

Intro to Juvenile Court Procedure

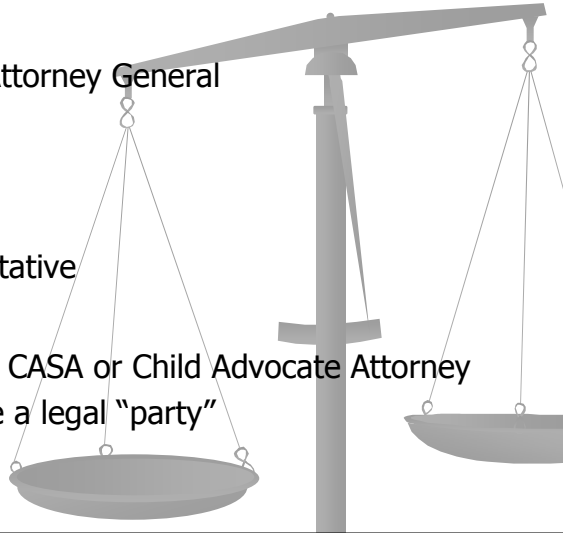
Hon. Kevin J. Guidry
Judge, Juvenile Courts
Piedmont Judicial Circuit

Introduction

- Overview of the life of a model child abuse/neglect case
- Each Circuit is different
- Juvenile Code gives Courts room to work

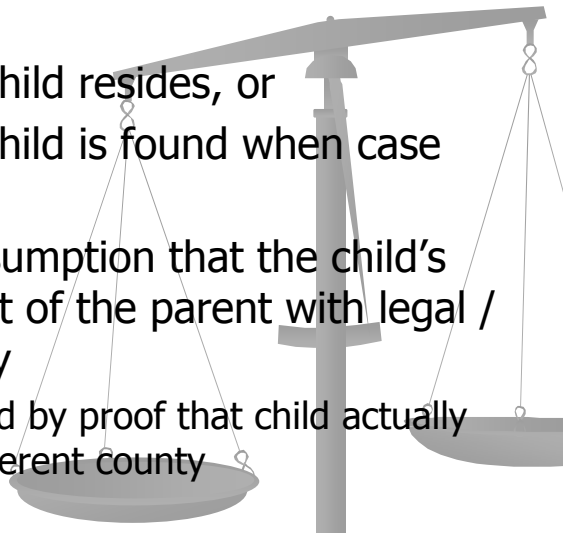
The Parties in Court

- DFCS
 - Special Assistant Attorney General
- Parents
 - Right to counsel
 - Mother
 - Father, legal or putative
- Child
 - Guardian *ad litem*, CASA or Child Advocate Attorney
 - May or may not be a legal "party"

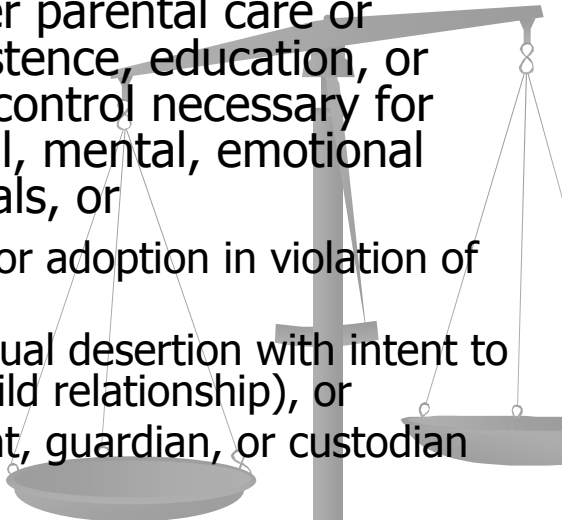


Which Juvenile Court

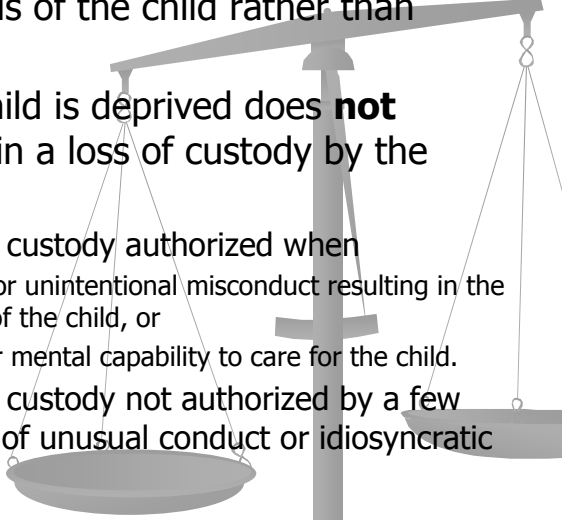
- Venue = which county should case be heard in
- County where child resides, or
- County where child is found when case begins
- Rebuttable presumption that the child's residence is that of the parent with legal / physical custody
 - May be rebutted by proof that child actually resides in a different county



Deprived Child

- Without proper parental care or control, subsistence, education, or other care or control necessary for child's physical, mental, emotional health or morals, or
 - Placed for care or adoption in violation of law, or
 - Abandoned (actual desertion with intent to sever parent/child relationship), or
 - Without a parent, guardian, or custodian
- 

Deprivation in Case Law

- Focus on the needs of the child rather than parental fault
 - A finding that a child is deprived does **not** necessarily result in a loss of custody by the parent
 - Temporary loss of custody authorized when
 - either intentional or unintentional misconduct resulting in the abuse or neglect of the child, or
 - Lack of physical or mental capability to care for the child.
 - Temporary loss of custody not authorized by a few isolated instances of unusual conduct or idiosyncratic behavior.
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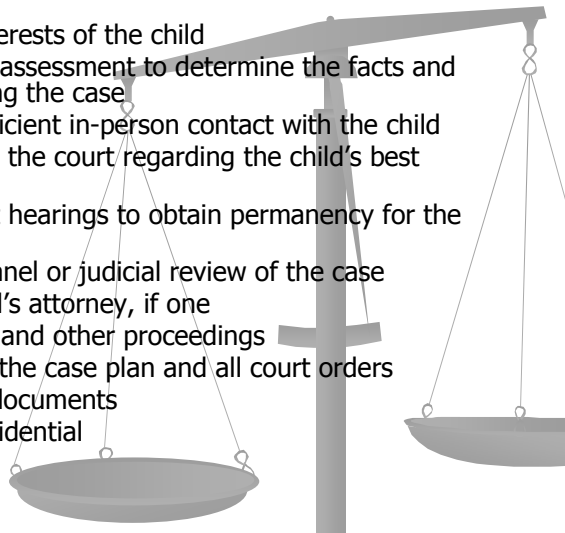
Guardian *ad litem*

- Required by law
- Protect child's rights
- Appear on behalf of child in legal case
- Manages the case for the child
- CASA may serve as GAL but may **not** serve as an attorney



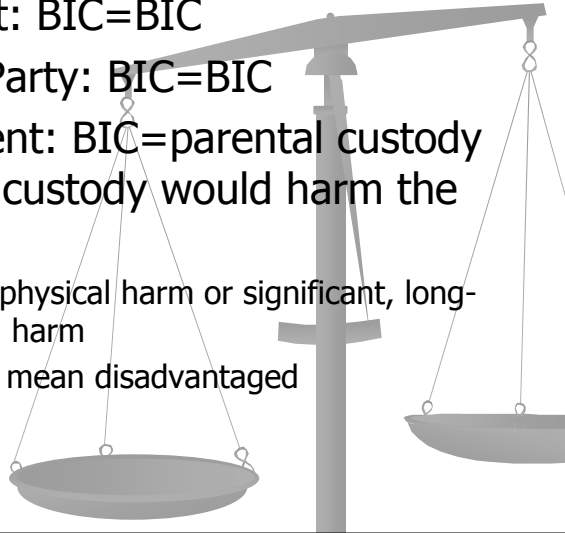
CASA Duties

- O.C.G.A. § 15-11-9.1
- Advocate for the best interests of the child
- Conduct an independent assessment to determine the facts and circumstances surrounding the case
- Maintain regular and sufficient in-person contact with the child
- Submit written reports to the court regarding the child's best interests
- Advocate for timely court hearings to obtain permanency for the child
- Request citizen review panel or judicial review of the case
- Collaborate with the child's attorney, if one
- Attend all court hearings and other proceedings
- Monitor compliance with the case plan and all court orders
- Review all court related documents
- Keep all information confidential



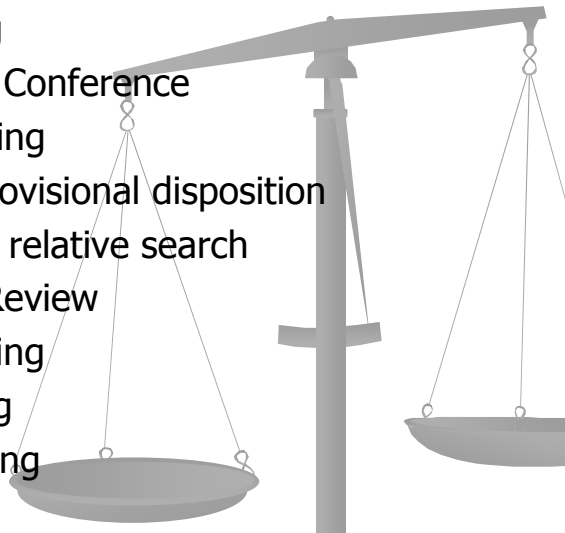
Best Interests of the Child

- Parent v. Parent: BIC=BIC
- 3d Party v. 3d Party: BIC=BIC
- 3d Party v. Parent: BIC=parental custody unless parental custody would harm the child
 - Harm = either physical harm or significant, long-term emotional harm
 - Harm does not mean disadvantaged



Overview of Procedure

- Shelter Care / reasonable efforts
- Detention Hearing
- Optional Pre-Trial Conference
- Adjudication Hearing
- 30 day report / provisional disposition
- Final Disposition / relative search
- Panel or Judicial Review
- Permanency Hearing
- Placement Hearing
- Termination Hearing



Shelter Care

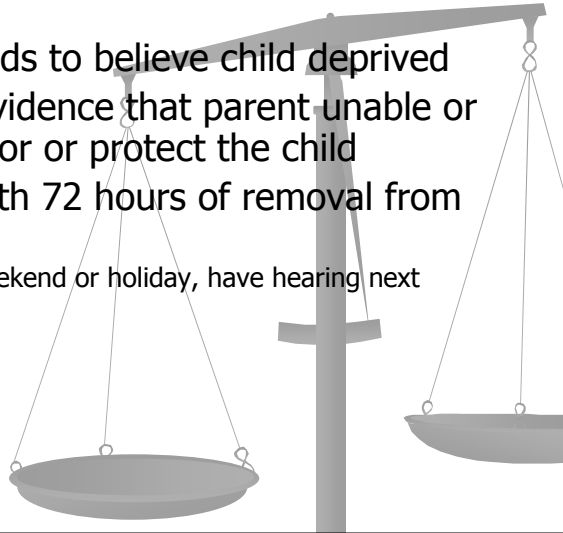
- Emergency placement of a child outside of the home pending adjudication
- Granted when
 - Conduct, condition or surroundings of the child endanger the child's health or welfare
 - Evidence of actual or imminent danger required
 - Danger child may be removed from jurisdiction
 - Parent fails to bring the child to court when ordered to do so

Reasonable Efforts

- DFCS must make RE to preserve and reunify the family
 - Ongoing efforts required
- RE are not required to be made if parent
 - Subjected the child to aggravated circumstances which, including but not limited to abandonment, torture, chronic abuse, and sexual abuse;
 - Committed murder of another child of the parent;
 - Been convicted of the murder of the other parent of the child;
 - Committed voluntary manslaughter of another child of the parent;
 - Aided or abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of another child of the parent; or
 - Committed a felony assault that results in serious bodily injury to the child or another child of the parent; or
 - The parental rights of the parent to a sibling have been terminated involuntarily

Detention Hearing

- Informal hearing
- Reasonable grounds to believe child deprived
- Continue ESC if evidence that parent unable or unwilling to care for or protect the child
- Should be held with 72 hours of removal from the home
 - If time expires on weekend or holiday, have hearing next business day
- Right to counsel



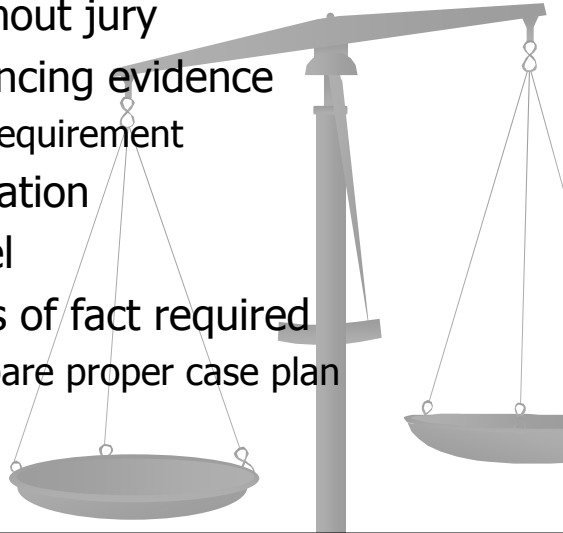
Pre-Trial Conference

- Optional
- Not a hearing
- Right to counsel
- Resolve preliminary matters such as
 - Appointment of counsel
 - Discovery
 - Pre-trial evaluations
 - Scheduling
 - Motions
- Informal



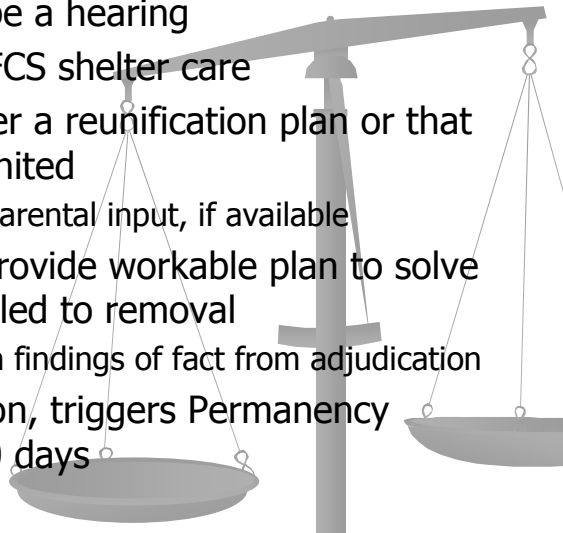
Adjudication Hearing

- Formal trial without jury
- Clear and convincing evidence
 - Constitutional requirement
- **Current** deprivation
- Right to Counsel
- Specific findings of fact required
 - Needed to prepare proper case plan

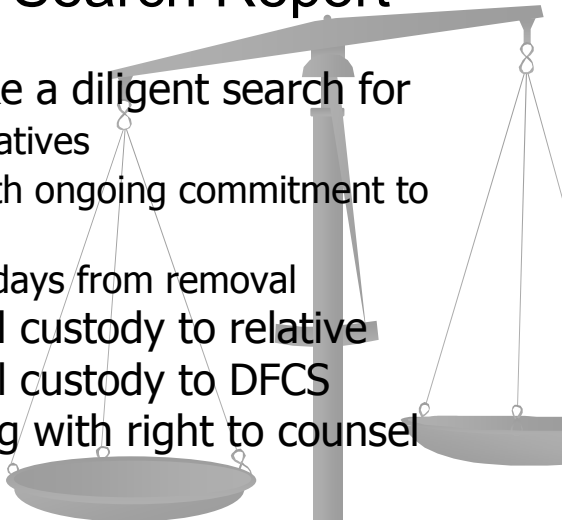


30 Day Report

- AKA "Case Plan," "Provisional Disposition"
- May or may not be a hearing
- Only if child in DFCS shelter care
- Recommend either a reunification plan or that family not be reunited
 - Developed with parental input, if available
- If reunification, provide workable plan to solve the problem that led to removal
 - Must be based on findings of fact from adjudication
- If non-reunification, triggers Permanency Hearing within 30 days



Final Disposition Hearing Relative Search Report



- DFCS must make a diligent search for
 - ALL suitable relatives
 - ALL persons with ongoing commitment to child
 - Report due 90 days from removal
- Temporary legal custody to relative
- Temporary legal custody to DFCS
- Informal Hearing with right to counsel

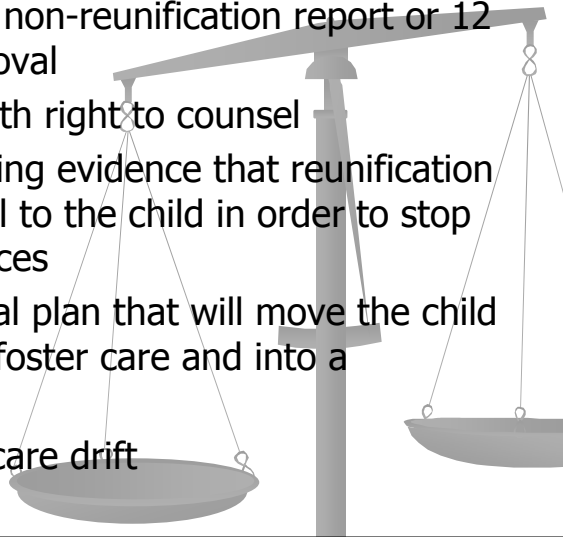
Panel Review



- 3 months from removal and every 6 months thereafter
- Informal meeting with no right to counsel
- Monitor *court ordered* case plan progress and recommend changes to plan
- Consider the safety of the child
- Examine the need for and appropriateness of placement
- Set a projected date for permanency, consider all barriers to achievement of goal, fine-tune
- Modify visitation if necessary
- Seek relative resources
- Determine if DFCS has made reasonable efforts to finalize the permanency plan
- May appeal to judge within 5 days

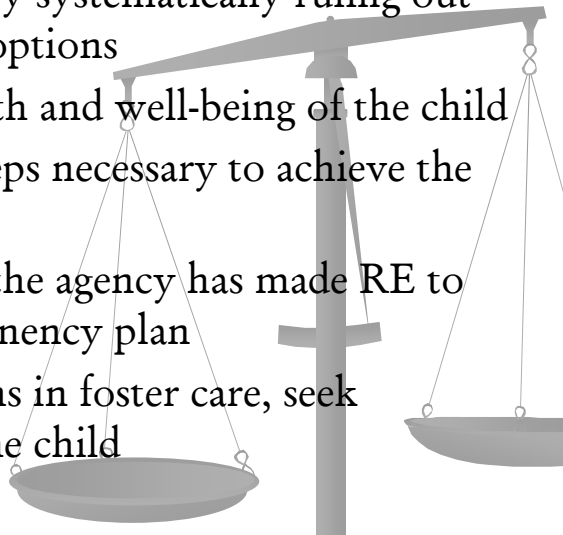
Permanency Hearing

- Within 30 days of non-reunification report or 12 months from removal
- Formal hearing with right to counsel
- Clear and convincing evidence that reunification will be detrimental to the child in order to stop reunification services
- Determine the final plan that will move the child out of temporary foster care and into a permanent home
 - Prevent foster care drift

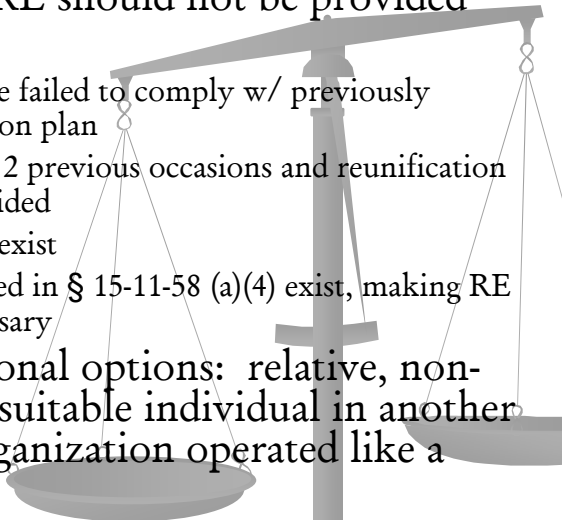


Permanency Hearing

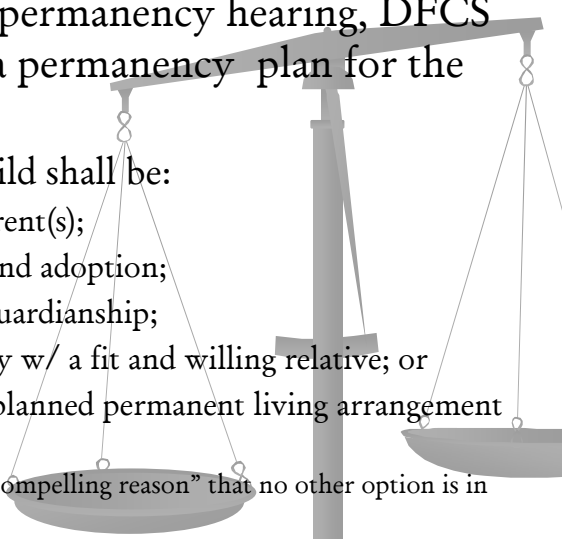
- Choose the plan by systematically ruling out more permanent options
- Consider the health and well-being of the child
- Order the next steps necessary to achieve the permanency plan
- Rule on whether the agency has made RE to finalize the permanency plan
- If the child remains in foster care, seek connections for the child



Permanency Hearings (cont'd)

- Presumption that RE should not be provided when:
 - Parent unjustifiably failed to comply w/ previously ordered reunification plan
 - Child removed on 2 previous occasions and reunification services were provided
 - Grounds for TPR exist
 - Circumstances listed in § 15-11-58 (a)(4) exist, making RE to reunify unnecessary
 - Available dispositional options: relative, non-related individual, suitable individual in another state, agency or organization operated like a “family home”
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DFCS' Permanency Plan (O.C.G.A. §15-11-58(o)(2))

- At the time of the permanency hearing, DFCS must recommend a permanency plan for the child
 - Whether/when child shall be:
 - returned to the parent(s);
 - referred for TPR and adoption;
 - referred for legal guardianship;
 - placed permanently w/ a fit and willing relative; or
 - placed in another planned permanent living arrangement (APPLA)
 - DFCS provides “compelling reason” that no other option is in BIC
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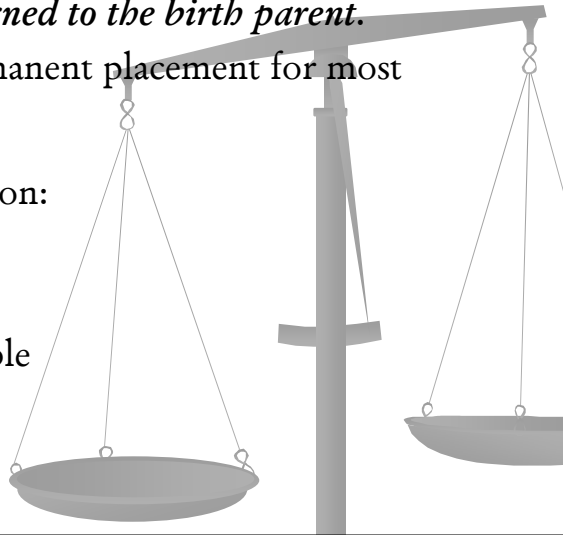
Reunification

Child returned to the birth parent.

- The preferred permanent placement for most children.

Barriers to reunification:

- Parental capacity
- Child's needs
- Services not available

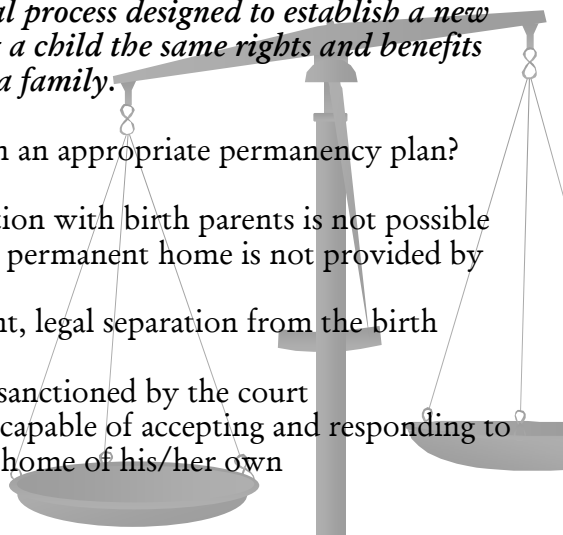


Adoption

The social and legal process designed to establish a new legal family giving a child the same rights and benefits of those born into a family.

When is Adoption an appropriate permanency plan?

- When reunification with birth parents is not possible
- When a suitable permanent home is not provided by relatives
- When permanent, legal separation from the birth family is necessary and sanctioned by the court
- When a child is capable of accepting and responding to family life and a home of his/her own



Guardianship

Guardianship is granted to a relative or non-relative for a child who is:

- *Unlikely to return home*
- *Adoption is not in the child's best interest.*

Why Select Guardianship?

- Guardianship does not sever birth parents' rights/responsibilities
- Maintains the bond/connection between the child and family.
- May be considered when a TPR has occurred, but does NOT require a TPR.
- Relatives and non-relatives can receive subsidized guardianship payments
- Birth parents can petition the court to dissolve the guardianship.

Permanent Placement w/ a Fit & Willing Relative

The development of a relationship between a related adult and child that is permanent.

Why Select Placement with Fit and Willing Relative?

- Custody until 18
- Adoption and Guardianship have been considered, but ruled out
- Supports family continuity and support
- Does not require TPR
- Relative Care Subsidy
- Not really permanent since must be reviewed by court on regular basis
 - Logistical problems in the out years
- May be dissolved relatively easily

Another Planned Permanent Living Arrangement (APPLA)

Child/Youth remains in agency custody until he/she reaches age of majority.

- *Long Term Foster Care – Agreement with a caregiver for placement until foster care is no longer needed.*
- *Emancipation – A planned arrangement for maintaining the child in foster care until he/she is emancipated.*

Why Select APPLA as the Permanency Plan?

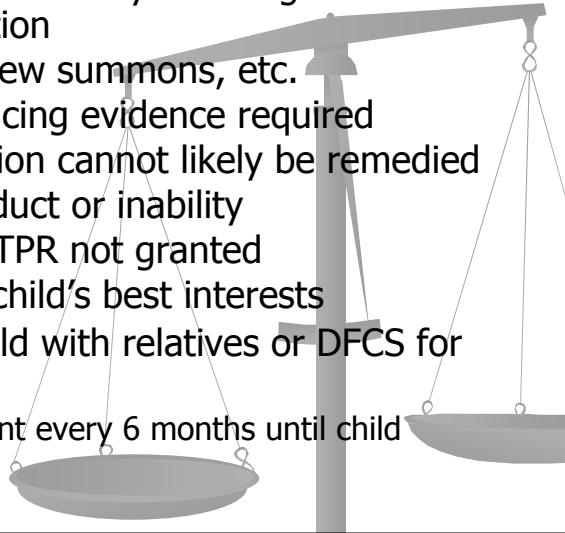
- Youth does not want to be adopted.
- Youth is in a stable, safe placement with an adult who is committed to the youth until he/she reaches the age of majority

Placement Hearing

- Goal = as few placements as possible
- Notice of change of placement
 - Non-emergency = at least 5 days notice to all parties
 - Emergency = Notice to court and attorneys within 24 hours of move
- Right to hearing on move within 5 days of receiving notice
- Court cannot direct placement if child in DFCS custody

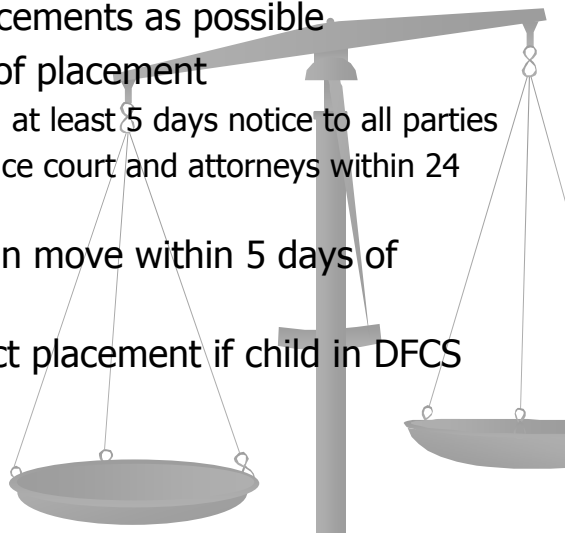
Termination Hearing

- Formal trial within 90 days of filing of termination petition
- New case with new summons, etc.
- Clear and convincing evidence required
- Current deprivation cannot likely be remedied
- Parental misconduct or inability
- Harm to child if TPR not granted
- TPR must be in child's best interests
- Usually place child with relatives or DFCS for adoption
 - Review placement every 6 months until child adopted

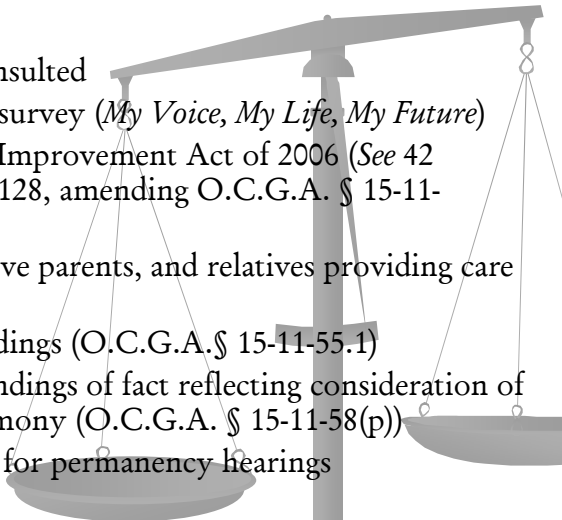


Child Placement Hearing


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Other voices (O.C.G.A. §§15-11-55 & 15-11-58)

- Child/youth must be consulted
 - Home At Last youth survey (*My Voice, My Life, My Future*)
 - Child & Family Svcs Improvement Act of 2006 (*See 42 U.S.C. § 675(5)(c); SB 128, amending O.C.G.A. § 15-11-58(o)(4)*)
 - Foster parents, preadoptive parents, and relatives providing care for the child
 - All foster care proceedings (O.C.G.A. § 15-11-55.1)
 - Court shall include findings of fact reflecting consideration of oral and written testimony (O.C.G.A. § 15-11-58(p))
 - 5 days advance notice for permanency hearings
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Conclusion

- Model only presented
 - Variations on the theme usual
 - Flexibility a must
 - No plan survives first contact with reality
 - All courts interpret law differently
 - “Trust but verify”
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Slide Contributors

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- Bobby Cagle
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