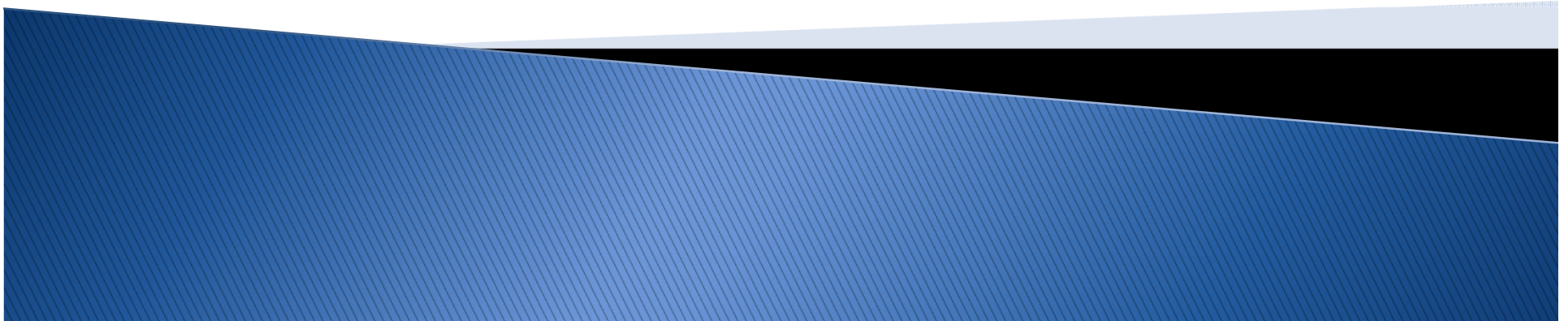


# Hand in Hand... Building the Bridge to Stay Connected

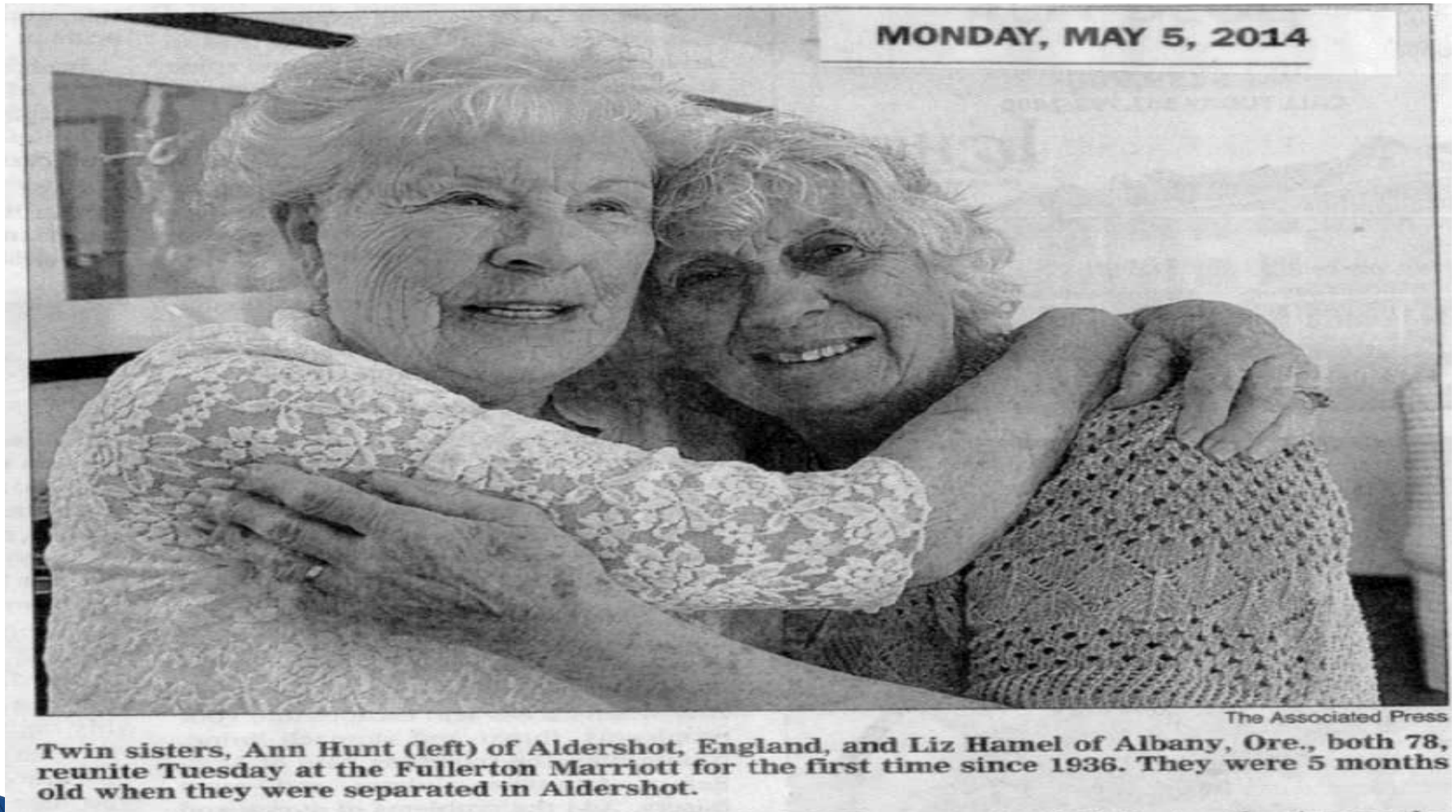
Honorable Jolene Grubb Kopriva, President Judge  
Blair County

Katherine J Gomez, Managing Attorney, Family  
Advocacy Unit, Community Legal Services, Inc.,  
Philadelphia

Christy R Stanek, Judicial Analyst  
Office of Children and Families in the Courts



# Twins Reunite after 78 years apart!



MONDAY, MAY 5, 2014

The Associated Press

**Twin sisters, Ann Hunt (left) of Aldershot, England, and Liz Hamel of Albany, Ore., both 78, reunite Tuesday at the Fullerton Marriott for the first time since 1936. They were 5 months old when they were separated in Aldershot.**

# What is Visitation and Why Do We Do It?

**“Visitation is a Right, not a Privilege”**

**Preserves Parent/Child Bond - Increases Better Outcomes and  
Reunification - Addresses the issue of Well-Being**

- ▶ Visitation preserves and develops attachment and bond
- ▶ Maintains a connection with extended family and a sense of belonging and identity, often lost when a child is removed
- ▶ Important to keep in mind why the child was removed when considering visitation
- ▶ Unsafe to live full time with a parent may or may not equal unsafe to visit unsupervised with the parent



# What is Visitation and Why Do We Do It?

**“Visitation is a Right, not a Privilege”**

- ▶ Research has shown that children are not only more likely to be reunified with their parents if they have early and frequent visitation, but will suffer less trauma in the meantime
- ▶ Visitation is a key component of the agency’s “reasonable efforts” toward the goal of reunification
- ▶ Visitation is the law





# Visitation: A Charge from the State Roundtable

- ▶ 2011 State Roundtable charged a workgroup to focus solely on Visitation (<http://www.ocfcpacourts.us/childrens-roundtable-initiative/state-roundtable/2013-state-roundtable>)
- ▶ Visitation is a key indicator of reunification
- ▶ Regulation 1 x every other week = 1 ½ days per year



# Visitation: A Charge from the State Roundtable

## 2013 Statewide Visitation Survey

### Visitation Planning:

- ▶ Almost 60% of Counties reported NOT having a visitation policy or procedures
- ▶ While 87% of Counties reported practicing FGDM, only 14% said that visitation is included in the FGDM plan, but when included, the visitation plan was accepted by the agency and the Court in 75% or more of the cases.



# Visitation: A Charge from the State Roundtable

2013 Statewide Visitation Survey cont.

## Visitation Planning (cont.):

- ▶ 74% of Counties reported that they did not complete a visitation plan with the family beyond the logistics of the Child Permanency Plan
- ▶ Visitation seemed to be supervised throughout the life of case with little modification



# Visitation: A Charge from the State Roundtable

2013 Statewide Visitation Survey cont.

## Visitation Location:

- ▶ 65% of Counties reported that only 1–25% of visitation occurred in a relative home
- ▶ 58% of Counties reported that only 1–25% of visits are unsupervised





# Visitation:

## A philosophical shift in thinking

- ▶ Similar to FGDM, we have to look at how we think about visitation
- ▶ Do we believe that family will protect?
- ▶ Do we believe that there are healthy family members
- ▶ Is there a place for family to be involved with the visitation planning
- ▶ Traditional visitation versus best interest visitation



# Visitation:

## A philosophical shift in thinking

### Past

- ▶ We must change people
- ▶ Professionals know best
- ▶ The agency plan is best
- ▶ People need us to keep them safe
- ▶ The apple doesn't fall far from the tree
- ▶ Extended families must come forward
- ▶ First goal – safety by removal

### Present

- ▶ People change themselves
- ▶ The family know their needs
- ▶ The family plan is best
- ▶ People can recognize safety if guided there
- ▶ All families have healthy members
- ▶ We must find extended families
- ▶ First goal – keep family safely in tact

# Visitation:

## A philosophical shift in thinking

### Past

- ▶ Foster care is best
- ▶ Bad behaviors means not caring
- ▶ Angry disruptive teen is incorrigible & needs group care
- ▶ Adversarial Court/CYS
- ▶ Compliance is most important
- ▶ Professional concern for system
- ▶ Visitation is an earned privilege

### Present

- ▶ Kinship Care is best
- ▶ Grief and loss can cause poor decision making
- ▶ Angry teen is often hurting and misdirecting emotions
- ▶ System must share common interest & must communicate for child/family
- ▶ Measured behavior change is most important
- ▶ System collaboration is critical
- ▶ Visitation is a right

# Imagine...



# Imagine being a parent...

- ▶ of a 3 year old...imagine something went terribly wrong in your life and your child had to be removed from your care and placed in foster care...
- ▶ How soon after your child was first taken from you, would they need to see you?
- ▶ How often would that child need to see you thereafter?





# How do “we” justify giving these children less?

- This child doesn't need to see their parent as frequently because...
- The child\_\_\_\_\_
- The parent \_\_\_\_\_
- The agency \_\_\_\_\_
- The child's foster/kinship parent \_\_\_\_\_



# Visitation:

## A philosophical shift in thinking

### Traditional Practice

- ▶ Visitation is earned by parents and children
- ▶ 1 X every other week = 1 ½ days per year
- ▶ 1<sup>st</sup> visit schedule once time permits after crisis and shelter hearing is over
- ▶ 1 hour in duration
- ▶ Occurs in an agency room
- ▶ All visits start supervised
- ▶ Not much focus on law and research regarding visitation

### Best Interest Practice

- ▶ Visitation is a right, not a privilege
- ▶ As frequently as possible, with consideration of age
- ▶ 1<sup>st</sup> visit scheduled within 72 hours of removal from the home
- ▶ Duration is flexible based on needs and age of child
- ▶ Occurs in the most family-like setting
- ▶ Least restrictive oversight considered to allow the most natural interaction
- ▶ Aware of the law, research and SRT recommendations



# Right to Visitation between parent and child is grounded in Constitution

- ▶ Parents have a “fundamental liberty interest . . . in the care, custody and management of their children” Santosky v. Kramer, 455 U.S. 745, 753 (1981).
- ▶ This right is implicated when the state attempts to limit a noncustodial parent’s visitation with his or her children. Interest of Rhine, 456 A.2d 608, 611 (Pa. Super. 1983).



# Safety and Visitation

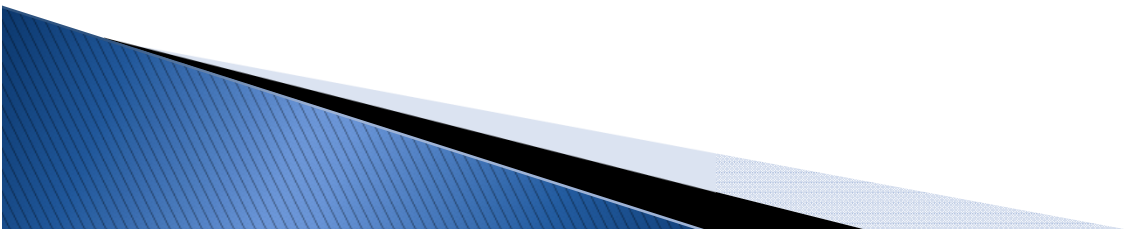
## “Visitation is a Right, not a Privilege”

Courts and child welfare agencies may not suspend parents' visitation with a child unless the party seeking to limit the visitation proves **by clear and convincing evidence** that visitation poses a **“grave threat”** to the child. *In re Rhine*, 310 Pa. Super 275, 456 A.2d 608 (1983),



# Grave Threat...

- ▶ In order to conclude that a “grave threat” exists, the court must find that “**there are no practicable visitation options that permit visitation AND protect the child**” *In re Rhine*, 310 Pa. Super. At 286, 456 A.2d at 614. (1983).






# Parent is incarcerated? ...Same standard

Visitation between a child and **incarcerated parent** should not be denied unless it poses a **grave threat** to the child.

–In re C.J., 729 A.2d 89, 95 (Pa. Super. 1999)



## Case law: Restrictions on Visitation should be sparingly imposed & least intrusive

- ▶ Cases restricting visitation suggest a careful tailoring of restrictions to meet specific circumstances and needs.
  - ▶ “to avoid unduly impinging upon a parent–child relationship, *a court must sparingly impose restrictions on the relationship . . . and must furthermore impose the least intrusive restriction(s) necessary to assure the child’s welfare.* In re Constance W., 506 A.2d 405, 407 (Pa.Super. 1986), quoting Fatemi v. Fatemi, 489 A.2d 798, 802
- 

## Case law: Sets forth different standard if goal in case is not reunification...

- ▶ If goal is not reunification... then the grave threat standard does not need to be met in order to suspend visits, rather the best interest of the child standard is used by the COURT. In the Interest of M.B., 674 A.2d 702, 705–706 (Pa. Super. Ct. 1996)



## DPW Regulations: Affirmative duty to provide visitation

“The County Agency **shall** provide opportunity for visits between the child and parents

- ▶ **as frequently as possible**
- ▶ but no less frequently than once every 2 weeks
- ▶ at a time and place convenient to the parties
- ▶ and in a location that will permit natural interaction” DPW Regulation – 55 Pa. Code § 3130.68(a)



# DPW Regulations: What does “as frequently as possible” mean?

- ▶ Courts and agencies have the responsibility and opportunity to shift their emphasis to the affirmative requirement : to “provide opportunity for visits between the child and parents as frequently as possible”
- ▶ But, what is “*possible*”?
- ▶ What makes something possible or impossible?  
(What types of issues might make more visitation less possible or *impossible* in a case?)





## DPW Regulations: What does “as frequently as possible” mean?

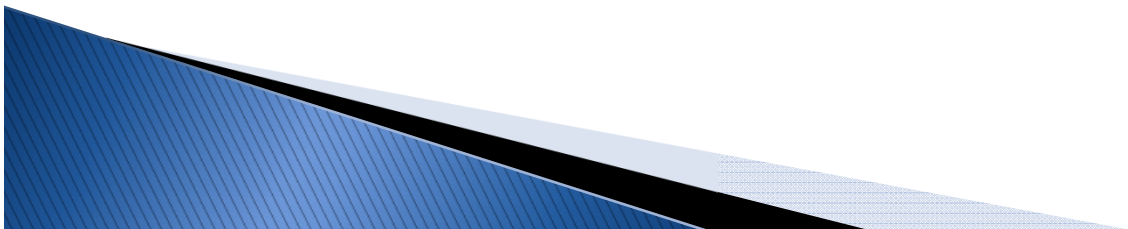
- ▶ Who should determine that? How?  
With what information?  
(Who/what has traditionally been the decider or determining factor of what is “possible” in your county?)



## DPW Regulations: Affirmative duty to provide visitation

“The County Agency **shall** provide opportunity for visits between the child and parents

- ▶ as frequently as possible
  - ▶ but no less frequently than once every 2 weeks
  - ▶ at a time and place convenient to the parties
  - ▶ and in a location that will permit natural interaction”
- DPW Regulation – 55 Pa. Code § 3130.68(a)



# Whose role is it to advocate or ensure that visitation is as frequently as possible?

- ▶ Parent/Lawyer for parent?
- ▶ Child/Lawyer for child / GAL?
- ▶ CYS / CYS lawyer?
- ▶ Court?

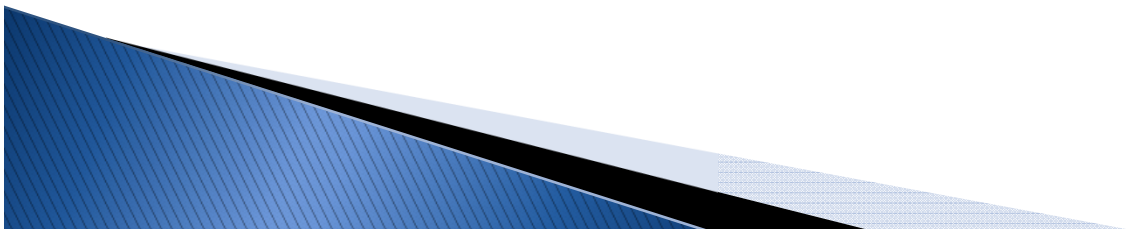


# DPW regulations: Visitation is not earned nor is it a tool for punishing a child or parent

- ▶ Youth in Congregate Care have visitation rights. 55 Pa. Code § 3800.32.
- ▶ Resource family cannot use denial of visitation as a form of punishment. 55 Pa. Code § 3700.63 (b)(7).

***What if Agency suspects \_\_\_\_\_ and wants to reduce/suspend visits?***

–Agency may only reduce visitation without prior court approval if they suspect child is at risk of abuse and file a motion with the court requesting a hearing within 24 hours of the action taken. 55 Pa. Code § 3130.68(b)



# DPW Exceptions to Visitation

- ▶ The county agency shall provide opportunity for visits between the child and parents as frequently as possible ... unless visiting is:
  - (1) Clearly not in keeping with the placement goal.
  - (2) Freely refused in writing by parents.
  - (3) Not in the child's best interest and is limited or prohibited by court order.
- 55 Pa.Code 3160.68



# Right to Visitation Extends beyond parent-child

Federal law and the PA Juvenile Act now require visits between separated siblings:

- The federal Fostering Connections to Success and Increasing Adoptions Act of 2008 requires agencies to make reasonable efforts to provide frequent visitation to separated siblings. 42 U.S.C. § 671(a)(31).
- Act 115 of 2010 amended the Juvenile Act to require visits between separated siblings at least twice a month. 42 Pa. C.S. § 6351(b.1)& (f)(11).



# Right to Visitation Extends beyond parent-child

- The recently-enacted Children in Foster Care Act states that children in placement should be provided with “permission to visit and have contact with family members, including siblings, as frequently as possible,” consistent with their service and permanency plans. 11 P.S. § 2633 (10).





# Visitation is an important component of Reasonable Efforts

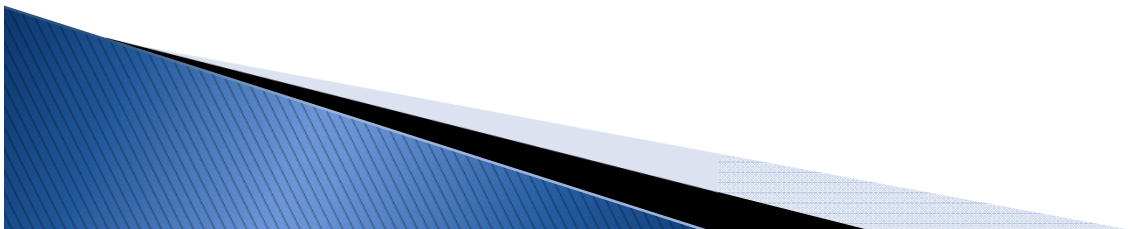
- ▶ Agency required to make “reasonable efforts” to “preserve and reunify” the family
  - 42 Pa. C.S. 6351(b)&(f)
- ▶ “The agency must not only provide preventive and reunification services to families in need, but can be required also to provide services that are generally the province of other agencies.” In the Interest of James Feidler, 573 A.2d 587(Pa. Super. Ct. 1990)



# Court can review visitation as part of Reasonable Efforts

“In order to proceed effectively toward successful reunification in a case involving out of home placement, frequent and meaningful family visitation is essential. Visitation is also a key component of the agency's “reasonable efforts” toward the goal of reunification, which the court must review on an ongoing basis” –

–PA Dependency Benchbook p. 65



# What is reasonable efforts in one case may not be enough in another case

- ▶ Once a week for a 3 month old child?
- ▶ Offering visits only during business hours for a working father?
- ▶ Visits in a location where mother has to take 3 buses?



# Role of advocates: Family needs are dynamic...Advocate Between Hearings

## Trouble shoot between hearings

- ▶ Are there communication or logistics problems that you should address?
- ▶ Have “internal” rules/policies/ expectations about visitation become barriers?
- ▶ Does the visitation plan need changes?
  - Request changes to the plan
  - File a Motion to modify /enforce visits



# Role of Advocates: Advocate at Court Hearings

Be prepared to advocate about visitation changes/issues to support your client

Be aware of issues around testimony, visitation reports and post visitation reactions. Testimony/reports can vary, some issues to consider...

- What was the primary purposes of supervision?
- Were expectations clear to all?
- What was quality and content of feedback provided to parent soon after negative observations?
- Who supervised? skilled for the purpose? potential bias?
- Natural environment for parenting interaction?
- Stating observations or drawing conclusions? (opinions, inferences, conclusions and/or interpreting child behavior)

\*\*Note also person providing care for the child may submit a report to court prior to permanency hearings, including a description of child's experience involving visitation with birth parents, specifying if visitation is supervised or unsupervised and any significant events which occurred. 42 Pa. C. S. § 6336.1



# Important Role of the Court

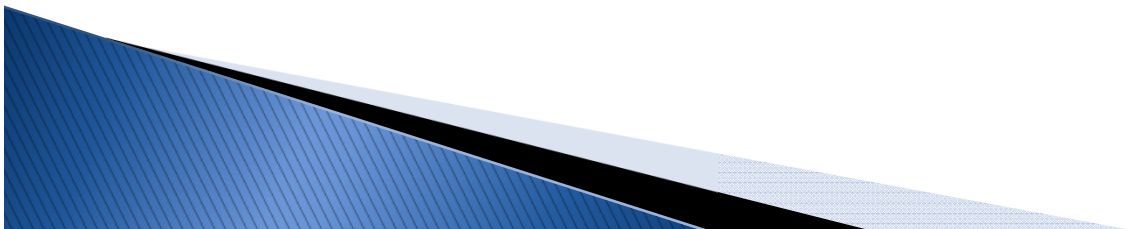
“When the court decides to place a child outside the home, additional steps are needed to **minimize the harm of separation**. The court should set terms for appropriate visitation and parent-child communication. The court may need to **specify services** needed to help the child deal with the trauma of separation and to deal with the child’s other special needs. When the separation of siblings is unavoidable, **visitation and communication between siblings** must be addressed during disposition.” *Resource Guidelines: Improving Court Practice in Child Abuse & Neglect Cases, National Council of Juvenile and Family Court Judges*



# Please review scenario

Based on the information in the scenario...

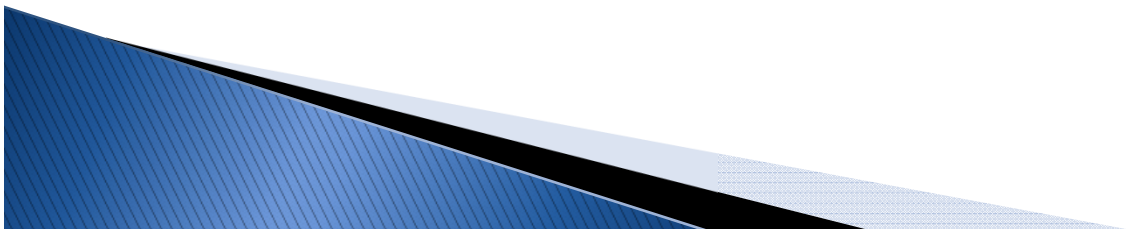
- ▶ What visitation would likely occur in your county between Ms. Jacoby and her children between the removal on Monday and the shelter hearing on Wed?
- ▶ What visitation between shelter hearing on Wed and the adjudicatory hearing in 10 days?





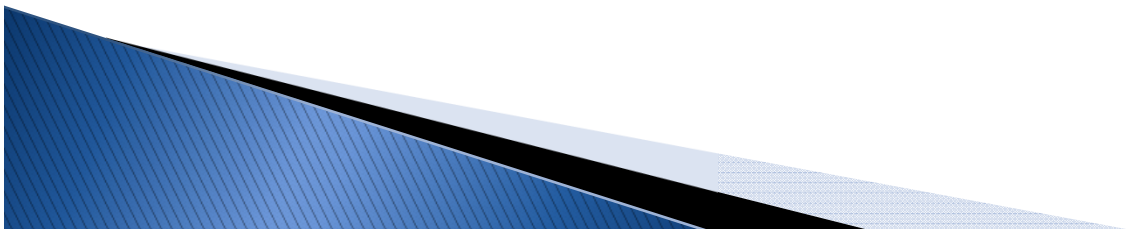
## Visitation should be an important issue at all stages and court hearings...

- ▶ The time between removal and the Shelter hearing and between Shelter and Adjudicatory is not inconsequential for a child that has just been removed.
- ▶ Note that at Shelter Care hearings, the order should specify any orders of visitation. Pa. Juv. Ct. R. § 1242 (e).



# Visitation should be an important issue at all court hearings...

- ▶ Juvenile Court Rules specify that all dispositional Orders should include “a visitation schedule, including any limitations.” Pa. Juv. Ct. R. §1512 (D)(1)(j).
- ▶ *Juvenile Act 6351 (f)(2)* requires that “The appropriateness, feasibility and extent of compliance with the permanency plan developed for the child” be reviewed at each permanency hearing. 42 Pa. C.S. 6351 (f)(2). The Judicial Benchbook, explains this includes a review of compliance and quality of visits. P. 102.



## Courts have broad discretion to issue orders to meet child's best interest:

- ▶ court can issue "orders of disposition best suited to the safety, protection and physical, mental, and moral welfare of the [dependent] child." 42 Pa.C.S.A. § 6351(a), and to impose "conditions and limitations." 42 Pa.C.S.A. § 6351(a)(1), (a)(2), (a)(2.1).
- ▶ The Court has broad discretion to issue orders in the child's best interest. Tameka M., 580 A.2d 750, 753 (Pa. 1990).



# The Content of Orders Matter

- Comprehensive, includes details
- Builds in expansion/ladder (tied to child/family safety and needs, not meeting FSP goals or other carrot/stick)
- Avoids terms like “by discretion of ,” “by agreement of”
- Avoids use of compliance with goals as a proxy for safety,
- Avoids use of visitation as a carrot or stick
- Flexibility, Creativity (ex: must all visits be supervised by agency or can some be supervised by family to increase frequency?)
- Separates visits from medical appts, school events
- Includes visits with siblings
- Considers visits with family even if not a placement resource
- Addresses special situations like DV, Incarceration

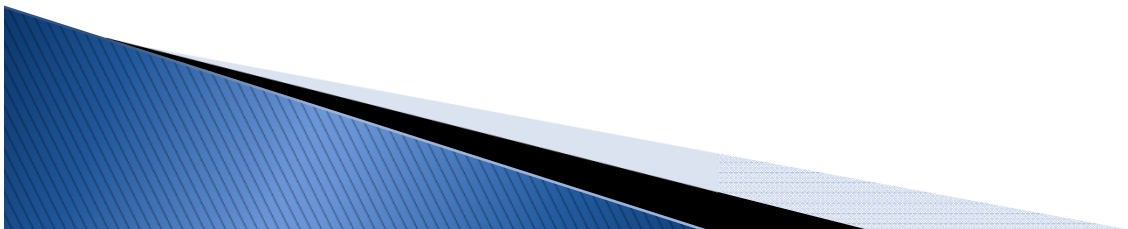


# Is My County There Yet?

1. Are the majority of visits in your county supervised? Do they always start supervised?
2. Does the level of supervision change over time?
3. Is age considered in the visitation planning process?
4. Have you seen a visitation plan, other than what is in the CPP?
5. Do visits occur frequently?
6. Are the majority of visits held in a relative home, community, visitation house or agency-like setting?



# Visitation is Often the Missing Piece to Connection and Well-Being for Children



# 10 Best Practice Key Components

1. Strengths Based and Empowerment Driven
2. Assessment of Risk and Safety
3. Collaboration of Teams
4. Visitation Plan
5. Consideration of Frequency and Duration
6. Developmental Needs Considered
7. Location
8. Planning and Managing Reactions
9. Ensuring Connections are maintained
10. Careful Consideration of Oversight





Who shared these moments in your life?



# Critical Components

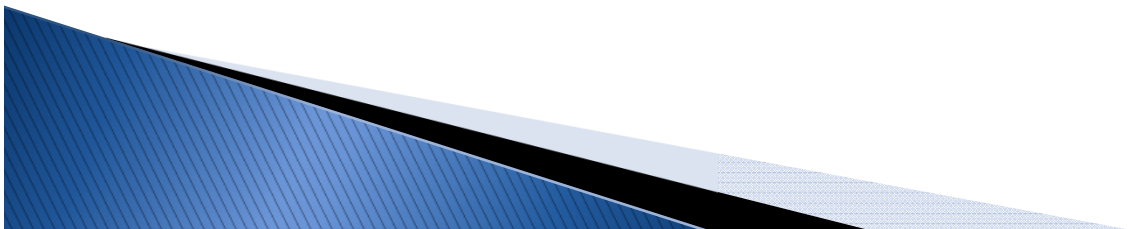
Risk and Safety  
Frequency and Duration  
Location  
Managing Reactions  
Visitation Oversight  
Visitation Plan



# Critical Components

## Assessment of Risk and Safety

- A careful assessment of risk and safety is done from the initial placement
- What must change for the child to be safe during visits
- Risk and safety as foundation for visitation planning, oversight, frequency, location and activities



# Case Scenario

Based on the information in the scenario...

- How often would Claire, John and Lisa visit their parents in your county? Why?
- Where would visitation take place for Claire, John and Lisa in your county? Why?



# Critical Components

## Frequency and Duration *(refer to Guide)*

- Frequent visits = Decreased trauma
- Frequent visits = Higher education scores and less negative behaviors in school
- Frequent visits = Motivated Parent
- Frequent visits = expedited reunification and fewer days in care
- Infant, toddler and early latency years need more frequency over duration





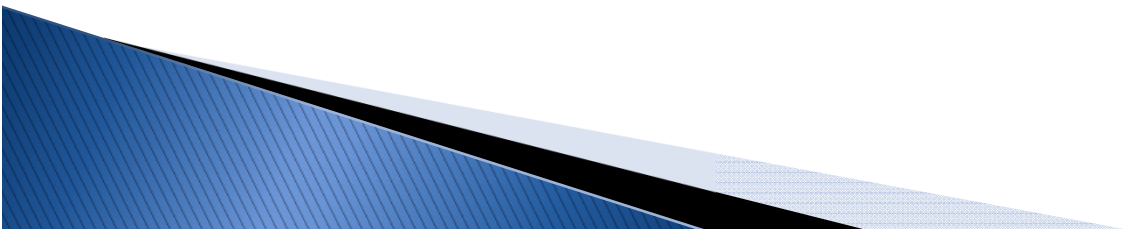
“Mom who???”



# Critical Components

(Frequency and Duration Continued)

- Middle and High School Children need consideration of Duration over Frequency
- Consideration give to education, developmental, emotional and cognitive needs





# Critical Components

## Location of Visits

- Consider travel distance and age of child
- Least restrictive and most family-like setting is considered first
- Family's home
- Relative's home
- Foster Home
- Community Setting
- Visitation House
- **\*\*Agency – should only be used when the safety threat is severe**



If you were a kid, where would you rather go?



# Critical Components

## Managing Reactions

*Each visit of a child in out of home placement begins with a reunion and end with another separation/loss (visitation manual)*

- Feelings before, during and after
- Parent who no-shows.....Doesn't care or Hurts too much to say goodbye over and over
- Child who acts out before and after a visit...Fear of their parent or desire to be with their parent
- Lack of interaction between an older child and parent during visit....lack of bonding or unclear on how they are allowed to act
- We all struggle to feel and act "on cue"
- Services to Assist in Managing Reactions



# Critical Components

## Oversight

- Most natural interaction
- Least restrictive
- Ensuring safety
- Remember the presenting threat that caused removal
- Be prepared for natural reactions by children and parents to unnatural environments
- Visitation is a very important time for families and their time together should be respected
- Visitation oversight at initial removal may look different on day 30, 60, 90, etc.



# Critical Components

Engage extended family and kin support.....



# Critical Components

(Oversight continued)

Six Key Operating Principles for Determining Oversight

Oversight vs. Support Matrix:

- Supervised
- Unsupervised
- Either with Support





# Critical Components

(Oversight continued)

- Safety for Removal does not always equal safety for visits
- Safety, Parental Capacities and Oversight
- Phases for oversight to be evaluated:
  - Initial Phase – Assessment and goal planning
  - Intermediate Phase – Parent working to meet the goals
  - Transition Phase – Reunification underway and/or accomplished

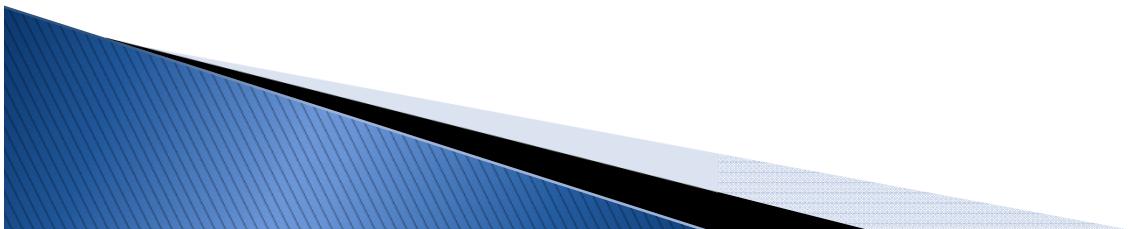




# Critical Components

## Visitation Plan

- Visitation planning and Family Group Decision Making
- Always Developed with the Family
- Plan should be fluid
- Reviewed and Discussed with Client
- Provided to the Court
- Reviewed at every hearing and changed when appropriate (Dependency Benchbook)



# Critical Components

*(Visitation Plan Continued)*

A Visitation Plan should Include:

- Purpose
- Expectations/Conditions
- Location
- Frequency
- Duration
- Persons permitted to participate
- Team members roles and responsibilities
- Transportation
- Oversight requirements
- Creative activities permitted



# What Does the Judge Want to Know?



# What Does The Judge Want To know?

- ▶ Have you differentiated visitation as to connection and not just permanency?
- ▶ Do you have a visitation plan
- ▶ Are visits occurring in the most family-like, least restrictive location
- ▶ Are visits occurring as frequently as possible
- ▶ Have you determined the most appropriate oversight based on a safety assessment for visitation



# What Does The Judge Want to Know?

- ▶ Have you considered age and developmental needs when determining frequency and duration
- ▶ Who is important to the child and will they get to see those family members
- ▶ Has there been progress since the last hearing so that visitation plan can be enhanced to less restriction
- ▶ Have you made “reasonable efforts” to maintain the parent/child bond and consider the child’s well-being



# What is Visitation and Why Should We Do It?

## Because Very Simply, It Is About a Child's Well-Being

