



# GAL RESPONSIBILITIES & Best interest

KATHLEEN SAUVAGE

KATHLEEN@KMURRAYPLLC.COM

# GAL: Guardian Ad Litem

- ▶ Sec. 107.001
- ▶ "Guardian ad litem" means a person appointed to represent the best interests of a child. The term includes:
  - ▶ (A) a volunteer advocate from a charitable organization described by Subchapter C who is appointed by the court as the child's guardian ad litem;
  - ▶ (B) a professional, other than an attorney, who holds a relevant professional license and whose training relates to the determination of a child's best interests;
  - ▶ (C) an adult having the competence, training, and expertise determined by the court to be sufficient to represent the best interests of the child; or
  - ▶ (D) an attorney ad litem appointed to serve in the dual role.

# Sec. 107.002. POWERS AND DUTIES OF GUARDIAN AD LITEM FOR CHILD

- ▶ (b) A guardian ad litem appointed for the child under this chapter shall:
  - ▶ (1) within a reasonable time after the appointment, interview:
    - ▶ (A) the child in a developmentally appropriate manner, if the child is four years of age or older;
    - ▶ (B) each person who has significant knowledge of the child's history and condition, including educators, child welfare service providers, and any foster parent of the child; and
    - ▶ (C) the parties to the suit;
  - ▶ (2) seek to elicit in a developmentally appropriate manner the child's expressed objectives;
  - ▶ (3) consider the child's expressed objectives without being bound by those objectives;
  - ▶ (4) encourage settlement and the use of alternative forms of dispute resolution; and
  - ▶ (5) perform any specific task directed by the court.

# Sec. 107.002. POWERS AND DUTIES OF GUARDIAN AD LITEM FOR CHILD

- ▶ (f) In a nonjury trial, a party may call the guardian ad litem as a witness for the purpose of cross-examination regarding the guardian's report without the guardian ad litem being listed as a witness by a party. If the guardian ad litem is not called as a witness, the court shall permit the guardian ad litem to testify in the narrative.
- ▶ (g) In a contested case, the guardian ad litem shall provide copies of the guardian ad litem's report, if any, to the attorneys for the parties as directed by the court, but not later than the earlier of:
  - ▶ (1) the date required by the scheduling order; or
  - ▶ (2) the 10th day before the date of the commencement of the trial.

# Sec. 107.011. MANDATORY APPOINTMENT OF GUARDIAN AD LITEM

- ▶ (a)....court shall appoint a guardian ad litem to represent the best interests of the child immediately after the filing of the petition but before the full adversary hearing.
- ▶ (d) The court may appoint an attorney to serve as guardian ad litem for a child without appointing the attorney to serve in the dual role only if the attorney is specifically appointed to serve only in the role of guardian ad litem. An attorney appointed solely as a guardian ad litem:
  - ▶ (1) may take only those actions that may be taken by a nonattorney guardian ad litem; and
  - ▶ (2) may not:
    - ▶ (A) perform legal services in the case; or
    - ▶ (B) take any action that is restricted to a licensed attorney, including engaging in discovery other than as a witness, making opening and closing statements, or examining witnesses.

# Sec. 107.031. VOLUNTEER ADVOCATES

- ▶ A court-certified volunteer advocate appointed under this section may be assigned to act as a **surrogate parent** for the child, as provided by 20 U.S.C. Section 1415(b), if:
  - ▶ (1) the child is in the conservatorship of the Department of Family and Protective Services;
  - ▶ (2) the volunteer advocate is serving as guardian ad litem for the child;
  - ▶ (3) a foster parent of the child is not acting as the child's parent under Section 29.015, Education Code; and
  - ▶ (4) the volunteer advocate completes a training program for surrogate parents that complies with minimum standards established by rule by the Texas Education Agency within the time specified by Section 29.015(b), Education Code.  
(<https://www.spedtex.org/educators/surrogate-parent-training>)

# BEST INTEREST FACTORS: *Holley* *Factors*

- 1) **the desires of the child**
- 2) the emotional and physical needs of the child now and in the future
- 3) the emotional and physical danger (of one parent) to the child now and in the future
- 4) the parental abilities of the individuals seeking custody
- 5) the programs available to assist the parents
- 6) the plans for the child by these individuals
- 7) the stability of both parties' homes and any acts or omissions of a parent which may indicate that the existing parent-child relationship is not a proper one
- 8) any excuse for the acts or omissions of a parent.

**WE'RE NOT LIKE REGULAR FAMILY LAW**

**WE'RE CHILD WELFARE LAW**

# FACTORS FOR BEST INTEREST: Tex. Fam. Code Sec. 263.307

- ▶ (a) In considering the factors established by this section, the prompt and permanent placement of the child in a safe environment is presumed to be in the child's best interest.
- ▶ (b) The following factors should be considered by the court and the department in determining whether the child's parents are willing and able to provide the child with a safe environment:

# FACTORS FOR BEST INTEREST: Tex. Fam. Code Sec. 263.307

- ▶ (1) the child's age and physical and mental vulnerabilities;
- ▶ (2) **the frequency and nature of out-of-home placements;**
- ▶ (3) **the magnitude, frequency, and circumstances of the harm to the child;**
- ▶ (4) **whether the child has been the victim of repeated harm after the initial report and intervention by the department;**
- ▶ (5) **whether the child is fearful of living in or returning to the child's home;**
- ▶ (6) the results of psychiatric, psychological, or developmental evaluations of the child, the child's parents, other family members, or others who have access to the child's home;
- ▶ (7) whether there is a history of abusive or assaultive conduct by the child's family or others who have access to the child's home;
- ▶ (8) whether there is a history of substance abuse by the child's family or others who have access to the child's home;

# BEST INTEREST FACTORS: Tex. Fam. Code Sec. 263.307 cont.

- ▶ (9) whether the perpetrator of the harm to the child is identified;
- ▶ (10) the willingness and ability of the child's family to seek out, accept, and complete counseling services and to cooperate with and facilitate an appropriate agency's close supervision;
- ▶ (11) the willingness and ability of the child's family to effect positive environmental and personal changes within a reasonable period of time;
- ▶ (12) whether the child's family demonstrates adequate parenting skills, including providing the child and other children under the family's care with:
  - ▶ (A) minimally adequate health and nutritional care;
  - ▶ (B) care, nurturance, and appropriate discipline consistent with the child's physical and psychological development;
  - ▶ (C) guidance and supervision consistent with the child's safety;
  - ▶ (D) a safe physical home environment;
  - ▶ (E) protection from repeated exposure to violence even though the violence may not be directed at the child; and
  - ▶ (F) an understanding of the child's needs and capabilities; and
- ▶ (13) whether an adequate social support system consisting of an extended family and friends is available to the child.

# TEX FAM § 153.131. Presumption That Parent to be Appointed Managing Conservator

- ▶ (a) Subject to the prohibition in [Section 153.004](#) (history of domestic violence or sexual abuse) , **unless** the court finds that appointment of the parent or parents would not be in the best interest of the child because the appointment would **significantly impair the child's physical health or emotional development**, a parent shall be appointed sole managing conservator or both parents shall be appointed as joint managing conservators of the child.

# Case law on best interest

## ▶ *In The Interest of JEMM & LAMM*

- ▶ In this case, the COA found termination was **not** in the best interest of the children where there was no evidence that the mother was unable to care for a child with autism, no evidence mother was ever diagnosed with or treated for a mental illness even though she had thoughts of paranoia or delusions, mother lacked financial resources, had not completed her family plan of service, and no evidence of how other caregivers could fill the stability gap if mother's rights were terminated.

# Case law cont.

- ▶ *In The Interest of FMEAF, AAFH, & AJFH*
- ▶ 14th COA ruled evidence legally insufficient to prove termination of mother's rights of well-adjusted **sixteen year old** was in the child's best interest. Mother had an extensive criminal history and a history of bipolar disorder. However, criminal history alone is not a sufficient basis for termination, and mother was in therapy and on medication to deal with bipolar at time of trial. **Child expressed her desire that mother's rights not be terminated**, and there was no evidence that mother's behavior had negatively affected the child.

# Case law cont.

- ▶ ***In The Interest of JC***
- ▶ 12th COA reversed and remanded trial court's finding of termination on "O" grounds and best interest. **The court stated although the parents did not complete their service plans, the investigator's and CASA volunteer's argument that it was in the child's best interest to terminate parental rights was conclusory.** The court also noted that CPS did not change its goal to termination until the grandparent caregivers expressed a desire to adopt.

# Case law cont.

- ▶ ***In The Interest of JA & NA***

- ▶ Evidence was factually insufficient as to best interest. The only evidence of father's inability to care for the child was his marijuana use, and father was willing to stop smoking and had family support if the child was placed with him. Father could provide for the child's emotional and physical needs despite his previous conviction of sexually assault and his marijuana use.

# Other things to consider in determining best interest

- ▶ Child's age—older children tend to stay in care longer
- ▶ Ability to find an adoptive home—Level of care, frequent hospitalizations, aggressive behaviors
- ▶ Maintaining sibling contact

# YOUTH AGING OUT OF FOSTER CARE

- ▶ Youth aging out of foster care are more likely to experience
  1. behavioral, mental and physical health issues
  2. housing problems and homelessness,
  3. employment and academic difficulties,
  4. early parenthood
  5. incarceration
  6. Other lifelong adversities—substance abuse

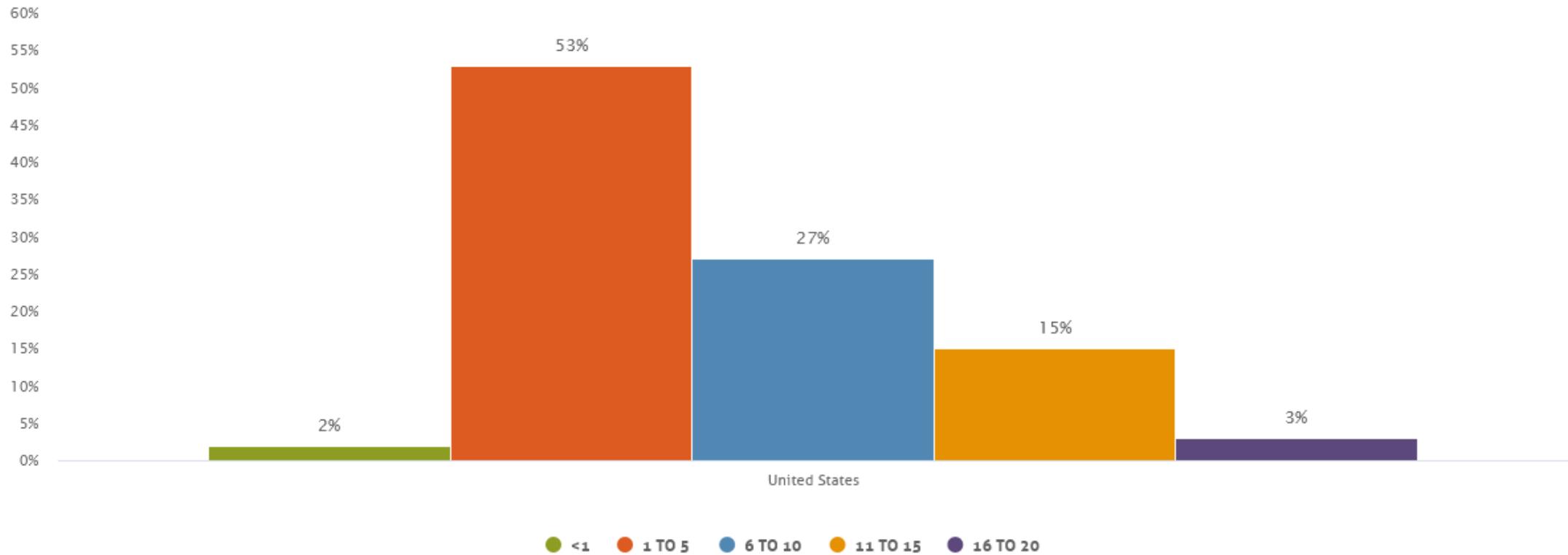
# YOUTH AGING OUT OF FOSTER CARE

- ▶ One in five report experiencing homelessness between ages 17 and 19, and over one in four (29%) report being homeless from 19 to 21. In Texas 33% of youth who have aged out of care have experienced homelessness by age 21.
- ▶ One in five report being incarcerated between ages 17–21. (Texas--22% incarcerated by age 21).
- ▶ One in 10 report having a child (i.e., giving birth or fathering a child) between ages 17–19, with nearly one in four (23% in TX) saying they became parents between 19–21.
- ▶ By age 21, over two-thirds (70%) have a high school diploma or equivalent. Only 4% had a vocational certificate. The highest level of education by age 21 was an associates degree and that was at 2%.
- ▶ Just 57% report being employed (full- or part-time) at age 21,

National statistics: Anne E. Casey Foundation

<https://www.aecf.org/blog/child-welfare-and-foster-care-statistics>

## CHILDREN IN CHILD WELFARE SYSTEM WHO HAVE BEEN ADOPTED BY AGE GROUP (PERCENT) - 2020



# Adoption Disruptions and Dissolutions: AKA Failed adoptions

- ▶ An estimated 10 to 25% of foster adoptions are disrupted, and about 1 to 5% are dissolved

**Disruptions:** When prior to finalizing the adoption, the adoption process is terminated and the child returned to care.

**Dissolutions:** The legal relationship between the adoptive parents and adoptive child is severed, either voluntarily or involuntarily, after the adoption is legally finalized.

# Failed adoptions/Dissolutions

- ▶ Failed adoptions are often hard to track to obtain accurate statistics (adoption cases area sealed, can happen years after the fact, adoptive families relocate, etc.)
- ▶ In looking at my case numbers, 1%-5% appears to be an accurate percentage.
- ▶ While failed adoptions are a relatively a small number of cases in the child welfare world, these tend to be some of the saddest cases we get. There are no return policies on kids!
- ▶ 25% of my failed adoption cases came back for some sort of abuse of the child/children
- ▶ 75% of my failed adoption cases came back for allegations the adoptive parents no longer wanted the child in the home due to the child's mental health and/or their behaviors

# The tale of a failed adoption

- ▶ I was appointed to a 15 year old girl in the juvenile system, we will call her Jane Doe.
- ▶ Jane had been adopted with her younger sister at the age of 7 by her foster parents.
- ▶ By the age of 12, her adoptive parents had divorced and the adoptive father relinquished rights.
- ▶ By age 14 she ran away, and was living with bio family and on the streets. Her adoptive mother knew where she was the entire time. Not going to school, drinking, smoking meth, etc.
- ▶ Jane was detained after allegedly taking her adoptive mother's boyfriend's truck for a drive without authorization.

# Sibling Access

- ▶ According to DFPS statistics sibling groups with all the children placed together account for 62.2%
- ▶ **Tex. Fam. Code Sec 153.551**
- ▶ **(a)** The sibling of a child who is separated from the child because of an action taken by the Department of Family and Protective Services may request access to the child by filing: **(1)** an original suit; or **(2)** a suit for modification as provided by Chapter 156. **(b)** A sibling described by Subsection (a) may request access to the child in a suit filed for the sole purpose of requesting the relief, without regard to whether the appointment of a managing conservator is an issue in the suit. **(c)** The court shall order reasonable access to the child by the child's sibling described by Subsection (a) if the court finds that access is in the best interest of the child.
- ▶ **DFPS policy 4113.2: workers required to review Impact, including closed cases to look for siblings and try to place the siblings together**
- ▶ **DFPS Policy 4114: requires placement with siblings to be a factored considered when looking for placement options**
- ▶ **DFPS policy 4114.14: Requires DFPS to consider placement with Adoptive Parents of Siblings (Tex. Fam. Code Sec. 102.005(a) gives foster parents who have adopted or who have filed a petition to adopt a sibling, standing to file a suit for termination and adoption as to the newly removed sibling.**
- ▶ **DFPS policy 4114.2: Federal law requires placement of siblings together unless doing so is contrary to the safety or well-being of one of the siblings, if they are not placed together DFPS must provide frequent sibling contact**
- ▶ **DFPS policy 4114.23: Siblings of Youth in Extended Foster Care: DFPS has to ensure youth in extended care are given the ability to maintain sibling contact**

# Benefits of sibling access

- ▶ Children who have positive relationships with their siblings are less likely to exhibit internalizing behaviors (i.e., behavior problems, such as anxiety or depression, that are directed inward or “kept inside”) after experiencing a traumatic event (*Gass, Jenkins, & Dunn, 2007; Wojciak, McWey, & Helfrich, 2013*).
- ▶ Being placed with siblings or maintaining sibling connections while in care serves as a protective factor for children’s mental health (*Jones, 2016; McBeath et al., 2014*).
- ▶ Being placed with all their siblings may improve children’s school performance
- ▶ When siblings who are all placed together were compared with those in “splintered” placements, those placed together tend to show more closeness to their foster caregivers and like living in the foster home more than those not placed with a sibling (*Hegar and Rosenthal, 2011*).
- ▶ Separating siblings can hinder adjustment and adaptation to the new home. This is in part due to children worrying about their siblings in other foster homes or those remaining with their birth families (*Affronti, Rittner, & Semanchin Jones, 2015*).

# GAL Responsibilities and Best Interest

- ▶ **Responsibilities**: Visit with the child, get to know them and what their desires are. Communicate with the parties. Participate in case staffings. Be involved/know what's going on with the child's educational needs. Be **prepared** to testify on the case.
- ▶ **Best interest**: LONG TERM STABILITY!!! Hopefully through reunification which should always be the goal—it's what legislature is pushing for through laws and what court's are upholding through their rulings. If not possible, next look for family. Ultimately, unrelated adoption.