



# BASICS OF REPRESENTING CHILDREN IN ABUSE & NEGLECT CASES





# CHILDREN'S ATTORNEYS PROJECT

- ❖ Legal Aid Center of Southern Nevada represents children who have been abused and/or neglected and placed in foster care. We ensure they have a voice in court.
- ❖ *Education Advocacy Program*: Legal Aid Center provides advice, training, advocacy, and legal representation in Special Education to those involved in the education of children with disabilities.
- ❖ *Volunteer Education Advocate Program*: When a parent is not available to advocate for a child's special education needs and rights, a volunteer education advocate is assigned to represent the child as an Educational Surrogate Parent and protect their rights. Legal Aid Center of Southern Nevada provides training and support to volunteers who are willing to become Volunteer Education Advocates for children with disabilities, ensuring that their schools are meeting their disability-related needs.



# CHILDREN'S ATTORNEYS PROJECT (CAP)

21 Full-Time Staff Attorneys  
Over 300 Pro Bono Volunteers

Nearly 90% of the kids in the system are represented

The rest have no one to speak for them



# THE ROLE OF A CHILDREN'S ATTORNEY

- ❖ Giving Child Victims a Voice
- ❖ Attorney vs. GAL
- ❖ What the Child Wants vs. Best Interest
- ❖ Attorney vs. Big Brother/Sister



# CHILD PROTECTION ACT -- NRS 432B

## A. Abuse/Neglect Of Child (NRS 432B.020)

- ❖ Physical or mental injury
- ❖ Sexual abuse or exploitation
- ❖ **Negligent treatment/maltreatment**

## B. Negligent Treatment (NRS 432B.140)

- ❖ Abandonment
- ❖ Without proper care, control, supervision
- ❖ Lacks subsistence, shelter, medical, education



# AGENCIES/ATTORNEYS

## A. Department of Family Services (DFS)

- ❖ Investigate
- ❖ Submit for petition
- ❖ Case management
- ❖ Represented by District Attorney

## B. Children's Attorneys Project (CAP)

- ❖ Represent the wishes of the child

## C. District Attorney – Juvenile (DA)

- ❖ File petitions
- ❖ Represents DFS

## D. Parent's/Contract Attorney

- ❖ Represent parents

## E. Court Appointed Special Advocates (CASA)

- ❖ Best interest of child



# COURT STRUCTURE

## Hearing Masters

*Issue: findings and recommendations, not orders*

1. Holly Roys – Dependency 2 (Courtroom 23)
2. David Gibson – Dependency 3 (Courtroom 20)
3. Jon Norheim – Dependency 1 (Courtroom 14)

## District Court Judges

1. Frank Sullivan – Dept. O (Courtroom 21)
2. Cynthia Giuliani – Dept. K (Courtroom 22)
3. Robert Teuton – Dept. D (Courtroom 11)



## OBJECTION TO HEARING MASTER'S FINDINGS - EDCR 1.46

1. Inform the hearing master of your intention to object to the findings and request that you are provided with a written copy of the findings/recommendations.
2. 5 days after receiving the written findings/recommendations, you must file a written objection to the district court judge.





# EXPEDITING ORDERS WHEN BEFORE A HEARING MASTER

- A. Following a decision by the Hearing Master, an inquiry should be made on the record as to whether the parties are willing to waive their right to object to the decision.
  - ❖ If the Hearing Master forgets to ask, you can ask that the parties be canvassed.
  - ❖ If the parties all waive, then the recommendation will immediately be treated like a final order. If not, you must go through the recommendation and order process.
  - ❖ When submitting a formal written order, it can be noted in the findings that the parties waived objection on the record.
- B. Any Objection from a Hearing Master's decision involving placement of a child or other emergency situation, shall, if all parties agree, be heard the same day by the duty Judge.
- C. If the parties don't agree to a same day Objection Hearing on a placement decision, upon the timely filing of an Objection, a hearing before the on-duty District Judge will be set within two (2) judicial days from the notice of the Objections.



## ABUSE & NEGLECT COURT: TIPS FOR NEW VOLUNTEERS

- ❖ Case listed under mother's name on Docket
- ❖ Welcome to go early and observe other hearings
- ❖ Check in with the Marshal and identify yourself as a pro bono volunteer
- ❖ Where do CAP attorneys stand?



# PRELIMINARY PROTECTIVE HEARINGS: *BEGINNING OF A CASE*

- A. Placement of Child into Protective Custody (NRS 432B.390)
  - ❖ Reasonable cause to believe that immediate action is necessary to protect child
- B. Preliminary Protective Hearings (NRS 432B.470)
  - ❖ Within 72 hours of removal
  - ❖ Immediate risk of harm
- C. Findings by Court (NRS 432B.480)
  - ❖ Contrary to welfare to remain in the home & why
  - ❖ Best interest of child to be outside of home
- D. Child Could Be:
  - ❖ Released to parents
  - ❖ Remain in protective custody in a shelter or foster home
  - ❖ Placed with relatives or fictive kin



# PRELIMINARY PROTECTIVE HEARINGS: *ISSUES TO DISCUSS*

## A. Safety

- ❖ What are the safety concerns?
  - ❖ Vulnerable child?
  - ❖ Present Danger: immediate, significant, and clearly observable family condition that is actively occurring and will likely result in serious harm to the child
  - ❖ Impending Danger: specific family situations, behaviors and/or emotions that are out of control, severe, imminent and observable
- ❖ Can these be mitigated?
- ❖ Is an in-home safety plan viable?

## B. Relatives/Fictive Kin Placements

- ❖ Have the parents indentified anyone as potential placement?
- ❖ Can this person facilitate frequent and long visits that will help the parents stay connected with daily activities and are conducive to meaningful parent-child interactions?
- ❖ Are there relatives or fictive kin who are willing/committed to being long-term placement if necessary?

## C. Parent/Child Visitation

- ❖ Ensure that visits are set up with your client and his/her parents.
- ❖ Ensure they are in the least restrictive appropriate environment.

## D. School of Origin

## E. Medical or Special Needs of the Child



# PLEA HEARINGS

## Abuse/Neglect Petitions (NRS 432B.490)

- ❖ Petition filed within 10 days of Preliminary Protective Hearing
- ❖ Parents can:
  - ❖ Admit (Disposition within 15 working days)
  - ❖ Deny (Adjudicatory Hearing within 30 days)
  - ❖ Plead No Contest (Disposition within 15 working days)
- ❖ Review placement, services, and other issues



# PLEA HEARINGS

## *ISSUES TO DISCUSS*

- ❖ Same issues from PC: safety, relative/fictive kin placement and child's needs:
- ❖ Whether child(ren) will be called to testify;
- ❖ Ensure you have all relevant discovery:
  - ❖ Medical Records
  - ❖ Forensic Interviews by CPS
  - ❖ Police Interviews and Reports
  - ❖ Expert Reports
  - ❖ Medical Studies, Articles, and Journals on Specific Issues (i.e. Abusive Head Trauma, Non-Accidental Injuries, etc.)
- ❖ Clarify the Department's position regarding any hanging putative or legal fathers.



# ADJUDICATORY HEARING

## A. Adjudicatory Hearing (NRS 432B.530)

❖ Within 30 days of petition

## B. Preponderance Of Evidence



# DISPOSITIONAL HEARINGS

- A. Dispositional Hearing (NRS 432B.530(5))
  - ❖ Within 15 working days
- B. Case Plan Approval
- C. Child is Made a Ward of the Court
- D. Review Placement Of Child (NRS 432B.550)





# REVIEW HEARINGS

## A. Semi-Annual Reviews (NRS 432B.580)

- ❖ Within 6 months of removal & every 6 months thereafter
- ❖ Review Placement
- ❖ Evaluate progress of family/child (PCPA)
- ❖ Reasonable Efforts Finding

## B. Annual Review -- (all of the above and) Permanency Goal Review

- ❖ Reunification
- ❖ TPR/Adoption -- Court must adopt at 12 months unless Compelling Reasons
- ❖ Guardianship
- ❖ OPPLA (Foster Care/Independent Living)



# OUT OF HOME PLACEMENTS

## A. Relatives Within the 5<sup>th</sup> Degree of Consanguinity

- ❖ Preference (NRS 432B.550(5)(b)) -- Broader interest in family unity and typically more supportive of parent-child relationship
- ❖ Can become licensed

## B. Fictive Kin

- ❖ Known/familiar to the child
- ❖ Can become licensed

## C. Foster Care

- ❖ Last resort



# FOSTER HOMES

- A. DFS Licensed Foster Homes
- B. Private Agencies/Higher Level of Care (HLOC) Therapeutic Homes
  - ❖ Examples: SAFY, Olive Crest, Eagle Quest, Bamboo Sunrise Homes, etc.
  - ❖ Provide intensive services, such as:
    - ❖ Therapy/Counseling
    - ❖ Psychosocial Rehab (PSR)
    - ❖ Basic Skills Training (BST)
    - ❖ Case Management
- C. Group Homes – St Jude’s or private agencies



# SIBLING PLACEMENTS


## NRS 432B.550(5)(a)

- ❖ Rebuttable presumption -- best interests to be placed together
- ❖ If siblings are not placed together
  - ❖ Inquire regarding:
    - ❖ Reasons siblings not placed together
    - ❖ Efforts to place siblings together
    - ❖ Actions to ensure sibling contact
  - ❖ Request a sibling visitation order
    - ❖ Include language that it will be incorporated into adoption decree
    - ❖ If kids are on separate Petitions (i.e. P1, P2, P3), file in all cases



# REASONABLE EFFORTS


- ❖ Court is required per statute to make a reasonable efforts finding at various stages throughout the case
  - ❖ To prevent removal – at preliminary protective hearing
  - ❖ To achieve the permanency plan – at review hearings
- ❖ A finding of lack of reasonable efforts can be requested orally or by formal motion
- ❖ A finding of lack of reasonable efforts means DFS loses federal funding for that child until a reasonable efforts finding is restored. As a result, it gets the attention of DFS upper management very quickly.



# SAFETY INTERVENTION AND PERMANENCY SYSTEM (SIPS)

## **Purposes of SIPS as an Intervention System**


- ❖ To identify unsafe children in need of protection
- ❖ To enhance caregiver protective capacities and restore caregivers to their protective responsibilities
- ❖ To create safe homes
- ❖ To achieve child permanency by restoring caregivers back to their protective role



# SAFETY INTERVENTION AND PERMANENCY SYSTEM (SIPS)

## **Core SIPS Concepts used throughout the life of the case**

- ❖ Present Danger - An immediate, significant, and clearly observable family condition that is actively occurring or in process of occurring at the point of contact with a family and will likely result in serious harm to a child, therefore requiring a prompt CPS response.
- ❖ Impending Danger - A state of danger in which negative family conditions and/or Diminished Caregiver Protective Capacities pose a threat which may not be currently active but can be anticipated to have severe effects on a child at any time in the near future
- ❖ Caregiver Protective Capacities - A caregiver's personal (individual) and parenting characteristics that specifically and directly can be associated with being protective of one's children (Enhanced-Safe) or can be associated with contributing to a "state of danger" that a child is routinely exposed to (Diminished - Unsafe).



# SAFETY INTERVENTION AND PERMANENCY SYSTEM (SIPS)

**Nevada Initial Assessment (NIA):** Used to determine which families DFS should serve and what is the least intrusive and most appropriate approach.

**Safety Plan Determination (SPD):** Development of the least intrusive situation that ensures child safety as the Permanency Specialists begin and continue their interventions with the family. It describes how *Impending Danger* is manifesting in the family, analyzes the residence, caregivers, and resources which can support and allow an in-home safety plan, determines if an out-of-home safety plan is necessary, and rules in or out the use of relatives or fictive kin.





# SAFETY INTERVENTION AND PERMANENCY SYSTEM (SIPS)

**Conditions for Return:** Defined behaviors and circumstances that must exist in the home that would allow for an in-home safety plan – managed by CPS -- that is sufficient, feasible and sustainable to control the *Impending Danger* that remains in the home

**Protective Capacities Family Assessment (PCFA):** A structured intervention that is intended to engage caregivers in a partnership that seeks their involvement in determining what must change, resulting in the development of the individualized Case Plan Goals that target the enhancement of diminished *Caregiver Protective Capacities*.



# SAFETY INTERVENTION AND PERMANENCY SYSTEM (SIPS)

**Protective Capacity Progress Assessment (PCPA):** A formal intervention that occurs on a scheduled basis following the PCFA and the implementation of the Case Plan (at least every 90 days and before all court reviews), which:

- Measures the caregiver behavior change
- Assesses whether the Safety Plan continues to be necessary
- Ensures that Case Plan Services are working effectively
- Examines Conditions for Return



# FIRST STEPS

## ❖ File the Notice of Appearance

- ❖ Detailed instructions in the Placement Letter
- ❖ Free e-filing available

## ❖ Contact the caseworker

- ❖ What is a caseworker?
- ❖ “Suggested Questions for the Caseworker” included with the file

## ❖ Set up an appointment to meet with your client




# MEETING YOUR CLIENT

- ❖ Choosing a Place
  - ❖ See Their Home
  - ❖ Maintaining Confidentiality
  - ❖ Not Alone Behind Closed Doors
  - ❖ At School?
  - ❖ Where They Can Talk Comfortably



# MEETING YOUR CLIENT

- ❖ Explaining Your Role
  - ❖ How Are You Different From All These Other People
  - ❖ “You’re my boss”
  - ❖ Age Appropriate Discussion -- “secret”
- ❖ Preventing Conflicts



# ATTORNEY/CLIENT VISITS

## *Getting to Know Your Client*

- ❖ Visit your client as soon as possible
- ❖ Maintain regular contact with client, the caregivers, and the case worker
- ❖ Observe the child's interactions with substitute caregivers
- ❖ Understand the parent/child relationship
  - ❖ Try to observe visits
  - ❖ Speak to caregivers about the child's behaviors before and after visits
- ❖ Learn your client's environment
- ❖ Does your client have any medical needs?
  - ❖ Make sure you are aware of all medical needs and follow up after appointments to learn what services and treatment are recommended
  - ❖ Understand early childhood development and how abuse can affect your client's development and ensure client is screened for developmental delays and linked to necessary services.



# BUILDING THE RELATIONSHIP

- ❖ On-Going Contact
  - ❖ How Often?
  - ❖ They Won't Always Think to Call You
- ❖ Counselor At Law
- ❖ Confidentiality vs. Mandatory Reporter  
(Exception NRS 432B.225)



# WORKING WITH THE CASEWORKER

## ❖ Send introduction email


- ❖ Ask for all upcoming court dates and CFT meetings in the case
- ❖ Remind caseworker to contact you for any changes in the case

## ❖ Contact the Supervisor if unresponsive

- ❖ Caseworker contact list and supervisor list provided with your file

## ❖ Be persistent!





# WHAT IS A CHILDREN'S FAMILY TEAM (CFT)?

- ❖ What's the Purpose?
- ❖ Who Attends?
- ❖ Should I Be Invited?
- ❖ Should My Client Be There?



# YOUR TASK AS A CHILDREN'S ATTORNEY

- ❖ Advocate for the child's wishes and legal interests.
  - ❖ Studies have shown that children who are removed from their families are far more likely to have detrimental life outcomes, than children who are returned to their natural families.
  - ❖ Foster care is the last resort when determining safe placement for a child.



# BETTER OUTCOMES FOR CHILDREN WHO STAY WITH THEIR NATURAL FAMILIES

- ❖ Recognize the bias you bring to the case and check it at the door.
- ❖ Remember, the goal of foster care is temporary placement until reunification with a natural parent is possible.



# DID YOU KNOW THAT CHILDREN IN FOSTER CARE ARE...

- ❖ Three times more likely to end up in the juvenile justice system or have a criminal record.
- ❖ 9-10% more likely to have a teenage pregnancy.
- ❖ More likely to drop out of school.
- ❖ Increasingly prone to homelessness.
- ❖ Less likely to maintain employment.
- ❖ More likely to earn less money and need welfare.
- ❖ More likely to suffer from mental health issues.
- ❖ Three times more susceptible to engage in substance abuse.
- ❖ Four times more likely to be treated for an STD than the national average.



# REPRESENTING PREVERBAL CHILDREN

**ABA Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings dated August 2011.**

## SECTION 7. DUTIES OF CHILD'S LAWYER AND SCOPE OF REPRESENTATION

### **Section 7(d) Diminished Capacity: The child's lawyer shall determine**

whether the child has diminished capacity pursuant to the Model Rules of Professional Conduct. When a child client has diminished capacity, the child's lawyer shall make a good faith effort to determine the child's needs and wishes. The lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client and fulfill the duties as outlined in Section 7(b) of this Act. During a temporary period or on a particular issue where a normal client-lawyer relationship is not reasonably possible to maintain, the child's lawyer shall make a substituted judgment determination. A substituted judgment determination includes determining what the child would decide if he or she were capable of making an adequately considered decision, and representing the child in accordance with that determination.



# REPRESENTING PREVERBAL CHILDREN

## Determining Diminished Capacity

- ❖ When determining the child's capacity the lawyer should elicit the child's expressed wishes in a developmentally appropriate manner.
- ❖ Criteria for determining diminished capacity include:
  - ❖ the child's developmental stage,
  - ❖ cognitive ability,
  - ❖ emotional and mental development,
  - ❖ ability to communicate,
  - ❖ ability to understand consequences,
  - ❖ consistency of the child's decisions,
  - ❖ strength of wishes and the opinions of others, including social workers, therapists, teachers, family members or a hired expert



# REPRESENTING PREVERBAL CHILDREN

## Substituted Judgment

- ❖ A substituted judgment determination is not the same as determining the child's best interests.
- ❖ When determining a substituted judgment position, the lawyer shall take into consideration the child's legal interests based on objective criteria as set forth in the laws applicable to the proceeding, the goal of expeditious resolution of the case and the use of the least restrictive or detrimental alternatives available.



# REPRESENTING PREVERBAL CHILDREN

## Balancing Act

- ❖ Attorneys must balance several factors to best advocate for their client:
  - ❖ Safety
  - ❖ Permanency
  - ❖ Placement with relatives/fictive kin
  - ❖ Relationship with biological parents
  - ❖ Relationship with siblings
  - ❖ Length of time in current placement
  - ❖ Minimize placement disruptions
  
- ❖ In general, a child prefers to live with known people to continue normal activities, and to avoid moving.





# HOW A CASE ENDS

- ❖ Reunification\*
- ❖ Guardianship
- ❖ TPR/Adoption
- ❖ Aging Out

Question: Should a CAP attorney ever withdraw sooner?



# REUNIFICATION WITH A PARENT

- ❖ Occurs when the Conditions for Return Are Meet
- ❖ May involve the provision of Safety Services
- ❖ DFS typically continues to assist and provide services to the family post-reunification
- ❖ The Court typically keeps the case open for a period of time to monitor how the family is doing and ensure all safety concerns have been resolved



# GUARDIANSHIP

- ❖ NRS 432B.466-.468 (vs. NRS 159)
- ❖ Requires permanency goal change and statement that guardianship vs. adoption is in the child's best interest
- ❖ Child must be in the care of the proposed guardian for 6 months unless the Court finds good cause to waive
- ❖ Guardian must meet the requirements of NRS 159
- ❖ If the child is 14 or older, must consent
- ❖ DFS provides attorney for the guardian
- ❖ If someone later moves to modify or terminate the order, the Court directs DFS to prepare a report and make recommendations



# KINSHIP GUARDIANSHIP

- ❖ New program – NRS 432B.621-.626
- ❖ Provides on-going financial assistance to the guardian similar to adoption subsidy
- ❖ Guardian must be a relative and be licensed through DFS
- ❖ Child must reside with the guardian for 6 months AFTER the guardian becomes licensed
- ❖ Court must make a finding that reunification and adoption are not viable permanency options
- ❖ All other 432B Guardianship requirements apply



# TERMINATION OF PARENTAL RIGHTS

- ❖ Termination of parents rights (NRS 128)
- ❖ District attorney files motion  
*(Until 1/1/2018, a Petition, not a motion and a separate D case.)*
- ❖ Prove by clear and convincing evidence that it is in the best interest of the child



# ROLE OF CAP DURING TRIAL

(Adjudicatory or TPR)

- ❖ Preparation/Discovery/Mediation
- ❖ Which Side to Take
- ❖ Opening/Closing Statements
- ❖ Questioning & Cross Examining Witnesses
- ❖ Presenting Evidence
- ❖ Preparing & Protecting Your Client as a Witness



# CHILD WITNESS

A. Motion to testify by alternative method – NRS  
50.500

B. Kids Court (UNLV)

- ❖ Kids' Court line 702-895-5933
- ❖ Schedule online at [law.unlv.edu/kids-court](http://law.unlv.edu/kids-court)
- ❖ Rebecca Nathanson, Ph.D., 702-895-2080, [Rebecca.Nathanson@unlv.edu](mailto:Rebecca.Nathanson@unlv.edu)

C. Pre-Trial Meeting



# ADOPTION

- ❖ Adoption of children/adults (NRS 127)
- ❖ Child must reside in the home for at least 6 months (unless related within the 3<sup>rd</sup> degree of consanguinity)
- ❖ Adoption subsidy
- ❖ 14 years old and older must consent
- ❖ Ensure sibling visitation order incorporated into adoption decree (*See recent statutory change.*)





# BEWARE OF ADOPTION STALLS

*Unfortunately, “Referred for Adoption” doesn’t mean your case is almost over.*

## Tips to Keep TPR/Adoption Moving

- ❖ *Within a month after the goal is changed to TPR, make sure the matter was actually referred to the DA for TPR.*
- ❖ *At the time the goal is changed, ask about the Status of the Social Summaries.*
- ❖ *By the Initial TPR Hearing, matter should have been referred to adoptions.*
- ❖ *Ask who the assigned adoption worker is and communicate with that worker directly regarding any potential stalls.*
- ❖ *Ask for court-ordered specific deadlines for any of the above steps if necessary.*
- ❖ *Ask for the matter to be put on the Adoption Assessment Calendar if needed.*



# POST-ADOPTION AGREEMENTS (Open Adoption Agreements)

- ❖ Between natural parents and prospective adoptive parents (NRS 127.187)
- ❖ Incorporated into adoption decree
- ❖ Who drafts it?
- ❖ What is CAP's involvement?



# INDEPENDENT LIVING PROGRAM

- ❖ For youth in care who are ages 14-18
- ❖ Each youth is assigned an IL worker who helps the youth develop an Independent Living Transitional Plan to prepare them for transitioning into adulthood and does a Casey Life Skills Assessment.
- ❖ IL Classes address things like resume building, housing, money management, finding community resources, and education options.
- ❖ IL workers help youth with getting their NV ID, and a health card and retrieving their credit reports
- ❖ IL workers provide access to Chafee Funds.
  - ❖ \$300-\$750 depending on age, per fiscal year
  - ❖ Can be used for expenses and fees associated with: High School/Vocational School; Cultural Activities; Work Experience; Abstinence Activities; and Self-Sufficiency.

# 3 OPTIONS WHEN A YOUTH IN CARE TURNS 18

- A. Remain Status Quo – in foster care and under court jurisdiction
  - ❖ Must still be in high school
  - ❖ Still in custody of DFS and ward of the Court
  - ❖ CAP attorney stays on
- B. AB350 Program (Voluntary Jurisdiction)
  - ❖ Wardship is terminated, but the youth remains under voluntary jurisdiction
  - ❖ No longer under DFS custody
  - ❖ Provides monthly payments (\$773) directly to the youth
  - ❖ Young adult must make good faith efforts towards goals on transition plan. Goals include diploma or GED, college, employment.
  - ❖ If not compliant, termination of program letter, administrative review and court process
  - ❖ CAP attorney stays on
- C. Funds to Assist Former Foster Youth (FAFFY) (formerly Step-Up)
  - ❖ Wardship has been terminated
  - ❖ CAP attorney withdraws
  - ❖ Rental assistance up to \$773 per month paid directly to the landlord. Money left over goes directly to the youth

## For both Voluntary Jurisdiction & FAFFY

- ❖ 18-21 years old
- ❖ Move-in costs (deposit only) available (up to \$1000 on time)
- ❖ Emergency Funds available
- ❖ Graduation stipend available (\$500 for high school and \$250 for GED/HiSet)
- ❖ Eligible for “aged out youth Medicaid” until 26 years of age



## STEP UP PROGRAM (FAFFY)

- ❖ After care program- wardship has been terminated
- ❖ 18-21 years old
- ❖ Provides rental assistance up to \$773 a month
- ❖ Recent approval to have young adult get difference between \$773 and the amount of rental assistance
- ❖ Move-in costs (deposit only) [available to AB350 youth too]
- ❖ Emergency funds
- ❖ Graduation stipend [available to AB350 youth too]
- ❖ Eligible for “aged out youth Medicaid” until 26 years of age



# MENTAL HEALTH NEEDS

- ❖ Up to 80% of children in the dependency system have significant emotional, developmental, or behavioral needs requiring mental health services.
- ❖ Despite their disproportionate needs, most dependent children do not receive mental health care unless their situation reaches a crisis point.
- ❖ Dependent children who act out due to behavioral problems are more likely to get treatment than children with other mental health needs, as are children who have been sexually abused.
- ❖ Children of color are the least likely to get treatment, and the most likely to get referrals.
- ❖ Children placed with relative caregivers are also less likely to get referrals than those in traditional foster care.



# A CHILDREN'S LAWYER'S JOB RE MENTAL HEALTH NEEDS

- ❖ **NOT** to diagnose or treat mental illness.
- ❖ To recognize when your client may need to be evaluated for treatment.
- ❖ To make sure that if she needs an evaluation, she gets one.
- ❖ To ensure that professionally recommended treatment is provided (assuming your client is in agreement – remember we are client directed).



# MENTAL HEALTH DOCUMENTS & TERMS

- ❖ **Assessment:** When a child is referred to a mental health services provider, an assessment will be completed. This will be a written document. As the child's attorney, you are entitled to a copy, which the caseworker should provide to you.
- ❖ **Treatment Plan:** based on the assessment, if your client is believed to need therapeutic services, a treatment plan will be developed. It will lay out the goals your client and her therapist will be working on in treatment. As the child's attorney, you are also entitled to a copy, which the caseworker should provide to you. You should also be included in the plan's development.
- ❖ **Treatment Team Meetings (TTMs):** Some (although not all) agencies which provide mental health services hold regular meetings with the child's team to develop the treatment plan, amend it as necessary, and stay on top of the child's progress and case developments. You should be given the opportunity to participate.
- ❖ **Release of Information (ROI):** Treatment providers will typically require the caseworker to sign a release of information before they can speak to you, provide you with documents, or allow you to participate in meetings.




# HOSPITALIZATION IN LOCKED PSYCHIATRIC FACILITIES

*(Montevista, Spring Mountain, Desert Willow, Desert Parkway)*

- The Law and Court Process (NRS 432B.607)
  - A child may be admitted to a locked facility without court intervention in an emergency situation.
  - If a child remains in a locked facility for more than five business days, the Department must file a **Mental Health Petition** (432B.7075) or release the child.
    - Do not count day of admission, holidays, or weekends.
    - The Petition must be supported by a certification of a physician, psychiatrist, or licensed psychologist, stating that the examination revealed that the child is emotionally disturbed and likely to harm herself or others if she remained at liberty.
  - Mental Health Petition Hearings are heard by Judge Sullivan on Thursday at 1:00 pm.
  - A child who is subject to a mental Health Petition is entitled to counsel.
  - Standard of Review: The court must find by clear and convincing evidence that the child's behavior is likely to cause harm to herself or others if she doesn't remain in such a facility. Less restrictive alternative courses of treatment must be explored and found insufficient.
- (432B.6076(2))
  - The necessity of the child remaining in the locked facility is typically reviewed weekly. A child should be released when no longer acute.
- Visiting Your Client
  - Get "the code" from the caseworker
  - Remind the caseworker to ensure you are on the client's call and visitor list
  - Attend weekly treatment teams. This is where decisions about medication changes and discharge will occur and where discussions about placement in a residential facility typically begin.

# MENTAL HEALTH PETITIONS FOR RESIDENTIAL TREATMENT (*RTC Petition*)

- ❖ Separate Petition -- Different from the initial mental health petition
- ❖ Alleges that the child is emotionally disturbed
- ❖ Affidavit/letter from treating Psychiatrist recommending long-term residential placement and explaining the reasons
- ❖ In state RTC: Desert Willow, Montevista, and Willow Springs (Reno)
- ❖ Right to a Second Opinion
  - ❖ Make the request of the Court under NRS 432B.6078
  - ❖ Must be done by an independent physician, psychiatrist, or psychologist who is not employed or connected to the doctor who made the original recommendation.
  - ❖ Per statute, it must be conducted not later than 5 business days after the court authorizes it. However, it typically takes 2-3 weeks.
  - ❖ The examination must include, without limitation, an evaluation concerning whether the child should remain in the facility and a recommendation concerning the appropriate placement of the child which must be provided to the facility.
  - ❖ The examination must be paid for by the government entity that is responsible for the agency which provides child welfare services, if such payment is not otherwise provided by the State Plan for Medicaid.



# PERSON LEGALLY RESPONSIBLE (PLR)

## NRS 432B.4684-469

- ❖ The agency shall nominate a person who is legally responsible for the psychiatric care of the child and will consent for psychotropic mediations
- ❖ The person could be:
  - ❖ The attorney for the child;
  - ❖ The guardian ad litem of the child;
  - ❖ The foster parent or other provider of substitute care for the child;
  - ❖ An employee of the agency which provides child welfare services; or
  - ❖ Any other person who a court determines is qualified to carry out the duties and responsibilities prescribed by NRS 432B.4681 to 469
- ❖ The person shall:
  - ❖ Obtain medical history
  - ❖ Maintain current information concerning the emotional, behavioral, educational and related needs of the child
  - ❖ Attend each medical visit or be available by telephone



## ISSUE SPOTTING

❖ Indian Child Welfare Act (ICWA)

❖ Special Education Needs

Email: [specialed@lacs.org](mailto:specialed@lacs.org)

❖ Immigration Problems

❖ Juvenile Delinquency



# IMPORTANT THINGS TO REMEMBER:

- ❖ Visit your child and develop a relationship of trust so they can call you if something goes wrong.
- ❖ Show up to every court hearing.
- ❖ Push the system to get the child in a permanent home – depending on what they want – back to their parents, to relatives, adopted, or in independent living...or with someone they love.
- ❖ The case will take ten years unless you push it. If you don't push the case, it won't get pushed.
- ❖ If your child has severe emotional abuse, watch out for overmedication – it runs rampant.
- ❖ If something doesn't sound right or feel right, or if it's not how you would want your own child to be treated, it's probably wrong.
- ❖ Please attend the support luncheon...you can chat about your case, meet other volunteers, get advice, and have a free lunch!




# COMMON PRO BONO ATTORNEY PITFALLS

- A. Not meeting your client(s) right away
- B. Not showing up for court hearings, CFTs, TTMS or other meetings regarding your client(s)
- C. Not talking to your mentor or asking for help when you need it
- D. Trying to be your client's friend instead of his/her attorney
- E. Substituting your opinion for your client's/being influenced by your bias



# TRAPS THAT CAN DELAY PERMANENCY

- A. Unresolved Paternity Issues – often ignored and can cause huge problems later in the case
- B. Overlooked/Unexplored Relatives – find and assess them early!
- C. DFS Not Providing Reasonable Efforts to Parents – parents have to be given a chance to remedy the problems to get their kids back
- D. Assuming because a case worker is supposed to do something or she said she would do something that it is done – always follow up
- E. Placement Disruption – help ensure placements your clients prefer are supported



# Q & A