

# Permanency Hearings: An In Depth Look

Through the Eyes of a Child Conference

August 7, 2017



# Timing

- \* When a child is in substitute care, the court shall conduct a permanency hearing no later than 12 months after the ward was found within the jurisdiction of the court or 14 months after the child was placed in substitute care, whichever is earlier.  
ORS 419B.470(2).
- \* Subsequent hearings are required every 12 months.  
ORS 419B.470(6)



# Timing (cont)

- \* The court shall also conduct a permanency hearing:
  - \* No reasonable efforts required. 30 days after ORS 419B.340(5) judicial finding /DHS determination regarding reasonable efforts. ORS 419B.470(2)
  - \* Permanent foster care. 3 months within child's removal from court sanctioned permanent foster care. ORS 419B.470(3)
  - \* Adoption. Child legally free and not physically placed for adoption within six months: court to conduct within 30 days of DHS report and every six months until placed or adoption proceedings initiated. ORS 419B.470(4) and (7)
  - \* Upon request by specified persons. ORS 419B.470(5)

Local Perspectives

# Hearing Logistics



# Local Practices

- \* How and when are permanency hearings scheduled?
- \* How much time is allotted generally?
- \* How is the hearing conducted (witnesses, exhibits)?
- \* What is done with scheduling and hearing time allotment if a permanency hearing is contested?



# Evidentiary Issues

# Evidence related to “disposition”

- \* *For purposes of establishing proper disposition of the ward, testimony, reports or other material relating to the ward’s mental, physical and social history and prognosis may be received by the court without regard to their competency or relevancy under the rules of evidence. ORS 419B.325(2); ORS 419B.476(1)*
- \* *ORS 419B.325(2) applies to the determinations the court makes regarding “reasonable efforts” and “sufficient progress” concerning the disposition of the ward. **Dept. of Human Services v. J.B.V., 262 Or App 745 (2014).***

# Evidence related to “jurisdiction”

- \* The court may only rely upon evidence that is relevant, material and admissible under the Oregon Evidence Code in ruling on a party’s motion to terminate a child’s wardship. *Dept. of Human Services v. J.B.V.*, [262 Or App 745 \(2014\)](#).

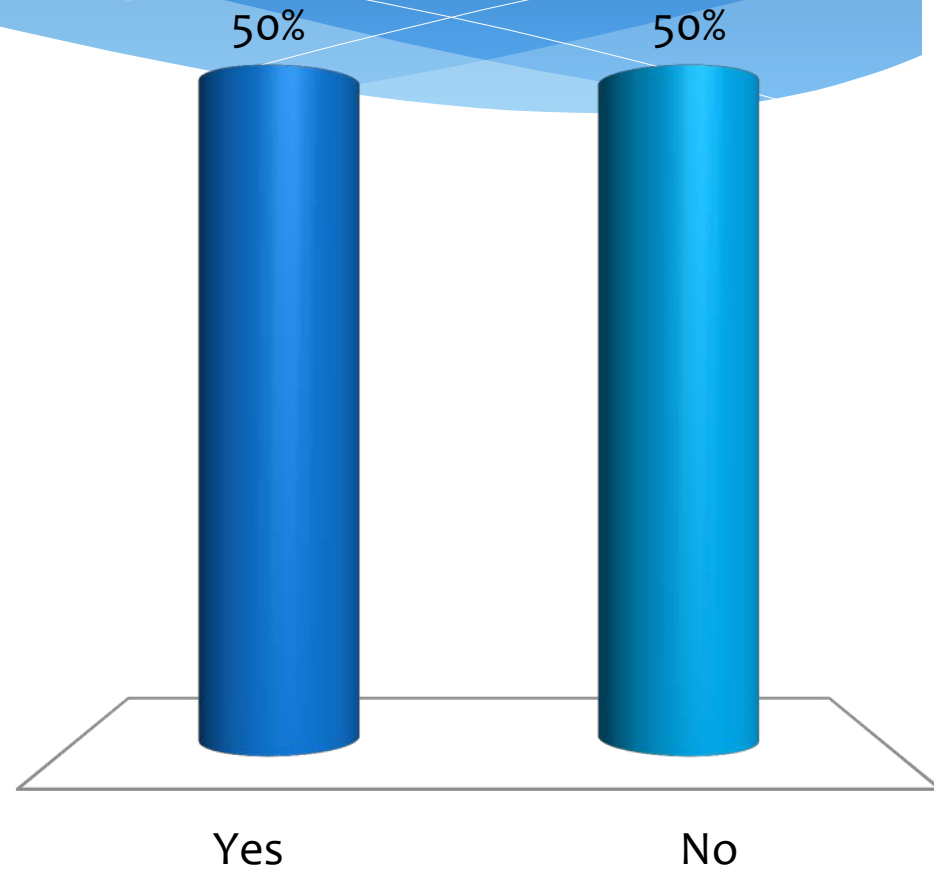


# What are the procedural considerations regarding the motions to dismiss?



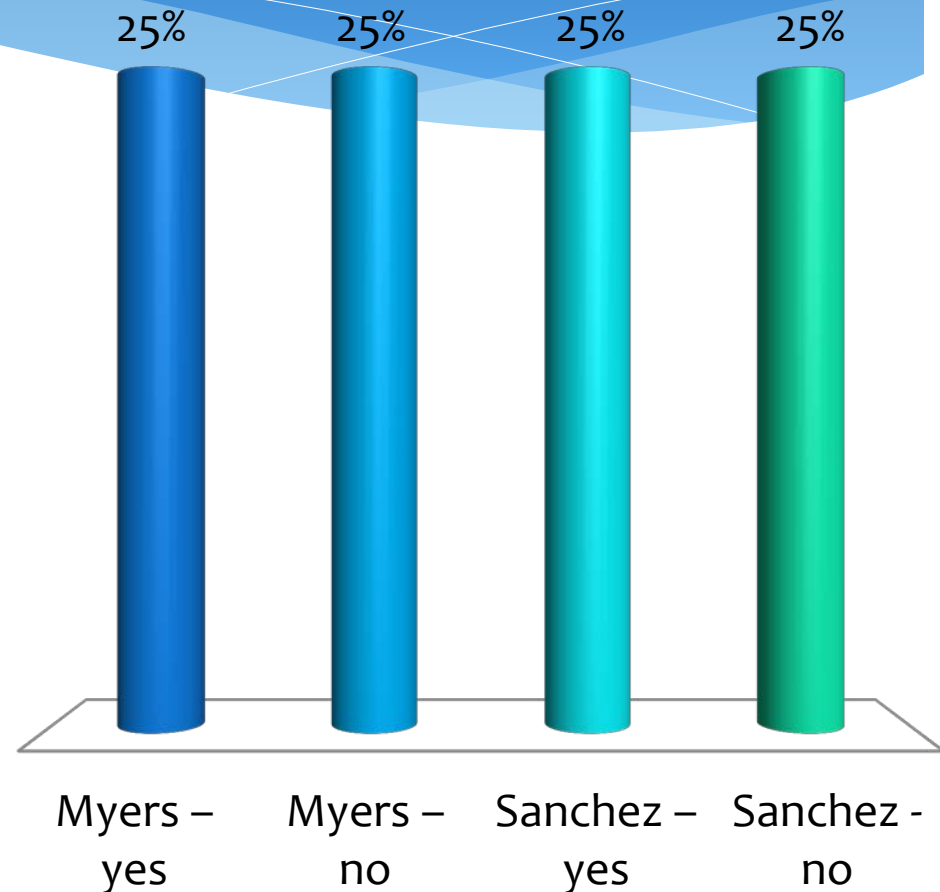
# Would you hear the motion to dismiss before the permanency hearing?

- A. Yes
- B. No



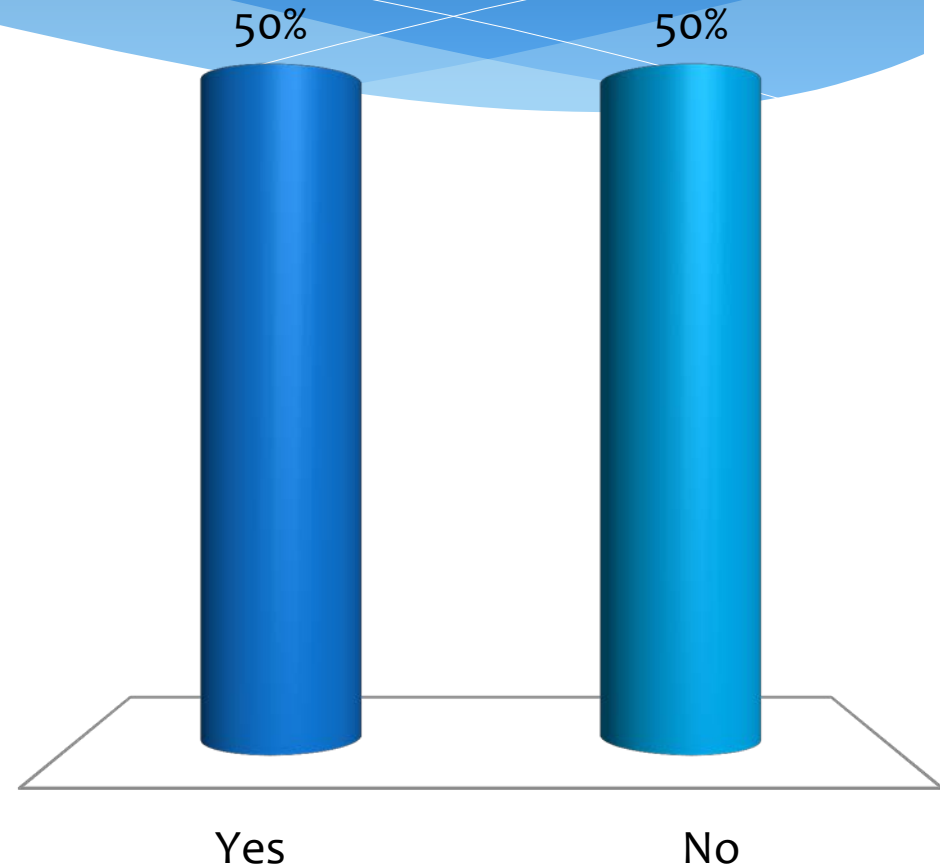
# Would you grant the motions to dismiss? (pick 2)

- A. Myers – yes
- B. Myers – no
- C. Sanchez – yes
- D. Sanchez - no



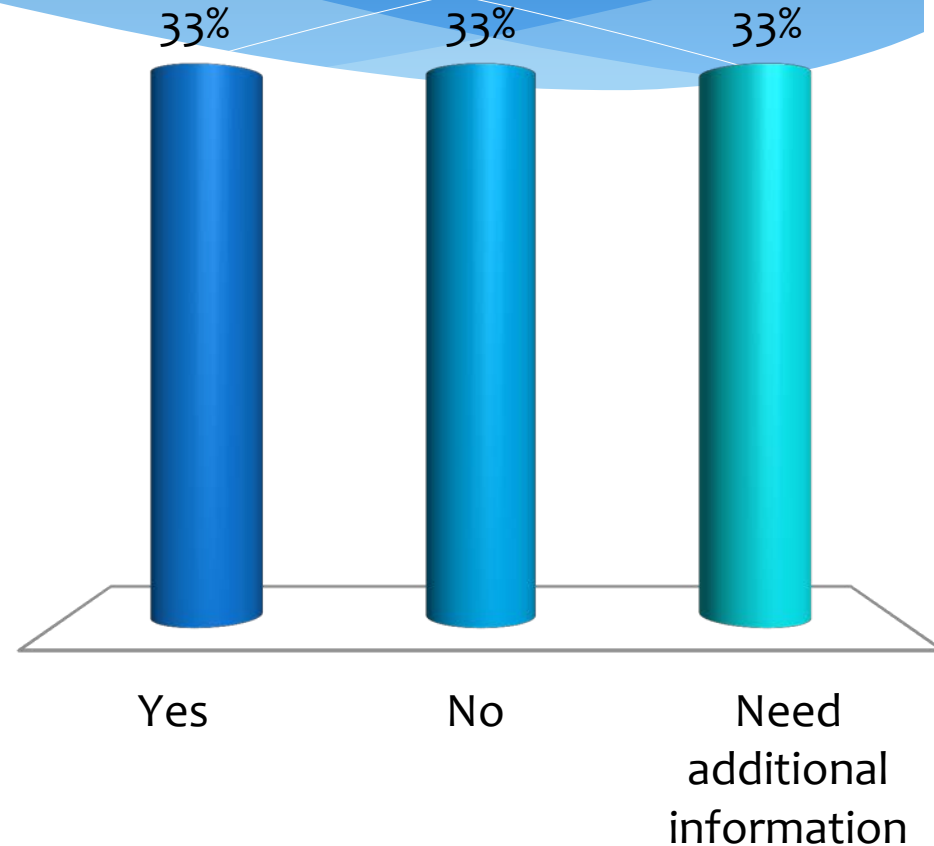
# Are the bases of jurisdiction adequate under the facts of this case?

- A. Yes
- B. No



# Did DHS make diligent efforts to try to place the siblings together?

- A. Yes
- B. No
- C. Need additional information



How do the CRB findings and recommendations impact your review?



A Primer

# Court Determination of the Permanency Plan

# Maintaining the Reunification Plan

- \* Reunification plan:
  - \* Must have a rational relationship to the jurisdictional requirements. ORS 419B.343(1)(a)
  - \* Must provide appropriate services to allow the parent the opportunity to adjust the parent's circumstances, conduct or conditions to make it possible for the ward to safely return home within a reasonable time. ORS 419B.343(2)(a)





# Maintaining the Reunification Plan

- \* Inquiries:

- \* Has DHS made reasonable or active efforts to make it possible for the ward to safely return home?

- \* Has the parent made sufficient progress to make it possible for the ward to safely return home?

- ORS 419B.476(2)

- \* Will further efforts make it possible for the ward to safely return home within a reasonable time?

- ORS 419B.476(5)(c)

# Changing from Reunification to Another Plan

- \* The proponent of a change in plan must show that:
  - \* DHS made reasonable efforts to make it possible for the child to return home safely; and
  - \* The parent has not made sufficient progress for that to OCCUR. *Dept. of Human Services v. R.S.*, [270 Or App 522 \(2015\)](#)
  - \* Additional findings are required for each type of permanency plan.



# Reasonable Efforts

- \* Initial Considerations:
  - \* Fact dependent:
    - \* Reasonableness depends on circumstances of each case.
  - \* Efforts must be made for each parent.
  - \* Time considerations:
    - \* Efforts are judged over the life of the case, with an emphasis on the period before the hearing sufficient to afford a good opportunity to assess parental progress

# Reasonable Efforts

- \* Reunification efforts are reasonable only if DHS has given a parent a fair opportunity to demonstrate the ability to adjust his or her behavior and act as a minimally adequate parent.
- \* DHS is not excused from making reasonable efforts because a parent is incarcerated.

*Dept. of Human Services v. C.L.H.,*  
[283 Or App 313 \(2017\)](#)



# Child Safety and Well Being

- \* Information has emerged raising serious questions about Toby's safety and well being in care. How would you handle?
- \* What services or other supports should be provided to Toby to address his exposure to trauma and possibly neglect?
- \* What can be said or done about the fact that Anna was placed in a hotel for a month?

# Reasonable Efforts: Discussion

- \* What efforts should the court require at a minimum for incarcerated parents?



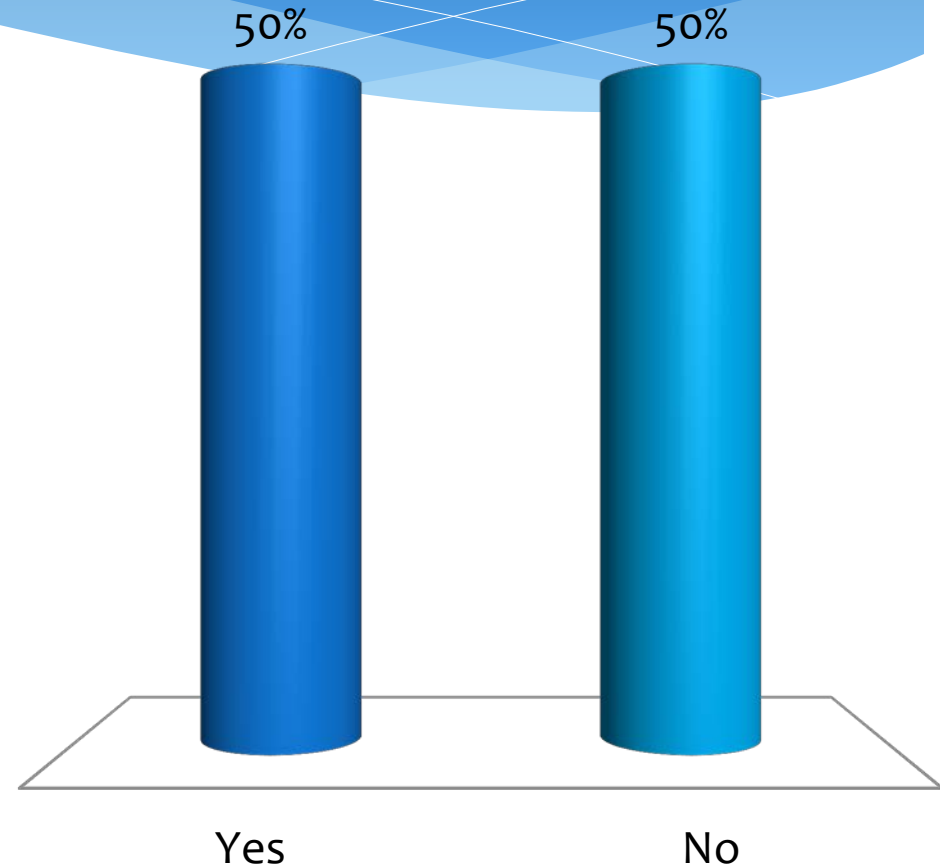
# Reasonable Efforts

## Toby and Anna

- \* Is it appropriate to order Mother to obtain a restraining order against Mr. Sanchez?
- \* Should parent involvement in Anna's services be an expectation given her special needs?
- \* Is anger management the appropriate service for Mr. Sanchez to address the conduct that resulted in his conviction?
- \* What other concerns do you have about services to the parents?

# Did DHS make reasonable efforts?

- A. Yes
- B. No



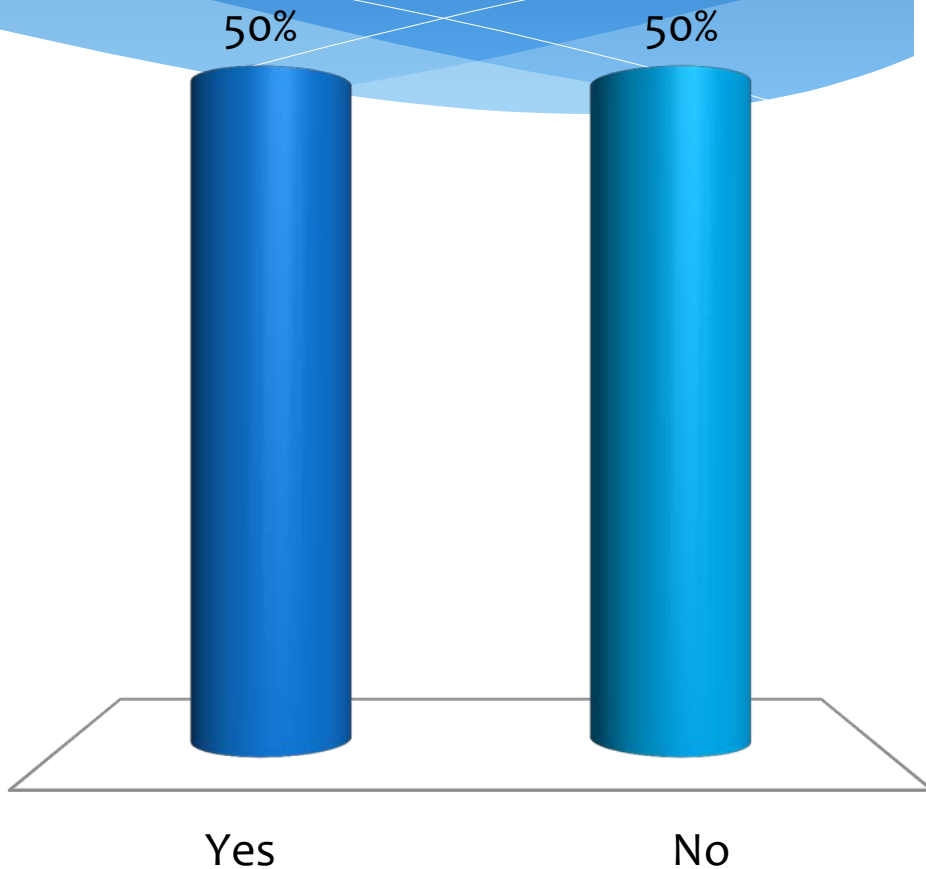


# Sufficient Progress

- \* Parents must be provided with a reasonable opportunity to demonstrate their ability to adjust their conduct and become minimally adequate parents.
- \* It is possible that, despite a parent's progress in meeting DHS plans and goals, it will remain unlikely that a parent will be capable of making sufficient progress to allow the child to safely return home, and consequently, a parent's progress may be legally insufficient under ORS 419B.476(2). *Dept. of Human Services v. R.S.*, [270 Or App 522 \(2015\)](#)

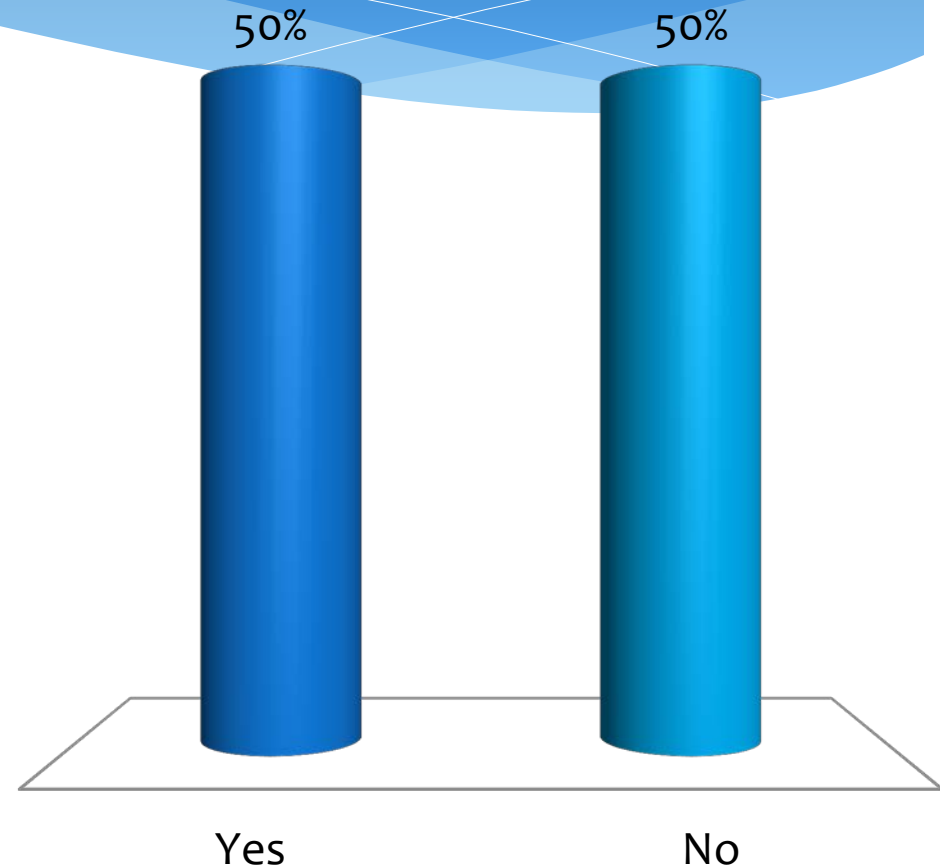
Has Mrs. Sanchez made sufficient progress for either child to be safely returned to her care?

- A. Yes
- B. No



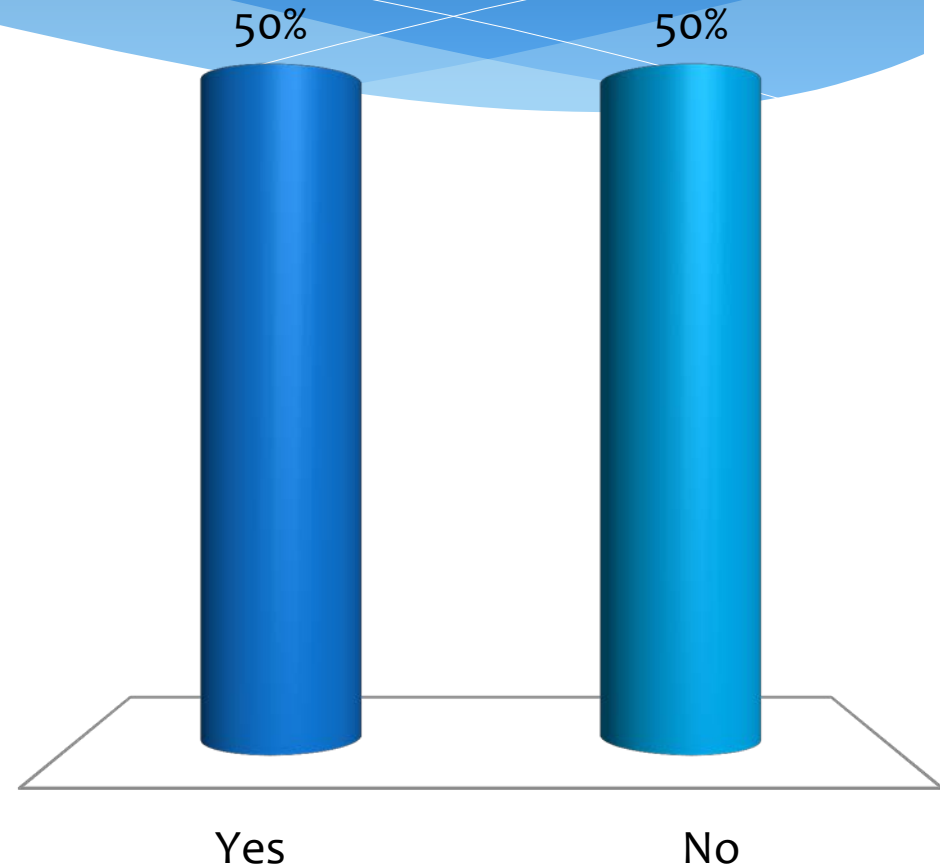
Has Mr. Myers made sufficient progress for Anna to be safely returned to his care?

- A. Yes
- B. No



Has Mr. Sanchez made sufficient progress for Toby to be safely returned to his care?

- A. Yes
- B. No



# Reasonable Time

- \* When the court finds further efforts will make it possible for the child to be safely returned home *within a reasonable time*, the court shall include a determination of the services in which the parents are required to participate, the progress they are required to make and the time frame for doing so. ORS 419B.476(5)(c).
- \* Reasonable time defined: ORS 419A.004(23)

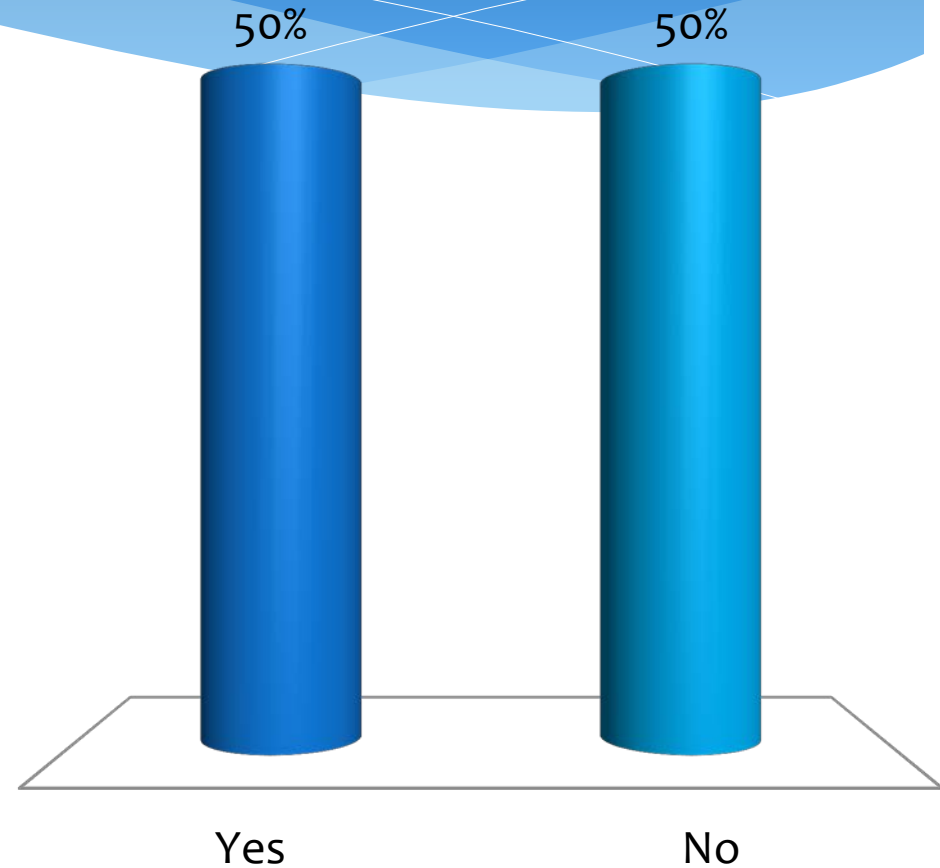
# Reasonable Time - Evidence

- \* The court considers the child's particular needs and circumstances and any barriers the parents might face:
  - \* whether the child's placement in substitute care would be unacceptably long given her age;
  - \* the amount of time the child had already spent in foster care;
  - \* the child's unique permanency needs;
  - \* how long the parent would have to remain in services before the child could safely return home, and how such a delay would impair the child's best interests;
  - \* whether the parent suffers from drug or alcohol addiction, or that the parent has mental health issues that are too severe to alleviate within the foreseeable future; and
  - \* the parent's participation and progress in services at the time of the permanency hearing.

***Dept. of Human Services v. D.I.R., 285 Or App 60 (2017)***

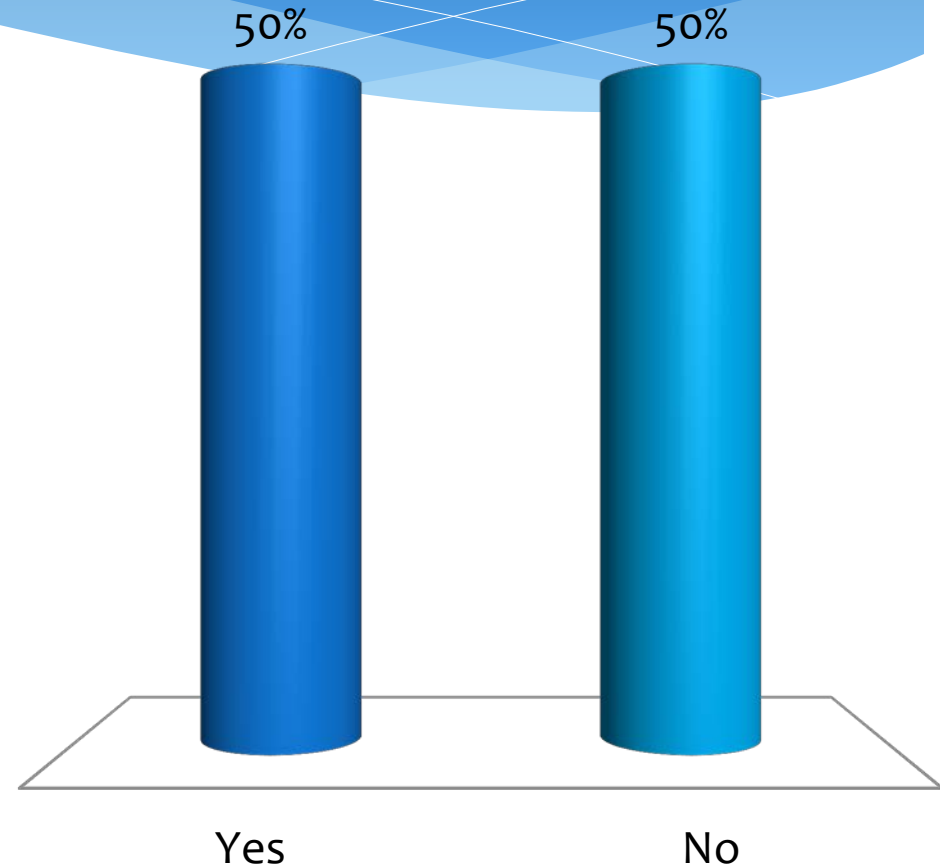
# Will further efforts enable Toby to return home within a reasonable time?

- A. Yes
- B. No



# Will further efforts enable Anna to return home within a reasonable time?

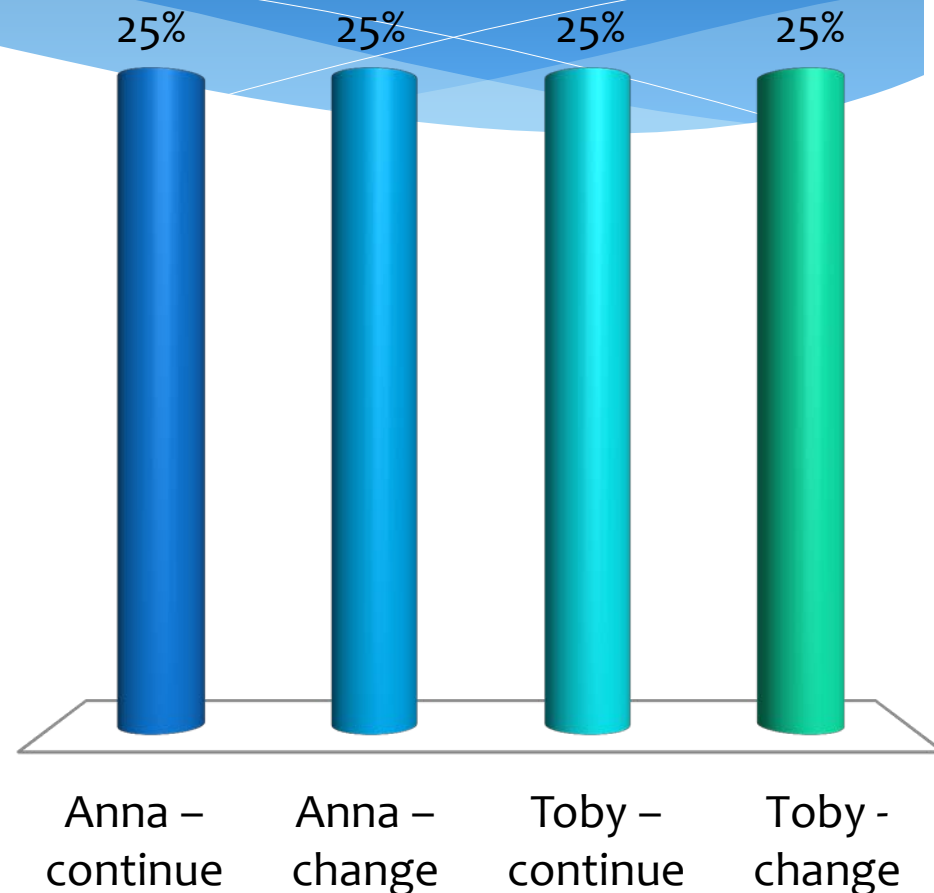
- A. Yes
- B. No





# Would you continue or change the children's permanency plans? (2 responses allowed)

- A. Anna – continue
- B. Anna – change
- C. Toby – continue
- D. Toby - change



# Adoption

- \* If the court determines the permanency plan should be adoption, the court must include in the order a determination of whether one of the circumstances in ORS 419B.498(2) is applicable. ORS 419B.476(5)(d); *Dept. of Human Services v. S.J.M.*, [283 Or App 367 \(2017\)](#)

# Compelling Reasons

- \* ORS 419B.498(2): DHS shall file TPR (15/22 m.) unless:
  - \* Child is being cared for by a relative (permanent)
  - \* There is a compelling reason that TPR not in child's BI:
    - \* ***The parent is successfully participating in services that will make it possible for the child to safely return home within a reasonable time;***
    - \* Another permanent plan is better suited to meet the child's health and safety needs, including preserving attachments.
    - \* There was a prior no reasonable efforts finding.

# Guardianship and Placement with a Fit and Willing Relative

- \* ORS 419B.476(e) and (f):
  - \* Guardianship: Must determine why placement with parents and adoption are not appropriate.
  - \* Placement with a Fit and Willing Relative: Must determine why placement with the ward's parents, adoption or guardianship are not appropriate.

# Another Planned Permanent Living Arrangement (APPLA)

- \* Before the plan may be changed to APPLA:
  - \* DHS must document intensive, ongoing efforts to return home, secure placement with a fit and willing relative (including adult siblings), a legal guardian or an adoptive parent. 42 U.S.C. §675A(a)(1)

# Another Planned Permanent Living Arrangement (APPLA)

- \* Child must be at least 16
- \* Court must find:
  - \* Plan in child's best interest; and
  - \* Why it would not be in the child's best interest to be returned home, placed for adoption, placed in a guardianship, or placed with a fit and willing relative.

ORS 419B.476(5)(g)

# APPLA (cont)

- \* The court must also determine whether:
  - \* DHS has taken steps to ensure that:
    - \* The ward's substitute care provider is following the reasonable and prudent parent standard; and
    - \* The ward has regular, ongoing opportunities to engage in age-appropriate or developmentally appropriate activities, including consultation with the ward in an age-appropriate manner about the opportunities the ward has to participate in the activities.

# APPLA (cont)

- \* DHS shall implement procedures to ensure the court asks the child about the desired permanency outcome for the child. 42 U.S.C. §675A(a)(2)(A)
  - \* What efforts have been made for the child to be present at the hearing?
  - \* Does the child understand his/her permanency options?
  - \* Are there alternative ways for the child to be heard?



# Maintaining the plan of adoption at a second permanency hearing

- \* The court must enter an order within 20 days of the permanency hearing and must include, “*if the plan is continued as, or changed to, adoption...* the court’s determination of whether one of the circumstances in ORS 419B.498(2) is applicable.

*Dept. of Human Services v. M.H.*, [258 Or App 83 \(2013\)](#).

# Changing plan back to reunification

- \* Required inquiry to change plan back to reunification:
  - \* Is it possible for the child to return home *within a reasonable time*? *Dept. of Human Services v. C.L.*, [254 Or App 203 \(2012\)](#); ORS 419B.476(5)(c); 419B.498(2)(b)(A) (if yes, this constitutes a “compelling reason” for determining that filing a petition to terminate rights is not in the child’s best interests).
- \* Party requesting the change in plan bears the burden of proof. *Dept. of Human Services v. M.S.*, [284 Or App 604 \(2017\)](#)

# Toby and Anna: What additional orders should the court consider making in this case?

- \* Services
- \* Progress
- \* Permanency plan
- \* Visitation
- \* Placement
- \* Concurrent plan
- \* Subsequent reviews

# What steps should you take to conclude the hearing?

- \* Timely preparation of the judgment
- \* Next hearing date
- \* Do you explain what has happened to parents and children, if they are present?
- \* Safety issues
- \* ???