Child Protection and the Family Court

A Study of Processes, Procedures and Outcomes Under Article Ten of the New York Family Court Act

York State Senate Committee on Child Care
Senator Mary B. Goodhue, Chairman

December 1989

National Center on Child Abuse and Neglect
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EXECUTIVE SUMMARY

I. THE STUDY

In the fall of 1987, New York State Senator Mary B. Goodhue, Chairperson of the Senate Standing Committee on Child Care, was awarded a grant from the National Center of Child Abuse and Neglect to study abused and neglected children involved in family court proceedings.

The grant award was made to the Senator in order to fill a serious knowledge gap in New York State and throughout the nation regarding the processes, procedures and outcomes under family court proceedings affecting the most troubled and vulnerable of society's children and their families.

Child abuse reporting in New York State surged some 125 percent between 1976 and 1985, and increased another 50 percent to nearly 123,000 reports in 1988. Child abuse and neglect cases reaching the family court are the most serious and persistent cases that have defied the voluntary intervention strategies of protective units of local departments of social services. They represent some 20 percent of reported cases in a given year.

The study collected data from 500 court case records of child protective proceedings initiated in 1985. The records came from 14 counties across the state - representing a cross-section of New York - and the number of cases read in each county was proportional and randomly selected. The study also tracked each case beginning with the Hotline report and collected information about the case before, during and after family court intervention (until the fall of 1988).

II. CHARACTERISTICS OF THE PETITIONS

The cases

* Two-thirds involved single-parent households.

* The mother was named the respondent in 84 percent of the cases.

* Eighty percent of the children from New York City were black or Hispanic; 75 percent of the children from upstate New York were white.

* The average age of the child was 7.5 years old. Some 40 percent of the children were under age three; 25 percent were between the ages of five and 10.

* Sixty percent of the children were female.

* The average family size was 2.6 children.

The allegations in the petition

* A third were abuse; two-thirds were neglect.

* The children who were the subjects of abuse petitions were more than twice as likely to be females.

* The most frequent charges were sexual abuse of the child, alcohol and drug abuse by the parent, and lack of food, clothing and shelter.

* Serious physical abuse most often was associated with children under age five. Serious neglect most often was associated with children ages five through 12.

* Sexual abuse and emotional neglect charges most often were associated with children over age 12.

* Female children were most likely to be associated with serious physical and sexual abuse.

* Male children were most likely to be associated with allegations of serious neglect.

III. FINDINGS

* More than half the children were removed from their homes before a petition to the court was filed; the basis for such removals often was not found in the court record.

* The average child's case was known to the local child protective system for more than two years before a petition was filed with the court.

* Counsel for the respondent was consistently appointed after the initial court appearance and often as late as one month after the petition was filed in more than 25 percent of the cases.

* Few parents whose child was removed applied for the return of their child.

* Cases lasted an average of four months.

* Less than half the placement orders dealt with parental visitation.

* Twenty percent of the cases were dismissed.

* Results of final orders disposing of the case:

  - More than 50 percent of the time the child was placed outside the home;

  - Twenty-two percent resulted in adjournment in contemplation of dismissal, or ACD;

  - Thirty-three percent resulted in orders of protection;

  - Twenty-five percent resulted in orders of supervision;

  - Two percent, suspended judgment;

  - Three percent, appealed.

* The court monitored its order, after disposition of the case, 3.8 percent of the time.

* Child abuse reports to the State Hotline declined, but still continued after case disposition (nearly one per case).

* Settled cases were twice as likely to have a new child abuse report after court disposition than those contested in court.

* Hotline reports after disposition were least likely to occur if the child was placed in foster care or if the respondent was ordered to stay away from the home.

* One-quarter of the cases with open court orders had at least one report to the Hotline after case disposition and the allegation in the report matched the allegation in the original court petition more than half the time;

* Of these cases where subsequent reports were filed, the child protective agency brought the matter back to court only 16 percent of the time.

IV. MAJOR RECOMMENDATIONS

The study makes the following recommendations, fully aware that there may be a need for additional resources to implement them. The Committee will work with the Governor and Legislature for action consistent with the State's fiscal resources, to better protect children from abuse and neglect.

Legislation

* Mandate that court records document the statutory basis for removal where a child is removed prior to the filing of a petition.

* Require child protective services to document in its child protective petition, the basis for emergency removal of the child.

* Codify standards for emergency removals.

* Improve procedures to notify the respondent of his or her rights early in any child protective action.

* Codify the time frame during which law guardians and respondents' attorneys must be appointed.

* Codify requirements that an initial family court appearance will be held on a petition setting forth which parties must be noticed and present.

* Require court records to reflect the reasons for dismissal or withdrawal of a petition.

* Codify obligations of respondent counsel regarding pre-petition removal actions.

* Set flexible guidelines for the use of court-ordered investigations;

* Require the court to address visitation issues in placement orders.

* Expedite the appeals process in abuse and neglect cases.

* Codify the role of court-appointed special assistants (CASAs) in child protective proceedings.

* Extend the appointment of law guardians to the end of term of any dispositional order.

* Require that the law guardian be notified of any reports to the Hotline during terms of open orders.

* Require child protective services to report to the law guardian regarding the status of a child and his or her family in settled cases for a limited period following settlement.

* Codify local child protective agency's obligations in regard to orders of protection, supervision and adjournments in contemplation of dismissal.

* Establish standards for filing child protective petitions.

* Require child protective service to inform the family court of status of child at conclusion of term of any order where no extension is sought, including placement orders.

Administrative

* Expedite service of process upon filing of petition.

* Include affidavit of service in court record.

* Standard form to document service of process.

* Expedite law guardian and respondent counsel appointment.

* Timely hearing on application for return of child following emergency removal.

* Improve participation of parties and counsel at hearings.

CHAPTER 1: INTRODUCTION AND ACKNOWLEDGEMENTS

In the fall of 1987, New York State Senator Mary B. Goodhue, Chairperson of the Senate Standing Committee on Child Care, was awarded a grant from the National Center on Child Abuse and Neglect to study abused and neglected children involved in family court proceedings.

The grant award was made to the Senator in order to fill a serious knowledge gap in New York State and throughout the nation regarding the processes, procedures, and outcomes under family court proceedings affecting the most troubled and vulnerable of society's children and their families.

Child abuse and neglect as a social phenomenon is a matter of growing, indeed critical, importance in the United States. According to information provided by the American Humane Association, the reporting of child abuse and maltreatment underwent a virtual explosion during the last decade: in 1976, reports alleging abuse and maltreatment totalled 669,000 nationally. By 1985, nine years later, the Association indicated that the reporting volume had risen by 184 percent to 1.9 million. The majority of such reports are those alleging child neglect, as opposed to abuse. Part of the reason for this growth in reporting has been explained by greater public awareness of the problems of child abuse and neglect as well as a growing recognition that such problems demand public intervention. Even though such reports, upon investigation, appear to be proven or substantiated only some 40 percent of the time, a major factor in the growth of reporting must also be attributed to a growing incidence of this problem, which reflects the signs of growing

family dysfunction produced by the drug explosion and other symptoms of violence in society.*

Moreover, against this sobering background, the capacity of already-stressed and overworked public child protective systems to provide meaningful rehabilitative efforts to child victims of abuse and neglect and their families is questioned by the fact that, in New York State at least, subsequent or repeat reports as a percentage of substantiated child abuse and neglect cases have in recent years averaged at least one in five.**

A central element in the nation's child protective system is the family court, utilized most commonly for the most serious child abuse and neglect cases, those cases where public and private protective agencies have tried to assist and rehabilitate the family and failed. In this context, the family court system has become the increasingly-stressed focal point for the resolution of problems of alcoholism, substance abuse, homelessness, unemployment and other multifaceted aspects of family dysfunction which find violent outlet in acts of child abuse and maltreatment. Such a challenge often makes the work of the family court a thankless and virtually insurmountable task.

Although anecdotal studies of the family court exist both at the state and national levels, very little empirical data is available to document the nature and extent of family court child protective proceedings. Moreover, the history of the child and family before, during and following family court intervention has not previously been determined in any systematic fashion.

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*Substantiation, or indication rates for child abuse and neglect reports vary tremendously from state to state, according to AHA, and also within regions of particular states. On the average, indicated reports have ranged from 38 to 47 percent nationally during the decade described here.

**National data are not available.

As noted above, the present research project, made possible by the National Center on Child Abuse and Neglect through a grant made to the New York State Senate Child Care Committee, is intended to fill a wide knowledge gap regarding the nature, scope and extent of child protective proceedings before the family court and their impact on the family. The focus of this study is upon New York State, a major population center consisting of rural, suburban and densely populated urban counties, whose child protective caseload represents a significant proportion of the national problem. New York has experienced increases in reporting volume comparable to the nation as a whole, and the pressures and demands on its family court system may be illustrative of issues and concerns about the operation of judicial processes and their interrelationships with the entire public child protective system in the United States.

New York State's child protective system, with its integrated family court structure, reflects national experience in confronting problems of child abuse and neglect. Child abuse reporting in the state grew dramatically during the past decade with reports to the State Central Register of Child Abuse and Maltreatment (commonly referred to as the State's Child Abuse Hotline) totalling 84,415 in 1985. This figure, representing five percent of the national total of reported cases, represents an increase of some 125 percent over 1976 (when reports totalled 37,698). Child abuse and maltreatment reports rose to 122,917 in 1988, an increase of more than 38,500 cases or nearly 50 percent in only four years! For 1988, neglect reports in the state represented 91 percent of the total. Consistent with national data, substantiated or "indicated" reports of abuse and neglect in New York ranged from 36 to 50 percent during the 1976-1985 period.

To cope with a rising level of increasingly difficult cases of child abuse and neglect, child protective agencies more frequently seek court intervention by filing abuse and neglect petitions to the family courts of the state in some 20 percent of

reported cases in a given year. In 1985, child abuse and neglect petitions in New York family courts totalled 14,399 cases. For 1988, the State Office of Court Administration reports that 30,990 child protective petitions were filed, representing more than a doubling of the 1985 figure and reflecting a far greater rate of increase in family court petitioning than that found in child abuse reporting.

As will be described in the following chapters, the Senate Child Care Committee undertook a complex research task which analyzed actual family court records in 14 counties throughout the state and then integrated data in the State Central Register of Child Abuse and Maltreatment to determine the history of case children and their families before child protective petitions were filed, during the adjudicatory process, and after court disposition.

The research findings and the conclusions and policy recommendations arising therefrom which are presented in this report, identify administrative and statutory mechanisms which may be improved to better protect abused children and facilitate the rehabilitation of troubled families. However, it would be a disservice to characterize what will be presented here as a criticism, either implicit or explicit, of New York's judicial system or individual members of the judiciary. The family court adjudicates based on what is presented in the court room, and failures within a broader human service system cannot be ascribed to the court itself. It is in this context that the policy recommendations found at the conclusion of this report are presented: to better equip a family court system to deal with the problems of troubled children.

The Committee wishes to acknowledge, with deep gratitude and appreciation, the support of the National Center of Child Abuse and Neglect, without which this project would not have been possible. In addition, Commissioner Cesar Perales and his tireless and often overburdened Services Division staff of the

State Department of Social Services assisted the project in a complex and time-consuming data analysis and processing effort. Most important, however, we wish to express our heartfelt thanks to the Hon. Kathryn A. McDonald, Deputy Chief Administrative Judge for the New York City Courts, and the Hon. Robert J. Sise, Deputy Chief Administrative Judge for Courts outside New York City and their staffs at the State Office of Court Administration, without whose wisdom, guidance, and practical assistance this complex field research project into family court records could not have taken place. Assurances of confidentiality - the project report will not identify the individual counties participating in the research - prevent further acknowledgements. We extend our sincerest appreciation to the members of the judiciary, their staffs, as well as private attorneys, law guardians, and social services departments cooperated with the Committee in the various counties we visited.

Also, we wish to acknowledge the assistance of two young men, Joel Bloom and Marc Spiegler, versatile and conscientious students who did the casereading for the project, working long and arduous hours in document storage rooms throughout the state. The insights they provided to project staff were both creative and helpful.

Finally, we cannot forget to extend our deepest appreciation to Helen McSherry, who typed countless drafts of this report, and Sandra Wiegand, whose prowess on the computer enabled us to produce the graphic presentations contained in this report.

CHAPTER 2: OVERVIEW OF NEW YORK STATE'S FAMILY COURT ACT

In New York State, an intra-familial case of child abuse or neglect enters the protective services system when a phone call is made to the State Central Register. Protective units of local departments of social services (found in each of the state's 57 counties and one in the City of New York) are required to investigate reports of abuse and maltreatment and to determine, within a 90 day period, whether these reports are "indicated" or "unfounded" based on a standard of "some credible evidence" of child abuse or neglect. While an investigation is underway, and following case indication, the protective agency attempts to voluntarily engate the family in appropriate supportive and rehabilitate services to address problems underlying the child abuse and maltreatment.

Article 10 of New York State's Family Court Act (sections 1011 through 1084) provides the framework for judicial intervention regarding children alleged to be abused and neglected children. Intervention by the family courts of the state through Article 10 proceedings is viewed by child welfare professionals as the avenue of last resort. Petitioning the family court is sought only when less extreme, voluntary service intervention strategies to rehabilitate the families of abused and neglected children have been tried and have failed, or where acts of abuse or neglect are so extreme as to demand immediate court action to protect the life or health of a child.

In addition to child protective proceedings, the family courts (located in each of the state's sixty-two counties) have been given statutory jurisdiction over juvenile delinquency, persons in need of supervision (PINS), child support, paternity, family offenses, termination of parental rights, foster care review and other proceedings. These other proceedings were not reviewed in the present study.

To understand the framework of family court child protective proceedings, and the terms used throughout the narrative of the research findings of this report, a series of sections have been incorporated into the introduction of each of the chapters on research findings which appear below. Each section provides a description, albeit simplified, of relevant definitions, terms, and procedures, particular to New York State, involved in the adjudication of child abuse and neglect which are referred to in a particular chapter. The chapters trace the conduct of child protective proceedings in chronological order, and elaborate on key terms and processes.

Article 10 proceedings are described from initiation of the petition through final disposition, and include pre-petition removal activities as well as other associated post petition activities which may be initiated through the family court.

The description of the family court process appearing in the following chapters reflects provisions of the Family Court Act as of the close of the 1989 session of the New York State Legislature. Amendments to the statute enacted between 1985 and 1989 which impact on the research findings are highlighted as appropriate.

A. Definition of Abuse and Neglect

The terms "abused child" and "neglected child," central to an understanding of New York statute and practice, are precisely defined by §1012 of the Family Court Act. According to this section:

> (e) "Abused child" means a child less than eighteen years of age whose parent or other person legally responsible for his care;
>
> (i) inflicts or allows to be inflicted upon such child physical injury by other than accidental means which causes or creates a substantial risk of death, or serious or

protracted disfigurement, or protracted impairment of physical or emotional health or protracted loss or impairment of the function of any bodily organ, or

(ii) creates or allows to be created a substantial risk of physical injury to such child by other than accidental means which would be likely to cause death or serious or protracted disfigurement, or protracted impairment of physical or emotional health or protracted loss or impairment of the function of any bodily organ, or

(iii) commits, or allows to be committed, a sex offense against such child, as defined in the penal law (deviate sexual intercourse, rape, sodomy, sexual contact and other acts); allows, permits or encourages such child to engage in any act described in sections 230.25, 230.30 and 230.32 of the penal law (promoting prostitution); commits any of the acts described in section 255.25 of the penal law (incest); or allows such child to engage in acts or conduct described in article two hundred sixty-three of the penal law (sexual performance by a child), provided, however, that (a) the corroboration requirements contained in the penal law and (b) the age requirement for the application of article two hundred sixty-three of such law shall not apply to proceedings under this article.

(f) "Neglected child" means a child less than eighteen years of age
(i) whose physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired as a result of the failure of his parent or other person legally responsible for his care to exercise a minimum degree of care

(A) in supplying the child with adequate food, clothing, shelter or education in accordance with the provisions of part one of article sixty-five of the education law, or medical, dental or optometrical or surgical care, though financially able to do so or offered financial or other reasonable means to do so; or

(B) in providing the child with proper supervision or guardianship, by unreasonably inflicting or allowing to be inflicted harm, or a substantial risk thereof, including the

> infliction of excessive corporal punishment; or by misusing a drug or drugs; or by misusing alcoholic beverages to the extent that he loses self-control of his actions; or by any other acts of a similarly serious nature requiring the aid of the court; provided, however, that where the respondent is voluntarily and regularly participating in a rehabilitative program, evidence that the respondent has repeatedly misused a drug or drugs or alcoholic beverages to the extent that he loses self-control of his actions shall not establish that the child is a neglected child in the absence of evidence establishing that the child's physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired as set forth in paragraph (i) of the subdivision; or
>
> (ii) who has been abandoned, in accordance with the definition and other criteria set forth in subdivision five of section three hundred eighty-four-b of the social services law, by his parents or other person legally responsible for his care.

B. Graphic Presentation of Child Protective Proceedings

Figure 1 presents in graphic form an overview of the various stages of a child protective proceeding under Article 10 of the Family Court Act. It includes activities leading to the filing of a petition such as refusal of the family to voluntarily accept services or removal of the child from the home. The various stages of the proceeding are depicted beginning with the filing of the petition and ending with the entry of a final order of disposition. The figure also sets forth the various dispositional orders available.

A detailed presentation of the multiple stages of Article 10 proceedings, including key terms and definitions, is incorporated within the chapters of this report which set forth the project's research findings.

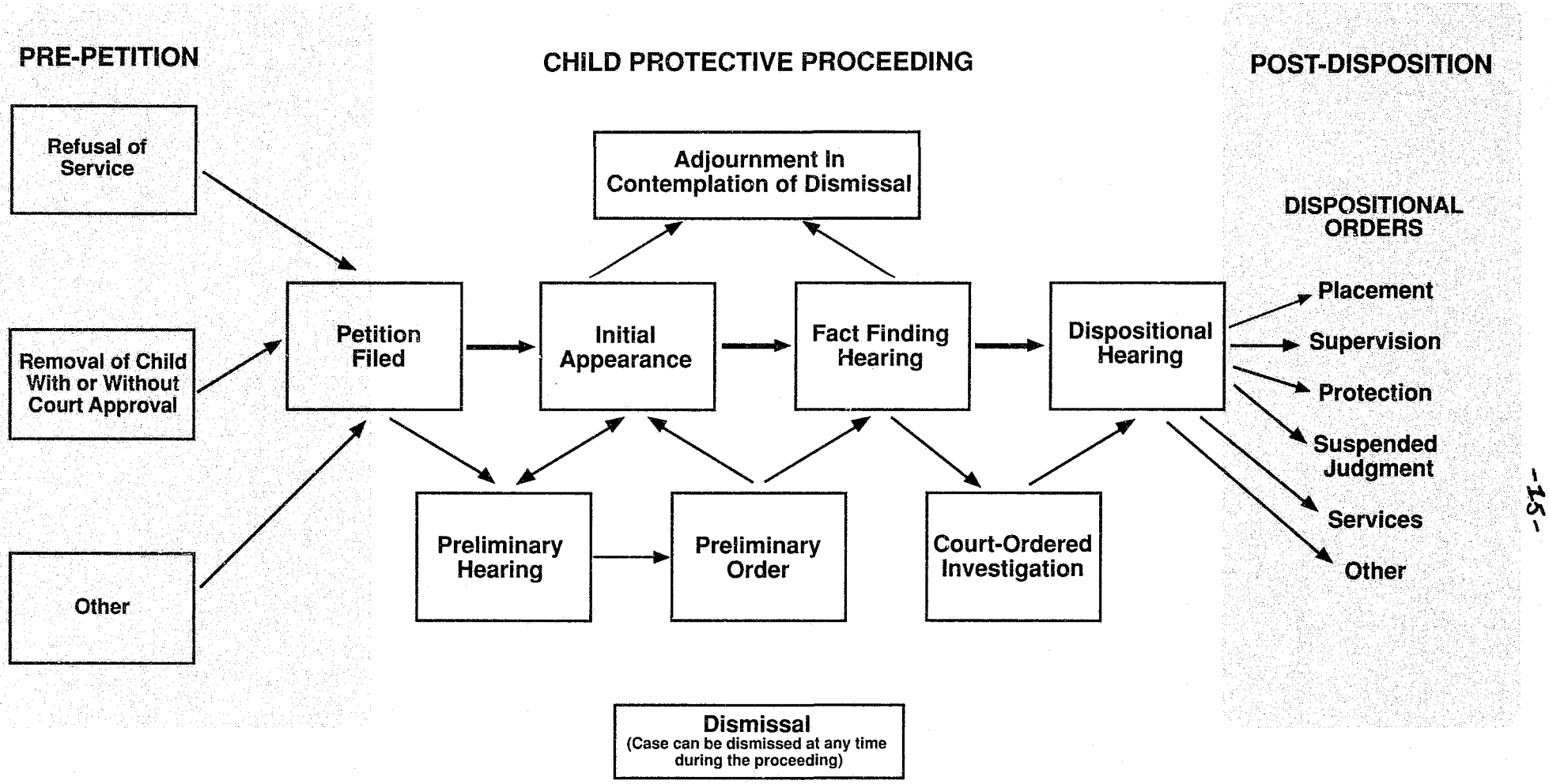


Figure 1:
Child Abuse and Neglect Proceedings Under New York State Family Court Act

CHAPTER 3: PROJECT METHODOLOGY

The Senate Child Care Committee's two-year research project was divided into a number of tasks and phases: (a) a survey of existing primary and secondary statistical and other research materials regarding family court child protective proceedings in New York State; (b) preliminary interviews and follow-up with practicing professionals in the family courts and the child protective services system generally, both at the start of the project as well as in connection with its various succeeding phases; (c) selection of data elements to be collected in case reviews of family court records and child protective records of the New York's State Central Register of Child Abuse and Maltreatment; (d) development of instruments, coded for computer analysis, for review of these records; (e) selection of a random sample of family court child protective petitions within a representative set of counties; (f) accessing individual family court and local child protective agencies for, and conducting, case record reading; (g) data analysis and interpretation and, in this regard, meeting with officials in counties in which cases were read, and others regarding data interpretation; and, finally, (h) development of findings, conclusions and recommendations for administrative and policy change, as appropriate, and their dissemination at the state and national levels.

At the initiation of the project, project staff reviewed relevant documents and publications regarding child protective services, the State Central Register and child protective proceedings in New York State, including statewide statistics on family court protective proceedings compiled by the State Office of Court Administration pursuant to requirements of the Family Court Act. The OCA data formed a set of useful background information concerning variations in county practices that assisted in establishing factors for the selection of the project's sample of child protective cases.

Committee staff also reviewed family court record-keeping practices in a number of counties in order to determine the nature and extent of data maintained by local family courts throughout the state. Staff also met with key officials in the state's unified court systems, including the Hon. Kathryn McDonald, Administrative Judge of the New York City Family Courts and Hon. Robert Sise, Deputy Administrative Judge for Courts outside New York City, administrative, supervising and other family court judges and local judicial personnel, key staff of the State Office of Court Administration, the State Department of Social Services, the New York Legal Aid Society, and other knowledgeable officials in state and local government, the State Legislature and the private sector, concerning the parameters of the research project. These individuals provided guidance to the Committee and helped identify issues and concerns that would form an integral part of later data collection and analysis activities. A number of these individuals were consulted extensively to review the content of data collection instruments and to help to validate pilot testing in selected counties.

In order to select a sample of counties that would be representative of the State as a whole, a set of 41 primary and derived variables considered relevant to the study were identified. Data were collected or developed in each of these 41 variables for each of the State's 62 counties. A resultant table of counties by variables provided the primary information source for selection of the sample.

The relationships among these 41 variables were identified through inspection and, in some cases, through the use of scatter diagrams. As an outcome of this process, three derived variables were identified as most appropriate to the research study and were used for assignment of counties to categories or groups (where each category represented a combination of specific levels of each of the three derived variables). These variables were derived in the sense that each represented a combination of two or more primary variables and each would be considered a major

component of the family court/child protective services system at the county level.

The variables used for assignment of counties to categories were:

-- population density (number of people per square mile), a variable which measures the size of the county in terms of number of residents and the county's physical size. This variable also addresses such issues as service availability and accessibility.

-- State Central Register Reporting Rate - (the number of SCR reports per calendar year for each 1000 children in the county). This variable addresses the volume of local child abuse and neglect reported activity relative to the child population; and

-- family court protective petition rate - (the number of Article 10 petitions submitted to the family court in 1985 for each 1000 SCR-reported cases). This figure may reflect the nature of the working relationships and other interactions between the family court and a local department of social services in a given county. (In some counties more than 40 percent of protective cases were brought to court while in others only four percent of reported cases resulted in Article 10 petitions).

Counties were grouped according to the levels of these derived variables ("high" or "low") and a random sample of 14 counties was selected thereby for participation in the study.

The number of court cases read within a particular county was developed proportionally and cases within a county were chosen randomly.

As indicated above, the Committee research project selected 1985 family court child protective cases as the subjects of the study. By pinpointing this historical point in time rather than a later date, it became possible to achieve a central objective of the project. This objective was to assess the incidence of child and family problems, as measured by reports made to the State Central Register of Child Abuse and Maltreatment, not only during the periods prior to the filing of the petition, and while the case was pending in court, but, also during the three-year period following case disposition (until the fall of 1988 when case review ended).

A data collection instrument was designed, and coded for computer analysis, to enable the project to collect relevant data during all stages of a child protective proceeding, including pre-petition removal activities, as well as other family court proceedings affecting the case child and family. In addition, an appropriate instrument was prepared for use by State Department of Social Services personnel who would access the State Central Register to track the study's 500 cases.

The court record data collection instrument was piloted in two counties which formed part of the study. Extensive interviews with family court judges, local department of social services personnel, public and private attorneys and others in each of these counties served to validate the data collection methodology. In fact, respondents indicated that the case reading results not only accurately reflected local family court/child protective practices, at least historically, but also served to underscore continuing strengths and weaknesses of their systems.

To undertake the complex and time-consuming task of reading 500 court case records, the Committee employed the services of two casereaders, one with a Master's Degree in Political Science and the other an undergraduate junior majoring in Political Science. These two individuals underwent intensive training

concerning: Article 10 of the Family Court Act and how to track a protective case through the possible options of family court procedures and interventions during the pendency of a proceeding; a rigorous overview of the child protective services system (legal and social work terms, child protective data, types of protective cases entering family court, public and private human services systems, specific state and local agency functions and responsibilities); the SCR and its forms; forms used in various family court proceedings; the use of project data collection instruments; and finally, the requirements and protocols to be used in dealing with confidential, case-specific information.

At the conclusion of their training, the case readers visited a local family court and, together with project supervisory staff, read a sample of case records and used the data collection instruments. Repeated review and discussion of questionable items, discrepancies in answers, and other problems were incorporated as part of the training protocol to ensure accuracy and consistency in the reading of the study's 500 cases.

At the conclusion of the case reading of court and State Central Register records, the collected data was subjected to intensive and extensive manual and computer analysis involving frequency distributions, assessment and analysis of time measures and other derived variables and cross-tabulation of significant variables. Further meetings and discussions were held with local family courts, social services and other agencies included in the sample, to again validate, confirm and update statistical findings. Significantly, our meetings confirmed the continuation of demographic patterns in the counties, and documented exacerbation of protective services problems, particularly in the area of drug abuse. Finally, important improvements in administrative practices were noted in a number of instances. Above all, our discussions confirmed continuing systemic problems in dealing with child protective cases.

At the conclusion of these phases, the following report was prepared which incorporates statewide data as well as for the New York City and upstate counties participating in the study. Its major findings, conclusions and recommendations were initially disseminated at a presentation before the Eighth National Conference on Child Abuse and Neglect held in Salt Lake City, Utah in October of 1989.

The following report describes and assesses problems concerning the adjudication of child protective cases by the family courts in New York State, and, by extension, in other states in the nation. It also assesses the complex interrelationships of the judicial and protective services systems as considered from the perspective of entry of the family into the child protective system via reports made to the State's child abuse Hotline (or State Central Register), both before, during and after, judicial intervention.

The problems identified herein are significant and growing. The solutions recommended are worthy of consideration and action by the Governor and the Legislature, to better protect children from abuse and neglect.

CHAPTER 4: FINDINGS: DEMOGRAPHIC CHARACTERISTICS OF THE SAMPLE AND PETITION CHARACTERISTICS

This chapter presents findings from the court case record review and, to a more limited extent, from State Central Register data, that are descriptive of general demographic characteristics of the case child, family, and living arrangements prior to the filing of the court petition. Findings are presented for samples drawn from the entire state, New York City and upstate counties. Exact sample size varies somewhat from variable to variable but, in all instances in this chapter, information was available for almost the entire sampled set of cases. These data, although drawn from 1985 cases, with respect to the counties involved in the study, are reflective of current demographic trends.

A. Summary of Findings: Demographic Information; Petition Characteristics

The following general statements summarize the characteristics of child protective cases in family court as found in the statewide sample of the present study. (The New York City and upstate data are provided in this summary only in instances where these two geographic areas produced disparate findings.)

1. Composition of the Household

- Most children (about two-thirds) were still at home with their parents when the abuse or neglect petition was filed with the family court.

- In most cases (almost 90 percent), the case children lived with their mother. They resided with their father in only about one-third of the cases. (More than one person may have resided with the child.)

- Both parents were present in the home only about one-third of the time. There were more of these intact families in the upstate area than in New York City.

- In most cases (85 percent), no other children lived outside of the home, such as in foster care.

2. Respondent Characteristics

- The mother was named as the respondent in most (84 percent) of the cases.

- The father was named as the respondent in only slightly more than one-third of the cases.

- Two respondents were named in 41 percent of the cases.

- Respondents were, on the average, in their early thirties.

- In New York City, over 80 percent of the respondents were Black or Hispanic; in upstate areas, almost three-quarters of the respondents were White and one-quarter were Black.

3. Case Child Characteristics

- The ages of the case children ranged from 0-17.5 years with an average age of 7.5 years.

- Many children (about 40 percent) were younger than five years old.

- Almost 60 percent of the case children were female.

- Abuse and neglect petitions were filed most often for younger children who were, most often, male.

- In the older age ranges, petitions are more likely to be filed for female case children, reflecting a higher incidence of sexual abuse petitions at these age levels.

- In New York City, most (almost 90 percent) of the case children were Black or Hispanic, while the upstate sample consisted of almost 70 percent White and almost 30 percent Black children.

4. Petition Characteristics

- About one-third of the petitions were child abuse petitions and the remaining two-thirds were child neglect petitions.

- Female children were much more likely to be named in abuse petitions than males: 72 percent of all abuse petitions were female.

- Child protective proceedings were initiated by the local public child protective agency in virtually all of the cases.

- The most frequent allegations in the petitions were alcohol and drug abuse; sexual abuse; lack of food, clothing and shelter; lack of supervision; lacerations, bruises and welts; and, excessive corporal punishment.

- Allegations most frequently associated with children less than five years old were serious physical abuse allegations, such as fractures, subdural hematomas, and burns and scalding.

- Allegations most frequently associated with children 12 years or older were a single type: sexual abuse.

- Allegations most frequently associated with female children were serious physical injury and sexual abuse.

- Allegations most frequently associated with male children were lack of supervision and inadequate guardianship.

- Abuse petitions were most often associated with serious physical injury and sexual abuse.

- Neglect petitions were most often associated with alcohol/drug abuse, lack of medical/dental care, malnutrition/failure to thrive, educational neglect, emotional neglect and lack of food, clothing and shelter.

- Pre-petition removals were most often associated with allegations of: burns and scalding; fractures, subdural hematomas, and internal injuries; and, lack of supervision.

- However, pre-petition removals were found in virtually every allegation type.

B. Residence of Child at Time of Initial Petition to the Court.

Table 1 provides data on the residence of the child at the time that the initial abuse or neglect petition was filed with the family court, drawn from information listed on the petition itself.

Table 1: RESIDENCE OF THE CASE CHILD AT TIME OF PETITION*

RESIDENCE OF CASE CHILD	AREA OF THE STATE		
	Statewide	New York City	Upstate
At Home with Parents	66.9	70.9	62.9
In Foster Care	20.0	11.3	27.7
With Friends or Relatives	10.7	11.7	4.1
Other	2.4	6.1	5.3

* Entries in the table are percentages of geographic area samples.

As Table 1 indicates, nearly two-thirds of the case children in the statewide sample resided with their parents at the time of the original petition to the court. Another 20 percent were in foster care, and nearly 11 percent lived with friends or relatives at that time. This distribution varies somewhat across the state: in New York City, a smaller percentage of children were already in foster care when the petition was filed (11.3 percent) than the statewide value would suggest. On the other hand, upstate counties registered a higher rate of early foster care placement (27.7 percent) and a lower incidence of residence with friends or relatives (4.1 percent) than that in the City. These differences may be accounted for in part by New York City practices (which are not always documented in the court records) whereby judicial approval of pre-petition removals of children from the home frequently occurs in conjunction with a preliminary hearing pursuant to §1027 and the filing of the petition. Although this after-the-fact judicial order places a "stamp of approval" on the previous removal, the record appears to suggest that the child was not removed from the home until after the petition was filed contrary to the more common removal practice. A more complete treatment of this matter can be found in a later chapter.

C. Composition of the Household at Time of Petition

As depicted in Table 2, the child's mother was the person most often living with the child (88 percent statewide) at the time of petition, followed by siblings (71 percent) and the child's father (35 percent). Because more than one person may have resided with the child (35 percent of the sample came from intact two parent families), the percentages in the table do not sum to 100.

TABLE 2: COMPOSITION OF THE HOUSEHOLD AT TIME OF PETITION

	Area of State		
Household Resident	Statewide	NYC	Upstate
Mother	88*	88	89
Father	35	27	41
Stepmother	2	2	2
Stepfather	8	9	8
Maternal Grandparent	6	10	4
Paternal Grandparent	1	2	2
Siblings	71	--	87
Other Relatives	5	6	4
Boyfriend	5	6	4
Girlfriend	1	0	1

*Entries in the table are geographic area percentages and do not total 100%.

This distribution varied somewhat across the state: New York City registered a somewhat lower incidence of fathers residing in the home (27 percent), while upstate counties showed a higher frequency of paternal residence with the child (41 percent). Also, in New York City, more maternal grandparents lived with the child (10 percent) than in the upstate counties (four percent). Finally, in upstate counties, siblings resided with the case child at the time of petition in almost 90 percent of the cases. Data on sibling residence in New York City were incomplete and therefore not available for analysis.

D. Intact Families

The percentages of intact families (for the statewide, upstate and New York City samples and for individual counties) are presented in Table 3. A review of this table indicates that (with the exception of two small upstate counties) both parents were in the home in only 35 percent of the cases across the state. Overall, the upstate counties had more intact families (40.2 percent) than did the New York City sample (28.6 percent).

E. Number of Siblings Residing with the Case Child

For the entire state, an average of 1.64 siblings lived in the home with the case child at the time of the child abuse or neglect petition to the court. (The New York City mean was 1.74 children; upstate counties recorded somewhat lower mean of 1.55 siblings.) Throughout the state, the most frequently recorded number of siblings (mode) was one child. Also, approximately one quarter of the case children were only children.

F. Average Number of Siblings Residing Outside the Home

The statewide sample indicates that approximately 85 percent of the case children had no siblings living outside the home at the time of the filing of the petition. Both New York City and upstate data support this finding.

Table 3: INTACT FAMILIES IN DIFFERING GEOGRAPHICAL LOCATIONS

Location	Percent Intact Family
Upstate Total	40.2%
County A	30.8%
County B	41.2%
County C	44.4%
County D	66.7%
County E	38.7%
County F	50.0%
County G	36.4%
County H	42.4%
County I	38.5%
County J	25.0%
County K	37.4%
New York City Total	28.6%
County L	33.7%
County M	21.9%
County N	24.3%
Statewide Total	34.9%

G. Characteristics of Respondents

1. Relationship to Case Child

As depicted in Table 4, the mother was the most frequently cited respondent on the court petition (84 percent of the time statewide). In New York City, this figure was somewhat higher (87 percent) while in upstate counties, the mother was listed as the respondent 81 percent of the time. The father was the next most-often cited respondent (39 percent statewide), with New York City registering a lower value of 31 percent and upstate a higher rate (45 percent). Stepparents, maternal grandparents and boyfriends were each recorded as the respondent in less than 10 percent of the cases.

Table 4: IDENTITY OF RESPONDENTS*

Respondent Identity	Geographic Area		
	Statewide	New York City	Upstate
Mother	84*	87	81
Father	39	31	45
Stepmother	1	1	1
Stepfather	8	8	7
Maternal Grandparent	3	3	2
Boyfriend	4	5	3

*Entries in the table are percents of geographic area samples and are duplicative and therefore, do not total 100.

The case reading data also indicated that two respondents were named in 41 percent of the cases. These rates were very similar in New York City (38 percent) and upstate (42 percent).

2. Age of Respondents

As indicated in Table 5, statewide, the average age of the two respondents that were named in the court petition was in the early thirties. Comparisons of New York City with upstate counties demonstrate very little variation on this measure. It should be noted that Respondent #1 was most typically the mother and Respondent #2 the father, thus producing the age differential found in these data.

Table 5: AGE OF RESPONDENTS*

RESPONDENT AGE	Geographic Area		
	Statewide	NYC	Upstate
Average Age of Respondent #1	30.3	29.9	30.9
Average Age of Respondent #2	33.5	33.7	33.3

* Table entries are average number of years

3. Sex of Respondent

Table 6 indicates that female respondents were cited in 86.2 percent of the cases statewide (with a somewhat lower incidence upstate and a higher frequency in New York City). Male respondents were named in 55.2 percent of the statewide sample. This frequency was somewhat higher in upstate counties (61.9 percent) and considerably lower in New York City (46.4 percent).

Table 6: RESPONDENT SEX*			
Respondent Sex	Geographic Area		
	Statewide	New York City	Upstate
Female	86.2	89.5	81.2
Male	55.2	46.4	61.9

*Table entries are percentages of geographic area samples and do not add to 100.

4. Respondent Ethnicity

Table 7 presents the ethnicity of respondents in the case sample.

Table 7: RESPONDENT ETHNICITY			
Respondent Ethnicity	Geographic Area		
	Statewide	New York City	Upstate
American Indian	0.4*	0.9	0.0
Black	35.1	45.1	25.4
Oriental	1.3	2.7	0.0
Hispanic	20.8	37.2	5.1
White	41.6	12.4	69.5
Other	0.9	0.0	1.8

* Table entries are percentages.

On a statewide basis, respondents were most often White (41.6 percent), followed by Blacks (35.1 percent) and persons of Hispanic origin (20.8 percent). However, this statewide picture does not reflect the variations found in different areas of the state; to wit, in New York City, respondents were most frequently

Black and Hispanic, while in upstate counties, respondents were most often White.

H. Characteristics of Case Children

1. Case Child Age

Case children ranged from new born infants to seventeen and one-half year olds, with an average age of 7.5 years across the state. The New York City and upstate average ages diverged only minimally from this statewide value (6.7 and 8.3 years, respectively). However as depicted in Table 8, the children in the sample were most often from the younger age groups.

TABLE 8: PERCENTAGE OF CHILDREN IN SPECIFIC AGE CATEGORIES*

Age Category	Geographic Location		
	Statewide	NYC	Upstate
0 - 4.99 years	38.5*	46.1	31.4
5 - 9.99 years	26.3	23.9	27.4
10 - 14.99 years	24.7	16.0	27.3
15 - 18 years	11.3	8.3	14.0

*All entries are percentages

This table indicates that, statewide, nearly 40 percent of the sample children were younger than five years of age, although more New York City children fell into this age category (46.1 percent) than did upstate children (31.4 percent). Similarly, approximately a quarter of the case sample was between five and ten years of age throughout the state. Another 25 percent of the statewide sample were in the 10 - 15 age group. Finally, some 11 percent of the sample children were over 15 years old statewide,

with a lower incidence of older teenagers in New York City (8.3 percent) and a higher frequency in the upstate area (14 percent).

2. Case Child Sex

As indicated in Table 9, the majority of case children were female (nearly 57 percent statewide). Upstate counties had a slightly higher incidence of female case children and New York City had fewer female cases but both areas had more females than males. Male case children were 43 percent of the statewide sample, with slightly higher numbers in New York City and a lower incidence upstate.

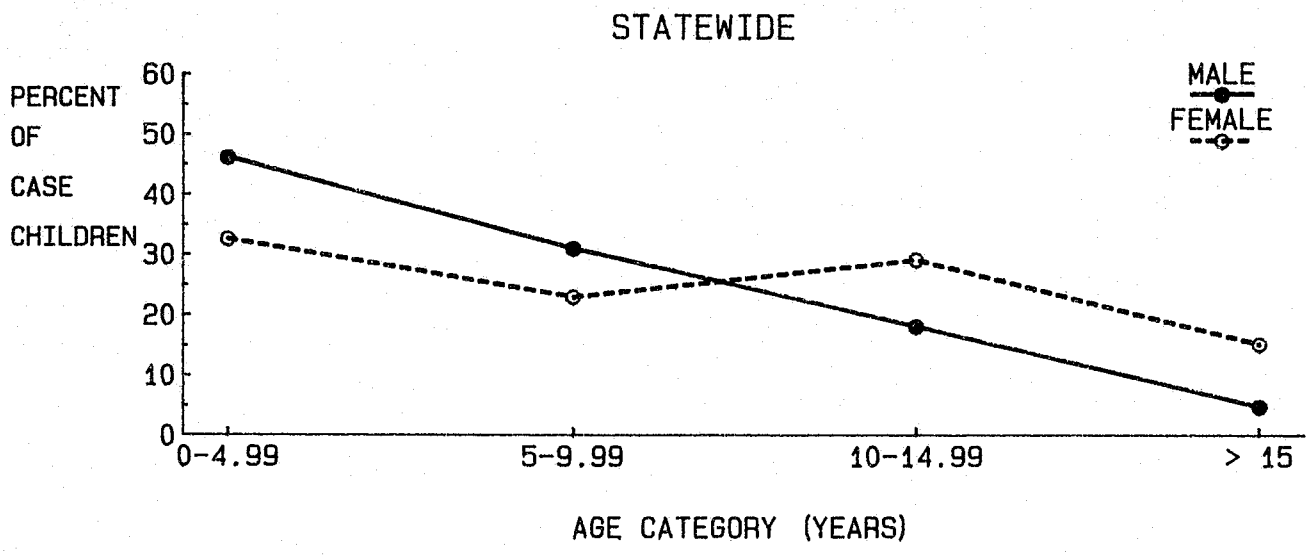
TABLE 9: SEX OF CASE CHILD*

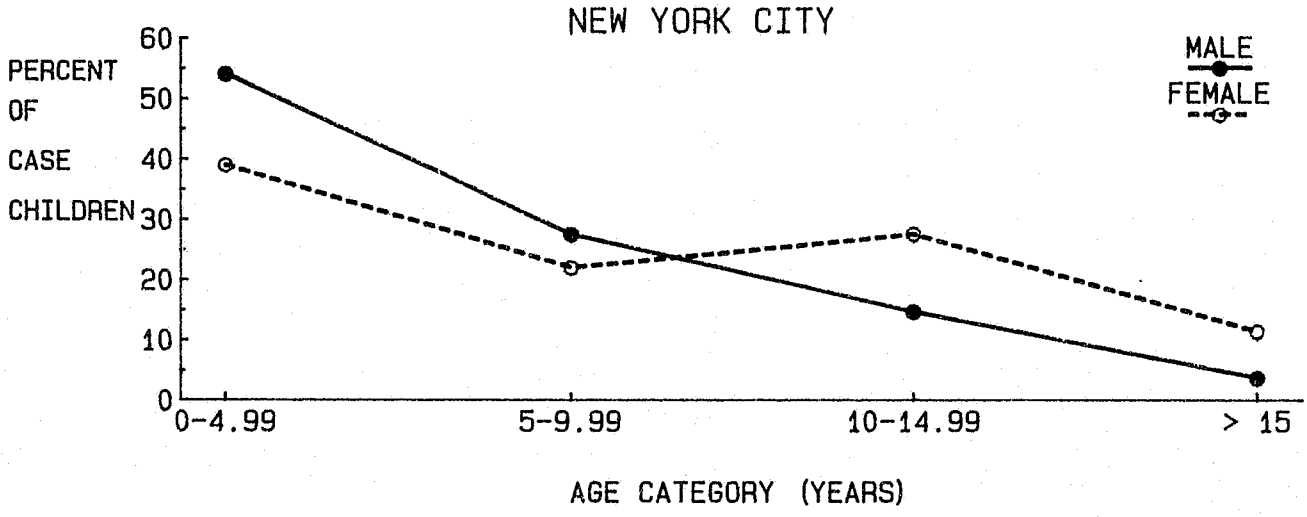
Case Child Sex	Geographic Location		
	Statewide	NYC	Upstate
Female	56.9	52.4	60.9
Male	43.1	47.6	39.1

*Entries are percentages

3. Age of Case Child Compared with Sex of Child

Table 10 and Figure 2 depict the relationship between age and sex of the case children. In general, similar trends are found in both New York City and upstate, in that younger children are more frequently the subjects of child abuse and neglect petitions in the family court. Indeed, as children grow older, the incidence of petitioning generally declines, with the exception of females in the ten to fifteen year age range.





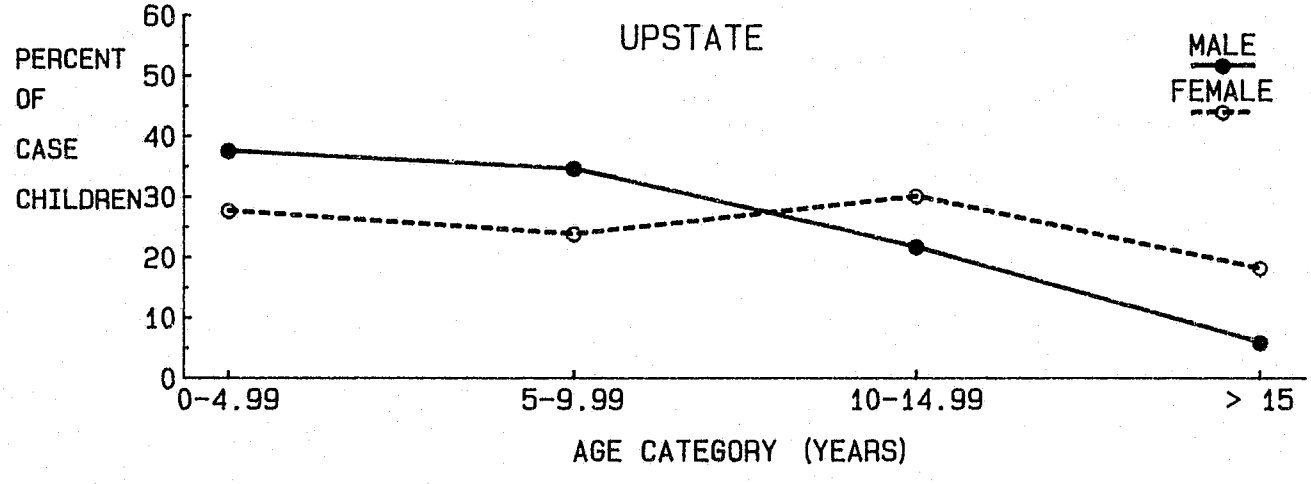


FIGURE 2: CASE CHILD AGE CATEGORY BY SEX

TABLE 10: CASE CHILD AGE CATEGORY BY SEX

Geographic Location	Child Sex	Age Category			
		0-4.99	5-9.99	10-14.99	>/15.00
Statewide					
	Female	32.6%	23.0%	29.1%	15.2%
	Male	46.2%	31.0%	18.1%	4.8%
New York City					
	Female	39.0%	22.0%	27.6%	11.4%
	Male	54.1%	27.5%	14.7%	3.7%
Upstate					
	Female	27.7%	23.9%	30.2%	18.2%
	Male	37.6%	34.7%	21.8%	5.9%

The relationship between age and sex is remarkably similar in the two geographic areas studied. In both cases, petitions relating to male children are more frequent in the younger age ranges (0 to 9.99 years), while petitions relating to female children are more frequent in the older age categories (10-17.99 years). This interaction effect, which is demonstrated in both New York City and in the upstate areas, appears to be produced by a large number of sexual abuse cases filed for older female children.

Although a detailed explanation of this finding is beyond the scope of the present study, it is possible to speculate that the findings reflect in part, the availability of admissible evidence in sexual abuse cases. Where children are old enough to testify appropriately in court, the local department of social services may be more likely to bring a petition than it is regarding the case of a younger (perhaps nonverbal) child.

4. Case Child Ethnicity

As depicted in Figure 3, across the entire state nearly 43 percent of the case children were Black, 41.2 percent were White, and 16 percent were Hispanic. In New York City, a high incidence of Black and Hispanics case children (59 percent and 30 percent respectively), and a low incidence of White case children (11 percent) were found. In upstate counties, White children represented nearly 69 percent of the cases, Blacks 27 percent, and Hispanic children only four percent. These data are roughly comparable to the respondent characteristics presented in Table 7, with the exception of Black children in New York City who appear in considerably greater numbers than Black respondents. This finding may be explained by differential information available from court records on respondents and case children, as well as by varying characteristics of the respondents themselves. Children with other ethnic characteristics (those of American Indian, Oriental and mixed racial heritage) were not included in the presentation because, in total, they generally represented only two percent of the statewide sample.

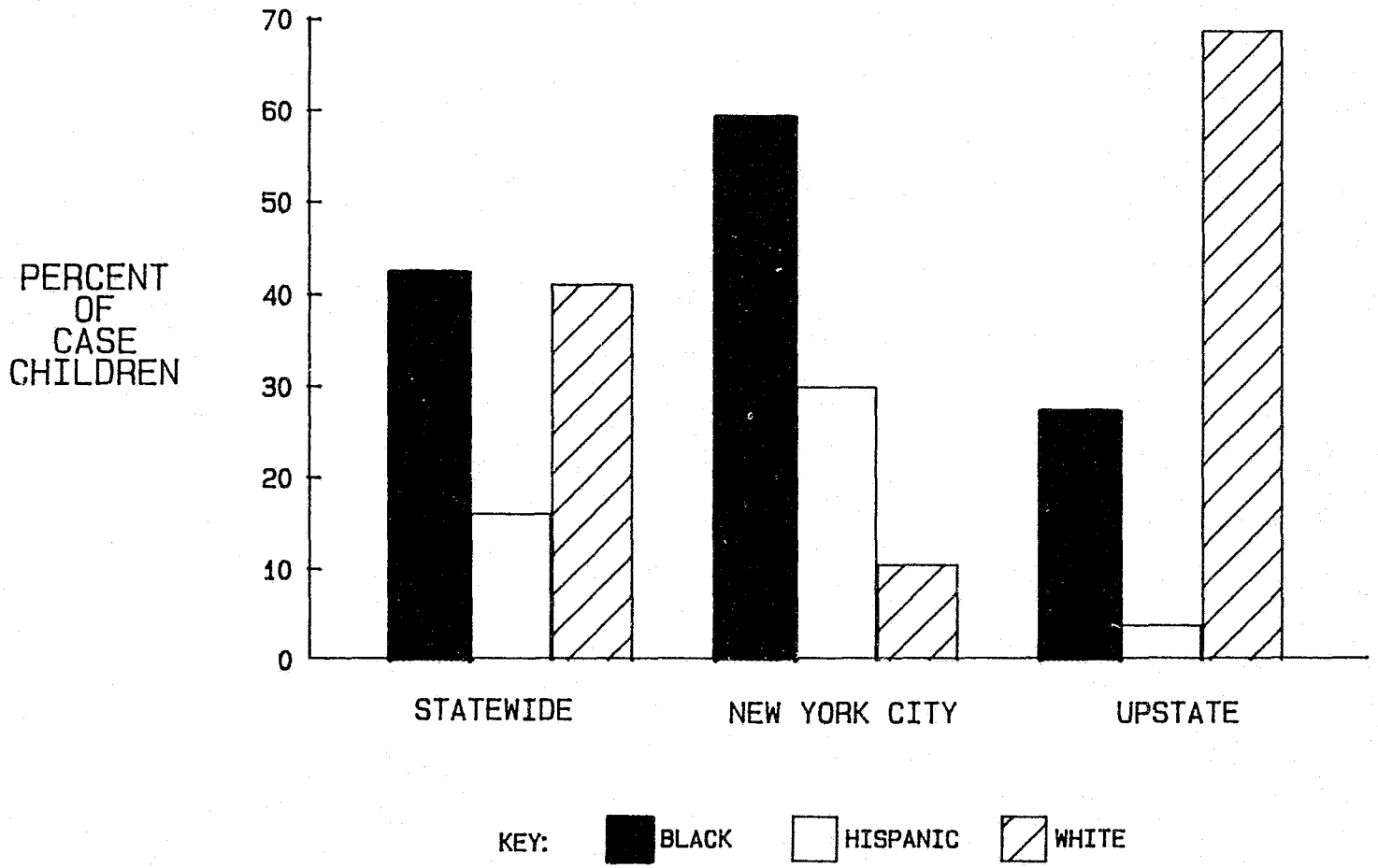


FIGURE 3: CASE CHILD ETHNICITY

I. Petition Characteristics

1. Petition Type

The frequency with which different types of petitions were filed in the entire state, in New York City and in upstate areas, is presented in Table 11. A review of this table indicates that, in general, neglect petitions account for about two-thirds of all Article 10 petitions, both in New York City and upstate while the percentage of abuse petition varies depending on whether joint abuse and neglect petitions are commonly filed in the area. (The latter are referred to as "both" in the table.) New York City apparently files none of these "both" petitions and, thus, the abuse/neglect relationship is approximately one-third to two-thirds.

Table 11: TYPES OF PETITIONS IN DIFFERENT AREAS OF THE STATE

GEOGRAPHIC LOCATION	PETITION TYPE		
	Abuse	Neglect	Both
Statewide	29.1%	67.3%	2.8%
New York City	32.5%	67.5%	0.0%
Upstate	26.5%	68.1%	5.4%

In contrast, about five percent of the upstate petitions are of the "both" variety. Other data in this report suggest that in "both" petitions, the abuse charge is the more serious and is directed toward a single respondent (in sexual abuse cases, this is most typically the alleged perpetrator), while the neglect portion of the petition is directed toward the spouse of the alleged perpetrator, and relates, most commonly, to a failure to protect the child from the perpetrator. Thus, these "both" petitions should constitute a portion of the abuse petition

category and when added to this set, abuse petitions in the upstate area as well as in New York City, represent about one-third of the sample. In other words, the family court deals with about twice as many neglect petitions as it does abuse petitions.

2. Petition Type By Sex of Case Child

Table 12 presents the distribution of abuse and neglect petitions, according to the sex of the child named in each petition, and indicates that female children are much more likely to be named in abuse petitions than are males across the entire state. Similar trends were found both in New York City and in upstate counties. Among abuse petitions statewide, males were named only 28.5 percent of the time while females constituted about 72 percent of all abuse petitions. These data are also presented in Figure 4, which clearly demonstrates the interaction between child sex and petition type.

Table 12: PETITION TYPE BY CASE CHILD SEX*

PETITION TYPE	CASE CHILD SEX	
	Female	Male
Abuse	71.5*	28.5
Neglect	49.5	50.1

* Entries in Table are percentages and are statewide data.

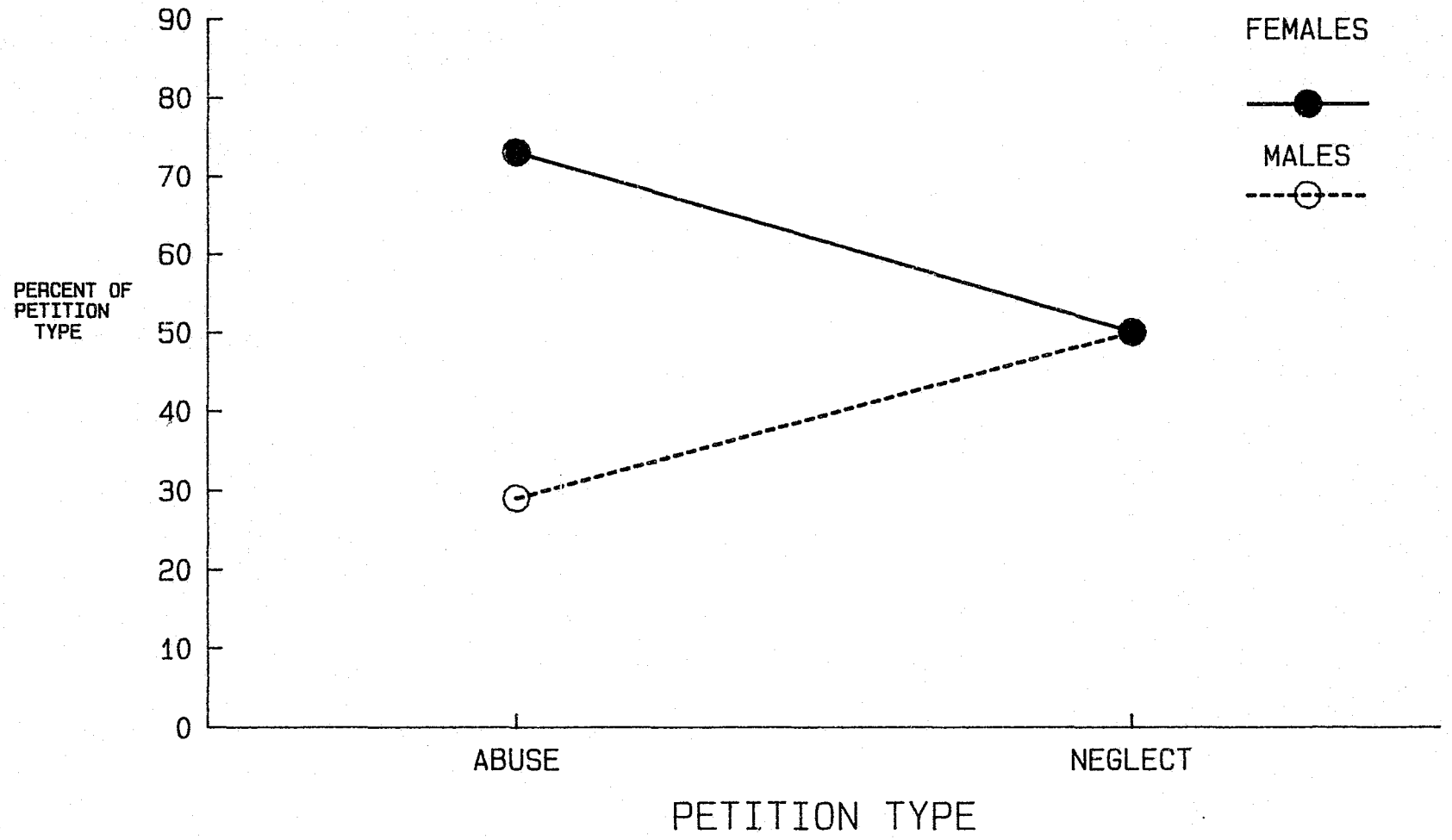


FIGURE 4: PETITION TYPE BY CASE CHILD SEX

3. Identity of Petitioner

The statewide sample indicates that the public child protective agency was the petitioner in over 99 percent of the cases both in New York City and upstate counties. The only other petitioner noted (less than one percent of the time) was the law guardian.

In this context, it should be noted that §1032 of the Family Court Act allows only two persons or groups to originate Article 10 proceedings. (These proceedings are originated by the filing of a petition "in which facts sufficient to establish that a child is an abused or neglected child under...(A)rticle 10 are alleged".* Potential petitioners are a child protective agency or a person under the court's direction. A child protective agency is defined in New York State law as a society for the prevention of cruelty to children (SPCC), a child protective service within a county department of social services, or an agency acting under contract to this local department.

Given this range of possibilities, it is interesting to note that the petitioner in an Article 10 proceeding is almost always a public child protective service in a local department of social services. This study found no instance in which an SPCC or other private agency originated such proceedings.

Law Guardians did not serve as petitioners for children in the sample. This may be attributed to the fact that appointment of a law guardian for a child generally occurs after the Article 10 petition has been filed, although it is possible for a law guardian in another proceeding (such as PINS proceeding) to file a child protective petition if the court so directs.

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*§1031(a) Family Court Act

4. Allegations Contained in the Petition

As depicted in Table 13 and Figure 5, the allegations most frequently cited in the petition (in 20 percent or more of the cases) were, on a statewide basis: alcohol and drug abuse; sexual abuse; lack of food, clothing and shelter; lack of supervision; lacerations, bruises and welts; and excessive corporal punishment. New York City cases had a higher incidence of allegations of alcohol and drug abuse, and of lack of food, clothing and shelter, than other parts of the state.

On the other hand, certain other allegations were extremely rare in the sample, such as fatalities, malnutrition, and other serious forms of physical abuse including fractures, subdural hematomas and internal injuries.

TABLE 13: PERCENT OF CASES WITH A SPECIFIC ALLEGATION TYPE*

ALLEGATION	AREA OF STATE		
	Statewide	NYC	Upstate
Dead on Arrival	0.2*	0.0	0.4
Fractures, Subdural Hematomas, internal injuries	3.2	3.4	3.0
Lacerations, Bruises and Welts	21.6	19.8	23.1
Burns, scalding	3.8	4.2	3.4
Excessive Corporal Punishment	20.2	17.3	22.7
Alcohol, Drug Abuse	25.9	36.7	16.3
Drug Withdrawal/Infant	4.8	8.9	1.1
Lack Medical/Dental Care	12.4	11.8	12.9
Malnutrition	2.4	1.7	3.0
Sexual Abuse	25.7	25.3	26.1
Educational Neglect	11.0	7.6	14.0
Emotional Neglect	4.2	3.0	5.3
Lack of food, clothing, and shelter	25.0	31.6	18.9
Lack of supervision	22.2	21.9	22.3
Abandonment	8.0	11.0	5.3
Inadequate Guardianship	11.6	9.7	13.3

*Entries in table are percentges and do not total 100 because cases may have more than one allegation.

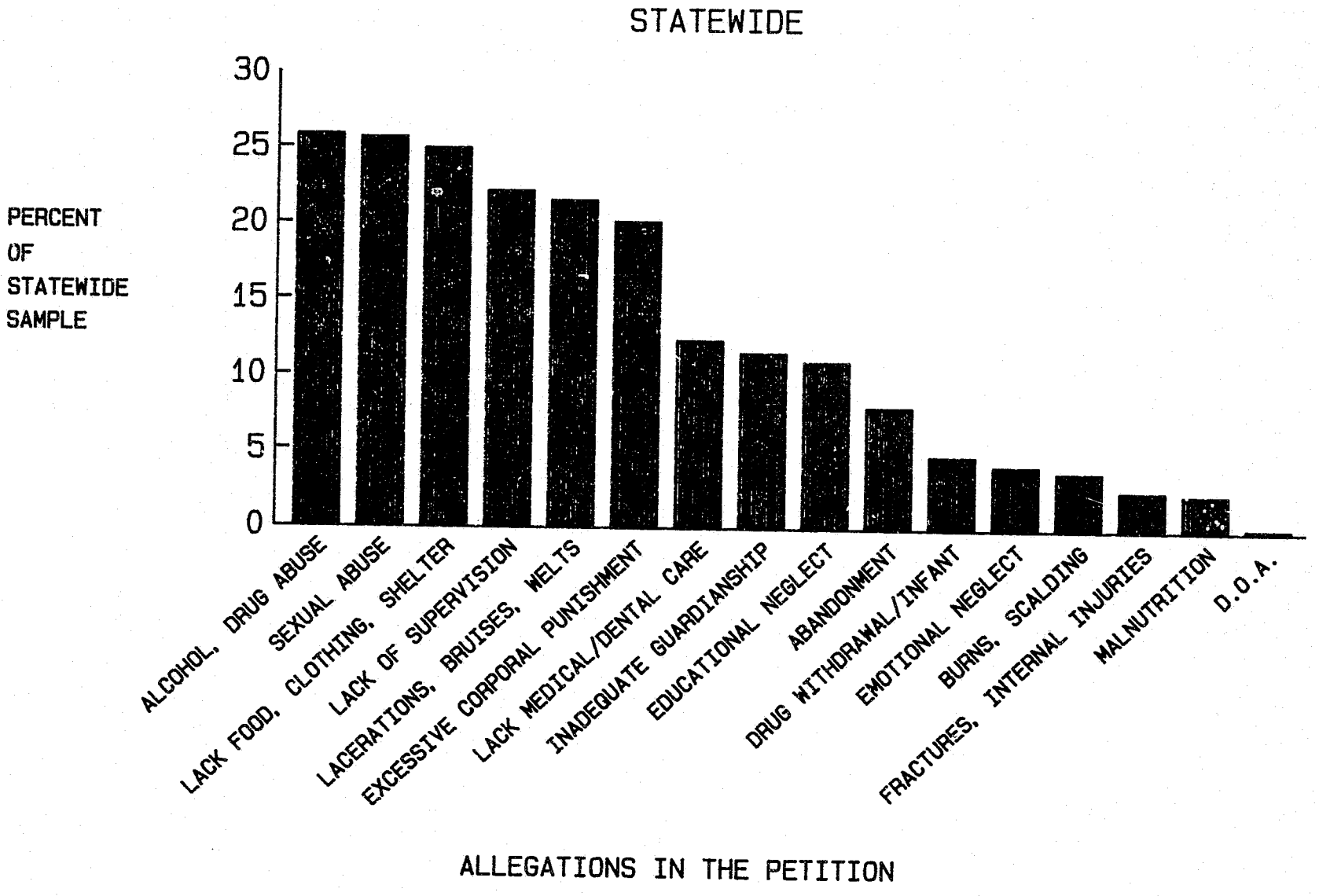

FIGURE 5: PERCENT OF SPECIFIC ALLEGATION TYPES IN THE SAMPLE

5. Allegations in Petition by Age of Child

For the purposes of the following analysis, the case children in the sample were grouped by age into three categories, as follows:

Symbol		Label	Definition
Y	=	young	= less than 5 years old
M	=	middle	= 5 or older & less than 12 yr old
O	=	older	= 12 years and older

The age category data were then related to the specific allegations found in the petitions in order to identify allegation-by-age patterns. These data are presented in Table 14, in which all cases containing a specific allegation are sorted into case child age groups. This type of analysis allows for an assessment of the degree to which certain allegations are associated with a particular age group. For the statewide sample, the following allegations were associated most frequently with young children: dead on arrival; fractures; subdural hematoma and internal injuries; burns, scalding; alcohol or drug abuse; drug withdrawal/infant; malnutrition/failure to thrive; and abandonment.

Petition allegations most frequently associated with children in the middle category included the following on a statewide basis: lacerations, bruises and welts; excessive corporal punishment; educational neglect; emotional neglect; and, inadequate guardianship.

Finally, petition allegations in the statewide sample, most frequently associated with older children included a single category: sexual abuse.

Certain allegations were frequently observed in more than one age category in the statewide data. These included lack of medical and dental care, food, clothing or shelter, and supervision as well as inadequate guardianship, all allegations that are found in young and middle children.

Finally, although sexual abuse allegations are ascribed (above) to older children, it should be noted that more than one-third of these allegations concern middle children.

In general, the findings described in the preceding for the statewide sample reflect both upstate and New York City data.

TABLE 14: ALLEGATIONS IN PETITION BY CASE CHILD AGE CATEGORY*

Allegation	Age Category	Geographic Area: Statewide	NYC	Upstate
Dead on Arrival	Y	100%	0%	100%
	M	0%	0%	0%
	O	0%	0%	0%
Fractures	Y	69%	57%	83%
	M	23%	29%	17%
	O	8%	14%	0%
Subdural Hematoma, Internal Injuries	Y	75%	100%	67%
	M	0%	0%	0%
	O	23%	0%	67%
Lacerations, Bruises, Welts	Y	31%	36%	28%
	M	40%	36%	43%
	O	25%	23%	26%
Burns, scalding	Y	68%	60%	78%
	M	32%	40%	22%
	O	0%	0%	0%
Excessive Corporal Punishment	Y	23%	27%	20%
	M	43%	29%	52%
	O	34%	44%	27%
Alcohol/Drug Abuse	Y	50%	56%	37%
	M	31%	25%	42%
	O	15%	13%	21%
Drug Withdrawal/ Infant	Y	79%	81%	67%
	M	17%	14%	33%
	O	0%	0%	0%

*Table continued on next page

Table 14 (con't)

Allegation	Age Category	Statewide	NYC	Upstate
Lack of Medical/ Dental Care	Y	44%	43%	44%
	M	37%	36%	38%
	O	19%	21%	18%
Malnutrition/ Failure to thrive	Y	75%	75%	75%
	M	25%	25%	25%
	O	0%	0%	0%
Sexual Abuse	Y	18%	25%	12%
	M	36%	37%	36%
	O	42%	33%	49%
Educational Neglect	Y	5%	11%	3%
	M	64%	56%	68%
	O	29%	33%	27%
Emotional Neglect	Y	14%	0%	21%
	M	38%	43%	35%
	O	33%	29%	36%
Lack of food, clothing, shelter	Y	47%	51%	42%
	M	34%	32%	38%
	O	17%	15%	20%
Lack of super-vision	Y	46%	48%	42%
	M	41%	38%	42%
	O	12%	12%	12%
Abandonment	Y	63%	62%	64%
	M	25%	31%	14%
	O	10%	4%	21%
Inadequate Guard-ianship	Y	38%	26%	46%
	M	47%	52%	43%
	O	16%	22%	11%

* Age Category: Y = young = less than 5 years old
M = middle = 5 to less than 12 years old
O = older = 12 years and older

** Percentages are of cases with specific allegation and do not necessarily add to 100 because of missing data.

6. Allegations in the Petition by Case Child Sex

Table 15 relates allegations contained in the abuse or neglect petition with the sex of the case child. On a statewide basis, the following allegations were more frequently associated with female than with male children: subdural hematomas and, internal injuries; burns and scalding; drug withdrawal/infant; sexual abuse; educational neglect; and emotional neglect. Conversely, the following allegations were more frequently associated with male case children: fractures; lack of supervision; and inadequate guardianship. Allegations with a seemingly even distribution across the sexes included: lacerations, bruises, and welts; excessive corporal punishment; alcohol/drug abuse; lack of medical/dental care; malnutrition/failure to thrive; lack of food, clothing and shelter; and abandonment. Variations in these relationships are found when comparing New York City with upstate counties.

The following organization of the allegation-by-sex relationships may help to clarify these findings for the reader.

ALLEGATIONS FOUND MOST OFTEN IN FEMALES	ALLEGATIONS FOUND EQUALLY IN BOTH SEXES	ALLEGATIONS FOUND MOST OFTEN IN MALES
o internal injuries, subdural hematomas	o lacerations, and welts	o fractures
o burns and scalding	o excessive corporal punishment	o lack of supervision
o drug withdrawal/ infant	o alcohol/drug abuse	o inadequate guardianship
o sexual abuse	o alcohol/drug abuse	
o educational neglect	o lack of medical/ dental care	
o emotional neglect	o malnutrition/ failure to thrive	
	o lack of food, clothing, shelter	
	o abandonment	

TABLE 15: ALLEGATIONS IN PETITION BY CASE CHILD SEX

Allegation	Case Child Sex	Statewide	NYC	Upstate
Dead on Arrival	F	100%*	0%	100%
	M	0%	0%	0%
Fractures	F	38%	43%	33%
	M	62%	47%	67%
Subdural Hematoma, Internal Injuries	F	67%	0%	67%
	M	33%	0%	33%
Lacerations, Bruise Welts	F	47%	57%	39%
	M	53%	43%	61%
Burns, Scalding	F	58%	60%	56%
	M	42%	40%	44%
Excessive Corporal Punishment	F	51%	60%	44%
	M	49%	40%	56%
Alcohol/Drug Abuse	F	52%	48%	61%
	M	48%	52%	39%
Drug Withdrawal/ Infant	F	61%	60%	67%
	M	39%	40%	33%
Lack of Medical/ Dental Care	F	47%	48%	45%
	M	53%	52%	55%
Malnutrition/Failure to thrive	F	50%	25%	63%
	M	50%	75%	38%
Sexual Abuse	F	84%	73%	94%
	M	16%	27%	6%
Educational Neglect	F	58%	61%	57%
	M	42%	39%	43%
Emotional Neglect	F	67%	86%	57%
	M	33%	14%	43%
Lack of food, clothing, shelter	F	45%	41%	51%
		55%	59%	49%
Lack of supervision	F	44%	38%	50%
	M	56%	62%	50%
Abandonment	F	55%	58%	50%
	M	45%	42%	50%
Inadequate Guard-ianship	F	40%	35%	44%
	M	60%	65%	56%

*Entries in the table are percentage of cases with allegation associated with male or female case children.

7. Allegations in the Petition by Petition Type

Child protective petitions in New York State are typically requests to the court that a child be adjudicated an abused or neglected child and that the court remove the child from the home, enter an order of protection, order services or take such other action as may be necessary to protect the child. Petitions are filed with the court on specific forms which are given a title ("Abuse" or "Neglect") that specifies the type of petition being filed. Infrequently, as noted above, a case may represent a combination of abuse and neglect allegations. For example, it may be alleged that a father has sexually abused his child (abuse) and that the mother in the case failed to protect the child from the abuse (neglect). In these latter types of cases, allegations of both abuse and neglect are contained within the same petition. These cases are referred to in the present report as "Both" (abuse and neglect) cases and are, in many of the following analyses, folded into the abuse category because such cases are treated as abuse cases by the court in meeting calendaring and procedural requirements.

Table 16 provides, for each allegation type, the percentage of times that allegation was included in an "Abuse", or "Neglect", or "Both" petition. In reviewing these data, earlier findings in this chapter have noted that (when "both" petitions are counted as "abuse" petitions), on a statewide basis, about one-third of the sample were abuse petitions and two-thirds were neglect petitions, reflecting patterns of child abuse reporting generally. Because of this low rate of filing abuse petitions, only deviations from a 33%/67% abuse/neglect ratio can be considered meaningful.

Given this framework for interpreting the data, the following conclusions can be drawn regarding allegation-by-petition type data:

TABLE 16: ALLEGATIONS IN PETITION BY PETITION TYPE

Allegation	Petition Type*	Percentage	Allegation	Petition Type	Percentage
Dead on Arrival	A	100%	Emotional Neglect	A	14%
	N	0%		N	86%
	B	0%		B	0%
Fractures, Subdural hematoma, internal injuries	A	63%	Lack of food, clothing, shelter	A	6%
	N	31%		N	94%
	B	6%		B	0%
Lacerations, bruise welts	A	33%	Lack of super-vision	A	6%
	N	60%		N	94%
	B	6%		B	0%
Burns, scalding	A	42%	Abandonment	A	0%
	N	47%		N	100%
	B	11%		B	0%
Excessive Corporal Punishment	A	35%	Inadequate guardianship	A	16%
	N	58%		N	83%
	B	6%		B	2%
Alcohol/Drug Abuse	A	10%	Malnutrition/ Failure to Thrive	A	0%
	N	92%		N	92%
	B	8%		B	8%
Drug Withdrawal/ Infant	A	0%	Sexual Abuse	A	81%
	N	100%		N	12%
	B	0%		B	5%
Lack of Medical/ Dental Care	A	11%	Educational Neglect	A	4%
	N	87%		N	96%
	B	2%		B	0%

* Key for Petition Type: A = Abuse
N = Neglect
B = Both

- Statewide, abuse petitions were most often associated with serious physical injury (including fractures, subdural hematomas, and other internal injuries) and with sexual abuse.

- Neglect petitions were most frequently associated with allegations of alcohol/drug abuse, drug withdrawal (infant), lack of medical/dental care, malnutrition/ failure to thrive, educational neglect, emotional neglect, lack of food, clothing and shelter, lack of supervision, abandonment, and inadequate guardianship.

- Very few "both" cases were filed and what few there were, were filed exclusively in the upstate area. There appears to be very little relationship with allegation type although the largest rate of filing "both" petitions occurs in association with the allegation, "burns, and scalding".

8. Allegations in Petition by Pre-Petition Removal

As indicated earlier in this chapter, the majority of case children were not removed from the home prior to the filing of a petition with the family court, according to the documentation in the court record. However, when pre-petition removals were documented, allegations associated with such removals, as shown in Table 17, embraced virtually the entire lexicon of allegation types, in no individual allegation associated with pre-petition removal with more than 50% of such removals.

Among the various allegations, removals occurred with the highest frequency when the petitions contained allegations of severe physical injury (fractures, subdural hematoma, or internal injuries; lacerations, bruises, and welts; and burns and scalding), or when petitions contained allegations that often connote serious neglect (lack of supervision; malnutrition/failure to thrive; and inadequate guardianship). Of

singular interest, allegations of sexual abuse were rarely (only 12 percent of the time) associated with pre-petition removals. This finding may be partially explained as noted earlier by an absence of documentation in court records of FCA §1024 emergency removals that are ultimately approved by the court after §1027 preliminary hearings in child abuse proceedings (see Chapter 5 for explanation). Other findings in this report indicate that, rather than removing sexually-abused children from their home, family courts, not infrequently, issue an order of protection requiring the respondent to vacate the home. Additionally, these cases may be heard by the Family Court as the same time as criminal court proceedings arising from the same allegations.

TABLE 17: ALLEGATIONS IN PETITION BY PRE-PETITION REMOVAL

Allegation	Pre-petition Status*	Percent of Statewide sample
Dead on Arrival	R	0%
	NR	100%
Fractures, Subdural Hematoma, internal injuries	R	31%
	NR	69%
Lacerations, bruises, welts	R	25%
	NR	75%
Burns, scalding	R	42%
	NR	58%
Excessive corporal punishment	R	15%
	NR	85%
Alcohol/drug abuse	R	10%
	NR	90%
Drug/withdrawal infant	R	4%
	NR	96%
Lack of Medical/ dental care	R	19%
	NR	81%
Malnutrition/Fail-ure to thrive	R	25%
	NR	75%
Sexual abuse	R	12%
	NR	88%
Educational neglect	R	7%
	NR	93%
Emotional neglect	R	14%
	NR	86%
Lack of food, cloth-ing, shelter	R	18%
	NR	73%
Lack of Supervision	R	27%
	NR	73%
Abandonment	R	15%
	NR	85%
Inadequate guardian-ship	R	26%
	NR	74%

*Pre-Petition Status: R = Removal; NR = Non-Removal

CHAPTER 5: FINDINGS: PRE-PETITION REMOVALS OF CHILDREN FROM THE HOME

A. Family Court Act and Related Statutory Removal Provisions

For an understanding of the findings of this chapter, it is important to note that New York State statutes provide a number of different methods for removing children from the home which are relevant to the present study. The relationship between the type of removal and the associated Article 10 proceeding is complex. In consequence, each type of removal is described in some detail in the following:

- Social Services Law §358-a - establishes a process whereby a parent can voluntarily place a child in foster care by signing an appropriate instrument, the components of which are specified by statute and regulation. Although the present study is not designed to assess these "voluntary placements", the possibility of using them as a means of "settling" Article 10 cases required that an, at least, cursory measurement of the frequency of 358-a placements be a part of the present study.

  These §358-a voluntary placements require the local department of social services to petition the family court for judicial approval of the placement within 30 days of that placement, if the child is expected to remain in care for more than 30 days. Section 358-a also implements the "reasonable efforts" mandate of PL.96-272, the Federal Adoption Assistance and Child Welfare Act of 1980, whereby "reasonable efforts" must be made by the local social services department to reunite and rehabilitate the family.

- Family Court Act §1021 - establishes a means for removing children from their home when they meet the legal definition of "abused or neglected child" (as described earlier in this report), and when the parent consents to this removal.

  When a §1021 removal takes place, the local department of social services is required (when the child is not returned home within three days of the removal) to file an Article 10 petition with the family court "forthwith".

- Family Court Act §1022 - establishes a means of removing a child from the home, pre-petition but pursuant to a judicial order, when there appears to be imminent danger to the child's life and health and when the parent either is absent or refuses to consent to the removal and if there is not time to file an Article 10 petition and hold a preliminary hearing before the removal. These §1022 removals with prior judicial approval require that the local department of social services file an Article 10 petition within three days of the court order for removal.

- Family Court Act §1024 - provides for extreme measures in situations where the need to remove a child from his or her home is urgent and compelling (that is, there is imminent danger to the child's life or health) and there is no time to apply for a §1022 court-ordered pre-petition removal. In these situations where the child is in danger, and the parent is absent or refuses to allow the removal, and time is short, the Family Court Act cuts away all legal barriers and allows for the immediate emergency removal of that child by a child protective worker without prior judicial approval and without parental consent.

These §1024 or emergency removals carry with them a requirement that the child protective agency making the removal file an Article 10 petition with the Family Court forthwith.

It should be noted that these various types of removal cover a range of potential situations, from something as simple as a parent arranging for care for his child during a prolonged, but, conceivably, temporary absence (for example, when a single parent must be hospitalized) to the extreme instance where a child is in such danger that immediate removal is deemed necessary (as in emergency removals). In fact, Douglas Besharov notes, in his Practice Commentaries on the Family Court Act, that,

> The provisions...establish a continuum of consent and urgency and mandate a hierarchy of required review before a child can be removed from his home. ...If the parents do not consent, a child may be removed from their custody only if removal is necessary to avoid 'imminent danger to the child's life or health.' Whether prior judicial authorization is required depends upon the urgency of the circumstances. *

This continuum of consent and urgency is depicted in Table 18 whereby the statutory petition filing requirement is shown as a function of the availability of parental consent and the immediacy and severity of risk to the child. It can be noted that the length of time to file a petition with the family court following removal varies directly with the presumed urgency of the case and with the availability of parental consent. As such,

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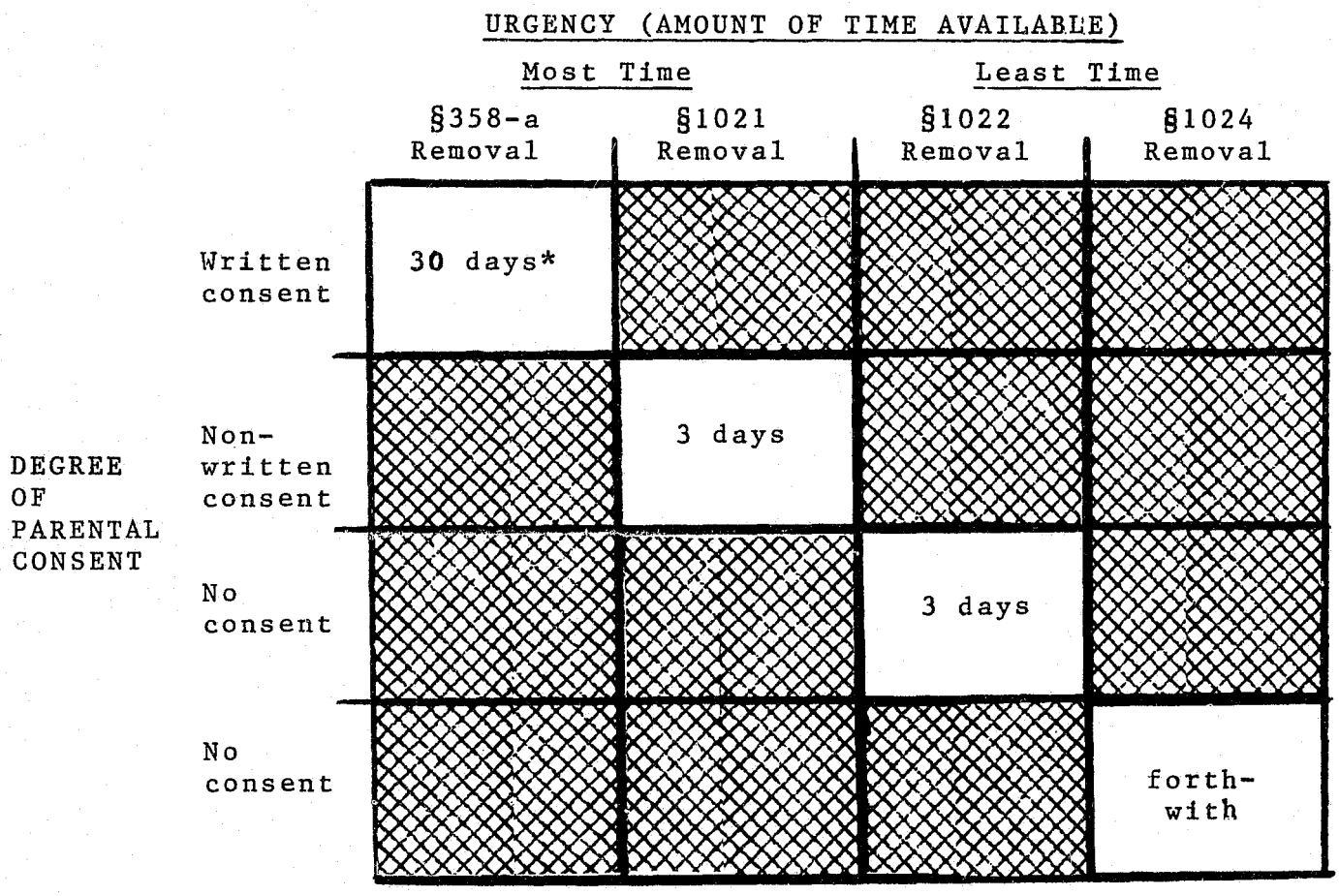
* Besharov, Douglas A. Practice Commentaries: McKinney's Consolidated Laws of New York, Annotated. Book 29A - Judiciary: Family Court Act. West Publishing Co., St. Paul Minnesota, 1983.

TABLE 18: Maximum number of days allowed for filing petition after removal, based on varying urgency of the removal and availability of parental consent.*



* Entries in table are maximum number of days allowed for filing petition with court after removal of child from the home.

voluntary placements require filing within 30 days; temporary removals with consent and court-ordered removals require filing within three days; while Article 10 petitions following emergency removals must be filed "forthwith".

Finally, two additional events during Family Court child protective proceedings provide the means for the removal and placement of the child. It should be noted that both of these occur after initiation of the proceeding, that is, after an Article 10 petition has been filed with the court. Each is described briefly in the following:

- Family Court Act §1027 - requires that a hearing be held as soon as possible after the filing of a petition to assess the need for protection of the child. These §1027 hearings are required for abuse cases and for those in which there was a prior removal without court order. As a result of this hearing, the court may issue a number of orders, one of which is a preliminary order of placement.

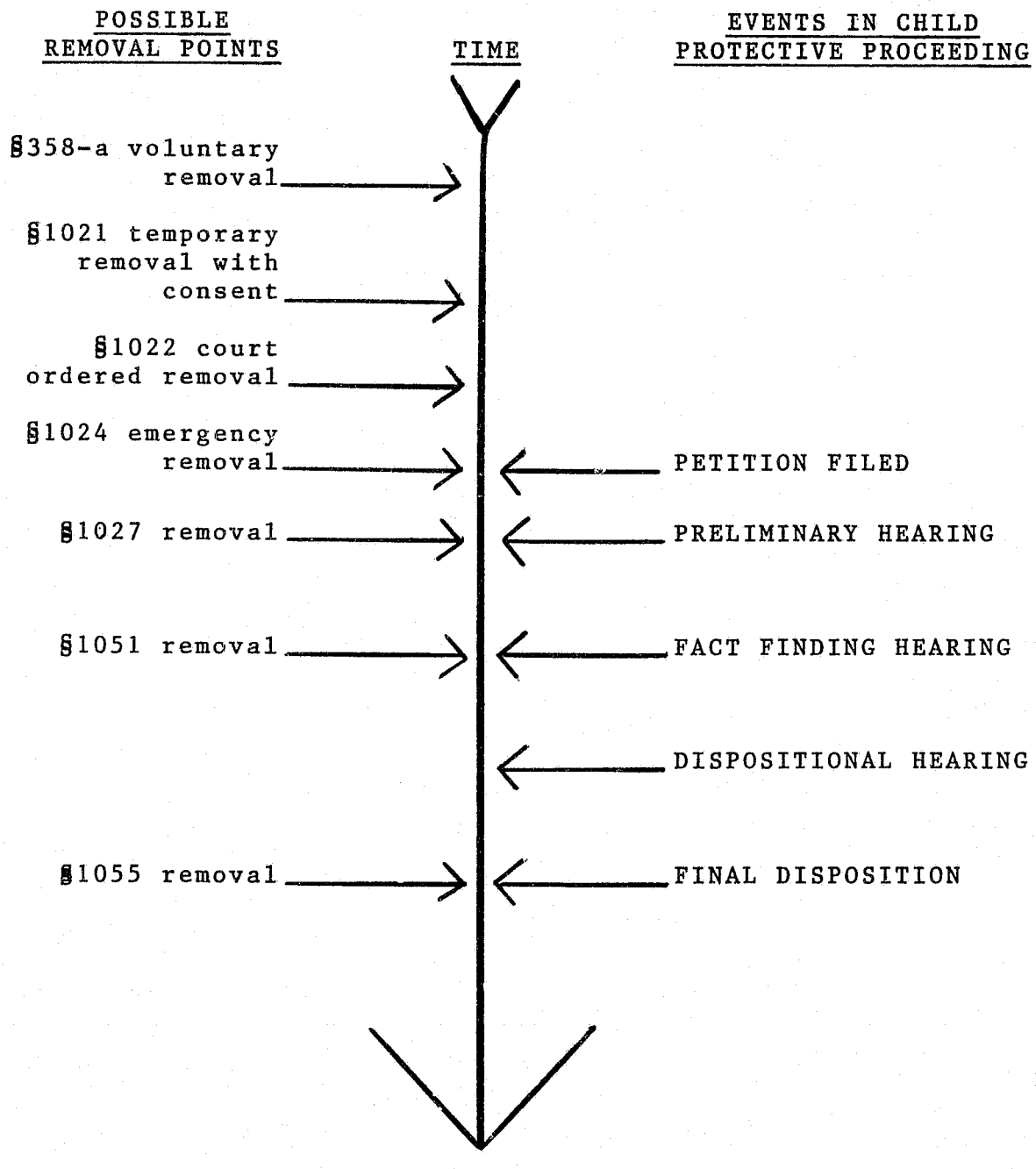
  There is no requirement built into the statute or case law for the presence of the parents at a §1027 hearing. Hence, it is quite possible to hold an initial inquiry into the facts of the case and to order a removal of the child without the presence of or representation for the respondent. The parents are accorded the right to apply for the return of the child through §1028 of the Family Court Act, and the court must within three days, hold an additional hearing to determine whether the child should be returned home. A fuller explanation of 1028 hearings appears later in the report.

- Family Court Act §1055 - provides for the placement of a child in foster care for up to 18 months, as one of a set of final dispositional orders made by the court at the end of the child protective proceeding. (In 1989 the New York State Legislature reduced the initial placement period to not more than 12 months.) As such, this type of removal is not tied to pre-petition events and is reviewed in more depth later in this report.

For the convenience of the reader, Table 19 presents a time line in which the various types of removal and placement orders available to the court are depicted relative to a simplified version of the various formal events during the child protective proceeding.

The reader may wish to refer to these above explanations of the New York State placement statutes when such provisions are discussed throughout this report.

TABLE 19: Time line depicting possible removal points relative to some of the events in a child protective proceeding.



B. Summary of Findings: Pre-petition Removals, Preliminary Hearings, and Applications for Return of the Child

The findings presented in this chapter regarding both pre-petition removals and §1027 removals, parameters of §1027 preliminary hearings, and of the §1028 application process are reviewed briefly below.

1. Pre-petition Removals

- Based on existing documentation in the court records, less than 20 percent of all Article 10 cases involve a pre-petition (§1021, §1022, §1024 FCA or §358-a) removal.

- The documented pre-petition removal rate in the upstate area is higher than in New York City (27 vs. 9 percent).

- Prior to the petition, more children in New York City are residing outside of the home (retained in hospital, staying with relatives) than is the case upstate (18 vs. 7 percent).

- The average number of days to file a petition with the family courts was 8.2 days statewide. Although the statutory limit for filing is three days, almost half of the petitions (43.6 percent) were filed late (more than three days after removal). Compliance with the three day statutory limit was higher upstate than in New York City. Statutory, as well as administrative remedies, have addressed this problem.

- Removals occur at about an equal rate in abuse and neglect petitions. That is, about one-third of removals and of non-removals are abuse cases; the rest are neglect.

- Cases with pre-petition removals begin faster than do non-removal cases (10.2 vs. 14.5 days, on the average from filing to the initial court appearance), and take slightly longer to proceed from petition filing to final disposition (averages of 127 vs. 123 days).

2. Preliminary Hearings

- Preliminary hearings to assess the child's need for protection were held an average of 8.7 days after the petition was filed with the family court, although two-thirds of preliminary hearings are held on the same day that the petition is filed.

- Almost half of all preliminary hearings statewide occur prior to the initial court appearance and are, thus, ex parte hearings. This finding typifies proceedings in New York City and major urban upstate counties. Smaller upstate counties are much less likely to hold such ex parte preliminary hearings.

- The most common order issued following a preliminary hearing was removal of the child (41 percent of the cases statewide; 59 percent in New York City; 25 percent, upstate).

- In 30 percent of the cases (more commonly upstate), temporary orders of protection were issued as preliminary orders.

- Almost one-third of the time (again, more commonly in the upstate areas), no preliminary orders were issued by the court.

- Respondents were present at the preliminary hearing only 23 percent of the time in New York City and 54 percent of the time in upstate areas.

- Following preliminary hearings, temporary custody of the child (when it changed) was granted most frequently (60 percent) to the local department of social services following preliminary hearings.

3. **Section 1027 Removals**

- Statewide, only about 20 percent of cases have a pre-petition removal governed by §1021, 1022 and 1024. When §1027 removals are also counted, the early removal rate soars to 56 percent.

- New York City practices include very few documented pre-petition removals but a large number (64 percent) of §1027 removals. Major metropolitan upstate counties performed in a similar manner.

- Small rural upstate counties did very few removals at the §1027 hearing but, in contrast, made most of their removals under §1021, 1022 and 1024 with these removals documented in the court record.

- In cases with §1027 judicial approval of prior §1024 emergency removals, the case family was known to the child protective system for two years prior to removal of the child and filing the Article 10 petition with the court.

4. Relationship of Early Removal (Prior to Filing of Petition or During Early State of Proceeding) to Other Variables

- Early removals are associated more than half the time with cases in which allegations of serious physical abuse, drug/alcohol abuse, and serious neglect are made.

- Cases with a final order of placement are much more likely to have had an early removal (62 percent) than not. The dismissal/withdrawal rate is lower among cases with early removals than cases where the child was left home. In New York City, final orders of protection are more likely to be issued in non-early removal cases, but this is not the practice in the upstate areas.

- Early removal and non-removal cases were found to be settled at essentially the same rate. That is, regardless of the early removal status of the child, about 70 percent of the cases were settled.

5. Applications for Return of the Child following Early Removal

- Only 16.5 percent of parents whose children were removed from the home early in the child protective proceeding applied pursuant to §1028 for the return of the child.

- Parents charged with abuse were about twice as likely to make §1028 applications as parents charged with neglect.

- Applications for §1028 hearings were denied 6 percent of the time.

- When §1028 hearings were held, only about 20 percent were successful in obtaining a return of the child. Out of all early removal cases, however, the child was returned home only 4 percent of the time.

- In New York City, parents who contested their cases were much more likely to apply for a §1028 return of their child than parents who settled their cases. In contrast, in the upstate area, parents who settled their cases were much more likely to have applied for a §1028 hearing than were parents who had contested the case.

- In spite of the statutory requirement for a §1028 hearing within 3 days after the application was filed, the average time, statewide, between the application for and the actual §1028 hearing was 12 days. (New York City's time was longer, 19 days, and the upstate time was shorter, 7 days.) However, about half (53 percent) of the hearings were held within 3 days of the §1028 application.

- When §1028 applications are successful, the child is returned home fairly quickly; 10 percent of these children were returned home within 5 days of the §1028 application.

C. Findings: Pre-Petition Activities and Petition Characteristics

1. Removals from the Home; Non-removals

Data presented in Table 20 indicate that, statewide, nearly 70 percent of the case children remain in the home prior to the filing of the child protective petition. This finding, based as it is on documentation in the court records, may be extremely conservative. That is, many more children may actually be in out-of-home care prior to petition filing than is reflected in court records. Family court and social services officials in New York City and in some of the large upstate counties described to project staff what is apparently a common practice: to wit, the child is removed from the home, and, at a later date, the petition is filed with the court and a §1027 hearing is simultaneously held. The court issues a preliminary order of removal at the time; in effect, granting a judicial approval of a removal that may have occurred considerably earlier in time. These practices, described in greater detail later in this chapter, result in a family court record that contains no documentation of the pre-petition removal but, instead, incorporates the removal of the child from the home as part of a §1027 preliminary court order.

TABLE 20: PRE-PETITION ACTIVITY*

Pre-Petition Activity	Geographic Area		
	Statewide	NYC	Upstate
Removal with parental consent, signed agreement on file (§358-a removals)	2.5%	0.4%	4.2%
Removal with parental consent, no signed agreement on file (1021 removals)	1.4%	0.0%	2.7%
Removal pursuant to court order without parental consent (§1022 removals)	4.3%	0.9%	7.3%
Emergency removal (no court order) (§1024 removals)	10.3%	7.5%	12.7%
Total removals	18.5%	8.8%	26.9%
Other (includes child in hospital, child with grand-parent, etc.)	11.9%	18.1%	6.5%
No removal	69.6%	73.1%	66.5%

*Pre-Petition Activity includes only those removals documented in the case record. Section 1024 emergency removals not-so-documented, but approved in later §1027 hearings are <u>not</u> included above.

The data in Table 20 are, thus, presented with the caveat described above. As indicated in this table, pre-petition removals with parental consent (both with and without a signed agreement in the file), were made for 3.9 percent of the cases, this occurring almost exclusively in counties outside New York City. Removals without parental consent and pursuant to court order (§1022 removals) were made in 4.3 percent of the cases statewide, again mostly with respect to upstate cases. Emergency removals without court order (§1024 removals) were made in 10.3 percent of the statewide sample, with upstate counties registering higher percentages and New York City lower (these latter removals are probably much higher than the record suggests, as noted above). In sum, total removals from the home prior to the filing of the petition were 18.5 percent statewide, with upstate frequencies at nearly 27 percent and New York City removals at a lower, nine percent. Other pre-petition activities noted (including retention of the child in hospital, or with grandparents) accounted for some 12 percent of the statewide sample, with a higher incidence (18.1 percent) for New York City and a low frequency (6.5 percent) upstate.

As noted above, the frequencies presented in this table, in particular the §1024 emergency removals, are quite low relative to the number of children who were actually in care during the Article 10 proceedings. These data cannot be considered complete because of the court documentary practices in some areas of the state. Findings presented later in this chapter relating to §1027 removals, flesh out these data and give a more accurate representation of pre-petition placements.

2. Time Between Pre-petition Removal and Filing of Petition

The statewide data indicate that, on the average, the number of days which elapse between removal of the child from the home and the filing of the petition with the court is 8.2 days with a range of 0 to 178 days. This value reflects the range of local practices throughout the state.

However, as Table 21 indicates, in spite of this rather large range of values, most of the petitions (56.4 percent) were filed within three days of the pre-petition removal. Of these, 13.8 percent were filed on the same day that the child was removed from the home. Reference back to the statutory filing requirements presented in the beginning of this chapter indicates that, with the exception of Social Services Law §358-a voluntary removals (of which there were very few in the present study), pre-petition removals carry with them a requirement that an Article 10 petition be filed within, at most, three days after the removal. (Emergency removals require that the petition be filed "forthwith".)

Hence, it is somewhat disquieting to note that in almost half of the cases (43.6 percent) in which there was a pre-petition removal, the petition was filed late, i.e., more than three days after the removal. Most of these late filings (58.5 percent) occurred within the next four days (that is within the first week after the removal), while another 24.4 percent of the late filings occurred within two weeks of the removal. Almost one-fifth of the late filings (17.1 percent) occurred more than two weeks after the removal and, as noted, these values extend up to 178 days (or almost six months) after the removal.

TABLE 21 : NUMBER OF DAYS BETWEEN PRE-PETITION REMOVAL AND FILING THE PETITION

GEOGRAPHIC LOCATION	PETITION FILING STATUS		
		TIMELY PETITIONS	LATE PETITIONS
	STATEWIDE	56.4	43.6%
	NEW YORK CITY	44.8%	55.2%
	UPSTATE	61.5%	38.5%

GEOGRAPHIC LOCATION	PETITION FILING STATUS				
	TIMELY PETITIONS		DISTRIBUTION OF LATE PETITIONS		
	SAME DAY	WITHIN THREE DAYS	>3 DAYS, <1 WEEK	>7 DAYS, <2 WEEKS	>2
STATEWIDE	13.8%	56.4%	25.5%	10.6%	7.4%
NEW YORK CITY	20.6%	44.85%	13.8%	27.6%	13.8%
UPSTATE	10.8%	61.5%	30.8%	3.1%	4.6%

In 1985 when these cases were before the family court, there was no statutory provision for extending the time in which a petition could be filed after removal. Such a provision was added to the law in 1987, whereby family courts may now order an extension in §1024 emergency removals only upon good cause shown, of up to three court days from the date of...(the) "child's removal" (FCA §1026 (c)). In addition, Committee discussions with family court and social services personnel indicate that the incidence of late filings has been reduced in recent years.

The New York City data demonstrate a pattern similar to the statewide. Almost half of these petitions (44.8 percent) were filed within three days of the removal. Twenty-one percent of the petitions were filed on the same date as the removal. Late filings characterized over half (55.2 percent) of the pre-petition removal sample. Of late filings, 25 percent were filed within the next four days (or one week from the removal; 50 percent were filed within two weeks of the removal; and the final 25 percent were filed more than two weeks after the removal.

Upstate data indicate a higher degree of compliance with filing requirements. Here, 61.5 percent of the petitions were filed within three days of the removal. Almost 20 percent of these were filed on the same day as removal of the child. While more than one third of the petitions (38.5 percent) were filed late, most of these (80 percent) were filed within one week of the removal.

3. Pre-petition Removal by Petition Type

On a statewide basis, (see Figure 6), there appears to be no discernible difference between the pre-petition removal rates for abuse cases and for neglect cases.

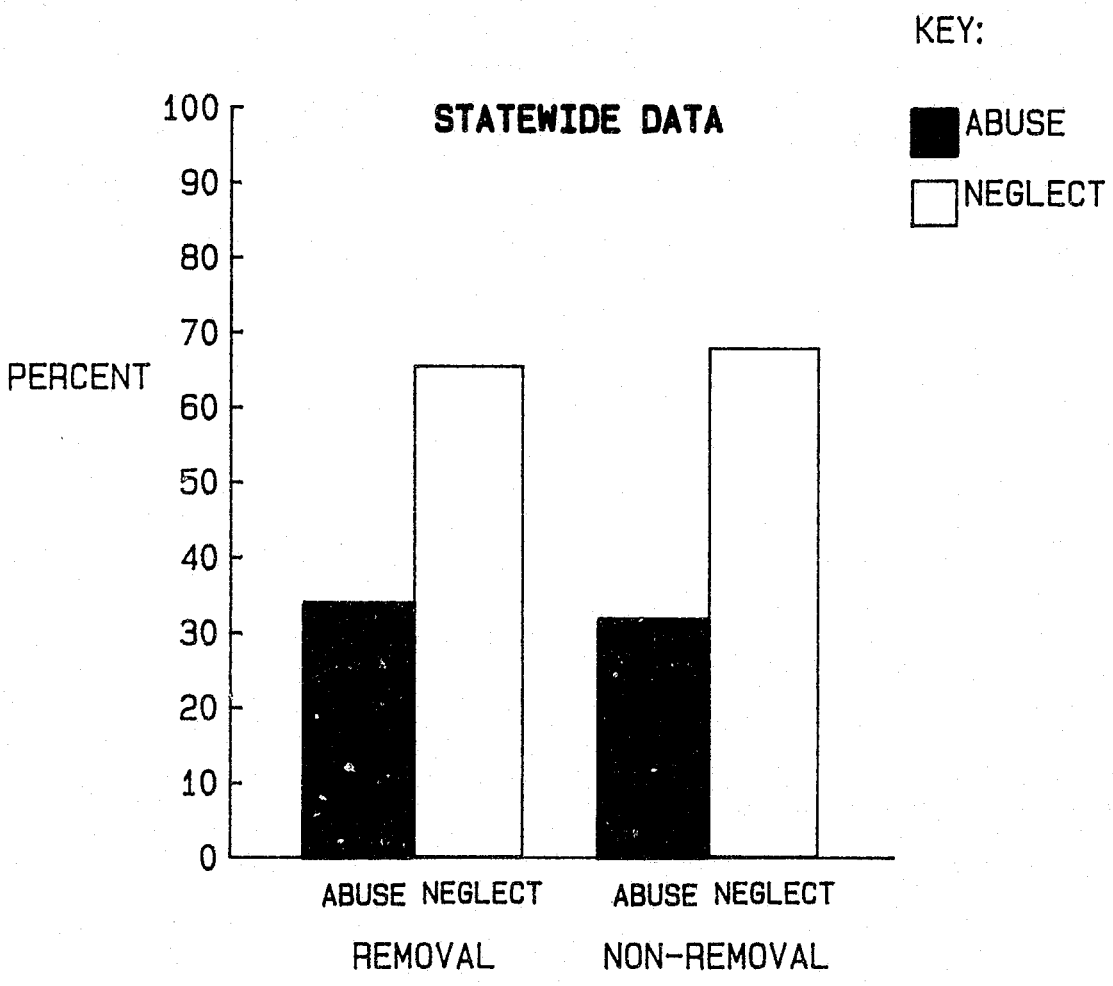


FIGURE 6: PERCENT OF ABUSE AND NEGLECT CASES WITH PRE-PETITION REMOVAL

That is, when cases are sorted into two categories (removal and non-removal) and the percentage of abuse and neglect petitions is compared across categories, the distribution of these two types of cases are remarkably similar with respect to petition type. To wit, approximately one-third of removal cases and one-third of non-removal cases involve abuse petitions; the remaining two-thirds of both removals and non-removals are neglect cases.

This pattern was consistent throughout all regions of the state, and would seem to indicate that abuse and neglect petitions can be equally serious. In other words, if the need to remove a child from the home reflects the presence of danger to the child and an urgency regarding removing the child from that danger, then one would expect to find higher removal rates in the more serious cases.

However, if the assumptions underlying Article 10 are correct (where abuse cases are accorded more serious attention under the law than neglect cases), then one would expect to find higher rates of abuse cases within the "removal" category and higher rates of "neglect" cases within the "non-removal" category. Instead, one finds about the same percentages of abuse and neglect petitions regardless of whether or not removals took place, and this percentage reflects the overall distribution of abuse and neglect cases in the entire sample (that is, about one-third abuse and two-thirds neglect).

4. Start-up Time and Case Length

For the purposes of the present study, two time measures were identified that would characterize the rapidity with which the courts process child protective cases. These measures, "start-up time" and "case length," are defined in the following.

- Start-up time - the number of days from filing the petition until the initial appearance of the respondent(s) in the court.

- Case length - the number of days from filing the petition until final disposition of the case.

It seems reasonable to assume that these criteria would reflect the degree to which a case is considered "serious," in that, "serious" cases should start faster (because the court would feel more urgency regarding immediate intervention) and take longer to process (because of the complexity of the case). In other words, start-up time would be shorter and case length longer in these serious cases.

Based on the assumption that pre-petition removal cases are more serious than non-removal cases, it can be hypothesized that start-up time would be shorter and case length longer for the removal cases. The data confirm this.

As presented in Figure 7, statewide, the average start-up time for child abuse and neglect cases involving removal of the child from the home prior to the filing of the petition, was 10.2 days; for non-removal cases, this value was somewhat higher, 14.5 days. Moreover, case length for removal cases was higher than for non-removals: 127.1 days compared with 123.4 days.

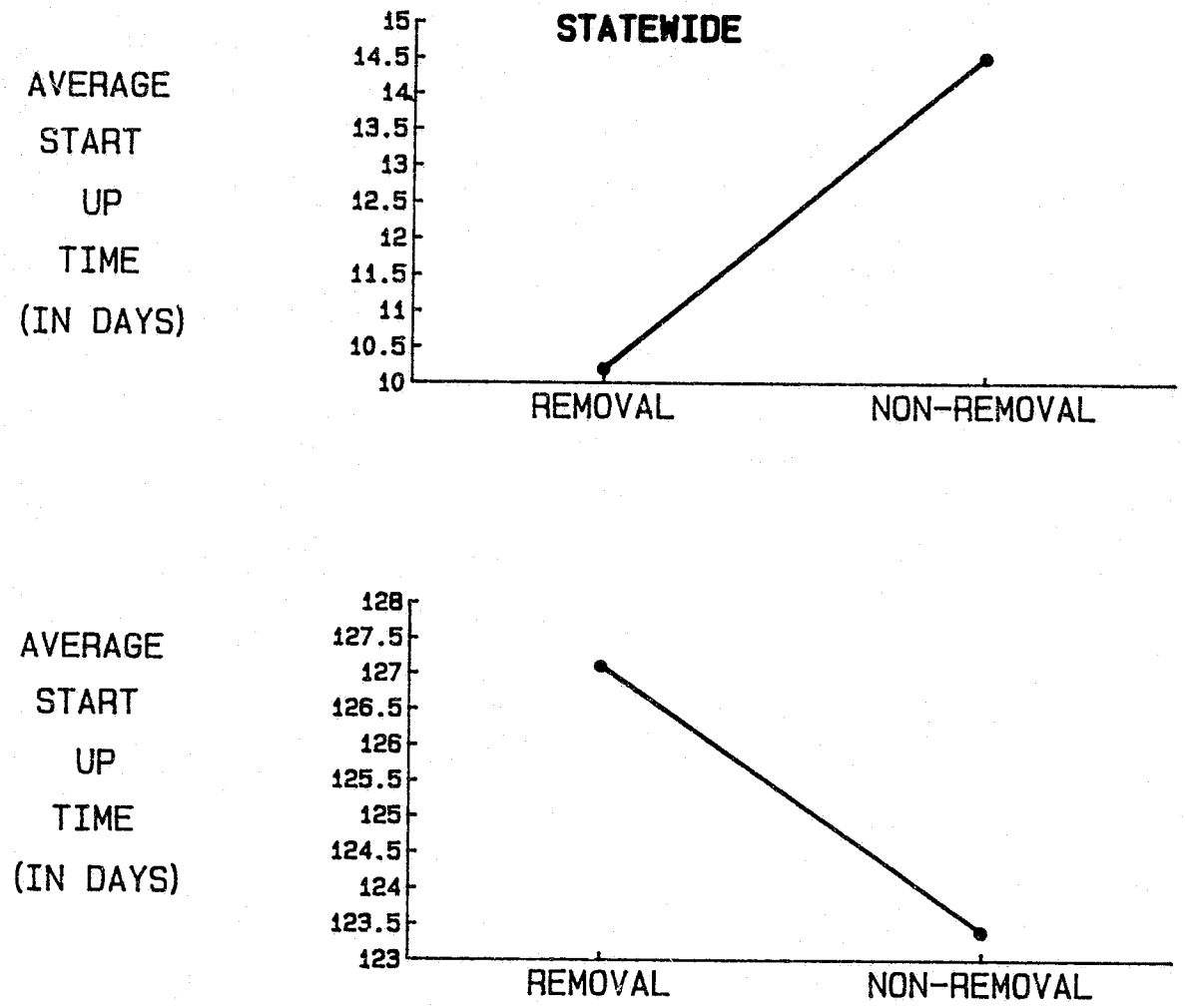


FIGURE 7: AVERAGE START UP AND CASE LENGTH TIMES FOR REMOVAL AND NON-REMOVAL CASES (PRE-PETITION)

Analysis of these data by region indicate that start-up time for removal cases in New York City and upstate counties did not vary appreciably from the statewide mean. When the child was not removed from the home prior to the filing of the petition, New York City start-up time was somewhat lower than the statewide mean (12.5 days) and upstate start-up time was higher (16.8 days). In this regard, it should be noted that because New York City has a high rate of Section 1027 removals which are not counted as removals in these data (see below), these more rapid start-ups would tend to artificially decrease the non-removal start-up value for the City.

With respect to case length in pre-petition removal cases, New York City registered a mean of 156 days and upstate counties had a much lower average case length of 117.9 days (lower than the statewide mean). Where the child was not removed from the home prior to the filing of the petition, case length in New York City averaged 130.3 days, while upstate case length averaged 115.1 days.

D. Preliminary Hearings

As discussed in the first section of this chapter, preliminary hearings are required under §1027 of the Family Court Act in abuse cases or in cases where the child was removed from the home prior to filing the Article 10 petition with the Family Court. These hearings are required so that the court can immediately consider the need for protection of the child. The Family Court Act does not require the presence of nor representation for the respondent at such hearings.

The following sections provide a set of information on a number of variables relating to preliminary hearings, including timing of the hearings, presence of the respondent at the hearings, and preliminary orders issued by the courts during the hearings.

1. Time Between Filing of Petition and the Preliminary Hearing

A statewide average of 8.7 days elapsed between the filing of a petition and the holding of a preliminary (§1027) hearing (in those cases where a §1027 hearing was held) with very little variation in this average value in the measures for New York City (8.0 days) and for upstate counties (9.4) days. These average values are somewhat deceptive, however. Some 66 percent of all cases statewide with preliminary hearings had those hearings on the same day that the petition was filed. Values for same day hearings were 85 percent in New York City, and 43 percent for upstate). Of the remainder, most of such hearings were held within one month of the filing of the petition. (See Table 21.)

TABLE 21: Time Between Filing of Petition and Preliminary Hearing*

Time of Preliminary Hearing	Area of State		
	Statewide	NYC	Upstate
Same day	66*	85	43
Within one week	79	92	63
Within two weeks	85	94	75
Within one month	92	98	86

* Entries in Table are percentages of sample for specific area of state.

2. Time Between Initial Appearance and Preliminary Hearing

In this report, the term, "initial appearance", refers to the first time that the respondent appears in the court. This initial appearance includes a number of components, including, but not limited to: information to the respondent identifying the allegations in the petition; advice regarding rights to legal representation and assignment of counsel (when such is requested); and an indication of the respondent's right to apply for the return of the child (when the child has been removed) under §1028 of the Family Court Act.

This hearing may represent the first chance for the respondent parents to directly impact the child protective proceedings. In this proceeding, where respondents are not legally required to be present, the respondents will not have an opportunity to respond to the allegations in the petition until, at the earliest, a §1028 hearing to consider their request for return home of the child, or, more likely, the fact-finding hearing itself. This may be an unfortunate consequence of holding §1027 hearings on the same day as the petition is filed.

When the §1027 hearing is truly ex parte, then the respondent is not present and does not present his or her position when the court initially decides (during this §1027 hearing) to approve removal of the child.

Thus, the order in which these two court sessions (the initial appearance and the preliminary hearing) are held is of interest. The relevant findings are presented below.

On the average, statewide, preliminary hearings precede the initial court appearance by 6 days (9 days in New York City and 2.8 days upstate). However, as depicted in Figure 8, there are fairly unique variations in practices throughout New York State regarding the conduct of such hearings.

On a statewide basis, Figure 8 shows that 46 percent of all cases have preliminary hearings prior to the initial court appearance (generally between one week and one month before the hearing), 47 percent have preliminary hearings on the same day as the initial appearance, and the remaining seven percent of the cases have preliminary hearings after the initial appearance (within one week to within one month afterward).

In New York City, a larger proportion of cases (52 percent) have preliminary hearings prior to the initial court appearance; 45 percent have preliminary hearings on the same day as the initial appearance; in three percent of the cases, preliminary hearings are held after the initial hearing.

For the upstate counties in the sample, 39 percent have preliminary hearings prior to the initial court appearance, 50 percent on the same day, and 11 percent have preliminary hearings after the initial court appearance.

The prevailing practice in New York City and in upstate* urban areas, as documented here, of conducting preliminary hearings prior to the initial appearance where respondents are advised of their rights and have an opportunity to secure the services of counsel, raise serious questions regarding due process protections of the rights of respondents (especially given patterns for appointment of counsel described below). These issues will be explored in the final chapter of this report.

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*In the upstate counties, two divergent practices were found: smaller urban and rural counties used §1021, §1022, or §1024 removals and, when infrequent §1027 hearings were held, these were typically after the initial appearance. In contrast, major metropolitan areas upstate performed like New York City, using §1024 removals along with §1027 court approvals that preceded the initial appearance.

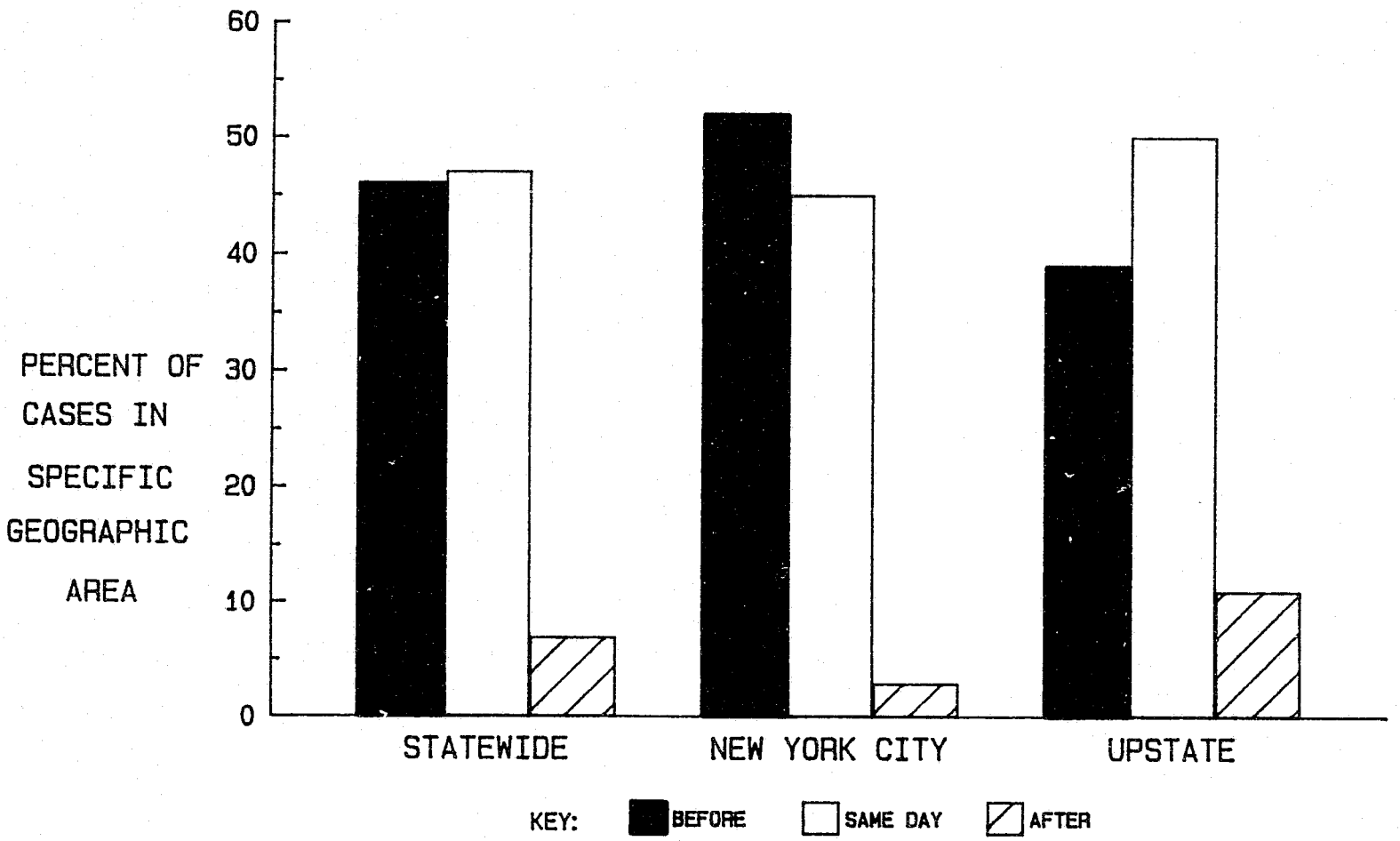

FIGURE 8: PERCENT OF CASES (WITH PRELIMINARY HEARINGS) IN WHICH PRELIMINARY HEARING PRECEDED, WAS SIMULTANEOUS WITH, OR WAS SUBSEQUENT TO THE INITIAL COURT APPEARANCE

3. Initiation of the Hearing

Statewide, the preliminary hearing was requested 75 percent of the time by the petitioner and, in the remainder of the cases, on the court's own motion. In New York City, the preliminary hearing was requested by the petitioner 92 percent of the time and, in upstate counties, the petitioner requested the hearing 55 percent of the time.

4. Preliminary Orders Resulting from Preliminary Hearing

As noted earlier, the common practice in New York City and in selected major metropolitan areas upstate is that children be removed from the home on an emergency basis pursuant to the provisions of §1024 FCA. Subsequently, an article 10 petition is filed and a §1027 preliminary hearing is held in which court approval for the earlier emergency removal is obtained. This removal order, which shows up in the court record as a §1027 removal, is one of several orders that can be issued during the preliminary hearing.

In fact, removal of the child from the home and placement with the local department of social services was the single most common preliminary order (41 percent of the time statewide, with 59 percent in New York City and 25 percent upstate). The next most prevalent order was a temporary order of protection (issued in 30 percent of the cases statewide), with a lower incidence in New York City (17 percent) and a higher frequency upstate (41 percent). Other preliminary orders of note included removal of the child and placement with a suitable person (5.6 percent statewide). In 30 percent of the statewide sample (17 percent in New York City and 41 percent upstate), the court issued no preliminary orders as the result of a preliminary hearing.

5. Presence of Respondents

Court records indicate that the respondent was present at the preliminary hearing in only 37 percent of the cases statewide. In New York City, this percentage was considerably lower (23 percent) and in upstate counties, court records indicated presence of the respondent 54 percent of the time. In non-urban upstate areas, the respondent was present at the preliminary hearing 75 percent of the time.

6. Award of Temporary Custody

Among cases with preliminary hearings, temporary custody was awarded most frequently to the local department of social services (60 percent, statewide), and much less often to the mother (9 percent), the grandparents (7 percent) and to other relatives (3 percent). (See Figure 9.) This pattern was repeated throughout the state, although New York City reflected a somewhat higher incidence of placements with the department (69 percent). Conversely, in upstate counties, department of social services placements accounted for only 51 percent of the total. Significantly, in nearly 18 percent of the preliminary hearings, statewide, custody orders were not issued and the child remained at home. This value was lower in New York City (10 percent) and higher upstate (27 percent).

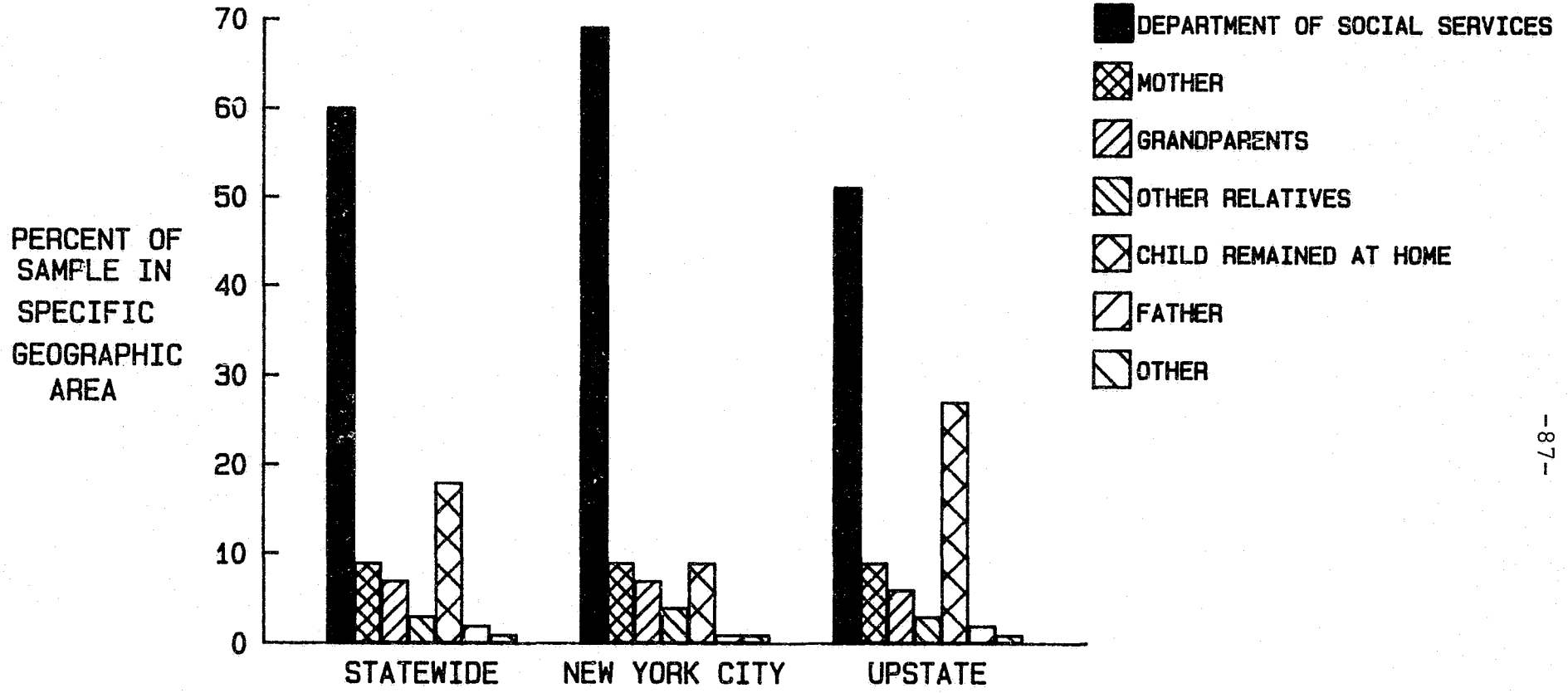

FIGURE 9: TEMPORARY CUSTODY AWARDS AFTER PRELIMINARY HEARING

E. FCA §1027 Removals

As noted early in this chapter, all types of early removals used to effect protection of the child must be added together in order to accurately assess the degree to which placement is used prior to fact-finding in Article 10 cases.

Figure 10 presents data that depicts early removals in Article 10 proceedings, including those documented in the court record as occurring prior to filing the petition.

As can be noted in Figure 10, approximately 21 percent of the statewide sample of children were removed from their homes prior to the time the child abuse or neglect petition was filed. By the time a preliminary hearing was held pursuant to the provisions of Section 1027 of the Family Court, this proportion rose to nearly 56 percent. This is a significant segment of the case sample given the frequency with which §1027 hearings are consolidated with the filing of the petition.

For New York City cases, pre-petition removals had been documented in only 10.6 percent of the cases and by the time of the 1027 hearing, this proportion had risen dramatically to nearly 64 percent, lending credence to the observations on pre-petition removals made earlier in this chapter. In upstate counties, pre-petition removals were made in a higher proportion of the cases (almost 30 percent) than in New York City. This upstate removal rate rose to only 48 percent by the time of the 1027 hearing.

A description of upstate practices, however, is not as simple as it would appear to be, based on the data presented in Figure 10. In fact, when the upstate sample is sorted into two groups (i.e., counties with major metropolitan areas and suburban/rural counties), two different removal practices become apparent. These data are presented in Figure 11 and it can be seen that upstate counties containing major metropolitan centers

appear very much like New York City, in that more removals are made via the §1027 provisions than through early pre-petition removals governed by §1021, 1022 and 1024.

In contrast, other upstate counties with suburban/rural populations have an entirely different pattern, with almost all of their early removals being true pre-petition removals. More specifically, these data show that in major metropolitan counties, pre-petition removals were made in only 25 percent of the cases; this proportion rose to 53 percent by the time of the 1027 hearing. In other, upstate counties, pre-petition removals were considerably higher (39 percent) but rose only modestly by the time of the 1027 proceeding (41 percent).

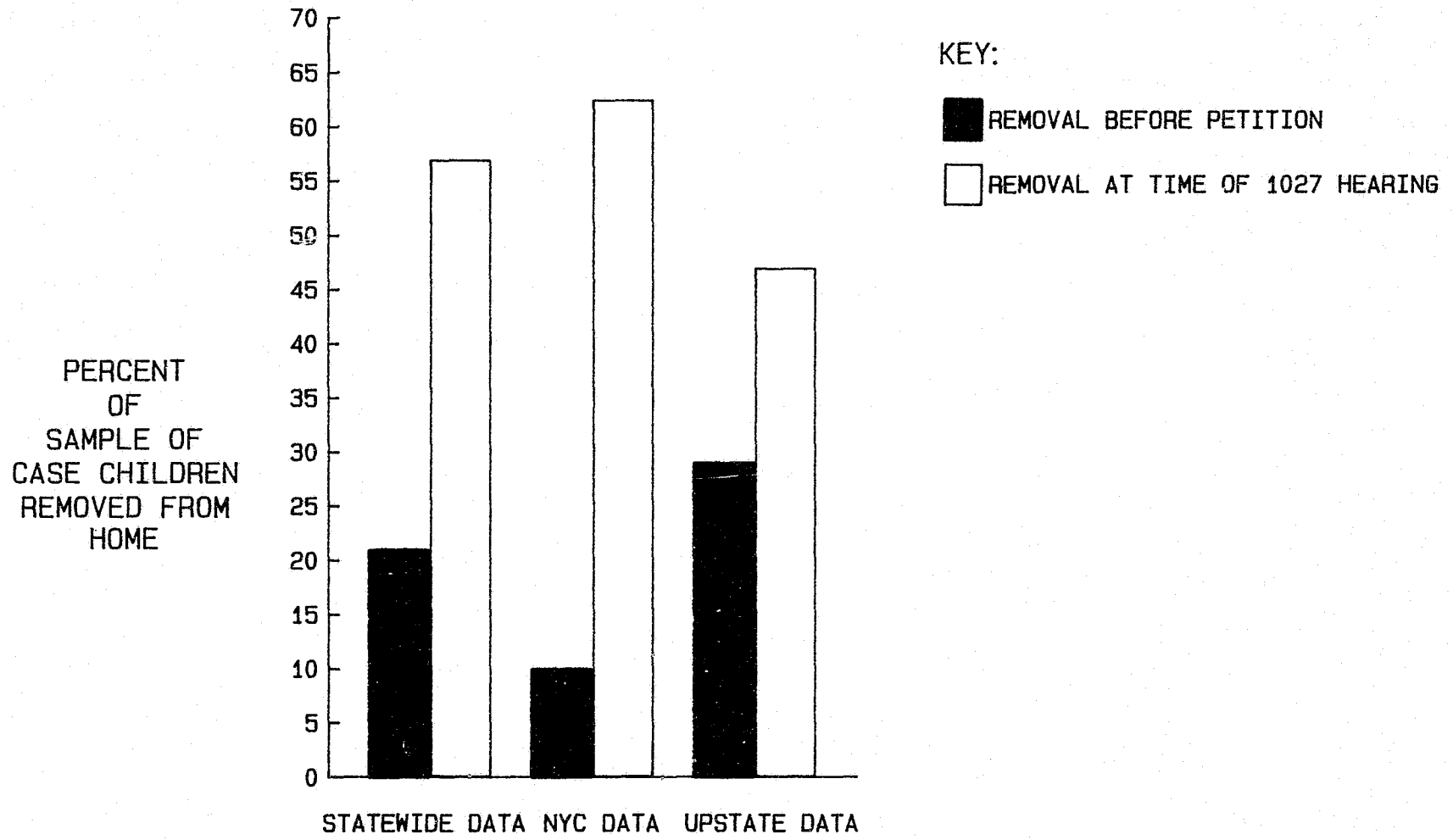

FIGURE 10: PERCENT OF CASE CHILDREN REMOVED FROM HOME BEFORE FINAL DISPOSITION

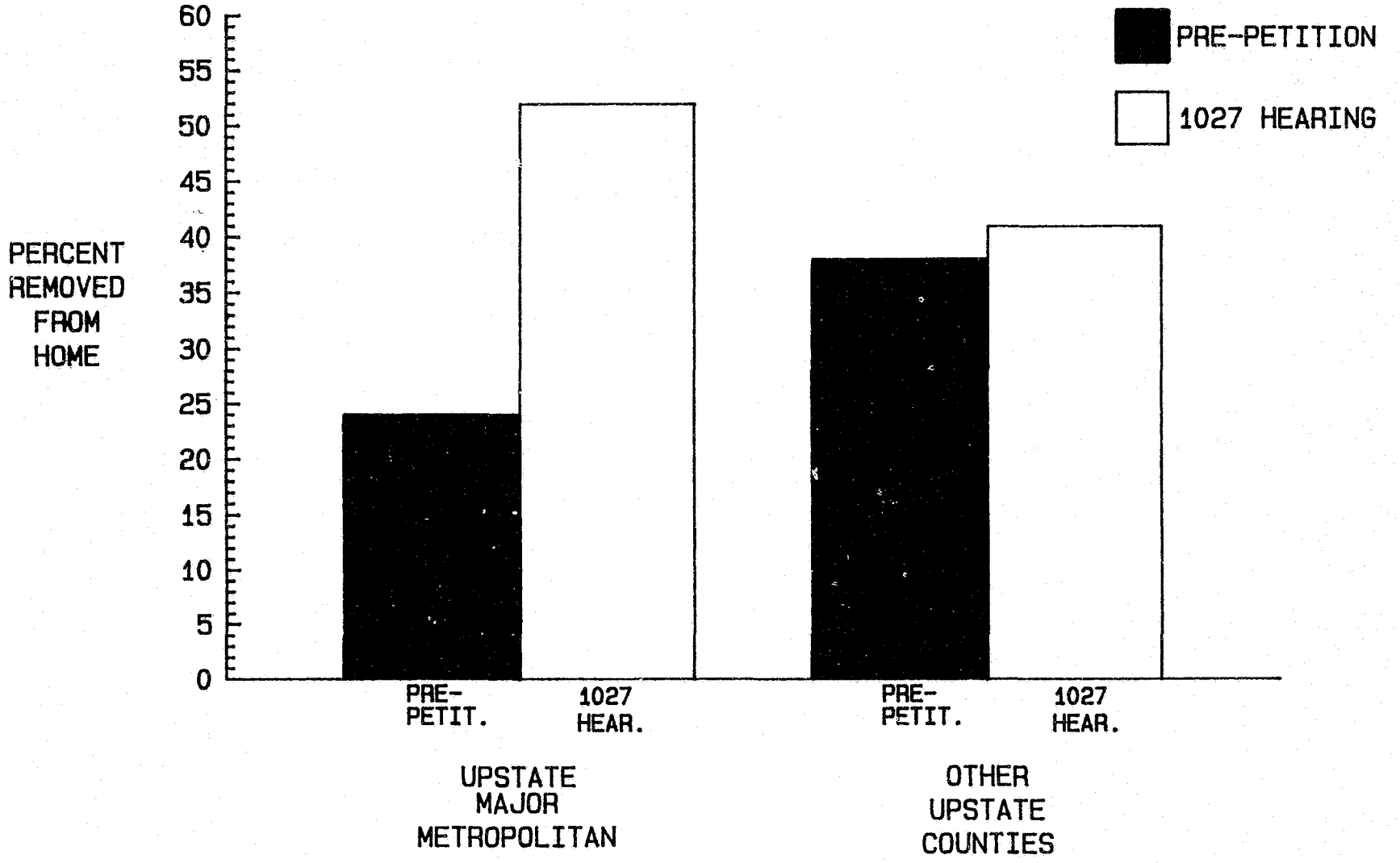

FIGURE 11: VARIATIONS IN COUNTY REMOVAL PATTERNS IN UPSTATE NEW YORK

F. Length of Time in the System Before §1027 Removals

As discussed above, §1027 removals (used mainly in New York City and in several upstate major metropolitan counties) basically represent after-the-fact judicial approvals of pre-petition §1024 emergency removals. Based on the emergency nature of the removal (especially when options exist for removals with parental consent or without such consent but with prior judicial approval), it can be assumed that these §1027 removals occur in cases that were primarily unknown to the child protective system, i.e. the child and family had not previously been the subject of child abuse investigations or received services and other assistance from the local department of social services. It is difficult to postulate a rationale for extensive use of such an emergency system when cases have been served by the local department of social services for a considerable period of time.

Given the large number of such emergency removals in some areas of the State, an analysis of the length of time that §1027 removal cases were in the system prior to petitioning the family court was conducted. Using data from the State Central Register of Child Abuse and Maltreatment, the number of days from the date when the first child abuse or neglect report was made regarding the case family to the date of the Article 10 petition was calculated. Average number of days for different areas of the state were converted into years. These are presented in Table 23.

As Table 23 indicates, across the State as a whole, §1027 removal cases were in the system for an average of 2.02 years before the emergency removal and filing of an Article 10 petition took place. These cases were under the jurisdiction of the local department of social services for 1.72 years in New York City and for 2.57 years in the upstate area.

Given this finding, it is difficult to justify the extensive use of §1027 judicial approvals of pre-petition §1024 emergency removals found in the present study. If cases have been in the

system and have been provided both services and supervision by the local protective agency for an average of two years, then it is likely that the department would, in most cases, have sufficient time to obtain prior judicial approval for the removal (as in §1022 FCA). This issue will be explored more fully in the concluding chapter of this report.

TABLE 23: AVERAGE NUMBER OF YEARS FROM 1ST REPORT TO PETITION FILING FOR §1027 REMOVALS IN ENTIRE STATE, NEW YORK CITY, AND UPSTATE

	Geographic Location		
	Statewide	NYC	Upstate
§1027 Removal Cases	2.02 years	1.72 years	2.57 years

G. Early Removal Related to Other Variables

1. Petition Allegations and Early Removals of Children

Early removal cases (including all §1021, 1022, 1024, and 1027 removals) were examined with respect to the allegations in the petition in order to determine whether certain patterns of family problems were more likely to be associated with early removals. For this comparison, allegations in the petition were categorized into five major groups, including:

- Serious Physical Abuse = fractures, subdural hematoma, internal injuries, lacerations, bruises, welts, burns, and scalding.

- Excessive Corporal Punishment

- Drug/Alcohol Abuse = including both parental addiction problems and infants born addicted.

- Other Neglect = lack of medical or dental care, malnutrition/failure to thrive, educational neglect, emotional neglect, and lack of food, clothing and shelter.

- Sexual Abuse

The data presented in Figure 12 provide an analysis of the types of petition allegations associated with children who are removed from the home prior to the filing of the petition or after a 1027 hearing. As indicated in this Figure, early removals of children are most often (50 percent of the time or more) associated with allegations of serious physical abuse, drug/alcohol abuse, serious neglect and, in New York City only, sexual abuse. The City, with higher incidences of early removal than upstate, had consistently higher instances of removals associated with specific types of allegations than upstate counties.

2. Early Removals and Final Dispositional Orders

An important question raised by the present study is whether the family courts treat cases in which the child is removed before petitioning or early in the proceeding differently from cases in which no such removal occurs.* This question was addressed by assessing, for each possible final dispositional order, the percentages of a particular order associated with early removals.

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* This question was suggested by family court interviews conducted before the data collection instruments were developed.

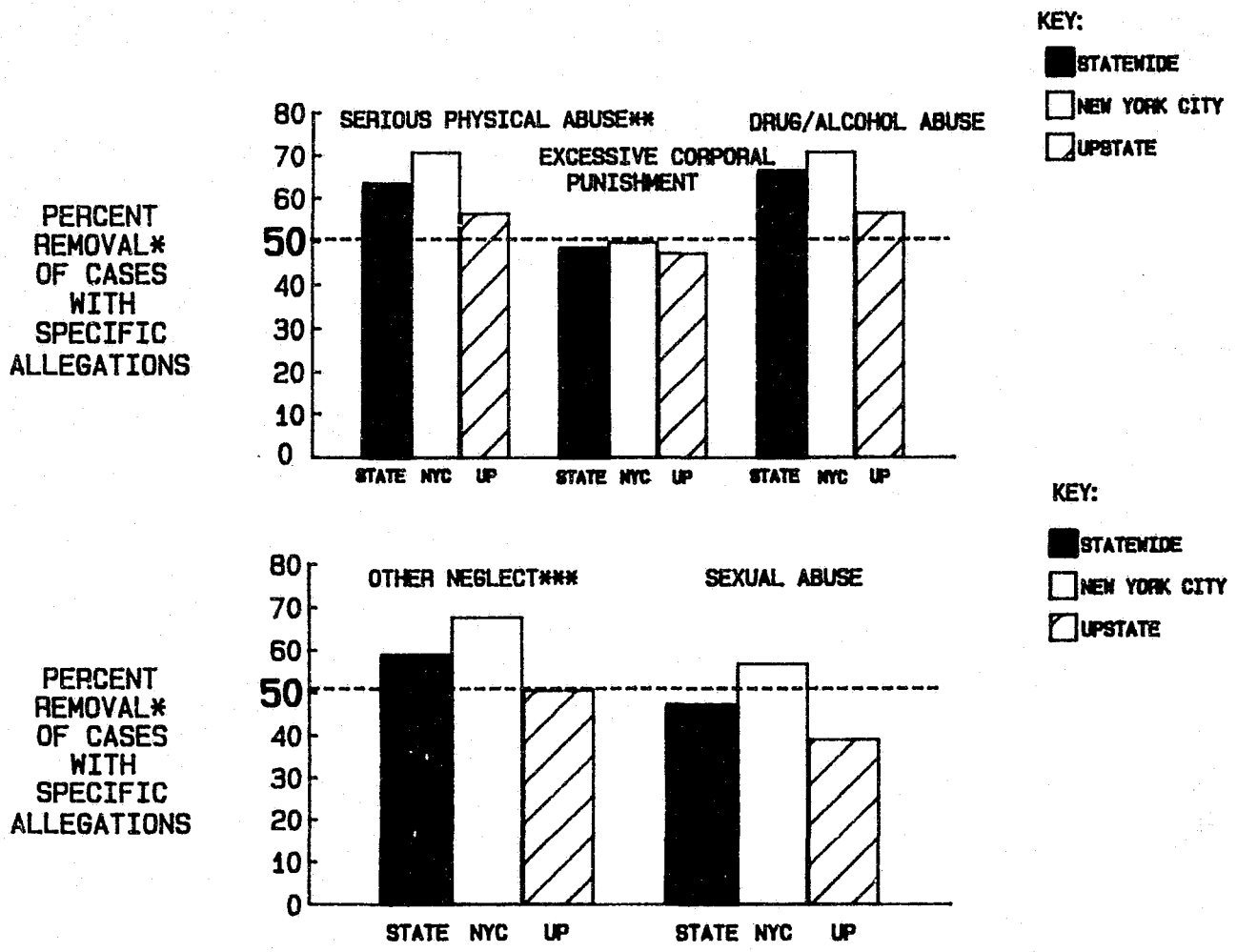

FIGURE 12: PERCENT OF CHILDREN REMOVED IN CASES WITH ALLEGATIONS (PREPETITION AND 1027 REMOVALS)

* DATA INCLUDE PREPETITION REMOVALS AND REMOVALS AFTER 1027 HEARING

** FRACTURES; SUBDURAL HEMATOMAS; INTERNAL INJURIES; LACERATIONS; BRUISES AND WELTS; BURNS; SCALDING

*** LACK OF MEDICAL OR DENTAL CARE; MALNUTRITION OR FAILURE-TO-THRIVE; EDUCATIONAL AND EMOTIONAL NEGLECT; LACK OF FOOD, CLOTHING, SHELTER

Data relating early removals to final dispositional orders are presented in Figure 13. As can be noted from an examination of this figure, only one final dispositional order shows a relatively high rate of association with early removal of the child; that being a final dispositional placement, an order which could be issued for up to 18 months in 1985. Final dispositional placement orders were issued in 62 percent of early removal cases statewide, indicating judicial confirmation of the earlier decision taken by the local department of social services to remove the child in these cases.

It should be noted that there is a 35 percent final placement rate for non-early removal cases. Because these final dispositional placements in non-early removal cases are more likely to have been instigated by the family court based on the facts of the case rather than by the family's history with the local child protective agency, this latter figure means that of cases where the child is still in the home at final disposition, the court orders removal and placement almost one-third of the time (approximately half the time in New York City).

The only other final dispositional order with a higher frequency for early removal cases than for non-removal cases is the order for service provision to the case children and their families. Presumably, this finding reflects attempts to provide services that would assist in reunifying families. However, the rate at which these services are ordered is disquietingly low; some 30 percent statewide.

Final orders of protection are ordered in almost half of the cases in the upstate area but the rate of issuing this order is the same regardless of whether or not the child was removed early in the case.

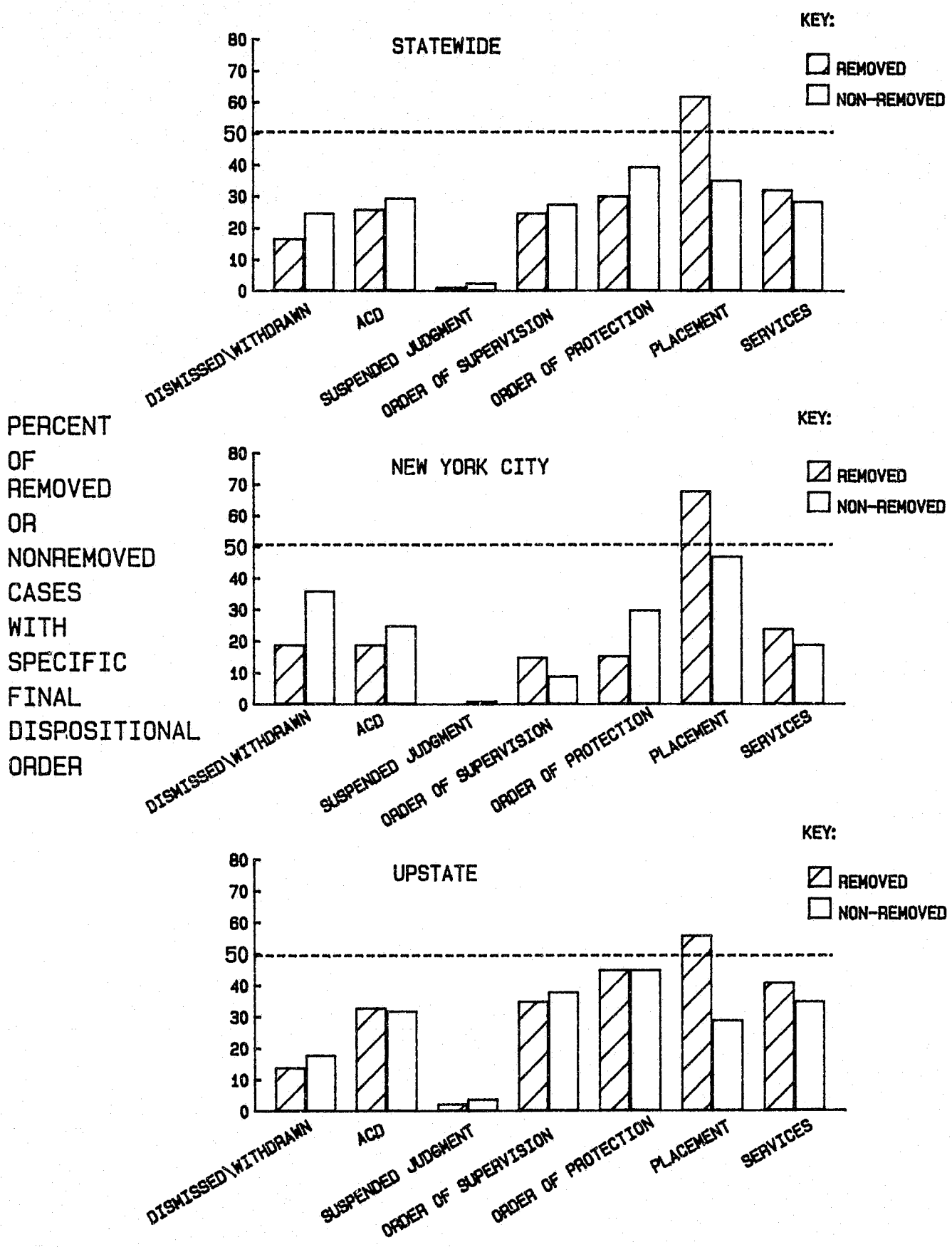

FIGURE 13: FINAL DISPOSITIONAL ORDERS FOR REMOVED (PREPETITION AND 1027) AND NON-REMOVED CASES

Finally, it appears that it is less likely that an Article 10 petition will be dismissed or withdrawn if the child was removed from the home early in the proceeding, particularly in New York City. The dismissal rate in that location for cases with early removals was only 19 percent compared with a 36 percent dismissal rate in non-removal cases.

3. Early Removals and Settled vs. Contested Cases

One variable of interest in the present study was that of settling a case or allowing it to proceed through all of the stages of the Article 10 proceeding in an adversarial manner. Anecdotal information provided to this Committee early in the project had indicated that a very high proportion of Article 10 cases are settled. Hence, this SETTLE/CONTEST variable was examined in relation to a number of the other variables studied in the present project including the early removal variable.

In this project, a case is defined as "settled" when 1) an order of adjournment in contemplation of dismissal is issued, in which case, there is no finding or adjudication of abuse or 2) when there is an adjudication (finding) of abuse or neglect by consent.* "Contested" cases are defined as those in which a fact-finding hearing takes place and in which the judge makes an adjudication of abuse or neglect. The data relating early removals and the settle/contest variable are presented in Figure 14.

In general, no relationship was found between the SETTLE/CONTEST variable and the early removal variable. Approximately 70 percent of both early removal and early non-removal cases were settled.

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*§1051 of New York State's Family Court Act provides for a finding of abuse or neglect either based on the facts presented to the court or when the parties to the proceeding and the law guardian consent to such a finding (usually without a fact-finding hearing).

For contested cases, there does appear to be a small relationship with early removals, particularly in the New York City area, in that, if a case is contested, it is nearly twice as likely to be an early removal case.

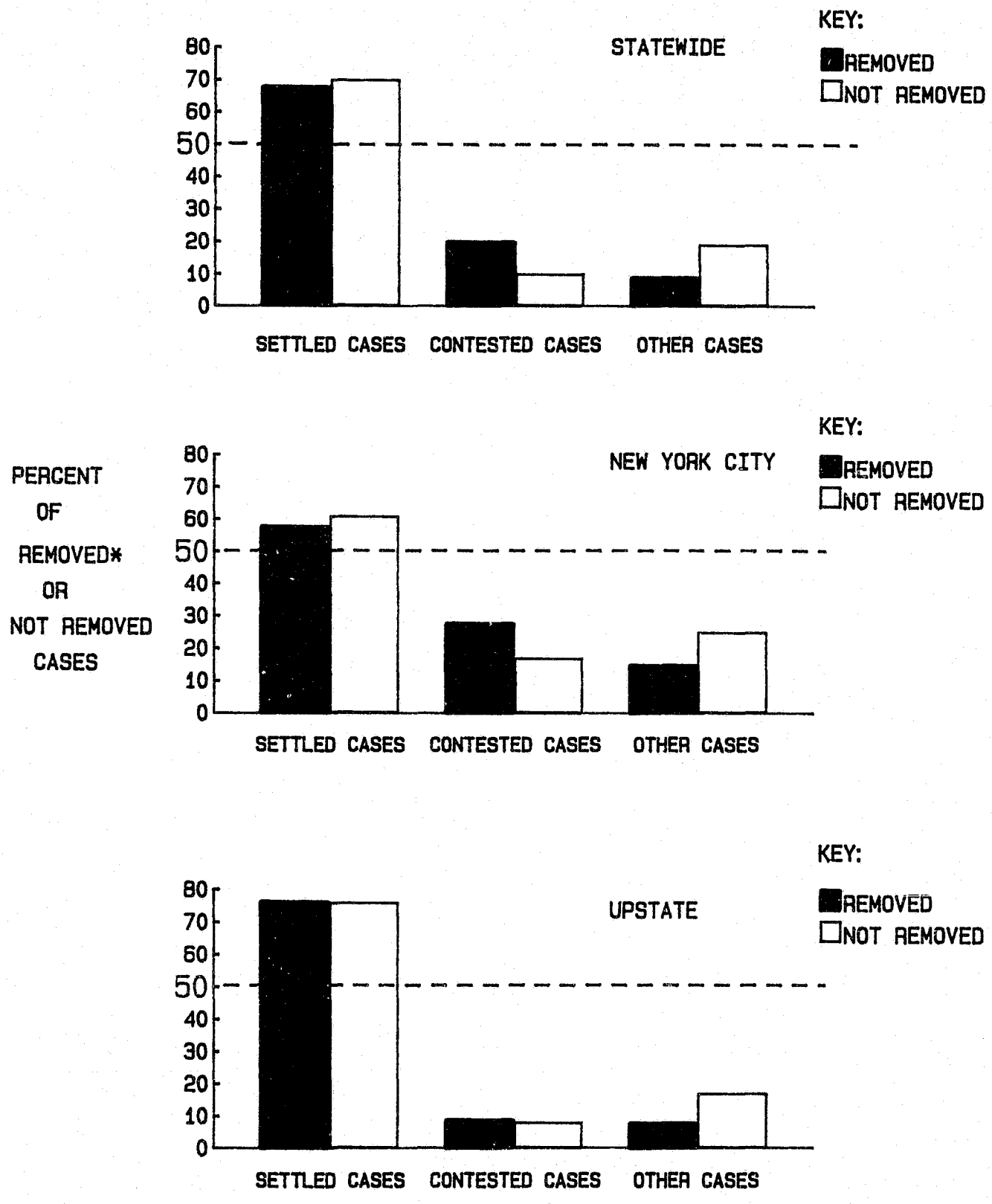

FIGURE 14: PERCENT OF REMOVED* OR NOT REMOVED CASES THAT WERE SETTLED, CONTESTED, OR PROCESSED IN SOME OTHER MANNER

*INCLUDES PREPETITION & 1027 REMOVALS

H. Applications for Return of the Child Following Early Removal

As discussed earlier in this report, New York State's Family Court Act §1028 allows a parent (or a child's law guardian) to apply to the court for an order returning the child to the home following a pre-petition removal.

Following such an application, the court is required to hold a hearing regarding return of the child, if there has not already been a hearing on the removal "at which the parent...was present and had the opportunity to be represented by counsel or had an adequate opportunity to be present, or...upon good cause shown." In other words, the major reason for denying a hearing, in these circumstances, is when the parent could have been present at a prior §1027 hearing and chose not to appear.

§1028 hearings must be held within three days of the application and the court must order a return of the child unless such a return represents an imminent risk to the child's life or health.

Parents are advised of their right to apply for a §1028 return of their child during their initial appearance at the court. Furthermore, the court appoints counsel for the respondent at that same appearance if requested. (This matter is described more fully in the next chapter.)

Data were collected during the present project on components of the §1028 return process and on time spans between these components (the relevant findings below).

1. Use of Section 1028 Application Process

Statewide, in approximately 16.5 percent of the early removal cases, the respondent applied for a hearing for return of the child pursuant to Section 1028 of the Family Court Act as indicated in Figure 15. In New York City, this proportion was

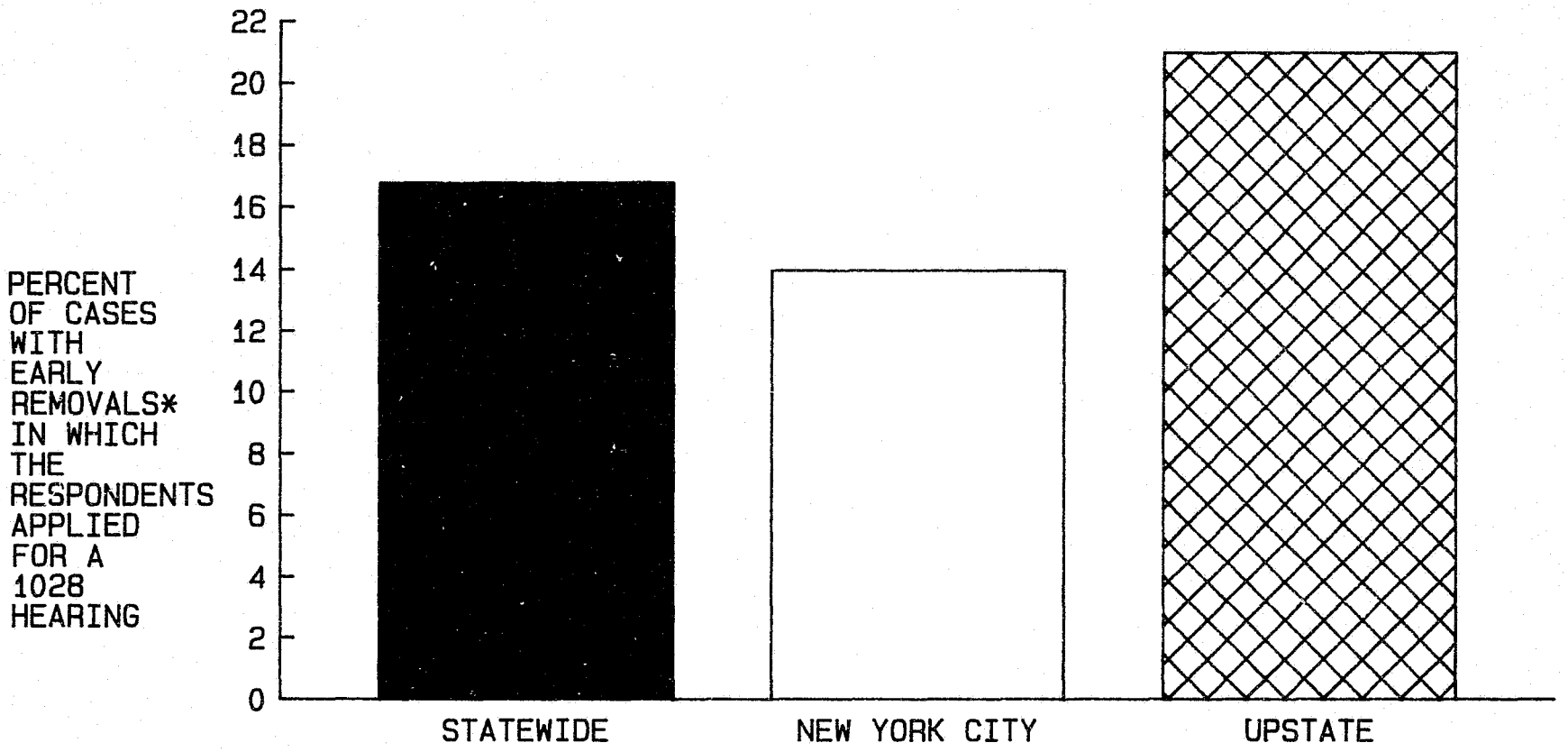

FIGURE 15: PERCENT OF CASES WITH EARLY REMOVALS* IN WHICH THE RESPONDENTS APPLIED FOR A 1028 HEARING FOR THE ENTIRE STATE, NEW YORK CITY, AND UPSTATE

*INCLUDING PREPETITION AND 1027 REMOVALS

somewhat lower, 14 percent, and in upstate counties somewhat higher, 20 percent.

Thus, the rate of filing §1028 applications for the return of the child is extremely low in the State as a whole. In general, the parents use this statutory proceeding to obtain the release of their child from foster care in less than one-fifth of early removal cases.

When early removal cases are sorted into categories by petition type (abuse or neglect), an interesting relationship is found. A much higher rate of 1028 applications occurred in abuse cases than in neglect cases, a finding which is contrary to the distribution of abuse and neglect petitions in the sample as a whole (33 percent and 67 percent, respectively). These data are presented in Figure 16.

Section 1028 applications were made in approximately 23 percent of abuse cases and 12 percent of neglect cases statewide, a pattern that appeared consistently throughout the state. In other words, it would appear that parents are about twice as likely to try and obtain a return of their child when they are charged with abuse than when they are charged with neglect.

The motion for a 1028 hearing was denied in six percent of all applicable cases. In approximately 20 percent of all applications, the child was returned to the home. Again, this pattern was consistent throughout the state as can be seen by reference to Figure 17. To put this finding in context, out of all of the early removal cases in the sample, the child was returned home only approximately 4 percent of the time. The New York City and upstate return rates are very similar, 3 percent and 6 percent, respectively as can be noted in Figure 18.

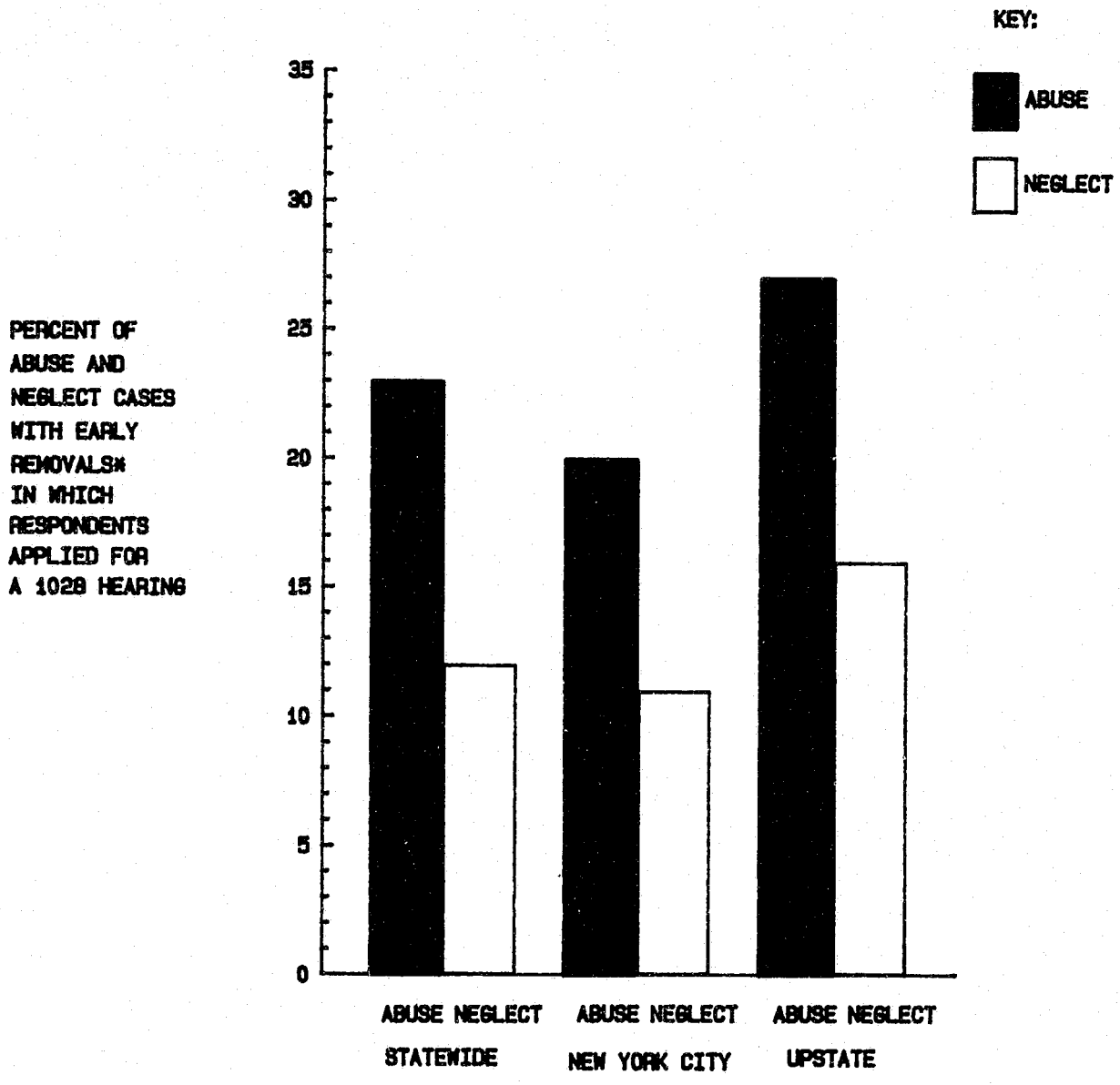

FIGURE 16: PERCENT OF ABUSE AND NEGLECT CASES WITH EARLY REMOVALS* IN WHICH RESPONDENTS APPLIED FOR A 1028 HEARING BY GEOGRAPHIC AREA

*INCLUDING PREPETITION AND 1027 REMOVALS

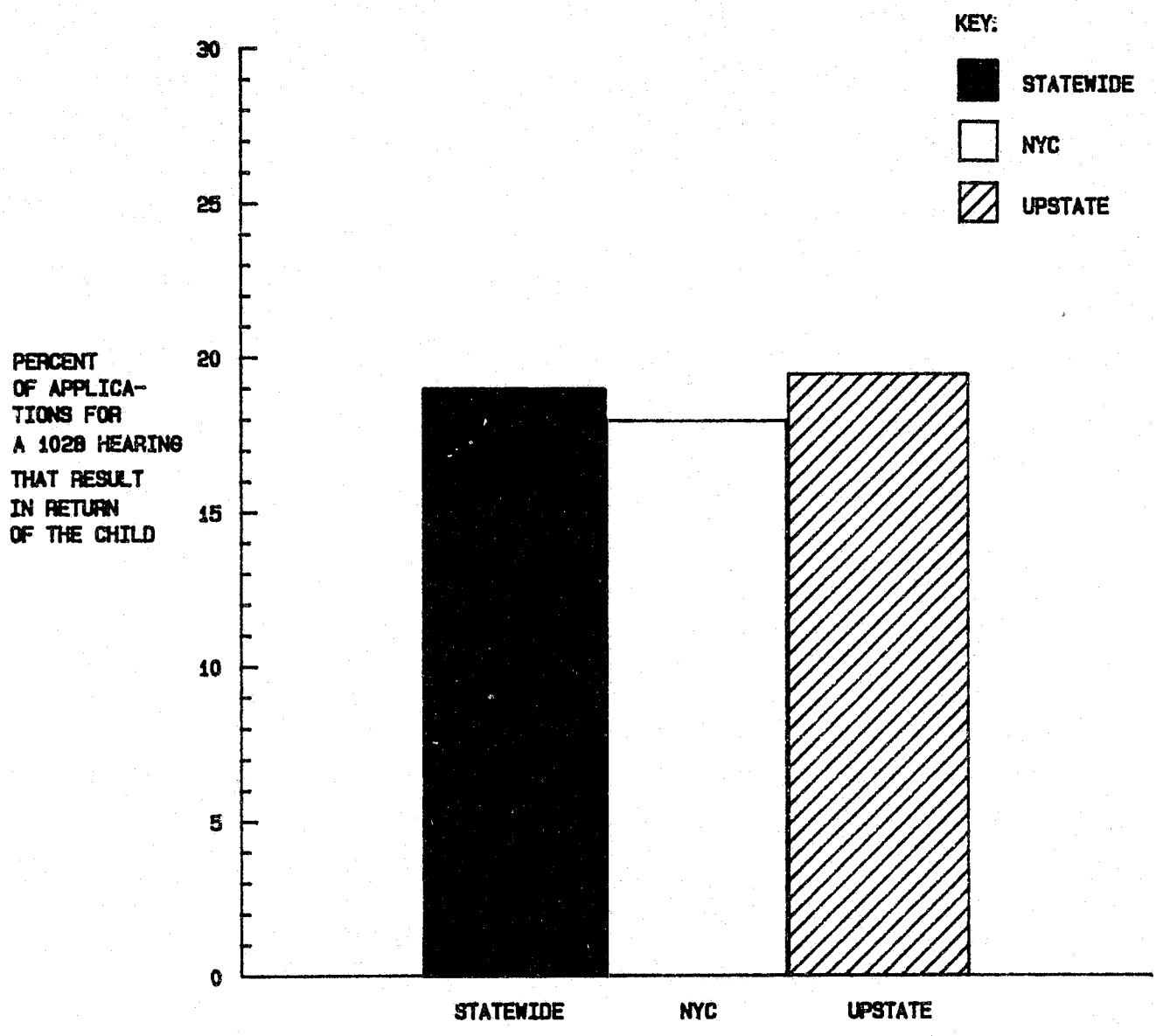

FIGURE 17: PERCENT OF APPLICATIONS FOR A 1028 HEARING THAT RESULT IN A RETURN OF THE CHILD TO THE HOME

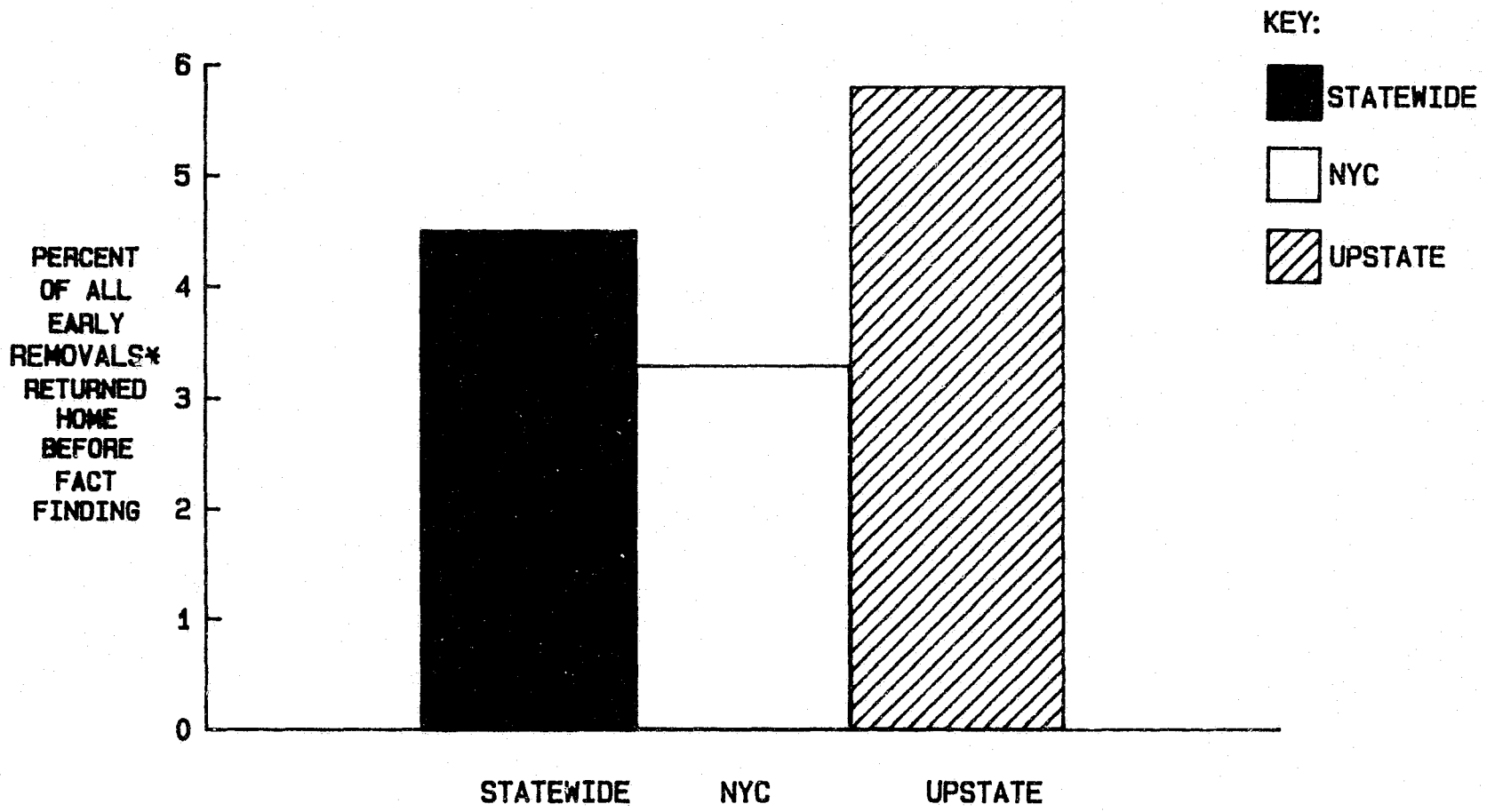

FIGURE 18: PERCENT OF ALL EARLY REMOVALS* RETURNED HOME BEFORE FACT-FINDING

* INCLUDING PREPETITION AND 1027 REMOVALS

The policy implications of these findings are discussed in the concluding chapter of this report.

Finally, when early removal cases are sorted into categories (settled, contested, and "other") and the percentages of cases with §1028 applications within each category is calculated, the results demonstrate that New York City patterns of applying for §1028 hearings are very different from those found in upstate areas. These data are presented in Figure 19. It can be seen that, for settled and contested cases, the New York City and upstate values work in opposite directions, that is, there is an interaction between geographic area and the settle/contest variable. This interaction, depicted more clearly in Figure 20, effectively makes the statewide data on this variable somewhat meaningless. Very clearly, the rate of applying for §1028 hearings in settled or contested cases depends on the area of the State.

In New York City, parents who contest the allegations in the petition and who proceed to the full fact-finding hearing are much more likely to have applied for a §1028 return of the child than are parents who choose to settle the case.

In contrast, in the upstate regions, the opposite results are reached. Parents who settle their case are much more likely to apply for a §1028 return of their child than are parents who contest the proceeding. These contrary findings are not readily explainable.

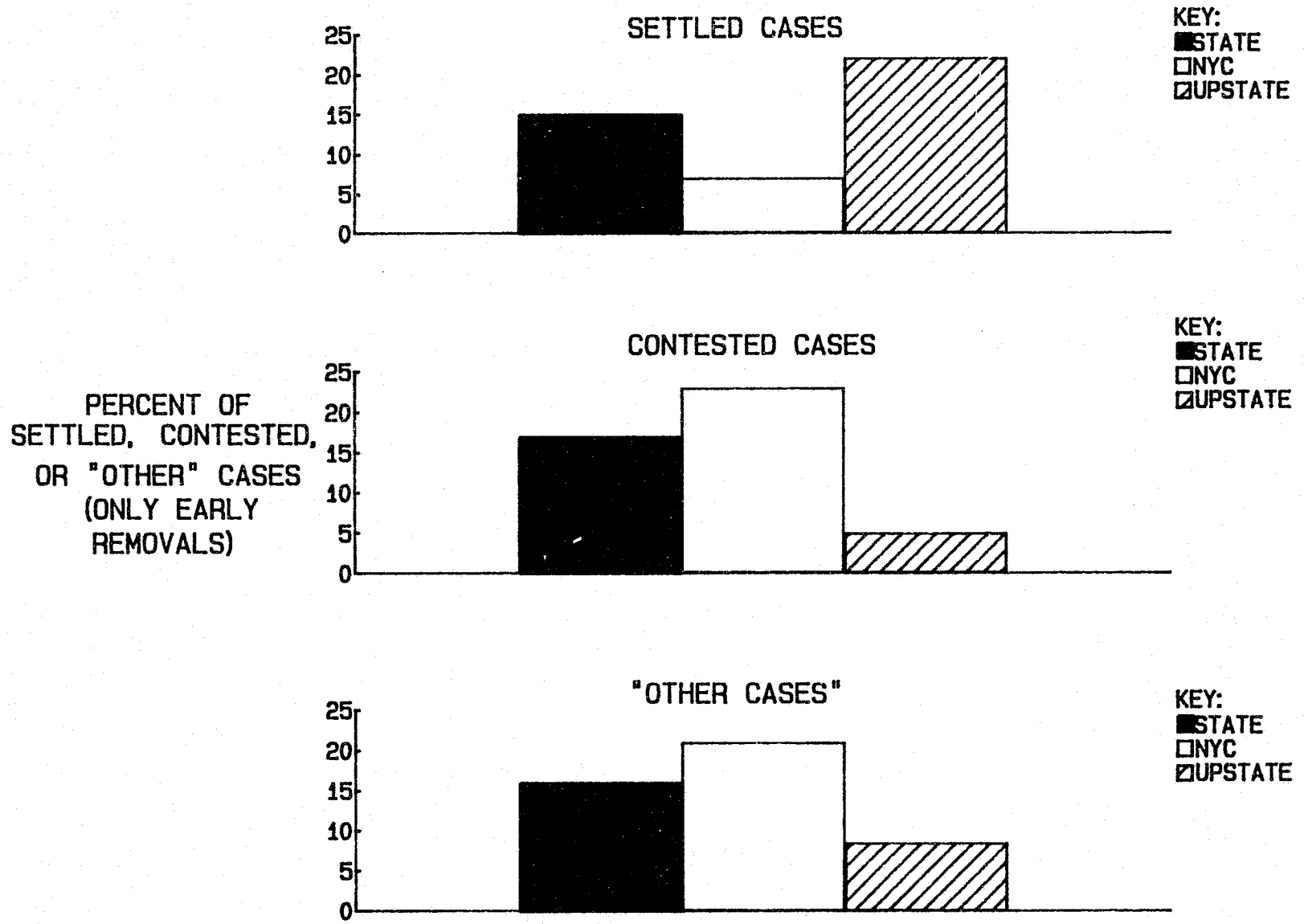

FIGURE 19: PERCENT OF SETTLED, CONTESTED, OR "OTHER" CASES (WITH EARLY REMOVALS*) WHICH RESULT IN APPLICATION FOR SECTION 1028 HEARING

*INCLUDING PREPETITION AND 1027 REMOVALS

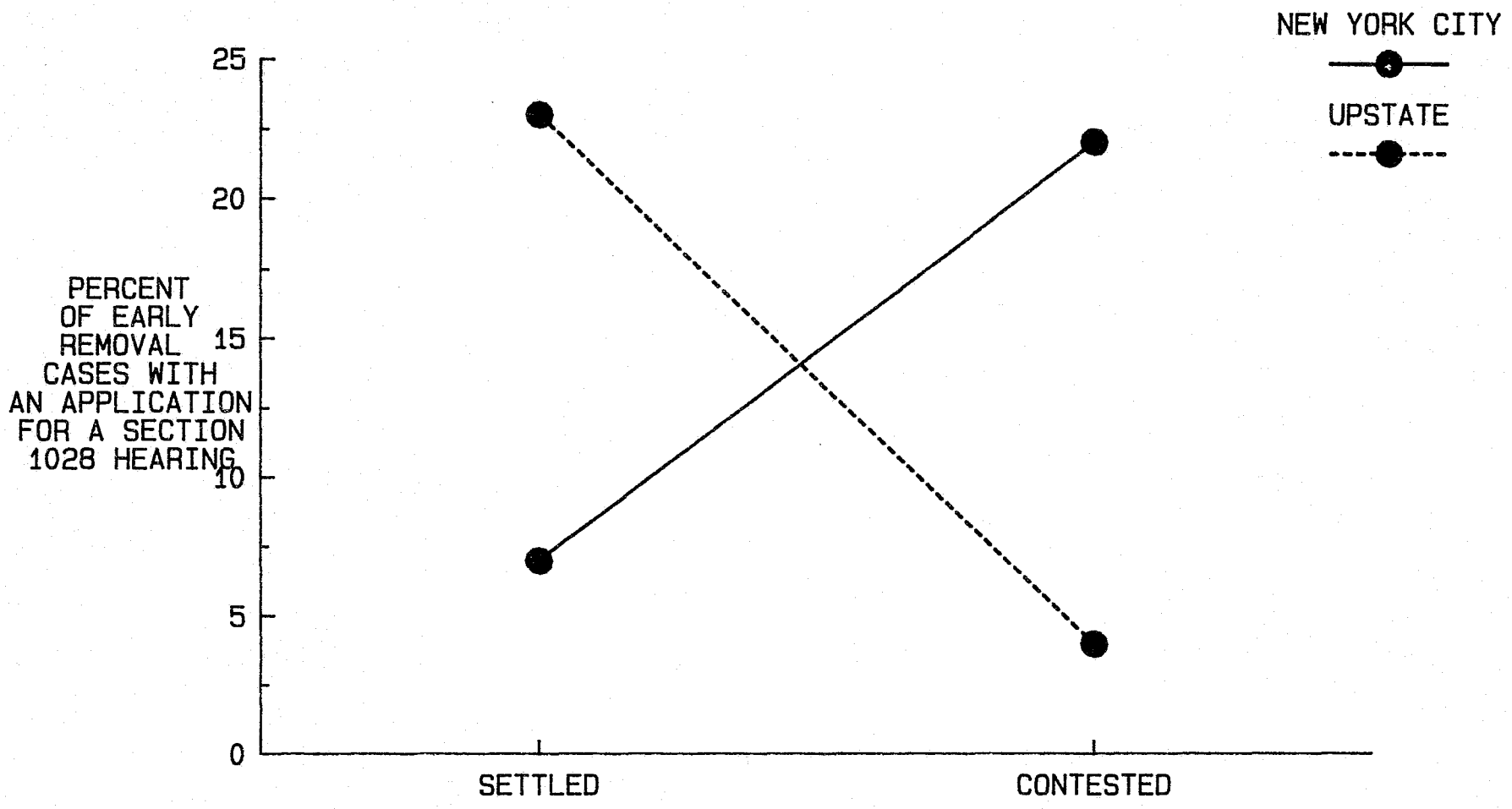

FIGURE 20: PERCENT OF SETTLED AND CONTESTED CASES (WITH EARLY REMOVALS) THAT RESULT IN AN APPLICATION FOR A SECTION 1028 HEARING

2. Time Frames

The sequence of events that occur in cases where there is an early removal of the child is depicted in Figure 21 along with some of the empirical findings of the present project. It should be noted that the Family Court Act only imposes statutory time limits in two areas of this sequence of events. First, when a child is removed, a petition must be filed within a maximum of three days, depending on the type of removal. Second, when an application for a §1028 return of the child is filed with the court, the court is required to hold a hearing within three days of the application. The law does not specify how quickly a child is to be returned if the court agrees to grant that return.

In the following, the empirical time spans between the events depicted in Figure 21 are presented, where appropriate to this section of the report.

The time elapsing between the filing of the petition and the §1028 application by the parent for return of the child averaged 14.8 days statewide (New York City, 16.9 days, upstate 12.8 days). However, in almost one-third of the statewide sample, the application for the 1028 hearing was filed on the same day that the petition was filed. For the remaining cases, more than half of the applications were filed within three days after the filing of the petition and 75 percent within the first week after filing. In other words, although, on the average, parents wait more than two weeks after an Article 10 petition is filed to apply for the return of their child, this average length of time is distorted by a few extreme values. The median length of time (3.0 days, not noted on the Figure) between the petition filing and the §1028 application may be a more representative value.

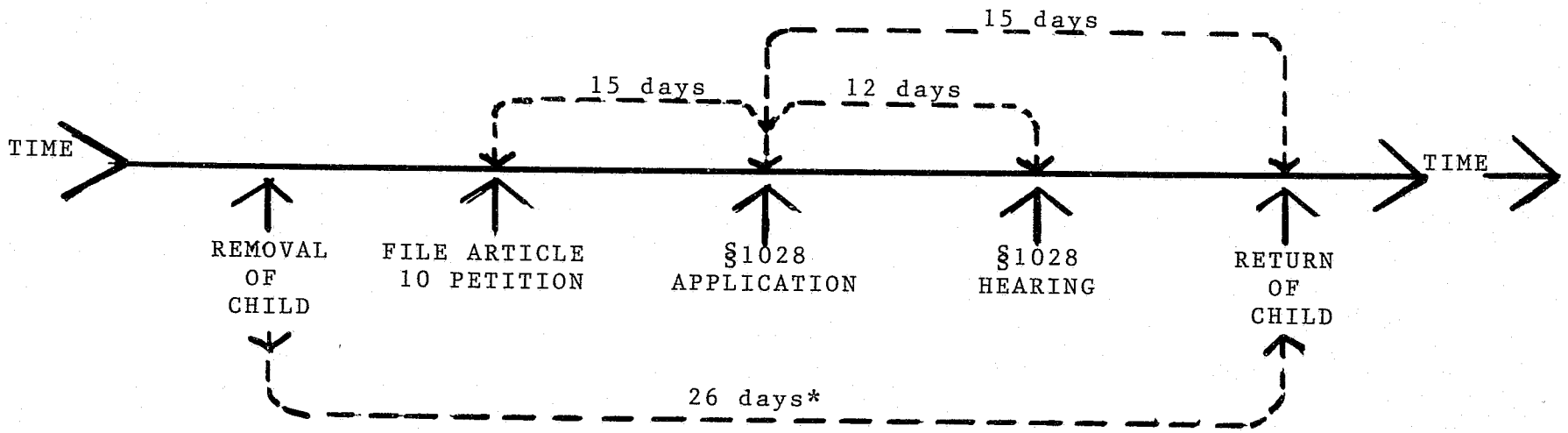

Figure 21: Average number of days between events in the §1028 application process (Statewide data).

*Figures do not total exactly because different time spans rely on data from different sets of cases.

In spite of the fact that the law includes a three-day hearing requirement, the time between the application for and the holding of 1028 hearings averaged 12.0 days statewide (New York City, 18.6 days and upstate counties, 7.2 days). Again, this average value is produced by a few extreme cases. As Figure 22 indicates, on a statewide basis, 16 percent of the hearings were held on the same day as the application. Of the remainder, 53 percent were held within three days of the §1028 application and almost 80 percent within one week. This pattern was generally consistent throughout the state.

The time which elapsed between the application for the 1028 hearing and the return of the child to the home averaged 15.1 days on a statewide basis. As Figure 23 indicates: 10 percent of the children were returned on the same day as the application; 50 percent were returned within three days of the application; 70 percent had been returned within five days; and 90 percent had been returned to the home within a month of the original application by the parent.

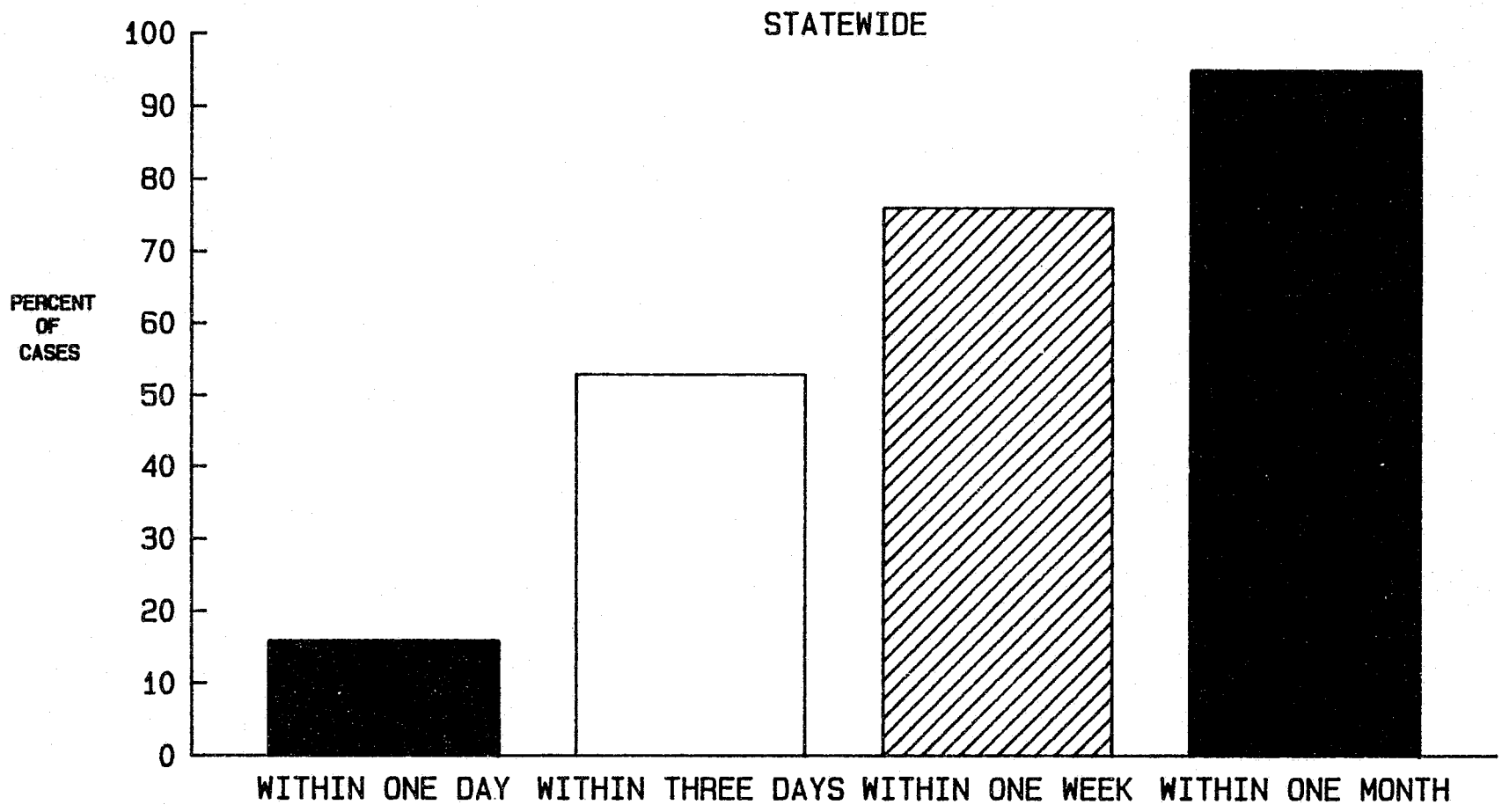

FIGURE 22: TIME BETWEEN APPLICATION FOR AND THE HOLDING OF A 1028 HEARING

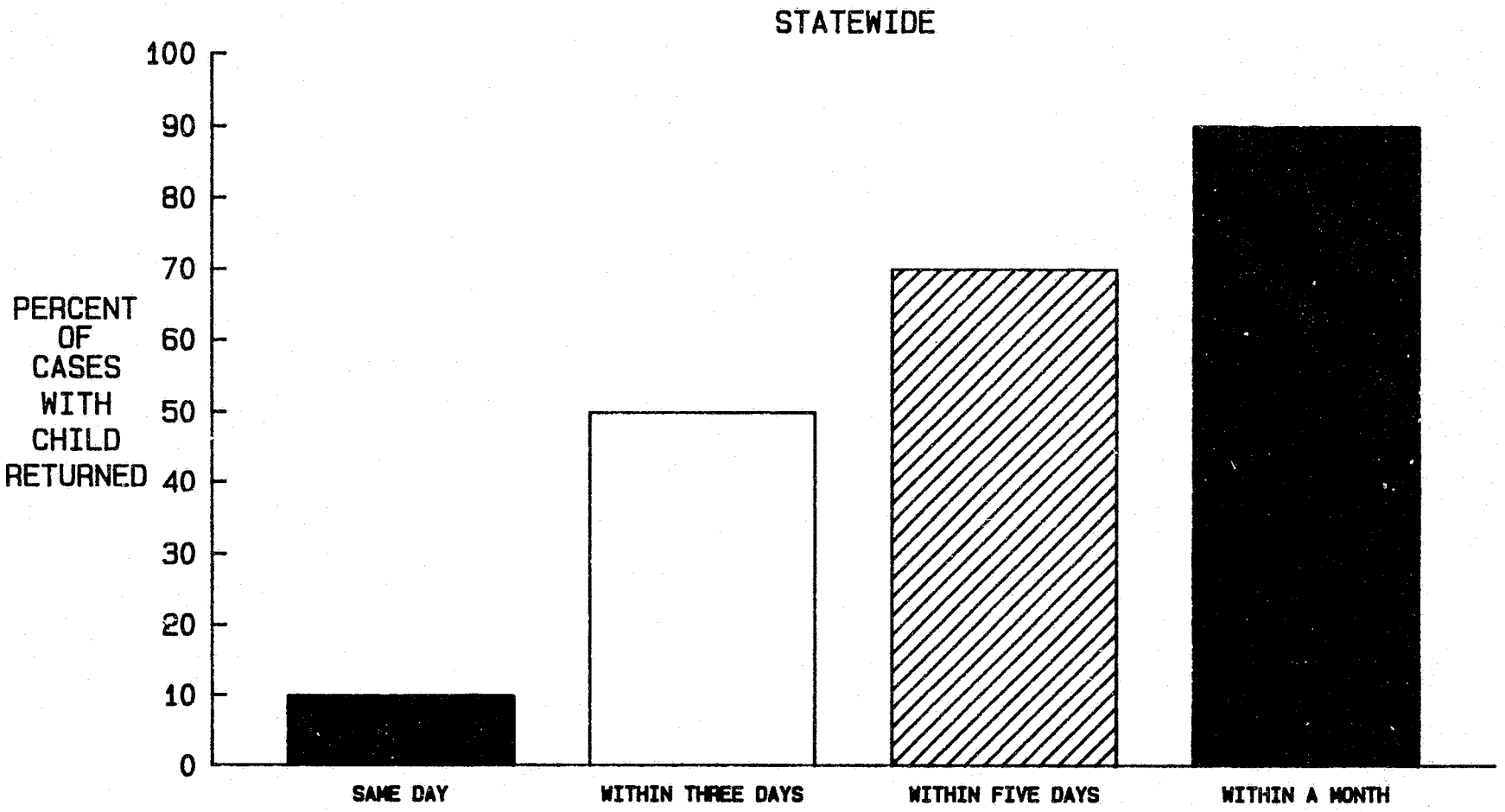

FIGURE 23: TIME BETWEEN THE APPLICATION FOR THE 1028 HEARING AND THE RETURN OF THE CHILD TO THE HOME

CHAPTER 6: DUE PROCESS CONCERNS AND PRE-FACT-FINDING ARTICLE 10 PROCEDURES

This chapter reviews the requirements for and the findings concerning a number of events that follow the filing of the child protective petition but precede the fact finding hearing in an Article 10 proceeding. Because many of these early events directly impact on the rights of the respondents, much of this chapter is devoted to due process concerns, and to the degree to which respondents in child protective proceedings are accorded due process protections in various areas of the State. Additionally, other sections of the chapter discuss amendments to the petition, dismissing or withdrawing the petition, adjournments in contemplation of dismissal, and temporary orders of protection.

A. Summary of Findings: Due Process Concerns and Pre-Fact-Finding Article 10 Procedures

1. Due Process Concerns

- Less than 50 percent of the cases contained evidence of service of the summons, although this finding may be reflective of a failure to document service rather than a failure to serve.

- For those cases where information was available, on the average, statewide, it took approximately seven days from issuance to service of the summons.

- Child protective warrants were issued in about 10 percent of the cases, on the average, 42 days after the original summons was issued. These warrants were usually issued because the respondent refused to obey the summons.

- On the average, respondents first appeared in court about 18 days after the petition was filed. However, this average is distorted by extreme values. In fact, 56 percent of the sample of respondents had appeared in court within one week of the petition filing; 85 percent made their initial appearance within one month of the filing.

- Court documentation indicates that in only 37 percent of the cases, respondents are advised by the court of their right to apply for a §1028 return of the child. This low value may reflect a failure to document rather than a failure of the court to provide the information.

- Nearly 15 percent of respondents were not advised of their right to obtain counsel. This less-than-100 percent compliance rate is most likely due to faulty documentation rather than to a failure to advise.

- Counsel was appointed for the respondent in 69.3 percent of the cases, an average of 23 days after the petition was filed. (In upstate areas, counsel for the respondent were appointed after 13 days; in New York City it took more than twice as long, or 28 days after filing the petition before counsel for the respondent was appointed.)

- Counsel for the respondents are appointed approximately eight days after the initial appearance.

- Only 12.4 percent of respondents use private counsel.

- Law guardians for the case children were appointed in 94 percent of the sample approximately 10 days, on the average, after the petition was filed.

- In New York City, 84 percent of the law guardians are appointed on the same day that the petition is filed. In contrast, in the upstate areas, only 16 percent of the law guardian are appointed on the same day as the petition filing.

- Law guardians are appointed an average of 10 days before the initial appearance of the respondents.

2. **Amendments to or Withdrawal of the Petition**

- The original petition was modified to substitute neglect for abuse allegations in 40.4 percent of the original abuse petitions.

- Most (80 percent) of these amended petitions resulted from negotiations between the parties.

- Petitions were amended, on the average, slightly more than three months after the original petition was filed, and about two weeks before the fact finding hearing.

- Less than 10 percent of the original petitions were withdrawn.

- The withdrawal rate was similarly low for both abuse and neglect petitions.

3. **Petitions Dismissed or Withdrawn**

- About one-fifth of all child protective petitions to the family court are dismissed or withdrawn.

- There appears to be little difference, statewide, in the rate at which Article 10 petitions are dismissed or withdrawn in abuse or neglect cases, although the New York City data suggest a higher dismissal rate in abuse cases.

- Cases that are eventually dismissed or withdrawn have a virtually identical start-up time (i.e., about 14 days to all other cases.

- Cases that proceed to final disposition take about one month longer than do cases that are dismissed or withdrawn.

4. Adjournments in Contemplation of Dismissal

- Adjournments in Contemplation of Dismissal (ACDs) represented 21.8 percent of the final orders of disposition.

- Almost 2/3 of these ACDs were granted before the case ever went to fact finding; the rest, during the fact finding hearing.

- On the average, it took about 3.5 months from filing a petition until the Adjournment in Contemplation of Dismissal was granted. The time frames for granting an ACD varied over a large range with no length of time being more frequent than any other.

- Most (77 percent) of the ACDs granted were for the maximum term allowed by statute, one year.

- The most common terms and conditions associated with ACDs were: directives specific to an individual case (58 percent); meeting with supervising agency as directed (55 percent); obtaining counseling for emotional or alcohol/drug abuse problems (54 percent); and providing care and supervision to the child and securing treatment or counseling for the child (24 percent).

- Almost all (87 percent) of ACDs were deemed dismissed at the end of the term of the ACD. In the remainder of the ACDd cases, an application to restore the case to the calendar was submitted.

- Hearings on applications to restore ACDd cases to the calendar were held about 7.5 months after the application, on the average.

- When applications were submitted to the court for restoration of an ACDd case to the calendar, 72 percent of the time the case was so restored.

- When ACDd cases were restored to the calendar: 23 percent proceeded to fact finding; 31 percent of the time, the ACD was extended; and 8 percent of the cases were transferred to criminal court.

- ACDs were issued about equally between the sexes.

- ACDs were issued about equally across petition types (abuse vs. neglect).

- ACDs were issued in more than 80 percent of the cases when the allegations were: excessive corporal punishment; emotional neglect; lacerations, bruises and welts; and sexual abuse.

- ACDs were issued least often (in less than 10 percent of the cases) when the allegations were: drug withdrawal/infant; burns and scalding; and abandonment.

- The final dispositional orders of "release child to parents with supervision" and orders of protection were the orders most likely to have an associated ACD.

- 15 percent of placements with relatives and 11 percent of placements with the local department of social services had an associated ACD .

5. **Temporary Orders of Protection**

- A Temporary Order of Protection (TOP) was issued at some point in the case prior to final disposition in 37 percent of the cases. All applications for TOPs were initiated by child protective agencies.

- On the average, TOPs were issued 16.4 days after petition filing and 85 days before the fact finding hearing. However, more than half were issued on the same day the petition was filed.

- TOPs were ordered against the father or against the mother each in slightly more than 50 percent of the cases. The next most frequent subject of the TOP was the stepfather (10.9 percent).

- TOPs most frequently contained the following conditions:
  - abstain from offensive conduct against the child (20 percent)
  - stay away from the child (16.4 percent)
  - stay away from the home (15 percent)

- Family court violations of the order were reported in 5 percent of the TOP cases, usually about 2 months after the order was issued.

- TOPs were most frequently associated with abuse petitions (59 percent).

- When temporary orders of protection were issued during the proceeding, they often culminated in final orders of protection (71 percent), final orders of supervision, (47 percent), and ACDs (46 percent).

B. Due Process Concerns

This section describes a number of processes that must occur on a timely basis during an Article 10 proceeding to insure the respondents in the proceeding (usually the parents) are fully informed regarding the hearings scheduled by the court, their various rights during the proceeding, and the potential consequences of their actions.

1. Service of Summons

The statutory requirements for issuance of the summons are discussed in the following. It should be noted that New York State law differentiates here and in other places between its requirements for child abuse and child neglect cases.

Pursuant to sections 1035 and 1036 of the Family Court Act, in child abuse cases, the court must cause issuance of a copy of a child abuse petition and a summons (both clearly marked "Child Abuse Case"). This summons requires the parent to appear within three court days to answer the petition, and to produce the child, unless this latter requirement is dispensed with for good cause shown. The petition and summons must be served within two court days of issuance. Failure to serve must be reported to the court within three court days and the court must then issue a warrant and direct the production of the child. Service must be personal or substituted (if reasonable effort at personal service is first made and the court so orders), and must be accomplished at least 24 hours before the time that the respondent is required to appear in court.

The statutory requirements for service in child neglect petitions are somewhat less specific than are the child abuse service requirements. There is no time limit in neglect cases for a maximum time span between issuance and service of the summons. However in these cases, service of the summons must require appearance by the respondent to answer the petition within three court days (where the child has been temporarily removed from the home), otherwise within seven court days. The

court may also require the person summoned to produce the child. As in abuse cases, service must be at least 24 hours before the court appearance. The same method of service is employed as in abuse cases.

The following findings regarding service of the summons are somewhat problematic concerning the degree to which respondents are given notice of the child protective petition filed against them. Of the 500 court files reviewed for the statewide sample, less than half (47 percent) contained evidence that a summons to appear at the proceeding was served on one or both respondents. In New York City, evidence of service was found in only 25 percent of the records sampled; for upstate counties evidence of service was found in a considerably larger proportion, or 67 percent of the sampled cases.

To a large extent, it can be assumed that these data (which reflect a very low rate of service of the summons) are produced by a failure to document an actual higher level of service. The Family Court Act does not require that evidence be placed in the record regarding service of the summons, only that the court be informed when service could not be effected. Practices on filing affidavits of service in the case file seemed to vary from county to county. Thus, it is likely that the findings reported above are, at the least, conservative. Policy concerns relating to this issue are discussed in Chapter 11.

2. Time from Petition to Service of Summons

As noted above, a summons must be issued by the court following the filing of a petition and must be served on the respondent within two days in abuse cases. In order to determine the degree to which the family courts were in compliance with this requirement, the relevant time periods were measured.

Where information was available (in approximately one-third of the sample), statewide, the time which elapsed from the filing of the petition to service of the summons was 7.1 days. For upstate counties, this time from petition to service of summons

was 8 days. In New York City the time interval between filing the petition and service was 1.4 days. However, the New York City data may be questionable because of the small number of cases containing the requisite information.

It would thus appear, based on this evidence, that the family courts in New York State may be failing to achieve service within the statutory time period. In fact, the average time to effect service is more than twice that allowed by law. It is possible that this is an anomalous finding, produced by the small number of cases which contain sufficient information to allow for this measurement. However, there is other information (based on 89 percent of the entire sample) that provides support for this finding. As noted elsewhere in this chapter, statewide, an average of 17.8 days elapsed between the petition filing and the initial appearance of the respondents in the court. Although even this figure is unduly long, it is, at least, more in accord with later rather than earlier service.

3. Issuance of Child Protective Warrant

There are occasions in which service of the summons is deemed to be simply not possible or practical, and other occasions when the summons is not obeyed. Under such conditions the Act empowers the Family Court to order the issuance and execution of a warrant for the arrest of the respondent.

Section 1037 of the Family Court Act provides that a warrant may be issued under the following conditions: the summons cannot be served; the summoned person refused to obey the summons; the respondent is likely to leave the jurisdiction; the summons would be ineffectual; the safety of the child is endangered; or, the safety of a parent, foster parent or other custodian is endangered.

It is significant that the fact-finding hearing (described later in this report) may not commence in the absence of the respondent, unless every reasonable effort to effect service or to secure the respondent's appearance through the issuance of a

warrant has been made (see §1041 of the Family Court Act). Notably, the results described in later chapters of this report indicate that respondents are present at the fact-finding only about 79 percent of the time.

The project results indicate that this warrant-issuing provision of law is not used frequently across the state. Child protective warrants were issued in only 10 percent of the cases statewide (New York City, 16.5 percent; upstate, 4.2 percent).

The time period elapsing between issuance of the summons and issuance of the warrant was 42 days statewide (New York City, 28 days; upstate, 54 days).

The reasons for issuance of the warrant were: the summons could not be served (noted about one third of the time in New York City, but only 20 percent of the time in upstate cases; or, the respondent refused to obey the summons (found about two thirds of the time in New York City and about 80 percent of the time in the upstate regions).

4. Time Between Filing of Petition and Initial Appearance

Although the term "initial appearance" does not appear in Article 10 of the Family Court Act, it is used within the body of this report to refer to the first time the respondent appears in court to answer the petition. At this time, the respondent is advised of his or her rights, including the right to have an attorney appointed if he or she is indigent, as well as the right to apply for the return of a child who has been temporarily removed from the home prior to the filing of the petition (see §1028 of the Family Court Act).

It is of interest to note how quickly the respondent appeared in court after the petition was filed. Statewide, an average of 17.8 days elapsed between the filing of the petition and the initial court appearance, (the mean was 21.2 days in New York City and 14.8 days in the upstate regions). However, as

described in Table 24, nearly one quarter of the statewide sample had an initial court appearance on the same day the petition was filed; within the first week after the filing of the petition more than half of all cases had had initial appearances; some 70 percent of the cases had an initial appearance by the end of the second week after the petition was filed; and, 85 percent of the caseload had initial appearances within one month after filing.

Thus, although more than half of the respondents appeared in court within a week of the day the petition was filed, nonetheless some 44 percent had not yet appeared at that point and had not had an opportunity to obtain appointed counsel if necessary. This issue is discussed in some detail in earlier chapters of this report, especially in the discussion of ex parte §1027 preliminary hearings. Its policy implications are explored in the concluding chapter of this report.

5. Advising Respondents of their Rights to Apply to Have the Child Returned and of the Right to Counsel

The right to apply for the return of the child (§1028, FCA) has been discussed in some detail in the preceding chapter. As described in Table 24, at the time of the initial court appearance, the court records indicated that some 37 percent of the statewide sample of respondents were advised of their rights under the Family Court Act to apply for return of a child who had been removed from the home prior to the filing of the petition. This frequency was higher in New York City (46.6 percent) and lower upstate (28.8 percent). It should be noted that this value is undoubtedly much lower than one would expect, and most likely represents a failure to document rather than depicting actual court practice. However, these low percentages are descriptive of the inconsistent provision of information by the courts across the state. They do not reflect the degree to which counsel may explain these rights to the respondents.

TABLE 24: Time Between Filing of Petition And Initial Court Appearance (Present Distribution)

TIME OF INITIAL APPEARANCE	AREA OF STATE		
	Statewide	NYC	Upstate
Same day petition filed	22%	35%	11%
Within 1 week after filing	56%	60%	52%
Within 2 weeks after filing	71%	73%	69%
Within 1 month after filing	85%	86%	84%

In addition to according parents the right to apply for the return home of their child, the Family Court Act also makes provision for their legal representation. Section 262 mandates the assignment of counsel for indigent respondents in Article 10 as well as other enumerated proceedings. Under this section when the respondent first appears in court, the judge must advise him or her (before continuing with the proceeding) of the right to be represented by counsel of his or her own choosing, and the right to have counsel assigned by the court when the respondent is financially unable to obtain an attorney. No time frames are set forth for appointment of counsel.

The court records showed that nearly 75 percent of respondents statewide were advised of their right to obtain counsel. This finding was fairly consistent statewide, although occurring with somewhat less frequency in New York City and somewhat more upstate. It may be that this less than 100 percent compliance record is to a measurable degree a fault of court documentation.

In only four percent of the statewide sample did the court records indicate that respondents were not advised of their rights. In nearly 10 percent of the cases statewide, the respondents were not present at the initial court appearance to be advised of their rights (New York City reported a higher frequency of this occurrence (17.7 percent). Finally, in another 10 percent of the cases, relevant information was missing from the court files, even though in some instances respondents exercised their rights to counsel or to apply to the court for return of the child. Policy concerns on this subject are addressed in chapter 11.

TABLE 25: WERE THE RESPONDENTS ADVISED OF THEIR RIGHT TO APPLY TO HAVE THE CHILD RETURNED AND THE RIGHT TO OBTAIN COUNSEL

	Geographic Location		
Advised of Rights	Statewide	NYC	Upstate
Advised may apply for return of child	37.1%	46.6%	28.8%
Advised of right to obtain counsel	74.6%	69.5%	79.1%
Respondents not advised of their rights	4.0%	4.2%	3.8%
Respondents not present at initial appearance	9.8%	17.7%	2.7%
No information in file that respondent was advised of rights; respondent later had counsel	4.2%	2.5%	5.7%
No information in file that respondent was advised of rights; respondent later applied for return of child	0.2%	0.0%	0.4%
Information Missing from file	5.8%	3.8%	7.6%

6. Appointment of Counsel for Respondents

Because child protective petitions may be filed against more than one respondent (for example, when the child is from an intact family and both parents are allegedly involved in the abuse or neglect), service of the summons may be necessary for one or more respondents. During the review of the court records, information was collected for two respondents, where appropriate. In the present report, only information for Respondent 1 is presented, except in those instances where the data for Respondent 2 differ in some significant way from the data for Respondent 1.

Information contained in court files for the statewide sample indicated that counsel for the first respondent named in the petition was appointed in 69.3 percent of the cases. In New York City, this percentage was higher (81.9 percent), and in upstate counties, lower (58 percent).

On the average, counsel for the respondent were appointed 22.7 days after the petition was filed, far longer than the time frame for appointment of law guardians, as noted below. In New York City, the mean time for appointment of counsel for the respondent was 27.6 days. In upstate counties, the time frame was shorter, averaging 12.9 days.

These time values give a somewhat misleading picture of the time frame within which respondents in child protective proceedings are advised of their rights. In fact, statewide, 47 percent of respondents were provided with appointed counsel within one week of petition filing (see Table 26) and two-thirds of the respondents received appointed counsel within a month of filing.

TABLE 26: Time Between Filing of Petition and Appointment of Attorney for Respondent One*

Time for Appointment of Counsel for Respondent One	AREA OF STATE		
	Statewide*	NYC	Upstate
Same day petition filed	13	18	7
Within one week after filing	47	44	50
Within two weeks after filing	50	59	67
Within one month after filing	67	77	83

*Entries in table are percentages of cases in particular geographic area.

Even though 67 percent of respondents have counsel within one month of petition filing, it has been noted elsewhere in this paper that a number of significant events can and frequently do occur during that first month (during which time a third of respondents have no appointed counsel). Preliminary (§1027) hearings are typically held during this time period; preliminary orders of consequence to the respondent (such as removal of the child or temporary orders of protection) may have been issued. As these data clearly indicate, these events occur and orders are often issued in the absence of representation for the respondent, which may be prejudicial to the respondent's interests.

7. Time Between Initial Appearance and Appointment of Attorney for Respondents

On a statewide basis, the sample data indicate that counsel for the respondent named in a child abuse or neglect petition was appointed on the average within 8.1 days of the initial court appearance of the respondent. In New York City, the mean was 10.3 days and for upstate counties, attorneys were appointed on the average of 5.2 days after the first court appearance. However, as described by Table 26, nearly three-quarters of the statewide cases have appointments of counsel for the respondent on the same day as the initial court appearance, with nearly 90 percent of remaining counsel appointed within one month after the first court appearance. These patterns were consistent throughout the state.

Essentially, these data support a pattern that has been emerging through the previous chapters for the preliminary stages in an Article 10 petition. In many cases, it would appear that the following sequence of events occurs:

- a child is removed from the home on a §1024 emergency removal
- an Article 10 child protective petition is filed with the family court
- a §1027 preliminary order of removal is issued (retroactively granting judicial approval for the previous removal) along with other preliminary orders, such as an order of protection
- a child protective summons is served one week after the filing of the petition
- three weeks after the petition was filed, the respondent makes his or her initial appearance in the courtroom
- four days after the respondent first appears in the court, an attorney is appointed for the respondent.

The data show that a number of highly significant events occur prior to the initial appearance and prior to the initial appointment of representation for the respondent. All of these

events occur on an ex parte basis and many of the events are of a magnitude to shake the family structure of the respondent. Although technically the respondent's due process rights may not be violated by this sequence, the entire procedure raises significant policy concerns which will be explored in the concluding chapter of this report.

TABLE 27: Time Between Initial Court Appearance and Appointment of Attorney for the Respondent

Time of Appointment of Counsel for Respondent	AREA OF STATE		
	Statewide	NYC	Upstate
Appointed on same day as initial appearance	74%	72%	70%
Within one week after initial appearance	81%	78%	77%
Within two weeks after initial appearance	86%	83%	79%
Within one month after initial appearance	89%	89%	87%

8. Appointment of Law Guardian

Section 249 of the Family Court Act requires that, in any proceeding under Article 10, the court must appoint a law guardian to represent a minor who is the subject of the proceeding, if independent legal representation is not available to that minor.

Statewide, nearly 94 percent of the sampled cases contained evidence of an appointment of a law guardian for the case child. In New York City, the file showed appointment of law guardians in 98.3 percent of the cases; for upstate counties, this statistic was 89.8 percent. Again, given state mandates and court practices generally, less than a 100 percent finding may be indicative more of incomplete documentation than actual practice, although interviews with local participants in the child protective system confirmed that, in fact, although rarely, a law guardian is not appointed for a child who is the subject of an Article 10 proceeding.

9. Time Between Filing of the Petition and Appointment of Law Guardian

The Family Court Act does not address the issue of appropriate timing for the appointment of a law guardian. Certainly, one would expect to find, as a common practice, that the law guardians are appointed sufficiently early so that they can review the case record in some depth and interview the child prior to the preliminary court decisions which affect the welfare and custodial status of the child.

In the present study, it was found that, on a statewide basis, the law guardian for the child was appointed an average of 9.64 days after the filing of the petition. In New York City, this value was 8.2 days and upstate, 11 days.

However, as a review of Table 29 indicates, a prevailing practice in New York City is for the child's law guardian to be appointed on the same day that the petition is filed. As shown in the table, statewide, law guardians were appointed in 50 percent of the cases on the day the petition was filed. (This figure is weighted by the New York City practice of same-day appointment in 84 percent of the cases, while the upstate figure was considerably lower, 16 percent). This may be accounted for by contractual relationships in New York City for law guardian representation.

Seventy-nine percent of law guardians are appointed within one week after filing, 86 percent within two weeks, and virtually all are appointed within a month after the petition is filed. In all cases, New York City data demonstrate a more expeditious appointment of law guardians for the child than is found in the upstate regions.

Policy concerns and recommendations relating to law guardian appointments may be found in the concluding chapter of this report.

TABLE 29: Time between filing of petition and appointment of law guardian*

Time of Appointment of Law Guardian	Area of State		
	Statewide	NYC	Upstate
Same Day Petition Filed	50*	84	16
Within One Week After Filing	79	95	63
Within Two Weeks After Filing	86	96	75
Within One Month After Filing	95	99	91

* Entries in table are percentage of geographic area sample.

10. Time Between Initial Court Appearance and Appointment of Law Guardian

The findings of the present study indicate that, across the entire spectrum of cases, counsel for the child is appointed prior to counsel for the respondents. Since counsel for the respondent is often not appointed until the respondents have made their initial appearance in court and have requested legal representation, the following comparisons were developed.

On the average, the statewide sample showed that law guardians were appointed 5.7 days before the initial court appearance of the respondents in the abuse or neglect proceeding. In New York City, law guardians were appointed an average of 10 days before the initial appearance, and in the upstate counties, law guardians were appointed an average of only 1.6 days before the initial appearance. Table 30 provides additional details on this subject.

TABLE 30: Time Between Initial Appearances and Appointment of Law Guardian

Law Guardian Appointment time	Statewide	NYC	Upstate
More than one month before initial appearance	8*	12	4
More than two weeks before initial appearance	17	25	10
More than one week before initial appearance	25	37	15
At least one day before initial appearance	44	59	31
The same day as the initial appearance	51	39	62

*Entries in table are percentages of geographic area sample.

According to the data presented in the table, in New York City, law guardians tend to be appointed well in advance of the initial court appearance, (12 percent are appointed more than a month before the initial appearance, rising to a 25 percent appointment rate more than two weeks before, and to 37 percent more than a week before the initial appearance). More than half (59%) of all law guardian appointments are made at least a day before the initial appearance.

This practice does not appear to be duplicated in counties outside New York City (four percent of upstate law guardians are appointed more than a month before the initial appearance, rising to ten percent more than two weeks before; and, to fifteen percent more than a week prior to the initial appearance). Almost a third (31 percent) of upstate law guardians are appointed at least a day before the initial appearance).

In addition, 51 percent of law guardians statewide are appointed on the day as the initial appearance (39 percent in New York City and 62 percent upstate), with the remainder appointed thereafter. Some of the differences between New York City and upstate practices regarding the timing for appointment of law guardians as they relate to the initial court appearance stem from different practices for scheduling initial appearances (discussed elsewhere in this report).

C. Amendments To Or Withdrawal of The Petition

1. Amendments of the Petition to Substitute Neglect Charges for Abuse Charges

Section 1031 of the Family Court Act permits the court on its own motion to substitute a neglect petition for an abuse petition if the facts that have been established are not sufficient to making a finding of abuse. These substitutions can be made at any point in the proceedings. Additionally, §1051 gives the court power to amend the allegations in the petition when "the proof does not conform to the specific allegations."

There are a number of reasons why a family court would wish to amend a petition and substitute a charge of "neglect" for one of "abuse". Clearly, when the evidence presented in court does not sustain an abuse petition, but is sufficient for making the finding of a charge of neglect, amendment of the petition may occur.

Practice commentary to the Family Court Act suggests another potential reason for such an amendment. Even though the evidence may be sufficient to sustain a finding of abuse, a reduction to the charge of neglect may be made as a result of "plea bargaining." * In these instances, the respondent (whether because of an attempt to avoid the stigma of being characterized as an abusing parent or because he or she believes that the dispositional consequences are less severe for neglect cases) will agree to an adjudication by consent of the finding of neglect.

In recognition of the various possible reasons for amending a petition, the data collection effort in the present project was designed to assess these differences. The results are presented below.

The statewide sample indicated that the initial petition was modified to substitute neglect for abuse allegations in 40.4 percent of all the original abuse petitions. Eighty percent of these substitutions were made as a result of negotiations between the parties and are therefore associated with settling of cases. Another 7 percent of substitutions were made because the facts that were presented in the original petition were insufficient to sustain the allegation of abuse. In the remaining cases, no information for the reason for substitution were contained in the court record. This pattern was consistent throughout the state.

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*See the practice commentary to §1031 FCA, McKinney's Consolidated Laws of New York, Annotated.

Given the fact that almost half of original abuse petitions are amended to substitute neglect for the original charges, it is important to examine carefully the cases in which such substitutions occur. In particular, in view of the outcome differential found between settled and contested cases, (described later in this report), in which cases that were settled had a much higher rate of reports to the State Central Register following case disposition than did contested cases, it is important that the reduction in petition type be used with great discretion.

2. Time Frames For Petition Amendments

The time elapsing between filing the abuse or neglect petition and the modification of that petition averaged 102.3 days, statewide, with a range from 0 to 685 days. Sixty percent of all modifications were made within 90 days after filing the petition.

Statewide, the petition was amended, on the average, 14.2 days before the fact-finding. However, 75 percent of substituted petitions had fact finding hearings on the same day that the modification was made. Of the rest, most (71 percent) were amendments to the petition before the fact finding hearing. Only 29 percent of the non-same-day amendments occurred after the fact findings, which is as would be expected if these amendments are typically used as part of a negotiating procedure.

The time elapsing between modification of the petition and final disposition of the case averaged 48.7 days statewide, with slightly more than 50 percent of such cases receiving final disposition on the day the petition was modified, and a total of 82.4% receiving final disposition within three months of the amendment.

3. Petition Withdrawals

Statewide, 8.8 percent of the cases in the sample were withdrawn. It was not possible to determine the reasons for withdrawal of the petition in 11 percent of the cases as the court records did not generally contain appropriate information.

With respect to withdrawn petitions, the time elapsing between filing and withdrawal averaged 97.7 days statewide. Three-quarters of such petitions were withdrawn within 90 days of filing.

The withdrawal rate did not appear to differ widely across petition types: five percent of all abuse petitions, and ten percent of all neglect petitions, were withdrawn statewide. Law guardians had already been appointed for the child in 80 percent of the cases that were withdrawn (compared with a 95 percent appointment rate among petitions that were not withdrawn).

It is interesting to note this somewhat higher withdrawal rate among cases where a law guardian was not appointed for the child and to speculate regarding what difference, if any, in case processing and outcome there might have been if the law guardians had been appointed before the decision was made to withdraw the petition.

D. Petition Dismissed or Withdrawn

For the purposes of the following analysis, petitions that were dismissed by the court and those that were withdrawn by the petitioner are combined into a single category. Conceptually, this one category which represents all of the cases in which there is no adjudication and no final disposition is of interest for comparison with the remainder of the Article 10 cases that proceed to disposition, and to determine whether such cases have differential outcomes from cases going to final disposition. These latter questions will be addressed in later sections of this report. In the present section the rate at which certain types of cases are dismissed and withdrawn and certain time measures are considered.

1. Proportion of Cases Dismissed or Withdrawn

Across the entire sample, about one-fifth of all child protective petitions to the family court were dismissed or withdrawn. Specifically, as indicated in Figure 24, 19.4 of all cases in the sample were of this type. The New York City (23 percent) and upstate (16.1 percent) dismissal/withdrawal rates were comparable to this statewide average.

Almost none of the case files for dismissed/withdrawn cases contained information regarding the reason for dismissal/ withdrawal. Nonetheless, an almost 20 percent rate of dismissal/withdrawal, or about one-fifth of all the cases in the sample was noted.

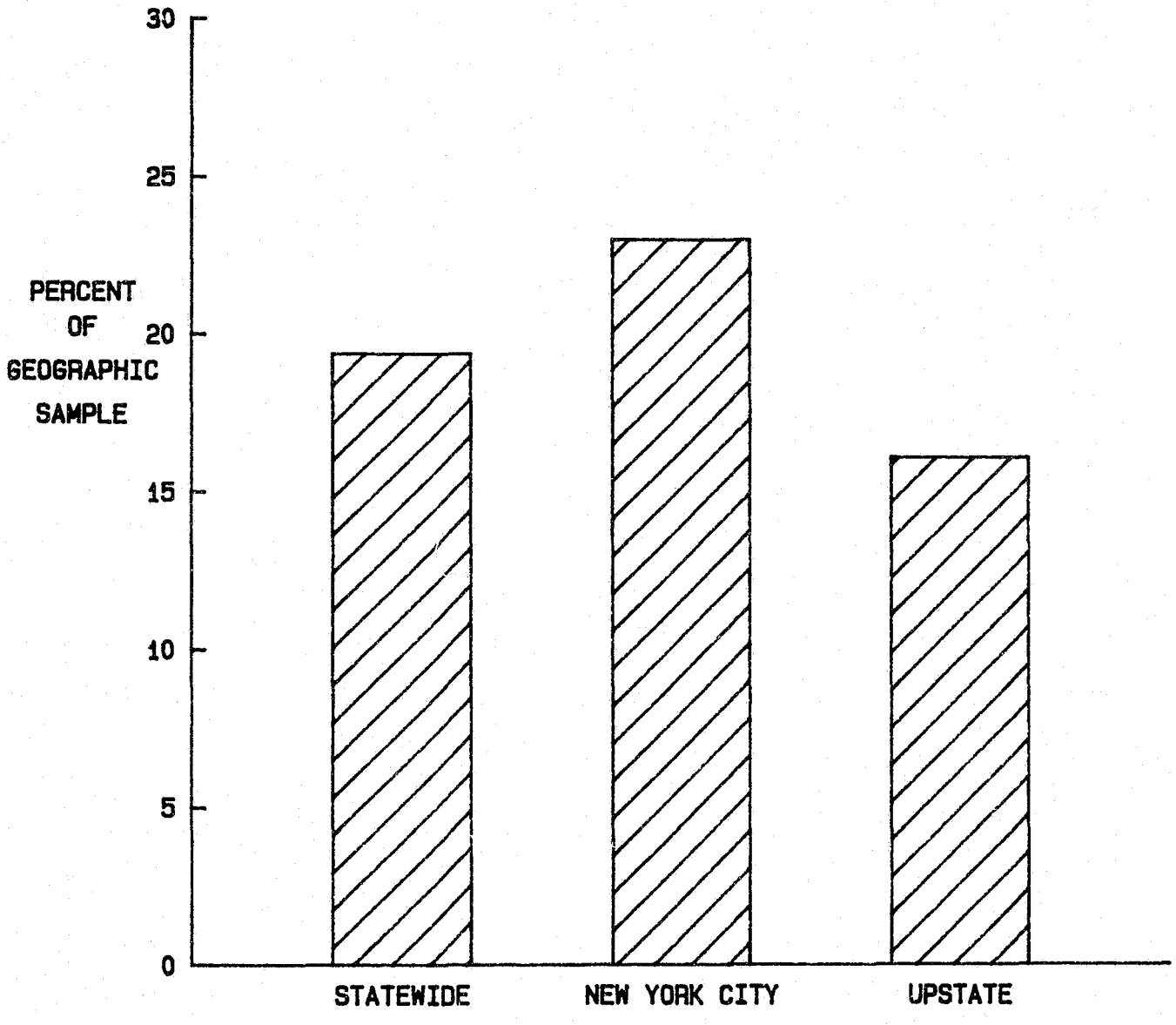

FIGURE 24: PERCENT OF PETITIONS DISMISSED OR WITHDRAWN

2. Case Dismissed or Withdrawn by Petition Type

The degree to which dismissal/withdrawal (D/W) rates vary by petition type is of interest, i.e., is a case more likely to be dismissed, when the abuse rather than neglect is charged. D/W rates were compared for abuse and neglect cases for the three geographic areas studied in the present project and these data are presented in Figure 25 which compares dismissal/withdrawal rates for abuse and neglect petitions considered separately. Statewide, 21.3 percent of abuse petitions and 18.5 percent of neglect petitions were dismissed or withdrawn. Regionally, New York City registered higher D/W rates for both abuse and neglect petitions (28.6 percent and 20.3 percent, respectively) than those reported upstate (where 14.5 percent of abuse petitions and 16.9 percent of neglect petitions were D/W cases).

In these findings, the New York City figures are suggestive of a differential D/W rate of abuse and neglect cases. It appears that abuse case are more likely to be dismissed or withdrawn than are neglect cases. However, the upstate findings (where the D/W rates are much closer together than in the City) tend to contradict this finding.

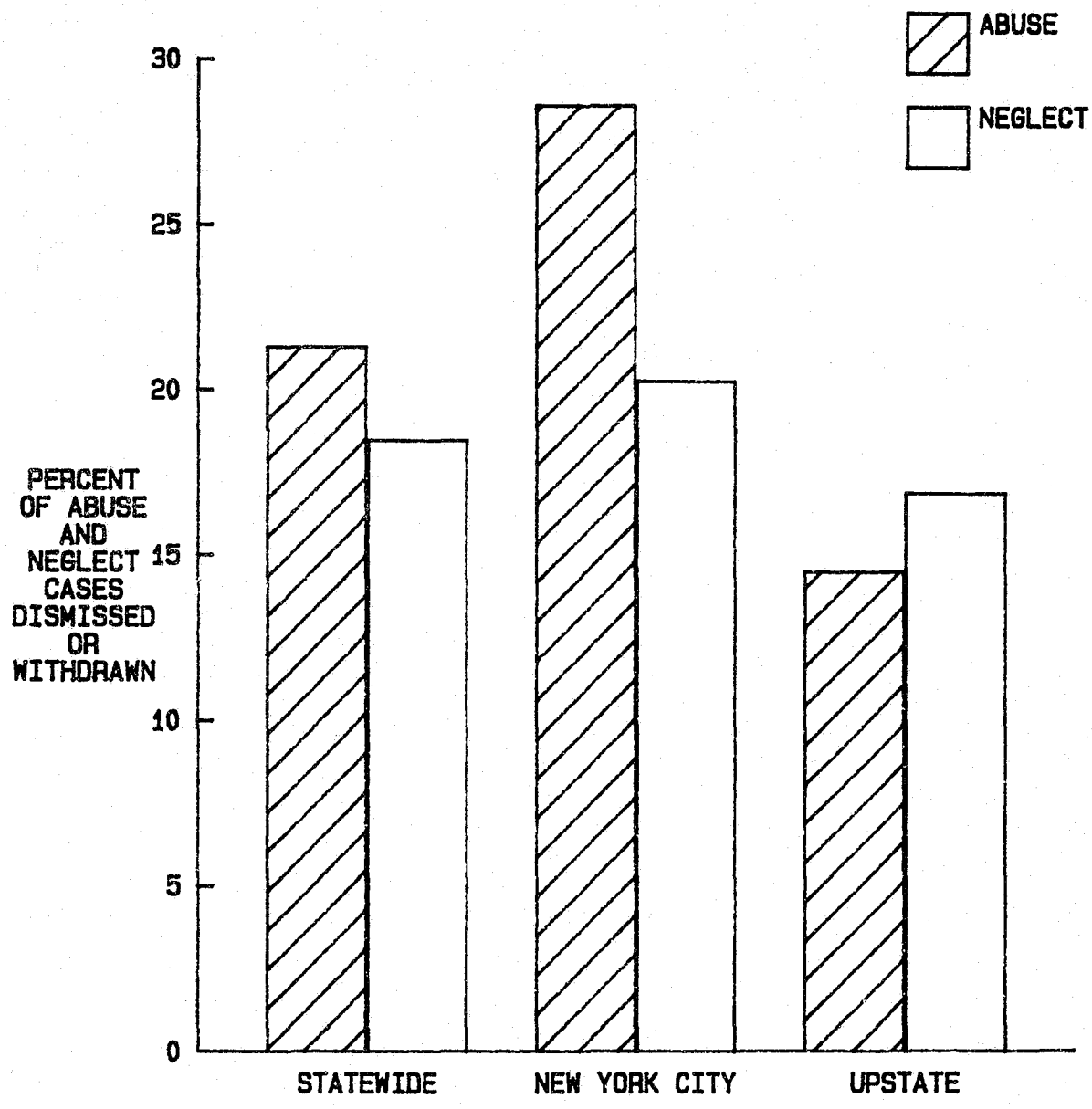

FIGURE 25: PERCENT OF ABUSE AND NEGLECT CASES DISMISSED OR WITHDRAWN

3. Start-up Time; Case Length

As noted earlier in this report, two standard measures were used throughout the data analysis that reflect, 1) how quickly the respondent appears in the court room and 2) how quickly a case proceeds to final disposition. These measures are defined as in the following.

Start-up time: the number of days from filing the Article 10 petition until the initial appearance of the respondents.

Case Length: the number of days from petition filing until final case disposition.

With regard to start-up time, there is little distinction between how courts treat D/W cases as opposed to cases that proceed to disposition. In fact, as reference to Table 30 indicates, there was virtually no difference statewide between dismissed/withdrawn cases and non-dismissal/withdrawals, in start-up time, although regional variations exist. (This statistic was approximately 14.2 days statewide for both levels of the variable.)

TABLE 30: START-UP TIME FOR DISMISSED/WITHDRAWN CASES*

Geographic Location	Dismissed/ Withdrawn Cases	Not Dismissed/ Withdrawn Cases
Statewide	14.20*	14.15
New York City	10.32	14.21
Upstate	20.25	14.10

* Entries in table are average number of days from petition filing to initial appearance.

As depicted in Table 31, case length, as expected was longer by about one month for cases that proceeded to final disposition (an average of 135.3 days on a statewide basis) than for cases that were dismissed or withdrawn (103.5 days statewide). This pattern held consistently throughout the State: in New York City case length for dismissed/withdrawn cases was 108.9 days and 149.9 days for other cases. In upstate counties, case length for dismissed/withdrawn cases was 96.3 days, 123.42 days for non-dismissal/withdrawals.

TABLE 31: CASE LENGTH FOR DISMISSED/WITHDRAWN CASES*		
Area of State	Dismissed Withdrawn	Not Dismissed/ Withdrawn
Statewide	103.5*	135.3
New York City	108.9	149.9
Upstate	96.3	123.42

*Entries in table are average number of days between filing of petition and final case disposition.

E. Adjournments in Contemplation of Dismissal

Article 10 of the Family Court Act provides options for dealing with cases in ways other than proceeding through the entire series of fact-finding and dispositional hearings. An Adjournment in Contemplation of Dismissal (ACD) is one means of disposing of a case without an adjudication or the issuance of final dispositional orders. This type of solution to the problems posed by a child protective case represents a legislative attempt to develop "an alternative to the disruption of adjudicatory hearings when a family at risk is simply in need of the assistance which a child protective agency can provide."*

*Governor's Memorandum, approving Chapter 707, Laws of 1975 (August 9, 1975).

§1039 of the Family Court Act establishes the ground rules for an ACD. These are briefly described in the following:

- The court may order an ACD on the motion of the petitioner or upon its own motion.
- The respondent, the law guardian and the petitioner must consent to the ACD.
- The ACD can be ordered either before or during a fact-finding hearing but, so long as the ACD is in effect, there is no adjudication.
- In an ACD, the court proceeding is adjourned for a time period up to a maximum of one year. This period can be extended on consent of the respondent, the law guardian, and the petitioner.
- The terms and conditions of the ACD must include a requirement that the child and respondent be under the supervision of a child protective agency during the adjournment period.
- The child protective agency can be ordered under the terms of the ACD to report to the court as often as directed to do so by the court. If it comes to the attention of the court that the child protective agency has not observed the terms of the adjournment order or if it has failed to properly supervise the respondent, then the court can order the agency to comply with the terms of the ACD order.
- If the respondent fails to observe the terms of the ACD or to cooperate with the supervising agency, the court, after a hearing, can restore the case to the calendar, thus effectively ending the adjournment.

In most of 1985, when petitions were filed for the cases in the sample, §1039 required that in ACD cases that were restored to the calendar, neglect would be held to exist and the case would immediately be subject to disposition. However, in 1985, the Legislature guided by recent judicial decisions, amended this section of law to require that, when an ACDd case is restored to the calendar, the court must proceed to a fact finding hearing. In other words, while earlier an adjudication of neglect was assumed on restoration of

an ACDd case to the calendar, after the amendment, this assumption of neglect was no longer made and the case was to be tried at a fact finding hearing.

This hearing requirement became effective at the end of November, 1985, thus occurring near the end of the time period when petitions were filed for the sampled cases but about in the middle of the post-case-year when ACDs might be in effect. This change, which might be expected to affect the readiness with which ACDs are ordered, is, therefore, a potential variable of relevance when examining the ACD findings.

- Finally, §1039 provides that when an ACDd case is not restored to the calendar, it is deemed to have been dismissed by the court at the end of the adjournment period.

Adjournments in Contemplation of Dismissal are, thus, one means of disposing of cases, and, as such, are counted as case dispositions in many of the analyses in this report.

As noted above, an ACD automatically contains an order of supervision as one of its terms and conditions.

The findings regarding the use of Adjournments in Contemplation of Dismissal are presented in the following.

1. Incidence of ACDs

On a statewide basis, adjournments in contemplation of dismissal represented 21.8 percent of final orders of disposition. In New York City, this proportion was somewhat smaller (17.7 percent), and, in upstate counties, almost one third of the cases were ACDd (27.9 percent).

2. Point of Occurrence of Court-ordered ACDs

As described in Figure 26, of the statewide total, 65 percent of the ACDs were granted before the fact finding hearing, and the remaining 35 percent during the fact finding hearing. New York City and upstate counties reflected this basic pattern with respect to both the pre-fact finding period and during the fact finding itself.

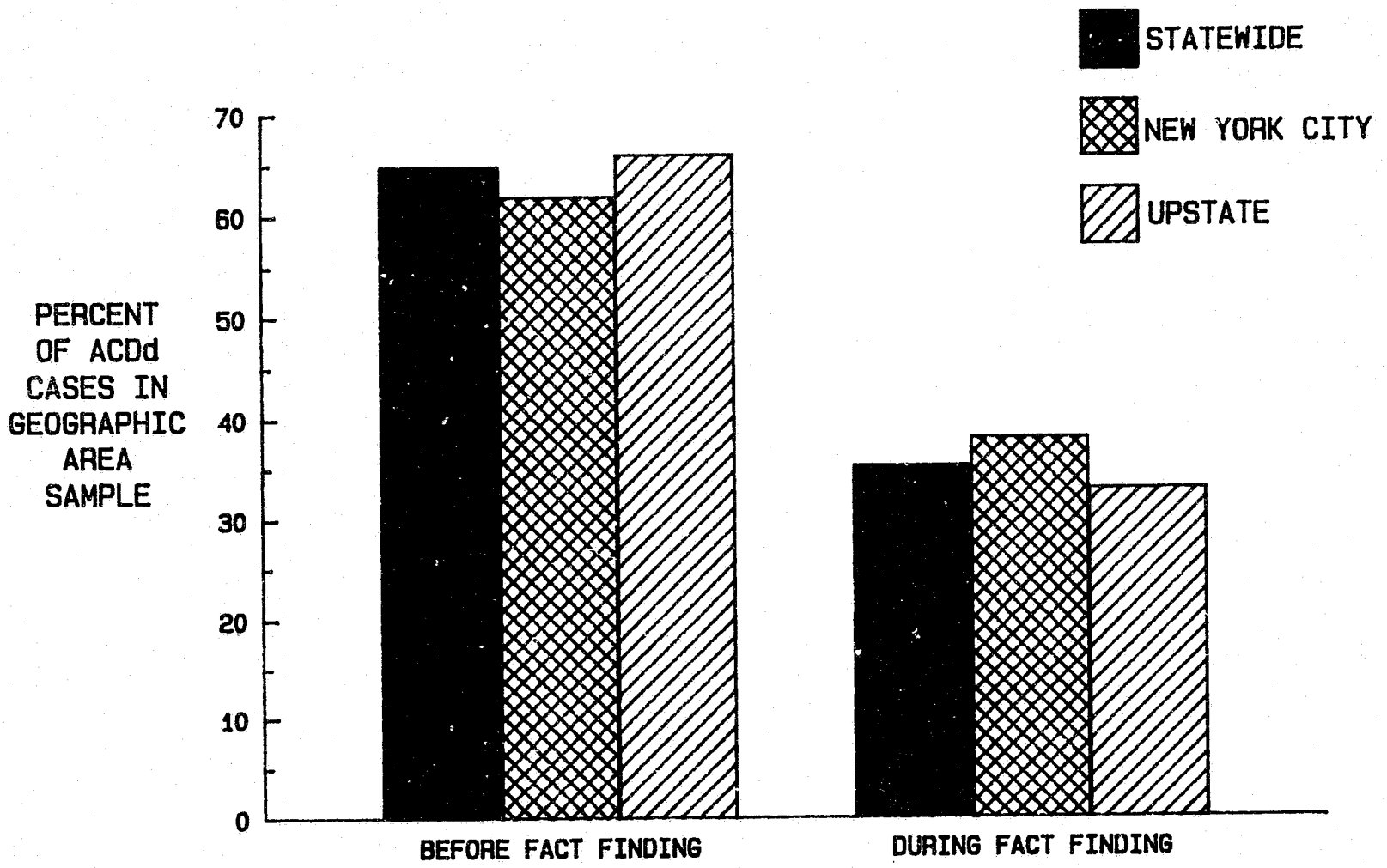

FIGURE 26: POINT OF OCCURRENCE OF ADJOURNMENTS IN CONTEMPLATION OF DISMISSAL

3. Time to Grant ACD

The time elapsing between filing of the petition and the ACD order averaged 106 days statewide or about 3.5 months. This mean was somewhat lower in New York City (96 days) and higher upstate (111 days). The range on the statewide times was quite large, from 6 days to more than 5 months, with cases distributed with essentially equal frequencies throughout the range. This data would, thus, suggest that there is "no magic moment" following petition filing when a child protective case is settled through the use of an ACD, but, instead, cases are equally likely to settle early in the process as they are likely to settle immediately prior to or during fact-finding or disposition.

4. Length of ACD

As noted earlier in this chapter the maximum length allowed by statute for an ACD is one year. Most courts across the state appear to set this limit on the ACDs as a matter of course. Statewide, 77 percent of the ACDs ordered in the project sample were for one year. New York City and the upstate region, both reflected this finding.

5. Terms and Conditions of the ACDs

Although Family Court Rules* do not specify any requirements for the terms and conditions of an ACD (as they do for certain other orders, such as an order suspending judgment), §1039 of the Family Court Act requires that each ACD must include a condition placing the child and respondent under the supervision of a child protective agency during the adjournment period. Hence, for the purpose of obtaining standardized information on the terms and conditions of ACDs in the present study, those standard terms and conditions in the Uniform Rules of the Family Court designed for orders of suspended judgment and

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*22 NYCRR Part 205, Uniform Rules for the Family Court

for orders of supervision * were used as models. The extent to which those terms and conditions were attached to the ACDs in the sample is reported in the following.

The most frequently cited terms and conditions of ACD orders included:

- specific directives relating to the details of a particular case, (for example, parent to refrain from leaving children alone) cited in 58 percent of such orders;

- meeting with the supervising agency when requested to do so (55 percent);

- obtaining counseling and/or treatment for a variety of emotional or alcohol/drug abuse problems (54 percent); and,

- provision of proper care and supervision to the child and securing treatment or counseling for the child (24 percent).

Other terms and conditions cited with less frequency (each cited in less than 15 percent of the orders) included: reporting to the supervising agency when requested; notifying the supervising agency of address changes; behaving in ways to protect the child from injury and safeguard his or health and welfare; refraining from specified acts; and taking steps to ensure the child's attendance at school.

6. Percentage of ACDs Deemed Dismissed

As noted above, when an ACDd case is not restored to the calendar because of a violation of the terms and conditions of the order, the petition is deemed dismissed by the court at the end of the adjournment period. In the present study, 87 percent of ACDs were deemed dismissed at the end of the time

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*22 NYCRR §205.83

period noted in the order. This pattern held consistently throughout the state.

7. Applications to Restore ACDd Cases to the Calendar

When the respondent fails to observe the terms of an ACD or to cooperate with the supervising agency, then, after a hearing, the court can restore the case to the calendar. Such a restoration happened fairly infrequently in the sampled cases. Statewide, an application was made to restore a case to the calendar in only 14 percent of the ACDd cases. (The rate was 15.7 percent in the upstate regions and 9.5 percent in New York City.) In such cases, the time elapsing between the application and the court hearing on restoration averaged 7.5 months, with a range of from 10 days to more than two years.

8. Court Findings on Applications to Restore ACDd Cases to the Calendar

As noted above, in only 14 percent of the ACDs in the sample was an application submitted to the court to restore the case to the calendar. Hence, the absolute number of cases in which restoration hearings were held is small (n = 18), and, in consequence, the sample size for any measures on these cases is also quite small.

Therefore, bearing in mind the limitations imposed on these findings because of the small sample size, the following results are presented:

Following the court hearing on an application to restore, the court found:

- in 39 percent of the cases, that the respondent had failed to observe the terms and conditions of the ACD;

- in 11 percent of the cases, that the respondent had failed to cooperate with the local department of social services;

- in 28 percent of the cases, the case was not restored to the calendar; and,

- in 11 percent of the cases, the ACD order was extended.

The court files disclosed only one instance where the court, during the course of the hearing on restoration of the ACD order, ordered the local child protective agency to fulfill its responsibilities as originally ordered by the court under the original ACD. In this case the local department of social services was ordered to provide the respondent with appropriate services.

Seventy-two percent of the time, when a hearing was held on an application to restore, the ACD case was in fact restored to the calendar. Of these restored cases, 23 percent, proceeded to the fact finding hearing; in another 31 percent the ACD was extended and then deemed dismissed; and 8 percent of the cases were transferred to criminal court.

9. Relationship of the ACD disposition with Other Variables

In order to determine whether ACD orders were used in particular kinds of cases, the ACD variable was cross-tabulated with several other study variables. The results of these cross tabulations are presented below:

- The ACD order was made with about equal frequency across case types. Twenty-nine percent of abuse and 23 percent of neglect petitions were ACDd.

- ACD orders were issued for 29 percent of the female case children in the sample and 20 percent of the males.

- ACDs were issued with respect to 21 percent of all children in the sample under the age of five; 25 percent of the children between the ages of five and 12; and 31 percent of children over the age of twelve.

Figure 27 presents the percentage of cases with specific allegations in which ACD orders were issued. ACD orders were associated more than 30 percent of the time with

- excessive corporal punishment,
- emotional neglect,
- lacerations, bruises and welts, and
- sexual abuse.

ACD orders were associated between 10 and 25 percent of the time with

- educational neglect
- malnutrition/failure to thrive
- inadequate guardianship
- lack of supervision
- lack of medical/dental care

Finally, ACD orders were associated less than 10 percent of the time with

- drug withdrawal/infant
- burns and scalding
- abandonment
- alcohol/drug abuse

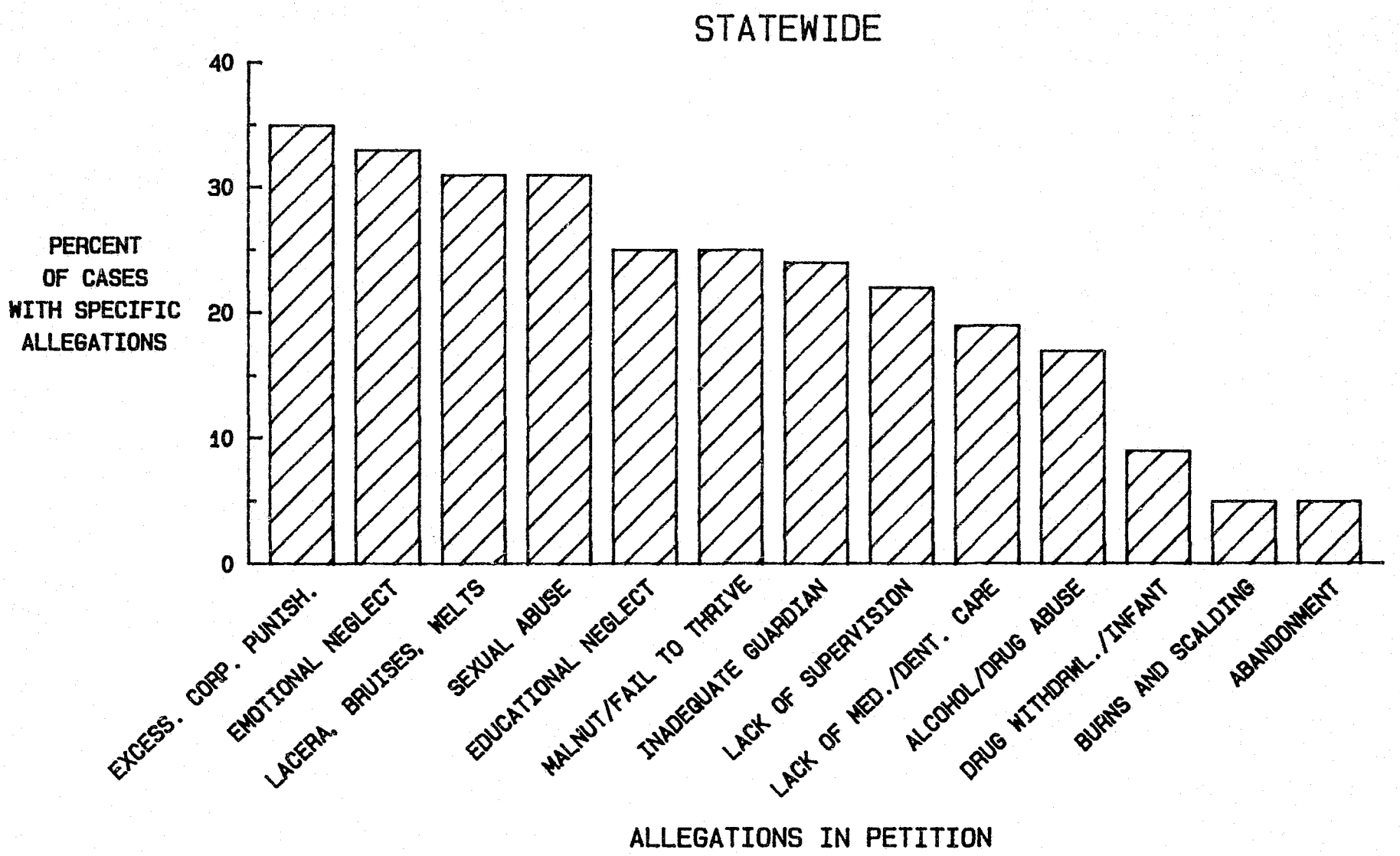

FIGURE 27: PERCENTAGE OF ACDS ISSUED IN CASES WITH SPECIFIC ALLEGATIONS

- The relationship between Adjournments in Contemplation of Dismissal and other final dispositional orders is also of interest. Among all ACD cases in the sample, an order of protection was the most frequent other dispositional order with 43.2 percent of ACDs receiving this order. Two other dispositional orders with a relatively high frequency among ACDs were "counseling" and "release child to parent with supervision", each representing 29.6 percent of the ACD cases.

  The reverse of this relationship, that is, the relative frequency of ACDs within specific dispositional orders is presented in Figure 28 which summarizes the following findings. ACDs were ordered in conjunction with:

  - 39 percent of orders of release to parents with supervision;

  - 33 percent of orders of protection;

  - 27 percent of all orders for the department to help counsel the family;

  - 24 percent of orders of supervision;

  - 22 percent of orders of release to parents without supervision;

  - 20 percent of orders for the department of social services to provide housing services;

  - 18 percent of all orders for other services;

  - 15 percent of orders of placement with relatives;

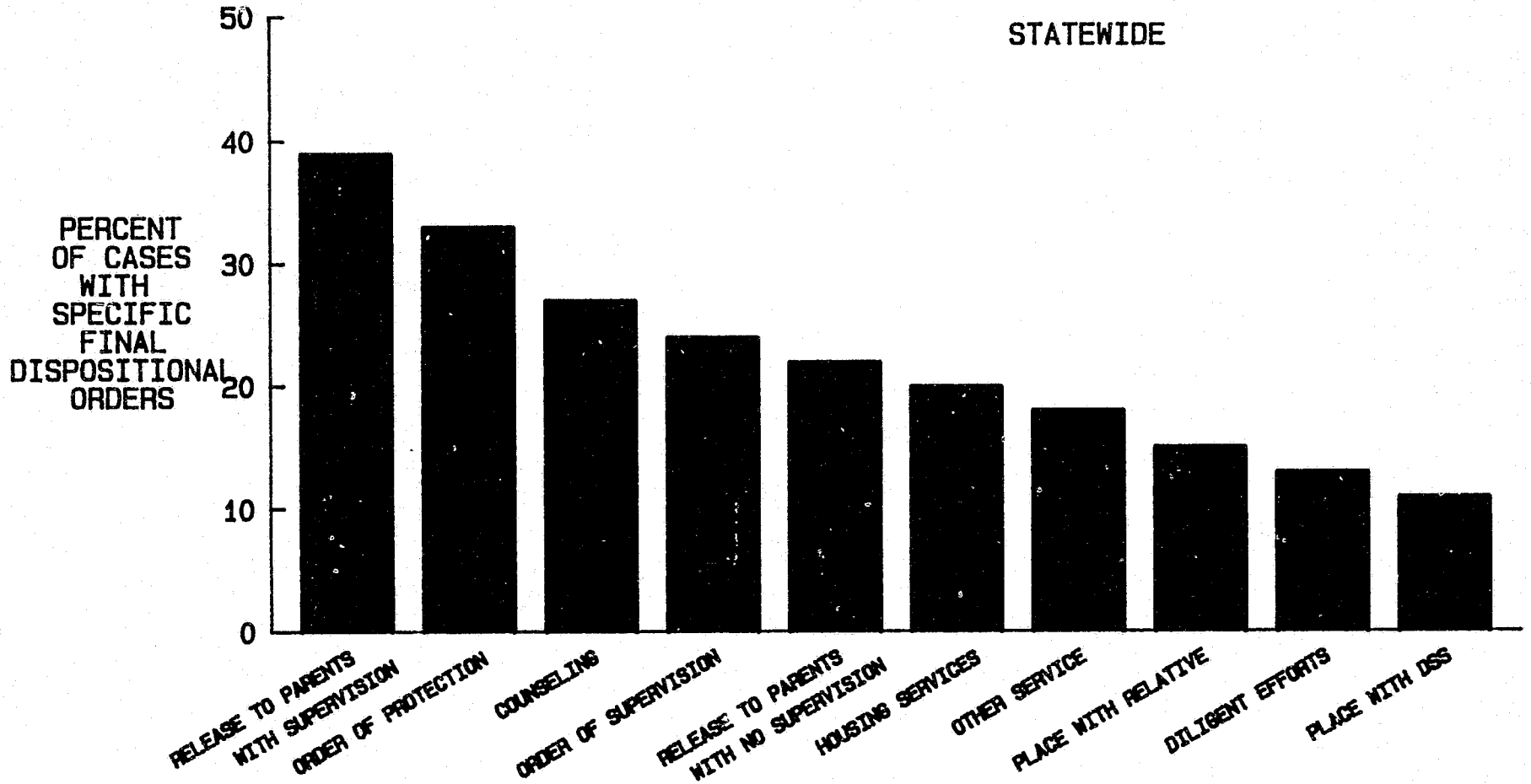

FIGURE 28: PERCENTAGE OF CASES WITH SPECIFIC FINAL DISPOSITIONAL ORDERS THAT ALSO RECEIVE AN ACD

- 13 percent of orders for the department of social services to undertake diligent efforts to provide services or assistance to the child and family;

- 11 percent of orders of placement with the department of social services.

As might be expected, ACDs are found in a relatively high number of orders of release to parents with supervision and orders of protection. In both instances, the court clearly believes that, in building into its disposition either supervision by the department or an order of protection, the child may safely be released to the parents.

Of even more interest is the small but nonetheless, finite number of cases in which the child is placed either with relatives (15 percent) or with the local department (11 percent) and an ACD is also granted.

F. Temporary Orders of Protection

1. Frequency of Issuing TOPs

Two provisions of Article 10 of the Family Court Act authorize the court to issue temporary orders of protection (TOPs). Section 1029 broadly permits the court to issue such orders either before or after a child protective petition is filed but limits the terms and conditions of such orders to a more restrictive set than are found in final orders of protection.*

However, §1027 (which establishes the requirement for a preliminary hearing in abuse cases or those involving pre-petition removal without court approval) authorizes the

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*This limitation was in effect in 1985 when the cases in the sample were proceeding through the courts but was removed by the Legislature in a 1988 amendment to §1029 FCA.

issuance of a preliminary order of protection with terms and conditions exactly comparable to those attached to final orders of protection. The only limitation on the use of this type of authorization for issuing temporary orders of protection is that these orders must stem from (hence be preceded by) a §1027 preliminary hearing.

The potential terms and conditions of a temporary order of protection may include, (but are not limited to) any or all of the following:

- requiring the respondent to stay away from the home, the other spouse or the child;
- allowing a parent to visit the child at specified intervals;
- requiring the respondent to abstain from offensive conduct against the child or the other parent;
- requiring the respondent to give proper attention to the care of the home;
- requiring the respondent to refrain from acts that tend to make the home not a proper place for the child.

The first two terms and conditions listed above were not available to the family courts in 1985 unless the TOP stemmed from a §1027 preliminary hearing.

A number of measures of TOPs as used in the 1985 sampled cases are reported below.

A temporary order of protection was issued at some point in the case prior to final disposition in 36.7 percent of the statewide sample. In New York City, TOPs were issued in 28.3 percent of the cases; in upstate counties, TOPs were issued in 44.3 percent of the cases.

2. Applications for TOPs

Under the provisions of the Family Court Act, in 1985, applications for temporary orders of protection could be initiated by a child protective agency, or by a person on the court's direction (§1032 FCA). In 1987, the Legislature amended the Family Court Act to allow law guardians to apply for TOPs, but this power was not available to law guardians in 1985 when the cases in the sample were in the courts. In the present study, data from the sample indicate that, in virtually all cases, the application for a TOP was initiated by the child protection agency. This pattern was consistent throughout all regions of the state.

3. Time of Issuance of TOPs

On a statewide basis, temporary orders of protection were issued, on the average, 19.7 days after the petition was filed. However, more than half (56 percent) of them were issued on the same day that the petition was filed; and more than three-quarters were issued within two weeks of filing. The remainder were issued up to 320 days after the petition was filed. This pattern was evident throughout the state.

As described in Figure 29, the time elapsing between the initial court appearance and the issuance of the temporary order of protection averaged 8.4 days statewide. However, this value is distorted by the fact that TOPs could (and, did) occur before, after, and simultaneously with the initial court appearance. In fact, statewide in 34 percent of the cases the TOP was issued within two weeks prior to the initial appearance, and, in almost half the cases (48.6 percent), the TOP preceded the initial appearance of the respondent. The TOP was issued on the same day as the initial appearance in 29.9 percent of the cases. Finally, 21.5 percent of the TOPs were issued after the initial appearance, including 14 percent that were issued anywhere from two weeks to a year after the initial court appearance. This pattern appeared fairly consistent statewide.

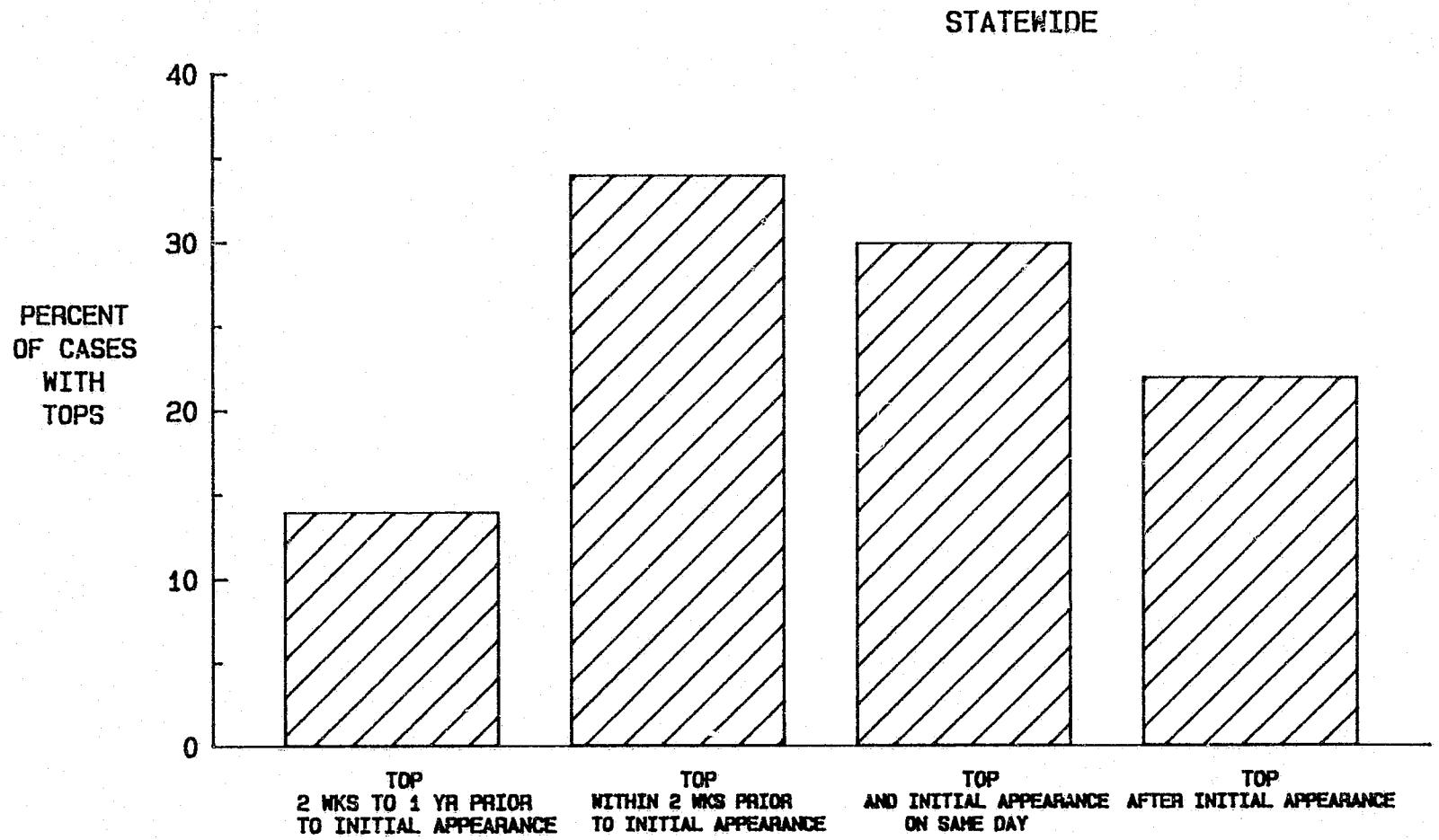

FIGURE 29: TIME BETWEEN INITIAL APPEARANCE AND TEMPORARY ORDER OF PROTECTION

With respect to time between the preliminary court hearing and the issuance of a temporary order of protection, a statewide average of 12.2 days elapsed between the two dates. Again, these two events could occur in either order; that is, the TOP could precede the preliminary hearing (a §1029 derived TOP), or the TOP could derive from the preliminary hearing itself (a §1027-derived hearing). As Figure 30 indicates, in most cases, the order of protection was issued on the same day as the preliminary hearing (74 percent) or within two weeks thereafter (an additional 7 percent). The remaining orders were issued from 12 days to two and one-half months prior to preliminary hearing (3 percent), or more than two weeks to one year after the preliminary court hearing (15 percent). This pattern appeared throughout the state, with upstate counties registering an even higher incidence issuance of TOPs on the same day of or within two weeks after the preliminary hearing.

The time which elapsed between the issuance of a preliminary order of protection and the fact-finding hearing averaged slightly more than three months or 98 days on a statewide basis. These orders of protection were issued with an average duration of 101.3 days statewide demonstrating that the TOPs were tailored to provide protective coverage until after fact-finding and adjudication.

4. Subjects of Orders of Protection

Statewide, temporary orders of protection were most often entered against the father (54.1 percent), mother (52.4 percent); stepfather (10.8 percent), live-in boyfriend (5.4 percent), and maternal grandparent (2.2 percent). These proportions generally reflect the findings in different areas of the state, although in upstate counties, TOPs were issued more frequently against the child's mother (61.5 percent).

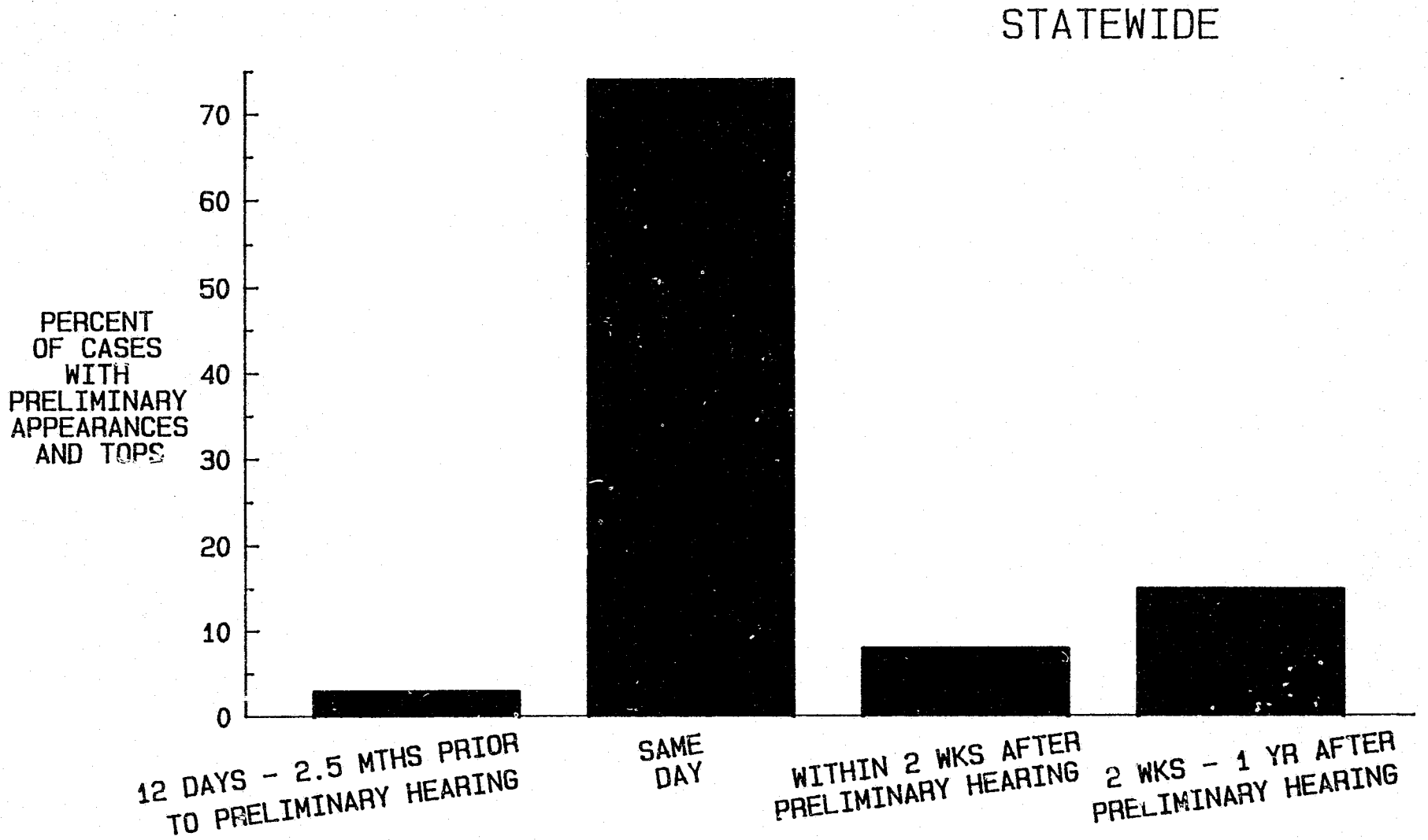

FIGURE 30: TIME BETWEEN THE PRELIMINARY COURT HEARING AND ISSUANCE OF TEMPORARY ORDER OF PROTECTION

5. Terms and Conditions of the TOPs

Figure 31 shows that, on a statewide basis, the most frequently cited terms and conditions of temporary orders of protection were, abstain from offensive conduct against the child (55 percent); stay away from the child (45 percent); stay away from the home (41 percent); refrain from acts that tend to make the home not a proper place for the child (30 percent); and, abstain from offensive against the other parent or person with custody of the child (26 percent). It is interesting to note that in almost half of the TOPs, the means of insuring that the child was protected involved removing the respondent from the home rather than placing the child in foster care.

6. Violations of Temporary Orders of Protection

The statewide data indicate that violations of temporary orders of protection took place in 4.9 percent of the cases in which TOPs were issued. The specific conditions violated included: stay away from the home (33 percent of the violations); stay away from the child (11 percent); abstain from offensive conduct against the other parent or guardian (11 percent); abstain from offensive conduct against the child (11 percent), stay away from the other spouse (11 percent). Statewide, the time that elapsed between the issuance of the temporary order of protection and the violation of that order averaged 60 days, with a range from 4 to 114 days.

Hearings on violations of temporary orders of protection were held in five percent of the cases with TOPs. On the average, TOPs were violated 3.8 times per case before a violation hearing was held. The results of these hearings included (more than one result was possible): issuance of a new order (60 percent); a jail term (40 percent); amendment of the old order and a finding of no violation (20 percent each). It should be noted that so few hearings on violations were held that these results are based on a very small sample size.

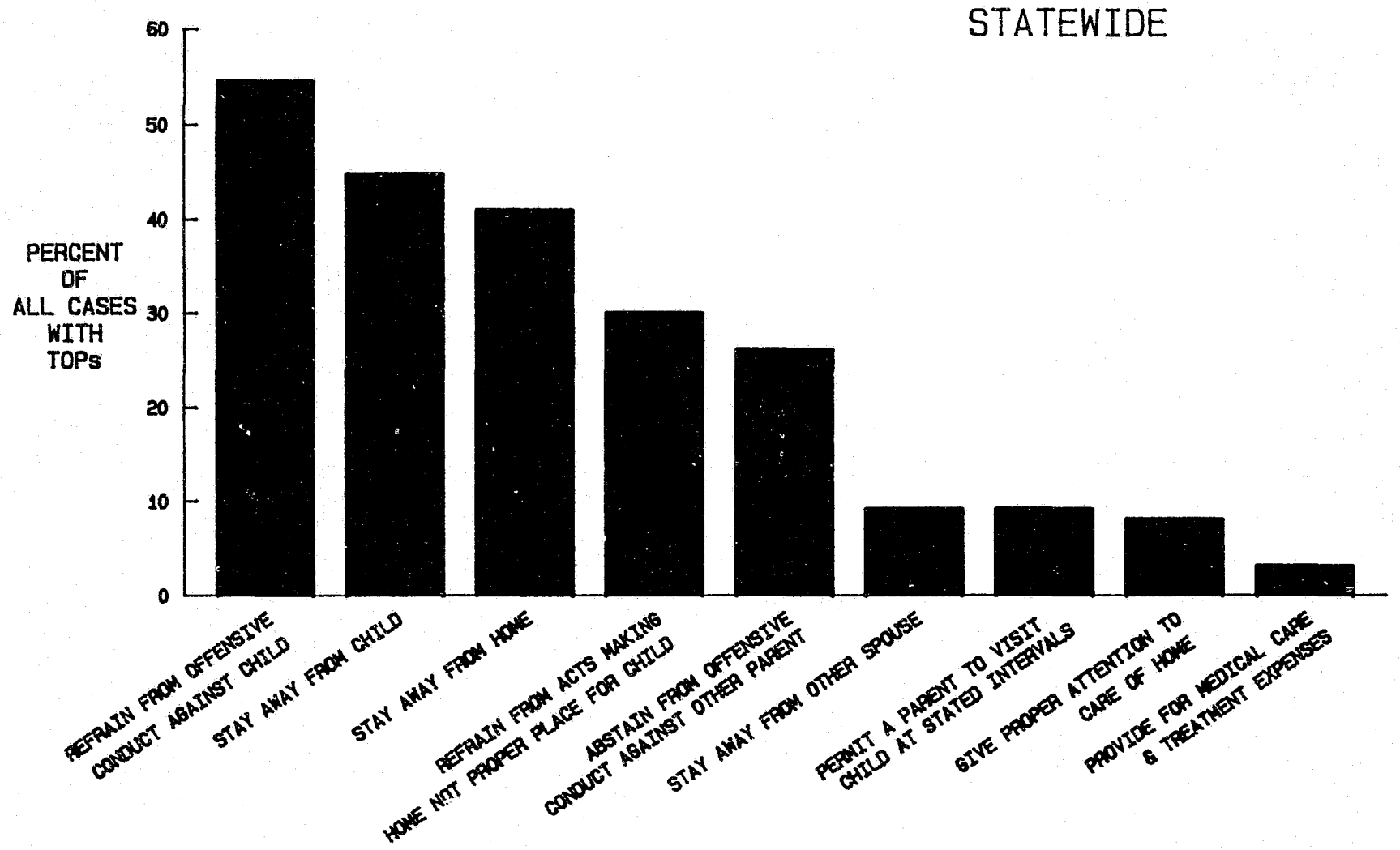

FIGURE 31: TERMS AND CONDITIONS OF TEMPORARY ORDERS OF PROTECTION

7. Relationship of TOPs to Other Variables

As Figure 32 indicates, temporary orders or protection were issued in 59 percent of cases with abuse petitions, and in only 27 percent of cases with neglect petitions. However, among all TOPs in the sample, about half were abuse and half were neglect.

With respect to specific allegation types, Figure 33 indicates that temporary orders of protection were issued in 69 percent of all sex abuse cases, 44 percent of cases with allegations of excessive corporal punishment; 38 percent of cases with allegation of fractures and subdural hematomas, 35 percent of cases with allegations of lacerations, bruises and welts and of alcohol/drug abuse, 33 percent of cases with allegations of malnutrition/failure to thrive; and in 8 to 30 percent of all other allegation types.

In summary, Temporary Orders of Protection were issued most frequently in abuse cases, in cases with allegations of sexual abuse or excessive corporal punishment, and in cases with serious physical abuse or neglect.

Almost one-third of the cases in which there was a pre-petition removal also had a TOP issued. The relationship of TOPs to other preliminary orders of the court is shown in Figure 34. As Figure 34 indicates, TOPs were ordered in more than half of the cases with orders for: medical examinations; release of the child to a parent; removal of the child and placement with a suitable person; and other case-specific directives.

The statewide sample also indicated that temporary orders of protection were issued in 56 percent of the cases where a child was returned home (after application by the parent following removal of the child, and a hearing under §1028 of the Family Court Act). Further, the sample revealed that temporary orders of protection were associated with 28 percent of the cases where the court ordered an investigation during the pendency of the proceeding.

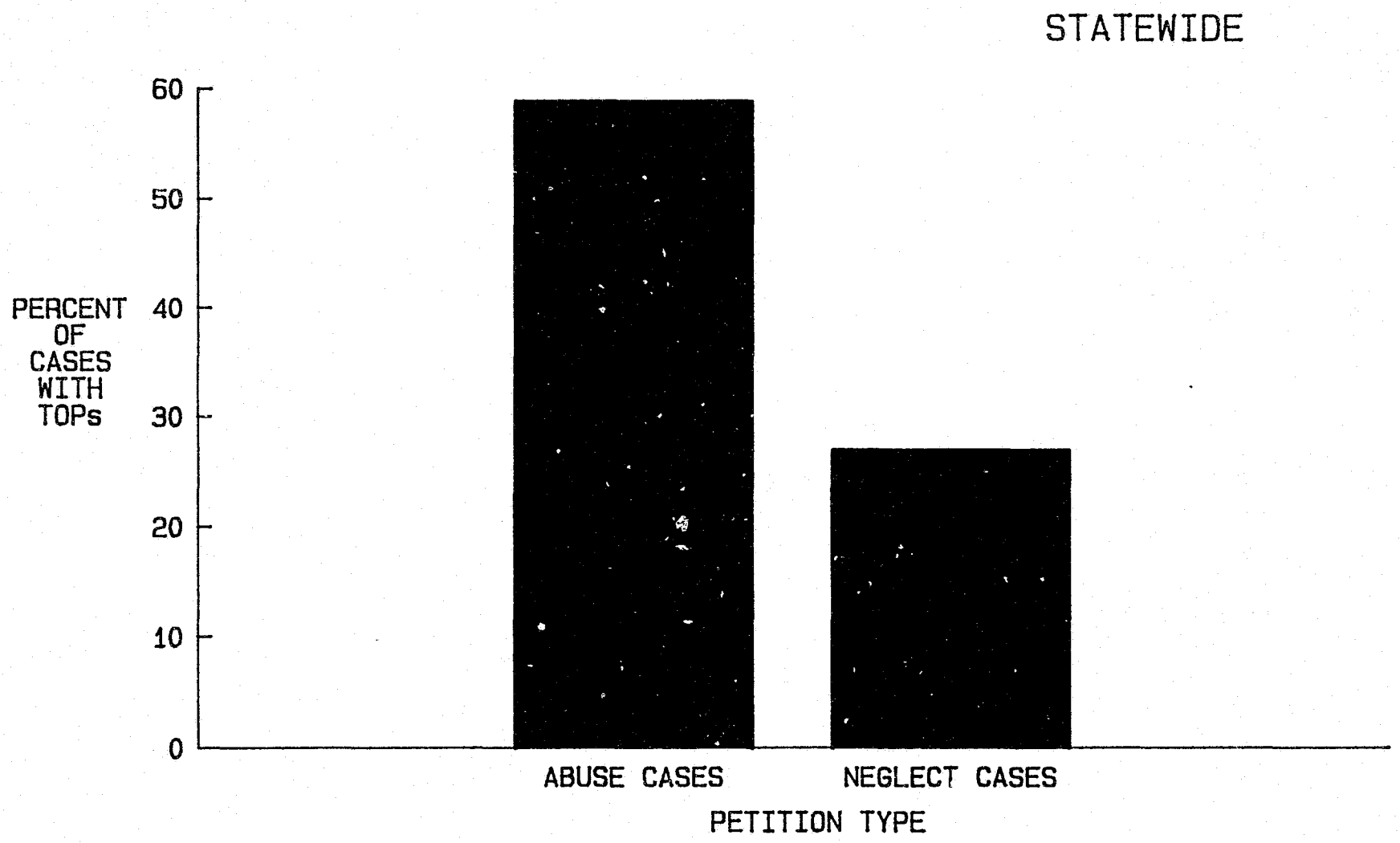

FIGURE 32: RATE OF TOPs IN ABUSE AND NEGLECT CASES

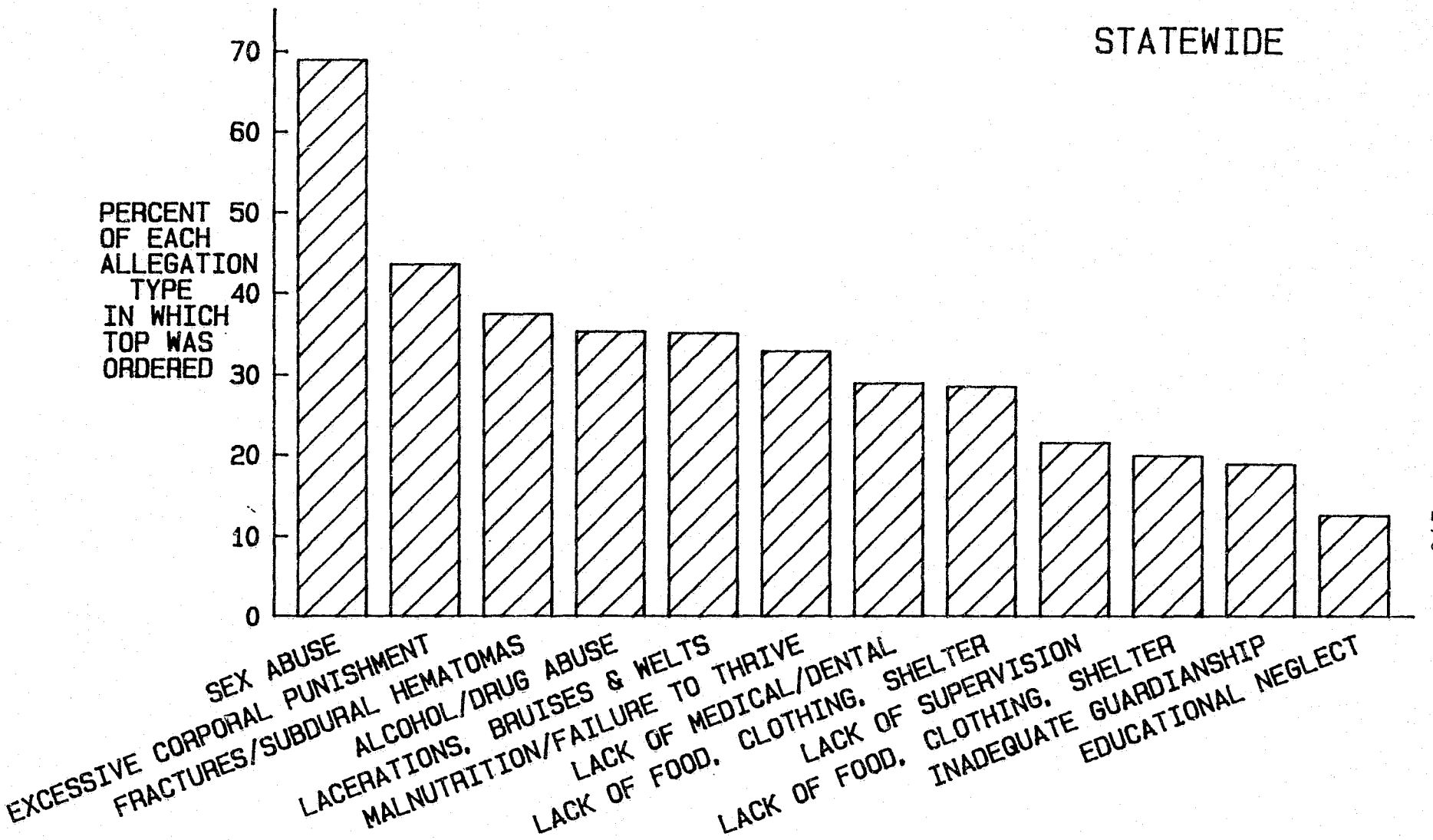

FIGURE 33: TEMPORARY ORDERS OF PROTECTION BY MAJOR PETITION ALLEGATION TYPES

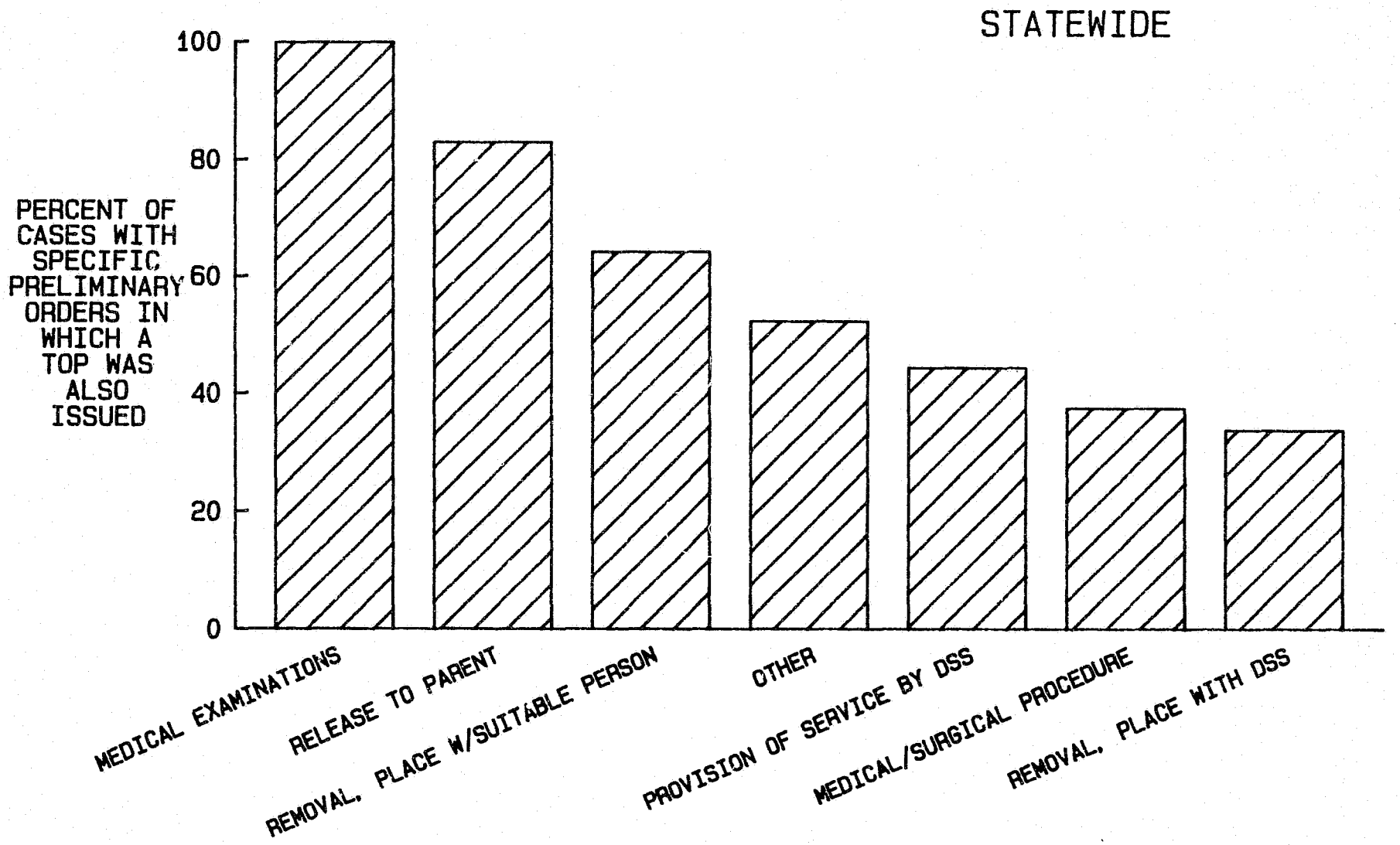

FIGURE 34: TEMPORARY ORDERS OF PROTECTION AND PRELIMINARY COURT ORDERS

Almost half (46.2 percent) of cases that were eventually dismissed had a temporary order of protection issued. Furthermore, in 71 percent of the cases with TOPs, the case child was female; or, roughly half (46 percent) of all petitions with female children named as the subject of the petition were associated with TOPs and only 25 percent of all petitions concerning male children had temporary orders of protection issued during the pendency of the proceeding.

When Temporary Orders of Protection are assessed relative to orders issued during the court's final disposition of the case, some interesting patterns emerge. Figure 35 presents these relationships and, as can be noted, most of the findings are about as might be expected. Not surprisingly, when final orders of protection are issued, these have been preceded by TOPs about 71 percent of the time. At the other extreme, when children are placed as part of the final dispositional order, only about one-quarter of these cases had previous TOPs. In both final orders of supervision and ACDs, about half the time a previous TOP had been issued. It would appear that these widely differing rates of TOPs vary as a function of the need for protection of the child and the degree to which similar orders are made part of the final disposition of the case. In other words, in placement cases one might expect to find a lower TOP rate because the child is no longer living in physical proximity to the respondent, whereas, the high rate of TOPs associated with orders of protection (71 percent) serves to validate the original issuance of the TOP. Since in both orders of supervision and ACDs, the likelihood is high that the child remains in the home with the respondent (albeit under the supervision of the local department of social services), the order of protection may be seen by the courts as a very useful adjunct order in such cases.

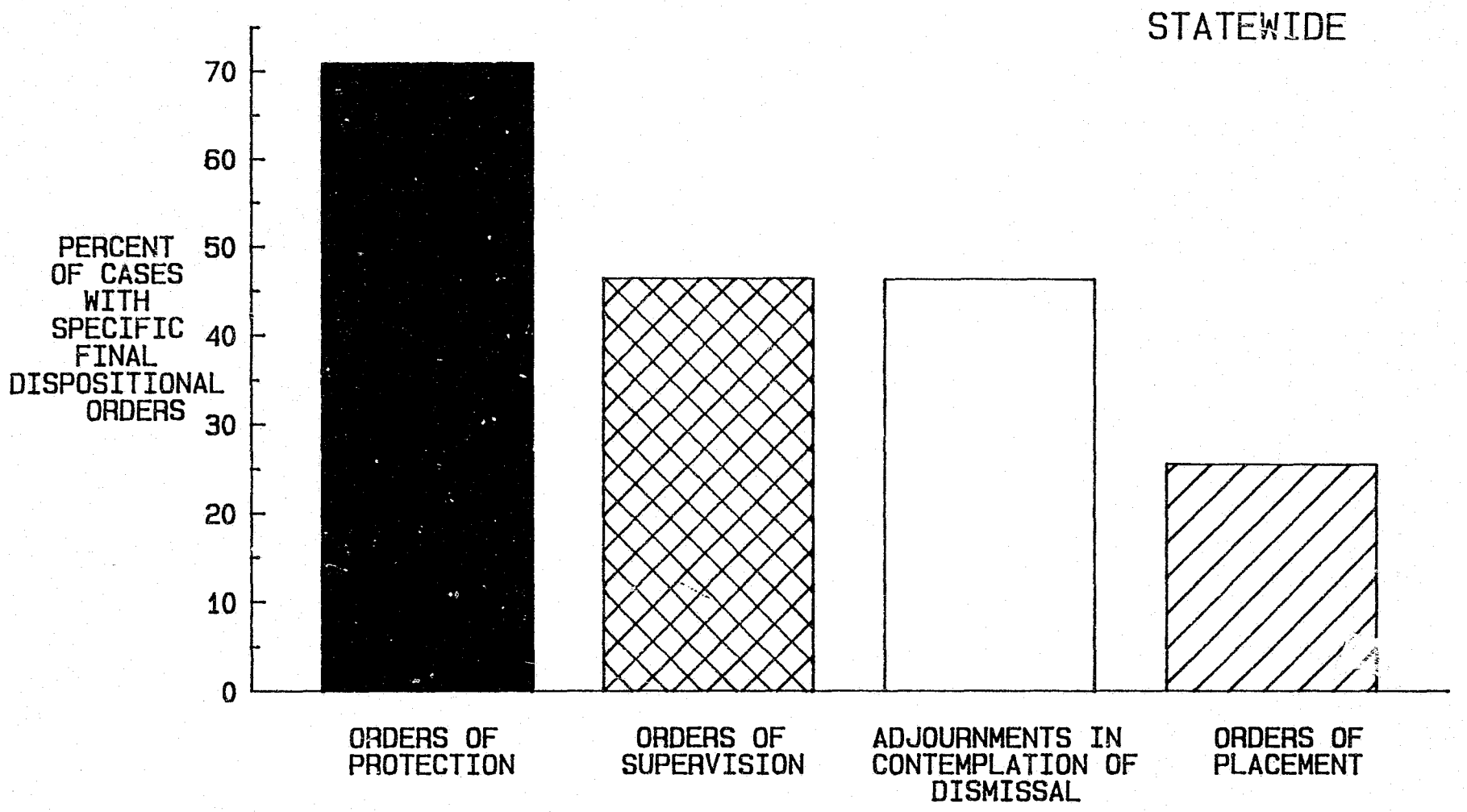

FIGURE 35: TOPs AND FINAL ORDERS OF DISPOSITION

It may be argued that absent the restraints imposed by orders of protection, judges would be hesitant to return children home in a large number of cases. However, the low incidence of violations of TOPs, and OPs coming back out to the court calendar, calls into question the efficacy and enforceability of these orders.

The rate of settling or contesting cases with TOPs is effectively equivalent to the rate of settling all cases in the sample. About two-thirds of TOP cases are settled (67.4 percent) and about two-thirds of non-TOP cases are settled (68.1 percent).

CHAPTER 7: FACT-FINDING AND DISPOSITIONAL HEARINGS

This chapter presents findings regarding fact finding and dispositional hearings as well as signficant time measures related to case processing. Specific orders of disposition are examined in detail.

A. Summary of Findings

1. Fact Finding Hearings

- Fact finding hearings were held for 72 percent of the sample approximately 3.6 months after the petition was filed.

- Law guardians and attorneys for the respondents were present at the fact finding hearing somewhat less than 100 percent of the time (law guardians at 94 percent and respondent counsel at 87 percent of fact findings).

- Respondents were only present at about three-quarters of the fact finding hearings.

- 72 percent of all cases that went to fact finding, were adjudicated by consent; of these 18 percent were abuse cases and 82 percent were neglect cases.

- 24 percent of all cases that went to fact finding were contested; the case was adjudicated only after a full hearing.

- In 82 percent of the adjudicated abuse cases, the statutory basis indicated for the abuse finding was sexual abuse.

- Preliminary orders were issued after the fact finding in 23 percent of the cases, including additional placement orders, orders of protection and, rarely, return of the child to his home (5 percent).

2. Court-Ordered Investigations

- The court ordered an investigation seeking additional information on the child and family in 55 percent of the cases.

- 80 percent of these court-ordered investigations were for the purpose of developing additional information for use in case disposition.

- Most often these investigations were conducted by child protective services and mental health organizations (each approximately 75 percent).

- Six percent of the investigations were conducted by the Probation Service.

- Child protective and mental health reports were received by the court about two months after they were requested.

- Probation reports were received by the court approximately a month after they were requested.

- Investigations were ordered at about the same rate in both abuse and neglect cases.

- The most frequent dispositional order following a court-ordered investigation was a final order of placement.

3. Dispositional Hearings

- Dispositional hearings were held an average of 36 days after the fact finding hearing.

- However, 56 percent of the dispositional hearings were held on the same day as the fact finding hearing.

- Law guardians were not present at the dispositional hearing almost 10 percent of the time.

- Attorneys for the respondents were not present at the dispositional hearing almost 10 percent of the time.

- The respondents were not present at the dispositional hearing almost 30 percent of the time.

- The following final orders of disposition were issued (more than one was possible in a case):

  - placement with DSS; 37 percent
  - order of protection; 33 percent
  - order of supervision; 25 percent
  - ACD; 22 percent
  - release to parents, supervision; 19 percent
  - placement with relatives; 15 percent

- other court orders during disposition were (most frequently) directions to the department of social services to provide or arrange counseling to the family.

4. Time Measures

- Across all cases, on the average it took almost three weeks from filing the petition to the first court appearance (or, mean start-up = 17.8 days).

- The average case length for the statewide sample was 129.8 days or 4.3 months.

- Average start-up time for abuse cases was 13.6 days; for neglect cases, this value was 17.8 days.

- Average case length for abuse cases was 130.4 days; for neglect cases, this value was 126.3 days.

5. **Orders of Placement**

- The average length of an order of placement was 16 months, although the most frequently ordered length of placement was 18 months.

- The issue of parental visitation was addressed in only 42 percent of the orders of placement.

- Petitions to extend placement were entered in 55 percent of placement cases.

- Petitions to extend placement were approved 97 percent of the time.

- Extensions of placement were usually granted for one year periods.

- Petitions to terminate placement were filed in only 5 percent of the placement cases. In all instances, the petition was approved.

6. **Orders of Protection**

- The average length of an order of protection was 16 months, although 51 percent of these orders were issued for 18 months.

- The most frequent conditions of orders of protection were: refrain from offensive conduct against the child (66 percent); stay away from the child (52 percent); and, stay away from the home (49 percent).

- Custody of the child during the order of protection was most frequently awarded to the mother (58 percent).

7. Orders of Supervision

- The most frequent terms of the orders of supervision were therapy for the respondent (72 percent) and meeting with the supervising agency (65 percent).

- Most (56 percent) of the orders of supervision were for an 18 month period. The average duration of these orders was 15 months.

- Petitions to extend the period of supervision were filed only 4 percent of the time, and approved in all such cases.

- Hearings were held on violations of the orders of supervision in 3 percent of the cases.

B. Overview of Hearing Requirements

The heart of the Article 10, child protective process consists of the two major hearings that form an integral part of the proceeding: the fact finding and the dispositional hearings. In general terms, the fact finding hearing (which is a trial to prove that allegations in the petition) is designed to require presentation of the evidence supporting the allegations in the original petition, evidence controverting the allegations, and for a judicial decision on the veracity of those allegations. In contrast, the dispositional hearing (which has some similarity to the sentencing process in criminal court) is where the court determines what final order, if any, should be entered given the adjudication of the case at fact-finding.

§1044 of the Family Court Act defines a fact finding as "a hearing to determine whether the child is an abused or neglected child", and §1045 of the Family Court Act defines a dispositional hearing as "a hearing to determine what order of disposition should be made."

Thus, the adjudication of abuse or neglect occurs during the fact finding hearing in child protective cases. Decisions as to how to best deal with the case follow the dispositional hearing although this latter hearing may not take place if, in a neglect case, "the court concludes that its aid is not required on the record before it" (in which case, the petition is dismissed).

All hearings under Article 10 of the Family Court Act, including fact-finding hearings are held before a judge in the absence of a jury. Case law has held that respondents in such cases do not have a right to a trial by jury.* The hearings are generally private, i.e., not open to the public (§1043 F.C.A.) although admittance to the court room is left to the discretion of the individual judge. In fact, court rules allow a number of persons to attend these hearings, if approved by the judge, including among others: any attorneys who are admitted to the bar, representatives of news media, representatives of charitable and other organizations, and people engaged in bona fide research.** However, in practice, courts in New York State rarely admit individuals in any of these categories to child protective hearings. All who are admitted are bound by rules of confidentiality.

Section 1047 of the Family Court Act specifies that the dispositional hearing may begin immediately after the adjudications are made in the fact-finding hearing. In other words, the fact finding hearing must precede a dispositional hearing. (This section also contains provisions controlling the

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*In re Walsh, 64 Misc. 2d 292, 315 N.Y.S. 2d 59 (Family Court, Westchester County, 1970).

**22 NYCRR 205.4 Uniform Rules For the Family Court

use of reports from the probation service or other agencies. Such information is to be used by the court in making its decisions regarding proper disposition of the case and not during the adjudicatory process.)

This section, read in conjunction with §1048(b), indicates that the court, following fact finding and the making of adjudications, may "adjourn the proceedings to enable it to make inquiry into the surroundings, conditions, and capabilities of the persons involved in the proceedings" (§1048(b)). In other words, the court may: order new investigations of the case child and family following its determination that the child was abused or neglected; adjourn the proceeding to await these reports; and use the information in these reports in making decisions regarding appropriate disposition of the case.

Section 1048 allows for adjournments during the fact finding or dispositional hearings in addition to those adjournments discussed above. Specifically, §1048(a) allows for adjournments "for good cause shown". The decision as to whether to grant such an adjournment is left to the court's discretion.

Finally, the court is required by §1049 to give priority in "scheduling hearings and investigations" to two types of cases: those involving abuse; and, those in which a child was removed from the home either before the petition was filed or during the pendency of the child protective proceeding. Additionally, this section stresses the compelling need to quickly bring these more serious cases to disposition by stating that adjournments that are granted during such proceedings "should be for as short a time as is practicable" (§1049).

C. Fact Finding Hearings

1. Incidence of Fact-Finding Hearings: Time Frames

Fact finding hearings, while required as a predecessor for dispositional hearings (in conjunction with the appropriate findings from this earlier hearing), may not occur in every case.

When petitions are withdrawn or dismissed, when the case is adjourned in contemplation of dismissal, and, in certain other circumstances, a fact finding hearing may not actually occur.

In the present study, fact finding hearings were held in 72 percent of all cases statewide. In New York City, 79.7 percent of the cases had fact finding hearings, while in upstate counties, fact finding hearings were held in 65.5 percent of the cases. Statewide, fact finding hearings were held 109.2 days (or more than three months) after the petition was filed. Both New York City and upstate had similar average values for this time measure (respectively, 106.4 and 112.5 days). These average time measures will reflect a distribution of values that is somewhat more variable than those noted elsewhere in this report. Instead of finding that fact finding hearings regularly occur close in time to petition filing, in the cases in this sample, only four percent of the fact findings occurred within one week of the petition filing; only 14 percent within one month; and, only 37 percent within two months. In fact, only 56 percent of these hearings were held within three months of the filing. More than two-thirds (69 percent) were held within four months of filing.

In other words, in more than two-thirds of the cases, some type of fact finding hearing is held, and this occurs about three months after the petition has been filed.

2. Persons Present at Fact Finding Hearing

As indicated earlier in this report, the Family Court Act requires that fact finding hearings not begin unless the court first enters a finding that "the parent... is present at the hearing and has been served with a copy of the petition...(§1041(a)) or "if the parent...is not present, that every reasonable effort has been made..." to serve the parent with a copy of the summons and the petition (§1041(b)).

When the parent is not present, the court may proceed to fact finding and disposition, only when the case child is represented by a law guardian, a guardian ad litem, or counsel (§1042). Parents who are absent from these hearings may ask that the court vacate a resulting disposition and rehear the case. The court must grant these motions unless the parent "willfully refused to appear at the hearing, in which case the court may deny the motion" (§1042).

The people who potentially may appear in the court room include the respondent(s), counsel for the respondent(s), the department of social services counsel (or the New York City corporation counsel), non-respondent parents, other non-respondent relatives, child protective workers, foster parents, and others (including expert witnesses, and police, among others).

In the present study, court docket sheets were read in order to determine the individuals present at each of the appearances and hearings during the pendency of the child protective proceeding. These data are presented in Figure 36. As can be seen, statewide, present at the fact-finding hearings, in all or almost all of the cases were attorneys for the respondent, child protective agency counsel, and law guardians. The respondents were present in only slightly more than three-quarters of the cases and the department of social services caseworkers were present almost 72 percent of the time. People in the "other" category were present somewhat more than one-tenth of the time, and non-respondent parents attended 7.4 percent of the trials.

Of interest, the child was present (according to the records) in only 2.3 percent of the fact finding hearings while foster parents were in attendance only less than one percent of the time.

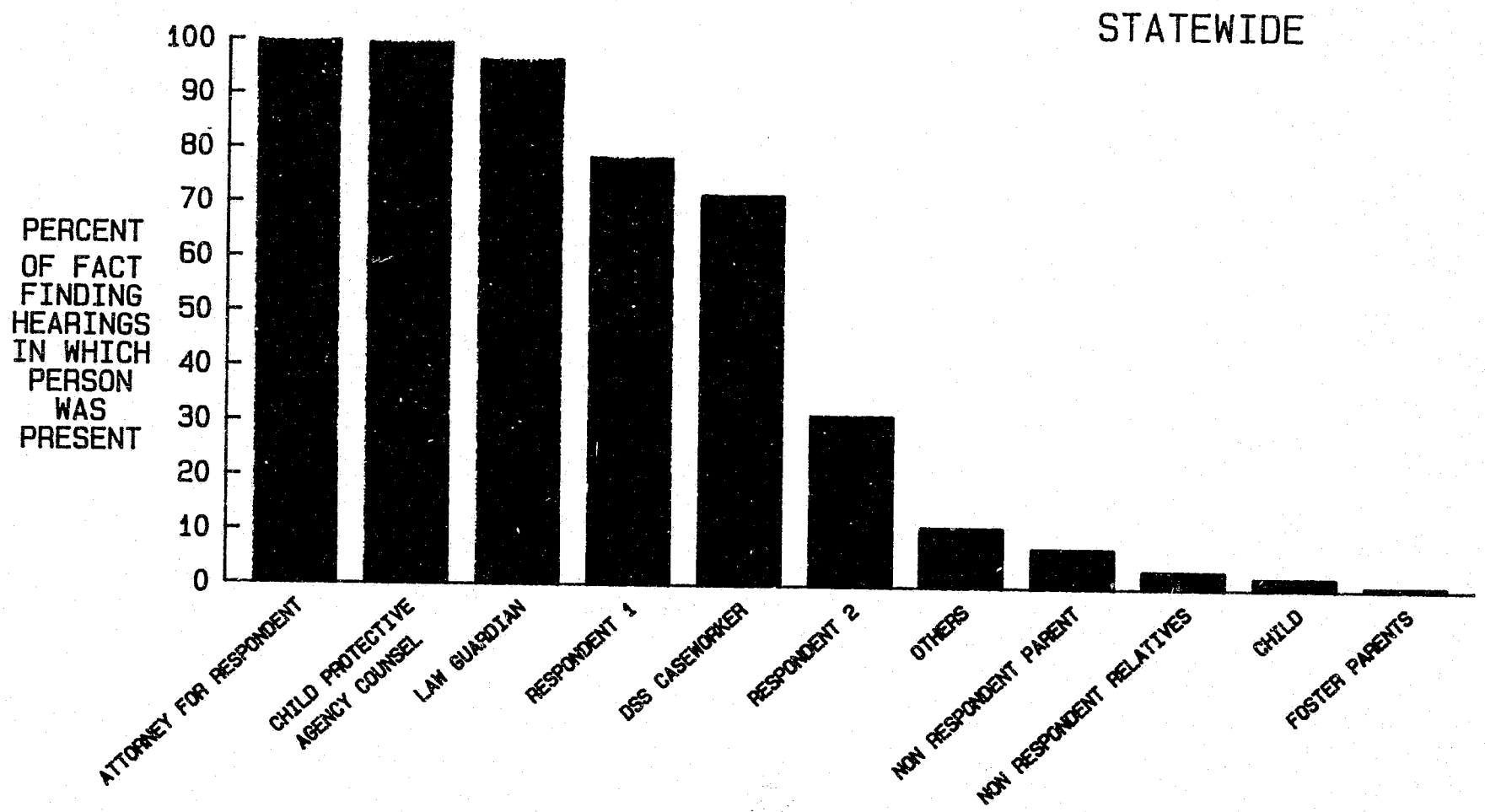

FIGURE 36: PERSONS PRESENT AT FACT FINDING HEARINGS

3. Findings of the Fact-finding Hearing

The outcome of the fact finding hearing rests on the evidence presented during that hearing. If "facts sufficient to sustain the petition...are not established...", the court must dismiss the petition (§1051(c)). Furthermore, when the evidence presented in fact finding does not "conform to the specific allegations of the petition", then the petition may be amended by the court to produce this required conformance (§1051(b)).

Two methods exist for producing a finding that the case child is abused or neglected. First, "if facts sufficient to sustain the petition are established", then an adjudication of abuse or neglect is ordered (§1051(a)). In other words, one means of producing a finding of abuse or neglect is by proving the case during the fact finding hearing.

A second method for producing adjudications of abuse or neglect is contained in §1051(a), which allows such a finding if all parties * consent to this adjudication. That is, if the petitioner (usually, the child protective agency) and the respondent agree to this adjudication by consent, the necessity to hold a full fact finding hearing and, to require judicial decision-making is deemed waived.

In this regard, the Practice Commentary for McKinney's Consolidated Laws of New York states:

> It may seem curious to require the petitioner's consent since, ordinarily, one would assume that a finding would be consistent with the petitioner's position. However, because the court may make a finding of either abuse or neglect, and because respondents are often willing to consent to

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*In 1987, the Legislature added the law guardian to the set of those who must agree to this adjudication by consent. This provision was, however, not in effect during the pendency of the cases reviewed in the present study. (L.1987, C.160, §1, eff. June 29, 1987.)

> a finding of neglect (frequently going so far as to have it labelled "no fault neglect"), the requirement that all parties consent was added to ensure that, if the petitioner determines that the best interest of the child require pursuing an abuse disposition, the petitioner could so proceed. The reasons for wishing to maintain an abuse petition despite a respondent's offer to consent to a finding of neglect usually involve the psychological impact on the dispositional process of a finding of "child abuse".*

In fact, as results of this study indicate elsewhere in this report, this failure to hold a complete fact-finding hearing and to submit the case to judicial decision may represent a variable of primary importance in determining case outcome. In consequence, adjudications by consent are discussed in some detail in the present report.

In the present study, of the cases that went to fact finding, 2.5 percent were dismissed because the facts were not established by the evidence, and, 1.1 percent were dismissed for other reasons. These data, along with the adjudicatory data, are presented in Figure 37. This figure indicates that, statewide, most (76.2 percent) of the cases that went to fact finding resulted in adjudications by consent. Of these latter cases, 82 percent were neglect, and only 18 percent were abuse. Among the remaining 23.8 percent of cases that were contested, 36 percent were abuse while 64 percent were neglect. There were no instances where the court dismissed a case after a finding and concluding that its aid was not required.

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* Besharov, Douglas J. Practice Commentary to Section 1051, Family Court Act, McKinney's Consolidated Laws of New York: Annoted Book 29A-Judiciary, Part I.

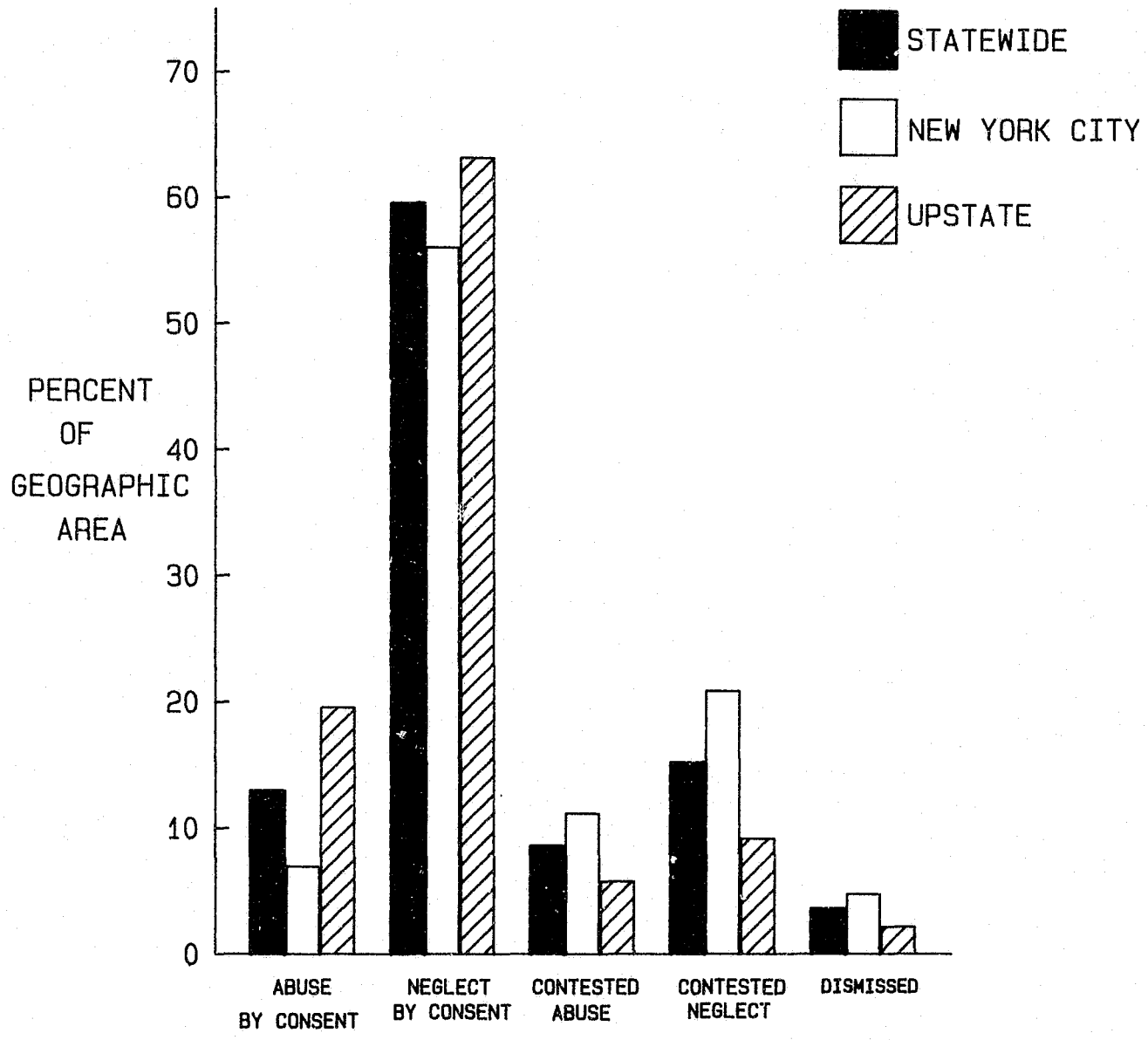

FIGURE 37: RESULTS OF FACT FINDING HEARING

In other words, almost three-quarters of the cases that go to fact finding result in adjudications by consent. Very few cases are contested (less than one quarter) and almost no cases are dismissed at this stage of the proceeding. A larger percentage of "by consent" cases have adjudications of neglect (82 percent) than do contested cases (64 percent).

The New York City and upstate breakouts of the data support these findings, at least in directionality. Upstate, however, has a much higher rate of settling cases by consent, (83 percent) than does New York City (63 percent). In both the City and upstate, the consent rate among neglect cases was much higher than the consent rate among abuse cases. For New York City, 89 percent of settled and only 65 percent of contested cases were neglect, whereas in the upstate area, 76 percent of settled and only 42 percent of contested cases were neglect cases.

4. "Settled" and Contested Cases

Thus, it is clear that the preponderance of cases that continue to fact finding during Article 10 proceedings in Family Court are those in which, although an adjudication of child abuse or neglect takes place, the respondents have agreed to this adjudication. In these instances, no judge has imposed a label on the respondents; they, themselves, have chosen to accept the label.

It should be emphasized that these cases with adjudications by consent were not the only cases in the project sample in which the case outcome was determined by an agreement among the parties. In fact, adjournments in contemplation of dismissal (discussed earlier in this report) also represent settled cases in the sense that the respondents have agreed to abide by certain terms and conditions if the case is adjourned without an adjudication. When these ACDd cases are added to those in which there were adjudications by consent (creating a new category of "settled" cases), then the extent to which these child protective cases are settled by negotiations among the parties is revealed.

As Figure 38 indicates, across the entire sample of 500 cases (hence, on a statewide basis), 77 percent of the Article 10 proceedings were resolved by negotiations between the parties, that is, these cases were "settled". Only 17 percent of the cases in the entire sample were contested, with the remainder being dismissed or withdrawn.

The magnitude of usage of this method of case resolution can, thus, be seen. Almost 80 percent of the time, when a child protective case is filed with the family court, no trial is held. The settlement process, if it occurs, is handled by negotiations between the attorneys for the petitioner and the respondent. The involvement of the respondents, themselves, is only minimal.

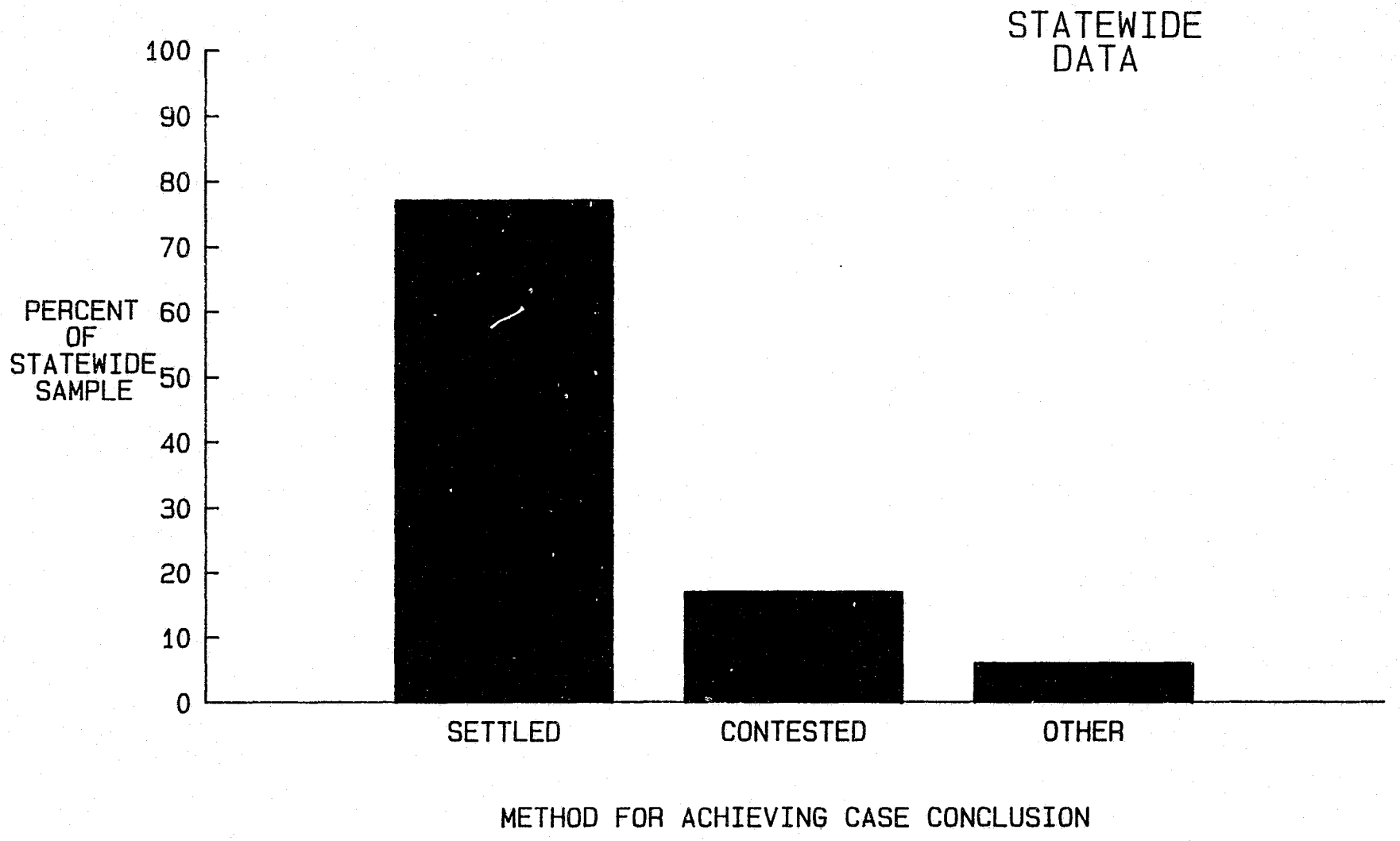

FIGURE 38: PERCENT OF CASES THAT ARE SETTLED OR CONTESTED

There is no question that when cases are settled in this manner the length of time that the case is in the system is substantially reduced. Average case length for settled, contested, and other cases in New York State, New York City and upstate is presented in Figure 39, and it can be seen that the pendency of contested cases (regardless of geographic area) is much longer than for settled cases. In fact, on a statewide basis, contested cases have a case length of 203 days (6.7 months), almost twice as long as settled cases which have a case length of 116 days (3.8 months).

Given the present overcrowded calendars of the Family Court, it is no surprise that all parties in the system appear to favor settling a case when that is possible. As noted, a much shorter case length is achieved, and even so, the court is still empowered to issue the entire set of orders that are available after a dispositional hearing. Assuming that there is no negative effect on case outcome, such an approach makes sense. However, data presented later in this report strongly suggest that settling a case may, in fact, have a deleterious effect on the child and/or stability of the family, and, thus, use of this method of case resolution may argue for special precautions. (See Chapter 10 of this report.)

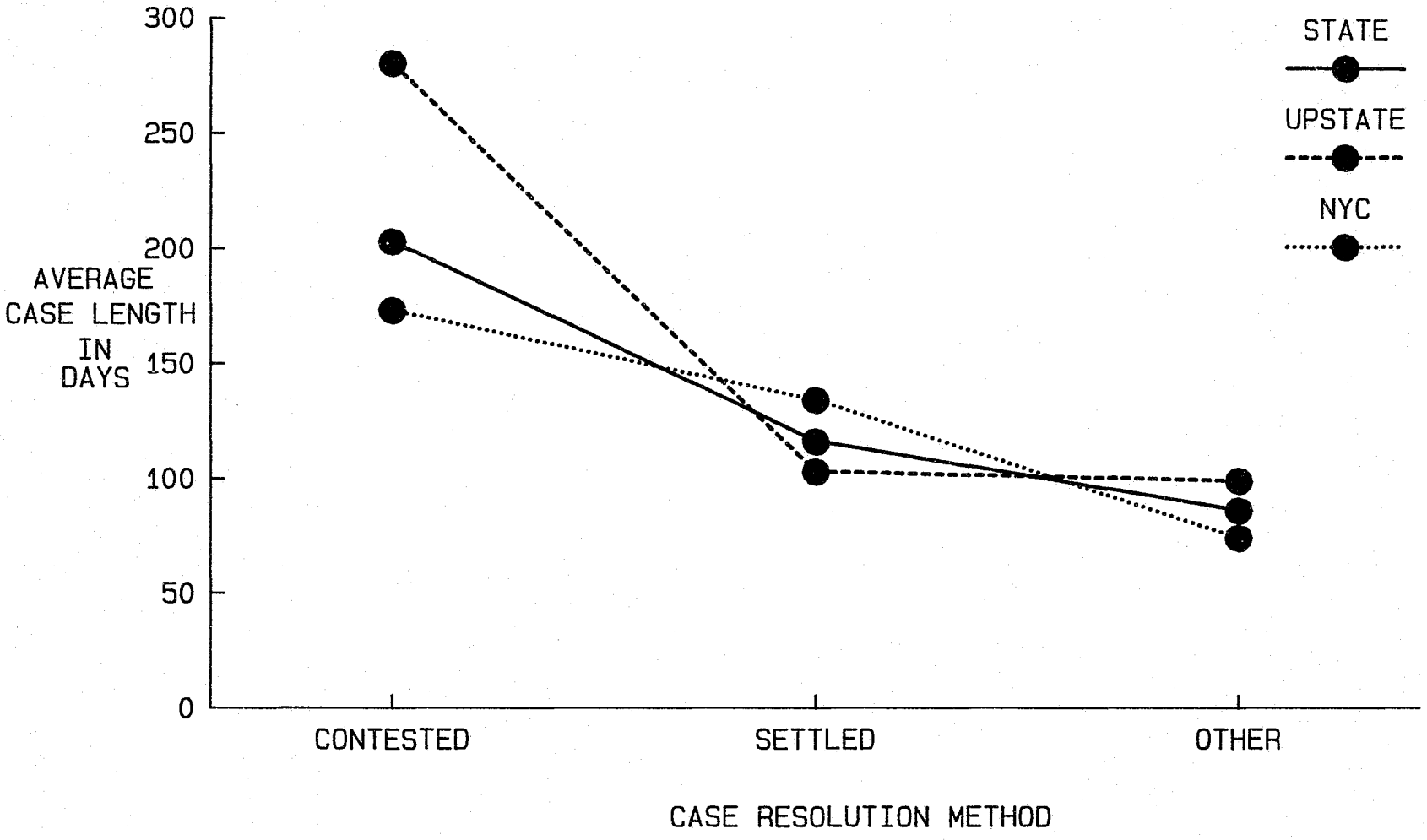

FIGURE 39: AVERAGE CASE LENGTH (IN DAYS) FOR SETTLED, CONTESTED AND OTHER

5. The Settled/Contested Variable in Relation to to Other Case Variables

The settle/contest variable was assessed in relation to other case variables in the study; to wit, original petition type, pre-petition removal, case child age and sex, allegations in the petition, final dispositional placement of the child, use of court-ordered investigations, substituting neglect for abuse petitions and concurrent criminal proceedings. Aside from suggestions of a greater rate of settling cases when the allegations were of fractures or subdural hematomas and drug withdrawal in newborns, no relationship was found with these other variables. That is, the rates of settling or contesting cases did not differ regardless of the level of these other case variables.

6. Statutory Grounds for Abuse Finding

Section 1051(e) requires that if the court makes an adjudication of abuse, an identification of the specific section of the statutory definition of child abuse that was violated must be made. In other words, a finding of abuse requires a specification by the statutory grounds for this finding. Three alternative grounds are provided by statute (§1012(e)(i,ii,iii)) and are briefly paraphrased as follows:

- the parent inflicts serious physical injury, impairment, or disfigurement to the child
- the parent creates a substantial risk of serious physical injury, impairment, or disfigurement to the child
- the parent commits a sex offense against the child

(See Chapter 2 of this report for the full text of these provisions)

Standard family court forms contain sections for the specification of these statutory grounds. Specifically, Form 10-9* (Determination upon Fact-Finding Hearing) and Form 10-10** (Order of Fact-Finding and Disposition) each contain a simple means of indicating the specific offense in a case. Originally, in this project sample, 160 abuse petitions were filed; when cases that were dismissed or those in which neglect was substituted for abuse are removed, 73 abuse petitions remain. Of these, 82 percent were sexual abuse cases; 12 percent involved serious physical injury; and, only 5 percent involved a risk of serious physical abuse. These data are presented in Figure 40.

Similar results were obtained in both major geographic areas of the state and are depicted in Table 32.

Table 32: Types of Abuse Found in New York City and Upstate***

		TYPE OF ABUSE FOUND		
		SEXUAL ABUSE	PHYSICAL ABUSE	RISK OF PHYSICAL ABUSE
GEOGRAPHIC LOCATION	NEW YORK CITY	78*	16	6
	UPSTATE	85	10	5

*** Entries in table are percentages of abuse cases in specific area.

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*3243 JUD 7/31/86

**3245 JUD 7/31/86

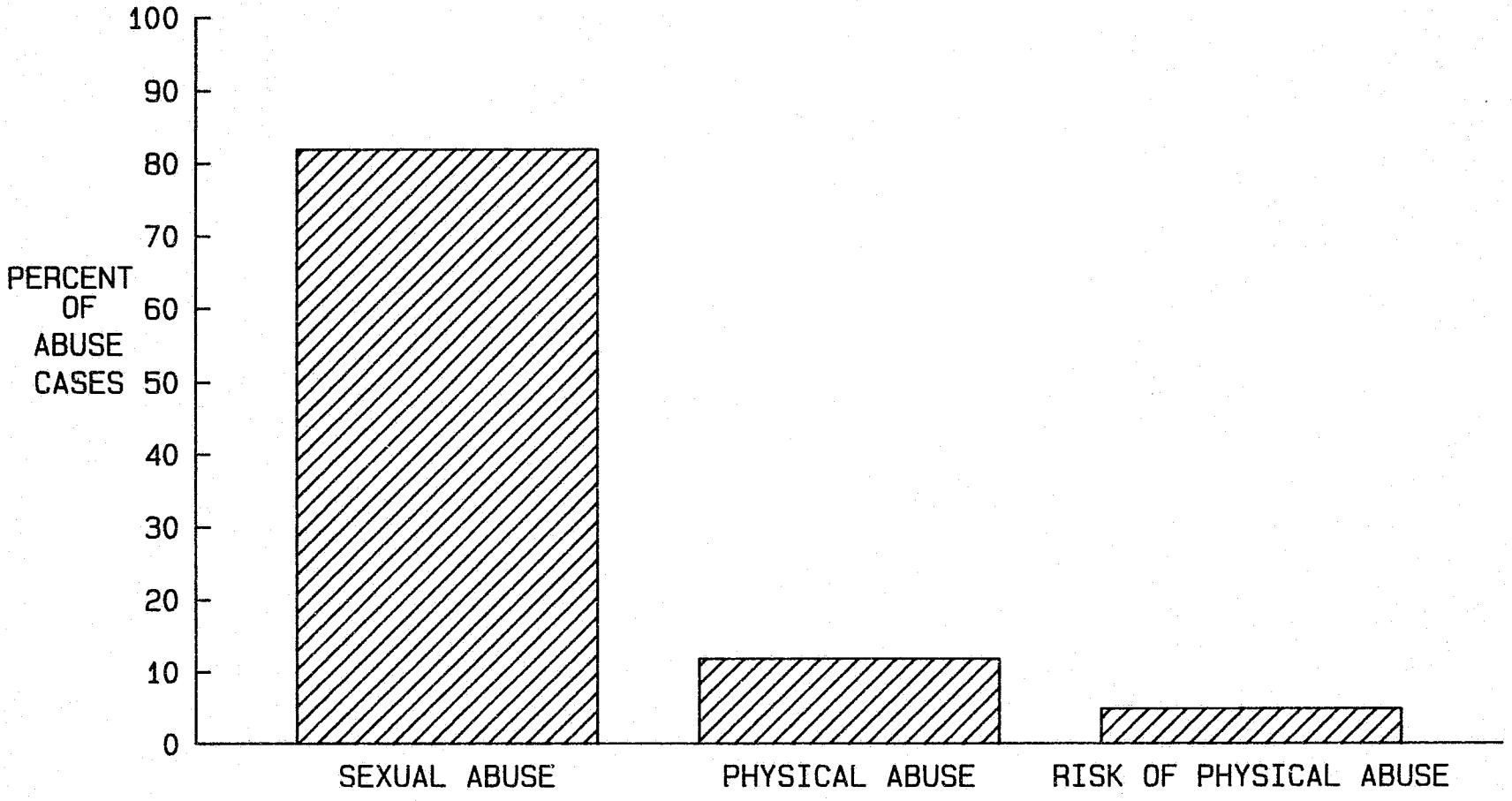

FIGURE 40: TYPE OF ABUSE FOUND BY COURT

As these data indicate, almost all of abuse adjudications in the state and in specific areas of the state are based on sexual abuse of the child. A much smaller number derive from physical abuse, and only a minimal number of such adjudications are produced by parents creating a risk of physical abuse to the child.

7. Preliminary Orders After Fact Finding

Section 1051(d) contains a provision that allows for the issuance of preliminary orders pursuant to §1027 (described earlier in this report) following a finding of abuse or neglect. Under this authority, the court may order removal and placement with the local department of social services; or placement of the child in the custody of a suitable person (if the court finds that there is a "substantial probability" that the child will be placed at disposition); or issue a preliminary order of protection; release the child to the custody of the parent; authorize the provision of medical or surgical procedures; and, order a physical examination of the child by a physician.

In the project sample, among cases that produced an adjudication of abuse or neglect, preliminary orders were issued in 23 percent of the cases statewide. Almost all of these cases with preliminary orders (90 percent) were in New York City. (Only eight cases in the upstate area had preliminary orders after fact-finding.) Hence, the statewide data presented in the following are heavily weighted toward the New York City findings.

The most prevalent orders (more than one order was possible per case) were case specific instructions (issued in 71 percent of the cases). Other preliminary orders included: removal of the child from the home and placement in the custody of the department of social services (20 percent); services to be provided or arranged for by the local department of social services (10 percent); preliminary orders of protection (9

percent); removal of the child from the home and placement in the custody of a suitable person (6 percent); and, release of the child to the parent or other legally responsible person (5 percent). Notably, there was no case in the entire statewide sample in which the court ordered the provision of a medical or surgical procedure or ordered a physical examination of the child by a physician.

D. Court-Ordered Investigations

1. Incidence

As discussed earlier in this chapter, the court may, at the conclusion of the fact finding hearing and after the adjudicatory orders have been issued, order additional studies of the case child and family so that a more complete informational base is available for the making of dispositional orders. These court-ordered investigations may be conducted by a number of groups, including child protective agencies, mental health organizations, the probation service, medical professionals, and other groups. Although it would appear that there is reason to believe that using such additional information sources represents good practice, in fact, the frequency with which these investigations are ordered varies considerably across the state.

Specifically, the statewide sample indicates that the court ordered an investigation during the pendency of the proceeding in 55 percent of the cases. However, the variation around this central figure is immense when upstate and New York City rates of ordering investigations are compared. New York City anecdotal evidence suggested that court policy has dictated ordering such an investigation in most cases. In fact, investigations were ordered in 74 percent of the cases in which there was an adjudication in the City.

In contrast, many small upstate counties report almost never using such additional information, although upstate urban

counties are more likely to order investigations. The data show that 36 percent of the upstate cases with adjudications also contained a court-ordered investigation.

The New York City family courts are, therefore, slightly more than twice as likely as are upstate courts to order a new investigation of the case child and family to produce additional information. Although outside the scope of this study, lower utilization of post-fact-finding studies in rural upstate counties may be attributable to a lack of available resources to conduct such studies.

2. Reason for Court-Ordered Investigation

As depicted in Figure 41, statewide, the most frequent reason for ordering an investigation was to develop additional information for the dispositional hearing (found in 80 percent of these cases where an investigation was ordered). Much less frequently, the court ordered investigations to develop information for the fact finding hearing (12 percent of the cases). Other reasons for the investigation, (cited in only a handful of cases) included assisting the court in its determination of an ex parte application to file a petition, and the ordering of an investigation during the pendency of another proceeding (for example, support, custody and PINS proceedings). In New York City, court ordered investigations in connection with dispositional hearings occurred in 91 percent of the cases (where an investigation was ordered), and for fact-finding, in 5 percent. Upstate investigations for dispositional hearings took place in 65 percent of the cases (where an investigation was ordered), and for fact finding in 31 percent of the cases.

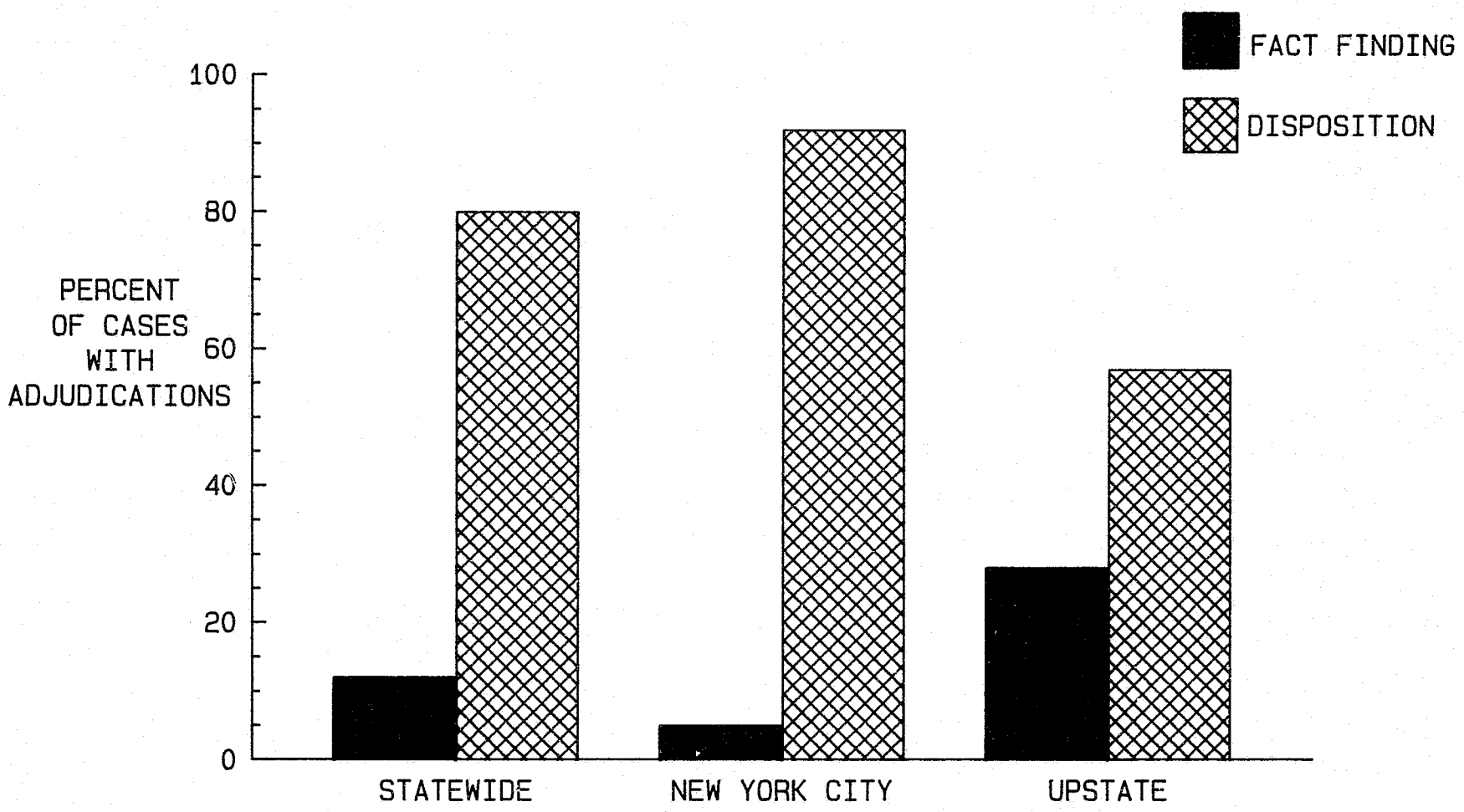

FIGURE 41: REASON FOR COURT ORDERED INVESTIGATIONS

3. Types of Investigations Ordered

When the court orders an investigation, it is most often either the local child protective agency or a mental health agency which conducts this new investigation. In fact, as Figure 42 indicates, statewide, investigations by these two types of agencies are ordered at quite similar rates (73 percent and 76 percent respectively). Only a handful of other types of investigations are ordered: health evaluations are requested 10 percent of the time; probation conducts such an investigation 6 percent of the time.

Data presented earlier in this chapter indicates that New York City family courts are much more likely to order investigations of the case family than are upstate courts. Additionally, the frequency with which different types of reports are ordered varies across the state. Table 33 presents the percentage of all cases with an investigation in which specific types of investigations are ordered for these two geographic areas.

Table 33: Type of Reports Ordered in New York City and Upstate*

TYPE OF REPORT ORDERED	AREA OF STATE	
	NEW YORK CITY	UPSTATE
Child protective	94.6	37.7
Mental health	84.5	49.2
Probation	1.6	4.9
Health	7.0	13.1
Other	0.8	9.8

* Entries in Table are percentages of cases in which a report was ordered and do not toal 100 percent because more than one type of report can be ordered in a given case.

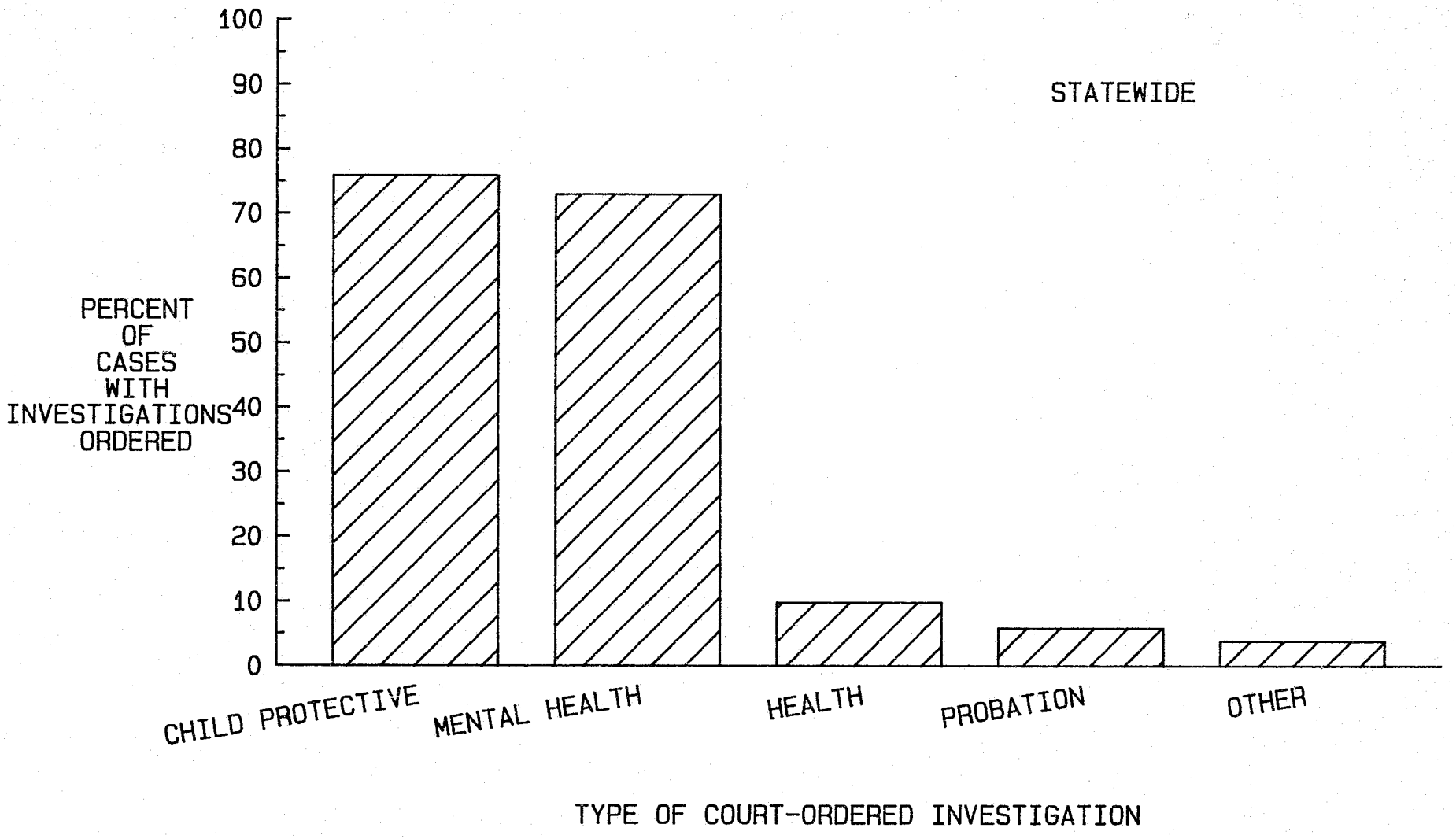

FIGURE 42: FREQUENCY OF ORDERING DIFFERENT TYPES OF INVESTIGATIONS

It should be noted that New York City courts, almost as a matter of course, order both child protective and mental health evaluations at the conclusion of fact finding. Since the preponderance of the investigations ordered in the sampled cases were in the City, it is not surprising to find such similar frequencies of child protective and mental health reports as were noted above.

Finally, the incidence of investigations ordered from the probation service represents somewhat of an anomaly given the present day structure of the child protective system. The section of law that addresses reports prepared by the probation service was enacted in 1962 before the present child protective services structure was in place.** At that time, the probation service was heavily used by the courts for obtaining predispositional information. Currently, however, because the local department of social services (through its child protective services unit) has often conducted an extensive social work evaluation of the case family, the courts are more likely to turn to this source , adding a psychiatric evaluation where it is deemed appropriate.

It should be noted that using the local department of social services to develop additional information for use in determining the appropriate disposition in a case is only the most frequently used method in the state, but it is not the sole approach taken by the courts. One family court in a mid-sized county prefers to request reports from probation at this stage of the proceeding (that is, following fact-finding adjudication). Similarly, other upstate counties occasionally make use of the probation service.

**The Child Protective Service Act of 1973 created the present day system.

4. Time from Ordering Report to its Receipt

Escalating numbers of Article 10 petitions filed with the family courts in recent years have created a number of problems, the most obvious of which is an overcrowding of court calendars. This has focused attention on the need to move cases through the Article 10 process expeditiously in order to make room for new cases entering the system.

Thus, the extent to which the courts need to wait for the results of a court-ordered investigation is of interest as a potential variable contributing to increased case length, and to the retention of cases in the court system without a prompt resolution of the issues in the case. Although this study has, generally, found compliance on the part of individual family courts around the state with the administrative guidelines for average case length (i.e., six months), nonetheless, average case length is affected by a number of variables. Most notably, this project has demonstrated that, on the average, settling a case reduces by about 3-4 months the pendency of the case. Additionally, the results have demonstrated that settling a case is the norm in New York State; 77 percent of cases in the sample were settled. Taken together, these results at least imply a procedural preference for settling cases in order to remain within guidelines for case length.

The opposite reasoning might be applied to the use of court-ordered investigation. If the proceeding must be adjourned to await the results of a court-ordered investigation, then the pendency of the proceeding will most likely be increased. This effect, in conjunction with a lower availability of agencies equipped to provide the necessary evaluative services, no doubt contributes to the lower rate of ordering such investigations found in the upstate area.

Among all cases with court-ordered investigation in the present study, an average of 61.4 days elapsed from the time that an investigation was ordered until the results of that investigation were reported back to the court. Generally, a delay of about two months is inserted into the pendency of an Article 10 proceeding when an investigation is ordered. However, the story is not quite that simple. The length of delay in a case caused by ordering these investigations varies depending on what type of investigation is ordered. Data pertaining to this topic are presented in Figure 43. As this figure indicates, two types of reports already entail the longest average delay in Article 10 proceedings: child protective services reports take about 60 days, on average, and mental health evaluations take about an average of 73 days.

Thus, two or more months are added to the case length of child protective proceedings when the most common types of investigations are conducted pursuant to court order.

Reports from other types of investigations are received in much shorter time frames. Probation reports are returned to the court in little more than one month; health and "other" reports in about three weeks.

The distributional data for each of these report types support these overall findings. Only 15 percent of child protective reports are received within one month of the court order; 57 percent of these reports are received within two months of the order; and 91 percent are received within three months.

With respect to mental health reports: only 11 percent are received within the first month after the court order, 66 percent are received within the first two months; and, 87 percent are received within three months.

The findings for probation, health, and "other" reports have similar distributions even though each is based on a relatively small sample size.

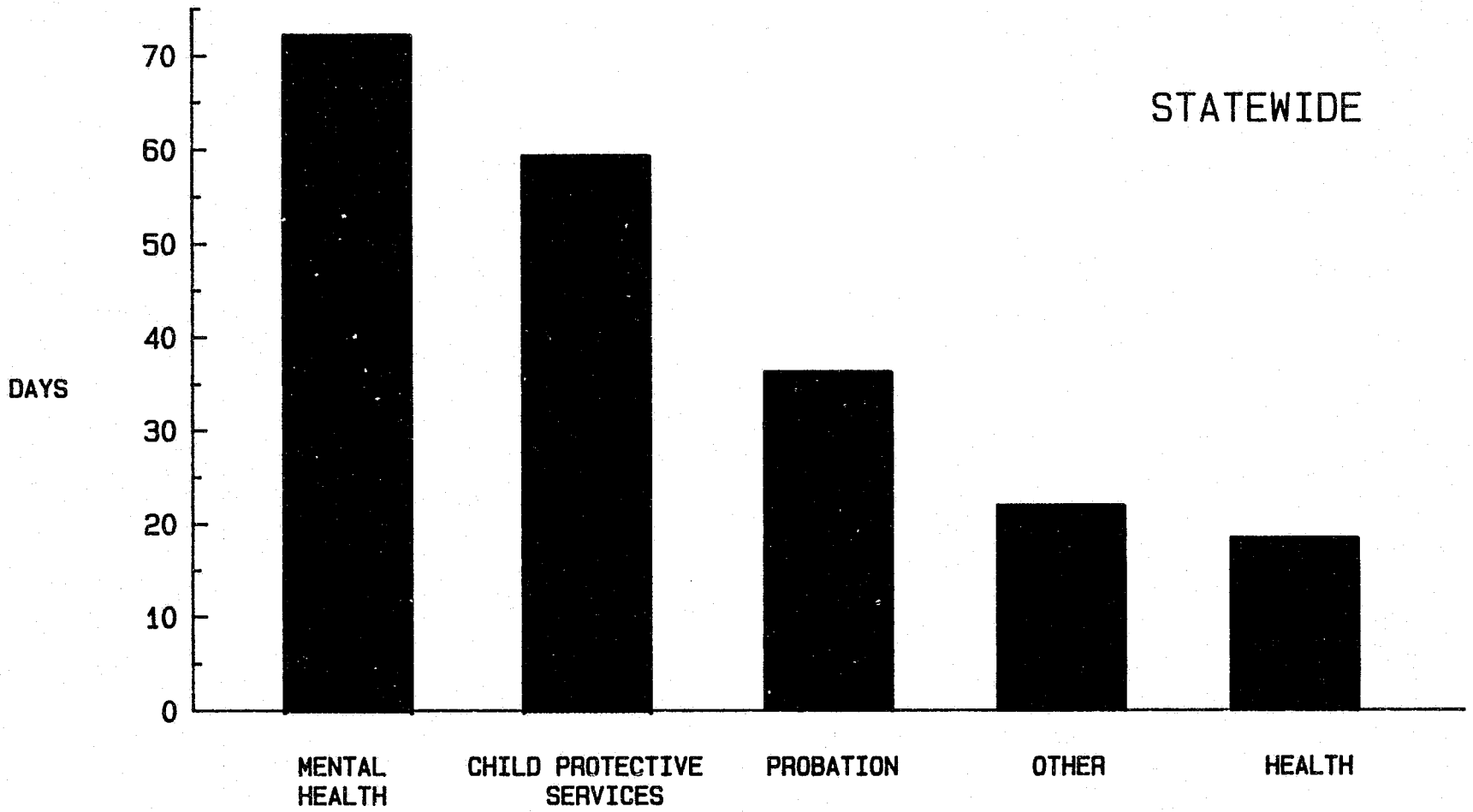

FIGURE 43: TIME BETWEEN COURT ORDER AND RECEIPT OF INVESTIGATIVE REPORT FOR DISPOSITION HEARING

5. The Relationship of Court-Ordered Investigations to Other Variables

The manner in which courts use the investigatory process is of interest. Do the courts request this information more frequently in certain types of cases? And, are specific types of dispositional orders more likely, given a previous court-ordered investigation?

Statewide, orders for investigations appear to be issued at similar rates, regardless of whether the original petition charged abuse or neglect. That is, investigations were ordered in 34 percent of abuse cases and 41 percent of neglect cases.

An examination of the set of cases with court-ordered investigations tells one kind of story. Among these cases, the most frequently found allegation types were: "alcohol/drug abuse" (36.5 percent of all cases with court-ordered investigations); and, "lack of food, clothing and shelter" (30.7 percent of all cases with court-ordered investigations). Lack of supervision (24 percent), sexual abuse (21.4 percent), and lacerations, bruises and welts, (21.4 percent) are also found with some frequency. Allegation types almost never found among court-ordered investigations include emotional neglect (2.6 percent), malnutrition/failure to thrive (3.1 percent), and fractures/subdural hematomas (3.6 percent), although these low rates are most likely produced by the relative infrequency of these allegation types in the complete sample.

When these cases with specific allegations in the original petition are reviewed, statewide about half of the allegation types show a differential rate of court-ordered investigations when compared with all other cases in the sample (i.e. those without such allegations.) For example, in cases of infants born with drug addictions, the court ordered additional investigations 71 percent of the time. This is quite high compared to a 37 percent rate of ordering investigations in all other cases

without such allegations. Similarly, the court ordered additional investigations in 57 percent of cases with allegations of burns and scalding, and only 38 percent of the time in all other cases. These data are presented in Figure 44 for those allegation types with an investigation rate substantially different from the rate found in all other cases. As can be noted from this figure, investigation rates are substantially higher when the allegations are:

- drug withdrawal/infant
- burns, scalding
- alcohol/drug abuse
- malnutrition/failure to thrive, and
- lack of food, clothing and shelter

In contrast, investigatory rates appear to be substantially lower than the rates found in other cases when the allegations are of educational or emotional neglect.

Finally, the relationship between court-ordered investigations and final dispositional orders was assessed. To rephrase this question: to what extent is a specific final order of disposition issued when there was a previous investigation, and how does this compare to the rate of such orders found when there was no previous investigation. Data addressing this question are presented in Figure 45, and are summarized as follows. When there has been an investigation, courts are:

- almost twice as likely to place the child than if there were no previous investigations;
- about equally likely to issue an order of supervision regardless of previous investigation;
- only about half as likely to issue an order of protection;
- less than half as likely to issue an ACD; and
- about equally likely to issue a suspended judgment.

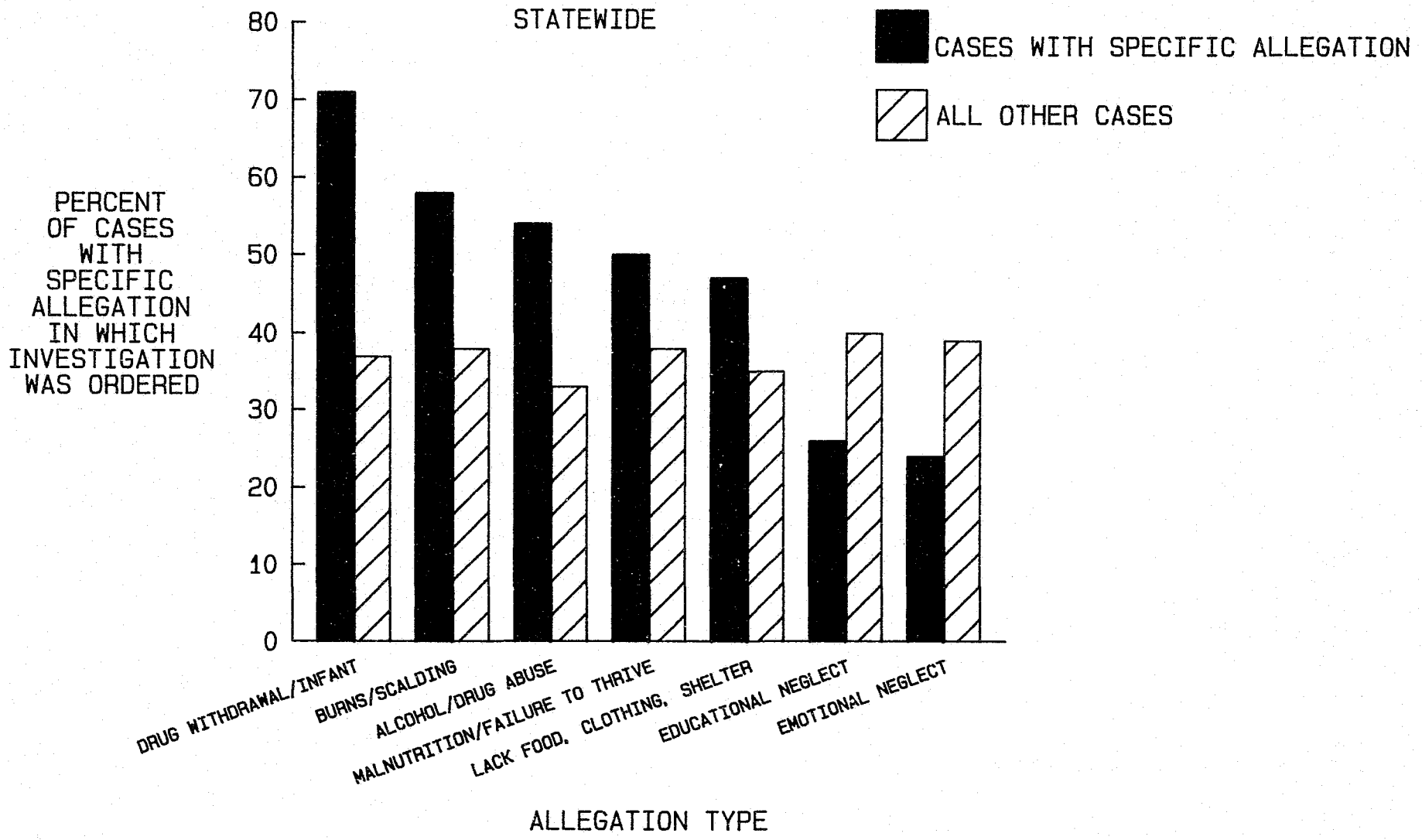

FIGURE 44: RATE OF ORDERING INVESTIGATIONS AMONG CASES WITH DIFFERENT ALLEGATION TYPES

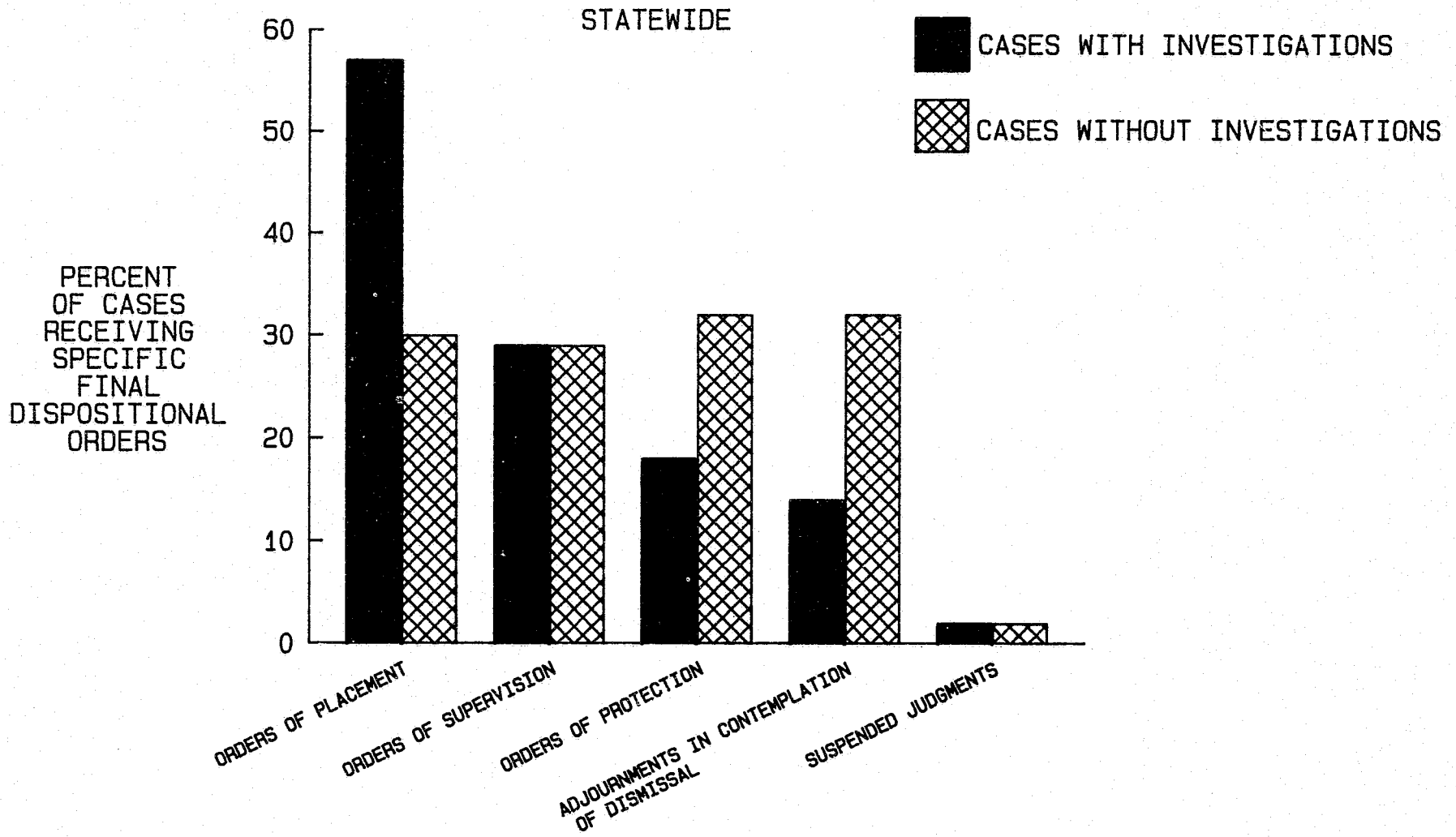

FIGURE 45: PERCENT OF CASES WITH AND WITHOUT INVESTIGATIONS RECEIVING SPECIFIC FINAL DISPOSITIONAL ORDERS

E. Dispositional Hearings

Section 1045 of the Family Court Act defines a dispositional hearing as one to determine what order of disposition should be made. Upon completion of the fact-finding hearing, §1047 provides that the dispositional hearing may be commenced immediately after the required findings are made, although this section in combination with §1048 also allows for a break between these two hearings. Specifically, provision is made for adjournment of fact-finding or dispositional hearings and/or for adjournment of the proceeding after fact-finding so that the court can make inquiry into the "surrounding conditions and capacities" of the persons involved in such proceedings (§1048(b)). This inquiry may include psychiatric and alcohol evaluations or other related reports or studies. In any event, the law clearly requires a specific sequence of these proceedings (i.e., that a fact finding hearing precedes a dispositional hearing), and, furthermore, precludes holding a dispositional hearing in the absence of a previous fact finding.

Other portions of the Family Court Act that address the dispositional hearing include the following:

- Agencies providing temporary foster care and supervision to the child are required to be notified of the dispositional hearing (§1048(c)).

- In scheduling all hearings, including dispositional hearings, the court is required to give priority to abuse cases and cases in which the child was removed from the home prior to disposition (§1049).

- In a dispositional hearing only material and relevant evidence may be admitted, permitting introduction of hearsay evidence which would be inadmissible in fact finding (§1046(c)).

1. Time Between Fact Finding and Dispositional Hearing

Statewide, the time elapsing between the conclusion of the fact finding hearing and the dispositional hearing averaged 35.7 days. In New York City, this value was higher (49.7 days) and, in upstate counties, the average was lower (20.7 days).

As noted in the previous chapter, cases in which an investigation is ordered by the court average about two months between fact finding and disposition. This factor, in combination with the more frequent use of court-ordered investigation by the New York City family courts, most probably accounts for these wide regional variations found in time between fact finding and disposition.

Another method for examining this break in the proceeding consists of reviewing the distribution of time measures. That is, the average figures reported above can be affected by extreme measures such that the occasional long delay between fact finding and disposition can disproportionately contribute, and distort to an average value. Other measures may now accurately convey a picture of the distortion.

In fact, distributional measures do moderate the picture of a rather long delay created by the arithmetic mean. Specifically, 56 percent of cases going to dispositional hearings, statewide, had such hearings on the same day as the fact finding hearing, suggesting that in cases where fact finding and disposition did not occur on the same day, the time period between fact finding and disposition would be far longer than the above average. Regional variations existed for this measure, as well: in New York City, 33 percent of such cases had fact finding and dispositional hearings on the same day; in upstate counties, this proportion was considerably higher (80 percent). Again, this difference reflects the differential use of court-ordered investigations in the two areas.

2. Persons Present At Dispositional Hearing

The dispositional hearing is a critical juncture in the determinion of the future of the abused and neglected child and his or her family. Far-reaching decisions may be made by the court at this point that affect the custodial status of the child and the relationship between the child and family.

Given the significance of this hearing, it is somewhat surprising to note that the Family Court Act does not require that formal notice be provided to the respondents, regarding the scheduled date of the dispositional hearing. Unlike the requirement for service of notice of the fact finding hearing (found in §1041), the law is silent with respect to parental presence at this stage of the proceeding.

The implicit assumption is, of course, that since the respondents are required to attend the fact finding, they are present when the date is set for the dispositional hearing. To the extent that presence at the fact finding is sufficient to insure presence at the dispositional hearing, a comparison of attendance rates at the two hearings may reflect the impact of this lack of requirement for service of notice of the dispositional hearing.

Respondent participation at the dispositional hearing reached a 73 percent level for the statewide sample, a value slightly lower than but, nonetheless, relatively comparable to that recorded for the fact-finding hearing. These findings would appear to support the assumption, implicit in the absence of any notice statute, that, indeed, presence at the fact-finding insures a knowledge of the date set for disposition.

Attendance data for other participants in the proceeding indicate relatively high levels for those professionals having a stake in the outcome of the proceeding.

As presented in Figure 46, attorneys for petitioner and respondent were present at more than 90 percent of the dispositional hearings, as was the child's law guardian, a high proportion but still short of full participation. Of note, is the finding that the child was rarely present (only 1.7 percent of the time). However, the presence of the child's law guardian argues that the child's interests are legitimately protected at this important stage. These patterns of attendance were generally consistent statewide for disposition proceedings. New York City reflected a lower incidence of the first respondent's presence at the dispositional hearing (60 percent) and upstate counties reflected a higher incidence of the respondent's presence (89 percent).

These findings raise procedural and policy concerns which will be addressed in greater detail in the concluding chapter of this report.

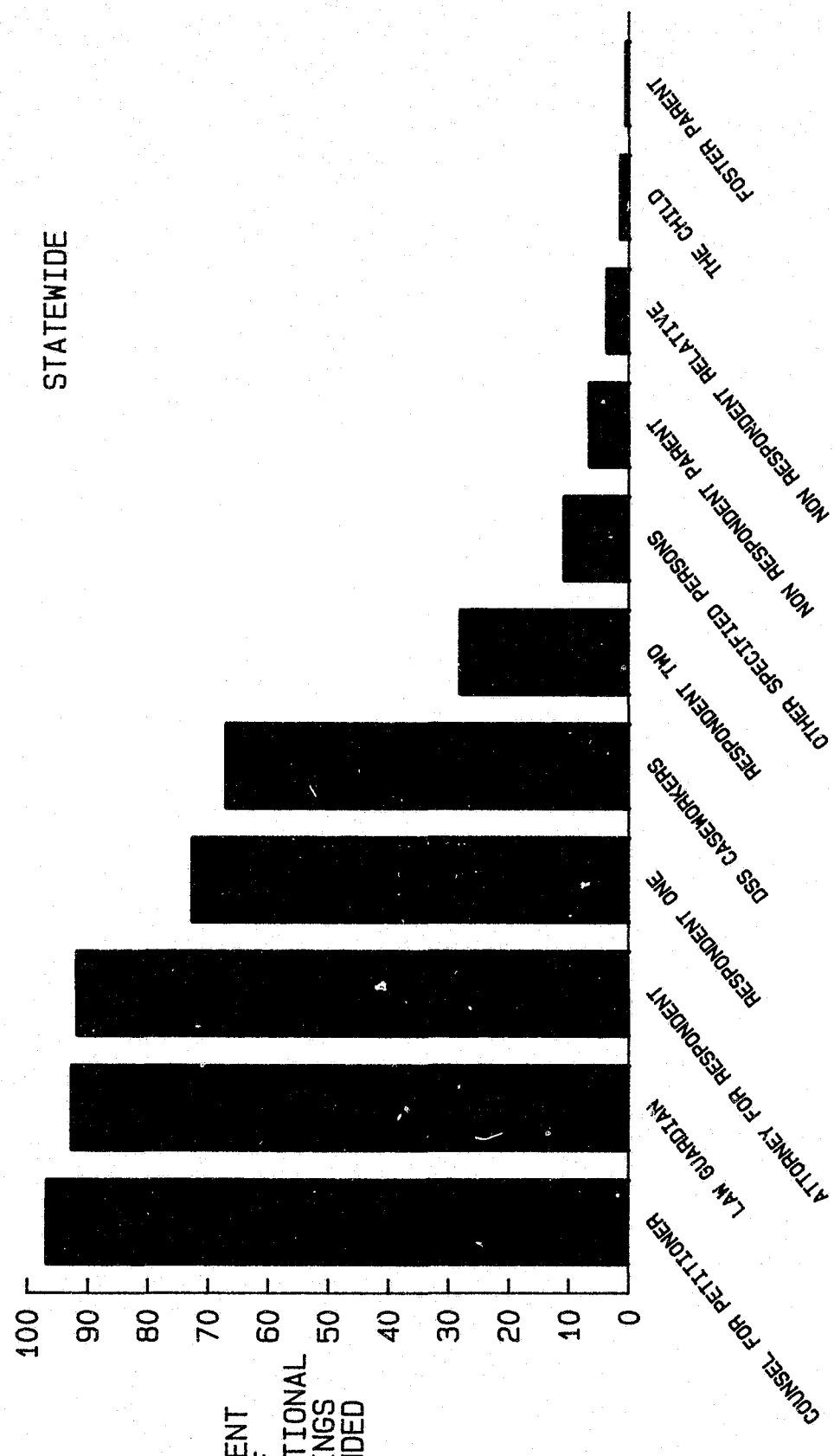

FIGURE 46: PERSONS PRESENT AT DISPOSITIONAL HEARING

F. Final Orders of Disposition - General

1. Description

Assuming that a number of procedural requirements have been met (that is, that a fact finding hearing has preceded case disposition, that the appropriate findings were made based on this hearing, and that a dispositional hearing has taken place), the statutes grant broad dispositional discretion to the family courts. Five specific dispositional orders are listed in §1052, all of which are available for use at the conclusion of the dispositional hearing. (Other dispositional alternatives not listed in this section but, nonetheless available to the courts include: adjournments in contemplation of dismissal (§1039); dismissals when the aid of the court is not required (§1051(c)); and, discharging abandoned children to the department of social services (§1059).

The Family Court Act provides no direction as to which of these dispositional alternatives should be used with specific types of cases. That is, no standards are available for choosing appropriate dispositional orders and, thus, broad discretion is given to the judge at this point in a child protective proceeding.

The five dispositional orders listed in §1052 are: (a) suspending judgment; (b) releasing the child to the custody of the parents or other legally responsible person; (c) placing the child in foster care or with a relative or other suitable person; (d) issuing an order of protection; (e) placing the respondent under supervision. The statutory definition of terms and conditions of dispositional orders are as follows:

a. Suspended Judgment

Under Section 1053, regulatory rules of court are to define the permissible terms and conditions of a suspended judgment,

which must relate to the acts or omissions of the parent or other person legally responsible for the care of the child.

These permissible terms and conditions of a suspended judgment, as defined by §205.82 of the Uniform Rules for the Family Court are:

1) refrain from or eliminate specified acts or conditions found at the fact-finding hearing to constitute or to have caused the neglect or abuse;

2) provide adequate and proper food, housing, clothing, medical care, and for the other needs of the child;

3) provide proper care and supervision to the child and cooperate in obtaining, accepting or allowing medical or psychiatric diagnosis or treatment, alcoholism or drug abuse treatment, counseling or child guidance services for the child;

4) take proper steps to insure the child's regular attendance at school;

5) cooperate in obtaining and accepting medical treatment, psychiatric diagnosis and treatment, alcoholism or drug abuse treatment, employment or counseling services, or child guidance, and permit a child protective agency to obtain information from any person or agency from whom the respondent or the child is receiving or was directed to receive treatment or counseling. (22 NYCRR Part 205)

The maximum duration of a suspended judgment is one year, unless the court finds at the conclusion of such period, after a hearing, that "exceptional circumstances" require an additional year's extension.

b. Release to Parent or Legally Responsible Person

Section 1052 authorizes an order of disposition releasing a child to the custody of his or her parent or other legally responsible person. In conjunction with this order, §1054 also authorizes the court to place this parent or legally responsible person under the supervision of a child protective agency. Additionally, this section allows the court to issue an order of protection where deemed appropriate.

Rules of court define permissible terms and conditions of supervision. (See subsection (e) below.) Until this year, the duration of any such period of supervision was for an initial period of 18 months with authority for successive extensions of up to one year each. In 1989 the New York State Legislature limited the initial period of supervision to one year.

c. Placement, Extension of Placement; Term of Placement

As set forth in Section 1055 of the Family Court Act, the family court is empowered to place a child in the custody of a relative or other suitable person, or of the local commissioner of social services or of other duly authorized child care agencies. In 1985, when the sample cases were in the courts, §1055 authorized placements "for an initial period of eighteen months...". Chapter 129 of the Laws of 1987 amended this language to read "...of up to eighteen months..." (emphasis added), and recent changes in the 1989 legislative session have curtailed this initial placement period to no more than one year in duration.

Section 1055 also empowers the court in its discretion to extend the placement of the child any number of times for one year for each extension.

In order to extend a placement, a petition and supporting affidavits or reports must be filed at least 60 days prior to the

expiration of the period of placement, except for good cause shown. Special provisions of law, enacted in 1988, provide for periodic court review of the status of abused and neglected children placed in foster care under this Act and who are subsequently freed for adoption.

Placements cannot be extended or continued without holding a hearing held concerning the need for such extension. The hearing is held upon the petition of or on motion of the placement agency, or on motion of the child or the child's law guardian, or of the foster parent in whose home the child resides at the time of the application for extension of placement.

Notice of the extension of placement hearing and a copy of the petition and any supporting papers must be served upon the person or agency with whom the child is placed, the child's parent or other legally responsible person, the foster parent with whom the child resides at the time of the petition, and the child's law guardian at the time of the original placement.

In addition to or in lieu of an order of placement or extension of placement, the statute empowers the family court to direct a child protective agency to undertake diligent efforts to provide appropriate services to encourage and strengthen the parental relationship when such efforts would not be detrimental to the child's best interests. The court may also enter an order directing the initiation of proceedings to legally free the child for adoption, if the court finds reasonable cause to believe that grounds therefor exist.

Placements of extension thereof are not authorized beyond the child's eighteenth birthday without his or her consent and in no event past the child's twenty-first birthday.

Any interested person acting on the child's behalf, the child's parent or the person legally responsible for the child may petition the court for an order terminating the placement.

The petition must show grounds for the requested termination and must also show that an application for the child's return home had been made to an appropriate person where the child was placed and that this application was either denied or not granted within thirty days from the day the application was made (§1062). After a hearing the court may approve or deny the petition, discharge the child, reduce the length of placement, change the child care agency, or direct other arrangements for the child (§1065).

d. Protection

Under Section 1056, the family court may make an order of protection "in assistance or as a condition of any other order made under this part" of the Article (emphasis added).

Essentially, this means that orders of protection, issued as final dispositional orders in child protective proceedings, may not be issued independently or as the only final dispositional outcome of a case but must instead be issued in conjunction with one of the other dispositional orders listed in §1052. In 1985, the statutes did not specify the duration of such orders of protection, presumably because such orders were subservient to other dispositional orders, all of which had a statutorily-imposed maximum duration. Thus, an order of protection issued in conjunction with an order of supervision (which had duration of one year) might be expected to also have a duration of one year. However, because §1056 was silent with respect to the duration of an order of protection, it was not clear at the time what, if any, limits were imposed on such orders. (The 1989 Legislature provided that protective orders must expire concurrently with such other orders.)

Orders of protection may be issued against the respondent or against other people, including the spouse of the respondent, and may set forth reasonable conditions of behavior to be observed for a specified period of time. Specifically, the order of protection may require any such person to: (a) stay away from

the home, the other spouse or the child; (b) permit a parent to visit the child at stated periods; (c) abstain from offensive conduct against the child or against the other parent or against any person to whom custody of the child is awarded; (d) give proper attention to the care of the home; (e) refrain from actions of commission or omission tending to make the home not a proper place for the child; or, (f) provide for expenses incurred for medical care and treatment arising from the incident or incidents forming the basis for issuing the order. During the term of an order of protection the court is authorized to award custody of the child to either parent or an appropriate relative of the second degree.

e. Supervision

The court is empowered by Section 1057 of the Family Court Act to place the respondent under the supervision of a child protective agency, social services official or duly authorized agency. Rules of court define permissible terms and conditions of supervision. These terms and conditions, as specified by the Uniform Rules of the Family Court include requirements that the respondent:

- cooperate with the supervising agency in remedying specified acts or omissions found at the fact-finding hearing to constitute or to have caused the neglect or abuse;

- meet with the supervising agency alone and with the child when directed to do so...;

- report to the supervising agency when directed to do so...;

- cooperate with the supervising agency in arranging for and allowing visitation in the home ...;

- notify the supervising agency immediately of any change in residence or employment of the respondent or of the child; and,

- do or refrain from doing any other act of omission or commission that, in the judgment of the court, is necessary to protect the child from injury or mistreatment and to help safeguard the physical, mental and emotional well-being of the child (22 NYCRR 205.83)

Additionally, court rules specify that when a court has issued an order of supervision, it should notify the supervising agency of its role in writing, inform the respondent that a jail term may result from a violation of the terms and conditions of the order, and, if the court "concludes that it is necessary for the protection of the child", it may "direct the supervising agency to furnish a written report to the court at stated intervals not to exceed six months..." (22 NYCRR 205.83).

The duration of any period of supervision (until amended by the 1989 New York State Legislature) could be for an initial period of up to eighteen months, at the expiration of which the court was empowered, upon an hearing and for good cause shown, to make successive extensions of up to one year each. The 1989 enactment reduced the initial period of supervision to not more than one year. At the time of the study, however, the order of supervision could be issued for eighteen months.

f. Violations of Orders of Protection, Supervision or Suspended Judgments

As noted above, two separate sections of Article 10 authorize orders of supervision: §1054 allows for supervision when the child is released from foster care as part of the final dispositional order; on the other hand, §1057 authorizes supervision of the respondent, independent of such a release from care. Unfortunately, when there is a violation of the terms and

condition of an order of supervision, the available judicial remedies differ depending on the statutory authority for the original order of supervision. The Legislature provided a set of alternative remedies when there is a violation of supervision under §1054 (see above) and for violations of orders of protection. Violations of §1057, however, are not covered by specific statute under Article 10.

Section 1072 of the Family Court Act provides that, if after a hearing, the court is satisfied by competent proof that a person violated the terms and conditions of an order of supervision under §1054 or of an order of protection issued under §1057 or §1027, the judge may revoke the order of supervision or of protection and enter any order that might have been made at the time the order of supervision was made, or commit the person to up to six months in jail.

Similarly, upon failure of a person to comply with the terms and conditions of a suspended judgment issued under Section 1053, the court may revoke the suspension of judgment and enter any order that might have been made at the time judgment was suspended.

2. Frequency of Dispositional Orders

The relative frequency of the various dispositional orders is presented in Figure 47. As these data incidcate, on a statewide basis, the most frequently entered final order of disposition was an order of placement with the local commissioner of social services (37.1 percent). When combined with orders of placement with relatives or other suitable persons (14.7 percent), the aggregate number of placements, was statewide, 51.8 percent.

The next most frequently issued orders of disposition were orders of protection (33.4 percent), supervision (24.8 percent) adjournments in contemplation of dismissal (21.8 percent), and release to parents with supervision (19.3 percent). Other, infrequent, dispositional orders (2.4 percent or less) included release to other legally responsible person, release to parents without supervision, suspended judgments, abandoned child, and aid of court not required/neglect finding/dismissed.

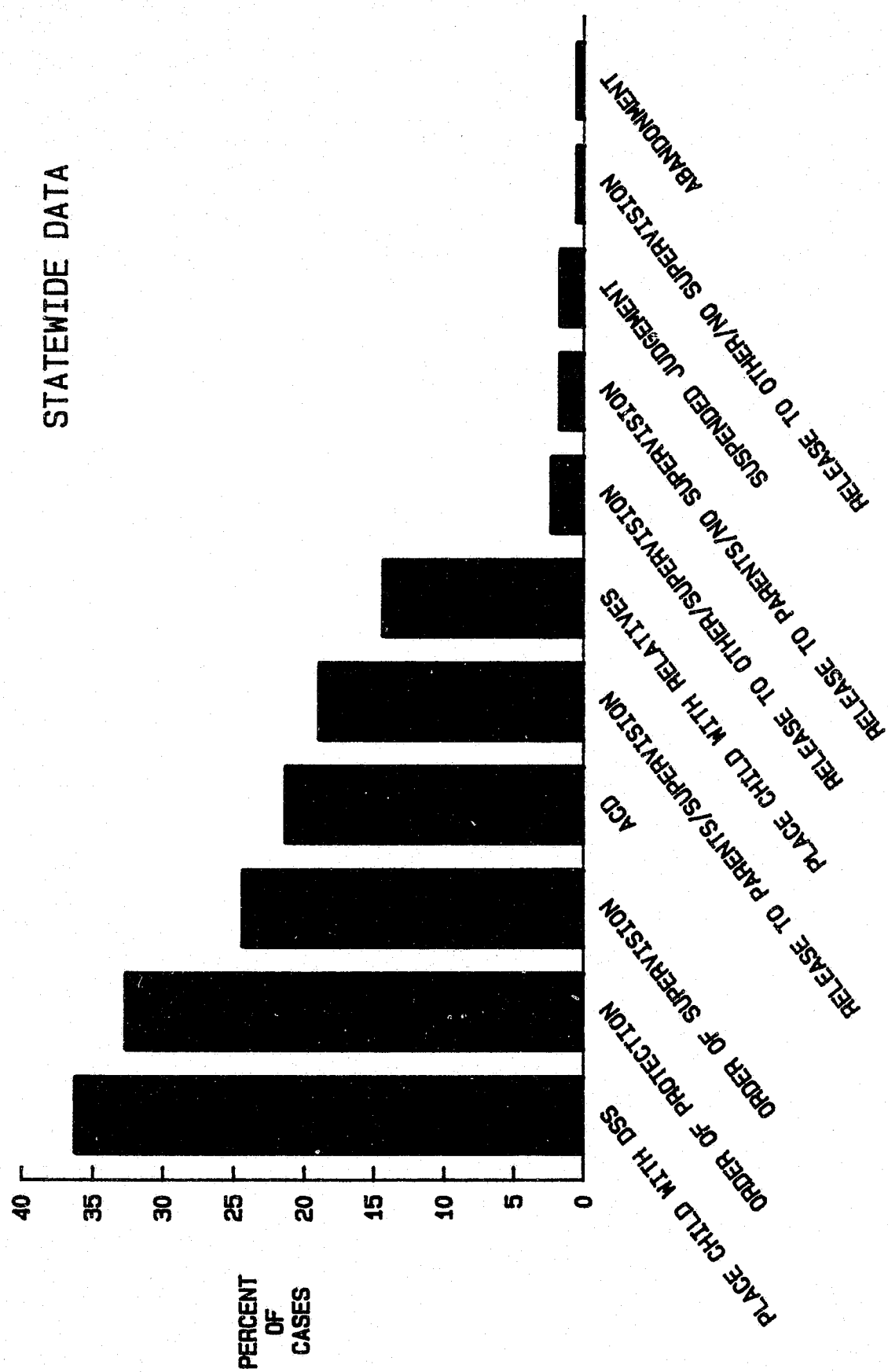

FIGURE 47: FINAL DISPOSITIONAL ORDERS

Figure 48 compares final orders of disposition for New York City and upstate counties. In New York City, orders of placement are emphasized and account for 67.3 percent of the final dispositional orders, while in the upstate area, only 37.6 percent of the children were so placed.

Upstate counties, on the other hand, emphasize other dispositional orders:

-- Upstate, orders of protection represented 46.5 percent of final orders of disposition, compared with 18.9 percent in New York City;

-- Upstate, orders of supervision were 37.2 percent of final orders of disposition, compared with 11.2 percent in New York City, and

-- ACDs, upstate, were 27.9 percent of final dispositional orders, compared with 17.7 percent in New York City.

Finally, dispositional orders of release to parents were nearly comparable throughout the State (22.7 percent upstate and 21.4 percent in New York City).

3. Other Dispositional Orders

The court in child abuse and neglect proceedings may make dispositional orders directing the local department of social services to render a variety of services to assist the child and family, particularly in non-placement cases. In our statewide sample, the only order to the department of social services made with any regularity was for departmental assistance in counseling the family, made in 26.9 percent of the cases. This practice occurred less often in New York City (18 percent) and more frequently upstate (36 percent). Other enumerated orders included: case-specific orders (8.6 percent); diligent efforts to assist the child and family (3.3 percent); assistance in

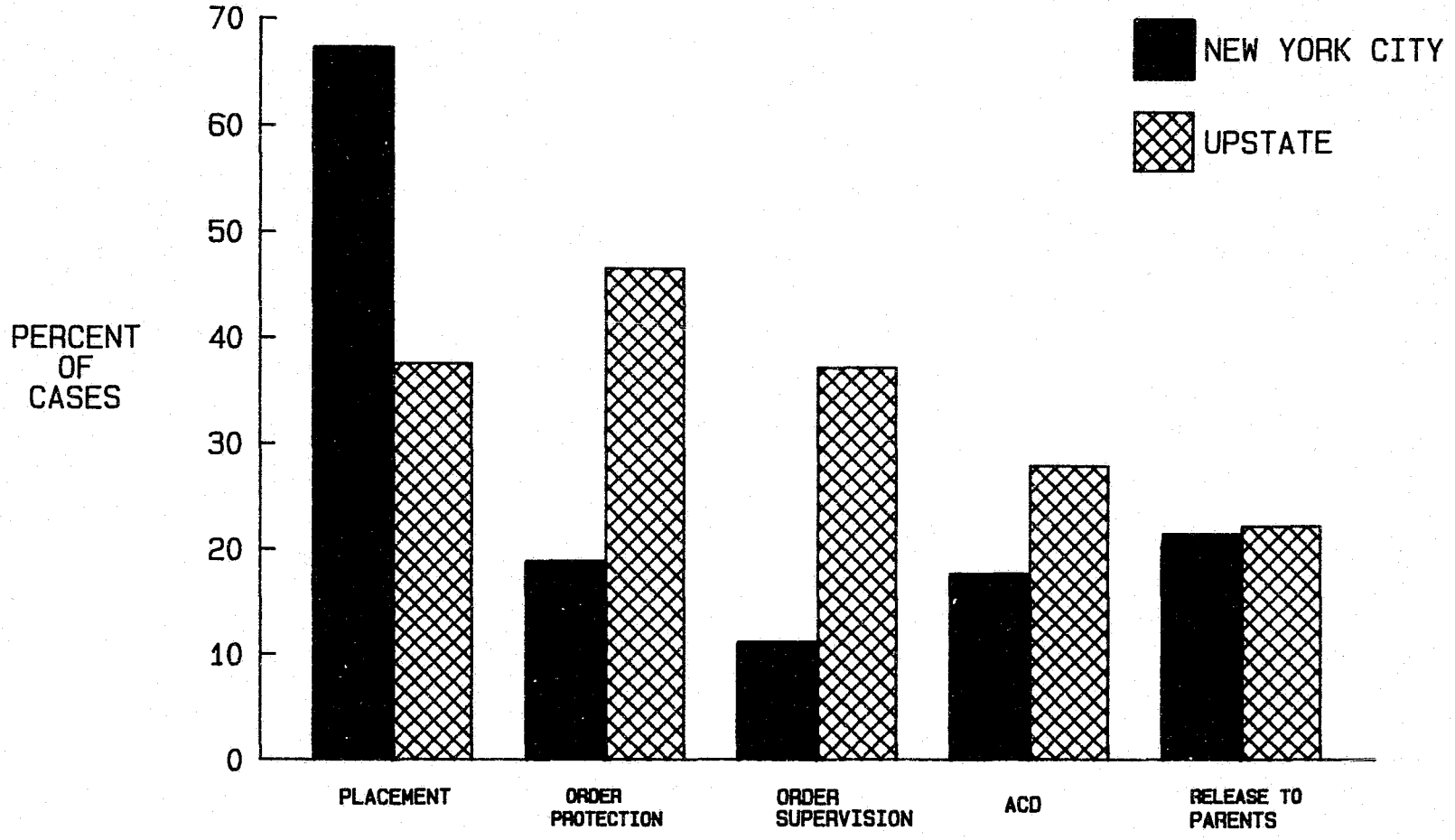

FIGURE 48: A COMPARISON OF FINAL DISPOSITIONAL ORDER RATES IN NEW YORK CITY AND UPSTATE

NOTE: THE FOLLOWING DISPOSITIONAL ORDERS ALL HAD RELATIVE FREQUENCIES LESS THAN 5%: RELEASE TO OTHER PERSON LEGALLY RESPONSIBLE; SUSPENDED JUDGMENT; ABANDONED CHILD; NEGLECT, AID OF COURT NOT REQUIRED.

finding housing (2.0 percent); aid in securing medical care (0.6 percent), and orders for employment services (0.2 percent).

4. Relationship of Dispositional Orders with Child's Age, Sex, and Petition Type

Each of the most frequent dispositional orders noted was cross-tabulated with a number of variables, including the age and sex of the child, petition type, and other dispositional orders. The results of these cross-tabulations are noted below only when there was a finding that represented a substantial differential use of specific dispositional orders. All findings cited below are based on the statewide sample.

a. Sex of Child

Final orders of protection were issued in 43 percent of the cases with female children, and in only 19 percent of cases with male children.

ACDs were issued in 24 percent of the cases with female children, and 17 percent of cases with male children.

b. Types of Petition

Thirty-two percent of abuse petitions and 39 percent of neglect petitions result in final orders of placement with the local commissioner of social services. There would, thus, not appear to be any meaningful difference between the rates at which different petition types lead to placement.

Fifty-two percent of abuse petitions, and only 24 percent of neglect petitions have final orders of protection. Hence, abuse petitions are about twice as likely to result in an order of protection.

c. Age of Child

There appears to be a slight trend with greater likelihood of releasing younger children to their parents at final disposition. Twenty-one percent of younger children (under age 5) were released to their parents with supervision, compared with a somewhat lesser percentage for older children (18.4 percent for the 5-12 year or mid-age group, and 16.5 percent for older children, i.e., those over age 12).

A similar, slightly greater tendency to place younger children with relatives was found.

Eighteen percent of younger children in the sample were placed with relatives compared with 12.8 percent of mid-age children and 11.6 percent of older children.

Similarly, more younger children are placed in foster care at final disposition than older children. Forty-one percent of younger children in the sample were placed with the local commissioner of social services compared with 38.5 percent of mid-age children, and 28.1 percent of older children.

Orders of protection appear to have an opposite relationship with the age variable. Twenty-five percent of younger children received orders of protection compared with 33 percent in the mid-age group and 44.6 percent of older children.

Finally, it would appear that the courts are more likely to issue ACDs when the children are older. The project data indicated that 18.3 percent of younger children receive ACDs

compared with 19.6 percent of mid-aged children and 28.1 percent of older children.

In summary, the family courts are more likely to place younger children in foster care or with relatives than they are to so place older children. At the same time, they are also slightly more likely to release younger children to their parents with supervision than is the case with older children.

The courts use certain final dispositional orders more often with older children, including ACDs and orders of protection.

5. Placement Cases

For the purpose of a number of analyses, a new variable was developed. This variable, referred to herein as "placement," simply indicates whether the child was placed at some point during the child protective proceeding, including at final disposition. In the following comparisons, the sample is divided into two sets: a group of cases in which placement did occur during the proceeding; and, a group with no placement during the term of the court case. With cases divided in this manner, the following differences were identified.

There appears to be a relationship between the placement variable and whether or not petitions are withdrawn or dismissed. While one-quarter of all non-placement cases have petitions withdrawn or dismissed, only 9 percent of placement cases have such a result.

Moreover, if cases are settled (as defined earlier in this report), about 66 percent of the case children are placed, whereas, if a case is contested (again, as defined earlier), about 80 percent of the case children are placed at some point during the case.

Other dispositional orders show varying degrees of relationship with the placement variable. As might be expected, non-placement cases are more likely to receive an order of protection than are placement cases (where presumably the child is protected by the placement itself). Specifically, 29 percent of placement cases had final orders of protection, while 39 percent of non-placement cases received this order.

G. Start-up Time and Case Length

As discussed elsewhere in this report, two time measures were used to characterize how expeditiously the court processes child protective cases: "start-up time", or the number of days from filing the petition until the initial court appearance, and "case length", the time elapsing between the filing of the petition and final disposition of the case. These measures are used in an earlier chapter to compare cases in a variety of contexts including removal of the child from the home prior to the filing of the petition as well as cases with no such removal.

An a priori assessment of case processing in child protective cases suggests that courts would attend to cases with more serious problems first and the less serious cases would receive the court's formal attention somewhat later in time. In other words, start-up time would be shorter for the more serious cases. In contrast, case length might be hypothesized to be longer in the more serious, more complex cases.

Analyzing the data in this manner may reflect whether cases are processed by the courts differentially depending on a number of factors associated with the seriousness of a case. Some of these factors are assessed in the following.

1. General Patterns

On a statewide basis, start-up time for all cases averaged 17.8 days (with a range of from 0 to 222 days). However, in almost a quarter of the sample, the initial court appearance took

place on the same day the petition was filed; a total of 56 percent of the cases "started-up" within a week of filing, and 71 percent within two weeks after filing. Virtually all cases (99 percent) had been initiated within three months of filing.

Comparative data for New York City and upstate indicate average start-up times of 21.2 and 14.8 days respectively. These data are presented in Table 34. Standards for case length have been established by the State Office of Court Administration and call for case disposition within six months of petition filing. On the average, cases within the sample met this objective, with a statewide case length of 129.8 days or 4.3 months. However, case length ranged from 0 to 852 days, with two percent of the cases receiving final disposition on the day the petition was filed, a total of 13 percent within a month after filing, 47 percent within three months and 83 percent within the six month goal. The remaining 17 percent of the cases were disposed of after this time period, raising practice implications which will be discussed in the concluding chapter of this report.

Table 34: Case Processing Time (In Days)			
	Statewide	NYC	Upstate
Start-up Time	17.8	21.1	14.8
Case Length	129.8	139.9	122.01

Regional comparisons indicate that New York City generally takes longer both to start and to finish a case than does upstate. Average case length in New York City was 139.9 days while in upstate counties, case length was 122.01 days on the average.

2. Petition Type

Statewide, the average start-up time for abuse cases was 13.6 days and 17.8 days for neglect cases. This finding would appear to support hypotheses suggesting that court petitions for the traditionally more serious cases (i.e., abuse) are filed more quickly than for the less serious (i.e, neglect). A comparison of data for New York City and upstate counties, as presented in Figure 48A confirms this pattern for upstate counties, but not for New York City. Start-up time upstate averaged 9.3 days for abuse cases and 17.3 days for neglect; in New York City, the average start-up times for abuse and neglect cases were roughly comparable (19.1 days and 18.8 days, respectively).

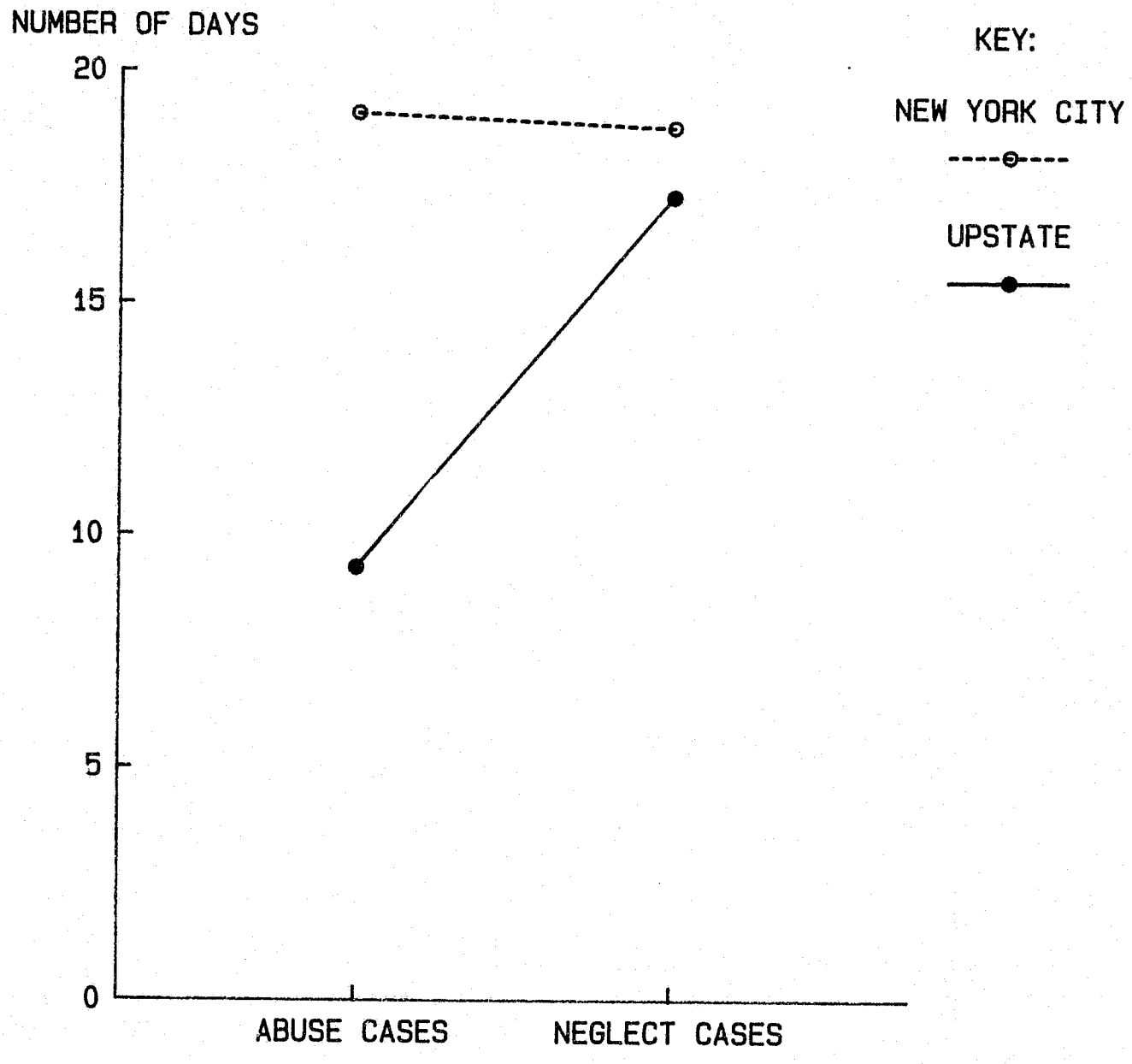

FIGURE 48A: AVERAGE START UP

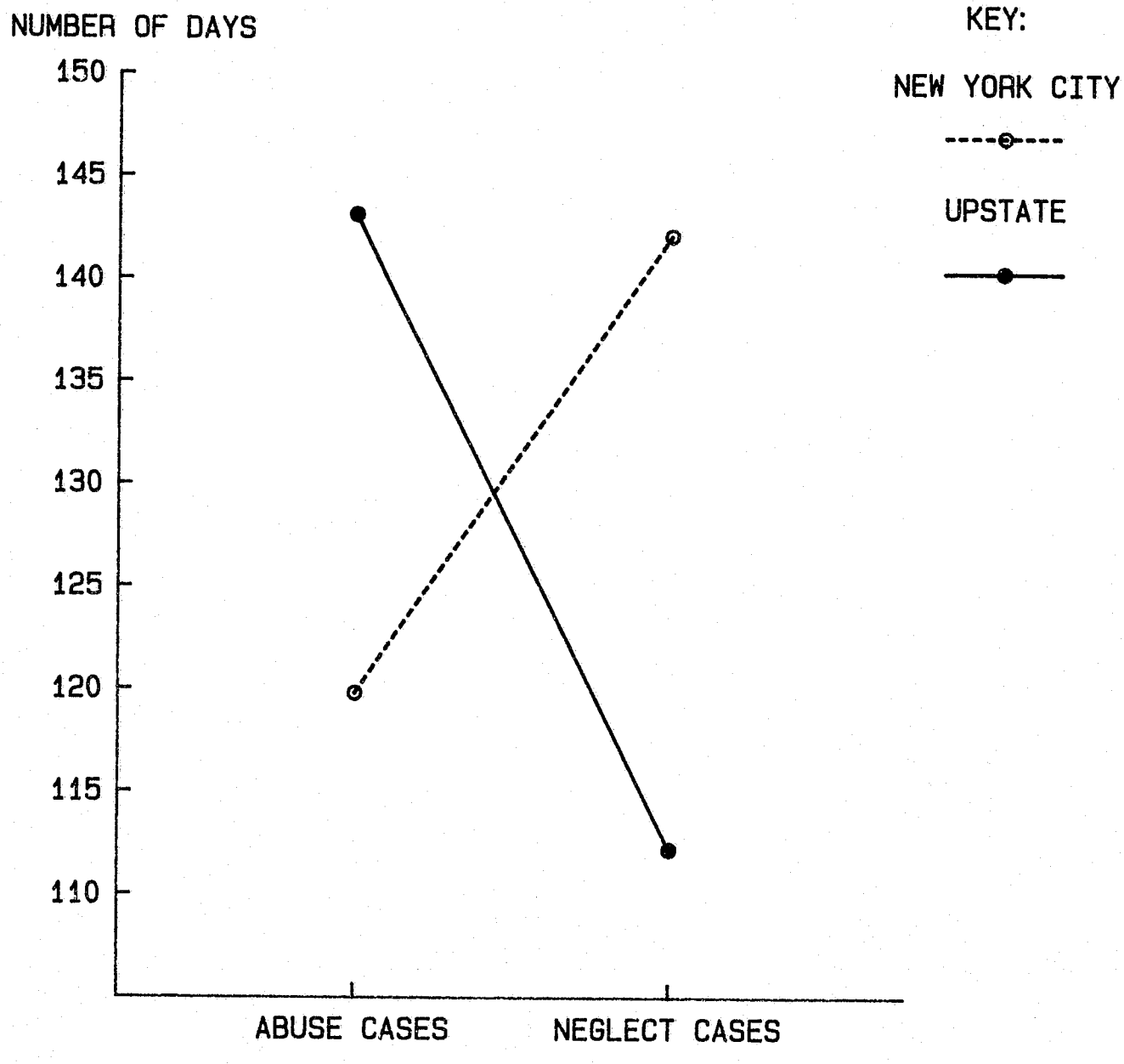

FIGURE 48B: AVERAGE CASE LENGTH

Case length for abuse and neglect petitions considered separately also varied considerably across the state. As presented in Figure 48B, the average case length for abuse cases was 119.8 days in New York City and a much higher, 142.1 days upstate. For neglect cases, average case length was 143.1 days in New York City and a much lower, 112.2 days upstate. The interaction of these patterns tends to cancel out regional variations, producing statewide case lengths of 130.4 days for abuse cases and a somewhat shorter period, 126.3 days, for neglect. These findings which are not immediately explained, are roughly comparable to the statewide case lengths for all cases described above.

3. Case Resolution Method

When cases are divided into those that are settled (i.e., those with adjudications by consent and cases with adjournments in contemplation of dismissal) and those that are contested (i.e., which proceed to a fact-finding hearing), an interesting finding is produced. Start-up time for "settled" cases is 17.2 days, almost twice as long as the 9.8 average start-up time for contested cases. It is somewhat difficult to explain this finding, although (because start-up time hinges on the initial appearance of the respondent in the court) it may be that the parent who is most likely to contest the finding is also most likely to appear early in court in order to resolve the case. Average case lengths for these two types of cases indicate a similar, but much sharper difference between cases that are settled and those that are contested than is found with start-up measures. Specifically, statewide, settled cases took an average of 106 days to resolve, while contested cases took considerably longer, or 185 days. This latter difference, suggesting that it takes about half again as long to bring a contested case to resolution as it does a settled case, is prime evidence supporting a rationale for settling a preponderance of these cases given the present overcrowding of court calendars.

However, other data of a more compelling nature, described later in this report, indicates a contrary argument.

H. Final Orders of Disposition - Specific

1. Suspended Judgments

Suspended judgments, one of the possible final dispositional options under Article 10, were found in only a handful of cases representing 1.8 percent of the statewide sample. Of this small number, the terms and conditions of these orders were as follows: case specific orders (56 percent); orders to obtain therapy for the respondent (33 percent); to ensure school attendance (22 percent); to provide supervision/therapy for the child or for other needs of the child (11 percent).

The average duration of the suspended judgment orders was twelve months. In a third of the cases, a hearing was held to extend the suspended judgment order and, in all such cases, the court ordered continuation of the terms and conditions of its order.

The statewide data also indicate that a hearing on violation of a suspended judgment order was held in 22 percent of such cases. In all instances where a hearing was held, the original petition was withdrawn.

2. Orders of Placement

As noted above, the most prevalent final dispositional order (51.8 percent statewide) is placement of the child, either with relatives or other suitable persons or with the local commissioner of social services. This statewide figure, however, obscures a difference in placement rates in different areas of the state. In fact, the incidence of placement is far higher in New York City (67.3 percent) than in upstate counties (37.6 percent).

a. Length of Placement Orders

On a statewide basis, the average length of an order of placement was 15.7 months. As noted in Figure 49, however, this mean is deceptive and does not reflect great disparities in placement practices between New York City and the upstate counties. New York City had more 18-month orders (82 percent) than upstate counties which utilized 18-month placements only a third of the time. Twelve-month orders were far less common in New York City (15 percent) while the majority of placement orders in the upstate counties (53 percent) were for one year. Six-month placement orders were almost never used in New York City (0.9 percent) while these orders were found in upstate counties 9 percent of the time.

As stated previously, New York City family courts have shown an express preference for placement among their dispositional alternatives and have incorporated, in this preference, placement orders of maximum statutory duration. Conversely, upstate courts appear to show a greater readiness to employ dispositional options other than placement and have shown a preference for shorter-term placements. As noted above, statutory changes made in 1989 limited initial orders of placement to 12 months but these changes were not in effect during 1985 when the sampled cases were in court.

b. Parental Visitation of Children

Data from the statewide sample indicate that express making provisions for visitation by the child's parent while the child was in placement is not a high priority of the family courts.

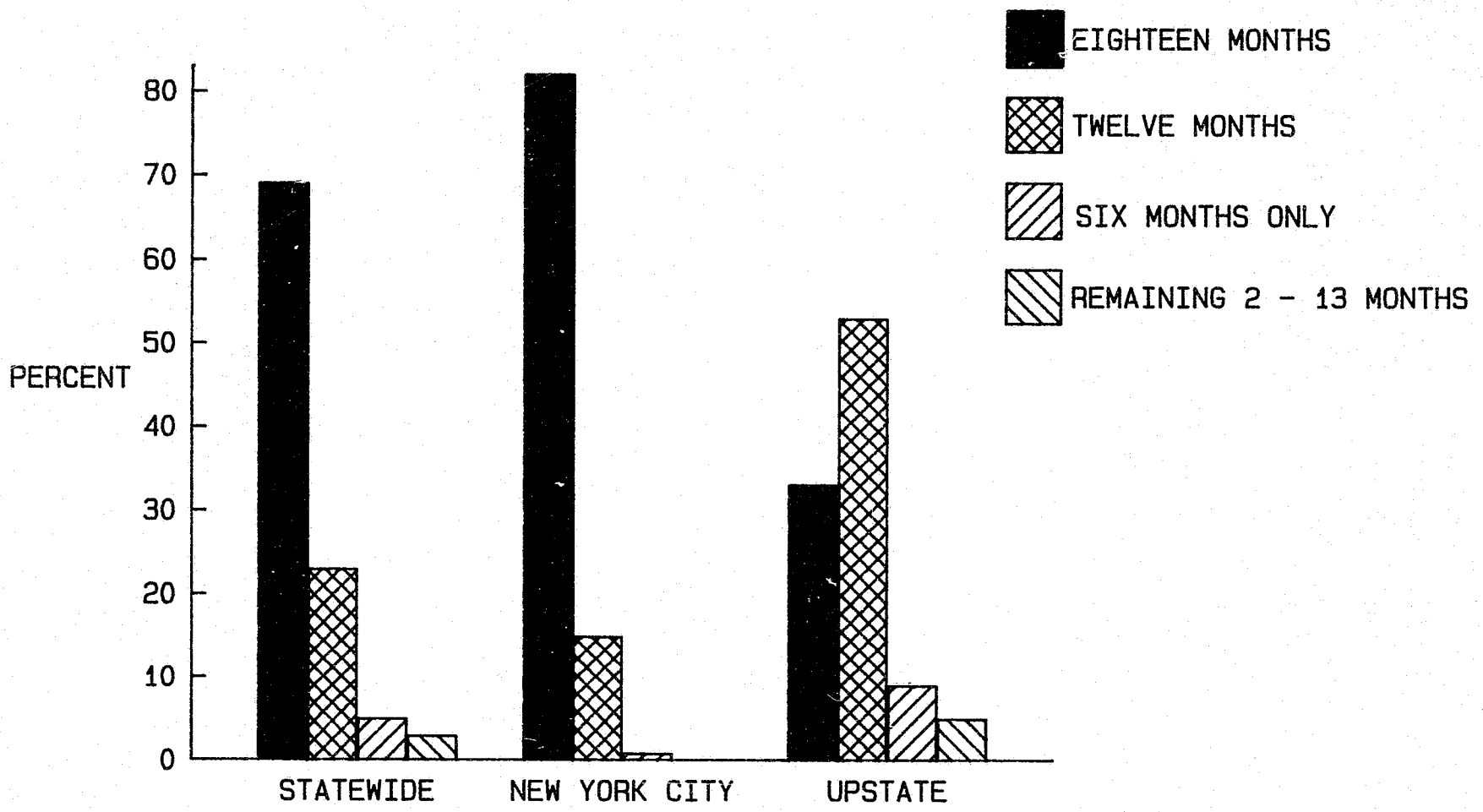

FIGURE 49: LENGTH OF ORDERS OF PLACEMENT

Only 42 percent of final orders of placement address issues of parental visitation. Again considerable regional variations in court practice were found. In New York City, parental visitation was addressed in only 20 percent of placement orders, while visitation was addressed 65 percent of the time in the placement orders of upstate courts.

In 1988, the New York State Legislature enacted Chapter 457 to address the issue of enforcement of visitation rights by non-respondent parents whose children have been placed pursuant to an Article 10 proceeding. The statute also provided for visitation rights by court order to respondent parents whose children have been placed. The implementation of this new statute was subsequent to the dispositional proceedings in the cases under this study. It is anticipated that the implementation of this statute will result in an increase in parental visitation relative to the findings of the present study. Nevertheless, these findings suggest the need for further refinement of New York State's laws governing parental visitation, as will be discussed in the concluding chapter of this report.

i. Circumstances of Visitation

In cases where parental visitation was ordered, 45 percent of the court orders set visitation at twice monthly, 32 percent set visitation at four times monthly, and 9 percent set visitation at 8 times monthly. The remaining cases were scattered; interestingly, the only visitation plan noted from New York City court records provided for visitation on a twice-monthly basis.

Statewide, where visitation was ordered, the court required that the visit be supervised by the local child protective agency half of the time. Again regional differences were found. New York City family courts ordered supervised visitation in 62 percent of the time; upstate courts made such orders in 47

percent of the placement cases. It should be noted that when supervised visitation was ordered, the child protective service was the agency given responsibility for the actual supervision of parental visits. This responsibility may place additional burdens on overextended protective staff resources.

c. Extension of Placement

Statewide, 55 percent of all orders of placement eventuated in a subsequent petition to extend such placements. In New York City, extensions of placement were noted 71 percent of the time and in upstate counties petitions to extend placements were filed in 47 percent of placement cases. In almost all cases (98 percent), the party seeking the extension of placement was the agency or institution where the child was placed.

The higher percentage of placement extension petitions in New York City is consistent with the New York City family courts' greater reliance on placement and suggests long-term foster care for many abused and neglected children. This pattern may reflect the realities of available dispositional alternatives in New York City, consistent with the best interests of the child.

i. Notice

There is considerable disparity between court records listing parties given notice of an extension-of-placement hearing and the parties who typically appear in court. Consistently throughout the state, court records reveal that less than 25 percent of the necessary parties are given notice of extension proceedings. This finding may be more reflective of record keeping practices than of actual notice providing practices. This hypothesis is partially borne out by the fact that, at extension proceedings, the agency caring for the child is present 91 percent of the time, the child's law guardian is present 85 percent of the time, the respondent parent or the parent's attorney is present 56 percent of the time, the foster parent 18

percent, the child 8 percent, and others 4 percent. (See Figure 50.)

These data suggest that extensions of placement are routinely ordered--44 percent of the time--without any input or representation from the respondent parent. This practice lends itself to making extensions of placement a pro-forma proceeding and not hearings on the merits of extensions.

Policy recommendations related to this finding appear in the concluding chapter of this report.

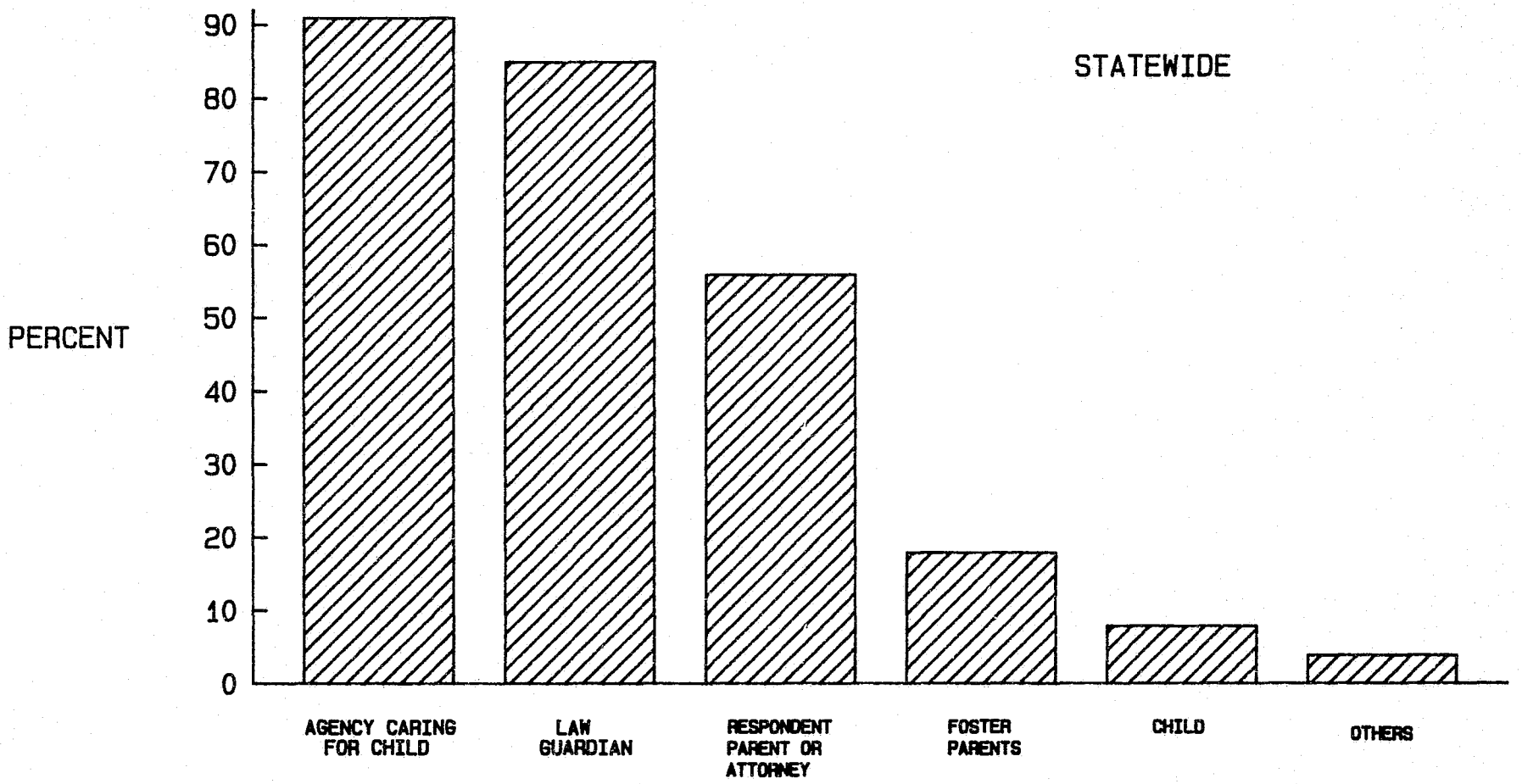

FIGURE 50: PERSONS PRESENT AT HEARING TO EXTEND PLACEMENT

ii. Frequency and Duration

Statewide, the petition to extend placement was granted in nearly every case, 97 percent. Most of the petitions were granted (88 percent after a hearing and 9 percent by stipulation). The large number of extension petitions which went to hearing is somewhat surprising. It might have been expected that pre-hearing contact by the petitioner with the respondent parents and the foster parents would result in a larger number of consensual stipulations. However this was not the case. The data are unclear as to whether placement extensions are granted by default in cases where the respondent parent or attorney do not appear.

On a statewide basis, extensions of placement were granted for one year periods 83 percent of the time. This is the maximum period permitted by law. Other extension periods ranged from one to seven months. However, these shorter term extensions were relatively rare (17 percent). In cases where short-term extensions were granted, it may be hypothesized that near-term resolution of the child's family situation or custodial status were contemplated by the court.

d. Termination of Placements

A petition to terminate placement was filed in only three percent of the placements. In each of these cases the petition was approved. These findings emphasize that the far more common vehicle for returning a child to his or her parents is the uncontested expiration of placement order rather than an adversarial proceeding to terminate placement.

3. Orders of Protection

As noted above, the court issued permanent orders of protection as part of one-third of all final dispositions statewide. New York City family courts do not use this

dispositional alternative often; here, orders of protection were issued in only 18.9 percent of all cases. However, in upstate counties, almost half, or 46.5 percent, of all cases had orders of protection.

The Committee notes judicial concern regarding enforcement of orders of protection by the parties themselves and by law enforcement agencies. It is possible that the low issuance rate of orders of protection in New York City reflects difficulties in enforcement and monitoring of these orders. This problem may cause the New York City family courts to rely more heavily on placing the child outside the home, as noted above.

a. Duration

Orders of protection varied in length from 2 to 36 months with an average duration of 15.6 months statewide. However, as seen in Figure 51, 51 percent of such orders were issued for 18 months, 40 percent for 12 months, and 9 percent were distributed over the period, 2 to 36 months.

Courts in upstate counties utilized the 12-month and 18-month orders of protection with almost equal frequency (49 percent and 45 percent respectively). However, New York City courts issued the 18-month order more than twice as often as the 12-month order of protection. This finding is in keeping with earlier findings whereby upstate courts favored shorter dispositional orders than do their counterparts in New York City.

Also in a number of instances, the case reading disclosed orders of protection of indeterminate duration. Responding to these early project findings, the 1989 Legislature limited the length of orders of protection to the length of any underlying orders issued by the court. This statutory change should lend consistency to statewide practices pertaining to the duration of permanent orders of protection.

b. Terms and Conditions

Orders of protection under Article 10 of the Family Court Act provide a broad menu of statutory and discretionary remedies to be brought to bear on the subject family. As illustrated in Figure 52, in the statewide sample, 66 percent of such orders directed the respondent to refrain from offensive conduct against the child; 52 percent to stay away from the child; 49 percent to stay away from the home; 37 percent to follow court directions specific to the case; 36 percent to refrain from acts that tend to make the home not a proper place for the child; 22 percent to visit the child as scheduled; 18 percent to attend to care of the home; 9 percent to refrain from offensive conduct against the parent; 6 percent to stay away from the spouse; and 6 percent to pay for medical care for the child.

Orders are regularly issued containing one or a combination of any of the above terms and conditions.

Considerable variations were identified throughout the state, with New York City family courts emphasizing orders to stay away from the child and the home as well as visitation, and upstate counties conforming more closely with the statewide norms.

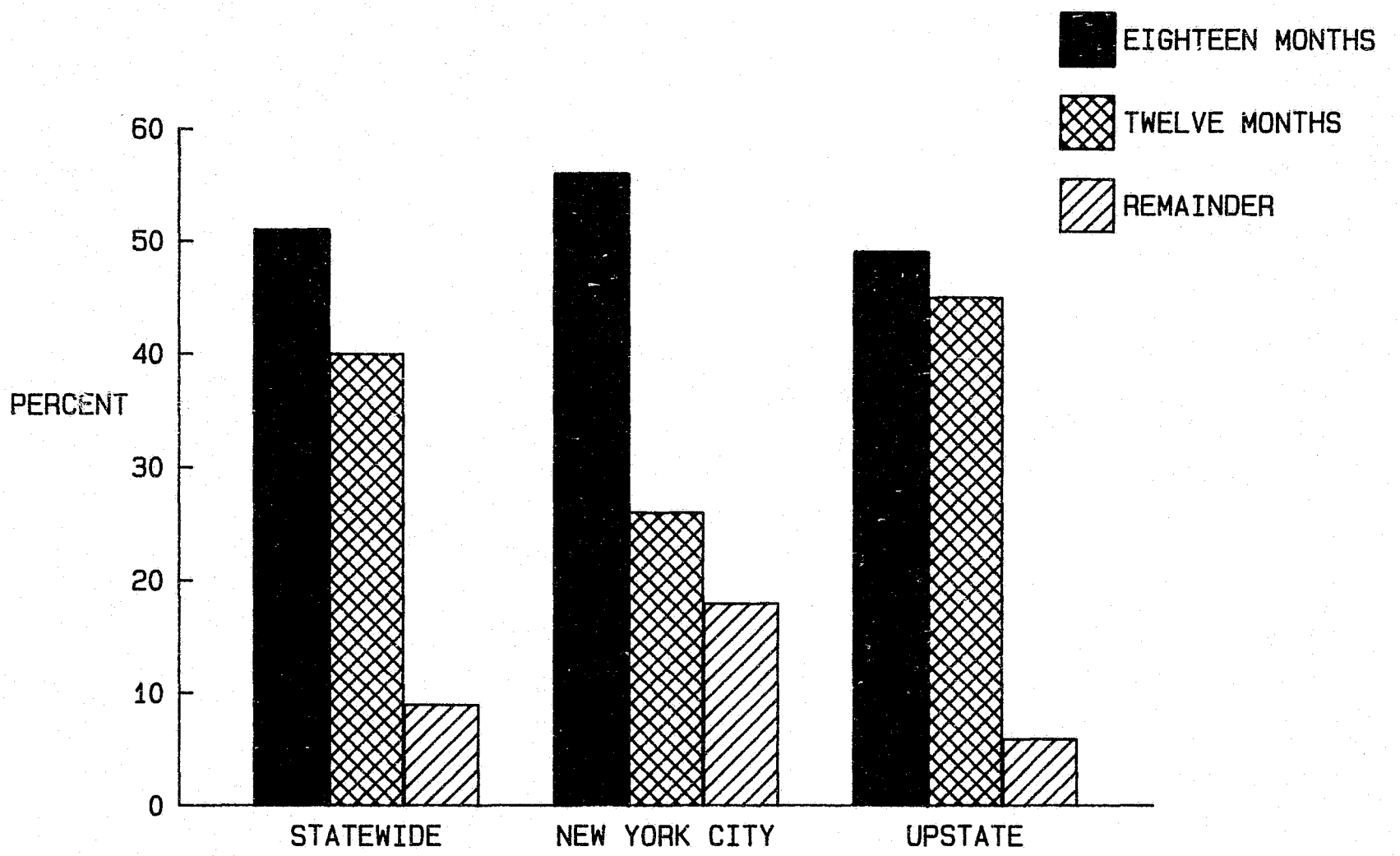

FIGURE 51: DURATION OF ORDERS OF PROTECTION

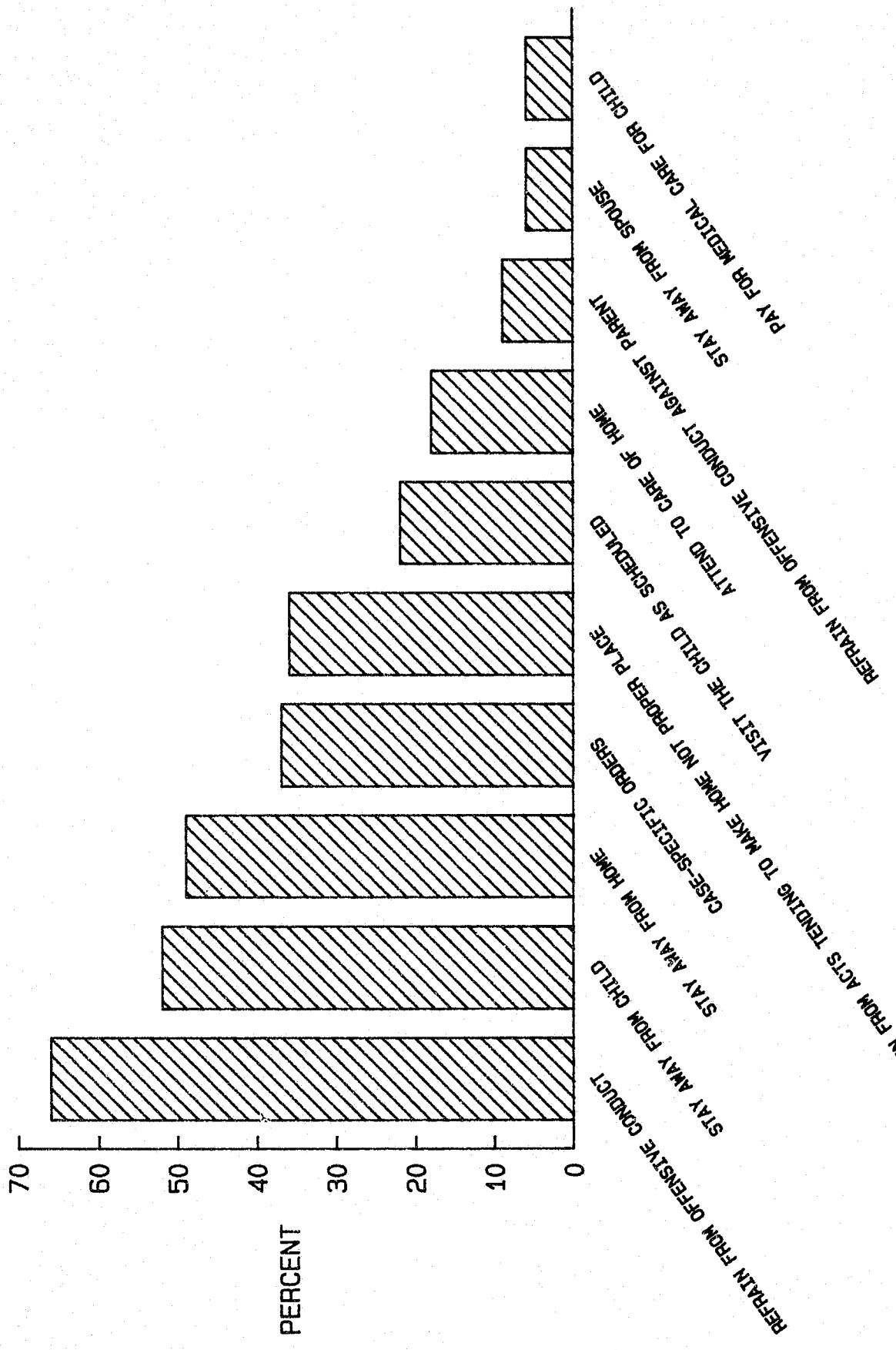

FIGURE 52: TERMS AND CONDITIONS OF ORDERS OF PROTECTION

c. Award of Custody

In more than half of the cases in which a permanent order of protection was issued (58 percent), the case child was returned to the mother. In another 21 percent of the cases, the child was placed with a grandparent, the father, or another relative. Finally, in 16 percent of the cases when a permanent protective order was issued, the child was remanded to the custody of the local commissioner of social services for placement.

This information suggests that the order of protection is a tool utilized to permit the child to return to the home in volatile situations. Placements are rare in cases where an order of protection is issued. It is likely the child would be placed in many of these cases if the order of protection could not be enforced and the family stabilized. As will be described in a subsequent chapter, certain terms and conditions of permanent orders of protection are more likely to contribute to the safety of the child.

4. Orders of Supervision

As noted earlier, the court entered orders of supervision in nearly a quarter of the statewide sample. In New York City, such orders represented 11.2 percent of the sample and, in upstate counties, a considerably higher 37.2 percent share.

The fact that upstate counties use orders of supervision more than three times more often than New York City may be a reflection of the availability of services and the capacity of the local child protective agency to monitor cases.

a. Terms and Conditions

Orders of supervision give judges wide latitude to impose terms and conditions upon which the family and child protective personnel are to interact. Most common is the order directing

therapy for the respondent (mandated in 72 of orders of supervision). Other frequently utilized terms and conditions of supervision are: meeting with the supervising agency as directed by the court (65 percent); and, cooperating with the supervising agency in remedying specified acts that caused the abuse or neglect of the child (51 percent). Other commonly used terms and conditions are identified in Figure 53.

b. Duration; Extension; Violations

Most orders of supervision issued by the court are for 18 months (56 percent of the orders). However, more than a third of these orders are for 12 months (38 percent). Only a few orders are for 6 months (4 percent) or more. Statewide, the average duration of orders of supervision was 15.2 months. These patterns held consistently throughout the state. As indicated above, 1989 legislation limits initial orders of supervision to 12 months.

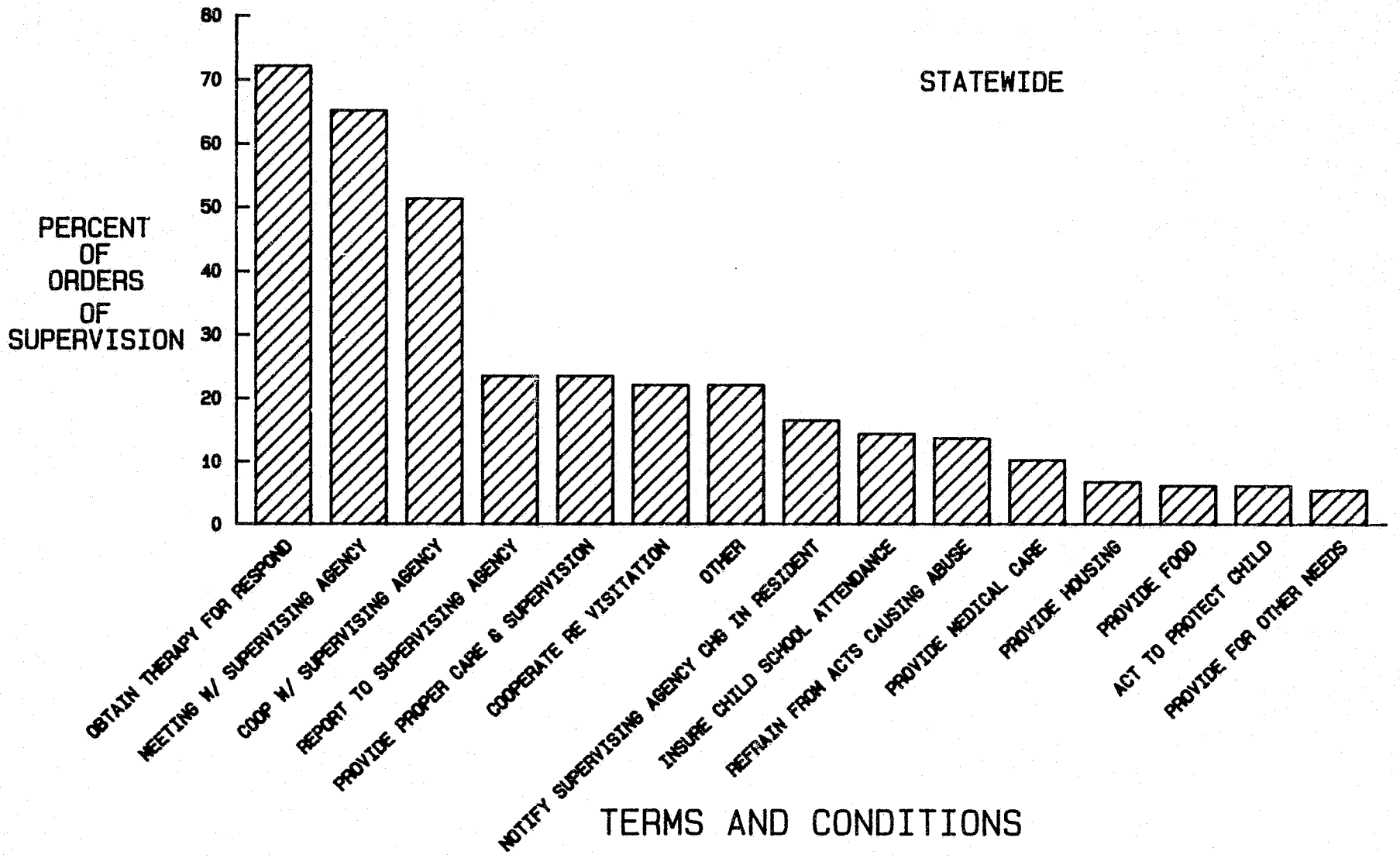

FIGURE 53: USAGE OF TERMS AND CONDITIONS OF ORDERS OF SUPERVISION BY THE COURTS

Unlike petitions to extend placement, petitions to extend orders of supervision were almost never filed (i.e., representing only four percent of such orders). This finding suggests that either the terms of supervision have been complied with or that attempts at rehabilitation of the family have been abandoned by allowing the original order to expire without further court review. Information assessing the relationship between open court orders and further State Central Register activity will be discussed in a subsequent chapter.

The extension petitions which were filed were approved in all cases either by stipulation or after a hearing. The average extension was granted for 13.9 months.

Based on statewide research not connected with this project, the Committee has found that compliance with orders of supervision, the terms of which may be nonspecific in nature, is difficult, and enforcement of violations of such orders may also be difficult. Consequently, only blatant or egregious violations reach the hearing stage. And, of this project's statewide sample, hearings on violations of the terms and conditions of orders of supervision were held in only three percent of all cases where an order of supervision was entered. No jail terms or punitive action was taken by the court in any of these cases. More commonly, the subject order was revised or revoked.

The policy implications of these findings will be presented in the concluding chapter of this report.

CHAPTER 8: MONITORING OF COURT ORDERS; APPEALS.

This chapter presents findings concerning the extent to which the family court makes provision for case monitoring after final disposition and describes the incidence of appeals of Article 10 cases.

A. Summary of Findings

- The court monitored or put into place procedures for monitoring the implementation of its orders in less than 4 percent of the sample.

- Dispositions were appealed in only 3 percent of the cases.

- In 80 percent of the perfected appeals, the original disposition was upheld.

B. Monitoring of Court Orders

Aside from provisions relating to penalties for the violation of court orders, the Family Court Act is essentially silent regarding the responsibilities of the court once final dispositional orders have been issued.

Monitoring the extent to which these orders are actually executed is normally considered to be beyond the purview of the court. It is, in fact, assumed (because statutory provision is made for returning cases with violations to the court), that the court will be made aware of violations through petitions filed by the child protective agency. In other words, court involvement in post-dispositional events takes place only when information is brought to the court's attention.

However, it was possible in 1985 (and remains possible today) for the court to require, as part of its final dispositional order, that the child protective agency report back to the court on a regular basis regarding the progress of the case family and child and the degree of compliance with the order. Indeed, during the term of time-defined court orders, such as, for example, orders of supervision, where changes in family status may require changes in court orders, it would seem appropriate for the court to take this approach and to be informed regarding case progress.

Hence, in the present study an item was devised for data collection that was designed to identify any procedures that the court put in place at final disposition that would allow the court to monitor case progress.

The results indicated that such efforts by the courts to monitor implementation of their orders were extremely infrequent across the state. While the occasional judge did establish such monitoring procedures, this process occurred in only 3.8 percent of the cases in the entire sample.

This finding may reflect the absence of statutory guidance as to the court's post-dispositional monitoring responsibilities. The subject will be explored more fully in the concluding chapter of the report.

C. Appeals

Although there are a significant number of procedural and substantive due process issues involved in abuse and neglect proceedings, and efforts regarding the fundamental rights of the parent versus the state are regularly raised by such proceedings, the statewide sample shows that only a very small percentage of case dispositions were actually appealed (3.4 percent). Moreover, when a notice of appeal was filed, only a third of these appeals were heard in an appellate court. And, 80 percent

of the time that the appeal was heard, the original disposition was upheld.

This low number of appeals may be the result of respondent parents being represented by appointed counsel and law guardians being appointed for the family court proceeding only, thus imposing substantial ministerial obstacles to continued representation of the parent and the child at the appellate level.

Recent legislative enactments (1988) have provided for the continued appointment of law guardians assigned to a particular case through the appellate process. In addition, legislation now pending in New York would deal with expediting the appeals process generally.

CHAPTER 9: OTHER RELATED FAMILY COURT CASES; TRANSFER OF CASES TO CRIMINAL COURT

This chapter presents findings identifying relationships between a family's involvement in child protective proceedings and other contact with the family court. It also describes transfer of family court proceedings to the criminal courts.

A. Summary of Findings

Family Offense Petitions

- Family Offense Petitions decreased after the 1985 case (9.6 percent pre-petition; 3.6 post-disposition).

Custody Petitions

- Custody petitions increased somewhat after the 1985 case (11 percent pre-petition; 14.3 percent post-disposition).

Termination of Parental Rights

- Petitions for the termination of parental rights increased in number after the 1985 case (0.4 percent pre-petition; 6.2 percent post-disposition).

Paternity Petitions

- Paternity petitions decreased after the 1985 case (14.2 percent pre-petition; 3.8 percent post-disposition).

Child Abuse and Neglect Petitions

- Other child protective petitions had been filed on the case families prior to the petition in 13 percent of the cases.

- New child protective petitions on the case families were filed after the 1985 case in 9 percent of the cases.

Transfer of Cases

- Concurrent criminal court proceedings were held in 10 percent of the sample.

- Only 4 percent of the family court cases were transferred, the majority to the district attorney.

B. Other Related Family Court Cases

This project sought to identify relationships between a family's involvement in child protective proceedings and other contacts of the family with the family court. Accordingly, data were collected on the incidence of filing other family court petitions at three times: prior to the filing of the child abuse or neglect petitions reviewed in the present study; during the pendency of the court proceeding (initiation of petition to disposition of the case); and after the date of disposition. Data were collected, as relevant, for the immediate family, the case child, and siblings of the child. Petitions for which data were sought included: child abuse and neglect, voluntary foster care placements, Persons in Need of Supervision (PINS), Juvenile Delinquency, family offenses, termination of parental rights, custody, support and paternity.

No apparent relationship was found to exist between involvement in child abuse and neglect proceedings and voluntary foster care placements (§358-a of the Social Services Law), juvenile delinquency, PINS, or child support proceedings.

Family offense petitions, however, occurred in 9.6 percent of the statewide sample prior to the filing of the Article 10

petition but dropped to the 3.6 percent level following final disposition of the protective case, suggesting that common issues underlying both the child protective and family offense petitions, were resolved or at least addressed in the child abuse proceeding.

Custody petitions were filed in 11 percent of the cases prior to the initiation of the Article 10 petition and rose to 14.2 percent following case disposition, suggesting that issues raised in the course of a child abuse and neglect proceeding may have highlighted the need for a change in the child's custodial status.

Virtually no (0.4 percent) termination of parental rights petitions were filed with the court prior to the initiation of the Article 10 petition. The incidence of such petition increased to 6.2 percent following disposition, again suggesting that evidence adduced during the protective proceeding provided sufficient grounds to initiate proceedings to terminate parental rights and thereby legally free the child for adoption.

Curiously, paternity petitions dropped from a pre-Article 10 proceeding level of 14.2 percent to a post-dispositional level of 3.8 percent of the sample, a finding for which there is no immediate explanation.

Finally, of considerable significance, children subject to an Article 10 proceeding had previously been before the court on a prior abuse and neglect petition in 12.8 percent of the cases. Following case disposition, 8.8 percent of the sample experienced a subsequent child abuse or neglect petition. Although the incidence of Article 10 petitioning had dropped, the incidence of new petitions points to ongoing dysfunction in case families even after thorough family court intervention. This assumption is borne out by an associated family involvement with the State Central Register, as described in the next chapter.

C. Transfer of Cases

Section 1014 of the Family Court Act empowers the family court to transfer, upon a hearing, any proceeding originated under Article 10 to an appropriate criminal court. The court may also refer such proceeding to the appropriate district attorney if it concludes that the processes of family court are inappropriate or insufficient. The court may continue the proceedings under Article 10 after such transfer or referral. If the proceeding is continued, the court may enter any preliminary order permitted under Section 1027 to protect the interests of the child. Other provisions of law provide for the transfer of criminal complaints charging facts amounting to abuse or neglect under Article 10 from the criminal courts to the family court. The Family Court Act does not preclude concurrent proceedings in the family court and a criminal court.

In 10 percent of the case sample, court records indicated that the case in question was being tried in criminal court during the pendency of the Article 10 proceeding. These cases represented 6 percent of the New York City case sample and 14 percent of upstate cases. These are cases with independent criminal court origins and are not cases transferred from the family court.

Four percent of the statewide sample were cases transferred or referred by the family court during the pendency of the abuse or neglect proceedings. Of these cases, the majority were transferred by the judge to the district attorney.

For cases transferred to the criminal courts or referred by the family court to the district attorney, the statewide data indicate that the family court proceeding continued concurrently with the criminal proceedings in 75 percent of the applicable cases. For the remainder, the family court proceeding was adjourned pending the outcome of the criminal proceeding.

A persistent problem in cases with concurrent family and criminal court proceedings is a reluctance of the respondent parent to admit any wrongdoing or to cooperate with the court or child protective authorities, out of fear that such acts or admissions may be raised against the parent in a criminal prosecution. As a result, child abuse and neglect proceedings can be brought to a halt until the resolution of a criminal action.

CHAPTER 10: THE STATE CENTRAL REGISTER

This final chapter of research findings is relatively brief but sobering. It details the Committee's search into the records of the State Central Register of Child Abuse and Maltreatment (the State's Child Abuse Hotline) for each of 500 children in the statewide sample. For these children, State Central Register records were accessed to determine the incidence of child abuse reporting on the case families for three distinct time periods: the period prior to the filing of the petition; the time between the filing of the petition and final case disposition; and the period after case disposition (until October 1988, when the case reading was conducted).

The purpose in reviewing State Central Register records was to ascertain the incidence of family dysfunction as evidenced by reports made to the Hotline and to determine whether reporting was affected by the Article 10 adjudicatory and dispositional process.

The results of this research are disturbing: as will be described below, although the incidence of child abuse reporting declines, it nonetheless continues after case disposition. Moreover, the family court rarely knows of this continuation of family stress: local departments of social services, the agencies charged with the supervision of the child and family following case disposition, rarely return to the court on violations of open dispositional orders. Violations of court orders are, in this context, considered synonymous with reports to the State Central Register, especially since allegations contained in the subsequent child abuse report matched those in the original Article 10 petition half the time or more.

Also, as described in the preceding chapter, the court for its part, rarely provides for the monitoring of its orders of disposition by requiring the supervising agency to report back to

the court on the status and location of the child. And, as has been noted earlier, the Family Court Act contains no specific requirements for court involvement after the dispositional phases of child protective proceedings.

The absence of monitoring by the family court process, combined with a failure of the local child protective agencies to report continued family difficulties to the court, appears to create real dangers for vulnerable children who remain unprotected from abuse and maltreatment.

A. Summary of Findings

1. Average Number of Reports

- Before the 1985 case, an average of 3 reports per case were made to the SCR, on a statewide basis.

- After the 1985 case disposition, statewide, an average of 0.8 reports per case were made to the Register.

2. Time to File Petition

- Statewide, an average of 2.2 years elapsed between the first report to the SCR on a case family and the filing of a child protective petition on that family.

3. Settled vs. Contested Cases

- 36 percent of settled cases had at least one report to the Register after case disposition in the statewide sample.

- 20 percent of contested cases had at least one report to the Register after case disposition.

4. Continuing Court Orders

- Almost 60 percent of the cases in the statewide sample received a final disposition order with a defined term (time period), including ACDs, orders of supervision and protection, and suspended judgments.

- Of these cases with continuing orders, 25 percent had at least one report to the SCR during the term of the order.

- Of such cases with SCR reports, the allegation in more than half of them matched those in the original court petition.

- Of these cases with reports during the term of a continuing court order, court hearings on violation of the order were held less than 20 percent of the time.

5. Orders of Protection and SCR Reports (Statewide Sample)

- Among non-placement cases, 9 percent of cases with an order of protection that included the provision, "stay away from the home" had at least one report to the SCR.

- Among non-placement cases, 41 percent of cases without an order of protection that included the provision, "stay away from the home," had at least one report to the SCR.

B. Number of Reports to the State Central Register

As depicted in Table 35, on a statewide basis, the number of reports made to the State Central Register prior to the filing of the child protective petition averaged 3.0 per case. This figure dropped to an average of 0.21 per case during the pendency of the child abuse or neglect proceeding. This figure is not surprising, given the intensity of CPS and court involvement during an Article 10 proceeding. Following case disposition, the average number of reports per case rose again: to almost 0.8 reports statewide; to almost one report per case in the upstate regions; and to more than one report for every two cases in New York City.

In general, across all three time periods, the incidence of reports in New York City was lower than that found upstate.

C. Time Between First SCR Report and Filing of Petition

On a statewide basis, Table 36 indicates that an average of 2.2 years elapsed between the first report to the State Central Register and the filing of the child abuse or neglect petition. In New York City, this average was somewhat lower (1.8 years), and in upstate counties the time between the first report and the filing of the petition was higher, averaging 2.5 years, (with a range of from 1.2 to 4.9 years). These data are consistent with findings reported earlier herein, concerning the time elapsing between the first child abuse reports on a case and pre-petition removals of the child from the home. Both findings raise serious policy considerations regarding the need for standards for family court petitioning, which will be addressed in the concluding chapter of this report.

TABLE 35: NUMBER OF REPORTS TO THE STATE CENTRAL REGISTER BEFORE FILING OF PETITION, DURING PROCEEDING, AND AFTER DISPOSITION

	TOTAL NUMBER	BEFORE PETITION	TOTAL NUMBER	DURING PROCEEDING	TOTAL NUMBER	AFTER DISPOSITION
Statewide	1,354	3.00	93	0.21	356	0.79
New York City	496	2.44	33	0.16	119	0.59
Upstate	858	3.45	60	0.24	237	0.95

* Table entries are average number of reports per case.

TABLE 36: AVERAGE NUMBER OF YEARS FROM FIRST SCR REPORT AND PETITION FILING

	Average time to file petition
Statewide	2.2*
New York City	1.8
Upstate	2.5

* Entries in table are average numbers of years

D. Reports and Petition Type

As indicated in Table 37, statewide, nearly all of the sample cases, regardless of petiton type, had at least one report to the State Central Register prior to filing the petition with the family court.

With respect to sex abuse petitions, the percentage of cases with at least one SCR report dropped to 12.3 percent during the pendency of the proceeding and rose to 26.7 percent following final disposition of the case.

For petitions alleging other types of abuse, only 8.9 percent of the cases had at least one report to the Register during the pendency of the case. This measure increased to 31.1 percent following case disposition.

Finally, the percentage of neglect petitions with at least one report to the Hotline dropped to 14.5 percent during the pendency of the case and rose to 34.5 percent following final case disposition. These patterns appeared consistently throughout the regions of the state.

TABLE 37: PERCENT OF CASES WITH AT LEAST ONE REPORT TO THE SCR, FOR DIFFERENT PETITION TYPES			
Time period of Report	Sex Abuse	Other Abuse	Neglect
Before Filing Petition	97.0*	95.6	99.7
During Pendency of Case	12.3	8.9	14.5
After Case Disposition	26.7	31.1	34.5

* Entries in table are percentage of cases with a specific petition type.

In summary, across the entire state, for cases in the sample, reporting to the State Central Register declined dramatically while the case was pending before the court, a not unexpected occurrence, given the combined impacts of protective agency and court involvement with the case family. However, for all petition types, the percentage of cases with reports to the SCR increased again following final disposition of the case by the court. In fact, the incidence of cases with such reports rose to more than a quarter for sex abuse cases and about a third for other cases.

E. Settled vs. Contested Cases

Figure 54 compares the percentage of settled and contested cases with at least one report to the State Central Register after final case disposition. On a statewide basis, 35.7 percent of settled cases had at least one child abuse or maltreatment report made to the Hotline following case disposition. This proportion contrasted with a considerably lower, 19.7 percent of contested cases which had at least one report made to the State

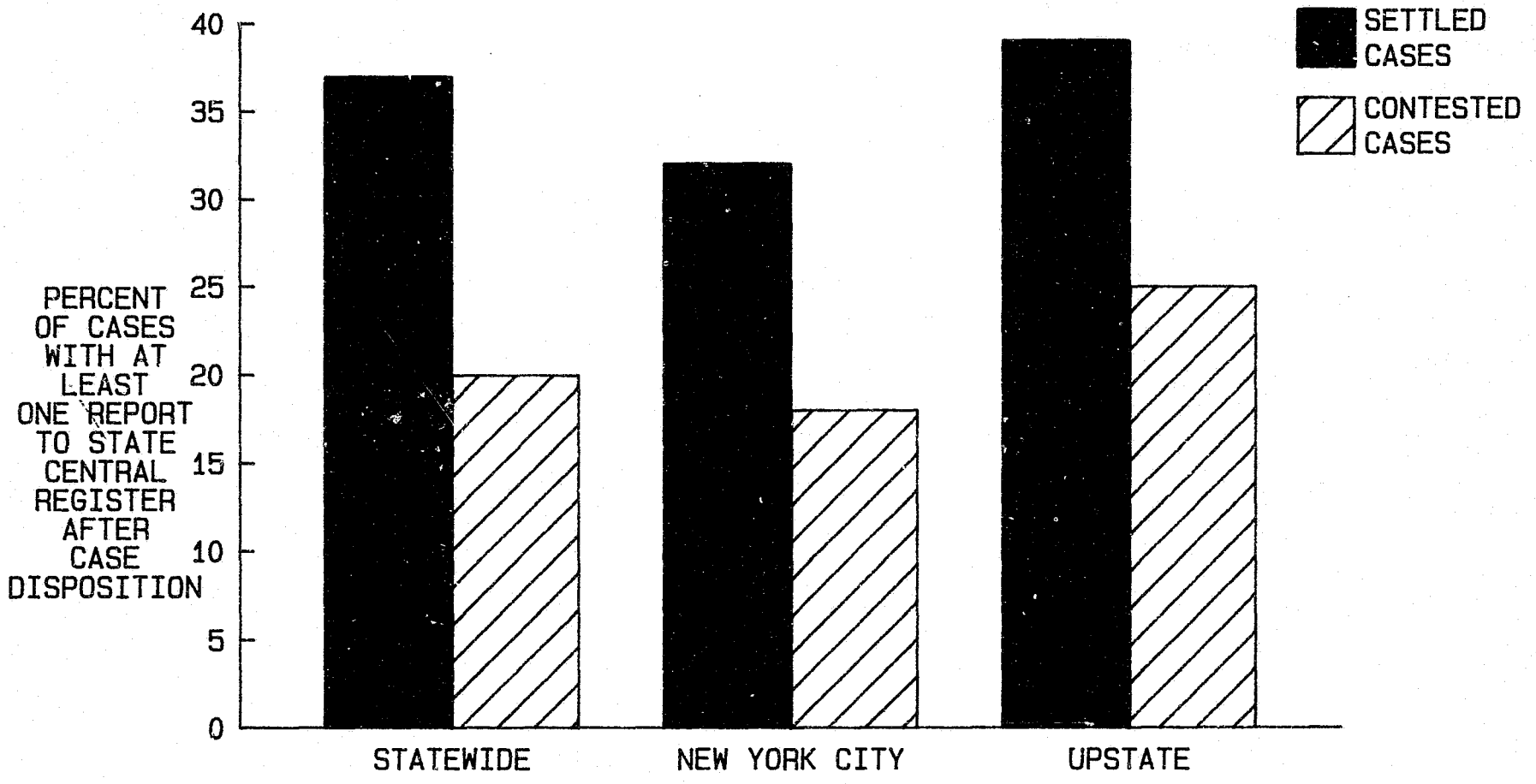

FIGURE 54: THE PERCENTAGE OF SETTLED AND CONTESTED CASES WITH AT LEAST ONE REPORT TO THE STATE CENTRAL REGISTER AFTER CASE DISPOSITION FOR THE ENTIRE STATE, NEW YORK CITY, AND UPSTATE

Central Register. This pattern was repeated consistently throughout the state. In New York City 31.3 percent of settled cases, and only 17.3 percent of contested cases, had at least one report made to the State Central Register following case disposition. For upstate counties, 38.7 percent of settled cases, contrasted with 25 percent of contested cases, had at least one SCR report after final disposition of the case.

It would thus appear that there is something inherent in settling a case which has less of an impact on abusing and neglecting families than is found when cases are contested and proceed through a full blown fact-finding hearing. Because both case types begin with roughly equal numbers of reports to the Register, the effect would appear to be produced by the manner of case resolution and "contesting" appears to be the better method in terms of impact on the dysfunctional family. As discussed in the last chapter of this report, these findings have significant implication for court practice.

F. SCR reports during the Term of Continuing Orders

Cases where the family court had made continuing dispositional orders constituted 58.3 percent of the sample (see Table 38). For this report, continuing court orders are defined as orders with specified time periods (except orders of placement). Generally, these continuing orders have specific terms, conditions and durations and include: adjournments in contemplation of dismissal; orders of supervision; orders of protection; and suspended judgments.

In New York City, 41.4 percent of the cases had such continuing orders, compared with a far larger, 73.5 percent of upstate cases with such orders. This report has previously noted the reliance of the City courts on placement as a final dispositional order, with an associated lower incidence of cases with other continuing orders.

Of the cases, statewide, with continuing orders, 25 percent had at least one report to the State Central Register during the term of these orders (New York City, 21.4 percent, upstate 26.8 percent), as noted in Table 38.

TABLE 38: SCR REPORTS DURING THE PENDENCY OF CONTINUING COURT ORDERS

	Cases with Continuing Orders	Cases with at least one SCR report during Continuing Order
Statewide	58.3*	25.0
New York City	41.4	21.4
Upstate	73.5	26.8

* Entries in table are percentages.

With respect to cases with specific types of continuing court orders, Table 39 indicates that between 19 and 26 percent of all types of continuing orders (with the exception of suspended judgments), had at least one SCR report during their terms. Twelve and one half percent of suspended judgments orders had at least one report made to the State Central Register. This pattern appeared generally throughout the state, with the exception of SCR reports during suspended judgments, which occurred only in upstate counties.

TABLE 39: PERCENTAGE OF CASES WITH SCR REPORTS DURING OPEN ORDERS BY ORDER TYPE

	ACD	Suspended Judgment	Order of Supervision	Order of Protection
Statewide	23.0*	12.5	25.2	21.3
New York City	19.1	0	25.0	26.2
Upstate	25.0	14.3	23.1	20.4

*Entries in table are percentages of cases with specific continuing order types.

G. Allegations in SCR reports vs. Allegations contained in the original petition; Hearings on Violations of Court Orders.

Comparison of allegations contained in reports made to the State Central Register during the term of the continuing court order with those allegations contained in the original child protective petition reveals a disturbing finding. Allegations in about half (50.6 percent) of the SCR reports during court orders matched those contained in the original Article 10 petition. The rate of these allegation matches is relatively constant across the state.

When allegations in subsequent reports to the Register match the allegations that were contained in the original court petition, it is likely that the original family dysfunction remains intact and that the family is continuing to behave in ways that indicated the need for child protection and court involvement in the first place. In other words, it is quite likely that the family court's order of disposition has been violated. On this basis, one would have expected the supervising child protective agency to petition the court to reopen the case. However, the findings presented below indicate that protective agencies often failed to exercise their responsibilities in situations such as this.

As noted in Table 40, with respect to those cases in the sample with at least one SCR report, the court records indicated that, statewide, a hearing was held on violations of the order in only 16.4 percent of the cases. Regional areas produced very similar numbers. In New York City, 14.3 percent of such cases went to hearing. (The values ranged from 0 hearings in two counties to 4.6 percent in one county.) Upstate, 17.3 percent of such cases had hearings, with a range from 0 hearings (in six counties) in 37.5 percent in one small county).

TABLE 40: PERCENTAGE OF CHILD PROTECTIVE CASES WITH AT LEAST ONE SCR REPORT DURING CONTINUING COURT ORDER WHERE HEARING ON VIOLATION WAS HELD	
State	16.4
New York City	14.3
Upstate	17.3

H. Case Examples

The failure on the part of child protective agencies to protect children from continued abuse and maltreatment by returning to court was repeatedly underscored by one case example after another. Although a long litany may be recited, to avoid repetition of recurrent themes, only two will be cited.

In one case, a neglect petition was filed in June of 1985 against a case child's mother and step father arising from allegations of child beating by the stepfather and failure by the mother to intervene or provide medical attention to the child. After a preliminary hearing (§1027), the child was temporarily placed in the custody of the local department of social services and a temporary order of protection was issued against both respondents. The case was adjourned in contemplation of dismissal and the child returned home with a one-year order of protection entered against the respondents. The court also entered a one-year order of supervision for the family and ordered counseling for the mother.

State Central Register records disclosed that four reports had been made prior to the filing of the petition, the last of these only three days before the petition was filed. Following case disposition, and during the terms of the ACD and other court orders, four new reports were made to the Hotline, one only a few days following case disposition. The allegations in the subsequent SCR reports matched those in the original petition. The child protective agency never made application to

restore the case to the calendar or for a hearing on violation of court orders. At the end of the term established for the ACD, the petiton was deemed dismissed. Following the end date of the ACD, four additional reports were made to the Central Register again with matching allegations. The court records indicate that no new protective petitions were filed.

In another case, in another county, a neglect petition was filed in July of 1985 against a case child's mother (the father was later added to the petition) for allegations arising from failure to feed or clothe the child, misuse of public assistance funds, failure to appear at medical appointments (the child had cerebral palsy) or to enroll the child in department of social services-recommended programs. The case was adjourned in contemplation of dismissal in March of 1986. Prior to the filing of the petition, five reports had been made to the State Central Register, two of which preceded petition filing by less than a month. Two additional reports were filed during the course of the judicial proceeding, and five other reports were made to the Hotline during the term of the ACD. Allegations in Register reports made during the term of the ACD matched those in the original Article 10 petition. Again the protective agency did not apply to restore the case to the calendar. A month after the expiration of the term of the ACD another report was made to the Register and, in 1989 (two years after the ACD expired) an abuse petition was filed against the father arising from allegations of child beating.

I. Orders of Protection

Although, as might be expected, placement of the child was found in the current study to be a strong protective method, the data analysis revealed another, and unanticipated, tool for protecting children. In non-placement cases, where the child remains in the home, orders of protection of a particular type prove to be of singular value in protecting children. In other words, an analysis of the incidence of orders of protection made

in non-placement cases, revealed the following: orders of protection containing directives for the respondent to "stay away from the home" were far more likely to protect children (i.e., such orders were associated with a lower incidence of State Central Register reporting) than was found for all other cases, including those with other types of orders of protection.

Figure 55 presents non-placement cases with continuing court orders and compares the incidence of subsequent reports based on whether or not a protective order was issued that directed the respondent to stay away from the home. As indicated by the figure, 9.1 percent of such orders of protection statewide (with directives for the respondent to stay away from the home) had at least one report made to the State Central Register during the term of the order. This incidence compares with a much higher, 41 percent of cases with SCR reports when the respondent was not ordered to stay away from the home. These patterns appeared statewide: in New York City, 15 percent of protective orders with "stay away" directives had at least one SCR report during these terms, while 30.8 percent of cases without such protective orders had SCR reports. For upstate counties, 8.6 of protective orders with "stay away" provisions had at least one SCR report, compared with 46.2 percent of cases which did not have such orders.

It would thus appear, based on these data, that a powerful tool for protecting children (in these serious cases which have gone to court) rests on a physical separation of the child and the respondent. In order to avoid a relatively high chance of recurrence of the abuse or neglect, either the child must be placed in foster care or the abusing parent must be removed from the home. This unexpected project finding may derive from an inherent weakness on the part of other methods of preventing abuse or neglect or may speak to a failure by local departments of social services to properly supervise the respondents when these other methods are being used. The policy implications of these findings are discussed in the next chapter.

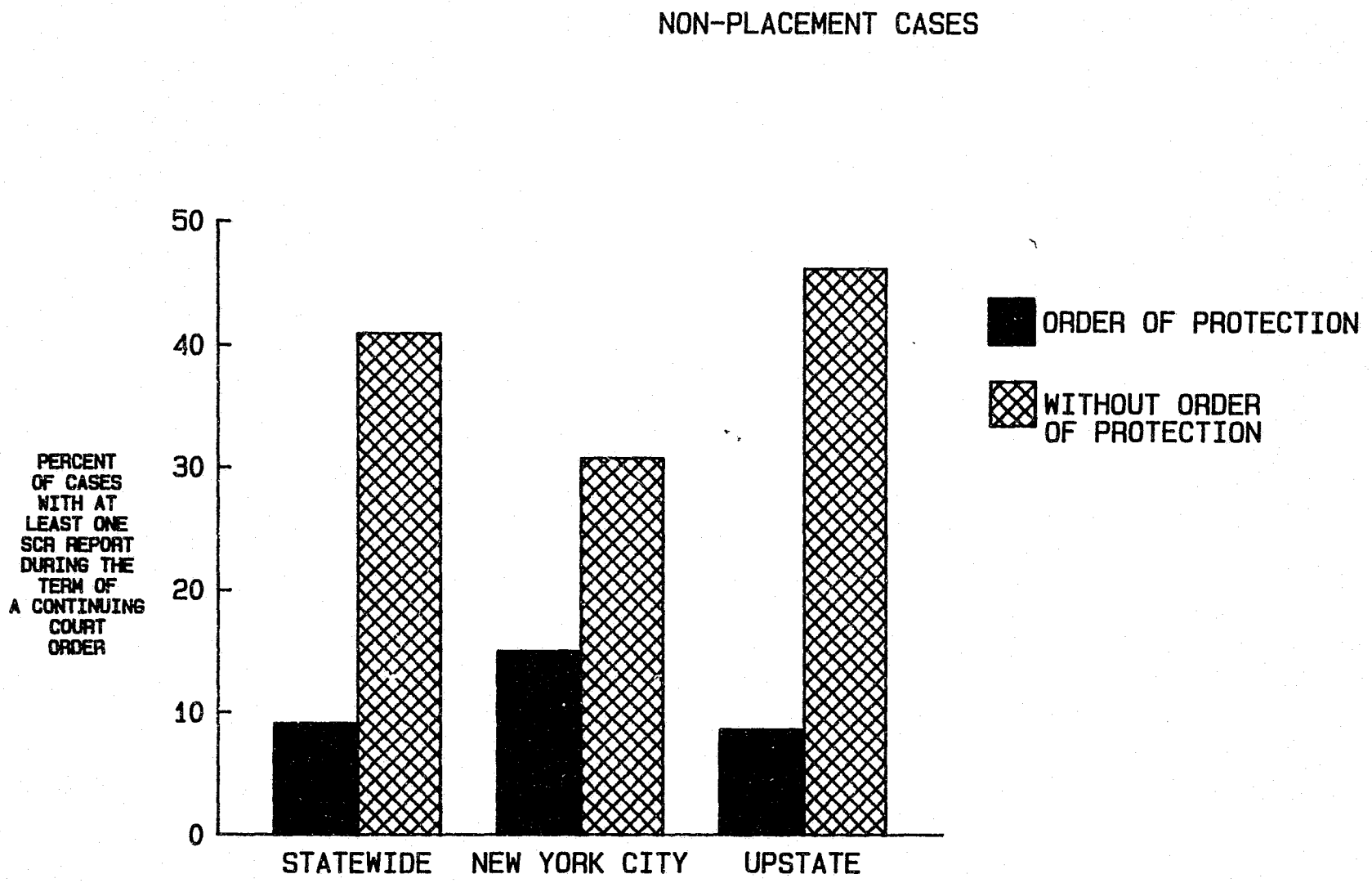

FIGURE 55: PERCENT OF NON-PLACEMENT CASES WITH AT LEAST ONE SCR REPORT DURING THE TERM OF A CONTINUING COURT ORDER, STATEWIDE, IN NEW YORK CITY, AND UPSTATE

CHAPTER 11: POLICY CONCERNS AND RECOMMENDATIONS

This concluding chapter of the Committee's report on family court intervention in child protective cases presents the major policy concerns emanating from our research findings and relevant statutory and administrative recommendations. The chapter generally follows the chronological presentation of findings of the earlier sections of the report.

A. Pre-Petition Removal Activities

The findings indicate that the court record does not always document the circumstances of the pre-petition removal of a child from the home. In fact, pre-petition removals were documented in only some 20 percent of the statewide sample even though a far higher incidence of removals had taken place (56 percent) and were subsequently approved by the court as part of its preliminary orders after the petition was filed (Section 1027 of the Family Court Act). The Committee recommends enactment of legislation providing that, when there is a pre-petition removal, the court in its order approving such removal pursuant to Family Court Act 1027, indicate under which provision of law the removal occurred and the date of the removal (Sections 1021, 1022 or 1024). It also recommends legislation requiring the court record to include a copy of the written instrument signed by the parent indicating consent to the child's removal from the home, if there is such consent.

When a case has been in the child protective system for a period of years, it is assumed that the need for an emergency removal of the child without court order (Family Court Act, Section 1024) should be minimized. However, this study found that even when cases are known to the system for more than two years on the average before petitions are filed, pre-petition emergency removals without court approval often take place. The Committee is concerned that some pre-petition emergency removals may be unnecessary. It, therefore, recommends legislation to

require that, when such a removal takes place, the local department of social services should be required to state to the court, as part of its child protective petition, the basis for the removal, including the need for a §1024 emergency removal. Enactment of such legislation may encourage use of court-ordered pre-petition removal mechanisms available under Article 10. Further, we recommend that standards for the use of 1024 removals, as additions to existing imminent danger requirements, be codified for use by child protective agencies. Based on these standards and the extent of their implementation, the Legislature should consider imposition of sanctions for noncompliance pursuant to §153-d of the Social Services Law.

B. Service of Process

This study found that, on the average, service of the summons and petition occurred one week after their issuance. Section 1036 of the Family Court Act establishes a two-day service requirement in child abuse cases and does not establish time limits for service in child neglect cases. Administrative attention needs to be brought to facilitate speedier service of process. The Committee also recommends legislation to create a two-day service requirement for child neglect cases.

C. Preliminary Hearings

Hearings held under Section 1027 of the Family Court Act are intended to be preliminary procedures to determine whether imminent risk to a child's life or health exist so as to warrant court-ordered removal of the child from the home. Upon such hearing, the court may also enter a temporary order of protection, another matter of major impact on the family. However, the 1027 hearing, as disclosed in this study, is often a vehicle to validate earlier pre-petition removals of children, as described above, (mostly removals without court order pursuant to Family Court Act 1024). At such hearings, the research showed that the respondent often is not present (the

records showed respondent's presence in only 37 percent of the cases). In addition, the respondent, when present, is not always represented by counsel (the Family Court Act does not require such representation). Absence of representation may be attributed to the fact that the 1027 hearing occurs, on the average, six days before the initial court appearance where counsel for respondent is normally appointed. All of these matters raise serious due process concerns.

The Committee recommends legislation to require that the child protective petition, or the notice of a pre-petition emergency removal, whichever is received by respondent first, advise respondent of the right to appointment of, and methods of gaining access to, counsel (in the case of the notice or the petition), and of the right to apply for return of the child (in the case of the petition).

In addition, we recommend that statutory requirements for appointment of counsel for respondent be revised so as to afford better representation at this important stage of the child protective proceeding. If this objective is achieved, the consequence may be that the issues necessarily raised by the respondent in a hearing for the return of his or her child following a prepetiton removal (Family Court Act, Section 1028), could be resolved at the preliminary hearing. The research data alternatively suggest the consolidation of 1028 proceedings with 1027 proceedings, assuming time frames can be established by legislation for the conduct of such hearings to facilitate service of process and appearance by the respondent. This latter issue should be considered by the Legislature in coming years.

D. Procedural Concerns

The study found that court records contain documentation of service of process in only 47 percent of the cases.

Attention should be given by the State Office of Court Administration to assure that an affidavit of service is filed with every court record where personal service is required. Where service is not possible, a standard form should be developed and used to indicate this fact and the efforts made to effect personal or substituted service. Article 10 proceedings, affecting the safety and well-being of children, and their custodial status with their parents, strongly suggests standardized documentation of service on all necessary parties.

Court records indicate often-significant time lags (17.8 days on the average) between the filing of the petition and the initial court appearance where the respondent is advised of the right to counsel and of the right to apply for return of the child following a pre-petition removal. Our review of court records indicates that, at the initial appearance, respondents were advised of their right to apply for return of a child removed from the home only 37 percent of the time, and of the right to obtain counsel in only 75 percent of the cases. Although these findings may be partially attributable to deficient documentation in the court record, many case reviews reveal an insufficient concern for properly informing respondents of these aforementioned rights. The Committee recommends that legislation be enacted to codify requirements in Article 10, similar to those appearing in general sections of the Family Court Act, for an initial appearance, including advising the respondent of enumerated substantive rights.

Although the Family Court Act mandates the appointment of law guardians in child protective proceedings, court records and supportive documentation in this study show less than full and timely compliance. Six percent of the sample had no law guardian appointments. In upstate counties more than 10 percent of the cases had no law guardians appointed. Greater attention to the statutory requirement by judges and court administrators is urged, with special reference to more expeditious appointments of law guardians. The need for such action is underscored by

frequent findings of long time periods elapsing between filing of the protective petition and the law guardian's appointment (averaging 10 days statewide) and the often short time line between the law guardian's appointment and the initial appearance. The majority of law guardians are appointed on the same day as initial appearance, especially in upstate counties. This finding certainly raises questions concerning the law guardian's ability to adequately review the petition and adequately represent the child.

We also recommend that legislation be enacted to require the appointment of law guardians at the time the Article 10 petition is filed. Other policy alternatives include requiring the appointment of the law guardian at the time of a prepetition removal.

Similarly, court records reviewed in our study show less than full compliance with requirements for appointment of counsel for respondents. According to court records, counsel were not appointed in more than 30 percent of the cases (even after accounting for the use of private attorneys). This finding closely parallels those noted above that respondents were not always advised of their rights to appointed counsel. Again, these data may be attributed in part to insufficient court record documentation. However, greater administrative attention should be paid to this requirement, as well as to the more expeditious appointment of counsel for respondents. The latter concern is underscored by project findings that counsel are most often appointed at the initial court appearance (nearly 75 percent of the time) or within a month thereafter. This practice may partially explain the extremely low incidence (16.5 percent) of respondent applications (under Family Court Act, Section 1028) for return of the child following a pre-petition removal; here again, the subject child's custodial status is determined in these preliminary proceedings where parents have not yet had counsel appointed. These findings suggest that

competent legal representation be available at the early and critical stages of these proceedings.

The Committee recommends that legislation be enacted to establish time frames for the appointment of counsel, when requested by respondents, as soon as practicable after the filing of the petition.

E. Dismissals and Withdrawals

Petitions are dismissed or withdrawn more than 20% of the time, a significant proportion. The reasons for dismissals or withdrawals should, by statute, be made part of the written court record to facilitate the proper administration of protective preceedings. This action would discourage frivolous petitioning, and guard against inappropriate dismissals and withdrawals of such cases.

F. Application for Return of the Child Following Pre-Petition Removal (Family Court Act §1028)

The low rate of §1028 applications, noted above, suggests that respondents are not always aware of their rights under this section. In this connection, 1989 State legislation provides additional notice to parents following pre-petition removals, and may help alleviate this concern. Nevertheless, the Committee recommends legislation codifying the obligations of counsel for the respondent when the child has been removed from the home prior to the filing of a petition.

The Family Court Act provides for the holding of a §1028 hearing within three court days of application. The project findings indicate a statewide average of 12 days elapsing between the application and the hearing, although more than half the hearings were held within three days. Court administrators should work with local courts to ensure compliance with this statutory requirement.

G. Court Ordered Investigations

Court ordered investigations perform a useful function in the adjudication of child abuse and neglect. Such investigations take place 38 percent of the time, statewide. They are used extensively in New York City in connection with dispositional hearings (in 80 percent of applicable cases). The Committee recommend legislation requiring the State Office of Court Administration to establish guidelines for this practice to encourage its statewide application.

The project findings show that more than half of all dispositional hearings across the entire state occur on the same day as the fact-finding proceedings, indicating that (especially outside New York City) the court generally does not order reports for the dispositional hearing. In upstate counties, 80 percent of dispositional hearings take place on the same day as fact-finding.

H. Adjournments in Contemplation of Dismissal

The Committee recommends legislation to require more expeditious processing of applications to restore ACDs to the court calendar, when a violation has occurred or another petition has been filed, inasmuch as the time elapsing between such applications and hearings thereon average 7-1/2 months statewide. It also recommends that statutory changes be enacted to establish time frames for the holding of hearings on applications to restore ACDs to the court calendar. Such applications are particularly significant because they represent substantive violations of court orders frequently arising from further family difficulties. Pursuant to recent State legislation, ACDs restored to the court calendar must be returned to the fact-finding, as opposed to the dispositional stage of the proceeding, which further underscores the need for expeditious hearing on the matter.

I. Case Length

Although the average case length (the time from petition to final disposition) in the sample generally conformed to standards and goals established by the Office of Court Administration (6 months), county practices indicated wide variations which often exceed this mean. Admittedly, expediting case processing involves significant dedication of resources, especially given the explosion of Article 10 petitions in the last four years. This radical increase in petitioning has been compounded by the serious nature of crack and other drug-related child abuse and neglect cases in this State. Nevertheless, the Committee urges serious consideration by the Office of Court Administration and the fiscal committees of the State Legislature of the need to make more judicial personnel and other related resources available for the adjudication of child abuse and neglect cases.

J. Parental Visitation in Placement Orders

The study findings indicate that court orders address issues of parental visitation in less than half the cases where a final dispositional order was the placement of a child in foster care. This is particularly true in New York City which has a higher rate of placement orders than upstate counties. The Committee recommends legislation requiring the family court to address this important concern in its placement orders. Parental visitation may often be the most important variable impacting on reunification of the family.

K. Parties Present at Hearings

The findings of the study indicate a disturbing incidence of the absence of key parties -- particularly respondents and their attorneys, and sometimes law guardians -- in hearings affecting the status of the child. In fact-finding and dispositional hearings, the respondent was absent some 25

percent of the time, and his or her attorney some twenty percent of the time. Law guardians were absent slightly less than ten percent of the time. In extension of placement proceedings, the respondent or his or her attorney were absent 44 percent of the time, and the child's law guardian did not appear 15 percent of the time. Further, at extension-of-placement hearings, where the Family Court Act provides for foster parent notification and the right to be present, the study found only 18 percent of foster parents in attendance. These 1985 findings would appear to reflect a trend which continues today, according to discussions by project staff with family court judges and other judicial personnel. Considerable attention should be addressed--by the courts, local social services departments, and attorney groups--to improve participation in Article 10 hearings by parties concerned with and relevant to the safety and future of the child.

L. Placements; Other Orders

The study found that the most preferred dispositional order, in more than 50 percent of child protective cases statewide, was the order of placement. New York City evidenced a higher rate of placement (nearly two-thirds of final dispositional orders) than upstate counties (less than 40 percent). Furthermore, extensions of placement were applied for in more than half the placement orders and were universally extended, and placements were virtually never terminated. Moreover, in some cases where petitions to extend placement were not filed, (nearly half of placements) the court files had no information regarding the status or location of the child.

It is important to promote accountability in placement proceedings by assuring that the child is not returned to an unsafe home (a conclusion highlighted in our study by continuing child abuse reports -- nearly one per case -- following final orders of disposition), and that placements do not continue without court approval (reported to the Committee as taking

place on a number of occasions). The Committee recommends that a statutory mechanism be created to require the local department of social services to inform the court, at the conclusion of the term of a placement order where no extension is sought, of the status and location of the child and action taken or contemplated by the agency. Such information would include a report on the home environment if the child is to be returned home, and document appropriate permanency planning activities to promote return of the child to the home or to legally free the child for adoption. Under such legislation, the court would have the right to obtain additional data and enter additional orders, including extensions of placement.

In a similar vein, legislation should be enacted to provide the court with the aforementioned information at the conclusion of all other time-limited non-placement orders (adjournments of contemplation of dismissal, orders of supervision and orders of protection), which are deemed to expire at the end of their terms.

M. Appeals

The study found an extremely low rate of Article 10 appeals of adjudications (only three percent). This finding underscores the importance of 1988 legislation which clarified the duties of law guardians with respect to the appellate process and of legislation pending before the New York State Legislature to expedite the child welfare appeals process generally.

N. Monitoring

Within the child protective service and judicial systems, the traditional division of labor between the family court and the local department of social services has been for the court to hear, adjudicate and enter orders of disposition regarding future treatment of a child abuse or neglect case. For its

part, the local department is charged with assuring implementation of judicial orders with respect to the child and family. This division of responsibilities has been codified over decades by statute, regulation and practice. It is reflected in policies, practices and verbalized philosophies of the family court. Members of the judiciary have expressed to this Committee their understanding that family court responsibilities in child abuse and neglect proceedings terminate with the entry of a final order of disposition (unless of course the matter is brought back to the court by one of the parties).

Under this arrangement, it is the view of the Committee that no formal accountability system exists to assure effective implementation of court orders by local protective agencies. It is in this context that the New York State Legislature in the last decade has gradually moved to address accountability concerns through the enactment of legislation in several areas. The law now gives the court continuing jurisdiction in voluntary foster care proceedings, and has specifically expanded the power to order the provision of services and assistance to abused and neglected children by public agencies. Most recently, a 1989 enactment has reduced the initial maximum period for child protective orders from 18 months to 12 months in order to encourage periodic review of the status of these cases.

However, despite these enactments, Article 10 of the Family Court Act does not specifically require the court to monitor the implementation of its orders (excluding, of course, cases where petitions are made to the court to extend placements, or to restore cases where orders have been violated). Our study showed that in only 3.8 percent of the statewide sample did the court monitor the implementation of its order by requiring in its orders that the local child protective or other agency, report back to the court on the status of the child and on the degree to which the respondent had complied with the terms of the judicial order.

The need for monitoring is underscored by our study findings of frequent instances where open court orders were violated, as evidenced by at least one child abuse and neglect report made to the State Central Register in connection with at least 25 percent of such continuing orders. In such instances, the court clearly was not aware of violations because the local department of social services did not petition the court accordingly (hearings on violations occurred with respect to only 16 percent of these cases). The marshalling of additional resources to enable the court to extend its capacity for monitoring the actions of public officials is a partial solution to this problem. An important resource in this context lies in the use of court appointed citizen volunteers as special assistants, or advocates, commonly known as CASA. CASA's are now used by family courts in voluntary foster care review proceedings in more than a dozen counties in the state. Nationally, CASA was initiated and had been used with much positive effect, in child abuse and neglect proceedings. Pending legislation before the New York State Legislature would codify the role of CASA in New York child welfare proceedings before the family court.

O. Article 10 Cases and Child Abuse Reports: Early Reports

This study confirmed that children known to the child protective system for up to nearly five years in some counties and, on the average, 2.2 years statewide become the subjects of child protective petitions. Although it may be argued that this time period ordinarily reflects the efforts of the protective services system to engage the family voluntarily to resolve problems giving rise to abuse and neglect, the Committee believes that far too long a time period elapses before the intervention of the court is sought. The inability of the protective services system to effectively assist the family may be underscored by the high level of pre-petition emergency removals of children documented by this study.

The Committee recommends that legislation be enacted to require the State Department of Social Services to develop and promulgate standards embracing terms, conditions and time frames pursuant to which local departments of social services must file Article 10 petitions.

P. Settled vs. Contested Cases

This study shows that almost twice as many settled cases (adjudications by consent or ACDs) as contested cases (adjudications following factfinding and dispositional hearings) have at least one report made to the State Central Register after final case disposition. This finding raises serious concerns regarding what may be a diminished effect of court intervention when a case does not have the opportunity for a full court hearing with its potential benefits to the respondent in terms of problem identification and recognition. The parties and the court in child protective proceedings need to adequately explore the relative advantages of settling a case and its impact on the child and family before agreeing to such a course of action.

In the face of evidence sharply suggestive of continuing family difficulties after a case is settled, the Committee recommends that the Family Court Act be amended to require a local department of social services to report on a periodic basis (every three months), to the child's law guardian, whose appointment would be continued until the conclusion of the term of any order, on the status of the child and family involved in ACDs and other adjudications by consent. The law guardian would automatically have the right to petition the court to recalendar a case where a local department of social service report indicated evidence of continued family dysfunction and non-compliance with court orders.

Q. State Central Register Reports During Open Court Orders

As noted above, the study found that 25 percent of the cases with continuing court orders (supervision, protection, suspended judgments, adjournments in contemplation of dismissal) had at least one child abuse report filed with the State Central Register during the term of such order. In many cases, the allegations in the subsequent report matched the allegations contained in the original petition, clearly suggesting a violation of the court order.

Of the cases with at least one report, the petitioning agency requested, and a hearing was held on violations of the order only 16 percent of the time statewide. Nearly half the sample held no hearings at all on violations of court orders.

Such practices serve to undermine the integrity of the family court because the court has no way of knowing that its orders have been violated. At the same time, the force of judicial authority is undermined in the eyes of impressionable respondents.

To remedy this situation, the Committee recommends that legislation be enacted to require that the child's law guardian be informed of any report made to the State Central Register regarding the child during the term of a continuing order. Again, the law guardian, whose appointment would continue until the conclusion of the term of any order, could petition the court to recalendar a case. In such manner, the court would be in a better position to monitor child protective cases.

In addition, the Committee urges that legislation be enacted to codify the responsibilities of local departments of social services in assuring the implementation of continuing orders of the court. Such legislation would define circumstances constituting violation of differing court orders, and prescribe activities which should be undertaken by the

department in instances when violations occur. Specific local social services department responsibilities should be added to the Social Services Law governing the nature and scope of mandated casework, case supervision, and other service responsibilities when ordered by the court during the terms of suspended judgments, adjournments in contemplation of dismissal, orders of supervision and orders of protection, when such orders represent final dispositions in Article 10 proceedings. A clearer delineation of these responsibilities can facilitate greater specificity in, and compliance with, court orders intended to rehabilitate the family.

In making these recommendations, the Committee is cognizant of the need for additional resources to implement these proposals at the state and local government levels. We will work with the Governor and the fiscal committees of the Legislature to secure such resources.

R. Court Orders, State Central Register Reports and Orders of Protection

The study findings indicate that where a child is not placed in foster care, and where the court has not entered a final order of protection that directs the respondent to stay away from the home, such cases are more than four times likely to have at least one report to the State Central Register during the term of a continuing court order, than are nonplacement cases where such protective orders are made.

In this context, the Committee is cognizant of recent New York legislation expanding the use of orders of protection and urges consideration of greater use of such orders in child protective cases.