2019 Annual
Child Welfare Law Update

Ko`olau Ballrooms and Conference Center
45-550 Kionaole Road
Kane`ohe, Honolulu, Hawai`i
Friday, August 23, 2019

7:30 a.m. REGISTRATION

8:30 a.m. WELCOME
Honorable Bode Uale, Family Court of the First Circuit
Cathy Betts, Deputy Director, Department of Human Services
Thomas Haia, Program Emcee

8:40 a.m. CHILD WELFARE STATUTORY CHANGES AND APPELLATE DECISIONS
Patrick Pascual, Deputy Attorney General, Family Law Division
(Q&A to follow)

9:00 a.m. JUDICIARY AND EXECUTIVE BRANCH: CHILD WELFARE INITIATIVES, ACCOMPLISHMENTS, AND PLANS FOR 2018-19
Department of Education: Evangeline Casinas, Educational Specialist for Foster Care and Neglected, Delinquent, or At-Risk Students
Family Court: Honorable Bode A. Uale, Judge, Family Court, First Circuit
Department of Human Services: Tonia Mahi, Assistant Branch Administrator, Child Welfare Services
Department of Health: Scott Shimabukuro, Child and Adolescent Mental Health Division
(Q&A to follow)

10:00 a.m. BREAK

10:15 a.m. FOSTER YOUTH BILL OF RIGHTS AND DEVELOPMENT OF A PONO PROCESS
HI H.O.P.E.S. Board. Discussion facilitated by Delia Ulima, HI H.O.P.E.S. Statewide Initiative Manager

11:00 a.m. LGBTQ UPDATE: OVERVIEW OF CURRENT LGBTQ ISSUES
Josephine Chang, JD, Consultant, Trainer, Parent Resource, and Community Advocate (LGBTQ Issues)

11:20 a.m. CURRENT DRUG TRENDS
Gary Shimabukuro, Laulima Hawaii

12:20 p.m. LUNCH AND COMMUNITY PROGRAM UPDATES
Edralyn Caberto, Systems Liaison, Liliuokalani Trust: Ka Pili Ohana
Carla Houser, Executive Director: RYSE (Residential Youth Services and Empowerment
Keith Kuboyama, Family Programs Hawaii, and Malia Malufau, Youth-In-Court Facilitator, UH School of Law: Geist Foundation Enhancements Fund

1:15 p.m. CURRENT DRUG TRENDS - PART II
Gary Shimabukuro, Laulima Hawaii

2:15 p.m. ASSESSING HOME SAFETY FOR CHILDREN WHEN MARIJUANA USAGE IS OCCURRING
Michele Nakata, J.D., Department of Health, Medical Cannabis Dispensasry Licensing Program; Tamara Iida Whitney, Program Coordinator, Medical Cannabis Registry Program; Tonia Mahi, Child Welfare Services Assistant Branch Administrator; Julio Herrera, Supervising Attorney, Department of the Attorney General; Makia Minerbi, Guardian Ad Litem, Legal Aid Society of Hawaii; Honorable Brian Costa, Judge, Family Court, First Circuit

3:45 p.m. CLOSING REMARKS
Honorable Brian Costa, Family Court, First Circuit

4:00 p.m. STATEWIDE GUARDIAN AD LITEM CONVENING
Guardian Ad Litem Reports, GAL role in ensuring rights of youth in foster care.

5:30 p.m. PAU

Handouts from the conference will be posted at www.ittakesanohana.org → _Handouts → Factsheets/Conference Handouts → 2019Annual Child Welfare Law Update

This event is funded by the the Judiciary State of Hawaii Hawaii Court Improvement Program and supported by the First Circuit Family Court, Department of Human Services, William S. Richardson School of Law, and the CIP Training Grant Planning Committee.

KEYNOTE SPEAKER

Gary Shimabukuro. Gary Shimabukuro, a Certified Prevention Specialist, has been providing drug education for businesses, schools, apprenticeship programs, labor organizations, management groups, law enforcement agencies, military personnel, and other organizations since 1978. He was a clinical supervisor for a substance abuse treatment program and a former certified trainer and "Trainer of Trainers" for the National Institute of Drug Abuse (NIDA).

Since 1988, the trainings have focused on creating a Drug Free Workplace. Approximately 200,000 people have attended the various training programs throughout the State of Hawaii, Alaska, California, Missouri, Washington D.C. and the Pacific Basin, including Guam, Saipan, Palau, Pohnpei, Australia and New Zealand. Gary's communication skills have effectively overcome language and cultural differences for participants from countries all over the world.

Gary, through the nonprofit Laulima Pacific Inc. (LPI), has concentrated his efforts in drug prevention and education by conducting thousands of sessions for public and private schools for teachers, students, and parents; churches; youth athletic groups; rotary clubs; social groups; nonprofit organizations; and various other community groups.

Training law enforcement personnel is another mission of LPI. Programs have been conducted for the DEA, FBI, ICE, police narcotics and criminal intelligence units, DCESP personnel, OCDEF task forces, U.S Attorneys, prosecutors, Corrections staff, and other law enforcement agencies and staff.

Gary has presented in numerous conferences, including four National DARE conferences, two California DARE Conferences, eight Hawaii State DARE Conferences, Pacific Judicial Conference, Western BJA conference, International Association of Chiefs of Police, International GHB and Chemical Drug Conference, Australia's National Chemical Diversion Conference, New Zealand's Combined Law Enforcement Group Conference, South Pacific Criminal Intelligence Network Conference, and numerous Customs Pacific Basin Conferences.

The training programs have been endorsed by the Federal Bureau of Investigation (FBI) and the US Drug Enforcement Administration (DEA). Gary has won numerous awards including the following:

- FBI Director's Award for Drug Demand Reduction in 1992 and 2001
- Honolulu Police Department's Certificate of Merit in 1993
- US Attorney General Certificate of Recognition

- Federal Executive Board Citizen of the Year for 1998
- Ola Pono Award in 2001
- National Association of Drug Diversion Investigators Life Achievement Award 2010
- U.S Senators and Representatives, Governors, Mayors, U.S. Attorneys, State and County lawmakers, and Police Chiefs and Commissioners have recognized the Laulima Programs.

CONFERENCE PRESENTERS

CATHY BETTS. Cathy Betts is the Deputy Director for the Hawaii State Department of Human Services. She has worked in the fields of advocacy for women, family law, violence prevention, Title IX, labor protections for workers, economic justice, and gender-based violence. She served as the Executive Director of the Hawaii State Commission on the Status of Women from 2011-2017 and was appointed as Deputy Director in October 2017.

Cathy is a former Deputy Attorney General with the State of Hawaii's Family Law Division, where she primarily represented Child Welfare Services in child abuse and neglect cases. She currently serves on the Board of Directors for the Hawaii Filipino Lawyers Association, the Board of Directors for Hawaii Women Lawyers, and the Board of Directors for the National Association of Commissions for Women. She also serves as the Co-Chair of the Hawaii State Bar Association's Diversity, Equality and the Law (DEAL) Committee and serves as the Co-Chair of the Commercial Sexual Exploitation of Children (CSEC) Committee with the Family Court of the First Circuit. Cathy earned her B.A. in Sociology from the University of California, Los Angeles and her J.D. from the William S. Richardson School of Law.

EDRALYN CABERTO. Edralyn worked for over 23 years in numerous agencies in the State of Hawaii, the last one being the Office of Youth Services, where she held the title of Children and Youth Specialist and worked for eleven years primarily in the area of juvenile justice. She now holds the title of Systems Liaison for Liliuokalani Trust, where she works in program development to improve the lives of primarily Native Hawaiian children. Edralyn holds a Bachelor's Degree in Public Affairs from Seattle University, and a Masters Degree in Public Health Planning from the University of Hawaii.

EVANGELINE CASINAS, B.Ed, MAT, NBCT. Evangeline Casinas is an Educational Specialist for the Student Support Services Section, Hawaii Department of Education, Office of Curriculum, Instruction & Student Support. She specializes in the area of At-Risk Intervention & Prevention. She has a Bachelor of Education degree, a Masters of Arts degree in Teaching, and a National Board Certification in Teaching.

JOSEPHINE CHANG. Jo Chang has been an advocate for the lesbian, gay, bisexual, transgender, and queer (LGBTQ) community for over 25 years. She partnered with Judge R. Mark Browning to organize the Family Court's Committee on Lesbian, Gay, Bisexual, and Transgender (LGBT) Youth in Hawaii's Juvenile Justice System and serves as a consultant to this committee and its member agencies. She also provides support to parents of LGBTQ children, LGBTQ resources to families and professionals, conducts LGBTQ training for organizations, and organizes LGBTQ training conferences and educational events. Jo is a retired attorney-at-law and state employee, has three sons, including a gay son, and does photography. She can be reached at: ocsjosie@hotmail.com.

HONORABLE BRIAN COSTA. Judge Costa has been a full-time judge in the Family Court of the First Circuit, State of Hawaii since June 2017 and was assigned to the Juvenile Division in December 2017. Previously, he served as a per diem judge in Family Court from February 2015 to June 2017. He was awarded a Bachelor of Science degree in Management from Hawaii Pacific University and a Juris Doctorate, *Magna Cum Laude*, from the William S. Richardson School of Law, and worked in

the private and public sectors as an attorney for over 15 years before receiving his appointment as a full-time judge.

THOMAS HAIA, J.D. Thomas Haia received his Juris Doctor degree in 1995 from the William S. Richardson School of Law. Since then, he has practiced law as a solo practitioner, specializing in Family Law. Mr. Haia was also a foster parent.

JULIO HERRERA, J.D. Julio Herrera graduated from Santa Clara University Law School and was admitted to the Hawaii Bar in 1998. He is currently Supervisor of the Family Law Division of the Department of Attorney General.

CARLA HOUSER. Carla Houser serves as the Executive Director for Residential Youth Services and Empowerment (RYSE), a street outreach and housing program for transition aged youth experiencing homelessness. She is passionate about her work around the health and wellness of at risk youth and has contributed to the social work literature on youth homelessness with publications appearing in the peer-reviewed journals *Child and Family Social Work* and *Children and Youth Services Review.*

Carla has also served as the Program Manager for the Waikiki Health-Youth Outreach program. She oversaw the Teen Clinic, and the community health, employment and education programs. Before arriving in Hawaii, she worked for the city of Long Beach, CA as a health and wellness coordinator for at risk, low income youth throughout the city. She has also been a teacher and coach in the Los Angeles community. Prior to her work with youth, Carla served as a case manager and socialization worker for the homeless communities of Los Angeles' skid row.

Carla has her bachelor's degree in Sociology from UCLA, and her master's degree in Social Work from UH Manoa. She currently serves as the Data Committee chair and Youth Coordinated Entry System administrator for Oahu's Continuum of Care, Partners In Care.

KEITH KUBOYAMA. Keith Kuboyama is President and CEO of Family Programs Hawaii. He holds a Master's degree in Social Work and is a Licensed Clinical Social Worker. Keith has over 30 years of experience working in the area of foster care and adoption.

TONIA MAHI. Tonia Mahi is the Department of Human Services Assistant Child Welfare Services Branch Administrator. She graduated from the University of Hawaii at Manoa with a Bachelor's degree in Social Work and from the University of Southern California with a Master's degree in Social Work. She has been with the Department of Human Services since 1991 working as an assessment worker, supervisor, trainer, and section administrator until assuming her current position in May 2019.

MALIA MALUFAU. Malia Malufau grew up in foster care, entering at age 5 and aging out at age 18. She earned a Bachelor's degree in Political Science with a minor in Ethnic Studies from the University of Hawaii at Manoa. Malia currently works for the William S. Richardson School of Law as a Youth-In-Court Facilitator at the Family Court on Oahu. As a Youth-In-Court Facilitator, Malia helps youth feel more comfortable with the court process, connects youth with available resources, and explains their rights while in foster care. Malia is a member of the 'Ohana Is Forever Conference and Oahu Teen Day planning committees. Malia is also the proud mother of three beautiful daughters.

MAKIA MINERBI. Makia Minerbi is an attorney with the Legal Aid Society of Hawaii, previously in the Leeward Office and now in the Windward Office. He works mostly in the area of family law, as a Guardian ad Litem. He participates weekly in the Medical Legal Partnership at Waimanalo Health Center, co-teaches the Family Law Clinic at the William S. Richardson School of Law, and serves on the 2018 Child Support Guidelines Committee. Before joining Legal Aid, he clerked for the Hon. Michael D. Wilson (Circuit Court, State of Hawaii). In law school he externed with the Hon. Richard R. Clifton (9th Cir., Federal) and Earthjustice and worked at the Office on Equality and Access to the Courts. Makia has been a foster parent.

MICHELE NAKATA. Michelle is Supervisor of the Department of Health, Medical Cannabis Dispensary Licensing Program, State of Hawaii. She was previously Branch Chief of the Disease Investigation Branch and responsible for statewide infectious disease surveillance and outbreak response. Michelle is a 2017 Graduate of the William S. Richardson School of Law, University of Hawaii at Manoa and has a Bachelor of Science degree in Microbiology from the University of Hawaii at Manoa.

PATRICK PASCUAL, J.D. Patrick Pascual is a graduate of the William S. Richardson School of Law at the University of Hawaii at Mānoa. Patrick has worked as a Deputy Attorney General in the Family Law Division with the Office of the Attorney General for over 20 years.

SCOTT K. SHIMABUKURO, Ph.D, ABPP. Scott K. Shimabukuro serves as Assistant Administrator of Operations, Practice Development Officer, Clinical Services Office for the Child and Adolescent Mental Health Division of the Department of Health (CAMHD). He is a clinical psychologist and is board certified in family psychology.

HONORABLE BODE UALE. Judge Bode Uale was the first Family Court judge appointed in the United States of Samoan descent. He is currently the lead judge of the First Circuit Family Court's Juvenile Division. Judge Uale has a strong interest in foster youth and has played a pivotal part in the ʻOhana is Forever conferences. He was raised in Laie, Hawaiʻi, and graduated with a Political Science degree from Brigham Young University–Hawaiʻi and later earned a Juris Doctorate in 1984 from the University of Hawaiʻi.

DELIA ULIMA, J.D. Delia Ulima is a Statewide Initiative Coordinator for the Hawaii Youth Opportunities Initiative, which serves as the local site for the national Jim Casey Youth Opportunities Initiative, with EPIC ʻOhana as the lead agency. A large part of her work focuses on youth engagement, public will and policy efforts, and overseeing the advocacy work of the youth boards statewide. She holds a B.A. from BYU-Hawaiʻi and a J.D. from the William S. Richardson School of Law.

TAMARA WHITNEY. Tamara (Tami) Whitney is a program specialist for the Medical Cannabis Registry Program at the Department of Health, State of Hawaii. Previously, she was the evaluation coordinator with Project Kealahou in the Child and Adolescent Mental Health Division of the Department of Health. Tami earned an MBA and bachelor's degree in business economics from Hawai'i Pacific University

AMENDMENTS TO STATUTES and COURT RULES, and APPELLATE DECISIONS

(October 2018 to August 2019)

Patrick A. Pascual
August 23, 2019

2019 Act 259

S.B. 947

(Effective: July 5, 2019)

2019 Act 259

S.B. 947

- Prohibits the person's disability from being the **sole** factor in determining the person's fitness:
  - Resource Caregiver (HRS Chapter 346);
  - Prospective Adoptive Parent (HRS Chapter 346);
  - Parent or Caregiver's Ability to Provide a Safe Family Home (HRS Chapter 587A);
  - Prospective Guardian (HRS Chapter 560);
  - Obtaining Custody or Visitation (HRS Chapter 571).

2019 Act 259

S.B. 947

- Must Prove that the Disability is a Factor.
- Demonstrate a Clear Nexus (Connection) Between the Disability and the Alleged Parental Deficiency.
- Does not affect rights and duties that mature, penalties that were incurred, and proceedings begun before the effective date (July 5, 2019).

2019 Act 150

S.B. 1466
(Effective: January 1, 2020)

2019 Act150
S.B. 1466

Amends HRS Chapter 134 by Adding a New Part Titled "GUN VIOLENCE PROTECTIVE ORDERS."

2019 Act150
S.B. 1466

Authorizes the family court to issue gun violence protective orders to prevent a person from having access to firearms if the person poses a danger of causing bodily injury to self and/or another person(s) by owning, possessing, receiving or having in his/her custody or control firearm(s) or any ammunition.

2019 Act 150
S.B. 1466

- Ex Parte Gun Violence Protective Order (without notice to the respondent): Imminent Danger.
- One-Year Gun Violence Protective Order.

2019 Act 150
S.B. 1466

- Respondent is Required to Surrender All Firearms and Ammunition.
- Police Officer Serving the Petition, the Ex Parte Order or the One-Year Order is Required to Take Custody of All Firearms and Ammunition.

2019 Act 85

S.B. 1232
(Effective: July 1, 2019)

2019 Act 85
S.B. 1232

Upon the Receipt of Consent, the DHS is Authorized to Disclose Confirmed Reports of Child Abuse and Neglect at Exempt Child Care Facilities to Any Parent or Guardian of a Child Enrolled at the Child Care Facility.

2019 Act 83

S.B. 1226
(Effective: June 7, 2019)

2019 Act 83
S.B. 1226

- Exempt Child Care Providers for a Child who Receives Child Care Subsidies are Required to Undergo Background Checks.
- Authorize the DHS' Child Care Licensing Program to Share and Cooperate with the DHS CWS and Law Enforcement Investigations.
- The DHS May Take Administrative or Judicial Action to Enforce Child Care Licensing Requirements.

2019 Act 12

S.B. 325
(Effective: April 17, 2019)

2019 Act 12
S.B. 325

- Addresses the Hawai'i Supreme Court's Ruling in *LC v. MG and CSEA*, 143 Hawai'i 302, 403 P.3d 400 (2018).
- Amended HRS § 584-12.
- In Determining Paternity, the Court is Authorized to Consider Evidence of the Parent's (Non)Consent to an Artificial Insemination that Resulted in the Birth of the Child.
- Amendment Does Not have Retroactive Effect.

2019 Act 157

H.B. 664
(Effective: July 1, 2019)

2019 Act 157
H.B. 664

- Prohibits Persons Licensed to Provide Professional Counseling to:
  - Engage in or Attempt to Engage in Conversion Therapy on Persons Under the Age of 18; and
  - Advertise the Offering of Conversion Therapy on Persons Under the Age of 18.
- Specifically states "conversion therapy," instead of "sexual orientation change efforts."
- Violations May Subject Person to Discipline by the Licensing Authority.

Amendments to the Child Abuse Treatment and Prevention Act ("CAPTA")

Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act or the SUPPORT for Patients and Communities Act

P.L. 115-271

P.L. 115-271

- Added subsection (a) (7) to Section 105 of CAPTA (codified in 42 U.S.C. § 5106 (a) (7)
- Authorize Grants to agencies and organizations to facilitate the collaboration in developing, implementing, and monitoring plans for the safe care of infants exposed to drugs and/or alcoholic beverages in utero.

P.L. 115-271
(Cont.)

- Repealed the Abandoned Infants Assistance Act of 1988 (codified in 42 U.S.C. §§ 5117a *et seq.*

Victims of Child Abuse Act Reauthorization Act of 2018
P.L. 115-424

P.L. 115-424

- Amended section 106 (b) (2) (B) (vii) of CAPTA (codified in 42 U.S.C. § 5106a (b) (2) (B) (vii)).
- Provide Immunity from Civil and Criminal Liability Under State and Local Laws for Making Good Faith Reports of Child Abuse.

U.S. Department of Health and Human Services, Children's Bureau
Child Welfare Policy Manual

U.S. Dept. of Health & Human Services,
Children's Bureau,
Child Welfare Policy Manual
Chapter 8. Title IV-E
§ 8.1B Administrative Functions/Costs –
Foster Care Maintenance Program

Question 30

May a title IV-E agency claim title IV-E administrative costs for attorneys to provide legal representation for the title IV-E agency, a candidate for title IV-E foster care or a title IV-E eligible child in foster care and the child's parents to prepare for and participate in all stages of foster care related legal proceedings?

Answer to Question 30

Yes. The statute at section 474(a)(3) of the Act and regulations at 45 CFR 1356.60(c) specify that Federal financial participation (FFP) is available at the rate of 50% for administrative expenditures necessary for the proper and efficient administration of the title IV-E plan. The title IV-E agency's representation in judicial determinations continues to be an allowable administrative cost.

Answer to Question 30 (Cont.)

Previous policy prohibited the agency from claiming title IV-E administrative costs for legal services provided by an attorney representing a child or parent. This policy is revised to allow the title IV-E agency to claim title IV-E administrative costs of independent legal representation by an attorney for a child who is a candidate for title IV-E foster care or in foster care and his/her parent to prepare for and participate in all stages of foster care legal proceedings, such as court hearings related to a child's removal from the home. These administrative costs of legal representation must be paid through the title IV-E agency. This change in policy will ensure that, among other things: reasonable efforts are made to prevent removal and finalize the permanency plan; and parents and youth are engaged in and complying with case plans. (Emphasis added).

Question 31

Are title IV-E administrative costs for the legal representation provided by agency attorneys and for independent legal representation of children and parents in all stages of foster care related legal proceedings available to tribes and public agencies that have an agreement under section 472(a)(2)(B)(ii) of the Act?

Answer to Question 31

Yes. A title IV-E agency that has an agreement with a tribe or any other public agency under section 472(a)(2)(B)(ii) of the Act may claim title IV-E administrative costs for legal representation provided by tribal or public agency attorneys under the agreement in all stages of foster care related legal proceedings. The title IV-E agency may also claim administrative costs for independent legal representation provided by an attorney for a candidate for title IV-E foster care or a title IV-E eligible child in foster care who is served under the agreement, and the child's parents, to prepare for and participate in all stages of foster care related legal proceedings.

Children's Bureau Website

https://www.acf.hhs.gov/cb

Hardin, Mark. Claiming Title IV-E Funds to Pay for Parents' and Children's Attorneys: A Brief Technical Overview (February 25, 2019) at https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/january---december-2019/claiming-title-iv-e-funds-to-pay-for-parents-and-childrens-attor/

Family First Prevention Services Act
(P.L. 115-123)
("FFPSA")

Flores v. Barr,
__ F.3d __, No. 17-56297 (9th Cir. Aug. 15, 2019)

Case No. 2:85-cv-4544-DMG-AGR ,
(U.S. C.D. Calif.)

Reno v. Flores,
507 U.S. 292, 113 s.ct. 1439, 123 L.Ed.2d 1
(1993)

Hawai'i Appellate Decisions

2019 ANNUAL CHILD WELFARE LAW UPDATE
LGBTQ UPDATE: OVERVIEW OF CURRENT LGBTQ ISSUES – August 23, 2019
List of Hawaii Laws Noted

Josephine Chang, JD - ph. 808 383-2111, ocsjosie@hotmail.com

1. Hawaii civil rights laws

-Employment: Section 378-2 (a)(1), HRS, Discriminatory practices made unlawful; offenses defined.

-Public Accommodations: Section 489-3, HRS, Discriminatory practices prohibited.

-Real Property Transactions: Section 515-3, HRS, Discriminatory practices.

2. Hawaii's birth certificate law

-Section 338-17.7(a) (4) Establishment of new birth certificates of birth, when. (to change sex designation upon gender transition)

3. Hawaii law on rights of children in foster care

-Section 587A-3.1 (b)(1) Rights of children in foster care.

4. Hawaii conversion therapy law

-Chapter 453J, HRS, as amended by Act 157, SLH 2019.

5. Hawaii discrimination in education law.

-Chapter 368D, HRS, Discrimination in State Educational Programs and Activities, as amended by Act 177, SLH 2019.

6. Hawaii drivers license law and identification card law on three gender options.

-Section 286-109, HRS, Section 286-111, HRS, and Section 286-303, HRS, as amended by Act 148, SLH 2019.

7. Hawaii health insurance law on nondiscrimination on basis of gender identity.

-Section 431:10A-118.3, Section432:1-607.3, Section 432D-26.3, Nondiscrimination on the basis of actual gender identity or perceived gender identity; coverage for services.

-Chapter 87A, Hawaii EUTF, Part I General Provisions. See: Note (2)

RESOURCES FOR SUPPORTING LESBIAN, GAY, BISEXUAL, TRANSGENDER, QUEER, and OTHER SEXUAL AND GENDER MINORITY (LGBTQ+) CHILDREN, YOUTH, and their FAMILIES

Compiled by Jo Chang, ocsjosie@hotmail.com – Updated June 2019

Basics – Understanding LGBTQ+ children and youth

- ***A Guide for Understanding, Supporting, and Affirming LGBTQI2-S Children, Youth and Families*** J.Poirier, S.Fisher, R.Hunt, M.Bearse, 2014. https://www.air.org/sites/default/files/A_Guide_for_Understanding_Supporting_and_Affirming_LGBTQI2-S_Children_Youth_and_Families.pdf
- ***About Transgender People*** National Center for Transgender Equality. https://transequality.org/about-transgender
- ***Answers to Your Questions About Transgender People, Gender Identity, and Gender Expression*** American Psychological Association, 2014. https://www.apa.org/topics/lgbt/transgender.pdf
- ***Answers to Your Questions For a Better Understanding of Sexual Orientation & Homosexuality*** American Psychological Association,2008. http://www.apa.org/topics/lgbt/orientation.pdf
- ***Disaggregating the Data for Bisexual People*** Shabab A. Mirza, 2018. https://cdn.americanprogress.org/content/uploads/2018/09/04103516/BiCommunityStats-factsheet2.pdf
- ***Frequently Asked Questions About Transgender People*** National Center for Transgender Equality, 2016. https://transequality.org/sites/default/files/docs/resources/Understanding-Trans-Full-July-2016_0.pdf
- ***Gender Spectrum*** at https://www.genderspectrum.org/explore-topics/
- ***GLBTQ - The Survival Guide for Gay, Lesbian, Bisexual, Transgender, and Questioning Teens*** Kelly Huegel, 2011. (Book)
- ***Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*** Jaime Grant, Lisa Mottet, Justin Tanis, Jack Harrison, Jody Herman, Mara Keisling, 2011. http://www.thetaskforce.org/static_html/downloads/reports/reports/ntds_full.pdf
- ***Intersex 101: Everything You Need to Know*** InterACT Advocates for Intersex Youth, 2018. http://4intersex.org/wp-content/uploads/2018/07/4intersex-101.pdf
- ***Invisible Majority: The Disparities Facing Bisexual People and How to Remedy Them*** Movement Advancement Project (MAP), 2016. http://www.lgbtmap.org/file/invisible-majority.pdf
- ***Let's Talk About Nonbinary*** Jay Ehrenhalt, 2019. https://www.tolerance.org/magazine/lets-talk-about-nonbinary
- ***The Trevor Project Research Brief: Bisexual Youth Experience*** March 2019. https://www.thetrevorproject.org/wp-content/uploads/2019/03/Trevor-Project-Bisexual-Research-Brief-March-2019.pdf
- ***3 Barriers that Stand Between LGBT Youth and Healthier Futures*** Andrew Cray, 2013. https://www.americanprogress.org/issues/lgbt/news/2013/05/29/64583/3-barriers-that-stand-between-lgbt-youth-and-healthier-futures/
- ***Transgender 101, A Simple Guide to a Complex Issue,*** Nicholas Teich, 2012. (Book)
- ***2015 U.S. Transgender Survey – Report on the Experiences of Asian, Native Hawaiian, and Pacific Islander Respondents*** NQAPIA and NCTE. https://transequality.org/sites/default/files/docs/usts/USTS-ANHPI-Report-Dec17.pdf
- ***Understanding Non-Binary People: How to Be Respectful and Supportive*** National Center for Transgender Equality, 2018. https://transequality.org/issues/resources/understanding-non-binary-people-how-to-be-respectful-and-supportive

- ***What Does It Mean for a Transgender Person to Transition*** Crystal Raypol, Good Therapy.Org, 2016. https://www.goodtherapy.org/blog/what-does-it-mean-for-transgender-person-to-transition-0629167

Child Welfare & Foster Care

- ***A Guide for Understanding, Supporting, and Affirming LGBTQI2-S Children, Youth and Families*** J.Poirier, S.Fisher, R.Hunt, M.Bearse, 2014. https://www.air.org/sites/default/files/A_Guide_for_Understanding_Supporting_and_Affirming_LGBTQI2-S_Children_Youth_and_Families.pdf
- ***A Place of Respect: A Guide for Group Care Facilities Serving Transgender and Gender Non-Conforming Youth*** Jody Marksamer, 2011. http://www.nclrights.org/wp-content/uploads/2013/07/A_Place_Of_Respect.pdf
- ***A Practitioner's Resource Guide: Helping Families to Support Their LGBT Children*** SAMHSA, 2014. http://store.samhsa.gov/shin/content/PEP14-LGBTKIDS/PEP14-LGBTKIDS.pdf
- ***Affirming and Supporting LGBTQ Children and Youth in Child Welfare*** Capacity Building Center for States, Children's Bureau, ACF, USDHHS, 2016. https://library.childwelfare.gov/cwig/ws/library/docs/capacity/Blob/105897.pdf?w=NATIVE(%27SIMPLE_SRCH+ph+is+%27%27Affirming+and+Supporting+LGBTQ+Children+and+Youth+in+Child+Welfare%27%27%27)&upp=0&order=native(%27year/Descend%27)&rpp=25&r=1&m=1
- ***All Children-All Families: LGBTQ Resources for Child Welfare*** HRC. http://www.hrc.org/resources/all-children-all-families-additional-resources
- ***Caring for LGBTQ Children & Youth, A Guide for Child Welfare Providers*** Human Rights Campaign Foundation, 2013.
- ***Child Welfare and LGBT*** Youth.GOV. https://youth.gov/youth-topics/lgbtq-youth/child-welfare
- ***Creating LGBTQ Affirming Agencies*** Capacity Building for States and Children's Bureau, ACF, DHHS. https://www.youtube.com/watch?v=je6mCUiZrjM&feature=youtu.be (VIDEO)
- ***CWLA Best Practice Guidelines, Serving LGBT Youth in Out-of-Home Care*** Shannan Wilber, Caitlin Ryan, and Jody Marksamer, 2006. http://familyproject.sfsu.edu/sites/sites7.sfsu.edu.familyproject/files/bestpracticeslgbtyouth.pdf
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Schools, School Climate, Bullying and Bias

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- ***Creating Safe & Welcoming Schools For All Children and Families*** Resources for elementary schools, Welcoming Schools. http://www.welcomingschools.org/
- ***Creating Safe and Supportive Learning Environments, A Guide for Working with Lesbian, Gay, Bisexual, Transgender, and Questioning Youth and Families*** E.Fisher and K.Komosa-Hawkins, eds., 2013. (Book)

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- ***Rainbow List 2019,*** Jan Kamiya, Young Adult Librarian, Hawaii State Public Library System, jan.kamiya@librarieshawaii.org, ph. (808) 973-1099.
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- ***Safe Schools for Transgender and Gender Diverse Students*** National Association of School Psychologists (NASP). file:///C:/Users/Owner/Downloads/Transgender_PositionStatement.pdf
- ***Safe Space Kit - A Guide to Supporting Lesbian, Gay, Bisexual, and Transgender Students in Your School*** GLSEN http://www.glsen.org/sites/default/files/SSK_2013_book.pdf
- ***SCHOOL CLIMATE BEST PRACTICES FOR SERVING LGBTQ STUDENTS A Teaching Tolerance Guide*** Teaching Tolerance, A Project of the Southern Poverty Law Center. https://www.tolerance.org/sites/default/files/2018-09/TT-LGBTQ-Best-Practices-Guide.pdf
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- ***Sticks and Stones*** A short Hawaii documentary film featuring Hawaii LGT youth, Trisha Nakamura and Jamie Sumile. You Tube https://www.youtube.com/watch?v=2IS0WlD2EwU
- ***Supporting Transgender and Gender Diverse Students in Schools, Key Recommendations for School Administrators*** American Psychological Association. https://www.apa.org/pi/lgbt/programs/safe-supportive/lgbt/school-administrators.pdf
- ***Test Yourself for Hidden Bias*** Teaching Tolerance. https://www.tolerance.org/professional-development/test-yourself-for-hidden-bias
- ***The GLSEN Jump-Start Guide, Building and Activating Your GSA or Similar Student Clubs,*** GLSEN http://glsen.org/jumpstart
- ***The School Counselor and LGBTQ Youth*** American School Counselor Association, 2016. https://www.schoolcounselor.org/asca/media/asca/PositionStatements/PS_LGBTQ.pdf
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Social Progress – Other Resources

- ***Americans Show Broad Support for LGBT Nondiscrimination Protections*** D.Greenberg, E.Beyer, M.Najle, O.Bola, R.Jones, 3.12.2019. https://www.prri.org/research/americans-support-protections-lgbt-people/
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- ***571 companies earn perfect score on HRC's 2019 Corporate Equality Index*** John Riley, March 2019. https://www.metroweekly.com/2019/03/571-companies-earn-perfect-score-on-hrcs-2019-corporate-equality-index/

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- ***Number of lesbian mayors across America could triple by June*** John Riley, March 2019. https://www.metroweekly.com/2019/03/number-lesbian-mayors-ever-elected-lead-top-100-city-could-triple-june/

HAWAII RESOURCES

HAWAI'I ISLAND – The Big Island

- **Alu Like**. Hana Lima Scholarship Program, Native Hawaiian Summer School Assistance Program, Ho'omanea 'Oiwi Employment & Training Program. Contact (808) 961-2625.
- **Bay Clinic, Inc.** Network of health care clinics serving East Hawaii. Contact Cyd Hoffeld, Health Promotions Manager, (808) 965-3037, choffeld@bayclinic.org., and also for other therapists/social workers for children.
- **Boys and Girls Club**. Offers children after school programs. Contact (808) 961-5536.
- **Child and Family Service.** Supports LGBT youth. Contact Jacqueline Economy, at jeconomy@cfs-hawaii.org or (808) 935-2188.
- **Friends of the Children's Justice Center East Hawaii**. Support for abused children and children in foster care. Contact Robin Benedict, Program Coordinator, at (808) 935-8755 or fcjceh@hawaii.rr.com.
- **GLSEN Hawaii (Chapter of Gay, Lesbian, Straight Education Network) for Hawaii County.** Contact Yolisa Duley, Hawaii Island Coordinator at hduley@hawaii.edu.
- **Hawaii Family Guidance Center, Child and Adolescent Mental Health Division, Hawaii Department of Health**. Contact (808) 933-0610.
- **Hawai'i Island HIV/AIDs Foundation.** Contact Jewel Castro, Women and Youth Prevention Specialist, at jcastro@hihaf.org or (808) 982-8800.
- **Konawaena High School Gay Straight Alliance (GSA).** Contact John Lee, Advisor, at jlee@konawaenahigh.k12.hi.us
- **Neighborhood Place of Puna**. Prevention of child abuse and neglect and family strengthening program; Kamalama Parenting Program. Contact Paul Normann at (808) 965-5550.
- **PFLAG Kona/Big Island.** Provides support for parents, friends, and family of LGBT. Contact Jeff Gourley, President, at pflagkonabigisland@gmail.com or (808) 895-2803.
- **Pride Hilo.** LGBT student support group at UH-Hilo. Contact Ashley Magallanes, Advisor, at ashleylm@hawaii.edu or (808) 932-7642.

- **University of Hawaii at Hilo, LGBTQ+ Center.** Contact Destiny Rodriguez, Coordinator, at destinyr@hawaii.edu or (808) 932-7958, and see https://hilo.hawaii.edu/studentaffairs/lgbt/
- **University of Hawaii at Hilo, Office of Equal Opportunity/Affirmative Action.** Contact Jennifer Stotter, Title IX Coordinator, at jstotter@hawaii.edu or (808) 932-7641, and Jenna Waipa, Title IX Lead Deputy Coordinator, at waipajk@hawaii.edu or (808) 932-7818.
- **University of Hawaii at Hilo, Student Health and Wellness Program.** Contact Yolisa Duley, Health Education Program Specialist, at hduley@hawaii.edu.
- **YWCA Hawai'i Island.** Inclusive youth and family and sex abuse support, teen court. Contact Kathleen McGilvray, CEO, at kmcgilvray@ywcahawaiiisland.org. or Lorraine Davis at ldavis@ywcahawaiiisland.org.

KAUAI

- **GLSEN Hawaii (Chapter of Gay, Lesbian, Straight Education Network).** Contact Matthew Houck, co-chair, at (808) 245-5959 and matthew@ywcakauai.org.
- **Kapaa High School's Diversity Club.** LGBTQ student support**.** Contact Mr. Martin Antonio at Antonio@kapaahs.k12.hi.us.
- **Kauai Family Guidance Center, Child and Adolescent Mental Health Division, Hawaii Department of Health**. Contact Madeleine Hiraga-Nuccio, Branch Chief, at (808) 274-3883.
- **Kauai High School, GSA/Diversity Club**. Contact Nikki Hurtado at Nicole_Hurtado/KAUAIH/HIDEO@notes.k12.hi.us.
- **PFLAG Kauai.** Provides education, support, advocacy for LGBT persons, their families, and the community. Contact pflagkauai@gmail.com or (808) 634-0127.
- **Waimea High.** LGBTQ student support. Contact Kristina Kutchner at Kristina_Kutcher@notes.k12.hi.us
- **YWCA of Kaua'i.** Girl Camps (any female identified children and youth), family and youth support services, LGBT training for service providers. Contact Renae Hamilton, Executive Director, (808) 245-5959 or Matthew Houck, LGBTQ Services Specialist, (808) 245-5959, matthew@ywcakauai.org. See www.ywcakauai.org.

MAUI

- **Al and Jane Nakatani**, Honor Thy Children, Inc.. Support for parents, the LGBT community, training and educational materials for professionals and the larger community. Contact alnakatani@gmail.com, or (808)495-1550.
- **Alu Like**. Prevention Programs on Molokai. Contact Jana Sasada at jacaria@alulike.org.
- **Boys and Girls Club**. Contact Kelly Pearson at (808) 242-4363.
- **Friends of Children's Justice Center on Maui.** Support for abused children in Maui county. Contact Paul Tonnessen, Executive Director, (808) 986-8634.
- **GLSEN Hawai (Chapter of Gay, Lesbian, Straight Education Network) for Maui County.** Contact Robin Lee at 243-1251.
- **Kamehameha Schools Maui Gay Straight Alliance (GSA).** Support for LGBTQ students. Contact Waianuhea Getgen, Outreach Counselor and GSA advisor, at wagetgen@ksbe.edu.
- **Malama I Ke Ola Health Center.** Services for transgender and gender nonconforming children and youth, and their families. Contact Dr. Casandra Simonson, M.D., pediatrician, at ph. (808) 872-4089.
- **Maui Aids Foundation's Empower'd Support Group.** Serves LGBTQI and allies of adolescent s and young adults ages 13 to 26. Contact Tiare Sua at (808) 242-4900 ext. 229 or Tiare@mauiaids.org.
- **Maui Economic Opportunity (MEO).** Youth Services Prevention Program: cyberbullying, suicide prevention, underage drinking; Underage Drinking Program (Up-Country). Contact Shayna-Marie Maniapao at (808) 243-4304.

- **Maui Family Guidance Center, Child and Adolescent Mental Health Division, Hawaii Department of Health**. Contact Robin Lee, Branch Chief, at robin.lee@doh.hawaii.gov or (808) 243-1251.
- **Maui Youth and Family Services (MYFS).** Intensive outpatient and outpatient substance abuse services. Contact Susan Pirsch, Clinical Director, at (808) 280-1150, or Heather Long, School based Substance Abuse Counselor at Baldwin High School, at (808) 264-6696.
- **Meghan Walles, LCSW**. Walles Wellness (counseling services), at (808) 371-9517.
- **Mental Health America – Hawaii.** Community support. Contact Danielle Bergan, Community Coordinator at Danielle.bergan@mentalhealthhawaii.org .
- **Parents and Children Together (PACT).** Ulupono Family Strengthening Program, contact Mele Andradeat (808) 847-3285; Maui Family Peace Centers, contact Connie Meekhof at (808) 565-9191.
- **PFLAG Maui.** Information and support for parents of LGBT children. Contact PFLAGMaui@gmail.com.
- **Tina Boteilho, LMFT**. Ahupuaa Counseling Services, at (808) 283-8640.

OAHU

- **Adolescent Medicine Clinic, Kapi'olani Medical Specialist Clinics at Hale Pawa'a, Hawaii Pacific Health.** Contact Dr. Robert Bidwell at (808) 373-7588.
- **Dr. Robert Bidwell**, Associate Clinical Professor of Pediatrics at the John A. Burns School of Medicine, and in practice at the Adolescent Medicine Clinic, Hawai'i Pacific Health. Contact at robertb@kapiolani.org, and (808) 428-4545.
- **Jo Chang** provides support for parents of LGBT children, LGBT resources for families and professionals, LGBT training and consultation for agencies and organizations. Contact at ocsjosie@hotmail.com and (808) 383-2111.
- **Child and Adolescent Mental Health Division (CAMHD), Hawaii Department of Health**. Provides mental health services to youth with severe emotional and behavioral disturbances. CAMHD Safe Spaces Committee works to make the CAMHD workplace and services more inclusive of LGBTQ. Contact Dana Abdinoor at: Dana.Abdinoor@doh.hawaii.gov.
- **Civil Rights Compliance Office (CRCO), Hawaii Department of Education**. Contact at (808) 586-3322.
- **Farrington High School Gay Straight Alliance (GSA).** Contact Alison Colby, MSW, and Gwen Murakami, MSW, co-advisors, at (808) 305-5178 or (808) 305-5179 and alison_colby/farrington/hidoe@notes.k12.hi.us and gwen_murakami/farrington/hidoe@notes.k12.hi.us
- **Pia Francisco-Natanauan, M.D.** Assistant Professor of Pediatrics at the John A. Burns School of Medicine, and in practice at the Adolescent Medicine Clinic, Hawaii Pacific Health, ph. (808) 373-7588.
- **GLSEN Hawaii (Chapter of Gay, Lesbian, & Straight Education Network).** Contact Valor Grimm, M.S., MFTI, Co-chair (for Oahu), at healingpug@gmail.com.
- **Hale Kipa, Inc**. Provides wide range of services for at-risk/high-risk youth, see www.halekipa.org.
- **Dean Hamer and Joe Wilson**, film-makers with community outreach and education campaigns and resources at www.KUMUHINA.COM and www.wpsu.org/outinthesilence, Contact Joe Wilson at QwavesJoe@yahoo.com , or (808) 629-9864.
- **Dr. Samuel Hawk (See Lavender Clinic).**
- **Hinaleimoana (Hina) Wong-Kalu**, cultural consultant, educator. Contact Kumu Hina for youth support and training at taahine.hina@gmail.com .
- **Public Library LGBT resources:** Contact Jan Kamiya, Young Adult Librarian at McCully-Mo'ili'ili Public Library, for recommended library collections for LGBT children and youth at Jan.Kamiya@librarieshawaii.org or ph. (808) 973-1099.

- **Lavender Clinic.** A transgender and LGBQ health clinic that provides health care, leadership, programs, education and services for the transgender community and lesbian, gay, bisexual community. At www.lavenderclinichawaii.com and ph. (808) 445-5392.
- **Lili'uokalani Trust in Waianae, Oahu**. Contact Ka'ohu'onapua (Pua) Kaninau-Santos, Ohana Services Team Lead at (808) 851-7817 or kkaninausantos@onipaa.org.
- **Mental Health America-Hawaii.** Contact Mestisa Gass, PSYD, Program Director or Amanda Martinez, MPH, Training Program Manager at (808) 521-1846, http://mentalhealthhawaii.org/youth/
- **Pacific Center for Sex and Society at the University of Hawaii.** Contact Dr. Milton Diamond, Director, at diamond@hawaii.edu, or Dr. Connie Brinton-Diamond, PhD, at (808) 341-4346.
- **Planned Parenthood of Hawaii.** Provides sexual and reproductive health care and education, and LGBT services through advocacy and compassionate, affordable services. Ph. (808) 589-1149, https://www.plannedparenthood.org/learn/sexual-orientation-gender
- **Ryse Hawaii.** Provides shelter and support services for homeless youth 18-24 yrs. Contact Carla Houser, E.D., by email at info@rysehawaii.org or ph. (808) 498-5180.
- **Suicide Prevention Program of the EMSIPS Branch of the Department of Health.** Nancy Deeley, Suicide Prevention Coordinator at (808) 733-9320 or nancy.deeley@doh.hawaii.gov.
- **Susannah Wesley Community Center, Trafficking Victims Assistance Program.** Provides case management services to survivors of human trafficking to minors and adults. Contact at info@susannahwesley.org and ph. (808) 847-1535 and go to tvaphawaii.org.
- **Teen Alert Program (TAP 808), Domestic Violence Action Center (DVAC).** Teen dating violence prevention, education, and intervention program. Helpline at (808) 531-3771 or email the Teen Advocate, at teen@stoptheviolence.org. See also http://www.tap808.org/
- **TransSpectrum Hawai'i.** Provides education, support, and visibility for Hawaii's FTM transgender community. Contact transspectrum808@gmail.com .
- **University of Hawaii at Manoa, Commission on Lesbian, Gay, Bisexual, Transgender and Queer+ (LGBTQ+) Equality.** Student rights and system-wide representation with Commissioners on each of 10 campuses. http://www.hawaii.edu/offices/president/lgbtq/ and contact lgbtq@hawaii.edu, (808) 956-9250.
- **University of Hawaii at Manoa, Lesbian, Gay, Bisexual, Transgender and Intersex Student Services.** Camaron Miyamoto, Coordinator, email at Camaronm@hawaii.edu or ph. (808) 956-9250, http://manoa.hawaii.edu/lgbt/contact.html
- **Waianae Coast Comprehensive Health Center**. Contact Lisa Garcia,PSYD, school based health clinics and GSA at Waianae High, (808) 450-1222; behavioral health services for families and health at (808) 697-3469; teen clinic, medical and hormone therapy at (808) 697-3300.
- **Waikiki Health.** Provides medical and social services that are accessible for everyone regardless of ability to pay, range of medical care, and homeless and youth outreach, see www.waikikihc.org, (808) 922-4787, information@waikikikhc.org.
- **YO (Youth Outreach) Program.** Provides medical and social services to homeless youth in Waikiki. Carla Houser, co-coordinator at (808) 791-9366 chouser@waikikihealth.org and http://waikikihc.org/locations/youth-outreach-drop-in-center-and-teen-clinic/

FAITH AND SPIRITUAL SUPPORT in Hawaii

- **Calvary by the Sea Lutheran Church & Montessori School** in East Oahu welcomes all. Contact Pastor Tim Mason at http://www.calvarybythesea.org/ or (808) 377-5477.
- **Center for Spiritual Living Kauai** is an open and affirming congregation in Kapa'a, Kaua'i. Contact Rev. Diane Decker, Staff Minister, at http://www.cslkauai.org/center-team or (808) 755-9177.

- **Christ Church Uniting Disciples and Presbyterians** is an open and affirming congregation in Kailua, Oahu. Contact Rev. Elizabeth "Liz" Leavitt, Pastor, at http://www.ccukailua.org/open-and-affirming/ or (808) 262-6911.
- **Christ Lutheran Church** in Mililani, Oahu, is a vibrant caring community that welcomes all. Contact Pastor Keith Wolter at http://www.clcmililani.org/ or (808) 623-9229.
- **Church of the Crossroads United Church of Christ** is an open and affirming church in Honolulu. Contact Pastor David Kieffer at http://churchofthecrossroadshawaii.org/ or (808) 949-2220.
- **Church of the Holy Apostles** is an Open, Loving, and Affirming congregation in Hilo, Hawaii. Contact Rev. Katlin McCallister at http://www.episcopalchurchhilo.org/ or (808) 935-5545.
- **Community Church of Honolulu** is a congregation-based, inclusive community. Contact Pastor Ron Williams at http://www.cchonolulu.org/ or (808) 595-7541.
- **Dignity/Honolulu** provides outreach ministry for Gay, Lesbian, Bisexual, and Transgender Catholics, and their families and friends, in Honolulu. Contact Chapter President Gene Corpuz at https://honolulu.dignityusa.org/ or (808) 779-1965.
- **Emmanuel Episcopal Church** in Kailua, Oahu, where all are welcome. Contact The Rev. Christopher Golding at http://www.emmanuelkailua.com/?view=mobile or (808) 262-4548.
- **Epiphany Episcopal Church** in Honolulu is a diverse community. Contact The Rev. Irene Tanabe, Rector, at http://epiphanychurchhi.weebly.com/ or (808) 734-5706.
- **First Christian Church of Honolulu** in Honolulu that is open to all. Contact Pastor Jimmy Hutcherson at http://firstchristianchurchhonolulu.org/welcome or (808) 521-3500.
- **First Unitarian Church of Honolulu** is a Unitarian Universalist welcoming Congregation. Contact T.J. Fitzgerald, Minister at http://www.unitariansofhi.org/contactus or (808) 595-4047.
- **Hanapepe United Church of Christ** is an open and affirming congregation in Hanapepe, Kauai. Contact Rev. Michael Christensen at http://www.hanapepeucc.org/index.html or (808) 335-5135.
- **Harris United Methodist Church** in downtown Honolulu is an open and reconciling congregation where ALL are welcome. Contact Rev. Dr. Cheol Kwak, Senior Pastor and Rev. Rona Mangayayam, Associate Pastor at http://www.harrisumc.org/index.html or (808) 536-9602.
- **Holy Innocents Episcopal Church** in Lahaina, Maui, where ALL are welcome. Contact Rev. Amy Crowe, Vicar at http://www.holyimaui.org/ or (808) 661-4202.
- **Honolulu Friends Meeting** in Honolulu is an open and affirming Quaker congregation where all are welcome. Contact Resident Couple at http://www.hawaiiquaker.org/ or (808) 988-2714.
- **Iao United Church of Christ** in Wailuku, Maui, is an open and affirming congregation where all are welcome. Contact Pastor Tino Cordova at http://www.iaoucc.org/ or (808) 244-7353.
- **Joy of Christ Lutheran Church** in Pearl City, Oahu, is affirming and caring for all. Contact Pastor Keith Wolter at http://joyofchristhawaii.org/index.htm or (808) 455-1138.
- **Keawala'I Congregational Church** in Kihei, Maui, welcomes ALL. Contact Kahu Alika at http://www.keawalai.org/ or (808) 879-5557.
- **Konko Mission of Honolulu** is supportive and welcoming of all people. Contact Rev. Koichi Konko, Head Minister, at http://konkomissionshawaii.org/honolulu.htm or (808) 533-7173.
- **Konko Mission of Wahiawa** is supportive and welcoming of all people. Contact Rev. Yasuhiro Yano and Associate ministers at http://konkomissionshawaii.org/WahiawaMain.htm or (808) 621-6667.
- **Lutheran Church of Honolulu** is welcoming to ALL. Contact The Rev. Jeff Lilley at http://www.lchwelcome.org/site/ or (808) 941-2566.
- **Makawao Union Church** in Paia, Maui, is the spiritual home for diverse people and welcomes all. Contact Rev. Dave Schlicher at http://makawaounionchurch.org/ or (808) 579-9261.
- **Mo'ili'ili Hongwanji** in Honolulu welcomes all people. Contact Rev. Bert Sumikawa at http://www.moiliilihongwanji.org/ or (808) 949-1659.
- **Nuuanu Congregational Church** in Honolulu values and embraces diversity. Contact Rev. Neal MacPherson, Supply Pastor, or Paula Yamamoto, Administrative Coordinator, at http://nuuanu.org/ or (808) 595-3935.

- **Open Arms MCC** is a Metropolitan Community Church in Pahoa, Hawaii Island, an open and affirming church where everyone is loved with open arms. See http://www.openarmspuna.org/ and contact at openarmspuna.mcc@gmail.com or (808) 339-7560.
- **Palolo Kwannon Temple** in Honolulu welcomes all. Contact Rev. Irene Matsumoto at http://www.tendai.or.jp/english/temple.php or (808) 737-5177.
- **St. Andrew's Cathedral** is an Episcopal church in Honolulu that respects the dignity of all. See: http://www.thecathedralofstandrew.org/clergy-staff/ or (808) 524-2822.
- **St. Clement's Episcopal Church** in Honolulu is a caring and inclusive Christian community. Contact at http://www.stclem.org/ or (808) 955-7745.
- **St. John's Church** in Kula, Maui, is a Caring and Inclusive Christian Community. Contact The Rev. Keridith Harding at http://stjohnsmaui.org/staff/ or (808) 878-1485.
- **St. Mark's Episcopal Church** in Kapahulu, Oahu is an inclusive and welcoming ohana that rejoices in its diversity. Contact The Rev. Paul Lilley, Rector at https://www.stmarkshonolulu.org/ or (808) 732-2333.
- **St. Peter's Episcopal Church** in Honolulu welcomes all. Contact The Rev. Diane Martinson, Rector, at http://www.stpetershonolulu.org/ or (808) 533-1943.
- **Temple Emanu-El** is a member congregation of the Union for Reform Judaism in Honolulu. Per Rabbi Ken Aronowitz, "We live the spirit of 'shaloha' as a house of prayer for all peoples including LGBT children, youth, families, and adults who may participate fully as who they are." See: http://shaloha.com/contact-us or (808) 595-7421.
- **Trinity by-the-sea** is an Episcopal congregation in Kihei, Maui, that welcomes all. Contact The Rev. Austin Murray at http://www.episcopalchurch.org/parish/trinity-sea-kihei-maui-hi or (808) 879-0161.
- **United Church of Christ – Judd St.** is a safe and welcoming congregation with an LGBTQ spiritual life group. Contact Pastor Darren Galindo at http://uccjudd.org/ or (808) 536-8418.
- **Unitarian Universalists of Puna** is a welcoming community on Hawaii Island. Contact Bob Jacobson, President at http://www.uupuna.com/UU_Puna/Aloha.html or at uupuna@gmail.com.
- **Unity Church of Hawaii** in Honolulu is an open and welcoming congregation. Contact Rev. Tim Lytle, Senior Minister, at https://www.unityhawaii.org/contact-us or (808) 735-4436.
- **Windward Unity Church** in Kailua, Honolulu is an open and welcoming congregation. Contact Rev. Geo Downer at http://www.unitywindward.org/ or (808) 262-6731.

§329-125.5 Medical cannabis patient and caregiver protections. (a) No school shall refuse to enroll or otherwise penalize, and no landlord shall refuse to lease property to or otherwise penalize, a person solely for the person's status as a qualifying patient or primary caregiver in the medical cannabis program under this part, unless failing to do so would cause the school or landlord to lose a monetary or licensing-related benefit under federal law or regulation; provided that the qualifying patient or primary caregiver strictly complied with the requirements of this part; provided further that the qualifying patient or primary caregiver shall present a medical cannabis registry card or certificate and photo identification, to ensure that the qualifying patient or primary caregiver is validly registered with the department of health pursuant to section 329-123.

(b) For the purposes of medical care, including organ transplants, a registered qualifying patient's use of cannabis in compliance with this part shall be considered the equivalent of the use of any other medication under the direction of a physician and shall not constitute the use of an illicit substance or otherwise disqualify a registered qualifying patient from medical care.

(c) No qualifying patient or primary caregiver under this part shall be denied custody of, visitation with, or parenting time with a minor, and there shall be no presumption of neglect or child endangerment, for conduct allowed under this part; provided that this subsection shall not apply if the qualifying patient's or primary caregiver's conduct created a danger to the safety of the minor, as established by a preponderance of the evidence.

(d) This section shall apply to qualifying patients, primary caregivers, qualifying out-of-state patients, and caregivers of qualifying out-of-state patients who are validly registered with the department of health pursuant to this part and the administrative rules of the department of health. [L 2015, c 242, §2; am L 2017, c 170, §2; am L 2018, c 116, §8]

Revision Note

In subsection (b), "marijuana" changed to "cannabis" to conform to L 2017, c 170, pursuant to §23G-15.

CHILD PROTECTIVE ACT
SUMMARY DISPOSITION ORDERS & MEMORANDUM OPINIONS
October 2018 – August 2019

HRAP Rule 35 (c) (2): Unpublished appellate decisions, entered after July 1, 2008, may be cited for persuasive value only, unless it establishes the law of the case of a pending case or has res judicata or collateral estoppel effect. A copy of the decision (SDO/Memo Opinion) must be attached to the legal brief/memo. SDO/ Memo Opinions usually turn on the facts; important legal issues are digested only.

CASE	DIGEST
In re AB, No. CAAP-18-00000010, 2018 WL 6258933 (Haw. App. Nov. 30, 2019) (SDO); *reversed and remanded,* No. SCWC-18-0000010, 2019 WL 2714348 (June 28, 2018) (Order)	Hawai'i Intermediate Court of Appeals Proposed Intervenor appealed the 1) Order Awarding Permanent Custody; 2) Order Continuing Permanent Custody; 3) Order Denying Motion to Intervene; and 4) Order Denying Motion for Reconsideration of Order Denying Motion to Intervene. ICA dismissed the appeal in part, and vacated and remanded in part. 1. Even if the Proposed Intervenor had standing to oppose the award of permanent custody to the DHS, the appeal was not timely, and the appellate court did not have jurisdiction. 2. Even if the Proposed Intervenor had standing to appeal the Order Continuing Permanent Custody (that "modified the child's foster custody placement" by approving the change of the child's placement from the Proposed Intervenor to concerned child's relative), the appeal was not timely, and the appellate court did not have jurisdiction. 3. Rejected the Proposed Intervenor's argument that she had standing based on her hānai relationship to the child, and that her child is a blood sibling of the concerned child. 4. Prior to the hearing on the motion to intervene, the Proposed Intervenor file an adoption petition, and an adoption petition was filed on behalf of the concerned child's relatives. Based on the filing of her adoption petition, the Proposed Intervenor had a right to intervene pursuant to HFCR Rule 24 (a) (2), and the family court erred in denying her motion to intervene. The orders denying motion to intervene and the motion for reconsideration were vacated and remanded to the family court. 5. Rejected the Proposed Intervenor's argument, that if "custody was returned to her," that she would be able to consent to adoption to herself. The DHS had "foster [legal] custody" of the concerned child and the DHS had the authority to consent to the adoption pursuant to HRS § 578-2 (a) (6).
In re AB, No. SCWC-18-0000010, 2019 WL 2714348 (June 28, 2018) (Order), *reversing and remanding* No. CAAP-18-00000010, 2018 WL 6258933 (Haw. App. Nov. 30, 2019) (SDO)	Hawai'i Supreme Court 1. Based on the Proposed Intervenor's status as an hānai parent, mother of the child's half-sister and resource caregiver of the child, and the Proposed Intervenor's expression to adopt the child, the Proposed Intervenor was entitled to a contested hearing before the family court changed the child's placement. The ICA erred by ruling that the Proposed Intervenor was not entitled to intervene to contest the change in placement.

CASE	DIGEST
	2. The case was remanded to the family court for a contested hearing, giving the Proposed Intervenor's proper recognition as the child's hānai parent, as well as the child's best interests. 3. The DHS shall ensure the child's safety and stability in a suitable placement, which may include the child's current placement.
In re L.E., No. CAAP 18-00000091, 2018 WL 6629411 (Haw. App. Dec. 19, 2018) (Order Dismissing for Lack of Appellate Jurisdiction)	Mother's appeal of the Order Terminating Parental Rights was not timely but the proceedings were not fundamentally unfair due to the untimely appeal. Therefore, the appellate court did not have jurisdiction. 1. Mother's counsel was ineffective by not filing the notice of appeal in a timely pursuant to RECPA Rule 3 and HRAP Rule 4. 2. In termination of parental rights proceedings, the appellate court must determine whether counsel was ineffective in determining whether the appellate court has jurisdiction due to counsel's failure to file a timely notice of appeal. The appellate court must determine whether the proceedings were "fundamentally unfair" as a result of counsel's incompetence, per the test adopted by the Hawai'i Supreme Court in *In re RGB*, 123 Hawai'i 1, 25, 229 P.3d 1066, 1090 (2010). As a result, the appellate court must review Mother's points of error raised in her opening brief. 3. The appellate courts shall not pass upon issues dependent upon the credibility of the witnesses and the weight of the evidence. 4. The family court did not clearly err in making its HRS § 587A-33 (a) (1) and (2) "parental unfitness" determination: a. Based on the credible testimony of the DHS social worker, mother was not presently willing and able to provide a safe home, even with the assistance of a service plan, and it was not reasonable foreseeable that she would become willing and able to provide a safe home, even with the assistance of a service plan within a reasonable period of time. The mother did not make sustained progress in addressing her safety issues of unresolved domestic violence/anger management, and lack of bonding with the child. b. Mother testified that she did not have problems with domestic violence/anger management. c. Father testified that mother continued to have problems controlling her anger. d. Mother's counselor for domestic violence testified credibly that mother was far from being able to address her domestic violence problems before mother stopped participating in counseling. 5. Rejected mother's argument that she was not given a reasonable opportunity to reunify. Even though mother's domestic violence counselor testified that mother needed a higher level of care, mother refused to modify her service/treatment plan and refused the counselor's offer to refer mother to other service providers because mother believed that she already addressed this safety issue.
Kiriako v. DHS, No. CAAP-16-00000338, 2019 WL 763061 (Haw. App. Jan. 30, 2019) (SDO)	Secondary appeal of an administrative hearing where the father contested the DHS' determination that he subjected the seven year-old child to physical harm or abuse, and the circuit affirmed agency (administrative) hearing decision. The ICA affirmed. 1. Rejected the father-appellant's ("father") argument that he was denied due process because the DHS conducted an administrative hearing under HRS Chapter 91, instead of filing an action under the Child Protective Act, HRS Chapter 587A. a. The DHS gave father notice of its determination. Per the father's request, an administrative hearing was conducted. b. HRS § 587A-5 authorizes, but does not require the DHS to initiate an HRS Chapter 587A proceedings in the family court.

CASE	DIGEST
	c. The DHS did not file a petition in the family court because mother was assessed to be safe with services, mother's home was safe, mother separated from father, mother obtained a restraining order against father, and father was not granted any visits. 2. There was sufficient evidence in the record to support the administrative hearings officer's determination and findings that were based on the evaluation of witness credibility.
In re LK, No. CAAP-18-0000393 and CAAP No. 18-0000424, 2019 WL 912115 (Haw. App. Feb. 26, 2019) (SDO)	The family court granted the DHS' MTPR. The ICA affirmed. <u>Mother</u> 1. Rejected mother's argument that the DHS did not make reasonable efforts when it did not comply with the family court's order regarding the service plan. At the subsequent hearing, the DHS explained that due to the parent's lack of compliance, family supervision was not appropriate, and the family court modified the previous order regarding the service plan. Subsequently, the DHS provided a service plan that provided a written explanation on how parents can reunify under family supervision, thereby complying with the family court's modified order. 2. The family court did not err in considering the testimony of a DHS employee who was qualified as an expert in the field of child protective and welfare services, but not in the field of social work. Mother failed to identify what parts of the witness' testimony was in the field of social work. Mother's counsel elicited testimony that the witness was the social worker in the case, and performed the same work as a social worker. The witness' testimony was based on her personal knowledge in her capacity as a social worker, as well as the DHS' representative in the case. 3. Mother's claim that the DHS failed to explain why the permanent plan goal of adoption was preferred over guardianship is without merit. Per HRS § 587A-32 (a) (3), adoption should be the permanent plan goal unless there is a compelling reason for guardianship or permanent custody. Mother does not point to any compelling reasons why the permanent plan goal to establish that guardianship is in the child's best interests. <u>Father</u> 1. Rejected father's reasonable efforts argument based on the DHS' failure to comply with the family court's initial order regarding the service plan for the same reasons the court rejected mother's argument. 2. Father's trial counsel was not ineffective for stipulating to the expertise of the DHS employee in the field of child protective and welfare services. The witness testified that she has a bachelor's degree in psychology and a master's degree in counseling psychology. Her job title is "human services professional," but she has the same duties as a social worker. The family court would not have abused its discretion by qualifying the witness as an expert, even if father's trial counsel objected. 3. Father's trial counsel was not ineffective by failing to object to hearsay testimony by the DHS employee. HRE Rule 703 authorizes expert witnesses to rely on facts reasonably relied upon experts in the field, and the facts need not be admissible evidence. The DHS is not required to call a person as a witness to introduce evidence contained in a DHS report. 4. There was sufficient evidence in the record to support the family court's HRS § 587A-33 (a) (1) and (2) "parental unfitness" determination: a. Father did not participate in services because of his repeated incarcerations. b. At the time of the trial, father was incarcerated and had four more years in his sentence. According to the DHS employee, even if father were released, he would need about one year to complete services and to demonstrate his ability to provide a safe home.

CASE	DIGEST
In re AG, No. CAAP-18-0000541, 2019 WL 1274713 (Haw. App. Mar. 20, 2019 (SDO)	The family court granted the DHS' MTPR. Father appealed. The ICA affirmed. 1. Rejected father's argument that the DHS made no reasonable efforts to comply with the recommendations of father's psychological evaluation and to craft a service plan customized for father's mental health needs. a. According to the psychological evaluation, father understood that his parental rights could be terminated, and that although he did not agree that he needed to complete services, he understood that he needed to complete services to reunify. b. Although case management services, individual therapy and anger management services were not included in the last court-ordered service plan, there was no prejudice to father. Father refused to participate in services, and did not request additional services before trial. 2. There was substantial evidence in the record to support the family court HRS § 587A-33 (a) (1) and (2) "parental unfitness" determination. a. Father denied having the problems that led to the removal of the child, and which prevented him from providing a safe home. b. Father refused to participate in services. c. The child was in the foster custody of the DHS for two years at the time of trial.
In re B Children: NH and NN, No. CAAP-18-0000520, 2019 WL 1552060 (Haw. App. Apr. 10, 2019) (SDO); *cert. rejected* (July 9, 2019)	The family court granted the DHS' MTPR. Father and mother appealed. The ICA affirmed. <u>Father</u> 1. Rejected father's argument that there was insufficient evidence because he only had one positive urinalysis and ten missed urinalyses, but had sixty-four negative urinalyses. a. The timing of the missed urinalyses coincided with other issues such as father's conduct during unsupervised visitation and when the children were in his and mother's care. b. Father admitted to using illegal substances, but denied that he had a drug problem. c. Father refused to participate in substance abuse treatment, including through Family Drug Court. 2. Father was denied admission into Family Drug Court because of his refusal to participate in residential drug treatment, and his use of methamphetamines on the day of the intake interview. <u>Mother</u> 1. Mother was not denied due process when the parents were not served with the notice of the hearing on the motion for admission into Family Drug Court, and the motion was withdrawn. The presiding Family Drug Court judge had a low level of confidence that mother would succeed because father did not want to enter Family Drug Court. 2. Rejected mother's argument that the family court should have terminated father's parental rights, and allow her to participate in Family Drug Court. a. Mother only requested admission into Family Drug Court three and one-half years after the children were first placed into foster custody. b. Mother had a history of missing random urinalyses, that resulted in the children's removal from mother and father's care, and the termination of unsupervised visits.
In re EA, No. CAAP-18-0000705, 2019 WL 1578799 (Haw. App. Apr. 12, 2019) (SDO); *cert. rejected* (July 15, 2019)	The family court granted the DHS' MTPR. Mother appealed. The ICA affirmed. <u>Facts</u>: The case started in the Family Court of the Third Circuit. The DHS intervened because father subjected the child's older maternal half-sister to sexual harm, which placed the subject female child at risk for sexual harm. The

CASE	DIGEST
	family court adjudicated the petition, and awarded family supervision to the DHS. The family court later confirmed the DHS' assumption of foster custody. Venue was changed to the First Circuit. The ICA's Ruling 1. Mother contested various findings of fact, but did not make any discernible arguments, and therefore waived these issues. Two of the contested findings of fact are the family court's credibility determination, and another reflects the family court's inferences. The appellate courts will give due deference to the right of the trier of fact to determine credibility, weigh the evidence, and draw reasonable inferences from the evidence. 2. There was sufficient evidence to support the family court's determination that mother was unwilling and unable to provide a safe family home. Rejected the argument that the child was not at risk for sexual harm because mother was the non-offending parent and mother's failure to complete services did not make her non-protective of the child while father is incarcerated. a. According to the child's therapist, mother's failure to participate in a clarification session with the child put the child at greater risk of harm. Without the clarification session, the child would continue to blame herself and feel guilty, and would not receive assurances from mother that she would make things right. b. According to the DHS social worker, mother failed to recognize that father, an untreated sex offender, posed a risk of harm to the child. Mother had a pattern of giving father access to the child. Mother told the child not to trust the DHS, and should hide from the DHS which would make the child afraid to disclose any future harm. Once father is released, mother would be blind to any sexual abuse by father. 3. The proposed permanent plan is in the child's best interests. Rejected mother's argument that the child's placement with paternal grandmother was not in the child's best interests. According to the credible evidence, the paternal grandmother was providing for all of the child's needs, the child was bonded with the paternal grandmother, and was doing well in the placement. 4. Mother was not denied her right to counsel. a. Mother was not denied her right to counsel when the Family Court of the Third Circuit granted the DHS' Ex Parte Motion for Foster Custody, based on HRS § 587A-15 (a) (2) which did not require a hearing before the DHS assumes foster custody. The family court set a review hearing in a timely manner pursuant to HRS § 587A-15 (a) (2) (B). At the hearing, family court granted mother's request for appointment of counsel. b. After the Third Circuit Family Court awarded foster custody to the DHS, the family court authorized an extended visit for mother. Mother failed to return the child to the DHS by the court-ordered deadline. At the first hearing in the First Circuit Family Court, the family court denied mother's motion to continue the hearing to give her new court-appointed counsel the opportunity to prepare for the hearing, and granted the DHS' oral request that mother produce the child (based on the prior order of the Third Circuit Family Court). Mother failed to show how her court-appointed counsel was inadequate due to the denial of the motion to continue the hearing, and did not show any prejudice.

CASE	DIGEST
In re MP; JP, No. CAAP-18-0000731, 2019 WL 1614717 (Haw. App. Apr. 16, 2019) (SDO)	The family court granted the DHS' MTPR. Father of JP appealed. The ICA affirmed. 1. Father was not denied the reasonable opportunity to reunify when the DHS filed its MTPR approximately one year after it filed its Petition for Temporary Foster Custody. a. Father was homeless when the Petition was filed and was incarcerated approximately three months later. He was released four months later but did not contact the DHS, did not visit the children, and did not participate in services. Four months after his release, father was again incarcerated for probation violation and sentenced to one year incarceration. b. The DHS is not obligated to provide services that are not available in the prisons system. c. Father did not provide any legal authority to support his position that there is a minimum period that the DHS must wait before filing its MTPR. The HRS § 587A-33 (a) (2) two-year period is the maximum period for which a parent must become willing and able to provide a safe family home. 2. The family court did not clearly err in determining that father was not willing and able to provide a safe family home within a reasonable period of time. a. One child was in foster custody for twenty months when father's parental rights were terminated. The time father was incarceration is not excluded from the maximum two-year period, and his incarceration may be a factor that may be considered along with other factors. The family court may also consider previous termination of parental rights. b. According to the credible testimony of the DHS social worker: 1) Father had unaddressed problems of substance abuse, domestic violence, and his incarceration, which the same problems in the cases involving his older children where his parental rights were terminated. He had no insight of his problems. 2) Father had a history of his parental rights to his older children being terminated. 3) Father's unresolved substance abuse problem affected his ability to provide a safe home. 4) It would take father approximately two years to complete services and to demonstrate his ability to provide a safe home.

EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

April 17, 2019 **GOV. MSG. NO. 1113**

The Honorable Ronald D. Kouchi,
President
and Members of the Senate
Thirtieth State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

The Honorable Scott K. Saiki,
Speaker and Members of the
House of Representatives
Thirtieth State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

This is to inform you that on April 17, 2019, the following bill was signed into law:

SB325 SD1 RELATING TO PARENTAGE
ACT 012 (19)

Sincerely,

DAVID Y. IGE
Governor, State of Hawai'i

Approved by the Governor
on APR 17 2019
THE SENATE
THIRTIETH LEGISLATURE, 2019
STATE OF HAWAII

ACT 012
S.B. NO. 325 S.D. 1

A BILL FOR AN ACT

RELATING TO PARENTAGE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The legislature finds that the Hawaii supreme court's majority opinion in LC v. MG and Child Support Enforcement Agency, No. SCAP-16-0000837 (HAW. Oct. 4, 2018) held, in part, that the Hawaii Uniform Parentage Act, chapter 584, Hawaii Revised Statutes, precludes a spouse from rebutting the marital presumption of parentage with evidence that demonstrates a clear and convincing lack of consent to the other spouse's artificial insemination procedure. The legislature also finds that the court's majority based this holding on speculation regarding the legislature's intent in removing a provision relating to artificial insemination when it adopted the Uniform Parentage Act in 1973. The provision at issue specifically identified a husband's written consent to his wife's artificial insemination procedure as evidence relating to paternity. The legislature finds that the court's majority overreached in its conclusion that the legislature's removal of this provision in its initial adoption of the Uniform Parentage

Act indicates express legislative intent to preclude any evidence of non-consent to an artificial insemination procedure as a rebuttal to the presumption of parentage.

The purpose of this Act is to clarify that evidence of an alleged parent's non-consent to an artificial insemination procedure that resulted in the birth of a child may be considered as evidence relating to paternity in an action regarding the parentage of that child.

SECTION 2. Section 584-12, Hawaii Revised Statutes, is amended to read as follows:

"**§584-12 Evidence relating to paternity.** Evidence relating to paternity may include:

(1) Evidence of sexual intercourse between the mother and the alleged father at any possible time of conception;

(2) An expert's opinion concerning the statistical probability of the alleged father's paternity based upon the duration of the mother's pregnancy;

(3) Genetic test results, including blood test results, weighted in accordance with evidence, if available, of the statistical probability of the alleged father's paternity;

(4) Medical or anthropological evidence relating to the alleged father's paternity of the child based on tests performed by experts. If a man has been identified as a possible father of the child, the court may, and upon request of a party shall, require the child, the mother, and the man to submit to appropriate tests;

(5) A voluntary, written acknowledgment of paternity;

(6) Bills for pregnancy and childbirth, including medical insurance premiums covering this period and genetic testing, without the need for foundation testimony or other proof of authenticity or accuracy, and these bills shall constitute prima facie evidence of amounts incurred for such services or for testing on behalf of the child; [~~and~~]

(7) Evidence of consent to an artificial insemination procedure that resulted in the birth of the child; and

[~~(7)~~] (8) All other evidence relevant to the issue of paternity of the child."

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

APPROVED this 17 day of APR , 2019

GOVERNOR OF THE STATE OF HAWAII

THE SENATE OF THE STATE OF HAWAI'I

Date: March 5, 2019
Honolulu, Hawai'i 96813

We hereby certify that the foregoing Bill this day passed Third Reading in the Senate of the Thirtieth Legislature of the State of Hawai'i, Regular Session of 2019.

President of the Senate

Clerk of the Senate

THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAI'I

Date: March 29, 2019
Honolulu, Hawai'i 96813

We hereby certify that the foregoing Bill this day passed Third Reading in the House of Representatives of the Thirtieth Legislature of the State of Hawai'i, Regular Session of 2019.

Speaker, House of Representatives

Clerk, House of Representatives

EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

June 7, 2019 **GOV. MSG. NO. 1184**

The Honorable Ronald D. Kouchi,
President
and Members of the Senate
Thirtieth State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

The Honorable Scott K. Saiki,
Speaker and Members of the
House of Representatives
Thirtieth State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

This is to inform you that on June 7, 2019, the following bill was signed into law:

SB1226 SD2 HD1 CD1 RELATING TO CHILD CARE.
ACT 083 (19)

Sincerely,

DAVID Y. IGE
Governor, State of Hawai'i

Approved by the Governor
on JUN 7 2019
THE SENATE
THIRTIETH LEGISLATURE, 2019
STATE OF HAWAII

ACT 083

S.B. NO. 1226 S.D. 2 H.D. 1 C.D. 1

A BILL FOR AN ACT

RELATING TO CHILD CARE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Access to safe, affordable, and nurturing child care is a critical need for Hawaii's children and working parents. The purpose of this Act is to amend provisions of chapter 346, Hawaii Revised Statutes, to:

(1) Improve the safety of children in Hawaii's regulated and legally exempt child care settings by repealing certain limitations placed on criminal history record checks of adult relatives who provide care for a child whose family receives a child care subsidy from the department of human services;

(2) Clarify that when the child care licensing program receives a report of death or injury of a child in a child care setting, the program is not prohibited from sharing information and cooperating with child welfare services and law enforcement;

(3) Clarify when investigation information will be released to the public; and

(4) Clarify that the department of human services may take both administrative and judicial action to enforce child care licensing requirements and increase penalties by making the penalties apply on a daily basis.

SECTION 2. Section 346-152.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) [~~To be eligible~~] In order to provide child care for a child whose family receives a child care subsidy from the department, persons exempt pursuant to section 346-152 shall be required to agree to:

(1) A criminal history record check, a sex offender registry check, a child abuse record check, and an adult abuse perpetrator check in the same manner as a prospective applicant or licensed provider in accordance with section 346-154; [~~provided that the criminal history record check shall be limited to a criminal history record check conducted through files maintained by the Hawaii criminal justice data center for the following relatives of the child who requires care: grandparents, great grandparents, aunts, uncles,~~

~~and siblings aged eighteen or older living in a separate residence;~~]

(2) Completion of a pre-service or orientation training and ongoing training in health and safety topics; and

(3) Any monitoring inspection visits by the department or its designee to determine compliance with minimum health and safety standards at the location where child care is being provided for a child whose family receives a child care subsidy from the department, including investigations by the department when the department has received a report of health and safety concerns."

SECTION 3. Section 346-153, Hawaii Revised Statutes, is amended to read as follows:

"**§346-153 Records of deficiencies and complaints; release to public.** (a) For every child care facility, the department shall maintain records for the current and previous two years of: results of its inspections; notifications to providers of deficiencies; corrective action taken; complaints of violations of rules adopted under this part; results of its investigations; resolution of complaints; and suspensions, revocations,

reinstatements, restorations, and reissuances of licenses, temporary permits, and registrations issued under this part.

(b) Notwithstanding any other law to the contrary, the records described in this section shall be available for inspection in the manner set forth in chapter 92F and may be posted by the department on a public website; provided that with respect to records of family child care homes and group child care homes, sensitive personal information, including home addresses, or information provided to the department with the understanding that it would not be publicly divulged shall be deleted or obliterated prior to making the records available to the public. Nothing in this section shall authorize the department to release to the public the names of or any other identifying information on complainants. Nothing in this section shall prohibit the department's child care licensing program from sharing information and cooperating with the department's child protective services and law enforcement on investigations.

(c) The department may withhold information [~~on a~~] regarding an investigation of a complaint [~~for which an investigation is being conducted~~] of a violation for not more

than ten working days [~~following the date of filing of the complaint;~~] after the date the investigation report is completed; provided that if an investigation relates to an alleged criminal offense, no information shall be released until the criminal investigation has been completed and the director has determined that no legal proceeding will be jeopardized by its release."

SECTION 4. Section 346-156, Hawaii Revised Statutes, is amended to read as follows:

"**§346-156 Penalty[~~.~~]; remedies.** (a) Any person, entity, agency, or organization violating any provision of this [~~chapter~~] part or any rule made pursuant thereto shall be fined [~~as follows:~~

~~(1) Up~~] up to $1,000 for [~~the first~~] each day of violation; [~~and~~

~~(2) Up~~] provided that the fine may be up to $3,000 for [~~the second violation and each succeeding violation.~~] each day for a violation of section 346-161 or 346-171.

(b) The department may enforce this part in either administrative proceedings or judicial proceedings, or both."

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

APPROVED this 7 day of JUN , 2019

GOVERNOR OF THE STATE OF HAWAII

THE SENATE OF THE STATE OF HAWAI'I

Date: April 30, 2019
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the Senate of the Thirtieth Legislature of the State of Hawai'i, Regular Session of 2019.

President of the Senate

Clerk of the Senate

SB No. 1226, SD 2, HD 1, CD 1

THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: April 30, 2019
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Thirtieth Legislature of the State of Hawaii, Regular Session of 2019.

Scott K. Saiki
Speaker
House of Representatives

Brian L. Takeshita
Chief Clerk
House of Representatives

EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

June 7, 2019 **GOV. MSG. NO. 1186**

The Honorable Ronald D. Kouchi,
President
and Members of the Senate
Thirtieth State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

The Honorable Scott K. Saiki,
Speaker and Members of the
House of Representatives
Thirtieth State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

This is to inform you that on June 7, 2019, the following bill was signed into law:

SB1232 SD1 HD1 CD1 RELATING TO CHILD SAFETY.
ACT 085 (19)

Sincerely,

DAVID Y. IGE
Governor, State of Hawai'i

Approved by the Governor
on JUN 7 2019

THE SENATE
THIRTIETH LEGISLATURE, 2019
STATE OF HAWAII

ACT 085
S.B. NO. 1232 S.D. 1 H.D. 1 C.D. 1

A BILL FOR AN ACT

RELATING TO CHILD SAFETY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Section 350-2, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

"(f) For a confirmed case of child abuse or neglect that occurred [~~where a child is provided care,~~] at a child care facility as defined in section 346-151 [~~,~~] that is operating in accordance with an exclusion or exemption pursuant to section 346-152 and upon receipt of [~~the~~] consent [~~of the child care provider~~], the department is authorized to disclose [~~that~~] the report of child abuse or neglect was confirmed to any parent or guardian of a child who was enrolled at the [~~licensed or registered~~] child care facility [~~as defined in section 346-151~~]."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2019.

APPROVED this 7 day of JUN, 2019

GOVERNOR OF THE STATE OF HAWAII

THE SENATE OF THE STATE OF HAWAI'I

Date: April 30, 2019
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the Senate of the Thirtieth Legislature of the State of Hawai'i, Regular Session of 2019.

President of the Senate

Clerk of the Senate

SB No. 1232, SD 1, HD 1, CD 1

THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: April 30, 2019
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Thirtieth Legislature of the State of Hawaii, Regular Session of 2019.

Scott K. Saiki
Speaker
House of Representatives

Brian L. Takeshita
Chief Clerk
House of Representatives

EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

June 26, 2019 **GOV. MSG. NO. 1252**

The Honorable Ronald D. Kouchi,
President
and Members of the Senate
Thirtieth State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

The Honorable Scott K. Saiki,
Speaker and Members of the
House of Representatives
Thirtieth State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

This is to inform you that on June 26, 2019, the following bill was signed into law:

SB1466 SD2 HD2 — RELATING TO GUN VIOLENCE PROTECTIVE ORDERS
ACT 150 (19)

Sincerely,

DAVID Y. IGE
Governor, State of Hawai'i

Approved by the Governor
on JUN 26 2019

THE SENATE
THIRTIETH LEGISLATURE, 2019
STATE OF HAWAII

ACT 150
S.B. NO. 1466 S.D. 2 H.D. 2

A BILL FOR AN ACT

RELATING TO GUN VIOLENCE PROTECTIVE ORDERS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The legislature finds that the State has some of the strongest gun safety laws in the nation and in 2016 received an A-minus rating from the Law Center to Prevent Gun Violence. According to the Centers for Disease Control and Prevention, Hawaii had the second-lowest number of gun deaths per capita among the states in 2015.

However, the legislature also finds that an area in which the State can improve its gun safety laws is gun violence protective orders. Nationwide, active shooters have inflicted great harm by killing and injuring innocent persons, sometimes in tragic mass shootings such as the 2016 Orlando nightclub shooting and the 2017 Las Vegas and Sutherland Springs church shootings. In such cases, law enforcement or a member of the shooter's family or household may have observed warning signs before the shooting, but depending on the jurisdiction, they may not have had the ability to petition a court to confiscate the shooter's firearms and ammunition.

The legislature also finds that California, Oregon, Washington, and numerous other states have already implemented gun violence protection laws, allowing for a family or household member to file a petition for the temporary removal of guns from an individual who shows clear and convincing signs of planning to use these guns to commit violent acts.

The legislature further finds that section 134-7(f), Hawaii Revised Statutes, already authorizes police to take custody of a person's firearms and ammunition upon issuance of a restraining order or order of protection by any court if the court finds the person may use a firearm to threaten, injure, or abuse any person. However, the statute does not address preventative actions that may be taken by law enforcement or a family or household member of an individual who shows articulable signs of planning to use these guns to commit violent acts. Accordingly, the legislature believes that a more comprehensive law is needed.

The purpose of this Act is to reduce gun deaths and injuries in the State by establishing a detailed process that allows a law enforcement officer, family or household member, medical professional, educator, or colleague to obtain a court

order to prevent a person from accessing firearms and ammunition if the person poses a danger of causing bodily injury to the person or another.

SECTION 2. Chapter 134, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

"**PART . GUN VIOLENCE PROTECTIVE ORDERS**

§134-A Definitions. For the purposes of this part:

"Bodily injury" has the same meaning as in section 707-700.

"Business day" has the same meaning as in section 709-906.

"Colleague" means a person employed or working at the same place of business or employment as the respondent.

"Educator" means a person employed at an institution of learning at which the respondent may have a connection.

"Ex parte gun violence protective order" means an order issued by the family court, pursuant to section 134-D, prohibiting the respondent from owning, purchasing, possessing, receiving, or having in the respondent's custody or control any firearm or ammunition until the court-scheduled hearing for a one-year gun violence protective order.

"Family or household member" means any spouse or reciprocal beneficiary, former spouse or former reciprocal beneficiary, person with whom the respondent has a child in common, parent, child, person related by consanguinity, person related by adoption, person jointly residing or who formerly jointly resided with a respondent in the same dwelling unit as the respondent, person who has or has had a dating relationship, or person who is or has acted as the respondent's legal guardian. "Family or household member" includes a person who is an adult roommate or a co-habitant of a respondent.

"Medical professional" means a licensed physician, advanced practice registered nurse, psychologist, or psychiatrist who has examined the respondent.

"One-year gun violence protective order" means an order issued by the family court, pursuant to section 134-E, prohibiting the respondent from owning, purchasing, possessing, receiving, or having in the respondent's custody or control any firearm or ammunition for a period of one year.

"Petitioner" means a law enforcement officer, family or household member of the respondent, medical professional,

educator, or colleague, who files a petition pursuant to section 134-D or section 134-E.

"Respondent" means the person identified in the petition filed pursuant to section 134-D or section 134-E.

§134-B Court jurisdiction. A petition for relief under this part may be filed in any family court in the circuit in which the petitioner resides. A petition under this part shall be given docket priority by the court.

§134-C Commencement of action; forms. (a) In order to seek an ex parte gun violence protective order or a one-year gun violence protective order, the petitioner shall file a written petition for relief on forms provided by the court. The court shall designate an employee or appropriate non-judicial agency to assist the petitioner in completing the petition.

(b) The petition shall allege, under penalty of perjury, the grounds for issuance of the order and shall be accompanied by an affidavit made under oath or a statement made under penalty of perjury containing detailed allegations based on personal knowledge that the respondent poses a danger of causing bodily injury to the respondent's self or another person by owning, purchasing, possessing, receiving, or having in the

respondent's custody or control any firearm or ammunition, and specific facts and circumstances in support thereof, as well as the number, types, and locations of any firearms or ammunition presently believed by the petitioner to be possessed or controlled by the respondent. The petition shall also state, if known to the petitioner, whether there is an existing restraining order or protective order in effect governing the respondent and whether there is any pending lawsuit, complaint, petition, or other action between the parties under the laws of this State. The judiciary shall verify the terms of any existing order governing the parties. The court shall not delay granting relief because of the existence of a pending action between the parties or the necessity of verifying the terms of an existing order. A petition for an ex parte gun violence protective order or a one-year gun violence protective order may be granted regardless of whether there is a pending action between the parties.

(c) All health records and other health information provided in a petition or considered as evidence in a proceeding under this part shall be sealed by the court, except that the identities of the petitioner and respondent may be provided to

law enforcement agencies as set forth in section 134-I. Aggregate statistical data about the numbers of ex parte gun violence protective orders and one-year gun violence protective orders issued, renewed, denied, dissolved, or terminated shall be made available to the public upon request.

(d) Upon receipt of the petition, the court shall set a date for hearing on the petition within fourteen days, regardless of whether the court issues an ex parte gun violence protective order pursuant to section 134-D. If the court issues an ex parte gun violence protective order pursuant to section 134-D, notice of the hearing shall be served on the respondent with the ex parte order. Notice of the hearing shall be personally served on the respondent by an officer of the appropriate county police department.

§134-D Ex parte gun violence protective order. (a) A petitioner may request that an ex parte gun violence protective order be issued before a hearing for a one-year gun violence protective order, without notice to the respondent.

(b) The court shall issue or deny an ex parte gun violence protective order on the same day that the petition is submitted to the court, unless the petition is filed too late in the day

to permit effective adjudication, in which case the order shall be issued or denied on the next business day.

(c) Before issuing an ex parte gun violence protective order, the court may examine under oath the petitioner and any witnesses the petitioner may produce.

(d) In determining whether sufficient grounds for an ex parte gun violence protective order exist, the court shall consider all relevant evidence presented by the petitioner, and may also consider other relevant evidence, including evidence of facts relating to the respondent's:

(1) Unlawful, reckless, or negligent use, display, storage, possession, or brandishing of a firearm;

(2) Act or threat of violence against the respondent's self or another person, regardless of whether the violence involves a firearm;

(3) Violation of a protective order or restraining order issued pursuant to chapter 586 or section 604-10.5, or a similar law in another state;

(4) Abuse of controlled substances or alcohol or commission of any criminal offense that involves controlled substances or alcohol; and

(5) Recent acquisition of any firearms, ammunition, or other deadly weapons.

(e) The court shall also consider the time that has elapsed since the events described in subsection (d).

(f) If the court finds probable cause to believe that the respondent poses an imminent danger of causing bodily injury to the respondent's self or another person by owning, purchasing, possessing, receiving, or having in the respondent's custody or control any firearm or ammunition, the court shall issue an ex parte gun violence protective order.

(g) An ex parte gun violence protective order issued pursuant to this section shall include:

(1) A statement that the respondent shall not own, purchase, possess, receive, transfer ownership of, or have in the respondent's custody or control, or attempt to purchase, receive, or transfer ownership of, any firearm or ammunition while the order is in effect;

(2) A description of the requirements for relinquishment of firearms and ammunition under section 134-G;

(3) A statement of the grounds asserted for the order;

(4) A notice of the hearing under section 134-C(d) to determine whether to issue a one-year gun violence protective order, including the address of the court and the date and time when the hearing is scheduled;

(5) A statement that at the hearing, the court may extend the order for one year; and

(6) A statement that the respondent may seek the advice of an attorney as to any matter connected with the order, and that the attorney should be consulted promptly so that the attorney may assist the respondent in any matter connected with the order.

(h) An ex parte gun violence protective order issued pursuant to this section shall be personally served on the respondent by an officer of the appropriate county police department. The officer shall file the proof of service with the court within one business day of service.

(i) In accordance with section 134-C(d), the court shall schedule a hearing within fourteen days of the granting of the petition for an ex parte gun violence protective order to determine if a one-year gun violence protective order shall be issued. A respondent may seek an extension of time before the

hearing. The court shall dissolve any ex parte gun violence protective order in effect against the respondent if the court subsequently holds the hearing and issues or denies a one-year gun violence protective order.

§134-E One-year gun violence protective order issued after notice and hearing. (a) A petitioner requesting a one-year gun violence protective order shall include in the petition detailed allegations based on personal knowledge that the respondent poses a significant danger of causing a self-inflicted bodily injury or an injury to another person by owning, purchasing, possessing, receiving, or having in the respondent's custody or control any firearm or ammunition.

(b) In determining whether to issue a one-year gun violence protective order under this section, the court shall consider all relevant evidence presented by the petitioner and the respondent, and may also consider other relevant evidence, including but not limited to evidence of the facts identified in section 134-D(d).

(c) If the court finds by a preponderance of the evidence at the hearing that the respondent poses a significant danger of causing bodily injury to the respondent's self or another person

by owning, purchasing, possessing, receiving, or having in the respondent's custody or control any firearm or ammunition, the court shall issue a one-year gun violence protective order.

(d) A one-year gun violence protective order issued pursuant to this section shall include all of the following:

(1) A statement that the respondent shall not own, purchase, possess, receive, transfer ownership of, or have in the respondent's custody or control, or attempt to purchase, receive, or transfer ownership of, any firearm or ammunition while the order is in effect;

(2) A description of the requirements for relinquishment of firearms and ammunition under section 134-G;

(3) A statement of the grounds supporting the issuance of the order;

(4) The date and time the order expires;

(5) The address of the court that issued the order;

(6) A statement that the respondent may request a hearing to terminate the order at any time during its effective period;

(7) A statement that the respondent may seek the advice of an attorney as to any matter connected to the order;

(8) A statement of whether the respondent was present in court to be advised of the contents of the order or whether the respondent failed to appear; and

(9) A statement that if the respondent was present in court, the respondent's presence shall constitute proof of service of notice of the terms of the order.

(e) If the respondent fails to appear at the hearing, a one-year gun violence protective order issued pursuant to this section shall be personally served on the respondent by an officer of the appropriate county police department. The officer shall file the proof of service with the court within one business day of service.

§134-F Termination and renewal. (a) The respondent named in a one-year gun violence protective order issued under section 134-E may submit a written request at any time during the effective period of the order for a hearing to terminate the order. Upon receipt of the written request for termination:

(1) The court shall set a date for a hearing. Notice of the request shall be personally served on the

petitioner by any person authorized by section 634-21. The hearing shall occur no sooner than fourteen days from the date of service of the request upon the petitioner; and

(2) The respondent seeking termination of the order shall have the burden of proving by a preponderance of the evidence that the respondent does not pose a significant danger of causing bodily injury to the respondent's self or another person by owning, purchasing, possessing, receiving, or having in the respondent's custody or control any firearm or ammunition.

If the court finds after the hearing that the respondent has met the respondent's burden, the court shall terminate the order.

(b) A petitioner may submit a written request for a renewal of a one-year gun violence protective order within three months prior to the expiration of the order. Upon receipt of the written request for renewal, the court:

(1) In determining whether to renew a one-year gun violence protective order, after notice to the respondent, shall consider all relevant evidence

presented by the petitioner and the respondent and may also consider other relevant evidence, including evidence of the facts identified in section 134-D(d); and

(2) May renew a one-year gun violence protective order if the court finds by a preponderance of the evidence that the respondent continues to pose a significant danger of causing bodily injury to the respondent's self or another person by owning, purchasing, possessing, receiving, or having in the respondent's custody or control any firearm or ammunition.

A one-year gun violence protective order renewed pursuant to this section shall expire after one year, subject to termination by further order of the court at a hearing held pursuant to subsection (a) and further renewal by order of the court pursuant to this subsection.

§134-G Relinquishment of firearms and ammunition. (a) Upon issuance of an ex parte gun violence protective order, a one-year gun violence protective order, or a domestic abuse protective order, the court shall order the respondent to voluntarily surrender or dispose of all firearms and ammunition

that the respondent owns or possesses, or has in the respondent's custody or control, in accordance with section 134-7.3(b).

(b) At the time of serving notice of a petition, an ex parte gun violence protective order, a one-year gun violence protective order, or a domestic abuse protective order, a police officer shall take custody of any and all firearms and ammunition in accordance with the procedure described in section 134-7(f). Alternatively, if personal service by a police officer is not possible, the respondent shall surrender the firearms and ammunition in a safe manner to the control of the chief of police where the respondent resides within forty-eight hours of being served with the order.

(c) At the time of surrender or removal, a police officer taking possession of a firearm or ammunition pursuant to an ex parte gun violence protective order, a one-year gun violence protective order, or domestic abuse protective order shall issue a receipt identifying all firearms and ammunition that have been surrendered or removed and provide a copy of the receipt to the respondent. Within seventy-two hours after being served with the order, the officer serving the order shall file the original

receipt with the court that issued the ex parte gun violence protective order or one-year gun violence protective order, and shall ensure that the appropriate county police department retains a copy of the receipt.

(d) A court that has probable cause to believe a respondent to a protective order owns, possesses, or has in the respondent's custody or control any firearms or ammunition that the respondent has failed to surrender pursuant to this section, or has received or purchased a firearm or ammunition while subject to the order, shall issue a warrant describing the firearm or ammunition and authorizing a search of any location where the firearm or ammunition is reasonably believed to be and the seizure of any firearm or ammunition discovered pursuant to the search.

(e) The appropriate county police department may charge the respondent a fee not to exceed the reasonable and actual costs incurred by the department for storing a firearm or ammunition surrendered or removed pursuant to this section for the duration of the ex parte gun violence protective order, one-year gun violence protective order, or domestic abuse protective order and any additional periods necessary under section 134-H.

§134-H Return and disposal of firearms or ammunition. (a) A county police department shall return any surrendered or removed firearm or ammunition requested by a respondent only after confirming, through a criminal history background check, that the respondent is currently eligible to own or possess firearms and ammunition.

(b) A respondent who has surrendered or had removed any firearm or ammunition to or by a county police department pursuant to section 134-G and who does not wish to have the firearm or ammunition returned, or who is no longer eligible to own or possess firearms or ammunition, may sell or transfer title of the firearm or ammunition to a firearms dealer licensed under section 134-31. The department shall transfer possession of the firearm or ammunition to a firearms dealer licensed under section 134-31 only after the dealer has provided written proof of transfer of the firearm or ammunition from the respondent to the dealer and the department has verified the transfer with the respondent.

(c) If a person other than the respondent claims title to any firearm or ammunition surrendered or removed pursuant to section 134-G, and that person is determined by the appropriate

county police department to be the lawful owner of the firearm or ammunition, the firearm or ammunition shall be returned to the lawful owner.

(d) A county police department holding any firearm or ammunition that was surrendered by or removed from a respondent pursuant to section 134-G may dispose of the firearm or ammunition only after six months from the date of proper notice to the respondent of the department's intent to dispose of the firearm or ammunition, unless the firearm or ammunition has been claimed by the lawful owner. If the firearm or ammunition remain unclaimed after six months from the date of notice, then no party shall thereafter have the right to assert ownership thereof and the department may dispose of the firearm or ammunition.

(e) For the purposes of this section, "dispose" means selling the firearm or ammunition to a firearms dealer licensed under section 134-31, or destroying the firearm or ammunition.

§134-I Reporting of order to Hawaii criminal justice data center. (a) The court shall notify the Hawaii criminal justice data center no later than one business day after issuing, serving, renewing, dissolving, or terminating an ex parte gun

violence protective order or a one-year gun violence protective order under this part and after receiving notice of such an order.

(b) The information required to be submitted to the Hawaii criminal justice data center pursuant to this section shall include identifying information about the petitioner and respondent and the date the order was issued, served, renewed, dissolved, or terminated. In the case of a one-year gun violence protective order, the court shall include the date the order is set to expire.

(c) The Hawaii criminal justice data center shall maintain a searchable database of the information it receives under this section and make the information available to law enforcement agencies upon request.

(d) The Hawaii criminal justice data center shall within one business day make information about an ex parte gun violence protective order or a one-year gun violence protective order issued, served, renewed, dissolved, or terminated pursuant to this part available to the National Instant Criminal Background Check System for the purposes of firearm purchaser background checks.

§134-J Penalties. A person who files a petition for an ex parte gun violence protective order or a one-year gun violence protective order under this part, knowing the information in the petition to be materially false or with an intent to harass the respondent, is guilty of a misdemeanor.

§134-K Law enforcement to retain other authority. The provisions of this part shall not affect the ability of a law enforcement officer to remove firearms or ammunition from any person pursuant to other lawful authority.

§134-L Lack of liability for failure to seek order. This part shall not be construed to impose criminal or civil liability on any person who chooses not to seek an ex parte gun violence protective order or a one-year gun violence protective order pursuant to this part."

SECTION 3. Section 134-7, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

"(f) No person who has been restrained pursuant to an order of any court, including [~~an ex parte order as provided in this subsection,~~] a gun violence protective order issued pursuant to part , from contacting, threatening, or physically abusing any person, shall possess, control, or

transfer ownership of any firearm or ammunition therefor, so long as the protective order, restraining order, or any extension is in effect, unless the order, for good cause shown, specifically permits the possession of a firearm and ammunition. The protective order or restraining order [~~or order of protection~~] shall specifically include a statement that possession, control, or transfer of ownership of a firearm or ammunition by the person named in the order is prohibited. [~~Such~~] The person shall relinquish possession and control of any firearm and ammunition owned by that person to the police department of the appropriate county for safekeeping for the duration of the order or extension thereof. [~~In the case of an ex parte order, the affidavit or statement under oath that forms the basis for the order shall contain a statement of the facts that support a finding that the person to be restrained owns, intends to obtain or to transfer ownership of, or possesses a firearm, and that the firearm may be used to threaten, injure, or abuse any person. The ex parte order shall be effective upon service pursuant to section 586-6.~~] At the time of service of a protective order or restraining order involving firearms and ammunition issued by any court, [~~the~~] a police officer may take

custody of any and all firearms and ammunition in plain sight, those discovered pursuant to a consensual search, and those firearms surrendered by the person restrained. If the person restrained is the registered owner of a firearm and knows the location of the firearm, but refuses to surrender the firearm or refuses to disclose the location of the firearm, the person restrained shall be guilty of a misdemeanor. In any case, when a police officer is unable to locate the firearms and ammunition either registered under this chapter or known to the person granted protection by the court, the police officer shall apply to the court for a search warrant pursuant to chapter 803 for the limited purpose of seizing the firearm and ammunition.

For the purposes of this subsection, good cause shall not be based solely upon the consideration that the person subject to restraint pursuant to an order of any court [~~, including an ex parte order as provided for in this subsection,~~] is required to possess or carry firearms or ammunition during the course of the person's employment. Good cause consideration may include but not be limited to the protection and safety of the person to whom a restraining order is granted."

SECTION 4. Section 134-7.3, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (b) to read:

"(b) Any person disqualified from ownership, possession, or control of firearms and ammunition under section 134-7[~~,~~] or part , within [~~seven days~~] forty-eight hours of disqualification, shall voluntarily surrender all firearms and ammunition to the chief of police where the person resides or dispose of all firearms and ammunition. If any person fails to voluntarily surrender or dispose of all firearms and ammunition within [~~seven days~~] forty-eight hours from the date of disqualification, the chief of police may seize all firearms and ammunition."

2. By amending subsection (d) to read:

"(d) For the purposes of this section, "dispose" means selling the firearms to a gun dealer licensed under section 134-31, transferring ownership of the firearms to any person who meets the requirements of section 134-2, or surrendering all firearms to the chief of police where the person resides for storage or disposal; provided[~~,~~] that, for a person subject to section 134-7(f)[~~,~~] or part , "dispose" shall not include

transferring ownership of the firearms to any person who meets the requirements of section 134-2."

SECTION 5. The judiciary shall adopt any rules of court necessary to implement this Act.

SECTION 6. The department of the attorney general shall adopt any rules, pursuant to chapter 91, Hawaii Revised Statutes, necessary to implement this Act.

SECTION 7. The chief of police of the respective counties shall adopt any procedures necessary to implement this Act.

SECTION 8. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 9. In codifying the new sections added by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 10. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 11. This Act shall take effect on January 1, 2020.

APPROVED this 26 day of JUN , 2019

GOVERNOR OF THE STATE OF HAWAII

SB No. 1466, SD 2, HD 2

THE HOUSE OF REPRESENTATIVES OF THE

STATE OF HAWAII

Date: April 9, 2019
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Third Reading in the House of Representatives of the Thirtieth Legislature of the State of Hawaii, Regular Session of 2019.

Scott K. Saiki
Speaker
House of Representatives

Brian L. Takeshita
Chief Clerk
House of Representatives

S.B. No. 1466, S.D. 2, H.D. 2

THE SENATE OF THE STATE OF HAWAI'I

Date: April 18, 2019
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the Senate of the Thirtieth Legislature of the State of Hawai'i, Regular Session of 2019.

President of the Senate

Clerk of the Senate

EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

June 26, 2019 **GOV. MSG. NO. 1259**

The Honorable Ronald D. Kouchi,
President
and Members of the Senate
Thirtieth State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

The Honorable Scott K. Saiki,
Speaker and Members of the
House of Representatives
Thirtieth State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

This is to inform you that on June 26, 2019, the following bill was signed into law:

HB664 HD2 SD1 RELATING TO GENDER IDENTITY
ACT 157 (19)

Sincerely,

DAVID Y. IGE
Governor, State of Hawai'i

Approved by the Governor
on JUN 26 2019

ORIGINAL

HOUSE OF REPRESENTATIVES
THIRTIETH LEGISLATURE, 2019
STATE OF HAWAII

ACT 157
H.B. NO. 664 H.D. 2 S.D. 1

A BILL FOR AN ACT

RELATING TO GENDER IDENTITY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Chapter 453J, Hawaii Revised Statutes, is amended by amending its title to read as follows:

"[~~[~~] CHAPTER 453J [~~]~~]

CONVERSION THERAPY PROHIBITED FOR SEXUAL ORIENTATION [~~CHANGE EFFORTS~~] AND GENDER IDENTITY"

SECTION 2. Section 453J-1, Hawaii Revised Statutes, is amended to read as follows:

"[~~[~~] §453J-1 [~~]~~ ~~Sexual orientation change efforts~~]

Conversion therapy prohibited; advertising prohibited. (a) No person who is licensed to provide professional counseling shall:

(1) Engage in or attempt to engage in [~~sexual orientation change efforts~~] conversion therapy on a person under eighteen years of age; or

(2) Advertise the offering of [~~sexual orientation change efforts~~] conversion therapy on a person under eighteen years of age.

(b) Any person who is licensed to provide professional counseling who engages in or attempts to engage in the offering of [~~sexual orientation change efforts~~] conversion therapy on a person under eighteen years of age shall be subject to disciplinary action by the appropriate professional licensing authority.

(c) For purposes of this section:

"Advertise" means a communication made by or on behalf of a person who is licensed to provide professional counseling, made for the purpose of inducing or promoting a professional counseling relationship in which [~~sexual orientation change efforts~~] conversion therapy will be undertaken on a person under the age of eighteen. "Advertise" includes oral, written, graphic, or pictorial statements or representations, including those made through any electronic or print medium.

"Conversion therapy" means any practices or treatments that seek to change an individual's sexual orientation or gender identity, including efforts to change behaviors or gender expressions or to eliminate or reduce sexual or romantic attractions or feelings toward individuals of the same gender.

"Conversion therapy" shall not include counseling that provides assistance to a person undergoing gender transition, or counseling that provides acceptance, support, and understanding of a person or facilitates a person's coping, social support, and identity exploration and development, including sexual orientation-neutral interventions to prevent or address unlawful conduct or unsafe sexual practices, as long as such counseling does not seek to change an individual's sexual orientation or gender identity.

"Person who is licensed to provide professional counseling" means a person who performs counseling as part of the person's professional training, including a physician, especially one practicing psychiatry, licensed pursuant to chapter 453; psychologist licensed pursuant to chapter 465; nurse licensed pursuant to chapter 457; social worker licensed pursuant to chapter 467E; licensed mental health counselor licensed pursuant to chapter 453D; or licensed marriage and family therapist licensed pursuant to chapter 451J.

~~["Sexual orientation change efforts" means the practice of attempting to change a person's sexual orientation, including but not limited to efforts to change gender identity or gender~~

~~expressions and behaviors; or to reduce or eliminate sexual or romantic attractions or feelings toward a person of the same gender.~~

~~"Sexual orientation change efforts" shall not include counseling supporting a person seeking to transition from one gender to another or counseling that:~~

~~(1) Provides acceptance, support, and understanding of a person or facilitates a person's coping, social support, and identity exploration and development, including sexual orientation neutral interventions to prevent or address unlawful conduct or unsafe sexual practices; and~~

~~(2) Does not seek to change sexual orientation, gender identity, or gender expression.~~]"

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2019.

APPROVED this 26 day of JUN, 2019

GOVERNOR OF THE STATE OF HAWAII

HB No. 664, HD 2, SD 1

THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: April 25, 2019
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Thirtieth Legislature of the State of Hawaii, Regular Session of 2019.

Scott K. Saiki
Speaker
House of Representatives

Brian L. Takeshita
Chief Clerk
House of Representatives

H.B. No. 664, H.D. 2, S.D. 1

THE SENATE OF THE STATE OF HAWAI'I

Date: April 5, 2019
Honolulu, Hawai'i 96813

We hereby certify that the foregoing Bill this day passed Third Reading in the Senate of the Thirtieth Legislature of the State of Hawai'i, Regular Session of 2019.

President of the Senate

Clerk of the Senate

EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

July 5, 2019

GOV. MSG. NO. 136(

The Honorable Ronald D. Kouchi,
President
and Members of the Senate
Thirtieth State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

The Honorable Scott K. Saiki,
Speaker and Members of the
House of Representatives
Thirtieth State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

This is to inform you that on July 5, 2019, the following bill was signed into law:

SB947 SD1 HD1 CD1 — RELATING TO FAMILIES.
ACT 259 (19)

Sincerely,

DAVID Y. IGE
Governor, State of Hawai'i

Approved by the Governor
on JUL 05 2019
THE SENATE
THIRTIETH LEGISLATURE, 2019
STATE OF HAWAII

ACT 259
S.B. NO. 947 S.D. 1 H.D. 1 C.D. 1

A BILL FOR AN ACT

RELATING TO FAMILIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The purpose of this Act is to protect the best interests of children parented or cared for by persons with disabilities by prohibiting the disability of a parent or caregiver from being considered as the sole factor in determining the fitness of any:

(1) Foster parent or resource family;

(2) Prospective adoptive parent of a minor;

(3) Prospective guardian of a minor;

(4) Person seeking custody or visitation of a minor child; or

(5) Parent or caregiver when evaluating whether a child's family is willing and able to provide the child with a safe family home.

SECTION 2. Chapter 346, Hawaii Revised Statutes, is amended by adding a new section to part I to be appropriately designated and to read as follows:

"§346- Department standards and requirements; disability. The department shall not consider the disability of

a person to be the sole factor in making a determination under section 346-17 or section 346-19.7. If the department makes a determination to deny the petition of a disabled person under section 346-17 or section 346-19.7, the department shall make specific written findings stating the basis for the determination. The party attempting to demonstrate that the disability impairs a person's ability to parent must prove that the disability is a factor, and demonstrate a clear nexus between the disability and the alleged parental deficiency."

SECTION 3. Chapter 560, Hawaii Revised Statutes, is amended by adding a new section to article V, part 2 to be appropriately designated and to read as follows:

"**§560:5- Judicial appointment of guardian; disability.** The court shall not consider the disability of a prospective guardian to be the sole factor in the court's determination to approve or deny the appointment of a guardian pursuant to this part. If the court makes a determination to deny guardianship to a person who is disabled, the court shall make specific written findings stating the basis for this determination. The party attempting to demonstrate that the disability of a prospective guardian impairs the prospective guardian's ability

to parent must prove that the disability is a factor, and demonstrate a clear nexus between the disability and the alleged parental deficiency."

SECTION 4. Chapter 571, Hawaii Revised Statutes, is amended by adding a new section to part V to be appropriately designated and to read as follows:

"**§571- Criteria and procedure in awarding custody and visitation; disability.** The court shall not consider the disability of a person seeking custody or visitation of a minor to be the sole factor in the court's determination made pursuant to this part. If the court makes a determination to deny custody or visitation to a person who is disabled, the court shall make specific written findings stating the basis for this determination. The party attempting to demonstrate that the disability of a person seeking custody or visitation impairs the person's ability to parent must prove that the disability is a factor, and demonstrate a clear nexus between the disability and the alleged parental deficiency."

SECTION 5. Chapter 587A, Hawaii Revised Statutes, is amended by adding a new section to part III to be appropriately designated and to read as follows:

"§587A- **Safe family home factors; disability.** The court shall not consider the disability of a parent or caregiver to be the sole factor in the court's determination made pursuant to this part. If the court makes a determination that a child's family is unable to provide a safe family home and one or more of the child's parents or caregivers are disabled, the court shall make specific written findings stating the basis for this determination. The party attempting to demonstrate that the disability of a parent or caregiver impairs the parent's or caregiver's ability to parent must prove that the disability is a factor, and demonstrate a clear nexus between the disability and the alleged parental deficiency."

SECTION 6. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 7. New statutory material is underscored.

SECTION 8. This Act shall take effect upon its approval.

APPROVED this 05 day of JUL, 2019

GOVERNOR OF THE STATE OF HAWAII

THE SENATE OF THE STATE OF HAWAI'I

Date: April 26, 2019
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the Senate of the Thirtieth Legislature of the State of Hawai'i, Regular Session of 2019.

President of the Senate

Clerk of the Senate

SB No. 947, SD 1, HD 1, CD 1

THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: April 30, 2019
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Thirtieth Legislature of the State of Hawaii, Regular Session of 2019.

Scott K. Saiki
Speaker
House of Representatives

Brian L. Takeshita
Chief Clerk
House of Representatives

Ka Pili ʻŌhāna
"He lei poina ʻole ke keiki"

The Liliʻuokalani Trust has partnered with the Department of Human Services, Child Welfare Services Branch, Child and Family Service, and Family Programs Hawaiʻi to design and implement a culturally-grounded pilot program to explore new ways of supporting Hawaiian kamaliʻi (children) and ʻohana in the foster care system.

We believe that every Native Hawaiian kamaliʻi should have a strong sense of self and permanency in their ʻohana

Ka Pili ʻŌhāna means
to cause one to thrive or flourish.
He lei poina ʻole ke keiki means
"A beloved child is a never forgotten lei.

Ka Pili ʻŌhāna Pilot Objective:

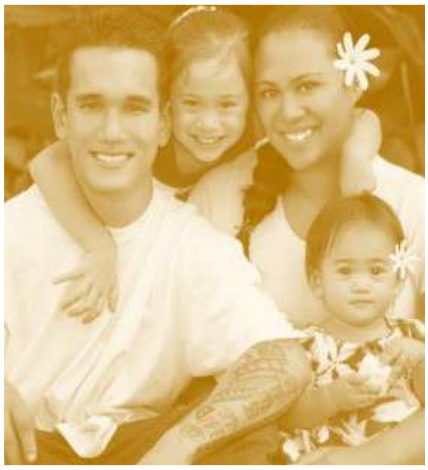
The primary objectives of the pilot are:

- To serve as a liaison and advocate for Native Hawaiian kamaliʻi in foster care.
- To strengthen pilina (interrelationships) between kamaliʻi, their mākua (birth parents), siblings, and resource caregivers by increasing the frequency and quality of ʻohana time in creative ways.
- To increase kamaliʻi, ʻohana, and resource caregivers' knowledge and practice of cultural values and ways of being through participation in relevant and meaningful cultural programs and activities.
- To strengthen the support for kamaliʻi in placement by increasing access to resources for kamaliʻi, mākua, and resource caregivers.

<u>What is it about?</u>

Through this pilot, we hope to provide opportunities to kamaliʻi and their ʻohana to learn and practice new ways of being and thriving together.

- Helping kamaliʻi ,ʻohana , and resource caregivers navigate the foster care system and access needed resources.
- Increased/enhanced visitations (with their mākua, siblings, extended ʻohana, and other supportive relationships.
- Developing a collaborative relationship between CWS social worker, mākua, and resource caregivers to foster consistent and increased support to the kamaliʻi while in foster care.
- Engaging in culturally relevant activities, individually and with their ʻohana.



<u>Who is eligible:</u>

- This program is for Native Hawaiian kamaliʻi ages 4 – 12 who are in foster custody or temporary foster custody with the State of Hawaiʻi Child Welfare Services Branch foster care system. The pilot program will be focused on kamaliʻi from the Leeward Coast of Oʻahu

<u>How to get involved:</u> Referrals for the program can be made by CWS Social workers.

Referrals are sent to Charla Weaver at Family Programs Hawaiʻi (808) 540 - 2543 charla@familyprogramshi.org

For general questions about program, please contact Iris Kauka- Lili`uokalani Trust (808) 203-6150.

This program was designed through a collaborative planning process with Lili`uokalani Trust; State of Hawaii, Department of Human Services, Child Welfare Branch; Catholic Charities Hawai`i; Child Family Service; EPIC `Ohana; State of Hawaii Judiciary

Who we serve:

Street outreach is conducted island wide with a geographic focus in the Windward communities.

Drop in services for basic needs such as a warm shower, clothing, laundry and a hot meal are available each day from 7am-9pm for any youth up to the age of 24.

The RYSE Access Center provides on site living and dining quarters for 20 transition aged youth, ages 18-24

RYSE

A 501c3 and proud partner in the Ohana Nui strategy designed to drive more partnerships between public and private entities.

For outreach needs, referrals, donations and volunteer opportunities, please contact us!

(808) 498-5180

or

info@rysehawaii.org

Mailing address:
PO BOX 11662, Honolulu HI 96828

Location:
42-470 Kalanianaole Highway
Building #6
Kailua HI 96734

www.rysehawaii.org

Homelessness doesn't care how young you are.

RYSE

Residential Youth Services & Empowerment

Our Mission:

Our mission is to create an access center where Hawaii's street youth have a safe haven and are empowered to make positive change, and to work in community collaboration to provide shelter, medical care, education, employment assistance and counseling in a nurturing, non judgmental environment.

YOUNG DIVERSE YDP PROUD
YOUTH DEVELOPMENT PROGRAMS

EMPOWER YOUTH

Residential Youth Services & Empowerment

Our street outreach teams and access center help connect homeless and at risk youth with age appropriate services through a coordinated entry process.

STREET OUTREACH TO ANY YOUTH AT RISK OF HOMELESSNESS: Outreach often serves as the first step in making a connection with young people. Our person centered approach make it easier for youth to access low barrier housing and utilize service referrals that are best suited for their unique needs.

A SAFE PLACE TO CALL HOME: Youth in the target age range of 18-24 have access to a safe temporary living space specifically designed for young people. In providing unique services required by this age cohort, we are able to fill potential gaps in their development and take a trauma informed approach to promote recovery and resiliency.

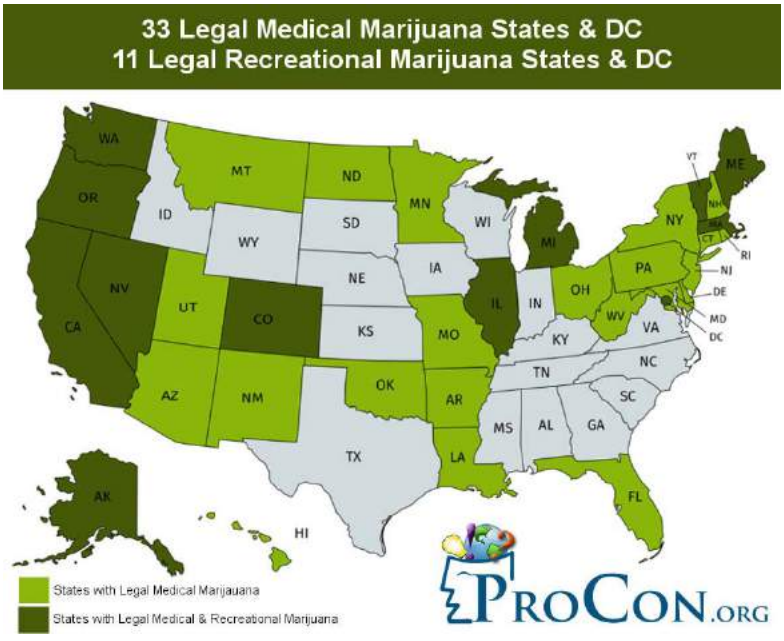
BUILDING A SENSE OF SELF: We employ culturally appropriate strategies for outreach, education and prevention services through venues that serve NHPI communities.

PATHWAYS TO SUCCESS: Through a coordinated community effort, programs and services work to empower our young people and build a bridge towards education and employment goals, family reunification, community involvement and reintegration into mainstream society.

Hawaii's Medical Cannabis Program

Hawaii Child Welfare Law Update
August 23, 2019

HEALTH RESOURCES ADMINISTRATION
HAWAII DEPARTMENT OF HEALTH



Hawaii's Timeline

Act 228 SLH 2000 – initial medical use of cannabis law
Act 177 SLH 2013 – transfers patient registry program from PSD to DOH
Act 178 SLD 2013 – amends law to address patient needs
Act 241 SLH 2015 – authorizes dispensary licensing program
Act 242 SLH 2015 – non-discrimination for medical use
Act 230 SLH 2016 – Legislative Oversight Working Group amendments
Act 041 SLH 2017 – deadlines to implement dispensary system
Act 170 SLH 2017 – language change from "marijuana" to "cannabis"
Act 116 SLH 2018 – registration of out-of-state patients
Act 159 SLH 2018 – Office of Medical Cannabis Control & Regulation
Act 240 SLH 2019 – amendments to dispensary rules

Office of Medical Cannabis Control & Regulation (OMCCR)

Guiding Principles
- Patient safety - Product safety - Public safety

Multi-Agency Collaboration
- DoTax; DBEDT; PSD; DoAg; DCCA
- Counties

Federal Law
- Controlled Substances Act
- DOJ Cole Memo (rescinded by current administration)
- DOT FinCEN Memo

Two Components

Patient Registry	Dispensaries
• HRS Chapter 329 Hawaii's Uniformed Controlled Substances Act (part IX – Medical Use of Cannabis) • HAR Chapter 11-160	• HRS Chapter 329D • HAR Chapter 11-850

329 Registry Statistics

Average number of in state applications received/processed monthly = 1900

Average number of out of state applications received/processed monthly = 195

Average turnaround time = 1-2 business days

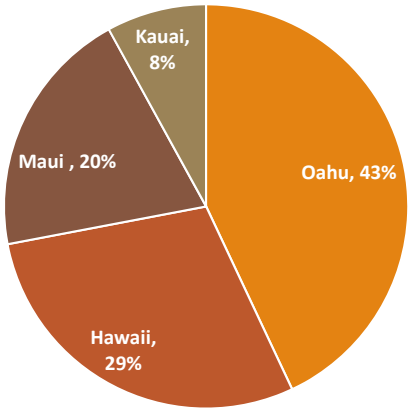
Average monthly increase in valid in state patients = 1.8%

6

Average Patient in Hawaii

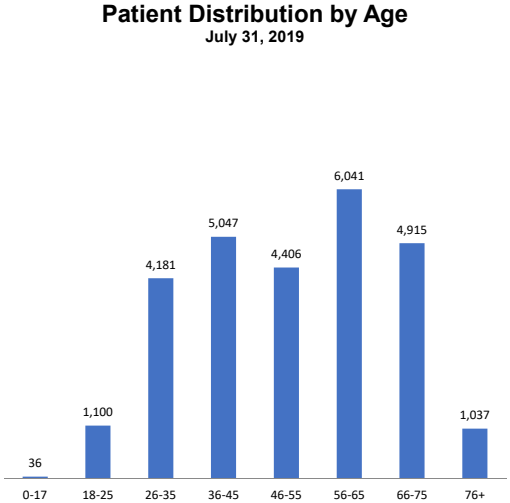
- Is male (60%)
- Over 45 years of age (60%)
- Lives on Oahu (43%)
- Has severe pain (84%)

26,763 Patients Statewide
July 31, 2019



Minor patient population in Hawaii

- 0 – 17 years of age
- Top reported conditions are:
  - Seizures
  - Severe pain
  - PTSD



329 Patient Registry Program

In State Patients	Out of State Patients
New Patients – 1 year registration	2 – 60 day registration cards in a calendar year
Renewal Patient – Up to a 2 year registration	60 day registration - $49.50
1 year - $38.50 2 year - $77.00	All application fees are non-refundable

329 Patient Registry - Eligibility

IN STATE ELIGIBILITY	OUT OF STATE ELIGIBLITY
Certified as having one or more debilitating medical conditions recognized in Hawaii	Certified in their "home" state as having one or more debilitating medical conditions recognized in Hawaii
Certified by a licensed physician/advance practice registered nurse (APRN)	Valid Medical Cannabis Registration card issued by the patients home state/territory
Valid ID	Valid state ID or drivers license from the patients home state/territory

329 Patient Registry - Eligibility

Qualifying Debilitating Medical Conditions

1. Amyotrophic Lateral Sclerosis
2. Cancer
3. Epilepsy
4. Glaucoma
5. HIV/AIDS
6. Lupus
7. Multiple Sclerosis
8. Post Traumatic Stress Disorder (PTSD)
9. Rheumatoid Arthritis, OR
10. A chronic or debilitating disease or condition that produces one or more of the following:
    - Cachexia or wasting syndrome;
    - Severe Pain;
    - Severe Nausea;
    - Seizures;
    - Severe and persistent muscle spasms (i.e., multiple sclerosis or Crohn's disease)

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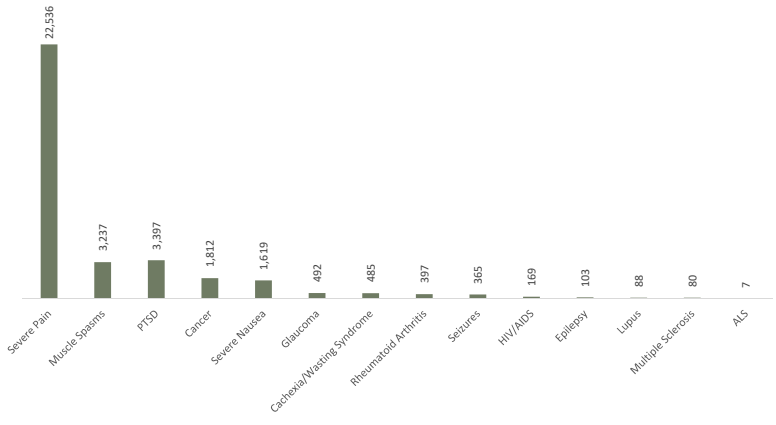
Patient Distribution by Condition
July 31, 2019

Patients may be diagnosed with more than one condition



Registration Process

Patient completes online application at: https://medmj.ehawaii.gov/medmj/welcome

Physician/APRN certifies medical condition

DOH reviews, approves, emails link to e-card

Hawaii 329 Registration Card

In-State Patient Sample 329 Card

Hawaii Out of State 329 Registration Card

Out-of-State Patient Sample 329 Card

State of Hawaii 329 Medical Cannabis - OSP

OSP Registration Number: 2019000251
Start Date: 03/05/2019 Expiration Date: 05/03/2019

Patient Last Name: Sample
First, Middle, Suffix: John Jr.
Date of Birth: 03/29/1977

Caregiver Last Name:
First, Middle, Suffix:
Date of Birth:

State of Hawaii 329 Medical Cannabis - OSP

You are a visitor in Hawaii, and we welcome you with Aloha. You are required to keep both your valid government-issued ID and valid Hawaii 329 registration card in electronic or printed media on your person whenever in possession of medical cannabis. You are also required to be able to present these two documents to law enforcement upon request and upon entry into a dispensary. Not having WIFI or data is not a valid excuse. Medical cannabis can be legally obtained only from licensed dispensaries in Hawaii.

Out-of-State registered patients and caregivers are prohibited from possessing, using, or transporting medical cannabis in any public place including but not limited to: public parks and beaches, recreation centers, youth centers, school grounds, and/or in moving vehicles. Hawaii's "smoke free" laws also apply to medical cannabis.

Registration Accommodation for In-State Patients

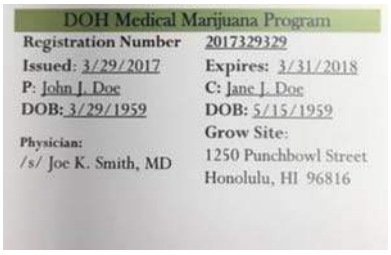
Registration Process - Accommodation

Physician/APRN completes the application for the patient and certifies medical condition

DOH reviews, approves, U.S. postal mails a traditional hard copy 329 card to the patient

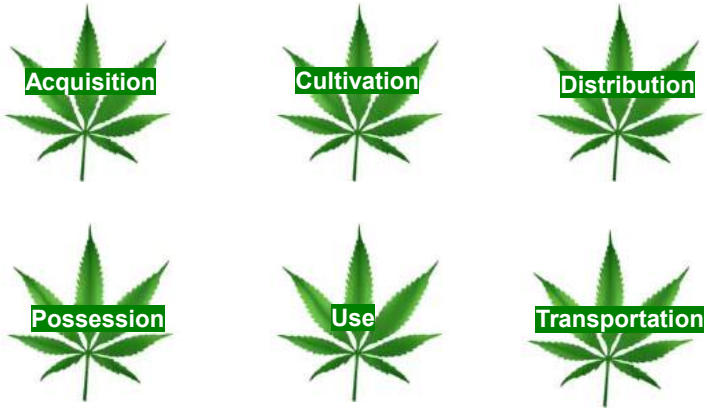
Hawaii 329 Registration Card

In State Patient Sample 329 Card – traditional hard copy (physician created applications)


DOH Medical Marijuana Program
Registration Number 2017329329
Issued: 3/29/2017 Expires: 3/31/2018
P: John J. Doe C: Jane J. Doe
DOB: 3/29/1959 DOB: 5/15/1959
Physician: Grow Site:
/s/ Joe K. Smith, MD 1250 Punchbowl Street
Honolulu, HI 96816

Medical Cannabis Use

§329-121 Definitions: "Medical Use" means



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Medical Cannabis Use

Registered Participants MAY

- Grow no more than **10** medical cannabis plants at a single registered location,
- Have no more than **4** ounces of usable cannabis,
- Purchase medical cannabis from a dispensary,
  - 4 ounces within a consecutive period of 15 days
  - 8 ounces with a consecutive period of 30 days
- May test their home-grow at a certified lab, and
- May designate a caregiver: 1:1 ratio. A caregiver is a person who is eighteen years of age or older, other than the qualifying patient and the patient's physician/APRN, who has agreed to undertake responsibility for managing the well-being of the patient with respect to the medical use of cannabis. In the case of a minor or an adult lacking legal capacity, the caregiver shall be a parent, guardian, or person having legal custody.

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Medical Cannabis Use

IF a patient/caregiver is growing medical cannabis – all plants must be tagged with the valid registration number and expiration date, and

Must have their valid ID and 329 card:

- Present to law enforcement upon request
- Whenever in possession of medical cannabis
- Upon entering a dispensary

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Medical Use Rules

- No acquiring, possession, cultivation, use in public places
- No use in any way that "endangers the health or well-being of another person"
- Must be transported in sealed container, not be visible to public, & not removed from the container while in public
- No protection of State laws if transported inter-island
- Patient registrations & grow sites subject to verification
- Complaints investigated by law enforcement
- Patients are required to carry their 329 card & valid ID whenever they are in possession of medical cannabis

Patient and Caregiver Protections

§329-125 Patients and Caregivers

(a) may assert the medical **use** of cannabis as an affirmative defense to any prosecution involving cannabis under this [part] or part 712

(b) any patient or caregiver "not complying with the permitted scope of the medical **use** of cannabis shall not be afforded the protections against searches and seizures pertaining to the misapplication of the medical **use** of cannabis."

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Patient and Caregiver Protections

Act 242 – effective July 1, 2015:

§ 329-125.5: Non-discrimination based solely on the status as patient or caregiver for:

a) School Enrollment or Housing
   - provided strict program compliance by the patient/caregiver,
   - patient or caregiver "shall present a medical cannabis registry card … and photo identification" to ensure valid registration, and
   - failure would cause the school or landlord to lose a monetary or licensing related benefit under federal law

b) Medical Care: shall not constitute the use of an illicit substance or otherwise disqualify a registered qualifying patient from medical care, and

c) Custody: provided that the patients' or caregivers' conduct did not create "a danger to the safety of the minor"

There is **neither** protection for patients in employment situations **nor** a requirement for DOH to verify type of employment prior to issuing 329 Cards.

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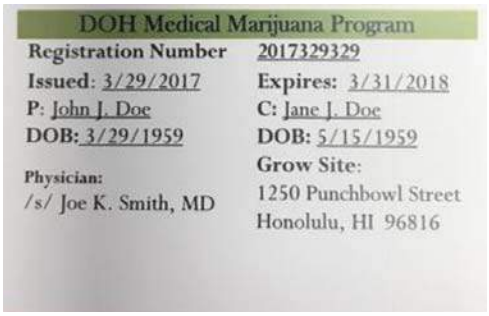
DOH Requirements

1. 329 Registration Cards include the following:
   - Registration Number
   - Expiration Date
   - Patient Name
   - Caregiver Name, if any
   - Grow site location, if any
   - Physician's signature (electronic)

2. Provide law enforcement the ability to verify registered individuals, 24/7


DOH Medical Marijuana Program
Registration Number 2017329329
Issued: 3/29/2017 Expires: 3/31/2018
P: John J. Doe C: Jane J. Doe
DOB: 3/29/1959 DOB: 5/15/1959
Physician: Grow Site:
/s/ Joe K. Smith, MD 1250 Punchbowl Street
Honolulu, HI 96816

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Law Enforcement (24/7 Subject) Verification

Patient Data is CONFIDENTIAL, however,

1. Law enforcement has access to data for law enforcement purposes
   - 24/7 subject verification access via an online process
   - Reasonable access to additional data (i.e. grow site location)
   - Additional information may be released via subpoena, court order, or other legal means
2. All law enforcement *searches are logged and tracked*
3. Patients may submit a personal verification request or request to release information to a third party to confirm their status as a registered patient
4. Dispensaries have similar, limited access, to verification information to ensure medical cannabis is only sold to registered program participants

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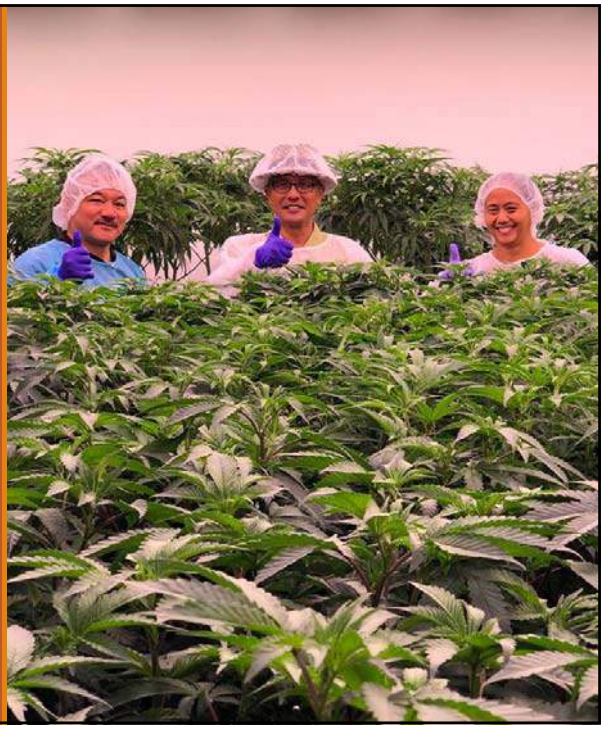
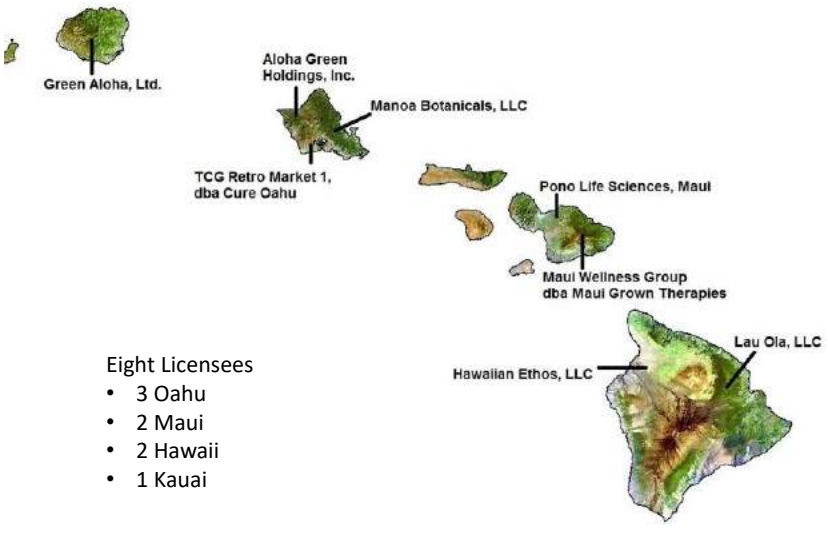
Dispensary Program





Eight Licensees
- 3 Oahu
- 2 Maui
- 2 Hawaii
- 1 Kauai

- Cultivation
- Harvest
- Flowers & Products
- Lab Testing
- Retail
- Patient

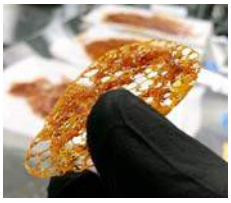
Electronic Seed to Sale Tracking

Quality Assurance Testing

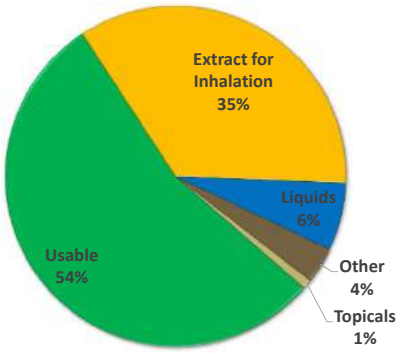
- Potency – THC, CBD, etc.
- Heavy Metals, Pesticides, Solvents
- Microorganisms – bacteria, molds, yeast
- Mycotoxins
- Visible foreign or extraneous material
- Moisture content

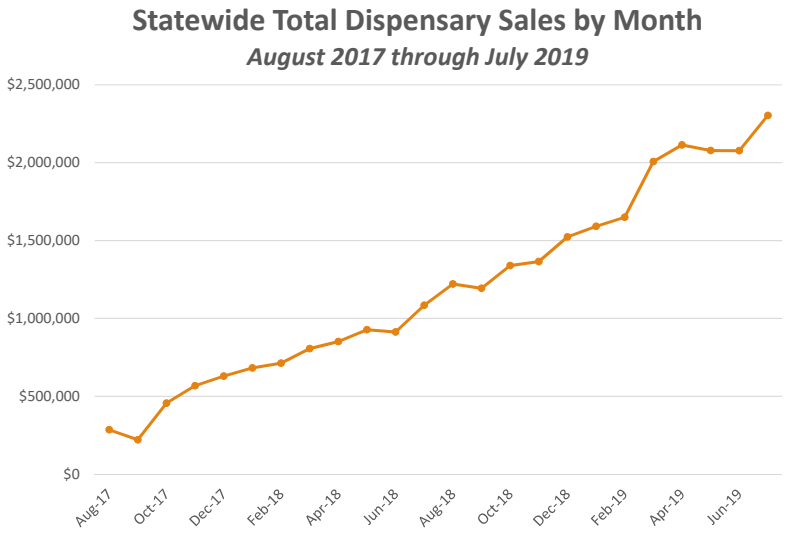
What is 4 ounces of useable cannabis?

Products



Statewide Sales by Product Type for July 2019





Upcoming Program Changes

Act 116 SLH 2018 – Update the online system to allow both legal guardians to register as caregivers for one or more of their children

§329-130 Authorized sources of medical cannabis – After December 31, 2023

A qualifying patient shall obtain medical cannabis or manufactured cannabis products only:

1. From a dispensary licensed pursuant to chapter 329D; or
2. By cultivating cannabis in an amount that does not exceed an adequate supply for the qualifying patient; provided that each location used to cultivate cannabis shall be used by no more than five qualifying patients.

No primary caregiver shall be authorized to cultivate cannabis for any qualifying patient:

- Excludes caregivers for qualifying minor patients or adults lacking legal capacity
- Excludes caregivers for qualifying patients on any island which there is no licensed medical cannabis dispensary

Program Challenges

- Patient "collectives"
- Stacking of growing sites
- Patient & caregiver misuse
- Edibles
- Recreational use

Adverse Health Effects

"***NOT*** *your mother's marijuana*"

- Higher THC content
- Modes of use
- Contaminants

Public Health Concerns

- "At risk" populations
- Inadvertent intoxications & over-intoxications
- Impaired driving

Industry Risks

- Acceptance by Financial Institutions
- Taxes
- Insurance
- Unregulated market

Law Enforcement Concerns

- Diversion
- Illegal growing
- Interisland & Interstate transport

Hemp

- "Hot" harvests
- Unregulated manufacturing of CBD products

Helpful Links & Contacts

Office of Medical Cannabis Control and Regulation

Patients: 808-733-2164 (T - TR, 12:30 – 3:30pm)

Registry email: medicalcannabis@doh.hawaii.gov

Dispensary email: doh.medmarijuana.dispensary@doh.hawaii.gov

Patient Registry Application Website https://medmj.ehawaii.gov
Technical Support – 808-695-4620

DOH Food and Drug Branch (CBD information) - http://health.hawaii.gov/food-drug/cbd-information/

Dept. of Agriculture (Industrial Hemp Pilot Program) - http://hdoa.hawaii.gov/hemp/

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Questions?

Child Safety

A GUIDE FOR JUDGES AND ATTORNEYS

Therese Roe Lund, MSSW
National Resource Center for Child Protective Services

Jennifer Renne, JD
National Resource Center on Legal and Judicial Issues

American Bar Association

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Table of Contents

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Sally Small Inada, our editor, whose enthusiasm, great ideas, support and patience were critical in the writing of this *Guide*. She edited several versions, helping us maintain our focus on producing a succinct publication that lays out a practical approach to safety decision-making that can be used from the bench. In addition to the long hours she spent brainstorming ideas and editing, she coordinated all efforts in the process of completing the book.

Wayne Holder and Theresa Costello, from the Resource Center for Child Protective Services, who reviewed the *Guide* for accuracy and content. We also acknowledge and are grateful to Action for Child Protection for providing conceptual and practical information on safety intervention.

Mark Hardin and Howard Davidson, from the ABA, who read earlier versions of the *Guide*, and provided critical feedback on content. They also made suggestions on how to streamline the content to make the material more useable and accessible to judges and lawyers.

Judge John J. Romero, Jr. District Court judge from Albuquerque, New Mexico, and Ramona Foley, consultant and former Child Welfare Director, who reviewed the *Guide*. They were generous in sharing their experience and expertise, and brought two key perspectives: that of a judge presiding over abuse and neglect cases, and that of child welfare administrator.

Emily Cooke, and Irene Bocella, our Project Directors for our Resource Centers at the Children's Bureau, whose leadership and support we always gratefully appreciate.

And finally, thanks to the judges, attorneys, and social workers out there who struggle with these issues every day. We all want to keep children safe, and we all want to accomplish this goal in the least-intrusive manner possible, making your jobs challenging. It is our hope that this *Guide* leads to improved outcomes for children, parents, and their families.

Foreword

Judges in abuse and neglect proceedings are responsible for protecting the rights of all parties before the court and for ensuring safety and permanency for abused and neglected children. Additionally, the responsibilities must be met in a timely manner by avoiding delays in the court process.

All participants in court proceedings play vital roles in achieving positive outcomes for children. Timely decisions are dependent on complete and current information about the children, parents and the specific incidents of neglect and abuse.

Each child and parent is unique. So too, are the facts and circumstances impacting on a child's current and future safety.

Child welfare professionals must consistently be sufficiently informed and prepared to deal with children and parents as individuals. Thorough, up to date information is critical to sound decisions that ensure the safety and well-being of our children. However, the method by which the information is processed and analyzed is similarly critical.

This *Guide* details a process of critical thinking and analysis that will enhance child safety decision-making. "Business as usual" is unacceptable. The *Guide's* decision-making framework requires child welfare participants to establish higher standards for information quality and processing. Judges, attorneys, agency workers and CASAs will be well-served by the principles and methodology set out in the *Guide*. As a consequence, child safety outcomes will necessarily be improved.

HONORABLE JOHN J. ROMERO, JR.

District Judge
Children's Court Division Albuquerque, NM

Ever wonder what "parenting classes" have to do with child safety?

Ever wish that child welfare workers would use plain language in describing their investigation?

Ever been frustrated at a hearing in which the parent has met all of the conditions in the reunification plan, but the parties can't assure the Court that the child can be safely returned?

If your answer is "yes" to any of these questions, this publication was written to assist you.

Through a unique collaboration, the National Resource Center for Child Protective Services and the National Child Resource Center on Legal and Judicial Issues have produced a document which not only answers these questions, but is targeted at taking the mystery out of assuring child safety.

Throughout the country, child welfare systems are developing or are refining the models by which they provide child protective services. As these new models are being implemented, they are impacting other components of the child protection system. Questions are being raised by the judiciary, by Court Appointed Special Advocates (CASA's), and attorneys. The two most common questions are: What improvements can we expect from the child welfare system? What am I expected to do differently in order to meet my obligations to assure child safety?

Regardless of your jurisdiction or your specific role in the system, you will want to be familiar with how these new models of practice work and how they can improve Court practice. The national experts present a compelling case for a precise and explicit practice model and, in doing so, share new terminology both in plain language and through case scenarios.

The actual outcomes of cases may differ from one jurisdiction to another as the outcomes are often dependent on the availability of local resources. However, the decision making around child safety should be far more consistent than in the past. This publication will go a long way in furthering the safety of children by prompting specific questions that the Court must have answered when it is making important decisions.

And as the ultimate decision maker in child welfare cases, the Judge can create an expectation for the kinds of timely and accurate information needed from all parties. This important publication serves as a guide for how this can happen.

ROMANA FOLEY, MSW

Consultant and former Child Welfare Director

Preface

My own experience as a practitioner in child protection was greatly shaped by the patient tutoring from the attorneys and judges with whom I worked. While I had learned social work principles and techniques, the legal community required me to stay disciplined, focused and it reinforced the need for critical thinking when trying to communicate what I believed was best for a child and his/her family.

The approach our Resource Center takes in helping child welfare agencies implement standards for child safety decision-making applies these same principles of rigor, discipline and critical thinking. The structure for decision-making is comprised of the seemingly simple steps of (first and foremost) understanding the family and then methodically analyzing that family information to justify each decision. Implementation efforts by child welfare have had uneven results, but today there is much more agreement than debate about the needed framework for child safety decision-making.

Another area around which there is little debate is the need expressed by child welfare administrators for help in communicating with their legal community about their desired approach to safety decision-making. We hope that having a vehicle such as this *Guide* rather than the seemingly polar opposites of a set of statutes and a social work text will foster discussion and mutual understanding between our two disciplines regarding this important responsibility.

About two years ago, I requested that our Resource Center meet with our colleagues at the Resource Center on Legal and Judicial Issues. The simple purpose I had in mind was to have some conversations regarding the fact that we each were providing technical assistance, often on the same issues regarding child safety. It seemed logical that we should try to make sure we were saying close to the same thing. Jennifer Renne had a very clear (and not as simple) idea for what was needed: a guide for judges on child safety decision-making. We knew that child welfare administrators would find this helpful as well, particularly if we developed a product that could also be useful for agency attorneys.

The process of developing this *Guide* has been demanding as our respective ideas regarding clarity, logic, pertinence and critical thinking were tested. Dedication to the topic at hand and our respect for each other's profession led to this finished product. We serve as examples that the two professions can effectively communicate (and enjoy it as well)! We hope this *Guide* assists your legal and child welfare community with that same kind of constructive debate about what is best, and ultimately what is fair, when deciding safety intervention for children and their families.

THERESE ROE LUND, MSSW

Associate Director, National Resource Center for Child Protective Services
Director of Program and Staff Development, ACTION for Child Protection

The need for this *Guide* became apparent to me years ago when I began my legal career representing children in abuse and neglect cases. While we received extensive training on a variety of topics, I was surprised that we didn't receive *any* training on safety decision-making. Workers often could not articulate exactly why a child had to be removed, or exactly why a child was not ready to be returned home. Judges were reluctant to rule against agency requests for removal, or to return a child without approval from the agency. None of us in the legal community really knew what questions to ask the workers, or how to analyze the information we did have to answer fundamental questions such as: Is this child safe? What needs to be accomplished before this child can be returned home?

When I came to the ABA and gained a national perspective, I discovered that my anecdotal experience was not unusual. Judges often "rubber stamp" agency recommendations because they lack confidence in their ability to assess the decision-making process. When cases first come in, the focus tends to be on the precipitating incident that led to agency involvement. Children are removed (or left at home) based on *very* little information. The legal community lacks a framework for understanding the process by which a child is determined safe or unsafe. Often we don't even know what questions to ask or what additional information is needed to make such a decision.

On the back end of the case, there is a lack of rigor in making reunification decisions. The focus tends to be on compliance with a case plan, i.e. participation in services, instead of on whether the child would be safe if returned home. Judges rarely identify *what needs to change* within the family before reunification can occur. This leads to children either lingering in foster care, or being returned home prematurely. It also leads to frustration for parents as they are never quite sure what they need to do or what conditions in the home need to be in place before they can get their child back.

Having realized the need for such a *Guide*, I also knew that I could not write it alone. I needed the expertise of those in child protective services, who have developed, measured, and tested methodologies for safety decision-making. Terry Roe Lund, from the Resource Center for Child Protective Services, was the perfect co-author as she has made a career out of developing, training, and implementing safety decision-making models. We have done our best to keep this *Guide* simple and straightforward. A wealth of knowledge on this subject exists, and we have tried to capture the essence of the subject matter while creating a *Guide* that was practical and useful for judges and attorneys.

JENNIFER RENNE, J.D.

Assistant Director
National Resource Center on Legal and Judicial Issues

Introduction

Every day, judges and attorneys struggle with questions such as:

- How do you know whether a child's severe injury represents a pattern of dangerous family conditions or is a one-time incident?
- What criteria do you use to determine whether a child is safe?
- How do you decide whether to return a child home?
- What information do you need from the agency to make these decisions?

Safety planning in the child welfare system is a shared responsibility, but ultimately the court must make critical safety decisions such as whether to remove a child and when to return a child home. Judges rule on these choices every day, but often lack a decision-making structure, which can lead to following agency recommendations without a thorough inquiry. This can lead to an over-removal problem, rubber-stamping agency recommendations without knowing what's driving the safety decision; or an under-removal problem, leaving children in unsafe conditions, or returning them home prematurely.

This *Guide* offers a comprehensive approach to child safety decision-making, addressing the fundamentals of safety assessments and safety planning. It is targeted towards judges and others in the legal community, but is relevant for agency staff too. When agency staff expects judges to ask probing, detailed questions, workers and attorneys will come to court prepared, and will make more thoughtful case decisions.

Safety decisions must be made throughout the life of the case. Often after the initial removal, attorneys, caseworkers and judges lose sight of original safety concerns. Parents, children, and indeed judges and attorneys, are often unclear as to what needs to be accomplished in order for the child to be returned. The lack of clear standards leads to frustration for families and their attorneys, and causes children to linger in foster care. This *Guide* lays out clear standards, or "conditions for return" that must be met before a child can be returned, and provides checklists to assist judges in making reunification decisions. Finally, the *Guide* provides assistance to judges on what to consider prior to terminating jurisdiction.

The purpose of this *Guide* is to provide judges and attorneys with a practical summary about child safety so they can:

- Evaluate whether agency recommendations regarding child safety are based on sufficient information;
- Recognize recommendations that follow logical reasoning and analysis;
- Identify what additional specific information must be gathered and reported to court;
- Have confidence in decisions about child safety, which will improve decision making regarding permanency and well-being.

How to Use the Guide

The *Guide* helps judges and legal audiences understand the principles of safety decision-making. The text contains checklists and flow

Confounding the language problem are two issues: CPS staff (child protective services or child welfare agency staff) frequently confuse the two concepts which we refer to as **risk** and **safety**, and use the same words to refer to each concept. For a child to be unsafe, the consequences must be severe and imminent.

A conclusion about **safety** means considering:

- how **soon** something may occur;
- how **severe** the consequences will be to a child;
- how **out-of-control** conditions are.

A conclusion about **risk** assesses the **likelihood** of maltreatment and has:

- an **open-ended** timeframe;
- **consequences** may be **mild or serious**;

This distinction is important so that the judge can stay focused on the critical question which is: **Is this child safe?**

charts to synthesize the information for quick reference. The flow charts and some of the checklists are printed in the pocket part of the *Guide* as *benchcards*. The bench cards are most useful when the reader understands the entire framework. Upon gaining a sense of how the checklists fit into the decision-making process, judges and attorneys can use them as a tool to make appropriate safety decisions. The online version of the *Guide* provides more detailed explanations of the core concepts of the *Guide*, expanded case examples illustrating key concepts and principles, as well as information to provide a deeper understanding of what goes into safety decision-making. The online version can be located at: www.nrccps.org or www.abanet.org/child/rclji/.

This *Guide* will not provide answers for judges and attorneys about where to draw lines when deciding close cases. It does not claim to resolve controversial safety-protection issues such as how severe corporal punishment must be to justify court intervention, and the *Guide* leaves such issues to community standards and state statutes. A mechanical or formulaic approach is not realistic because each case has unique facts and circumstances that affect child safety. Rather, the *Guide* ensures that judges and attorneys have necessary information and they understand how to process this information to make safety decisions.

Understanding the Terms

State statutes use different terms to describe safe and unsafe children; your statutory terms may or may not match the words in this *Guide*. Many statutes use language such as:

- Imminent risk
- Risk of harm
- Imminent risk of severe harm
- Immediate physical danger
- Threat of harm
- Threat of imminent harm

Most caseworkers believe it necessary to use their statutory language, even if there is confusion over how statutory language matches with the language used in their agency's assessment tool.

The critical question remains whether or not the child is safe, regardless of the terms in your statute.

Whether or not a child is safe depends upon a *threat of danger*, the child's *vulnerability*, and a family's *protective capacity*. Each term is described in Chapter 3 and is part of the following definitions of the safe and unsafe child. Later in this *Guide* the reader will see how our bench cards for decision-making are based in part on the definitions of these terms.

Safe **child:**

Vulnerable children are safe when there are no threats of danger within the family *or* when the parents possess sufficient protective capacity to manage any threats.

Unsafe **child:**

Children are unsafe when:

- threats of danger exist within the family *and*
- children are vulnerable to such threats, *and*
- parents have insufficient protective capacities to manage or control threats.

Information Drives Decisions about Safety

Concluding a child is or is not safe is based on information observed or gathered from credible sources. The information determines if threats, protective capacities, and child vulnerability exist. Later in this *Guide*, when deciding what to *do* for an unsafe child, this information will support those actions too.

The following are six background questions that should guide safety in each case. The answers will help the court assess threats of danger, child vulnerability, and protective capacities. The information will later help judges decide what to do about an unsafe child.

BENCHCARD A

1 What is the nature and extent of the maltreatment?

2 What circumstances accompany the maltreatment?

3 How does the child function day-to-day?

4 How does the parent discipline the child?

5 What are overall parenting practices?

6 How does the parent manage his own life?

Without this information, courts can have little confidence in their decisions about safety.

Judges, attorneys, and caseworkers tend to focus on maltreatment and exclude gathering and considering more information. Although circumstances may initially seem threatening to the child, continuing to gather information helps confirm if patterns and threats actually exist. More information also helps decide if the family can mange safety without court intervention.

Below are six broad questions the court needs CPS workers and other parties to answer, thus supporting CPS child safety recommendations. *These answers provide the barest minimum information judges need to decide about safety.*

1 What is the nature and extent of the maltreatment?

The CPS worker should be able to describe the maltreating behavior and the immediate physical effects on a child. This answer includes what is happening, such as hitting or, injuries. Answering this question also results in a maltreatment finding. This question is typically the focus of most investigations. Explaining the nature and extent of the maltreatment should include:

- Type of maltreatment
- Severity of the maltreatment, results, injuries
- Maltreatment history, similar incidents
- Describing events, what happened, hitting, pushing
- Describing emotional and physical symptoms
- Identifying child and maltreating parent

However, relying only on the immediate behavior and its effects is inadequate for deciding if a child is unsafe or what to do about it if she is.

2 What circumstances accompany the maltreatment?

The worker should be able to describe what is going on when the maltreatment occurs. This can help the court understand contributing factors.

Answering this question includes:

- How long has the maltreatment been occurring
- Parental intent concerning the maltreatment
- Whether parent was impaired by substance use, or was otherwise out-of-control when maltreatment occurred
- How parent explains maltreatment and family conditions
- Does parent acknowledge maltreatment, what is parent's attitude?
- Other problems connected with the maltreatment such as mental health problems

3 How does the child function day-to-day?

The worker should know about *all* children in the home: their general behavior, emotions, temperament and physical capacity. Information should address how a child functions generally rather than points in time, such as time of CPS contact or time of maltreatment.

Answer this question, and include the following information about the child compared to other children of their age:

- Capacity for attachment (close emotional relationships with parents and siblings)
- General mood and temperament
- Intellectual functioning
- Communication and social skills
- Expressions of emotions/feelings
- Behavior
- Peer relations
- School performance
- Independence
- Motor skills
- Physical and mental health

4 How does the parent discipline the child?

Have the worker learn how parents approach discipline and child guidance. Discipline is considered in the context of socialization, teaching and guiding the child. Find out about:

- Disciplinary methods
- Concept and purpose of discipline
- Context in which discipline occurs, is the parent impaired by drugs or alcohol when administering discipline
- Cultural practices

5 What are overall parenting practices?

Beyond discipline, the worker should learn more about parent's general approach to parenting, and parent-child interaction.

Find out:

- Reasons for being a parent
- Satisfaction in being a parent
- Knowledge and skill in parenting and child development
- Parent expectations and empathy for child
- Decision-making in parenting practices
- Parenting style
- History of parenting behavior
- Protectiveness
- Cultural context for parenting approach

6 How does the parent manage his own life?

The worker should learn how the parents feel, think, and act daily, not limited to times and circumstances surrounding the maltreatment. Focus on the adults, separate from their parenting role or interaction with CPS.

Discover:

- Communication and social skills
- Coping and stress management
- Self control
- Problem-solving
- Judgment and decision-making
- Independence
- Home and financial management
- Employment
- Community involvement
- Rationality
- Self-care and self-preservation
- Substance use, abuse, addiction
- Mental health
- Physical health and capacity
- Functioning within cultural norms

CASE EXAMPLE

Sufficient Information in Plain Language: What does it look like?

The following information is an example of sufficient information that can be collected through interviews with family, professionals who know the family and agency records. It does not include all the information needed for a court hearing (including identifying sources of information, dates, etc.), but is an example of the *content* that must be minimally considered to make good safety decisions.

Maltreatment:

Donna Kazca gave her daughters Natasha and Esta and sons Simon and Donelo sleeping pills in order to get them to go to sleep faster. A prior foster parent who has remained involved with the family after the children were returned home last year said that she was given this information by one of the children on a weekend she had them at her home. The children were tested by the pediatrician who found significant but non-toxic levels of the medication in the children's blood samples. A medical report with details is provided.

Circumstances Surrounding the Maltreatment

Ms. Kazca's 4 children were all returned from foster care to her on the same day 7 months ago, and the agency had closed the case until this referral 3 days ago. Ms. Kazca has been frequently tired and overwhelmed in caring for her children. When the worker spoke to Ms. Kazca about the allegation she was very upset, yelling and crying. She made a threat to leave with her children if removal became an issue. She denied ever giving her children sleeping pills. However, she reportedly had admitted to the foster parent that she was tired and needed the children to go to sleep. Ms. Kazca has a history of mental health issues (bipolar disorder) which may have affected the decisions she made regarding the sleeping pills as well as how she is reacting to the allegations. This is the only known instance of Ms. Kazca giving the children sleeping pills. However the circumstances that seem to have influenced her decision to give them the medication (her own fatigue, poor decision making, and stress) remain. Previous maltreatment has included 2 instances of overly harsh discipline that left physical bruising and scrapes by Ms. Kazca to Simon and Donelo. These instances of physical abuse were due to her mood instability (was not on current medication) and over-reacting to the boys' behavior. The maltreatment that led to previous foster care was due to Ms. Kazca's psychiatric hospitalization after the accidental death of one of her children. She had become so depressed that she was not able to provide even basics for the rest of the

CASE EXAMPLE

children. The children were fundamentally uncared for while Ms. Kazca slept and isolated herself from the children.

Children's Functioning

All the children are developmentally on target. Simon, age 7, is smart and likes to help when he can. Simon has some significant anger issues that have increased since the death of his brother (accidental death approximately 2 years ago). Simon has temper tantrums where he fights with his younger siblings or other children. He throws things and tries to break them. Simon seeks a lot of attention. He knows what appropriate behavior is, but when he becomes upset he refuses to follow rules and directions. Simon responds well to redirection when he is out of control. Physically, Simon is close to average height for a child his age. Simon likes to take on a parental and protective role toward his younger brother and sisters.

In the past year, Donelo, age 5, has become more outgoing and friendly with both adults and other children. Donelo used to be very quiet and withdrawn at times but has improved a great deal. He is now more talkative and responsive to others. Donelo is also smart and likes to be a helper. Donelo has a history of inappropriate boundaries with others, asking other children to pull their pants down. This behavior has been decreasing. Donelo gets along well with other children. He sometimes plays rough with other children at school and also gets into fights with his sister Esta. Donelo is developmentally on target in terms of height, weight, and social skills.

Esta, age 4, more recently has begun to look sad or moody. She is not as talkative as she used to be. She appears to be developmentally (social skills and intelligence) and physically on target at this time. Esta has times where she wants to be treated like a baby and she will revert into baby talk and actions.

Natasha, almost 3 years, is doing very well. She is talking a lot now and is potty training. She laughs a lot and enjoys being around her siblings. She eats well and is easy to care for. She sleeps well, though not long. She continues to have a slight allergy problem which the pediatric allergist is monitoring. Her behavior is socially and intellectually appropriate for her age.

Disciplinary Practices

Some of Donna's discipline practices are inappropriate for the children's ages. She has made the children clean and scrub walls as a form of discipline. She has at times responded to her children out of frustration by yelling and cursing at them. Even though this continues to happen fairly regularly, this is something that she has been trying to improve. She has also punished the children appropriately by taking away their privileges for a period of time. In the past, the children were physically punished, but this is no longer the case.

General Parenting Practices

Ms. Kazca takes her parenting seriously and is committed to making sure they never leave her again. To raise four children alone, she has established a routine and schedule. However, all of the children are on the same schedule, which keeps them up too late and does not include naps. Although she uses the former foster parent for respite on many weekends, Ms. Kazca is often tired and overwhelmed with parenting. She wants all the children to demonstrate respect and honesty. She also encourages them to stick together as a family. However, some of her expectations for her children are inappropriate. The children are given more responsibility than children of their age can handle. For example, they are expected to take care of each other and are sometimes are given parent-like roles such as fixing lunch and waking mother up in the morning. She does allow them to play and be active. Ms. Kazca does not get along with the teacher and principal at Simon and Donelo's school and when in conflict with them, she has not sent the boys to school for days at a time. She does not seem to understand Simon's behavioral issues (temper and fighting) and how to address those issues. However, it is evident that she has an extremely strong bond with her children and loves them very much.

Adult Functioning

Ms. Kazca is diagnosed as having bipolar disorder. She takes medication but still has

CASE EXAMPLE

problems with mood and behavior. On a daily basis she can be a very calm, kind and respectful person. However, when she becomes upset she goes from one extreme to the other very quickly. When she has become upset she screams and cries and at times hyperventilates. Ms. Kazca's response to stressful situations is improving but she still has had need for intervention in the past year. Ms. Kazca has a history of suicide attempts and of self medicating by way of marijuana. She has a history of reacting before thinking about the consequences of her actions. For example, she has tried to get into physical fights with friends or relatives in front of the children without thinking about how it would affect them. Ms. Kazca is lower functioning intellectually, and was diagnosed with a learning disability as a child. She has difficulty calculating her expenses and expenditures on her own. She has had reoccurring problems with keeping her bills paid and doing the necessary steps toward keeping her TANF benefits. Donna does receive occasional child care help from her family (older sister and mother), but she does not always use it due to her frequent conflicts with family members.

The key principle in safety decision-making is that conclusions must be supported by sufficient information. This information supports the court's conclusions about threats, protective capacities, and methods to keep the child safe. Later chapters in this *Guide* demonstrate how this information applies to decision-making.

The Logistics of Information Collection/Availability During the Court Process

A court's safety decisions can be thorough only if the agency has had time to assemble comprehensive information. Depending on the court proceeding, the worker may not have necessary information. For example, at an emergency removal hearing, the worker may only know information about the incident last night; more information will need to be collected. At this early stage, the agency often will not have sufficient information to provide a full picture. The agency *does* need to present their reasoning for an emergency removal decision. During an emergency removal hearing, the judge needs to hear, at minimum, information on the extent of this maltreatment and surrounding circumstances.

After that initial hearing, however, the CPS worker should gather and assess comprehensive information. *By adjudication, judges and attorneys can expect CPS staff to provide complete information. If complete information is not available, ask the reason, and ask when it will be available*.

Since the agency's safety decision-making process is sometimes not consistent with court timeframes, the court may need to hold additional hearings after information gathering and assessment is complete. *This may represent a departure from many court practices, where decisions are made with limited information and a belief "this is just the way it must be" to expedite the case.*

ASFA requires the court to make the initial reasonable efforts determination (reasonable efforts to prevent removal) within 60 days of removal, or to make a finding that an emergency at the time of removal made services to prevent removal impractical. Further, the

majority of states, whether by statute or practice, make this finding much earlier than 60 days, usually within a few days of filing the petition. Similarly, the "contrary to the welfare" finding must be made even earlier in the case, as part of the first court order authorizing removal. *The timing of these findings means the court often has insufficient information at early stages to make a well-informed decision*.

Regardless of when original reasonable efforts and "contrary to the welfare" findings are made, the court must revisit the child's safety once complete information is gathered and analyzed. While an emergency may have existed at removal, later the child may be safe at home, with an in-home safety plan.

While federal law doesn't require a subsequent reasonable efforts finding (to finalize the permanency plan) until 12 months after foster care entry, the court can rule on reasonable efforts to reunify earlier. Once the agency has gathered sufficient information on the above six safety-related questions, the court should reconsider whether the child can be safely returned home. Indeed, the court may look again at whether a safety plan can be put in place to return the child *at any point in the case*. If the agency fails to obtain this safety-related information, thus jeopardizing the child's chances of returning home in a timely manner, *the court may find the agency failed to make reasonable efforts to finalize the reunification plan.* The court should direct the agency to collect and provide additional information for an informed decision concerning the child's safety, and make a follow-up decision based on full information.

Key Elements for Safety Decision-Making: Standardizing Criteria for Threats, Vulnerabilty, and Protective Capacity

The First Element: Threats of Danger

BENCHCARD B

A threat of danger is a specific family situation or behavior, emotion, motive, perception or capacity of a family member.

These criteria must be present to constitute a threat:

- Specific and observable/describable
- Out-of-control;
- Immediate or liable to happen soon, and;
- Severe consequences

Understanding what is happening in a family depends on how volatile and transparent the threats of danger are, and how difficult it is to answer the six questions in Chapter 2.

Threats of danger occurring in front of the CPS worker demonstrate the need for protection and urgent response. These threats are the basis for emergency removal decisions. Because little is known, often the only protective action the agency can make is removing the child. And typically, at the emergency removal hearing, little information has been gathered besides the maltreatment.

However, information collection must continue. *The protective action, removal, is temporary until a more complete picture can be offered to the court about ensuring the child's safety.*

By collecting answers to the six questions from Chapter 2, the worker and the court should learn which, if any, of the 15 threats of danger listed below are present. *At each review hearing, the judge should ask if, and to what degree, threats still exist.* Often at review hearings, the parties and the court forget the original safety concerns surrounding the removal.

Who should be considered when assessing threats?

Evaluate the child's safety in his own home. The threats appeared in the original home, so don't be distracted if the child is temporarily placed. Would these threats exist if the child were now home with parents?

Who are the parents and who is the family? Consider who interacts or responds with the child as a parent. So consider biological parents, the sleep-over boyfriend, and live-in grandmother.

Would these threats exist if temporarily-absent boyfriend returns home?

You may need to consider more than one household if the child spends time in the home of the other parent.

***Unsafe* child:**

Children are unsafe when:

- threats of danger exist within the family *and*
- children are vulnerable to such threats, *and*
- parents have insufficient protective capacities to manage or control threats.

The following list identifies 15 threats of danger. The different threats of danger may be present in parental behavior, emotion, attitude, perception or in overall situations.

Threats of Danger

- No adult in the home is routinely performing basic and essential parenting duties and responsibilities.
- The family lacks sufficient resources, such as food and shelter, to meet the child's needs.
- One or both parents lack parenting knowledge, skills, and motivation necessary to assure a child's basic needs are met.
- One or both parents' behavior is violent and/or they are behaving dangerously.
- One or both parents' behavior is dangerously impulsive or they will not/cannot control their behavior.
- Parents' perceptions of a child are extremely negative.
- One or both parents are threatening to severely harm a child, are fearful they will maltreat the child and/or request placement.
- One or both parents intend(ed) to seriously hurt the child.
- Parents largely reject CPS intervention; refuse access to a child; and/or the parents may flee.
- Parent refuses and/or fails to meet child's exceptional needs that do/can result in severe consequences to the child.
- The child's living arrangements seriously endanger the child's physical health.
- A child has serious physical injuries or serious physical symptoms from maltreatment and parents are unwilling or unable to arrange or provide care.
- A child shows serious emotional symptoms requiring immediate help and/or lacks behavioral control, or exhibits self-destructive behavior and parents are unwilling or unable to arrange or provide care.
- A child is profoundly fearful of the home situation or people within the home.
- Parents can not, will not or do not explain a child's injuries or threatening family conditions.

For definitions of each threat of danger and examples, refer to Appendix A, page 55.

CASE EXAMPLE

Using the Collected Information to Justify and Explain the Presence of Threats of Danger in Plain Language

Using the information provided in Chapter 2 on the Kazca family, the information supports the conclusion that the following threats of danger are present:

One or both prents' behavior is dangerously impulsive or they will not/cannot control their behavior.

While the diagnosis of Ms. Kazca (bipolar disorder) could be significant, it is not by itself very revealing. What is more important is the description of how she behaves and reacts emotionally—not just related to the incident of the sleeping medication or how she behaved when confronted. The information about her functioning (fights with family and friends, suicide attempts) and how she reacts as a parent (extreme, reactive punishments, her reaction to the school) provides much more information than a diagnostic label. The lack of control over her behavior and emotions has serious implications for problem solving as a parent and reactions to the children.

CASE EXAMPLE

Perhaps in time a change in medication can control this threat. However, currently it is operating without anything or anyone able to manage it.

One or both parents lack parenting knowledge, skills, and motivation necessary to assure a child's basic needs are met.

Information supports the conclusion that Ms. Kazca is overwhelmed with her parenting responsibilities and (perhaps fueled by her lack of behavioral and emotional control) is using parenting methods that are not just ineffective, but pose danger to the children. This threat is not just about the use of sleeping medication.
Information provided shows that children are up before mom and mom is using very harsh disciplinary methods. Ms. Kazca's poor problem solving as a parent and her fatigue/lack of motivation could possibly be managed in time, perhaps as a result of a change in medication. Currently, however, there is nothing and no one able to manage it.

The Second Element: Child Vulnerability

BENCHCARD C

Recall that for a child to be unsafe, there must be a threat of danger, *and* that child must be vulnerable to those threats. Children are vulnerable because they depend on others for protection and care. Considering a child's vulnerability involves both knowing about the child's ability to protect himself from threats and knowing how the child is able to care for himself. The information (i.e., from the six questions) that CPS must provide to the court will help the judge decide on the child's vulnerability. Criteria to consider include age, physical ability, cognitive ability, developmental status, emotional security, and family loyalty.

Sufficient information must be offered to the court to understand the family conditions shaping the child's vulnerability. While the vulnerability of some children is obvious (e.g., an infant), judging and concluding about the vulnerability of lots of children depends on the worker or other parties having a good understanding of the child and family.

Vulnerability must be judged against threats occurring in a family. Vulnerability is not judged in degree; children are either vulnerable to threats or they are not.

If a threat of danger is present, presume the child is vulnerable, and therefore unsafe. If, however, the child possesses certain strengths, then the child may not be vulnerable to that particular threat. *Vulnerability is presented as a key element of safety assessment because workers, attorneys, and judges often skip or oversimplify whether a child is vulnerable to a threat of danger.*

For example, a judge may assume the child is not vulnerable because of her age. An older child may be unable or unwilling to protect herself due to fear, family loyalty, or not comprehending the seriousness of the threats. Assessing child vulnerability is more complex than assessing age or how bright and articulate the child is. The analysis should focus more on ways safety threats manifest in the family and the child's qualities that may or may not make him vulnerable to those threats.

The following help determine or increase a child's vulnerability:

- A child lacks capacity to self-protect
- A child is susceptible to harm based on size, mobility, social/emotional state
- Young children (generally 0-6 years of age)
- A child has physical or mental developmental disabilities
- A child is isolated from the community
- A child lacks the ability to anticipate and judge presence of danger
- A child consciously or unknowingly provokes or stimulates threats and reactions
- A child is in poor physical health, has limited physical capacity, is frail
- Emotional vulnerability of the child
- Impact of prior maltreatment
- Feelings toward the parent – attachment, fear, insecurity or security
- Ability to articulate problems and danger

CASE EXAMPLE

A Vulnerable Child in Plain Language

Katrina is 13 years old and is healthy. She gets above average grades and is comfortable talking with the CPS worker and other adults. She has friends, and can identify a teacher she respects and tells the worker she will talk with that teacher if she has problems. Katrina knows protective behaviors and is indignant about stories of people in positions of authority who harm kids. She knows that if she experienced such behavior (e.g., a coach who might inappropriately touch her) that she should and would tell someone and that it would NOT be her fault.

She has not, however, been able to talk about coming home and seeing her parents drunk and often in the midst of physical fights. She is ashamed to discuss this with the worker or anyone else. She has tried to ignore her parents but is frightened, and she did try to intervene once. As a result, her father began to hit her and she was pushed out of the way by her mother who then fell and cut her lip. Katrina felt like it was her fault that her mother fell.

Although the CPS worker has been able to understand the nature and frequency of the parents' drinking and fighting from the mother and grandmother, Katrina presents herself to the worker as someone who is eager to please, is pleasant and has few concerns. She is willing to take the worker's business card when offered.

While the mother has been somewhat candid about the domestic violence and the frequency that alcohol is used in the home, she does not want to confront the situation at this time. The police have been to the home 4 times in the past year. The situation appears to be escalating, in that the last two incidents have been increasingly violent, involving more damaged items in the home and greater visible bruising.

While Katrina may not be a vulnerable child with respect to her assertiveness, intelligence, communication skills, these strengths are likely to only serve her if she is confronted with a threatening situation OUTSIDE her family. These strengths do not seem to outweigh issues of family loyalties, fear of outside intervention results, shame, embarrassment. In light of the threats of danger: violence, lack of control on the part of one or both parents, Katrina is vulnerable.

How the Judge Can Expect Critical Thinking in the Courtroom Regarding Vulnerability

The following are some questions the judge can ask. The answers can help judges decide if the child can protect himself from threats.

- Has the child demonstrated self-protection by responding to these threats? (Self-protection means recognizing danger and acting to secure safety for one's self; it is not calling 911, CPS, or the school *after* an event.)
- Besides defending herself from threats, can the child care for her own basic needs?
- How does the judge find this child *not vulnerable* given the threats?
- Is vulnerability of all children, not just the victim, considered?
- Are there issues preventing this child from self-protecting?
- What plan would this child carry out to protect himself from threats?
- Can the child describe how she will know a threatening situation is developing, rather than recognizing it once it is happening?
- What has been learned about this child's functioning? How comprehensive is the information? How much time did the worker or other parties talk to the child about self-protecting? Is there information about this family and the way threats operate arguing against the child self-protecting?
- Are there ways the child behaves and responds, that escalate the threats to the child?

The Third Element: Protective Capacities

BENCHCARD D

Remember the definition of a safe child is where threats of danger are absent *or* sufficient protective capacity exists to manage threats. This section will discuss "protective capacity." It will also detail how the judge can decide that while threats exist, the child is safe.

Judges should weigh parents' protective capacities against existing threat(s) of danger. Some protective capacities may exist; are they are sufficient, do parents demonstrate sufficient capacity to control and manage the threats? When threats of danger exist, limits and gaps in protective capacity can mean the court orders CPS to do what the parent cannot. The child may or may not require placement. What substitutes for a parent's insufficient protective capacity and keeps the child safe will be discussed in Chapter 6.

Protective capacity means being protective towards one's young. Protective capacities are cognitive, behavioral, and emotional qualities supporting vigilant protectiveness of children. Protective capacities are fundamental strengths preparing and empowering the person to protect.

Information detailing what protective capacities exist should be included in answers to the six questions discussed in Chapter 2. CPS workers should inform the court about parents' observable qualities, behaviors and actions that makes him or her protective.

All adults living in the home should be assessed for protective capacities. This includes adults who do not maltreat, and are not sources of any threats of danger.

Determine whether their capacities are strong enough to control or manage the specific threats of danger.

Below is a description of cognitive, behavioral and emotional protective capacities, and examples of how a parent might demonstrate these strengths.

The questions that follow the list can help the court learn about protective capacities, particularly in challenging cases.

The list below is a partial list of characteristics of protective capacities. For definitions of each characteristic and additional examples, refer to *Appendix B, page 65.*

Cognitive Protective Capacities

Cognitive protective capacity refers to *knowledge, understanding, and perceptions* contributing to protective vigilance. Although this aspect of protective capacities has some relationship to intellectual or cognitive functioning, parents with low intellectual functioning can still protect their children. This has to do with the parent recognizing she is responsible for her child, and recognizing clues or alerts that danger is pending.

Cognitive protective capacities can be demonstrated when the parent:

- articulates a plan to protect the child
- is aligned with the child
- has adequate knowledge to fulfill care-giving responsibilities and tasks
- is reality oriented; perceives reality accurately
- has accurate perceptions of the child
- understands his/her protective role
- is self-aware as a parent

Behavioral Protective Capacities

Behavioral protective capacity refers to *actions, activities, and performance* that result in protective vigilance. Behavioral aspects show it is not enough to know what must be done, or recognize what might be dangerous to a child; the parent must *act*.

Behavioral protective capacities can be demonstrated when the parent:

- is physically able
- has a history of protecting others
- acts to correct problems or challenges
- demonstrates impulse control
- demonstrates adequate skill to fulfill care-giving responsibilities
- possesses adequate energy
- sets aside her/his needs in favor of a child
- is adaptive and assertive
- uses resources necessary to meet the child's basic needs

Emotional Protective Capacities

Emotional protective capacity refers to *feelings, attitudes and identification* with the child and motivation resulting in protective vigilance. Two issues influence the strength of emotional protective capacity: the attachment between parent and child, and the parent's own emotional strength.

Emotional protective capacities can be demonstrated when the parent:

- is able to meet own emotional needs
- is emotionally able to intervene to protect the child
- realizes the child cannot produce gratification and self-esteem for the parent
- is tolerant as a parent

- displays concern for the child and the child's experience and is intent on emotionally protecting the child
- has a strong bond with the child, knows a parent's first priority is well-being of the child.
- expresses love, empathy and sensitivity toward the child; experiences specific empathy with the child's perspective and feelings

How to Decide if Sufficient Protective Capacity Exists

There is no formula or automatic match of protective capacities controlling for specific threats of danger. If sufficient protective capacity exists, the court must remember that it has 1) concluded there are active threats of danger and now is concluding that 2) no further judicial action is necessary to assure safety because the parent can do it herself. Sufficient information must justify this recommendation. This is not a matter of a well-intended parent wanting to do the right thing or making a promise. The court must have confidence that credible information supports a conclusion regarding protective capacity.

How the Judge Can Expect Critical Thinking in the Courtroom Regarding Protective Capacities

The following questions by the judge or attorney can illuminate protective capacities even when the CPS worker has trouble presenting relevant and sufficient information. Answers to these questions should help the judge gain confidence in deciding about a parent's protective capacity. Each answer will provide information about parents demonstrating cognitive, behavioral and emotional protective capacities.

Questions the judge can ask:

- Has the parent demonstrated the ability to protect the child in the past under similar circumstances and family conditions? ***(Behavioral Protective Capacity)***
- Has the parent arranged for the child to not be left alone with the adult/parent maltreater or source of danger? (This could include having another adult present aware of the protective concerns and able to protect the child). ***(Cognitive and Behavioral Protective Capacity)***
- Is the parent intellectually, emotionally and physically able to protect the child given the threats? ***(Cognitive, Behavioral and Emotional Protective Capacity)***
- Is the parent free from needs which might affect the ability to protect such as severe depression, lack of impulse control, or medical needs? ***(Behavioral and Emotional Protective Capacity)***
- Does the parent have resources to meet the child's basic needs in light of the other changes the court is expecting from the family? ***(Behavioral Protective Capacity)***
- Is the parent cooperating with the caseworker's efforts to provide services and assess family needs? ***(Cognitive and Behavioral Protective Capacity)***
- Does the parent display concern for the child's experience? Is the parent intent on emotionally protecting the child? ***(Emotional Protective Capacity)***
- Can the parent specifically articulate a feasible, realistic plan to protect the child, such as the maltreating adult leaving when a situation escalates, calling the police in the event the restraining order is violated, etc.? ***(Cognitive Protective Capacity)***

- Does the parent believe the child's report of maltreatment and is he/she supportive of the child? ***(Emotional Protective Capacity)***
- If appropriate, has the parent asked the maltreating adult to leave the household? ***(Behavioral Protective Capacity)***
- Is the parent capable of understanding the specific threat to the child and the need to protect? ***(Cognitive Protective Capacity)***
- Does the parent have adequate knowledge and skill to fulfill parenting responsibilities and tasks? (This may involve considering the parent's ability to meet any exceptional needs that the child might have). ***(Cognitive and Behavioral Protective Capacity)***
- Is there no precedent for the current maltreatment in respect to type and severity, and does the parent demonstrate appropriate concern and intolerance? ***(Cognitive, Behavioral and Emotional Protective Capacity)***
- Is the parent emotionally able to carry out a plan and/or to intervene to protect the child (parent is not incapacitated by fear of maltreating adult)? ***(Behavioral and Emotional Protective Capacity)***
- If appropriate, has the parent legally separated from maltreating/source of threat adult and has/does the parent demonstrate behavior to suggest he or she will not reunite until circumstance warrants or they are proceeding with divorce action? ***(Cognitive and Behavioral Protective Capacity)***
- Do the parent and child have a strong bond and does the parent demonstrate clearly that the number one priority is the safety and well-being of the child? ***(Behavioral and Emotional Protective Capacity)***
- Does the non-maltreating parent consistently express a belief that the maltreating/source of threat adult is in need of help and does he or she support the maltreating adult getting help? Is this the parent's point of view without being prompted by CPS? ***(Cognitive Protective Capacity)***
- Even if the parent is having a difficult time believing the other adult would maltreat the child, does he or she describe the child as believable and trustworthy? ***(Emotional Protective Capacity)***
- Does the parent believe that the problems of the family (including current CPS and court involvement) are not the child's fault or responsibility? ***(Cognitive and Emotional Protective Capacity)***
- Does the parent demonstrate believable self-confidence and independence sufficient to act on his or her own in the best interest of the child? ***(Behavioral and Emotional Protective Capacity)***

CASE EXAMPLE

Examples of Sufficient and Insufficient Protective Capacity in Plain Language

Sufficient Protective Capacity:
CPS worker contacts a family due to a report that 5 year old Maquel told his teacher that his uncle Joaqin lives with him and that his uncle is in a "gang" and deals drugs. The CPS worker talks with all family members, including Joaqin, who is 20, and is the younger sibling of Maquel's mother. The worker gathers information that addresses all of the 6 questions. ***All case information will not be included here.*** The information pertinent to threats and protective capacities follows:

- Joaqin is using alcohol and speed regularly to the point where he has dropped out of school, lost his job, sleeps most of the day, and stays up most of the night. He is impulsive and would probably show poor judgment if left alone with 5 year old Maquel. Joaqin's choice of friends is worrisome to Maquel's parents, Anna and J.T., but the friends do not come to the house.
- The parents initiated much of the discussion about Joaqin with the worker. They explained their decision to temporarily house Joaqin and how they know and fully understand how this increases their work to keep Maquel safe and never alone with Joaqin. While they have strict rules for Joaqin about no drugs or friends in the house they are realistic about the fact that his problems could escalate and they can't take the chance that he will follow the rules.
- The parents were able to describe in detail the plans they carry out each day (weekdays and weekends) to make sure that one of them is always with Maquel at the house, transports Maquel to anywhere he needs to go, and takes Maquel with them if they have errands. They have provided a room for Joaqin that is away from Maquel and they regularly check to see that the room is locked so Maquel does not have the ability to go in (in case Joaqin has things that could harm Maquel).
- While they are concerned about Joaqin and his future, the parents show no sign of ambivalence or confusion about the fact that their first responsibility is to Maquel. They have agreed to allow Joaqin to stay with them for 3 months but have told him that there will be no extension and there could be an immediate termination of the agreement if Joaqin violates any of their rules.
- The conversation about Joaqin and their concerns about needing to keep Maquel safe was open, insightful and the parents also were able to express all of these ideas to Joaqin in front of the worker.
- The information collected around the 6 questions (adult functioning, parenting, etc) provided additional information that supports an absence of any threats of danger that would have the parents as a source; information further supported that the protective capacities seem credible, realistic, and believable.

Insufficient Protective Capacity:

CPS worker contacts a family due to a report that the mother of a 3 year old and a 2 year old tried to commit suicide in front of the children by stabbing herself repeatedly. After an emergency hospitalization, mother is ready for discharge home. Father stated he is willing to assure that the children are safe. His mother (the paternal grandmother), he said, will provide assistance when necessary. The worker gathers information around the 6 questions. ***All information will not be provided here.*** Information pertinent to the threats and protective capacity includes:

- This is mother's 5th suicide attempt in 3 years. The attempts have always been when she is with the children and they involve fairly aggressive self-harming acts.
- Father currently has lost his job due to a medical crisis that caused him to miss work. He is therefore currently at home and available to provide child care until he finds another job.
- Father worked 50 hours per week during the previous 3 years, leaving mother in charge of child care.
- Father states he is worried about mother's mental health, but is not really worried about her care of the children, say-

CASE EXAMPLE

ing he knows she would not hurt them.

- Paternal grandmother, who would serve to back-up and support father as needed, lives 30 minutes away. She says that she thinks the mother needs some focus in her life and shouldn't be sleeping the day away. She is willing to help but adds that providing child care is a good distraction for her daughter-in-law.
- Father is cooperative with CPS and says he will call if he has any problems.

Putting the Information Together and Making a Safety Decision

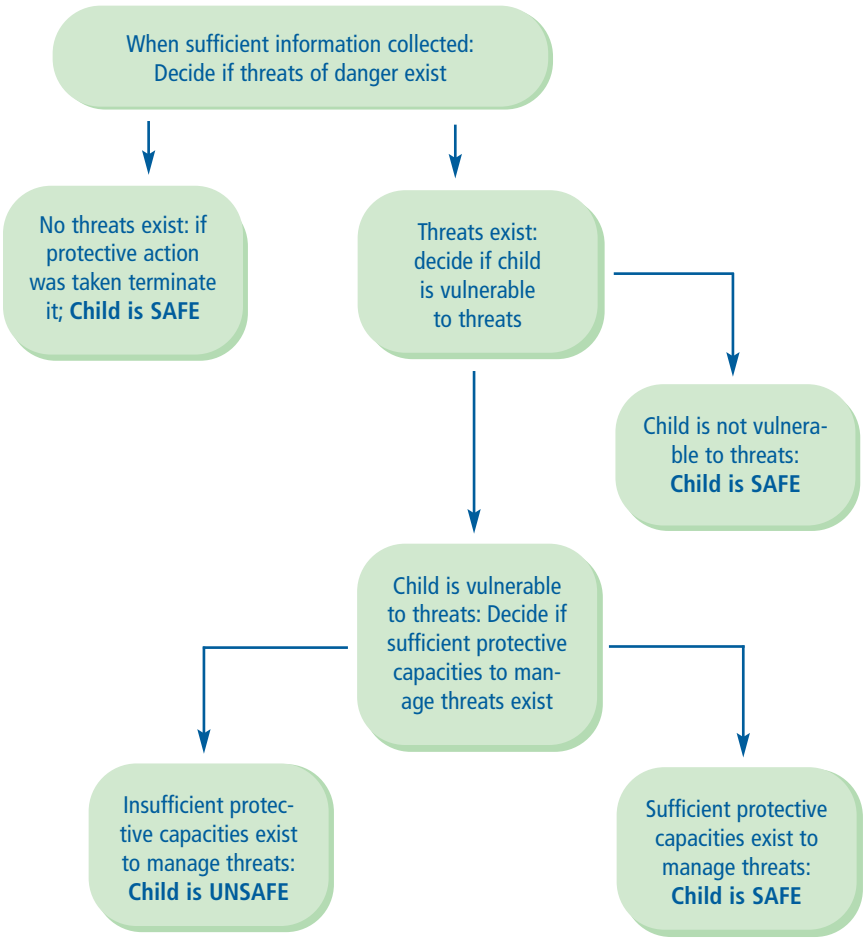
Determining whether the child is safe means considering three elements: threats of danger, child's vulnerability, and protective capacities. This decision is distinct from issues such as pending criminal charges, understandable stresses associated with maltreatment, what needs to happen if the child is determined unsafe. This specific decision demands a logical, sequential process built on credible information supplied to the judge. Carefully analyzing and applying the three safety decision elements helps avoid confused thinking and respects the rights of child and family.

Here is an overview of the decision process:

- The court is given sufficient information about the family (Chapter 2— the 6 questions).
- The court weighs the information against criteria for threat of danger (Chapter 3 — 15 threats) and determines if one or more threats exists.
- The court is given sufficient information to understand if the children are vulnerable, analyzes it, then determines if they are vulnerable.
- The court considers the criteria for protective capacities (Chapter 3 - protective capacities), determines whether protective capacities exist, and if they are sufficient to manage specific threats.
- If no threats are present, the child is safe.
- If threats are present, but the child is not vulnerable, the child is safe.
- If threats are present with a vulnerable child, but sufficient protective capacities exist, the child is safe.
- If threats are present, child is vulnerable and protective capacities are insufficient, the child is unsafe.

BENCHCARD E

An illustration of this process follows:



Safety Plans

When the Child is Unsafe, a Safety Plan is Necessary

When threats of danger are present with a vulnerable child and the parents possess insufficient protective capacities, the court decides what will temporarily substitute for the parents' inability to control the threats. These substitute actions and tasks focus on controlling threats of danger. These actions and tasks are called a *safety plan*. A safety plan ensures the child's safety while simultaneously working with the family. A safety plan is different from a case or treatment plan.

Nothing in the safety plan identifies how the parent needs to change. The case or treatment plan – discussed in Chapter 8 – identifies what has to change for the parent to protect and assure her children's safety.

The safety plan must meet the following criteria:

- The safety plan only controls or manages threats of danger. There must be a direct and logical connection between plan tasks and the way threats operate in the family.
- The safety plan must have an immediate effect in controlling threats. Strategies resulting in long term change, such as counseling or anger management classes, may be appropriate for the case/treatment plan but will not have an immediate effect and do not belong in a safety plan.
- People and services identified in the safety plan must be accessible and available when threats are present.
- Safety plans will have more concrete, action oriented activities and tasks than will case plans (e.g., providing day care or supervising/monitoring the home vs. therapy or parenting classes).
- Safety plans never rely on parental promises to stop the threatening behavior, for example, will stop drinking, or will always supervise the child. Since a criterion for a threat of danger is something out-of-control, it is useless to rely on an out-of-control parent to be in control.

CASE EXAMPLE

In Home Safety Plan

The mother of two toddlers is extremely depressed, to the point that most days she stays in bed sleeping. The children essentially fend for themselves, eating cereal and playing together in the apartment. Mother tries to do better but each day her promises to get up dissolve and the children are unsupervised.

While thus far, the children have not been harmed, the lack of supervision and provision of basics to the children will soon lead to serious consequences. The impending threats of danger are **"No adult in the home is routinely performing basic and essential parenting duties and responsibilities,"** and **"One or both parents' behavior is dangerously impulsive or they will not/cannot control their behavior."** The children are 2 and 3 years old, and are vulnerable to these threats. No other adult caregiver lives in the household so protective capacities are insufficient to control or manage the threats.

CASE EXAMPLE

The safety plan involves the maternal aunt coming over each day before the children get up to provide them breakfast, get them dressed, and transport them to the daycare center where her own child goes. At the end of the aunt's workday, she transports the children home. Every evening, the maternal grandmother comes over to give the children dinner and put them to bed. On weekends, the children stay with the maternal aunt.

The Range of Safety Plans

An unsafe child does not automatically require placement outside the home. Consider alternative safety plans. Safety plans range from entirely in-home to exclusively out-of-home care. A safety plan's objective is to control threats in the least intrusive manner. Using respite care or short-term foster care to separate children from threats can be combined with time at home. When recommending an out-of-home safety plan, the parties must inform the court why an in-home safety plan cannot work. This is the essence of demonstrating reasonable efforts to prevent placement or to quickly reunify.

Safety Plan Actions and Services that Help Control Threats

Devising a safety plan that is not full- time out-of-home placement means knowing about other actions or methods that might immediately control threats of danger. The following are actions and strategies that can help substitute for a parent's lack of protective capacities.

Most actions described below do not have to be carried out by a professional or a paid service provider. Child care can be provided by a daycare facility or by a church volunteer. Monitoring whether and how parents provide children meals can be done by grandmother, a mentor, a family preservation worker or the CPS worker.

The court should consider including these actions and strategies in the court order.

Actions and Services to Control Threats of Danger

BENCHCARD F

Actions or Services to Control or Manage Threatening Behavior

This type of service in a safety plan is concerned with aggressive behavior, passive behavior or the absence of behavior – any of which threatens a child's safety. Activities or services that are consistent with this action can include, for example:

- In-home health care
- Supervision and monitoring
- Stress reduction
- Out-patient or in-patient medical treatment
- Substance abuse intervention, detoxification
- Emergency medical care
- Emergency mental health care

Actions or Services that will Manage Crises
Crisis management aims to halt a crisis, return a family to a state of calm, and to solve problems that fuel threats of danger. Appropriate crisis management handles precipitating events or sudden conditions that immobilize parents' capacity to protect and care for children. Examples include:

- Crisis intervention
- Counseling
- Resource acquisition, obtaining financial help; help with basic parenting tasks

Actions or Services Providing Social Support
These services may be useful with young, inexperienced parents failing to meet basic protective responsibilities; anxious or emotionally immobilized parents; parents needing encouragement and support; parents overwhelmed with parenting responsibilities; and developmentally disabled parents. Services or actions include:

- Friendly visitor
- Basic parenting assistance and teaching
- Homemaker services
- Home management
- Supervision and monitoring
- Social support
- In-home babysitting

Actions or Services that Can Briefly Separate Parent and Child
Separation is a temporary action ranging from one hour to a weekend to several days. Separation may involve hourly babysitting, temporary out-of-home placement or both. Besides ensuring child safety, separation may provide respite for parents and children. Separation creates alternatives to family routine, scheduling, and daily pressures. Separation also can serve a supervisory or oversight function. Examples:

- Planned parental absence from home
- Respite care
- Daycare
- After school care
- Planned activities for the children
- Short term out-of-home placement of child: weekends; several days; few weeks
- Extended foster care

Actions or Services to Provide Resources (Practical Benefits the Family Might Otherwise Be Unable to Afford)
These actions and services provide unaffordable practical help to the family, without it the child's safety is threatened.

- Resource acquisition, obtaining financial help, help with basic needs
- Transportation services
- Employment assistance
- Housing assistance

When an In-Home Safety Plan Is Sufficient, Feasible and Sustainable: Reasonable Efforts to Prevent Placement

This chapter describes how judges decide whether the agency has made reasonable efforts to prevent removal as required under the ASFA regulations. 45 C.F.R. Sec. 1356.21(b)(1). To determine this, the judge must first decide on a safety plan that is sufficient, feasible and sustainable.

Deciding about reasonable efforts goes beyond identifying information—the 6 questions, threats of danger, vulnerability, and protective capacities—to determine if the child is safe. The real question is: will an in- or out-of-home safety plan, or some combination, be the least intrusive approach to keep the child safe and still be sufficient?

If an in-home safety plan would be sufficient, and the agency fails to consider or implement one, then the agency has failed to provide reasonable efforts to prevent removal.

BENCHCARD G

Checklist for judges. Reasonable efforts to prevent removal: In-home safety plans

By asking these questions, judges can determine whether the child can be kept safe with an in-home safety plan, and if so, some key components of the plan.

- Once threats are identified and the child is vulnerable, determine if the family can protect the child. Does the family possess sufficient protective capacity?

If the family's protective capacities are insufficient, determine what will protect the child by examining how and when threats emerge.

- Does each threat happen every day? Different times of day? Is there any pattern or are they unpredictable?
- How long have these threats been occurring? Will it be easier or harder to control or manage threatening behavior with a long family history?
- Does anything specific trigger the threat or accompany the threat, such as pay day, alcohol use, or migraine?

Is an in-home safety plan sufficient to control the threats, in view of when and how the threats of danger emerge?

- Are the parents living in the home, or do they disappear occasionally?
- Are the parents willing to cooperate with an in-home plan? How are we gauging "cooperation?"
- Is the household predictable enough that

actions will eliminate or manage threats of danger?

(If the answer to any of these questions is "no," then an in-home safety plan is not appropriate)

- Are the people carrying out the in-home the safety plan aware, committed, and reliable?
- Are safety plan providers able to sustain the intense effort until the parent can protect without support?

What actions or services are required for an in-home safety plan to control the threats of danger to the child?

- How often and long would services be needed (for example, separation: after-school daycare two times per week, from 3 pm to 6 pm)?
- Are providers available to carry out services at appropriate times, frequency and duration?

The court is now moving from analyzing if the family can manage safety on their own (least intrusive state intervention) to whether an in-home safety plan involving others will work (increasingly intrusive intervention). If the analysis reveals that no practical in-home safety plan is sufficient, feasible or sustainable, an *out-of-home safety plan* must be developed and ordered by the court (most intrusive).

A note about reasonable efforts findings:

Often in lieu of a finding that the agency has made reasonable efforts to prevent removal, courts will find that an emergency existed at the time of removal. In these cases, as in all cases, the agency is obliged to provide reasonable efforts to reunify immediately. The next required reasonable efforts finding under ASFA is a finding that the agency has/ has not made reasonable efforts to finalize the permanency goal. 45 C.F.R. Sec. 1356.21(b)(2). This finding is required to be made within 12 months of foster care entry, but can be made earlier than 12 months after foster care entry. 45 C.F.R. Sec. 1356.21(b)(2)(ii).

This reasonable efforts finding may be more meaningful as the court can consider whether the agency has explored, developed, and implemented a sufficient safety plan. At any point in the case, the court can order the agency to take specific actions to accomplish these objectives. Failing to follow the court's order or failing to develop a sufficient safety plan can be the basis for the court making a finding that the agency has failed to finalize a permanency plan of reunification. This may be added incentive for the agency to follow up on the safety plan because the agency will be unable to receive federal funding under Title IV-E unless and until a positive finding is made.

CASE EXAMPLE

Analysis of the Case Supports an In-Home Safety Plan

Using the Kazca family situation from Chapter 2 (Answers to the six questions are on pages 5-7).

- The identified threats are: **"One or both parents' behavior is dangerously impulsive or they will not/cannot control their behavior" and "One or both parents lack parenting knowledge, skills, and motivation necessary to assure a child's basic needs are met."**
- The 4 children range in age from 3 to 7 and all are vulnerable.
- Mother is the only adult parent residing with the children, so there are insufficient protective capacities in the home. **Therefore, children are UNSAFE.**

What is the level of effort required to control the threats? How do the threats really play out?

- **The threats play out in the family as follows:** Ms. Kazca has the sole daily responsibility for 4 children under the age of 7, at least 2 of whom have special behavioral concerns. She is frequently tired and overwhelmed even when her mood is stabilized. She takes medication daily, but at least 3 times a week feels its effectiveness is diminished when she finds herself very frustrated, sometimes angry to the point of screaming at the children, and in tears. She is administering increasingly harsh discipline on the children as each week goes by. The children receive significantly long time outs (including a missed meal) once per week and must perform rigorous chores approximately once per week. The 5 and 7 year old fix breakfast for all the siblings daily, waking Ms. Kazca up after breakfast. Ms. Kazca is tired everyday and finds herself focusing on how soon the children can go to bed so she can get some sleep. Her problem-solving skills have deteriorated to the point of giving the children adult sleeping medication so she can get some rest. While there is no indication she has given the children sleep medication before, given the severity of the stresses facing her, further potentially injurious acts by Ms. Kazca are likely.

Are the parents really residing in the home full-time or do they disappear for periods of time?

- Mother resides in the home.

Are the parents willing to cooperate with an in-home plan?

- Mother is angry about CPS finding out about the sleeping medication. Her mood shifts dramatically while she is with the CPS worker, and she can rapidly change from being open and amiable to being suspicious and angry. However, she does want an in-home safety plan to avoid having her children being placed into foster care a second time. She is willing to submit to periodic medication checks to ensure that her dosage is correct. She realizes that an in-home safety plan will include people being involved in her life and coming into her home. She promises to cooperate with the plan and appears to be sincere.

Does the household have a relative predictability to it so actions taken will have a reasonable chance to have an impact?

- There is no overly chaotic pattern to the household to cause concern that an in-home safety plan might have no effect.

Is the household sufficiently calm enough so anyone going to the home to carry out tasks or actions will be safe?

- Violence to people entering the home is not a concern. The times when Ms. Kazca did have physical struggles with a relative are not a concern regarding an in-home safety plan: the situation was an aberration and involved a certain relative who will not participate in this plan. Violence is not a pattern of behavior of Ms. Kazca herself.

Given the picture of how and when the threats of danger emerge, what activities can control the threats of danger, how often will they be needed, and how long will such activities need to last?

- **The actions that would logically con-**

CASE EXAMPLE

trol the threats are: (1) Behavior Management, consisting of a mental health check for medication and mood stabilization as quickly as possible. The mental health check can occur only once or may take several appointments. Supervision and monitoring of the home must occur unpredictably (to Ms. Kazca) at different times of the day, 2 times per week. (2) Social support to encourage Ms. Kazca and hopefully to provide an uplift and surge in her energy should occur at least 1 time per week. (3) Short-term separation from the children, consisting of after-school daycare for the 2 oldest boys every school day; respite care of all children from Friday through Sunday 2 times per month; and respite care for 2 children at a time (alternating with other 2 children) from Friday through Sunday 2 times per month.

Are people and/or service providers immediately available and accessible to carry out the actions needed at the level of frequency and duration determined?

- The mental health clinic can see Ms. Kazca immediately and is available for timely follow-up. Any changed dosage in medication will likely take days, weeks or longer to take full effect. Ms. Kazca's mother can come to the home (for supervision and monitoring) on Monday mornings, from 7:30 am to 10 am to check to see whether Ms. Kazca is up and to help her get up and start her day. The previous foster mother, who has remained appropriately helpful and involved since the children were last in care, can come over on Thursdays with her own child for a "play date" from 2 to 4 pm and thereby provide supervision and monitoring. The foster mother is also willing to provide transportation for Ms. Kazca to join her Tuesday morning exercise class (childcare provided on site), from 9 am to 10:30 am to give Ms. Kazca additional social support and energy. The two oldest boys can begin after-school daycare immediately at their school, every school day and will be shuttled home by the school. Finally, the previous foster mother will provide regularly scheduled respite for all the children from Friday until Sunday night, the first and 3rd weekends. She will provide regularly scheduled respite for 2 children at a time on the opposite weekends. (Note, incidentally, that the cost of all of these services is less than the cost of foster care.)

Are the participants in the safety plan aware of their responsibility in the safety plan and do they acknowledge the gravity of their commitment?

- A long meeting to discuss the safety plan was held in Ms. Kazca's home and included Ms. Kazca, the CPS worker, Ms. Kazca's mother and the former foster mother. Each is aware of the threats to the children's safety and the critical nature of this plan and with everyone else's precise role in the plan. The school daycare program is aware that they are to contact the CPS worker if there are concerns or they have other information the agency may need.

Are the participants in the safety plan able to sustain the level of effort needed for the length of time it reasonably will take until a) the intensity of the plan should lessen or b) the parent should become able to provide protection without intervention?

- The threats to the children's safety may not lessen in intensity for some time. Ms. Kazca's medication changes, if effective at all, may take weeks or months or longer. Parenting 4 children alone is exhausting even for the most resourceful parent, and 2 of the children can pose regular behavior challenges. This safety plan, with its current level of intensity, could last for a long time. The foster mother and grandmother know this and are committed to the plan on a long-term basis. Neither have other commitments likely to interfere with their full participation. Both are committed to maintaining an in-home safety plan to prevent the children from returning to foster care.

2ND CASE EXAMPLE — *Analysis of the Case DOES NOT Support an In-Home Safety Plan*

For more details regarding this case, see Horan case information, Appendix C, page 73.

Family composition:

Barbara Horan	mother	38 years
Gregory James	father of 2 youngest children	37 years
Kyle James	son	2 years, 7 months
Jesse James	son	1 year, 6 months
Tony Horan	son of Barbara	15 years
Dylan Horan	son of Barbara	17 years

- While the father is currently out of the Horan home, this is a temporary arrangement that may end at any time. Therefore, threats of danger must be analyzed as if both adults resided in the home. The current operating threat is **"One or both parents' behavior is dangerously impulsive or they will not/cannot control their behavior."** Specifically, the father, Gregory, is drinking to excess daily making him increasingly unlikely to supervise the children and to increasingly over-react when difficult situations arise, such as Kyle's misbehavior when unsupervised. There is a potential of **violence** in this home (if there hasn't already been unreported violence) based on the history of both adults and the high level of stress father was experiencing when recently residing in the home.
- The father's recent arrest and his resulting temporary separation from the children provides an opportunity to determine what additional threats could become active very shortly if mother must assume child care responsibilities during father's absence. Mother's long absences from the home and her tenuous grip on solving her child care problems could lead to a concern that SHE cannot control her behavior or impulses—namely, her impulse to stay out all night. It is likely that she would rely on her 15 year old son Tony for child care, even though there is nothing to suggest that this is a realistic plan (or a good one). Mother now seems easily distracted by either work or social activities from her role as parent.
- The children are in a household where either 1) the father is increasingly angry and overwhelmed and therefore is drinking daily and fueling his anger against the mother, who herself is not modifying her behavior and late hours; or 2) the father will leave and there will be no adult in the home to supervise and provide basic care. All the children in the home are vulnerable to these threats, including the two older boys.
- The discussions with Barbara (the mother) show a lack of sufficient protective capacity to manage the threat of danger. As mentioned, Barbara herself may be the source of a threat if the current situation of Gregory remaining outside the home continues. The children, therefore, are UNSAFE.
- The threats emerge as follows: Barbara works two jobs every week day, and is absent from the home from 10 a.m. until at least 11:30 pm. At least 3 times during the week, according to Gregory and Tony, she comes home between 3 am and 5 am. Barbara also works 3 pm to 11 pm on Saturdays and every other Sunday. Most Saturdays, according to Gregory, she comes home around 3 am. Gregory comes home from work, relieving the paternal aunt from child care, around 2 pm (he does not work Saturdays or Sundays). In the past 4 months he has 3 or more beers before dinner, another 2 beers with dinner and often takes a nap with the youngest children until about 7 pm. Almost every night he begins thinking about whether Barbara is going to return home after work. He gets angry, begins obsessing about whether she is having an affair, and begins drinking more, even though the boys are still awake. His drinking continues after they go to bed. He usually intends to wait up for Barbara but most often passes out. The times that he does stay awake until Barbara gets home, they get into loud arguments that have thus far not resulted in violence, but the arguments do involve throwing

2ND CASE EXAMPLE

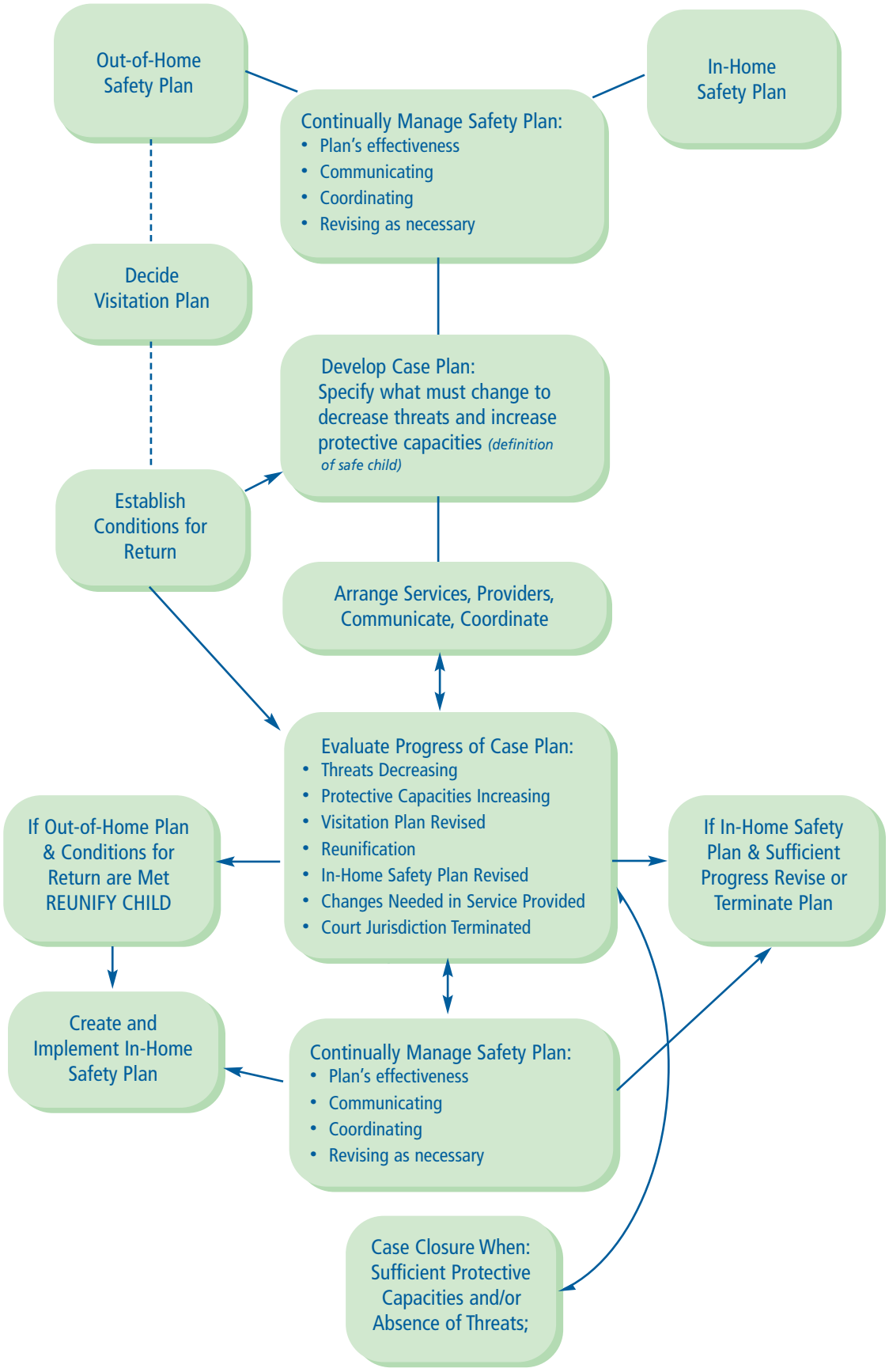
things around. While Gregory has been out of the house since the arrest, (the past 7 days) Barbara's hours away have not changed. She has used her sister-in-law on 3 occasions for all night child care and has relied on her teenage sons for the other nights.

- The mother (and possibly the father) reside in the home and would cooperate with an in-home safety plan.
- The home environment is not violent to the point of causing concern to persons participating in a possible in-home safety plan and the situation is predictable enough for an in-home safety plan.
- If father returns to the home, the in-home safety plan will require behavior management including supervision and monitoring of the home situation every evening to curtail or mitigate his drinking. It will require his periodic separation from the children in the form of child care, which will reduce the burden placed on Gregory and will assure that the children will receive basic care every evening, including Saturdays and Sundays. *(The intensity of Gregory's obsession with Barbara's absence from the home is the reason this level of monitoring and child care is necessary. Gregory has no other diversion and every night follows a pattern of obsessing about her behavior, drinking, and getting angry.)*
- If father does *not* return home, an in-home safety plan should include child care every day mother works, to ensure care all of the time she is away from the home.
- The time of day when child care is needed (whether the father is in or out of the home) demands an in-home child care provider for significant periods of time, including overnights, every day. There are no relatives or friends who are available to carry out this high demand level of child care, nor are there professional child care resources available in the community. ***Therefore, an in-home safety plan is not feasible and an out-of-home safety plan must be developed. The agency will try to find relatives with whom to place the children to keep them safe.***

Safety Decision-Making: Developing the Safety Plan through Terminating Court Jurisdiction

BENCHCARD H

Once the court orders the safety plan, review hearings continue to address safety and other issues. Steps to resolve safety issues are depicted in the chart on the page opposite.


Out-of-Home Safety Plan
In-Home Safety Plan
Continually Manage Safety Plan:
• Plan's effectiveness
• Communicating
• Coordinating
• Revising as necessary
Decide Visitation Plan
Develop Case Plan:
Specify what must change to decrease threats and increase protective capacities (definition of safe child)
Establish Conditions for Return
Arrange Services, Providers, Communicate, Coordinate
Evaluate Progress of Case Plan:
• Threats Decreasing
• Protective Capacities Increasing
• Visitation Plan Revised
• Reunification
• In-Home Safety Plan Revised
• Changes Needed in Service Provided
• Court Jurisdiction Terminated
If Out-of-Home Plan & Conditions for Return are Met REUNIFY CHILD
If In-Home Safety Plan & Sufficient Progress Revise or Terminate Plan
Create and Implement In-Home Safety Plan
Continually Manage Safety Plan:
• Plan's effectiveness
• Communicating
• Coordinating
• Revising as necessary
Case Closure When: Sufficient Protective Capacities and/or Absence of Threats;

The Out-of-Home Safety Plan: Tasks and Responsibilities

An out-of-home safety plan becomes necessary whenever an in-home safety plan is not sufficient, feasible or sustainable. The out-of-home safety plan occurs with a relative, foster home, or other court-ordered placement.

An out-of-home safety plan poses two issues the court must decide:

1) What kind and amount of contact will there be?

2) What are the minimum expectations or conditions for the child to return home?

This chapter will help judges consider *visitation* and the *conditions for return home* within the framework of safety decision-making.

Visitation: Contact between children and family

Immediate and frequent contact between the child and parent(s) helps maintain the child's identity and reduces trauma. It also influences future safety decision-making. Visitation is less helpful to future safety decisions when it is identical in every case, such as:

- supervised regardless of need for, or level of, supervision
- carried out at same location, such as the CPS agency
- has the same frequency

Cookie-cutter visitation plans often place needless restrictions on parent-child contact, and miss opportunities to achieve safety expediently. CPS, parties, and the judge should use visits to assess and develop parental protective capacities; this could make the child safe at home without the state intervening. Judges should bear in mind why the child had to be removed when deciding visitation.

Visitation should, at minimum, include:

- Face-to-face contact between child and parent (unless shown why not) no more than five days after placement. Contact should occur weekly and, in many cases, more frequently.
- Face-to-face contact between siblings at least once per month.
- Arrange other contacts including phone calls, letters, email, text messaging, attending church, school and other appointments together.
- A court order or visitation document, provided to everyone involved in visitation, specifying times, duration, location, and conditions of supervision.
- Assure frequency or length of visits will not be used as punishment or reward, but is a right of all family members unless child safety is jeopardized.
- CPS will oversee visitation, including logistics, and will ensure the child's safety.
- Steps to maintain parent-child attachment and help parents practice or learn greater protective capacity.

- Dates when visitation terms will be routinely reviewed.
- Ideally, visits will take place in the foster home providing a more natural setting and letting the foster parent model parenting techniques.

Determining Visitation: Checklist for Judges

BENCHCARD I

- Organize visits to occasionally allow parents to learn or practice the protective capacities they lack. Can visit length and location help make this happen?
- Arrange visits so CPS or another service provider can evaluate whether parents' protective capacities are improving. Can visit length and location help with this?
- Reasons visits may or may not be supervised are based on:
  - Threats of danger: some threats may be more difficult to manage without supervision than others. Unmanageable threats may include violence, child's intense fears, premeditated harm, extreme negative perception of the child, and likelihood of fleeing with the child.
  - The volatility of the threat and how difficult it would be to manage without supervision. Analyze volatility by considering when and how the threats emerge, parent's impulsivity, whether home environment is unpredictable, or safety could be maintained only through 24 hour in-home help.
  - Whether significant information is lacking about the parent, due to parent unwillingness or other obstacles.
  - Are parent's or children's functioning deteriorating during visits so threats of danger must be reconsidered?
- Is allowable contact spelled out, including email, text messages, and phone?
- Is there reason *not* to include parents at appointments, school, and church events?
- Are the requirements and logistics for visits and contacts provided in writing to parents and other visitation participants? Are they clear to *all,* not just legal parties?
- Are participants clear that visits will not be used as punishment or reward?
- Set dates when visitation terms and contacts will be reconsidered.

Conditions for Return: Establishing Clear Objectives

Conditions for return are what must happen for the child to return home. The judge and CPS must be clear on what these conditions are, and this information must be provided to parents. This is consistent with federal law requiring the court to hold annual permanency hearings (administrative reviews every six months), and determine:

- Safety of the child;
- Continuing necessity for and appropriateness of the placement;
- Extent of compliance with the case plan;
- Extent of progress which has been made toward alleviating or mitigating the causes necessitating placement in foster care, and
- A likely date by which the child may be returned to and safely maintained in the home or placed for adoption or legal guardianship. 42 U.S.C. 675(5)(B).

Having unclear, imprecise, vague conditions for the child's return produces bad outcomes.

Parents being confused about what they must do or accomplish creates barriers to the child's safe and timely return. Failing to identify and explain conditions for return leads to lower rates of reunification.

Some courts and agencies decide to reunify based entirely on parents following case plan requirements such as attending service classes, or appointments. More important is whether parents participating in classes or counseling changes their skills, behavior, attitudes, and conditions that brought the family before the court. Perfect attendance may do nothing to make the home safe. Or a parent may not attend services and yet still satisfy conditions for return.

The judge can use the safety decision-making process as the logical foundation for identifying conditions for return. Conditions for return are the benchmarks for reunification. Conditions for return should be detailed in a court order, including the circumstances that must exist within a child's home before that child can return. Circumstances should include, for example, the parents' behaviors, skills, understandings, emotions, and attitudes as well as other conditions that must be met.

The conditions for return, as stated in the court order, will be used by the court, CPS, the attorneys and others in the decision-making process as benchmarks guiding feasibility of reunification. These benchmarks guide services, provide clarity for parents, and help parties focus on whether *safety can be achieved in the home*, not whether treatment programs were completed or treatment goals accomplished.

Using Safety Related Information and Logical Decision-Making when Establishing Conditions for Return

Conditions for return are based on what is needed for the child to be safe, with a sufficient, feasible and sustainable in-home safety plan. What happens when threats of danger and gaps in protective capacities have been identified, and an analysis shows an in-home safety plan is insufficient? Knowing why an in-home safety plan cannot work suggests

One example:

One or both parents lack parenting knowledge, skills, and motivation necessary to assure a child's basic needs are met.

Bryan and Sheila are the 19 year-old parents of a newborn. Both adults are limited intellectually and socially immature. They lack fundamental knowledge and skills needed in providing basic care to the infant (i.e., food, clothing, protection). In addition to the basic care problems, they mishandle the child and behave toward her like she is a doll.

Conditions for Return:

- A person with suitable knowledge and skill to meet the basic care needs of Heather is present in the home every day to help care for her.
- Bryan and Sheila agree to accept help in learning how to care for and physically handle the child.
- Bryan and Sheila demonstrate the ability to handle Heather gently, carefully and understand the importance of doing so.

what circumstances or conditions must change for the child to return. What must change in the home to be safe *now* becomes the condition for return.

Can Return Be Made Safe?

Conditions for return should not be confused with long-term service needs or what must change over time. *It is not necessary to wait until the family is able to protect the child before returning the child home.* Threats of danger do not have to be eradicated — they need to be *controlled* — before children can be reunified with families. Likewise, parents do not have to change before children can be reunified. When deciding to return a child, focus on whether *return can be made safe*, not on parents complying, completing or even improving with treatment.

Specify the people, behaviors, and circumstances (including alternatives and options) that, if in place and active, would resolve why an in-home safety plan was insufficient.

For additional examples of conditions for return, refer to Appendix D, page 77.

CASE EXAMPLE

What Conditions for Return Should Look Like

Note: Not all case information is presented in this example, but essential contextual information is provided.

1. Specific threats of danger

- **One or both parents' behavior is dangerously impulsive or they will not/cannot control their behavior.**
- **No adult in the home is routinely performing basic and essential parenting duties and responsibilities.**
- **One or both parents lack parenting knowledge, skills, and motivation necessary to assure a child's basic needs are met.**
- **A child is profoundly fearful of the home situation or people within the home.**

Mom's substance use has relapsed; she is leaving the children (ages 4 and 10) alone frequently, almost every night, often all through the night; she is unable to control her behavior; no other adult lives in the home to manage and provide basics for children. Children are fearful for themselves and for mom. Mom believes the 10 year old is responsible and can stay home alone through the night with her brother. The children are terrified when they are left alone. Mom's love and attachment to the children are not sufficient to compensate for her personal needs.

2. Why the analysis showed an in-home safety plan would not work:

Mom denies that her lifestyle and behavior is a problem or a threat to the children's safety; she does not see or accept that the children are in danger; she knows the children are afraid; she avoids CPS and her extended family and sees them as interfering in her life; all indications are that she would block the presence of any people who would be part of an in-home safety plan; her behavior that poses the greatest threats (lack of control over impulse to go out to get high, leaving the children unsupervised) occurs mostly at night, almost every night and often all through the night. A high intensity of actions to control for these threats would be necessary and are not available. This is the justification for the development of an out-of-home safety plan.

B. Conditions for Return

1. Circumstances that must exist & be sustained within family/household including time provisions

- A responsible adult in the home provides general care assuring the children's basic needs are met during after school hours, evenings, weekends, and holidays.
- A responsible adult in the home provides supervision for the children at all times the children are home, including after school and weekends.
- A responsible adult can be immediately

CASE EXAMPLE

available when the mother is there but unable to care for the children.

- The children are safe, secure, and not afraid.

2. Behavior that must exist & be sustained within family/household including time provisions

- Mom demonstrates some awareness of the effects her lifestyle and choices have on her children's safety.
- Mom accepts and seeks out support and assistance related to caring for and supervising the children.
- Mom demonstrates the ability to control her behavior as evidenced by restraint in use of substances and not leaving the home under unplanned circumstances without reliable child care.
- Mom convincingly demonstrates her recognition of the need for an in-home safety plan when the children return home.
- Mom shows her willingness for people and service providers to assist her and enter her household as they carry out the actions necessary for a successful in-home safety plan.

Discussion: some noteworthy points about conditions for return as demonstrated in the example:

- **Looking at a) what the threats are; b) how often, intensely, etc. they emerge; and c) why an in-home safety plan was thought to be unworkable, the conditions for return address:**
- **Someone needs to be there at any time mom is gone or is home but incapacitated, and that the actions are such that the children's fear is no longer present.**
- **Mom doesn't have to be "all better" for her children to return home, but given her evasiveness and the impact of her substance abuse on her impulsiveness, she will need to demonstrate a genuine ability to restrain her behavior to the extent that she can secure child care (and wait for it) before going out. She will also need to demonstrate openness to having people in her life, "knowing her business" in order for an in-home safety plan to be workable.**
- **As a condition which should always be considered whenever a child has been placed to assure safety, Mom has to agree that at reunification an in-home safety plan will be implemented and she has to agree to its level of intensity.**

Conditions for return can and should have specific behavioral change: concrete behavior changes should demonstrate that Mom has gained at least some limited restraint about her use of drugs so she will call a child care provider before going out.

Non-exhaustive examples:

- **She should first demonstrate restraint in her drug usage in other kinds of settings: should show she can put off getting high during gradually increasing amounts of visitation; should be able to talk about what she used to do, how that threatened the children's safety, and what she will do now; should clearly know the available options for childcare; should discuss the arrangements with day care providers; and should be making gains in substance abuse treatment service (if participating) – thus, providing credible information that she is reducing her drug use.**

The sometimes controversial point as demonstrated in this example:

- **Parents do not have to complete treatment to meet conditions for return. The threshold for what constitutes the need for out-of-home care is applied again when looking at returning children: How can the children be safe with an in-home safety plan? What circumstances and behaviors need to be present for an in-home safety plan to be sufficient, feasible and sustainable?**

Finally: Conditions for return always include a provision for the parent's willingness and acceptance for a court ordered in-home safety plan when return of the child occurs.

BENCHCARD J

Checklist for Judges. Establishing Conditions for Return

The judge should expect CPS and the legal parties to use the following process to identify the conditions for return to include in the court's order. (The following builds on the decision process needed to determine whether to remove a child from home, as discussed in Chapter 6.)

- Carefully review *exactly* why an in-home safety plan was originally determined to be insufficient, unfeasible or unsustainable.
- Ask the following questions regarding each threat of danger (including any new threats that may have emerged):
  - How does the threat emerge, including its intensity, frequency, duration, etc?
  - Can it be controlled with the children in the home and, if so, how?
  - Can anyone substitute for the parent within the home to provide sufficient protective capacity to assure control of the threat of danger?
- Based on the answers to the above questions, discuss what is needed to control threats of danger. Referring to the analysis that led to the original decision that an in-home safety plan would not work, identify what circumstances must be different. Answer the following questions (discussed more fully in Chapter 6):
  - Were the parents' capacity, attitude, awareness, etc. factors in the original decision that an in-home safety plan would be insufficient?
  - Do any of these factors need to change before the child can return home with an effective in-home safety plan?
  - What is the potential for other threatening parents or persons leaving home?
- Specify the acceptable people, behaviors, situations, and circumstances (including alternatives and options) that, if in place and active, would resolve the reasons an in-home safety plan was originally determined to be insufficient.
- Always include as a condition for return that the family agree to a court-ordered in-home safety plan.

The Court-Ordered Case Plan

The *case plan* is different from the safety plan in two respects:

- **It details what must change to be "successful,"** such as terminating court jurisdiction; (versus an in-home safety plan detailing what must be controlled for the child to be placed at home).
- **Its effect can be achieved over time** (versus a safety plan day-by-day controlling threats of danger).

Federal and state laws and policies specify requirements for case plans (including requirements about the child and foster parents).

This chapter shows judges and advocates how to determine whether a case plan recommended by the parties a) is consistent with federal safety requirements; b) is consistent with a logical process for safety decision-making; and c) has a high likelihood of achieving "success."

Federal Foster Care Requirements: Titles IV-B and IV-E of the Social Security Act, as Amended by the Adoption and Safe Families Act (ASFA)

When children are deemed unsafe and are placed out-of-home to assure safety, ASFA says the following about case plans:

Excerpt from ASFA

SEC.475. [42 U.S.C. 675] as used in this part or part B of this title:

(1) The term "case plan" means a written document which includes at least the following:

(B) A plan assuring that the child receives safe and proper care and that the services are provided to parents, child and foster parents in order *to improve conditions in the parents' home, facilitate return of the child to his own safe home* (emphasis added)

and

(5) (B) the status of each child is reviewed periodically but no less frequently than once every six months by either a court or by administrative review…in order to determine the safety of the child, the continuing necessity for and appropriateness of the placement, *the extent of compliance with the case plan, and the extent of progress which has been made toward alleviating or mitigating the causes necessitating the placement* (emphasis added)

The case plan should contain a logical strategy for addressing the reasons the court became involved: threats of danger to the child and parents' insufficient protective capacity.

Federal law also establishes time limits for children in an out-of-home placement. These time limits make it essential that:

- The case plan lays out an effective and expedient strategy to prepare parents to ensure children's safety; and
- Progress under the case plan is evaluated frequently and revised when needed.

The case plan outcome should be a home environment with no threats of danger or, at least, sufficient protective capacities to manage such threats. The case plan should include goals, tasks, and timetables for services facili-

tating changes: eliminate specific threats of danger and develop protective capacities regarding threats.

Again, keep in mind that while the case plan should reduce threats of danger over time, the safety plan, out-of-home or in-home, ensures the child's safety now. While the case plan and safety plan may be written in the same document, it is helpful to keep their purposes distinct.

Note that a case plan covers more than safety outcomes; it also outlines how to get children's needs met. **This *Guide* only addresses safety aspects of case plans.**

Increasing the Case Plan's Likelihood for Success

BENCHCARD K

The judge should consider:

- **Does the case plan include goals or tasks addressing changes** in behaviors, commitments, and attitudes related to safety? Listing services people must attend, directing them to "follow all treatment recommendations," does not allow the court to measure progress, only to measure attendance or participation.

  An example: "Alan will demonstrate an ability and willingness to delay his own needs to provide food, supervision, and attention for his daughter Kayla."

- **Does the case plan follow logically from the threats** and gaps in protective capacities in the home? Be precise when detailing a case plan's strategy, and specify what must change.
- **Does the case plan duplicate the safety plan**? If yes, one plan (or both) is not fulfilling its purpose. A case plan does not replace the safety plan, nor is it a duplicate. These plans work concurrently. The case plan works on changing things so the parents, in time, can keep their child safe without the court intervening; while the safety plan, in or out-of-home, helps control things now so the child stays safe from threats.
- **Does the case plan target issues that influence threats of danger?** Does it target conditions interfering with parent protective capacity? Some parents must deal with their own experiences of being victimized to develop protective capacities. Some mental health issues make a parent so ill-prepared for being protective that those issues must be addressed first. A case plan calling for the parent to "learn about child development" will fail if it does not address these crucial problems.
- **How do parents react to the case plan?** An experienced judge knows how to gauge a parent's hope, fear, or remorse.
- **Does the case plan focus on reducing threats without also increasing protective capacities?** The family has the best chance for success if they reduce threats *and* increase protective capacity. Compare the benefits of a) having a single mother end her live-in relationship with her boyfriend who physically abused her and her child; and b) helping that mother develop her alertness to danger and willingness to put her child first. If the first succeeds, one threat is eliminated. If the second succeeds, future threats will be managed by the mother. Both strategies can be in the case plan. Focusing solely on reducing threats, while more obvious, will likely limit long-term success.

CASE EXAMPLE

What a Safety Related Case Plan Looks Like

Note: not all information will be provided in this sample **excerpt** of a case plan. *Goals, services related specifically to the children's treatment needs, the foster parent, permanency planning requirements, etc. would also be included in a complete case plan.* What follows is an example of a strategy that involves increasing protective capacities and decreasing threats of danger. (Of course, real case plans may follow other formats.)

Family Composition:

Mother: Jennifer, age 21

Children: Ashante, age 4; Anijah, age 2, and Richard, age 8 months

Specific Threats:

The parent's behavior is dangerously impulsive or she will not/cannot control her behavior.

In attempting to discipline the children, the mother lost her temper and ended up injuring Anijah's face with a broken broom. Although the mother was upset over the injury, she acknowledged that she felt that she was unable to control herself and unable to prohibit herself from hurting the children. The mother's general pattern of responding to problems and difficulties appears impulsive and short sighted, and at the time she is unaware of how her actions may result in serious harm to her children. The mother reports a history of "problematic relationships" with men characterized by verbal arguing and physical altercation, which she herself sometimes instigates. The mother has a previous charge of disorderly conduct to which she pleaded no contest. The mother's lack of foresight ("present-mindedness") and impulsive behavior coupled with numerous sources of stress limit her ability to manage her own behavior to keep from injuring the children.

The parent lacks parenting knowledge, skills, and motivation necessary to assure the children's basic needs are met.

The mother has difficulty establishing and applying consistent routines and rules for the children. She lacks planning and foresight in her care and discipline of her children. She has unrealistic expectations regarding the children's behavior, specifically feeling that the children are capable of managing themselves. These views, in effect, place the children in danger. She is unhappy in the parenting role. This compounds her feelings of stress and contributes to her outbursts toward the children.

The family does not have or use resources necessary to assure a child's basic needs.

The mother is unable to meet the children's basic needs for food, clothing, stable shelter, and medical treatment. This inability is due in part to her poverty, limited education, and lack of self discipline, and lack of job skills. It is also due to the mother's lack of planning, forethought, and effort to take necessary steps to provide for the needs of the children. Currently the mother is unemployed and she is reluctant to seek employment. Mother has a longstanding history of dependence on others: boyfriends and relatives meet her needs and makes decisions based on the crisis of the moment. The mother's lack of planning has caused her increased stress; feeling of being trapped and isolated; inability to maintain stable housing; inconsistency in providing for the children's food, shelter, and medical care; and impulsiveness in her care of the children.

CASE PLAN (CHILD CURRENTLY IN FOSTER CARE)

Case Plan Strategy or Objective:

By focusing on enhancing specific parent protective capacities that Jennifer lacks, and by using appropriate services to help, Jennifer will become able on her own to manage her behaviors or other issues that are causing the threats to the children.

Case Plan Goals:

Jennifer can effectively think through, develop and discuss realistic long term plans for assuring the protection and basic needs of the children; she is proactive in seeking help; she anticipates problems and is solution focused in her response.

Jennifer is creative and adaptive as a parent as evidenced by being able to adjust to changes in her life; and she makes reasonable choices to effectively deal with the challenges facing her and her children.

CASE EXAMPLE

Jennifer is able to cope with stresses and is determined to see plans through in order to manage her life and care for her children.

Jennifer can control her emotions and behavior; she is tolerant when dealing with the children; and is able to consistently manage their behavior in ways that are helpful to them and to her.

Jennifer uses resources necessary to meet the children's basic needs and is thoughtful about how best to use resources to assure the long terms care of the children (i.e. stable housing, food, and clothing).

Services to Help Achieve Goals:

Individual therapy, 1x per week, with Jane Doe, Ph.D.

Home management skill building, 2x per month, with DSS parent aide and 1x/month with CPS worker

Employment and Housing Assistance, 18 sessions beginning 12/1, with DSS economic assistance program

Support Group for Adults Who Were Victims as Children, 1x per week, at mental health clinic

Case Management Responsibility:

CPS social worker will help enroll Jennifer in the above services and resources. The worker will coordinate and communicate with all parties to routinely evaluate the progress of the case plan goals and notify the court of any significant events or need for revision.

Progress Evaluation Timeframe:

Every 90 days the CPS worker will consider Jennifer's progress and make adjustments as needed. The CPS worker's sources for information regarding Jennifer's progress will be from Jennifer herself, the CPS worker's own observations, the parent aide, Dr. Jane Doe, the mental health clinic support group facilitator, and Jennifer's economic assistance worker.

Evaluating Progress Using Safety Criteria

As the example in Chapter 8 illustrates, progress towards achieving case plan goals will be measured in behavioral, emotional, and mental health changes. Simply measuring attendance, or participation, in services is insufficient. The judge can order that progress is evaluated frequently, far more often than twice per year.

When children are unsafe and a safety plan is active, the judge must evaluate progress during the review hearing no matter how many other many issues need to be resolved. The judge evaluates progress to determine whether:

- The safety plan and case plan are appropriate;
- Services, actions, tasks and responsibilities are being carried out according to plan;
- Parents and others are participating according to commitments made in both plans;
- Progress is occurring;
- Conditions for return have been met; and
- The safety plan or case plan must be modified or revised.

If the judge raises these issues in every hearing, it can influence how diligently the parties meet their case plan responsibilities. *The judge's influence is often critical to achieving a safe home for the child and a successful plan.*

Judges and attorneys should focus on critical safety issues. This focus can help deter parties from overemphasizing attending services and can avoid confusing *child well-being*, such as appropriateness of the child's education while in care, with *child safety*.

Safety-related questions, in sequence, for judge to consider:

- **What do parties know about child safety issues, including progress under the case plan?** Are the six questions (Chapter 2) about the family being answered today with current information? Can they be answered with credible information free from bias?
- **What is the status of the threats of danger and, what, if any additional threats of danger have emerged?** Does information suggest threats are diminishing or emerging differently? Ask for information about each original threat. What, if any, information has come forth concerning new threats of danger?
- **What is the status of parent protective capacities?** Have the parents demonstrated enhanced capacity? Will parents protect without intervention? Has there been any change in their willingness, awareness, and ability to protect the child from threats of danger? Judges should get information about each protective capacity identified in the case plan.
- **Are there differences of opinion among the parties?** Learn why differences are present. Resist listening to one opinion or relying on the most credentialed "expert." Challenge the parties to reconcile differences of opinion and consider their rationales.
- **Have conditions for return been met?** This question must be asked, regardless of how well treatment is or is not progressing.

Resist "raising the bar" by having higher standards for returning the child than removing the child. Is an in-home safety plan now sufficient, feasible, and sustainable until the parent is able to protect the child without help?

- **Can the in-home safety plan be revised to be less intrusive?** The answer to this question depends upon how threats are emerging, any changes in parent awareness, and parents acknowledging a safety plan is important and necessary.
- **If there has been little progress, consider:**
  - Does the case plan contain the right strategies?
  - Are the services and/or the providers appropriate for the task?
  - Does the parent want the same changes as the parties?
  - Does the lack of progress affect permanency issues if an out-of-home safety plan is in effect? There is a solid link between safety outcomes and permanency, with one influencing the other. Consider how long it will take for the conditions for return to be met – and how long it is reasonable to continue working on the reunification goal.

CASE EXAMPLE

Safety-Related Portions Regarding Case Plan Progress

The following case evaluation information relates to a family of a single mother with a daughter, age 7. There is an out-of-home safety plan in place. Only safety related case information is provided here. This is an evaluation made 90 days after the case plan was ordered.

Case Plan Start Date: October 31

Date of this Case Plan Evaluation: January 25th

Anticipated Date of Next Case Plan Evaluation (90 days): April 25th

Sources of information for the Case Plan Evaluation:

1. Angela Russell, mother
2. Angel Russell, daughter
3. Amy Johnson, Foster Mother
4. Eugene Christianson, Therapist

Section II. Safety Re-Evaluation

A. Current Status of Threats of Danger

The family situation results in no adult in the home routinely performing basic and essential parenting duties and responsibilities.

One or both parents' behavior is dangerously impulsive or they will not/cannot control their behavior.

One or both parents lack parenting knowledge, skills, and motivation necessary to assure a child's basic needs are met.

B. Description of the Impending Threats and how they currently Emerge:

There remains significant concern regarding Angela's ability to adequately supervise Angel and manage her behavior. While Angela continues to deny that substance usage is a problem, she has had several "dirty" UAs (analysis of urine to discover whether there is proof of recent drug or alcohol use) since the implementation of the case plan. Angela's depression appears less intense than before, but she apparently continues to use drugs to stave off further depression. Her sporadic use of drugs coupled with her "on and off again" involvement with friends who reinforce her substance abuse show that she remains unable to provide a consistent and safe home for Angel.

CASE EXAMPLE

Section III. Parent Protective Capacity Measure

Identify what progress has been made toward enhancing parent protective capacities:

Protective Capacity Goal #1: Ms. Russell will become able to recognize and accept her problems and circumstances and learns to find solutions to typical practical difficulties in caring for Angel.

Minimal Progress has been made: Although Angela still adamantly denies that Angel was unsafe in her home, she has become increasingly aware there are significant issues that need to be resolved. At some level, Angela seems to have become surprisingly self-aware about how her inability to cope with and manage her emotions impact the decisions she makes for herself and Angel. Angela has been consistently participating in individual counseling. She indicates that it has been particularly helpful for her in "working out some of her own issues." While Angela seems to be making significant of progress in certain areas of her life, her continued use of drugs makes it unclear whether she will achieve sufficient long-term change within the time permitted by law to allow Angel's safe return home before the case permanency goal must be changed.

Protective Capacity Goal #2: Ms. Russell will become able to actively keep Angel safe, as shown by her staying on top of Angel's needs (basic care, medical care, and supervision), being able to get out of bed, and appropriately supervising and managing Angel.

Minimal Progress has been made: Generally during home visits, Angela vacillates back and forth between appearing sad, withdrawn; expressing feelings of hopelessness; and expressing a desire for things to be different and being interested in working on problems. There is an improvement in her energy level and outlook in that Angela has consistently and actively participated in individual counseling. Further progress is possible if Angela consistently uses her anti-depressant medication and sharply curtails her substance usage.

Protective Capacity Goal #3: Angela will demonstrate adequate self-control as shown by her avoiding the use of substances that prohibit her from providing for Angel's safety and needs.

No Progress has been made: Angela passively participates in conversations related to her substance usage. She sits through the conversation, occasionally offering short and cursory comments. During the last several weeks, Angela has become more closed to talking to the CPS worker about substance usage. At this point, she neither denies nor admits that she is using. In spite of having another dirty UA, Angela seems to have rationalized to herself that her methamphetamine usage is rare and that her continued usage does not have a significant affect on her functioning. Angela completed a substance abuse evaluation immediately following the implementation of the case plan, but has not followed through with the treatment recommendations. She indicates that she does not need substance abuse treatment because she "does not have a problem."

Protective Capacity Goal #4: Ms. Russell will be able to meet her own emotional needs and, therefore, will have the ability to meet the needs of Angel as shown by her having a positive outlook about her life, confidence in her own self-sufficiency; and selectivity in choosing healthy and positive peer relationships and activities are good for her and Angel.

*Minimal Progress has been made: A*ngela remains open to discussing issues related specifically to her. She processes her feelings and thoughts about her emotional state, about losses in her life and feelings of victimization. At a certain level and depending on the day of the meeting and how alert and optimistic Angela is, she is willing to explore the possibility that her current relationships may not be particularly helpful to her in overcoming problems. She has talked about how she does not want to have any of Phil's friends over to the house and that usually they will just go out if they are going to get together. On more than one occasion, Angela has

CASE EXAMPLE

dropped a hint that she is not necessarily happy with her relationship with Phil, which in some ways, seems to be more of a matter of convenience for both of them. However, it appears that Angela's need for belonging, need for companionship, need for diversion and escape continue to heavily influence her choices.

Protective Capacity Goal #5: Ms. Russell will be able to recognize when situations may threaten Angel and will be able to show that she has specific and effective plans for keeping Angel well supervised and protected.

Minimal Progress has been made: Angela admits that Angel may have been unintentionally exposed to situations that she should not have, but she minimizes the effects of those experiences. Angela readily acknowledges that there are things about her parenting that must improve but still contends that CPS involvement and foster placement were unnecessary. When discussing her relationship and parenting of Angel, she agrees that for quite a while she has evaded her responsibilities to care for Angel. Angela says she feels guilty for not being "more on top of what was going on in the home." She seems to be struggling to fully recognize that it is not good to expose Angel to her drug use and sexual activities of herself and her friends.

Section IV.
Revisions of Case Plan Activities

The case plan will remain as is except that Angela's substance abuse treatment plan may need to be changed. The case plan should require another substance abuse consultation to help reevaluate the current treatment strategy. At the same time, the plan should include intensified efforts to try to engage Angela again in substance abuse treatment. Since Angela is not ready for Angel to return home, home based services to prepare for an in-home safety plan will be further delayed.

Section V.
Facilitating Change

A. Client's Motivation

Angela has been willing to discuss the need to make changes in her life – other than curtailing her substance abuse. She has consistently attended therapy and seems invested in making some changes in her life and improving her care of Angel.

B. Client's Relationship with CPS

The relationship between this worker and Angela seems fairly good. Angela seems to understand and to some extent appreciate the reason for CPS intervention. She seems increasingly trusting and has been fairly open during discussions, with the exception of dealing with the substance usage issue.

C. Forthcoming Case Management Activities

In addition to regularly scheduled meetings with Angela, this case worker will focus on getting Angela back into substance abuse treatment to at least attend outpatient treatment sessions.

This worker will also work out a plan with Angela to make sure that she consistently takes her anti-depressant medication.

Reunification: A Safety Decision

Deciding when a child can be reunified safely – and stay home safely is one that troubles most judges. This chapter reinforces the idea that the reunification decision has the same threshold as the out-of-home safety plan decision. Practical help will be offered on identifying essential information, and how to weigh its significance.

The formal case plan evaluation informs the reunification decision. As noted in Chapter 9, watching progress should be continual, occurring between as well as at court review hearings.

A Review of Issues Central to the Reunification Decision

- Parents do not have to complete treatment nor do all safety threats need to disappear before reunification can occur.
- The conditions for return are reunification benchmarks, not case plan goals and objectives.
- The fundamental issues are:
  - Has there been enough change in threats, in protective capacities, and in *circumstances*, that the earlier reason an in-home safety plan was insufficient is no longer accurate?
  - Does an analysis (described in Chapter 6), using the same criteria that required an out-of-home safety plan, now find that an in-home safety plan is sufficient to control the threats, is feasible and **can be sustained** until the parent can protect without help?
- Deciding to reunify the child and family is determining an in-home safety plan can replace an out-of-home safety plan.

CASE EXAMPLE

How Evaluation of Case Plan Progress is Used to Decide Reunification

Consider the sample of the case plan evaluation on the Russell case, given in Chapter 9. Using that information about the level of progress, the following questions are asked in order to consider if an in-home safety plan can replace the out-of-home safety plan. Note the similarity to the original analysis questions described in Chapter 6. (these questions are asked each time the case is evaluated)

Russell Family

A. Ongoing Safety Management: Controlling Impending Danger

(Consider the following safety analysis questions and conditions for return to determine the least intrusive and most appropriate level of effort for controlling and managing safety threats.):

Is the home environment stable enough to sustain the use of an in-home safety plan: **No**

Are parents willing to be involved and cooperate with the use of an in-home safety plan: **Yes**

Are safety services available and accessible at the level of effort required to assure safety in the home: **No**

Are safety service providers committed to participating in the in-home safety plan: **No**

Does the in-home safety plan provide the proper level of intrusiveness and level of effort to manage safety threats **No**

Has there been a specific change in family circumstances and/or protective capacities that would allow for the use of an in-home safety plan: **(conditions for return) No**

Have parent(s) been consistent and

CASE EXAMPLE

responsive with respect to visitation opportunities: **Yes**

(An answer of "No" to any of these questions would prompt revision to an in-home safety plan, consideration of the need for an out-of-home safety plan or continue to maintain the child in placement)

- In-Home Safety Plan remains sufficient
- In-Home Safety Plan revised as needed
- The use of an in-home safety plan is indicated (proceed to developing a reunification plan and develop and complete an in-home safety plan)
- Placement out of the home is indicated

Therefore, continued placement is indicated

Justify response:

Angela's continued substance usage and the indication that "friends" continue to come in and out of the home does not make it prudent to use an in-home safety plan at this time. Further, there are not sufficient in-home safety services at the time needed (evening and night) to assure child's supervision.

Determining Whether to Reunify

BENCHCARD L

While deciding whether to reunify, the judge requires the following information:

- The status of the original threats of danger and any newly emerged threats
- The nature, quality, and length of visits between child and parent. (By the time reunification is considered, visits should have been frequent, consistent, and unsupervised).
- Specific information about changes in parent behavior, attitudes, motivation, and interactions. (This has little to do with how many service sessions parents attended).
- Parental willingness and capacity to support reunification and an in-home safety plan. (Note this has *nothing* to do with gaining parental promises to control situations already determined out-of-control).
- Information and observations from the out-of-home care provider. (What are patterns of child or parent behavior before, during, and after visits, or changes in the child since placement that will influence reunification's success)?
- The preparation given the out-of home care provider to support reunification. (The natural loss experienced by the provider if reunification occurs does not rule out the value their information; consider how their support or lack of it will influence reunification).
- Progress noted by providers; opinions of providers regarding reunification; recommendations from providers about what is needed for the in-home safety plan to be sufficient. (Scrutinize differences of opinion; resist relying on one party, or the person with the most credentials; sort through turf wars and personality conflicts).
- The recommendation and its justification from the CPS worker. (The worker should not be relying solely on "the recommendations of Dr. X"—demand he/she make a recommendation and explain how he/she arrived at the recommendation).
- The specifics of a reunification plan, including: (A reunification *plan* means that even if

the court orders reunification, it must happen with preparation, not at 6 pm tonight. Neither should it wait until the end of the school semester or some other lengthy timeframe.)

- The changes to the visitation schedule, how will visits increase and still be used to keep measuring and building confidence in the reunification decision?
- Involvement as appropriate of the extended family
- Involvement of the out-of-home care provider, foster parent
- Specific time frames
- The plan to prepare the child; who will talk to the child? Who will discuss emotions, such as what will be missed in the placement home and other issues important to the child?
- The plan to prepare the family and the home for child's return. (There are unspoken issues the parent may feel guilty about raising, or worried that they may be misinterpreted as not being ready. There also must be a plan (who, when) for discussing and solving practical issues such as school or transportation and emotional issues such as fear or anxiety. Do not assume the therapist will do this. Get specifics on how these important topics will be resolved).
- The specifics of the in-home safety plan: actions, frequency, providers, and roles. (Details are required: who will do what, when, and for how long).
- The role and responsibility for active safety plan management by the CPS worker; reunification is the most dangerous time for the child. (The court should be alert; often agency and service providers now see this family as successful so contact slows. Order specifics of how the safety plan will be aggressively supervised).

Safety Criteria Help Determine When to Terminate Court Jurisdiction

Just as evaluating the case plan informs the reunification decision, so too it provides the basis for terminating court jurisdiction. Using criteria for what makes a child safe helps avoid prematurely dismissing the case at reunification. If the court dismisses the case when a child returns home, either that dismissal is too early or the child was returned home too late.

Another common error in case dismissal is arbitrarily using the calendar for ending the court order, such as at six months or one year after reunification. Deciding to dismiss should be based on analyzing the child's safety, including showing that threats of danger are no longer present or that sufficient protective capacities now exist.

Only consider terminating the court order if the child is safe. This can be achieved by:

- Eliminating threats of danger, so the child is safe;
- Improving the parents' protective capacities to control threats of danger; or
- A combination of both: reducing threats of danger *and* improving parents' protective capacities.

Key criteria to help determine the improvements will endure:

- Parent change, such as enhanced protective capacity, ongoing for a reasonable period of time;
- The parent can describe the change and explain how the change has produced benefits;
- The parent is taking active steps to sustain the change; and
- The child and parent are getting help from support services, members of their extended family, or others.

SUMMARY

- Decisions about child safety must be methodical, logical, and thorough, following a careful sequence of critical thinking.
- Good decisions about safety require extensive information about the family, more than just describing the maltreatment. The judge should know: the extent of maltreatment, circumstances contributing to the maltreatment, the child's vulnerabilities and strengths, the attitudes, behavior, and condition of parents, and how parents care for and discipline the child.
- This information guides the judge in determining whether there is a sufficient "threat of danger" to justify the court intervening; what out-of-control circumstances will result in immediate and severe harm to a vulnerable child.
- The child is unsafe if threats of danger exist, the child is vulnerable, and parents have insufficient protective capacities to control the danger. A safety plan must then temporarily compensate for parents' inability to control the threats of danger.
- When a child is currently unsafe, question whether an in-home safety plan is appropriate. How that question is answered explains if reasonable efforts to prevent removal or reunify the family would support an in-home safety plan.
- A child being unsafe does not mean that the child must be removed from home or be placed into foster care. Work to develop a practical, sustainable in-home safety plan that keeps the child at home.
- Safety plans may be 100% in-home plans or 100% out-of-home plans — or some combination of both, where at times a child will be in and out of the home. In either case, in-home and out-of-home safety plans must be managed by CPS to assure they are working and determine whether they need revising.
- Out-of-home safety plans require immediate decisions about the child's visitation and contacts with parents and siblings, and should specify conditions for the child's return home. These conditions for return should be based on both the exact threats of danger and the reasons why an in-home safety plan was not sufficient, feasible and/or sustainable.
- The case plan (as opposed to the safety plan) identifies what must change for the child to be fully safe, for the court to ultimately dismiss the case. The case plan identifies long term goals and services that reduce specific threats of danger and will increase parents' protective capacities.
- These two different and concurrent plans must remain distinct. This allows equal attention to be given to short term safety tasks and actions (the safety plan) and long term safety goals and services (the case plan).
- Frequently evaluate case plan progress to assure its effectiveness; at a minimum of every 90 days.
- Family reunification should occur when an in-home safety plan is now sufficient, feasible and sustainable. Deciding on an early in-home safety plan is similar to later deciding whether to reunify the family. Both need to know how to safely place the child with parents while working to end court intervention. The court should dismiss the case when sufficient information supports the judgment that threats of danger are now absent, or parents have sufficient protective capacities, or both.

Threats of Danger Definitions and Examples

Present Threats of Danger

Sometimes threats of danger happen right in front of the CPS worker and cause little doubt about the need for immediate protection. These are threats that most often are described in initial petitions and are the reason for emergency removal decisions. Threats like these are in the present (at the time of CPS response) and are cause for an urgent response to assure safety. Examples include:

- Hitting, beating, severely depriving of basic necessities now (during CPS response)
- Injuries to the face and head
- Life threatening living arrangements
- Bizarre cruelty toward a child
- Vulnerable children who are left unsupervised or alone now (during CPS response)
- Child needing immediate medical care to avoid/treat severe consequences
- Caregiver exhibiting bizarre behavior suggesting possible harm to child
- Caregiver under the influence of substances now (during CPS response)
- Caregiver cannot/will not explain child's serious injuries

When these kinds of threats are occurring, most often the only practical protective action by CPS is removal of the child because little else is known at the time. The question of removal is the principal subject of the emergency removal hearing, where often little information has been gathered beyond the maltreatment incident and its surrounding circumstances.

Impending Threats of Danger

Most threats of danger are not as obvious as those described above. Even when the initial abuse report sounds serious, caseworkers do not walk into situations very often that have "present threats of danger."

Threats of danger that are impending are discovered by collecting more information than the incident of maltreatment or the immediate situation. By knowing how the adults function, carry out parenting, and how the children are functioning, conditions can be revealed that:

- Are out of control;
- Will play out in the next few days or weeks; and
- Will have severe consequences to vulnerable children

Once identified, impending threats of danger demand immediate and diligent efforts to ensure protection of the child. The information that has been collected around the 6 questions will provide more detail than the emergency circumstances, and will help the court fully understand what will be sufficient, feasible and sustainable to assure safety.

The following illustrates the difference between a present threat of danger and an impending threat of danger.

The Difference between a Present Threat of Danger and Impending Threat of Danger in Plain Language

Present Threat of Danger:

Worker arrives at the home to begin contact and 3 year old child answers door, saying mother is sleeping. No one else is in the home besides 3 year old and 18 month old sibling. Mother is in locked bedroom sleeping soundly, having had alcohol and taken prescription pills (non-lethal but enough to not hear her children or the doorbell). The mother does not become coherent when awakened by worker. The children have not eaten anything but candy and are playing with some twine and wire hangers. No other adult is present to supervise and care for the children. A crisis mental health team is called and they convince the mother to self-admit to detox.

Impending Threat of Danger:

Worker arrives at the home and the mother of a 3-year-old and an 18-month-old answers the door. The mother seems reluctant to talk but she could be ill or not want CPS in her home. She shows little emotion and seems not interested in much, including the children. During this initial contact all basic provision of parenting seems to be occurring. In interviewing the mother, the maternal grandmother and the daycare provider over the course of 2 days, the worker learns that mother's brother was killed 2 months ago in Iraq, the mother is overwhelmed with parenting, forgot to feed her children dinner last Monday, has increasing thoughts of suicide, and took 3 times the dose (non-lethal) of her sleep medication once last week to numb her pain and get some sleep. No other adult is present to supervise and care for the children.

The following list identifies 15 threats of danger, with definitions and examples. A child is unsafe when one or more of these threats exist, a child is vulnerable to the threats, and the parent/caregiver lacks sufficient protective capacity to manage or control the threats.

Threats of Danger Definitions and Examples

1 No adult in the home is routinely performing basic and essential parenting duties and responsibilities.

This threat refers only to adults (not children) regarding responsibilities for provision of food, clothing, shelter, and supervision. Consideration is at a basic level: the absence of any of these basic duties will result in severe consequences to a child. This can include:

- situations in which parents'/caregivers' whereabouts are unknown.
- a child's caregiver is present and available but does not provide supervision or basic care.
- failure to provide supervision and basic care may be due to avoidance or physical incapacity.

This threat includes both behaviors and emotions illustrated in the following examples.

- Caregiver's physical or mental disability/incapacitation makes the person unable or unavailable to provide basic care for the children.
- Caregiver is or has been absent from the home for lengthy periods of time, and no other adults are available to provide basic care without CPS coordination.
- Caregivers have abandoned the children.
- Caregiver arranged care by another adult, but caregiver's whereabouts are unknown or they have not returned according to plan, and the current caregiver is asking for relief.
- Caregiver is or will be incarcerated, leaving the children without a responsible adult to provide care without CPS coordination.

- Caregiver does not respond to or ignores a child's basic needs.
- Caregiver allows child to wander in and out of the home or through the neighborhood without the necessary supervision.
- Caregiver ignores; does not provide necessary, protective supervision and basic care appropriate to the age and capacity of a child.
- Caregiver is unavailable to provide necessary, protective supervision and basic care because of physical illness or incapacity.
- Caregiver allows other adults to improperly influence (drugs, alcohol, abusive behavior) the child.
- Child has been left with someone who does not know the caregiver.

2 One or both caregivers' behavior is violent and/or they are acting (behaving) dangerously.

Violence refers to aggression, fighting, brutality, cruelty and hostility. It may be immediately observable, regularly active or generally potentially active.

This threat includes both behaviors and emotions illustrated in the following examples.

- Violence includes hitting, beating, physically assaulting a child, spouse or other family member.
- Violence includes acting dangerously toward a child or others including throwing things, bantering weapons, driving recklessly, aggressively intimidating and terrorizing.
- Family violence involves physical and verbal assault on a parent in the presence of a child, the child witnesses the activity and is fearful for self and/or others.
- Family violence occurs and a child has been assaulted.
- Family violence occurs and a child has attempted to intervene.
- Family violence occurs and a child could reasonably be inadvertently harmed even though the child may not be the actual target of the violence.
- Caregiver is physically impulsive, exhibiting physical aggression, having temper outbursts or unanticipated and harmful physical reactions.
- Caregiver's behavior outside the home (e.g., drugs, violence, aggressiveness) creates an environment within the home that could reasonably cause severe consequences to the child (e.g., drug parties, gangs, drive-by shootings).

3 One or both caregivers' behavior is dangerously impulsive or they will not/cannot control their behavior.

This threat is about self-control: a person's ability to postpone, set aside needs; plan; be dependable; avoid destructive behavior; use good judgment; not act on impulses; exert energy and action; inhibit, manage emotions. Caregiver's lack of self-control places vulnerable children in jeopardy. This threat includes caregivers who are incapacitated or not controlling their behavior because of mental health or substance abuse issues.

Poor impulse control or lack of self-control includes behaviors other than aggression and can lead to severe consequences to a child, illustrated in the following examples.

- Caregiver is seriously depressed and unable to control emotions or behaviors.
- Caregiver is chemically dependent and

unable to control the dependency's effects.

- Substance abuse renders the caregivers incapable of routinely/consistently attending to the children's basic needs.
- Caregiver makes impulsive decisions and plans that leave the children in precarious situations (e.g., unsupervised, supervised by an unreliable caregiver).
- Caregiver spends money impulsively resulting in a lack of basic necessities.
- Caregiver is emotionally immobilized (chronically or situational) and cannot control behavior.
- Caregiver has addictive patterns or behaviors (e.g., addiction to substances, gambling or computers) that are uncontrolled and leave the children in potentially severe situations (e.g., failure to supervise or provide other basic care).
- Caregiver is delusional and/or experiencing hallucinations.
- Caregiver cannot control sexual impulses (e.g., sexual activity with or in front of children).
- Caregiver is seriously depressed and functionally unable to meet the children's basic needs.

4 Caregivers' perceptions of a child are extremely negative.

"Extremely" means a perception that, when present, an out of control response by the caregiver is likely and will have severe consequences for the child. The perception can be reasonably connected to caregiver behavior that can lead to imminent and severe harm to the child.

This threat is illustrated by the following examples.

- Child is perceived to be evil, deficient, or embarrassing.
- Child is perceived as having the same characteristics as someone the caregiver hates or is fearful of or hostile towards, and the caregiver transfers feelings and perceptions of the person to the child.
- Child is perceived to be punishing or torturing the parent/caregiver.
- One caregiver is jealous of the child and believes the child is a detriment or threat to the caregivers' relationship.
- Caregiver sees child as an undesirable extension of self and views child with some sense of purging or punishing.
- Caregiver sees the child as responsible and accountable for the caregiver's problems; blames the child; perceives, behaves, acts out toward the child based on a lack of reality or appropriateness.

5 The family does not have or use resources necessary to assure a child's basic needs.

"Basic needs" refers to the family's lack of (1) minimal resources to provide shelter, food, and clothing or (2) the capacity to use resources for basic needs, even when available.

This threat is illustrated in the following examples.

- Family has insufficient money to provide basic and protective care.
- Family has insufficient food, clothing, or shelter for basic needs of child.
- Family finances are insufficient to support needs (e.g. medical care) that, if unmet, could result in severe consequences to the child.

- Caregivers lack life management skills to properly use resources for basics when they are available.
- Family is routinely using their resources for things (e.g., drugs) other than their basic care and support resulting in the children's basic needs not being adequately met.

6 One or both caregivers are threatening to severely harm a child or are fearful they will maltreat the child and/or request placement.

Caregivers are implicitly or explicitly threatening to hurt a child. Their emotions and intentions are hostile, menacing and sufficiently believable to conclude grave concern for immediate and severe consequences to a child. This threat also refers to caregivers who express anxiety and dread about their ability to control their emotions and reactions toward their child.

This threat is illustrated in the following examples.

- Caregivers use specific threatening terms including identifying how they will harm the child or what sort of harm they intend to inflict.
- Caregiver's threats are severe, plausible, believable, and may be related to specific provocative child behavior.
- Caregivers state they will maltreat the child.
- Caregiver describes conditions and situations which stimulate them to think about maltreating the child.
- Caregiver talks about being worried about, fearful of, or preoccupied with maltreating the child.
- Caregiver identifies things the child does that aggravate or annoy the parent/caregiver in ways that make the parent want to attack the child.
- Caregiver describes disciplinary incidents that have become out-of-control.
- Caregivers are distressed or "at the end of their rope," and are asking for some relief in either specific (e.g., "take the child") or general (e.g., "please help me before something awful happens") terms.
- One caregiver expresses concerns about what the other parent/caregiver is capable of or may be doing.

7 One or both caregivers intend(ed) to seriously hurt the child.

Caregivers anticipate acting in a way that will assure pain and suffering. "Intended" means that before or during the time the child was mistreated, the caregiver's conscious purpose was to hurt the child. This threat is distinguished from an incident in which the caregivers meant to discipline or punish the child and the child was inadvertently hurt. "Seriously" refers to an intention to cause the child to suffer physically or emotionally. Caregiver action is more about causing a child pain than about a consequence needed to teach a child.

This threat includes both behaviors and emotions as illustrated in the following examples.

- The incident was planned or had an element of premeditation.
- The nature of the incident or use of an instrument can be reasonably assumed to heighten the level of pain or injury (e.g., cigarette burns).
- Caregiver's motivation to teach or discipline seems secondary to inflicting pain and/or injury.

- It is reasonable to assume that the caregiver had some awareness of what the result would be prior to the incident.
- Caregiver's actions were not impulsive, there was sufficient time and deliberation to assure that the actions hurt the child.

8 One or both caregivers lack parenting knowledge, skills, and motivation necessary to assure a child's basic needs are met.

This refers to basic parenting that directly affects a child's needs for food, clothing, shelter and required level of supervision. It includes caregivers lacking the basic knowledge or skills to meet the child's basic needs; or the lack of motivation resulting in the caregivers abdicating their role to meet basic needs or failing to adequately perform the parental role to meet the child's basic needs. This inability and/or unwillingness to meet basic needs reasonably creates a concern for immediate and severe consequences to a vulnerable child.

This threat is illustrated in the following examples.

- Caregiver's intellectual capacities affect judgment and/or knowledge in ways that prevent the provision of adequate basic care.
- Young or intellectually limited parents/primary caregivers have little or no knowledge of a child's needs and capacity.
- Caregiver's expectations of the child far exceed the child's capacity thereby placing the child in situations that could result in severe consequences.
- Caregiver does not know what basic care is or how to provide it (e.g., how to feed or diaper; how to protect or supervise according to the child's age).
- Caregivers' parenting skills are exceeded by a child's special needs and demands in ways that will result in severe consequences to the child.
- Caregiver's knowledge and skills are adequate for some children's ages and development, but not for others (e.g., able to care for an infant, but cannot control a toddler).
- Caregiver is averse to parenting and does not provide basic needs.
- Caregiver avoids parenting and basic care responsibilities.
- Caregiver allows others to parent or provide care to the child without concern for the other person's ability or capacity.
- Caregiver does not know or does not apply basic safety measures (e.g., keeping medications, sharp objects, or household cleaners out of reach of small children).
- Caregivers do not believe the children's disclosure of abuse/neglect even when there is a preponderance of evidence and this has or will result in severe consequences to the children.

9 Caregivers largely reject CPS intervention; refuse access to a child; and/or there is some indication that the caregivers will flee.

Several circumstances suggest the presence of this threat. The family who hides the child from CPS; avoids CPS access to a child; overtly rejects all attempts by CPS to enter the home, see a child, or conduct necessary information collection. The meaning of "rejection" is far more than a partial failure to cooperate, open anger or hostility about CPS involvement or other signs of general resist-

ance or reluctance. The rejection of CPS intervention must be substantial and pervasive to justify this threat of danger.

This threat can apply when there are indications that a family will change residences, leave the jurisdiction, or refuse access to the child. Information other than the fact that CPS is investigating the family may need to be considered in order to understand if other incentives for the family to flee may exist (e.g., other legal problems, financial problems, etc.)

In all instances when a family is avoiding any intervention by CPS, the current status of the child or the potential consequences for the child must be considered severe and immediate. Overt rejection of CPS could be an expression of a caregiver's rights; however, until access to the child can be gained through legal means, the conclusion about the rejection representing a threat of danger remains.

This threat is illustrated in the following examples.

- Caregivers repeatedly or decisively avoid talking with CPS; or refuse to allow CPS access to the home.
- Caregivers manipulate in order to avoid any contact with CPS; make excuses for not participating; miss appointments; go through various means and methods to avoid CPS involvement and any access to a child.
- Caregivers avoid allowing CPS to see or speak with a child; do not inform CPS where the child actually is located.
- Family is highly transient.
- Family has little tangible attachments (e.g., job, home, property, extended family).
- The family or caregiver has evaded investigation or valid allegations or has fled in the past.
- There are other circumstances prompting flight (e.g., warrants, false identities uncovered, criminal convictions, financial indebtedness).

10 Caregiver refusal and/or failure to meet a child's exceptional needs do/can result in severe consequences to the child.

"Exceptional" refers to specific child conditions (e.g., developmental disability, blindness, physical disability, special medical needs). This threat is present when the caregivers, by not addressing the child's exceptional needs, create an immediate concern for severe consequences to the child.

This does not refer to caregivers who do not do particularly well at meeting a child's special needs, but the consequences are relatively mild. Rather, this refers to specific capacities/skills/intentions in parenting that must occur and are required for the "exceptional" child not to suffer serious consequences.

This threat exists, for example, when the child has a physical or other exceptional need condition that, if unattended, will result in imminent and severe consequences and one of the following applies:

- Caregiver does not recognize the condition or exceptional need.
- Caregiver views the condition as less serious than it is.
- Caregiver refuses to address the condition for religious or other reasons.
- Caregiver lacks the capacity to fully understand the condition.

- Caregiver's expectations of the child are totally unrealistic in view of the child's condition.
- Caregiver allows the child to live or be placed in situations in which harm is increased by virtue of the child's condition.

11 The child's living arrangements seriously endanger the child's physical health.

This threat refers to conditions in the home that are immediately life-threatening or seriously endangering a child's physical health (e.g., people discharging firearms without regard to who might be harmed; the lack of hygiene is so dramatic as to cause or potentially cause serious illness). Physical health includes serious injuries that could occur because of the condition of the living arrangement.

This threat is illustrated in the following examples.

- The family home is being used for methamphetamine production; products and materials used in the production of methamphetamine are being stored and are accessible within the home.
- Housing is unsanitary, filthy, infested, a health hazard.
- The house's physical structure is decaying, falling down.
- Wiring and plumbing in the house are substandard, exposed.
- Furnishings or appliances are hazardous.
- Heating, fireplaces, stoves, are hazardous and accessible.
- The home has easily accessible open windows or balconies in upper stories.
- Occupants in the home, activity within the home, or traffic in and out of the home present a specific concern for severe consequences to a child.
- People who are under the influence of substances that can result in violent, sexual or aggressive behavior are routinely in the home, or have frequent access to the home while under the influence.

12 A child has serious physical injuries or serious physical symptoms from maltreatment that have immediate implications for intervention and caregivers are unwilling or unable to arrange or provide necessary care.

The key words are "serious," and "immediate implications for intervention" (e.g., need for medical attention, extreme physical vulnerability). There are serious physical injuries or symptoms and there is some connection, alleged or confirmed, that the physical injuries or physical symptoms are related to maltreatment.

Many of these examples could be apparent at the first contact CPS has with the family (i.e., present danger threats). Some of the examples, such as failure to thrive, may not be apparent at the initial CPS contact.

When this threat of danger exists, the caregiver is failing to take necessary steps to arrange, provide, or follow through on care related to serious physical injuries or symptoms. The following are examples of such injuries or symptoms:

- Child has severe injuries.
- Child has multiple/different kinds of injuries (e.g. burns and bruises).
- Child has injuries to head or face.

- Injuries appear to have occurred as a result of an attack, assault or out-of-control reaction (e.g. serious bruising across a child's back as if beaten in an out-of-control disciplinary act).
- Injuries appear associated with the use of an instrument which exaggerates method of discipline (e.g., coat hanger, extension cord, kitchen utensil, etc.).
- Child has physical symptoms from maltreatment which require immediate medical treatment.
- Child has physical symptoms from maltreatment which require continual medical treatment.
- Child appears to be suffering from Failure to Thrive.
- Child is malnourished.
- Child has physical injuries or physical symptoms that are a more serious example of similar injuries or symptoms previously known and recorded.

13 A child shows serious emotional symptoms requiring immediate intervention and/or lacks behavioral control that result in self-destructive behavior or provoking dangerous reactions in caregivers and caregivers are unwilling or unable to arrange or provide necessary care.

Key words are "serious" and "lack of behavioral control." "Serious" suggests that the child's condition has immediate implications for intervention (e.g., extreme emotional vulnerability, suicidal thoughts or actions). "Lacks behavioral control" describes the provocative child who stimulates reactions in others.

This threat is illustrated in the following examples.

- Child threatens suicide, attempts suicide, or appears to be having suicidal thoughts.
- Child's emotional state is such that immediate mental health/medical care is needed.
- Child is capable of and likely to self-mutilate.
- Child is a physical danger to others.
- Child abuses substances and may overdose.
- Child is so withdrawn that basic needs are not being met.
- Child is annoying, aggravating to the point of stimulating intolerance in others.
- Child is highly aggressive and acts out repeatedly so as to cause reactive responses.
- Child is confrontational, insulting or so challenging that caregivers lose patience, impulsively strike out at the child, or isolate the child or totally avoid the child.

14 A child is profoundly fearful of the home situation or people within the home.

"Home situation" includes specific family members and/or other conditions in the living arrangement. "People in the home" refers to those who either live in the home or frequent the home so often that a child routinely and reasonably expects that the person may be there or show up.

The child's fear must be obvious, extreme, and related to some perceived danger that the child feels or experiences. This threat can also be present with children who do not verbally express fear but their behavior and emotion clearly and vividly demonstrate fear.

This threat is illustrated in the following examples.

- Child demonstrates emotional and/or physical responses indicating fear of the living situation or of people within the home (e.g., crying, inability to focus, nervousness, withdrawal, running away).
- Child expresses fear and describes people and circumstances which are reasonably threatening.
- Child recounts previous experiences which form the basis for fear.
- Child's fearful response escalates at the mention of home, specific people, or specific circumstances associated with reported incidents.
- Child describes personal threats which seem reasonable and believable.

15 Caregivers cannot, will not or do not explain a child's injuries or threatening family conditions.

Caregivers do not or are unable or unwilling to explain maltreating conditions or injuries that are consistent with the facts. An unexplained serious injury is a present threat of danger and remains so until an explanation alters the seriousness of not knowing how the injury occurred or by whom.

An unexplained injury at CPS initial contact should be considered a present threat of danger with an immediate protective action taken. If the injury remains unexplained at the conclusion of an investigation the lack of an acceptable explanation must be considered an impending threat of danger.

This threat is illustrated in the following examples.

- Caregivers acknowledge the presence of injuries and/or conditions but plead ignorant as to how they occurred.
- Caregivers express concern for the child's condition but are unable to explain it.
- Caregivers appear to be totally competent and appropriate with the exception of 1) the physical or sexual abuse and 2) the lack of an explanation or 3) an explanation that makes no sense.
- Caregivers accept the presence of injuries and conditions but do not explain them or seem concerned.
- Sexual abuse has occurred in which 1) the child discloses that someone in the family has sexually abused him/her; 2) family circumstances, including opportunity, cannot yet be definitively ruled in or out as consistent with sexual abuse; and 3) the caregivers deny the abuse, blame the child, or offer no explanation or an explanation that is unbelievable.
- "Battered Child Syndrome" case circumstances are present and the caregivers appear to be competent, but the child's symptoms do not match the caregivers' appearance and there is no explanation for the child's symptoms.
- Caregivers' explanations are far-fetched.
- Facts observed by CPS staff and/or supported by other professionals that relate to the incident, injury, and/or conditions contradict the caregivers' explanations.
- History and circumstantial information are incongruent with the caregivers' explanation of the injuries and conditions.

RETURN TO CHAPTER 3

Protective Capacities Definitions and Examples

Protective capacity means being protective towards one's young. Protective capacities are cognitive, behavioral, and emotional qualities supporting vigilant protectiveness of children.

Protective capacities are fundamental strengths preparing and empowering the person to protect.

Cognitive Protective Capacities

Cognitive protective capacity refers to specific *knowledge, understanding and perceptions* that contribute to protective vigilance. Although this aspect of protective capacities has some relationship to intellectual or cognitive functioning, it does not mean that parents with lower cognitive functioning cannot protect their children. This aspect has to do with the caregiver's recognition/awareness that:

- I am the parent/caregiver
- I am the one responsible for this child
- I have to look out for danger
- I know and recognize cues that alert me that danger is impending

The stronger this capacity is the more comprehensive and astute this cognition is. For example:

- I understand and recognize how my child's behavior represents his needs
- I know I am responsible for figuring out what those needs are and getting them met
- I am aware that my child and I react to certain stimuli in predictable ways (e.g., stress, impulsive, irritable, etc.)

Examples Of Cognitive Protective Capacities That Can Be Demonstrated:

1 The caregiver plans and articulates a plan to protect the child.

This is the thinking ability that is evidenced in a reasonable, well-thought-out plan.

- People who are realistic in their ideas and arrangements about what is needed to protect a child.
- People who recognize what dangers exist and what arrangement or actions are necessary to safeguard a child.
- People who are aware and show a conscious focused process for thinking that results in an acceptable plan.
- People whose awareness of the plan is best illustrated by their ability to explain it and why it is sufficient.

2 The caregiver is aligned with the child.

This refers to a mental state or an identity with a child.

- People who strongly think of themselves as closely related to or associated with a child.
- People who think that they are highly connected to a child and therefore responsible

for a child's well-being and safety.

- People who consider their relationship with a child as the highest priority.

3 The caregiver has adequate knowledge to fulfill caregiving responsibilities and tasks.

Information and personal knowledge specific to caregiving that are associated with protection.

- People who know enough about child development to keep children safe.
- People who have information related to what is needed to keep a child safe.
- People who know how to provide basic care which assures that children are safe.

4 The caregiver is reality oriented; perceives reality accurately.

Mental awareness and accuracy about one's surroundings; correct perceptions of what is happening; and the viability and appropriateness of responses to what is real and factual.

- People who describe life circumstances accurately.
- People who recognize threatening situations and people.
- People who do not deny reality or operate in unrealistic ways.
- People who are alert to danger posed by people and by the child's environment.
- People who are able to distinguish threats to child safety.

5 The caregiver has accurate perceptions of the child.

Seeing and understanding a child's capabilities, needs and limitations correctly.

- People who know the capacity of children at different ages or with particular characteristics.
- People who see a child exactly as the child is and as others see the child.
- People who recognize the child's needs, strengths and limitations. People who can explain what a child requires for protection and why.
- People who see and value the capabilities of a child and are sensitive to difficulties a child experiences.
- People who appreciate uniqueness and difference.
- People who are accepting and understanding.

6 The caregiver understands his/her protective role.

Being aware and knowing there are certain solely owned responsibilities and obligations that are specific to protecting a child.

- People who possess an internal sense and appreciation for their protective role.
- People who can explain in their own words what the "protective role" means and involves and why it is so important.
- People who recognize the accountability and stakes associated with the role.
- People who value and believe it is their primary responsibility to protect their child.

7 The caregiver is self-aware as a caregiver.

Sensitivity to one's thinking and actions and the effect on others, particularly the child.

- People who understand the cause – effect relationship between their own actions and results for their children
- People who are open to who they are, what they do, and to the effects of what they do.
- People who think about themselves and judge the quality of their thoughts, emotions and behavior.
- People who see that the part of them that is a caregiver is unique and requires different things from them.

Behavioral Protective Capacities

Behavioral protective capacity refers to specific *action, activity and performance* that is consistent with and results in parenting and protective vigilance. While connected to the cognitive aspects of protective capacities, behavioral aspects signify that it is not enough to "know" what must be done, or "recognize" what might be dangerous to a child. The caregiver must act. Behavioral protective capacities mean the caregiver must have:

- The physical ability to act in ways to protect
- The ability/willingness to stop what the caregiver wants to do (defer needs) in order to meet the child's basic needs
- The energy to do what must be done
- The skills that will help the caregiver effectively carry out what he/she intends

Examples Of Behavioral Protective Capacities That Can Be Demonstrated:

1 The caregiver has a history of protecting others

A person with many experiences and events that demonstrate clear and reportable evidence of having been protective. Examples might include:

- People who have raised children with no evidence of maltreatment or exposure to danger.
- People who have protected their children in demonstrative ways by separating them from danger; seeking assistance from others; or similar clear evidence.
- Caregivers and other reliable people who can describe various events and experiences where protectiveness was evident.

2 The caregiver takes action to correct problems or challenges

A person who is action-oriented as a human being, not just as a caregiver.

- People who perform when necessary.
- People who proceed with a course of action.
- People who take necessary steps, such as a caregiver seeking a Protective Order against a violent adult in the home.
- People who are expedient and timely in doing things.
- People who discharge their duties.

3 The caregiver demonstrates impulse control

A person who is deliberate and careful; who acts in managed and self-controlled ways.

- People who do not act on their urges or desires.
- People who do not behave as a result of outside stimulation.
- People who avoid whimsical responses.
- People who think before they act.
- People who plan before they act.

4 The caregiver is physically able.

This refers to people who are sufficiently healthy, mobile and strong.

- People who can run after children.
- People who can lift children.
- People who are able to restrain children.
- People with physical abilities to effectively deal with dangers like fires or physical threats.

5 The caregiver demonstrates adequate skill to fulfill caregiving responsibilities.

The possession and use of skills that are related to being protective.

- People who can feed, care for, supervise children according to their basic needs.
- People who can handle, manage, and oversee the child to keep them safe.
- People who can cook, clean, maintain, guide, and provide shelter as required to keep children safe.

6 The caregiver possesses adequate energy.

The personal drive necessary to be ready for and "on the job" of being protective.

- People who are alert and focused.
- People who can move; are on the move; ready to move; will move in a timely way.
- People who are motivated and have the capacity to work and be active.
- People express force and power in their action and activity.
- People who are rested or able to overcome being tired.

7 The caregiver sets aside her/his needs in favor of a child.

Ability to delay gratifying own needs; accepting the children's needs as a priority over own.

- People who do for themselves after they've done for their children.
- People who sacrifice for their children.
- People who can wait to be satisfied.
- People who seek ways to satisfy their children's needs as the priority.

8 The caregiver is adaptive as a caregiver.

Adjusting and making the best of whatever caregiving situation occurs.

- People who are flexible and adjustable.
- People who accept things and can move with them.
- People who are creative about caregiving.
- People who come up with solutions and ways of behaving that may be new, needed and unfamiliar but more fitting.

9 The caregiver is assertive as a caregiver.

Being positive and persistent.

- People who are firm and have conviction.
- People who are self-confident and self-assured.

- People who are secure with themselves and their ways.
- People who are poised and certain of themselves.
- People who are forceful and forward

10 The caregiver uses resources necessary to meet the child's basic needs.

Knowing what is needed, getting it and using it to keep a child safe.

- People who get people to help them and their children.
- People who use community public and private organizations.
- People who will call on police or access the courts to help them.
- People who use basic services such as food and shelter.

11 The caregiver emotionally supports the child.

This refers to genuine, observable ways of sustaining, encouraging and maintaining a child's psychological, physical and social well-being.

- People who spend considerable time with a child that is filled with positive regard.
- People who take action to assure that children are encouraged and reassured.
- People who take an obvious stand on behalf of a child.

Emotional Protective Capacities

Emotional protective capacity involves the specific *feelings, attitude, identification with the child* and motivation that result in parenting and protective vigilance. Two critical issues influence the strength of emotional protective capacity:

- The nature of the attachment between caregiver and child
- The caregiver's own emotional strength

Most caregivers love their children and this love is the greater motivation to protect their children than simply the knowledge/awareness that they are "supposed to," as discussed in the cognitive examples of protective capacity. When there is sufficient emotional protective capacity, the nature of the attachment between the caregiver and child is demonstrated as:

- Love for the child is unconditional
- The caregiver realizes the child cannot produce gratification and self-esteem for the caregiver
- The quality of the attachment is not diminished when the caregiver discovers the child cannot meet the caregiver's emotional needs

In order to sustain this type of attachment, the caregiver must be:

- Emotionally stable
- Resilient enough to adjust to life and/or parenting difficulties
- Able to express and receive love
- Able to provide nurturing
- Able to love and invest emotionally in the child

Examples Of Emotional Protective Capacities That Can Be Demonstrated:

1 The caregiver is able to meet own emotional needs.

Satisfying how one feels in reasonable, appropriate ways that are not dependent on or take advantage of others.

- People who use personal and social means for feeling well and happy that are acceptable, sensible and practical.
- People who employ mature, responsible ways of satisfying their feelings and emotional needs.
- People who understand and accept that their feelings and gratification of those feelings are separate from their child.

2 The caregiver is emotionally able to intervene to protect the child.

This refers to mental health, emotional energy and emotional stability.

- People who are doing well enough emotionally that their needs and feelings don't immobilize them or reduce their ability to act promptly and appropriately.
- People who are not consumed with their own feelings and anxieties.
- People who are mentally alert, in touch with reality.
- People who are motivated as a caregiver and with respect to protectiveness.

3 The caregiver is resilient as a caregiver.

Responsiveness and being able and ready to act promptly.

- People who recover quickly from set-backs or being upset.
- People who spring into action.
- People who can withstand.
- People who are effective at coping as a caregiver.

4 The caregiver is tolerant as a caregiver.

This refers to acceptance, allowing and understanding, and respect

- People who can let things pass.
- People who have a big picture attitude, who don't over react to mistakes and accidents.
- People who value how others feel and what they think.

5 The caregiver displays concern for the child and the child's experience and is intent on emotionally protecting the child.

A sensitivity to understand and feel some sense of responsibility for a child and what the child is going through, compelling one to comfort and reassure.

- People who show compassion through sheltering and soothing a child
- People who calm, pacify and appease a child.
- People who physically take action or provide physical responses that reassure a child, that generate security.

6 The caregiver and child have a strong bond and the caregiver is clear that the number one priority is the well-being of the child.

A strong attachment that places a child's interest above all else.

- People who act on behalf of a child because

of the closeness and identity the person feels for the child.

- People who order their lives according to what is best for their children because of the special connection and attachment that exist between them.
- People whose closeness with a child exceeds other relationships.

7 The caregiver expresses love, empathy and sensitivity toward the child; experiences specific empathy with the child's perspective and feelings.

Active affection, compassion, warmth and sympathy.

- People who fully relate to, can explain, and feel what a child feels, thinks and goes through.
- People who relate to a child with expressed positive regard and feeling and physical touching.
- People who are understanding of children and their life situation.

RETURN TO CHAPTER 3

The Horan Case: Information that Addresses the Six Questions

Maltreatment:

The youngest child, Kyle, age 2 years, 7 months, sustained a broken nose and also has various cuts and bruising to his body including a cut to his hand, some redness and bruising to the neck and shoulder, caused by his father, Gregory James on 1/11. Three other children live in the home. Jesse, age 1 1/2, also the son of Gregory James, was present during the incident but not hurt. Tony Horan, age 15, and Dylan Horan, age 17, are step-sons and were not present.

There has been previous substantiated maltreatment over the years, involving the older sons (including two others who are no longer at home). These incidents involve neglect by the mother, Barbara Horan.

Circumstances Surrounding the Maltreatment:

Parents have been married 8 months. Mother works two jobs and father works one. On 1/11 while father was caring for the children while mother was at work, he lay down on the bed with the two youngest children. He woke up to the noise of glasses breaking in the kitchen. He found Kyle standing on the kitchen counter, throwing glasses to the floor. Kyle had strewn coffee and sugar all over the kitchen counters and floor. Father grabbed Kyle and roughly sat him on the counter and hit him in the face. He cleaned up the child and the kitchen and called mother at work, telling her he had "lost it" with Kyle and they were lucky he hadn't hurt him worse than he did. He told her Kyle had a bloody nose.

Mother returned from work 3 hours later. Fifteen year old Tony told her to go look at Kyle's face. Barbara Horan said she was so angry she felt she might hurt her husband, so she left, leaving Tony in charge of the two youngest boys. She returned to the house in the morning.

Father admits to hitting Kyle, and admits to having a few drinks before falling asleep on the bed, but denies being intoxicated then or later when he hit Kyle. He cares for the children every night while Barbara works a 3-11 shift. No one in the family says anything like this has happened before. However, all family members (including Gregory James) say that Gregory is drinking more frequently.

The day after the incident, when Barbara returned to the house, she called the police and CPS. Upon the direction from CPS, she took Kyle to the doctor, where photographs were taken and treatment given for a broken nose.

The police have arrested Gregory; he is released pending court action but on the condition that he have no contact with the children subject to CPS arrangements for supervised visits.

Child Functioning

Kyle: age 2 years 7 months. Kyle is a very active child who explores everything. He also

is fairly easily diverted and will sit and play appropriately if given challenging games, puzzles, etc. Both parents say he sleeps well, eats well, is toilet trained. He plays well with his siblings and neighbor children. He can, if not diverted, escalate his behavior—running, screaming, and "finding trouble," according to his parents.

Jesse: age 1 year 6 months. Jesse appears healthy, but is having some eye testing at the pediatric clinic, according to mother. He likes to play with Kyle and is on target developmentally. He eats and sleeps well. While not too verbal yet, he appears to be able to play with challenging puzzles and other games. He is mobile, but both parents say he does not have the same high energy as his brother Kyle.

Tony: age 15. Tony is in high school where he does average work. His attendance is regular but he has had some behavior problems, with a recent suspension due to a fight with another student. Tony has been a "good helper" with the two younger boys, according to mother. Tony seems to have a lot of affection for Kyle and Jesse. He gets along well with Gregory, his step-dad, and says he has never seen Gregory physically hit any of the children. Most evenings, Tony is home but he does go out on weekends. Neither parent feels they have any concerns about Tony. Tony is beginning a job next week at a restaurant, where he will work from after school until 9 pm. Tony has a good relationship with his biological father, and visits him when mutually agreeable, usually about twice a month for dinner or occasional sleep-over.

Dylan: age 17. Dylan has been missing a lot of school and will likely not graduate. He spends most of his time away from the house, reportedly listening to music at a friend's and learning about mechanics from the friend's father. Dylan gets along with family members, but is not interested in being home much. He likes Gregory and was stunned that this type of incident happened. Dylan has the same father as Tony and gets along well with him, but doesn't see him often.

Disciplinary Practices

Barbara: Mother works two jobs on most days so she feels she does not have enough time with any of the children to become involved in situations requiring discipline. She does expect the older boys to maintain a curfew but could not say for certain how often (or if) the curfew is followed. With the smaller children, she had had to use time-outs with Kyle, but more often tries to distract both young boys when they are doing something they should not. Barbara's older boys who are out of the home began having patterns much like Dylan—staying away more and more, skipping school, etc. Barbara does not know what to do about Dylan and mostly her job prevents her from focusing on dealing with him. She believes Tony is her helper and rarely needs any discipline.

Gregory: Gregory is home from work at 2 pm daily at which time, his sister who supplies childcare, leaves. Gregory supplies most of the day-to-day discipline according to both parents, and at times that involves issues that come up with the older boys as well. Gregory has a good relationship with the older boys and most of the time discusses consequences of their decisions with them. For the younger two, Gregory usually tries to "run off" some energy with the boys when he gets home from work, by going to the park. He finds a method like this to be the best form of "discipline," meaning it prevents him from having

to carry any out. He sometimes uses time outs with Kyle. Other than when he "lost it" during the maltreatment incident, he has never physically disciplined or harmed the child, he reports.

Parenting Practices

Barbara: Barbara seems to have minimal interaction with the children. She is away from the house from 10 am to 11:30 pm most weekdays and also works some weekends. She relies entirely on Gregory for the parenting responsibilities. Gregory states that in addition to her job hours, Barbara stays out later and sometimes does not return home until early the next morning. Barbara refuses to discuss this issue, saying Gregory is paranoid, but offering no explanation. The recent arrest of Gregory has caused Barbara considerable stress due to a lack of resources for any other kind of child care. Gregory's sister has been helping, but her relationship with Barbara is strained and may not last long. Barbara has said that Tony can help, but seems oblivious to the fact that Tony's new job will interfere with his ability to help.

Gregory: Gregory has been providing the day-to-day structure for parenting: meals, laundry, baths, medical follow-up, etc. He says he has been overwhelmed, exhausted, and growing resentful, particularly with Barbara staying out later and later. He admits to often taking the boys into the bedroom for a late afternoon/early evening nap in order to get some rest. The incident of 1/11 was the first time he was so fast asleep that he did not hear Kyle get up and start "exploring" in the kitchen.

Adult Functioning

Barbara: Barbara's history involves being a victim of sexual abuse as a child and involved in 2 previous relationships with violent men, where she was hurt to the point of requiring hospitalization. She minimizes either of these issues as important in how she copes today. She says that she has not had any violent episodes with Gregory, although he is drinking frequently now and is "a mean drunk." Barbara does not communicate in-depth about issues such as: where she is spending her time beyond work (including the night of the maltreatment incident); whether she is happy; who she relies on for friendship. Her problem-solving skills (e.g., what she will do for child care) seem poor and she lacks insight into how life is, at least for now, changing with respect to her being needed by her children. Barbara says she is not depressed nor has she had any other kinds of mental health issues. She has been in outpatient treatment for alcohol abuse several years ago but feels that she does not have any problems—she says she drinks "socially." Barbara gives superficial answers to lots of questions and this sometimes seems to assist her in evading topics she doesn't want to address. However, she also tends to look at issues in her life and with her children in a superficial manner, coming up with fast and often unreliable "solutions" that may work for one day. While she said Gregory is a "mean drunk," she also comes back to the idea that he should come home to take care of "his kids."

Gregory: Gregory admits to a serious problem with alcohol, for which he has received treatment a little over a year ago and was sober for 10 months. He began drinking again 4 months ago. He describes considerable stress and an intense desire to know if his wife is having an affair. He believes she is, and it is an over-riding issue for him which

he discusses at length no matter what the topic at hand is. Gregory knows he gets "mean" when he drinks but states this has not affected his relationship with Barbara or the children and was not a factor in the incident on 1/11. This is Gregory's second marriage, and he had a domestic violence charge against him from his first marriage. He states that he is not typically violent and that the incident from the first marriage was a "misunderstanding," where both he and his 1st wife were drinking and both were violent, but he was arrested. He says he has never been violent with Barbara. However, they have had extremely loud fights, including throwing things around, due to Barbara's late hours. Gregory admits to being depressed and overwhelmed with the prospect that his marriage is over. He believes Barbara will help him get the current criminal charge of child abuse dismissed and let him come home—but only because she needs him for child care. Gregory said he has not had a drink since the 1/11 incident. However, as other topics were raised, he talked about other nights since the incident where he drank "to get to sleep." During the conversation, he smelled of alcohol, though did not appear to be intoxicated.

RETURN TO CHAPTER 6

Examples of Conditions for Return

Conditions for return are the benchmarks for reunification. These benchmarks should guide service provision, provide clarity for caregivers, and help all parties focus on whether ***safety*** can be achieved in the home, not whether all treatment programs have been completed or treatment goals have been accomplished. Knowing why an in-home safety plan could not work at the time of removal suggests what circumstances must change in order for the child to return home with an in-home safety plan. Conditions for return should be based on what is needed for the child to be safe with a sufficient, feasible and sustainable in-home safety plan.

Samples of Conditions for Return

The following list takes each of the threats of danger and, using an assumption that an in-home safety plan was determined insufficient due to lack of available and accessible resources at the level needed, provides an example of a condition for return. Complete case information would, of course, be needed to develop conditions for return.

Threat of Danger	Example of Threat and of Conditions for Return
No adult in the home is routinely performing basic and essential parenting duties and responsibilities.	Mary impulsively leaves her child while she goes out with her friends; the 6 year-old is often alone for several hours at a time. *Conditions for Return:* • A responsible adult is in the home providing care and supervising Brittany all the time whenever she is not in school. • A plan for supervision by a suitable babysitter exists whenever Mary is away from the home.
One or both caregivers' behavior is violent and/or they are acting (behaving) dangerously.	Cindy lashes out at her 8 year-old son, Steve, hitting him uncontrollably with her fists and with objects. *Conditions for Return:* • A responsible person can be in the home at all times that Steve is home and prevent Cindy from behaving violently and acting on her violent impulses. • A specific plan is in place for Steve to be away from the home and Cindy at all times when a protective person is not in the home. • Cindy does not interfere with care being provided by others.

One or both caregivers' behavior is dangerously impulsive or they will not/cannot control their behavior.	Greta is so depressed that she cannot provide basic care for her three children (7, 4, and 2); she is lethargic; sleeps most of the time; refuses to take medication; cries and sobs; cannot keep the home safe or hygienic. *Conditions for Return:* • One or more people (e.g., family members, volunteers, neighbors, or service providers) are available and accessible to assist in child care, supervision and protection as often and for as long as necessary. • A responsible person assures that the home is safe and clean. • Greta follows the necessary medical regimen to treat her depression including routinely taking her medication.
Caregivers' perceptions of a child are extremely negative.	Don hates his 12 year-old effeminate son, Sean. His tolerance is totally absent. He describes feeling physically repulsed by the boy and attacks him. *Conditions for Return:* • A responsible family member or professional is in the home or in contact with Don, his wife Gladys and Sean several times a week to supervise and observe how Don is behaving toward Sean and to monitor Don's attitudes toward Sean. • A responsible person is available to immediately remove Sean from the home whenever Don's attitudes are escalating into a physical confrontation.
The family does not have or use resources necessary to assure a child's basic needs.	Junior and Rita have moved several times due to eviction for not paying their rent. Rita has sold their food stamps, resulting in their 2 children begging neighbors for food. The couple is mildly low functioning and makes poor choices about use of their money. *Conditions for Return:* • The family home is secure, Junior and Rita agree to pay their rent directly from their bank when the monthly checks arrive. • Junior and Rita agree to accept and follow home and financial management help as part of an in-home safety plan.
One or both caregivers are threatening to severely harm a child or are fearful they will maltreat the child or request placement.	Marsha is increasingly failing to cope with her newborn infant's colic and fitful temperament. Marsha's lack of sleep and feelings of inadequacy as a parent are combining in ways that frighten Marsha and lead her to having thoughts of hurting the baby or asking CPS to take the baby away. *Conditions for Return:* • A responsible family member, or combination of volunteers, professionals are in the family home every day and at all times to provide adequate supervision and care of the baby, as well as supervise all contact Marsha has with the baby. • Marsha is able to recognize and discuss the combination of factors that culminated in her fearing she might maltreat her baby, e.g., her lack of sleep, lack of information regarding colic, soothing methods, isolation, self-doubt, etc.

	• Marsha demonstrates the ability to request and accept help from others for respite, support, encouragement before the stressors combine to create a crisis.
One or both caregivers intend(ed) to seriously hurt the child.	Beatrice burned her 13 month-old daughter, Phoebe, with a cigarette to teach her a lesson. Beatrice believes that what she did was acceptable given how Phoebe is so stubborn. *Conditions for Return:* • Beatrice cannot be alone with Phoebe. • A family member or other responsible adult must be in the home 24 hours a day when Beatrice and Phoebe are together. • A family member or other responsible adult in the home must actively observe the interaction between Beatrice and Phoebe. • Beatrice must recognize that what she did was wrong and a danger to Phoebe and openly and believably show regret and remorse for the way she treated Phoebe.
One or both caregivers lack parenting knowledge, skills, and motivation necessary to assure a child's basic needs are met.	Bryan and Sheila are the 19 year-old parents of a newborn. Both adults are limited intellectually and socially immature. They lack fundamental knowledge and skills needed in providing basic care to the infant (i.e., food, clothing, protection). In addition to the basic care problems, they mishandle the child and behave toward her like she is a doll. Conditions for Return: • A person with appropriate knowledge and skill to meet the basic care needs of Heather is present in the home every day to help care for her. • Bryan and Sheila agree to accept help in learning how to care for and physically handle the child. • Bryan and Sheila demonstrate the ability to handle Heather gently, carefully and understand the importance of doing so.
Caregivers largely reject CPS intervention; refuse access to a child; or there is reason to believe the caregivers may flee.	Fred is the father of two boys: 4 and 7. Both children were removed because of Fred's failure to provide medical care for their acute medical problems. Fred has a history of moving frequently and has indicated that he will not let CPS run his life. *Conditions for Return:* • Fred has an established residence based on some standing commitment (such as a lease or mortgage). • Fred's employment is stable. • Fred demonstrates genuine acceptance of his responsibility to provide a stable environment. • Fred demonstrates a reliable pattern of contact with CPS by phone or in person weekly. • Fred demonstrates openness to the implementation of an in-home safety plan and all of its components upon the return of the boys. (Conditions for return regarding the children's medical needs would be identified related to another threat of danger.)

Caregiver refusal and/or failure to meet a child's exceptional needs do/can result in severe consequences to the child.	Lydia has an acute breathing problem requiring constant and elaborate care including the use of medical technology. Her mother, Sandy, is easily distracted; in denial about the medical problem; and preoccupied with having fun. *Conditions for Return:* • A person with sufficient expertise is willing, available and present whenever needed at all hours of day and night to make sure that Lydia receives necessary routine care for her medical condition. • Sandy demonstrates support for Lydia receiving proper medical treatment by allowing others access to her home to carry out the necessary caretaking.
The child's living arrangements seriously endanger the child's physical health.	The Radcliff's have an 18 month-old and a 3 year-old. The home is overrun with pets, littered with pet feces on the floor; contains rotting and spoiled food; has used diapers discarded on the floor; trash is overflowing; plumbing is faulty and backing up; and is infested with insects. *Conditions for Return:* • The plumbing must be fixed and operating. • All rooms must be clean and maintained at a level consistent with hygiene and safe conditions for children these ages. • The number of pets must be reduced in accordance with health codes and maintained in ways that demonstrate that the pets will not cause health problems for the inhabitants of the house. • Food must be properly stored, maintained and disposed of daily. • The home must be sprayed for insects and have follow-up spraying at the frequency determined by the health department. • Parents will allow unscheduled weekly visits by CPS and others to oversee the conditions of the house, and will demonstrate openness to these visits.
A child has serious physical injuries or serious physical symptoms from maltreatment which have immediate implications for intervention and caregivers are unwilling or unable to arrange or provide necessary care.	4 year old Carlotta's retina was severely scratched when her mother, Suzan, lost control and hit her with a belt buckle. While Carlotta was seen immediately by medical staff, her eye is not healing, but is badly infected. Suzan is not using the eye drops nor is she taking Carlotta in for the twice weekly appointments for follow up care. Doctors have told Suzan that Carlotta could lose her sight in this eye without diligent treatment and medical monitoring. *Conditions for Return:* • Suzan agrees to allow in-home health care professionals to come and treat and monitor Carlotta's condition 4 times weekly. • Suzan demonstrates the ability to administer drops and any other medical treatment needed, and agrees to the monitoring of her follow through. • Suzan can describe what must be done for Carlotta, why it is important, and the consequences for Carlotta if it is not carried out.

A child shows serious emotional symptoms requiring immediate intervention and/or lacks behavioral control that result in self-destructive behavior or provoking dangerous reactions in caregivers and caregivers are unwilling or unable to arrange or provide necessary care.	Alex, age 10, is becoming more physically challenging and verbally abusive to his mother, Joan, causing Alex's step-father Bill to step in and throw Alex to the ground, hitting him with closed fists. Joan is frightened to be around her son. *Conditions for Return:* • A responsible person is in the home at all times Alex is present, and is immediately accessible if unplanned circumstances result in Alex being in the home. The person has sufficient expertise to prevent any escalating behavior between Alex and Bill, and will remove Alex immediately from the situation before anything gets out of control. • Alex's medical and mental health are examined and any medications prescribed are taken regularly by Alex. • Joan demonstrates an increased knowledge of Alex's behavioral and emotional issues and experiences less fear of Alex even if she does not yet know how to manage his behavior. • Bill demonstrates an increased knowledge of Alex's behavioral and emotional issues and experiences less rage about Alex, even if he does not yet know how to manage Alex's behavior. • Bill demonstrates openness and an ability to allow another person to manage the situation should Alex's behavior escalate. • Both Bill and Joan demonstrate that they want Alex home with them.
A child is profoundly fearful of the home situation or people within the home.	A.J. is noticeably deeply anxious about his father, Greg. A.J. is terrorized and made fun of by his father, a gang member, and his father's friends. *Conditions for Return:* • A responsible adult supervises and observes Greg's caregiving. • Greg does not entertain his friends at the family home. • A.J. feels comfortable with the home situation and Greg and expresses no fear.
Caregivers cannot, will not or do not explain a child's injuries or threatening family conditions.	Sarah is 9 months old. She has an unexplained serious injury to her head. Doctors determine the injury to be non accidental. Missy, the mother, has offered three different explanations for the injury, none of which fit. *Conditions for Return:* • A suitable, trustworthy adult has primary responsibility for Sarah's care in the home all the time. • Missy is not left alone with Sarah. • Missy works diligently with CPS to determine how Sarah was injured.

RETURN TO CHAPTER 7

FREQUENTLY ASKED QUESTIONS ABOUT THIS *GUIDE*

What does this *Guide* do?

This *Guide* describes a methodical process, using critical thinking, to make decisions about child safety. This *Guide* can help a judge or attorney use a sequential approach to decision making.

Who is the audience?

The text emphasizes how judges may use this process; the broader audience is anyone in the legal community participating in decision making, or who makes decisions about child safety.

Is this process a new requirement by the federal government?

No. The process is a way to help make decisions about child safety using logic and analysis rather than a form or formula.

My court and the child welfare agency in my community already use a process to make child safety decisions. Am I expected to use this approach instead?

Most of the methods, examples, and definitions presented here reflect thinking by the child welfare community. There is more agreement among child welfare professionals about child safety than disagreement. Successfully applying the process is often the more pervasive problem. The *Guide's* thoroughness, identifying safety responsibilities from the initial contact through case termination, reflects federal requirements (Adoption and Safe Families Act or ASFA) regarding child safety.

The *Guide* may help a judge and child welfare agency scrutinize its own child safety decision-making processes to ensure:

- its processes are consistent with ASFA requirements for safety;
- its processes are consistent with the logic and the sequential, critical thinking principles of decision making that are covered here;
- its processes are implemented as intended.

In my community, we regard safety plans as voluntary between the parents and the child welfare agency. When safety plans cannot be put in place, the agency takes the case to court. How does this approach differ?

An approach to child safety decision-making should be consistent and logical. It should build on principles of critical thinking, such as not making a decision unless there is sufficient information. None of the methods for thinking about safety, for analyzing what should be done to keep a child safe is dependent on the case being voluntary or court involved. Obviously, there are times when court jurisdiction cannot be obtained. But the process of thinking through the safety issues for a child should be the same process, with the same standards and principles, whether the court is involved or not.

What are the most important issues that I can quickly look at to see if my own process for making safety decisions is consistent with the one in this *Guide*?

In particular, look at:

- Does your process build logically and sequentially?
- Do you have a minimum standard for information collection that is comprehensive enough to make good decisions?
- Do you use that information to make decisions or do you focus primarily on the allegation of maltreatment?
- Do you have clear definitions and consistent criteria for making safety decisions?
- Is safety confused with risk?
- Are safety plans confused with case or treatment plans?
- Do you have any in-home safety plans? Is a safety plan seen only as placement?
- Is reunification achieved when safety in the home can be controlled, rather than when all treatment issues are resolved?
- Does court jurisdiction terminate when the children are safe?

Is there help available to further explain this *Guide* or how its ideas may be used in my community?

Yes! Both of the Resource Centers who collaborated on this *Guide* are available to help provide you with technical assistance.

Contact:
National Resource Center for Child Protective Services
www.nrccps.org

National Child Welfare Resource Center on Legal and Judicial Issues
www.abanet.org/child/rclji/

NOTES

ABA Center on Children and the Law
740 15th Street NW
Washington, DC 20005
http://www.abanet.org/child