

*Presented by The Iowa State Bar Association's
Family and Juvenile Law Section*

2015 Juvenile Law Seminar



**Friday, May, 1
ISBA Headquarters**



CLE Credit

6.75 state hours which includes 1 ethics hour

Activity ID 186304



ISBA CLE Calendar

Visit www.iowabar.org/calendar to register for any of our upcoming CLE opportunities.

May 13

Legal Issues Surrounding “Drones” and “Big Data” in Agriculture (Live Webinar)
12:00 - 1:00 p.m.

May 14

What You Need to Know about Ag Liens (Live Webinar)
12:00 - 1:00 p.m.

May 14 - 15

Bridge the Gap Seminar
West Des Moines Marriott • West Des Moines

May 18

Other Agency Action: Tips for Practitioners (Telephone CLE)
12:00 - 1:00 p.m.

May 21

Unpacking the Legal Implications of a Pipeline (Live Webinar)
12:00 - 1:00 p.m.

May 28

Establishing an LLC (Live Webinar)
12:00 - 1:00 p.m.

May 29

Commercial and Bankruptcy Law Seminar
ISBA Headquarters • Des Moines

June 11

Justice Fore All Golf (Eastern)
Saddleback Ridge Golf Course • Solon

June 15 - 16

Basic Skills Course
Community Choice Credit Union Convention Center • Des Moines

June 15 - 18

Annual Meeting
Community Choice Credit Union Convention Center • Des Moines

2015 Annual Meeting

Held in conjunction with the Iowa Judges Annual Conference and the Iowa Court Reporters Association

June 15-18

Community Choice Credit Union Convention Center
833 5th Avenue ▶ Des Moines, IA 50309

MONDAY, JUNE 15

- Registration
8:30 a.m.
- Court of Appeals Oral Arguments
1:00 - 3:00 p.m.
- Annual Meeting CLE Program
1:00 - 5:10 p.m.
- Basic Skills Course
1:00 - 5:40 p.m.
- Iowa Judges Annual Conference Program
1:00 - 5:10 p.m.

TUESDAY, JUNE 16

- Registration
7:00 a.m.
- Annual Meeting CLE Program
8:00 a.m. - 5:00 p.m.
- Court Reporters Association Program
8:00 a.m. - 5:00 p.m.
- Iowa Judges Annual Conference Program
8:00 a.m. - 5:00 p.m.
- Basic Skills Course
8:00 a.m. - 5:00 p.m.
- Court Reporters Association Blood Drive
8:00 a.m. - 5:00 p.m.
- Probate Track Luncheon
12:00 - 1:30 p.m.
- Court Reporters Luncheon
12:00 - 1:30 p.m.
- Law School Luncheons
12:00 - 1:30 p.m.
- YLD Quarterly Meeting
1:30 - 5:00 p.m.
- Joint Presidents Reception
5:00 - 6:30 p.m.
- Luau in the Lot Hosted by the YLD
(ISBA Headquarters)
6:00 - 9:00 p.m.

WEDNESDAY, JUNE 17

- Registration
7:00 a.m.
- ISBA Foundation Fellows Breakfast
7:30 - 8:45 a.m.
- Access to Justice Symposium
8:00 - 11:30 a.m.
- Annual Meeting CLE Program
8:00 a.m. - 5:00 p.m.
- Iowa Judges Annual Conference Program
8:00 a.m. - 2:30 p.m.
- Court Reporters Association Program
8:00 a.m. - 1:30 p.m.
- Probate Section Meeting
9:00 a.m. - 12:00 p.m.
- ISBA Foundation Board Meeting
9:00 a.m. - 12:00 p.m.
- ISBA Board of Governors Orientation
10:00 a.m. - 12:00 p.m.
- Luncheon Honoring
the Iowa Supreme Court
12:00 - 1:30 p.m.
- ISBA Board of Governors Meeting
1:30 - 5:00 p.m.
- ISBA Annual Awards Gala
6:30 - 9:30 p.m.

THURSDAY, JUNE 18

- Registration
7:30 a.m.
- ISBA Annual Meeting CLE Program
8:00 - 11:35 a.m.
- Board of Governors Meeting
8:00 a.m. - 12:00 p.m.
- 3rd Annual ISBA Tech Show
Time TBD
- 50-Year Member Luncheon
12:00 - 1:30 p.m.
- ISBA Public Service Project
Annual Meeting
12:00 - 1:30 p.m.

CLE Tracks

- Appellate Practice Track
- Solo & Small Firm Track
- Commercial & Bankruptcy Law Track
- Federal/Litigation Track
- Juvenile Law Track
- Real Estate Track
- Family Law Track
- Probate Track
- Litigation Track
- Elder Law Track
- Ag Law Track
- Case Law Track
- Ethics Track
- Mixed Bag Track

Registration Form: 2015 Annual Meeting

Judges, law clerks and judicial branch staff attorneys will receive registration information from the Judges Association

Name: _____ Member # _____ Phone # _____

Address: _____ City, State, Zip: _____

E-mail: _____

EARLY-BIRD REGISTRATION FEES:

Prices below reflect the early-bird registration fees. Registering after June 11 will result in a \$50 late fee being added on to your registration fee amount.

- ISBA Members - Admitted to practice prior to July 2011 (Full Seminar) - \$325
- ISBA Members - YLD Members (Years 4 - 5) (Full Seminar) - \$275
- ISBA Members - YLD Members (Years 1 - 3) (Full Seminar) - \$125
- Non-ISBA Members (Full Seminar) - \$425
- Only Monday (ISBA Members) - \$100
- Only Monday (Non-ISBA Members) - \$150
- Only Tuesday (ISBA Members) - \$175
- Only Tuesday (Non-ISBA Members) - \$225
- Only Wednesday (ISBA Members) - \$175
- Only Wednesday (Non-ISBA Members) - \$225
- Only Thursday (ISBA Members) - \$100
- Only Thursday (Non-ISBA Members) - \$150
- Para Professional (Legal Assistants & Office Employees) - \$150

Reminder:

This year's Annual Meeting is going paperless. No hard copy materials will be available for this event. A link to the materials will be sent to attendees a few days prior to the event so attendees may download/print off materials of their choosing. It is strongly suggested attendees download the materials in advance of the event.

SOCIAL EVENTS (If only attending complimentary events, you must register above for Annual Meeting):

- Probate Track Luncheon (Tuesday, June 16) \$25 each \$ _____
- Creighton University Law School Luncheon (Tuesday, June 16) \$25 each \$ _____
- Drake University Law School Luncheon (Tuesday, June 16) \$25 each \$ _____
- University of Iowa College of Law Luncheon (Tuesday, June 16) \$25 each \$ _____
- Joint Presidents Reception (Tuesday, June 16) Complimentary to Annual Meeting attendees
- Luau in the Lot Hosted by the YLD (Tuesday, June 16) Complimentary to Annual Meeting attendees
- Probate Section Luncheon (Wednesday, June 17) \$25 each \$ _____
- Luncheon Honoring the Iowa Supreme Court (Wednesday, June 17) \$25 each \$ _____
- ISBA Annual Awards Gala (Wednesday, June 17) \$60 each \$ _____
- 3rd Annual Tech Show (Thursday, June 18) Complimentary to Annual Meeting attendees
- 50-Year Member Luncheon (Thursday, June 18) \$25 each \$ _____

TOTAL (registration fee and social event expenses): \$ _____

Method of Payment: Check enclosed Check Number _____
 Master Card Visa American Express CLE Season Pass (registration fees only)

Credit Card #: _____ Exp. Date: _____

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Special Considerations (dietary, hearing, vision, etc.): _____

Return registration form to: ISBA CLE, 625 E. Court Avenue, Des Moines, Iowa 50309 or fax (515) 243-2511

For questions: phone (515) 697-7874 or e-mail cle@iowabar.org

Cancellation policy/Walk-in registration fee: Registration refunds will be issued only if written notification is received by the bar office by June 8, 2015. Written notification can be mailed, faxed, or e-mailed to the bar office. Walk-in registration fee will be an additional \$50 (fee will begin after June 11, 2015)

Hotel Information

The Quality Inn and Suites Room rate: \$94.95 (+ tax & fees) (515) 282-5251 929 3rd Street, Des Moines, IA 50309	Holiday Inn - Mercy Campus Room rate: \$109 (+ tax & fees) (515) 283-0151 1050 6th Avenue, Des Moines, IA 50314	Des Moines Marriott Downtown Room rate: \$139 (+ tax & fees) (515) 245-5500 700 Grand Avenue, Des Moines, IA 50309
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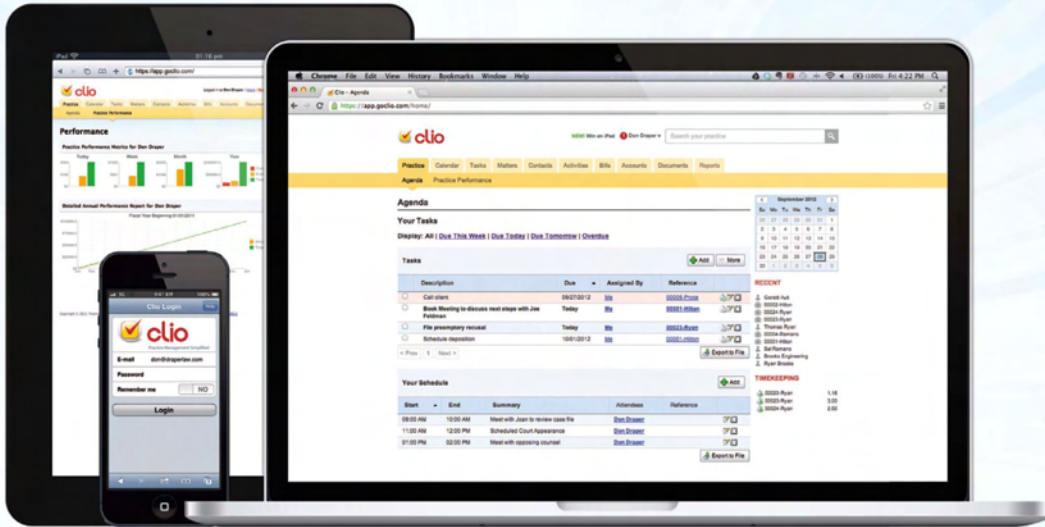
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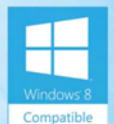


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Caveat

The printed materials contained in this book and the oral presentations of the speakers are not intended to be a definitive analysis of the subjects discussed. The reader is cautioned that neither the program participants nor The Iowa State Bar Association intends that reliance be placed upon these materials in advising your clients without confirming independent research.



CLE Credit

6.75 state hours which includes 1 ethics hour

Activity ID 186304

Sponsored by The Iowa State Bar Association's Family Law and Juvenile Law Section

Juvenile Law Seminar

Friday, May 1, 2015

8:00 – **Registration**

8:30 - 9:30 - **Case Law Update**

Speaker: Prof. Jerry Foxhoven, Drake Legal Clinic

9:30 - 10:15 - **Practice Pointers Regarding Competency**

Speaker: Prof. Brent Pattison, Drake Legal Clinic

10:15 - 10:30 – Break

10:30 - 11:15 - **Addressing Competency and Other Mental Health Concerns in Delinquency Cases**

Moderator: Prof. Brent Pattison, Drake Legal Clinic

Panel: Dr. David Beeman, Innovative Learning Professionals; Kim Carson, Juvenile Court Officer; and Patricia Weir, Johnson County Attorney's Office

11:15 - 12:00 - **Children with Special Needs and Children in Need of Assistance (CINA): Improving Outcomes for Children and Families**

Moderator: Prof. Brent Pattison, Drake Legal Clinic

Panel: Michael Bandstra, Bandstra Law Office and Patricia Weir, Johnson County Attorney's Office

12:00 - 12:30 - Lunch (provided with registration)

12:30 - 1:30 - **Challenging Drug Testing Results**

Speaker: Cynthia Finley, Magistrate Judge

1:30 - 2:00 - **Differential Response – Lessons Learned and How to Divert a Case**

Speaker: Julie Allison, Department of Human Services (DHS)

2:00 - 2:15 – Break

2:15 - 3:15 - Break Out Session #1

- **Relative Care/Fostering Connections** - Speaker: Doug Wolfe, DHS
- **Dream Team/Family Team Meeting Advocacy** – Speakers: Annie Von Gillern and Jessie Eash Thomas
- **Substance Abuse and Depression (Ethics)** – Speaker: Hugh Grady

3:15 - 3:30 – Break

3:30 - 4:30 - Break Out Session #2

- **Challenging Cases - Difficult Attorney/Client Relationships** - Speakers: Ellen Ramsey-Kacena and Prof. Jean Lawrence, University of Iowa Legal Clinic
- **Substance Abuse and Depression (Ethics)** – Speaker: Hugh Grady (repeat of the 2:15 presentation)



Sponsored by The Iowa State Bar Association's Family Law and Juvenile Law Section

Juvenile Law Seminar

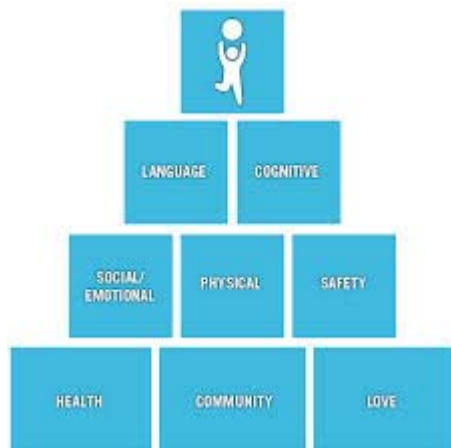
Case Law Update

8:30 a.m.-9:30 a.m.



Presented by

Prof. Jerry Foxhoven
Drake Legal Clinic
2400 University Avenue
Des Moines, IA 50311
Phone: 515-271-2073



Friday, May 1, 2015

2015 Juvenile Law Update

*Jerry Foxhoven, Executive Director, Drake Legal Clinic
Drake University Law School*

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A. Reasonable Efforts:

A Parent's Imprisonment Can Diminish the Amount of Services Available to be Offered: *In re: W.E. (Iowa Court of Appeals, June 11, 2014):* In this appeal affirming an order terminating parental rights (TPR), the Iowa Court of Appeals held that a parent's imprisonment may result in his unavailability to take advantage of services offered to prevent termination:

Ollie also argues he should have been provided more time because the evidence showed he “was turning his life around.” There is evidence that Ollie was experiencing success while living at a shelter upon his release from jail. Ollie's limited, positive steps toward rehabilitation do not cure or eliminate his past conduct. . . While the father was not able to use many of the services because he was in custody pending the resolution of the domestic violence charge, he was required to demand other, different, or additional services prior to a permanency or termination hearing that could have been provided to him. . . While those services may have been too little too late, it does not change the fact that Ollie had the obligation to demand other, different, or additional services and failed to do so. *See In re M.T.*, 613 N.W.2d 690, 692 (Iowa Ct. App. 2000) (“The only service DHS was able to offer [the father] during his incarceration was supervised visitation. [He] cannot fault DHS for being unable to provide him additional services when his own actions presented him from taking advantage of them.”).

Failure to Exercise Visitation and Request Services can Support TPR: *In re: I.L.*, (Iowa Court of Appeals, September 17, 2014): In this appeal affirming an order terminating parental rights (TPR), the Iowa Court of Appeals held that a father's failure to exercise visitation or request other services supported TPR:

In our de novo review of the record, we conclude Chris did not take advantage of the interactions with his daughter offered by the DHS and did not ask for more or different services during the CINA case. Chris needed to request additional services to advance a reasonable efforts claim on appeal. (*Citations omitted*). From January 2012 to December 2013, Chris made no contact with DHS despite being represented by counsel and aware of the ongoing CINA proceedings. Because Chris was not in contact with the DHS or participating in

visitation, the DHS was unable to recommend or provide additional services. The father's inability to assume care of I.L. at the time of the termination hearing is due to his indifference, or at least inaction, and not a lack of reasonable effort by the DHS . . . This record does not reveal a close relationship between I.L. and her father. In fact, Chris has been absent for four of seven years—a majority of her life time. The juvenile court found Chris had “no bond” with I.L. and opined “the parent-child relationship cannot be maintained where there exists only a remote possibility . . . Chris will become [a] consistent parent[] sometime in the unknown future.” Like the juvenile court, we conclude the father's long absences from I.L.'s life cast doubt on his ability to be a stable parent for her in the long term.

Reasonable Efforts Required Even for Incarcerated Parents: *In re: J.H.*, (Iowa Court of Appeals, September 17, 2014): In this appeal affirming an order terminating parental rights (TPR), the Iowa Court of Appeals held that a parent's incarceration does not remove the duty of DHS to make reasonable efforts:

On our de novo review, we are less sanguine about the department's reunification efforts.

The department social worker overseeing the case admitted she did nothing to facilitate reunification while the father was incarcerated. Her only reason for declining to afford services during these periods was that the agency was not requested to do so.

The department's reasonable efforts obligation is not triggered by a request. Although a parent is required to seek new and different services if the original services are deemed inadequate, the department's duty to work towards reunification of parent and child begins at the moment of removal and continues through termination, unless statutorily waived. (*Citations omitted*). While incarceration may render the provision of services more difficult, it does not absolve the department of the obligation to make reasonable reunification efforts. (*Citations omitted*). Notably, the obligation was a substantive requirement of both statutory grounds on which the district court relied in terminating the father's parental rights. (*Citations omitted*). For these reasons, the department could and should have tried to address the concerns that led to the removal of the child, even when the father was behind bars.

While the department shirked its responsibilities to the father during his periods of incarceration, we nonetheless conclude the agency minimally satisfied its statutory mandate by paying for a psychosocial evaluation and by facilitating the father's participation in a drug treatment program.

Father Cannot Complain with a Criminal No-Contact Order Preventing Visitation: *In re: F.K.*, (Iowa Court of Appeals, January 28, 2015): In this appeal of an order granting a Termination of Parental Rights (TPR) on a father, the Iowa Court of Appeals affirmed the TPR, holding that the fact that a criminal no-contact order prevented the father from demonstrating his ability to parent does not prohibit a TPR:

We recognize the father was unable to test his progress towards reunification because of the no-contact order. However, the mother had every right to seek an extension of the order and the criminal court had every right to extend it. *See* Iowa Code § 664A.8 (authorizing State or victim to file application for extension of no-contact order). The department was obligated to follow the order. *See* Iowa Code § 664A.3(4) (stating an order "requiring the defendant to have no contact with the alleged victim's children shall prevail over any existing order which may be in conflict with the no-contact order."). Accordingly, the department did not violate its reasonable efforts mandate by declining to facilitate visits between father and child. (*Citation Omitted*)

Nor was a juvenile court order granting the district court concurrent jurisdiction required as a prerequisite to the district court's extension of the no-contact order. While a party to a juvenile court action must obtain permission to concurrently litigate "custody, guardianship, or placement of a child," no mention is made of criminal proceedings. *See* Iowa Code § 232.3(1). The no-contact order was issued in a criminal proceeding.

Reasonable Efforts Complaints Must be Raised Before the TPR Hearing: *In re: T.C. and J.C.*, (Iowa Court of Appeals, February 11, 2015): In this appeal of an order terminating the parental rights (TPR) of the father, the Iowa Court of Appeals affirmed the TPR, holding that a parent who complains about the state's failure to provide reasonable efforts must make that complaint prior to the TPR hearing:

The father filed a post-trial motion seeking a new trial due to the court's failure to allow him to present evidence that the State failed to make reasonable efforts during the case. Although the State has an obligation to make reasonable efforts toward reunifying the parent and child, the parent has the obligation to demand different or additional services the parent may require *prior* to the termination hearing. *In re H.L.B.R.*, 567 N.W.2d 675, 679 (Iowa Ct. App. 1997). The father does not cite any instance in the record prior to the termination hearing in which he made such a demand; therefore, he failed to preserve the issue for hearing before the juvenile court. *See S.R.*, 600 N.W.2d at 65. The juvenile court did not abuse its discretion in denying the motion for new trial.

B. Placement Issues:

The Parent from Whom the Child Was Removed: *In re: M.P. and C.P. (Iowa Court of Appeals, November 26, 2014)*: In this appeal of a permanency order in a Child-in-Need-of-Assistance (CINA) case placing the child with the mother rather than return to father, the Iowa Court of Appeals reversed the permanency ruling, holding that a parent from whom the child was removed is the proper parent for return/placement:

Relevant statutory text supports the conclusion the child's "home" is the home from which he was removed. Iowa Code sections 232.95(2) and 232.96(10) provide the "child's home" is the home in which the child resided at the time of removal. Section 232.104(2)(a) provides that the court shall "return" the child to the child's home. From this we can infer that the child had to be removed from the "home" to be "returned" to the "home." Here, the removal order removed B.N. from Shane's home. The fact that B.N. was temporarily residing with Abbey while Shane completed treatment does not change our conclusion. Shane consented to the placement at the request of IDHS. Further, the temporary removal order identified Shane's residence as the child's "home." . . . Based on our conclusion that Iowa Code section 232.104(2)(a) authorizes only the return of the child to the home from which the child was legally removed, the court erred in entering a permanency order pursuant to that particular section "returning" the child to the mother's home, as that was not an option available to the

court. . . Accordingly, we reverse the permanency order placing the child with the mother pursuant to section 232.104(2)(a).

Return Home of Some But Not All Children: *In re: A.G., O.S., and S.S., (Iowa Court of Appeals, April 22, 2015):* In this appeal of dispositional and dispositional review orders, the Iowa Court of Appeals reversed the trial court’s order leaving one child in out-of-home placement, holding that the out-of-home placement was not supported by the evidence:

Where, as here, IDHS recommended and the juvenile court found that two other children of similar age could be safely returned to the parents, in the absence of any distinguishing factor regarding the third child, we must conclude that the third child could also be returned to the parents.

C. Abandonment:

Maintaining Meaningful Contact: *In re: S.B., M.N., and S.N., (Iowa Court of Appeals, October 15, 2014):* In this appeal affirming an order terminating parental rights (TPR), the Iowa Court of Appeals held that a parent has an affirmative duty to maintain meaningful contact with the child in order to prevent TPR:

First, there is clear and convincing evidence the parents have not maintained significant and meaningful contact with the child. Significant and meaningful contact is an affirmative duty that requires “a genuine effort to complete the responsibilities prescribed in the case permanency plan.” Iowa Code § 232.116(1)(e)(3). The parents’ continued substance abuse and occasional refusal to submit to drug screenings is uncontroverted and belies any genuine effort to adhere to their permanency plans. The parents’ efforts to “maintain communication” and “a place of importance in the child’s life” have been inconsistent and ineffective. *Id.* There is therefore clear and convincing evidence to satisfy the requirements of section 232.116(1)(e).

Maintaining Significant and Meaningful Contact: *In re: H.C. and K.C. (Iowa Court of Appeals, April 22, 2015):* In this appeal of an order terminating the parental rights (TPR) of the mother, the Iowa Court of Appeals reversed the TPR,

holding that the parent had not maintained significant and meaningful contact with the child:

With the mother's inconsistent attendance at visitations, continued drug use, and inability to follow the requirements of the case permanency plan, we find clear and convincing evidence demonstrates the mother has not maintained significant and meaningful contact with her children.

D. Domestic Abuse:

Domestic Abuse Supports a CINA Adjudication: *In re: K.S.-T (Iowa Court of Appeals, November 13, 2014):* In this appeal of a termination of parental rights (TPR), the Iowa Court of Appeals affirmed the TPR, holding that the presence of domestic violence supports a Child-in-Need-of Assistance (CINA) adjudication:

Domestic violence also is a harm that would justify adjudication of the child as a child in need of assistance. *Citation Omitted.*

Minimization of Domestic Abuse Supports TPR: *In re: L.A., R.A., and M.A. (Iowa Court of Appeals, November 26, 2014):* In this appeal of a termination of parental rights (TPR), the Iowa Court of Appeals affirmed the TPR, holding that the mother's minimization of domestic violence demonstrates her inability to make the necessary lifestyle changes to provide a safe environment for her children:

The biggest problem was Nicole's minimization, if not outright denial, of the domestic violence in the home and its impact on her ability to safely parent her children. . . . Nicole's testimony revealed a fundamental misunderstanding of the concept of intimate violence: her definition of domestic abuse was "when a man or a woman beats up on each other to a point where sometimes it ends up in the hospital." Later in her testimony, she acknowledged someone being hit and receiving a bruise could be called domestic abuse but insisted she bruised easily. Nicole has taken no steps to provide the children with a safe home. She has refused to attend domestic violence counseling. Nicole testified she had every intention to continue a romantic relationship with Fernando, giving no thought to its impact on the children. The record shows Nicole is not willing to make the

necessary lifestyle changes to fulfill the case permanency plan and reunite with her children.

E. Incarceration of a Parent:

Participation in Services by an Incarcerated Parent: *In re: K.M. and C.M. (Iowa Court of Appeals, June 25, 2014):* In this appeal of a termination of parental rights (TPR), the Iowa Court of Appeals affirmed the TPR, holding that even a parent in prison must request services in order to preserve a claim that the state failed to make reasonable efforts for reunification:

The father's incarceration "was due to his own actions, and he cannot fault DHS for being unable to provide services while he is in prison." *Citation Omitted.* In fact, the father never requested services while he was in prison. He has not obtained a sex offender evaluation or treatment.

Long-Term Imprisonment Leads to TPR: *In re: D.D., K.D. and K.M., (Iowa Court of Appeals, July 16, 2014):* In this appeal affirming an order terminating parental rights (TPR), the Iowa Court of Appeals held that a long term period of imprisonment makes TPR likely:

Here, the children are placed with foster parents in a pre-adoptive home. The father's projected release date is not until January 2025, and it is therefore unlikely he will be released for a period of more than five years. Consequently, the State proved by clear and convincing evidence grounds to terminate pursuant to paragraph (j).

The father also argues termination is not in the children's best interest, given the bond he shares with the children. However, the father is unable to provide for the children or give them a home, and will be unable to do so for approximately the next ten years. The children are placed with a family who intends to adopt them, and by all accounts, they are thriving in that environment. The children are in need of permanency, and it is in their best interest to terminate the father's parental rights so they may be adopted and achieve that necessary stability.

See also *In re: C.P. and K.P.*, (Iowa Court of Appeals, July 16, 2014):

We find termination was appropriate under subsection (f) as to C.P. and subsection (h)4 as to K.P. as the children could not be returned to the father's care at the time of the hearing or in the foreseeable future due to his incarceration. Conviction of a crime and resulting imprisonment do not necessarily result in termination of parental rights. *Citation Omitted*. But by the same token, incarceration cannot justify a parent's lack of relationship with the children. *Citation Omitted*. Here, the father's pursuit of crime rather than stable parenthood contributed to the grounds for termination.

A Parent Cannot Complain when Incarceration Prevents a Relationship: *In re: T.E.*, (Iowa Court of Appeals, August 13, 2014): In this appeal affirming an order terminating parental rights (TPR), the Iowa Court of Appeals held that a parent cannot complain that the state prevented her from maintaining contact with her child during the parent's incarceration:

Though she does not contest she has not maintained significant and meaningful contact with the child, she asserts she was unlawfully prevented from doing so. . . The mother's inability to maintain contact with the child is due to her own lifestyle choices that have resulted in her incarceration. This kind of inability to maintain meaningful contact is no legal excuse for failing to do so. The requirements of section 232.116(1)(e) have been satisfied, and the juvenile court's order was proper.

A Parent Cannot Complain of TPR When His Absence was Due to Incarceration: *In re: A.H.*, (Iowa Court of Appeals, January 28, 2015): In this appeal of an order granting a Termination of Parental Rights (TPR), the Iowa Court of Appeals affirmed the TPR, holding that a parent cannot complain when his inability to assume his parental duties is due to his incarceration:

The father's scant contact with the child during most of her life indicates he has little interest in ministering to the physical, mental, and emotional needs of the child. The father suggests his involvement with the child will improve once he is released from incarceration. However, he "cannot use his incarceration as a justification for his lack of relationship with the child. This is especially true when the

incarceration results from a lifestyle that is chosen in preference to, and at the expense of, a relationship with [the] child.”

F. Substance Abuse by Parent:

History of Substance Abuse and Relapse Supports TPR: *In re: H.L., (Iowa Court of Appeals, July 16, 2014):* In this appeal affirming an order terminating parental rights (TPR), the Iowa Court of Appeals held that a history of substance abuse and relapse supports TPR:

Alan has a long history of substance use and abuse, and we see no reasonable likelihood of successful treatment and continued sobriety by the end of the six-month period. He first consumed alcohol and marijuana at age eleven. He started using methamphetamine and acid at age twelve. He started using cocaine at age thirteen. He is now forty-four. While it is true that Alan experienced success with services at the beginning of this case, he relapsed shortly after completing outpatient treatment despite all the services afforded him. The story of Alan’s life is substance use and abuse punctuated by brief interludes of sobriety. What’s past is prologue.

Changes for a Prior Substance Abuser: *In re: J.W., (Iowa Court of Appeals, July 30, 2014):* In this appeal reversing the trial court’s adjudication order in a Child-In-Need-Of-Assistance (CINA) case, the Court of Appeals found that the mother had complied with treatment and her prior substance abuse problems no longer justified an adjudication of CINA:

Even under the most liberal interpretation of the phrase “imminently likely” there is not clear and convincing evidence J.W. is imminently likely to suffer the statutorily defined harm. . . The mother’s status as a prior substance abuser is insufficient evidence to establish an imminent likelihood of the statutorily prescribed harm. *Citation Omitted.* The inference of statutory harm is particularly weak here where the evidence points to the mother’s remarkable progress since April 2013. . . These same considerations also lead us to conclude there is insufficient evidence supporting the adjudication under section 232.2(6)(c)(2). . . But the record in this case does not support

adjudication under this provision. The mother no longer has an “active addiction” to methamphetamine. Further, this is not a case where the parent waited until the eve of an important hearing to address her behaviors and express an interest in parenting. *Citation Omitted*. Here, the mother responded to the State’s intervention. She accepted services, changed her associations, successfully completed substance abuse treatment, maintained sobriety, and reunited with her three older children. The service providers involved with this family conclude she is learning to become a good parent and providing a safe and stable home for her children. She had progressed so far from the time of removal of her three older children that J.W. was never removed from the mother’s custody and care. Unlike his older siblings, J.W. has never known or been exposed to the drugs, violence, or chaos associated with the mother’s prior life. The only life J.W. knows is a relatively calm and peaceful life in the care of his mother.

New Standard for TPR Based on Substance Abuse: *In re: L.S., H.S., and E.H., (Iowa Court of Appeals, October 15, 2014)*: In this appeal reversing an order terminating parental rights (TPR), the Iowa Court of Appeals held that statutory change requires that a substance abuse disorder must be diagnosable in order to serve as grounds for a TPR:

We need only address the second element because it is dispositive of the outcome. The State alleged and the juvenile court found the mother had a “severe chronic substance abuse problem.” That language was from the pre-2012 version of section 232.116(1)(l)(2). In 2011, the legislature amended this provision, replacing the phrase “severe, chronic substance abuse problem” with “severe substance-related disorder.” *Citation Omitted*. In the same enactment, the legislature defined “substance-related disorder” as “a diagnosable substance abuse disorder of sufficient duration to meet diagnostic criteria specified within the most current diagnostic and statistical manual [DSM] of mental disorders published by the American psychiatric association [APA] that results in a functional impairment.” *Citation Omitted*.. It is no longer sufficient for the court to assess in lay terms whether the parent suffers from “a severe, chronic substance problem.” The definition of substance-related disorder requires consideration of diagnostic criteria from the DSM-5 . . . In fact, in response to cross examination from the mother’s attorney, the DHS case worker testified she did not know if the mother’s condition had ever been diagnosed or

described as a “severe substance related disorder” and as far as she knew it had not been. Given this concession by the DHS worker, it would be difficult to conclude the State offered clear and convincing evidence the mother had a severe substance-related disorder.

Sobriety Required Before Return Home to Prevent TPR: *In re: B.G., B.G. and B.G. (Iowa Court of Appeals, November 26, 2014):* In this appeal of a termination of parental rights (TPR), the Iowa Court of Appeals affirmed the TPR, holding that a parent’s inability to maintain sobriety without the children in the home demonstrates that the children would not be safe if placed back in the home:

“Where the parent has been unable to rise above the addiction and experience sustained sobriety in a noncustodial setting, and establish the essential support system to maintain sobriety, there is little hope of success in parenting.” *In re N.F.*, 579 N.W.2d 338, 341 (Iowa Ct. App. 1998).

DHS Does Not Have to File Involuntary Commitment Proceedings: *In re: L.P. (Iowa Court of Appeals, November 26, 2014):* In this appeal of a termination of parental rights (TPR), the Iowa Court of Appeals affirmed the TPR, holding that the state is not required to file involuntary commitment proceedings against a drug-addicted parent to meet the reasonable efforts requirement:

Even if the mother is gaining skills in child care, she has not demonstrated those with her own son because she has not taken the initiative to undergo drug testing since April. The mother’s argument does not address the fundamental impediments to reunification, which are the unresolved drug addictions and mental health challenges faced by both her and L.P.’s father. A child cannot be safely placed in the home of a methamphetamine addict who is actively using. . . We decline to hold the DHS had an obligation to commence proceedings for involuntary commitment or treatment under Iowa Code section 125.75 for the parent of a child adjudicated CINA as part of its reasonable-efforts requirement. . . His appellate argument that the DHS should have pursued *involuntary* commitment does not square with the settled principle that parents must *demand* the services they believe will help eliminate the need for removal of their child.

TPR Based on Substance Abuse Disorder Requires a Diagnosable Condition: *In re: G.B. (Iowa Court of Appeals, November 26, 2014)*: In this appeal of a termination of parental rights (TPR), the Iowa Court of Appeals reversed the TPR, holding that the code section relied upon by the state required that the substance abuse condition must be a diagnosable condition:

The State alleged and the juvenile court found that both of the parents have a “severe, chronic substance abuse problem.” That language was from the pre-2012 version of section 232.116(1)(l)(2). In 2011, the legislature amended this provision, replacing the phrase “severe, chronic substance abuse problem” with “severe substance-related disorder.” *See* 2011 Iowa Acts ch. 121 § 58 (effective July 1, 2012). In the same enactment, the legislature defined “substance-related disorder” as “a diagnosable substance abuse disorder of sufficient duration to meet diagnostic criteria specified within the most current diagnostic and statistical manual [DSM] of mental disorders published by the American psychiatric association [APA] that results in a functional impairment.” *Id.* § 26 (codified at Iowa Code § 125.2(14)). It is no longer sufficient for the court to assess in lay terms whether the parent suffers from “a severe, chronic substance problem.” The definition of substance-related disorder requires consideration of diagnostic criteria from the DSM–5.

Court Cannot Use a Parent’s Refusal to Submit to Pre-Adjudication Drug Testing: *In re: D.S. (Iowa Court of Appeals, February 25, 2015)*: In this appeal of an order adjudicating the child to be a child in need of assistance (CINA), the Iowa Court of Appeals affirmed the lower court, but also held that the court could not base its opinion on a parent’s refusal to submit to drug testing that was requested by DHS prior to adjudication:

We recognize the district court and the department additionally relied on the mother’s refusal to undergo drug testing at the time of the child abuse investigation—testing we have held a district court and, by extension, the department, lacks authority to require at the pre-adjudication stage. *See In re A.C.*, 852 N.W.2d 515, 518 (Iowa Ct. App. 2014) (“[W]e find no statutory authority to support the district court’s ex parte pre-adjudication parental drug testing-order. . .”).

Recent Substance Abuse May Constitute Imminent Danger: *In re: A.H., (Iowa Court of Appeals, March 25, 2015):* In this appeal of an order adjudicating the child to be a Child in Need of Assistance (CINA) of the father, the Iowa Court of Appeals reversed the CINA on one ground but affirmed on another, holding that the recent history of substance abuse by the parents constitutes “imminent harm” to support the adjudication:

Iowa Code section 232.2(6)(c)(2) provides a child in need of assistance is one whose parent “has physically abused or neglected the child, or is imminently likely to abuse or neglect the child.” Preliminarily, there is no evidence the parents have physically abused or neglected the child. We assess only whether the evidence supports a conclusion that the parents are *imminently likely* to abuse or neglect the child . . . We agree with the juvenile court that the father’s sobriety in particular is of such recent vintage as to still pose a risk of imminent harm to A.H. without court and DHS supervision. Clear and convincing evidence supports this conclusion. A.H. is very young, barely three months old at the time of adjudication, and she is unable to self-protect if either one or both her parents relapse into drug use. Therefore, we affirm adjudication under Iowa Code section 232.2(6)(c)(2).

G. Poverty Issues:

The Impact of Poverty on Placement Decisions: *In re: M.P. and C.P. (Iowa Court of Appeals, November 26, 2014):* In this appeal of a permanency order in a Child-in-Need-of-Assistance (CINA) case with the goal of placement with mother rather than return to father, the Iowa Court of Appeals affirmed the permanency ruling, holding that a parent’s inability to provide for the needs of the children does reflect on the placement decision:

Kenneth has no long-term plan to provide for the children. He is unemployed and not searching for work. He depends entirely on others for transportation for himself and the children. He is dependent upon FIP payments, food assistance, and donations to provide for the children. He is also dependent upon his paramour for housing and support. While poverty, alone, is not grounds for determining permanency, the best interests of the children require a

determination of whether the parent can meet the children's basic needs. See *In re P.L.*, 778 N.W.2d 33, 39 (Iowa 2010) (noting the court looks at placement that best meets the physical, mental, and emotional needs of the child).

H. Elements of Proof:

Proof Required for Modification of a Dispositional Order: *In re: V.B. (Iowa Court of Appeals, June 11, 2014)*: In this appeal affirming an order modifying a dispositional order by removing the child from the parent in a Child in Need of Assistance (CINA) case, the Iowa Court of Appeals recited the pre-requisites for the modification of a dispositional order:

A transfer of custody shall not be ordered unless the court finds there is clear and convincing evidence that “(1) the child cannot be protected from physical abuse without transfer of custody; or (2) the child cannot be protected from some harm which would justify the adjudication of the child as a child in need of assistance and an adequate placement is available.” Iowa Code § 232.102(5)(a). Further, the court “must make a determination that continuation of the child in the child’s home would be contrary to the welfare of the child, and identify the reasonable efforts that have been made.” Iowa Code § 232.102(5)(b). Finally, in order to modify custody or placement, there must also be a material and substantial change of circumstances.

Requirements for a Six-Month Extension: *In re: K.M. and C.M. (Iowa Court of Appeals, June 25, 2014)*: In this appeal of a termination of parental rights (TPR), the Iowa Court of Appeals affirmed the TPR, holding that the parents were not entitled to a six-month extension:

In order to be granted an additional six months to work toward reunification, Iowa Code section 232.104(2)(b) requires the court to make a finding that the need for the removal of the child will no longer exist at the end of the additional six-month period. As the district court found, there is no evidence the parents’ circumstances will change in six months, and the children are entitled to permanency in their lives. The children should not be forced to endlessly wait for their parents to provide responsible parenting.

See also: *In re: K.B.*, (Iowa Court of Appeals, August 13, 2014):

The juvenile court may grant more time only if the judge specifically finds whatever prompted removal of the child will be resolved at the end of the six months.

Defining “Imminently Likely”: *In re: J.W.*, (Iowa Court of Appeals, July 30, 2014): In this appeal reversing the trial court’s adjudication order in a Child-In-Need-Of-Assistance (CINA) case, the Court of Appeals helped define the terms “imminently likely”:

The State may also seek to adjudicate a child in need of assistance pursuant to section 232.2(6)(b) if the child is “imminently likely” to suffer “physical abuse or neglect,” as defined above. “Imminently likely” is not defined by the code. *Citation Omitted*. Our supreme court has considered several definitions: “Relying on a dictionary definition, we have defined ‘imminent’ for purposes of our self-defense statute to mean ‘ready to take place,’ ‘near at hand,’ ‘hanging threateningly over one’s head,’ and ‘menacingly near.’ *Citation Omitted*. Relying on this same definition, we explained in another case that ‘imminent’ means a threatened act ‘is impending or about to occur.’ *Citation Omitted*. ‘Imminent’ has also been defined to mean ‘on the point of happening.’” *Citation Omitted*. Our court defined the term as “an immediate risk of the statutorily proscribed harm; and a real, as opposed to speculative or conjectural, risk of statutorily proscribed harm.” *Citation Omitted*. Regardless of the exact denotation, our “[c]ase law supports a liberal interpretation of the phrase “imminently likely” in the CINA context.”

Defining “Harmful Effects”: *In re: J.W.*, (Iowa Court of Appeals, July 30, 2014): In this appeal reversing the trial court’s adjudication order in a Child-In-Need-Of-Assistance (CINA) case, the Court of Appeals helped define the terms “harmful effects”:

Chapter 232 does not define “harmful effects.” Our supreme court has provided the following guidance: “[I]t ‘pertains to the physical, mental or social welfare of a child.’ *Citation Omitted*. Because of this broad definition, we have found such effects established when there was

harm to a child's physical, mental, or social well-being or such harm was imminently likely to occur. *Citations Omitted*. Hence, a juvenile court could reasonably determine that a parent's active addiction to methamphetamine is 'imminently likely' to result in harmful effects to the physical, mental, or social wellbeing of the children in the parent's care. *Citation Omitted*."

Modification of a Permanency Order: *In re: M.F. and A.A., (Iowa Court of Appeals, October 1, 2014)*: In this appeal affirming an order modifying a permanency order by moving the child from a relative placement to foster care and changing the permanency goal from reunification to placement with a suitable person, the Iowa Court of Appeals set for the standard for modifying a permanency order:

Following a permanency determination continuing out-of-home placement of a child for an additional six months, the juvenile court may modify the permanency order by transferring guardianship and custody of the child to a suitable person. *See* Iowa Code § 232.104(2)(d)(1). Prior to entering a permanency modification order, the State must show by clear and convincing evidence that (a) termination of the parent-child relationship would not be in the child's best interest; (b) services were offered to correct the situation which led to the child's removal; and (c) the child cannot be returned to the child's home. *See* Iowa Code § 232.104(3).

Failure to Properly Supervise as a Ground for CINA Adjudication: *In re: E.R. and E.R., (Iowa Court of Appeals, October 1, 2014)*: In this appeal reversing an order adjudicating a child to be a child in need of assistance (CINA), the Iowa Court of Appeals held that the trial court had adjudicated the child on an improper ground and explained what is required to support an adjudication on the grounds of a failure to properly supervise:

We have no doubt these children are in need of assistance. However, our supreme court has recently noted, "The grounds for a CINA adjudication do matter." *J.S.*, 846 N.W.2d at 41. Iowa Code section 232.2(6)(c)(2) defines a child in need of assistance as one "[w]ho has suffered or is imminently likely[3] to suffer harmful effects[4] as a result of . . . the failure of the child's parent . . . to exercise a reasonable degree of care in supervising the child." We interpret the provision liberally and broadly to protect children, *see J.S.*, 846 N.W.2d

at 43, but we cannot read it so broadly as to include the parents' conduct here, particularly where the code clearly addresses the conduct in another provision. See Iowa Code § 232.2(6)(c)(1) (defining a child in need of assistance as one who “has suffered or is imminently likely to suffer harmful effects as a result of . . . [m]ental injury caused by the acts of the child’s parent.”). . . There may be a question about whether the mother’s judgment is faulty, but we do not agree the issue here falls under the rubric of a failure to exercise a reasonable degree of care in supervising the child.

Typically, an adjudication as a child in need of assistance pursuant to Iowa Code section 232.2(6)(c)(2) involves a parent who inadequately or insufficiently supervises a child due to inability or lack of concern, placing the child at risk of harm. . . Here, adequate protection for these children can be found in a plain reading of section 232.2(6)(c)(1) because both children have sustained mental injury at the hands of both parents. . . However, to adjudicate these children as CINA for failure to exercise a reasonable degree of care in supervising the children is to read section 232.2(6)(c)(2) so broadly as to render its terms meaningless.

We therefore reverse and remand the adjudication pursuant to Iowa Code section 232.2(6)(c)(2).

I. Procedural Issues:

Requirements for Notice of a Parent: *In re: A.L., (Iowa Court of Appeals, May 29, 2014)*: In this appeal reversing an order terminating parental rights (TPR), the Iowa Court of Appeals held that the father was not given notice for the underlying Child-in-Need-of-Assistance (CINA) hearing:

The child-in-need-of-assistance statute provides that the State shall serve the child-in-need-of-assistance petition “in the same manner as for adjudicatory hearings in cases of juvenile delinquency as provided in section 232.37.” Iowa Code § 232.88 (2013). Section 232.37, in turn, requires service “upon the known parents . . . of a child” and specifies that the service shall be “made personally by the sheriff” or, if the court determines personal service is impracticable, by certified mail. *Id.* § 232.37(1), (4). Hearings may not take place without a parent

except if the parent “fails to appear after reasonable notification” or “if the court finds that a reasonably diligent effort has been made to notify the child’s parent.” *Citations Omitted*. A diligent search “is measured not by the quantity of the search but the quality of the search.” *Citation Omitted*. “While a reasonable search does not require the use of all possible or conceivable means of discovery, it is an inquiry that a reasonable person would make, and it must extend to places where information is likely to be obtained and to persons who, in the ordinary course of events, would be likely to have information of the person or entity sought.” The department conducted no search for James, diligent or otherwise, during the child-in-need-of-assistance proceeding. . . . Even if James had actual notice of the child-in-need-of-assistance proceeding, that fact did not obviate the need to provide formal notice, absent some participation by James in the proceeding. *Citation Omitted*. It is conceded that James did not participate in the child-in-need-of-assistance proceeding.

The Court of Appeals went on to explain the effect of the lack of notice in the underlying CINA case on the TPR case:

This brings us to *In re M.L.M.*, 464 N.W.2d 688, 690–91 (Iowa Ct. App. 1990), in which this court held that a father was entitled to notice of a child-in-need-of-assistance action, but failure to provide notice did not mandate reversal where the father knew the whereabouts of the children, had abandoned or deserted them, and could not assume care of them in the reasonable future. If *M.L.M.* is read to require a parental showing that the termination petition likely would have been denied on the merits, we believe such a showing is inconsistent with due process precedent. In particular, the United States Supreme Court has rejected the notion that a person deprived of notice has to establish the existence of a meritorious defense. *Citation Omitted*. Such a showing is also inconsistent with the allocation to the State of the burden of proving the grounds for termination. Because James did not receive notice of the child-in-need-of-assistance proceeding, that proceeding was void as to him irrespective of whether he knew he had a child and had contact with the child. This is as true under the statutory notice test as it is under the constitutional notice test. For the same reason, James’s failure to file a paternity action and seek custody of the child has no bearing on the notice issue. The State filed

the child-in-need-of-assistance petition, and the State had the obligation to formally notify James of that filing once it received the affidavit of paternity, even if James expressed no interest in the child and took no action to establish a relationship with the child. Absent such notice, the proceeding was void as to him. *Citation Omitted*.

While we are not convinced the merits should have been reached in *M.L.M.*, we recognize that they were. Accordingly, we will briefly address the merits in this case.

Limits of Questioning Witnesses by the Court: *In re: A.C.. and A.J., (Iowa Court of Appeals, July 16, 2014)*: In this appeal affirming the trial court’s adjudicatory and dispositional orders in a Child-In-Need-Of-Assistance (CINA) case, the Court of Appeals explained the limits of the role of the Court in questioning a witness:

A court may interrogate witnesses “[w]hen necessary in the interest of justice.” Iowa R. Evid. 5.614(b). However, “we have cautioned against assuming the role of an advocate.” *See State v. Cuevas*, 288 N.W.2d 525, 533 (Iowa 1980)

Here, the district court judge came close to the line of impermissible advocacy by raising a foundational issue that aided the State. However, the court did not attempt to undermine the father’s position that the document flowed from the statutorily unauthorized ex parte drug testing order and, as “fruit of the poisonous tree,” was inadmissible.

Appearing at a Hearing May Waive Lack of Service: *In re: K.S.-T (Iowa Court of Appeals, November 13, 2014)*: In this appeal of a termination of parental rights (TPR), the Iowa Court of Appeals affirmed the TPR, holding that the fact that the father had appeared at the adjudicatory hearing waived any jurisdictional complaint about a lack of service (or a reasonably diligent search):

Notice is jurisdictional and a judgment entered without notice is void. *Citation Omitted*. “The issue boils down to whether [the father’s] whereabouts were unknown and whether a ‘reasonably diligent search’ was made to determine his whereabouts.” . . . There is no question the investigator made “numerous inquiries.” *Citation Omitted*. But he did not make “the obvious inquiries a reasonable person would make under the circumstances,” such as a request for information from the child’s mother. . . In light of the father’s appearance at the

adjudicatory hearing, we conclude the State's failure to notify him formally does not require us to vacate the district court judgment against him.

Amending a TPR Petition to Conform to the Proof: *In re: H.E., (Iowa Court of Appeals, March 11, 2015):* In this appeal of an order terminating the parental rights (TPR) of the mother and father, the Iowa Court of Appeals affirmed the TPR holding that it was permissible for the Court to allow the petition to be amended "to conform to the proof" (especially where none of the parties objected):

Though the child was four years of age on the last day of the termination proceeding, the original petition to terminate rights alleged the child was three years of age, and sought termination pursuant to Iowa Code section 232.116(1)(h) (2013) . . . On limited remand from the supreme court, and without objection by either parent, the petition was amended to "conform to the proof" and assert termination was proper under Iowa Code section 232.116(1)(f) . . . Upon our de novo review, it is clear that the child who had been adjudicated CINA was four years of age, had been out of the parents' custody for more than the last twelve consecutive months, and could not be returned to their custody at the present time. Finding no resistance to the juvenile court's order on remand conforming the amended petition to the proof, we affirm the termination of each parent's parental rights under Iowa Code section 232.116(1)(f).

Amending a TPR Petition at Trial May Violate Due Process: *In re: B.B., (Iowa Court of Appeals, March 25, 2015):* In this appeal of an order terminating the parental rights (TPR) of the father, the Iowa Court of Appeals reversed the TPR, holding that the amendment of the TPR petition at trial violated the Due Process rights of the parent:

We conclude the State's amendment of its petition to substitute a new ground for termination during the hearing, over the mother's objection, violated the mother's due process rights. Accordingly, we reverse the order terminating her parental rights. . . Termination of parental rights should not be a bait-and-switch proposition, where a parent prepares a defense against one set of allegations and at the hearing, over her objection, the State moves forward with a different

ground for termination. Due process requires Joleen to have notice of the grounds under which termination was eventually decreed. . .

J. Evidentiary Issues:

The Ordering of a Psychosexual Evaluation is Authorized: *In re: J.F.*, (Iowa Court of Appeals, October 15, 2014): In this appeal affirming an order adjudicating the child to be a child in need of assistance (CINA) the Iowa Court of Appeals held that a court may order a psychosexual evaluation and that such order does not improperly shift the burden of proof:

The father appeals the juvenile court’s order requiring him to complete a psychosexual evaluation. He contends the requirement improperly shifts the burden to him to prove he is a fit parent. . . The court did not order the father to undergo a psychosexual evaluation until finding the State had met its burden in proving by clear and convincing evidence J.F. is a CINA. Rather than shifting the burden to the father to prove his fitness as a parent, the court has ordered the evaluation to determine what services need to be offered to facilitate the possible reunification of J.F. with her father. It is within the discretion of the court to determine what services are to be provided “to the child’s parent, guardian, or custodian in order to enable them to resume custody of the child.”

A Therapist’s Testimony can be Compelled in a CINA Case: *In Interest of A.M.*, ___ N.W.2d ___ (Iowa 2014) [November 21, 2014]: In this Child-in-Need-of-Assistance (CINA) Case, the Iowa Supreme Court held that the psychotherapist privilege and HIPAA do not prevent the Court from ordering a psychotherapist to testify in a CINA case:

We must decide whether section 232.96(5)’s limited statutory exception to the psychotherapist privilege in CINA adjudicatory hearings trumps the confidentiality afforded mental health treatment under Iowa Code chapter 228, Iowa Code section 622.10, and the Health Insurance Portability and Accountability Act of 1996 (HIPAA) [citation omitted]. This is a question of first impression. . . We conclude the legislature has made the policy choice to balance these competing interests by allowing the court to compel the therapist’s

testimony in CINA adjudicatory proceedings, and no contrary result is required under HIPAA. For the reasons explained below, we hold the juvenile court properly ordered the therapist to testify.

Opinion of the FSRP Worker as to the Bond Between the Parent and Child is Admissible: *In re: L.C., (Iowa Court of Appeals, February 11, 2015):* In this appeal of an order terminating the parental rights (TPR) of the father, the Iowa Court of Appeals reversed the TPR, holding that the opinion of the FSRP worker concerning the exception to FPR of the close bond between the child and parent was improperly excluded:

The record might have been even stronger, but as Clifford’s attorney was asking the FSRP worker to discuss how L.C. would react to being separated from her father, the county attorney objected to the question as calling for “speculation and beyond the scope of the witness’s expertise.” The county attorney voir dired the witness about her credentials, pointing out she did not have a postgraduate degree as a therapist nor had any interaction with the L.C. outside the visitation. The juvenile court ultimately sustained the objection. While the evidentiary question is not raised in this appeal, we nevertheless are troubled by the State’s adversarial treatment of the FSRP worker and the juvenile court’s unwarranted limitation on the father’s ability to prove the detrimental impact of termination under section 232.116(3)(c). The FSRP worker consistently supervised the interaction between the father and L.C. during visits and, accordingly, had one of the best vantage points to form an opinion on how separation would impact L.C. In numerous cases, the State relies on FSRP workers to give their opinions on the propriety of terminating parental rights. And our supreme court has found it “significant” when “the third-party service providers” have expressed their belief that a child could not be safely returned to her parents at the time of trial. *See A.M.*, 843 N.W.2d at 112. In this case, we are persuaded by the FSRP worker’s opinion concerning the significant bond between the child and her father.

The Effect of Failure to Acknowledge Abuse: *In re: R.M. (Iowa Court of Appeals, February 25, 2015):* In this appeal of a permanency order granting the father an additional six months of services and visitation, the Iowa Court of

Appeals, in affirming the order, held that a failure to acknowledge any wrongdoing may diminish the chance of regaining custody but cannot automatically disqualify a parent from regaining custody:

The State is rightly concerned with Adam’s failure to acknowledge any wrongdoing. Parents’ refusal to address their role in a child’s abuse may hurt their chances of regaining custody. *Citation Omitted*. But a parent’s insistence he is innocent cannot automatically disqualify him from resuming custody. Our supreme court has said: “The State may require parents to otherwise undergo treatment, but it may not specifically require an admission of guilt as part of the treatment.”

The Use of Professional Statements by an Attorney: *In re: M.B., (Iowa Court of Appeals, February 25, 2015)*: In this appeal of an order terminating the parental rights (TPR) of the mother, the Iowa Court of Appeals explained that an attorney making a professional statement may be cross-examined:

See Frunzar v. Allied Prop. and Cas. Ins. Co., 548 N.W.2d 880, 888 (Iowa 1998) (“Under Iowa law, professional statements are treated as affidavits and the attorney making the statement may be cross-examined regarding the substance of the statement.”).

K. Jurisdictional Issues:

A Legal Father who is Not the Biological Father is NOT a necessary party in a CINA or TPR Proceeding: *In re: J.C., ___ N.W.2d ___ (Iowa Supreme Court, December 26, 2014)*: In this appeal of a child in need of assistance (CINA), case, the Iowa Court of Appeals reversed the lower court’s dismissal of the legal father from the proceedings when a paternity test showed him not to be the biological father. The Iowa Supreme Court reversed the Court of Appeals (affirming the trial court) holding that a legal father who is not the biological or adoptive father is not a necessary party in child in need of assistance (CINA) proceedings and termination of parental rights (TPR) proceedings:

Under Iowa Code chapter 232, which governs CINA proceedings, “*Parent*” means a biological or adoptive mother or father of a child” Iowa Code § 232.2(39). . . The legislature, through clear language,

specified necessary parties to CINA proceedings. *See id.* § 232.91(1). The child’s parent is one necessary party. *See id.* The legislature, again through clear language, defined a “parent” as a “biological or adoptive mother or father.” *Id.* § 232.2(39). Daniel is undisputedly not J.C.’s biological or adoptive parent. Therefore, he is not a necessary party to the CINA proceedings involving J.C.

The Iowa Supreme Court also made it clear that the trial court in a juvenile case has the power/jurisdiction to determine paternity in the cases of children in its jurisdiction:

Consequently, when it becomes apparent to the juvenile court that a child’s established father is not the child’s biological father, determining the child’s biological father both honors the biological father’s due process rights and also serves to make subsequent placement decisions sounder, thereby providing stability for the child. The juvenile court did not exceed its authority in determining Daniel is not J.C.’s biological father as part of the termination of parental rights proceedings.

Finally, the Supreme Court made it clear that there are some instances where legal fathers may still participate in CINA and TPR proceedings even when they are not the adoptive or biological parent:

Nothing in the juvenile code warrants a blanket extension of rights to all established fathers to participate in CINA or termination cases. But our holding here does not exclude *all* nonbiological established fathers from participating in CINA proceedings or termination of parental rights proceedings. As noted above, there may be circumstances where a juvenile court would allow a nonbiological established father to remain a part of the juvenile proceedings. For example, in the CINA context, Iowa Code section 232.91(2), provides a “person . . . may petition the court to be made a party to [CINA] proceedings” Further, in some termination of parental rights cases, an established father may be a necessary party where the court makes the factual determination that he “stand[s] in the place of the parents of the child.” *See* Iowa Code §§ 232.111(4)(b)(6), .112(1).

Follow up:

The Court Cannot Order a TPR on a Legal Father who is Not the Biological Father: *In re: J.C.*, (Iowa Court of Appeals, January 28, 2015): In this follow-up to the Supreme Court’s prior ruling, the Iowa Court of Appeals held that, since the “established father” was not the parent, he could not have his parental right terminated:

An established father appeals the juvenile court order terminating his parental rights. The established or legal father is not a parent under Iowa Code chapter 232 (2013), and we conclude the juvenile court did not have the authority in this termination proceeding to enter an order terminating his parental rights. We therefore conclude the order terminating his parental rights should be vacated. . . The Iowa Supreme Court has determined Daniel is not the child’s parent under chapter 232. *Id.* at ___, 2014 WL 7338505, at *11 (“Although Daniel is J.C.’s established father, he is not her parent under chapter 232.”). Because Daniel was not a parent for purposes of chapter 232, he did not have parental rights that could be terminated.

The Court has No Authority to Enter an Ex Parte Pre-Adjudication Parental Drug-Testing Order: *In re: A.C. and A.J.*, (Iowa Court of Appeals, July 16, 2014): In this appeal affirming the trial court’s adjudicatory and dispositional orders in a Child-In-Need-Of-Assistance (CINA) case, the Court of Appeals held that the court does not have authority to order an ex parte pre-adjudication parental drug-testing order:

The legislature has specified precisely what the department can do on receipt of a child abuse complaint. *See* Iowa Code § 232.71B. Nothing in that provision authorizes a department employee to obtain an ex parte court order mandating parental drug testing for the purpose of confirming child abuse allegations. To the contrary, the provision only authorizes the department to furnish voluntary services to families and then only to families of “abused children,” not families being investigated for abuse. *See id.* § 232.71B(13).

We recognize that a separate code provision, section 232.71C, allows the department to seek juvenile court action at any time during the assessment process if the department believes such action is necessary “to safeguard a child.” *See id.* § 232.71C(1). This provision cannot be

read as authorizing the department to seek a pre-adjudication, ex parte order for mandatory parental drug testing because another provision permits such testing only “[f]ollowing an adjudication that a child is a child in need of assistance” and only “after a hearing.” *See id.* § 232.98(2).

In sum, we find no statutory authority to support the district court’s ex parte pre-adjudication parental drug-testing order, nor do we find that the court had inherent authority to enter such an order.

L. Termination of Parental Rights (TPR):

Statutory Time Periods for TPR Still Apply to Parents in Close Proximity to Children: *In re: K.R., K.R., K.R., K.R., K.R. and K.R. (Iowa Court of Appeals, June 11, 2014):* In this appeal affirming an order terminating parental rights (TPR) as to six children, the Iowa Court of Appeals held that living next to the home of the children does not toll the statutory time periods:

On appeal, the father contends the children have not been out of his custody for the requisite time to support termination under either statutory provision. But the record is clear that the children have been in the custody of the department and placed with their grandparents for more than the statutory time period. The father’s apparent argument is that his presence in the house next door to the grandparents’ residence and his having spent time with the children is sufficient to disrupt the statutory clock. It is not.

Failure to Appear at TPR Hearing Supports Termination: *In re: J.L.-S. and C.L.-S., (Iowa Court of Appeals, July 16, 2014):* In this appeal affirming an order terminating parental rights (TPR), the Iowa Court of Appeals held that living the mother’s failure to appear at the TPR hearing supports a finding of instability and lack of commitment to her children:

In this case, Anna received notice of the termination hearing yet failed to appear. At the termination hearing, Anna was represented by counsel, who had not heard from her client that day. Counsel moved to continue, but the court denied the motion. Anna does not challenge the

denial of a continuance on appeal. At the termination hearing, Anna’s attorney did not object to any evidence presented by the State, offer any evidence on Anna’s behalf, or raise any specific issues. . . By not showing up at the termination hearing and not informing counsel of her whereabouts, Anna displayed her instability and lack of commitment to the welfare of her children. Anna’s counsel failed to explain or counterbalance any of the State’s evidence at the hearing. The State’s uncontested exhibits were sufficient to show, by clear and convincing evidence, the children could not be returned to Anna’s care at the present time. We affirm the termination based on section 232.116(1)(h).

Relative Custody Exception to TPR Does Not Apply When DHS Has Custody: *In re: R.L.P., (Iowa Court of Appeals, July 16, 2014):* In this appeal affirming an order terminating parental rights (TPR), the Iowa Court of Appeals held that the provision allowing an exception to TPR when placement is with a relative does not apply when the legal custody is still in DHS:

Citing Iowa Code section 232.116(3), the mother argues that because the children are placed with their maternal grandmother, termination need not occur. However, Iowa Code section 232.116(3) is not applicable because the children are not in the legal custody of a relative—they are in the legal custody of the department of human services.

Termination of One Parent’s Rights When Placing with the Other Parent: *In re: C.C., (Iowa Court of Appeals, August 13, 2014):* In this appeal affirming an order terminating parental rights (TPR), the Iowa Court of Appeals held that a court can terminate the rights of one parent while placing the child in the other parent’s care:

He does not argue the child could be returned to his care. Instead, he claims the last element was not proved “because the child has been returned to [the custody of] one of the parents, the mother.” His claim implies the provisions of subsection (h) do not apply unless the rights of both parents are being terminated. . . Applying section 4.1(17) to section 232.116(1), both the Iowa Supreme Court and our court have allowed termination of the rights of a noncustodial parent when the children are placed with the other parent. *Citations Omitted.* The

statutes permit the termination of one parent's rights. . . Under the facts of this case, termination of the father's parental rights was proper despite the child being in the care of his mother. We cannot maintain the parent-child relationship where there exists only a remote possibility the father will become a responsible and consistent parent sometime in the unknown future.

Keeping Siblings Together does not Trump Best Interests in TPR: *In re: Q.E., C.E. and K.E., (Iowa Court of Appeals, August 13, 2014):* In this appeal affirming an order terminating parental rights (TPR), the Iowa Court of Appeals held that the best interests of the child standard controls even when TPR results in separating siblings:

The mother contends termination of her parental rights is not in the best interests of the children because it would sever “the sibling group [and] the sibling relationship between these children and their half sibling group [of which] the mother retains parental rights.” Indeed, we prefer to keep siblings together when possible. *Citation Omitted.* But the paramount concern is the children's best interests.

Failure to Acknowledge Abuse Supports TPR: *In re: J.D. and E.D., (Iowa Court of Appeals, August 13, 2014):* In this appeal affirming an order terminating parental rights (TPR), the Iowa Court of Appeals held that a parent's refusal to acknowledge abuse can prevent the change necessary to prevent TPR:

The father has shown no progress or willingness to engage in services throughout the pendency of this proceeding. He consistently denies any abuse ever occurred, which evidences an unwillingness to modify his violent behavior. . . He adamantly contends there was no abuse. However, it is vital the parent acknowledge and recognize abuse occurred before any meaningful change can take place.

See also: *In re: J.L.M., (Iowa Court of Appeals, August 27, 2014):*

Most importantly, she does not acknowledge the abuse J.L.M. has suffered. She demonstrates no protective capacity in that regard. . . Given her unwillingness to believe her boyfriend sexually abused

J.L.M., the trauma this has caused to J.L.M., and the extent to which J.L.M. has become integrated into her safe and loving foster family, it is clear her safety; her long-term nurturing and growth; her physical, mental and emotional needs; and her own wishes are best secured by termination of the mother's parental rights.

Economic Factors can be Relevant to TPR: *In re: N.S., (Iowa Court of Appeals, August 27, 2014):* In this appeal affirming an order terminating parental rights (TPR), the Iowa Court of Appeals held economic factors are relevant to the issue of whether a child can be returned to the parent:

Lisa is also unable to manage her financial affairs or control her impulses with respect to spending money. Lisa's Social Security Disability Insurance benefits are managed by a designated payee. The money Lisa earns from employment is compulsively spent or gambled away. IDHS provided services to Lisa to assist her in managing her money, but those services were not successful. The social worker assigned to the case testified Lisa is barely able to provide for herself let alone N.S. While termination cannot be based on economic factors alone, we find those factors are relevant to the extent they reflect on Lisa's decision making process, or lack thereof.

Lack of a Relationship due to Incarceration can Support TPR: *In re: T.J., (Iowa Court of Appeals, September 17, 2014):* In this appeal affirming an order terminating parental rights (TPR), the Iowa Court of Appeals held that a parent's incarceration can prevent the formation of a parent/child bond, leading to TPR:

Following her incarceration, the mother had no contact with her child because the prison did not allow inmate visits with victims of their crimes. On her release, she would require time to reacquaint herself with the child and address the issues that compromised the child's safety two years earlier. Under these circumstances, we conclude termination was in the child's best interests.

A Father Has an Obligation Even Before Paternity is Established: *In re: J.S., (Iowa Court of Appeals, September 17, 2014):* In this appeal affirming an order terminating parental rights (TPR), the Iowa Court of Appeals held that a father who has had a relationship with the mother and is aware that the mother is

pregnant, cannot wait until paternity is established to become involved with the child and the juvenile case:

We are cognizant that the father did not know of his paternity until July 2013. But for two years he chose to ignore the possibility of his fatherhood as he knew of the mother's pregnancy and the child's birth. *See In re M.M.S.*, 502 N.W.2d 4, 7 (Iowa 1993) (stating the father "must be charged with some sense of involvement on the basis of his encounter with [the mother] and his knowledge of her pregnancy that followed, even notwithstanding rumors of another father"). Although J.G. chose to believe that J.S. was not his child, he was then afforded more than eight months to work toward reunification. He was less than cooperative with the case plan until just before termination was scheduled. Such eleventh-hour efforts do not bode well for the possibility of reunification in a reasonable amount of time.

Failure to Maintain Contact with the Child Supports TPR: *In re: K.W.*, (Iowa Court of Appeals, October 1, 2014): In this appeal affirming an order terminating parental rights (TPR), the Iowa Court of Appeals held that a father's failure to maintain regular contact with his child supports TPR:

Even if we ignore the father's issues with honesty and blame shifting—although we note these issues could also support termination—the record shows he does not prioritize his child. Since April 2014 he has missed eight scheduled visitations with his child. Since that same time he has missed multiple scheduled phone calls with his child. These missed appointments were purely a result of the father's indifference or inability to place the child first in his life. For these reasons, we find the father has failed to exhibit "a genuine effort to maintain communication with the child," and thus satisfying the third factor of 232.116(1)(e)(3). We find clear and convincing evidence the father has not Maintained significant and meaningful contact with his child during the previous six months, pursuant to section 232.116(1)(e)(3); termination is appropriate.

Parent Can Improve to the Point Where the Child Can Be Returned: *In re: A.S. and E.S.*, (Iowa Court of Appeals, October 1, 2014): In this appeal reversing an order terminating parental rights (TPR), the Iowa Court of Appeals held that a

mother who has demonstrated an ability to safely parent a child in spite of a previous history of drug addiction can avoid TPR:

When we view the evidence presented at the termination hearing in its entirety, we do not find clear and convincing proof that A.S. and E.S. would be exposed to harm of the kind that would merit a new CINA adjudication if returned to the mother's care. The mother has not used synthetic marijuana, or other illicit drugs, since June 2013. The mother gave up stable employment to comply with the directives of the DHS to achieve reunification with her children. Her visits with the children are consistent and go very well. By all accounts, she is progressing in her substance abuse treatment. The State's suggestion of possible harm is too elusive to qualify as clear and convincing evidence. . . . Nowhere in the record is the mother's substance-related disorder described as "severe" and the State did not offer evidence that her drug addiction continued to present a danger to herself or others. The mother has been able to successfully maintain employment throughout the case and is now in drug treatment and undergoes regular drug testing. The record does not reveal a prognosis for the mother that would prevent returning the children to her custody within a reasonable period of time considering their age and need for a permanent home.

Our supreme court has said "a parent who was once unfit may not automatically be deemed forever unfit." *In re D.J.R.*, 454 N.W.2d 838, 845 (Iowa 1990). That is not to say that parents can take their time in addressing their problems. We adhere to "the principle that the statutory time line must be followed and children should not be forced to wait for their parent to grow up." *In re N.F.*, 579 N.W.2d 338, 341 (Iowa Ct. App. 1998). In this case, we recognize the mother realized late in the game that she needed to comply with the DHS expectations or face termination of her parental rights. But she did arrive at that realization approximately three months before the termination hearing. We do not believe it was proper to discount her improvement from December 2013 through March 2014 simply because the CINA case was on a trajectory toward termination. The State bears the burden to satisfy the statutory elements under section 232.116(1) by clear and convincing proof. The State did not carry its burden in this case.

Drug Use Does Not Equate to Abuse and Neglect to Support a TPR: *In re: G.B. (Iowa Court of Appeals, November 26, 2014):* In this appeal of a termination of parental rights (TPR), the Iowa Court of Appeals reversed the TPR, holding that the code section relied upon by the state required abuse and neglect which was not satisfied by only showing drug abuse by the parents:

Under Iowa Code section 232.116(1)(d), the juvenile court may terminate parental rights to a child only when “[t]he court has previously adjudicated the child to be a child in need of assistance *after finding the child to have been physically or sexually abused or neglected*” or another child in the family has been adjudicated “after such a finding.” *Citation Omitted.* “Physical abuse or neglect” and “abuse or neglect” are terms of art in this context. *Citation Omitted.* “Within chapter 232, ‘physical abuse or neglect’ and ‘abuse or neglect’ means ‘any nonaccidental physical injury suffered by a child as the result of the acts or omissions of the child’s parent, guardian, or custodial or other person legally responsible for the child.’” *Citation Omitted.*

In the CINA adjudication order, the juvenile court recited issues with the parents’ history of drug use, the fact that a registered sex offender was allowed in the home, and the father’s incarceration. The court did not make any findings regarding nonaccidental physical injury suffered by G.B. Our supreme court has concluded it is not sufficient to cite the parents’ history of drug use for the proposition that the child has suffered physical injury or is imminently likely to do so to terminate under section 232.116(1)(d). *Citation Omitted.* (“[W]e do not believe general statements about methamphetamine addiction are enough by themselves to prove that a child is imminently likely to suffer physical harm”) *Citation Omitted.* Although addiction to methamphetamine may be sufficient to establish that a child has suffered or is imminently like to suffer “harmful effects” as a result of the parents’ failure to exercise reasonable care in supervising the child, that only allows the court to adjudicate the child a CINA under 232.2(6)(c). A CINA determination under 232.2(6)(c) may not lead to termination of parental rights under section 232.116(1)(d) because section 232.116(1)(d) requires a nonaccidental physical injury. *Citation Omitted.*

Because the juvenile court did not adjudicate G.B. a CINA pursuant to Iowa Code section 232.2(6)(b) after finding him to be physically or

sexually abused or neglected or another child in the family to be physically or sexually abused, the termination of the mother's and father's parental rights may not be premised upon section 232.116(d).

Parents Can Change Sufficient to Justify Denial of a TPR: *In re: A.H. (Iowa Court of Appeals, December 24, 2014)*: In this appeal of a Termination of Parental Rights (TPR), case, the Iowa Court of Appeals reversed the termination order, saying that the parent had demonstrated that she could change sufficiently to provide a safe home for her child:

This court reviews limitless appeals from parents challenging the termination of their parental rights. It is very easy to read the opening line in this case, stating this case concerns a parent's appeal "from the termination of her parental rights to her seventh biological child" and have little faith that this case is any different from those that have come before. Nevertheless, *this* case shows a mother who has taken the all of the necessary steps to change her life for the better, for both herself and A.H. Given all that she has accomplished, it is patently unfair to ignore her progress because of her unfortunate history, particularly in light of the fact that there was no evidence that this child was in any imminent danger from the mother. Past performance is of course indicative of potential future behavior, but it is not all that courts must consider, especially considering the constitutionally protected parent-child relationship. Children simply are not entitled to perfect parents because there is no such thing.

Computing the Time Period of Removal of a Child from the Parent in a TPR Proceeding: *In re: J.J., J.J., and A.J. (Iowa Court of Appeals, January 14, 2015)*: In this appeal of a Termination of Parental Rights (TPR), case, the Iowa Court of Appeals affirmed the TPR on the father, finding that placement with the father contrary to a court order did not extend the one-year time period necessary to support TPR:

We reject the father's suggestion that the grandfather's leaving the children with the mother for five days, contrary to court order and against DHS direction, constituted any kind of "trial period" or in any way tolls the period of time the children were removed from the parents' custody.

Participation in Services Shortly Before Termination Does Not Support an Extension of Time in a TPR Case: *In re: A.K. and A.W. (Iowa Court of Appeals, January 14, 2015):* In this appeal of a Termination of Parental Rights (TPR), case, the Iowa Court of Appeals affirmed the TPR, finding that the mother's recent participation in services shortly before the TPR hearing did not support the granting of a six-month extension:

Because the mother only became more involved with the offered services in the few weeks leading up to the termination hearing, we cannot say the issues that led to removal will no longer exist in six months. Children should not be forced to wait for their parent to be able to care for them, particularly when we have so little evidence to rely upon to believe the circumstances will be different in six months. *Citation Omitted.* We agree with the district court that the extension is not warranted, and we consider whether the grounds for termination have been met.

TPR is Preferred Over Guardianship: *In re: E.D. and A.G. (Iowa Court of Appeals, January 14, 2015):* In this appeal of a Termination of Parental Rights (TPR), case, the Iowa Court of Appeals affirmed the TPR, finding that TPR is preferred over establishing a guardianship, as TPR provides more permanency for the child:

We note that a guardianship is not a legally preferable alternative to termination of parental rights and adoption, *Citation Omitted*, and termination is the appropriate solution when a parent is unable to regain custody within the time frames of chapter 232.

Termination on the Non-Custodial Parent even When the Child is Placed with the Other Parent: *In re: G.W., (Iowa Court of Appeals, February 11, 2015):* In this appeal of an order terminating the parental rights (TPR) of the father, the Iowa Court of Appeals affirmed the TPR, holding that the timeframe for TPR is not excused for a noncustodial parent even when the child is placed with the other parent:

To terminate parental rights under Iowa Code section 232.116(1)(f), the State must prove by clear and convincing evidence the child is four years of age or older, has been adjudicated in need of assistance, has been removed from the physical custody of the parent for twelve of the last eighteen months, and cannot be returned to the parent's care. We

further note that termination is appropriate for the noncustodial parent, even when the child is placed with the other parent.

The Obligation of an Out-of-State Noncustodial Parent in a TPR Case: *In re: T.S. and K.G.*, (Iowa Court of Appeals, February 25, 2015): In this appeal of an order terminating the parental rights (TPR) of the mother, the Iowa Court of Appeals affirmed the TPR holding that a noncustodial parent whose conduct was not responsible for the removal must “step up” his involvement with the child in order to avoid TPR:

The question might be reframed: What did the legislature intend that a noncustodial out-of-state parent must do in order to satisfy the requirement of an “affirmative assumption of the duties encompassed by the role of being a parent” when faced with a CINA adjudication and possible termination of parental rights? In the context of a CINA proceeding and impending termination proceeding, was Kirk required to do more than maintain his status quo as a noncustodial dad? . . . The legislative scheme is designed to require that parents whose children are subjects of a CINA case “step up their game” in order to avoid termination. Parents are given timely warnings—as was Kirk in this case—that failure to take such steps may result in termination and they are given opportunities to request additional services or assistance. Simply put, a parent must *do* something, must make some effort to move; neither standing still nor cruise control on a status-quo path will defeat an impending termination.

Inherent in CINA proceedings is a requirement that parents who were the cause of the CINA determination are required to take certain affirmative steps to remedy the circumstances which gave rise to the adjudication. In other words, maintaining the status quo is not sufficient for such a parent. In the event only one of the parents was responsible for causing the CINA adjudication, the other parent cannot refuse to assist in the remediation and just stand on the sideline and observe.

Defining “Previously Adjudicated” Under the TPR Statute: *In re: A.R., D.R., J.C. and J.C.*, (Iowa Court of Appeals, February 25, 2015): In this appeal of an order terminating the parental rights (TPR) of the mother, the Iowa Court of Appeals reversed the TPR, and in doing so interpreted the terms “previously adjudicated” to include an adjudication in a concurrent proceeding:

Section 232.116(1)(d) requires that “[t]he court *has previously adjudicated* the child to be in need of assistance.” Iowa Code § 232.116(1)(d)(1) (emphasis added). Nine subsequent subparagraphs require that the child “*has been adjudicated*” a child in need of assistance. *See id.* § 232.116(1)(e), (f), (g), (h), (j), (k), (l), (m), and (n) (emphasis added). One subparagraph requires that the child “meets the definition of child in need of assistance.” *See id.* § 232.116(1)(d)(i). The remaining subparagraphs do not require any CINA determination. *See id.* § 232.116(1)(a), (b), (c), and (o) . . . We reconcile *N.H.* and *A.B.* by concluding that our supreme court has determined a “previous adjudication” should be interpreted to mean an adjudication in *either* a prior or the current proceeding so long as the adjudication is previous to the filing of the termination petition.

M. Constitutional Issues:

Combining Dispositional and Termination Hearings Does Not Violate Due Process: *In re: K.P. (Iowa Court of Appeals, June 25, 2014):* In this appeal of a termination of parental rights (TPR), the Iowa Court of Appeals affirmed the TPR, holding that combining two hearings (TPR and Disposition) does not violate the parent’s constitutional Due Process rights:

K.S. claims her procedural due process rights were violated by the combined disposition and termination hearing. . . K.S. was given sufficient notice of both the nature and scope of the combined hearing. She was also given ample opportunity to be heard on both the aggravated circumstances and termination issues, and declined to present a meaningful defense to the State’s allegations. In no way did the combined hearing deprive her of a meaningful right.

Accepting Evidence After the Case is Submitted Without a Chance for Response Violates Parents’ Due Process Rights: *In re: A.B. and A.B. (Iowa Court of Appeals, December 24, 2014):* In this appeal of a Termination of Parental Rights (TPR), case, the Iowa Court of Appeals reversed the termination order finding that the reliance of the trial court on a report of the G.A.L. submitted after the case was “submitted”, violated the parents’ due process rights:

The mother now appeals. She contends the juvenile court violated her right to procedural due process by considering the new information contained in the GAL's filings after the termination hearing closed without providing her an opportunity to respond. . . . But in this case, the mother did not have notice the juvenile court would consider evidence submitted after the termination hearing. At the close of the hearing, the court deemed the matter "submitted." . . . In the termination ruling, the court relied heavily on the new, untested information. . . . The mother argues the court's use of this information violated her due process rights as the court held no hearing where she could object to the new evidence or present new evidence of her own. We agree. . . . It is true juvenile courts have broad discretion to reopen the evidence. *In re J.R.H.*, 358 N.W.2d 311, 318 (Iowa 1984) (explaining "[t]his is a juvenile case in which the best interests of the children dictate that the rules of procedure be liberally applied in order that all probative evidence might be admitted"). But the court here did not reopen the record to take the GAL's new evidence. In fact, the evidence was not admitted into the record. The court did not hold a hearing on the GAL's filings. The mother did not have an opportunity to object to or explain the evidence attached to the GAL's filing nor to present her own contrary evidence. Because due process requires the mother be afforded a meaningful opportunity to respond, we reverse the termination order and remand the case to the juvenile court for a supplemental hearing where the State, the GAL, and the mother may present any additional evidence relevant to the court's decision whether to terminate parental rights.

N. Appeals:

Failure to Order Transcript on Appeal Waives Error: *In re: I.M.*, (Iowa Court of Appeals, August 27, 2014): In this appeal affirming a dispositional order and an order terminating parental rights (TPR), the Iowa Court of Appeals held that an intervenor-grandparent's failure to provide a transcript of the dispositional hearing proceedings waives any claims:

Insofar as the grandmother's appeal involves the district court's disposition order finding placement of I.M. in her care was not in the child's best interests, the grandmother's failure to provide us with a transcript of the entire disposition proceedings constitutes waiver of the issue.

Preservation of Issues on Appeal: *In re: I.L., (Iowa Court of Appeals, October 1, 2014):* In this appeal affirming an order terminating parental rights (TPR), the Iowa Court of Appeals held that a mother's failure to ask the trial court to enlarge or modify its order resulted in a waiver of any issues not included in the trial court's order:

Where, as here, the juvenile court failed to make a written finding of fact or conclusion of law, "[t]he findings and conclusions may be enlarged or amended and the judgment or decree may be modified upon timely posttrial motion [pursuant to Iowa R. Civ. P. 1.904(2)]." *Citation Omitted.* The party must bring the issue to the attention of the lower court, and it must be evident the court considered the party's claim. *Citation Omitted.* Failure to file such a motion waives any challenges to the deficiency in the court's termination order. *Citation Omitted.*

Here, we agree with the mother that the juvenile court did not make an express determination addressing whether any statutory exception applied. Nevertheless, the mother did not make any further motion to amend and enlarge the court's findings. Therefore, the issue was not preserved for appeal.

Review Orders and Orders Setting Permanency Hearings are Not Final Orders for the Purposes of Appeal Rights: *In re: Z.F., C.F., R.F., and T.F. (Iowa Court of Appeals, December 24, 2014):* In this appeal of a child in need of assistance (CINA), case, the Iowa Court of Appeals held that review orders and orders setting permanency hearings are not final orders allowing a right to appellate review:

Final orders or judgments are appealable. Iowa R. App. P. 6.101(1). The mandatory review order and order setting permanency hearing is not a final order. *See In re T.R.*, 705 N.W.2d 6, 10 (Iowa 2005) (stating a final order is "one that finally adjudicates the rights of the parties" and stating an order "is not final when the trial court intends to do

something further to signify its final adjudication of the case” and “unless it disposes of all the issues.”). By its terms, the order leaves open the possibility of revision, on receipt of additional information. While the parents point out that certain information cited by the juvenile court as unavailable was actually in the court file at the time of the order, other information such as evidence from the parents’ individual therapist, had yet to be presented. We conclude the order, like a permanency review order this court considered in *In re S.K.*, No. 10-1628, 2011 WL 662837, at *2 (Iowa Ct. App. Feb. 23, 2011), “essentially maintains the status quo and sets the matter for further review at a later date.” The order is not appealable as a matter of right. It is interlocutory. *See* Iowa R. App. P. 6.104(1).

Dispositional Orders are Final Orders for the Purposes of Appeal Rights: *In re: A.H.* (Iowa Court of Appeals, December 24, 2014): In this appeal of a Termination of Parental Rights (TPR), case, the Iowa Court of Appeals held that dispositional orders are final orders and, if not appealed, may fail to preserve error on deficiencies in the CINA proceedings:

Nevertheless, there is a serious error preservation concern here. The aggravating circumstances finding was in the dispositional order, which is a “final,’ appealable order.” *In re Long*, 313 N.W.2d 473, 476 (Iowa 1981). We have held that a parent must appeal the dispositional order to challenge deficiencies from any of the CINA proceedings to preserve the alleged errors for our review.

Preserving Appeal Issues by Appealing the CINA Adjudication: *In re: J.B.* (Iowa Court of Appeals, January 14, 2015): In this appeal of a Termination of Parental Rights (TPR), case, the Iowa Court of Appeals affirmed the TPR, finding that the mother had waived the claim that abandonment had not been established when she failed to appeal the Child-in-Need of Assistance finding:

The mother challenges the juvenile court’s finding that she abandoned the child, which was made during the CINA proceedings. The challenge to the finding of abandonment could have and should have been made by appeal from the dispositional order entered after the CINA adjudication and it cannot be raised here.

A Permanency Order May Not Be a Final Order for Appeal: *In re: R.W. and C.W.*, (Iowa Court of Appeals, February 11, 2015): In this appeal of an permanency order in a Child in Need of Assistance (CINA) case, the Iowa Court of Appeals dismissed the appeal, holding that the permanency order that did not include the mandatory options, was not a final order allowing an appeal:

In its permanency order, the juvenile court cited Iowa Code section 232.104, which governs permanency proceedings, but failed to rule pursuant to one of the four mandatory options in 232.104 (2)(a)–(d). Instead, the juvenile court ruled on some items, (discontinuation of services) and left other items unresolved (the guardianship). We find the juvenile court’s ruling fits the definition of an interlocutory order and therefore cannot be heard on appeal. We dismiss the mother’s appeal due to the lack of a “final order or judgment” in this case.

Post-Trial Motions Alone do not Preserve Error: *In re: T.C. and J.C.*, (Iowa Court of Appeals, February 11, 2015): In this appeal of an order terminating the parental rights (TPR) of the father, the Iowa Court of Appeals affirmed the TPR, holding that post-trial motions and a notice of appeal alone do not preserve error on appeal:

The father asserts he preserved error through testimony, the motion pursuant to Iowa Rule of Civil Procedure 1.904, and the notice of appeal. Our examination of the record discloses the father did not assert the applicability of the exception during the termination hearing. Thus, although he requested a post-trial ruling, the father had not raised the issue prior to the rule 1.904 motion. Thus it was not properly raised. Accordingly, the 1.904 motion did not preserve the issue for hearing on appeal.

Preservation of Error on Constitutional Issues: *In re: J.F.* (Iowa Court of Appeals, February 25, 2015): In this appeal of an order removing a child and adjudicating the child to be a child in need of assistance (CINA), the Iowa Court of Appeals affirmed the lower court, holding that the parent failure to preserve error on the constitutional issues:

Parents are entitled to due process in a CINA proceeding. *Citation Omitted*. Nevertheless, parties to a child welfare hearing have an obligation to preserve error for appeal, even when the alleged error impacts their constitutional rights. *Citation Omitted*. This requires

that parties present their constitutional questions to the district court when the grounds for objection become apparent at the earliest opportunity. *Citation Omitted*. “A party cannot preserve error for appeal by making only general reference to a constitutional provision in the district court and then seeking to develop the argument on appeal.” *Citation Omitted*. Additionally, the court must rule upon the constitutional issue to preserve error, in either its initial ruling or after the parties file a motion to enlarge or amend, requesting the court to rule on the issue. *See State v. Mitchell*, 757 N.W.2d 431, 435 (Iowa 2008) (noting that when the district court fails to address a constitutional argument raised by the defendant, the defendant must “file a motion to enlarge the trial court’s findings or in any other manner have the district court address th[e] issue”).

Here, even assuming without deciding the father presented his constitutional claims to the juvenile court, the court did not rule on his constitutional challenges, nor did the father file a motion to enlarge or amend the court’s rulings, even after he was represented by counsel. The father did not preserve error on his due process claims, and consequently, we do not consider them on appeal.

Preserving Error on a Request for Additional Time: *In re: A.L., L.R., and E.R., (Iowa Court of Appeals, March 25, 2015)*: In this appeal of an order terminating the parental rights (TPR), the Iowa Court of Appeals affirmed the TPR, holding that the mother failed to preserve error for appeal on the issue of her request for an additional six months when the court failed to specifically rule on the request and she failed to file a post-trial motion requesting a specific ruling:

Finally, the record shows the mother asked for an additional six months to work toward reunification at the termination hearing. The court noted this issue in its opinion, but it did not provide a ruling on the issue. Since the mother did not file a motion to preserve error on this issue, this issue has not been preserved on appeal.

Preserving Error on Constitutional Issues: *In re: C.H., (Iowa Court of Appeals, March 25, 2015)*: In this appeal of an order terminating the parental rights (TPR), the Iowa Court of Appeals affirmed the TPR, holding that the mother failed to preserve error for appeal on the issue of the constitutionality of the statute when the court failed to specifically rule on the issue and she failed to file a post-trial motion requesting a specific ruling:

On appeal, the mother claims the permanency deadlines in section 232.116(1)(h) are unconstitutional because the time is unreasonably short to regain custody of a child under the age of four. The mother argued this position at the hearing, but the juvenile court did not discuss the constitutionality of the statute in its decision. The mother did not file a motion under Iowa Rule of Civil Procedure 1.904(2) asking for the court to address this argument. Because the juvenile court did not rule on the constitutional claim, it was not preserved for appellate review.

O. Delinquency Cases:

Placing Juveniles on the Sex Offender Registry: *In re: A.J.M.*, ___ N.W.2d ___ (Iowa, June 6, 2014): In this appeal of a ruling declining to place a juvenile offender on Iowa’s Sex Abuse Registry, the Iowa Supreme Court reversed, holding that there is a presumption of placement on the registry and that the sole issue before the court is protection of the public:

A juvenile court is authorized to waive the registration requirements for eligible juveniles when it “finds that the person should not be required to register.” *Citation Omitted*. This waiver provision gives the juvenile court discretion to excuse an eligible juvenile from the registration requirement. *Citation Omitted*. The discretion, however, “is not unbridled.” *Citation Omitted*. Not only is the waiver limited to eligible juveniles, but the juvenile court must *find* registration should be excused. The waiver provision does not identify any specific guidelines for juvenile courts to apply in exercising discretion to waive sex offender registration. . . Accordingly, the legal standard for waiver under the statute is guided by public protection. Waiver is available when the juvenile court “finds” in its discretion that the eligible juvenile is not likely to reoffend. . . In applying these standards, it is important to recognize it is possible for any juvenile sex offender to reoffend. Yet, the mere possibility of reoffending does not preclude waiver or subsequent modification. The standard intended by our legislature is built on a likelihood of reoffending. This means the risk of reoffending would be “probable or reasonably to be expected.”

Evidence Required for Delinquency Adjudication: *In re: S.P. (Iowa Court of Appeals, June 25, 2014)*: In this appeal of a delinquency adjudication, the Iowa Court of Appeals reversed, holding that the State’s case against S.P. rested on too many inferences to satisfy the burden of proof,:

Because juvenile proceedings do not offer the right to a jury trial, a more in-depth appellate review of the facts supporting and opposing adjudication is appropriate. *Citation Omitted*. Delinquency adjudications are special proceedings that serve as an alternative to a criminal prosecution—keeping the best interest of the child as the objective. *Citation Omitted*. . . Our law has no bias against circumstantial evidence. *Citation Omitted*. But like direct evidence, it must raise a fair inference of culpability; if circumstantial evidence does no more than create speculation, suspicion, or conjecture, it is insufficient. . . “An inference must do more than ‘create speculation, suspicion, or conjecture.’ Evidence that allows two or more inferences to be drawn, without more, is insufficient to support guilt.”

Standard for Waiving Placement of a Juvenile on the Sex Offense Registry: *In re: D.H., (Iowa Court of Appeals, February 11, 2015)*: In this appeal of an order denying a juvenile’s request for waiver from placement on the Iowa Sex Offender Registry, the Iowa Court of Appeals affirmed the decision to deny waiver, setting for the requirements for granting a waiver:

In Iowa, a person who is convicted of or adjudicated delinquent for committing certain sexual offenses is required to register as a sex offender. . . The code allows a juvenile court to waive the registration requirements for an eligible juvenile when it “finds that the person should not be required to register.” Iowa Code § 692A.103(3). But the code does not provide any specific guidelines or factors for the court to consider. . . Waiver from the registry requirement is only available when the juvenile court “finds” in its discretion that the eligible juvenile is not likely to reoffend. . . The nature of the offender’s acts, the offender’s status, his attitude toward his victims, as well as clinical judgment and assessment tools, are all factors which courts may consider in deciding if a juvenile is appropriately listed on the sex offender registry.

Sponsored by The Iowa State Bar Association's Family Law and Juvenile Law Section

Juvenile Law Seminar

Practice Pointers Regarding Competency

9:30 a.m.-10:15 a.m.



Presented by

Prof. Brent Pattison
Director

Middleton Children's Rights Center
Drake Legal Clinic
2400 University Avenue
Des Moines, IA 50311
Phone: 515-271-1810



Friday, May 1, 2015

Juvenile Competency

THE LEGAL FRAMEWORK AND EMERGING ISSUES

Juvenile Competency

What is the Standard?

Whether the Child has a "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and whether he has a rational, as well as factual understanding of the proceedings against him." *Dusky v. United States*, 362 U.S. 402 (1960).

The only Iowa appellate law on juvenile competency applied the Dusky standard. See *In re A.B.*, 2006 WL 469945 *3 (Iowa Ct. App. 2006).

The right to be tried while competent is a due process right, and should be distinguished from different, but related concepts of capacity or diminished capacity.

Should the Adult and Child Standard be the Same?

Some courts/commentators have suggested that the competency standard in Juvenile Court could be lower than adult court due to the rehabilitative nature of Juvenile Court. Others have rejected this notion because even rehabilitation sanctions "can and do involve a major loss of a child's liberties" *In re the Welfare of D.D.N.*, 582 N.W.2d 278, 280-81 (Minn. Ct. App. 1998).

Our Supreme Court has not addressed the question, but has noted that the increasingly punitive nature of Juvenile Courts necessitates maintaining due process protections for juveniles. *State v. Lyle*, 2014 WL 3537026 (Iowa 2014).

Historical Background

Common Law Rule of 7s: Children under 7 lacked the capacity to commit a crime. Children 7-14 were presumed incapable of committing a crime. Children 14 and over were prosecuted in the same courts as adults.

When Juvenile Courts were created at the beginning of the 20th century, "the assumption of juvenile incompetence was at the heart of the juvenile court system." Redding & Frost (2001).

The Due Process revolution after *In re Gault* and increasingly punitive nature of juvenile courts revived due process protections like competency, and although the US Supreme Court has never addressed the question, every state except Oklahoma recognizes that juveniles have the right to be adjudicated only when competent.

Iowa's Reliance on Adult Competency Statute

In re A.B. discussed potential problems with applying Iowa Code Chapter 812 to children.

812 limits the scope of competency evaluations to "mental disorders", but developmental immaturity is just as likely to result in competency problems.

812 allows for competency restoration, but some children have never reached the standard in the first place, and may not be brought to competence by medication or treatment.

What is a reasonable time period before dismissing a case in Juvenile Court? *A.B.* says the remedy for a lack of competency is not necessarily dismissal. 812 says if the defendant cannot be restored to competency in a "reasonable amount of time" the case may be dismissed.

A.B. held that developmental immaturity is a basis for lack of competency, and that the case should not be dismissed without periodic reviews, and suggested dismissal could happen at 18 months, or when there is a finding that there is no substantial probability that the Child will acquire competence in a reasonable period of time.

Trend Towards Juvenile Specific Competency Statutes

Because of the unique issues with juvenile competency, many states have developed juvenile-specific competency statutes. See Larson and Grisso, *Developing Statutes for Competence to Stand Trial in Juvenile Delinquency Proceedings: A Guide for Lawmakers*.

Juvenile Specific Issues: 1) developmental immaturity as an issue; 2) differences in diagnosis, like comorbidity in juveniles; 3) juveniles present with a "constellation of issues"; 4) language development; 4) need for juvenile specific assessment/interviews; 5) how should issue be raised; 6) who should have the burden?

Research on Prevalence of Competency Issues in Juvenile Court

Recent research indicates that competency problems are significantly more common among juveniles than we previously understood.

35% of 11-13 year olds are significantly impaired.

22% of 14 and 15 year olds were significantly impaired.

More than one half of the 11-13 year olds were significantly impaired if they had an IQ below 74.

Especially important because more than 20% of children in detention centers have IQs under 74.

Research also indicates that 50% of 11-13 year olds with special education plans had competency issues.

Problems with Identifying Competency as an Issue in Juveniles

Issues related to developmental immaturity are harder to identify than traditional adult competency issues like psychosis.

Juvenile defense attorneys are often not well trained in child development, and may face ethical issues in raising competency as an issue. See David Katner, *The Ethical Struggle of Usurping Client Autonomy by Raising Competency in Delinquency and Criminal Cases*, 16 S. Cal. Interdis. L. J. 293 (2007).

Research indicates juvenile defense attorneys raise competency in about half of the cases where they have concerns.

Red Flags Regarding Juvenile Competency

- Age
- Special Education Eligibility
- I.Q.
- Mental Health Diagnoses
- Verbal Comprehension
- Processing Speed
- Memory/Recall
- Decision-Making
- Struggling with open-ended questions

Juvenile Adjudicative Competency Interview

Guide for clinical interviews that is juvenile-specific

Requires Juvenile to respond to specific questions about trial process (e.g. what does pleading guilty mean? What happens if you plead guilty).

Measures decision-making ability by giving the juvenile opportunity to demonstrate rational decision-making skills.

Who should have the burden of proving competency or lack of competency?

In Iowa, there is a "presumption of competence." This means that the defendant must rebut this presumption. Applying this presumption to adults has been held constitutional by the US Supreme Court in *Medina v. California*.

A growing number of states put the burden on the state to prove competency in juvenile court, especially for younger juveniles.

Query: Does a presumption of competence, especially for children under 14, fly in the face of the research indicating a higher prevalence of competency problems, as well as other legal presumptions regarding the capacity of juveniles?

What should happen when a child is found incompetent?

- 1) Assess whether child can be brought/restored to competence?
- 2) Periodic reviews?
- 3) Placement? Where can a child be "restored?"
- 4) CINA?
- 5) Mental Health Placement?
- 6) Who is responsible for placement/cost prior to adjudication?

Sponsored by The Iowa State Bar Association's Family Law and Juvenile Law Section

Juvenile Law Seminar

Differential Response- Lessons Learned and How to Divert a Case

1:30 p.m.-2:00 p.m.



Presented by

Julie Allison

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Iowa Department of Human Services
1305 East Walnut Street, Hoover Bldg.
Des Moines, Iowa 50319
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Friday, May 1, 2015



Differential Response System Overview

Calendar Year 2014

Executive Summary

The Iowa Department of Human Services began its Differential Response (DR) System in January 2014. The new system consists of two pathways, Family Assessment (FA) and Child Abuse Assessment (CA), to respond to allegations of neglect and abuse. The new FA, pathway responds to less serious allegations of child neglect.

Differential Response did not impact the criteria for accepting a report for assessment. Code changes did impact worker response times, the labeling of perpetrators and victims, and report conclusion categories for less serious neglect cases following the acceptance of a report for assessment. In addition, Code changes established a firm path for cases to be re-assigned from the FA pathway to CA pathway. These decisions were based on the premise that safety of a child is first and foremost in a FA and CA.

The Department and stakeholders developed process and outcome measures to monitor implementation. Process measures were developed to indicate how the system is working and outcome measures were developed to measure a families' increased ability to protect and parent their children.

DR findings following one year of implementation are promising. Process and outcome measures indicate that the system is working as designed and the outcomes for children and families are positive.

Highlights of report findings include:

- Children who receive a FA are as safe as children who receive a CA
- 97.8% of families who engage in Community Care services do not experience a CINA within six months of service
- 94.3% of families who engage in Community Care services do not experience a substantiated abuse report within six months of service.
- The Community Care performance measure related to child safety improved with the implementation of the differential response model.
- The Community Care performance measure related to entry into the formal child welfare system improved with the implementation of the differential response model.
- A significantly higher number of families than projected have voluntarily accepted services since the implementation of the differential response model.

- Re-assignment from the FA pathway to the CA pathway is within the projected parameters.
- Founding rates on the CA pathway have increased as projected.

Introduction

The Iowa Department of Human Services (DHS) began its (DR) System in January 2014. The new system consists of two pathways, FA and CA, to respond to allegations of neglect and abuse. The following information is a year review of how the system is functioning.

Data included in this report represents historical information for purposes of comparison.

The Department and stakeholders developed process and outcome measures to monitor implementation. Process measures were developed to indicate how the system is working and outcome measures were developed to measure a families' increased ability to protect and parent their children.

I. Intake Decisions (Figure 1.1)

A. Background

Differential Response did not impact the criteria for accepting a report for assessment. Code changes did impact worker response times, the labeling of perpetrators and victims, and report conclusion categories for less serious neglect cases following the acceptance of a report for assessment. In addition, Code changes established a firm path for cases to be re-assigned from the FA pathway to CA pathway. These decisions were based on the premise that safety of a child is first and foremost in a FA and CA.

B. Analysis of Intake Decisions

The total number of intakes has not varied substantially when comparing calendar year 2013 (CY13) to calendar year 2014 (CY14). There is a difference of 393 total intakes received. In CY13 the acceptance percentage was 52% and in CY14 it was 48%. The number of intakes and the percent of accepted intakes vary year to year. The change is believed to be a normal variation.

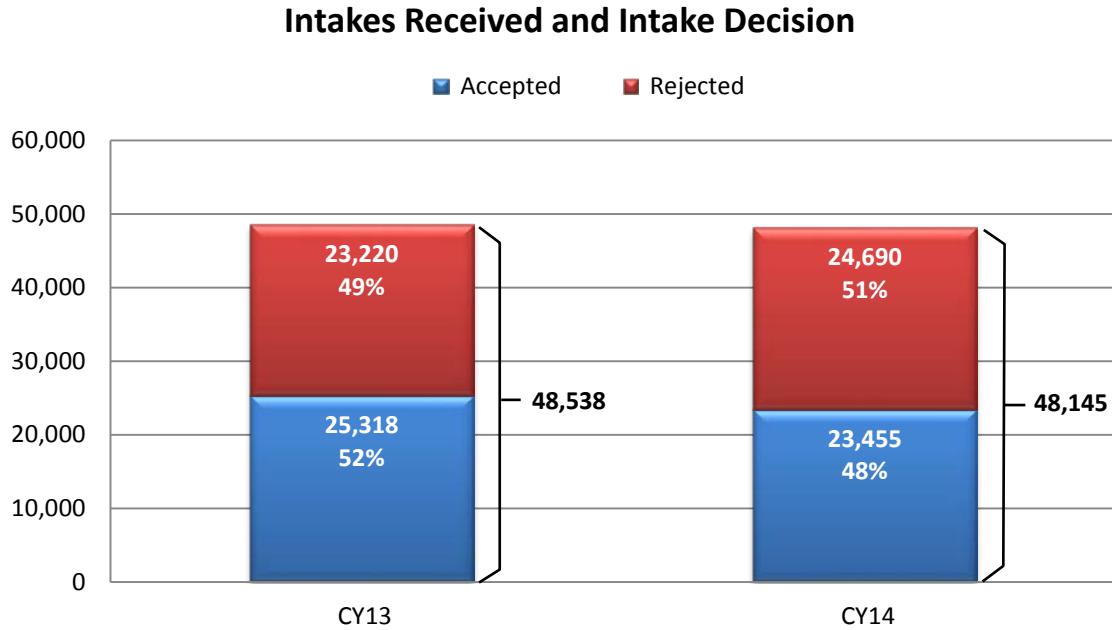
Iowa's rate of screened out (rejected) intakes has increased from CY13 to CY14. In fact, the rate has been slowly increasing since 2011 however the implementation of DR did not affect this trend.

The Department implemented the Centralized Statewide Intake Unit (CSIU) in 2010 and facilitated a more consistent structured intake process and use of standardized tools for uniform decision making. In addition, continued quality assurance activities monitor process, performance, and outcomes. Consequently, the changes identified in the data are expected and considered an appropriate positive change in practice.

Iowa will continue to monitor the number and quality of intakes, as well as accept/reject rates, as part of the on-going intake process analysis to improve decision-making and narrow practice

variation around clinical judgments applied to intake criteria.

Figure 1.1



II. Initial Pathway Assignment (Figure 2.1)

A. Background

There was no change in criteria to accept or reject a report of suspected abuse. However since January 1, 2014 accepted intakes are assigned to one of two possible assessment pathways, the traditional CA and the new FA pathway.

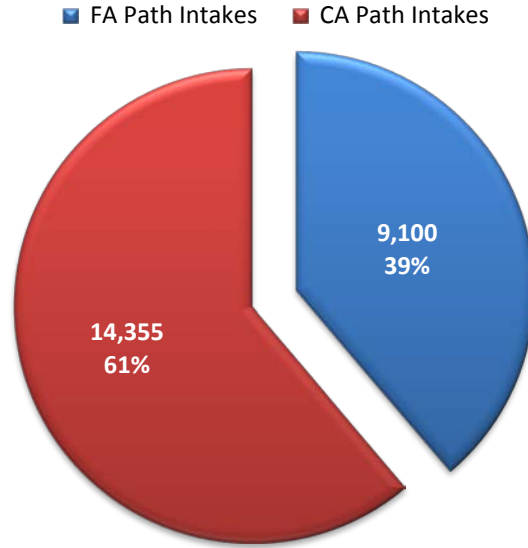
B. Analysis of Pathway Assignment

During the DR planning process, the Department of Human Services and stakeholders discussed various models and recommended the model which eventually became law. At the time, the Department forecast that 37% of accepted intakes would be assigned to the FA pathway. This projection included cases assigned to FA at intake as well as cases re-assigned from the FA pathway to the CA pathway (refer to section IV-Pathway re-assignment). During the first year of DR implementation, the FA pathway assignment rate is 39%. Thus far, the data indicates that the actual assignment of cases is in line with the projected assumptions.

Figure 2.1

Intakes Received by Initial Pathway Assignment

Calendar Year 2014



III. Initial Pathway Assignment Criteria (Table 3.1)

A. Background

Iowa law defines a set of criteria for pathway assignment. Each report may have met one or more criteria for assignment to the CA pathway. Consequently, the total reason count exceeds the total unique assessments (14,355) for the period.

B. Analysis of Initial Pathway Assignment Criteria

The data confirms that assignments to the CA pathway are for the more serious cases.

Table 3.1

CA Initial Pathway Assignment Criteria	Count by Reason
The alleged abuse type includes a category other than Denial of Critical Care	8329
The allegation requires a 1-hour response or alleges imminent danger, death, or injury to a child.	3859
There is an open DHS service case on the alleged child victim or any sibling or any other child who resides in the home or in the home of the non-custodial parent if they are the alleged person responsible.	2089
The allegation is meth and at least one child victim is under six years old.	1832
The alleged person responsible is not a parent (birth or adoptive), legal guardian, or a member of the child's household.	1768

<p>Combined - categories less than 5% individually</p> <ul style="list-style-type: none"> • It is alleged that illegal drugs are being manufactured or sold from the family home. • There is a separate incident open on the household that requires a child abuse assessment. • There has been prior Confirmed or Founded abuse within the past 6 months which lists any caretaker who resides in the home as the person responsible. • The child has been taken into protective custody as a result of the allegation • There has been TPR (in juvenile court) on the alleged person responsible or any caretaker who resides in the home. • The allegation involves an incident for which the caretaker has been charged with a felony under chapter 726 of the Iowa Code (including neglect or abandonment of a dependent person; child endangerment resulting in the death, serious injury, or bodily injury of a child or minor; multiple acts of child endangerment; or wanton neglect of a resident of a health care facility resulting in serious injury). • The allegation is failure to thrive or that the caregiver has failed to respond to an infant's life-threatening condition. 	<p>3202</p>
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IV. Pathway Re-assignment (Figure 4.1)

A. Background

In the design of the Differential Response system it has been critically important to ensure the safety of the alleged victim(s) through the entire assessment process. Consequently, Iowa law established a firm path for cases to be reassigned from the FA pathway to the CA pathway at any point in the family assessment if the case was determined to fit one of several criteria. There are times when assessors make home visit(s) and new information is uncovered and DHS wanted to ensure that when this information came to light, there was a clear path back to the CA pathway. It should be noted that Iowa law does not allow the ability for cases to move from the CA to the FA pathway.

B. Analysis of Pathway Re-assignment

As stated earlier, the Department forecast the total percentage of FA pathway assignment which was inclusive of re-assignment. The forecast for re-assignment of pathways was based on National trends ranging from 2-5%. Iowa's 5% re-assignment rate is directly in line with National rates and within DHS projected parameters. Estimated projections identified that 37% of the assessments would be family assessments. The projection of 37% included cases initially assigned as FA and cases re- assigned as CA after a family assessment had begun.

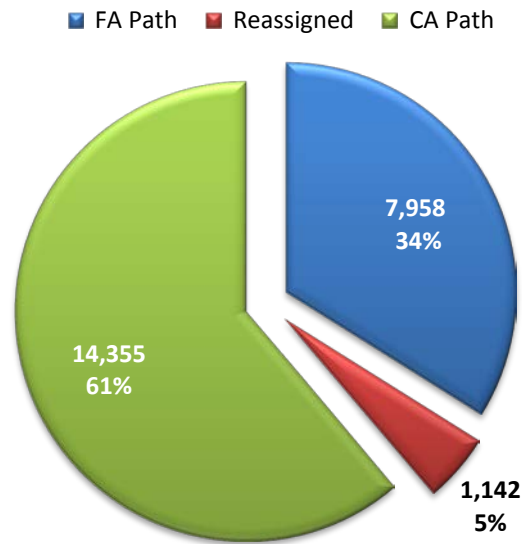
During the first year of Differential Response implementation, 9,100 cases (39%) were originally assigned to the FA pathway. After initiating a family assessment, 1,142 (5%) were then re-

assigned to the CA pathway. Factoring in both elements 7,958 (34%) of cases were assessed on the FA pathway. This is 3% below the projection which demonstrates our continued thoughtful and cautious approach.

Figure 4.1

Completed Assessments by Pathway

Calendar Year 2014



V. Pathway Re-assignment Criteria (Table 5.1)

A. Background

As stated earlier, Iowa law established a firm path for cases to be re-assigned from the FA pathway to the CA pathway at any point in the family assessment if the case was determined to fit one of several criteria. Each case may involve one or more reasons for being re-assigned to the CA pathway; therefore the total reason count exceeds the total unique re-assignments (1,142) for the period.

B. Analysis of Pathway Re-assignment Criteria

The data confirms that re-assignment to the CA pathway is for the more serious cases and is a cautious approach used by the department to assist in assessing high risk or safety concerns. There are a variety of reasons why a child protection worker, in consultation with their supervisor would reassign pathways due to a child safety concern. Case readings indicates that reassignment due to a child safety concern includes situations in which the child protective worker is unable to locate a family and/or there is a need for additional time to perform a comprehensive assessment, inclusive of contacting all individuals who may have information regarding the family and situation. Of the 9,100 family assessments 511 cases were reassigned

from January-June 2014 for a child safety concern. Of the 511 cases reassigned for a safety concern a total of 315 (62%) cases resulted in a substantiated finding which indicates pathway reassignment is being utilized as designed; specifically a reassignment pathway to be utilized for cases in which the child protection worker discovers additional information while performing a comprehensive assessment. Safety of children continues to be first and foremost.

Table 5.1

Pathway Re-Assignment Criteria	Reason Count
Child Safety Concern	511
The alleged abuse type includes a category other than Denial of Critical Care	137
Family chose CAA	128
The allegation requires a 1-hour response or alleges imminent danger, death, or injury to a child.	90
The allegation is meth and at least one child victim is under six years old.	66
Combined - categories less than 5% individually <ul style="list-style-type: none"> • There is an open DHS service case on the alleged child victim or any sibling or any other child who resides in the home or in the home of the non-custodial parent if they are the alleged person responsible. • The alleged person responsible is not a parent (birth or adoptive), legal guardian, or a member of the child's household. • The child has been taken into protective custody as a result of the allegation • There has been TPR (in juvenile court) on the alleged person responsible or any caretaker who resides in the home. • There is a separate incident open on the household that requires a child abuse assessment. • It is alleged that illegal drugs are being manufactured or sold from the family home. • The allegation involves an incident for which the caretaker has been charged with a felony under chapter 726 of the Iowa Code (including neglect or abandonment of a dependent person; child endangerment resulting in the death, serious injury, or bodily injury of a child or minor; multiple acts of child endangerment; or wanton neglect of a resident of a health care facility resulting in serious injury). • There has been prior Confirmed or Founded abuse within the past 6 months which lists any caretaker who resides in the home as the person responsible. • The allegation is failure to thrive or that the caregiver has failed to respond to an infant's life-threatening condition. 	322

VI. Founding Rates (Figure 6.1)

A. Background

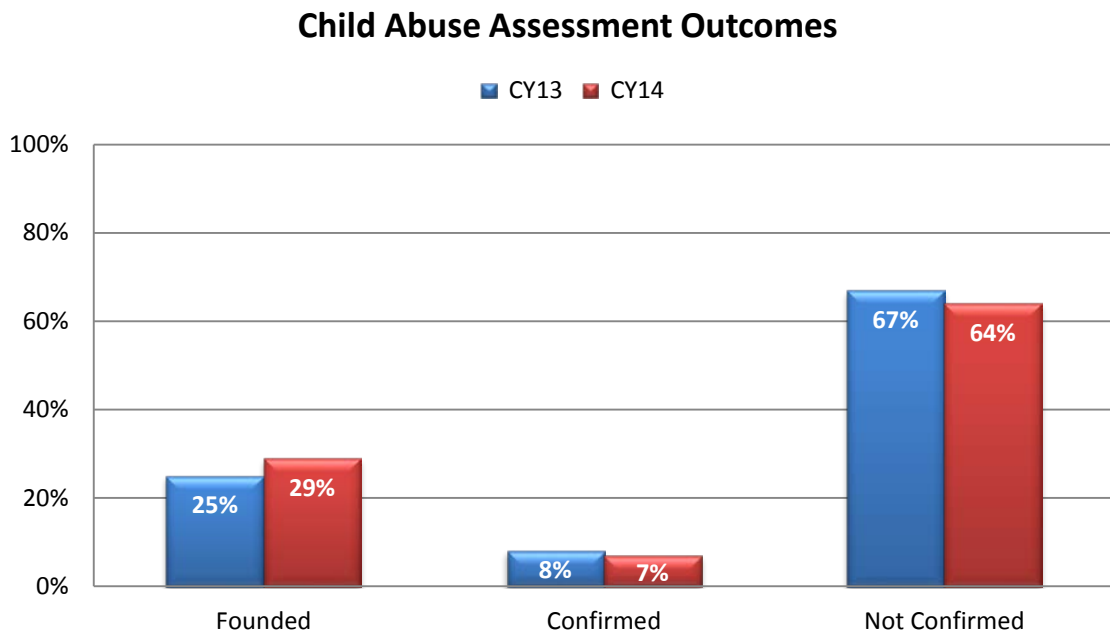
Throughout the design of the new system it was anticipated that the “founding rate”, the percentage of accepted CA pathway intakes that result in a founded case, would increase. This projection was based on the notion that, as lower risk cases were assigned to the family assessment pathway, the remaining cases on the CA pathway would be more serious cases.

B. Analysis of Founding Rates

Based on the first year of Differential Response, the child abuse founding rate demonstrates that the more serious cases are being assigned to the CA pathway. The smaller total number of cases on the child abuse pathway and the fact that they are, by design, the more serious cases combine leading to a higher percentage of those cases being founded. So, while the founding rate increased, the smaller total number of cases on the child abuse side resulting in a founded assessment means fewer names being placed on the Central Abuse Registry.

Iowa’s focus on a comprehensive assessment, use of research and evidence based tools to assess risk and safety, ongoing training, and clinical oversight will continue to evolve and it is anticipated fewer children and families over time will enter the formal child welfare system.

Figure 6.1



VII. Ongoing Service Provision (Figure 7.1)

A. Background

By design, it was anticipated that the Differential Response System would increase the number of families voluntarily engaging in protective services. Iowa law defines what type of state purchased services a family may receive.

- Community Care services are available to families at the conclusion of a child abuse assessment when the assessment is not confirmed (moderate and high risk) and confirmed (moderate risk) and at the conclusion of a family assessment when there is moderate or high risk.
- FSRP services are available to families when a child is adjudicated child in need of assistance and/or when there is a founded abuse assessment (low, moderate and high risk) and confirmed (high risk). The service can be opened at any point during the life of a case.

The data is organized based on the service referral date and may or may not be related to the presence or date of a child protective intake. Because of the time needed to conduct an assessment and to complete initial case management activities that result in a service referral and service case opening some of the November and December intakes (CY13) that eventually were opened for FSRP would be counted in CY14 and November and December intakes (CY14) would be potentially opened in January or February 2015.

B. Analysis of Ongoing Service Provision

The data indicates that almost 2,353 more families are being referred to state purchased services when comparing CY13 to CY14. The increase in these services was a goal of the Differential Response design. Families who previously did not accept services are now taking advantage of the opportunity to engage in activities designed to enhance the safety and stability of their families.

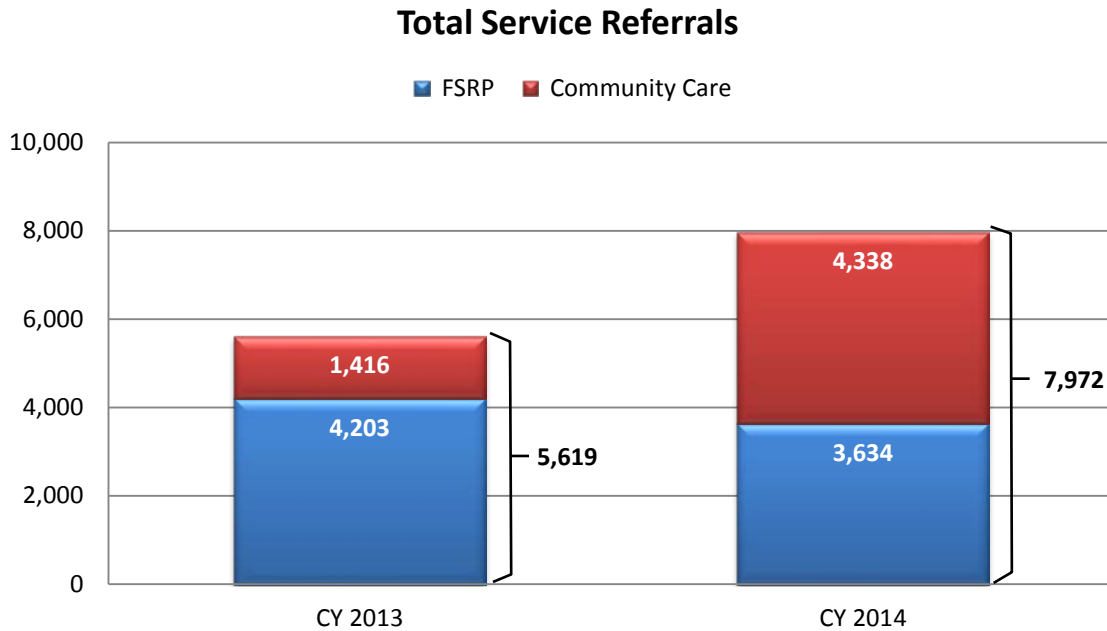
There has been an increase in Community Care referrals in the periods shown. The projected assumption, an increased number of referrals resulting in Community Care, was based on National data which indicates families are more willing to accept services when the child protection agency is less non-adversarial in their approach. The family assessment cases are less adversarial by design as they do not result in a “finding” of abuse. As the data reflects there has been an increase in Community Care referrals.

There has been a decrease in the number of Family Safety Risk Permanency (FSRP) referrals when comparing CY13 to CY14. A gradual decrease in referrals to FSRP was projected. Projections built on the premise that families would voluntarily agree to protective services and build a families ability to protect and parent their children therefore reducing the likelihood they would enter more deeply into the formal child welfare system. DHS and the providers

contracted to provide the service are continuing to assess the impact of the decrease on individual agencies as well as on the system as a whole.

Currently, analysis suggests the service provision system is strong with no wait times and a reliably quick response to engage families appropriately.

Figure 7.1



VIII. Community Care Outcomes (Figure 8.1)

A. Background

Community Care is provided through a single statewide performance-based contract. Community Care was available pre DR (CY13) and post DR (CY14). Referrals to Community Care are made at the completion of both child abuse assessments and family assessments. The intent of this service is for families to learn new skills or establish supportive relationships in order to better protect their children. The outcome measures below were established to measure the service success.

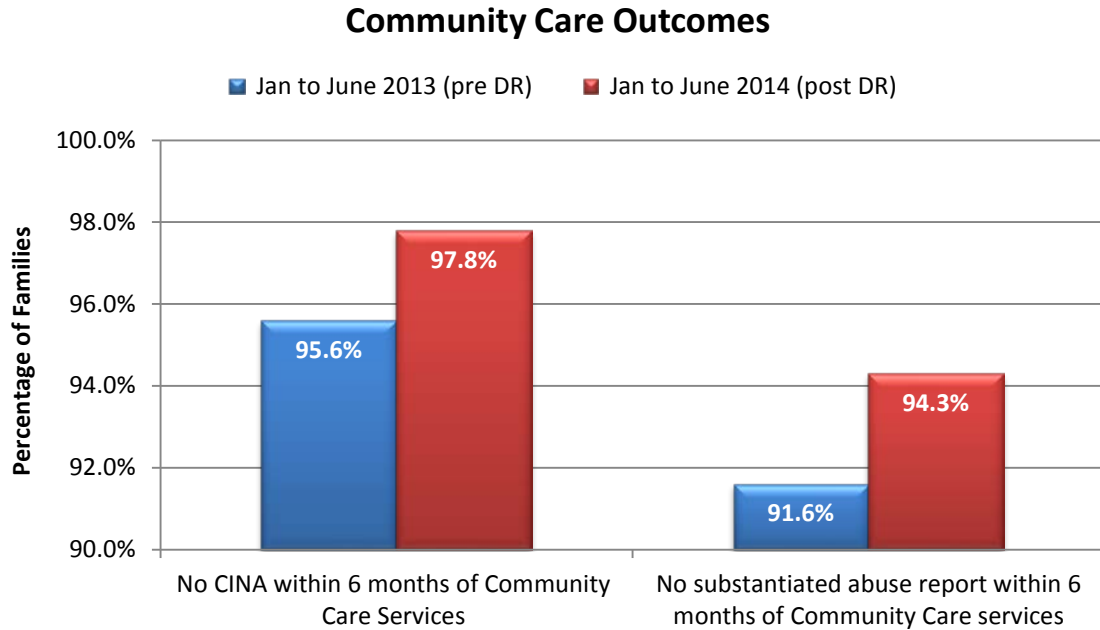
B. Analysis of Community Care Outcomes

The percent of families who do not experience a CINA within six months of Community Care service increased from CY13 (96.5%) to CY14 (97.8%)

The percent of families who do not experience a substantiated abuse report within six months of Community Care service increased from CY13 (91.6%) to CY14 (94.3%)

Community Care performance has increased for both measurements despite an increase of referrals (1,576) from CY13 to CY14.

Figure 8.1



IV. Safe from Abuse or Neglect (Figure 9.1)

A. Background

The child protection system places the safety and well-being of children at the forefront of all decision making. Traditionally, child safety is measured by some common sense thinking. Specifically, once the child protection system intervenes in the life of a family, their ability to protect their children should improve and they should not re-enter the system through a substantiated child abuse report or the adjudication of a petition in Juvenile Court to protect the child (CINA).

Differential Response established a new family assessment pathway to respond to less serious allegations of child neglect. The traditional child abuse pathway remained unchanged in the new model. This new system was built on the premise that children would be as safe or safer under the new model because the response to allegations of neglect would be tailored (differentiated) to the seriousness of the situation and to the families' particular needs.

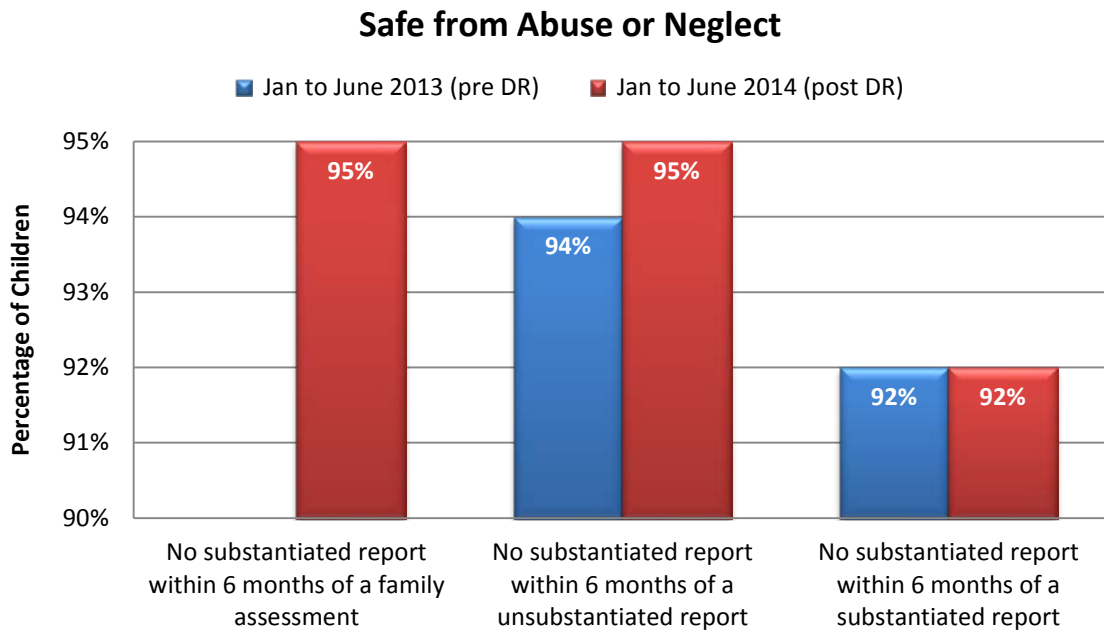
B. Analysis of Safe from Abuse or Neglect

The data confirms that children who receive a family assessment are as safe as those who receive a child abuse assessment. 95% of children who receive a family assessment did not

experience a substantiated report within six months, 95% of children who had an unsubstantiated child abuse assessment did not experience a substantiated report within six months and 92% of children who had a substantiated abuse child abuse assessment did not experience a substantiated report within six months.

The data confirms that the most serious cases are receiving a child abuse assessment.

Figure 9.1



Conclusion

Child safety remains the primary goal of the State child protection system. The Differential Response initiative, by design, supports child protection by assessing safety at intake, during both child abuse assessments and family assessments, and by increasing the numbers of families who voluntarily access protective services. The ultimate goal of a child welfare agency is to build on a family’s resources and develop supports with the family in their community while reducing the need for higher service intervention. National research indicates that families who engage with services are more apt to sustain change and reduce the potential risk of abuse or neglect.

Differential Response results across the country have demonstrated that children are no less safe in a Differential Response system and engagement/shared partnership with families increases their interest and involvement in services. Following a year of implementation the data confirms that children are no less safe in Iowa’s Differential Response system.

The first step in assessing DR implementation was to compare the projected forecast of process measures with actual performance. Iowa's DR system was designed so low risk cases receive a family assessment. Criteria for pathway assignment were carefully chosen with the assistance of national experts, representatives from diverse disciplines and lawmakers. The projected forecast for FA pathway assignment was 37% and during the first year of implementation 34 % of cases are receiving a family assessment. Forecast projections for percentage of founded cases were also expected to increase and during the year it did increase by 4%.

The projected forecast for total service referrals was less than the CY14 results. During the first year of DR service referrals increased more than expected. Initially, we had anticipated a slower, more gradual, shift in family's trust of Department service provision and are pleased that families are engaging in services.

The second step in assessing DR implementation will be to continue to measure outcomes for the families the system comes in contact with. Outcome measures focus on child safety and future involvement with the formal child welfare system. Performance after one year indicates that children are as safe in a DR system and are not experiencing re-entry into the formal child welfare system at a deeper level.

In addition to assessing process and outcome measures the Department has and will continue quality assurance activities to monitor implementation. Quality assurance activities include:

- Case reading
- Structured state and local community meetings
- External and Internal Communication feedback structure
- Local implementation teams

It is by using these valuable tools that the system will continue to evolve and become even stronger in its protection of the children of Iowa and DHS very much looks forward to the work ahead.

 Iowa Department of Human Services

Differential Response - Iowa


December 2014

*Wendy Rickman, LISW, Adult and Children Family Services,
Division Administrator for DHS*

Julie Allison, MPA, Child Welfare Bureau Chief for DHS

*Christine Secrist, PhD, LMFT, Executive Director,
Mid-Iowa Family Therapy Clinic, Inc.*

1


 Iowa Department of Human Services

Children and Family Services

These are services provided to children who:

- are at-risk of abuse or neglect
- have been adjudicated a Child in Need of Assistance
- are at risk of becoming a delinquent
- have been adjudicated delinquent
- are transitioning from the foster care system into adulthood

2

 Iowa Department of Human Services

Guiding Principles

- Children are safe
- Services must be available equally to all children statewide
- Children grow up best in their families
- Families can gain the skills necessary to effectively support their children
- Families need and deserve community support


3

 Iowa Department of Human Services

Changes Started With Better Results For Kids (BR4K)

- Formalized Family Engagement Strategies
- Differential Response 1.0 (Community Care)
- Children of Color
- Population Differentiation
- Outcomes
- System Linkages
- Legislative Proposals

4

 Iowa Department of Human Services

Legislation

- 2011 legislative session, House file 562, Child abuse registry.
- 2012 legislative session, House File 2226, directing DHS to conduct a "comprehensive review."
- 2013 legislative session, House File 590, directed DHS to implement DR.


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 Iowa Department of Human Services

2012 Legislation - HF2226

- Comprehensive" Review
- Expertise of Workgroup
- CAPTA 2010 reauthorization
- Report provided December 2012
- Recommendations made to Legislature


6

 Iowa Department of Human Services

Collaborative Effort

- Workgroup
- National assistance and state visit
- 23 states had implemented and determined:
 - child safety is not jeopardized
 - services can be in place more quickly
 - families are more motivated to use services
- Workgroups to support the design and performance measures

7

 Iowa Department of Human Services

Principles and Assumptions of Differential Response

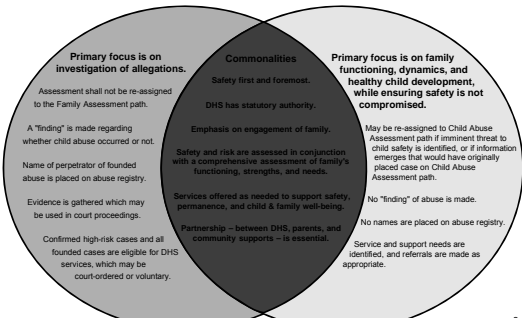
- Child Safety is first and foremost
- Circumstances and needs of families differ and so should the response
- Majority of reports do not need an adversarial approach or court intervention
- Best way to prevent child abuse is to help parents develop the skills and identify resources they need to meet a child's needs and protect the child from harm

8

Pathways

Iowa's Differential Response Approach Has Two Paths With the Common Goal of Keeping Children Safe

Child Abuse Assessment and Family Assessment



Primary focus is on investigation of allegations.
Assessment shall not be re-assigned to the Family Assessment path.
A "finding" is made regarding whether child abuse occurred or not.
Name of perpetrator of founded abuse is placed on abuse registry.
Evidence is gathered which may be used in court proceedings.
Confirmed high-risk cases and all founded cases are eligible for DHS services, which may be court-ordered or voluntary.

Commonalities
Safety first and foremost.
DHS has statutory authority.
Emphasis on engagement of family.
Safety and risk are assessed in conjunction with a comprehensive assessment of family's functioning, strengths, and needs.
Services offered as needed to support safety, permanence, and child & family well-being.
Partnership – between DHS, parents, and community supports – is essential.

Primary focus is on family functioning, dynamics, and healthy child development, while ensuring safety is not compromised.
May be re-assigned to Child Abuse Assessment path if imminent threat to child safety is identified, or if information emerges that would have originally placed case on Child Abuse Assessment path.
No "finding" of abuse is made.
No names are placed on abuse registry.
Service and support needs are identified, and referrals are made as appropriate.

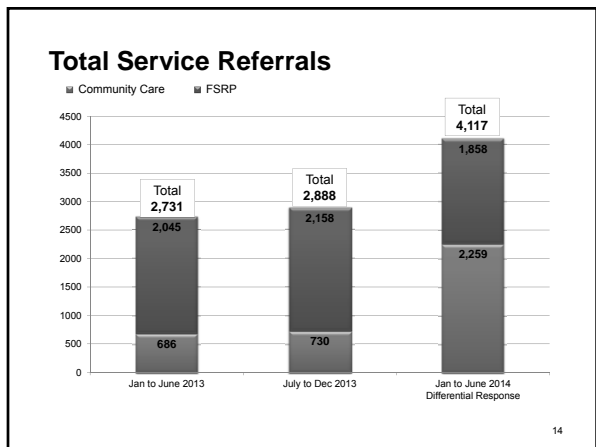
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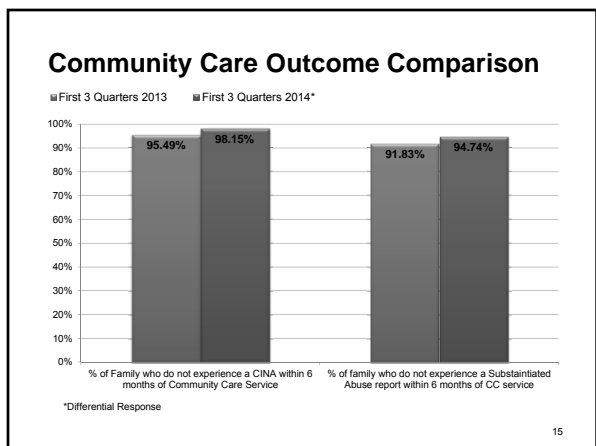
Iowa Department of Human Services

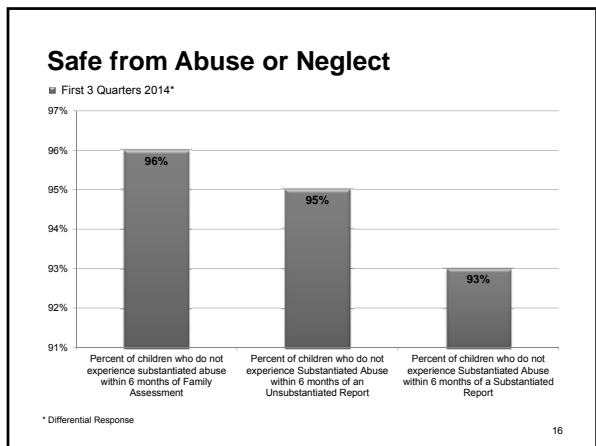
Measuring Success - Process

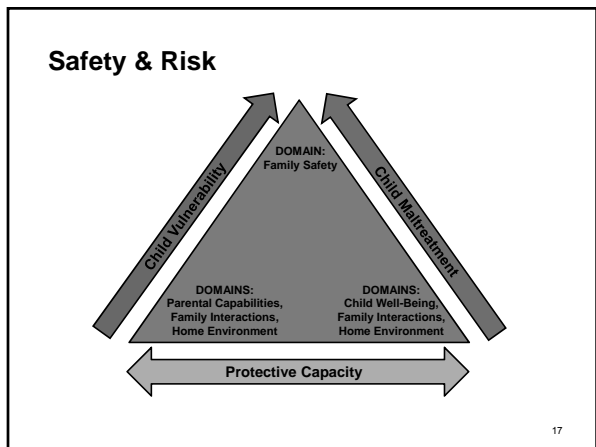
- Pathway assignment and reassignment
- Total Service Referrals
- More results are on the DHS website at:
<http://dhs.iowa.gov/child-welfare/differential-response>


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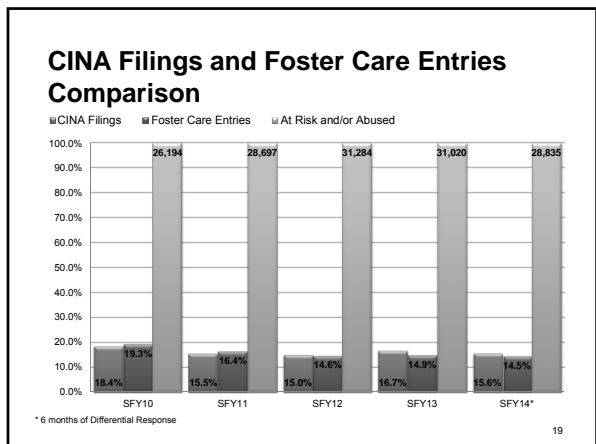


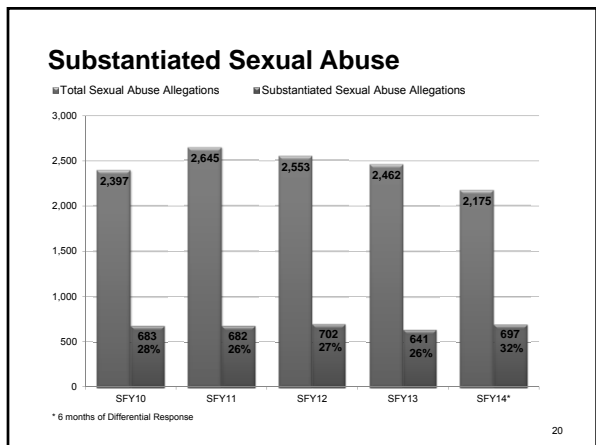
 Iowa Department of Human Services

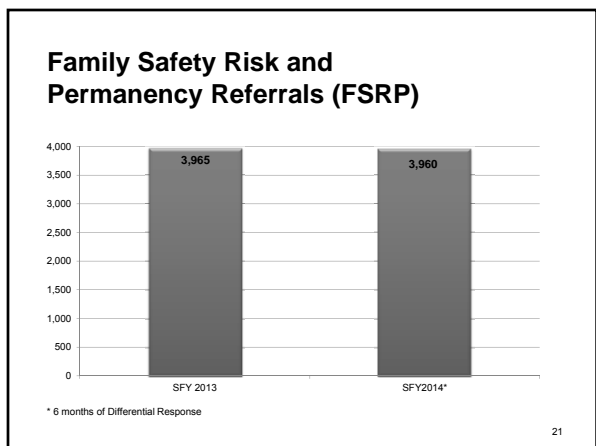
Answering Concerns


- CINA and Foster Care Entries
- Substantiated Sexual Abuse
- FSRP Referrals

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 Iowa Department of Human Services

Next Steps

- Future shifts in populations
- Continue to monitor national landscape
- Continue to monitor process measures
- Continue to develop and/or monitor outcome measures
- Procurement considerations

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 Iowa Department of Human Services

Additional Information

- Thanks and we look forward to working with all of you as we continue to strive towards positive outcomes for children and families
- Additional materials regarding Iowa DR may be found at: http://www.dhs.state.ia.us/Consumers/Child_Welfare/CW_Menu.html

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Sponsored by The Iowa State Bar Association's Family Law and Juvenile Law Section

Juvenile Law Seminar

Lawyers in Need of Assistance:
The Impact on the Person,
Ethics and Professions



Break Out Session 1
2:15 p.m.-3:15 p.m.

Break Out Session 2
3:30 p.m.-4:30 p.m.



Presented by

Hugh Grady

ILAP Executive Director

Phone: 800-243-1533 or 515-277-3817

Email: hugh@iowalap.org

<http://www.iowalap.org>

Friday, May 1, 2015

Lawyers In Need of Assistance: The Impact on the Person, Ethics and the Profession

Hugh Grady
ILAP Executive Director

Today's Outline

- Some facts about the profession
- What exactly is an impaired lawyer?
- Correlations between lawyer impairment and disciplinary chaos
- Balance – some materials provided by Linda Albert of WISLAP
- Golden Rules

Scope of The Impairment Problem

Impact on the Person

Some Data

(International Journal of Law and Psychiatry)

1990 Sample of Washington Lawyers

- 19% suffered from depression compared to 3%-9% nationally
- 18% were problem drinkers, nearly double the national rate
- 26% reported cocaine use at some point in their lives
- Similar to results found in previous Arizona study

SIGNS AND SYMPTOMS OF IMPAIRMENT

Lawyering: An “At Risk Profession” – Seems to imply that “it’s hard”

- 1990 Johns Hopkins study ranked lawyers first in experiencing depression
- 44% of lawyers feel they don't have enough time with families
- 54 % feel they don't have enough time for themselves
- 1990 study illustrated job dissatisfaction data doubled from 1984 data

Attendance

- Routinely arrives late or leaves early
- Regularly returns late from or fails to return from lunch
- Fails to keep scheduled appointments
- Fails to appear at depositions or court hearings
- Decreased productivity
- Has frequent sick days and unexplained absences

Job Performance

- Procrastinates, pattern of missed deadlines
- Neglects prompt processing of mail or timely return of calls
- Decline of productivity
- Quality of work declines
- Overreacts to criticism, shifts blame to others, withdraws
- Smells of ETOH in office or during court appearances
- Client complaints
- Co-mingles or "borrows" client funds

Personal Behavior

- Gradual deterioration of personal appearance/hygiene/health
- Loses control at social gatherings or where professional decorum is expected
- Distorts the truth, is dishonest
- OMVI, public intoxication arrest or possession of illegal drug
- Poor time management, failure to timely file tax payments
- Pattern of family crisis
- Pattern of mood swings

IMPAIRMENT AND DISCIPLINE

Rule 32:1.3 Diligence

- A lawyers work must be controlled so that each matter can be handled competently.
- Perhaps no professional shortcoming is more widely resented than procrastination.

Rule 32:3.2 Expediting Litigation

- Reasonable efforts to expedite litigation
- Consistent with interests of client
- Dilatory practices bring the administration of justice into disrepute
- Realizing financial or other benefit from otherwise improper delay in litigation is not a legitimate interest of the client

Rule 32:3.3: Candor Toward The Tribunal

- A lawyer shall not knowingly make a false statement of fact or law to a tribunal.
- Or fail to correct a false statement of material fact or law previously made.

Rule 32:5.1 Responsibilities of Partners, Managers, and Supervisory Lawyers

- Reasonable efforts to ensure compliance with Rules of Professional Conduct
- Knowledge and ratification of specific conduct
- Failure to take remedial action

Rule 32:8.3 Reporting Professional Misconduct

- Knowledge requires reporting when one lawyer has knowledge of another
- Judges
- Iowa Lawyers Assistance Program exception
- Confidentiality

Yes, lawyers do need balance.

Balance is Worthwhile Work



LAWYERS ARE HUMAN BEINGS TOO

SDT = Three Basic Human Needs for Well-Being

- Competence (What I do I do well)
- Good interpersonal relationships
- Autonomy (I have control over what I do)

► Ryan and Deci, 2000

Influence of the Work Environment on Quality of Life

- Workload?
- Balance of demands?
- Responsibility versus authority?
- Financial balance?
- Is it “never enough”?
- Civility versus adversarial?

Look/Feel Familiar?



Feeling out of control?



WHAT DID YOU EXPECT?

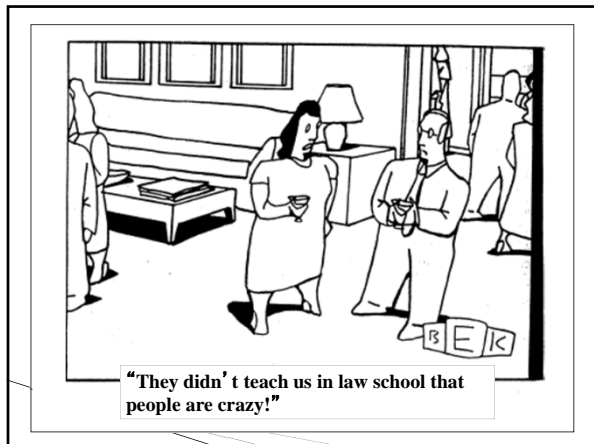
- Are you doing what you expected to be doing at this time in your life?
- Is your work as an attorney what you thought it would be? Are you satisfied?
- Is your marriage/partnership what you assumed it would be? Satisfied? Happy?
- Are your children happy, healthy individuals making a contribution to society?

How Does that Translate?

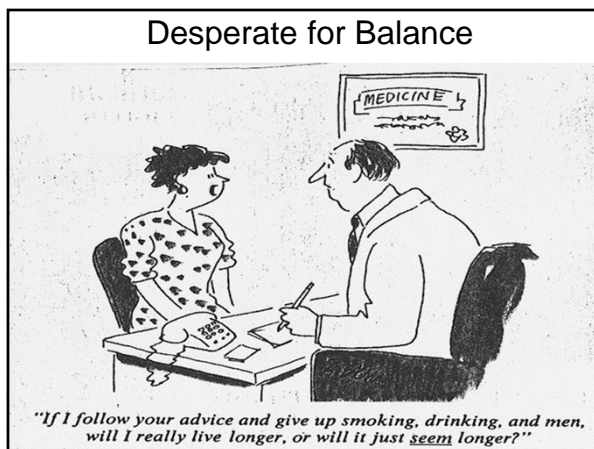
- Law School: I will achieve and do well
- Later: I will find a job that I excel at and enjoy (intrinsic)
- I will make a good living and have good things due to my achievements (extrinsic)
- I will be a good partner and have a good relationship/family
- Children will enrich my life

Hum...Law School–the Other Bar (after first semester grades come out)









Working Towards Acceptance

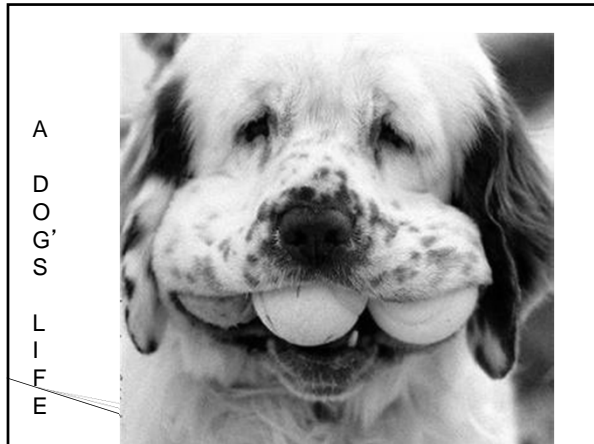
Acceptance doesn't mean I like it, it means "I get it" and I move to put a plan in place for survival and even to thrive

What Hurts More than Helps?

- Alcohol or Drug abuse or dependence
- Gambling or other addictions
- Depression or other mental illness
- General sense of imbalance which decreases intrinsic motivation—may lead to the above
- Lack of purpose or connectedness

Impact of Stress=Imbalance

- Georgetown Journal of Legal Ethics 2001 cited depression as a significant factor in lawyer discipline
- Louisiana study found 80% of their Client Protection Fund cases involved addictions including gambling.



Lawyer Know Thyself

- “It is not the strongest of the species that survives, nor the most intelligent that survives. It is the one that is most adaptable to change”.
- Charles Darwin

Balance is Hard but Worthwhile Work

The 20 Golden Rules

Richard S. Massington, Miami Fl.

- | | |
|--|---|
| 1. Behave yourself | 11. Value the time of your fellow attorneys |
| 2. Answer the phone | 12. Give straight answers |
| 3. Return your phone calls | 13. Avoid the need to go to court |
| 4. Pay your bills | 14. Think first |
| 5. Hands off clients money | 15. Define your goals |
| 6. Tell the truth | 16. There is no such thing as billing 3000 hours a year |
| 7. Admit ignorance | 17. Tell your clients how to behave |
| 8. Be honorable | 18. Solve problems – don't become one |
| 9. Defend the honor of your fellow attorneys | 19. Have ideals you believe in |
| 10. Be gracious and thoughtful | 20. Call your mother |

Sponsored by The Iowa State Bar Association's Family Law and Juvenile Law Section

Juvenile Law Seminar

Challenging Cases Difficult Attorney/Client Relationships

Break Out Session #2
3:30 p.m.- 4:30 p.m.



Presented by

Prof. Jean Lawrence
Director
Family Representation Clinic
Clinical Law Programs
College of Law - University of Iowa
380 Boyd Law Building
Iowa City, Iowa 52242-1113
Phone: 319-335-9023




Ellen R. Ramsey-Kacena
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4403 First Avenue SE
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Friday, May 1, 2015

CHALLENGING ATTORNEY / CLIENT RELATIONSHIPS


Overview

- Juvenile work is different from other types of legal work because we are trying to be agents of change. So we have to be particularly good at understanding and motivating clients. But we will find "difficult clients" in every area of law.



What does a "challenging client" look like?


- Demanding
- Dependent
- High intensity emotions
- Unrealistic expectations
- Inaccurate perceptions
- Non-responsive/ Does not keep in touch
- Indecisive
- Won't follow advice
- Blames others/ lack of personal responsibility



WHAT CAN WE DO?

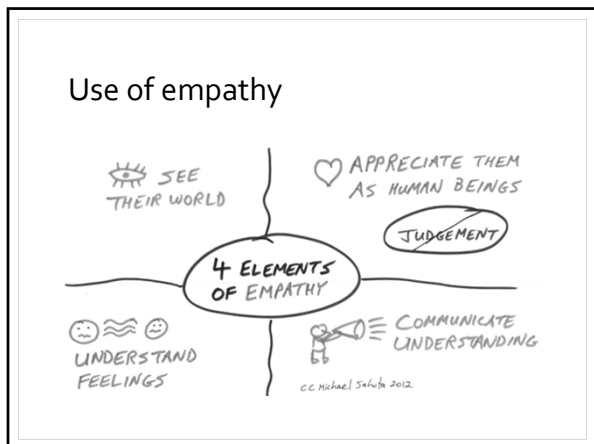
Starting points...

- Know your client in order to really understand what makes them tick
- Build a trusting relationship so the client knows they can be honest with you
- Know what **your client's** goals are
- Use interpersonal skills to help client achieve necessary change
- Use advocacy to clear the way for necessary change
 - PR
 - Clear barriers



HOW DO WE DO IT?

Tools and Tips!



Assess for Complex Needs

- Mental health diagnoses
- Domestic violence
- Substance abuse
- Trauma

difficult client or difficult situation?

- Educate yourself on how these needs may be playing out in your relationship
- How do they factor into your client's choices and behavior?

Set Boundaries

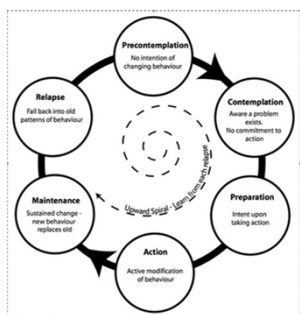
KEEP CALM AND Have Boundaries

- Know your boundaries!
- Set them early
 - Structure first visit and give opportunity to set boundaries and discuss roles
- Be consistent!!
 - You may feel you are doing client a favor but you are actually not
 - We like to know what is expected of us and what we can expect from others
 - What happens if you hit a "slip up"?

Communication!

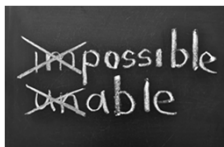
- Encourage regular communication with client (not just when things are bad)
- Find what setting or means of communication works best for your client
 - Different communication styles
- Keep client posted on status of case
- Allow venting
 - Deescalate by using softer tone
 - Ensure clear boundaries before to ensure this is safe
- Honestly lay out options and consequences of each option
 - Allow the client to make their decision based off of this information
- Do not make promises or guarantees you can no keep

Motivational Interviewing



Empower the client

- Break tasks into manageable chunks
- Intentionally seek ways to make client more independent
- Client driven and client is in control (as much as possible)
- Help them to navigate the circumstance
- Meet the client where they are— emotionally, geographically, etc



Enhanced interpersonal skills

- I statements
 - When someone yells at me I have a very difficult time listening...
- Immediacy
 - Example
- Confrontation
 - On the one hand... on the other
- Perspective
 - I see what you mean, but DHS or the Judge might see _____
 - Use this when helping them weigh decisions

Mantras

- We can only control ourselves!
- Don't work harder than the client!

"DEFENSIVE LAWYERING"

When do we switch?

- Point where client is not willing/ able to follow advice
- Asking yourself, What more can I do?

- Switch to traditional or defensive lawyering

- How do we recognize this point?

- What does defensive lawyering look like?

What does it look like?

- Keep the client informed
- Let them know the consequences of their decisions/ failures to act
- Show ongoing willingness to keep working
- No judgement



WHY IS THIS IMPORTANT?

Parent Representation Standards

Professional Responsibilities Standards

Ethical scenarios

- Client wants you to take a position that you do not agree with
- Client is making threats



Iowa Standards of Practice for Attorneys Representing Parents in Juvenile Court

These standards do not add obligations to the Iowa Rules of Professional Conduct, but like the comments to those rules, provide guidance to attorneys representing parents in juvenile proceedings for practicing in compliance with the rules. In the event of any conflict between these standards and a rule of professional conduct, the requirements of the rule shall take precedence.

The parent's attorney shall:

General:

1. Adhere to all educational requirements before accepting a court appointment to represent a client in a child welfare case. Acquire sufficient working knowledge of all relevant federal and state laws, regulations, policies, and rules.
2. Avoid continuances and work to reduce delays in court proceedings unless warranted by the interests of the client.
3. Communicate as needed with other professionals in the case to protect or advance the client's interests.

Relationship with the Client:

4. Establish and maintain a working relationship with the client. Communicate with the client prior to the day of hearing and when apprised of emergencies or significant events.
5. Advocate for the client's goals. Empower the client to direct the representation and make informed decisions.
6. Understand and protect the client's rights to information and decision-making while the child is placed out of the home.
7. Act in accordance with the duty of loyalty owed to the client while adhering to all laws and ethical obligations concerning confidentiality. Avoid potential conflicts of interest that would interfere with the competent representation of the client. Comply with all other Iowa Rules of Professional Conduct.
8. Provide the client with all relevant contact information. Establish a system that promotes regular client-attorney contact.

9. Communicate with the client in a manner that promotes advocacy and adequate preparation to support the client's position.
10. Take reasonable steps to communicate with incarcerated clients and to locate clients who become absent. Develop representation strategies. Establish a plan for the client's participation in case-related events.
11. Communicate with and counsel the client about financial implications of the juvenile matter to promote and protect the client's interest.
12. Investigate and consider the client's background and its impact on the case. Act in a culturally-competent manner and with due regard to disabilities or unique circumstances of the client. Advocate for appropriate supportive services with the child welfare agency and court.

Investigation & Court Preparation:

13. Conduct an independent investigation at every stage of the proceeding as reasonable and necessary.
14. Use effective discovery methods according to the Iowa Rules of Juvenile Procedure.
15. Consult with the client to develop a case theory and strategy. Explain the statutory timeline for the case.
16. Timely file appropriate pleadings, motions, and briefs.
17. Engage in multidisciplinary case planning and advocate for appropriate services and high quality family interaction.
18. Effectively participate with the client in family team meetings, mediation, and other negotiations.
19. Thoroughly prepare the client in advance for all hearings, meetings, and other case events.
20. Identify, locate, and prepare necessary lay and expert witnesses. Prepare for cross-examination and, when permissible, interview those witnesses.
21. Review court orders to ensure accuracy and clarity. Review orders with the client. Take reasonable steps to ensure the client complies with court orders.
22. Continually evaluate whether the case should be reviewed by the court prior to the next scheduled hearing date to ensure case progress.

23. Timely file reasonable and necessary post-hearing motions.

Appeal:

24. Consider and discuss appeal options and deadlines with the client.

25. Timely file appeal documents if the client decides to appeal. Adhere to the Iowa Rules of Appellate Procedure.

26. Timely review the ruling and discuss its implications with the client.

27. Consider and discuss further review options.

Resources for Additional Information

MENTAL HEALTH

National Alliance on Mental Illness (NAMI): www.nami.org

MentalHealth.gov: www.mentalhealth.gov

National Institute of Mental Health: <http://www.nimh.nih.gov>

SUBSTANCE ABUSE

Substance Abuse & Mental Health Services Administration (SAMHSA): <http://www.samhsa.gov>

National Institute on Drug Abuse: <http://www.drugabuse.gov>

TRAUMA

Trauma Symptoms, Causes, and Effects:

<http://www.psychguides.com/guides/trauma-symptoms-causes-and-effects/>

MOTIVATIONAL INTERVIEWING

MINT: Excellence in Motivational Interviewing: <http://www.motivationalinterviewing.org/>

Motivational Interviewing Strategies and Techniques:

http://www.nova.edu/gsc/forms/mi_rationale_techniques.pdf

DOMESTIC VIOLENCE

The National Coalition Against Domestic Violence: <http://www.ncadv.org/>

Iowa Coalition Against Domestic Violence: <http://www.icadv.org/>

MOTIVATIONAL INTERVIEWING



WHAT IS MOTIVATIONAL INTERVIEWING (MI)?

- "...A COLLABORATIVE, PERSON-CENTERED FORM OF GUIDING TO ELICIT AND STRENGTHEN MOTIVATION FOR CHANGE."
- A DIRECTIVE, CLIENT CENTERED KIND OF CONVERSATION ABOUT CHANGE
 - COUNSELING, THERAPY, CONSULTATION, METHOD OF COMMUNICATION
- COLLABORATIVE APPROACH TO ADDRESSING AMBIVALENCE
 - PERSON CENTERED, PARTNERSHIP, HONORS AUTONOMY, NOT EXPERT- RECIPIENT
- EVOCATIVE- SEEKS TO CALL FOR THE PERSON'S OWN MOTIVATION AND COMMITMENT
 - HELPS BY INCREASING DISCREPANCY BETWEEN CLIENTS CURRENT BEHAVIORS AND DESIRED GOALS TO MINIMIZE RESISTANCE

HOW IS MI USEFUL?



- ASSESSING THE PERSON'S PERCEPTION OF THE PROBLEM
- LOOKING AT THE PERSON'S UNDERSTANDING OF THE CURRENT SITUATION
- LOOKING FOR "THE HOOK" AND MOTIVATION
- UNDERSTANDING HOW SUCCESSFUL THE CLIENT BELIEVES THEY CAN BE
- IDENTIFICATION, EXAMINATION, AND RESOLUTION OF AMBIVALENCE ABOUT CHANGING BEHAVIOR
- STRENGTHENS AN INDIVIDUAL'S MOTIVATION FOR AND MOVEMENT TOWARDS A SPECIFIC GOAL BY ELICITING AND EXPLORING THE PERSON'S OWN ARGUMENTS FOR CHANGE

WHY USE IT IN YOUR PRACTICE?

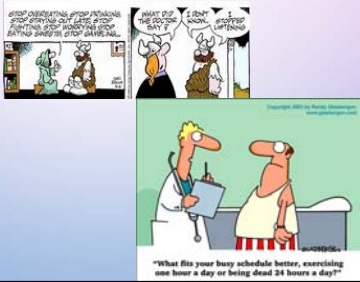
- UNDERSTAND YOUR CLIENTS AND THEIR POSITION ON CHANGE
- WILL YOUR CLIENT FOLLOW THROUGH WITH COURT RECOMMENDATIONS? (DHS GOALS MAYBE LENGTHY AND CHALLENGING)
- IDENTIFY HOW THE CLIENTS GOALS COMPARE TO DHS'
 - DHS GOAL: MOM GET SUBSTANCE ABUSE TREATMENT,
 - CLIENT'S GOALS: GET DHS OUT OF HER LIFE, GET HER KIDS BACK IN HER HOME,
 - FIND A WAY TO RECONCILE THESE GOALS
- AVOID EMBARRASSMENT

IT'S NOT THAT SOME PEOPLE HAVE
WILLPOWER AND SOME DON'T
IT'S THAT SOME PEOPLE ARE READY
TO CHANGE AND OTHERS ARE NOT

CARL SANDBURG

THE PRINCIPLES OF MI

- EXPRESS EMPATHY
- SUPPORT SELF-EFFICACY
- ROLL WITH RESISTANCE
- DEVELOP DISCREPANCY



EXPRESS EMPATHY

- EMPATHY IS NOT SYMPATHY
- SEEING THE WORLD THROUGH THE CLIENT'S EYES, THINKING ABOUT THINGS AS THE CLIENT THINKS ABOUT THEM, FEELING THINGS THE CLIENT FEELS
- CRITICAL TO MI APPROACH
- WHEN THE CLIENT FEELS THEY ARE UNDERSTOOD, THEY ARE MORE LIKELY TO OPEN UP
 - WHEN THEY ARE OPEN YOU ARE BETTER ABLE TO GAUGE THEIR FOLLOW THROUGH AND WHAT APPROACH TO TAKE

"Empathy" is the ability to understand and feel another person's feelings.

"Sympathy" is the desire or tendency to help others in order to lessen their pain or suffering.

The key difference is that it's possible to show **sympathy** without knowing or feeling what the other person is feeling; it's basically **"compassion."**

Someone in distress

- Feeling the same emotions as the other person
- Feeling sorrow or concern for the other person
- Feeling care and warmth for the other person

SUPPORT SELF EFFICACY

- HELPING THE CLIENT SEE THAT THEY CAN MAKE CHANGES
 - KNOWING THEY HAVE THE ABILITY GOES A LONG WAY IN HELPING THE CLIENT BECOME AND STAY MOTIVATED
- LOOK FOR OTHER TIMES THE CLIENT HAS BEEN SUCCESSFUL
 - POINT OUT THE SKILLS THEY USED THEN AND CAN USE AGAIN
 - FIND THEIR "HOOK" FOR CHANGE
 - EMPOWER

"If I have the belief that I can do it, I shall surely acquire the capacity to do it even if I may not have it at the beginning."

- Mahatma Gandhi -

ROLL WITH RESISTANCE

- RESISTANCE IS A SIGN THE CLIENT MAY SEE THINGS DIFFERENTLY THAN US OR DHS
- WE NEED TO LISTEN BETTER TO THE CLIENT OR CHANGE THE DIRECTION OF THE SESSION
- OFTEN SEEN AS DEFIANCE OR INTENTIONALLY SABOTAGE OR FAILURE
- ROLLING WITH THE RESISTANCE AND NOT FIGHTING THE CLIENT TO MAKE A POINT
- MEET THE CLIENT WHERE THEY ARE
- EXAMPLE: I DON'T KNOW WHY I HAVE TO GO TO REHAB! I'M NOT AN ADDICT. I CAN QUIT IF I WANT
 - SO YOU FEEL THAT YOU DO NOT HAVE A SUBSTANCE ABUSE PROBLEM?

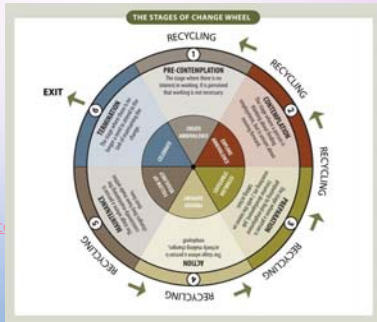
DEVELOP DISCREPANCIES

- HELP THE CLIENT TO SEE THE DISCREPANCY IN THEIR CURRENT BEHAVIOR AND THEIR STATED GOALS
- ONE SOURCE OF MOTIVATION: SEE HOW THEIR CURRENT BEHAVIORS ARE HARMFUL TO THE GOALS
- EXAMPLE: YOU TOLD ME YOUR GOAL IS TO GET YOUR CHILDREN BACK, BUT YOU HAVE NOT BEEN ATTENDING YOUR MANDATED THERAPY APPOINTMENTS. HELP ME UNDERSTAND THAT.



STAGES OF CHANGE IN MI

- PRE-CONTEMPLATION
 - CONTEMPLATION
 - PREPARATION
 - ACTION
 - RELAPSE
- [HTTP://WWW.YOUTUBE.COM](http://www.youtube.com)



Relapse

Falling back into old patterns, actions and behaviours. Each relapse is met with new insights and knowledge leading to less frequency in setbacks.

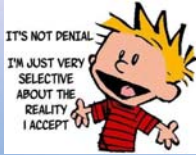


PRE-CONTEMPLATION

- PATIENTS DO NOT EVEN WANT TO CONSIDER CHANGE
- CLIENT DOES NOT SEE THE BEHAVIOR AS AN ISSUE
 - WHILE THEY MAY HAVE EXPERIENCED CONSEQUENCES TO THE BEHAVIOR, OFTEN TIMES THE CLIENT DOES NOT SEE THEIR RESPONSIBILITY IN THE CONSEQUENCES
 - EXAMPLE: I WAS USING MARIJUANA BUT MY KIDS WERE IN THE OTHER ROOM SO IT DIDNT EFFECT THEM. I DONT KNOW WHAT THE BIG DEAL IS.

CONTEMPLATION

- CLIENT IS STARTING TO THINK ABOUT THE PROBLEM BEHAVIOR AND ITS NEGATIVE EFFECTS
- HIGHLY AMBIVALENT, ON THE FENCE ABOUT MAKING CHANGE
- NOT READY TO MAKE A COMMITMENT BUT CAN SEE BENEFITS
- EX: A CLIENT LOOKS AT HOW HER MARIJUANA USE HAS LED TO DHS BEING INVOLVED, BUT THINKS ABOUT ALL THE GOOD THINGS ABOUT HER SMOKING. CALMING, FUN, BRINGS HER FRIENDS



PREPARATION

- CLIENT PREPARES TO MAKE A SPECIFIC CHANGE
- MAY EXPERIMENT WITH SMALL CHANGES AS THEIR DETERMINATION TO CHANGE INCREASES
- THEY ARE REALLY LOOKING AT THE BEHAVIOR AND HOW THE NEGATIVE OUTWEIGHS THE POSITIVE
- MAY BE REACHING OUT FOR HELP, TELLING OTHERS OF THEIR PLANS, MAKING SMALL CHANGES TO GET STARTED
- EX: GETTING SET UP WITH TREATMENT, NOT HANGING OUT WITH SAME FRIENDS, MAKING CHANGES IN THEIR ROUTINE

ACTION

- STAGE WHERE CLIENTS HAVE STARTED TO MAKE CHANGES
- CLIENT IS AWARE OF RELAPSE SIGNS AND IS AVOIDING THESE PEOPLE, PLACES, AND THINGS
- EX: A CLIENT HAS BEEN GOING TO NA MEETINGS, HAS BEEN SOBER, SEES THE BENEFIT OF BEING SOBER, MAKES NEW FRIENDS

MAINTENANCE

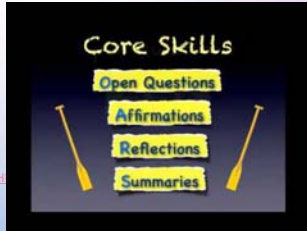
- ACTION IN THE LONG RUN
- HAS GONE AT LEAST 6 MONTHS WITHOUT DOING THE HARMFUL BEHAVIOR- HAS REPLACED IT WITH NEW POSITIVE BEHAVIOR
- MAINTENANCE IS FOR THE LENGTH OF TIME YOU ARE SOBER
- EX: A CLIENT HAS BEEN SOBER FROM MARIJUANA AND LEADING N.A. MEETINGS

RELAPSE

- GOING BACK TO THE OLD HABIT, HARMFUL BEHAVIOR
- CAN LAST ANY LENGTH OF TIME
- CAN GET BACK INTO THE WHEEL AT ANY OF THE FIRST THREE POINTS
 - RELAPSE AND NOT WANT TO STOP AGAIN. NOT SEE IT AS A PROBLEM
 - CAN RELAPSE AND THINK ABOUT WHY THEY QUIT BUT NOT READY TO TRY AGAIN
 - CAN RELAPSE AND GET RIGHT BACK INTO THINGS THAT HELPED KEEP THEM FROM THE BEHAVIOR

USE OF OARS

- OPEN ENDED QUESTIONS
- AFFIRMATIONS
- REFLECTIVE LISTENING
- SUMMARIES



<http://lytimg.com/vi/s3MCJZOGRIk/hqdefault.jpg>

OPEN ENDED QUESTIONS

- NOT EASILY ANSWERED WITH A "YES/NO" OR SHORT ANSWER CONTAINING ONLY A SPECIFIC, LIMITED PIECE OF INFORMATION
- INVITE ELABORATION AND THINKING MORE DEEPLY ABOUT AN ISSUE
- INVITING THE PERSON TO TELL THEIR STORY, IN THEIR OWN WORDS
- NOT LEADING QUESTIONS, LETTING THE CLIENT LEAD THE STORY



AFFIRMATIONS

- STATEMENTS THAT RECOGNIZE CLIENT STRENGTHS
- ASSIST IN BUILDING RAPPORT AND HELPING CLIENT TO SEE THEMSELVES DIFFERENTLY, MORE POSITIVELY
- ACKNOWLEDGE BEHAVIORS THAT HELP LEAD TO CHANGE
- AFFIRMATIONS MUST BE GENUINE



REFLECTIVE LISTENING



- GOOD WAY TO BUILD TRUST AND RAPPORT
- TO SHOW THAT YOU ARE LISTENING
- GIVES THE CLIENT A CHANGE TO HEAR HOW THEY SOUND TO OTHERS
- WILLING TO ASK QUESTIONS IF WE ARE NOT CLEAR
- DON'T BE AFRAID TO ADMIT YOU ARE CONFUSED, OR WANT TO CLARIFY SOMETHING THE CLIENT SAID

SUMMARIES

- RECAP OF WHAT HAPPENED IN THE SESSION
- SHOWS THAT YOU HAVE BEEN LISTENING AND UNDERSTAND WHAT THE CLIENT SAID
- HELP THE CLIENT TO SEE THEIR DISCREPANCIES AND AMBIVALENCE
- DON'T HAVE TO BE AT END, CAN BE USED ANYTIME

CHANGE TALK



- PREPARATORY CHANGE TALK
 - DESIRE (I WANT TO CHANGE)
 - ABILITY (I CAN CHANGE)
 - REASON (ITS IMPORTANT TO CHANGE)
 - NEED (I SHOULD CHANGE)
- IMPLEMENTING CHANGE
 - COMMITMENT (I WILL MAKE CHANGES)
 - ACTIVATION (I AM READY, PREPARED, WILLING TO CHANGE)
 - TAKING STEPS (I AM TAKING SPECIFIC ACTIONS TO CHANGE)

STRATEGIES FOR EVOKING CHANGE TALK

- 1) ASK EVOCATIVE QUESTIONS
- 2) EXPLORE DECISIONAL BALANCE
- 3) GOOD THINGS/ NOT-SO-GOOD THINGS
- 4) ASK FOR ELABORATION/ EXAMPLES
- 5) LOOK BACK
- 6) LOOK FORWARD
- 7) QUERY EXTREMES
- 8) USE CHANGE RULERS
- 9) EXPLORE GOALS AND VALUES
- 10) COME ALONGSIDE

READINESS SCALE:
How ready are to consider increasing your physical activity?

0 1 2 3 4 5 6 7 8 9 10

Not Ready Thinking About It Ready

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