

The *Promise*



Of Permanency

## THE PROMISE OF PERMANENCY . . .

“When we remove children from their homes through state action, there is an implied promise, a covenant if you will, to effect permanency for them timely and compassionately, and with as little damage to them and their families as possible.”

“The Promise of Permanency” (2005)

NOT A SINGLE CHILD MORE; NOT A SINGLE  
DAY MORE...

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

## PERMANENCY PLANNING PRINCIPLES:

- Believe that reunification is the optimal goal
- Consider that termination of parental rights signals some important failure
- Adopt a kin-first philosophy
- Understand how placement stability impacts permanency
- Challenge complacency for youth who will age out w/o legal permanency
- But, know that relational permanency can be more important than legal permanency

## ROLE OF REASONABLE EFFORTS

“Doing for children and families we serve that which we would want others to do for us and our children if we found ourselves in like circumstance”

~Hon. Michael Key

# KIN FIRST PHILOSOPHY

- Importance of familial connections
  - Single most identifiable variable contributing to positive outcomes for youth = meaningful connections and lifelong relationships with family and other caring adults – *especially those which existed prior to foster care.*
  - Every youth has healthy family members—set expectation for normalcy
  - Family connections/relationships are as important as services
  - Expansive view of kin
- Kin Continuum
- Create and sustain a strong network to support kin caregivers

# EXPANDED DEFINITION OF PERMANENCY

- Relational vs. Legal Permanence
- Permanence is a mind-set, a state of permanent belonging and connectedness across a lifespan, not a placement
- “Sense of belonging and security we work for and covet for our own children”
- “Our purpose is family finding is to restore the opportunity to be unconditionally loved, to be accepted, and to be safe in a community and a family.” ~ Kevin Campbell
- Court orders are only a part of permanency

# PERMANENCY PLAN GOALS

- Reunification
- TPR and Adoption
- Permanent Guardianship
- Another Planned Permanent Living Arrangement (APPLA)



# PERMANENCY OUTCOMES

- Discharges from foster care
- April 2018 – March 2019
  - Reunification 50%
  - Adoption 18%
  - Relative 11%
  - Guardianship 11%
  - APPLA 9%

# CASE PLAN IS THE ROADMAP HOME

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

# FAMILY TIME CAN MAKE OR BREAK A PLAN

- 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 BIC
  - shall specify frequency, duration and terms
- Presumption that visitation shall be unsupervised unless court finds that unsupervised visits are not in the 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
- NEW – Family Time Protocol

# REUNIFICATION

WE DO NOT TRULY CELEBRATE  
REUNIFICATION.

WE TOLERATE IT.

“CHILDREN DON’T WANT BETTER  
FAMILIES; THEY JUST WANT THEIR  
FAMILIES TO BE BETTER.”

~HON. RUSTY JACKSON

# REUNIFICATION IS THE ULTIMATE GOAL!

- Preferred permanent placement
- Requires authentic family engagement
  - Believe that foster care should be a service/support to families, not a substitute for parents
  - Value people-first
  - Believe that people can change
- Placement stability
- Acknowledge power imbalance of system

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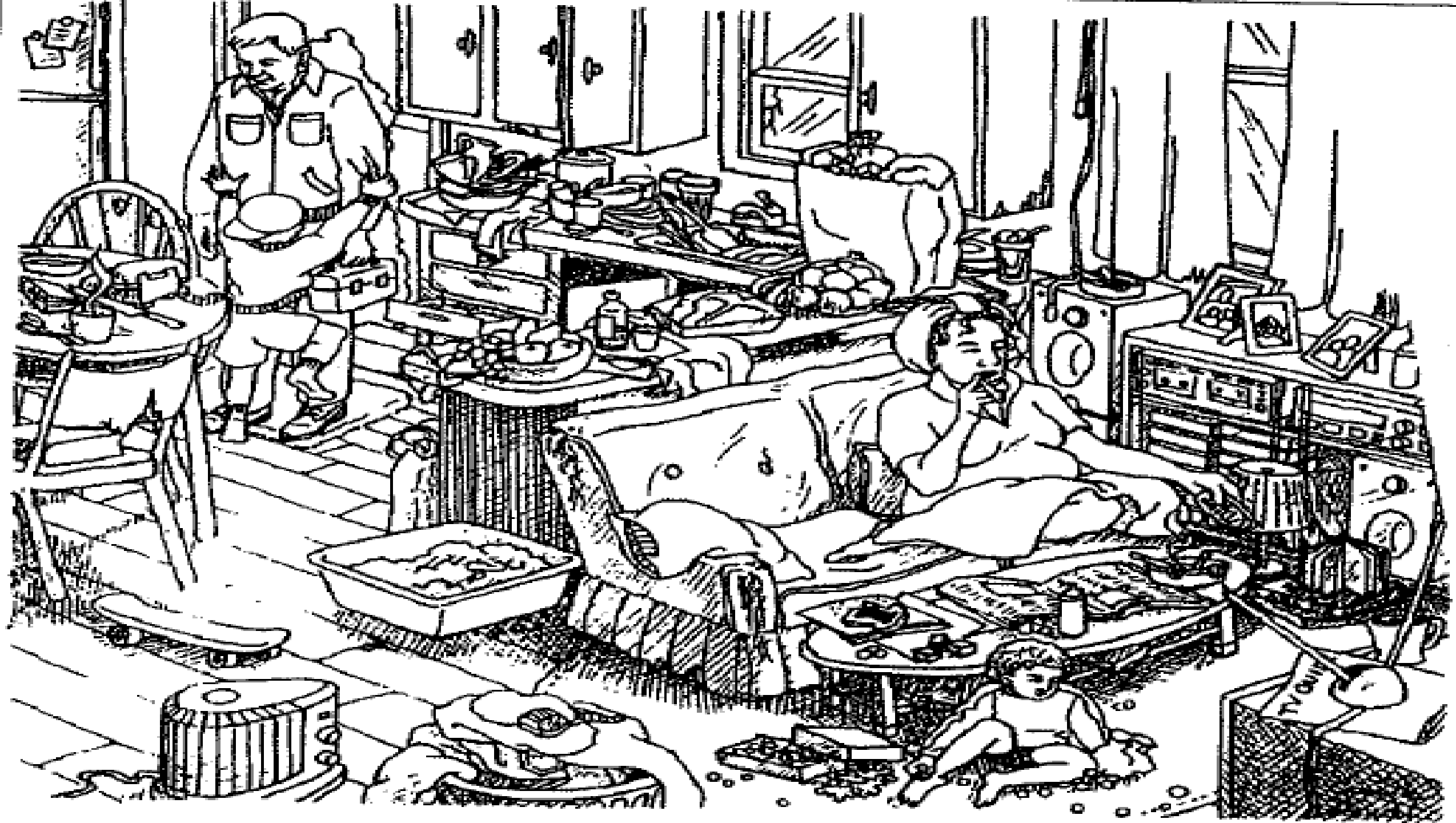
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# MINIMUM SUFFICIENT LEVEL OF CARE



- “Lousy parenting does not necessarily equal neglectful parenting.”



# MINIMUM SUFFICIENT LEVEL OF CARE

- 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
- Set of minimum conditions, not ideal situation
  - Developmental: education, services for children w/ disabilities
- Remains the same when considering both removal and reunification
- Perceive 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*

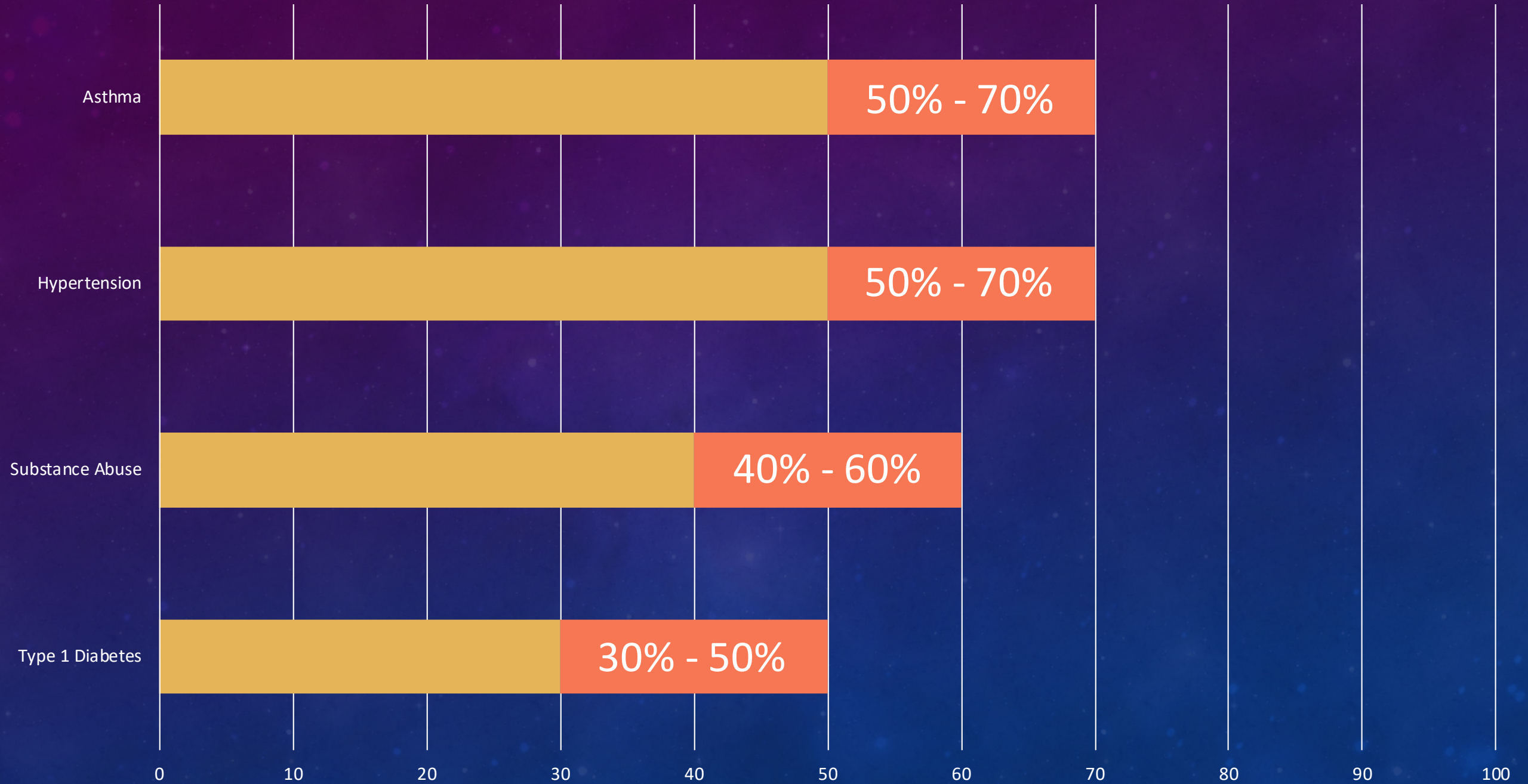
# PERMANENCY PRESERVATION

- Transitions
- Trial Home Visit (10.3)
  - Consider progress on case plan with regards to resolving safety concerns
  - Parent demonstrated effective parenting
- After Care (10.27)
  - Request after care services be ordered (usually < 6 months)
  - Continue to visit, solicit feedback

# ISSUES IMPACTING REUNIFICATION

- Substance Use Disorder
- Mental Health and Disabilities
- Harms of Long-Term Foster Care

# RELAPSE RATES



PROVIDING SERVICES THAT ARE NOT EVIDENCE-BASED IS A FAILURE TO MAKE REASONABLE EFFORTS.

PARENTS ARE NOT GENERALLY RESPONSIBLE FOR FAILURES TO REUNIFY UNTIL EVIDENCE-BASED SERVICES HAVE BEEN PROVIDED.

# WHY IS LONG-TERM FOSTER CARE BAD FOR KIDS?

1. Foster Care Placements Are Not Stable
2. Foster Care Placements Often Cut Children Off From Their Parents And Family.



# PLACEMENT (IN)STABILITY

- April 2018 – March 2019
  - Average # of Placement Moves in 1<sup>st</sup> 12 months: 4.4
  - Placement Moves Away from Permanency: 15%
  - Placement Moves Toward Permanency: 27%
  - Lateral Placement Moves: 58%

# ADOPTION

# CONSIDERING TPR/ADOPTION

- Why is adoption the second best alternative for permanency?
  - Is it more legally permanent?
  - Is it so children can be moved out of foster care quicker?
  - Federal context
- A challenge:
  - Consider that every other permanency plan should be ruled out first
  - Assess whether parent-child relationship is “irretrievably broken”

# DOES TPR GET KIDS TO PERMANENCY?

Children in care legally free for adoption as of March 31, 2018 who achieved permanency within 12 months:

53%

Children in non-relative foster care over 24 months on March 31, 2019:

24%

Percentage of those children who are free for adoption:

41%

# GROUNDINGS FOR DETERMINING TPR

- Written consent of parent; voluntary surrender,
- Aggravated circumstances,
- Wanton & willful failure to comply with lawful court order to provide support for child for 12 months or longer
- Abandonment, OR
- Court determines existence of parental misconduct or inability:
  - Child is dependent due to lack of proper parental care or control\* by parent is cause of dependency;
  - Reasonable efforts to remedy circumstances were unsuccessful/not required
  - Cause of dependency likely to continue/will not likely be remedied in foreseeable future; AND
    - Returning child likely to cause serious harm or threaten safety or well-being, OR
    - Continuation of parent-child relationship will cause/likely to cause serious harm

# WHEN MUST DFCS FILE FOR TPR?

- Child has been in DFCS custody for 15 out of the most recent 22 months;
- Court determined parent subjected child to aggravated circumstances, or
- Court determined parent committed, aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of another child of the parent or parent;
- Court determined 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:

- Child is cared for by a relative;
- Case plan documents compelling reason that termination not in best interests
  - Parent successfully participates 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 provides child with stable and permanent home and removal would be detrimental to well being
  - In prior hearing, 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

# \*LACK OF PROPER PARENTAL CARE & CONTROL

- Medically verified deficiency of parent's physical, mental, or emotional health
- Excessive use of or history of chronic un-rehabilitated substance abuse
- Parent's felony conviction/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 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



# IF GROUNDS FOR TPR EXIST, IS IT IN BIC?

- If any grounds for termination have been met, court will consider if TPR is in the BIC considering:
  - 1. Child's sense of attachments, continuity of affection
  - 2. Child's wishes and long-term goals
  - 3. Child's need for permanence, continuity of relationships
  - 4. Benefit to child of being integrated into stable and permanent home and likely effect of delaying integration into a stable and permanent home
  - 5. Detrimental impact of lack of stable and permanent home on the child's safety, well-being, or physical, mental, or emotional health
  - 6. Child's future physical, mental, moral, or emotional well-being
  - 7. Any other factors, including the list of 20, considered to be relevant and proper

“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

- 1. Very thorough, specific fact finding
- 2. Competent expert testimony
- 3. Clearly reasoned conclusions of law
- 4. Exemplary record
- 5. Competent Trial Skills
- 6. Do not TPR simply because “that is what we do in this kind of case”.

# ADOPTIONS

- 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
- 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

# PERMANENT GUARDIANSHIPS

# PERMANENT GUARDIANSHIPS

- 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 GUARDIANSHIP, CONT'D.

- 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 that 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.

- 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



# ANOTHER PLANNED PERMANENT LIVING ARRANGEMENT

# APPLA FOR 16+

- Appropriate when court has ordered non-reunification, adoption and guardianship have been ruled out as inappropriate or not in the BIC, and compelling reason is documented
  - Long-term foster care (agreement with caregiver for placement until foster care 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 court finds there is a compelling reason that it's not in child's best interests to be reunified, adopted or placed with a permanent guardian, court's order shall document compelling reason and provide that child should obtain permanency via APPLA.
- DFCS shall rule out all other permanency plans prior to selecting APPLA
  - Youth does not want to be adopted
  - Youth is in safe, stable placement w/ adult committed to youth until he reaches age of majority
  - Medical needs

# APPLA IS NOT THE END OF THE STORY

At every permanency hearing (at least once a year) for the life of the case, the court must determine:

(A) Whether DFCS has documented intensive, ongoing, and, as of the date of the hearing, unsuccessful efforts to return the child to the home or to secure a placement for the child with a fit and willing relative, a legal guardian, or an adoptive parent, including through efforts that utilize search technology, including social media, to find biological family members for the children;

(B) Whether DFCS has documented the steps it is taking to ensure that the child's foster family home or child care institution is following the reasonable and prudent parent standard and the child has regular, ongoing opportunities to engage in age or developmentally appropriate activities, including by consulting with the child in an age-appropriate manner about the opportunities of the child to participate in the activities; and

(C) After asking the child, what his or her desired permanency outcome is

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

~Mary Anne Rodmacher

# THE ROLE OF ADVOCATES IN APPLA CASES

- Advocating for well-being needs
- Promoting adult connections--stability and consistency
- May be the only visiting resource
- Continue to revisit legal permanency options
- Encourage youth to stay in care
- Ensure youth has what he needs to transition to adulthood

PERMANENCY PLAN ADVOCACY  
IN CASES WHERE  
REUNIFICATION IS NOT  
POSSIBLE

# CONCURRENT PLANNING

- Assess and identify a concurrent plan within 30 days of child entering care. Simultaneously implement concurrent plan of either adoption or permanent guardianship, with a primary plan of reunification if determined to be in the best interest of the child (10.22)
- When the case plan requires a concurrent permanency plan, the court shall review the reasonable efforts of DFCS to recruit, identify, and make a placement in a home in which a relative of a child adjudicated as a dependent child, foster parent, or other persons who have demonstrated an ongoing commitment to the child has agreed to provide a legally permanent home for such child in the event reunification efforts are not successful. § 15-11-212

# THE ROLE OF THE NONREUNIFICATION DETERMINATION

- Nonreunification may be ordered by the court when:
  - A statutory exception exists under O.C.G.A. §15-11-203(a);
  - DFCS files a recommended case plan that does not contain reunification services and the court holds a permanency hearing;
  - The court finds sua sponte at any hearing that nonreunification is appropriate



# THE ROLE OF THE NONREUNIFICATION DETERMINATION

- However the court gets to the question of NR, the facts at the hearing must support a conclusion that **the provision of reunification services would be detrimental to the child.**
- **Nonreunification is not a permanency plan.**

# PRESUMPTIVE PERMANENCY PREFERENCES

**Why have permanency preferences?**

**“Permanency decisions should not be arbitrary ...[T]he best permanency decisions for children can be made within a structured decision making framework based on a carefully considered order of preference for permanency options founded on law, good practice, and just plain common sense.” ~The Promise of Permanency (2004)**

# PRESUMPTIVE PERMANENCY PREFERENCES

## Guiding Principles:

1. **Relational Permanency is the most important consideration.**
2. **Relational Permanency should preserve the parent-child relationship unless that relationship is itself harmful to the child.**
3. **Relational Permanency is best achieved with a person who has a long-term, beneficial relationship with and demonstrated commitment to the child.**

# PRESUMPTIVE PERMANENCY PREFERENCES

## **OPTION 1 –PARENT-CHILD RELATIONSHIP IS NOT IRRETRIEVABLY BROKEN AND HARMFUL TO THE CHILD:**

- a. Permanent Guardianship with a relative who has an ongoing, beneficial relationship with and demonstrated commitment to the child.**
- b. Permanent Guardianship with fictive kin who has the same.**
- c. Permanent Guardianship with a third party who has the same (e.g., foster parent or other non-relative the child has met since coming into foster care).**
- d. Permanent Guardianship with relative without an ongoing relationship with the child, but who can demonstrate a commitment to the child.**
- e. APPLA with a stable, committed foster placement supportive of meaningful family time with parents.**

# PRESUMPTIVE PERMANENCY PREFERENCES

## **OPTION 2 –PARENT-CHILD RELATIONSHIP IS IRRETRIEVABLY BROKEN AND HARMFUL TO THE CHILD:**

- a. Adoption with a relative who has an ongoing, beneficial relationship with and demonstrated commitment to the child.**
- b. Adoption with fictive kin who has the same.**
- c. Adoption with a third party who has the same (e.g., foster parent or other non-relative the child has met since coming into foster care).**
- d. Adoption with relative without an ongoing relationship with the child, but who can demonstrate a commitment to the child.**
- e. APPLA with a stable, committed foster placement.**

# ASSESSING AN ADOPTIVE RESOURCE

- willingness to maintain connections
- skilled at handling challenges
- reasonable expectations
- familiarity w/ child

“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.”

QUESTIONS? DON'T ASK US!

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