

PRELIMINARY REPORT
of the
CHIEF ADMINISTRATIVE JUDGE
Pursuant to
Chapter 626 of the Laws of 2007

December, 2007

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Preface

Chapter 626 of the Laws of 2007, which added a new section 249-b to the Family Court Act, directed the Chief Administrator of the Courts to promulgate court rules, on or before April 1, 2008, prescribing workload standards for law guardians. The legislation also required the Chief Administrator to issue this Preliminary Report to the Governor, the Legislature, and the Administrative Board of the Courts.

To assist in the preparation of this report and in the development of law guardian workload standards, Hon. Ann Pfau, Chief Administrative Judge of the New York State Courts, retained the National Center for State Courts (NCSC) as a consultant. NCSC is an internationally recognized non-profit organization, headquartered in Williamsburg, Virginia, that has provided research, education, information, technology, and direct consulting services to court systems and justice system agencies for more than 35 years. NCSC has extensive experience with juvenile and family law issues, and has been a significant force in advancing the child welfare movement at both the national and state levels. NCSC's work in this area includes evaluations of pilot programs, review of organizational structures, assessment of delivery of services to children, youth, and families, and preparation of improvement plans for service delivery. Additionally, NCSC organized two national summits of court and child welfare agency leaders to improve the timeliness and fairness of child protection proceedings, child permanency, and the safety and well-being of victimized children. NCSC also has extensive experience in conducting workload assessments in a variety of contexts—statewide and local efforts, general and limited jurisdiction courts—and with a variety of justice system stakeholders, including judges and hearing officers, probation officers, administrative and clerical staff, prosecutors and public defenders.

The NCSC team on this project included the following:

- Daniel J. Hall, Vice President for Court Consulting Services. Mr. Hall is responsible for the development, coordination, and execution of all NCSC consulting projects. He also provides technical assistance to the nation's courts on a variety of issues. His prior workload assessment and staffing model studies include projects for courts in Minnesota, California, Delaware, Florida, and South Dakota.
- Dawn Marie Rubio, Principal Court Management Consultant. Ms. Rubio has directed numerous projects involving various state courts' organization, processes and operations, and has been actively involved in the juvenile and family court arena as a child advocate and attorney, program director, judicial attorney and NCSC consultant. In conjunction with the National Council of Juvenile and Family Judges and the American Bar Association's Center for Children and the Law, she developed court performance measures and judicial workload standards for courts handling child abuse and neglect cases. Prior projects also include the development of workload standards in child welfare cases for the State of California, the Statewide Needs Assessment for the Colorado Court Improvement Program's Respondent

Parent's Counsel Task Force, Court Improvement Program Reassessments in Wyoming, Ohio and New Jersey, as well as the Process, Outcome and Cost-Benefit Evaluation of Hawaii's adult, juvenile and family drug courts. Her publications and presentations include *What You Count Counts: A National Model Using Measures of Performance to Monitor Effectiveness*; *Justice for Children: Changing Lives by Changing Systems*, Judicial Leadership Summit (September 2005); and *Building a Better Court: Measuring and Improving Court Performance and Judicial Workload in Child Abuse and Neglect Cases*, ABA Center on Children and the Law, NCSC, and National Council of Juvenile and Family Court Judges Permanency Planning Department (Spring 2004).

- Mary Durkin, Principal Court Management Consultant. Ms. Durkin specializes in performance measurement, workload analysis, strategic planning and caseflow management. Her prior projects include the establishment of innovative court programs including drug courts, assistance for self-represented litigants, and differentiated case management. She is currently involved in a national study of workload and performance measurement in dependency cases.
- Richard Van Duizend, Principal Court Management Consultant. Mr. Van Duizend provides technical assistance, consulting, facilitation and training services to the courts with respect to such issues as caseflow management, provision of services to unrepresented litigants, operation of juvenile and drug courts, criminal and civil case processing, and guardianship. His prior projects in the area of juvenile justice/child welfare include the Nashville/Davidson County Tennessee Juvenile Court, Contracting with Attorneys to Represent Parents in Child Protection Cases for the Maine Judicial Branch, the Evaluation of the District of Columbia Court's Social Services Programs for Juvenile Cases, and Project Director for the National Judicial Leadership Summit on the Protection of Children.

The Office of Court Administration (OCA) also acknowledges the valuable contributions of the following groups and individuals, each of whom met with and provided information and insights to the NCSC:

- Jane R. Schreiber, Harriet R. Weinberger, John E. Carter, Jr., Tracy M. Hamilton, Directors of the Law Guardian Programs of the four Judicial Departments of the Appellate Division of the Supreme Court of the State of New York
- Tamara A. Steckler, Attorney-in-Charge, and the staff of the Juvenile Rights Practice, The Legal Aid Society
- Karen Freedman, Executive Director, and the staff of Lawyers for Children
- Carol Sherman, Executive Director, and the staff of the Children's Law Center
- Jayne Ann McPartlin, Chief Attorney, and the staff of the Law Guardian Bureau of the Legal Aid Society of Suffolk County, Inc.

- Pamela L. Neubeck, Senior Staff Attorney, and the staff of the Law Guardian Unit of the Legal Aid Bureau of Buffalo, Inc. Bureau of the Erie County Legal Aid Society

Finally, the New York Statewide Law Guardian Advisory Committee (the “Committee”) provided invaluable insights and assistance during meetings with NCSC representatives on the workload study. The Committee, which is chaired by Appellate Division Justice Edward O. Spain, consists of Appellate Division Justices from all four Departments, Supreme Court Justices, Family Court Judges, OCA representatives and the Directors of the Law Guardian Programs. Since its creation in 1996 by the Administrative Board of the Courts, the Committee has examined law guardian issues in New York State and recommended rule changes, policy reforms and other solutions to improve the administration of the Law Guardian Programs and ensure the highest possible quality of representation for children.

I. Introduction

Law guardians play a crucial role in the Family Court. As required by Chapter 626 of the Laws of 2007, this Preliminary Report addresses workload standards for law guardians.¹ However, the work of law guardians cannot be considered in a vacuum since they are only one of the participants in the juvenile justice system. Indeed, in interviews with NCSC, law guardians acknowledged this interconnectedness, by identifying such factors as congested calendars and long adjournment times as having an impact on their workload.

The New York State Family Court faces enormous challenges. The annual filings in Family Court will approach 700,000 in 2007, with a resulting two million appearances a year on Family Court calendars. Moreover, the workload continues to increase, in part, as a result of new legislative mandates and other events, including:

- Under the Federal Adoption and Safe Families Act of 1997, cases involving children in foster care (in voluntary placement), child abuse and neglect, juvenile delinquency and persons in need of supervision (“PINS”) proceedings, as well as cases involving children who are the subjects of termination of parental rights proceedings, are subject to more frequent judicial reviews, more extensive monitoring and documentation of children’s progress toward permanence, and expedited filings of proceedings to terminate parental rights.
- The volume of Family Court work throughout the State has increased significantly as a result of the new permanency legislation that took effect in December 2005, which requires that children in foster care receive immediate and ongoing attention, including hearings every six months until permanent placement is achieved. The Family Court in New York City held close to 29,000 permanency hearings during 2006; the Family Courts outside New York City held almost 18,000 permanency hearings.
- With the heightened attention brought on by the Nixzmary Brown case, filings in abuse and neglect cases in New York City Family Courts more than doubled during 2006. Original filings in New York City increased from just over 5,000 in 2005 to over 12,300 in 2006, an increase of 147%.
- The Family Court Act was amended in 2000 to increase from 16 to 18 the age over which the Family Court has jurisdiction to supervise individuals in PINS cases.

¹ This report uses the term “law guardian,” the term that is used in the Family Court Act. It should be noted that there is a movement, based in large part on recommendations made by the Matrimonial Commission and the Statewide Law Guardians Advisory Committee, to replace the term “law guardian” with “attorney for the child” to reflect the status of the attorney as an advocate for the child, rather than as a fiduciary. It should be further noted that in October 2007, the Administrative Board of the Courts adopted new rule 7.2 of the Rules of the Chief Judge, which utilizes the term attorney for the child in the place of law guardian, and also sets forth standards of representation for the attorney for the child. A copy of Rule 7.2 is attached as Appendix A.

Despite these developments, there has been virtually no increase in the number of Family Court Judges. In her February 2007 State of the Judiciary message, Chief Judge Kaye stated that New York is “desperately short of judicial resources” and requested that the Legislature create 39 new judgeships “essential to meet the critically important needs of New York’s families and children.” There are 153 judges assigned to the Family Courts statewide: 47 judges in New York City and 106 in the courts outside of New York City. Based upon a judicial needs assessment conducted in early 2007, OCA determined that there is an urgent need for a bare minimum of 39 additional Family Court Judges.

Law guardian resource needs must be addressed in the context of the larger systemic problems of an overburdened Family Court system in which Judges are struggling to keep pace with crushing caseloads. Efforts that focus on a single – though critical – player in that larger system will be of limited impact if the Court itself is overburdened. In addition, any analysis of law guardian workload should also encompass an examination of initiatives and reforms that would eliminate inefficiencies in the present system, and that permit law guardians and other participants in this court to perform more effectively.

II. Background

A. Statutory Framework of the New York Law Guardian System

New York was among the first states to enact laws providing for the appointment of counsel to represent minors. Family Court Act (FCA) §241 declares that minors who are the subject of Family Court proceedings or appeals in proceedings originating in Family Court should be represented by counsel of their choice or by law guardians. This declaration is premised on a legislative finding that counsel is generally indispensable to ensuring due process of law. Accordingly, Part 4 of Article 2 of the Family Court Act establishes a system of law guardians for minors who require the assistance of counsel to help protect their interests and help them express their wishes to the court.

The types of proceedings in which law guardians must or may be appointed have expanded steadily over the years based on legislative action and court decisions. Today, law guardians must be appointed in all delinquency and persons in need of supervision proceedings under Articles 3 and 7, all child protective proceedings under Article 10, all termination of parental rights proceedings under Article 6 and Social Services Law §384-b, all permanency hearings under Article 10-A, and certain foster care review proceedings under Social Services Law §358-a. Under FCA §249, Family Court Judges have the discretion to appoint a law guardian in any proceeding when such representation will serve the purposes of the Family Court Act. Pursuant to this provision, law guardians are often appointed in custody, visitation, interstate custody, and adoption proceedings, and in some family offense and paternity proceedings.²

B. Law Guardian Providers: Administrative and Operational Framework

New York is a geographically large, diverse state with many heavily populated urban centers as well as large, sparsely populated rural areas. In light of the widely varying conditions and circumstances in different parts of the state, the legislature has authorized a number of different administrative alternatives for providing law guardian services. FCA §243(a) authorizes OCA to enter into agreements with legal aid societies to provide Family Court law guardians for children in those counties – typically, urban centers – which contain legal aid societies. FCA §243(c) provides that the Appellate Division may designate a panel of law guardians for a particular county and invite bar associations to recommend qualified attorneys for service on these panels. Finally, where a county panel is insufficient to provide appropriate law guardian services, the Appellate Division may enter into agreements with any qualified attorneys to serve as law guardians. FCA §243(b).

In New York City, OCA contracts with three agencies to provide law guardian services: Legal Aid Society's Juvenile Rights Practice (JRP), the Children's Law Center, and Lawyers for Children. Outside of New York City, OCA contracts with similar agencies to provide law guardian

² In addition, Judiciary Law § 35(7) authorizes the appointment of law guardians in all cases commenced in Supreme Court and Surrogate's Court that could have been commenced in Family Court.

services in Erie, Monroe, Suffolk, Orange, Rockland, Tompkins, Genesee, and Chemung Counties. Additional offices under contract with the Appellate Divisions are in operation in the Third Department in Schuyler, Franklin, Otsego, Clinton and Fulton Counties, and in the Fourth Department in Erie County.

In addition, there are law guardian panels in each county of the state, overseen by each of the four departments of the Appellate Division, through each department's Law Guardian Director. In counties without an institutional law guardian provider, law guardians are assigned solely from county law guardian panels. These panel law guardians are attorneys engaged in the private practice of law who are certified as eligible by the Appellate Divisions to accept law guardian assignments from judges and are reimbursed by the state at the rate of \$75 per hour.³ The payment of law guardian fees is a responsibility of the state and funds are allocated for this purpose by OCA in the Judiciary's annual budget. Panel law guardians are able to self-regulate caseload sizes by routinely declining assignments, whereas institutional providers generally must take all cases assigned to them unless the particular office has a conflict.

³

Additionally, in counties where there is a contract agency, panel law guardians are appointed to represent children if the law guardian contract office has a conflict of interest.

III. Methodology and Preliminary Data Collection

Prior to the August 28, 2007 effective date of Chapter 626 of the Laws of 2007, OCA began to solicit input from law guardian contractors and other interested parties regarding appropriate methodologies for conducting a caseload study. OCA staff met individually with each of the three New York City institutional law guardian offices (the Juvenile Rights Practice of the New York City Legal Aid Society, Lawyers for Children, and The Children's Law Center) to gather information about law guardian caseloads and solicit their views about how best to conduct a study.

In July, OCA and Appellate Division staff met in Syracuse with institutional law guardian offices from outside New York City to gather the same kind of information previously solicited from New York City providers. Participants included representatives from the law guardian offices in Suffolk, Orange, Rockland, Tompkins, Chemung, Monroe, and Erie Counties.

Finally, on July 31, OCA hosted a full-day session on this topic at the Albany headquarters of the New York State Bar Association. Participants included representatives of institutional law guardian offices, including those who had been involved in earlier sessions, as well as panel law guardians representing each judicial department, and a number of both Family Court and appellate judges as well as court officials who have been involved in issues related to family court representation.

Based largely on feedback received during these sessions, including the desirability of procuring an independent, recognized expert, OCA retained the National Center for State Courts as a consultant. The NCSC research team developed a methodology that employs a number of approaches to gathering information and data.

A. Review of Research on Caseload and Workload Standards

First, NCSC undertook a review of the research of prior studies of caseload and workload standards. Each workload analysis is unique and necessarily focuses on the nature and requirements of the particular positions studied. Nonetheless, it is instructive to review prior workload studies, primarily for the purpose of formulating an appropriate methodology and identifying relevant factors for analysis. Among the studies reviewed were reports from the National Advisory Commission on Criminal Justice Standards and Goals, the National Association of Counsel for Children, the American Bar Association's Center for Children and the Law, the National Council of Juvenile and Family Court Judges, and the American Humane Association.

A summary of the review of prior literature on this topic is appended as Attachment B.

B. Review of Caseload/Case Processing Data

Second, NCSC reviewed available statistical data and background materials about the Family Court generally, as well as law guardians specifically. Sources of information reviewed include

New York Contract Agency Law Guardian Surveys and Program Summaries, Institutional Law Guardian Provider Budget Information and Budget Request, County Law Guardian Panel Assignment/Activity Statistics, and data generated by the Family Court's automated Universal Case Management System (UCMS).

Further analysis of this data, as well as the gathering of additional data, will be undertaken as part of the next phase of the development of law guardian workload standards. Certain trends relevant to a workload analysis are already apparent and worth noting.

The first and fundamental statistic is the steady increase in Family Court filings over the years. Over the past ten years, the workload of the Family Court has grown by 12 percent. In addition to changes in the number of filings are changes in the amount and type of work associated with each filing. For example, as reflected in Table I (attached as Appendix C), the average number of appearances per disposition in child welfare cases (Adoption Surrender, Termination of Parental Rights, Foster Care Review, Foster Care Placement, Abuse and Neglect), has increased substantially in recent years as a result of the requirements of the 2005 Permanency Planning legislation. While this increase is evident throughout the state, it is particularly notable in New York City, where the average number of appearances increased nearly 60 percent between 2004 and 2006 (6.73 to 10.73, respectively). The same pattern is reflected in Table II (attached as Appendix C), which identifies the number of post-dispositional appearances for child welfare cases. Again, the impact of the legislation is obvious, as the number of post-dispositional appearances has risen between 2004 and 2006 in virtually every county, and, again is especially apparent in New York City where the average number of such appearances has almost doubled within this time period (2.24 to 4.46, respectively). Another trend warranting further study is the increase in the percent of child welfare cases disposed of more than 120 days after filing.

There is also evidence of significant differences between counties with respect to many factors that directly affect not only the workload of the Family Courts but also the workload of law guardians and other participants in that forum. For example, as shown by Table I, there is a wide disparity between counties with regard to the number of appearances required for each case disposition. For example, in 2004 the average number of appearances to dispose of a child welfare case ranged from a low of 2.42 appearances to a high of 9.54 appearances; 2006 shows a similar range of 2.40 to 13.30. There are also significant differences between the counties with respect to average time from filing to case disposition.

Further analysis of the Family Court workload is clearly required. The preliminary review, however, suggests that any standards must accommodate a workload that is not only growing but changing in nature over time and that varies from county to county in ways that are not fully reflected by merely comparing numbers of cases.

C. Review of Qualitative Interview and Focus Group Data

Finally, NCSC team members met with the Statewide Law Guardian Advisory Committee, the Law Guardian Panel Directors for each of the four Judicial Departments, as well as with leaders and representative staff of contract agencies providing law guardian services in New York City,

Suffolk and Erie Counties. The purpose of these latter on-site interviews was to (1) review issues regarding uniformity of case counting and reporting; (2) discuss issues related to workload measurement and appropriate workload measures; and (3) explore factors that influence law guardian workload, such as variations in caseload composition, availability of non-legal professional and support staff and other resources, the level of coordination/cooperation with the child welfare agencies and service providers, the impact of specialized court dockets, such as drug treatment courts, and the local court culture. A number of key themes and structural issues were identified based on these discussions.

1. Consistent Themes Raised by Law Guardians

Impact of the 2005 Legislation on Workload – Law guardians uniformly cited the Child Welfare Permanency Law (Chapter 3 of the Laws of 2005) as having a major impact on their workload. Law guardians have emphasized that the periodic review requirement has changed the nature of their workload. Permanency hearings are labor intensive, requiring them to engage in regular client status reviews and to ascertain whether ordered services have been delivered. While the initial investigation period is the most intensive, the workload during the rest of the proceeding, including the permanency hearings, can be significant. This appears to be less true for delinquency and PINS matters, where the permanency hearings are less frequent.

Court Caseload and Management Practices – Law guardians also noted that their workloads are affected by a number of different factors, including: crowded calenders, long waits in the courtroom, discontinuous trials, and long adjournment periods. While these factors were perceived to be more serious in New York City, they were also cited in other large counties.

Role of Law Guardians – One facet of their role that was frequently cited by law guardians as having a significant impact on workload was the need to meet regularly with clients to understand their situations, and, except when the client is non-verbal or very young, to discuss their case and determine their wishes. (Rule 7.2 of the Rules of the Chief Judge, which sets forth standards of representation for law guardians is attached as Appendix A.)

Lack of Uniform Management Data – Although OCA collects and analyzes uniform workload data from contract providers based on the number of petitions to which they are assigned annually, the providers themselves do not use consistent criteria to track their caseloads. Indeed, one contract provider did not know the average number of cases being handled by each law guardian. The absence of uniform management data at the provider level complicates an assessment of whether workloads are being rationally or equitably distributed. Going forward, greater uniformity of data collection by contract providers is essential to the complex task of setting appropriate workload standards and determining what funding levels are actually required to meet existing mandates.

Turnover of Child Welfare Agency Personnel – Although no data was provided on this issue, law guardians stated that their workload is affected by what was characterized as a high rate of turnover among case workers and staff responsible for children in out-of-home placements. This dynamic impedes the ability of law guardians to efficiently manage their

caseloads and heightens the importance of promoting continuity of representation by ensuring that law guardians remain assigned to a particular client for the duration of a case.

Lack of Automation and Communications Resources – Some law guardians stated that additional automation and communications equipment would enable them to function more effectively and efficiently. In particular, these law guardians cited a need for wireless laptops, personal digital assistants, and cell phones, to enable them to communicate and work electronically, particularly from the courthouse or on the road.⁴

Travel Time – The time required to meet with clients, parents and providers and assess living conditions is a significant workload factor for county law guardian panels and those employed by contract providers. In New York City, law guardians must travel from borough to borough by public transportation. Upstate, law guardians are routinely required to drive within geographically large counties or to adjacent counties. The travel burden increases when multiple siblings assigned to the same law guardian are in different foster care placements. In addition, due to court, school and work schedules, meetings often occur during late afternoons, evenings and weekends.

2. Variations in Structure and Practice

Structural Differences Among Providers – Discussions with law guardian service providers revealed two major structural differences: significant variations in the types of cases handled by different providers and wide variations in the ratio of law guardians to support staff and social workers. These variations, which are largely a result of historical developments rather than a comprehensive plan for providing legal representation to children, have important implications for any law guardian workload study. It is simply not possible to assess workloads on the basis of the number of cases assigned to each provider divided by the number of lawyers available to that provider, since the work requirements for each type of case (delinquency, PINS, child protection, custody, adoption, etc.) vary considerably and the degree of support staff available to law guardians working in different provider offices is not consistent.

Types of Cases Handled: The types of Family Court cases assigned to particular providers varied sharply from handling any type of proceeding involving a child (e.g., county law guardian panels, Suffolk County Legal Aid Society, Erie County Legal Aid), to all cases other than custody cases (e.g., New York Legal Aid Society), to primarily custody matters (e.g., Lawyers for Children and Children’s Law Center).

Ratio of Attorneys to Support Staff: The ratio between attorneys and support staff varies widely among providers in New York. Some offices have investigators, paralegals, social workers, and/or administrative staff to assist law guardians, while others, particularly county panel law guardians, have only minimal support assistance. For

⁴ Requests from legal aid providers for information technology equipment are regularly considered as part of the annual UCS budget process. In the two most recent state fiscal years, a total of \$3 million in UCS funding was allocated to legal aid contractors for technology and other equipment costs.

example, Erie County Legal Aid uses a team system of three attorneys, one social worker, and one investigator; Suffolk County Legal Aid assigns a social worker to almost every child protection client; and, the Children's Law Center and New York City Legal Aid Society assign social workers to cases upon request of the assigned law guardian.

Variations in Practice Among Providers – NCSC's discussions with law guardian providers also revealed significant variations in assignment practices around the state. Most providers continue to rotate attorneys through intake sessions, with all eligible cases heard during that intake session assigned to the attorney on duty, regardless of the numbers involved or the judges later assigned to those cases. In contrast, some providers permanently assign attorneys to a particular courtroom to handle all eligible cases assigned to the judge in that courtroom. This approach offers significant workload efficiencies in that law guardians avoid scheduling conflicts and need not appear in several courtrooms on a daily basis. This approach also fosters the development of a close working relationship between the judge, court clerks, prosecutor (corporation counsel or county attorney), and law guardian.

IV. Workload Issues Identified

The New York State Family Court is enormously complex, with many different participants and a diverse range of case types. There are also significant regional differences within the Family Court in terms of local culture and practice. In addition, the law guardian community is itself highly diverse. Any analysis of law guardian workloads must therefore account for a wide range of variables.

A. Issues Bearing Upon Law Guardian Workloads

Structural Differences in Service Delivery – The most basic issue in the provision of law guardian representation is the structural division between institutional providers and individual panel attorneys. Any effort to address law guardian workloads must recognize that these are distinct service delivery models functioning within totally different professional and structural environments.

Differences in Case Categories – As discussed earlier, there are wide variances in workload composition among the different contractual law guardian offices. Since each case type involves differing levels of complexity and workload demands, any evaluation must address and quantify such disparities.

Differences in Experience Levels – As is true within any professional field, the experience and skills gained over time by law guardians representing children in Family Court enables them to effectively and efficiently handle more cases at any given time. This has been acknowledged by all, and any effort to quantify caseload-related issues must somehow consider this factor.

Differences in the Availability of Support Staff and Technology – Law guardian offices have access to varying levels of staff support, including social workers and investigators who perform important out-of-court tasks on behalf of attorneys. In addition, there are differences among law guardian providers with regard to available technology, such as laptops, portable digital assistants and cell phones, all of which maximize productivity when working outside the office. The availability of such support, recognized throughout the field as essential to a functioning service provider, is another significant workload factor.

Differences in Court and Practice Culture – There are wide differences throughout the state with regard to local court culture and practice. How effective is the local social service agency? How formally does the court function with regard to motion practice, conferences and court calendaring, among others? Are there problem-solving courts that can require more hearings, preparation and follow-up? Each of these and countless other local practice-related issues, such as waiting time and the overall expeditiousness of case processing, can have a significant impact on law guardian practice and on determining appropriate workloads.

Differences in Staff Deployment – A major disparity among law guardian offices involves the deployment of attorneys. Many offices regularly assign law guardians to a particular courtroom, which offers significant workload efficiencies in that law guardians avoid scheduling conflicts and need not appear in several courtrooms or in different courthouses on a daily basis. Other offices use different assignment protocols, which do not involve assigning law guardians to a particular courtroom. While each approach offers advantages and disadvantages, the choice of approach has an impact on the caseloads which law guardians can effectively handle.

B. Statistical Variables Affecting Workload Measures

In assessing law guardian workloads, a threshold issue is the selection of statistical benchmarks by which caseloads can be measured. Historically, law guardian workload data has been collected and reported to OCA by counting and analyzing petitions to which institutional providers have been assigned annually. This method of data collection has the advantage of consistency with reports generated by the Family Court reporting system. In addition, the data can be compared with workload parameters presented in much of the literature prepared by advocacy groups. However, as Family Court practice has evolved toward cases of longer duration, involving, in some cases, years of court monitoring, some service providers propose the overall number of active or pending cases at any one time as a more appropriate method of measuring workload, particularly in the child welfare permanency area.

There are other pertinent workload measures that could be utilized. For example, some providers prefer that data be analyzed on the basis of “cases” to which law guardians are assigned, because a case includes all pending petitions pertaining to the client at any one time. Other providers argue that the most appropriate workload measure is the number of clients a law guardian represents at any one time, because time spent on a case will vary according to the individual client's unique needs. Finally, other providers argue that the most appropriate workload measure should be “family-based,” inasmuch as families often are subject to multiple problems and Family Court petitions affecting the law guardian's clients. From a data collection and analysis perspective, all of the workload measures mentioned above have some merit.

NCSC has begun the analysis of a great deal of statistical data obtained from the court system's Universal Case Management System in an effort to quantify and determine the impact of the variables discussed above, including, for example, the average number of petitions associated with specific categories of cases. At the same time, NCSC is endeavoring to make empirical assessments based on the relative numbers of court appearances, and the related duration of cases, within these various case categories.

V. Next Steps

In light of the complexity of accounting for all of the variables discussed above, law guardian workload standards must be flexible and avoid a rigid limit that may well prove unworkable or arbitrary as applied to a particular situation or set of law guardians. Such a nuanced approach was contemplated by the Legislature, which noted that the standard must take into account “differences among various categories and types of cases, the various levels and activities required by each stage of the proceedings, variations in the use of support staff in providing legal representation and differences in local practice and in the mode of representation provided in accordance with section 253 of the family court act” (Chapter 626, §1).

OCA has asked NCSC to continue as a consultant in the next phase of this undertaking. NCSC will gather additional data and evaluate existing data related to law guardian caseloads and resources, and then quantify, to the extent possible, the many key variables already identified in this Report, such as different management structures and practices across law guardian service providers, variations in local court practice and culture, differences in law guardian caseload composition, and availability of support staff, among others.

In conducting this study, NCSC will work collaboratively with key stakeholders, especially the state’s law guardian provider community, judges, court staff and the Statewide Law Guardian Advisory Committee. Decisions about the data collection and evaluation process will draw upon input from all of these groups. Based on this study, the Chief Administrative Judge will issue court rules prescribing workload standards for Law Guardians on or before April 1, 2008.

APPENDIX A

The Chief Judge of the State of New York

Judith S. Kaye

ADMINISTRATIVE ORDER OF THE
CHIEF JUDGE OF THE STATE OF NEW YORK

Pursuant to the authority vested in me, and in consultation with the Administrative Board of the Courts, and with the approval of the Court of Appeals, I hereby promulgate, effective immediately, a new section 7.2 of the Rules of the Chief Judge, relating to the functions of the attorney for the child, to read as follows:

§7.2 Function of the attorney for the child.

(a) As used in this part, "attorney for the child" means a law guardian appointed by the family court pursuant to section 249 of the Family Court Act, or by the supreme court or a surrogate's court in a proceeding over which the family court might have exercised jurisdiction had such action or proceeding been commenced in family court or referred thereto.

(b) The attorney for the child is subject to the ethical requirements applicable to all lawyers, including but not limited to constraints on: ex parte communication; disclosure of client confidences and attorney work product; conflicts of interest; and becoming a witness in the litigation.

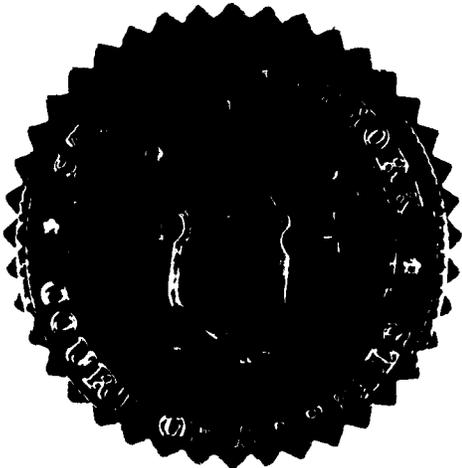
(c) In juvenile delinquency and person in need of supervision proceedings, where the child is the respondent, the attorney for the child must zealously defend the child.

(d) In other types of proceedings, where the child is the subject, the attorney for the child must zealously advocate the child's position.

(1) In ascertaining the child's position, the attorney for the child must consult with and advise the child to the extent of and in a manner consistent with the child's capacities, and have a thorough knowledge of the child's circumstances.

(2) If the child is capable of knowing, voluntary and considered judgment, the attorney for the child should be directed by the wishes of the child, even if the attorney for the child believes that what the child wants is not in the child's best interests. The attorney should explain fully the options available to the child, and may recommend to the child a course of action that in the attorney's view would best promote the child's interests.

(3) When the attorney for the child is convinced either that the child lacks the capacity for knowing, voluntary and considered judgment, or that following the child's wishes is likely to result in a substantial risk of imminent, serious harm to the child, the attorney for the child would be justified in advocating a position that is contrary to the child's wishes. In these circumstances, the attorney for the child must inform the court of the child's articulated wishes if the child wants the attorney to do so, notwithstanding the attorney's position.



Chief Judge of the State of New York

Attest: _____
Clerk of the Court of Appeals

Dated: October 17, 2007

AO/ 03 /07

APPENDIX B

Literature Review of Caseload and Workload Standards

NCSC conducted a review of the national literature on caseload/workload standards for attorneys representing children in juvenile and Family Court cases, including delinquency and child protection proceedings. Sources of information for the review included publications and websites of national level research and policy organizations such as the National Association of Counsel for Children (NACC), the American Bar Association's (ABA) Center for Children and the Law, the National Council of Juvenile and Family Court Judges (NCJFCJ), and the Spangenberg Group. Information on court improvement program initiatives related to legal representation was obtained from the National Child Welfare Resource Center on Legal and Judicial Issues. Research also included gathering copies of specific caseload and performance standards, court rules, and reports from identified states and defender and child advocate attorney agencies and offices.

Some caseload standards are quantitative and set a specific limit on the number of cases that an attorney can accept and/or have open during a year. Others are qualitative and encourage attorneys not to accept caseloads that compromise their ability to provide effective representation and fulfill their professional responsibilities. This review focused on national and local efforts to develop and implement maximum, case-specific numerical standards.

A. National Standards

The first nationally recognized caseload standard for attorneys providing representation in juvenile delinquency cases was presented in the 1973 publication, *Report on the Courts*, issued by the National Advisory Commission on Criminal Justice Standards and Goals (NAC). The standard provided that "the caseload of a public defender should not exceed more than two hundred juvenile court cases per attorney per year." A "case" was defined as a single charge or set of charges concerning a defendant in one court in one proceeding. NAC did allow that particular conditions, such as travel time, could be considered and result in a lower caseload standard in some local jurisdictions. The process for developing the standard is not described in detail in the report and appears to be based on a consensus of expert opinion.¹ In 1992, the NAC standards were positively referenced by the ABA in commentary to Standard 5-5.3 of the *ABA Standards for Criminal Justice: Providing Defense Services* as being "resilient over time and providing a rough measure of caseloads."² The NAC standards were also adopted by the National Legal Aid and Defender Association.³ More than 30 years later, the NAC standards continue to serve as a guide for developing maximum caseloads and preparing funding requests at the state and local level.⁴

¹ Members of the National Advisory Commission included judges, prosecutors, defense attorneys, law enforcement officers, corrections officials, elected officials, and community leaders. The Commission was appointed by the Federal Law Enforcement Assistance Administration.

² ABA Standards for Criminal Justice: Providing Defense Services, 3rd ed. American Bar Association, Chicago, IL: 1992:72.

³ National Legal Aid and Defender Association, Guidelines for Negotiation and Awarding Indigent Defense Contracts, Guideline III – 5, 1984

⁴ See Workload Measurement for Juvenile Justice Personnel: Practices and Needs, JAIBG Bulletin, Juvenile Accountability Incentive Grant Program, Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice, November, 1999 and Indiana Public Defender Commission, *Standards for Indigent Defense Services in Non-Capital Cases* available at www.in.gov/judiciary/pdc.

In contrast, caseload standards for attorneys representing children in child protection cases were not directly addressed at the national level until 2001 with the publication of *Recommendations for Representation of Children in Abuse and Neglect Cases* by the National Association of Counsel for Children (NACC). Although the 1996 *ABA Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases* included a standard on the court's role in assuring reasonable lawyer caseloads, they did not cite a specific numerical standard, stating only that "courts should take steps to assure that lawyers appointed to represent children...do not have such a large open number of cases that they are unable to abide by these Standards."⁵ The 2001 NACC *Recommendations* also speak to reasonable caseload limits in order to assure that the child has an attorney with adequate time and resources, but in commentary make a specific recommendation that a full time attorney represent no more than 100 individual clients at a time, assuming a caseload that includes clients at various stages of cases, and recognizing that some clients may be part of the same sibling group.⁶ The commentary notes that this is the same cap recommended by the U.S. Department of Health and Human Services' Children's Bureau and the ABA. The 100-case standard is based on an average of 20 hours per case in a 2000-hour year.

B. Development of State and Local Caseload Standards

Caseload standards are generally developed at the state and local level in two ways:

(1) National standards are used as a starting point and adjusted as necessary to fit local case volume, resources, and legal practices and procedures.⁷ The exact method for making these adjustments is generally not documented in detail when the standards are issued, but a number of standards have been developed by committees or task forces that are reviewing legal representation issues and/or performance standards in general.

(2) A workload assessment, or case-weighting study, is conducted to develop standards tailored to the specific case types handled in that jurisdiction. The national standards do not differentiate between a delinquency and PINS case, for example, or an abuse and termination or parental rights case. Workload assessment models also have the advantage of providing objective and standardized evaluation of resource needs across courts and/or court-related offices and agencies that vary in population, caseload composition, and other factors.

A recent example of a workload assessment is the *Child Advocate Attorney Representation and Workload Study* conducted by the Carl Vinson Institute of Government at the University of Georgia. This study was the result of the Consent Decree in the *Kenny A. v. Perdue* federal class action lawsuit. While the workload study concluded that the size of the caseload was the most important factor in the inability of child advocates to meet the standards of the consent decree, it also identified a series of internal and external factors that contributed to this inability. Internal factors related to the functioning and funding of the Child Advocate Attorneys' Office and external factors concerned the processes and procedures of the child welfare agency and the juvenile court. The study included specific recommendations to address these issues. In light of these recommendations, the study offered three different point-in-time caseloads: (1) if no internal or external reforms were implemented, caseloads should consist of no more than 80 children per child advocate attorney; (2) if only internal reforms were implemented, caseloads should

⁵ *ABA Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases*, Standard L.1, page 22.

⁶ *NACC Recommendations for Representation of Children in Abuse and Neglect Cases*, Section III.2, available at www.nacchildlaw.org.

⁷ Spangenberg Group, *Keeping Defender Workloads Manageable*, Bureau of Justice Assistance Monograph, U.S. Department of Justice, 2001.

consist of no more than 100 children per child advocate attorney; and (3) if both internal and external reforms occurred, caseloads should consist of no more than 120 children per child advocate attorney.

Another example is the 2004 *Dependency Counsel Caseload Study and Service Delivery Model Analysis* conducted by the American Humane Association and Spangenberg Group for the California Administrative Office of the Courts. The caseload study had four distinct components:⁸

- *Defining dependency counsel work in terms of discrete actions attorneys take in providing services to clients. More than 150 attorneys and judicial officers statewide participated directly in the effort to define dependency counsel;*
- *A workload study to measure the time it currently takes to provide these services; 591 attorneys and 131 support staff participated in the two-week workload study;*
- *Structured estimation focus groups to determine the amount of time attorneys should spend providing services, based on two standards of performance; and*
- *The development of models to identify caseload standards based on structured estimation results*

Based on the results of all the study components, a recommended maximum caseload of 141 clients per full-time dependency attorney was identified as a base-level standard of performance. Currently, the Dependency Representation: Administration, Funding, and Training (DRAFT) Program is evaluating the efficacy of the caseload standards and other program elements related to compensation and performance measurement in 10 pilot courts.

Caseload standards need not be based on time studies to incorporate elements designed to improve and ensure uniformity of practice statewide. The Indiana Public Defender Commission's *Standards for Indigent Defense Services in Non-Capital Cases* incorporate two caseload standards, one applicable to county public defender offices with adequate support staff and another standard for counties without adequate support staff. Specific ratios of support staff (paralegals, investigators, law clerks, and secretaries) to attorneys have been established to define "adequate" versus "inadequate" support staff across offices. The caseload standards for offices with "inadequate" support staff are reduced by 20 to 25 percent of the maximum for the "adequate" support staff offices. The standards also differentiate by case type and part-time and full-time attorneys.⁹

⁸Report to the Judicial Council re Court Appointed Counsel Caseload Standards, Service Delivery Models, and Contract Administration, June 5, 2004. (internal communication)

⁹ Indiana Public Defender Commission, *Standards for Indigent Defense Services in Non-Capital Cases* available at www.in.gov/judiciary/pdc.

APPENDIX C

**TABLE I. AVERAGE NUMBER OF TOTAL FAMILY COURT APPEARANCES CHILD PROTECTION CASES,
2004 TO 2007**

FAMILY COURTS	AVG # Court Appear 2004	AVG # Court Appear 2005	AVG # Court Appear 2006	Change 2004 To 2006	AVG # Court Appear 2007*
Albany County Family Court	3.61	4.19	5.01	1.4	5.85
Allegany County Family Court (M-B)	3.21	5.72	5.04	1.83	4.85
Bronx County Family Court	9.54	10.43	12.76	3.22	10.91
Broome County Family Court	3.58	4.98	5.93	2.35	5.34
Cattaraugus County Family Court (M-B)	2.76	3.35	3.91	1.15	3.21
Cayuga County Family Court (M-B)	2.6	2.87	4.22	1.62	4.67
Chautauqua County Family Court	3.95	3.79	5.36	1.41	5.21
Chemung County Family Court	3.39	3.89	4.53	1.14	3.7
Chenango County Family Court (M-B)	2.74	3.95	4.09	1.35	2.7
Clinton County Family Court	4.19	4.49	4.76	0.57	3.64
Columbia County Family Court	3.79	5.49	6.04	2.25	3.6
Cortland County Family Court (M-B)	3.21	4.94	6.78	3.57	6.22
Delaware County Family Court (M-B)	2.58	3.31	4.08	1.5	2.82
Dutchess County Family Court	6.04	7.14	7.92	1.88	5.81
Erie County Family Court	6.18	8.33	10.12	3.94	7.4
Essex County Family Court (M-B)	3.95	5	4.61	0.66	3.81
Franklin County Family Court (M-B)	2.73	4.42	3.95	1.22	3.41
Fulton County Family Court	2.42	2.84	3.29	0.87	2.89
Genesee County Family Court	5.66	5.4	7.41	1.75	5.32
Greene County Family Court	2.58	4.35	4.65	2.07	3.41
Hamilton County Family Court (M-B)	3.36	2	4.6	1.24	6
Herkimer County Family Court	2.5	4.05	4.07	1.57	3.78
Jefferson County Family Court	8.45	8.35	8.03	-0.42	8.92
Kings County Family Court	8.62	10.56	12.95	4.33	11.71
Lewis County Family Court (M-B)	4.16	5.51	4.83	0.67	3.62
Livingston County Family Court (M-B)	2.97	4.06	8.32	5.35	6.26
Madison County Family Court (M-B)	2.46	3.45	3.51	1.05	3.19
Monroe County Family Court	5.92	7.82	10.21	4.29	9.13
Montgomery County Family Court	2.91	3.95	5.61	2.7	5.68

TABLE I. AVERAGE NUMBER OF TOTAL FAMILY COURT APPEARANCES CHILD PROTECTION CASES,
2004 TO 2007 (CONTINUED)

FAMILY COURTS	AVG # Court Appear 2004	AVG # Court Appear 2005	AVG # Court Appear 2006	Change 2004 To 2006	AVG # Court Appear 2007*
Nassau County Family Court	5.2	5.62	5.69	0.49	5.39
New York City Family Court – Citywide FCR	2.59	5.61	6.45	3.86	4.89
New York County Family Court	5.57	8.01	11.17	5.6	10.23
Niagara County Family Court	3.5	4.79	5.84	2.34	5.76
Oneida County Family Court	4.17	5.07	7.61	3.44	7.71
Onondaga County Family Court	3.6	3.64	4.53	0.93	4.07
Ontario County Family Court (M-B)	3.98	3.75	5	1.02	4.7
Orange County Family Court	3.45	4.55	4.62	1.17	4.16
Orleans County Family Court (M-B)	4.41	4.47	3.78	-0.63	6.23
Oswego County Family Court	3.4	4.24	4.34	0.94	4.65
Otsego County Family Court (M-B)	3.44	4.07	3.28	-0.16	4.29
Putnam County Family Court	3.74	7.81	11.97	8.23	12.19
Queens County Family Court	8.69	10.31	13.3	4.61	13.22
Rensselaer County Family Court	4.24	4.82	5.44	1.2	5.82
Richmond County Family Court	5.36	7.48	7.74	2.38	6.19
Rockland County Family Court	3.27	3.86	5.75	2.48	4.3
Saratoga County Family Court	4.83	5.16	7.61	2.78	3.59
Schenectady County Family Court	3.88	3.93	5.29	1.41	5.11
Schoharie County Family Court (M-B)	3.3	3.16	3.99	0.69	4.45
Schuyler County Family Court (M-B)	3.15	4.13	3.63	0.48	4.36
Seneca County Family Court (M-B)	3.68	3.6	4.21	0.53	4.22
St. Lawrence County Family Court	3.66	5.31	4.54	0.88	3.43
Steuben County Family Court (M-B)	3.04	3.69	3.78	0.74	3.9
Suffolk County Family Court	3.86	4.44	5.01	1.15	4.66
Sullivan County Family Court	3.59	4.02	5.31	1.72	5.44
Tioga County Family Court (M-B)	3	2.31	2.4	-0.6	2.66
Tompkins County Family Court (M-B)	4.5	4.82	5.23	0.73	4.62
Ulster County Family Court	5.27	6.63	6.75	1.48	6.28
Warren County Family Court	3.57	4.41	5.29	1.72	5.62
Washington County Family Court (M-B)	2.96	3.46	4.69	1.73	5.63
Wayne County Family Court (M-B)	4.06	3.9	3.3	-0.76	3.94
Westchester County Family Court	3.66	4.17	5.39	1.73	3.73
Wyoming County Family Court (M-B)	3.92	6.73	9.13	5.21	6.07
Yates County Family Court (M-B)	3.05	3.31	4.35	1.3	3.76

TABLE II . AVERAGE NUMBER OF POST-DISPOSITION APPEARANCES IN CHILD PROTECTION CASES IN FAMILY COURT, 2004 TO 2007

FAMILY COURT	AVG # PD Court Appear 2004	AVG # PD Court Appear 2005	AVG # PD Court Appear 2006	Change in AVG # 2004 to 2006	AVG # PD Court Appear 2007
Albany County Family Court	0.45	0.88	0.98	0.53	0.98
Allegany County Family Court (M-B)	0.07	1.94	1.19	1.12	0.75
Bronx County Family Court	2.75	4.39	4.92	2.17	2.52
Broome County Family Court	0.41	1.73	1.72	1.31	1.44
Cattaraugus County Family Court (M-B)	0.02	0.51	0.42	0.4	0.19
Cayuga County Family Court (M-B)	0.19	0.9	1.32	1.13	0.84
Chautauqua County Family Court	0.56	1.05	1.35	0.79	1.29
Chemung County Family Court	0.63	1.08	1.38	0.75	0.73
Chenango County Family Court (M-B)	0.27	0.97	0.91	0.64	0.4
Clinton County Family Court	1.57	2.51	2.63	1.06	1.34
Columbia County Family Court	0.99	2.5	2.58	1.59	1.18
Cortland County Family Court (M-B)	0.23	1.62	2.89	2.66	1.86
Delaware County Family Court (M-B)	0.17	0.91	1.3	1.13	0.56
Dutchess County Family Court	2.22	3.23	3.65	1.43	1.61
Erie County Family Court	2.88	5.15	5.77	2.89	2.6
Essex County Family Court (M-B)	0.77	1.98	1.46	0.69	0.61
Franklin County Family Court (M-B)	0.12	1.84	1.3	1.18	0.72
Fulton County Family Court	0.55	1.2	1.4	0.85	0.86
Genesee County Family Court	1.88	2.39	3.2	1.32	1.82
Greene County Family Court	0.29	1.27	1.58	1.29	0.69
Hamilton County Family Court (M-B)	0	0.13	2	2	2
Herkimer County Family Court	0.02	1.13	1.03	1.01	0.41
Jefferson County Family Court	2.78	2.92	2.08	-0.7	2.06
Kings County Family Court	2.5	5.25	5.04	2.54	2.47
Lewis County Family Court (M-B)	0.19	1.27	0.88	0.69	0.58
Livingston County Family Court (M-B)	0.06	1.15	3.7	3.64	2.74
Madison County Family Court (M-B)	0.06	0.67	0.72	0.66	0.49
Monroe County Family Court	1.62	3.43	3.97	2.35	1.93
Montgomery County Family Court	0.48	1.86	2.47	1.99	1.45
Nassau County Family Court	0.38	0.88	0.81	0.43	0.83
New York City Family Court - Citywide FCR	1.14	4.26	4.75	3.61	3.29
New York County Family Court	1.83	4.1	4.51	2.68	2.22
Niagara County Family Court	0.13	0.86	1.29	1.16	1.09
Oneida County Family Court	0.56	1.42	2.65	2.09	1.9
Onondaga County Family Court	0.52	0.79	1.12	0.6	0.95
Ontario County Family Court (M-B)	0.43	0.68	0.95	0.52	0.26
Orange County Family Court	0.73	1.86	1.65	0.92	1.17
Orleans County Family Court (M-B)	0.47	0.98	0.96	0.49	0.92
Oswego County Family Court	0.29	1.24	0.71	0.42	0.95
Otsego County Family Court (M-B)	0.49	0.82	0.52	0.03	0.63

TABLE II . AVERAGE NUMBER OF POST-DISPOSITION APPEARANCES IN CHILD PROTECTION CASES IN FAMILY COURT, 2004 TO 2007 (CONTINUED)

FAMILY COURT	AVG # PD Court Appear 2004	AVG # PD Court Appear 2005	AVG # PD Court Appear 2006	Change in AVG # 2004 to 2006	AVG # PD Court Appear 2007
Putnam County Family Court	0.87	4.76	7.69	6.82	7.12
Queens County Family Court	2.94	4.63	4.51	1.57	2.46
Rensselaer County Family Court	0.94	1.08	1.39	0.45	0.65
Richmond County Family Court	2.28	4.3	3.07	0.79	1.19
Rockland County Family Court	0.4	1.14	2.26	1.86	1.03
Saratoga County Family Court	1.31	1.67	1.08	-0.23	0.72
Schenectady County Family Court	0.22	0.71	0.95	0.73	0.57
Schoharie County Family Court (M-B)	0.05	0.3	0.62	0.57	0.59
Schuyler County Family Court (M-B)	0.16	0.45	0.38	0.22	0.31
Seneca County Family Court (M-B)	0.02	0.54	0.74	0.72	0.35
St. Lawrence County Family Court	0.85	2.08	1.34	0.49	0.5
Steuben County Family Court (M-B)	0.51	0.94	0.79	0.28	0.86
Suffolk County Family Court	0.35	1.06	0.96	0.61	0.45
Sullivan County Family Court	0.14	0.87	1.43	1.29	0.4
Tioga County Family Court (M-B)	0.33	0.32	0.4	0.07	0.21
Tompkins County Family Court (M-B)	0.26	1.03	1.19	0.93	0.66
Ulster County Family Court	1.69	3.35	2.31	0.62	1.68
Warren County Family Court	0.09	1.29	2.08	1.99	1.41
Washington County Family Court (M-B)	0.03	0.46	0.78	0.75	1.03
Wayne County Family Court (M-B)	0.14	0.35	0.21	0.07	0.17
Westchester County Family Court	0.98	1.46	1.65	0.67	0.87
Wyoming County Family Court (M-B)	0.93	3.08	5.64	4.71	2.69
Yates County Family Court (M-B)	0.13	0.06	0.32	0.19	0.24