

A photograph of a Black family consisting of a father, a mother, and a young child, all smiling and looking towards the right. They are outdoors, with trees and foliage in the background. The scene is lit by warm sunlight, suggesting a sunset or sunrise.

“The Court  
Finds...”

*Legal Evaluation of  
Evidence in Child  
Protection Decisions*

# SAFE STRONG SUPPORTIVE

casey family programs

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safe children | strong families | supportive communities

A photograph of a Black family consisting of a father, a mother, and a young child, all smiling and looking towards the right. They are outdoors, with a warm sunset or sunrise light in the background. The father is in the foreground, wearing a striped sweater. The mother is behind him, also smiling. The child is being held up by the father, wearing a brown jacket. The overall mood is positive and hopeful.

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A photograph of a Black family outdoors. A man is smiling and holding a young child, while a woman looks on. The scene is bright and sunny, with trees in the background.

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**In my practice related to the  
child protection court, I  
matter most when I...**

**Families in the court  
would say that I matter  
most when I...**





## SCOTUS Parent's Rights and Parental Fitness Cases:

**Meyer v. Nebraska** (1923): Due process clause protects right to “establish a home and bring up children”

**Prince v. Massachusetts** (1944): BUT limits on those rights – *Parens Patriae*

**Stanley v. Illinois** (1972): All parents are entitled to hearing on fitness before removal of children

**Santosky v. Kramer** (1982): The State registers no gain towards its declared goals when it separates children from the custody of fit parents.

**Troxel v. Granville** (2000): Fit parents are deemed to act in children's best interests



# OR State Constitutional Analysis

The legislature has announced that it is “the policy of the State of Oregon to guard the **liberty** interest of **parents** protected by the Fourteenth Amendment to the United States Constitution,” and, further, that the dependency statutes are to be “construed and applied” consistently with the requirements of the federal constitution. [ORS 419B.090\(4\)](#).

Under the Fourteenth Amendment, a **parent’s liberty** interest in **parenting** his child is broad, and encompasses “the fundamental right of **parents** to make decisions concerning the care, custody, and control of their children.” [Troxel v. Granville, 530 U.S. 57, 66, 120 S.Ct. 2054, 147 L.Ed.2d 49 \(2000\)](#).

*Department of Human Services v. L.L.S., 290 Or.App 132 (2018)*





# OR State Constitutional Analysis

“Juvenile courts administering [dependency] statutes act in ***parens patriae***, focusing on family unity and the best interests of the child. *Dept of Human Svc v J.L.J.* 233 Or.App 544 (2010)

It is the policy of the State of Oregon to safeguard and promote each child's right to safety, stability and well-being and to safeguard and promote each child's relationships with parents, siblings, grandparents, other relatives and adults with whom a child develops healthy emotional attachments. **ORS 419B.090(3)**



# Strict Scrutiny

Least Intrusive

Narrowly Tailored

Compelling Government Interest



Nine-year-old gets off the bus can't get into the apartment; they're wandering around upset.

Child is encountered by a neighbor in the complex, then parents arrive about 1/2 hour later. Obviously, they've been drinking.

They went to renew father's driver's license and the bus was running late, so they had a couple beers while they waited.

The father notes that his father recently passed away unexpectedly, and it's been really difficult dealing with that but they're back now and they want to take the child into the home and resume their evening.

They walk in, the child turns and looks back - looking sad.

**Does the Constitution allow the government to intervene in every family that make us feel uncomfortable?**



# Sacred – Emotional - Personal – Primal



Parenting is a core human function and behavior.

But we need to notice...

What is at stake when abuse or neglect are identified?









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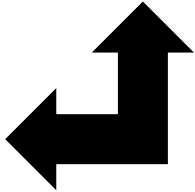








ME



YOU







**Decision fatigue**

**Lack of food or sleep**

**Stress**

**Time pressures**

**Fear of error**

**Vicarious trauma**

**Lack of values congruency**

**Lack of information**

**Cross cultural communication**

# Applying Compassion in Child Welfare

- Compassion is a response to suffering, and is a desire to alleviate that suffering, or not add to it



- Suffering is difficult emotions or feelings that one does not want to have or is not allowed to have

- **Compassion = empathy + humility**  
*(the suffering and the alleviating is defined by the one experiencing the pain)*

- Our feelings and emotions are valid, always in action and we must be aware of these as they interplay





# Accountability as a Check on MAE

Prior to investigation and analysis

Builds careful, critical thinking

Creates caution against pre-judgment, assumptions

## **Safety Assessment**

- Gathering Information
- Foundation for Case Analysis

## **Safety Plans**

- Based on Safety Assessment
- In-Home
- Out-of-Home

## **Conditions for Return – (October)**

- Based on Safety Assessment
- Foundation for Case Plan

## **Assessing Safety in Family Time – (October)**

- Building Visitation Structure That Provides Safety in Context of Visits
- Articulate Plan for Reduction of Supervision, Increase Time, and Least-Restrictive Environment Possible

## **Case Plans, Progress, and Ongoing Safety Assessment**

- Assessing Progress in Case Plan
- Ongoing Assessments of Current Safety Threats





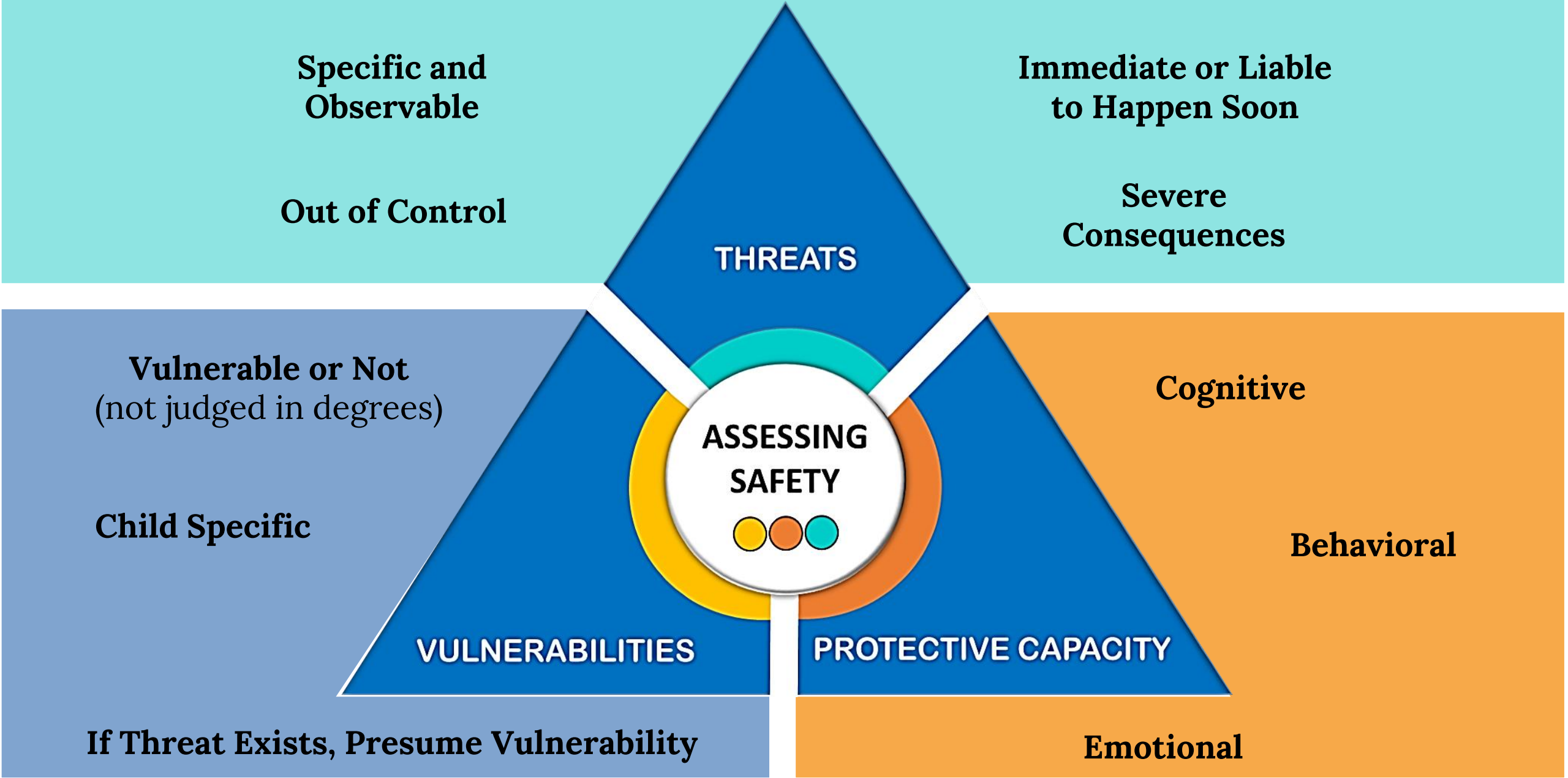
# How do we think about the Best Interests of the Ward?

At the shelter hearing, parents are given their first opportunity to present evidence to the juvenile court that the child can **safely** return home prior to dependency proceedings. [ORS 419B.185\(1\)](#). The court will then determine whether “it is in the best interests of the child or ward that the child or ward be removed from the home or continued in care.” [ORS 419B.185\(3\)\(d\)](#). Matter of J.P. 328 Or.App 502 (2023)

*See also 419B.331 and .337 re Disposition after adjudication*

*See also 419B.449 (Review) “necessary” and BIOC*

*See also 419B.476 (Permanency hearing)*





# Reasonable or Active Efforts

(3)(a) At a hearing described in subsection (1) of this section, the court shall make written findings as to whether the Department of Human Services has made reasonable efforts or, if the child is an Indian child, active efforts to prevent or eliminate the need for removal of the child or ward from the home and to make it possible for the child or ward to safely return home.

419B.185

# Safety Planning

**Actions or Services to Control or Manage Threats – immediately**



**In-Home**

Assume threat is ongoing

- Sufficient
- Feasible
- Sustainable

Assessing Reasonable Efforts



# Case Planning

- (1) ... The department shall ensure that the case planning in any case:
- (a) For the reunification of the family bears a **rational relationship to the jurisdictional findings** that brought the ward within the court's jurisdiction under [ORS 419B.100](#);
- (b) Incorporates the **perspective of the ward and the family** and, whenever possible, **allows the family to assist** in designing its own service programs, based on an assessment of the family's needs and the family's solutions and resources for change; and
- (c) Is integrated with other agencies in cooperation with the caseworkers.

# Case Planning

- Use Safety Framework to design case plan.
- Involves supporting *parents'* safety behaviors
- Looking toward the Court and Dept exiting Family.





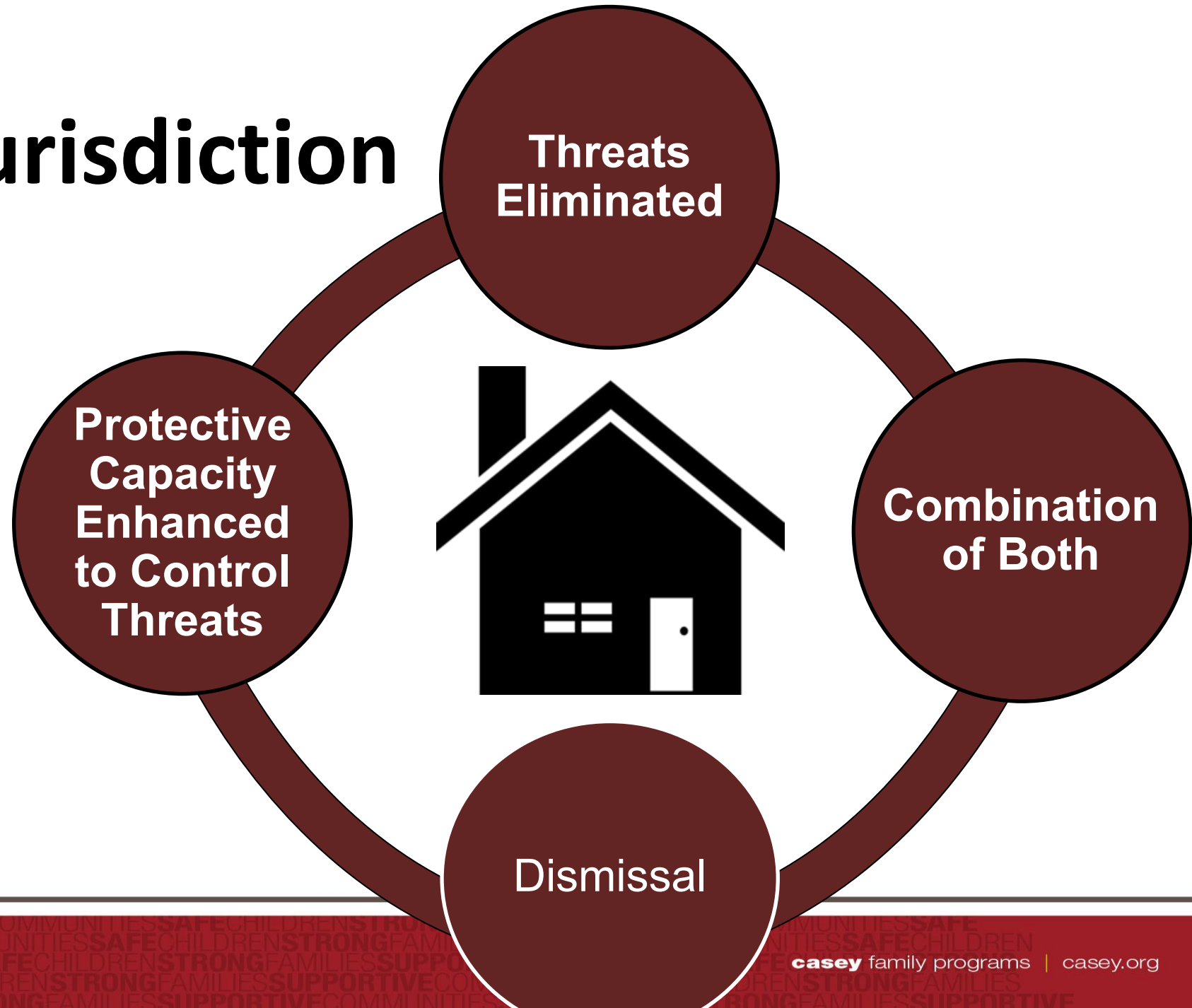
# Considering Ending Jurisdiction

- ***Matter of T.L.*** Oregon Ct App 2016
- Per prior caselaw, “The court must determine whether the **original bases** for jurisdiction ***continue to pose a current threat of serious loss or injury.***” If the court determines that they do, it then must assess the likelihood that that risk will be realized. At 685



# Terminating Jurisdiction

## Case Plan Goals





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