

Child Safety Decision-Making

Eric Calvino

Waukesha County Department of Health and Human
Services

Molly Jasmer

Attorney

October 2, 2020

Goal

Educate court, child welfare, and legal professionals on child safety, create a common language across disciplines, and implement consistent child safety practices across the state.

Objectives

Participants will be able to:

- * Recognize child safety is an issue to be assessed and addressed throughout the entirety of the case.
- * Define the terms and components of the safety equation.
- * Engage in more meaningful discussions at hearings and with caseworkers.
- * Identify changes that need to be made by parents for the child to remain in or return to the home.

Child Welfare Systemic Issues

- * CHIPS cases do not fit typical adversarial nature of other court systems.
- * Serious decisions are made with potential for unintended consequences.
- * Social workers, attorneys, and court speak different languages.

Child Welfare Systemic Issues

INSUFFICIENT INFORMATION

=

POOR DECISIONS

=

POOR OUTCOMES

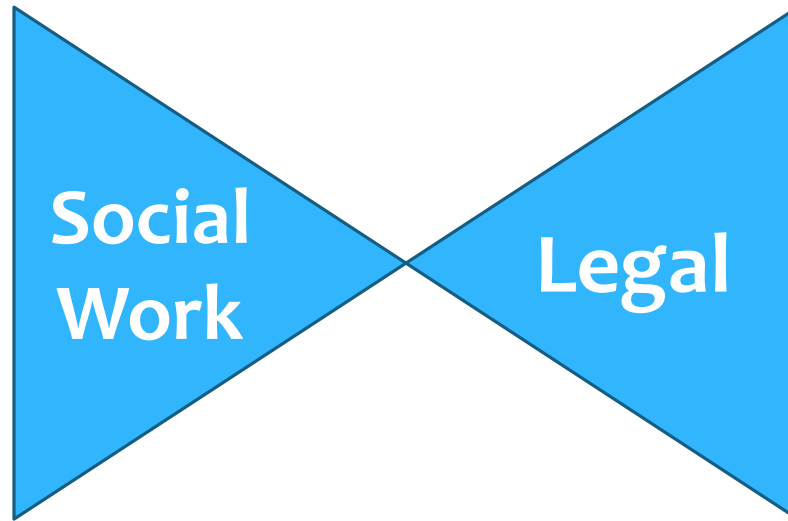
Child Welfare

Two Different Systems

Social Work

Guiding Principles:

- Initial Assessment Standards
- Ongoing Standards
- Safety Intervention Standards



Legal

Guiding Principles:

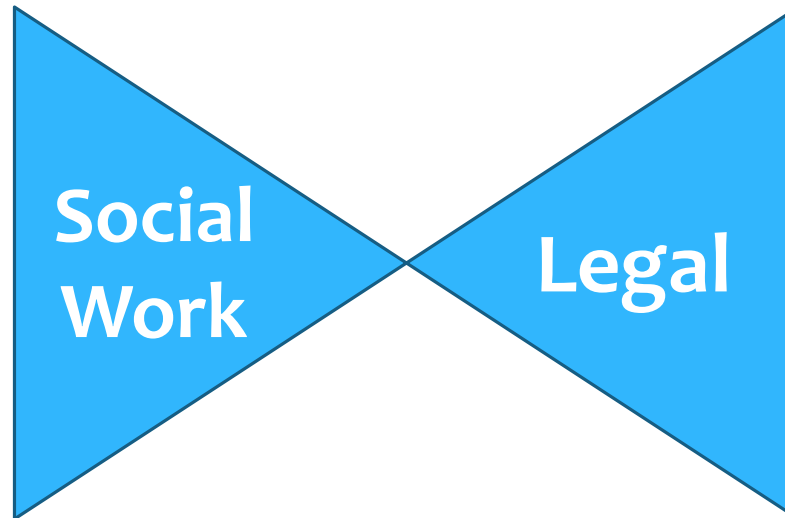
- Chapter 48
- Case Law
- Federal law
- Due process

Two separate systems that must work together.

The Focus of Two Systems

Social Work Focus

- * Safety
- * Behavior Change
- * Permanence
- * Well-Being



Legal Focus

- * Jurisdiction
- * Contrary to the welfare/reasonable efforts
- * Best Interests

Best Interests

In the Interest of Caryn A.-G., 228 Wis.2d 658 (Court of Appeals 1999)

- * The court shall determine a placement dispute between a parent and a third party so as to promote the best interests of the child.
- * Safety is not the primary emphasis that the court should consider when assessing best interests. Safety and best interests are not synonymous.

In the Interest of Nadia S., 219 Wis.2d 296 (WI Supreme Court 1998)

- * Recognized parents retain a constitutional right to raise children and those rights don't evaporate because they have not been model parents, but the conditions at disposition reflect court's assessment of the changes needed at the time of disposition.
- * Compliance with Dispositional Order Conditions of Return is not dispositive of the child's best interests.

Child Welfare Guides

Social Work

CHILD PROTECTIVE SERVICES SAFETY INTERVENTION STANDARDS

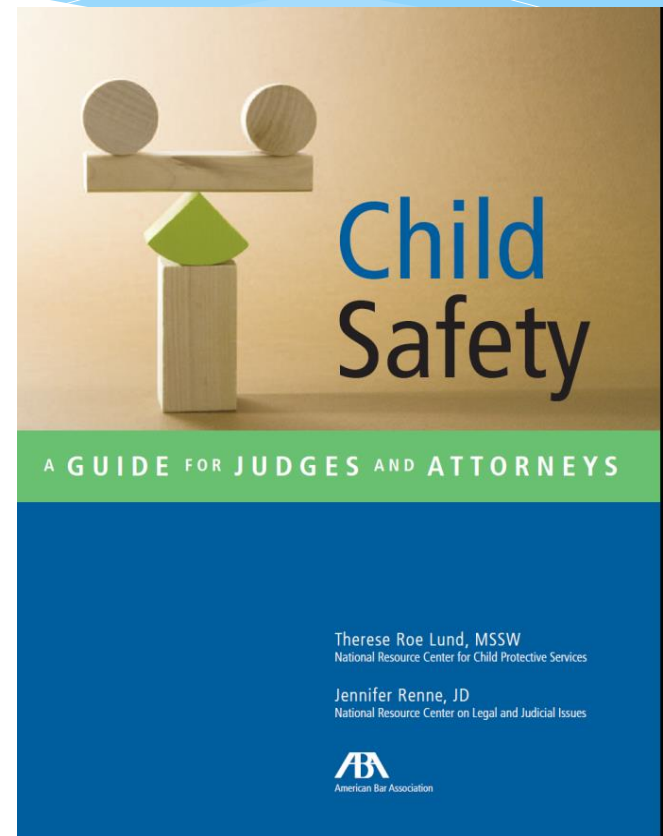
Issued: June 2016



Division of Safety and Permanence

<https://dcf.wisconsin.gov/files/cwportal/policy/pdf/safety-intervention-standards.pdf>

Legal



Therese Roe Lund, MSSW
National Resource Center for Child Protective Services

Jennifer Renne, JD
National Resource Center on Legal and Judicial Issues



https://www.americanbar.org/content/dam/aba/administrative/child_law/ChildSafetyGuide.authcheckdam.pdf

Safety Intervention Standards

Decisions and actions required through CPS involvement with the family to:

- * Assure an unsafe child is protected.
- * Respect the constitutional rights of each family member.
- * Utilize the least intrusive intervention to keep a child safe.

Purpose of Structured Decision-Making Framework

- * Eliminate gut feelings and hunches, and it helps to professionalize the work
- * Promote consistent practice in each county and across the state
- * Inform professional judgment through analytical Process
- * Provide common language across disciplines

Key Concepts in CPS Safety Intervention

- Present Danger Threats
- Impending Danger Threats
- Vulnerable Child
- Parental Protective Capacities
- Protective & Safety Plan

Child Safety Decision-Making Safety Equation

Present or Impending Danger

+ Vulnerable Child

- Sufficient Parental Protective Capacities

= Unsafe Child

Present Danger Threat

- * Immediate, significant and clearly observable family condition that is actively occurring or “in process” of occurring at the point of contact with a family and will likely result in severe harm to a child.

Present Danger Threats

Benchcard B1



Present Danger Threats

An immediate, significant and clearly observable family condition that is actively occurring or "in process" of occurring at the point of contact with a family and will likely result in severe harm to a child.

Present Danger Threats – Maltreatment

The child is currently being maltreated at the time of the report or contact

The child is being maltreated at the time the report is being made, maltreatment has occurred the same day as the contact, or maltreatment is in process at the time of contact.

Severe to extreme maltreatment of the child is suspected, observed, or confirmed

This includes severe or extreme forms of maltreatment and can include severe injuries, serious unmet health needs, cruel treatment, and psychological torture.

The child has multiple or different kinds of injuries

This generally refers to different kinds of injuries, such as bruising and burns, but it is acceptable to consider one type of injury on different parts of the body.

The child has injuries to the face or head

This includes physical injury to the face or head of the child alleged to be the result of maltreatment.

The child has unexplained injuries

This refers to a serious injury which parents/caregivers and others cannot or will not explain. It includes circumstances where the injury is known to be non-accidental and maltreater is unknown.

The maltreatment demonstrates bizarre cruelty

This includes such things as locking up children, torture, extreme emotional abuse, etc.

The maltreatment of several victims is suspected, observed, or confirmed

This refers to the identification of more than one child currently being maltreated by the same caregiver.

The maltreatment appears premeditated

The maltreatment appears to be the result of a deliberate, preconceived plan or intent.

Dangerous (life threatening) living arrangements are present

This is based on specific information indicating that a child's living situation is an immediate threat to his/her safety. This includes serious health and safety circumstances such as unsafe buildings, serious fire hazards, accessible weapons, unsafe heating or wiring, etc.

Present Danger Threats – Child

Parent's viewpoint of child is bizarre

This refers to an extreme viewpoint that could be dangerous for the child, not just a negative attitude toward the child. The parent's perception or viewpoint toward the child is so skewed and distorted that it poses an immediate danger to that child.

Child is unsupervised and unable to care for self

This applies if the child is without care. This includes circumstances where an older child is left to supervise younger children and is incapable of doing so.

Child needs medical attention

This applies to a child of any age. To be a present danger threat of harm, the medical care required must be significant enough that its absence could seriously affect the child's health and well-being. Lack of routine medical care is not a present danger threat.

The child is profoundly fearful of the home situation or people within the home

"Home situation" includes specific family members and/or other conditions in the living arrangement. "People within the home" refers to those who either live in the home or frequent the home so often that a child routinely and reasonably expects that the person may be there or show up.

The child's fear must be obvious, extreme, and related to some perceived danger that the child feels or experiences. This threat can also be present for a child who does not verbally express fear but their behavior and emotion clearly and vividly demonstrate fear.

Impending Danger Threat

- * A foreseeable state of danger in which family behaviors, attitudes, motives, emotions and/or situations pose a threat which may not be currently active, but can be anticipated to have severe effects on a child at any time in the near future and requires safety intervention.

Impending Danger Threats

Benchcard B2

Observable

**Severe
Consequences**



Vulnerable

Out of Control

BENCHCARD B2

Impending Danger Threats

A foreseeable state of danger in which a family behavior, attitude, motive, emotion or situation that can be anticipated to have severe effects on a child at any time in the near future and requires safety intervention.

- Specific and Observable
 - Imminent
 - Out-of-control
 - Severe consequences
-
- No adult in the home will perform parental duties and responsibilities.
 - One or both parents/caregivers are violent.
 - One or both parents'/caregivers' behavior is dangerously impulsive or they will not/cannot control their behavior.
 - One or both parents/caregivers have extremely negative perceptions of the child.
 - Family does not have or use resources necessary to assure the child's basic needs.
 - One or both parents/caregivers fear they will maltreat the child and/or request placement.
- One or both parents/caregivers lack parenting knowledge, skills or motivation necessary to assure the child's basic needs are met.
 - One or both parents/caregivers intend(ed) to seriously hurt the child.
 - The child has exceptional needs, which the parents/caregivers cannot or will not meet.
 - Living arrangements seriously endanger the child's health.
 - The child is profoundly fearful of the home situation or people within the home.

Present and Impending Dangers

Present Danger Threats

- Now
- Immediate
- Requires Protective Plan

Impending Danger Threats

- Near Future
- Imminent
- Requires Safety Plan

Or if unable to plan collaboratively with the family – placement would be required as a response to danger threats



What Characteristics Does a Vulnerable Child Have?

Child Vulnerability Characteristics

Benchcard C

- * Age
(0-6 Always Vulnerable)
- * Powerless
- * Invisible
- * Physical Disability
- * Mental disability
- * Provoking Behaviors
- * Illness
- * Defenseless
- * Non-assertive

Vulnerability

A child is vulnerable when they lack the capacity to self-protect. This nonexhaustive list are issues that determine or increase a child's vulnerability:

- A child lacks capacity to self-protect
- A child is susceptible to harm based on size, mobility, social/emotional state
- Young children (generally 0-6 years of age)
- A child has physical or mental developmental disabilities
- A child is isolated from the community
- A child lacks the ability to anticipate and judge presence of danger
- A child consciously or unknowingly provokes or stimulates threats and reactions
- A child is in poor physical health, has limited physical capacity, is frail
- Emotional vulnerability of the child
- Impact of prior maltreatment
- Feelings toward the parent – attachment, fear, insecurity or security
- Ability to articulate problems and danger

Questions the judge can ask.

- Has the child demonstrated self-protection by responding to these threats? (Self-protection means recognizing danger and acting to secure safety for one's self; it is not calling 911, CPS, or the school *after* an event.)
- Besides defending herself from threats, can the child care for her own basic needs?
- How does the judge find this child *not vulnerable* given the threats?
- Is vulnerability of all children, not just the victim, considered?
- Are there issues preventing this child from self-protecting?
- What plan would this child carry out to protect himself from threats?
- Can the child describe how she will know a threatening situation is developing, rather than recognizing it once it is happening?
- What has been learned about this child's functioning? How comprehensive is the information? How much time did the worker or other parties talk to the child about self-protecting? Is there information about this family and the way threats operate arguing against the child self-protecting?
- Are there ways the child behaves and responds, that escalate the threats to the child?



What Characteristics Does a Protective Parent Have?

Parent Protective Capacities

Benchcard D

* **Cognitive**

- * Knowledge, understanding, and perceptions contributing to protective vigilance.
- * Parent's ability to recognize and be responsible for the child.

* **Behavioral**

- * Actions, activities, and performance that result in protective vigilance
- * Parent's ability recognize a dangerous situation AND act

* **Emotional**

- * Feelings, attitudes and identification with the child and motivation resulting in protective vigilance
- * Parent-child attachment and parent's emotional strength

Protective Capacities

Cognitive Protective Capacities

Cognitive protective capacity refers to *knowledge, understanding, and perceptions* contributing to protective vigilance. Although this aspect of protective capacities has some relationship to intellectual or cognitive functioning, parents with low intellectual functioning can still protect their children. This has to do with the parent recognizing she is responsible for her child, and recognizing clues or alerts that danger is pending.

Cognitive protective capacities can be demonstrated when the parent:

- articulates a plan to protect the child
- is aligned with the child
- has adequate knowledge to fulfill care-giving responsibilities and tasks
- is reality oriented; perceives reality accurately
- has accurate perceptions of the child
- understands his/her protective role
- is self-aware as a caregiver

Behavioral Protective Capacities

Behavioral protective capacity refers to *actions, activities, and performance* that result in protective vigilance. Behavioral aspects show it is not enough to know what must be done, or recognize what might be dangerous to a child; the parent must *act*.

Behavioral protective capacities can be demonstrated when the parent:

- is physically able
- has a history of protecting others
- acts to correct problems or challenges
- demonstrates impulse control
- demonstrates adequate skill to fulfill care-giving responsibilities
- possesses adequate energy
- sets aside her/his needs in favor of a child
- is adaptive and assertive
- uses resources necessary to meet the child's basic needs

Emotional Protective Capacities

Emotional protective capacity refers to *feelings, attitudes and identification* with the child and motivation resulting in protective vigilance. Two issues influence the strength of emotional protective capacity: the attachment between parent and child, and the parent's own emotional strength.

Emotional protective capacities can be demonstrated when the parent:

- is able to meet own emotional needs

- is emotionally able to intervene to protect the child
- realizes the child cannot produce gratification and self-esteem for the parent
- is tolerant as a parent
- displays concern for the child and the child's experience and is intent on emotionally protecting the child
- has a strong bond with the child, knows a parent's first priority is well-being of the child
- expresses love, empathy and sensitivity toward the child; experiences specific empathy with the child's perspective and feelings

Questions the judge can ask.

- Has the parent demonstrated the ability to protect the child in the past under similar circumstances and family conditions? (*Behavioral Protective Capacity*)
- Has the parent arranged for the child to not be left alone with the adult/parent maltreater or source of danger? (This could include having another adult present aware of the protective concerns and able to protect the child). (*Cognitive and Behavioral Protective Capacity*)
- Is the parent intellectually, emotionally and physically able to protect the child given the threats? (*Cognitive, Behavioral and Emotional Protective Capacity*)
- Is the parent free from needs which might affect the ability to protect such as severe depression, lack of impulse control, or medical needs? (*Behavioral and Emotional Protective Capacity*)
- Does the parent have resources to meet the child's basic needs in light of the other changes the court is expecting from the family? (*Behavioral Protective Capacity*)
- Is the parent cooperating with the caseworker's efforts to provide services and assess family needs? (*Cognitive and Behavioral Protective Capacity*)
- Does the parent display concern for the child's experience? Is the parent intent on emotionally protecting the child? (*Emotional Protective Capacity*)
- Can the caregiver specifically articulate a feasible, realistic plan to protect the child, such as the maltreating adult leaving when a situation escalates, calling the police in the event the

Gathering Information: Assessment Questions

Benchcard A

1. What is the nature and extent of the maltreatment?
2. What circumstances accompany the maltreatment?
3. How does the child function day-to-day?
4. How does the parent discipline the child?
5. What are overall parenting practices?
6. How does the parent manage his/her own life?
7. How does this family unit operate and function?

Gather Information About the Family

More comprehensive information than simply the incident of maltreatment must be learned about the family. This body of knowledge must include the extent of maltreatment, the surrounding circumstances, child functioning, adult functioning, parenting and discipline. The following are 7

background questions that should guide safety in each case. The answers will help the court assess threats of danger, child vulnerability, and protective capacities. The information will later help judges decide what to do about an unsafe child.

1. What is the nature and extent of the maltreatment?
 - Type of maltreatment
 - Severity of the maltreatment, results, injuries
 - Maltreatment history, similar incidents
 - Describing events, what happened, hitting, pushing
 - Describing emotional and physical symptoms
 - Identifying child and maltreating parent
2. What circumstances accompany the maltreatment?
 - How long maltreatment lasted
 - Parental intent concerning the maltreatment
 - Whether parent was impaired by substance use, or was otherwise out-of-control when maltreatment occurred
 - How parent explains maltreatment and family conditions
 - Does parent acknowledge maltreatment, what is parent's attitude?
 - Other problems connected with the maltreatment such as mental health problems
3. How does the child function day-to-day?
 - Capacity for attachment (close emotional relationships with parents and siblings)
 - General mood and temperament
 - Intellectual functioning
 - Communication and social skills
 - Expressions of emotions/feelings
 - Behavior
 - Peer relations
 - School performance
 - Independence
 - Motor skills
 - Physical and mental health
4. How does the parent discipline the child?
 - Disciplinary methods
 - Concept and purpose of discipline
 - Context in which discipline occurs, is the parent impaired by drugs or alcohol when administering discipline
 - Cultural practices
5. What are overall parenting practices?
 - Reasons for being a parent
 - Satisfaction in being a parent
 - Knowledge and skill in parenting and child development
 - Parent expectations and empathy for child
 - Decision-making in parenting practices
 - Parenting style
 - History of parenting behavior
 - Protectiveness
 - Cultural context for parenting approach
6. How does the parent manage his/her own life?
 - Communication and social skills
 - Coping and stress management
 - Self-control
 - Problem-solving
 - Judgment and decision-making
 - Independence
 - Home and financial management
 - Employment
 - Community involvement
 - Rationality
 - Self-care and self-preservation
 - Substance use, abuse, addiction
 - Mental health
 - Physical health and capacity
 - Functioning within cultural norms

Safety Equation

Present or Impending Danger

+ Vulnerable Child

- Sufficient Parental Protective Capacities

= Unsafe Child

We have an unsafe child. Now what?

- * **Protective Plan or Safety Plan** - allows a child to remain in-home while concrete actions and services can control the danger threat(s).
- * **Temporary Physical Custody (TPC)**

Protective and Safety Plans

Protective Plan

- * An immediate, short-term action that protects a child from present danger threats in order to gather more information to determine if impending danger threats exist.

Safety Plan

- * A safety plan is a written arrangement between parents/caregivers and CPS that establishes how impending danger threats will be managed.
- * The safety plan is implemented and active as long as impending danger threats exist and parent/caregiver protective capacities are insufficient to assure a child is protected.

Purpose of a Protective Plan

- Provides a child with adult supervision and care to control for the threat
- Allows for the collection of information that can be used to determine impending danger and parent/caregiver protective capacity.
- A protective plan give CPS time to analyze the information to assure the safety of the child in the LEAST RESTRICTIVE setting possible – REASONABLE EFFORTS TO PREVENT REMOVAL

Protective Plan - Examples

- Maltreating or threatening person agrees to leave and remain away from the home and caregiver show protective capacity
- A responsible, suitable person agrees to reside in the household and supervise the child at all times.
- Child is cared for part time or full time through agreement outside the home by a friend, neighbor or relative
- A TPC is requested and child is placed in out of home care

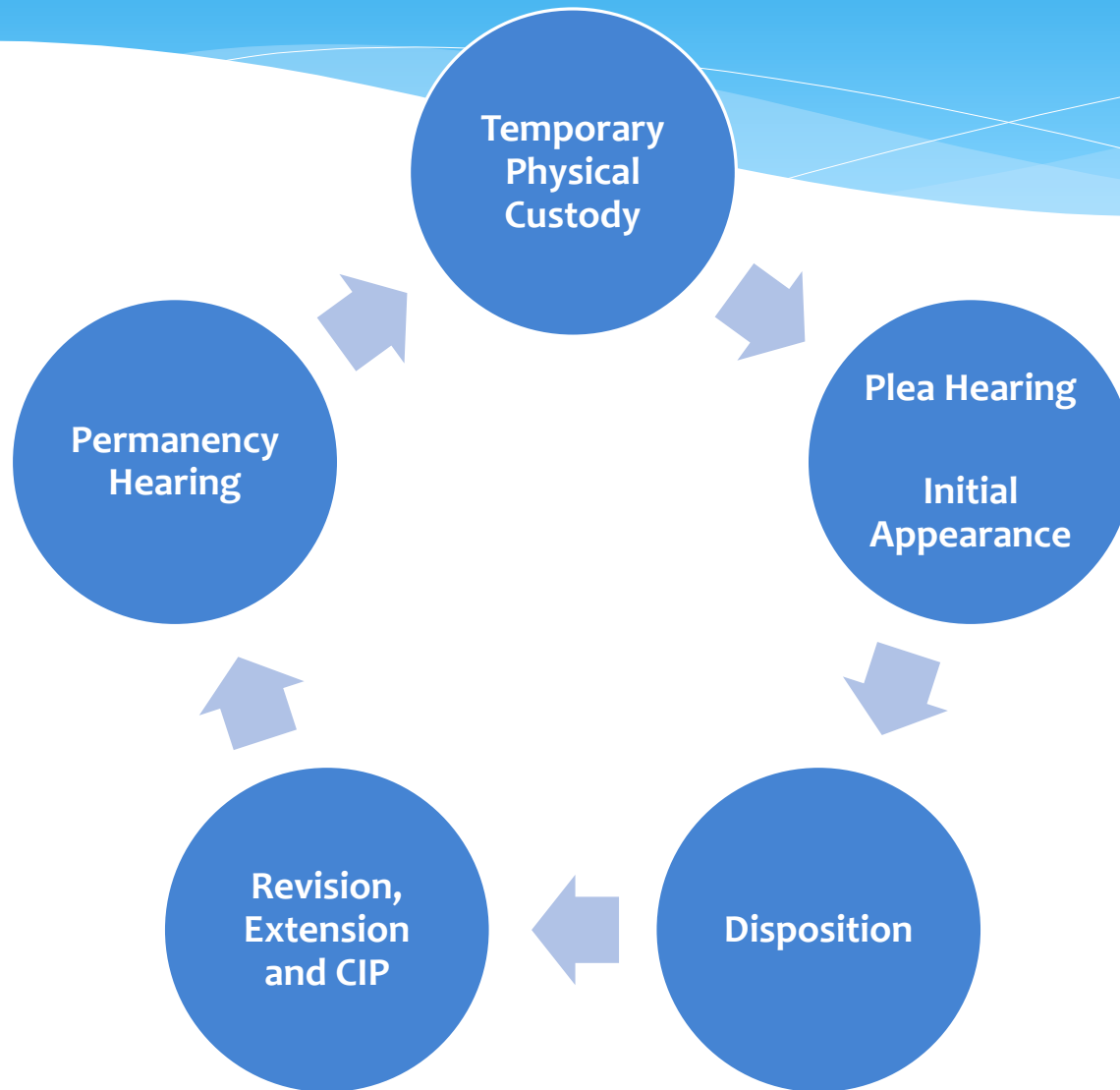
Safety Analysis and Planning

- How and when do threats emerge?
- Home environment conducive to controlling the pattern of emerging danger?
- What outside actions or services are required to do that?
- Are required actions or services available at a sufficient level to control the pattern of emerging danger?

Hallmarks of Effective Safety and Protective Plans

- Sufficient, feasible, and sustainable
- Manages danger threats and promotes behavior change
- Immediate effect
- People and services available and accessible
- Action oriented
- Does NOT rely on promises

Child Safety Applies at Every Stage of the Case



Types of CPS Plans - Review

- * Protective Plan – manage present danger threat
- * Safety Plan – manage impending danger threat
- * Case Plan – manage a behavior change

| | Protective Plan | Safety Plan | Case Plan |
|---------------------------------------|--|--|---|
| Based on the Assessment of: | Present Danger Threats | Impending Danger Threats | Impending Danger Threats, Parental Protective Capacity and Risk |
| When in Case Process? | At 1 st Contact; Anytime | End of Initial Assessment | End of Family Engagement and Assessment; 60 Days After Supervisory Approval of Initial Assessment |
| How Long Will The Plan Last? | Until the Assessment for Impending Danger Threats is Completed | Until no Impending Danger Threats or Enough Parental Protective Capacity | Until Case Closure |
| What Does The Plan Accomplish? | Assure Safety While Gathering More Information | Assure Safety Until Parents Can Resume That Role | Change Conditions and Behaviors so That They Have A Safe Home |

Ch. 48 TPC Request Supplement JC-1609

- * TPC Supplement (JC-1609) was created to address:
 - * Present danger threats
 - * Impending danger threats
 - * Child vulnerable to danger threats
 - * Parents' protective capacities
- * Provides additional information to judges and court commissioners to make TPC decisions.

Review

- * SAFETY first and throughout the case.
- * Social work and legal systems have different focus, guiding principles, decisions, assessments and determinations and approach to child safety.
- * Child Safety Decision-Making framework is a method for shared communication about child safety throughout the case.

Review

Present or Impending Danger

+ Vulnerable Child

+ Diminished Parental Protective Capacities

= Unsafe Child

Review

BETTER INFORMATION

=

BETTER DECISIONS

=

BETTER OUTCOMES

Child Safety Decision-Making Resources

Online learning activity: www.wiccuptraining.com

Circuit court forms: www.wicourts.gov/forms1/circuit/index.htm

- * TPC Request – JC-1608 or IW-1608
- * TPC Request Supplement – JC-1609

TPC Hearing Preparation Guide:

www.wicourts.gov/courts/programs/docs/tpchearingprepguide.pdf

Thank You!

Molly Jasmer, Attorney

mjj@ghnlawyers.com

Eric Calvino

Waukesha County Department of Health and Human Services,
Child & Family Division Supervisor

ecalvino@waukeshacounty.gov