

**COURT IMPROVEMENT PROGRAM TRAINING**

**Practices and Procedures  
in the  
Child Welfare System**

**A Multi-disciplinary Curriculum for Improvement of  
the Child Welfare System**



**Colorado Supreme Court  
Court Improvement Program**  
*A Multidisciplinary Approach to Improving Systems  
to Benefit Families and Children*

# **Procedures and Practices in the Child Welfare System:**

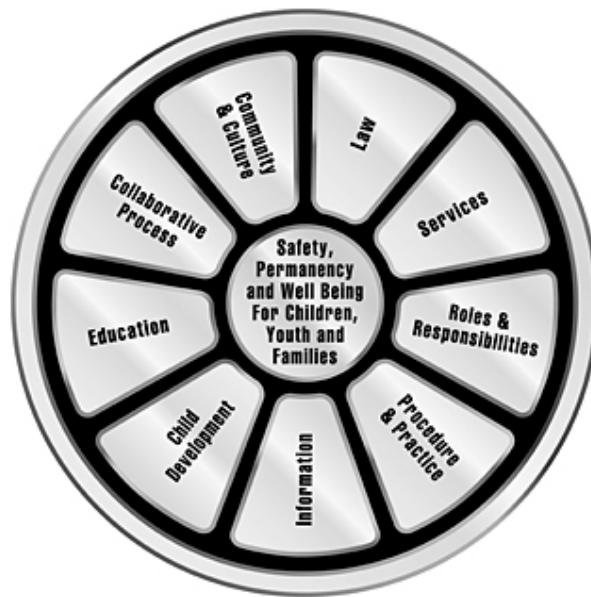
**A Multi-Disciplinary Curriculum for Improvement of  
the Child Welfare System**

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## Colorado Court Improvement Program Training Wheel Curricula

It is not surprising that the diverse culture of the child welfare system creates knowledge and experience gaps for child welfare participants and practitioners alike, which leads to the question, “How can individuals who are involved in the child welfare system know about that system as a whole as well as the roles of others involved in it?”

The Colorado Court Improvement Program (CIP) is in the process of designing training to answer this very question. The Training Wheel Curricula is made up of nine separate modules, each representing a discipline or service area associated with the Child Welfare process. The purpose of each module is to assist multi-disciplinary Best Practice Court Teams in building a foundation of core knowledge within each discipline or service area. While each discipline or service area may have a required professional knowledge and skill base that exceeds core knowledge, it is core knowledge in all areas that creates an understanding of the child welfare process as a whole.

The *Roles and Responsibilities* curriculum was authored by J. Robert Lowenbach, J. Robert Lowenbach Consulting at [jrlconsulting@q.com](mailto:jrlconsulting@q.com).

For questions about the *Roles and Responsibilities* curriculum or about other Training Wheel curriculum, please contact Kay Yorty, Training Coordinator for the Colorado Court Improvement Program at [margaret.yorty@judicial.state.co.us](mailto:margaret.yorty@judicial.state.co.us)



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## PROCEDURES AND PRACTICES OF THE COLORADO CHILD WELFARE SYSTEM

Time 8 hours

Purpose The purpose of Procedures and Practices training is to provide to all child welfare system stakeholders a basic understanding of the procedures and practices used by the court and the child protection agency that seek to assure that the children are protected and families are respected. The challenge presented in providing an effective and useful program for participants with varied and diverse knowledge of procedures and policies of the agency and court is to keep participants engaged all of the time. In order meet this challenge, participants with more knowledge in a particular area will be encouraged to share that knowledge and provide other participants with the philosophical and/or historical background necessary to provide understanding of the practice by all participants.

Competencies/  
Learning Objectives

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- Participants will be able to articulate the stages of a child welfare intervention from initiation of a report of neglect or abuse to the final resolution of a case.
- Participants will be able to identify the parallel proceedings that may take place throughout a child welfare intervention including county and state level agency proceedings, and court proceedings in the dependency, criminal/delinquency, probate, domestic relations and truancy arenas.
- Participants will be able to articulate the mandates, expectations, and basic procedures, as well as the tools



## PROCEDURES AND PRACTICES OF THE COLORADO CHILD WELFARE SYSTEM

that are involved in the Department of Human Services (DHS) processing of a case from the initiation of a complaint to final resolution of all types of child protection interventions.

- Participants will be able to describe court mandates and procedures governing the processing of both Expedited Permanency Planning (EPP) and non-EPP cases.
- Participants will be able to demonstrate an understanding of the confidentiality, privilege, and evidentiary limitations on information that can be used in court proceedings and throughout child welfare cases.

### Materials

All materials as well as this curriculum are provided in electronic and printed format.

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### Expectations of Trainers

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Two Lead trainers are required for the effective presentation of this curriculum. These Lead trainers must have a thorough understanding of the practices and procedures of their respective systems. The Lead judicial trainer should be a current or former Colorado Judicial Officer. The Lead agency trainer should be a current or former county or State of Colorado child welfare supervisor, manager or administrator who has recent experience in working directly with the court, children and families. The small group leaders need not be knowledgeable or skilled in agency and court practice and procedure. All trainers must also be willing and able to share their knowledge and respectfully listen to the views of others and must be skilled in facilitating productive discussion amongst diverse groups of stakeholders.

## **PROCEDURES AND PRACTICES OF THE COLORADO CHILD WELFARE SYSTEM**

The discussion group leaders must be chosen carefully and must be willing to prepare fully. Full preparation includes reading and thinking critically about the preparation materials (Hypothetical Case Scenario-Handout 1a, Advance Reading-Handout A, Small Group Questions – Faculty Resource 2a) that are contained in their section of this curriculum.

Each discussion group should be populated with a diverse group of stakeholders including lawyers, CASA workers, caseworkers, DHS supervisors and managers, etc. The ideal discussion group leader will ask probing questions, facilitate a civil discussion, keep the group on task, and report back to the full group. The discussion group leader is not someone who will dominate the discussion and should assure that no one else dominates the discussion.

**PROCEDURES AND PRACTICES OF THE COLORADO CHILD WELFARE SYSTEM  
PREPARATION**

**PROCEDURES AND PRACTICES – PREPARATION** ([Back to Table of Contents](#))

**Description of Activity**

**Facility.** The ideal facility is a public meeting area such as a government office, library or church. The main meeting room must be large enough to accommodate the number of registrants, ideally at rounds of up to 8. If rounds are not available, tables should be pushed together to accommodate each discussion group. The main meeting room should have audio equipment so that all participants can easily hear the presentations. It must have a screen or a wall that is appropriate to display a PowerPoint presentation. There must be a flip chart for each discussion group.

**Recruitment.** The greatest value of this curriculum will be derived through the recruitment of a diverse group of stakeholders. Generally lawyers, court and agency professionals are well informed about the procedures and policies of *their own* side of the system but are often unaware of the specific procedures and practices or of the philosophy behind those of the other side of the system. Further, stakeholders such as CASAs, parents, youth, grandparents, educators, foster parents, visitation supervisors/therapists, mediators, psychologists, mental health and drug and alcohol treatment providers and tribal representatives may not have a useful understanding of either side of the system. For this reason, active efforts should be made to assure that as many of these diverse stakeholders as possible are in attendance at this training. *If advance registration does not reflect sufficient diversity of stakeholders, the Lead trainers should take steps to assure recruitment of an appropriate blend.*

*Lead Faculty must assure that registration forms include email addresses for all participants, as materials and notices will be sent to participants via their email addresses both before and after the training. The person delegated to be in charge of registration should create a distribution list to be used for registrant communication.*

*If this training is to be presented for a particular county, judicial district or region, it may be necessary for the Lead Judge(s) or the County Director(s) to take steps to assure full participation, which may include motivating or prodding attorneys or heads of agencies, sending repeat notices, etc. Lead*

**PROCEDURES AND PRACTICES OF THE COLORADO CHILD WELFARE SYSTEM  
PREPARATION**

*Faculty should monitor early registration and contact Lead Judges or County Directors so that they can ensure full participation.*

**Registration/Pre-Training Survey.** It is important for faculty to know the level of experience and the roles of stakeholder registrants. In addition, participants appreciate being asked what they expect to learn from a training. They will often designate specific areas that they would like addressed in the training. For this reason, the registration process should include a short survey to elicit this information. The registration process and survey should be on-line so that the responses are anonymous and are easily collected and analyzed. Survey Monkey ([www.surveymonkey.com](http://www.surveymonkey.com)) can be used effectively for such a survey. A sample survey is included as Faculty Resource 1c.

**Advance Reading.** In order to set the tone for the training and to focus participants on the role that an understanding or lack of understanding of the procedures and practices of the system can have on outcomes for children, participants will be asked to read selections from *Three Little Words*, by Ashley Rhodes-Courter. This book is a memoir of the experiences of the author as a child growing up in foster care in Florida. In many ways it depicts a comedy of errors that occurred in her case that resulted in Ashley and her brother not being safe. These failures might have been corrected if the various child welfare stakeholders who were involved in the child's life had fully understood the procedures, practices and policies of others in the system and had held them accountable for adhering to those tenets. The selections from this book are troubling to read but will serve to focus the participants' attention on the reason they are attending the training – to gain knowledge that will provide tools to assure the safety, permanency and well-being of the children we serve and to provide a fair opportunity for families to extricate themselves from state intervention.

The specific selections chosen for this training are pages 1-9, 77-81, and 91-121) of the book. These selections describe the author's removal from her mother and placement in foster care. They further detail the abuse that she suffered in one of her many foster homes and the failure of the system to effectively protect her from the abuse. The last selection demonstrates the importance of having someone, in this case Ashley's CASA, who is willing to hold the system accountable to follow their own procedures. It is important for the faculty to make reference to and weave the themes from the selections into each of the segments of this training.

**PROCEDURES AND PRACTICES OF THE COLORADO CHILD WELFARE SYSTEM  
PREPARATION**

*Approximately 10 days prior to the training, the Lead Faculty should draft an email message to be sent to all participants in which they are welcomed as participants in this important training and encouraged to complete the advance reading. In the message it is important to let participants know that the selections are short and that reading them is important in setting the stage for a successful training. This message should be sent to participants from the Lead Judge and/or the County Director in the participant's district.*

**Small Discussion Groups.** Each substantive segment of this training employs small discussion groups. Discussion groups should be no larger than 6-8 persons. The value of small discussion groups is to allow each participant to have his/her voice heard in a less intimidating manner than with the larger group. The discussion group also gives the participants a chance to actively experiment with problems posed by the material presented when applied to the Hypothetical Child Welfare Case Scenario (Handout 3). It is important that each group be diverse in terms of background and role. There should be at least one "legal" expert (judge or attorney) as well as at least one "child welfare" expert in each group. In addition, it is important to identify a discussion group leader for each group. This person does not need to be an expert in either area but rather should be a person who will ask probing questions and attempt to actively engage each member of the group.

*At least 10 days before the scheduled training, one of the lead faculty members should divide the participants into small discussion groups using the criteria set forth above. At this time, discussion group leaders should be recruited and preparation materials sent. Some method of identifying group members, such as colors or team names, should be used to get the group members to sit with their respective groups. In setting up the training room, table tents or some other identifying characteristic should direct the group members to sit at their assigned table.*

**PROCEDURES AND PRACTICES OF THE COLORADO CHILD WELFARE SYSTEM  
WELCOME AND INTRODUCTIONS**

**WELCOME AND INTRODUCTIONS**

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**Time: 15 minutes**

**Description of Activity:**

*Welcome participants to Procedures and Practices Training and thank them for taking the time out of their busy schedules to improve their system.*

*Briefly introduce yourself (your bio for introduction should be included in the materials) and take a moment to explain why you are committed to education as a means of helping to improve the lives of children and their families.*

*Take care of housekeeping issues including:*

- *Information about the facility (restrooms, parking, breakout rooms)*
- *Participant materials*
  - *Expense reimbursement forms and rules*
  - *CLE forms*
- *Remind participants to silence cell phones*

*Thank the organizers of the training and the rest of the faculty.*

*Although many of the participants may already know many other participants, not everyone does and it is important to wear their nametag. Ask participants to participate in an introduction activity at their small table. In their introductions they should give their name, their stakeholder role (agency and position), how long they have been in their current role, and their single greatest wish for enhancement of the agency and court child protection system. Explain that each introduction should be less than a minute.*

 1. Procedures and Practices in the Child Welfare System



*This slide, in conjunction with a review of Ashley and Luke's experiences in the child welfare system provides an opportunity for the participants to reflect*

**PROCEDURES AND PRACTICES OF THE COLORADO CHILD WELFARE SYSTEM**  
**WELCOME AND INTRODUCTIONS**

*on their own professional work. Thank the participants for completing the Advance Reading selection. Explain that this reading, along with the hypothetical case scenario, serves as a focal point that will highlight the importance of having good practices and procedures as well as having at least a basic understanding of the practices and procedures of the other stakeholders. Recall for the participants the trauma that was caused when Ashley was removed from her mother. Recall how she felt when she was separated from her brother and how she struggled to keep Luke and herself safe in homes that were supposed to do that for them. Consider the fact that there were procedures and policies in place that – if followed – would likely have provided a more nurturing response to the family’s problems and would have protected Ashley and Luke once they were removed. Finally, acknowledge that one person – in this case Mary Miller – who understands the rules and is willing to do what it takes to hold others accountable, can make all the difference between a successful and an unsuccessful outcome. Mary Miller was able to understand that others in the system serving Ashley and Luke were in ruts, rut that prevented them from giving these children the least that we should promise every child that we touch in the system, that is a promise to make their circumstances better than the ones from which they came.*

*Acknowledge that there are many different levels of experience represented in the room and as a result the depth of understanding of the Procedures and Practices of the agency or of the court is equally varied. Therefore, the purpose of this training is to level the playing field by providing participants with basic knowledge about things as they are supposed to occur. If we are successful, participants will have tools to hold the system accountable. If the system has these “agents of accountability” built in, we will do a better job of assuring that children are protected and families are respected.*

**PROCEDURES AND PRACTICES OF THE COLORADO CHILD WELFARE SYSTEM  
ENTRY INTO THE SYSTEM – OPPORTUNITIES AND PITFALLS**

**ENTRY INTO THE SYSTEM – OPPORTUNITIES AND PITFALLS**

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**Time: 150 minutes**

**Description of Activity:**

This session is designed to provide all participants with a basic understanding of the work that goes into a case from the time that a report is made to the conclusion of the Preliminary Protective Proceeding (PPP/Emergency Hearing). During this session participants will come to understand how child safety is assessed through the use of the Colorado Assessment Continuum; how safety plans are conceived and when they are appropriate; and, the necessary elements of proof and the evidentiary standards used in the initial stages of a court proceeding. Further, participants will be provided a checklist of items that the court will use to assure that the initial hearing is meaningful and complete. Using this framework and the hypothetical case scenario, participants will be prepared to participate meaningfully in discussion groups that imbedded in this segment. In this portion of the program a pre-training test is introduced. This test measures knowledge about practices and procedures that will be covered during the course of the training day. It is not designed primarily to test participants' knowledge before entering the training but rather to peak their interest in learning the answers to test questions.

In addition, PowerPoint is utilized to cause reflection and to present abstract material. The Hypothetical Child Welfare Case Scenario together with small group discussion is used to encourage active experimentation with the material presented.

It is important for the trainer to engage the participants throughout this segment by weaving in the concrete aspects of the hypothetical case scenario and the advance reading, by asking difficult questions and by allowing participants to reflect together and in discussion groups on how procedures and practices in the two systems and adherence to them might result in better outcomes for children and families.

📄 2. Procedures and Practices in the Child Welfare System


(Date)

(Faculty's names and titles)



**PROCEDURES AND PRACTICES OF THE COLORADO CHILD WELFARE SYSTEM  
ENTRY INTO THE SYSTEM – OPPORTUNITIES AND PITFALLS**

*Start by informing the participants what the session and the overall training will cover. Just as important, however, is explaining what the training cannot do – that is, it cannot provide a comprehensive view of all, or even a majority of the aspects of court or agency practice. The most that can be accomplished is to focus on some critical areas and to provide references to other resources that are available to more fully understand the system. In addition, you should explain that this curriculum is not a detailed or in depth study of the law that applies to D&N cases. Statutory and case law issues are only touched upon in this curriculum module. The legal framework is covered in more depth in another spoke of the training wheel.*


 3. Where we are doing well –

- Staff and foster parent training
- Collaboration

Things we need to work on –

- Engaging parents
- Achieving permanency in a timely manner

*Explain that the results of the Colorado CFSR provided clear evidence that while we do some things quite well, Colorado must do a better job of handling child welfare cases if we are to adequately provide for the safety, permanency and well being of all children in Colorado. Change is not easy. Change that will improve the lives of children and families requires that we work cooperatively for our common goals and that we hold each other accountable. It also requires that we understand how our systems operate and how they might interact in a more fruitful matter.*

 4. Where are we going?

- Focus on critical stages
  - Entry into the system
  - Dispositional hearing/Treatment Plan
  - Effective Permanency Planning/Permanency Options
  - Termination of the P-C Legal Relationship/Allocation of Parental Rights and Responsibilities

## PROCEDURES AND PRACTICES OF THE COLORADO CHILD WELFARE SYSTEM ENTRY INTO THE SYSTEM – OPPORTUNITIES AND PITFALLS

*Those who are lawyers involved primarily through the court system only see families once DHS decides to file a case. Those who are first responders (intake workers, medical personnel, school personnel, emergency personnel, etc.) know that a great deal goes on before a family ever reaches the court. These stakeholders know that there are critical decisions that are made before a case ever gets to court.*

*You will note that the list of focus areas on this slide is not comprehensive – it cannot be in the time allotted. Our objective in this training is to give you tools to assure that all who attend have sufficient knowledge of the rules under which each system operates so that they can ask critical questions, undertake necessary research/investigation and take actions to hold other stakeholders accountable to follow the rules that are designed to keep children safe and assure due process.*

### 5. How will we get there?

- Advance reading (Handout A3)
- Hypothetical case scenario (Handout 1a)
- Interactive presentation
- Facilitated discussion groups

*The agenda that I've just outlined is ambitious. Critical to its success is sharing by those with more knowledge of how one leg of the system or the other works. For this reason, the small groups are populated with resource persons with advanced knowledge about the legal system and the child welfare system. In addition, each group has been assigned a discussion group leader. This person is not necessarily an expert in either system but has facilitation skills to ask probing questions and elicit participation by all group members*

*We think it essential that you view the information as relevant, i.e. that it is linked to a reasonable likelihood that outcomes for children might improve as a result of employing this knowledge. Our strategy to help you gain and retain the necessary information incorporates several different methods, including:*

**PROCEDURES AND PRACTICES OF THE COLORADO CHILD WELFARE SYSTEM  
ENTRY INTO THE SYSTEM – OPPORTUNITIES AND PITFALLS**

- *Interweaving the advance reading and connecting the facts in the Hypothetical Case Scenario (Handout 1a) into our discussions throughout the day*
- *Imparting abstract knowledge regarding how the systems work, where to find relevant information, and the philosophy behind the rules through interactive presentations using PowerPoint, flip charts and other tools.*
- *Perhaps most important, active participation in problem solving activities in small discussion groups. These discussion groups are imbedded within most segments of today's training.*
- *Learning from the experiences of the other small groups who may have chosen different methods of attacking difficult child welfare problems.*

- 📄 6. Pre-Training test (Handout A-1)  
Test your knowledge before the training  
Will not be collected, shared or graded  
Is only for your use

*At this point you should introduce the pre-test: Before we get started we'd like to test what you already know about the procedures and practices that govern the child protection agency and the court. The test is for your benefit only and we will not be grading it.*

*(Give the participants 3-5 minutes to complete the test)*

*The pretest in many ways provides a roadmap for some of the issues that we will discuss in today's training. The questions that you have been asked may have been difficult to answer, but by the time the training day is over each of you will have the knowledge to correctly answer each of them. (An answer sheet – Handout A-2) will be handed out before the day is over)*

- 📄 7. 25 C.C.R. 2509 – What is it?  
Volume 7 of the Colorado Code of Regulations  
Governs the practices of the Department of Human Services  
Why should I care? Where can I find it?  
[http://stateboard.cdhs.state.co.us:8008/CDHS/rule\\_volumes\\$.Volume7s](http://stateboard.cdhs.state.co.us:8008/CDHS/rule_volumes$.Volume7s)

**PROCEDURES AND PRACTICES OF THE COLORADO CHILD WELFARE SYSTEM  
ENTRY INTO THE SYSTEM – OPPORTUNITIES AND PITFALLS**

*Ask whether anyone knows what 25 C.C.R. 2509 is? It is Volume 7 – the section of the Colorado Code of Regulations that guides the practices of the Department of Human Services.*

*So why is Volume 7 so important? It is the template by which caseworkers operate in interacting with families, with their administration, and in making critical child welfare decisions. So why is it important for lawyers and others ancillary to the court process to know the ins and outs of Volume 7? The necessity to follow the requirements of Volume 7 is sometimes frustrating to lawyers and also to caseworkers as well as other stakeholders. But, knowing the requirements of Volume 7 can assist lawyers and others not associated with DHS to assure that children are safe; that needed services are provided to both parents and children; and that children are not unnecessarily removed or kept from their families.*

8. What is a “District Plan”?

Your plan can be found at:

[http://www.courts.state.co.us/Courts/Supreme\\_Court/Committees/Committee.cfm/Committee\\_ID/8](http://www.courts.state.co.us/Courts/Supreme_Court/Committees/Committee.cfm/Committee_ID/8)

*Resource Guidelines: Improving Court Practice in Child Abuse & Neglect Cases*

*Conversely, it is important for non-lawyers to have a basic understanding of how the court works, what the rules of evidence are and how these rules are enforced to different degrees at different stages of the case. In addition, it is important to know what the court must hear in order to accept or be persuaded by the non-lawyer’s recommendations, be they to remove children from the home, to enter protective orders, to require UA’s, to terminate parental rights, to place with kin, or leave the children at home.*

*So what is a “District Plan”? Just like the roadmap of DHS procedures, it is the document that summarizes the policies and procedures that the various districts use in processing D&N cases. Most districts have formulated their district plan as required by Chief Justice Directive 98-02 (Handout 1bb). For the most part these plans are not written in legalese and are recipes for how*

**PROCEDURES AND PRACTICES OF THE COLORADO CHILD WELFARE SYSTEM  
ENTRY INTO THE SYSTEM – OPPORTUNITIES AND PITFALLS**

*D&N cases should proceed. They emphasize a concept that you will hear often during the day – that word is “frontloading.” What it means is that from the moment a family enters the court system the court should ensure that every available resource and court practice is used to view the case through the eyes of the child, to understand that the child cannot wait, to understand that the time between court hearings can be an eternity to a child, to know that children are not resilient.*

*The participant’s district’s plan (assuming one exists) can be found and downloaded at:*

*[http://www.courts.state.co.us/Courts/Supreme\\_Court/Committees/Committee.cfm/Committee\\_ID/8](http://www.courts.state.co.us/Courts/Supreme_Court/Committees/Committee.cfm/Committee_ID/8)*

*The plans are based on Chief Justice Directive 98-02 and on the seminal work on court procedures in child abuse and neglect cases, Resource Guidelines: Improving Court Practice in Child Abuse & Neglect Cases. This work, published in 1995 by the National Council of Juvenile and Family Court Judges, remains the bible for judicial officers who preside over these cases. If participants do not already have a copy of the Guidelines, they should be available for distribution at the registration table.*

*It is important for participants to review their district plan to determine whether it is being followed. If not, they should ask, “Why not.” If there is a good reason to believe that the plan does not serve to provide safety, permanency and well-being to children and due process for all, then they should take the steps that lead to modification of the plan.*

 9. The Referral and Response

What action is necessary?

- Response times
- The Safety and Risk Assessments

*As this session’s title suggests, this morning we are going to concentrate on the early stages of an investigation and the decisions about whether to file a case, whether to leave the children at home or whether to remove them.*

**PROCEDURES AND PRACTICES OF THE COLORADO CHILD WELFARE SYSTEM  
ENTRY INTO THE SYSTEM – OPPORTUNITIES AND PITFALLS**

*Why is it necessary to have these rules and what some view as complicated instruments? Colorado is a county administered and state directed system. Without the rules there would be little uniformity, filtering of bias, consistency and predictability. In addition, there might be less confidence in the fairness or effectiveness of the decisions that are made on behalf of children and families.*

📄 10. Investigation Requirements (Volume 7 – 7.202.4.F)

Required when

1. Specific allegation of known or suspected abuse or neglect, and
2. Sufficient information to locate the child victim

Also required when #2 is established and it is the 3<sup>rd</sup> report in a 2 year period when the 2 previous reports were not investigated.

*Not every report of suspected child abuse or neglect gets investigated every time. It is unfortunate, but true, that some reports are made by folks with an axe to grind and not because there is a danger to a child. Even so, if the reporter is persistent there must be an investigation.*

📄 11. Response Times (Volume 7 – 7.202.4 .J)

Immediate/Same Day required when:

- ✓ Without such response the child is in danger of moderate to severe harm; or
- ✓ A child’s vulnerability or factors such as drug and alcohol abuse, violence, isolation, or risk of flight increase the need for immediate response

“Immediate” means within the same day or if received after hours, within 8 hours

*Sometimes it is evident from a report that immediate investigation is required to assure that the child is protected. Of course, what is said in a referral is not always true, but for purpose of deciding how quickly to investigate it is assumed that the allegations are true. Immediate means within the same day or if received after hours, within 8 hours.*

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- 📖 12. End of 3<sup>rd</sup> calendar day response required when:
- ✓ Without such response the child is in danger of moderate to severe harm; or
  - ✓ Factors such as drug and alcohol abuse, violence, isolation, or risk of flight increase the need for intervention in the near future
- Within 5 working days required when the report of maltreatment or risk of maltreatment indicates an absence of safety concerns

*The five day response would be appropriate for those cases where there appears to either be a misunderstanding by where there are reports by multiple reporters, or by one persistent reporter who reports either in good or bad faith.*

- 📖 13. Minimum Investigation Requirements (Volume 7 – 7.202.52)
- ✓ Face-to-face interview with or observation of child out of alleged perpetrator's presence;
  - ✓ Names and conditions of all other children living in home;
  - ✓ To the extent possible interview with alleged perpetrator; and
  - ✓ Visit to child's place of residence if home conditions are subject of referral or otherwise at issue

*Again, you should make a point of why the regulations are important in the county administered system. Without such regulations there would be no uniformity in investigations and abuse or neglect of siblings, for example, might not be discovered.*

*It is also important to note that there are other requirements regarding specific types of allegations, e.g. sexual abuse, that are found in this section of Volume 7.*

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📖 14. Is state intervention necessary?

Is the child “unsafe”?

- Is there a threat?
- Is there a vulnerable child?
- Does the parent lack sufficient protective capacities to assure that the child is not harmed?

Only if all three are answered “yes” is the child considered “unsafe”

*The framework for making decisions about safety is found in Volume 7 with requirements for safety and risk assessments. Although Volume 7 and the instruments used by Colorado DHS are essential in understanding how these decisions are made, a recently published guide presents the fundamentals of this analysis in a framework that is easily understandable for judges, attorneys and other stakeholders. This guide, entitled “Child Safety: A Guide for Judges and Attorneys,” was the joint effort of the National Resource Centers for Child Protective Services and Legal and Judicial Issues. You may be familiar with its authors, Therese Roe Lund, MSSW and Jennifer Renne, JD. The citation for this guide as well as a link to download it can be found in your Resource Bibliography (Handout A-4) in your materials.*

*Another handout, the Parental Protective Capacities Tool (Handout 1j), will help the participants assess whether parents possess sufficient protective capacities.*

📖 15. There are three tools that are part of the CAC.

1. Safety Assessment
2. Risk Assessment
3. North Carolina Family Assessment Scale (NCFAS and NCFAS-R)

*Announce that the safety and risk instruments and instructions are included in the materials (Handouts 1h, 1i, 1k and 1m). Materials regarding NCFAS and NCFAS-R can be found in Handouts 2a and 2b. We will address these instruments this afternoon. Keep in mind the importance of the NCFAS tools as they must be completed prior to treatment planning and they serve as the basis for the treatment plan.*



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 16.

1. Safety Assessment (documented in Trails within 30 days of referral)

- Required for all abuse or neglect cases being investigated or assessed except where the caregivers have abandoned the child (there are other exceptions that will not apply if the case ends up in court)
- Must also be completed when there is a significant change in family circumstances that may pose a safety threat; prior to reunification; and, prior to closure
- Assessment for child safety shall be based upon 15 standardized Safety Concerns (Handout 1h)

*There may be questions about these other exceptions. They are:*

- a. Institutional abuse investigations*
- b. Third party investigations*
- c. Fatality investigations where there is no surviving sibling*
- d. Caregivers have abandoned the child*
- e. When there is clear evidence after contact with the alleged victim and perpetrator that no incident of abuse or neglect occurred*

 17.

2. Risk Assessment (documented in Trails within 30 days of referral)

- Required for all abuse or neglect cases being investigated or assessed except for when the caregivers have abandoned the child or where there are other factors that will not apply if the case ends up in court
- A risk reassessment is required in any case where remain home or reunification are the permanency goals.
- The reassessment must be completed prior to return home and upon closure of case.

*The excluding factors are the same as set forth in the slide above.*

 18.

3. NCFAS and NCFAS-R – North Carolina Family Assessment Scale

- Used when reunification is the goal

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- Required where the goal is remain home.
- Must be completed within 60 days of assignment
- NCFAS-R assessment must be completed in any case where the child is removed
- Must be completed at the beginning, prior to reunification and prior to case closure

*So for a lawyer or a CASA, or another treatment provider, is it important to know these requirements and how the assessments work? How might you use this knowledge to obtain a better result for your client? As a judge how might you improve the functioning of the system with this knowledge? Use a flip chart to record answers from participants.*

(Suggested answers: Assure that the proper assessments have been completed; Require that the caseworker bring the safety and risk assessments with them when they attend the PPP; Counsel your client to address safety concerns to meet the safety needs of the child as set forth in the assessments; Understand the components that go into making the determination of whether the child should be removed and use these components to offer alternatives to placement that will address the safety concern; Make sure that the treatment plan is directed to the items that cause a child to be unsafe as revealed by the NCFAS instrument; etc.)

- 📖 19. Whether a child is “safe” is a product of three factors:
1. “Are there *threats* of danger that exist within the family?”; *and*
  2. “Are children *vulnerable* to such threats?”; *and*
  3. “Do parents lack sufficient *protective capacities* to manage or control threats?”
- Only when all three criteria are met is a child deemed “Unsafe.”

*Use Safety Plan Scenario (Handout 1bb) here and as a group discuss each of the safety factors set forth on the slide to reach a consensus about whether or not the child is unsafe.*

Safety Plan Scenario: A 15 year-old boy announces that he is gay. The child’s father is enraged and strikes the child several times, leaving marks on his face. When the caseworker investigates she learns that the child has two younger siblings. When interviewing the father he

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says that he was pretty buzzed before the altercation, having consumed three beers after work. He states emphatically that he cannot accept that his son is gay. He admits that he should not have struck him and promises the CW that it will not happen again. Mother indicates that this is out of character for her husband and that while they occasionally use physical discipline on the children there have never been any marks left on them as a result. She believes that father is likely to isolate his son emotionally. She does not believe that he will hit the child again. Mother asserts that she is willing and able to protect the child and report any physical abuse.

*The Safety Assessment Instrument is included in your materials as Handout 1h. We will be applying it later to our hypothetical.*

*Transition to the next slide and the question of whether an unsafe child equals removal.*

 20. Unsafe Child ≠ Removal

Another question: “Can the child be made safe through the implementation of a safety plan?”

*An “unsafe” child does not automatically require placement outside the home. If a child is “unsafe” under the above analysis, another question must be asked: “Can the child be made safe through the implementation of a safety plan?”*

*At this point inform the participants that they will meet at their tables with their facilitator to attempt to devise a safety plan for this family. Use the Safety Plan Hypothetical (Handout 1bb) with the following additional information:*

*Son is close to a neighbor couple who agree that he can stay in their home whenever needed. Mom and dad agree to allow son to reside with neighbor if things seem to be getting out of hand.*

*Give participants 10 minutes to think about a possible safety plan.*

*When the groups come back together the faculty should call on the facilitators or group reporter to report their findings. The faculty should challenge the*

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*conclusions and call on members of other groups to test whether the correct analysis has been applied. During the discussion, at an appropriate time, you should show the next slide. Groups should also be asked to comment on whether some of the children may be “unsafe” and others “safe.” Use a flipchart to keep track of the proposed plans and the considerations that the groups used in reaching their conclusions.*

📖 21. The Safety Plan:

- ✓ Not a document to describe how parents should change (cf. treatment plan)
- ✓ Designed only to *control* or *manage* threats
- ✓ Must have immediate impact in controlling threats
- ✓ Services in plan *must* be accessible and available
- ✓ Action oriented
- ✓ Must never rely on parental promises to stop the threatening behavior

*Important considerations include the following:*

- 1. Nothing in the safety plan should identify how the parents need to change. The treatment plan will identify what has to change for the parent to protect and assure the children’s safety.*
- 2. The 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.*
- 3. The safety plan must have an immediate impact in controlling threats. Strategies for long term change do not belong in the safety plan.*
- 4. People and services identified in the safety plan must be accessible and available when threats are present.*
- 5. Safety plans have more concrete, action oriented activities and tasks than do treatment plans (e.g., providing day care or supervising/ monitoring the home vs. therapy or parenting classes)*
- 6. 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 that is out-of-control, it is useless to rely on an out-of-control parent to be in control.*

*Included as Handout 1s is a sample safety plan for future reference.*

📖 22. Small Group Exercise

1. “Are there *threats* of danger that exist within the family?” *and*

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2. “Are children *vulnerable* to such threats?” *and*
3. “Do parents lack sufficient *protective capacities* to manage or control threats?”
4. “Is there a safety plan that can *assure* safety for the child?”

*At this point inform participants that they will meet in their discussion groups for 15 minutes to engage in a structured discussion and decision-making process to decide whether the children in the Hypothetical Child Welfare Case Scenario (Handout 1a) are safe or unsafe and whether there are means available to provide safety for the children through a safety plan. Participants should read Handout 1a only up to the section on the Preliminary Protective Proceeding. The small group facilitators should guide their group in completing of the Family Safety Assessment (Handout 1h). Because of time constraints the groups will not administer the Risk Assessment. Questions for use by the facilitators are included as Faculty Resource 1a.*

 23. Conclusion:

This is a tough business

There are no easy answers

Awareness by all stakeholders is a key to assuring accountability and safety of children

***Child Safety is the paramount concern (ASFA)***

*Conclude this segment by acknowledging that this is a messy business. Assuring child safety when faced with competing arguments for maintaining the family unit or removing the child is difficult and open to debate by well meaning people. However, recognize that the law (ASFA) requires that child safety be the paramount concern. Recall the situation of Ashley and her brother Luke (Three Little Words) and consider how their lives might have been changed if there were checks and balances on the actions of different parts of the system.*

*Only if all stakeholders are armed with knowledge of mandated procedures will they be able to make decisions and frame their arguments so that they effectively serve their constituencies to assure that children are protected with minimal disruption to the family unit.*

*Announce that following the break we will explore the court system and the court procedures at the initial stages of the case.*

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- ☞ 24. “This Court is real, real different.”  
- Unknown (But could be you?)
- ✓ Not really *civil* litigation
  - ✓ Not really *criminal* litigation
  - ✓ Most language is *not legalese*
  - ✓ *Policy* driven

*Announce that in the time between now and lunch we will discuss what makes this court different, what all stakeholders must know about this court generally in order to function within it and to interact effectively with it, and what special rules apply at the entry point.*

*Acknowledge that it isn't just the non-lawyers who think so, but recognize that this court has much more of a supervisory role to play because of federal law than other types of courts.*

*Contrary to the legend that there are no “rules” in this court, a well functioning D&N court has rules that are known to the participants and that are laid out in the District Plan for Handling D&N Cases. If you are new to the system, the best way to find out the ins and outs of your District's D&N court is by reference to the district plan.*

- ☞ 25. Ethical Considerations
- ✓ Ex parte communications (Rule 2.9)
  - ✓ The judge as a leader (Rule 2.1 [2], 1.2[6], 3.1[1])

*Ex parte communication is forbidden unless authorized by law. These are oral or written communications about a case without the other parties present. There are occasions when ex parte communication is allowed, e.g. asking the court to order custody to DHS in an emergency situation as contemplated by CRJP 2.3 and C.R.S. 19-3-405. All such communications must be on the record or a written order shall be made of them within 24 hours. Make it clear that when a judge receives a letter or other communication concerning a case from a caseworker, attorney, CASA, family member or anyone else, that the judge will share its contents with all of the parties.*

*However, the judge – especially a judge presiding over D&N cases – is also encouraged to engage in quasi-judicial activities to improve the law, legal system and administration of justice. What does this mean? A judge in the*

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*juvenile court is someone who will convene meetings on global issues and engage other stakeholders in efforts to improve the system for children and families. These roles do not conflict unless there is discussion about particular cases or discussion of facts that would only apply to one case. In engaging stakeholders, judges must assure that all sides are invited to participate in order to avoid the appearance of impropriety.*

📖 26. Evidentiary Considerations:

- ✓ The rules of evidence are relaxed at many stages of the case, e.g. PPP, Dispo, Review, Permanency (C.R.S. 19-3-403(3.6)(a)(II))
- ✓ Statutes regarding *Privilege* apply with equal force at every stage of the case (C.R.S. 13-90-107)
- ✓ Exception – Mandatory reporters are required to report abuse or neglect regardless of privilege (C.R.S. 19-3-304), however, they may not be examined without patient consent

*Similar to the rules in criminal and other civil matters, the rules of evidence, particularly those with respect to the receipt of hearsay, are relaxed at the preliminary stages of a case. (E.g. preliminary hearings in felony matters, bond hearings in criminal matters, etc.) Therefore, at the Preliminary Protective Hearing a caseworker is generally allowed to testify as to what a doctor, a relative or other witness said to him/her regarding the child and the family. Each judicial officer will determine the extent of relaxation that comports with notions of due process. It is important for the court to be consistent in its evidentiary rulings at this stage so that litigants know the rules and know what witnesses they will need to bring to court.*

*Privilege is a different matter. The law recognizes that there are certain relationships that deserve special protection. Ask the participants why the law protects communications within these professions. Because of privilege, in almost all cases, what a client tells his/her attorney, his/her priest in the confessional, his/her individual therapist, his/her addiction counselor is “privileged” and may not be revealed to others without the consent of the holder of the privilege (parent). The only relevant exceptions are when disclosure is necessary to prevent a future crime such as harming a child. These “privileged” statements are not admissible without the holder’s waiver at any stage of D&N proceedings.*

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*It is important to identify who the holder of the privilege is. For example, the child is the patient of the physician who is treating the child even though it is the parent who hired the physician.*

☞ 27. Taking a child into protective custody

Legal Standard: “A child may be taken into temporary custody by a **law enforcement** officer . . .:

- ✓ “When the child is abandoned, lost, or *seriously endangered* in such child’s surroundings or seriously endangers others and immediate removal appears to be necessary for such child’s protection or the protection of others.” C.R.S. 19-3-401(1)
- ✓ “Serious endangerment” means that the child’s safety and well-being is immediately at issue and there is no other reasonable way to protect the child without removal. C.R.S. 19-3-401(1.5)
- ✓ If a newborn child is taken into custody, the court must approve within 24 hours. C.R.S. 19-3-401(3)

*Although the statute allows a law enforcement officer to take custody of a child, you should have a good enough relationship with law enforcement entities in your district to assure that the DHS intake worker is consulted before making such a decision. This allows the worker to use the Colorado Assessment Continuum. If this relationship does not exist you may have children unnecessarily taken into care.*

*With regard to the requirement for an early court review after law enforcement takes a newborn into custody, there are exceptions for when the child is suffering from withdrawal from illicit substances, when the home from which the newborn is removed is engaged in manufacturing drugs and when the available birth parent(s) is/are certifiably mentally ill.*

☞ 28. Taking a child into protective custody by a Court – Verbal Orders  
C.R.S. 19-3-405

DHS, Law Enforcement or a Hospital Administrator may request and the Court may grant when:


1. Child appears to have been abused or neglected, *and*
2. The circumstances or conditions of the child are such that continuing in the care and custody of the parent or caretaker *would present a danger to the child’s life or health in the reasonably foreseeable future.* (Hearing required within 72 hours)



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*There is another more common manner of taking children into custody by notifying the court of the child’s circumstances. Each district is required to have a judge or magistrate on duty to hear such requests 24/7/365. If the child is taken into custody pursuant to this section or by law enforcement without court involvement and the child is placed in a DHS facility, the hearing must take place within 72 hours (excluding weekends and holidays). This is true regardless of the age of the child.*

*The ICWA standard for continued removal at the PPP hearing is clear and convincing evidence that “continued custody by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.” §1912(e). In addition, expert testimony is required.*

 29. Where should the child be placed?

- Parental Care
  - Diligent search for non-custodial parent initiated within 3 days (V.7304.52.B)
- Kinship Placement
  - Diligent Search for grandparents and other adult relatives within 30 days (V.7.304.52.B)
- Foster Care

*The decision about where to place a child who cannot remain home is of critical importance and should not be made based merely upon availability. Often this decision sets the tone for the entire case. If placed with a relative, in addition to considering whether the home will provide good emotional and physical care for the children, it is important to consider how the parents will respond to the placement. Will tension between the parents and the relative caregiver spill over and affect the children? Will the parent respect the caregiver’s boundaries and follow court orders regarding contact at the caregiver’s home? Are the foster parents willing to be part of the support system for the parents? Are they willing to have a relationship with the parents? Are their safety concerns for the caretakers? Included in the handouts is a paper by Lorrie Lutz entitled “Kinship Caregiver’s Capacity to Keep the Child Safe” (Handout 1n). However, there is no formula that will definitively tell you whether a particular caregiver is safe for a child. Although it is important to not use cookie cutter approaches, the use of standardized tools can filter out inconsistency and bias.*

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☞ 30. So, have we forgotten something?

“School is forgotten or treated as a side issue as the adults worry about protecting children, finding them new homes, or transferring them if a placement does not work out. Our first challenge is to pay attention and to look at the special obstacles foster children face in trying to get an education . . . “

Kippi Klausen  
Mile High United Way

*We often forget that when we are helping children achieve safety and strengthening their families that we also owe them a duty to maintain connections with not only their families but their communities. Education is the cornerstone of that community. Consider how many times Ashley and Luke were moved. A recent statistic cited by Bob Coulson, **Administrator** with CDHS reveals that on average, children who age out of the child welfare system experience 11 removals from home or foster care by the time they turn 18.*

*John Thirkell, a training participant stated his vision that being a foster child should be an opportunity for us to show provide for children what we believe all children should receive. Under this vision, foster care should mean that things are measurably improved upon removal. Unfortunately, that is not how it works out for most foster children, especially in terms of continuity of their education.*

☞ 31. Educational Assessments – Vol. 7.301.241

DHS must coordinate with the school of origin to assure there is a plan for educational stability including:

- Provider responsibilities
- Assessment of whether out of home placement is educationally appropriate
  - Is the placement close to the child’s school of origin?
  - Is there transportation to keep child in the same school?
  - Is the current educational placement in the child’s best interest?

*There are very specific requirements in Volume 7 for assuring that children’s educational needs are not forgotten.*

☞ 32. If transfer is in the best interests of the child

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DHS must coordinate with school of origin to assure timely enrollment in new school

- Educational records must be transferred within 5 school days – C.R.S. 22-32-138
- The child shall be enrolled within 5 school days

*Delay is not an option. It is important that participant hold other stakeholders accountable.*

📖 33. Placement Preferences – If in the children’s Best Interest

- ✓ Grandparents – C.R.S. 19-3-402(2)(a)
- ✓ Grandparent, aunt, uncle, brother, sister, half-sibling, & 1<sup>st</sup> cousin – C.R.S. 19-3-403(3.6)(a)(V)
- ✓ Sibling Groups (joint placement) – C.R.S. 19-3-402(2)(b), 19-3-403(3.6)(b)

**Relative must be appropriate, capable, willing and available**

*There are a number of statutes that provide for preferences regarding where children should be placed. The overarching consideration is the children’s best interests, but the law provides a clear preference for kinship care. In fact, C.R.S. 19-3-403(3.6) requires the parent to complete an affidavit listing relatives and making comments regarding their suitability for placement.*

*When making arguments to the court or giving testimony as a caseworker, CASA, attorney, service provider or other stakeholder, it is important to frame your argument in terms of these preferences. If you favor foster care over kinship care then you must show that the relative is not capable, for example, or that there is a competing preference (e.g. the relative is unwilling to take the entire sibling group or is the relative of some but not all of the children in the group).*

📖 34. Preparing for the hearing – “Best Agency Practices”

- ✓ Provide proper notice
- ✓ Meet with supervisor
- ✓ Meet with County/City Attorney
- ✓ Prepare petition and sworn statement of fact for presentation to parties before the hearing

*The most important persons/entities to be notified of a fact that a child has been taken into custody and that a hearing will be held are the city/county*

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*attorney, the court and both of the parents or custodians. If one of the parents is absent, expect the attorneys and the court to ask about efforts to identify, locate and notify the parents.*

*At each of the meetings listed on this slide, the caseworker witness must demonstrate that he/she is able to clearly enunciate (using the template set forth in the Risk Assessment) the reasons for the action proposed. The attorney should review and prepare the caseworker for likely areas of inquiry by the GAL or RPC.*

*The law does not require the filing of the formal Petition until 10 days after the child is taken into custody (CRJP 4(a)), however, courts using best practices and frontloading practices work with stakeholders to assure that petitions are filed at the time of the initial hearing. Failing to do so can cause valuable court time to be wasted at the PPP by persons speculating about what the Petition will say when it is filed.*

 35. Preparing for the hearing – “Best Court Practices”

- ✓ Require proper notice
- ✓ Appoint Guardian ad Litem (C.R.S. 19-1-111)
- ✓ Counsel for Parents available for appointment in case of indigence
- ✓ Setting aside sufficient time
- ✓ Be prepared to speak in clear and understandable language and to provide written orders at hearing

*Again, “frontloading” and having a quality hearing are the by-words here. A hearing that addresses all issues to assure safety and due process does not just happen. There must be preparation. The court must assure that support personnel know what to do and who to contact so that a quality hearing can take place. If all parties are not represented it is unlikely that this very important hearing can accomplish all that it needs to accomplish.*

*Courts should consider a system whereby the parties show up at least 30 minutes before the case is to be called so that newly appointed counsel can meet with their clients and formulate strategy. Without this time parties who are newly represented often feel (rightly so) that they have been ambushed. This additional time also gives the parties time to discuss settlement of the custody question in a manner that provides safety for the child.*

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*Parents are often like deer in the headlights. The stress created by their child's removal along with that created by being in court for such an important matter causes them to freeze and makes it hard to understand and retain important information. It is important for stakeholders, especially the judge, to think about how others hear you and wherever possible to provide written information that can be reviewed later.*

- 📄 36. Conducting the Hearing – Best Practices – Preliminary Matters
- ✓ Determine Jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act and the Uniform Parental Kidnapping Act
  - ✓ Determine what other actions may be ongoing in your own district

*It is critical for courts to make these determinations. They set the groundwork for how the court proceeds with the rest of the case. Even if it is determined that another court or the tribe has jurisdiction or if the other parent cannot be located, the court is required to act to protect children in emergency situations.*

*Under the UCCJEA and UPKA, if a court in another state or district has jurisdiction through a domestic relations action, a paternity action or other case where custody has or can be determined, the juvenile court cannot enter final orders that determine custody unless the other court (after the judges consult) determine that the juvenile court is in a better position to do so. It is important to ask whether there are other actions involving the child at this stage so that the courts can consult and determine who should assume jurisdiction.*

*In addition, the court should determine whether there are other proceedings that are taking place concurrently in the same district. Ask the participants to list the types of actions that might be ongoing in the same jurisdiction. Use a flipchart to record the results. Examples include: one or both of the parents may be restrained by a protection order, one of the children may be the subject of a delinquency petition, the parents may be engaged in a custody battle through their dissolution or paternity case, a motion to modify child support may be active, a criminal matter may have been filed against one of the parents that led to the D&N being filed or one of the parents may be charged or on probation for an offense unrelated to the D&N case.*

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*How the court handles these issues varies dramatically from jurisdiction to jurisdiction. In making the decision on which court should handle different parts of a case involving the same family certain principles should be paramount including the need for consistency between the different courts (e.g., one court has ordered no contact and the D&N court orders family time), the importance of minimizing the inconvenience to the family and other parties in having to make numerous appearances in different courts for essentially the same issues, and the effect of proceeding in the civil action (D&N) without compromising rights in the criminal proceeding.*

*You should solicit information from the participants about how different jurisdictions handle these conflicts. Examples include one family – one judge in rural jurisdictions, the D&N court handling all of the civil matters, etc.*

 37. Preliminary Matters (Continued)

- ✓ Determine whether the child is an Indian child (JDF567)
- ✓ Determine Paternity
- ✓ Require the Parent/Custodian to complete the affidavit regarding relatives (Form JDF559)

*The Indian Child Welfare Act requires that timely notice be given to tribes if a child might be an Indian child under the Act. In addition, if a child is determined to be an Indian child, the child, parents and the tribe have important rights and access to sometimes significant resources for rehabilitation or placement. Handout 1e is included in the materials. This document is the ICWA assessment form. Only cursory attention is within the purview of this training but suffice it to say, this is an important issue/right that cannot be overlooked. Four handouts are included in your materials regarding the provisions and requirements of the Act, including a form that should be used by the court at the initial hearing and at any other place when the question of whether the child is an Indian child might come up. (Handouts 1b, 1c, 1d, and 1e)*

*Further, it is important to note that you might not find out that a child may be of Indian heritage unless you specifically inquire. This is an important task for **all** stakeholders to complete. If it turns out later that the child is an Indian child or eligible for membership in a tribe the whole process that has occurred up to that time is derailed with the result that possible family/tribal resources have been ignored and permanency delayed.*

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*Every child has two parents! Failure to properly notify and gain jurisdiction over one or both parents can lead to catastrophic results for the child. The parties must engage in a diligent search to identify, locate and notify all parents!*

*The completion of Form JDF559 is **required**. Courts must enforce this requirement. On many occasions parents are reluctant to disclose to others family resources that may be viable options for a child. Such reluctance should not be allowed to interfere with the child's right to have access to these resources. The law says that the court must require parents to fill out the affidavit and file it with the court. C.R.S. 19-3-403 (3.6). Often, it is not effective for the court to merely state that compliance is required. The court needs to help the parents understand why relative participation is important and, if necessary, allow/require the parents to be put under oath to reveal information about their family. When the affidavit is filed, the court must provide a copy to the agency, the GAL, each parent and counsel for parent. C.R.S. 19-3-403(3.6)(a)(III)*

*Failure to attend to any one of these areas can lead to delay and in some cases reversal of termination orders.*

☞ 38. Preliminary Matter – Is this a case where Expedited Permanency Planning (EPP) applies?

- ✓ If *any* of the children are under 6 at the time the case is filed then all children named in the petition are subject to the expedited timeframes of EPP (C.R.S. 19-1-123)

*EPP was adopted in recognition of numerous studies establishing that children undergo a critical bonding and attachment process prior to the time they reach six years of age. It is all about “frontloading.” This is an example of using what we know about how kids develop and bond to drive what we do. A chart showing the comparative time differences between a regular case and an EPP case is found in Handout 1g.*

*In order to comply with the expedited timeframes it is necessary to determine at the very first hearing whether the Act applies*

☞ 39. Key Decisions by the Court

- ✓ Should the child be returned home immediately?

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- ✓ Are there services that will allow the child to safely remain at home?
- ✓ Has the agency made reasonable efforts to avoid the need for placement?

*The court has an obligation to make an independent determination of whether the action proposed by DHS or any of the parties meets the standards for removal or return of the child. In addition, the court should not only determine whether the child is in danger, but also whether with the entry of protective orders or the implementation of other measures it is possible to return the child to the home.*

*The Risk Assessment makes sense. If judges and others outside the agency understand how it works and understand its rationale to protect children and maintain family units, they will adopt this template when they inquire about how it was applied and when they rule on whether the child should remain in custody or return home.*

*A court may disagree with the agency's request for custody but also determine that the agency made reasonable efforts to prevent the need for placement, and the court may conclude under the law that because of the emergency nature of the situation that reasonable efforts were not required.*

**ICWA Removal Standard:** *The standard for removal for ICWA children is clear and convincing evidence that “continued custody by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.” §1912(e). In addition, expert testimony is required.*

 40. Key Court Decisions (continued)

- ✓ Are responsible relatives or other adults available?
- ✓ Is the proposed placement the least disruptive and most family-like setting that meets the child's needs?
- ✓ Are protective orders necessary to assure compliance?

*This slide lists other factors for the court to consider in determining whether there are viable and safe alternatives to placement with the agency. Failure to take these steps can cause delay and harm to children and families.*

 41. Key Court Decisions (continued)



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- ✓ Are orders needed for examinations, evaluations or immediate services?
  - Urinalysis of a parent or custodian
  - Substance Abuse Evaluation of a parent or custodian
  - Physical Examination of a child or parent
  - Mental Health Examination of a child or parent

*Regardless of how the court decides the custody issue, there may be the need for court assistance in obtaining evaluations or examinations. The most common items for consideration are UA's, Substance Abuse Evaluations of a parent, or physical or mental examinations of a child or parent. The court can order any of these examinations as part of a protective order that places conditions on return of the child or visitation with the child, however, the examination must be reasonably related to an issue of safety. In addition, these examinations are often ordered with the proviso that the results will not be used at an adjudicatory hearing. Some participants may list Domestic Violence or Parent-Child Interactional evaluations. These evaluations are generally reserved for entry, when necessary, at later hearings.*

📄 42. Key Court Decisions (continued)

- ✓ How often, when and under what conditions should there be contact between the child and the parents and between siblings?
- ✓ What must the parents do to regain custody?

*Perhaps the most important decision the court will make and the parties will advocate for, other than the question of removal, is the extent and conditions of contact with the child following removal. Those advocating or making this important decision should consider how the removal looks through the eyes of the child. Consider the case of Ashley. She didn't see her mother for what seemed to her like an eternity. Consider your own children, grandchildren or nieces or nephews. Think about how they would react if they were suddenly removed from their familiar surroundings and had no power to speak to the people who are familiar to them.*

*Sometimes overlooked by the court is a question that is uppermost in the parents' minds, that is, what must the parent do to regain custody of the children? Often we are so focused on the docket for the day or the question of what we must do to provide for the immediate safety of the children that we neglect to address the question that parents most want to have answered. Shouldn't the parents reasonably expect us to know what they must*

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*demonstrate to have the children returned? If we can't answer this question in language that parents understand they may become discouraged or doubt our motives of child protection. If we are successful then work on a service plan will be expedited and the process will move more quickly.*

☞ 43. Family Time (Visitation) – Best Practice Principles

- ✓ Children and families should be provided meaningful and safe Family Time from the time they enter care until reunification *unless* the court orders otherwise based on the best interest of the child
- ✓ Absent extraordinary circumstances an initial period of Family Time shall occur within 48 hours of removal (Best Practice – Not Rule or Statute)

*(It is important to note that these Best Practice principles are not specifically required by law or regulation) Where there is no visitation there is no hope. This statement is true for parents and children. Children feel helpless and powerless when they are removed from their familiar surroundings. This is often true even if they have been removed from deplorable situations. While they may **be** safer separated from their parents and siblings, they often don't **feel** safer. It is essential that they have contact with those who are familiar to them if it can be done so safely.*

☞ 44. Family Time – Best Practice Principles (continued)

- ✓ Family Time plans should be based on the unique circumstances of each case and must be factually based, appropriately documented and approved by the court
- ✓ Family Time plans should not be used as a threat or form of discipline to the child or to control or punish the parent

*It is not okay to use a cookie cutter approach to establishing family time. Although templates have been developed, it is important to design family time plans based on the family's unique circumstances. Handout 1t may be useful in incorporating activities that will make visits as developmentally appropriate as possible. Handout 1u is a summary of Volume 7 regulations and laws that impact family time in child protection cases. Whatever the plan is, it should be flexible enough to make the changes that are necessary for children and parents to benefit from the contact.*

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*The determining factor for how to tailor family time is never punishment or control but instead the best interests of the child! Even though a parent may be in violation of a court order to not use drugs, for example, the child may very well benefit from consistent contact with that parent. Means other than depriving a child of Family Time should be used to enforce the court's orders.*

☞ 45. Family Time – Best Practice Principles (continued)

- ✓ If siblings cannot be placed together specific provisions should be made for family time between siblings

*Except in extraordinary circumstances, predictable sibling contact is essential to maintain a degree of normalcy for children removed from the home.*

☞ 46. Provide Information to Parents

- ✓ Petition
- ✓ Advisement
- ✓ Affidavit Regarding Relative or Other Caretakers
- ✓ Protective Order
- ✓ Next court date
- ✓ Information about available services

*Many parents won't remember much of what happened in court. It is important to provide as much information as possible in a written form and other stakeholders, especially counsel for parents, must be available to meet with parents to explain the court process. A tool that may be useful to parents as well as stakeholders is the D&N Handbook that was prepared by SCAO. This handbook is included as Handout 1aa. In addition, Handouts 1v and 1w provide samples of advisements to be given by the court at the PPP hearing.*

*Not only should the court hand out papers, but it must assure that the material is understood and that parents know where to turn if they lack understanding. Further, it is important that members of the team are on the same page, i.e. working toward a common goal, understanding that time is of the essence. E.g., in an EPP case the adjudication must take place within 60 days.*

*Should the court and the other stakeholders, as a part of this process, assure that the parents understand what the safety issue is and what it will take to get*

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*the child home? Ask what ideas participants have for other stakeholders about what they can say to parents to motivate them?*

📄 47. Bringing it together!

- ✓ What might you do in your jurisdiction to make the court and agency process better?
- ✓ How might the information provided through this training make you a better advocate for your constituency?

*If there is sufficient time, you should break into the small groups for 10 minutes and allow this discussion to go on there. When the groups come back together or if you do this as a large group, use the flipcharts to brainstorm ideas about how this knowledge might change practice to improve the lives of children in the system.*

📄 48. Agenda

- ✓ Networking Lunch
- ✓ Afternoon Session
  - Disposition/Treatment Planning
  - NCFAS/NCFAS-R
  - Permanency Planning
  - Permanency Options
  - Termination/Allocation of Parental Rights and Responsibilities

*Prior to breaking for lunch you should outline the afternoon agenda and emphasize the importance of starting the afternoon session on time.*

**ADJUDICATION/DISPOSITIONAL HEARING/TREATMENT PLAN  
ENGAGING THE FAMILY**

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**Time: 90 minutes**

**Description of Activity:**

This session is designed to provide all participants with a basic understanding of the work that goes into a case from the time following the conclusion of the Preliminary Protective Proceeding (PPP/Emergency Hearing) through the entry of a treatment plan at the dispositional hearing. Because of time constraints, the adjudicatory hearing will be addressed only briefly. During this session participants will learn the importance of engaging the family in formulating the treatment plan; what elements are required as a part of a treatment plan as well as common mistakes in writing or approving treatment plans. In addition, participants will be introduced to the North Carolina Family Assessment Scale and its importance in formulating appropriate service plans. A discussion of privilege and evidentiary rules as they apply to adjudication and treatment planning will also be aired. Participants will be provided time in their small groups to construct an appropriate treatment plan using the facts in the hypothetical case scenario (Handout 1a).

As in the morning session, thinking about the advance reading and PowerPoint are utilized to cause reflection and to present abstract material. The Hypothetical Child Welfare Case Scenario together with small group discussion is used to encourage active experimentation with the material presented.

Further, as in the morning session, it is important for the trainer to keep the participants' interest throughout this segment by weaving in concrete elements of the hypothetical case scenario and the advance reading, by asking difficult questions, and by allowing participants to reflect together and in discussion groups on how procedures and practices in the two systems and adherence to them might result in better outcomes for children and families.

- 📄 49. Procedures and Practice in the Child Welfare System  
Adjudication/Disposition/Treatment Planning – Engaging the Family  
(Date)  
(Faculty Names and Titles)

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*Again, this segment emphasized two principles: Frontloading and Accountability. Without knowledge of the practices and procedures at this stage of the proceeding we will be lost in trying to achieve either.*

☞ 50. Adjudication

- ✓ Advisement
- ✓ Right to jury/court trial
- ✓ Burden of proof – preponderance
- ✓ Rules of Evidence Apply
- ✓ Taking a plea

*Although a significant step in the processing of a case, the adjudication is only briefly mentioned here. The reason is because in most instances there is no trial to either a jury or a judge. Most frequently, the parties meet to discuss the issues that brought the case to the court. Sometimes mediators assist the parties in reaching a resolution short of trial. The most important issues to the parties are safety, defining what it will take to return the child, what it will take to end state involvement, and what the treatment plan will look like. Most settlements deal with all of these issues. A common concession is the entry of a deferred adjudication instead of a decree. Deferred adjudication is where the parents admit an allegation in the petition but a decree is not entered. A deferred adjudication usually lasts only 6 months but can be extended for up to a year at which time either the case must be dismissed or a decree must enter. Less frequently the parties will agree to informal adjustment in which the parties agree to a plan that can last for up to six months. An informal adjustment results in the case being dismissed with the agreement that it can be refiled if there are new allegations of abuse or neglect or if the parties do not comply with their agreement.*

*Most of the time a resolution through negotiations or mediation will define the parameters of the treatment plan. This negotiated settlement is not binding on the court since the court must be guided by what is in the best interests of the child.*

☞ 51. Effect of a Plea on a criminal case – C.R.S. 19-3-207

- ✓ Except for purposes of impeachment or rebuttal no plea in the D&N case may be used against a parent in the criminal case
- ✓ None of the professionals involved in the TP may be examined in the criminal case without the consent of the defendant

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- ✓ Compelled testimony of a respondent may also be protected after notice to the DA

*When there is a criminal case concerning the same allegations as the D&N, the parent must be concerned about the effect that a plea or compliance with the TP might have on the criminal case. This statute was adopted so that parents can fully participate in the D&N case and take advantage of the services offered by the TP without being faced with the Hobson's choice of at the same time waiving their right to remain silent.*

☞ 52. So what if there is a trial?

- ✓ Jury trial
- ✓ Court trial
- ✓ Who are your witnesses?
  - Rules of evidence apply
  - Do you put the child on the stand?

*Sometimes the case will end up with a trial. Although non-legal stakeholders are not expected to be experts in the rules of evidence, they have to be prepared to present their evidence. Everyone needs to understand that at the adjudication and at the termination stage, unlike other stages, the rules of evidence apply with full force. Agencies and other stakeholders need to know some basic rules to effectively assist the lawyers in presenting the best possible case for your position. Caseworkers in consultation with the agency attorney and the GAL will be influential in deciding such issues as whether the child will need to testify.*

☞ 53. Rules of Evidence . . . What is “hearsay”?

“Hearsay is an out of court statement, made in court, to prove the truth of the matter asserted.”

Testimony is “hearsay” if the witness is repeating what someone else has said out of court and the reason it is being said by the witness is to prove that the content of the statement is true.

*Point out that this course cannot provide a comprehensive view of all of the evidentiary issues that may arise at a trial or in planning for a trial, but it is important to understand a few basic rules so that when stakeholders are gathering evidence that they know what works and what does not work in court.*

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*The “legal” definition should be displayed first and the second plain English version should then be displayed and broken down into its parts. The electronic version of the PowerPoint file does this.*

🖥️ 54. Hearsay or Not Hearsay?

Witness: I saw Dick hit the child.

**Not Hearsay**

Witness: Tom told me that he saw Dick hit the child.

**Hearsay**

Witness: Tom told me to look and when I did I saw Dick hit the child.

**Not Hearsay**

*Non-legal participants will need some examples of how the rule works. In the PowerPoint file each line displays sequentially upon clicking.*

*As each witness statement is displayed you should ask the participants to say out loud whether they believe the witness’ statement is hearsay or not.*

🖥️ 55. In the context of D&N cases, are there exceptions to the hearsay rule?

✓ Spontaneous present sense impression

W: John and I were there when mom gave the baby the bottle and John said, “That bottle stinks.”

✓ Excited utterance

W: I walked into the apartment and I could see that mom’s eye was red and she was huddled in a corner. She exclaimed: “He did it! He hit me!”

*Note that these are hearsay statements but that because of the context in which they are made they are more reliable and thus admissible. Emphasize the clear meaning of the words, for example, “spontaneous” and “present” mean just that. If the witness first asked John about the bottle before he made the statement it would not be “spontaneous”. Likewise, if the statement is: “That bottle stunk yesterday,” it does not express a “present” sense impression.*

*With regard to an excited utterance, it is important to note that the key elements are “spontaneity” and “excitement”. The person making the statement must be still under the stress of a startling incident.*



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📄 56. Disposition/Treatment Plans

Findings from Colorado CFSR

- ✓ Lack of effective assessment of parental needs;
- ✓ Lack of effective parental engagement in service planning;
- ✓ Lack of sufficient engagement of relatives in service planning;
- ✓ Failure of courts and DHS to consistently obtain information from relatives on Form JDF-559

*A theme throughout the CFSR was that contacts with parents, foster parents and children lacked sufficient quality. This deficiency is especially evident at the dispositional stage of the case. You should mention that Handout 2c provides methods to engage the family.*

*Ask how can these issues can be addressed? What are some of the problems? Use a flipchart to list. (Suggested problems: Caseworker overload; parents who are hard to contact; parents who avoid contact; failure to effectively utilize assessment instruments; caseworker burnout; parents who are in jail/prison; caseworker turnover, inconsistent/intermittent court engagement regarding JDF-559, etc. Suggested solutions: Partnerships with other stakeholders to gather critical information; use of assessment instruments, etc.) How might some of these issues be resolved? Use the flipchart to brainstorm strategies to improve practice.*

📄 57. Volume 7 Caseworker contact requirements (7.202.62.F):

A portion of every face-to-face contact shall take place out of the presence of the provider and must include a visual assessment of where the child sleeps

- ✓ Parents
  - At least monthly (unless TPR filed or return home is not a goal)
  - Every other month must be face-to-face
- ✓ Children
  - In-home – face-to-face every month
  - Out-of-home – face-to-face every month with the majority occurring in the child’s out-of-home placement

*Before going further with the discussion of what services should be provided, point out that we need to be aware of how information about the family and safety of children is accumulated. This information is obtained from many possible sources, but at the core of that information gathering is contact with*

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*parents and children. The visit to the placement facility must include a visual assessment of where the child sleeps.*

*These requirements are currently in effect; however, it is expected that in order to comply with Federal regulations new contact rules will go into effect on June 1, 2010.*

 58. Contact Requirements for Children and Youth in Out-of-Home Placement (Effective 6/1/10)

- ✓ Face-to-face required monthly and at least every other month must occur in the out-of-home placement facility
  - Contact provided by primary CW, Supervisor or a Designation Visitation Caseworker
- ✓ Two face-to-face contacts required in the first 30 days of placement, one of which must be in the out-of-home placement
- ✓ Majority of face-to-face contacts must occur in the placement

*Note: This includes youth in program areas 4-6.*

*The Designated Visitation Caseworker is a new creature. There may be only one Designated Visitation Caseworker for a child or youth at any time. That person may not be the caseworker who is primarily designated to supervise the home and this person may not be an employee of the home. On its face, this new provision appears to provide more flexibility, but there is more . . .*

 59. Contact Rules and Enforcement

- ✓ Runaways who are in DHS custody *MUST* have monthly face-to-face contact even though they are on the run during a large portion of the month

*Point out that the inclusion of runaways is a real problem. If the contact is scheduled for the 21<sup>st</sup>, for example, and the child runs away on the 20<sup>th</sup>, the contact won't occur and the agency will be out of compliance.*

*For courts, this will likely result in early requests by DHS to relieve the agency of custody so that the contact is not required. This may be the case even though the child/youth is only gone a few hours. Query, how can the court relieve DHS of custody if TPR has occurred or if the parents' whereabouts are unknown?*

 60. Issues with Federal Enforcement:

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- ✓ 90% compliance required – Stiff fiscal penalties for non-compliance
    - To be counted as compliant there must be face-to-face contact in *EVERY* month – **11 of 12 gets no credit!**
  - ✓ Provides disincentive for further compliance if one month is missed
- Query: Why are the Feds only focused on enforcement of out-of-home contacts and not in-home?**

*This is an example of the significant burdens that are placed on caseworkers that have little relation to the protection of kids. If we want to incentivize the agency to do the very best they can, we need to give them credit when they are almost perfect. An example of how this works as a disincentive is if the contact is missed for whatever reason in the 3<sup>rd</sup> month, from that point on for the rest of the year there is no fiscal incentive to make the rest of the contacts.*

📖 61. Family Service Plan Principles

Volume 7 – 7.301.2

- A. A child’s safety is paramount;
- B. Children belong in families;
- C. Families need support of communities; and
- D. Community partners are key to achieving strong outcomes for children and families

*Point out that all stakeholders have these common goals whether their job is as caseworker, judge, CASA, parent, attorney or other service provider.*

*So how do we promote these principles in the FSP? What services are required?*

📖 62. Core Services – Volume 7 – 7.303.1/C.R.S. 19-3-208

- ✓ Home Based Interventions
- ✓ Intensive Family Therapy
- ✓ Life Skills
- ✓ Day Treatment
- ✓ Sexual Abuse Treatment
- ✓ Special Economic Assistance
- ✓ Mental Health Services
- ✓ Substance Abuse Treatment Services
- ✓ Aftercare Services
- ✓ County Designated Services

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*It is important to state that if we are true to the principles outlined above, it is important that our regulations and statutes require this full array of services be available in every county. However, it poses another issue – How do we avoid cookie cutter approaches to treatment planning?*

📖 63. Assessment for services – Tools for Success

Goals –

- Avoid cookie cutter solutions
- Engage parents
- Avoid overwhelming parents
- Give families hope

*When building an appropriate treatment plan it is essential that the caseworker, attorneys and the court think outside the box and not merely populate the treatment plan with the same old services. To do this it is important to not only focus on the needs of the family but to recognize and build upon what the family does well and to utilize resources that are available through the extended family.*

*How do we get there? Ask if we should utilize what we have already learned about the family or whether we should learn more about possible family strengths? We have a tendency to focus only on the weaknesses because that is what brought the family before the court.*

*The Risk Assessment is a tool that not only measures areas of concern but can also be used as a tool to identify areas where the family is not placing the children at risk. It is important to not just throw it in the waste bin after it has been entered into TRAILS.*

*Perhaps a more important tool in treatment planning is one we mentioned this morning. It is the NCFAS.*

📖 64. The North Carolina Family Assessment Scale (NCFAS)/

North Carolina Family Assessment Scale – Reunification

- ✓ Used to assist with Family Services planning
  - Evidence Based – California Evidence-Based Clearinghouse  
<http://www.cebc4cw.org/assmt-ncfas>
  - ID's most needed services
  - Assesses family strengths
  - Measures change in family functioning

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- Measures outcomes of safety, permanency and well-being

*The NCFAS and NCFAS-R are used in Colorado as part of the Colorado Assessment Continuum. It is a tool that when used properly can help identify strengths and needs so that appropriate service plans can be put into place and decisions can be made to about whether children can safely return to their home. In addition, application of NCFAS at other intervals after the initial assessment can accurately assess whether progress has been made. Use of this assessment is important because it is critical to ensure that the changes that occur through the delivery of services are at a level of intensity that corresponds to the risk assessment, and that the changes can be measured in a reduction of risk to the child.*

*Ask whether participants think that the NCFAS may be an important tool for attorneys and others to use in determining whether the treatment plan as proposed is appropriate? Is it an important tool in arguing and deciding whether the agency has made reasonable efforts to prevent or eliminate the need for placement?*

*Let's learn a little bit more about NCFAS. Handout 2a summarizes the purpose and value of NCFAS and NCFAS-R*

- 📄 65. NCFAS: Assessment of family functioning on 5 domains
  - ✓ Environment
  - ✓ Parental Capabilities
  - ✓ Family Interactions
  - ✓ Family Safety
  - ✓ Child Well-Being

*Subsets of these five areas in included in the assessment tool. For example, Environment has 9 different sub-categories with rating scales that range from "Clear Strength" to "Serious Problem." The 9 sub-sets under environment are: Housing Stability; Safety in Community; Habitability of Housing; Income/Employment; Financial Management; Food/Nutrition; Personal Hygiene; Transportation; and Learning Environment.*

*Conscientious adherence to the definitions and assessment by the same caseworker throughout the case allows the instrument to be applied*

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*consistently. Good supervision is an important element for proper application of the definitions.*

*Ask the legal participants how they might apply this knowledge to benefit their client. Tell them that in a few minutes they will have a chance in their small groups to apply the instrument to the Hypothetical Case Scenario (Handout 1a) and to develop a treatment plan to present at the dispositional hearing.*

- ☞ 66. Volume 7 Requirements re: NCFAS/NCFAS-R
  - ✓ NCFAS required in child abuse and neglect cases with permanency goal of reunification or remain home
  - ✓ NCFAS-R used to predict when reunification will be successful
  - ✓ Must be completed at least twice during life of case:
    - Within 60 days from when the case was assigned for investigation (serves as the basis for the treatment plan)
    - As part of the decision-making process regarding case closure

*For legal professionals and CASA in particular, it is important to see the NCFAS instrument and to review it critically to see if any of the information used to make the assessment is inaccurate or based upon improper or over emphasized considerations such as poverty, ethnicity, race, etc. We all hold implicit biases. It is important for accountability to explore whether those implicit biases drive decisions about placement, treatment planning, etc. NCFAS provides an opportunity to do that.*

[There may be a question about consistency of the instrument. Internal consistency regarding progress is achieved primarily through the strong preference for the same worker to complete the first and all subsequent assessments. If not possible it provides that there should be a staffing between the workers who have completed the assessment.]

- ☞ 67. NCFAS-R: Includes all of NCFAS plus two additional domains unique to reunification
  - ✓ Ambivalence
  - ✓ Readiness for Reunification

*NCFAS-R offers assistance to the caseworker and other professionals involved with the case when considering whether and when the family is ready for reunification. These additional domains include several subparts.*

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*The Ambivalence domain looks at 9 factors including how eager the parent and child are to reunify, how the caregiver responds to the child verbally and non-verbally, how comfortable the child appears to be in the presence of the caregiver, and whether home visits have progressed in terms of frequency, duration and level of supervision. Readiness looks at 12 factors including how much progress the family has made on practical/logistical/legal issues, how the caregiver has addressed needs of the family such as transportation, housing, employment, income and supervision, whether the perpetrator has been removed from the home and whether the caregiver reconstructed a living environment that affords protection and care for the child.*

*So let’s look at some examples of how the scale might be applied.*

 68.

**NCFAS Parental  
Discipline Scale**

Clear Strength +2	Mild S. +1	Baseline/Adequate 0	Mild P -1	Mod P -2	Serious P. -3
Refers to caregivers’ ability to provide age-appropriate, non-punitive, consistent discipline. Uses positive reinforcement, and tries to educate children through appropriate discipline.		Refers to caregivers’ adequate provision of discipline and guidance of children. Occasionally discipline is inappropriate to age, too harsh or too lenient, but inconsistencies do not create major problems between child and caregivers.			Refers to caregivers’ lack of discipline, or past or current emotional or physical abuse referred to as discipline. Discipline is excessive, punitive, inappropriate to age, inconsistent, and/or absent. Present poor role models. Caregivers disagree on parenting strategies and present mixed messages to child.

*This and the rest of the definitions can be found at: [http://ssw.unc.edu/jif/reports/Defs\\_20.pdf](http://ssw.unc.edu/jif/reports/Defs_20.pdf) This link is included in the Resource Bibliography – Handout A4.*

*Ask the group to reflect on the case of Sam and Marianne that we considered this morning and apply one of the Parental Capacity subscales to this family.*

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*Ask them consider the following additional information that Marianne and the children provided at a caseworker contact:*

*Marianne reveals that Sam is the disciplinarian in the family and that on a couple occasions he has spanked Sandra with a belt on the buttocks over her clothes. The last time this happened was about two months before DHS contact. Marianne has never noticed any marks on Sandra resulting from these incidents but says she does not think Sam should be using a belt. So far she has not felt able to confront Sam about it. Sandra says that sometimes Sam is nice but when he drinks she and the other kids are afraid.*

*The Parental Discipline Scale as shown in this slide appears to be pertinent to the issues that brought this family to the attention of the agency and the court. Where would you rate the family on this scale? What factors would you consider? What treatment interventions would you suggest? Are you most concerned about physical or emotional abuse? What if further investigation revealed that there were prior reports of minor abuse to the children?*

 69.

**NCFAS Parental/Caregiver  
Use of Alcohol/Drugs**

Clear Strength +2	Mild S. +1	Baseline/Adequate 0	Mild P -1	Mod P -2	Serious P. -3
Refers to caregivers' current or past use of drugs/alcohol. Caregiver does not use drugs/alcohol, or uses alcohol appropriately. Caregiver does not use illegal drugs, and actively discourages children's use of drugs/alcohol. Caregivers' moderate or non-use does not impair ability to parent.		Refers to caregivers' current or past use of drugs/alcohol; mostly uses alcohol appropriately. Use of drugs/alcohol does not significantly hinder the caregivers' ability to supervise or parent children.			Refers to caregivers' current and/or past alcohol/substance abuse problems that negatively affect ability to parent children. Caregivers' are frequently unable to care for or supervise children due to use of drugs/alcohol. Caregiver projects personal problems on children or other household members.

*Invite the participants to consider one of the sub-scales under parental capacities. How would they rate Marianne and Sam's home on this subscale?*



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*What, if any, treatment interventions might be appropriate? What if a check of the parents' criminal record revealed that both had been charged with DUI three years ago? IT IS EXTREMELY IMPORTANT TO NOTE THAT THIS EXERCISE IS PROVIDED FOR ILLUSTRATION ONLY. IT IS IMPROPER TO COMPLETE THE NCFAS WITHOUT AN INTERVIEW WITH THE PARENT.*

70.

**NCFAS Housing  
Stability Scale**

Clear Strength +2	Mild S. +1	Baseline/Adequate 0	Mild P -1	Mod P -2	Serious P. -3
Refers to family occupying the same, adequate residence for more than three years. If less than three years, move is prompted by a job change or move to better housing, etc. Rent/mortgage are paid on time. There are no problems meeting financial obligations of rent or mortgage.		Refers to family experiencing or previously experiencing minor problems in remaining in the same residence, but family is relatively capable of meeting financial obligations, present housing is not threatened, and family members are not inhibited in pursuing other obligations due to these problems.			Refers to family being threatened with eviction. Unable to meet rent or mortgage obligations on time, or at all. Or, family does not have housing, is living with different relatives or friends, or living in a homeless shelter. Family is not satisfied with living situation.

*This slide shows one of the Environment Domains, i.e. "Housing Stability." Ask the participants to again consider the case of Marianne and Sam (Handout 1a) and apply this sub-scale to the family. Assume that the caseworker discovers these facts during the investigation:*

*The family has rented the home for 9 months. Three months ago the family missed a rent payment when Sam was temporarily laid off from his job. They were threatened with eviction but worked out a payment plan with the landlord. They still owe \$150 toward back rent. Sam has been steadily employed and the home appears to have adequate space for all of the children.*

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*Ask where participants might rate the home on this sub-scale? Should requirements regarding the home even make it into the treatment plan? As a legal representative of a parent or child, should you use the NCFAS as a checklist to highlight not only the weaknesses in the family but also the strengths?*

*As you can see, this is a tool that can provide valuable insight into how child welfare cases are assessed and how treatment plans are formulated. While non-agency stakeholders do not have to be experts in its administration, it is important for them to understand how it is used so that they can effectively represent their constituencies both in and out of court.*

 71. Applying NCFAS to Sam and Marianne's Family

- ✓ Environment Sub-scales
  - Housing Stability
  - Safety in Community
  - Environmental Risks
  - Habitability of Housing
  - Personal Hygiene
  - Learning Environment
  - Overall Environment

*Now that the participants have dipped their toes in the NCFAS waters, announce that they are going to break up into our discussion groups to apply a portion of the NCFAS to the facts found in the Hypothetical Case Scenario (Handout 1a). Announce that they should use the additional facts set forth in the Hypothetical Case Scenario Plea/Adjudication/Disposition (Handout 2d) as well. Handout 2a contains facts and an analysis of the Johnson family. However, we will use the subscales in that handout and apply them to Sam and Marianne. There is only enough time to look at this single domain (Environment). Explain that the task is two-fold: 1. Assess the family's level of functioning for each subpart; and 2. Construct an appropriate service plan to address the family's needs. Participants should state the expected outcomes along with any service plan elements. Tell participants that they have 15 minutes to complete the ratings on the seven sub-scales.*

 72. NCFAS Exercise using Hypothetical

1. Assess the family's level of functioning for each subscale
2. Construct an appropriate service plan using the SMART format
  - a. Service Plan Requirements;

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b. Expected Outcomes  
(Measurements of  
Success)

*When the groups come back together after 15 minutes choose a different discussion group to report on each sub-part. Allow other groups to comment on/critique the work of each group.*

*Explain the SMART format: Specific, Measurable, Achievable, Result Focused and Relevant, and Time limited. Explain that a good service plan should include objectives, action steps and measurements of success.*

*Instruct the participants to return to their small groups for 15 minutes to construct a treatment plan using this format. Acknowledge that 15 minutes is not sufficient time but that they should complete at least one aspect of the plan.*

*When the groups come back together call on the different groups to lay out the plan that they constructed and record salient points on the flipchart. Make a point to ask questions about the meaning of parts of the treatment plan. Ask how the words might be modified to make the plan more understandable to the family. Emphasize the importance of engaging the family.*

 73. Meeting the Legal Requirements

Does your plan meet the legal requirements?

1. For an EPP case, a priority of services – C.R.S. 19-1-107(2.5);
2. Demonstrate that the continued placement is/is not necessary – C.R.S. 19-3-507(4)
3. Reasonable efforts were made to prevent or eliminate the need for placement – C.R.S. 19-3-501(1)(b);

*C.R.S. 19-1-107(2.5) requires that services in EPP cases be prioritized if multiple services are recommended. It is important to note that especially in EPP cases it is important to frontload services.*

*The need for placement must be addressed at every stage.*

*Federal law requires a finding that reasonable efforts were made at every stage unless the court finds that reasonable efforts are not necessary. The factors driving a decision that reasonable efforts may not be necessary are as follows:*

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- *There are aggravating circumstances exist as defined by state law.*
- *The parent has committed murder or voluntary manslaughter of another child or aided or abetted or attempted such an offense.*
- *The parent has committed felony assault resulting in serious bodily injury to the child or the child's sibling.*
- *The parental rights of the parent with respect to a sibling have been involuntarily terminated.*

📖 74. Meeting the Legal Requirements (Continued)

4. If siblings are not placed together a statement of whether joint placement is not in the children's best interests (C.R.S. 19-3-507(1)(b));
5. Is the treatment plan an appropriate service plan for the family in light of the needs of the parents and the children?

*The law recognizes that in most cases siblings have a special bond and should be placed together. This presumption can be overcome by a finding that the best interests of the children require separate placements.*

*Finally, it is essential when approving or amending a treatment plan that the court find that the service plan is appropriate for the family in light of their needs. The failure by a court to make this finding is a fatal flaw if TPR is later sought. Further, if the plan is not appropriate then it is a set up for the family to fail.*

📖 75. Pulling it all together . . .

- ✓ Improved outcomes for families and children require all stakeholders to have a basic understanding of how others work in the system
- ✓ Holding others accountable delivers better outcomes

*Again, emphasize that it is all about improving outcomes for children and families. There is no other reason to be here. Ask participants to consider the reading from Three Little Words again. What if Mary Miller, Ashley's CASA had been appointed earlier in the case? Remember that Mary Miller was the one who took the time to learn about what should have happened. She did this through perseverance and not because of any legal or child protection training. Might the result have been better for Ashley? Wrap the session up by emphasizing that every child and every family needs any*

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*number of Mary Millers in their lives in order to create the best outcome. Ask participants if they are willing to be as tenacious in their advocacy.*

*Announce that participants will have a 15 minute break before talking about permanency planning.*

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**Time: 60 minutes**

**Description of Activity:**

This segment is designed to provide the participants with an understanding of permanency options and preferences. Some believe that the permanency planning hearing is the most important hearing in a Dependency and Neglect case. If that is so, it is essential that it be treated as such. During this segment the participants understand the important of careful selection of permanency goals and the importance of not only establishing concurrent goals but also making sure that the two plans are worked with equal vigor.

As with the other segments, brainstorming and PowerPoint are utilized to cause reflection and to present abstract material.

As in the previous segments it is important for the trainers to keep the participants' interest throughout this segment by weaving in concrete elements of the hypothetical case scenario and the advance reading, by asking difficult questions, and by allowing participants to reflect together and in discussion groups on how procedures and practices in the two systems and adherence to them might result in better outcomes for children and families.

- 📖 76. Procedures and Practice in the Child Welfare System  
Effective Permanency Planning  
(Date)  
(Faculty Names and Titles)

*It is important to set the mood for this segment in a manner that will help the participants to understand just how critical “permanency” and the permanency planning hearing are to children and youth. To do that you should read (or have a female participant read) a short passage in Ashley’s words from her book Three Little Words (pp. 116-118):*

*I was always hungry for anyone to give me one-on-one attention, so I was pleased when Mrs. Merritt took me aside one day. “You’re going to visit your mother today, but Luke will stay home.” She closed her eyes for*

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*a moment. "Can you be a big girl and not mention it to him so he doesn't feel left out?"*

*"I know that he doesn't belong to her anymore." I tried to make myself sound mature, but there was a tinge of bragging in my voice because my mother wanted me and not him."*

*I was dressed and waiting for Miles Ferris at the appointed time, but he was late. When the phone rang, I heard Mrs. Merritt say, "Yes, Miles. I understand." My heart thudded with every syllable. "I'll tell her." Obviously, my mother was canceling again.*

*Mrs. Merritt came into the living room shaking her head. "Can you Imagine? Your mother and Mary Miller are waiting for you, but Miles forgot to pick you up. He's on his way now."*

*When I arrived at the visit, I flew into my mother's arms. "I thought you forgot about me!" I was on the verge of tears.*

*"That man didn't arrange for someone to bring you here." My mother stared accusingly at Mr. Ferris.*

*I pouted. "You said you would be back soon, and it's been weeks and weeks."*

*"I had to go to South Carolina for a bit," she cooed. "There are a lot of arrangements to be made, Sunshine, but you'll be living with us soon."*

*. . . "I brought you a present." My mother handed me a jewelry box inlaid with flowers and a little clock. "It's a music box." She wound the key.*

*I opened the lid expecting to hear "You Are My Sunshine." Some other tune tinkled out. "What's that song?"*

*"It's by some famous composer," she said lamely. "I wanted to get 'You are My Sunshine,' but they didn't have it."*

*I stroked the polished lid. "That's okay." I slipped into my mother's lap. She caressed my arm as the music box played each little note increasingly slower. My eyes began to sting. I pressed my face against my mother's chest and sobbed. The final plink of the tune was suspended in the air expectantly, waiting for the next note that would never come. Something else had ended mid-song. Nobody in that room knew what I sensed: that I would never see my mother again.*

*Stay on the introductory slide to allow participants to reflect on the importance of family and permanence. Engage them in a discussion of why children need permanence and how it is unfair to leave children hanging on the promises of many including parents and child welfare stakeholders that*

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*they only need to hold on a little longer and they will have their forever home. As this time of reflection continues, introduce the next slide and continue the discussion of what a home really means. This section should take no longer than 10 minutes.*

- ☞ 77. “Home is the place where, when you have to go there, they have to take you in.”

Robert Frost  
The Death of the Hired Man

*As the end of the discussion and reflection on what it means to have a permanent home, quickly transition to the business of giving participants abstract information about the process and the choices involved in permanency planning.*

- ☞ 78. Options and Timelines for Permanency Planning
  - ✓ EPP and non-EPP cases
  - ✓ Preferences
  - ✓ Concurrent planning authorized:
    - “Efforts to place a child for adoption or with a legal guardian or custodian may be made *concurrently* with reasonable efforts to preserve and reunify the family.”  
C.R.S. 19-3-508(7)
  - ✓ 2009 CFSR concluded that in many cases “concurrent planning” happened in name only.

*Explain that in fulfilling our respective roles and responsibilities it is important to know certain basic information about each of these topics. Some stakeholders are required to have a much greater level of knowledge but it is important for all to have a basic understanding so that we speak the same language.*

*Explain that Colorado law has special timelines and requirements for cases where at least one child in the family is under six (See Handout 1g). Ask participants to explain why the legislature might have established this policy for young children. Usual answers will be based on child development and the need for stability and consistency. Other policy consideration should not be ignored, i.e. the flaws in the system that cares for children when out of their homes. Some examples are foster care drift, loss of family and*



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*community connections, stakeholders not living up to their responsibilities to treat children with the kind of care that they would use if the child was their own, etc.*

*Most participants will know that there are preferences in the law and policy but may not know exactly what they are. One of the purposes of this segment is to make those preferences clear.*

*Finally point out that “concurrent planning” means that more than one goal can be pursued at one time, for example, “return home” and “placement with relatives.” Refer the participants again to the Concurrent Planning Tool (Handout 1r). However, it is important to point out that concurrent planning is of little benefit if it occurs in name only. The 2009 CFSR revealed that in many cases, although there were concurrent goals established, only one goal was actively pursued.*

- 📖 79. By when must Permanency Plan be adopted? C.R.S. 19-3-702(1)
- Within 12 months of “removal”; or
  - If the court determines that “reasonable efforts” are not to be made the PP hearing must be within 30 days (unless a TPR motion has been filed)
  - If one or more of the children in the family under six when the petition was filed the case is an EPP case and the PP hearing must be held within 90 days of disposition
  - ✦ Subsequent permanency planning hearings must be held at least every 12 months

*The timelines set forth in the statute are maximums. It is okay to conduct a permanency planning hearing sooner. In fact, many jurisdictions conduct permanency planning hearings within 90 days of disposition in all cases, not just EPP cases.*

*Don’t forget, subsequent PP hearings must occur at least every 12 months and they must continue to occur until the child is adopted or the case is closed through emancipation.*

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80. How is the Permanency recommendation formulated?
- ✓ The caseworker must consult with his/her supervisor, the child, and the family to formulate a Family Service Plan including a recommended permanency goal that is based upon the individual needs and best interests of the child. Vol. 7.301.24.M
  - ✓ Best practice calls for the permanency goal to consider the views of other stakeholders

*Good permanency planning practice requires that effort and thought go into the process. This involves planning with the supervisor and family as well as seeking the input of other stakeholders.*

81. What kind of notice must be provided and to whom?
- The notice shall state the purpose of the hearing
  - The notice shall be sent to all parties and in addition to any persons with whom the child is placed including foster parents, pre-adoptive parents or relatives.

*Too often the child and caretakers do not attend PP hearings. It is important that all stakeholders ask questions when neither appear for the hearing.*

82. Notice (Continued)
- Although not entitled to party status because of having a child in their care, persons providing placement for a child have a right to heard at this and other hearings
  - If the child has been in their care for more than 90 days they may intervene in the matter as a right
  - ✦ The person with whom the child is placed *shall* provide notice to the child

*There may have been a problem with notice or perhaps the child or caretakers were discouraged from attending court or didn't want to attend. It is up to each stakeholder to find out whether there are impediments to attendance and to seem ways to remove any barriers.*

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83. How is the hearing conducted?
- ✓ The Caseworker must provide a Family Service Plan to all parties, including a recommended permanency goal that is based upon the individual needs and best interests of the child. Vol. 7.301.24.M
  - ✓ At the Permanency Planning Hearing the court *must* consult with the child in an “age-appropriate” manner. C.R.S. 19-3-702(3.7)

*The child must be involved! Stakeholders including the court must assure that this occurs. Some children may be too young, timid or overwhelmed to share their verbal input in court. This fact does not mean that the child should not be consulted.*

84. What are the preferences? (Vol. 7.301.24.M and 7.304.54)
1. Remain Home
  2. Return Home
  3. Permanent Placement with a Relative through Adoption
  4. Permanent placement with a relative through guardianship or permanent custody (APR)
  5. Adoption by a non-relative
  6. Legal guardianship/permanent custody (APR) by a non-relative

*It’s pretty obvious that “remain home” or “return home” should be preferred permanency goals. Our whole system is built on these principles. Ask the participants what it is about the other goals that cause us to rank them in this order.*

85. Preferences (continued)
7. Other planned permanent living arrangement (OPPLA) – emancipation
  8. OPPLA – relative long term foster care
  9. OPPLA – non-relative long term foster care.

*Ask what is it about these goals that cause them to be disfavored?*

86. “Return Home” must be the initial primary goal unless:
- ✓ Both parents are deceased or have relinquished; or
  - ✓ After diligent search the parents cannot be located; or
  - ✓ Parents have been found guilty of severe or repeated abuse to child or sibling; or

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- ✓ It appears, after investigation, that a safe return home will not be possible even with the provision of reasonable efforts.

*Both statute and rule focus on the goal of return home. Only under these exceptional circumstances should the “system” reject “return home” as a goal.*

- 📄 87. Remember – the NCFAS-R must be administered prior to return home
  - Measures Caregiver/Child Ambivalence
  - Measures Readiness for Reunification

*The NCFAS-R was mentioned earlier in the training. It is an important tool for caseworkers and other professionals. Just as an example, the next slide shows one of the sub-scales in the Readiness for Reunification domain.*

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 88. Readiness for Reunification

<b>Clear Strength +2</b>	<b>+1</b>	<b>Baseline/ Adequate 0</b>	<b>-1</b>	<b>-2</b>	<b>Serious Problem -3</b>
Caregiver has addressed pre-potent needs of family (transportation, housing, employment, income, supervision, etc.) If appropriate, perpetrator has been removed from family by remaining caregiver. Caregiver has reconstructed living environment to afford protection and care for child.		Caregiver has made substantial progress towards resolution of risk factors that led to removal. Some issues remain unresolved, but improved, and progress continues to be made. Caregiver acknowledges and accepts responsibility for continued work on those issues.			Caregiver has maintained destructive, abusive, or inappropriate relationships with other adults (or perpetrator) or has established new such relationship(s) in child absence. Caregiver has failed to address pre-potent needs that place family under extreme stress or threat of legal intervention such as continued use of drugs, alcohol, or engaging in prostitution, or criminal lifestyle, etc.

*Just a brief look at this subscale will make it apparent why it is important for other stakeholders to know about this tool. The complete tool is found in Handout 3a. The definitions can be found in Handout 3b.*

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89. There are special rules if OPPLA is a permanency goal:  
“The county department shall consider [OPPLA] as a permanency goal for children/youth in *exceptional circumstances* [where they] have co-occurring complex conditions that make them incapable of living in a family-like environment and [that] therefore preclude their return home, adoption, legal guardianship or permanent custody.”

Use of this goal can only be approved after review by the county’s permanency review team.

*Note that this goal cannot be approved by the team unless other permanency goals are ruled out and the team finds a compelling reason not to establish another permanency goal*

*Ask to the participants to list reasons why OPPLA is such a disfavored goal. Examples include: Foster care drift, loss of family and community connections, stakeholders not living up to their responsibilities to treat children with the kind of care that they would use if the child was their own, etc.*

90. What must the court decide? C.R.S. 19-3-702(3.5)
- ✓ Whether procedural safeguards to preserve parental rights have been applied in connection with any change of placement or determination that affects visits;
  - ✓ Whether reasonable efforts have been made to finalize the PP that is in effect;
  - ✓ If a child is out of state, whether the placement continues to be appropriate and in the best interests of the child; and
  - ✓ If the child is 16 years of age or older, whether the PP includes emancipation.

*This is an important checklist. Note how the statute is phrased, i.e. “**whether** . . .” a factor exists. It is important that the court not view its role as making these findings even if there is insufficient evidence to support the finding.*

91. What must the court decide? (continued) C.R.S. 19-3-702(4)
- ✓ If there is not a substantial likelihood that the child will be returned home within 6 months, the court must enter an appropriate permanency goal for each child

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- If the goal is other than reunification, adoption or legal guardianship the court must find that there are compelling reasons for establishing the goal

*Again, it is important to point out that there is a strong preference for the goals that provide the most assurance of permanency for the child. Ask the participants to return to Ashley and her brother's case. There were surely the same preferences in Florida law at the time, so why did Ashley and Luke not attain permanency in a timely manner? Is it because there was not enough accountability in the system? Who can provide accountability in our system? What kind of knowledge is required to cause the system to be accountable?*

📖 92. Special Circumstances where DHS must file for termination unless there are compelling reasons to show that termination is not in the best interests of the child . . .

📖 93. Special Circumstances

- The child has been in foster care under the responsibility of the state for 15 of the last 22 months; Vol. 7.304.54.M
- Within 60 days of a court finding that the child is an abandoned infant; Vol. 7.304.54.N
- Within 60 days of a court finding that no reasonable efforts to reunify are required under C.R.S. 19-3-508(e)(I) and 19-3-102(2). Vol. 7.304.54.O

*The Adoption and Safe Families Act of 1997 requires each of these actions to be taken unless there are compelling reasons to show that the child's best interests would not be served. What are some reasons for such a finding?*

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94. Compelling reasons for not ordering the filing of a Termination Motion – C.R.S. 19-3-702(5)(a)

- The parents have maintained regular parenting time and the child will benefit from continuing the relationship;
- The child is 12 years or older and objects to TPR or adoption;
- The child’s foster parents are unable to adopt the child because of exceptional circumstances but are willing and able to provide a stable and permanent environment and removal would be seriously detrimental to the emotional well being of the child; or
- The criteria for termination have not yet been met.

*It is important to discuss what a stakeholder might do if a 12 year old child refuses to consent to TPR or adoption. Does the stakeholder have a responsibility to help the child understand the benefits of adoption? What about adoption counseling?*

95. Closure of the Case when the child cannot return home

- Adoption
- Custody to a relative or non-relative through Allocation of Parental Rights and Responsibilities (APR)

*Termination will be discussed in the next section, but it may be appropriate and in the child’s best interests to be placed with a relative or non-relative instead of losing his/her parents. Ask participants to suggest some reasons why it might be better for a child if APR was the option chosen.*

96. Allocation of Parental Rights and Responsibilities (Custody)

- ✓ Does not require TPR
- ✓ Standard is Best Interests as set forth in C.R.S. 14-10-124
- ✓ Special consideration must be given to the biological parent

*In many ways APR is an option that is more palatable to parents and sometimes to children. It is easier to achieve since the burden of proof is preponderance, even though there must be special consideration given to the parent. There are disadvantages as well. It is generally believed that an APR order, once entered can only be changed if circumstances have changed such that the environment in the home seriously endangers the child, i.e. the same standard that is used if a non-custodial parent seeks to change custody.*



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*However, APR can lead to a series of hearings on parenting time and other issues that may disrupt the permanency of this option.*

*Before closing a D&N case after entering an order for allocation of parental rights and responsibilities to a parent or another person it is important to enter an order in the existing domestic relations case or open a new domestic relations case if there is not one that already exists. This order allows the parties to use the domestic relations case if it is necessary to modify the court's order. Often courts will waive the filing costs if a new case is required to be opened.*

- ☞ 97. Closure of the Case when the child remains in the care of DHS after termination cannot occur until:
- The child reaches 18 years of age *and* the court does not continue its jurisdiction; or
  - The child is emancipated before 18 years of age; or
  - The court otherwise terminates the department's legal responsibility.
- Vol. 7.304.55.J

*DHS cannot simply pull the rug out from under youth who are in their care. The court must consent. Each of these actions requires court approval.*

- ☞ 98. Emancipation
- Entitled to Medicaid until age 21 if in care after age 18
  - Before closing a case the court or the GAL *must* notify the youth that he/she will lose the right to receive Medicaid until age 21 if the case is closed before the youth turns 18. C.R.S. 19-3-702(10)

*Many times a youth just wants to get DHS out of his/her hair before age 18. There are serious repercussions to early termination. The child must be advised of one of these issues, i.e. the loss of the right to receive Medicaid if the case is terminated early.*

- ☞ 99. Other rights of OPPLA youth leaving care –
- Before emancipation all OPPLA youth shall receive:
- ✓ A certified birth certificate or, a green card; and,
  - ✓ Tribal affiliation information for Native American youth; and,
  - ✓ A Social Security card; and,
  - ✓ A state identification card or a state driver's license; and,

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- ✓ Health Passport and other pertinent health-related records; and,
- ✓ Educational records

*All too often youth leave the child protection system with too few skills to succeed in the real world. Volume 7, however, requires that youth have these material things at a minimum.*

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**VOLUNTARY RELINQUISHMENT AND TERMINATION OF THE  
PARENT-CHILD RELATIONSHIP**

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**Time: 55 minutes**

**Description of Activity:**

This segment is designed to provide the participants with an understanding of the process of voluntary relinquishment and involuntary termination of the parent-child relationship. During the course of the training day participants have come to understand that each part of the D&N process builds upon the others. Voluntary or involuntary termination of the parent-child relationship provides one means of assuring safety, permanency and well-being for children where reunification with parents or placement with relatives does not serve the best interests of the child. In making decisions regarding whether termination is appropriate, stakeholders must grapple with such issues as whether this course is appropriate for children where an adoptive home has not been identified or where adoption is not considered likely. Stakeholders must also come to grips with the dilemma of whether it is fair to seek termination where the parents have followed the treatment plan in good faith but are unable to provide an adequate home for the child. Many of these questions do not have clear answers from an ethical or moral point of view; however, this segment will provide a framework in law and policy to make such decisions.

As with each of the preceding segments, brainstorming and PowerPoint are utilized to cause reflection and to present abstract material. As in the previous segments it is important for the trainers to keep the participants' interest throughout this segment by weaving in concrete elements of the advance reading, by asking difficult questions, and by allowing participants to reflect together and in discussion groups on how procedures and practices in the two systems and adherence to them might result in better outcomes for children and families.

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- 📖 100. Procedures and Practices in the Child Welfare System  
Voluntary Relinquishment and Involuntary Termination of the Parent-Child Legal Relationship  
(Date)  
(Faculty Names and Titles)

*We learned in the previous section that there are certain circumstances where the Adoption and Safe Families Act and Colorado Law require that the agency pursue termination of the parent-child relationship. The following section will lay out the process for achieving that result. Because of the limitations on time, this section is necessarily brief. Further, although TPR is an essential step to place children for adoption, the policies and procedures surrounding this step are fairly straightforward. That does not mean that these procedures and practices are less important. Quite to the contrary, the failure to follow the steps regarding notice or to recognize that a child may be an Indian child can cause a child to lose the permanency that TPR was meant to achieve.*

- 📖 101. Relinquishment Advantages
- Less time consuming
  - Often results in continued positive contact with parent
  - Eliminates delay caused by appeal of TPR order

*There are a number of advantages to voluntary relinquishment. The process is less time consuming in terms of time off the court docket and can be accomplished within days of the decision by a parent to relinquish.*

*Relinquishment often results in the relationship between the adults being preserved such that positive contact between the parent and the child will continue so long as it is in the best interests of the child. However, just as in the case of involuntary TPR, it is the adoptive parent who must decide whether continued contact serves the child's best interests and therefore, any promises that such contact will continue are unenforceable.*

*Finally, relinquishment rarely results in an appeal. Therefore, the adoption process is truncated.*

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102. Relinquishment Pitfalls

- Failure to identify the child as an Indian child
- Failure to require relinquishment counseling
- Failure to properly identify the other parent
- Coercion, undue influence, or improper inducements affecting the decision to relinquish

*If a court fails to determine that a child is an Indian child and notice has not been made to the child's tribe then the whole process is void because the court did not have jurisdiction to enter anything but emergency orders regarding the child.*

*The court must find that relinquishment counseling by the proper agency has been completed before granting a petition for relinquishment. Too often the counseling has not been provided by DHS or a child placement agency (C.R.S. 19-5-103(2)).*

*Most important is that the court make a record that the relinquishment is truly voluntary. Failure to make that record may result in an appeal, delay and perhaps a reversal of the order.*

103. Relinquishment Requirements (C.R.S. 19-5-103)

- Jurisdiction under ICWA and UCCJEA
- Counseling of the parent by DHS or a Child Placement Agency (The court may also order that the child receive counseling)
- The parent(s)' decision is knowing and voluntary
- The parent(s)' decision is not the result of any threats, coercion, or undue influence or inducements
- The relinquishment will serve the interests of the child

*All of these must be present. It is not sufficient for the parent to obtain the counseling from his/her therapist. The counseling must be by DHS or a child placement agency.*

*It is important that stakeholders require that the parent take the witness stand and affirm to the parties and the court that these requirements have been met. Such a record will likely prevent a later appeal if the parent changes his/her mind.*

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*Often, where a D&N has been filed and has been ongoing, a parent will feel some pressure to go forward with relinquishment because of a pending TPR motion. It is not unheard of for a parent to seek to voluntarily relinquish on the morning of trial. Each stakeholder must consider whether it is appropriate to advocate for the court to accept a “voluntary” relinquishment under these conditions. It may be a better course for the parent to confess the motion or to decide not to appear at the trial under these circumstances.*

*An important issue is the final requirement for relinquishment, i.e. whether the relinquishment will serve the interests of the child. The parties must consider in their advocacy to the court whether it is in the interests of the child to consent or advocate for relinquishment when there is no identified placement, or when the parents seeking to relinquish are the child’s adoptive parents, or when it appears that the parents are seeking relinquishment to avoid financial responsibility. These decisions must be made on a case-by-case basis.*

📖 104. DHS Responsibilities upon filing motion to terminate  
(Vol. 7.304.55.H)

- ✓ Consider legal custody or adoption by relatives as an alternative
- ✓ Determine resources available for an adoptive placement or alternative permanent plan
- ✓ Begin efforts to recruit, identify, process and approve a qualified adoptive family

*It is not enough that the agency simply file a motion. The agency must take actions that will promote permanency for the child.*

📖 105. DHS Responsibilities in planning for TPR hearing (Vol. 7.304.55.G)

- ✓ Work with City/County Attorney
- ✓ Provide Treatment Plan
- ✓ Cooperate with Guardian *ad litem*
- ✓ Provide prepared staff to testify and assist in preparation of witnesses
- ✓ Keep parents, children, and interested parties informed
- ✓ File the motion for TPR on time

*These are continuing duties.*

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106. Types of TPR Filings (C.R.S. 19-3-604)
- Abandonment
  - No reasonable treatment plan can be devised
  - Failure to progress

*These three types of allegations regarding the conduct of the parents are different and have distinct elements of proof.*

107. Contents of Motion – C.R.S. 19-3-604)(1.5)(a)
- Statement of continued inquiries regarding ICWA and whether child is Indian child and if so identify tribe;
  - Statement that grandparent, aunt, uncle, or sibling must file request for guardianship and legal custody within 20 days of filing;
- If child is an Indian child, notice of the motion to terminate must be sent to the child’s tribe unless the tribe has explicitly stated that the child is not eligible for membership in the tribe**

*It is critical that the court not attempt to proceed without notice to a tribe at this stage. If the tribe failed to respond to proper notice at an earlier stage, waiver of rights for TPR cannot be presumed. People in Interest of S.R.M., 153 P.3d 438 (Colo.App. 2006)*

108. Timing of Motion and Hearing (C.R.S. 19-3-602)
- The motion must be filed at least 30 days before the hearing;
  - The hearing on the motion must be held within 120 days of the filing if an EPP case
    - May be delayed for “good cause”
    - Continuance of a *set* TPR hearing only available if a “manifest injustice” would occur in the absence of a continuance (Chief Justice Directive 98-02)

*The legislature has made it clear that there should not be delay in the hearing of TPR motions. CJD 98-02 makes this even clearer.*

*It should also be noted that the even in the absence of a finding of good cause, failure of the court to set the hearing within the required time is not a jurisdictional flaw (People ex. Rel. T.E.H., 168 P.3d 5 (Colo. App. 2007)).*

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- 📖 109. Practical Question upon Filing and Setting of TPR Motion
- ✓ Was a decree entered as to **each parent**?
  - ✓ Are the parents represented?
  - ✓ Will the parents file a motion for an expert witness?
  - ✓ Will other motions be filed?
  - ✓ How will discovery be handled?

*It may seem elementary, but the judge and other parties must be assured that a decree adjudicating the child dependent or neglected has been entered. Failure to do so will result in delay. Frequently, the court will enter a deferred adjudication instead of an adjudication and neglect to follow up with the adjudication when the case goes sour. In addition, all too often the parties will fail to identify and/or adjudicate with regard to absent parents.*

*Failure of the parents to be represented or to effectively communicate with their attorney sometimes causes delay. Absent communication from their client, attorneys will often seek to withdraw from representation. Courts handle such issues in different ways, but it is important to provide notice to parents that it is not in the best interests of their child to delay the proceedings and to tell them the consequences of failure to cooperate in their defense.*

*Each of these checkmarks provides opportunities for delay. Thus, it is important for stakeholders to ask courts to deal with the issues when the motion is filed. Handout 4c is an example of a pretrial order that addresses such issues and seeks to avoid delay. Handout 4b is another document that seeks to put the parents on notice about their responsibilities after the TPR motion is filed.*

- 📖 110. Special Evidentiary Consideration – C.R.S. 19-3-604(3)
- “For the purpose of determining [TPR], written reports and other materials relating to the child’s mental, physical and social history may be received and considered by the court along with other evidence . . .”
- Any party or the court may require that the author appear

*This provision allows the caseworker to prepare a report that details the history of the case and outlines the reasons he/she has for holding the opinion that TPR is in the best interests of the child. Although much of the information in the report may be otherwise inadmissible hearsay, the material*



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*is admissible for purposes of judging the credibility of the opinion under Colorado Rule of Evidence 703.*

- ☞ 111. Affidavit of Unknown Whereabouts – Abandonment (C.R.S. 19-3-603)
- If a parent’s whereabouts remain unknown the petitioner must file an affidavit stating what efforts have been made to identify and locate the parent
  - Must be filed at least 10 days before the hearing

*This provision often applies when the whereabouts of one of the parents remains unknown. Failure to follow this simple procedure will result in delay.*

- ☞ 112. Necessary findings – Failure to Progress:
- Appropriate Treatment Plan has been approved and not complied with or unsuccessful; and,
  - The parent is unfit; and,
  - The conduct or condition of the parent is unlikely to change within a reasonable time; and,
  - No alternative short of termination will adequately serve the best interests of the child; and,
  - The best interests of the child requires an order of TPR

*This is it in a nutshell.*

- ☞ 113. In determining “Unfitness, Conduct, or Condition” the court must find:
- Continuation of relationship is likely to result in grave risk of death or serious bodily injury; or
  - The parent’s conduct or condition makes the parent unable or unwilling to give the child reasonable parental care . . .
- C.R.S. 19-3-604(2)

*It should be pointed out that there is a laundry list of factors that could support a court’s conclusion that a parent is unfit. The Termination Order Checklist (Handout 4a) provides a complete list of the statutory factors. However, the court is not limited to the statutorily listed factors.*

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114. Special Expedited Permanency Planning (EPP) Consideration –  
C.R.S. 19-3-604(1)(c)(I)

In an EPP case, no parent shall be in reasonable compliance if:

- The parent has without good cause failed to attend visits with the child; or
- The parent exhibits the same problems addressed in the TP without adequate improvement . . .

*Although it can be argued that this provision should be applied not only to EPP cases, it can be a valuable tool in arguing that the treatment plan has not been successful. The fact that it specifically applies to EPP cases does not mean that an advocate should not argue that a TP is not successful if these conditions are present in a case that is not EPP.*

115. What are the critical factors that drive the court's TPR decision?

- Has the process been fair?
- Have the parents been given a realistic chance to succeed?
- Has DHS made reasonable efforts and have they followed their rules?
- Has DHS properly considered other alternatives to TPR?
- What are the chances for the child to have a better life after TPR?
  - Will the child be adopted?
  - Does the child want termination/adoption?
  - Does the child gain any benefit from maintaining the P-C relationship?

*Don't reveal more than the title to this slide until the participants have a chance to brainstorm this question.*

*Note that as a practical matter, once the case gets to the termination stage, in most instances litigants will find it relatively easy to check off most of the findings on the checklist. Ask participants to imagine that they are the judge. In addition to the statutory or caselaw requirements, ask what they would want to see in order to feel comfortable in order to enter a TPR order. Use the flipchart to record answers. This discussion touches on the issue of creating legal orphans. This exercise will allow participants to reflect on what the court goes through in making this most important decision. Doing so is designed to cause them to put themselves into the shoes of the judge the next time they are preparing for a TPR hearing.*

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CONCLUSION AND EVALUATION – CHANGE AND MAKING MEANING**


**CONCLUSION AND EVALUATION – CHANGE AND MAKING MEANING**

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**Time: 20 minutes**

**Description of Activity:**

This segment is designed to give participants an opportunity to synthesize what they have learned during the day. The purpose of any learning must be to create a better understanding of the world and to translate that understanding into change. To be successful, this training must cause stakeholders to change court and agency practice where it needs to be changed so that the lives of children and families are improved and so that they achieve better outcomes than are currently prevalent. The conclusion of this training must contain a call to action. It must ask what the participants will do to improve the system once they return to their jobs on Monday morning. To be effective the appeal must be emotional and should include a personal story from the trainers to which the participants can relate. Ideally, the story will illustrate the importance of knowing and understanding the procedures and practices of the system so that each of them can become an agent of accountability for children and families.

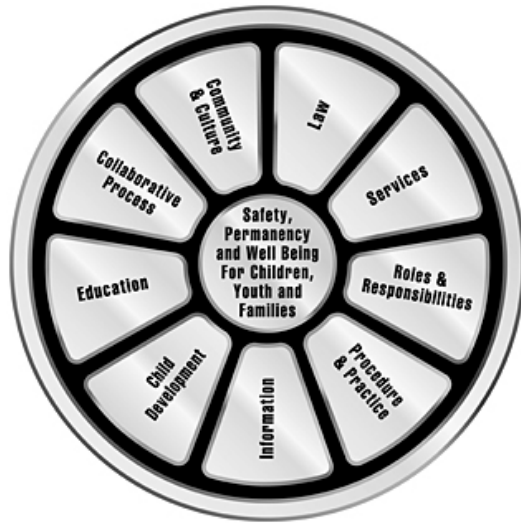
 116. Conclusion and Evaluation  
(Pictures of happy families – diverse)

*Announce that participants will be receiving a link to a survey that will allow them to comment on the curriculum. Their feedback is important to making the training an experience that is valuable for all stakeholders.*

*Acknowledge that today's training has been cursory on many subjects. This is out of necessity. The training was designed to provide a basic understanding of how the two systems work and to provide a common language that holds the possibility of making the changes in our system that are needed to make the system more humane and effective in providing children with safety, permanency and well-being.*

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CONCLUSION AND EVALUATION – CHANGE AND MAKING MEANING**

117. The CIP Training Wheel and Change



1. *Ask if any of the participants have seen this wheel before. What is it?*
2. *Ask how many think there is a need for change in the way in which we address the needs of children and families in our system.*
3. *Ask whether any in the audience have ideas about what specifically needs to change.*
4. *Ask whether the change that they envision is something that has just come to them during this training or whether they have had good ideas for some time.*
5. *Ask whether they sometimes go to trainings and come back with good ideas only to have them die on the vine.*

*Acknowledge that this is a common occurrence but that it is not something that we want to replicate in this training or in other CIP trainings that form spokes in the training wheel. We did not offer this training so that attorneys or other stakeholders could obtain the continuing education that they need to keep their licenses in good standing. The idea was to create change.*

*Ask how a participant might return to their jurisdiction and implement a good idea. Use a flipchart to list the ideas. Suggested strategies: Ask to put the idea on as an agenda item for the next model court meeting; meet with the*

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judge or court facilitator to talk about the new approach; build momentum from the grassroots up by approaching other stakeholders.

*Tell a personal story about your experience in the child welfare system that illustrates the importance of knowing and understanding the procedures and practices of the system so that each of the participants can become an agent of accountability for children and families.*


*There is a poem that is very meaningful when it comes to the responsibility that each stakeholder accepts by being involved in this system. It was written by Nobel Laureate Gabriella Mistral. She wrote:*

*We are guilty of many errors and faults,  
But our worst crime is abandoning the children,  
Neglecting the fountain of life.*


*Many of the things we need can wait,  
The child cannot –  
Right now is the time that bones are being formed,  
Blood is being made,  
Senses are being developed.*

*To the child we cannot answer tomorrow,  
The child's name is today.*

*The last slide should appear on the screen when delivering the last two lines of the poem.*

-  118. To the child we cannot answer tomorrow,  
The child's name is today.  
(Pictures of children – diverse)

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 119.

“We should all take this work, every child, every case very seriously, very respectfully, as we play a role in providing the Court the best possible, the most thorough information and advocacy of all perspectives to allow a reasoned, just and appropriate decision in each case. People’s lives and the quality of those lives hang in the balance.”  
*We can never allow ourselves to be totally comfortable in Court or any other event related to a case.”*

*It is important that participants understand the power that they have over the lives of children and their families. We need to walk humbly and never be too comfortable with that power.*

***Carpe diem!***

QR