What is Removal of a Child, *Really*?

A panel discussion with

Michael Johnson, FACTS Director, DHHR
Toby Lester, CPS Policy Specialist, DHHR
Teresa Lyons, Esq.
Nikki Tennis, Esq., Children's Services, AOC
Robert Wilkinson, Chief Public Defender, Cabell and Wayne Counties
Joyce Yedlosky, WVCADV

Ingredients for removal
(attorneys on panel)

- State intervention, including CPS protection plans that exceed 7 days
- Child sent to care of someone who is not the child's custodial parent or custodial legal guardian
- Change of care, custody, and control, not necessarily physical home

DHHR Thoughts on Removal

- Removal only when court-ordered custody to DHHR or voluntary placement agreement between DHHR and parent
- Temporary protection plans may or may not be removals
- Placement of child in care, custody, and control of someone other than DHHR (e.g., grandmother or other parent) is not removal for IV-E purposes
- Giving DHHR legal custody and someone else physical custody is not a valid removal for IV-E funding
- AFCARS and Title IV-E drive definitions

Considerations

- Federal definition of removal (42 USCA s 672)
- Constructive removal (e.g., child has not moved, but care, custody, and control has changed to someone else)
- Reasonable efforts to prevent removal required in most cases
- Due process to child and parents beyond federal requirements
- Trauma of removal on child (family ties, educational stability, friends, belongings, etc.)

Scenario One

Grandma has child under a CPS temporary protection plan.

- How long can temporary protection plan last until court action is filed?
- When a court action is filed, does the Department seek care, custody, and control of the child?
- What is Grandma's role in case?
- Is this a removal?

Scenario Two

A CPS Protection Plan requires child to stay with noncustodial parent, contrary to family court order and current living situation.

- How long can temporary protection plan last until court action is filed?
- Is court action in family court or circuit court?
- When a Chapter 49 court action is filed, is there a preliminary hearing?
- What is noncustodial parent's role in case?
- Is this a removal?

Scenario Three

A CPS Protection Plan requires child to stay with noncustodial parent. There has been no order in family court establishing parenting time/decision-making responsibility.

- How long can temporary protection plan last until court action is filed?
- Is court action in family court or circuit court?
- When a Chapter 49 court action is filed, is there a preliminary hearing?
- What is noncustodial parent's role in case?
- Is this a removal?

Practical Tips

- Even if DHHR does not request custody in the petition, check facts/prayer in petition, other documents filed, UCCJEA addresses, response, etc., for possible removal situation
- When in doubt about removal, have a preliminary hearing and inquire
- Courts usually count removal date as date court orders/ratifies removal

What do you think?