



# Lots of Apples, Lots of Trees: Kinship & Family Time Updates and Importance

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## Roadmap

- 🍏 Legislative Update
- 🍏 Talk about the Why
- 🍏 Look at how it translates to practice

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## 2023 Legislative Session

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## HB23-1024 Relative and Kin Placement of a Child

- New placement presumption:  
*placement with a capable, willing, and available relative or kin is in the best interests of the child.*
- Can be overcome by a preponderance of the evidence.
- For all placement considerations under this bill, the Court must give primary consideration to the child's or youth's mental, physical, and emotional needs, *including the child's or youth's preference* regarding placement.

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## HB23-1024

### Relative and Kin Placement of a Child

#### *Updated notice requirements*

- **Relative Affidavit** must be filed with the court and served on all the parties no later than 7 days after initial hearing date.
  - Court shall ask the parent if there are any changes to the information on the affidavit at all dispo and permanency planning hearings.
  - If the parent has not completed it the Court shall ask the parent, on the record, for names and contact information for relative and kin whom the parent would like considered for engagement in the case.
- DHS shall provide notice to relatives and identified kin that the child/youth has been removed from home and an explanation of the various options to participate in the youth's care or placement and the options that may be available to support the family.
  - Notice has additional requirements found in §19-3-403 (3.6)(a)(IV)(B).
- DHS required to exercise due diligence to contact and engage relatives and kin who respond to the notice.

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## HB23-1024

### Relative and Kin Placement of a Child

#### *Contested placements*

- If a motion to place with a relative/kin is contested, the Court must set a hearing within 63 days.
- When the contest is between relatives/kin the factors in 19-3-702 (6) must be addressed.
  - As an aside, (h) was changed and now says:  
The child's or youth's attachment to the child's or youth's caregiver at the time of the hearing and the possible effects on the child's or youth's emotional well-being if the child or youth is removed from the caregiver's home. However, placement with a child's or youth's relative or kin should not be denied based solely upon the ordinary bonding and attachment to a foster parent as a result of time spent in the home. The court shall consider the number of prior placements, the child's or youth's mental, physical, and emotional needs, and any subsequent caregivers' ability to provide emotional and psychological support when considering a change of placement.

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# HB23-1024

## Relative and Kin Placement of a Child

### Intervention

- Adds kin caregivers who have had the child for 3 months to the list of intervenors by right.
- Foster parents now required to have care of the child for 12 month before they can intervene by right.
  - Must occur after adjudication
  - limited to the purpose of providing knowledge or information concerning the care and protection of the child or youth, including the child/youth's mental, physical, and emotional needs.
- Clarifies that any type of intervenor may not, on their own motion:
  - seek to restrict family time,
  - file a petition to terminate,
  - or appeal a denial of termination.

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## HB23-1043

### Emergency or Continued Placement with Relatives or Kin

- Combined § 19-3-406 and 407 into a new § 19-3-406.
- Clarifies procedures around finger-print background checks.
- Updates the "shall not" criminal history in section (5).
  - Add a 5 year limitation for felony with underlying factual basis of DV.
  - Reduces drug felony limitation to 3 years.
  - Adds pattern of misdemeanor DV in the preceding 5 years .
  - Includes human trafficking offenses involving unlawful sexual behavior.
  - Removes violation of a protection order.
- Does not REQUIRE a placement, merely allows it to occur. Safety assessments will continue to happen.

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## ACF Guidance

### Kinship Care, Waivers of Non-Safety Licensing Standards, Title IV-E Guardianship Assistance Program

ACYF-CB-IM-20-08, Dec. 29, 2020

*Research is clear that children who live with relatives and extended family members experience more positive well-being outcomes than children in foster care placed with non-kin foster parents. CB strongly encourages child welfare agencies to better support relatives by providing them with consistent information on their options to become licensed as foster parents and a legal guardian for the child. CB encourages all states to review their policies and practices to better support kinship caregivers, including by promoting licensure of relative foster homes and by making title IV-E GAP benefits available to a broad population of children and relatives.*

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## Kin placements and connections are simply put: **better**

A little peek about what we know about kin placements:

- Reduce trauma
- Improves children's well-being
- Increases permanency for children
- Promotes sibling ties
- Improves behavioral and mental health outcomes
- Provides a bridge for older youth
- Preserves children's cultural identity and community connections



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## HB23-1027

# Parent and Child Family Time

- Family time is defined as: *any form of contact or engagement between parents, legal custodians, guardians, siblings, and children or youth for the purposes of preserving and strengthening family ties.* §19-1-103 (64.5)
- Requires the maximum family time possible, including regular family time and participation in the care of the child or youth when in their best interests.
- The Court may only restrict or deny family time if it is necessary to protect the child's or youth's safety or mental, emotional, or physical health.
- The Court shall order family time in the least restrictive setting and supervision at the least restrictive level to satisfy the child's or youth's safety or mental, emotional, or physical health.
- The court must consider both the child/youth's preferences and the parent's when determining supervision, location and timing of family time.



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## HB23-1027

# Parent and Child Family Time

**Family time plan** required no later than 30 days, at the first hearing after the shelter hearing. It must include:

- Frequency and Length
- Persons who may be present
- Whether family time must be supervised
- The child or youth's opportunity to communicate with a parent, sibling, or other relative.

For good cause, or by agreement of the parties, the court may waive this requirements or extend the time.

- Lack of staff or financial resources is not good cause.

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## HB23-1027

# Parent and Child Family Time

**Presumption** that supervised family time must:

- be supervised by informal supports,
- occur in the community, a homelike environment, or other agreed upon location.

Presumption can be rebutted if:

- the child or youth's safety or mental, emotional, or physical health requires professional supervision OR
- other family supports are unable or unwilling to provide supervision after DHS exercises due diligence to engage relatives, kin or other natural supports.

Family Time may not be limited as a sanction for a parent's failure to comply with court orders or services or for a youth's behavior (or as an incentive to change the youth's behavior).

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## HB23-1026

# Family Time for Grandparents

- Relocated from §19-1-117 to Title 14.
- New legislative declaration in §14-10-124.4.
- Incorporated Troxel requirements into the statute.
- Court must consider the best interests of the child factors in § 14-10-124 (1.5)(a).
- Gives specific authority for the court to appoint a CLR in a Grandparent Family Time matter.



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## The Data on Family Time is Pretty Clear

### Family Time Improves Every Part of Case

- Consistent contact with family is strongly associated with reunification
- Children who visit more frequently with their parents were in care for shorter periods
- Increased chances of reunification being sustained

### Family Time Also Improves the Lives of Our Youth

- Stronger attachments to their parents;
- Improved reported well-being;
- Fewer behavioral problems, including both internalizing and externalizing problems
- Lower levels of depression
- Better coping tools and adjustment skills

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## HB23-039 Reduce Child and Incarcerated Parent Separation

### Attending and Participating

- 19-3-502 (5.5)(a): A Person named a respondent is a party to the proceedings and has the right and responsibility to attend and fully participate in all proceedings related to the respondent. A respondent's failure to appear for a hearing does not constitute a violation of the respondent's due process rights and nothing in this section prohibits the court from proceeding if a respondent fails to appear.
- If Courts become aware of incarceration, it shall issue a writ for the respondent's personal attendance or attendance through audio-visual communication technology.
  - Requires counsel to file motions as well.



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## HB23-039

### Reduce Child and Incarcerated Parent Separation

#### Treatment Planning

- DHS must make reasonable efforts to involve an incarcerated parent in planning the services for the child.
  - Includes permitting and facilitating remote participation in meetings.
  - Opportunities for meaningful family time.
  - Communicating with the facility or jail's designee.
- CW must include information in the dispo report regarding what services and treatment are available to the parent in the facility or jail where they are incarcerated.
  - Post dispo, this kicks in when parent is incarcerated for more than 35 days.

#### Family Time

- If in person is not reasonably practicable, then caseworker must communication with the facility about arranging virtual family time.
- Can be prohibited if there is a protection order or if the court determines it would jeopardize the child's mental, emotional, or physical health.
- The Court shall not determine that family time is not in the BIC based solely on the fact that the family time would occur in a facility or jail.

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## HB23-039

### Reduce Child and Incarcerated Parent Separation

- Long-term confinement removed from the no appropriate treatment plan section of §19-3-604.
- Good cause to NOT file for TPR is added in 19-3-702 (4)(e)(V) for incarcerated parents who have a meaningful and safe relationship with the child or youth while incarcerated, detained, or deported.
  - (7) also added for incarcerated parents who have maintained a meaningful and safe relationship with the child while incarcerated – the Court shall make findings regarding whether a permanent placement exists that permits the parent to maintain a relationship with the child, giving primary consideration to the child's mental, physical, and emotional needs. If this requires another placement, the court must consider the factors in 19-3-702 (6). The court shall not find that the parent's incarceration is the sole reason that a relationship with the parent is not in the BIC and shall consider the parent's efforts to comply with the treatment plan.

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## HB23-1133

# Cost of Phone Calls for Persons in Custody

- Makes this communication free to the family and the person who is incarcerated in prison (DOC or private contract prison) with a phased in approach:
  - Sept. 1, 2023 – June 30, 2024 25% is covered.
  - July 1, 2024 – June 30, 2025 35% is covered.
  - July 1, 2025 and later – 100% is covered.



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## Practice Tips

### Relative and Kin Placements

#### Attorneys

- Update motions and arguments with new presumption.
  - Be prepared to overcome the presumption if necessary.
- Directly tie all advocacy to the child's mental, physical, and emotional needs.
- Determine and focus on the child or youth's preferences.
- Get the relative affidavit.
  - Vet it with the child/youth and expand from their lens.
  - Remind court to go on the record to ensure parents are identifying possible options early in the case.
  - Double check that notice has gone out and that DHS is engaging all relatives/kin.

#### Case Consultants

- Identify resources that would allow placement with the relative/kin.
- Learn the mechanisms for accessing resources from the department
- Try to team up with CASA to get child find assessments
- Get creative about the toolkits you are bringing to home visits

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# Practice Tips

## Family Time

### Attorney

- Determine child/youth's preferences about when, who and where.
- Ensure the family time plan is put in the record.
- Be diligent about any changes to the plan and why they are necessary.

### Case Consultant

- Help identify supports, supervisors, and good settings for children and their families.
- Make a 'map' of how time can look. An object for a case is one of the great services case consultants can provide.



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# Practice Tips:

## Attending Visitation

**A quick note from Retired Supreme Court Justice Souter and Bryan Stevenson and a poet named Marie Howe.**

- "In this 21st century, we are Antaeus. If we lose our touch from the ground in which we come, we will lose our strength as well as our mental and physical power."
- "It's actually in proximity to the poor that we hear things that we won't otherwise hear, that we'll see things we won't otherwise see. The things we hear and see are critical to our knowledge and our capacity to problem solve."
- Resist story about the families that we work with and just go see.



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# Practice Tips

## Incarcerated Parents

### Attorneys

- Ensure good records are being made about respondent's attendance or lack of.
- Talk to children/youth about their preferences with family time and contact.

### Case Consultants

- Learn jail procedures!
- Make a map for meaningful time together: in person, virtual, and phone.
- Help educate foster parents and kin placements on the importance of contact.



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