

IN THE SUPREME COURT OF OHIO

In the Matter of:

T.M.

Case No. 2007-2317

On Appeal from the Madison
County Court of Appeals,
Twelfth Appellate District

APPELLANT'S MERIT BRIEF

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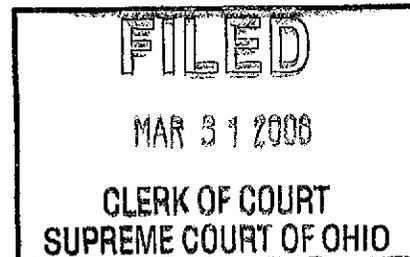


TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
STATEMENT OF FACTS	1
ARGUMENT	4
 <u>Proposition of Law:</u>	
Compelling a parent to admit to the abuse of a child, as a requirement under a case plan for reunification of the child with the parent, is unconstitutional and a violation of the parent's Fifth Amendment privilege against self-incrimination.	4
PROOF OF SERVICE	11
APPENDIX	Appx. Page
Notice of Appeal of Appellants Summer Overfield and Shane Manley (December 13, 2007)	1
Opinion of the Madison County Court of Appeals (Oct. 29, 2007)	3
Findings of Fact and Conclusions of Law/Journal Entry/Final Judgment Entry of the Madison County Court of Common Pleas, Juvenile Division (April 10, 2007)	17
Constitutional Provisions, Statutes, Regulations:	
O.A.C. 5101:2-39-06.....	21
O.A.C. 5101:29-39-07.....	24
U.S. Constitution, Fifth Amendment.....	31
U.S. Constitution, Fourteenth Amendment.....	32
O. Const. Art. I, Sec. 10.	33
R.C. 2151.412	34

TABLE OF AUTHORITIES

<u>CASES</u>	<u>Page</u>
<i>In re: A.D., A.D. Jr., K.D., R.D., & J.D.</i> (2005), 2005-Ohio-5183.....	8
<i>In re Amanda W.</i> (1997), 124 Ohio App.3d 136.....	5
<i>In re Billman</i> (1993), 92 Ohio App.3d 279, 634 N.E.2d 1050.....	4
<i>Cincinnati v. Bawtenheimer</i> (1992), 63 Ohio St.3d 260, 586 N.E.2d 1065.....	8
<i>Garner v. United States</i> (1976), 424 U.S. 648, 657.....	4
<i>H.L. v. Matheson</i> (1981), 450 U.S. 398, 410.	9
<i>In re Jones Children</i> , (2002), 2002-Ohio-1748.....	5
<i>In the Matter of Welfare of J.W. and A. W.</i> (1987), 415 N.W.2d 879.	6
<i>In re Knight</i> (1999), 135 Ohio App.3d 172, 733 N.E.2d 303.	4
<i>Lefkowitz v. Cunningham</i> (1977), 431 U.S. 801, 805.	5
<i>In re M.C.P.</i> (1989), 153 Vt. 275, 300, 571 A.2d 627, 641.....	6
<i>In re Murray</i> (1990), 52 Ohio St.3d 155, 157.....	9
<i>In re Puckett</i> (Sept. 17, 2001), Butler App. Nos. CA2000-10-203, CA2000-11-223, unreported.....	5
<i>Santosky v. Kramer</i> (1982), 455 U.S. 745, 753.....	9
Constitutional Provisions, Statutes, Regulations:	
O.A.C. 5101:2-39-06; O.A.C. 5101:29-39-07.....	7
O. Const. Art. I, Sec. 10.	4
R.C. 2151.412(E)(1)	7
R.C. 2151.412 (F)(1)	6
U.S. Constitution, Fifth Amendment.....	4
U.S. Constitution, Fourteenth Amendment.....	4

STATEMENT OF FACTS

On December 7, 2004, a complaint was filed alleging that T.M. was a dependent child. (Supp. p. 1) Specifically, the circumstances that stemmed the alleged dependency were x-rays of the child that revealed five fractures in various stages of healing. On January 18, 2005, Summer Overfield and Shane Manley (T.M.'s parents) admitted the child was dependent and the child was found to be dependent. (Supp. p. 4) Temporary custody was granted to Madison County Children Services. The matter came on for further hearings in front of the Madison County Court of Common Pleas, Juvenile Division wherein temporary custody was continued with Madison County Children Services. At the July 1, 2005 review hearing, the case was set for a dispositional hearing on September 22, 2005. Evidence was taken on September 22, 2005 and November 22, 2005 for that dispositional hearing. Based upon those hearings, the trial court entered orders on December 22, 2005. (Supp. p. 8) Appellants Summer Overfield and Shane Manley filed their Notice of Appeal on January 9, 2006. Linda Overfield (T.M.'s maternal grandmother) filed her Notice of Appeal on January 24, 2006. The Twelfth Appellate District dismissed the appeals citing that the trial court's order was not a final appealable order. See *In re T.M.*, (Dec. 11, 2006), Madison App. Nos. CA2006-01-001, CA2006-01-004, 2006-Ohio-6548. The matter came on before the trial court on March 30, 2007, on the State's Motion for Permanent Custody. Permanent custody was granted to Madison County Children Services. Summer Overfield and Shane Manley filed their Notice of Appeal with the Twelfth Appellate District, as well as Linda Overfield. The Twelfth District affirmed the trial court's judgment. The appeal of that decision comes now before the Court.

During the course of the case, a case plan was put in place with the goal of reunifying the family. (Supp. p. 11) Summer Overfield and Shane Manley were required to maintain adequate housing, attend parenting classes, complete mental assessments and attend counseling to address any issues, complete a psychological assessment, and complete substance abuse assessments. Summer Overfield and Shane Manley completed everything under the case plan. (September 22, 2005 and November 22, 2005 T.p. 217, 238, 244) They met most of the case plan objectives. (September 22, 2005 and November 22, 2005 T.p. 216) The parents can provide the basic care. (T.p. 155) They attended parenting classes. (T.p. 6) The parents completed a mental health assessment with no recommendations of follow-up from the mental health assessments. (T.p. 160-162) The parents have been very cooperative. (T.p. 155) The parents attended every visit and therapy with T.M. (T.p. 68, 125) The parents developed their parenting knowledge and demonstrated their knowledge. (T.p. 7) The child shows attachment to both parents. (T.p. 130) The parents have a strong bond with T.M. (T.p. 150) The entire case hinges on the fact that Children Services does not know who cause the injuries to the child. Page five of the case plan that was filed July 20, 2006, which was one and one-half years after the complaint was originally filed, read in pertinent part, "the person or persons responsible for the above will verbally admit their responsibility for the physical abuse." (T.p. 124) Bethlynn Recker, social worker with Madison County Children's Services, testified that the case plan requires one of the parents to admit that they physically abused that child in order for the child to be placed with them. (T.p. 137) Subsequently, Recker was asked, "So we're all very clear, the only way that this couple can comply with the case plan is to expose themselves to potential criminal prosecution,

its fair to say, isn't it?" Her response was, "I believe that's correct." (T.p. 176-177)

Additionally, it was evident from the hearing that not only was a culpability admission a part of the case plan, it was the chief component. It was the parenting educator's position that until someone came forth and admitted harming the child, she would be against reunification. (T.p. 20) It was her main concern that she did not know how T.M. "got hurt." (T.p. 13) The Guardian ad litem herein was asked if he had personally inquired of the parents regarding how T.M. was injured. His response was, "I wouldn't due to the fact that it's my understanding that—well, I wouldn't want to infringe upon their constitutional rights." (T.p. 211-212) It should be noted that the parents testified at Grand Jury in regards to the injuries. (September 22, 2005 and November 22, 2005 T.p. 40, 71)

ARGUMENT

Proposition of Law:

Compelling a parent to admit to the abuse of a child, as a requirement under a case plan for reunification of the child with the parent, is unconstitutional and a violation of the parent's Fifth Amendment privilege against self-incrimination.

The Fifth Amendment to the United States Constitution provides that no person "shall be compelled in any criminal case to be a witness against himself." This protection applies to any type of proceeding, whether civil, criminal, administrative, investigatory, or adjudicatory, in which an individual could be compelled to produce evidence against himself that could be used later in a criminal trial.

Cincinnati v. Bawtenheimer (1992), 63 Ohio St.3d 260, 586 N.E.2d 1065. The privilege applies to evidence that could directly support a criminal conviction, to information that would furnish a link in the chain of evidence that could lead to prosecution, and to evidence that a person reasonable believes could be used against him in a criminal prosecution. *Id.*

In re Knight (1999), 135 Ohio App.3d 172, 733 N.E.2d 303.

The United States Supreme Court has held that the right to refrain from self-incrimination applies to juvenile court proceedings. In *In re Gault* (1967), 387 U.S. 1, 47-48, 87 S.Ct. 1428, 1454, 18 L.Ed.2d 527, 557, the court held: "The language of the Fifth Amendment, applicable to the States by operation of the Fourteenth Amendment is unequivocal and without exception."

In re Billman (1993), 92 Ohio App.3d 279, 634 N.E.2d 1050. The Ohio Constitution also guarantees the privilege against self-incrimination. O. Const. Art. I Sec. 10.

The privilege is self-executing, that is, it does not have to be expressly raised, in cases where "the individual is deprived of his 'free choice to admit, to deny, or refuse to answer.'" *Garner v. United States* (1976), 424 U.S. 648, 657. A State may not impose substantial penalties because a witness elects to exercise his Fifth Amendment right not

to give incriminating testimony against himself. *Lefkowitz v. Cunningham* (1977), 431 U.S. 801, 805.

In *In re Jones Children*, (2002), 2002-Ohio-1748, the Ninth District Court of Appeals considered an appeal by a mother asserting, in part, that her required attendant at a sexual offender treatment program violated her Fifth Amendment rights as an admission that she sexually abused her children. The Court stated, "Admissions are, by definition, voluntary." *Id.* at 11. Court ordered admissions and attendance are involuntary.

The Twelfth Appellate District recognized that a termination of parental rights context, a case plan is prohibited from requiring a culpability admission from a parent facing possible criminal charges. *In re Puckett* (Sept. 17, 2001), Butler App. Nos. CA2000-10-203, CA2000-11-223, unreported. In *In re Amanda W.* (1997), 124 Ohio App.3d 136, the trial court had found that the child asserted that her father sexually abused her; however, the juvenile court never determined, by adjudication that the father was the child's abuser. Moreover, any statement about the father's abuse could subject her mother to prosecution for child endangerment. The juvenile court granted the motion for permanent custody. The appellate court reversed. The sole area of noncompliance with the case plan to get the child back was the failure of the parents to admit that the father sexually abused his daughter. Thus, the court found that the department failed to make diligent efforts to offer a case plan for treatment of the alleged sexual offender while protecting his or her individual rights. The Twelfth District Court wrote that "this is the type of compelling sanction that forces an individual to admit to offenses in

violation of his right not to incriminate himself. Accordingly, the privilege was self-executing. Therefore, in order to avoid a Fifth Amendment infringement, the state was required to offer [the parents] protection from the use of any compelled statements and any evidence derived from those answers in a subsequent criminal case against either one or both of them.” *Id.* at 141.

The Vermont Supreme Court has also used the Fifth Amendment privilege against self-incrimination to state that “the trial court cannot specifically require the parents to admit criminal misconduct in order to reunite the family.” *In re M.C.P.* (1989), 153 Vt. 275, 300, 571 A.2d 627, 641. The Minnesota Supreme Court has also held that, “to the extent it requires appellants to incriminate themselves, violates appellants’ Fifth Amendment rights and is unenforceable. This means that appellants’ noncompliance with the order requiring them to divulge details of the nephew’s death to psychologists, cannot be used as grounds under Minn.Stat. Sec. 260.221(5) (1986) for termination of parental rights nor for keeping J.W. and A.W. in foster care. Assertion of a constitutional right does not make a person a less fit parent, any more than it makes a person a less good citizen. The state may not penalize the parents for noncompliance with the court order impinging on their privilege.” *In the Matter of Welfare of J.W. and A. W.* (1987), 415 N.W.2d 879.

Pursuant to R.C. 2151.412 (F)(1), all case plans for children in temporary custody shall have the following general goals:

- (a) Consistent with the best interest and special needs of the child, to achieve a safe out-of-home placement in the least restrictive, most family-like setting available and in close

proximity to the home from which the child was removed
or the home in which the child will be permanently placed;

(b) To eliminate with all due speed the need for the out-of-home placement so that the child can safely return home.

Further, the primary goals of the case plan and services provided by Children Services is to respect and support the integrity of the child's family unit; to prevent placement of a child away from his family or caretaker; and to enable a child's return home. See O.A.C. 5101:2-39-06; O.A.C. 5101:29-39-07. The case plan herein provided for the parents to provide food, clothing, shelter, medical care and emotional support. Further, the parents were to participate in parenting classes, complete psychological assessments, complete drug and alcohol assessments, and maintain employment. (Supp. P. 14) To that end, one of the requirements in the case plan, added on July 20, 2006 reads, "the person or persons responsible for the abuse will verbally admit their responsibility for the physical abuse of Tristan." (Supp. p. 69) The parents did not comply with this portion of the case plan. The parents assert their noncompliance based on their Fifth Amendment privilege against self-incrimination.

A case plan in Madison County Juvenile Court falls into the category in which the Fifth Amendment applies. It is a juvenile proceeding wherein the case plan herein became a court order. Failure to comply with the terms of the case plan could lead to being held in contempt. R.C. 2151.412(E)(1). The parents are being compelled to comply and could be subject to fine and/or jail for not complying. The Fifth Amendment privilege applies to the parents on any evidence that "could directly support a criminal conviction, to information that would furnish a link in the chain of evidence that could lead to prosecution, and to evidence that a person reasonable believes court be used

against him in a criminal prosecution.” *Cincinnati v. Bawtenheimer* (1992), 63 Ohio St.3d 260, 586 N.E.2d 1065. For a parent to make a verbal admission of abuse on a child is to open the door to, at a very minimum, a domestic violence or child endangerment charge.

Children Services attempts to disguise the requested admission as an avenue to create proper treatment for the parent(s). (T.p. 137) It ignores that the parents herein entered an admission to dependency. This implies they understood the nature of the injuries. It also justifies why Children Services never filed an “abuse” allegation. It also ignores the accomplishments already made by the parents in regards to mental health assessments and counseling. In this case it is not as though the parents had not completed any counseling to address any speculated physical abuse. Each completed individual assessments and then they completed sessions as a couple. (T.p. 110) Father treated with Kayleen Sitdham-Klier and Mother treated with Janet Thomas. Both treated with Janice Bersoff. They were released with no further treatment necessary. (T.p. 160, 161-162) Children Services never obtained an “admission of responsibility for the incident that occurred, [the case worker’s position and] the agency’s position that without an admission, there could be no real learning event so that wouldn’t happen again.” (T.p. 112) Children Services had months upon months of opportunities to address any concerns with the issues covered in the counseling sessions with the counselor(s). Additionally, the requirement did not become a part of the case plan until one and one-half years after the case was initiated and well after the parents made significant strides in completion of the case plan. Therefore, the parents’ participation in mental health treatment has surely helped the parents gain insight into their own behaviors. See *In re:*

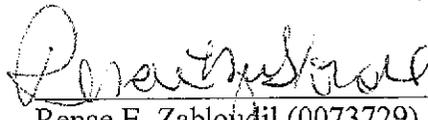
A.D., A.D. Jr., K.D., R.D., & J.D. (2005), 2005-Ohio-5183. Children Services asserts that neither parent has adequately addressed the injuries, their responsibility and learned how to prevent further harm. (T.p. 127) Children Services criticizes the parents for not discussing the issue adequately with counselors. However, Children Services ignores the fact that they have releases to discuss the issues with counselors and failed to do such. (T.p. 157, 165-167) Children Services claims that the parents have not been able to use the services placed for them by Children Services. (T.p. 130) Children Services cannot claim that it made reasonable efforts when Children Services denies the existence of successfully completed counseling. It is no fault but Children Services that counseling did not address what it wanted addressed. For Children Services to turn a blind eye to its lack of communication with the counselors is unacceptable. The main concern Children Services is the "possibility" of physical abuse reoccurring. (T.p. 127) To force an admission out of a parent which creates criminal liability while dangling their child in front of them is malicious.

The United States Supreme Court has stated that the right to raise one's children is an "essential" and "basic civil right." *In re Murray* (1990), 52 Ohio St.3d 155, 157 citing *Stanley v. Illinois* (1972), 405 U.S. 645, 651. Parents have a "fundamental liberty interest" in the care, custody, and management of the child. *Santosky v. Kramer* (1982), 455 U.S. 745, 753. Further, it has been deemed "cardinal" that the custody, care and nurture of the child reside, first, in the parents. *H.L. v. Matheson* (1981), 450 U.S. 398, 410.

In regards to T.M., Children Services has nitpicked a family's values, morals, and parenting techniques for the lone reason that it does not know how the injuries occurred and will never rest until it finds out. It makes no matter what strides the family took and accomplishments made. Children Services refuses to acknowledge the possibility that if the parents are responsible, what lesson is learned out of not having your own child in your own home for two years. Children Services instead criticizes the parents for in appropriate burping. (T.p. 145) It ignores that the parents are able to provide basic needs, without any overlays of drugs or alcohol. (T.p. 122)

For all the foregoing reasons, the grant of permanent custody to Madison County Department of Job and Family Services was error. Permanent custody should be denied.

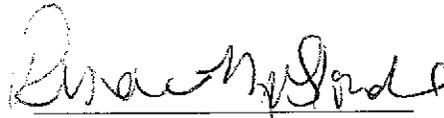
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CERTIFICATE OF SERVICE

The undersigned attorney at law hereby certifies that a true copy of the foregoing brief was served upon Rachel M. Price, 59 North Main Street, London, Ohio 43140; Richard A. Dunkle, 2 North Main Street, London, Ohio 43140; J. Michael Murray, 8 East Main Street, West Jefferson, Ohio 43162 by U.S. regular mail, postage prepaid on this 31st day of March, 2008.



Renae E. Zabloudil

IN THE SUPREME COURT OF OHIO

IN THE MATTER OF:

07-2317

T.M.

On Appeal from the Madison
County Court of Appeals,
Twelfth Appellate District

Court of Appeals Case Nos.
CA2007-04-016 & CA2007-05-020

NOTICE OF APPEAL OF APPELLANTS SUMMER OVERFIELD AND SHANE MANLEY

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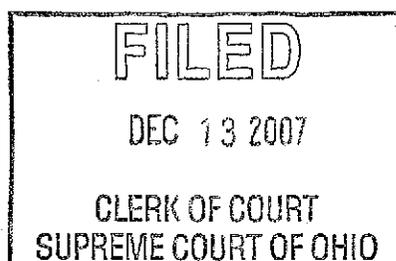
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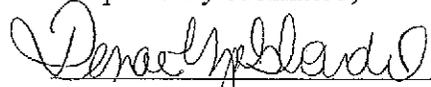


Notice of Appeal of Appellants Summer Overfield and Shane Manley

Appellants Summer Overfield and Shane Manley hereby give notice of appeal to the Supreme Court of Ohio from the judgment of the Madison County Court of Appeals, Twelfth Appellate District entered in Court of Appeals Case Nos. CA2007-04-016 and CA2007-05-020 on October 29, 2007.

This case raises a substantial constitutional question and is one of public of great general interest. This case also involves the termination of parental rights.

Respectfully submitted,

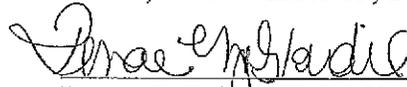


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Certificate of Service

I certify that a copy of this Notice of Appeal was sent by ordinary U.S. mail to Rachel A. Price, 59 North Main Street, London, Ohio 43140, Counsel for MCDJFS, Richard A. Dunkle, 2 North Main Street, London, Ohio 43140, guardian *ad litem*, and upon J. Michael Murray, 8 East Main Street, West Jefferson, Ohio 43162, counsel Linda Overfield, on December 13, 2007.



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IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
MADISON COUNTY

IN THE MATTER OF:

T.M.

CASE NOS. CA2007-04-016
CA2007-05-020

OPINION FILED
10/29/2007 The Court of Appeals
Madison County, Ohio

OCT 29 2007

Maria Teresa
Clerk of Courts

APPEAL FROM MADISON COUNTY COURT OF COMMON PLEAS,
JUVENILE DIVISION
Case No. 20430024

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POWELL, J.

{¶1} Appellants, S.O. and S.M. (parents) and L.O. (grandmother), appeal a decision of the Madison County Common Pleas Court, Juvenile Division, granting permanent custody of T.M. to the Children Services Department of the Madison County Department of Job and Family Services (Children Services).

{¶2} Children Services first became involved with T.M. and her parents when the child was around two months old. At that time, the child had a burn on her face caused by her father holding her too close to a vaporizer. The agency began providing parenting classes for both the mother and father at that time. Around the age of three and half-months old, T.M. was taken to the hospital due to swelling in her leg. Testing revealed that the child had sustained five limb fractures. T.M. had a fracture on each of her arms and legs and an additional fracture on one of her legs. Medical testimony established that the injuries were intentionally inflicted and a great degree of force was used to cause the fractures.

{¶3} At the time of their discovery, the fractures were in different stages of healing. However, it was determined that they had all occurred within a ten-day time frame. The only people who cared for the infant during the time period were the parents, the grandmother and her boyfriend. None of the adults who had access to the child during this time claim any knowledge of how the injuries were inflicted.

{¶4} In early December, 2004, Children Services filed a complaint alleging that T.M. was a dependent child and temporary custody was granted to the agency. At an adjudication hearing in January 2005, both parents admitted that the child was dependent and temporary custody to the agency was continued. A dispositional review hearing was held in the fall of 2005 at the request of the agency. Children services requested the review hearing for further direction regarding whether reunification with the parents should be continued as the goal. The trial court issued a decision in December 2005, finding that reunification could not occur with any of the four persons who were possible perpetrators of the abuse. The parents and grandmother appealed this decision.

{¶5} Children Services filed a motion for permanent custody of the child in March 2006. The motion was stayed pending resolution of the appeal. This court found that the

appeal from the review hearing was not a final appealable order. *In re T.M.*, Madison App. Nos. CA2006-01-001, CA2006-01-004, 2006-Ohio-6548. A hearing on the permanent custody motion was held on March 30, 2007 and the trial court issued an entry on April 10, 2007 granting permanent custody of T.M. to Children Services.

{¶16} The parents and grandmother now appeal the trial court's decision to grant permanent custody of the child to the agency. The parents raise the following assignments of error for our review:

{¶17} "THE TRIAL COURT ERRED BY DETERMINING THAT THERE WAS CLEAR AND CONVINCING EVIDENCE TO GRANT PERMANENT CUSTODY TO THE AGENCY."

{¶18} "THE GRANT OF PERMANENT CUSTODY WAS A DIRECT VIOLATION OF APPELLANT'S [SIC] FIFTH AMENDMENT RIGHT AGAINST SELF INCRIMINATION."

{¶19} "THE TRIAL COURT ERRED IN DETERMINING THAT THE AGENCY MADE REASONABLE EFFORTS TO REUNITE THE CHILD WITH HER PARENTS AND FAILED TO MAKE REASONABLE CASE PLANNING AND DILIGENT EFFORTS TO ASSIST THE PARENTS."

{¶10} The grandmother raises the following assignment of error for our review:

{¶11} "THE TRIAL COURT ERRED WHEN IT DID NOT CONSIDER THE MATERNAL GRANDMOTHER AS A PLACEMENT OPTION FOR [T.M.] BEFORE GRANTING PERMANENT CUSTODY OF THE CHILD TO CHILDREN SERVICES."

{¶12} Before a natural parent's constitutionally protected liberty interest in the care and custody of his child may be terminated, the state is required to prove by clear and convincing evidence that the statutory standards for permanent have been met. *Santosky v. Kramer* (1982), 455 U.S. 745, 759, 102 S.Ct. 1388. An appellate court's review of a juvenile court's decision finding clear and convincing evidence is limited to whether sufficient credible

evidence exists to support the juvenile court's determination. *In re Starkey*, 150 Ohio App.3d 612, 2002-Ohio-6892, ¶16. A reviewing court will reverse a finding by the juvenile court that the evidence was clear and convincing only if there is a sufficient conflict in the evidence presented. *In re Rodgers* (2000), 138 Ohio App.3d 510, 520.

{¶13} R.C. 2151.414(B) requires the juvenile court to apply a two-part test when terminating parental rights and awarding permanent custody to a children services agency. Specifically, the trial court must find that: 1) the grant of permanent custody to the agency is in the best interest of the child, utilizing, in part, the factors of R.C. 2151.414(D); and, 2) any of the following apply: the child cannot be placed with either parent within a reasonable time or should not be placed with either parent; the child is abandoned; the child is orphaned; or the child has been in the temporary custody of the agency for at least 12 months of a consecutive 22-month period. R.C. 2151.414(B)(1)(a), (b), (c) and (d); *In re Schaefer*, 11 Ohio St.3d 498, 2006-Ohio-5513, ¶31-36; *In re Ebenschweiger*, Butler App. No. CA2003-04-080, 2003-Ohio-5990, ¶9.

{¶14} In the parents' first assignment of error, they challenge the trial court's best interest determination on three separate bases. They argue that there is clear and convincing evidence of a relationship and interaction between the child and parents, that the court should not have considered the guardian ad litem's report, and that there is clear and convincing evidence that a legally secure placement can be achieved without a grant of permanent custody.

{¶15} With respect to determining the best interest of the child, R.C. 2151.414(D) provides that in considering the best interest of a child in a permanent custody hearing, "the court shall consider all relevant factors, including, but not limited to, the following:

{¶16} "(1) The interaction and interrelationship of the child with the child's parents,

siblings, relatives, foster caregivers and out-of-home providers, and any other person who may significantly affect the child;

{¶17} "(2) The wishes of the child, as expressed directly by the child or through the child's guardian ad litem, with due regard for the maturity of the child;

{¶18} "(3) The custodial history of the child, including whether the child has been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two month period ending on or after March 18, 1999;

{¶19} "(4) The child's need for a legally secure permanent placement and whether that type of placement can be achieved without a grant of permanent custody to the agency;

{¶20} "(5) Whether any of the factors in divisions (E)(7) to (11) of this section apply in relation to the parents and child."

{¶21} The parents argue that there is clear and convincing evidence that there is a relationship and interaction between the child and her biological family. The trial court stated that it had considered the statutory factors in making a best interest determination. The fact that there is a relationship, bond and interaction with the child and her biological family is not disputed. However, the focus of the court's decision is on issues involving the safety of the child. We find no error in the trial court's weighing of the factors and determining that ensuring the child's physical safety was the paramount concern in this case.

{¶22} The evidence showed that at the age of two months, the child suffered a burn caused by her father, and at less than four months old, had five broken bones. Medical testimony established that the broken bones could only have been caused by a great deal of force and that the injuries were intentionally inflicted and were not the result of an accident or medical condition. The parties agree that only four people had access to the child during the

time the injuries were inflicted, yet no one has taken responsibility for the injuries. Witnesses from the agency testified that they were unable to return the child to her home without identifying the perpetrator, as all four people lived in close proximity of each other and returning the child home would be placing her back with the person who caused the abuse. Witnesses also testified that it was imperative that the person responsible for the abuse first accept responsibility for their actions, and then engage in counseling tailored to rehabilitate and ensure that the situation that led to the abuse does not occur again. The witnesses testified that until this occurs, there is still risk to the child.

{¶23} In addition, there was testimony that although the parents were involved in parenting classes and received instruction on how to parent the child, they were unable to implement what they had learned on a long-term basis. Both parents had difficulty with basic parenting skills and understanding of the behavior and capabilities of children at various stages of development. Although the parents were willing to take part in services and instruction, the parenting instructor and the caseworker both testified at the permanent custody hearing that although the parents initially appeared to be making some progress towards improving their parenting skills, the progress was not adequate to reduce the risk of harm to a child in their care. Both parents needed reminders of basic parenting skills during their visitations, even when reminded at the start of the visit. In the areas where the parents appeared to be progressing, the follow-through in continuing proper parenting skills did not always occur at subsequent visits.

{¶24} There were also concerns regarding the parents' ability to cope with the demands of parenting on a full-time basis without having support services, and particularly if one of the parents were to be alone with the child. The father also had some issues with anger management. These concerns increased when the parents had a second child, as

parenting two children would increase the demands on the parents. The parents exhibited little ability to deal with the child's normal behavior as a toddler during a group class, and it was eventually decided that only the foster mother would attend the classes so that the child could continue to learn. Given these safety concerns, we find no error in the trial court's weighing of the factors relative to the child's best interest.

{¶25} The parents also argue that the court should not have considered the guardian ad litem's report in determining best interest, as the guardian's report was not based on an independent investigation. The parents argue that the guardian ad litem neglected to speak independently with the parents, the counselors or the parenting educator, and never observed the child interact with her parents or grandmother.

{¶26} Pursuant to R.C. 2151.281(B)(1), "[t]he court shall appoint a guardian ad litem to protect the interest of a child in any proceeding concerning an alleged abused or neglected child and in any proceeding [involving permanent custody]." A guardian ad litem "shall perform whatever functions are necessary to protect the best interest of the child." R.C. 2151.281(I). "The role of guardian ad litem is to investigate the ward's situation and then to ask the court to do what the guardian feels is in the ward's best interest." *In re Baby Girl Baxter* (1985), 17 Ohio St.3d 229, 232. The trial court determines a guardian ad litem's credibility and the weight to be given to the guardian's report. *In re E.C.*, Butler App. No. CA2006-03-060, 2007-Ohio-39.

{¶27} In this case, the guardian ad litem was questioned at the hearing regarding the extent of his involvement in this case. He answered questions from the parents' attorney indicating that he did not visit the parents or grandmother's home, did not observe visitations, or speak independently with the counselors or the parenting instructor. He indicated that his recommendations were based on information from Children Services and attending the

hearings.

{¶28} Other courts considering issues involving the alleged failure of the guardian ad litem to perform his duties have determined that when a parent cannot establish any prejudice arising from the action or inaction of a guardian ad litem, then any potential error is harmless. See e.g. *In re J.C.*, Adams App. No. 07CA833, 2007-Ohio-3781, and cases cited therein.

{¶29} The parents have not indicated any manner in which they were prejudiced by the guardian ad litem's failure to visit with the parents, observe the parents' visits with the child, nor have they indicated any way in which they were prejudiced by the guardian ad litem's failure to speak independently to the counselors or parenting instructor. While other issues were involved, many of the facts in this case were not disputed, and the primary focus of the persons involved was the physical safety of the child and whether the parents or a relative could provide a safe environment. The guardian ad litem's report addresses the issues involved in this determination and the parents have not alleged any manner in which they were prejudiced by the guardian's inaction in the other areas they argue on appeal.

{¶30} In addition, as discussed above, the trial court determines a guardian ad litem's credibility and the weight to be given to his/her report. In this case, counsel for the parents questioned the guardian ad litem and addressed specific questions regarding his investigation and the basis of his report. Accordingly, we find that the trial court did not err in considering the guardian ad litem's report.

{¶31} Finally, the parents and the grandmother argue that there is evidence that placement can be achieved without a grant of permanent custody. Factually, they argue that the evidence shows that they can provide for the child's basic needs. However, as discussed above, the record shows contrary evidence. While the parents completed parenting classes

and counseling, there was still concern expressed by the parenting instructor and the caseworker regarding the parents' ability to carry over what they had learned on a long-term basis, or even from visit to visit. There were also concerns based on the fact that the parents were unable to follow-through on basic parenting skills from visit to visit in a controlled environment. The parenting instructor stated that the parents would need help over the next two to three years to parent the child.

{¶32} In addition, witnesses testified that there is still a major concern because they still do not know who hurt the child. The possibility that the physical abuse may occur again without an admission by the person who caused it and steps to ensure that it does not reoccur was a major concern in reuniting the child with her parents.

{¶33} We find no error in the trial court's determination that granting permanent custody was in the best interest of the children. Accordingly, the parents' first assignment of error is overruled.

{¶34} In their second assignment of error, the parents argue that the grant of permanent custody was a direct violation of their Fifth Amendment right against self-incrimination. They argue that their rights were violated because the case plan required the person(s) responsible for the abuse to admit responsibility for their physical abuse of the child and to do so would subject them to criminal liability. As support for their arguments, the parents cite *In re Puckett* (Sept. 17, 2001), Butler App. Nos. CA200-11-203, -223; and *In re Amanda W.* (1997), 124 Ohio App.3d 136.

{¶35} In *Amanda W.*, the appellate court determined that the parents' Fifth Amendment rights were violated by a requirement that the father undergo sexual offender counseling that required him to admit that he sexually abused his daughter. In that case, it was clear from the agency and the court's decision that the father's refusal to admit to the

sexual abuse was the cause for the agency's decision to seek permanent custody. In a case involving similar circumstances, this court distinguished *Amanda W.* on the basis that the father was free to see another counselor but waited to do so until over a year later. *In re Puckett.*

{¶36} In another case addressing a similar issue, the court distinguished *Amanda W.* on the basis that there was sufficient credible evidence of the father's sexual abuse from other sources, the father stipulated to the findings of dependency and because the alleged sexual abuse was not the sole factor weighing in favor of terminating the father's parental rights. *In re A.D.*, Summit App. No. 22668, 2005-Ohio-5183.

{¶37} We find the facts of the case before us more akin to the factual scenario presented in the case of *In re A.D.* than *Amanda W.* First, there is substantial credible evidence, outside of the failure to admit culpability for the injuries, that the injuries occurred and that one of the four people involved caused the injuries.

{¶38} Factually, this case presents a unique situation. There is no doubt that the child was seriously injured as the fractures are substantiated by medical testimony. Moreover, medical testimony established that the cause of these injuries could only be violent force. It is further undisputed that one of the four individuals caused the injuries, as all four people who had access to the child admit that the four of them are the only possible persons who could have injured the child.

{¶39} Second, like *In re A.D.*, the parents stipulated to the dependency finding in this case, and to the facts alleged in the complaint. As mentioned above, the parents agree that the injuries could only have been caused by one of the four individuals. While agency workers testified that identifying who caused the abuse was a goal from the beginning, the requirement that the responsible party admit the abuse was not formally added to the case

plan until after the December 2005 hearing in which the court determined that a goal other than reunification should be added to the case plan. Any one of the four persons with access to the child could have admitted to causing the abuse, or identified the abuser but all failed to do so and the trial court determined that reunification with the parents was not possible since placing the child back with the parents would be placing her back with the person who caused the injuries.

{¶40} Finally, there is other substantial credible evidence to support the trial court's findings that it was in the child's best interest to grant permanent custody and that the child could not be placed with the parents within a reasonable time. It was the parents' inability to safely parent the child at two months old that initially caused the agency to become involved. The father indicated that the child was burned when he placed the child directly in front of a vaporizer and placed a towel over the child and the vaporizer. Shortly after that time, it was discovered that the child had five fractures and she was removed from the home. Although the parents were willing to undergo services and parenting instruction, there was little long term progress and the concern for the child's safety continued.

{¶41} The child's need for a legally secure placement was also an issue. The child was removed at the age of four months, and at the time of the hearing was two-and-a-half years old. As discussed above, the parenting instructor testified that it would take two or three more years for the parents to be able to take care of the child independently.

{¶42} The parents also argue that the trial court erred in finding that they failed to take a polygraph as requested by the agency. The polygraph was not part of the case plan, but the agency requested that the four individuals who were potentially responsible for the abuse take a polygraph examination. The grandmother and her boyfriend both took, and passed the polygraph. The parents refused to take the polygraph and this fact was mentioned by the

court in its decision. However, the failure to take the polygraph was not the sole reason for the court's determination that permanent custody should be granted, and was just one fact that the court considered.

{¶43} Accordingly, because there is significant evidence supporting the fact that the parents can not safely parent the child, and the decision to grant permanent custody is not based solely on the parents failure to admit to abusing the child, the parents' second assignment of error is overruled.

{¶44} In their final assignment of error, the parents argue that the trial court erred in determining that the agency made reasonable efforts to reunite the child with her parents and to make reasonable case planning and diligent efforts to assist the parents. Much of this argument centers on the requirement that the person responsible admit to the abuse, but the parents also allege other ways in which the agency failed to provide reasonable efforts, such as failing to obtain a home study of the grandmother's residence and allowing them to be released from counseling but find that they did not make progress in counseling.

{¶45} The court made findings that the agency had made reasonable efforts to prevent the removal of the child from the home and to eliminate the continued removal of the child from the home at several different points in this case, including in the decision granting permanent custody. Much of the parents' argument on this issue involves the requirement that the person who harmed the child admit causing the abuse, which has been discussed above. Moreover, completion of the case plan is only one factor for that the court considered and is relevant to the court's determination as it relates to the child's best interest. *In re S.N.*, Summit App. No. 23571, 2007-Ohio-2196.

{¶46} A review of the record supports the trial court's determination that the agency made reasonable efforts. Children Services arranged for psychological assessments,

counseling, parenting classes and other instruction, and provided other services. Although the parents completed these services, there were still concerns regarding their ability to safely parent. The fact that the parents did not benefit long-term or permanently from the services does not negate the fact that the agency made reasonable efforts in providing them. In addition, a home study was not performed on the grandmother's residence as it was determined that she was not a suitable placement, as discussed below in the grandmother's assignment of error. Accordingly, the parents' third assignment of error is overruled.

{¶47} The grandmother's sole assignment of error contends that the court erred in not considering her as a placement option before granting permanent custody. The grandmother was considered as a placement option for the child. However, agency workers identified several areas of concern that substantiated the court's decision that she was not a suitable placement option.

{¶48} First, the grandmother is one of the four persons who had access to the child and could have potentially caused the abuse. Second, the close proximity of the grandmother to the parents is a concern. Evidence was presented that she lives only 60 feet away from the parents and that both the parents and her boyfriend would have access to the child. According to the caseworker the grandmother indicated when questioned regarding her close proximity to the parents that she would not be willing to move away from the parents. Finally, evidence was presented that the lives of the four individuals are "emeshed" into what was described as an "enabling relationship." The caseworker testified that the grandmother performs fundamental necessities for the parents, such as buying them things for their basic care, transportation, and attending medical appointments with them and that the extent of this involvement in their lives is unhealthy. The level of this relationship also caused concerns in that the grandmother did not recognize that her daughter may have been

responsible for the abuse and also concerns regarding the grandmother's ability to limit the parents' access to the child. Accordingly, we find no error in the trial court's determination that the grandmother was not a suitable placement option. The grandmother's sole assignment of error is overruled.

{¶49} Judgment affirmed.

YOUNG, P.J. and BRESSLER, J., concur.

This opinion or decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: <http://www.sconet.state.oh.us/ROD/documents/>. Final versions of decisions are also available on the Twelfth District's web site at: <http://www.twelfth.courts.state.oh.us/search.asp>

KEZ

**IN THE COURT OF COMMON PLEAS, MADISON COUNTY, OHIO
PROBATE DIVISION, JUVENILE COURT**

In the Matter of
Tristen Manley,
Dependent Child.

FILED
JUVENILE COURT
APR 10 2007
Glenn S. Hamilton
Judge, Madison County, Ohio

Case No. 20430024

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW/ JOURNAL
ENTRY/FINAL JUDGMENT ENTRY**

The above captioned matter came on for hearing of the "Motion for Permanent Custody" on March 30, 2007. Appearances were entered by the mother and by the father; by their attorney, Renae E. Zabloudil; by the maternal grandmother; by her attorney, J. Michael Murray; by the maternal grandmother's fiancée; by the caseworker for the Madison County Department of Children Services, Bethlynn Recker; by the guardian *ad litem*, Richard A. Dunkle; and by the assistant prosecutor, Rachel M. Price.

The Court makes the following findings of fact and conclusions of law by clear and convincing evidence. The Court takes judicial notice of its prior proceedings, entries, and hearings.

Findings of Fact

The Court finds that Tristen Manley, at four months of age, suffered five fractures within a 14-day period. Each arm and each leg contained at least one fracture. One leg contained two fractures.

Dr. Philip V. Scribano, in his deposition, testified that the fractures came from twisting and shaking so violently that a whiplash effect to the bone was caused. It was his opinion that the fractures could only have been caused by intention. The Court infers from the testimony of various medical experts and the medical records that the intentional injuries to the infant reflect an intense, purposeful fury on the part of the perpetrator. Only four people were present when the injuries could have

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JUVENILE COURT
MAY 04 2007
Glenn S. Hamilton
Judge, Madison County, Ohio

occurred: the parents, the maternal grandmother, and the maternal grandmother's fiancée. The four individuals live in three separate houses, but spend much of their time together. The maternal grandmother lives within 60 feet of the parents. All four spent significant amounts of time with the infant during the period in which the wounds were inflicted. None of the four has admitted to inflicting the injuries, and all of the four claim no knowledge of how the injuries were inflicted.

The maternal grandmother and her fiancée took polygraph examinations, which found no deception. Both parents refused to take polygraph tests.

The Agency through its investigation and the Court process was unable to determine who perpetrated these horrendous injuries. The father has admittedly caused injury to the child on two previous occasions. He admits that he burned the child when he got her too close to the vaporizer and may have hurt her leg by bumping it in a shopping cart.

Although the parents have complied with most of the goals of the Case Plan, they have failed to take polygraph examinations as requested by the Agency.

The parenting instructor who has been working with the parents testified on March 30, 2007, that the parents would need at least two or three more years of assistance in order to safely parent the child. Other witnesses who testified for the State expressed serious concerns for the parents' ability to learn and apply safe parenting techniques at any time without assistance.

A verbal *Ex Parte* Order of Temporary Custody was issued on December 6, 2004, placing temporary custody of Tristen Manley with the Agency. A written entry followed the verbal order on December 8, 2004. Tristen has been in the continuous temporary custody of the Agency since that time.

To date, the perpetrator of the horrendous injuries to the baby has not come forward and has not been identified. There was no evidence presented at the March 30, 2007, hearing that the close living

FILED

MAY 04 2007

Glenn S. Hamilton
Judge, Madison County, Ohio

circumstances of the four persons present during the baby's injuries had changed whatsoever. Replacing the child with the parents would also be replacing the child with the perpetrator or perpetrators of the child's injuries and would place the child in extreme danger.

The guardian *ad litem* recommends that the Court grant permanent custody of the child to the Agency.

Conclusions of Law

The Court finds that it is in the best interest of the above-captioned child to grant permanent custody of the child to the Madison County Department of Children Services. [R.C. 2151.414(B)(1)] The Court finds that the child cannot be placed with a parent within a reasonable time and should not be placed with either of the child's parents. [R.C. 2151.414(B)(1)(a)]

In determining the child's best interest, the Court has considered the factors required by Revised Code Section 2151.414(D).

The Court further finds that the child has been in the temporary custody of a public children services agency for 12 or more months of a consecutive 22 month period. [R.C. 2151.414(B)(1)]

The Court finds that the Agency has made reasonable efforts to reunite the child with her parents, but that reunification is not possible due to the extreme danger to the child of such a reunification.

It is, therefore, **ORDERED** that:

1. Pursuant to Ohio Revised Code Section 2151.414, the permanent custody of Tristen Manley is granted to the Madison County Department of Job and Family Services, Children Services Department.
2. Educational responsibility is placed with the Madison Plains Local School District.
3. Copies of this entry shall be provided by ordinary mail to the parties and counsel of record.

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JUVENILE COURT

MAY 04 2007

Glenn S. Hamilton
Judge, Madison County, Ohio

4. This matter shall be scheduled for review hearing by separate entry.
5. The Court enters final judgment and finds that there is no just reason for delay.

ENTER:

Glenn S. Hamilton

JUDGE

cc: Mother/Father/~~REZ~~
Grandmother/JMM
gal/RAD
Prosecutor/MCCS

NOTICE:

THIS ORDER DIVESTS THE PARENTS OF ANY AND ALL PARENTAL RIGHTS, PRIVILEGES, AND OBLIGATIONS, EXCEPT THE RIGHT OF THE PARENTS TO APPEAL THE PERMANENT CUSTODY ORDER.

NOTICE:

A PARTY HAS THE RIGHT TO APPEAL THIS ORDER BY FILING HIS OR HER NOTICE WITH THE CLERK OF THIS COURT WITHIN THIRTY (30) DAYS OF THE DATE THIS ORDER ISSUES.

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JUVENILE COURT

MAY 04 2007

Glenn S. Hamilton
Judge, Madison County, Ohio

5101:2-39-06 Preplacement preventive services, reunification services and life skill services.

(A) The PCSA shall make available the following supportive services to a child and his parent, guardian or custodian as the agency determines necessary:

- (1) Preplacement preventive services designed to help a child to remain safely in his own home;
- (2) Reunification services designed to help a child to return safely to his own home or to a permanent alternative placement;
- (3) Life skill services, pursuant to rule 5101:2-42-19 of the Administrative Code, designed to assist a child who has attained the age of sixteen to prepare for transition from substitute care to independent living; or
- (4) Emergency services, pursuant to paragraph (C) of this rule, to a child enrolled in the "Help Me Grow" program.

(B) The PCSA shall make available supportive services listed in paragraphs (F) and (G) of rule 5101:2-39-07 of the Administrative Code in order to ensure reasonable efforts are made to:

- (1) Prevent or eliminate the need for removal of a child from his own home;
- (2) Make it possible for a child who has been removed to return safely to his parent, guardian or custodian or to be placed in a permanent alternative placement; or
- (3) Assist a child who has attained the age of sixteen to prepare for transition from substitute care to independent living.

(C) The PCSA may provide emergency services, kinship care services and any other form of financial assistance for a child and his parent, guardian, custodian, relative, kin, or preadoptive parent in order to:

- (1) Prevent child abuse or neglect;
- (2) Prevent or eliminate the need for removal of the child from his home;
- (3) Prevent placement of a child away from his kinship care family; or
- (4) Safely return a child to his parent, guardian or custodian.

(D) Prior to the provision of emergency services, the PCSA shall:

- (1) Determine if the child can remain safely in the home; or
- (2) Determine if the child can be safely returned to the home; or

(3) Determine if the child is enrolled in the "Help Me Grow" program; and

(4) Meet with the child's family and/or "Help Me Grow" coordinator, if applicable, to determine the amount of emergency assistance that is needed.

(E) The PCSA may consider contacting the CDJFS to determine if any services or assistance can be provided to families coming to its attention including but not limited to prevention, retention or contingency (PRC) services.

(F) When the PCSA provides emergency services assistance, the agency shall develop or amend a case plan in accordance with the requirements contained in rule 5101:2-39-08 or 5101:2-39-081 of the Administrative Code when emergency services assistance will be provided for more than thirty days.

(G) The PCSA shall include the following information in the case record, if applicable:

(1) A completed copy of the JFS 01444;

(2) Emergency services, kinship care services, and any other form of financial assistance provided.

(H) Services made available by the PCSA can be paid for through utilization of the following funding sources, if appropriate:

(1) Title IV-B funds;

(2) Title IV-E funds;

(3) Title XX funds, through the CDJFS;

(4) State child protection allocation;

(5) Kinship care services funds;

(6) TANF funds, through the CDJFS; or

(7) Local funds.

Utilization of the above mentioned funds shall be governed by the respective guidelines of each funding source.

HISTORY: Eff 9-30-85 (Emer.); 12-22-85; 9-28-87 (Emer.); 12-23-87 (Emer.); 3-15-88; 1-1-90; 1-1-91; 7-1-97 (Emer.); 9-29-97; 3-18-99 (Emer.); 6-17-99; 10-4-04

Rule promulgated under: RC 119.03

Rule authorized by: RC 2151.421, 5153.16

Rule amplifies: RC 2151.421, 5153.16

RC 119.032 Review Dates: 06/01/2004 and 04/01/2009

5101:2-39-07 Supportive services.

(A) The primary goals of all supportive services are:

- (1) To respect and support the integrity of the child's family unit.
- (2) To prevent placement of a child away from his family or caretaker.
- (3) To enable a child's return home or to an alternative permanent placement.
- (4) To assist a child who has attained the age of sixteen to prepare for transition from substitute care to independent living and self sufficiency.

(B) Supportive services shall be made available by the public children services agency (PCSA) to the child, his family or caretaker through one or more of the following:

- (1) Information and referral services to community resources.
- (2) Direct services from the PCSA.
- (3) Contract services from community service providers.
- (4) Compact services from community service providers.
- (5) Direct and indirect services from child abuse and neglect multidisciplinary teams.
- (6) Direct and indirect services through the county family and children first council and/or county "Help Me Grow" provider.

(C) Supportive services shall be based upon the PCSA's assessment of safety and risk to the child and shall be available during all of the following:

- (1) The safety planning process.
- (2) The assessment/investigation process.
- (3) The supervision of a child in his own home without court order.
- (4) The protective supervision of a child as ordered by the court.
- (5) The child's substitute care placement.
- (6) The period immediately following reunification of the child, as appropriate.

(D) Supportive services shall be available when one or more of the following exists:

- (1) The child, his family or caretaker have requested services, and the PCSA has determined such

services are necessary.

(2) The case evaluation/resolution or other information obtained during or after the assessment/investigation indicates the need for the services.

(3) The PCSA has received an order of protective supervision.

(4) The child has been placed in a substitute care placement.

(E) When one or more of the conditions listed in paragraph (D) of this rule exist, the JFS 01444 "Family Decision Making Model, Part II: Case Plan" (rev. 2/2001) shall be prepared as set forth in rules 5101:2-39-08 and 5101:2-39-08.1 of the Administrative Code.

(F) The PCSA shall establish procedures for referral of a child who is the subject of a report and who is not at risk of imminent harm to a community organization or voluntary preventive service.

(G) The PCSA may provide any of the mandated services identified in this paragraph directly, or through arrangement with a community service provider:

(1) Case management services. "Case management services" means activities performed by the PCSA or private child placing agency (PCPA) for the purpose of providing, recording and supervising services to a child and his parents, guardian, custodian, caretaker or substitute caregiver.

(2) Counseling services, which may include one or both of the following:

(a) General counseling services performed by a PCSA or shelter for victims of domestic violence to assist a child, a child's parents, and a child's sibling in alleviating identified problems that may cause or have caused the child to be an abused, neglected, or dependent child.

(b) Psychiatric or psychological therapeutic counseling services provided to correct or alleviate any mental or emotional illness or disorder and performed by a licensed psychiatrist, licensed psychologist, or person licensed under Chapter 4754. of the Revised Code to engage in social work or professional counseling; (3) Diagnostic services. "Diagnostic services" means medical, psychiatric, or psychological services performed by a licensed physician, psychiatrist, psychologist, licensed professional counselor with clinical endorsement, or a licensed independent social worker for the purpose of evaluating an individual's current physical, emotional, or mental condition.

(3) Diagnostic services. "Diagnostic services" means medical, psychiatric, or psychological services performed by a licensed physician, psychiatrist, psychologist, licensed professional counselor with clinical endorsement, or a licensed independent social worker for the purpose of evaluating an individual's current physical, emotional, or mental condition.

(4) "Help Me Grow" early intervention services. "Help Me Grow" early intervention services means services provided to a child under age three which can include developmental evaluations and assessments, speech and hearing services, family training and counseling, home visits, occupational or physical therapy, social and psychological services and service coordination.

(5) Emergency shelter. "Emergency shelter" means the short-term crisis placement of any child who is threatened or alleged to be abused, neglected, or dependent to an extent that there is imminent risk to the child's life, physical or mental health, or safety.

(6) Home health aide services. "Home health aide services" means the personal care and maintenance activities provided to individuals for the purpose of promoting normal standards of health and hygiene.

(7) Homemaker services. "Homemaker services" means the professionally directed or supervised simple household maintenance or management services provided by trained homemakers or individuals to families in their own homes.

(8) Protective child care services. "Protective child care services" means services provided for a portion of the twenty-four hour day for the direct care and protection of children who have been harmed or threatened with harm, or who are at risk of abuse, neglect, or exploitation due to a psychological or social problem, or physical or mental handicap of a caretaker parent, or whose health or welfare is otherwise jeopardized by their home environment.

(9) Substitute care. "Substitute care" means the care provided to a child apart from his parent or guardian, while the child's custody is held by a PCSA or PCPA.

(10) Therapeutic services. "Therapeutic services" means medical, psychiatric or psychological services performed by licensed or certified physicians, psychiatrists, psychologists, professional counselors or independent social workers for the purpose of correcting or alleviating physical, mental, or emotional illnesses, or disorders.

(H) When the PCSA determines that an emergency exists and supportive services are necessary to reduce the risk of abuse or neglect of the child, the PCSA shall immediately, but no later than the next working day after making this determination, make available any appropriate mandated services identified in paragraph (G).

(I) The PCSA shall, within fourteen days from the date the case plan has been approved by the parent, guardian, or custodian and the court, if applicable, make available such mandated services listed in paragraph (G) of this rule by providing or arranging the service.

(J) The PCSA shall within thirty days from the date the case plan has been approved by the parent, guardian, or custodian and the court, if applicable, make available such mandatory services listed in this paragraph.

(1) Adoption. "Adoption" means the creation, by a court of competent jurisdiction, of parental rights and responsibilities between a child and an adult, along with the termination of all parental rights and responsibilities to the child held by any other persons, which have not been previously surrendered or terminated by court order.

(2) Information and referral services. "Information and referral services" means services which may assist any person in location and/or using available and appropriate resources.

(3) Life skill services. "Life skill services" means a series of developmentally appropriate services or

activities that provide an opportunity for a child to gain the skills needed to live a self-sufficient adult life pursuant to rule 5101:2-42-19 of the Administrative Code.

(4) Unmarried parent services, as defined in 5101:2-42-70 of the Administrative Code.

(K) If there are barriers to the provision or arrangement of appropriate service(s), the PCSA caseworker must identify them, and must have supervisory review and approval from an immediate supervisor or the director, which indicates that the appropriate service(s) cannot be provided directly or arranged.

(L) The results of the supervisory review must be documented in the case record showing which service(s) were needed, and the barriers causing the PCSA's inability to provide them directly, or arrange for their provision.

(M) The PCSA shall also make available a minimum of three of the following supportive services within the county:

(1) Community education services. "Community education services" means a range of public information activities designed to increase the public awareness of child abuse or neglect and to promote appropriate utilization of services.

(2) Crisis services. "Crisis services" means services provided to families in crisis situations for purpose of providing an immediate or temporary solution to the presenting problem.

(3) Emergency caretaker. "Emergency caretaker" means services provided by a person placed within a child's own home to act as a temporary caretaker when the child's own caretaker is unable or unwilling to fulfill the responsibility.

(4) Employment and training services. "Employment and training services" means services designed to assist individuals in obtaining paid employment. Such services may include, but not be limited to, the use of social, psychological, and vocational diagnostic assessment, training, and placement.

(5) Environmental management services. "Environmental management services" means services offered to the child and his family or caretaker to improve physical living conditions and provide emergency funds. Such services may be provided, arranged, or ensured and may include, but not be limited to, housing repair, housing location, exterminating rodents or insects, lead abatement or making available financial assistance for outstanding utility bills.

(6) Parent aide services. "Parent aide services" means supportive services provided by a person assigned to families as a role model, and to provide family support for a portion of the twenty-four-hour day.

(7) Parent education. "Parent education services" means a teaching process to assist a parent, guardian, or custodian in developing the basic skills necessary to provide adequate care and support to a child in his own home.

(8) Crisis nursery. "Crisis nursery" means an emergency facility designed to prevent the occurrence of

abuse or neglect by assuming immediate child-care responsibility on behalf of caretakers who are experiencing a crisis.

(9) Day treatment services. "Day treatment services" means services provided for a portion of the day for a child living at home or in substitute care, who is at risk, or is being or has been abused or neglected, and who manifests emotional, psychological, behavioral, or social problems which cannot be resolved in nonspecialized educational or developmental settings, or in specialized settings such as learning behavioral disabilities classes.

(10) Volunteer services. "Volunteer services" means services (e.g., transportation) performed by a person of his own free will and without monetary gain or compensation.

(N) PCSAs may regionalize the provision of mandatory supportive services when appropriate. Each PCSA participating in the regionalization of supportive services must identify which services are regionalized, and what other counties are involved in the regionalization of services.

(O) When the PCSA has identified, through completion of a risk assessment, that a child is at imminent risk of abuse or neglect because the parent, guardian or custodian of the child has a chemical dependency problem or a chemical dependency problem was the basis for a court's determination that the child was an abused, neglected or dependent child, the agency shall:

(1) Develop and implement a safety plan pursuant to rule 5101:2-34-37 of the Administrative Code in order to protect and keep the child safe.

(2) Refer the parent, guardian, or custodian to an alcohol or drug addiction program certified by the Ohio department of alcohol and drug addiction services (ODADAS) for initial screening, assessment, treatment or testing.

(3) Notify the county department of job and family services (CDJFS) of the referral when the parent, guardian, or custodian is an Ohio works first (OWF) participant in order to determine if the self-sufficiency contract needs to be amended.

The PCSA may require the parent, guardian or custodian to reimburse the agency for the costs incurred for alcohol or drug testing if the parent, guardian or custodian is not a recipient of medicaid.

(P) At the conclusion of a diagnostic service or treatment, the PCSA shall request a written report from the service provider. Reports involving treatment shall contain information which indicates the progress the parent, guardian, or custodian and child has made to resolve areas identified in the provider's service or treatment plan. Such report shall be included in the case record.

(Q) At the conclusion of a short-term, time-limited service or short-term time-limited treatment, the PCSA shall request a report from the service provider. Reports involving treatment shall contain information which indicates the progress the parent, guardian, or custodian and child has made to resolve areas identified in the provider's service or treatment plan. If such report is not written, the service provider's identity, the date of the report, and the content of the report shall be included in the case dictation.

(R) At a minimum of once every four months and at the conclusion of ongoing services or treatment, the PCSA shall request written or verbal reports from all ongoing service providers. Reports shall contain information which indicates the progress the parent, guardian, or custodian and child have made to resolve areas identified in the provider's service or treatment plan. Such written reports shall be included in the case record. If such report is not written, the service provider's identity, the date of the report, and the content of the report shall be included in the case dictation.

(S) The PCSA shall document all of the following in the case record:

(1) Supportive services which have been offered or provided.

(2) Supportive services planned, but not provided, and the reason the services were not provided.

(T) The director of the PCSA shall be responsible for submitting a letter to the appropriate Ohio department of job and family services (ODJFS) field office by January 1st of every year that contains the following assurances:

(1) The agency will assure all supportive services mandated in paragraphs (G) and (J) of this rule are available to all children and families in need of services without regard to income, race, color, national origin, religion, social status, handicap, or sex.

(2) The agency will assure that there is a commitment to maintaining and improving the quality of services for the support of families and the protection of children.

(3) The agency will assure that there is a commitment to meeting staff resource requirements of the state and/or county civil service system.

(4) The agency will assure that there is a written policy and procedures for reviewing and resolving complaints concerning the provision of services and appeals by individuals who disagree with the PCSA disposition/resolution of a report of child abuse and neglect pursuant to rule 5101:2-33-04 of the Administrative Code.

(U) At the same time the director submits the letter, he or she may submit a request to obtain ODJFS approval to waive the requirement for the provision of homemaker or home health aide and/or protective child care services listed in paragraph (G) of this rule. A waiver for either or both of these services may be granted on an annual basis. In order for the waiver to be granted by ODJFS, the PCSA must provide the following information in the request for a waiver:

(1) The number of requests for the provision of protective child care services or homemaker/home health aide services received during the last year.

(2) The number of times the agency provided protective child care services or homemaker/home health aide services during the last year.

(3) Whether protective child care services and/or homemaker/home health aide services are available within the county, and if not, where protective day-care services or homemaker/home health aide services are available in proximity to the county.

(4) The projected unit cost, per hour, for provision of protective child care services or homemaker/home health aide services.

(5) The projected total cost for county/agency provision of protective child care services or homemaker/home health aide services.

(V) To secure a waiver, the PCSA must also certify that such service(s) are not needed by a significant number of persons within the county; are not available from the PCSA or other community resources within the county; and the cost of providing such service(s) is undue or excessive when compared to the benefits to be derived from the service(s).

(W) Within thirty days of receipt and review of the information contained in this paragraph, ODJFS will notify the PCSA of receipt of the assurances and, if applicable, approval or disapproval of its request for a waiver.

Effective: 04/17/2006

R.C. 119.032 review dates: 04/01/2009

Promulgated Under: 119.03

Statutory Authority: 2151.412, 2151.421, 5153.16

Rule Amplifies: 2151.412, 2151.421, 5153.16

Prior Effective Dates: 4/1/83, 1/1/87, 1/1/88, 1/1/89, 1/1/91, 10/1/92, 12/15/96 (Emer.), 3/31/97, 6/30/97 (Emer.), 6/17/99, 4/1/01, 6/25/04

Amendment V.

**CONSTITUTION OF UNITED STATES
AMENDMENTS - BILL OF RIGHTS**

Amendment V. Rights of Persons

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

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Amendment XIV.

CONSTITUTION OF UNITED STATES

AMENDMENTS

Amendment XIV. Rights Guaranteed: Privileges and Immunities of Citizenship, Due Process, and Equal Protection

SECTION. 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

SECTION. 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

SECTION. 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

SECTION. 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

SECTION. 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

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§ 10

CONSTITUTION OF THE STATE OF OHIO

Article I - Bill of Rights

§ 10 Trial for crimes; witness

Except in cases of impeachment, cases arising in the army and navy, or in the militia when in actual service in time of war or public danger, and cases involving offenses for which the penalty provided is less than imprisonment in the penitentiary, no person shall be held to answer for a capital, or otherwise infamous, crime, unless on presentment or indictment of a grand jury; and the number of persons necessary to constitute such grand jury and the number thereof necessary to concur in finding such indictment shall be determined by law. In any trial, in any court, the party accused shall be allowed to appear and defend in person and with counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face, and to have compulsory process to procure the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed; but provision may be made by law for the taking of the deposition by the accused or by the state, to be used for or against the accused, of any witness whose attendance can not be had at the trial, always securing to the accused means and the opportunity to be present in person and with counsel at the taking of such deposition, and to examine the witness face to face as fully and in the same manner as if in court. No person shall be compelled, in any criminal case, to be a witness against himself; but his failure to testify may be considered by the court and jury and may be made the subject of comment by counsel. No person shall be twice put in jeopardy for the same offense.

(As amended September 3, 1912.)

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2151.412 Case plans.

(A) Each public children services agency and private child placing agency shall prepare and maintain a case plan for any child to whom the agency is providing services and to whom any of the following applies:

- (1) The agency filed a complaint pursuant to section 2151.27 of the Revised Code alleging that the child is an abused, neglected, or dependent child;
- (2) The agency has temporary or permanent custody of the child;
- (3) The child is living at home subject to an order for protective supervision;
- (4) The child is in a planned permanent living arrangement.

Except as provided by division (A)(2) of section 5103.153 of the Revised Code, a private child placing agency providing services to a child who is the subject of a voluntary permanent custody surrender agreement entered into under division (B)(2) of section 5103.15 of the Revised Code is not required to prepare and maintain a case plan for that child.

(B)(1) The director of job and family services shall adopt rules pursuant to Chapter 119. of the Revised Code setting forth the content and format of case plans required by division (A) of this section and establishing procedures for developing, implementing, and changing the case plans. The rules shall at a minimum comply with the requirements of Title IV-E of the "Social Security Act," 94 Stat. 501, 42 U.S.C. 671 (1980), as amended.

(2) The director of job and family services shall adopt rules pursuant to Chapter 119. of the Revised Code requiring public children services agencies and private child placing agencies to maintain case plans for children and their families who are receiving services in their homes from the agencies and for whom case plans are not required by division (A) of this section. The agencies shall maintain case plans as required by those rules; however, the case plans shall not be subject to any other provision of this section except as specifically required by the rules.

(C) Each public children services agency and private child placing agency that is required by division (A) of this section to maintain a case plan shall file the case plan with the court prior to the child's adjudicatory hearing but no later than thirty days after the earlier of the date on which the complaint in the case was filed or the child was first placed into shelter care. If the agency does not have sufficient information prior to the adjudicatory hearing to complete any part of the case plan, the agency shall specify in the case plan the additional information necessary to complete each part of the case plan and the steps that will be taken to obtain that information. All parts of the case plan shall be completed by the earlier of thirty days after the adjudicatory hearing or the date of the dispositional hearing for the child.

(D) Any agency that is required by division (A) of this section to prepare a case plan shall attempt to obtain an agreement among all parties, including, but not limited to, the parents, guardian, or custodian of the child and the guardian ad litem of the child regarding the content of the case plan. If all parties agree to the content of the case plan and the court approves it, the court shall journalize it

as part of its dispositional order. If the agency cannot obtain an agreement upon the contents of the case plan or the court does not approve it, the parties shall present evidence on the contents of the case plan at the dispositional hearing. The court, based upon the evidence presented at the dispositional hearing and the best interest of the child, shall determine the contents of the case plan and journalize it as part of the dispositional order for the child.

(E)(1) All parties, including the parents, guardian, or custodian of the child, are bound by the terms of the journalized case plan. A party that fails to comply with the terms of the journalized case plan may be held in contempt of court.

(2) Any party may propose a change to a substantive part of the case plan, including, but not limited to, the child's placement and the visitation rights of any party. A party proposing a change to the case plan shall file the proposed change with the court and give notice of the proposed change in writing before the end of the day after the day of filing it to all parties and the child's guardian ad litem. All parties and the guardian ad litem shall have seven days from the date the notice is sent to object to and request a hearing on the proposed change.

(a) If it receives a timely request for a hearing, the court shall schedule a hearing pursuant to section 2151.417 of the Revised Code to be held no later than thirty days after the request is received by the court. The court shall give notice of the date, time, and location of the hearing to all parties and the guardian ad litem. The agency may implement the proposed change after the hearing, if the court approves it. The agency shall not implement the proposed change unless it is approved by the court.

(b) If it does not receive a timely request for a hearing, the court may approve the proposed change without a hearing. If the court approves the proposed change without a hearing, it shall journalize the case plan with the change not later than fourteen days after the change is filed with the court. If the court does not approve the proposed change to the case plan, it shall schedule a hearing to be held pursuant to section 2151.417 of the Revised Code no later than thirty days after the expiration of the fourteen-day time period and give notice of the date, time, and location of the hearing to all parties and the guardian ad litem of the child. If, despite the requirements of division (E)(2) of this section, the court neither approves and journalizes the proposed change nor conducts a hearing, the agency may implement the proposed change not earlier than fifteen days after it is submitted to the court.

(3) If an agency has reasonable cause to believe that a child is suffering from illness or injury and is not receiving proper care and that an appropriate change in the child's case plan is necessary to prevent immediate or threatened physical or emotional harm, to believe that a child is in immediate danger from the child's surroundings and that an immediate change in the child's case plan is necessary to prevent immediate or threatened physical or emotional harm to the child, or to believe that a parent, guardian, custodian, or other member of the child's household has abused or neglected the child and that the child is in danger of immediate or threatened physical or emotional harm from that person unless the agency makes an appropriate change in the child's case plan, it may implement the change without prior agreement or a court hearing and, before the end of the next day after the change is made, give all parties, the guardian ad litem of the child, and the court notice of the change. Before the end of the third day after implementing the change in the case plan, the agency shall file a statement of the change with the court and give notice of the filing accompanied by a copy of the statement to all parties and the guardian ad litem. All parties and the guardian ad litem shall have ten days from the date the notice is sent to object to and request a hearing on the change.

(a) If it receives a timely request for a hearing, the court shall schedule a hearing pursuant to section 2151.417 of the Revised Code to be held no later than thirty days after the request is received by the court. The court shall give notice of the date, time, and location of the hearing to all parties and the guardian ad litem. The agency shall continue to administer the case plan with the change after the hearing, if the court approves the change. If the court does not approve the change, the court shall make appropriate changes to the case plan and shall journalize the case plan.

(b) If it does not receive a timely request for a hearing, the court may approve the change without a hearing. If the court approves the change without a hearing, it shall journalize the case plan with the change within fourteen days after receipt of the change. If the court does not approve the change to the case plan, it shall schedule a hearing under section 2151.417 of the Revised Code to be held no later than thirty days after the expiration of the fourteen-day time period and give notice of the date, time, and location of the hearing to all parties and the guardian ad litem of the child.

(F)(1) All case plans for children in temporary custody shall have the following general goals:

(a) Consistent with the best interest and special needs of the child, to achieve a safe out-of-home placement in the least restrictive, most family-like setting available and in close proximity to the home from which the child was removed or the home in which the child will be permanently placed;

(b) To eliminate with all due speed the need for the out-of-home placement so that the child can safely return home.

(2) The director of job and family services shall adopt rules pursuant to Chapter 119. of the Revised Code setting forth the general goals of case plans for children subject to dispositional orders for protective supervision, a planned permanent living arrangement, or permanent custody.

(G) In the agency's development of a case plan and the court's review of the case plan, the child's health and safety shall be the paramount concern. The agency and the court shall be guided by the following general priorities:

(1) A child who is residing with or can be placed with the child's parents within a reasonable time should remain in their legal custody even if an order of protective supervision is required for a reasonable period of time;

(2) If both parents of the child have abandoned the child, have relinquished custody of the child, have become incapable of supporting or caring for the child even with reasonable assistance, or have a detrimental effect on the health, safety, and best interest of the child, the child should be placed in the legal custody of a suitable member of the child's extended family;

(3) If a child described in division (G)(2) of this section has no suitable member of the child's extended family to accept legal custody, the child should be placed in the legal custody of a suitable nonrelative who shall be made a party to the proceedings after being given legal custody of the child;

(4) If the child has no suitable member of the child's extended family to accept legal custody of the child and no suitable nonrelative is available to accept legal custody of the child and, if the child temporarily cannot or should not be placed with the child's parents, guardian, or custodian, the child

should be placed in the temporary custody of a public children services agency or a private child placing agency;

(5) If the child cannot be placed with either of the child's parents within a reasonable period of time or should not be placed with either, if no suitable member of the child's extended family or suitable nonrelative is available to accept legal custody of the child, and if the agency has a reasonable expectation of placing the child for adoption, the child should be committed to the permanent custody of the public children services agency or private child placing agency;

(6) If the child is to be placed for adoption or foster care, the placement shall not be delayed or denied on the basis of the child's or adoptive or foster family's race, color, or national origin.

(H) The case plan for a child in temporary custody shall include at a minimum the following requirements if the child is or has been the victim of abuse or neglect or if the child witnessed the commission in the child's household of abuse or neglect against a sibling of the child, a parent of the child, or any other person in the child's household:

(1) A requirement that the child's parents, guardian, or custodian participate in mandatory counseling;

(2) A requirement that the child's parents, guardian, or custodian participate in any supportive services that are required by or provided pursuant to the child's case plan.

(I) A case plan may include, as a supplement, a plan for locating a permanent family placement. The supplement shall not be considered part of the case plan for purposes of division (D) of this section.

Effective Date: 07-01-2000