




OPDS's Juvenile Appellate Section 2008 to 2018

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In 2007, the legislature conceived of and funded the formation of the Juvenile Appellate Section (JAS) for the Appellate Division of OPDS.

In doing so, the legislature intended for JAS to provide a centralized and professionalized approach to dependency and termination-of-parental-rights (TPR) appeals.

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- JAS represents indigent parents on direct appeal from juvenile dependency and TPR judgments.
 - JAS currently consists of six attorneys and two paralegals.



Guiding principles:

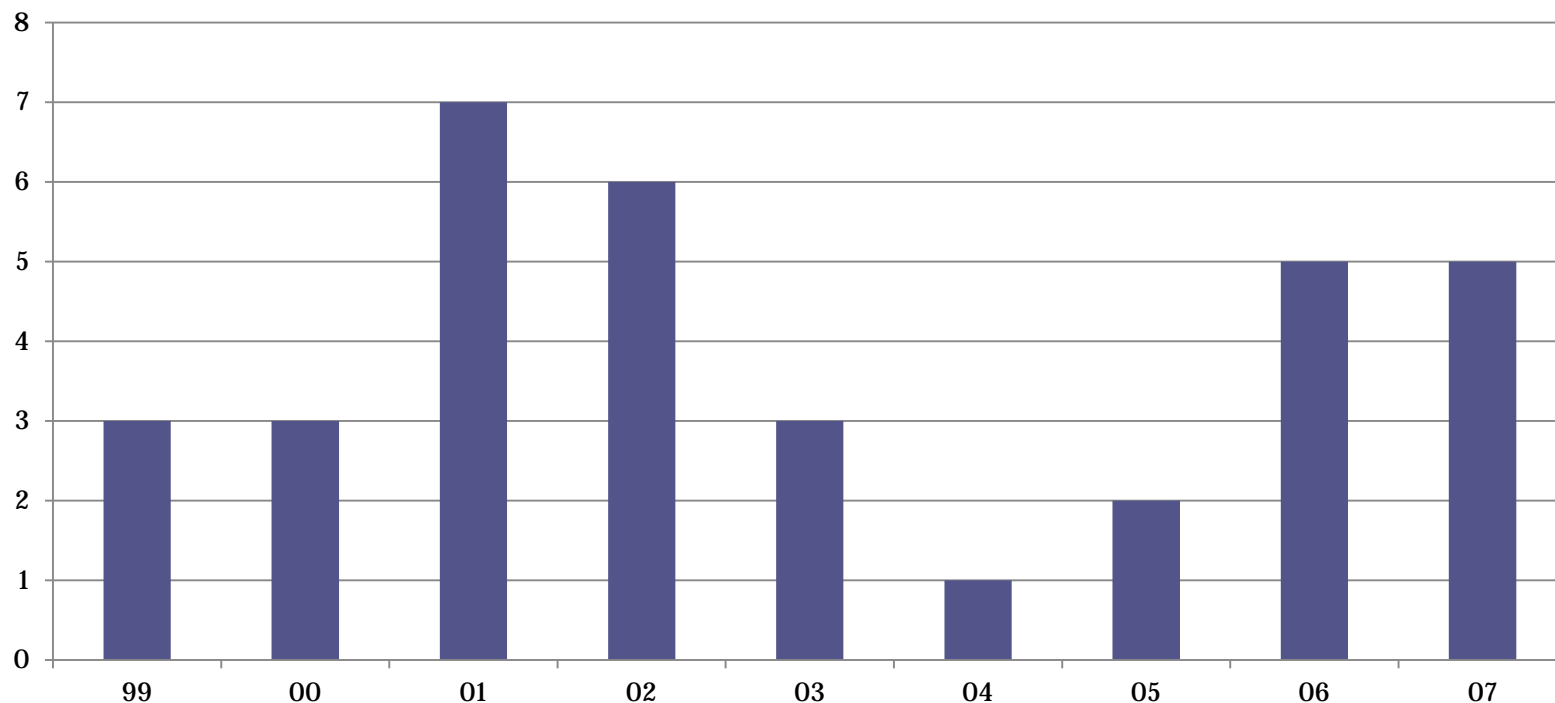
- zealous advocacy for individual clients
- strategic impact litigation focused on preservation of family integrity and parental rights
- team-based, collaboration
- education and outreach



The Numbers

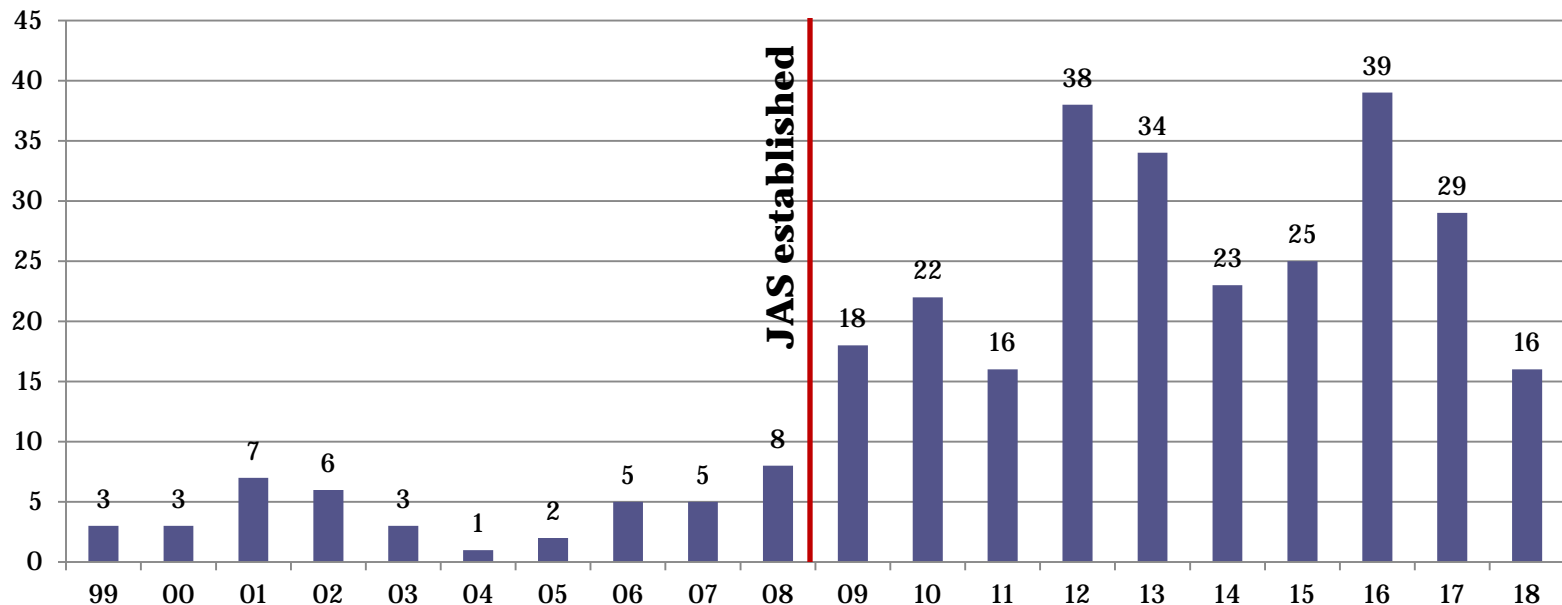
In the 10 years preceding JAS's establishment (1999 to 2007), juvenile dependency cases received little attention from the Court of Appeals.

Dependency Opinions 1999 to 2008

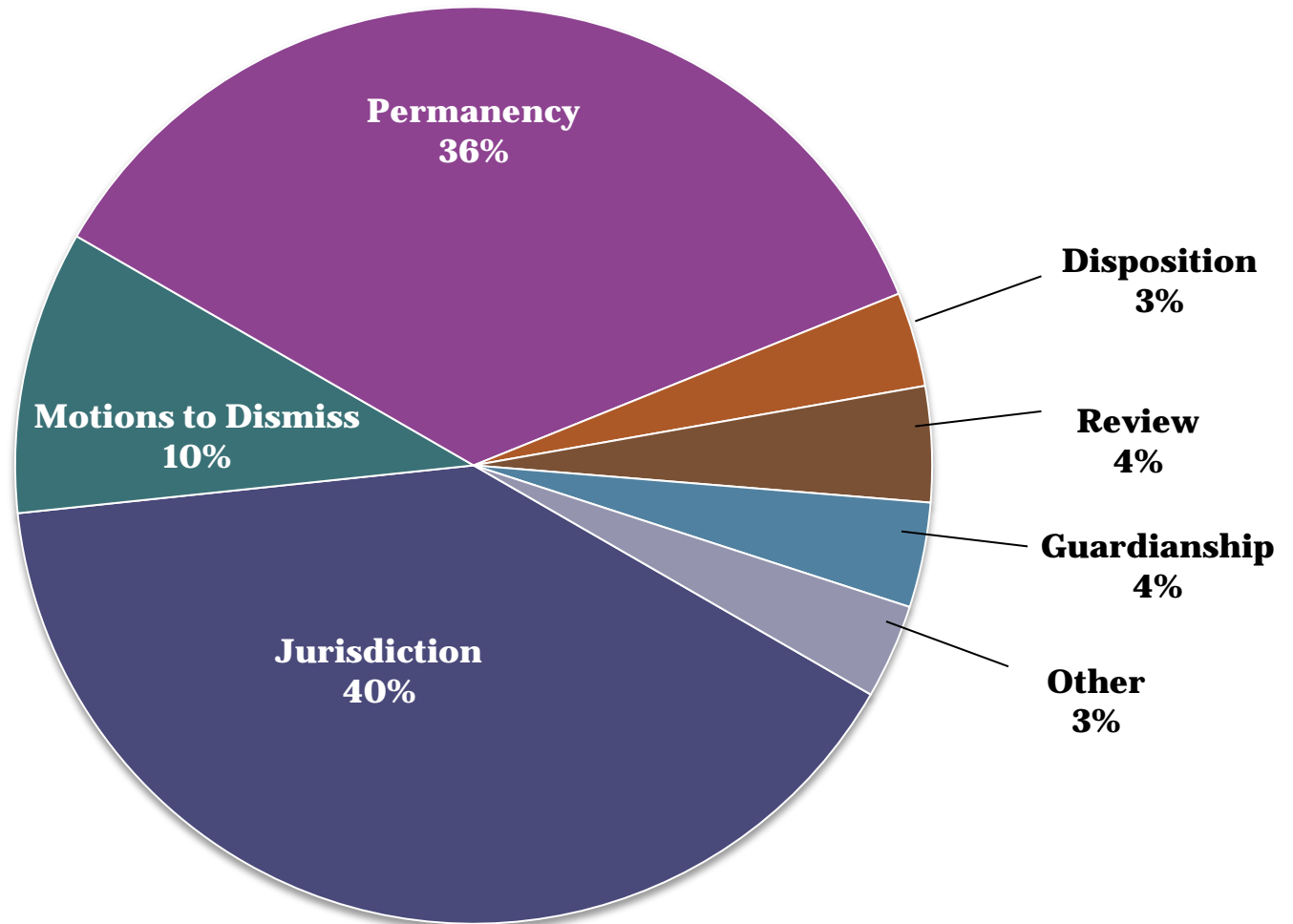


In the ten years since JAS's inception (2009-2018), the number of published opinions by the Court of Appeals in dependency cases increased 504% from the previous ten-year period.


Dependency Opinions 1999 to 2018



Court of Appeals Dependency Opinions By Case Type 2008 to 2017




Greatest Hits




Under ORS 419B.100(1)(c), the juvenile court is authorized to assert dependency jurisdiction over a child if the child's condition or circumstances expose the child to a current threat of serious loss or injury that will likely be realized in the absence of dependency jurisdiction.

Dept. of Human Services v. A.F., 243 Or App 379 (2011)




That rule applies to the court's assessment of whether it has authority to intervene in the first instance or to continue its intervention in the face of a motion to dismiss jurisdiction and terminate the wardship.

Dept. of Human Services v. A.R.S., 258 Or App 623 (2013)



A parent's inability to parent independently, without more, is not a basis for dependency jurisdiction.

Dept. of Human Services v. B.L.J., 246 Or App 767 (2012)




A parent may avoid or end the juvenile court's involvement by delegating primary caregiving responsibilities for the child to someone else.

Whether DHS approves or certifies the third-party caregiver is immaterial to the analysis of whether the child is endangered to a degree that would warrant dependency jurisdiction.

Dept. of Human Services v. A.L., 268 Or App 391 (2015)

The court may not continue jurisdiction based on facts that have not been pled and proven as a basis for jurisdiction over the child in the first instance.

Dept. of Human Services v. G.E., 246 Or App 136
(2011)



The rule against extrinsic facts applies to the court's analysis on a motion to change a child's permanency plan away from reunification and to some other plan; the court's assessment of the department's efforts and the parent's progress is circumscribed by the adjudicated jurisdictional bases.


Accordingly, the court may not change a child's permanency plan based upon facts that were not pled and proven as bases for jurisdiction in the first instance.

Dept. of Human Services v. N.M.S., 246 Or App 284 (2011)



The department must work to reunify a child with both legal parents.

Dept. of Human Services v. J.F.D., 255 Or App 742 (2013)



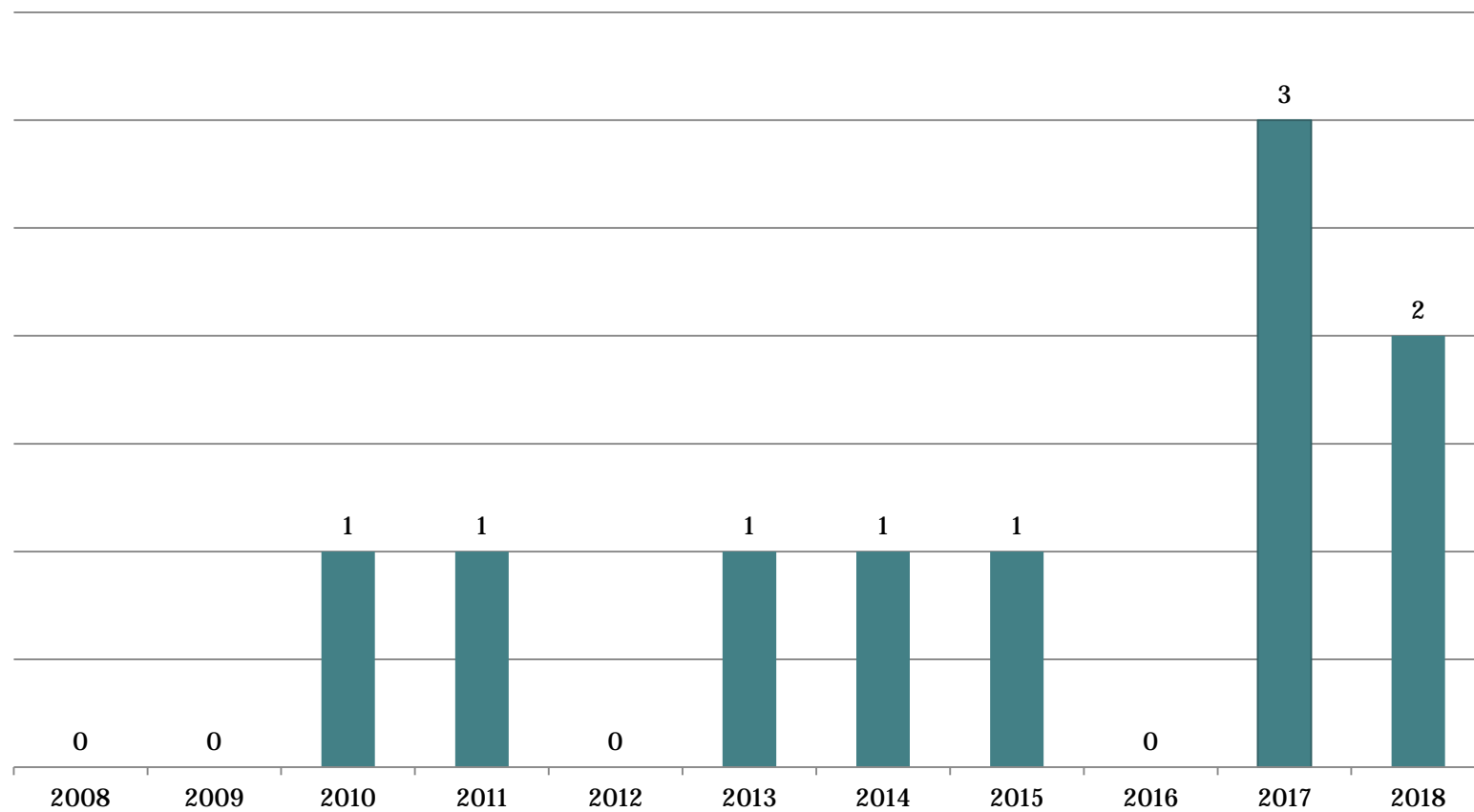
The department is not excused from making meaningful reunification efforts as to one of a child's parents because that parent is incarcerated or otherwise difficult to provide services to.

Dept. of Human Services v. L.L.S., 290 Or App 132 (2018)

JAS Supreme Court Practice



JAS Cases in the Oregon Supreme Court



2008 to 2016: 5 cases

State v. L.C., 234 Or App 347, 228 P3d 594, *rev. allowed*, 349 Or 171, 243 P3d 69 (2010), *rev. dismissed*, 349 Or 603, 249 P3d 124 (2011) (whether a permanency plan of adoption requires some likelihood that adoption will be achieved).

Dept. of Human Services v. J.R.F., 351 Or 570, 273 P3d 87 (2012) (any statutory authority to order the father to facilitate visitation of a ward with her siblings who were not within the court's jurisdiction was circumscribed by the father's constitutional right to direct the upbringing of his children).

Dept. of Human Services v. A.R.S., 258 Or App 624, *rev. allowed*, 354 Or 735, 320 P3d 567 (2013), *rev. dismissed* (2014 WL 5462426) (the proponent of continued jurisdiction bears the burden of proving that the facts upon which jurisdiction was based continue and that those facts expose the child to a threat of serious loss or injury that will likely be realized in the absence of the court's continued protection).

Dept. of Human Services v. S.M., 355 Or 241, 323 P3d 947 (2014) (court's order appointing DHS as a ward's legal custodian and guardian authorizes DHS to consent to the ward's vaccination over the ward's parent's objection).

Dept. of Human Services v. T.L., 358 Or 679, 369 P3d 1159 (2016) (a parent of a ward is entitled to effective assistance of counsel to defend against a motion to change the ward's permanency plan from reunification to some other plan; the parent may raise such a claim in the first instance on direct appeal without regard to the constraints of plain error review).

2017 to 2018 to date: 5 cases

Dept. of Human Services v. S.J.M., 283 Or App 592, 388 P3d 1199 (2016), *rev. allowed*, 361 Or 350, 393 P3d 1175 (2017) (to prevail on a motion to change a ward's permanency plan from reunification to adoption, DHS must prove that there does not exist a "compelling reason" to forego a change in plan).

Dept. of Human Services v. A.B., 362 Or 412, 412 P3d 1169 (2018) (in determining whether a court order terminating a wardship renders the parents appeal from the original jurisdictional judgment moot, the party contending that the appeal is moot bears the burden of proving that is).

Dept. of Human Services v. T.J.D.J., 285 Or App 503, 393 P3d 1207 (2017) (a parent is not adversely affected by a review judgment memorializing the juvenile court's ruling that DHS's efforts to reunify the parent with his child qualified as active; accordingly such a judgment is not appealable by the parent).

Dept. of Human Services v. J.C., 289 Or App 19, 407 P3d 969 (2017), *rev. allowed*, 362 Or 389, 411 P3d 380 (2018) (A guardianship established under ORS 419B.366 may continue only so long as the juvenile court continues to have jurisdiction over the child).

Dept. of Human Services v. T.M.D., 292 Or App 119, ___ P3d ___, *rev. allowed*, 363 Or 677, ___ P3d ___ (2018) (applying *de novo* to determine that termination of the mother's parental rights was in the child's best interest and declining to clarify whether the juvenile court is presumptively required to terminate a parent's parental rights upon proof that the parent is unfit).

Education & Outreach

JAS attorneys have given over 50 continuing education presentations in a variety of forums, including the following:

- **Juvenile Law Training Academy**
- **Oregon State Bar Juvenile Law Section CLE**
- **OCDLA Juvenile Law Conference**
- **Juvenile Court Improvement Project's Through the Eyes of the Child**
- **American Bar Association Center for Children & the Law Parent Defense Conference**
- **A variety county-level juvenile practice groups**

JAS attorneys have also contributed to publications, including:

- **Oregon State Bar's Performance Standards for Dependency Practitioners Task Force I and II**
- **Co-authoring chapters in the award-winning Juvenile Law Bar Book published in 2017:**
 - **The Rights of Parties and Nonparties to Dependency and Termination Cases**
 - **The Dependency Petition**
 - **Jurisdiction and Disposition**
 - **Termination of Parental Rights**
 - **Postjudgment Motions**
 - **Appeals**

JAS attorneys have been members of committees and work groups, including:

- **Editorial Board for Juvenile Law Bar Book**
- **OCDLA Juvenile Law Committee**
- **OSB Juvenile Law Executive Committee**
- **OSB Appellate Practice Section Executive Committee**
- **Preventing Sex Trafficking and Strengthening Families Act Legislative Compliance Workgroup**
- **Governor's Child Foster Care Advisory Commission**
- **Oregon Task Force on Dependency Representation**



JAS attorneys regularly consult with trial attorneys representing parents

- Strategize and arm with authority to present legal issues that the juvenile court must confront
- Obtain timely relief for parents thus obviating the need for an appeal
- At the same time preserving issues for vindication on direct appeal

Looking to the Future

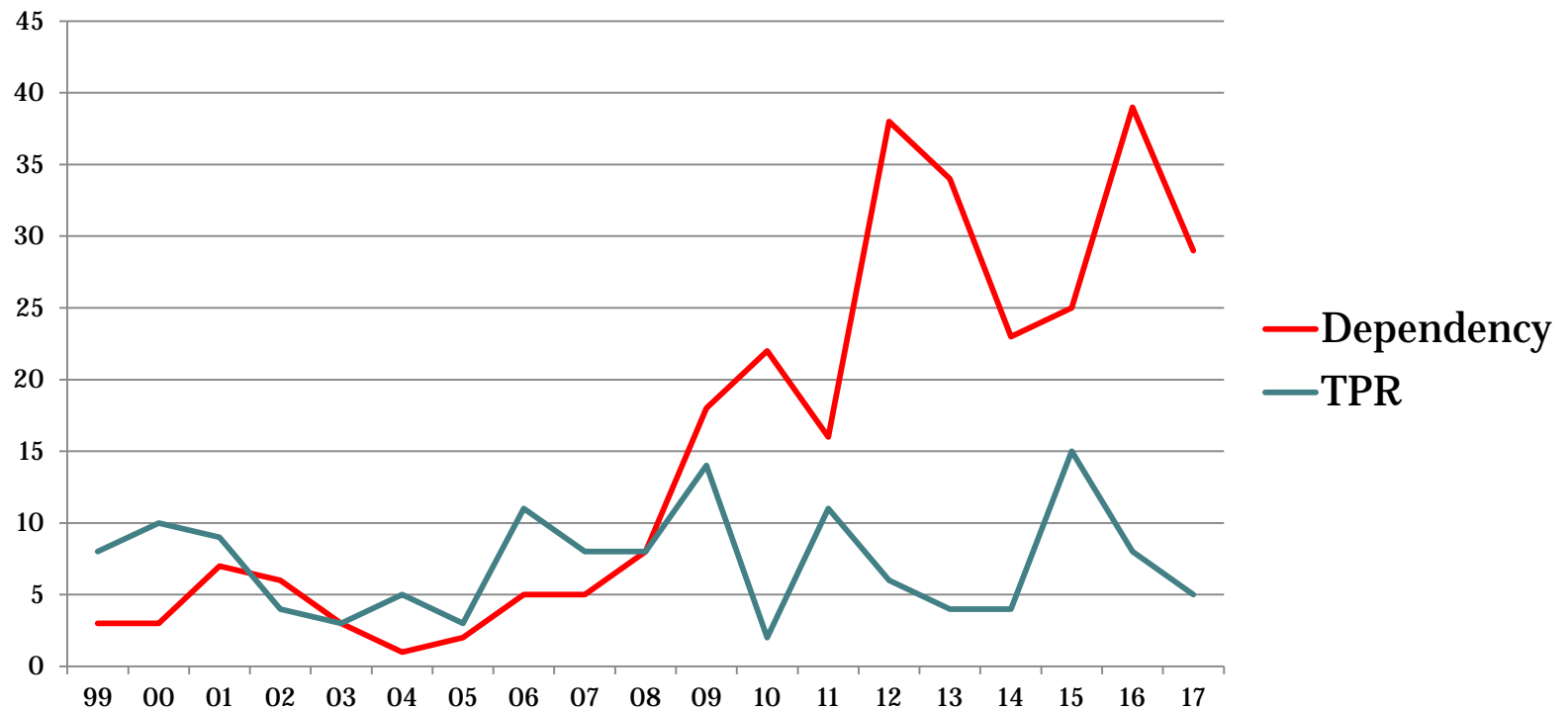


JAS is currently developing and advancing arguments on the following legal issues:

- Who is the decider—the juvenile court or DHS?
- Whether the invocation of jargon substitutes for direct evidence about a particular child and their circumstances
- Whether particular judgments “adversely affect” a parent’s rights or duties and are, therefore, appealable
- The scope of the juvenile court’s authority to order parents to submit to forensic psychological evaluations and other invasive examinations
- The legal sufficiency of DHS’s evidence to prove that termination of parental rights and adoption is the outcome in the child’s best interests

**JAS views *de novo* review as an
impediment to the clarification of legal
standards applicable in TPR cases.**

While the number of opinions in dependency cases has dramatically increased over the previous ten years, the number of opinions in TPR cases has stayed flat.



JAS Goals:

- **Continue our appellate advocacy in the Court of Appeals**
- **Expertly navigate increased Supreme Court practice**
- **Continue the quantity and quality of outreach efforts all while**
- **Limiting reversions to 25-30% (currently at 43% of cases referred for appeal)**