

## Permanency: Our Roles & Our Challenges



Nebraska Children's Summit  
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## Permanency

Who is responsible for improving permanency for children?

How do my ethical duties to my clients and the court relate to permanency?

Do I have a specific role in ensuring that a permanency hearing is meaningful?

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## What we will cover

- Permanency as a concept rooted in child development and its relationship to the law
- What works and what doesn't work in achieving timely permanency: good case planning and more shared expertise with "older youth"
- The challenges in our roles as attorney, judge, social worker and CASA volunteer

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## Foundational Principle: What we believe

All children/youth have the right to a healthy and safe childhood in a nurturing, family, or in the closest possible substitute to a family setting that affords them the guarantee of permanent relationships.

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## Do we understand “permanency”?

“Permanency is a psychological state implying security, identity, and connection without limitation.”

- The opportunity to live in a safe and nurturing home environment, one which can be returned to for support even as an adult in a home intended to last indefinitely
- Contact with family of origin if appropriate
- Educational and health needs met
- Healing of past trauma
- Religion and culture preserved
- A sense of belonging and a definitive legal and social status

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## Constitutional analysis

The Constitutional Analysis :  
balancing interests and rights

The liberty interests of parents

The due process rights of the child

The right of the state to intervene –  
trumps the liberty interests of the  
parents *if* compelling reasons  
are proven



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## A decade of seeking permanency for children of all ages

Federal child welfare law:

AACWA---case plans + parental involvement required

CAPTA---GAL appointed to each child

ASFA---Reasonable efforts, 12 months to permanency hearing, 15/22 months to filing TPR

FCIA---Preparing youth for successful transition

Fostering Connections to Success (2008) --subsidized guardianships, relative and kinship notice/ outreach

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## How does permanency translate into legal process?

How do we translate that?

Careful removal

Minimizing time away from parent (s)

Reducing the incidence of re-abuse

Permanency planning

Meaningful permanency hearings

AND, what does research tell us about the impact of removal, "stranger" placement, placement disruption, changing schools, bonding and attachment, and positive life outcomes?

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## What works???

GOOD CASE PLANNING

AND how are we doing?

OF THE 32 STATES IN ROUND 2

Child and Family Service Review (CFSR)

NOT ONE STATE PASSED THE CASE PLAN REQUIREMENTS

OF THE CASE REVIEW SYSTEMIC FACTOR



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## The biggest challenge for permanency is "older youth".

### They need us to increase our shared expertise:

National data-50+% of the children in care for more than 2 years are older youth "8 and older"

#### Shared characteristics:

Children over 10 with emotional and behavioral needs  
Children who are dual diagnosis

Teens "Do we make them a lot more trouble than they are?"

- Children who have been "kicked out" of programs for behaviors that brought them to court
- "Not suitable for a family setting"

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## Profile of a Youth Aging Out

- 18 years old
- 3 or more years in care
- Multiple placements
- Multiple workers
- Not likely to have completed education
- May have health or mental health needs
- Likely to return to bio-family

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## Shared ethical issues

Relationship with **your** client  
Protecting your client's confidentiality  
Establishing and maintaining good communication  
Avoiding conflict of interest

Challenges:  
Relationships with other attorneys  
Relationship with other interested parties  
Statutory mandates

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## Role of the County Attorney

Representation....states use different model

Common duties:

Legal and factual analysis

Clear drafting

Knowledgeable and current on federal law  
and policy and child welfare policy/practice

Maintains good communication with the client,  
is available, and counsels on issues beyond  
the immediate case/incident.

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## Social workers ethics

### ETHICAL PRINCIPLES

- Social worker's primary goal is to help people in need & to address social problems.
- Social workers challenge social injustice.
- Social workers recognize the central importance of human relationships.
- Social workers behave in a trustworthy manner.
- Social workers practice within their areas of competence & develop & enhance their professional expertise.

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## Social worker-my role in improving permanency

Intervention and case planning are focused on the fundamental question: Is it safe for the child to return home?  
Under what circumstances? And, when?

Family centered practice --- parents, children and relatives

Family engagement --parents and case planning

Child centered practice -- individualized, focusing on stability and connections

(See *Fostering Connections for Success Act, 2008*)

Concurrent Permanency Planning

Involving foster parents as resources for biological parents

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## Attorneys for Parents

Ethical obligations to provide zealous advocacy which includes ethical duties to counsel

To fashion a strategy to achieve the client's goals --- reunification—not in all cases.

Parents are entitled to competent representation—there is no lesser ethical or constitutional standard.

Special challenges in this area of law

A range of strategies---full adversarial, mediation, early assessment of likelihood of reunification, active involvement by the parent in seeking out alternatives which preserve their parental rights.

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## My role as GAL

- Belief in permanence for every child.

- Involving the youth directly  
"...nothing about us, without us."



- What will it take to ensure that no child ages out without a permanent nurturing family/family relationship?

- Legal ties do bind.

- How good is my relationship with my client? Adolescents have not given up on the idea of a new family despite words & behaviors to the contrary.

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## Your client-the child, the youth, the teenager

- Remind your judge that "the clock is ticking".
- Maintain, if possible and *in the child's best interests* connections with family and always siblings --- *if this is what the child wants*.
- Refine your communication skills so that they are developmentally appropriate when meeting with your client.
- Be strategic with other parties and in adding new voices to the planning, e.g., out of state relatives, providers, therapists, people important to the child.
- Remember protecting the emotional stability of the child relates directly to successful reunification, permanency, and successful transition to adulthood.

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## Role of the CASA volunteer

### Ethical issues

Advocacy for children – help them have a strong voice  
Children exist within the context of their families --- don't  
abandon the relatives because they are relatives  
Knowledge of the child's special needs – mental health,  
educational, developmental delays  
Support strong ties with siblings  
Preparation for transition from foster care  
The "overzealous" volunteer—privacy rights of parents

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## WE NEED TO MONITOR THE PROCEDURAL STEPS very carefully

### Periodic/6 Month Judicial Review

Within 12 months of the child's entry into  
foster care and every 12 months  
thereafter.

A negative, late, insufficient or missing  
finding means the agency is ineligible  
for IV-E dollars until the court makes a  
positive finding.

- The finding must be detailed and child specific.
- AND, at each permanency hearing thereafter

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## Reasonable efforts?

- Have all services to enable the parent to safely care for the child  
been offered?
- Are child's well being needs addressed?
- Have parents participated in the case planning?
- Nexus between services and underlying problems?
- Parents- participation AND benefit? Change in behavior?
- Assess the risk. Have we "raised the bar?"
  
- What has been the frequency/quality of visitation?
- Are *nonsafety* issues keeping the child from returning home?
- Has a trial home visit been considered?
  
- Has all relevant information been presented to the court: treatment  
plans, evaluations, provider recommendations?

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**Planning for Older Youth:  
ASFA defines APPLA  
as “any permanent living  
arrangement not enumerated in the  
statute.”**

42 U.S.C. 475(5)(C)



ASK: Does this plan include a parent relationship with at least one adult, a mutual understanding that this relationship is intended to last forever, unconditional commitment by the adult (s), participation of all parties in the relationship, lifelong & mutual support and involvement, intimacy and belonging, status-how the world views your relationship?

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**The plan of choice for older youth:  
APPLA**

- Have other permanency options been fully considered and ruled out for valid reasons?
- What efforts has the agency made to identify and recruit a permanent placement for the child? Relatives? Current/former caretakers? Mentors, coaches, teachers, counselors, neighbors or employers?
- Have we asked the child about preferences or ideas for placement options?
- Is this placement the best way to meet child's needs?

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**Judicial Oversight**

Obstacles to permanency:

**CONTINUANCES**

The case plan---“cookie-cutter”? Do the parents understand the plan?  
Does it make sense? Can you explain it? Were the parents involved?

*The unseen and unheard child*

Services aren't linked to safety and/or aren't *frontloaded*

Sequential rather than concurrent permanency planning

The invisible family – especially, paternal side

Compelling reasons WHICH aren't really: Kinship guardianship IS

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## The role of your Judge

- "Consult with the child in an age appropriate manner..."
- Engage foster parents/relatives
- Can the child be safely returned NOW?
- Conduct an individual assessment of the placement *at each permanency hearing.*
- Review the youth's case plan--it must include evidence at least monthly face to face visits with social worker/casemanager
- Consider all issues pertaining to well being of child, including issues of visitation, with parents, siblings, others.
- ICPC--- remove obstacles

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## What doesn't work?

### If we are serious about permanency for children:

- Delays in adjudication --We are doing no favors for anyone, especially children and parents
- Inadequate time for meaningful hearings on court calendars
- A court culture that accepts a different standards of attorney competency than in criminal or civil courts.
- Failure to reach permanency timely through delayed filing of TPR petitions and inconsistent judicial oversight

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## What does work

### If we are serious about permanency for children:

- Front loading Services
- Actively involving the extended family
- Specially trained units working on locating family connections through electronic databases
- Engaging the parents as real partners in the case planning
- Concurrent permanency planning
- Keeping the focus on safety
- Zealous advocacy
- Family Group Conferencing
- Improved transition planning --"benchmark hearings"

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## A reminder for us all

“A healthy democratic society can exist only if the people of the state have a respect for their legal system. That respect comes from your not being awed by the system, but rather from understanding that system.”

Hon. Mike Heavican,  
Chief Justice of the State of Nebraska

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## *Contact Information*

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