BEST PRACTICES TERMINATION OF PARENTAL RIGHTS
SUB-COMMITTEE REPORT

OBJECTIVES:

1. Determine what the best practices and procedures are that should be utilized to achieve permanency for children who have been removed and are currently in out-of-home placements:
   A. By examining the Courts with Juvenile Docket responsibilities throughout the State of Oklahoma, and;
   B. Comparing the best practices and procedures used by other states with those used in Oklahoma, to determine whether we should consider adopting some of their procedures as our own.
2. Answer the following question: Is COVID-19 the major player causing permanency delays, or are the delays being contributed by other factors as well—what are they?, and finally:
3. Is there a way to improve timeliness in achieving permanency for children?

SUMMARY OVERVIEW:

"Oklahoma Leads The Nation In Childhood Trauma," the title of a 2019, 8-part special report in the Tulsa World newspaper, only begins to tell the story. A 2017 national survey found 30.4% of Oklahoma's children had been exposed to two or more Adverse Childhood Experiences (ACEs), the highest percentage in the country. Earlier surveys also showed Oklahoma had the highest percentage of children with four or more ACEs.

Why does it matter? Compared to children with zero ACEs, those with four or more ACEs are:

12 times more likely to attempt suicide;
4.6 times more likely to suffer depression;
4.7 times more likely to abuse drugs;
7.4 times more likely to become an alcoholic;
2x as likely to suffer a stroke or have heart disease;
2x as likely to not finish high school; and
As adults, they die 20 years earlier than other adults.

In 2017, Oklahoma had the highest female incarceration rate and the second-highest male incarceration rate in the country. The resulting 26,000 children with one incarcerated parent are 70% more likely to become incarcerated themselves.

It's hard to overstate the consequences of childhood trauma. Over the last two decades, science has uncovered how childhood adversity (ACEs) changes our brains, literally altering the

brain's architecture in ways that can prevent the child from becoming a successful adult. The impacts from these experiences can carry forward to the child's future children and even grandchildren. Oklahoma's deprived children are caught in a vicious cycle, where tomorrow they will inflict the same abuse, neglect, and poverty on their kids that they themselves face today. The interests of deprived children are more compelling than previously recognized, especially for those under age five, whose brains are most at risk.

Oklahoma has a systemic problem in achieving timely permanency for abused and neglected children, and this delayed and unstable permanency are forms of childhood adversity we exact onto children who are already known to be the most traumatized in the country.

The COVID-19 pandemic is not a significant factor in achieving permanency, but only because the problem was so pervasive and of such magnitude before the pandemic that COVID-19-specific delays are difficult to distinguish.

While this sub-committee was initially focused on COVID-19's impact on jury trials, the frequency of jury trials is just a symptom of a larger problem. The root problem is best understood in the axiom, "You don't know what you don't know." We simply don't know; we fail to understand and appreciate the last two decades of science relating to abused and neglected children. As a result, we lack the requisite urgency in achieving timely permanency, and some of our well-intentioned efforts to protect children are, instead, harming them.

There are solutions to lessen the number of Adverse Childhood Experiences that have resulted in Oklahoma's #1 highest child-trauma ranking, but these solutions will require our willingness to change, creativity, and perhaps new, science-informed approaches. When parents aren't being good parents, we must remember the deprived child has an interest even more fundamental and even more compelling-- the right to grow into adulthood free from the permanent negative effects of physical and mental abuse, and neglect.

We must take a step back and reassess how we see the parent-child relationship, especially given the scientifically proven facts, and the trends among our sister states who have recognized these facts.

ANALYSIS:

COVID-19

The sub-committee began its investigation by exploring whether COVID-19 was having a major impact on achieving permanency. We were able to quickly determine that although the numbers of out-of-home-placements-without- permanency had risen, most of our Oklahoma Courts had only been closed for short time periods, having reopened under the guidelines established by the Jury Trial Best Practices Subcommittee in July, 2020, and the Pandemic Judicial Advisory Committee established by Chief Justice Gurich. But although most Courts were

open and operating, we learned that some judicial districts had no plans to conduct jury trials before early 2021, hoping the Virus would by that time have lessened its impact. And although some Courts were delaying their jury dockets, others, specifically Oklahoma County Juvenile Division, was conducting jury termination trials full-steam-ahead, as quickly as they could be placed on the jury trial docket. The Tulsa County Juvenile Division was at first more cautious due to the Covid-19 numbers. We were satisfied the Courts were handling all juvenile cases as expediently as they possibly could, given the need to maintain distancing and safety for all participants in the courtroom. COVID-19 did not account for the delays in achieving permanency for the large numbers of children we were about to discover in limbo, without permanency.

OKLAHOMA'S CHILDREN OUT-OF-HOME NUMBERS-

We contacted Bonnie Clift, Deputy General Counsel for OKDHS, and asked if she could obtain the numbers, by county, of at least the larger counties in Oklahoma, of children being held in OKDHS custody outside the home, without permanency. She worked very hard on short notice, and prepared the following memo, below, as of October 29, 2020. When we read it we were shocked! We have highlighted portions below we consider very important.
(Prepared by Bonnie Clift):

ISSUE: Are Jury trials on issue of termination of parental rights being held on a timely basis?

Information from counties around the state reflect situations that are similar to pre-COVID status. Courts are scheduling jury trial dockets at almost the same pace as they were in January and February, 2020, but the difference is that only 1-2 counties have actually conducted a jury trial for this issue since March, 2020.

But, the counties that have a high number of cases that are pending a jury trial on the termination of parental rights have in the past, consistently had a high number of pending cases. Currently, Tulsa County has over 400 cases, Oklahoma County has over 350 cases and Comanche and Cleveland County each have over 100 cases that are pending a trial on the issue of termination of parental rights. Pottawatomie County also has 75 pending cases and Muskogee County has over 50 pending cases, with about 5 more counties with 30-40 pending cases.

The approach to working through these cases is multi-faceted when you consider all the moving parts of conducting a jury trial, especially in juvenile deprived matters. There is a prosecutor, an attorney representing the child, an attorney representing each parent, along with the Judge, and support staff as well as the jurors. From the responses around the state, the unanimous elements that slows down a case are:

1) The lack of sufficient, experienced prosecutors to prepare the cases for trial, and to also be able to maintain their day-to-day case work, with many counties only having a part-time ADA; and

2) The lack of attorneys to represent parents in these cases at trial and the needed resources for these attorneys to prepare for trial.

This makes sense, when you look at any given docket, each ADA may only be able to prepare for 3-4 cases and the attorneys representing the parents may only be able to prepare for 3-4 cases.

The second facet of responses dealt with the courts and the multiple settings of a case for trial from docket to docket. When a county only has 2-3 jury dockets a year, this practice can result in a lengthy delay for the resolution of these cases.

Possible approaches for Resolution

A) Compose a group of staff to prepare and try these cases on a statewide or regional basis to include a Judge, 2-3 experienced prosecutors and attorneys to assist the legal representatives for parents and children to prepare and try these cases.

B) Hold Jury Dockets that are dedicated to juvenile matters only, with the group described above to try a larger number of cases at a docket.

Before our next scheduled meeting we contacted some of the judges in the respective counties mentioned. The judges provided estimates that were lower than what was provided to us from OKDHS.

We analyzed the data and learned that the judges and OKDHS were both right. But the collecting of data by each was entirely different:

OKDHS labeled a case ready for termination at the point in time they determined that Reasonable or Active efforts to achieve permanency had failed. The recommendation was then made by OKDHS to the Assistant District Attorney to prepare and file a Petition to Terminate the parent's rights;

The judges labeled a case ready for termination at the point the ADA had actually filed the Petition to Terminate and the case was waiting or had been placed on the docket for trial.

We learned that although OKDHS may have recommended to an ADA a Petition to Terminate be filed after their efforts had failed, the Petition might not have been filed. The child would be in limbo—efforts had failed, but the case was not yet moving toward resolution. The ADA often would have a good reason not to have filed the Petition—he or she could only prepare 3, maybe 4 juvenile cases for jury trial on a given jury docket with his or her additional burden to prepare other matters for jury trial for that docket as well. It was too much to expect.

Another factor regarding data collection that would account for the difference in numbers stems from how cases are counted. DHS General Counsel, Bonnie Clift, stated that DHS counts each child as a "case" in their numbers. However, generally when cases are placed on the jury docket for trial, courts count cases which have multiple children in them as one case. Bonnie Clift submitted that the difference between counting each child as a case versus counting one case with multiple children would account for a 66% difference. In other words, the case count including multiple children as one case would be approximately one third compared to the one child equals one case method.

USE OF JURY TRIALS IN OTHER STATES

Of the fifty states and District of Columbia, only three states (Texas, Oklahoma, and Wyoming) allow the unrestricted use of juries when terminating parental rights; two additional states (Wisconsin and Virginia) allow juries but restrict their use. The jury right in Oklahoma and Texas has a constitutional dimension, while the right in Wyoming, Wisconsin, and Virginia is purely statutory.

Wyoming has a statutory right to a jury in a termination hearing, and the jury decides both the grounds for termination and whether termination is in the child's best interest. WYO. STAT. ANN. § 14-2-312.

Wisconsin has a statutory right to a jury in a termination hearing, but the jury only decides the grounds for termination; the judge decides whether it's in the child's best interests. WIS. STAT. § 48.424(3).

Virginia does not allow a jury at the original termination hearing in the juvenile court, but on appeal to a circuit court, the judge has discretion to allow an advisory jury if a party requests; however, the jury is merely advisory—the judge does not have to follow their recommendation. VA. CODE ANN. § 16.1-296(F)

Courts in twenty-four states and the District of Columbia have been presented with the question, "Is there a constitutional right to a jury trial when terminating parental rights?" They have responded as follows:

Oklahoma has a constitutional right to a jury that is specific to termination hearings, but the right exists only when the State is a party. The right is required as a matter of constitutional due process. Oklahoma established this right in 1987 based on specific text in article II, section 19, which was subsequently removed in 1990. In 1997, the Oklahoma Supreme Court reaffirmed the constitutional right, requiring it under due process. A.E. v. State, 1987 OK 76; Gray v. Upp, 1997 OK 98; see also Christopher M. Calvert, *Trial by Jury: Unequal Protection for Oklahoma's Abused and Neglected Children*, OKLA. B. J., Aug. 2020, at 6, 8;

Texas interprets its constitution such that everyone in "all causes in the District Courts" has the right to demand a jury, regardless of whether the case is one in law or equity. (TEX.

CONST. art. V, § 10). The constitutional right isn't specific to terminating parental rights, nor is it tied to due process. Texas also allows jury trials in divorce and custody matters.

Twenty-two states and the District of Columbia have ruled that there is no constitutional right to a jury when terminating parental rights: Nevada (2016), West Virginia (2014), Florida (2010), Alaska (2007), Arizona (2005), Wisconsin (2004), New Mexico (1997), Utah (1997), Tennessee (1996 and reaffirmed in 2004), Indiana (1995), Maine (1988), Michigan (1985), Wyoming (1984), Montana (1984 and reaffirmed in 2006), Kentucky (1983), North Carolina (1981), Illinois (1979 and reaffirmed in 2008), Oregon (1976), New York (1976), Washington (1975), Georgia (1961), Kansas (1959 and reaffirmed in 1984), and the District of Columbia (1953).

Although those twenty-three courts took various approaches, three common themes emerge:

1) The Federal Constitution does not provide the right to a jury in termination proceedings because: (a) the Sixth Amendment only applies to criminal trials, and termination hearings are civil in nature; and (b) the Seventh Amendment is inapplicable to the states as it has not been incorporated into the Fourteenth Amendment;
2) A state constitution's guarantee of a jury for civil proceedings is "inviolate," which courts interpret as encompassing the right as it existed at Common Law or at statehood, a time when termination hearings did not exist; and
3) Constitutional due process does not require a jury when terminating parental rights. Some rely on McKeiver v. Pennsylvania, 403 U.S. 528 (1971); others perform the balancing test from Mathews v. Eldridge, 424 U.S. 319 (1976); some use both.

Below are a few cases where a court engaged in an in-depth analysis regarding the constitutional right to a jury trial:

- In re Parental Rights as to M.F., 371 P.3d 995, 132 Nev. 209 (Nev. 2016);
- In re K.J., 885 N.E.2d 1116 (Ill. App. Ct. 2008);
- In re M.H., 2006 MT 208, 143 P.3d 103 (Mont. 2006);
- State ex rel. Child., Youth & Fams. Dep't v. T.J., 1997-NMCA-021, 934 P.2d 293; and
- In re T.B., 933 P.2d 397 (Utah. Ct. App. 1997);

TIMELY PERMANENCY IS PART OF A MUCH LARGER PICTURE

In 1998, the ACEs study showed a direct relationship between adverse experiences during childhood, and poor physical, mental, and emotional outcomes in adults, including early death. At the same time, scientists were conducting parallel research on how a child's brain develops and discovered how those same adverse experiences damaged the developing brain's

structure and function, permanently. These events spurred additional research, providing new insight into what the interests of abused and neglected children really are. We aren't simply protecting children from abuse and neglect; we're protecting *their only opportunity to develop into a healthy, functioning adult*.

ACEs stands for Adverse Childhood Experiences, which are ten specific types of childhood adversity, including emotional, physical, or sexual abuse; emotional or physical neglect; and households with domestic violence, substance abuse, mental illness, divorce, or incarceration. According to the Center for Disease Control, at least five of the top ten leading causes of death are associated with ACEs. An "ACEs score" is the number of ACEs a person experiences before the age of eighteen. As one's ACEs score increases, so does the likelihood of suffering depression, attempting suicide, not completing high school, being unemployed, living in poverty, using illicit drugs, committing violence, being a victim of violence, being a smoker, engaging in risky behaviors that lead to unintended pregnancies or STDs, being an alcoholic, and suffering from chronic diseases such as heart disease or cancer, among others.

Data from 2016-2018 shows that during that span, 21% of Oklahoma's children, or 1 in 5 Oklahoma children under age 3 had *at least* 2 ACEs, the highest such percentage in the country. For context, Arizona was next with 15%. Oklahoma's percentage was 263% higher than the U.S. average (8%) and 700% higher than Maryland and Massachusetts (3%), states having the lowest percentage. Almost as alarming is that only 53% of Oklahoma's children had zero ACEs. All other states were at or above 63% of their children having no ACEs, with the national average being 71%.

Brain development, and the expanding skillset children acquire during it, occurs in stages. During these stages, the brain is adapting to the child's unique environment, so while heredity plays a role, it's now known that optimal development also depends on a child encountering a sequence of certain types of experiences from reliable, nurturing caregivers. Each stage of development directly impacts how subsequent stages will develop. The first four to five years of a child's brain development is critical to laying a good foundation for emotional development during adolescence, which in turn is critical to laying a good foundation for executive-function development through early adulthood.

Absent positive relationships with reliable adult caregivers, essentially the definition of "neglect", the type of stress associated with abuse and neglect can alter a young child's brain development, even affecting "gene expression," determining when, or if, certain genes are activated. The activation or non-activation of a gene caused by ACEs can be passed from one generation to the next, and beyond. This means the impacts from abuse and neglect continue beyond today's deprived child to other generations.

If the stress is chronic or repeated, the brain's natural fear response can become stuck in the "on" position, flooding the body with chemicals that can damage or destroy neurons in

critical brain areas and elevating heart rate and blood pressure, eventually leading to heart disease. The potential consequences are devastating: difficulty learning, unable to succeed in school, unable to regulate emotions, lack of impulse control, unable to have healthy relationships with peers, unable to put others needs before their own or be effective parents, difficulty thinking logically or considering the consequences of their actions, unable to have empathy, suffering long-term depression, developing mental, emotional, or intellectual disorders, to mention a few.

Intensive, early intervention is key to minimizing the long-term effects of early trauma on a child's brain development. Stabilizing a damaged or altered brain before permanent damage occurs requires interventions targeting the specific parts of the brain that have been affected. The child's brain requires frequent, consistent replacement experiences of nurturance, stability, predictability, understanding, and support so the child's brain can begin adapting to a positive environment. Delayed permanency is a type of childhood adversity and something we do to a deprived child at the very end of his or her ordeal. Given what deprived children have already experienced and the potential damage already inflicted, delaying permanency is not in their best interest.

This is just a brief primer. We refer the reader to the sources below for more information, especially the first source, which is an article we relied on from the Child Welfare Information Gateway, a congressionally mandated and funded information service under the U.S. Department of Health and Human Services.

https://acestoohigh.files.wordpress.com/2009/09/childbrains.pdf
https://www.cdc.gov/violenceprevention/aces/index.html
https://developingchild.harvard.edu/
https://www.childtrauma.org/
https://acestoohigh.com/
https://mchb.hrsa.gov/sites/default/files/mchb/Data/NSCH/nsch-ace-databrief.pdf
* Numbers vary by data source, but more recent data suggests Oklahoma may have slightly improved its percentage of children with two or more ACEs, moving out of the very bottom ranking.

In 2019, The Tulsa World did a special report on ACEs and Oklahoma leading the nation in childhood trauma. It's located at:
https://tulsaworld.com/news/specialreports-databases/special-report-oklahoma-leads-the-nation-in-childhood-trauma-how-does-this-affect-our-state/collection_7089b3a4-4b3f-5d9d-987d-58f32653a390.html

ARE JURY TRIALS NECESSARY IN TERMINATION HEARINGS?

Given the overwhelming weight of authority against using jury trials in termination hearings, we look at Oklahoma's approach. Specifically, what are our objectives, and are we achieving them? Considering Arizona's brief negative experience with jury trials, there are legitimate questions of whether a jury is necessary.

In light of when and how Oklahoma instituted jury trials in termination hearings, it's clear the objective was to give parents a "fair" decision, which is a laudable goal. Unfortunately, we've never considered the adverse impact of jury trials on deprived children. Based upon our data, it's arguable whether a jury at a termination hearing even achieves its objective of a "fair" decision.

In Oklahoma when a judge makes the decision in a non-jury trial, he or she is required to make specific findings of fact based on admissible evidence that's both presented and admitted at the hearing. The findings must support the judge's legal conclusions, and those conclusions must support the ultimate decision. On the other hand, a jury makes the decision by checking boxes on a form. Though the standard of review is the same on appeal for both judges and juries, there's more to review when a judge makes the decision, and it's easier to see the decision's bases. In a close case, it would seem easier to ensure a fair decision by verifying what the judge was thinking as opposed to guessing the collective thought of six jurors. If the case isn't close, then it *shouldn't* matter who makes the decision, but as six individuals trying to function as one, a jury adds a degree of unpredictability we generally don't see with a judge. Predictability would seem more consistent with the idea of fairness than unfairness.

Making specific findings with reference to the evidence presented also helps ensure a judge doesn't include information from outside the hearing, mitigating concerns of the judge's bias based on prior knowledge with the case. The judge's findings are easy to review, and he/she knows it.

Some believe any prior knowledge could lead to a "bias" where the judge pre-decides a case. This focus on only being fair to the parent is an objective that harms deprived children. It protects parents at the children's expense. The judge is the one with the specialized training in deprived-related issues, the one who knows the family's history and capabilities, the one with experience in such cases, the one trained in the science of a child's brain development, and thus, most importantly, the one positioned to reach the best decision. The parents contribute to whatever body of prior knowledge the judge has, so as long as the evidence is admissible and presented at the hearing, it can hardly be considered "unfair" to the parent.

When Arizona reformed its Child Protective Services (what Oklahoma calls OKDHS) in 2003, it provided a statutory right to a jury with a three-year sunset provision, meaning the right would go away in three years unless the legislature expressly extended it. Some of the key findings in a report to the Arizona Supreme Court, after interviewing key participants, give hints

to why the legislature didn't extend the jury right, letting it expire in 2006.

The report indicated that jury requests by parents were more likely in cases exhibiting certain similar characteristics, such as chronic substance abuse, serious mental health issues, parents with criminal charges, and the termination ground being "time out of the home," where the child had been in foster care for fifteen months or more. These characteristics are arguably associated with cases where the parent is likely to lose if a judge is making the decision. In other words, a jury trial gives these parents a slim chance to "win" when they would (and should) otherwise "lose." This is certainly good news for the parent, but with little to no expectation of eventually regaining custody of the child, it unreasonably delays the child's permanency, making the parent's "win" the child's "loss." Also in the report, parental rights were terminated roughly 90% of the time, regardless of whether a judge or jury made the decision. Everyone interviewed agreed that between a judge and jury, there was very little, if any, difference in the likelihood of termination. This begs the question, "Are jury trials necessary in termination hearings?"

Arizona's analysis may be particularly relevant because, like Oklahoma, that state has two "urban" counties, and the report shows that, also like Oklahoma, cases proceed differently in those urban counties than they do in their rural counterparts. TERMINATION OF PARENTAL RIGHTS BY JURY TRIALS IN ARIZONA: A SECOND YEAR ANALYSIS (2005), available at:

https://www.azcourts.gov/Portals/46/Publications/tpr_jury_trial.pdf

DATA COLLECTION- JUDICIAL REPORTING/TRAINING

Arizona's analysis makes one thing obvious—we need data. When making decisions, such as whether jury trials are necessary, it's easy to operate based on what we think/assume is true, what was true twenty years ago, or what we hope is true. Ensuring deprived children achieve timely permanency, or protecting deprived children in general, will require a concerted effort to collect the data necessary for making evidence-based decisions. While DHS has made progress in this area, there is more we should do. For example, in the last five years, how many termination hearings were held? How many were to a judge? How many were to a jury? What were the termination rates of each? What's the termination rate of a specific judge? Of the parents that won a termination hearing, how did the case end, e.g., did they eventually get their children back? Did the children remain out of the home anyway because of the same problems as before? What's the average time to serve process? How often do we have to publish notice? What case characteristics are statistically significant?

Though the 1999 best-practice guidelines from the Children's Bureau, an agency under

the U.S. Department of Health and Human Services, was targeted for state legislatures, it has utility for the judiciary as well. The guidelines recommend monitoring courts' compliance with mandatory timelines, and it specifically recommends holding a termination hearing within ninety days of filing the termination petition and providing a decision within fourteen days of starting the hearing. GUIDELINES FOR PUBLIC POLICY AND STATE LEGISLATION GOVERNING PERMANENCE FOR CHILDREN, IV-2,3 (1999), available at:

http://ia802607.us.archive.org/20/items/guidelinesforpub00duqu/guidelinesforpub00duqu.pdf

PERMANENCY MEDIATION

Permanency mediation is one of the tools in a judge's toolbox, but it's currently an under-utilized asset, so courts are missing out on the earlier disposition of cases, and children are missing out on achieving earlier permanency.

The AOC's Oklahoma Early Settlement Program provides a court access to neutral mediators trained in issues underlying child permanency and deprived cases. The mediator meets with the parties of a case in an informal setting, facilitating a discussion that allows everyone to confidentially collaborate towards a solution.

While some courts have been using mediation for quite some time, others, especially rural counties, have yet to embrace mediation and its potential benefits. It may be because the county has few cases and the judge doesn't think it necessary, or it could be because a judge allows the parties time to "go out and talk about it." But mediations provide a neutral facilitator who brings "fresh eyes" to the problem, and the confidential setting gives an opportunity for parties, especially parents, to feel like they're being heard.

But even courts employing mediation can under-utilize it by confining its use to the last stages of a case where the goal is for the parent to relinquish instead of facing a termination hearing. While mediation at that point can prevent a termination hearing, had the mediation occurred earlier in the case, such as at the first sign of trouble, the parent may have been put in a better position to succeed or seen that relinquishing was the better choice much earlier. Mediation can also be helpful in competing placements or competing adoptions, allowing the parties to amicably reach agreement instead of a judge imposing a decision, thereby creating "winners" and "losers."

Permanency mediation at least provides the opportunity for earlier permanency, and just as important, it can also provide the opportunity for the permanency to be amicable to everyone involved.

GUARDIANSHIPS

Two types of guardianships are available for the court's consideration at or before disposition. The first is found in Title 10A, and is probably less used than the second.

The reluctance to pursue a Title 10A guardianship is because the requirements to be met are more numerous and restrictive. Section 1-4-709(A) sets out eight different factors, all of which must be met before the Court may approve the guardianship. Further, such guardianships may only be requested by the DA or the child's attorney, and to some extent require DHS approval (Section 1-4-709(C)).

A Title 10A guardianship is permanent and requires the deprived child case remain open for a minimum of one year for the court's review. After one year, the court may close the file if it believes that reviews are no longer necessary.

Termination of a Title 10A guardianship can only occur when the child reaches the age of majority, or at the request of the guardian, DA, or child. The parent may not terminate the guardianship.

The second type of guardianship, and the type of guardianship more commonly used, is the Title 30 guardianship. Title 30 guardianships are handled outside the deprived case, and often result when OKDHS instructs a family member to "Get a guardianship", to avoid the necessity of the child coming into custody. It can be requested by anyone and is less restrictive and burdensome to obtain. The benefit of seeking a Title 30 guardianship is that it terminates the Court's jurisdiction in the deprived child case, therefore ending DHS involvement. Therefore, some Courts wisely adopt the In-treatment Service Plan prepared by OKDHS as a requirement for the parents to meet before termination of the guardianship can occur. A Title 30 guardianship does allow the parent to petition the court for termination of the guardianship, so it is not considered permanent.

However, there is a major built-in setback when considering a Title 30 guardianship as an alternative, on the part of the caregivers. When relative or other kinship placements are made under foster care situations, there is significant state funding available to continue financial assistance for the monetary burden of caring for the children. Once a guardianship is approved under Title 30, such funding is either lost or is severely restricted. Several factors must be considered and approved before any financial assistance is awarded under a Title 30 guardianship, and even when approved, it is not as much as previously received under a foster care setting. Also, unlike adoption proceedings in a child welfare case, funds for attorney fees are not as readily available in a guardianship proceeding. So, in either the Title 10(A), or the Title 30 guardianship, they may not have the financial support or services to ensure that the children are achieving permanency. But the parents can be required to pay child support to the guardians in a Title 30 guardianship. This may be a significant burden on the parents, affecting

their financial stability. The result may have been better if the children had been in custody long enough to allow the parents to become financially stable.

It is apparent that guardianship is considered a positive remedy and an alternative to termination of parental rights. And it is usually more readily accepted by parents, especially when faced with the possibility of termination.

AMENDING STATUTES

Some have suggested the amendment of particular statutes. We do not address this issue.

CONSIDERATIONS IN MOVING FORWARD

The following is a nonexclusive list of additional ideas, thoughts, and questions arising from this subcommittee we feel are worth considering going forward. Admittedly, some may require participation from other branches of the government:

Given what science has uncovered the past two decades, it's time to reflect on, if not rethink, the legal framework we apply to the parent-child relationship, a framework that primarily developed between 1923 and 1982, a time when children were, at least implicitly, treated as parental property.

The science and statistics show abused and neglected children have an interest even more compelling than their parents, but one we have yet to recognize and consider. Oklahoma's children have a right that their childhood be unencumbered with avoidable adversity. This adversity includes delayed permanency. If children are truly individuals and not property, then perhaps parenting is more a privilege or trust than a fundamental right.

- Would parents benefit from limited discovery, such as interrogatories and admissions? What about using summary procedures? A lot of states apply their normal rules of civil procedure to these types of cases. Some states have dedicated juvenile rules of civil procedure. What are the pros and cons of each? See Fla. R. Juv. P. at https://www.flcourts.org/content/download/217911/file/Florida-Rules-of-Juvenile-Procedure.pdf
- We need to ensure children's permanency isn't delayed due to the volume of appeals or from appeals that are frivolous. Options include "merit briefs" (a.k.a. "Anders briefs"), making appeals discretionary, see Ga. Code § 5-6-35 and Ga. Ct. App. R. 31, and an appellate court dedicated to deprived cases (with constitutional issues still going to the

supreme court).

- Court appeals involving a deprived child should be given the highest priority, time-wise. In the child's life, months seem like years.
- Review hearings in a deprived case need to mean something, which dovetails with quality representation. If there are questions with whether DHS is making reasonable efforts, it needs to be brought up at the next review hearing, or in a motion if the review hearing is more than a few weeks away. Parents are most successful when put into a position to succeed early. Allowing such issues to continue and then putting DHS on trial in a termination hearing only serves to undermine the parent's chances of success and delay the child's permanency.
- For deprived cases, operating at the county level is inefficient as it's the level with the fewest resources. Combining rural counties into larger "blocks" and pooling resources creates economies of scale, such as requiring fewer juvenile judges and fewer attorneys. With fewer participants, they can be better compensated, which in turn, can mandate specialized training and higher-quality performance. A related concept is virtual representation of parents by highly trained attorneys from urban areas.
- Monitor compliance with best practices through data analysis, personal interviews, client evaluations, and maybe even an independent ombudsman.

CONCLUSION

As a final observation, it was noted by Chris Calvert, author of the August Oklahoma Bar Article, "Trial by Jury: unequal Protection for Oklahoma's Abused and Neglected Children," that the CDC-Kaiser Permanente Adverse Childhood Experiences study has become the accepted standard for assessing overall childhood emotional health and well-being. This indicator suggests that Oklahoma children in the deprived and neglected system are faring poorly and it should be a call to arms for all of us to find a way to improve the plight of children in our state.

The sub-committee would like to especially thank Chris Calvert for his participation in the creation and editing of this report.

The sub-committee would like to also thank Bonnie Clift for her research, and the following people who participated in the discussions at our virtual meetings: Angela Marsee; Kathryn Brewer; Jennifer Hardin, Representative Mark Lawson; Tfineana Thompson; Sarah Herrian; Daniel Harring; Keith Pirtle; and Jari Askins.

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