

Advocating for Infants and Young Children in Child Welfare Proceedings

Christine Sabino Kiesel, Esq.
Assistant Coordinator
Child Welfare Court Improvement Project

Why Focus on Infants & Young Children?

- Consider the inherent difficulties in representing pre-verbal clients
 - How do you develop a position on the client's behalf?
 - How do you meet your ethical obligations to that client?
 - How do you prevent ethical violations?
- Consider the developmental urgency
- Consider the potential outcomes
- Consider the magnitude

Abuse/Neglect Threatens the Well-being of Too Many Infants and Toddlers

- Consider the magnitude
 - Nationwide, almost 200,000 children under the age of 4 come into contact with the child welfare system every year
 - More than a third of these infants and toddlers are placed in foster care
 - *Representing the largest age group entering care*
- Consider the critical developmental stage
 - Brain development occurs at monumental rates during infancy/toddlerhood
 - Maltreatment chemically changes that development
 - *Threatening permanent damage of the brain's architecture*
- Consider the outcomes
 - *“The child welfare system has not done well at addressing the developmental needs of infants and toddlers and, in some instances, acts in ways that threaten their development.”*

Source: American Humane Association, Center for the Study of Social Policy, Child Welfare League of America, Children's Defense Fund, and ZERO TO THREE. 2011. *A Call to Action On Behalf of Maltreated Infants and Toddlers*.

<http://www.cwla.org/advocacy/CalltoActionZto3.pdf>.

Infants in Out-of-Home Care Differ from Older Children

- 1) Incidence of first-time out-of-home placements
 - Infants account for disproportionately large percentage of first-time admissions
- 2) Duration in care
 - Infants generally spend more time in care
- 3) Experiences in care
 - Infants spend more time in foster homes/less time in group homes
 - Infants are adopted at higher rates
- 4) Vulnerability for delayed development
 - Infants in care are particularly vulnerable to emotional, social and cognitive developmental delays

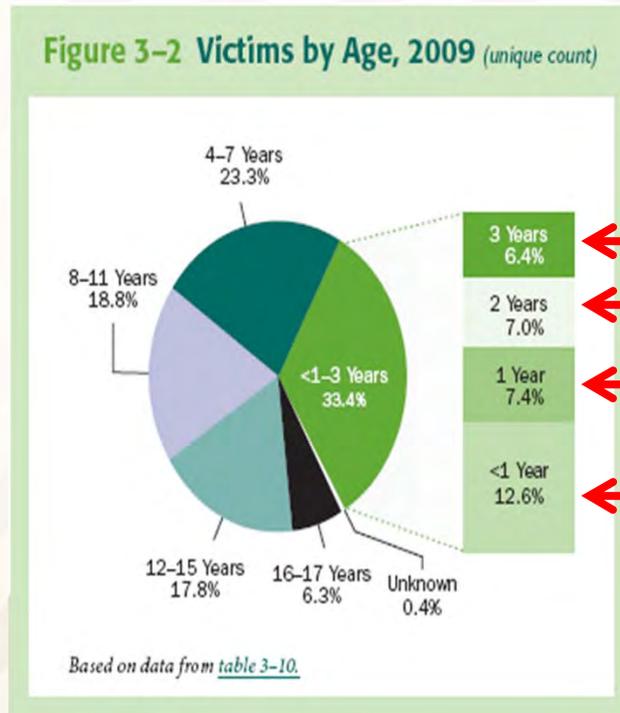
Youngest Children are the Most Vulnerable to Maltreatment

Percentage of Victims

- Nationally, infants accounted for highest percentage of victims in 2009

Rates/1,000 General Population

- Nationally, infants had the highest rate of victimization in 2009



- Infants = 21.3/1,000
- 1-3 Years = 12.4/1,000
- 4-7 Years = 10.7/1,000
- 8-11 years = 8.8/1,000
- 12-15 years = 8.2/1,000
- 16-17 years = 5.6/1,000

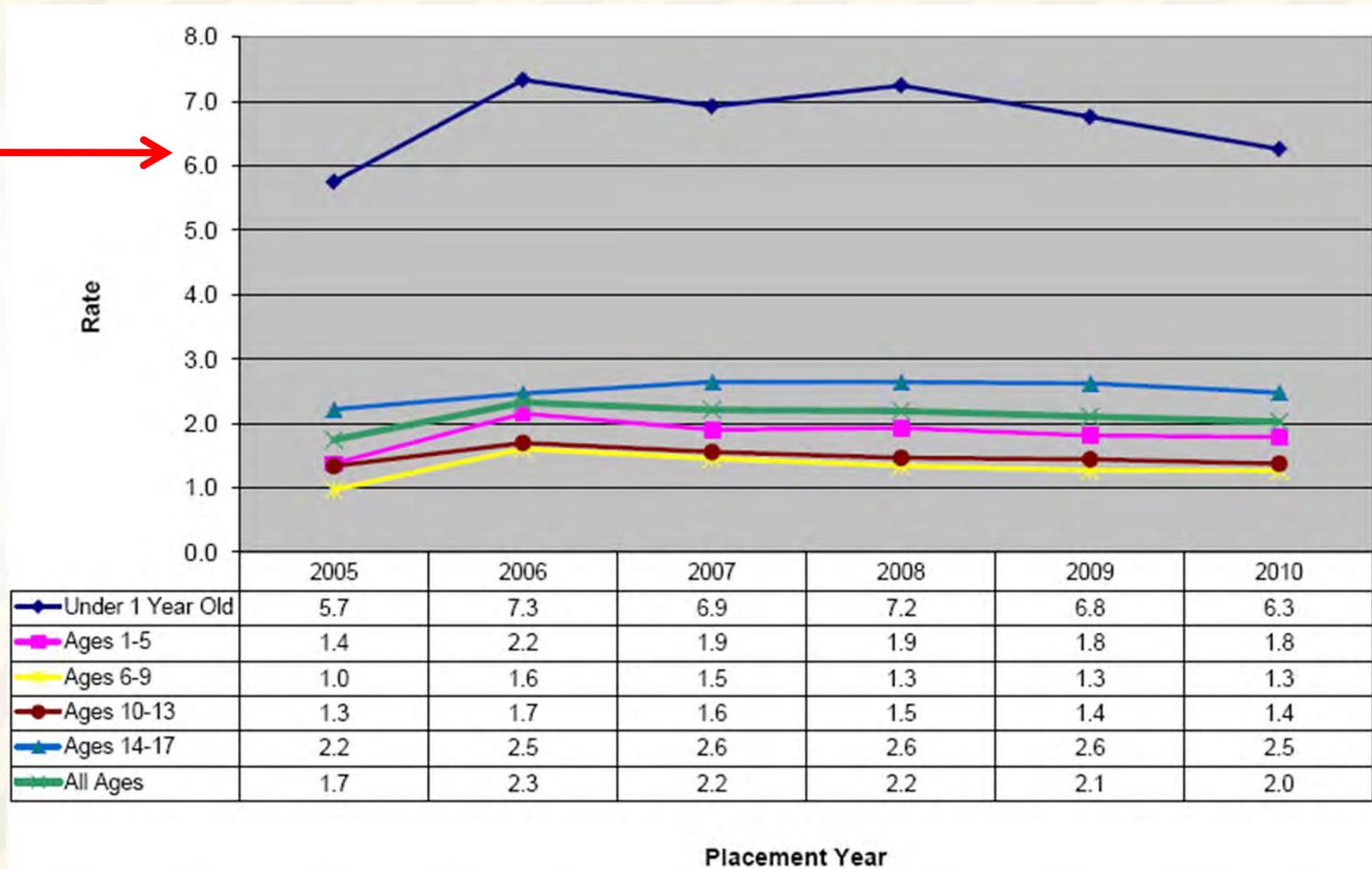
Source: U.S. Department of Health and Human Services, Administration for Children and Families, Administration on Children, Youth and Families, Children's Bureau. (2010). *Child Maltreatment 2009*. Available <http://www.acf.hhs.gov/programs/cb/pubs/cm09/cm09.pdf#page=31>

Source: Rate of substantiated maltreatment reports [ChildStats.gov](http://childstats.ed.gov/americanchildren/tables/fam7a.asp) (<http://childstats.ed.gov/americanchildren/tables/fam7a.asp>) (Accessed 8/12/11)

Incidence of First-Time Out-Of-Home Placements

How do infants and toddlers differ
from older children?

Rate of First Placements in Foster Care Per 1,000 Children By Age at First Admission: NYS, 2005 to 2010



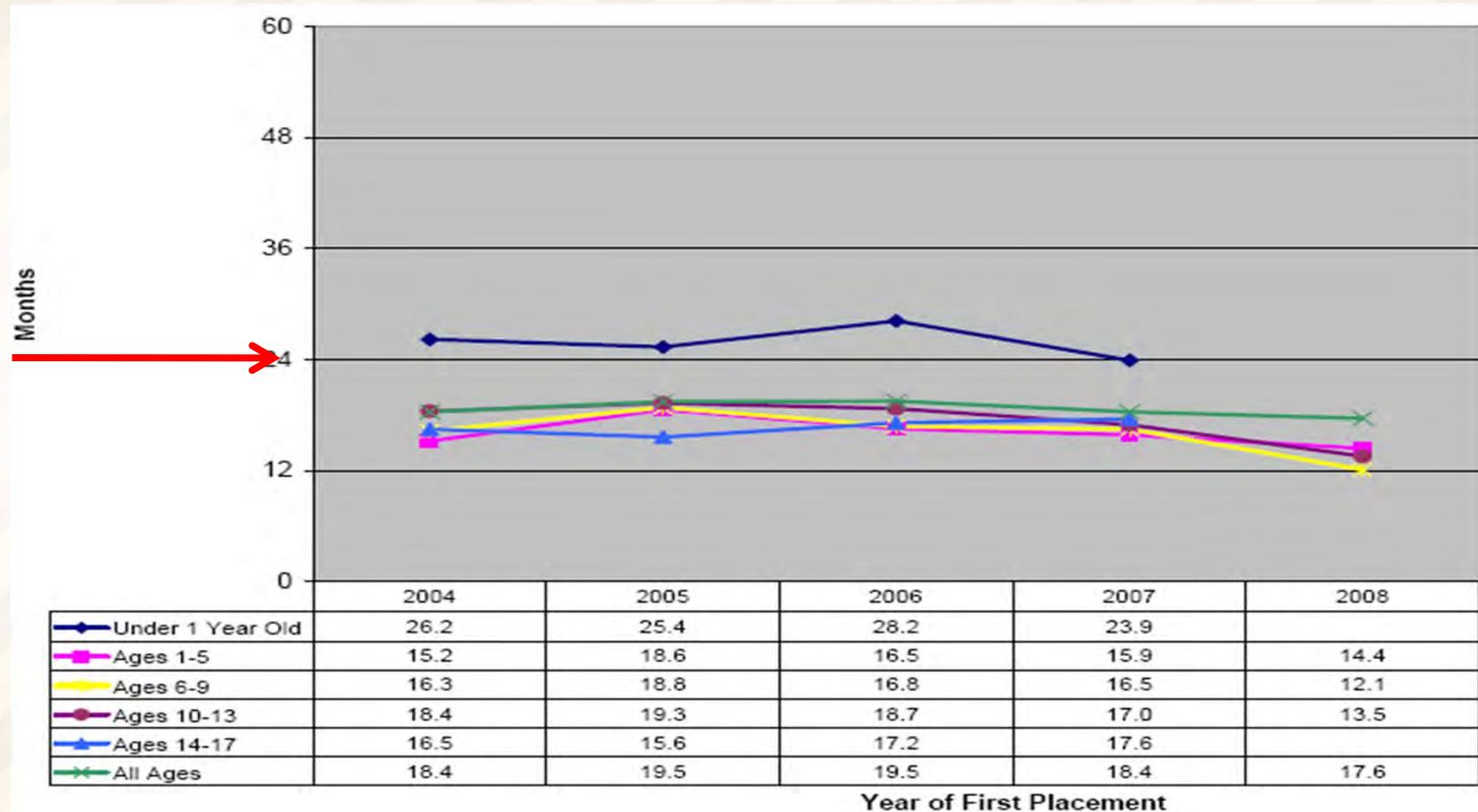
Note: Rate of first placements per 1,000 children in the general population does not include children re-entering care

Source: NYS CCRS Data via Multistate Data Center, CCRS Data as of 1/31/11

Duration in Care

How do infants and toddlers differ
from older children?

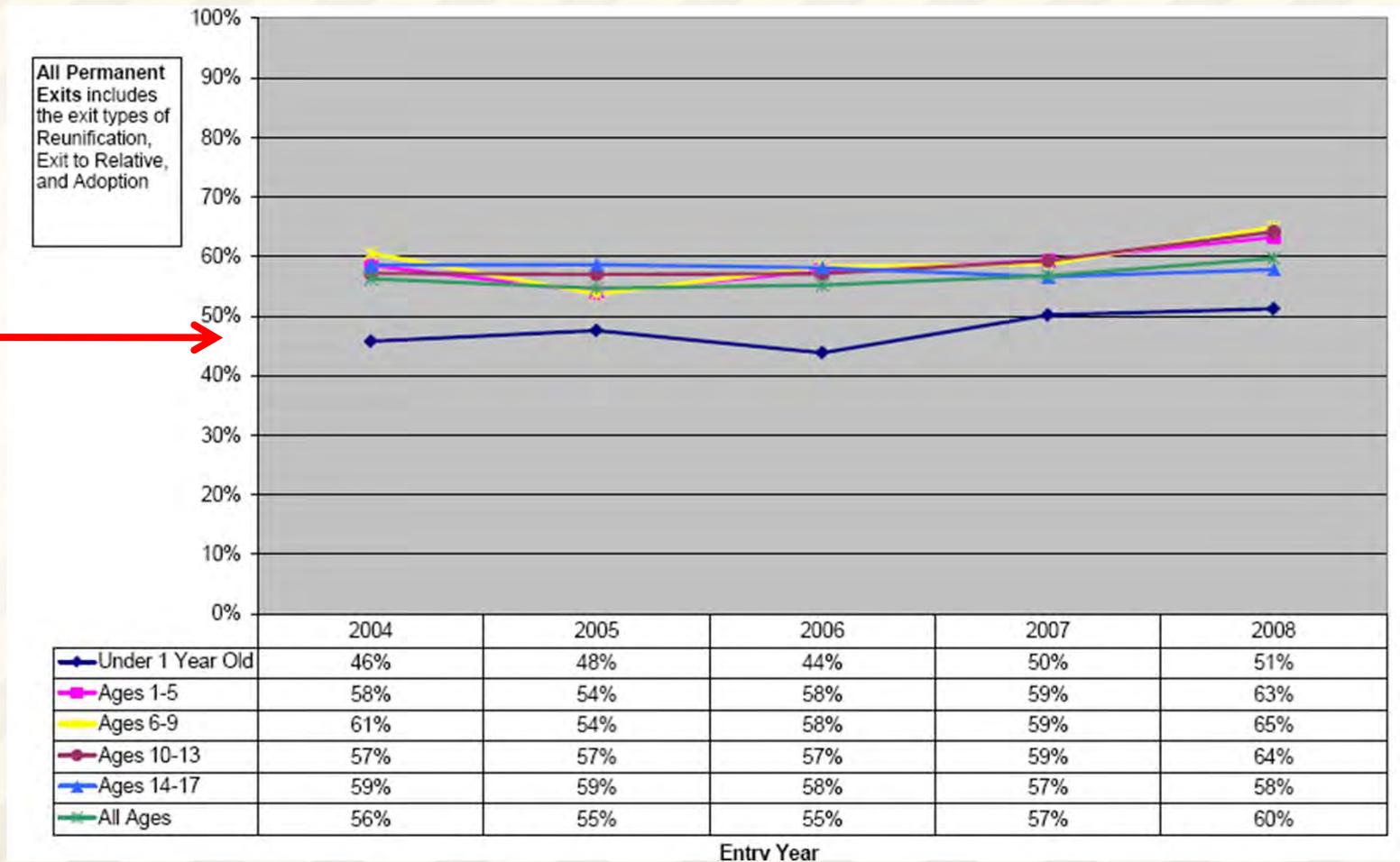
Median Length of Stay (in months) for Children Placed in Foster Care for the First Time and Exiting to a Permanent Exit: NYS, 2004 to 2008



Note: Of all of the children entering foster care for the first time, number of months it took for half of the children to exit to a permanent exit - reunification with family, exit to relative, or adoption by age at first admission.

Source: NYS CCRS Data via Multistate Data Center, CCRS Data as of 1/31/10

Rate of Permanent Exits Within 2 Years of First Admission by Age: NYS, 2004-2008



Note: Of children who entered foster care for the first time between 2004-2008, percent exited to a permanent exit within 2 years.
 Source: NYS CCRS Data via Multistate Data Center, CCRS Data as of 1/31/11

Experiences in Care

How do infants and toddlers differ
from older children?

Exit Outcomes within 2 Years of First Admission by Age Group: NYS, placed in 2007, tracked through 2009

Admission Year: 2007			Percent of Exits by Type and Cumulative Month Range							
Age at First Admission	Month Range	Total first admissions in 2007 *	Reunification	Exit to Relative	Adoption	Permanent exits	Reach Majority	Run Away	Other Exit	Still in care
Under Age 1	0 - 6 Months	1,794	15%	8%	0%	23%	0%	0%	3%	
	0 - 12 Months		22%	10%	1%	33%	0%	0%	3%	
	0 - 18 Months		28%	11%	3%	41%	0%	0%	4%	
	0 - 24 Months		32%	11%	7%	50%	0%	0%	4%	46%
Ages 1-5	0 - 6 Months	2,374	23%	9%	0%	32%	0%	0%	2%	
	0 - 12 Months		32%	11%	0%	43%	0%	0%	4%	
	0 - 18 Months		40%	12%	1%	53%	0%	0%	5%	
	0 - 24 Months		45%	13%	1%	59%	0%	0%	6%	36%
Ages 6-9	0 - 6 Months	1,362	23%	8%	0%	32%	0%	0%	4%	
	0 - 12 Months		33%	9%	0%	43%	0%	0%	6%	
	0 - 18 Months		41%	10%	0%	52%	0%	0%	7%	
	0 - 24 Months		46%	11%	1%	58%	0%	0%	9%	34%
Ages 10-13	0 - 6 Months	1,445	21%	7%	0%	28%	0%	3%	7%	
	0 - 12 Months		34%	9%	0%	43%	0%	3%	10%	
	0 - 18 Months		41%	10%	1%	51%	0%	4%	12%	
	0 - 24 Months		46%	10%	1%	57%	0%	5%	13%	25%
Ages 14-17	0 - 6 Months	2,773	21%	4%	0%	25%	1%	8%	9%	
	0 - 12 Months		36%	5%	0%	41%	2%	11%	13%	
	0 - 18 Months		44%	6%	0%	50%	3%	12%	15%	
	0 - 24 Months		47%	7%	0%	54%	4%	13%	16%	14%
All Ages	0 - 6 Months	9,748	21%	7%	0%	28%	0%	3%	5%	
	0 - 12 Months		32%	9%	0%	41%	1%	4%	7%	
	0 - 18 Months		39%	10%	1%	50%	1%	4%	9%	
	0 - 24 Months		43%	10%	2%	55%	1%	4%	10%	30%

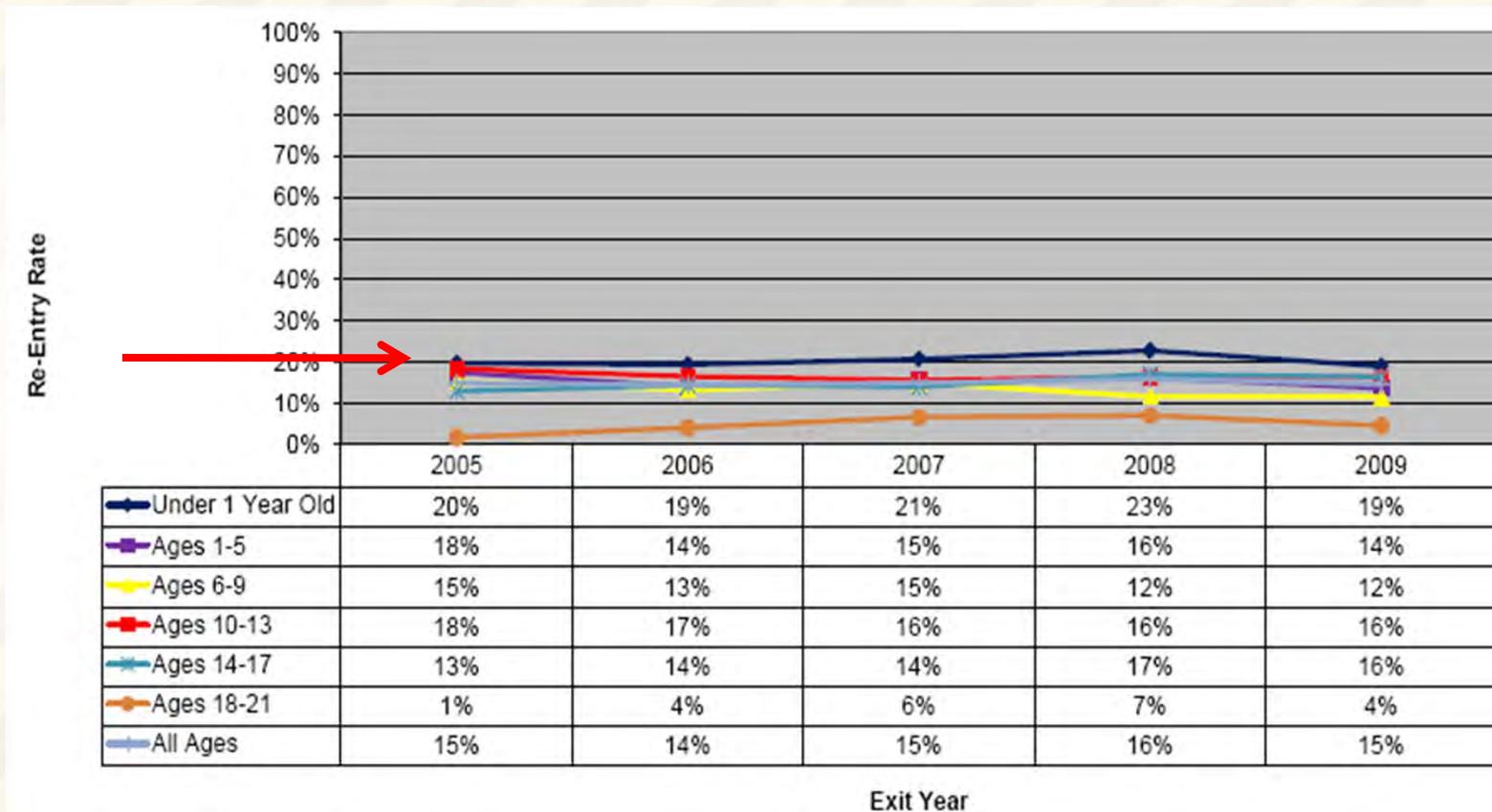
Source: NYS CCRS Data via Multistate Data Center, CCRS Data as of 1/31/10

Age – A Factor Related to Re-reporting & Recurrence

- The likelihood of re-reporting is similar for infants and children ages 1 year
- The likelihood of recurrence is greatest for infants
- Generally, as the age of children at initial report increases, the likelihood of re-reporting decreases and as the age of child victims at initial report increases, their likelihood of experiencing recurrence declines

Source: Fluke, J.D., Shusterman, G.R., Hollinshead, D., & Yuan, Y.T. *Rereporting and Recurrence of Child Maltreatment: Findings from NCANDS*. (Washington, DC: U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, 2005). <http://aspe.hhs.gov/hsp/05/child-maltreat-rereporting/report.pdf>

Re-Entry Rate by Age and Year at Exit: NYS, 2005 to 2009

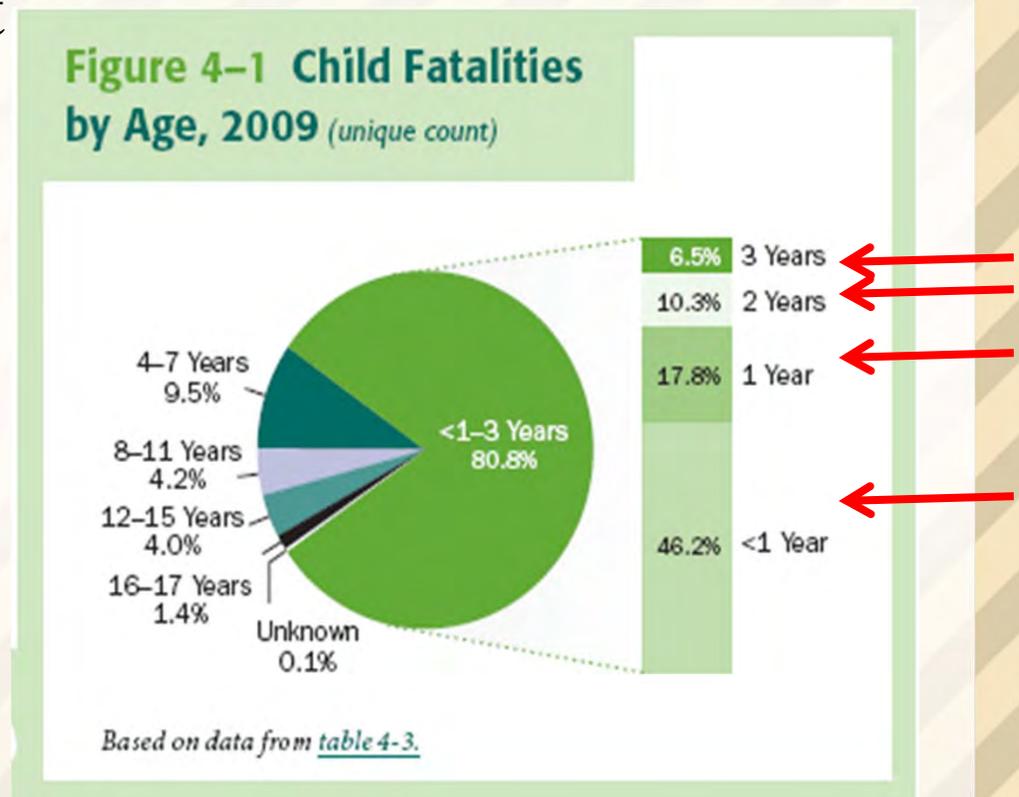


Note: Percent of discharges to reunification with family or exit to relative that result in a re-entry to foster care within one year. Age recorded at time of exit.

Source: NYS CCRS Data via Multistate Data Center, CCRS Data as of 1/31/11

Child Fatality Demographics

- Youngest children are the most vulnerable to death as result of abuse/neglect
 - 80.8% of all child fatalities in 2009 were younger than 4 years old



Vulnerability for Delay

Ensuring the Healthy Development of Infants and
Young Children

Ensuring Healthy Development

- Medical Needs
- Developmental Needs
- Mental Health

Ensuring Healthy Development

- Medical Needs
 - Elevated Risk Factors
 - Poverty
 - Communicable diseases
 - Drug exposure
 - High stress levels
 - National Standards – Medicaid Law – Early and Periodic Screening, Diagnosis and Treatment (EPSDT)*
 - New York State – OCFS Administrative Directive requires a comprehensive medical examination within thirty days of placement (90 ADM-21)

Ensuring Healthy Development

- Developmental Needs
 - ABA Guide – Early developmental milestones*
 - Knowing where a baby should be in a developmental hierarchy will assist you in communicating with your client and gathering information
 - Early Intervention – mandatory –CAPTA (P.L. 108-36) and funded under Part C of the IDEA - FCA 1089(c)(2)(iii)(C) Require state child welfare agencies to refer children under 3 years with a substantiated case of abuse/neglect to an early intervention program

*Source: Maze, C. (2010). *Advocating for Very Young Children in Dependency Proceedings: The Hallmarks of Effective, Ethical Representation*. Chicago, IL: American Bar Association; Practice and Policy Brief.

Ensuring Healthy Development

- Mental Health

- Social developmental milestones – achievement of self-regulation
- Attachment – The formation of an enduring emotional bond with a primary or small number of stable, responsive and sensitive caregivers.

Ensuring Healthy Development

- Attachment
 - Attachment disruption contributes to emotional, social and biochemical consequences in a developing brain. *
 - Removal
 - Moves in foster care
 - Chronic Inconsistency in routine/schedule

*Source: Dicker, S. & Gordan, E. (2004). *Ensuring the Healthy Development of Infants in Foster Children: A Guide for Judges, Advocates and Child Welfare Professionals*. Washington DC: Zero to Three.

Ensuring Healthy Development

- Attachment

- Birth – 2 months - Preference is based upon familiar smells and sounds
- 2 – 4 months – ability to distinguish among care givers – no strong preference
- By 6 months – babies have a preferred attachment and begin to exhibit anxiety to strangers
- “Babies can attach to more than 1 person & that responsive care by a primary adult can help a child attach to future care givers” *

*Source: Dicker, S. & Gordan, E. (2004). *Ensuring the Healthy Development of Infants in Foster Children: A Guide for Judges, Advocates and Child Welfare Professionals*. Washington DC: Zero to Three.

Ensuring Healthy Development

- Mental Health Evaluations/Assessments
 - Early Head Start – a federally funded program designed to address multi-system needs of pregnant women and families with children from birth to age three:
 - Education
 - Health
 - Mental Health
 - Social
 - Nutrition
 - Family support Services -
<http://eclkc.ohs.acf.hhs.gov/hslc/HeadStartOffices#map-home>
 - Other family support services
 - Child Care Resource and Referral programs – national data base of local communities child care, parent education and family-centered programs.
 - Starting Early, Starting Smart
 - Public Health Nursing
 - Home Visiting Programs



Checklist for the Healthy Development of Foster Children

- 1 Has the child received a comprehensive health assessment since entering foster care?
- 2 Are the child's immunizations complete and up-to-date for his or her age?
- 3 Has the child received hearing and vision screening?
- 4 Has the child received screening for lead exposure?
- 5 Has the child received regular dental services?
- 6 Has the child received screening for communicable diseases?
- 7 Has the child received a developmental screening by a provider with experience in child development?
- 8 Has the child received mental health screening?
- 9 Is the child enrolled in an early childhood program?
- 10 Has the adolescent child received information about healthy development?

**What does all this mean for
Advocating for children?**

Advocating

- Critical Decision Points
 - Removal/Placement
 - Visiting
 - Services
 - Adjournments/Continuances

Advocating

- Removal/Placement
 - Is removal necessary – imminent danger standard - SAFETY
 - Relative options – including the dad and his family
 - Placement should be supportive of reunification efforts – Mentor role
 - Should have the capacity to care for an infant/young child with unique needs – reducing need for disrupted placements
 - Willingness to host visits
 - Access to supportive services and information about the child's unique needs
 - Close proximity to the home

Advocating

- Visiting
 - Does the visitation need to be supervised?
 - If so, utilize traditional and non-traditional visitation types
 - Everything the agency will provide
 - Every relative and family friend who is willing
 - Medical appointments
 - Early intervention appointments
 - Early Head Start
 - Foster parents
 - Parenting groups
 - School and Sporting Events
 - Timing to be consistent with child's schedule

Advocating

- Services
 - Advocate for screenings of your clients at first court appearance
 - Comprehensive medical
 - Early Intervention
 - Early Head Start – other mental health screening
 - Advocate that parent voluntarily begin necessary services so that safety risk to the child can be eliminated as soon as possible
 - Concurrent planning

Advocating

- Adjourning/Continuances
 - Don't request and don't consent when at all possible
 - Washington State Institute for Public Policy – “How do Court Continuances Influence the Time Children Spend in Foster Care” *
 - Increase the duration of completion of the case by 31.8 days per continuance for neglect/abuse proceedings
 - Increase the duration of completion of the termination proceeding by 26 days per continuance
 - Days in foster care increase by 11.9 days per continuance
 - Neglect cases averages 2.7 continuances – translates into an additional 32.1 days in foster care

* Washington State Institute for Public Policy. (2004). *How Do Court Continuances Influence the Time Children Spend In Foster Care?* Olympia, WA: author.

Ethical Considerations

- Rule of the Chief Judge §7.2
 - §7.29(d)(1) – Zealously advocate which means: ascertaining the child's position by consulting with and advising the child to the extent and in a manner consistent with the child's capacities, AND have a thorough knowledge of the child's circumstances.
 - Nowhere does it allow for pure subjective, substituted judgment
 - Thorough knowledge can not be obtained from interested professionals either.

Ethical Considerations

- Law Guardian Representation Standards for Article 10 Cases
 - Interviewing the child is a requirement absent EXTRAORDINARY CIRCUMSTANCES
 - Infancy or young child does NOT constitute an Extraordinary Circumstance
 - Visiting the child where they are being cared for
 - Gather information – obtain information regarding those that may have pertinent information about the child (Drs. Caretakers, school officials, etc.)

Developing an informed position on behalf of your infant/young child client

- Learn as much as possible about the child's history
 - Medical records
 - Talking to parents and other care givers (ethical issue)
 - Consult with a nurse practitioner or other professional to help you understand what's in the medical records.

Developing an informed position on behalf of your infant/young child client

- Get to know your client –
 - See the baby or child in their own environment
 - Interact with the child in an age appropriate way –
 - Observe the child's environment
 - Safe
 - Appropriate sleeping arrangements
 - Books/toys
 - Are child's cultural/religious/community ties being honored

Developing an informed position on behalf of your infant/young child client

- Learn about parental capacity
 - Family History
 - Prior family involvement with child protective services
 - Review written notes of interactions between parent and child where observation made by a trained professional
 - Review assessments of both parent and child
 - Understand what factors lead to the decision that the child was unsafe
 - Understand unique needs of your client

In Summation

- There is an urgency for permanency for infants and young children
- They come in in large numbers
- They stay the longest
- They are the most medically fragile
- They are affected by early experiences

In Summation

They need you!

Thank You!

Christine Sabino Kiesel, Esq.

ckiesel@courts.state.ny.us

315 266-4254