

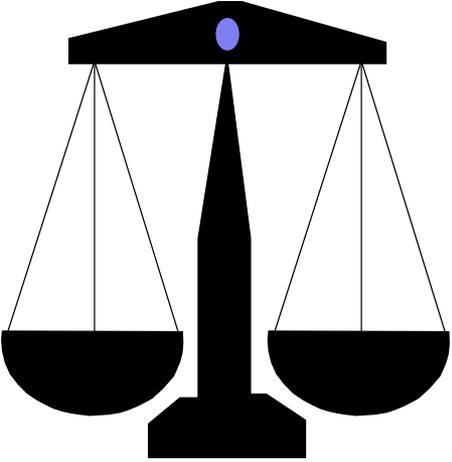


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***Legal Issues for Cases of Child  
Neglect: Hot Topics***

14th National Conference  
on Child Abuse and Neglect

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# Legal Issues: Hot Topics

*What this presentation will cover:*

- Background on child neglect
- Policy dilemmas
- Issues for legal community to consider
- Case law update on child neglect cases

## Specific Hot Topics in Child Neglect Cases:

- Prenatal Exposure to Drugs
- Abandoned Babies: “Safe Haven” Legislation
- Withholding of Medically Indicated Treatment
- Children Who Witness Domestic Violence

# *Types of Neglect*

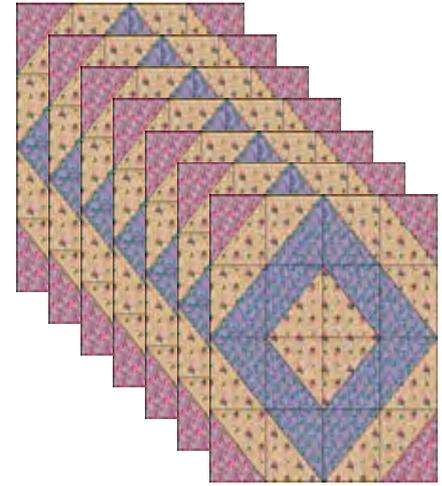
Physical Neglect

Abandonment

Medical Neglect

Educational Neglect

**Psychological or Emotional Neglect** — defined as more extreme incidents or repeated pattern of caregiver behavior which conveys to child they are worthless, unloved, unwanted or endangered



## **Legal definitions of child neglect**

- **Differences in State laws, community standards, legal standards**

### **Definitions:**

#### **Child Abuse Prevention and Treatment Act (CAPTA)**

**The physical or mental injury, sexual abuse or exploitation, negligent treatment, or maltreatment of a child . . . by a person who is responsible for the child's welfare under circumstances which indicate that the child's health or welfare is harmed or threatened . . .**

#### **American Medical Association :**

**Failure to meet a child's basic needs**

## Legal definitions of child neglect: (continued)

### Polansky definition:

**A condition in which a caretaker responsible for the child, either deliberately or by extraordinary inattentiveness, permits the child to experience avoidable present suffering and/or fails to provide one or more of the ingredients generally deemed essential for developing a person's physical, intellectual, and emotional capacities.**

- ***Issue of Parental Intent***
- ***Policy Dilemmas***



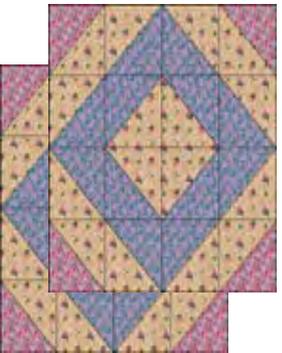
The legal system is premised on notion that there should be evidence of:

1) Maltreatment & 2) Consequences justifying intervention



Problem: effects of neglect may not be immediately apparent, tend to be more cumulative in nature.

Research indicates some forms of neglect have more profound negative consequences on children than physical abuse



# Neglect case law update: Recent legal trends



*State of Florida v. DuFresne*, 782 So. 2d. 888 (2001).

Trial court had dismissed charges of “mental injury,” finding term unconstitutionally overbroad and vague. Court of Appeals overturned. Found term defined as “intentional acts which *could reasonably be expected* to result in mental injury” not overbroad or vague.

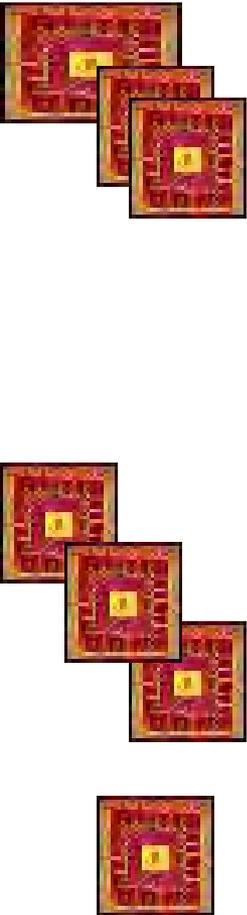
Legal definition - “injury to the intellectual or psychological capacity of a child as evidenced by a discernible and substantial impairment ...”

# Neglect case law update: Recent legal trends

*In the Matter of Megan G.*, 737 N.Y.S.2d. 684 (2002). (New York)

Appellate court that “a child may be adjudicated abused or neglected without proof of actual injury so long as preponderance of evidence shows “imminent danger of physical harm.”

Here, removal of children upheld based on both parents abuse of alcohol. They would pass out leaving older sister to care for younger brother, and would drive drunk with children in car.



# Neglect case law update: Recent legal trends

*In re Kayla M.*, 785 A.2d. 330 (2001). (Maine)

TPR upheld where father was likely to remain incapable of responding to child's emotional needs.



## Factors:

- Highly negative interaction between father/child
- Father's "self involved parenting style"
- Child's reaction- 1) highly anxious, 2) development of narcissistic tendencies
- ASFA discussion in case- emphasis on child



# Neglect case law update: Recent legal trends

*In the Matter of Chantel Z.*, 717 N.Y.S.2d. 802 (2001).  
(New York)

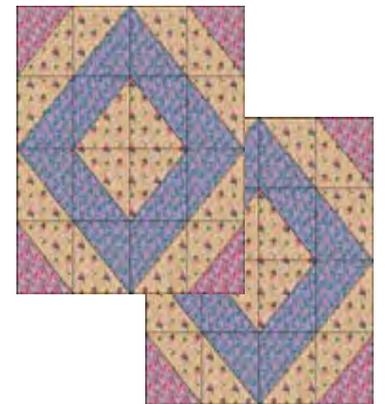
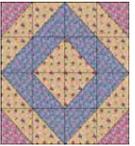
Finding of neglect upheld where mother “placed mental and emotional conditions on daughter that placed daughter in “imminent danger of being impaired.”

Case involved mother and 13-year-old daughter-- volatile relationship, mother’s insufficient participation in counseling, case plan.



# Possible Long-Term Effects of Neglect \*

- Anxiety
- Depression
- Low self esteem
- Posttraumatic stress disorder
- Emotional instability
- Social withdrawal
- Physiological and neurological (brain structure) changes
- Failure to thrive
- Decreased empathy
- Increased aggression
- Impaired learning abilities



# *Issues for the court to consider:*

- What are the minimal adequate types of care that children require?
- What actions or failures to act on the part of the parents constitute neglectful behavior?
- Must the parent's or caretaker's action or inaction be *intentional*, willful, or not?
- What are the effects of the actions or inactions on the child's health, safety, and development?



# *Issues for the court to consider:*

- What is the required degree of harm? Is actual harm necessary or merely sufficient *risk* of harm?
- Is the family's situation a result of poverty, or a result of parental neglect? (i.e. no after school care, no medical insurance)
- To what degree should cultural variations in standards for adequate care be taken into consideration?
- New research on long-term effects of neglect



# Legal intervention

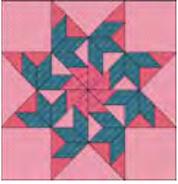
→ ***Removal of child or in-home services?***

## **Factors to consider:**

- Severity of harm
- Risk of harm/ danger
- Age of child
- Special needs
- Parent-child bond
- History of neglect / CPS intervention
- Caretaker's motivation to improve care
- Other support: extended family members, neighbors



# Prenatal Exposure to Drugs

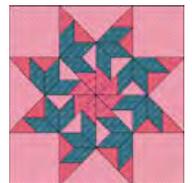


Historically, alcoholism/ drug addiction alone is insufficient to remove a child.

Must be a nexus between the drug use and abuse/neglect

Recent legislation → child born drug-exposed/ drug addicted could be removed from other.

Legal rationale → prenatal drug use constitutes “neglect” because of impact on child



# Prenatal Exposure to Drugs

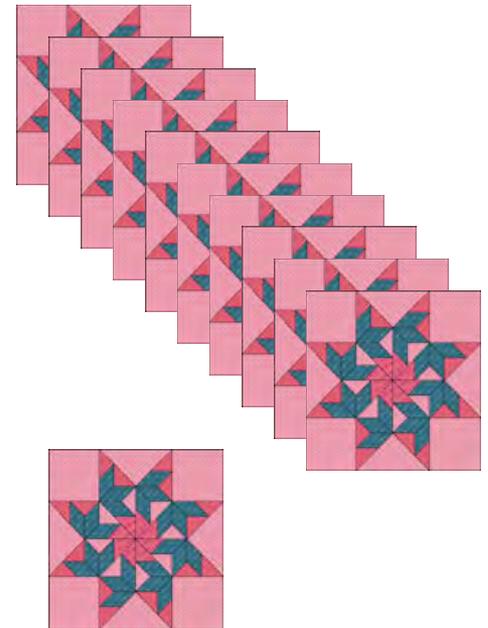
Conflict → mother's rights vs. fetal rights

## Effects of drug exposure/addiction

- On the newborn
- On the toddler
- On the school age child
- Predicting long term outcome

## Constitutional Issues

- Equal Protection
- Due Process
- Right to Privacy



# Prenatal Exposure to Drugs

## Legal Analysis:

**Equal Protection** – principle that the government treat similarly situated individuals in similar manner

Laws that accord different treatment that involve fundamental interest (here: TPR) are subject to *strict scrutiny*

Strict scrutiny test →

- 1) Are the *means* necessary to advance a *compelling state interest*?
- 2) Is the statute *narrowly tailored*? (least restrictive means)



# Prenatal Exposure to Drugs

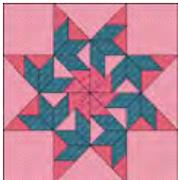
## Equal Protection analysis - Strict scrutiny test

1) Are the *means* necessary to advance a *compelling state interest*?

Yes. Compelling state interest = State's role as *parens patriae* to protect children from abuse

2) Is the statute *narrowly tailored*? (least restrictive means)

Yes. Statute distinguishes between classes of people based on risk of direct physical harm to child when drugs are passed in utero

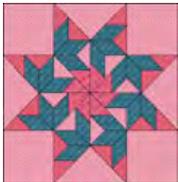


# Prenatal Exposure to Drugs

## Equal Protection analysis

### Parent's Arguments:

- 1) Recent studies have indicated the prenatal cocaine exposure does not have as severe long-term health consequences as previously thought
  
- 2) Mother claimed she was treated more harshly than:
  - Mother who ingest drugs after child is born
  - Mother who ingests drugs early in pregnancy, child not born with evidence of substance in body
  - Father who uses drugs at time of mother's pregnancy



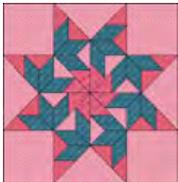
# Legal Analysis:    **Prenatal Exposure to Drugs**

**Due Process** – principle that State cannot take something from a citizen without providing a meaningful opportunity to be heard/ to challenge State action

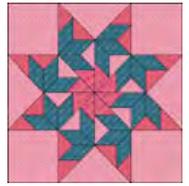
Issue here is that State presumes unfitness without regard to evidence of rehabilitation or specific time limit within which prior conviction occurred

Court found NO due process violation because:

- 1) Presumption is rebuttable
- 2) Parent has notice
- 3) Isn't only criteria in TPR
- 4) Because statute requires this to be the second child parent has opportunity to correct medical neglect/abuse



# Prenatal Exposure to Drugs



## Case Law

*In re O.R.* 767 N.E.2d. 872 (2002). (Illinois)

Holding (matter of first impression):

[New statute] which provided that mother is unfit if controlled substance was found in the the blood or urine of infant and mother had previous child also born with controlled substance, does NOT violate equal protection or due process.

Illinois statute contained rebuttable presumption that prenatal exposure to drugs constitutes “unfitness”

# Abandoned Babies: “Safe Haven” Legislation

## Background:



1998 – 105 babies abandoned in public places

31,000 babies left in hospitals

(source: Senate Report: Topics of Legislative  
Interest May/June 2000)

Texas became first state to enact “safe haven” law in  
1999

Currently, 37 states have some form of safe haven  
legislation

Intent is to decrease # of babies left in dangerous  
situations

# Abandoned Babies: “Safe Haven” Legislation

## How the law works:

- Allows a woman to leave her baby at a hospital, medical center or police station with no legal consequences
- Child welfare agency takes custody
- Court may TPR if parent voluntarily surrenders (different states have various reconsideration periods)
- Limited immunity time period (usually 72 hours after baby is born)
- Some states protect anonymity of mother



# Abandoned Babies: “Safe Haven” Legislation

## Controversial →

- **Laws don't address underlying problems of poverty, social isolation, misinformation, lack of services**
- **Fathers– notice & opportunity to respond**
- **Few states mandate counseling**
- **Statistics haven't shown significant success**
- **Guarantee of anonymity for mother robs child of right to know medical history**
- **Problem of proving that person who drops child off is biological mother**
- **Emphasis should be on education, especially for young, unwed women facing pregnancy**
- **Many laws are unclear about procedural rights when woman changes her mind, is unfair to parents and babies**

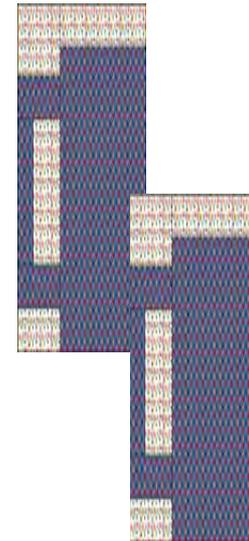


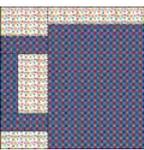
# Withholding of Medically Indicated Treatment

- Criminal versus Civil Penalties
- Religious element
- Rights of Parents versus Rights of Child
- State's Role as *Parens Patriae*

## Constitutional Issues

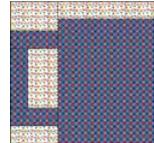
- Free Exercise Clause
- Due Process





# Withholding of Medically Indicated Treatment

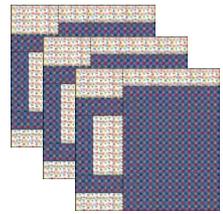
## Case Law:



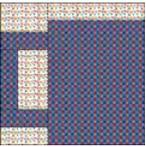
### After agency already had legal care & custody:

*DCFS v. G.M. & J.J.*, parents of L.B., 816 So.2d 830 (2002).

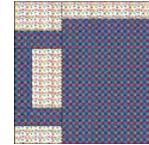
Court order is required when parents do not consent to surgery. Because surgery is neither ordinary medical care nor treatment, judicial authorization is required.



# Withholding of Medically Indicated Treatment



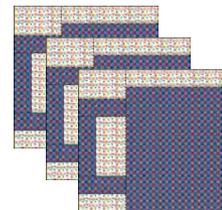
## Case Law:



### **After agency already had legal care & custody:**

*Newmark v. DCPS*, 588 A.2d. 1108 (1991).

Child not legally neglected when parent refuse to accede to medical demands that child receive radical form of chemotherapy having only 40% chance of success.



# Children Who Witness Domestic Violence

Issue often gets framed as a “classic conflict between child advocacy and DV victim advocacy”



## Legal Issues:

- Emotional harm- both measurable and speculative
- Risk to child

Controversy → removal from home?

# Children Who Witness Domestic Violence

Legal decision re: whether to remove from home

## Child Specific Considerations:

- Greater risk of child maltreatment where DV is present
  - From abuser or non abuser (Kent study)
  - Indirect injuries
- Trauma suffered by witnessing DV
- Impact on Child\*: (physical, emotional, behavioral),
  - Difficulty sleeping, nightmares, poor appetite, headaches, bed wetting
  - Fear, confusion, guilt, depression
  - School problems: learning, behavioral problems
  - Peer relations- trouble making or keeping friends
  - Low self esteem
  - Running away
  - Substance abuse
  - Cycle of abuse & learning violence as conflict resolution

\*U. Mass Medical Society

# Children Who Witness Domestic Violence

Legal decision re: whether to remove from home

## Child's attachment to:

Non abusing parent (mother)

Siblings

Extended family

Home, community, school, friends

- DV impacts children differently. Court should conduct specific inquiry and weigh factors as to best interest of this particular child



# Children Who Witness Domestic Violence

## Other Considerations:

- Non-abusive parent's attitude toward the perpetrator
- Non-abusive parent's attitude toward the child
- Availability of safe places for the adult victim and child
- Services- frame the issue as “reasonable efforts to prevent removal”
- Non-abusive parent's skills and ability to function independently
- Demonstrated pattern of repeated victimization?





# Children Who Witness Domestic Violence

## Case Law



*In the Matter of Cybill V. and Joel V.*, 719 N.Y.S.2d. 286 (2001). (New York)

- 1) Father neglected daughter by engaging in acts of violence against mother in presence of daughter.
- 2) Evidence also supported finding of derivative neglect with regard to son.

Father created imminent danger that children's physical, mental, and emotional health would be harmed



# Children Who Witness Domestic Violence

## Case Law



*In the Interest of J.K.*, 38 S.W.3d. 495 (2001).  
(Missouri)

TPR upheld where mother had a condition of “learned helplessness,” despite mother’s *lack of intent* to neglect children.

TPR based on: 1) mother’s failure to address her own and children’s needs, and 2) father’s acts of DV against mother and his failure to comply with case plan.





# Children Who Witness Domestic Violence

## Case Law



*State of Louisiana v. C.J.K.*, 774 So.2d. 107 (2001).

TPR upheld where mother participated in passive abuse of children which resulted in life-threatening and severely disabling psychological injury to children.

“Mother allowed infliction of mental injury on children who were repeatedly exposed to violence perpetrated by father on mother, mother sabotaged efforts to rehabilitate and continued to return to father.

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