

# Shelter Hearings: An In Depth Look

Through the Eyes of a Child Conference  
August 6, 2017



# Model Shelter Hearing Protocol

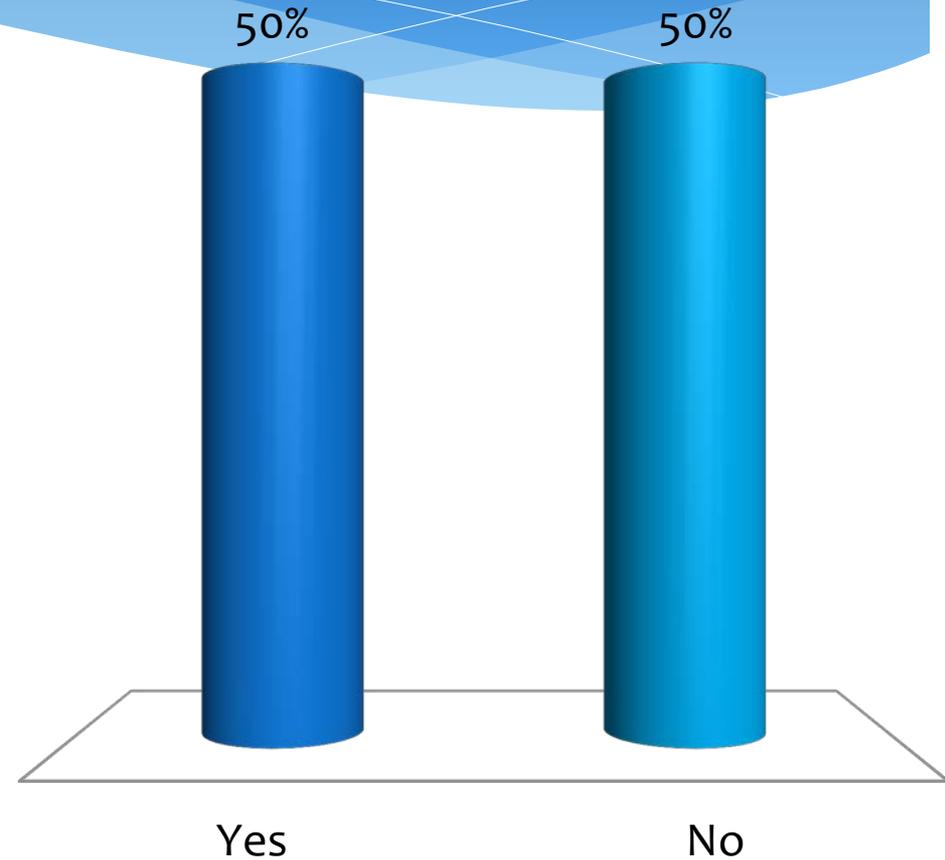


# Early Appointment of Attorneys

- \* Benefits of appointment prior to hearing:
  - \* Enables attorney to meet with client and have opportunity to review discovery.
    - \* Builds trust with client
    - \* Provides opportunity to prevent entry into foster care
    - \* Adequate representation throughout the case associated with fewer days in foster care
    - \* Cost savings; better outcomes

# Are attorneys appointed prior to the shelter hearing in your jurisdiction?

- A. Yes
- B. No



# Early Contact between Parent and Child (Parenting Time)

- \* Ensure first visit/contact occurs within 48 hours of removal
  - \* Reduces trauma
  - \* Early, frequent, quality parenting time correlated with decreased time in foster care
  - \* DHS policy requires first visit within a week and encourages caseworkers to schedule first visit within 48 hours when possible
  - \* Ask about the first visit at the shelter and consider ordering one if necessary
  - \* At every hearing, ask and consider: ***why is supervision necessary?***

# Three Phase Roll Out

- \* Messaging to DHS caseworkers – Spring 2017
- \* Presentation at Eyes and Model Court – August 2017
- \* Training for attorneys – October 2017



# Hearing Logistics

- \* How are shelter hearings scheduled in your jurisdiction?
- \* How much time is allotted?
- \* Do you have a pre-hearing orientation process for parents?
- \* Who serves parents with summons and petition?
- \* Who advises parents of their rights and how?
- \* When is a CASA appointed?

Shelter Hearing

# Nuts and Bolts



# Shelter Hearings

- \* A child or ward may not be held in detention or shelter care for more than 24 hours (excluding holidays and weekends) without a court order after a hearing. ORS 419B.183
- \* Evidentiary hearing required when child or ward taken into protective custody. ORS 419B.185

# Pre-Hearing

- \* Read the affidavit
- \* Read the Petition
- \* Have your staff make preliminary attorney appointments and ensure that the attorneys have the affidavit and Petition
- \* Make a preliminary ICWA determination
- \* Fill out as much of the model shelter order as possible

# Check the Environment

- \* Is the courtroom prepared for a trauma-informed hearing?
- \* Examples – If DV is an allegation between the parents and both parents will be present, does the seating arrangement provide emotional and physical safety? Is the same available for a child who might be present?
- \* Are necessary accommodations available (interpreter, listening devices for the hearing impaired, etc.)?

# Evidentiary Standard

- \* The rules of evidence do not apply to shelter hearings. Reports and summaries are admissible. Evidence still must be relevant to the findings the court is required to make. Privilege applies to all juvenile hearings. ORS 419B.185(1)(g); 419B.325(2), ORS 40.015(4)(i)

# Who is Here, Who Do We Need?

- \* Which parents are here?
- \* Legal status of fathers?
- \* Is the child present?
- \* If ICWA applies, has 10 day notice of proceeding been provided to parents and tribe? Is an expert available to testify?
- \* DHS is must notify parents, grandparents and foster parents when there is a hearing about a child. ORS 419B.876. Present?
- \* Are other family members, supporters or service providers present? Identify and acknowledge.

# Toby and Anna

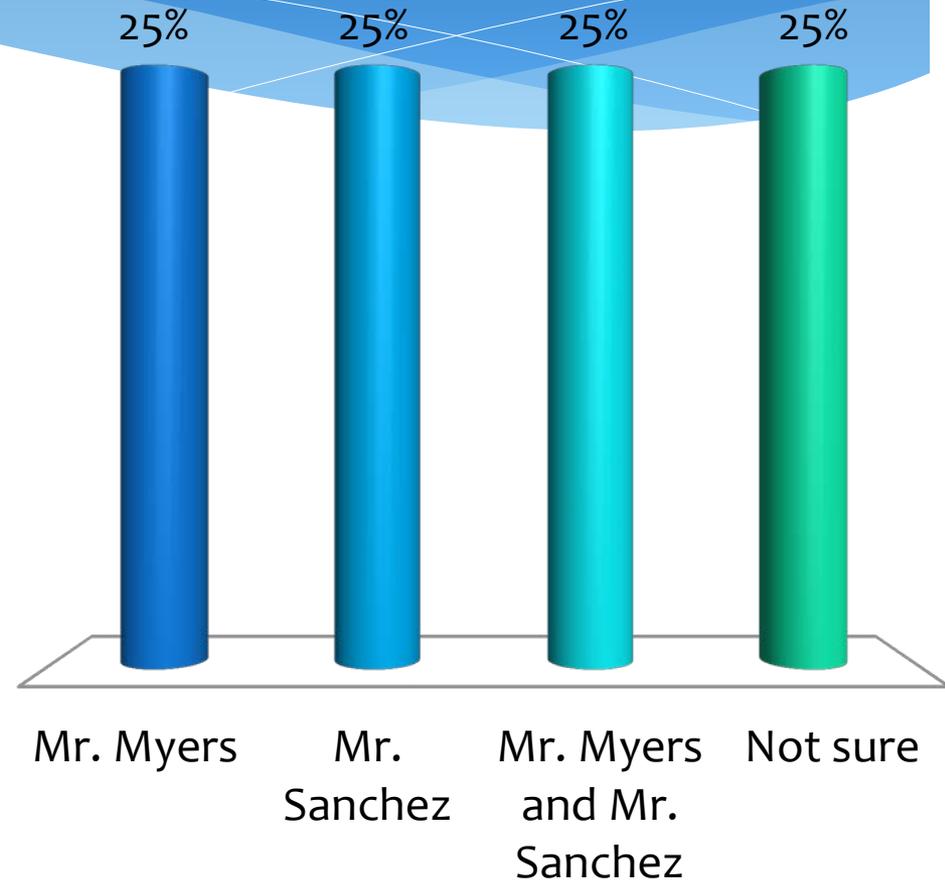
- \* Do you have any concerns about who is present/not present in this case?
- \* Would you appoint a CASA?

# Preliminary Matters

- \* Formally appoint attorneys for parents and child. ORS 419B.195; 419B.205.
- \* Identify materials or information the court intends to rely on; after considering objections, cause the material to be marked and admitted, or take judicial notice. Create judicial notice list and attach list and exhibits to order. ORS 419A.253.
- \* Identify stipulations
- \* Swear all parties & other witnesses, if any

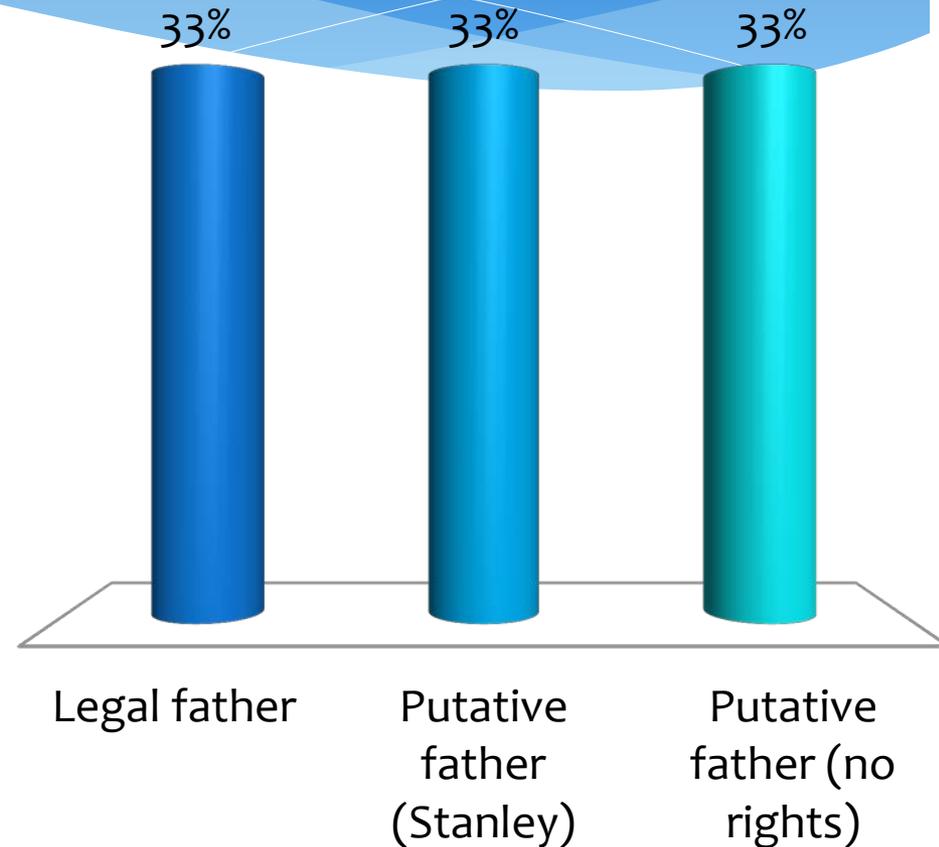
# Who is Anna's legal father?

- A. Mr. Myers
- B. Mr. Sanchez
- C. Mr. Myers and Mr. Sanchez
- D. Not sure



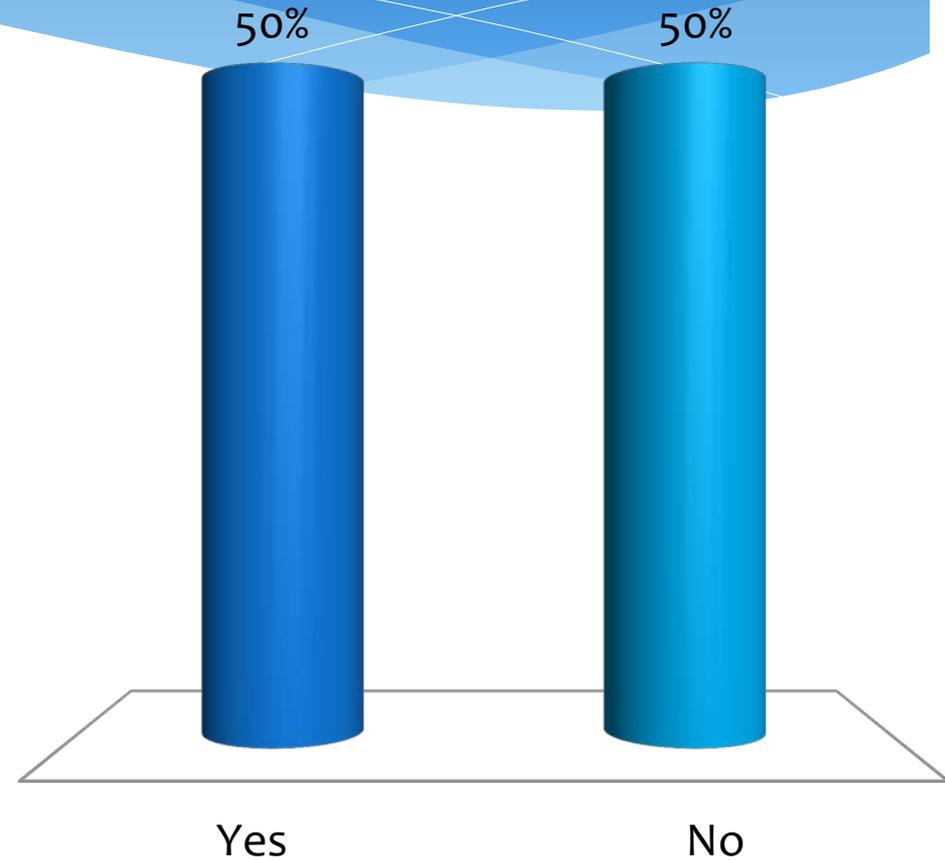
# What is Mr. Myers' legal status?

- A. Legal father
- B. Putative father (Stanley)
- C. Putative father (no rights)



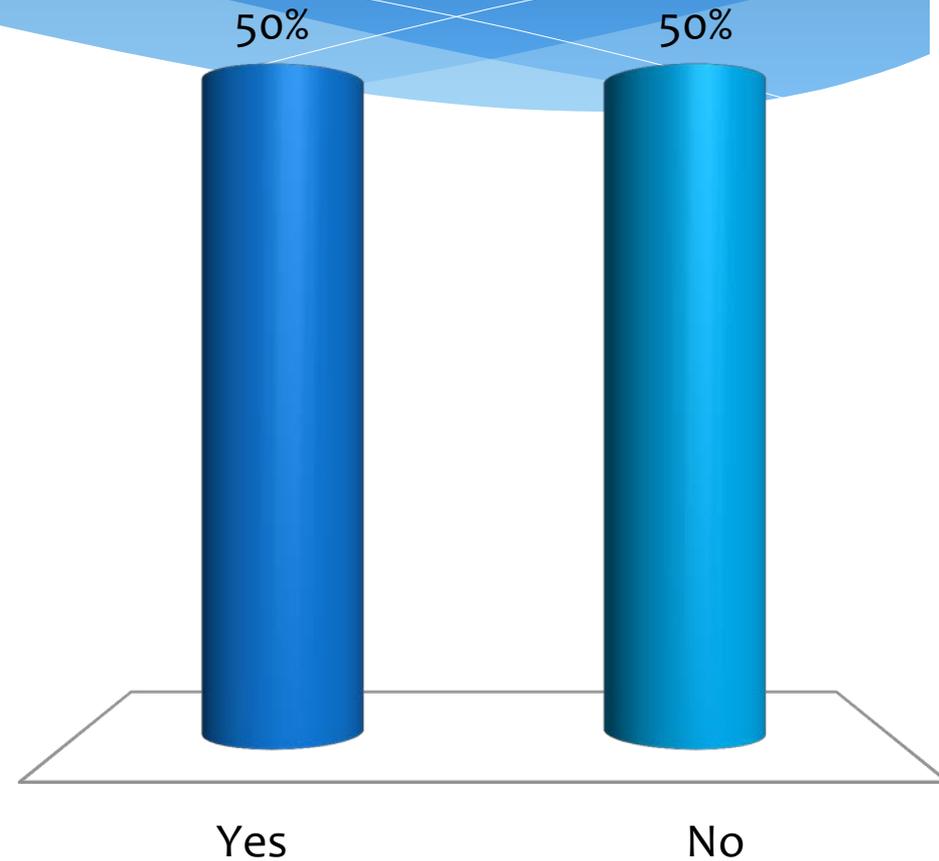
# Can an attorney be appointed for Mr. Myers?

- A. Yes
- B. No



Would you appoint an attorney for Mr. Sanchez, who is not present and incarcerated?

- A. Yes
- B. No



# Preliminary Matters Cont.

- \* Notify of rights (if not already covered by staff). ORS 419B.117 (JCIP form available)
- \* Assure that the parties have been served and determine whether the parties served by fax or email wish to waive formal service
- \* Consider appointing a CASA. ORS 419B.112, ORS 419B.875

# Talk to the parents and others present about ICWA

- \* “The affidavit I read says that the State [does/does not] believe that your child is an Indian Child according to the law that applies in these cases.”
- \* “It is important that we talk about this issue because it could change some of the standards the court applies in your case.”
- \* “Do either one of you have Native American heritage?”
- \* Ask others present: “do you know, or is there a reason to know, the child is an ‘Indian child’ under the Indian Child Welfare Act (ICWA)?”
- \* Make preliminary determination. Remind the parties that this finding could change if more information becomes available later.

# Set the Stage

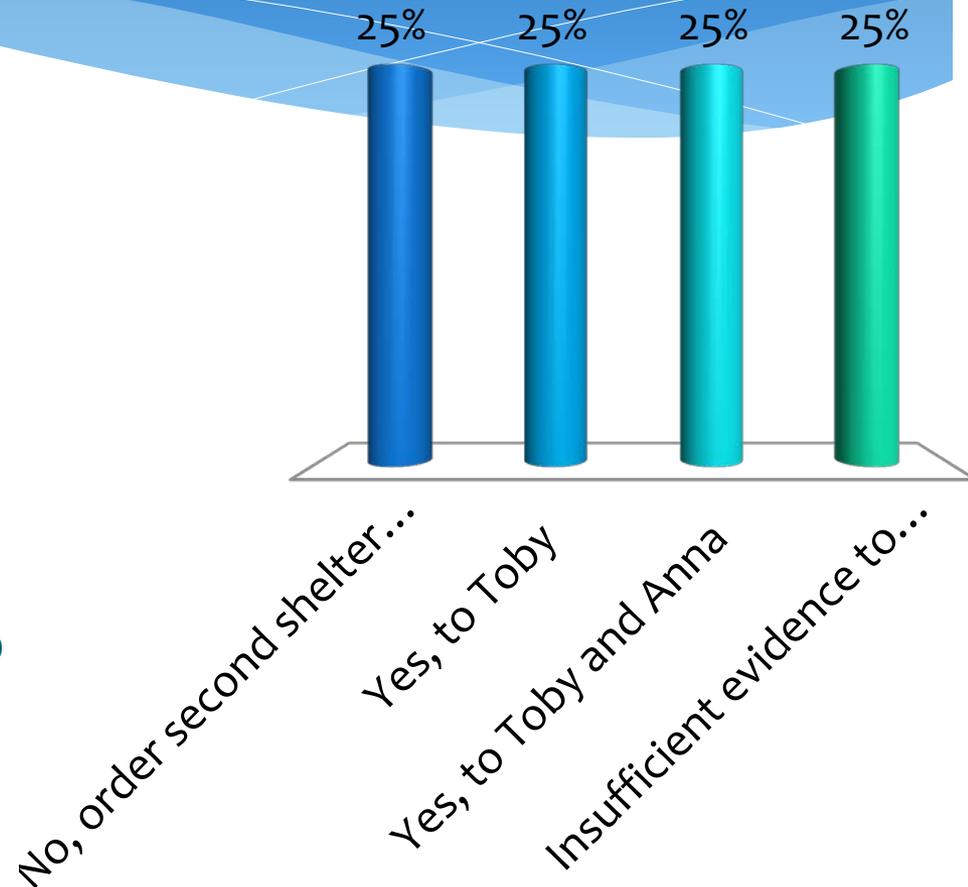
- \* Why are parties here: “The State has filed a petition saying that something about your child’s conditions and circumstances endangers them.”
- \* “DHS is asking the court to allow the State to intervene in your child’s life to keep them safe.”
- \* “The goal of this system and this court is to return the child to a parent as soon as it is safe to do so. You should know, however, that if the problems don’t get solved, the court and the State could stay involved in your child’s life longer and the court could potentially make other plans for your child.”

# Explain Procedure

- \* “You have the right to have the State prove the allegations in the petition at a hearing before a judge.”
- \* “That hearing should happen within 60 days.” ORS 419B.305
- \* “In the meantime, you have the right to see the State’s evidence in order to make an informed decision with your attorney about how to resolve this case.”

# Does ICWA apply?

- A. No, order second shelter to allow DHS to produce information
- B. Yes, to Toby
- C. Yes, to Toby and Anna
- D. Insufficient evidence to apply ICWA



# Findings required for federal funding

- \* Under Title IV-E of the Social Security Act, when a child is removed from the home, the court must make two findings at the beginning of the case to make the child eligible for federal funding:
  - \* Reasonable Efforts
  - \* Best Interests
- \* If the court doesn't make one of these findings, there will not be federal money available to fund foster care, assisted guardianship, or adoption assistance for this child during the removal episode.

# Best Interest Finding

- \* At the time of the first order authorizing removal, the court must find the child's continued residence in the home would be contrary to his or her welfare, or that placement would be in his or her best interest. 42 U.S.C. §672(a)(1)-(2); ORS 419B.185(1)(d).

# Reasonable/ Active Efforts

- \* At shelter, the court must make written findings as to whether DHS made reasonable/active efforts to prevent or eliminate the need of removal from the home. ORS 419B.185(1)(a).
- \* This satisfies the federal requirement that the reasonable efforts finding be made within 60 days from the date of removal. 42 U.S.C. §§671(a)(15); 672(a)(1)-(2)

# Reasonable/Active Efforts Cont.

- \* Did the State make reasonable/active efforts to prevent the need for removal? Detail in shelter order.
- \* If not, were the children removed during an emergency such that no reasonable/active efforts could have been made that would have prevented the need for removal? Detail in shelter order.

# RE/AE Inquiry and Findings

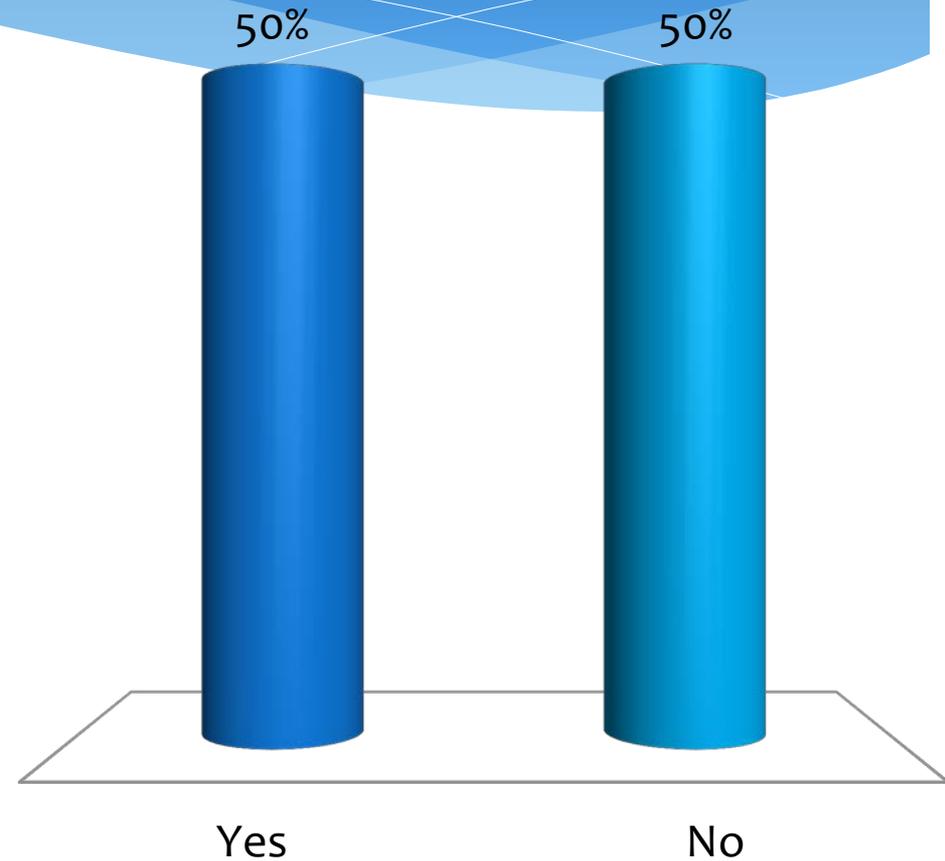
- \* If the child could not have stayed home without being in jeopardy even with reasonable services, DHS shall be considered to have made reasonable efforts to prevent or eliminate the need for removal. ORS 419B.185(1)(a)

# Toby and Anna

- \* What other efforts could have been made in this case to keep the kids at home?

# Did DHS make reasonable efforts?

- A. Yes
- B. No



# Primary Issue

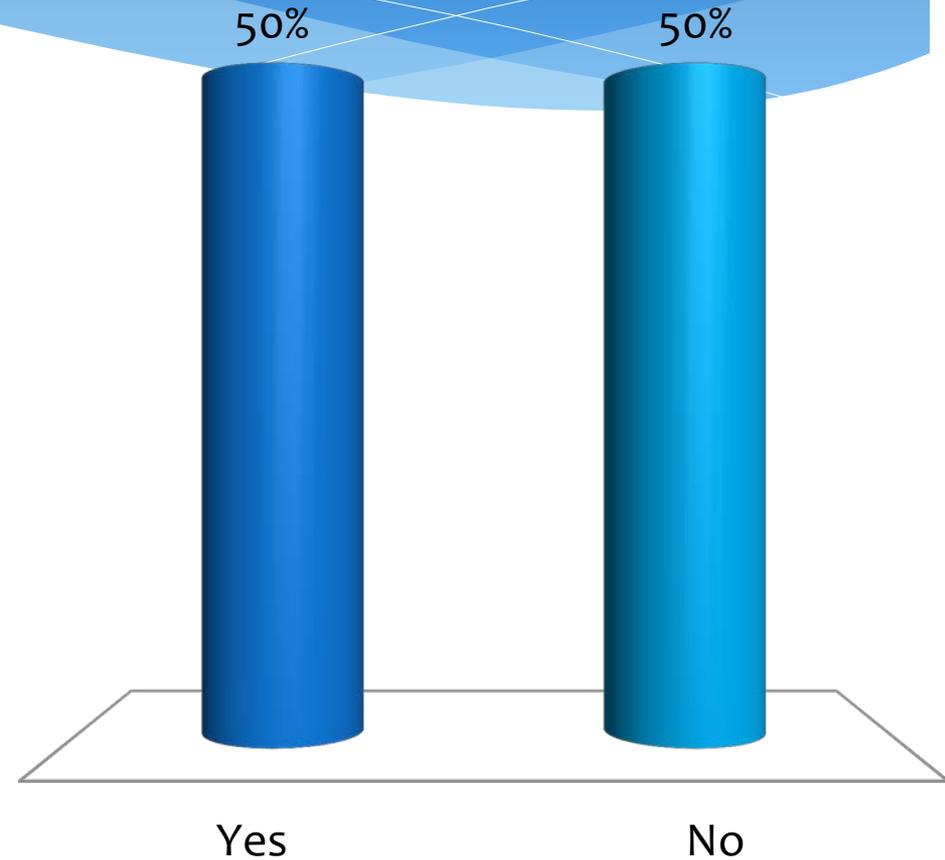
- \* **Can the child go home today?** Why or why not?
- \* A parent child or ward shall be provided the opportunity to present evidence that the child can be returned home without further danger of suffering physical injury or emotional harm, endangering or harming others, or not remaining within the reach of the court process prior to adjudication. ORS 419B.185 (1).

# What Will it Take to Make the Child Safe in the Home?

- \* If returning the child home to a parent without restriction is not an option:
  - \* In-home with a safety plan?
  - \* In-home with Safety Service Providers?
  - \* Placement in treatment with a parent?

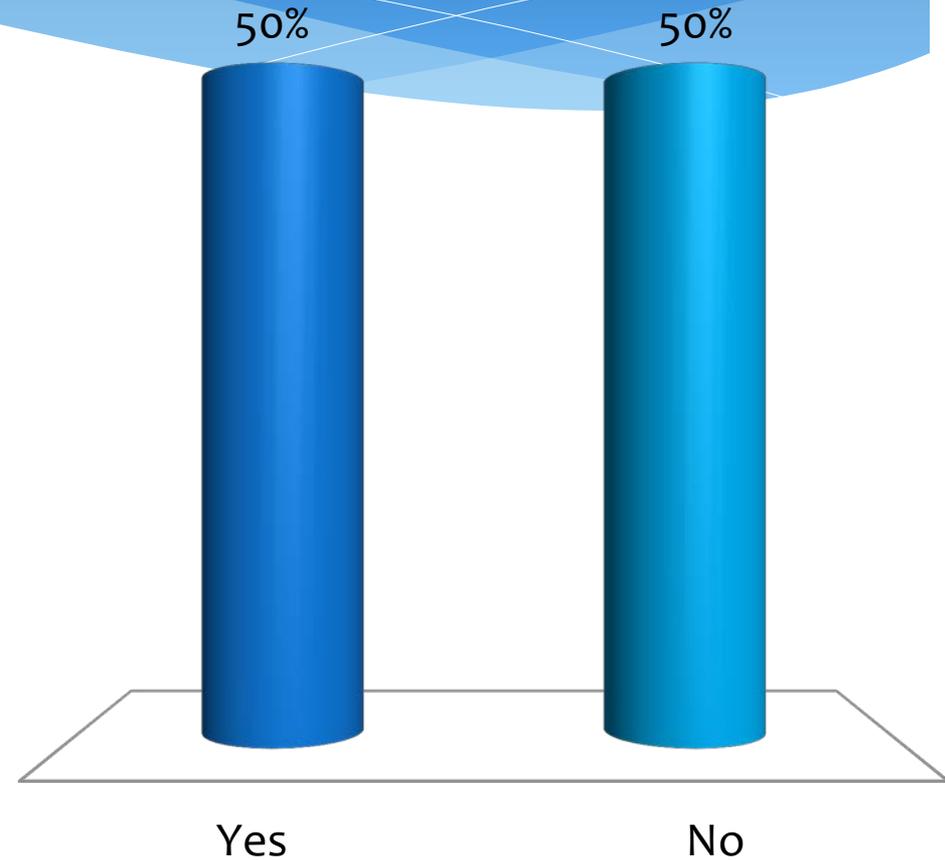
# Can Toby safely go home with services?

- A. Yes
- B. No



# Can Anna safely go home with services?

- A. Yes
- B. No

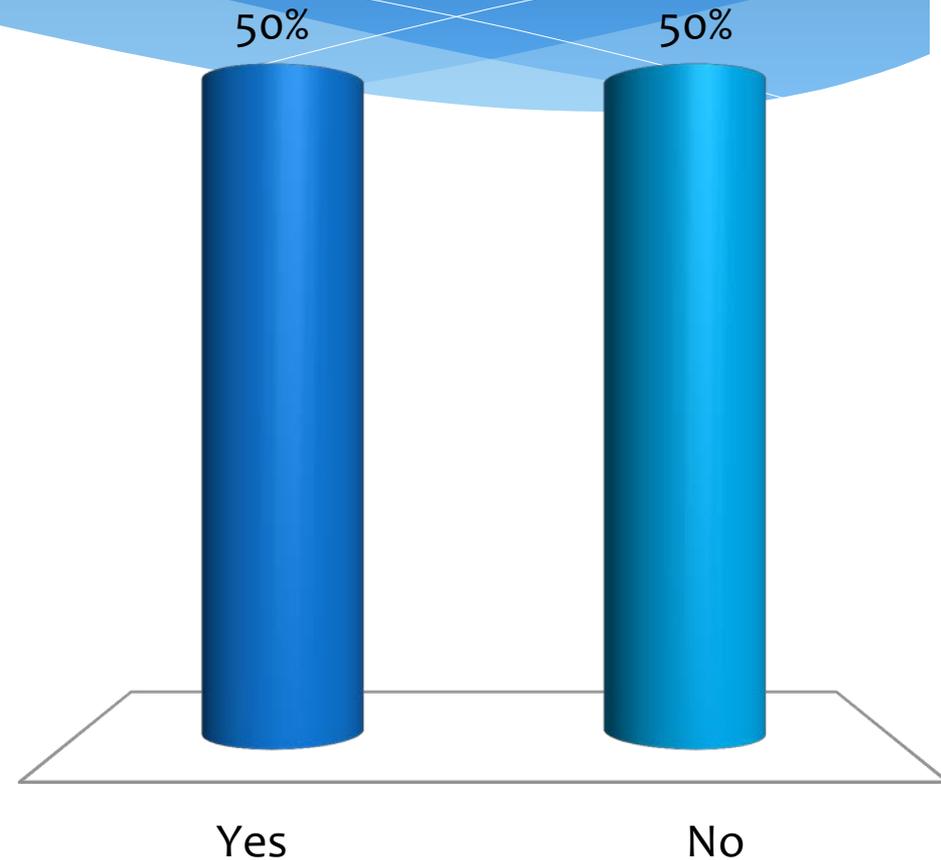


# Placement

- \* Where is the child today?
- \* What type of placement (with family, non-relative foster care, group home setting, etc.)?
- \* If you are removing the child from the home, did DHS make diligent efforts to place the child with relatives or persons with a caregiver relationship with the child? ORS 419B.185(1)(e); ORS 419B.192(1)
- \* Did DHS make diligent efforts to place the child with siblings who are also in need of substitute care? ORS 419B.185(1)(e); ORS 419B.192(2)

# Did DHS make diligent efforts to place the child with relatives and the siblings together?

- A. Yes
- B. No



# Toby and Anna

- \* Do the petition allegations adequately capture the issues of concern?
- \* How does this impact your analysis, if at all?
- \* What role should the court play, if any, if the allegations are not sufficient?

# If the Child Can't go Home Today

- \* Determine whether the foster placement is the least restrictive, most family like setting. 42 U.S.C. §675(5).
- \* Ensure that DHS has set up a visitation plan, and that a first visit has been set up with 48 hours (ideally) or a week of removal. OAR 413-070-0860. Order one if necessary. ORS 419B.337(3)
- \* Inquire about the needs and well-being of the child and how the child's needs will be met.

The caseworker says there are no planned visits at this time and she won't have time to work out a schedule until next week. What do you do?



# Toby

- \* What would you do about visits for Toby and Mr. Sanchez?



# Services for Parents

- \* Inquire whether the parents are willing to engage in services pre-adjudication
- \* If so, what services would best help them overcome the barriers to safe parenting?
- \* Consider authorizing return of the child to a parent before another court hearing if an appropriate safety plan is in place and all parties agree.

# Final Steps

- \* Grant temporary legal custody to DHS (or, in rare cases, to someone else). ORS 419B.809(5)
- \* Set dates (second shelter hearing if necessary and appropriate, discovery date, settlement, trial)
- \* Detail in the shelter order expectations for DHS and others (continue investigation of possible relative placement, locate and get notice to grandparents, further investigate ICWA, find and serve dads, have the child evaluated, make service referrals for parents, etc.)

# Toby and Anna

- \* What final steps are appropriate in this case?
- \* Second shelter?
  - \* If yes, why?
  - \* How far out?
- \* What action items do you assign for follow up?