

CHILD & FAMILY

RESEARCH PARTNERSHIP

MEMORANDUM

To: Tina Amberboy, Executive Director, Supreme Court of Texas Children's Commission

Cc: Judge Darlene Byrne, Tiffany Roper, Katy Gallagher

From: Cynthia Osborne and Cynthia Bryant

Date: November 13, 2015

Subject: Cost Analysis of Mediation in Travis County Family Court

Summary

The Texas Supreme Court Children's Commission contracted with Dr. Cynthia Osborne and the Child and Family Research Partnership (CFRP) at the University of Texas at Austin to evaluate the effectiveness of the use of mediation in child protection cases by Travis County Family Court. Mediation is a process by which a trained neutral third party helps parties in a legal dispute negotiate a resolution, with the objective of reaching a resolution without going to trial. As a model court, Travis County Family Court has been using mediation as a nearly universal approach in child protection cases for the past decade.

The broad objective of this study is to help the Texas Supreme Court Children's Commission learn from the mediation model in Travis County and assess how mediation could be used in other Texas jurisdictions. In addition, Travis County Family Court is interested in ensuring that the current use of mediation is cost-effective for the county and beneficial for children and families. Specifically, CFRP was tasked with answering the following research questions for the Supreme Court of Texas Children's Commission and Travis County Family Court:

- 1) To what extent is mediation a cost-effective strategy for resolving child protection cases?;
- 2) To what extent do the complexities of a case, such as the nature of the substantiated allegations, number of parties to a case, or prior CPS history, predict if a case is best-suited for mediation?;
- 3) At what point in time during a case is mediation most effective?; and
- 4) How are child and case outcomes, such as time to permanency, type of permanency placement, and recidivism, affected by mediation?

This memo presents analyses related to the first research question, regarding the cost-effectiveness of mediation, using data from cases filed in the Travis County Family Court after October 2008 and closed before February 2015. Where appropriate, these analyses of Travis

County Family Court data are complemented by findings from qualitative data from focus groups conducted with attorneys, Child Protective Services (CPS) caseworkers, and CASA volunteer advocates in April 2014. CFRP is awaiting additional data from the Department of Family Protective Services (DFPS) to answer the other three research questions, and anticipates receiving these data in January 2016.

CFRP finds that mediation is a cost-effective strategy for resolving child protection cases and the **use of mediation by Travis County Family Courts saved up to \$1,494,696 annually** from 2009 to 2014, in savings to both the county and the state. These savings were realized because cases were resolved either directly after mediation or between mediation and trial, thereby reducing the number of cases that went trial in Travis County, and consequently reducing the attorney, court, and foster care costs associated with the cases.

These analyses show that the cost-savings realized by providing mediation services far outweigh the cost of providing mediation nearly universally for child protection cases. **If mediation were not available** in Travis County, **an additional 99 cases might proceed to trial each year**; a nine-fold increase in the average number of cases that went to trial annually in Travis County during the study's time period. If all of these cases instead went to trial, there would be an additional \$1,697,435 per year in quantifiable attorney, court, and foster care costs associated with Travis County child protection cases, as well as an expanded administrative burden and increased demand on existing county and state personnel and resources. The county spent \$202,739 on mediation annually,¹ yielding the estimated annual cost savings of up to \$1,494,696 (comprised of \$1,240,605 in cost-savings to the county and \$254,046 in cost-savings to the state).

This memo presents CFRP's analyses of the cost-effectiveness of mediation in Travis County Family Court and findings related to these analyses that may inform practices in Travis County and across the state. The memo includes three appendices: Appendix A presents the data sources that were used; Appendix B provides the cost model methodology and assumptions; and Appendix C presents additional descriptive tables referenced in the memo. CFRP will conduct analyses related to the other three research questions when it receives the DFPS data needed for these analyses. Subsequent analyses using the DFPS data will allow for a more precise estimate of the cost-savings, and provide better understanding of how the timing of mediation influences resolution, how case complexity influences whether mediation is a cost-effective approach, and how mediation affects case outcomes.

Background and Objectives

Child protection cases are often complex and may require a lengthy legal process to resolve, however, the length of time to case resolution has a real impact on the children and families involved in the cases. Child protection cases also carry substantial costs for the state and counties, including costs associated with the legal process and care for youth who are removed to care. It is in the best interest of children, families, the state, and counties to resolve cases in a timely manner, while also ensuring careful consideration of decisions that impact the welfare of all parties involved in the case. As a result, there is a need to better understand how innovative approaches, such as the use of mediation in child removal cases, influence the time frame, costs, and outcomes of child protection cases.

Travis County Family Court is one of twenty child abuse and neglect model courts established by the National Council of Juvenile and Family Court Judges to implement innovative strategies to improve outcomes for children and families. As a model court, one strategy employed by Travis County Family Court is the use of mediation in child protection cases. Mediation is a process by which a trained neutral third party helps parties in a legal dispute negotiate a resolution with the goal of settling the dispute without the need for a trial. Mediation is used in child protection cases by jurisdictions, such as Travis County, that believe mediation facilitates less adversarial and more cost-effective resolution of cases.²

Jurisdictions in Texas began using mediation in child protection cases after the passage of the Texas Alternative Dispute Resolution Act in 1987, but mediation did not become widely used until the Texas Children Justice Act (CJA) provided funding to 13 counties for the use of mediation in child protection cases from 1997 to 2005. Evaluations of these pilot projects found that mediation was both effective and efficient for encouraging more open adoptions for families and reducing overall costs, however, the cost saving measures used in the evaluations were not consistent across counties.³

Although mediation is not required in all child removal cases, for the last decade judges in Travis County Family Court have strongly encouraged parties to conduct mediation before going to trial.⁴ Although Travis County Family Court is committed to using mediation as a less adversarial approach for resolving cases, little is known about the extent to which this use of mediation is a cost-effective strategy and whether it leads to better outcomes for children and families. In addition, analysis is needed to assess which cases are best suited for mediation and the optimal timing in the cycle of a case to conduct mediation. CJA no longer funds mediation, and most mediation for child protective cases in Texas is funded by the county, such as in Travis County, or funded by the Department of Family and Protective Services (DFPS).⁵

The Texas Supreme Court Children's Commission contracted with Dr. Cynthia Osborne and the Child and Family Research Partnership (CFRP) at the University of Texas to evaluate the effectiveness of the use of mediation in child protection cases by Travis County Family Court. The broad objective of this study is to help the Texas Supreme Court Children's Commission learn from the mediation model in Travis County and assess how mediation could be used in other Texas jurisdictions. In addition, Travis County Family Court was interested in ensuring that the current use of mediation is cost-effective for the county and beneficial for children and families.

Specifically, CFRP was tasked with answering the following research questions for the Supreme Court of Texas Children’s Commission and Travis County Family Court:

- 1) To what extent is mediation a cost-effective strategy for resolving child protection cases?;
- 2) To what extent do the complexities of a case, such as the nature of the substantiated allegations, number of parties to a case, or prior CPS history, predict if a case is best suited for mediation?;
- 3) At what point in time during a case is mediation most effective?; and
- 4) How are child and case outcomes, such as time to permanency, type of permanency, and recidivism, affected by mediation?

This memo presents analyses related to the first research question, regarding the cost-effectiveness of mediation, using data from cases filed in the Travis County Family Court after October 2008 and closed before February 2015. CFRP is awaiting to receive additional data from the Department of Family Protective Services (DFPS) to answer the other three research questions, and anticipates receiving these data in January 2016.

Methods

To determine whether mediation is a cost-effective strategy for resolving child protection cases, CFRP examined the difference in the average (or median) costs¹ associated with cases that went to trial compared to those that were resolved after mediation and prior to trial, using data from cases filed in the Travis County Family Court after October 2008 and closed before February 2015. These analyses took advantage of the fact that the use of mediation is nearly universal in child protection cases heard by Travis County Family Court, and are premised on an assumption that a proportion of cases that settled between mediation and trial would have gone to trial if not for the use of mediation. Although it is likely that some cases would have settled prior to trial in the absence of mediation, CFRP did not have a counterfactual set of cases that did not receive mediation to use as a basis for comparison. To address this limitation, this memo presents a range of cost-savings estimates based on different assumptions for the proportion of cases that may have settled prior to trial without mediation.

The methods for calculating the cost-savings associated with the use of mediation in child protection cases by Travis County Family Court are discussed in more detail in this section. Additional descriptions of data sources can be found in Appendix A and additional information about the cost model methodology and assumptions are presented in Appendix B.

DATA SOURCES

CFRP used three data sources from Travis County Family Court for these analyses: the DFPS Research Database in the Qlikview data management system (Qlikview), the Petition Tracking System (PTS), and aiSmartBench (SmartBench). CFRP also used qualitative data from focus groups conducted with attorneys, CPS caseworkers, and CASA volunteer advocates in April 2014.

¹ The median is used as the measure of central tendency throughout this analysis because of skew in the distribution of case costs.

Appendix A provides additional information on these data sources, as well as supplementary data sources used for these analyses.

ANALYTIC SAMPLE

CFRP assessed the cost-effectiveness associated with the use of mediation in child protection cases by Travis County Family Court using data pertaining to 1,778 cases that were filed in Travis County Family Court after October 1, 2008 and closed before February 1, 2015. Only Temporary Managing Conservatorship (TMC) and Permanent Managing Conservatorship (PMC) cases were included in the sample; Court Ordered Services (COS) cases were not included in the sample because COS cases do not involve child removals from the home, and are therefore beyond the scope of this analysis. Although PMC cases are included in the sample, CFRP only analyzed the costs per case *during the TMC period* of the case. TMC is the initial conservatorship given to the state when a child is removed and typically lasts between 12 and 18 months (total time in TMC can be longer if a child experiences conservatorship status changes throughout the case). Mediation and trial are used during the TMC period to resolve the legal issues of the case.

ANALYTIC STRATEGY

To assess the costs associated with the use of mediation in Travis County, CFRP divided the analytic sample into four case resolution groups, based on when the case was resolved relative to the timing of mediation and trial. The four case resolution groups are defined in Table 1. Appendix B further describes the method of case categorization and the assumptions made to divide the dataset into four groups.

Table 1: Case Resolution Groups

| Resolution Group | Definition | Number of Cases | Percent of Sample |
|-------------------------|----------------------------------|------------------------|--------------------------|
| 1 | Cases resolved without mediation | 1003 | 56 |
| 2 | Cases resolved at mediation | 515 | 29 |
| 3 | Cases resolved after mediation | 177 | 10 |
| 4 | Cases resolved at trial | 83 | 5 |

Source: DFPS Research Database in Qlikview for Travis County Family Court. Includes TMC and PMC cases filed in the Travis County Family Court after October 2008 and closed before February 2015.

CFRP divided the sample into these four groups to analyze the difference in the median costs of cases that settle at mediation (Group 2) or after mediation before going to trial (Group 3), compared to cases that are resolved at trial (Group 4). For these analyses, CFRP assumed that, if not for mediation, many of the cases in Groups 2 and 3 would have gone to trial, and as a result would have incurred additional costs to the county and the state. Cases in Group 1 were able to reach a resolution without a formal legal intervention or mediation, and as a result these cases are not relevant to the cost-savings calculation; although the median costs are presented to provide additional context about the flow of cases through Travis County Family Court.

In Travis County Family Court, if parties cannot or chose not to reach a resolution independently, mediation is requested by an attorney and approved by the judge on most cases. Parties may resolve the dispute at mediation (Group 2), resulting in a settlement of the case and the TMC

case closing shortly after. Cases that do not reach a resolution at mediation will likely be set for trial, however, parties may reach a resolution before the case proceeds to trial, resulting in a resolution after mediation (Group 3). These analyses assume that cost-savings associated with resolutions after mediation, but before a trial (Group 3), can also be attributed to the mediation that occurred. This assumption is based on focus groups with attorneys in Travis County who described that mediation often facilitates partial resolutions and makes it easier to reach a full resolution before a case goes to trial, thereby reducing case costs associated with trial preparations and trial.⁶

Cost-savings were determined by comparing the median costs of cases in Group 2 and Group 3 with the median costs of cases in Group 4. CFRP calculated the median cost for each case resolution group based on the costs to the county and the state that were available and could be quantified at the case level. The county costs included are the costs associated with attorney fees billed to the county (including private attorneys and county public defenders), the cost of mediation, and the cost of trial (specifically jury costs). The state costs included are the estimated cost of foster care placements during the TMC time period. Using these cost categories for which there were available data, CFRP calculated the cost of each case in the sample, and the median case cost by group. CFRP then used the median costs for Groups 2, 3, and 4 to determine the total and annual cost-saving associated with mediation, described below. Additional cost-savings associated with mediation that could not be quantified in these analyses are described below.

Mediation Cost Model: Findings

CFRP finds that mediation is a cost-effective strategy for resolving child protection cases, and the use of mediation by Travis County Family Courts saved up to \$1,494,696 annually from 2009 to 2014, in savings to both the county and the state. If the county did not use mediation, as many as 99 additional child protection cases might proceed to trial each year in Travis County, leading to up to \$1,697,435 in additional county and state costs. In contrast, with the current level of funding for mediation, \$202,739 annually, an average of 11 cases proceed to trial each year. As such, CFRP estimates that Travis County that using mediation in child protection cases saves the county and state up to \$1,494,696 each year, assuming that in the absence of mediation all cases resolved at mediation or after mediation but prior to trial would otherwise proceed to trial. However, even using a more conservative estimate that in the absence of mediation only 50 percent of these cases would have proceeded to trial, we find an estimated annual cost-savings of \$645,956 to the county and the state.

Cost-savings were realized because cases were resolved either directly after mediation or between mediation and trial, thereby reducing the number of cases that go to trial in Travis County, and consequently reducing the attorney, court, and foster care costs associated with the cases. As shown in Table 2, the median cost of cases that went to trial (Group 4) was substantially higher than the cost of cases that settled at mediation (Group 2) or after mediation (Group 3). There are large differences in both the median costs to the county, primarily related to higher attorney fees associated with trial preparations, as well as differences in costs to the state associated with longer placements in foster care.

Table 2: Median Cost by Resolution Group

| | Group 1: Resolved without mediation N=1003 | Group 2: Resolved at mediation N=515 | Group 3: Resolved after mediation N=177 | Group 4: Resolved at trial N=83 |
|----------------------------------|---|---|--|--|
| County Costs | \$3,771 | \$9,549 | \$10,249 | \$24,305 |
| Attorney Fees | \$3,771 | \$8,482 | \$9,182 | \$21,335 |
| Mediation | \$0 | \$1,067 | \$1,067 | \$1,050 |
| Jury | \$0 | \$0 | \$0 | \$1,920 |
| State Costs (Foster Care) | \$5,217 | \$22,184 | \$25,106 | \$25,488 |

Source: DFPS Research Database in Qlikview for Travis County Family Court. Includes TMC and PMC cases filed after October 2008 and closed before February 2015. See Appendix A for additional sources.

Notes: The median is used as the measure of central tendency for all costs, because of skew in the distribution of costs within groups. Individual line costs differ from overall case cost because of skew in the distribution for certain costs.

The cost-savings Travis County realizes by providing mediation services far outweigh the costs to the county, and also result in cost-savings for the state in the form of reduced expenditures on foster care placements. If mediation was not available in Travis County, as many as an additional 99 cases might proceed to trial each year, shown in Table 3. Currently, in Travis County these cases are either resolved at mediation (Group 2) or after mediation and before going to trial (Group 3).

Table 3: Number of Cases Resolved Before Trial

| | Group 2: Resolved at mediation | Group 3: Resolved after mediation | Total |
|-------------------------|---|--|--------------|
| Number of Cases, annual | 74 | 25 | 99 |
| Number of Cases, 7-year | 515 | 177 | 692 |

Source: DFPS Research Database in Qlikview for Travis County Family Court. Includes TMC and PMC cases filed in the Travis County Family Court after October 2008 and closed before February 2015. See Appendix A for additional sources.

Cases resolved prior to trial are, on average, less costly for the county and the state. Table 4 presents the difference between the average (median) costs associated with cases resolved at mediation (Group 2) or after mediation and before going to trial (Group 3) compared to cases that are resolved at trial (Group 4). As shown in Table 4, the lower case costs among cases resolved prior to trial is largely driven by the difference in county costs. Although some of the difference in costs is associated with trial, the bulk of the difference is comprised of attorney fees associated with preparation for trial. Resolution before trial is associated with a shorter case length and, as a result, lower costs to the state in terms of foster care. Importantly, there is not a significant difference in the average length of cases in Group 2 and Group 3 (shown in Appendix C, Figure 2).

Table 4: Median Difference in Case Cost Compared to Cases Resolved at Trial (Group 4)

| | Group 2: Resolved at mediation | Group 3: Resolved after mediation |
|---------------|---|--|
| County | -\$14,756 | -\$14,056 |
| State | -\$3,304 | -\$382 |

Source: DFPS Research Database in Qlikview for Travis County Family Court. Includes TMC and PMC cases filed in the Travis County Family Court after October 2008 and closed before February 2015. See Appendix A for additional sources.

Notes: Foster care costs are randomly assigned at the child level, and as such, the difference in foster care costs between Group 2 and Group 3 presented here reflect this random assignment, rather than actual differences between the two groups. CFRP will be able to present the actual differences across groups when we receive the DFPS data.

If all of the child protection cases in Travis County that are currently resolved at mediation or after mediation instead went to trial (99 cases annually), there could be up to \$1,697,435 additional quantifiable attorney, court, and foster care costs associated with Travis County child protection cases. The county spent \$202,739 on mediation annually,⁷ suggesting that the use of mediation yielded savings of up to \$1,240,605 annually for the county from 2009 to 2014 (shown in Table 5). An additional cost-savings of up to \$254,046 in foster-care costs (shown in Table 6) is realized by the state, for a combined county and state annual cost-savings of up to \$1,494,696.

Although it is likely that some cases would have settled prior to trial in the absence of mediation, these analyses did not have a counterfactual set of cases that did not receive mediation to use as a basis for comparison. To address this limitation, Table 5 and Table 6 present a range of cost-savings estimates to the county and the state, based on a range of assumptions regarding the proportion of cases that may have settled prior to trial without mediation. Even using a more conservative estimate that in the absence of mediation only 50 percent of these cases would have proceeded to trial, we find an estimated annual cost-savings of \$518,933 to the county and \$127,023 to the state.

Table 5: Estimated County Cost-Savings

| | Group 2: Resolved at mediation | Group 3: Resolved after mediation | Cost of Mediation | Total Savings |
|---|---|--|------------------------------|----------------------|
| Annual Reduction in Case Costs | | | | |
| Scenario 1: All cases go to trial | \$1,091,944 | \$351,400 | \$202,739 | \$1,240,605 |
| Scenario 2: 75% of cases go to trial | \$818,958 | \$263,550 | \$202,739 | \$879,769 |
| Scenario 3: 50% of cases go to trial | \$545,972 | \$175,700 | \$202,739 | \$518,933 |
| Total Reduction in Case Costs (7-year) | | | | |
| Scenario 1: All cases go to trial | \$7,643,608 | \$2,459,800 | \$1,419,173 | \$8,684,235 |
| Scenario 2: 75% of cases go to trial | \$5,732,706 | \$1,844,850 | \$1,419,173 | \$6,158,383 |
| Scenario 3: 50% of cases go to trial | \$3,821,804 | \$1,229,900 | \$1,419,173 | \$3,632,531 |

Source: DFPS Research Database in Qlikview for Travis County Family Court. Includes TMC and PMC cases filed in the Travis County Family Court after October 2008 and closed before February 2015. See Appendix A for additional sources.

Notes: Annual and 7-year reductions are calculated based on an assumption that, on average, each year 74 cases are resolved at mediation and 25 cases are resolved after mediation, but before trial.

Table 6: Estimated State Cost-Savings

| | Group 2: Resolved at mediation | Group 3: Resolved after mediation | Cost of Mediation | Total Savings |
|---|---|--|------------------------------|----------------------|
| Annual Reduction in Case Costs | | | | |
| Scenario 1: All cases go to trial | \$244,496 | \$9,550 | \$0 | \$254,046 |
| Scenario 2: 75% of cases go to trial | \$183,372 | \$7,163 | \$0 | \$190,535 |
| Scenario 3: 50% of cases go to trial | \$122,248 | \$4,775 | \$0 | \$127,023 |
| Total Reduction in Case Costs (7-year) | | | | |
| Scenario 1: All cases go to trial | \$1,711,472 | \$66,850 | \$0 | \$1,778,322 |
| Scenario 2: 75% of cases go to trial | \$1,283,604 | \$50,138 | \$0 | \$1,333,742 |
| Scenario 3: 50% of cases go to trial | \$855,736 | \$33,425 | \$0 | \$889,161 |

Source: DFPS Research Database in Qlikview for Travis County Family Court. Includes TMC and PMC cases filed in the Travis County Family Court after October 2008 and closed before February 2015. See Appendix A for additional sources.

Notes: Annual and 7-year reductions are calculated based on an assumption that, on average, each year 74 cases are resolved at mediation and 25 cases are resolved after mediation, but before trial.

It is important to note that the estimated cost-savings for the state, outlined in Table 6, likely underestimate the cost-savings associated with the cost of foster care. This analysis assumes that, within each case resolution group, the same proportion of children were in each type of foster care placement based on the typical distribution of placements in Travis County. Cases that proceed to trial, however, are typically more complex and are likely to have fewer children in kinship care and a higher proportion of children in more expensive placements than cases resolved without mediation. Consequently, this analysis makes a conservative assumption about the cost-savings associated with foster care placements and may underestimate the cost-savings to the state.

There are also county and state costs associated with child protection cases that we are not able to quantify at the case level for this analysis, but are likely affected by the use of mediation and therefore important to consider in an analysis of cost-effectiveness. Table 7 presents the current level of annual expenditures related to child protection cases in Travis County. These costs are largely related to the time use of court and state personnel, which would likely experience an increase in volume if not for the use of mediation.

Table 7: Current Annual Child Protection Case Costs Not Quantified in Model²

| Item | Per Item Cost | Estimated Annual Cost |
|--------------------------------------|---|-----------------------|
| Judge | \$140,000 annual salary per judge x 9 Judges | \$1,260,000 |
| Child Protective Services Caseworker | \$32,976 annual salary per Conservatorship worker x 185 workers in Austin region | \$6,100,560 |
| Court Operations Officer | \$48,000 annual salary per court operations officer x 9 Court Operations Officers | \$432,000 |
| Court Reporter | \$80,341 per court reporter x 9 Court Reporters | \$723,069 |
| Inmate Transport to Trial | \$2,060 for transport and 6 days of housing x 6 average annual transports | \$12,362 |

Source: Texas Tribune Government Salaries, DFPS 2014 Data Book, DFPS Self Evaluation to Sunset Commission, Sept 2013, Meanette Salgado (Court Reporter), Joan Peterson (ADA), Lieutenant John Bartlett (Travis County Sheriff's Office), Amanda Michael (Lead Financial Analyst).

Notes: Number of items is an approximate number based on past years.

With the current resources and staff, shown in Table 7, Travis County Family Court holds approximately 11 child protection trials annually, including both bench and jury trials. Without mediation, the number of trials might increase by as much as an additional 99 trials per year; a nine-fold increase in volume. This would produce a substantial strain and could require an increase in the existing county and state resources.

² Additional costs include Transcripts for Appeal (\$2,800 per appeal) and District Attorney Salary Costs (\$104,000 per DA). We could not obtain approximate information on number of appeals and DAs, therefore these costs could not be fully quantified annually.

Limitations

As previously mentioned, this analysis of the cost-savings associated with the use of mediation by Travis County Family Court does not benefit from a counterfactual, and as such, cannot provide the precise number of cases that would have proceeded to trial if not for mediation. To address this limitation, multiple cost-savings scenarios are presented in the findings section of this memo. In addition, subsequent analysis using DFPS data will allow CFRP to better understand the differences and similarities in case characteristics across the four case resolution groups and better estimate the number of cases likely to proceed to trial in the absence of mediation.

Another limitation of the current analysis is that the cost model likely underestimates the cost savings for the state associated with foster care. This analysis assumes that, within each case resolution group, the same proportion of children were in each type of foster care placement based on the typical distribution of placements in Travis County. Cases that proceed to trial, however, are typically more complex and are likely to have fewer children in kinship care and a higher proportion of children in more expensive placements than cases resolved without mediation. Consequently, this analysis makes a conservative assumption about the cost-savings associated with foster care placements. This will be adjusted when CFRP receives the DFPS data on the cases.

Conclusion

These cost analyses show that the use of mediation in child protection cases by Travis County Family Court is a cost-effective strategy for resolving cases. The use of mediation by Travis County Family Courts saved up to \$1,494,696 annually from 2009 to 2014, in savings to both the county and the state. These cost savings were realized because cases were resolved either directly after mediation or between mediation and trial, thereby reducing the number of child protection cases that went to trial in Travis County, and consequently reducing the attorney, court, and foster care costs associated with the cases. Without mediation in Travis County, as many as an additional 99 cases per year could likely go to trial; a nine-fold increase in volume. This would not only increase the financial burden on the county and state per case, but also place significant strains on the resources of the current system, increasing costs and reducing efficiency.

The use of mediation in child protection cases has cost-savings for Travis County, and indicates that other jurisdictions in Texas should consider using mediation in child protection cases as an approach for yielding timelier and lower-cost case resolution. The study also indicates there are substantial cost-savings to the state in terms of reduced costs associated with the time children are in care, suggesting that the state may want to consider mechanisms for funding mediation.

Additional analyses are needed, however, to better understand the best practices for using mediation in child protection cases, including the types of cases best served by mediation, the appropriate timing for mediation during the course of a case, and the impact of mediation on child and case outcomes, such as time to permanency and recidivism. CFRP is awaiting additional data from DFPS to answer the other three research questions, and anticipates receiving these data in January 2016. Answers to these questions will provide a more detailed understanding of when and how mediation should be used to best serve children and families in Texas.

Appendix A: Data Sources

Table 8: Data Sources and Variables Used by Source

| Source | Variables Used |
|--|--|
| DFPS Research Data on Qlikview Data Management System* | Case open date, case closed date, mediation date, mediation result, trial date, invoices, permanency status of child, number of children per case, number of parents per case, conservatorship status by child, attorney assignments |
| Petition Tracking System | Mediation date, conservatorship status by child |
| aiSmartBench | Final order dates |
| "Texas Health and Human Services Commission 24-Hour Residential Child Care Facilities Rates," Department of Family and Protective Services, effective September 2013. https://www.dfps.state.tx.us/PCS/rates_childcare_reimbursement.asp . | Foster care costs |
| Amanda Michael, Lead Financial Analyst, Travis County Family Court | Mediation budget |
| Joan Peterson, Assistant District Attorney, Travis County District Attorney's Office | Information on mediation processes, average number of inmate transports for trial, average number of appeals after trial per year |
| Karen Berryman, Paralegal at the Office of Parental Representation | Attorney hours worked per case |
| "Travis County Jury Duty FAQs"- https://www.traviscountytexas.gov/district-clerk/jury-duty/faq | Jury trial costs |
| Katy Gallagher, Court Attorney, Travis County Family Court | Information on mediation processes, child status and conservatorship interpretation |
| Kimberely Pierce and Tonya Mills, "Office of Parental Representation Cost Benefit Analysis," <i>Travis County Criminal Justice Planning</i> , March 2011. | Office of Parental Representation and Office of Child Representation Hourly rates |
| Warren Vavra, Court Administrator, Travis County Family Court | Trial identification and length of trials |
| "DFPS 2014 Data Book," <i>Texas Department of Family and Protective Services</i> , https://www.dfps.state.tx.us/documents/about/Data_Books_and_Annual_Reports/2014/DataBook14All.pdf | Information on types of foster care and child placement breakdowns by region |
| "Government Salaries Explorer" http://salaries.texastribune.org/ | Salary information for District Judge, CPS Caseworker, Court Reporter, District Attorney |
| Lieutenant John Bartlett, Travis County Sheriff's Office, Prisoner Transport | Cost of transporting an inmate for trial |
| Meanette Salgado, Official Court Reporter, 126 th District Court | Cost of transcript for appeal |
| Focus groups with attorneys, CPS workers, and CASA volunteer advocates | Qualitative information on the use of mediation in Travis County, benefits and limitations of mediation |

*Qlikview is a data management tool that Travis County Family Court uses to compile data from different sources. Each case in Qlikview has an identifying cause number, which was used to match with case information across data sources.

Appendix B: Assumptions and Additional Information for Cost Model

Case Categorization

Assumption: Cases with no mediation date and no trial date were placed in Group 1: Resolved without mediation

Details: It is assumed that cases with no mediation or no trial date resolved without using these legal avenues.

Assumption: Cases with a mediation date and a successful mediation result were placed in Group 2: Resolved at mediation

Details: It is assumed that a successful mediation result means that parties reached a legal resolution in the case.

Assumption: Cases with a mediation date, unsuccessful mediation result or partially successful mediation result, and no trial date were placed in Group 3: Resolved after mediation

Details: It is assumed that cases that had mediation dates but unsuccessful or partially successful mediation results did not reach legal resolution at mediation. If these cases had no trial date it is assumed that the parties did not go to trial and resolved the case after the failed mediation.

Assumption: Cases with a trial date were placed in Group 4: Resolved at trial

Details: It is assumed all cases with a trial date went to trial.

Assumption: Cause numbers that had two separate cases associated with them were separated out and each case was placed in its corresponding groups depending on resolution.

Details: If a case re-opens with the same family, often the same cause number corresponding to the older case is used. In our data we had some causes with multiple cases in our 7 year time period.

Assumption: Cases with multiple trial dates were assumed to have 1 trial and the first trial date was used.

Details: 4 cause numbers in the data had 2 trial dates. With limited case information, we chose one trial date to use for the cost calculations. It is possible that multiple parents or other reasons caused the case to have multiple trial dates but without detailed information about the case, it was unclear if both dates should be considered trial dates.

Costs in Cost Model

Legal Representation and Attorney Costs

Assumption: Private attorney costs differ from county public defenders. Different sources were used to determine the costs of each type of attorney.

Details: The County contracts with private attorneys to represent parents and children in CPS cases. These attorneys bill the county for their expense and these invoices are reflected in Qlikview. The County also fund two public defender offices: the Office of Parental Representation and the Office of Child Representation. Staff from these offices only represent parties on CPS

cases and do not bill the county for their services. Their hourly rate was obtained from a cost benefit analysis report completed by the county in 2011.

Assumption: All private attorney costs are reflected in the invoice amounts recorded by child attorney or parent attorney in DFPS Research Data in Qlikview data management system.

Unknown invoices associated with cases that were not labeled as parent attorney or child attorney were divided in the same proportion as the known invoices by resolution group.

Details: The attorney invoices in Qlikview were categorized by an account, either parent or child. Most invoices had this categorization so we were able to know if the invoice pertained to parent attorney costs or child attorney costs. However, some older invoices were labeled as unknown. In order to still use these invoices, we figured out the proportion of parent invoice amounts and child invoice amounts per case resolution group and divided the unknown invoices in that same proportion.

Assumption: Hourly rates for county attorneys, Office of Parental Representation (OPR) and the Office of Child Representation (OCR), obtained from a cost benefit analysis completed in 2011, reflect present day costs.

Details: Since OPR and OCR attorneys do not bill the county, an hourly rate is not available. The county determined an hourly rate of OPR and OCR services in 2011 to compare the costs of these attorneys to private attorneys. The hourly rate obtained for OPR is an hourly rate for all OPR services, including legal support and social work support. The hourly rate obtained for OCR includes attorney costs only.

Assumption: Hours worked per case for the Office of Parent Representation (OPR) includes both attorney and support hours. Hours worked per case for the Office of Child Representation (OCR) includes attorney hours only. Cases with OCR attorneys that were missing information about hours worked were given the median number of hours worked depending on resolution group.

Details: The hourly rate for OPR services includes legal and support costs, therefore the number of hours worked per case includes hours for all OPR staff. The hourly rate for OCR services includes only attorney costs, therefore only the attorney hours worked per case are used. 45 cases in the data had OCR attorney assignments but we do not have information on hours worked for those cases. Those cases received the median number of hours worked per case depending on resolution group.

Assumption: Calculations of OCR costs and child invoice costs were added together to calculate total child representation costs per case per group. Calculations of OPR costs and parent invoice costs were added together to calculate total parent representation costs per group.

Foster Care Costs

Assumption: All kids enter DFPS custody on TMC date. All kids leave DFPS custody on the case closed date for TMC cases and the PMC date for PMC cases. Any days spent in COS were subtracted from number of days in care.

Details: Since the data does not have dates for when kids leave foster care placements, CFRP had to designate number of days in foster care per child. Foster care costs were calculated for all

children in TMC by calculating the number of days each child was in TMC. The time a child spent in COS or PMC was subtracted from the foster care calculations. Closed dates are used for TMC cases but for PMC cases we chose the date the case goes into PMC. We understand that some children may still be in foster care when the case goes into PMC but for mediation effectiveness purposes, the legal issues of the case are resolved when the PMC order is signed.

Assumption: Type of foster care placement was randomly assigned to each cause using the proportions of foster care placement in the Austin region, as reported by the DFPS 2014 Data Book. This assignment was applied to all children in each cause.

Details: Qlikview does not have information as to whether kids enter foster care or are placed with a relative in kinship care. Additionally, there is no indication of type of foster care placement and if foster placement changes for a child throughout his or her time in care. Therefore, this analysis uses the proportions of children in kinship care and types of foster care placement that are representative of children in DFPS custody in the Austin region. According to the DFPS 2014 data report for the Austin region, 48% of children were in kinship placement, 33% in a CPA foster home, 6% in a DFPS foster home, 6% in a residential treatment facility, and 7% in other placement.

Assumption: Costs associated with placement type are representative of the DFPS daily foster care costs from September 1, 2013. Children in kinship care received a daily cost of \$0.

Mediation Costs

Assumption: Mediation costs were applied to cases with mediation dates.

Details: Mediation is currently a flat fee of \$1,050 in Travis County (\$900 before October 1, 2010) for a full day of mediation. It is assumed all cases had full day of mediation and rates were applied as such except for cases in Qlikview that had mediation invoices for \$525 or \$450.

Some cases had more than one mediation attempt and those multiple attempts are reflected in the costs. Appendix C, figure 5, details the number of mediations per resolution group. Judges in Travis County Family Court strongly encourage that all parties attempt mediation before proceeding to a trial. There are instances when a party does not want to mediate or mediation is not in the best interest of the parties. Additionally, a successful mediation result does not necessarily imply that all issues in the case are resolved and the case is closed. Therefore, cases with successful mediations can proceed to a contested trial. These cases have both mediation costs and trial costs.

Trial Costs

Assumption: All bench trials in this data last 2 days. All jury trials in this data last 4 days.

Details: According to Warren Vavra, Court Administrator in Travis County, bench trials last between 1-2 days and jury trials last between 3-5 days. Assumed all trials lasted the same number of days because the data did not provide information on trial length.

Assumption: All trials that took place for closed cases filed between FY 2008-FY2014 are reflected in the Qlikview data management system.

Details: It is possible that the dataset does not reflect the accurate number of trials that occurred during the 7 years reflected in the dataset. CFRP obtained 2014 trial dates from Warren Vavra,

court administrator, and not all dates matched the dates that were in the Qlikview management system. Since we were unable to obtain trial dates for all years reflected in our dataset, we chose to keep the trial dates reflected in Qlikview for all years.

Assumption: Jury trials cost an additional \$520 per trial.

Details: 12 people sit on a jury and are paid \$40.00 a day. Jury trials in our data are assumed to last 4 days.

Total Cost Savings

Assumption: Cases that resolved at mediation or after mediation are assumed to require a trial if mediation was not an option in Travis County.

Details: In cost savings calculation, it is assumed that all cases that resolve at mediation or after mediation would have proceeded to trial without the availability of mediation. It is possible that these cases would have resolved without a contested trial but the assumption is that mediation resolved or helped resolve these cases.

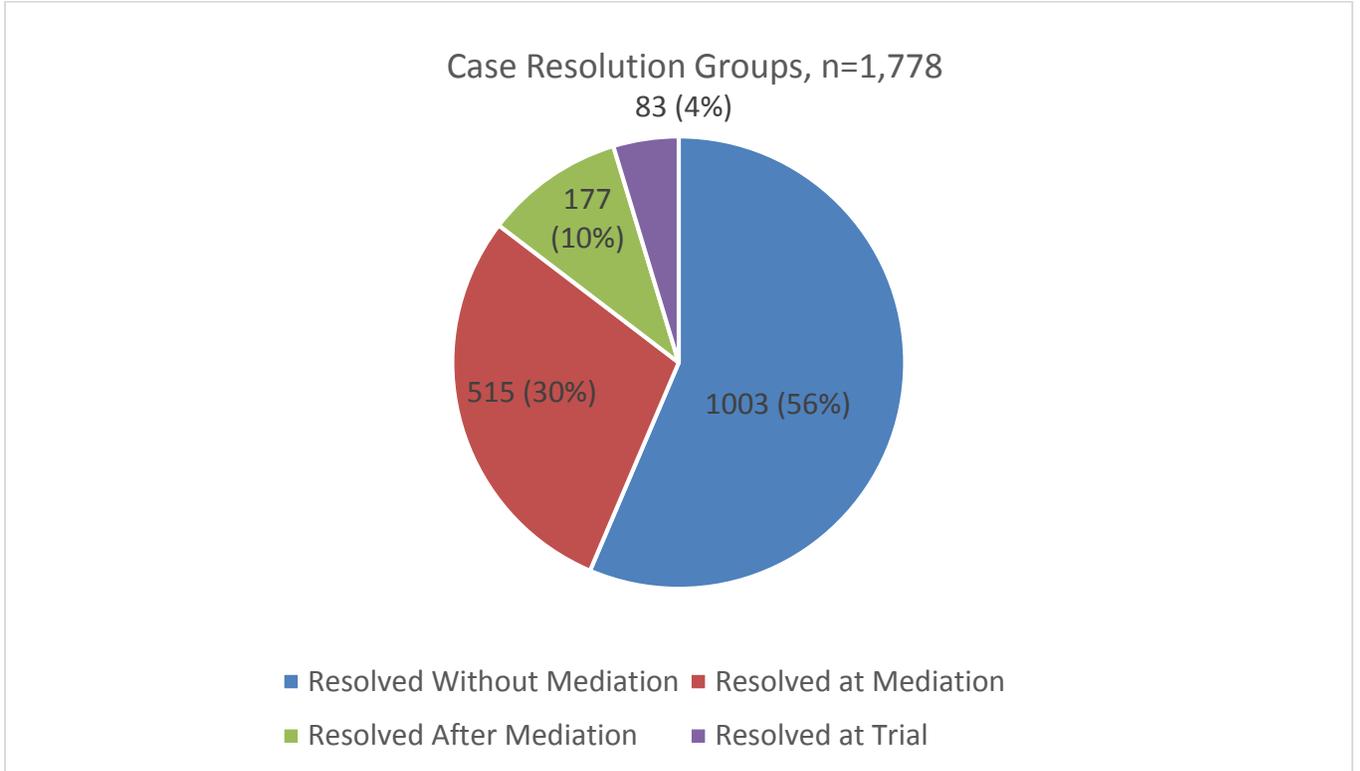
Case Length

Assumption: All cases open on the case filing date in Qlikview. Cases close on the closing date if the case ended in TMC. If the case went into PMC, the PMC date is used for case close date.

Details: The dates used for case length reflect the time period a case is in TMC. Since mediation and the statutory regulations of a case in Texas are based on the TMC period, this analysis only focuses on the TMC period.

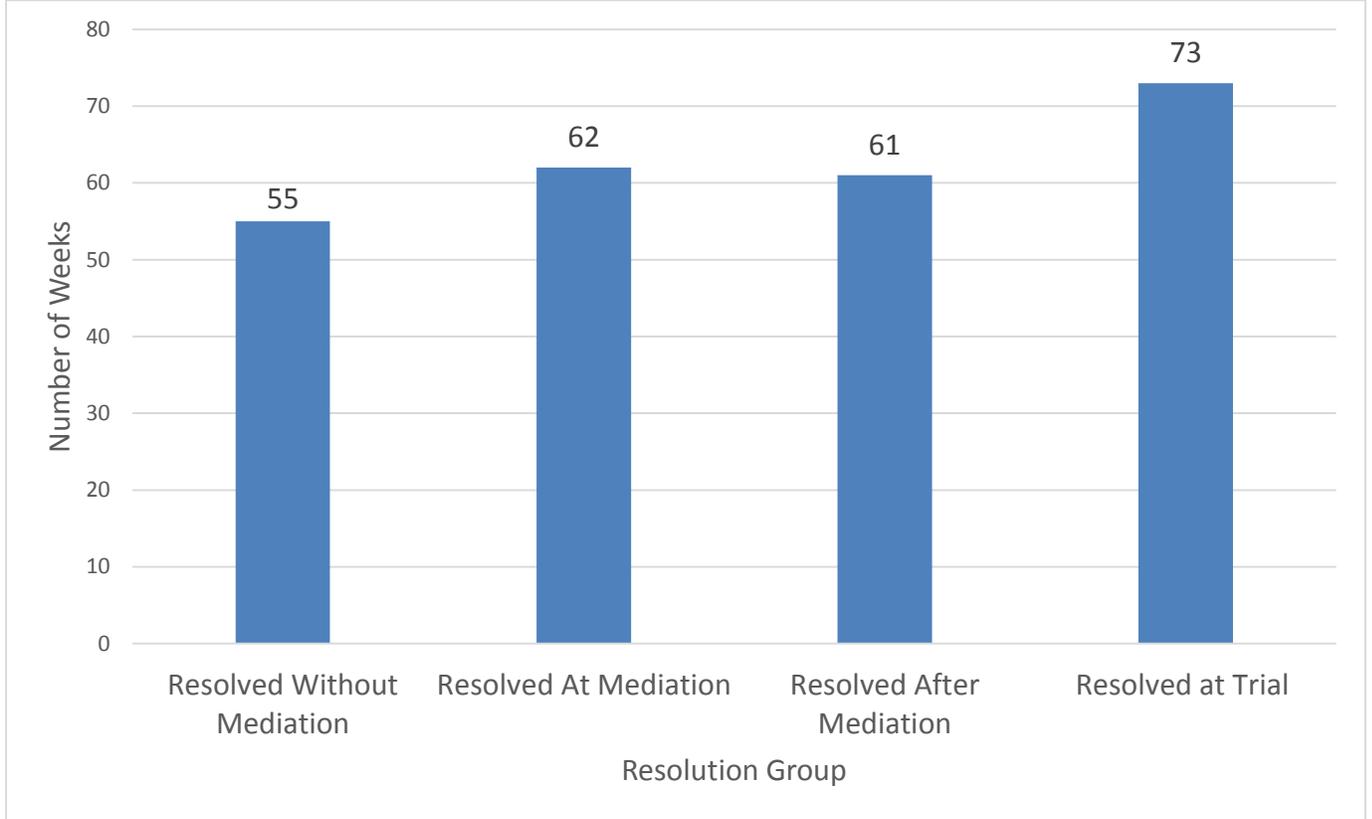
Appendix C: Descriptive Statistics of Case Data

Figure 1: Number of Cases by Resolution Group



Source: DFPS Research Database in Qlikview for Travis County Family Court. Includes TMC and PMC cases filed in the Travis County Family Court after October 2008 and closed before February 2015.

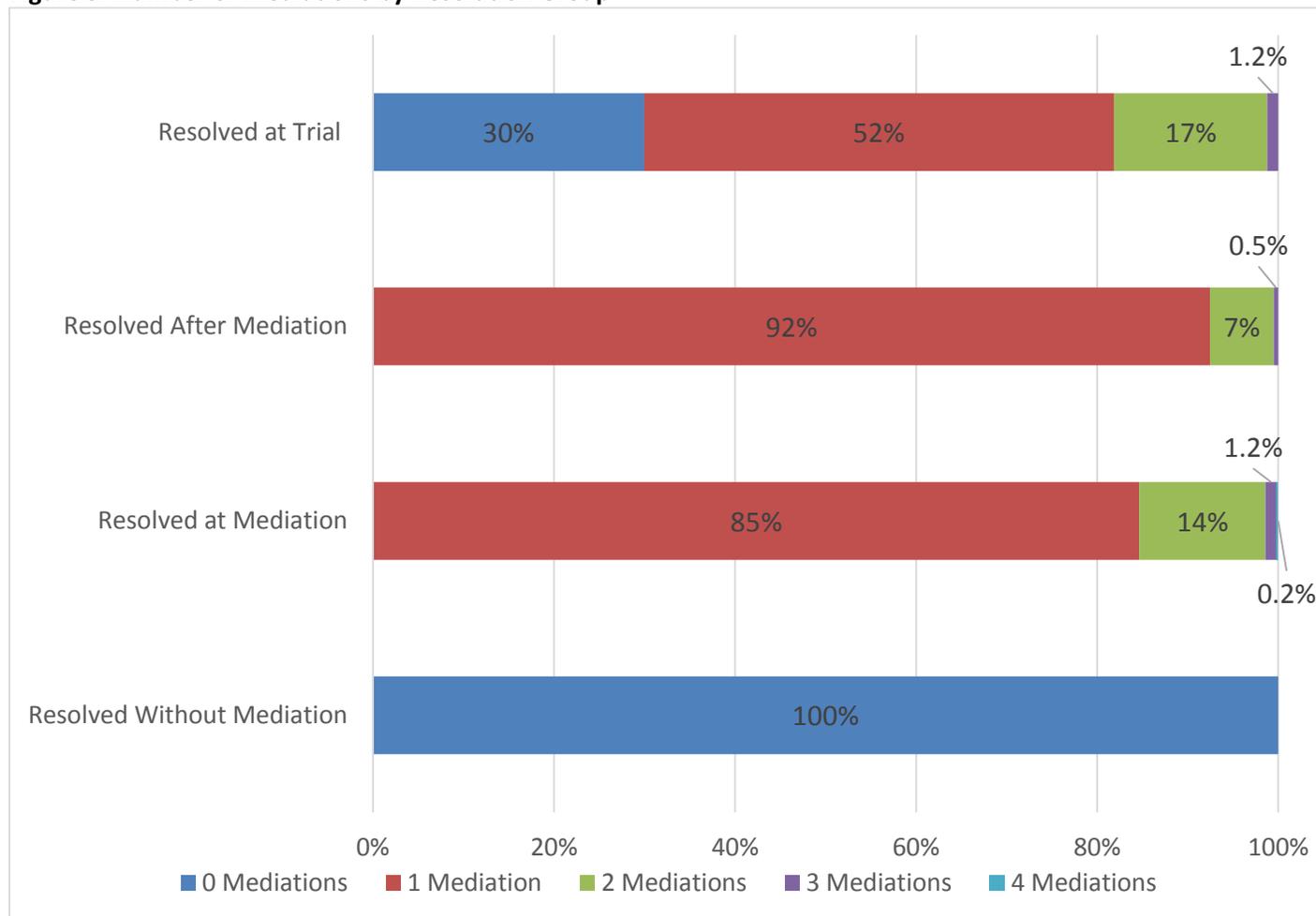
Figure 2: Median Case Length in Weeks by Resolution Group



Source: DFPS Research Database in Qlikview for Travis County Family Court. Includes TMC and PMC cases filed in the Travis County Family Court after October 2008 and closed before February 2015.

Notes: The median number of weeks a case remained open in family court per resolution group. Cases that resolve with mediation are open fewer weeks than cases that proceed to a contested trial.

Figure 3: Number of Mediations by Resolution Group



Source: DFPS Research Database in Qlikview for Travis County Family Court. Includes TMC and PMC cases filed in the Travis County Family Court after October 2008 and closed before February 2015.

Notes: Cases can have more than 1 mediation in an attempt to reach case resolution. This graph breaks down the number of mediations per case by the case resolution group. Cases that proceed to a contested trial had the highest percentage of more than 1 mediation attempt. While not common, cases can proceed to trial without a mediation. 23 percent of cases in our sample had 0 mediations but had a contested trial.

Table 9: Child Last Status by Resolution Group

| Child's Last Status | Resolved without Mediation | Resolved at Mediation | Resolved After Mediation | Resolved at Trial | All Groups |
|---|-----------------------------------|------------------------------|---------------------------------|--------------------------|-------------------|
| Adoption | 13.1% | 37.3% | 48.6% | 68.4% | 27.5% |
| Legal Permanency Adoption Relative | 4.6% | 14.2% | 16.3% | 14.2% | 9.4% |
| Legal Permanency Adoption Other | 8.5% | 23.1% | 32.3% | 54.2% | 18.1% |
| Reunification | 59.5% | 29.2% | 24.8% | 9.7% | 43.5% |
| Legal Permanency Reunification Parent | 58.9% | 29.1% | 24.8% | 9% | 43.1% |
| Legal Permanency Reunification Other | 0.6% | 0.1% | 0% | 0.7% | 0.4% |
| Permanent Managing Conservatorship | 7.3% | 23.9% | 14.5% | 14.9% | 13.8% |
| Legal Permanency PMC Relative | 6.2% | 21.2% | 10.3% | 11% | 11.7% |
| Legal Permanency PMC Other | 1.2% | 2.7% | 4.2% | 3.9% | 2.1% |
| Aged out of Foster Care | 6.3% | 2% | 1.2% | 1.4% | 4.1% |
| Left Care at 18 | 4.6% | 1.4% | 0.3% | 0.7% | 2.9% |
| Left Care After 18 | 1.7% | 0.6% | 0.9% | 0.7% | 1.2% |
| Case Dismissed | | | | | |
| Nonsuit/Petition Dismissed | 7% | 1.9% | 0.9% | 1.3% | 4.4% |
| Other | 6.7% | 5.6% | 10% | 3.9% | 6.6% |
| Adopted | 1% | 0.2% | 0.9% | 0.7% | 0.7% |
| Deceased | 0.2% | 0% | 0.3% | 0% | 0.1% |
| Relative Placement | 0.2% | 0.6% | 0% | 0% | 0.3% |
| Runaway | 1.5% | 0% | 0% | 0% | .8% |
| Severed | 1.2% | 4.6% | 7.9% | 3.2% | 3.1% |
| Transfer of Jurisdiction | 2.6% | 0.2% | 0.9% | 0% | 1.6% |
| Total | 100% | 100% | 100% | 100% | 100% |
| Number of children | 1558 | 952 | 331 | 155 | 2,996 |
| Number of cases | 1,003 | 515 | 177 | 83 | 1,778 |

Source: DFPS Research Database in Qlikview for Travis County Family Court. Includes TMC and PMC cases filed in the Travis County Family Court after October 2008 and closed before February 2015.

Notes: This table shows how the child's status differs between different resolution groups. Cases that resolve without mediation and at mediation have a higher percentage of reunification than cases that resolve after that time period.

¹ Amanda Michael, Lead Financial Analyst, Travis County Civil Courts. Personal Communication. FY 2015 Adopted Budget

² Bryant, Cynthia. (2010) "Child Protection Mediation in Texas: Past, Present, and Future," *The University of Texas School of Law Mediation Clinic*.

³ Bryant, Cynthia. (2010) "Child Protection Mediation in Texas: Past, Present, and Future," *The University of Texas School of Law Mediation Clinic*.

⁴ The District Courts of Travis County, Texas. (2014) Local Rules of Civil Procedure and Rules of Decorum.

⁵ Bryant, Cynthia. (2010) "Child Protection Mediation in Texas: Past, Present, and Future," *The University of Texas School of Law Mediation Clinic*.

⁶ *Mediation Focus Group*. April 23 & 29, 2014 [Focus Group]. Austin, Texas. Participants: Travis County Family Court Attorneys, Caseworkers, and CASA Volunteers.

⁷ Amanda Michael, Lead Financial Analyst, Travis County Civil Courts. Personal Communication.