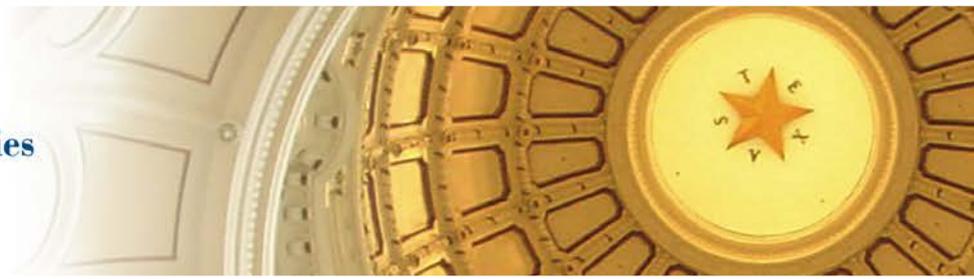




Center *for* Public Policy Priorities



The Judiciary's Role in the Child Welfare System

National Child Welfare Evaluation Summit

August 29, 2011

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Center for Public Policy Priorities

- Non-profit, non-partisan policy institute based in Austin, Texas
- Committed to improving public policies at a federal and state level to create a better Texas
- Pursue mission through independent research, policy analysis and development, public education, advocacy, coalition-building and technical assistance.

Presentation Overview

- Incorporating legal system into child welfare research
- Using data to engage judges and others who work in the courts in making systemic change

Federal Law Applying to All States

- Generally, very broad with states having significant discretion to construct their own legal standards and process

Federal Law Applying to All States

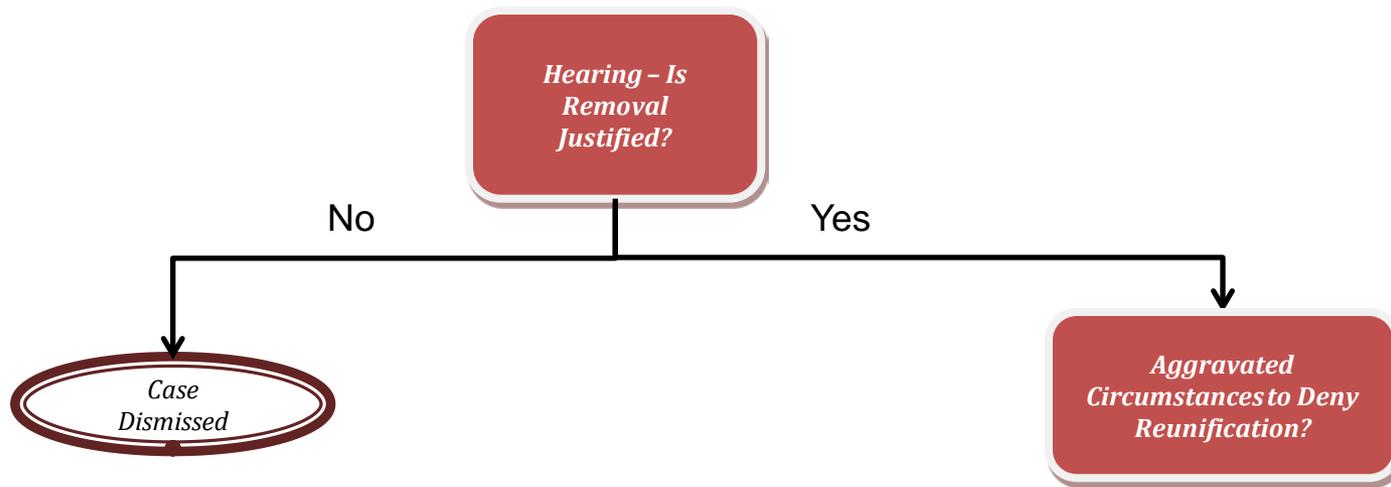
- Child abuse and neglect definition
 - Parent's act or failure to act that results in death, serious physical or emotional harm, sexual abuse or exploitation or imminent risk of harm
- Only 4 legally permissible plans after removal
 - Return child home, adoption, legal guardianship or another planned, permanent living arrangement (APPLA)

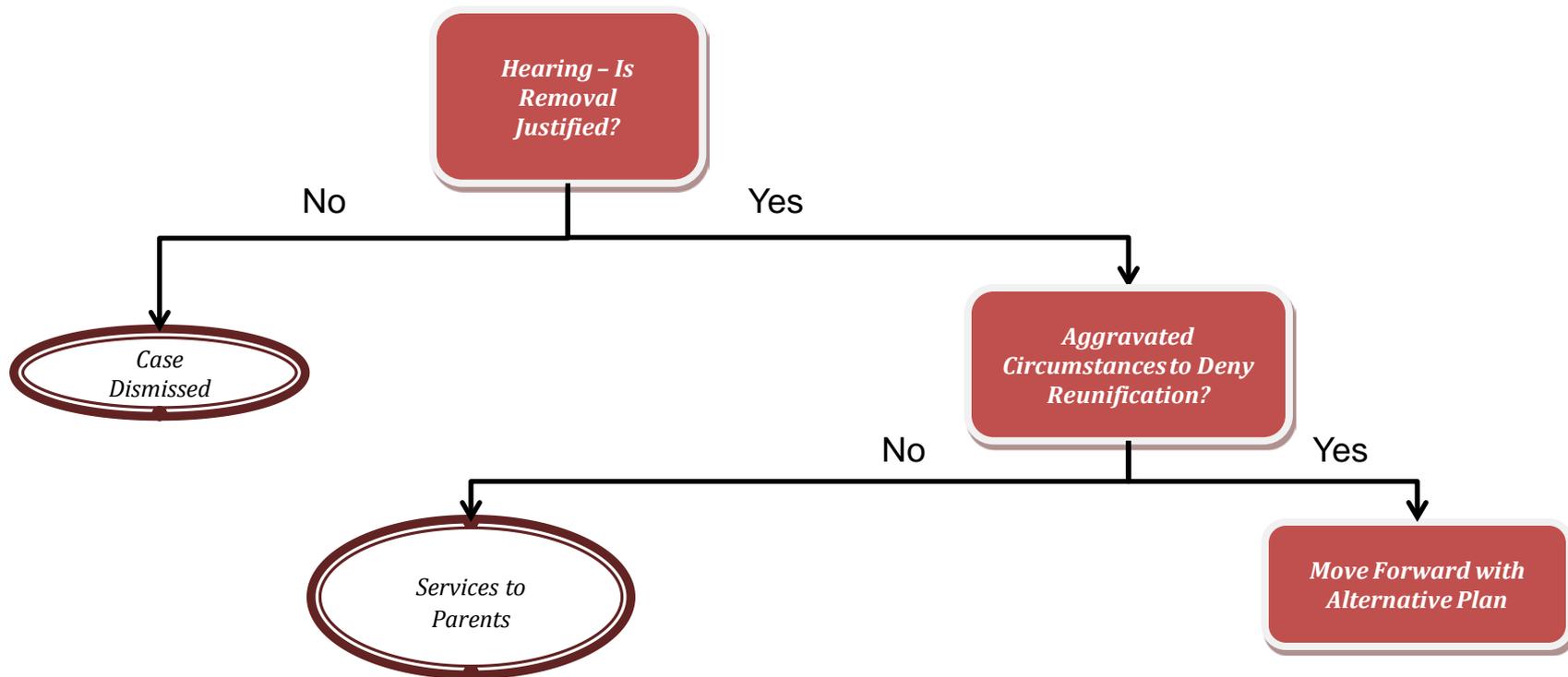
Federal Law Applying to All States

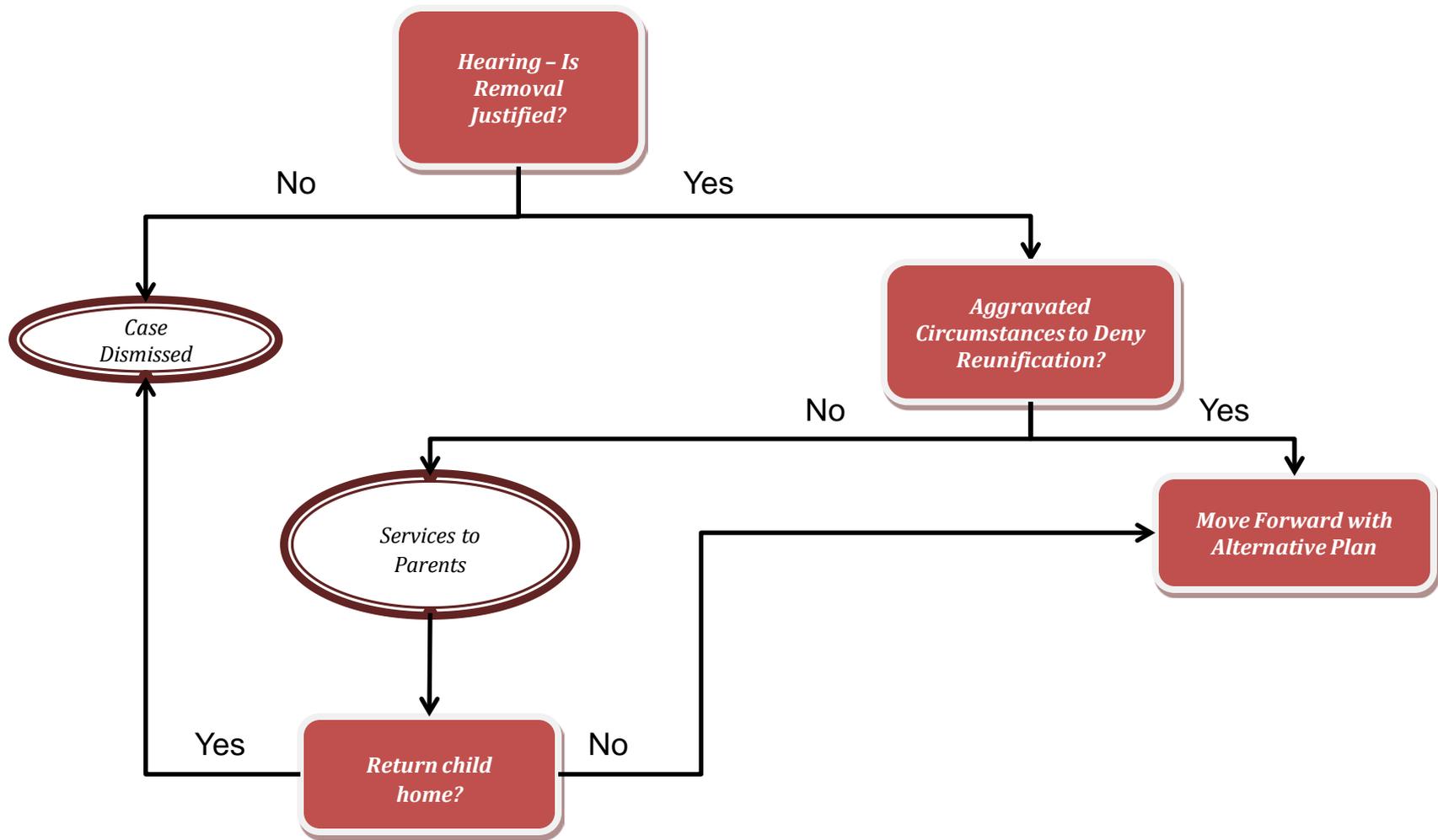
- Before proceeding with adoption, legal guardianship or APPLA, must be a legal finding that return home is not appropriate
- Usually have to give parents a chance to regain custody but can deny reunification if:
 - Involved in killing own child
 - Felony assault with serious bodily injury to own child
 - Parental rights to other child involuntary terminated
 - Anything else state defines as aggravated circumstances

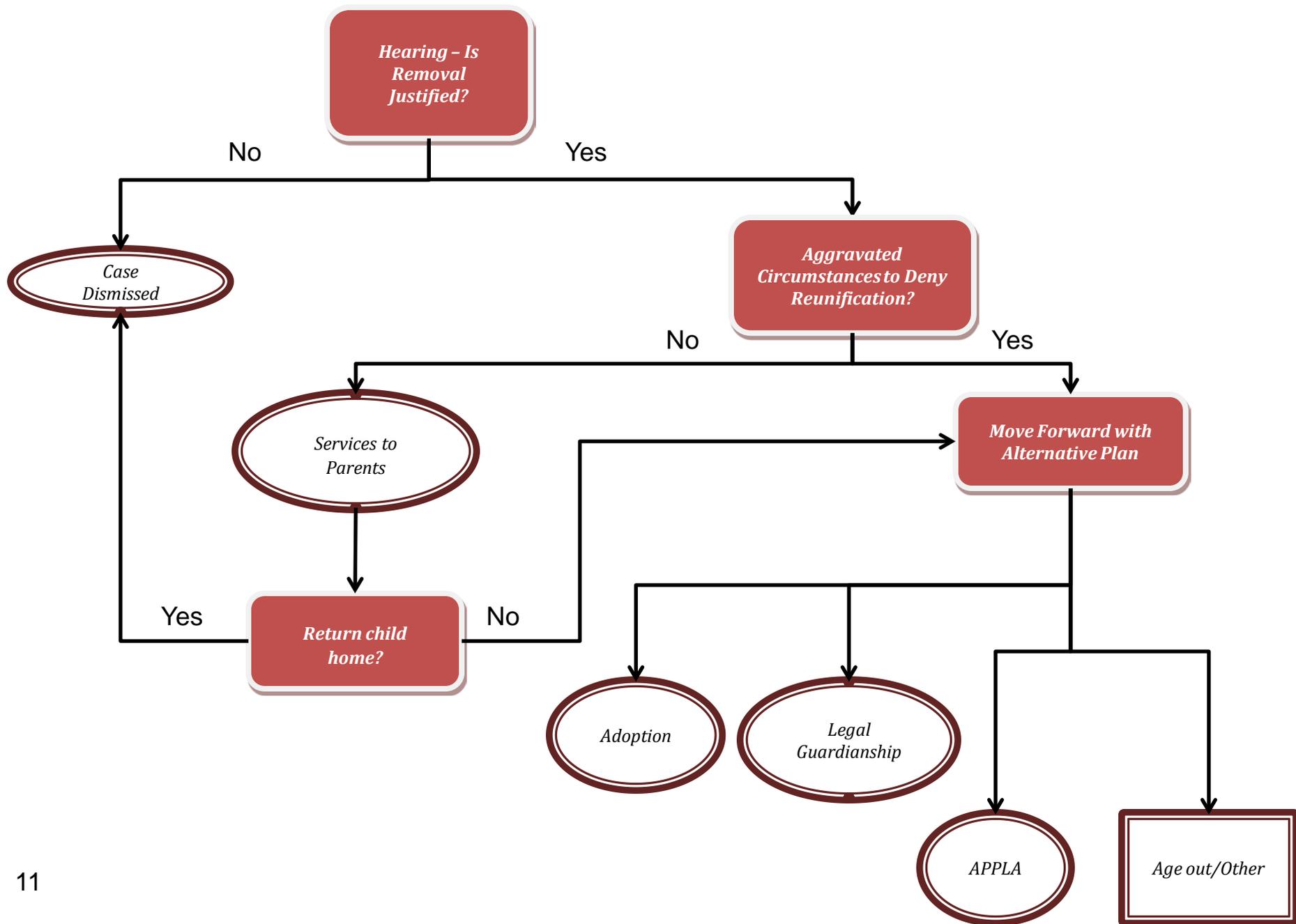
Federal Law Applying to All States

- A petition to terminate parental rights must be filed if the child has been in care for 15 of last 22 months unless:
 - Living with relative caregiver
 - Allow reunification but no reasonable services
 - Compelling reason not in child's best interests
- Before pursuing an APPLA, must be a legal finding that return home, adoption and legal guardianship are not appropriate









Legal System Differences

- Different standards at each point in the process among the states
- Different interpretation and application of a standard within a state
- Differences in experience and skill of judges and attorneys

Differences Among the States

*Hearing – Is
Removal
Justified?*

Differences Among the States

- Child abuse and neglect definitions
 - Variation as to substance abuse and neglect
 - 15 states include prenatal drug exposure in definition of child maltreatment
 - 25 states include failure to educate a child in definition of neglect
- Burden of proof for removal
 - Texas: Sufficient evidence to satisfy person of ordinary prudence and caution
 - California: Clear and convincing evidence

Differences Among the States

*Aggravated
Circumstances to Deny
Reunification?*

Differences Among the States

- Aggravated circumstances to deny reunification
 - If child was previously removed (9 states)
 - If parent failed to reunify with another child (6 states)
 - If parent is incarcerated for a substantial term (6 states)
 - If parent has a serious mental illness and is unlikely to resume care within reasonable period of time (6 states)
 - If parent has chronic substance abuse problem and refused or failed in treatment (7 states)

Differences Among the States

*Return child
home?*

Differences Among the States

- Timeframe for reunification services
 - California – up to 24 months
 - Texas and South Carolina – up to 18 months
 - California and Texas – additional 6 months of reunification services permitted when child in long term care and no other viable options
 - Most other states have no timeframe specified

Differences Among the States

*Move Forward
with Alternative
Plan*

Differences Among the States

- Termination of parental rights
 - 24 states have timeframes shorter than 15 months
 - 6 states have even shorter timeframes when child is young
 - 5 states will not terminate parental rights if a child is a certain age and objects
 - 8 states allow a reinstatement of rights after a period of time

Differences in Applying Standards within a State

- Some jurisdictions in Texas pursue adoption with relative caregivers while others rely primarily on legal guardianship
- Extensions of the reunification time period in Texas counties range from 0% to 100%
- Termination of parental rights in Texas counties range from 0% to 100%

Differences in Judiciary and Legal Representation

- In some counties in Texas and in Los Angeles County, California, judicial officers specialize in child welfare cases
- Travis County, Texas and Los Angeles County, California have specialized offices to represent children and parents

Legal System Differences

- Important to understand how differences affect outcomes
 - Do certain state policies make certain outcomes more or less likely?
 - Do families with experienced judges and attorneys who specialize in child welfare cases have better outcomes (e.g., higher rates of reunification)?

Legal System Differences

- Important to account for differences in legal system when researching relationship between outcomes and other types of policies
 - Is use of relatives as caregivers related to reunification?
 - May find children placed with relatives are more likely to reunify but may actually be a function of state's legal structure such that states with permissive relative placement policies also have more permissive legal standards for reunification

Resources for Legal System Differences

- Child Welfare Information Gateway has summary of state laws on numerous different issues, including citation to actual laws for each state. Available at:
http://www.childwelfare.gov/systemwide/laws_policies/state/
- Most states have child welfare policy manuals available online

Data and the Judiciary

- Traditional View—Judge makes a decision based on the evidence in each individual case with no responsibility for the “system”
- Emerging View—Use aggregate data to see where the “system” needs to be improved and to develop a leadership agenda for judge’s jurisdiction and the state
- Whatever your conclusion about judges using data, policymakers will use data to shape the law and assess judges

Using Data to Engage the Judiciary

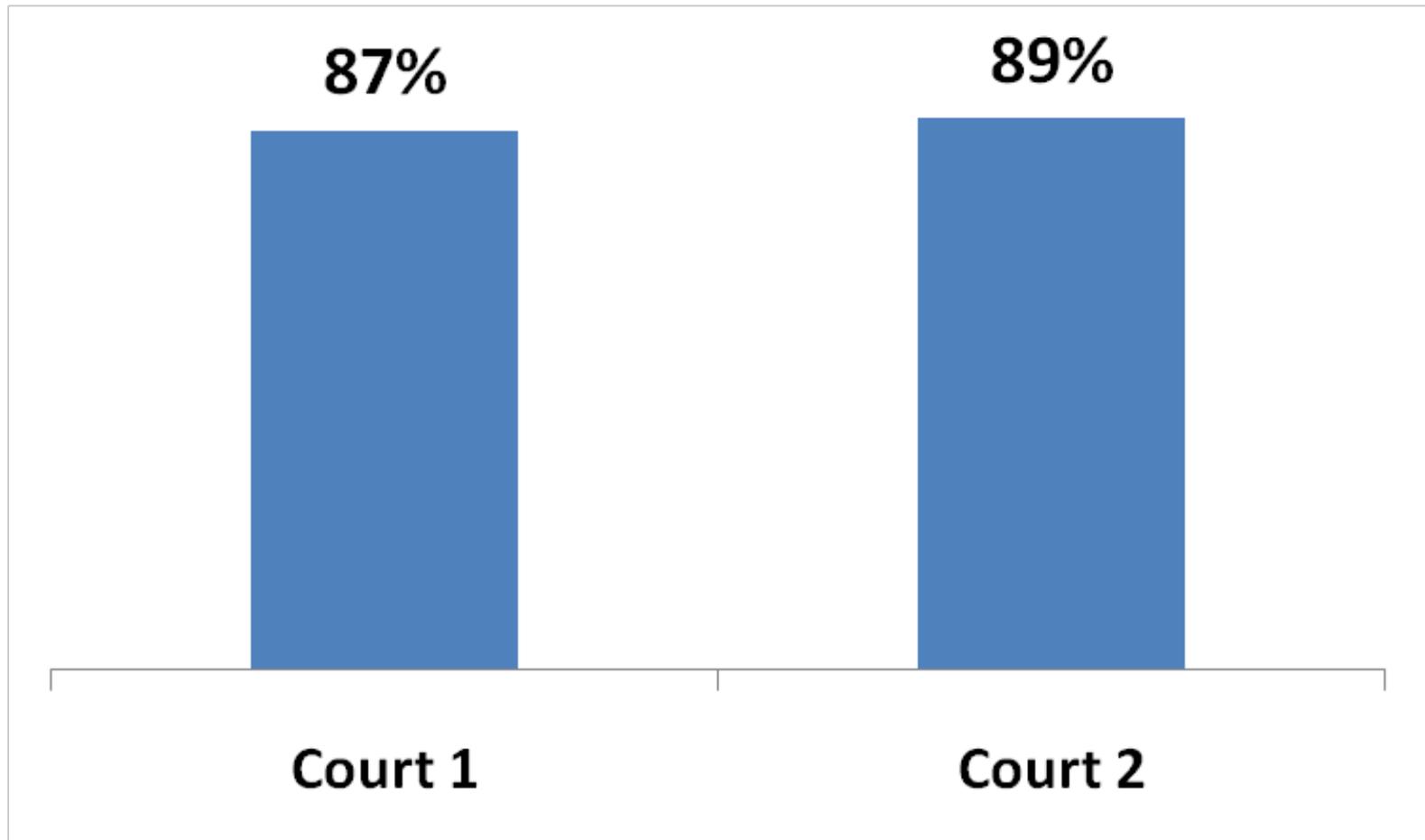
- To generate general interest in data, use state average and pick several different jurisdictions to show range of outcomes around the state
- If a judge wants data for particular jurisdiction, pick a handful of other, similar jurisdictions
- Can also use Child and Family Services Review benchmarks as a comparison point

Using Data to Engage the Judiciary

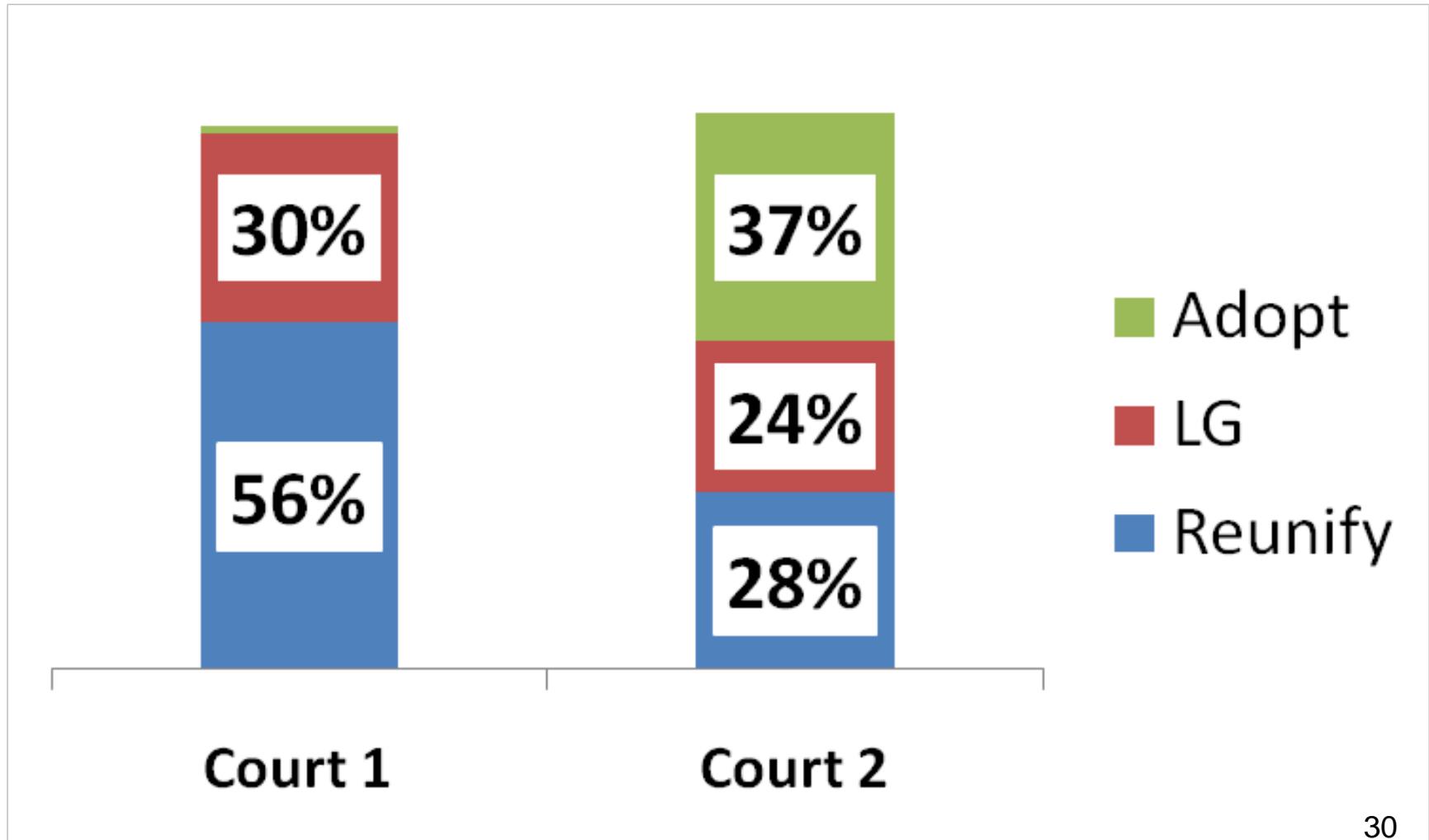
- Pick key indicators
 - Don't overwhelm with too much data but
 - Must look at system both in its parts and as a whole to fully understand what's happening to children and families

If Only Look at Overall Outcomes, Courts Look Similar

Permanency for Kids Who Leave State Custody

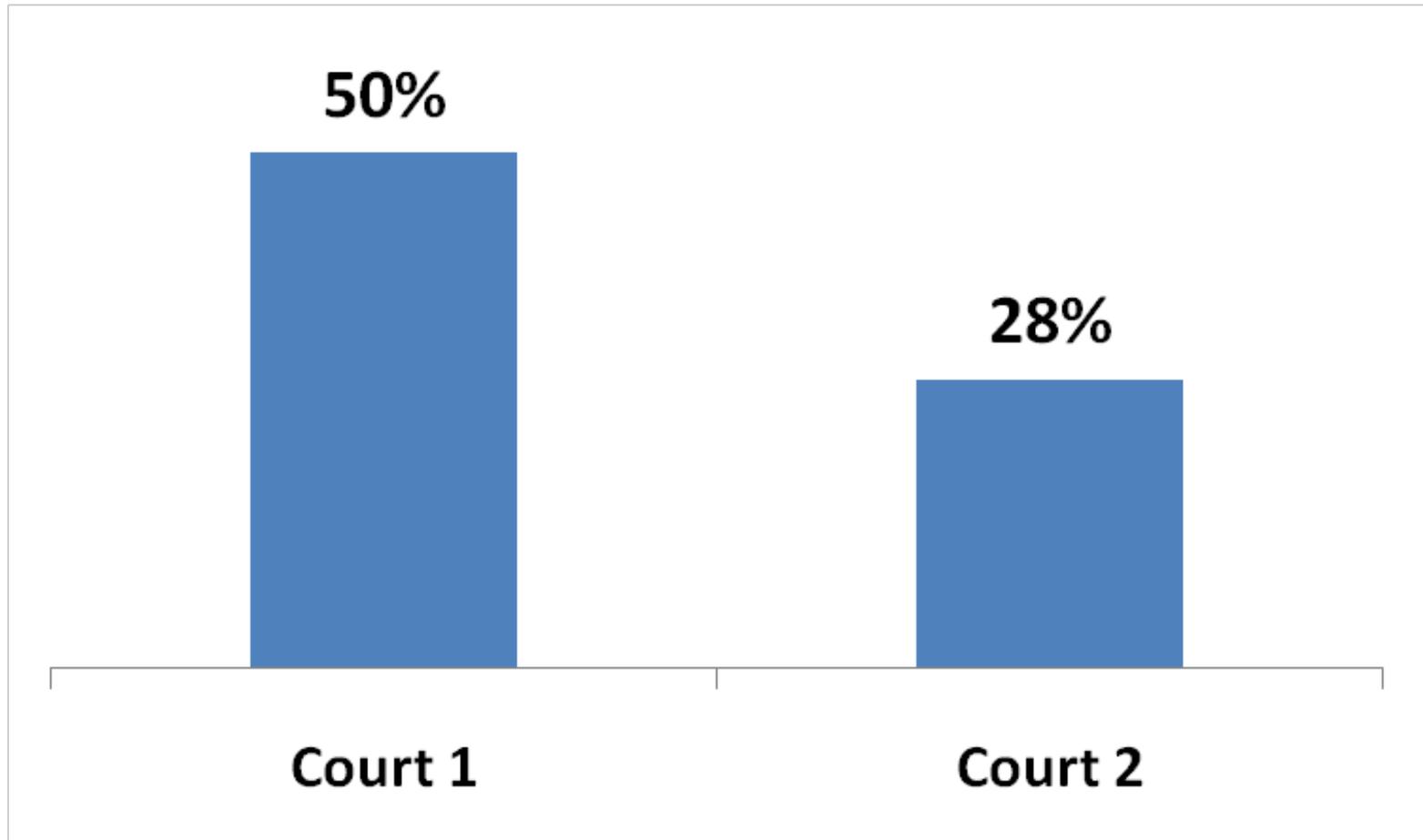


But The Type of Permanency They Achieve Is Very Different



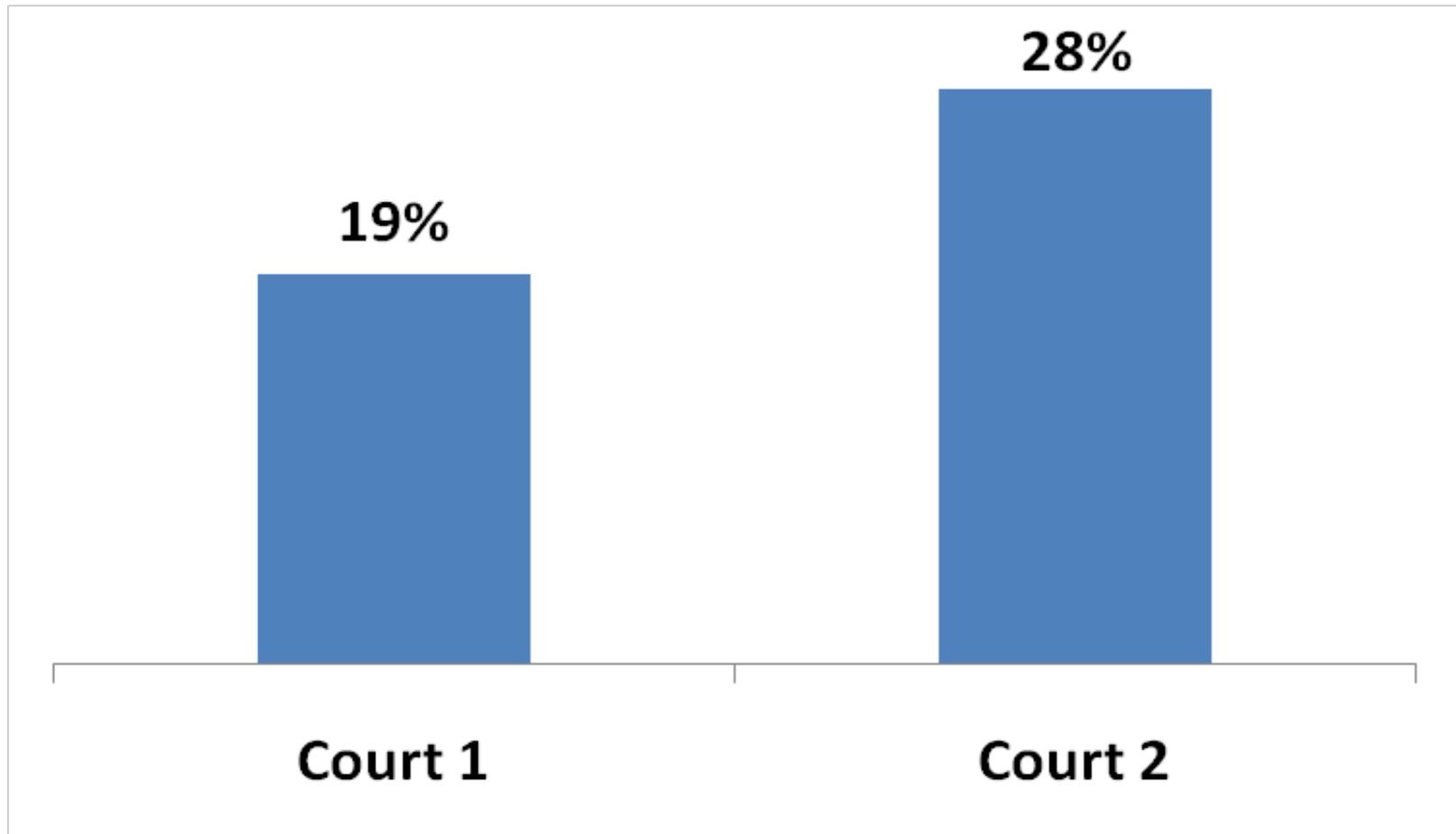
The Data for Court 1 Looks Good During the Reunification Period

Kids Who Go Home during Reunification Period



But It Doesn't Look as Good on the Back-End

Permanency for Kids in Long-Term Care



Using Data to Engage the Judiciary

- Use data in understandable format
 - Don't get too technical
 - Graphs should be easy to understand
- Give appropriate caveats
 - Data is a tool to better understand what is happening to families but should not be used to make decisions in individual cases
 - Data can highlight differences among jurisdictions but cannot explain why differences exist

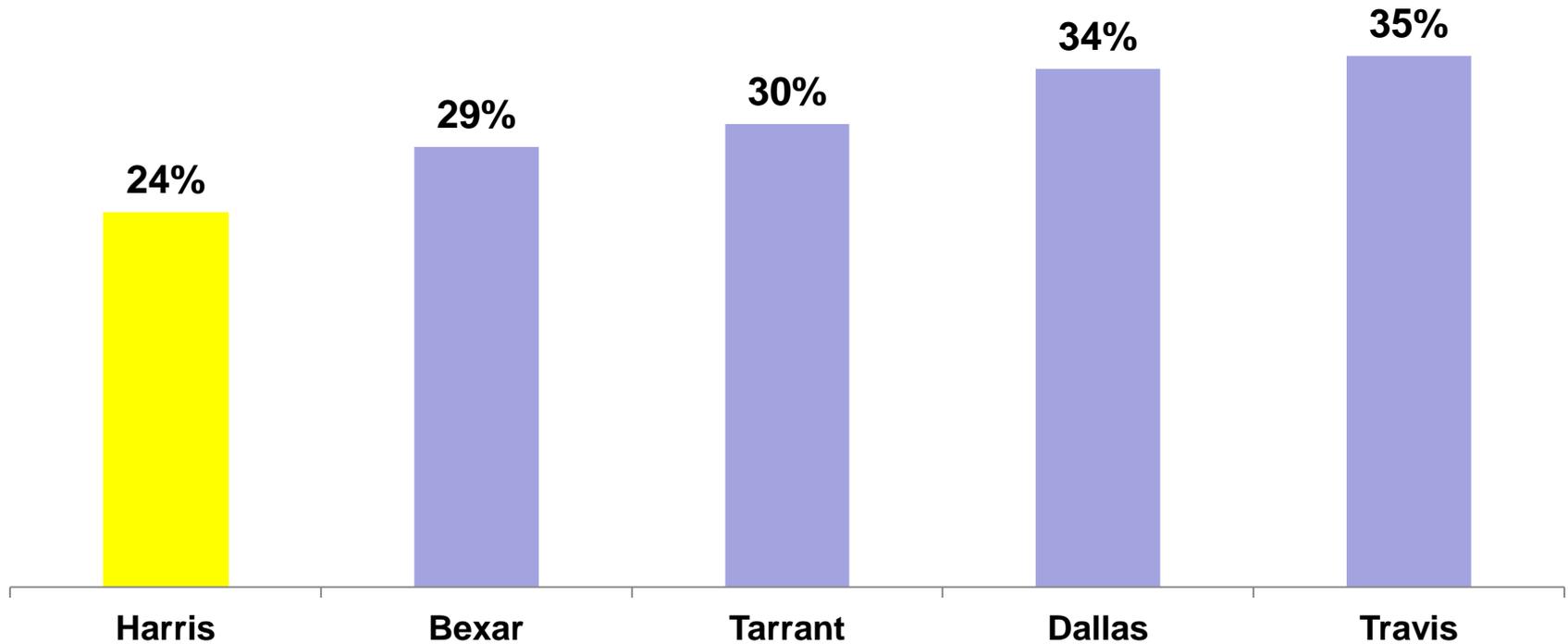
Using Data to Engage the Judiciary

- Use data to empower judges to make systemic change rather than as an evaluation of their performance
- Summarize what the data means and how judges can use it to focus their efforts on systemic change
 - Is there a particular point in the process that seems to be more problematic for a particular jurisdiction?
 - Are there certain CFJR benchmarks where they are falling significantly short or which they are meeting?

Texas as a Case Study

- Conference for all judges in Harris County who handle child welfare cases
 - Includes attorneys, child welfare agency leadership, caseworkers and others who work in system
 - Goal is to help judges take leadership role in improving the system
 - Harris County has largest share of children in state custody
- Used data in opening session to set stage for individual group discussions

Harris County Achieved Permanency for Less than 1 in 4 Children in Care

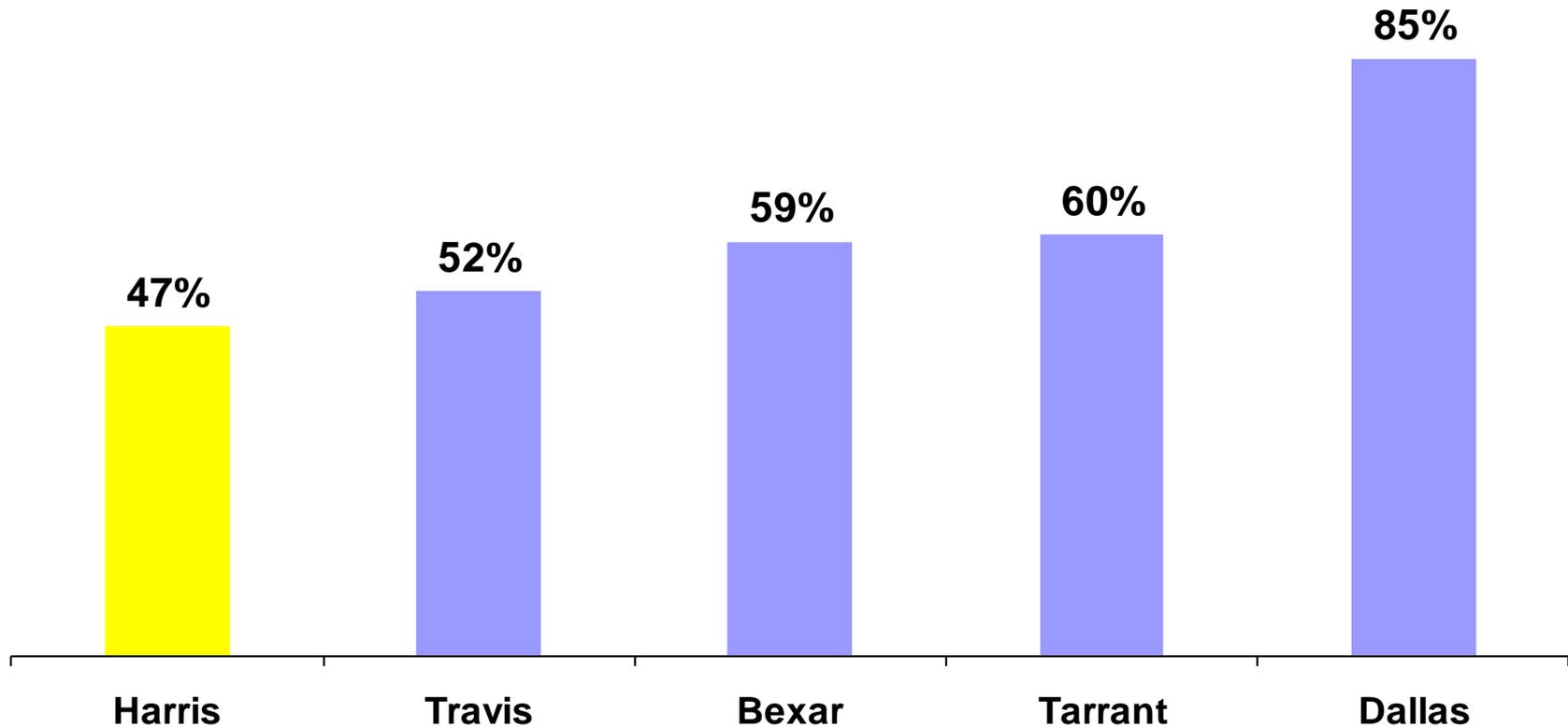


Understanding Harris County's Low Permanency Rate

- Look at 2 primary forms of permanency: Reunification and adoption
- Examine both how well county is utilizing each option and how long it is taking to achieve them

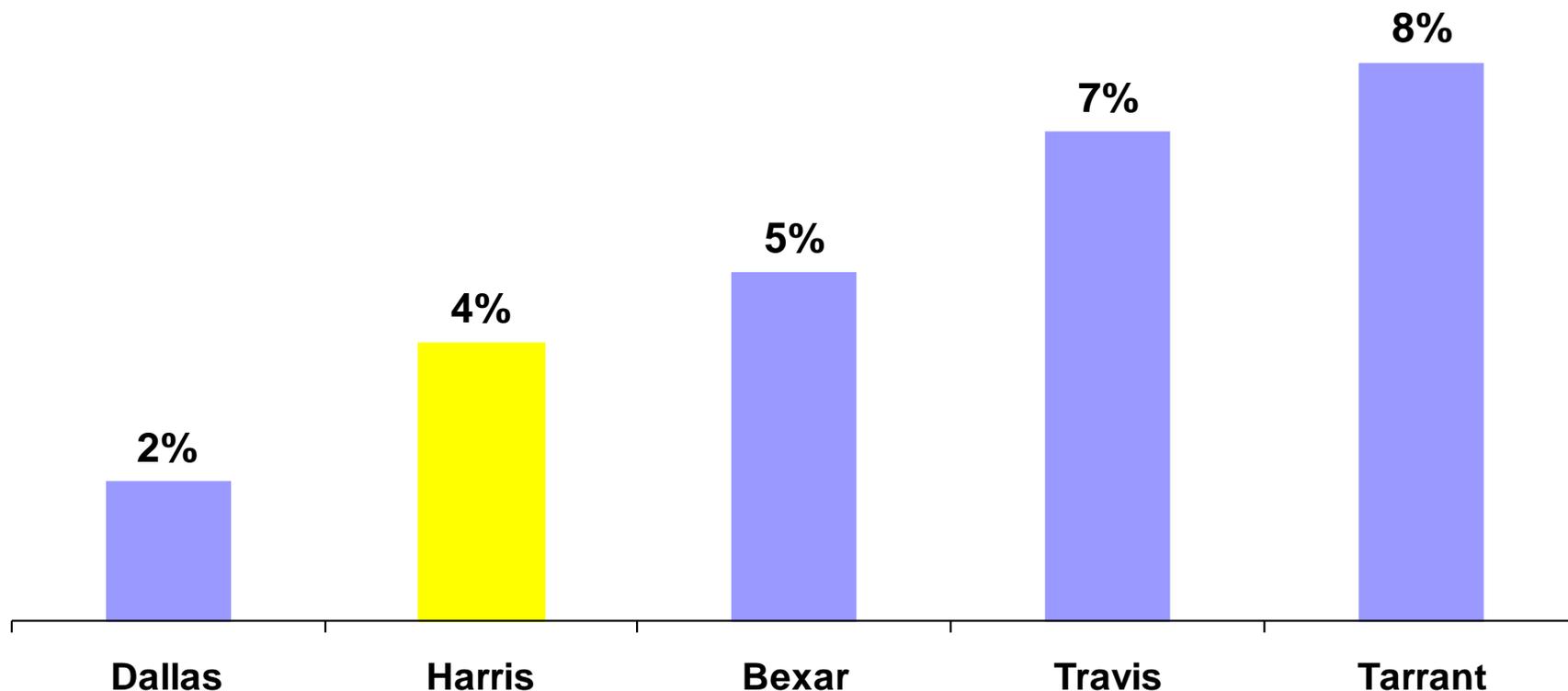
Harris County is Slow to Move Kids through Reunification Period

How Often Reunification Period Ends within 1 Year

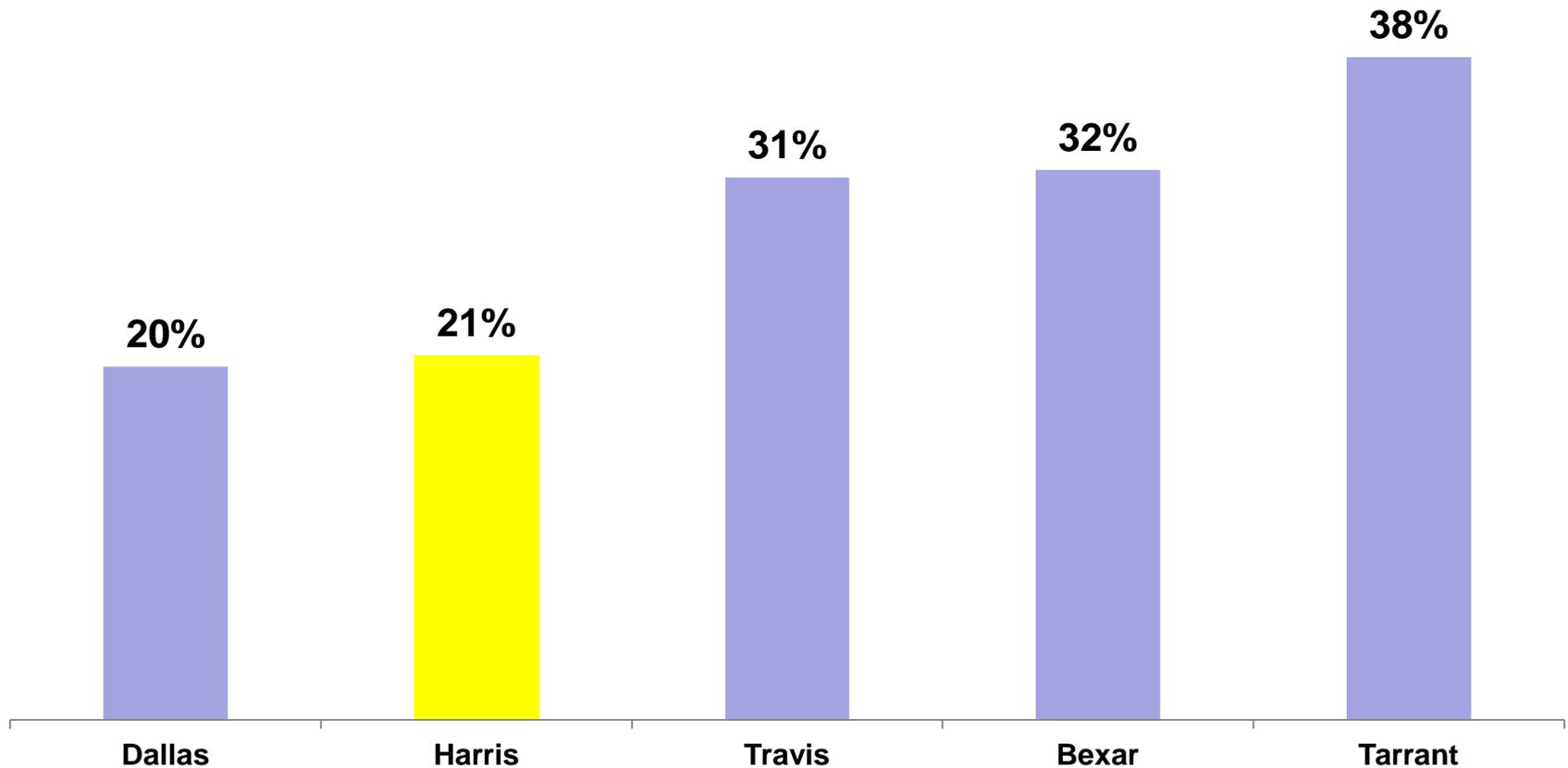


Not because Extending for Trial Home Visits at a High Rate

Percentage of Children in Trial Home Visit

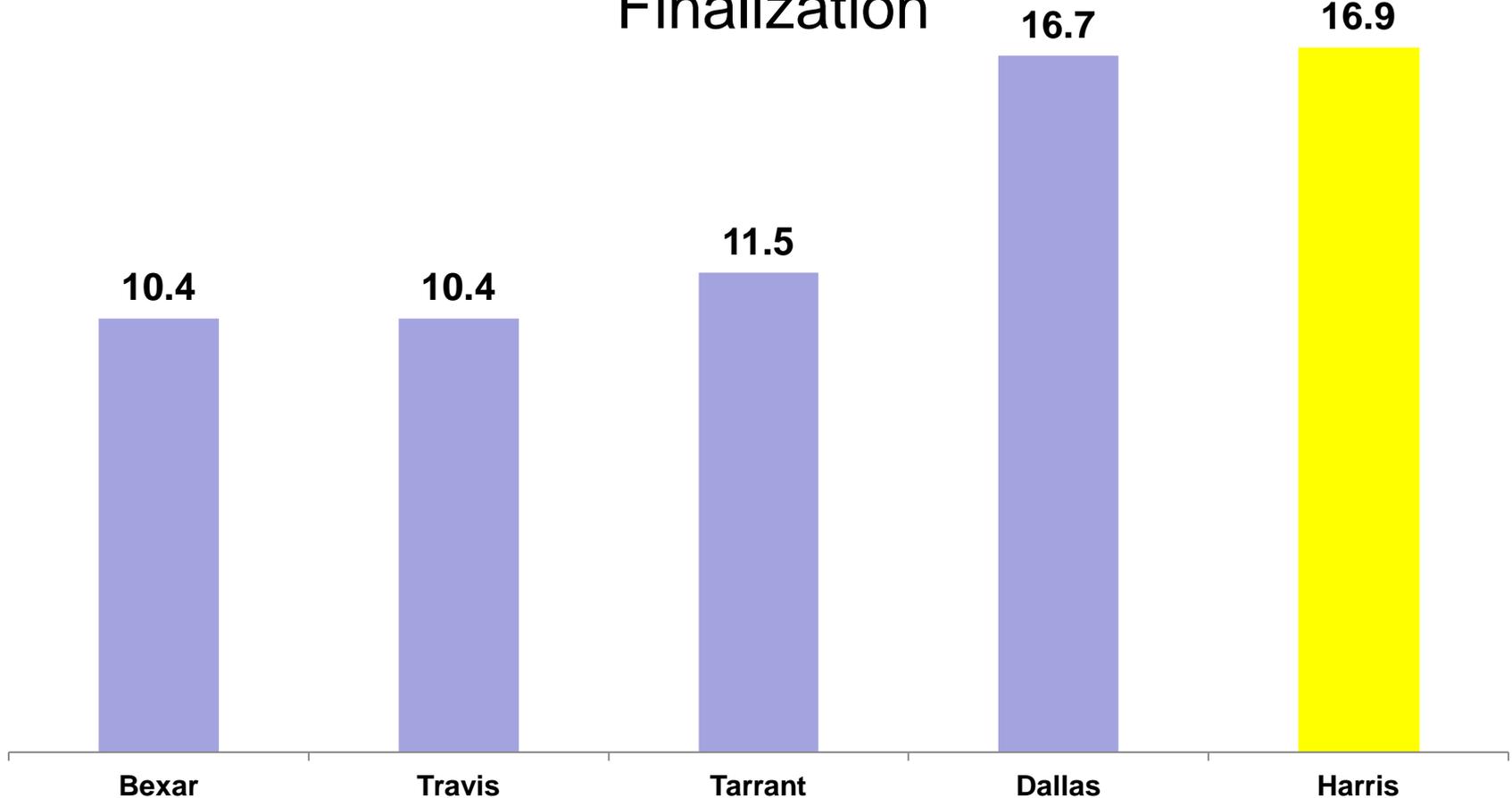


Harris County Has One of the Lowest Rates of Children Going Home During Reunification Period

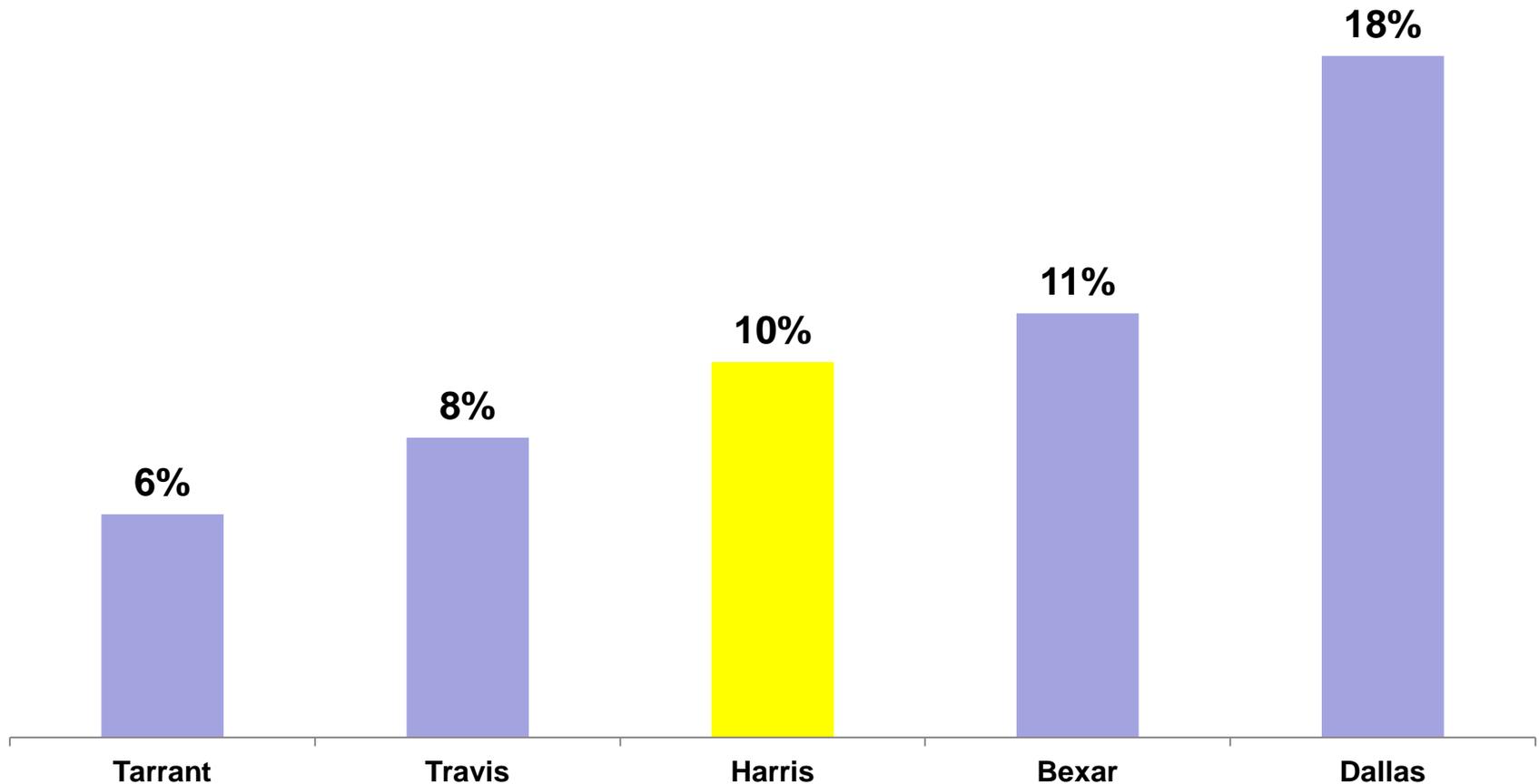


Harris County Struggles to Timely Complete Adoptions

Median Time (in months) from TPR to Adoption Finalization



1 in 10 Children in Harris County Who Are Eligible for Adoption and Leave Care, Do So as a Legal Orphan



What Does It All Mean for Harris County?

- Harris County is struggling to achieve permanency for children both on the front-end and the back-end of the process
- Focus efforts first on exploring why extending time in so many cases
 - Not resulting in high reunification rates
 - Something that is within the judiciary's control

In Conclusion

- Legal system plays an important role in the child welfare system
- Need more research on how legal standards and judicial policies and practices affect outcomes
- Given the right tools, judges can serve as important leaders in facilitating systemic change

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