

CONTINUING LEGAL EDUCATION

Parent Representation in Missouri Child Welfare Cases: Emerging Issues in the Field

Friday, March 7, 2025 | 8:30 a.m. – 3:15 p.m. CST

7.2 CLE Credits including 1.2 Ethics Credits and 1.2 Elimination of Bias Credits

8:30 a.m. | Welcome

8:40 a.m. – 9:40 a.m.

Prepetition Advocacy

Alexandria Cinney

Staff Attorney, ABA Legal Representation Projects

9:40 a.m. – 10:40 a.m.

Challenging placement on Missouri's Child Abuse and Neglect Registry

Kathleen DuBois

Parent Attorney since 1999, St. Louis, Missouri

10:40 a.m. – 10:55 a.m. | Break

10:55 a.m. – 11:55 p.m.

Representing parents regarding permanency when reunification is ruled out.

Advocating against TPRs with a focus on permanency options including guardianship.

Josh Gupta-Kagan

Clinical Professor of Law, Columbia Law School

11:55 a.m. – 12:55 p.m.

Representing Incarcerated Parents

Kathleen Creamer

Managing Attorney - Family Advocacy Unit, Community Legal Services of Philadelphia

12:55 p.m. – 1:15 p.m. | Break

1:15 p.m. – 2:15 p.m.

Exploring the Concept of a Family Defender Office and State Office of Parent Representation

Gwendolyn Clegg

Director, Family Representation and Advocacy Program, Oklahoma Office of Family Representation

2:15 p.m. – 3:15 p.m.

Duties to Clients at Family Court – confidentiality, competence, diligence, zealouslyness

Laurie Snell

Parent Attorney since 1997, Jackson County, Kansas City, Missouri

HOSTED BY



www.missouriappleseed.org

Visit our website for an archive of past CLE programs and resources.

Pre-Petition Legal Advocacy

MISSOURI APPLESEED CLE

Alex Cinney, Staff Attorney

ABA Center on Children & the Law

March 7, 2025

INTRODUCTION



AGENDA

- Defining PLA
- The Value of PLA
- Key Functions of PLA
- PLA Models
 - Key Considerations
- Funding PLA Programs
- Data & Outcomes
- Resources

WHAT IS PREVENTIVE LEGAL ADVOCACY?

Preventive legal advocacy

Early family defense

Pre-petition

THE VALUE OF PLA

Rooted in community

Broadly defines success

Avoids unnecessary court involvement

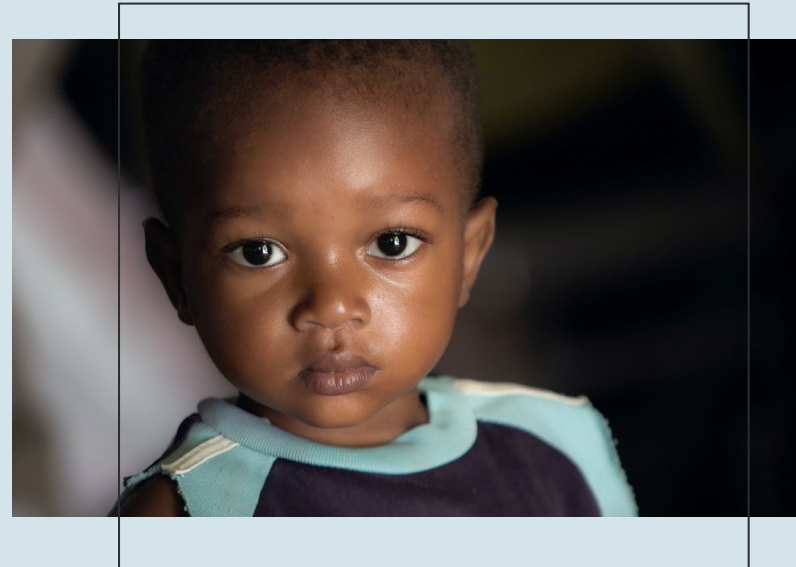
Combats predictors of child welfare involvement & engages underlying causes

KEY FUNCTIONS OF PLA



Address

Upstream legal issues that directly affect the ability of the parent or caregiver to provide for the child's safety, permanence, and well-being



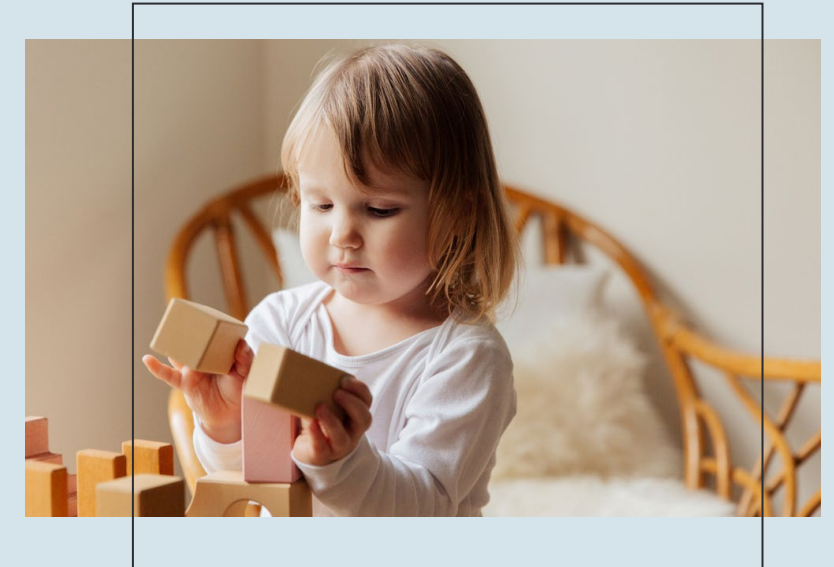
Prevent

Trauma caused by unnecessary investigation and separation of families



Distinguish

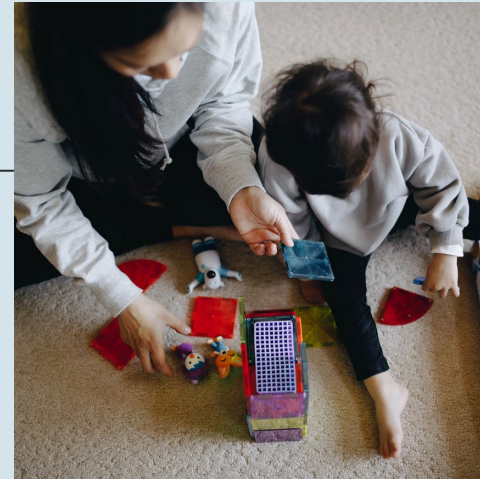
Poverty-driven obstacles from statutory "neglect"



Collaborate

Using a multidisciplinary approach to address multifaceted and intersectional issues affecting families

PLA MODELS



Family Civil Legal Aid

- Existing legal aid and services offices
- Address family civil legal needs
- Multidisciplinary teams
- Offices generally do not represent parents in child welfare proceedings

Medical -Legal Partnerships (MLPs)

- Partner with hospitals or in-home nursing programs
- Referrals for pregnant or parenting families
- Partnered legal services


Community - Partnered Programs

- Independent program
- Contract/full -time attorneys
- Multidisciplinary model
- Holistic advocacy

Law School Clinics

- PLA programs administered through law schools and/or social work clinics

PLA MODELS - KEY CONSIDERATIONS

- 
- A background image showing the silhouettes of four people standing on a beach, holding hands and raising their arms in a gesture of unity or celebration. The scene is set against a bright sunset or sunrise over the ocean, with the sun low on the horizon and its light reflecting on the water. The overall tone is positive and collaborative.
- Capacity for multidisciplinary model
 - Build & support
 - Identifying your client
 - Parent
 - Child
 - Family
 - Conflicts of interests that may arise
 - Ethical obligations
 - Referral source
 - Agency
 - Mandatory reporters
 - Community members
 - Law enforcement
 - Local courts
 - Community relationships & engagement with existing organization
 - Public awareness of program
 - Information shared directly with community members
 - Agency buy-in
 - Existing collaboration
 - Capacity to provide trainings
 - Reminders
 - Updates on program impact

PLA PROGRAM #1

Parent Representation Project
Iowa Legal Aid

Structure

- Interdisciplinary team

Services

- Legal advice & support
- Civil legal services
- Referrals

Referral source

- Iowa Department of Human Services
- Contracted service providers

Funding source

- CIP and private funding



PLA PROGRAM #2

First Call for Families

Dependency Advocacy Center (DAC), Santa Clara, California

Structure

- Interdisciplinary team
- Collaborative effort

Services

- Warm line
- Know Your Rights
- Individualized support

Referral source

- Self-referral, DFCS social workers, Family Resource Centers, community-based organizations

Funding source

- Partnership with Department of Family and Children's Services in Santa Clara County



PLA PROGRAM #3

F.I.R.S.T. Clinic

Snohomish County, Washington

Structure

- Interdisciplinary team

Services

- Legal advocacy during investigation
- Assistance obtaining community supports
- Ancillary legal issues
- Concrete goods

Referral source

- Medical providers
- Community partners
- Department of Children & Families

Funding source

- State and private foundation



PLA PROGRAM #4

Family Advocacy and Prevention Project
University of Miami School of Law

Structure

- Law school clinic

Services

- General advice
- Filing court forms
- Representation or referral

Referral source

- Community referrals
- Agency referrals

Funding source

- Equal Justice Works Fellowship



PLA & PRE - PETITION NATIONAL COHORT

Barton Child Law and Policy Center's
Preventive Legal Advocacy & Pre -Petition
National Cohort

Emilie Cook

bartoncenter.net/preventive-legal-advocacy

- Community
- Resources
- Presentations
- Sample materials
- PLA map



FUNDING SOURCES

Federal & State Funding

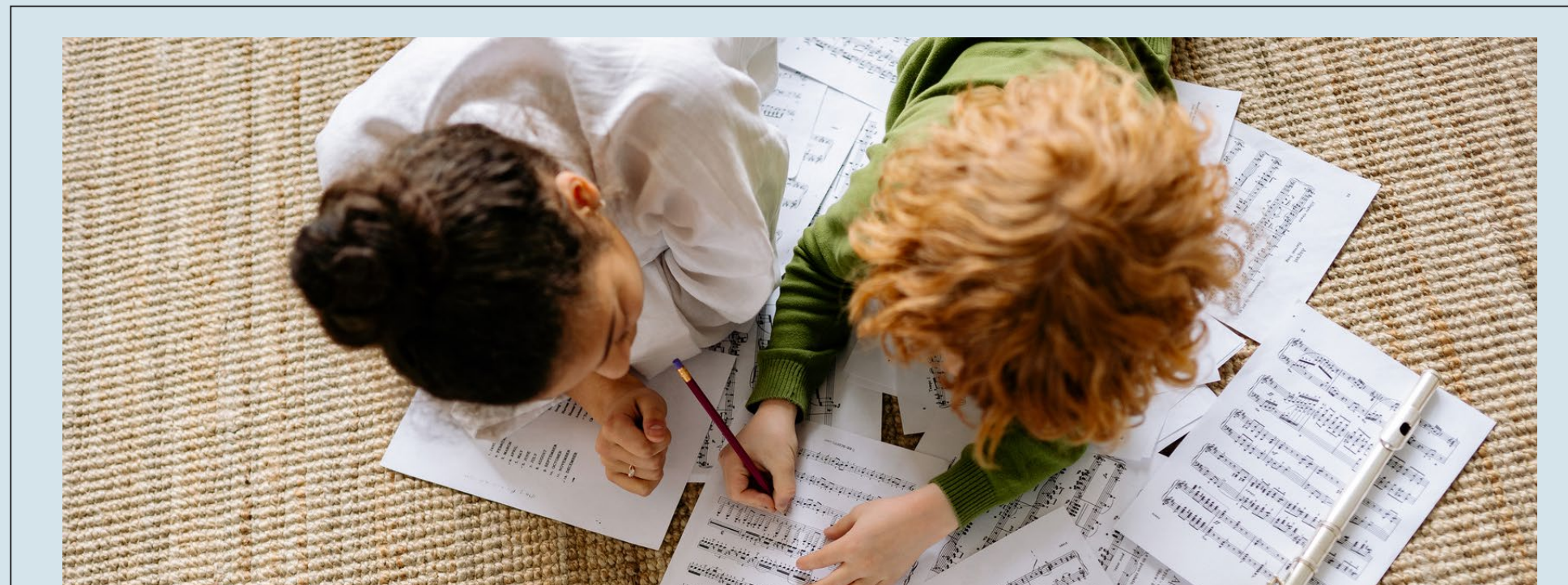
- Government grants
- State budgets
- Title IV -E Reimbursements
- Court Improvement Programs
- Agency funding
- City and county budgets
- Victims of Crime Act Funds

Private & Philanthropic Funding

- Foundation grants
- Private donations
- Corporate Sponsorships

Innovative Funding Models

- Social impact bonds (pay - for -success models)
- Medical -Legal partnerships
- Sliding Scale & Fee -for Service



DATA & OUTCOMES MEASUREMENT

Demonstrating impact through metrics is key to sustaining and expanding funding sources.

- Outreach efforts
- Know Your Rights presentations
- Direct referrals
- Assess family needs
- Individualized support
- Outcomes
- Focus groups



LESSONS FROM FUNDING SUCCESSES

Demonstrate

cost savings

Reducing foster care placement can justify funding

Leverage

federal & state funds

Engage legislators

Connect with national partners

- Barton Child Law & Policy Center
- NACC
- ABA

Build

strong partnerships

County collaborations

Identify potential allies & partnerships

Build base in community

Develop quick & accurate referrals

Measure

& share outcomes

Track & report impact

RESOURCES

Model Programs

- [Parent Representation Project](#)
- [First Call for Families, DAC](#)
- [F.I.R.S.T. Clinic](#)

National Cohort

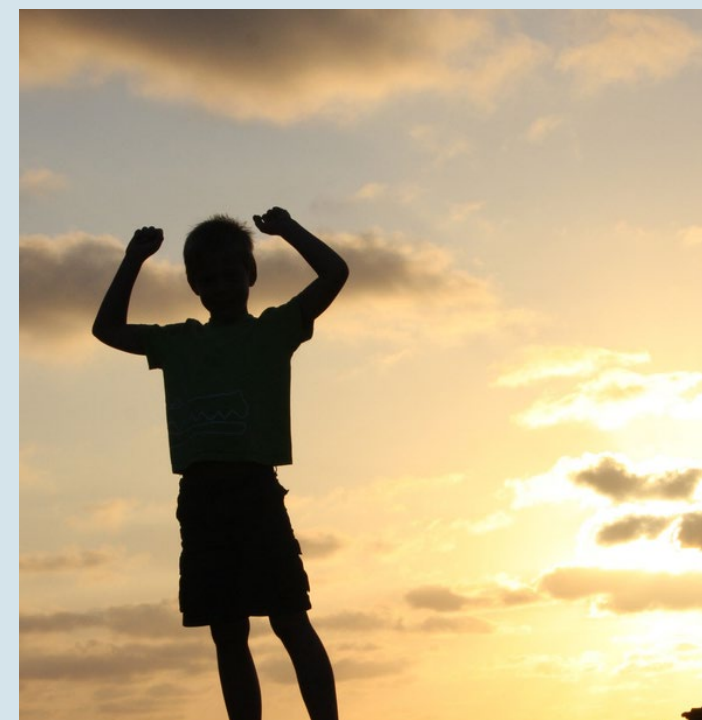
- [Barton Child Law and Policy Center's Preventive Legal Advocacy & Pre -Petition National Cohort](#)

Know Your Rights

- [CWARE Toolkit](#)

ABA Resources

- [Pre-petition Legal Representation Page](#)
- [Law Clinic Model for PLA](#)
- [Judge's Action Alert](#)
- [Pre-petition Legal Representation Panel](#)



Thank you!

ALEXANDRIA.CINNEY@AMERICANBAR.ORG

Alex Cinney, Staff Attorney

ABA Center on Children & the Law

alexandria.cinney@americanbar.org

Missouri's Hotline and Registry System for Child Abuse and Neglect



Child Abuse/Neglect Registry – The Problem and Consequences

Why should I care about this kind of case? This system grew out of a belief in the 1960s that people who abused children were very sick or very evil such that they couldn't be helped, and that they needed to be branded as such.

Missouri has a particularly rigid mandatory reporting system that applies to persons suspected of having harmed or neglected a child. Missouri's Registry is not just life long, it is permanent. Once a person is listed, there is no legal process to remove them, no matter the triviality of the accusation. There are more people on Missouri's Registry than there are residents in the state of Missouri.

Employers seek and receive state background checks for current or prospective employees. Clean backgrounds are a requirement for employment in industries ranging from medical care to education to public contact jobs. Accordingly, those on the Registry will be prohibited from certain jobs, unable to make a living, to support their families or to interact with children.

This “stigma, plus”, with the rights that apply to this process, is acknowledged by Missouri courts in *DSS v. Jamison*.

Reports of Abuse/Neglect

Missouri has an 800 number for callers wishing to report abuse or neglect of a child. By far, most reports involve neglect.

§ 210.145 gives Children's Division responsibility for establishing and maintaining a Child Abuse and Neglect Hotline and Registry. For practitioners, be aware that state regulations apply as well: **13 CSR 35-31.010 – 13 CSR 35-31.100**. (Missouri's Child Welfare Manual provides some guidance for CD, but courts have declared it not legally binding. www.dssmanuals.mo.gov.)

Calls go to a central phone network in Jefferson City, and complaints are then routed to the local CD office for investigation.

CD maintains a separate staff of investigators specifically to look into the reports. The time for response is based on the seriousness of the allegation.

Mandated Reporters

Members of certain occupational groups, such as teachers, social workers, and physicians are mandated by law to make reports to the hotline and are considered mandated reporters. For a complete list of mandated reporters, please review [RSMo 210.115.1](#). Their reports are not anonymous.

Members of the public who are not mandated reporters and who call the hotline may remain anonymous.

Investigations

Depending on the seriousness of the allegation and considerations such as continued risk to the child, a report may be considered either an “investigation” or CD may offer the family “prevention” services. Various consequences may arise from these alternatives.

(IMPORTANT! Bear in mind that CD may not remove a child. If the investigator is accompanied to the home by a police officer, the officer may remove a child. Likewise, a doctor or medical facility may remove the child.)

If the allegation is not deemed an investigation, CD does NOT make a determination that abuse or neglect occurred. The child may not be removed in that case, and CD will not refer the family to Family Court for a civil case alleging child abuse/neglect. Instead, it may either (1) open a file and give preventative services to the family, or (2) persuade the parent(s) to agree to “hidden foster care” where the child goes to live with a relative or friend. Voluntariness is always a legal issue in that case. See Josh Gupta-Kagan, *America’s Hidden Foster Care System*, 72 Stan. L. Rev. 841 (2020).

Investigations

If the matter is declared an investigation, the CD investigator will interview those with knowledge of the allegation in order to determine whether the abuse will be “substantiated” or “unsubstantiated.”

The investigator maintains a file that should be provided to counsel by means of a document request.

At the conclusion of the investigation, the investigator determines whether the abuse is substantiated. **The standard that applies is preponderance of evidence.** See *Jamison v. DSS*, 218 S.W.3d 399 (Mo banc 2007).

There is no consequence to the agency if the investigation takes longer than the statutory limits.

Investigations

At the point of substantiation, the CD investigation case becomes an administrative action, parallel to the civil child abuse/neglect court case. They are both forms of family policing, prosecuted separately by different branches of government.



Civil court case against client



Administrative agency case

This is the track we are talking about.

Your Client Interview

Counsel, please note:

- Most clients with children in foster care are not aware of the second, administrative case, or of its severe consequences. **Yet depending on the outcome, the client may be barred from work, a prohibition that could last a lifetime.**
- Ask: Did your client receive a letter in the mail from CD? Notice is constitutionally mandated, but in a time of crisis, among all the paperwork from the court, one more item of mail may be ignored. (Did the client move?) There should be a record in the CD file. The letter will be numbered CS-21.
- The deadlines for each of the two cases will be different.
- The rules that apply to each are different.
- The consequences are very different.

Administrative Review Process

The CS-21 notice about the result of the investigation is a letter that goes to the person accused, sent by regular mail. It will state the alleged facts that led to the substantiation. Frequently lay people in crisis do not grasp the significance of the notice, so they ignore it.

On the reverse of the CS-21, appeal rights are explained. Your client may seek a review of the allegation before the Child Abuse and Neglect Review Board (CANRB) within 60 days of receiving the CS-21. This request can take the form of a letter from you to CD, or a letter from your client.

If no appeal request occurs within the 60 days, the accused's name will be placed on the Child Abuse Registry with no further right of appeal. This can harm that person's right to work in their chosen field, as a background check will reflect a history of child abuse.

Administrative Review Process

Jamison requires that CD offer certain processes before placing the accused on the Registry.

All administrative law requires that the claimant “exhaust all administrative remedies.”

When CD receives an appeal request from a hotline, the first administrative review goes to the Child Abuse and Neglect Review Board.

See 13 CSR 35-31.025

Administrative Review Process

The CANRB is not part of CD. It is an independent group appointed by the governor from among certain professions listed in the statute. Most are not attorneys.

Your preparation is vital in this process.

The CANRB holds administrative hearings at various locations statewide. The hearings are not informal, but the rules allow hearsay and affidavit evidence to be offered. There is no cross-examination. CD will refuse formal discovery such as depositions.

If the CANRB substantiates the finding from below, the accused will be named on the Registry at that point.

CD is resistant to discovery for the purpose of CANRB preparation.

Preparing for a CANRB Hearing

CD will schedule a hearing when it receives your request for appeal. In their letter, you will receive both a date for the hearing and a deadline to submit materials in advance of the hearing, both dates several months out. It will also advise you where the hearing will be held and provide instructions for appearing by telephone or in person.

It may help in prep to review the names and backgrounds of the members of the CANRB that will hear your case.

Witness affidavits are extremely important in preparation. The written materials are your opportunity to present your case despite the short time limit for the hearing – **save that time for your client's testimony!** In a letter to the CANRB Liaison with attachments - including eyewitness affidavits, photos and other documentation - present your evidence and written argument on behalf of your client. Make reference to the evidence. A timeline may help.

Make certain you have the entire CD file concerning your client, not just records relevant to your case.

CANRB Proceeding

The proceedings follow the same order, whether you choose a hearing in person or by phone. Have your client and any live witnesses prepared well ahead, particularly if proceeding by telephone.

If appearing in person, you may have to wait in turn after signing in. Usually, couples will be called to be heard together.

The Board members will introduce themselves, and you will introduce your client and any witnesses. An investigator from CD will testify first (commonly by phone) and will generally read from the CD account concerning the allegations. As the rules of evidence do not apply, he or she may range far afield in what they cover in testimony.

If you must call a live witness, keep their testimony short and to the point.

The real purpose of this hearing is to allow the Board members to assess your client's credibility and to let them ask questions of your client.

CANRB's Finding

An order, in a letter to counsel, will issue within a day or two.

If the finding is that the allegations are not true, your client will not be placed on the Registry.

If the allegation is found to be true, your client will be listed on the state Child Abuse and Neglect Registry.

The time then begins running for an appeal to circuit court.

Administrative Review Process

The next administrative remedy is a trial de novo before a Circuit Judge. The accused is the Petitioner for this proceeding, and you may file either

- in the county of their residence or
- in Cole County, the seat of administrative law for Missouri.

Counsel for Petitioner needs to decide whether local judges or one not familiar with the case but who has administrative law expertise should hear the case.

The burden to prove the case is still on the state agency, even though the state will be the Respondent.

The rules of evidence apply at this stage, and discovery per the Rules of Civil Procedure is permitted.

Trial De Novo

This is not a trial of the evidence that was before the CANRB. (There is no record kept of the CANRB proceeding.)

Literally a denovo trial is a trial held as though the case had not been tried before. This means that evidence that was not available before may be entered. It is difficult to determine whether the issues that CD decided before will involve the same or different evidence as that before the Circuit Court now.

Ask, what are the alleged facts?

Trial De Novo

As you have satisfied the requirement to exhaust your administrative remedies at this point, if you lose at Circuit Court, you are entitled to seek review of the Circuit Court's findings by the Court of Appeals and by the Missouri Supreme Court (if it agrees to grant review).

Other Helpful Facts

The Missouri Child Abuse/Neglect Registry is life-long. There is no process for a citizen to remove themselves from the Registry.

There are more names on the Registry than there are people residing in the state of Missouri. Many of them are dead.

There is a “good cause waiver” that Children’s Division may be willing to provide to those who have a substantiated finding against them. A CD worker needs to agree to provide it, but this may allow the person to take one specific job that would otherwise be prohibited to them.

Important State Statutes

Section 210.110, RSMo.

- Definitions of abuse; neglect; care, custody, and control; assessment, investigation, central registry, preponderance of evidence

Section 210.115, RSMo.

- Mandated reporter law

Section 210.118, RSMo.

- Court notification of court adjudication

Section 210.145, RSMo.

- Hotline, investigation, assessment procedures

Section 210.150, RSMo.

- Confidentiality of CD records, and exceptions

Cases and Articles

Jamison v. DSS, 218 S.W.3d 399 (Mo. banc 2007) due process applies to Registry.

Gary B. Melton, *Mandated reporting: a policy without reason*, 9–18 Child Abuse & Neglect 29
Institute on Family and Neighborhood Life, Clemson University, (2005)

Regulations

[Section 13 CSR 35-31.020 - Screening and Classification of Child Abuse/Neglect Hotline Reports](#)



Fighting to preserve family relationships when reunification is ruled out

Josh Gupta-Kagan
Clinical Professor of Law
Columbia Law School

igupta-kagan@law.columbia.edu

March 7, 2025

What's at stake: Con Law

- Right to parent “perhaps the oldest of the fundamental liberty interests recognized.” Troxel v. Granville, 530 U.S. 57, 65(2000)
- Right “does not evaporate simply because the parents have not been model parents or have lost temporary custody of their children to the state.” Santosky v. Kramer, 455 U.S. 745, 753 (1982)
- “Few consequences of judicial action are so grave as the severance of natural family ties.” Santosky v. Kramer, 455 U.S. 745, 758 (1982)



What is Termination of Parental Rights

“Unique kind of deprivation” “Civil
Death Penalty”

Permanently deprives a parent of their
right to direct the care of their children

No right to visit or gain information
about their children

Cuts off children’s rights to see
siblings, extended family members

Supreme Court on TPRs

“Few forms of state action are both so severe and so irreversible.”

“[T]he parents and the child share an interest in avoiding erroneous termination.”

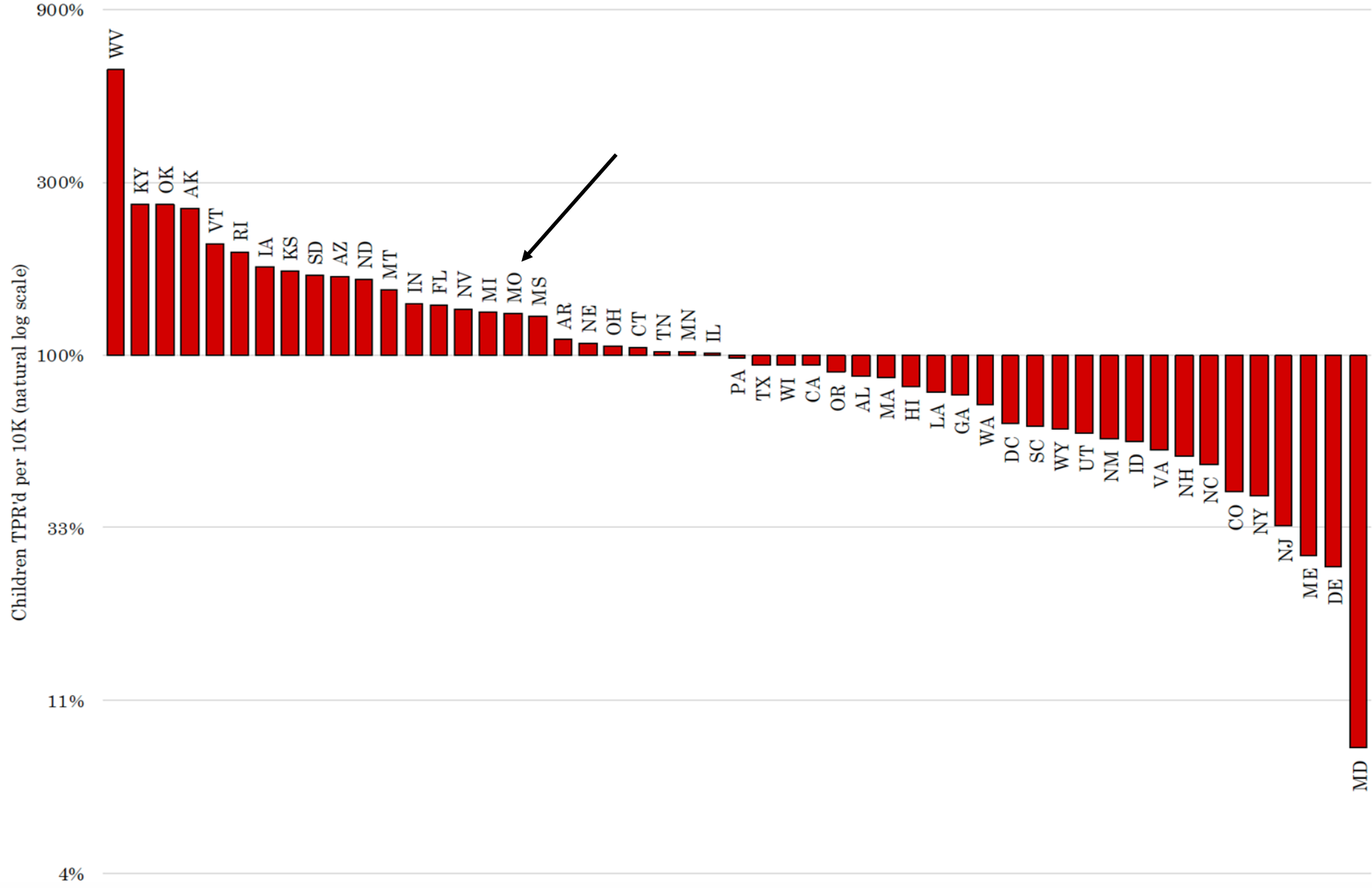
“[TPR] proceedings employ imprecise substantive standards that leave determinations unusually open to the subjective values of the judge.”

“Because parents subject to termination proceedings are often poor, uneducated, or members of minority groups, such proceedings are often vulnerable to judgments based on cultural or class bias.”

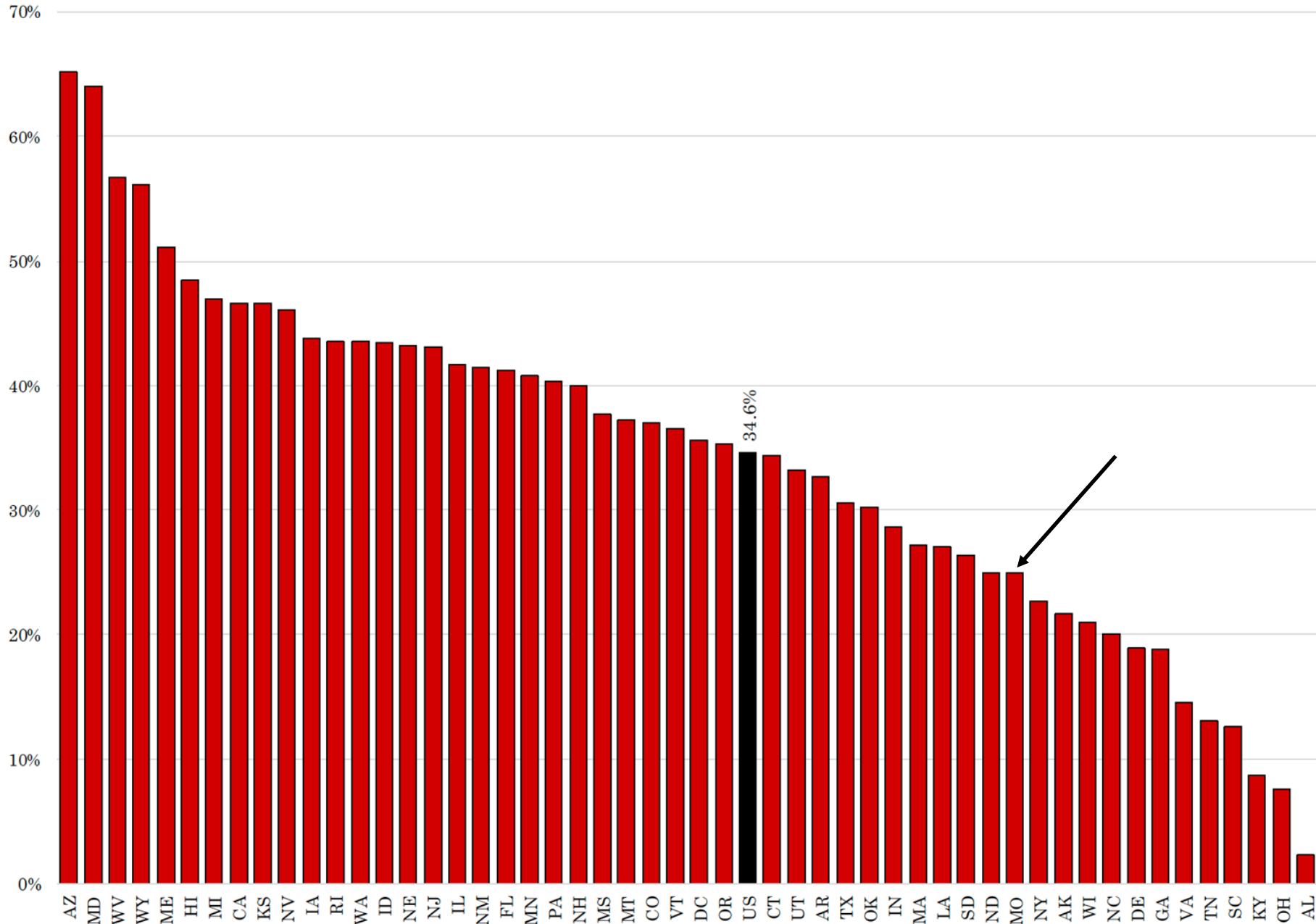
Lots of TPRs & Lots of State Variation

- Child protection system ends the legal relationship between parents and children more than 50,000 times each year.
- State variance is significant: West Virginia TPRs the most. Maryland TPRs the least.
- Disparities by race: During 2019 FFY, the rate of TPR for white, non-Hispanic children was 8.5 per 10K, compared to 94 per 10K for children of color.
- Disparities by time: Among children who experienced TPR in 2019, the median time from removal to TPR was just shy of 18 months. But Texas, West Virginia and Utah all completed more than 50% of TPRs within 1 year of the child's removal.
- Disparities by other circumstances: parental disability, immigration status, incarceration

Number of Children TPR'd During the 2022 FFY per 10K, by State
 Expressed as a Percent of the Nat'l Rate (6.9 per 10K), NDACAN AFCARS File



Percent of TPR's where Child was Living w/ a Relative at Time of TPR
NDACAN AFCARS File, Children TPR'd during 2022 FFY



Missouri TPRs vs. Guardianships #s

- Children TPRed and adopted: 1,404.
- Children who entered guardianships: 1,304.

Source: MO AFCARS Report FY'23 <https://www.acf.hhs.gov/sites/default/files/documents/cb/afcars-tar-mo-2022.pdf>


Does MO TPRs create legal orphans?

- Children with a permanency plan of adoption: 2,304
- Children TPRed and adopted: 1,404.
- Children TPRed and “waiting”: 795
 - For an average of 21.7 months
 - Average time from TPR to adoptions: 6.6 months
- Children “emancipated”: 619



Why TPR?

Might lead to a child's adoption (with associated financial and other benefits)



Might be necessary to protect a child from further physical or emotional harm



Concerns about TPR

Does not lead to permanency for children. Of the 52,000 children subject to TPR (nationally), 12% were not adopted.

Unnecessary when there are other forms of permanency that don't require TPR, such as a permanent guardianship. One third of all children TPRed were living with relatives. 54% children of color TPR'd were living with relatives.

Causes unnecessary emotional harm to children and their parents. Many children want relationships with parents even when parents cannot have physical custody of them.

TPRs take time and are costly.



Loss

- Ambiguous loss can “raise lifetime of questions for children about their identities.” (Samuels 2009)
- Ambiguous losses create feelings of confusion, helplessness and immobilization. (Lee & Whiting 2007)
- Children maintain significant psychological ties to birth families even after adoption, and grieve those losses. (Johnson 1996; Beyer & Mlyniec 1986)

Resilience

- Young adults who reported connections with **both** birth parents and parental figures showed relatively high levels of competence and low vulnerability in young adulthood.
- Group with **best outcomes** had relationships with **both** birth parents and parental figures.
- “Even when youth no longer live with their biological parents, some birth parents can serve as unique sources of care and support around relational permanence.”

Cushing, Samuels, Kerman (2014)





Discontinuity and Disruption in Adoptions and Guardianships

A stable, permanent home is critical to providing children with the best opportunity to thrive. Living with their birth families is the most desired option in nearly all cases, but there are situations when adoption or guardianship is the best path toward safety and permanency. Although most adoptions or guardianships remain intact, some will terminate prior to finalization (disruptions) or may terminate or be temporarily interrupted after finalization (discontinuity).

This brief reviews the incidence and contributing factors for discontinuity and disruptions in adoptions and guardianships from foster care. It also discusses discontinuity and disruptions in intercountry adoptions as well as related topics, such as the effects of discontinuity and disruptions and unregulated custody transfers (UCTs).

WHAT'S INSIDE

Definitions

Effects of placement instability

Discontinuity

Disruptions

Unregulated custody transfers

Conclusion

Additional information

References



“Permanency”?

- “It is estimated that approximately 10 to 25 percent of adoptions disrupt prior to finalization.”
- “Studies show that approximately 1 to 10 percent of all adoptions from foster care end due to dissolutions.”

IM 21-01



- “Emphasizing a child’s attachments and connections while ensuring safety, rather than solely prioritizing timeframes . . . will serve to strengthen and preserve families.”
- “Children in foster care should not have to choose between families. We should offer them the opportunity to expand family relationships, not sever or replace them.”
- “Children do not need to have previous attachments severed in order to form new ones.”

The slide features decorative elements consisting of several circles of various colors (light blue, teal, purple, orange, pink) scattered in the top-left and bottom-right corners. The main title 'Guardianship' is positioned in the upper left area, with a small cluster of blue and teal circles to its left.

Guardianship

- ✓ Custody to a third party
- ✓ Maintains parent-child relationship
- ✓ Just as stable as adoption (especially controlling for age and disability)

Litigating against TPRs

- ✓ Rule out Guardianship *before* considering TPR/Adoption
- ✓ Avoid creating legal orphans
- ✓ Strict scrutiny
 - ✓ What is the compelling government interest?
 - ✓ Is a TPR narrowly tailored to that interest?
- ✓ Especially strong fact patterns:
 - ✓ No identified adoptive family; legal orphanhood is possible/likely
 - ✓ Child in relative placement
 - ✓ Anytime guardianship is possible
 - ✓ The parent-child relationship demonstrably has significant value

Challenges in Children's Division Policy

- CD Child Welfare Manual: Guardianship is appropriate “where neither family reunification nor adoption is feasible.”
 - <https://dssmanuals.mo.gov/child-welfare-manual/section-4-chapter-9-adoption-and-guardianship-process-subsection-5-guardianship-planning-process/>

Legislating against TPRs

(f) That continuation of the parent and child relationship clearly diminishes the child's prospects for early integration into a stable and permanent home. In making this determination, the court must consider the efforts taken by the department to support a guardianship and whether a guardianship is available as a permanent option for the child. If the parent is incarcerated, the court shall consider whether a parent maintains a meaningful role in his or her

a child from an overt act or condition that constitutes egregious harm.

Subd. 3. Termination of parental rights; exceptions. (a) The court may terminate the parental rights of a parent of an African American or a disproportionately represented child if a transfer of permanent legal and physical custody under subdivision 1 is not possible because the child has no willing or able noncustodial parent or relative to whom custody can be transferred, if it finds that one or more of the following conditions exist:

Minnesota African American Family Preservation
and Child Welfare Disproportionality Act (2024)

[¶45] The caseworker for the Department testified that she considered a permanency guardianship, but there is nothing in the record regarding any

e Presentation

In the Child of Barni A, Maine Supreme Court, 2024

27

follow up or advocacy for this option by the Department, the GAL, or the mother's attorney. Permanency guardianship in this case might have been a viable option and in the best interest of the child, without the need to terminate the mother's parental rights.

Ex Parte DH

Alabama Supreme Court, March 2024

To satisfy this Court's test for **termination of parental rights**, DHR must prove, by clear and convincing evidence, (1) that adequate legal grounds [*7] exist for the **termination of parental rights** and (2) that no viable alternative to the **termination of parental rights** exists. [Ex parte Beasley](#), 564 So. 2d 950, 952 (Ala. 1990); [Ex parte T.V.](#), 971 So. 2d 1, 4-5 (Ala. 2007). This test is based on the constitutional requirement that strict scrutiny be applied to decisions to terminate fundamental parental rights. [Ex parte E.R.G.](#), 73 So. 3d 634, 646 (Ala. 2011); [Ex parte Bodie](#), [Ms. 1210248, Oct. 14, 2022] 377 So. 3d 1051, 2022 Ala. LEXIS 99 (Ala. 2022) (Parker ▼, C.J., concurring in part and concurring in the result). Based on the facts before us, DHR utterly failed to meet the second element of this test. There is no argument before this Court that a permanent placement with T.W. was not a viable alternative to the termination of the father's parental rights.

Resources

- ABA, The End TPR Initiative, https://www.americanbar.org/groups/public_interest/child_law/project-areas/end-tpr-initiative/?login
- U.S. Children's Bureau, *Discontinuity and Disruption in Adoptions and Guardianships* (2021) <https://www.childwelfare.gov/resources/discontinuity-and-disruption-adoptions-and-guardianships/>
- U.S. Children's Bureau, *Achieving Permanency for the Well-being of Children and Youth*, IM-21-01 (2021), <https://www.acf.hhs.gov/cb/policy-guidance/im-21-01>
- Vivek S. Sankaran & Christopher E. Church, *The ties that bind us: An empirical, clinical, and constitutional argument against terminating parental rights*, 2023 Fam. Ct. Rev. 1 (2023)
- Christopher Church & Vivek Sankaran, *Applying Strict Scrutiny in Termination of Parental Rights Proceedings: Why Alabama's Jurisprudence Should Reshape Child Protection Practice*, 76 Ala. L. Rev. 383 (2024).
- Josh Gupta-Kagan, *The New Permanency*, 19 U.C. Davis J. Juv. L. & Pol'y 1 (2015).



Representing Incarcerated Parents In Dependency Cases

Kathleen Creamer
Managing Attorney, Family Advocacy Unit
Community Legal Services of Philadelphia



OVERVIEW

- ❖ Understanding Mass Incarceration
- ❖ Rights of Incarcerated Parents
- ❖ Law & Best Practice:
 - ❖ Reasonable Efforts
 - ❖ Visitation
 - ❖ Right to Counsel
 - ❖ Participation in Court Proceedings
 - ❖ Permanency/TPR

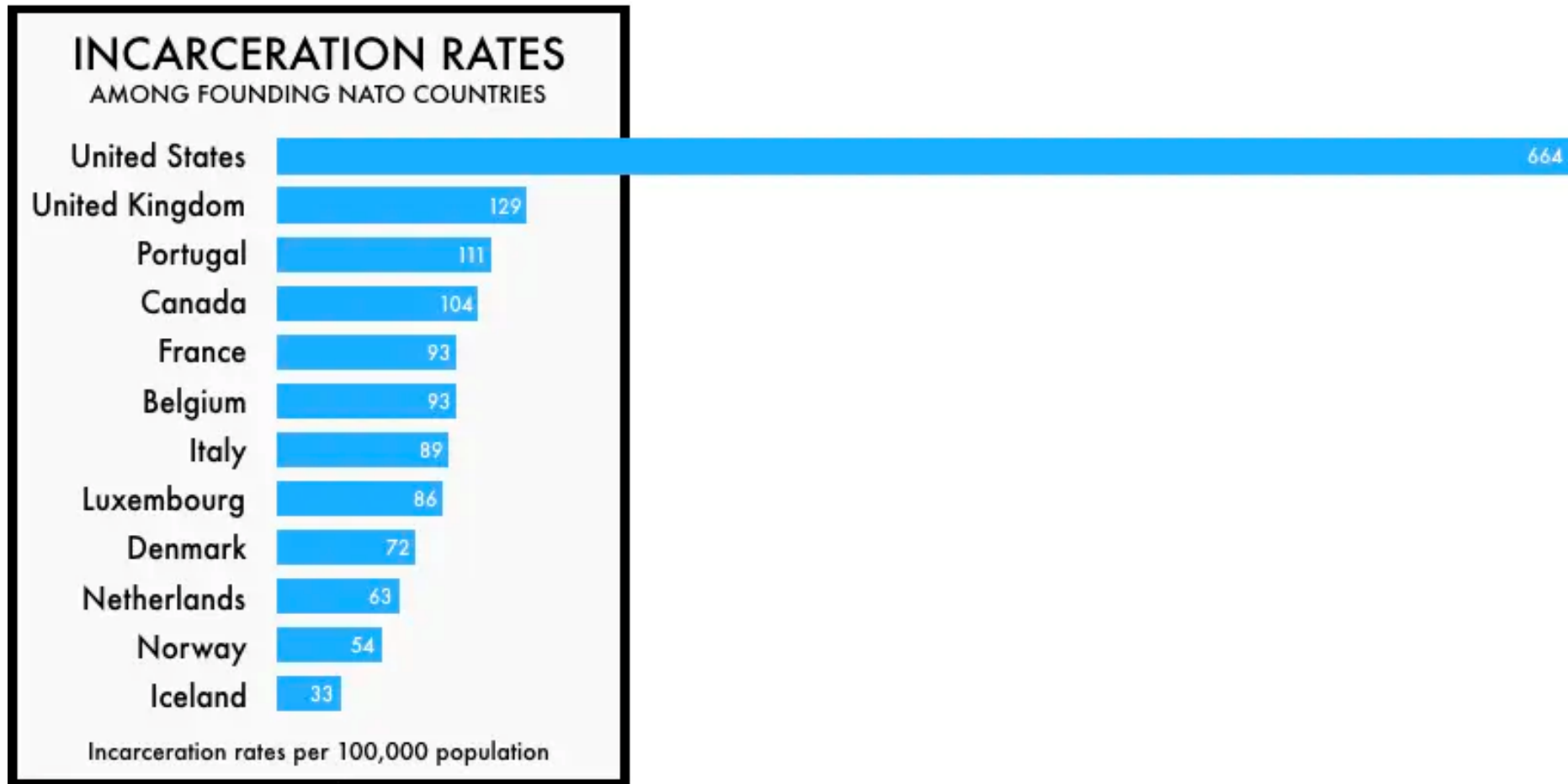




Understanding Mass Incarceration



U.S. LEADS THE WORLD IN INCARCERATION

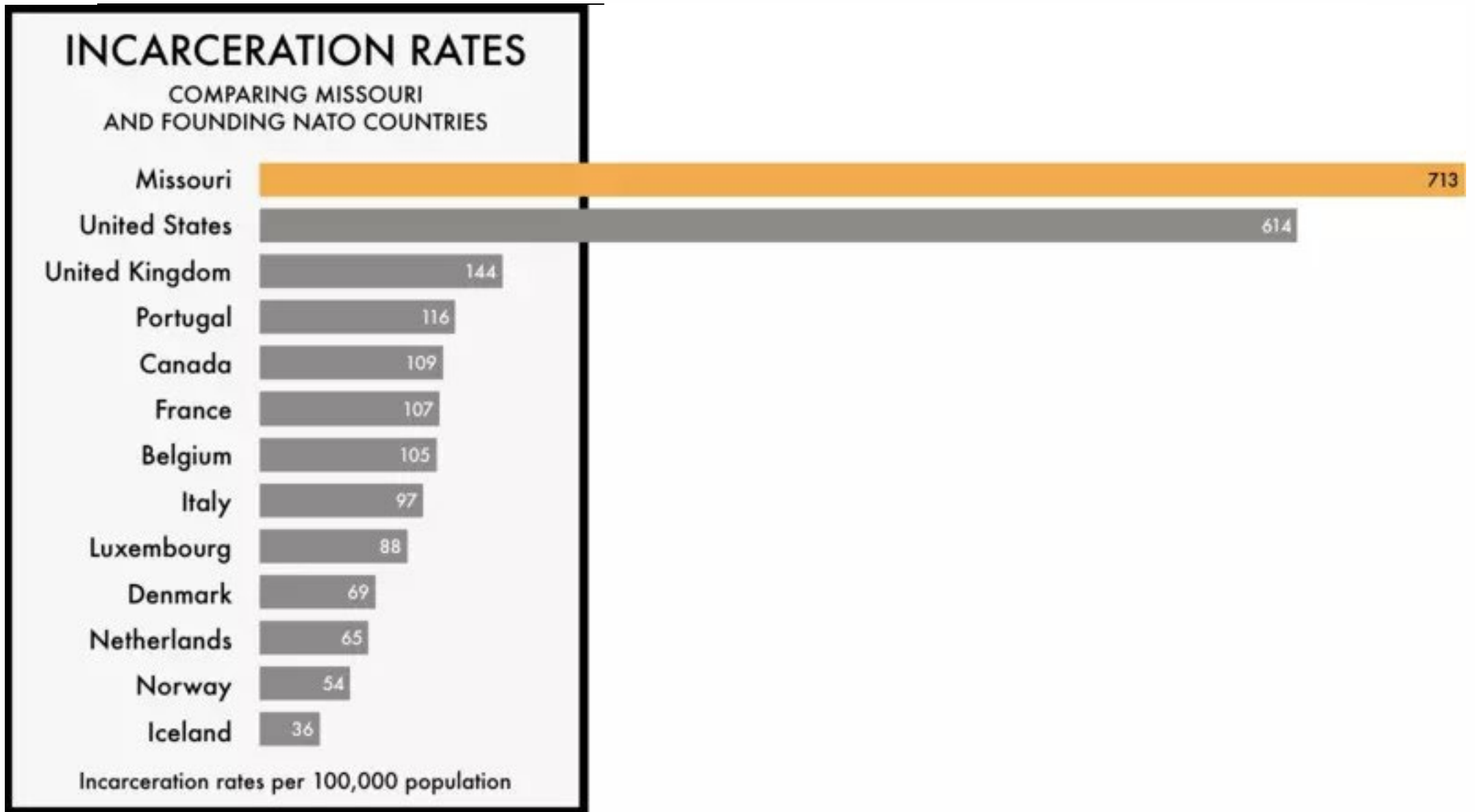


Source: <https://www.prisonpolicy.org/global/2021.html>

Source: State of Incarceration: The Global Context 202, Prison Policy Initiative

<https://www.prisonpolicy.org/global/2021.html>

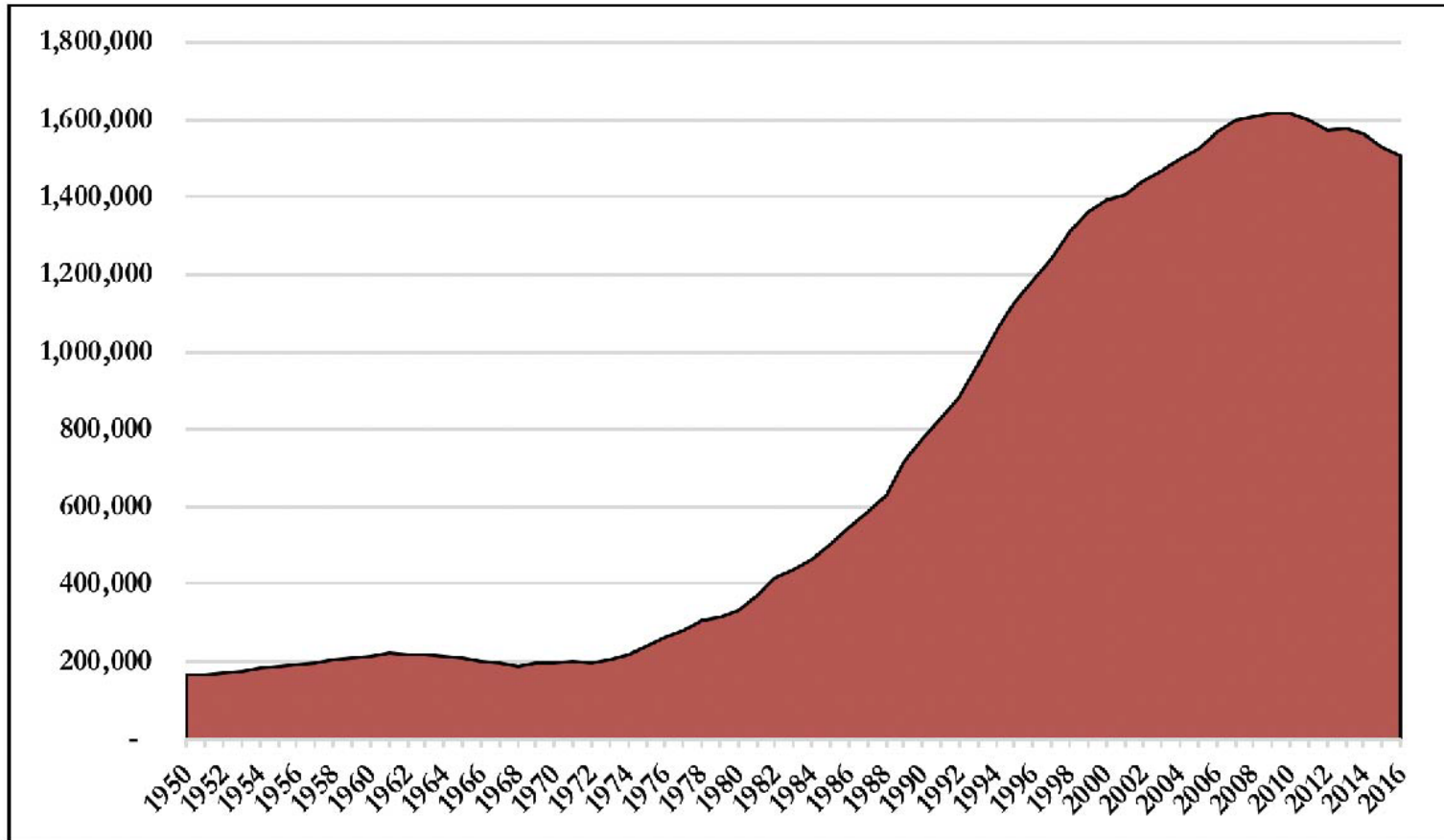
MISSOURI ALSO LEADS THE WORLD IN INCARCERATION



Source: <https://www.prisonpolicy.org/global/2024.html>

RISING RATES OF INCARCERATION

Prison System Growth (1950-2016)



Source: Brennan Center: The History of Mass Incarceration

<https://www.brennancenter.org/our-work/analysis-opinion/history-mass-incarceration>



Rights of Incarcerated Parents



RIGHTS OF INCARCERATED PARENTS

In general, Federal and State laws do not distinguish between the rights of incarcerated parents and other parents regarding regular visits and contact with their children, engagement in case planning and the court process, and reasonable efforts to support reunification. Even when reunification appears challenging due to the parent's length of incarceration, child welfare agencies are required to pursue reunification if there is no court order directing them otherwise. Caseworkers should engage incarcerated parents early and often, from the time of arrest until release.

Child Welfare Information Gateway. (2021). [Child welfare practice with families affected by parental incarceration](#). U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau.

RIGHTS OF INCARCERATED PARENTS

Incarcerated parents have the same rights, as those parents who are not incarcerated... to fully participate in the court process, to fully participate in case planning, to require the agency to make reasonable effort towards reunification, and to have visitation and contact with their children.

Administrative Office of Pennsylvania Courts
Office of Children, Family & the Courts

<https://ocfcpacourts.us/childrens-roundtable-initiative/state-roundtable-workgroupscommittees/dependent-children-of-incarcerated-parents/>

RIGHTS OF INCARCERATED PARENTS

[Video: Parents In Prison Are Losing Their Kids Forever | NBC Left Field](#)

<https://www.youtube.com/watch?v=FUEIqIDFgt0>

RIGHTS OF INCARCERATED PARENTS

Discussion:

What rights did Laurie and Corey have? What rights did their children have? How were those rights protected (or not)?

How could a lawyer have helped them?

Law & Best Practice



REASONABLE EFFORTS

WHAT ARE REASONABLE EFFORTS FOR
INCARCERATED PARENTS?

REASONABLE EFFORTS

Reasonable Efforts:

- Supporting parent-child relationship through visits, letters and phone calls
- Involving the parent in case planning
- Engaging the parent in decision-making for their child
- Keeping the parent informed about their child and the progress of their case
- Supporting the parent in completing case plan goals but during incarceration and as they transition back to the community after incarceration

Child Welfare Information Gateway. (2021). [Child welfare practice with families affected by parental incarceration](#). U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau.

REASONABLE EFFORTS

For incarcerated parents, Children's Service Worker must:

- Obtain information about the location of the incarcerated parent and the length of sentence
- Visit the parent and/or attempt phone contact with parent
- Involve the parent in the assessment process to begin building the social service plan
- Mail information to the parent's facility, including a regular Notice to Incarcerated Parent update form

[Missouri Department of Social Services Child Welfare Manual](#),
Section 4, Chapter 6

REASONABLE EFFORTS

REASONABLE EFFORTS STRATEGY: LOCATING THE INCARCERATED PARENT



LOCATING INCARCERATED PARENTS

START WITH:

vinelink.com

LAW & BEST PRACTICE

VISITATION & CONTACT



VISITING & CONTACT

Discussion:

Why is In-Person Visitation Important for Child Well-Being?

VISITING & CONTACT

- ❖ Children of incarcerated parents experience trauma and loss characterized by feelings of grief, shame and isolation
- ❖ Visitation can help a child's emotional adjustment and behavior
- ❖ When the incarcerated parent was the primary caregiver, visiting is especially crucial to addressing the trauma of separation

“Why Maintain Relationships,” National Resource Center on Children and Families of the Incarcerated, <https://nrccfi.camden.rutgers.edu/files/cipl102-whymaintainrelationships.pdf>

VISITING & CONTACT

Strategies for Maintaining Contact?

- Visitation
- Video-conference visitation*
- Phone calls
- Letter writing
- Cards/drawings
- Videos of parent reading/talking to child

*“While video visits can be a valuable supplement to in-person visits or serve as a substitute for connecting when visits are not possible, they should not replace in-person visits entirely. For more guidance on facilitating and supporting virtual visits.” Child Welfare Information Gateway. (2021). [Child welfare practice with families affected by parental incarceration](#). U.S. Department of Health and Human Services, Administration for Children and Families, Children’s Bureau.

LAW & BEST PRACTICE

CASE PLANNING



CASE PLANNING

The case plan for each child must:

(1) Be a written document, which is a discrete part of the case record, in a format determined by the title IV-E agency, which **is developed jointly with the parent(s) or guardian** of the child in foster care

45 C.F.R. § 1356.21

CASE PLANNING

Including the Parent in the Case Plan:

- Video conference
- In-person meeting to develop
- Phone conference

Bottom Line: It is a conversation!

CASE PLANNING

What Kind of Case Plan Objectives Could a Parent Accomplish in Jail/Prison?



CASE PLANNING

Many Jails & Prisons Now Offer:

- Parenting Classes
- Drug Treatment Classes
- Vocational Classes
- GED
- Anger Management
- Individual Therapy
- Medication Management
- & more!

LAW & BEST PRACTICE

PARTICIPATION IN COURT PROCEEDINGS
&
RIGHT TO COUNSEL



PARTICIPATION IN COURT PROCEEDINGS

There is no constitutional right to appear in person at a civil trial. Call v. Heard, 925 S.W.2d 840, 846 (Mo. banc 1996). There is also no statutory right. Although § 491.230.2(1) allows an incarcerated parent to seek a writ of habeas corpus ad testificandum to appear and attend a trial on termination of the person's parental rights, an incarcerated parent does not have an unequivocal right to such writ upon request. Issuing the writ is within the discretion of the circuit court.

In Interest of J.P.B., 509 S.W.3d 84, 97 (Mo. 2017)

RIGHT TO COUNSEL

Parents have a right to counsel in juvenile neglect and TPR proceedings.

Mo. Rev. Stat. Ann. § 211.211 and § 211.462

PERMANENCY PLANNING & TPR

PERMANENCY PLANNING & TERMINATION OF PARENTAL RIGHTS



PERMANENCY PLANNING

The Adoption and Safe Families Act (ASFA) requires DHS to file for TPR if the child is in care for 15 of the last 22 months

Exceptions to 15/22 month requirement

- Child is living with a relative
- TPR is not in the child's best interests
- DHS has not provided adequate reunification services

PERMANENCY PLANNING

Discussion:

What Effect Does ASFA Have on Children of Incarcerated Parents?

PERMANENCY PLANNING

Remember...

Permanency planning requires individualized consideration of best interests of the child

Children need

- The security of a permanent home
- Lifelong family connections

TERMINATION OF PARENTAL RIGHTS

*...(6) The conviction of the parent of a felony offense that the court finds is of such a nature that the child will be deprived of a stable home for a period of years; provided, however, that **incarceration in and of itself shall not be grounds for termination of parental rights;***

Mo. Rev. Stat. Ann. § 211.447 (West)

But see:

In Interest of J.P.B., 509 S.W.3d 84, 96 (Mo. 2017)(Termination may be justified by duration of incarceration)

Interest of R.D.M., 576 S.W.3d 318, 325 (Mo. App. E. Dist. 2019)(Termination justified where incarcerated parent failed to pay support and visit his child)



Caregiver, Child & Parent Supports



CHILD & CAREGIVER RESOURCES

- ❖ Sesame Street Incarceration Toolkit
<https://sesameworkshop.org/topics/incarceration/>
- ❖ Osborne Association: See Us, Support Us
<https://www.susu-osborne.org/>
- ❖ Children of Incarcerated Parents Partnership
https://sfonline.barnard.edu/children/sfcipp_01.htm
- ❖ National Resource Center on Children and Families of the Incarcerated
<https://nrccfi.camden.rutgers.edu/>

WORDS MATTER



#WordsMatter

Think of how a child might feel when their parent is called a “criminal.” To children they are moms and dads first and forever. #WordsMatter can signal to a child struggling with their parent’s incarceration that you are a safe space. Creating safe spaces for children of incarcerated parents can reduce stigma and negative effects of separation from a parent. Join us in using thoughtful language when speaking of and with people with criminal justice involvement and their families. Together we can change the narrative.

WORDS MATTER

Instead of “inmates” or “offenders” say...

Parent

People who are incarcerated

People who have been in conflict with the law

Instead of “felons” or “ex-cons” say...

Formerly Incarcerated Person

Returning Citizen

People with prior criminal justice involvement

Join us in changing the narrative—by listening to the children who are directly affected, celebrating their resilience, and using humanizing language when referring to people who are incarcerated.

Find more resources at: www.osborneny.org/susu





PROTECT YOUR RIGHTS

What You Should Do Now if You are Incarcerated and Your Child is in Foster Care or County-Paid Kinship Care

When your child is in foster care or kinship care, the law says you can't wait to act. You need to take steps now to protect your rights. Know your rights and responsibilities and stay involved with your child's life during your incarceration.

YOUR RIGHTS

If your child is in foster or kinship care, you have the right to:

Have a say in where your child is placed. If you have a safe relative or family friend who can care for your child, tell your Agency caseworker. The Agency must try to first place children with relatives.

Visit your child. Unless a judge said you can't, you have the right to regular, in-person visits with your child.

Know how your child is doing and where your child is living. The Agency must keep you informed about your child's health, education, and development. They must give you the address of where your child is staying, unless there is a documented reason not to.

Help make plans for your child. A Family Service Plan (FSP) will be made and you will be given goals to meet. The Agency must involve you in making the FSP, and you should have a say about what goals and supports will help your family.

Help to meet your goals. The Agency must make "reasonable efforts." That means that the Agency should help you stay in contact with your child and support you in meeting your goals.

An attorney. If you can't afford an attorney, you can request that the court appoint you one. Your attorney must communicate with you and represent your wishes in court.

Participate in court hearings. If you can't be taken to court for your hearing, ask to participate by phone.

YOUR RESPONSIBILITIES

If your child is in foster or kinship care, you have the responsibility to:

Make regular contact with your child. Have in person visits, send letters and ask for phone contact. You can also send cards and gifts, no matter the age of your child. Staying in touch is good for your child and shows the judge and the Agency that you care about your child.

Stay in touch with your children's workers. Make sure you have the names, phone numbers, and addresses of the Agency workers who work with your family. Let them know about the progress you are making and ask them for updates about your child.

Work on your Family Service Plan goals. Do everything you can to meet the goals you have been given while incarcerated. Tell the Agency and your attorney if goals on your FSP aren't possible in jail/prison.

Participate in court hearings. If you can't be there in person or by phone, ask your attorney to represent your wishes in court.

Stay in touch with your attorney. Tell your attorney about your progress on your FSP goals and any problems you are having. Be sure to give your attorney any papers you have that show you are working on your FSP goals. This information can be given to the court.

Help in planning for your child. Help to make educational, medical, and treatment decisions for your child. Stay informed about how your child is doing and what supports your child needs.

Your Parental Rights: What You Need to Know

The Adoption and Safe Families Act (ASFA) says that if a child has been in foster or kinship care for 15 of the past 22 months, the Children & Youth Agency must file to terminate parental rights (TPR) so that the child can be adopted. But, the Agency does **not** have to do this in certain situations, like if your child is living with a relative or if adoption is not a good idea for your child. This decision is made on a case-by-case basis by the court. The most important thing you can do to prevent losing your parental rights is to work on having a strong relationship with your child.

This document was prepared by the PA State Roundtable's Dependent Children of Incarcerated Parents Workgroup and supported by the following organizations.



<https://ocfcpcourts.us/wp-content/uploads/2020/06/Final-Protect-Your-Rights-Poster1.pdf>

Questions? Comments?

Kathleen Creamer

Managing Attorney, Family Advocacy Unit

kcreammer@clsphila.org

215-981-3799



How We Established a Statewide Law Office

Gwendolyn Clegg
Director, Oklahoma Office of Family Representation
Legal Aid Services of Oklahoma, Inc.

OKLAHOMA
OFFICE OF

Family
Representation



Laying the Groundwork



How did Oklahoma begin conversations about centralized legal representation for parents and children in child welfare cases?

- Chief Justice Gurich of the OK Supreme Court in 2019 convened a Task Force to improve the representation of parents and children in abuse and neglect cases.
- Twelve voting members and various support staff from:
 - Administrative Office of the Courts
 - Court Improvement Program
 - ABA Center for Children and the Law, Director of Legal Representation
 - Casey Family Programs



Laying the Groundwork

What was the existing system in place for legal services?

- Oklahoma District courts contracted with solo practitioners via the local county court fund to provide legal representation to children and parents, i.e. Panel Attorneys
 - The Judge decided who received a contract
 - The Judge determined the pay of attorneys not on contract
 - The Judge assigned the court appointed attorneys to the cases
- In the two largest Oklahoma counties, the Public Defender's office represented and still represents children
 - Oklahoma does not have a unified state Public Defender

Laying the Groundwork

Was the idea of a statewide office parent and child representation supported by relevant stakeholders?

(i.e., Judges, DHS, parents' and children's attorneys, CASA, foster Parents, legislators).

No, the idea was not universally supported in 2019. In fact, it had very little support.

A photograph of a young child in orange overalls standing with their hands held up by an adult's hands in a living room setting. The child is looking upwards. The background shows a couch and a wooden table.

Laying the Groundwork

Did Oklahoma already have a right to counsel before the decision to establish a statewide office?

- **YES!** Oklahoma children and indigent parents have the right to counsel in our juvenile deprived court proceedings. This right is guaranteed by our Oklahoma State Constitution, case law, and statute.

A photograph of a baby in orange overalls being held up by an adult in a living room. The baby is looking to the side. The background shows a couch and a table.

Laying the Groundwork

Was a coalition, work group, or task force formed? How far in advance of the legislative session did this occur? Did this group play a critical role in advocacy? ?

- YES! A Task Force was formed in 2019.
- Conversations started before Task Force was formed, first bill was run in 2022, second bill in 2023 and was passed into law.
- Yes, the multitude, diverse, and multi-faceted conversations moved Oklahoma to a statewide central office of child and parent representation quickly.

Laying the Groundwork

A Coalition was formed

- Casey Family Programs



- Oklahoma's AOC



- CIP Director

- OK DHS Child Welfare State Director

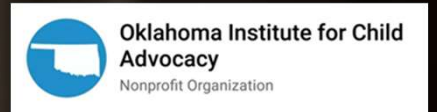
- ABA Center for Children and the Law



- Oklahoma Commission on Children and Youth



- Oklahoma Institute for Child Advocacy



- **Private funders**

- Schusterman Family Foundation



- Arnall Family Foundation



A close-up photograph of a woman with long dark hair kissing a young girl with blonde hair on the cheek. The woman is smiling and looking down at the girl. The background is softly blurred, suggesting an outdoor setting with warm lighting.

Laying the Groundwork

How was the Coalition formed?

What did the Coalition do:

- Created communication strategies
- Promulgated the Written materials
- Established a Timeline

Authored the legislation

Laying the Groundwork

A woman and two children are dancing in a living room. The woman is on the left, wearing a striped shirt and jeans, with her arms raised. A young boy is in the center, wearing a plaid shirt and jeans, also with his arms raised. A young girl is on the right, wearing a grey sweater and jeans, with her arms raised. They are in a room with a large bookshelf in the background, a window on the right, and a potted plant in the foreground.

- Judicial Champion - retired Judge Doris L. Fransein
 - Critical outspoken voice
 - Knowledge of individuals and experience presiding over the cases
 - One-on-one connections
 - Provided funds for communication experts, printed materials, legislative luncheon – all to introduce the concept of HQLR to the Legislators.
 - Spent hours emailing, visiting, and participating in virtual meetings
 - Educating and extolling benefits of high-quality legal representation
 - Hours were spent educating the DHS Executive Director on the benefits of HQLR to Agency
 - Sitting judges cannot lobby the way a retired judge can
 - Accompanied Lobbyists, educated Senate Staff on HQLR
 - Critical efforts to the passage of the legislation

Legislation - Primary Champions:

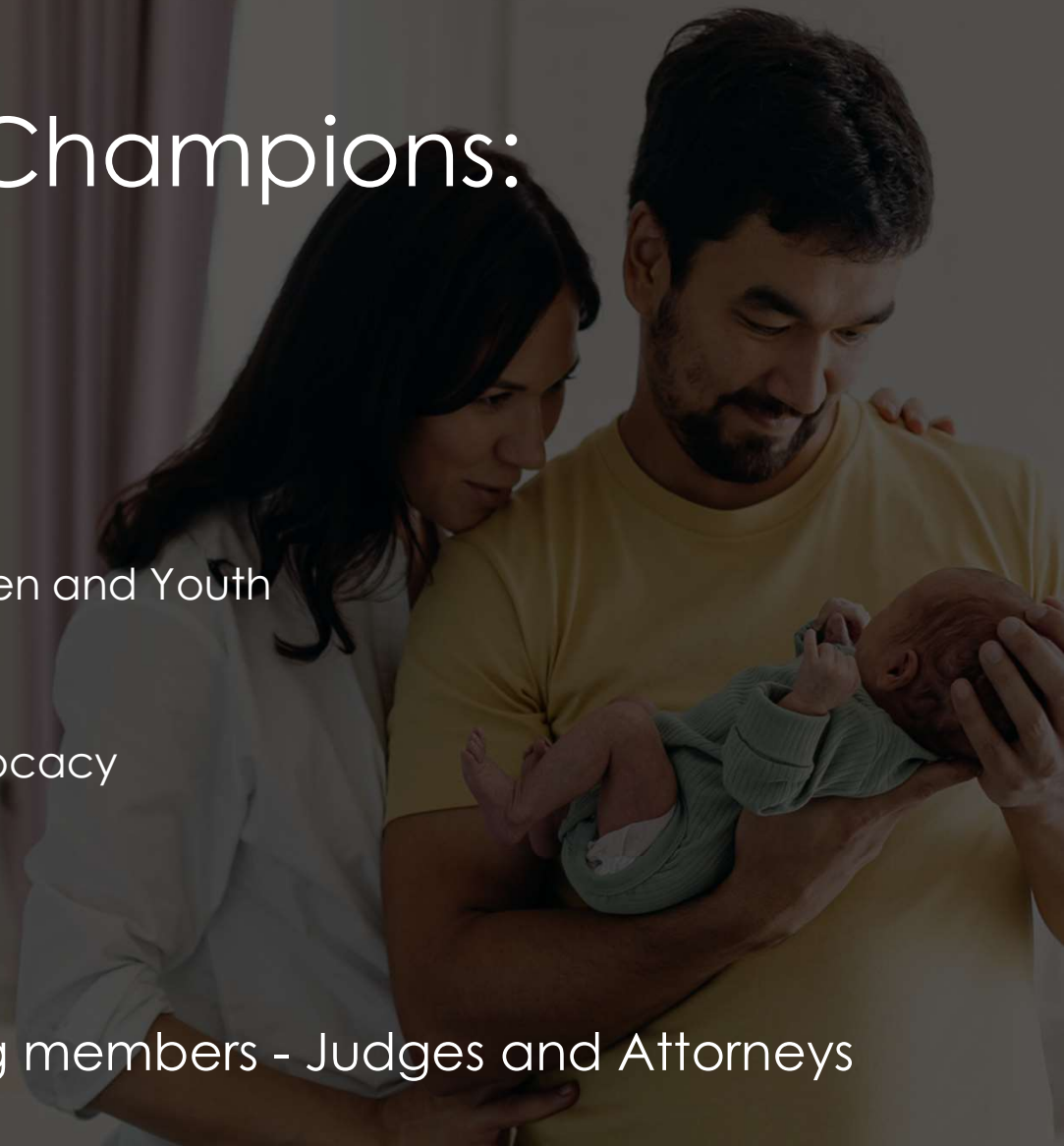
- Private funders
- Policy groups
 - Oklahoma Commission on Children and Youth



- Oklahoma Institute for Child Advocacy



- State foster parent association
- Task force members – 12 voting members - Judges and Attorneys



Legislation -Critical stakeholders:

- Oklahoma Supreme Court Task Force
- Executive Director of AOC
- Oklahoma Institute for Child Advocacy
- Schuster Family Foundation



- CREDIT - EXECUTIVE DIRECTOR



Legislation –Running the Bills

- 2022 ran a bill for an office of parent representation – bill failed in April 2022;
- 2023 ran a bill for an office of family representation – included representation for parents and children.

Passed into legislation June 2023 with an effective date of November 1, 2023.

A photograph of a family of four walking in a field. In the foreground, a young girl with long blonde hair is smiling and looking to her right. She is wearing a grey sweater and a dark, fuzzy vest. To her left, a young boy is looking down, wearing a grey and yellow striped shirt. In the background, a man and a woman are walking away from the camera. The man is wearing a dark long-sleeved shirt, and the woman is wearing a dark jacket and blue jeans. The background is a soft-focus field of tall grass or reeds under a bright sky.

Legislation – Primary Criticisms

- Opposition:
 - Politics – change in Senate Committee Leadership
 - Viewpoint that public funds should not be used to provide legal representation
 - Belief that Oklahoma's government should be reduced and not expanded to include a new statewide agency
 - Identifying the state agency that would receive the legislative appropriations to build the Office of Family Representation

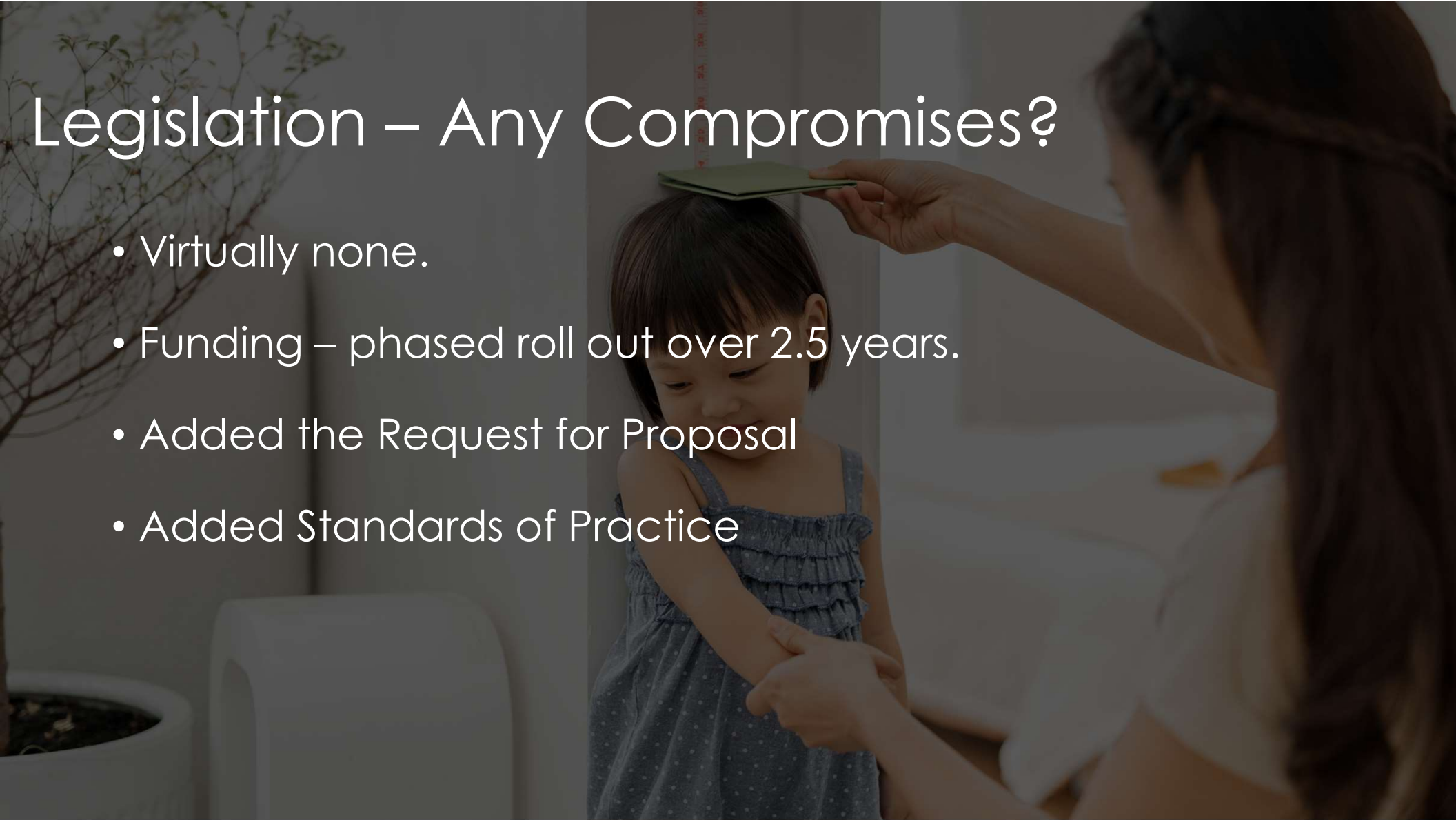
A photograph of a family of three—a man, a woman, and a young child—sitting together on the steps of a house. The man is on the left, the woman is on the right, and the child is in the middle. They are all smiling and looking towards the camera. The background shows a brick wall and a window. The image is dimmed to serve as a background for the text.

Legislation – HQLR

- Inclusions were put in the bill to ensure high-quality legal representation
- Section E – provides the responsibility and requires **Training** of attorneys, social workers and mentors to provide HQLR;
- Section H – ensure all attorneys are adequately **trained**; requires attorneys to be contractually bound to Oklahoma's **Stds. Of Practice, caseload limits**, and ensure the **IDT's** engage in evidence based training
- Section J – adequate compensation, access to resources, authorized to **annually review contractor performance**, to achieve HQLR.

Legislation – Any Compromises?

- Virtually none.
- Funding – phased roll out over 2.5 years.
- Added the Request for Proposal
- Added Standards of Practice



A photograph of a woman with long dark hair, seen from the side, measuring a young child's height against a wall. She is holding a green book on top of the child's head. The child is wearing a blue dress with white polka dots. The background is a plain wall with a red measuring tape visible. The text is overlaid on the image.

Legislation – Wish we would have known?

Our work on the Task Force prepared us for legislative Advocacy.

- Studied other jurisdictions with Statewide Offices
- Massachusetts, Colorado, Washington
- Hired the University of Oklahoma
 - Provided a cost estimate, with data from DHS
 - Hired an economist to review – same person who assisted New Mexico with the passage of their bill for a Family Representation office
- Hindsight
 - Improved communication strategies with judges & stakeholders
 - Earlier support & assistance from AOC and OK Supreme Court for the passage of the bill.



Office Model and Infrastructure

- Independent contractor model
- Interdisciplinary teams
 - Attorneys, Parent/Youth mentors, and Master Social Workers
 - Ideally, IDT will serve 15% of our client population

A photograph of a family with a mother, father, and two children, overlaid with text. The image is dimly lit, showing a woman on the left, a man on the right, and two children in the center. The text is overlaid on the left side of the image.

Funding Source(s)

- Was IV-E a factor?
 - No.
 - Did not educate on IV-E
 - OK does not like accepting federal funds
- Additional Funding Sources – can include grants, etc.



Lessons Learned

- NEVER GIVE UP!
- Keep Educating legislators
- Form a Coalition with experienced and persuasive persons
- Ask an experienced & well-connected Judge to support your efforts
- Seek collaboration from community stakeholders
 - CASA, Foster Parent Associations, Policy Institutes
- Compromise – be willing to slow the rollout
- Bring Data
- Include Lived Experience
- Interim Studies – request and participate
- Red states generally dislike government intruding into the right to parent your own child – use that to your advantage!



Gwendolyn L. Clegg

Director, Oklahoma Office of Family Representation

Legal Aid Services of Oklahoma, Inc

gwendolyn.clegg@laok.org

www.oklahomafamilyrepresentation.org

OKLAHOMA
OFFICE OF

Family
Representation

