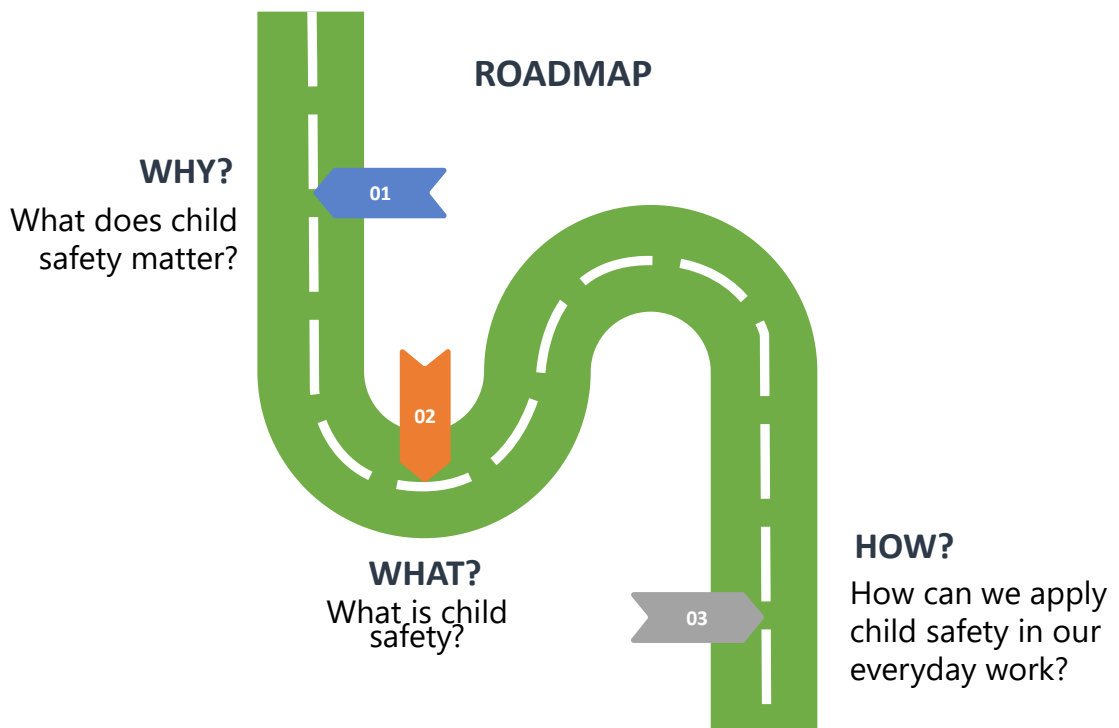




1



2

First...

WHY

3

1. **CHILD SAFETY IS A HOT TOPIC.**

4

Family Time and COVID

During COVID, were decisions made via blanket policies/orders or **via child-specific safety-based orders?**

5

Racial/Ethnic Disproportionality

When we don't understand or misapply child safety, we have/exercise discretion.

"And when such wide discretion exists, we know that both implicit and explicit bias can significantly affect the decisions that are made. In similar circumstances, Black children are thought to be at greater risk of abuse than white children. And behavior that's accepted as normal in affluent, white neighborhoods - smoking a joint, co-sleeping with your child, or leaving a 10-year-old home alone - can be grounds for taking a child in a Black neighborhood."

Vivek Sankaran, *With Child Welfare, Racism is Hiding in the Discretion* <https://chronicleofsocialchange.org/child-welfare-2/with-child-welfare-racism-is-hiding-in-the-discretion/44616>.

6

Some Colorado Child Ethnicity Data: 2018

	White	Hispanic	Black
% of Colorado child population	56%	31%	4%
% of Colorado children in foster care on 9/30/2018	44%	38%	11%
Race/ethnicity of children adopted	46%	37%	7.6%

Children's Bureau, *Child Welfare Outcomes Report Data*

<https://cwoutcomes.acf.hhs.gov/cwodatasite/pdf/colorado.html#footnote4>.

7

2. **CHILD SAFETY** IS THE ROOT OF EVERY CHILD WELFARE DECISION.

8



9

Purpose of the Children's Code

"The overriding purpose of the Children's Code is to protect the welfare and safety of Colorado children by providing procedures through which their best interests can be served."

L.G. v. People, 890 P.2d 647, 654 (Colo. 1995). Emphasis added.

10

Emergency Protection Orders

“Emergency protective orders may be requested by the county department of human or social services, a law enforcement officer, an administrator of a hospital in which a child reasonably believed to have been neglected or abused is being treated, or any physician who has before him or her a child the physician reasonably believes has been abused or neglected, whether or not additional medical treatment is required, **if such person or department believes that the child is able to remain safely in the child's place of residence or in the care and custody of the person responsible for the child's care and custody only if certain emergency protection orders are entered.**”

C.R.S. 19-3-405(2)(b)(2020). Emphasis added.

11

Removal Orders

“To remove a child from the custody of his parents only when his welfare and safety or the protection of the public would otherwise be endangered and, in either instance, for the courts to proceed with all possible speed to a legal determination that will serve the best interests of the child.”

C.R.S. 19-1-102(1)(c)(2019). Emphasis added.

12

Reasonable Efforts

Reasonable efforts is “the exercise of diligence and care throughout the state of Colorado for children who are in out-of-home placement, or are at imminent risk of out-of-home placement. **In determining whether it is appropriate to provide, purchase, or develop the supportive and rehabilitative services that are required to prevent unnecessary placement of a child outside of a child's home or to foster the safe reunification of a child with a child's family [...] or whether it is appropriate to find and finalize an alternative permanent plan for a child, and in making reasonable efforts, the child's health and safety shall be the paramount concern.**”

C.R.S. 19-1-103(89)(2019). Emphasis added.

13

Visitation

“Visitation services for parents and children in out-of-home placement must be provided in accordance with individual case plans. §19-3-208(2)(b)(IV). **The child's health and safety are the paramount concerns in determining whether services, including visitation, are necessary and appropriate.** *People in Interest of D.G.*, 140 P.3d 299, 302 (Colo. App. 2006). **Visitation services shall be designed to promote the health, safety, and well-being of the children; facilitate the speedy reunification of parents and children; and promote the best interests of the child.** § 19-3-208(2)(a).

People In Interest of A.A., 2020 COA 154, ¶ 17, cert. denied sub nom. *People In Interest of A. A. v. M. A.*, 20SC927, 2021 WL 199350 (Colo. Jan. 19, 2021) Emphasis added..

14

Periodic Reviews

During periodic reviews, courts shall determine:

- “(a) **Whether the child's or youth's safety is protected in the placement;**
- (b) Whether reasonable efforts have been made to find **safe and permanent placement** for the child or youth;
- (c) The continuing necessity for and the appropriateness of the child's or youth's placement;
- (d) The extent of compliance with the individual case plan [...] and the extent of progress that has been made toward alleviating or mitigating the causes necessitating placement out of the home;
- (e) A likely time frame in which the child or youth will be returned to a parent or legal guardian or be in a **safe and permanent home**; and
- (f) If the child or youth is not likely to be returned to a parent or legal guardian within six months, a finding about whether the child or youth is in a potential permanent placement and if not, a likely time frame when he or she will be in a safe and permanent home.”

C.R.S. 19-3-702.5(1)(2019). Emphasis added.

15



3. MISAPPLICATION OF CHILD SAFETY CAN HAVE GRAVE CONSEQUENCES.

16

Misapplication of safety can cause unnecessary removals/delays in returns + additional unnecessary trauma.



<https://youtu.be/IOeQUwdAjE0>

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The trauma of removal is **compounded** when children do not see their parents after removal or experience short-term removals.

- Short term removals interfere with learning, curiosity, social engagement and emotional regulation
- When children don't know what happened to their parent, they may imagine worst case scenarios or experience abandonment as a result of ambiguous loss, a huge source of stress and trauma.
- Most traumatic immediately after removal when children do not see parents for days or weeks which can exacerbate stress and trauma responses.

Children's Bureau Memo ACYF-CB-IM-20-02 <https://familyfirstact.org/sites/default/files/ACYF-CB-IM-20-02.pdf>.

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And then, when family time is set...

“What the field most often regards as ‘visitation’ and ‘visitation plans’ seldom fulfills the needs that parents and children have for meaningful and nurturing time together. This language often implies **standard visitation schedules** whereby all parents receive a **predetermined amount of supervised time** with their child, **regardless of the parents’ circumstances and protective capacities**, and for **‘visitation’ to increase only as parents ‘earn’ the right for longer and unsupervised interactions.**”

Children’s Bureau Memo ACYF-CB-IM-20-02 <https://familyfirstact.org/sites/default/files/ACYF-CB-IM-20-02.pdf>.

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Second...

WHAT

20

Pause

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Safety and risk assessment tools

“Many child welfare agencies use safety or risk assessment instruments to help workers assess families. These tools can provide a structure for assessing current and future harm to the child. However, **used alone they do not provide a comprehensive picture of the family or help engage them in problem solving.** These tools are considered to be **most effective when they are directly connected to service planning and monitoring ongoing progress of the case.**”

Child Welfare Information Gateway

<https://www.childwelfare.gov/topics/systemwide/assessment/family-assess/safety/>. Emphasis added. See also 12 CCR 2509-4:7.301.1(B) (both safety and risk assessments are the basis for case planning.).

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A minute on risk

- Definition: “Increases the likelihood of **future maltreatment** to a child or adolescent.”
- Purpose of risk assessment: To determine the **likelihood or risk for future abuse and/or neglect**. Helps determine **whether services should be provided and at what level**.
- Timing: **Within 30 days of referral** date.
- If high score: DHS must document reasonable efforts to **hold a FEM** to discuss next steps. If DHS closes the assessment without providing services, DHS must document why.

Some factors

1. Current allegation is for abuse or neglect.
2. Number and results of prior abuse or neglect assessments.
3. Children mental health concerns, behavioral problems, or physical disabilities.
4. Number of children.
5. Age of youngest child.
6. Age of primary caregiver.
7. Previous receipt of CPS services.
8. Primary caregiver has history of abuse or neglect as a child or was in CPS custody as a child.
9. Primary or secondary caregiver has substance use problem.

Quotes from Child Welfare Info. Gateway <https://www.childwelfare.gov/topics/systemwide/assessment/family-assess/safety/>. Emphasis added. See also 12 CCR 2509-2:7.107.21-107.2 et seq. (risk assessment) .

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Two safety tools

Colorado Family Safety Assessment Tool (CFSA) and Instructions

<https://www.coloradocwts.com/resources-for-caseworkers/colorado-family-safety-and-risk-assessments-case>

Child Safety: A Guide for Judges and Attorneys by Therese Roe Lund (MSSW) and Jennifer Renne (JD) (“the Guide”) download at http://www.ct.gov/ccpa/lib/ccpa/ABA_Child_Safety_Manual_june32009.pdf or purchase with bench cards at <https://www.americanbar.org/products/inv/book/215601/>.

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Support for the CFSA

“A primary use of the CFSA will be to **provide the court with basic information regarding the agency’s assessment and decision-making.** Based on this information, an appropriate decision may be made regarding probable cause, removal and reentry/re-removal options, and it is an **essential tool for the judge in making an appropriate disposition.** Complete and accurate information about all aspects of the case, with a recommendation when appropriate, enhances the Court’s ability to order a disposition which represents the best interest of the child(ren)/ youth, the family and the community. ”

Colorado Program Improvement Plan <https://tinyurl.com/4qt2og9a>.

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Support for the Guide

“Successfully applying the [child safety] process is often the more pervasive problem. The Guide’s thoroughness, identifying safety responsibilities from the initial contact through case termination, **reflects federal requirements** (Adoption and Safe Families Act or ASFA) regarding child safety. **The Guide may help a judge and child welfare agency scrutinize its own child safety decision-making processes to ensure:**

- **its processes are consistent with ASFA requirements for safety;**
- **its processes are consistent with the logic and the sequential, critical thinking principles of decision making that are covered here;**
- **its processes are implemented as intended.”**

Guide http://www.ct.gov/ccpa/lib/ccpa/ABA_Child_Safety_Manual_june32009.pdf.

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In the end, it doesn't matter which tool we use because they aren't that different.

"My court and the child welfare agency in my community already use a process to make child safety decisions. Am I expected to use this approach instead?"

Most of the methods, examples, and definitions presented here reflect thinking by the child welfare community. There is more agreement among child welfare professionals about child safety than disagreement."

Guide http://www.ct.gov/ccpa/lib/ccpa/ABA_Child_Safety_Manual_june32009.pdf.

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Big picture of each tool

CFSA

1. General information
2. Current or impending danger
3. Caregiver's strengths and/or protective capacities
4. Caregiver's functioning
5. Child's vulnerabilities and functioning
6. Actions that responded to current or impending danger
7. Safety intervention analysis
8. Safety planning

Guide

1. Collect information.
2. Analyze information to assess for safety.
3. Plan for safety.

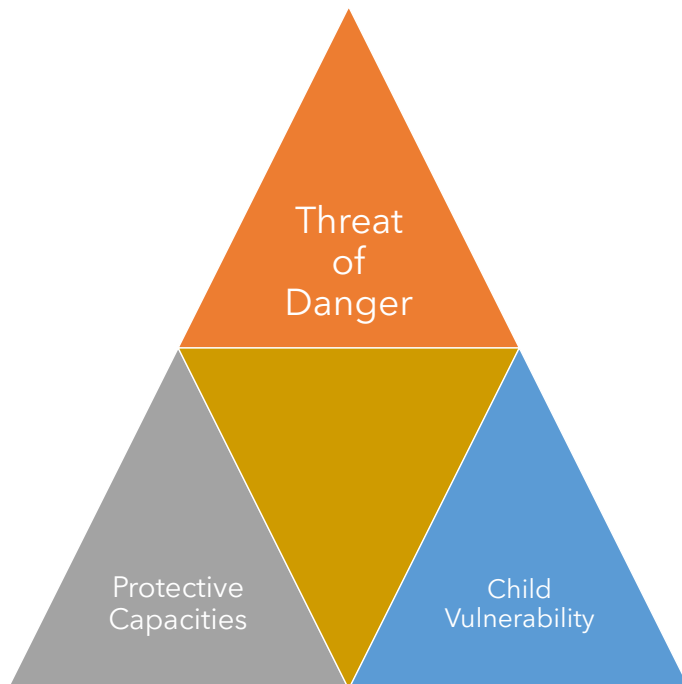
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Step 1: Collect information: 6 crucial questions

1. What is the **nature and extent** of the maltreatment?
2. What are the **circumstances** surrounding the maltreatment?
3. How does the **child function** on a daily basis?
4. How does the **parent discipline** the child?
5. What are the **overall parenting practices**?
6. How does the **parent manage his/her own life**?

29

Step 2:
Analyze
information
to assess for
safety.



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Definition of safety

A child is unsafe when:

1. there is a **threat of danger** to the child, AND
2. the child is **vulnerable** to that threat, AND
3. the parent lacks sufficient **protective capacities** to control or manage that threat.

See 12 CCR 2509-2:7.107.12 for similar safety definition.

A child is safe when:

1. there is no **threat of danger** to the child; OR
2. there is a threat of danger to the child BUT the child is not **vulnerable** to that threat; OR
3. there is a threat of danger to the child and the child is vulnerable to that threat, BUT the parent has sufficient **protective capacities** to control or manage that threat.

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a. Threat of danger

Definition: A threat of danger is:

- **specific and observable**, AND
- **out of control** (unmanaged, not subject to internal control), AND
- **immediate** (likely to occur if threat is not controlled), AND
- potential harm is **moderate or severe**.

Some examples

- No adult is routinely performing basic/essential parenting duties.
- Caregiver is violent.
- Caregiver refuses access to child.
- Living situation is hazardous

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b. Child vulnerability

Definition: Child lacks the ability to self-protect.

Examples

- Young: 0-6.
- Non-verbal.
- Physical disabilities.
- Mental disabilities.

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c. Protective capacities

Definition: Cognitive, behavioral, and emotional qualities supporting the caregiver's ability to protect the child.

Examples

- Cognitive: realistic expectations for the child
- Behavioral: adequate skills for caretaking
- Emotional: supportive of the child

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Step 3: If the child is not safe, then plan for **safety.**

IN-HOME SAFETY PLAN

- Roadmap/conditions for child staying in home.
- **Temporary substitute** for caregiver's inability to manage/control threats of danger to which the child is vulnerable.
- Must be **sufficient, feasible, and sustainable.**
- Does **not rely on caregiver promises** to control threats.

OUT-OF-HOME SAFETY PLAN

- Roadmap/conditions for child's return home **with a safety plan.**
- **Only used when** an in-home safety plan is not sufficient, feasible, or sustainable.
- Includes family time.
- Includes sibling time.

(CASE PLAN:

Roadmap/conditions for **case closure.**)

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Third and finally...

HOW

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We can start by remembering that **(safe,)** regular and meaningful family time is associated with positive outcomes.

Benefits to children

- Improved emotional well-being.
- Stronger attachments to parents.
- Improved well-being.
- Fewer behavioral problems.
- Lower levels of depression.
- Better adjustment.

Benefits to parents

- Improved emotional well-being.
- Greater likelihood of reunification.
- Increase chances of sustained reunification.
- Expedited permanency.
- Enhanced parental engagement.

Children's Bureau Memo ACYF-CB-IM-20-02 <https://familyfirstact.org/sites/default/files/ACYF-CB-IM-20-02.pdf>.

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We can encourage best practices in family time, **when such practices are safe for the child.**

What activities?

Safe normal parenting activities.

Examples include:

- meals,
- medical appointments, and
- school events.

Where?

A safe normalized setting.

Examples include:

- child's placement,
- parent's home,
- a family member's home, and
- a park.

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We can use the tools to **assess safety** for the children whose best interests we represent.

Colorado Family Safety Assessment Tool (CFSA)

<https://www.coloradocwts.com/resources-for-caseworkers/colorado-family-safety-and-risk-assessments-case>.

Child Safety: A Guide for Judges and Attorneys by Therese Roe Lund (MSSW) and Jennifer Renne (JD) ("the Guide") download at

http://www.ct.gov/ccpa/lib/ccpa/ABA_Child_Safety_Manual_june32009.pdf or purchase with bench cards at

<https://www.americanbar.org/products/inv/book/215601/>.

Tool for Assessing and Planning for Child Safety posted to the Litigation Toolkit

<https://coloradochildrep.org/attorney-center/litigation-toolkit/>.

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We can ask DHS about safety and/or safety tools.

- Ask DHS when the last safety assessment was completed. Request a copy.
- Ask DHS to complete an updated safety plan with us.
- Confer with DHS about filing a lack of reasonable efforts motion if DHS did not complete the CFSA as required by Volume 7 and/or as ordered by the court.
- Discuss returning a child home with a safety plan in place and/or liberalizing family time with a safety plan in place when a safety plan would be sufficient, feasible, and sustainable.
- Ask DHS to individually tailor family time plans to meet the safety each child.
- **Ask DHS to draft out-of-home safety plans (roadmap/criteria for return home with a safety plan in place).**
- Ask DHS to draft detailed family time plans.
- Ask DHS for detailed updates on the status of family time at every hearing.
- Encourage DHS to apply the principles and recommendations in IM-CW-2020-0051 which addresses visitation during COVID https://mcusercontent.com/cd781c9bc8f90270567729e9e/files/311ab509-5562-4c5e-baa3-d74d75c59fe6/IM_CW_2020_0051.pdf?mc_cid=98e388e048&mc_eid=%5bUNIQID.

Children's Bureau Memo ACYF-CB-IM-20-02 <https://familyfirstact.org/sites/default/files/ACYF-CB-IM-20-02.pdf>.

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...some fodder for our discussions with DHS.

“Enhancing the safety practice in Colorado and including the assessment findings in communications with legal and judicial partners will **promote a culture of removing child(ren)/youth from the home only when it is a true safety issue that cannot be controlled by department intervention, and ensures child(ren)/youth will be returned to the home as soon as the safety threat can be eliminated or controlled.** [...] As part of other child welfare transformation efforts, partnership with the court system court administrator staff, Court Improvement Program (CIP), Best Practice Court Teams (BPCT), judges, attorneys for parents and child(ren)/youth, Court-Appointed Special Advocates (CASA), and county attorneys, is imperative to successful implementation of the safety practice model [...]. Colorado recognizes that CDHS/DCW and the court system **must work in collaboration to support and foster the practice of keeping child(ren)/youth in their homes of origin whenever safely possible.** To accomplish this, Colorado will enhance the understanding of the safety assessment approach, tool, and process with legal partners and seek their assistance in supporting its application in practice at relevant junctures such as removal consultations, Family Engagement Meetings (FEM) or court hearings.”

Colorado Program Improvement Plan Colorado Program Improvement Plan <https://tinyurl.com/4qt2og9a>.

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We can ask courts to address safety and/or safety tools.

- Ask DHS why a safety plan was not possible at the time of removal.
- Order DHS to file its most recently completed safety assessment.
- Order DHS to file a safety assessment before every hearing or certain hearings.
- Order the parties to complete and file an assessment.
- Order the parties (including DHS) to follow a safety plan.
- Find lack of reasonable efforts if DHS did not complete the CFSA as required by Volume 7 and/or as ordered by the court.
- Find lack of reasonable efforts if the child was not returned home or family time was not liberalized with a safety plan in place when doing so would have been sufficient, feasible, and sustainable.
- Set clear expectations that DHS individually tailors family time plans to meet the safety each child.
- Require detailed family time plans.
- Require detailed updates on the status of family time at every hearing.

Children’s Bureau Memo ACYF-CB-IM-20-02 <https://familyfirstact.org/sites/default/files/ACYF-CB-IM-20-02.pdf>.

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We must be careful if the source of (safety-related) information is the child.

Requirement

"The unique statutory responsibilities of a GAL and a CLR do not set forth a traditional attorney-client relationship between the appointed attorney and the child; instead, the "client" of a GAL or a CLR is the best interests of the child. The ethical obligations of the GAL or CLR, under the Colorado Rules of Professional Conduct, flow from this unique definition of "client." **Because of this unique relationship, an attorney's obligation not to reveal confidential information provided by the child does not apply if the information must be revealed to ensure the child's best interests.** [...] A GAL or a CLR must also explain to the child the limitations on confidentiality."

CJD 04-06(V)(B).

Tips

- Try to get the information from another sources.
- If we must use the information from the child, we should do our best not to destroy our relationship with the child. We can talk with the child about the need to disclose the information.

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Let's chat...

What would you think about courts starting hearings by asking,

- "Could the child be returned home safely today with a safety plan in place," and/or
- "Could family time be safely liberalized (e.g., less/no supervision, greater frequency, less restrictive location today with a safety plan in place?"

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