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# Path to Permanency:

Practical Considerations for CASA

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Not a single child more; not a single day more. 2

Every time you touch a case file, think, 'What would it take to get the child home [or in a permanent placement] today??'

## General permanency planning principles:

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- ▶ Reunification is the goal
- ▶ Advocate for most permanent placement next
- ▶ Adopt a kin-first philosophy
- ▶ Placement stability impacts permanency
  - ▶ Scrutinize placement moves that are a step away from permanency
- ▶ Challenge complacency for youth who will age out w/o legal permanency

## Kinship Care

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- ▶ Kin first philosophy
  - ▶ Preference for relatives in law and policy AND culture
- ▶ Identify and engage relatives for children at every stage
- ▶ Create and support a strong network to support relative caregivers

## Permanency plan goals

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- ▶ Reunification
  - ▶ TPR and Adoption
  - ▶ Permanent Guardianship
  - ▶ Another Planned Permanent Living Arrangement (APPLA)
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## Permanency Outcomes

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- ▶ Discharges from foster care
  - ▶ April 2016-March 2017, 7042 discharges
    - ▶ Reunification 55% (3847)
    - ▶ Adoption 16% (1120)
    - ▶ Relative 13% (895)
    - ▶ APPLA 8% (566)
    - ▶ Guardianship 6% (427)
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# Reunification

## Reunification is the ultimate goal!

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- ▶ Reunification is an appropriate permanency plan when the child requires temporary foster care and the family requires time-limited reunification services (generally provided 12-15 months) to make it possible for the child to return home.
- ▶ Preferred permanent placement
- ▶ Consider parents' response to reunification services and progress in meeting case outcomes
- ▶ Requires family engagement
- ▶ Barriers include parental capacity, child's needs, and to some extent implicit biases.
- ▶ After care



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## Minimum sufficient level of care

"Lousy parenting does not necessarily equal neglectful parenting."

## Minimum sufficient level of care

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- ▶ Is the parent providing for the child's physical, emotional, and developmental needs at a basic level?
  - ▶ Physical: food, clothing, shelter, medical care, safety, protection
  - ▶ Emotional: attachment between parent and child
  - ▶ Developmental: education, special help for children w/ disabilities
- ▶ Set of minimum conditions, not ideal situation
- ▶ Remains the same when considering both removal and reunification
- ▶ Again, consider protective capacities
- ▶ Look at the family through a resource lens
  
- ▶ *"A lawyer who determines that a child's current situation is not in the child's best interest, but who does not consider whether the resulting intervention would be any better has done that child client no service." ~ Jean Koh Peters*

## Key elements for safety decision making

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- ▶ Threats of danger:
  - ▶ No adult in home is routinely performing basic parenting duties
  - ▶ Family lacks sufficient resources to meet child's needs
  - ▶ Parents lack knowledge/skills/motivation to assure needs met
  - ▶ Parents' behavior is impulsive, violent, dangerous
  - ▶ Parents cannot/will not explain child's injuries or threatening conditions
- ▶ Child's vulnerability:
  - ▶ Inability to self-protect
  - ▶ Susceptibility to harm based on size, mobility, social/emotional state
  - ▶ Young in age
  - ▶ Physical/mental developmental disabilities; poor health; limited physical capacity
  - ▶ Isolation from community
  - ▶ Inability to anticipate and judge presence of danger or articulate problems
  - ▶ Consciously or unknowingly provokes or stimulates threats and reactions



## Key elements for safety decision making, cont'd.

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- ▶ Protective Capacity: ability to be protective towards one's child
  - ▶ Cognitive protective capacity: can the parent recognize she is responsible for the child and recognize clues/alerts that danger is pending
  - ▶ Behavioral protective capacities: parent not only knows what must be done and recognizes danger, but will also act
  - ▶ Emotional protective capacity: attachment between parent and child and parent's own emotional strength



## Case plan is the roadmap home

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- ▶ CASA may be heard on the development of the case plan
- ▶ Should be based on the findings made at Adjudication
- ▶ Should be focused on safety concerns
- ▶ Individualized
- ▶ ADA considerations

## Visitation can make or break a case plan

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- ▶ Visitation: period of access to a child by the parent, guardian, legal custodian, sibling or other relative or any person who has demonstrated an ongoing commitment to child in order to maintain involvement
- ▶ Court must order reasonable visitation that is consistent with the age and development needs of a child if it is in the child's best interests
  - ▶ shall specify frequency, duration and terms of visitation
- ▶ Presumption that visitation shall be unsupervised unless the court finds that unsupervised visits are not in the child's best interests
- ▶ Within 30 days of finding that there is a lack of substantial progress towards completion of a case plan, the court shall review the terms of visitation

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# TPR and Adoption

HARM: SEEKING TPR IN THE POST-*EMD* ERA

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“We must be able to educate the court, not only about the harm the parents have caused, but also about the harm the system and foster care cause, as the child waits for permanence.”

## When DFCS must file for TPR:

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- ▶ The child has been in DFCS custody for 15 out of the most recent 22 months;
- ▶ The court has determined parent subjected child to aggravated circumstances, or
- ▶ The court has determined that the parent has committed, aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of another child of the parent or parent;
- ▶ The court has determined that the parent has committed felony assault that has resulted in serious bodily injury to the child or to another child of the parent;

## Except when DFCS does not have to file for TPR:

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- ▶ The child is being cared for by a relative;
- ▶ The case plan documents a compelling reason that termination would not be in the best interests of the child;
  - ▶ Parent successfully participating in services
  - ▶ another permanency plan is better suited
    - ▶ Child is 14+ and objects to TPR
    - ▶ Child is 16+ and specifically requests emancipation
    - ▶ Significant bond, but parent can't care for child b/c of emotional or physical disability and caregiver committed to raising child and facilitating visitation, or
    - ▶ Child is in residential treatment facility specifically designed for needs
  - ▶ Child is living with relative who is unable/unwilling to adopt but is providing child with stable and permanent home environment and removal of child would be detrimental to well being
  - ▶ In a prior hearing or review, it was found DFCS did not make RE on reunification case plan, or
  - ▶ Child is unaccompanied refugee or international legal obligation/foreign policy reason precluding TPR, or
- ▶ DFCS has not provided services necessary for the return of the child

## Two issues that impact TPR discussions:

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- ▶ \* Substance Abuse
  - ▶ Parental substance abuse has to be linked to the ability to parent
  - ▶ Consideration of addiction as a disease
  - ▶ Recognition that family treatment court will take 18 months
  
- ▶ \* American with Disabilities Act –
  - ▶ Parties with disabilities must be afforded reasonable accommodations in addition to reasonable efforts

## Grounds for determining TPR

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- ▶ Written consent of parent; acknowledgement before the court or voluntary surrender,
- ▶ Aggravated circumstances,
- ▶ Wanton and willful failure to comply with a lawful court order to provide support for the child for a period of 12 months or longer
- ▶ Abandonment of the child, OR
- ▶ The court determines the existence of parental misconduct or inability by finding 4 prongs:
  - ▶ 1. The child is a dependent child; AND the lack of proper parental care or control by the parent in question is the cause of the child's status as dependent; AND
  - ▶ 2. Reasonable efforts to remedy the circumstances were unsuccessful or not required
  - ▶ 3. Such cause of dependency is likely to continue or will not likely to be remedied; AND
  - ▶ 4. The continued dependency will cause or is likely to cause serious physical, mental, emotional, or moral harm to the child.

## Lack of proper parental care and control

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- ▶ Medically verified deficiency of such child's parent's physical, mental, or emotional health
- ▶ Excessive use of or history of chronic un-rehabilitated substance abuse
- ▶ Parent's felony conviction and imprisonment (murder of sibling, voluntary manslaughter of sibling, voluntary manslaughter of other parent, aiding, abetting, attempting, conspiring, soliciting to commit murder or VM of sibling or other parent, felony assault resulting in serious bodily injury to child or sibling)
- ▶ Current or past egregious conduct toward child or sibling
- ▶ Current or past physical, mental, emotional neglect of child or sibling, and
- ▶ Serious bodily injury or death of a sibling due to abuse or neglect
- ▶ For children not in parent's custody, whether he/she failed for period of 6 months prior to TPR hearing to:
  - ▶ Develop and maintain parental bond
  - ▶ Provide financial support as required by law and court order, and
  - ▶ Comply with reunification case plan

## Prong 4: Harm

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- ▶ prove that every other permanency plan must be ruled out
- ▶ Parent-child relationship is "irretrievably broken"
- ▶ 1. Must show harm if returned to the parent AND
- ▶ 2. Must show harm from continued foster care
  - ▶ Show the extent to which instability and impermanency are "currently causing specific harm" to the child, OR
  - ▶ Show whether the parent's current relationship with the child is itself detrimental/toxic
- ▶ DFCS proposed legislation (SB 131) states, "returning the child to his parent is likely to cause serious physical, mental, moral, or emotional harm to the child or threaten the physical safety or well-being of the child; or (B) Continuation of the parent and child relationship will cause or is likely to cause serious physical, mental, moral, or emotional harm to the child"

## If grounds for TPR exist, is it in BIC?

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- ▶ If any grounds for termination have been met, then court will consider if TPR is in the BIC considering:
  - ▶ 1. Child's sense of attachments
  - ▶ 2. Child's wishes and long-term goals
  - ▶ 3. Child's need for permanence
  - ▶ 4. Any other factors, including the list of 20, considered to be relevant and proper
- ▶ Exception: when ground is aggravated circumstance b/c of murder of child's other parents, TPR is presumed in BIC
- ▶ DFCS proposed legislation adds 3 additional BIC factors: (1) Any benefit to the child of being integrated into a stable and permanent home and the likely effect of delaying the integration into a stable and permanent home environment; (2) The detrimental impact of the lack of a stable and permanent home environment on the child's safety, well-being, or physical, mental, or emotional health; (3) the child's future physical, mental, moral, or emotional well-being;

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"We do not consider whether a child would be better off with a foster family when deciding to sever the natural parent-child relationship."

*- In the Interest of A.S.*

## Increasing the likelihood for a successful TPR

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- ▶ 1. Very thorough, specific fact finding
- ▶ 2. Competent expert testimony
- ▶ 3. Clearly reasoned conclusions of law
- ▶ 4. Exemplary record
- ▶ 5. Competent Trial Skills

\*Jerry Bruce, CJ4C

## Impact of TPR order:

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- ▶ Without limit to duration
- ▶ Divests parent and child of all legal rights, power, privileges, duties, obligations, except
  - ▶ Right of child to receive child support until adopted
  - ▶ Right of child to inherit from parent until adopted
  - ▶ Right of child to pursue civil action against parent
- ▶ Parent has no right to notice regarding adoptions
- ▶ Child's relationship with siblings not terminated until adoption
- ▶ Relatives remain relatives for purpose of placement and permanency until adoption
- ▶ Consider Reinstatement possibility

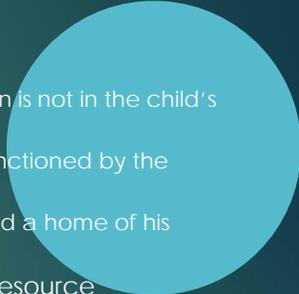
## TPR Appeals: Reversals in Published Decisions

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- ▶ 2005-08: 12%
  - ▶ 2015: 60%
  - ▶ 2016: 69%
  - ▶ 2017: 75% (1<sup>st</sup> 6 months)
- 

## Adoptions

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- ▶ Child has same legal rights/benefits as if born into the family
  - ▶ Adoption is an appropriate permanency plan when:
    - ▶ the parent(s) are unable to safely care for the child or reunification is not in the child's best interest,
    - ▶ permanent, legal separation from birth family is necessary and sanctioned by the court, and
    - ▶ the child is capable of accepting and responding to family life and a home of his own.
  - ▶ Relatives and non-relatives may be selected as the adoptive resource
  - ▶ Termination of parental rights must occur
  - ▶ Consider voluntary post-adoption contracts
  - ▶ Adoption Assistance
    - ▶ Adoption subsidy/monthly maintenance for "special needs" adoptions
- 

## Adoptions, cont'd.

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- ▶ Assess adoptive resource—
  - ▶ willingness to maintain connections,
  - ▶ skilled at handling challenges,
  - ▶ reasonable expectations,
  - ▶ familiarity w/ child



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## Permanent Guardianships



## Permanent Guardianships

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- ▶ Guardianship is granted to a relative or non-relative for a child who is unlikely to return home and where adoption is not in BIC
- ▶ Why guardianship?
  - ▶ Does not sever birth parents' rights/responsibilities
  - ▶ Maintains bond/connections between child and family
  - ▶ May be considered when TPR has occurred
  - ▶ Relatives and non-relatives can access subsidized guardianship payments
- ▶ Advantage of being less vulnerable to disruption than more formalized long-term foster care arrangements.
- ▶ May only be dissolved or modified if there is a material change in the child's or guardian's circumstances.
  - ▶ However, a temporary guardianship can be threatened whenever a parent, who has agreed to the guardianship, petitions for dissolution

## Permanent Guardianships, cont'd.

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- ▶ DFCS shall ensure there is a court order finding for non-reunification, an approved Relative/Non-Relative Care Assessment (R/Non-RCA) and at least six months of DFCS' supervision of a child's placement with the relative or non-relative caregiver prior to recommending permanent guardianship.
- ▶ County DFCS shall request a waiver from the Region for guardianship to be selected as a permanency plan whenever a child is under the age of 14 or whenever a child is legally free for adoption (policy)
  - ▶ Region considering whether waiver was sought with ample time, whether adoption was fully vetted and ruled out by the potential family

## Permanent guardianship, cont'd.

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- ▶ Notice must be given to biological family
- ▶ Court must make findings:
  - ▶ RE to reunify would be detrimental
  - ▶ TPR and adoption is not in the BIC
  - ▶ Proposed guardian can provide safe, permanent home, and
  - ▶ Appointment of guardian is in the BIC and chosen person is most appropriate considering BIC
- ▶ Court may order child support
- ▶ Guardianship orders:
  - ▶ Remain in effect until child is 18
  - ▶ Not subject to review by court, and
  - ▶ Establish reasonable visitation schedule which allows child to maintain meaningful contact with parents through visits, calls, letter, or other forms of communication or specifically includes any restrictions on parents right to visitation

## Permanent Guardianships, cont'd.

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- ▶ Court retains jurisdiction for purpose of entering order following petition to modify, vacate, or revoke and appoint a new guardian
- ▶ Superior courts have concurrent jurisdiction for enforcement or modification of child support or visitation
- ▶ Guardianship shall be modified, vacated, or revoked base upon clear and convincing evidence there has been material change in circumstance of child or guardian and the modification/vacation/revocation of order and appointment of new guardian is in BIC

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# Another Planned Permanent Living Arrangement

APPLA

## Another Planned Permanent Living Arrangement—16+

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- ▶ Appropriate when the court has ordered non-reunification, adoption and guardianship have been ruled out as inappropriate or not in the BIC, and compelling reason is documented in the case plan and court order
  - ▶ Long-term foster care (agreement with caregiver for placement until foster care is no longer needed)
  - ▶ Emancipation (Planned arrangement for maintaining child in foster until he ages out)
  - ▶ Placement with fit and willing relative—supports continuity, family relationships, parents can petition for return of custody
- ▶ If the court finds there is a compelling reason that it would not be in the child's best interests to be reunified, adopted or placed with a permanent guardian, the court's order shall document the compelling reason and provide that the child should obtain permanency via APPLA.
- ▶ DFCS shall rule out all other permanency plans (reunification, adoption, and guardianship) prior to selecting APPLA as the permanency plan
  - ▶ Youth does not want to be adopted
  - ▶ Youth is in safe, stable placement w/ adult who is committed to youth until he reaches the age of majority
  - ▶ Medical needs

## Cold Case Project

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- ▶ Project of Committee on Justice for Children and Office of the Child Advocate
- ▶ Cold Case: Predictive model of youth likely to age out without permanency
  - ▶ (high per diem, long foster care stay, institutionalized setting)
- ▶ Fellows review cases
  - ▶ Permanency Roundtable +
- ▶ Coaches consult on cases
- ▶ Access to resources

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“At first glance, it may appear too hard.  
Look again.  
Always look again.”

~Mary Anne Rodmacher

## Why should CASA stay on the case?

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- ▶ Advocating for well-being needs—education, mental health, etc.
  - ▶ Normalcy! --- RPPS
- ▶ Promoting adult connections--stability and consistency
- ▶ May be the only visiting resource
- ▶ Continue to revisit legal permanency options
- ▶ Encourage youth to not opt out of care
- ▶ Ensure youth has what he needs to transition to adulthood
  
- ▶ Why else??

## Ways CASA can expedite permanency:

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- ▶ Participate in Family Team Meetings
- ▶ Participate in Permanency Roundtables
- ▶ Advocate for timely hearings, frequent reviews
- ▶ Assist DFCS with family finding (identifying and engaging)
  
- ▶ What else??

Don't forget about the *Quick Reference Topical Guides on Permanency Options and Best Interest Factors!*

### Permanency Options

A child's permanency plan must include whether a child should be returned to his parent, referred for termination of parental rights and adoption, placed with a permanent guardian, or in the case in which DFCS has documented a compelling reason that none of the foregoing options would be in the best interests of the child who is 16 years old or older, whether a child should be placed in another planned permanent living arrangement.

When advocating for permanency, CASA should consider the most permanent placement option that is feasible under the circumstances and give preference to relatives when appropriate. Relatives should be pursued prior to non-relatives for both temporary and permanent placements.

CASA should scrutinize any placement moves that are a step away from permanency or challenge complicity for children aging out of the system without legal permanency.

#### Reunification

Reunification occurs when the child can be safely returned home to his parents during the required timeframes.

Reunification is appropriate when a parent has completed his case plan and there are no remaining safety threats in the home.

Barriers to reunification may include parental capacity, the severity of a child's needs, and availability of services. Consider whether reunification could be appropriate if proper support services were in place.

#### Adoption

Adoption is appropriate:

When reunification is not possible and permanent and legal separation from the birth family is necessary and sanctioned by the court.

When a child is capable of accepting and responding to family life and a home of his own (a child 14 years old or older must be willing to consent to the adoption).

When there will be no unintended consequences to terminating parental rights.

Advocate for the timely filing of a petition for termination of parental rights and post-adoption reviews to ensure the adoption is finalized as expeditiously as possible.

Consider whether adoption subsidies are available for the family and whether the family is connected to this resource if appropriate.

Advocate for the creation of a post-adoption contact agreement with relatives when appropriate.

#### Permanent Guardianship

Permanent guardianship is a judicially-created and permanent relationship between the child and a relative or non-relative caregiver.

Permanent guardianship is appropriate when adoption has been explored and is not in the best interests of the child. (e.g., Medicaid is needed, parent's SSI benefits are needed).  
CASA October 2016

Permanent guardianship does not sever the birth parents' rights/responsibilities and allows for a continuing bond and connections between the child and family and may include visitation.

Permanent guardianships remain in effect until the child turns 18 years old with limited circumstances to modify or vacate.

Non-reunification findings must be made prior to granting a permanent guardianship.

Waivers are required for a permanent guardianship for a child under 14 years old or who has had his parental rights terminated.

The child must be placed with the caregiver for a period of 6 months prior to DFCS recommending a permanent guardianship.

Permanent guardianship subsidies can be accessed by relatives and non-relatives.

#### Another Planned Permanent Living Arrangement (APPLA)

APPLA occurs when DFCS maintains care and custody of a youth and changes a living situation in which the youth is expected to remain until adulthood.

APPLA is permissible for youth over 16 years of age yet only appropriate when other options have been exhausted and compelling reasons exist for why it is not in a child's best interests to achieve permanency through another option.

APPLA could be appropriate when a youth is in safe, stable placement with an adult who is committed to him until he reaches the age of majority or has medical needs requiring state-funded support.

When APPLA must be the permanency plan, CASA should continue to advocate for a youth's well-being, helping to ensure that a youth can participate in activities, engage in as much normalcy as possible, successfully prepare for adulthood, and maintain relationships with a supportive adult. Other legal permanency options can also be revisited.



## Hypothetical situations

ACTIVITY



## Hypothetical #1

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- ▶ Intellectually-disabled mom has completed case plan, and DFCS is ready for the child, who is deaf, to return home. CASA has observed visits, and child shows no attachment to Mom. Mom is not engaged with child and barely interacts with him. Child is 16 months old and has been in care for 12 months. Mom has completed parenting classes per her case plan.

## Hypothetical #2

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- ▶ Three sisters (ages 3, 8, & 11) have been in foster care for 30 months. DFCS filed for TPR when the children had been in foster care 21 months (9 months ago), and the hearing finally occurred. After seven days of testimony, the evidence indicates that even though the girls haven't seen their parents in a year (per court order), the parents have completed with the majority of their case plans and, most importantly, have been clean and sober (main cause for initial removal) for one year. The girls are separated into two proposed adoptive placements and will likely have little contact with each other following TPR and adoption.

## Hypothetical #3

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- ▶ Handicapped, wheelchair-bound, 16 year old boy was abandoned into the foster care system five years ago and has experienced a dozen foster homes and school changes during this time. He has finally been placed in a long-term foster home for the past year and is doing well in this home. They are committed to him long-term, unlike his prior foster homes in which he acted out and suffered minor neglect and abuse. His permanency plan is adoption, but this family is not interested because of their advanced age.

## Hypothetical #4

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- ▶ A 12 year old boy was taken from his maternal grandmother into DFCS custody with his four cousins and ultimately separated from them. The boy wanted to live with his paternal grandmother in TN with whom he had lived for the previous few years. Seven years before, she had gotten a DUI and a TPO against her boyfriend (who is now her husband). DFCS refused to consider the grandmother as a placement because of that involvement with the law. Grandmother and boyfriend had gone to counseling and worked out their problems before getting married. Grandmother has been in the same home and maintained the same job as a daycare worker for 17 years.

## Dream Team: live case consultations

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## Remember:

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- ▶ Every CASA report for a permanency plan hearing must contain a recommendation for permanency
- ▶ All recommendations should be supported with applicable best interest of the child factors
- ▶ Reunification is best, relatives are next best option
- ▶ Consider whether parent-child relationship is irretrievably broken when determining whether to recommend adoption or guardianship
- ▶ Challenge placement moves and complacency

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“Every child needs and deserves a family. Not just a family in which to grow and develop, but a family to leave when the time is right, a family to come home to when the need demands, and a family to be a part of when childhood is only a distant memory.”

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# Questions?

THANK YOU!

