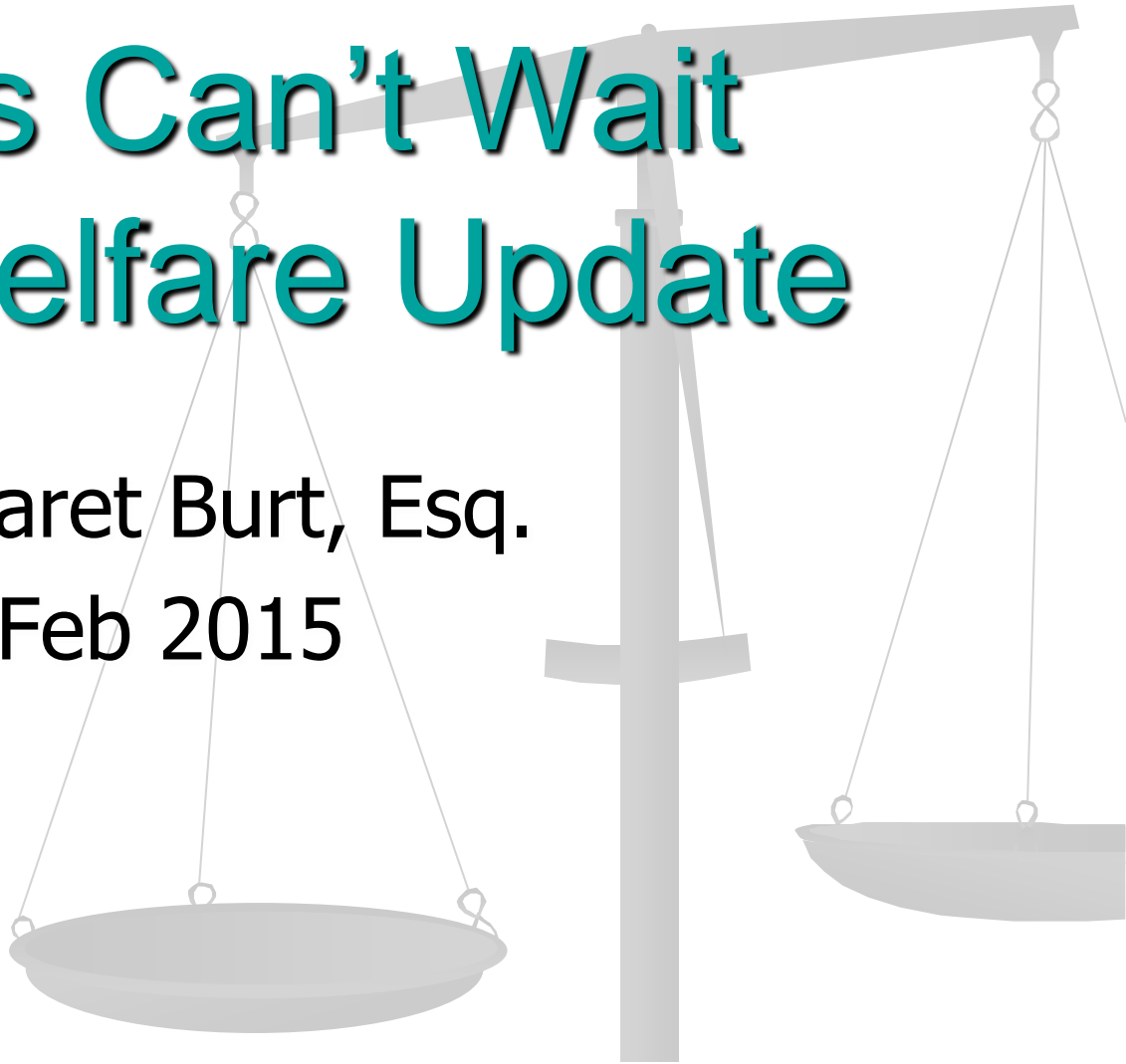


Babies Can't Wait Child Welfare Update

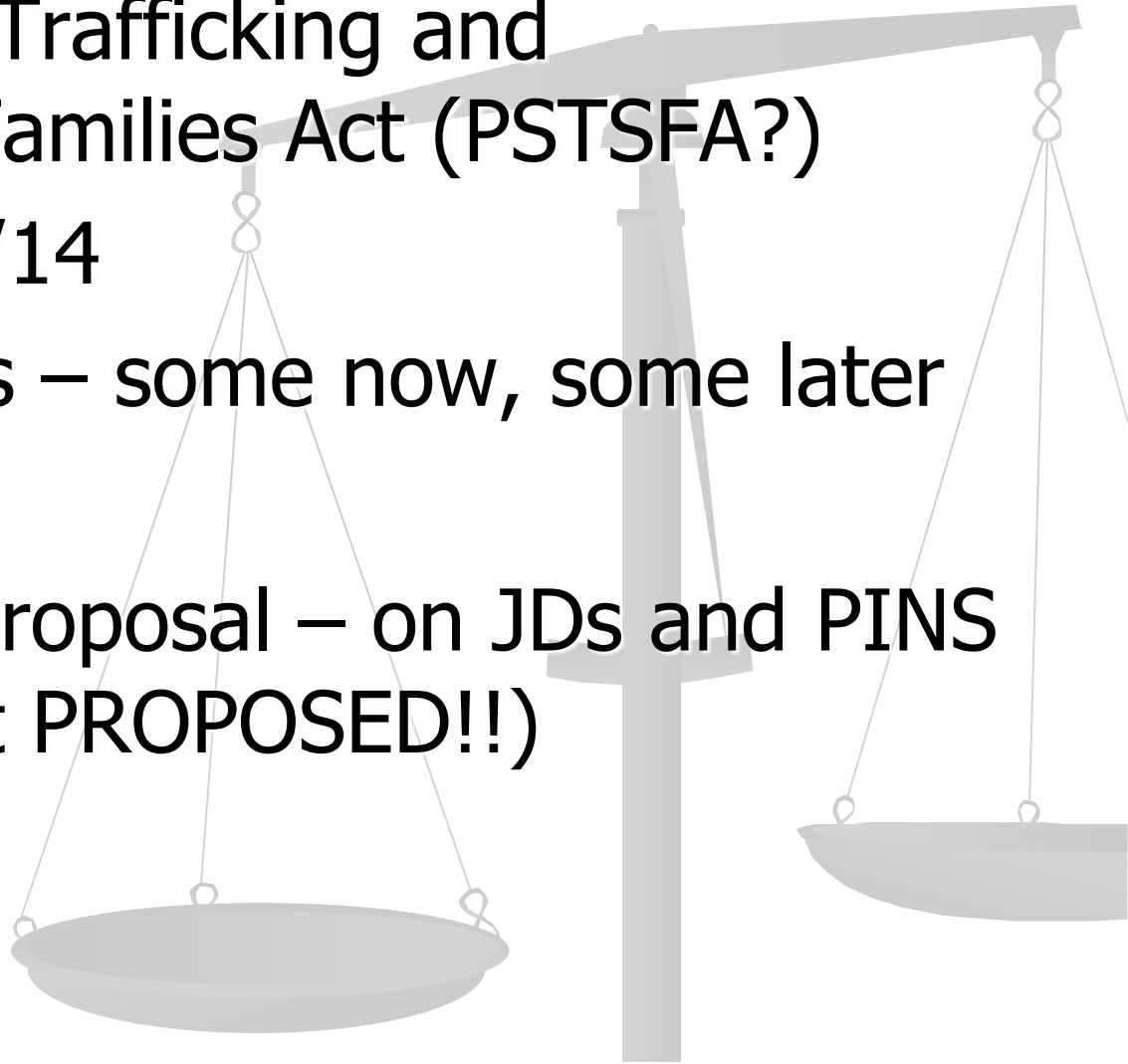
Margaret Burt, Esq.

Feb 2015



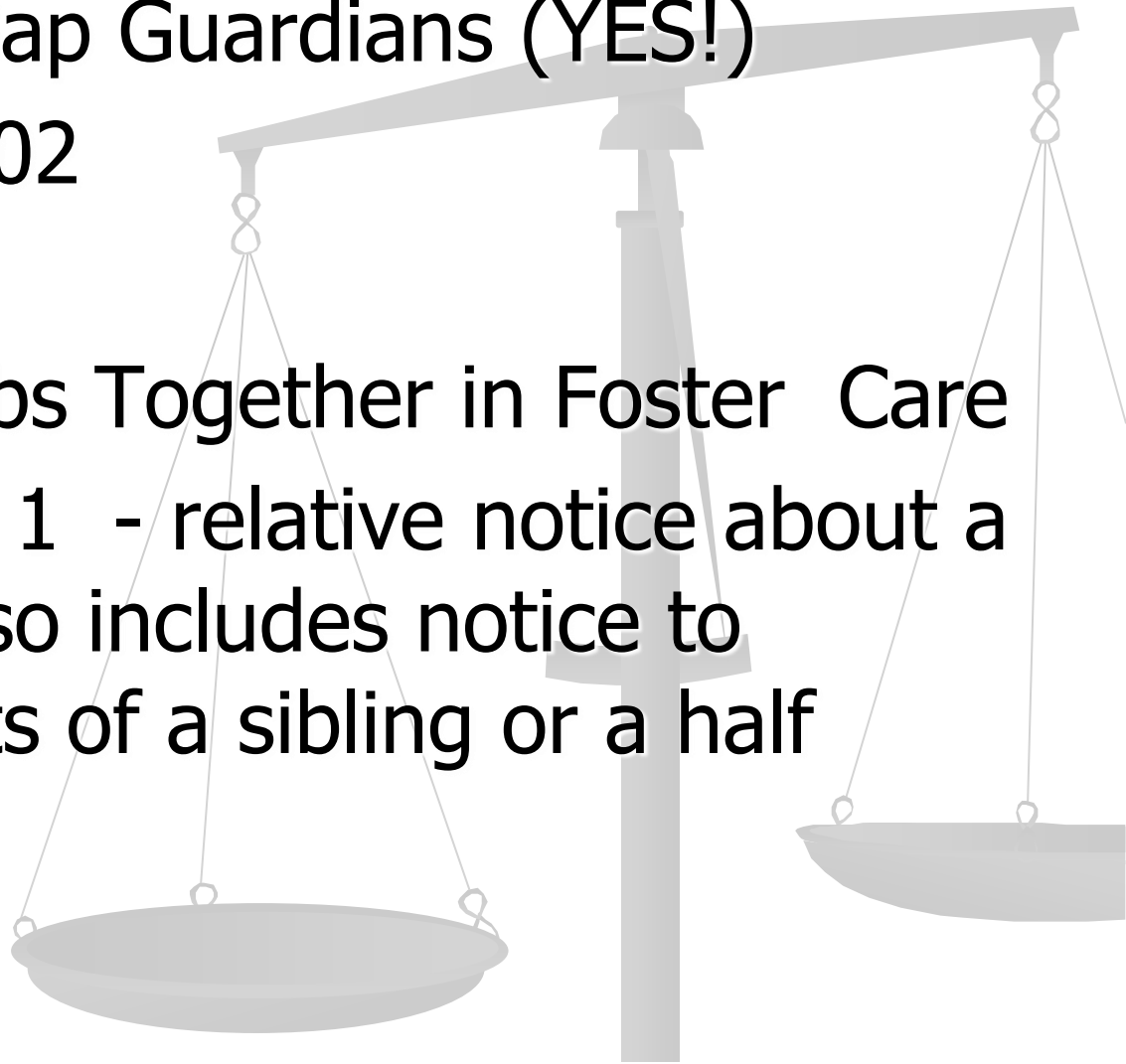
I see new laws comin' round the mountain

- Preventing Sex Trafficking and Strengthening Families Act (PSTSFA?)
- Signed on 9/29/14
- Various changes – some now, some later
- Gov'rs Budget proposal – on JDs and PINS (I SAID it is just PROPOSED!!)



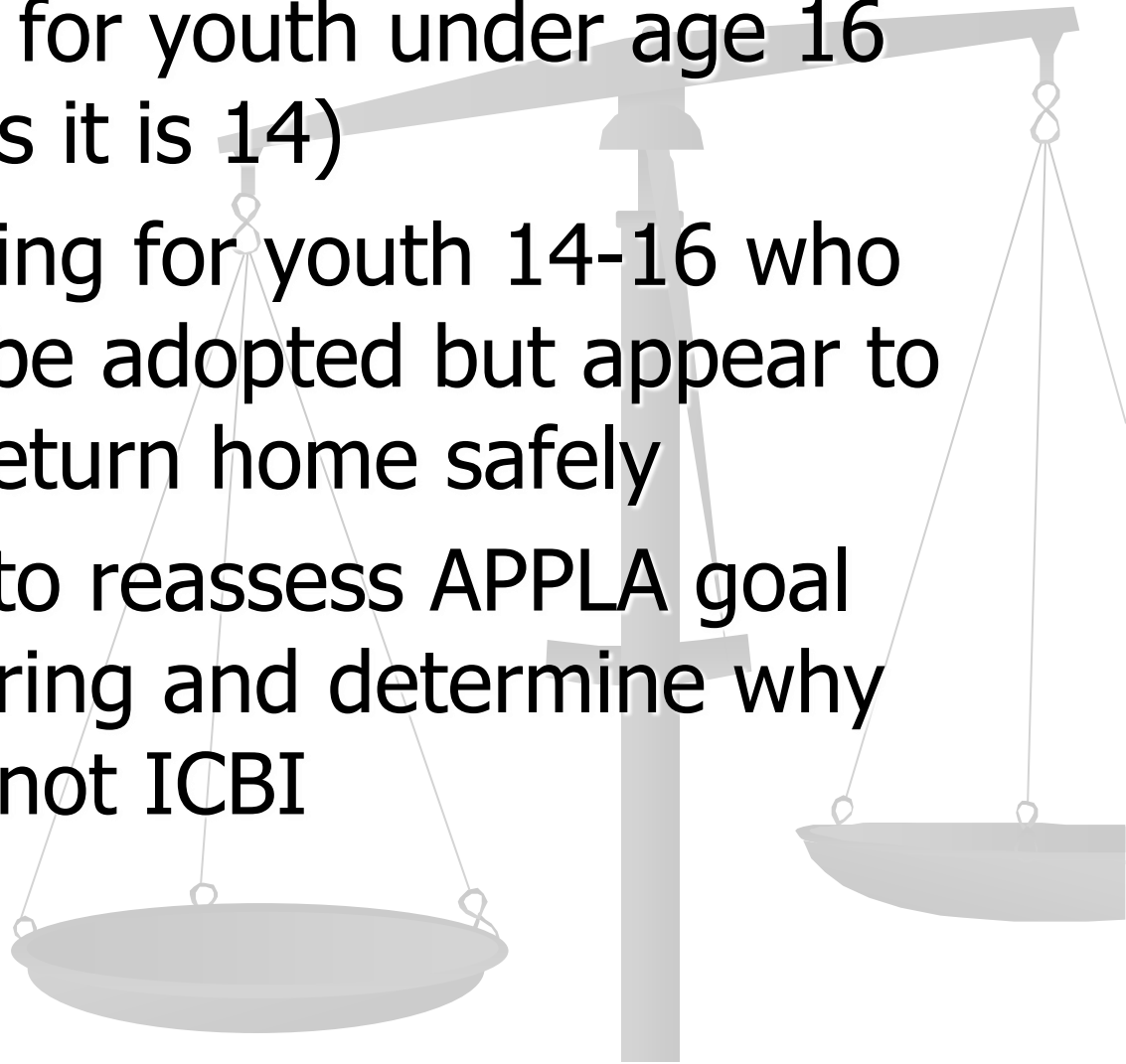
Effective NOW!

- Successor Kin Gap Guardians (YES!)
15 OCFS ADM 02
- Placement of Sibs Together in Foster Care
15 OCFS ADM 1 - relative notice about a removal now also includes notice to custodial parents of a sibling or a half sibling



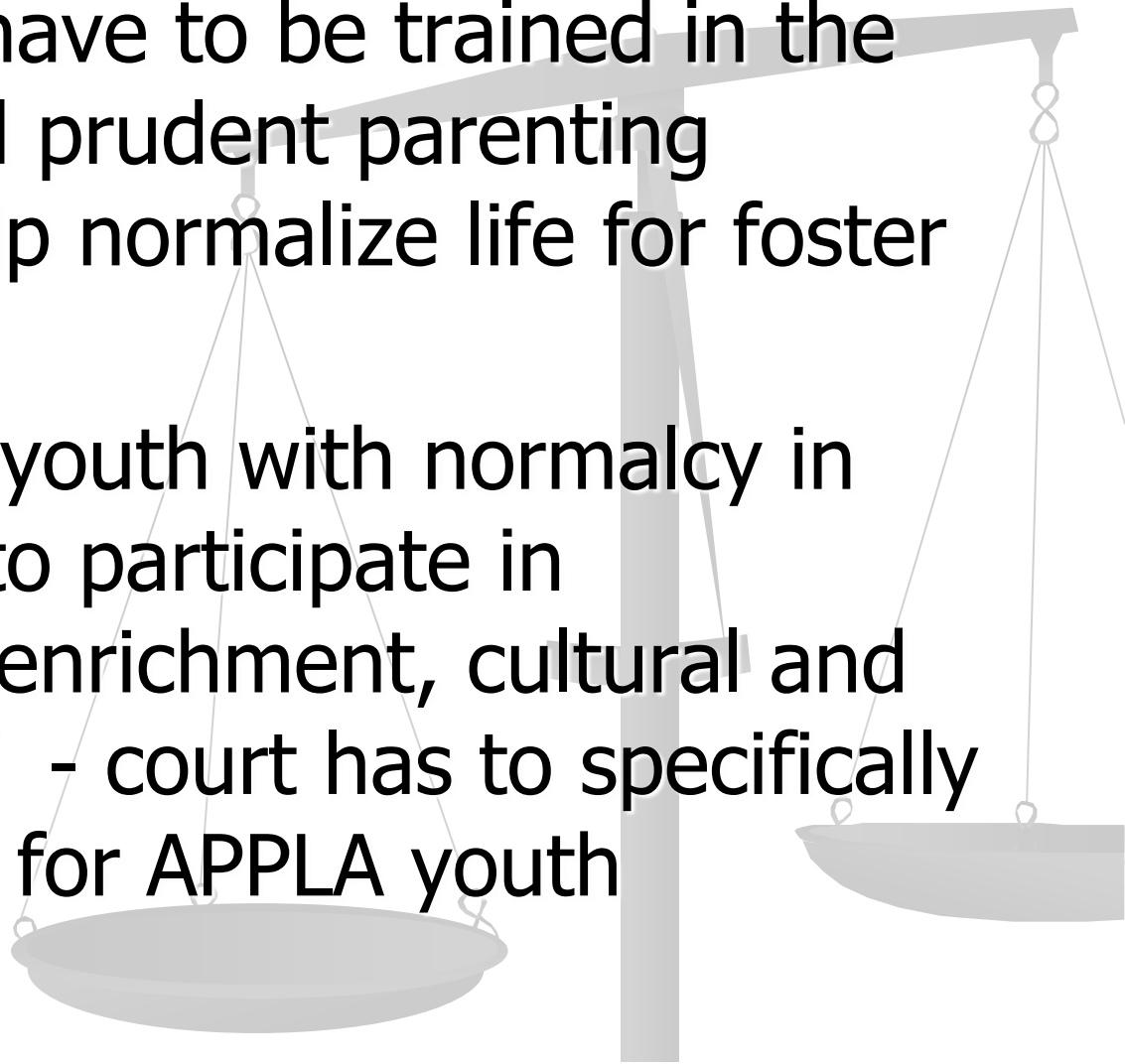
By Sept 2015

- No APPLA goals for youth under age 16 (right now for us it is 14)
- Will be challenging for youth 14-16 who do not want to be adopted but appear to not be able to return home safely
- Court will have to reassess APPLA goal every perm hearing and determine why other goals are not ICBI



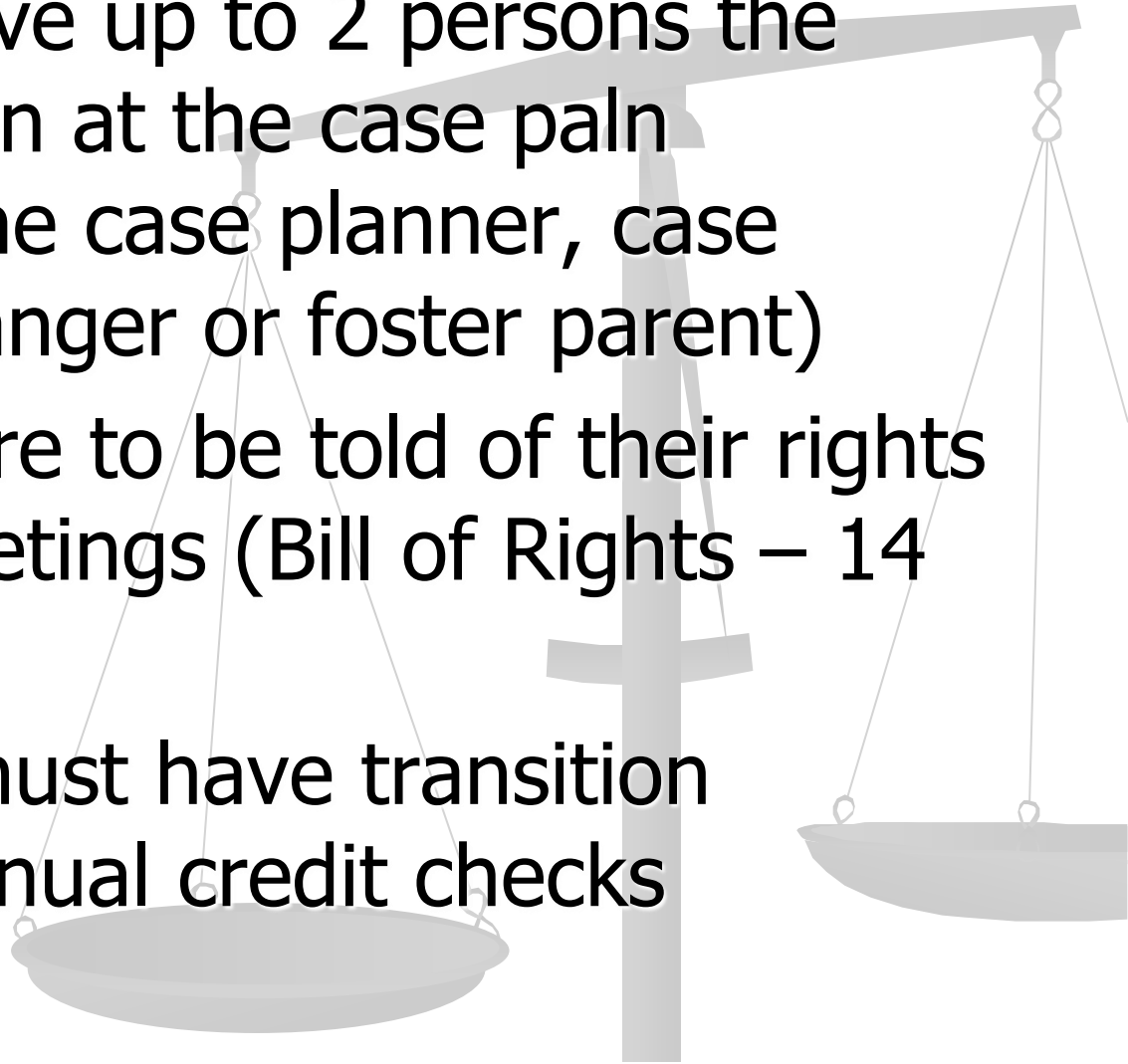
By Sept 2015

- Foster parents have to be trained in the “reasonable and prudent parenting standard” to help normalize life for foster children
- To assist foster youth with normalcy in activities i.e.– “to participate in extracurricular, enrichment, cultural and social activities” - court has to specifically check this issue for APPLA youth



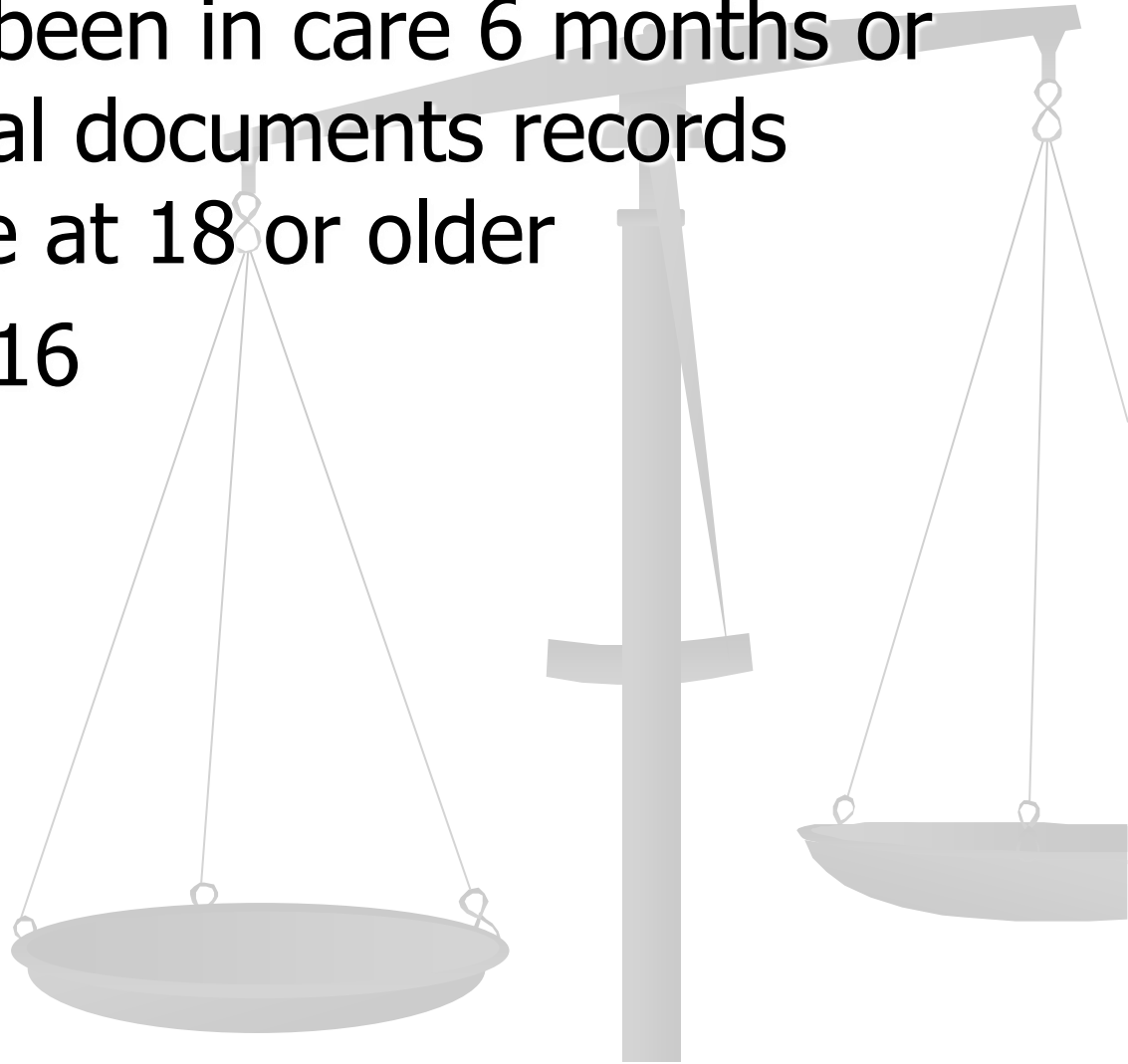
By Sept 2015

- Youth over 14 have involvement in case plan and can have up to 2 persons the youth has chosen at the case plan meetings (not the case planner, case worker, case manager or foster parent)
- Youth over 14 are to be told of their rights at case plan meetings (Bill of Rights – 14 OCFS INF 06)
- Youth over 14 must have transition planning and annual credit checks

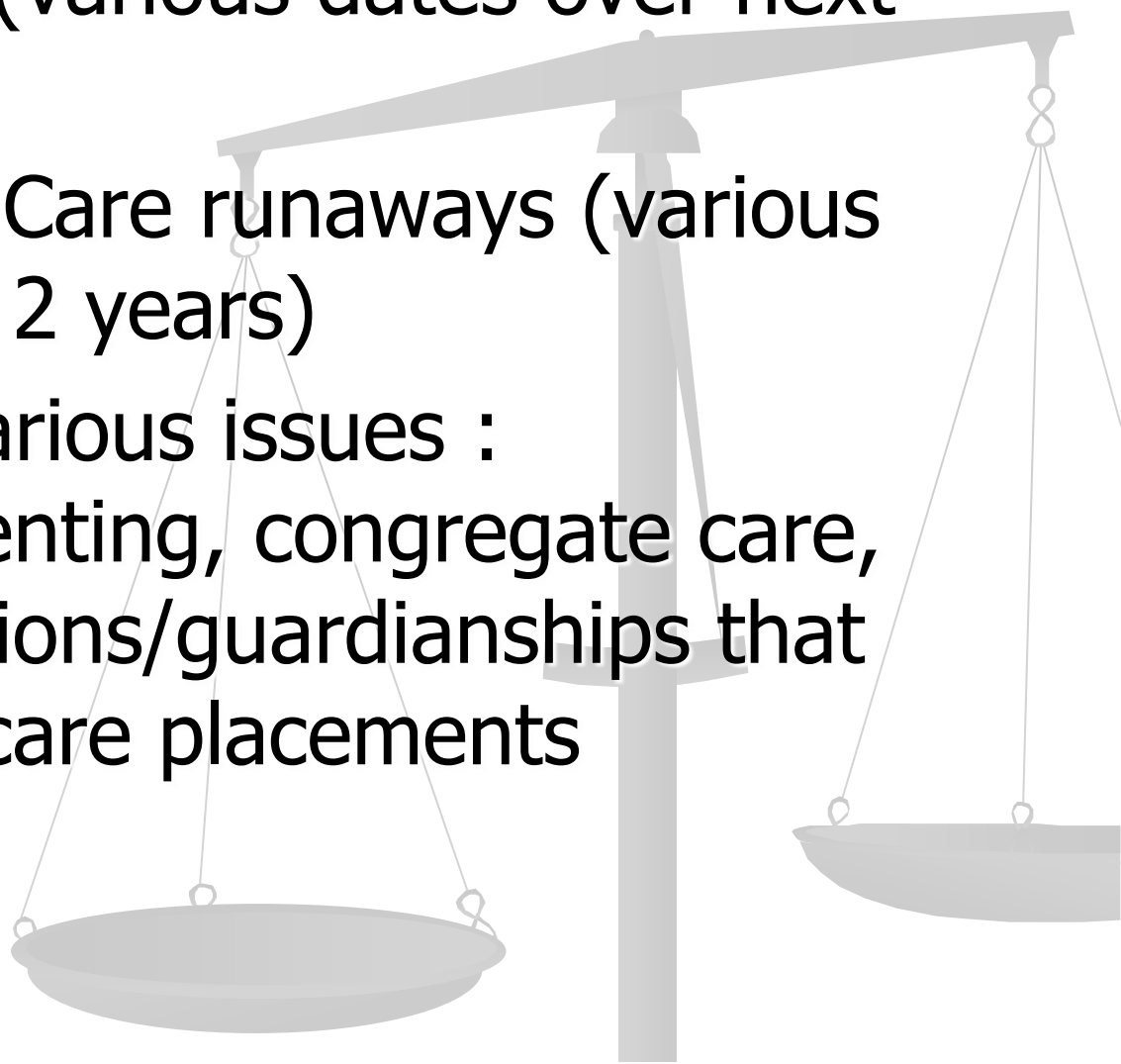


By Sept 15

- Youth who has been in care 6 months or more gets critical documents records when they leave at 18 or older
09 OCFS ADM 16

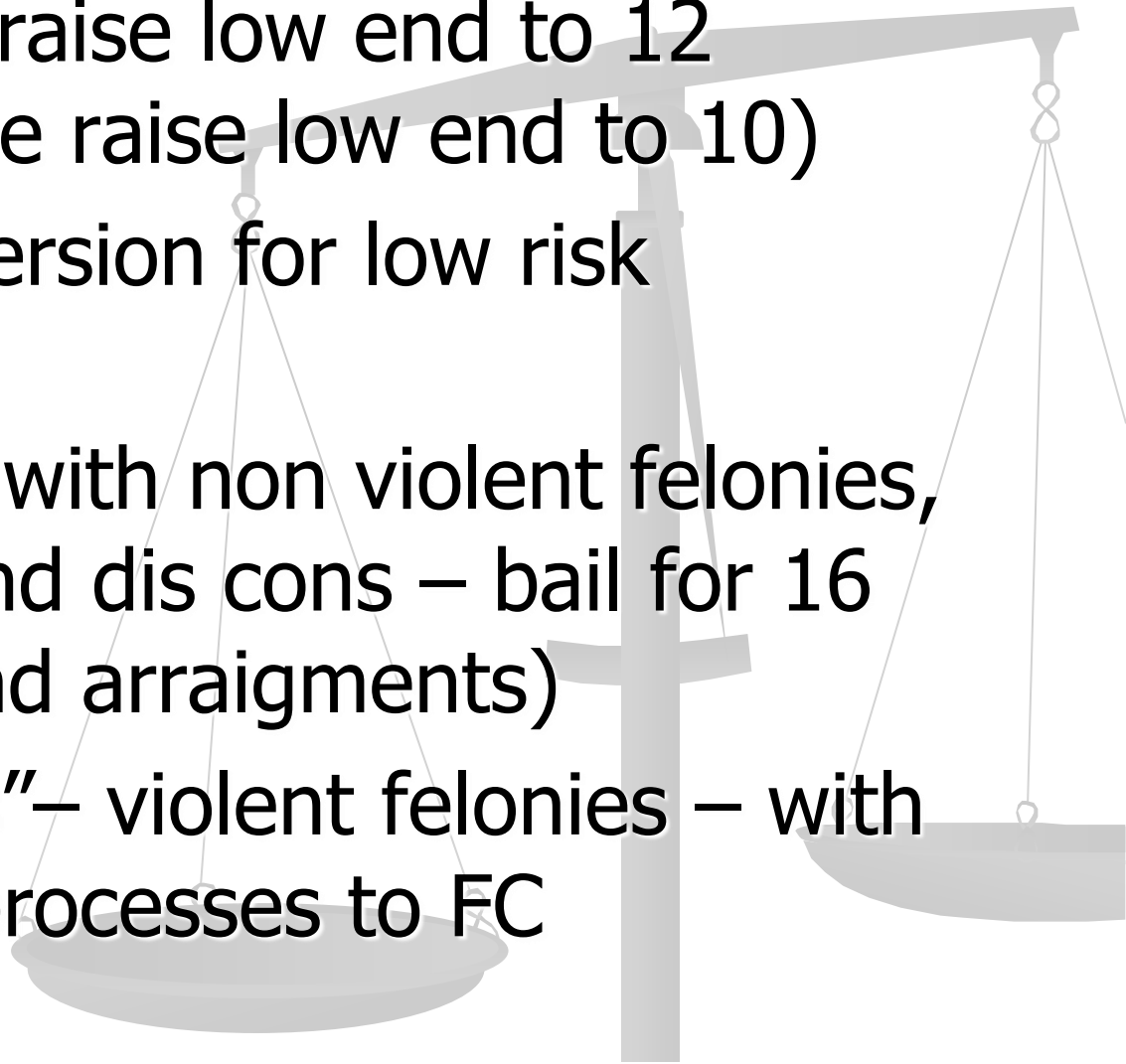


- DSS involved in more documentation and services re sex trafficked youth and those at risk of (various dates over next 3 years)
- Locating Foster Care runaways (various dates over next 2 years)
- More data on various issues : pregnancy, parenting, congregate care, disrupted adoptions/guardianships that result in foster care placements



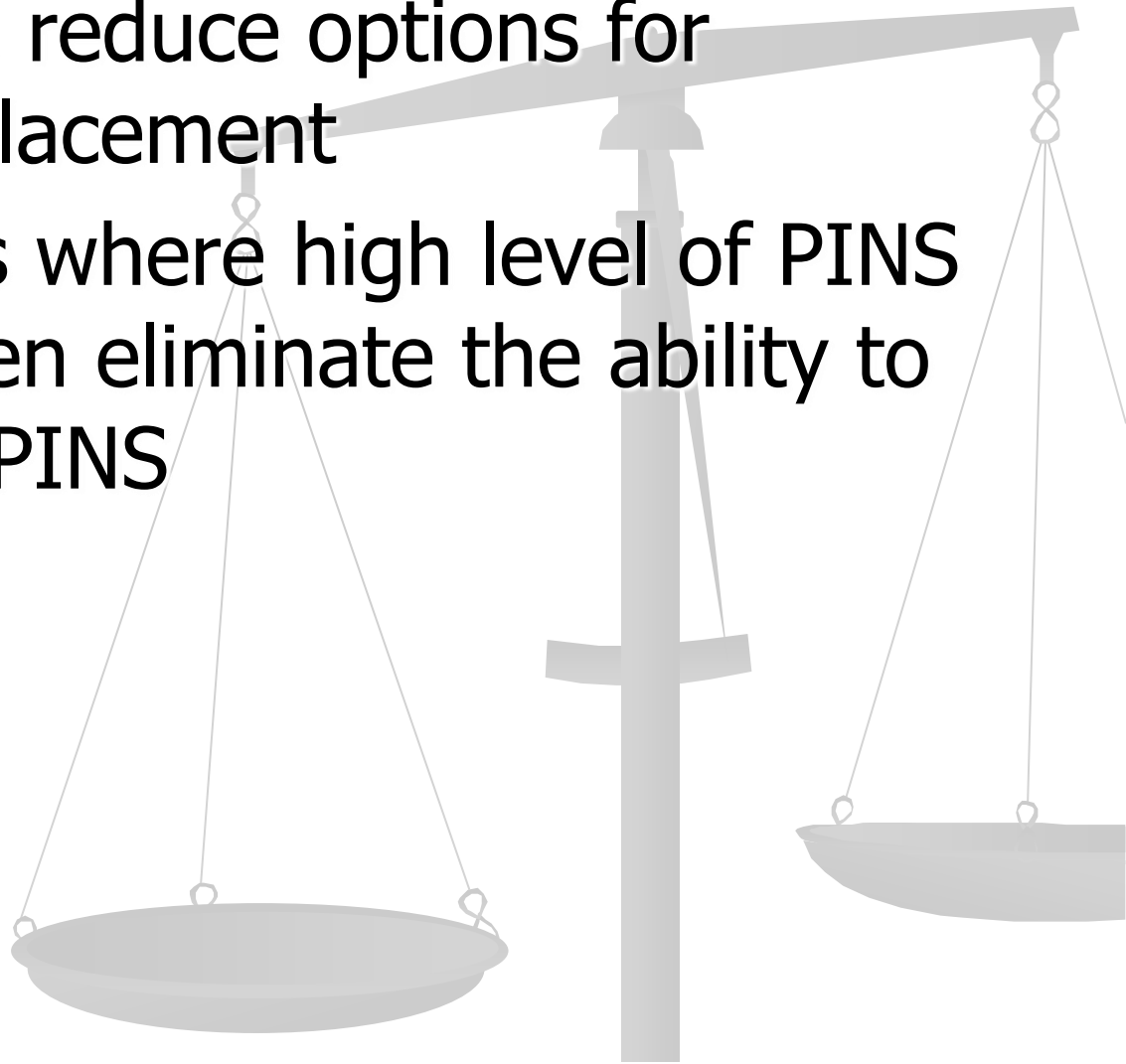
IT IS JUST PROPOSED!!

- Raise JD to 18, raise low end to 12 (except homicide raise low end to 10)
- Mandate JD diversion for low risk misdemeanors
- FC – 16 and 17 with non violent felonies, misd., harass and dis cons – bail for 16 and 17 (weekend arraignments)
- CC “Youth Parts”– violent felonies – with some removal processes to FC



IT IS JUST PROPOSED!!

- No adult prison, reduce options for detention and placement
- Support Centers where high level of PINS placement - then eliminate the ability to detain or place PINS
- Etc etc –
- We shall see!



Hot CASE LAW Topics



§ 1046 (a)(ii) – *res ipsa loquitor*

Defense expert rebuts and “positive”
parent evidence :

Tyler S – 2nd Dept. 2013

Amir L – 1st Dept. 2013

Nyla W, Kings FC 2013

Nicole C, Kings County 2013

David TC – 2nd Dept. 2013

Jaylin C – 2nd Dept. 2014



§ 1046 (a)(ii) – res ipsa loquitor

- Parent did not rebut:

Jordan TR – 2nd Dept. 2014

Rachel SD – 1st Dept. 2014

Robert A -2nd Dept. 2013

Radames S – 1st Dept 2013

Brayden UU – 3rd Dept. 2014

Ni’Kia C – 1st Dept. 2014

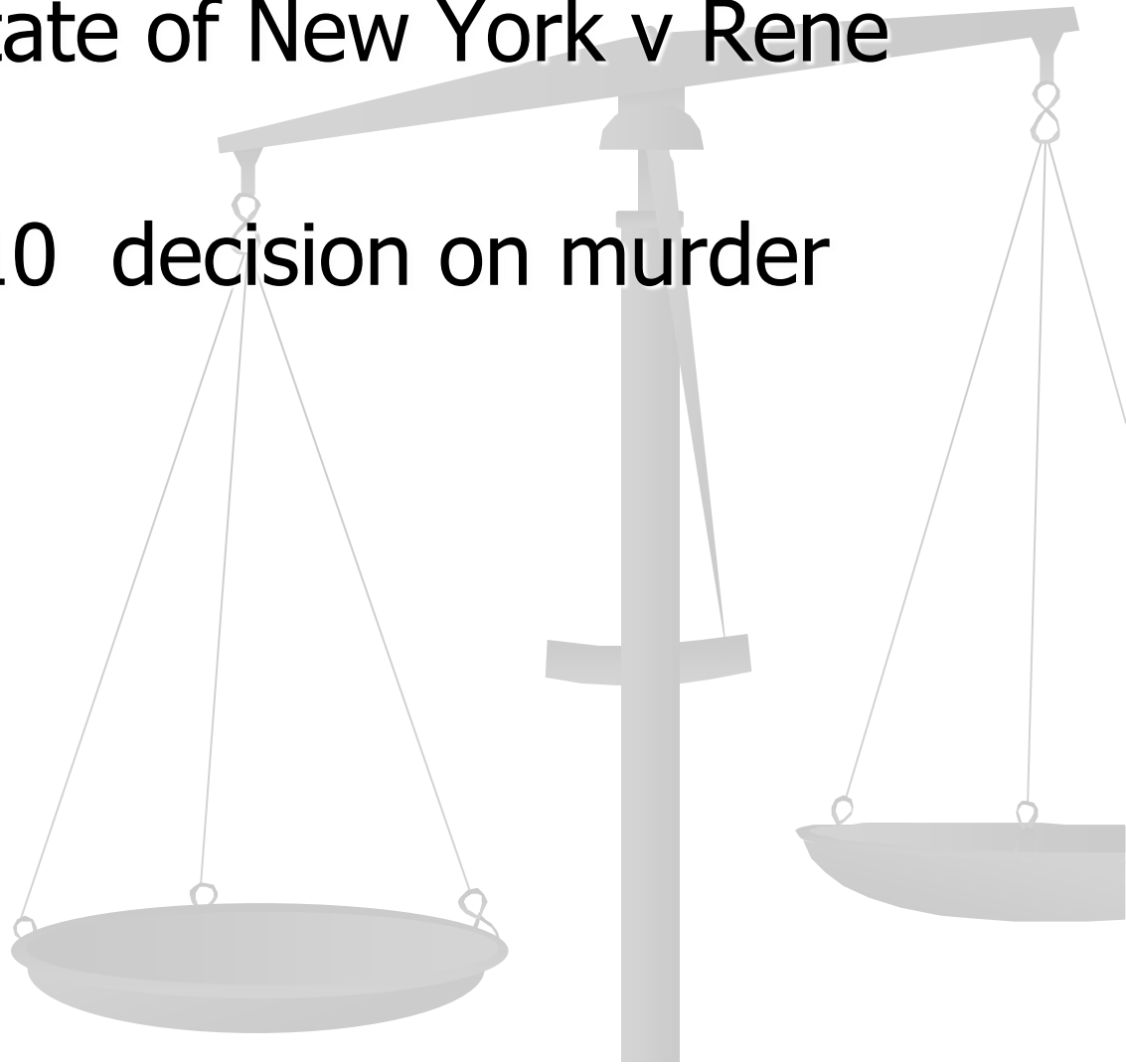
Stephen Daniel A – 2nd Dept-2014

- Amirah L – 2nd Dept. 2014 – mother who did not hit/kill child was severely abusive



New Issues with “Shaken Baby”

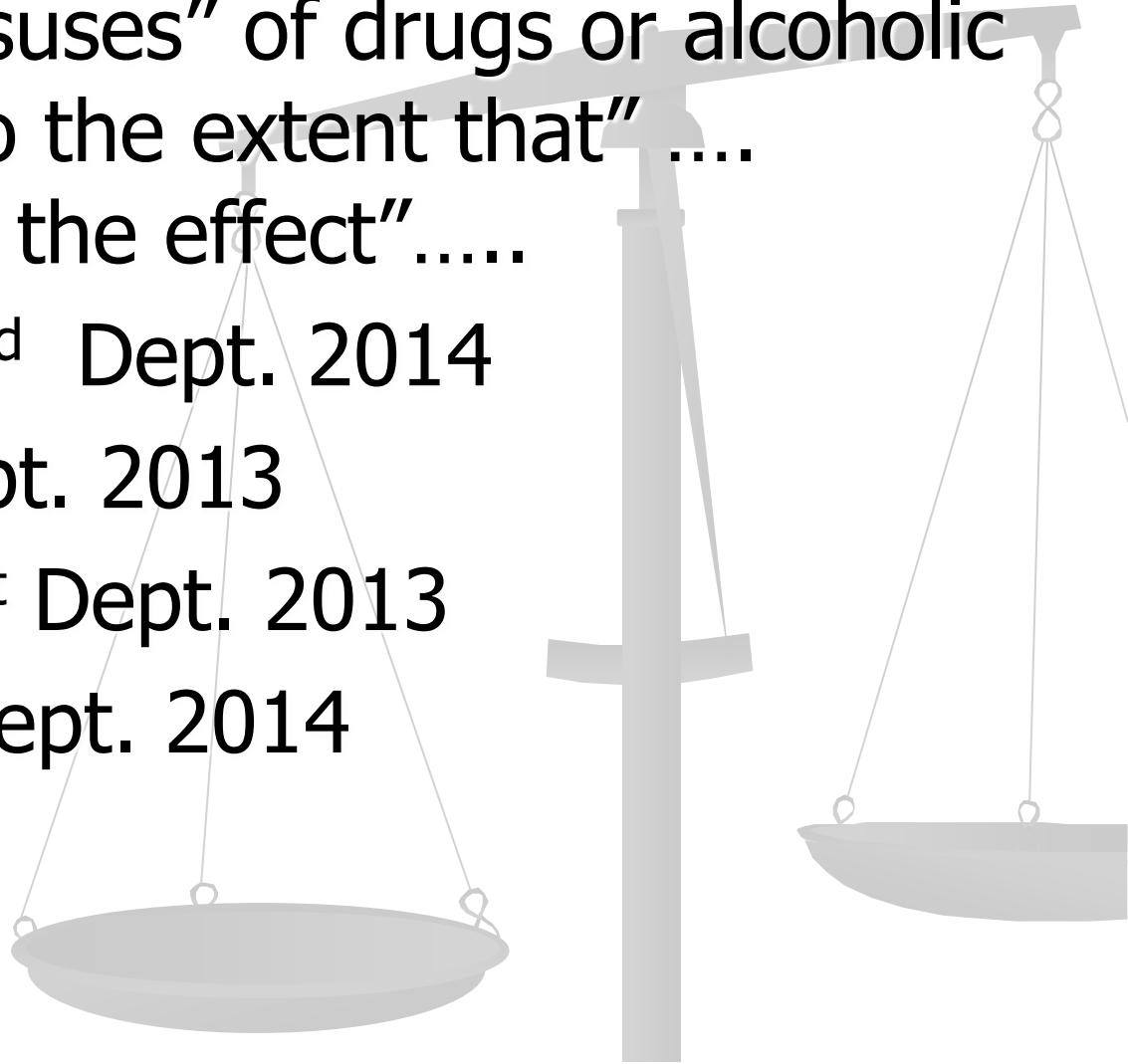
- People of the State of New York v Rene Bailey
- 12/16/14 440.10 decision on murder conviction
- NYLJ 12/19/14



§ 1046(a)(iii) and Marijauna

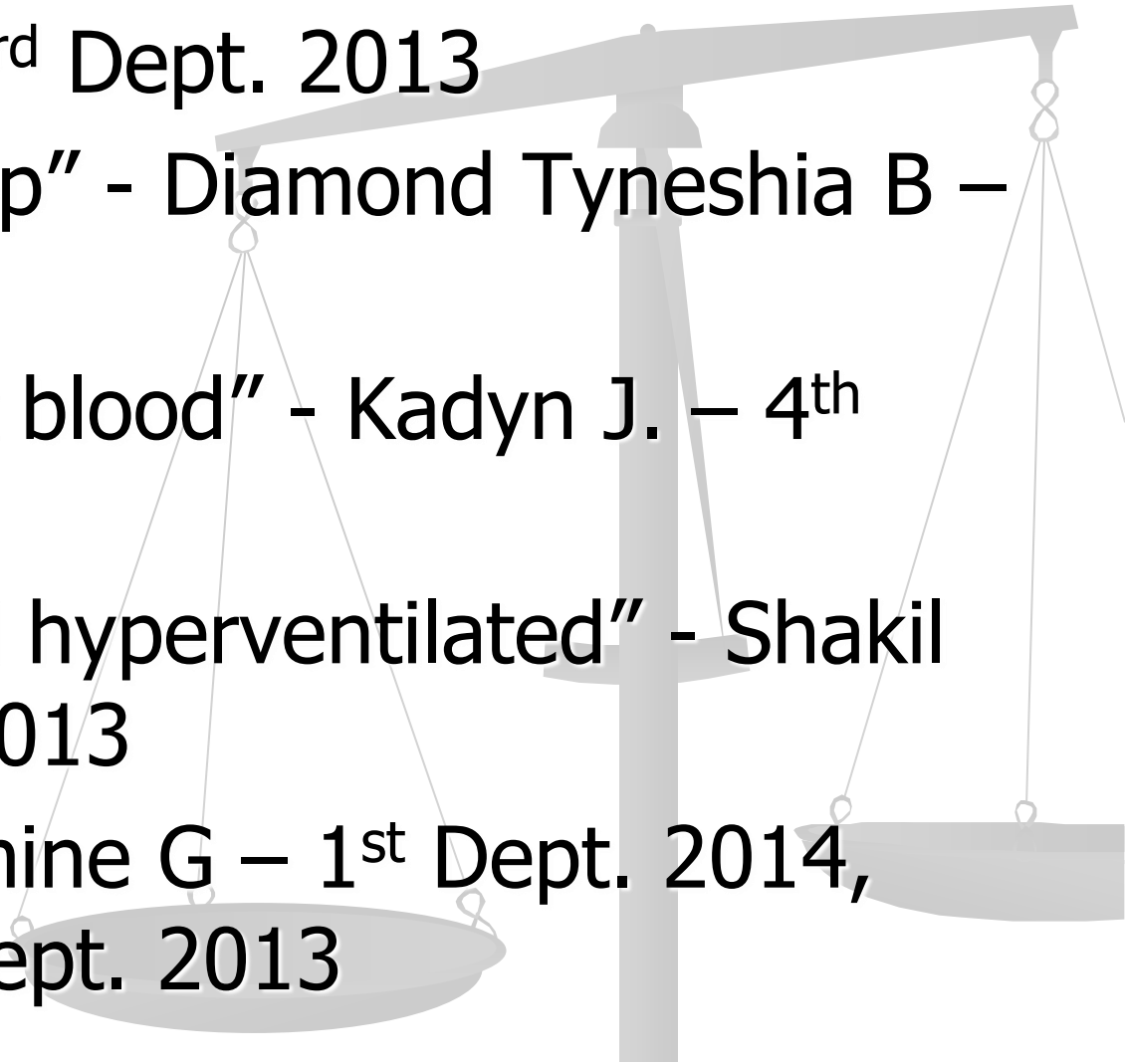
– “repeatedly misuses” of drugs or alcoholic beverages.... “to the extent that”
“ordinarily have the effect”

- William N – - 2nd Dept. 2014
- Elijah J - 1st Dept. 2013
- Camarrie B – 1st Dept. 2013
- Ishaq B. - 2nd Dept. 2014



DV cases – impact on child?

- “blamed children” “told children to lie”
Anthony FF – 3rd Dept. 2013
- “told him to stop” - Diamond Tyneshia B –
1st Dept. 2013
- “traumatized at blood” - Kadyn J. – 4th
Dept. 2013
- “frightened and hyperventilated” - Shakil
G. – 1st Dept. 2013
- “aware” - Carmine G – 1st Dept. 2014,
Angie G – 1st Dept. 2013



DV cases – impact on child?

- “frightened”, “scared” “afraid” “shaking”
“sad” - Celeste O. 2nd Dept. 2014; David M., 2nd Dept. 2014, Nia J – 1st Dept. 2013, Amodea D – 4th Dept. 2013
- “crying” - Cherish C. - 1st Dept. 2013
Madison M., 1st Dept. 2014, Nia J – 1st Dept. 2013
- “punched while going to mother’s aid –
Heaven H – 3rd Dept. 2014

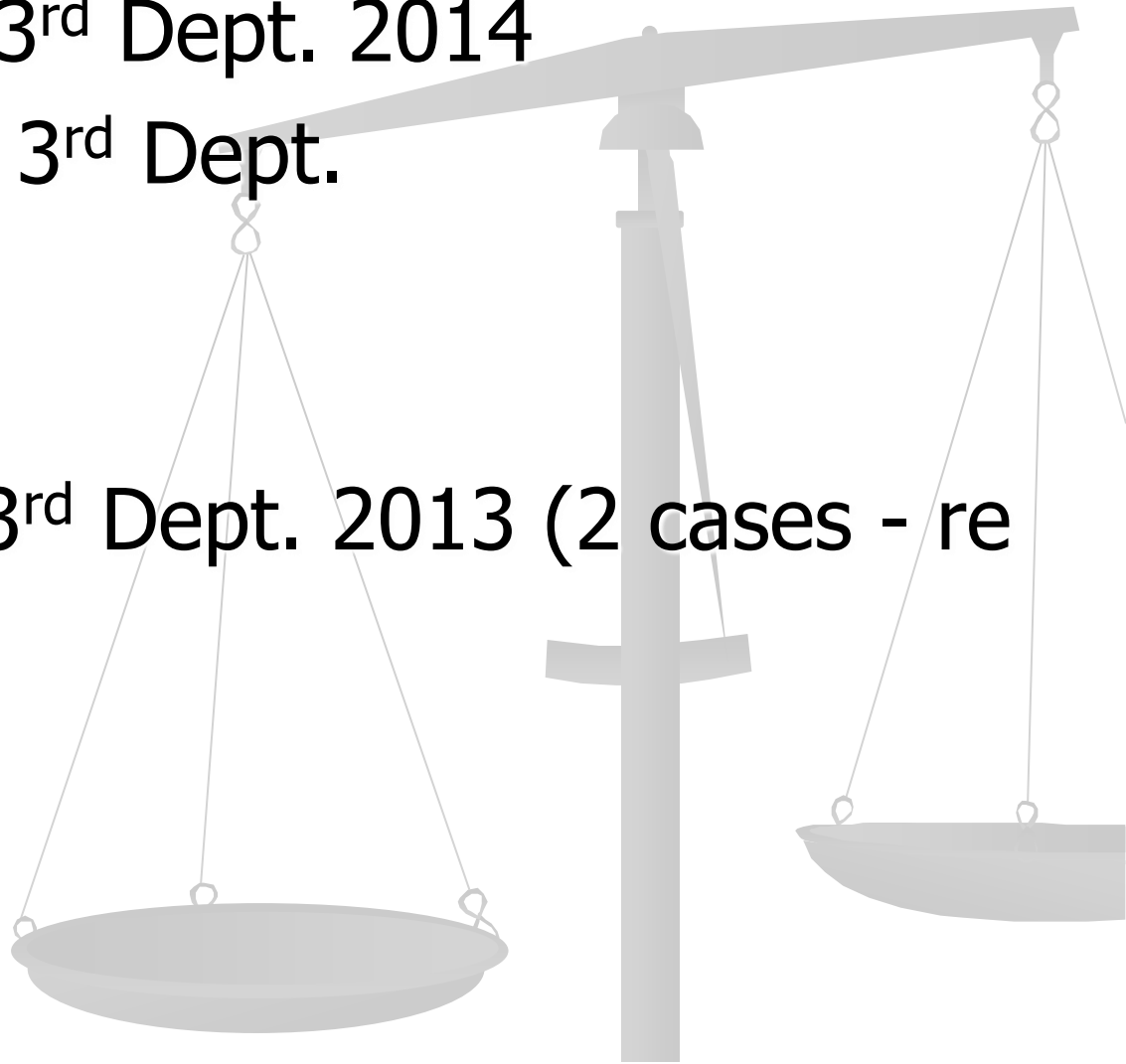
Sex Offenders in the Home

Post Afton C

YES - Lillian SS – 3rd Dept. 2014

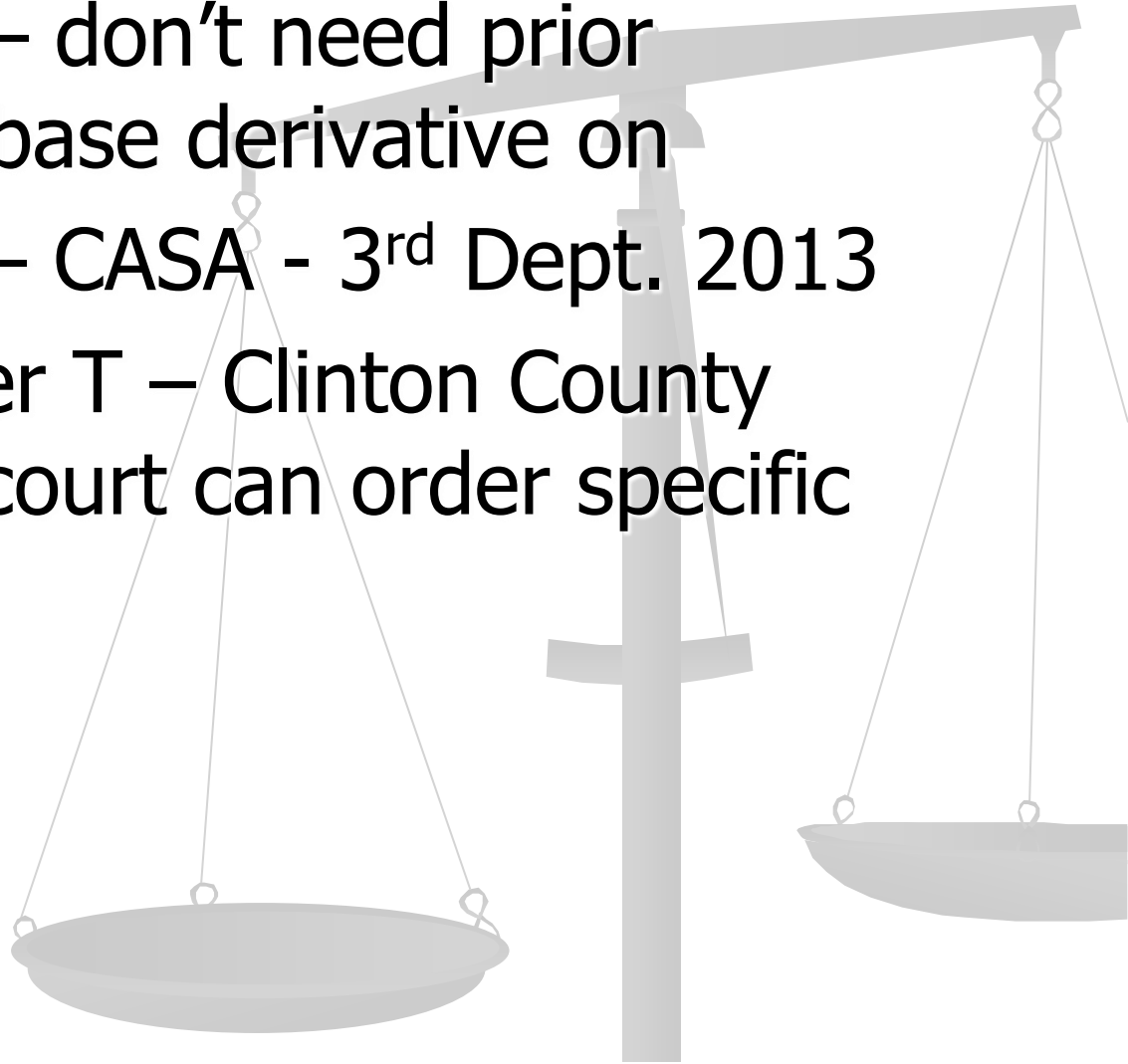
Gianna O – 3rd Dept.

NO- Hannah U – 3rd Dept. 2013 (2 cases - re both of them)



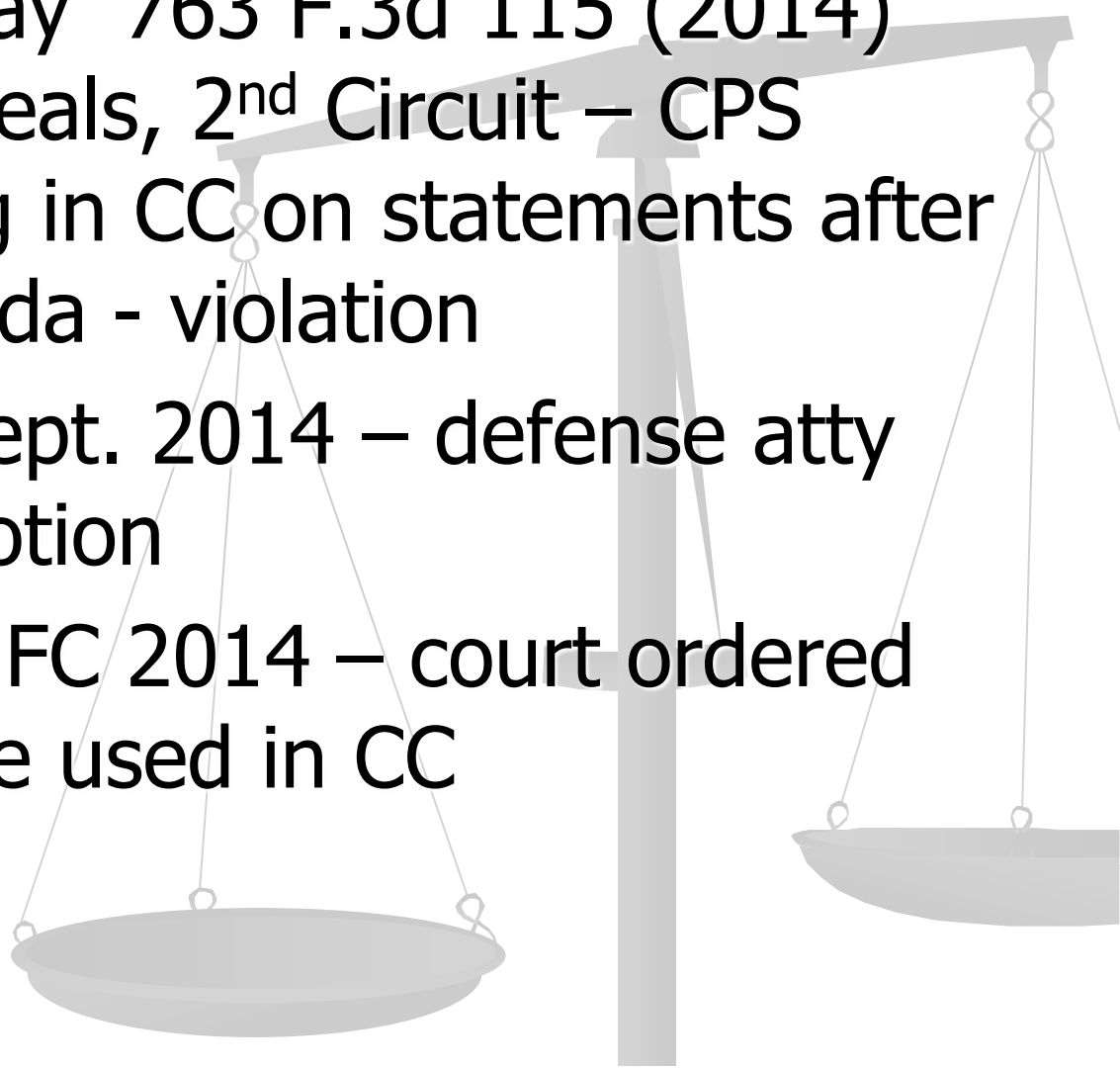
A few other interesting ones:

- Matter of Brad – 3rd Dept. 2014; Jamel T.- 2nd Dept. 2014 – don't need prior adjudication to base derivative on
- Matter of Evan – CASA - 3rd Dept. 2013
- Matter of Gunner T – Clinton County Family Court – court can order specific foster home



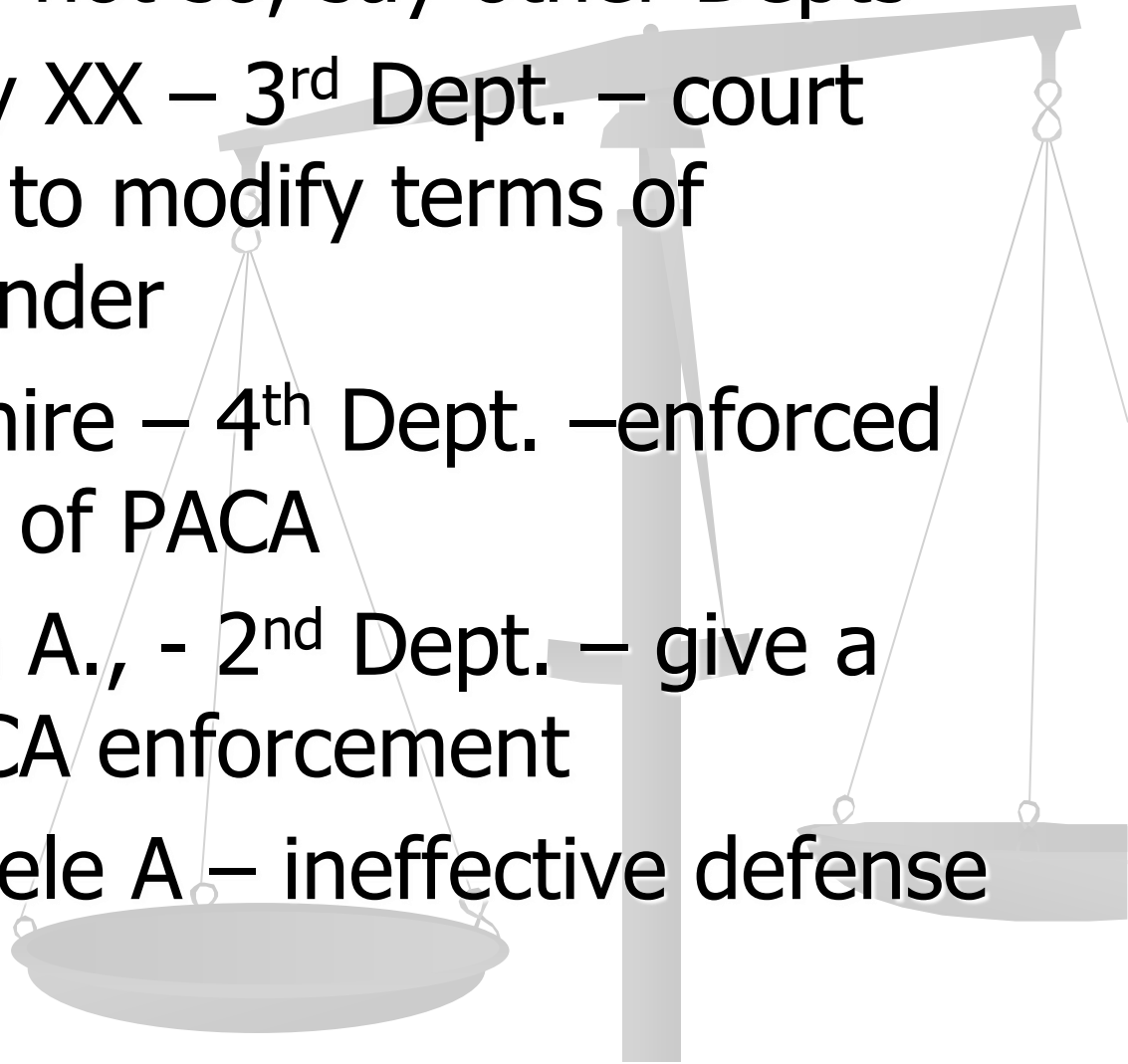
AND YET More Cases for Child Welfare Geeks

- Jackson v Conway 763 F.3d 115 (2014)
US Court of Appeals, 2nd Circuit – CPS
worker testifying in CC on statements after
D invoked Miranda - violation
- Joslyn U – 4th Dept. 2014 – defense atty
did not make motion
- Kayla S – Bronx FC 2014 – court ordered
records not to be used in CC



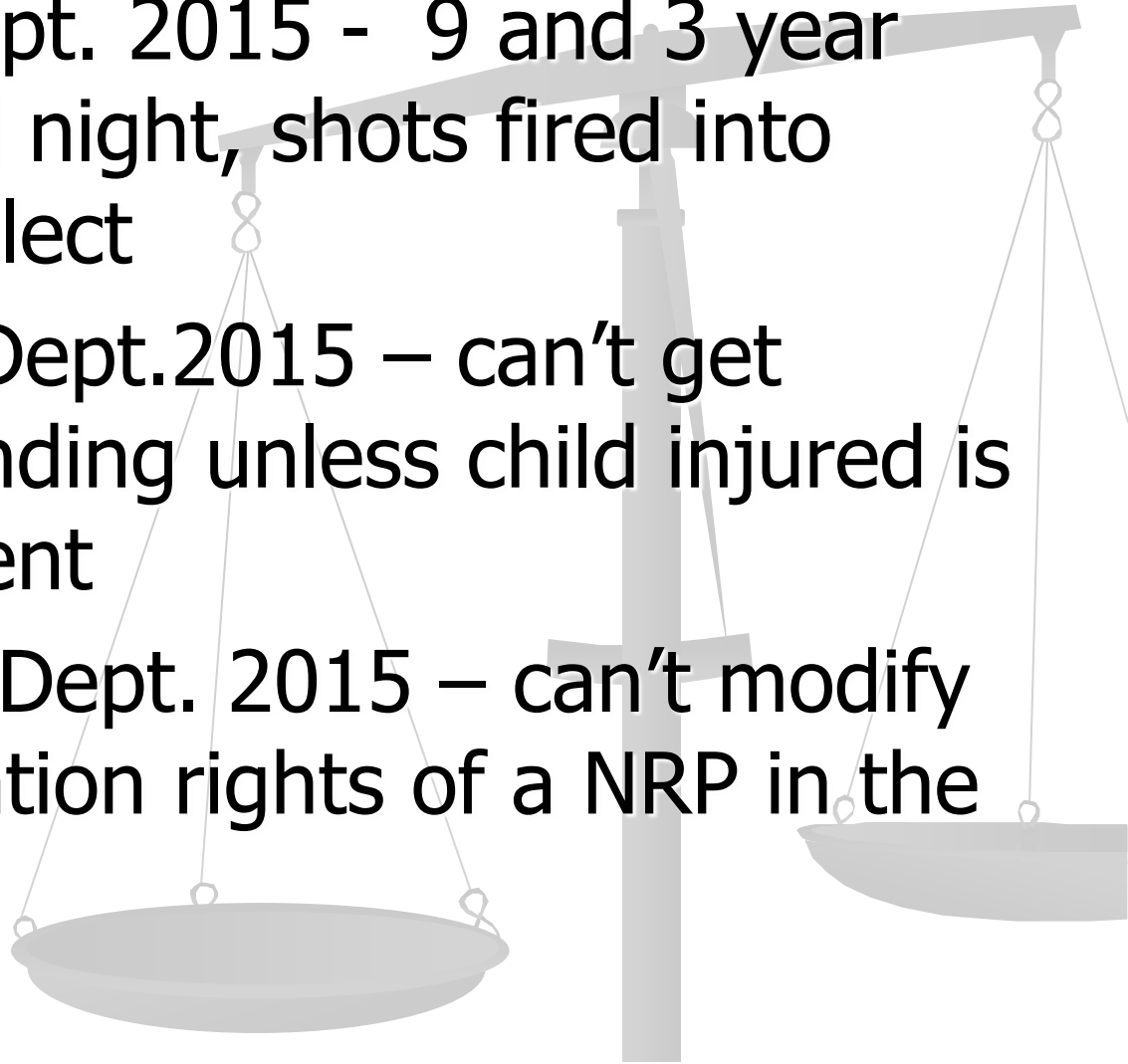
And NOT JUST Art. 10 cases...

- Joseph EK – 4th Dept. 2014 – can't TPR on both MI and PN –not so, say other Depts
- Matter of Bentley XX – 3rd Dept. – court has no authority to modify terms of conditional surrender
- Matter of Shapphore – 4th Dept. –enforced only some terms of PACA
- Matter of Jayden A., - 2nd Dept. – give a hearing on a PACA enforcement
- William O v Michele A – ineffective defense atty



I am just getting started...

- Javan W., 3rd Dept. 2015 - 9 and 3 year old left alone all night, shots fired into home – not neglect
- Tiarra D., - 3rd Dept. 2015 – can't get severe abuse finding unless child injured is child of the parent
- Damian D – 3rd Dept. 2015 – can't modify prior Art 6 visitation rights of a NRP in the Art. 10 dispo



Have you had enough?

**COMMENTS and
QUESTIONS??**

