

The Legal Aspects  
of Relative  
Placements



Legal Aspects DVD Series

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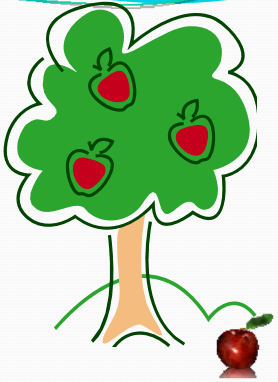
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Does it really  
matter how far  
the apple falls  
from the tree?



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The Laws That Affect  
Placement Decisions



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### Sources of the Law

- Federal and State Constitutions
- Federal and State Statutes
- Supreme Court Rules of Procedure
- Federal and State Agency Regulations
- Agency Policy - CWM

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### Constitutional Law



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### Constitutional Rights

- The U.S. Supreme Court has held that a parent, guardian or custodian have a protected liberty interest in his/her relationship with a child
- Children have a constitutionally protected liberty interest in their relationship with their parents
- State Government cannot interfere with parent/child relationship without providing due process of law

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## Constitutional Rights

- The bonds between a parent and child is a fundamental societal relationship
- A parent's have a right to raise his or her children is a fundamental liberty interest protected by the constitutional guarantee of due process
- It is one of the oldest fundamental liberty interests recognized by the U.S. Supreme Court  
In the Interest of K.A.W., 133 S.W.3d 1 (Mo banc 2004)

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## Parental Rights Don't Just Disappear

“The fundamental liberty interest of natural parents in raising their children does not evaporate because they have not been model parents or have lost temporary custody to their children”  
*In the Interest of K.A.W.*, 133 S.W.3d 1 (Mo banc 2004)



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## State's Compelling Interest

- States have a constitutionally recognized compelling interest in protecting children from abuse or neglect:
  - Authority to investigate allegations of child abuse or neglect
  - Authority to take reasonable steps to protect children who are at risk of being abused or neglected
  - Authority to take reasonable steps to provide protection and treatment to children who have been abused from future abuse

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### Other Laws on Parents

- Require CD to do a diligent search to identify and locate parents
- Require CD to place with the non-offending parent entitled to custody, with exceptions
- There is a prohibition on reunifying or placing a child who is in state custody with a parent who has been convicted of or pled guilty to certain crimes
- Require CD to provide reasonable efforts in most cases

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### Diligent Search

- CD is required by law to do a diligent search to identify and locate absent parents and
- To report the efforts to the court at each hearing **until**
- The parent is identified/located; or
- The court relieves CD by order

§210.127, RSMo

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### What about Dad?



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### Non-offending Parents

- The law requires children be returned promptly to the custody of the non-offending parent (NOP) who is entitled to physical custody under certain conditions §211.037, RSMo

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### Prohibition on Reunification and Placement

- A child, taken into state custody, shall not be reunited with a parent or placed in a home in which a parent or any person residing in the home has been found guilty of, or pled guilty to certain Missouri felony criminal offenses under chapter 566 and 568 where a **child** was the victim §§210.117 and 211.038, RSMo
- The applicable criminal offenses are listed in the statute and in the CWM

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### Prohibition on Reunification and Placement

- The statutory prohibition applies as long as the juvenile court case was filed **on or after** August 28, 2004
- Regardless of the date of the conviction
  - Ex. Juvenile case filed January, 2007, parent's conviction is in 1999 - child **cannot** be reunited
  - This is **NOT** a retroactive application (does not violate Ex Post Factor clause of the constitution)
- Important cases:
  - In the Interest of A.S.W.*, 226 S.W.3d 151 (Mo. banc 2007)
  - Canon v. Canon*, SC89118, (Mo. banc April 14, 2009)

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## Federal Laws on Relative Placements



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## ICWA

- Federal law
- The Tribe must be notified as provided by law
- The Tribe determines whether or not this is an Indian Child under ICWA
- If so, mandatory compliance with tribal placement preferences

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## Indian Relatives

- Missouri law requires CD to **comply** with the **placement requirements** of the Indian Child Welfare Act in 25 U.S.C. §1915 when any Native American child is placed in protective custody §210.565.5

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### ICWA Placement Requirements

- Relatives: extended family is defined by
  - the law or customs of the Indian tribe or
  - in its absence defined as:
    - Grandparent
    - aunt or uncle
    - brother or sister (including in-laws)
    - niece or nephew
    - first or second cousins
    - stepparent

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### ICPC

- Applies to
  - Placement with relatives when the court has jurisdiction
  - Placement preliminary to adoption
  - Placements into foster care/group/residential
  - Placement of adjudicated delinquents into a residential facility

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### ICPC – priority home study

- Priority home study request criteria:
  - Child under 2 years old or
  - Child in an emergency shelter (less than 30 days) or
  - Child has spent “substantial time” in the proposed placement’s home
    - Focus is on a “substantial relationship”
- Note: the request can be made on a whole sibling group, as long as one child meets the criteria listed above

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### ICPC – priority home study

- Placement relationship: requested placement with a parent, step-parent, grandparent, adult aunt or uncle, adult sibling or guardian (not “great” relatives)
- The **court order** has to say that the child meets the criteria, the relationship and that the court is ordering a regulation 7 or priority home study

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### ICPC – priority home study

- Priority home study has 20 business days from the time the receiving state’s local office receives it to return it to their ICPC office
- Home studies/approval to place is not valid after 6 months



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### Sibling Placements

- Federal law
- Requires the division to exercise reasonable efforts to place siblings removed from the home in the same placement
- Unless the division documents in the case file that is contrary to the safety or well being of any of the siblings

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### Sibling Placements

- If siblings cannot be placed together, the division must provide
  - frequent visitation or
  - other ongoing interaction between the siblings
- Unless the division documents in the case file that the interaction would be contrary to the safety or well being of any of the siblings

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### Missouri Laws on Relative Placements



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### Relative Placements

- Grandparents
- Other adult relatives
- Prior foster parents, if no relative placement available
- Kinship
- Other foster parents

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## Grandparents

- Missouri law
- Grandparents get first dibs! §210.565, RSMo
- The law requires the division to make diligent efforts to locate, contact and place with a grandparent within 3 hours when an emergency placement is deemed necessary
  - After all of the child's needs have been attended to
  - unless
    - Determination not in child's best interest and
    - subject to background checks for emergency placement

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## Relative Placements

- The law mandates a preference for placement with relatives unless the court makes specific findings that it is contrary to the child's best interest to be placed with a relative §210.565, RSMo
- Relatives are defined by law as related within the 3<sup>rd</sup> degree of blood or marriage §210.565.2, RSMo
- Continuing obligation to make diligent efforts to locate, identify and place with a relative §210.305, RSMo

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## Other Missouri Laws

- Child's preference for placement
- Kinship placement
- Foster parent placement

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### Federal Notification Law

- Within 30 days after removal, CD is required to identify and provide notice to all adult grandparents and other adult relatives of the child
  - Exception for family or domestic violence
- Notification requirements
  - Child has been removed from the parents' custody
  - Explanation of federal and state laws regarding relative placement and options lost if they don't respond
  - Requirements for fostering and services available
  - Availability for relative subsidy for guardianship

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### FACTORS TO CONSIDER FOR PLACEMENT

The Child

- Age
- Sex
- Culture and race of the child
- Physical health
- Mental health
- Behavior
- Cognitive functioning
- Previous placement History

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### Fit Parent for Placement

- Non-offending parent, entitled to physical custody
- Background check (including CA/N, criminal, and walk through of home)
- Relationship of the parent and the child

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**Siblings**

- Removed together
- Lived together
- Sibling adopted
- Relationship between the siblings
- Need for sibling separation
- Is it contrary to the safety or well-being of any of the siblings to be separated?

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**Relatives**

- Background checks
- Location of the relative
- Proximity to child's parents
- School district
- Relationship between the child and the relatives
- Relationship between the parents and the relatives
- Is the relative equipped to care for the child?
- What is the relative's commitment level to the child?

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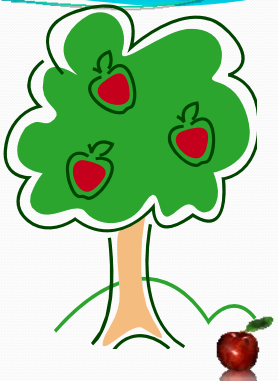
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