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safe children

strong families

supportive communities

14th Amendment Constitutional Right to Family Integrity

Parent's right to "care, custody, and control"

Due Process Clause provides substantive and procedural protection against state interference in family life.



Foundational Parent's Rights Cases:

These 3 cases set up the legal relationship parameters between parents and the state.

Meyer v. Nebraska (1923)

Due process clause protects right to "establish a home and bring up children"

Pierce v. Society of Sisters (1925)

Parents' liberty interest to direct child's upbringing and education

Prince v. Massachusetts (1944)

BUT limits on those rights – *Parens Patriae*



Parental Fitness Cases

Stanley v. Illinois (1972)

All parents are entitled to hearing on fitness before removal of children

Santosky v. Kramer (1982)

The State registers no gain towards its declared goals when it separates children from the custody of fit parents.

Troxel v. Granville (2000)

Fit parents are deemed to act in children's best interests



Federal Funding Statutes (Reasonable Efforts)

Adoption Assistance and Child Welfare Act of 1980:

Established Titles IV-B and IV-E under the Social Security Act

Title IV-B – generally, funds to use in **preventing & responding** to cases of maltreatment

Title IV-E – generally, funds to offset the cost of **placing** kids

FFPSA authorized optional use for *some* prevention services

Required State to Provide REASONABLE EFFORTS to:

Prevent removal

Reunify the family if removal was necessary

Federal Funding Statutes (Reasonable Efforts)

Adoption and Safe Families Act of 1997

- REASONABLE EFFORTS added the provision that the child's health and safety shall be the paramount concern
 - -To the extent reunification is not the permanency goal, ASFA also requires reasonable efforts to obtain permanency (adoption, guardianship, etc.)

What's the Harm?

Separation from parent(s) is an ACE Ambiguous loss Disrupted development – emotional and brain architecture Prolonged stress of "temporary" and uncertainty

Sacred - Emotional - Personal - Primal



Parenting is a core human function and behavior.

But we need to notice...

What is at stake when abuse or neglect are identified?

Balance of Harms



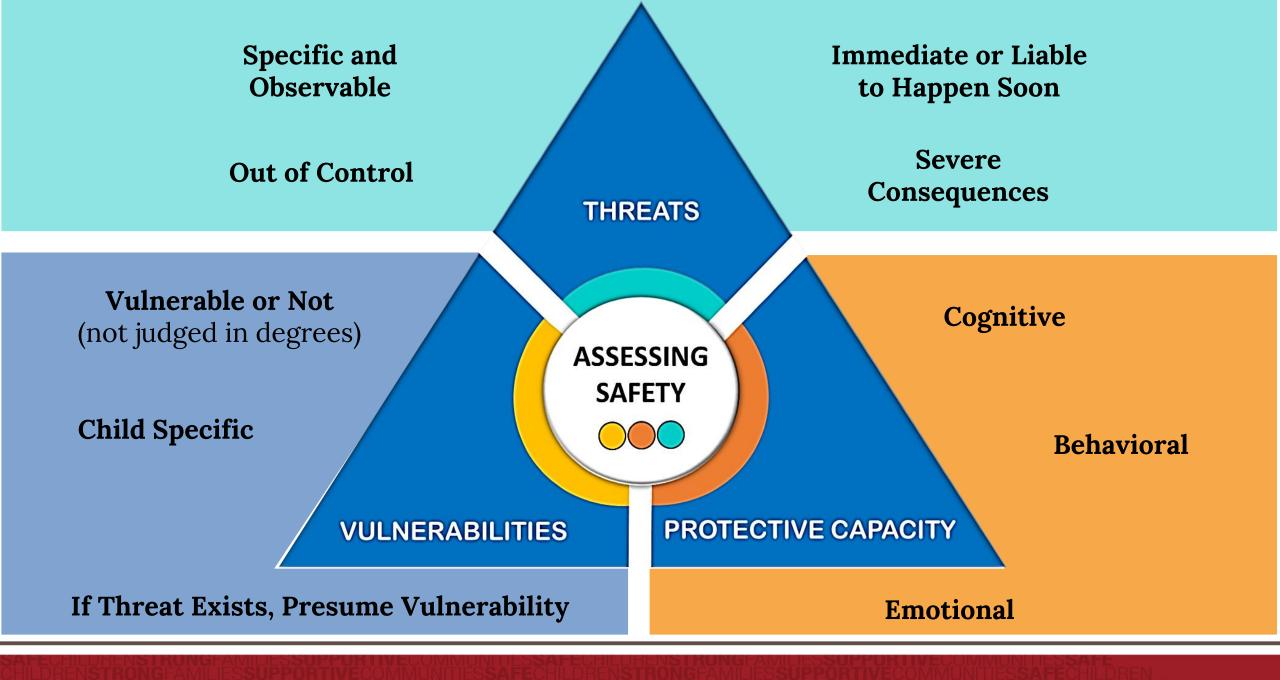


In the absence of clearly defined legal standards, along with insufficient evidence, we tend to fill in the blanks.

- Reasonable grounds to believe not in BIOC 38-2232
- "determine if circumstances warrant filing a petition 38-2233
- "child is **likely to sustain harm**" 38-2242
 - "harm" = physical or psychological injury or damage 38-2202
- "probable cause... health or welfare may be endangered without further care" 38-2243
 - "Sustain harm" "contrary to the welfare" "Best Interests of the child" and "reasonable efforts"

All at or before the temp custody hearing.

- Conditions of decision-making
 - Implicit biases
 - Priming
 - Social Judgability
 - Confirmation bias

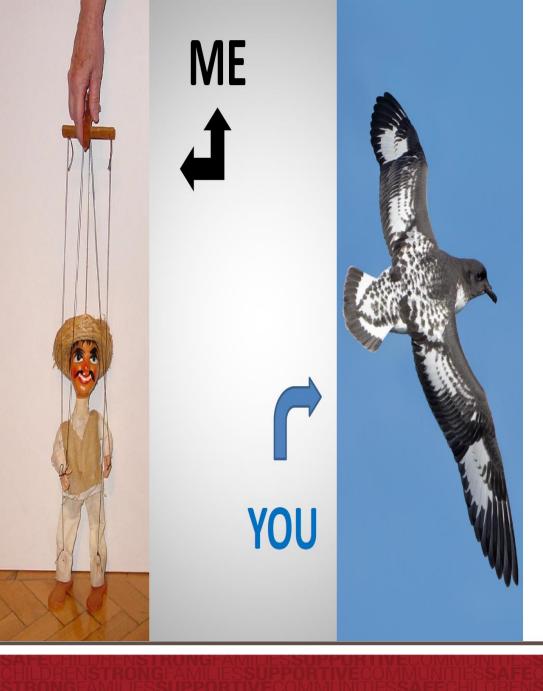


Iowa 7 Judges, 4 Questions

- 1. What can we do to remove the danger instead of the child?
- 2. Can someone the child or family knows move into the home to remove the danger?
- 3. Can the caregiver and child go live with a relative or fictive kin?
- 4. Could the child move temporarily to live with a relative or fictive kin.

Iowa 7 Judges, 4 Questions

- Reduction of removals by half during study period
 - Increase in relative placement
 - Increase in fictive kin placement
 - Decrease in shelter placement
 - Rate of foster care placement remained same
- Subsequent to the study drop in removal requests
- Project part of Round 3 PIP now moving statewide



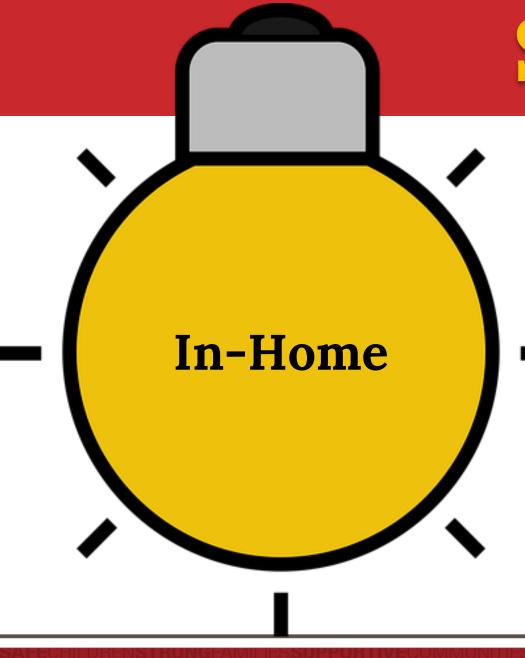
One more thing about our brains... related to safety plans and case plans.

"Accountability"

"Pull yourself up by your bootstraps"

Legal version:

 "failure to provide... food, adequate supervision,... use resources available to treat medical condition"



Safety Planning

Actions or Services to Control or Manage Threats – immediately

Assume threat is ongoing

- Sufficient
- Feasible
- Sustainable

Assessing Reasonable Efforts

<u>Safety Plan – In Home</u>:

circumstances in the home need to change as follows:

and the specific action that will control the threat will be: ________.

Terminating Jurisdiction

Threats Eliminated

Case Plan Goals

Protective Capacity Enhanced to Control Threats



Combination of Both

Dismissal



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