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Child Welfare Case Compendium

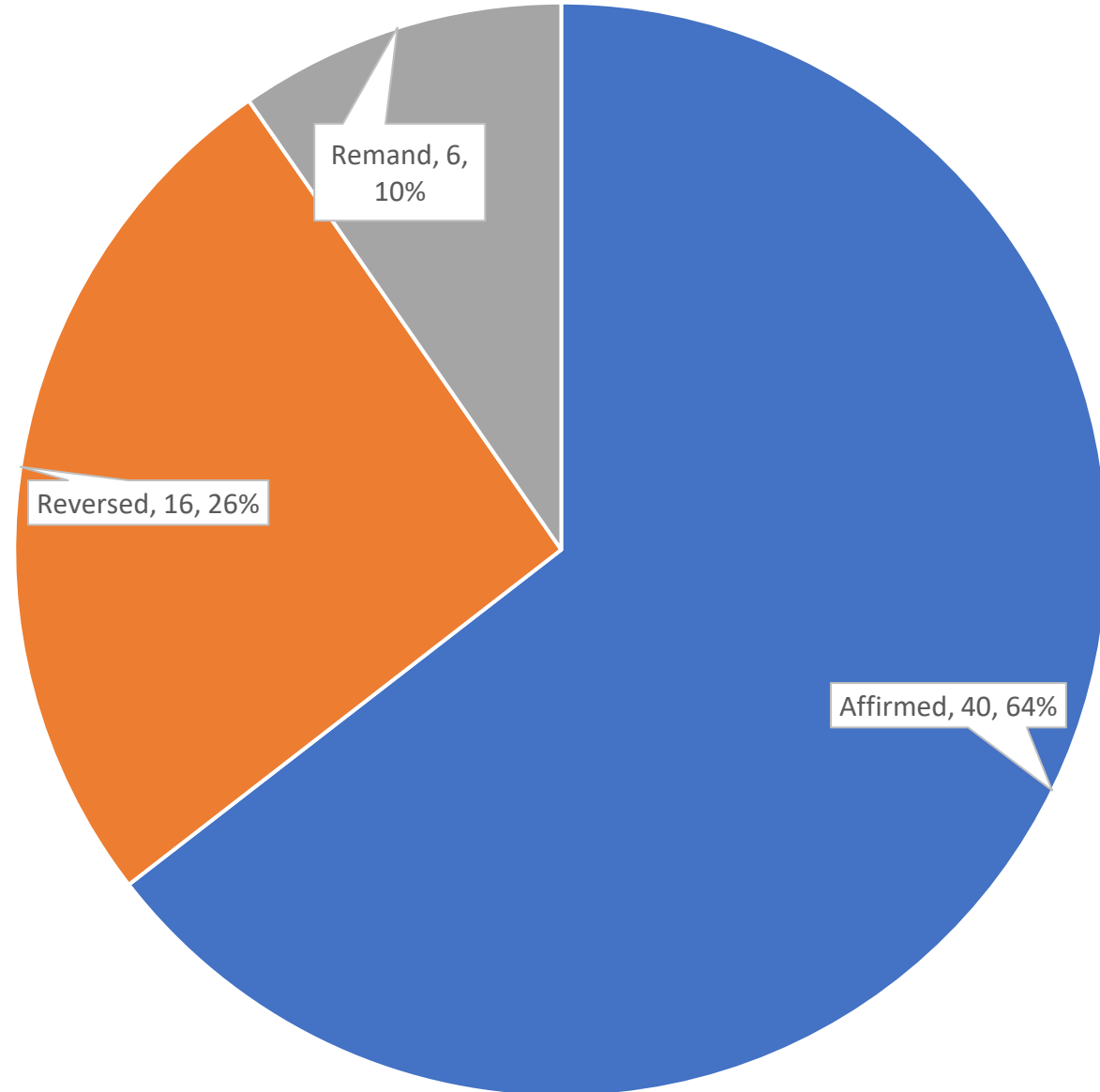
SARA DEPASQUALE  
UNC SCHOOL OF GOVERNMENT

TPR SUMMARIES (11/20/20 -2/5/21)

# Termination of Parental Rights: Summaries of NC Supreme Court Opinions (Nov. 20, 2020-Feb. 5, 2021)

[Contents](#)

Outcomes  
44 opinions (10 dissents)  
62 issues





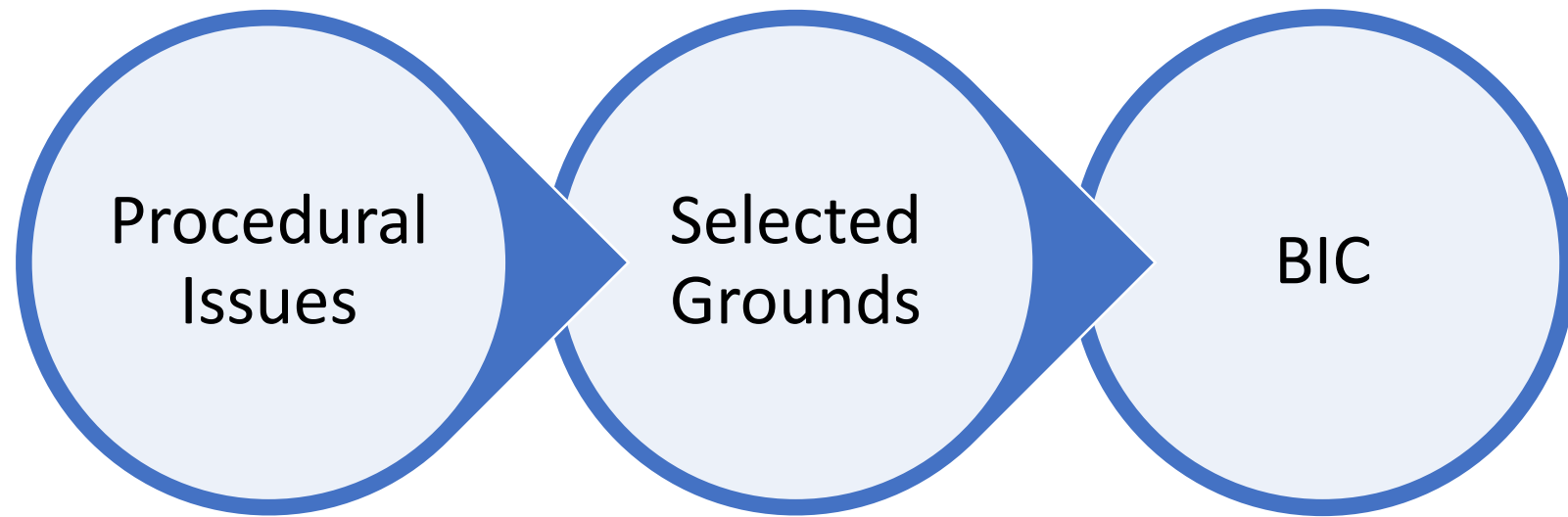
# Heads Up!

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- SB 113
- Back to COA
- If passed, Oct. 1, 2021

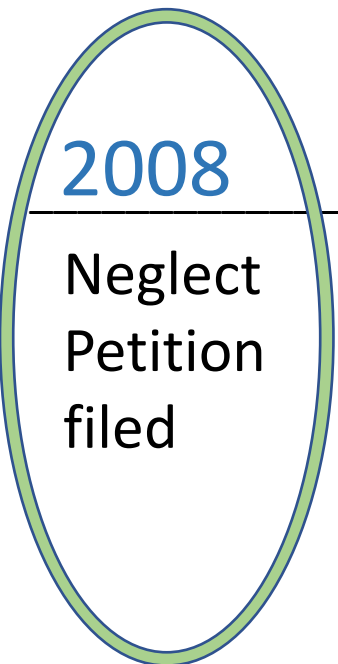


# Today's Themes



# Jurisdiction: Standing

## In re K.S.-D.F. (p.2)



2008

Neglect  
Petition  
filed

2010

- Guardianship granted
- Hearings waived

2016

- DSS motion for review
- Nonsecure custody

2018

TPR

# Nonsecure custody – Implications for Practice?

2008

Neglect  
Petition  
filed

2010

- Guardianship granted
- Hearings waived

2016

- DSS motion for review
- **Nonsecure custody**



ICWA: Notice Provisions (Notices not in record)  
In re N.K. (p. 4)  
**REMAND**



What can you do?

# Service by Publication Is Jurisdictional

In re S.E.T. (p. 4)

7B-1106 (court  
findings and  
approval)



Service by  
Publication

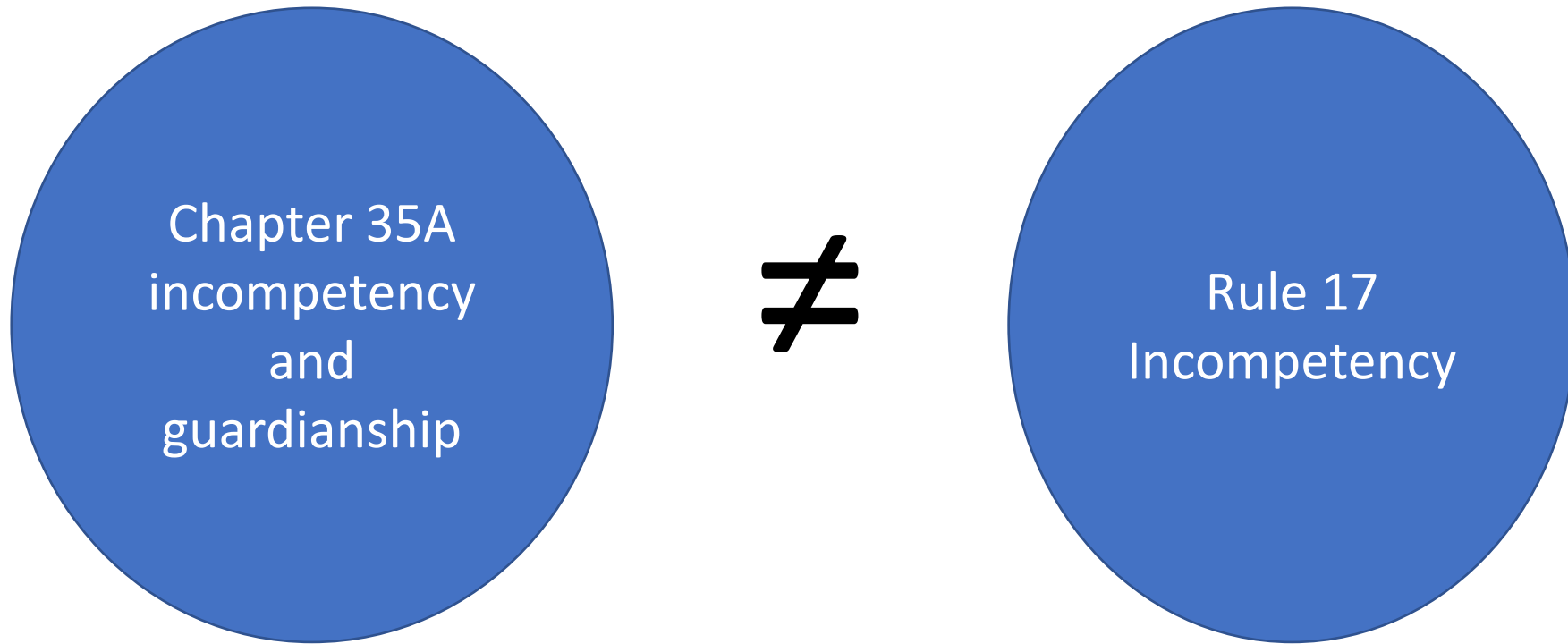
VOID




# Rule 17 GAL for Respondent Parent: Appointment

In re Q.B. (p. 5)


In re N.K. (p. 6)




Substantial deference to whether a substantial question of (in)competency



# Parent's Functioning in Proceeding



- Attended hearings
  - Testimony indicated she understood
  - Compliance with case plan provision
    - Attend visits
    - Obtain housing
    - Complete parenting program
    - Follow APS recs
  - Participated in negotiations
  - Own rep payee
  - Expressed preference for providers
  - Available to court, DSS, GAL
- 

# Rule 17 GAL for Respondent Parent: In re J.E.B. (p. 7)

## Duties

7B-1101.1(d): “shall not act as an attorney”

- Cross-Examine
- Present Oral Argument



- **Is this ok?**

CANNOT BE THE SAME PERSON

# Attorney for Respondent Parent

In re K.M.W (p. 9)

- Motion to Withdraw
  - Inquiry
  - Notice to client; efforts to make sure client understood and protect right to counsel
- Knowing and Voluntary Waiver, 7B-1101.1(a1)
  - vs Forfeit (egregious dilatory or abusive conduct)
  - INQUIRY re: desire to proceed pro se
  - NOT discussed G.S. 7B-1109(b)
- Prejudice not required

# Dual Role GAL for Juvenile: One Person

In re R.D. (p. 35)

- Rule 3.7 of Rules of Professional Conduct
- Relevant, Reliable, Necessary Evidence (no finding of that required)
- No right to cross-examine



# Competent Evidence at Disposition

In re S.M. (p.37)

- GAL Report “distributed” to parties and court
- GAL not testify
- Findings in order based on GAL report

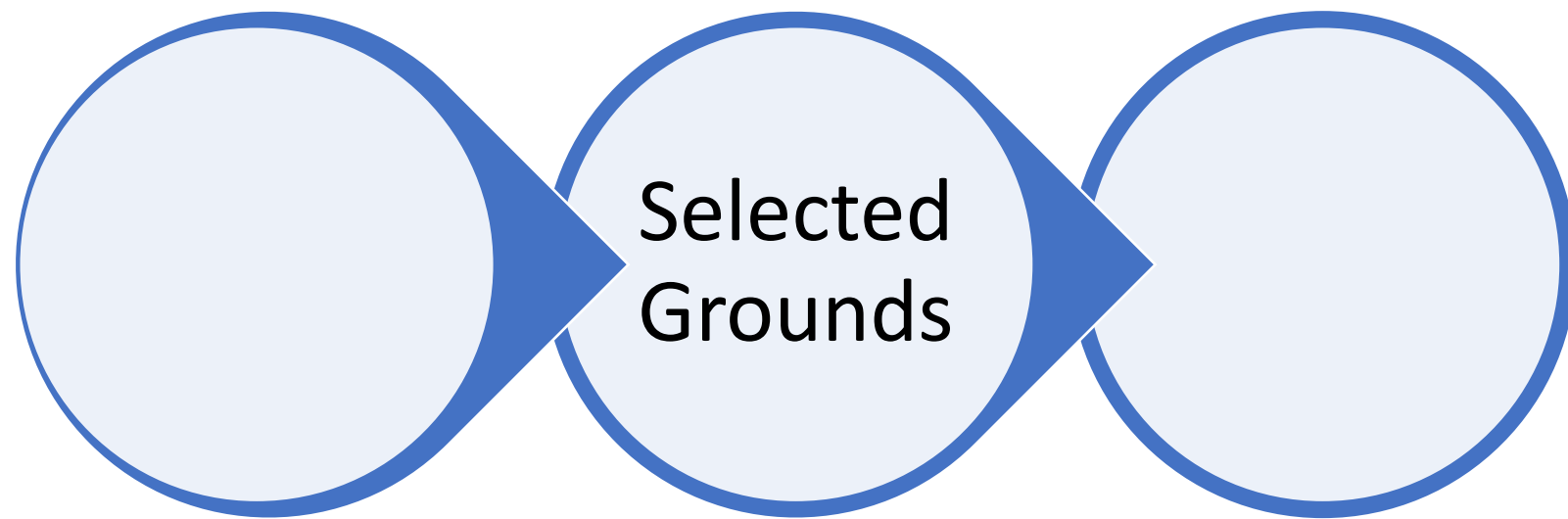
Is there sufficient competent evidence?

Different from COA opinions in PPH  
(In re J.H., 244 N.C. App. 255 (2015);  
In re E.M., 249 N.C. App. 44 (2016))  
Preserve for Appeal

Implications?



# Today's Themes



## Standard of Proof

7B-1109(f): Clear, Cogent, Convincing Evidence

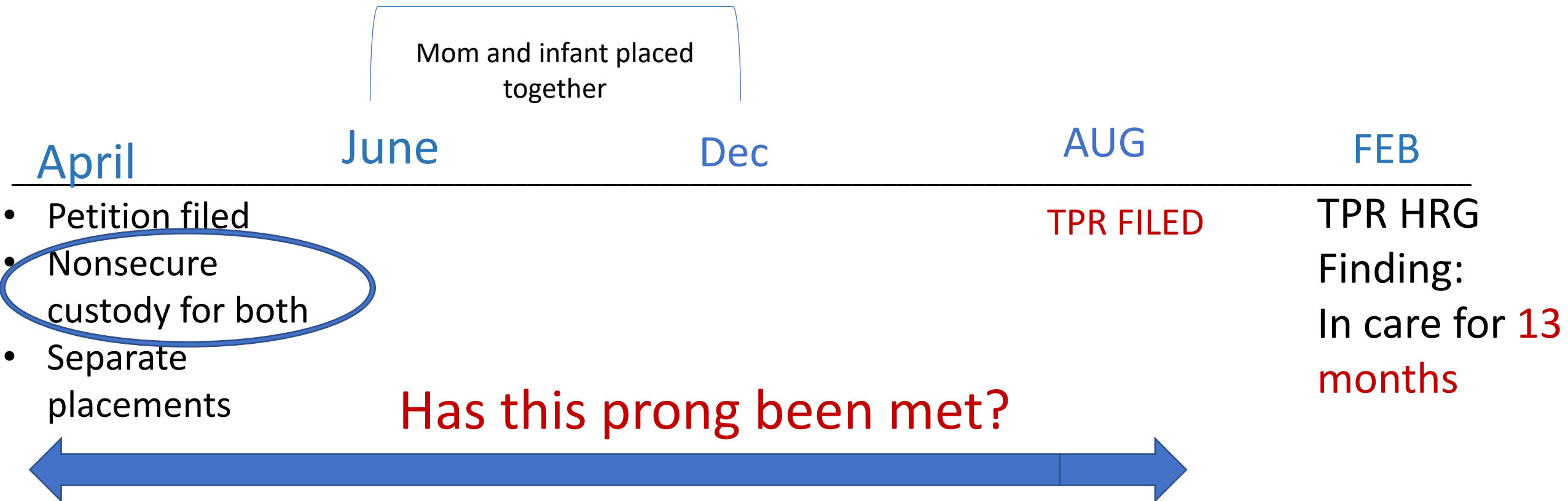
Statutory Interpretation: state at hearing **or** in order  
(enables appellate court review)

*In re B.L.H. (p. 12)*



# 7B-1111(a)(2): Willfully left juvenile in foster care... 12 mo

In re K.H. (p.21)





# Interpretation

- Order – Filing = Time Period
  - Notice 12 months to correct conditions
- Plain language
  - Foster care, GS 131D-10.2(9)
  - Outside the Home
- June – Dec Together
- Only 10 months

# Definition of Foster Care

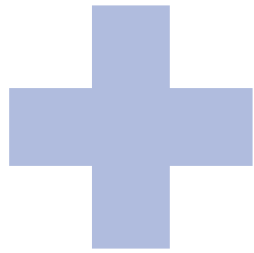
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Implications for ICPC  
Non-Removal Parent



7B-1111(a)(6)

Incapable of  
providing  
care and  
supervision



Lack of  
appropriate  
alternative  
child care  
arrangement



Dependency

# Lack of Appropriate Alternative Child Care

In re A.L.L., p. 29

Permanent Guardian =  
Appropriate  
Alternative Child Care  
Arrangement

Does not matter that  
mom did not identify  
alternative placement

**DIFFERS  
FROM COA**

# Implications

What ground  
could have been  
alleged?

Will this impact  
adjudications of  
dependent  
juvenile?

Neither a  
Sword Nor a  
Shield







Willfulness  
(Abandonment)  
In re A.L.L.  
(p. 32)

## What's a Mental Illness?

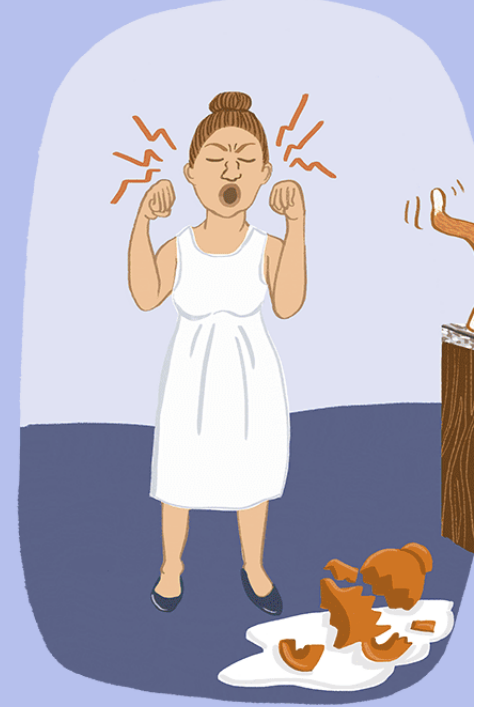
A mental health condition that has a negative effect on the way an individual...



thinks



feels



and behaves

well

Neglect  
Need Risk of  
Harm  
In re K.C.T (p. 16)

## What's a Mental Illness?

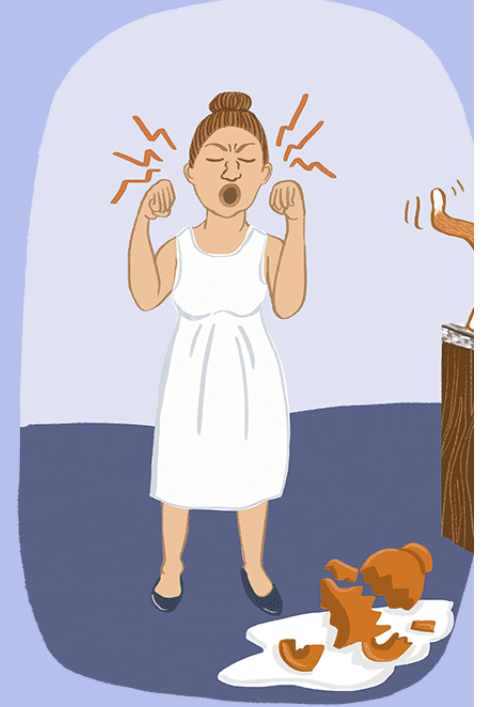
A mental health condition that has a negative effect on the way an individual...



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# Neglect

In re O.W.D.A. (p. 15)

Prior Neglect  
(adjudication =  
collateral estoppel)

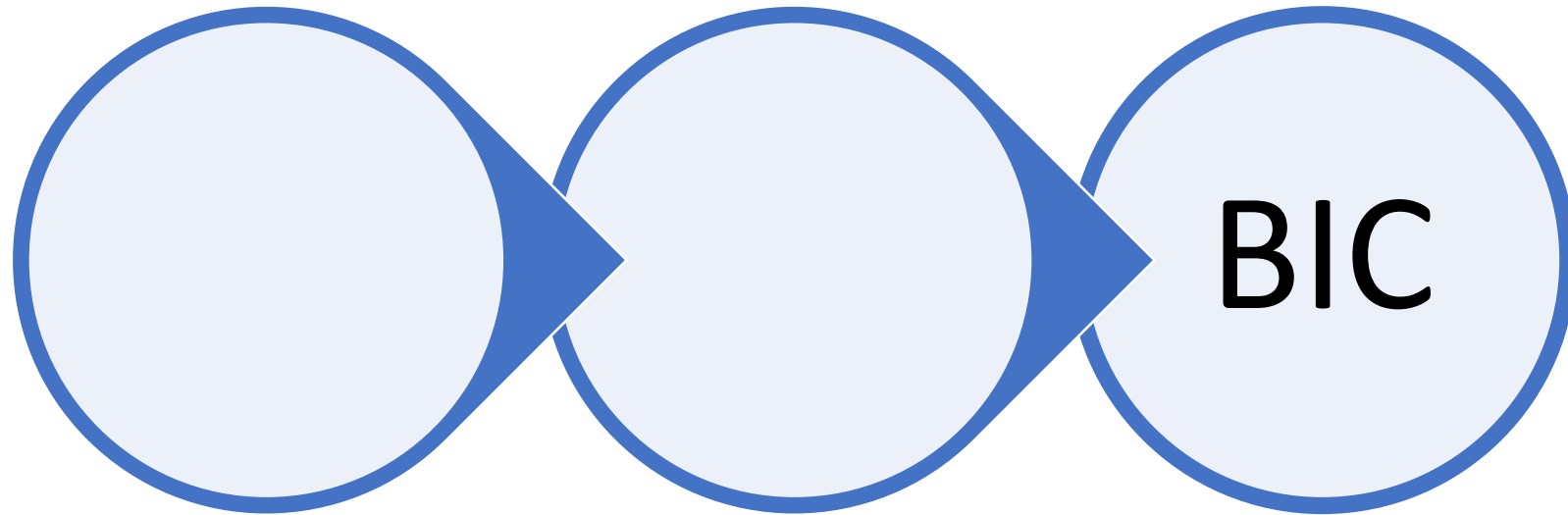
Likelihood of  
future neglect

# Neglect: Delay by parent

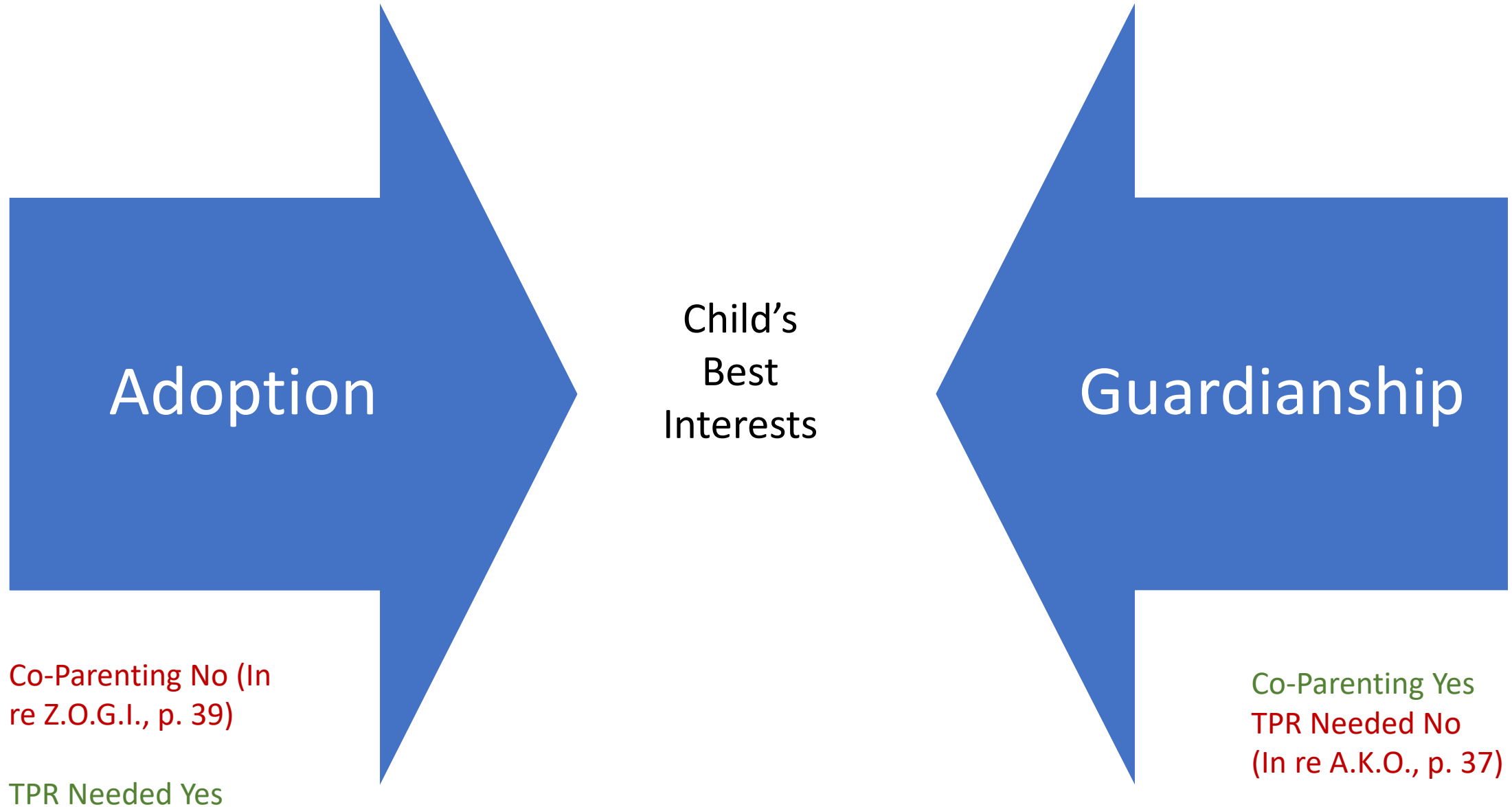
- “11<sup>th</sup> hour efforts” on parenting classes
  - Case plan: SA, housing, income, criminal
  - Period not incarcerated
  - In re O.W.D.A (p. 15)
- Delays
  - 1-year delay in signing case plan
  - 2-year delay in obtaining parenting eval/failing to complete program
  - In re K.P.-S.T. (p. 18)



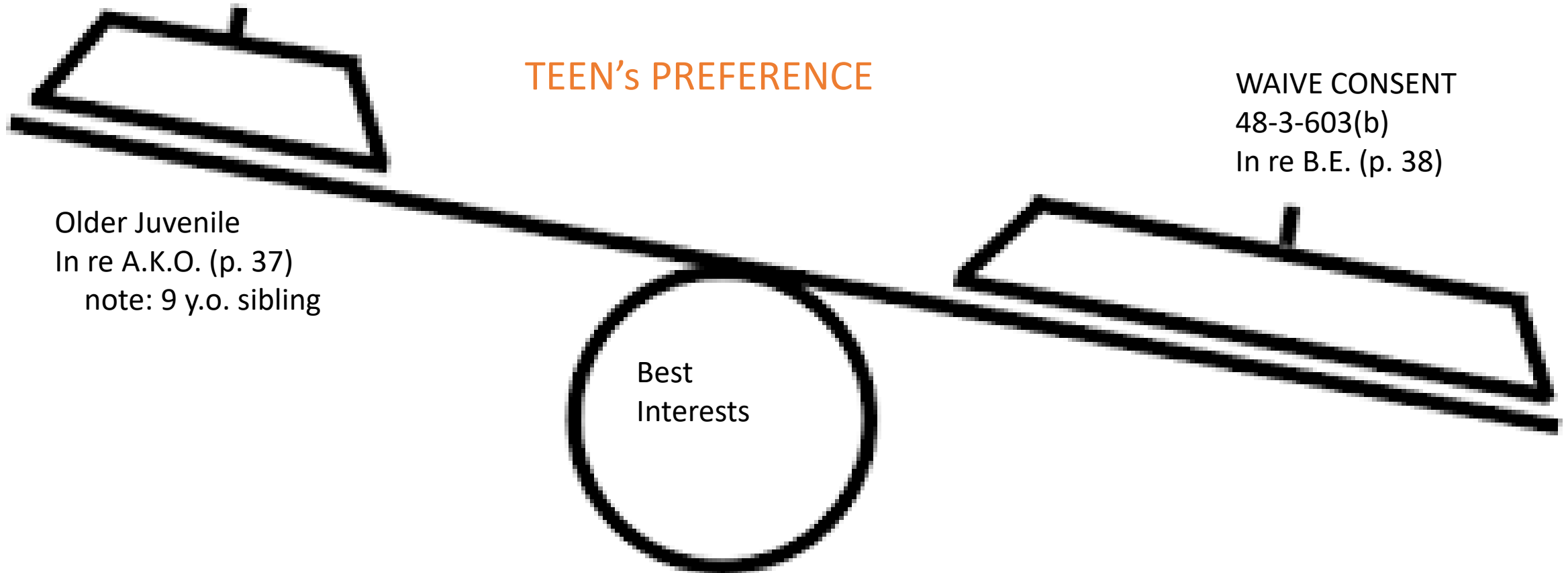
# Today's Themes



# Misapprehension of the Law



# Adoption vs Guardianship



# Likelihood of Adoption Distinguish J.A.O.

- GAL did not recommend TPR because unlikely to be adopted
- Mother made reasonable progress
- 18 mo – 14 y.o.
- Child's condition not improving



See You  
Tomorrow at  
9:45

