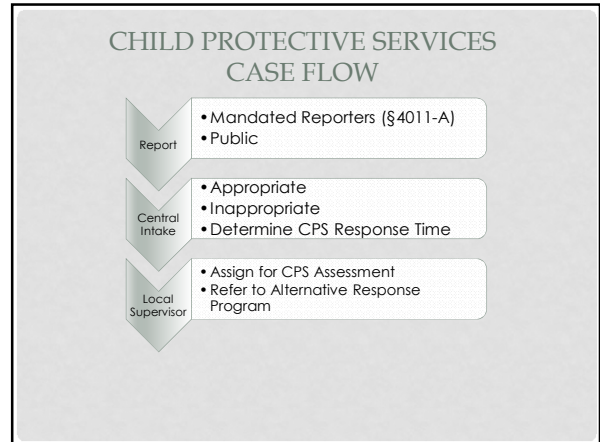




**NAVIGATING THE MINEFIELD OF THE  
LEGAL SYSTEM IN CHILD PROTECTION**

TRACY LEIGH, ESQ., COORDINATOR OF GAL SERVICES  
BRIANA WHITE, ESQ., ASSISTANT ATTORNEY GENERAL



## REPORT

- Child Protective Intake (24 hr): **1-800-452-1999**
  - Approximately 50,000 calls come into the hotline per year
    - 85 – 90% are child welfare related
    - The remain 10 – 15 % are after-hours Adult Protective reports
  - Only 927 child protection cases were filed in 2016.
- Mandatory reporters & optional report
  - Mandatory (acting in professional capacity)
    - 22 M.R.S. § 4011-A(1)(A)(1 – 32)
  - Optional: Any person may make a report if that person knows or has reasonable cause to suspect that a child has been or is likely to be abused or neglected or that there has been a suspicious child death.
    - 22 M.R.S. § 4011-A(3)

## WHAT DO WE REPORT TO D.H.H.S.?

- Standard for reporting: **reasonable cause to suspect child has been or is likely to be abused or neglected**
- **Types of Child Abuse:**
  - Physical abuse or risk of serious injury
  - Sexual abuse or exploitation
  - Emotional abuse
  - Abandonment
  - Deprivation of adequate food, clothing, shelter, care or supervision ("neglect")

## SIGNS TO LOOK FOR (AS PROFESSIONALS WORKING WITH THE FAMILY)

- Disclosures of abuse or neglect
- Physical signs (bruises, burns, injuries)
- Changes in behavior (regression, acting out, sexualized behaviors, violence toward others including animals)
- Environment: exposure to domestic violence, drug/alcohol use, mental health

## INTAKE'S ROLE AND RESPONSIBILITIES

Structured Decision-Making (SDM)

1. Determine whether to accept a report as appropriate for assessment.
2. If appropriate → determine the response time for CPS to begin assessment.

.... So how does one determine "appropriateness"?

### INTAKE DECISION-MAKING

**Step #1** → Preliminary Screening:

- Automatic screen out → Is there a child victim under the age of 18?

**Step #2** → Appropriateness of Report for CPS Response

- Screening criteria checklist
- Intake screening decision
- Screen out (inappropriate for assessment)
  - Insufficient information to identify or locate child/family
  - Another agency has jurisdiction (law enforcement/probation/court)
  - Historical information only
- In-person response required

### INTAKE DECISION-MAKING

**Step #3** → Response Priority (CIP/ARP/Prevention)

- **Maximum time frames:**
  - **Within 24 hours from report (emergency report)** → first contact with critical case members and home visit to determine preliminary safety decision.
    - CPS must assign and assess.
  - **Within 72 hours from report (regular report)** → first contact with critical case members and home visit to determine preliminary safety decision.
    - CPS may screen out to Alternative Response Program.

### DISTRICT OFFICE DECISION

1. CIP/ARP Referral
  - Only possible on 72 hour response
  - Known as "straight referral"
  - Report closed
2. Assign for CPS Assessment
  - 35 day assessment begins

### CPS ASSESSMENT

CPS social worker will respond (initial responsibilities):

- **Prior to going out in the field:**
  - Assignment sheet discussion with supervisor & identify alternative hypotheses
  - Share report with DV liaison as appropriate
  - Review of CPS history
  - SBI/BMV/ SOR – checks need to be completed and summarized in MACWIS
  - Police records – should be gathered and summarized in MACWIS
  - ICWA information – if identified as an ICWA case from a tribe in Maine, contact the tribe and coordinate as applicable
  - Contact DA's office and coordinate with law enforcement – as appropriate
  - Contact with referent – for follow-up clarification regarding original report
- **Within 72 hours:**
  - Parental notification – document in narrative and if not notified document why
  - Critical case members interviewed
  - 72 hour response time met for all victims, parent caregiver, and alleged abuser(s)
  - Observe home environment/conditions
  - Safe sleep checklist and Period of Purple Crying
  - Preliminary Safety Decision (PSD)

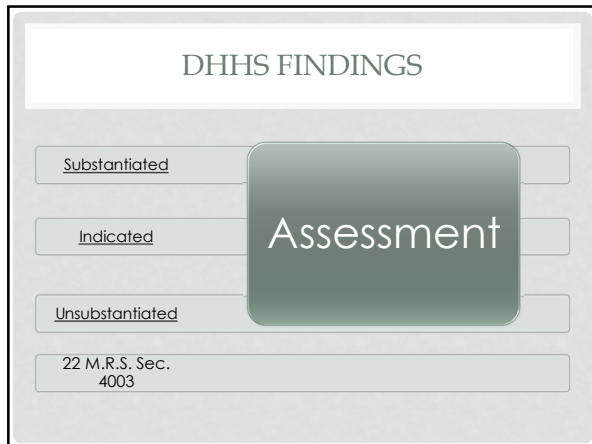
### PRELIMINARY SAFETY DECISION

- Is there immediate risk?
  - If so, can we safety plan?
    - If we safety plan a child outside of the home because of an unsafe caregiver, or if the safety impacts parental rights or responsibilities, the Department should make all reasonable efforts to hold a Facilitated Family Team Meeting within 5 working days.
  - If so, but DHHS cannot safety plan:
    - Does the danger rise to immediate risk of serious harm requiring a Preliminary Protection Order to ensure child safety?
- If not – DHHS continues 35 day assessment

### 35 DAY ASSESSMENT

**Within 35 days:**

- All other case members, including other household members and children who are in the home part time
- Custody arrangements
- Continued efforts to locate non-custodial/absent parents
- UNCOPE & substance use/abuse assessed
- Collateral contacts
- Relative resource narrative
- Records requested
- Recorded interviews downloaded to the V drive
- 3 CPS pamphlets provided
- Contact Animal Welfare as necessary
- Profile window - update if needed



### FINDINGS AND OUTCOMES

- Substantiated:
  - Closed
  - Referral to ARP
  - Service case with DHHS
    - Typically lasts 3 to 6 months
- Indicated:
  - Closed
  - Referral ARP
- Unsubstantiated:
  - Closed
  - Referral to ARP

### FAMILY TEAM MEETINGS

- Participants
  - Parents
  - Child(ren)
  - Formal and informal supports
    - Service providers
    - Medical professionals
    - School staff
    - Family friends
    - Neighbors
    - Religious supports
- Goal – Anytime you can empower the family to make their own decisions, you increase the sustainability of any developed plan and decrease the trauma within the family unit.

### WHEN SAFETY PLANS FAIL .... OR AREN'T POSSIBLE

- Safety planning and implementation of a created safety plan is really the mechanism by which the Department is able to gauge child safety while completing their assessment.
- Safety plans are not meant to be long-term or permanent solutions, especially if they alter or affect the composition of the family or parental rights and responsibilities.

### INTERIM CARE - EMERGENCY

- "6 hour hold" authorization:
  - 15 M.R.S. sec. 3501
  - No court order needed – law enforcement may place a child in interim care while the Department seeks an emergency Preliminary Protection order
  - Grounds: child lost, abandoned, endangered, runaway
  - Duration: 6 hours

### CHOICE OF PETITION

Jeopardy? (Contrary to welfare but child stays in parent's custody)

Jeopardy PLUS Immediate Risk of Serious Harm? (Contrary to welfare and child removed immediately)

### DEFINITIONS - TO NAME A FEW

- Abuse or neglect – 4002 (1)
- Abandonment – 4002 (1-A)
- Aggravating factor - 4002 (1-B)
- Jeopardy – 4002 (6)
- Person responsible for the child - 4002 (9)
- Serious harm - 4002 (10)
- Parental unfitness (TPR) 4055 (1)(B)(2)(b)
- Best interest (TPR) – 4055 (2)

### GUARDIANS AD LITEM

- A guardian ad litem (GAL) is a person appointed by a judge to represent the best interest of one or more children in a court proceeding.
- Judges must appoint a GAL in all child protection cases;
- These GALs must either be licensed Maine attorneys or Court Appointed Special Advocate (CASA GALs).

### GUARDIANS AD LITEM

- All GALs must abide by the Maine Rules for Guardians ad Litem;
- M.R.G.A.L. 4(c) governs Court Appointments and Duties in Title 22 – Protective Custody matters.

### RULE 4 - COURT APPOINTMENTS AND DUTIES 22 MATTERS

- Guardian ad litem appointment orders entered pursuant to 4 M.R.S. § 1556 and 22 M.R.S. § 4005 shall be issued on a court-approved form and shall specify the terms and conditions of the guardian ad litem's appointment as stated in Title 22 and in these Rules.

### RULE 4 - COURT APPOINTMENTS AND DUTIES 22 MATTERS - INVESTIGATION

- All GALs in all Title 22 matters must investigate, when possible and appropriate:
  - Review of relevant mental health records and materials;
  - Review of relevant medical records;
  - Review of relevant school records and other pertinent materials;
  - Interviews with the child with or without other persons present; and,
  - Interviews with parents, foster parents, teachers, caseworkers, and other persons who have been involved in caring for or treating the child.

### RULE 4 - COURT APPOINTMENTS AND DUTIES 22 MATTERS - OTHER DUTIES

1. Shall face-to-face contact with the child seven days after appointment, and at least once every three months thereafter;
2. File a GAL report once every six months;
3. Act in the best interest of the child;
4. Make the wishes of the child known to the court, even if he/she disagrees with those wishes;
5. File necessary court motions to assist the court in acting in a child's best interest;
6. Participate in hearings;
7. Protect the child as a witness;
8. Make recommendations to the court and advocate for services to protect a child's best interest;
9. Participate in the development and implementation of plans or orders that affect the best interest of the child;
10. Monitor reunification plans.

**RULE 1 - AUTHORITY, SCOPE, GOALS, AND DEFINITIONS**

1. Represent consistently the best interest of the child and provide information to the court that assists the court in determining the best interest;
2. Understand and uphold the law and court orders related to the appointment order;
3. Maintain the highest standards of professionalism, cultural sensitivity and ethics;
4. Recognize timely resolution serves the best interest of the child and the child's need for stability;
5. lalalala

**RULE 1 - AUTHORITY, SCOPE, GOALS, AND DEFINITIONS**

5. Within the scope of authority defined by statute or court order complete a thorough, timely, appropriate and fair investigation;
6. Communicate in a developmentally appropriate way with the child;
7. Make well-reasoned and factually based written recommendations regarding the best interest of the child;
8. Include parties in the investigation, use effective communication techniques, recognize limitations that may be imposed by financial resources of the parties, and be aware of the cultural and socioeconomic status of the parties; and
9. Complete assignments and written reports in a timely manner and communicate effectively with the court in motions, reports, recommendations and testimony.

**RULE 5 - STANDARDS OF CONDUCT**

- Maintain "**independent representation**" of the best interest of the child
- Perform GAL duties faithfully
- Act as a quasi judicial officer, "respecting" Judicial Canon 2.2, "perform all judicial and administrative duties promptly, fairly and competently"
- Canon 2.2: "A Judge shall uphold and apply the law, and shall perform all judicial and administrative duties **promptly, fairly and competently.**" An error of law is not a violation of the Canons, unless willful or repeated disregard of "explicit requirements of the law."

**GAL REPORTS**

- GALs must file a report at least once every six months.
- GAL reports may contain reliable hearsay, but it is important to source all information in reports.
- The court may admit the written report into evidence, 22 M.R.S. § 4005(1)(D); *In re Chelsea C.*, 2005 ME 105.

**Law & Procedure**

**CASE MANAGEMENT CONFERENCE**

Petition filed



CMC

- Within 30 days of petition
  - Schedule hearing
  - Identify witnesses
  - Establish undisputed facts and agreed dispositions
  - Schedule settlement conference

**Law & Procedure**

**JEOPARDY HEARING**

Petition filed



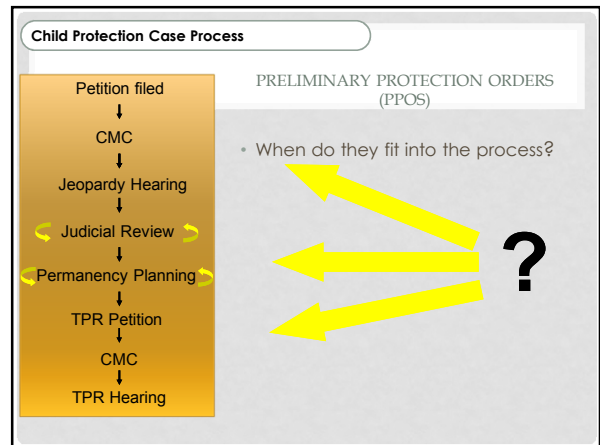
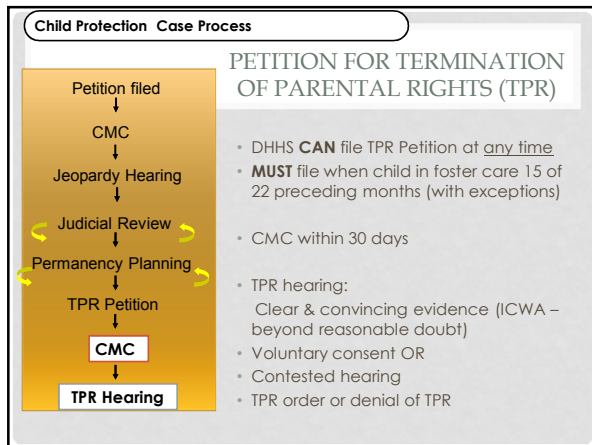
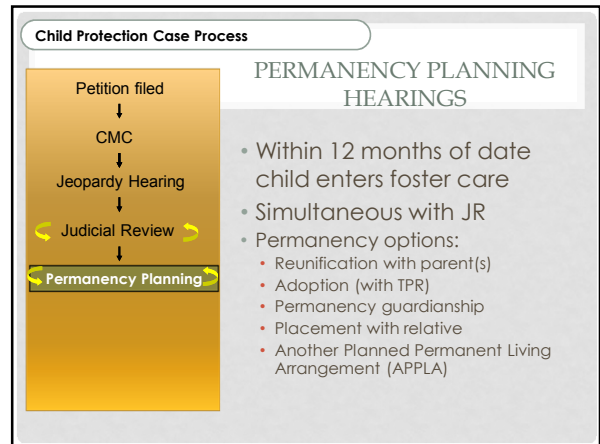
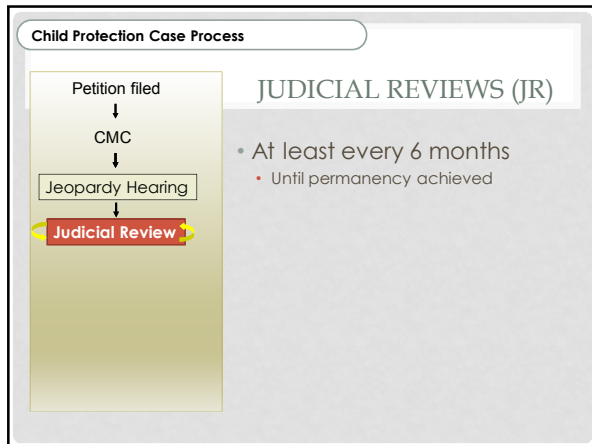
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Jeopardy Hearing

- Within 120 days of petition
- Evidentiary hearing – witnesses, exhibits
- Preponderance of Evidence (ICWA – Clear & Convincing)



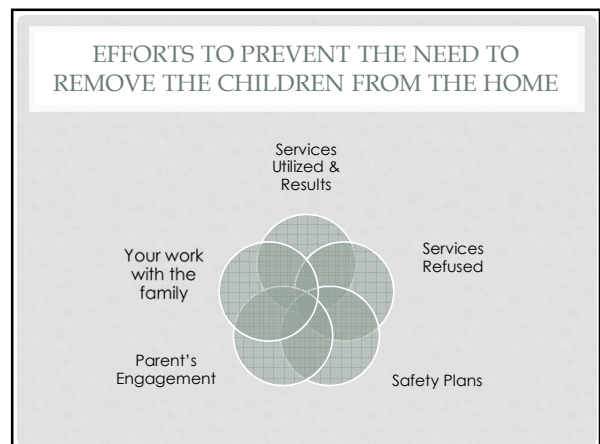


**WHY THESE TIME FRAMES?**

• In the words of the Maine Supreme Court:

“ In the lives of pre-adolescent children . . . more than two years, is an eternity.”

*In re Thomas H.*, 2005 ME 123, ¶133.



### WITNESS PREP - THE BASICS

### MORE BASICS

### IT'S O.K. TO SAY....

I don't know  
I don't remember

### COURT HAS ITS OWN RULES

Speak only when you are asked. Don't "help."

Stand when you address the court – unless you are on the witness stand.

No second-guessing any questions; refrain from conclusions... just state the facts you know.

### LET'S TALK ABOUT THE DON'TS IN PRACTICE

"Maybe that isn't the way it happened, but that's the way it should have happened, and that's the way I'm going to remember it happened."

"I know nothing about the subject, but I'm happy to give you my expert opinion."

### SUBPOENAS

- Timing
- Testimony/documents
- Objections
- How to narrow time frame for testimony?
- Prepping for hearing after subpoena with issuing party

## RULES OF EVIDENCE/OBJECTIONS

- You are either a:
  - 1. Lay witness
  - 2. Expert witness
- Personal knowledge – you must have it!
  - You observed something and you have a present recollection of what you observed.
- Witness sequestration
- Refreshing recollection
- Impeachment
- Relevance
- Hearsay
- Judge can ask their own questions of the witness!

## PRIVILEGES/CONFIDENTIALITY

- Privileged or confidential communications abrogated (22 M.R.S. § 4015)
  - The husband-wife and physician and psychotherapist-patient privileges under the Maine Rules of Evidence and the confidential quality of communication under Title 16, section 53-B; Title 20-A, sections 4008 and 6001, to the extent allowed by applicable federal law; Title 24-A, section 4224; Title 32, sections 7005 and 18393; and Title 34-B, section 1207, are abrogated in relation to required reporting, cooperating with the department or a guardian ad litem in an investigation or other child protective activity or giving evidence in a child protection proceeding. Information released to the department pursuant to this section must be kept confidential and may not be disclosed by the department except as provided in section 4008.
  - Statements made to a licensed mental health professional in the course of counseling, therapy or evaluation where the privilege is abrogated under this section may not be used against the client in a criminal proceeding. Nothing in this section may limit any responsibilities of the professional pursuant to this Act.
- HIPPA – Contact your friendly AAG ASAP!