



# It's Personal!!! Unique Role, Responsibilities, and Background of Juvenile Court

## **Comm'r Kevin Costello**

Waukesha County Circuit Court  
Waukesha

## **Hon. Christopher Foley**

Milwaukee County Circuit Court  
Milwaukee

## **Hon. Jason Rossell**

Kenosha County Circuit Court  
Kenosha

## Learning Objectives

- Understand the purpose and importance of the juvenile court
- Understand the unique role and responsibilities of judicial officers in juvenile court
- Understand the importance of the judicial leadership role (both on-the-bench and off-the-bench) in child welfare
- Understand your own leadership style and the components of effective judicial leadership

## Learning Objectives (In Human Terms)

- Understand that everything you do (and don't do) in child welfare cases will determine:
  - ▶ Whether a child can stay safely home
  - ▶ If they can't stay safely home, whether they will stay within their family and with siblings and whether they will achieve timely, safe reunification
  - ▶ Or, if needed, timely and safe alternative permanence

## Juvenile Court Today

### What is Juvenile Court?

- ▶ Juvenile court is a unique institution that combines social and legal attributes to serve public interests relating to children and families
- ▶ Legal issues in child welfare cases overlay critical human issues
  - ✓ Almost never—in my experience—is the question whether there is a problem; it is how to solve the problem

## The Role of the Judge in Child Abuse and Neglect Cases

Remember Judge Joseph Wapner?  
In Child Welfare Cases, You Ain't Him/Her!!



## The Role of the Juvenile Court Judge

- Doesn't the judge just decide cases?
  - ▶ Not in juvenile court!
  - ▶ The juvenile court judge must do much more than decide cases
- The juvenile court is the original problem solving court
- The role of the juvenile court judge involves leadership functions
  - ▶ The judge must connect with system stakeholders and the community to address the needs of the children and families before the court

## **Responsibilities of the Dependency Court Judge**

- Parens patriae surrogate
- Gatekeeper
- Jurist of law and fact
- Administrator of due process
- Inquiring magistrate of well-being, safety, and permanency goal(s) for children in care
- Applier of therapeutic/restorative justice principles

## **Responsibilities of the Judge Presiding Over Child Abuse and Neglect Cases**

- Permanency Plan for the child
- Assuring that appropriate services are provided
- Set standards which the juvenile system will be governed
- Provide leadership to community and ALL participants in the juvenile court system

## Responsibilities of the Judge Over Guardians ad Litem

- GAL duties under §48.235(3), unless granted leave by the court:
  - ▶ Meet with the child
  - ▶ Assess the appropriateness and safety of child's environment
  - ▶ If old enough to communicate, interview child and determine child's goals and concerns regarding his/her placement, make clear and specific recommendations to the court
- *Paige KB v. Molepske*, 580 NW 2d 289 (Wis Supreme Court 1998).
  - ▶ "In overseeing the conduct of a GAL, the circuit court plays a vital role, for in a custody dispute, the circuit court must be the vanguard for the best interests of the child. Accordingly, the circuit court must not idly wait for or blindly rely on a GAL's recommendation. Rather, the court, at each stage of the proceeding, should inquire into the method of analysis utilized by the GAL, the time and effort expended by the GAL, and the reasons supporting the GAL's actions and recommendations."

## The Role of the Judge - Who are you?

- A social worker; an administrator; a child development expert; a psychologist; a parent coach, a motivator; an ASFA cop; a terminator???
- You are all of these and a leader directly responsible for assuring the safety, well being and permanence of these children

## The Role of the Judge

- Did you know you have the authority and responsibility to determine “intake policy” and court services in child welfare cases? [§48.06 (1)]
  - ▶ What in-home services are provided to prevent out-of-home care (OHC)?
  - ▶ What efforts are undertaken to identify fit and willing relatives and keep siblings together?
  - ▶ What rehabilitative services are being provided to assure safe return of children to their homes?

## The Role of the Judge

- What leadership/oversight are you providing off the bench to assure these services and the safety, well-being, and permanence of our children?

## Role of the Court (It starts at the beginning)

- At Temporary Physical Custody (TPC), demonstrated safety risk warranting intervention?
- If so, what have they done to control or remediate the risk to avoid OHC? [§48.21 (5)]
- If OHC, fit and willing relatives---if not, why not? [§ 48.355 (1), §48.38 (4)(bm)]
  - ▶ Have you asked the parent about relatives? [§48.21 (3)]
  - ▶ Have we identified dad? Resolve paternity/swab them § 48.299(6)

## Role of the Court (It starts at the beginning)

- Are the siblings together? If not, why not? Are they visiting each other? [§ 48.21 (5); § 48.38 (4)]
  - ▶ Remember siblings are still siblings even after adoption. [§ 48.38 (4) (br) 1.]
- Keeping children in same school?
- If OHC, how quickly and often can we facilitate family interaction if safe?
- If OHC, have you told the parent they just went on the 15-month time clock?  
[Adoption and Safe Families Act (ASFA); § 48.417]

## Role of the Court (It starts at the beginning)

- Is this a WICWA child/family? If so, § 48.028
- Duty of the court to:
  - ▶ Fully cooperate with, and in many cases to defer to, Indian Tribes and Tribal Courts
  - ▶ Promote stability of Indian Tribes and families
  - ▶ Respect minimum standards established for OHC of Indian children
  - ▶ OHC, when necessary in homes reflecting value of Indian culture and maintaining ties to Indian culture and tribe

## Role of the Court (Initial Appearance/Plea, Disposition, and Permanency Hearings)

- If in home, are we adequately controlling the safety risks?
- If OHC, do they still need to be out—is there still an uncontrolled risk?
  - ▶ Are they with relatives, which can include the parent of a sibling who has legal custody of that sibling. [§ 48.02 (15)]
  - ▶ Are siblings placed together?
  - ▶ Parent progress, appropriate services to remediate risk and get children safely home

## Role of the Court (Initial Appearance/Plea, Disposition, and Permanency Hearings)

- Do we anticipate a safe return?
  - ▶ “Why can’t the child be returned home today?”
- Should we concurrently plan?
- Is this a reasonable efforts not required case?
- How do we get these children to safe, timely permanence?

## Role of the Court Trauma-Informed Practice

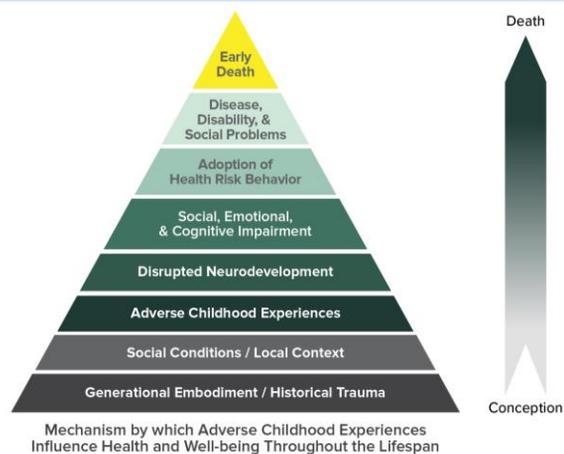
- Acknowledging and understanding impact of past trauma on participants
  - ▶ **What You Say:** Communication Counts
  - ▶ **What You Do:** Court Processes and Procedures
  - ▶ **How You Do It:** Courtroom & Courthouse Experience
- See Trauma-Informed Benchcards & Essential Components of Trauma-Informed Judicial Practice (see online materials)

## What is Trauma?

- SAMHSA defines individual trauma as that which results from an event, a series of events or set of circumstances that is experienced by an individual as physically or emotionally harmful or threatening and having lasting adverse effects on the individual's functioning and physical, social, emotional or spiritual well being.
- Trauma = event + experience + effect

## Adverse Childhood Experiences (ACE) Study

- More than two-thirds of the population report experiencing one ACE, and nearly a quarter have experienced three or more



# Childhood Trauma

An event that a child finds overwhelmingly distressing or emotionally painful, often resulting in lasting mental and physical effects.

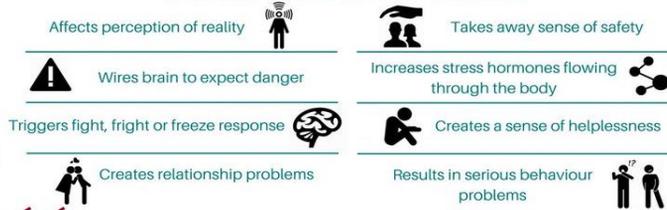
**2x**  
more likely to develop  
**DEPRESSION**

**3x**  
more likely to develop  
**ANXIETY DISORDERS**

## Common causes:



## LONG-TERM IMPACTS:



“The initial trauma of a young child may go underground but it will return to haunt us”  
James Garbarino

**PREFRONTAL CORTEX (PFC)**  
"Thinking Centre"

**Underactivated**

Difficulties concentrating & learning.

A traumatised brain is "bottom heavy"

**AMYGDALA**  
"Fear Centre"

**Overactivated**

Difficulty feeling safe, calming down, sleeping

**ANTERIOR CINGULATE CORTEX (ACC)**  
"Emotion Regulation Centre"

**Underactivated**

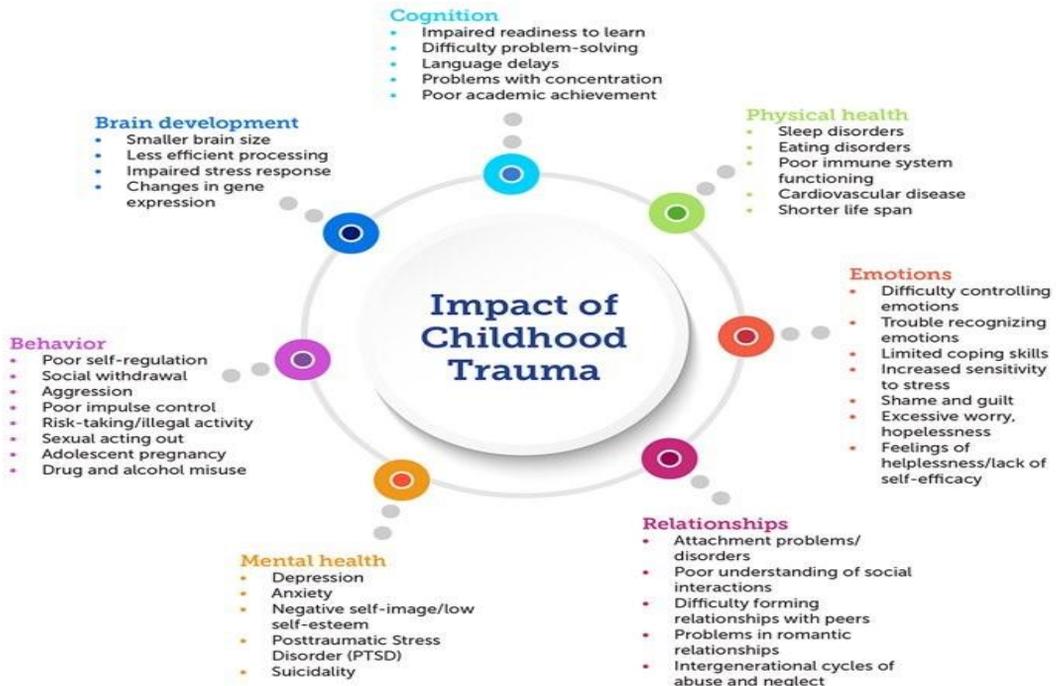
Difficulties with managing emotions.

**Complex Trauma:** a result of repetitive, prolonged trauma



www.70-30.org.uk  
@7030Campaign

## Impact of Childhood Trauma



# Impact on Parents & Children

Enduring effects of trauma can lead to survival mode, which impacts an individual's ability to engage with the court process:

- Missed appointments for services (especially mental health)
- Mistrust of the system – the need for increased transparency and authentic engagement
- Aggressive reactions when questioned by judge, attorney, case worker, etc.
- Substance use
- Academic failure, poor school attendance
- Difficulty focusing, concentrating, appearing checked out
- Running away from home or placements

## Core Principles of a Trauma-Informed Approach



### Safety

Throughout the organization, patients and staff feel physically and psychologically safe



### Trustworthiness & Transparency

Decisions are made with transparency, and with the goal of building and maintaining trust



### Peer Support

Individuals with shared experiences are integrated into the organization and viewed as integral to service delivery



### Collaboration

Power differences — between staff and clients and among staff — are leveled to support shared decision-making



### Empowerment

Patient and staff strengths are recognized, built on, and validated — this includes a belief in resilience and the ability to heal from trauma



### Humility & Responsiveness

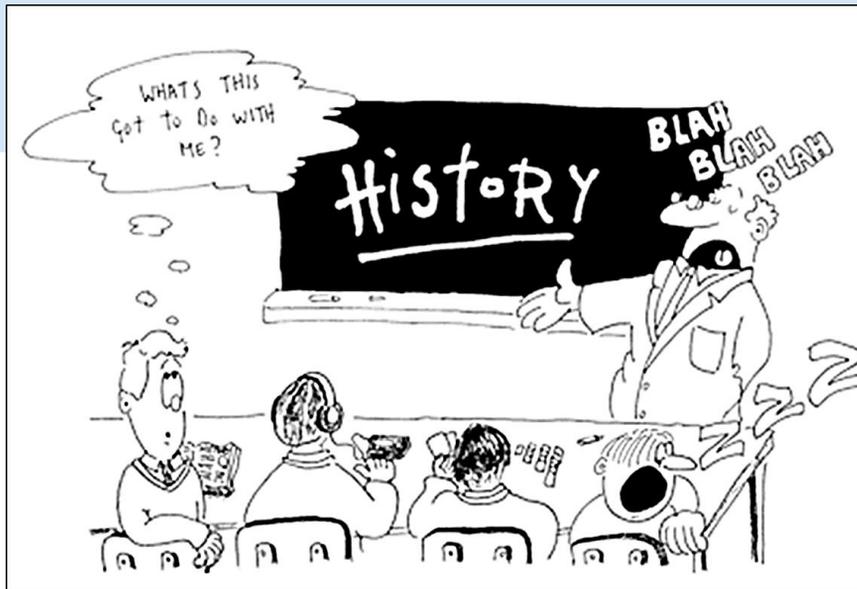
Biases and stereotypes and historical trauma are recognized and addressed

## Trauma Informed Approach

- Recognized as a best practice
- Universal approach and application
- Builds rapport and strengthens working relationships
- Decreases likelihood of case-interfering behaviors
- Increases willingness to be a collaborative partner  
increases satisfaction and compliance
- More productive interactions and court appearances

## It's Personal

- We are taught not to make cases personal. These cases are personal for the children and their families
- We are a problem solving court vested with the personal responsibility to assure the safety, well-being and timely permanence of our children
- Everything we do and don't do impacts their safety, well-being and permanence



## Learning Objectives

- **Lincoln said, "Until you know where you have been, you don't know where you are going."**
  - Senator John F. Kennedy 1960 interview
  - ▶ Understand the requirements and intent of federal laws impacting decision-making
  - ▶ Review the data of current and past outcomes for our children
  - ▶ Understand the use of data for changing practices and outcomes

## And We're Off

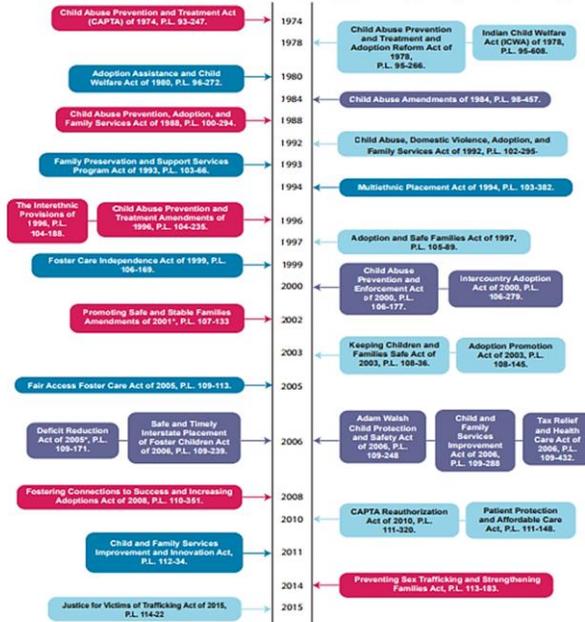
- Mary Ellen Wilson, Society for the Prevention of Cruelty to Children and the Response
  - ▶ Rise and Fall of Private Charities
    - ✓ 1880 - 37 private organizations
    - ✓ 1922 - over 300 private organizations
    - ✓ 1954 - 86 private organizations and 32 states no organization
    - ✓ 1964 - 10 private organizations
  - ▶ CPS existed in 47 states in 1964 all found to be inadequate



## Rise of Governmental Action

- 1973 Senate Hearings:
  - ▶ ¾ of abuse and neglect deaths children known but not investigated
  - ▶ States had no framework for services - either remove forever or keep them home with the abuse
- 1974 Child Abuse Prevention and Treatment Act (CAPTA) – First step of the Federal Government into providing funding the child welfare system and providing grants for innovation

Timeline of Major Federal Legislation Concerned with Child Protection, Child Welfare, and Adoption



## Rise of Governmental Action

- 1980 Adoption Assistance and Child Welfare
  - ▶ Court responsible to review:
    - ✓ Removal: Did the agency use sufficient services to prevent removal and was continuation in the home contrary to the Child's welfare?
    - ✓ Did agencies provide adequate services to assist in reunification?
    - ✓ Foster Care was last resort
    - ✓ No enforcement mechanism—Lawsuits not allowed

## ASFA

- Adoption and Safe Families Act
  - ▶ Enacted in 1997 in response to the high numbers of children *languishing* in foster care
  - ▶ Emphasis on:
    - ✓ Child safety
    - ✓ Permanency
    - ✓ Child and family well-being

## ASFA

- Recognized that foster care is NOT a long-term solution—Families ARE a long-term solution
  - ▶ If the safety risks can be controlled in the home, they should remain in the home [§ 48.21(5)(b)]
  - ▶ If they can't be home, they should be with fit and willing relatives [§§ 48.355(1), 48.38(4)(bm) and 48.834]
- Every day in foster care the child both:
  - Establishes critical non-family bonds **AND**
  - Loses critical family bonds

## Keeping Kids Safely Home & Maintaining Family Ties

### ► Critical Issue:

- ✓ Resolve paternity immediately [§ 48.299(6)(e)]
- ✓ A paternity determination opens up a whole new group of potential fit and willing relatives for placement
- ✓ A child deserves both parents
- ✓ Two parents to help pay the costs, if necessary

## Keeping Kids Safely Home & Maintaining Family Ties

- To take and keep them out of home, **except in reasonable efforts NOT required cases**, you have to find at the TPC hearing and at disposition:
  - Contrary to their welfare to remain in the home, **and**
  - Agency made reasonable efforts to:
    - ✓ Prevent removal (in home services, etc.); and
    - ✓ Safely return the child home [§§ 48.21(5)(b)1.a-c and 48.355(2)(b)6.]
- These are not mere “boilerplate” findings—think them through!

## Maintaining Family Ties

### *It is imperative that we keep siblings together!*

- “Sibling” means a person who is a brother or sister of the child, whether by blood, marriage, or adoption, including a person who was a brother or sister of a child before the person was adopted or parental rights to the person were terminated [§§ 48.38(4)(br)1 & 48.834]
- Reasonable efforts to keep siblings together, unless contrary to safety/well-being of child [§ 48.21(5)(b)2m.]
  - ▶ Agency to provide visitation between siblings, if not placed together and not contrary to safety/well-being

## Timely and Safe Permanence

- If a child must be out of home, the law requires we achieve **timely** permanence through:
  - ▶ Reunification, or,
  - ▶ Adoption, or,
  - ▶ Guardianship, or,
  - ▶ Permanent placement with a fit and willing relative  
*ASFA provided that these four alternatives must be considered in that order*
  - ▶ Other Permanent Planned Living Arrangement (OPPLA)  
(only if 16 years or older)

## Timely and Safe Permanence

- The agency must have a permanency goal
- The permanency plan has to be filed with you within 60 days of **removal** [§ 48.38]
- The permanency plan review must occur:
  - ▶ Not later than six months after first removal; and
  - ▶ Every six months thereafter while the child is out of the home

## Timely Permanence

- In a *reasonable efforts not required* case (see §§ 48.38(4m) and 48.355(2d)):
  - ▶ Permanency hearing must be held within 30 days *of that finding* and
  - ▶ Petition for termination must be filed (absent compelling circumstances) within 60 days in cases of
    - ✓ Child abandonment, or
    - ✓ Homicide of child's other parent, or
    - ✓ Serious sexual or physical abuse
      - §§ 48.355(2d)(c) and 48.417

## Timely Permanence

- Absent a compelling circumstance, if child is out of home 15 out of most recent 22 months, a strong presumption exists that the agency/county/state must file for termination of parental rights [§§ 48.38(5) and 48.417(1) & (2)]

## ASFA Summary

### Summary of ASFA's Provisions Affecting Abuse and Neglect Proceedings

- Contrary to welfare determination
- Reasonable efforts
- Permanency hearing deadline
- Permissible permanency goals
- Reasonable efforts to finalize plan (all “necessary steps” to finalize the permanency plan)
- TPR filing deadline (15/22 months)

## ASFA Enforcement

- Money, Money, Money,
  - ▶ Court Findings
  - ▶ Timeliness
    - ✓ Permanency Reviews/Hearings
    - ✓ TPR filing
  - ▶ Audits (MAXIMUS)
  - ▶ Child and Family Services Reviews
    - ✓ Last one occurred in Wisconsin in April 2018
    - ✓ Wisconsin recently completed Program Improvement Plan

## Interstate Compact on the Placement of Children (ICPC)

- Establishes procedures and safeguards when children are placed out-of-state
- Sending agency retains legal and financial responsibility
- Sending state is responsible until the child is:
  - Adopted, reaches majority or becomes self-supporting
  - Sending agency terminates the agreement
  - Other reasons with prior concurrence of receiving state
- Review ICPC e-learning activity: [www.wiccuptraining.com](http://www.wiccuptraining.com)

## Chafee Act

- Foster Care Independence Act of 1999
  - ▶ Provides medical insurance, housing and educational assistance for children aging out of foster care without permanence

## Fostering Connections

- Fostering Connections to Success and Increasing Adoptions Act of 2008 (2009 WI Act 79)
  - ▶ Subsidized guardianship
  - ▶ Additional funding for family finding
  - ▶ Agency must notify relatives within 30 days of child's removal
  - ▶ Transition plan for the 90-days prior to aging out
  - ▶ Focus on educational stability
  - ▶ Reasonable efforts to place siblings together
  - ▶ Notice to all adult relatives of the child's removal

## Preventing Sex Trafficking and Strengthening Families Act of 2014 (Public Law 113-183)

- Promotion of child “normalcy”
- Use of the OPPLA permanency goal is prohibited for any child under age 16
- Mandates that for every Permanency Hearing the agency must document on the record “intensive, ongoing, unsuccessful efforts for family placement”
- During review of an OPPLA plan, child must now be asked about their desired permanency outcome
- If OPPLA remains the goal, in every case there must be a judicial determination at that hearing of compelling reasons why OPPLA remains best permanency plan for that child

## Preventing Sex Trafficking and Strengthening Families Act of 2014 (Public Law 113-183)

- Empowers transitioning foster youth at the earlier age of 14
  - ▶ May select up to two individuals to be involved in developing the case plan
  - ▶ Requires case plan includes a “rights document”
- Mandates receipt of key documents upon leaving foster care at age 18 or older
- Encourages sibling placements
- Reasonable and Prudent Parenting Standard

# Family First Prevention Services Act

- Altered the purposes for which the state may claim Title IV-E funding, including expanded opportunities to provide preventative services
  - ▶ Sets standards for effectiveness of interventions
- Restricts Title IV-E funding for out-of-home placements longer than two weeks, except:
  - ▶ Foster and Relative Homes
  - ▶ Specialized placements for pregnant or parenting youth
  - ▶ Specialized placements for victims of sex trafficking
  - ▶ Supervised independent living for youth 18+
  - ▶ Family-based residential treatment facility for substance abuse
  - ▶ Qualified Residential Treatment Programs (QRTP)

**Questions or Comments?**

# Removed Video



Part 1: <https://www.youtube.com/watch?v=IOeQUwdAjE0>

Part 2: <https://www.youtube.com/watch?v=I1fGmEa6WnY>