
RISK &
REMOVAL

REMOVAL DECISIONS: Why Remove?

PALMYRA, PA

Palmyra,
PA

ITIO S.D., 316 Ga. App. 86 (2012)

Mom is minor (16 y/o) in DFCS custody. Has the baby in the hospital.

Grandmother's home is found to be appropriate and she is ready to take in the mother and the baby upon discharge from the hospital.

DFCS seeks and obtains an emergency removal based upon the allegation that the mom is "not capable of caring and providing for the child".

Juv. Ct. adjudicated the child deprived despite the case manager's testimony that the child had suffered no abuse, neglect, or maltreatment, and that the case was filed solely because the child was born to a child in custody and because of the "likelihood of possible future deprivation".

ITIO V.G., 352 Ga.App. 404 (2019)

- Mother with infant child requests help because she has no place to live and feels overwhelmed. Mom says she was diagnosed with schizophrenia as a child.
- DFCS gets mom and child into a shelter.
- Mom depends on bus transportation & one day the bus is late, causing mom to miss curfew at the shelter, so she loses her place there.
- Mom searches for another shelter, then goes to see a social worker at Grady Hospital to seek help.
- Grady social worker calls DFCS; DFCS removes the child.
- At PPH, ct finds that the child is dependent and removal is warranted because mom has “untreated bipolar-schizophrenia diagnosis” and mom is homeless.

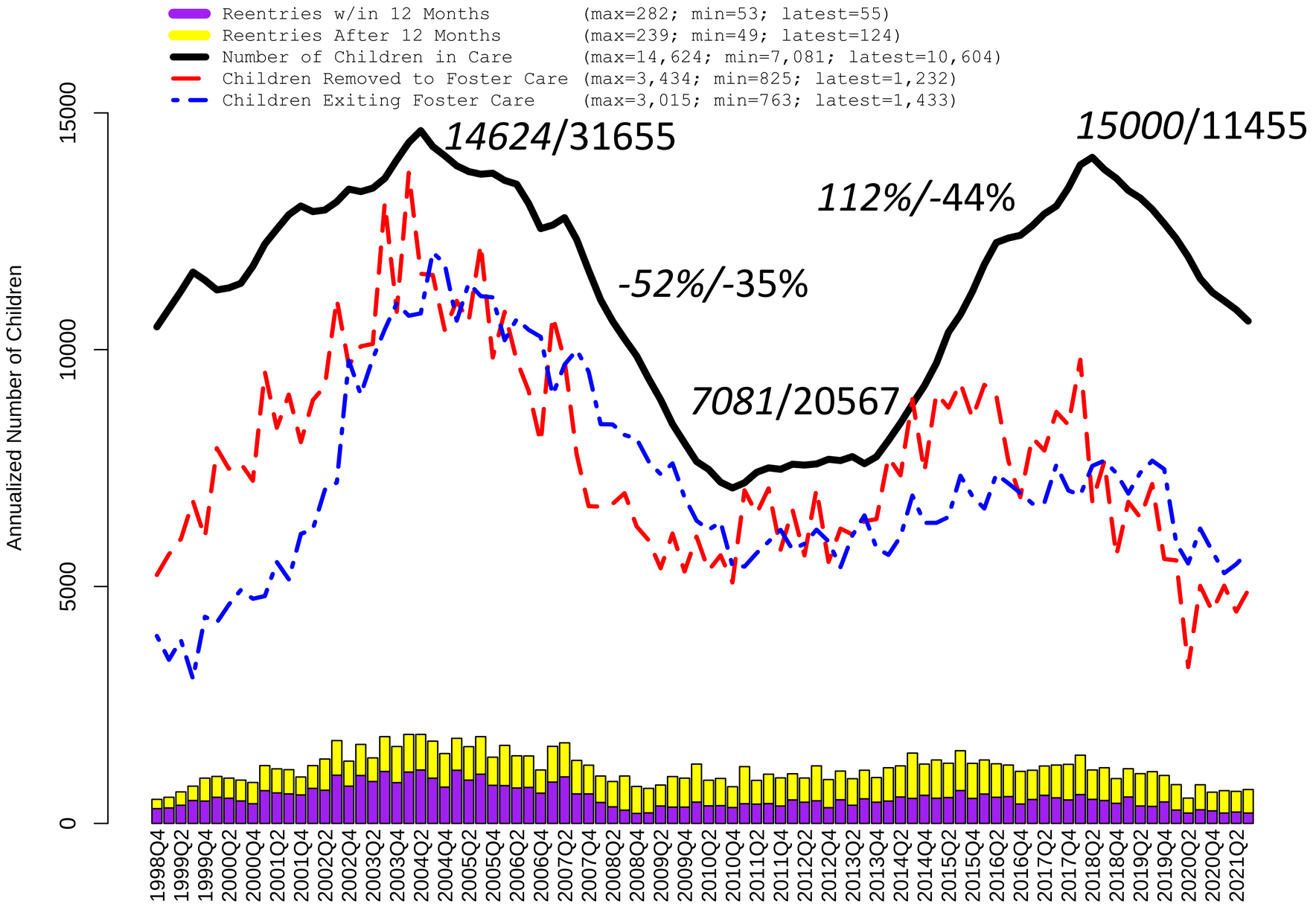
ITIO V.G., 352 Ga.App. 404 (2019)

- Mom's sister agrees that mom and child can live with her.
- At adjudication, the only witnesses are mom and the case manager. Mom says she has a place to live with her sister.
- Ct finds child dependent and continues removal because:
  - The mother is without a home of her own and is unable to provide stable housing for the child; and
  - Mom has untreated bipolar-schizophrenia and refuses to submit to a MH eval.
- Ct. App:
  - Mom has housing.
  - No competent evidence that mom has MH issue, and even if there were, there was no evidence of how such an issue made her unable to care for the child.

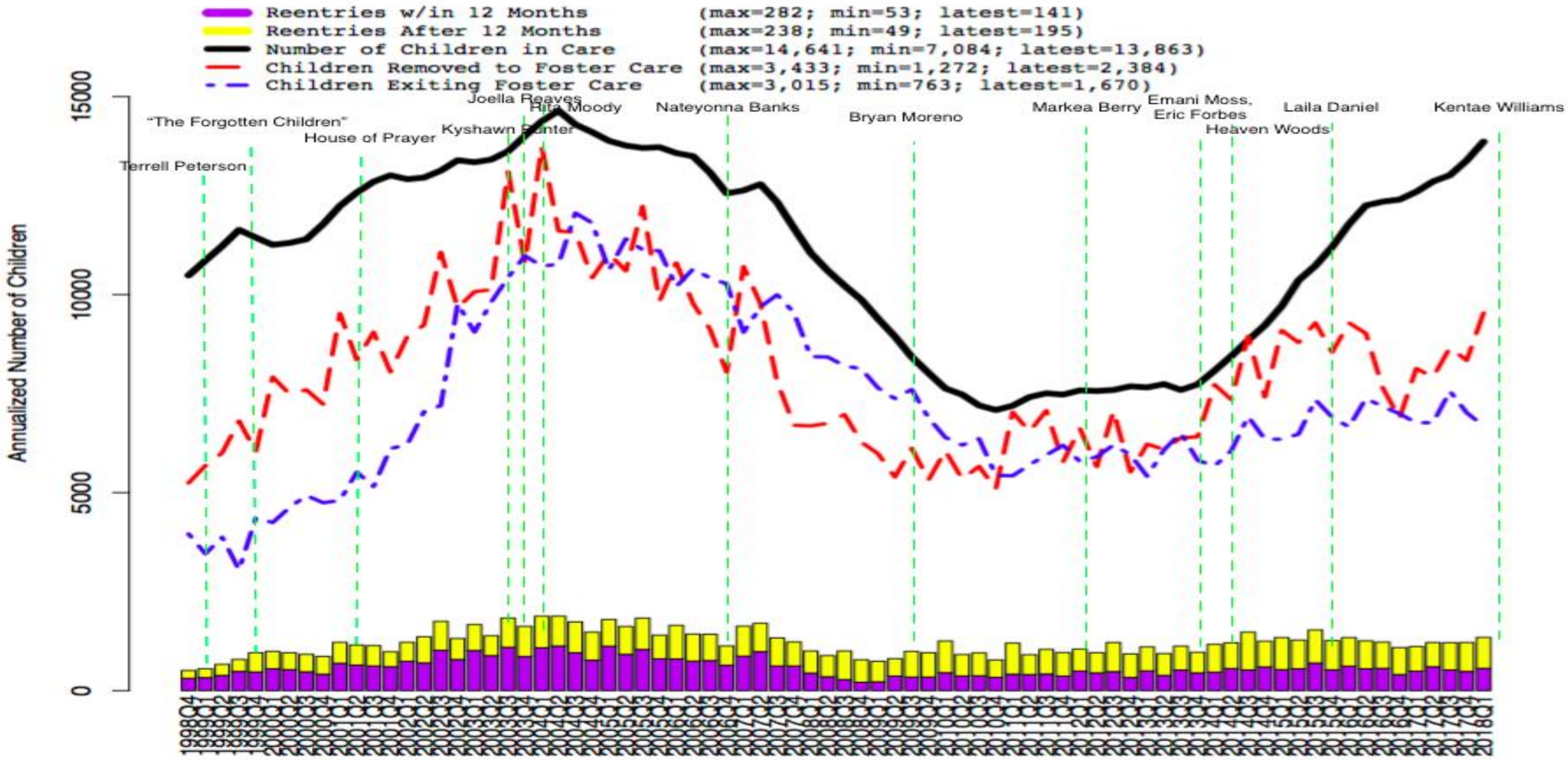
ITIO K., et al., 353 Ga. App. 855 (2020)

- Trial court found the children dependent as to the father due to the father's failure to protect the children from the mother's drug use.
- Ct.App: trial court found that no harm had come to the children through the father's actions. Though the mother didn't appeal, the court noted that there had been no evidence of harm to the children since her return from detox, even if she continued to use drugs.
- "[T]he record before the deciding court must contain evidence of *present* dependency, *not* merely past or potential future dependency."

Statewide: Foster Care Dynamics
October 1998 through September 2021 by Quarter



Statewide: Foster Care Dynamics
October 1998 through March 2018 by Quarter



CONSTITUTIONAL CONNECTION

The Civil Liberty Interest

There is a “fundamental liberty interest of natural parents in the care, custody, and management of their child”. *Santosky v. Kramer*, 455 U.S. 745, 753 (1982).

“The liberty interest at issue in this case — the interest of parents in the care, custody, and control of their children — is perhaps the oldest of the fundamental liberty interests recognized by this Court.” *Troxel v. Granville*, 530 U.S. 57, 65 (2000).

The Civil Liberty Interest

“[D]ue process requires that we afford this liberty interest the same protection on appellate review as we afford those constitutionally protected interests in cases where a criminal conviction is had.” *Blackburn v. Blackburn,* 249 Ga. 689, 693 (1982).

The Civil Liberty Interest

From a constitutional Due Process standpoint, the arrest or detention of a youth and the removal of a youth from the home are **equivalent acts**:

They are both a form of state intervention that infringes upon the constitutional liberty interest.

Not Just Civil Hearings

There is a requirement of a record: Proceedings shall be recorded by stenographic notes or by electronic, mechanical, or other appropriate means capable of accurately capturing a full and complete record of all words spoken during the proceedings. O.C.G.A. § 15-11-17.

There is an enhanced burden of proof: Clear & Convincing Evidence. This burden belongs to the State and never shifts to the parent.

There is a due process right to confront witnesses in termination cases [*ITIO C.W.D.*, 232 Ga. App. 200, 209(5) (1998)] and in dependency cases [*ITIO B.H.*, 295 Ga. App. 297, 301 (2008)].

STANDARDS AND REQUIREMENTS FOR REMOVAL

What is the Standard for Removal?

(a) A child may be removed from his or her home, without the consent of his or her parents, guardian, or legal custodian:

(1) Pursuant to an order of the court under this article; or

(2) By a law enforcement officer or duly authorized officer of the court if a child is in imminent danger of abuse or neglect if he or she remains in the home.

OCGA §15-11-133

(a) Any order authorizing the removal of a child from his or her home shall be based on a finding by the court that continuation in his or her home would be contrary to his or her welfare.

OCGA §15-11-134

What is the Standard for Removal?

Preliminary issue: What is “abuse and neglect”?

“At a minimum, any recent act or failure to act on the part of a parent or caretaker, which results in death, serious physical or emotional harm, sexual abuse or exploitation, or an act or failure to act which presents an imminent risk of serious harm”

(CAPTA definition of “abuse & neglect”)

What is the Standard for Removal?

At the removal stage, “contrary to the welfare” must be understood in the context of the federal definition of “abuse and neglect”, and in the context of larger due process considerations.

This means that remaining in the home is only **contrary to the welfare** of the child when removal is **necessary to prevent an imminent risk of serious harm**.

- Taken together, and in the context of best practice models, the requirement for emergency removal is an **imminent threat of abuse or neglect if the child remains in the home.**
- An understanding of this standard requires an understanding of **risk and threats.**

- A child may be at risk of abuse or neglect (at risk of dependency), but not be dependent:
  - The risk may not be imminent;
  - The potential harm may not be serious (due to protective ability, for example).

- A child may be dependent and not subject to removal:
  - The child may have been subjected to neglect, but not in imminent danger of serious harm.
  - The first option listed for a judge after an adjudication hearing is to permit the child to remain with the parent who made the child dependent (O.C.G.A. § 15-11-212 (a)(1))

- At-risk children who are not yet dependent should be the subject of alternative case management, such as safety plans or family support plans.
- When a child has not yet been abused or neglected, but is in **imminent danger of abuse or neglect**, an emergency response is appropriate.

Unpacking “Imminent Danger”

- The threat is **observable and describable**:
  - A reliable observer has seen the conditions which create the threat;
  - the threat itself can be accurately described; and
  - the question “What will happen to the child if not removed?” can be clearly and succinctly answered.

- The threat is **imminent**:
  - Conditions are very likely to lead to a harmful outcome in a matter of minutes or hours without intervention.

- The threat is a **serious threat to the health or safety of the child**:
  - A clear and specific harm or set of harms will affect the health or safety of the child without intervention; and
  - The harm will be serious enough to invoke the extraordinary circumstance of emergency removal.

- The threat is **due to a failure or inability of the parent or guardian to provide proper care.**
  - "At a minimum, any recent act or failure to act on the part of a parent or caretaker, which results in death, serious physical or emotional harm, sexual abuse or exploitation, or an act or failure to act which presents an imminent risk of serious harm."
  - More than "cannot be maintained safely in the home".
  - **Parental Unfitness** is a requisite for removal
  - **"**Although the father's inability to secure stable housing and employment regrettably serves neither his nor his child's best interests, it in no way constitutes intentional or unintentional misconduct resulting in abuse or neglect of the child. Consequently, the juvenile court erred in finding the child deprived and transferring custody of the child from the father to DFCS.

    ~ *In re E.M.*, 264 Ga.App. 277, 280 (2003)

- **There is no alternative to removal which will protect from imminent harm.**

RISK

Is Everywhere.

Controlling it is what we do.

WHAT IS THE MOST DANGEROUS THING MOST PEOPLE EVER DO?

- 38,000 people die in car accidents every year in the US.
- 4.4 million are injured seriously enough to require medical intervention.
- Driving has been getting steadily more dangerous since 2017.

RETHINKING THE NEED FOR FOSTER CARE

We need to learn to see foster care as a temporary service to families while we work to remediate an imminent safety risk, rather than as a way to replace impoverished or troubled families with new ones.

We cannot remove all risk. We cannot even remove all serious risks. Removal addresses a specific, describable, imminent risk of serious harm, not potential future harm. Removal remedies a serious parental unfitness that endangers the child.

At every hearing under our Juvenile Code, the State bears the burden of proving by clear & convincing evidence:
1. Dependency exists or continues;
2. An imminent risk of serious harm exits to necessitate removal or to prevent return.

Dependency doesn’t require foster care unless there is an imminent risk of serious harm due to parental unfitness; when the risk is eliminated, the child should go home, even where other dependency issues exist.

We shouldn’t think in terms of finding sufficient reasons to return a child; we should think in terms of sufficient reasons to continue a stay in foster care.

“Case Plan Completion” is not an acceptable condition for return, unless the entire case plan is geared toward removing an imminent risk of serious harm.

Most case plans deal with long-term issues and emerging or impending risks as well as imminent risks of serious harm.

At removal, and at every hearing thereafter, the question is: “What is the specific, identifiable imminent risk of serious harm, caused by parental unfitness, to which this child will be subjected if the child remains in or returns to the home?”

We can never remove all differences related to geography,
but we ought to work for more uniformity.
Justice by Geography shouldn’t be a thing.

“Local Practice” never overrules the law.

Questions?

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