DNA COURT 2024 UPDATE

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AGENDA

Introduction

DNA court overview

Recent implementation issues

2024 legislation

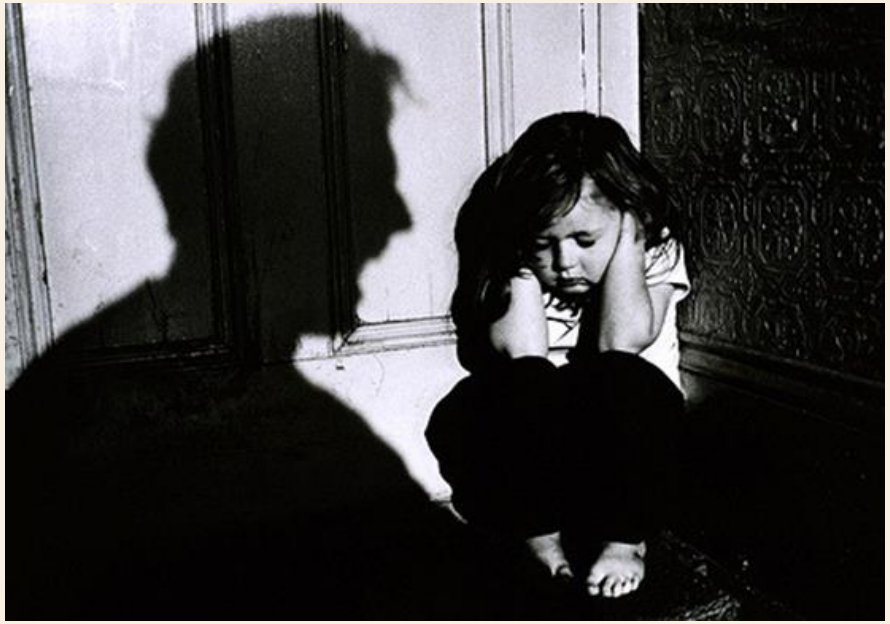
Final tips & takeaways

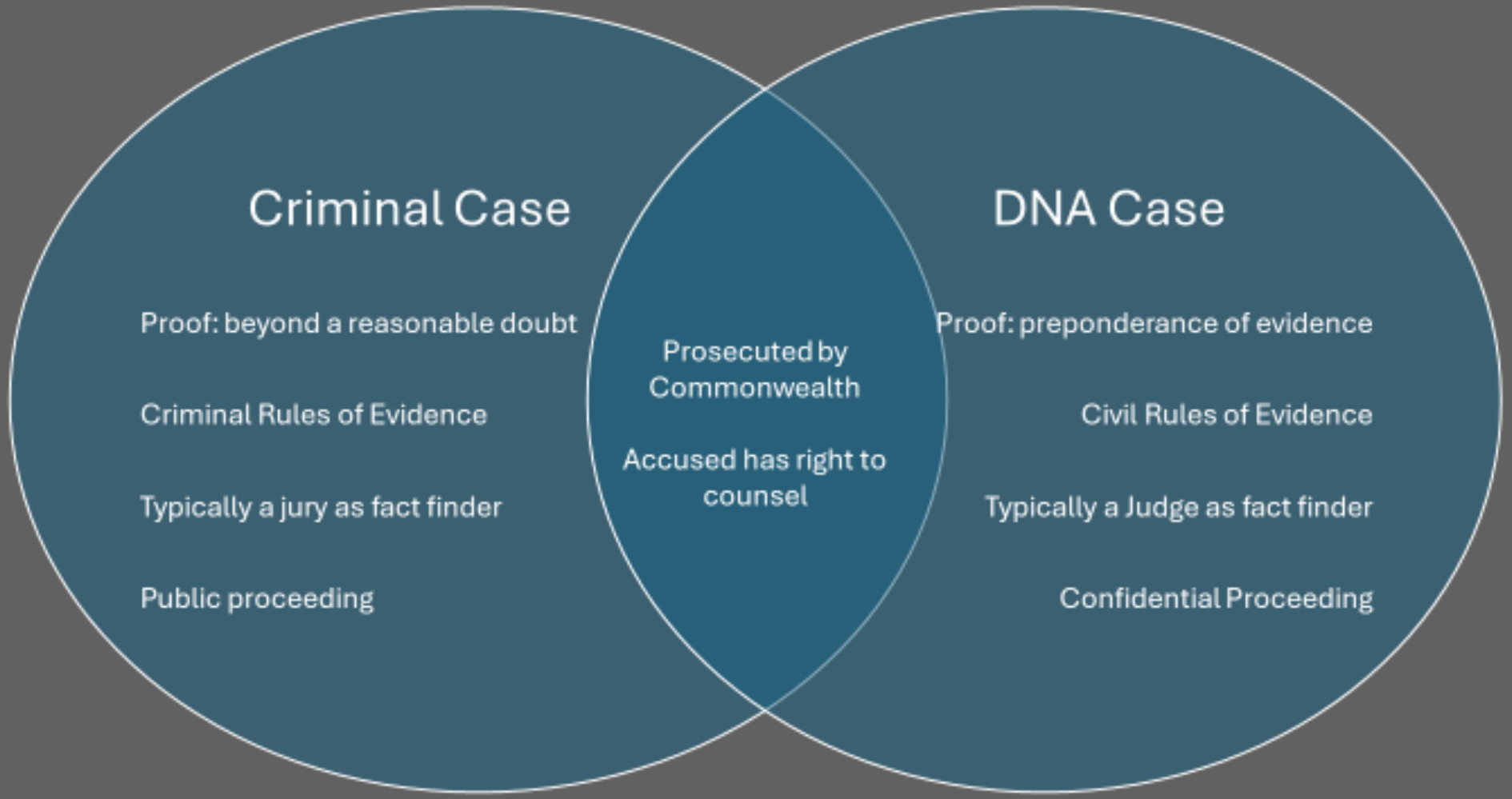
WHAT IS DEPENDENCY, NEGLECT, AND ABUSE COURT?

WHEN A CHILD IS HARMED

2 Court Cases May Result:

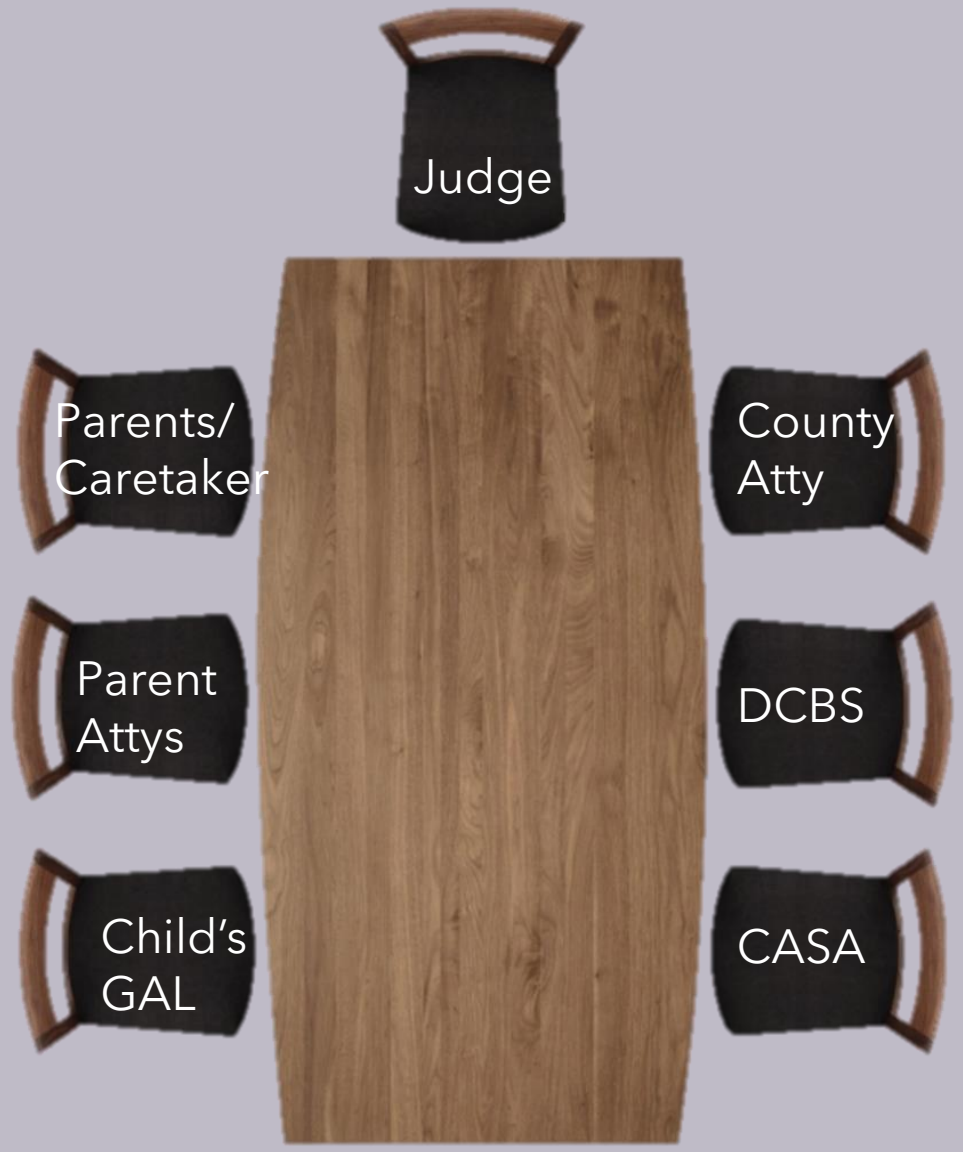
1. Criminal charges to hold perpetrator accountable
2. Petition for Dependency Neglect Abuse (DNA) to protect the child




Criminal Case
Proof: beyond a reasonable doubt
Criminal Rules of Evidence
Typically a jury as fact finder
Public proceeding
Prosecuted by Commonwealth
Accused has right to counsel
DNA Case
Proof: preponderance of evidence
Civil Rules of Evidence
Typically a Judge as fact finder
Confidential Proceeding

COURT DISPOSITION ALTERNATIVES IF FINDING OF D/N/A

- Child remains in the home with orders designed to protect child and rehabilitate the family, often with Cabinet supervision
- Child is removed from the home and placed with an appropriate relative
- Child is removed from the home and committed to the Cabinet, typically then placed in foster care
- Informal adjustment by agreement of the parties, which can include orders up to one year


Judge
Parents/
Caretaker
County
Atty
Parent
Attys
DCBS
Child's
GAL
CASA

RECENT IMPLEMENTATION ISSUES & CONCERNS

CONCERNS FROM THE BENCH

1. Reports of child abuse from judges, teachers, and others “not meeting criteria” for investigation
2. Children “placed” out of home without actual custody orders

DUTY TO REPORT

"Any person who knows or has reasonable cause to believe that a child is dependent, neglected, or abused shall immediately" report to CHFS, local law enforcement, KSP, or prosecutor. KRS 620.030.

No privileges apply except for attorney-client privilege.

No one in Kentucky is exempt from duty to report.

DUTY TO INVESTIGATE

"Based upon the allegation in the report, the cabinet shall immediately make an initial determination as to the risk of harm and immediate safety of the child. Based upon the level of risk determined, the cabinet shall investigate the allegation or accept the report for an assessment of family needs and, if appropriate, may provide or make referral to any community-based services necessary to reduce risk to the child and to provide family support." KRS 620.040

Statute grants lots of powers to assist

…BUT CANNOT BE ORDERED TO INVESTIGATE

Separation of powers prevents court from ordering that CHFS investigate certain individuals for risk of D/N/A. "By ordering an investigation, the family court usurped the Cabinet's executive function of determining the necessity of an investigation and, if so warranted, initiating the investigation. Section 28 of the Kentucky Constitution precludes the family court from exercising the Cabinet's executive powers."

C.H.F.S. v. Garber, 340 S.W.3d 588, 590 (Ky. Ct. App. 2011)

Cabinet is entitled to writ of prohibition if ordered to investigate. *Id*.

ALL A JUDGE CAN DO IS REPORT LIKE ANYONE ELSE

- And most (possibly all) sitting family court judges have reported cases only to later learn that those case "did not meet criteria" for investigation.
- Not only were they not prosecuted, they were not even investigated.

ALL A JUDGE CAN DO IS REPORT LIKE ANYONE ELSE

- Doctors and teachers report similar experiences.
- In documented cases, children have died as a result of abuse or neglect after a case was not accepted for investigation.

2024 HB 271

- Requires CHFS to accept for investigation reports made by: court, judge, attorney, law enforcement officer, social worker, medical professional, educator, therapist…or equivalently credentialed person.
- Does not require CHFS to file petitions or prosecute those cases, only requires investigation.
- Mandates monthly reporting to General Assembly, via LRC, of reports received and additional data.
- Reiterates requirement that CHFS refer family to services if case is not accepted for investigation.

CHILDREN PLACED WITHOUT CUSTODY ORDERS

- Cabinet's use of safety plans to temporarily separate parents is nothing new.
- May be done while an investigation is ongoing – for example, to give time for a CAC interview or forensic interview to occur
- Use of this tool appears to have greatly increased in recent years
- In some cases and in some areas, children were being "placed" via safety plan indefinitely, without subsequently filling a petition or obtaining legal custody

WHY THIS IS A PROBLEM – EXAMPLE

- In 2021 child tests positive for various substances at birth, both parents complete case plan and have child returned in 2022. This happens via usual process, court case 001.
- In January 2024, Mom gets DUI, has obviously had relapse. Child was not with her at the time, but she called Dad and his family to take child while she went to jail. CHFS gets new report. Files case number 002. Court awards Dad temporary sole custody.
- In April 2024, Dad refuses to drug screen and Stepmom tests positive for cocaine. Cabinet files case number 003, names Stepmom as a responsible party, custody still with Dad.
- In May 2024, Dad stops cooperating with CHFS, cuts workers brakes during home visit. CHFS files case number 004 as a non-removal, seeking court to order cooperation with Dad. Meanwhile, Mom has resolved criminal case and is in treatment.

WHY THIS IS A PROBLEM – EXAMPLE

- In June 2024, at court hearing in case number 004, Dad and Stepmom says child have been removed. Court is unable to locate any new removal petition or ECO granting custody to anyone else. Turns out children were placed with other relatives via “safety plan” allegedly signed by Dad and Stepmom night of most recent incident. Safety plan is allegedly signed electronically and CHFS cannot produce a copy to the Court. Court hearing continued two weeks because “new petitions will be filed.” Mom continues to make progress.
- At continued court hearing two weeks later, new petitions still have not been filed. This means children have been in physical care of relatives while legal custody of Dad (who now faces criminal charges for cutting CHFS workers brakes) for over a month. Court has ordered Mom and child to do family therapy, Dad as legal custodian doesn’t consent and cannot be forced to.

2024 HB 271

- Defines “safety plan” as “means a written agreement developed by the cabinet and agreed to by a family that clearly describes the protective services that the cabinet will provide the family in order to manage threats to a child's safety.” KRS 600.020(57).
- Requires CHFS to file petition if child is out of home more than 14 days, even if safety plan is in place.
- Requires compiling of safety plans in place, status of same, and quarterly reporting to General Assembly.

FINAL THOUGHTS

We need to follow the law we have!

We all need to be accountable for our duties to abused or neglected children.

Separation of powers can play a big role in that accountability.

Transparency is key.

Get involved! CASA is a great place to start!

THANK YOU

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