focus groups, with the exception of the mediators, reported that other forums in which parties are convened could have produced the same results in less time. Mediation sessions typically take up to 90 minutes, and some last as long as 3 hours. For more than half the duration of the project, cases were referred to mediation randomly, without regard to whether there were issues ripe for mediation or even whether there were outstanding issues to be resolved. Therefore a significant number of the sessions were not useful, and went over ground that had already been covered, and even resolved, elsewhere.

While not for every type of case, the judge from Lewiston commented that mediation is a resource to use in cases in which the parties are fairly close on a particular issue. He did not believe that mediation was useful for cases in which a Preliminary Protection Order was pending. He estimated that 50 percent of the cases sent to mediation reach some kind of agreement, but that there tended to be "a lot of halfway results." The judge stated that the likelihood of success in a mediation session depends largely on the personalities

and the chemistry among the various participants, including those of the DHS caseworker, AAG, GAL and parents' attorneys.

The Assistant Attorney General stated that the cases which reached settlement in mediation could have been settled in 15 minutes rather than after a 2 to 3 hours session, "if only we had 15 minutes to devote to it." He also said that parties already knew going into a mediation session that they were not going to settle. The greatest prospect for an agreement existed when a jeopardy order had been entered in the case—generally, parents' attorneys did not want to talk about jeopardy at mediation. The AAG did support the notion that the mediation process is transparent, unlike the court process, and it does include parents rather than leave them out.
Parents' attorneys said mediation takes too much time, and that what they accomplished in the sessions could have been done in 10 minutes at the courthouse, with the AAG and without the involvement of the parents or DHS. The agreements that are reached in mediation usually involve services and visitation, and rarely involve jeopardy. These attorneys believe agreements could more easily be reached in a different forum.

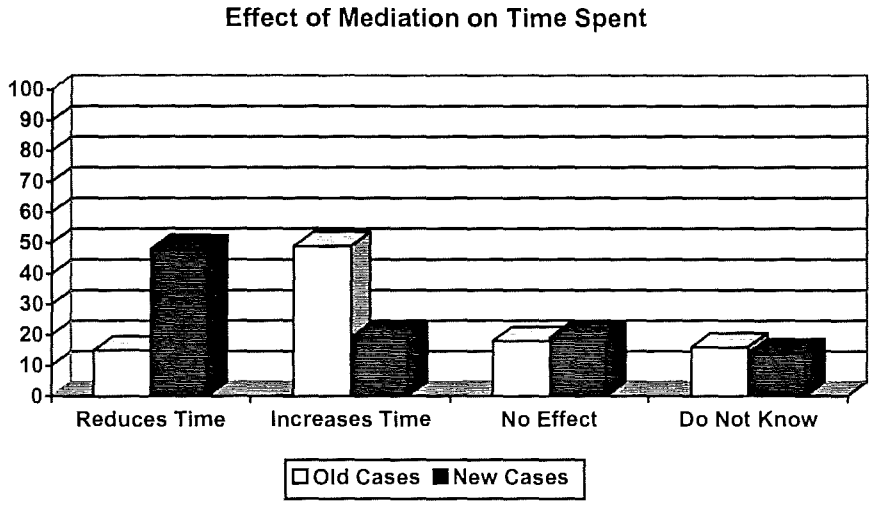
Comparison between New and Old Cases

Once the evaluation data had been analyzed and the first draft of this report written, 29 new questionnaires were submitted, 22 from professionals and 7 from parents. Because all of these cases represented results from the new mediation design, the evaluators thought it would be useful to compare the groups for broad trends. (The second data set was too small for detailed analysis and too late to be combined with the first.)

Essentially this resulted in three major findings:

- Parents are no more or less satisfied with mediation now as they were before.
- Professionals have a more positive attitude about mediation under the new arrangement with regard to settlements reached, productivity of sessions and overall effectiveness.
- Professionals also have a more positive view about time spent on mediation when cases are deliberately selected as with the new model.

The graph below displays the professionals' views on the last point, time spent, under the old and new conditions.



Limitations of the Study

Because there was no follow-up on the mediation cases, it is not possible to determine whether there was greater compliance with the agreements or other impact of mediation on the course of the child protection cases. We do not know from the surveys whether exact language was agreed upon at the mediation, or whether agreement in principle was reached. We do not know if these agreements held up, or whether the issues resurfaced and were addressed at a later Case Management Conference or contested hearing. We also do not know, from looking at the issues discussed, whether there were genuine issues in controversy, or whether there were fine points of disagreement.

Conclusions

Mediation provides a positive process for parents involved in child protective cases.

Mediation provides a safe and respectful setting in which parents are able to communicate, feel listened to and be understood. Parents report that mediation provides an opportunity to talk about what they want and generally to understand what they need to do.

Mediation is particularly helpful in addressing and resolving issues around visitation and services. Most sessions result in partial or complete agreement on at least some issues. However, it is not known whether these agreements are satisfactory and lasting and lessen the amount of court time needed ultimately to resolve the cases.

Most participants believe that some type of agreement was reached in their case, or that their case made progress in some way. However, because there was no follow-up to the mediation sessions, it is not known whether the agreements were satisfactory and lasting and whether they avoided the necessity for contested hearings or further negotiation.

Mediation generally did not save time in the way it was initially implemented in this pilot study.

A mediation session takes longer than any given court hearing. Sixty percent of the mediation sessions take less than ninety minutes while many court hearings take only 15 minutes. However, the issue for many of the professionals was that the session went over old ground. If the mediation replaced rather than duplicated what had transpired it would be more efficient. Once the process for selecting cases changed, people found mediation more efficient in terms of saving time than when cases were selected randomly.

Mediation may not be effective in improving the ability of parents and DHS to work together.

While about half the parents said that mediation improved their ability to work with DHS, only twelve percent of DHS workers and AAGs reported improvement. Since the success of an improved working relationship needs to be mutual, it is questionable whether mediation is having a positive impact in this respect. In addition, while mediation is intended to give all parties an equal say in the

proceedings, there is a reported imbalance of power between DHS and the parents, particularly parents whose children have been removed from their home. About half of the parents thought the mediation sessions were very fair while three-quarters of the professionals reached that conclusion. Even with highly skilled mediators the perceived imbalance of power cannot be overcome.

When comparing results from the mediation sessions which took place during the period of random selection with those of deliberate selection, the following results can be observed:

- Parents are equally satisfied with mediation under either condition.
- Professionals have a more positive attitude about mediation under the new arrangement with regard to settlements reached, productivity of sessions and overall effectiveness.
- Professionals have about the same view as before with regard to time spent on mediation compared to judicial proceedings, i.e., that mediation does not reduce the amount of time required.

Recommendations

1. **Develop protocols for the types of cases which are appropriate for mediation based on case types, which stage of the process the case is at, level of interest and willingness of parties to engage in the process, and the availability of other appropriate forums in which to resolve the contested issues.**

2. **In any future mediation projects, provide for follow-up in the form of case file review and/or interviews with parties to determine the true impact of mediation on the court process and on reducing the need for court time and involvement in the case.**

3. **Consider other non-judicial forums besides formal mediation, such as team or network meetings (these are organized by DHS and generally involve DHS, parents, service providers, and sometimes parents' attorneys) as alternatives to mediation, particularly where parties have disagreements on issues such as services and visitation.**

4. **If a decision is made to expand mediation to other courts, explore the receptiveness of the courts, the local DHS office and the local bar to the process, and involve all three constituencies from the outset in establishing the project and setting the protocols.**