

A r i z o n a J u v e n i l e C o u r t s

**Terminating
Parental Rights
by Jury Trial
in Arizona:
A First Year Look**

May 2005



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Children's Action Alliance (CAA) is a non-profit, non-partisan organization dedicated to promoting the well-being of all of Arizona's children and their families through research, policy development, media campaigns and advocacy.



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Terminating Parental Rights by Jury Trial in Arizona: A First Year Look

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FOREWORD

The juvenile courts play a critical role in providing oversight and assuring accountability of our Child Protective Services (CPS) System, which is mandated to protect abused and neglected children, provide permanent homes if reunification with the family is not appropriate, and assure the well-being of children in the state's care. Recognizing the importance of the courts, the Pew Commission on Children in Foster Care¹ developed policy recommendations in 2004 related to improving court oversight of child welfare cases to achieve better and more timely decisions affecting children's safety, permanence and well-being.

The Pew Commission's recommendations call for:

- Adoption of court performance measures by every dependency court to ensure that they can track and analyze their caseloads, increase accountability for improved outcomes for children, and inform decisions about the allocation of court resources;
- Incentives and requirements for effective collaboration between courts and child welfare agencies on behalf of children in foster care;
- A strong voice for children and parents in court and effective representation by better trained attorneys and volunteer advocates;
- Leadership from Chief Justices and other state court leaders in organizing their court systems to better serve children, providing training for judges, and promoting more effective standards for dependency courts, judges, and attorneys.

In response to these recommendations, Children's Action Alliance has produced two reports examining the work of Arizona's Juvenile Courts.

The first report, *Arizona Juvenile Courts: Working to Improve Outcomes for Abused and Neglected Children*, available on Children's Action Alliance's website at www.azchildren.org, presents the past decade of

juvenile court reform in Arizona, the current dependency court hearing process and plans for court improvement. Based on this study, we found that funding for Arizona's juvenile courts has not kept pace with the critical reforms mandated by the Arizona State Legislature. This report concluded that without additional resources, the expected results for CPS and the child welfare system in Arizona will not be totally realized as the courts will not have the means to provide effective and timely oversight that will enhance the safety, well-being and permanency of children in the state's care.

This second report, *Arizona Juvenile Courts - Terminating Parental Rights by Jury Trial in Arizona: A First Year Look*, examines the legislative mandate initiated in December 2003, without additional funding, to allow jury trials for termination of parental rights hearings based on a parent's request. This first year look at jury trials reveals that this mandate affects the juvenile court's resources and case flow management and places significant additional burdens on all parties to these proceedings, including CPS, the Attorney General's Office and attorneys representing children and their parents. This strain on system resources also indirectly harms other children's cases because scarce resources are redirected to the jury trial process. The critical question is whether the benefits of the jury trial process outweigh the potentially negative consequences on the permanency goals of all the children in the state's foster care system.



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EXECUTIVE SUMMARY

This report provides an overview of Arizona's first year experiences with jury trials in termination of parental rights cases (also known as severance, termination or TPR).

The ability of parents to request TPR jury trials in Arizona became law as a result of the Special Legislative Session on Child Protective Services (CPS) held during the fall of 2003. The law became effective on December 18, 2003 and will expire after December 31, 2006 unless reauthorized by the legislature. The information and perspectives provided in this first year look at severance jury trials were derived from interviews with judges, Assistant Attorneys General (AGs), attorneys representing parents and children, and CPS case managers who were involved with TPR jury trials from December 18, 2003, through December 17, 2004.

As a first year look at the jury trial process, the findings and recommendations provided in this report should be considered preliminary.

Summary Findings

This review of the implementation of jury trials for TPR has found:

- Statewide, 167 TPR jury trials were requested from December 18, 2003 through December 17, 2004.
- Excluding pending cases, only 13 percent of all jury trial requests (17 cases) resulted in jury trials being completed to verdict. Eighty-seven percent of cases involving jury trial requests were resolved before jury trials were held. Half the cases resolved resulted in bench trials either because the parent withdrew the jury trial request, failed to appear at the jury trial, or failed to appear at the pre-trial conference. Just under one-third of the parents requesting jury trials relinquished their parental rights at some point before juries rendered verdicts in their trials. And, in eight percent of the cases, CPS withdrew its motion for severance.

- Four of Arizona's fifteen counties experienced completed TPR jury trials (i.e. trials that resulted in jury verdicts) during this period.
- Because of the low number of jury trials completed, it is too early to determine whether jury trials are more or less likely than bench trials to result in the termination of parental rights. Outcomes for jury and bench trials are as follows:

In Jury Trials -

- 16 of the 17 completed jury trials resulted in jury verdicts severing parental rights on all or some of the children.
- One completed jury trial resulted in a verdict in which parental rights were not terminated.

In Bench Trials -

- 151 of the 158 completed bench trials resulted in judges' rulings severing parental rights on all or some of the children.
- Seven completed bench trials resulted in judges' rulings in which parental rights were not terminated.

- When a jury or judge rules against terminating parental rights it does not mean that children are immediately returned to their parents' custody. In fact, the children continue to be adjudicated dependent and will likely remain with foster parents, relatives, or another out-of-home setting while CPS works toward a new permanent plan.
- Bench trials are more likely to be held and completed as scheduled than TPR jury trials. In Pima County², there were 45 TPR bench trials set during this period and, excluding pending cases, 71 percent resulted in completed bench trials.
- Comparison data between jury and bench trials is limited, but preliminary Pima County data indicate that jury trials (when held and



completed) took an average of 121 days to complete, from the point of the permanency hearing, compared to 137 days for TPR bench trials. This is primarily due to calendar congestion and scheduling practices that spread out the completion of bench trials (i.e., bench trials may be segmented over a period of days or even weeks rather than completed within a continuous time period).

- The vast majority of both jury and bench trial decisions to terminate parental rights are appealed. When a case is on appeal, the child who is the subject of the severance cannot be adopted until the appeal is concluded.
- TPR jury trials have more elements that could lead to mistrials or appeals (whether successful or not) of the verdicts. Mistrials and appeals will result in delays of permanency for children. In FY 2004, the average time for Court of Appeals Division 1 to decide a dependency or TPR case on appeal was 285 days; for Division 2, it was 338 days.
- Jury trials are taking priority over other hearings and case management activities. Therefore,

services to assure safety, child well-being and permanency for other children (not involved in the jury trial process) may be delayed because of the lack of additional and sufficient funding to support the jury trial process.

- The roles of Court Appointed Special Advocates (CASAs), Guardians ad litem (GALs) and children's attorneys are not clearly defined by court rule or statute in the TPR jury trial process.
- Arizona has adopted the national juvenile court standard of One Family/One Judge for all dependency court processes. However, having the same judge hear the dependency case and also preside over the severance hearing may be one important factor in the parent's decision to request a TPR trial by jury. Because of court calendaring and jury trial accommodation issues, Maricopa and Pima Counties have designated specific judges to handle all TPR jury trials; thus deviating from the One Family/One Judge standard.
- Because so few jury trial requests actually result in trials held, some of the judges responsible for TPR jury trials experienced substantial blocks of

“down time” (i.e., unanticipated stretches of time on judges’ schedules when no hearings occurred). To better plan their time, judges started the practice of stacking trials (i.e., scheduling multiple trials for the same time period). This practice reduces the likelihood of judges experiencing substantial down time, but it does not reduce or save time for the attorneys and CPS case managers who must still prepare for each one of the pending stacked trials in addition to their other cases.

- Jury trials have a significant impact on the workloads of key parties involved in these proceedings. AGs, attorneys for children and parents and CPS case managers estimate that TPR jury trials take from three to ten times more time than TPR bench trials, including preparation and time in court.
- In the four counties, there is consensus that TPR jury trials cost more than bench trials although there was no state appropriation to implement the jury trial provision of the new law.
- The jury trial option must be viewed in light of its effects on other children’s cases. CPS case managers preparing for TPR jury trials have less time to see other children on their caseloads and work toward the well-being of those other children. Attorneys for parents and children as well as AGs have less time to prepare for other cases on their workload, all parties must shuffle and reshuffle court hearings as jury trials may be held or cancelled.
- There is a continuing need for basic and specialized training for judges, AGs, other attorneys, CPS case managers, CASAs and GALs on topics relevant to TPR jury trials.

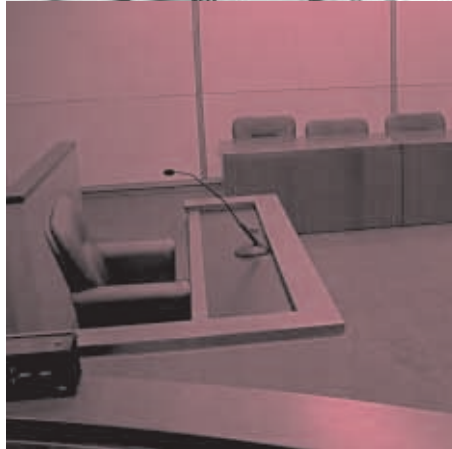
Recommendations

1. **Based on the first year experience of TPR jury trials, including the negative impact on workloads affecting other dependent children’s safety, well-being and permanency needs, the legislature should allow the TPR jury trial provision to sunset. If there is consideration of reauthorizing this law, the legislature should appropriate sufficient funds to support the additional costs for jury trials and to address workloads of all involved parties.**
2. **The Supreme Court and the Attorney General’s Office should continue tracking both TPR jury and bench trials and expand data collection to include:**
 - Data on the number, outcomes and time-frames of appeals and mistrials for both jury and bench trials and the impact on permanency for the children.
 - How many days it takes from the permanency hearing and request for a jury or bench trial to completion of the trial and the jury or judge’s decision.
 - An analysis of the relevant characteristics of parents who are requesting jury trials including how many requests are being made by incarcerated parents, how many are being made by parents with documented severe mental illnesses, and how many are being made by parents with chronic substance abuse problems.
 - What happens to children after a jury or judge decides not to terminate parental rights.
3. **Prior to any decision to extend this legislation, the Supreme Court or the Legislature’s Office of the Auditor General should conduct a cost and workload analysis of jury trials including:**
 - An evaluation of why so few jury trial requests actually result in jury trials being completed, and the costs associated with this outcome.

- The impact on parties and case flow management whether or not the jury trial is actually held.
 - The costs associated with remodeling juvenile courts to accommodate juries and the related expenses that would allow jury trials to be held at juvenile court centers.
 - The TPR by jury workload as it affects other dependency cases not directly associated with the jury trials including other children's well-being and timeliness of permanency.
 - An assessment of whether the option of jury trials is fostering more adversarial proceedings in dependency matters.
4. **As an alternative to a jury trial, the courts should consider allowing parents to make a formal written request to have a different judge preside over the severance trial than the judge responsible for their child's dependency case. (Other jurisdictions, including the 65th Judicial District Children's Court in El Paso, Texas, have successfully implemented this practice without adverse effects on permanency for children.)**
 5. **The Supreme Court's Court Improvement Project should move forward with new rules to expedite (to within 90 days) the Court of Appeals' consideration and findings in termination of parental rights cases. (Iowa has successfully implemented this expedited appeals process.)**
 6. **The judges in Maricopa and Pima Counties should explore ways to issue findings and rulings in bench trials in a more expedited manner than waiting up to the 60 days permitted to issue their findings after a trial commences.**
 7. **The Supreme Court should update court rules to clarify the roles of CASAs, GALs, and children's attorneys in contested TPR trials.**

8. **The Supreme Court and the Arizona Department of Economic Security should make additional training available for judges, AGs, other attorneys, CPS case managers, CASAs and GALs on TPR jury trial issues including courtroom testimony.**





INTRODUCTION

For many people, the ability to be tried by a jury of ones' peers is a foundation of American jurisprudence and the embodiment of our court process. However, of all cases heard in our courts – including civil, criminal, and juvenile matters – few actually go to juries. Most cases are resolved before they get to trial and those that do go to trial are often decided by a judge, not a jury. In the vast majority of juvenile courts, jury trials in abuse or neglect matters are extremely rare, even in states that permit jury trials in dependency cases.³

Perhaps no decision made by juvenile courts is more dramatic than deciding if parents should retain the right to parent their child or children. Many juvenile courts face this difficult decision on a daily basis and, until fairly recently, termination of parental rights (also called severance or TPR) proceedings have remained largely shielded from the public's view due to concerns about privacy and the need to protect children.

When a child is adjudicated *dependent*, it means the juvenile court has determined that the parents or guardians have abused and/or neglected that child to such a degree that the state must formally intervene, at least temporarily, to ensure the child's protection.⁴ When a *parent's rights are terminated*, it means the court has determined the parent(s) are incapable on a long-term basis of providing a safe, permanent and stable home for that child and it is in the child's best interests to have the parental rights terminated.⁵

In Arizona, up until December 2003, when parents contested a TPR motion or petition, their only option was to have their case tried before a judge (otherwise known as a "bench trial"). This judge was, most often, the same judge who handled the parents' dependency proceedings. With the passage of ARSS§8-223 in December 2003, parents facing the termination of their parental rights obtained a second option – the ability to request a jury trial in TPR matters.⁶

This report is intended to capture the key issues and experiences surrounding the first year of TPR jury trials in Arizona. Where possible, comparisons of perspectives will be drawn among judges, Assistant

Attorneys General (AGs) who prosecute TPR cases, CPS case managers, and attorneys who represent children and/or parents in these matters. Comparisons among the four counties⁷ (Maricopa, Mohave, Pima and Yuma counties) that completed TPR jury trials, including different experiences in metropolitan and rural counties, will also be drawn where applicable. And comparisons between jury and bench trials will also be discussed when relevant.

This initial look at TPR jury trials in Arizona was based on interviews with professionals involved in trials that were actually held, and review of preliminary data. All statistics used in this report were provided by: the Office of the Arizona Attorney General, Child and Family Protection Division; the Arizona Supreme Court's Administrative Office of the Courts (AOC); and the juvenile courts in the four counties that experienced completed jury trials. Jurors, parents, and children who participated in these proceedings were not interviewed due to confidentiality concerns and time constraints.

The professionals who were interviewed expressed strong and varied opinions as to the relative benefits and drawbacks of jury trials. There was no disagreement, however, when it came to discussing the workload impact of jury trials. While the number of jury trials completed in Arizona has been relatively small to date, the impact on key participants in the TPR jury trial process has been anything but small.

While the focus of this paper is on TPR jury trials, interviews with key participants in severance matters revealed that juvenile courts, particularly those in Maricopa and Pima counties, continue to face formidable challenges with crowded court dockets. This report offers some options to address this concern, a concern that applies to both jury and bench trials.

BACKGROUND AND HISTORY OF TPR JURY TRIALS IN ARIZONA

Jury trials in TPR matters in Arizona emerged within a much broader effort to reform the state's Child Protective Services (CPS) system. The state's reforms were embodied in legislation passed during a special session of the state legislature in December 2003. This legislation clarified the mission of CPS to: (1) protect children, (2) promote the well-being of a child in a permanent home and (3) strengthen the family and prevent abuse or neglect.

Prior to the special session and during negotiations among key legislators and the Governor's Office on how to improve CPS, one legislator suggested the jury trial option. The impetus for this legislator's suggestion was based on a desire to afford parents as much due process as

possible in termination of parental rights proceedings. This reflected concerns regarding the possibility, perceived by some, that CPS reforms could lead to more children being removed from their homes and thus the need for more options for parents and opportunities for systemic checks and balances. Jury trials, say proponents, offer an additional check and balance.

The statutory provision allowing parents to request jury trials in severance cases is ARS §8-223. It reads as follows:

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

An emergency clause made the statute immediately effective upon the Governor's signing on December 18, 2003. This new section of law also has a three year sunset provision; the law will cease to exist after December 31, 2006 unless it is reauthorized by the legislature.

"The underlying reason for severance jury trials was to give people a greater sense of fairness. Some people are concerned about the existing court process and CPS. Jury trials offer a balance that enables parents to plead their case in front of a jury of their peers instead of a judge who some feel may be biased."

- Arizona State Senator



QUESTIONS AND ANSWERS

Q How many TPR jury trials have been requested?⁹

A Statewide, 167 TPR jury trials were requested from December 18, 2003 through December 17, 2004.

As shown in Table 1, requests for TPR jury trials were received in 11 of Arizona’s 15 counties during this period. Pima County experienced the highest number of TPR jury trial requests (70), which represents 42 percent of all jury trial requests. In contrast, Maricopa County experienced 54 jury trial requests, which represents 32 percent of all requests. Cochise County experienced the third highest rate of jury trial requests; specifically, 14 requests which represents roughly eight percent of the statewide total.

In Pima County, there were 70 jury trial requests compared to 45 bench trials planned because a jury trial was not requested.

Q How many TPR jury and bench trials have been completed?

A A total of 17 TPR jury trials were completed in four counties between December 18, 2003 and December 17, 2004 period, compared to 158 TPR bench trials.

As shown in Table 2, only four of Arizona’s fifteen counties experienced completed jury trials (i.e. trials that resulted in jury verdicts) during this period. Of the statewide total of 167 jury trial requests, 39 trials were still pending as of December 17, 2004. This means 128 of the 167 jury trials requested between mid-December 2003 and mid-December 2004 resulted in some form of case outcome or resolution. Excluding the 39 pending trials,¹⁰ 13 percent of all jury trial requests resulted in jury trials being completed to verdict.

As also shown in Table 2, the number of TPR bench trials completed during this period in the four juvenile courts was substantially higher than the number of completed jury trials (158 completed bench trials versus 17 completed jury trials, a ratio of over nine to one).

Table 1
TPR Jury Trials Requested (12/18/03 – 12/17/04)

	Number of jury trial requests	% of all requests
Pima County	70	42%
Maricopa County	54	32%
Cochise County	14	8%
Yavapai County	10	6%
Mohave County	7	4%
Yuma County	5	3%
Coconino County	2	1%
Gila County	2	1%
Navajo County	1	<1%
Pinal County	1	<1%
Graham County	1	<1%
Statewide Total	167	100%

Table 2
TPR Jury and Bench Trials Completed (12/18/03-12/17/04)

	# of jury trials completed	# of bench trials completed ¹¹
Pima County	12	29
Maricopa County	2	98 ¹²
Mohave County	2	14
Yuma County	1	17
Total	17	158

In Pima County, the only jurisdiction from which comparable request versus completed bench trial data were immediately available, of the 45 TPR bench trials set during this period, four were still pending as of December 17, 2004. Excluding these four pending bench trials, the Pima County data indicate that 71 percent (29 out of 41 cases) resulted in completed bench trials.

The preliminary information from Pima County is consistent with comments made by jury and bench trial participants who indicated that bench trials, when requested, are more likely to be held and completed than TPR jury trials. In other words, jury trial requests appear much less likely to

result in completed trials than trials arising out of bench trial requests.¹³

What were the outcomes of jury and bench trials that were completed?

The vast majority of both TPR jury trials and bench trials completed during this period resulted in severance on all or some of the children listed in the TPR motion/petition.

Data from Maricopa, Mohave, Pima, and Yuma counties show the following:

In Jury Trials -

- 16 of the 17 completed jury trials resulted in verdicts severing parental rights on all or some of the children.
- One completed jury trial resulted in a jury verdict in which parental rights were not terminated.

In Bench Trials -

- 151 of 158 completed bench trials resulted in judges' rulings severing parental rights on all or some of the children.
- Seven completed bench trials resulted in judges' rulings in which parental rights were not terminated.

Because of the low number of jury trials completed, it is too early to say whether jury trials are more or less likely than bench trials to result in the termination of parental rights.

What happens to the children when a jury or judge decides not to terminate parental rights?

When a jury or judge rules against terminating parental rights it does not mean that children are immediately returned to their parents' custody.

When a jury or a judge decides not to terminate

parental rights, it does not mean the dependency case is dismissed nor does it mean the child is returned to his parents. It does mean that the evidence and considerations of the child's best interests did not support termination of parental rights. In fact, children remain adjudicated dependent and will likely stay with foster parents, relatives, or another out-of-home setting while CPS works toward a new permanent plan. The new permanent plan could possibly become "return to parent," but it subsequently may be "severance and adoption" again if the parents do not demonstrate sufficient progress toward remedying the behaviors and/or conditions that led to their children's dependency.



"I think parents' counsel have begun to ask for jury trials before the time line to keep their options open. When they get closer to trial, they realistically discuss the pros and cons of a jury trial with their clients and, most often, decide it is not the way to go."

- Yavapai County
Presiding Superior Court Judge

Q What were the outcomes of cases when jury trials were requested but did not go to trial?

A *The vast majority (87%) of cases involving jury trial requests were resolved before jury trials were held.*

Of the 167 jury trials requested, 39 cases were pending as of December 17, 2004. Of the remaining cases, 128 reached some form of resolution. Seventeen (17) cases resulted in completed trials where juries rendered verdicts,¹⁴ and 111 cases reached some other form of resolution without a jury rendering a verdict.

Table 3 shows that half of the cases where the parent initially requested a jury trial resulted in bench trials either because the parent withdrew the jury trial request, failed to appear at the jury trial, or failed to appear at the pre-trial conference. Just under one-third (34 cases) of the parents requesting jury trials relinquished their parental rights at some point before juries rendered verdicts in their trials. And in eight percent of the cases that did not go to jury trial, CPS withdrew its motion for severance.

Q Why are relatively few TPR jury trials actually completed and when do they tend to resolve?

A *In this first year, many cases involving jury trial requests resolved close to or on the first day of trial.*

There appear to be a number of reasons why jury trials are not held. These include:

- Mandatory mediation in some counties which helps many of these matters resolve before trial, particularly if relatives are involved and present an alternative placement for the child.
- Many parents who initially request trials (either jury or bench trials) do not show for pre-trial hearings (or mediation) which can lead the court, after consideration of the evidence, to sever their parental rights.
- Some parents realistically assess their chances before juries (or judges) and ultimately agree to the child’s permanent placement before or soon after a trial commences.

	Number of cases (N=111)	Percentage of jury trial requests reaching of resolution without a trial being held
Jury trial request withdrawn by parent, bench trial ordered	27	24%
Parent failed to appear at trial, bench trial held in absentia	7	6%
Right to jury trial denied by judge due to non-appearance of parent at pre-trial conference, bench trial ordered	22	20%
Parent relinquished, jury trial vacated	34	31%
Guardianship agreed to, trial vacated	5	5%
Motion for summary judgment granted, parental rights terminated	6	5%
Motion for termination withdrawn by CPS	9	8%
Dependency adjudication set aside on appeal, no trial	1	<1%

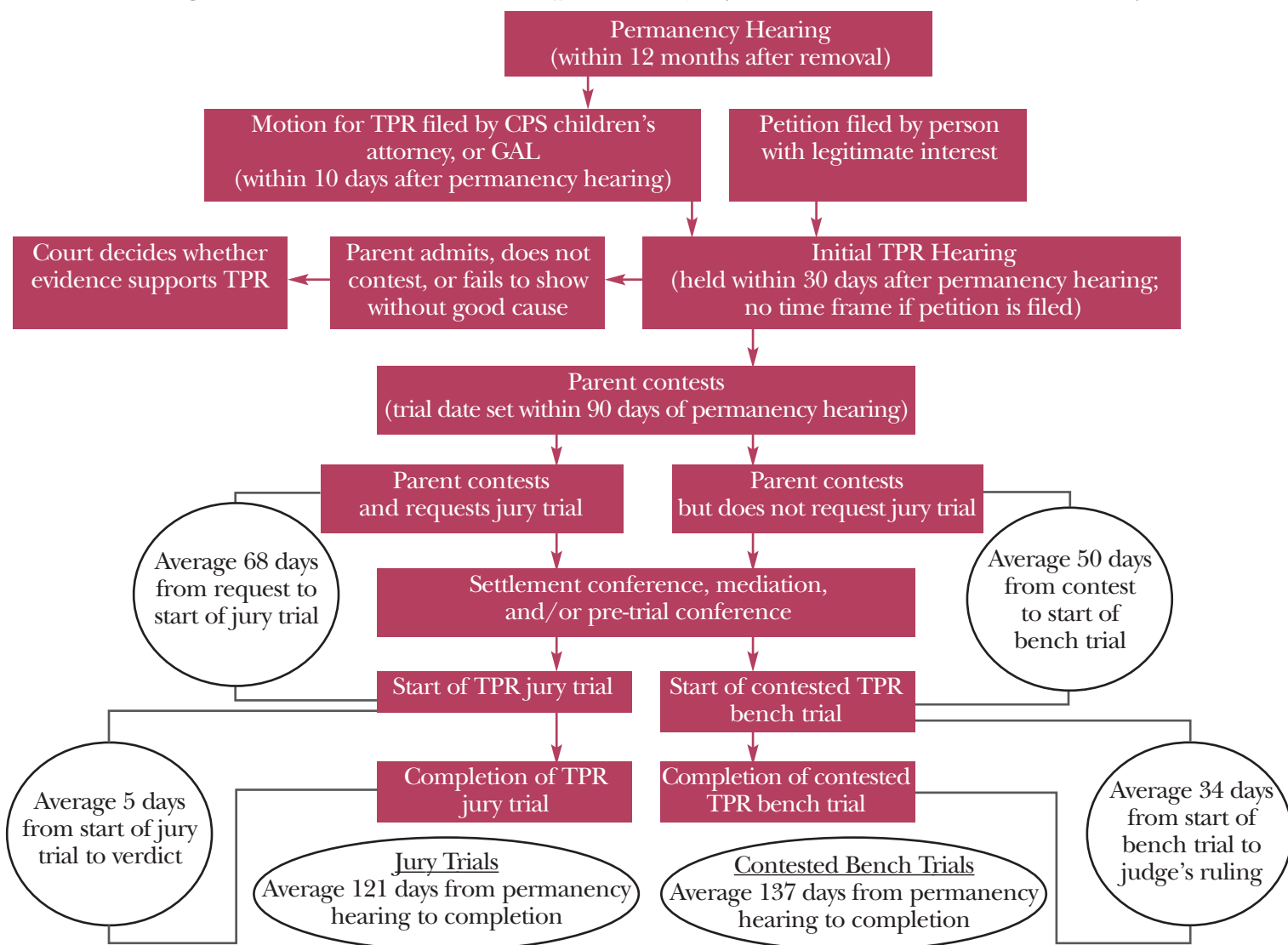
- Parents' attorneys may also decide after a request for a jury trial has been made that it is not in their clients' interests to go to trial and convince parents to relinquish or withdraw their requests.
- Parents may initially ask for jury trials to preserve their right to have a jury trial and decide later whether they want a jury to decide their case.
- The state may agree to change the child's permanent plan in some way (e.g., from adoption to guardianship) before a trial begins.

Q How long do jury and bench trial cases take from point of request to completion?¹⁵

A *In Pima County, jury trials have taken an average of 121 days to complete, from the point of a child's permanency hearing, versus 137 days for TPR bench trials.*

Figure 1 shows the TPR process and average time periods for starting and completing TPR jury trials and bench trials in Pima County, from the point of the permanency hearing and trial request to completion of the TPR process.¹⁶

Figure 1 – Time Frames to Complete TPR Jury and Bench Trials in Pima County



■ Statutory time-frames. The statutory time-frames are the same for both TPR jury and bench trials. See ARS §8-862.D in Appendix A.
○ Average actual time-frames for Pima County.

The preliminary data show that while bench trials are initiated sooner than jury trials in Pima County, they take longer to complete.

Timeliness of TPR Trial Dispositions/Rulings

In Maricopa and Pima Counties, TPR jury trials, when held, are likely to take less time to complete than bench trials. This is primarily due to calendar congestion and scheduling practices that prevent timely completion of TPR bench trials in these two courts.

The juvenile courts in Maricopa and Pima counties schedule TPR bench trials in available segments of the court calendar which can spread these events over days or weeks. In jury trials, however, once a jury is seated and the trial is underway there will be a ruling within a finite period of days. Also, in bench trials in the two urban county courts, judges often take matters under advisement at the conclusion of these hearings and issue written findings of fact and rulings days or weeks later (up to 60 days after the bench trial is held).

In Mohave and Yuma counties, TPR bench trials take less time to complete than jury trials. The judges in these counties are more likely to rule from the bench at the conclusion of bench trials than judges in the two urban counties.

In Mohave and Yuma counties, TPR bench trials can generally be completed within one uninterrupted day and judges can usually issue prompt rulings at the conclusion of these hearings or soon thereafter.

Appeals of TPR cases delay permanency for children.

The vast majority of both jury and bench trial decisions to terminate parental rights are appealed. When a case is on appeal, the child who is the subject of the severance cannot be adopted until the appeal is concluded. In FY 2004, the average time for Court of Appeals Division 1 to decide a dependency or TPR case on appeal was 285 days¹⁷; for Division 2, it was 338 days¹⁸.

“In Yuma County, it is easier to find time for bench trials and fewer things get in the way to cause delays. More things can go wrong in jury trials that can lead to mistrials.”

- Yuma County Superior Court Judge

Jury trials present opportunities for mistrials and greater issues for appeal than TPR bench trials.

There have been two mistrials in TPR jury trials during the first year.

Mistrials occur when the judge agrees that the jury has been exposed to inadmissible information. In other words, evidence has been introduced that is likely to lead to a jury verdict that is not based on relevant facts. When a judge declares a mistrial, the jury is dismissed and the case must be retried. Mistrials do not exist with bench trials.

While both bench and jury trials may be appealed, jury trials present more issues for appellate review.

This is due to a number of factors including the more complex evidentiary and procedural issues that arise in jury trials and the greater possibility that a jury may be persuaded by bias or emotion. In addition to constitutional challenges and sufficiency of evidence issues, jury trial appeals may also include other factors not present in bench trials such as instructions to the jury, jury selection, and jury misconduct.¹⁹

“I never take a severance under advisement. I make a prompt ruling and explain it. Jury trials take longer and there is no discussion. When I rule in bench trials I explain why I have made the decision.”

- Mohave County Superior Court Judge

Q How are contested TPR trials handled in Arizona?

A Typically, contested severance matters are handled through bench trials, not jury trials. Bench trials do not involve juries – they are presided over by a single judge. In the vast majority of bench trials in Arizona, the same judge that handles a family's pre-severance (i.e., dependency) matters presides over the bench trial. This "One Family/One Judge" approach reflects one of a number of nationally recognized guidelines and practices recommended by the National Council of Juvenile and Family Court Judges and the American Bar Association in dependency and termination of parental rights cases. Specifically, these adoption and permanency guidelines state:²⁰

It is strongly preferred that the same judge or judicially supervised magistrate presides over the entire child welfare case from the preliminary protective hearing through permanency, including adoption. Following a case from start to finish offers the judge an opportunity to see the impact decisions have made on the child, creates the best possibility of ensuring that case plans relate to the specific needs of the child and family and allows for development of perspective about cases. Judicial monitoring must continue until a permanent home is finalized and the court can close its case. Judges must use the full extent of their authority to protect children and to keep children and other family members safe. Judges must hold all participants in the proceedings, including state and local agencies, accountable to provide reasonable and necessary services to children and families.

In Arizona, One Family/One Judge case handling was adopted as the preferred practice in dependency matters by all juvenile courts before the end of 2001.

This practice played an important role in reducing continuances and delays that had plagued the juvenile courts through the mid-1990s and helped reduce the length of time dependent children remained involved in the court system.²¹ As will be discussed, the perceived unfairness of retaining the same judge from dependency through severance proceedings represents one important factor in why parents may request jury trials.

Juvenile courts in Arizona continue to try to follow One Family/One Judge case handling in all dependency matters, although the two urban county juvenile courts have more difficulties maintaining this practice through all dependency proceedings than rural county courts. For example, in Maricopa County, adhering to One Family/One Judge has been particularly challenging in the past two years due to substantial judicial rotation.²² But overall, all of Arizona's juvenile courts have adopted the One Family/One Judge approach in dependency cases.

Q How are TPR jury trials assigned to judges²³ in the four counties that held jury trials?

A While all Arizona juvenile courts continue to support One Family/One Judge case handling in dependency matters, different judges are assigned to handle TPR jury trials in Maricopa and Pima counties.

All Arizona juvenile courts maintain One Family/One Judge case assignment in TPR bench trials. However, in severance jury trials, there are substantial differences between the urban and rural county courts. The two urban county courts have



designated specific judges to handle all TPR jury trials. In Maricopa County, two superior court judges have been assigned to handle jury trials. In Pima County, one juvenile court judge has been given this assignment.²⁴ In the rural county courts, the same judge who handled the dependency phase of a case will also handle the TPR jury trial.

The juvenile courts in Maricopa and Pima counties are transferring TPR jury trials to specially assigned judges due to crowded court calendars. There is simply not enough open time in these juvenile courts' schedules to find three or more consecutive days required to complete jury trials. These consecutive time periods must be set aside whenever a jury trial is scheduled, whether or not the trial actually goes as planned. Unfortunately, because so few jury trial requests result in trials being held, the specially assigned judges responsible for TPR jury trials were experiencing substantial blocks of "down time" (i.e. unanticipated stretches of time on judges' schedules when no hearings occur).

It remains almost impossible for Maricopa and Pima County Juvenile Courts to hold and complete severance bench trials without delays.

Assigning TPR jury trials to specific judges in Maricopa and Pima counties allows jury trials to be set on consecutive days and helps relieve some of the pressures on regular juvenile court dockets. However, these dockets include TPR bench trials that remain difficult if not impossible to schedule without interruption in the two urban county courts. Scheduling difficulties and the time it takes for a judge to issue a written decision in TPR bench trials continue to pose formidable challenges.

There are strong disagreements about retaining the One Family/One Judge case handling approach in TPR trials (bench or jury).

Despite the clear call for One Family/One Judge case assignment noted in the *Adoption and Permanency Guidelines*, there are strong disagreements about this practice when it comes to severance matters. Proponents of this approach emphasize the

importance of continuity and the benefits of keeping judges with juvenile court experience assigned to these cases. These proponents also emphasize that the assigned judge has an obligation to be fair to all parties and to hold CPS and parents appropriately accountable to ensure that the best interests of children are served. Proponents of keeping the same judge add that there is no empirical or factual basis for the perception of some that having the same judge preside over a TPR bench or jury trial is fundamentally or presumably unfair to parents.²⁵

Those who feel different judges should handle TPR matters emphasize there are fundamental constitutional and fairness issues that override the arguments in support of One Family/One Judge in severance cases. Those favoring a different judge for a severance matter do not necessarily agree that a jury trial is also warranted. In other words, there is not a consensus in Arizona among judges, AGs, CPS case managers, and attorneys regarding whether One Family/One Judge case assignment should continue through the severance phase.

What are the procedures for requesting and scheduling TPR jury trials?

A *The Arizona Supreme Court is responsible for drafting and implementing state court rules, including those applicable to juvenile courts. Rule 66.1.B covers the request for a TPR jury trial and reads:*

The request for a trial to a jury shall be signed personally by the parent or by counsel of record, filed and served on the petitioner prior to the initial termination hearing provided by Rule 65 of these rules or, if counsel is appointed at the initial termination hearing, within twenty days of appointment of counsel. If the written request for jury trial is signed by counsel of record, the counsel must avow that the request for jury trial has been made by the parent. Failure to file and serve the request in a timely manner constitutes a waiver of the right to a jury trial. Failure to appear at the initial termination hearing or the termination adjudication hearing shall be deemed a rescission of any request for a trial to a jury.

Some of the parties involved in jury trials feel the process for requesting a TPR jury trial may be more complex or onerous for parents than in criminal or civil jury trial cases. However, one of the intents of the rule is to help minimize the chances that the parent’s attorney will request a jury trial just to cover all bases. Still, a substantial number of jury trial requests resolve right before or right after trials begin. The high frequency of these “false starts” presents many dilemmas for the courts and raises an important question – who benefits when jury trials are scheduled but do not go? Most certainly, these incidents represent another source of delay for other children not necessarily involved in the jury trial, but who are awaiting permanency.

The hearing process leading up to jury and bench trials and alternatives to trial

The statutorily required first hearing in the termination process is the initial termination hearing. Things start to vary a bit after this initial hearing. In Mohave and Yuma counties, for example, parties involved in severance actions are required to participate in pre-trial mediation. In Maricopa County, mediation is routinely held but is not required. In Pima County, through mid-December 2004, mediation or settlement conferences were

generally offered but not required as a matter of juvenile court policy (the juvenile court began a mandatory permanency and TPR mediation pilot project in early 2005).²⁶ One other difference involves Maricopa County where the two specially assigned judges have implemented “Trial Management Conferences” that occur roughly 10 to 14 days before a jury trial is set to commence. These proceedings, held after the pre-trial conference, involve only the attorneys (for the state, the parents, and the child) and are intended as one more method for the court to make sure that the parties are ready to go to trial.

Table 4 shows the processes for each of the four counties.

Scheduling TPR jury and bench trials

As mentioned earlier, juvenile courts in many counties, particularly Maricopa and Pima counties, are experiencing very heavy court dockets. Much of this can be attributed to a sharp increase in dependency petition cases, which have risen 21 percent from fiscal year to 2003 to 2004,³⁰ and the fact that juvenile courts conduct more frequent hearings than other divisions of the superior court. The addition of TPR jury trials has created new scheduling challenges for the courts because jury trials require consecutive days and uninterrupted time periods.

	Maricopa County	Mohave County	Pima County	Yuma County
Initial termination hearing	<ul style="list-style-type: none"> • If TPR motion filed, must be held within 30 days of the Permanency Hearing. • If TPR petition filed, must be held no sooner than 10 days following completion of service. 			
Mediation or Settlement conference ²⁷	Mediation and/or Settlement conference routinely held.	Mandatory mediation or Settlement conference.	Mediation or Settlement conference offered but not required.	Mandatory mediation or Settlement conference.
Pre-trial conference or Status hearing	Usually set 30 days before trial.			
Trial management conference	Usually held 10 to 14 days before <i>jury trials only</i> . ²⁸	Not applicable	Not applicable	Not applicable
Jury or Bench Trial	• If a trial (bench or jury) results from the filing of a TPR motion, it must be held within 90 days of the Permanency Hearing. ²⁹			



The courts are likely to move other types of hearings when they need time for TPR jury trials.

The courts have attempted, with varying degrees of success, to make TPR jury trials a priority. If a jury trial has to be held, other hearings will be moved to make room for it. While this reflects statutory and court time requirements for TPR trials (i.e. trials are supposed to start within 90 days of the permanency hearing), it also reflects the courts' recognition of the importance of these events. However, because so few TPR jury trial requests result in actual trials, the courts have adapted court scheduling practices. In the two urban county courts, multiple jury trials are likely to be scheduled for the same time period (i.e. they are "stacked") as the court anticipates most if not all will resolve before the actual trial. This practice of stacking trials reduces the likelihood of judges experiencing substantial down time, but it does not preclude other parties from having to prepare for pending trials.

In the two rural counties, the superior court judges handle all types of cases, not just severance jury trials. When a jury trial is set on their calendars, they have to move other proceedings to make room. This situation is magnified when multiple jury trial requests occur within the same time frame.

Most important, however, is the fact when jury trials are taking priority over other hearings, safety and permanency issues for other children may be delayed.

The courts attempt to start termination jury trials within 90 days of the permanency hearing but all courts report difficulties meeting this requirement. This is also true for TPR bench trials in Maricopa and Pima counties.

In the four counties, the courts have had serious difficulties meeting the timeline in at least half of their jury trials. In some cases, parents waive the timeline requirement. However, the complexities inherent in TPR jury trials, the characteristics of individuals who request jury trials (e.g. many exhibit serious mental health problems), the availability and number of witnesses, the need for adequate preparation time, and heavy court dockets also contribute to these challenges. Unfortunately, in the two urban county courts, it is also very difficult to commence TPR bench trials within 90 days of the permanency hearing.

Jury trials to date have been set for two to more than five consecutive days, with three to four days being the average time set aside for these matters.

The designated judge currently assigned to handle TPR jury trials in Pima County sets matters for Tuesdays through Thursdays (three consecutive days) unless there are compelling reasons to extend this period. Other courts do not appear to have specific days for jury trials but all set them for consecutive (uninterrupted) periods.³¹ Overall, the courts are allowing sufficient time for jury trials although at least



two of the 17 trials completed through mid-December 2004 exceeded their allotted time.

In contrast to jury trials, termination bench trials are rarely held during uninterrupted time blocks in the two urban county courts; in fact, bench trials are almost always segmented over a period of days or even weeks.

The primary reason for the interrupted flow of bench trials in Maricopa and Pima counties is the crowded juvenile court dockets. There is also a sense that TPR bench trials are not given the same precedence as jury trials. Furthermore, if a parent in Maricopa or Pima County reconsiders their jury trial request after the jury trial has been scheduled, the case may be sent back to juvenile court for a bench trial before the original dependency judge. This can compound delays and scheduling dilemmas.³² The two rural county courts, in contrast, are able to hold severance bench trials without interruption; generally, within a half to one-full day, and as noted earlier, in the two rural county courts, the same judge is more likely to handle jury and bench trials.

Jury trials can have dramatic effects on the schedules of key participants in dependency and severance matters, forcing them to reschedule other juvenile court hearings and other case management duties for dependent children.

Because jury trials are held over uninterrupted time stretches and take precedence over other court hearings, AGs, attorneys for children, CPS case

managers and parents must shuffle their schedules whenever a jury trial is actually held. This creates a domino effect forcing the juvenile court to continue and/or reschedule other dependency or delinquency matters because key participants are tied up in jury trials. This phenomenon is particularly evident in Pima County due to the higher number of cases that have actually gone to trial and to a lesser extent in Maricopa County during this time period. But this domino effect is not limited to the two urban jurisdictions. In Mohave and Yuma counties, the pool of AGs, CPS case managers, and attorneys who represent children and parents in dependency and termination cases is smaller, so when a jury trial is held, the court must reset other hearings to accommodate the schedules of these key parties.

Are TPR trials open to the public?

The majority of TPR jury trials held to date have been closed to the public. Those that were open did not present significant problems for the courts.

Arizona law (ARS §8-224) allows parents facing termination trials “to request that a hearing or trial ... be open to the public.” Before the so-called open hearings law went into effect, TPR bench trials were closed to the public due to confidentiality and other concerns. Now, parents may request that any hearing related to a dependency action, including TPR bench and jury trials, be open to the public. Through December 17, 2004, most TPR jury trials were closed

proceedings. The few that were open did not present significant problems for the courts. In the open proceedings, the courts did take special precautions to ensure attendees understood the need to maintain confidentiality; specifically, the judges repeatedly admonished those in attendance, posted the admonishment in the courtroom, and required everyone entering the courtroom to sign a paper containing the admonition.

Who participates in TPR jury trials?

The presence of multiple parties at TPR jury trials makes these proceedings distinctly different from other types of jury trials.

TPR jury trials typically involve more parties than other types of jury trials. At criminal trials, for example, you only have two parties – the defendant (with her or his attorney) at one table in the courtroom, and the prosecutor at the other table. In TPR jury trials, you may have the state’s attorney (AG), the attorneys for the parents, the attorney for the child or children, the guardian ad litem³³ for the child (if one has been appointed), and a guardian ad litem (GAL) for the parent (if one has been appointed). You may also have a Court Appointed Special Advocate (CASA volunteer)³⁴ at the trial.

There are also differences between TPR jury and TPR bench trials in who attends, participates, and testifies.

Perhaps the most noticeable difference between jury trials and bench trials involves witness testimony. Because juries are more apt to listen to live testimony rather than read transcripts or other documents, most evidence in a jury trial is presented through witnesses who testify in person. This contrasts with bench trials where witnesses may testify telephonically or through written submissions. This means more witnesses are physically present for jury trials. Another key difference may involve the testimony of children. Children’s attorneys may be generally reluctant to have their clients testify in jury trials because it may re-traumatize the children. For example, in a jury trial, a child may have to testify in front of a group of

strangers (jurors) as well as parents, and provide details of prior abuse and/or neglect. In bench trials, there is no jury and the judge can manage the trial to protect a child more directly than in a jury trial.

The current juvenile court rules do not specifically address what CASA volunteers and GALs can and cannot do in jury trials.

There are ongoing questions by CASA volunteers, GALs and attorneys for children in TPR jury trials about their respective roles. The participation of the non-attorney GAL and the CASA volunteer appear to be limited to providing testimony in those cases in which they are called to testify by one of the parties. If one of the parties does not call them to testify, they will not have an opportunity to provide information to the jury. Even when called to testify, they usually are not permitted to provide their opinion as to what may be in the best interest of the child. They are, however, generally permitted to testify and express their opinions in TPR bench trials.

Also, the rules do not specifically delineate the child’s attorney role at trial even though the child is the named party. For example, is the child’s attorney allowed to *voir dire* the jury and use preemptory challenges? Can the child’s attorney question witnesses called by the other parties? If so, is it direct or cross examination? Can the child’s attorney call witnesses, give an opening statement and closing argument and, if so, at what stage of the trial? The answers are even less clear for GALs who may be attorneys; sometimes they are treated as full-fledged parties and other times as limited parties, witnesses or spectators.

“Jury trials have a great impact on the court because they take precedence and the court has to move other hearings to make room on the calendar. For me, I have to cancel a lot of home visits and other things to appear in jury trials.”

- CPS Case Manager

"I believe jurors are as capable of dealing with termination matters as anyone else. While jurors are not trained to handle these cases, severance matters are difficult no matter who you are."

- Assistant Attorney General

What are the differences between TPR jury trials, bench trials, and other jury trials?

A One key difference between TPR jury trials, bench trials, and other jury trials is the need to educate jurors on the role of CPS, the basic components of dependencies and severance matters, and the roles of multiple parties (including the child's attorney).

While jury trials are fundamental components of civil and criminal cases, they are new to Arizona's juvenile courts. Many of the key parties involved in TPR jury trials during this past year had no experience trying cases to juries. TPR jury trials also represent the first time the public has been directly involved in severance matters. Starting when the jurors are going through the selection process and continuing throughout the trial, the court and the parties have to take substantial time to explain the basic aspects of the juvenile court process, what a dependency is, what a severance is, the role of the jury in the severance trial, the role of CPS and other parties, and other relevant topics. This must be done in easy to understand language, avoiding the jargon that many system professionals take for granted. This is a unique aspect of TPR jury trials. In bench trials, there are no jurors, and the judge and the attorneys can focus on ensuring that parents and children understand the nature and substance of the proceedings.

A second difference between TPR trials and other jury trials involves important evidentiary issues.

The TPR jury trial differs from the TPR bench trial with respect to evidence that can and should be presented in several ways. Expert witnesses are an example of how evidence is presented differently for a jury. In a bench trial, expert reports and other documentary evidence are admitted regularly in lieu of testimony. The judges are familiar with the experts' credentials and the basic nature of the reports. By contrast, a jury is not generally educated or knowledgeable in the same manner and must be educated not only on the subject matter but be given the opportunity to decide the credibility of the expert through his or her credentials and live testimony.

An overriding principle is the risk that a jury will decide an issue of fact based on irrelevant information or emotion. In order to control this risk, parties must engage in more formal pretrial discovery and disclosure. What witnesses will say on the stand in front of a jury must be "nailed down" through formal discovery (i.e. depositions, interrogatories, requests for admission) prior to trial to determine what testimony should not be allowed, either by agreement or through a motion to the court to limit or exclude the testimony. Formal discovery is used very infrequently in non-jury TPR cases.

Who is requesting TPR jury trials in Arizona?

A Arizona's jury trial statute authorizes only parents to request severance jury trials. The state's attorney, the child's attorney, and CPS do not have this capability.

Although we do not have precise data on the characteristics of parents making requests for jury trials, key TPR trial participants interviewed for this paper identified case characteristics that appear to increase the likelihood of a parent requesting a jury

"All my jury trials were closed proceedings. I don't believe there is a teen on earth who wants the public to know her or his business."

- Child's Attorney in Pima County

trial. The requests for a jury trial may be due to one or more of the following:

- Parents who want a different judge to handle their TPR trial.
- Parents who are incarcerated and who may be using jury trials to spend some time out of prison – this includes at least some parents who are serving extended prison sentences, who have not been actively involved in their children’s lives, and who have no hope of parenting their children.
- Parents with chronic substance abuse problems and/or with serious mental health problems.³⁵
- Parents who have previously relinquished rights to other children and/or that have extensive histories with CPS.
- Parents who feel jury trials offer an opportunity to show their children that they did not give up.
- Parents who see jury trials as a forum to be heard by members of the public before they relinquish parental rights or before a jury terminates these rights.
- Parents who view TPR jury trials as criminal trial-type proceedings intended to determine parental “guilt or innocence” rather than what they are – civil proceedings intended to determine what is in the best interests of children.
- Parents whose attorney believes a CPS case manager will not present well before a jury.
- Parents or parents’ attorney who perceives a potential advantage in a jury trial, even if CPS has made diligent efforts to reunify a child with the parents.

“Mental illness is a real factor. The mother in the case I tried just did not believe that the jurors would rule to sever. I had two other jury trials set and they settled before trial. In both of these the Moms were incarcerated. Substance abuse is also an important factor. These parents really damage themselves and they do not see how it affects their kids.”

- Assistant Attorney General in Pima County

- Cases involving dependent children who have been in an out-of-home placement (e.g. a foster home) for a cumulative total period of 15 months or longer, and whose parents, the state believes, are unlikely to remedy the circumstances that led to out-of-home placement.³⁶
- Cases that do not have a permanent placement option for the child, and with no overriding parental mental illness, less severe histories of child abuse, along with some evidence of the parents making some efforts to participate in services.³⁷

Q What impact do jury trials have on the courts, attorneys, CPS and children?

A *There is broad agreement across the four counties that TPR jury trials significantly magnify the workloads of AGs, attorneys, and CPS case managers, compared to TPR bench trials. These professionals estimate that jury trials take from three to ten times more time than bench trials, including preparation and actual trial attendance.*

Jury trials have profound effects on the workloads of key professionals involved in dependency and

termination matters. These effects occur whether jury trials actually are held or not. Because attorneys and CPS case managers must prepare for jury trials as if they are going to be held. Jury trials also affect judges' workloads. Judges have to set aside sufficient time on their calendars to hear the TPR jury trials which may require delaying other cases on their calendars or reassigning the other cases or the TPR jury trial to another judge.

When jury trials are scheduled, attorneys and CPS case managers must reschedule all other hearings and work responsibilities.

When jury trials are scheduled, AGs, CPS case managers, and attorneys for parents and children must reschedule other hearings and other work responsibilities. In Pima County, when a jury trial is scheduled, attorneys are not allowed to reschedule other dependency or delinquency matters³⁸ until the Monday before a trial is set to start. This policy was enacted because few jury trials are actually held. But the impact on attorneys and CPS case managers in terms of preparation time and scheduling is dramatic nonetheless – they have to prepare for these trials as if

“The workload impact can depend on how many trials are going at once. Most trial lawyers usually have more than one trial to prepare for. Aside from that, the average preparation is five times the amount compared to bench trials. If the lawyer has the amount of time he really needs, it can take 10 times the amount of time versus a bench trial. I like the TPR jury trials, though, because these are cases where I think I can best advocate for my client in front of a jury.”

- Attorney for Parents in Pima County

“Jury trials require a good ten days to two weeks out of my time as a case manager. You have to drop everything else and focus all your attention on the trial, prepare for it, then actually go to it. Everything else on the caseload gets neglected.”

- CPS Case Manager in Pima County

they are going to be held and, when they do actually proceed, they have to move all other work obligations, including other trials, off their schedules at the last minute. This is a problem not only for the persons involved in the TPR jury trial, but for all others in the rescheduled trials and hearings including children, parents, foster parents, CASAs, doctors and other expert witnesses to name but a few. While TPR bench trials present their own unique challenges (i.e. in terms of being scattered over days or weeks), they generally do not produce this domino effect on people's schedules.

Without sufficient funding, the extra time and work required for jury trials may exacerbate stress and turnover for at least some AGs and CPS case managers.

For the AGs who prosecute TPR cases, jury trials produce substantial increases in preparation and in-court presentation time. This is a concern for at least two reasons. First, the extra preparation time may prevent AGs from adequately preparing for other cases on their caseloads. Second, the extra work demands add substantial stress that can exacerbate AG turnover.³⁹ The same is true for CPS case managers. The extra work required to prepare for jury trials forces case managers to fall behind on other cases and work substantial overtime. Again, this is true whether jury trials actually go or not.

Cost impact

In the four counties there is consensus that TPR jury trials cost more than bench trials. The costs of jury trials, however, should not be measured solely by

direct or out of pocket expenses. The substantial time and workload demands discussed earlier may present substantial direct and indirect costs that should be considered in any future cost/benefit analysis. Assessing direct and indirect costs and weighing these against the argument that the opportunity for jury trials offers greater fairness or justice than bench trials is a key issue to be resolved.

In the meantime, there are some readily identifiable direct costs unique to jury trials. In addition to the costs of juries, evidence and testimony must be presented differently. For example, presenting evidence to a judge in a bench trial does not require fancy, large reproductions or multiple copies of materials as is needed in jury trials. Expert witnesses usually are called in front of a jury whereas judges may require only written reports from certain experts. These additional costs may include:

- Jury fees and expenses.
- Costs associated with photographic evidence that are not already budgeted for in the Office of the Attorney General and CPS.
- Costs for hiring additional bailiffs.
- Costs for expert witness testimony (i.e. to pay expert witnesses for their time).
- Costs for formal discovery (e.g. court reporters for depositions and copies of transcripts).
- Costs for bringing in witnesses from other states who physically appear in jury trials versus the telephonic testimony often permitted in bench trials (e.g. transportation, lodging and meals).
- Costs for remodeling courtrooms and building jury assembly and deliberation rooms at juvenile courts, if the law becomes permanent.
- In some counties, there may be additional costs for contract attorneys if they work beyond a certain number of hours.
- Overtime pay for CPS case managers.

Impact on permanency for children

In 1997, the federal Adoption and Safe Families Act (ASFA) was passed by Congress to speed the process of finding permanent homes for children.⁴⁰ Arizona's landmark dependency court reforms instituted since the late 1990s to present day also emphasize the need for timely permanency for abused and neglected children. Proponents of TPR jury trials believe that jury trials offer necessary balance and fairness to the existing juvenile court dependency and CPS systems. But what effects do jury trials have on permanency for children?

“Jury trials will require judges, attorneys, CPS case managers, doctors, foster parents and many others to spend tens of thousands of extra hours over the three year time period allowed under the current law. Can our state’s limited resources be better spent for the benefit of all children in foster care?”

– Assistant Attorney General

Judges, AGs, attorneys representing children and/or parents, and CPS case managers have varied perceptions of the impact of jury trials on permanency for the children who are subjects of the jury trials.

There is no consensus across the four counties as to whether jury trials promote or detract from timely permanency for children who are subjects of the jury trial process. Some of the professionals involved in these cases indicated they saw no effects whatsoever, while others pointed to delays tied to the time it takes to schedule and hold jury trials. Some cited delays in finalizing adoptions because of appeals or mistrials, and emphasized the possibility that at least some CPS case managers may be waiting longer to file TPR motions or petitions because of the concerns regarding the demands of jury trials. Others cited delays caused by jury trials being scheduled but then being reset as bench trials.

Impact on other dependent children.

There were no additional resources provided to the courts, AG's Office or CPS for the implementation of the jury trial process. However, dependency petitions have increased 21% for the court from FY 2003 to FY 2004, and the number of children in foster care under the court's supervision has increased 18%. This in itself has placed a substantial burden on all involved parties in the dependency process. Additionally, CPS case managers have less time to see other children on their caseloads and work towards securing their permanent placements. Attorneys for parents and children as well as AGs have less time to prepare for other cases on their workload. All parties must shuffle and reshuffle court hearings as jury trials may be held or cancelled. The exact impact of jury trials on other children has not been measured in this preliminary study, but should be in any further evaluation of this process.

Training

There is a continuing need for basic and specialized training programs on topics relevant to termination jury trials including how to testify before a jury.

One of the more intriguing aspects of this first year look at TPR jury trials involves how key parties present themselves to juries. How someone may appear (i.e. the way they look, the ability to appear friendly to jurors, etc.) before a jury may be as important as the content of their testimony. Virtually all of the parties involved in jury trials suggested that there is a need for introductory and ongoing training on all aspects of trying cases before a jury.

As the number of jury trials requested and held presumably increases across the state,⁴¹ judges and attorneys also need basic and ongoing training. Training for judges and attorneys should, at a minimum, cover evidentiary issues, jury selection considerations, initial and final jury instructions, forms of verdict, effective client advocacy, and other relevant topics. Future training should also cover effective methods for educating jurors on relevant issues tied to TPR jury trials.



“Jury trials drag the process out. It takes longer to get us to the jury trial in our county. I have one case where the lawyer wants to depose 27 people. This can be very expensive and delay the case.”

- Presiding Superior Court Judge in
Yavapai County

“Having a jury’s decision hinge on a worker’s appearance before a jury or the worker’s ability to testify, instead of the facts of the case, is a real concern. Some of us do a better job of presenting ourselves than others.”

- CPS case manager in Maricopa County

Many CPS case managers, expert witnesses and other key parties need training on courtroom testimony for all types of trials (jury and bench).

The need for courtroom testimony training is not limited to jury trials. Many CPS case managers, for example, need training on preparing for and presenting testimony in court for all types of trials (including bench proceedings), not just TPR jury trials.

Where are jury trials being held?

Most TPR jury trials are being held in superior court courtrooms that were designed for adult civil and criminal matters. These settings can be intimidating for dependent children involved in jury trials.

In Arizona, as elsewhere, very few juvenile courts have the capacity and facilities for jury trials.⁴² If jury trials were to be held at the juvenile courts, current facilities would have to be remodeled and arrangements would have to be made with jury commissioners (usually based at superior court) to either provide transportation to and from the juvenile court buildings for jurors, or the state or counties would have to hire additional jury commissioners and staff for the juvenile courts.



“We have no budget for TPR jury trials. The counties absorbed the expenses. We had 100 prospective jurors report for my trial. We had to hire a bailiff which was not budgeted for. I let the mother call an expert witness and this cost thousands of dollars.”

- Mohave County Superior Court Judge

RECOMMENDATIONS

1. Based on the first year experience of TPR jury trials, including the negative impact on workloads affecting other dependent children's safety, well-being and permanency needs, the legislature should allow the TPR jury trial provision to sunset. If there is consideration of reauthorizing this law, the legislature should appropriate sufficient funds to support the additional costs for jury trials and to address workloads of all involved parties.
2. The Supreme Court and the AGs Office should continue tracking both TPR jury and bench trials and expand data collection to include:
 - Data on the number, outcomes and time-frames of appeals and mistrials for both jury and bench trials and the impact of permanency for the children.
 - How many days it takes from the permanency hearing and request for a jury or bench trial to completion of the trial and the jury or judge's decision.
 - An analysis of the relevant characteristics of parents who are requesting jury trials including how many requests are being made by incarcerated parents, how many are being made by parents with documented severe mental illnesses, and how many are being made by parents with chronic substance abuse problems.
 - What happens to children after a jury or judge decides not to terminate parental rights.
3. Prior to any decision to extend this legislation, the Supreme Court or the Legislature's Office of the Auditor General should conduct a cost and workload analysis of jury trials including:
 - An evaluation of why so few jury trial requests actually result in jury trials being completed, and the costs associated with this outcome.
 - The impact on parties and case flow management whether or not the jury trial is actually held.
- The costs associated with remodeling juvenile courts to accommodate juries and the related expenses that would allow jury trials to be held at juvenile court centers.
- The TPR by jury workload as it affects other dependency cases not directly associated with the jury trials including other children's well-being and timeliness of permanency.
- An assessment of whether the option of jury trials are fostering more adversarial proceedings in dependency matters.
4. As an alternative to a jury trial, the courts should consider allowing parents to make a formal written request to have a different judge preside over the severance trial than the judge responsible for their child's dependency case. (Other jurisdictions, including the 65th Judicial District Children's Court in El Paso, Texas, have successfully implemented this practice without adverse effects on permanency for children.)
5. The Supreme Court's Court Improvement Project should move forward with new rules to expedite (to within 90 days) the Court of Appeals' consideration and findings in termination of parental rights cases. (Iowa has successfully implemented this expedited appeals process.)
6. The judges in Maricopa and Pima Counties should explore ways to issue findings and rulings in bench trials in a more expedited manner than waiting up to the 60 days permitted to issue their findings after a trial commences.
7. The Supreme Court should update court rules to clarify the roles of CASAs, GALs, and children's attorneys in contested TPR trials.
8. The Supreme Court and the Arizona Department of Economic Security should make additional training available for judges, AGs, all other attorneys, CPS case managers, CASAs and GALs on TPR jury trial issues including courtroom testimony.

Appendix A – Arizona statutes regarding termination of parental rights and permanency hearings

The grounds for terminating parental rights are delineated in ARS §8-533.B which reads:

Evidence sufficient to justify the termination of the parent-child relationship shall include any one of the following, and in considering any of the following grounds, the court shall also consider the best interests of the child:

1. That the parent has abandoned the child.
2. That the parent has neglected or willfully abused a child. This abuse includes serious physical or emotional injury or situations in which the parent knew or reasonably should have known that a person was abusing or neglecting a child.
3. That the parent is unable to discharge the parental responsibilities because of mental illness, mental deficiency or a history of chronic abuse of dangerous drugs, controlled substances or alcohol and there are reasonable grounds to believe that the condition will continue for a prolonged indeterminate period.
4. That the parent is deprived of civil liberties due to the conviction of a felony if the felony of which that parent was convicted is of such nature as to prove the unfitness of that parent to have future custody and control of the child, including murder of another child of the parent, manslaughter of another child of the parent or aiding or abetting or attempting, conspiring or soliciting to commit murder or manslaughter of another child of the parent, or if the sentence of that parent is of such length that the child will be deprived of a normal home for a period of years.
5. That the potential father failed to file a paternity action within thirty days of completion of service of notice prescribed in section 8-106, subsection G.
6. That the putative father failed to file a notice of claim of paternity as prescribed in section 8-106.01.
7. That the parents have relinquished their rights to a child to an agency or have consented to the adoption.
8. That the child is being cared for in an out-of-home placement under the supervision of the juvenile court, the division or a licensed child welfare agency, that the agency responsible for the care of the child has made a diligent effort to provide appropriate reunification services and that either of the following circumstances exists:
 - (a) The child has been in an out-of-home placement for a cumulative total period of nine months or longer pursuant to court order or voluntary placement pursuant to section 8-806 and the parent has substantially neglected or willfully refused to remedy the circumstances which cause the child to be in an out-of-home placement.
 - (b) The child has been in an out-of-home placement for a cumulative total period of fifteen months or longer pursuant to court order or voluntary placement pursuant to section 8-806, the parent has been unable to remedy the circumstances which cause the child to be in an out-of-home placement and there is a substantial likelihood that the parent will not be capable of exercising proper and effective parental care and control in the near future.
9. That the identity of the parent is unknown and continues to be unknown following three months of diligent efforts to identify and locate the parent.
10. That the parent has had parental rights to another child terminated within the

preceding two years for the same cause and is currently unable to discharge parental responsibilities due to the same cause.

11. That all of the following are true:

- (a) The child was cared for in an out-of-home placement pursuant to court order.
- (b) The agency responsible for the care of the child made diligent efforts to provide appropriate reunification services.
- (c) The child, pursuant to court order, was returned to the legal custody of the parent from whom the child had been removed.
- (d) Within eighteen months after the child was returned, pursuant to court order, the child was removed from that parent's legal custody, the child is being cared for in an out-of-home placement under the supervision of the juvenile court, the division or a licensed child welfare agency and the parent is currently unable to discharge parental responsibilities.

C. In considering the grounds for termination prescribed in subsection B, paragraph 8 or 11 of this section, the court shall consider the availability of reunification services to the parent and the participation of the parent in these services.

D. In considering the grounds for termination prescribed in subsection B, paragraph 8 of this section, the court shall not consider the first sixty days of the initial out-of-home placement pursuant to section 8-806 in the cumulative total period.

Arizona law also requires that for a judge in a severance bench trial or a jury in a severance jury trial, the court's findings with respect to grounds for termination must be based on "clear and convincing evidence under the rules applicable and adhering to the trial of civil causes."⁴³

The requirements for a permanency hearing and timelines for permanency are found in ARS §8-862:

A. The court shall hold a permanency hearing to determine the future permanent legal status of the child:

- 1. Within thirty days after the disposition hearing if the court does not order reunification services.
- 2. In all other cases, within twelve months after the child is removed from the child's home. The court shall not continue the permanency hearing beyond twelve months after the child is removed from the child's home unless the party who is seeking the continuance shows that the determination prescribed in section 8-829, subsection A, paragraph 3 has been made or will be made within the time prescribed in that paragraph.

B. At the permanency hearing, the court shall determine:

- 1. Whether termination of parental rights, adoption, permanent guardianship pursuant to section 8-872 or some other permanent legal status is the most appropriate plan for the child and shall order the plan to be accomplished within a specified period of time.
- 2. Whether reasonable efforts have been made to finalize the permanency plan in effect.

C. If the court determines that the child should remain in out-of-home placement longer than eighteen months from the date of the permanency order, the court shall conduct a review of the order at least once each year. After reviewing the order, the court may reaffirm the order or direct other disposition of the child.

D. If the court determines that the termination of parental rights is clearly in the best interests of the child, the court shall:

1. Order the department or the child's attorney or guardian ad litem to file within ten days after the permanency hearing a motion alleging one or more of the grounds prescribed in section 8-533 for termination of parental rights. The party who files the motion has the burden of presenting evidence at the termination hearing to prove the allegations in the motion.
 2. Set a date for an initial hearing on the motion for termination of parental rights within thirty days after the permanency hearing. If the termination is contested at the initial hearing, the court shall set a date for the trial on termination of parental rights within ninety days after the permanency hearing.
- E. If the court determines that permanent guardianship is clearly in the best interests of the child, the court shall:
1. Order the department or the child's attorney or guardian ad litem to file within ten days after the permanency hearing a motion alleging the grounds prescribed in section 8-871 for permanent guardianship. The party who files the motion has the burden of presenting evidence at the hearing to prove the allegations in the motion.
 2. Set a date for an initial hearing on the motion for permanent guardianship within thirty days after the permanency hearing. If the permanent guardianship is contested at the initial hearing, the court shall set a date for the trial on the permanent guardianship within ninety days after the permanency hearing.

Appendix B – Individuals interviewed for this report

Children's Action Alliance would like to thank the following individuals for taking the time to provide their comments and information relevant to TPR jury trials in Arizona:

Randi Alexander, Esq.

The Honorable Mark Anderson, Arizona State Senate

Denise Avila-Taylor,

Office of the Arizona Attorney General

Paul Bennett, Esq.

David Braun,

Office of the Arizona Attorney General

The Honorable Robert Brutinel,

Presiding Judge, Yavapai County Superior Court

Merritt Bingham Dublin,

Office of the Arizona Attorney General

Jeff Costin, Child Protective Services

David Croxton, Child Protective Services

Julie Duncan, Child Protective Services

The Honorable Patricia Escher,

Pima County Juvenile Court

The Honorable Richard Fields,

Pima County Superior Court

The Honorable Stephen Gerst,

Maricopa County Superior Court

The Honorable Charles Harrington,

Pima County Juvenile Court

Hervey Hotchkiss,

Office of the Arizona Attorney General

David N. Howarth,

Office of the Arizona Attorney General

The Honorable John Kelly,

Pima County Superior Court

The Honorable Virginia Kelly,

Pima County Superior Court

The Honorable Kirby Kongable,

Yuma County Superior Court

The Honorable John Leonardo,

Presiding Judge, Pima County Superior Court

Sandra Lopez, Child Protective Services

Bruce MacArthur,

Office of the Arizona Attorney General

The Honorable Michael McVey,

Maricopa County Superior Court

Sara Moody, Child Protective Services

Bill Owsley,

Office of the Legal Advocate, Maricopa County

Eileen Palles,

Office of the Arizona Attorney General

Judith Palmer, Esq.

Rich Poniske, Child Protective Services

Robert Rosenelli, Esq.

The Honorable Julie Roth,

Mohave County Superior Court

The Honorable Stephen Rubin,

Lead Dependency Judge,

Pima County Juvenile Court

Peggy Schwartz, Child Protective Services

Keith Singer, Esq.

William Stanton,

Arizona Supreme Court,

Administrative Office of the Courts

Pat Trebesch,

Office of the Arizona Attorney General

Edward Truman,

Office of the Arizona Attorney General

Carey S. Turner,

Office of the Arizona Attorney General

Kathy Tuthill,

Office of the Arizona Attorney General

Karyn Vampotic,

Office of the Arizona Attorney General

Tracy Wareing, Office of the Governor

Jo Ann Zirkle,

Office of the Arizona Attorney General

End Notes

1. The Commission, a national, nonpartisan panel funded by The Pew Charitable Trusts and composed of leading experts in child welfare, undertook the first-ever, comprehensive assessment of two key aspects of the foster care system: a federal financing structure that encourages an over-reliance on placement of children in foster care at the expense of other more permanent options for children who have been abused or neglected, and a court system that lacks sufficient tools, information, and accountability necessary to move children swiftly out of foster care and into permanent homes. More information on the Pew Commission and its final report can be found on their website at www.pewfostercare.org
2. Pima County was the only jurisdiction from which comparable bench trial data were immediately available.
3. Abuse/neglect (i.e., dependency) proceedings precede termination of parental rights matters. As of January 2004, 11 states (Colorado, Maine, Massachusetts, Michigan, Montana, Oklahoma, South Dakota, Texas, Virginia, Wisconsin, and Wyoming) have statutes or case law that permit or require a jury trial in dependency cases. The remaining states have case law or statutes or local court rules that specifically prohibit a jury trial in dependency cases. See Szymanski, L. (2004). *Jury Trial in Abuse, Neglect, Dependency Cases NCJJ Snapshot*, 9(1). Pittsburgh, PA. National Center for Juvenile Justice.
4. A publication prepared by Children's Action Alliance and the Arizona Supreme Court, Administrative Office of the Courts, in September 2004 and entitled *Arizona Juvenile Courts: Working to Improve Outcomes for Abused and Neglect Children* contains an overview of Arizona's juvenile court proceedings for dependency and severance cases.
5. In Arizona, there are two ways to initiate termination actions. The first most common method involves the filing of a motion to sever parental rights. ARS §8-862.D.1. states "If the court determines (at the permanency hearing) that the termination of parental rights is clearly in the best interests of the child, the court shall order (CPS) or the child's attorney or guardian ad litem to file within 10 days after the permanency hearing a motion alleging one or more of the grounds prescribed in ARS §8-533 for termination of parental rights." Arizona law (ARS §8-533.A) also allows any person or agency who "has a legitimate interest in the welfare of a child to file a petition for the termination of the parent-child relationship."
6. Only six states (Nevada, Oklahoma, Texas, Virginia, Wisconsin, and Wyoming) have statutes, court rules, and/or case law that permit or require a jury trial in termination of parental rights cases. Szymanski, L. (2003) *Jury Trials in Termination of Parental Rights Cases: NCJJ Snapshot*, 8(12). Pittsburgh, PA. National Center for Juvenile Justice. The remaining 43 states have case law or statutes or local court rules that specifically prohibit TPR jury trials.
7. The Presiding Superior Court Judge in Yavapai County was also interviewed for this report. The Yavapai County Superior Court convened one TPR jury trial during this period though this trial did not end in a jury verdict (the parent relinquished rights before the end of the trial).
8. Grounds for terminating parental rights in Arizona are delineated in ARS §8-533.B. (See Appendix A.)
9. All Arizona jury trial statistics used in this report were provided by the Office of the Arizona Attorney General, Child and Family Protection Division, the Arizona Supreme Court, Administrative Office of the Courts, and/or the juvenile courts in Maricopa and Pima counties.
10. Excluding pending jury trials was necessary for this preliminary analysis because we do not know the outcomes for pending events.
11. In Pima County, the preliminary bench trial data reflect cases in which parents specifically waived their rights to jury trial. In Maricopa, Mohave, and Yuma counties, the preliminary bench trial data may reflect at least some cases that started as jury trial requests but then reverted to bench trials.
12. The Maricopa County Juvenile Court reported that 141 bench trials were completed during this period but outcomes for these bench trials were available for only 98 of these cases. Therefore, a more conservative count of "completed" bench trials has been used in this report.
13. This is also consistent with data provided by the Milwaukee County (Wisconsin) Circuit Court that show that over 96 percent of termination filings in 2002 and 2003 were resolved through court (bench) trials, defaults, or consents.
14. This excludes the 40 pending cases because the outcomes were not yet known.
15. "Completion" means the jury trial has been completed and the jury has rendered a verdict, or the judge has issued her/his ruling following a bench trial (i.e., parental rights terminated or not).
16. Pima County data are presented here because of the higher number of completed jury trials in that county. These figures only apply to cases where jury or bench trials were actually held and completed during the December 18, 2003 through December 17, 2004 period. These data should be considered preliminary.
17. Email of April 13, 2005 from The Honorable Maurice Portley, Court of Appeals, Division I.
18. Telephone conversation with Michelle Nimmo, Court of Appeals, Division II, March 31, 2005.
19. Comparison data on appeals of TPR jury and bench trials during this first year were not available for this study.
20. National Council of Juvenile and Family Court Judges. (2000) *Adoption and Permanency Guidelines: Improving Court Practice in Child Abuse and Neglect Cases*. Reno, Nevada. (Page 5) The purpose of the *Adoption and Permanency Guidelines* is "to set forth the essential elements of best practice for the court processes that lead to a permanent home for children who cannot be reunified with their families."
21. The National Center for Juvenile Justice (NCJJ) conducted a series of studies examining juvenile court practices, including judicial assignments, before and after court reforms were instituted statewide. The first study, completed in 1996, found frequent changes in judges handling dependency matters. This contributed to frequent continuances and delays in court proceedings and prolonged court involvement for many dependent children. G.J. Halemba & G. Siegel (1996) *Arizona Court Improvement Project: Final Report*. Pittsburgh, PA. National Center for Juvenile Justice. A follow up study conducted after court reforms were adopted statewide, including One Family/One Judge case assignment, found significant reductions in continuances and delays, as well as significant decreases in the average length of time dependent children remained court involved. G. Siegel, et. al. (2002) *The Arizona Court Improvement Project: Five Years Later*. Pittsburgh, PA. National Center for Juvenile Justice.
22. For example, in 2003, half of the judges assigned to Maricopa County's southeast court facility (SEF) rotated off the juvenile bench. The majority of new judges rotated in from the criminal bench and did not have experience with juvenile cases. G.J. Halemba, et. al., (2004) *Arizona Dual Jurisdiction Study: Final Report*. Pittsburgh, PA. National Center for Juvenile Justice.

23. All juvenile court judges in Arizona are superior court judges. When cited in this paper, however, their titles reflect the court they were assigned to during the December 2003 through December 2004 period.
24. The judge assigned to handle jury trials in Pima County is currently assigned to juvenile court but he conducts jury trials at the superior court building, not at the juvenile court. Other judges may handle TPR jury trials if there is a conflict. In early 2005, a different superior court judge will be assigned to handle TPR jury trials. After that assignment is completed, the Pima County Juvenile Court will rotate jury assignments among the juvenile court judges.
25. Some proponents of the One Family/One Judge approach also emphasize that when a TPR motion is filed, it is an extension of a dependency case and, thus, parents are not entitled to a change in judge.
26. The Pima County Juvenile Court will be initiating a pilot TPR mediation project in five of its courtrooms in early 2005. This project will involve mandatory referral to mediation between the initial severance hearing and pre-trial conference. The initial severance hearing will be handled by the same judge that handled the dependency while the pre-trial conference will be handled by the judge assigned to the jury trial. The court is also initiating a mandatory permanency mediation pilot project, also starting in early 2005. Parties will be required to go to mediation prior to the permanency planning hearing. Courtrooms that will not be participating in the mandatory TPR and permanency mediation projects will have the option of referring parties to mediation but it will not be mandatory. The court anticipates that expanded mediation will reduce the number of cases that go to contested TPR bench and jury trials.
27. Mediation is conducted by either a court-employed, contracted, or volunteer mediator. Settlement conferences may be facilitated by the judge who handled the dependency phase, the judge assigned to the jury trial, or a different judge, depending on the county.
28. As shown, trial management conferences for jury trials are unique to Maricopa County. Interviews indicated the judges in Maricopa County require only attorneys to attend these conferences.
29. Arizona law and court rules do not specify a time limit for holding TPR bench or jury trials in cases involving TPR petitions. However, almost all TPR matters in Arizona involve motions, not petitions.
30. Based on information provided by the Administrative Office of the Arizona Supreme Court, Dependent Children's Services Division.
31. While Yavapai County has not completed a termination jury trial to verdict yet, the Yavapai County Juvenile Court holds jury trials on Wednesdays through Fridays.
32. However, the judges handling jury trials in Maricopa and Pima counties have initiated some steps that are intended to minimize the frequency of cases bouncing from jury to bench trial.
33. Guardians Ad Litem (GALs) may be appointed by the court for children and/or parents. GALs are almost always attorneys, but their roles are different than attorneys appointed to represent children or parents. In brief, the GAL is appointed to represent the "best interests" of the child or parent. The child or parent may not agree with the GAL's assessment regarding what is in their best interest. Attorneys for children and parents, on the other hand, must advocate for and represent their clients' wishes.
34. CASA volunteers are trained volunteer advocates who speak for the best interests of children in court. Today, more than 900 CASA programs are in operation, with 70,000 women and men serving as CASA volunteers nationwide. Information obtained from the National CASA Organization (www.nationalcasa.org).
35. Previous research on families involved in the juvenile court system has shown very high rates of chronic substance abuse and mental illness among parents of dependent children. For example, see G. Siegel, et. al. (2002) *The Arizona Court Improvement Project: Five Years Later*. NCJJ.
36. See Appendix A for the specific grounds for terminating parental rights in Arizona.
37. Pursuant to both state and federal law, the juvenile court is required to make "reasonable efforts" findings at almost every stage of a dependency action. "Reasonable efforts refer to those actions which the state (i.e. CPS) would reasonably be expected to take, such as the provision of appropriate rehabilitative or treatment services, to enable children to remain safely at home before they are placed in foster care. It also refers to those actions the state would reasonably make to reunite foster children with their biological parents. (TPR motions or petitions) cannot be filed without consistent reasonable efforts findings by the juvenile court." This description of reasonable efforts was drawn from a letter written by the Honorable Leonard P. Edwards, Presiding Juvenile Court Judge in Santa Clara County, California. (1995) *Resource Guidelines: Improving Court Practices in Child Abuse & Neglect Cases* (Pg. 167-168). Reno, NV
38. Many court appointed attorneys handle both dependency and delinquency cases. Attorneys may have to reschedule hearings for both types of cases when a jury trial is scheduled.
39. The state has provided funding for additional AGs and CPS case managers. However, the funding was given to meet only the dependency caseloads projected through fiscal year 2005. It did not include funding to increase staff to account for the additional time necessary to prepare for and present at jury trials. At the same time, additional funding has not been provided at the county level for attorneys who represent parents and children in these matters, and jury trials dramatically increase work demands for these key professionals as well.
40. *Adoption and Permanency Guidelines* (Page 93).
41. A recent discussion with the Chief Counsel for the Protective Services Division, Office of the Arizona Attorney General, indicated that Maricopa County may be experiencing a substantial increase in jury trial requests and jury trials that may actually be held.
42. The Pima County Juvenile Court Center has two courtrooms with jury boxes and adjoining jury deliberation rooms. It does not have jury assembly rooms. The Maricopa County Juvenile Court does not have any jury boxes nor does it have any jury assembly or deliberation rooms.



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