

Best Practices for Permanency Planning- Role of Lawyers and Courts

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Defining Permanency

Permanence is **not** a philosophical process, a plan, or a foster care placement, nor is it intended to be a family relationship that lasts only until the child turns age 18.

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Permanence should bring physical, legal and emotional safety and security within the context of a family relationship and allow multiple relationships with a variety of caring adults.

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Permanence is about locating and supporting a lifetime family for every child.

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QUALITIES OF PERMANENCY:

- Intent to stay where you are;
- Continuity and commitment;
- Sense of belonging;
- Respected social status;

PLUS

- Recognized/enforceable legal status - important that lawyers and judges recognize that permanency is more than the legal arrangement.



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What Is Permanency?

- Stability without disruption
- Safe and nurturing home environment and set of relationships
- Growing up with siblings
- Connections of Community of Origin
- Religion and Culture Preserved
- Gives child a sense of belonging and a definitive legal and social status
- Educational needs met
- Healing of past trauma
- Physical/ Emotional Needs met
- Contact with family of origin if appropriate
- Opportunity to live in a permanent home, one which can be returned to for support even as an adult; home intended to last indefinitely

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Planning for Permanency

For children and young people in out-of-home placement, planning for permanence should:

- begin at entry into care;
- be youth-driven;
- family-focused;
- culturally competent;
- Continuous; and
- approached with the highest degree of urgency.



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Our Goals Should Include:

- Reduce number of placements so that attachment difficulties might be lessened;
- Earlier permanency through reunification or other permanency option, less trauma;
- Reduce loyalty issues for the child by trying to focus on cooperation with placement resources; and
- Less identity issues in adolescence and adulthood, assist for more stable movement into adulthood.

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What is important to those of us in the trenches?

What do child welfare people mean when
they say “IV-E” and “IV-B”?

Remember that the federal advocates are
not out to punish or make us jump through
hoops; each requirement has a purpose
behind it.



Federal Child Welfare Law Relevant for Courts

- Child Abuse Prevention and Treatment Act (CAPTA) 1974
- Indian Child Welfare Act (ICWA) 1978
- Adoption Assistance and Child Welfare Act 1980
- Multi Ethnic Placement Act (MEPA) 1994 & (IEPA) 1996
- Adoption and Safe Families Act (ASFA) 1997
- Keeping Children & Families Safe Act (KCFSA) 2003
- Safe and Timely Interstate Placement Act 2006
- Fostering Connections to Success and Increasing Adoptions Act 2008
- Preventing Sex Trafficking and Strengthening Families Act 2014₀

The Adoptions and Safe Families Act (ASFA)

- **ASFA amended the federal foster care law Titles IV-B and IV-E of the Social Security Act.**
- **All states passed legislation in order to be in compliance with ASFA.**
- **Made safety, permanency, and well-being of the child the primary focus of the law.**
- **Signed into law on November 19, 1997 HHS. Regulations went into effect on March 27, 2000.**

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Lets talk first about some of the latest federal requirements as to permanency.

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Fostering Connections 2008

- Kinship guardianship option.
- Due diligence must be used to identify and locate all adult relatives w/in 30 days except those with DV history.
- Explain options to participate or be placement resources, include what could be lost – must include option of foster care.

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Fostering Connections

- Reasonable efforts to keep sibs together unless contrary to safety or well-being.
- Assess sibling visitation and should be at least monthly.
- School stability – coordinate with school to ensure child being able to stay in same school.
- Transition plans for older youth.

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Recent Federal Requirements

- Preventing Sex Trafficking and Strengthening Families Act (PSTSFA)
- Signed by President Obama on 9/29/14.
- Concerns about older children in particular, sex trafficking in our child welfare population and changes particularly in the permanency area.
- Biggest change for lawyers and state courts is in permanency hearings.

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PSTSFA Sec. 209- Placement of Sibs Together in Foster Care

- Relatives who are noticed about a removal of child into care now also includes notice to custodial parents of a sibling or a half sibling.
- **This includes children who have been adopted.**
- Can use the child support parent locator service to help locate.

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Kansas

- K.S.A. 38-2202(bb) definition of relative already met this test “person related by blood, marriage or adoption”.
- Department for Children and Family (DCF), Prevention and Protection Services (PPS) policies were revised after enactment of federal law to clarify that this definition includes adopted siblings and half siblings.

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Placement of children w/ Sibs

- When child enters care, all adult grandparents and all other relatives must be notified and also all parents who have legal custody of the child’s siblings or half siblings within 30 days.
- This includes adopted sibs.

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Supporting “Normalcy”

- PSTSFA Sec. 111 - Foster parents have to be trained in the “reasonable and prudent parenting standard” to help normalize life for foster children.
- To assist foster youth with normalcy in activities i.e.– “to participate in extracurricular, enrichment, cultural and social activities” - court has to specifically address this issue.

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Supporting Normalcy

- Section 111
- State must address caregiver liability.
- Court must review at every permanency hearing of an Another Planned Permanent Living Arrangement (APPLA) youth is the “reasonable and prudent parenting standard” is being applied for specific youth.

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Kansas- RPPS

- “standard characterized by careful and sensible parental decisions that maintain the health, safety and best interests of a child while at the same time encouraging the emotional and developmental growth of the child, that a caregiver shall use when determining whether to allow a child in foster care under the responsibility of the state to participate in extracurricular; enrichment, cultural and social activities.” K.S.A. 38-2202(aa)

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Kansas

- RPPS has been included before in Kansas licensing regulations, but federal law strengthens requirement.
- Applied to all kids in foster care.

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Permanency Hearing Changes

“enter a finding as to whether the reasonable and prudent parenting standard has been met and whether the child has regular ongoing opportunities to engage in age or developmentally appropriate activities” K.S.A. 38-2264(c)(2).

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Kansas

- This is a relatively new obligation for courts and is in the CINC Code.
- Caseworkers will provide information to the court which will be the basis for the court to find if RPPS is being met, based on report from the agency/contract workers.
- K.S.A. 38-2264. Permanency hearing; purpose; procedure and requirement; time for hearing; authorized orders.

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Isn't this just natural anyway?

- People do not want to be mean, but there are issues.
- Motive is often to “keep a child safe” who has already been traumatized.
- Concerns about liability - particularly birth parents who may be angry and frustrated already - choosing to sue when there are injuries.
- Concerns about cost – does the system have money to pay for driving lessons, sports equipment, etc.
- Concerns that the child won't have the same opportunities if returned to the parent which would create disincentive to want to return home, frustration on the part of the birth parent.

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Why is it important?

- Respond to the many and loud concerns of older foster youth/young adult graduates of foster care system who tell of limits to playing sports, staying over at friend's home, getting driver's licenses, and holding a part-time jobs.
- Activities help child grow and develop, become productive adults – just like with our kids.
- Participation in extracurricular and social activities is effective in reducing poor outcomes of our graduating foster youth.

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What does “Normalcy” mean?

- Experiences similar to peers.
- Participation in age–appropriate extracurricular activities, social activities.
- Ask youth in care what they are not “allowed” to do, what makes them feel different, not like other kids, singled out, even a stigma as a “foster kid”.
- Some youth may even need this as part of a treatment plan to integrate out of a program like a therapeutic foster care program.

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How will it help youth?

- Help youth take on increasing levels of responsibility and leadership.
- More successful transition to adulthood.
- More opportunity to interact with community, make friends, find mentors, and see what else there is out there.
- Reduces risk of alienation, risk for trafficking.

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How is it supposed to be done?

- Consider the child's age, maturity, mental and physical health, cognitive level, developmental level, and interests.
- How does the child behave - what are child's skills and aptitude?
- How does the birth parent view the child and this activity? Will it interfere in any way with visitation or other court ordered services?
- Is there any court provision preventing it?
- How safe is the activity being considered?²⁹

- Vacations
- School trips
- Overnight socializing
- Camps
- Using public transportation alone
- Hanging out/shopping/driving with friends
- Curfews
- Part-time jobs
- Dating, information on sex, birth control, parenting

- Sports – easy and more difficult safety decisions – ping pong, swim teams, football, hockey, ATV, hunting
- Scouting, religious activities, social media, cell phones
- Driving
- Proms
- Clubs
- Volunteering
- Haircuts, tattoos, piercings

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PSTSFA

Sec 113 - for all youth over 14

- 1) Must have involvement in case plan and can have up to 2 persons the youth has chosen at the case plan meetings (not the case planner, caseworker, case manager or foster parent).
- 2) Must be told of their rights at case plan meetings and given Foster Youth Bill of Rights.
- 3) Must have transition planning and annual credit checks.

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APPLA changes

- Section 112 - 9/15.
- Cannot be a goal until child is 16 – no grandfathering, no exceptions.
- At every PH, it must be documented the “intensive, ongoing unsuccessful efforts” to attempt the other goals – including using social media to find family.

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APPLA changes

- At every PH for an APPLA youth –
 - Child must be asked about the desired perm outcome;
 - Court must specifically rule why APPLA is still best plan for child and why it is still not BI to return child home, free child for adoption or place child with guardian or fit and willing relative;
 - That foster family is using “reasonable and prudent parenting” standard; and
 - That child is being given regular, ongoing, opportunities to engage in developmentally appropriate activities.

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ALL Foster Children over 14

- Case plans and transition plans must be done in consultation with child.
- Child may have one or two people of their own selection who can attend the case plan, one of whom can be designated as an advocate for reasonable and prudent parenting decisions.
- Case plans must have written descriptions of the transition plan (this used to be for 16 and up).
- Case plan must include a document that lists the child’s rights- re: education, health, visitation, court participation, safety, credit reports –signed by the child.
- Annual credit report and correction of inaccuracies.
- Section 113 – all as of 9/15.

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Kansas law - APPLA changes

- Where child has APPLA goal – court must ask the child about their desired goal.
- Document “intensive, ongoing” but to date “unsuccessful” efforts to achieve other goals.
- Determine why APPLA is the best goal and why there are compelling reasons why it is not in the child’s best interests to have another goal.
- K.S.A. 38-2264. Permanency hearing; purpose; procedure and requirements; time for hearing; authorized orders.

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Involvement in the Permanency/Case Plan

- Kansas law includes this requirement of consultation for all children 14 and older.
- Changed from 16 to 14
- Worker has to know how to motivate and engage.
- Court’s role – “document efforts to prepare for transition” for 14’s and up, K.S.A. 38-2264.

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List of Rights

- An actual list of rights to all foster children 14 and older that includes issues concerning education, health care, visitation, court hearings and participate in them, and rights to safe environment.
- Must explain in an age-appropriate way.
- Youth must sign that they have received it.

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Annual Credit Checks

- Why?
- Not just checked, but also fixed

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Kansas

- All children 14 and up will be given notice of the “time and place of the permanency hearing” and notice “shall request the child’s participation in the hearing by attendance or by report to the court” K.S.A. 38-2265.
- What are differences in attending vs sending a report?

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Youth Leaving Care

- Sec 114 - Youth who has been in care six (6) months or more gets critical documents records when they leave at 18 years or older to help with transition plan.
- What are critical documents?
 - Birth certificate,
 - Social Security card,
 - health insurance info,
 - medical records, and
 - state ID with a picture.
- Court Role?
- When to start asking about this?

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Youth Leaving Care- Transition Plans

- DCF-Prevention and Protection Services (PPS) policies and practice required this prior to the federal law change.
- Reflected in Transition Plan posted in PPS Policy and Procedures Manual.
- For youth with APPLA goal, planning is to start at 16, for youth with other goals, planning is to start at 17.

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All Youth over 18 leaving care after at least 6 months of care

- Must be provided with critical papers:
 - birth certificate,
 - Social Security card,
 - medical records,
 - health insurance info, and
 - state issued ID card (such as a driver's license).
- Section 114 – as of 9/15.

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PSTSFA - Sex Trafficking

- Looking for youth who have been involved or are “at risk” and providing appropriate services.
- Sec 102 requires agency informing law enforcement within 24 hours.
- Sec 103 requires data to be kept.
- Sec 104 requires state have a plan to locate youth who have run away from foster care including reporting within 24-hours to law enforcement and national databases.

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Sex Trafficking

- Set of policies to identify, document and provide services to children who are being investigated, supervised by agency or are in care where there is reason to believe child is at risk of or is trafficked.
- Must report child within 24-hours to law enforcement if trafficking victim.

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Sex Trafficking

- Common risk factors include youth who have limited family connections, youth in foster care, youth with history of abuse or neglect, runaways, throwaways, LGBTQ youth, and dropouts.
- What can it “look like” – not just what you think about from movies and TV.

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Kansas - Sex Trafficking

- Kansas will track all children suspected of being victims of sex trafficking who have been assessed by DCF.
- The word “prostitution” is no longer in the statute.
- Proof of force or fraud not required if victim is a minor.

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Runaways

- Must be protocols for locating any child who is missing from foster care or from supervision or investigation to locate child quickly.
- Must determine factors causing and respond to them.
- Must determine what happened while on runaway including possible sex trafficking.
- Must report runaway to law enforcement within 24-hours (by 9/16).

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Runaways

Law enforcement officers **must take a child into police protective custody** when the officer has probable cause to believe the child is a runaway or a missing person or is entered into NCIC. K.S.A. 38-2231(b)(2) and must notify department to begin assessment regarding child's safety, appropriate placement and services to meet child's immediate needs.

*Previously a child was only “missing” if the child was entered into NCIC.

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Runaways

Effective January 1, 2017, the court may use juvenile intake records at a juvenile offender proceeding for a runaway “only if such records, reports and information are in regard to the possible trafficking of a runaway” for safety determinations and for diagnostic and referral purposes. K.S.A. 75-7023(b)(2).

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Out of State Runaways

When an out-of-state runaway is taken into police protective custody the Interstate Compact for Juveniles (ICJ) sets the rules:

- 1) The juvenile is taken to a detention facility.
- 2) The detention hearing considers the return of the child under ICJ. If the child is suspected to be abused or neglected (HT), there are certain situations where the child can be detained.
- 3) Now the court will have juvenile intake records “in regard to the possible trafficking of a runaway” to assess safety issues in returning the child to their home state or for diagnostic or referral purposes. K.S.A. 75-7023(b)(2).⁵⁰

IV-E Review for Kansas

- No secret that you have increased foster care – about to hit the 7,000 mark.
- Just completed.
- Good news – PASSED!
- Areas they would like to see some improvement on:
 - Good Quality Permanency Hearings;
 - Moving Adoptions Expeditiously; and
 - Increased documentation in journal entries.

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Lets Do a Quick Review on IV-E Court Related Eligibility Requirements

- Removal of Child
- Legal Authority
- Best Interests/Contrary to the Welfare
- Reasonable Efforts – Removal
- Reasonable Efforts – Permanency
- Placement with Specific FC Provider

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Time Periods

Two different starting points in defining time periods:

- 1) Actual Removal (date the child is removed from the home)

- 2) Foster Care Entry - defined as the *earlier* of:
 - the date the court found the child neglected or abused or
 - 60 days after the child's actual removal.

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Federal Time Periods

Requirement	Deadline	Starting Date
Case Plan	60 days	Actual Removal
Reasonable Efforts to Prevent Removal	60 days	Actual Removal
Six-Month Periodic Review	6 months	Foster Care Entry
Permanency Hearing	12 months	Foster Care Entry
Reas Efforts to Finalize Permanency Plan	12 months	Foster Care Entry
Mandatory Termination Petition Filing	15 of the last 22 months	Foster Care Entry

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Reasonable Efforts - Removal

- Federal Standard
 - A case specific judicial determination whether reasonable efforts were made to prevent removal or that reasonable efforts were not required must be made by the court within 60 days of removal of child.

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Reasonable Efforts at Removal

- Federal Reference: Section 471(a)(15) of SSA; 45 CFR 1356.21 (b)(1) and 45 CFR 1356.21 (d)
- Impact of Non-Compliance
 - Failure to make a timely and adequate court finding of reasonable efforts results in loss of Title IV-E funding for the entire duration of the foster care episode.
 - Can be very costly, particularly in congregate placements.

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Reasonable Efforts to Prevent Placement “RE”

- The agency has a duty to provide timely, reasonable efforts to prevent placement .
- The court must make a finding that the department made such reasonable efforts - finding must be made within 60 days of the child’s removal.
- If the court does not make the finding, the agency will not receive IV-E dollars for the child’s entire stay in foster care.
- The finding must be detailed and child specific - not just a reference to state law.

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Reasonable Efforts

Don’t be confused, this phrase is used in two ways. Reasonable efforts is also used to describe the efforts to achieve permanency plan.

- The court must make a finding whether the agency provided reasonable efforts to finalize the permanency plan within 12 months of the child’s entry into foster care.
- A negative, late, insufficient or missing finding means the agency is ineligible for IV-E dollars until the court makes a positive finding.
- The finding must be **detailed and child specific**.

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Reasonable Efforts to Prevent Placement

- Recent preventive efforts - homemaker, parent aide, visiting nurse, daycare, parenting classes, substance abuse or mental health treatment
- Recent casework contacts or counseling
- Relevant past efforts
- Relevant emergency type assistance

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Reasonable Efforts to Prevent Placement

- Non-foster care safety plan - use of relatives, non-perp parent, alternative shelter for child with non-perp parent
- Use of court-ordered protective supervision

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Remember. . .

- There have been no efforts that could have been reasonably made to prevent the placement.
- This is not “no efforts,” this is “no efforts could have been reasonably made.”
- This should be the exception, not the rule – most cases should have had reasonable efforts to prevent placement.

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Reasonable Efforts: Practice Tips Early & Ongoing – the RE is coming back – start now!

- Draft/obtain ASFA compliant court orders
- Advocate for services upfront
- Establish concurrent plan when reunification is unlikely
- Ask about relatives who might be able to care for the child
- Find Fathers
- Sibling contacts
- Community contacts

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Best Interests/Contrary to Welfare

- **Federal Standard**

- *Child's removal from home must have been the result of judicial determination-- continuation in home would be contrary to welfare of child or removal would be in child's best interests.*

- Contrary to welfare/best interests must be **explicitly documented** in initial court order sanctioning removal.

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Best Interests/Contrary to Welfare

- **Federal Standard**

- Even if removal by detention order
 - Even if removal involves Direct Placement/ Relative
 - Must be made on case-by-case basis

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Best Interests/Contrary to the Welfare

- Federal Reference: Section 472(a)(1) of SSA; 45 CFR 1356.21 (c)
 - Must be made on the first court order sanctioning a child's removal from home.
 - Case specific and detailed.
 - **If the finding is not made in the first order, the agency will NOT receive IV-E dollars for the entire length of the child's stay in foster care.**
 - The finding must be made in both emergency and non-emergency removals.

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Reasonable Efforts – Finalize Permanency Plan

- Federal Standard
 - Initial permanency hearing must be held within 12 months of the entry of child into foster care.
 - Entry of child is considered the earlier of the fact finding of abuse or neglect or the date that is 60 days after removal of child from home/including where child removed and placed into detention.

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Reasonable Efforts – Finalize Permanency Plan

- Federal Standard
 - Initial permanency hearing must be held within 12 months of the entry of child into foster care
 - Federal Exception -- Where court makes a finding that reasonable efforts are not required, then a permanency hearing must be held within 30 days of the court's determination

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Reasonable Efforts Toward Reunification Are Not Required When. . .

- 1) Aggravated Circumstances: Abandonment, sexual abuse, torture, chronic mental injury, or chronic physical harm.
- 2) Enumerated Felony: Murder of another child of the parent, voluntary manslaughter, aiding, abetting, conspiring, soliciting to commit such murder or voluntary manslaughter, felony assault.
- 3) Prior involuntary termination of parental rights.

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Reasonable Efforts – Finalize Permanency Plan

- Federal Reference: Section 471(a)(15) of SSA; 45 CFR 1356.21 (b)(2) and 45 CFR 1356.21 (d)
 - Subsequent permanency hearings must be held every 12 months from preceding hearing
 - Court or state law may elect more frequent permanency hearings

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Permanency Hearings

- Feds identify this as an area Kansas can improve on to achieve permanency for foster children more expeditiously.
- Not just the technical details of the hearing but the underlying issues that need to be addressed with urgency.

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Permanency Time Bombs

- 💣 Time bombs may explode if they are not diffused.
- 💣 Time bombs can explode and hurt anyone or everyone.
- 💣 Time bombs hurt no matter what the goal is – not just for TPR and adoption.
- 💣 Diffuse them early on – use the power of the court process to deal with the bombs.
- 💣 Best Practices to ID your bombs and diffuse.

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The Top Ten Legal Time Bombs

- 💣 ID of and working with fathers
- 💣 ID of relatives as placement resources
- 💣 ICWA
- 💣 ICPC
- 💣 Good quality initial placements
- 💣 Hearing continuances
- 💣 Front loaded services
- 💣 Detailed, behavior oriented court orders
- 💣 “Fear” of concurrent planning
- 💣 Effective meaningful permanency hearings

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ACTIVISM FOR PERMANENCY



This is not just the job of caseworkers - Lawyers and Courts can and should **DIFFUSE** the bombs and not just clean up after the explosion.



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Locating Parents

- ID of fathers critical – largest time bomb.
- Right of the child to identity, support, possible permanency resource.
- Right of the father to information, option to parent, right to services.
- Importance re ICWA, relatives.
- Late arrival of Dad = loss of permanency option, loss of relationship, and legal delays.

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Ideas

- Get court to ask mother directly.
- Agency should have known extensive diligent search process including using child support units/parent locator process.
- Court should order agency to look and report.
- All attorneys should ask.
- Should continue to ask at every court hearing until father ID'ed, located, involved.

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More Ideas

- Do paternity testing.
- Don't accept "there is no father."
- Fathers deserve services too – specialized?
- Fathers need to know if permanency plan is not going to work – give them a chance.
- Even a father who cannot be a resource may have something to offer a child.
- Incarcerated does not mean ignore.

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Looking for Relatives

- Relatives are good resources.
- Keep sibs together.
- Use extended family support.
- Provide “extras” for kids/parents – contact, visitation, modeling, and less trauma.
- “Save the foster beds!”
- Can develop into permanency if needed.

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Ideas

- Get court to ask parents directly – use power of the court to get the info ASAP.
- Relatives should be brought to court.
- Agency should have specific process and recording – booklet to provide.
- EVERYONE should understand the legal options and make sure relatives are told of same – custody, guardianship, foster parent status, adoption – Fostering Connections Act 2008.

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More Ideas

- Consider ICPC requests right away.
- Placement relative resources should be at every hearing.
- “Relatives” is a relative thing.
- Avoid the “pop up.”
- Do relatives understand “stepping up to the plate”, timeliness and bonding?
- Ask relatives about fathers and ICWA status.

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Out of State Relatives and Parents

- Are there any parents or relatives outside of Kansas?
- Consider ICPC requests right away.
- Would out of state placement help or hurt current goal?
- Is anyone incarcerated?
- Do parents understand options?
- Do non-Kansas folks understand permanency needs and likely bonding?

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“Do we have an ICWA child?”

- Ask – and ask- until there is an answer.
- Agency must have process and documentation.
- All attorneys should ask.
- More hands = more help, more services, and more options
- Tribe/Indian Nation should be involved as quickly as possible.

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Good Initial Placements

- “A body in foster care tends to stay in foster care.”
- “It was on my way home.”
- “They answered the phone.”
- ASK, ASK, ASK
- Placed with sibs? Why not? What contact?
- Visitation issues – frequency, quality, who, supervised?

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MORE

- Same school, same church, same neighborhood?
- Good placements are everybody's concern.
- Will the placement be “concurrent” if needed?
- Placement resources as service advocates and court participants.

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Court Orders

- Not just a “to-do” list.
- Too concrete – not measurable.
- Confusing if not unfair to parent
- “Here's my parenting certificate – gimme my kid.”
- “Resetting the bar.”
- Hard change – takes more thought.

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Court orders with behavioral language:

NOT JUST ATTEND

- Mother gets evaluation and follows recommendations.
- Mother completes parenting classes.
- Mother goes to drug treatment.
- Mother cooperates with agency.

BETTER TO ALSO ADD

- Mother demonstrates:
 - effective coping
 - energy and activity to perform basic parenting duties of feeding, clothing, supervision, protection from harm
- Mother demonstrates learned proper supervision and discipline techniques during visitation.
- Mother remains sober.

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PERMANENCY HEARINGS

- **Participation:** Parent, Child (court must “consult with the child”), Relative caretakers and foster parents (entitled to notice and opportunity to be heard – “right to be heard”)
- **Full hearing**
- **Independent judicial review**
- **Timing**
 - Within 12 months of the child’s entry into foster care, or
 - Within 30 days of a judicial determination that reasonable efforts to help a child safely return home are not required
 - Every 12 months thereafter as long as child is in foster care

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Meaningful Hearings

- Have them as often as needed.
- Get everybody there – parents, child, foster parents/relatives – service providers?
- Focus on both “look back” and “look forward.”
- Meaningful evaluation of goal.
- Visitation – from child's POV as well
- Services – from child's POV as well

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Foster Parents Rights

Notice and opportunity to be heard – “right” to be heard

- Permanency hearing
- Periodic reviews

Includes:

- Foster parents
- Pre-adoptive parents
- Relatives having care of the child

- ASFA does not require personal appearance but best practices. . .
- ASFA does not grant party status.

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WHY SHOULD FOSTER PARENTS PARTICIPATE?

- They are the only people who see the child every day.
- They often see the parent interact with the child.
- They have a bond with the child.
- They get school reports.
- They take the child to medical appointments.
- They can report how the child has changed since entering foster care.
- They know the child's ability to take care of herself.
- They may be a permanent resource for the child.

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Children in Court

“Permanency hearing...which shall include age-appropriate consultation with the child...”



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Child and Family Service Improvement Act of 2006

Procedural safeguards to be applied to assure that in any permanency hearing held with respect to the child, including any hearing regarding the transition of the child from foster care to independent living, the court or administrative body conducting the hearing consults, in an age-appropriate manner, with the child regarding the proposed permanency or transition plan for the child.

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Does “consult” mean child has to be present in court?

Feds say no – “We do not interpret the term ‘consult’ to require a court representative to pose a literal question to a child or require the physical presence of the child at a permanency hearing. However, the child’s views...must be obtained by the court for consideration during the hearing.”

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Value of Including Children

- Fed Law - “consult with child” regarding perm plan as part of perm hearing decision.
- Who better? No “interpretation” – best interests only does not comply.
- “Not about me, without me.”
- “Fear” of child’s emotion.
- Practical problems that hamper attendance can be solved.
- This is important.

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Benefits when youth participate...

- Youth has more of a sense of control, involvement in their own life.
- Youth have better understanding of the process and who is saying what – understanding more directly what is occurring.
- More complete information for the court.

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Practice Considerations

- What are youth's wishes regarding coming to court?
- How old is the youth?
- What is the developmental level of the youth?
- Will attending court upset the youth? Or are we upset FOR the youth?

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Practice Considerations (cont.)

- KSA 38-2264(d)(1) – Child has opportunity to speak about desired permanency outcome “by attendance at the hearing or by report to the court”.
- Have the youth physically present throughout the hearing or determine if it is really necessary for them to step out at some point.
- Consider an advance visit to the courthouse.
- GAL could present the child's statements in court if they feel that they will not be able to speak or need to be coached a bit.

96

Consider

- Who will decide if child comes?
- Who will prep child?
- How will child tell court?
- Can child speak alone/with GAL in chambers?
- Timing regarding school and other problems.
- Court facilities adequate?
- Transportation?

97

Youth say they need help with:

- Placement problems (this is the #1 issue)
- Visitation and their preferences
- Practical stuff: computers, phones, privacy issues, driver's license, jobs, college questions, high school needs like sports equipment, prom attire, permission to do things that non-foster kids do – the NORMALCY issue!!

98

Children in Court

- Let's talk.
- Is it happening? What are the barriers?
- Kansas project!! The youth responded VERY positively to being included in court proceedings and wanted to be there. This continued even after child had been at a hearing.

99

Children in the Court

We can give children a more meaningful voice in their lives; lives which are not so great at this point.

We can show them that how they feel and what they want is important to us.

We can make permanency hearings be more meaningful by giving each child the attention and time that they rightly deserve.

100

Talking to children

- Do you want/need help talking with the child? Who could that be? How would that affect confidentiality?
- What do you know about developmental stages – read something about this.
- You have to find out them – example.
 - “Can you change the font on my phone.”
 - “Can you show me how to do XX in that game.”
 - “Can you draw a picture for my office.”

101

Talking to children

- Cannot talk like a lawyer!!
- Cannot tell them too much at once – one or two concepts.
- Have a much harder time understanding probabilities.
- They probably know more what went on at home/with parents.
- VERY good resource: “Handbook on Questioning Children: A Linguistic Prospective” By Ann Graffam Walker

102

OK – I heard this stuff before

- We already know about this and I am not sure I am convinced and/or my judge does not want it.
- Is bringing children and youth to court actually the normal expected practice in your court?
- Is the child or youth really participating in a meaningful way or are things getting in the way of that?

103

HANDS UP

- Do children and youth come to their permanency hearings in your experience?
- How frequently?
- Does it matter what age the child is?
- Are they given an opportunity to speak if they are there?
- How is this done?
- Do they actually talk? Do they actually talk about their own permanency issues and goals?

104

GAL Role when a youth comes to court

- Inform the court of any issues.
- Prepare client.
- Ensure youth is aware of what's happening.
- Allow/Help the youth to speak.
- Discuss the hearing afterwards.
- OR – in a particular case, should any of this be done by caseworker, CASA or foster parent?

105

GAL Role when a youth comes to court

- Does child have any preferences that should be brought to the court's attention?
- Elicit child's preferences in developmentally appropriate manner, recheck right before.
- Make a good faith effort to determine child's wishes.
- Child can but won't express preference?
- Determine if child would like you to:
 - just tell the court what you think are the child's BI;
 - tell the court the child has no position; and
 - advise the court of the child's preference only if parent isn't present.

106

Common Issues

- Child who says he/she does not want to come to court at all:
 - Does not want to come or does not have an opinion to express?
 - Why and who is talking to child about it?
 - Come with a friend.
 - Contact/Invite from the Judge.
 - The report as an option.

107

Common Issues

- There are things that the child should not hear/know.
 - Really? How do we know that the child does not already know?
 - Have child step out of court at this point? How would this look or be handled?

108

Common Issues

- Hearing is at a bad time or will take too long:
 - Can the court be advised in advance that more time will be needed?
 - Can hearings be held outside of school hours?

REALLY???

109

Common Issues

- At court child becomes (or we think might become) very emotional or won't say anything at all:
 - Someone there that the child wants/trusts.
 - Still able to communicate?
 - Use other ways to communicate – write something out, you tell the court what child would like said.

Is it really their discomfort or our discomfort?

110

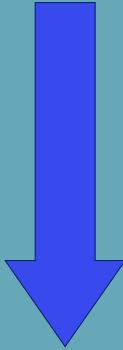
Children in Court

- This is just **too important** to go through the motions or check the box.
- You cannot know how **vital** this may be to the child.
- It is **CRITICAL** for the child or youth to see themselves as a person whose presence and opinion are valued by everyone in our system.

111

**Lets quickly review goals
and permanency hearing
requirements**

Hierarchy of Permanency Options Under ASFA



- Return to the Parent
- Adoption
- Legal Guardianship
- Permanent Placement with a Fit and Willing Relative
- Another Planned Permanent Living Arrangement
(16 years of age and must document compelling reason)

113

Concurrent Planning

Working toward family reunification while, at the same time, developing an alternative permanent plan.

- **Concurrent** rather than sequential planning.



- **NOT** a fast track to adoption, but to permanency.

114

WHO HAS VALUABLE INFORMATION?

- Foster parents
- Doctors and health care providers
- Teachers
- Day care providers
- Substance abuse providers
- Relatives

115

Permanency Planning Philosophy

- Permanency planning guided by a child's sense of time, not convenience or schedule of adult.
- Least Detrimental Alternative → "each move hurts"
- A range of parenting styles and practices is acceptable, if minimum care is provided.

116

Reasonable Efforts: Reunification

ASFA: Reunification is appropriate when:

- (1) Parent is working diligently on the plan.
- (2) Specific time frame.
- (3) Consistent with child's developmental needs.

Reason Efforts Questions:

- Have all services to enable the parent to safely care for the child been offered?
- Nexus between services and underlying problems?
- Parents- participation AND benefit? Change in behavior?
- Assess the risk. Have we "raised the bar?"

117

Thinking Through Reunification

- What's the child's position?
- Is the parent aware of any special needs of the child/educated the parent on how to care for those special needs?
- Are needed programs going to continue and are they coordinated to avoid duplication and inconsistent recommendations?
- Has the parent had enough contact from caseworker and service provider to properly assess the relative success of reunification? Were the contacts made at various times, in various ways?

118

More Thoughts on Reunification

- Will the child and parent need counseling together in order to transition to living together?
- Are there other members of the household who have to be prepared for the child's return?
- Has there been a gradual, increased level of unsupervised visitation?
- Does the parent have a clearly identified safety plan and net – particularly re substance abuse?

119

TERMINATION OF PARENTAL RIGHTS (TPR)

Motion must be filed when:

- child in foster care 15 of the most recent 22 months;
- court has adjudicated child to be abandoned; and
- court has waived duty to provide reasonable efforts to reunify due to felony.

The only exceptions are:

- the child living with a relative;
- agency has failed to provide services; and
- compelling reasons.

120

Compelling Reasons

Don't be confused, this phrase is also used in two different ways:

- 1) The agency determines it has a **“compelling reason” not to file a termination petition** for child who has been in care “15 of the last 22 months.”
- 2) **“Compelling reason” why “another planned permanent living arrangement”** is being selected as a permanency option.

121

Compelling Reasons

- 1) an older teen who specifically requests that emancipation be established as his/her permanency plan;
- 2) the case of a parent and child who have a significant bond but the parent is unable to care for the child because of an emotional or physical disability and the child's foster parents have committed to raising him/her to the age of majority and to facilitate visitation with the disabled parent; or
- 3) the Tribe has identified another planned permanent living arrangement for the child.

45 C.F.R. § 1356.21 (h)(3)(i), (ii), & (iii).

122

Thinking about this plan moving along at a timely pace...

Pre-TPR:

- Is the TPR petition prepared?
- Who must be served?
- How will the case proceed if parent is missing?
- Would the parents surrender? Is mediation appropriate?
- Has the agency explored open adoption?
- Can pretrial issues be resolved?
- What records or testimony will be necessary?
- Will reasonable efforts toward reunification cease once TPR is filed?

123

Other ideas for timely plan

- ⌚ Are current caretakers or relatives an adoptive resource?
- ⌚ Adoptive resource recruitment should begin as soon as TPR is filed if no one yet identified.
- ⌚ What's the child's position and how old is the child?
- ⌚ Are there any sibling placement/contact issues?

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Other ideas for timely plan

- If the current or prospective caretakers have reservations:
 - Would services allow an adoption to occur?
 - Is counseling necessary?
- Have any pre-adoptive parents been counseled on adoption assistance and subsidy issues?
 - regular monthly payments
 - medical coverage
 - respite care
 - special costs, such as ramps or wheelchairs
 - special services: speech and language instruction, physical therapy
 - family or individual counseling
 - one time legal costs
 - tax benefits

125

Where resource not identified

- Has the agency listed the child locally, nationally, regionally?
- Has the agency utilized matching programs, or community outreach programs?
- Could a private agency be used?
- Is there anyone in the child's life who might wish to adopt?

126

Definition of *Legal Guardianship* Under ASFA

Two key features:

- 1) Permanent
- 2) Self-sustaining

Transfer to the caretaker the following parental rights:

- Care and Control
- Protection
- Education
- Custody
- Decision making

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Guardianship or Custody with a Relative

- Have adoption or other permanency options been explored?
- What is the quality and nature of relationship to the child—is this the best placement?
- Are the relatives committed to the child long term?
- Are the relatives able to meet child's needs?
- Are any services necessary?
- Does the relative acknowledge the abuse/neglect?

128

Guardianship or Custody with a Relative

- Does the relative hold the parent accountable?
- How will contact with the parent be managed?
- Is a subsidy available? Does the family need to apply for TANF or other benefits? If so, has the agency helped the family apply?
- Will this preserve the child's cultural identity?
- Is a home study needed and been initiated? ICPC?
- Are there others in the household who need to be checked out?

129

What is an "APPLA?"

- Permanency *goal* for the child.
- The objective is to craft the most stable, secure arrangement possible.
- "Permanency" includes something more than merely meeting the child's immediate physical, educational, social, and mental health needs.
- Key to the child's future happiness and success is the development of relationships with members of the child's family and communities.

130

Profile of a Youth Aging Out

- 18 years-old
- 3 or more years in care
- Multiple placements
- Multiple workers
- Not likely to have completed education
- May have health or mental health needs
- Likely to return to bio-family

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Examples of What Youth Aging Out of Foster Care Lose:

- **Access to the courts** for enforcement of orders and legal advocates fighting for their right to access services.
- **Consistent adults** who are working for their best interest (i.e., foster parent, CASA, lawyer, or judge).
- **A sense of security** that may have been provided by their child welfare system involvement.
- **Medical Coverage:** in most states, medical coverage will end between the ages of 18 and 19.
- **Housing:** While in care the state must guarantee a youth's housing needs are addressed, but after leaving, a youth is left to find housing on their own or through a supportive housing program.

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What are the issues?

- We tend to focus on housing instead of permanency.
- Once APPLA is selected; other permanency options are not revisited.
- Youth and resource families not present at hearings and reviews.
- Very hard to live on your own at 19.
- Fear that the youth will set unrealistic goals.
- Ignoring the fact that youth need “family” and they will find one somehow – need help to do this safely.

133

Transition Planning and Permanency Hearings

- **Must be held for young adults.**
- Should provide notice to young adult.
- Should involve youth and actively include them in key decision making.
 - If young adult isn't present, the court should make a finding as to whether the young adult was given notice and made an informed decision not to attend or postpone the hearing
- Identify and recruit permanent placement for child.
- Transition planning discussion – not just a presentation of a generic plan.
- Determine specific services this youth needs to transition from foster care to independence.
- What does a good transition planning/ permanency hearing for a young adult look like:
 - Youth always gets adequate notice and is always present – can have his/her chosen advocates present;
 - Caseworker, GAL, service providers always present; and
 - Youth is a primary source of information and has meaningful participation and input into decisions.

134

Talk to the Youth!

- Permanent Connections
 - Where do you go for holidays? Who do you call for support, help, advice and in emergencies? Will those people be available after you transition out of foster care?
 - Do you keep in touch with family (parents, siblings, other relatives)? Do you know how to get in touch with them?
 - Who will you contact after you transition out of foster care if you have any questions health, school, housing?
- General questions about transition plan
 - Did you work with your social work on writing the transition plan? What do you like most about your transition plan? What do you like least? Is there anything you don't understand about it?

135

Talk to the Youth!

- Specific questions about the required topics
 - Who is your doctor? Do you know whether you can continue with this doctor after foster care terminates? If not, who will your doctor be? Doctor = general doc, ob/gyn, psychiatrist, etc.
 - Do you have an understanding about the importance of having a health care power of attorney or health care proxy to make health care decisions on your behalf?
 - Has someone at the agency talked to you about this?
 - Do you know the process for reapplying for Medicaid if necessary?
 - Where do you live? Are you going to live there after the case closes? If not, where are you going to live? Do you have information on landlord/tenant rights? Where should you go to get that information?

136

Talk to the Youth!

- Are you in school? What is your plan for future education?
 - What is the plan for post-secondary education or training?
 - What are the supports in place to assist you with continued educational success?
- What assistance has the young adult received to prepare for and apply to post-secondary education or training, including assistance with financial aid applications?
 - Have you accessed Chafee services and Education and Training Vouchers (ETVs)?
 - Are you eligible for other scholarships or financial assistance programs targeted at youth in foster care including available state tuition assistance programs?

Talk to the Youth!

- Do you have a job? Will that job continue after you transition out of foster care?
- Do you know how to get access to your medical records or health passport?
- Do you have a dentist? Can you keep that dentist after you age out of foster care?
- Do you have health insurance for when you transition?
- Does the youth/young adult have an understanding of the basic governmental, community and housing services available to them after discharge?
- What aftercare services will be provided by the state?
- Is there anything else you need assistance with?

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APPLA

- *Have other permanency options been fully considered and ruled out for valid reasons?*
 - Review compelling reasons at each and every permanency hearing and at each review to determine whether a more preferred permanency option is possible.
- *What efforts has the agency made to identify and recruit a permanent placement for the child?*
 - Parents?
 - Relatives?
 - Current and former caretakers?
 - Mentors, coaches, teachers, counselors, or employers?
- *Have we asked the child?*
- *Is this placement the best way to meet child's needs?*

139

Be prepared

- Youth who are involved in case planning will expect people to follow the plan!
- May have strong objections to their placement and if these objections are ignored, they can view other things as pointless.
- Involved youth will want to be at court.
- It can be very difficult for them to compromise.

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Recommendations for APPLA

- Don't use "APPLA" as a catchall for temporary plan.
- Conduct an individual assessment of placement *at each permanency hearing*.
- Review the youth's service agreement.
- Consider all issues pertaining to well being of child, including issues of visitation, with parents, siblings, others.

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Remember

- Youth deserve a child specific and individually developed case plan – we owe them this sense of importance.
- It is critical for a youth to feel that they have a say in what is happening in their lives, even more so for our youth.
- Youth's feelings of self worth can depend on this.

142

Adoption

- Feds would like to see us finalize more expeditiously.

Ideas –

- See it through the child's eyes – its urgent and means a lot.
- What can be done in advance? – but not so much that things are stale and need a re-do
- Great local project.

143

What if the permanency plan is not going as planned?

- Agency should consider bringing case back to court.
- ASFA does not mandate court order to change plan, but could be best practice.
- Court should require plan to have specific benchmarks.
- Mere attendance versus behavior change.

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Permanency for the Child

What is home?

- “Where they always have to take you in.”
- “Where you go for Thanksgiving.”
- “Where you bring the baby for them to see.”

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