

# PARENT DEFENDERS:

From Shelter to Adjudication

- ▶ CERTIFICATION REQUIRED FOR HANDLING FIVE OR MORE CASES
- ▶ MISSISSIPPI CERTIFICATION STANDARDS-ADOPTED BY SUPREME COURT'S TASK FORCE ON PARENT REPRESENTATION
- ▶ MODELED IN PART FROM ABA GUIDELINES

# CERTIFICATION

- ▶ CONSTITUTIONAL IMPLICATIONS
- ▶ YOUTH COURT ACT
- ▶ UNIFORM RULES OF YOUTH COURT PRACTICE
- ▶ RELEVANT CASE LAW
- ▶ FEDERAL LAW APPLICABLE TO CHILD WELFARE
- ▶ EACH PLAYER'S ROLES AND RESPONSIBILITIES
- ▶ STATE'S PROSECUTION MODEL
- ▶ CLIENT'S EXPOSURE TO CRIMINAL LIABILITY
- ▶ REASONABLE EFFORTS
- ▶ APPLICABLE TIME REQUIREMENTS
- ▶ CPS POLICY
- ▶ COUNTY SPECIFIC PRACTICES
- ▶ TRAUMA OF SEPERATION

# PARENT REP SHOULD UNDERSTAND

- ▶ Report to Central Intake
- ▶ Screened In or Screened Out
- ▶ Sent to County
- ▶ Investigator Assigned
- ▶ Risk level Assigned

## HOW DOES IT START?

- ▶ 43-21-307 and Rule 11:
- ▶ Judge or Designee may authorize temporary custody no longer than 48 hours.
- ▶ What's Required? Three things:
  1. Probable Cause that the child is within the jurisdiction of the youth court.
  2. Custody is deemed necessary (43-21-301(b))
    - Child is endangered or endangering; or
    - To Insure Child's appearance at court; or
    - Parent or Guardian not able to care for

AND
  3. There is no reasonable alternative to custody
- ▶ Order can be verbal or written. If verbal, must be reduced to writing within 48 hrs.
- ▶ SHELTER HEARING MUST BE HELD WITHIN 48 HOURS

## TAKING CUSTODY WITH AN ORDER

- ▶ 43-21-309 and Rule 16(b)
  - ▶ Notice Requirement: Reasonable oral or written notice
  - ▶ Must be on the record
  - ▶ Burden of Proof: Probable Cause
  - ▶ How the Court takes jurisdiction
  - ▶ Hearsay is Admissible
  - ▶ Potential Outcomes
  - ▶ Removal analysis the same!!! (Think Risk and Protective Capacity)
  - ▶ CHILD MUST BE RETURNED IF NO HARM
- \*\*\*\*Determination for jurisdiction and removal are different\*\*\*\*

## SHELTER HEARING

What Should the Focus Be???

- ▶ Identifying Risk
- ▶ Assessing Protective Capacity

ENDANGERMENT

Several white lines of varying lengths and thicknesses are positioned in the bottom right corner of the slide, creating a modern, abstract graphic element.

What kind of test is being used and where?

- ▶ Many tests have insert that says they are not reliable.
- ▶ If testing outside of the court, does state have witness present to authenticate?
- ▶ If testing done at court, who is reading the result and are they qualified?
- ▶ What prescription drugs is your client taking? Will any of those show a false positive?

AGAIN WE WANT RELIABLE EVIDENCE!!!!!!!!!!!!!!!!!!!!!!

MAKE YOUR RECORD!!!!

# DRUG TEST RESULTS



## EXPANDED PROTECTION FROM UNECESSARY REMOVALS!!

2017: “A finding of probable cause as prescribed under this paragraph shall not be based solely upon a positive test of a child’s parent for marijuana...”

2019: “A finding of probable cause under subsection (3)(a) shall not be based solely upon a positive test of a newborn or parent for marijuana...”

# 43-21-301 AND 43-21-303

DRUGS OTHER THAN MARIJUANA: “Probable cause for the unlawful use of any controlled substance, except as otherwise provided in this subsection (3) (a) for marijuana, may be based: (1) upon a parent’s positive drug test for unlawful use of a controlled substance **only** if the child is endangered or the parent is unable to provide proper care or supervision of the child because of the unlawful use and there is no reasonable alternative to custody; and (2) upon a newborn’s positive drug screen for a controlled substance that was used unlawfully **only** if the child is endangered or the parent is unable to provide proper care of supervision of the child because of the unlawful use and there is no reasonable alternative to custody.

43-21-301 AND 43-21-303

- ▶ PROVIDING ALL THE FACTS IF KNOWN
- ▶ IDENTIFYING RISK AND PROTECTIVE CAPACITY
- ▶ REASONABLE EFFORTS
- ▶ EXPLORING ALTERNATIVE CUSTODY OPTIONS
- ▶ PREVENTING UNNECESSARY REMOVALS-MAKING SURE STATUTE REQUIREMENTS MET:

Custody is deemed necessary (43-21-301 (b))

Child is endangered or endangering; or

To Insure Child's appearance at court; or

Parent or Guardian not able to care for

AND

3. There is no reasonable alternative to custody

▶

# SHELTER

- ▶ No one really knows what it means. States are given some federal guidance on this but left to define on their own.
- ▶ WILL BE CASE SPECIFIC!!!

MS defines as: The exercise of reasonable care and due diligence by the Department of Human Services, the Department of Child Protection Services, or any other appropriate entity or person to use appropriate and available services to prevent the unnecessary removal of the child from the home or provide other services related to meeting the needs of the child and the parents. (2017 SB 2680, Signed by the Governor)

# REASONABLE EFFORTS

- ▶ ETHICAL DUTY TO CONDUCT DISCOVERY
- ▶ CONDUCT INDEPENDENT INVESTIGATION TO EXTENT POSSIBLE
- ▶ EXPLORE CASE SPECIFIC STRATEGIES, SUCH AS DUAL COURSE
- ▶ ASSIST WITH SERVICE AGREEMENT IF POSSIBLE

BUT

- ▶ PARENT DEFENDERS ARE NOT SOCIAL WORKERS

# BEFORE ADJUDICATION

- ▶ Yes..... 43-21-261
- ▶ OLD – Parent, guardian, custodian, attorney for parent shall have right to inspect and receive copy of record “which is to be considered by the Youth Court at a hearing.”
- ▶ NEW – “Relevant to a matter to be heard by a Youth Court”.

SO DO WE GET DISCOVERY

- ▶ Motion for Discovery
- ▶ Motion to Dismiss
- ▶ Motion for Reconsideration
- ▶ Motion for New Trial
- ▶ Motion for Reunification

# MOTION PRACTICE

- ▶ SEVERE ANXIETY, DEPRESSION, PTSD, TOXIC STRESS
- ▶ DELAYS IN COGNITIVE DEVELOPMENT
- ▶ PHYSICAL HARM TO BODY AS A RESULT OF STRESS INDUCED RELEASES OF HORMONES THAT IMPACT BRAIN AND ORGAN FUNCTION

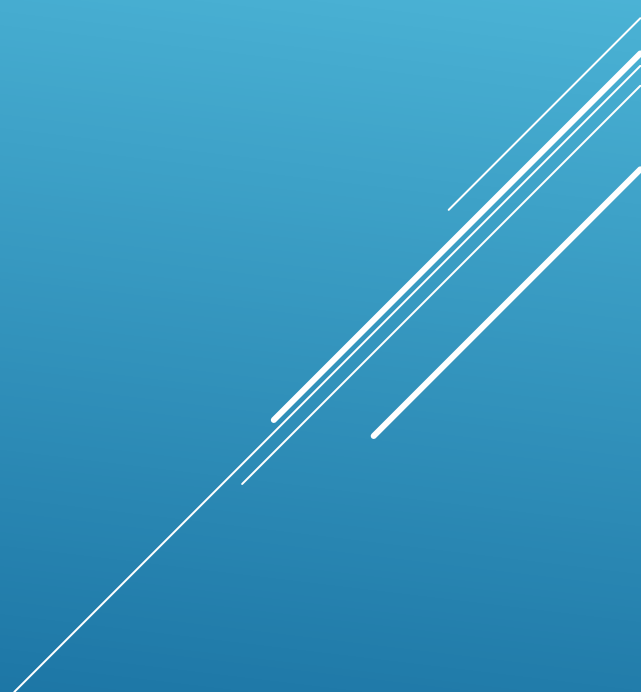
# HARM RESULTING FROM SEPERATION



- ▶ Can we get the Petition Dismissed
- ▶ Either Way Working on Service Agreement – At the very least hopefully we get reunification at Adjudication
- ▶ Challenge Your GAL

## TRIAL STRATEGIES

# PARENT DEFENDER ROLE AT EACH STAGE



- ▶ 43-21-309 and Rule 16(b)
- ▶ Notice Requirement: Reasonable oral or written notice
- ▶ Required to be on the record
- ▶ Burden of Proof: Probable Cause
- ▶ How the Court takes jurisdiction
- ▶ How the Court Removes

# SHELTER

Is this for the child or the court?

BEST INTERESTS – WHAT IS IT?

- ▶ JURISDICTIONAL REQUIREMENTS
- ▶ SUFFICIENCY OF PETITION
- ▶ UNDERSTAND AND APPLY RULES OF EVIDENCE
- ▶ PRESERVE RECORD FOR APPEAL
- ▶ USE EFFECTIVE CROSS EXAMINATION
- ▶ CALL NECESSARY WITNESSS
- ▶ TREAT IT AS ANY OTHER IMPORTANT TRIAL

# ADJUDICATION

SHOULD MY CLIENT DO IT???

TESTIFYING

- ▶ BURDEN OF PROOF: Preponderance of the Evidence (43-21-561)
- ▶ Some states have the higher burden of proof of Clear and Convincing Evidence.
- ▶ Question: If the abuse and neglect adjudication is a precursor to a TPR proceeding, should the burden of proof be raised to Clear and Convincing???
- ▶ Must be on the Record.

## ADJUDICATION

Do the Rules of Evidence Apply??? YES!!!! We want reliable evidence.

SEE: *In the Interest of: J.T., A Minor, D.T. and M.T. v. Hinds County Youth Court*

Supreme Court of Mississippi: “[W]e find it necessary to clarify that the Rules of Evidence do apply in youth-court adjudications with full force and effect.”

“So both the rules of court and the Mississippi Code dictate that the Mississippi Rules of Evidence apply to abuse adjudications in youth court.”

# ADJUDICATION



## What Are The Potential Outcomes

- ▶ Dismissed
- ▶ Adjudicated and Reunified
- ▶ Adjudicated and remain in CPS custody, but placed in home for 90 day trial home placement
- ▶ Adjudicated and remain in CPS custody in foster care

# ADJUDICATION / DISPOSITION

- ▶ Recent MS Supreme Court Case Law –Important Case for Child Welfare Matters
- ▶ Reversed on Several Grounds
- ▶ Due Process Right to Representation:

“This lack of interaction with Elizabeth also infringed Elizabeth’s due-process right to representation. Under Section 43-21-201, she had a right to representation of counsel.


## THE KING CASE

- ▶ Disclosure of records to include “or to identify a person who knowingly made a false allegation of abuse or neglect.”
- ▶ Parent, guardian, custodian, attorney for parent shall have right to inspect and receive copy of record “**Relevant** to a matter to be heard by a Youth Court”.

LEGISLATIVE UPDATE-43-21-261-RECORDS

REQUIRES ALL HEARINGS BE ON THE RECORD INCLUDING SHELTERS  
AND DETENTIONS.

43-21-203

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Disclosure may be made to include:

“A person who was the subject of a knowingly made false allegation of child abuse or neglect which has resulted in a conviction or a perpetrator in accordance with Section 97-35-47 or which allegation was referred by the Department of Child Protection Services to a prosecutor or law enforcement official in accordance with the provisions of Section 43-21-353 (4).

43-21-261-RECORDS

Allows Review Hearings to be held upon the request of the child's attorney, a parent's attorney, or a parent as deemed appropriate by the youth court in protecting the best interests of the child."

43-21-613

- ▶ Parent Defender will need to perfect the appeal
- ▶ Once record is complete Parent Defender reviews for completion
- ▶ Substitution of Counsel once record goes to Supreme Court.

## APPEAL PROCEDURE

- ▶ ABA STANDARDS OF PRACTICE FOR ATTORNEYS REPRESENTING PARENTS IN ABUSE AND NEGLECT CASES
- ▶ REPRESENTING PARENTS IN CHILD WELFARE CASES: ADVICE AND GUIDANCE FOR FAMILY DEFENDERS by Martin Guggenheim and Vivek S. Sankaran
- ▶ CHILD WELFARE LAW AND PRACTICE: REPRESENTING CHILDREN, PARENTS, AND STATE AGENCIES IN ABUSE, NEGLECT AND DEPENDENCY CASES by Duquette and Haralambie
- ▶ The Neglected Transition:  
Building a Relational Home for Children Entering Foster Care by Monique B. Mitchell
- ▶ Trauma Caused by Separation of Children from Parents: A Tool to Help Lawyers created by the Children's Rights Litigation Committee of the American Bar Association Section of Litigation.

## RESOURCES FOR PARENT DEFENDERS



Chad King

[Chad@bowtielawyer.ms](mailto:Chad@bowtielawyer.ms)

601-421-1085

Kelly G. Williams

[Kelly@kellywilliamslaw.com](mailto:Kelly@kellywilliamslaw.com)

601-982-1111

CONTACT INFO